

ORIGINAL

# UNITED STATES NUCLEAR REGULATORY COMMISSION

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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: 13359 through 13669

Place: Concord, New Hampshire

Date: June 14, 1988

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION  
 2 ATOMIC SAFETY AND LICENSING BOARD

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

11 Tuesday,  
 12 June 14, 1988

13 Room 302  
 14 Legislative Office Building  
 15 Concord, New Hampshire

16 The above-entitled matter came on for hearing,  
 17 pursuant to notice, at 9:01 a.m.

18 BEFORE: JUDGE IVAN W. SMITH, CHAIRMAN  
 19 Atomic Safety and Licensing Board  
 20 U. S. Nuclear Regulatory Commission  
 21 Washington, D.C. 20555

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

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



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1	I N D E X			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
			<u>RECROSS</u>	<u>DIRE</u>
3	EDWARD THOMAS			
	by Mr. Oleskey	13372		
4	by Mr. Turk			13496
	by Mr. Oleskey	13502		
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## I\_N\_D\_E\_X (Continued)

2	<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>DESCRIPTION</u>
4	<u>Massachusetts Attorney General:</u>			
5	No. 48	13378		Multipage, FEMA- REP-3, February 1981 Dynamic Evacuation Analyses
6				
7	No. 49	13437		5 pp., Memo exchange, January 1986, Quinn and Thomas
8				
9	No. 50	13544	13553	3pp., Memo, FEMA Response to Contentions June 3, 1987
10				
11				
12	No. 51	13556	13560	1pp., Memo June 5, 1987 Flynn to Thomas
13				

INSERTS.

15	<u>Description:</u>	<u>Page:</u>
16	Notice of Appearance of Mr. Barshak and Ms. Netski	13669
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## P R O C E E D I N G S

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JUDGE SMITH: Good morning.

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Mr. Barshak has asked to make a preliminary statement on the matter scheduled for this morning, but before that is there any other preliminary business.

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Mr. Turk, I see you have Mr. Scinto this morning.

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MR. TURK: Yes. Your Honor, I want to introduce Mr. Scinto to the Board and parties. With me to my right is Joseph F. Scinto, he is acting Assistant General Counsel for hearings with the NRC staff.

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I have two other matters I'd like to mention on the record. First, the staff will be making a limited document production today. I do have some notes of telephone conversations between myself and other persons, which during the break I'm going to ask Your Honor to review briefly for mental impressions, and then I'll be making that production to the parties.

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In addition, the staff has prepared some testimony for Thomas McKenna to be presented later this week, hopefully. And also during the break I'll be gathering that up and distributing it.

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JUDGE SMITH: Mr. Oleskey?

MR. OLESKEY: During the break similarly we will distribute a motion in connection with proposed rebuttal testimony I mentioned on the telephone. I think I'd rather not

1 go into it at length today, but at this time the considerations  
2 are subsidiary ones as it is but I wanted you to have them.

3 Those are the answers to Judge Linenberger's question  
4 last week on our telephone conversation about the format we  
5 have proposed in a previous filing. Mr. Traficonte is working  
6 on that response now, our part of the filing I think is due the  
7 17th of June this week, so that should all come together by the  
8 end of the week for you.

9 JUDGE SMITH: Anything further?

10 (No response)

11 JUDGE SMITH: Mr. Barshak, would you introduce  
12 yourself and your colleague, please, and make your statement.

13 MR. BARSHAK: Thank you very much, Your Honor.

14 My name is Edward Barshak and my associate is  
15 Christine Netski, and we have an appearance slip for the two of  
16 us and multiple copies here. I don't see what we ordinarily  
17 call a clerk to pass it out, but we'll distribute it if we may.

18 I just want to make sure that I have one request that  
19 Your Honors will entertain, and I have to put it in its  
20 context. I'm here following a telephone conference I had with  
21 you, Judge Smith. It was my understanding from that conference  
22 that even though my client is entitled to have counsel here, my  
23 role is unfortunately somewhat limited in accordance with our  
24 conversation, that is, ordinarily I would question my own  
25 witness or my own client, I wouldn't have to be required to let

1 somebody else do that.

2           You explained to me on the telephone, I'm in no  
3 position to quarrel with it, that for reasons having nothing to  
4 do with my relationship with my client, this body would insist  
5 that the Intervenors put him on as a witness, at which point I  
6 pointed out to you, okay. But that means that we will have to  
7 sort of submit him as a witness to the Intervenors' counsel to  
8 questions, which we've done.

9           We have allowed Mr. Oleskey and others to come to our  
10 office, and in the presence of Christine Netski, to ask  
11 questions and we've tried to help prepare the witness so things  
12 will flow smoothly.

13           The request that I have is directly related to my  
14 understanding of my role and Mr. Thomas's position here. Mr.  
15 Thomas is not a party to this proceeding. He has counsel, as I  
16 understand it by your permission, only because some attacks  
17 have been made upon his professionalism and his integrity. And  
18 my interest as his counsel is limited to exactly that. I have  
19 no role that I intend to play or should play, obviously, with  
20 respect to the substantive matters before you.

21           But in order to properly undertake my role as counsel  
22 for him in terms of his professional standing, you know,  
23 ordinarily I suppose, I'd have the right to bring in witnesses,  
24 cross-examine others and so forth. I understand that's not  
25 practical in considering the status here.



1           But I would like to have, at least, the limited right  
2 to be able to question my own client after others are through.  
3 Now, Mr. Oleskey, as I understand it, is going to put him  
4 through direct. It makes no sense to me for me to then  
5 question him. I do not expect Mr. Oleskey is going to attack  
6 my client. The attacks in the past have come from another  
7 source.

8           I therefore request that I be allowed to question my  
9 own client, not after Mr. Oleskey is through, but after other  
10 counsel have questioned him, because my only interest, and the  
11 only reason why he has counsel, is to see to it that the full  
12 story of his professionalism and his status is brought out. I  
13 can't do that until I see what attacks are made upon him upon  
14 the record.

15           So I would like, contrary to what you told me on the  
16 telephone, you said I'd have to question him after Mr. Oleskey.  
17 If possible, I would very much appreciate at least a limited  
18 right to question him, not then, but when everybody else is  
19 through.

20           Then I have one other request. Since I can't bring  
21 in witnesses because it wouldn't be practical, nonetheless,  
22 people are being interviewed who are involved and I expect to  
23 have some affidavits which I will present or offer for  
24 presentation either later on today or tomorrow.

25           And then, finally, just to get it all out at one

1 time, I understand that your procedures are such that when  
2 hearings or portions of hearings are over you have counsel  
3 involved submit to you proposed findings. I would have no  
4 proposed findings on the merits of what's before you, but I  
5 would appreciate the opportunity to submit brief proposed  
6 findings with respect to my client.

7 Those are my requests. Thank you.

8 JUDGE SMITH: Yes. As you observed Mr. Thomas is not  
9 a party to the proceeding, and in effect -- in fact, he cannot  
10 be affected by the outcome of the proceeding as such. Everyone  
11 should understand that he is not now and never has been on  
12 trial for anything or being sued for anything.

13 The matter about which you are concerned arose when  
14 the Board was called upon to make a determination whether we  
15 would authorize a very large extensive discovery program based  
16 upon information gathered from Mr. Thomas's deposition, and we  
17 declined to do that.

18 Counsel for the Utility has objected to your  
19 participation here, and with a great deal of justification.  
20 Because as we state, Mr. Thomas has no stake in this hearing,  
21 and others have a very large stake.

22 It is simply the Board's feeling of fairness when a  
23 person in the exercise of his responsibilities comes to the  
24 hearing and testifies, should be able to do so and come out of  
25 it satisfactorily so. It was just a question of fairness and

1 practicality, recognizing that there is no other way. There  
2 just is no other way available to Mr. Thomas in which he can  
3 have any redress, if any, if he feels any is needed.

4 As to your particular request we'll have to take it  
5 in context. I recognize that there is logic to your statement  
6 as appointed and never occurred to me when I said that you  
7 would be limited to following Mr. Oleskey.

8 Well, the better thing to do is for you to understand  
9 that we will not be going into matters extraneous to the  
10 hearing and to the issues for which Mr. Thomas is called. We  
11 will not be going into -- an excursion into character or other  
12 matters at all; we just see no need for that.

13 At the end of the cross-examination of Mr. Thomas you  
14 may come to the Board and tell us what your needs are and we  
15 will entertain your request, but we will not in advance give  
16 you a blank check on it.

17 MR. BARSHAK: That's fine. All I'm really saying is,  
18 I don't want to question him immediately after Mr. Oleskey, it  
19 would be meaningless to me. And when everyone else is through  
20 I may not have any questions, but that's the point at which I'd  
21 like to be able to come forward.

22 Thank you.

23 JUDGE SMITH: And certainly you're welcome to join  
24 Mr. Thomas at the witness table, if he wishes to consult,  
25 that's your prerogative.

1 MR. BARSHAK: Thank you very much, sir.

2 JUDGE SMITH: Anything further before we begin?

3 MR. DIGNAN: Yes, Your Honor.

4 I understand from my learned friend Mr. Barshak that  
5 he may be offering affidavits. It will be the Applicants'  
6 position that I do not wish to cross-examine this witness until  
7 the affidavits have been presented and their admissibility  
8 ruled upon because I have a feeling my cross-examination might  
9 want to include some inquiry as to the source of the affidavits  
10 and methods of their gathering.

11 So, if there's an intention to offer affidavits I  
12 would prefer it if the requirement were that they be offered  
13 before Mr. Thomas undergo cross-examination.

14 JUDGE SMITH: I would recommend, Mr. Barshak, that if  
15 you intend to offer affidavits that you make the substance or  
16 copies of those available at your first opportunity, so that  
17 other counsel can see what they're dealing with.

18 MR. BARSHAK: Oh, I agree, Your Honor. And I also  
19 agree with Mr. Dignan, I don't expect to have affidavits during  
20 the middle of the day. My understanding, every time I make a  
21 prediction I'm wrong, but my prediction is it will probably be  
22 a long time before direct examination is through, so I would  
23 expect that whatever affidavits I have will be available to Mr.  
24 Dignan before his cross-examination begins.

25 JUDGE SMITH: Anything further?

1 (No response)

2 JUDGE SMITH: All right. Mr. Thomas, it has been  
3 some time since you testified, you remain under oath.  
4 Whereupon,

5 EDWARD THOMAS  
6 having been previously duly sworn, was recalled as a witness  
7 herein, and was examined and testified further as follows:

8 JUDGE SMITH: You may proceed, Mr. Oleskey.

9 MR. OLESKEY: Thank you.

10 Just a brief comment. I have -- I've done a lot of  
11 preparation, especially this weekend and even up to,  
12 unfortunately, way hours of last evening. And reflecting on  
13 the timing I have grave concerns that the schedule that the  
14 Board wants us to observe with respect to direct really can be  
15 met. I'm going to do my best, but in putting this together for  
16 today, thinking about the matters that Messrs. Boris and  
17 Lazarus testified to, the FEMA officials who followed them; the  
18 fact that the witness had a four day deposition, that there are  
19 many, many documents which he had authored or is in a key  
20 position to explain because of his seven years overseeing the  
21 planning for FEMA for this case, I do have concerns I wanted to  
22 articulate now that the schedule you've asked us to keep can be  
23 met.

24 And I say that, not to indicate that I'm not going to  
25 do my best to do it but that if I look at the outline and think

1 about it and talk with my colleagues as I have, we all have  
2 concerns that we can really shoehorn somebody who, in our mind,  
3 is the key witness, not just in the evolution of the FEMA  
4 position, but with respect the facts in the case that we know  
5 you're as concerned about as we are into a one-day direct.

6 With that let me begin.

7 DIRECT EXAMINATION

8 BY MR. OLESKEY:

9 Q Mr. Thomas, how long have you had your present  
10 position in Region 1 for the Federal Emergency Management  
11 Agency?

12 A (Thomas) Since November 1981.

13 Q And again, that position -- your position has what  
14 title?

15 A (Thomas) I am the Chief of the Natural and  
16 Technological Hazards of FEMA, Region 1.

17 Q In that capacity, how many emergency response plans  
18 have you had occasion to review in those approximately seven  
19 years?

20 A (Thomas) The emergency response plans -- are you  
21 talking about radiological emergency response plans?

22 Q Yes.

23 A (Thomas) Radiological emergency response plans for  
24 the six sites that are operating, and also plans for the  
25 Yabrook site; that would be state and local plans, in total

1 over 100 plans.

2 Q And have you chaired the Regional RAC during that  
3 time?

4 A (Thomas) Since November of 1981, yes.

5 Q How many RAC meetings would you say you've chaired  
6 during that time?

7 A (Thomas) On the order of 50 or 60.

8 Q You understand, I'm generally referring, in my  
9 questions, to radiological plans not to natural hazard plans;  
10 all right?

11 A (Thomas) Yes.

12 Q Have you had training in connection with your  
13 position?

14 A (Thomas) Yes, I have. In connection with  
15 radiological emergency response plans I've had training in our  
16 National Training Center in Emmitsburg, and I've had training  
17 at the Harvard School of Public Health, the one week training  
18 course in planning for nuclear emergencies.

19 I've also been a guest lecturer at a number of  
20 training courses.

21 Q That is, you've given training as well as received  
22 it?

23 A (Thomas) That's correct.

24 Q All right. In connection with the other plants in  
25 -- the other nuclear plants in Region 1, are there any which



1 have beaches within the 10 mile zone surrounding the plant?

2 A (Thomas) Yes.

3 Q Which are those?

4 A (Thomas) Pilgrim, Millstone. There would be,  
5 perhaps, inland beaches at some of the other sites. With  
6 respect to Maine Yankee I wouldn't call what's up there  
7 beaches, it's gravelly places where people will go swimming.

8 Q Is there a summer population there, however?

9 A (Thomas) Certainly.

10 Q And in connection with at least those three other  
11 plants, have you in connection with carrying out your duties  
12 had occasion to review and evaluate issues in connection with  
13 protecting summer transient populations in the event of an  
14 accident at one of these facilities?

15 A (Thomas) Yes.

16 Q All right.

17 In connection with your work in evaluating the  
18 Seabrock plant over the years, have you kept notes of  
19 conversations and meetings and the like?

20 A (Thomas) Yes, I have.

21 Q Have you had occasion, insofar as you've had time to  
22 review those notes in connection preparing for your testimony  
23 today?

24 A (Thomas) Yes, I have.

25 Q Have your files and notes ever been made generally

1 available to my office or to other Intervenors in this case?

2 A (Thomas) No, they have not. Not even until this  
3 day.

4 Q Directing your attention to the plans developed by  
5 the State of New Hampshire in conjunction with the utilities  
6 for the Seabrook Station, could you tell us when the first time  
7 was that the beach population came to your attention in the  
8 area of the plant as a special issue for planning?

9 A (Thomas) I'm sorry, can you clarify the question,  
10 did you say the plans developed by the utility; is that what I  
11 heard you say?

12 Q I said the State of New Hampshire --

13 A (Thomas) With respect --

14 Q -- and the utility?

15 A (Thomas) With respect to the plans developed by the  
16 State of New Hampshire and the plans that were being developed  
17 by the Commonwealth of Massachusetts, the issue of the beach  
18 population was brought to my attention during the course of my  
19 readings prior to my involvement with radiological emergency  
20 planning as one of my job responsibilities, just reading drafts  
21 of FEMA publications as they were coming out. And that would  
22 have been in late 1981, before I took over my present  
23 responsibilities.

24 Q Would you tell us if some time in 1981 a document  
25 called "FEMA-REP-3" came to your attention in the course of

1 carrying out your duties?

2 A (Thomas) Yes, it did.

3 Q Would you give us a general description of that  
4 document?

5 A (Thomas) Yes. FEMA-REP-3 was first brought to my  
6 attention when it was in draft, I just happened to see a copy  
7 of it, I did not make review comments. It was -- the nature of  
8 the document is a response to a request from the Nuclear  
9 Regulatory Commission that FEMA review the emergency -- I'm  
10 sorry, not emergency, the evacuation time estimates at 12  
11 nuclear power sites around the country; review them with  
12 respect to differences in methodology and the implications of  
13 those evacuation time estimates.

14 The publication itself fairly well describes its  
15 purpose and nature.

16 Q Did you have any involvement in the preparation of  
17 that document?

18 A (Thomas) I did not.

19 Q What does the reference "REP-3" connote?

20 A (Thomas) It connotes the numerical sequence of  
21 planning documents for the radiological emergency response plan  
22 program of FEMA; and I believe it was the third document in a  
23 series of documents.

24 Mr. OLESKEY: Just a moment, Your Honor.

25 (Pause)

1 MR. OLESKEY: I'm going to furnish the witness with a  
2 copy of this document, Your Honor. It was marked at his  
3 deposition. We are having additional copies made this morning,  
4 but Ms. Keough informs me that we probably won't have them  
5 until 10 o'clock.

6 For continuity I'd like to question him about them,  
7 about the document now even though we won't have enough copies  
8 for people who didn't bring their deposition copy until they  
9 come in around 10 o'clock. Is that agreeable?

10 JUDGE SMITH: Does anybody object to that?

11 (No response)

12 JUDGE SMITH: Proceed.

13 MR. OLESKEY: Okay.

14 BY MR. OLESKEY:

15 Q Do you have a copy of REP-3, Mr. Thomas? Does your  
16 counsel have one?

17 A (Thomas) Yes.

18 Q Mr. Thomas, you have a copy of REP-3 in front of you  
19 dated February 1981?

20 A (Thomas) Yes, I do.

21 Q Are there references to the Seabrook site in this  
22 document?

23 A (Thomas) Yes, there are.

24 Q Did you review this document in connection with  
25 undertaking your duties as the Chief of the Division in Boston?

1 A (Thomas) Yes, I did.

2 Q Have you had recourse of this document for reference  
3 during the carrying out of your duties in evaluating the  
4 emergency response plan for Seabrook Station?

5 A (Thomas) Once or twice I've looked at it.

6 Q From time to time?

7 A Yes.

8 Q All right.

9 MR. OLESKEY: I'd like to mark this as an  
10 identification exhibit, Your Honor, at least on the record, and  
11 that would be Mass. AG 48 for identification.

12 (The document referred to  
13 was marked for  
14 identification as  
15 Massachusetts Attorney  
16 General Exhibit 48.)

17 BY MR. OLESKEY:

18 Q Mr. Thomas, do you know if this document was provided  
19 to the NRC by FEMA?

20 A (Thomas) I don't know that of my personal knowledge,  
21 I just know that there's a -- what appears to be a cover letter  
22 transmitting it to the NRC inside the document itself.

23 Q All right. Can you summarize briefly for us your  
24 understanding of the discussion of Seabrook as distinguished  
25 from other sites discussed in REP-3?

1 MR. DIGNAN: Objection. The document speaks for  
2 itself, if it be admissible or relevant.

3 JUDGE SMITH: Would you repeat your question.

4 MR. OLESKEY: Yes. I wanted him to summarize briefly  
5 for you references to Seabrook in this REP-3 document as a way  
6 of shorthanding -- in a shorthand fashion explaining to the  
7 Board some of the background he got when he came on board from  
8 reviewing this document which analyzing a number of sites  
9 including Seabrook.

10 JUDGE SMITH: Well, it may be the document speaks for  
11 itself, and that to a large extent removes any damage that  
12 could be done. On the other hand, if we don't permit it, it  
13 will be a very painful awkward process to try to extract the  
14 information on our own.

15 MR. DIGNAN: The problem is, Your Honor, I don't  
16 think the document itself is admissible for any issue in this  
17 case. And so what we're going to do is get a summary of a  
18 document that I don't think he can get in as relevant; and  
19 that's the basis of the objection. I don't usually use,  
20 document speaks for itself in NRC proceedings, but what I see  
21 here is an attempt to read in a document of extremely  
22 questionable relevancy to any issue before this Board.

23 JUDGE SMITH: Did you prepare a cross-examination  
24 plan?

25 MR. OLESKEY: Are you addressing, Mr. Dignan?

1 JUDGE SMITH: No, to you. I mean, do you have an  
2 examination --

3 MR. OLESKEY: I have an outline of examination, it's  
4 an outline of direct and not an outline of cross.

5 JUDGE SMITH: Yes, I misspoke when I said cross. Did  
6 you intend to provide it to the Board?

7 MR. OLESKEY: I guess -- well, I hadn't actually.  
8 There are probably things -- there are undoubtedly things I  
9 would edit out including my own handwritten notes.

10 JUDGE SMITH: Well, if it was not intended for us I  
11 wouldn't ask you to give it to us.

12 MR. OLESKEY: I could edit one for you, but it would  
13 take some work at this point.

14 JUDGE SMITH: Well, you see, I'm having difficulty  
15 following the logic of your approach, so I can't rule on it.  
16 So you're going to have to be a little more forthcoming under  
17 what you're trying to establish.

18 MR. OLESKEY: Well, this is a document that was  
19 prepared by FEMA in 1981 as an independent assessment of  
20 evacuation times around 12 nuclear plants including Seabrook.  
21 Now it singles out Seabrook as a special case, and discusses  
22 Seabrook separately from the other plants as well as discussing  
23 the other plants.

24 The point of the document, as I understand it, was to  
25 make recommendations for possible actions, protective actions,



1 given the types of -- given the nature of the evacuation times  
2 that were hypothesized at that period 1981 around these various  
3 nuclear plants.

4           It remains, as I understand it, a work in currency,  
5 it's still relied upon at FEMA as a kind of overview of  
6 evacuation times and possible response mechanisms, possible  
7 protection actions at the various -- around the country.

8           It was the first time they had had occasion to  
9 address the issue in the form of a study of what are evacuation  
10 time estimates? They addressed it in the context of 12 plants  
11 including Seabrook and came up with a general discussion which  
12 has remained the basis for discussion and thought at Seabrook  
13 -- at FEMA since that time.

14           And it became the basis -- finally, it became the  
15 kind of seminal document, as I understand it, for this witness.  
16 It was something that was current when he became chief of his  
17 division and it became a basis for this thought and his  
18 opinions thereafter.

19           MR. DIGNAN: Your Honor, my difficulty to start with  
20 is the description of the document. The document was not a  
21 document which FEMA picked out 12 sites. Indeed, the document  
22 on its face recites the NRC picked out 12 sites and asked FEMA  
23 to analyze these 12. The only reason FEMA included Seabrook or  
24 any of the others in the document is because NRC asked them to  
25 do an analysis of these particular plants.

1           And this is what I mean about a document of very  
2     questionable relevancy. I don't understand that FEMA witnesses  
3     will testify later to have stated their relying on this  
4     document in any way. I haven't heard any of my witnesses state  
5     they're relying on this document in any way.

6           JUDGE SMITH: You haven't heard Mr. Thomas yet.

7           MR. DIGNAN: I haven't heard Mr. Thomas, but Mr.  
8     Thomas is being asked now to read this thing in. Now, if we  
9     want to establish that Mr. Thomas relied on this document and  
10    that this document forms the basis of some, if any, opinions he  
11    is going to give, that's one thing; but it hasn't been  
12    established yet.

13          JUDGE SMITH: Yes. And it certainly could not be  
14    because of your very early objection. Mr. Thomas is certainly  
15    going to be free, to the extent that it relates to the subject  
16    matter of this phase of the hearing, sheltering the beach  
17    population, he's going to be free to testify concerning the  
18    input and the input that he had into the document, I guess  
19    there's none. To the extent that he himself used it, and the  
20    extent that he knew that his organization used it.

21          MR. DIGNAN: And if that foundation is laid, my  
22    objections will cease. It hasn't been laid at this time. He's  
23    been asked to summarize the document without the foundation.

24          JUDGE SMITH: I would have expected that to come in.  
25    Proceed. I think we're all --

1 MR. OLESKEY: I'm ready to proceed.

2 JUDGE SMITH: I think we're all operating under the  
3 same rules and under this same understanding now.

4 BY MR. OLESKEY:

5 Q Mr. Thomas, when you took on your present post and  
6 had available a copy of this document, FEMA-REP-3, did you  
7 review it? Did you read it?

8 A (Thomas) I had read it before I assumed my present  
9 position.

10 Q And you've already testified that you've consulted it  
11 from time to time since then; is that right?

12 A (Thomas) That is correct.

13 Q What is the status of this document within FEMA  
14 today, that is, is it guidance; is it discussion document? How  
15 would you characterize it from the agency's perspective, as you  
16 understand it?

17 A (Thomas) I would characterize it, again, just  
18 following what I understand the agency's perspective to be,  
19 it's articulated in a guidance document called "IT-1" which  
20 sets forth what our operative guidance documents are, and  
21 assigns different levels to those documents; and FEMA-REP-3 is  
22 one of those operative documents at a certain level.

23 Q And with respect to the Seabrook Station site, was  
24 there anything in the document which, when you reviewed it  
25 originally or from time to time, you've relied upon as guidance

1 or thought for yourself in performing your duties?

2 A (Thomas) Yes.

3 Q All right. Would you indicate what aspects of REP-3  
4 have been useful to you and relied upon by you in performing  
5 your duties as chief of your division since 1981?

6 A (Thomas) I think to summarize the thing that struck  
7 me most about the document was that, of the 12 sites that we  
8 have been asked to look at, Seabrook was said to be --

9 JUDGE SMITH: Excuse me, Mr. Thomas.

10 (Discussion off the record to photographer.)

11 JUDGE SMITH: Proceed. Go ahead.

12 THE WITNESS: (Thomas) The thing which had struck me  
13 most of all about this when I read it and as I read it again  
14 was, Seabrook of the 12 sites that we at FEMA had been asked to  
15 look at was considered a special case. And special  
16 recommendations were made with respect to Seabrook. The  
17 statement that Seabrook is a special case is located on page 10  
18 of the document in paragraph, that has the letter "C."

19 And other things that struck me were on page 46,  
20 talking about the behavior of drivers caught in congestion  
21 within direct sight of Seabrook can only be guessed at, at this  
22 time.

23 And the other thing that struck me was that we were  
24 making specific recommendations on page 48 in the paragraph  
25 numbered eight with respect to looking at the behavior drivers

1 on the beach within sight of Seabrook, looking at sequential  
2 evacuation, sheltering the population, and building  
3 supplemental an evacuation, only ramps on to I-95.

4           Tha: -- those thoughts made an impact on me, a very  
5 great impact. And that impact has continued right through to  
6 this day.

7           BY MR. OLESKEY:

8           Q     Are you saying that in 1981 the agency made some  
9 tentative or proposed recommendations for ways of dealing with  
10 the beach population at Seabrook?

11          A     (Thomas) That was and is my understanding; that is  
12 correct.

13          Q     All right.

14                is there anything else about the document which, as  
15 you sit here today, you thought important when you reviewed it  
16 and have relied upon in carrying out your duties since that  
17 time?

18          A     (Thomas) The -- there was another area that that  
19 struck me and that was, the length of the evacuation times at  
20 Seabrook were -- had a very substantial range. There was a  
21 great uncertainty at this time, in 1981, as to what those  
22 evacuation times might be. And it's very clearly expressed in  
23 here and in other documents that I was reading at about this  
24 same time, perhaps a little bit later, in an NRC publication  
25 talking about the need for traffic management in the

1 evacuation.

2           Of the sites around the country Seabrook had one of  
3 the longer evacuation times, I believe it was the second  
4 longest or of that magnitude, and it struck me that we would  
5 certainly want to carefully follow the recommendations to look  
6 at those evacuation time estimates and see if they could be  
7 reduced. And certainly, also, to try and come to a good  
8 understanding about what those evacuation time estimates were  
9 in terms of our evaluation of whether there was reasonable  
10 assurance of an adequate level of public protection.

11           And also, with respect to the issue of making sure  
12 that the State was able to have a good evacuation time estimate  
13 so that it could make proper and well informed protective  
14 action recommendations to the public.

15           Q     And did these issues which you have indicated caught  
16 your attention in REP-3 in 1981 become the focus, at least in  
17 part, of your concern in the planning process that continued  
18 from 1981 forward?

19           A     (Thomas) Yes.

20           MR. OLESKEY: I'd like to offer so much of the  
21 document, Your Honor, as the witness has referred to for the  
22 reasons already indicated, that it's a technical document  
23 authored by FEMA. It was relied upon by him; it is still  
24 relied upon and used at FEMA. And it formed a basis for his  
25 own thought and evaluation from 1981 forward.

1 JUDGE SMITH: Objections?

2 MR. DIGNAN: I have no objection if the entire  
3 document is offered. I object to it being offered just the  
4 pieces that the witness referred to because I think it might be  
5 interesting to explore the entire document.

6 MR. OLESKEY: I'm willing to have that done. I  
7 thought it would be objected to, but I'm certainly willing to  
8 have the whole document go in.

9 MR. TURK: Your Honor, I have a question for Mr.  
10 Oleskey on this. Is the purpose in order to establish a direct  
11 case through Mr. Thomas or is the purpose to use the document  
12 for impeachment to FEMA when their testimony is presented  
13 later.

14 MR. OLESKEY: Well, I've offered it generally. I  
15 don't think, as I've explained it, I don't think I have to  
16 characterize it further.

17 MR. TURK: I don't object --

18 JUDGE SMITH: I'm not sure when it really boils right  
19 down to findings that the Board would make and proposed  
20 findings that the distinction is going to be very important.  
21 There's going to be two points of view on this: FEMA's present  
22 point of view; and the one advanced by the Intervenors, and  
23 rather its rebuttal or direct or case in chief, I don't see how  
24 it matters.

25 MR. DIGNAN: When I heard the original offer, and



1 maybe I misheard it, was that the purpose of the offer was to  
2 show that this was a document Mr. Thomas had used in forming  
3 his judgments. Is that correct, Mr. Oleskey, and that was the  
4 purpose of the offer?

5 MR. OLESKEY: That was correct.

6 MR. DIGNAN: It is not offered for the truth of the  
7 matters contained.

8 MR. OLESKEY: Well, I represented, based on what the  
9 witness has said, that I understood it was a document still  
10 relied upon at FEMA. In fact, we all have a package of  
11 guidance documents and this is listed number three on that  
12 list. so --

13 MR. DIGNAN: Well, I don't know --

14 MR. OLESKEY: FEMA hasn't disavowed it.

15 MR. DIGNAN: I will note an objection, if the  
16 document is being offered generally, because I don't have the  
17 author to cross-examine. This witness had not even any input,  
18 never mind the authorship of it.

19 JUDGE SMITH: We understand the document is being  
20 offered to show that it was used by Mr. Thomas and used by  
21 FEMA, and whatever the document intended -- whatever the author  
22 intended by the document is not directly relevant. It's how it  
23 was used and how it was understood and how it was employed.

24 MR. TURK: Your Honor, just so I'm clear on my  
25 objection. On that basis I don't object. I see that as

1 basically being a historical document, something that was  
2 reviewed, relied upon at some time that formed the sense of Mr.  
3 Thomas's opinion; I have no objection on that basis.

4 JUDGE SMITH: Well, it's more than that, it's more  
5 than a historical document, the offer as I see it. I see it  
6 being offered -- well, you tell me how you're being offered,  
7 you respond to Mr. Turk.

8 MR. OLESKEY: Well, you've accurately characterized  
9 it in our colloquy a moment ago. In addition, it seemed -- it  
10 seems that it formed for FEMA a base for certain kinds of  
11 inquiries and questions to be asked about the subsequent  
12 development of plans at Seabrook. So it became a document that  
13 was a base point of departure, if you will, by which the agency  
14 could make reference to some concerns that it highlighted as  
15 early as 1981, and ensure, at least through Mr. Thomas, and I  
16 take it from the rest of his testimony, as I understand it,  
17 officials in Washington that questions were asked from time to  
18 time of the State and utility about aspects of the beach  
19 population situation that were highlighted in this report.

20 JUDGE SMITH: Okay.

21 MR. TURK: I do have an objection on the broad basis,  
22 Your Honor. The objection is that this witness is not  
23 testifying for FEMA. If a FEMA witness, somebody who is put  
24 forth by the agency, wants to adopt this document as something  
25 that forms a basis for FEMA's opinions, I won't object in the

1 way that I am to Mr. Thomas's use to the document.

2 JUDGE SMITH: Overruled.

3 MR. OLESKEY: Well, and as I said, Your Honor, we  
4 will have that marked and supplied to the reporter as soon as  
5 it comes in, and the 10 copies.

6 JUDGE HARBOUR: Before you proceed, Mr. Oleskey.

7 MR. OLESKEY: Yes, sir.

8 JUDGE HARBOUR: I'd like to know the date of the  
9 publication of that document. Are there other publication  
10 versions of it or is that the main version?

11 MR. OLESKEY: My understanding is that that's the  
12 only version, but I'd like to have Mr. Thomas respond directly,  
13 if I may.

14 THE WITNESS: (Thomas) The answer to your question,  
15 Your Honor, is that is the only version that I'm aware of. I  
16 believe it's the only version.

17 JUDGE HARBOUR: Publication date of 1981?

18 THE WITNESS: (Thomas) Yes, sir.

19 MR. OLESKEY: It says February 1981 on the front,  
20 Your Honor.

21 JUDGE LINENBERGER: Mr. Oleskey, before we get into a  
22 new line of interrogation here, I should like to ask Mr. Thomas  
23 for clarification about something that I think I must have  
24 misunderstood.

25 It seems to me that at one point in your

1 characterization of time and the REP-3 document you indicated  
2 that there was lack of information about evacuation times, but  
3 at another point in the discussion with Mr. Oleskey it seemed  
4 to me, if I heard you correctly, you were talking as though  
5 evacuation time information had become more refined or more  
6 detailed, more accurate or more specific, whatever.

7 I'm not quite sure how those two points of view  
8 relate chronologically; can you shed light on that, please,  
9 sir?

10 THE WITNESS: (Thomas) Yes, I can.

11 The FEMA-REP-3 document, as I recall it, indicated a  
12 range of evacuation times and indicated that there were several  
13 different estimates that had been reached.

14 There is a later NRC document of which Thomas Urbanik  
15 was the lead author that also gave a tremendous range in the  
16 possible evacuation times at Seabrook.

17 And in response to a question as to what impact that  
18 made on me, the impact was from RFP-3 and also from the later  
19 NRC document that indicated that there was uncertainty as to  
20 what the evacuation time would be, and indicated that the  
21 evacuation time would be greatly influenced by the amount of  
22 traffic control which would be in effect.

23 And my response was designed to indicate that there  
24 were two major sources of guiding light, as it were, to me and  
25 to my staff as we worked with the State during the period of

1 1981, '82, '83, and was the NRC document and REP-3.

2 JUDGE LINENBERGER: Thank you, sir.

3 BY MR. OLESKEY:

4 Q Mr. Thomas, you referred a few moments ago to a part  
5 of what's now Exhibit 48 describing Seabrook as a special case;  
6 do you recall that?

7 A (Thomas) If FEMA REP-3 is Exhibit 48?

8 Q Yes. I'm sorry.

9 A (Thomas) Yes, I did.

10 Q Let me ask you, if there's a term of art at FEMA  
11 characterized as special population?

12 A (Thomas) Yes, there is.

13 Q What does that mean at FEMA or to FEMA?

14 A (Thomas) It's really a shorthand for special needs  
15 populations. These are populations usually that has special  
16 needs for transportation. It also can include populations that  
17 have special need for medical attention, but it primarily is  
18 transit-dependent persons, persons that are in nursing homes,  
19 persons that are in hospitals that need either transportation  
20 provided to them or some specialized transportation or some  
21 other special services in the course of an evacuation.

22 Q Has FEMA regarded the beach population in the area of  
23 Seabrook Station as a special population within the meaning of  
24 that term?

25 A (Thomas) As we now use the term, I don't think that

1 would be fair to say. We -- with respect to what we estimate  
2 to be about 98 percent of the population, we have not regarded  
3 them as transportation dependent. They are a special  
4 population in that we've given them a special attention, but  
5 they're not -- when we say, special population, we're usually  
6 talking about people who have special and needs usually with  
7 respect to transportation.

8 Q All right.

t/3 9 I want to try to take you as concisely as possible  
10 through the years from 1982, '83, '84, and '85 up to the time  
11 that your memo of December 31, 1985 was distributed to the RAC,  
12 and there's been a lot of testimony about that, that the Board  
13 is familiar with. But I want to set a little context for that  
14 by asking you some questions about the intervening years.

15 At the time that you became chief of your division  
16 were there Licensing hearings scheduled to take place in  
17 connection with the emergency response plans for Seabrook  
18 Station?

19 A (Thomas) Yes.

20 Q When were they initially scheduled to take place?

21 A (Thomas) I really don't recall, and I wasn't able  
22 to find it in my records. My recollection is that it was in  
23 the summer of 1982 or perhaps the early part of 1983, would be  
24 the first recollection I have of the schedule for the Licensing  
25 hearings.

1 Q And did you have -- did your duties include preparing  
2 your agency for these possible hearings?

3 A (Thomas) Yes.

4 Q All right. In connection with that did you have  
5 dealings with the State of New Hampshire about the status of  
6 their preparation of an emergency response plan?

7 A (Thomas) Yes.

8 Q What did you do, let's say, in 1982 in connection  
9 with evaluating the status of the plans for New Hampshire?

10 A (Thomas) I think the direct answer to your question  
11 is, I did very little with respect to evaluating the plans, the  
12 plans did not exist.

13 Q Let me be more precise. Did you do anything in an  
14 effort to move the process forward, so that there would be  
15 plans you could evaluate should hearings begin in '82 or  
16 thereafter?

17 A (Thomas) Yes, very much so.

18 Q What did you do, sir?

19 A (Thomas) Well, the -- actually, the first meeting  
20 that I ever went to on radiological emergency planning was in  
21 January of 1982, and it was with the State of New Hampshire  
22 involving their plans for the Vermont Yankee site. But during  
23 the course of that meeting I had been requested by the Regional  
24 Assistance Committee to emphasize to the State that in the  
25 course of their preparations for Vermont Yankee they should



1 keep in mind the need to prepare for Seabrook and that although  
2 they may be able to develop the personnel infrastructure to  
3 support their role in the small portion of the emergency  
4 planning zone at Vermont Yankee, they should keep in mind that  
5 it would be a much larger task to develop the personnel  
6 resources at the State level to handle their responsibilities  
7 with respect to Seabrook.

8           And I was requested by the RAC to make that point  
9 very, very forcefully to the State. And that began a long  
10 series of technical assistance, meetings with the State to  
11 encourage them to develop the plans and the infrastructure, and  
12 to hire the number of people that would be necessary for them  
13 to carry out their responsibilities for Seabrook.

14           Q     Did your office have certain resources that had  
15 offered to make available to the State?

16           A     (Thomas) Yes; surely, we offered to give technical  
17 assistance reviews and guidance and to meet with them.  
18 Primarily our role was to encourage them, as our role is by  
19 regulation and by agreement with the Nuclear Regulatory  
20 Commission, to encourage them to do the best possible job they  
21 could with respect to radiological emergency planning.

22           Q     And during 1982 did you have any relationship, any  
23 working relationship with the NRC in connection with these  
24 efforts to prompt New Hampshire to move forward in development  
25 of the plans?

1 A (Thomas) Yes.

2 Q What was that relationship?

3 A (Thomas) Basically, the -- we would occasionally get  
4 a visit from the NRC counsel and the NRC Washington staff  
5 that's concerned with licensing; and they would encourage us to  
6 move forward to get the States moving forward with preparation  
7 of adequate plans. And the NRC staff would express concern to  
8 us that better and faster progress wasn't being made with  
9 respect to radiological planning as they sought, that, you  
10 know, the hearings were scheduled and the plans just simply  
11 weren't done.

12 Q Did you continue working with the State of New  
13 Hampshire in the years thereafter in connection with these  
14 efforts to produce a plan and subsequently to refine plans?

15 A (Thomas) Both the State of New Hampshire and the  
16 Commonwealth of Massachusetts; yes, sir.

17 Q And did you continue working with the NRC in this  
18 same vein?

19 A (Thomas) Yes.

20 Q Under the agreements between your agency and the NRC,  
21 can the NRC request a finding from FEMA as to the status of an  
22 emergency preparedness plan for a nuclear facility?

23 A (Thomas) Yes.

24 Q What -- as you understand it, what's the nature of  
25 such a request and the finding which is the object of that

1 request?

2 A (Thomas) The nature of the request is simply a  
3 letter from the appropriate person at the NRC headquarters to  
4 the appropriate person at our headquarters requesting a finding  
5 and determination with respect to the status at a particular  
6 time, status of emergency preparedness planning at a particular  
7 nuclear powerplant.

8 Q And the finding could fall under what potential range  
9 when FEMA responds to such a request?

10 A (Thomas) Well, it would be a factual finding as to  
11 what the status of emergency planning was at that point in  
12 time.

13 Q Would it -- is there an infinite spectrum of answers  
14 or would the response be only the plan is adequate or the plan  
15 is not adequate?

16 A (Thomas) Well, the finding would be much longer than  
17 that, it would be a document describing a plan review and if an  
18 exercise report was available that would be included as well.  
19 The findings typically, as a matter of practice, the NRC would  
20 ask us if we were prepared at that point to make a positive  
21 finding on planning or a positive finding on the plan in the  
22 exercise, and if we were they would request it.

23 Q Does this include a finding of reasonable assurance?

24 A (Thomas) The -- yes, that is the nature of the  
25 finding. The bottom line, the conclusion of the finding is

1 whether or not there was a reasonable assurance of an adequate  
2 level of public safety. The basic language set forth at -- in  
3 our regulations, FEMA's regulations at 44 CFR 350.5(b); and  
4 that would be the bottom line. It would be a predictive  
5 finding if we hadn't had an exercise.

6 Q And what do you mean by, predictive finding?

7 A (Thomas) It would be predictive in that it would be  
8 a matter of saying that with respect to the plans, without  
9 having an exercise of the plans, that the plans indicate that  
10 there's a reasonable assurance, even though the plans haven't  
11 been tested yet; it would be a caveat on them.

12 Q Once your agency made such a finding of reasonable  
13 assurance, would that be the end of its involvement in  
14 evaluating the plan except for exercise, in a case where  
15 exercise had not yet taken place?

16 A (Thomas) It could be. Typically findings were  
17 requested in response to either a Licensing hearing or in  
18 response to a petition that had been filed with the NRC. If it  
19 was a petition and we made a finding of reasonable assurance,  
20 that usually would -- that would be communicated to the  
21 petitioners and that would generally end the matter. If it was  
22 a Licensing hearing we would, pursuant to the memorandum of  
23 understanding, we would be giving testimony.

24 Q Did there come a time in these early years, that  
25 you're describing, when the NRC requested a finding in

1 connection with the New Hampshire plan from FEMA?

2 A (Thomas) There were perhaps a continual series of  
3 requests, and the date would be changed as we would go along.  
4 I don't think that there was a letter every single time  
5 exchanged between the agencies. It was just simply a matter  
6 that there was a request for a finding from the NRC and the  
7 date that the finding was due would change depending upon what  
8 we said was the status of emergency preparedness planning.

9 Q When do you recall the first such request for a  
10 finding of reasonable assurance of FEMA by the NRC?

11 A (Thomas) The -- I don't have an exact memory of the  
12 date. It would have been four to six months prior to the  
13 scheduled date of the hearings on Seabrook. My recollection  
14 is, that was being requested as of September 1982, but I don't  
15 have good records in that period of time on this issue, and I  
16 just don't recall.

17 Q Your best recollection is some time in '82 or early  
18 '83?

19 A (Thomas) That is correct.

20 Q And how was that request answered by FEMA?

21 A (Thomas) The -- a couple of different ways. We  
22 informed the NRC as to what the status of emergency  
23 preparedness planning was, which was at that point that we had  
24 no plans in from either State, and there was no evidence really  
25 at all of emergency preparedness planning for the Seabrook

1 Nuclear Powerplant in the period around September 1982.

2 Q Well, you said you'd been working with the NRC during  
3 this period in any event, isn't that right?

4 A (Thomas) That's correct. And I characterized this,  
5 we would have an occasional meeting and perhaps a phone call.  
6 And it became more frequent -- the phone calls and the contacts  
7 became more frequent as we approached this period of time here  
8 in 1988.

9 Q Was the NRC apprised of the status of emergency  
10 planning at all times when you were the chief of the division  
11 from 1981 on?

12 A (Thomas) Yes, as often as they asked. There was a  
13 document that is submitted or was submitted at one point on a  
14 monthly basis, a joint agency report called "The Congress  
15 Report," which was designed to inform Senator Simpson and his  
16 committee as to the status of emergency preparedness planning,  
17 and in that there would be a running discussion of the status  
18 of all the emergency preparedness planning for the licensing,  
19 the sites that were in licensing around the country.

20 Q Did the NRC tell FEMA, in this period in '82 or early  
21 '83 when it was requesting a finding, why, if it knew as well  
22 as FEMA, the status of the plans for New Hampshire and  
23 Massachusetts it was then requesting an affirmative finding by  
24 FEMA at that time?

25 MR. TURK: Objection, no premise laid. No proper

1 form.

2 JUDGE SMITH: I don't understand your objection.

3 MR. TURK: Mr. Oleskey states, why did the NRC ask  
4 you for the finding if they knew as well as you. I don't see  
5 that that premise has been laid as to what NRC's knowledge of  
6 the status of the planning was.

7 MR. OLESKEY: I just went through that at some  
8 detail. There were regular contacts. Then there became  
9 monthly reports that the two agencies filed. And I simply  
10 asked him if he was told --

11 JUDGE SMITH: Well, ask him if he agrees with the  
12 premise and let's get on with it.

13 MR. OLESKEY: All right.

14 BY MR. OLESKEY:

15 Q Do you agree with -- do you understand the premise of  
16 my question, Mr. Thomas?

17 A (Thomas) I believe I do. I'm not ready to agree  
18 with the premise. If I -- what I understood your question to  
19 be, in essence was, did the NRC know as much as we knew about  
20 the status of emergency preparedness planning, and  
21 nevertheless, ask for a positive finding? No, I don't agree  
22 with that.

23 Q You'd say they knew less?

24 A (Thomas) Well, even though we had communication with  
25 the NRC, they knew less than we knew. I mean, we would



1 give them summaries and briefings.

2 Q Let me simply ask you this then, did the NRC indicate  
3 to FEMA in this period in '82 or '83 when the first request was  
4 made for a positive finding, why was it being made at that  
5 time?

6 A (Thomas) Yes. It was being made on the basis that  
7 there was a time line schedule and they expected to have the  
8 finding four to six months prior to the start of the hearing.

9 Q Fine.

10 And following that first occasion, were there later  
11 occasions when the NRC requested similar findings by FEMA with  
12 respect to the status of the plans?

13 A With respect to the status? Sure, we would have -- I  
14 won't say regularly, in that they were scheduled at a  
15 particular time, but we would have increasingly frequent  
16 discussions with NRC headquarters and with NRC regional  
17 personnel as to what the status was of the plan; sure.

18 Q But what I'm asking you is if there were later  
19 occasions when the NRC requested a finding of reasonable  
20 assurance by FEMA between this initial event in '82 or early  
21 '83 and today?

22 A (Thomas) As I tried to say, there was perhaps a  
23 rolling date that would be moved along as to when the NRC  
24 wanted the finding on Seabrook, and we would explain to them  
25 what the status of emergency preparedness planning was, and

1 typically the date would move forward; and that happened  
2 occasionally. And occasionally we would have an oral request  
3 as to when we would be ready to make a finding on Seabrook.

4 Q And did FEMA ever indicate that it was ready to make  
5 an affirmative finding of reasonable assurance in connection  
6 with these requests, whether rolling or otherwise?

7 A (Thomas) We did not so indicate, no.

8 Q I'd like to direct you now to 1983, did there come a  
9 time when New Hampshire formally submitted an emergency  
10 response plan for the Seabrook Station to FEMA?

11 A (Thomas) Yes.

12 Q Do you recall if that was approximately in May of  
13 '83?

14 A (Thomas) That sounds correct, yes.

15 Q What did FEMA do when that plan was submitted in May  
16 of '83 by New Hampshire?

17 A (Thomas) Well, it did come in as a formal request  
18 for review and we responded to the State that since it was a  
19 partial submission, it was only some or many of the local  
20 plans, as I recall, it didn't include the State plan, that we  
21 would not be able to process that partial submission as a  
22 formal request. And by that, what I mean when I talk about a  
23 formal request, we have regulatory obligations when we receive  
24 a formal request from a State to put a notice in the Federal  
25 Register and to initiate a period of public comment.

1           And in view of the fact that the submission was  
2 incomplete, we did not feel it was appropriate to initiate that  
3 formal process.

4           Q     Did you do anything with respect to reviewing the  
5 plan or providing technical assistance?

6           A     (Thomas) Yes, we did.

7           Q     What was that?

8           A     (Thomas) We did accept the plans for review, and we  
9 did provide a review of the plans. Additional documents were  
10 submitted by the State after May, and we did provide review  
11 comments on both the local and the State plans.

12          Q     Did the RAC have any part in this process beginning  
13 in May of '83?

14          A     (Thomas) Sure. The RAC had --

15          Q     What was that?

16          A     (Thomas) RAC had the usual review responsibilities  
17 that it has with respect to emergency response plans.  
18 They -- we did, in a collegial way, we went through the A  
19 through P elements of NUREG-0654 and did a review of the plans  
20 against the A through P elements.

21          Q     And did you furnish that information to the State of  
22 New Hampshire?

23          A     (Thomas) Yes, we did.

24          Q     Can you characterize generally the progress that was  
25 made by New Hampshire in developing a plan in '83 and '84.

1 those two years?

2 A (Thomas) The plans that were submitted in 1983  
3 needed a great deal of work. And we so informed the State and  
4 tried to work with them on an informal basis to explain what  
5 was the problems with the plans. And they began to make  
6 considerable progress. Mr. Strome and I had private meetings,  
7 and we had a series of additional meetings and the State began  
8 to make considerable progress moving forward in preparing  
9 plans.

10 Q By late '84, early '85 what steps, if any, were you  
11 taking to try to move along the process of development of this  
12 plan by the State of New Hampshire?

13 A (Thomas) In 1983 it occurred to me that both States,  
14 both Massachusetts and New Hampshire were not making the  
15 progress at the rate and of the quality that we and the NRC  
16 felt was necessary in order to meet our goal of having  
17 emergency preparedness plans in place which would not delay the  
18 licensing of Seabrook.

19 And therefore I devised what I called "coordination  
20 meetings," and we held about 25 of them during the period 1983  
21 through early 1986. These meetings involved the two States,  
22 Massachusetts and New Hampshire, the utility, ourselves, and  
23 sometimes the NRC, and provided a forum whereby we could learn  
24 of the State progress, where we could explain to the States  
25 what would be expected of them, give us an opportunity to bring

1 in guest speakers such as our regional counsel, Brian Cassidy,  
2 Attorney Turk, Attorney Dignan, to talk about what was going on  
3 at some of the other Licensing hearings, so that the States  
4 would know what special problems they should be focusing on.  
5 Special issues that were coming up in other Licensing hearings.  
6 Attorney Flynn was a guest speaker once describing what he had  
7 run into at one of the Licensing hearings and suggesting that  
8 the States pay special attention to those issues since we know  
9 that they had come up elsewhere.

10 Q There's been a lot of time spent in this hearing  
11 discussing the role of the RAC in connection with this project.  
12 Let me just ask you at this point, in your view as the Chair of  
13 the RAC for about seven years in this region, in terms of  
14 technical assistance and in terms of evaluating emergency  
15 response plans for nuclear facilities, what's been your view of  
16 the appropriate role the RAC plans vis-a-vis FEMA?

17 A (Thomas) The role of the RAC is set forth in our  
18 regulations, and perhaps has been expanded upon in practice.  
19 The primary role of the RAC is to give FEMA advice in their  
20 area of expertise, focusing on the A through P standards in  
21 Part 2 of NUREG-0654.

22 In addition, we use individual members of the RAC as  
23 a whole to devise special technical assistance documents or to  
24 have special meetings with the States, to address various  
25 emergency preparedness planning issues.

1           It's really a twofold role. One is to assist FEMA,  
2 encourage the States in developing proper emergency  
3 preparedness plans, to give them technical guidance. And then,  
4 the second part of the role is to evaluate those plans against  
5 the A through P standards in NUREG-0654.

6           Q     Has the RAC historically, at least in this region,  
7 been involved in making a finding or a recommendation of  
8 whether reasonable assurance exists in connection with a  
9 particular plan?

10          A     (Thomas) The RAC will be, in my region, has always  
11 been given -- excuse me, has generally and frequently been  
12 given an opportunity to comment on whether or not there is a  
13 reasonable assurance, and that is done by sending them draft  
14 copies of exercise reports which is -- always contains a bottom  
15 line of whether or not there's a reasonable assurance of an  
16 adequate level of public safety.

17                 We talked about what a deficiency was when we prepare  
18 exercise reports. We talked about what a deficiency was some  
19 time ago in my testimony, and when we prepare exercise reports  
20 we categorize events that happen, don't happen in exercises as  
21 to whether or not they're a deficiency, and if they're a  
22 deficiency it's an impediment to a finding of reasonable  
23 assurance.

24                 And it has been my practice to always get RAC input  
25 on that before FEMA makes a decision. And we will often also

1 send out reports that FEMA has initiated such as the Pilgrim  
2 Report, the self-initiated review on Pilgrim which is a FEMA  
3 document, it was circulated to the RAC for their input and  
4 comment on the issue of reasonable assurance.

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1 Q Have you tended to involve the RAC in issues of  
2 reasonable assurance, solely in terms of plan review leaving  
3 aside exercise events?

4 A (Thomas) No, to the contrary. We always -- pardon  
5 me, during my chairmanship we have tried to involve the RAC in  
6 getting their input. I value their advice very, very highly  
7 and I like to get their input on exercise issues as well.

8 Q I don't think you understood my question.

9 A (Thomas) I'm sorry.

10 Q The question is, have you involved the RAC in issues  
11 of reasonable assurance solely in connection with plan review,  
12 leaving aside exercises?

13 A (Thomas) I'm sorry, I don't --

14 Q When the RAC has reviewed a plan, as it reviewed for  
15 years the New Hampshire plan, you've talked about matching  
16 NUREG criteria and valuing the RAC's opinion there, has the  
17 process in the RAC been carried further, short of the exercise,  
18 to seek the RAC's guidance as to whether there's reasonable  
19 assurance solely in connection with the plan review?

20 A (Thomas) Thank you, now I understand your question.  
21 The answer to your question is, no, it has not except on very  
22 rare occasions, and I cited the Pilgrim self-initiated review  
23 done by FEMA which addressed really planning issues. Some  
24 exercise issues as well, but primarily planning issues. And  
25 the RAC was involved in that reasonable assurance finding.

1           On the other hand, we have done responses to 2.206  
2 petitions to the NRC. The NRC will ask FEMA to address a  
3 particular offsite emergency preparedness element in the  
4 context of a 2.206 petition, and in those cases the RAC is  
5 typically not involved or involved only to the extent that we  
6 feel it's within the area of one of the member's expertise and  
7 we will just bounce some ideas of them.

8           Q     And when you talk about a finding of reasonable  
9 assurance at the regional level, are you speaking essentially  
10 of a recommendation that the region makes to Washington?

11          A     (Thomas) Now we would be. Up until either early  
12 1988 or late 1987 the Regional Director had the authority and  
13 responsibility to make interim findings of reasonable  
14 assurance; and we did make those as a practice, and the RAC was  
15 typically not involved in those interim findings.

16          MR. OLESKEY: Your Honor, could I have a very brief  
17 break?

18          JUDGE SMITH: Sure. Let's take our morning break, 10  
19 minutes please.

20               (Whereupon, a 10 minute break was taken.)

21          JUDGE SMITH: It's been brought to my attention there  
22 was not an expressed formal ruling on Mass. AG Exhibit 48,  
23 there was just an overruling of an objection. Is that your  
24 understanding or --

25          MR. OLESKEY: I think that perhaps is right, and

1 let's take care of that now by my formally offering the  
2 document in accord with our earlier colloquy.

3 JUDGE SMITH: You -- we're ending up again with a  
4 document that has a lot of extraneous material in it, partly  
5 because we have not enforced a discipline of requiring the  
6 parties to clean out extraneous material, and another pathetic  
7 attempt to do that.

8 You talk to Mr. Dignan and you agree upon throwing  
9 junk out of here.

10 MR. OLESKEY: Sure.

11 JUDGE SMITH: We don't need the Three Mile Island EPZ  
12 in this hearing at all.

13 MR. OLESKEY: Well, I'd originally offered a  
14 limited --

15 JUDGE SMITH: I know. Mr. Dignan wanted it all in.

16 MR. OLESKEY: Yes.

17 JUDGE SMITH: But you can't have it all, Mr. Dignan.  
18 You arrive at some agreement.

19 MR. OLESKEY: Okay. I'm not going to have --

20 MR. DIGNAN: Your Honor, the request for the entire  
21 thing is not just to make life difficult, the request for the  
22 entire thing is to put that document in context.

23 JUDGE SMITH: All right. The Three Mile emergency  
24 planning zone does not add to the context, and we don't want to  
25 read through a lot of extraneous material or even carry it

1 around.

2 MR. DIGNAN: Well, that's my point. What the  
3 document is, is a survey document at 10 sites; and it's not  
4 even relevant to Seabrook. But if it's going to be in, I think  
5 I have a right to make it clear what its context is.

6 JUDGE SMITH: You don't have a right to put in junk.  
7 And I'm telling you, get together with Mr. Oleskey and work it  
8 out.

9 MR. DIGNAN: Yes, Your Honor.

10 MR. TURK: Your Honor, let me note two procedural  
11 things, if I may. One, I passed out to the -- I've given to  
12 Chairman Smith copies -- the original notes of conversations I  
13 have had with various individuals, either directly with Mr.  
14 Thomas or with other people concerning conversations they have  
15 had with Mr. Thomas.

16 And I've asked Judge Smith to review them to  
17 determine whether any or all or what portions of those  
18 documents may be withheld as mental impressions of attorney  
19 work product.

20 JUDGE SMITH: We tried to do that just before we  
21 began, it's going to take some time.

22 MR. TURK: Yes. And I note that there's one document  
23 in particular which I had discussed back in December, my notes  
24 of July 31st, a conversation I had with Dr. Boris, which  
25 reflects the answers given to particular questions I asked Dr.

1 Boris concerning the RAC meeting; that's one of those  
2 documents.

3 Also, let me at this time distribute to the parties  
4 the copy of the draft or the proposed testimony of Thomas  
5 McKenna.

6 (Pause)

7 JUDGE SMITH: Mr. Dignan, if after you have looked at  
8 the document, and after you talk to Mr. Oleskey and still in  
9 good conscience you could not agree to the deletion of any of  
10 it, we'll accept that. It just seems to be on the face of it  
11 there's too much detail about other plants cluttering up the  
12 record, and the fact that we have not consistently requested  
13 that in the past is just that, an inconsistency, but we want it  
14 on this one.

15 MR. DIGNAN: I'm confident that with your  
16 observations in mind Mr. Oleskey and I can reach an agreement  
17 that will cut it down, Your Honor.

18 BY MR. OLESKEY:

19 Q Mr. Thomas, we were at the end of 1984, 1985, let me  
20 ask you this, did there come a time in that period when the RAC  
21 was involved not only with evaluation and technical assistance  
22 of the New Hampshire plant for Seabrook, but also a plan for a  
23 facility called Maine Yankee in Maine?

24 A (Thomas) Yes.

25 Q Were there any considerations in terms of planning

1 issues that were common to both plants that became a focus of  
2 discussion at the RAC?

3 A (Thomas) I don't believe that we ever had a meeting  
4 in the RAC where anyone said that there were -- used the word  
5 "common" or considered them as being common issues.

6 Q I'm only asking you if, in substance, at about the  
7 same time common planning issues arose for FEMA and the RAC  
8 concerning these two facilities and the plans for emergency  
9 evacuation there?

10 MR. TURK: Your Honor, I'm going to object on grounds  
11 of relevance. Whatever may be Massachusetts's interest in  
12 Pilgrim, it's not relevant to Seabrook unless they can  
13 demonstrate that.

14 MR. OLESKEI: I don't think Mr. Turk means what he  
15 says, I haven't mentioned Pilgrim. I've asked the question  
16 about parallel considerations of similar planning issues at  
17 Maine Yankee in Maine and at Seabrook

18 MR. TURK: I excuse myself, Your Honor, the same  
19 comment applies to Maine Yankee.

20 JUDGE SMITH: What is the relevance?

21 MR. OLESKEY: I'm trying to elicit whether there were  
22 certain common issues between the two plants that were dealt  
23 with at Maine Yankee that affected the way the RAC looked at  
24 Seabrook thereafter, because it had the experience at Maine  
25 Yankee to essentially, important I think, to understand the

1 evolution of the RAC's thinking and FEMA's evaluation of the  
2 plan with the RAC.

3 JUDGE SMITH: Just as, for example, they're  
4 determinations in this case could affect policy --

5 MR. OLESKEY: If we were in that subsequent case,  
6 that would be right.

7 JUDGE SMITH: Do you persist in your objection?

8 MR. TURK: As it affects Seabrook plant, no.

9 JUDGE SMITH: All right. You withdrew it.

10 MR. OLESKEY: Excuse me.

11 JUDGE SMITH: He withdrew his objection, if I  
12 understand it.

13 BY MR. OLESKEY:

14 Q Let me sharpen it for you, Mr. Thomas, at this time  
15 in late '84, early 1985 were there discussions at the RAC and  
16 in the FEMA Region in connection with evaluating the plan for  
17 Maine Yankee about the so-called ETEs?

18 A (Thomas) There were discussions at FEMA that  
19 involved one RAC member; there were not general discussions in  
20 the RAC on this issue.

21 Q Was FEMA involved with the consideration of the ETE  
22 issue at Maine Yankee in late '84, early '85?

23 A (Thomas) Yes.

24 Q And in brief what was that issue?

25 A (Thomas) The issue was simple. Again, this was an



1 issue that had been referred to us by the NRC pursuant to a  
2 2.206 petition, and the issue was whether or not alleged  
3 impediments to the evacuation time -- I'm sorry, alleged, not  
4 impediments but rather the length of the evacuation times on  
5 Route 27 which leads from Booth Bay, Booth Bay Harbor in that  
6 area were such that they would impact on a finding of  
7 reasonable assurance.

8 FEMA indicated that based on our preliminary analysis  
9 that those evacuation time estimates were extremely sensitive  
10 to the population count, that the petitioner, the 2.206  
11 petitioner had filed an estimate of population which was at  
12 variance with the State estimate and in turn both of those  
13 estimates were at variance with what the utility was saying.  
14 And that we really didn't know what the evacuation times were  
15 for that area, and therefore could not determine whether or not  
16 the length of the evacuation time estimate would impact on a  
17 finding of reasonable assurance.

18 Q As a matter of process at FEMA what kind of  
19 information was evaluated in dealing with that issue  
20 thereafter?

21 MR. TURK: Your Honor --

22 JUDGE SMITH: You mean site specific information?

23 MR. OLESKEY: The kinds of planning consideration  
24 which obviously touch on site specific issues that were dealt  
25 with at the region<sup>and</sup> in Washington to dispose of this issue about

1 ETEs there, right in the middle of this evaluation of the  
2 Seabrook project; that's the question.

3 MR. TURK: Your Honor, I'm going to object to the  
4 question. I'm going to move to strike the prior question and  
5 answer. I withdrew my objection based upon my understanding  
6 that this was somehow going to elicit an answer as to how Maine  
7 Yankee's various ETE factors may have affected the  
8 consideration of Seabrook. I didn't hear that, and I think  
9 that it's irrelevant. The whole question and answer should be  
10 stricken.

11 JUDGE SMITH: That's right. How did that come out,  
12 you know, we need the nexus.

13 MR. OLESKEY: I was going to ask him the first  
14 question which was, what was the issue? The second question  
15 was, what's the kind of information you look for? And the  
16 third question is, how did that affect the thinking of the  
17 agency about Seabrook? It's a sequence.

18 JUDGE SMITH: All right. If you're going to go  
19 there, okay. But I think that you're using a lot of your  
20 precious time here that is not going to be all that helpful to  
21 you.

22 May I suggest, and I'm going to get protests, but it  
23 is very unlikely that you're going to be having a strong  
24 influence on Mr. Thomas's recall, judgment, everything else by  
25 leading questions. I'm going to ask you to go a little more

1 direct even if it requires leading to get your answers out.

2 MR. OLESKEY: That's certainly helpful.

3 JUDGE SMITH: I don't think that he's amenable --  
4 he's a witness who is amenable to suggestion on these things.

5 MR. OLESKEY: Fine.

6 JUDGE SMITH: All right, go ahead.

7 BY MR. OLESKEY:

8 Q Let me try it this way, Mr. Thomas. Can you tell us  
9 what aspects there were of that evaluation of this issue about  
10 ETEs raised at this facility in Maine that affected your  
11 thinking and your agency's thinking about evaluation of the  
12 similar ETE issue at Seabrook, which you were then reviewing?

13 A (Thomas) Okay. There are two very different  
14 situations, but the commonality is, in my opinion and as I  
15 understood my agency's opinion, was that the length of the  
16 -vacuation time and the nature of the evacuation time, and by  
17 that what I mean is, whether or not the people would be stuck  
18 in what we call Category F traffic which is essentially stop-  
19 and-go traffic extended periods of time with no forward  
20 progress. That issue of the length and the type of situation  
21 that the drivers would be going through was considered at Maine  
22 Yankee to directly impact on our consideration of whether or  
23 not there was a reasonable assurance and adequate level of  
24 public safety.

25 And I at least took that as a precedent, took that as

1 part of my thinking with respect to Seabrook by thinking that  
2 the length and the nature of the evacuation times at Seabrook  
3 would also impact on our agency's finding of reasonable  
4 assurance.

5 Q Now let me ask, if in 1985 there were discussions  
6 with the NRC and the utility about the nature of the  
7 containment at Seabrook and the effect that that containment  
8 had on or should have on FEMA's evaluation of the New Hampshire  
9 plan for Seabrook emergencies?

10 A (Thomas) In this context, from time to time when we  
11 would meet with the -- primarily when we would meet with the  
12 utility, to some extent when we would meet with the State, and  
13 we would have a difficult issue of emergency preparedness  
14 planning, the number of bus drivers that would be needed, the  
15 number of buses that would be needed, the number of personnel  
16 that would be needed. There would be an indication from  
17 utility personnel, to some extent from State personnel, that  
18 they really didn't need to do all of these things with respect  
19 to meeting the A through P standards NUREG-0654 because  
20 Seabrook was special and that it had this huge double  
21 containment, and the probability of an accident was reduced and  
22 the nature of the accident was attenuated in that there would  
23 be a longer time until there was a release, a different time  
24 than what is indicated in NUREG-0654. And that when there was  
25 a release at the end of that period of time the release would

1 be of much lesser magnitude than the standard plants around the  
2 country.

3 Q Did either the utility or the NRC provide FEMA with  
4 technical information supporting that kind of analysis in 1985  
5 or '86?

6 A (Thomas) In 1985 we received briefings from the  
7 utility that were technical, to me at least, on the nature of  
8 the containment and the reason that Seabrook instead of having  
9 a release that would take place in as little as a half an hour,  
10 the earliest possible time for the release was two and a half  
11 hours; and that was explained in technical terms to me.

12 And let me explain what I mean by technical terms is  
13 that I didn't understand them. I mean, it went beyond my  
14 capacity to understand what they were saying. So to that  
15 extent it was technical, it wasn't a highly technical  
16 probabilistic risk assessment or something like that. But it  
17 satisfied me that they -- that the utility seemed to feel that  
18 they were entitled to special treatment and special  
19 consideration. Certainly the State echoed that concern, and  
20 occasionally the NRC would also echo that concern.

21 Q Were those representations important to you in terms  
22 of your analysis of the New Hampshire plan?

23 A (Thomas) They were important to me in that I was  
24 concerned many times during the period at '85 and early '86  
25 that we had to go down one or two paths; either we used the

1 standard documents, NUREG-0654 which sets forth the parameters  
2 of emergency preparedness planning in Part 1, and follow along  
3 with the A through P standards in the usual nature of release,  
4 the usual time to release or it had to be established that  
5 Seabrook was entitled to special treatment.

6 And it seemed that we weren't really quite doing  
7 either. That the utility was claiming that it was entitled to  
8 special treatment, and it wasn't coming forward and  
9 demonstrating that in a way that could be recognized by FEMA  
10 and the RAC.

11 Q What did you do in an effort to have the utility or  
12 the NRC or the State, for that matter, provide technical  
13 information to FEMA about the containment that FEMA could rely  
14 upon in this analysis it was making of the New Hampshire plan?

15 A (Thomas) Let me emphasize, it wasn't so much that I  
16 was looking to have information supplied to FEMA, I was willing  
17 to -- I suggested several alternative ways of the information  
18 being provided into the process of our evaluation.

19 The idea always, of course, would be that the NRC as  
20 the cognizant agency would evaluate this material. It was  
21 totally beyond FEMA's technical capacity to evaluate the  
22 probabilistic risk study or a study on the nature of a release  
23 at Seabrook.

24 With that in mind, we had several meetings with State  
25 personnel, with the utility in 1985 and early 1986 in essence



1 saying, look, if you don't establish in the appropriate way  
2 that Seabrook is entitled to special consideration it will not  
3 be given special consideration in our analysis of the emergency  
4 preparedness plans. And part of our analysis of the emergency  
5 preparedness plans will include an evaluation of the times and  
6 the nature of the evacuation -- the evacuation; and that is an  
7 important component of our finding of reasonable assurance.

8 If you don't establish that you're entitled to  
9 special treatment, we won't give it to you, and that may very  
10 well impact on our finding of reasonable assurance.

11 Q Was there a time in December of 1985 where you  
12 discussed these considerations directly with an official of the  
13 Public Service of New Hampshire?

14 A (Thomas) Yes, there was.

15 Q Can you detail briefly that discussion?

16 A (Thomas) Yes. The meeting was with myself and my  
17 supervisor, Henry Vickers, with Edward Brown, the president of  
18 what became the New Hampshire Yankee organization, if it wasn't  
19 then it was either New Hampshire Yankee or its predecessor.  
20 And basically we went through that as a matter of  
21 administrative practice which had been drilled into my head  
22 really since I started working for the government in 1969 that  
23 agencies when they reached conclusions and made determinations  
24 on a project or whatever could only look at what was in their  
25 record, and that was in front of me, established record. And



1 we didn't have an established record with respect to this two  
2 and a half hours would be the earliest release possible at  
3 Seabrook; and therefore we would not take it into account. And  
4 if the utility wanted that taken into account that there were  
5 certain procedures that had to be followed, and we laid out  
6 three possible ways that they could get that introduced into  
7 our process of consideration.

8 JUDGE SMITH: Mr. Thomas, are you being distracted by  
9 the microphone and the media? If that becomes a problem --

10 THE WITNESS: (Thomas) It's just when they move  
11 things around over here. It's not really distracting, no, sir.  
12 Thank you for asking.

13 BY MR. OLESKEY:

14 Q What did -- who was it that you met with from the New  
15 Hampshire Yankee organization?

16 A (Thomas) Edward A. Brown.

17 Q Did he tell you -- what did he tell you about what  
18 the utility could do in connection with these assurances you  
19 said might mean that FEMA could treat the plan evaluation in a  
20 way that was other than straight evaluation under the criteria  
21 in NUREG-0654?

22 A (Thomas) I'm troubled by two aspects of your  
23 question.

24 Q Only two? Go ahead, I'll clarify whatever you want.

25 A (Thomas) Assurances --

1 Q Let me -- what did Brown say?

2 MR. DIGNAN: A good one.

3 THE WITNESS: (Thomas) I, of course, don't remember  
4 everything he said, but that the bottom line was that he  
5 understood that, yes, regulatory agencies or federal agencies  
6 could only look at what was in that record, that was certainly  
7 clear to him. That he understood our concern and that he was  
8 going to go over forthwith and meet with his attorneys and that  
9 this -- he described this as being the highest possible  
10 priority of his organization at that time to make sure that  
11 this was introduced into the record in such a way as FEMA could  
12 consider it, because he realized it was an important part of  
13 our thinking with respect to the -- to our regulatory standard  
14 of reasonable assurance.

15 BY MR. OLESKEY:

16 Q At that time in late '85 what were the ETES that FEMA  
17 was generally considering as applicable to evacuation of the  
18 beach population at Seabrook?

19 A (Thomas) To the best of my recollection, in 1985 we  
20 still did not have what we considered to be an adequate  
21 evacuation time estimate in hand. As I indicated, we had REP-3  
22 which had some indication of a possible range. We had a  
23 document -- a NUREG document, I'm just sorry I'm drawing a  
24 blank on the number, that was authored by Dr. Thomas Urbanik,  
25 that indicated the times up to 14 hours if the evacuation was

1 uncontrolled.

2           We had a document that had been litigated in the  
3 onsite portion of the hearing. And we had some preliminary  
4 estimates that were part of the -- what became the New  
5 Hampshire plan submission. I'm not sure when the State sent  
6 that in, but that was certainly not earlier than late December  
7 1985. So we had a number of different things, none of which  
8 FEMA considered to be authoritative in terms of really nailing  
9 this down with respect to the whole EPZ or certainly with  
10 respect to the beach population. We really didn't know at that  
11 point.

12           Q     Well, with respect to the discussion that you say the  
13 utility was having at this time, there might be two and a half  
14 hours before there was a major release affecting the beach, do  
15 you have any recollection of the nature by comparison of the  
16 ETEs for the beach population?

17           A     (Thomas) Again, we didn't have a -- what we  
18 considered an authoritative evaluation of the ETE for the beach  
19 population, but it was our sense at that time or my sense, I  
20 should say, and I really don't recall where I derived that  
21 sense from, conversations or just a guesstimate of my own, that  
22 we were talking about clearing the beaches in three to four  
23 hours. And if you have two and a half hours to a release, and  
24 you have some period of travel time for a release, that meant  
25 with good sharp emergency preparedness planning you could make

1 tremendous difference in the dose consequences for the public.

2           So it was a great importance if in fact there is two  
3 and a half hours to the release. The earliest possible  
4 release, as is indicated in some of the documents we were  
5 getting from Public Service of New Hampshire, that would have a  
6 profound impact on our thinking at that time.

7           Q     Following up this conversation with Ed Brown from New  
8 Hampshire Yankee, was there a subsequent meeting in December of  
9 '85 wit' yourself, Brown, and Tom Dignan?

10          A     (Thomas) No, sir. There was --

11          Q     All right. With Mr. Quinn, one of Mr. Brown's  
12 subordinates, Mr. Dignan and yourself?

13          A     (Thomas) That is correct.

14          Q     And was that a followup meeting to the one you've  
15 just been describing?

16          A     (Thomas) Yes, it was.

17          Q     What was the substance of what was said at that  
18 meeting, this later meeting?

19          A     (Thomas) The substance was, in essence, I explained  
20 what FEMA's concerns were under our regulations, and Attorney  
21 Dignan indicated that he felt that an attempt to introduce a  
22 probabilistic risk study or otherwise support special treatment  
23 for the nature of the release at Seabrook would lead to  
24 litigation which, as I recall he said, would . . . two years.  
25 And that he felt that with respect to the NRC regulations there

1 was no need for Seabrook to establish that it needed special  
2 treatment; and therefore it was going to be his recommendation  
3 that they not go forward with any attempt to introduce whatever  
4 documents were necessary to prove that there was two and a half  
5 hours to an early release at Seabrook. That was my  
6 understanding of the conversation.

7 Q All right. Now, during this exact same period  
8 December of 1985 do you recall that New Hampshire submitted  
9 another revision of the plan for Seabrook to FEMA, Revision 0?

10 A (Thomas) Yes, I do recall that.

11 Q And did that submittal together with the issues that  
12 you've been describing to the Board about the containment and  
13 the releases prompt some discussion between FEMA and the NRC  
14 about how the process of evaluating the plan should go forward?

15 A (Thomas) Yes, it did, with respect to -- not to  
16 evaluating the plans. Of course, I don't remember the  
17 specifics, but of course we would have had conversations with  
18 the NRC RAC representatives, talking about the plan reviews in  
19 general.

20 I also had discussions with Dr. Ronald Bellamy about  
21 some special attention being given to the beach population at  
22 Seabrook. Those discussions were in -- probably had started  
23 earlier than this, but became more focused in mid to the end of  
24 December 1985. And as I understood the discussions, Dr.  
25 Bellamy was telling me that in essence my concern that I was

1 articulating was that there was, you know, we're looking at a  
2 spectrum of accidents at Seabrook, a release that could take  
3 place as early as a half an hour, and it's described as a,  
4 quote, "serious release" in NUREG-0654.

5           And what I understood him to be saying was that, in  
6 fact, a serious release in terms of it really having health  
7 consequences would take a minimum of two to three hours,  
8 according to the standard NRC documents. And that in fact the  
9 release that would take only half an hour would be a very minor  
10 release.

11           And as I understood the discussion, the release would  
12 be so minor that it would not even exceed the Environmental  
13 Protection Agency protective action guides which are used as a  
14 means, not evaluating the plans, but of determining -- the  
15 State determining whether or not there will be an evacuation or  
16 not; it helps them reach their protective action  
17 decisionmaking.

18           And if you have a release that's not even going to  
19 exceed the protective action guides, by definition there's no  
20 overwhelming need to have an evacuation. It helped us  
21 understand the nature of this early, fast-breaking release.  
22 And again, we seemed to be getting to having two and a half or  
23 perhaps three hours to evaluate people prior to their being a  
24 major release, and that was very, very important considering  
25 our analysis of the beach population in terms of our finding a



1 reasonable assurance.

2 Q Dr. Bellamy was at that time in the NRC Region 1?

3 A (Thomas) Yes, he was.

4 Q In some kind of supervisory position?

5 A (Thomas) He, in essence, was the supervisor of the  
6 RAC members.

7 Q Did you --

8 A (Thomas) I'm sorry, of the NRC RAC representatives  
9 or RAC members.

10 Q Did you tell him in substance you'd like to have  
11 these views from his agency in writing?

12 A (Thomas) In substance, yes. I said, well, gee, this  
13 does help take away a substantial concern that I'm having with  
14 respect to the Seabrook plans and let's figure out a way to get  
15 this written down in a way that FEMA can recognize it and rely  
16 upon it and go forward.

17 Q And what did he say in response?

18 A (Thomas) We batted around how best to achieve that  
19 objective. And as I recall the conversations, I was asking him  
20 to have the NRC send us a memo. And finally he said, well,  
21 look, if you want us to send you a memo you write one in and  
22 we'll respond.

23 Q And did you proceed with others in the agency to  
24 draft what became your memo of December 31, 1985 which is in  
25 evidence?



1           A     (Thomas) I did. I basically drafted it myself with  
2 the input from the FEMA Office of General Counsel and my  
3 counterparts in Washington, specifically Mr. Robert Wilkerson.

4           Q     That is, they looked at it and made comments about  
5 it?

6           A     (Thomas) They looked at it and they did have  
7 comments on it, but I can't say that I developed it in  
8 conjunction with them, it was primarily my work product with  
9 their comments on it.

10          Q     Did they tell you it was okay eventually, to go ahead  
11 and send it?

12          A     (Thomas) Yes, they did. It specifically was  
13 approved by Spence Perry and by Bob Wilkerson.

14          Q     And what was -- strike that. Did you have a view  
15 whether FEMA could make a reasonable assurance finding prior to  
16 receiving this technical assurance from the NRC?

17          A     (Thomas) I don't know if I -- well, I knew that we  
18 were in no position to make a reasonable assurance finding at  
19 that point because we hadn't even reviewed the New Hampshire  
20 plans and the plans were incomplete. So we were nowhere near  
21 making a reasonable assurance finding at that point.

22                 What -- my December '85 memo was actually written  
23 with an idea towards focusing RAC attention on the beach issue,  
24 pardon me, so that we could assist the State in the development  
25 of plans. It was a design to elicit a technical assistance

1 support from the RAC for New Hampshire to see if, again, the  
2 NRC was -- as I understood it, was going to be telling us that  
3 there was essentially a benign release that would be an early  
4 release. And then we would look at ways of really trimming  
5 down the evacuation times for the beach population so that we  
6 would be able to say with respect to that population at a later  
7 date that, yes, there was a reasonable assurance of an adequate  
8 level of public safety.

9 Q Well, as I've understood your testimony the principal  
10 recipient of the memo was the NRC, not every other agency  
11 represented in the RAC because it came out of these discussions  
12 with Dr. Bellamy and the utility, which you've been describing;  
13 isn't that right?

14 A (Thomas) Well, certainly the driving force behind it  
15 was conversations with the NRC, but I really can't agree that  
16 they were the principal recipient because there were two parts  
17 to what we had in mind. One was to establish that we had a  
18 little bit more time than we thought we had before there was a  
19 serious release.

20 And the second part was to get input from the RAC  
21 members in how we could specifically improve the plans in such  
22 a way as to make them the best possible with respect to the  
23 beaches. So we were trying to do two things.

24 Q And that little more time was the difference between  
25 a half hour and two and a half hours; right?

1           A       (Thomas) Two and a half to three hours, as I  
2 understood the conversation; yes, sir.

3           Q       There are some documents in evidence that appear to  
4 be responses from RAC members in early 1986, members other than  
5 the NRC, to your memorandum of December 31, 1985, Mass.  
6 Attorney General Exhibits 26, 28, 29, Mr. Lutz, Mr. Church, Mr.  
7 Oleson; are you familiar with those responses?

8           A       (Thomas) I'm familiar with the response from Mr.  
9 Lutz and Mr. Church. There is a response also from the U.S.  
10 Department of Agriculture. And let me clarify, Mr. Oleson was  
11 not specifically a member of the RAC; he is a member of what  
12 FEMA called the REP task force, he is FEMA staff.

13          Q       Or was at that time?

14          A       (Thomas) He was at that time, yes.

15          Q       And in substance, what kind of responses did you get  
16 from these RAC members in early '86, as they affected your  
17 thinking about the evolution of this review?

18          A       (Thomas) What I understood in substance we were  
19 getting was that, at least a couple of the members thought that  
20 this was a real problem that needed to be looked at. There was  
21 some suggestions made on ways that we could deal with it in  
22 terms of early closing of the beaches at the alert level;  
23 things that were later implemented in fact from the plans.  
24 That's about all that strikes me right now. The responses do  
25 speak for themselves.

1 Q All right. Now, Mr. Oleson's response which we marked  
2 as Exhibit Mass. AG 29 was from somebody in your own agency  
3 you've indicated?

4 A (Thomas) That's correct. It was -- at one of the  
5 RAC meetings that we held in 1986 RAC member Byron Keene of the  
6 Environmental Protection Agency indicated that he essentially  
7 concurred in Mr. Oleson's analysis, and to that extent perhaps  
8 it's a joint response, but Byron never agreed to it line by  
9 line or anything like that; he said he agreed with the  
10 reasoning and the results of what Fred Oleson said.

11 Q All right.

12 JUDGE SMITH: My notes show that would be Exhibit 28.

13 MR. OLESKEY: We'll take a look at the actual exhibit  
14 copy we have, Your Honor.

15 MR. TURK: Your Honor, I have that also. I would  
16 note that the Department of Agriculture document was Exhibit  
17 27, not referred to by Mr. Oleskey.

18 JUDGE SMITH: That doesn't require any -- it clearly  
19 has a --

20 MR. OLESKEY: I mischaracterized it, it is 28 and the  
21 Church memo is 29. Thank you.

22 BY MR. OLESKEY:

23 Q Did the Oleson memo deal with containment as a  
24 consideration?

25 A (Thomas) Yes.

1 Q And did he have a background in that area?

2 A (Thomas) He was our regional health physicist and  
3 had been involved in physics and nuclear powerplants for some  
4 30 years at one level or another. He was certainly our  
5 regional expert on the inner operations of a nuclear  
6 powerplant.

7 Q As you understood what he was telling you from that  
8 background in answer to your memo, what was it?

9 A (Thomas) Basically, don't worry about the Seabrook  
10 beach population, Seabrook is special, it's got this huge  
11 containment, they've established that in a document, a  
12 probabilistic risk study and I just really shouldn't worry  
13 about that population because of the special containment.

14 Q After that memo did he -- did Oleson play any further  
15 part in the RAC's process or in FEMA's evaluation?

16 A (Thomas) Intermittently, yes. I don't really recall  
17 when Fred retired, I believe it was in 1986. He has since been  
18 brought back on board as a consultant working for the Argonne  
19 National Laboratory. So he plays an ongoing role and is  
20 involved in Seabrook on to this day.

21 Q Did the NRC provide any response in 1986 to your  
22 memo?

23 A (Thomas) No written response, no.

24 Q Thank you.

25 Did you have a discussion with Mr. Quinn of New

1 Hampshire Yankee after your memo went out about the utility's  
2 view of what you'd said in that December 31, 1985 memorandum to  
3 the RAC?

4 A (Thomas) I had a discussion with Mr. Quinn about  
5 what he said was his view, let's say he put it in the pronoun  
6 "I," yes.

7 Q What was the substance of that discussion?

8 A (Thomas) In essence, that he said, quote: "I didn't  
9 like," I'm paraphrasing, it's my best recollection of the  
10 quote: "I didn't like parts of your December 31st memo."

11 Q And that was the substance of what he and you said on  
12 that subject?

13 A (Thomas) That was about it. And I said, I'm sorry,  
14 and that was it.

15 Q At this same period did Mr. Quinn request of you on  
16 behalf of the RAC certain information about what was going on  
17 in the RAC's evaluation?

18 A (Thomas) Yes. He requested copies of certain  
19 documents, transmittal memos to the RAC and RAC responses.

20 Q And what reply did you make to him?

21 A (Thomas) After consulting with my Washington office  
22 I responded that we would give him a copy of our -- we had  
23 already given him a copy of the December 31st memo to the RAC  
24 and we would give him a copy of our transmittal memo, giving  
25 the plan or giving copies of the plans, New Hampshire plans, to

1 the RAC, but that we declined to give him any copies of the RAC  
2 responses.

3 MR. OLESKEY: Your Honor, I'm going to -- I'm going  
4 to offer copies of the correspondence on this subject only for  
5 one purpose, in Mr. Thomas's Voir Dire in October and November  
6 there was, to me at least, a lot of diffidence on his part in  
7 getting into the deliberations of the RAC for reasons he said  
8 dealt with collegiality and he requested advice from Joe Flynn  
9 about whether he should talk about it.

10 I personally felt that that was likely to have  
11 flavored the impression he created as a witness about reticence  
12 and forthcomingness.

13 I want to offer this correspondence now from early  
14 '86 solely to show that, at least for this witness, there's a  
15 consistent policy regarding deliberations of the RAC as  
16 collegial and something that shouldn't be disclosed in a  
17 hearing unless absolutely necessary, and certainly not the  
18 parties in advance of a hearing.

19 So I have a letter here dated January 23, '86 to Mr.  
20 Quinn which he's just described together with the agenda which  
21 he did provide Mr. Quinn, and a letter from Mr. Quinn dated  
22 January 14 to him at which the original request was made for  
23 this information. I'm offering it for this limited purpose.

24 They're actually two letters of January 23rd. A top  
25 document that doesn't have the FEMA letterhead, but has some



1 carbon copies noted. And an underlying letter that is on the  
2 letterhead with no carbons shown.

3 And then there are two separate January 14 letters.  
4 I suggest that we can all tear off the second of those so that  
5 we don't burden the record further. Just take off the last  
6 page.

7 (The document referred to was  
8 marked for identification as  
9 Mass. Attorney General Exhibit  
10 49.)

11 MR. DIGNAN: Could I hear again the purpose of this  
12 offer, Your Honor, before I decide to object, because I don't  
13 think there's an issue of the nature that's being litigated.

14 JUDGE SMITH: The -- he's probably alluding to an  
15 observation made by the Chairman in a telephone conference call  
16 in which I stated that it was -- to cross-examination or they  
17 request examination to adduce the fact that the NRC had  
18 disagreement with the position. And part of the reticence seen  
19 by Mr. Oleskey is disinclination to reveal what happened in the  
20 RAC meeting, and he wants to disabuse the record that that was  
21 a reticence just made up for that purpose, but it had been a  
22 traditional procedure at FEMA to regard the RAC as RAC  
23 deliberations as privileged.

24 MR. DIGNAN: Well, to keep the record clear I would  
25 be glad to stipulate that Mr. Thomas consistently took the

1 position, as far as -- as long as I've known that the RAC  
2 meetings were confidential, and indeed he so testified. And I  
3 at least had no question that that was his position and had  
4 been his position right up until the time the Board directed  
5 him to testify. So I'm not sure there's an issue to be done.

6 JUDGE SMITH: That's about as good as you can get.

7 MR. OLESKEY: If we can also stipulate that it was  
8 the agency's position, because of the number of people in the  
9 agency outside the region in Washington who were copied on this  
10 reply to Mr. Flynn of January 23rd '86, then I think we can  
11 close it out.

12 MR. DIGNAN: I can't stipulate to the agency's  
13 position, Mr. Oleskey, simply because I don't represent the  
14 agency --

15 JUDGE SMITH: Let's --

16 MR. DIGNAN: -- on behalf of Mr. Flynn.

17 JUDGE SMITH: Let's let the Board rule that no  
18 adverse inferences should be drawn from the fact that on  
19 October 7th when Mr. Thomas testified that his reticence to  
20 discuss the collegial privilege aspect of the RAC meeting. Now  
21 I've lost the thread of my --

22 MR. OLESKEY: No --

23 JUDGE SMITH: I've lost the whole thread here.  
24 There's no adverse effect from his reticence to break the  
25 collegiality and break the privilege.

1 MR. OLESKEY: Could you say the same thing with  
2 respect to November 4th which was the second Voir Dire that Mr.  
3 Dignan conducted.

4 JUDGE SMITH: I don't recall that. I just don't  
5 recall that.

6 MR. OLESKEY: I'm only asking that if you would apply  
7 this same analysis to November 4th that you similarly be  
8 comfortable telling us now that you wouldn't draw any adverse  
9 inferences on that occasion either on account of reticence to  
10 discuss the RAC process.

11 MR. DIGNAN: Mr. Oleskey, if you think that I  
12 stipulated to that with respect to either Voir Dire, you better  
13 just offer your document, because I didn't. I stipulated, as I  
14 understood what this was being offered for, that Mr. Thomas's  
15 indication that he was reluctant to disclose the workings of  
16 the RAC was not something that was made up on the occasion of  
17 the Voir Dire but had been his consistent position prior to  
18 that time, which I am happy to stipulate.

19 I am not stipulating that no adverse inferences/  
20 should be drawn from what then took place after he was directed  
21 to disclose.

22 MR. OLESKEY: No, that was a statement that Judge  
23 Smith had made and I was simply trying to elucidate the extent  
24 to which it went.

25 JUDGE SMITH: There's a very discrete portion of the

1 transcript on October 7th in which Mr. Thomas very specifically  
2 was reluctant to talk about the RAC, he wanted to talk to  
3 counsel. There was a dialogue between Turk and Flynn. I'm  
4 saying that there's no adverse inference to be drawn from that  
5 part of the transcript.

6 I have no memory about a similar situation on  
7 November 4th, so I can't be helpful there.

8 MR. OLESKEY: Let me just ask you then --

9 JUDGE SMITH: So you're withdrawing it. I mean,  
10 you're not going to offer 49 or that --

11 MR. OLESKEY: No, but I'm going to ask him one more  
12 question.

13 BY MR. OLESKEY:

14 Q Did your copy -- your agency in Washington upon your  
15 transmittal to Mr. Quinn reply to his request for this  
16 information about the RAC?

17 A (Thomas) Yes.

18 Q And was the position you took in telling Mr. Quinn  
19 that he couldn't have correspondence with RAC members because  
20 it might affect the process, as you understood agency policy?

21 A (Thomas) The answer is, yes, and let me be very  
22 clear on that. I was directed to send that letter using the  
23 language that I used.

24 Q Okay.

25 MR. FLYNN: Your Honor, the question has been raised

1 in this colloquy as to whether the policy of protecting the  
2 confidentiality of RAC discussions was agency policy, and I  
3 wish to report that, yes, it was a long standing policy of the  
4 agency, at least through November and the early part of --

5 JUDGE SMITH: The transcript even reflects that I  
6 stated to Mr. Thomas at the time that we appreciate and  
7 understood the value of collegiality and confidentiality. I  
8 don't think we have an issue here.

9 MR. OLESKEY: Good.

10 BY MR. OLESKEY:

11 Q Did there later come a time when the utility asked if  
12 it could approach RAC members and discuss their views of what  
13 was -- of the New Hampshire plan?

14 A (Thomas) Not exactly, no. There came a time --

15 Q Was there some kind of a contact along those lines?

16 A (Thomas) Yes.

17 Q All right. What was that?

18 A (Thomas) There came a time when the utility  
19 requested that it be able to contact the RAC members  
20 individually with respect to discussing with the RAC members  
21 any concerns that the RAC member may have and giving them  
22 direct input in answering their questions.

23 And again, I staffed that through my Washington  
24 office. I staffed that through the RAC itself and we -- at one  
25 of the RAC meetings we had the discussion of a draft of that

1 letter that I had sent out to the RAC. And I took my advice  
2 from my Washington office and the request from the RAC, which  
3 in essence, the RAC members said, we don't want to talk to the  
4 utility directly, we want to talk only through FEMA; and I took  
5 that with the advice I got from Washington and formulated a  
6 response to the letter which the letter came from Edward A.  
7 Brown to me and I replied to Edward A. Brown.

8 Q Along those lines?

9 A (Thomas) Along those lines, yes.

10 Q Okay. Now, you've described coordination meetings  
11 that took place from time to time involving the State and the  
12 utility and FEMA, do you recall that?

13 A (Thomas) Both States --

14 Q Yes.

15 / (Thomas) -- the utility, FEMA, and sometimes the  
16 NRC; yes.

17 Q Do you recall a coordination meeting so-called in  
18 January of 1986 in which a memorandum that you understood Mr.  
19 Dignan had prepared was distributed to those in attendance, the  
20 so-called three misconceptions memo?

21 A (Thomas) Yes.

22 Q All right. How did it happen that at a meeting in  
23 the middle of January 1986 a legal memorandum prepared by the  
24 utility's attorney was distributed to the federal and state  
25 personnel who were in attendance?

T6

1           A       (Thomas) It happened that it was distributed at the  
2 meeting and something certainly not anything extraordinary  
3 about that. We often had special speakers come in -- Joe  
4 Flynn; his boss, Spence Perry; as I said, Shep Turk; Tom  
5 Dignan -- to address aspects of emergency preparedness planning  
6 from the lawyers' perspectives.

7                   The primary purpose of the coordination meetings was  
8 to create emergency preparedness plans that were going to go  
9 right through a licensing hearing very easy, so we wanted to  
10 get the lawyers' input into that. so there was that document  
11 distributed at the meeting and -- well.

12           Q       Was it discussed?

13           A       (Thomas) It was discussed at least somewhat. It was  
14 discussed at least in the context that Massachusetts Civil  
15 Defense Director Robert Boulay read it and said to me -- said  
16 to the group, this is a very, very important document, that  
17 it's very significant to him and to his considerations of  
18 creation of emergency preparedness plans, and he specifically  
19 requested that FEMA obtain a review, legal review of the  
20 document in cooperation with the NRC. In other words, a joint  
21 FEMA and the NRC of the legal aspects of that document.

22           Q       Was there discussion thereafter at FEMA about how to  
23 respond to Mr. Boulay's request?

24           A       (Thomas) Shortly after that coordination meeting,  
25 there was a meeting at FEMA headquarters that was attended by



1 the staff of the NRC and there was discussion about how we  
2 would go about creating a response to that document.

3 Q And what was decided as a matter of agency policy  
4 about how to respond to Mr. Dignnan's memo?

5 A (Thomas) What was decided was perhaps not so much a  
6 matter of policy but just a matter of procedure, and that was  
7 that I would send a letter to headquarters requesting that the  
8 legal review be done in cooperation with the NRC, and that at  
9 some future time I would get a response back from my  
10 headquarters with the results of the review.

11 Q Did FEMA do any work itself in its law department, or  
12 counsel's office to respond?

13 A (Thomas) Yes, there was a draft prepared -- a draft  
14 response prepared that was sent to me by Attorney Flynn.

15 Q And did that become the document that was the final  
16 product?

17 A (Thomas) No, it did not.

18 Q What happened thereafter?

19 A (Thomas) Well, again, I'm involved there in  
20 Washington. What I know happened was Attorney Flynn's proposed  
21 response was sent over to the NRC, and at some time after that  
22 I may have received a call from Attorney Turk in other matters,  
23 or I just don't remember, but certainly later on in 1986, I was  
24 down at NRC headquarters, or the building that Attorney Turk  
25 works in, at any rate, whatever that building is in Bethesda,

1 working on responses to contentions and motions for summary  
2 dispositions and things like that.

3 And he showed me his current draft of the response to  
4 the three misconceptions memo, and we had a discussion about  
5 that.

6 JUDGE SMITH: Could you remind us now what time  
7 period that's involved?

8 THE WITNESS: (Thomas) I'm sorry. I'm having  
9 trouble with the time period.

10 I looked at my travel vouchers, and tried to sharpen  
11 up my recollection. It is only a very general recollection and  
12 I'm not prepared to say it was exactly this or that. My  
13 recollection -- we do have a copy of the draft that was done by  
14 Joe Flynn of the response to the three misconceptions memo, and  
15 that is either late January or early February, 1986.

16 My recollection of the conversations with Attorney  
17 Turk would have been in say around April or May of '86, but I'm  
18 really almost guessing. It sounds like it's around then.

19 JUDGE SMITH: Okay, that's good enough.

20 BY MR. OLESKEY:

21 Q Now, we all know in the proceeding that Attorney Turk  
22 works for the NRC and you work for FEMA.

23 When did he first become a lawyer in the case whose  
24 role was one that came to your attention?

25 A (Thomas) Sometime in late 1985 or early 1986.

1 Q And what relationship did you have with him  
2 thereafter?

3 A (Thomas) We worked very, very closely together in  
4 terms of preparing responses to contentions and motions for  
5 summary disposition and exchanging documents; essentially at  
6 the instructions of Attorney Flynn. I treated him as if he  
7 were co-counsel to FEMA.

8 Q Did you feel free to pick up a telephone and call him  
9 to discuss an issue that was appropriate to be raised with a  
10 lawyer?

11 A (Thomas) With an agency lawyer, sure; yes.

12 Q And you did do that, I take it.

13 A (Thomas) Sure.

14 MR. FLYNN: Your Honor, I have to raise an issue  
15 here. I guess this is in the nature of an objection; perhaps a  
16 motion to strike.

17 Mr. Thomas has reported conversations that I had with  
18 him, but I didn't have an opportunity to object because the  
19 question didn't obviously ask for hearsay. The problem that I  
20 have is, to the extent that I might wish to, or I might have  
21 questions about the accuracy of every detail of what Mr. Thomas  
22 says, I don't have any opportunity to do that. I'm not a  
23 witness and I can't become a witness without disrupting FEMA's  
24 role in this case. I can't become a witness and then go back  
25 to being a lawyer for the agency.

1           So I guess the question I'm raising is how I deal  
2 with the problem of hearsay that's inherent in the questioning  
3 to the extent that Mr. Oleskey is going to elicit responses  
4 that deal with what I said to Mr. Thomas.

5           JUDGE SMITH: It's a difficult problem. I propose  
6 what you do as -- if you don't have any difficulty of the  
7 accuracy of the question -- I mean the answer, let it go. If  
8 you do, see if you can correct it on your examination. If you  
9 can't, then worry about it.

10          MR. FLYNN: Thank you.

11          JUDGE SMITH: Does that satisfy you? Maybe we don't  
12 have to worry about it. Let's wait and see.

13          MR. FLYNN: Yes, that's helpful, Your Honor. Thank  
14 you.

15          BY MR. OLESKEY:

16          Q     Mr. Thomas, to the extent that you had input into  
17 this process of preparing a reply to Mr. Dignan's memo, what  
18 points did you stress to be treated in the memo from your  
19 perspective.

20          A     (Thomas) From my perspective, I thought they were --  
21 in the course of the response, I thought there were two special  
22 points that FEMA wanted to make.

23                 The first was to make sure that everybody understood  
24 that NRC valued our opinion highly; that we were important to  
25 the process. I'm not sure -- the licensing process, I'm not

1 sure that that was necessarily clear to everyone connected with  
2 the process at that time.

3 And, secondly, I wanted to make sure that we gave the  
4 emergency preparedness planners and myself proper advice on how  
5 these plans should be evaluated.

6 And other than that, it was just a matter of creating  
7 a correct and thorough legal response to the memorandum.

8 Q Did you or your agency advocate a position in late  
9 '85, or in early '86 that a complete evacuation of the beach  
10 population in the Seabrook area had to be completed within a  
11 half an hour or so?

12 A (Thomas) No, sir. I never heard anyone advocate  
13 that.

14 Q Later in '86, toward the end of March, do you recall  
15 a meeting with Mr. Christenbury, Mr. Speck of your -- or FEMA,  
16 Mr. Jordan, and others to discuss the beach population issues?

17 A (Thomas) Can you give me the time frame again?

18 A (Thomas) March -- on or about March 27 of '86.

19 A (Thomas) There was a meeting on March 27, 1986, with  
20 personnel from the utility and the NRC and FEMA. That meeting  
21 did not at all focus on the beach population issues.

22 Q Was that to be a topic on the agenda?

23 A (Thomas) If it was discussed, it was discussed in a  
24 tangential way. It was discussed, and it was discussed in a  
25 tangential way with respect to scheduling only. The meeting

1 was to talk about when FEMA was going to be finished with it  
2 reviews of New Hampshire plans so that we could go forward with  
3 the licensing.

4 Q Was there a discussion at that meeting about views of  
5 Governor Sununu or any of his staff as to your role in  
6 conducting the review for FEMA?

7 A (Thomas) There was extremely tangential discussion  
8 with respect to a need to sort of lower everyone's level of  
9 temper, and stop the complaints and the yelling, I think was  
10 the nature of the -- and specifically that the response to that  
11 from Edward Brown was, we can't control Governor Sununu.

12 Q I don't understand what it was that Governor Sununu  
13 had apparently said that was the subject of these comments in  
14 this meeting.

15 A (Thomas) I don't know either. I just know my boss  
16 said, look, it's not doing anybody any good that there is a lot  
17 of screaming and yelling going on between the people in this  
18 room. And essentially said, look, if Ed Thomas is removed from  
19 this process, it's going to make things much worse. And the  
20 response that the utility gave us was that they couldn't  
21 control what Governor Sununu did.

22 Q Well, who was screaming in the room and about what?

23 A (Thomas) No one was screaming in the room at that  
24 time, but apparently I wasn't really aware of any great  
25 acrimony at that point, but my boss apparently was, and was

1 the comments were addressed to the utility with respect to  
2 knock off the yelling.

3 Q Are you saying, in substance, that the utility and  
4 the Governor of New Hampshire had been on your boss about your  
5 role in the review process?

6 A (Thomas) No, I'm ont saying that. I'm relating what  
7 happened. Maybe I should relate --

8 Q I think if you wouldn't be quite so circumspect, and  
9 just tell us what was said and what you understand was going  
10 on --

11 A (Thomas) I'm trying --

12 Q -- we'd get through it.

13 A (Thomas) I'm trying not to be circumspect.

14 MR. DIGNAN: And I'm going to object to the leading  
15 nature of the interrogation. Maybe if you would just ask it  
16 what was said, he wouldn't have the problem he's having.

17 MR. OLESKEY: I'm having a problem --

18 JUDGE SMITH: We have arrived at that point now.  
19 Go ahead, Mr. Thomas.

20 THE WITNESS: (Thomas) I'm just trying to describe  
21 the facts. I don't want to characterize them.

22 In essence, my boss opened the meeting up by saying,  
23 let's reopen communications, let's knock off the pointless  
24 shouting and screaming that's been going on heretofore. And  
25 either very early on in the meeting or later on in the response



1 from the utility to that point, knocking off the shouting and  
2 calming down, was we can't control what Governor Sununu does.  
3 And I was basically silent throughout the meeting. I didn't  
4 quiz anybody on what they meant, and what was going on. That's  
5 about all I know about it --

6 MR. OLESKEY: Did you understand --

7 THE WITNESS: (Thomas) -- as of that day.

8 BY MR. OLESKEY:

9 Q I'm sorry. Were you through?

10 A (Thomas) Yes.

11 Q Did you understand from the context of the meeting  
12 what the reference was with which your boss Vickers opened the  
13 meeting?

14 A (Thomas) The reference as he opened the meeting  
15 certainly was just in general with respect to reopening  
16 communication. And then later on he went on to discuss a need  
17 to lower the decibel level and be a little bit calmer, and  
18 specifically said, if Ed Thomas is removed from this, things  
19 would be worse, things could be worse, words to that effect.

20 Q Did somebody at the meeting suggest that you ought to  
21 be removed?

22 A (Thomas) No one at the meeting suggested that I  
23 should be removed. I'm just saying that was what he said, and  
24 the response to it was, in essence, we can't control what  
25 Sununu does.

1 Q Okay.

2 JUDGE SMITH: Well, then is it your testimony that  
3 you don't understand what gave rise to the suggestion that Ed  
4 Thomas ought to be removed, or what the decibel -- why the  
5 decibel level should be lowered?

6 THE WITNESS: (Thomas) I -- as of that time I --

7 JUDGE SMITH: And you can't say you know, the degree  
8 of confidence that you have in your impression, you should feel  
9 free to explain that, too.

10 THE WITNESS: (Thomas) The degree of confidence I  
11 have is comparatively slight. My boss was extremely  
12 circumspect with me as to what conversations he was talking  
13 about. And really further analysis would almost be speculation  
14 on my part.

15 BY MR. OLESKEY:

16 Q Okay. The Christenbury memo was sent, as I recall,  
17 in late June of 1986. Do you recall that it finally did go?

18 A (Thomas) Yes.

19 Q Prior to the time that the memo was sent to the  
20 various people who got it, was there any discussion in your  
21 agency about whether or not it was going to be sent?

22 A (Thomas) There was discussion in the agency in that  
23 I was called by Attorney Flynn who in essence asked me did I  
24 really still want an answer on the three misconceptions memo,  
25 did I think it would do any good. And because he had been

1 given to understand from someone else that the utility was  
2 unhappy with the answer, and that the memo would not be sent  
3 unless I -- I don't remember if he said I insisted on it, or I  
4 still continued my request, but basically it was going to be my  
5 choice as to whether the response would be sent or not.

6 And I said, yes, I thought it was still very  
7 important to Massachusetts especially with respect to their  
8 understanding of emergency preparedness planning.

9 Let's recall for all of us that at that time  
10 Massachusetts was still a very, very active part of the  
11 emergency preparedness planning for Seabrook.

12 MR. TURK: I'm sorry, I didn't hear who it is who  
13 related this to you.

14 THE WITNESS: (Thomas) Attorney Flynn.

15 BY MR. OLESKEY:

16 Q And thereafter I take it you said, yes, I think it  
17 should be sent and it was.

18 A (Thomas) Yes, I did say that it was very important.

19 Q Now throughout '86, 1986, were there further  
20 discussions with the NRC about the state of its work on a reply  
21 to your December 31, 1985 memo to all the RAC members,  
22 including the NRC?

23 A (Thomas) Yes, there were -- there were discussions,  
24 yes.

25 Q With whom did you have such discussions?

1           A       (Thomas) I couldn't begin to give you a listing.  
2       It was a lot of people. I was very, very anxious to get an  
3       answer to that memorandum.

4           Q       And were a number of those people at the NRC?

5           A       (Thomas) Yes, and my headquarters, and the State of  
6       New Hampshire, and probably others too.

7           Q       Did you have a view of whether the RAC's progress in  
8       evaluating the New Hampshire plan was being affected by the  
9       lack of a response from the NRC to the December 31 memo?

10          A       (Thomas) Yes, I had a very strong view that we could  
11       not come to closure on the RAC's responsibilities in the New  
12       Hampshire plan which was the Elements J-9 and J-10-M; that part  
13       of the spread sheets that you have seen of the RAC review.  
14       That was still an open item. I wanted to close it and to  
15       finish it off.

16                   And as the RAC review itself indicates, it was left  
17       as an open item pending resolution of the December 31st, or the  
18       memorandum -- the issues that had been raised in the memorandum  
19       of December 31st, and I felt that we need to have the NRC  
20       response in order to come to closure on that.

21          Q       Did you convey the substance of that view to these  
22       various people at the NRC, among others?

23          A       (Thomas) Yes, I sure did.

24          Q       Did you have a conversation with Attorney Turk, or  
25       correspondence with Attorney Turk in early 1986 --

1 A (Thomas) Yes.

2 Q -- about this issue?

3 A (Thomas) Both. Yes.

4 Q What did you say to him?

5 A (Thomas) Basically what I just said; that, in  
6 essence, look, we want to finish the RAC review. This is an  
7 open item. I need the cooperation and the assistance of the  
8 NRC in order to come to closure on this matter.

9 And I sent him a copy of the December 31st memo, and  
10 the responses we had received to date.

11 Q What did he say about any role he could play in  
12 facilitating a response?

13 A (Thomas) My recollection is, and I don't have a note  
14 on this, but my recollection is -- quite strong -- that what he  
15 indicated to me was in essence that it would not be appropriate  
16 for him to play a role in persuading or cajoling or otherwise  
17 adducing a response out of the NRC region.

18 Q Which was Region 1, is that right?

19 A (Thomas) NRC Region 1.

20 Q Okay. Were other people at FEMA in Washington aware  
21 of your efforts to get a response from the NRC to your December  
22 31, 1985 memo?

23 A (Thomas) Yes, very much so.

24 Q What kind of discussions did you have with your own  
25 people in Washington about the RAC progress and the need for a

1 definitive position from the NRC?

2 A (Thomas) Basically that, look, hearings are going to  
3 be coming up on the Seabrook plans. I want to finish my RAC  
4 review. We want to wrap this issue up. I need a response from  
5 the NRC, and can't you please induce them to answer the  
6 correspondence.

7 Q And did they tell you that they were having their own  
8 contacts with the NRC?

9 A (Thomas) Yes, they did.

10 Q And did they tell you what results they were having?

11 A (Thomas) Well, as we went from 1986 into, you know,  
12 late '86, early '87, my first understanding was that the NRC  
13 staff would not be able to provide an answer to the beach  
14 population memo issues, because they were working on the  
15 response to the three misconceptions memo.

16 And then after the response to the three  
17 misconceptions memo came out, I said, in essence, to my  
18 headquarters, good, now they can work on the response to the  
19 December 31st memo and pushed on that; pushed my headquarters  
20 on pushing the NRC headquarters and to induce the region to get  
21 an answer and also -- sorry. That's the end of my answer.

22 Q Okay. Were you told that some time in the fall of  
23 '86, that the NRC had the view that the Christenbury - Perry  
24 memo of June was the response that was going to be forthcoming  
25 from the NRC to your December 31 request?

1 A (Thomas) Yes, I was.

2 Q What did you say to that?

3 A (Thomas) I said -- well, what I think is said was  
4 that was absolute nonsense, and that the Christenbury  
5 memorandum with the Spence Perry endorsement simply did not  
6 address the issues that had been raised in the December 31st  
7 memorandum as I read it. I didn't -- I certainly couldn't  
8 understand how it was a direct response, and that I very, very  
9 much wanted the direct response to my December 31st memorandum.

10 MR. TURK: Your Honor, I'm going to move to strike  
11 the last series of questions and answers about this hearsay  
12 conversation of Mr. Thomas. Mr. Oleskey has failed to elicit  
13 even who the communicator was. Not only is it hearsay, it's so  
14 rank -- it's so unspecified that there is no way that it can be  
15 reliable.

16 MR. OLESKEY: I'm happy to go through chapter and  
17 verse on who he talked to. It didn't seem to me to be  
18 critical.

19 JUDGE SMITH: He's --

20 MR. OLESKEY: I'm trying to move along rapidly, but  
21 I'll go back if that's a problem.

22 JUDGE SMITH: Well, isn't this the heart of it,  
23 though?

24 It's not so much the conversations but developing the  
25 attitude, Mr. Thomas's attitude and the person to whom he



1 expressed it become secondary importance.

2 MR. TURK: Presumably the --

3 JUDGE SMITH: He could have complained to his wife as  
4 far as that's concerned, and that isn't --

5 MR. TURK: Presumably the question and answer are  
6 designed to elicit correct representations, and the question  
7 and answer are designed for truth of the contents. Now this is  
8 more than simply historical purpose for which the questioning  
9 is taking place.

10 JUDGE SMITH: I understand what we get from this is  
11 that the Christenbury - Perry exchange was, in his view, not  
12 addressing the issue. That is the central piece of evidence.  
13 How he got there is relatively unimportant.

14 But if you -- narrow in on your objection. You don't  
15 know who the other end of the conversation was.

16 MR. TURK: And because I don't, I believe that the  
17 hearsay testimony is unreliable. If Mr. Oleskey want to bring  
18 in hearsay, let him at least structure it in a way that we can  
19 have some indicia --

20 JUDGE SMITH: What he said to the other person, that  
21 isn't hearsay.

22 MR. TURK: No, there are statements that he was told  
23 by some unnamed person that the Perry - Christenbury memo was a  
24 response to his memorandum of December. There is unspecified  
25 conversations with other people where "they said they were

1 talking with the NRC". I don't know who these people are.

2 MR. OLESKEY: Let me ask a couple of questions and  
3 cut this colloquy off.

4 MR. TURK: And I'm would note I'm going to have a lot  
5 of trouble if Mr. Oleskey simply wants to make a record of  
6 hearsay here. At least if he wants hearsay, let's get it  
7 specific so that we know if we're going to have a problem.

8 MR. OLESKEY: May I proceed and ask the questions?

9 MR. TURK: We have to do our cross-examination  
10 tomorrow. We can't prepare. We can't talk to the hundreds of  
11 NRC people who may have clues as to what this is all about. We  
12 really do need some specific direct examination.

13 MR. OLESKEY: Would you tell Mr. Turk when he made  
14 his point, I'm going to ask my questions?

15 We don't need speeches because it just delays all of  
16 us, Your Honor.

17 JUDGE SMITH: Go ahead, Mr. Oleskey.

18 BY MR. OLESKEY:

19 Q Mr. Thomas, in this discussion you're having in the  
20 fall of 1986 with your headquarters about efforts you and they  
21 were making to get a response from the NRC, would you tell us  
22 who you were talking to there in Washington?

23 A (Thomas) I couldn't begin to give you a list of  
24 everyone I talked to. Please understand, this was a very, very  
25 important issue to me and to my office, and I talked to a lot

1 of people.

2 Certainly I know from my records that I talked with  
3 Margaret Lawless. I also know from my recollection that I  
4 talked with Richard Krimm and Robert Wilkerson about this as  
5 well. I know from my records that I raised this in one or more  
6 RAC meetings in terms of, hey, I want a response to this memo.  
7 It's very important to me.

8 Q Do you recall any specific responses that you got  
9 from Lawless, or Krimm, or Wilkerson in these conversations on  
10 this topic?

11 A (Thomas) Yes.

12 Q What were they?

13 A (Thomas) In essence, I do have a record of a  
14 conversation with Margaret Lawless, which is her note to  
15 someone else, and she sent me a copy of it, that basically says  
16 that Ed Thomas is complaining about not getting an answer to  
17 the December 31st beach population memorandum; that we, FEMA  
18 headquarters, had been advised by the NRC -- unnamed, I believe  
19 it was unnamed, I don't recall offhand -- that the answer to  
20 the three misconceptions memo is responsive to the December  
21 31st memo. Ed doesn't agree. She, Margaret Lawless, didn't  
22 agree, and she was asking this other person if she could -- if  
23 he could intercede with the NRC to try and get an answer.

24 Q Okay. This other person is somebody else at FEMA; is  
25 that right?

1           A     (Thomas) That's correct. It was someone else that  
2 was a former NRC employee who has very close, good relations  
3 with the NRC headquarters office.

4           Q     Okay. Did you ever learn anything more about that  
5 track of these efforts?

6           A     (Thomas) Following on these efforts the next thing I  
7 have a record of, or for that matter, a distinct recollection  
8 of was a conversation between myself, my boss Henry Vickers,  
9 and Regional Administrator of the NRC, Thomas Murley. And that  
10 conversation, as I recall, was in early October.

11                     And at that time I again explained to Dr. Murley, we  
12 had talked about this on other occasions, I again explained to  
13 him what the nature of FEMA's concerns were, my concerns, and  
14 why we felt we needed some information from the NRC. And at  
15 that time Dr. Murley made a commitment to myself and my boss  
16 that, yes, he understood the problem and that we would get an  
17 answer.

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18                     (Continued on next page.)

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1 Q There's an exhibit in the case now, Mass. AG 43, Mr.  
2 Thomas, which is a memo that you authored about reasonable  
3 assurance in October of '86, do you recall that memo and its  
4 general subject matter?

5 A (Thomas) Yes, I do.

6 Q What was the occasion for you to write such a memo?

7 A (Thomas) The occasion was a follow-on to what FEMA  
8 refers to in its parlance as, quote, "murder board or a murder  
9 board."

10 Q Murder board?

11 A (Thomas) Murder board, yes, sir. It is our  
12 preparations for a major hearing. And the specific hearing and  
13 the specific murder board were preparations for a hearing  
14 before Congressman Markey's subcommittee of the House on -- the  
15 hearing was to be held on Seabrook and Seabrook related  
16 matters.

17 And at the murder board sessions, and questions had  
18 come up about what reasonable assurance meant, and I had given  
19 a response that was not considered satisfactory by the group as  
20 a whole. And I went back and wrote up an expanded version of  
21 what I said and a rationale for why I had said it.

22 Q Well, let me see if I understand this correctly. The  
23 memo was done in preparation for the Markey hearings, requested  
24 of you by FEMA officials in order to define the concept of  
25 reasonable assurance should that become a topic in the

1 hearings, is that the substance of what you're saying?

2 A (Thomas) Not exactly. I'm not prepared to testify  
3 that I was requested to develop that memo. What I'm testifying  
4 is that, I developed it following the meeting. I don't  
5 remember if anybody asked me to or not. I did it perhaps on my  
6 own, perhaps at direction to develop it, I just don't recall.  
7 But I did it as part of our preparation for the Markey hearing.

8 Q Did Mr. Krimm, who was the recipient, or anybody else  
9 in Washington comment on the accuracy and utility of the memo  
10 from their perspective after they got it?

11 A (Thomas) Intermittently Mr. Krimm, the legal staff,  
12 Mr. Flynn or Mr. Cumming, Mr. Wilkerson would make reference to  
13 the memo with me; yes, they did.

14 Q What was the substance of what you were told by them  
15 about how well you'd summarized the agency's notion of  
16 reasonable assurance in the context in which it's put in this  
17 memo, Exhibit 48?

18 MR. DIGNAN: May the witness be instructed to first  
19 exhaust his memory as to exactly who said exactly what before  
20 we go to a summarization of four different people's possible  
21 views. I think at this point the hearsay objection is well  
22 taken. I'm not making an objection provided the Board will  
23 instruct that the witness first exhaust his specific memories  
24 before we get into summaries.

25 MR. OLESKEY: I was actually trying to ask for

1 summary of specific memories, but -- so I don't think Mr.  
2 Dignan and I have any real dispute.

3 BY MR. OLESKEY:

4 Q We're both asking you to tell us what you recall  
5 being said?

6 MR. DIGNAN: And I'd like exact words first, Your  
7 Honor, or a statement that exact words can't be remember.  
8 We're right in hearsay knee deep at this point.

9 BY MR. OLESKEY:

10 Q We're both asking you to tell us what you recall  
11 specifically individual people said after getting your memo?

12 A (Thomas) I recall -- the first conversation I recall  
13 from anybody was from Attorney Cumming who said --  
14 congratulated me on my progress as a law student. He said,  
15 just the nature of that was a nice legal analysis, Eddie.

16 I had a conversation with Mr. Krimm following that,  
17 and I'm sorry I can't give you the exact words. The substance  
18 was, thank you for sending that in, it gives us a lot to think  
19 about. And words that were to the effect of, boy, it sure is a  
20 thick memo and it's a lot to plow through; something like that.

21 I had conversations sporadically with Mr. Wilkerson  
22 shortly following the receipt of the memo. Mr. Wilkerson  
23 indicated to me that he wasn't, by any means, sure that he  
24 agreed with it and had to really, really think about it. I'm  
25 not sure that those are his exact words; that's my best



1 recollection of it.

2           And that -- words to that effect from Mr. Wilkerson  
3 continued on right through June of 1987 where I do have fairly  
4 good notes that were taken at a meeting at FEMA headquarters,  
5 and Mr. Wilkerson again specifically said that he just didn't  
6 know whether he agreed with the Ed Thomas reasonable assurance  
7 memo or not.

8           Q     He then left the agency about that time, didn't he?

9           A     (Thomas) It was after June of '87, yes. And I  
10 really don't recall anything about the nature of the  
11 conversation with Attorney Flynn on this other than I know we  
12 had at least one and probably more conversations that there was  
13 such a memo.

14          Q     Is it fair to say that after the memo there were a  
15 series of discussions in which you tried to get -- you sought  
16 to have the agency give you a definition, working definition of  
17 reasonable assurance that you could apply in the proceedings at  
18 the RAC for Seabrook and otherwise?

19               MR. DIGNAN: Objection, if that's suppose to  
20 summarize the conversations just described.

21               JUDGE SMITH: I --

22               MR. OLESKEY: No, it's suppose to summarize his state  
23 of mind and his interest in pursuing the topic.

24               JUDGE SMITH: And what he did?

25               MR. OLESKEY: Yes.

1 MR. DIGNAN: Well, Your Honor, can I object to the  
2 form and ask the question be asked that way, what if anything,  
3 Mr. Thomas, did you do after these conversations, is the  
4 customary question.

5 JUDGE SMITH: All right. Mr. Oleskey was invited to  
6 use leading questions to expedite matters here because of our  
7 observation that -- with the relationship between the  
8 questioner and the witness it's unlikely that Mr. Oleskey is  
9 going to plant ideas in Mr. Thomas's mind it didn't otherwise  
10 have.

11 We do -- we would like very much to stick to the  
12 schedule we have. I think we ought to stick with the amount of  
13 leading questions that we've had. I don't think it's harmful.  
14 I mean, the leadingness of it is -- I don't think has been  
15 harmful.

16 BY MR. OLESKEY:

17 Q Do you want the question restated, Mr. Thomas?

18 A (Thomas) No, I have it well enough.

19 Q Go ahead.

20 A Basically, I would periodically talk with various  
21 people of the four I just mentioned: Mr. Cumming, Mr. Flynn,  
22 Mr. Wilkerson and Mr. Krimm in the period following the memo  
23 indicating not so much that we needed to have a working  
24 definition for the RAC, because that's not correct, we already  
25 have a perfectly good working definition for anything relating

1 to reasonable assurance in terms of the FEMA review of  
2 exercises and that didn't seem to be an issue. But that as we  
3 got closer to the Seabrook hearings we had to have a rational  
4 answer to that question of what is reasonable assurance. And  
5 that I thought it was important, and periodically there would  
6 be some level of discussion about that.

7 Q All right. I'll come back to that discussion level  
8 later.

9 Just two final questions about this memoranda in  
10 Exhibit 43. It says generally in terms of, we have reached the  
11 conclusion, we believe and so on, rather than I; was this --  
12 does this indicate it was the product of conversation and  
13 discussion among people other -- other people in FEMA and not  
14 just your own view?

15 A (Thomas) Part of the "we" in the memo certainly  
16 is -- the memo is written so that it comes to a conclusion at  
17 the end which was to -- was suggested to be testimony before a  
18 Congressional committee, and at that part the "we" is my  
19 suggested statement to what the agency ought to say.

20 The other "wes" are really -- I'm talking about  
21 myself and my staff and our understanding of the situation.

22 Q Okay. Then just to clarify an ambiguity at page  
23 five, at least in my mind, it says: "We've also prepared a  
24 somewhat longer answer to the question: answer mit schlag," I  
25 think means with whip cream or something along those lines,

1 "Dave McLoughlin." What's the point of that reference in that  
2 -- the answer that follows?

3 A (Thomas) You're --

4 Q A dressier a version of the answer?

5 A (Thomas) That is correct. It's humor. I mean, it  
6 was a long memo and it was a little piece of humor in there.

7 Q We can use some here, too, I assure you. Okay.

8 A (Thomas) It meant only an expanded version of the  
9 answer to the question.

10 Q Fine.

11 JUDGE SMITH: Is this a good time?

12 MR. OLESKEY: It is indeed. Thank you.

13 JUDGE SMITH: Return at quarter to 1:00 then.

14 (Whereupon, at 11:45 a.m. the hearing was recessed to  
15 reconvene at 12:45 p.m. this same day, Tuesday, June 14, 1988,  
16 at the same place.)

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## A F T E R N O N   S E S I O N

(12:52 p.m.)

Whereupon,

EDWARD THOMAS

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

JUDGE SMITH: Mr. Oleskey.

MR. OLESKEY: Thank you, Judge.

## RESUME DIRECT EXAMINATION

BY MR. OLESKEY:

Q Mr. Thomas, did you have some discussions with Robert Bores of the NRC in or about December of 1986 in connection with the long-discussed NRC response to your memo of the previous December?

A (Thomas) Yes, I did.

Q Did you learn in that conversation anything about the timing and nature of the NRC's response?

A (Thomas) I have a note that in mid to late December Dr. Bores called me and told me that his response was quite far advanced, that he had a draft that had already been seen by two or three people at the NRC regional office, and I could give you the names, if you'd like, and the draft at that point was with the NRC Regional Administrator in King of Prussia, Dr. Thomas Murley, for comment.

MR. TURK: May I ask, is this anything that the

1 witness is testifying to from memory or is he relying on those  
2 notes.

3 THE WITNESS: (Thomas) I have looked at notes which  
4 refresh my recollection. I am not totally independently  
5 testifying from memory. They refresh my recollection, but --  
6 I'm willing to be a little precise about that, if you'd like me  
7 to be. I remember the conversation, I remember the approximate  
8 time, I remember the general gist of it, but with memory alone  
9 I don't remember what Dr. Bores said about who had actually  
10 looked at it and anything else at that point.

11 MR. OLESKEY: If somebody else wants that I'm sure  
12 they'll get into it later.

13 MR. TURK: My question next, Mr. Oleskey, is have  
14 those notes been produced to us?

15 MR. OLESKEY: I don't know what notes he's talking  
16 about. I'm doing my examination, would you let me complete it.  
17 He's talking about something he's seen, counsel, it has nothing  
18 to do with me.

19 MR. TURK: Well, Your Honor, the problem is, there's  
20 been a discovery request for documents, if the witness is  
21 relying on documents he's reviewed and they haven't been  
22 produced to us, then I think that's important.

23 JUDGE SMITH: All right. I don't think that you are  
24 as sensitive as you should be in the relationship between Mr.  
25 Oleskey and the witness. Mr. Oleskey is not responsible for

1 producing Mr. Thomas's notes.

2 MR. DIGNAN: Well, all right, let's cut through it.

3 If Mr. Thomas is relying on notes I want them produced now. As  
4 part of the cross-examination I want to look at them now before  
5 he testifies any further which is usually my right in any  
6 adjudicatory proceeding, if he's using notes. If he's not  
7 using notes, fine, I've got no problem.

8 MR. OLESKEY: Well, he has no notes in front of him I  
9 observe.

10 JUDGE SMITH: I didn't understand he was using notes,  
11 I understood the question was, were there any.

12 MR. OLESKEY: No, the reference that Mr. Dignan has  
13 made to his so-called right to have notes produced, in my  
14 experience, turns on whether the witness has seen --

15 MR. DIGNAN: I agree with that, Mr. Oleskey, if he's  
16 not using notes I haven't got a problem. I couldn't tell from  
17 the colloquy whether he was or was not.

18 JUDGE SMITH: That wasn't Mr. Turk's thrust, though.  
19 So, go on.

20 MR. OLESKEY: Okay.

21 BY MR. OLESKEY:

22 Q Did you have any discussions with Mr. -- with Dr.  
23 Bores then or any other time about --

24 MR. TURK: Your Honor, this may come up again, I'm  
25 sorry to interrupt Mr. Oleskey, that there was a document



1 production by Mr. Barshak late last week. I personally did not  
2 receive it before coming up here, I was able to get a copy  
3 here. I'd like to know if that document production purports to  
4 be a response to the request for documents that was made to Mr.  
5 Thomas.

6 JUDGE SMITH: By whom?

7 MR. TURK: By Mr. Thomas.

8 JUDGE SMITH: No, no, who made the request?

9 MR. DIGNAN: Attorney General.

10 MR. TURK: Massachusetts made the request.

11 MR. OLESKEY: Months ago.

12 JUDGE SMITH: Right. So go ahead. Held the  
13 subpoena, right.

14 MR. OLESKEY: Months ago, and then again the  
15 subpoena, correct.

16 MR. TURK: And there was a document production which  
17 I don't understand textually what it consisted of and I want to  
18 know if that was -- that document production was a response to  
19 the request for notes that should be made by Massachusetts. If  
20 it was I'd like to know if these particular notes were inserted  
21 in the batch.

22 JUDGE SMITH: My trouble is, isn't it Mr. Oleskey who  
23 has standing to make the request to the argument you're making  
24 now.

25 MR. TURK: I would consider that I have standing as

1 well, Your Honor, as party in the case. When the document  
2 production would have been made I would have been a recipient  
3 to it.

4 JUDGE SMITH: I don't think you have -- unless you  
5 can point to somebody other than Mr. Thomas to produce notes, I  
6 don't think you have anything now to complain. I don't know  
7 what it is if you do. I mean --

8 MR. TURK: Your Honor, if your ruling is that a party  
9 is not entitled to receive a document production unless he's  
10 made the request for production, that would require that every  
11 party to the proceeding make an independent production of  
12 parroting each other's production in order that they get  
13 copies, otherwise I would have no standing to complain of  
14 failure of production.

15 JUDGE SMITH: Well, the only document demand that I  
16 know about is on the subpoena to Mr. Thomas. Mr. Barshak  
17 apparently made return on that subpoena. If he gave some to  
18 Mr. Oleskey that he didn't give to you, that's one problem. If  
19 he gave -- if he responded to a subpoena from Mr. Oleskey to  
20 Mr. Oleskey's satisfaction, I don't see how you have standing  
21 to get in on it unless you can specify some other way in which  
22 you're hurt. But how do you know you don't have what you're  
23 asking for.

24 What did you give him, Mr. Barshak?

25 MR. BARSHAK: I'm going to ask Christine Netski to

1 respond to that because I was busy trying to do something else.

2 JUDGE SMITH: Ms. Netski?

3 MS. NETSKI: Yes. The documents we produced were  
4 sent to all counsel that we were informed were of record in  
5 this proceeding, so they should have them.

6 JUDGE SMITH: And you gave to all counsel exactly  
7 what you gave to Mr. Oleskey?

8 MS. NETSKI: Yes.

9 JUDGE SMITH: Anything -- no difference?

10 MS. NETSKI: No.

11 JUDGE SMITH: And --

12 MR. TURK: And the question --

13 JUDGE SMITH: Wait a minute. Let him consult.

14 MR. BARSHAK: Well, I understand, you know, following  
15 my conversation with you, which I reluctantly said, I guess I  
16 have no choice if someone is going to prepare my client. I  
17 told you, well, he'll have to meet with him. And during the  
18 course of that he met with him in our office. We didn't give  
19 him everything we have, because some things we don't think he's  
20 entitled to look at all.

21 JUDGE SMITH: Mr. Oleskey?

22 MR. BARSHAK: Mr. Oleskey.

23 JUDGE SMITH: All right.

24 MR. BARSHAK: But with the exception of some things  
25 I'm sure he must have looked at during the course of preparing

1 Mr. Thomas in our office, with the exception of that, when we  
2 sent out documents originally, everybody got the same thing.

3 JUDGE SMITH: What is it you think that you don't  
4 have, Mr. Turk, that you should have?

5 MR. TURK: I don't recall seeing these particular  
6 notes. I could be wrong.

7 JUDGE SMITH: Can you be helpful here?

8 THE WITNESS (Thomas): Yes, Your Honor.

9 The particular notes in question were showed to my  
10 attorney and have not been produced to anybody, other than my  
11 attorney and to agency Attorney Flynn, has seen the ones that  
12 he has requested to look at from time to time.

13 JUDGE SMITH: And you're asserting your privilege on  
14 those notes, Mr. Barshak, or --

15 MR. BARSHAK: Well, I don't think I have to assert a  
16 privilege yet. No one's made any demand upon me for something  
17 that I can have described, look at, and see whether I need a --  
18 I'll need a privilege.

19 MR. TURK: I have a couple of problems, Your Honor.

20 One is I still don't understand what that production  
21 was meant to be. Was it a response to the subpoena? Is it  
22 represented that that is a complete response to the subpoena?  
23 What is it that we have?

24 Number two, if there is something that was not  
25 produced, why not?

1 MR. BARSHAK: Number one is easy; it was a response  
2 to the subpoena.

3 Number two, I don't know what he's referring to,  
4 except that I say everything that was called for in the  
5 subpoena was produced.

6 The witness made some personal notes which we haven't  
7 shown anybody. Nobody's asked for them.

8 THE WITNESS (Thomas): Your Honor, you asked me to be  
9 helpful. Can I add to that, perhaps?

10 JUDGE SMITH: Well, it's up to you.

11 THE WITNESS (Thomas): It's clear to me what is  
12 happening, and basically I discussed with counsel the nature of  
13 the subpoena, and documents were supplied in response to the  
14 subpoena, as counsel has indicated.

15 There were additional documents that were given to  
16 the Massachusetts Attorney General's office that relate to the  
17 issue of my credibility, and yes, they have a stack of  
18 documents on that issue which, as we read the subpoena, was not  
19 what was being subpoenaed at that time. And that's where we  
20 are.

21 JUDGE SMITH: You gave them to Massachusetts Attorney  
22 General?

23 THE WITNESS (Thomas): My attorneys did, sir.

24 JUDGE SMITH: Your attorney did.

25 MR. BARSHAK: Yes, during the course of preparation.

1 So, since he's going to put my witness on instead of me --

2 JUDGE SMITH: You think there's privity?

3 MR. BARSHAK: Between him and me?

4 JUDGE SMITH: Yes.

5 MR. BARSHAK: No.

6 JUDGE SMITH: So if there's a privilege attendant to  
7 those notes, it's been, now been given up by providing it to  
8 the Massachusetts Attorney General.

9 MR. BARSHAK: Oh, yes, there's no privilege involved  
10 that I know of to begin with.

11 JUDGE SMITH: Well, then you should share them.

12 MR. OLESKEY: I don't care. I wasn't -- I didn't  
13 realize until this exchange now, frankly, that I had some stuff  
14 that others didn't.

15 JUDGE SMITH: Okay.

16 THE WITNESS (Thomas): Your Honor, you did ask me to  
17 clarify. Just so that everybody understands, the notes of my  
18 conversation that I was making reference to, with respect to  
19 the conversation with Dr. Bores, have, as I said, not been  
20 shared with anybody, other than my attorneys. So -- but he  
21 doesn't have them.

22 JUDGE SMITH: That's a different category of notes.

23 THE WITNESS (Thomas): That's correct. There's just  
24 additional notes that Mr. Oleskey also does not have. And it's  
25 not that we're asserting any privilege --

1 JUDGE SMITH: But those that Mr. Oleskey has,  
2 certainly there's no privilege, nobody is objecting to sharing  
3 them, and they should be shared now.

4 MR. OLESKEY: That's okay with me.

5 JUDGE SMITH: The other notes, that's another matter.  
6 I don't think that's before us now, is it?

7 MR. OLESKEY: Just to be clear, I got some -- I was  
8 out of my office yesterday afternoon. There were some  
9 documents waiting for me from Mr. Barshak's office at 5:00  
10 o'clock last night which I personally haven't looked at,  
11 although Ms. Keough's looked at them, and I think Ms. Weiss has  
12 looked at them. I don't know whether, in response to any  
13 particular question, when the witness says he's been refreshed  
14 from notes or documents whether he's referring to documents  
15 that were produced by Mr. Barshak last week or documents that I  
16 now understand may be somewhat different that we received  
17 yesterday that I haven't seen but others have, or the documents  
18 he has yet to produce that he's just described.

19 So, may I resume?

20 JUDGE SMITH: Yes.

21 MR. OLESKEY: Thank you.

22 JUDGE SMITH: All right.

23 Are you satisfied now, Mr. Turk?

24 MR. TURK: Your Honor, the subpoena which was served  
25 upon Mr. Thomas back on April 14, 1988, included Item 2, all



1 notes prepared by you memorializing the discussion at any  
2 meeting where the adequacy of NHRERP for Seabrook was  
3 discussed, or without limiting it to the generality of the  
4 foregoing, in particular any notes prepared by you after or as  
5 a result of the March 4, 1988, meeting.

6 Number -- the next item, all materials utilized by  
7 you or other participants at interagency meetings between FEMA  
8 and NRC, including but not limiting the generality of the  
9 foregoing (the January 19th meeting between FEMA and NRC.

10 Next item, all notes or materials bearing on the  
11 issue of dose reduction achieved or achievable by the NHRERP,  
12 telephone logs of any telephone conversations you may have had  
13 with others outside FEMA regarding the agency's position on the  
14 adequacy of the NHRERP in regard to --

15 MR. BARSHAK: Are you reading the subpoena, Mr. Turk?  
16 It doesn't sound like it. It doesn't sound -- I don't have it  
17 in front of me -- it doesn't sound like the subpoena that Mr.  
18 Oleskey caused to be served on my client. Would you please  
19 identify what you're reading from?

20 MR. TURK: I'm reading from my copy --

21 MR. BARSHAK: Of what?

22 MR. TURK: -- of a document filed on April 14th,  
23 1988, and entitled Application for Subpoenas Requiring  
24 Attendance and Testimony of Particular Named FEMA Employees,  
25 pursuant to 10 CFR 2.720(a) and NRC Employees pursuant to

1 2.720(h)(?).

2 This document was served -- it's a 17-page document -  
3 - served --

4 MR. BARSHAK: 17 pages?

5 JUDGE SMITH: That's not the one.

6 MR. BARSHAK: That's not the subpoena.

7 JUDGE SMITH: That's not the same subpoena.

8 MR. BARSHAK: No, not the same --

9 JUDGE SMITH: Let's -- look, everything except some  
10 notes that you prepared relating to the credibility issue have  
11 been produced; is that correct, to Mr. Oleskey, at least?

12 THE WITNESS (Thomas): Various things have been  
13 produced at various times. Requests for productions of  
14 documents have been made on FEMA, and in consultation with FEMA  
15 counsel the agency has produced some documents.

16 MR. OLESKEY: Previously.

17 THE WITNESS (Thomas): Previously.

18 MR. OLESKEY: A long time ago.

19 THE WITNESS (Thomas): A long time ago.

20 A subpoena was served on me personally, and after  
21 consultation with my attorneys, a response was made to that  
22 subpoena.

23 JUDGE SMITH: But there is a category of notes which  
24 you have so far decided not to reveal; is that right?

25 Well, that you -- I mean, that was not, in your view,

1 was not responsive to the subpoena but in addition to that you  
2 provided to your attorney? Everything that has been responded  
3 to the subpoena is in the hands of Mr. Oleskey, but there's  
4 also a category of other information given to Mr. Oleskey but  
5 not to the parties. Now where does that fit in?

6 MR. BARSHAK: May I inquire, because I --

7 JUDGE SMITH: Yes.

8 MR. BARSHAK: -- wasn't involved in all aspects of  
9 this.

10 (Witness and counsel confer.)

11 MR. BARSHAK: I think I know the answer; I'm going to  
12 try to state it succinctly.

13 The subpoena has only one paragraph scheduling  
14 documents; it's very simple. To the best of our knowledge  
15 we've turned over all of those documents; everybody has them

16 In addition, after my conversation with you, and  
17 pursuant to that, having Mr. Thomas come to my office, and he  
18 prepared, he was trying to educate us because we didn't know  
19 anything about this case, there are other things which do not  
20 appear to come within the four corners of this. But since I  
21 was not going to put him on the witness stand, somebody else  
22 was going to, in the course of Mr. Oleskey preparing him, there  
23 were those documents, I gather from Mr. Oleskey, he says he now  
24 has them in a pile he --

25 JUDGE SMITH: Okay.

1 MR. OLESKEY: I take it those are the documents that  
2 came over yesterday afternoon to our office.

3 MR. BARSHAK: Then in addition --

4 JUDGE SMITH: We're not worried about those anymore,  
5 because Mr. Oleskey's going to make those available to the  
6 other parties.

7 MR. BARSHAK: Then there's a third category which  
8 Your Honor mentioned. There are some personal notes on mostly  
9 yellow sheets, I think, aren't they?

10 THE WITNESS (Thomas): Personal notes, agency notes,  
11 hundreds of pieces of paper.

12 MR. BARSHAK: They're notes that he took which he  
13 made which don't appear to be really even relevant to the  
14 examination that's going to be conducted, which we didn't turn  
15 over. No one's called for them.

16 JUDGE SMITH: Because they're just not relevant, they  
17 don't respond to any request before you?

18 MR. BARSHAK: I think that's a fair statement. May I  
19 check?

20 Well, I have to say, with only one small caveat.  
21 It's a lot of pieces of paper, and I can't guarantee that we  
22 reviewed every single one, but --

23 JUDGE SMITH: Let me go right to it.

24 Mr. Thomas was concerned after his second appearance  
25 here that questions were being raised as to his credibility.

1 He became aware of Dr. Bores's and Mr. Lazarus's different  
2 opinion because of memorandum, and we have some testimony that  
3 he had conversations with Dr. Bores on recollection. Is that -  
4 - some of these notes pertain to that?

5 THE WITNESS (Thomas): Quite conceivably. We --

6 JUDGE SMITH: I'm -- well, the point I'm raising, if  
7 that's what it is, I'm trying to cut short this area of inquiry  
8 as not being very productive and very helpful to our inquiry,  
9 and I -- the parties always resist it, but I think the time has  
10 come for you to realize that you're just not going to do  
11 anything better to illuminate the record on this point.

12 MR. OLESKEY: Sorry, which point are you addressing,  
13 Judge?

14 JUDGE SMITH: If that is part of the notes, if that's  
15 what the concern is.

16 THE WITNESS (Thomas): Can I confer? Excuse me.

17 JUDGE SMITH: Yes.

18 (Witness and counsel confer.)

19 (Continued on next page.)

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1 THE WITNESS: (Thomas) We had given Mr. Oleskey my  
2 personal, handwritten notes of the conversations I had  
3 following the hearing on November 4th.

4 JUDGE SMITH: All right. That's all right.

5 THE WITNESS: (Thomas) That's all.

6 JUDGE SMITH: He already has that.

7 THE WITNESS: (Thomas) The only thing that Mr.  
8 Oleskey doesn't have is material that my attorneys advised me  
9 was just burdensome, and not necessary.

10 For example, I have a sheet in what I call my log  
11 book that makes note of a conversation with Dr. Bores. If  
12 anybody wants that, they can have it. The problem is going  
13 through the pieces of paper and xeroxing them. And if we flag  
14 things as we go along, and I have the notes, anybody who wants  
15 to see them is most welcome to them.

16 I would like to reserve the right on some things to  
17 edit out personal, you know, characterizations or something  
18 like that.

19 JUDGE SMITH: Let's go on.

20 All right, would you summarize to what extent do you  
21 feel unfulfilled enough?

22 MR. TURK: With respect to this hearing.

23 (Laughter.)

24 MR. TURK: I was under the impression, apparently  
25 erroneously, that Mr. Barshak's document production was in

1 response to the April 14th request. I stand corrected, and I  
2 thank Mr. Barshak for correcting me.

3 I now understand that there has been a document  
4 request attached to a subpoena which I do not have a copy of.  
5 I inquired of Mr. Flynn and Mr. Dignan and Mr. Backus if they  
6 have copies here. They told me they do not. So I don't know  
7 what the request is.

8 I'm in the dark as to exactly what the new document  
9 request was to Mr. Thomas and how the production responded to  
10 it.

11 JUDGE SMITH: But you're getting -- whatever was  
12 produced you're going to get.

13 MR. BARSHAK: He already has it.

14 JUDGE SMITH: Well, no, there is still some more.

15 MR. OLESKEY: What he is saying -- what Mr. Barshak  
16 is saying that Mr. Turk has the response --

17 JUDGE SMITH: Yes.

18 MR. OLESKEY: -- to the subpoena.

19 JUDGE SMITH: Right.

20 MR. OLESKEY: He doesn't have additional material, et  
21 cetera.

22 JUDGE SMITH: I misspoke. Right, okay.

23 MR. TURK: So I'll wait to see if I can get a copy of  
24 the subpoena, and then see if I have problems. At this point  
25 I don't know if I have a problem.



1 BY MR. OLESKEY:

2 Q Mr. Thomas, back at the races with the questioning.

3 The question you were about to be asked was this: In  
4 this period, in December of 1986, when Dr. Bores was describing  
5 the status of the NRC's response, did you have then or indeed  
6 at any time discussion about whether the response was an agency  
7 position as distinguished from that of the individual Robert  
8 Bores?

9 A (Thomas) I'm not sure if we had one at that  
10 particular point. My notes don't address that, but the issue  
11 of whether Dr. Bores's written comments concerning RAC reviews,  
12 the A through F elements were personal comments from him, or  
13 agency comments was something that he and I had been going back  
14 and forth on for a long time.

15 Q Now this is something other than the Bores letters.  
16 You're talking about response to the NUREG review; is that  
17 right?

18 A (Thomas) That is correct.

19 Q All right.

20 A (Thomas) And it was just an object of frequent  
21 discussion. We had never really come to closure on it. I had  
22 certainly indicated to him that when I got something with an  
23 agency letterhead on it signed, that I relied on that as a  
24 position of at least that office of the agency that I was -- I  
25 expected it to be an agency position, and he had many times

1 expressed reservations that he wasn't in a position to develop  
2 agency positions.

3 I would say, well, then send me it from somebody --  
4 get me a review from somebody that's authorized to sign this on  
5 behalf of the NRC. I'm entitled to the position of the  
6 representative of the NRC pursuant to our regulations, and I  
7 want something that I can rely upon.

8 We did have discussions along these lines with  
9 respect to the beach sheltering issue at one or two points with  
10 Dr. Bores and with other people from the NRC, and I did  
11 understand that it was -- that whatever we got from the NRC  
12 would not be the final authoritative position; that that only  
13 could be developed through the licensing board process and  
14 through the -- one particular part of their law office. I'm  
15 sorry, I don't recall the name.

16 Is it the executive office of legal -- General  
17 Counsel's office could state a position on NRC regulations, and  
18 that was a very elaborate process.

19 And we finally came to an agreement that whatever I  
20 had was something that we could rely upon, and it was on agency  
21 letterhead and it was signed by someone who was ready to come  
22 forward and testify on it.

23 Q And by late '86, at the time of this discussion which  
24 you were reviewing a moment ago, was that the understanding?

25 A (Thomas) That was my understanding, yes. That was

1 further throughout 1986 that that was one of the reasons that  
2 it was taking so long to get a paper from the NRC because there  
3 were a lot of folks that had to look at the paper before it  
4 went to us, because I was saying that this -- this document  
5 with respect to the beach shelter is going to be an important  
6 issue in the licensing hearing, and we want to be able to have  
7 something we can rely upon at the RAC level and at FEMA in  
8 terms of reaching our review under A through P at the RAC  
9 level, and then finally a FEMA finding and determination under  
10 our regulations.

11 Q When, in February '87, the document we have labeled  
12 here for shorthand Bores 1 came into you, did you in your own  
13 mind assess it as the NRC response which you had been pressing  
14 to get since December of '85?

15 A (Thomas) Yes, I did, and I understood that then and  
16 understand now that there would be those that would say, no,  
17 it's not the agency position, but however you care to  
18 characterize it, it met the standards that I had articulated  
19 that it had to be on letterhead, signed, with a text explaining  
20 their position with respect to why it was that -- with respect  
21 to the beach population at Seabrook, that FEMA could come to a  
22 finding that there was a reasonable assurance of an adequate  
23 level of public protection. And then finally it was somebody  
24 that was prepared to come forward in a licensing hearing and  
25 explain that to others, the judges.

1 Q When you got that letter, Bores 1, and read it, what  
2 did you conclude for your purposes as the RAC chair, as the  
3 FEMA regional official were the salient or important points  
4 that were being made?

5 A (Thomas) Well, the most important point that was  
6 being made to me -- the most salient point that was being made  
7 to me, as I understood it, was that we had -- we were going to  
8 give Seabrook special treatment.

9 There was this containment, that there was a less of  
10 a probability of a release at all, that the nature of the  
11 release was such that it would be less of a risk to the public,  
12 and that the time of the release would be greater than the  
13 standard parameters in NUREG-0654. And that that would be the  
14 basis that we would rely upon for our finding of a reasonable  
15 assurance of an adequate level of public protection.

16 I viewed that memo as -- or that letter as  
17 essentially the solution to the problems that FEMA had been  
18 raising concerning the Seabrook beach population.

19 JUDGE SMITH: You said time of release. Do you mean  
20 to say time until release?

21 THE WITNESS: (Thomas) Time to release, yes.

22 JUDGE SMITH: To release.

23 THE WITNESS: (Thomas) To release, yes.

24 In other words, with respect to the reference in  
25 NUREG-0654 that there can be release from initiation to release

1 of a half of hour, as little as a half an hour; that that time  
2 was different at Seabrook.

3 BY MR. OLESKEY:

4 Q And was the treatment of these issues in the memo  
5 consistent in your mind with the kind of discussion you'd had  
6 with the NRC in the previous year about the nature of the  
7 response that you would find helpful?

8 MR. TURK: I'm going to object because I don't recall  
9 any testimony about discussions with NRC on that in the prior  
10 year.

11 MR. OLESKEY: Have we been in the same hearing room?

12 He's testified that he had discussions beginning even  
13 before he sent out the memo in '85, and continuing all the way  
14 through '86, with the NRC at the region and through officials  
15 of FEMA in Washington, that there had to be a response to his  
16 December 31, '85 memo. And if it was going to be helpful, it  
17 should be responsive to that memo. And he's described what it  
18 was that the NRC and before that the utility had said that  
19 would take the discussion out of the standard tracking of the  
20 NUREG elements against the plan, and enable the plant to get  
21 special consideration.

22 JUDGE SMITH: I thought there had been plenty of  
23 testimony on that, Mr. Turk.

24 MR. TURK: Well, I don't recall that the NRC had  
25 suggested giving special treatment, Your Honor. I think that

1 was something that was discussed, but I don't recall that as  
2 a --

3 JUDGE SMITH: It's the characterization --

4 MR. TURK: Characterization.

5 JUDGE SMITH: -- of the discussion that you object  
6 to.

7 MR. TURK: Yes.

8 BY MR. OLESKEY:

9 Q The question was, was the memo consistent with the  
10 discussions you'd had in the past year with the NRC about the  
11 kind of information you would consider to be responsive or  
12 helpful to your memo of December 31, Mr. Thomas?

13 A (Thomas) Yes.

14 Q Thank you.

15 And did you send out that memorandum to the RAC for  
16 review?

17 A (Thomas) Yes.

18 Q Did you send Mr. Turk, my worthy adversary behind me,  
19 a copy of that memo?

20 MR. TURK: Why don't you ask about time frame, Mr.  
21 Oleskey?

22 THE WITNESS: (Thomas) Yes.

23 BY MR. OLESKEY:

24 Q All right. When did you send the RAC the Bores 1  
25 memo of late February for their review?

1           A       (Thomas) I don't have an independent recollection  
2 of that. I believe you have a --

3           Q       Let me just show you a transmittal memo dated March  
4 2nd, and ask if that refreshes your recollection.

5           A       (Thomas) This is a copy of a memo that I took from  
6 my files. I believe that on or about March 2nd, we sent it  
7 out. I have no independent recollection of that. That sounds  
8 right, though.

9           Q       And on or about that date did you send a copy of that  
10 memo, or some other memo to Mr. Turk with an additional copy of  
11 this Dr. Bores memo?

12          A       (Thomas) I don't know what you mean by an additional  
13 copy of Dr. --

14          Q       A copy of Dr. Bores's memo.

15          A       (Thomas) Not on that date, but my recollection is  
16 approximately a week or so later --

17          Q       Fine.

18          A       (Thomas) -- our records indicate that a copy of that  
19 was sent to Mr. Turk.

20          Q       Okay. So the RAC had it, and Mr. Turk, as NRC's  
21 counsel, had it some time in early March as you recall it.

22                 MR. TURK: Well, wait a minute now. The witness has  
23 just stated that his records indicate something. And, again,  
24 that's not testifying from recollection, Mr. Oleskey.

25                 MR. OLESKEY: If you want me, counsel, to stop and



1 pull out the records and protract it rather than explore it.  
2 If you doubt the accuracy of the record or his testimony, if  
3 the Board directs me to deviate from my cross (sic), I'll do it  
4 now. I suggest, however, that's the kind of thing that's  
5 appropriate for you to explore on your cross-examination.

6 MR. TURK: No, Your Honor, if we're getting into  
7 things that are based on records, we have a right to establish  
8 in the first instance if the testimony is based on records or  
9 on recollection.

10 If it's based on records, I'd like to have the record  
11 identified and see if we can prepare for cross-examination.

12 JUDGE SMITH: With respect to this particular point,  
13 do you question the accuracy of it?

14 MR. TURK: Yes.

15 JUDGE SMITH: Okay.

16 MR. OLESKEY: The question is do we treat it now or  
17 do we treat it on cross.

18 JUDGE SMITH: Treat it now.

19 MR. OLESKEY: All right.

20 BY MR. OLESKEY:

21 Q Mr. Thomas, would you tell us what the record is that  
22 leads you to testify that Mr. Turk received a copy of the Bores  
23 1 memo from you some time in early March of 1987?

24 A (Thomas) In preparing for my appearance here today,  
25 I spent quite a lot of time going through FEMA's files, and

1 found a record in the FEMA file of -- which is our official  
2 green copy, showing who received copies of the memorandum.

3 Q That's the March 2nd memorandum to the RAC?

4 A (Thomas) Yes.

5 Q All right.

6 A (Thomas) With the attachments to the March 2nd  
7 memorandum which was all the responses we had received to that  
8 point to the beach population memorandum, the December 31, 1985  
9 memo. And it indicates copies going internally to FEMA. I  
10 don't think that's -- unless you want me to go into that.

11 Q No, go ahead.

12 A (Thomas) Indicates a copy to Richard Strome on  
13 3-6-87; to Joe Flynn on 3-9-87. It looks like 3-6-87 written  
14 over with 3-9-87. And then to Sherwin Turk, 3-6-87. It appears  
15 to be a 6 written over a 3-9-87. It may be a 9 written over a  
16 6. I'm not sure which.

17 I did not make these notations. I recognize the  
18 handwriting of the person who did.

19 Q Is that the kind of record which FEMA ordinarily made  
20 in the course of its business at that time in connection with  
21 showing that copies of official documents had been sent out to  
22 agency personnel?

23 A (Thomas) Well, not just agency personnel, but  
24 everyone.

25 Q All right.

1 A (Thomas) Yes, yes, yes.

2 Q It was in the ordinary course of FEMA's business at  
3 that time to make such a record; is that right?

4 MR. TURK: Your Honor --

5 THE WITNESS: (Thomas) Yes, it is.

6 MR. OLESKEY: Fine. I'll offer the record if counsel  
7 persists on this point.

8 MR. TURK: I'd like to see the document. It's not  
9 been produced.

10 MR. BARSHAK: Well, it's not very far. Do you want  
11 to come over here and take a peek. Right here.

12 MR. OLESKEY: I don't want to see it. Apparently  
13 counsel does, Mr. Barshak. It's Mr. Turk.

14 MR. BARSHAK: I mean it's right here. Maybe we can  
15 save some time.

16 There's your name right there, sir.

17 JUDGE SMITH: Let the Board see it, Mr. Turk.

18 MR. OLESKEY: If he want to inquire, let's mark it as  
19 an identification exhibit, Your Honor.

20 MR. TURK: I don't need to mark it.

21 MR. OLESKEY: Well, I don't want a document --

22 (Simultaneous conversation.)

23 JUDGE SMITH: Gentlemen, come on. Let's move on.  
24 Let's let Mr. Turk do it his way this time.

25 MR. BARSHAK: Can I just make sure I get it back

1 eventually, Mr. Turk?

2 MR. TURK: Oh, absolutely.

3 MR. BARSHAK: Thank you.

4 VOIR DIRE

5 BY MR. TURK:

6 Q Mr. Thomas, you indicated that you recognize the  
7 handwriting with which these names are written down.

8 Whose handwriting is it?

9 A (Thomas) Elizabeth Dionne.

10 Q And who is she?

11 A (Thomas) She is now a technological hazards  
12 specialist in my division, in the Natural and Technological  
13 Hazards Division.

14 Q And when did she come into your division?

15 A (Thomas) In November 1981. At that time she was a  
16 clerical employee and has worked her way up.

17 Q And if I'm not mistaken, there are -- there is a  
18 pencil entry here that indicates R. Strome, 3-6-87. Do you  
19 recognize that that's a pencil entry?

20 A (Thomas) I remember that there were some pencil and  
21 some pen entries. I'd have to look at it.

22 Yes, I recognize that that's a pencil entry that says  
23 R. Strome, 3-6-87.

24 Q And then below that there is a pen entry that says  
25 cc: H. J. Flynn, 3-9 over 6-87; is that correct, it's a pen

1 entry?

2 A (Thomas) That's correct.

3 Q And below that another pen entry, Sherwin Turk,  
4 3-6 with perhaps a 9 written over it, '87. That's a pen entry,  
5 is that correct?

6 A (Thomas) That is correct.

7 Q And below that there is an initial.

8 A (Thomas) That's correct.

9 Q Whose initials are those?

10 A (Thomas) Those are mine.

11 Q But you indicated that you did not prepare these  
12 entries?

13 A (Thomas) That's correct.

14 Would you like me to explain that?

15 Q Did you -- did Ms. Dionne indicate to you when she  
16 made these entries?

17 A (Thomas) I've never talked to her about the entries.

18 Q So you don't know when she made those entries?

19 A (Thomas) I don't know that of my personal knowledge,  
20 now.

21 Q And you don't know if she was correct by making those  
22 entries.

23 A (Thomas) I know that she's a very, very careful,  
24 thorough employee.

25 Q That's not my question.

1           You have no knowledge that she was correct in making  
2 those entries; is that true?

3           A       (Thomas) That's true.

4           JUDGE SMITH: Is it a normal practice in your agency  
5 to keep a record of subsequent -- well, that's not -- it  
6 strikes me as a little bit unusual to see the typed in carbon  
7 copies, and then having the handwritten additional ones.

8           Is that a common practice in your agency?

9           THE WITNESS: (Thomas) It's a common practice in my  
10 office. What we try and do is on our green copy keep a record  
11 of who actually got the memorandum.

12          JUDGE SMITH: Why wouldn't all the recipients receive  
13 it at the same time?

14          THE WITNESS: (Thomas) In this case, which I have  
15 knowledge of, there were people that got it at different times.  
16 The original distribution --

17          JUDGE SMITH: Because of later needs?

18          THE WITNESS: (Thomas) Later needs or it's -- again  
19 I'd be speculating, but can I just describe how this would  
20 work?

21                 This green tissue would come to me along with the  
22 original on it. I would sign the original and I put my  
23 initials on the green, which is then our file copy that, yes, I  
24 did send this out.

25                 After -- at some point after this was distributed,

1 the original distribution, additional needs came up. For  
2 example, I remember very distinctly distributing this to  
3 Richard Strome on or about 3-6. I don't remember that it was  
4 3-6, but I remember talking to Dick Strome essentially along  
5 the lines of saying the beach population issue is solved, thank  
6 God, it's over, we're going to be able to wrap this up very,  
7 very quickly. And Dick asked me for a copy of the response  
8 from the NRC. And I said, well, you know, we don't usually do  
9 that, but I'll send it to you, and that was the 3-6.

10 JUDGE SMITH: What do you remember about the Turk  
11 entry?

12 THE WITNESS: (Thomas) No recollection at all.

13 JUDGE SMITH: I infer, Mr. Turk, that you did not  
14 receive it.

15 MR. TURK: That's correct, Your Honor.

16 JUDGE SMITH: Okay.

17 MR. TURK: I am also about to, if I can find the  
18 place in Mr. Thomas's deposition, I'm going to show that Mr.  
19 Thomas has previously stated that the document, to his  
20 knowledge, was not shown to me until the middle of April 1987.

21 Would Mr. Thomas agree with that so I can save the  
22 time of looking through the deposition transcript?

23 THE WITNESS: (Thomas) My recollection is that we  
24 had a conversation about the Bores memo, and you indicated to  
25 me that you had never seen a copy. I did not previously



1 testify to this. I remember at the time I thought, gee, I  
2 thought I thought I had sent you one. And I think I said that  
3 to you. And I said, yes, we'll send you another one, and that  
4 was approximately mid-April; that is correct.

5 As I said, when I was going through our files, this  
6 is what I found.

7 MR. TURK: You didn't indicate that in your  
8 deposition, though, did you, that you had indicated to me that  
9 you had thought you had sent me one already. You didn't  
10 mention that in your deposition.

11 THE WITNESS: (Thomas) I did not mention that, no,  
12 sir.

13 MR. TURK: It wasn't important.

14 MR. OLESKEY: Wait a minute. Is he going to be  
15 allowed to continue an ad hoc voir dire with --

16 JUDGE SMITH: Didn't he just testify that in  
17 preparation of coming here today he went to his files, and  
18 there he finds a green copy, and the green copy now is the one  
19 that he's talking about as I understand; was that your  
20 testimony?

21 THE WITNESS: (Thomas) Yes, sir.

22 JUDGE SMITH: Which is I don't understand to be  
23 inconsistent with the deposition.

24 But we're taking a long time on an issue that I never  
25 would have believed we could come so far away from the

1 standards of NUREG-0654 as we have these last few minutes. I  
2 mean it is far.

3 Go ahead, Mr. OlesKey.

4 MR. OLESKEY: Thank you.

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1 RESUME DIRECT EXAMINATION

2 BY MR. OLESKEY:

3 Q When you said you attached the other materials that  
4 had come in, were you referring to the 1986 responses from the  
5 other RAC members?

6 A (Thomas) Well, Dr. Bores response and the 1986  
7 responses; all of the responses which we had received up until  
8 that day.

9 Q So you wanted the RAC to have a package of the  
10 responses to your 12-31-85 memorandum?

11 A (Thomas) That's correct. We had previously sent out  
12 a package that didn't include Dr. Bores's response, and I  
13 wanted to send out another package that was complete.

14 Q And a couple days later did you get a further  
15 response from Mr. Wasserman of a Weather Service?

16 A (Thomas) Yes, according to my records we did.

17 Q What was the substance of that response?

18 A The substance of it was just a statement that he  
19 agreed with the concerns expressed by Paul Lutz about the  
20 variable condition at the Seabrook beach.

21 Q And with that response did that conclude the  
22 materials that the RAC had on April 15th from its members that  
23 were responsive to your request as to December 31, '85?

24 A (Thomas) That is correct.

25 MR. OLESKEY: I'm not going to offer the Lutz memo,

1 Your Honor, because he's just testified to what it says and I  
2 want to save time.

3 THE WITNESS: (Thomas) The Wasserman memo.

4 MR. OLESKEY: Wasserman, excuse me.

5 BY MR. OLESKEY:

6 Q Now, Mr. Thomas, I want to direct you to the RAC  
7 meeting of April 15, 1987. First, let me ask if there were  
8 counsel in attendance from any agency?

9 A (Thomas) No.

10 Q Have you reviewed notes, from whatever source, of  
11 that meeting in preparation for your testimony this week?

12 A (Thomas) Yes.

13 Q Do you have a recollection based upon whatever you  
14 knew before you made the review and the review of the notes of  
15 some of the things that happened at the meeting?

16 A (Thomas) Yes.

17 Q Okay. What was the focus of the meeting?

18 A (Thomas) The -- well, I considered the focus of the  
19 meeting on the resolution of the issues that I had raised in  
20 December 1985. And from that we very quickly went to focusing  
21 on Dr. Bores's response, and spent -- shall I continue?

22 Q Yes, please.

23 A (Thomas) Spent very few minutes discussing the first  
24 part of his memorandum which dealt with the compliance -- his  
25 feeling that the New Hampshire plans complied with each of the

1 subelements of NUREG-0654 that related to the beach population,  
2 the A through P elements.

3 And then we spent the bulk of the meeting going over  
4 the second part of his memorandum, the additional  
5 considerations, talking about the nature of the release, the  
6 time of the release, and weather. We spent a lot of time on  
7 weather. And we spent a lot of time talking about a phrase  
8 that was in that -- Dr. Bores's memorandum where the notion  
9 that was attempted to be conveyed was that -- at a distance 10  
10 miles from the Seabrook site, an individual was at the same  
11 level of risk that an individual would be at two -- excuse me,  
12 I think I've just gotten it backwards.

13 JUDGE SMITH: You got safety and risk.

14 MR. OLESKEY: Dr. Bores already testified there was  
15 some confusion about this.

16 THE WITNESS: (Thomas) There was. Well, the concept  
17 that was trying to be conveyed is that a person would be just  
18 as safe 10 miles from the Seabrook reactor as they would be --

19 JUDGE SMITH: Two miles from Seabrook, 10 miles some  
20 place else.

21 MR. DIGNAN: He should have read the Dignan memo.

22 (Laughter)

23 MR. OLESKEY: He read it one too many times.

24 BY MR. OLESKEY:

25 Q Want to try it one more time.

1 A (Thomas) I guess so.

2 Q With the assistance that Judge Smith has given you.

3 A (Thomas) Thank you. At two miles from the Seabrook  
4 site a person would be just as safe as if they were 10 miles  
5 from another plant. In other words, Seabrook was special.  
6 That because of the nature of the containment and the special  
7 features of the plant, that from two miles further on you were  
8 at the same level of risk, same level of safety as someone  
9 outside the normal 10 mile emergency planning zone.

10 That was the concept that was attempted to be  
11 conveyed and we had spent a tremendous amount of time trying to  
12 figure out how to write that down on a sheet of paper.

13 Q Did Dr. Bores give a gloss or an explanation, a text,  
14 textual analysis of this portion of his memorandum?

15 A (Thomas) He certainly explained what it was that he  
16 meant to say, and we had a variety of different explanations  
17 about what it was, and finally we wrestled with some language  
18 that we decided on at the meeting and then Dr. Bores sent a  
19 letter or memo to me later setting out that language.

20 Q Did Dr. Bores say anything in substance that went,  
21 the so-called special features of the plan aren't essential, in  
22 my view or the NRC's view, to this RAC reaching its position of  
23 adequacy or reasonable assurance about the plan?

24 MR. TURK: I'm going to object to the compound  
25 question. You're throwing in Dr. Bores or the NRC, why don't

1 you specify what you want, Mr. Oleskey.

2 MR. OLESKEY: Well, I wanted both and that's why I  
3 asked both, counsel.

4 MR. TURK: Well, I object to the compound.

5 MR. OLESKEY: Well, fine.

6 JUDGE SMITH: We'll make it either; does that satisfy  
7 you?

8 MR. OLESKEY: Thank you.

9 JUDGE SMITH: Well, if it doesn't speak up.

10 MR. DIGNAN: It doesn't satisfy me.

11 MR. TURK: It doesn't satisfy me, Your Honor.

12 MR. DIGNAN: I want to know what Bores said, and then  
13 we can hear what anybody else said.

14 MR. OLESKEY: I haven't asked about anybody else,  
15 I've only asked about Bores.

16 MR. DIGNAN: Well, you said, or anybody at the NRC.

17 JUDGE SMITH: Well, let's make it Bores, then --

18 MR. OLESKEY: Let's start again.

19 BY MR. OLESKEY:

20 Q Did Dr. Bores say in substance the position here with  
21 respect to the containment and risk isn't essential to the RAC  
22 reaching its position of comfort, however you want to  
23 technically style that, Mr. Thomas, in passing upon the plan?

24 A (Thomas) He said something much like that. What he  
25 argued, and argues in the memo, it was by way of correcting



1 something that I had started the meeting off with. He said,  
2 look, according to his analysis the standards -- the A through  
3 P standards of NUREG-0654 are met on the -- by the Seabrook  
4 plans as they stand. That the -- as I understood the  
5 conversation from there, and I'm not saying it was absolutely  
6 crystal clear to everybody else, it was clear to me, that the  
7 extra stuff, the extra considerations were designed to address  
8 my concern on the reasonable assurance issue.

9 In other words, going beyond the strict A through P  
10 standards of NUREG-0654 to a more generic analysis of 0654 and  
11 the FEMA regulations addressing the standard of a reasonable  
12 assurance of an adequate level of public safety.

13 So he made it very clear, and I agreed with him that,  
14 yes, you can argue that 0654 is met, and that's really what the  
15 RAC is traditionally focused on, whether or not the A through P  
16 standards of 0654 were met.

17 Q What did you say with respect to your view for FEMA  
18 of whether the standards were met by the plan without reference  
19 to the containment and the risk factors?

20 A (Thomas) In essence what I said was, that I wasn't  
21 going to get into a fight with anybody about that at that point  
22 because we had the extra -- the added considerations. That I  
23 felt that the standard could be read both ways. But that I  
24 could understand how somebody could argue that -- specifically  
25 we were talking about J-9 and J-10-M, that those two portions

1 of the A through P standards in Part 2 of NUREG had been met.

2 I can understand how somebody would say that. Dr.  
3 Bores, who I have great respect for said it, other people at  
4 FEMA were to say that later. I didn't necessarily agree with  
5 it, but it was a matter of no consequence because we were  
6 leaping forward -- further on giving us information that there  
7 was a reasonable assurance of an adequate level of public  
8 safety.

9 Q When you say "we" do you mean the RAC or FEMA?

10 A (Thomas) What I say -- what I'm trying to convey is  
11 that, my sense is that the RAC was advising FEMA, as they will  
12 do when requested, as to whether they felt that there was a  
13 reasonable assurance of an adequate level of public safety. I  
14 mean, we do ask for that. We ask for that essentially when we  
15 ask for their input on categorizing the problems that come up  
16 in an exercise: is it a deficiency or is it an area requiring  
17 corrective action. As we ask for their advice with respect to  
18 the Pilgrim report. That this was going beyond the A through P  
19 standards of NUREG.

20 What I think -- what I understood we finally agreed  
21 to was, we were going to do both. We were going to say that  
22 the standards of NUREG-0654 are met on J-9 and J-10-M; and the  
23 articulated reason was going to be essentially a modified  
24 version of the Bores paper.

25 Q What was the modification going to be?

1           A       (Thomas) Well, we were going to make -- we were  
2 going to put in, in English, the concept of the differential  
3 and the risk at Seabrook, and also some changes with respect to  
4 the language Dr. Bores was suggesting with respect to the winds  
5 at the Seabrook beaches. It was the primary changes; there may  
6 have been one or two others, I just don't recall them offhand.

7           Q       And with those factors, was it your understanding  
8 that the RAC was saying as a group, not just that the J-9 and  
9 J-10-M standard had been met, but that reasonable assurance, in  
10 their judgment, would be provided?

11          A       (Thomas) That was my understanding, yes, that that  
12 was what they were advising FEMA, yes.

13          Q       And who was to do what after the meeting to pull all  
14 that together so that there would be a position that  
15 represented the RAC's view once and for all on those issues?

16          A       (Thomas) Basically the way we left it, Bob Rospenda  
17 who is the person that I have tasked over the years to write up  
18 the results of the RAC meeting on those spread sheets that  
19 we've talked about many times here, was to get with Bob Bores  
20 and figure out the language for J-9 and J-10-M. And  
21 modifications were to be made to the Bores's paper and that  
22 was, as I understood it, was going to be that or some  
23 modification of it, whether, you know, it was going to have Dr.  
24 Bores's cover sheet or whatever, it was going to get appended  
25 right on to the RAC report.

1 Q And was Mr. Rospenda or anybody else suppose to  
2 produce a piece of paper that represented testimony coming out  
3 of the RAC for FEMA or somebody else to deliver at the  
4 licensing hearing?

5 A (Thomas) No. Maybe I should explain that. The  
6 reason I say no is, I think I heard your question to say, was  
7 it going to be testimony of the RAC. Mr. Rospenda was working  
8 on one thing at that point and that was getting a RAC review  
9 spread sheet finished with an appendix of a paper.

10 Later he was also tasked with a separate item for  
11 FEMA of assisting us in preparing testimony for the Seabrook  
12 proceeding.

13 Q And by later do you mean late in April of '87 or in  
14 May?

15 A (Thomas) Yes.

16 Q And who, to use your words, tasked him with that  
17 responsibility?

18 A (Thomas) I don't recall. It may have been a -- I  
19 just don't remember. It would have come out of discussions  
20 that I would have had with FEMA counsel and FEMA headquarters.  
21 I don't know if I particularly told him or somebody down at  
22 headquarters did, I just don't remember.

23 Q And in this continuum after the April 15th meeting  
24 leading up to what the Board knows happened on June 2nd and  
25 June 4th of that year with the filing of the very different

1 piece by FEMA, what happened to derail the -- making the RAC's  
2 position final on the one hand between Mr. Rospenda and Dr.  
3 Bores, and Dr. Rospenda preparing testimony which would  
4 eventually be given in a hearing reflecting the view of FEMA  
5 and the RAC? And if that's too big a chunk I'll break it up.

6 A (Thomas) Let me try. It's Mr. Rospenda not Dr.  
7 Rospenda.

8 Q Yes.

9 A (Thomas) The thing that happened was, we were told  
10 that we could not longer rely upon the Bores 1 memo, and that  
11 came at a variety of different points through May and then into  
12 early June, that we could no longer rely on that. And we  
13 didn't come to closure, therefore, on writing up the language  
14 of the RAC review. We were spending most of our time  
15 exchanging drafts, the testimony between Dr. -- Mr. Rospenda  
16 and my staff, and Mr. Rospenda and NRC attorneys and Attorney  
17 Flynn.

18 JUDGE LINENBERGER: Excuse me, I'm puzzled here.  
19 When you say, we were told we could no longer rely upon ,who so  
20 told you?

21 THE WITNESS: (Thomas) The first direct recollection  
22 that I have is approximately the 19th of April and I do have  
23 notes in, what I call my logbook that address this. I was told  
24 by Craig Wingo of FEMA headquarters that there had been a  
25 meeting with the NRC, and they were backing -- I don't remember

1 his exact words, but the sense was they were backing away from  
2 the Bores 1 paper. And there were additional conversations  
3 with Attorney Flynn. There may have been a conversation or two  
4 with Attorney Turk in that period, and then that culminated in  
5 our June 2nd meeting.

6 I don't know how much of those you want to get into.

7 JUDGE LINENBERGER: That's fine.

8 BY MR. OLESKEY:

9 Q There is in evidence as part of Staff Exhibit 2-A at  
10 global page 42 a letter to you from Bores offering some  
11 language to be inserted in his memorandum, and it's contained  
12 at the bottom of the page. It appears to bear on this  
13 recollection that you have about the level of risk at two miles  
14 and 10 miles. What was the reason, as you understood it, why  
15 that language was being sent along to you about nine days, I  
16 guess, after the RAC meeting had concluded?

17 A (Thomas) It was to put this concept into an  
18 intelligible form that everyone could live with. At the RAC  
19 meeting, I don't remember exactly what the language was in the  
20 original Bores paper, but everybody else had as much trouble  
21 with that language as I just had explaining what it was.

22 Q And did that paragraph that you got from Dr. Bores  
23 under date of April 24 put it in a form that you thought made  
24 sense in light of the discussion at the RAC meeting?

25 A (Thomas) Yes. Yes.



1 Q During this period were the discussions between  
2 yourself and the Office of General Counsel for FEMA about how  
3 testimony embodying this RAC result would be presented at a  
4 hearing and who present it?

5 A (Thomas) Again, the testimony was not so much on the  
6 RAC result per se, but, yes, there were conversations about the  
7 testimony concerning the beach population, response to  
8 contentions -- FEMA position on contentions. And how we would  
9 handle a position on contentions and how we would handle the  
10 actual testimony.

11 Q Was there a discussion inside your agency that Dr.  
12 Bores would be a good person to present some of this testimony?

13 A (Thomas) Oh, yes.

14 Q What was the substance of that discussion?

15 A (Thomas) Well, basically this came in the context of  
16 working with Attorney Flynn, and I remember working with  
17 Attorney Chan in my office at that point, going over the FEMA  
18 position on contentions and our motion for the -- the position  
19 on the motions for summary disposition and that sort of thing.  
20 And the subject came up of position on the beach population,  
21 those three contentions that dealt with that. And we pointed  
22 out that we were going with the RAC review and relying very,  
23 very heavily on Dr. Bores's paper, and FEMA felt that he would  
24 have to come forward and testify.

25 Q When you said, Attorney Chan in your office, you're



1 describing Attorney Elaine Chan of the NRC being at your office  
2 for a meeting; is that right?

3 A (Thomas) Yes.

4 Q Okay. And as a result of those discussions, was  
5 there a letter sent which we marked as Exhibit 30 here by Joe  
6 Flynn to Mr. Reis of NRC?

7 A (Thomas) That is correct.

8 Q Did you see that letter before it went or at least  
9 after it went?

10 A (Thomas) I saw it both before and after it went.

11 Q But did you have any discussion with Mr. Flynn at or  
12 after the time the letter went out with -- about whether it was  
13 entirely accurate?

14 A (Thomas) Yes.

15 Q What was that discussion?

16 A (Thomas) The discussion was, after the letter had  
17 been faxed and perhaps after it had been mailed, I had already  
18 seen a draft of it and I simply did not catch on reading that  
19 draft a statement in the next or next to the last paragraph  
20 which says that the RAC has determined that it's essential to  
21 the effective presentation of FEMA's testimony on this issue  
22 that Dr. Bores be available.

23 And I pointed out to Attorney Flynn that that really  
24 wasn't so, we hadn't talked about that in the RAC. That I  
25 believe the thrust of the letter was suppose to be that FEMA

1 has determined that it's effective to FEMA's presentation, the  
2 testimony, Dr. Bores be available.

3 What I recall is the bottom line which was Joe Flynn  
4 told me not to worry about it. And I have a vague recollection  
5 of some of the details there, but it's pretty hazy.

6 Q So, as you recall and as this letter indicates, as  
7 late as May 1 there was still an assumption at FEMA that Mr.  
8 Bores's paper of February would be the basis for a FEMA filing  
9 with the Licensing Board and testimony which it was hoped Dr.  
10 Bores would deliver?

11 A (Thomas) Yes, but in fairness, as I testified,  
12 starting around the 19th of April or perhaps even a little  
13 earlier than that, there was a growing sense that there was a  
14 very active movement within the NRC to pull the Bores 1 paper.  
15 But we were saying that, look, we have this, what became Bores  
16 1, this paper from Dr. Bores, we're relying on it; and it's an  
17 important part of our testimony.

18 And the purpose of this letter was to make it clear  
19 that we were expecting Dr. Bores to testify on this, because  
20 there had been discussions with Attorney Chan from the NRC in  
21 my office with Joe Flynn there to the effect that Dr. Bores  
22 would not be available for testimony on what he had written in  
23 Bores 1. And that was the reason the letter was sent.

24 Q And did Mr. Rospenda in early May draft some  
25 testimony for possible use by FEMA?

1           A       (Thomas) Yes. In April and May Bob was -- Bob and  
2 my staff were doing drafts of what became testimony. I  
3 remember at that point it was our response to -- it was the  
4 FEMA position on contentions and our response to the various  
5 interrogatories. It was primarily designed to respond to the  
6 Board request that FEMA produce a position on contentions by  
7 June 4th. It later became testimony. I don't -- sometimes I'm  
8 perhaps a little loose in my wording there, it became  
9 testimony; at that point we weren't necessarily preparing  
10 testimony, we were preparing response to contentions.

11          Q       And did you become aware that Mr. Rospenda had sent  
12 his draft of the FEMA position dated May 6th to Mr. Swiren of  
13 your office and Ms. Chan and Joe Flynn on May 7th, all in a  
14 document that's been marked here as Mass. AG 32?

15          A       (Thomas) I knew in general that that was going on.

16          Q       Do you recall seeing this document which has been  
17 marked as Exhibit 32?

18          A       (Thomas) I don't recall seeing this document at that  
19 time. I saw this document in preparation for my appearance  
20 here today.

21          Q       Okay.

22          A       (Thomas) This was being handled at the staff level  
23 by Bruce and Bob Rospenda, and I was pretty well out of that  
24 loop handling other things in terms of the details of the  
25 testimony preparation.

1 Q Did that draft that was sent off to people in your  
2 agency, at the NRC, in your mind accurately reflect the  
3 position the RAC had come to on April 15th after the long  
4 discussion which you've testified to here?

5 A (Thomas) I honestly have no recollection of  
6 reviewing that draft. It wasn't quite far enough along. The  
7 concept was that, the staff would pull the testimony together  
8 and get input from various sources, and then as I understood  
9 it, it would come to me. I may have seen it, I don't know.

10 Q Let me ask you this then, which is really what I  
11 wanted to ask. Having reviewed it now in preparation for your  
12 testimony did that draft that Mr. Rospenda was doing at Argonne  
13 in Chicago reflect accurately what you felt the RAC had  
14 concluded in its April 15th meeting?

15 A (Thomas) I'm prepared to state that in general -- I  
16 mean, I looked at this in preparing for this hearing here  
17 today, and that was a fairly rushed process for me with new  
18 lawyers and all. I didn't go through this line by line. But  
19 in general I think it captures what the RAC was recommending to  
20 FEMA and what FEMA had decided tentatively it was going to  
21 adopt.

22 Q Well, let me be precise about it. Part of the  
23 document relies on the containment and references to risk as  
24 important to the position that was being reached. It doesn't  
25 treat it as surplusage or excess or nice stuff, but seems to

1 treat it as previously testimony has had it, that it was part  
2 of the RAC's opinion as to why the plan would be adequate. Was  
3 that portion of it -- did that portion of it accurately reflect  
4 what you felt had happened at the April 15th meeting of the  
5 RAC?

6 MR. TURK: Objection, unless you're going to ask  
7 whether there were any clear expressions at the RAC. You're  
8 asking for speculation by the witness as to what was in the  
9 minds of over half a dozen, nine or ten people at a RAC  
10 meeting.

11 MR. OLESKEY: He's testified about --

12 MR. TURK: Ask if there were expressions.

13 MR. OLESKEY: He's already been through that meeting.  
14 I'm now asking if a later document accurately reflected what he  
15 heard and what was said and what he's testified to today.

16 MR. TURK: Well, if you're asking for what was  
17 stated, I have no objection.

et/10

18 (Continued on next page.)  
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T11

1 BY MR. OLESKEY:

2 Q With that helpful clarification from Mr. Turk, Mr.  
3 Thomas, would you answer the question?

4 A (Thomas) Let me try with this.

5 I left the April 15th RAC meeting with an  
6 understanding that Dr. Bores felt that with respect to NUREG  
7 Part 2, A through P, specifically J-9 and J-10-M, that he felt  
8 the plans were adequate on that basis without the special  
9 considerations. I understood that.

10 I also understood that we had spent the bulk of the  
11 time in the RAC meeting talking about the special  
12 considerations portion of his paper. And I left the meeting,  
13 as I believe Mr. Rospenda's spread sheets reflect, with the  
14 sense that all of Dr. Bores's paper, including the special  
15 considerations, influenced us with respect to J-9 and  
16 J-10-M, and that was why it was -- as I understood it, it was  
17 going to be an appendix to the RAC review. That was my  
18 understanding.

19 Regardless of that, it was certainly my very clear  
20 understanding that going from the literal compliance with the A  
21 through P standards that where the RAC is giving FEMA advice on  
22 FEMA's regulatory requirement to come to a finding of a  
23 reasonable assurance of an adequate level of public safety, it  
24 was certainly my understanding, based upon the time that we  
25 spent with Dr. Bores's paper, the second part of Dr. Bores's



1 paper, that that was very important to people in terms of the  
2 advice that they were giving to FEMA.

3 That's my answer to your question.

4 Q Well, let me try this once again because I'm not sure  
5 if you've answered the question I wanted to have answered.

6 As you looked at this document 32, Mass. AG Exhibit  
7 32, in preparation for this testimony, did you feel it fairly  
8 reflected the substance of the comments that had been made at  
9 the RAC and the way the RAC had left its deliberations two or  
10 three weeks earlier, on April 15th?

11 MR. DIGNAN: Objection.

12 MR. TURK: I object to the form. The witness has  
13 been very careful to say that he left with an understanding  
14 based on the amount of time spent on the issue that it was  
15 important.

16 The question, as I clarified it in advance, was what  
17 were the statements. There has been no testimony about  
18 statements. You're looking to establish something that the  
19 witness has been very careful about being correct on.

20 With respect to the compound nature of the question,  
21 I think it was obvious from the question that he was looking at  
22 both the statements made and the impression left of the overall  
23 status, and I object to that.

24 MR. OLESKEY: Mr. Turks seems to be under some  
25 illusion that the question that has to be asked is his



1 question. I want the question being asked to be mine, and let  
2 me rephrase it.

3 MR. TURK: Thank you.

4 BY MR. OLESKEY:

5 Q On Page 2 of Exhibit 32, Mr. Thomas, do you have it  
6 there?

7 A (Thomas) Yes.

8 Q There is a discussion that begins at the bottom  
9 paragraph, "The following considerations were utilized by the  
10 RAC in arriving at its conclusion relative to the beach  
11 population."

12 And it goes on to Page 3 where a new paragraph begins  
13 about half way down. Do you see that?

14 A (Thomas) Yes.

15 Q In your mind as you look at that right here with the  
16 Board and all of us, were those considerations utilized by the  
17 RAC in arriving at its conclusion relative to the beach  
18 population?

19 A (Thomas) Yes.

20 Q Thank you.

21 JUDGE SMITH: I guess I need some more help as to  
22 that text that he alluded to.

23 MR. OLESKEY: Yes, the ques -- my question is  
24 intended to ask, look at that language, look at what Rospenda  
25 said the RAC had relied on. Is it consistent with your

1 understanding from the April 15th meeting of what the RAC  
2 relied on in reaching its conclusion of the beach population.

3 JUDGE SMITH: Would you identify that text better?

4 MR. OLESKEY: Of course. Thank you.

5 MR. TURK: And I object to his characterization. The  
6 question was -- or the statement by the witness was that these  
7 elements were considered by the RAC, not relied upon. They  
8 were considered by the RAC in reaching its conclusion on the  
9 beach population.

10 Incidentally, Your Honor, these bullets are the  
11 bullets, I presume, from Dr. Bores's first paper.

12 MR. OLESKEY: Dr. Bores has testified that the  
13 considerations that are listed there match, as anyone who takes  
14 his paper and matches them against this document will see, the  
15 bullet points from the last page of his document, the Bores 1  
16 letter.

17 So let me identify it clearly for the record, Judge,  
18 as you have requested.

19 The language I referred Mr. Thomas to began on Page 2  
20 with the sentence I read, "The following considerations were  
21 utilized by the RAC in arriving at its conclusion relative to  
22 the beach population." And ran over to Page 3, ending with the  
23 last bullet point, "Reasonable assurance" does not equate with  
24 "absolute safety", i.e., guarantee of no exposures or exposures  
25 above the PAGs.

1 BY MR. OLESKEY:

2 Q You understood that was encompassed within my  
3 question, Mr. Thomas, did you not?

4 A (Thomas) Yes, I did.

5 Q Okay.

6 JUDGE SMITH: And what's the exhibit?

7 MR. OLESKEY: It is Exhibit 32, Mass. AG, Your Honor.

8 And the point which Mr. Turk has made, which I agree  
9 with, is that all those considerations in fact were taken  
10 literally from the last page of Dr. Bores's February memo,  
11 Bores 1, as he himself has previously testified.

12 MR. TURK: That's my impression. I won't state it  
13 100 percent, but that's my impression.

14 MR. OLESKEY: We have not given the Board another  
15 copy of 32.

16 JUDGE SMITH: No.

17 MR. OLESKEY: I apologize.

18 BY MR. OLESKEY:

19 Q Directing you to Page 4, Mr. Thomas, the paragraph  
20 beginning, "The use of early precautionary protective actions  
21 such as beach closing and evacuation is not the sole means for  
22 protection of the beach population."

23 Do you see that paragraph?

24 A (Thomas) Yes.

25 Q Okay. Is that summary here in Mr. Rospenda's draft

1 of May 6th consistent with the discussion at the RAC on April  
2 15th of the significance of a portion of Dr. Bores's paper?

3 A (Thomas) Yes.

4 Q Fine.

5 MR. OLESKEY: Now I'm going to move on, Your Honor,  
6 to a different topic.

7 BY MR. OLESKEY:

8 Q You said that Mr. Wingo called you, Mr. Thomas, some  
9 time after the RAC meeting and said that the NRC might withdraw  
10 Mr. Bores's paper.

11 A (Thomas) That is correct.

12 Q Okay. Did you then discuss with him or shortly  
13 thereafter what your agency would do if that happened?

14 A (Thomas) Yes.

15 Q And when did you approximately have a discussion  
16 about the contingency action that your agency would take if the  
17 NRC withdrew Dr. Bores's February memorandum?

18 A (Thomas) I'm not prepared to swear to the exact  
19 date. I believe I had it with him that very day, on the 19th.  
20 It may have been at a later time, a day or two later. I'm just  
21 not sure.

22 Q What was the contingency that the agency developed  
23 for its own position in the eventuality that the position by  
24 the NRC was changed?

25 A (Thomas) Let me be careful here. You're saying

1 neither Craig Wingo nor I have the authority to develop a  
2 position of the agency in this hearing. We both have certain  
3 parameters of authority.

4 What Craig and I were saying was, was in essence that  
5 we were going to tell the NRC from our perspective that if we  
6 didn't have Bores -- what became Bores 1, Dr. Bores's memo,  
7 that we didn't see how we could possibly come to a finding of  
8 reasonable assurance of an adequate level of public safety.

9 Q And therefore the agency's position were adopted  
10 along the lines that Mr. Wingo was suggesting would be what,  
11 sir?

12 A (Thomas) I'm not sure that he was suggesting it. It  
13 was what I was telling him and I believe he was agreeing with  
14 would be that if you pull that paper, then we come back -- we  
15 don't see our way clear to a solution to the problem on the  
16 Seabrook beaches; that using the standard parameters, in  
17 essence, tracking along the logic of the Appendix 1 position on  
18 contentions, Pages 38 and 39, to use the standard parameters of  
19 emergency planning in NUREG-0654, you don't come -- FEMA  
20 doesn't come to a reasonable assurance of an adequate level of  
21 public safety.

22 Q During this same period, in the middle of May or so  
23 when you're having these conversations with Mr. Wingo, did you  
24 talk to Dr. Bores about his understanding of where this  
25 interagency discussion was, the standing of his paper as

1 something that your agency could rely on?

2 A (Thomas) On or about February 21st, and the notes  
3 are what? Give me the --

4 Q February or May, sir.

5 A (Thomas) Excuse me. On or about May 21st, my notes  
6 give me the date, Dr. Bores called me. I remember the  
7 conversation very, very distinctly. And he essentially said  
8 there are horrible things going on down here. The lawyers are  
9 involved. That all the technical people have reviewed this  
10 paper and are comfortable with it, but the lawyers aren't. And  
11 my notes stop at that point, and I'm testifying from memory  
12 here. It looks like his paper was going to be pulled by the  
13 NRC.

14 And I told him, well, fine. You understand what the  
15 consequences are, and in terms of a negative finding of  
16 reasonable assurance, and we just had a very mutually sad  
17 conversation at that point.

18 Q Was there any discussion about whether the utility  
19 would carry the issue of the containment, or push the issue of  
20 the containment at that time?

21 A (Thomas) In that conversation, or in another  
22 conversation Dr. Bores indicated that one of the problems, at  
23 least, that was causing the NRC to have difficulties, or the  
24 NRC attorneys having difficulty with the Bores paper was that  
25 the NRC didn't feel, or the NRC staff didn't feel that they

1 should have to carry the burden of, as it were, proving the  
2 special nature of the Seabrook containment. But that, rather,  
3 if anybody was going to do that, it would have to be the  
4 Applicant.

5 MR. TURK: For clarification, what's the date of this  
6 first or second telephone conversation, the horrible things are  
7 going on?

8 THE WITNESS: (Thomas) The date of that is about May  
9 21st.

10 BY MR. OLESKEY:

11 Q Now I want to direct you to --

12 A (Thomas) I do have those notes. I mean, I --

13 Q That's all right. You don't have to volunteer to  
14 produce your notes merely because Mr. Turk makes an inquiry.  
15 If he wants them, he'll ask for them.

16 A (Thomas) Thank you, counsel.

17 Q I want to direct you to about two weeks later, June  
18 2nd of last year.

19 Were you at a series of meetings in Washington  
20 involving your agency and in part the NRC?

21 A (Thomas) It's not a series of meetings. It was one  
22 meeting involving -- there was a series of meetings, but only  
23 one of them involved the NRC.

24 Q Fine.

25 A (Thomas) Yes, I was.



1 Q All right. Were you in Washington to meet with your  
2 agency about the development of the agency's position on the  
3 contentions in this case?

4 A (Thomas) Yes, but only with respect to the Seabrook  
5 beach population.

6 Q Okay. Would you tell the Board the sequence of  
7 meetings that day, and at the conclusion of the day what  
8 position your agency took as a result of those meetings?

9 A (Thomas) The sequence of meetings was essentially we  
10 had a premeeting. I have notes of that meeting which have been  
11 produced, and there is a list of attendees at that meeting.  
12 And we batted around, okay, what are we going to do. We  
13 understand we're not going to have the Bores paper anymore.  
14 What does that do for us in terms of a finding of reasonable  
15 assurance. What does that do for us in terms of compliance  
16 with the A through P standards of NUREG-0654.

17 Extended discussion that basically, as I understand,  
18 came to closure with Robert Wilkerson stating the agency  
19 position that, yes, he understood the argument that J-9 and  
20 J-10-M were met, and that in fact he agreed with it, but that  
21 that didn't mean that there was reasonable assurance or that  
22 the plans complied with NUREG-0654, and that he didn't believe  
23 that they complied with our requirement to come to a reasonable  
24 assurance of an adequate level of public safety; to make a  
25 finding of a reasonable assurance of an adequate level of

1 public safety.

2 Following that meeting --

3 Q Was Mr. Wilkerson the highest FEMA official at that  
4 meeting?

5 A (Thomas) No, he was not. Mr. Krimm was there, and  
6 he basically endorsed that position.

7 Q Okay.

8 A (Thomas) I don't have the exact words, but I  
9 remember him nodding his head, and I believe he said, that's  
10 right, Bob.

11 Q All right.

12 A (Thomas) And then we went into a meeting with the  
13 officials from the Nuclear Regulatory Commission. And again I  
14 believe I have a list of attendees at that meeting, which  
15 included Attorney Turk, and several others.

16 Q Just before you go to that second meeting, let me ask  
17 you at the meeting you've just described if there was any  
18 discussion about how difficult a site Seabrook was to deal with  
19 for the beach population from FEMA's perspective?

20 A (Thomas) Yes, there was extensive discussions of  
21 that.

22 Q What was the substance of that discussion by the FEMA  
23 participants at this what you called premeeting on June 2?

24 A (Thomas) The substance was we were discussing  
25 whether or not there were other sites where there were even

1 worse emergency planning problems than Seabrook which FEMA had  
2 already made findings of reasonable assurance on.

3 And I made the point that that wasn't the issue in  
4 front of us. That if we had problems at other sites, so be it.  
5 We could only deal with things one at a time.

6 And Mr. Wilkerson and Mr. Wingo were very active  
7 participants in this especially, and we -- they really analyzed  
8 a number of sites around the country sort of back and forth in  
9 the meeting with them being the primary speakers.

10 Specifically, they talked about, I recall, San  
11 Onofre, Zion, and St. Lucie.

12 And at that time Mr. Wilkerson said, no, that  
13 Seabrook was really different from those sites and really  
14 unique in terms of the magnitude of the risk posed to the  
15 public because of the proximity of the plant to the beaches,  
16 and the time, the evacuation times, and also the nature of  
17 those evacuation times; the large amount of Category F traffic  
18 that would be taking place; essentially the stop and go  
19 traffic; the large number of people who wouldn't be moving in  
20 traffic who would be in sight of the plant -- that's  
21 S-I-G-H-T -- of the plant; and the very, very large number of  
22 transients who had no access to shelter; and also the large  
23 number of people who had no access to what we called winterized  
24 shelter. That is to say, shelter or buildings that were  
25 designed to resist air intrusion.

1           And I remember we specifically talked about the  
2 nature of the beach population at St. Lucie in a conversation  
3 led by Mr. Wilkerson who is familiar with that area. I don't  
4 believe I've ever been there.

5           Q     That's in Florida?

6           A     (Thomas) In Florida. And there is a barrier beach  
7 there and looks very similar to Seabrook in some ways on a map.  
8 And he said, no, the nature of the population on those beaches  
9 were difference. The accommodations were designed to resist  
10 air intrusion because they're air-conditioned. And he felt you  
11 could clear the beach much more quickly in a radial fashion;  
12 have a couple of alternatives of evacuation routes, as I  
13 recall.

14           And that was pretty much the end of that discussion.

15           Q     Was anything said to you --

16           MR. DIGNAN: Excuse me. Is that the end of the  
17 answer? I just want to be sure the answer -- are you through,  
18 Mr. Thomas?

19           JUDGE SMITH: That's what he said. That was the end  
20 of the discussion.

21           THE WITNESS: (Thomas) As I recall, I --

22           MR. DIGNAN: No, is he at the end of the answer,  
23 because I've got a motion. I just want to be sure the answer  
24 is finished.

25           THE WITNESS: (Thomas) I think so, yes.

1 MR. DIGNAN: All right. I move to strike the entire  
2 dissertation of what Mr. Wilkerson said, or that it be  
3 restricted on admission to simply be a historical reference to  
4 things Mr. Thomas heard.

5 I haven't got Mr. Wilkerson here to cross-examine on  
6 his opinions as to uniqueness of the Seabrook site, and I move  
7 to strike it as hearsay.

8 MR. OLESKEY: Well, it's not hearsay. It's a part of  
9 what the agency deliberations constituted almost exactly a year  
10 ago at a point when the agency's position was different than it  
11 is today. And it's worth whatever -- all the testimony has  
12 been worth from Bores, and Lazarus, and Peterson, and  
13 McLoughlin about the evolution of the position.

14 MR. DIGNAN: No, but the opinions of Peterson, Bores,  
15 McLoughlin, Lazarus have been subject to cross-examination.  
16 Wilkerson's has not been. I move to strike it unless the  
17 admission is going to be restricted.

18 MR. OLESKEY: No. Neither is anything, for example,  
19 that a RAC member who is not here has said that the witness has  
20 said formed a part of his thinking and affected what his agency  
21 thought.

22 This is of more probative value, in my judgment, than  
23 something a RAC member says, because this constitutes  
24 discussions not just of Wilkerson, but of Wingo and others,  
25 high officials with technical expertise in dealing with a

1 variety of plans and plants around the country at an important  
2 meeting.

3 MR. DIGNAN: Your Honor, it is fundamental that if  
4 you're going to get an expert opinion in, you put the expert  
5 who gave the opinion on the stand and subject him to cross-  
6 examination. This is a hearsay rendition of a supposed  
7 opinion, and apparently being offered for the truth and  
8 expertise of that opinion, and it is hearsay, and it should be  
9 stricken.

10 MR. OLESKEY: It doesn't prove that St. Lucie is  
11 different or the same as Seabrook. It merely proves that  
12 somebody in the agency at that time had a view that Seabrook  
13 posed different problems than other sites which they had  
14 examined and found plans which did satisfy the reasonable  
15 assurance standard. Very simple.

16 (Board confer.)

17 (Continued on next page.)

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T12 1 MR. TURK: Your Honor, may I ask for a bench  
2 conference for a moment?

3 JUDGE SMITH: Okay.

4 (Bench conference.)

5 JUDGE SMITH: The answer is allowed to remain. The  
6 objection however is understood. The answer cannot be used to  
7 any extent for the truth of Mr. Wilkerson's statements or his  
8 expert opinion, or nonexpert opinion as the case may be. It is  
9 accepted solely for the purpose of demonstrating what Mr.  
10 Thomas's perceptions were as they entered the meeting to  
11 follow, and will not be available for any findings with respect  
12 to the subject matter, the content of the conversation alluded  
13 to by Mr. Thomas. I mean, that is, Mr. Wilkerson's opinion and  
14 Mr. Wilkerson's statements.

15 Does that reflect our discussion?

16 MR. OLESKEY: I think so. That reflects your views  
17 very accurately. Obviously, I had a different view.

18 JUDGE SMITH: No, but I just wanted to know if that  
19 was the thing that satisfied --

20 MR. OLESKEY: My friends.

21 JUDGE SMITH: Yes.

22 MR. DIGNAN: That reflects the Applicants' objection,  
23 Your Honor.

24 On that basis the objection is withdrawn.

25 MR. OLESKEY: May I proceed?



1 JUDGE SMITH: Yes.

2 BY MR. OLESKEY:

3 Q You were about to discuss, Mr. Thomas, the second of  
4 the meetings on June 2nd; namely, the one between your agency  
5 and the NRC.

6 Would you turn your testimony now to that, please?

7 A (Thomas) Yes.

8 Q Would you tell us who was there and what was said?

9 A (Thomas) I could tell you better who was there if I  
10 had my notes. If you want me to, I can try and recall who was  
11 there independently.

12 Q Well, give me your best shot.

13 A (Thomas) Okay.

14 Q And I'll decide whether I want you to go to your  
15 notes.

16 A (Thomas) Attorney Turk, Dave Matthews, Frank Congel,  
17 and those are the participants I remember from the NRC.

18 From FEMA: Myself, Bob Wilkerson, Craig Wingo, Bill  
19 Cumming, I'm not sure if Mr. Flynn was there or not without my  
20 notes, and I'm not sure if Margaret Lawless was there or not  
21 without my notes.

22 Q This is adequate for my purposes.

23 A (Thomas) Fine.

24 Q Just so we're clear of the hierarchy, at this time  
25 Mr. Wilkerson reported to Mr. Wingo, you've said?

1           A       (Thomas) No, sir. Mr. Wilkerson -- Mr. Wingo  
2 reported to Mr. Wilkerson and --

3           Q       Mr. Wilkerson reported to Mr. Krimm.

4           A       (Thomas) -- who reported to Mr. Krimm.

5           Q       Mr. Krimm reported to Mr. McLoughlin.

6           A       (Thomas) That is correct.

7           Q       Good. Okay, what was said at this --

8           MR. DIGNAN: Your Honor, I don't like to always wind  
9 up the fall of the press, but this large camera is slowly  
10 driving me crazy. Click, click, click, click. Can the  
11 photographer move, or back up?

12                   He's got a long lens, I notice. It is very  
13 distracting to try to listen to this testimony and have that  
14 going constantly.

15           JUDGE SMITH: Would you mind standing over here?  
16 We've found this is the least intrusive place.

17                   Now you did it; you've hurt his feelings.

18                   (Laughter.)

19           JUDGE SMITH: You are welcome to be here and take a  
20 spot.

21           THE PHOTOGRAPHER: I got what I need.

22           JUDGE SMITH: Okay.

23           MR. DIGNAN: Thank you very much.

24           BY MR. OLESKEY:

25           Q       Would you tell us who said what at the meeting about

1 the position of the two agencies on the beach population as  
2 well as you can recall it?

3 A (Thomas) I'm having a hard time without my notes,  
4 but as well as I can recall --

5 Q Well, I'm willing to have you look at your notes if  
6 it would speed it up.

7 A (Thomas) Well, let me tell you what I recall and  
8 then we can go from there.

9 Q All right.

10 A (Thomas) Basically Bob Wilkerson did most of the  
11 talking for the agency. Dick Krimm would chime in from time to  
12 time. I didn't have much to say at all.

13 Essentially they laid out the concerns that we had  
14 with respect to the beach population at Seabrook. They meaning  
15 Mr. Krimm and Mr. Wilkerson, with Mr. Wilkerson doing most of  
16 the talking. And said that we didn't understand how we could  
17 come to a finding of reasonable assurance of an adequate level  
18 of public safety on this issue considering the factors where  
19 which were later memorialized in Pages 38 and 39 of our  
20 Appendix A.

21 The NRC response, as I recall it from Mr. Congel,  
22 was, in essence, the consideration of the containment isn't  
23 needed for a finding of reasonable assurance. There was  
24 discussion by Attorney Turk that I remember reading in my  
25 notes. I really have no independent recollection of this. But

1 it is essentially that if you have compliance with NUREG-0654  
2 that is the same thing as reasonable assurance of an adequate  
3 level of public safety.

4 And I really don't recall anything much else at the  
5 meeting. It was essentially left on the basis that the two  
6 agencies were in disagreement with each other.

7 Q Okay. Did the FEMA people then reconvene and have  
8 their own concluding meeting?

9 A (Thomas) Yes. There was another meeting, a smaller  
10 meeting of the FEMA staff with Mr. Krimm, Mr. Wilkerson, myself  
11 and Dave McLoughlin. There may have been other people present  
12 there, I don't recall who else. And we went through the  
13 premeeting and the results of that, and went through the NRC,  
14 the results of the NRC meeting and the arguments that had been  
15 made by the NRC. And again with Mr. Wilkerson doing most of  
16 the talking.

17 And I believe Attorney Flynn was also present at this  
18 meeting, come to think of it. Just now it flashed in my head.  
19 And explained to Dave McLoughlin what the argument was which  
20 Mr. Wilkerson encapsulated, and I agreed with him, that as we  
21 understood what NRC was saying is that if you look at the exact  
22 words and letters of NUREG-0654, Part 2, A through P, J-9,  
23 J-10-M especially, and the J standard as a whole, that if you  
24 just looked at that in very narrow confines, that, yes, that  
25 language had been complied with by the New Hampshire plans, or

1 could be readily complied with. We still had the problem of  
2 the transient-dependent transients.

3 And that we collectively did not find that persuasive  
4 at all. And Mr. McLoughlin said, yes, we're in the business of  
5 reasonable assurance of adequate safety. If there is still a  
6 risk, and you people still think there is a risk to the public,  
7 so be it.

8 And then I was given some directions as to the  
9 preparation of what became Pages 38 and 39 of our position on  
10 contentions.

11 MR. DIGNAN: Objection and move to strike. So much  
12 of the answer has said, we did not find this persuasive at all.  
13 The witness has not established that the other people told him  
14 one way or the other that it was persuasive or nonpersuasive.  
15 If that can be established, I will drop the objection.

16 BY MR. OLESKEY:

17 Q Would you back up and put words in the mouths of  
18 specific people to meet the objection, please?

19 A (Thomas) Yes.

20 Q To the extent you recall it.

21 A (Thomas) The recollection is basically that Bob  
22 Wilkerson was doing the talking, and Mr. Krimm and I were  
23 agreeing with him. Mr. Wilkerson has an amazing gift for  
24 encapsulating and summarizing meetings.

25 And that's about all I can say. That's the we. It

1 was Bob Wilkerson saying it, and Dick Krimm and I agreeing with  
2 him, and I don't really recall anyone else saying anything at  
3 that point other than Mr. McLoughlin responding, fine, so be  
4 it.

5 And then I was given specific directions as to how to  
6 proceed with the preparation of a FEMA position on the beach  
7 population.

8 MR. OLESKEY: I'm going to go forward because I think  
9 that meets the objection.

10 BY MR. OLESKEY:

11 Q What were the instructions you were given about the  
12 preparation of the position?

13 A (Thomas) Number one, that it was -- it was to, and  
14 perhaps most important, that it was to be in Washington,  
15 preferably the afternoon of the 3rd, the next day. And so it  
16 was to be done very quickly. That it was to reflect the  
17 discussions that we'd had. And it was emphasized to me I was  
18 to totally stay away from J-9 and J-10-M; that we were not  
19 going to get into that squabble about whether the exact words  
20 and letters of J-9 and J-10-M were met, but rather, to go not  
21 to the Part 2, A through P standards of 0654, but to the front  
22 part of 0654 for the parameters of emergency planning, the  
23 nature of the release, the time to release.

24 Couple that with the site-specific situation at  
25 Seabrook, and then come to a conclusion following our

1 regulations.

2 JUDGE LINENBERGER: Who was giving you these  
3 instructions and guidances?

4 THE WITNESS: (Thomas) There were several people  
5 sitting around doing it. I can tell you it was not Mr.  
6 McLoughlin. I mean, Mr. McLoughlin was sitting there and  
7 specific guidance and instructions being given to me. My  
8 recollection is, and it is hazy at this point and I don't have  
9 good notes on this, and I can even explain why I don't if you  
10 want to hear. But my recollection is Bob Wilkerson is doing  
11 most of the talking. Joe Flynn is chiming in with specific  
12 points, and I believe it was Joe Flynn that said, you're  
13 absolutely to stay away from J-9 and J-10-M.

14 I wanted to include that discussion in the text, and  
15 I was told, no, absolutely not. We're not going to get into a  
16 fight with people about J-9 and J-10-M. It's not worth it.

17 And Mr. Krimm was occasionally adding something in in  
18 the way of concurrence. And I don't remember what specific  
19 words Mr. McLoughlin said, but we were in his office and he was  
20 nodding his head or otherwise giving approval to the thrust of  
21 the conversation which was, of course, important to all of us  
22 that he was signing off. Since this was going to be a FEMA  
23 position, that it was under his authority that we were taking  
24 it.

25 And then we ended the meeting, and McLoughlin said,



1 okay, let's go, and we did.

2 BY MR. OLESKEY:

3 Q Did you go back to Boston that night and start  
4 drafting?

5 A (Thomas) I started drafting at the airport, and then  
6 on the flight, and continued then on that night, and had it  
7 typed that morning.

8 JUDGE SMITH: Were you told the conclusion to arrive  
9 at, or the process by which you had to arrive at your  
10 conclusion?

11 THE WITNESS: (Thomas) Both.

12 Do you want me to explicate that again?

13 I was told basically what to take into account; that  
14 we were going to go to Part 1 of 0654, the -- that sets the  
15 parameters for emergency planning. And this is, you know,  
16 basically what I -- I did what I was told to do, and that's  
17 what became Pages 38 and 39. I just fleshed out what I was  
18 told to do at that point.

19 I was also told to develop a, as it were, a  
20 chronology of how we got to that point, which was then June 2,  
21 1987, of -- we had sent out the December '85 memo, and we had  
22 gotten certain responses back, and we had gotten a response  
23 from the NRC, and that response was -- we were told we -- at  
24 that point we had just been told we could no longer rely on it,  
25 but hadn't yet -- you know, we hadn't gotten the replacement

1 document yet.

2 And that's about all. That was an additional chunk  
3 that I remember being told.

4 BY MR. OLESKEY:

5 Q Did you get the document down to Washington on the  
6 wire the next afternoon, the 3rd?

7 A (Thomas) I'm not sure. If I recall correctly, there  
8 was some problem with the fax that day. If I recall correctly,  
9 and I am refreshed somewhat in my recollection by looking at or  
10 fax logs, that what I had to end up doing was getting it into a  
11 Federal Express for delivery at nine o'clock the following  
12 morning, the morning of the 4th.

13 Q Okay.

14 A (Thomas) But the answer is, yes, they had it in  
15 Washington the morning of the 4th.

16 Q Let me show you a document that has at the time, the  
17 handwritten reference, Edward Thomas draft to response to  
18 Contention, 6-3-87, sent to HQ for review by Flynn, and  
19 something else, and see if that can be identified by you as  
20 your draft of the testimony sent to Washington as you've just  
21 testified on the 4th, last year, for review by your agency.

22 A (Thomas) Yes, it is.

23 MR. OLESKEY: I'm going to distribute this, Judge,  
24 and mark it as I guess now Exhibit 49 for identification.

25 JUDGE SMITH: Well, it's 50.

1 MR. OLESKEY: Fifty, all right.

2 JUDGE SMITH: Forty-nine was identified and not  
3 offered. The mark keeps its place. Fifty should be the one to  
4 keep the computer from getting confused when it looks for  
5 exhibits.

6 (The document referred to was  
7 marked for identification as  
8 Massachusetts Attorney General's  
9 Exhibit No. 50.)

10 JUDGE SMITH: I assume you're following the rule of  
11 giving three copies, providing three copies?

12 MR. OLESKEY: Yes, Ms. Keough has got that down cold  
13 now.

14 JUDGE HARBOUR: But including the previous one which  
15 never got a number?

16 JUDGE SMITH: No, he doesn't have to offer -- he  
17 doesn't have to give three copies if Mass. AG 49.

18 MR. OLESKEY: Okay.

19 JUDGE SMITH: Forty-eight, however.

20 MR. OLESKEY: Okay, I think we're all set.

21 MR. TURK: Are you going to give us copies of 48 as  
22 well? Are you making copies of those?

23 MR. OLESKEY: Am I going to give you a copy of a  
24 document I'm not offering?

25 Not particularly, but you can have it, I guess.

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1 JUDGE SMITH: Forty-nine, you didn't offer. Forty-  
2 eight, you did.

3 MR. TURK: Well, that's the big document that the  
4 Board indicated that you want a modification of, FEMA-REP-3.

5 JUDGE SMITH: Forty-eight is the one that --

6 MR. OLESKEY: If you don't have REP-3, you're going  
7 to get it right now, Mr. Turk.

8 There you are, REP-3.

9 MR. TURK: I appreciate that. It's different from  
10 what I had been given as a deposition exhibit.

11 MR. OLESKEY: That's the copy that we put into  
12 evidence today.

13 JUDGE SMITH: You can put it in your collection of  
14 REP-3s.

15 Don't forget, you have a little homework to do on  
16 this one.

17 MR. OLESKEY: Yes. Ms. Keough tells me it is the  
18 identical copy she believes that was marked at the deposition,  
19 for whatever that's worth.

20 BY MR. OLESKEY:

21 Q Mr. Thomas, after you sent down what we've marked as  
22 50 for identification, did you have any further involvement in  
23 drafting what became the final testimony?

24 A (Thomas) Yes.

25 Q What became the final response to the contentions?

1 A (Thomas) Yes, yes, I did.

2 Q What was your further involvement, sir?

3 A (Thomas) I was on a phone call with Attorney Flynn  
4 and someone else, who I believe was Margaret Lawless, but I'm  
5 not absolutely sure. I just remember Attorney Flynn, and I'm  
6 fairly sure about Margaret Lawless. And this would have been  
7 probably the mid to late morning of the 4th, talking about  
8 changes that had to be made on this before it was served out of  
9 our office in Boston.

10 Q All right. And did Mr. Flynn tell you that he wanted  
11 to make some changes, or the agency wanted to make some changes  
12 in what you had sent down?

13 A (Thomas) Yes. Other than typos and semantic  
14 corrections, if any, were there any changes that affected the  
15 substance of what you sent down to Washington?

16 A (Thomas) Whether it affected the substance or not,  
17 I'd rather not characterize it.

18 Q All right.

19 A (Thomas) But there were changes.

20 Q What changes did Mr. Flynn tell you the agency wanted  
21 to make? That's fine.

22 A (Thomas) Two The primary portion is on the first  
23 page starting in the third paragraph, "In December 1985," I  
24 believe that sentence, "In December 1985," through the end of  
25 that sentence, "44 CFR 350", remained in. But most of the rest

1 of this was taken out with respect to the chronology of how we  
2 had gotten to where we were on the beach population.

3 In other words, the bulk of the first page was  
4 deleted, a considerable portion of the first page.

5 Q Why don't you just let me show you, to help the Court  
6 and all of us, what was actually filed alongside. Let me just  
7 mark this 50 for identification. I think that will refresh  
8 you.

9 A (Thomas) Thanks.

10 Q There is the response and here is Exhibit 50.

11 (Pause.)

12 (Continued on next page.)

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1 THE WITNESS: (Thomas) Okay. Thank you. I stand  
2 corrected. The change starts in the third paragraph, further  
3 down than what I was suggesting, with the sentence that says:  
4 "It was our intention." That through the end of the third  
5 paragraph on the second page was, Mr. Flynn directed I chop  
6 that out.

7 BY MR. OLESKEY:

8 Q So that was about a page that went out there?

9 A (Thomas) That's correct.

10 Q Okay. You said there was a second change that you  
11 were told should be made?

12 A (Thomas) Again, and not necessarily substantive, but  
13 on the third page in the last paragraph on the third line.

14 Q The paragraph beginning, "Therefore using the  
15 standard guidance?"

16 A (Thomas) Yes, that is correct.

17 JUDGE SMITH: Would this be a good time to take a  
18 break?

19 MR. OLESKEY: Let me just finish this and offer the  
20 document and it will be a great time. Thank you.

21 THE WITNESS: (Thomas) Mr. Flynn told me that the  
22 word "trapped" would be inflammatory and I should replace it  
23 with something, and we replace it with "could be unable to  
24 leave."

25



1 BY MR. OLESKEY:

2 Q And with those changes was the document put into  
3 final shape and filed with the Board?

4 A (Thomas) Those are the changes that I recall. There  
5 may have been, as you said, typographical changes and other  
6 changes that I don't now recall which I believe were minor.  
7 But, yes, that's --

8 JUDGE SMITH: That's why we take the break and he can  
9 make his -- I mean, if he's just preparing right on the spot.

10 MR. OLESKEY: Okay. I'll let him come back after the  
11 break and add anything he wanted to.

12 JUDGE SMITH: Okay.

13 MR. OLESKEY: I just wanted to finish that line.

14 JUDGE SMITH: All right.

15 MR. OLESKEY: And I do want to offer the document to  
16 show what the witness says the Chairman of the RAC thought, in  
17 essence, recommended to the agency: (b) the statement of  
18 position for comparison with the position that was finally  
19 given.

20 MR. DIGNAN: Well, let's get very clear what the  
21 purpose of this offer is. It is not being offered for the  
22 truth of the matters contained, but rather for historical  
23 purposes, Mr. Oleskey.

24 MR. OLESKEY: Yes. Then I also want to show, since  
25 there's been questions about various documents that FEMA

1 authored and who made changes and why wasn't the whole story  
2 laid out, that this guy, Ed Thomas, at this time in June  
3 proposed one explanation which does, in my mind, answer some  
4 questions I think the Board had, and for whatever reasons his  
5 headquarters said, delete that, go with a thinner version which  
6 is the version that we have.

7 So those two reasons, Mr. Dignan.

8 MR. DIGNAN: All right. That's fine. In other  
9 words, forgetting my characterization, it is not offered for  
10 the truth of the matters contained.

11 MR. OLESKEY: Well, you've got the witness. He  
12 thought it was a good --

13 MR. DIGNAN: Mr. Oleskey, just tell me the purpose of  
14 the offer.

15 MR. OLESKEY: I'm trying to answer your question,  
16 counsel, don't be intemperate with me, please. This witness, I  
17 take it, who's here for examination thought that was a good  
18 summary from his perspective of his agency's position. His  
19 agency, through some people in Washington disagreed. Whatever  
20 that adds up to may be an additional or third point for which  
21 the Board may find some comfort in the document.

22 JUDGE SMITH: The answer is, yes, Mr. Dignan, it is.

23 MR. DIGNAN: Are you offering -- I'm not sure it is,  
24 Your Honor. Can I ask Mr. Oleskey to answer that question, is  
25 he offering for the truth of the matters contained or is he

1 offering it for a restricted purpose --

2 JUDGE SMITH: It's --

3 MR. OLESKEY: It's not --

4 JUDGE SMITH: He does not have to -- Mr. Oleskey does  
5 not have to offer this document for any particular purpose in  
6 this context. He's offering the witness, if the witness  
7 believes it, he doesn't have to sponsor it any further.

8 MR. DIGNAN: The witness hasn't said he believes it  
9 yet, that's my point.

10 JUDGE SMITH: Well, the witness says that he believes  
11 what he did responded to instructions --

12 MR. DIGNAN: Correct. He was told he was instructed  
13 to draft a document. He sent it down to Washington. He says  
14 he was told to make corrections in it, et cetera. If he wants  
15 to give this to Mr. Thomas and say, Mr. Thomas, do you adopt  
16 this under oath, and Mr. Thomas says, yes, then he can offer it  
17 for the truth of the matters contained. Until he does that he  
18 shouldn't be allowed to --

19 JUDGE SMITH: Mr. Thomas, when you sent this down  
20 there, did you believe it?

21 THE WITNESS: (Thomas) Yes.

22 MR. DIGNAN: Does he still believe it, that's the  
23 question.

24 JUDGE SMITH: Well, that's another matter.

25 MR. DIGNAN: Well, Your Honor, if you're taking for

1 the truth of the matters contained, the witness must testify he  
2 believes it.

3 JUDGE SMITH: Well, that's right. You cover that on  
4 cross-examination. In the meantime it's accepted for the fact  
5 that on June the 3rd this was his judgment as to what the  
6 testimony should have been.

7 MR. FLYNN: I've been --

8 MR. DIGNAN: I don't have any problem with it for  
9 that purpose, Your Honor, that's my point.

10 JUDGE SMITH: All right. So we're fine.

11 MR. DIGNAN: I don't want to examine on it on that  
12 basis. But as I understood Mr. Oleskey he's forcing it --

13 JUDGE SMITH: He prevailed.

14 MR. FLYNN: I have to make a brief comment, I've been  
15 drawn into this peripherally. Mr. Oleskey made a comment in  
16 answering Mr. Dignan a moment ago that Mr. Thomas was  
17 instructed to delete certain things because the agency didn't  
18 agree with them or didn't accept them as accurate. And that  
19 has not been established.

20 MR. OLESKEY: Well, what I said was, you were told  
21 for whatever reason by your agency in Washington to delete the  
22 material referred there.

23 MR. FLYNN: Well, it was an additional comment. But  
24 if we can leave it at that, fine, I'll withdraw it.

25 JUDGE SMITH: All right. On the top there's a legend

1 Edward Thomas's Draft, did you put that on there, Mr. Thomas?

2 THE WITNESS: (Thomas) In preparation for this  
3 hearing.

4 JUDGE SMITH: For today's hearing?

5 THE WITNESS: (Thomas) Yes.

6 JUDGE SMITH: All right. Let's break until 3  
7 o'clock. Attorney General Exhibit 50 is received.

8 (The document referred to having  
9 been previously marked for  
10 identification as Massachusetts  
11 Attorney General Exhibit 50 was  
12 received in evidence.)

13 (Whereupon, a brief recess was taken.)

14 BY MR. OLESKEY:

15 Q Mr. Thomas, I take it from your testimony just before  
16 the break that the document you sent down to Washington last  
17 June 4th would be marked Mass. AG Exhibit 50, that was in your  
18 judgment an accurate summary of where you thought your agency  
19 was on the beach population issue at that time; is that right?

20 A (Thomas) Yes, with one small explanation.

21 Q Okay.

22 A (Thomas) It was where I thought they were or where  
23 they ought to be. And the explanation is with respect to the  
24 use of the word "trapped" in the last paragraph. No one  
25 suggested to me that that be used. It was -- I put that in

1 there of my volition and based on my analysis, and so I don't  
2 think it would be fair to say that --

3 Q Did you put it in there because you -- I understood  
4 it was some kind of term of art in nuclear planning or was it  
5 just good old descriptive trap as we'd ordinarily understand  
6 it?

7 A (Thomas) I don't know it as being a term of art in  
8 nuclear planning, but it is a term which is used in evacuation  
9 planning. And I felt it was a correct description of the  
10 situation as it would result in a fast breaking accident at  
11 Seabrook.

12 Q And if you were asked today to do this again in the  
13 circumstances which existed last June would you send down the  
14 same text you sent down then?

15 JUDGE SMITH: Whoa, I have trouble with that one.  
16 Necessarily he would, you know -- would he send down  
17 today --

18 MR. OLESKEY: This is tautology.

19 JUDGE SMITH: Yes.

20 MR. OLESKEY: Well, I'm just trying to deal with what  
21 I understood that your last comments were that, as a ruling,  
22 which is that this is some kind of historical document only and  
23 doesn't represent Thomas's views.

24 JUDGE SMITH: Well, then ask the question, based upon  
25 what you know today would you still advocate this as --

1 MR. OLESKEY: Well, that gets into a level of  
2 complexity that deals with everything that's happened between  
3 June 2, '87 and today. To get this in the record as his view  
4 of where the agency was or should be last June, I think the  
5 only operative question was, was it your best judgment, was it  
6 accurate, did you send it down to be relied on, which is all I  
7 said.

8 JUDGE SMITH: Yes.

9 MR. DIGNAN: And he so testified and it's in for that  
10 purpose, as I understand it, to show his view.

11 MR. OLESKEY: All right. That's what I wasn't clear  
12 about.

13 JUDGE SMITH: Yes, it's in for that purpose. My  
14 concern with your last question is it necessarily then, if  
15 everything were the same then up till the time you sent it.

16 MR. OLESKEY: I was proceeding from a misapprehension  
17 about what your concern was, Judge Smith, so I don't need that  
18 question.

19 BY MR. OLESKEY:

20 Q Right after the final testimony was produced and  
21 filed did you get a letter from or a memo from Mr. Flynn  
22 summarizing his views on the work that you and your staff had  
23 done in producing the statement?

24 A (Thomas) Again, it was not testimony at that point,  
25 it was the FEMA response to contentions -- FEMA position on the



1 contentions.

2 Q Well, he refers to it as testimony, but in any event,  
3 it was the filing of June 4th?

4 A (Thomas) Yes. Yes, I did get a letter following  
5 that.

6 Q All right. Let me see -- let me show you a document  
7 dated June 5th headed "Memoranda for Edward A. Thomas," and  
8 then Ed struck out from Mr. Flynn.

9 MR. FLYNN: May I inquire into the purpose of this  
10 line.

11 MR. OLESKEY: Yes. The purpose of this line is to  
12 show that on June 5th, '87 Mr. Flynn sent a memo to the witness  
13 saying, you did a terrific job and so did you staff in getting  
14 ready for the filing and carrying it out, and it's in the  
15 tradition of the agency.

16 I'm going to ask that be marked momentarily as Mass.  
17 AG Exhibit 51 for identification.

18 (The document referred to  
19 was marked for  
20 identification as  
21 Massachusetts Attorney  
22 General Exhibit 51.)

23 MR. FLYNN: I'm quite willing to acknowledge Mr.  
24 Thomas's effort, but I'm not sure I understand the relevance of  
25 this.

1 MR. OLESKEY: Are you making an objection, Mr. Flynn?

2 JUDGE SMITH: No, I think that he's entitled to  
3 understand the -- without making objections, try to understand  
4 where the question is going.

5 MR. OLESKEY: I just gave an explanation I thought  
6 was very adequate that last year on June 5th following the  
7 production of the work that's just been testified to and the  
8 work that preceded it, the lawyer in the agency who was working  
9 with the witness commented him and his staff for their  
10 thoroughgoing work. I'm not going to -- I'm only summarizing  
11 it generally, you have it in front of you.

12 I'm going to offer it on that basis to show something  
13 about the esteem in which the witness and his work were held by  
14 the agency as of that date.

15 MR. FLYNN: We endorse the document.

16 MR. DIGNAN: Has it been offered? I didn't hear an  
17 offer.

18 JUDGE SMITH: Well, it's going to be offered in a  
19 moment.

20 MR. OLESKEY: I just said it's going to be offered.

21 JUDGE SMITH: See, there was an inquiry as to its  
22 relevance.

23 MR. DIGNAN: Could we get the offer and then if there  
24 are going to be objections, we can object.

25 MR. OLESKEY: Considering I'm offering it, Mr.

1 Dignan, Mass. AG Exhibit 51.

2 MR. DIGNAN: Object, it's irrelevant. And I  
3 certainly object that the purpose as to show the agency was  
4 thrilled. All that tells me that Flynn was thrilled.

5 MR. OLESKEY: I --

6 MR. DIGNAN: And whether Flynn was thrilled or not is  
7 irrelevant.

8 MR. OLESKEY: Well, you know, I'm doing two  
9 things --

10 JUDGE SMITH: Does he have a low level of being --  
11 low threshold --

12 (Laughter)

13 MR. DIGNAN: Your Honor, when you practice in the  
14 private side the CEOs don't care what the lawyers do, Your  
15 Honor.

16 MR. OLESKEY: It only has to do two things, put my  
17 case -- our case in for the witness and deal of the issues of  
18 the witness's professionalism, so Mr. Barshak wouldn't have to.  
19 This, at least, falls in the second category if not in the  
20 first. And I think frankly it falls in both.

21 MR. BARSHAK: And that's why I'm leaning closer to  
22 the microphone. I don't mind standing here, but I think when a  
23 piece of paper is a compliment to my client that's being  
24 offered, I think I have standing to say, I hope it gets in.

25 JUDGE SMITH: Well, the real question, we can't

1 receive documents solely for the purpose of establishing Mr.  
2 Thomas's bona fides as an employee here.

3 I thought it was relevant as you're trying to  
4 establish here, as I understand it, that the position arrived  
5 at by FILMA and offered in response to the Board's direction and  
6 the response of the contention and they are submitted as  
7 proposed testimony was regularly arrived at.

8 MR. OLESKEY: Sure.

9 JUDGE SMITH: At institutional acceptance, and  
10 therefore has some momentum.

11 MR. OLESKEY: Sure.

12 JUDGE SMITH: And for that purpose it's just  
13 received. This has been thread of their case all along.

14 MR. TURK: Your Honor, I have a problem. If you  
15 start admitting evidence about a person's professionalism, then  
16 aren't we really opening the door to see if there are other  
17 documents or other facts that might be elicited that go the  
18 other way.

19 MR. OLESKEY: Well, that door was opened a long time  
20 ago, Mr. Turk.

21 JUDGE SMITH: We're not interested in the untold  
22 hours that he spent, we're not reading it for that, we're not  
23 reading it for anything else.

24 MR. TURK: Your Honor, the issues here in this  
25 proceeding relate --

1 JUDGE SMITH: This is some evidence. And Mr. Thomas  
2 who was assigned to the matter, FEMA's Office of General  
3 Counsel --

4 MR. TURK: Your Honor may recall the FEMA position on  
5 contentions was exceeding long, it was some 70 or so pages, I  
6 forget the exact number, it was single spaced, it was a very  
7 lengthy document. It seems to me that this letter relates to  
8 the whole of that document that has nothing to do in particular  
9 with the beach population issue.

10 JUDGE SMITH: Well, if it had -- relates to the whole  
11 of the document, necessarily relates to a part of the document.

12 MR. OLESKEY: You're getting the benefit of 90  
13 percent of it, Mr. Turk, which you like.

14 MR. TURK: I assume you --

15 JUDGE SMITH: The problem is not relevance. The  
16 relevance is tenuous but it's there. It's how important it is,  
17 how much weight we will assign it. We're not receiving it --  
18 with that we'll accept it.

19 MR. OLESKEY: Thank you.

20 (The document referred to having  
21 been previously marked for  
22 identification as Massachusetts  
23 Attorney General Exhibit 51,  
24 was received in evidence.)

25

1 BY MR. OLESKEY:

2 Q Mr. Thomas, moving on, as we must, on the 5th of 6th  
3 right after the filing of the response to contentions, did you  
4 get -- was there a phone call to you from somebody at the  
5 headquarters in Washington concerning the State of New  
6 Hampshire's reaction to the FEMA filing date of June 4th?

7 A (Thomas) No, sir, but there was a phone call to my  
8 supervisor, Henry Vickers.

9 Q Okay.

10 A (Thomas) And I was brought in on a conference call.

11 Q Okay. When you were brought in to the conference  
12 call, who was Vickers talking with and what was the subject of  
13 the conversation?

14 A (Thomas) My best recollection is that he was talking  
15 with Dave McLoughlin and others, and I don't remember  
16 specifically whom, it would have been Mr. Krimm or Mr. Krimm's  
17 staff. And basically it was that Governor Sununu had called,  
18 if I remember correctly, looking for General Becton, and then  
19 he talked with Dave McLoughlin and said he was concerned or  
20 upset about the FEMA position that had been filed, and  
21 concerned that he hadn't heard about it from us first, and that  
22 he had heard about it from newspaper reporters or something  
23 like that. And some type of media reporter. And that there  
24 was clearly a misunderstanding on the Governor's part as to  
25 what we had said and what we hadn't said, and that there was a

1 need to have a clarifying letter sent out as soon as humanly  
2 possible.

3 And at that call Robert Wilkerson agreed to take a  
4 first draft of the letter, this is a Friday.

5 Q No, this is after the call?

6 A (Thomas) No, this is -- I believe this is right  
7 during the call. Wilkerson -- now I'm realizing Wilkerson had  
8 to have been part of the conference call, says that, I'll take  
9 a fresh crack at that over the weekend. And I pointed out that  
10 I was going to be in Seattle at a conference and since it was  
11 very important agency business that I be there and plus I  
12 wanted to go, I didn't want to miss the conference to write a  
13 letter so they were going to telefax it to me out in Seattle  
14 and we would take it from there.

15 Q Okay. And so the following week or that weekend did  
16 you get a, by telex, a copy of a draft letter to Director  
17 Strome purporting to respond to the concerns Governor Sununu  
18 had expressed and Mr. McLoughlin?

19 A (Thomas) The following week, yes, that Monday I  
20 believe.

21 Q What happened to that draft of the letter that Mr.  
22 Wilkerson faxed or telexed out to Seattle to you?

23 A (Thomas) I still have a copy of it.

24 Q In terms of the evolution of a draft toward a final  
25 product which in fact is in evidence as Exhibit 35,



1 Massachusetts Attorney General, what happened next?

2 A (Thomas) I rewrote the copy he had to make changes  
3 that I felt were necessary. Brought the letter to a  
4 professional typing service and then had it telefaxed back to  
5 Washington. We then had a call, sort of a nature of the  
6 conference call with me on the phone with several people from  
7 headquarters. I believe -- it was certainly Mr. Krimm, Bob  
8 Wilkerson, and then Howard Schmidt came in for part of the  
9 call, there may have been other people on the call as well, and  
10 we talked about the nature -- the differences, the changes I  
11 had made with -- in Mr. Wilkerson's draft. And there were some  
12 things that we really couldn't come to a closure on in that  
13 conference call and Mr. Krimm said that he would take another  
14 crack at it himself, personally, and he redrafted it and then  
15 telexed it back out to me.

16 And I made one or two more changes that I talked to  
17 him about over the phone, very minor changes comparably. And I  
18 guess I should say I had some reservations about signing the  
19 letter, but I did sign it and did send it from Seattle to Mr.  
20 Strome, either through my office or directly to Mr. Strome, I  
21 don't recall which, via fax; and then a cleaner copy with Mr.  
22 Strome's name spelled correctly was sent from my office shortly  
23 thereafter.

24 Q Let me show what you marked as Mass. AG Exhibit 35  
25 and ask if it with its attachment which is the contentions

1 response of June 4th represents the final product of the  
2 process you just testified to?

3 A (Thomas) Yes, it's the final product. It's the  
4 cleaned up copy of the letter -- cleaned up in the sense that  
5 the letter had become distorted back and forth in the telefax  
6 because we were -- and we were running out of time to get this  
7 thing out, and there wasn't time to get it retyped again clean.  
8 So this is the copy that spells Mr. Strome's name correctly and  
9 was the extra -- the final thing that was sent to him.

10 Q Now do I understand your testimony to be that the  
11 final version of the letter that you signed was the one  
12 produced in Washington?

13 A (Thomas) Yes, actually it was, because I signed --  
14 the letter that I signed was a fax that had been sent to me  
15 from Washington. Yes, that's correct.

16 Q Did you say you expressions reservations but were  
17 told to go ahead and sign the letter and get it out anyway?

18 A (Thomas) Yes, I did.

19 Q What were the nature of your reservations?

20 A (Thomas) My reservation, that I recall, there may  
21 have been others, but what I was particularly concerned about  
22 was on page two in the second paragraph, the last sentence  
23 which reads: "Although sheltering is an alternative, we doubt  
24 if the use of existing public or private facilities would be  
25 acceptable."

1                   We had never reviewed in a thoroughgoing professional  
2                   the nature of the accommodations in the sheltering in the  
3                   book area. And I was very concerned about sort of  
4                   ing whatever review we would come to. We had looked at  
5                   area. We were concerned about the nature of the buildings  
6                   in that area, as I had set forth in the December 1985 memo, but  
7                   we never really looked at it in a thoroughgoing professional  
8                   way and I was concerned about that sentence would seem to  
9                   prejudge matters if the State wanted to try and demonstrate a  
10                   solution to the problem of the risk to the public by sheltering  
11                   them in the event of an accident.

12                  Q     Did you point out that reservation?

13                  A     (Thomas) Yes, I did. And that was --

14                  Q     To Mr. Krimm or to someone else?

15                  A     (Thomas) Oh, sure to Mr. Krimm and to Mr. Wilkerson.

16                   And we went back and forth on it for quite some time, and Mr.  
17                   Krimm told me that basically that he couldn't see why I  
18                   couldn't live with it, and I said, well, I just don't want to  
19                   seem like we would close our minds to that if the State -- if  
20                   that is in fact what the State decides to come up with. And he  
21                   said, well, I want you to sign it please, and I did.

et/13

22                   (Continued on next page.)

23

24

25

t/14 1 MR. OLESKEY: Okay. I'll take that back.

2 JUDGE SMITH: Let me interrupt here.

3 MR. OLESKEY: Yes.

4 JUDGE SMITH: The time that we had hoped for is

5 becoming more and more unrealistic. As I recall the testimony

6 from the FEMA people, there does not begin to be a divergence

7 in the views expressed by Mr. Thomas and the views later

8 adopted by Mr. McLoughlin until much later in the events.

9 Can't we move faster to the point where we diverge without

10 doing damage to anybody's case here?

11 MR. OLESKEY: Well, we've got a --

12 JUDGE SMITH: I know you're doing a very careful way,

13 a block at a time, I know.

14 MR. OLESKEY: In my judgment we have to cover the

15 July 30th RAC meeting.

16 JUDGE SMITH: Well, yes, you got to do that.

17 MR. OLESKEY: So we're almost there.

18 JUDGE SMITH: All right.

19 MR. OLESKEY: Okay.

20 BY MR. OLESKEY:

21 Q Mr. Thomas, trying to finish off briefly here the

22 period up until the RAC meeting of July 30. There's an exhibit

23 which is 31 which is a memo to the RAC conveying the filing

24 that FEMA made on June 4th, and making some comments on how

25 that filing happened to come about, which is -- bears your

1 name, but also has on it Edward A. Thomas, for him, Jack Dolan,  
2 dated June 17th. Will you describe briefly the circumstances  
3 under which this memo went out to the RAC members telling them  
4 how it happened that the agency had taken the position it did  
5 on June 4th?

6 A (Thomas) Sure. It struck me on June 4th or the  
7 morning of June 5th, I think it was June 4th late in the day,  
8 that the RAC members were going to hear some fairly astonishing  
9 news in the newspapers on June 5th most likely, and they were  
10 going to wonder what in the world was going on, because all of  
11 them save Bob Bores thought that we had settled this problem in  
12 April, and also they're go'ing to be hearing about some FEMA  
13 position that they didn't know anything about and I felt badly  
14 about that.

15 And asked Jack Dolan and his staff to do two things  
16 while I was away in Seattle and then subsequently on vacation.  
17 Number one, the Maine Yankee exercise was taking place while I  
18 was in Seattle and I asked Jack to please go over that with the  
19 RAC members that were present at Maine Yankee and explain to  
20 them what had happened and how things had come to pass. And  
21 then I said, please come up with a memorandum for the RAC that  
22 explains what happened and sends them the actual materials as  
23 quickly as you possible can.

24 Q So you didn't consult on this document in terms of  
25 reviewing it?

1           A     (Thomas) No, I didn't. It was just -- I said, I  
2 want a document that sets forth what happened to go out as soon  
3 as possible for the RAC members.

4           Q     And Mr. Dolan and the rest of the staff did that?

5           A     (Thomas) Mr. Dolan, I believe, Mr. Swiren and the  
6 staff actually did the work on that. On that -- the day that  
7 that was sent out I was in a cruise boat off the coast of  
8 Alaska with my wife.

9           Q     I'm sure that many people in this room wish they were  
10 there now.

11                     In July, directing you to the next month and a  
12 different topic, was the agency in the middle of what's called  
13 a self-initiated review of the plan, emergency response plan  
14 for another location, name of the Pilgrim Station?

15           A     (Thomas) Yes.

16           Q     That's the project you referred to several times  
17 today in your testimony?

18           A     (Thomas) Yes.

19           Q     Briefly, so that the Board will have a context for  
20 the July 30 meeting which is coming up, what was going on in  
21 the agency about the Pilgrim plan?

22           A     (Thomas) Very briefly. Really in -- around June of  
23 1986 facts were brought to our attention that led us to  
24 question whether or not the emergency plans for Pilgrim were in  
25 fact adequate to protect the public. And increasingly through

1 1986 and 1987 we were carrying out a self-initiated review of  
2 our previous interim finding of reasonable assurance of  
3 adequacy of the emergency plans.

4 In this period when I came back from Alaska, in  
5 cooperation with my headquarters, we were reviewing documents  
6 that were prepared by my staff. A draft report was prepared  
7 for my headquarters, reviewed and rejected by my headquarters,  
8 sent back up to me to redo very quickly during July; and that  
9 was where the bulk of my personal attention was focused during  
10 the month late -- well, late June and through the end of July  
11 on getting the self-initiated review done properly to my  
12 headquarters' satisfaction and my satisfaction.

13 And we do so, and we had sent it out for RAC comment  
14 and had received detailed comments from the NRC and some  
15 comments from perhaps one or two other RAC members, I don't  
16 even recall if we had any comments from anybody else, and  
17 incorporated the changes.

18 And finally, by the end of July we had -- the RAC had  
19 concurred that they had no further comments on the report.  
20 They concurred in the report, and it was ready to be  
21 distributed and it was in fact distributed August 4th.

22 Q Had that work by the RAC on this other plant, at  
23 Pilgrim, been completed by the time of the July 30th meeting?

24 A (Thomas) Yes, it had. It was just a matter of --  
25 well, there were a few dots to be made and a few Ts to be



1 crossed, but it was done and it was ready for distribution.

2 Q And is it accurate to say that a focus of that review  
3 and report was the question of the safety of the beach  
4 population in the event of an accident?

5 A (Thomas) That is correct.

6 Q Okay. Now, I want to ask you about two different  
7 matters, one is the RAC meeting of July 30th and the other is  
8 the conversation which you testified to at your deposition with  
9 Mr. Peterson in Boulder, Colorado.

10 MR. TURK: Your Honor, before we move on, there's a  
11 line of questions that I thought was going to relate somehow to  
12 Mr. Thomas's responsibilities with respect to the Seabrook  
13 review and how this Pilgrim issue related to his time  
14 availability for this case, for Seabrook.

15 We just had an extensive series of questions and  
16 answers that went way beyond that, and I think it's irrelevant  
17 and should be stricken.

18 MR. OLESKEY: I know Mr. Turk is a competent and  
19 skilled counsel or he wouldn't be here in this job, but I'm  
20 very clear when I ask questions I believe, and I said as a  
21 preface, I'm going to ask you some questions about Pilgrim to  
22 give the Board a context for the question I'm going to ask you  
23 about the July 30th meeting; and he gave his answers.

24 And then I said a moment ago, I'm going to ask you  
25 questions about July 30th and about Boulder, Colorado, and I

1 want to ask you which came first in time.

2 Then comes this utterly irrelevant objection out of  
3 left field. I do not understand why Mr. Turk does these  
4 things.

5 May I continue with my examination.

6 MR. TURK: I have an objection pending.

7 MR. OLESKEY: I don't consider that an objection.

8 JUDGE SMITH: Well, how did that lay any groundwork  
9 for the July 30th meeting?

10 MR. OLESKEY: I'm going to ask him about discussions  
11 and reactions he had on July 30th that relate to the review  
12 that had just been completed at Pilgrim.

13 JUDGE SMITH: You're about to do that?

14 MR. OLESKEY: Either that or the Boulder meeting and  
15 then that. I just want to get the historical chronology right.

16 MR. TURK: Your Honor --

17 MR. OLESKEY: In order there be no confusion I'll go  
18 to that and come back to Boulder, fine.

19 MR. TURK: Before he moves on, Your Honor, I do have  
20 a motion to strike on grounds of relevance.

21 JUDGE SMITH: He has yet to establish the relevance.  
22 He has indicated that he will establish it.

23 MR. TURK: So it's de bene.

24 MR. OLESKEY: Whatever. Let's deal with the July  
25 30th RAC meeting first, get that issue out of the way. I'd

1 like to feel I accomplished something today.

2 BY MR. OLESKEY:

3 Q The RAC meeting of July 30th was called at FEMA's  
4 request to consider a variety of issues; is that right?

5 A (Thomas) That's correct.

6 Q Some of them related to -- some of them related to  
7 Seabrook and some did not?

8 A (Thomas) That is correct.

9 Q Okay. I'd like you to tell us, first, roughly how  
10 long the meeting took?

11 A (Thomas) In terms of an approximation, four and one  
12 half hours.

13 Q Now, how much of that time was consumed with  
14 discussions relating to the Seabrook beach population?

15 A (Thomas) Perhaps two hours, but I don't have an  
16 exact clear recollection of that. I believe it was  
17 approximately two hours.

18 Q Do you have a pretty good recollection of that  
19 portion of the discussion or would you like to look at your  
20 notes now?

21 A (Thomas) With respect to the portion of the  
22 discussion dealing with the Seabrook beach issue, I have a  
23 clear recollection.

24 Q Okay. Would you give us a summary overview of how  
25 that discussion went, the kinds of comments that were made and

1 who made them; and then I'll ask you some specific focus  
2 questions when you've completed that answer?

3 A (Thomas) Okay.

4 MR. DIGNAN: Now at this point I object. This  
5 meeting is a key meeting, everybody knows it's a key meeting  
6 and I see no reason why we can't go to exhausting the witness's  
7 recollection, and then if he must summarize fine.

8 We've got a lot of testimony about what certain  
9 individuals say or allegedly said at this meeting.

10 MR. OLESKEY: You know, I feel --

11 MR. DIGNAN: And to ask for a summary of what was  
12 said, Your Honor, I think transgresses the usual rules of  
13 precision on direct examination.

14 MR. OLESKEY: You know, there's an old New England  
15 expression, caught between the pillar and post. The Board  
16 keeps telling me to go faster and my brothers keep objecting  
17 when I tried to encapsulate and summarize. Let's all decide  
18 how we want to do this and I'll play by the rules.

19 JUDGE SMITH: Let's have a summary in detail.

20 (Laughter)

21 JUDGE SMITH: To satisfy the needs of the case.  
22 Go ahead.

23 THE WITNESS: (Thomas) It would enhance my  
24 summarizing detail if I could have my notes.

25 JUDGE SMITH: Then I think that you should use them.

1 MR. OLESKEY: It's agreeable to me.

2 MR. DIGNAN: Now, just so that we don't have a fight  
3 later --

4 MR. TURK: I'm going to have a problem.

5 MR. DIGNAN: -- will the notes be available to  
6 counsel for cross-examination purposes, if the witness is going  
7 to use them testify.

8 MR. OLESKEY: If he uses them.

9 JUDGE SMITH: If he relies upon them in his testimony  
10 as he says he will and needs to for reliable testimony, you  
11 will.

12 MR. OLESKEY: Mr. Barshak, can you --

13 MR. TURK: Your Honor, I'd like to --

14 JUDGE SMITH: Wait a minute.

15 MR. OLESKEY: Excuse me, Mr. Turk. Can you just cut  
16 through it, Mr. Barshak or Ms. Netski, and tell us if those  
17 were produced previously to everybody?

18 MR. BARSHAK: I will answer that question. Quick  
19 consultation. To play safe I'll say, no.

20 MR. OLESKEY: Okay.

21 MR. BARSHAK: But they're here.

22 JUDGE SMITH: If he prepared notes to help him in his  
23 testimony there's no responsibility to produce them. You get  
24 to look at them if he uses them.

25 MR. DIGNAN: Understand. I'm not questioning --

1 JUDGE SMITH: Okay.

2 MR. DIGNAN: -- the failure to produce, just, I  
3 assume I will have them to cross-examine if he relies on them,  
4 and I understand he's now relying on them.

5 JUDGE SMITH: Yes.

6 MR. BARSHAK: Tom, I'll have them in my room, I'll  
7 give you a cold coke with them.

8 MR. DIGNAN: Excuse me.

9 MR. BARSHAK: I'll give you a cold coke with the  
10 notes.

11 MR. DIGNAN: Fair enough.

12 MR. TURK: Your Honor, I have a problem. I'd like  
13 the witness's recollection on the questions, and I have a  
14 particular reason for that. There was a point in the  
15 deposition of Mr. Thomas during a break in which he indicated  
16 that he filled in his notes, taking during meetings, he filled  
17 in later for whatever reason, it was not established. And I  
18 have a problem that if he's going to testify from notes,  
19 there's a problem with the reliability of the notes from which  
20 he's working on them.

21 JUDGE SMITH: Ask him about it. What your relief?

22 MR. TURK: As Voir Dire.

23 JUDGE SMITH: No.

24 MR. TURK: Before the testimony comes in.

25 JUDGE SMITH: I don't -- where did those notes come

1 from, you prepared them to help you testify today?

2 THE WITNESS: (Thomas) No, sir. This is the actual  
3 sheet that I had in front of me --

4 JUDGE SMITH: at the --

5 THE WITNESS: (Thomas) -- at the meetings.

6 JUDGE SMITH: Okay.

7 THE WITNESS: (Thomas) And let me add so that  
8 everybody knows, that it is my practice after -- sometimes if  
9 I'm coming back from Washington --

10 JUDGE SMITH: Go ahead.

11 THE WITNESS: (Thomas) -- I'll fill in blanks or  
12 I'll straighten out words. In this case, I recall, after the  
13 meeting sitting and adding stuff to it and revolving this  
14 around in my mind and adding, I see two things that I know I  
15 added after the meeting.

16 MR. TURK: Your Honor, I think that establishes that  
17 the notes are not contemporaneous, they don't have any  
18 reliability, and I'd like the witness's independent  
19 recollection.

20 JUDGE SMITH: You've got a bad way to go because I'm  
21 a rotten note taker and very often the very next day or next  
22 week I'll sit down and make the notes of something important.  
23 It's the best I can do. If it enhances his memory, that's  
24 fine, you can cross-examine him on it.

25 MS. WEISS: The notes aren't being offered in



1 evidence, are they?

2 JUDGE SMITH: Right. They're just for his testimony.

3 MR. DIGNAN: Your Honor, I have a feeling they've  
4 been produced already. I'm getting signals from Mr. Barshak  
5 that they in fact have been produced. I think if Mr. Barshak  
6 would just write --

7 MR. BARSHAK: They're in this package.

8 MR. DIGNAN: -- where the package the notes are  
9 everybody would be copacetic, happy, and delighted.

10 MR. TURK: That solves a big part of the problem.

11 JUDGE SMITH: Mr. Turk is objecting on another basis,  
12 but that is something you can take up on cross-examination.

13 MR. OLESKEY: They were produced last week to  
14 everybody, Your Honor. Mr. Turk ought to read his files more  
15 carefully.

16 MR. TURK: Well --

17 MR. DIGNAN: Well, stop the shots. Could I be told  
18 which notes we're talking about in this package I received?  
19 It's my understanding they're in this package, I cannot discern  
20 which particular notes. And if somebody would tell me that, I  
21 at least will subside.

22 MR. BARSHAK: I'm told they're attached to the  
23 agenda.

24 MR. DIGNAN: Thank you, Mr. Barshak.

25 MR. TURK: Mr. Oleskey has no reason to get into

1 personal attacks. Mr. Barshak himself said, to be save he was  
2 going to say the notes had not been produced. I indicated that  
3 I had not gotten these notes until last night at the hotel. If  
4 Mr. Oleskey wants to pursue personal attacks I'll give him some  
5 retribution; I don't want to.

6 MR. OLESKEY: I apologize for my frustration.

7 JUDGE SMITH: I didn't hear it. Don't restate it,  
8 not for me.

9 (Laughter)

10 MR. TURK: And I also note, Your Honor, there are  
11 several notes that could be the ones that the witness is  
12 referring to; it's not clear from the package that I have what  
13 he's referring to. Put it on the record what he's referring  
14 to.

15 BY MR. OLESKEY:

16 Q Mr. Thomas.

17 A (Thomas) Yes.

18 Q Would you, making whatever use of whatever notes you  
19 feel appropriate, tell us the substance with as much  
20 particularity as you can of what was said by the RAC members  
21 about the Seabrook beach population back July 30 last year?

22 A (Thomas) Okay. I'm going to --

23 MR. DIGNAN: Mr. Thomas, would you do me the courtesy  
24 of holding up until I find out if I've got the notes.

25 THE WITNESS: (Thomas) No, no, no, absolutely not.

1 Yes, those.

2 MR. DIGNAN: Those is what I'm talking about.

3 THE WITNESS: (Thomas) This attached to the --

4 MR. DIGNAN: Agenda.

5 THE WITNESS: (Thomas) -- the agenda and the notice  
6 of hearing which was sent out the same time.

7 MR. DIGNAN: Attached to a different agenda, that's  
8 all, but these are the notes he's working from. Thank you.

9 Thank you, Mr. Barshak.

10 THE WITNESS: (Thomas) I'm just going to rattle off,  
11 the notes are made. It's a one side of a sheet of page, it's  
12 attached to my copy of the agenda and my copy of an attachment  
13 to the agenda which was the dates of the hearing, notice of the  
14 dates of the hearing, the Seabrook hearing.

15 JUDGE SMITH: Are you simply just going to read your  
16 notes --

17 THE WITNESS: (Thomas) No, sir.

18 JUDGE SMITH: -- or are you going to testify from  
19 your best memory from the notes?

20 THE WITNESS: (Thomas) I'm telling you, I'm going to  
21 testify in order of --

22 JUDGE SMITH: Well, okay.

23 THE WITNESS: (Thomas) -- what they say.

24 The first note I have -- the first recollection I  
25 have is Byron Keene says something about, hey, NRC has removed

1 the references to the plant features. And Bob Bores went into  
2 a great discussion of graded response and what reasonable  
3 assurance was, and look at the plan. Discussion of the  
4 efficacy of sheltering, that just shelter might not make the  
5 situation any better, and more. I mean, it was an extended  
6 discussion and I don't really recall the specifics at this  
7 point. He made a very good presentation on why he felt that  
8 the plans, as they existed, without reference to the  
9 containment or any special features or special consideration  
10 for Seabrook were adequate.

11 Herb Fish said that we've got to look at what the  
12 plan, the P-L-A-N, the plan prescribes. And Paul Lutz went on,  
13 and I don't recall from here but I recall from reading Dr.  
14 Bores's testimony, he starts out by saying, we have a problem,  
15 we in this room. And I think he also said, you, pointing at  
16 me, have a problem. He said that Oyster Creek, a site that he  
17 was familiar with from his duties with FEMA, Region 2 and that  
18 RAC was worse than Seabrook.

19 And he said that we have to really consider looking  
20 at the reality of the situation, and he gave an example that we  
21 don't need an expert to tell us how wide lanes on the road are.  
22 At one look at the Seabrook containment is perfectly quite  
23 enough to know that it's special and unusual and should have  
24 special consideration and that the RAC ought to say so.

25 Bill Lazarus added that on a generic basis that the

1 plans were adequate. And then we had the additional benefit of  
2 sea breezes in the area and that the breeze -- the coastal  
3 breezes would act as a great protector of the public along the  
4 beach.

5 We had extensive discussion -- I pointed out how  
6 FEMA, in general how FEMA had come to its conclusions. There  
7 was a comment that I recall from the notes that Herb Fish said  
8 that maybe one way we could deal with this is to have the RAC  
9 meet without FEMA and have them develop a RAC posture absent  
10 FEMA, and then that would be presented to FEMA to do with as it  
11 wanted.

12 I had tried several times to bring the meeting to  
13 closure because, I have to tell you, number one, on a personal  
14 level I was totally taken aback by the strongly held views of  
15 the RAC members on this issue. I expected very, very little  
16 discussion of this matter. It seemed just like what FEMA had  
17 done before at Maine Yankee. It seemed just like what we had  
18 just finished doing with respect to Pilgrim. We were not  
19 prepared for a prolonged discussion on this. I had requested  
20 permission to use the -- my reasonable assurance paper as a  
21 talking point with the RAC, so that they could understand that  
22 at least I distinguish between just compliance with the letters  
23 and numbers in NUREG-0654; and the larger issue of a reasonable  
24 assurance of an adequate level of public protection. And my  
25 headquarters hadn't been able to agree to that because they

1 hadn't agreed that that was the correct position. the agency  
2 position.

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1                   And basically I felt that FEMA wasn't getting its  
2 points across because all of us were tired, or both of us that  
3 were at the meeting, Jack Dolan and I were just exhausted from  
4 the work that we had done on getting the Pilgrim report pull  
5 together. We weren't being very coherent in terms of our  
6 points. And I felt that what we needed was to have FEMA come  
7 back with, in essence, a counterpoint, detailed paper talking  
8 about the -- as a counterpoint to what Bob Bores had come up  
9 with in Bores 2 that would discuss, number one, that a  
10 principle of administrative law that you only look at what's in  
11 front of you on the record. You don't think about containment  
12 if it hasn't been established that there is a specialized  
13 containment that results in some changes in the normal  
14 parameters of emergency planning.

15                   And, number two, I wanted to established that  
16 something in conjunction, as I'm thinking now, there was  
17 discussion in this meeting that a fast-breaking accident would  
18 not be all that serious; that the nature of the release would  
19 be comparatively slight, almost benign, and that was a  
20 discussion by Byrone Keene.

21                   And I wanted to come up with a counterpoint to that  
22 because I didn't think that that was what I was hearing from  
23 the NRC. I had heard that informally from staff once, and then  
24 I had heard that that really wasn't quite correct, and the NRC  
25 wasn't willing to rely on it. And I think I've discussed that



1 before. As I understood it, it was the PWR-8 and -9 argument,  
2 the fast-breaking accidents, or of the nature of PWR-8 or -9,  
3 mostly noble gases, and would not result in serious  
4 consequences.

5           And I said to Byron during the discussion -- I'm  
6 sorry to be a little out of sequence here. I said to Byron  
7 during the discussion, look, we almost obsess about prompt  
8 protective active decisionmaking. The NRC has been hammering  
9 on us to have this fail-safe system in place so that in the  
10 event that there is an accident at a plant, and the  
11 decisionmakers at the state level can't be reached, there was  
12 an NRC paper that indicated they wanted to have an automatic  
13 evacuation if a decisionmaker couldn't be reached at 15  
14 minutes, and there was great resistance to that in the New  
15 England states, and we insisted on going to shelter within 15  
16 minutes.

17           And we have emphasized the need for prompt protective  
18 action decisionmaking and communication of prompt protective  
19 action decisions to the public, and I just didn't understand  
20 why we were so concerned about that if in fact a fast-breaking  
21 accident was essentially benign.

22           And Byron said, look, you're, and he pointed to the  
23 NRC group and myself, you're worried about that. I'm not  
24 worried about that.

25           And so I was including in what I saw as a work

1 product that was needed as an explication for Byron and others  
2 on what he nature of a fast-breaking accident was, and had in  
3 mind the use of something called the, I believe, the mesorad  
4 dose consequence model which was something that had been put up  
5 on the FEMA IEMIS computer in conjunction with our analysis of  
6 evacuation plans.

7 So this is basically where we were at that point. As  
8 I've previously testified, the NRC absolutely disagreed with  
9 the testimony and absolutely said, look, J-9 and J-10-M are met  
10 on these plans.

11 BY MR. OLESKEY:

12 Q By the NRC, you mean Dr. Bores?

13 A (Thomas) Dr. Bores and Mr. Lazarus were I would say  
14 equally emphatic. Dr. Bores did most of the talking. Mr.  
15 Lazarus did do some.

16 And there perhaps were other points covered. And as  
17 I understood the meeting, I brought it to congruence that,  
18 look, we're just not going to get this done today. FEMA is not  
19 ready to talk about it. We need to go back and do work.

20 I said that we would come up with additional  
21 documents from FEMA and alternative language for the RAC spread  
22 sheets, and we would revisit the issue another day. And that  
23 was my understanding of how we left the meeting.

24 Q On your notes which you furnished us which say  
25 Seabrook beaches, 7-3-87, 9 a.m., that sheet of your notes at

1 the top.

2 A (Thomas) Yes.

3 Q There's a listing down the left-hand side, USDA,  
4 question mark; Commerce, not pres.; DOT, question mark; FEMA,  
5 NG, I guess; NRC, okay; and so on.

6 A (Thomas) Yes.

7 Q What's that indicate?

8 A (Thomas) When I got back up to my office after the  
9 meeting and sat there thinking about this and talking with my  
10 staff about it and Bob Rospenda, these were the notes that I  
11 made about essentially which way the wind was blowing, and  
12 where I thought the agencies were going, and who were  
13 essentially pretty well determined that the plans as they  
14 existed were okay, who was still open to persuasion in terms of  
15 where we would be going next.

16 And it was for the purpose of advising my  
17 headquarters as to what was going to be the next logical step  
18 which I saw as being a FEMA, a detailed FEMA position paper,  
19 alternate language for the spread sheet and the RAC, a majority  
20 view, a minority view.

21 I researched at that point what one other RAC had  
22 done with respect to developing a majority and minority view  
23 just, you know, have an idea of what we do. We never had a  
24 situation like this. And then this is what I used to talk to  
25 my headquarters about in terms of where I thought we should

1 how I thought we should be proceeding.

2 Q Now, was there any poll or vote that day, Mr. Thomas?

3 A (Thomas) No.

4 Q Do your notes reflect any poll or vote that day?

5 A (Thomas) No.

6 Q Have you reviewed other notes taken by FEMA personnel  
7 who were there to see whether they show a poll or vote?

8 A (Thomas) Yes, I have, and there's more to that.  
9 I've talked to a number of people.

10 Q I'll get to that in a minute.

11 What do those other notes of FEMA personnel at the  
12 meeting reflect by way of any reference to a poll or vote?

13 A (Thomas) There's no reference to a poll or vote in  
14 any of the notes.

15 Q Have you talked to those people who were at the  
16 meeting, the FEMA people as well as review their notes?

17 A (Thomas) I talked to everyone who was at that  
18 meeting save Bill Lazarus and John Schumacher.

19 Q Okay. Do you want to tick off who those people were  
20 to whom you've talked about this issue subsequent to July 30th,  
21 after July 30th?

22 A (Thomas) I talked with Dorothy Nevitt from the U. S.  
23 Department of Agriculture. I talked with Paul Lutz from the  
24 Department of Transportation. I talked with Jack Dolan and  
25 Jack Quinlan from FEMA, and Bob Rospenda from the Argonne

1 National Lab who was FEMA staff support. I talked with Dr.  
2 Bores from the NRC. I talked with Herb Fish from Energy. I  
3 talked to Warren Church from Health and Human Services, and I  
4 talked with Byrone Keene from the Environmental Protection  
5 Agency.

6 Q Okay. With the exception of Dr. Bores, did anyone  
7 else recall anything about a poll or vote at or near the  
8 conclusion of this meeting on July 30th?

9 A (Thomas) Yes.

10 Q Okay, who else recalled anything along those lines?

11 A (Thomas) Okay. With your indulgence, let me just  
12 say that I talked to these people really in two groups of  
13 times.

14 Q Okay, let's clarify that.

15 A (Thomas) One is shortly after the voir dire of  
16 November 4th, and I have also talked to all of those people in  
17 preparation for this -- my appearance here today.

18 I have notes of the conversations that took place  
19 after the 4th of November, and at that time no one remembered a  
20 poll or a vote or a show of hands or anything like that.

21 MR. TURK: No one including NRC.

22 THE WITNESS: (Thomas) I beg your pardon. Thank  
23 you, Mr. Turk.

24 No one save only Dr. Bores. Dr. Bores certainly  
25 remembered something which he described as being not a vote,

1 but a sense of the meeting or a poll. And then I think he said  
2 a show of hands. I have my notes of that. That would refresh  
3 my recollection as to exactly what he said if that's important.

4 But it certainly was the sense that there was a clear  
5 expression of people's viewpoints.

6 When I talked just recently with Paul Lutz from the  
7 U.S. Department of Transportation, he indicated to me that his  
8 recoll -- yes, he had talked to me about this in November, and  
9 he remembered telling me that there was no vote, no show of  
10 hands, no nothing like that, but that he had his recollection  
11 refreshed by Bill Lazarus, and that he now recalls that there  
12 was some kind of show of hands. And let me try to describe it  
13 to you exactly.

14 What he said to me was that at the end of the meeting  
15 he remembers that as people were putting their coats on, that  
16 there was some type of show of hands that took place within the  
17 blink of an eye. And that he saw Mr. Lazarus raise his hand,  
18 and he himself raised his hand. And as he recalls it, that was  
19 with respect to the question of whether or not people were  
20 essentially in agreement with either Mr. Lazarus or Dr. Bores;  
21 something along those lines, a poll of that nature.

22 I have talked with other people who strongly  
23 disagree. They just don't recall any show of hands, even  
24 people that I have said, well, Dr. Bores says this, and Paul  
25 Lutz now says this about a flash of a show of hands right at

1 the end of the meeting as people were putting their coats on.

2 BY MR. OLESKEY:

3 Q That was in connection with the recent conversations.

4 A (Thomas) Yes.

5 Q You went back to the same people essentially.

6 A (Thomas) I didn't go back to everybody. I just  
7 didn't have time.

8 Q Okay.

9 A (Thomas) But I went back to three or four people and  
10 said, well, now, Paul Lutz says this. Does this help you out.

11 Q Was there any kind of struggle for control or dispute  
12 between you or Mr. Lazarus at the meeting over anything?

13 A (Thomas) Not at the end of the meeting.

14 It may be of significance that during the course of  
15 the meeting I at least objected, and objected very strenuously.  
16 I kept -- I was quiet. I didn't voice this. I thought Mr.  
17 Lazarus was making rude remarks just under his breath and I  
18 couldn't quite catch them. And I was becoming increasingly  
19 irritated by the comments, like I couldn't quite make out what  
20 they were, but it was really irritating me tremendously.

21 And it was a tense meeting anyway because we were at  
22 the fourteenth item on an agenda. I didn't expect to spend any  
23 time talking about the subject, and we were I would say an  
24 acrimonious discussion about the protection of the beach  
25 population. And I was getting increasingly angry at Mr.



1 Lazarus's conduct in the meeting.

2 Q Did you ever say anything to him about it?

3 A (Thomas) I never did, but I did say something to his  
4 boss about it, and I did say something to Dr. Bores when I next  
5 saw Dr. Bores, that I really was offended by that conduct and  
6 that I wouldn't stand for a repetition of it. And the only  
7 reason I didn't say anything to Mr. Lazarus is I haven't bumped  
8 into him again since then.

9 Q Now could there have been a show of hands that you  
10 missed being out of the room or with your back turned,  
11 something like that?

12 A (Thomas) If there was some kind of show of hands in  
13 the blink of an eye as people are leaving the room, called for  
14 by Mr. Lazarus as everybody is getting up, I certainly can't  
15 swear that it didn't take place.

16 Q Were you there as everybody got up and left the room?  
17 Were you physically there?

18 A (Thomas) I wasn't the last person to leave the room,  
19 but I was one of the last to leave.

20 As I recall, at the end of the meeting I was talking  
21 with Mr. Rospenda about what I was looking for him to do with  
22 respect to the contribution towards the next RAC meeting to  
23 have on this subject.

24 Q Was there a commitment or promise made by FEMA at the  
25 meeting to the RAC to file a revised RAC position to supplant

1 that of June 4th?

2 A (Thomas) No, no, no, not at all.

3 First of all, the position that was filed June 4th  
4 was not a RAC position. It was FEMA testimony adopted at the  
5 level of Dave McLoughlin. I didn't have the authority to  
6 change it.

7 What I was committing to, and I'm not saying I was  
8 necessarily a model of clarity on this, my brain was developing  
9 this as I was going along, that we were going to develop  
10 alternate language for J-9 and J-10 elements on the spread  
11 sheets.

12 And certainly what I had in mind, I'm not sure if I  
13 necessarily clearly expressed it, was a counterpoint, a major  
14 paper from FEMA as a counterpoint to Dr. Bores's Bores 1 that  
15 would incorporate my concern that there was consideration of  
16 the containment and the special features for Seabrook that were  
17 not really before us as an administrative agency, and that  
18 would incorporate factual analysis of whether or not a fast-  
19 breaking accident can be a serious accident, those major items  
20 as well as going through Dr. Bores's paper a chunk at a time  
21 and carefully and thoroughly and technically analyzing it.

22 Q Just one other question about this meeting.

23 After the issue arose of the so-called vote here I  
24 think in November, you've indicated what you did. Did Mr.  
25 Flynn tell you that he had done any inquiries as counsel for

1 the agency to determine whether or not there was a vote which  
2 had missed in some fashion?

3 A (Thomas) Yes.

4 Q Did he go and talk to folks, as you understand it,  
5 who had been at the meeting who were not FEMA personnel?

6 A (Thomas) Yes.

7 MR. TURK: May I ask for a clarification?

8 Have you established that Mr. Thomas was at the  
9 meeting or interview? And if not, let's make clear that you  
10 are really going after hearsay.

11 MR. OLESKEY: Well, I thought it was clear that I was  
12 asking for what Flynn had done.

13 MR. TURK: Well, you haven't established whether Mr.  
14 Thomas was present.

15 THE WITNESS: (Thomas) I was not present.

16 BY MR. OLESKEY:

17 Q When -- and did Mr. Flynn discuss with you anything  
18 of what he had learned when he talked to RAC members who had  
19 been there?

20 A (Thomas) You bet. Yes.

21 Q Was there anything that he told you that was  
22 inconsistent with your memory of what happened --

23 A (Thomas) No.

24 Q -- with respect to the vote?

25 A (Thomas) No.

1 Q When was that, Mr. Flynn's own separate look at the  
2 situation and his then discussion with you?

3 A (Thomas) He went up during the Vermont Yankee  
4 exercise.

5 Q Was that November, December, January?

6 A (Thomas) Drawing a blank. I'm sorry.

7 I believe it was November. It was either November or  
8 December. If it's important, we can establish that.

9 Q Were you and he then comfortable with the position  
10 you had taken in the hearing about your recollection of the  
11 vote issue?

12 A (Thomas) Yes, let's be clear. Not my position, but  
13 we were both very comfortable with the truth of my testimony,  
14 yes.

15 Q Yes, that's exactly what I meant to say. Thank you  
16 for that clarification.

17 A (Thomas) And let me be clear. That is what he told  
18 me; that he was very comfortable with the fact that I had told  
19 the truth based upon his -- based on his interviews with the  
20 people at the Vermont Yankee exercise.

21 Q Which was separate and apart from the conversations  
22 you had yourself?

23 A (Thomas) That's right.

24 Q All right. And as you've told Mr. Turk, you weren't  
25 present when Mr. Flynn had his conversations.

1 A (Thomas) That is correct.

2 JUDGE SMITH: I want to ask Mr. Thomas one or two  
3 questions here.

4 MR. OLESKEY: Sure.

5 JUDGE SMITH: And I'll ask that counsel withhold  
6 their concern because if the answer does not come out to have  
7 an adequate basis, we'll just disregard it. But I'm certain  
8 that the events of July 30, '87 have lingered in your mind a  
9 lot. It's been very important to you; is that true?

10 THE WITNESS: (Thomas) They've been important to me  
11 since at the earliest October of this year.

12 I'll tell you very candidly, at the end of that  
13 meeting they had some importance to me that was fairly  
14 transitory. And when I first testified in October, I couldn't  
15 even remember what month we had that RAC meeting.

16 JUDGE SMITH: This has caused you a lot of concern.

17 THE WITNESS: (Thomas) Since November it sure has,  
18 yes.

19 JUDGE SMITH: And you have reflected back upon the  
20 day quite a bit.

21 THE WITNESS: (Thomas) Yes

22 JUDGE SMITH: Do you have an explanation -- what's  
23 your best explanation of how this dichotomy, how this  
24 digression of memories, and digression of views, how it has  
25 arisen?

1 I mean did you explain it by -- did you have an  
2 explanation for it at all?

3 THE WITNESS: (Thomas) The best explanation that I  
4 can come up with that fits all the facts, I mean accepting what  
5 Dr. Bores says is true and accepting what Mr. Lazarus says is  
6 true.

7 JUDGE SMITH: You can do that.

8 THE WITNESS: (Thomas) I'm willing to do that.  
9 I'm willing to believe that at the end of the meeting  
10 there was some kind of flurry, a flutter of hands in the blink  
11 of an eye on some issue that I don't even know what it was.  
12 That probably was something like, hey, are you wish NRC on  
13 this, guys, or are you with FEMA.

14 And if there had been such -- I'll tell you this. If  
15 there had been such a vote, I have little or no doubt that we  
16 would have lost hands down. And I -- no doubt about that at  
17 all.

18 My point was that we weren't ready to vote that day,  
19 and as chairman I would not have permitted a vote if one had  
20 been requested. We were just simply not ready to reach that  
21 point. I think it's always part of my job to protect the  
22 minority there and let them -- FEMA was not ready to come  
23 forward. FEMA wasn't ready to discuss that issue in an  
24 intelligent and intelligible way that day. They felt they  
25 needed to develop more information. I felt we needed to

1 develop more information, and I would not have permitted a  
2 vote.

3 We never had a vote, and I still then and at that  
4 point hoping we could come to a congruence on this and as we  
5 always had within the RAC.

6 It is possible there was something that I didn't  
7 observe and didn't know about. It is also I think worthy of  
8 note and that's why I mentioned it, that I was -- I was very  
9 angry with Bill Lazarus. I thought his conduct during the  
10 meeting was totally out of order and totally unacceptable, and  
11 which is what I told his supervisor and what I told Dr. Bores,  
12 and I also told them that there was one point during the  
13 meeting where I have to say that I thought he was -- I couldn't  
14 quite catch it. I thought he was using foul language to me  
15 just under his breath, and I was getting more and more angry.  
16 Towards the end of the meeting I was trying not to listen to  
17 his what I considered mutterings and grumblings.

18 If he said something at the end of the meeting, it's  
19 quite possible I wasn't hearing it, and I don't know, and there  
20 may have been some kind of flutter of hands. Paul Lutz is a  
21 very, very reliable and steady man. And if he says he  
22 remembers a flutter of hands, then, well, so be it. He also  
23 says he can't remember what it was about exactly, and he can't  
24 remember if anybody else raised their hands.

25 I just don't know. There is some doubt in my mind.



1 Certainly at points in this I have been at a loss to explain  
2 it. Based on my conversation with Paul Lutz, there sounds like  
3 there might be some rational explanation.

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1 BY MR. OLESKEY:

2 Q If there was a flutter of hands according to the  
3 conversations you have had with other FEMA people present and  
4 other RAC members present, Mr. Lutz, outside of the NRC  
5 representatives, was the only person upon whom it made an  
6 impression.

7 MR. TURK: Objection. Totally speculative. He's  
8 talking about recollections.

9 JUDGE SMITH: I think you're going -- now you're  
10 going from what Mr. Flynn told Mr. Thomas from Vermont Yankee.

11 MR. OLESKEY: Well, I'm asking about his own two  
12 discussions, Your Honor, with these --

13 MR. TURK: Your Honor, totally speculative. These  
14 are discussions held four months after the meeting, and he's  
15 asking about what made an impression. And what may have made  
16 an impression back in July is not necessarily what people  
17 recalled in November or December.

18 MR. OLESKEY: No, that's --

19 MR. TURK: Particularly if someone didn't ask the  
20 right questions that trigger recollection.

21 JUDGE SMITH: He's going to restate it.

22 MR. OLESKEY: Let me restate it.

23 BY MR. OLESKEY:

24 Q Did anybody else report to you in either of the  
25 several conversations you had with your own staff or other

1 agency members that they recalled anything that could  
2 approximate a flutter of hands on an issue at the end of the  
3 meeting?

4 A (Thomas) No, and I'd like to add to that.

5 Q Go ahead.

6 A (Thomas) There are those that have reported to me,  
7 and very emphatically, more emphatically than I remember it. I  
8 don't remember a vote. I don't believe a vote took place. I  
9 don't remember a show of hands. I don't believe it took place.

10 There are people that have come to me and said that  
11 they know, that they are sure that a vote and a show of hands  
12 did not take place, and have articulated reasons for that. I  
13 mean they are must stronger on this than I am.

14 And I have laid out for those people flutter of  
15 hands, shows of hands, vote, polling, whatever it is. And they  
16 said, no, there was no such thing.

17 MR. TURK: Can we get an identification on that?

18 THE WITNESS: (Thomas) John Quinlan.

19 BY MR. OLESKEY:

20 Q Who is he?

21 A (Thomas) John Quinlan --

22 JUDGE SMITH: Excuse me. Go ahead. Answer.

23 THE WITNESS: (Thomas) John Quinlan works in my  
24 office as a technological hazards specialist, and has indicated  
25 to me that because of his background in life he is extremely

1 sensitive to what he calls divisions of the house, or voting.  
2 And that he is convinced that there was no vote and there was  
3 no show of hands.

4 BY MR. OLESKEY:

5 Q He was there?

6 A (Thomas) Oh, sure, sure.

7 Q What's his background that makes him sensitive to  
8 nuances like this?

9 A (Thomas) He is a former Massachusetts state senator.

10 MR. BARSHAK: Mr. Dignan will buy that one.

11 (Laughter.)

12 MR. DIGNAN: I was going to say he was a town  
13 moderator. But I know the difference between a vote, too.

14 (Board confer.)

15 JUDGE SMITH: Gentlemen, the Board has listened to  
16 this testimony and I recommended to my colleagues that we have  
17 just heard enough about the vote matter. My recommendation has  
18 been based upon, golly, more than three decades of trial  
19 experience in which totally honest people have unbelievably  
20 diametric versions of the same events, and we don't think that  
21 it's worthwhile inquiring any further into it. It is not going  
22 to play a large role in our decision. It's taking too much  
23 time. It is causing anguish of people that is not deserved  
24 because of the facts, and we don't want to hear anymore.

25 That's our ruling. The record is closed on it.

1 MR. TURK: May I ask a clarification?

2 JUDGE SMITH: I would really prefer you didn't unless  
3 you really have to. I think the message is pretty direct  
4 there.

5 If you think you have to, Mr. Turk, I want you to.

6 MR. TURK: I'm not interested in making an issue of  
7 this at all. The only reason we're here is Mass. AG wanted to  
8 be here with this issue.

9 JUDGE SMITH: That may be. Whatever the -- that is  
10 not important. The point is the Board has listened to all of  
11 this. We have read all we want to about it. We are familiar  
12 and particularly I am familiar with many areas of practice  
13 where people just have different perceptions, and they're  
14 honest people, and they just -- it cannot be explained how they  
15 have these different perceptions.

16 And inquiry, no matter how much inquiry you have you  
17 never really do get to the answer. And it isn't worth it.

18 MR. TURK: My only clarification --

19 JUDGE SMITH: Huh?

20 MR. TURK: The only clarification I ask is, are you  
21 closing the record on only the vote issue, or on the  
22 expressions of views in the meeting?

23 JUDGE SMITH: We were talking right now about the  
24 vote issue. We have not had that much testimony on the  
25 expressions of views.

1           As a matter of fact, we don't encourage a heck of a  
2 lot going there. Mr. Thomas nas quite candidly conceded. He  
3 says, well, if there had been a vote, he has no doubt it would  
4 have gone against him.

5           The parties are not so far apart that we have to beat  
6 this to death, and we have more important things. It's been a  
7 distraction, an expensive one, a personally unsettling one to  
8 the people involved, and we're ruling it the ball is dead,  
9 whatever metaphor. The ship is dead in the water.

10           (Laughter.)

11           JUDGE SMITH: Although we're getting sick of that  
12 metaphor, but it's over, it's over now. Okay?

13           MR. OLESKEY: Thank you, Your Honor.

14           BY MR. OLESKEY:

15           Q     Mr. Thomas, immediately after the meeting did you  
16 report to your headquarters on what you thought should happen  
17 next?

18           A     (Thomas) Yes.

19           Q     What did you recommend?

20           A     (Thomas) Basically I recommended that we go forward,  
21 come up with a -- I don't want to use -- I'll use the word --  
22 elaborate. What I was thinking is a very elaborate, 10 - 20  
23 page paper that talked about the meteorology. I forgot to  
24 mention that before. That was one of the other concerns I had  
25 was the meteorology, some of the stuff that Mr. Lazarus had

1 said seemed at variance with my understanding of the  
2 meteorology in the area that talked about the issue of  
3 administrative law not considering things not in the record;  
4 talked about dose consequences; talked about fast-breaking  
5 accidents, et cetera.

6 And that we should develop such a thing; come up with  
7 the alternative language on J-9 and J-10-M, and vote it in the  
8 RAC, and then go forward.

9 The agency, FEMA, had already determined that even if  
10 J-10 and J-10-M were adequate, that FEMA came to the  
11 conclusions that it came to. And I just wanted to finish my  
12 RAC review to have it done and then we would go on.

13 Q What happened to that project that you recommended to  
14 do this big paper that stated the divisions, if you will?

15 A (Thomas) Well, I was asked if I was convinced that  
16 if we did such a paper that -- well, I was asked would we win  
17 in the RAC, and I said that it was the flip of a coin. That if  
18 it was a really good paper, we might. But that my sense was  
19 that we were -- the RAC was very much against us on this with  
20 respect to J-9 and J-10-M, and was certainly not supporting the  
21 testimony with respect to their advice on reasonable assurance.

22 And based on that the people that make the  
23 allocations of money and staff time in Washington said, well,  
24 we're not going to go forward on this. Forget it. We're just  
25 not going to do it.



1           And I would raise that from time to time because I  
2 just -- I wanted to get the RAC review completed and finished  
3 and over with and run it on a separate track from the  
4 testimony.

5           Q     What happened to the RAC review process in the late  
6 summer and fall of 1987, after this July 30 meeting?

7           A     (Thomas) Well, the only -- at that time the only  
8 thing that we had left to resolve in the RAC review were the  
9 open items on J-9 and J-10-M, and nothing happened. We had no  
10 other items received in the RAC until the New Hampshire  
11 submissions of August and September.

12           So the answer to your question, I guess, is nothing.

13           Q     Why wasn't there a meeting until January following  
14 the July 30 meeting?

15           A     (Thomas) Because I was told that I wasn't going to  
16 be given the resources to do -- to develop the material that  
17 was necessary in my mind to come to closure on J-9 and  
18 J-10-M, and I was strongly advised by the headquarters staff  
19 not to have a RAC meeting absent that material, and in fact not  
20 to have one at all.

21           Q     Who was that who told you that?

22           A     (Thomas) Certainly Craig Wingo told me that, and  
23 perhaps others. And I disagreed with it, but at the same time  
24 we were getting in towards the testimony preparation, and I was  
25 personally pretty much out of time to move forward on it

1 anyway.

2 Q Did you request some assistance through headquarters  
3 to have consultants do a technical analysis or evaluation of  
4 the position put out by Dr. Bores and the NRC in that second  
5 memorandum of June 4th?

6 A (Thomas) Well, sort of obliquely perhaps. What I --  
7 I requested really two different things.

8 One was with respect to closing out J-9 and J-10-M in  
9 the RAC. I said I want to finish this off, and we need -- I'd  
10 like to do the best we can with this, and explain this to the  
11 RAC in a clear and intelligible fashion so that we do come to  
12 the best result in the RAC, the most correct result. And that  
13 would have implied a technical analysis of the Bores paper; as  
14 I said a sort of line-by-line analysis.

15 Secondly, I suggested several times over the summer  
16 that it was my sense that the agency might want to very  
17 seriously consider reviewing the beach population testimony  
18 because it was going to be extremely controversial, and that a  
19 technical and peer review of a panel would be very, very much  
20 in order, and suggested some consultants be involved and  
21 brought into analyze the testimony and make sure it was what  
22 the agency really wanted to file in September, because I didn't  
23 want to have us put in the position where for any reason we had  
24 to change the testimony in the middle of the hearing.

25 Q What happened to that suggestion?

1           A       (Thomas) It was rejected because the people that I  
2 at least wanted to get involved and that we felt were the  
3 people that were needed were simply not available because of  
4 the Shoreham hearing.

5           Q       Did you role in preparing -- let me rephrase that.  
6                    What was your role in helping to prepare the  
7 testimony that was filed here by FEMA under date of September  
8 11, '87?

9           A       (Thomas) I -- well, just to give you background.  
10 Sequentially, essentially I was, number one, told that I would  
11 be the witness on the beach population testimony, and I would  
12 be a witness on all of the other panels with some assistance so  
13 that, you know, I didn't agree -- I didn't want to be the only  
14 witness on the beach population. I thought that that was a  
15 serious tactical error on the agency's part because it would  
16 make me into a personalized target.

17                   After the witness decision was made and I lost my  
18 fight on that, I was detailed to the Office of General Counsel  
19 and then worked with the other witnesses and with Bob Rospenda  
20 from Argonne and occasionally with other assistants in  
21 reviewing the testimony and creating the errata sheet and the  
22 other minor changes that were made to the testimony.

23                   We also were reviewing at that time, or considering  
24 at that time the development of an expanded version,  
25 supplemental version of the beach population testimony that

1 more clearly explained how we had gotten to it and what it was  
2 all about, and addressed the concerns that, hey, this -- the  
3 RAC is not with us on this one. This is -- there's a direct  
4 disagreement with the NRC, but this is how FEMA reached the  
5 conclusions it reached.

6 And I was involved with Mr. Flynn in creating that  
7 document, and we just, in terms of getting the testimony  
8 prefiled, we weren't able to get it done by the time of the  
9 prefiled date, and so we were holding that for use on direct  
10 testimony when the beach panel was put on.

11 And then as we slid into the hearings I would come to  
12 the hearings and be here, and go to Washington and get prepared  
13 for the following weeks as we went along.

14 Q Did you have any particular objectives that you  
15 wanted the agency to make clear in the portion of the testimony  
16 that was filed relating to the beach population?

17 A (Thomas) I thought it was very, very important for  
18 the agency to explain how it had gotten to where it was, and  
19 how much we were relying on the RAC, how much we weren't  
20 relying on the RAC, and that there was a disagreement with the  
21 NRC, and to really just lay it all out on one sheet of paper.

22 And it was decided that, yes, it was a great idea.  
23 We just didn't have time to do it at that point, and we'd  
24 handle it on the direct examination portion.

25 Q You're talking about someone other than yourself, I

1 take it.

2 A (Thomas) I'm not saying it was a deliberate  
3 decision. I would say that it was decided by the amount of  
4 time available. We just plain flat ran out of time. There are  
5 a couple of drafts around of what Mr. Flynn had worked up with  
6 my assistance on this subject.

7 Q One more incident in the summer of '87 before we dive  
8 into the fall together.

9 There has been testimony here, and you also gave  
10 deposition testimony as I think the Board is generally away,  
11 about what you recall of a discussion with Grant Peterson in  
12 Colorado in July of 1987 at a time when he was still a  
13 consultant with the agency before he became the associate  
14 director. I want to ask you some questions about that because  
15 it's not part of the record from you. It's merely because you  
16 testified to it in a deposition.

17 How did you happen to be in Colorado in July of 1987?

18 A (Thomas) There is an annual natural hazards  
19 conference that's put on by a nonprofit center in Boulder,  
20 Colorado, in conjunction with any number of federal agencies,  
21 and with the Natural Hazards Research Center in Boulder. And I  
22 try to attend that as often as I can to pick up information on  
23 especially hurricane and other evacuation planning, hazardous  
24 materials, latest information on dam break analyses, things  
25 like that

1 Q Okay. You were there?

2 A (Thomas) I was.

3 Q Had you ever met Grant Peterson before?

4 A (Thomas) I had never met Mr. Peterson before, no.

5 Q Did you meet him at this conference?

6 A (Thomas) Yes, I did.

7 Q What were the circumstances under which you met him?

8 A (Thomas) I arrived a day late for the conference for  
9 some reason that I don't recall right now, and went over, sat  
10 down with Mr. Krimm at his table, and at coffee break, as I  
11 recall, it was Tuesday morning. I can't remember the date now.  
12 I think the 12th of July, whatever it was it was that Tuesday  
13 morning of the conference. We were on break. Mr. Krimm walked  
14 over with me and said, Ed, have you met Grant Peterson.

15 I said, no, and he just said, Mr. Peterson, this is  
16 Ed Thomas, works in our New England office on Seabrook and the  
17 others.

18 Q Was that the entire conversation with Mr. Peterson at  
19 that time?

20 A (Thomas) No. Well, close. Mr. Peterson said  
21 something along the lines of Seabrook is a real mess, isn't it.  
22 A \$5 billion plant sitting there idle because of FEMA problems  
23 or emergency plan problems.

24 And then he looked at me, and he pointed and said,  
25 you're Ed Thomas. And he waved his hand down in a gesture of

1 dismissal, and he walked away.

2 So I remember the conversation very well.

3 Q Was Mr. Krimm there for that portion of the  
4 conversation?

5 A (Thomas) No, he was not.

6 Q He was not there?

7 A (Thomas) No, he was not.

8 He had just introduced me to Mr. Peterson and rushed  
9 off. Mr. Krimm is a very active participant in these meetings,  
10 and was somewhat harried all throughout the conference.

11 Q And that was the sum total of your conversation with  
12 Mr. Peterson that day?

13 A (Thomas) I have read the testimony from Mr. Krimm  
14 and Mr. Peterson that I was also introduced to Mr. Peterson  
15 that night at the barbecue. I don't recall that, but -- I just  
16 don't recall it. I'm not saying it didn't happen. I don't  
17 remember.

18 Q But the clear memory you have is of this morning  
19 meeting which you have just described?

20 A (Thomas) Yes, yes, very clear.

21 Q Okay. I want to ask you about some events during the  
22 course of last fall in connection with these hearings.

23 Was there a time in September after FEMA's testimony  
24 had been filed when you had a conversation with Mr. Flynn about  
25 the reaction that the utility was having to the substance of



1 FEMA's testimony?

2 A (Thomas) Yes.

3 MR. FLYNN: Your Honor, at this point, in  
4 anticipation of the questions which are about to come, I will  
5 raise a hearsay objection for the reasons that I suggested in  
6 the colloquy this morning. And that is, -- well I think there  
7 is an additional issue here that I didn't identify this  
8 morning, and that is the relevancy. And I think we know what  
9 the subject matter is. It's the so-called blood-on-the-floor  
10 discussion.

11 The hearsay problem is that Mr. Thomas will be asked  
12 to report what I said about what Mr. Dignan said. Now you've  
13 got two levels of hearsay. It may be Mr. Dignan's comments  
14 aren't being offered for the truth of the comments, but the  
15 fact that I reported Mr. Dignan's comments is being offered for  
16 the truth of that. So that's the hearsay problem.

17 And as I indicated earlier, if I have any quarrel  
18 with the details at all, there is no way to get at that because  
19 I can't be a witness.

20 MR. TURK: Your Honor.

21 MR. FLYNN: And I would also like to suggest that  
22 attorney/client privilege may also apply as well as the  
23 relevancy objection which I have just suggested.

24 MR. TURK: Your Honor, if this is indeed the so-  
25 called blood-on-the-floor comment, I object on grounds of

1 relevance. I don't see that it relates to 0654.

2 JUDGE SMITH: What was the blood-on-the-floor again?

3 MR. TURK: Is this what you're getting at, Mr.

4 Oleskey, because I'm not sure? If this is it, I just object to  
5 the line.

6 JUDGE SMITH: This is back at the hearing.

7 MR. OLESKEY: Back in September.

8 MR. TURK: No, sir

9 MR. OLESKEY: It was actually before the hearings  
10 began as I understand it. There are other -- you're thinking  
11 of a later instance during the course of hearing, and this is  
12 before the hearing.

13 And I am indeed going to ask a series of questions to  
14 demonstrate some things that I think that constituted unusual  
15 pressure put on this witness and in effect on his agency  
16 through him, because I think it's probative on the eventual  
17 decision that took place in March, but which his testimony and  
18 that of other witnesses and also Keller and Cumming will show  
19 is moving through the fall of '87 to the radical -- to the  
20 dramatic shift in position that we're all familiar with dated  
21 March 14th.

22 JUDGE SMITH: So you want to take him -- you want to  
23 take him step by step through the various, what you perceive as  
24 inappropriate pressures --

25 MR. OLESKEY: Yes.

1 JUDGE SMITH: -- which may have resulted in what?

2 MR. OLESKEY: At least the difficulties he had in  
3 being perceived by the Board here in testimony as someone who  
4 was being -- I think the Board has said in substance -- less  
5 than totally forthcoming and candid.

6 My view is -- Intervenors' view is that these  
7 pressures have to be taken into account when you evaluate how a  
8 man appears on the stand under unexpected voir dire when he's  
9 already been told that he and his agency are in trouble unless  
10 they reverse their position and withdraw their testimony.

11 JUDGE SMITH: Well, okay. Let's see if we can't cut  
12 it short because it's a very elusive thing. You know, how that  
13 would translate into candor and perception is such a tenuous  
14 relationship.

15 MR. TURK: Your Honor, the fundamental problem with  
16 Mr. Oleskey's premise is he's not going to be able to link up.

17 JUDGE SMITH: Well, I know.

18 MR. TURK: Whatever may have been said, there's been  
19 no one, either Mr. Thomas through his deposition or any other  
20 person who said this was somehow a factor in FEMA's  
21 consideration of their testimony, or that made an impression on  
22 anybody other than Mr. Thomas.

23 JUDGE SMITH: That's fine. That's why I want to  
24 throw out this. I don't think that it's going to be too  
25 helpful because it is tenuous. But the point is you used the

1 term this morning, Mr. Oleskey, don't be quite so circumspect.

2 MR. OLESKEY: Yes.

3 JUDGE SMITH: And, Mr. Thomas, you'll recall I had a  
4 conversation with you at the end of one day's testimony in  
5 which I -- with some exasperation -- suggested that you were  
6 being too -- and I wish I had thought of the word  
7 "circumspect", but I didn't. I thought of the word  
8 "conservative"; that it's hard to get the information from you,  
9 and that was a perception we had. And it just seemed to be a  
10 very laborious process as I've told you off the record and on  
11 the record.

12 Now, do you want to say anything about that? I mean,  
13 was there any merit whatever to our perceptions you believe, or  
14 was it just what?

E16

15 (Continued on next page.)

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T/17

1 THE WITNESS: (Thomas) I don't recall the context  
2 of Mr. Oleskey's "circumspect."

3 JUDGE SMITH: But, no -- but the reason I thought of  
4 it, I said, well, that's it, you know, that's the thing.

5 THE WITNESS: (Thomas) I thought of it, too.

6 JUDGE SMITH: Okay. That's the thing that was --  
7 drove me to comment to you after the hearing.

8 MR. FLYNN: I can supply the date for you, Your  
9 Honor, I remember that precisely.

10 MR. BARSHAK: I thought he was being asked if he  
11 wanted to respond to the Court.

12 JUDGE SMITH: Well, his testimony of October 7th and  
13 November 4th, you know.

14 MR. FLYNN: And you've also referred to the colloquy  
15 after his testimony on January 13th.

16 JUDGE SMITH: I don't recall that. But nevertheless,  
17 I think we've given him the benefit of the perceptions that we  
18 had and the opportunity to, if there is something to explain,  
19 to explain.

20 THE WITNESS: (Thomas) The only explanation I have  
21 is, I think with respect to the problem that you expressed to  
22 me on January 12th or 13th, I'm not sure which it was, the  
23 conservative --

24 JUDGE SMITH: I think it was.

25 THE WITNESS: (Thomas) -- the remark about being

1 conservative. I think that there was a misapprehension on my  
2 part about what your question was on a particular circumstance.  
3 And this was brought to my attention by counsel. I kept  
4 reading what I had said in response to your questions, in  
5 response to other questions, and couldn't understand what your  
6 concern was, in all honesty.

7           On reviewing that with counsel I was shown that there  
8 were two ways of reading something I had testified to that  
9 sounded like I was saying two different things about the  
10 reasons for having the RAC meeting in early January. And I  
11 wasn't. I wasn't clear enough when I was explaining to you --  
12 the particular statement is, I was saying the reason that we  
13 had the RAC meeting was to take care of an issue that I believe  
14 I said had become a cause celebre in this hearing.

15           The issue I was talking about was the J-9 and J-10-M  
16 RAC review, not the vote. I think it was ambiguous. I  
17 understand what your problem was now.

18           Very clearly, Mr. Flynn and I had taken care of, to  
19 our satisfaction, all issues relative to the question of vote  
20 in November. And frankly, sir, I never wanted in my life to  
21 hear about the July 30th RAC meeting again after November. I  
22 mean, it was -- after November it was an extremely unpleasant  
23 topic for me.

24           And that was certainly no part of our reason for  
25 calling the January RAC meeting. I think when I explained why

1 we had done that and used the language, there was a problem  
2 that was a cause celebre that had to get resolved in this  
3 hearing. It was not the vote, but finishing off J-9 and  
4 J-10-M, finishing the RAC review and being done with it. And  
5 then being able to explain how we had come to our conclusions  
6 on the beach population.

7 JUDGE SMITH: After you testified on October 4th and  
8 October 7th and November 4th the question came up about Mr.  
9 Dignan's comment to Mr. Flynn and the possibility that the  
10 matter should go to federal authorities in Boston, we decided  
11 to go back and read the transcript and see if there was  
12 something for us to do. I'm sure that you reread that, and it  
13 has to be very important to you.

14 And I haven't read that -- my comments for weeks,  
15 months actually, and I'm only going by memory and please don't  
16 be too analytical in the characterization of it, that we said  
17 that we found no reason to question your integrity, but we  
18 noticed that there's a lot -- a great deal of frustration on  
19 the part of Mr. Dignan eliciting the testimony that we felt  
20 that he was entitled to that we wouldn't go into that aspect of  
21 total believability or credibility of the testimony.

22 So we had problems with your testimony on October 7th  
23 and November 4th, which I characterized rather spontaneously as  
24 forthrightness.

25 I won't ask you to agree with my characterization



1 because you certainly must feel that you were forthright. But  
2 have you reread that testimony of October 7th and November 4th?

3 THE WITNESS: (Thomas) Have it? Yes.

4 JUDGE SMITH: Yes. Do you believe today that you  
5 were as forthcoming with the details of testimony as you should  
6 have been as a federal official representing your agency?

7 THE WITNESS: (Thomas) Yes.

8 JUDGE SMITH: You do?

9 THE WITNESS: (Thomas) I do.

10 JUDGE SMITH: Okay.

11 THE WITNESS: (Thomas) Can I explain more?

12 JUDGE SMITH: Certainly do.

13 THE WITNESS: (Thomas) I'm told that one of the  
14 Cardinal rules of practice is that you never disagree with the  
15 Judge, but I guess since I'm a witness I can take a shot at  
16 that. Sir, I don't believe you'll find that your comments  
17 following November were as you now recall them, if you read  
18 them again.

19 My recollection of your comments, and I haven't read  
20 it in a while, was basically that you saw no basis to question  
21 my candor. That Mr. Thomas had told you that this was a  
22 difficult subject area. And --

23 JUDGE SMITH: Integrity.

24 THE WITNESS: (Thomas) I won't dispute it with you.  
25 It says -- the transcript says whatever it says. But my point

1 is, you said that you won't -- your comment was -- your caveat  
2 was, we will not now discuss what weight we will give the  
3 testimony because that's inappropriate at this point.

4 I didn't see any reference in there to candor or  
5 credibility.

6 My point is simply this, I was asked a series of  
7 questions; to the best of my ability I gave an absolutely full  
8 response. That at times, as I understood your comment in  
9 January, was too full a response that, well, it might be this,  
10 it might be that. And I kept saying, let me expand on this and  
11 whatever.

12 And I also used a very unfortunate phrase that I  
13 don't know why I did which was, I don't want to mislead you.  
14 And by that I was trying to say, if I give you a short answer  
15 to this, it's not going to be correct. I want to give you a  
16 longer answer that's going to be more fuller and more  
17 explanatory.

18 And I think that you'll find when you look at the  
19 November 4th testimony that I was trying to answer it. I had  
20 given answers on a couple of occasions -- at one point you had  
21 said to me, answer his question, just say yes or no; and I  
22 really had already said, no, twice in the transcript. And you  
23 said at that point, well, if you've already said, no, you  
24 deserve an apology.

25 My point is that I did my best with those questions.

1 And I think if we went back over each and every one of them,  
2 there's not a whole lot that I'd change about them today in  
3 terms of giving you the fullest possible explanation in the  
4 world.

5 Certainly the RAC meeting of July 30th is clear to me  
6 now; I can remember more about it now than I could in October  
7 or November. In October I couldn't even remember the date of  
8 the darn thing and what month it was.

9 It was something that was considered to be totally  
10 irrelevant in terms of what the RAC said about J-9 and  
11 J-10-M to FEMA's position on the beaches. We had already  
12 decided -- the agency had decided at headquarters' level that  
13 regardless of what J-9 or J-10-M said, the agency was  
14 developing the testimony it was.

15 So I hadn't given that the kind of consideration that  
16 I might otherwise have given it, if it was pertinent to the  
17 testimony.

18 All I can tell you is, I have been, to my mind, as  
19 forthcoming as I possibly could be and answered the questions  
20 to the best of my ability and truthfulness every single time.  
21 And I think --

22 JUDGE SMITH: How about your direct testimony, are  
23 you satisfied with the completeness of that? See, that plays a  
24 very large role in my concern about, when I said  
25 forthrightness.

1 THE WITNESS: (Thomas) Okay, let's talk about it.

2 JUDGE SMITH: That was very important.

3 THE WITNESS: (Thomas) Okay, let's talk about that.

4 JUDGE SMITH: Your direct testimony, you came to this  
5 Board asking us to accept FEMA's position and put your direct  
6 testimony in context with the examination. And I'm not saying  
7 that it is easy then to look down and see where the problems  
8 are, I'm just saying looking back now.

9 THE WITNESS: (Thomas) Looking back now, I wish we  
10 had finished off the special beach population testimony that  
11 Attorney Flynn and I were working on in September, because I  
12 think it would have solved all your problems.

13 Looking back now, I wish that FEMA had more clearly  
14 brought out in October and November what it was we were saying,  
15 what it was we weren't saying.

16 It was clear to us that we were saying, the beach  
17 population testimony is something special, it's a matter of  
18 policy. And it certainly would have been much clearer when we  
19 later said in the next page or two pages later in the prefiled  
20 testimony that the testimony was largely based upon input from  
21 the RAC, et cetera, et cetera, collegial process of review, if  
22 we had put an asterisk there and said, beach population  
23 testimony is really not exactly quite on this same wave length  
24 as everything else, because the beach population --

25 JUDGE SMITH: So with respect to the beach population

1 issue, is it your belief now that you should have been more --  
2 you should have had a greater explanation of the RAC process?

3 THE WITNESS: (Thomas) Judging from your comments,  
4 yes. Yes. I wish we had. I had wanted to put that in. When  
5 I first developed what became the testimony, when I developed  
6 the -- what became the answers to contentions, I want to go  
7 through the whole thing right up through where we were June  
8 3rd. I had -- I don't know --

9 JUDGE SMITH: Well, put yourself in our position, you  
10 know, I think you can do that easily you've been here enough,  
11 and if you had been the decider on the fact and the officials  
12 charged with applying the law on the beach issue, do you think  
13 you would have wanted to know more about the RAC process?

14 THE WITNESS: (Thomas) I think that looking back in  
15 hindsight, yes. Remember, though, please, from FEMA's  
16 perspective we had decided that that was irrelevant to the  
17 beach population. We were saying that the beach testimony was  
18 essentially FEMA's interpretation of NUREG-0654 and our  
19 regulations, and a matter of policy. And we said that very  
20 early on in the testimony. And we said that in the testimony  
21 at my request. We thought that was clear enough. Obviously,  
22 it wasn't clear enough; I wish we had done it better. I  
23 wish we --

24 JUDGE SMITH: Well, you said one thing here that I  
25 can focus on a little bit better. Your testimony is that

1 this direct testimony referenced to the RAC and the RAC  
2 collegial process was a generalized testimony. And that here  
3 you have looking in there this little time bomb of the beach  
4 population, and if you had to do it over again you might have  
5 what, footnoted that or --

6 THE WITNESS: (Thomas) Something. I mean, we  
7 thought that flagging it early on in the testimony, stating  
8 that the beach population testimony was a matter of policy was  
9 sufficient.

10 Later we go on -- two pages later or thereabouts we  
11 say -- we describe the testimony in general as being the result  
12 of a collegial process, getting input from all these people.  
13 That is strictly true. I mean, it --

14 JUDGE SMITH: Yes.

15 THE WITNESS: (Thomas) -- I mean, we got input from  
16 people. And we had determined that we didn't care what they  
17 said, that -- and I think that we should have made that very,  
18 very clear. I think that would have helped the Board. I think  
19 it also would have helped if we had been more clear and more  
20 insistent at FEMA's level on what we were saying and what we  
21 weren't saying.

22 Several times in the transcript Your Honor did  
23 misstate what we claimed to be doing. We never claimed to come  
24 in with a RAC position. We never claimed to come in with  
25 testimony that was approved by the RAC. We claimed to come in



1 with something that had gone through a collegial process of  
2 review that included input from the RAC.

3 JUDGE SMITH: Exactly, you got it right there.

4 THE WITNESS: (Thomas) Okay. And I -- you know,  
5 there was no intent, certainly, to deceive the Board. There  
6 was no intent to get into this awful mess that we had gotten  
7 into.

8 JUDGE SMITH: Can you see now how it would -- how the  
9 Board would infer that when you get RAC input and RAC review,  
10 and as a consequence -- as a part of a consequence, here you  
11 are, that we would assume that you had RAC support?

12 THE WITNESS: (Thomas) I can understand that except  
13 that I note, that we did say that the beach population  
14 testimony -- early on we said, it was a matter of policy. And  
15 we were trying to distinguish -- the answer to your question  
16 is, yes, I can understand it. Yes, I wish we would have done  
17 it better.

18 Let me also point out, though, that that -- while I  
19 adopted that testimony as the introduction, that was written by  
20 Attorney Flynn in cooperation with me, in terms of this being a  
21 personalized thing that Ed Thomas is not forthcoming --

22 JUDGE SMITH: The policy aspects of it. The emphasis  
23 that it's FEMA policy.

24 THE WITNESS: (Thomas) Well, what I'm saying -- my  
25 point is that, if we're talking about is Ed Thomas the witness



1 forthcoming, honest and candid; Ed Thomas the witness didn't  
2 write all that testimony all by himself. Ed had input to it,  
3 and it was developed as an agency posture.

4 JUDGE SMITH: Well, okay, Mr. Thomas, that's a good  
5 explanation. But I'm sure that one thing you have learned now  
6 that it's Ed Thomas who took the heat, when the testimony that  
7 you defended came under attack.

8 THE WITNESS: (Thomas) Well, my point is, not that  
9 I'm trying to back away from that. I mean, we did the best we  
10 could with it. There was nothing in it that I disagreed with.  
11 If there had been something in there that I disagreed with, I  
12 wouldn't have agreed to have my name on it.

13 JUDGE SMITH: Anything -- go ahead, I'm sorry.

14 THE WITNESS: (Thomas) But my point was just that  
15 there were other people involved, it isn't Ed Thomas failing to  
16 be candid, that the whole agency is responsible for that  
17 document as well with me.

18 And I hope that you're not thinking that FEMA is not  
19 candid with the Board. That's my point is, not that I'm trying  
20 to say, hey --

21 JUDGE SMITH: Mr. Thomas, I had difficulty from the  
22 very beginning, and I have difficulty today receiving testimony  
23 that says, that FEMA arrives at its position, and it uses --  
24 and here I'm going to fall. You're going to find something  
25 wrong with it. But the essence is, the direct testimony says

1 that it uses RAC, it's a collegial process. And FEMA arrived  
2 at its position and it uses RAC to do it. And you didn't tell  
3 us that RAC disagreed with you. Now, I still have trouble with  
4 that and nobody has ever explained it.

5 Your agency has it. Mr. Flynn has it. The closest  
6 we've come to it is that Mr. Peterson and Mr. McLoughlin came  
7 here. But I still to this very moment, as I sit here, cannot  
8 accept that testimony as being forthcoming.

9 THE WITNESS: (Thomas) Well, can I --

10 JUDGE SMITH: Yes, and that is exactly why I'm saying  
11 it, and I want you to get every opportunity to explain it. But  
12 I still cannot accept it.

13 THE WITNESS: (Thomas) Okay.

14 JUDGE SMITH: Let me give you, when I was a boy in  
15 school I came home and told my mother that everybody in our  
16 class got a star for spelling good except one, isn't that  
17 great. You know who that one was? That was me, see. And if  
18 you -- for you agency to come in and say, well, here we had  
19 this RAC process, this RAC review and here is our result, and  
20 not tell us that RAC doesn't support you, the Board  
21 unanimously, this last time I consulted, felt that that was  
22 less than forthcoming from your agency and from you.

23 And that's it, it's just disagreement. And that's,  
24 but I think that's about the best we can do unless you want to  
25 do something more.

1 THE WITNESS: (Thomas) I guess there's really not a  
2 whole lot more that we can do other than to point out from our  
3 logic -- I'm not saying we were right. I'm just saying that we  
4 did the best we could to flag this very early on in the  
5 testimony. Page two we talk about FEMA considers the statement  
6 about the transient beach population to largely involve matters  
7 of policy.

8 I absolutely agree with you. And if I had it to do  
9 over again, surely we would flag that again, later on when we  
10 talk about this going through the process that included input  
11 from the RAC. Yes, I had input; they disagreed. It blew right  
12 past us. We didn't mean to -- as an agency we certainly didn't  
13 mean to mislead the Board. I certainly never picked up on  
14 that. I didn't really pick up on that until most recently  
15 reviewing the transcript and understanding what had gone on.

16 Certainly as a whole -- you look at the whole  
17 testimony as Mr. Turk pointed out it's 70 pages or whatever it  
18 was -- oh, it was over 100 pages long, I think. It's quite a  
19 package. That as a whole, there was extensive input from the  
20 RAC.

21 There were two pages in there that we flag as a  
22 statement of policy that I wish we had said, the RAC is not  
23 with us on this and we don't care; that's irrelevant and we're  
24 not going to pursue this, whether it's lack of agreement or  
25 disagreement. When I walked out of there July 30th that was

1 important to me, they didn't quite disagree yet, we still had a  
2 chance to turn this around. But they certainly were not  
3 supportive of it, and I wish we had flagged that for you so we  
4 had full closure.

5 I'm sorry and I apologize for my part in that. We,  
6 as an agency, did our best. I did my best in developing this  
7 to flag these issues. And it was at my insistence that we had  
8 sentences in there that flagged this as a special item.

9 JUDGE SMITH: Well, that's a good lesson for  
10 everybody. And we have 50, 55 days of hearings, mountains of  
11 papers. We need, particularly from government agencies, we  
12 should not have to look and search where the problem is; it  
13 should be laid out for us easy so we understand easily as  
14 we -- it's impossible to misunderstand.

15 There's too much -- too much information passing by,  
16 and we depend very heavily upon you to tell us or advise us  
17 where the right road is.

18 THE WITNESS: (Thomas) I'm certainly not disagreeing  
19 with you. Let me just add that, it might be worth the Board  
20 knowing and maybe even looking at, the draft testimony we were  
21 developing on the transient beach population which we weren't  
22 able to get done in time for the prefile, but which was our  
23 intention to use, when we actually put the testimony of the  
24 beach population on. When it became, as we understood it,  
25 important for the Board to understand where we were. And that

1 goes through the whole process of RAC review and everything  
2 else.

3 JUDGE SMITH: Well, you made a good point because I  
4 recognize that that testimony never was actually offered, it  
5 was prefiled and that's it.

6 MR. FLYNN: Your Honor --

7 JUDGE SMITH: Mr. Flynn.

et/17

8 (Continued on next page.)

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1 MR. FLYNN: Your Honor, I am concerned -- well, it  
2 may be that my objection at this point is moot because I don't  
3 know what Mr. Oleskey's intentions are, and we will let him  
4 announce that. But you've raised another matter, and I have to  
5 say I'm concerned about your comment that even now FEMA has not  
6 explained to the Board's satisfaction --

7 JUDGE SMITH: No, that's not what I intended to say.  
8 What I intended to say is I go back over -- as I go back over  
9 the testimony, the direct testimony explaining how -- I have it  
10 right here.

11 Maybe something we're missing, and maybe it's worth  
12 this time. Huh? You don't think so. Well.

13 JUDGE HARBOUR: I think we're beating a dead horse.

14 MR. FLYNN: Perhaps we don't need to belabor the  
15 record with this. Let me just say that if on further  
16 reflection the Board has unsatisfied concerns, if you will  
17 identify them for me either privately or on the record at a  
18 later time, I will be more than happy to address them.

19 JUDGE SMITH: Read it from Page 4 of the direct  
20 testimony.

21 MR. FLYNN: Of what date?

22 JUDGE SMITH: Of the offered direct testimony that  
23 you submitted on September something. Number 11.

24 MR. FLYNN: Yes.

25 JUDGE SMITH: Page 4. Positions which FEMA has taken



1 on the NHRERP, the exercise of NHRERP and the contentions which  
2 the Atomic Safety and Licensing Board has admitted were arrived  
3 at through a collegial process of review by FEMA's regional  
4 office in Boston, consultation with FEMA's regional assistance  
5 committee, RAC, and Argonne National Laboratory, and review by  
6 FEMA state and local programs and support directorate in  
7 Washington, D.C.

8           The RAC is an interagency committee constituted in  
9 each of the 10 standard federal regions pursuant to 44 CFR 351.  
10 The committee is composed of representatives of FEMA, the NRC,  
11 et cetera. FEMA and the RAC have provided comments, and it  
12 goes on, and it tells all about the RAC. It tells, you know,  
13 that they are part of the collegial process, and yet we don't  
14 find out on the most important issue in this whole are that RAC  
15 reviewed it, yes, and they disagreed. We don't find out.

16           And I'm still not happy with it. But as Judge  
17 Harbour says, I'm beating it to death, and I think I am, and I  
18 think we'd better go on with it. But that falls short of my  
19 expectations.

20           THE WITNESS: (Thomas) Your Honor.

21           MR. FLYNN: I understand that, Your Honor.

22           THE WITNESS: (Thomas) Before you lose -- Page 2, I  
23 think, has to be read in context with that, in all fairness.

24           JUDGE SMITH: Policy, it's RAC -- I read that, yes.

25           THE WITNESS: (Thomas) We meant to split it off.



1 Remember, we never put the beach testimony on. Please remember  
2 that.

3 JUDGE SMITH: I got it. I'm not -- I'm long since  
4 trying to beat up on you, Mr. Thomas.

5 What I'm trying to state right now is the  
6 responsibility that has been given to us by the Atomic Energy  
7 Act and by the Notice of Hearing cannot be met -- cannot be met  
8 in this case and in any case in the future unless we have more,  
9 better help. You've got to lay it right out clean for us. We  
10 can't read it and understand all these nuances.

11 Of course, that's why we have an adversarial process  
12 here, because others can. But that never in a hundred years  
13 would we ever have divined from there, or even questioned  
14 whether or not the RAC had supported the position. It wouldn't  
15 even have occurred to me to even question that it happened.

16 Now that's in retrospect. Now you know it now. I'm  
17 just saying that we need careful help, careful help when a  
18 government agency comes to us, which we give a great deal of  
19 respect to, that they've got to be very careful that we  
20 understand exactly what the problem is.

21 MR. FLYNN: That explanation is helpful, Your Honor.  
22 Thank you.

23 JUDGE SMITH: Mr. Oleskey.

24 MR. OLESKEY: Yes, I had a pending question, Your  
Honor, and then there was an objection or two, and we went off

1 in this other direction which is associated with it, but  
2 doesn't fundamentally get me to the line of questions and  
3 answers I want to have.

4 So I guess we're at a point we have to deal with the  
5 objections, because I'm going to press the questions. And then  
6 if you want to know more about my purpose, I'll be happy to  
7 tell you. Fundamentally --

8 JUDGE SMITH: Well, the -- no, what happened was, as  
9 I recall, you were going to elicit information of influences  
10 upon Mr. Thomas.

11 MR. OLESKEY: Attempted influences on Mr. Thomas.

12 JUDGE SMITH: Attempted influences on Mr. Thomas.

13 MR. OLESKEY: And through him, in my judgment at  
14 least, the agency as part of the explanation that the  
15 intervenors wish the Board to understand, which is that we  
16 think there were a number of influences out of the ordinary  
17 force on FEMA.

18 JUDGE SMITH: But you characterized it, and I didn't  
19 understand your purpose, you characterized it as this may have  
20 given rise why the Board had some misperceptions of Mr.  
21 Thomas's testimony.

22 MR. OLESKEY: Yes. The aspect of it that relates to  
23 Mr. Thomas as distinguished from the agency, in my judgment,  
24 could have affected, and maybe you have closed that off, I  
25 don't know. I guess you have to make that conclusion.

1 JUDGE SMITH: Well, I think it should be put to bed  
2 now.

3 MR. OLESKEY: Well, I have --

4 JUDGE SMITH: Since we have the last word.

5 MR. OLESKEY: Except I haven't had a chance to ask  
6 him what effect on the conduct of his duties as perceptions of  
7 how he had to appear as a witness these various instances that  
8 were reported to him meant. That's separate and apart from the  
9 issue of the inference that I want you to draw eventually, and  
10 you can draw it or not draw it. It's open on the record, I  
11 suggest, that the agency's conduct was affected ultimately in a  
12 decisive manner by a series of influences of which this  
13 particular line is only one.

14 Also included, obviously, as you know now from our  
15 position, the meeting of January 19th with the clash between  
16 FEMA and the NRC and Mr. Stello's very vigorous and forthright  
17 comments, we're going to make war on your agency unless you  
18 recede. We think it's part of a package.

19 MR. TURK: Characterization improper.

20 JUDGE SMITH: You have a categorical objection. I  
21 don't think we can handle it categorically. I think you had  
22 better ask your questions one at a time.

23 But go ahead with your --

24 MR. TURK: I was going to say I was objecting to the  
25 characterization of Mr. Stello's comment, but I won't

1 interrupt. Unfortunately, I've done that.

2 MR. FLYNN: If Mr. Oleskey is going to press the line  
3 of questioning, then I will press the objection. And that has  
4 to do with hearsay, and relevance, and attorney/client  
5 privilege.

6 MR. BARSHAK: I think Mr. Flynn is replacing me  
7 improperly. It's not your privilege. It's the client's  
8 privilege. It always has been in the law.

9 MR. FLYNN: The client I'm referring to is FEMA.

10 MR. BARSHAK: At this point he's being questioned as  
11 a conversation with you, and you are apparently asserting an  
12 attorney/client privilege with the witness. The law has always  
13 been it's the witness's privilege, not yours. And as his  
14 lawyer, I have advised him he can waive it here.

15 So far as hearsay is concerned, anything Mr. Dignan  
16 says on behalf of the Applicant, if he's going to repeat it as  
17 you have told him, it isn't hearsay. It's the opposite.  
18 That's the clearest example of an admission.

19 MR. TURK: Your Honor, I'd like to note two things.

20 One, in response to Mr. Barshak, I think he's wrong.  
21 Unless he can establish that Mr. Thomas was not within the  
22 scope of the privilege -- the scope of FEMA for which Mr.  
23 Thomas -- which Mr. Flynn was representing when the  
24 conversation took place, then it is Mr. Flynn's prerogative to  
25 assert the privilege on behalf of the client which is the

1 agency with which Mr. Thomas was aligned.

2 Now I'll let Mr. Barshak respond, but I want to note  
3 one other thing.

4 My objection to the line of question is relevance.  
5 Whatever may have been the importance that Mr. Thomas attached  
6 to the blood-on-the-floor comments, it doesn't relate, unless  
7 Mr. Oleskey can show us that he's going to connect it, it  
8 doesn't relate in any way to pressures on FEMA that may have  
9 affected a change in testimony.

10 MR. BARSHAK: Well, I guess my -- the only thing I  
11 would add, Your Honor, is if I can add my 30 years to your 30  
12 years. If anyone will say that the attorney/client privilege  
13 belongs to the lawyer instead of the client, that's news to me.

14 JUDGE SMITH: We've recognized in the past that FEMA  
15 itself through Mr. Flynn, its general counsel, has a right to  
16 assert a privilege, and we've recognized both the  
17 attorney/client privilege and the work product privilege with  
18 respect to Mr. Flynn's conversation with Mr. Thomas.

19 Now it may very well be that there was another  
20 privilege that Mr. Thomas could have that you could waive.  
21 They're maybe overlapping privileges. I up you six years on  
22 that 30.

23 (Laughter.)

24 MR. BARSHAK: I'll up you three years on your 36.

25 (Laughter.)

1 MR. OLESKEY: I understood that one of the reasons  
2 that FEMA told Mr. Thomas to get his own counsel was because of  
3 the eventuality of a series of questions just like this.

4 MR. TURK: Well, the question is when the privilege  
5 is -- when the conversation for which privilege is asserted  
6 took place was the communicant part of the agency which had the  
7 privilege, unless you can establish that if that was not true  
8 at the point of the conversation, there's been waiver of the  
9 privilege pertains.

10 MR. FLYNN: I agree with Judge Smith's analysis of  
11 the point that I was trying to make.

12 JUDGE SMITH: Well, we will recognize the FEMA  
13 privilege. Now whether we will decide that the privilege does  
14 not withstand the need of the hearing or not is another matter.

15 So give me the privilege in context. What is the  
16 question?

17 MR. FLYNN: I think we've established, and Mr.  
18 Oleskey can correct me if I misstate something. He's about to  
19 ask the witness about statements which I'm alleged to have made  
20 to him reporting statements which Mr. Dignan made to me about  
21 "the blood on the floor".

22 And the conversation took place -- the conversation  
23 between me and Mr. Thomas took place as we were preparing  
24 testimony.

25 JUDGE SMITH: As a consequence, Mr. Thomas, of a



1 conversation you had with Mr. Flynn which may or may not have,  
2 use the express "blood-on-the-floor", did you do anything or  
3 did it affect your duties in any way?

4 THE WITNESS: (Thomas) Not consciously.

5 JUDGE SMITH: Okay.

6 MR. TURK: No connection.

7 JUDGE SMITH: All right.

8 BY MR. OLESKEY:

9 Q Following -- I've been asking you about an instance  
10 in late September, Mr. Thomas, prior to the onset of the  
11 hearing, correct?

12 A (Thomas) Yes.

13 Q All right. After that, in October and November, were  
14 there later conversations with Mr. Flynn and/or Mr. Cumming in  
15 which other comments made by counsel for the utility about you  
16 and the agency's testimony were reported to you?

17 MR. FLYNN: Same objection.

18 BY MR. OLESKEY:

19 Q Yes or no.

20 MR. TURK: Well, there's an objection.

21 MR. OLESKEY: Well, I'm entitled to a yes or not.

22 MR. TURK: Not unless you get --

23 JUDGE SMITH: Now what a minute.

24 MR. TURK: -- of the objection.

25 JUDGE SMITH: There is an unprivileged allusion to



1 the events you're talking about: the letter sent to us, the  
2 discussion, everything else. There's an unprivileged allusion  
3 to it. Go straight to those circumstances, those events affect  
4 his judgment or his agency's policy or whatever you're trying  
5 to get at.

6 You don't have to into the privileged. There's  
7 sufficient unprivileged disclosure of that information.

8 MR. OLESKEY: Okay.

9 BY MR. OLESKEY:

10 Q Understand what the Judge is saying?

11 I take it the Judge is saying in connection with the  
12 matters that were discussed between counsel and the Board,  
13 namely, the report that we made in a letter to the Board that  
14 you had been told by your counsel that because of your November  
15 4th testimony, Mr. Dignan had said he was considering or how  
16 would the agency or how would you react if the testimony were  
17 referred to the U.S. Attorney or an attorney in Massachusetts.

18 MR. DIGNAN: I object. There is not one ounce of  
19 evidence that that was allegedly said, Mr. Oleskey, and this  
20 thing has been gone into by a letter, reviewed by the Board and  
21 your attempt to have me censured was thrown out.

22 MR. OLESKEY: I thought you were directing me to  
23 put that -- to summarize that question to him, Your Honor. I  
24 don't understand Mr. Dignan's ire. I really don't.

25 MR. DIGNAN: That is not a fair summary of what was

1 in the letter, what was alleged or anything else.

2 JUDGE SMITH: All right. Without trying to  
3 characterize what happened, go to a common characterization of  
4 what happened, and -- I mean, skip over that and go to what  
5 effect it may have had upon -- go to his perception of what  
6 happened, leaving out -- that's not going to work either.

7 MR. FLYNN: Your Honor, I think it's perfectly  
8 obvious to the witness what letter we're referring to, and I  
9 think the question can be put to him without anymore  
10 elaboration than that.

11 JUDGE SMITH: Well, you know the letter I'm talking  
12 about. Counsel wrote us a letter --

13 THE WITNESS: (Thomas) Yes, Your Honor.

14 JUDGE SMITH: -- saying that Mr. Dignan should be  
15 disciplined.

16 THE WITNESS: (Thomas) Yes, Your Honor.

17 JUDGE SMITH: Sanctioned.

18 Now did the events as you perceived them to be  
19 underlying that letter affect your performance, and did it  
20 affect your agency's performance?

21 THE WITNESS: (Thomas) All of the events underlying  
22 the letter, not just the incidents referred to in the letter,  
23 did have an affect on me and my performance, and therefore the  
24 agency's performance, at least with respect to efficiency.

25 Let me be clear on that. We wasted a lot of time

1 worrying about it, and calling RAC members, and doing this,  
2 that and the other thing, to calling other people to find out  
3 what conversations I may have had with some person named Tom  
4 Hubbard, doing this that and the other things took a lot of my  
5 time in November and December, and took a lot of agency time as  
6 well.

7 JUDGE SMITH: Did it change any determinations other  
8 than induce inefficiencies, did it change any determinations  
9 made by your agency?

10 THE WITNESS: (Thomas) It did not by me. I have to  
11 answer I don't know with respect to the agency.

12 JUDGE SMITH: All right.

13 BY MR. OLESKEY:

14 Q Did it affect how you approached your testimony here  
15 as a live witness?

16 A (Thomas) It caused me very, very considerable  
17 concerns as to, in essence, what I was going to be put through  
18 in order to do my job. Yes.

19 JUDGE SMITH: Did you have a concern that unless you  
20 oriented your testimony in a certain way you would be perceived  
21 as not being candid? Did you feel free to come here and  
22 testify to the truth as you know it?

23 I'm suggesting for your consideration that the events  
24 preceding your appearance here may have put you in a situation  
25 where you're concerned that if you tell the truth, you may not

1 be believed, and that therefore you should perhaps bend a  
2 little bit toward your adversary's point of view so that you  
3 will be more believable.

4 Do you understand that?

5 THE WITNESS: (Thomas) I'm not sure I really do in  
6 all honesty.

7 JUDGE SMITH: All right.

8 THE WITNESS: (Thomas) Maybe I can tell you what was  
9 going through my mind and see if we can go from there. I'm for  
10 some reason having trouble with your questions.

11 What it caused me to do was to be very, very  
12 concerned that, in essence, slanderous accusations, false  
13 accusations would be made against me. To be very concerned  
14 that my name would be dragged through the mud.

15 How much influence that may have had, I don't know.  
16 In terms of my appearance in January, I think it very clearly  
17 caused me to be incredibly cautious in answering the questions,  
18 because I didn't want to make any misstatements at all, and I  
19 think that was perhaps partially what Your Honor was  
20 complaining about. You may say this, you may mean that, and  
21 I'm going to try and be very expansive in the answers.

22 Is that responsive to your question?

E18 23 (Continued on next page.)

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1 JUDGE SMITH: I guess, I don't know. You don't  
2 feel, you didn't feel any pressure to tailor your testimony, to  
3 accommodate the view of your adversary to avoid being charged  
4 with -- to avoid being slandered.

5 THE WITNESS: (Thomas) Yes, I felt that very much.

6 JUDGE SMITH: Oh, did you?

7 THE WITNESS: (Thomas) Yes.

8 JUDGE SMITH: Did you alter your testimony to avoid  
9 being slandered?

10 THE WITNESS: (Thomas) No, sir.

11 BY MR. OLESKEY:

12 Q Mr. Thomas, if I understood you what you're saying  
13 is, you altered your manner of testimony for fear that  
14 something you said would be used against you on account of  
15 these instances; is that an accurate way to sum it up?

16 A (Thomas) Perhaps. What I'm saying is that I may  
17 have altered my way of testifying to be hypercautious about  
18 everything I said out of the belief that my testimony would be  
19 distorted and attempts would be made to slander me.

20 JUDGE SMITH: Okay. Let's move on because this  
21 simply cannot be of any use to the Board or to the record as to  
22 whether the emergency planning regulations are being complied  
23 with unless you have something else you want to add --

24 THE WITNESS: (Thomas) No, sir.

25 JUDGE SMITH: -- for yourself.

1 MR. OLESKEY: Okay.

2 JUDGE SMITH: That's a very ethereal approach.

3 MR. OLESKEY: I think -- I happen to believe that the  
4 last series of questions and answers which you put and I put  
5 made the point that I think is appropriate that went to the  
6 Board's prior perception on part of the witness. And it was,  
7 as I said, in part for that reason I offered it. And so I  
8 don't think of it as ethereal, I think of it as productive.

9 JUDGE SMITH: Okay.

10 MR. OLESKEY: But that's why I'm here and you're  
11 there.

12 THE WITNESS: (Thomas) Can I just add one thing in  
13 response to your question. I would like to add one more thing  
14 and that is, the one comment that was related to me that you  
15 got in a somewhat distorted version in the letter alone would  
16 not have caused me the apprehension I felt.

17 JUDGE SMITH: Standing alone.

18 THE WITNESS: (Thomas) That's right, I would have  
19 shrugged it off.

20 MR. OLESKEY: Can I have a moment with my notes?

21 JUDGE SMITH: Sure.

22 (Pause)

23 BY MR. OLESKEY:

24 Q Was there a time in the fall of 1987 when there was a  
25 question whether or not you ought to attend a meeting between



1 your agency and the NRC or to be part of some discussion with  
2 the NRC, and Mr. Krimm advised you that he didn't want you  
3 there for a particular reason?

4 A (Thomas) Yes.

5 Q Would you describe in time and context that  
6 particular incident, please?

7 A (Thomas) Yes, sure. This was in the period when we  
8 were doing Seabrook witness preparation, as I testified to  
9 generally, pretty much the whole off week when we weren't in  
10 Concord I'd be in Washington, D.C. as part of the witness  
11 preparation. And there was to be a meeting with the NRC on, I  
12 believe, it was October 15th and there -- I was giving talking  
13 points to review and I was part of the analysis of what FEMA  
14 wanted to talk about, and it pretty well all concerned sites in  
15 FEMA, Region 1. And I suggested that I'd like to go along and  
16 hear what was said and contribute possibly.

17 And my very, very strong recollection is that it was  
18 Mr. Krimm. He and I, since I testified in deposition, have had  
19 couple of conversations about this, but my strong recollection  
20 is that it was Mr. Krimm and not one of his staff who said to  
21 me, Ed, you can't go, you're a red flag to the NRC and it would  
22 just upset them or words to that effect.

23 Q Was it explained why you would be a red flag to the  
24 NRC?

25 A (Thomas) I'm not prepared to swear it was. There



1 were other conversations along that line during that period,  
2 mostly focusing in on -- sometimes they'd focus in on the beach  
3 population testimony and sometimes on the Pilgrim self-  
4 initiated review. But the sense was that the -- at least the  
5 NRC headquarters personnel were very, very upset with Ed Thomas  
6 in Region 1.

7 Q Now, this deposition -- there was testimony at your  
8 deposition and Mr. Krimm was asked about it here when he was  
9 here, of a conversation that you had with him several years  
10 earlier in connection with the discussion of policy disputes  
11 between FEMA and the NRC and whether he had said to you at some  
12 time on that earlier occasion in substance, "You know, whenever  
13 there's a clash between the agencies the NRC goes to the White  
14 House and FEMA loses." So let me ask you, was there any such  
15 conversation between the two of you at any time?

16 A (Thomas) Yes.

17 Q When was it and what was the context?

18 A (Thomas) My best recollection is that it was  
19 somewhere between 1982 and 1984. My sense is, it was probably  
20 in the middle of that period. It was during intensive  
21 controversy over the Shoreham Nuclear Powerplant site. Mr.  
22 Krimm was not satisfied with the position that the Agency was  
23 taking on certain aspects of the Shoreham planning and had  
24 recused himself, he wouldn't be part of the issues, he had  
25 recused himself from that. And he and I went out to dinner and

1 we were talking about events. Is that responsive to your  
2 question?

3 Q Is the substance of what I've indicated what he said  
4 to you on that occasion?

5 A (Thomas) Yes.

6 Q Did you talk to him about that since then?

7 A (Thomas) Sure.

8 Q Have you asked him if he can recall it?

9 A (Thomas) Yes.

10 Q What's he say?

11 A (Thomas) Well, he initiated a call to me to say that  
12 he had reviewed my deposition and he really didn't remember the  
13 conversation about the calls from the White House or we go to  
14 the White House or whatever the form was, the way the battle  
15 got taken to the White House and FEMA lost.

16 And I started to refresh his recollection by  
17 reminding him of the year and what restaurant we were in, et  
18 cetera. And he told me that he just didn't want to hear about  
19 that, he just didn't remember it and that was the end of it.

20 After he testified and I read his testimony I did  
21 mention it to him during the course of a phone call that he had  
22 placed to me on other business and we talked about this at a  
23 little bit more length and I emphasized to him that I was  
24 talking about something that had come up during the course  
25 of -- a time when he was very, very dissatisfied with the

1 agency's position that we were taking with respect to Shoreham  
2 and whether there would be an exercise of the Shoreham Nuclear  
3 Powerplant and the like. And perhaps, other issues related to  
4 Shoreham.

5           And he told me that, well, he really had never meant  
6 to testify that conversations hadn't taken place, either the  
7 red flag conversation or the White House conversation, that  
8 he'd meant to say that he just didn't remember them. And went  
9 on to say that as far as he was concerned he understood how  
10 sometimes when one party was particularly struck with a  
11 conversation, especially if it was from several years old it's  
12 hardly surprising and the other party didn't remember it. And  
13 went on to volunteer that he and I have known each other almost  
14 15 years. He's hired me. He has a very special relationship  
15 with me, he's essentially my mentor, almost a father figure for  
16 me.

17           And that he said that he's never known me to tell a  
18 lie. That he believes I was telling the truth, even if I was  
19 wrong in my recollection, that it was truthful. And that he is  
20 shocked that anyone could think that what he testified to or  
21 could in any way indicate untruthfulness on my part. And said  
22 that he would be very willing to come forward and explain that  
23 to the Board that he didn't understand that that was the nature  
24 of the questions he was being asked.

25           Q     Now, I'm going to ask you some questions about a

1 different topic. There's an exhibit in evidence which is, I  
2 believe, Mass. Attorney General 37 which is a document styled  
3 essentially "NRC proposed rebuttal testimony to FEMA." Are you  
4 familiar with that document?

5 A (Thomas) I don't know it by that number. I know of  
6 a document of proposed rebuttal testimony or draft rebuttal  
7 testimony, something like that.

8 Q Let me show you a copy. It's dated October 5, 1987,  
9 there's a cover letter from Mr. Turk with it?

10 A (Thomas) Yes, I'm familiar with this document.

11 Q Did you see a copy of that some time shortly after it  
12 was sent out on October 5th?

13 A (Thomas) By shortly we mean within a week; yes, I  
14 did.

15 Q Other people in the agency saw it?

16 A (Thomas) Before I did, yes. As I recall -- gee, I  
17 don't remember who was the first one to get it, and shortly  
18 after that I got it.

19 Q Were you a party to discussions in the agency about  
20 the significance of this filing by the NRC staff for FEMA's  
21 testimony on the beach population in the hearings?

22 A (Thomas) Yes. Yes.

23 Q What was FEMA's reaction when various officials  
24 including yourself reviewed this staff filing which is now  
25 Exhibit Mass. AG 37?

1 MR. FLYNN: Excuse me, can we have the preliminary  
2 question of who these conversations were with.

3 MR. OLESKEY: Sure. I'm hoping he's going to go to  
4 that.

5 THE WITNESS: (Thomas) Yes. What I was going to  
6 point out is, FEMA as an agency doesn't have reactions to  
7 things.

8 BY MR. OLESKEY:

9 Q I understand.

10 A (Thomas) I mean, people have reaction.

11 Q When I say that it's a shorthand way of asking you to  
12 tell us what people said to you and what you said to them  
13 within the agency about how to respond to this?

14 A (Thomas) Let me start out by saying that the first  
15 reaction was by Attorney Cumming who -- I'm sorry, witness  
16 Cumming who went on at some length about what I at least  
17 consider to be -- I don't want to characterize it. He said  
18 some things about Attorney Turk, which I'd rather not repeat,  
19 and indicated that this was inappropriate conduct on the part  
20 of the Nuclear Regulatory Commission, that we were their  
21 experts on offsite emergency preparedness planning.

22 Sequentially after that I certainly had conversations  
23 with Attorney Flynn many times, and I -- maybe we can save an  
24 objection here -- I don't even remember the details of the  
25 conversations other than that they caused me to start working

1 on an analysis of surrebuttal testimony, information that would  
2 be used for a surrebuttal plan. And a lot of my people in my  
3 office spent a lot of time working on different aspects of  
4 surrebuttal with respect to this during the period October into  
5 early November.

6 Q Had anybody who talked to you at FEMA ever had any  
7 experience where the NRC staff in a licensing hearing had filed  
8 testimony or proposed testimony, the object of which was to  
9 rebut FEMA, their own expert, in such hearings?

10 MR. TURK: Objection to the characterization.

11 JUDGE SMITH: The expert?

12 MR. TURK: Yes. You're calling them an expert.

13 MR. OLESKEY: I think that's what the memorandum of  
14 understanding says, Your Honor, that's why I used it.

15 MR. TURK: Read it again.

16 JUDGE SMITH: Well, whatever it says, we know about  
17 the rebuttal presumption and the regulation.

18 MR. OLESKEY: Why they appeal and it's all in this.

19 JUDGE SMITH: Without requiring Mr. Thomas to accept  
20 the expert characterization, can you answer the question?

21 THE WITNESS: (Thomas) Could I have it again,  
22 please, I'm sorry. Could I have the question again.

23 BY MR. OLESKEY:

24 Q The question was, did you learn from anybody at FEMA  
25 or did you know yourself whether the NRC staff had ever filed



1 in any licensing proceeding testimony or proposed testimony,  
2 the stated object of which was to rebut a position already  
3 advanced by FEMA in that same proceeding?

4 A (Thomas) This was discussed in a couple of meetings  
5 and nobody could remember such an incident. I don't know of  
6 one of my own knowledge.

7 Do you want -- I mean, it was discussed in a meeting  
8 with Craig Wingo, Margaret Lawless, Joe Flynn, Bill Cumming,  
9 and perhaps Dick Krimm, but I don't recall if Dick was there.

10 Q I don't react reflexively to Mr. Turk's incisive  
11 demands that use name people, so unless I do it or he insists  
12 on it, don't feel you have to, okay.

13 A (Thomas) Yes.

14 Q Now, at the same time in October of '87 did you --  
15 were you told that Mr. Keller and Mr. Baldwin were doing some  
16 work for the agency that bore on these proceedings?

17 A (Thomas) Yes.

18 Q Who told you that they were involved and what were  
19 you told about their involvement?

20 A (Thomas) I was told by both Attorney Flynn and by  
21 Craig Wingo that Joe Keller and Tom Baldwin would be working on  
22 assisting us in the witness preparation phase of the sheltering  
23 -- Seabrook beach sheltering testimony.

24 Q And did you have conversations with either one of  
25 them about what they were doing at any time in the fall of



1 9187?

2 A (Thomas) Well, I went through a couple of meetings  
3 with them, the result of which was that I called Joe Keller and  
4 essentially said to him, what in the world is going on here,  
5 what is this all about. And he told me the purpose of the  
6 meeting was to get me to, quote, "Fairly, you know, semiquote,  
7 you know, as best I recall it, get you, Ed Thomas, to change  
8 your position on the beach population."

9 Q The purpose of what meeting, Mr. Thomas?

10 A (Thomas) These were what I thought were witness  
11 preparation meetings.

12 Q Were these in September, October or some other time?

13 A (Thomas) I have notes of meetings in October 28th  
14 and October 29th, there were others as well.

15 Q Okay. Where were the meetings of the 28th and 29th  
16 of October?

17 A (Thomas) In Washington.

18 Q Who else was there besides you and Keller and  
19 Baldwin?

20 A (Thomas) People would come in at various times, but  
21 pretty much throughout you'd have Craig Wingo and Margaret  
22 Lawless, sometimes Marshall Sanders, sometimes Vern Wingert,  
23 but Craig and Margaret were there pretty much for the whole  
24 thing. Joe Flynn was there pretty much for the whole thing.  
25 And Bill Cumming might have been there for some of it, I don't

1 remember.

2 Q Did either Keller or Baldwin tell you what it was  
3 they were doing for FEMA that would bear on the agency's  
4 testimony here in connection with the beach population?

5 A (Thomas) Not on the 28th and 29th, no.

6 Q Were there any discussions about, on the 28th and  
7 29th, about the time at which accidents might be expected to  
8 occur at Seabrook or anything along those lines?

9 A (Thomas) Yes. I do have notes of the meeting and I  
10 can give you a brief run down. Essentially the thrust of what  
11 Joe Keller was saying at that point was, in essence, that  
12 fast-breaking accidents, and I'm sorry I just don't know the  
13 technical mathematical terms, but he had plotted out the number  
14 of fast-breaking accidents there were in the WASH-1400 series  
15 of accidents, and he used a technical mathematic term for the  
16 way that they appeared on the graph and said that it really was  
17 not so much a sequence of accidents, but really one accident  
18 when you looked at it in terms of mathematical theory; I don't  
19 understand that stuff.

20 And said, you could argue that the fast-breaking  
21 accidents really were a worse-case accident, and therefore  
22 could be excluded from emergency planning.

23 And I said, no, no. Here we have the Christenbury  
24 memo that says, fast-breaking accident in fact is not the  
25 worse-case accident, so let's put that one aside.

1           And then Joe went on to say that the fast-breakers  
2 were comparatively mild, and he was talking about the  
3 PWR-8 and 9 type of accident, the noble gas accidents that, he  
4 didn't describe as being benign but said that they generally  
5 would not exceed the PAGs for the beach population. And said  
6 that really our testimony was focused on the extreme edge of  
7 the spectrum of accidents that we're supposed to be preparing  
8 for in terms of emergency preparedness planning.

9           Tom Baldwin had developed some numbers that attempted  
10 to show that by using the evacuation time estimate that by the  
11 time any plume could reach the beach population, many of them  
12 would have already left.

13           Q     Left the beach?

14           A     (Thomas) Left the beach. Left -- he thought left  
15 the area, but he had misinterpreted the ETE and he and I spent  
16 a lot of time going through what the ETE really said. But his  
17 point had some validity and that is, we often say, well, gee,  
18 what's the clear time evacuation for an area, forgetting that  
19 that's when the last car is out, and perhaps the bulk of the  
20 population has left hours before that and he attempted to  
21 develop a rationale saying that many, many people would be  
22 protected even though a lot of people would be struck in  
23 traffic for a long time or even the duration of the accident.

24           Q     Was this the kind of technical backup that you would  
25 ask the agency to undertake in the summer of '87 as you

1 previously testified?

2 A (Thomas) Well, no, not really. It was perhaps the  
3 kind of rigorous -- I beg your pardon, the kind of rigorous  
4 analysis that was needed before we filed our beach population  
5 testimony, and I didn't mind going through rigorous analysis.  
6 But it -- the thrust of what they were doing seemed to be  
7 designed with a particular objective in mind rather than to try  
8 and do an objective analysis of whether we had to abandon the  
9 beach population testimony.

10 In any case, I had understood that they were there to  
11 support the testimony. I didn't mind that they were pushing  
12 against it to poke holes in it and see what kind of holes  
13 others could poke in it. But it did strike me as strange and  
14 that was why I called Joe Keller later to say, what in the  
15 world was going on here.

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16 (Continued on next page.)

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1 Q That's when you had the conversation with you that  
2 you detailed, that it was a meeting, at least in part, to get  
3 you to change your mind?

4 A (Thomas) That was -- well, he said was the meeting  
5 was to get you to change your mind, Ed. He didn't say about in  
6 part.

7 Q Thank you.

8 What was your understanding after these meeting at  
9 the end of October about where the agency was going to go with  
10 the testimony on the beach population having had these meetings  
11 with these outside consultants, and having the testimony still  
12 sitting here ready to be offered to the Board?

13 A (Thomas) Well, there were a couple of discussions  
14 going on there at about the same time Mr. Dignan had filed his  
15 motion in limine on the beach population testimony, and FEMA  
16 was faced with a decision as to whether or not it would respond  
17 to the motion. And that was a subject of very, very lively  
18 debate within the agency. Perhaps I should say even  
19 acrimonious debate within the agency.

20 And this discussion of what Joe Keller and Tom  
21 Baldwin had come up with was folded into the debate about  
22 whether we should file any type of response to the motion in  
23 limine, or as one person in the agency had suggested, just  
24 simply accept the motion in limine and hope to God it was  
25 granted so that we would get out of the bind that we were in.

1 Q What was that bind?

2 A (Thomas) Well, that was how it was described, words  
3 to that effect; the bind that we were in, and I had an  
4 understanding of what that was. And the understanding was that  
5 this individual was having conversations with the NRC  
6 headquarters staff and there was anger. And certainly the  
7 utility had already expressed some anger about our beach  
8 population testimony. And, you know, prior to November 4th,  
9 there had been conversations, not just the blood on the floor,  
10 and you know, we knew we were in for a tough fight.

11 MR. TURK: Your Honor, I move to strike the question  
12 and answer. The answer was again in the form of the rankest of  
13 hearsay. Unnamed persons, relating conversations with unnamed  
14 persons. Those generalized discussions of anger, God knows  
15 where and by whom. I would move to strike it.

16 If Mr. Oleskey wants to try again, let him get some  
17 specifics.

18 MR. OLESKEY: Well, if there's going to be objection  
19 because you don't put names on conversations, you'll have to to  
20 back and put names on conversations.

21 THE WITNESS: (Thomas) Sure.

22 BY MR. OLESKEY:

23 Q Go ahead.

24 A (Thomas) The person involved is Craig Wingo at  
25 FEMA's end, and I do not know who he was talking to at the NRC.



1 That is beyond my knowledge.

2 Q Now you indicated Mr. Wingo was part of these  
3 conversations in Washington on the 28th and 29th of October; is  
4 that right?

5 A (Thomas) Yes.

6 Q Did you have a conversation with him during that time  
7 about FEMA backing off its existing beach population position?

8 A (Thomas) Yes. What he said in essence was, look,  
9 we've got to back off this position. The only question is how  
10 far. We talked about -- he made a suggestion that instead of  
11 saying that the plans, the New Hampshire were inadequate with  
12 respect to this, that it was a question, that we weren't sure.  
13 And we went through a discussion about this, which I don't know  
14 if you want to get into. It relates to Pilgrim.

15 Q Only if it bears on the agency's then deliberations  
16 respecting Seabrook.

17 A (Thomas) Perhaps it does. Let me just finish it  
18 off.

19 What we had said with respect to Pilgrim and the  
20 beach population was that we didn't have enough information.  
21 We didn't know whether or not the problems with respect to the  
22 transient beach population at Pilgrim would be an impact on  
23 public safety, whether it would impact on our finding of  
24 reasonable assurance of an adequate level of public safety, and  
25 we asked for more information.



1           Mr. Wingo suggested we go forward with a similar  
2 position saying we didn't know. And I asked him, well, what  
3 information did we need. And he said, I don't know, but we've  
4 got to do something. We've got to figure out a way to back off  
5 this thing.

6           And I basically said that I disagreed with what  
7 Keller was saying in terms of he was the wrong person to say  
8 it. If the NRC wanted to come in and say we didn't have to  
9 plan for fast-breaking accidents, that I didn't know how you  
10 could compare that with NUREG-0654, and all the things that we  
11 do as a normal course of action in terms of very much focusing  
12 on prompt protective action decisionmaking and all the other  
13 decisions that had been reached over the years, but certainly  
14 we had to listen very closely because they're the ones that  
15 really set the parameters on emergency planning, but that  
16 Keller wasn't the one who did, and that the stuff that Baldwin  
17 had come up with was just simply not persuasive, and I showed a  
18 number of places where it was just simply wrong and in error,  
19 and that I didn't see any basis to change the testimony based  
20 on that.

21           And we had a discussion with FEMA counsel, including  
22 the actual General Counsel of the agency at that time, Spence  
23 Perry, and the decision was made that we would continue to  
24 support the testimony and file a motion in limine -- file a  
25 response to the motion in limine.

1 JUDGE SMITH: Is this a good time to break, Mr.  
2 Oleskey.

3 MR. OLESKEY: Yes, I actually think it is.

4 JUDGE SMITH: All right.

5 MR. OLESKEY: You haven't asked, but I'll volunteer  
6 that we seem to have actually made meaningful in roads and  
7 accomplished the great bulk of my examination today.

8 JUDGE SMITH: I inferred that you had.

9 All right, we'll -- Mr. Turk.

10 MR. TURK: Your Honor, I just wanted to ask if the  
11 Board is considering whether to release those documents I had  
12 provided.

13 JUDGE SMITH: Okay, let's take those up. I think they  
14 should be identified.

15 MR. TURK: I have a copy.

16 JUDGE SMITH: No, we're getting our copy.

17 We're done for the day. We're taking up some  
18 paperwork now, so as far as you're concerned, you are free to  
19 step down and relax, whatever.

20 THE WITNESS: (Thomas) Thank you.

21 JUDGE SMITH: We're just taking up motions now.

22 MR. BARSHAK: Nine a.m. tomorrow, Your Honor?

23 JUDGE SMITH: Yes, please.

24 We're on the record, yes.

25 Mr. Turk gave me three groups of papers. One was a

1 memorandum dated November 4, 1987, from Dr. Bores to Edwin Reis  
2 who is deputy assistant to the General Counsel, who is in the  
3 Hearing Division, and it is Mr. Bores's report to Mr. Reis at  
4 his request, reviewing Mr. Thomas's testimony of October 7th.  
5 And it makes many comments on the testimony.

6           It is being asserted here as attorney work product  
7 privilege, and it is indeed that. We had no trouble saying  
8 that that is attorney work product. The question is, is there  
9 any statements made by Mr. Bores in it which would require us  
10 for the needs of the hearing to set aside the work product  
11 privilege and require its production.

12           In any event, we find no need. There is nothing in  
13 there that would indicate that there is anything being withheld  
14 from either the Intervenors or the Applicant which would be of  
15 any significant use to them.

16           We make the same ruling for a -- on a memorandum by  
17 Dr. Bores dated November 19th to Mr. Reis in which he analyzes  
18 the November 4th testimony of Mr. Thomas. And it's the same  
19 thing. It is generally consistent with Dr. Bores's testimony  
20 and we see no particular use.

21           And then Mr. Turk provided me and the Board an  
22 opportunity to review some of his handwritten notes dated July  
23 31st which purports to be a conver -- is, I'm sure, a  
24 conversation with Dr. Bores about the July 30th meeting; a  
25 conversation meeting with Mr. Flynn dated August 5th; a

1 conversation with Dr. Bores again on November 9th; and a  
2 conversation dated November 23 with Dr. Bores -- I mean a  
3 conversation on November 23; a conversation with Mr. Flynn on  
4 November 25th; Mr. Conklin on December 12th. And going on, Mr.  
5 Thomas from January 8th, and that's about it.

6 And then we have some -- well, these have been -- we  
7 have been asked to review these to determine whether, although  
8 they are, many of them, factual accounts of interviews,  
9 determine if they reflect the mental impressions of counsel.

10 And I'm not quite sure, Mr. Turk, you have some of  
11 them outlined as being particularly, you believe, contain  
12 mental impressions, but then you make the general argument that  
13 your selection of what you write down there tends to reflect  
14 mental impressions.

15 Is that your argu -- are you asking for protection  
16 for all of the documents, all of them?

17 MR. TURK: No. I have two levels of request, Your  
18 Honor.

19 Incidentally, let me not that there is one other set  
20 of notes that you didn't mention in your accounting, and that  
21 was a conversation with Dr. Bores on January 8th.

22 JUDGE SMITH: I thought I mentioned that one.

23 MR. TURK: There are two levels of my argument, Your  
24 Honor.

25 The first is that the areas that I have indicated

1 with the blue line on the margin are clearly mental  
2 impressions.

3 JUDGE SMITH: Yes, I agree.

4 MR. TURK: And should not be released.

5 JUDGE SMITH: Just the blue line?

6 MR. TURK: In terms of clear mental impression of the  
7 attorney setting out discussion of potential litigation  
8 strategy.

9 Now as to the rest of the documents, I'd like to  
10 retain them all. I recognize that if it's a pure factual  
11 accounting, it won't qualify for attorney work product. I felt  
12 more strongly about the July 31st memo because -- or set of  
13 notes because that reflected answers to questions I had asked.  
14 So I felt that the mere fact that it was a question and answer  
15 type of discussion that it doesn't reflect the type of notes  
16 that the rest of the notes consist of.

17 JUDGE SMITH: Well, I just don't see that they  
18 contain anything that would have been of any value during Dr.  
19 Bores's testimony.

20 MR. TURK: I would indicate also, Your Honor, that  
21 all of the discussions with Dr. Bores are consistent, in my  
22 view, entirely.

23 JUDGE SMITH: Yes, we couldn't see anything useful.  
24 There is one area in which we thought, at least I thought might  
25 be useful, and that is when Dr. Bores reports conversations

1 with Mr. Thomas about Mr. Thomas's testimony.

2           However, given our ruling that we want to bring this  
3 issue to a close and have in fact brought it to a close, it  
4 would not change our ruling. It would not really change the  
5 nature of the dichotomy between you or the difference of  
6 opinion. It just is not useful, and we're going to -- we're  
7 not going to require you to release any of it.

8           And then we have what might be called the attorney  
9 work doodles --

10           (Laughter)

11           JUDGE SMITH: -- which reflect mental impressions  
12 that only a psychologist could fathom. But I'm sure that we'll  
13 protect those, too.

14           (Laughter.)

15           MR. TURK: My son --

16           JUDGE SMITH: So we're including the whole thing.

17           MR. TURK: Thank you.

18           Your Honor, I note my son is in kindergarten and he  
19 draws better than I do.

20           I want to, just for the sake of complete openness, I  
21 want to disclose that I have one other document that I don't  
22 think is fairly embraced by the request of Mr. Oleskey.

23           Mr. Oleskey's request to us of October 27th commenced  
24 a time frame of September 1, 1986. And I do have a document  
25 that goes back to early 1986, which I have not produced

1 previously because it was outside of that scope.

2 The recent request by Mr. Oleskey on May 19th asked  
3 to go back to January of 1986, and it would fall within that  
4 except I believe that the intent of the second request was to  
5 use the same time period as the prior request of October 27th.  
6 And on that basis I have not produced it yet.

7 MR. OLESKEY: I don't understand what Mr. Turk is  
8 saying. If it's something that he apparently thinks should be  
9 produced except for a privilege that is no privilege, why  
10 doesn't he produce it?

11 MR. TURK: No, that's not the point.

12 I'm talking about scope of time. Mr. Oleskey's  
13 request of last October asked for documents which originated  
14 started September 1986. And I do have a document which  
15 predates that, and therefore was not produced earlier.

16 On May 19th Mr. Oleskey asked for documents going  
17 back to January of 1986, or December of '85, because it was his  
18 and my joint recollection that that's what his original request  
19 had asked for. And because I believe that the intent of this  
20 request, the current request has been to use the same time  
21 frame as the prior request of last October, I have not made  
22 production.

23 MR. OLESKEY: Let me just say, Your Honor, that if  
24 the question about the timing, given the amount of evidence  
25 that we've had and what I now know about the sequence of events



1 from 1981 forward, I would be requesting a document that Mr.  
2 Turk otherwise thinks is responsive that predates whatever time  
3 I arbitrarily picked in October, and I won't press it beyond  
4 that.

5 I would like to have to have it if it's responsive. I  
6 don't have any idea whether it would be useful at this point.  
7 Obviously I haven't done very well so far today. If I'm going  
8 to get one document, I'll go home happy. If I'm not, that's  
9 life.

10 JUDGE SMITH: Well, wait a minute. Are you demanding  
11 these documents?

12 MR. OLESKEY: I'm asking for the document he's  
13 telling me he hasn't produced that he apparently feels is  
14 responsive but for the fact in October I arbitrarily picked one  
15 date, and that we've gone well before that date, and if it's  
16 relevant to the issue, which it must be or Mr. Turk wouldn't be  
17 mentioning it, I'd like to have it.

18 JUDGE SMITH: All right.

19 MR. TURK: I'm going to have to ask the Board to  
20 review it for privilege. It was withheld --

21 JUDGE SMITH: Okay.

22 MR. TURK: -- from a FOIA request on the grounds of  
23 privilege, and I'd ask you to review it yourself.

24 JUDGE SMITH: All right. Do you want to give it to  
25 me and take possession of the three papers you have given me?

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All right, and we'll rule tomorrow.

Adjourned until 9:00 a.m.

(Whereupon, at 5:41 o'clock p.m., the hearing was recessed, to resume at 9:00 a.m., Tuesday, June 15, 1988.)

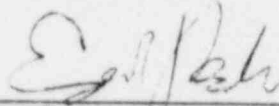
UNITED STATES DISTRICT COURT  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
PUBLIC SERVICE COMPANY OF ) Docket Nos. 50-443 OL  
NEW HAMPSHIRE, ET AL ) 50-444 OL  
(Seabrook Station, Units 1 and 2) ) Off-site Emergency Planning  
)  
)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorneys, *members of the*  
herewith enter an appearance on behalf of Edward Thomas in the *Bar of*  
captioned matter. *Massachusetts*

  
\_\_\_\_\_  
Edward J. Barshak

  
\_\_\_\_\_  
Christine M. Netski

33 Union Street  
Boston, Massachusetts 02108-2406  
(617) 227-3030

DATED: *June 14, 1988*

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

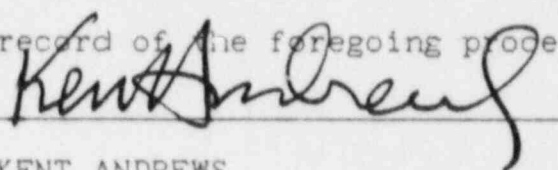
Name: PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE, et al.

Docket Number: 50-443-OL, 50-444-OL

Place: CONCORD, NEW HAMPSHIRE

Date: June 14, 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/ 

(Signature typed): KENT ANDREWS

Official Reporter

Heritage Reporting Corporation