

UNITED STATES NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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

DOCKET: 50-443-0L
50-444-0L
OFFSITE EMERGENCY
PLANNING

Pages: 13670 through 13950

Place: Concord, New Hampshire

Date: June 15, 1988

8806200194 880615
PDR ADDCK 05000443
T PDR

TR-01
0/1

HERITAGE REPORTING CORPORATION

Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

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

Tax50Tt1

3 In the Matter of:)
4)
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)
11 EVIDENTIARY HEARING

12 Wednesday,
13 June 15, 1988
14 Room 302
15 Legislative Office Building
16 Concord, New Hampshire

17 The above-entitled matter came on for hearing,
18 pursuant to notice, at 9:00 a.m.

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

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

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

1 APPEARANCES:

2 For the Applicant:

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

9 For the NRC Staff:

10 JOSEPH F. SCINTO, ESQ.
11 Acting Assistant General Counsel, Hearing Division
12 SHERWIN E. TURK, ESQ.
13 Office of General Counsel
14 U.S. Nuclear Regulatory Commission
15 Washington, D.C. 20555

16 For the Federal Emergency Management Agency:

17 H. JOSEPH FLYNN, ESQ.
18 GEORGE WATSON, ESQ.
19 Federal Emergency Management Agency
20 500 C Street, S.W.
21 Washington, D.C. 20472

22 For the State of New Hampshire:

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

26 For the Commonwealth of Massachusetts:

27 CAROL SNEIDER, ASST. ATTY. GEN.
28 STEPHEN OLESKEY, ESQ.
29 Commonwealth of Massachusetts
30 One Ashburton Place, 19th Floor
31 Boston, Massachusetts 02108

32 For the New England Coalition against Nuclear
33 Pollution:

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

1 APPEARANCES: (Continued)

2 For the Seacoast Anti-Pollution League:

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

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

11 For the Town of Hampton:

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

17 For the Town of Kensington:

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

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

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

For the Town of Amesbury:

(No Appearance)

For the witness Edward Thomas:

EDWARD J. BARSHAK, ESQ.
CHRISTINE NETSKI, ESQ.
Sugarman, Rogers, Barshak & Cohen
33 Union Street
Boston, Massachusetts 02108-2406

I N D E X

1					
2	<u>WITNESSES</u>		<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
3	EDWARD THOMAS				
	by Mr. Oleskey	13684			
4	by Mr. Dignan		13858		
	by Mr. Oleskey			13868	
5	by Judge Harbour				13872
	by Judge Linenberger				13875
6	by Mr. Backus			13881	
7	WILLIAM CUMMING				
	by Mr. Flynn	13921			
8	by Mr. Backus		13938		
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					
24					
25					

I_N_D_E_X (Continued)

2	<u>EXHIBITS:</u>	<u>IDENT.</u>	<u>REC'D.</u>	<u>REJ.</u>	<u>DESCRIPTION</u>
3	<u>Massachusetts Attorney General:</u>				
4	No. 52	13710	13713		1 page, memo, 21 Dec. '87, Vickers to McLoughlin
5					
6	No. 53	13721	13800		1 page, memo, 22 Dec. '87, McLoughlin to Vickers
7					
8					
9	No. 54	13793		13793	Handwritten notes of Ed Thomas
10					
11	No. 55	13842	13846		5 pages, draft memo, 7 March '88, Thomas to RAC with attachments
12					
13	<u>Applicant:</u>				
14	No. 39	13858	13864		5 pages, handwritten draft letter to Strome
15					
16					
17					
18					
19					
20	<u>INSERTS:</u>				
21	<u>Description:</u>				<u>Page:</u>
22	Mr. Scinto Notice of Appearance				13950
23					
24					
25					

T21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

JUDGE SMITH: Good morning.

Mr. Turk, the Board has decided that the document you submitted for our review is not entitled to work product privilege and should be made available to the parties.

Any preliminary business?

MR. OLESKEY: One matter, Your Honor.

I talked to John Traficonte this morning, who is back at the ranch working on paper for all of you. And he asked me --

JUDGE SMITH: Lots of it, I expect.

MR. OLESKEY: Yes, as a matter of fact.

He asked me to make this request which, given the volume of paper you already have, will probably make you feel a little ambivalent, but anyway he has divided the response to the contentions into two portions: A portion that will address the first six contentions which we have been referring to loosely as the "legal" contentions, and a second portion which addresses the balance of the 77 contentions.

He has been out a couple of days in the last week with dental problems, and Friday, believe it or not, it a legal holiday for the state. It's called Evacuation Day in Boston. It's the day that we brought the cannon down from Ticondaroga.

MR. DIGNAN: It's not Evacuation Day. It's Bunker Hill day.

1 MR. OLESKEY: Bunker Hill day. Thank you.

2 MR. DIGNAN: Evacuation Day is otherwise known as St.
3 Patrick's Day, Mr. Oleskey.

4 (Laughter.)

5 MR. OLESKEY: We have a lot of obscure --

6 MR. DIGNAN: I'm sensitive about those things.

7 MR. OLESKEY: We have a lot of obscure holidays.

8 JUDGE SMITH: It surprise me that civilization hangs
9 together in Boston.

10 (Laughter.)

11 JUDGE SMITH: But it does seem to though.

12 MR. OLESKEY: Well, there's some people who I'm sure
13 that it does.

14 MR. DIGNAN: The Athens of America, Your Honor.

15 JUDGE HARBOUR: It's because they have so many
16 holidays.

17 (Laughter.)

18 MR. OLESKEY: That helps.

19 Anyway, he's going to get the first section, which
20 will be about 50 pages, filed on Friday, but he can't get
21 secretarial help, and he's a little bit behind. He'd like to
22 know if the Board will give us until Wednesday to file the
23 second portion which will be the balance of the contentions.

24 JUDGE SMITH: Do you object, Mr. Dignan?

25 I'm sure that the 50 pages are going to occupy the

1 Board.

2 MR. DIGNAN: I have no objection, Your Honor.

3 JUDGE SMITH: Would you tell him that?

4 MR. OLESKEY: Yes, indeed. Thank you.

5 JUDGE LINENBERGER: Are you saying that the first
6 part on the threshold contentions will be filed on the 17th?

7 MR. OLESKEY: Yes.

8 JUDGE LINENBERGER: Thanks.

9 MR. OLESKEY: So you should have it on Monday. Don't
10 let that affect the course of your weekend.

11 JUDGE SMITH: Any other preliminary business?

12 MR. TURK: I have several matters, Your Honor.

13 First, in a few minutes I'll pass out copies of that
14 document which you have determined to be released.

15 JUDGE SMITH: You already had copies of it?

16 MR. TURK: Your Honor, I had copies of all the
17 documents just in case.

18 I do have a few other preliminary matters.

19 First, I have never seen the subpoena which has been
20 served on Mr. Thomas and I'd like to ask one of the parties,
21 whoever has a copy, to please let me see it. I made a point
22 yesterday of noting that I had thought the document request was
23 the same one as that filed in April.

24 (Document proffered to counsel.)

25 MR. TURK: Your Honor, I would note the document

1 request is even broader than the first one. Let me read it
2 into the record.

3 JUDGE SMITH: Well, all right, go ahead.

4 MR. TURK: "All documents relating to FEMA and RAC
5 consideration of plans to shelter or alternatively evacuate the
6 summer beach population from beaches within 10 miles of
7 Seabrook Station, New Hampshire, in the event of an accident."

8 That is the broadest possible document request. I
9 know that yesterday there was a discussion about additional
10 documents which were not produced. I think they clearly fall
11 within this, and I want to register my objection.

12 JUDGE SMITH: Mr. Turk, I don't agree with your
13 expectations of an adversary party subpoena. They could, if
14 they had elected to, have requested and received a subpoena ex
15 parte with a very large document production. Whether or not
16 that witness may appear and what document that witness is
17 required to produce is independent of the subpoena. The
18 subpoena is merely a vehicle by which a party may compel
19 information for its case, and it is not acting on behalf of all
20 the parties in the case.

21 I don't really understand why you think you have
22 standing to object to anything about that subpoena.

23 MR. TURK: Let me --

24 JUDGE SMITH: It is not a discovery subpoena.

25 MR. TURK: It was a subpoena duces tecum as I

1 understand it.

2 JUDGE SMITH: And it's entirely up to them to be
3 satisfied or dissatisfied with it.

4 MR. TURK: Well, Your Honor, at the risk of running
5 afoul of that ruling, let me indicate that there is one set of
6 notes that was produced to us that appears to have been
7 redacted in part. There are black crossouts of a substantial
8 portion of Mr. Thomas's notes of a particular meeting. And I'd
9 like to know if a copy of that is available without the
10 redacting.

11 MR. BARSHAK: I have no objection to answering that
12 question.

13 We redacted it and didn't give it to Mr. Oleskey.
14 Nobody has seen it.

15 MR. TURK: Has Mr. Oleskey --

16 MR. BARSHAK: Except me, and it's available for the
17 Board to look at if the Board wants. It's a personal --

18 JUDGE SMITH: Are you claiming privilege on it?

19 MR. BARSHAK: Yes, there were some personal notes on
20 it having --

21 JUDGE SMITH: Personal notes?

22 MR. BARSHAK: Yes, and we redacted --

23 JUDGE SMITH: So it's irrelevant.

24 MR. BARSHAK: It really is. And if Your Honors want
25 to see the original -- do we still have the original here of

1 what we redacted?

2 I think we do.

3 JUDGE SMITH: If you're claiming a privilege --

4 MR. BARSHAK: Yes, on --

5 JUDGE SMITH: If you're claiming that it's relevant
6 but privileged, that's one thing. We would examine it.

7 If you're claiming that it is personal and
8 irrelevant, then you don't have to submit it.

9 MR. TURK: And may I ask, Your Honor --

10 MR. BARSHAK: It really is personal.

11 MR. TURK: May I ask if Mr. Oleskey has been informed
12 about the nature of the comments that were redacted?

13 MR. OLESKEY: I heard it yesterday. I heard it again
14 today. That's what I know.

15 MR. BARSHAK: You didn't hear it from us. You didn't
16 find out anything about it from us. It's personal. We
17 redacted it. We didn't show it to him.

18 MR. OLESKEY: This was gone over yesterday, Mr.
19 Barshak. That's what I mean.

20 MR. TURK: Neither Mr. Barshak nor I recall that, Mr.
21 Oleskey.

22 MR. OLESKEY: He put it on the record yesterday. He
23 said there were three categories of notes, and he patiently
24 explained what they were, and he explained this category.

25 JUDGE SMITH: We accept counsel's representation that

1 they are personal and not relevant, and not required to turn it
2 over.

3 MR. TURK: And one other matter, Your Honor.

4 May I inquire as to the status of the affidavits
5 which were referred to by Mr. Barshak yesterday?

6 MR. BARSHAK: In view of Your Honor's ruling that the
7 issue as to what took place at that July meeting as to whether
8 or not there was a vote or not had been beaten to death, and
9 you didn't want to hear any more from it.

10 The affidavits --

11 JUDGE SMITH: You capture our tone of voice well, I
12 believe.

13 MR. BARSHAK: The affidavits, which would have been
14 in support of his testimony which he gave to you yesterday, I
15 think we still have them here in the box, but I didn't think
16 Your Honors wanted to hear them.

17 JUDGE SMITH: Well, I think you understood correctly.

18 MR. TURK: Your Honor, I want to note for the record
19 that I have copies of some of those affidavits. I believe all
20 of them other than one which has apparently not yet been
21 received, and I also have supplemental affidavits.

22 MR. BARSHAK: If you have our affidavits, I have no
23 problem with them. I want to see what you're calling copies of
24 our affidavits though.

25 MR. TURK: I'd be happy to show them to you.

1 And I want to note 'hat I'm going to -- well, I'll
2 take under advisement whether to go any further on this. Your
3 Honor.

4 MR. BARSHAK: I'm sorry, I didn't hear you, sir.

5 MR. TURK: I will take under advisement whether to go
6 any further with this.

7 MR. BARSHAK: Well, can I just sort of register an
8 old-fashioned state lawyer's sort of objection, I guess, to
9 this implied threat, whatever it is he's doing that he'll take
10 under advisement.

11 If you've got a piece of paper you want to produce,
12 produce it if you think it's relevant. Go ahead.

13 JUDGE SMITH: Any further preliminary business?

14 MR. OLESKEY: As Mr. Turk's distributing the document
15 that's being produced, could I just take a quick look at it
16 before I begin?

17 JUDGE SMITH: Yes.

18 MR. OLESKEY: Thanks.

19 MR. BARSHAK: Before I even read it, Your Honor, it
20 doesn't purport to be an affidavit or a copy of an affidavit.

21 JUDGE SMITH: This?

22 MR. BARSHAK: This piece of paper just handed to me.

23 JUDGE SMITH: He's not offering it into evidence.
24 All he's doing is complying with a request to produce it in
25 discovery. He doesn't really want you to have that, but we're

1 directing him to have it.

2 Does that make it any better for you?

3 MR. TURK: Your Honor, let me indicate briefly what
4 it is that I've distributed.

5 This is a one-page document with a caption at the top
6 entitled Seabrook Matter for Discussion. It's not dated and
7 it's not authored. To the best of my belief, it constitutes a
8 matter for discussion raised within the NRC staff some time in
9 early 1986; approximately January or February 1986. That date
10 is approximate.

11 There is a reference to a case attorney in there.
12 That attorney is not me, but another attorney who had been
13 working on the Seabrook case. I believe Mr. Perlis.

14 JUDGE SMITH: And is this in the format that the
15 Office of General Counsel uses to make entries into case files?

16 MR. TURK: No, it's not. I do not know the origin.
17 I do not know the author. All I know is that the document was
18 in the files.

19 JUDGE SMITH: All right. Any other preliminary
20 business?

21 You may proceed, Mr. Oleskey.

22 MR. OLESKEY: Thank you, Your Honor.

23

24

25

1 Whereupon,

2

EDWARD THOMAS

3 having been previously duly sworn, was recalled as a witness
4 herein, and was examined and testified further as follows:

5

DIRECT EXAMINATION (Resumed)

6

BY MR. OLESKEY:

7

Q Good morning, Mr. Thomas.

8

A (Thomas) Good morning.

9

Q I had asked you some questions near the conclusion of
10 yesterday's proceedings about meetings you were at in late
11 October of last year involving Mr. Baldwin and Mr. Keller.

12

Do you recall that line?

13

A (Thomas) Yes.

14

Q I think you testified briefly about some work that
15 both of them had discussed which they had been doing for FEMA,
16 although not at your request or under your supervision; is that
17 right?

18

A (Thomas) It was not under my supervision. I had
19 requested and urged that they become involved in the witness
20 preparation, however. I had been urging that they be involved
21 in the Seabrook beach sheltering issue really since shortly
22 after the July 30th RAC meeting.

23

Q Yes, but when they became involved some time prior to
24 that October meeting, it was not pursuant, as I understand it,
25 to directions or instructions from you to them about what you

1 would like them to do.

2 A (Thomas) That is correct.

3 Q All right. Did they produce at this meeting in late
4 October work that they had done?

5 A (Thomas) Yes, they did.

6 Q Was that work shared with the FEMA Washington people
7 at the meeting as well as with yourself?

8 A (Thomas) Yes, it was.

9 Q Did it consist of paper, documents?

10 A (Thomas) Yes, it did.

11 Q How many -- what kind of report or paper did each one
12 of them produce and distribute at that meeting?

13 A (Thomas) Mr. Keller distributed one or more graphs
14 that, as I understood it, had to do with his analysis of
15 WASH-1400 accident sequences.

16 And, Dr. Baldwin produced a fairly substantial number
17 of sheets dealing with the number of people that would be still
18 on the beach at Seabrook at various times according to the
19 evacuation time estimate as he understood it.

20 Q Then did they both explain and discuss the work that
21 they had done?

22 A (Thomas) Yes, they did.

23 Q Were questions asked of them by the participants
24 other than yourself?

25 A (Thomas) My recollection of the meeting is somewhat

1 sketchy. I remember more the questions that I asked and others
2 asked. I would reasonably expect that others asked them, but I
3 don't think that I can point to a specific question right now.

4 Q All right, what do you recall you asked?

5 A (Thomas) Well, I asked a number of questions of Mr.
6 Keller about whether or not the containment bypass sequence of
7 accidents was included in the analysis that he had done,
8 because I had understood that was one of the reasons that many
9 people did not want to get into the extra protection that the
10 Seabrook containment afforded in terms of time to release of
11 radiation, and the nature of the release.

12 Because if there was a containment bypass accident,
13 as I understood it, that just pretty well went out the window
14 in terms of protection, extra protection.

15 And he said it did include containment bypass
16 accidents, and asked other questions because what he was saying
17 about the WASH-1400 sequence of accidents was very much like
18 what I had been understanding Dr. Bellamy and Mr. Harpster to
19 be telling me in 1986, or early 1986.

20 And then I had understood the NRC was not quite
21 adopting that as a posture, and I was trying to ask him
22 questions along the lines of what I had heard later was the
23 reasons that the NRC didn't adopt Dr. Bellamy and Mr.
24 Harpster's indications to me about accident sequences.

25 Dr. Baldwin and I had a long discussion going back

1 and forth between the evacuation time estimate and what it
2 actually said in the evacuation time estimate and what he had
3 written down.

4 And I don't remember all the problems I said, but --
5 all the problems I found, but I indicated that I thought that
6 there were numerous errors in his analysis and pointed them out
7 to him.

8 Q What did he say in response?

9 A (Thomas) Something like, and I'm not quoting or
10 paraphrasing, yeah, you're right. I did this real quick,
11 something like that.

12 Q Did they explain whether this work was supposed to
13 help you and the agency support the testimony that had already
14 been filed?

15 A (Thomas) I didn't ask them both that question at
16 that time. It was a may I say, a very, very heated meeting.

17 Q Heated in what sense, sir?

18 A (Thomas) There were people that were yelling at me,
19 and I hope I didn't yell back at them, but I certainly was
20 making forceful representations back at them.

21 Q Who was yelling at you and what were they yelling?

22 A (Thomas) Craig Wingo and Margaret Lawless were
23 yelling at me that this indicated -- these documents indicated
24 that we had to change the agency position with respect to the
25 beach population at Seabrook.

1 And I was pointing out that, no, they didn't mean
2 that at all as a matter of fact. And I saw both analyses as
3 being flawed. I indicated that, you know, I had asked Mr.
4 Keller a number of questions, and he had said that, basically
5 that he had taken all my questions into account in his
6 analysis.

7 And I said, well, even if you did, this is different
8 than what I've been told by the NRC, and the authoritative
9 person in this field is the NRC, and I think we should listen
10 very close to the NRC if they were telling us this about
11 accident sequences. But they are the ones that know about the
12 operations of a nuclear reactor, not FEMA. I don't think we
13 should be basing our testimony on such an analysis that hasn't
14 gone through the NRC, or hasn't been initiated by the NRC.

15 Later, and I have notes of this -- I believe it's in
16 November -- I had another conversation with Joe Keller from Mr.
17 Cumming's office in Mr. Cumming's presence, and asked him a
18 number of questions about the meeting along the lines of what
19 in the world was going on at that meeting, and what was that
20 all about, and are you saying that the beach population
21 testimony is wrong, and do you think we need to change it.

22 And he gave me responses to that which basically were
23 that, yes, he thought the testimony should be changed, because
24 as he read it, it indicated that FEMA was saying that you had
25 to shelter all or nearly all of a population following an

1 accident. And he disagreed with that. And I indicated to him
2 that was never my intention in writing that, and I didn't
3 believe that was the agency intention to convey that
4 impression. And to the extent that there was an ambiguity
5 there, that that needed to be corrected, I agree.

6 The second thing he indicated was that he felt that
7 this was -- as to whether there was a reasonable assurance of
8 an adequate level of public safety, that was a matter of
9 judgment, and that he supported the right of the person in my
10 position, the RAC chairman, the chief of the division, to make
11 that judgment, and he felt that headquarters should support
12 that. And, no, he was not saying that that should be
13 overruled.

14 And then he said, thirdly, with respect to what was
15 going on at the meetings, that it was an attempt to get me to
16 "change my mind" with respect to the beach population, and go
17 along with the position that was being advocated at that point
18 by Craig Wingo and Margaret Lawless that the agency testimony
19 had to be changed.

20 Q You had said I think yesterday briefly that in this
21 meeting at the end of October, the one you began by describing
22 a moment ago, that you had felt there was a significant
23 misunderstanding by Mr. Baldwin about ETEs in connection with
24 the work he had done.

25 Do you recall that?

1 A (Thomas) Yes.

2 Q What was the point you were making there?

3 A (Thomas) Well, there were -- when I compared what he
4 had written with what was actually written in the evacuation
5 time estimate, and I don't have good notes of this, but this is
6 my recollection that here were three major flaws in his
7 analysis.

8 The first flaw was that in terms of the evacuation
9 time estimates to clear the beach, he understood that to mean
10 that the people were clear of the EPZ, or at least on the other
11 side of the plant.

12 And I pointed out that's not quite what it says in
13 the evacuation time estimate. That's not how they describe the
14 clearing of the beach. There's another definition of that.

15 Q You're referring to definitions and estimates in the
16 New Hampshire plan?

17 A (Thomas) In Volume 6 of the New Hampshire plans at
18 that time, which is what I was working -- what we were all
19 working from at FEMA.

20 Q You were not using in the fall anything that was being
21 developed in the hearings about ETEs. You were using a plan.

22 A (Thomas) Oh, absolutely, yes.

23 Q Okay.

24 A (Thomas) Secondly, if I recall correctly, I pointed
25 out that the times to clear the beach that he had used in his

1 analysis, the lowest of the times to clear the beach, and that
2 was for one particular beach and it was two hours and 10
3 minutes or something like that; one of the lower times to clear
4 the beach.

5 And I said, look, there's a range of times, and it
6 goes up to some other number which was quite a bit higher. I
7 don't have that in front of me and I don't know if that's
8 important.

9 And then there was a third problem with it. Oh,
10 Lord. I'm sorry, I'm drawing a blank on it. If it's important,
11 I could probably reanalyze it and come up with the third major
12 issue. I'm drawing a blank on it right now.

13 Q Did Baldwin say he'd go back and correct his work as
14 a result of your comments?

15 A (Thomas) Not specifically, no.

16 Q Did you ever see, after the end of that meeting at
17 the end of October, any revised version of either work done by
18 Baldwin or Keller?

19 A (Thomas) No, not really. I never really heard much
20 more about that specific stuff except when, in November, I had
21 a very, very brief conversation with Dick Krimm in which he
22 just indicated he was disappointed that I wouldn't change again
23 my personal position on the -- my professional opinion on the
24 beach sheltering, beach evacuation issue, the beach protection
25 issue, and said that he understood that the agency position was

1 technically incorrect.

2 And I said, you know, what technically incorrect,
3 what does that mean.

4 And he said, well, Joe Keller and Tom Baldwin say
5 it's technically wrong. And I replied, I don't think that's
6 what they say at all as a matter of fact, and it's a matter of
7 judgment. It's not technically wrong. And that was pretty
8 much the end of the conversation.

9 Q So by some time in November Mr. Wingo had told you,
10 if I understand you, that he thought the position should be
11 changed based on what these two consultants had done, and then
12 Mr. Krimm had said the same thing.

13 A (Thomas) Well, actually Mr. Wingo said in late
14 October that the position had to be changed. It was just a
15 question of how much we had to back off the position was how he
16 phrased it. And Mr. Krimm had indicated the same thing in
17 November as well.

18 And I told them, look, we'd better sit down and talk
19 about this in some detail. I just -- I don't follow what you're
20 saying at all. It doesn't make sense to me. It's not a matter
21 of technical error. It's a matter of judgment with respect to
22 what the word "reasonable" means, and what the word "adequacy"
23 means.

24 Q Did either Krimm or Wingo refer you to anything as a
25 basis for the agency changing its position on sheltering other

1 than this work which you had seen and discussed with Baldwin
2 and Keller?

3 A (Thomas) Joe Keller and I had a detailed discussion
4 about the efficacy of sheltering. And Joe Keller's views on
5 this were well known in our agency, and in fact had been
6 discussed the previous June, in June of '87, when we were first
7 adopting the agency position on this matter.

8 And his views were that generally sheltering was not
9 a particularly efficacious protective action, and that the bulk
10 of the dose that you would receive in the event of an accident
11 at a nuclear power plant came from what's known as ground
12 shine, and he felt that the longer you stayed in that area, the
13 worse off you were, and it was better just to get right on out
14 of there in an evacuation.

15 And he repeated his technical reasoning for that, for
16 me on that. He may also have gone into that a little bit
17 during the meeting. I really don't remember. I remember we had
18 a much longer conversation on this later on ourselves that
E21 19 night.

T22 20 Q My question is, up through this period in November
21 when you had the conversation with Dick Krimm that you've just
22 related, had either Mr. Krimm or Mr. Wingo recited anything as
23 a basis for a change in the agency's position other than the
24 work of Keller and Baldwin which you had been shown in late
25 October?

1 A (Thomas) No, not specifically. Mr. Krimm made
2 reference to the position being technically wrong because of
3 what Joe Keller and Tom Baldwin had done. And my assumption
4 was then and still is that he was talking about that work that
5 I had seen in the end of October, but I don't know that.

6 Q Did anybody say in this period that the agency was
7 concerned because its position at Seabrook, as filed with this
8 Board, was different than a position on substantially similar
9 issues at the Shoreham facility?

10 A (Thomas) Yes. I had a conversation with someone who
11 works in our Region 2 office, and he had expressed that
12 concern. And it's possible that Joe Keller had said something
13 similar to me when he was talking about our position could be
14 read as, or he had read it as saying that, hey, you have to be
15 able to shelter everybody following an accident, or nearly
16 everybody following an accident.

17 And the agency had adopted at Shoreham a position
18 that, no, you don't have to have sheltering for everybody
19 following an accident at a nuclear power plant.

20 Q Did Mr. Krimm or Mr. Wingo say to you in this period,
21 we have to change because we've said one thing at Shoreham and
22 another thing at Seabrook, and they're inconsistent?

23 A (Thomas) Mr. Krimm did not. I don't recall Mr.
24 Wingo making that point. Mr. Wingo was basically saying that
25 the position was technically wrong. I don't recall him saying

1 anything about it being inconsistent with the -- with the
2 Shoreham position.

3 Q All right. Now after the meeting in October and the
4 conversation with Mr. Krimm in November, what was your
5 understanding of what the agency was doing in preparation for
6 your eventual appearance to support the testimony that was
7 filed in September?

8 A (Thomas) Well, after we filed, the agency filed its
9 response to the motion in limine, and we went through this flap
10 over the -- whether the position was technically incorrect, I
11 didn't know what much more they were doing on the matter in
12 terms of preparation.

13 Mr. Krimm and I had had the discussion in November,
14 and that just pretty well ended the matter.

15 Q Were there any discussions about reconvening the RAC
16 to discuss this particular issue again?

17 A (Thomas) There were a thread of discussions --
18 that's thread, T-H-R-E-A-D -- a thread of discussions along
19 those lines that I would periodically raise the issue just
20 because as I said I wanted to finish the RAC review off, and
21 clearly we were going to have to do some kind of a vote on it.
22 There seemed to be no way that anything would persuade Dr.
23 Bores of the correctness of FEMA's position, and I hadn't seen
24 anything that would persuade me on behalf of FEMA of the
25 correctness of NRC's position.

1 So, clearly there was going to be a split, and I just
2 wanted to wrap that up and finish it off, and would raise that
3 from time to time. I may well have raised it in the November
4 time frame, and I'm drawing a blank on that.

5 Yes, I sure did. Yes, I very vehemently in early
6 November said we've got to have a RAC meeting to finish this
7 off, and that was an open question. I had discussed that
8 very, very vigorously with our attorneys that I wanted to move
9 forward to have the RAC meeting, to bring closure on the beach
10 population issue, and I wanted to get Baldwin and Keller and
11 some other people started on doing the counterpoint to the
12 Bores memo so that we could have that meeting and go forward.

13 Q And what were you told by the agency's lawyers?

14 A (Thomas) Basically that it was an open question as
15 to whether we would have a RAC meeting; that they'd take that
16 under advisement and we'd see.

17 Q What about the work by Baldwin and Keller to be the
18 counterpoint to the Bores paper?

19 A (Thomas) That we'd see. That we'd have to consider
20 the matter.

21 Q Okay.

22 A (Thomas) That it was a question. That it was a
23 legitimate question as to whether or not we wanted to do that.

24 During this period the agency was preparing what I
25 guess would be a motion. I don't recall what it was entitled.

1 We do have copies of it. Basically saying that the
2 consideration of the beach population by the RAC was legally
3 irrelevant to this proceeding, and that further inquiry should
4 not be permitted into the RAC's proceeding.

5 And so for that reason there was not a lot of support
6 for spending the time and effort and money to go forward to
7 finish off the RAC review on these J-9 and J-10-M because the
8 agency had decided that it was legally irrelevant to the
9 position we were adopting.

10 Q Who was preparing that pleading?

11 A (Thomas) Attorney Flynn.

12 Q We know it was never filed because nothing was ever
13 filed of that nature here in my recollection.

14 Did you -- do you recall a decision being made not to
15 file that pleading?

16 A (Thomas) I was not part of the decisionmaking on
17 that.

18 Q Okay. Did there come a time in the middle of
19 November when there was a ruling by this Board that came to
20 your attention in connection with what's called the Sholly-
21 Beyea testimony?

22 A (Thomas) I was aware of the Board's ruling on that.
23 And if you say it was in early November, then -- I just don't
24 remember.

25 Q Mid-November, I think.

1 A (Thomas) Yes, I remember about that time.

2 Q Was it something that was discussed by you with
3 others in the agency as affecting the course of the agency's
4 testimony on the beach population issue?

5 A (Thomas) It was a matter of lively discussions, yes;
6 at least among the legal staff.

7 Q I have no doubt that's accurate, but are you telling
8 me that you talked about it with somebody in the legal staff in
9 terms of the implications it had for FEMA's position?

10 A (Thomas) Yes, I did. I talked with both Attorney
11 Cumming and Attorney Flynn on the subject matter in general.

12 Q What was the substance of what the three of you were
13 discussing about any implications of the Board's ruling for
14 FEMA's position?

15 A (Thomas) At that time, as I understood the
16 discussions, we felt it supported FEMA's position. I certainly
17 felt it supported FEMA's position in that the Board, as we
18 understood it, was saying that a quantitative, objective
19 judgment of the emergency plans would not be made.

20 In other words, we wouldn't crunch out how many
21 illnesses and how many mortalities there would be in an
22 accident.

23 And I said, and I believe the attorneys agree --and
24 mr. Cumming can speak for himself tomorrow -- agreed with me
25 that that emphasized the importance of having a subject of

1 qualitative judgment of the plans as to their reasonableness
2 and their adequacy.

3 So I thought it was favorable to the position that
4 the agency had taken.

5 Q And that's what you remember of that discussion?

6 A (Thomas) Yes. I think we also -- I don't remember
7 discussing it, but I remember realizing at that point that that
8 portion of the work that I wanted to see done with respect to
9 the next RAC meeting that addressed the Mezzorad dose
10 consequence model for RAC understanding of the nature of an
11 early release was potentially troublesome to introduce into the
12 RAC.

13 If you recall from yesterday, I had thought from the
14 discussion in the RAC that there were some people that were
15 under a misapprehension in the RAC as to the nature of an early
16 release of radiation, and perhaps were thinking that it was not
17 really all that serious. NUREG-0654 just says it's a serious
18 release.

19 And certainly Byron Keene had indicated to me that
20 whatever it -- you know, it might be serious, but it was not
21 something that was a matter of great concern from the point of
22 view of public health. Those early release sequences would not
23 really harm people that badly.

24 So I do remember realizing, and I don't recall if I
25 discussed it with Attorney Flynn and Cumming that, in terms of

1 the preparation for the next RAC review, I wasn't so sure
2 anymore that we need that Mezzorad dose consequence model.

3 Q When did you realize that Baldwin and Keller were not
4 going to do the major paper to respond to Mr. Bores's second
5 memorandum to be used by the agency in support of the September
6 testimony?

7 A (Thomas) Some time in December it was certainly very
8 clear to me. By the time I called the RAC meeting for early
9 January, I knew that I would not be supported by papers from
10 anybody on dealing with --

11 Q How did that knowledge come to you?

12 A (Thomas) I don't specifically recall.

13 Q Did you make any efforts when you found it out to
14 reverse the course of events to have the paper that you had
15 asked to be done done after all?

16 A (Thomas) Yeah, I asked --

17 Q What did you do?

18 A (Thomas) I remember talking to Mr. Wingo, who is
19 essentially is the keeper of the pursestrings on the consultant
20 contracts saying -- asking him if we could please have the
21 support that I had been talking about since July developed for
22 the RAC meeting.

23 And I don't remember what reasons he gave me, but he
24 said no with a sufficient finality that I gave up.

25 Q Did he tell you, or did anybody tell you at that time

1 in December that Baldwin or Keller were working on a different
2 kind of testimony?

3 A (Thomas) No.

4 Q How did it happen that the RAC meeting, which we know
5 took place, I think, on January 7 and 8, did come to be
6 scheduled in December of '87?

7 A (Thomas) I had made up my mind the afternoon of
8 November 4th that we were going to have another RAC meeting,
9 and we were going to wrap up J-9 and J-10-M.

10 Q The afternoon of November 4th was after your second
11 voir dire here?

12 A (Thomas) That is correct.

13 Q All right.

14 A (Thomas) And that we were going to finish off J-9
15 and J-10-M, and that was going to be over and put to rest.

16 I was also hoping at the same time we could wrap up a
17 number of other items that had been left dangling in the RAC
18 that related to the other nuclear power plants around the
19 region. And I was also hoping that we would be able to give
20 RAC responses on the material that New Hampshire had submitted
21 to us just prior to the hearings in late August and early
22 September of 1987.

23 But I primarily wanted to be finished with J-9 and
24 J-10-M, and I secondarily wanted to finish the review of the
25 submissions of New Hampshire, and then I also wanted to get

1 other stuff taken care of from the other sites around the
2 country. Excuse me, around my region.

3 And I talked with our attorneys about that, and
4 continued to talk to them about it, because I felt a tremendous
5 anxiety to just finish that off and be done with it.

6 And finally I got agreement on that in very late
7 November or early December, and went forward with it. It was a
8 matter of extremely contentious debate within the agency
9 with -- again there was a lot of very, very acrimonious
10 discussion, and Attorney Flynn informed me that he had gotten
11 yelled at a lot for agreeing to the RAC meeting.

12 Q What were people in the agency saying as a reason not
13 to hold the RAC meeting and close out the consideration of
14 these two planning elements by the RAC?

15 A (Thomas) As far as I could make out the logic, it
16 was that the direct spread sheet clear bifurcation of one
17 position by FEMA where FEMA had at least a 50 percent
18 likelihood of being in the minority. And without any papers
19 being developed, as far as I was concerned it was a sure shot
20 we were going to be in the minority, would not enhance our
21 testimony on the beach sheltering issue.

22 Q Are you saying --

23 A (Thomas) The beach protection, the protection of the
24 beach population.

25 Q Are you saying your understanding was there was

1 resistance because the RAC might undermine the testimony that
2 had been filed here?

3 A (Thomas) Not so much the RAC, but the existence of a
4 clear minority position by FEMA on J-9 and J-10-M would serve
5 to undermine the testimony that was to be given on the beach
6 population, protection of the beach population.

7 Q In any event, you indicated you prevailed at some
8 point in late November and December, and the meeting was
9 scheduled for January; is that right?

10 A (Thomas) That's correct, yes.

11 Q Before we get to that meeting, I want to ask you
12 about something else in December, just before Christmas.

13 Did there come a time when you had a conversation
14 with Mr. Vickers, the regional administrator, your boss, about
15 a meeting he'd had in Washington with Mr. Peterson and Mr.
16 McLoughlin?

17 A (Thomas) Yes. Mr. Vickers is the regional director
18 of FEMA, and he had had a meeting with Mr. Peterson and Mr.
19 McLoughlin and others.

20 Yes, such a conversation took place.

21 Q You were not at tha' meeting, I take it.

22 A (Thomas) That is correct.

23 Q All right. How did you learn about the meeting?

24 A (Thomas) I learned about it from Mr. Vickers.

25 Q Okay. When was that?

1 A (Thomas) It was approximately December 22nd. I do
2 have notes of that.

3 Q You have notes of your meeting with Vickers?

4 A (Thomas) Yes, I do.

5 Q Would you get those out because I want you to be
6 clear on your recollections?

E22 7 (Continued on next page.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

t/23

1 A (Thomas) So that everyone is clear, I have a yellow
2 sheet of paper in front of me that just has noted at the top,
3 1-22-87, and it's the notes that I actually took while I was
4 talking to Mr. Vickers in his office.

5 Q Mr. Thomas, you just said 1-22-87, do you mean 12-22?

6 A (Thomas) Sorry, I can't read so well. Yes, it says
7 12-22-87 at the top of the page.

8 Q Is that yellow sheet a sheet of notes you made on the
9 22th of December of last year?

10 A (Thomas) While -- in Mr. Vickers's office while I
11 was talking to him.

12 Q Okay.

13 A (Thomas) Then when I went back from his office down
14 to my office I made notes in my logbook, detailed notes of the
15 conversation, because I thought it was -- well, I just wanted
16 to capture the conversation, I thought it was important.

17 MR. DIGNAN: Mr. Oleskey, just --

18 MR. OLESKEY: Yes.

19 MR. DIGNAN: -- so I can follow the examination
20 that's coming. Mr. Barshak, are those notes included in the
21 package that was sent by mail, the 12-22-87?

22 MS. NETSKI: I don't believe so.

23 MR. DIGNAN: Is it in the package that was delivered
24 for review last night?

25 MS. NETSKI: Yes.

1 MR. DIGNAN: Thank you very much.

2 MR. BARSHAK: Not the logbook, I don't think. Was
3 the logbook --

4 MS. NETSKI: No, the logbook has never been
5 furnished.

6 MR. DIGNAN: No, not the logbook, but the single
7 notes. Thank you.

8 BY MR. OLESKEY:

9 Q With whatever recourse you want to make to your
10 notes, but testifying as far as you can from your recollection,
11 if you would, I'd like to know what transpired at that meeting
12 between you and Mr. Vickers?

13 A (Thomas) Basically Mr. Vickers told me that --

14 Q Would you set a context for us. Mr. Vickers had been
15 to Washington, we understand from previous testimony, did he
16 ask you to come into his office?

17 A (Thomas) Yes, he did. He had been to Washington the
18 previous Friday, and this is the 22nd which is either a Monday
19 or Tuesday, I think it's a Tuesday, and he asked me to step
20 down to his office that he had something to talk to me about,
21 and said, well, I've got good news and bad news. The good news
22 is, we're going to get some help on Seabrook. The bad news is
23 they want one thing different, they want you off the Seabrook
24 plans and the Massachusetts communities. They want to bring in
25 Dick Donovan from Region 10 to run the review of the Seabrook

1 plans and the Massachusetts communities.

2 That the Washington office was really quite unhappy
3 with me. And he -- that I -- he was given a number of reasons
4 they were unhappy with me, and that there had been complaints
5 which I understood, now this is my understanding and not what
6 he said to me, that there was pressure from outside the agency
7 to get me off the case.

8 And that Dick Krimm had -- was part of the folks that
9 were complaining about me based on information supplied by
10 Craig Wingo and Margaret Lawless. I was hard to deal with and
11 et cetera.

12 And Mr. Vickers said that he had not wanted to have
13 me taken off; that he didn't want to have to directly supervise
14 this matter, that he felt very awkward because he was a
15 political appointee, he wasn't familiar with the intricacies of
16 radiological emergency planning and did not want to have to
17 directly supervise someone in this matter, but that Washington
18 was quite adamant on the matter that they had given him a
19 letter to sign. And as he understood it -- again, this is his
20 understanding -- that he had a choice between either signing
21 the letter or being fired or resigning.

22 And he asked me to please cooperate with Mr. Donovan
23 in every way, and to just hold my temper and that he understood
24 I was being slapped in the face and felt I didn't deserve it
25 but that it was done and it was over and we just had to sort of

1 move on. And I said I would and prepared a memo to the RAC
2 explaining that Dick Donovan was going to be the RAC Chairman
3 for the Seabrook plans, for the Massachusetts communities and
4 that was about it.

5 Q Was there any discussion with Mr. Vickers -- strike
6 that. Did Mr. Vickers tell you whether he had suggested that
7 Mr. Donovan report to you in connection with these duties
8 rather than to himself?

9 A (Thomas) Yes, he did. He had said he had
10 specifically requested that that portion of the -- of a letter
11 that he had been given to sign be changed so that Mr. Donovan
12 would be reporting to me as Mr. Donovan reports to my
13 counterpart in Bothell, Washington, Mr. Donovan's division
14 chief.

15 Q Mr. Donovan is a person who in the FEMA structure is
16 at a level below the level you're at?

17 A (Thomas) That is correct.

18 Q Now that you've given testimony, would you look at
19 your notes to see if there's anything that you haven't said
20 about which they refresh you?

21 A (Thomas) There are other things, I don't know
22 how -- yes, there are other notes I have in here that I'll be
23 given an opportunity to explain why -- why I feel Washington
24 shouldn't be unhappy with me. I gave Mr. Vickers my analysis
25 of why headquarters wanted me off the case. Do you want that?

1 Q What did you tell him?

2 A (Thomas) I told him that this was -- that the
3 complaints were without merit. I used a short, vulgar term for
4 that.

5 Q Something like bullshit?

6 A (Thomas) Something very like bullshit, that very
7 phrase. And that it was just simply the matter that the
8 utility wanted me off the case. And Mr. Vickers wanted me to
9 see Dave McLoughlin, and he also wanted me to see Mr. Peterson.
10 And I made a notation about, it was time to -- to the effect,
11 it was time to rethink my career goals.

12 Q Did you see then or see later the letter of
13 memorandum which Mr. Vickers told you he had been asked or
14 directed to sign in Washington?

15 A (Thomas) He showed it to me at that time, yes.

16 Q And at that time did he have any written reply from
17 headquarters to this letter request for assistance?

18 A (Thomas) Yes, he did.

19 Q He had both of those documents there?

20 A (Thomas) Yes, he did.

21 Q Did he tell you -- strike that. As I understand your
22 testimony, the letter of request had been prepared in
23 Washington?

24 A (Thomas) Yes.

25 Q What about the letter of reply to that request?

1 A (Thomas) Well, that, of course, came from
2 Washington.

3 Q Did he bring it back from Washington with him?

4 A (Thomas) I don't believe so, because it -- I believe
5 I saw a faxed copy of that letter. I'm not sure whether he did
6 bring it back or not.

7 Q Okay. Let me show you a document dated December 21,
8 1987 entitled "Memorandum for Dave McLoughlin from Henry G.
9 Vickers, subject: Assistance with Seabrook activities," with
10 some coding down at the bottom, and ask if that's a copy of the
11 memorandum that Mr. Vickers showed you in his office in Boston
12 on or about the 22nd of December?

13 A (Thomas) Yes, it is.

14 MR. OLESKEY: Could we mark that Massachusetts
15 Attorney General identification Exhibit 52, please, Your Honor.

16 (The document referred to
17 was marked for
18 identification as
19 Massachusetts Attorney
20 General Exhibit 52.)

21 BY MR. OLESKEY:

22 Q Is this document the memorandum, Mr. Thomas, the
23 letter so-called?

24 A (Thomas) It is a memorandum addressed from Henry
25 Vickers to Dave McLoughlin.

1 Q Is this the memorandum that Mr. Vickers showed you in
2 his office last December 22?

3 A (Thomas) Yes.

4 Q Would you explain the coding at the bottom beginning
5 "H.G. Vickers/ORD," and so on?

6 A (Thomas) That indicates that it is a memorandum
7 written, you know, that the draft -- the actual writing of the
8 memorandum is by Henry G. Vickers. It has a code that I'm not
9 familiar with being used in our Boston Regional Office that
10 I've never seen it before. I assume it's Office of the
11 Regional Director, but I've never seen that code used in our
12 office.

13 Then the next slash mark is a code that I'm familiar
14 with, it's my former secretary who is now Mr. Vickers's
15 secretary, Carol F. Roselli, that shows that she typed it. And
16 then there's another slash mark, the 12-21-87 which is the date
17 that the memorandum is prepared as opposed to when it's signed.
18 And then just -- the "CCs" is at the bottom.

19 Q Now, if your understanding from Mr. Vickers is
20 correct, the memorandum had actually been prepared in
21 Washington some time before the 21st of December; is that
22 right?

23 MR. TURK: Could we have that question again, what
24 understanding?

25

1 BY MR. OLESKEY:

2 Q Your understanding of the sequence is correct as
3 detailed to you by Mr. Vickers, this memorandum had actually
4 been prepared in Washington some time before the 21st; is that
5 right?

6 A (Thomas) That was my understanding at that time. I
7 have, as recently as the day before yesterday, had a
8 conversation with Mr. Vickers on this subject, that clarifies
9 that a little bit.

10 Q Okay. Would you give us that clarification?

11 A (Thomas) Sure. Mr. Vickers indicated that he had
12 said to me -- yes, he had said to me that he had been given a
13 memorandum to sign, but that actually they had just told him to
14 sign it and they had given it to him and it wasn't in final
15 typewritten form when he wanted to leave on this plane to come
16 back up to Boston. So he said his recollection is that they
17 faxed him a copy and he signed it. And he thinks that Carol
18 Roselli may have retyped the faxed copy.

19 Q Okay.

20 A (Thomas) He was a little vague on all that, but
21 these things -- that's likely the explanation for the
22 strangeness and the dates and the code.

23 Q All right. But the body -- the text of the memo
24 itself, as you understood it back then and understand it now,
25 was composed in Washington?

1 A (Thomas) What he told me on December 22nd and what
2 he told me the day before yesterday was that he was directed to
3 sign the memorandum, and that he specifically requested the
4 change for his reasons and for the reasons that he felt it
5 would be a slap in my face, as he put it, to have Mr. Donovan
6 who normally reports to a division chief reporting directly to
7 him as the Regional Director. And he had requested that that
8 part of the memorandum be changed and that was refused.

9 MR. OLESKEY: I offer the document, Your Honor.

10 JUDGE SMITH: Objections?

11 MR. TURK: What's the purpose of the offer?

12 MR. OLESKEY: It's a general offer, counsel.

13 MR. TURK: I don't object.

14 JUDGE SMITH: Massachusetts Attorney General Exhibit
15 52 is received.

16 (The document referred to having
17 been previously marked for
18 identification as
19 Massachusetts Attorney General
20 Exhibit 52 was received in
21 evidence.)

22 MR. DIGNAN: I'm not going to object. The general
23 offer is for the truth of the matters contained even after the
24 witness has testified as he has?

25 MR. OLESKEY: Well, Mr. Dignan --

1 MR. DIGNAN: Mr. Oleskey.

2 MR. OLESKEY: Mr. Dignan, there's a memo, it's been
3 testified to by Mr. McLoughlin when he was here.

4 MR. DIGNAN: You don't get --

5 MR. OLESKEY: And now it's been testified to by this
6 witness.

7 MR. DIGNAN: I'm not questioning the authenticity, I
8 am just asking --

9 MR. OLESKEY: I'm not addressing the authenticity.

10 MR. DIGNAN: All right.

11 MR. OLESKEY: I'm saying it would be my view that the
12 document has to be read in light of the testimony by the FEMA
13 panel two weeks ago, in light of the testimony today by this
14 witness. Obviously, I'm offering it for certain purposes.

15 MR. DIGNAN: I understand that, Mr. Oleskey, but you
16 said it's a general offer; that was your statement. And to me
17 a general offer is an offer for the truth of the matters
18 contained.

19 I'm asking you, is it the Massachusetts Attorney
20 General's position, having elicited the testimony you just did,
21 that you are offering th for the truth of the matters
22 contained, sir?

23 MR. OLESKEY: Mr. Dignan, as I understand it, when
24 you make a general offer you're free to argue any construction
25 of the document from its face or from the circumstances.

1 You know I infer from what you've said that I'm
2 going to argue to this Board later in findings that this
3 action, the meeting in Washington on the 18th and the memo that
4 Mr. Vickers was instructed to sign was part of an actions
5 within the agency designed to gradually take Mr. Thomas out of
6 this case and eliminate his usefulness as a witness, and as an
7 agency official dealing with Seabrook. I've made no secret of
8 that.

9 And I think that the document and the circumstances
10 surrounding it make that clear. To that extent, obviously I'm
11 not going to argue that it's literally true, although it is
12 true that Mr. Vickers did sign a document requesting help.

13 The surrounding circumstances, however, explain that
14 and you can draw many inferences from those circumstances, as
15 I've said.

16 JUDGE SMITH: He spit out your bait. He's not going
17 to argue that these facts are literally true. We understand
18 the context of the letter.

19 MR. DIGNAN: Well, now I've got Mr. Turk's question,
20 what's the purpose of the offer? Well, I heard general offer,
21 I didn't object. If it's limited, I might have an objection.

22 MR. OLESKEY: Well, you'll have to decide. I just
23 told you what I'm going to argue some day, and I've just argued
24 it in fact.

25 JUDGE SMITH: The exhibit has already been received

1 in evidence. It supports his testimony. I think the context
2 is clear from the testimony.

3 MR. OLESKEY: And I suggest, by the way, it also --

4 JUDGE SMITH: We always have the general rule about
5 any exhibit. If someone were to undertake to say, for example,
6 the Haddam Neck nuclear powerplant exercise is a problem.
7 Based upon this exhibit, we give it scarce attention, because
8 it is not the focus of the exhibit when it was received.

9 We understand the context of the exhibit, it relates
10 to his testimony.

11 MR. OLESKEY: And the testimony of the officials from
12 Washington who testified two weeks ago.

13 JUDGE SMITH: Right.

14 JUDGE LINENBERGER: Mr. Oleskey --

15 JUDGE SMITH: However, that does not say that Mr.
16 Dignan cannot argue that this language means what it says. I
17 mean, that's his prerogative.

18 MR. OLESKEY: I'll take that chance.

19 Judge Linenberger?

20 MR. TURK: There's something I've noticed on the
21 document -- I'm sorry, Judge.

22 JUDGE LINENBERGER: Go ahead.

23 MR. TURK: Does someone have the original of this?
24 Mr. Barshak, Mr. Oleskey?

25

1 MR. OLESKEY: I assume Henry G. Vickers has the
2 original, I certainly don't.

3 MR. TURK: Something occurs to me, Your Honor, that
4 perhaps should have been covered with Voir Dire. The type at
5 the bottom with the H.G. Vickers is different, it appears to
6 me, from the type in the rest of the text. And I'd like to see
7 the original to see if we can establish whether the entry at
8 the bottom was made as part of the original document.

9 JUDGE SMITH: We would assume that Mr. McLoughlin
10 would have the original.

11 MR. OLESKEY: Yes, that's exactly right.

12 MR. TURK: Your Honor, I also would note that there's
13 a slight difference angle of the type face. When you look at
14 the line -- of the bottom two lines at the bottom of the page,
15 it's a different angle than the angle of the lines in the rest
16 of the memo. And it appears there's been an entry made after
17 the document itself was prepared.

18 MR. FLYNN: This is really not my fight, but I'd like
19 to suggest that there's a simple explanation for that, and that
20 is, that the code which appears at the bottom of the document
21 doesn't appear on the original because it has no purpose --
22 it's not for the information of the person who receives the
23 original.

24 So what happens is, that a carbon set is typed. The
25 original is removed from the set and then the legend is typed

1 at the bottom of the rest of them.

2 JUDGE SMITH: That is office practice?

3 MR. FLYNN: Yes.

4 MR. TURK: If Mr. Flynn is representing that he's
5 familiar with this document and it is an authentic original
6 document fair in every respect, I'm withdrawing the
7 objection.

8 MR. FLYNN: I -- no, I'm not representing that
9 because I don't have possession of the original. But if you
10 want to Voir Dire the witness I'll bet at least a nickel that
11 he'll say the same thing.

12 JUDGE SMITH: When we heard the --

13 MR. DIGNAN: Only a nickel.

14 (Laughter)

15 JUDGE SMITH: This document was alluded to by the
16 testimony of the FEMA panel. Does anybody seriously contest
17 the authenticity or -- no one contests the authenticity. Does
18 anyone seriously questions the document was prepared and sent?

19 MR. TURK: Your Honor, personally, I have no basis to
20 take a position one way or the other.

21 JUDGE SMITH: Let's move on.

22 MR. OLESKEY: Judge Linenberger did have a question.

23 JUDGE LINENBERGER: I wanted to interrupt with a
24 question to Mr. Thomas, because in recent discussions with Mr.
25 Oleskey you've used a couple of different terms that I want to

1 be clear about what you mean by them.

2 One term is -- has been closure. Another term has
3 been close out. I'm not sure, I think there was a third term.
4 Be that as it may, it sounds like a dumb question but those
5 words might mean different things to different people. I
6 should like to know what they mean to you?

7 THE WITNESS: (Thomas) If we're -- I believe we're
8 talking about that I may have used to talk about
9 finishing the spread sheets?

10 JUDGE LINENBERGER: Correct.

11 THE WITNESS: (Thomas) When I said "closure" and
12 "close out," I meant them -- I used them interchangeably with
13 respect to that. And what I mean was something very simple.
14 The finished final RAC review of the Revision 2 of the New
15 Hampshire plans that was provided to the State in December of
16 1976 had two open items on it, with respect to items J-9 and J-
17 10-M. And I wanted them no longer to be open items, but
18 instead to have an "A" or an "I" next to them; and I understood
19 that there would have to be a majority report and minority
20 report on it, that's what I mean by closure.

21 JUDGE LINENBERGER: Then this should not be inferred
22 that close out and your thinking necessarily signifies a
23 complete technical resolution of -- technical resolution of the
24 matters contained?

25 THE WITNESS: (Thomas) Not so much a technical

1 resolution of the matters, but a finished completion of a
2 document report, which indicated, of course, throughout that
3 there was a considerable need for improvement in those plans.
4 I just wanted to have a complete review given to the States so
5 that there was no longer open items in it.

6 JUDGE LINENBERGER: Thank you. Sorry.

7 MR. OLESKEY: Those are questions that I should have
8 asked that I think they're very helpful.

9 BY MR. OLESKEY:

10 Q Just to close out this line on the discussions with
11 Mr. Vickers -- inadvertent -- and the discussions in December,
12 did you -- I think you testified a moment ago that you did see
13 a reply to Mr. Vickers from Mr. McLoughlin on or about the
14 22nd?

15 A (Thomas) Yes, I did. My recollection is, I had it
16 at the meeting -- I think he gave it me at the meeting, he may
17 have given it to me the next day. As I'm thinking about, I
18 think it might have been the next day.

19 Q Okay.

20 A (Thomas) I'm just -- I'm not sure. I got it pretty
21 quickly after that.

22 Q Let me show a document I think everybody has seen,
23 but we'll distribute it again, in the event, dated the 22nd of
24 December with the initials "DM over -- from Dave McLoughlin,"
25 entitled "Memorandum for Henry G. Vickers, subject: Assistance

1 with Seabrook Activities," and ask if that's the document to
2 which you've just testified?

3 A (Thomas) Yes, it is.

4 Q Okay.

5 A (Thomas) And at the top of the page it has a
6 notation on it that I recognize as a fax transmittal code from
7 my -- from FEMA headquarters in Washington.

8 MR. OLESKEY: To save time I'm going to tell you
9 right now, Judge, I'm going to offer this as our Exhibit 53.

10 JUDGE SMITH: All right.

11 (The document referred to
12 was marked for
13 identification as
14 Massachusetts Attorney
15 General Exhibit 53.)

16 MR. OLESKEY: May I continue?

17 JUDGE SMITH: Please.

18 BY MR. OLESKEY:

19 Q Mr. Thomas, had you heard from anybody prior to this
20 meeting with Henry Vickers that any aspect of your
21 responsibility for oversight of the Seabrook plans might be
22 changed?

23 A (Thomas) To respond to your question, if you're
24 using the word "might," yes, I had.

25 Q What had you heard prior to the meeting with Mr.

1 Vickers?

2 A (Thomas) I had heard something that I regarded as
3 essentially a rumor in, I believe it was early December, it
4 might have been late November, following one of the days of
5 hearings I had a long -- what I considered to be a long
6 conversation in that it lasted an hour and hour and a half with
7 Terry Harpster of the New Hampshire Yankee organization.

8 And Terry indicated to me among other things that he
9 had been given to understand that I would be removed from my
10 duties with respect to the review of the Seabrook plans and the
11 Massachusetts communities.

12 Q Did he tell you how he had that information?

13 A (Thomas) He did not.

t/24

14 Q Had you heard anything else about any change in your
15 duties other than that conversation with Terry Harpster of New
16 Hampshire Yankee prior to this meeting with Henry Vickers?

17 A (Thomas) Well, I -- following the conversation with
18 Terry, I've always found Terry to be quite well informed, I did
19 make contact with our attorneys at that day, this may help us
20 nail down the day if the day is important. George Watson was
21 representing the agency up here because Joe Flynn was not
22 available at that point. I talked with George that night, and
23 then I talked with my headquarters the next day and then the
24 following week in person, and was told that, yes, that was
25 under consideration.

1 Q All right. Did you followup Mr. Vickers's comment
2 that you would have the opportunity to talk to Mr. McLoughlin
3 or Mr. Peterson at some point about their stated
4 dissatisfaction with your work?

5 A (Thomas) Yes, I did. I followed up on that in early
6 January and had a meeting, private meeting with both Mr.
7 McLoughlin and Mr. Peterson.

8 Q What was -- what was the substance of what you were
9 told about any dissatisfaction with your work in connection
10 with the review of the Seabrook plan?

11 A (Thomas) The first conversation I had was with Mr.
12 Peterson and he said, look, I've just come on board, I'm not
13 unhappy with you, I don't know you; you got a clean slate with
14 me. And he expressed concern, which I took to be about
15 Seabrook, he didn't directly relate it to Seabrook. He said he
16 was always concerned with an employee or with a person who was
17 off over here by himself and everybody else was over there in
18 the circle of wagons or what -- I'm sorry, it wasn't a person.
19 When there was one wagon off over here and all the other wagons
20 were over here in a circle.

21 And I said to him something much like, well, if
22 you're talking about Seabrook, I thought I was in the middle of
23 the circle of the wagons, and I did notice that maybe all of a
24 sudden I'm not.

25 And he said, no, I'm not necessarily talking about

1 S ok, but, you know, we'll see. And I asked him if he
2 we reconsider the decision to have -- having me removed from
3 the review of the Seabrook plans and Massachusetts communities,
4 and he said that he would think about it. Very amicable and a
5 short discussion. He was pressed for time, and I suspect we
6 talked a little bit about politics and the forthcoming
7 elections, and I suspect the conversation was less than 10
8 minutes and perhaps on the order of more like five minutes.

9 I then had a longer conversation later on that day
10 with Dave McLoughlin. Again in Dave's office -- I'm sorry, not
11 again in Dave's office, I had a private conversation with Mr.
12 Peterson in Mr. Peterson's office and I had the private
13 conversation with Mr. McLoughlin in Mr. McLoughlin's office.
14 And I said, gee, I understand you're unhappy with me. And he
15 said very diplomatically, and it took us a while to get to the
16 point, he said, yes, we are unhappy with you and there are
17 people that I have a lot of respect for that are saying that
18 you're difficult to deal with and you're -- just said difficult
19 to deal with or -- I don't remember what else.

20 And I didn't ask him who he meant, because I pretty
21 well knew, and I said that I would try and be more amicable and
22 friendly. And he said, good; and that was about the end of it.

23 Q Prior to the discussion with Mr. Vickers on
24 December --

25 A (Thomas) I'm sorry, can I just add to that.

1 Q I'm sorry.

2 A (Thomas) He said, Ed, I don't have anything
3 personally against you, but there are people that I have a lot
4 of respect for that are telling me that you're very difficult
5 to deal with; that was the nature of that conversation.

6 Q Is it your suggestion that you understood he was
7 referring to Mr. Krimm and Mr. Wingo?

8 A (Thomas) At that time I assumed he was mostly
9 referring to Margaret Lawless and Craig Wingo. He may also
10 have been referring to Dick Krimm.

11 Q Now, prior to the meeting with Henry Vickers on the
12 22nd of December, had you any inkling that he would be in
13 Washington the previous week?

14 A (Thomas) No, not at all. He was supposed to be at a
15 Christmas party, and I actually thought he was going to be
16 coming to the Christmas party.

17 Q Had you and he discussed the need for him to go to
18 Washington and request help for your division, specifically,
19 somebody to replace you on -- in the aspect of the Seabrook
20 plan review whether or not it was the Massachusetts plan?

21 A (Thomas) Okay. There are three separate points
22 there and let me hit them one at a time. We had not talked
23 about the need for him to go to Washington. We had talked
24 about a very great need that we had for help in the Boston
25 office, if in fact we were to do a prompt job of finishing the

1 review of the New Hampshire plans and finishing the testimony,
2 and at the same time reviewing the Seabrook plans at the
3 Massachusetts communities with the knowledge that we had other
4 duties to perform in the region relative to nuclear
5 powerplants, and believe it or not we do do other things.

6 And we had the potential that we didn't know when the
7 State of Massachusetts or the Commonwealth of Massachusetts
8 might be sending in draft or final plans with respect to the
9 Pilgrim nuclear powerplant.

10 And that I was very, very concerned that we needed a
11 great infusion of staff. We had never discussed the need to
12 have, other than staff assistance in my division, we had never
13 discussed the need to have another Ed Thomas or someone at my
14 level.

15 Q That is, you had never requested somebody to take on
16 part of your duties?

17 A (Thomas) No, I never had.

18 Q Okay. Now, I want to move along to the RAC meeting
19 in early January, in a meeting that I think preceded that on
20 the 5th of January that you attended.

21 A (Thomas) Yes.

22 Q All right. Would you tell the Board how you came to
23 be at a meeting with other officials from FEMA, I believe, in
24 Washington on the 5th of January?

25 A (Thomas) I was told to go to Washington to be at a

1 meeting.

2 Q Okay. Who were the people who were there from your
3 agency?

4 A (Thomas) It was quite a cast. My notes would
5 refresh my recollection, but I can fairly well rattle off. It
6 was Joe Flynn, Bill Cumming, Craig Wingo, Margaret Lawless,
7 Dick Krimm, Dave McLoughlin. I don't remember offhand if Joe
8 Keller was at that meeting or not.

9 Q What about Mr. Peterson?

10 A (Thomas) Mr. Peterson came in for --

11 Q A cameo?

12 A (Thomas) I'd like to have my notes, I'm sorry, I'm
13 drawing a blank.

14 Q Sure. Go ahead. I think they've been supplied to
15 everybody.

16 A (Thomas) You know, what's happening is I'm confusing
17 a couple of meetings together.

18 Q Go ahead.

19 A (Thomas) I'm getting a little lost.

20 This helps me refresh my recollection. Yes, Mr.
21 Peterson was there and he was there for all or most of the
22 meeting.

23 Q Okay.

24 A (Thomas) The meeting where he came in at the end was
25 the meeting on the 25th of January.

1 Q All right. What was the subject matter of the
2 meeting?

3 A (Thomas) Basically, as I understood it, we were
4 talking about reasonable assurance again and what it meant to
5 FEMA. And Joe Flynn -- and this is -- I'm very much being
6 refreshed and I'm somewhat testifying from these notes. This
7 is -- I'm more remembering this from the notes than I am from
8 my own memory.

9 Joe Flynn talked about a Court of Appeals case which
10 he distributed. Talked about what was good enough in terms of
11 emergency planning. We talked about how this related to the
12 testimony. And -- well, there's a fairly detailed discursion
13 of what went on at the meeting in these notes.

14 Q All right. Let me try to cut through what's, I
15 think, a long set of notes, other people can inquire more if
16 they want, and just ask some more pointed questions.

17 How long did the meeting take?

18 A (Thomas) A couple of hours anyway.

19 Q Was Mr. Peterson running the meeting or Mr.
20 McLoughlin?

21 A (Thomas) I would say that, certainly Mr. Peterson
22 was in charge at this point. He was not acting as the master
23 of ceremonies and wasn't running it as much as he ran the
24 meeting that we had on March 4th.

25 I don't remember anyone particularly running the

1 meeting other than perhaps Attorney Flynn was maybe more acting
2 as master of ceremonies and introducing the topics and keeping
3 it moving along. That would be my recollection. That there
4 was no -- there was no one person that was just running the
5 whole show.

6 Q And there wasn't an agenda either, I take it?

7 A (Thomas) There was no agenda, no.

8 Q Was the context in which reasonable assurance was
9 being discussed, another discussion on what to do about the
10 FEMA September testimony, where the agency was going to go?

11 A (Thomas) Yes, indeed.

12 Q Okay. Did Mr. McLoughlin have some things to say
13 about reasonable assurance?

14 A (Thomas) Yes, he did. Basically --

15 Q Can you sum up what he said about reasonable
16 assurance?

17 A (Thomas) Better yet, I can tell you what -- exactly
18 what he said. The crystallization of his thinking was that,
19 reasonable assurance was the best reasonable dose saving
20 considering the nature of the site.

21 Q Did he talk about how FEMA would make that kind of
22 assessment in a context like the Seabrook plan? What kind of
23 criteria would be applied to make that assessment of what the
24 best reasonable dose saving was?

25 A (Thomas) Not specifically, no. It would be a matter

1 of judgment.

2 MR. TURK: Well, we could ask -- the question is, did
3 he say something and the witness's answer is, it would be a
4 matter of judgment. Is that a representation Mr. McLoughlin
5 said that or that's your understanding of how a solution would
6 be reached?

7 THE WITNESS: (Thomas) I represent to you that Mr.
8 McLoughlin said very directly that you have to have some
9 judgment in here. He talked about at one point, it sure would
10 be nice if we had a number, we had a quantitative standard that
11 we could say that if a plan achieved this much dose savings it
12 was good enough; and if it didn't achieve that dose savings it
13 wasn't good enough. And absent that you had to have some
14 judgment.

15 And he said that he felt that the judgment should be
16 applied in terms of the NUREG-0654 planning standards, that
17 there would be some best efforts that wouldn't be good enough,
18 if they weren't good enough in terms of a specific A through P
19 or subelement of A through P planning standard.

et/24

20 (Continued on next page.)

21

22

23

24

25

t/25

1 BY MR. OLESKEY:

2 Q Did anybody say anything about changing the agency's
3 position or a change in the agency's position?

4 A (Thomas) Yes.

5 Q What was that?

6 A (Thomas) They were talking about developing --
7 change testimony that would address the -- something along the
8 lines of what, at least some people call the "best efforts
9 approach" or as Mr. McLoughlin I believe summarized it as the
10 "best reasonable dose savings considering the nature of the
11 site."

12 That we would say in the testimony that it's
13 conceivable that the Seabrook site would be adequate, but that
14 it would definitively be inadequate if there was no plan for
15 sheltering the beach population. Plan for sheltering, and I
16 believe we were talking about the beach population. Yes, we
17 had to have been talking about the beach population.

18 MR. TURK: I'm sorry, I didn't hear who it is who
19 made that statement.

20 THE WITNESS: (Thomas) Specifically who? This is in
21 my -- the portion of the notes that is summarizing the meeting
22 and I don't know who specifically said it. This is in the end
23 of the meeting where we're reaching consensus.

24 MR. TURK: It could have been you?

25 THE WITNESS: (Thomas) No, no. It could not have

1 been me. It was not me. I was -- at this meeting I was mostly
2 listening and occasionally interjecting with a question. But
3 I -- that is not my statement.

4 MR. FLYNN: Mr. Oleskey --

5 MR. OLESKEY: Yes.

6 MR. FLYNN: I beg your indulgence for a moment. I
7 assume we've already had this -- at the beginning of this line
8 of questioning Mr. Thomas identified one of the participants as
9 William Cumming, but he says his notes indicate he was not
10 there, but apparently indicates that that was not the case.

11 Could I ask you the favor of having the witness clear
12 that up.

13 MR. OLESKEY: Sure.

14 BY MR. OLESKEY:

15 Q Mr. Thomas, do you want adopt that as a question?

16 A (Thomas) Yes. As I said, I was testifying totally
17 from memory and my notes certainly are better than my memory on
18 this, on this meeting; and I'm convinced that Bill Cumming
19 wasn't there unless Bill Cumming told me he was there, and I
20 somehow didn't -- I missed his name. But I believe I
21 accurately wrote down who was at the meeting at that time and
22 his name is not on here.

23 MR. FLYNN: Thank you.

24 BY MR. OLESKEY:

25 Q Had you begun to say that some kind of consensus was

1 evolving at the end of the meeting?

2 A (Thomas) Yes. Yes, indeed.

3 Q What was that?

4 A (Thomas) That there would be a change to the
5 testimony and it would -- we would be talking about it in terms
6 of reasonable assurance as a -- the best reasonable dose
7 savings considering the nature of the site. That was what my
8 understanding was.

9 Q All right. As you heard that standard being
10 articulated by Mr. McLoughlin at this meeting, how did it
11 differ from the way reasonable assurance had been employed by
12 the agency in connection with the preparation of the testimony
13 in June or September?

14 A (Thomas) It was -- at variance with what we had said
15 before on a very, very key point. Because what this line of
16 logic was, was that, in essence, that we start by accepting the
17 site that we're given. And then we do the best we reasonably
18 can with the site that we have in terms of emergency
19 preparedness planning, we encourage the State to develop the
20 best possible plans in accordance with the NUREG-0654 A through
21 P standards.

22 We ignore any recommendation along the lines that
23 FEMA had once made in REP-3 for consideration of additional
24 road construction or ramp construction.

25 We just focus on doing the best emergency plans that

1 can be considering the nature of the site.

2 Previously --

3 JUDGE SMITH: Before you go previously, could I
4 inquire, did you intend to say that you make the best effort
5 with respect to the standards A through P or did you meet those
6 standards?

7 THE WITNESS: (Thomas) I think the implication, as I
8 understood it, that was not clear from the -- well, it was
9 clear to me from the discussion. I'm not saying it necessarily
10 would have been clear to everybody. But based upon previous
11 discussions in the meeting, it was clear to me that what we
12 were talking about was, you had to meet the A through P
13 standards unless the area where you didn't meet the A through P
14 standards was something that we considered minor and not a
15 major problem.

16 But the A through P standards, as many people read
17 them, don't in any way make a reference to the length of time
18 of an evacuation or the nature of the evacuation; that sort of
19 thing. And wouldn't lead you to think about additional road
20 construction.

21 And this was different than some of the discussions
22 we had had earlier on in June and August and in September and
23 October where we said that FEMA, from the point of view of our
24 regulatory finding of a reasonable assurance in adequate level
25 of safety -- pardon me -- did not have to just accept the site

1 that we were given. That we -- that our judgment was
2 independent and focused on public safety. It didn't just
3 assume that we did the best we could with respect to A through
4 P or the best that needed to be done for reasonable public
5 safety, focusing only on A through P. That we had a broader
6 and more expansive mission.

7 And this was a narrowing of that mission focusing on
8 the acceptance of the site that you have with no additional
9 costs for road construction and the like.

10 BY MR. OLESKEY:

11 Q Did anybody -- Mr. McLoughlin or anybody else say at
12 that meeting, Sholly-Beyea drives us in this direction, Mr.
13 Keller, Mr. Baldwin's work, this fall, drives us in this
14 direction; anything about the rationale for this shift in the
15 application of standards?

16 A (Thomas) There --

17 JUDGE SMITH: To clarify your question, you mean
18 Sholly-Beyea driving them in that direction --

19 MR. OLESKEY: Yes.

20 JUDGE SMITH: -- or the Board's ruling on Sholly-
21 Beyea?

22 MR. OLESKEY: Yes. Thank you, Judge. Thank you very
23 much.

24 BY MR. OLESKEY:

25 Q Anything about the Board's ruling on Sholly-Beyea,

1 Mr. Keller, Mr. Baldwin's work of that, of the fall of '87, or
2 any other articulated reason or series of reasons why this view
3 was the way the agency intended to move?

4 A (Thomas) I'm looking for -- I remember Dave saying
5 this, and it's here in the notes and unfortunately it doesn't
6 expand other than I have a notation that he explained more
7 about it. Dave McLoughlin says, "Look, my thinking has changed
8 since June, I have increased knowledge." And I have a little
9 symbol in there that indicates that he went on and said more
10 about that, I don't remember what he said.

11 I could speculate for you on what he said, but I'd
12 prefer not.

13 Q Was there anything from Keller or Baldwin or anybody
14 else, this technical information that was new, since the work
15 they had done that fall that you had discussed at late October?

t/26 16 A (Thomas) I can't think of any right now. I don't
17 believe so, no.

18 Q Were there any new facts that the agency deemed to be
19 important about the Seabrook site which had come to its
20 attention between June 4th and this meeting on January 5th,
21 1988 which were discussed at this meeting?

22 MR. TURK: Your Honor, I'm going to object as being
23 cumulative. That line was followed with the FEMA witnesses. I
24 don't see that it's a very good use of time to repeat the same
25 thing.

1 JUDGE SMITH: Well, he's hoping, I would expect, to
2 establish different answers.

3 MR. OLESKEY: Yes. I think in fact the answer will
4 be -- probably be consistent here, but have a different
5 witness, and he has notes and so on. So I think I'm entitled
6 to ask him the question.

7 MR. TURK: It's cumulative.

8 JUDGE SMITH: It's cumulative from one panel to the
9 next, you mean, or from this witness from previous answers?

10 MR. TURK: My recollection of the FEMA testimony is
11 it did not have new information, they simply had better
12 thinking of the whole --

13 JUDGE SMITH: Overruled.

14 MR. TURK: I won't testify.

15 THE WITNESS: (Thomas) I think the principal input
16 we had was guidance from the Nuclear Regulatory Commission, and
17 that's noted in my notes as saying that NRC says there's no
18 quantitative standard. And I believe that's making reference
19 to the Board ruling in Sholly-Beyea.

20 There was -- I think it was a matter of logic. I
21 mean, there was -- there had been a, I think it's fair to say,
22 a tug of war in June, June of '87 about what we would say in
23 our testimony.

24 And Mr. Cumming has testified to that, that he
25 indicated that he agreed that the -- what became the FEMA

1 position on contentions, and what became the prefilled testimony
2 was legally correct, but that he disagreed with it because he
3 felt, as I understood it, that the standard we were applying
4 just didn't give adequate notice to the utility. He may have
5 had other reasons as well.

6 And at this meeting, again, I see George Watson as an
7 attendee saying, look, we're going to get killed if we're going
8 based upon judgment alone.

9 And we were talking about what would be the
10 alternative to saying that we were just going on judgment. If
11 we could go back to just the A through P standards and our
12 judgment as to whether each individual element and subelement
13 of A through P was met, that that was a place that FEMA would
14 be subject to -- well, George said, we're going to get killed
15 if we do it, so obviously we're safer if we just stick with A
16 through P.

17 Dave McLoughlin saying, look, there are no minimized
18 -- no minimum specified dose savings. There are no minimum
19 ETEs, and there's no requirement for shelter. And that he's
20 therefore defining reasonable assurance in a certain way.

21 And what he talked about was, early in the meeting,
22 was whether there was a mechanism in place for carrying out an
23 emergency plan to cover a range of accidents. And that, as we
24 went on we distilled that down to what I've testified before to
25 the -- the best reasonable dose savings considering the nature

1 of the site.

2 I can lead you through how we came to that. We
3 talked about best efforts. We talked about how best efforts is
4 sometimes actually a higher standard than what we've used,
5 because we've approved emergency plans that had a number of
6 inadequacies in them, but we felt that it was a reasonable
7 level -- a reasonable assurance of an adequate public
8 protection. It wasn't necessarily the best that a State could
9 do, but it was reasonable assurance of adequate safety.

10 And we talked about how best efforts could be a lower
11 standard, too, than what we had heretofore used as a reasonable
12 assurance of adequate public safety, that it was something that
13 was different in terms of a logic that we had used heretofore.

14 BY MR. OLESKEY:

15 Q What was your understanding from the meeting of what
16 the agency was going to do thereafter with respect to its
17 testimony on the beach population?

18 A (Thomas) I understood that there were going to be
19 major changes developed for the testimony on the beach
20 population based on this best efforts or the best -- or the
21 best reasonable dose savings concept.

22 Q Did you have any discussions with agency lawyers
23 after the meeting about your views on the different standard
24 that you heard being articulated in the meeting?

25 A (Thomas) Yes, I did. I thought about it a lot and

1 what I came up with after thinking about it, and I discussed
2 this with Attorneys Flynn and Watson, was that, in essence,
3 that I felt and I explained to them in detail why I felt so,
4 that this best efforts approach was different than our official
5 agency policy as articulated in the Christenbury memo which had
6 been endorsed by the general counsel of the agency.

7 I felt, as I read those memos that more than best
8 efforts was needed. The best efforts wasn't the point, it was
9 the reasonable assurance of adequate public safety.

10 And basically I said, look, I'm tired of being the
11 bad guy on this, this is a legal issue and I really have to
12 insist on you carrying the ball on it. And what I understood
13 was, they agreed with me that, yes, they had to go back and
14 revisit this with Grant and Dave after --

15 Q Revisit what, Mr. Thomas?

16 A (Thomas) Revisit the decision that the agency
17 position would be this best efforts or best reasonable dose
18 savings.

19 Q You felt that a decision that, whatever it was, eight
20 or ten agency officials had reached with the lawyers, was going
21 to be revisited based on what you told Watson and Flynn after
22 the meeting, is that your testimony?

23 A (Thomas) Perhaps not so much based on what I had
24 told them, but based upon the analysis that I had given them
25 and then looking at the Christenbury-Spence Perry memos, and as

1 I understood it, agreeing with my analysis that, yes, what had
2 been done at the meeting on the 5th of January was really not
3 legally acceptable.

4 Q Okay.

5 A (Thomas) That was my understanding, again.

6 Q Okay. I want to direct you now to the RAC meeting of
7 the 7th and the 8th --

8 JUDGE LINENBERGER: Excuse me, sir, before we go to
9 another meeting. Mr. Thomas, you testified with respect to
10 this meeting, I believe you told Mr. Oleskey you were told to
11 attend that meeting or invited, I'm not sure which word you
12 used, but my question goes to, by whom?

13 THE WITNESS: (Thomas) Your Honor, I'm sorry, I have
14 absolutely no recollection. It was my normal practice in off
15 weeks from the Seabrook hearings to be in Washington. And I
16 don't remember if I was specifically told or invited to be at
17 this one or if it was just that I was going to be down there
18 anyway. I'm totally drawing a blank on it.

19 JUDGE LINENBERGER: Okay. I thought I heard you say
20 to Mr. Oleskey that you were told or invited, and maybe I'm
21 wrong here, but I --

22 THE WITNESS. (Thomas) When I go to Washington I
23 always have to be invited to go. I mean, one way or another.
24 I just don't go. And I don't remember any specific language
25 from anyone saying, we want you here at such and such a time.

1 I could go back and dig through my notes and my travel logs and
2 figure out how I came to be there, but I just don't remember.

3 BY MR. OLESKEY:

4 Q When you say, you have to be invited, do you mean
5 because you're government employee, somebody above you has to
6 authorize your travel on official business; is that the
7 substance of what you're saying?

8 A (Thomas) Yes, exactly.

9 Q In other words, Dick Krimm or Henry Vickers or
10 somebody else?

11 A (Thomas) It would be Henry Vickers and I have to
12 have a reason to go there, which is usually that somebody wants
13 to see me.

14 Q Okay. Turning to the RAC meeting of the 7th and 8th
15 of January --

16 JUDGE SMITH: All right. Do you want to take a mid
17 morning break, 10 minutes, please.

18 MR. OLESKEY: That's fine. Let me say something
19 before we break, that I said before and now that we're at the
20 point of the RAC meeting, it's appropriate again.

21 I'm willing to have the transcript of the so-called
22 deposition offered in lieu what I believe would be repetitive
23 testimony.

24 JUDGE SMITH: The transcript of --

25 MR. OLESKEY: The so-called deposition that the Board

1 presided at --

2 JUDGE SMITH: Right. Yes, all right. Yes.

3 MR. OLESKEY: -- in January right after the meeting.

4 JUDGE SMITH: Yes. All right. What is the pleasure
5 of the parties on that, there was quite a bit of time spent.

6 MR. TURK: It's rather lengthy testimony.

7 JUDGE SMITH: What?

8 MR. TURK: I'd need to review that transcript before
9 I could pass judgment on the offer.

10 MR. DIGNAN: I'd rather have him questioned now, Your
11 Honor. That was the trouble, it was a deposition. I felt I
12 couldn't object, I couldn't raise Cain when I wanted to, and
13 I'd rather have him question it out right here.

14 MR. OLESKEY: Well, I could offer it and they could
15 question him out as much as they want about anything else.

16 MR. DIGNAN: No. No. That -- we went along with
17 that procedure on the basis the Board told us it was a
18 deposition, and that's all it was. So you can ask the
19 questions.

20 MR. OLESKEY: So be it.

21 JUDGE SMITH: All right.

22 (Whereupon, a brief recess was taken.)

et/26

23 (Continued on next page.)

24

25

T27

1 JUDGE SMITH: Ms. Sneider, I notice your motion to
2 file rebuttal testimony states that the testimony is currently
3 being prepared.

4 Have you informed the other parties as to who the
5 witness will be?

6 We won't even think about entertaining any motion.
7 When you made that identification of a witness, the first think
8 you've got to do is tell people about it.

9 MS. SNEIDER: I'll be prepared to tell people this
10 afternoon.

11 JUDGE SMITH: No, you tell them now. I mean,
12 otherwise this is not a bona fide motion. I mean, if you're
13 preparing testimony, you certainly must know who the witness
14 is.

15 MS. SNEIDER: Well, the piece that I was talking
16 about that is being prepared, I did identify the two witnesses
17 which is Dr. Gordon Thompson and Dr. Robert Goble.

18 JUDGE SMITH: Right. Oh, so the other witness, you
19 don't even know yet?

20 MS. SNEIDER: The other witness I'm talking to, and I
21 will be talking to at lunchtime, and I can then tell you
22 that -- there is no testimony being prepared right now. I can
23 tell you after lunch definitely whether that piece of --
24 whether we will be filing that testimony.

25 JUDGE SMITH: That's not covered by the motion then.

1 MS. SNEIDER: Well, I identified it to the extent
2 that I thought it was at least indicating to the Board what our
3 intention is, and I'd be confirming it this afternoon.

4 MR. OLESKEY: Under our obligation to tell you when
5 we think that we can put something in, we're telling you we
6 think we can, but we don't have the testimony. And we want the
7 guy to tell us, yes, I can give you the testimony that you want
8 before we tell you we've got --

9 JUDGE SMITH: So this is -- this is the earliest bit
10 of information --

11 MR. OLESKEY: Yes.

12 JUDGE SMITH: -- you can give us.

13 MR. OLESKEY: Yes.

14 MS. SNEIDER: Right.

15 MR. OLESKEY: And we're now saying that we think this
16 afternoon we can fill in the blank.

17 JUDGE SMITH: Okay.

18 MR. OLESKEY: Okay?

19 Should I start?

20 JUDGE SMITH: Please.

21 BY MR. OLESKEY:

22 Q Mr. Thomas, we're at the RAC meeting of the 7th and
23 8th of January about which you have given previous testimony
24 which is, however, as you know not record testimony in the
25 hearing. So let me ask you some relatively brief questions.

1 And if other people want to follow up on cross, they can.

2 Was there a agenda for that meeting?

3 A (Thomas) I believe there was, yes.

4 Q Okay. You've indicated to me and to Judge
5 Linenberger in his follow-up questions, as I heard you, that
6 one of the purposes of the meeting was to close out the
7 technical evaluation by the RAC of these two elements, J-9 and
8 J-10-M.

9 A (Thomas) That is correct.

10 Q Leaping over the discussion just to set a frame for
11 the meeting, what was the result of that RAC meeting on those
12 two days with respect to those two elements and the technical
13 review you had wanted to close out?

14 A (Thomas) Okay. The result was that there was a
15 minority view and a majority view developed and expressed.
16 There was a vote, and FEMA was in the minority.

17 Q Okay. And how did the sides align on the issues?
18 Who took what position by way of these agencies?

19 A (Thomas) Okay. Again, that meeting was a whole lot
20 fresher in my mind when I testified to it in January, but
21 basically Dr. Bores representing the NRC, Mr. Fish from the
22 Department of Energy, Mr. Lutz, Mr. Keene and Mr. Church all
23 indicated that, with respect to items J-9 and J-10-M, the New
24 Hampshire plans as submitted were adequate and should be marked
25 with an A as is our customer in the spread sheets.

1 Myself representing FEMA, and Stanley Wasserman
2 representing the Department of Commerce, as well as Bill
3 Patterson representing Interior, said that, no, the plans as
4 they existed were not adequate, and we developed language which
5 has not been finalized to this date. The actual language has
6 been transmitted to my headquarters for review, and that review
7 hasn't been concluded apparently, and that's about it.

8 Q Do you think that you can accurately summarize the
9 view of the people who found the elements adequate with respect
10 to the plan as well as the views of those who found it not
11 adequate --

12 A (Thomas) I'll tell you very candidly --

13 Q -- save reviewing who said what over a meeting that
14 went off and on for two days?

15 A (Thomas) I believe that the joint testimony of
16 myself and Dr. Bores represents -- not testimony, excuse me --
17 the formal deposition represents a far better source than my
18 current testimony, but I'll give you my recollection of the
19 bottom line.

20 We basically focused on the meaning of NUREG
21 subelements J-9 and J-10-M, as to whether there was a range of
22 protective actions that had been provided in the New Hampshire
23 plans, and focused on the need and the benefit of sheltering.
24 And the representatives of the majority indicated that they
25 were satisfied with the plans as they then existed, although

1 they felt that they could be enhanced, as I understood it, by
2 additional provisions for additional planning, preplanning for
3 dealing with the transit-dependent transients who would be
4 provided transportation and who needed to be sheltered until
5 they could be transported out of the EPZ.

6 And there was the minority view that the plans did
7 not provide for technically in terms of just the A through P
8 elements, the J, the standard J and J-9 as set forth more
9 completely at J-9 and J-10-M, that there was not a range of
10 protective actions for the transit -- for the beach population
11 in the Seabrook area.

12 Q On the issue of the range of protective actions, what
13 was the range that was being specified by the majority as
14 adequate which the minority felt to be inadequate?

15 A (Thomas) I think to some extent that's asking me to
16 crawl inside peoples' heads but --

17 Q I'm only asking you to summarize what folks said
18 insofar as you understood it.

19 A (Thomas) The majority view emphasized that
20 sheltering was the preferred protective action in any case.
21 That they wanted to get those people out of the area as quickly
22 as possible, and that sheltering them would in fact possibly
23 lead to greater dose consequences.

24 Q You said a moment ago that the majority felt that
25 sheltering was the preferred protective action. Did you mean

1 evacuation?

2 A (Thomas) I'm sorry. Yes, I certainly - of course, I
3 meant evacuation was the preferred protective action. That
4 sheltering -- in fact, if we were to put people into shelters
5 rather than evacuating them, that their cumulative dose would
6 be more than if we just got them out of the EPZ, and no
7 matter -- really, no matter how long it took that they were
8 sitting in traffic.

9 That was what I understood the position. And again,
10 I was a lot fresher on this in January. I did not even read my
11 notes in preparation for this today.

12 Q My brothers don't want me to offer that transcript,
13 so I can't. I have to ask you these questions.

14 JUDGE SMITH: Well, he can --

15 MR. OLESKEY: If you want to refer to the testimony,
16 that's perfectly all right.

17 JUDGE SMITH: As a matter of fact, I don't know why
18 we can't accept that deposition if he can adopt it. Well, he
19 did, and then let him be cross-examined on it.

20 MR. OLESKEY: I agree with you totally.

21 JUDGE SMITH: I don't see how that hurts your
22 position. I mean your complaint is that you did not take the
23 adversary posture that you could have and should have because
24 it was down at that position.

25 That may be, but now you have the opportunity to

1 cross-examine on it.

2 MR. TURK: Your Honor, that's not exactly correct.
3 We're hoping to conclude Mr. Thomas's examination today. The
4 examination concerning the January RAC meeting went on for I
5 believe two days. It was a lengthy examination. Probably took
6 more time than the RAC meeting itself; maybe twice as long.

7 JUDGE SMITH: Well, much of that was your efforts to
8 revisit the July 30th RAC meeting through the January RAC
9 meeting.

10 MR. TURK: I don't recall it that way, Your Honor.

11 JUDGE SMITH: Which was --

12 MR. TURK: I recall my effort, and I remember
13 somebody referred to it as being rather imaginative, but that
14 was a minor part at the end of the examination.

15 MR. OLESKEY: I don't think there's a lot of
16 controversy about what Bores and Thomas said sitting there.

17 JUDGE SMITH: That's exactly right, and I just don't
18 want to see our time drifting away, but I'm using time by
19 trying to appeal to --

20 MR. DIGNAN: Let's get the cards up on the table, and
21 if I can get a restriction, then I'll go for it.

22 The fact of the matter is that Mr. Bores was put in
23 the position, well, Bob, if you disagree with anything I say,
24 be sure you speak up.

25 Now, no man or woman can stand on a witness stand for

1 two days listening to somebody else testify, and every time
2 they disagree say, gee, I'd better speak up. It just doesn't
3 work that way, and I don't want an inference drawn that Dr.
4 Bores adopted everything Thomas said and --

5 JUDGE SMITH: Well, is that your problem?

6 MR. DIGNAN: That's my problem.

7 MR. TURK: I don't know if that's Mr. Dignan's
8 problem, but I have that problem, and I would couple with it
9 the fact that I have not spoken with Dr. Bores about Mr.
10 Thomas's testimony on those two day. So I don't know to what
11 extent I may need to cross-examine.

12 JUDGE SMITH: No, you're still not wrestling with the
13 whole picture. What are you going to do if he recreates that
14 testimony this afternoon?

15 MR. TURK: If Mr. Oleskey asks a question, even if
16 it's reading from the transcript and getting an agreement that
17 that was correct testimony, Dr. Bores is sitting next to me.
18 He can indicate if I need to cross-examine on that issue.

19 JUDGE SMITH: I don't understand.

20 MR. OLESKEY: I'm not going to do that. They were
21 both under oath. If he -- he's got Bores beside him. He's had
22 Bores beside him since January.

23 JUDGE SMITH: I'm not even suggesting that Bores's
24 deposition testimony be accepted. I'm only suggesting that
25 this witness's deposition testimony be --

1 MR. DIGNAN: I have no problem with it being accepted
2 provided it is fully understood no one can argue that Dr. Bores
3 adopted the testimony by silence.

4 JUDGE SMITH: That's right. That is not -- that would
5 not be present in this.

6 MR. TURK: Your Honor, if you're going to do that, I
7 note --

8 MR. DIGNAN: No objection.

9 MR. TURK: If you're going to do that, I note I still
10 have an objection because of the procedure. But I also note if
11 you are going to accept the Thomas deposition testimony, it's
12 only fair to take in the testimony of Dr. Bores as well,
13 because after all his purpose there was to indicate any views
14 that he had which were different.

15 JUDGE SMITH: All right, if do that, then the silence
16 gets significance. I am only thinking -- go ahead, ask your
17 questions.

18 MR. OLESKEY: Well, I don't know. I want to make one
19 more effort.

20 JUDGE SMITH: You know, we were here -- I was on the
21 telephone conference last week when everyone was yelling about
22 not having direct testimony from this witness.

23 Now here's a form of direct testimony, and you won't
24 accept it. You're making him go through question after
25 question of direct.

1 MR. OLESKEY: Mr. Turk, can't we leave Dr. Bores out
2 of it and just take Ed Thomas's testimony in January as if he
3 were giving it today? If you want to contradict it with things
4 that Dr. Bores thinks are wrong, you go ahead and contradict it
5 when you got the cross-examine.

6 MR. TURK: Your Honor, I think the fairest procedure
7 would be to take them both and not draw any inference from Dr.
8 Bores's silence on a point. That accomplishes getting the
9 clearest record possible without any, any --

10 JUDGE SMITH: Would you have called Dr. Bores as a
11 rebuttal witness today to this testimony? I mean --

12 MR. TURK: To the January testimony?

13 JUDGE SMITH: -- Mr. Oleskey can do exactly what
14 you're objecting to if he wishes, and that is getting out that
15 transcript, going through those questions and answers, and then
16 where are you.

17 I'm only suggesting that today that we accept this
18 witness's questions and answers as having been given here
19 today, and then you can cross-examine. You can do the cross-
20 examination that you didn't do.

21 Now you'd better have a good reason for just saying
22 no, because it can be done if he wishes to do it.

23 MR. TURK: Your Honor, the fundamental problem I have
24 is that the deposition transcript back in January, the joint
25 testimony of Dr. Bores and Mr. Thomas, lasted an enormous

1 amount of time.

2 For me to be able to accept the wholesale offer of
3 that testimony now would preclude me from being able to review
4 it and cross-examine in any kind of a timely fashion.

5 The only saving I have is that if you are going to
6 take Mr. Thomas's testimony, at least take the testimony of Dr.
7 Bores which indicated where he disagreed with Mr. Thomas's
8 testimony, and to be fair, not to draw any negative inference
9 from his silence on any other testimony.

10 MR. OLESKEY: Well, they've had the testimony since
11 it came out. And Dr. Bores has testified since then and said
12 things about that meeting, presumably put in any version that
13 Mr. Turk wanted with this disagreement. This is a nonissue.

14 MR. TURK: Why is Mr. Oleskey objecting to Dr.
15 Bores's testimony coming in. He had a full opportunity --

16 MR. OLESKEY: Because Mr. Dignan doesn't want it and
17 I want it --

18 MR. TURK: Excuse me. He had a full opportunity at
19 that time to do any examination of Dr. Bores he wished to.

20 MR. OLESKEY: I'll take the whole thing, or I'll take
21 Bores, but Mr. Dignan doesn't want --

22 MR. DIGNAN: Just so my position is clear, Mr.
23 Oleskey, you can take all of it, some of it, none of it. I
24 don't care as long as one thing is understood. That Dr.
25 Bores's silence after any particular answer of Mr. Thomas is

1 not to be argued as his agreement, because I recall quite
2 clearly he was told at some point during that examination, if
3 you have any disagreement, pipe up, and I can't believe there
4 is a human being in the world who can sit under cross or
5 examination for two days and remember that admonition every
6 time, and that's what makes me nervous.

7 If it's understood that his silence on any given
8 answer is not to be construed as his agreement with the answer,
9 everything c-n go in.

10 JUDGE SMITH: Dr. Bores, you are here. Have you had
11 an occasion to read that transcript since you've testified?

12 MR. BORES: No.

13 JUDGE SMITH: Okay.

14 MR. OLESKEY: Okay. To clean it up, I'm going to
15 offer the testimony of Ed Thomas as given on January 12th and
16 13th as if given today without respect to Bores. I'm not
17 offering Bores.

18 MR. DIGNAN: I have no objection to that offer, for
19 Bores not being offered.

20 MR. TURK: I have an objection.

21 JUDGE SMITH: The only objection that you have is the
22 length of it.

23 MR. TURK: No. You mean in terms of its coming into
24 the record?

25 JUDGE SMITH: Yes.

1 MR. TURK: No, that's not my objection at all.

2 My comments about the length of the examination were
3 meant to indicate that for me to prepare cross-examination on
4 this large document, I'm going to require a long period of
5 time --

6 JUDGE SMITH: Right, okay.

7 MR. TURK: -- in the order of days for the cross-
8 examination.

9 JUDGE SMITH: I understand that. That would also be
10 the case if he went question by question here today.

11 MR. TURK: No, because I wouldn't have to prepare
12 overnight. I have a person sitting next to me who can indicate
13 to me where I need to pursue cross-examination.

14 JUDGE SMITH: All right, so you feel you are
15 prejudiced by the representation that this would all be done in
16 one day, and here we are, a day and a half, and then suddenly
17 you're getting the equivalent to another day and a half, and
18 called upon to suddenly cross-examine.

19 MR. TURK: No, Your Honor. I'm sorry, I'm not making
20 myself clear.

21 The problem is not about admitting the prior
22 examination in its entirety. If that's what Mr. Oleskey wants
23 to do with respect to Mr. Thomas, I have no problem, except
24 that I can't sit here today and cross-examine on that because I
25 haven't reviewed it, I haven't discussed it with the member of

1 the NRC staff who was present in the same meeting with Mr.
2 Thomas and who could advise me where to go with cross-
3 examination.

4 All I'm saying is if Your Honor is inclined to take
5 that in rather than to burden the record with a whole another
6 series of questions and answers, which I agree is appropriate,
7 at least taken in Dr. Bores's testimony as well. Because at
8 least in those respects that Dr. Bores indicated disagreement
9 with Mr. Thomas, the record will be clear that those are areas
10 where Mr. Thomas's testimony are not agreed to by the staff.

11 If you take Thomas, take Bores, too. And I agree
12 with Mr. Dignan, don't draw a negative inference from Dr.
13 Bores's silence during the course of the January examination.

14 MR. OLESKEY: I can't agree to that because there are
15 lots of times he disagreed.

16 JUDGE SMITH: Well, no, wait a minute. Expressed
17 disagreement is something different than silence.

18 MR. OLESKEY: No, but the ground rules were sometimes
19 Bores got asked a question, sometimes Thomas got asked a
20 question. Gentlemen, if you disagree with the answer, tell us
21 now, and lots of times they did.

22 MR. DIGNAN: Yes, but that's the problem. It wasn't
23 that easy, Steven, and you know it. They were given the
24 admonition one or two times, I quite agree, but they were on
25 there for a lot longer, and that's my one concern, Your Honor.

1 is I'm not satisfied that Dr. Bores was sitting there with the
2 intensity that a lawyer would listening that was going to
3 cross-examine, and every nuance saying, I've got to disagree
4 here, and that's the only thing that's bothering me.

5 If that -- if no use is to be made of that
6 instruction that was given to Dr. Bores to later argue he must
7 have agreed with it because he said nothing, I've got no
8 problem with the whole kit 'n caboodle coming in.

9 MR. OLESKEY: How about --

10 MR. DIGNAN: I'm not satisfied, as I say, that
11 anybody can sit with fresh in their mind the admonition that
12 they must disagree if they -- or forever hold their peace.

13 MR. OLESKEY: How about this?

14 MR. DIGNAN: It's impossible.

15 MR. OLESKEY: I'll offer the entire transcript with
16 whatever inferences can be drawn against anybody if Turk and
17 Bores want to come in and put him on briefly in writing, or
18 orally briefly to rebut, because we have some rebuttal issues
19 that are pending anyway with the Board, let him do it.

20 I think if they haven't read it since January and
21 they now read it, there are some issues, and I don't think
22 they're going to be there, let them come in briefly and clean
23 them up.

24 MR. DIGNAN: One of the things that we're losing
25 sight of here is that the Board --

1 JUDGE SMITH: Wait, wait a minute.

2 MR. DIGNAN: -- put out a order that said that Mr.
3 Thomas's direct was going to be over last night. It isn't.
4 And now Mr. Oleskey is happily going to the process of dump a
5 bunch of stuff in and set up a procedure whereby we can have
6 more hearings.

7 And my understanding was we had a fairly stiff order
8 here, and that was Mr. Thomas's direct would be through last
9 night, his cross would be through today, the FEMA panel would
10 be crossed and we'd all be out of here on Friday.

11 Now the Attorney General, having taken a day and a
12 half to put this direct in, now wants to set up a procedure
13 whereby the NRC may feel obligated to bring us all back here in
14 July to do another piece. And as the Applicants' attorney, I
15 object to that.

16 JUDGE SMITH: And all of this is about yet another
17 RAC meeting.

18 MR. DIGNAN: That's correct.

19 JUDGE SMITH: And it's yet another recitation of what
20 other people, members of the RAC suggested that they felt about
21 the plans, all of which is becoming of minimal, even greater
22 unimportance as the hearing unfolds. People are not willing to
23 give up anything.

24 What happened to the old reckless spirit that we used
25 to have? You're not at risk by this process at all.

1 Here is what we will do. We will accept the
2 testimony of both. We will not allow an inference that Dr.
3 Bores in every instance would have interrupted Mr. Thomas.
4 However, we will call upon Dr. Bores to read the transcript,
5 and if he feels that anything has risen to a magnitude that
6 requires correct that he should have done, that is so important
7 that he just cannot remain silent, he'll bring it to the
8 attention of Mr. Turk, and Mr. Turk will ask for relief.

9 But I'm not inviting trivia.

10 MR. TURK: We won't offer trivia.

11 MR. OLESKEY: Okay. So that we're clear on the pages
12 that are involved in the prior record, as I understand it, it's
13 transcript 8683 to 8737 on the 12th; 8776 to 8915 on the 13th.

14 MR. DIGNAN: Is that the whole kit 'n caboodle,
15 Steve?

16 MR. OLESKEY: Well, Ms. Keough just handed it to me
17 and told me it is. I haven't made an independent evaluation.

18 MR. DIGNAN: We can agree that if after the noon
19 recess we have any disagreement as to what pages, we can reach
20 an accommodation.

21 MR. OLESKEY: Sure, sure.

22 MR. DIGNAN: No objection.

23 MR. TURK: Could you repeat the page references,
24 please?

25 MR. OLESKEY: Why don't I do it after the recess,

1 Sherwin, and I can proceed with the examination.

2 MR. TURK: I would like to be sure that I have a
3 correct understanding.

4 Can I hear it now, please?

5 JUDGE SMITH: He's going to give you a correct
6 understanding. He's just not going to take up hearing time for
7 it. Nothing you can do with it right now.

8 MR. TURK: Your Honor, in light of that, I withhold
9 an objection, and would ask you to hold off admission until I
10 can check the pages.

11 MR. OLESKEY: Well, we're going to give you the
12 pages. Whatever they are, you've got them, everything.

13 JUDGE SMITH: They are what they are. And if he
14 gives them to you and they're wrong, you can check them out and
15 protest anyway.

16 MR. OLESKEY: If they're wrong, I'll make them right.

17 MR. TURK: With that representation, Your Honor, I
18 have no objection.

E27 19 (Continued on next page.)
20
21
22
23
24
25

t/28

1 BY MR. OLESKEY:

2 Q Mr. Thomas, having -- with your assistance gotten by
3 a thorny problem we're going to move on. What happened within
4 the agency involving you and your still, at that point,
5 prefiled September 11 beach population testimony?

6 MR. DIGNAN: Wait a minute. The offer wasn't the big
7 finish, we're going to go on with this direct.

8 JUDGE SMITH: He's got to go to the January 19th
9 meeting and the 25th meeting.

10 MR. OLESKEY: Yes. Right.

11 JUDGE SMITH: This picks -- see if we can pick up the

12 --

13 MR. OLESKEY: This is picking up. I just moved out
14 of the RAC and I'm moving on.

15 JUDGE SMITH: Go ahead.

16 BY MR. OLESKEY:

17 Q What next happened i the agency involving its
18 testimony which you were then still to deliver respecting the
19 beach population following this RAC meeting?

20 A (Thomas) The next thing I recall offhand is, I was
21 in Washington as was the normal practice at that time, on the
22 Monday which I think was the 19th, whatever, the Monday of the
23 week that -- of January 19th. And I met with the FEMA
24 attorneys and was told about other meetings that were going on
25 both within FEMA and with the NRC that week.

1 Q To help you, there's been previous testimony that
2 Monday the 18th was Martin Luther King day and Tuesday was the
3 19th, if that helps you?

4 A (Thomas) Thank you. That does -- yes, it sure does.
5 I was -- so I went down Monday the -- Tuesday the 19th, and I
6 was there, left the FEMA office Thursday which was the 21st,
7 and flew home to Boston. In other words, I didn't go back into
8 the FEMA office after Thursday night the 21st and flew back to
9 Boston on Friday morning.

10 Q There's been testimony here by the panel of FEMA
11 officials two weeks ago about a meeting on the 22nd, I believe,
12 called the "would-should meeting" or the "would-could meeting,"
13 among the group of people who were there. Is it your testimony
14 that since you'd gone back to Boston the 21st you were not
15 there for any such meeting?

16 A (Thomas) There was, in my belief, based on
17 information that was provided to me by -- directly by phone by
18 a variety of folks, no such meeting on the 22nd, but rather
19 instead there was -- such a meeting did take place on the 25th.

20 Q Were you at a meeting -- whether or not you
21 considered it to be a "would-could meeting" that took place on
22 the 25th with other agency officials to discuss testimony that
23 was to be filed that day?

24 A (Thomas) Yes, I was.

25 Q Okay.

1 MR. TURK: And for clarity, other agency officials
2 meaning FEMA officials.

3 THE WITNESS: (Thomas) That is correct.

4 MR. OLESKEY: Yes, Mr. Turk.

5 BY MR. OLESKEY:

6 Q All right. I'd like you to go back to the 19th,
7 Tuesday, you're in Washington. What were you doing and what
8 were you given to understand was going on involving the beach
9 population testimony and the agency's position with which you
10 were not involved?

11 MR. FLYNN: I will object to this line of
12 questioning. Not that there's anything inherent in this
13 particular question, but obviously where this is going is to
14 elicit testimony about what this witness was told about the
15 meeting of January 19th. Now, we've already had a . . . of
16 testimony about that meeting, but the testimony came from
17 people who were at the meeting. And we also know from the
18 record that Mr. Thomas was not there. And I believe his
19 testimony will be that what -- the source of the information
20 that he has about the meeting was, myself or George Watson; and
21 this brings us right back to the problem that we had yesterday,
22 which I raised yesterday about hearsay and attorney/client
23 privilege and so on.

24 So to the extent that this line of questioning will
25 be eliciting information about that meeting between FEMA and

1 NRC officials on January 19th, I object on the basis of hearsay
2 and attorney/client privilege.

3 MR. OLESKEY: Well, I think it's rather late in the
4 game for FEMA, even if it lies in its mouth, to invoke
5 attorney/client privilege, adverting to Mr. Barshak's
6 discussion of yesterday about the client now being Ed Thomas to
7 invoke it.

8 But in any event, I am going to offer some
9 conversations that go to statements to Thomas about the
10 meeting. I think that they're arguably, at least as reliable
11 as what somebody who was there testifies to in May because
12 there are statements made immediately after the meeting by
13 people who were there and conveyed to Thomas. And that's a
14 check on the accuracy of what was testified to here in May; and
15 therefore it's particularly probative.

16 MR. DIGNAN: Are we invoking the excited utterance
17 doctrine?

18 MR. OLESKEY: No. We're invoking the contemporaneous
19 statement document.

20 Why don't I go ahead and you can make your rulings in
21 the context of what you understand to be, who told Thomas what
22 and under what circumstances.

23 JUDGE SMITH: I'm awfully sensitive to Mr. Flynn's
24 problem here in this particular instance.

25 MR. FLYNN: Well, may --

1 JUDGE SMITH: Mr. Flynn, were you repeating your
2 recitation, the meeting of the 25th, was it attended by you and
3 was there understanding with Mr. Thomas that it would be
4 confidential? Now, at this point and understand Mr. Thomas has
5 been under some heat from headquarters and from the Regional
6 Director.

7 MR. FLYNN: No, I have a different problem. I don't
8 remember telling him the things that, in his deposition, he has
9 me saying to him.

10 JUDGE SMITH: And you don't want to be in a position
11 of having to testify to counter his memory?

12 MR. FLYNN: That's right.

13 JUDGE SMITH: Well, let's let it at this, you -- we
14 will judge Mr. Thomas's credibility based upon the entire
15 record. Your silence carries with it no implications,
16 whatever, that you agree or disagree or anything else.

17 But this is a part of the record that Intervenors
18 wish very much to fill out. We've come a long way, it is
19 rather late in the day to close the gate on one of them. And
20 we recognized at the outset that FEMA did have a problem in
21 this case and that we're taking extraordinary measures to
22 ventilate it.

23 MR. FLYNN: I will accept that ruling, Your Honor.

24 JUDGE SMITH: Well, your silence means nothing.

25 MR. TURK: Your Honor, is the next line of

1 questioning directed at the NRC-FEMA meeting of the 19th?

2 JUDGE SMITH: I guess so. That's what I would
3 expect.

4 MR. OLESKEY: I'm going back to the 19th and that's
5 certainly an event of the 19th and we'll get there shortly.

6 MR. TURK: Your Honor, I want to enter my objection
7 on grounds of relevance -- let me withdraw that. I'll concede
8 relevance for now.

9 However, I do believe that the hearsay that you're
10 going to get here, which has been explored by the press I
11 believe ad nauseam following Mr. Thomas's deposition, is
12 unreliable.

13 FEMA personnel who were present at the meeting gave
14 their own testimony and was subjected to --

15 JUDGE SMITH: I understand that.

16 MR. TURK: -- cross-examination --

17 JUDGE SMITH: I understand that.

18 MR. TURK: -- they have given their indication of
19 whether they think the allegations made in the deposition were
20 correct or not. And I think simply to put on the record here
21 the allegation based on hearsay is unreliable, particularly
22 after the testimony has already been given by FEMA officials
23 who were present in the meeting.

24 JUDGE SMITH: We might have gone back and really
25 questioned whether we should have gone down this road to begin

1 with. But we felt there was an overriding need to bring the
2 whole story out. And we think it's been helpful. And we're
3 going to -- well, we respect your concern and we recognize that
4 it is hearsay. We will use that as a question of weight. But
5 we're going to allow the Intervenors to bring out their version
6 of these events.

7 BY MR. OLESKEY:

8 Q Mr. Thomas, here is the pending question. What were
9 you doing on the 19th of January in Washington, and what did
10 you understand at that time was happening affecting your
11 agency's position on Seabrook which you were not involved?

12 A (Thomas) The reason I was in Washington was to
13 assist in the development of the agency position with respect
14 to the Seabrook beach population. And I assisted by reviewing
15 a number of documents, drafts of testimony, and providing input
16 to the attorneys.

17 I was not permitted to participate in the general
18 agency meetings that were held on this or the agency -- or the
19 meeting with the NRC to discuss this.

20 Q Well, how did you know there were such meetings and
21 that you were not going to be allowed to attend?

22 A (Thomas) I was sitting on the 8th floor of the FEMA
23 building in the Office of General Counsel and the lawyers, Joe
24 Flynn and Bill Cumming, would go to the meetings and they would
25 come back and tell me what was said and we'd talk about that;

1 and I'd give my input and mark up drafts of the testimony. And
2 then they would go back and have more meetings.

3 Q I want to be a little more specific in terms of time
4 and conversations. You told the Board you were there on the
5 19th working on documents, preparing for further FEMA testimony
6 which got filed the 25th, I believe the record shows. When did
7 you first know that there were meetings, either of your agency
8 or of your agency with the NRC, but it happened that you were
9 not going to be part of it?

10 A (Thomas) Well, right that morning when I got there,
11 there was a meeting that was ongoing and I inquired if I should
12 be part of it and I was told, I should not be.

13 Q And who was at that meeting?

14 A (Thomas) I only know of two people that were at the
15 meeting, that I remember. There probably were more than that,
16 and I'm very much having my recollection refreshed from the
17 notes that I -- I'm jotting down at the time to assist me in my
18 job of drafting and redrafting the testimony. Well, not so
19 much drafting and redrafting, but commenting on the attorneys's
20 drafts of the testimony.

21 MR. TURK: Your Honor, may we ask if we can get a
22 recollection before the notes are used to refresh recollection.

23 JUDGE SMITH: That's up to the examiner, not you.

24 BY MR. OLESKEY:

25 Q You've indicated you need your notes to refresh your

1 recollection?

2 A (Thomas) I really do. I want to be precise here
3 and --

4 Q Go ahead.

5 A (Thomas) Maybe I can tell you as I go along. I
6 think these notes have been given out. My first note at the
7 top of the page is -- and I have an independent recollection,
8 as Joe Flynn came back and sat down and talked to me after he
9 got out of the morning meeting, and the note says, "Joe Flynn
10 recounts the a.m. meeting."

11 And the results of it are "Grant Peterson is saying
12 at the meeting as recounted by Joe, sheltering is an issue that
13 has to be addressed in the plan."

14 MR. TURK: Your Honor --

15 THE WITNESS: (Thomas) And then I have another note
16 that says, "Sheltering must be included in the plan."

17 JUDGE SMITH: Excuse me.

18 MR. TURK: I'm sorry to interrupt the witness. I'd
19 like to ask the Board for reconsideration of your prior ruling
20 on my request that we get a recollection before reference to
21 notes.

22 It's apparent to me that the witness is reading from
23 his notes now. That tends to give the notes a reliability
24 which may not be warranted.

25 JUDGE SMITH: All right.

1 MR. OLESKEY: It's just --

2 JUDGE SMITH: Here's what you can do. Ultimately we
3 will want his best recollection by whatever means, the notes or
4 whatever. However, if he reads from the notes now your
5 opportunity to test his recollection will be destroyed. Is
6 that your concern?

7 MR. TURK: Yes.

8 JUDGE SMITH: All right. Do you want --

9 MR. TURK: Not so much to test his recollection, but
10 to establish the lack of present recollection.

11 JUDGE SMITH: Well, that's what I meant, yes. That
12 will be destroyed. So what we have to do is figure out some
13 way that you can have that opportunity. What do you recommend?

14 MR. OLESKEY: I'm happy to ask him what he recalls
15 and then he can go to his notes. It takes a little time, but
16 if it's important to Mr. Turk, I'll certainly do it.

17 THE WITNESS: (Thomas) Okay. I've taken the notes
18 away. I -- they're short notes and I kind of read through them
19 already. I certainly glanced at them.

20 JUDGE SMITH: I know. Go ahead.

21 BY MR. OLESKEY:

22 Q Well, you read through them to prepare for your
23 testimony, didn't you?

24 JUDGE SMITH: Right. Just go ahead.

25 THE WITNESS: (Thomas) My best recollection is, I go

1 down to FEMA headquarters, there's a meeting going on I'm not
2 part of. I ask someone, I don't remember whom, am I supposed to
3 be in on that meeting and they said, no, you were not. And so
4 I sat in Bill Cumming's office which was my place where I hung
5 out in those days. And I don't know what I did, something or
6 other until Mr. Flynn came up and reported on the results of
7 the meeting.

8 BY MR. OLESKEY:

9 Q Well, was there testimony that the lawyers had
10 prepared to be filed the 25th that you were then evaluating?

11 A (Thomas) Maybe.

12 Q Okay.

13 A (Thomas) I don't remember. I have a stack of
14 versions of that testimony and the dates on it might refresh my
15 recollection. It's quite possible. I don't remember when I
16 first -- got the first draft of that.

17 Q In any event, Mr. Flynn came back and reported
18 something, what was that?

19 A (Thomas) He reported that there had been a meeting
20 and Grant Peterson had made some decisions about what the
21 nature of the FEMA testimony should be. And my recollection of
22 what Mr. Peterson said would really have to come from the
23 notes. It would -- that's why I take notes is to write down
24 what is supposed to be included in things. I have no present
25 recollection other than that Joe comes and says to me, Grant

1 wants these items included in the testimony.

2 Q And you read those off your notes a moment ago,
3 didn't you?

4 A (Thomas) Well, I was starting to, yes.

5 Q Yes. Did you complete what you were --

6 MR. TURK: Well, wait a minute, Mr. Oleskey, I'm
7 looking for -- I don't want the witness constantly going back
8 to his notes.

9 MR. OLESKEY: Mr. Turk, this is pathetic. He just
10 told you that he doesn't remember anything else. Now, I'm
11 continuing my examination by asking what he wrote down
12 contemporaneously.

13 MR. TURK: Your Honor, the simple problem is, the
14 witness is going to turn to his notes after every question,
15 there's obviously going to be some reading of the notes of
16 things which may come in the next question. And let's get a
17 total recollection, if the witness then wants to go back to his
18 notes and say, here's some additional things which in the prior
19 questioning I didn't give you, fine.

20 MR. OLESKEY: We just encompassed a series of
21 conversations. My understanding is, that's the end of that
22 scenario.

23 JUDGE SMITH: Well, Mr. Oleskey, we have gone very
24 far in allowing you to develop a case, you know, with liberal,
25 almost unrecognizable application of the hearsay rule; and now

1 Mr. Turk has a special need and we're going to accommodate him
2 in this. So complete your examination of Mr. Thomas on the
3 19th episode --

4 MR. OLESKEY: Yes.

5 JUDGE SMITH: -- by recollection, and then go back
6 and pick up by notes what can be picked up.

7 MR. OLESKEY: The point is, there 's apparently a
8 series of conversations on the 19th, as I understand it. He
9 just finished the first.

10 JUDGE SMITH: Right.

11 MR. OLESKEY: So for continuity I had then said to
12 him, now --

13 JUDGE SMITH: It's going to destroy continuity, I
14 don't question that. You're going to have to do it twice.

15 BY MR. OLESKEY:

16 Q All right. Let's take you all the way through the
17 19th, Mr. Thomas, and go back.

18 A (Thomas) Okay.

19 Q What else happened on the 19th that you presently
20 recall without the aid of your notes?

21 A (Thomas) Joe told me what had been decided at the
22 morning meeting. I don't remember -- the next that happened
23 Joe and I were, as I recall, sitting in Bill Cumming's office
24 doing something, which probably was working on drafts of the
25 testimony.

1 Q Was this later in the day?

2 A (Thomas) This is later in the day. This is after
3 lunch.

4 Q Okay.

5 A (Thomas) Bill Cumming was not there. He was
6 attending -- he had told me he was going to a meeting, and I
7 believe he was attending the meeting with the NRC personnel.
8 And Joe and I were talking about this, that and the other
9 thing, and working on -- I believe on testimony, working on
10 something or other. And Joe was called away. Came back
11 and -- with what I took to be a -- to be a look of great
12 astonishment on this face and said something to me about the
13 ongoing meeting that was taking place with the NRC.

14 I have no present recollection and I don't want to
15 guess as to what he said. He said something to me and I wrote
16 it down while I'm sitting there in Bill Cumming's office, about
17 what was going on at the meeting. What George Watson had told
18 him was going on at the meeting, Joe wasn't actually there.

19 Q Was Mr. Watson there?

20 A (Thomas) That was my understanding, yes. And then a
21 little bit later on or quite a bit later on, perhaps in that
22 afternoon, Joe was called out again and told to come down to
23 the meeting, I believe he was told to come down around 5
24 o'clock.

25 And then at 6:30 Mr. Flynn and Mr. Cumming came, and

1 Mr. Watson -- I remember Mr. Flynn and Mr. Cumming coming
2 upstairs, and probably Mr. Watson as well, it was about 6:30
3 that evening, and I had a short conversation with Mr. Cumming
4 in which he asked me to do some research of some specific
5 references in a -- the transcripts, indicated that someone from
6 the NRC whose name he told me, which my recollection is -- was
7 William Olmstead, but that doesn't mean I'm right. That's
8 my -- what I'm recalling and I don't think I wrote it down
9 even, that Bill Olmstead had said that these five or six pages
10 of the transcripts, and I wrote down the numbers on my pad,
11 that FEMA's statements on those five pages of the transcripts
12 of the Seabrook hearing indicated -- I'm vague on this -- but
13 I believe it was indicated that we had made a commitment to
14 make a finding of reasonable assurance on the Seabrook case.

15 Q There's a reference to testimony that FEMA gave to
16 statements of counsel -- what was being said here?

17 A (Thomas) It was references to the transcript. It
18 was page numbers in the transcript and I don't recall now -- I
19 mean, I have those pages, I Xeroxed them and gave Mr. Cumming a
20 note which we have copies of, and the copies of the pages of
21 the transcripts. And I can't remember if it was -- I believe
22 it was a mixture of statements by Attorney Flynn and statements
23 by me as the witness. But they speak for themselves. Those
24 pages of the transcripts obligated FEMA to do something or
25 other, which I think was make a finding.

1 Mr. Cumming -- I asked Mr. Cumming how the meeting
2 had gone and he was, what I took to be annoyed or angry and
3 said, I don't want to talk about it now, we'll talk about it
4 tomorrow. And he may have said something else, but I don't
5 remember it now. And he left and I stayed late at the office
6 that night and got out those pages of the transcript, Xeroxed
7 them, left a note on his desk and then I left for the day.

8 MR. OLESKEY: Okay. Now, the same page of notes,
9 Your Honor, has recollections of a conversation with Mr.
10 Cumming, as I understand, on the 20th. I propose that I cover
11 that, too, so as to observe Mr. Turk's needs, and then we'll go
12 back to the notes.

13 JUDGE SMITH: All right.

14 MR. TURK: Your Honor, I'd say let's just do the
15 whole thing without notes and then he can back. It all relates
16 to the same meeting.

17 JUDGE SMITH: That's what he said.

18 JUDGE HARBOUR: That's what he just suggested.

19 JUDGE SMITH: Go ahead.

20 BY MR. OLESKEY:

21 Q I'm taking you to the 20th, Mr. Thomas?

22 A (Thomas) The next morning I went and sat in Mr.
23 Cumming's office as my base, and I don't remember what time he
24 got in or what time I got in, but in the early morning. He
25 went over the note that I had given him and the pages of the

1 transcripts, and made some comments to me about the meeting,
2 which were -- which I do recall. And I do have an independent
3 recollection of.

4 Q Was it clear that he had been there?

5 A (Thomas) He told me he had been there, and it was
6 very clear to me. He's an honest man. I've never --

7 Q I just want to make that clear for the Board and the
8 record. Go ahead.

9 A (Thomas) And he said that Stello said that NRC would
10 engage in total war with FEMA if we didn't change our testimony
11 on the beach population.

12 (Continued on next page.)

13

14

15

16

17

18

19

20

21

22

23

24

25

T29

1 And I think he said something else, and it's written
2 in my notes. It was -- I'm scratching along as he's telling me
3 this sitting in his office. And that's about it that I recall
4 for that day. I think the rest of the day I spent reviewing a
5 draft of the testimony, and I believe we continued this sort of
6 go-between arrangement where I'd give comments to the attorneys
7 and the attorneys would go down from the eighth floor of the
8 FEMA building to the floor where Mr. Krimm's staff is, and bat
9 those comments around, and then come back up.

10 Q Did you say at all during this period, wouldn't it be
11 simpler if I went downstairs and talked with Dick Krimm about
12 the testimony?

13 A (Thomas) Yes, I did make that --

14 Q What were you told?

15 A (Thomas) I don't remember exactly what I was told.
16 I was told no.

17 Q By one of the attorneys?

18 A (Thomas) Yes.

19 Q Okay.

20 A (Thomas) I mean that was the only people I was
21 talking to that week was George Watson, Joe Flynn, Bill
22 Cumming, and the rest of the legal staff up there.

23 Q All right. Does that cover your recollections of the
24 20th, which is Wednesday?

25 A (Thomas) That's about it, yeah.

1 Q What about Thursday the 21st?

2 A (Thomas) Thursday the 21st, we continued on with
3 reviews of the draft FEMA testimony, and the shuttle service
4 back and forth between the FEMA OGC and the FEMA technological
5 hazards group.

6 And then I had a discussion with Joe Flynn about that
7 it seems like we were pretty well wrapped up in terms of
8 everything, and I'd like to scoot back to Boston a day early if
9 that was okay with him. And he said that was fine with him.

10 And if I recall, it was about 6:30 or so that
11 night -- no, it was about 5:30 that night Joe said to me, you
12 know, the decision has been made, or words to that effect
13 essentially that FEMA is going to do a 180-degree turn on the
14 testimony on the beach population. It's going to go from not a
15 reasonable assurance of an adequate level of public safety to
16 that it -- the situation is perfectly fine.

17 And I said, well, the testimony that I've been
18 working on here, the drafts all week, don't say that. And in
19 fact they really say something else as I read them, and I gave
20 him some specific examples that I thought the testimony we were
21 giving, if in fact we had reached an opposite conclusion, was
22 certainly misleading, and in my opinion false. And that he
23 should be concerned about himself getting in trouble for filing
24 something like that, and that I wouldn't be part of it in terms
25 of filing something that was misleading or false.

1 And he asked me if I would be willing to testify on
2 the change, or if this meant I couldn't be a witness. And I
3 said, well, no, not exactly. In my career I'm a civil servant
4 and I take orders. And if the agency has reached a position,
5 then I'll articulate the position as best I can even though I
6 don't agree with it unless the position is personally abhorrent
7 to me. And that I don't agree with a change in the FEMA beach
8 population, I don't see the basis for it, but I understand that
9 it's a matter of judgment and by our regulations I'm not the
10 one to make that judgment, something like that.

11 Perhaps it was abbreviated and in a shortened version
12 of that, but that was the sense of it.

13 And Joe said something like, yeah, well, I
14 understand, and that was the end of it. And I stayed in and
15 had breakfast with my sister-in-law.

16 Oh, can I go on to the next day?

17 Q Did you go back to Boston that -- you stayed in
18 Washington that night?

19 A (Thomas) That's right.

20 Q And went back to Boston the next day?

21 A (Thomas) That's correct.

22 Q Okay. During that conversation with Joe Flynn on the
23 21st in the afternoon that you've just recounted, did he tell
24 you or any of the lawyers you spoke with during the week told
25 you why the agency was going to do a 180-degree turn in its

1 position on the beach population?

2 A (Thomas) I remember asking him how we had come to
3 that conclusion, and pointing out -- I'd need my notes to
4 refresh my recollection. I'm not absolutely sure I said it the
5 21st. I know many times I said to him, look, this is
6 disastrous for the agency. You cannot have the agency do a
7 flip-flop on the beach population testimony without giving me
8 and Mr. Vickers a chance to present the regional opinion on
9 this. We don't agree with this. I certainly don't agree with
10 this.

11 And I think for the sake of the agency there ought to
12 be a meeting to go over the opinions, and I'd like to take my
13 best shot at convincing people that the conclusions that I had
14 personally drawn and that the agency had formerly -- or at that
15 point apparently maybe formerly drawn -- were still valid
16 conclusions, and still the correct ones.

17 And I know I mentioned that many times throughout
18 January and February to Mr. Flynn, to Mr. Krimm, to Mr. Vickers
19 and others. I'm not saying I absolutely am sure that I said it
20 on the 21st. My notes might refresh my recollection on that,
21 but certainly on or about that time I made that vigorously
22 known to many people in the agency.

23 Q Have you now given us your best recollection of these
24 conversations with the attorneys at FEMA during the week of
25 January 19, 20, 21?

1 A (Thomas) Yes, that's my best independent
2 recollection of those conversations that week with the
3 attorneys, yes.

4 Q All right. Now turn to your notes and look at them
5 to see if there is anything else that's there that either
6 refreshes your recollection or which is there, you know you
7 wrote it down but it doesn't refresh your recollection, and
8 indicate which, if you would.

9 A (Thomas) Well, I started earlier. Should I restart
10 what I was starting earlier in the transcript?

11 Q No, don't add in the cumulative matter. Just pick up
12 things you think you missed in the sequence of the 19th, 20th
13 and 21st.

14 A (Thomas) Okay. I'm picking up then from where Joe
15 Flynn is in the morning telling me about the results of the
16 meeting with Grant Feterson.

17 Q All right.

18 A (Thomas) The last point that Joe made was, and again
19 I have no independent recollection of this whatsoever. This is
20 what I wrote down at the time for the purposes of assisting me
21 in my job of working on the FEMA testimony. This says that the
22 state had to tell us what use they were going to make of
23 shelter for transient beachgoers.

24 The next note that I have, it doesn't have a time on
25 it. It just say 1-19 again. It says, Flynn says Watson

1 called. We negotiated away a negative finding in a meeting
2 with Stello.

3 Q Has that refreshed your recollection?

4 MR. TURK: As opposed to something that he sees there
5 and does not recall, other than the fact that it's written
6 down.

7 THE WITNESS: (Thomas) I don't remember the specific
8 words. I remember Joe coming in with what I took to be an
9 astonished look on what is otherwise a poker face. And saying
10 to me something which -- let me very clear about this.

11 Joe Flynn didn't tell me everything that was going on
12 down at FEMA headquarters by any means. Joe Flynn is not only
13 poker-faced, but is very laconic with respect to what he was
14 telling me as the FEMA witness and what he felt I needed to
15 know.

16 And I was much taken aback that he sort of blurted
17 out something that sounded like it was a very perhaps private
18 and confidential matter. I mean it wasn't like him to be so
19 forthcoming with me, quite frankly. And that's about all I
20 know.

21 I remember it was something that astonished me and
22 seemed to astonish him, and I remember it was about a negative
23 finding. I remember it was about Stello. And I remember
24 misunderstanding -- later understanding what had been said, I
25 had thought what the discussion was about at the time was

1 something that had been a topic of discussion in FEMA for
2 months and months, which was whether or not we would actually
3 be making a bottom line finding with respect to the Seabrook
4 plans.

5 The NRC hadn't asked us to, which was -- the norm was
6 that there was a finding made prior to the hearing, and that
7 would serve as a basis for the hearings going forward. And the
8 NRC had not given us a request for a bottom line finding. And
9 there had been discussions in FEMA about just sending one over
10 so that the Board had a complete picture of all of our
11 concerns.

12 And at the time I thought we were on the track of
13 whether or not we were just going to send a document over which
14 encapsulated all of the FEMA concerns about the New Hampshire
15 plans for the Seabrook EPZ as opposed to a FEMA position on the
16 contentions that had been filed. Two separate things really.
17 And I remember thinking that was what was going on here.

18 That's about the only recollection I have, other than
19 I recall sitting there writing down this note. It's what I do
20 when people tell me things.

21 BY MR. OLESKEY:

22 Q Okay. Directing you to the bottom of the page of
23 your notes which you have been looking at opposite the date of
24 1/20 language, which seem to be pretty much what you've already
25 said, "Bill C. tells me that Stello says the NRC will engage

1 in total war with FEMA if we don't change testimony --".
2 There's language underneath that.

3 What does that say, and does that refresh your
4 recollection about something else you have told me by Mr.
5 Cumming on the morning of the 20th?

6 A (Thomas) It refresh my recollection that, yeah, he
7 said that -- he complimented Grant Peterson on holding up
8 really well against -- I don't remember his exact words, but I
9 interpreted it to me a verbal assault, and but that we had
10 agreed to make changes in the testimony. But he didn't specify
11 the nature of the changes, and I thought that was what we were
12 working on that week.

13 My notes go on to say --

14 Q Well, the rest of the notes are your reflections
15 about what was happening at that point?

16 A (Thomas) Let me do some distinguishing here.

17 MR. DIGNAN: Well, wait a minute. The notes aren't
18 in evidence, so there is no need to distinguish it.

19 THE WITNESS: (Thomas) Sorry?

20 BY MR. OLESKEY:

21 Q My only question is, are the rest of the notes, which
22 counsel have and you have, essentially personal reflections
23 that you had about the events of that week?

24 A (Thomas) The next line of the notes is something I
25 wrote right then while -- just after I finished talking with

1 Bill about the draft of the testimony, I jotted down a note
2 that I had talked to Bill about.

3 Everything else on the page I believe I wrote on the
4 flight on the way back to Boston, or I wrote in the hotel that
5 night, and it was my personal reflections on the situation.

6 MR. TURK: May I inquire, Mr. Oleskey?

7 The notes that you're referring to indicate there is
8 something on the over side. That over side has not been
9 produced to us. Is that an oversight?

10 MR. OLESKEY: You're addressing that question to me,
11 Mr. Turk?

12 MR. TURK: Well.

13 MR. OLESKEY: I didn't produce any notes to you, so
14 it can't possibly be addressed to me.

15 MR. TURK: All right, that's fair.

16 MR. OLESKEY: I have two pages, and the second page
17 is numbered 2, and starts 1-21.

18 MR. TURK: Maybe we can ask the witness. The notes
19 which he's been referring to until now is the first of two
20 pages stapled together dated January 19, 1988 at the top, with
21 an arrow pointing to 1-22-88, and there's something that's been
22 redacted under that.

23 Towards the bottom of that page is the reference to
24 the January 20 conversation with Bill Cumming, and five lines
25 into that discussion of 1-20, it says, "thought I had won

1 another round but see over".

2 I guess I'd like to ask the witness or his attorney,
3 do we have the over side to this document?

4 THE WITNESS: (Thomas) Yes, you do. You have -- the
5 second sheet is the over side.

6 MR. TURK: Which is the sheet that refers to the
7 1-21-1988, 8:30 p.m. discussion?

8 THE WITNESS: (Thomas) That reads 5:30. That's
9 my --

10 MR. TURK: All right.

11 THE WITNESS: (Thomas) What I'm saying is 5:30 p.m.

12 MR. TURK: So that's a reference to a --

13 THE WITNESS: (Thomas) That's to a reference to a
14 conversation with Joe Flynn on 1-21.

15 MR. TURK: Mr. Oleskey, if you don't mind, may we ask
16 when this comment about over was entered into the -- it says
17 "but see over". When was that entered into this document?

18 MR. OLESKEY: You want to ask him when he made a
19 comment about a document that's not in evidence. Okay.

20 MR. TURK: You've been examining him on it, Mr.
21 Oleskey.

22 BY MR. OLESKEY:

23 Q Go ahead, Mr. Thomas.

24 A (Thomas) Yes, I remember playing with this writing
25 on this document, playing with it, but writing over my notes

1 from that week on the plane on the way back to Boston. And at
2 that point I put in the remark about "over" and had an
3 additional explanation that was my reflection on what was going
4 on, and notes to myself about what had happened and what was to
5 be done about it.

6 Let me be -- well, no, I'm sorry.

7 MR. TURK: So this is an entry made when you returned
8 to Boston on, what was it, the 23rd?

9 THE WITNESS: (Thomas) Sir, I beg your pardon. I
10 didn't say that. I thought I said -- I meant to say either in
11 the hotel that night, or on the plane on the way back to
12 Boston. And some of this stuff I wrote in the hotel that
13 night, the night of the 21st. Some of this I wrote on the
14 flight back up to Boston on the 22nd.

15 After the end of the flight on the 22nd, I didn't
16 write any more notes on this piece of paper. I put this in my
17 file in Boston. Is that clear?

18 MR. OLESKEY: Okay. I think what I'd like to do is
19 offer a portion of the notes because it's clear, at least with
20 respect to one matter, that he was clearly refreshing himself
21 from the notes.

22 I'm going to propose offering Page 1 of the notes
23 down through the second which reads "1-20", second paragraph,
24 "I point out difficulties as part of review of Joe's drafted
25 testimony." The rest of that appears to be personal

1 reflections.

2 And Page 2, I'm satisfied with the testimony he's
3 given, and there are more personal reflections, as I read it,
4 that interspersed.

5 So that's my offer.

6 MR. TURK: Objection.

7 JUDGE SMITH: No objections?

8 MR. TURK: I have an objection.

9 JUDGE SMITH: Oh.

10 MR. TURK: To whatever extent there has been
11 examination on the document already, the introduction would
12 simply be cumulatives.

13 But apart from that I have a tremendous problem
14 accepting the reliability of these documents. They are not
15 contemporaneous notes taken during the course of statements.
16 They don't have any standing on their own. There is no need
17 for them. There would be no prejudicial effect if something
18 has been testified to already is not admitted also in the way
19 of this document.

20 MR. OLESKEY: It seems to me it's helpful to have in
21 the notes because he's gone back and forth between his
22 recollection and the notes, and now it's clear what the notes
23 say, and it was previously clear what his recollection was.

24 JUDGE SMITH: Now the notes are only valuable -- they
25 are not reliable for past recollection recorded. They are only

1 valuable for reviving his present recollection because of the
2 nature in which he took them. And so for the reliability, they
3 should not be received.

4 You've offered them?

5 MR. OLESKEY: Yes.

6 JUDGE SMITH: Let me check to see if --

7 (Board confer.)

8 JUDGE SMITH: So the document identified as Attorney
9 General Exhibit 53 offered is rejected, and you can put it, if
10 you wish, in the -- 54, excuse me.

11 MR. OLESKEY: Okay, I just want to be clear on what
12 you're saying, Judge Smith.

13 My understanding of what he said is that these are
14 contemporaneous notes which he took as he generally takes notes
15 involving agency business.

16 JUDGE SMITH: Well, let me see the notes.

17 MR. OLESKEY: Sure.

18 JUDGE SMITH: As I recall him reading from them, they
19 do not stand alone reliably.

20 MR. OLESKEY: I wasn't sure why you ---

21 JUDGE SMITH: Well, you know, there are some
22 instances where we might accept them for past recollection
23 recorded, but they have no independent value here.

24 MR. OLESKEY: Well, I'm asking that they be accepted
25 for past recollection recorded, because I think the indicia

1 that such notes traditionally have to meet.

2 JUDGE SMITH: They do not -- they do not have
3 independent reliability the way I heard him read them. And the
4 way I read them myself, they do not have independent
5 reliability. They are only useful, if at all, to revive his
6 memory of those events.

7 I could not take this note, 1-19-88, "Flynn says
8 Watson called. We negotiated a negative finding at meeting
9 with Stello" as being a reliable entry of past recollection
10 recorded, nor do we need to because it has refreshed his
11 memory. There is -- and he did testify from his own memory.

12 MR. OLESKEY: All right.

13 JUDGE SMITH: This is not a reliable -- I mean, now
14 perhaps if we had a situation where there's nothing else could
15 be done, you know, and there is a need for it, we would do it,
16 but there is no need for it and it doesn't have independent
17 reliability.

18 MR. OLESKEY: All right, with that gloss by the
19 Board, let's -- I'll press it. I understand your ruling.
20 We'll put it in the rejected evidence file.

21 JUDGE SMITH: Certainly. Do you want mark it?

22 MR. OLESKEY: Yes, please.

23

24

25

1 (The document referred to was
2 marked for identification as
3 Massachusetts Attorney General's
4 Exhibit No. 54, and was
5 rejected.)

6 MR. TURK: Your Honor, just so it's clear here in the
7 transcript at the same place. This is the document which I
8 referred to earlier as having substantial redactions on the
9 second page which Mr. Barshak indicated were something on the
10 order of personal notes.

11 Now I haven't questioned that, and I'm not going at
12 this time since the document is rejected. But I note that if
13 the document was going to be offered into evidence, I would
14 insist on seeing the redacted portions as well so I had a
15 clear --

16 JUDGE SMITH: Well, you had already lost on that one.

17 MR. OLESKEY: All right.

18 BY MR. OLESKEY:

19 Q You testified that the meeting --

20 MR. DIGNAN: Could I get a mundane point? What
21 number is the rejected exhibit?

22 JUDGE SMITH: Fifty-four.

23 MR. DIGNAN: Thank you.

24 BY MR. OLESKEY:

25 Q You testified that the meeting that your colleagues

1 from Washington described here loosely as the would-could
2 meeting in your recollection took place on Monday the 25th of
3 January, this year.

4 A (Thomas) That's correct.

5 Q And you testified you were at that meeting.

6 A (Thomas) That's correct.

7 Q Okay. Is this a meeting Mr -- strike that.
8 Who presided at this meeting?

9 A (Thomas) Mr. McLoughlin.

10 Q Okay. Was Mr. Peterson present at the meeting?

11 A (Thomas) He came in at the end for what I would
12 estimate to be approximately five minutes; no more than 10
13 minutes.

14 Q Did he play any active role during those five to 10
15 minutes?

16 A (Thomas) Yes, yes. Certainly controversy or
17 difference of opinion was presented to him, and he made a
18 decision.

19 Q Okay. At the time the meeting took place was the
20 draft testimony that had been circulated to the participants as
21 the proposed testimony that was going to be filed with this
22 Board on the same date?

23 A (Thomas) I'm sorry, could I have the question again?
24 I don't think I understood it.

25 Q Yes. Did everybody at the meeting have a draft

1 testimony that FEMA proposed to file with this Board on or
2 about January 25?

3 A (Thomas) Yes.

4 Q Okay. Is that the testimony in which you had played
5 some role the previous week?

6 A (Thomas) Yes.

7 Q Okay. Now there was a final, a semi-final version
8 that the participants had to discuss at that meeting; is that
9 right?

10 A (Thomas) Yes.

11 Q All right. Mr. Peterson's there, Mr. Frimm, Mr.
12 McLoughlin, Mr. Wingo, yourself, Ms. Lawless.

13 Which of the legal staff?

14 A (Thomas) Mr. Flynn, Mr. Watson, and I -- again my
15 notes would refresh my recollection -- and probably Bill
16 Cumming

17 Q Okay. Can you tell us, with respect to the agency's
18 position about the testimony that was proposed to be filed that
19 was there in draft, what the salient points were which these
20 individuals made?

21 (Continued on next page.)

E29

22

23

24

25

t/30 1 A (Thomas) I'm sorry, I just -- I'm almost drawing a
2 blank on the meeting. I remember very clearly the end of the
3 meeting. I remember the decisions that were reached. I
4 remember that we were walking through that testimony almost on
5 a line by line basis. And as to who exactly said what, I took
6 notes and I just don't remember.

7 Q Okay. Tell us what you recall of the end of the
8 meeting?

9 A (Thomas) Well --

10 Q The summary discussion and the -- I mean, Mr.
11 Peterson's decision?

12 A (Thomas) Okay. Basically the -- we got finished
13 with the draft of the testimony essentially as it was
14 eventually filed with the Board. And I said, okay, fine. Now,
15 I've got a question for everybody. Joe Flynn told me last
16 weeks, that is to say that previous Thursday, that the agency
17 is going to do a 180-degree turn on the beach population
18 testimony, and that in essence that we're not going to tell the
19 Board, but that if we get pressed on it we're going to say the
20 problems with respect to the beach population are minor
21 inadequacies that would not block a finding of reasonable
22 assurance.

23 And I said, look, that is simply -- such a concept is
24 directly at variance with our prefiled testimony. The existing
25 testimony that -- that testimony that -- the final draft we

1 have of what was filed with the Board on January 25th was
2 labeled "supplementary testimony of FEMA to the previous
3 testimony on the beach population."

4 And I said, look, if we've reached a conclusion to do
5 a 180-degree turn on this, do the flip-flop, it is not a matter
6 of filing supplemental -- supplementary testimony; it's new and
7 different and revised testimony. And there were a couple of
8 other little points in the memo that I said also were
9 misleading.

10 Mr. Wingo said, no, no, no, the testimony is not
11 misleading, it is not false. It is rather ambiguous and
12 designed to be ambiguous. And I said, no, sir, it is not
13 ambiguous, it is, in my opinion, more than misleading; it is
14 directly false. I will not be part of it.

15 Mr. Wingo and I were starting into one of our
16 disputes at that point and Mr. McLoughlin cut us off and said,
17 he'd heard enough, that Ed was right -- Ed Thomas was right,
18 the testimony is not true, it's under oath and well -- well, we
19 just don't do things like that. And then he excused himself
20 and got up and spent some time out of the meeting, and came
21 back with Grant Peterson and explained -- summarized to
22 everybody what -- how he felt this should be handled. And
23 Grant Peterson said, well, we haven't reached a final decision
24 to change the testimony, we want to see what the State sends
25 in. And I believe his words were very much like, we won't

1 accept just any old thing that they send in, that we'll
2 carefully analyze it, and the issue of whether or not there's a
3 reasonable assurance of adequate level of public protection for
4 the beach population is still up in the air or still on the
5 table or something like that. We hadn't reached a final
6 decision to do a 180-degree turn; we were going to wait and see
7 what we got from the State in the way of information on
8 sheltering.

9 Q Now, you've been quoting Mr. Peterson?

10 A (Thomas) Well, I mean, not exactly. I mean, that
11 was the sense of it --

12 Q The substance?

13 A (Thomas) -- and the substance of it.

14 Q Fine. What was it that Mr. McLoughlin said in
15 summarizing the situation when he brought Mr. Peterson back
16 into the room to help -- to make the decision?

17 A (Thomas) Basically he said that, well -- something
18 like, you know, we've reached the decision to make changes and
19 our decision with respect to the beach population, and if we've
20 made that decision then this testimony that we've been working
21 on is just not correct or something like that. And that there
22 are some problems with filing it before the Board, and we need
23 to come to a conclusion about whether we've actually decided or
24 not whether to do what is referred to sometimes as the FEMA
25 flip-flop.

1 Q Does that complete your recollection of that meeting?

2 A (Thomas) Yes, it does.

3 MR. OLESKEY: Okay. It's a good point to break here,
4 Judge. I've got a couple more topics and I'll be through.

5 MR. DIGNAN: Can't we finish before lunch, Your
6 Honor, so that we at least have a running shot at finishing.

7 MR. OLESKEY: It's up to the Board.

8 JUDGE SMITH: Well, if you can finish we give
9 deference to the examiner. It's an appropriate time to break.

10 MR. OLESKEY: Actually, I wanted to talk to my
11 colleagues. I was think of eliminating a topic, and I wanted
12 to get their judgment.

13 MR. DIGNAN: Great, let's go to lunch.

14 JUDGE LINENBERGER: Mr. Oleskey.

15 MR. OLESKEY: Yes, Judge Linenberger.

16 JUDGE SMITH: 45 minutes -- oh, excuse me.

17 JUDGE LINENBERGER: Well, I'm just trying to inquire,
18 my records don't indicate the Board having received your
19 exhibit 53, did you offer it?

20 MR. OLESKEY: Yes. I think Judge Smith allowed it.

21 JUDGE LINENBERGER: Thank you.

22 MR. DIGNAN: It has not been received on the record
23 formally, Mr. Oleskey. If you intend to put it in you should
24 get a ruling.

25 MR. OLESKEY: May we do so at this time.

1 JUDGE SMITH: 53 has not been received.

2 MR. OLESKEY: Apparently it hasn't. Could it now be
3 received.

4 MR. DIGNAN: I think it was inadvertence, Your Honor.
5 Your Honor made it clear that it was going to be received, but
6 you never did order it received.

7 JUDGE SMITH: All right.

8 MR. OLESKEY: Thank you.

9 JUDGE SMITH: So let's -- it's now received.

10 (The document referred to having
11 been previously marked for
12 identification as
13 Massachusetts Attorney
14 General Exhibit 53 was received
15 in evidence.)

16 MR. TURK: Your Honor, when --

17 MR. DIGNAN: Your Honor, could we get a feel from
18 other counsel who are -- how do I put this without -- in league
19 with Mr. Oleskey as to how much examination of this witness
20 they're going to have.

21 JUDGE SMITH: Ms. Weiss, you still have one question.

22 MS. WEISS: No.

23 JUDGE SMITH: None?

24 MS. WEISS: No. I have a few questions, but perhaps
25 Mr. Oleskey could ask them instead.

1 JUDGE SMITH: Mr. Brock, will you do the same?

2 MR. BROCK: Yes, sir.

3 JUDGE SMITH: Okay.

4 MR. TURK: Mr. Backus the same.

5 JUDGE SMITH: Mr. Backus has been working --

6 MR. DIGNAN: What is the saying, you're going to give
7 Oleskey the questions or that they don't know how long they're
8 going to be.

9 JUDGE SMITH: They're going to work with Mr. Oleskey
10 during lunch break. We were going to make 45 minutes, maybe
11 you need an hour if you have to do that kind of work.

12 MR. OLESKEY: I think that would be helpful, Your
13 Honor, thank you.

14 MR. TURK: Your Honor, I have one question I'd like
15 to raise at this time I'd like to determine from Mr. Barshak,
16 if I can, whether or not he has received the affidavit from
17 Paul Lutz. And I did ask him during the break and --

18 JUDGE SMITH: Now, this affidavit would go to the
19 issue of show of hand?

20 MR. BARSHAK: Yes.

21 MR. TURK: And positions taken during the RAC
22 meeting.

23 MR. BARSHAK: Do you want me to reply to the
24 question, Your Honor?

25 MR. TURK: Your Honor, you may rule against me, but I

1 may want to make an offer. I have to see the affidavit before
2 I can decide.

3 JUDGE SMITH: On the -- on which issue?

4 MR. TURK: It would be speculative for me to stay in
5 advance, I need to see the affidavit.

6 JUDGE SMITH: Well, you're going to -- you're leaving
7 open the option of pressing the show of hands issue.

8 MR. TURK: Your Honor, I have never thought that the
9 show of hands was an important issue.

10 JUDGE SMITH: But you believe that the expression of
11 position issue is still important, and in dispute. All right,
12 go ahead, if it's involved.

13 MR. TURK: When I see the affidavit I'll know, Your
14 Honor.

15 JUDGE SMITH: If he's willing to provide it to you,
16 that's fine. I don't know if he's obligated to at all.

17 MR. BARSHAK: I don't think I'm obligated to, but
18 I'll tell you what my position is and I'll do whatever you say.

19 What I would like to do is something that Mr. Dignan
20 may recognize coming from the same jurisdiction I do, I want to
21 trap my brother. I'm going to tell him that if he is calling
22 for these affidavits I'll give them to him, but I to warn him
23 in advance, I've got -- I think there are five or six, the rest
24 are down in the car. One from Mr. Lutz and others from other
25 people.

1 If he's calling for them I will produce them to him
2 under the understanding which we usually go by when, if you
3 call for a document in open forum you can't later on object if
4 it's being offered.

5 MR. DIGNAN: That is certainly the law in the
6 Commonwealth of Massachusetts and we've all used it one
7 another.

8 MR. BARSHAK: We sure have. And under those --

9 MR. DIGNAN: Open up the guy's briefcase, in it goes,
10 and God help you.

11 MR. BARSHAK: And under those circumstances Mr. Turk
12 can be my guest. If he calls for them I'll produce them. If
13 he doesn't call for them, he ain't going to get them.

14 MR. TURK: Let me be clear what it is I'm talking
15 about. I don't know what affidavits you have, Mr. Barshak.

16 MR. BARSHAK: That's the risk you've got to run.

17 MR. DIGNAN: It's called into the briefcase.

18 MR. TURK: I'm calling for one.

19 MR. BARSHAK: Brother Turk, put up or shut up.

20 MR. TURK: I'm asking for one.

21 MR. BARSHAK: I've got five, you can have them. Six.

22 MR. TURK: Well, the question is, is the Lutz
23 affidavit among them? And let me indicate that I have -- I'm
24 expecting a copy of it myself today. And if you don't want to
25 disclose to me, fine, I won't ask for it now.

1 MR. BARSHAK: My position is clear, Your Honor, he
2 can have them all if he calls for them.

3 MR. OLESKEY: Just in case there's --

4 JUDGE SMITH: Well, I'm not going to get into whether
5 you can sandbag him on them or not. I might point out that
6 this is New Hampshire, you passed the State border.

7 MR. BARSHAK: I spend a lot of weekends up here, I
8 know.

9 (Laughter)

10 JUDGE SMITH: All right. But you're calling the
11 shots. I don't see that you're under any obligation to produce
12 the affidavits, and you can withhold them or produce them on
13 any condition that you wish.

14 MR. BARSHAK: I've stated my condition, he can have
15 them under those conditions.

16 JUDGE SMITH: Mr. Scinto, do you want to be heard?

17 MR. SCINTO: Mr. Chairman, I just want to note that
18 this forum is governed by the Commission's rules of practice
19 and admissibility.

20 MR. DIGNAN: And they're more byzantine than
21 Massachusetts.

22 (Whereupon, at 12:01 p.m. the hearing was recessed to
23 reconvene at 1:00 p.m. this same day, Wednesday, June 15, 1988
24 at the same place.)

25

et/30

T31 1 A F T E R N O O N S E S S I O N

2 (1:06 p.m.)

3 JUDGE SMITH: Ready to go?

4 MR. OLESKEY: Yes.

5 JUDGE SMITH: Mr. Oleskey has gathered up questions
6 from the other Intervenors and it looks like he will have less
7 than an hour --

8 MR. OLESKEY: For everybody, including myself.

9 JUDGE SMITH: -- to wind up the direct.

10 Whereupon,

11 EDWARD THOMAS

12 having been previously duly sworn, was recalled as a witness
13 herein, and was examined and testified further as follows:

14 DIRECT EXAMINATION (Resumed)

15 BY MR. OLESKEY:

16 Q Mr. Thomas, there came a time in February of this
17 year when the State of New Hampshire submitted additional
18 material to this Board, to the parties, and your agency in
19 response to discussions here and the request of FEMA in the
20 January 25th testimony that the state do some things with
21 respect to its position on sheltering.

22 Did you have a chance about the time of the submittal
23 of those materials by New Hampshire to evaluate them?

24 A (Thomas) Sure. It was my professional
25 responsibility to lead that review, yes.

1 Q Okay. Did you make an analysis and share that with
2 people in the agency of the New Hampshire response?

3 A (Thomas) I made a comparatively brief analysis, not
4 as thorough as would be my custom. I indicated, however, that
5 the -- to my mind, the submission did not solve the problem
6 that had been identified by FEMA with respect to the beach
7 population; that I found the submission confusing in that I
8 still wasn't sure how the state would go about sheltering
9 people, what we call the 98 percent population; the bulk of the
10 beach population that has access to automobiles. That I
11 considered it to be a fairly large undertaking that couldn't be
12 done on an ad hoc basis, and that made a number of other
13 comments from an emergency planning perspective about the
14 documents as submitted.

15 Q When you give that answer are you indicating that you
16 read the testimony as holding out the possibility of sheltering
17 being a protective action in some circumstances?

18 A (Thomas) I don't believe it was testimony. I
19 believe it was a submission to FEMA.

20 But, yes, I read that --

21 Q Well, it was filed here, so whatever we want to call
22 it we're talking about February 19th.

23 A (Thomas) Fine. I read that submission by the State
24 of New Hampshire as in conjunction with statements that had
25 been made by Director Strome that there might be some

1 circumstances that, as I recall, he said something like -- and
2 it's in the transcript -- that he wouldn't close the door on
3 sheltering the bulk of the beach population if that seemed to
4 be the appropriate protective action to take.

5 So I read it in conjunction with Director Strome's
6 testimony and, yes, I did take it to mean that the state might
7 shelter the beach population; might consider sheltering the
8 beach population.

9 Q As a planner for FEMA, did you have any concerns
10 about implementing detail that would be required, or might be
11 required in those instances where sheltering was the chosen
12 protective action employed by New Hampshire?

13 A (Thomas) Yes, I did. Considering the magnitude of
14 the problem, I didn't believe it could be handled on an ad hoc
15 basis; that preplanning would be required.

16 Q What kind of preplanning?

17 A (Thomas) Emergency broadcast system messages.
18 Obviously we're talking about a fast-breaking accident. There
19 wouldn't be a lot of time to create emergency broadcast system
20 message. We'd need appropriate emergency broadcast messages,
21 some types of signs leading people to those shelters, some type
22 of system set up for opening up buildings if they weren't open
23 up during the time of the peak population, making sure that the
24 buildings were in fact available. It was not clear to me from
25 the submissions that the buildings would not otherwise be full

1 of merchandise or equipment, but would in fact be available for
2 physical occupation of people; that sort of detail.

3 Q Okay. Did you pass along the substance of these
4 views to others in your agency in Washington?

5 A (Thomas) Yes.

6 Q Okay. Any response?

7 A (Thomas) I was told that it had been reviewed --
8 before its submission had been reviewed in headquarters. They
9 had looked at drafts of it, and that they were quite satisfied
10 with the nature of the submission.

11 Q Were you told who made that review?

12 A (Thomas) Craig Wingo.

13 Craig Wingo told me that Craig Wingo had made that
14 review.

15 Q Okay. There is testimony in the record, I believe,
16 that Mr. Keller and others attributed to you consistently a
17 position that you felt that federal law might require -- would
18 require sheltering for the beach population in New Hampshire as
19 a protective action, or as one alternative protective action in
20 the case of an emergency.

21 Was that the intent of the testimony which you
22 sponsored for the agency in September?

23 A (Thomas) No, that was not the intent. The intent
24 was to identify a problem, and basically say we have to come to
25 a solution of the problem.

1 The problem was the number of people that would be
2 stuck in traffic for potentially very long periods of time
3 within sight of the reactor, with the problem of possible
4 automobile abandonment stringing out the evacuation time
5 estimates, all the rest of that.

6 And that in my estimate that the emergency plans that
7 achieved the result of having people in traffic for so long
8 achieved the result of having people stuck within sight of a
9 reactor were simply not reasonable, and that that risk had to
10 be reduced somehow. And I've summarized that in many
11 conversations with people in saying the risk was too great.

12 And I have said that conceivably one option for
13 reducing that risk would be by demonstrating that rather than
14 evacuating everyone, you would be sheltering all or part of
15 that population if in fact that would reduce risk.

16 And I've testified that within FEMA there was some
17 serious doubt about the efficacy of sheltering. That FEMA was
18 in the process of developing a position paper on this, which I
19 still haven't seen yet, but in June of '87, there was a lot of
20 discussion about Joe Keller's feelings about the efficacy of
21 shelter and whether it should really be used very much as a
22 protective action versus the feelings and the analysis that had
23 been done by other people that it was a very, very important
24 protective action.

25 I said that, you know, conceivably, depending upon

1 the results that would be achieved, the reduction in the risk
2 to public health that might be achieved by sheltering, that
3 that would be conceivably one option to look at. But that
4 considering the nature of the buildings in that area, in the
5 area around Seabrook which I saw as having a unique
6 concentration of buildings that we summarized by saying are
7 unwinterized -- that U-N winterized -- that is to say they are
8 not designed to resist air intrusion at all, that I wasn't sure
9 that the use of existing structures was going to do us a whole
10 lot of good in this situation.

11 Q Did you ever content for the agency in your work that
12 the New Hampshire plan had to have sheltering in order to
13 satisfy FEMA criteria?

14 A (Thomas) No, not at all. In fact, I said I wasn't
15 sure that sheltering was necessarily going to provide that much
16 of a reduction in risk based upon the conversations that I had
17 had over the years with Joe Keller. That I just saw too much
18 risk to the public in the accident sequences as I understood
19 them in NUREG-0654, and I didn't think that the emergency plans
20 on this narrow issue, the issue of the beach population,
21 provided a reasonable assurance of an adequate level of public
22 safety, and we had to do something to get that risk down,
23 whether it was -- and we talked about a lot of different
24 options, including if the containment in fact reduced that risk
25 by giving us more lead time to get people out of there, then

1 that's something that should be included in our decision
2 matrix, or whether it was discussed with me once by someone
3 from the NRC, who I believe was Dr. Ronald Bellamy, but I'm not
4 sure of this -- it may have been someone else -- that when the
5 WASH-1400 sequences of accidents was developed, they were
6 generally considering the plant running at 100 percent power.
7 And that a plant operating at a lower level of power would not
8 be able to produce the kind of releases that would create
9 significant offsite consequences and maybe the plant could run
10 at some reduced level of power in the summer, or at no power.

11 There were any number of discussion over the years
12 about how to get the magnitude of the level of risk to the
13 public down to a level of reasonable and acceptable risk.

14 Q One of my colleagues wanted to ask a couple of
15 follow-up questions in this area.

16 You testified that at the meeting in late October of
17 last year with Mr. Wingo and Mr. Keller and Mr. Baldwin, Mr.
18 Wingo said to you, you made a technical error in your
19 testimony, or words in substance along those lines.

20 Do you recall that?

21 A (Thomas) Yes.

22 Q What was it that Mr. Wingo indicated in that meeting
23 was the technical error in the -- what I called your testimony,
24 the agency's testimony for which you were the sponsor?

25 A (Thomas) Thank you for correcting yourself.

1 As I -- well, not as I understood it. It was very
2 clear he was saying, look, Joe Keller and Dr. Tom Baldwin have
3 looked at the situation at Seabrook, and have determined that
4 technically the testimony is inaccurate.

5 And I said, all right, let's take it a piece at a
6 time and work our way down what they're really saying and how
7 that means that the testimony is technically inaccurate.

8 I didn't understand then and I don't understand now
9 how it could be technically inaccurate. It was a matter of
10 judgment.

11 Q In any event, is there anything of the work that you
12 saw from Keller and Baldwin back there in October which is in
13 the final FEMA testimony filed dated March 14th?

14 MR. TURK: Could we hear that question again, please?

15 MR. OLESKEY: Yes.

16 BY MR. OLESKEY:

17 Q Is there anything of the work that Keller and Baldwin
18 discussed back in October with the witness which is
19 incorporated in the FEMA testimony filed here under date of
20 March 14th?

21 A (Thomas) Certainly nothing that I can think of
22 offhand. I haven't read the FEMA testimony in awhile, but I
23 don't believe so.

24 I'm not going to say that there isn't some reference
25 to a concept. I can't think of anything.

1 Q Okay. The other question about that meeting was
2 this.

3 You said that Mr. Wingo also indicated that FEMA had
4 to change its position, in his judgement at least.

5 A (Thomas) That is correct.

6 Q Do you remember that?

7 A (Thomas) Yes, I do.

8 Q What was it that he referred to as a basis for that
9 statement, if anything?

10 A (Thomas) Earlier in the meeting he had indicated
11 that the testimony was technically wrong. And I assumed then
12 and assume now that what he was talking about was that since
13 it's wrong, we have to change it. I don't know more than that.

14 Q The only reference to technical error was to the work
15 being presented by Keller and Baldwin at that meeting; is that
16 right?

17 A (Thomas) It's the only reference that I understood,
18 yes.

19 Q All right. Now I want to direct you to the RAC
20 meeting of the 29th of February.

21 The parties know, the Board may not so I would like
22 to ask you the question. Is there a recorded transcript that
23 was kept of that meeting?

24 A (Thomas) Yes, indeed.

25 Q Which runs to --

1 JUDGE SMITH: It was served.

2 MR. OLESKEY: It was served, okay.

3 BY MR. OLESKEY:

4 Q Which runs to a hundred pages or so?

5 A (Thomas) It's thick. If you say a hundred pages,
6 that sounds right.

7 Q There had been a meeting almost two months earlier on
8 the 7th and 8th of January. This is another meeting of the
9 RAC.

10 Why did this one follow up?

11 A (Thomas) This was by way of follow up to include in
12 our decision process the information that had been filed by the
13 State of New Hampshire; to review that information and to come
14 to what I have termed closure on the RAC review.

15 Q Did the information that New Hampshire had supplied
16 in February get discussed that the meeting?

17 A (Thomas) I have to tell you my recollection of that
18 meeting is fairly dim at this point. Since the meeting was
19 called largely on account of that, I imagine it did. I'm
20 drawing a blank on the particular discussion points.

21 I mean it's in the transcript.

22 Q Was the discussion about whether the RAC and FEMA
23 could consider large numbers of people in cars stalled during
24 an evacuation as transit-dependent persons?

25 A (Thomas) Yes, I do recall that discussion.

1 Q What was that discussion as you recall it?

2 A (Thomas) As I recall it, and again let me emphasize
3 that I haven't ever, except one briefly glance through that
4 transcript so this is not terribly fresh in my mind.

5 In essence, as I recall, Stanley Wasserman from the
6 National Weather Service raised the issue of --

7 MR. TURK: May I ask, if it's in the transcript --

8 MR. DIGNAN: I object. If this is going in on
9 Wasserman's opinion of traffic problems, Wasserman's not going
10 to testify, and here we go again -- a hearsay expert opinion,
11 Your Honor.

12 MR. OLESKEY: I'm asking if an issue was raised and
13 discussed at the meeting.

14 MR. DIGNAN: Well, so what if it was.

15 MR. OLESKEY: I want to know what the RAC considered,
16 counsel. That's why I'm asking the question.

17 MR. DIGNAN: No, but we're not --

18 MR. OLESKEY: Give me the courtesy.

19 MR. DIGNAN: He's asking for Wasserman's opinion to
20 be read into this record. That's what he's asking for.

21 MR. TURK: And, Your Honor --

22 MR. DIGNAN: If he wants to give him a list of topics
23 discussed and stop, I don't have an objection. But through the
24 back door we're going to try to put Wasserman's opinion in
25 here, and we're not going to produce Wasserman for cross.

1 JUDGE SMITH: He says he's not.

2 MR. DIGNAN: He just did it, Your Honor. I don't
3 care what he said. He just did it.

4 MR. OLESKEY: Well, I care what I say. You ought to
5 care what I say, because what I say he has to answer if I get
6 the question in.

7 What I'm asking is whether a topic was discussed and
8 what was said.

9 MR. DIGNAN: Then he can answer that yes or no
10 without any editorializing.

11 MR. OLESKEY: He answered that, and I've now asked
12 him who said what which has been a complaint of yours, counsel,
13 and other people when I haven't asked it.

14 MR. DIGNAN: No, and I don't want that opinion of
15 Wasserman in, and that's the objection; hearsay, hearsay expert
16 opinion.

17 MR. OLESKEY: It's not. It's offered to see whether a
18 topic was dealt with by the RAC. That's all.

19 MR. DIGNAN: He can answer whether the topic was
20 dealt with by simply answering the question yes or no, Your
21 Honor --

22 MR. OLESKEY: Well, he can't answer with --

23 MR. DIGNAN: -- that it was dealt with or not.

24 MR. OLESKEY: -- a yes or no.

25 JUDGE SMITH: Your question to him now was -- are you

1 going to ask him to list all of the topics that were
2 considered?

3 MR. OLESKEY: No.

4 JUDGE SMITH: Just meteorology?

5 MR. OLESKEY: Yes.

6 JUDGE SMITH: Was meteorology considered?

7 MR. OLESKEY: No, I didn't ask him about meteorology.
8 I asked him whether an issue arose about whether a population
9 in cars stalled or substantially stalled during an evacuation
10 in the event of an accident could be considered to be transit-
11 dependent or something like that discussed on the meeting.

12 He said yes. He started to explain it and the
13 objections were made.

14 JUDGE SMITH: Where did I get meteorology?

15 MR. OLESKEY: What?

16 JUDGE SMITH: I don't know, somehow I came out of
17 that with meteorology.

18 MR. OLESKEY: I suppose because the name Wasserman
19 came up and he is the weather man on the panel.

20 JUDGE SMITH: Yes, that's right, yes. Okay.

21 And then he started to talk about Wasserman's
22 comments.

23 MR. DIGNAN: And I object to it being hearsay. If he
24 wants -- he's answered the question. He's got the fact that
25 the topic was discussed. Fine.

1 I object to the hearsay rendition of what somebody
2 else said on the topic.

3 MR. OLESKEY: There have been discussions throughout
4 examinations going far beyond this witness about what people
5 said in the RAC. Essentially --

6 MR. DIGNAN: Yes, and His Honor has indicated that
7 the hearsay rule got left at the door, but I'm still going to
8 insist on it occasionally, Mr. Oleskey. I have sat here and
9 let you do a hearsay number without objection for two days, but
10 there are limits.

11 MR. OLESKEY: That's because it's been limited,
12 counsel.

13 MR. DIGNAN: I object, Your Honor, and I ask for a
14 ruling on the hearsay aspect.

15 MR. OLESKEY: And I press the question.

16 (Board confer.)

17 (Continued on next page.)

E31

18

19

20

21

22

23

24

25

t/32

1 JUDGE SMITH: We -- assuming that he's going to
2 bring in expert opinions on this, we do not want the secondhand
3 recitation of the expert opinion. I don't know, Wasserman is a
4 meteorologist, I don't know what -- how it works out.

5 MR. OLESKEY: I'm not offering Wasserman as an expert
6 on stalled traffic. I'm trying to find out -- I don't care
7 whether it was Wasserman or Bores or Thomas, did this topic
8 come up? Was it raised? How did the RAC deal with it, that's
9 all.

10 JUDGE SMITH: All right.

11 MR. OLESKEY: Same concept as has been asked --

12 JUDGE SMITH: Did it come up how was it raised?

13 THE WITNESS: (Thomas) My recollection is that the
14 topic came up and it was raised by Stanley Wasserman. And for
15 your information, may I -- I recognize him or I consider him to
16 be an expert on hurricane evacuation planning and I do work
17 with him in that field.

18 MR. DIGNAN: Then I object to anything further about
19 Wasserman.

20 MR. OLESKEY: With that clarification that I hadn't
21 happened upon, I press the question for what it's worth in
22 terms of assessment of Wasserman's qualifications.

23 JUDGE SMITH: You're pressing the question?

24 MR. OLESKEY: Yes.

25 JUDGE SMITH: And our ruling is in this respect, that

1 we will not allow Mr. Thomas's interpretation of other
2 participants' expert opinions to be answered.

3 MR. OLESKEY: All right. Well, treating it -- for
4 purposes of your ruling merely as I indicated a moment ago, an
5 issue that arose in the RAC, may I have the question.

6 JUDGE SMITH: Yes.

7 MR. OLESKEY: Okay.

8 MR. TURK: What's the question?

9 MR. DIGNAN: Wait a minute.

10 JUDGE SMITH: The issue came up --

11 MR. DIGNAN: Yes.

12 MR. TURK: And he's got an answer.

13 MR. DIGNAN: Now, what's the next question?

14 MR. OLESKEY: The next --

15 JUDGE SMITH: What did you do about it?

16 MR. OLESKEY: Yes.

17 MR. DIGNAN: Yes, what did you do about it? Not what
18 anybody said, but what did he do about it?

19 MR. OLESKEY: No.

20 JUDGE SMITH: Our problem is --

21 MR. OLESKEY: I'm talking about the RAC --

22 JUDGE SMITH: The essence -- the basis of our problem
23 is, Mr. Thomas as he has explained many times does not purport
24 to have a technical background or technical expertise. And his
25 interpretation and relaying of expert opinion goes beyond our

1 very liberal acceptance of hearsay.

2 So why don't you just say, what came up and what
3 effect did it have on the --

4 MR. OLESKEY: He's told us what -- I'm not sure the
5 record reflects actually the answer to the question.

6 JUDGE SMITH: If I'm not mistaken, isn't this not the
7 very meeting that had the transcript taken of it -- I mean,
8 made of it?

9 MR. OLESKEY: Yes.

10 JUDGE SMITH: That's the one you're talking about,
11 yes.

12 BY MR. OLESKEY:

13 Q Did this topic come up, Mr. Thomas?

14 A (Thomas) Yes.

15 Q It was discussed at least briefly?

16 A (Thomas) Yes.

17 Q Did the RAC make any judgment affecting the way it
18 was dealing with these planning elements, J-9 and J-10-M, that
19 reflected its consideration of this issue of population stuck
20 in cars in evacuation as transit-dependent? Either the
21 majority as you've referred them or the minority?

22 A (Thomas) Not to the best of my recollection.

23 Q Okay. Was the subject of evacuation time estimates,
24 ETEs, a topic of discussion at the meeting?

25 A (Thomas) From time to -- I have no direct

1 recollection of that.

2 Q All right. Let me ask you this then, was -- right
3 through the RAC deliberations in '86 and '87 and up until this
4 meeting of February 29, '88, was the RAC using some version of
5 the ETEs that the Board would be familiar with as a basis for
6 its discussions about evacuation and shelter?

7 A (Thomas) Yes. Yes.

8 Q What was that version?

9 A (Thomas) Volume 6 of the New Hampshire RERP.

10 Q Did the RAC ever use any other version in its
11 discussions and deliberations than those ETEs?

12 JUDGE SMITH: Has it ever, ever?

13 MR. OLESKEY: Yes.

14 JUDGE SMITH: That day or ever?

15 BY MR. OLESKEY:

16 Q From that date backward in time, did they ever in
17 effect set aside those and say, there are other ETEs here,
18 let's focus a discussion around those?

19 A (Thomas) I'm not prepared to say that we never did
20 it back into 1981, but we certainly didn't use any versions of
21 the ETE after receipt of the Volume 6 of the New Hampshire
22 RERP.

23 Q All right. Did the RAC ever make a determination
24 whether that Volume, at least for its purposes, contained ETEs
25 that was sufficiently accurate and reliable to be used in its

1 review of the plan?

2 A (Thomas) Yes.

3 Q When was that?

4 A (Thomas) That was part of the RAC review that was
5 presented to the State in December 1986.

6 Q And the topic was thereafter not revisited, is that
7 it?

8 A (Thomas) Not with respect to the accuracy of the
9 evacuation time estimates within the RAC itself. It was --
10 from that then on it was a topic of analysis within FEMA and
11 perhaps others with respect to preparation of testimony on the
12 ETEs.

13 Q Well, did FEMA's testimony of September rely on the
14 accuracy of the New Hampshire plan Volume 6 ETEs?

15 A (Thomas) FEMA did not provide -- it was determined
16 between FEMA and the NRC that FEMA would not be providing
17 testimony on the ETEs to the extent that there was reliance
18 within, certainly, the beach sheltering testimony, we were
19 relying on the accuracy of Volume 6 of the New Hampshire plan.

20 JUDGE SMITH: Now, I do have a concern of my own
21 here. Where are you going? Is this within the scope of the
22 reason for having Mr. Thomas here?

23 MR. OLESKEY: Yes. I want to understand whether the
24 RAC and the agency ever used any other set of ETEs --

25 JUDGE SMITH: I understand that.

1 MR. OLESKEY: -- in their evaluation than the Volume
2 6 official set.

3 JUDGE SMITH: Well, how does that relate to Mr.
4 Thomas's difference in the evolution of FEMA's position?

5 MR. OLESKEY: That's the other side of the reason we
6 asked to have Mr. Thomas, Your Honor, and have been some
7 questions on that other side and that is, the -- our direct
8 case, we've made no bones about that --

9 JUDGE SMITH: I understand.

10 MR. OLESKEY: -- we want him here for both --

11 JUDGE SMITH: You've had him for two reasons.

12 MR. OLESKEY: Yes.

13 JUDGE SMITH: One is your own direct case.

14 MR. OLESKEY: And this is that other reason.

15 JUDGE SMITH: All right. Have you established that
16 those matters have, we haven't had a chance yet, but have those
17 matters had a role in his opinion?

18 MR. OLESKEY: The ETEs?

19 JUDGE SMITH: Yes. You're trying to do that now.

20 MR. OLESKEY: I thought we had, and I thought this
21 was kind of the gloss on the cap on it, but --

22 JUDGE SMITH: Okay.

23 MR. OLESKEY: Let me just ask a final question and if
24 you're not satisfied I'll revisit it, because I want --
25 obviously you have to be clear.

1 BY MR. OLESKEY:

2 Q You've reviewed -- well, you were part of the
3 discussions, you've said, in the fall of '87 and the winter and
4 early spring of '88 about what would be done with the FEMA
5 testimony?

6 A (Thomas) Yes.

7 Q In all those discussions did the agency ever focus on
8 ETEs that were different than those in the New Hampshire plan,
9 Volume 6?

10 A (Thomas) At one of the meetings I remember raising
11 the issue that our beach population testimony relied upon
12 Volume 6 of the New Hampshire RERP, and that my understanding,
13 at least from what Mr. Flynn had told me of the testimony and
14 from glancing at various filings, was that it appeared as
15 though the evacuation time estimates might be longer than was
16 indicated in Volume 6 of the State plan. And that I felt that
17 that was a -- that certainly further emphasized to me the
18 correctness of the position that had been reached by the agency
19 in June and in September of '87.

20 Q Is that the only instance you can recall, when you
21 were a party to such a discussion?

22 A (Thomas) Yes.

23 Q Then is it your present understanding that in its own
24 evaluations throughout and including the testimony that was
25 ultimately filed on the 14th of March of this year, to the

1 extent that ETEs are relevant to the agency's position, it has
2 relied on those contained in Volume 6 of the New Hampshire
3 plan?

4 A (Thomas) I have to answer, yes, to that with the
5 caveat that I was not very much involved with the preparation
6 of the agency's testimony as it was filed on March 14th. So
7 I'm not privy to significant discussions. I don't know what
8 all may have been considered by the agency.

9 Q Okay. Last question about the RAC meeting of the
10 29th of February. Would it be accurate to say that after that
11 meeting the position of the majority and the minority, as
12 you've detailed it here and in your testimony in January, were
13 essentially what they had been coming into the meeting?

14 A (Thomas) In my opinion they were essentially the
15 same. I didn't see a whole lot of change of position in the
16 meeting. But -- I mean, I'm characterizing it.

17 Q And the Board understands that New Hampshire had
18 filed its testimony and made a distinction between a 98 percent
19 and two percent, and you've indicated that was a major focus of
20 the meeting?

21 A (Thomas) Yes.

22 Q But the result was, there was still this alignment of
23 agencies roughly 6-3; is that right?

24 A (Thomas) I count 5-3, but --

25 Q All right.

1 A (Thomas) -- yes.

2 Q What's that other vote which somebody say are 6 and
3 you're calling 5?

4 A (Thomas) The U.S. Department of Agriculture was not
5 sending representatives to the RAC meetings and had told me
6 that they didn't consider this dispute over J-9 and J-10-M to
7 be really part of their area of responsibility.

8 At this same time I'd like to add that, I had also
9 received a memorandum from them that indicated that their
10 concerns relative to the beach population were satisfied. So
11 if somebody wants to -- I had counted as sort of an abstention,
12 but that memo maybe should count as a positive vote, so if
13 somebody wants to say 6-3, I really can't argue with them that
14 much. But the votes at the meeting were 5-3, as I understood
15 them.

16 Q All right. Directing you to a different date now.
17 The meeting at FEMA of March 4th, 1988, and the Board has heard
18 previous testimony about this from the officials from
19 Washington a couple of weeks ago, so there is a context; Mr.
20 Peterson presided at the meeting?

21 A (Thomas) Correct.

22 Q You were there?

23 A (Thomas) Yes.

24 Q Most of the agency officials and lawyers who had been
25 at these other meetings you have been describing were also

1 present?

2 A (Thomas) That is correct.

3 Q I'm interested in the position that you advocated at
4 the meeting because we've heard about the position other people
5 have advocated, would you summarize as best you can in the
6 course of what we understand was a meeting that went on for
7 some time, what you said with respect to the agency's position
8 that was in the final stages of evolution and eventually filed
9 here 10 days later, the 14th of March?

10 A (Thomas) Should I go to the bottom line or --

11 Q Go to the bottom line and then back up and tell us
12 how you got there?

13 A (Thomas) Okay. The bottom line that I suggested was
14 that: (a) with respect to what we were then in that meeting
15 and other times perhaps calling the 98 percent population, that
16 is to say, the transient beach population that had access to
17 automobiles and would evacuate on their own.

18 That -- since -- as I understood it, it had been
19 explained to me by Mr. Keller and Dr. McLoughlin, Dave
20 McLoughlin, that there was not circumstance in which there
21 would be a dose reduction from sheltering that 98 percent
22 population. That they were always better off evacuating. That
23 by definition sheltering that population was not a protective
24 action, and that didn't protect them.

25 And that therefore, I was willing to accept the

1 argument that the range of protective actions under J-9 and
2 J-10-M that would be talked about for the 98 percent population
3 was adequately met by evacuation and another protective action
4 which would be ingestion pathway planning. And a third action
5 of monitoring and decontamination. I would accept that
6 argument with respect to that population.

7 With respect to the two percent population I still
8 considered the plans to be inadequate, and that there were no
9 plans for sheltering the emergency planning zone population, as
10 a whole, especially the beach population. And I still
11 considered the plans to be seriously flawed in that respect.

12 The next point I made was, okay, fine, and I
13 essentially said, so what. We talked about this last June. We
14 talked about this last August. We talked about this last
15 September and had said consistently, so what. That it didn't
16 matter that J-9 and J-10-M were met or not met, that there were
17 arguments within the agency that, yes, those elements were
18 adequate with respect to the beach population, and perhaps,
19 even the population of the EPZ as a whole.

20 But that we had long ago decided -- pardon me -- that
21 mere adequacy with the A through P standards of NUREG-0654 did
22 not mean reasonable assurance. And that I still concluded that
23 the plans which resulted in the situation that's described on
24 pages 38 and 39 of the FEMA position on contentions, that
25 became prefilled testimony, that those simply didn't provide a

1 reasonable assurance of adequate protection. And I didn't see
2 that we should change that position.

3 And I certainly was the only one that clung to the
4 belief that the plans were inadequate or that, in any respect,
5 or that there was not a reasonable assurance of an adequate
6 level of public protection.

7 And the next point I made after it was established
8 that the agency had come to that conclusion, I was asked if I
9 found the presentation of testimony that the plans were
10 adequate to be distasteful. I indicated that I -- my personal
11 feelings were of -- should not be considered and that I was
12 willing to articulate the agency's position on this in that I
13 felt it was within the realm of the agency's judgment to reach
14 the conclusion it had. But I would insist on my right to
15 truthfully testify that I disagreed personally and
16 professionally with the conclusion.

17 And based on that the -- well, I guess it's not as
18 much my bottom line, but the agency's bottom line was that my
19 services on testimony would not be required.

20 Q Did Mr. Peterson make the final decision on the
21 testimony at that meeting?

22 A (Thomas) After he had gone around he made a
23 decision, as I understood it, with respect to J-9 and
24 J-10-M, and then we continued the discussion. And after he had
25 everybody's input he made a decision with respect to the

1 reasonable assurance issue. And then after he had everyone's
2 input he reached what became a final decision later, but it was
3 sort of a tentative decision about who the witnesses would be
4 on the beach shelter issue.

5 Q Did Mr. Peterson say anything to indicate why he
6 believed the New Hampshire filing of the 11th and the filing of
7 the 19th of February provided sufficient clarification or
8 assurance to FEMA to enable him to reach the decision he was
9 reaching at that meeting?

10 A (Thomas) I think what Mr. Peterson emphasized was
11 that, number one, that there was essentially a congruence in
12 the room, there was one person that was not agreeing with the
13 rest of the group; and he said that was very important to him.
14 And he indicated that the State had considered the use of
15 shelter, and had stated their position on the sheltering. And
16 that he found their statement or position to be adequate for
17 FEMA's purposes.

18 Q After the meeting did you play any further part in
19 development of the testimony that was filed on the 14th?

20 A (Thomas) No.

21 Q Were you asked to review it?

22 A (Thomas) No.

23 Q Were you asked to comment on it?

24 A (Thomas) No.

25 Q There's been testimony here, as Mr. Backus reminds

1 me, that you said something at the March 4th meeting along the
2 lines of, "I recant of my previous positions or position with
3 respect to plan adequacy." Did you say anything along those
4 lines or that could have been construed as such a statement?

5 A (Thomas) I think that's a very, very accurate
6 quote. With respect to the 98 percent population I said, based
7 on what Dr. McLoughlin and Joe Keller are saying that
8 sheltering the beach population is not an appropriate
9 protective action. We do have a couple of protective actions
10 which had not previously occurred to me; the ingestion pathway
11 planning, making sure that they didn't eat contaminated food
12 stuffs, and the monitoring and decontamination. That based on
13 that, that I felt that, yes, the words and letters of NUREG-
14 0654, if you put blinders on, had been compiled with, with
15 respect to 98 percent of the population. But not with respect
16 to the two percent.

17 And if I recall correctly, I -- and I have a fairly
18 close, good memory of that, yes, I used the word "recant."

19 Q And were these other aspects that you just mentioned,
20 the ingestion pathway reference and access control, were those
21 characterized as a range of protective actions?

22 A (Thomas) Yes.

23 Q Was that something that had been said back in the RAC
24 in January as well?

25 A (Thomas) It had certainly been said by Dr. Bores in

1 a RAC meeting and it may have been in January, it may have been
2 in February. And if I recall correctly what he was touting was
3 access control as a protective action. And it didn't click
4 with me at the time that, yes, that really is a protective
5 action if you think of the transit-dependent, transient beach
6 population as a whole or as a maximum group, if you keep some
7 of them from hitting the beach that, yes, that is a protective
8 action.

9 It seemed like a pretty weak one because in fact it
10 might not protect them if they were there at a maximum -- sort
11 of maximum strength when an accident hit. And I didn't really
12 pay a whole of attention to it.

13 But certainly I have to agree that, yes, ingestion
14 pathway planning is a form of protective action and certainly
15 decontamination, monitoring decontamination is a form of
16 protective action.

17 So again, as I have said and testified here, that my
18 perception is, if you put your blinders on, yes, okay, it
19 complies with NUREG-0654. But my point that I raised
20 immediately was that, so what.

et/32 21 (Continued on next page.)
22
23
24
25

T33

1 MR. TURK: In his presentation, I think the witness
2 said ingestion pathway. I think he meant to say access control
3 in his last statement.

4 THE WITNESS: (Thomas) I think I mean to say that.
5 I meant to say ingestion pathway planning is a form of
6 protective action.

7 If you prevent -- you know, that same group that
8 would be on the beach is going to be prevented by our ingestion
9 pathway planning from ingesting contaminated foodstuffs, and
10 that will reduce their potential dose. So it's a protective
11 action for them as well as the rest of the people in the 50-
12 mile and beyond ingestion pathway plan.

13 MR. TURK: But I thought, if you'll excuse the
14 interruption. I thought I had heard that Dr. Bores mentioned
15 access control as a protective action, and then you went to
16 ingestion pathway. I didn't see the connection.

17 THE WITNESS: (Thomas) I'm sorry. I was indicating
18 that, yes, I believe Dr. Bores had referenced access control at
19 a meeting which may have been the January meeting, or it may
20 have been the February meeting, or it may have been both.

21 BY MR. OLESKEY:

22 Q Was there any discussion at that meeting about
23 whether the agency ever applied this definition of the
24 reference range protective actions access control monitoring in
25 decontamination to other sites in New England which the RAC and

1 the agency had evaluated for the adequacy of plans?

2 A (Thomas) Well, I did point out that while at -- when
3 we had looked at the Maine Yankee plans and had told the NRC
4 that we really couldn't come to a conclusion as to whether
5 there was reasonable assurance of an adequate level of public
6 safety without a properly done evacuation time estimate, and we
7 had some very serious questions about the evacuation time
8 estimate as it was then extant that we didn't reference our
9 concerns to any particular NUREG element.

10 We certainly had referenced our concerns on the
11 Pilgrim plans on the beach population to particular NUREG
12 elements, and it seemed -- concerning range of protective
13 actions. And that it seemed to me that what we were saying now
14 on Seabrook was at variance with what we had reached only a few
15 months before as an agency policy on Pilgrim.

16 Q And did anybody respond to that comment?

17 A (Thomas) Not that I can recall, no.

18 Q You also said that it seemed to be important to Mr.
19 Peterson, as I understood you, that the NRC had interpreted its
20 regulations for your agency as not requiring sheltering in
21 connection with the evaluation of the sufficiency of a plan; is
22 that essentially what you heard?

23 MR. TURK: I'm going to object to the
24 characterization about NRC interpreting regulations for FEMA.

25 MR. OLESKEY: Mr. Turk, it's a question of what he

1 heard. Either he did hear it or he didn't hear it. It's not
2 objectionable. It's just a yes or no.

3 JUDGE HARBOUR: It's not understandable to me.

4 MR. OLESKEY: Well, that's more important than Mr.
5 Turk's objection, so let me rephrase it. Your Honor.

6 I had understood something, and I want to make sure
7 that I am correct, and especially so that Judge Harbour and his
8 colleagues understand.

9 BY MR. OLESKEY:

10 Q Was there a discussion by Mr. Peterson and others at
11 the meeting about the significance to them of a position taken
12 by my friend Mr. Turk on behalf of the NRC in connection with
13 the interpretation that its regulations to your agency as not
14 requiring sheltering?

15 A (Thomas) Yes, there was. You are refreshing my
16 recollection right here.

17 Yes, yes, that certainly was brought out by the
18 participants at the meeting, and I'm trying to remember if it
19 was Mr. McLoughlin or Mr. Peterson that said that it was very
20 important to the agency. Somebody did, and it was obviously
21 considered very important by the group.

22 Q Now back in June there had been an important meeting,
23 which you have given some testimony about, between the NRC and
24 FEMA in connection with the testimony that was -- or the
25 contention responses that were then being done; do you recall

1 that?

2 A (Thomas) Yes.

3 Q At that time, nine months earlier, eight months
4 earlier, had there been any discussion about this whole issue
5 that consumed your agency thereafter being resolved by a letter
6 from the NRC that would interpret its regulations in a fashion
7 that would in effect bind your agency?

8 A (Thomas) Well, there was - there was some
9 discussion very similar to that that took place which, as I
10 recall the discussion, Mr. Turk spoke up and offered to send a
11 letter explaining NRC's position which he was articulating to
12 FEMA.

13 And he was responded to by one of the participants at
14 the meeting, Attorney Flynn, by saying that essentially, thank
15 you, but we can write our own rhetoric. We don't need any help
16 with that, and we don't need any letters from you, words to
17 that effect.

18 Now I don't remember exactly what was going to be
19 sent, but it had to do with NRC laying forth its -- an
20 explication of the position that it had reached that was
21 advocating to -- the suggestions that were being made to FEMA
22 as to the --

23 Q The proper interpretation.

24 A (Thomas) Proper interpretation of the issues at
25 hand.

1 MR. TURK: For clarification, may I ask what was the
2 date you referenced that this meeting took place?

3 MR. OLESKEY: June 2 was my reference.

4 MR. TURK: June of 1987?

5 MR. OLESKEY: Yes.

6 BY MR. OLESKEY:

7 Q Did you have a discussion after the March 4th meeting
8 with Joe Keller concerning his analysis of the Seabrook
9 evacuation plan of New Hampshire?

10 A (Thomas) I don't believe I did, no.

11 Q Let me show you a memo dated March 7, '88; see if
12 that refreshes your recollection.

13 A (Thomas) It does.

14 Q As refreshed, would you indicated to the Board
15 whether you did have such a conversation?

16 I think I said after the March 4th meeting. I think
17 that misled you. I should have said after the --

18 JUDGE SMITH: Just wait until she -- if you want to
19 set up a microphone, go ahead and do it, but it's distracting.

20 Are you done, ma'am?

21 Go ahead.

22 BY MR. OLESKEY:

23 Q Do you recall a conversation about the time of the
24 RAC meeting on February 29th with Joe Keller concerning his
25 evaluation of an aspect of the Seabrook plan?

1 A (Thomas) Could I help out?

2 Q Sure.

3 A (Thomas) The conversation that I make reference to
4 in this memo was not after the March 4th meeting, but rather,
5 after the RAC meeting.

6 Q Right.

7 A (Thomas) At the March 4th meeting. At the March 4th
8 meeting Joe Keller gave certain information which I am writing
9 about in this draft memorandum --

10 Q Okay.

11 A (Thomas) -- to the -- this memorandum which is a
12 draft to the RAC that I sent to Mr. Krimm for comments.

13 Q You wanted the RAC had some information that Mr.
14 Keller had mentioned at the FEMA meeting of March 4th?

15 A (Thomas) Yes, some very, very important information,
16 because it influenced my position with respect to the adequacy
17 of elements of J-9 and J-10-M, in that I was, as I describe it,
18 recanting with respect to the 98 percent population based on
19 the information provided to me by Joe and Dave McLoughlin.

20 Q I'm not quite sure that last point is clear.

21 Are you saying that Mr. Keller said something at that
22 meeting that was important to you in your own evaluation?

23 A (Thomas) Yes, yes. As I said, as I've testified
24 that at the March 4th meeting he made statements with respect
25 to the efficacy of sheltering the 98 percent population at the

1 Seabrook beaches.

2 And that statement as I understood it then was very,
3 very important to me in my analysis of whether or not elements
4 J-9 and J-10-M were met with respect to that 98 percent
5 population.

6 Q Did you incorporate his statements, the ones you said
7 were important to you, in a memo to the RAC, a draft memo to
8 the RAC?

9 A (Thomas) Yes, I attempted to do so. I attempted to
10 capture what he had said, so that the minority group, the group
11 that had the minority opinion at the February 29th RAC meeting
12 would have an opportunity, the same opportunity I had to
13 reconsider their position with respect to at least the 98
14 percent population.

15 I mean I had changed my mind about that, that answer,
16 and I thought that the RAC should have an opportunity to. And
17 the other thing with this memorandum, it gave me an opportunity
18 to float this past my headquarters and make sure I had gotten
19 it right.

20 Q So you sent the draft of the RAC memo to your
21 headquarters for prior approval? Comment.

22 A (Thomas) For comment. Thank you. Yes.

23 Q Did you get any comments?

24 A (Thomas) Yes.

25 Q Have you sent out the memo?

1 A (Thomas) No.

2 Q Why not?

3 A (Thomas) I was told that I had misunderstood what
4 Joe Keller, and to a lesser extent, Dr. McLoughlin, had said,
5 and that they hadn't said, as I thought, that there were no
6 circumstances in which sheltering the beach population would
7 provide dose reduction.

8 But rather, that very few times, very few
9 circumstances would sheltering the beach population provide a
10 dose reduction.

11 And therefore I said, fine. Then I recant my recant.
12 I still say the elements J-9 and J-10-M are not adequately met,
13 and so we could go forward with the RAC document which was
14 being developed following the February 29th meeting which
15 reflected the split -- split vote in the RAC.

16 Q With that opportunity to have conversation with your
17 headquarters about what was really said on March 4th that you
18 thought was important from Joe Keller, looking back on it that
19 do you still have the recollection that you put in the memo, or
20 do you think you are mistaken?

21 A (Thomas) No, I -- the recollection is intense
22 because I mean this was important information to me, and it was
23 sketched out by Dave McLoughlin. Unfortunately, I didn't draw
24 the sketch in my notes, but he drew graphs on our flip chart
25 that we're using in the meeting and said, look, Ed, there is no

1 circumstance in which there are dose savings attendant to
2 sheltering that 98 percent population. Now how can you say
3 that therefore that that sheltering is something you want to
4 see in the plans.

5 And I said, well, gee, you know, if it's not going to
6 help anybody, that they're worse off in shelter, then it's not
7 a protective action and, yeah, yeah, I agree. That was very,
8 very important to me and whatever.

9 Q So whatever the subsequent clarification by Mr. Krimm
10 or others, you still believe that what you heard is what you
11 put in this memo of March 7th?

12 A (Thomas) That is my honest recollection of what I
13 heard, yes.

14 MR. OLESKEY: Distributing a copy of that memo, Your
15 Honor, which I'm going to offer.

16 JUDGE SMITH: Fifty-five.

17 MR. OLESKEY: Yes.

18 (The document referred to was
19 marked for identification as
20 Massachusetts Attorney General's
21 Exhibit No. 55.)

22 MR. DIGNAN: Mr. Oleskey, you've been going almost a
23 hour. How long are we --

24 MR. OLESKEY: Just about through, counsel.

25

1 BY MR. OLESKEY:

2 Q So we're clear, Mr. Thomas, this memo was never sent
3 to the RAC; only to your headquarters.

4 A (Thomas) That is correct.

5 Q Okay.

6 MR. OLESKEY: Is it admitted, Your Honor?

7 JUDGE SMITH: Have you offered it now?

8 MR. OLESKEY: Yes, I did.

9 JUDGE SMITH: Are there any objections?

10 MR. TURK: What's the purpose of the offer, Your
11 Honor?

12 MR. OLESKEY: My purpose is to memorialize the
13 witness's understanding of what he was told that was important
14 to him and arguably others at the key FEMA decisional meeting
15 of March 4th, which thereafter in a gloss the agency wasn't
16 quite right which caused him to change something he said at the
17 meeting three days ago earlier, on March 4th, something that's
18 been referred to here as "recantation".

19 So it's to clarify what was said at the meeting by
20 him and by others, and the subsequent discussions between him
21 and the agency which will bear on the testimony of Keller and
22 Cumming tomorrow and Friday.

23 JUDGE SMITH: So this is offered for his
24 interpretation of -- his impressions gained from Keller.

25 MR. OLESKEY: Yes, at the meeting when Mr. Peterson

1 made the decision to file the testimony that you have in front
2 of you.

3 JUDGE SMITH: Do you object?

4 MR. TURK: Yes.

5 JUDGE SMITH: Why?

6 MR. TURK: Two grounds.

7 First, the offer by Mr. Oleskey was broader than Your
8 Honor characterized it. Mr. Oleskey characterized it as being
9 something that was important to Mr. Thomas and arguably others
10 at FEMA. What we've heard from the witness is that FEMA
11 headquarters personnel said, Mr. Thomas, you've misunderstood.
12 So I don't see how this could arguably be something that was
13 relied upon by FEMA if they're telling him they didn't hear it
14 the way Mr. Thomas did.

15 If his offer is only for Mr. Thomas's impression,
16 then I withdraw that comment, but I would ask Mr. Oleskey to
17 clarify.

18 Second, if it's only for Mr. Thomas's impression,
19 it's irrelevant.

20 JUDGE SMITH: I don't agree with your second grounds.
21 But I think that it's only reliable for Mr. Thomas's
22 impressions.

23 Would you explain again how you tied the agency into
24 it?

25 MR. OLESKEY: Well, after the meeting one, possibly

1 two people at the agency said that he had misunderstood what
2 was being said on March 4th. There were a number of people
3 there. I think it's open to argue that if he heard it this
4 way, others heard it that way on the 4th. That's all.

5 JUDGE SMITH: No, we'll limit it to Mr. Thomas's
6 impressions.

7 At the top is RWK, that's Krimm?

8 THE WITNESS: (Thomas) Yes, sir.

9 BY MR. OLESKEY:

10 Q That indicates what, Mr. Thomas?

11 A (Thomas) That was just my note to Dick Krimm, and
12 then this was faxed down to Washington.

13 JUDGE SMITH: In handwritten at the top, it says --

14 MR. OLESKEY: Yes.

15 JUDGE SMITH: -- to RWK in handwriting.

16 MR. OLESKEY: Yes, I just wanted to clarify what that
17 was.

18 JUDGE SMITH: It's received on that basis.

19 MR. OLESKEY: Thank you.

20 MR. TURK: This is No. 55?

21 JUDGE SMITH: Yes.

22

23

24

25

1 (The document referred to,
2 having been previously marked
3 for identification as
4 Massachusetts Attorney General's
5 Exhibit No. 55 was received in
6 evidence.)

7 BY MR. OLESKEY:

8 Q Mr. Thomas, you reviewed the testimony that the
9 agency eventually filed on the 14th of March?

10 A (Thomas) I think perhaps reviewed is too strong a
11 word. I read it, I looked at it.

12 Q You've indicated the concerns you had about the
13 formulation of the position of the agency on the 4th of March
14 that resulted in the testimony on the 14th a little while
15 earlier this afternoon.

16 Is there any other point you want to make about your
17 evaluation of the agency's testimony that wasn't just testified
18 to in the context of the discussion of the 4th and its
19 aftermath?

20 A (Thomas) I don't believe so. I'll be happy to
21 answer the Board's questions or your questions about it.

22 Q All right. Just as a concluding question then on
23 that line, is it fair to say that personally and professionally
24 it's not testimony that you would support were you called to
25 sponsor it here before the Board?

1 A (Thomas) Not personally or professionally, no.

2 Q For the reasons you have been articulating.

3 A (Thomas) For the reasons I have articulated.

4 MR. OLESKEY: I have one question that's unrelated,
5 Your Honor, that another counsel has asked me to make and I
6 want to broach it with you first because you may not have left
7 the area open yesterday with some comments you made. I want to
8 be clear about that.

9 Mr. Thomas yesterday near the end of the day was
10 asked some questions about these comments that came to through
11 Attorney Flynn through the utility's attorney in the fall of
12 '87, last September, October, or November. And he said, in
13 substance, if it had just been the one comment, it wouldn't
14 have concerned me enough to be affected by it. I'm
15 paraphrasing. It's in the transcript if that's an issue. But
16 there were other things.

17 And as a sequence of events, as an aggregate of
18 concerns as a totality, it did concern me because it went off,
19 as I recall, into a lot of discussion with the Board and other
20 counsel. I never asked the witness what was the totality of
21 the situation that caused you to feel the way you did testify
22 he felt.

23 I want to know if it's open under your ruling of
24 yesterday for me to ask him now as I've been requested to by
25 another counsel, what was it about the aggregate of what was

1 happening, Mr. Thomas, that did cause you concern in a way that
2 the one incident that we were discussing wouldn't have.

3 JUDGE SMITH: Well, what ruling did we make that
4 raises the question?

5 MR. OLESKEY: There's some ruling that I don't think
6 I perfectly understood about closing off the area. I may have
7 misunderstood that.

8 MR. TURK: It might be useful to give us a transcript
9 cite since you're asking basically a reconsideration of
10 something that's been ruled upon.

11 MR. OLESKEY: 13645.

12 (Continued on next page.)
13
14
15
16
17
18
19
20
21
22
23
24
25

T/34 1 It starts at line 12, "Can I just add one more thing
2 in response." What I wanted to ask him was, what were the
3 other things --

4 JUDGE SMITH: All of this goes to how this might have
5 affected Mr. Thomas's demeanor --

6 MR. OLESKEY: Yes.

7 JUDGE SMITH: -- on the stand.

8 MR. OLESKEY: Yes.

9 JUDGE SMITH: And our perceptions of his credibility.

10 MR. OLESKEY: Yes.

11 JUDGE SMITH: And I said it's ethereal, you know,
12 that's a very, very tenuous link, and then we got into this
13 discussion.

14 MR. OLESKEY: Right. You understand, I've also
15 argued that these same -- these things, to use his term, could
16 be found to have affected the agency because they originally
17 communicate to the attorneys and not directly to him.

18 So in answer to your concerns about the theory, I see
19 two strains or threads, one to Thomas or one to the agency.
20 But with that gloss this is where we are at this page.

21 And the question that I want to put is, would you
22 tell us what the other things were in the aggregate which
23 caused you the apprehension that you mention here.

24 JUDGE SMITH: These are the aggregate of the things
25 previously mentioned or additional things?

1 MR. OLESKEY: I think in substance he never got to
2 testify to the rest of those things. I happen to know from a
3 brief conversation with him today to clarify this, that there's
4 one aspect in particular that concerned him, I wanted to get
5 that out.

6 MR. DIGNAN: Mr. Oleskey, for the record may we have
7 the name of the counsel asking you to press this question?

8 MR. OLESKEY: Well, if the Judge wants me to tell you
9 that I will, but I don't think it's particularly --

10 MR. DIGNAN: Your Honor, I ask the name of the
11 counsel be revealed, who is pressing -- which party is pressing
12 this question.

13 MR. OLESKEY: I don't think that's relevant. I was
14 asked to go out and get everybody's concerns and put them into
15 questions and I've done so.

16 MR. DIGNAN: Well, if you choose not to reveal it,
17 that's your privilege, Mr. Oleskey.

18 JUDGE SMITH: As I understand it, all you're trying
19 to -- you were trying to enumerate a series of impressions upon
20 Mr. Thomas.

21 MR. OLESKEY: Yes. Right.

22 JUDGE SMITH: Which individually and in their
23 aggregate may have had two effects. One, they may have
24 affected his demeanor as a witness, and the other, if made to
25 the agency, if similar impressions were made upon the agency,

1 may have affected their performance.

2 MR. OLESKEY: Yes.

3 JUDGE SMITH: And I said, well, that's a very tenuous
4 relationship to try to translate all of that through the
5 witness to his demeanor and to us and to proposed findings, and
6 it wasn't worth a lot. And it seems to me it's worth even less
7 as an influence upon a government -- a large government agency.

8 MR. OLESKEY: Well, I suggest the testimony here is
9 that, and this isn't a very large agency, it's about half a
10 dozen people in Washington and a few people in the region who
11 made all the decisions in this case.

12 JUDGE SMITH: Well, do you have specific instances in
13 mind?

14 MR. OLESKEY: Yes. There's really only one point
15 that I want to have a witness make and it was touched upon, I
16 think, in the letter -- and it won't be any surprise to the
17 Board or anybody else.

18 JUDGE SMITH: Well, we'll hear and then decide
19 whether we're receive it.

20 MR. OLESKEY: All right. Hear it in the form of a
21 question I can ask?

22 JUDGE SMITH: Yes.

23 MR. OLESKEY: All right.

24 BY MR. OLESKEY:

25 Q Mr. Thomas, you had the benefit of this colloquy now

1 between Judge Smith and myself. Let me ask you, turning you
2 back to that page in the transcript yesterday where you said
3 that the one comment that was related wouldn't have caused you
4 the apprehension that you felt, was there something else that
5 came up in that period last fall that did cause you to have a
6 lot of apprehension, as you detailed it yesterday in terms of
7 your testimony in the performance of your duties?

8 A (Thomas) Yes.

9 Q What was that?

10 A (Thomas) It was no one thing. There was a series of
11 incidents. The comment that was related to me by my attorneys
12 or I'm sorry, by the agency attorneys, Flynn and Watson, was
13 the third in a series of incidents.

14 It was not, as has been related to this Board either
15 by the Intervenors or by anyone else. It was highly
16 personalized, as I construed it a threat. And it was a threat
17 not to do something appropriate, which I think would have been
18 to go to the United States Attorney, if we're dealing with a
19 question of a rogue federal employee that perjures himself,
20 but rather to go after my license to practice law.

21 By referring the transcripts to the Commonwealth of
22 Massachusetts attorneys with additional clarification that this
23 conduct via attorneys outside the Commonwealth of Massachusetts
24 is grounds for disbarment in Massachusetts.

25 And a comment telling me that, hey, we're taking this

1 up with the U.S. Attorney or we're taking this up with your
2 boss or something, that wouldn't have bothered me. That's part
3 of being a federal official, to have that kind of complaint.

4 But to have a series of incidents, that there was
5 going to be blood on the floor. That Mr. Flynn should inquire
6 into my personal relationships with someone that I don't have a
7 personal relationship with.

8 And then finally, that, you know, my new life should
9 be sort of abruptly terminated, the thing I had worked so hard
10 for to become a lawyer was very hard.

11 Q Does that complete your answer?

12 A (Thomas) Yes.

13 Q Mr. Thomas, your attorney asked me to make a couple
14 of corrections to your deposition testimony in the event
15 that --

16 JUDGE SMITH: Just one question. Did that
17 circumstance affect your testimony?

18 THE WITNESS: (Thomas) It certainly affected me in
19 terms of --

20 JUDGE SMITH: Confidence?

21 THE WITNESS: (Thomas) Confidence.

22 JUDGE SMITH: Confidence on the stand?

23 THE WITNESS: (Thomas) What I was saying -- what I
24 considered your complaint really to be in January -- I mean,
25 let's think of the sequence. In October we had a witness that

1 Mr. Dignan said was very forthcoming. A witness who Mr. Dignan
2 praised me privately for, he said, you did a beautiful job.

3 In November we had a witness who did back flips, I
4 thought, to try and answer some very difficult and strangely
5 poised questions.

6 By January we have a witness that, as I understood
7 your constructive criticism, Judge Smith, that I was too
8 conservative, that it might be this, it might be that. I was
9 trying to avoid a situation that arose.

10 MR. OLESKEY: I just had a couple more questions that
11 Mr. Barshak asked me to put to the witness to clarify two
12 points in the deposition that Mr. Barshak felt somebody might
13 want to inquire into and ought to be clarified before that
14 happens.

15 MR. TURK: May I ask one question before you pass.
16 There's a series of questions the last time the issue came up,
17 Mr. Oleskey, and one of the important ones I thought was, did
18 any of those things -- any of those comments cause Mr. Thomas
19 to alter the substance of his testimony? And I think the same
20 question should be put to him now.

21 MR. OLESKEY: Mr. Turk, if you'll let me ask these
22 two questions about the deposition, you can have as much time
23 as the Board gives you to ask that question and every other.

24 MR. TURK: I'm going to ask the question.

25 MR. OLESKEY: I --

1 JUDGE SMITH: Did it -- just go ahead, did it?

2 THE WITNESS: (Thomas) No.

3 BY MR. OLESKEY:

4 Q Directing you to your deposition at transcript
5 pages, volume 2, 51, to volume 2 at 54, which I believe reflects
6 some testimony of yours about a meeting at which you placed Mr.
7 Wasserman of the Commerce Department/Weather Bureau. A

8 (Thomas) Yes.

9 Q On the reflection, do you want to change anything
10 about that testimony?

11 A (Thomas) Yes.

12 MR. FLYNN: Objection. Relevancy. If the deposition
13 is not in evidence, why is it important to burden this record
14 with corrections to the deposition.

15 MR. BARSHAK: Can I get involved in that. I asked
16 him to do that for me because his credibility was being
17 attacked and he recognized there are two places in the
18 transcript which with hindsight, and he thinks he ought to
19 change. So before he's cross-examined I wanted to get the
20 errata in.

21 JUDGE SMITH: I think there's -- wasn't he given a
22 chance to correct the transcript before, and you missed it, now
23 you're just taking a second chance. All right.

24 MR. BARSHAK: They're very brief.

25 JUDGE SMITH: Okay. Do it, just get on with it.

1 THE WITNESS: (Thomas) The first one was, I made a
2 mistake and said that Stanley Wasserman was at the April 15th
3 RAC meeting. In fact, it was representative of Mr. Wasserman.
4 I misspoke.

5 JUDGE SMITH: Okay.

6 BY MR. OLESKEY:

7 Q The second one I understand is at page 82 of the same
8 transcript, line 101?

9 A (Thomas) It's volume 1 of the transcript.

10 Q All right. Pardon me.

11 A (Thomas) And again, I just can't recall now that
12 Terry Harpster also was involved in the preapproval of the
13 December 31st, 1985 memo. Certainly Ron Bellamy was. I
14 testified that I had sent Ron a fax and I couldn't find our
15 copy of the fax in our records.

16 JUDGE SMITH: No use you talking to us because we
17 never saw that and I hope we never do.

18 THE WITNESS: (Thomas) Okay. So I did make those
19 two mistakes in the deposition.

20 MR. OLESKEY: Your Honor, that's it.

21 JUDGE SMITH: Mr. Flynn?

22 MR. FLYNN: Oh, I have -- do I have questions? No,
23 thank you.

24 JUDGE SMITH: Between Mr. Turk and Mr. Dignan, do you
25 have a pre

1 MR. DIGNAN: I guess I'm elected, Your Honor.

2 JUDGE SMITH: Mr. Huntington, do you have questions?

3 MR. HUNTINGTON: No, we don't have any questions,
4 Your Honor.

5 JUDGE SMITH: Mr. Dignan, would you like to take a
6 brief break now, 10 minutes?

7 MR. DIGNAN: If that's convenient I'll start right
8 now, whichever is your --

9 JUDGE SMITH: All right. Go ahead start.
10 Well, Mr. Dignan, on second thought we will take a 10
11 minute break.

12 (Whereupon, a brief recess was taken.)

et/34

13 (Continued on next page.)
14
15
16
17
18
19
20
21
22
23
24
25

T35

1 JUDGE SMITH: Ready to proceed, Mr. Dignan.

2 MR. DIGNAN: Thank you.

3 (Pause.)

4 MR. DIGNAN: Your Honor, I'd ask the reporter to mark
5 a document Applicants' Exhibit 39 for identification at this
6 time.

7 (The document referred to was
8 marked for identification as
9 Applicants' Exhibit No. 39.)

10 CROSS-EXAMINATION

11 BY MR. DIGNAN:

12 Q Mr. Thomas, I've caused to place before you
13 Applicants' Exhibit 39 for identification.

14 Can you identify that document for me, sir?

15 A (Thomas) Yes, I can.

16 Q What is it?

17 A (Thomas) This is a copy of a redraft of a letter
18 which I prepared in Seattle prior to June 11, 1987.

19 Q When you say a redraft, what was the first draft of
20 this?

21 A (Thomas) The first draft was sent to me in Seattle
22 by Robert Wilkerson, and there are parts of that draft that are
23 cut and pasted included in this letter.

24 Q I was going to ask you that.

25 There are certain parts of this on the last page, and

1 the second page from the end that are typewritten. That came
2 from the initial draft that had been done by Mr. Wilkerson?

3 A (Thomas) That's correct.

4 Q Is the handwritten part yours?

5 A (Thomas) Yes, it is.

6 Q Are the handwritten interlineations that I see on the
7 document all of yours?

8 And I'd ask you to look at the document thoroughly
9 and be sure you're correct in your answering this.

10 (Pause.)

11 THE WITNESS: (Thomas) I've looked at all the
12 insets, and did you call the interlineations?

13 And I believe they are all mine.

14 BY MR. DIGNAN:

15 Q Okay, everything in ink on the document as it's
16 reproduced then and as you see it in front of you was written
17 by you personally?

18 A (Thomas) It is my writing, my personal writing, yes.

19 Q All right. Did you copy something else, or are these
20 your original thoughts that are in writing?

21 A (Thomas) I had Mr. Wilkerson's draft in front of me,
22 and I was working from that draft. In some places I was able
23 to cut and paste. In other places, I may have taken thoughts.
24 I don't claim the original authorship. I was very much
25 influenced by Mr. Wilkerson's original draft.

1 Q In particular, can you point to me any of the
2 handwritten material on let us say Pages 1, 2 and 3 which you
3 took from the Wilkerson draft as opposed to it being your
4 phraseology?

5 A (Thomas) I don't believe I would be able to point to
6 it without carefully reviewing the Wilkerson draft and matching
7 this up. I wrote this a year ago.

8 Q Okay. Do you have the Wilkerson draft with you?

9 A (Thomas) Yes, I believe we do.

10 MR. DIGNAN: May that be produced, Mr. Barshak? It's
11 up to you, of course, sir.

12 MS. NETSKI: If we have it, it should have already
13 been produced.

14 MR. DIGNAN: I couldn't discern something as being
15 the Wilkerson draft. If you can help me out, I'd be very
16 appreciative.

17 (Pause.)

18 MR. BARSHAK: I'm informed that it's been produced.
19 May I hand you the original so you can compare it?

20 MR. DIGNAN: Yes, I'm assuming it's been produced. My
21 problem was I couldn't identify it.

22 MR. BARSHAK: Borrow that one.

23 MR. DIGNAN: Mr. Barshak, you inadvertently gave me
24 something with counsel's notes on it. I did not look at it,
25 but you may want to remove it before I look at the document

1 further.

2 MR. BARSHAK: Give it back again.

3 MR. DIGNAN: I think you've got a sticky piece of
4 paper in there.

5 MR. BARSHAK: Oh, yeah, that's --

6 MS. NETSKI: No, that's not counsel's notes.

7 MR. DIGNAN: Okay, all right. I just didn't know
8 what --

9 MR. BARSHAK: That's his writing. Mine's illegible.
10 (Laughter.)

11 MR. DIGNAN: Thank you very much.

12 At this time I would like to offer Applicants'
13 Exhibit 39 for identification into evidence, Your Honor.

14 MR. OLESKEY: What's the basis for the offer if I may
15 inquire, Your Honor?

16 MR. DIGNAN: It is the, as I understand it, the
17 initial draft or an initial draft of the document that
18 eventually became Mass. AG's Exhibit 35.

19 MR. OLESKEY: Are you offering it for all purposes,
20 Mr. Dignan?

21 MR. DIGNAN: Yes.

22 MR. OLESKEY: Well, then I object.

23 JUDGE SMITH: What's it involve?

24 MR. DIGNAN: It is the initial draft of Exhibit 35.
25 The problem with Exhibit 35 is there's been a lot of testimony

1 in the record about this was a collegial effort.

2 What I want this for, and I'm perfectly willing to
3 have somebody put the Wilkerson draft in, too, if they wish to,
4 is to nail down the portions that Mr. Thomas had a hand in
5 drafting as opposed to what he took from somebody else.

6 JUDGE SMITH: And how does this document help us?

7 MR. DIGNAN: Because the handwritten version
8 incorporates the typewritten -- that portion of the first draft
9 that Mr. Thomas just included, and he made some interlineations
10 there. And the rest is handwritten.

11 I have perused the Wilkerson draft, and I'm satisfied
12 that Mr. Thomas in substance has rewritten the other part.
13 However, I have no objection to somebody putting the Wilkerson
14 draft in, too. I'll put it in if anybody wants it in for a
15 full record.

16 What I am interested in is establish is what part
17 was originally Wilkerson's that came out as the -- what is
18 Mass. AG 35 and what part was Mr. Thomas's.

19 JUDGE SMITH: Mr. Dignan, can you be -- can you
20 remind us just what the issue is here? It's escaped me.

21 MR. DIGNAN: This is the memo to -- this letter is
22 the letter to Mr. Strome informing him of what the June 4th
23 filing meant and didn't mean.

24 JUDGE SMITH: Oh, all right. Yes.

25 And this --

1 MR. DIGNAN: And what I am interested in is who
2 drafted what part of it.

3 JUDGE SMITH: All right. And if it's in for that
4 purpose, you have no objection.

5 MR. OLESKEY: If he's putting it in to show the
6 historical evolution of the FEMA position in connection with
7 this particular document, I don't object.

8 I would object if he offers any broader than that.

9 JUDGE SMITH: Well --

10 MR. DIGNAN: Well, it's broader than that in this
11 sense. I am trying to establish what Mr. Thomas wrote as
12 opposed to what he took from the Wilkerson draft.

13 MR. OLESKEY: I understand that.

14 MR. DIGNAN: Do you have a problem with --

15 MR. OLESKEY: I don't have a problem with that.

16 MR. DIGNAN: Then he doesn't have a problem, and
17 that's the limit of the offer.

18 JUDGE SMITH: Yes, that's what I understood it to be.
19 All right, anybody else object?

20 (No response.)

21 JUDGE SMITH: Applicants' Exhibit 39 is received.
22
23
24
25

1 (The document referred to,
2 having been previously marked
3 for identification as
4 Applicants' Exhibit No. 39
5 was received in evidence.)

6 MR. DIGNAN: That completes my cross-examination.

7 JUDGE SMITH: Mr. Turk?

8 If you're going to invite us in findings to compare
9 this with the Wilkerson draft, somebody better have that in
10 evidence.

11 MR. DIGNAN: I'm not going to invite you to compare
12 it with the Wilkerson draft.

13 JUDGE SMITH: Okay.

14 MR. OLESKEY: Well, my --

15 MR. DIGNAN: My point is simply this. If somebody
16 wants the Wilkerson draft, I have no objection to it being in
17 evidence. I don't need it for my purposes. But if anyone
18 thinks it makes the record unfair to anybody, put in the
19 Wilkerson draft. I don't have the copies to do it.

20 If somebody's got the copies to do it, it's fine by
21 me.

22 MR. OLESKEY: Well, as I understand what the witness
23 just said, he said that the handwritten version, which is
24 Applicants' Exhibit 39, consists in part of what Wilkerson had
25 in the draft the witness got in part of Wilkerson comments that

1 the witness rewrote, or revised, or summed, and in part of his
2 own thoughts. So I don't see how anybody, especially Mr.
3 Dignan, makes anything of Exhibit 39 unless you have at least
4 the prior Wilkerson draft, and there may be other drafts, if I
5 understood the testimony yesterday.

6 If there isn't going to be an offer, then I'm going
7 to renew my objection because I think in an historical sense it
8 doesn't make -- it isn't useful to the Board to just have that
9 one document.

10 JUDGE SMITH: You people work it out. We already
11 received it. He was under no obligation to offer -- you can
12 offer it.

13 MR. OLESKEY: Well, let me pull together copies of
14 the Wilkerson draft and any other drafts I can get, and revisit
15 it on redirect tomorrow. That's my inclination now.

16 MR. DIGNAN: Redirect tomorrow?

17 MR. OLESKEY: Or today.

18 MR. DIGNAN: I just completed my cross.

19 MR. OLESKEY: Or today. Never known my brother Turk
20 to be short and terse, but maybe this will be an exception.

21 MR. BARSHAK: Mr. Oleskey, I hope you didn't really
22 mean redirect tomorrow. I had understood we were only going to
23 have two days, and I've got other things on tomorrow.

24 MR. OLESKEY: Whenever we're finished, Mr. Barshak.
25 Hopefully today.

1 MR. BARSHAK: I'm sure Mr. Turk's going to
2 accommodate us and be brief.

3 JUDGE SMITH: Mr. Turk, are you prepared?

4 MR. TURK: Yes, Your Honor.

5 JUDGE SMITH: Proceed.

6 MR. TURK: In light of the Board's rulings and Mr.
7 Thomas's testimony these last two days, I have no questions.

8 MR. OLESKEY: Okay.

9 JUDGE SMITH: Are you going to have redirect?

10 MR. DIGNAN: On that?

11 (Laughter.)

12 MR. DIGNAN: Want to rehabilitate on that last --

13 MR. OLESKEY: No, I want to clarify.

14 Mr. Thomas --

15 MR. DIGNAN: Mr. Barshak, the record will show I made
16 good on my promise that you'd be home tonight. The ball is in
17 someone else's court now.

18 MR. BARSHAK: I'll carry the news back to Boston.

19 (Laughter.)

20 MR. OLESKEY: Could we have, since we have arrived at
21 a surplus of time, five minutes or so to work with Mr. Thomas'
22 counsel to clarify this issue of these drafts that we have
23 here.

24 MR. DIGNAN: This is called woodshedding.

25 MR. OLESKEY: No, it's called -- finally I just had

1 something that appears to be important to you that I don't
2 fully understand.

3 MR. DIGNAN: Are we on a break, Your Honor?

4 JUDGE SMITH: Yes, take five minutes.

5 (Whereupon, a recess was (en.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

t/36

1 JUDGE SMITH: All right, Mr. Oleskey.

2 MR. OLESKEY: I have enough respect for Mr. Dignan to
3 know that nothing is wasted effort, so if he put it in, it's
4 important and I'm going to do a little bit of redirect.

5 MR. DIGNAN: That's official.

6 (Laughter)

7 MR. DIGNAN: Redirect leads to recross.

8 MR. OLESKEY: Mr. Thomas, I want to clarify with you
9 the --

10 MR. DIGNAN: Mr. Barshak wants to go home.

11 MR. OLESKEY: -- the sequence of --

12 REDIRECT EXAMINATION

13 BY MR. OLESKEY:

14 Q Mr. Thomas, I'm over here, I'm sorry. I want to
15 clarify with you the sequence of events that led up to the
16 sending under your signature of what was marked recently as
17 Applicants's Exhibit -- as Mass. AG Exhibit 35.

18 Now, Mr. Dignan just had you identify a handwritten
19 draft of what became the final version of Mass. AG Exhibit 35.
20 And as I understand it, that's an interim draft of the letter;
21 is that right?

22 A (Thomas) Yes.

23 Q The original draft of the letter was authored by
24 someone other than yourself, namely, Mr. Wilkerson; is that
25 right?

1 A (Thomas) That's correct.

2 Q All right. While you were in Seattle, Washington?

3 A (Thomas) Yes.

4 Q Did you receive by telex or fax a copy of Mr.
5 Wilkerson's draft?

6 A (Thomas) Yes.

7 Q Did you -- what did you do with his faxed draft after
8 you got it?

9 A (Thomas) I marked it up with comments and then began
10 what became a series of phone calls with my headquarters: Mr.
11 Wilkerson, Mr. Krimm and others, to discuss changes to the
12 draft.

13 Q How many phone calls over what period of time,
14 approximately?

15 A (Thomas) If I had a calendar it would refresh my
16 recollection. I got the draft Monday, if I recall. It would
17 have been over three days. Here we go. It was -- I get the
18 draft June 8th. It's hand-carried to me from our office in
19 Bothell, Washington. And then I begin a series of phone calls
20 and we get the final letter out June 11th.

21 Q Okay.

22 A (Thomas) Over that period of time how many phone
23 calls? I'm not sure how many there were, I know that it was
24 several hours worth of phone calls.

25 Q With whom?

1 A (Thomas) Mostly with Mr. Krimm, Mr. Wilkerson and
2 others, sometimes Howard Schmidt, sometimes Craig Wingo, but
3 primarily with Mr. Krimm and Mr. Wilkerson.

4 Q Did you make notes or have some way, at that time, of
5 trying to get a handle on all the comments they were making to
6 you and you were making to them?

7 A (Thomas) No doubt I did. It is my custom. I don't
8 have those notes now though.

9 Q All right.

10 A (Thomas) Other than it may be that some of the --
11 and only maybe, some of the writing on here, on marked up -- on
12 the mark up of -- my markings up of Bob Wilkerson's draft may
13 reflect items in the phone calls, I just don't recall.

14 Q All right. At the conclusion of these phone calls
15 with Wilkerson in this three day period, did you sit down and
16 write that handwritten draft that was just marked as Exhibit
17 39?

18 A (Thomas) No, not at the conclusion.

19 Q When did that happen?

20 A (Thomas) Fairly early on I sent the typewritten copy
21 of the handwritten draft. I believe there's a typewritten copy
22 of that here, and that has a facsimile date on it of 6/10 which
23 sounds about right. It -- and that was sent to Mr. Krimm.

24 So it would have taken me about a day to have gotten
25 the comments made into another draft for Mr. Krimm and company

1 to take a look at.

2 Q Are you saying that between the 8th when you got the
3 Wilkerson draft and the 10th when you sent your typed version
4 back by telex to Washington, was the time that you had
5 conversations and made ultimately the draft that was just
6 marked as Exhibit 39?

7 A (Thomas) Well, that would have been part of the time
8 with the conversations. Once they got my draft, then we had
9 more conversations about changes that they felt were needed in
10 my draft. And then Mr. Krimm sent a draft to me and we talked
11 about that. And then that was finalized and that became the
12 final letter. There were fairly minor changes in the draft
13 that Mr. Krimm sent me.

14 Q As you sit here today can you say with any degree of
15 assurance or certainty what portion of the handwritten draft
16 that we marked as Exhibit 39 was, quote, "Your original idea,"
17 and what was the part of this exchange of views between
18 yourself and headquarters?

19 A (Thomas) I don't really have a clue. I don't have
20 my notes of that. I know that it was influenced by Mr.
21 Wilkerson's draft and by the call from Washington -- calls from
22 me to Washington.

23 MR. OLESKEY: That's all, Your Honor.

24 JUDGE SMITH: Recross?

25 MR. DIGNAN: No, Your Honor.

1 JUDGE HARBOUR: Mr. Thomas, I have a couple of
2 questions. I'm not sure that they're terribly important.

3 You mentioned in the discussion of the series of
4 meetings that you've had in the latter part of 1987, and my
5 notes here indicate that you had a meeting with Mr. Peterson in
6 which there was a discussion of politics and upcoming election;
7 do you recall that?

8 THE WITNESS: (Thomas) Yes. This was in a private
9 meeting I had with him and we were just talking about -- he had
10 some photographs of some political figures on the wall, and it
11 was just like one does with someone, just a pleasant
12 conversation.

13 JUDGE HARBOUR: Okay.

14 THE WITNESS: (Thomas) It did not relate -- I don't
15 mean to volunteer.

16 JUDGE HARBOUR: Please, go ahead, that's what I was
17 going to ask you.

18 THE WITNESS: (Thomas) It doesn't have anything to
19 do with the Seabrook nuclear powerplant.

20 JUDGE HARBOUR: The next set of questions, when did
21 you develop the concept that, if you have any idea, of the
22 requirement for additional safety requirements or being
23 required or evacuation times might be too long or that the
24 simple meeting of the 16 A through P requirements in NUREG-0654
25 was not enough; do you have an idea of, you know, what time

1 frame, what time period you developed this concept?

2 THE WITNESS: (Thomas) I can give you some
3 parameters. It certainly was well developed in my mind by the
4 time we sent NRC a report on the Maine Yankee nuclear
5 powerplant and we said we could not come to a determination.
6 This is we -- when I'm saying "we" I'm talking about FEMA as an
7 agency at headquarters level sending it to NRC at headquarters
8 level saying FEMA could not come to a finding of reasonable
9 assurance with respect to the States' ability to protect the
10 public at Maine Yankee until we had -- until we had knowledge
11 the length of the evacuation time estimates. And we mention
12 specifically that until we know how long people are stuck in
13 cars, we can't tell you whether there's a reasonable assurance
14 of an adequate level of safety.

15 JUDGE HARBOUR: Do you recall what year that was or
16 the time frame you're saying?

17 THE WITNESS: (Thomas) Speculation? '83.

18 JUDGE HARBOUR: Well --

19 THE WITNESS: (Thomas) We can dig it out. We have a
20 file on that here. It was either '82 or '83.

21 JUDGE HARBOUR: All right. Either '82 or '83, so
22 that's -- do you have a copy of yesterday's transcript?

23 THE WITNESS: (Thomas) Not in front of me, no, sir.

24 JUDGE HARBOUR: I would direct you to transcript
25 pages 13385 to 86, and then the questions that Judge

1 Linenberger asked and you answered on 13391. First go to 13385
2 at the very bottom of the page.

3 In your last answer on the page there you're talking
4 about the uncertainty time around 1981 as to what the
5 evacuation times might be. And then you refer here to an NRC
6 publication talking about the need for traffic management in
7 the evacuation.

8 And then if you look also then at 13391. Oh, I just
9 wanted to identify that document and find out if the document
10 you refer to on 13391 in response to Judge Linenberger's
11 question, is that the same document?

12 THE WITNESS: (Thomas) It's the same document, yes.

13 JUDGE HARBOUR: Do you have an idea as to what that
14 document is?

15 THE WITNESS: (Thomas) Sure. It is an NRC
16 publication that I've seen. I -- if it helps at all I believe
17 it has four numbers, I believe the first two are 22, but that's
18 pretty fuzzy with me.

19 The purpose of it was to evaluate the different
20 evacuation time estimates that were then current for the
21 Seabrook nuclear powerplant. And what I most remember about
22 the document was that it talked about the evacuation time
23 estimate for just the 10-mile ring, at that point the emergency
24 planning zone hadn't been developed by the State of New
25 Hampshire or the Commonwealth of Massachusetts. But just the

1 10-mile ring could range up to 14 hours if there was not
2 traffic control, which is essentially an uncontrolled
3 evacuation.

4 JUDGE HARBOUR: Do you know Dr. Urbanik?

5 THE WITNESS: (Thomas) Yes, I do.

6 JUDGE HARBOUR: And are you familiar with any of his
7 ideas or statements about the purpose of evacuation time
8 estimates in emergency planning?

9 THE WITNESS: (Thomas) I have heard him state them.
10 I was here for some, at least, of his testimony and we've had
11 other conversations personally about this. I've been -- myself
12 and my staff have worked with him on several work products.

13 JUDGE HARBOUR: And do you recall just -- can you
14 paraphrase in your own words what Dr. Urbanik's view of the
15 purpose of evacuation time estimates is in emergency planning?

16 THE WITNESS: (Thomas) My understanding of what he
17 says is that they are to assist the State in reaching
18 appropriate protective action decisions, primarily with respect
19 to whether evacuation or sheltering should be used, that's my
20 understanding of his -- the primary purpose.

21 JUDGE HARBOUR: Thank you. That's all I have.

22 JUDGE LINENBERGER: Mr. Thomas, I believe it was some
23 time yesterday that you mentioned a consideration that may have
24 put into question the extent to which the consequence of a
25 fast-breaking accident might be serious or at the other end of

1 the spectrum, to use your word, benign.

2 It's not clear to me whether you had information that
3 caused you to want to shift your position in that spectrum or
4 not, and I'd like to ask first, was there a time when you
5 considered when you were convinced that perhaps fast-breaking
6 events were more nearly benign than had been originally thought
7 to be the case?

8 THE WITNESS: (Thomas) There certainly was such a
9 time when I was convinced that with respect to the Seabrook
10 plant, because of its special features.

11 JUDGE LINENBERGER: I'm talking with respect to
12 Seabrook, yes.

13 THE WITNESS: (Thomas) Yes, indeed.

14 JUDGE LINENBERGER: And then, did there come a time
15 when you decided that was no longer a proper consideration in
16 your own thinking, your own conviction, not what you were told
17 or asked to change your thinking about, but how you felt about
18 it?

19 THE WITNESS: (Thomas) Yes.

20 JUDGE LINENBERGER: And can you say -- can you recall
21 approximately when that transition, let's say, away from the
22 more nearly benign end of the spectrum toward the more serious
23 end of the spectrum, when that transition in your thinking
24 occurred, approximately in time?

25 THE WITNESS: (Thomas) Following June 4th, 1987

1 when -- when I say benign I was talking about two separate
2 concepts. The first is generically with respect to all sites.
3 From time to time people would tell me that fast-breaking
4 accidents were essentially benign, and I had studied at the
5 Harvard course on planning for nuclear emergencies what a
6 PWR-8 accident was and what a PWR-9 accident was.

7 And I was certainly willing to listen to any
8 authoritative expert that wanted to make that case. It did
9 seem inconsistent to me with the tremendous attention we give
10 to prompt protective action decisionmaking and prompt
11 communication of protective actions to the citizenry. But I
12 was certainly willing to listen to it.

13 With respect to Seabrook I was absolutely convinced
14 and I have some lingering doubts that it may not really be true
15 that in fact Seabrook is entitled to special consideration,
16 that as the utility has said in documents that I've seen that
17 in 99 percent of all possible accidents that there would be
18 many, many hours before there was any release at all of
19 radiation, benign or otherwise.

20 And in only -- and a very small one percent or less
21 of all accidents would you have a release any earlier than two
22 and a half hours. In other words, we always had two and a half
23 hours. And to that extent, a fast-breaker would be benign and
24 that it just -- there wouldn't be a fast-breaker, you had at
25 least two and a half hours.

1 So they're two separate concepts in my mind. And the
2 first concept I was always pretty skeptical about it, it seemed
3 pretty weird with respect to what we were doing that a fast-
4 breaking accident, generically at all sites, was just simply
5 nothing to worry about.

6 With respect to Seabrook, the utility and the NRC,
7 certainly the NRC staff, the people that I deal with, excuse
8 me, I'm not talking about Your Honors, had me quite well
9 convinced that the Seabrook special containment deserved
10 special consideration.

11 When the NRC was not willing -- the NRC staff was not
12 willing to support that, and I understood the utility would not
13 support that, and I understood from Attorney Turk that there
14 might be good reason why they wouldn't support that, that there
15 was something called, as I understood it, a containment bypass
16 accident sequence that, in which the containment wouldn't
17 account for a whole tremendous amount. That made that opinion
18 kind of go away in my mind. And I think that responds to your
19 question.

20 JUDGE LINENBERGER: I think that clarifies the
21 confusion in my mind. Thank you, sir.

22 THE WITNESS: (Thomas) Thank you.

23 JUDGE LINENBERGER: That's all I have.

24 JUDGE SMITH: Anything further?

25 (No response)

1 JUDGE SMITH: All right, you're excused, Mr. Thomas,
2 thank you. Mr. Barshak, thank you.

3 MR. TURK: Your Honor, before Mr. Barshak leaves I
4 just want to note one thing about the entry of transcripts from
5 January 12, 1987, there is a slight -- I'm sorry, 1988, there's
6 a slight error in Mr. Oleskey's notation of pages that are
7 being offered and I'd like to correct that at this time.

8 I want to be sure that when we introduce this
9 testimony that the record will show that Dr. Bores was sworn.
10 And I also want to get his professional qualifications in.

11 So I amend Mr. Oleskey's transcript references so
12 that the testimony offered commences at page 8779 and goes to
13 8737. The change there is, instead of commencing at 8683 we
14 now commence 8679.

15 And also with respect to the January 13th testimony,
16 instead of commencing at 8776, the offer will be pages
17 commencing 8775 and running to 8915 as Mr. Oleskey offered.

18 (Continued on next page.)
19
20
21
22
23
24
25

et/36

T37

1 JUDGE LINENBERGER: What is the last number, Mr.
2 Turk?

3 MR. TURK: Mr. Oleskey's offer ran to Page 8915.

4 JUDGE LINENBERGER: Thank you.

5 MR. TURK: I would have cut that short to 8914, but
6 it's a small point.

7 MR. BACKUS: Certainly is.

8 MR. TURK: The extra page does not relate to the
9 Bores or Thomas examination.

10 MR. BACKUS: Judge Smith, I had a clarification
11 question to follow up on what Judge Linenberger was asking, if
12 I could.

13 MR. TURK: Could we first nail this down and see if
14 Mr. Oleskey --

15 MR. BACKUS: Oh, I thought you had.

16 MR. TURK: Sorry.

17 JUDGE SMITH: Want to ask another question?

18 MR. BACKUS: Just to clarify a response to a question
19 that Judge Linenberger asked the witness.

20 MR. TURK: Your Honor, before we move back, can I
21 just be sure Mr. Oleskey agrees to this --

22 MR. OLESKEY: We're looking right now. I have no
23 objection to Mr. Backus asking his questions so that our
24 colleagues can leave.

25

1 RECROSS EXAMINATION

2 BY MR. BACKUS:

3 Q Mr. Thomas, in response to Judge Linenberger's
4 question, you were talking about being told that a fast-
5 breaking accidents were benign in a generic basis. And you
6 said I think you found that somewhat strange or weird given
7 what you do in radiological emergency planning.

8 Can you explain that?

9 A (Thomas) Sure. Our practice is to give a great deal
10 of attention to the ability of the states to get out prompt
11 protective action decisions. The millions and perhaps even --
12 well, the multimillions that have been spent on alert and
13 notification systems. The fact that during an exercise if the
14 state can't demonstrate that from the time the governor
15 reaches, or the governor's representative reaches a protective
16 action decision to the time that that goes out to the emergency
17 broadcast net, if that's more than 15 minutes, if that's 16 or
18 17 minutes, that is a deficiency as FEMA uses the term
19 automatically.

20 It's a blocking to a finding of reasonable assurance
21 of adequate public safety.

22 There are other examples that I could give with
23 respect to correspondence from the NRC focusing in on the need
24 for a redundant system to make sure that there was essentially
25 a failsafe system that if the utility communicated a notice of

1 general emergency or of a serious problem with the plant, that
2 in all cases the NRC was recommending that at that point there
3 be an immediate evacuation within 15 minutes. The state would
4 be notified of that, and within 15 minutes a communication
5 would be sent out evacuating a portion of the EPZ even if there
6 were no police in place, even if there were no facilities for
7 the refugees. And we had quite a discussion with the NRC staff
8 about that, we at FEMA, and with states saying that, no, we
9 would want to send the people to shelter first, and have a
10 controlled evacuation, a considered evacuation.

11 So with that line of thought, I had a hard time
12 following the logic of fast-breaking accidents being something
13 that we really didn't have to worry about when we seem to spend
14 so very much time worrying about them.

15 MR. BACKUS: Thank you.

16 MR. TURK: Your Honor, Mr. Backus was out of time
17 with that. I'm going to move to strike. I think if he wanted
18 to raise it, he should have raised it sooner. It certainly was
19 within the scope of Mr. Oleskey's examination previously, and I
20 think he's out of time. I would move to strike the question
21 and answer.

22 JUDGE SMITH: Because he's out of time, is that the
23 ground?

24 MR. TURK: Can't think of a better one.

25 MS. WEISS: You don't like the answer. That's the

1 reason.

2 JUDGE SMITH: Hearing no objections, the motion --
3 did you object to the motion?

4 MR. BACKUS: Oh, sure, yes.

5 Just want to see if we're not falling asleep over
6 here after lunch.

7 JUDGE SMITH: Overruled.

8 MR. BACKUS: Thank you.

9 JUDGE SMITH: Anything further?
10 Go.

11 (The witness was thereupon excused.)

12 MR. OLESKEY: Okay. I'm prepared to clarify the
13 offer of the transcript here that Mr. Turk has made.

14 Page 8775 of the transcript, which I understood to be
15 the corrected page he wanted to offer, had some cross-
16 examination of a man named Degulis, which I don't think we
17 want. I infer that perhaps Mr. Turk wants two pages that are
18 unmarked that follow that which contain the curriculum vitae of
19 Dr. Bores prior to Page 8776, and I have no objection to that
20 if that's the offer.

21 MR. TURK: Your Honor, I -- we're really getting down
22 to the smallest minutiae of trivia. The index refers to it as
23 occurring at Page 8775. Unless Mr. Oleskey has a problem, let
24 it go.

25 MR. OLESKEY: It doesn't occur on that page. It

1 occurs on unnumbered pages following, and that's fine.

2 As to the change to Page 9679, that's fine.

3 JUDGE SMITH: Okay.

4 Now we have -- do you have a report, Ms. Sneider?

5 MS. SNEIDER: Yes, I do.

6 JUDGE HARBOUR: The one with the sound is the two
7 taped together.

8 MS. SNEIDER: I'll try to speak loudly, Your Honor.

9 I spoke with the potential witness today, and we're
10 not going to be filing the testimony in NUREG-1210. We weren't
11 able to make arrangements for that. So we're just seeking to
12 file the second piece of testimony which I identified as the
13 piece from Dr. Robert Goble and Dr. Gordon Thompson.

14 And I might add, I hate to say this, but Dr. Jan
15 Beyea's name may be on that, but it will not be a resubmission
16 of the Sholly-Beyea testimony. I can assure you of that.

17 MR. DIGNAN: Your Honor, I'm going to oppose the
18 motion, and I'd like to be heard.

19 As the piece that's left is described, it is a piece
20 of testimony from Thompson and Goble, and I guess Beyea's on
21 the panel now, is directed to anticipated cross-examination
22 testimony of FEMA witnesses concerning the conclusion in the
23 direct that, and then there's a quote.

24 Then it goes on to say, "The additional piece will
25 also to a limited extent address certain matters raised in

1 cross-examination of the Applicants' witnesses."

2 Now I would remind the Board of the sequence that
3 took place here. The FEMA position was known as of March 14th.
4 Now, grant it we've had the new filing, cleaned up to remove
5 Dr. Hock's name, but the position's been known since March 14.

6 If you will recall, you got a commitment out of me
7 that was met that the Applicant file its direct case ahead of
8 the Attorney General's case, if you recall. We filed a week
9 early. So they had a complete run at my direct in their own
10 direct had they wanted to use it.

11 The Board had said we're going to have two days with
12 Mr. Thomas, we're going to have two days with FEMA, and we're
13 going to stop. And I at least had planned my life on that
14 basis, and I think it's time -- I don't know what day of
15 hearing we're on in the New Hampshire plan, but I think the
16 record should close.

17 There is only one party that pays the price for the
18 hearings going on and that's the Applicant. And that's because
19 it is in the Applicants' interest, as you pointed out, to a
20 fair and rapid decision, and that includes on parts of the
21 case.

22 You know, people say, well, it's not critical path
23 because we've still got to litigate Massachusetts. Well, if we
24 keep that attitude up, we're going to be litigating
25 Massachusetts on my sixteenth anniversary in this case instead

1 of my fifteen or fourteenth.

2 And I suggest that the Commonwealth had the two cases
3 well in advance of now. If they were going to rebut anything
4 the Applicants were going to say, they had the free shot of a
5 week's notice of Applicants' direct case before they filed
6 their own. And I think it's time for the Board to seriously
7 consider whether the Board feels any further development of
8 this record is necessary in order for the Board to make a
9 decision.

10 Now if the Board makes that decision, obviously there
11 is no argument I can make, because the regulations are clear.
12 But I think the Attorney General has had every advantage in
13 this thing. They got my testimony first. They've had FEMA
14 testimony for -- since March 14th. And to come now and say we
15 want to go over to July with more hearing, the Applicant
16 objects.

17 MR. TURK: Your Honor, I want to join in the
18 objection for a different reason, and that is that Dr. Goble
19 has already provided testimony on his opinion as to what dose
20 consequences -- dose savings might be achieved by evacuation or
21 sheltering. I think it's just a second attempt to say the same
22 thing, or maybe a little more expansion on the same thing in a
23 better way.

24 The Intervenors were aware of the Applicants'
25 testimony in advance. They saw the Keller and Cumming

1 depositions. They've had those for a long time. Dr. Goble
2 addressed the issue already to whatever extent Mass. AG thought
3 was necessary when they filed their testimony. And it's really
4 just a second attempt to do the same thing again.

5 JUDGE SMITH: Okay. You want to respond?

6 MS. SNEIDER: Yes, I would.

7 Your Honor, I think this is a very critical piece of
8 testimony on a very critical issue in the case. As I indicated
9 in our testimony, we did attempt to rebut this by filing the
10 Sholly-Beyea testimony which was rejected.

11 This testimony also addresses the Applicants'
12 testimony, and there was some critical changes in the
13 Applicants' testimony which I admit we got a week before the
14 hearing. It was not enough time for us to get our technical
15 witnesses together to respond to that. And the critical piece
16 that it's addressing is the predetermined protective action
17 recommendation which would automatically order the population
18 to evacuate without any consideration of the doses from
19 sheltering versus evacuation.

20 We've had a lot of testimony in cross-examination
21 which I think needs to be addressed, and there's been a lot of
22 testimony to the effect that evacuation automatically is the
23 best protective action; that you don't shelter people. And
24 this is a short piece of testimony, and it goes right to the
25 heart of the case.

1 JUDGE SMITH: Well, it's not so much the length of
2 the testimony as the fact you want to keep the record open for
3 another several weeks. You want to convene the group again,
4 and that is the thrust of Mr. Dignan's complaint, combined with
5 the fact that you've had opportunity.

6 MS. SNEIDER: Your Honor, I could speed up -- in
7 light of the fact that we're not filing the other piece of
8 testimony where I was concerned about witness availability to
9 file it, it's possible this testimony could be produced by the
10 end of this week, or at the very latest, the early part of next
11 week.

12 MR. DIGNAN: But the problem is is that I've made
13 plans, plans that are going to be very difficult for me to
14 break next week. And I really don't want to break them. The
15 exercise of the plan is the week after that, which I have to be
16 at. And if you allow it, it's going to be July.

17 I mean the Applicants' counsel is going to have to
18 say I can't be here until July.

19 JUDGE SMITH: I think that that is probably the case.
20 We have almost always stated that we would not reject an
21 essential piece of testimony based upon bringing the parties
22 back here, but we are talking now about no less than two weeks,
23 plus the travel time. We're talking about no less than three
24 and a half -- I mean two and a half weeks of keeping the record
25 open longer than we normally would.

1 So we will take that into account. We will take that
2 into account when we consider your offer here.

3 MR. TURK: Your Honor, I would note --

4 MR. DIGNAN: And I would point out, Your Honor, that
5 actually what you're into is -- yeah, at least, because
6 assuming it .sn't -- and I'll be the first to admit -- if the
7 Board ordered us back next week, I would be in real trouble
8 personally and professionally in terms of commitments.

9 Then we come to the 27th as I say is the Seabrook
10 exercise, and my people are going to -- and myself -- are going
11 to be involved in that. And my guess is the AG wants to be.

12 JUDGE SMITH: The Board has conflicts next week.

13 MR. DIGNAN: Okay. So the first week you're talking
14 about begins July 4th. So you can't go Monday the 4th, and I
15 assume it would be very difficult for the out-of-towners to
16 probably try to travel right on the 4th to be ready the 5th,
17 because that weekend is a tough travel weekend.

18 So as a practical matter we're talking at the
19 earliest coming in here the 6th, Wednesday. And, I'm sorry, I
20 think the Applicant has been most accommodating to the other
21 parties in this case. I don't think I've been insisting on
22 deadlines and driving people, and I want to point out one more
23 thing for you to consider.

24 Our testimony was filed, our direct, on April 15th.
25 And forgetting the week, it is now June 15th, and we are being

1 told we need some rebuttal to it. It doesn't wash, Your Honor.

2 MR. TURK: Your Honor, let me note Ms. Sneider has
3 conceded that in fact Dr. Goble's testimony did address the
4 same issue, but as I --

5 MS. SNEIDER: No, I did not concede that at all.

6 MR. TURK: It's not true?

7 MS. SNEIDER: The testimony is directly relevant to
8 responses on cross-examination that we got from the Applicants.
9 I anticipate that when we cross Mr. Keller tomorrow, that we're
10 going to get certain responses that this testimony directly
11 addresses. And we've had no opportunity to file rebuttal in
12 this part of the case.

13 There has been that opportunity available in the
14 previous portions of the case, and it just seems ironic to me
15 that, you know, this key issue in the case that there would be
16 no opportunity for rebuttal testimony.

17 MR. DIGNAN: There has been no request to file
18 rebuttal, and you've had the testimony, mine, since April 15th,
19 and FEMA's since March 14th. If you wanted to rebut it, you
20 could have done it 30 days ago.

21 I'm sorry, Your Honor, the Applicant really objects
22 to holding this record open further.

23 JUDGE SMITH: Anything further on this point?

24 We will take it under advisement and announce our
25 ruling in the morning.

1 Now, Mr. Cumming is here. Mr. Backus has a motion to
2 strike portions of his testimony. I think this would be a
3 good, if no one objects if we could just take advantage of this
4 time and get that out of the way.

5 Could we take just a few minute break and let's
6 gather the testimony. Take 10 minutes, and you'll be ready to
7 make your argument, and Mr. Cumming will --

8 MR. BACKUS: I assume Mr. Flynn will go ahead and put
9 his witnesses on, move the introduction of their testimony.

10 JUDGE SMITH: Let's do that. Let's begin -- I
11 understand that Keller isn't here, but we can get Mr. Cumming
12 sworn. We can get him to identify that portion of his
13 testimony. We can hear the motion to strike. We can get rid
14 of all the housekeeping matters. And when Keller comes
15 tomorrow, we will just take up with him.

16 MR. FLYNN: Yes, I'm prepared to do that.

17 MR. BACKUS: And Mr. Cumming.

18 JUDGE SMITH: And Mr. Cumming.

19 MS. WEISS: Assuming your motion --

20 JUDGE SMITH: Oh, oh, we also -- wait. We can also
21 argue -- hear arguments on whether we should hear the testimony
22 of Mr. McKenna.

23 MR. TURK: I don't think there are any arguments.

24 MR. OLESKEY: There will be, Mr. Turk. There will
25 be. I can assure you. There will be arguments, sir.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE SMITH: While those --

MR. DIGNAN: Is that a threat?

(Laughter.)

MR. OLESKEY: A flat prediction, counsel.

(Simultaneous conversation.)

JUDGE SMITH: Arguments expand to fill the space,
fill the time.

Ten minutes.

(Whereupon, a recess was taken.)

t/38

1 JUDGE SMITH: I guess the appearance of Mr. McKenna
2 is being opposed. Probably it would be better to take that,
3 those arguments up as a first order because Mr. McKenna -- so
4 Mr. McKenna can plan. So let's do that.

5 Do you wish to be heard, Mr. Turk, or you've already
6 made your arguments as to why you want it, but if you'd like to
7 review those you're welcome to.

8 MR. TURK: I'd just as soon hear what the opposition
9 is.

10 JUDGE SMITH: Okay. Well, everybody will be heard on
11 it. I understand you're opposing the --

12 MR. TURK: We've prefiled it and Mr. Oleskey says he
13 doesn't want it in; I'd like to hear why not.

14 MR. OLESKEY: Ms. Sneider is going the principal
15 argument. And I may say something, but she'll make the
16 principal argument.

17 JUDGE SMITH: Ms Sneider.

18 MS. SNEIDER: Your Honor, I just have a few comments
19 on an opposition to Mr. Turk's motion. Number one, it's my
20 understanding that this testimony is directed to rebut
21 testimony given under cross-examination of Dr. Goble as to the
22 meaning of NUREG-1210.

23 And I have in front of me the transcript of Dr.
24 Goble's testimony at page 11498 where Dr. Goble testifies that
25 even is he was told that his --

1 MR. TURK: What's the date of that transcript, do you
2 know?

3 MS. SNEIDER: May 17th. Dr. Goble testified, in
4 essence, that no matter what the authors of NUREG-1210 might
5 say about the intent of the document it wouldn't change his
6 testimony which did not rely on NUREG-1210. That his testimony
7 was talking about a population which would be immobile. And he
8 referred to NUREG-1210, but he states quite expressly that it
9 wouldn't change his testimony, that if he found out that the
10 intent of NUREG-1210 was different as Mr. Turk suggested.

11 If that's the sole purpose of this rebuttal
12 testimony, that I don't see where it has a place here.

13 Number two, I think the document does speak for
14 itself, that it's inappropriate for the author to come in now
15 and say, well, yes, maybe we were ambiguous, but this is what I
16 really meant.

17 And thirdly, I think it's inappropriate for the NRC
18 at this point to bring in testimony which I think, in essence,
19 goes to the substance of the case, that it isn't directed as
20 rebuttal at Dr. Goble's few statements about NUREG-1210. That
21 there are FEMA witnesses coming in and testifying as to what
22 NUREG-1210 says, that's the basis for their testimony.

23 And NRC staff does sponsor, that's my understanding,
24 the FEMA witnesses. The NRC shouldn't introduce any direct
25 testimony of their own. And I just think this is a back door

1 way to get in testimony at the last minute from the NRC. And I
2 think it's inappropriate at this point and unnecessary.

3 MR. OLESKEY: I just want to make one additional
4 point that I've been thinking about. You know, this isn't a
5 case where an expert is being offered to say, I have an opinion
6 in the case and it's "X," and for that opinion I rely on a
7 document which is NUREG-1210. That's what Keller is doing.
8 That's one thing.

9 This is different. Here they're bringing in a guy
10 who is one of many authors, as I understand it, of this
11 document to say in substance, I don't have any testimony except
12 about the document itself. And as one of the authors I want to
13 tell you, and he says it in here, the statements that have
14 caused confusion due to lack of clarity, that's at page five.
15 At page six they killed some language and say, would that
16 constitute entrapment within the meaning of the document.

17 And they go on to say, well, you could make an
18 argument that entrapment is considered to be in that situation,
19 but that's not our intention.

20 It's a kind of textual analysis or gloss on the
21 document by one of the authors that's entirely inappropriate,
22 when it's not offered as part of testimony in some issue in the
23 case, but about elucidation of a document itself.

24 It's as if a Congressional staffer was being asked to
25 come in and explain some testimony that the Congress had passed

1 to say, well, I know that Congress wasn't very clear, but
2 here's what we intended when we drafted the thing. I know it's
3 ambiguous but in our minds we meant "X."

4 Well, what we're concerned about is what the NRC
5 intended when they promulgated this is an official document and
6 what people reasonably can read it to mean as it stands. And
7 if the NRC including one of these authors thinks that the piece
8 is ambiguous as they're conceding here, the remedy is to write
9 it so that it's not ambiguous, not to open up an issue in the
10 case where somebody gets to interpret it under the guise of
11 being the author and clarifying its meaning.

12 JUDGE SMITH: Well, if the NRC knows that the parties
13 and the Licensing Board in a particular proceeding are going to
14 rely upon a document, in a very important proceeding, and they
15 know it's ambiguous, there's going to be a little relief to the
16 NRC's constituents for them to revise the document after the
17 fact, you know.

18 MR. OLESKEY: Yes, but what they're in effect
19 proposing to do is to revise it here as part of testimony in
20 this case; that's improper.

21 And as Mr. Backus just reminded me, it's not their
22 testimony to which it relates anyway, it's the testimony of
23 FEMA; and FEMA is a witness of the NRC.

24 JUDGE SMITH: To what extent will the Intervenors
25 rely upon 1210 in their proposed findings?

1 Mr. Traficonte referred to it heavily when he was
2 arguing the testimony of the -- the reoffered testimony of
3 Sholly and Beyea but that's not here anymore.

4 MS. SNEIDER: Mr. Traficonte referred to it because
5 the FEMA witnesses rely on NUREG-1210 for their testimony, and
6 that's exactly why Mr. Traficonte was referring to it. It's
7 that we wanted to produce some site-specific testimony that
8 would rebut the generic conclusions in NUREG-1210.

9 But in terms of our direct case we don't need to rely
10 on NUREG-1210.

11 JUDGE SMITH: One of the things that the Board will
12 probably take into consideration when they consider this offer
13 is, to the extent that any parties, and right now we're talking
14 about the Intervenors, hold up 1210 to the Board to make
15 findings, whether it be Dr. Goble's reference to it or whether
16 it be in response to Dr. Keller's testimony or whatever. To
17 the extent that you plan to do that, and to the extent that not
18 only one of the authors but the project chief of the document
19 is aware and has been aware historically that there has been
20 misunderstanding of that document, then I think that maybe we
21 have some responsibility to hear further on it.

22 See, the Board began the consideration of 1210 with a
23 great deal of skepticism as to whether it should be an
24 important part of the case at all. I mean, it seems like
25 almost everything we've heard about the document can be

1 restated to us in the form of argument, of logic, of inference
2 from facts. And it is not needed.

3 But --

4 MR. BACKUS: Your Honor --

5 JUDGE SMITH: -- and the only reason we begin to
6 entertain this to begin with is it has become a very important
7 aspect in the minds of the parties and more and more people
8 have alluded to it in their testimony. So if that's going to
9 be important to you.

10 MR. OLESKEY: We're only into the 1210 soup, if I can
11 use that expression, because FEMA cooked it up when they needed
12 a rationale to change their testimony. It went out of the
13 case, as far as I can recall, and I think Ms. Sneider and Ms.
14 Weiss, everyone else is agreeing with me, it's out as an issue
15 for us. It's only here because we have to deal with it because
16 FEMA claims that a year and a half or so after it was
17 promulgated they suddenly recognized that it was one of the
18 keys to their position. So they put it in, not us. And we
19 don't rely on it. We just have to deal with it as a fact in
20 the case.

21 We agree with you, it's NRC guidance that says all
22 over the thing that it's not to be used for licensing. And
23 it's outrageous that FEMA dragged it in, but it's even more
24 outrageous that Mr. Turk wants to bring in a guy to put a
25 textual gloss on it.

1 MR. TURK: At some point, Your Honor, I'd like to
2 respond to all of these collections of tidbit arguments.

3 JUDGE SMITH: Tidbit?

4 (Laughter)

5 MR. TURK: Well, I mean, Massachusetts AG's office
6 has two attorneys at the table. Mr. Oleskey began by saying
7 Ms. Sneider is going to handle it. Apparently Mr. Oleskey
8 wasn't satisfied when she was done and he had to add to it.
9 And Mr. Backus jumped --

10 MR. OLESKEY: For the record -- for the record --

11 MR. TURK: Excuse me.

12 MR. OLESKEY: -- I said I might add something and I
13 did, counsel.

14 MR. TURK: Mr. Backus --

15 JUDGE SMITH: The Board wants to be fully informed on
16 it.

17 MR. TURK: Mr. Backus, who didn't sponsor the
18 witnesses decided he was going to jump into the fray, too.
19 Your Honor, let me start off by --

20 JUDGE SMITH: Let's hear from Mr. Dignan. Do you
21 want it, Mr. Dignan?

22 MR. DIGNAN: Oh, hey, I'm staying out of this one.
23 There are times when daddy taught me to keep my head below the
24 table, Judge.

25 JUDGE SMITH: Mr. Flynn, your witness has an interest

1 in this debate.

2 MR. FLYNN: I think it would be a good idea, yes.
3 I'm not prepared to argue it, but I will support the motion
4 that Mr. Turk has made.

5 JUDGE SMITH: Mr. Turk?

6 MR. TURK: Your Honor, first let's start with
7 understanding what this document, the proposed testimony is and
8 what it's not. The document is clearly the product of not just
9 one of many authors, but the principal author and the project
10 manager, as Your Honor has noticed.

11 To say that because Mr. McKenna was one of the
12 authors named on the face of the document does not detract from
13 his full responsibility and primary responsibility in the
14 drafting and issuance and use of this document.

15 What the proposed testimony indicates is essentially
16 that when Dr. Goble testified on behalf of the Massachusetts
17 Attorney General he simply misunderstood the document which he
18 indicated also he had not used, he had not been trained to use,
19 and he had read it a short time before his testimony was
20 written, and he was making all of his assumptions about what
21 1210 meant based upon that reading of his own, untutored into
22 NUREG-1210.

23 I cross-examined him to some extent, determined that
24 his understanding was incorrect. Once I returned to Washington
25 I spoke to Mr. McKenna and decided for the purposes of the

1 Board having a clear understanding of NUREG-1210 it was
2 important that we come forward and provide that to the Board
3 through testimony.

4 Now, it's not meant to be rebuttal to the
5 Massachusetts Attorney General's substantive case. It merely
6 addresses the inaccuracies in Dr. Goble's testimony concerning
7 NUREG-1210.

8 JUDGE SMITH: How about this, could we stipulate that
9 Dr. Goble's reliance upon 1210, if any, that's in debate, is
10 out of the case and that would leave Mr. Turk only there to
11 support Keller, which is an entirely different footing.

12 Take it out -- take out any support that 1210 gives
13 to Dr. Goble. Eliminate that from his testimony and forget
14 1210.

15 MR. OLESKEY: That doesn't leave us necessarily a
16 position we would want to be, because it's the principal
17 document that Mr. Keller relies on.

18 JUDGE SMITH: No, forget Keller.

19 MR. OLESKEY: I'd like to but I can't.

20 (Laughter)

21 JUDGE SMITH: Well, let's take it out. Forget him at
22 the moment. We'll take it up in series. Now we're talking
23 about Dr. Goble. And as counsel pointed out he said, well, you
24 know, it doesn't make any difference in my opinion. And if
25 that is indeed the case, then why are we arguing about it.

1 MR. OLESKEY: That's right. To that extent it can
2 either be offered to rebut Goble. We agree.

3 JUDGE SMITH: Then let us stipulate that Dr. Goble's
4 testimony is not in any way supported by 1210. I mean, you
5 said it's not necessary, and then Mr. Turk, independent of my
6 memory, said he established that Dr. Goble's understanding was
7 diminished.

8 MR. TURK: What I indicated, Your Honor, was that he
9 had an untutored understanding.

10 JUDGE SMITH: Untutored understanding.

11 MR. OLESKEY: As I recall part of the Goble testimony
12 was that his reading of the document was, it was consistent
13 with his independent opinion. If it's going -- so I guess what
14 that gets us, if it's going to be in the case for any purpose,
15 that document, then we want Goble to be able to say, based on
16 his reading, however untutored and crude it may be, that he
17 thinks it supports it. If it's not going to be in the case,
18 then I agree, leave it out.

19 JUDGE SMITH: That's what I propose.

20 MR. DIGNAN: Could I point this out, that the only
21 time FEMA says anything about 1210, at least in the prefiled
22 direct, as I understand it, it's on page nine.

23 JUDGE SMITH: Yes.

24 MR. DIGNAN: In which they make the statement, it is
25 FEMA's understanding of NRC's guides and internal response

1 proceedings as stated in NUREG-1210, that initial protective
2 action decisions for areas near the site should be based on
3 plant status without inclusion of calculations of projected
4 doses unless a release of radioactive material -- that's the
5 only thing to rely on. That has nothing to do with what Goble
6 was talking about. Goble was talking about something else.

7 So my only point in rebutting Mr. Oleskey is, to say
8 that he's got a NUREG-1210 problem, and I can understand that
9 with FEMA, it is not the same thing that Dr. Goble has
10 addressed. It just simply isn't.

11 FEMA has relied on it for a very narrow point, as I
12 understand it. And that's all they've relied on it for. And
13 something, as I understand it, isn't really in dispute among
14 the parties to which --

15 JUDGE SMITH: We addressed FEMA's reliance on it in
16 the context of the motion for -- I mean, Sholly and Beyea.

17 MR. DIGNAN: Yes.

18 JUDGE SMITH: And you're right, there was just one
19 paragraph and it's in there, and we talked about it.

20 MR. DIGNAN: And it's for a point that I'm not sure
21 is in dispute among any witnesses here, that you should make
22 your initial decisions based on plant status without inclusion
23 of calculations. This is this concept that if you're sitting
24 there with a problem on your hands, that you know you've got a
25 problem, you start making the decisions without waiting for

1 calculations --

2 JUDGE SMITH: I guess Dr. Keller can defend it or
3 fail to defend --

4 MR. DIGNAN: Exactly. That proposition.

5 JUDGE SMITH: -- that premise -- that proposition on
6 his own. If he doesn't, he's in big trouble, relied upon 1210
7 anyway.

8 MR. DIGNAN: That's right.

9 MS. SNEIDER: Your Honor --

10 JUDGE SMITH: I just sort of -- I think we -- we want
11 to make some progress about getting this document out of the
12 hearing.

13 MS. SNEIDER: Can I just interject. In response to
14 interrogatories filed by the Attorney General, we went line by
15 line through the testimony and asked FEMA what documents they
16 relied on, and throughout they said they relied on NUREG-1210
17 and it went far beyond the narrow point that Mr. Dignan is now
18 saying that FEMA's testimony relied on 1210.

19 MR. DIGNAN: Yes, but that only gets into the case
20 when as and if you ask -- elect to have them elucidate on 1210.
21 The only thing they're saying on direct on 1210 is what I said.
22 Now, if you want to open 1210 up on cross and say, tell us
23 about 1210, that's your election, Ms. Sneider, I can't do
24 anything about it.

25 MS. SNEIDER: Mr. Dignan, I said to FEMA, tell us

1 what any and all documents you relied on for the statement that
2 if the dose reduction strategy is sheltering first, followed by
3 an evacuation after plume passage, the total dose reduction
4 would not be as great as that for the immediate evacuation
5 strategy.

6 MR. FLYNN: I don't understand the point.

7 MS. SNEIDER: Immediate evacuation strategy. And it
8 says FEMA relies on documents NUREG-1210 and NUREG-0396. And
9 we went throughout the testimony and said, what documents do
10 you rely on. Now you're saying that they didn't rely on them.

11 MR. FLYNN: Are you --

12 MR. DIGNAN: That's because 1210 is relied on for the
13 statement I said which is an internal statement that's
14 necessary to an analysis to any of the conclusions you're
15 talking about.

16 MR. FLYNN: Are you arguing that it's very important
17 or that it's minimally important?

18 MS. SNEIDER: Well, Mr. Keller told us that that's
19 the one document he relied on for his testimony, and he said he
20 relied on it for the testimony in terms of the dose
21 consequences to the beach population.

22 MR. FLYNN: If you're adding to the stature of 1210
23 it seems to me that strengthens Mr. Turk's point that it ought
24 to be explained.

25 JUDGE SMITH: Her argument is sort of a gotcha

1 argument. You know, you said it, now we gotcha, we're going to
2 make you rely upon it, but we're not going to let the document
3 be explained any further.

4 Somehow we got off the track of where I was going.
5 With respect to Goble, can we not stipulate -- with respect to
6 him, we'll come back to Keller in a moment -- that his
7 testimony is independent of 1210, it does not dependent upon
8 1210. It is not enhanced or detracted by 1210, it's separate
9 from it.

10 MS. SNEIDER: I could stipulate to that if FEMA was
11 not relying on 1210 for their testimony. But they do rely on
12 1210 and to that extent the references in Goble's testimony are
13 intended to rebut FEMA's position.

14 MR. OLESKEY: Why should we lose the benefit of the
15 document.

16 JUDGE SMITH: Okay. So they're linked. You say that
17 they're inseparably linked. Because I thought Goble went
18 beyond Keller's use of 1210.

19 MS. SNEIDER: Oh, he certainly does.

20 JUDGE SMITH: Well, all right, then -- I mean,
21 that's -- but give me the relationship between Goble's
22 testimony and Keller's 1210, I don't remember that.

23 If you're linking them, give us the link.

24 (Continued on next page.)

et/38

25

T39

1 MR. SNEIDER: Keller says, I rely on 1210 to show
2 that people should in all case evacuate rather than shelter and
3 then evacuate. Goble says, I reach a different conclusion that
4 in a lot of circumstances it would be better to shelter first
5 and then evacuate, and in fact that's buttressed -- I read
6 NUREG-1210 differently than you read it.

7 JUDGE SMITH: If you're going to persist in that
8 argument, then you lose, because we're going to let it come.

9 MS. SNEIDER: Your Honor, my feeling here is Mr. Turk
10 isn't coming in here with this document to rebut Dr. Goble.
11 He's really coming in here at this late date to buttress FEMA's
12 testimony.

13 JUDGE SMITH: The only chance you have of prevailing
14 is to separate Goble's from 1210, as far as I can see. I don't
15 know. I'd better talk to the Board about it. But you're --
16 you don't seem to be willing to do that.

17 MR. OLESKEY: Well, I think we're saying clearly that
18 we would be willing to do it if it's part of a package that
19 deals with the issue of 1210.

20 JUDGE SMITH: All right, but I'm willing to pursue
21 that, but give me the link between Goble's testimony and
22 Keller's; not a quid pro quo, unrelated, not just a "I'll give
23 you this if you give me that". There has to be a nexus between
24 the quid and the quo.

25 (Laughter.)

1 MR. OLESKEY: As I understand it --

2 JUDGE SMITH: I'm trying to develop this one at a
3 time. If there is a nexus between them, let's hear what it is
4 and then we can go on to that point.

5 MR. OLESKEY: Mr. Goble has given an opinion which
6 goes beyond 1210 as you've said, but also says that his
7 judgment -- in his judgment 1210 is consistent with his views.

8 Keller said on a different opinion 1210 is wholly
9 consistent with his views.

10 We'd be happy as part of a package that gets 1210 out
11 of the case to say, we'll stipulate that Goble doesn't rely on
12 it, because it's only a portion of his judgment. But if
13 Keller's allowed to rely on it to give his opinion, then we
14 want Goble to do the same.

15 JUDGE SMITH: I get your position now. I heard Ms.
16 Sneider to be arguing Keller said it and he stuck with it and
17 you'll never get away from it.

18 But I think maybe we can do some business that way.
19 Is that possible? Can we drop 1210 from Keller's testimony?

20 MR. FLYNN: Well, I hesitate to say that without
21 talking to him.

22 See, one of the problems that I have is that the
23 discovery request was a little more complex than Ms. Sneider
24 has indicated in the brief comments that she's made today.

25 In some questions they say, what did you rely on. In

1 other questions they ask for all documents intended to support
2 the position. And without going through the request question
3 by question, I can't say to what extent we have identified 1210
4 as the support for the position.

5 Now the other problem I have is if you're going to
6 put Dr. Keller on the stand and tell him, you can't make any
7 reference to 1210, then, you know, he can do that but that
8 affects the strength of the testimony that he provides. As you
9 correctly pointed out, he's expert enough to develop that
10 argument without one --

11 JUDGE SMITH: Our difficulty is -- our difficulty is,
12 and you might contemplate this, is that 1210 is, as we stated
13 before, is a training document. I infer that as a training
14 document it is intended to be supplemented by lectures, by
15 explanations as a part of a broader pool of information. As a
16 training document, you just don't pass it out and send the
17 students home.

18 MR. FLYNN: Correct.

19 JUDGE SMITH: And, so, naked reliance upon it is not
20 really justified that I can see, and we were unwilling -- this
21 Board was unwilling from the very beginning to look at that
22 document and give it much weight, whether it sneaks -- slips in
23 through Keller or through anybody else, because it is not a
24 document which by its nature is entitled to much weight before
25 this Board without a lot more.

1 MR. FLYNN: We understand that, and I think the point
2 of the reference in the testimony was not that here is a
3 learned treatise that we're relying on; but rather, here is
4 something that represents the views of the NRC. And in one of
5 the points there was that we are agreeing with the NRC's
6 analysis.

7 JUDGE SMITH: Because the NRC says it.

8 MR. FLYNN: I guess that's one way of putting it,
9 yes.

10 JUDGE SMITH: Okay. I mean if that's the case, we
11 can still -- I mean that will focus -- I mean will narrow the
12 base then.

13 MR. FLYNN: Okay, I'm not sure we are at this point.

14 JUDGE SMITH: I thought first we said that Dr.
15 Keller's reliance upon 1210, if nothing more, is not very
16 persuasive to the Board because of the very nature of 1210.
17 It's not a regulation. It is a training document, it is a
18 training document which in my mind at least indicated that it
19 is intended for use in a larger explanatory pool of information
20 like a textbook, giving it even more unreliability standing
21 alone. And the fact is that that the points made in there are
22 largely arguments, or evolution of logic rather than basic
23 scientific basic -- you know, scientific rationale.

24 MR. FLYNN: It's not a technical document.

25 JUDGE SMITH: That's right.

1 MR. FLYNN: That's very true.

2 JUDGE SMITH: That's right. And that's why we don't
3 want to go to a lot of fighting over this document, because all
4 it's doing is suggesting to us ways in which we may arrive at a
5 conclusion which you can do just as well by argument.

6 MR. FLYNN: Given the --

7 JUDGE SMITH: Proposed findings.

8 MR. FLYNN: Given the premise of the document which
9 is established through other means.

10 JUDGE SMITH: I think I agree with you.

11 MR. FLYNN: Okay, I'd like to think about that a
12 little bit more. But let me also suggest you were looking
13 for --

14 JUDGE SMITH: Yes, now you don't want to shoot down
15 Dr. Keller's testimony and tell him tomorrow, guess what, you
16 know, I just --

17 (Laughter.)

18 MR. FLYNN: No, I think if that happens one or the
19 other of us may not walk in the courtroom -- hearing room
20 tomorrow, and I don't know which.

21 JUDGE SMITH: Well, you want to talk to Dr. Keller?

22 MR. FLYNN: Yes. I was about to make a point that I
23 think the nexus that you're looking for between the Goble
24 testimony and the Keller testimony, the Keller reliance on
25 1210, is that when Goble testified he had already had the

1 benefit of reading the FEMA prefiled testimony on March 14th,
2 and evidently that was rebuttal, and now we're -- NRC is
3 rebutting the rebuttal, so it's through that route that it
4 comes back to the Keller testimony.

5 MR. TURK: This is not rebuttal, Your Honor. This is
6 clarifying a misunderstanding which a witness has, and which
7 unless it's correct the Board will have of NUREG-1210.

8 And I have to say that although Ms. Sneider credits
9 me with trying to buttress FEMA's testimony, I didn't even
10 think of FEMA's testimony when I did this.

11 Mr. Keller did have a deposition and it's months
12 since I read it, and there's been too much that's happened that
13 I do not recall his deposition, except I know that he referred
14 to NUREG-1210.

15 Let's put the cards on the table if we can.
16 Intervenors don't like this proposed testimony because it goes
17 against them in some way. It indicates that their expert
18 didn't understand the document that he was purporting to rely
19 upon, and Mr. Oleskey --

20 MR. OLESKEY: No, it is -- it is rebuttal.

21 MR. TURK: Excuse me, excuse me.

22 Mr. Oleskey candidly stated, "Why should we lose the
23 benefit of the document." Mr. Oleskey wants to rely --

24 JUDGE SMITH: Well, that's not the complete remark.
25 He said, why should we lose -- why should we be the only party

1 losing the benefit of the document.

2 MR. TURK: Well, then Mr. Oleskey also says he wants
3 to rely on the document and not have what he calls a "gloss"
4 put on it by the author.

5 (Simultaneous conversation.)

6 MR. TURK: I hope Mr. Oleskey will understand me, but
7 I would expect that the Commonwealth of Massachusetts would be
8 as interested as I am in having a clear record in this
9 proceeding on a document which has been referred to by their
10 expert and by the federal agency expert, Mr. Keller for FEMA.
11 I don't see the problem with getting a clear record.

12 MR. OLESKEY: What you're missing is that we agreed
13 with the skepticism the Board has expressed of whether the
14 document should be in the case at all. But if it's in the case
15 at all, then Keller and Goble ought to be on equal footings in
16 evaluating it for their purposes without somebody coming in who
17 has the benefit of looking at what both of them have said,
18 choosing sides and saying, you know, I know there is an
19 ambiguity here that threw Massachusetts off, but believe me,
20 Keller's got the right angle here. That's what it amounts to.

21 MR. TURK: I hope Mr. Oleskey isn't suggesting that
22 this testimony is anything other than the truth and unrelated
23 to taking a position in this proceeding.

24 MR. FLYNN: I have another suggestion.

25 JUDGE SMITH: See, the reason why I don't agree with

1 you, the primary reason is I'm taking up with the fact that
2 this is a training document. It is a document that by its
3 nature and design is used -- is not a technical document; is
4 used to supplement as an aid in training, and it cannot stand
5 by itself, at least the parts cited to us do not stand alone as
6 being any scientific basis upon which we can make findings on.

7 MR. FLYNN: Your Honor, I have a suggestion.

8 JUDGE HARBOUR: And I'll ignore any references.

9 JUDGE SMITH: You know, I think we're going to -- I
10 think we're going to cut this short a little bit because we
11 really don't care much how it comes out. We're not going to
12 give a lot of weight to it. I mean, we're just not going to do
13 it unless something about it we don't know about. Everybody's
14 had a chance. The technical members of the Board do not give
15 much weight to that document as help to us arriving at the
16 decisions we must.

17 MR. FLYNN: Your Honor, may I make a brief
18 suggestion?

19 To put the matter in perspective, the issues
20 addressed by the proposed McKenna testimony are two: What is
21 the meaning of the term "entrapment" in the document, and what
22 is the meaning of the reference to large population areas.

23 And I would submit that those can be argued both ways
24 without even having to have McKenna appear.

25 JUDGE SMITH: Well, that's right. You are right.

1 MR. TURK: You can argue, but you can't get a clear
2 resolution, Your Honor. It would simply be --

3 JUDGE SMITH: You can get a clear resolution because
4 we have been given the authority to decide. We don't have to
5 decide terms. I mean you can put any label on it you want to.
6 You can call it entrapment if it's 12 hours, entrapment if it's
7 24, entrapment in a car, whatever you want. It does not change
8 the fundamental nature of the thing you're talking about, the
9 label doesn't.

10 Furthermore, I believe -- you might take this into
11 account before you argue too much. I believe that the
12 paragraph beginning at the bottom of Page 5 of the proposed
13 testimony is a non sequitur when he tries to get into that
14 explanation. But I hope we don't have to go into that.

15 We'll rule on it tomorrow. We probably can get to it
16 tonight to give you some time.

17 MR. TURK: If you can get to it tonight, I would
18 appreciate it, Your Honor.

19 Yesterday I received a telephone call that my wife
20 has come down with chicken pox. I had it a year ago just
21 before, or during that RAC meeting of April 1987, which we've
22 heard a lot about.

23 Now here we are with Mr. Thomas's testimony
24 concluding and my wife's caught it.

25 (Laughter.)

1 MR. TURK: I'm going to have to return to Washington
2 tonight.

3 JUDGE SMITH: The way we stand right now from the
4 point of view of the Board, we are disinclined to give any
5 weight to the references, the 1210. To the extent that
6 witnesses have relied upon it and their testimony depends upon
7 it, depends upon it, then we will have difficulty with that
8 testimony.

9 To the extent that witnesses say, well, 1210 is an
10 agreement, that's another matter.

11 But I think a better solution to this problem before
12 we get into the litigation of another substantial litigation is
13 to get it out of the case. And unless our ruling will be will
14 not receive Mr. McKenna's testimony, unless it should turn out,
15 as we do not predict it will, that Mr. Keller is cut off at the
16 knees because of it, and then we'll have to re-entertain it.
17 But as I read his logic of it, he was just using that as a
18 method of explaining his rationale. And it may very well be
19 that any of these witnesses got their ideas from a particular
20 document, but if those ideas are then held independently as
21 being rationale, that's an entirely different matter, because
22 none of us are born with full worldly knowledge. We get our
23 ideas from other sources. That's an entirely different matter
24 than relying upon it. Relying upon it and using it form your
25 own intellectual processes and agreeing with it are different

1 matters, and it looks to us like reliance is minimal on this
2 document in this case. Actual reliance is minimal.

3 MR. TURK: May I ask one thing, Your Honor?

4 If that is going to be the Board's ruling ultimately,
5 I'd like to know what proposed findings may address based upon
6 the Goble testimony. But I understand that the Intervenors may
7 not cite the testimony of NUREG-1210 in their substantive
8 proposed findings.

9 JUDGE SMITH: Well, I was hoping that would be the
10 stipulation, and that would make it a lot easier because it's
11 neater that way than for the Board to just disparage the
12 document and --

13 MR. TURK: If that's the understanding, then I don't
14 need -- I don't need to clarify it on the record because there
15 is not record to have to deal with.

16 JUDGE SMITH: The holdup is Keller.

17 MR. FLYNN: That's right, and I can't say here today
18 without talking to him that he can go through all of his entire
19 testimony and cross-examination without referring to it.

20 JUDGE SMITH: Not without referring to it. I mean,
21 without depending upon it. Get it out of the testimony. If on
22 examination he says, where did you get that idea. Oh, I got it
23 from 1210. Well, I know, but is it sound, do you agree with
24 it, is the logic --

25 MR. FLYNN: Well, I'm --

1 JUDGE SMITH: -- fundamental? Then you don't need
2 it. He is an expert. He gets his information from all over
3 the place. But what is not clear from the cited paragraph in
4 his testimony is has he arrived at that conclusion
5 independently. I don't mean did he arrive at it independently,
6 but does he hold that opinion independently, perhaps having got
7 the rationale from another source, but does he hold it
8 independently or does he look to the other document and say,
9 well, you know, that -- I lean on that, and I don't think he
10 does.

11 MR. FLYNN: My instinct is that you're entirely
12 correct about that.

13 JUDGE SMITH: Our ruling -- what are we going to do,
14 what are you going to do about Mr. Turk's chicken pox?

15 MR. TURK: My wife.

16 JUDGE SMITH: He's got to know. Do you want to
17 defer, do you want to see if you can go call him, Keller?

18 MR. TURK: Your Honor, I have a solution. Mr. Scinto
19 is staying over tonight.

20 JUDGE SMITH: Okay.

21 MR. TURK: He'll pick it up tomorrow.

22 JUDGE SMITH: All right.

23 MR. TURK: But -- not the chicken pox.

24 (Laughter.)

25 JUDGE SMITH: All right, we'll address it tomorrow,

1 and you try to talk to Dr. Keller.

2 MR. FLYNN: I'm quite willing to be cooperative. The
3 only problem is that Mr. Keller is en route and I won't be able
4 to talk to him until about 8:30 this evening when he arrives at
5 the hotel.

6 JUDGE SMITH: Fine. We'll take it up again in the
7 morning. That will give McKenna time to get here. But as of
8 right now our feeling is that --

9 MR. TURK: Your Honor, that's the other problem,
10 though. That means McKenna is going to have to travel up here
11 from Boston.

12 Because of his responsibilities as an incident
13 response coordinator, there is difficulty in him being away
14 from Washington. If he doesn't have to come up here --

15 JUDGE SMITH: No matter which way we weave or go to
16 try to solve this problem somebody puts an impediment.

17 MR. TURK: Well --

18 JUDGE SMITH: Somebody is going to have to give. Now
19 you see what our problem is. Try to sit back and give us
20 solutions and not problems.

21 MR. TURK: I have a --

22 JUDGE SMITH: Mr. Scinto wants to be heard.

23 MR. SCINTO: If the Board thinks that we can get this
24 resolved before noon tomorrow, I'm sure that we can turn off
25 Mr. McKenna.

1 JUDGE SMITH: I think we should be able to resolve it
2 the first order of business tomorrow. And assuming -- assuming
3 that -- okay.

4 Would that solution be satisfactory -- Mr. Turk, I
5 understand you do not have an independent reason for wanting to
6 bring McKenna in.

7 MR. TURK: Apart from --

8 JUDGE SMITH: You have not given us any.

9 MR. TURK: My only reason is to correct the record
10 laid out by Dr. Goble's testimony --

11 JUDGE SMITH: Okay.

12 MR. TURK: -- on NUREG-1210.

13 JUDGE SMITH: All right.

14 MR. TURK: And I note that there's nothing in this
15 proposed testimony that relates to Seabrook or to the quality
16 of shelters in the Seabrook area, nothing expressly.

17 JUDGE SMITH: All right, you want to go with Mr.
18 Cumming?

19 MR. FLYNN: Yes, Your Honor.

20 (Continued on next page.)

E39

21

22

23

24

25

T40

1 MR. FLYNN: I would ask that Mr. Cumming be sworn
2 in.

3 JUDGE SMITH: All right.

4 Whereupon,

5 WILLIAM P. CUMMING

6 having been first duly sworn, was called as a witness herein
7 and was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FLYNN:

10 Q Mr. Cumming, will you state your name and position?

11 A (Cumming) My name is William R. Cumming, and I am an
12 attorney in the program law division of the Office of General
13 Counsel of the Federal Emergency Management Agency.

14 Q Do you have before you a document which bears the
15 heading Amended Testimony of William R. Cumming and Joseph H.
16 Keller on Behalf of the Federal Emergency Management Agency on
17 Sheltering Beach Population Issues, which document bears the
18 date of June 10, 1988?

19 A (Cumming) I have that document.

20 Q Are you familiar with the document?

21 A (Cumming) Yes, I am.

22 Q And did you have a role in the preparation of the
23 document?

24 A (Cumming) I'm a principal author of this document.

25 Q Do you wish to present the testimony which is

1 incorporated in this document as your own testimony and have it
2 made part of the record of this case?

3 A (Cumming) Yes, I do. This is my testimony and it is
4 on behalf of the Federal Emergency Management Agency.

5 Q Now the document, as the heading indicates, is
6 intended to be joint testimony of you and Joseph Keller.

7 Can you indicate which parts are uniquely your
8 testimony and which parts are uniquely his testimony?

9 A (Cumming) I can do so, but in fact the entire
10 testimony is my testimony to the extent that I have
11 understanding and expertise. And while some appear to be
12 primarily in the nature of legal items, my understanding is
13 that I am in fact the witness on behalf of the entire
14 testimony.

15 Q Do you then adopt the entire document as your
16 testimony?

17 A (Cumming) Yes, I do.

18 MR. FLYNN: At this point I offer the document as
19 testimony of this witness, and ask that it be bound into the
20 record.

21 JUDGE SMITH: Well, then your plan would be for Dr.
22 Keller to -- we'll bind it in now, and Dr. Keller to endorse
23 it --

24 MR. FLYNN: I'm sorry.

25 JUDGE SMITH: -- tomorrow, because he has -- he has

1 adopted the entire document.

2 MR. FLYNN: We could do that, or I'm willing to
3 postpone the binding into the record until tomorrow. Whatever
4 suits the convenience of the parties. But from prior
5 discussions off the record, I understand that there will be a
6 motion to strike some or all of this, and I am inviting that
7 motion at this time.

8 JUDGE SMITH: All right, let's -- I see. So let's
9 defer binding it in and we'll ask for objections.

10 And you have objections?

11 MR. BACKUS: Yes, to portions of this testimony, and
12 I don't know whether Attorney Weiss may have any or not, but --
13 all right.

14 The portions of the testimony that we object to are
15 on Page 6, and they are in two parts, Judge Smith. The first
16 has to do, and this is a completely separate item.

17 The first paragraph referencing the RAC meetings, the
18 RAC meeting of January 7th and 8th, and the fourth paragraph
19 referencing the RAC meeting of February 29th. I understand
20 that these are mere conclusory and preliminary matters, but we
21 believe that these RAC meetings have been the subject of
22 extensive testimony by people who attended the RAC meeting,
23 which I understand these witnesses did not. At least -- well,
24 Mr. Cumming, I guess you did attend this February 29th RAC
25 meeting; is that correct?

1 THE WITNESS: (Cumming) If it would be helpful to
2 the Board, Mr. Keller attended the February 29th RAC meeting.
3 Neither Mr. Keller nor I attended the January 7th and 8th RAC
4 meeting.

5 MR. BACKUS: All right. In any event, the objection
6 to that is simply that we have testimony from participants at
7 those RAC meetings, both from NRC and the RAC chairman who just
8 testified, and we think that that's the testimony that should
9 be dealt with in regard to the RAC meeting and not this.

10 The second matter is the last paragraph on Page 6.

11 JUDGE SMITH: But you don't challenge the conclusion
12 of that statement, though, do you?

13 MR. BACKUS: It's just that I think that there's been
14 a lot of attention devoted to the RAC meetings and the nuances
15 of what agency positions were, what the significance of a
16 majority is and a minority is, and I think that we should go
17 with the testimony of the principal parties to that rather than
18 this overall conclusory statement.

19 JUDGE SMITH: Okay. But when you make your
20 arguments, I understand this testimony not to be offered for
21 the merits of the RAC's action, but to explain the evolution of
22 FEMA's position and to point out those events which influence
23 the evolution. And if the event did in fact influence the
24 evolution, he's going to have to refer to it. I mean, that's
25 the way I see it going.

1 I mean he could not agree that that event -- those
2 facts did not influence a decision of FEMA.

3 MR. BACKUS: If they were just saying --

4 JUDGE SMITH: I just want you to argue understanding
5 that is my understanding of the context of it.

6 MR. BACKUS: Right. Well, let me be a little bit
7 more precise here.

8 This first sentence on the January 7th and 8th RAC
9 says, "On July 7 and 8, 1988, the RAC met, and the majority of
10 the RAC endorsed the views stated in Dr. Bores's letter of June
11 4, 1987."

12 I think there has been testimony, extensive testimony
13 on the record that some of those RAC members were continuing to
14 endorse Dr. Bores's views about the strength of the Seabrook
15 containment, for example.

16 So I have no objection to this witness stating, yeah,
17 we knew that there was a RAC meeting and it played a part in
18 our evolution of our position. I object to the characterization
19 of this witness who was not there as to endorsing the views
20 stated in Dr. Bores's letter of June 4th, as to which I think
21 we have a better record available in the prior testimony.

22 JUDGE SMITH: Okay. Go to your next objection.

23 MR. BACKUS: Okay.

24 JUDGE SMITH: What will be your actual motion then?

25 MR. BACKUS: It would be to delete that sentence, the

1 first paragraph on Page 6, and the four paragraph on Page 6,
2 and I would have no objection if Attorney Flynn wants to put in
3 a sentence on the lines I suggested in substitution of that.

4 JUDGE SMITH: Do you want to be heard?

5 MR. TURK: I want to ask a question, Your Honor. I
6 don't know how many points there are that are going to be moved
7 against. I'd like to respond at some point to Mr. Backus.

8 Is it better that we respond individually, or wait
9 until he's finished and then take them up?

10 JUDGE SMITH: Well, I guess let's take up -- let's
11 take up January 7th and 8th paragraph.

12 Do you want to be heard on that?

13 MR. FLYNN: Yes, Your Honor. It seems to me the
14 substance of the objection is twofold. Number one, that's
15 cumulative and redundant. And then the second point, and
16 perhaps the stronger point is that because Mr. Cumming was not
17 present at those meeting that he's not as reliable witness as
18 other people.

19 Now on the first point, on the cumulative nature or
20 the redundancy of the evidence, I would say we're talking about
21 two short paragraphs. They are important as you have already
22 pointed out to an understanding of how we got from Point A to
23 Point B.

24 And if that is the nature of the objection, we're
25 really quibbling about something rather small, two short

1 sentences.

2 On the subject of Mr. Cumming's firsthand knowledge
3 of what went on, Your Honor, we've listened to weeks of
4 testimony of a hearsay nature, and I will readily agree that
5 there are more reliable accounts, but the hearsay nature of the
6 testimony is hardly grounds, given the record in this
7 proceeding, for excluding the statements.

8 JUDGE SMITH: Well, in fact, the very existence of
9 the greater explanation of that meeting, the fact that it's on
10 the record makes your objection almost -- I mean your concerns
11 rather harmless, because all he is doing here, as I understand
12 it, he does not purport to have been a participant. All he's
13 doing, and he must to be thorough, he must say that that is one
14 of the matters that influenced FEMA's evolution.

15 If he strikes it -- he could not strike it even if he
16 were asked to if in fact FEMA's perception of that RAC meeting
17 was one of the influences in its evolution.

18 So I don't think that you're harmed. I think that
19 the other testimony on the meeting removes any harm to you
20 which might flow from that statement when it's understood
21 simply to be an identification as compared to an explanation,
22 an identification of one of the events that led to the
23 evolution of the position.

24 Is that right? You intend to this to be an
25 identification, not an explanation of it, because that's

1 already been testified to.

2 THE WITNESS: (Cumming) That's basically correct.

3 MR. BACKUS: Well, if that's the understanding, I
4 have no objection.

5 MR. TURK: I have one question about that.

6 MR. DIGNAN: You've won, Shep.

7 MR. TURK: I don't know if I have won.

8 Your Honor asked if it's simply an identification.
9 If it's an identification of the fact of the meeting and the
10 outcome, I have no problem.

11 It seems to me the outcome of the meeting is --

12 JUDGE SMITH: Well, you don't need this. I mean, all
13 right, it is an identification and the perception of this
14 witness representing FEMA as what happened to that meeting.

15 Now we had a lot of --

16 MR. TURK: I have no problem with that.

17 JUDGE SMITH: -- testimony on --

18 MR. TURK: I have no problem with that.

19 JUDGE SMITH: All right. It's identification and
20 perception.

21 Okay, what's the next one?

22 MR. BACKUS: I have a problem with that if that's the
23 case. As I understand it, this witness was not there. And if
24 his perception is at the end of the two-day meeting of the RAC
25 is simply that the majority endorsed the Bores letter of June

1 4th, I definitely do have a problem with that.

2 If there's going to be a statement that tracks the
3 prior evidence here that there was a RAC meeting on June 7th
4 and 8th that the agency thought that the RAC meeting was
5 important to its deliberation, and they want to make note of
6 that in this chronology, I have no objection to that.

7 MR. FLYNN: I don't understand. Do you want more
8 detail or less details? You started out moving to strike.

9 MR. BACKUS: I am just objecting to the
10 nonparticipants stating the conclusion of the RAC meeting in
11 this summary fashion.

12 MR. DIGNAN: May I respectfully point out that Mr.
13 Backus's argument amounts to the sentence is wrong, and that
14 classically is the subject of cross-examination, not a motion
15 to strike. If you think the witness is wrong, you cross-
16 examine him about it.

17 MR. BACKUS: I can't cross-examine him about it
18 because he wasn't there.

19 MR. TURK: We've had that problem for some time, Mr.
20 Backus, with other witnesses.

21 JUDGE SMITH: The nuances of the majority of the
22 RAC's action are reflected in the extensive testimony we've
23 had. If Mr. Cumming wishes to say the perception of the RAC, I
24 mean the perception of FEMA which he is expressing in his
25 testimony is that the majority of the RAC endorsed the views

1 stated in Dr. Bores's letter of June 4, 1987 is that, it's
2 okay. Cross-examine him on it if you wish, and maybe he'll
3 change it. I don't know. But you are not harmed by it. It is
4 necessary to his testimony. It is limited in the impact, and
5 you have a very treasure trove of evidence to refine it and
6 define it in your proposed findings.

7 To delete, it would be in effect requiring the
8 testimony produced missing a link which they believe is
9 material, which would have a worse effect.

10 Now go on to -- so that objection is overruled on
11 that basis.

12 So February 18th, that one by Sherwin Turk. I didn't
13 catch that one.

14 MR. BACKUS: No, I did not enter an objection to that
15 one.

16 MR. FLYNN: No, he means the fourth full paragraph.

17 MR. BACKUS: The fourth full paragraph.

18 MR. FLYNN: It's the succeeding paragraph.

19 MR. BACKUS: About the February 29th RAC.

20 MR. DIGNAN: No, that's the fifth paragraph.

21 MR. FLYNN: No, fifth paragraph.

22 MR. BACKUS: Fifth paragraph. I'm sorry.

23 I guess that's the same exact thing.

24 JUDGE SMITH: Right.

25 MR. BACKUS: Well, all right.

1 Now, the next paragraph presents -

2 JUDGE SMITH: Same objection; same ruling.

3 MR. BACKUS: Yes.

4 JUDGE SMITH: All right.

5 MR. BACKUS: I understand.

6 The next paragraph, the last paragraph on the page
7 states, "Over the period encompassed by the foregoing
8 discussions, it became increasingly clear to FEMA that to
9 require sheltering for the transient beach population as a
10 condition of a finding of reasonable assurance is inconsistent
11 with the precept that emergency planning requirements do not
12 require that an adequate plan achieve a preset minimum
13 radiation dose saving or a minimum evacuation time."

14 Now, if you read back over the preceding language,
15 what you find there is that the witness here is saying that
16 based upon these various developments, and in regard to preset,
17 no minimum preset doses, he is, of course, relying on the NRC's
18 rule change, the Board's ruling from the bench on the Sholly-
19 Beyea testimony on November 16th, the Shoreham decision of July
20 of '86; all legal material provided through this Board or the
21 Commission.

22 And I submit that the effect of those decisions upon
23 what is an appropriate position, or a defensible position for
24 FEMA is a matter for this Board, and we don't need a lawyer's
25 testimony as to his legal opinion as to it.

1 So the objection to this is that it is nothing more
2 than a legal opinion in a matter that is entrusted to this
3 Board. And however interested Mr. Cumming may be as the agency
4 lawyer, however much time he may have spent deliberating on
5 these NRC decisions, it's not something that he should testify
6 to as a witness. It's a matter of law for this Board to
7 decide.

8 MR. FLYNN: Your Honor, it seems to me that the
9 problem that we have here that Mr. Backus has identified is
10 essentially the same problem that Mr. Dignan raised in his
11 motion in limine. And that is, it's very hard to sort out what
12 is legal argumentation, what is logic, what is policy
13 interpretation. And I would put the question to the Board, if
14 someone other than Mr. Cumming were sitting in that chair and
15 endorsing that testimony, if Dave McLoughlin for example were
16 the witness instead of Mr. Cumming, would the same argument
17 obtain.

18 MR. BACKUS: The answer to that is yes.

19 MR. FLYNN: May I finish my argument, please?

20 MR. BACKUS: Yes.

21 MR. FLYNN: Clearly there is an element of legal
22 argumentation here. A legal conclusion is stated, but I submit
23 that it's not just a legal conclusion. That isn't the purpose
24 of it and the Board is free to disregard the legal conclusion,
25 qua legal conclusion.

1 The whole point of the testimony is that FEMA came to
2 a conclusion about the adequacy of the plans, and secondarily,
3 to trace the route that FEMA followed to get to that point.
4 And that's why this is in here, and that's why it's important.

5 And if the testimony making sense without that and
6 the Board feels it's important to strike it and disregard
7 it --

8 JUDGE SMITH: We can't strike anything if in fact --
9 I don't care if it's Mr. Cumming's horoscope for the day said
10 he ought to change the FEMA position. If that is one of the
11 reasons why they did it, as compared to the reasons suggested
12 by the Intervenors, it is relevant. And we may find that it's
13 a poor reason or a good reason. I don't know.

14 MR. FLYNN: Well --

15 JUDGE SMITH: The fact that it is one of the bases
16 for the change of their position is in itself relevant and
17 that's why it's there.

18 MR. FLYNN: Your Honor, that gets right to the heart
19 of the matter, and I will represent to you that that is a
20 critical reason, and I will also represent that that will be
21 confirmed by Mr. Cumming if the question is put to him.

22 (Continued on next page.)

23

24

25

T/41

1 JUDGE SMITH: As far as the direct testimony is
2 concerned, the importance of that paragraph -- the importance
3 of all these paragraphs, as I read them, is that indeed,
4 whatever the merits, that indeed those were the reasons.

5 The adequacy of those reasons is open to litigation,
6 as we've been litigating for a long time. But if in fact it
7 was with the reasons, however well founded or ill-founded, that
8 is the basis of his testimony and it's going to be received on
9 that basis.

10 MR. BACKUS: Well, I think it puts us in a difficult
11 position. If we end up in this case with a decision that we
12 want to appeal, we are then faced with not just a legal
13 argument that we lost this case with this Board's November 16th
14 ruling, say for example, there are those that hold that
15 opinion, if this whole case was lost, we're in a position we
16 cannot win as a result of this Board's November 16th ruling.

17 And then we have to go up and we have to deal with a
18 higher tribunal saying, well, that's not just a legal issue
19 because the FEMA testimony that was admitted says that, and
20 therefore it's mixed question of law and fact.

21 I think it somehow got to be clear that this is
22 absolutely a question of law.

23 JUDGE SMITH: I don't --

24 MR. BACKUS: And having a witness come in and testify
25 about legal considerations, which he does say right here in an

1 earlier place in his testimony, where a very important part of
2 the testimony is going to make that a very difficult situation.

3 JUDGE SMITH: There's a difference in legal opinions
4 and the effect of legal actions, which are real. Now, I don't
5 see how you're precluded from arguing that, just exactly that,
6 you know, that FEMA changed its position to our detriment based
7 upon a Board's legal ruling that was inappropriate, should not
8 have done it. We lost the benefit of presumption that we
9 should have had inappropriately.

10 But the fact is, if they did in part change their
11 position based upon our ruling, by golly, not only should they
12 say it, but you're entitled to know it, too.

13 MR. FLYNN: I would take that even further and remind
14 the Board and the parties that I have pointed out many times on
15 this record that if we are wrong in our understanding of what
16 the law is, then our conclusion ought to be disregarded.

17 JUDGE SMITH: There's -- that's right. But there's
18 yet another reason. You have by cross-examination intervenors
19 -- by bringing Mr. Thomas here, you have presented a case that
20 FEMA inappropriately and to some extent -- I'm searching for a
21 word somewhere between inappropriately and corruptly, but to
22 some extent poor, you know, just poor motives, bad motives,
23 change their position.

24 Now, let's say they change their position for reasons
25 that were not corrupt or poorly motivated or whatever, but for

1 other reasons which aren't very good reasons.

2 MR. BACKUS: Yes, that's a possibility.

3 JUDGE SMITH: For bad reasons.

4 MR. BACKUS: Right.

5 JUDGE SMITH: Nevertheless, they have the opportunity
6 to offer those reasons and counter to the suggestion that the
7 reasons were corrupt, whatever they are. And that's what
8 they're doing. As I understand, he's going to defend them.
9 These are the reasons no matter how valid, how invalid, those
10 are the reasons.

11 And that's the only basis we're receiving them for is
12 that, that was their perception of the events and they acted on
13 that perception. And you're not hurt because you got a big
14 record that you can counter these -- this rationale.

15 You subside?

16 MR. BACKUS: Yes.

17 JUDGE SMITH: All right.

18 MR. BACKUS: And not like some others, when I subside
19 I really subside.

20 (Laughter)

21 JUDGE SMITH: Do you have any more motions to strike.

22 MR. DIGNAN: That's a joke.

23 MR. BACKUS: Of course.

24 JUDGE SMITH: Any more motions to strike?

25 (No response)

1 JUDGE SMITH: Shall we begin with the -- what's the
2 pleasure of the parties, do you want to recess for the night or
3 begin with the cross-examination of Mr. Cumming?

4 MR. BACKUS: Well, I'm not prepared except to do some
5 very preliminary things and that is to get Mr. Cumming to
6 identify, if he would --

7 JUDGE SMITH: Okay. Might as well.

8 MR. BACKUS: All right.

9 Mr. Cumming, what I want to do just as an initial
10 matter --

11 MR. DIGNAN: Before Mr. Backus begins, can I get a
12 feel for how long the Intervenors think they need to cross-
13 examination this panel total.

14 MR. BACKUS: I don't know, probably a day.

15 MR. DIGNAN: A day.

16 MR. BAC US: A day.

17 JUDGE SMITH: Do you think we might be out tomorrow?

18 Can we go off the record on this. I mean, all you're
19 asking for is for travel convenience and the scheduling.

20 MR. DIGNAN: Yes, this can be off the record, I just
21 want to get a feel for how long --

22 MR. BACKUS: Well, this all got rather expedited. We
23 had absolutely no notice that there was going to be either no
24 or very little cross-examination for Mr. Thomas.

25 MR. DIGNAN: Surprise.

1 MR. BACKUS: In fact, all indications were that we
2 were going to have extensive examination for Mr. Thomas.

3 MR. TURK: May I indicate, Mr. Backus, that was --

4 JUDGE SMITH: Are we on the record?

5 THE REPORTER: On.

6 JUDGE SMITH: Let's go off the record now.

7 (Discussion off the record.)

8 JUDGE SMITH: We had exchange of pleasantries off the
9 record concerning when we could adjourn.

10 (Laughter)

11 CROSS-EXAMINATION

12 BY MR. BACKUS:

13 Q Mr. Cumming, I would just like you to expand, if you
14 would, your counsel said that you were uniquely responsible for
15 certain portions of this testimony and I'd just like you to
16 identify which portions of this testimony you take primary
17 responsibility for?

18 MR. FLYNN: Mr. Backus, I didn't say that he was
19 uniquely responsible, I asked him, there's a difference.

20 MR. BACKUS: You're correct.

21 BY MR. BACKUS:

22 Q Wait a minute, let me withdraw that, Mr. Cumming and
23 just ask a question. The testimony as filed on March 14th for
24 the agency when there were three witnesses had set out in front
25 of each paragraph which witness or which witnesses were

1 responsible for that, and that's now been deleted in the June
2 10th edition that's just been marked; what was the reason for
3 that?

4 A (Cumming) The primary reason for that is the
5 following: Joseph Keller is an employee of Idaho National
6 Engineering Lab. Based on the Westinghouse GOCO contract with
7 the Department of Energy there is a management policy that a
8 lab employee concerned with the REP program, Radiological
9 Emergency Preparedness program conducted by the Federal
10 Emergency Management Agency should not appear solo as a witness
11 in an Atomic Safety and Licensing Board proceeding.

12 So it was to some extent a tactic in case there was a
13 motion to strike that Mr. Keller, we would not end up not
14 having a FEMA witness in this proceeding.

15 And the reason that was a concern of FEMA is that
16 FEMA believes that the Licensing Board is entitled to have a
17 FEMA description of the events and a position on the issue
18 that's before the Board.

19 And with respect to that I would state, and ask to be
20 bound into the transcript tonight, there was a statement of the
21 primary contention before this Board that was filed on June
22 4th, 1987 and September 11th, 1987, and it was not, in fact,
23 the contention, the exact wording is omitted by the Board on
24 April 29th, 1986.

25 So I would like to respectfully request the Board

1 that in tonight's -- today's transcript that both those
2 documents be bound in, somehow be marked, not as evidence, but
3 so that there's an understanding of why FEMA in fact is putting
4 on the position it is and why it has graciously consented to
5 allow an attorney to testify in this proceeding.

6 It's for -- it's because FEMA is concerned that
7 without that testimony the Board would not have a full picture
8 of the events which transpired from June 1987 until this date.

9 MR. BACKUS: I think I forgot my question.

10 (Laughter)

11 JUDGE HARBOUR: That's a good response.

12 MR. BACKUS: I think, Mr. Cumming, I would like to
13 let your lawyer handle additional submissions to this Board. I
14 don't know whether this has anything to do with answering the
15 question I asked.

16 MR. DIGNAN: Well, you got a good answer, put a
17 question to it.

18 (Laughter)

19 MR. BACKUS: Yes.

20 Mr. Cumming, let me try again.

21 For the record I'm not taking up Mr. Cumming's offer
22 to supply for the record through him at this point. I didn't
23 understand it.

24 BY MR. BACKUS:

25 Q On March 14th, I think, Mr. Cumming, you will agree

1 with me that the testimony as filed had your name written in
2 front of the additional -- particular paragraphs of the
3 testimony; is that right?

4 A (Cumming) That's correct. The prefiled testimony of
5 March 14th had identified a sponsor for each particular
6 paragraph.

7 Q You're now telling me that because of some concern
8 that there would be a motion to strike granted for all or
9 portion of the testimony that you wanted to be on all of it, so
10 that if any of it survived a FEMA witness would be on record as
11 having testified in this proceeding; is that what you said?

12 A (Cumming) That's substantially correct.

13 Q Okay. Is that a different situation than on March
14 14th?

15 A (Cumming) Yes.

16 Q Been a new rule at the Idaho National Lab about this
17 or something?

18 A (Cumming) If you recall, the testimony that was
19 prefiled on March 14th, I believe that there was only one
20 paragraph, and I'm not certain of that, that identified only
21 Joseph Keller. All other paragraphs were co-sponsored or
22 sponsored by a FEMA employee or official.

23 Q All right. Now, if you could, please, just tell me
24 which paragraphs of this testimony you take primarily
25 responsibility for, understanding that you want to be

1 considered a sponsor of the whole thing, but which ones do you
2 take primary responsibility for?

3 A (Cumming) I take primary responsibility for those
4 which includes statements concerning NRC staff or Commission
5 decision and orders for interpretations thereof.

6 Q Okay. Let me just check and see if I can understand
7 what that would be. Starting on page two on the background,
8 the paragraph that starts, "The NRC staff has advised FEMA it
9 does not interpret its regulations to require sheltering for
10 each segment of the beach population." Would that be a
11 paragraph within the area of your primary responsibility?

12 A (Cumming) That sentence, yes.

13 Q How about the paragraph at the or the sentence
14 starting at the bottom of the page and running over, "The
15 material submitted by the State of New Hampshire make it clear
16 that it has considered the use of sheltering for the transient
17 beach population, explains what use, if any, it intends to make
18 of sheltering."

19 MR. TURK: Mr. Backus, if you don't mind, since we do
20 have the other version of the prefiled testimony, the prior one
21 in which Dr. Hock was named in, and Mr. Cumming's name is laid
22 out paragraph by paragraph, maybe it would be appropriate to
23 ask if those remain the paragraphs for which he takes primary
24 responsibility and are there any additional ones or does he
25 wish to change any of those designations. Maybe he can do that

1 overnight.

2 MR. BACKUS: By God, I think that's helpful.

3 (Laughter)

4 BY MR. BACKUS:

5 Q Would you like to do that, Mr. Cumming?

6 A (Cumming) No, I wouldn't.

7 MR. TURK: The choice is doing it overnight or doing
8 it here now.

9 BY MR. BACKUS:

10 Q Why don't you just go through the document and tell
11 us which ones we should primarily direct questions to you and
12 which ones we should primarily direct questions to Mr. Keller,
13 if you can? And I ask you this, Mr. Cumming, because the way
14 we've organized this, and I want to advise the Board of this,
15 too, as you know I took your deposition, Attorney Weiss took
16 Mr Keller's -- Dr. Keller's deposition and we would like to
17 divide this examination so that she will concentrate on the
18 areas that are particularly within the purview of Dr. Keller.

19 A (Cumming) Well, I believe I may have important
20 contributions to make to the entire testimony. However, be
21 that as it may, to expedite this, certainly on page three the
22 last full paragraph which begins with the words "The June 18th,
23 1986 letter from the chief hearing counsel," is a paragraph for
24 which I will be the primary witness.

25 Also, the paragraph which begins at the bottom of

1 page three and extends over to the top of page four.

2 Q Before going on, how about the paragraph on page
3 three that starts, "Legal considerations were very important
4 influence?"

5 A (Cumming) Yes. In my judgment, I would be the
6 primary sponsor of that statement, that paragraph.

7 Q Page four?

8 A (Cumming) The second full paragraph which begins
9 with the language --

10 JUDGE SMITH: Well, wait, I'm confused here, Mr.
11 Cumming. As we -- as you heard us discuss during the motion, I
12 guess the motion to strike, these milestones are in here, and I
13 understand your testimony and Mr. Flynn's argument, more for
14 the fact that these events occurred and FEMA -- and they
15 entered into FEMA's evolution.

16 THE WITNESS: (Cumming) That's correct.

17 JUDGE SMITH: Not so much for the merits of the
18 statements contained.

19 THE WITNESS: (Thomas) That's correct.

20 JUDGE SMITH: Now, if you don't support, for example,
21 the first full paragraph on page four, and if Mr. Keller is
22 some part-timer out in Idaho Falls, I guess -- consultant out
23 of Idaho Falls, who supports that paragraph?

24 THE WITNESS: (Cumming) No, no, I don't believe that
25 was the question I was asked. I was asked to identify

1 specifically the ones for which I would be the primary witness.
2 I was reluctant to do that. I'm prepared to defend this
3 testimony.

4 JUDGE SMITH: Oh, I see, primary witness in addition
5 to the milestone aspect.

6 THE WITNESS: (Cumming) That's correct.

7 JUDGE SMITH: I didn't understand that.

8 Did you understand that, Mr. Backus, that
9 distinction?

10 MR. BACKUS: I don't think so.

11 JUDGE SMITH: Well, see, we're drawing a distinction
12 here. You know to your knowledge, do you not, that these
13 milestones set forth were the milestones that FEMA -- that
14 influenced FEMA's evolution.

15 THE WITNESS: (Cumming) Absolutely.

16 JUDGE SMITH: You can defend that fact -- facts?

17 THE WITNESS: (Cumming) Absolutely.

18 JUDGE SMITH: And then in addition to that, you can
19 be the principal defender to certain paragraphs?

20 THE WITNESS: (Cumming) That's correct.

21 JUDGE SMITH: Okay. I mean, that -- defender -- the
22 defender of the -- principal defender of the merits of the
23 paragraph?

24 THE WITNESS: (Cumming) That's correct.

25

1 BY MR. BACKUS:

2 Q Okay. Page four.

3 A (Cumming) Second full paragraph beginning, "The
4 proposed rule change."

5 Top of page five, first paragraph, the second
6 paragraph, the third paragraph, the fifth paragraph, the sixth
7 paragraph, the seventh paragraph which goes over to the top of
8 page six.

9 The second full paragraph on page six which begins,
10 "FEMA filed its supplemental testimony." The fourth full
11 paragraph beginning -- that reads, "On February 18th, 1988
12 Sherwin Turk sent a letter."

13 The last full paragraph on page six. The first
14 paragraph, full paragraph at the top of page seven, second full
15 paragraph on page seven, the third full paragraph on page
16 seven, the fourth full paragraph, fourth and fifth paragraph on
17 page seven.

18 By listing these I am giving the impression that I am
19 excluding the fact that there may be in fact input --
20 significant input on some of these others, but I will not skip
21 over to top of page nine. And I realize this has been an
22 issue already this afternoon, but I have some specific
23 understanding of NUREG-1210 and it's implications for FEMA, not
24 with respect to NRC, but with respect to FEMA.

25 MR. DIGNAN: Keller's not the bad guy after all.

1 THE WITNESS: (Cumming) And certainly the
2 conclusion, the paragraph under the word "conclusion" which
3 appears on page 11.

4 BY MR. BACKUS:

5 Q So on page nine you want to take primary
6 responsibility for the first paragraph on that page or the
7 whole page?

8 A (Cumming) There is a specific aspect to that
9 paragraph that I believe that I will be the prime witness on,
10 should that stay in the testimony.

11 Q And what part of this paragraph is that, NUREG-1210?

12 A (Cumming) The reference to NUREG-1210.

13 JUDGE SMITH: You'll be the prime witness on that?

14 THE WITNESS: (Cumming) With respect to a specific
15 aspect of that paragraph and its implications for FEMA's
16 position.

17 JUDGE SMITH: Well, what happens if we throw it out?

18 THE WITNESS: (Cumming) Then I won't have to worry
19 about it.

20 JUDGE SMITH: Very practical.

21 (Laughter)

22 MR. BACKUS: Your Honor, at this point I do think I
23 want to come back to the NUREG-1210 reference. Frankly, Mr.
24 Cumming and his background is that he is an attorney. He is an
25 agency attorney at the general counsel's office. He's saying

1 he's going to take particular responsibility for the
2 significance of NUREG-1210 to FEMA; I think that should be
3 stricken at this point. We're not going to go over the whole
4 discussion about NUREG-1210 being a training guidance and
5 specifically saying on its face, it's not a licensing document.

6 But now to have it sponsored primarily by the witness
7 who's the lawyer on the panel, I think this is a good time to
8 do something that will be of general benefit and that's get
9 NUREG-1210 entirely out of this case.

10 JUDGE SMITH: Well, let's -- before we run around
11 striking it, let's wait until we hear from Keller, and at least
12 until Mr. Cumming would have a chance to explain it.

13 MR. BACKUS: All right.

14 JUDGE SMITH: I get the impression he's not going to
15 get much of an argument from him.

16 MR. BACKUS: It doesn't sound like it.

17 JUDGE SMITH: But I think that counsel better check
18 with his other witness first.

19 MR. BACKUS: Right. I think that's a good point.

20 JUDGE SMITH: This is a good time --

21 MR. BACKUS: Just as long we know we're going to come
22 back to this and we're not foreclosed --

23 JUDGE SMITH: Yes, first order of business in the
24 morning.

25 MR. TURK: One comment as another lawyer from another

1 agency about NUREG-1210, It's document that's used in training
2 at Emmitsburg which is the FEMA National Training Center, among
3 other places.

4 MR. FLYNN: Could I clean up one piece of unfinished
5 business here.

6 JUDGE SMITH: Yes. And since you like to linger a
7 little bit, why don't you see if you can't arrive at your own
8 stipulation on 1210 in the testimony; is there any possibility
9 of that, do you think?

10 MR. OLESKEY: I guess there are.

11 MR. FLYNN: I would be glad to explore that, yes.

12 Your Honor, what Mr. Cumming suggested earlier that
13 we bind into the record the wording of the contention,
14 NH RER -- I'm sorry, NECNP contention, RERP-8 for ease of
15 reference. And the documents that he has handed me have some
16 handwritten notes on it and I think it would be inappropriate
17 to include all of that. But could I ask the indulgence of the
18 Board to take a minute to read in the wording of the
19 contention?

20 JUDGE SMITH: Yes, but I would -- can we do it
21 tomorrow. We'll have -- I didn't understand his point on that.
22 I understood that there was a mis- -- I think we need a better
23 explanation of what his concern is, so let's do it tomorrow
24 first thing and then we'll bind in the testimony tomorrow after
25 Keller gets here and we'll take that up.

1 MR. FLYNN: Yes, thank you.

2 JUDGE LINENBERGER: Mr. Flynn.

3 MR. FLYNN: Yes.

4 JUDGE LINENBERGER: I think implicit what the
5 Chairman said, but I'll make it explicit, could you amplify
6 tomorrow a little bit of the background for why these specific
7 contention matters are being offered now.

8 MR. FLYNN: Yes, I will do that first thing.

9 JUDGE SMITH: Okay, we're adjourned.

10 (Whereupon, at 5:03 p.m. the hearing was adjourned to
11 reconvene at 9:00 a.m. tomorrow morning, Thursday, June 16,
12 1988 at the same place.)

13

14

15

16

17

18

19

20

21

22

(Notice of appearance of

23

Mr. Scinto follows:)

24

25

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE, et al.

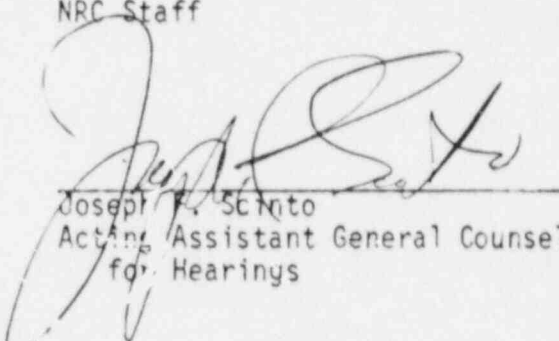
(Seabrook Station, Units 1 and 2)

} Docket Nos. 50-443 OL
50-444 OL
} Off-site Emergency Planning

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance on behalf of the NRC Staff in the captioned matter. In accordance with 10 C.F.R. Section 2.713(b), the following information is provided:

Name: Joseph F. Scinto
Address: U.S. Nuclear Regulatory Commission
Office of the General Counsel
Washington, DC 20555
Telephone Number: 301-492-1580
Admissions: Court of Appeals, State of New York
United States Court of Appeals,
2nd Circuit
Name of Party: NRC Staff



Joseph F. Scinto
Acting Assistant General Counsel
for Hearings

Dated at Rockville, Maryland
this 13th day of June, 1988

1 CERTIFICATE

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 15, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken electronically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the recording is a true and accurate record of the foregoing proceedings.

/s/ Kent Andrews
(Signature typed): KENT ANDREWS

Official Reporter
Heritage Reporting Corporation