

ORIGINAL

NRC PUBLIC DOCUMENT ROOM

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

DEPOSITION OF DAVID A. DURAND

Place - Midland, Michigan

Date - Monday, 14 May 1979

Pages 1-120

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

(121) 365 230
7907130093

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3

4 DEPOSITION OF DAVID A. DURAND
5

6 Dow Center
7 Patrick Road and Abbot Street
8 Building 2030
9 Executive Wing
10 Midland, Michigan
11 Monday, 14 May 1979

12 Deposition of DAVID A. DURAND, called for examination
13 at 3:50 p.m., pursuant to prehearing conference order of
14 the Atomic Safety and Licensing Board, before Helen M.
15 Rabbage, a notary public in and for the County of Midland,
16 State of Michigan, when were present on behalf of the
17 respective parties:
18

19 WILLIAM J. OLMSTEAD, Esq., Office of Executive Legal
20 Director, U. S. Nuclear Regulatory Commission,
21 Washington, D. C., on behalf of the NRC Regulatory
22 Staff.

23 WILLIAM C. POTTER, Jr., Esq., Fischer, Franklin, Ford,
24 Simon & Hogg, 1700 Guardian Building, Detroit,
25 Michigan; and
26 R. L. DAVIS, Esq., Michigan Division, Legal Department,
27 47 Building, Midland, Michigan 48640, on behalf of
28 Dow Chemical Company.

29 GERALD CHARNOFF, Esq., ALLEN WEISBARD, Esq., and
30 WILLIAM BRADFORD REYNOLDS, Esq., Shaw, Pittman,
31 Potts & Trowbridge, 1800 M. Street, N.W., Washington,
32 D. C. 20036, on behalf of Consumers Power Company.

33 RONALD G. ZAMARIN, Esq., Isham, Lincoln & Beale,
34 One First National Plaza, Chicago, Illinois 60603,
35 on behalf of Consumers Power Company.

C O N T E N T SWITNESS:DIRECT CROSS REDIRECT CROSS

David A. Durand

3

EXHIBITS:

(None.)

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 232

P R O C E E D I N G S

MR. OLMSTEAD: On the record.

Whereupon,

DAVID A. DURAND

was called as a witness and, having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MR. OLMSTEAD:

Q Would you state your full name, address and
occupation for the record?

A David A. Durand, 141 Spring Street, Route 6,
Midland, Michigan.

I'm an attorney for the Dow Chemical Company.

Q Do you hold the same position you held from
June 30, 1976 to June 1, 1977?

A I hold the same title. My duties have changed
considerably. I was an attorney then, I'm an attorney now,
but I'm now the labor attorney with the Dow Chemical
Company.

Q And what position and responsibilities did you
hold at the time of the June 30, 1976 to June 1, 1977
period?

A I was an attorney counselling the Michigan
Division at that time.

Q Throughout that period?

1 A Throughout that period, yes.

2 Q And what was your relationship to Lee Nute?

3 A Lee Nute was my superior.

4 Q To Lou Pribila?

5 A Lou Pribila and I were co-workers.

6 Q Milton Wessel?

7 A Milton Wessel I believe at that time he was
8 retained counsel for Dow Chemical.

9 Q And to Jim Hanes?

10 A Jim Hanes was vice president and general counsel,
11 Dow, US He would have been Lee's boss and my -- I guess
12 my big boss, as such.

13 Q How long have you been employed by Dow Chemical?

14 A A little over 20 years.

15 Q Throughout that period, have you been an attorney
16 with Dow Chemical?

17 A No. I became an attorney for Dow Chemical in
18 September of 1975.

19 Q Taking the Bar examination following that?

20 A Yes, I took the Bar exam sometime after that.
21 I assumed the title of attorney -- I took the Bar in
22 February of 1976.

23 Q When did you first become aware of the decision
24 of the District of Columbia Court of Appeals involving the
25 Midland Nuclear Facility?

1 A Probably soon after it was published. I'm not
2 sure of the date. Probably the latter part of 1976. I don't
3 know whether that's when it was published.

4 Q It came out in July of 1976.

5 A Okay. I probably became aware of it shortly
6 thereafter.

7 Q At that time did you have any responsibilities
8 concerning the ongoing negotiations between Dow and Consumers
9 Power Company on the Midland steam contract?

10 A None whatsoever.

11 Q At what time did you become aware that that
12 court's decision was going to require you to have some
13 involvement with regard to the Midland-Dow steam contract?

14 A Probably the day before the September 29, 1976
15 meeting between Mr. Wessel and Mr. Nute.

16 Q So up to that time you had had no involvement
17 with the Dow steam contract at all?

18 A That's correct.

19 Q So that would have been the attending of the
20 meeting of September 29, I believe it was, was the first
21 time that you had any involvement?

22 A Yes.

23 Q During the period following the time that you
24 had involvement on the Dow steam contract, what Dow
25 employees did you interact with?

1 A Lee Nute, Joe Temple, Connie Miller, who was
2 legal secretary, Jim Burroughs . . . there may have been
3 some other people. I don't recall right now at the moment.

4 Q Did you have any contact with Consumers Power
5 personnel?

6 A Yes.

7 Q Other than in the meetings at which you took
8 notes?

9 A No.

10 Q Did you have any contact with intervenors other
11 than Dow, Myron Cherry, Peter Flynn, Mary Sinclair, et al?

12 A I had some discussions during some of the
13 hearings in Chicago with Myron Cherry, chatted briefly from
14 time to time, and Mrs. Sinclair.

15 Q During the hearings?

16 A Well, during the breaks and stuff, yes.

17 Q Other than at the hearings, any phone conversations
18 with them?

19 A I had a phone conversation with Myron Cherry
20 sometime . . . the date doesn't . . . sometime after that
21 9-29 meeting. It might have been sometime in October of 1976.
22 He called me at home, or I got a message that he wanted to
23 talk to either myself or Mr. Nute or Mr. Wessel. And I
24 called him back from home. He was in Chicago. We had a
25 lengthy telephone conversation. He gave me some data that

1 he wanted documents on and stuff, and I prepared just a
2 summary of my phone conversation. I think it was on a
3 Saturday or a Sunday.

4 Q So there is a record of that phone conversation?

5 A I think there is. I think it's listed among
6 the documents.

7 Q Did you have an occasion to talk with personnel
8 representing the NRC Staff at that time?

9 A I don't believe so. I think other than just
10 chatting with them during breaks and stuff.

11 Q Did you have occasion, once you were involved,
12 to attend meetings within Dow Chemical Company to the
13 exclusion of other parties in the proceeding concerning the
14 nuclear steam contract?

15 A Like the meetings, say, with Consumers Power
16 retained counsel or their counsel?

17 Q Right.

18 A I think as an ongoing thing I met with my boss,
19 Lee Nute, and talked about things.

20 Q We'll go into the meeting notes that you took
21 in some detail later, but I just would like to ask the
22 general question about the discussions which went on
23 concerning the testimony that Dow personnel might give
24 concerning contract relations with Consumers Power Company,
25 and ask the question: Have you ever expressed any personal

1 views as to the issue of the testimony, as to who should
2 give it, what should be in it?

3 A Myself, no.

4 Q What would you describe as the general attitude
5 among the Dow legal staff toward the NRC Staff in the
6 forthcoming hearings?

7 MR. POTTER: That's an awfully broad question.

8 MR. OLMSTEAD: I know. I just pointed out it's
9 a general question.

10 MR. POTTER: You mean like personal?

11 MR. OLMSTEAD: I'm trying to get a feeling for
12 the legal staff's view of the parties in the proceeding as
13 background, more than anything else.

14 MR. POTTER: Are you talking about in preparation
15 for the suspension hearings?

16 MR. OLMSTEAD: For the suspension hearings, the
17 general preparation that was going on.

18 THE WITNESS: I think at the time, I'm not so
19 sure you're talking -- I'm relating now only about
20 discussions or opinions that Dow employees may have had.
21 I'm not so sure that, at least before we had any contact
22 with them, whether they had any opinion at all, because
23 I'm not so sure that we -- I can't recall that we had had
24 any contact with them, which is to say I'm not so sure they
25 had any opinion at all, good or bad.

1 Q Okay. Well, then, what about intervenors other
2 than Dow? Myron Cherry, Peter Flynn and Mary Sinclair.
3 Was there any prevailing attitude, view, belief, commonly
4 held assumptions concerning their participation?

5 A As to Myron Cherry, I think the opinion was
6 held that he was pretty abrasive, pretty thorough. They
7 could expect to have him participate in such a manner that
8 he'd try to bring out a complete record, as such, tipping
9 to his advantage. So that the preparation would have had
10 to have been complete to prepare for cross-examination, and
11 that sort of stuff.

12 Mary Sinclair, I think the opinion was that
13 she had been on this thing for quite some time, and they
14 weren't really sure if she was -- her position was justified,
15 valid or not. I remember at times some people expressed
16 some frustration with the fact that her participation had
17 caused delay and stuff.

18 Q Either as to the NRC Staff or intervenors other
19 than Dow, do you think there was any personal hostility
20 among any of the employees of Dow toward any of these
21 people?

22 A No, I really don't think so. In fact, in
23 relation to Myron Cherry people that I remember talking
24 about him had maybe sort of a grudging respect at times.
25 But hostility, no, either to Myron Cherry or intervenors.

1 Q With regard to Consumers Power Company personnel
2 what was the generally held feelings toward them?

3 A The only person I think -- Consumers Power
4 personnel -- that I'd heard anything about was their counsel,
5 Judd Bacon. The consensus -- not the consensus -- at least
6 one person felt that they didn't feel that they could
7 trust him, or they didn't have respect for him, because of
8 prior dealing with him during negotiations and stuff.

9 Q And who was that?

10 A Lee Nute.

11 Q Was it generally believed by the legal staff
12 coming up to the remanded hearings that the Commission
13 would quickly handle the remanded proceedings, take some
14 time, suspend the license or not suspend the license? Was
15 there any general feeling about what might happen as a
16 result of the remand proceedings?

17 A Well, we depended a lot on our feelings for
18 feedback from the Consumers Power people, and their retained
19 counsel, specifically Rex Renfrow and Dave Rosso, just to
20 get a feel for, you know, how they might go, how long it
21 might take, and what direction they might move in.

22 I think the general opinion was they'd probably
23 take some time -- really not as much time as they did --
24 but they'd take some time. As to whether or not they would
25 result in suspension being granted, I guess we felt that it

1 wouldn't be granted.

2 Q Did you -- did anyone that you were associated
3 with with regard to these issues on the staff have any
4 personal feelings about Mr. Renfrow or Mr. Rosso, particular-
5 ly following some of the meetings that you held?

6 A I think in regards to Mr. Renfrow some members
7 of the legal staff felt that -- well, they knew that he had
8 worked for the NRC before he came to the firm of Isham,
9 Lincoln & Beale, and I guess particularly after some of
10 the sessions we had with him in preparing testimony and
11 stuff, they weren't really sure if, you know, he had his
12 act together at times.

13 I think a lot of that stemmed from maybe the
14 way he proceeded to get into issues and stuff, but then at
15 other times they expressed maybe surprise that the guy
16 got into things as deep as he did in some areas.

17 Maybe the consensus was that -- I guess it
18 depended on what kind of subject he was dealing with.

19 Q Did anybody express the belief during that
20 period of time leading up to the first of the hearings in
21 December of 1976 that Consumers' license was in serious
22 jeopardy?

23 MR. CHARNOFF: This is at what time?

24 MR. OLMSTEAD: This is between September 29,
25 1976 and November 30, 1976, the first day of the hearings.

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 241

1 MR. REYNOLDS: And the question was what? Did
2 anybody feel -- I'm sorry, I didn't --

3 MR. POTTER: Let's read the question back. The
4 witness isn't going to remember what it is now.

5 (Whereupon, the reporter read from the record,
6 as requested.)

7 THE WITNESS: We're talking September 29 to
8 November 30, before the first hearing was held. I really
9 don't remember anyone saying that. In fact, I remember the
10 opposite, where they felt pretty confident that they could
11 meet any challenges that might come out during the hearings.

12 BY MR. OLMSTEAD:

13 Q Before we go into the rest of this deposition,
14 have you had any conversations with Mr. Nute concerning
15 this deposition today?

16 A I talked to Lee about 2, 2-1/2, or 3 weeks ago,
17 just about the fact that we were potential witnesses. Well,
18 in fact, at the time I didn't know I was going to be
19 deposed today. So the answer to that is no.

20 Q Okay. I have requested counsel and the other
21 parties in the proceeding, pursuant to Rule 615 of the
22 Federal Rules of Procedure that no discussions of the
23 content of the depositions will be had with other people
24 who are going to be deposed concerning this matter, which
25 we have all mutually agreed to, particularly as among you,

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 242

1 Mr. Nute and Mr. Wessel.

2 A All right.

3 Q You took stenographic notes at a number of
4 meetings between Dow and Consumers, is that correct?

5 A Yes, sir.

6 Q Are you a trained stenographer?

7 A What do you mean by trained stenographer?

8 Q Have you had shorthand training?

9 A Yes. I took shorthand in high school 20 years
10 ago, and I've used it ever since.. I've used it extensively
11 in law school, and I use it now for meetings.

12 I rely on it quite a bit for note taking and
13 stuff.

14 Q Is that Gregg shorthand?

15 A Yes, Gregg simplified.

16 Q You haven't had any other court reporting
17 experience or special stenographic experience beyond -- or
18 training beyond your high school?

19 A No. For a period there about 15 years ago I
20 did take some specialized training for court reporting,
21 but never followed through on it, and really haven't
22 retained much of it.

23 Let me clarify that. I'm talking about the
24 machine, not the manual taking of notes.

25 Q Do you feel you can take a verbatim transcript?

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 243

1 A I think it depends, like most people, it depends
2 on the speed, who is transcribing, and how many people are
3 talking at the same time. If you keep it down to maybe
4 100 words a minute I could take it verbatim, if it's one
5 person. If you put two or three people in there talking
6 well above 100, I doubt very seriously if I could take it
7 verbatim.

8 Q Do you feel you have any independent memory of
9 the meetings between Consumers and Dow Chemical which you
10 attended and took notes at, beyond the notes that you've
11 taken?

12 A Is your question do I remember something that
13 isn't in my notes from the meeting?

14 Q Yes. Are you aware of things that you know that
15 are not in --

16 A That went on during the meeting?

17 Q Right.

18 A Generally -- no, I'm not aware of anything,
19 because when I was taking notes it pretty well occupied my
20 full time.

21 Q Did someone in Dow's legal staff suggest to you
22 that you attempt a verbatim transcript of those meetings?

23 A Or. Dow's legal staff?

24 Q Right.

25 A No.

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 244

1 Q Did Mr. Wessel suggest that you attempt a verbatim
2 transcript?

3 A Yes.

4 Q Why?

5 A As I testified earlier, the first involvement I
6 had in this situation was the morning of the first meeting
7 on September 29, 1976.

8 Mr. Wessel and Mr. Nute called me into Mr. Nute's
9 office and said we're going into a meeting shortly with
10 retained counsel for Consumers Power, and -- this is Mr.
11 Nute talking now -- and he said, since I was involved in
12 a meeting like a week and a half ago or so, it's possible
13 that I might be called as a witness in some of the hearings,
14 and we'd like to bring somebody in on the board to be aware
15 of what's going on so that they might be able to step in
16 and cover for me if I'm called as a witness.

17 And that's what my role was, as explained by
18 Mr. Nute and Mr. Wessel.

19 As to why I should take verbatim notes, I believe
20 at the time they both knew that I had the capability to
21 take shorthand and sat me down and asked me to keep notes
22 of the proceedings and meetings between counsel.

23 I think the only reason that they expressed to
24 me for taking verbatim was to make sure that an accurate
25 record of what went on during the meetings in preparation of

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 245

1 testimony was kept.

2 Q Did anybody suggest that it wasn't a good idea
3 to take verbatim notes?

4 A No.

5 Q Or did you say you didn't think it was a good
6 idea?

7 A No.

8 Q Was there anybody else present besides Mr. Wessel
9 and Mr. Nute and yourself at this discussion?

10 A No.

11 Q Were these notes distributed after you finished
12 taking them?

13 A It seems to me the first notes I took I sent a
14 copy of to Mr. Wessel. We talked about them. Let's see ...
15 I don't think I generally distributed my notes, no.

16 Q When the meeting commenced with Consumers Power
17 the first time that you were there to take notes, was
18 Consumers made aware of your attempt to take a verbatim
19 transcript of the meeting?

20 A You know, I really don't recall.

21 Q Had they been made aware, would that have been
22 in your notes?

23 A Quite possibly. It should have been.

24 Q Were you aware of anybody from Consumers attempting
25 to take notes?

1 A No, not really. I don't believe that Mr. Renfrow
2 and Mr. Bacon took many notes.

3 Q In the course of the period when you were taking
4 these notes did you ever hear it stated, suggested or
5 otherwise considered that Dow would be better off if
6 Consumers lost its construction permit?

7 A Would you state that again?

8 Q Did you ever hear it stated by other Dow personnel
9 that you interacted with during this period of time leading
10 up to the hearings, suggested or in any other way considered
11 that Dow would be better off if Consumers lost its
12 construction permit?

13 A I really don't recall.

14 Q Do you recall whether the legal staff, to your
15 knowledge, was asked to determine whether Dow could take
16 a position adverse to Consumers in NRC proceedings?

17 A Would you rephrase the first part of that? I'm
18 confused as to who you're --

19 Q Well, are you aware --

20 A Rephrase the whole thing, if you would. Restate
21 it.

22 Q All right. Are you aware of anyone employed by
23 Dow being asked -- or Mr. Wessel --

24 A Can we assume Mr. Wessel is in there?

25 Q Yes.

1 A Okay.

2 Q -- to determine whether Dow could take a position
3 adverse to Consumers in the NRC proceeding?

4 A I really don't recall.

5 Q To your knowledge did the legal staff, including
6 Mr. Wessel, whether requested or not, review the contract
7 to determine whether a position adverse to Consumers in NRC
8 proceedings was feasible?

9 MR. POTTER: Just a second. I'm a little
10 concerned by your use of the phrase legal staff. Are you
11 meaning those over with the Michigan Division? Because I'm
12 not certain -- if you're trying to include all the Dow
13 Chemical Company --

14 MR. OLMSTEAD: I'm just asking whether, to his
15 knowledge, anyone on the Dow legal staff --

16 THE WITNESS: Again, I don't recall.

17 MR. POTTER: Wait, please --

18 THE WITNESS: That doesn't trigger anything.

19 MR. POTTER: Before we proceed any further with
20 questions along that line, may I ask you to please define
21 for the record what do you deem to be included in the legal
22 staff?

23 MR. OLMSTEAD: I primarily deem it to include
24 the people we've identified in this proceeding. But because
25 of the confusion from time to time between Dow Midland, and

1 Dow USA, and as to who represented whom, I'm really talking
2 about the legal staff that had something to do with the
3 Dow-Consumers contract, whether or not they worked for Dow
4 Midland or Dow USA during this period of time. And I'm
5 really asking only to have Mr. Durand tell me if he knows
6 the answer to the question to his knowledge, not saying that
7 it is true or it's not true that nobody did.

8 MR. POTTER: Well, as I say, for purposes of the
9 record all I'm trying to make clear is that there were two,
10 three or four lawyers at any one time working over in the
11 Michigan -- Building 47. When you use the word legal staff,
12 I'm just concerned, and I want this record to indicate that
13 Mr. Durand is speaking for the lawyers that work over in
14 the main building. Lord knows, he has no idea what's
15 going on --

16 MR. OLMSTEAD: He's only speaking for the lawyers
17 with whom he had contact and would have reason to know
18 whether they undertook such an analysis or not.

19 THE WITNESS: Okay. Would you restate that
20 question?

21 BY MR. OLMSTEAD:

22 Q Based on our discussion as to what the legal
23 staff was, did any lawyer involved with the Dow-Consumers
24 steam contract, to your knowledge, analyze the Dow-Consumers
25 contract with a view to determine whether a position adverse

1 to Consumers in NRC proceedings was feasible?

2 A I believe that one of the legal staff did review
3 the contract with that purpose in mind.

4 Q And who?

5 A It might have been -- I think Lee Nute undertook
6 an effort to review that. I guess to testify to my know-
7 ledge the only thing I remember is someone mentioned the
8 fact that a review had been conducted and the opinion was
9 that we shouldn't take a contrary position during the
10 hearings.

11 Q Okay.

12 A As to the extent of it and everything else, I
13 really have no knowledge of that.

14 Q To your knowledge, what objective did the lawyers
15 with whom you worked, employed by Dow, feel that they had
16 to accomplish in order to preserve Dow's options while
17 fulfilling the contract's technical terms?

18 Now, that phrase is one that Mr. Wessel used many
19 times throughout the hearing, that Dow had reserved its
20 options under the contract.

21 A This thing gets a little involved. The problem
22 was, in this entire process, I think because of the review
23 that came out as to what our obligations were under the
24 contract to Consumers Power, we had the obligation to support
25 them in the hearings, but we also had an obligation to Dow

1 -- we at Dow had an obligation to Dow to make sure that we
2 had energy when we needed it, whether it came from the
3 nuclear power plant or from our own power plants as such.

4 So the problem we ran into was supporting
5 Consumers Power as, I guess, the contract was interpreted.
6 We had that obligation too. But at the same time, protecting
7 our future needs as such.

8 Q So would it be fair to say that there were those
9 among the lawyers working on this issue with whom you were
10 familiar who felt they had a conflicting duty?

11 A Definitely.

12 The other side of it was that we at that time
13 didn't feel that we were parties. The record will reflect
14 that we tried to withdraw from the proceedings, and that
15 was denied. We then just assumed that we were supplying
16 information to Consumers to support their effort.

17 Q Do you know why Dow decided to attempt to
18 withdraw from the proceeding?

19 MR. POTTER: I'm going to have to interpose an
20 objection. It would have to be based on hearsay at that
21 point, because I think he said his first involvement was
22 September 23, 1976, and I'm not really certain from this
23 record, but I think they had withdrawn as a party before
24 that. I don't think he's a witness who can answer that.

25 MR. OLMSTEAD: Well, that's true, they had

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 251

1 withdrawn from the Court of Appeals proceeding, but they
2 had not appeared before the Nuclear Regulatory Commission
3 Licensing Board and made any statement of position to that
4 Board at that time.

5 That didn't come until later.

6 THE WITNESS: The motion to withdraw from the
7 Court of Appeals was felt to be a withdrawal from the whole
8 thing, and if you go back and review the transcript that
9 was created in Chicago during another motion to withdraw,
10 we just felt that we had been withdrawn as a party.

11 BY MR. OLMSTEAD:

12 Q But you felt that you were going to have to
13 supply witnesses for the NRC Licensing proceeding?

14 A Yes, because of our contractual duty to support
15 Consumers in the hearings.

16 Q And that there was a certain conflict in doing
17 even that much?

18 A A conflict only in that the other side of the
19 sticky part of the problem was that ongoing negotiations --
20 negotiations were continuing between Consumers and Dow,
21 and there was information we had which was part of our
22 negotiating strategy as such that we felt was very sensitive,
23 and we really didn't want that to be discovered, and we
24 didn't feel we had an obligation to give that to Consumers
25 because it would either prejudice or compromise our

1 negotiating position in the future.

2 Q And the corollary of that, of course, would be
3 if you didn't give it to Consumers, you wouldn't give it
4 to the Board either.

5 A Without a subpoena as such.

6 And I remember very vividly Mr. Wessel being
7 very concerned about having to share information that would
8 compromise the negotiating strategy in the future, but at
9 the same time not wanting to fail to support Consumers in
10 the hearings because of our contractual commitment.

11 Q One last question of a general type:

12 Was it ever suggested by anyone employed by
13 Dow, either contract relationship or employee relationship,
14 to your knowledge, that Dow might, by doing the minimum
15 possible under the contract achieve the suspension of the
16 contract and thus relieve itself of liability under the
17 contract?

18 A I don't remember anybody saying that.

19 Q Do you still have your stenographic notes or
20 shorthand notes of the September 29, 1976 meeting?

21 A The actual notes?

22 Q Yes.

23 A Yes, I do.

24 Q How many pages are there of those notes?

25 A I took them on a legal pad. I think the thing

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 253

1 probably runs -- we're talking actually notes, now, we're
2 not talking about the typed finished copy as such --

3 Q Right.

4 A I think it was a full legal pad, probably on one
5 side and started down several pages of the reverse side,
6 which condenses down -- it condensed down to 19 or 20
7 typewritten pages.

8 Q Did you have the typewritten stenographic notes
9 of the 9-29 meeting typed up verbatim?

10 A Verbatim of what I had, or verbatim of --

11 Q Right, as you took them.

12 A No, as I stated, in the final copy what I did, I
13 looked through -- for the most part it was verbatim, but
14 generally it tends to take on a summary of what went on.

15 Q The notes that were put in in the record of the
16 September 29 meeting as Attachment G to Consumers motion for
17 summary disposition in this latest round of proceedings, is
18 19 pages long. Is that the only copy of those notes that
19 you had typed up?

20 A It seems to me I typed -- and this was in
21 reference to me trying to see if I captured everything
22 verbatim -- I went through my notes and typ . . . let's
23 see, I typed up a copy that ran maybe more pages -- no, I
24 typed up those notes and gave them to Mr. Wessel for him
25 to get an idea as to whether or not, since, (1) I was new

1 to it, and I didn't really understand what was going on. I
2 did have stenographic ability, but I wasn't -- in fact, I
3 knew at the time I couldn't take notes verbatim from the way
4 the thing turned into. We had like four or five people in
5 the room, everybody talking back and forth.

6 Q Do you still have a copy of the notes that you
7 furnished to Mr. Wessel?

8 A Do I? Yes. Or do I? I'll have to check.

9 Q I'd like a copy.

10 A As I said before, I don't know if that's the
11 first -- if that's the same as my finished. I'd have to
12 check.

13 Q I can refresh your memory here in just a moment.
14 Mr. Wessel wrote you a letter --

15 A Yes.

16 Q I don't know right offhand where it is.

17 A It seems to me that letter, together with the
18 attachment, was made a part of the documents.

19 Q What I have is a letter to you dated October 5,
20 1976.

21 (Document handed to the witness.)

22 A Right.

23 MR. CHARNOFF: October what was that?

24 MR. OLMSTEAD: October 5, 1976.

25 MR. CHARNOFF: Okay.

1 BY MR. OLMSTEAD:

2 Q And it refers in there to 26 pages of typed notes.

3 Now, as near as I can determine -- I may be
4 wrong -- but I don't think we've been furnished a copy of
5 the 26-page version.

6 A I thought you had.

7 Q As you know, I haven't been in this case all
8 along, and that's what I can't find. I have the 19-page
9 version.

10 Do you have a copy of the 26-page version?

11 MR. CHARNOFF: No.

12 THE WITNESS: Is there one there?

13 MR. POTTER: Let's go off the record.

14 (Discussion off the record.)

15 MR. OLMSTEAD: Back on the record.

16 BY MR. OLMSTEAD:

17 Q I think we've ascertained that there's another
18 version of the September 29, 1976 notes, which is in more
19 of a verbatim form, or an attempt to be verbatim form.

20 A Yes. But your question was do I still have that,
21 and I said no, I'd have to go back and check. And I was
22 under the assumption that it was part of the record.

23 As far as I know, it's still in my file, because
24 everything I created in this effort I've never destroyed.
25 So it should be there.

Acme Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 256

1 Q But if it's not there, your stenographic notes
2 are there?

3 A Yes.

4 Q And they could be --

5 A Yes.

6 Q Now, in this 10-5-76 letter he references a
7 meeting of September 30. I assume that he was referring to
8 the September 29 meeting?

9 A Yes. We had no meeting on September 30.

10 Q Okay.

11 Now, this may be an unfair question, and I'll
12 hold it if it is. But since there was a more elaborate
13 version which Mr. Wessel found to be unsatisfactory for
14 the purposes that he had in mind -- and I won't ask you what
15 those are at the moment -- do you recall essentially what
16 you took out of the memorandum to files that you ultimately
17 wrote that was in the longer version?

18 A What I did, as I stated earlier, was summarized
19 the conversations so that the final copy in a sense would
20 make sense.

21 You know, if you go back to my stenographic notes
22 and take down everything I took and just put it in there,
23 a person would have trouble I think making sense out of
24 some of it, because of the way it jumped back and forth,
25 together with my inexperience in that first meeting as such.

1 Q Now, in that letter Mr. Wessel says to you
2 there's really no way in which they can be modified to do
3 what we had hoped to.

4 Do you know what he meant by modified?

5 A I really don't. I may have at the time. I don't
6 recall now. Mr. Wessel may remember.

7 Q Do you know what it was that he had hoped?

8 A What he had hoped to accomplish was a verbatim
9 record of the meetings, and verbatim to me, and possibly to
10 most people if they look the definition up, is you capture
11 everything that is said in that room, much like our court
12 reporter is doing today.

13 And I think in going through there, he understood
14 that I wasn't really capable of doing that, for several
15 reasons. And he didn't want to mislead people into thinking
16 that I had done that.

17 Q Okay.

18 In the September 29 memorandum to files, attach-
19 ment B to Consumers summary disposition letters, discussing
20 that meeting now for a minute did you attend the entire
21 meeting on that date?

22 A Do you mean was I there every second that the
23 meeting was going on?

24 Q Well, were you there for 99 percent of it?

25 A Probably. When I took -- I think at times,

1 because of the nature of the meeting, and people could get
2 up and leave, get up maybe for a break, phone call or
3 whatever.

4 Q Would it be possible for you to, after reviewing
5 your shorthand notes, look at your memo to files and be
6 able to determine which portions of the meeting you were
7 not present at?

8 A No, it wouldn't be. I think probably 95, 96 --
9 a high percentage of the time I was there. But I did at
10 times leave the room, you know, for whatever reason.

11 Q Okay.

12 If you'll look at those now, on page 3, the last
13 paragraph --

14 A You're talking of the --

15 Q The September 29 memorandum to files.

16 A Page 3?

17 Q Right.

18 A What paragraph?

19 Q Last paragraph on that page.

20 A All right. Would you like me to read it to
21 myself?

22 Q If you wish.

23 A (Witness reading document.)

24 Q The first sentence there says:

25 "Milt stated at this point Dow is not prepared

1 to give anyone information on what went on during the
2 proceedings."

3 What proceedings is he referring to?

4 A I think I'd be guessing. I really don't
5 remember.

6 I think if you read the rest of the paragraph ...
7 no, I'd hate to assume that's what it meant. The rest of
8 the paragraph deals with, as I stated earlier, the delicacy
9 of the ongoing negotiations and stuff.

10 Whether or not he meant by proceedings the
11 previous negotiations or whatever, I really couldn't tell
12 you.

13 Q Okay.

14 Going to page 6 of that memorandum, here we have
15 a discussion by Rex Renfrow. Second paragraph.

16 A "Rex stated..."?

17 Q Right.

18 If you read that on through the end of the page
19 and over to the first two lines of page 7 --

20 A Okay.

21 Q Now, if I understand your answers to some of my
22 more general questions and your last response, essentially
23 there was concern about prejudicing the negotiating position
24 of Consumers and Dow in the revised negotiations on the
25 nuclear steam contract, while at the same time fulfilling

1 contractual obligations that then existed in the NRC proceed-
2 ings.

3 A To support Consumers.

4 Q To support Consumers.

5 A Yes.

6 Q So this discussion here deals with that issue in
7 varying degrees, as I understand it. Is that correct?

8 A That's my understanding of it, yes.

9 Q Okay.

10 Then the next to the last sentence on that page,
11 it says:

12 "Milt pointed out that if Dow was requested to
13 go further they could run into problems."

14 Go further than what?

15 A That, there again, is a reference to going
16 further into information, even with ongoing negotiations.
17 To get a better handle on this Milt was agreeable to give
18 them information that stayed away from that kind of informa-
19 tion.

20 Q But he did not want to provide to the NRC
21 Licensing Board information concerning the ongoing negotiations,
22 is that correct?

23 A No. He didn't want to give Consumers Power the
24 information.

25 Q And by not giving -- he was afraid if he gave it

1 to the NRC that Consumers Power would get it, or --

2 A Well, he was concerned that if Myron Cherry asked
3 for it and it was a matter of discovery, then it would get
4 out and Dow would be at a disadvantage because now Consumers
5 Power has their information and Dow doesn't have Consumers
6 Power's information, all of it pertaining to ongoing
7 negotiations.

8 Q Okay.

9 I'd like to go to the third paragraph on page
10 9.

11 A If I may clarify something in response to your
12 question, Milt never had a problem with sharing information
13 with the NRC or the Licensing Board if it were done properly
14 in terms of a subpoena, or whatever.

15 Q But he wanted the information to be subpoenaed?

16 A Yes. He was not going to give it freely.

17 Q He didn't want it volunteered?

18 A Right. The information that was sensitive in
19 his eyes, that might have had an impact on future negotia-
20 tions.

21 Page 9?

22 Q Yes, and the third paragraph.

23 A Right. (Witness reviewing document.)

24 MR. OLMSTEAD: Would you show him a copy of I
25 believe it's Lee Nute's notes of the same date. I would

1 show him mine, but --

2 MR. POTTER: I'd rather you'd show him yours,
3 because he's got the copy, and you're asking the questions.
4 I don't know what you're referring to. So I think if you
5 could show him yours --

6 MR. OLMSTEAD: Okay.

7 (Document handed to the witness.)

8 BY MR. OLMSTEAD:

9 Q Read paragraph D, page 2, of Mr. Nute's notes.

10 A This is notes of the same date, 9-29?

11 Q Yes. 9-29-76. And if you'll look over on page
12 3 -- no, I'm referring to page 2, item D, just before Roman
13 numeral III, Roman numeral II.D.

14 A Okay.

15 Q Would that reference in the Nute notes be the
16 same as the reference in your expanded notes that I pointed
17 out to you at page 9?

18 A It would be difficult for me to say yes on that.
19 The subject seems to be the same in that, you know, it
20 deals with information about negotiations.

21 As I said, the other side of the rock that we
22 were faced up against was the contractual legal obligation
23 to support Consumers, you know, with our information. Which
24 is to say that if they asked us for information that we had,
25 that they felt they needed for the hearing, and that

1 particular piece of information caused them to lose -- I
2 mean give them difficulty in the hearing, would Consumers
3 come back at a later date and give us problems because we
4 supplied information.

5 So taking the preceding question, which was, I
6 recognize, some time ago, where you said that Mr. Wessel
7 was concerned about putting the negotiating position before
8 the Board without a subpoena --

9 A Yes.

10 Q -- and this discussion, as represented in Mr.
11 Nute's and in your notes, would it be -- do you want to look
12 at Mr. Nute's again?

13 A Go ahead.

14 Q -- would it be fair to conclude that Dow was
15 urging Consumers to put less information with regard to
16 the ongoing contract negotiations in the testimony than
17 Consumers, at least at this date, was inclined to put in?

18 A For one thing, I think Milt felt that a lot of
19 the information concerning ongoing negotiations was really
20 irrelevant, in that that had to do with negotiations that
21 weren't really part of the hearing that we were at.

22 From that standpoint we felt that possibly less
23 information would protect our position in ongoing
24 negotiations.

25 Q All right. On page 10 of your notes -- and I'm

1 not going to try to pull them all out myself, but I'd also
2 like you to refer to -- page 10, the first paragraph.

3 A The first full paragraph?

4 Q The one that starts, "It is stated that..."

5 A Okay.

6 Q Page 15. Here I believe Mr. Temple was present.

7 A 15?

8 Q Yes. And that's the third paragraph. I'm
9 counting each of those lines on page 15 as a paragraph, so
10 it's the first big paragraph.

11 A "Milt told Joe..."

12 Q Right. And then on your 11-1-76 notes, page 3,
13 last paragraph --

14 A Okay.

15 Q And in your 11-15-76 notes --

16 MR. POTTER: What was the reference in the 11-1?

17 MR. OLMSTEAD: Page 3, last paragraph.

18 BY MR. OLMSTEAD:

19 Q 11-15, last paragraph --

20 A Wait a minute. 11-15, page what?

21 Q Page 1, last paragraph.

22 A "Discussion to see whether or not Dow was
23 initiating any legal action?"

24 Q Right.

25 Now, in all of those paragraphs Mr. Wessel seems

1 to be indicating that it is feasible for Dow to sue
2 Consumers.

3 MR. POTTER: If you're going to inquire about
4 these paragraphs, I want him to take time to read the
5 paragraphs.

6 MR. OLMSTEAD: I thought he had just read them.
7 THE WITNESS: Oh, no. I was just trying to find
8 them.

9 MR. OLMSTEAD: All right. Please read them.
10 (Witness reviewing documents.)

11 THE WITNESS: Okay.

12 BY MR. OLMSTEAD:

13 Q All right. As I read those statement all along,
14 although those are three different days at four different
15 places, Mr. Wessel was making it clear that Dow felt they
16 had a cause of action for a breach of contract against
17 Consumers Power.

18 Do you think that's a fair reading of those
19 references?

20 A He felt there was a possibility, is my interpreta-
21 tion.

22 Q And he, in fact, was saying we may have to sue
23 you?

24 A Yes.

25 Q Would that be a threat?

1 A A threat?

2 MR. POTTER: I'm going to object. If he communi-
3 cated the information, Mr. Durand can certainly answer yes
4 or no, whether such a statement was made. Now, whether it
5 was a threat or something is in the eyes of the beholder,
6 and I don't think he's the one that can answer that question.

7 BY MR. OLMSTEAD:

8 Q Was Dow, to your knowledge, considering suing
9 Consumers on the contract?

10 A I have no knowledge of that.

11 Q Had anybody that you were aware of prepared any
12 legal papers for filing of breach of contract?

13 A No one that I was aware of.

14 Q Okay.

15 I want to go back now to the 11-29 notes. I
16 think it's page 10.

17 MR. CHARNOFF: 11-29 or 9-29?

18 MR. OLMSTEAD: 9-29. I'm sorry. Page 10, the
19 middle of the large paragraph, the middle paragraph there,
20 where it says, "Rex then said he would like to get in the
21 Michigan and Dow US reviews and why these decisions were
22 reached."

23 THE WITNESS: Right.

24 BY MR. OLMSTEAD:

25 Q I don't really get a flavor from your notes that

1 they ever got into that during this discussion.

2 A During that day?

3 Q Yes.

4 A They may not have. They got into it I think
5 later.

6 Q Okay. I just wondered if there was more dis-
7 cussion on that day, particularly by Dow personnel, concern-
8 ing the Michigan Division vs the Dow corporate position.

9 A I'd say if it's not in my notes and my summaries
10 of such, no, they didn't.

11 Q Okay.

12 Page 11.

13 A Same notes?

14 Q Same notes.

15 A Okay.

16 Q Second paragraph, second sentence. It says:

17 "Milt pointed out that Joe has a great reluctance
18 to say anything."

19 A Yes.

20 Q What reluctance did Joe Temple have?

21 MR. POTTER: Again, I'm going to have to inter-
22 pose an objection. I think it's hearsay at this point,
23 because as I read that statement --

24 MR. OLMSTEAD: All these notes are hearsay.

25 MR. POTTER: No they're not. He can state whether

1 or not Joe Temple was present. But I don't think Joe Temple
2 was present during this time of the meeting, and you're
3 asking him to tell you what Milt Wessel meant when he said
4 what Joe Temple said, and I don't think that's competent.

5 MR. OLMSTEAD: I'm asking him if there was a
6 further discussion of just what this reluctance was that
7 Milt says Joe Temple has at this meeting.

8 THE WITNESS: I think they got into it later,
9 within either this -- within these notes as such.

10 BY MR. OLMSTEAD:

11 Q Were you present at any conversations where Joe
12 Temple stated the reluctance to testify on behalf of Dow
13 regarding this matter?

14 A I think I remember Joe Temple saying that, you
15 know, if there's any way he could get out of it, he would.
16 But he expressed a reason at that time that -- I think he
17 just didn't want -- you know, if he didn't have to testify,
18 it would have been just fine, because of his -- I think, just
19 like a lot of other people -- just having to get up and
20 testify.

21 Q Would you say that lawyers for Consumers might
22 have gotten the impression that Joe Temple was not a willing
23 witness?

24 MR. POTTER: Again, I think you've got to ask
25 Consumers' lawyers that question. I don't see how he can

1 answer the question.

2 BY MR. OLMSTEAD:

3 Q Did you get an impression that Joe Temple was not
4 a willing witness?

5 A I think it goes back to the answer I just gave
6 you. When we first got into the testimony, talking to Joe
7 Temple about it, I got the impression initially that the
8 reluctance was there because it was just -- you know,
9 testifying was not distasteful, but it was something that
10 people don't normally like to go through.

11 That was the initial impression I got. But as
12 we got more into preparing him and stuff, it became apparent
13 that he knew what he was talking about. I can recall that
14 his feeling about his reluctance wasn't there anymore as
15 such.

16 Q But at this particular time, had there been any
17 discussions with Joe Temple, to your knowledge, leading up
18 to this meeting? I mean obviously Milt Wessel must have
19 talked to Joe Temple, but were you aware of any conversations
20 between lawyers and Joe Temple before this meeting?

21 A No. I don't recall.

22 Q Do you remember whether Mr. Temple had been
23 told that if he testified as to his true feelings on the
24 contract that Dow could be sued for not supporting Consumers?

25 A I don't recall that he was told that.

1 Q He wasn't told that, to your knowledge?

2 A Not that I can recall.

3 Q On page 13, second paragraph.

4 A Same meeting?

5 Q Right. The last sentence of the second paragraph,
6 "Judd pointed out that he wanted to know why Joe
7 had made the statements he made to the Press Club."

8 And then there are no further notes. Nobody
9 responded to that request, or...?

10 A I think if you read the succeeding paragraph --

11 Q In other words, Milt, rather than get into the
12 statements that he made at the Press Club, essentially
13 raised objections to that line of testimony being even
14 included in Temple's presentation?

15 A Yes, I think it goes to Milt wanting to keep Judd
16 Bacon out of the area of either personal feelings that had
17 no relevance to what we were doing, or information that was
18 sensitive to ongoing negotiations.

19 Q Okay, on page 14, in the last paragraph, third
20 sentence, where it states:

21 "Milt said that Judd may be present on the
22 general stuff, but on the cross-exam stuff he should
23 not be present."

24 And then later I guess, when they discussed with
25 Joe Temple, on page 15, that Judd Bacon is no longer there?

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

355 271

1 Is that correct?

2 A I believe Judd Bacon was there until we get to a
3 point...let's see ...

4 Q He's there on page 19?

5 A Yes, I think he's there.

6 Q He never left?

7 A Yes, I assume he never left. Looking at that
8 statement that you pointed out, about the cross-exam stuff,
9 I can assume that they never got into the cross-exam stuff.

10 The situation there was that Milt felt that if
11 we got into sensitive stuff with Joe Temple, it was okay if
12 Rex and Dave -- or Rex at this point, I think -- heard it,
13 but he didn't want Judd hearing any of this stuff. So they
14 came out with this little agreement amongst them -- Rex and
15 Judd did -- that whenever they got into this sensitive stuff
16 Judd would be asked to leave the room.

17 I think you'll see an example of that at one of
18 the later meetings.

19 Q Okay.

20 A In fact, it goes even further. I think a
21 protective order was drafted and signed by Dave Rosso.

22 Q So the purpose of having Judd Bacon leave the
23 room was more the fear that inside information relating to
24 Dow Chemical would end up in the hands of Consumers Power,
25 rather than for any other reason?

1 A Precisely.

2 Q Did Judd Bacon leave the room during other
3 meetings that you were at and took stenographic notes?

4 A Was he asked to leave the room, or did he leave
5 the room?

6 Q Either one.

7 A I know he left the room at times, to --

8 Q Did you continue to take notes when he left the
9 room?

10 A Yes, if the meeting went on. In fact, I know he
11 was asked to leave the room at one of the subsequent
12 meetings, because they got into some personal feelings.

13 MR. POTTER: Excuse me. I think you were
14 interrupted when you started to answer. Were there times
15 when Mr. Bacon left the room of his own volition?

16 THE WITNESS: Yes, just like I said earlier,
17 people got up and left, whether they wanted to go to the
18 bathroom or take phone calls, or whatever.

19 BY MR. OLMSTEAD:

20 Q To clarify what I am concerned about, in those
21 instances where you were concerned about information related
22 to Consumers Power -- sort of a proprietary or insider
23 nature -- and therefore wanted Judd Bacon out of the room,
24 in those instances did you continue to take notes?

25 A Yes.

1 Q On page 15 --

2 A I think if I may, just to clarify the record,
3 I can show you an instance of that if you're interested,
4 when he left the room and they continued talking. My notes
5 reflect that, as such. Look on page 8 of the notes of
6 10-17, page 8, about half way down:

7 "Lee asked Judd Bacon to leave the room."
8 Mr. Wessel proceeded to relate to Dave how Joe felt about
9 certain things, and we got precisely into all the problems,
10 and it's outlined for you what the various problems were.
11 A lot of it is critical to Consumers Power.

12 Q I think I'll have a question about that when we
13 get there.

14 You have clarified it for me.

15 Page 15 of the 9-29 notes, Joe Temple is now
16 present and down at the bottom of the page, the last para-
17 graph, in the middle of that paragraph, Joe asked if the
18 Hearing Board would let other parties get into this, Joe's
19 personal views, because of its relevance.

20 Because I assume he'd been advised that it wasn't
21 relevant, since that was Mr. Wessel's view at that time.

22 "Milt then read the prefacing statement that he
23 had prepared for Joe's use and recital before the Board,
24 copy attached."

25 It may just be my error, but I don't have a copy

1 of that.

2 Do you all have a copy of that?

3 MR. CHARNOFF: I don't.

4 MR. POTTER: I think we'd better mark it and get
5 it in the record at this point if there's any doubt about
6 it.

7 MR. ZAMARIN: I have a copy.

8 MR. OLMSTEAD: I'm not saying it's not in this
9 record, I just can't find it.

10 MR. POTTER: Bear with me just a minute.

11 (Pause.)

12 BY MR. OLMSTEAD:

13 Q Let me give you this document and ask you if
14 this is it?

15 (Document handed to the witness.)

16 Is this the statement?

17 MR. OLMSTEAD: I've handed --

18 THE WITNESS: Yes, that's the statement.

19 MR. OLMSTEAD: Let the record show that the
20 statement referred to is Exhibit CC of Midland Intervenor's
21 Exhibit Number 60.

22 BY MR. OLMSTEAD:

23 Q On page 17, the end of the second paragraph,
24 second sentence from the end, it says:

25 "Rex pointed out that he would rather have Dow

1 err on the side of too much in their outline rather than not
2 enough."

3 Is it your opinion that Dow accommodated this
4 request?

5 A To tell you the truth, there were about 14
6 different outlines running through this. I'd have to review
7 this thing to get a full flavor of what outline you're
8 talking about, and then try to remember how much we gave
9 them.

10 So maybe in answering your question -- I don't
11 really recall.

12 Q Did you participate or otherwise make any comments
13 during the course of this meeting, other than take notes?

14 A Generally not.

15 Q Following the September 29, 1976 meeting with
16 Consumers Power legal personnel, did you attend any other
17 meetings with Dow personnel concerning that meeting?

18 A It seems to me I did. I'm remembering my meetings
19 now. It seems to me we put together a draft of some
20 testimony. I think it had to do with this outline that Rex
21 Renfrow came back with.

22 Back on page 6 there's a reference to Rex handing
23 Milt a copy of an outline of items.

24 Q Did you work on the preparation of testimony to
25 fill in that outline in preparation for the next meeting?

1 A I think about the only thing I worked on in that
2 outline was just the front part of the data relating to
3 Joe's background and history and stuff. That's about all I
4 recall working on.

5 Q Not the substance of the contract or the Midland
6 Division position, or --

7 A No.

8 Q You've already testified that you were working
9 with Lee Nute, and to a lesser extent with other attorneys
10 who were involved at this particular time. Did you have
11 any other communications or conversations with other Dow
12 personnel in preparation or anticipation for the future
13 meetings at which you were present?

14 A Legal or otherwise?

15 Q Right.

16 A I really don't recall.

17 Q Okay. Going back to the letter that Mr. Wessel
18 sent you of October 5, 1976, he states you --

19 "...couldn't catch all the references."

20 What references do you think he was referring to?

21 A Well, my interpretation of that would be that
22 there were references to matters that if you were involved
23 in the thing and knew about it it would have, you know, a
24 meaning to a person. And we talked about this. What he
25 was really talking about is (1) since you were new to it and

1 didn't really understand what was going on, together with
2 the fact that so many things were going on, you undoubtedly
3 missed some stuff.

4 Q Okay.

5 You testified earlier that you had taken shorthand
6 since you were in high school, and hadn't kept up.

7 Forgetting this case for the moment, normally
8 when you take notes if you don't really appreciate what's
9 going on but later develop the information to appreciate it,
10 do you usually find that your notes are adequate to satisfy
11 your need to deal in the substance of a matter?

12 A I really don't understand your question.

13 Q Well, I assume that if one said you didn't catch
14 all the references that one could analogize to other
15 situations where you weren't as familiar as you might
16 otherwise be at some later time about the information that
17 you were trying to take notes on -- say a law school class
18 where you hadn't read the day's assignments, or something
19 of that nature.

20 Have you found in the past that when you use your
21 shorthand capability and take notes in those kinds of
22 situations, and then later come back with other knowledge,
23 do you find your notes generally adequate to understand the
24 substance of what's going on?

25 A Yes. But that depends on what was going on when

Acc-Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 278

1 I was taking the notes. If I'm sitting in a class situation
2 and there's a professor talking and I maybe missed a
3 reference as such, but, as you say, come back later with
4 some knowledge it may make sense.

5 But that generally goes to how complete the
6 record was when I first put it down.

7 Q Well, having sat through a number of meetings
8 now with Consumers Power, and being involved to the extent
9 that you have, in hindsight do you go back and find your
10 notes fully developed and meaningful?

11 MR. POTTER: Which notes are you talking about,
12 all of them?

13 MR. OLMSTEAD: The notes he took of this September
14 29 meeting.

15 THE WITNESS: Yes. I did go back and they
16 started making sense.

17 For instance, a reference to Black & Veatch. I
18 didn't even know how to spell it, let alone what it was.
19 But as I got more into the meetings and stuff it became
20 apparent as to what that kind of data was, and if I went
21 back into my notes -- if we're talking about did I under-
22 stand better after I went back, quite possibly. Once again,
23 depending on what I was able to put down.

24 BY MR. OLMSTEAD:

25 Q Do you still feel it's a full and accurate

summary of that meeting?

A You said full and accurate summary?

Q Right. I was trying to -- let me use your words.

A I just used the word "accurate."

Q It's an accurate summary? Do you still feel that is?

A I still believe it's an accurate summary. I think keeping in mind that -- yes, I still believe it's an accurate summary.

Q Okay.

On page 2 of Milt's letter of October 5 that attaches a memorandum to the files, which was his effort to summarize this meeting of which we have your notes, he puts down at the end of this second paragraph a statement to the effect that:

"Consumers rejected the suggestion that Temple's testimony be reduced to writing as direct."

MR. POTTER: Where are you?

MR. OLMSTEAD: I'm on the second page of Milt's summary of the meeting of September 29. Attached to his letter to Dave is a two-page memorandum summarizing that meeting.

MR. REYNOLDS: Let's go off the record.

(Discussion off the record.)

MR. OLMSTEAD: Back on the record.

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 280

1 BY MR. OLMSTEAD:

2 Q On page 2 of Mr. Wessel's summary of the Septem-
3 ber 29, 1976 meeting he notes:

4 "Consumers rejected the suggestion that Temple's
5 testimony be reduced to writing as direct."

6 Was that your understanding?

7 (Pause.)

8 The next question, obviously, is where is that
9 in your notes? And that is the segment of the notes we
10 were talking about earlier, the summary that Milt prepared?

11 (Pause.)

12 That's a compound question; if you want to object
13 we'll take it one section at a time.

14 MR. POTTER: That's all right, if the question
15 is understandable to anyone else.

16 THE WITNESS: All right. Do you want me to
17 answer the first question?

18 BY MR. OLMSTEAD:

19 Q All right. I'm asking if that was your under-
20 standing of the discussions that took place regarding the
21 Temple testimony on September 29.

22 MR. POTTER: Before he answers that question, I
23 want him to read from page 1 to the end of the page of his
24 notes of the 9-29 meeting. He hasn't done it yet.

25 MR. OLMSTEAD: I requested that that be done.

1 MR. POTTER: If your question is, does that
2 appear in his notes, he's going to have to read his notes
3 to see if it's in them.

4 THE WITNESS: Frankly, I cannot --

5 BY MR. OLMSTEAD:

6 Q My question at the moment is whether that
7 accurately reflects his understanding.

8 MR. POTTER: Which he can only understand by
9 reading his notes to refresh his recollection. That's the
10 point I'm trying to make.

11 THE WITNESS: Yes. Frankly, I couldn't tell you
12 as to whether or not Milt's summary of the meeting is an
13 accurate summary of what went on in relation to what I put
14 down. I really couldn't tell you unless I went back through
15 and found the same reference.

16 We're dealing with 19 pages of notes, condensed
17 down to a page and a half.

18 BY MR. OLMSTEAD:

19 Q And he condensed that from 26 pages of notes?

20 A No.

21 Q He had your 26-page --

22 MR. POTTER: Wait a minute. I'm going to object,
23 if you're characterizing now that Mr. Wessel's notes are
24 somehow prepared based on Mr. Durand's --

25 MR. OLMSTEAD: Let me rephrase it.

1 BY MR. OLMSTEAD:

2 Q He had your 26-page typewritten notes at the
3 time he prepared that memorandum.

4 MR. POTTER: We don't know that, either.

5 MR. OLMSTEAD: He said so in his cover letter,
6 of the same date.

7 MR. POTTER: Okay. I stand corrected.

8 THE WITNESS: He said in the third paragraph:

9 "I suggest we scrap the effort and try to prepare
10 a valid summary of the important points which were made."
11 My effort is enclosed."

12 Now, whether or not he took --

13 MR. POTTER: Excuse me. Read those two paragraphs
14 together. There's nothing in there that says that Mr.
15 Wessel prepared his notes based on Mr. Durand's notes. He
16 said he had them. I don't see anything in the cover letter
17 that stands for the proposition that you're making, Bill.
18 That is, that Mr. Wessel had Mr. Durand's notes at the time
19 he prepared his own. Maybe that's the construction you
20 make of it, but I don't think we can ask Mr. Durand to
21 assume that.

22 BY MR. OLMSTEAD:

23 Q Well, will you agree with me that his summary
24 of that meeting is dated on the same date as the cover
25 letter, rejecting your 26-page attempt at verbatim notes?

1 A The dates are the same, yes. Whether or not
2 that --

3 Q So that at least at the time that document was
4 typed he had your 26-page effort to refer to if he wished to?

5 A If he wished to.

6 Q Whether he did or not we can ask Mr. Wessel.

7 A Yes. I couldn't answer that question.

8 Q Okay.

9 Now, going back to the paragraph on page 2, if
10 I have to wait for you to read all your notes, I will.

11 MR. POTTER: Well, I'm just telling the witness
12 I'm advising him not to answer that question without reading
13 the notes.

14 MR. OLMSTEAD: All right. Then I suggest we take
15 a five-minute break while --

16 MR. REYNOLDS: Well, wait -- what's the question?

17 THE WITNESS: Just let me know what I'm supposed
18 to do, first.

19 BY MR. OLMSTEAD:

20 Q I'm asking, as to the paragraph that I read to
21 you, or asked you to read, where he refers to Consumers
22 rejecting the suggestion that Temple's testimony be reduced
23 to writing as direct testimony, --

24 A I don't see "direct testimony."

25 Q Well, reduced to writing.

1 A It says reduced to writing.

2 Q And offered in evidence at the beginning of the
3 session, subject to cross-examination.

4 I'm asking you, was that your understanding of
5 the discussion of the Temple testimony at the meeting of
6 September 29?

7 MR. POTTER: And I'm advising the witness to
8 read his notes of that meeting to find out whether it's
9 in there or not.

10 THE WITNESS: I would have to go through my
11 notes, because I couldn't answer your question the way you
12 phrased it. I really couldn't. I'm wondering even if my
13 notes will . . .

14 MR. REYNOLDS: Let' - off the record for a
15 minute.

16 (Discussion off the record.)

17 MR. OLMSTEAD: Let's take a five-minute recess.

18 (Recess.)

19 MR. OLMSTEAD: We're back on the record.

20 MR. POTTER: We have a question pending. See if
21 you can answer the question as it stands now. If you can't,
22 or if you need something else, then let's get it out.

23 Maybe we could have the court reporter read back
24 the question.

25 MR. OLMSTEAD: I can repeat the question.

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-1700

365 285

1 We're back from a recess and Mr. Durand has finished
2 reviewing his notes of the September 29, 1976 meeting, is
3 that correct?

4 THE WITNESS: Yes, sir.

5 BY MR. OLMSTEAD:

6 Q The question I was asking, which necessitated the
7 review, referred to a paragraph on page 2 of Mr. Wessel's
8 October 5, 1976 attempt at a summary of the September 29
9 meeting, where he notes that Consumers had rejected the
10 suggestion that Temple's testimony be reduced to writing --
11 and I put in the words, "as direct." I asked whether that
12 was your understanding based on your recollection, whether
13 through your notes or otherwise of the September 29 meeting.

14 A My recollection, after reviewing the notes, is
15 that in the first part of the meeting we handed a draft of --
16 I believe it was in affidavit form -- of Joe Temple's --
17 of a draft of his testimony, and we gave it to Mr. Renfrow,
18 and --

19 Q You used the word "affidavit" and then you used
20 the word "testimony," and throughout these notes the two
21 terms are used for two different documents. Are we talking
22 about one document or two?

23 A I need a couple of documents to make a comparison.

24 Q Okay.

25 A I need a copy of the draft that was given to

1 Rex Renfrow and Judd Bacon on that morning, the 29th, which
2 was a draft in response to a telephone conversation that
3 Judd Bacon had had with Milt Wessel before that.

4 Q Okay. I show you Exhibit 8A of Midland Interven-
5 ors Exhibit 60, and ask you if that's the testimony you're
6 referring to?

7 A (Pause.)

8 Q The document has at the top of it, incidentally,
9 "Draft MRW." I assume that means Milt Wessel?

10 A I can assume it does.

11 Q Do you know --

12 A Before I answer that, let me look back through it
13 just a second.

14 (Pause.)

15 Do you have a copy of a letter -- let's see . . .
16 before I answer that question, --

17 Q Well, excuse me. I had a question asking whether
18 you knew whether this was drafted by Mr. We 1. I believe
19 it says MRW.

20 A Before I can answer that question I need a letter.
21 Not a letter. It's a memo to the file that Milt prepared
22 after we had a conversation with Judd Bacon, wherein he
23 listed the items that Judd had asked him to prepare. And
24 I want to see if this draft is responsive to that letter.

25 MR. OLMSTEAD: Off the record.

1 (Discussion off the record.)

2 MR. OLMSTEAD: Back on the record.

3 I think for purposes of the record I ought to
4 identify the fact that I've handed the witness a memorandum
5 to L. F. Nute from M. R. Wessel dated September 28, 1976,
6 re: a telephone conversation with Judd Bacon.

7 BY MR. OLMSTEAD:

8 Q Is that the document you requested?

9 A No.

10 MR. POTTER: Off the record again.

11 (Discussion off the record.)

12 MR. OLMSTEAD: Back on the record.

13 Let the record show the witness answered no to
14 the September 28 memorandum, and is now looking at a memor-
15 andum to L. F. Nute from M. R. Wessel dated September 27,
16 1976, re: Conversation with Judd Bacon.

17 BY MR. OLMSTEAD:

18 Q Is that the memorandum you requested?

19 A Yes.

20 (Witness reviewing document.)

6:00 p.m. 21 I need one other document. I need a document that
22 Rex handed to Milt on September 29, which is an outline of
23 the items that . . .

24 MR. OLMSTEAD: I am handing the witness a page
25 entitled, "Exhibit BB" of a list of exhibits to Midland

1 Intervenor's Exhibit Number 60, which is a copy of a hand-
2 written document entitled, "Outline," and ask if that's the
3 document which you requested?

4 THE WITNESS: Yes. Here's the thing I'm struggling
5 with. This request for all this information was an attempt
6 by Rex Renfrow to get as much information as he thought he
7 needed to meet the challenge in the hearings, and he stated
8 several times just because he asks for information doesn't
9 mean he was going to use it, you know, in any prepared
10 testimony for Joe Temple.

11 At the first part of the meeting we gave him a
12 draft prepared upon an outline that came from a telephone
13 conversation.

14 Let me just ram through this so I can get a
15 better handle on it.

16 We gave him -- is this it? Yes. We gave him
17 information in a question-and-answer form. . . no, wait a
18 minute. This is the first part of this question-and-answer...
19 This is more in statement form, the answers to the questions
20 that Judd Bacon had asked him.

21 That, for some reason -- I don't recall now why,
22 but it was not acceptable. Rex came back with Exhibit BB,
23 his outline, which is in more of a -- it's a different format.
24 It's still in a summary form, but it's still in a different
25 format.

1 Q What do you mean, in a summary form?

2 A Not a summary form, it's in a format that breaks
3 things down chronologically, okay?

4 Q Okay, but there isn't anything on the face of
5 Exhibit BB which indicates what form the testimony would be
6 written in, is that correct?

7 A There's none.

8 Q Just an outline?

9 A Just an outline of subjects that they wanted Dow
10 to get information on.

11 Rex goes on further in the meeting to illustrate--
12 he said he wanted the information -- he wanted information in
13 a more direct fashion, other than our first attempt that
14 had been made. He wanted information in a different form.

15 I don't know, I guess I can't really recall what
16 he was trying to get to.

17 Q In other words -- now, let me get this straight:
18 You're referring to page 12 of your notes?

19 A Page 12, last paragraph, where it says,

20 "Rex stated that he didn't want any more from
21 Dow than what they put in Joe's draft. He did point
22 out, however, that he wanted it in a more direct fashion."

23 Q It also says that Milt stated he thought he
24 finally saw what Rex meant.

25 A (Nodding affirmatively.)

1 Q And now if I can refer back to the summary, page
2 2 of Milt's summary -- I think it's momentarily been mis-
3 placed --

4 All right. Now, you're telling me that that's
5 what he's referring to when he says:

6 "Consumers specifically rejected the suggestion
7 that Mr. Temple's testimony be reduced to writing and
8 offered in evidence..."

9 A Well, I think -- let me give you a couple more
10 examples. That's my impression from reading my notes as
11 to what Milt was saying, and is also a reflection that I
12 interpret it to agree with what Milt's summary was as such.
13 In fact, I address it and he addresses it.

14 But let me give you a . . .

15 If you go to page 16, the last part of that big
16 paragraph there, the second to the last sentence:

17 "Rex stated that the questioning was going to
18 be by oral means. Rex pointed out that what becomes
19 important is not the idea that you may want to convey,
20 but the means by which you may wish to convey it."

21 Q What questioning is he referring to there?

22 A The questioning of Joe Temple.

23 Q In other words, it was your impression that
24 Consumers Power was going to put on the direct examination of
25 Joe Temple orally?

1 A That's the impression I get from reading that.

2 MR. CHARNOFF: From reading "that?"

3 THE WITNESS: Page 16, the second to the last
4 sentence in the big paragraph.

5 MR. REYNOLDS: 16 of your notes on the meeting
6 of 9-29?

7 THE WITNESS: Yes.

8 BY MR. OLMSTEAD:

9 Q Had you been involved in any administrative
10 proceedings before the Nuclear Regulatory Commission before?

11 A No, never had.

12 Q In any discussions with Milt or Lee Nute, did
13 anybody ever mention the fact that it was customary NRC
14 practice to present all direct examination in writing?

15 A No, I didn't know that at that point.

16 Q If I tell you that that is the customary practice
17 would your interpretation of those words be the same?

18 A My interpretation would be the same, yes.

19 MR. CHARNOFF: Let me just make a comment for the
20 record:

21 I think I agree with you that it is customary
22 NRC practice for testimony -- direct testimony -- to be
23 reduced to writing, where there is time for it to be done.

24 So, as I understand it, this was a discussion on
25 September 29 at a meeting where they were talking about a

1 hearing I assume the very next week, on 10-6. Therefore, it
2 could well be under those circumstances that what was the
3 ordinary case would not have been anticipated.

4 MR. OLMSTEAD: I appreciate your interpretation.
5 My problem with either interpretation is that there are
6 three drafts -- in fact, one of the pages you're referring
7 to said draft number 6 on it, and --

8 THE WITNESS: There were lots of drafts.

9 MR. OLMSTEAD: -- of direct testimony in writing.
10 And there's discussion in this record of not liking the
11 organizational outline, as I get it, because here's a new
12 outline from Mr. Renfrow.

13 So I just wanted to make sure I understood what
14 the reference was here to the testimony. But I gather you
15 would not deduce from that that there was any intention on
16 the part of Consumers Power personnel or Dow personnel at
17 that time to put direct testimony in writing in the record
18 in question-and-answer format.

19 MR. CHARNOFF: Excuse me. Parenthetically, when
20 they were considering the hearing to be scheduled the very
21 next week.

22 MR. OLMSTEAD: Right, which they were at the
23 time of the September 29 meeting.

24 MR. REYNOLDS: Bill, can I just for the record,
25 indicate --

1 MR. POTTER: Well, wait, he's got a question
2 pending. Let's either take the question off the record or
3 let the witness answer it. I don't want to leave it hanging
4 with no answer to it.

5 THE WITNESS: I think, going back through my notes
6 and refreshing my memory, there is no mention of format as
7 to question-and-answer.

8 MR. OLMSTEAD: Okay.

9 MR. REYNOLDS: Bill, if I could just interject
10 something to help clarify things, I believe in the normal
11 course in NRC proceedings, while you submit direct testimony
12 in writing, that when a witness takes the stand all
13 questioning is by oral means.

14 MR. OLMSTEAD: Off the record.

15 (Discussion off the record.)

16 MR. OLMSTEAD: Back on the record.

17 BY MR. OLMSTEAD:

18 Q Mr. Durand, on the bottom of page 15 of your notes--

19 A Of September 29?

20 Q Right. The sentence appears:

21 "Milt then read the preface in the statement that
22 he had prepared for Judd's use in recital before the
23 Board, copy attached."

24 And then on page 16 it says:

25 "Rex stated that he didn't want Joe to start off

1 making this kind of statement initially, even though
2 he may have to say something like it in the hearing
3 process."

4 Could it be that the statement to which Mr. Wessel
5 refers in page 2 of his memorandum of October 5, 1976, was
6 to this piece of testimony that he had prepared for Joe's
7 use, rather than the entirety of Mr. Temple's testimony?

8 MR. POTTER: For the record, I just simply have
9 got to object. I can't see having Mr. Durand answer what
10 Mr. Wessel had intended by something in his notes. There's
11 just no way in the world it makes any sense. I just object.

12 MR. CHARNOFF: If I could comment on the form
13 of the question --

14 MR. OLMSTEAD: Let me put it another way.

15 BY MR. OLMSTEAD:

16 Q Do you have any independent recollection or
17 anyplace in your notes to point to where you would feel
18 comfortable stating that it was Consumers' position on
19 September 29, 1976 that none of Mr. Temple's testimony
20 should be presented in writing for the record?

21 A I couldn't point to any place in my notes to
22 that.

23 Q Okay. I asked you about your caveat sentence
24 at the beginning of your notes once before, to the effect
25 that your notes should not be regarded as verbatim. Now I'd

1 like to know whether you have prepared your notes and
2 transcriptions and memoranda to the files with the idea in
3 mind that they might at some time become public, either
4 among the parties to the proceeding or outside of Dow?

5 A No, I guess at the time I transcribed these notes
6 and prepared them, I felt that they were probably privileged
7 in some sense. I hadn't asked anybody that, but in my own
8 mind I felt they were probably privileged and wouldn't be
9 produced.

10 Q Okay. In spite of Mr. Wessel's letter of October
11 5, 1976 which indicates that he had ceased thinking that
12 it's possible to get a verbatim transcript of these meetings,
13 you continued to attempt complete notes, or at least as
14 complete as possible notes of meetings with Consumers Power
15 and Dow, is that correct?

16 A Yes.

17 Q Why?

18 A I saw my responsibility in those meetings to take
19 notes in such a fashion that it would produce an accurate
20 summary.

21 Q Was Consumers aware of this effort, or attorneys
22 for Isham, Lincoln and Beale?

23 A What, that I was going to --

24 Q That you were taking extensive notes and trans-
25 cribing them?

1 A In the first meeting Mr. Renfrow -- I was intro-
2 duced to Rex and Judd, and I don't recall as to whether or
3 not Lee told them why I was there specifically, but as the
4 meeting continued it became apparent to at least Mr. Renfrow
5 that I was taking a lot of notes.

6 So during one stage of the meeting he got up and
7 just kind of walked around the room and walked up behind me
8 and said, "That's interesting, where did you learn to take
9 shorthand?"

10 Q That doesn't appear in your notes, is that
11 correct?

12 A Pardon me?

13 Q That statement doesn't appear in your notes?

14 A I don't know if it does or not. I guess I'd
15 have to look back through the notes again, okay, and --

16 Q What did you respond to that?

17 A I didn't say anything.. I just sat there taking
18 notes.

19 MR. REYNOLDS: Off the record.

20 (Discussion off the record.)

21 MR. OLMSTEAD: Back on the record.

22 THE WITNESS: I don't recall that Mr. Nute or
23 Mr. Wessel ever sat down with Judd Bacon and Rex Renfrow
24 at the beginning of the meeting and said, Mr. Durand is
25 here to take notes, he's going to make an accurate summary

1 of them and publish them, or whatever, on down the line.
2 I don't recall that ever being said.

3 BY MR. OLMSTEAD:

4 Q Was Isham, Lincoln & Beale, for Consumers, ever
5 asked to confirm the accuracy of your notes concerning this
6 meeting, or these meetings?

7 A I never asked them. I don't know if anyone else
8 did. In fact, if I may go back to my original response to
9 your question, Mr. Renfrow mentioned my shorthand ability
10 at a break, because we got to talking about my high school
11 and my taking shorthand in law school, and the whole bit.

12 So it wasn't during the meeting as such.

13 Q Now, are you aware of how the notes of meetings
14 between Consumers and Dow during the contract negotiations
15 were handled?

16 A No.

17 Q Did Consumers Power personnel or Isham, Lincoln
18 and Beale personnel take notes of their own on October 5,
19 1976 at the meeting that you were at?

20 A October 5?

21 Q Right. I believe that's the next meeting.

22 A October 12, maybe.

23 Q October 12?

24 A You said October 5. I believe it's October 12.

25 Q All right.

1 A I can't recall if they took notes at all. I
2 really can't.

3 Q I don't have the reference in front of me, but
4 I suspect you'll recall that Mr. Wessel sent a letter to
5 Mr. Cherry setting forth Dow's non-party position on
6 discovery. Do you recall a communication like that?

7 A Yes, it was something to the effect that we're
8 not a party and if you want to effect discovery, why don't
9 you go through Consumers Power.

10 Q Right. Did you have any role in the drafting of
11 that letter?

12 A I really don't think so.

13 Q Was your memo to the files dated October 12,
14 1976 the first transcription of your notes for that meeting,
15 or was it edited by anyone else in the same manner as the
16 September 29 meeting?

17 A That was my first draft.

18 Q So on that one, you just went directly to the
19 memo to the files?

20 A You're asking is there a copy that exists that
21 might be -- if this is 15 pages, there was one that was
22 around 20 pages?

23 Q Or is there one around 12 pages?

24 A This is the original draft.

25 Q Is there another draft of the notes you took for

1 October 12?

2 A Yes. And if I may clarify the second part of
3 your question, the notes of the September 29 meeting really
4 weren't edited by anyone, other than me going back and
5 summarizing.

6 Q Oh, okay, I --

7 A Because I got the impression that -- you know,
8 nobody other than myself edited these notes?

9 Q Okay. You didn't make more than one draft of
10 what occurred at the 10-12 meeting at any time?

11 A No. One draft.

12 And, in fact, all the succeeding drafts were
13 prepared in that manner.

14 Q On page 2 of the October 12 notes, if you'll
15 look at the second paragraph there it says:

16 "Mr. Wessel asked Consumers Power what was wrong
17 with the 10-6-76 draft of Mr. Temple's testimony that
18 Dow gave. Mr. Bacon responded he felt the 10-6
19 document was just an outline of testimony rather than
20 an actual draft."

21 Now, in light of the preceding questions we had
22 about the September 29 meeting, is it reasonable to assume
23 that there had been some miscommunication between Dow and
24 Consumers as to what form Mr. Temple's testimony should have
25 taken?

1 A Yes, I think you can assume that there was some
2 misunderstanding.

3 Q So I guess we can assume at this point everybody
4 is clear that there's going to be written direct testimony,
5 and now Mr. Nute is wanting to know whether the written
6 direct testimony is going to be in question-and-answer
7 form.

8 A (Nodding affirmatively.)

9 Q Is that correct?

10 A Yes.

11 Q And Mr. Renfrow said he didn't want it done in
12 that form?

13 A Yes.

14 Q Then later on there on the same page Mr. Wessel
15 then talks about the form of the testimony and states that
16 he doesn't believe that the form is really important.

17 That's the next paragraph down, page 2, about
18 the fourth sentence.

19 A That's what my notes reflect, yes.

20 Q All right. Do you have any further recall of
21 this discussion?

22 A Other than what's down following that sentence,
23 no, I don't have any other recall.

24 Q Okay.

25 A The following sentence references to the fact

1 that Milt felt that all the information that we have in
2 terms of what Mr. Temple has to say we've given to Consumers
3 Power.

4 Q So Mr. Wessel feels that everything there is
5 that Dow wishes to contribute to the Temple testimony is
6 now in the Temple testimony, is that a fair reading?

7 A That's a fair reading.

8 Q Okay.

9 Now, the last paragraph, then:

10 "Rex Renfrow says he would like to see some
11 more information end up in Mr. Temple's testimony
12 than what he has asked for to date."

13 So up to this point is it a fair characterization
14 of the positions of Dow and Consumers that Dow was
15 concerned about getting too much information in Temple's
16 testimony. When Rex Renfrow insisted on pursuing this issue
17 they excluded Judd Bacon from the meetings, where they got
18 into the negotiations, just so that Rex and Dave Rosso
19 would have access to the information in preparation of the
20 testimony.

21 Am I correct up to that point?

22 A Yes.

23 Q And that in spite of that agreement they get
24 back with the next round of drafts, and Rex Renfrow and
25 Dave Rosso are still pushing for even more information.

1 What type of information, if you recall?

2 A I think the last part of that meeting, I think
3 Lee -- look on page 13 of that same meeting. Lee then went
4 over the list of documents which Rex was going to want to
5 review. They had already agreed that Rex was going to be
6 able to come up and review this additional information he
7 wanted, and this list included the following: And then it
8 goes on.

9 A lot of that has to do with . . .

10 Q And the fourth one on that list is all documents
11 relating to what Dow and Consumers Power have discussed
12 regarding Joe -- mean Joe Temple's testimony?

13 A Joe's testimony, yes. Those are backup documents.

14 Q Right. Did you assume at that time that that
15 meant that they thought those documents would be presented
16 to the parties and the Board in some manner?

17 A Well, they're talking about backup documents
18 here, and I think in maybe this meeting or the first meeting
19 Judd went through an elaborate suggestion on Dow's
20 responsibilities to keep backup documents of any testimony
21 or information that they gave to Consumers in the event
22 that, you know, if Myron or anybody else wanted to get to
23 it we could back up that kind of information.

24 Q So they were prepared to provide all that informa-
25 tion to the Board and the parties with the exception of

365 303

1 house counsel for Consumers Power?

2 A Yes.

3 MR. CHARNOFF: When you say "they" were prepared,
4 who?

5 MR. OLMSTEAD: Rex Renfrow and Dave Rosso.

6 THE WITNESS: Yes. Like I say, you go back
7 through these minutes as to when they arrived at an
8 agreement as to how to share this information, Rex wanted
9 to look at the information so that he would either have
10 as much information on the subject as possible so that, yes,
11 he could present it all.

12 BY MR. OLMSTEAD:

13 Q All right. I'd like a little clarification now
14 of these notes:

15 On page 5 - -

16 A Same meeting?

17 Q Right. The last paragraph, last sentence, says:

18 "A complete review of each item on Mr. Temple's
19 draft testimony followed with all parties present
20 participating."

21 Now, I'm assuming that that's what the rest of
22 this document, through page 12 and on to page 13, is. Is
23 that correct?

24 A Yes. If you will recognize that it's broken
25 down into the outline -- this outline under Exhibit BB.

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

305 304

1 Q Okay. So following receipt of Exhibit BB of
2 Intervenor's Exhibit Number 60 a new draft was prepared by
3 Dow Chemical, is that correct?

4 A Yes.

5 Q And that was discussed at this meeting of October
6 12, 1976?

7 A Right.

8 Q And the outline represented by BB amounts to the
9 headings that you used in your notes on pages 6 through 12?

10 A Yes.

11 Q Okay.

12 At this point, in preparation for the forthcoming
13 hearings, it was generally felt that they were going to start
14 earlier than they ultimately did, I believe, is that correct?

15 A Yes. In fact, the first date was October 6, and
16 they were preparing Joe for October 6.

17 Q So they'd really anticipated by this time being
18 in those hearings?

19 A Right.

20 Q Would you describe the relations between Consumers
21 Power Company's lawyers and Dow's lawyers in these meetings,
22 which are essentially lawyers meetings, as cordial, or
23 hostile, or some other?

24 A At times they were cordial. I think more they
25 were constructive. They weren't hostile, as such. There

1 wasn't -- oh, possibly there may have been a feeling between
2 Lee Nute and Judd Bacon occasionally that surfaced. But
3 for the most part I think that the two groups of lawyers
4 sat down and exhibited the attitude that they had a job to
5 do, and they were going to get it done. They worked together
6 on it. I think the amount of work put out by the two
7 reflects that, essentially.

8 And to answer your question, there was no
9 hostility as such. There was more of a constructive effort.

10 Q Okay. Now, on page 8, second paragraph, there
11 appears to be one sentence:

12 "Lee Nute discussed how the decision was made
13 by the Dow U. S. Area board."

14 And then as I read it, there's nothing on how
15 that decision was reached in your notes here. Am I missing
16 something, or is this . . .

17 A No. I think all Lee did was go back through the
18 summary of what had happened. And all I've got down in my
19 notes, or all I decided to take down in my notes, because
20 there were other documents that reflected the process, and
21 I chose not to record exactly what Lee Nute said.

22 As I recall, he's the only one who talked.

23 Q Well, they're discussing the Temple testimony
24 on page 7, and leading into page 8, and --

25 A And they're talking about it in --

1 Q And again Consumers is pushing for more information
2 in Mr. Temple's testimony. And then there's this discussion
3 about how the Dow US Area board reached their decision, and
4 they dropped further discussion of that item.

5 Am I reading too much into that?

6 A I think you are, and maybe you can correct me
7 as such. They're into the section about -- let's see . . .

8 Q "Continuing Michigan Division review," Section
9 3.

10 A The paragraph before that gets into -- let's see...
11 Rex was asking, or stated, that one of the reasons he asked
12 for the economic study was because of the possibility that
13 the Dow board relied on it to make their decision.

14 Q Okay.

15 If we go to the paragraph just after the Nute
16 reference I gave you on page 8, it says:

17 "Dave Rosso wanted to know if there was anything
18 further to discuss on item 3C."

19 All right, 3C, as I understand it, is "Continuing
20 Michigan Division review of contract decision and reasons
21 therefor." Is that correct?

22 A Yes.

23 Q And evidently Consumers was examining this
24 throughout this discussion, up until Mr. Nute describes how
25 the decision was made by the Dow board. And then further

1 discussion of 3 is dropped, including what would have been
2 3D, "Action taken."

3 And then we ask Judd Bacon to leave the room and
4 we go through a lot of things on the history of Consumers
5 Power and why Mr. Temple has a credibility problem.

6 So, I was just curious, if I asked you to go
7 back and look at your stenographic notes of this meeting
8 would you have down what Mr. Nute said?

9 A No.

10 MR. POTTER: Could I ask a question that will
11 maybe clarify that? At least I hope it will:

12 You characterized the statement as being dropped
13 after Lee Nute discussed how the decision was first made
14 by the Dow U.S. Area board. The next paragraph begins:
15 "Dave Rosso wanted to know if there was anything further
16 to discuss on item 3C."

17 I'd prefer to have Mr. Durand, if he hasn't
18 already done so, complete reading page 8, to see whether
19 the rest of it doesn't explain and answer that, or else
20 whether the matter really is dropped at that point.

21 THE WITNESS: Actually, the matter is not dropped,
22 as such. The reason --

23 BY MR. OLMSTEAD:

24 Q Let me rephrase it. Is the matter changed in
25 tone and direction, if you would read your notes?

1 A I'd have to read 7, because . . . in fact, let
2 me start from 6 and read that whole section.

3 (Witness reviewing document.)

4 Q All right. Having refreshed your recollection
5 on the material on pages 7, 8 and 9 of your notes of
6 October 12, 1976, would you agree that there's a change in
7 tone about the discussion of what should be in Temple's
8 testimony relating the outline item 3C, which is the
9 continuing Michigan Division review, or contract decision
10 and reasons therefor?

11 A I don't agree there's a change in tone, because
12 if you go out to the early parts of the meeting, together
13 with the many parts in the 9-10 meeting. Mr. Wessel is
14 consistently taking the position that the decision reached
15 by the Michigan Division in the review of the thing is
16 irrelevant, and --

17 Q So you don't think there's a disagreement between
18 Mr. Wessel and Mr. Rosso and Mr. Renfrow on what should be
19 put in item 3?

20 MR. POTTER: I wish you hadn't cut him off. Were
21 you finished with your answer?

22 THE WITNESS: No, what I was going to elaborate
23 on was the fact that there's disagreement all the way
24 through this thing -- well, I don't know if there's
25 disagreement. Mr. Wessel has said that -- if you look back

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3765

365 309

1 on page 6 at the bottom:

2 "In the area of a continuing Michigan Division
3 review Mr. Rosso stated that it was important to
4 emphasize that the Dcw board's decision is the thing
5 the parties should be looking at. Mr. Wessel stated
6 that that was his point exactly, and also why he felt
7 so reluctant to answer questions from Consumers Power
8 pertaining to the Michigan Division review."

9 BY MR. OLMSTEAD:

10 Q All right, stop right there.

11 Doesn't that sentence imply that Consumers Power
12 was wanting to put in information concerning the Michigan
13 Division review in the testimony, that Mr. Wessel did not
14 want to put in the testimony?

15 A No. In fact, just the opposite. Mr. Rosso is
16 saying that the only important thing to emphasize is the
17 Board's decision, and Milt is saying I agree with you, so
18 why get into this thing about the Michigan Division at all.

19 Q Okay. Let's look down at the first sentence in
20 the next paragraph, page 7:

21 "Mr. Rosso stated that when Consumers Power
22 considers what to put in to Mr. Temple's direct
23 testimony, they will have to try and anticipate what
24 Mr. Cherry is going to ask in the cross-examination."

25 Isn't it true that people generally agreed that

Acc-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

353 309

1 if Mr. Cherry was to show up at the proceeding, he would
2 inquire into the Michigan Division review?

3 A Yes.

4 Q And isn't it a fair implication of that sentence
5 that what Mr. Rosso is saying, by trying to anticipate
6 cross-examination, is that they need to put information in
7 concerning the Michigan Division review?

8 A If you go down about half way through that same
9 paragraph, Dave Rosso continues:

10 "He further pointed out that his original stand
11 was not to get into the Michigan Division review and
12 the reasons for that review being reversed by the Dow
13 board. He then made the observation that he is now
14 becoming concerned because he has heard that Mr. Cherry
15 may already have this information."

16 "The interpretation of that is that he's torn
17 between putting it in and not putting it in, but he also,
18 as I understand it, agrees with Milt that it's not really
19 important. And Milt is saying, wait a minute, since it's
20 not important and since it's sensitive to our ongoing
21 negotiations, why get into the whole damn mess?

22 Q So Milt is saying let's not get into it?

23 A Yes. Because he didn't feel it was important or
24 relevant.

25 Q And Rosso is leaning to getting into it more than

1 Milt wants to get into it?

2 A Yes, because, as stated here, he's now becoming
3 concerned because he has heard that Mr. Cherry may already
4 have this information.

5 Q But as of this date, no testimony for Mr. Temple
6 has been filed, is that correct?

7 A True. And, in fact, asking for the information
8 and putting it in the testimony are two different things at
9 this point.

10 I think both meetings reflect that.

11 Q Right. I don't want to get downstream of myself
12 before we get there.

13 Okay. I want to go back to page 8 now, and the
14 discussion by Lee Nute of how the decision was made by the
15 Dow Area board, which does not appear here, and ask you if
16 you have any recollection of your own as to how the decision
17 was made, or if you have any knowledge of your own as to
18 how the decision was made?

19 A My knowledge only goes to review of someone's
20 statement as to how it was made. I didn't participate in
21 it. That was done before I got involved in the matter.

22 Q Okay. Now, at page 3, the fourth paragraph,
23 which you referred me to sometime ago, Judd Bacon was asked
24 to leave the room, and the reason you gave before was they
25 didn't want to get into sensitive negotiating positions that

1 would prejudice Dow in the ongoing discussions with Consumers
2 Power.

3 A Right. In fact, if I may refer you back to, I
4 think, the previous meeting on September 29, . . .

5 (Pause.)

6 Q Well, I accept that. I --

7 A Okay. I'm looking for a statement where Rex
8 came back and said, Look, Milt and I agree that some of
9 this stuff we're going to be asking you is sensitive to
10 ongoing negotiations, and we agree that when we get into
11 that stuff that we'll ask Judd to leave.

12 Q Oh, I have no problem with that. As a matter
13 of fact, there is a letter signed by Rex Renfrow someplace
14 to that effect.

15 Now, after Judd Bacon leaves the room on page 8,
16 Milt outlines several items that he says -- or you attribute
17 to him as saying -- result in Joe -- I assume that's Joe
18 Temple --

19 A Yes.

20 Q -- having a credibility problem with Consumers
21 Power.

22 Now, is it your understanding that these
23 represent Milt's understanding of Joe Temple's problems, or
24 are these general problems that Milt perceives?

25 A I really -- all I'd have to be doing is assuming.

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET

WASHINGTON, D.C. 20001

(202) 347-3700

365 313

1 Q And the last item there is:

2 "A lot of what Myron Cherry states about
3 Consumers Power is really true."

4 Now, were any specific examples given?

5 A I really don't believe so.

6 Q Was it your impression that at this point the
7 tension between Consumers' lawyers and Dow's lawyers had
8 increased?

9 MR. POTTER: I'm sorry, do you mean in meetings
10 after this because of this event, or right at that point?

11 BY MR. OLMSTEAD:

12 Q In this meeting, from this time on, to the end
13 of the meeting were there greater tensions between Rosso,
14 Renfrow and Nute and yourself? You weren't participating
15 much, but . . .

16 A No, and I think the reason there wasn't is
17 because Judd Bacon was asked to leave the room.

18 Q In other words, there were tensions developing
19 before he left the room?

20 A Every time Judd Bacon asked a question about
21 that kind of information -- and you'll see it on the
22 record -- he gets a response from Milt or Lee saying, hey,
23 what do you want to get into that stuff for.

24 And that's about the only time during all these
25 meetings -- at least these two early meetings -- where

Acc. Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 314

1 things got a little tight between Judd Bacon and either
2 Milt or Lee.

3 There's one reference in the notes to Milt
4 saying, why do you want to get into this stuff? It isn't
5 important.

6 Q In other words, they suspected his motives?

7 A The inference was that Judd wanted it because
8 the information he was asking for might help him in future
9 negotiations with Dow, and Milt and Lee were aware of that.
10 And they said, hey, we're not going to give it to you, so
11 stop asking for it. And that went back and forth several
12 times.

13 But I think in response to your question, I
14 don't think things changed much from what they were from
15 the beginning, in terms of feelings between Rex and Dave
16 and Milt and me.

17 Q I'd like to go to page 10 now, the last para-
18 graph, and you may want to read some of this to refresh
19 your recollection. I'm interested in the last paragraph
20 on that page.

21 (Witness reviewing document.)

22 I'm also going to ask you a question on the
23 fourth paragraph on that page.

24 (Witness reviewing document.)

25 A Okay.

1 Q Let's take the fourth paragraph on page 10, where
2 it says what Rex Renfrow stated, and there's a dashed line,

3 "Consumers Power has a winner on the suspension
4 hearing -- Consumers Power has a problem because the
5 Appeal Board may not realize that Dow does not have
6 until 1985 before they are forced to act on the
7 decision of whether to start on new plants or not."

8 Did anyone at that meeting suggest that a 1985
9 date or a 1984 date, or some date short of 1985, be included
10 in the Temple testimony or otherwise supplied to the
11 proceeding?

12 A I really don't recall.

13 Q Now, in that last paragraph, on the question of
14 whether the ongoing negotiations on the Dow steam contract
15 were irrelevant, was that view generally held, in your
16 opinion, by everybody at that meeting?

17 (Pause.)

18 Do you recall any argument as to the relevance
19 of the ongoing negotiations? Other than what we've discussed
20 previously, about how you went about preparing for cross-
21 examination?

22 A I think everyone agreed that it was irrelevant.
23 That, together with the Michigan Division review.

24 Q I'm sure that everybody is going to be happy to
25 hear this, but I'm ready to go to the 11-1 notes.

1 MR. WEISBARD: I thought you were going to say,
2 to dinner.

3 (Laughter.)

4 MR. POTTER: You mean there's still an optimist
5 in the room?

6 (Laughter.)

7 BY MR. OLMSTEAD:

8 Q Do you recall when you transcribed these notes,
9 the November 1, 1976 memo to files?

10 A Do I recall when I actually sat down and
11 transcribed them?

12 Q Right. Was this normally -- well, let's just
13 take all the notes that you prepared. Did you normally do
14 that the next day, or was it a week later, or at your
15 leisure, or was there any time press?

16 A There was a time press to transcribe the first
17 notes, which I did, I think, immediately.

18 After we agreed as to what kind of notes I should
19 be -- you know, as to what role they would play in terms
20 of whether it was going to be an accurate summary rather
21 than verbatim, I didn't feel any pressure to immediately
22 sit down and transcribe them.

23 So I think I would sit down anywhere from a week
24 to three or four or five weeks after I took these notes.

25 Q Now, was the meeting of November 1, 1976 as

1 long as the previous two meetings?

2 A I really don't recall. I really don't.

3 Let me make another statement, too. My sitting
4 down -- I could sit down today, three years after taking
5 these notes, and probably give you 99 percent of what I
6 put down. That's the way I work with my notes. I don't
7 lose anything in terms of what they say.

8 Q Was this your first transcription of those notes?

9 A Yes.

10 Q And you made no other transcriptions of those
11 notes?

12 A No other.

13 Q Okay.

14 Except for the fact that the meeting may not have
15 lasted as long, I got the impression that your notes, as
16 the meetings were longer, got shorter. Like this is 8
17 pages long. Is there some --

18 A They got shorter in terms of actual volume. Let
19 me see . . .

20 Q Do you feel that they're less accurate because
21 of that, or is it because the meetings are shorter, or there
22 was less pressure to have as detailed a record, or . . .

23 A No, I think some of these meetings only lasted
24 like in the morning. I'm trying to remember now. Some of
25 the meetings went all day, and some of them didn't go all

1 day, okay? And the 11-1-76, that's where we kind of cut-
2 and-pasted this testimony and stuff together.

3 I think up to the point where we sat down and
4 started putting this testimony together in question-and-
5 answer form, it probably only lasted a couple of hours at
6 the most.

7 So I think in relation to what you had in the
8 9-29 meeting, which lasted the better part of a day, and --
9 let's see . . . well, like on the meeting of 10-12, we met
10 from 10:25 to 4:25.

11 That first meeting, it seems to me I recall that
12 thing lasted the better part of the day.

13 So I think, to answer your question, the shorter
14 length doesn't really mean that I got less and less complete.

15 Q Okay.

16 MR. OLMSTEAD: Off the record.

17 (Discussion off the record.)

18 MR. OLMSTEAD: Let's take a short break.

19 (Recess.)

7:10 p.m.20 MR. OLMSTEAD: On the record.

21 BY MR. OLMSTEAD:

22 Q I believe we were talking about your November 1,
23 1976 memo for the files. There's a discussion in here in
24 the first big paragraph, it's the fourth paragraph in that
25 memo --

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001

(Area) 5-27-2700

365 319

1 A On page 1?

2 Q Yes. Where Rex asked Milt about the documents
3 he wanted to take back to Chicago. Milt asked Rex if he
4 was talking about the sealed package of documents, and
5 Rex discussed the documents he was going to let Cherry see,
6 Mr. Cherry.

7 Then in the next paragraph, Milt says he doesn't
8 care whether Mr. Cherry sees those documents. He just
9 didn't want Consumers Power to see them.

10 So I gather that we're talking about the same
11 documents that we were talking about when Judd Bacon left
12 the room in your October 15 memorandum; namely, those types
13 of documents that reflected the ongoing negotiation
14 positions of the parties, is that correct?

15 A Wait a minute, we've got two sets of documents
16 here.

17 Q That's what I'm really trying to ascertain, just
18 exactly what we're talking about, in terms of documents.

19 (Witness reviewing documents.)

20 A We're talking about the documents that were
21 protected under that protective order that was signed --

22 Q Which, as I understand it, are essentially the
23 intervenors exhibit number 60. Are we talking about those
24 documents? Those are the ones that were released..

25 A You know, I really couldn't tell you. I didn't

1 have any hand in making up the documents. I didn't draft
2 the protective order, and I would just be, I think,
3 guessing as to what documents you're talking about.

4 Q My next question was: Did you know what was in
5 that package of documents, and I gather your answer is
6 no?

7 A My answer is no.

8 Q Okay. Was there any concern that you perceived
9 on the part of Mr. Wessel about what Rex Renfrow was going
10 to do with the sealed package of documents?

11 A I couldn't answer that.

12 Q Okay. In the last paragraph on the first page,
13 there's some discussion of the meeting notes, and Rex notes
14 that Consumers Power doesn't have any meeting notes
15 similar to Dow. Then he talks about Mr. Youngdahl's notes.

16 Now, are the notes that we're talking about
17 there not the notes that you had been keeping of the
18 meetings between the attorneys for Consumers and the
19 attorneys for Dow?

20 A They're not.

21 Q What notes are they?

22 A I think they're notes about ongoing negotiations
23 and stuff.

24 Q Okay.

25 A They quite possibly could include notes which

1 were of the meetings of September 21. That would be
2 speculating on that. I think they're probably notes of
3 ongoing negotiations, because . . .

4 Q At this time to the best of your knowledge
5 Consumers still didn't know of your memos to the files, is
6 that correct?

7 MR. POTTER: Which memos?

8 MR. OLMSTEAD: The ones that we've been discuss-
9 ing here.

10 MR. POTTER: Durand's notes? *

11 MR. OLMSTEAD: Yes.

12 THE WITNESS: I didn't tell them about them.

13 BY MR. OLMSTEAD:

14 Q Okay. On page 2, the third paragraph, Lee Nute
15 asked Rex about the possibility of getting out of the
16 hearing.

17 Is that reference to the continuing Dow position
18 that they were not a party to the hearing?

19 A Yes.

20 Q At this time they still hadn't been ordered as
21 a party in the proceeding, had they?

22 A I think to answer that you'd have to go back and
23 review the documents of -- the problem I have is when we
24 got into --

25 MR. OLMSTEAD: Off the record.

(Discussion off the record.)

MR. OLMSTEAD: Back on the record.

BY MR. OLMSTEAD:

Q Okay. On page 2, the third paragraph, Lee Nute asks Rex about the possibility of getting out of the hearing. This statement does not refer to getting out of the hearing as a party, is that correct?

A You know, after our discussion on this thing, I really couldn't answer that. There's a possibility it could mean that, and it could mean something else. It could mean either getting out of the hearing as a party, or everybody getting out of the hearing.

So my answer to your question is that I can't interpret that for you.

Q In other words, you don't know whether he's talking about Dow, Dow and Consumers, or --

A I don't know.

Q Okay.

On page 3 -- and I guess you're going to have to refer -- no, never mind.

The first full paragraph there, where it says:

"Milt stated ..."

A Okay.

Q Was it your impression at this meeting -- and refresh your memory to the extent you need to -- that Mr.

1 Wessel preferred that Temple not be used to testify, at
2 this point in the ongoing discussions?

3 A Are you asking me if at the time, at this time,
4 in the preparation of Joe's Temple, that Milt was under
5 the impression that he didn't want Joe to be the witness?

6 Q Yes, that maybe he was beginning to think that
7 it would be better to use someone else? Was there any of
8 that flavor in the meeting?

9 A Not from Milt. In fact . . . no, not from Milt.

10 Q Okay. Then let's take a sentence or two out
11 of that paragraph and examine it a minute.

12 About the middle of that paragraph he -- I
13 assume that's Milt -- stated that he did want to make it
14 very clear that the testimony was Consumers Power's doing,
15 and not Dow's.

16 Now, what do you think he meant by that?

17 A That goes back to Milt's previous reference
18 about Consumers Power putting this stuff together, and
19 Dow is just supplying information. The impression I get
20 from reading that sentence is just that, he wanted to
21 make it very clear that Consumers Power was putting testimony
22 together.

23 Q Okay, but if we go back to the last paragraph
24 on page 2, and leading into that statement on page 3, Dow
25 had evidently redrafted the Temple testimony and put it

1 back in an affidavit form. Is that correct?

2 A If you read the first part of that last para-
3 graph on page 2, Dave Rosso stated that the main problem
4 he had with Dow's draft is that it looks more like an
5 affidavit than testimony.

6 Q Okay. And Milt said this wasn't done inadvertent-
7 ly, we did that deliberately, when you go to the next
8 paragraph?

9 A Yes.

10 Q Then he states that he is concerned with what
11 may happen on Joe's cross-examination.

12 Now, why do you think he was concerned?

13 A I'd have to speculate.

14 Q Well, isn't the next sentence there that he's
15 concerned that Consumers Power may come back at a later
16 date and say Dow shot the thing down because it comes out
17 on Temple's cross-examination what the Midland Division
18 position was?

19 A That could be part of it.

20 Q And then it says, Dave Rosso stated that he
21 didn't really follow up with Milt. And then we go on into
22 a further discussion.

23 A I think the next to the last sentence, "Milt
24 stated that Dow is concerned with Consumers Power coming
25 back saying Dow shot the thing down."

1 Q Now, let's take that paragraph the next step,
2 then.

3 "Rosso asked if it would be better if the
4 testimony was put in question-and-answer form."

5 Then:

6 "Milt stated that this would at least show
7 that the testimony was being brought out in response
8 to Consumers Power's questions."

9 Now, was that --

10 A "...not a product solely of Dow."

11 Q Right. And was that because he was afraid that
12 if it were in direct examination and not in question-and-
13 answer format, he'd later be accused of breaching the
14 contract with Consumers Power to support their application?

15 A That was one of the concerns.

16 Q So that the use of the question-and-answer format
17 was to compromise, if you will, the disagreement between
18 Rex Renfrow and Rosso and Milt Wessel on the other hand,
19 over how to go about approaching the Midland Division
20 position in the Temple testimony. Would that be correct?

21 A No, I think it was more of a -- well, that may
22 be one of the feelings about it. But it was more of a
23 compromising the dilemma that Milt found himself in, (1)
24 having a legal obligation contractually to support Consumers,
25 but not wanting to compromise their position in the ongoing

1 negotiations. And that possibly was a compromise.

2 Q So that this discussion of misleading testimony
3 that we have --

4 A In the next paragraph?

5 Q -- in the next paragraph, would really be a
6 concern with Milt that one could be misled into believing
7 that Dow had not fully supported Consumers in their efforts
8 in the licensing proceeding, rather than a concern that the
9 testimony itself was untruthful?

10 A I couldn't agree with that statement.

11 Q So you feel that the belief of the Dow lawyers
12 was that the testimony, in substance, was misleading?

13 A Rather than make that statement and give people
14 the impression that Dow attorneys felt Consumers Power's
15 draft language was misleading, I think it would probably be
16 better to go to the draft itself together with letters that
17 Mr. Nute had exchanged with Mr. Bacon, to get a better
18 flavor of what Mr. Nute's and Mr. Wessel's concerns were,
19 rather than me trying to characterize it.

20 Q Yes, but we have gone through a number of those
21 drafts up to this point, and --

22 A Well, the one I just mentioned, the reason I
23 bring that up is Milt and Lee were particularly concerned
24 as to what the impression a person would get reading
25 Consumers Power's draft, that particular draft, of Joe's

1 testimony. And they wanted to keep away from it being
2 regarded as misleading.

3 Now, as to why they felt it was misleading or
4 disingenuous, or whatever term you want to use, I really
5 don't recall.

6 Q But at this point the testimony that we had
7 before us was not the testimony that was to be submitted
8 for Mr. Temple, is that correct? At this point, we had
9 just a few moments previously, agreed to a new format for
10 that testimony, so we didn't have the draft?

11 A No. I think in response to your one question
12 we hadn't arrived -- well, here's the problem. There were
13 so many drafts going through as to -- you know, if you got
14 one draft, let's say it was the sixth draft, at the time
15 that you received it people reviewing it, I don't think,
16 could make a decision as to whether or not that was going
17 to be the final draft. As it turns out, they went through
18 a couple of drafts after this, at least.

19 Q Right. So --

20 A So it would be hard to say, well, is this the
21 draft that's going to get to the Board? And, therefore,
22 it could be found to be misleading. I would think that
23 it was possible that it would get to the Board if it was
24 going to be the last draft that everybody could agree on.

25 Q Okay. Now, you just triggered in my mind another

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 328

1 question that I'd like to ask of your own knowledge about:

2 In all this drafting process that's gone on in
3 these three meetings we've discussed up to now, Joe Temple
4 was at a couple of those meetings, but the drafts that are
5 being exchanged are essentially being changed from lawyer
6 to lawyer, is that correct?

7 A Yes. Are you asking who prepared them, or --

8 Q I'm asking you to tell me the degree to which
9 Joe Temple was being consulted as each draft was prepared,
10 or were these drafts being exchanged among lawyers with
11 the idea that when you got some sort of agreement you would
12 give it to Mr. Temple and see what his reaction was?

13 A I only recall one situation in regards to drafts
14 of Joe Temple's input in it. I got the impression that --
15 I don't recall now whether it was Milt or Lee, because
16 they both drafted their own, as such -- I got the impression
17 that at least one of them, and possibly both of them, had
18 put the information together in a format, taken it in to
19 Joe Temple, and went over it with him. And I don't know
20 if Joe agreed with it or not.

21 Q Under Dow's policy would there have been any
22 documentation of concurrence? I mean under your normal
23 practices in the office, in dealing with clients would
24 there be any carbon copy with initials on it, or anything
25 that would indicate that he had read the testimony?

1 A I don't really know. If there is, I'm not
2 aware of a procedure. I do know there's some statement in
3 some of these in the record here which says that one,
4 either Milt or Lee, said, look, I've been to Joe on these
5 things as many times as I can, because he's said all he's
6 going to on the subject, or something in that regard, which
7 leaves one with the impression that he was involved in the
8 drafting of the testimony.

9 And I think to understand that -- I guess I
10 can't imagine Joe Temple not getting involved.

11 Q Okay. Let's go to page 6, paragraph 3.

12 We've discussed this testimony now for some time
13 following the discussion of whether the testimony was
14 misleading or accurate. As I read your notes, a lot of
15 changes were made in the drafts that they were working on
16 at that time.

17 The third paragraph says:

18 "Rex then proceeded to suggest several changes
19 and modifications or additions. He said that in the
20 first paragraph he would like to add the following
21 statement -- 'This testimony was prepared under my
22 supervision and direction and is true and accurate
23 to the best of my knowledge.'"

24 Now, at that time did anybody from Dow, namely
25 yourself, Mr. Nute or Mr. Wessel, object to the inclusion

1 of that statement in the testimony?

2 A I didn't object, and I don't recall that anyone
3 did. If I may review that paragraph for a second . . .

4 Q Sure.

5 (Witness reviewing document.)

6 A My notes do not reflect that anyone on the Dow
7 side objected to it.

8 Q So is it a fair conclusion, then, that once the
9 compromise -- which is what we agreed to call it -- was
10 reached, to put the testimony into question-and-answer
11 format, that there was no longer any objections on the
12 part of anyone as to whether the testimony was a true and
13 accurate disclosure of information relating to the Dow
14 position?

15 A Let me rephrase that so that I can try to
16 understand what you asked.

17 Are you saying that after we agreed on a
18 compromise position then everyone involved in that
19 proceeding was satisfied that what the end product was
20 going to be was accurate?

21 Is that what you're saying?

22 Q Well, I'll accept that, for purposes of an
23 answer.

24 A I think the people involved in drafting that
25 testimony at that point in time felt that the information

1 that they were going to present in Joe Temple's testimony
2 was true and accurate, and included what they felt was
3 all the relevant information.

4 Q Okay. So that when we get down to the bottom
5 of that page, page 6, where Milt states that the Dow
6 board got the impression that Consumers Power wanted Dow
7 to produce a witness that didn't know what had gone on,
8 and Dave Rosso stated a couple of sentences later he
9 didn't feel he was asking Dow to make a substantive change,
10 it's fair to conclude then that the matter had been
11 resolved?

12 A The matter being that . . .?

13 Q The witness was going to be Joe Temple.

14 A Yes.

15 Q And everybody agreed that the witness was going
16 to be Joe Temple?

17 A Yes..

18 Q And that the testimony that had been prepared
19 for Joe Temple's signature was true and accurate?

20 A True and accurate, and included, they felt,
21 what was all the relevant information, yes.

22 Q All of the relevant information? That went for
23 Dow's attorneys as well as for Consumers attorneys at that
24 time?

25 A Yes. And the reason I keep throwing that last

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 335

1 couple of words on there is the fact that I think at that
2 point in time both sides agreed that the Michigan Division
3 review was not relevant nor important.

4 Q Okay.

5 Going back to that sentence on page 6, bottom of
6 page 6, where Milt said that the Dow board had gotten the
7 impression that Consumers Power wanted Dow to produce a
8 witness that didn't know what had gone on, do you have any
9 independent knowledge of how they got that impression?

10 A I wasn't present at the meeting where they got
11 the impression. I've read documents. Specifically, I think
12 Lee's notes may have -- I don't have any independent
13 knowledge.

14 MR. CHARNOFF: You say Lee's notes of that
15 meeting? What meeting?

16 THE WITNESS: I think it's . . . what, September
17 21.

18 MR. CHARNOFF: Okay. You're referring to the
19 meeting with Consumers Power Company in September?

20 BY MR. OLMSTEAD:

21 Q But you weren't at that meeting.

22 A No, I wasn't at that meeting. I could be
23 mistaken on the date.

24 MR. CHARNOFF: But that's not a Dow board meeting
25 that you were referring to.

1 THE WITNESS: No. No. I'm talking about --
2 you're right, it would be confusing if I left it as such.
3 The impression that Dow got that Consumers Power wanted
4 them to produce a witness who didn't know anything allegedly
5 happened at a meeting September 21.

6 BY MR. OLMSTEAD:

7 Q That was communicated back to the board?

8 A And the board, I don't know when they got the
9 information. I really don't.

10 Q But it's your belief that the board got the
11 information by having the information relayed to them from
12 a participant at the 21st meeting, September 21 meeting?

13 A It's possible, because there were notes made of
14 that.

15 Q Okay.

16 In the middle of page , it says that:

17 "Lee Nute pointed out that Dow management saw
18 two general areas of significant misrepresentation
19 from Consumers that Dow was concerned about."

20 One dealt with the prospectus and the second with evidently
21 some statements by Consumers Power since the 1974 amend-
22 ments were agreed to. And then Tex said that he knew about
23 those issues and Lee Nute -- and that he put information in
24 the draft so that Cherry couldn't say that Joe Temple had
25 misled him. And then Nute observed that this was the way

1 that Joe Temple wants it stated.

2 Do you know what those two misrepresentations
3 are that were being referred to there?

4 A I guess you could read it that the two representa-
5 tions are the two items previously worded.

6 Q Right, but it says Rex knew what these issues
7 were.

8 A Knew about these issues.

9 Q And the issue was that "things", but things are
10 not defined in the note, and the other is a serious misrep-
11 resentation since the 1974 amendments were agreed to, but
12 it doesn't specify what it is.

13 What I'm asking is: Do you know what those two
14 items are?

15 A No, I don't. I can't at this point recall.

16 Q You don't think they were identified in this
17 meeting, other than Lee Nute making that statement and Rex
18 saying, yes, I know about that, whatever that was, and
19 moving on?

20 A I rather doubt that they were identified. That's
21 part of the problem of these meetings, that some of the
22 way things got stated were incomplete, and references to
23 things that everybody assumed they knew about.

24 So it wouldn't be uncommon to have that sort of
25 a statement sitting there and not fully defined, because

1 the people who were talking about it knew what they were
2 talking about, but --

3 Q But I assume, subject to your correction, that
4 the final sentence of the next paragraph, where Lee Nute
5 observed this is the way Joe Temple wants it stated,
6 indicates that Dow personnel felt that whatever those two
7 things were, they were sufficiently covered in the Temple
8 testimony so as not to raise a misrepresentation before the
9 board.

10 MR. CHARNOFF: Could I have that question read
11 back, if it was a question?

12 MR. OLMSTEAD: Let me restate it.

13 MR. CHARNOFF: If it wasn't a question, I don't
14 want it read back.

15 MR. OLMSTEAD: It was a question, but I put in
16 too many qualifiers I think.

17 BY MR. OLMSTEAD:

18 Q On page 7 there are two references to things
19 that may have been misrepresented by Consumers Power. Rex
20 Renfrow states he knows what those are. You have stated
21 you don't know specifically what those are, and you don't
22 think they were specifically indicated at the meeting.

23 A Right.

24 Q Then, at the end of that sentence is that Lee
25 Nute observed that "this" -- referring back to perhaps Rex's

1 reference to the way the Temple testimony was drafted is
2 the way Joe Temple wants it stated.

3 Now, my question to you is:

4 Am I to take that sentence as indicating general
5 agreement on the part of Dow counsel present at that
6 meeting that whatever those two things were, the Temple
7 testimony was drafted in such a way that the board would
8 not have the testimony misrepresented to them --

9 MR. CHARNOFF: The Licensing Board.

10 MR. OLMSTEAD: The Licensing Board -- on those
11 issues which Dow felt had been misrepresented by Consumers.

12 THE WITNESS: I really couldn't answer that
13 question, because I don't have the . . . I just don't know.
14 I really don't. I couldn't get that out of reading this
15 and refreshing my memory, either. It's just not that
16 complete there.

17 MR. REYNOLDS: Can we go off the record just for
18 a minute?

19 (Discussion off the record.)

20 MR. OLMSTEAD: Back on the record.

21 BY MR. OLMSTEAD:

22 Q On pages 7 and 8, the last two lines on page 7
23 and over to page 8, the top of page 8, it says that Rex
24 would like to have the statement in the testimony that Dow
25 would continue to review it and keep all its options open.

1 And Milt cautioned that this statement brought out the
2 tenuousness between Dow and Consumers.

3 Subsequently in the proceeding that became a
4 very stock reply of Milt Wessel, that Dow was keeping its
5 options open.

6 Why was Milt objecting to including it in the
7 testimony here, if you know?

8 A I wouldn't know, other than what I can read:

9 "Milt cautioned that this statement brought
10 out the tenuousness between Dow and Consumers Power."

11 I really couldn't give you an interpretation
12 from my knowledge of what he meant, other than what it says.

13 Q Okay.

14 Following the meetings of November 1, 1976
15 and/or the meetings of November 8, 1976, did you participate
16 in any meetings, discussions, conferences or otherwise
17 prepare materials concerning the Consumers-Dow matter,
18 other than those meetings?

19 A I may have had just discussions with Lee and
20 Milt on all of these items during that interim period, but
21 I don't specifically recall any.

22 Q Did you have any phone conversations with other
23 parties to the proceeding during that period?

24 A As I mentioned earlier, that phone conversation
25 I had with Myron Cherry. I'm not sure what the date was.

1 Q Okay. Other than that?

2 A I really don't think so.

3 Q Did you have any meetings with Mr. Temple?

4 A Individually?

5 Q Right, or with Mr. Nute present, or . . .

6 A I really don't recall.

7 Q After you transcribed your notes of these meetings
8 that we have discussed so far, that were typed up, did you
9 have occasion to compare your version with Mr. Nute's
10 version or with anybody else's version of the same meeting?

11 A No.

12 Q During any of these meetings when cross-examina-
13 tion preparation was being discussed with Joe Temple and
14 during those periods of time I assume that Judd Bacon was
15 not there, did Dave Rosso or Rex Renfrow suggest that Joe
16 Temple not express his own personal view, to the best of
17 your recollection?

18 MR. POTTER: I'm sorry. What was the full
19 question?

20 BY MR. OLMSTEAD:

21 Q The short full question is: Did Rex Renfrow or
22 Dave Rosso ever suggest that Mr. Temple not express his
23 own personal view?

24 MR. POTTER: That's at any meeting?

25 MR. OLMSTEAD: At any of these meetings.

1 THE WITNESS: You mean from 9-26 on?

2 BY MR. OLMSTEAD:

3 Q Right, during the cross-examination preparation.

4 MR. CHARNOFF: You said 9-26. Did you mean 9-29?

5 THE WITNESS: Yes, 9-29. I think I remember at
6 least one instance where Joe Temple was asked not to state
7 his personal viewpoint, because they didn't feel it was
8 important.

9 I guess I could find it. I don't recall right
10 now who said it or when. In fact, I think if you go back
11 to that one meeting we talked about, where . . .

12 BY MR. OLMSTEAD:

13 Q I think that you may be correct. Maybe we should
14 find it. I'm not sure that was during the cross-examination
15 preparation, but I think that was talking about the relevance
16 of his personal views.

17 A Let me just quickly look through, then.

18 (Witness reviewing document.)

19 MR. POTTER: Take a look at page 3 of your minutes
20 of 11-8-76, and see if that's what you're talking about.

21 THE WITNESS: Where it starts out, "Dave Rosso
22 asked Joe..."

23 MR. POTTER: Yes.

24 MR. OLMSTEAD: Which document is that?

25 MR. POTTER: 11-8. And please understand, I'm

Ace-Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 340

1 not trying to suggest that that is the answer, I'm just
2 trying to --

3 THE WITNESS: No, this is something -- if you get
4 back into that paragraph on page 3 of 11-8-76 notes, "Dave
5 Rosso asked Joe how much of a sense did Joe have of a
6 decision that Dow may eventually decide not to take nuclear
7 steam power from Consumers Power. Joe reiterated his
8 personal view on the matter. Milt stated that this was a
9 perfect answer for Joe, because he was looking at this from
10 a personal viewpoint. Rosso stated that from a Consumers
11 Power point of view, it would be better to have the Dow
12 corporate position."

13 MR. CHARNOFF: You might want to keep reading to
14 the bottom of that.

15 THE WITNESS: "He said that this was because Joe
16 feels so strongly about Consumers Power being here at all.
17 Dave Rosso pointed out that he thought Joe felt that Dow
18 did not have proper control over all of this. Dave Rosso
19 stated that it was not going to be good for Consumers Power
20 to have Joe stress the negative on this matter and stated
21 that Joe should stress the Dow corporate review position."

22 MR. CHARNOFF: Keep going to the next paragraph.

23 THE WITNESS: I can jump over down to the next
24 to the last sentence in the next paragraph:

25 "Dave Rosso stated that Joe may want to state

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 381

1 what the Dow corporate position is, and then state what his
2 personal concerns are. Joe stated that he didn't have a
3 problem with that approach."

4 I think in answering your question, I don't know
5 if Joe was ever told by anyone that they only wanted his --
6 they didn't want his personal view, but, rather, that they
7 wanted the Dow corporate review position. I think that's
8 what I'm saying.

9 MR. POTTER: Take a look at your notes, the
10 shortest one in the batch, the 11-15-76. Just look it over
11 and see if you can answer his question based on those two.

12 (The witness reviewing documents.)

13 THE WITNESS: On page 2 of the 11-15-76 notes,
14 third paragraph,

15 "Rex told Joe that he, Joe, should refrain
16 from referring to the fact that there were two
17 separate reviews, Michigan Division and Dow corporate."

18 There again, they approach it from this position
19 of we think the proper response for Joe would be to tell
20 them what the Dow board's final decision was, which is to
21 say the Michigan Division's review decision wasn't
22 important.

23 BY MR. OLMSTEAD:

24 Q Was not important? Or was not relevant?

25 A Was not relevant.

1 Q The reason I'm asking that is you told me earlier
2 that that was the position that Milt Wessel --

3 MR. CHARNOFF: I think he used both terms. He
4 said before that a concept of the Michigan position was
5 neither relevant nor important, were the words I heard him
6 say earlier.

7 THE WITNESS: Yes. In any event, they mean the
8 same thing, the way I use them. The fact is, they didn't
9 feel that leaving the Michigan Division review position out
10 was presenting less than -- you know, full information on
11 the situation.

12 MR. CHARNOFF: Could I have that answer read back,
13 please, that last sentence or two?

14 (Whereupon, the Reporter read from the record,
15 as requested.)

16 MR. CHARNOFF: They didn't feel, is that what
17 you said? They didn't feel?

18 THE WITNESS: Yes.

19 BY MR. OLMSTEAD:

20 Q All right. November 15, 1976, on page 2. This
21 is a memorandum to file, where I assume that the cross-examin-
22 ation preparation was continuing with Joe Temp' [redacted] at
23 right?

24 A Yes.

25 Q Down at the bottom of the page there is reference

1 to a discussion followed concerning coal pricing assumptions,
2 and a discussion of the status of that position.

3 A Yes.

4 Q Was this disagreement that occurred between
5 Consumers and Dow on coal costs at this meeting heated?

6 A No. I think it's a matter, as I pointed out --

7 Q Was it your impression that --

8 MR. CHARNOFF: Excuse me. Were you finished with
9 your answer?

10 THE WITNESS: No, I was going to say that there
11 was a difference of opinion as to where they got the
12 price information from, and I think it was merely that.
13 At one point . . . I guess I confused the record, because
14 I'm trying to remember that about coal pricing, but there
15 were also discussions about estimates from -- no, wait a
16 minute. They were talking about high-sulfur and low-sulfur
17 coal. The concern was that possibly Consumers' pricing
18 was done on low-sulfur coal and Dow's was done on high-sulfur
19 coal, and the difference of cost assumptions and pricing
20 assumptions might have stemmed from those differences.

21 BY MR. OLMSTEAD:

22 Q Okay. You started to say that there was a
23 disagreement on some other type of cost estimates. What
24 was that?

25 A I was trying to remember if there was a disagreement

Ace Federal Reporters, Inc.

444 NORTH CAPITOL STREET
WASHINGTON, D.C. 20001
(202) 347-3700

365 341

1 on cost estimates as they went to -- it had something to
2 do with the Black & Veatch study, but I just don't recall
3 what it is now. I never fully understood that part of it.
4 I mean I didn't work with it enough to fully understand.

5 Q But you do recall a disagreement --

6 A Yes. It's in my notes. That's why I was
concerned -- confused, as such.

8 Q To your knowledge, was there a belief on the part
9 of either Mr. Temple, Mr. Nute, Mr. Wessel or yourself,
10 that Consumers Power was deliberately inflating coal costs
11 in their environmental report, or in their analysis of the
12 alternatives to the nuclear steam project?

13 A I remember I don't feel that they had the feeling
14 that Consumers was deliberately trying to inflate coal costs.
15 My notes don't reflect that, I don't believe. Let me take
16 a look --

17 Q You're not aware of any discussion within Dow
18 internally as to coal costs, and discrepancies between Dow's
19 estimates and Consumers' estimates?

20 A I'm not aware of any. I wasn't a party on that.

21 Q If we go back just for a moment to your 11-8
22 notes --

23 MR. POTTER: Off the record.

24 (Discussion off the record.)

25 MR. POTTER: Back on the record.

BY MR. OLMSTEAD:

Q This is your 11-8-76 notes, page 4.

A If I may go back to the previous question, just to clarify the record, on page 2 of the 11-8 notes, there's a discussion on that page -- I think it's the second and third paragraphs -- about a disagreement about coal costs, and it had to do with inflation and a few other things.

But in reading back through these things I don't get the impression and I don't recall that . . .

Q Well, they seemed to soothe over their disagreement by using the reference that you gave to me in response to my question, that one was using high-sulfur and the other was using low-sulfur. But I was just trying to get a feel from your own mind for whether the Dow people who were involved found that explanation credible, or if they felt that it was a deliberate escalation of coal costs.

A Yes. I wasn't a party to that, so . . .

Q Okay.

A If it in fact happened, I don't really know.

Q If we can go to page 4 of those 11-8 notes, at the top of that page you report that Dave Rosso thought that Joe was a lousy witness in terms of Consumers Power's position in the case.

Now, had this opinion been expressed on any other occasion, during a recess or in any other manner, to

1 your knowledge?

2 A I just don't . . . I don't recall anybody telling
3 me that, either during a meeting or at recess, other than
4 what I reported there.

5 Q All right.

6 If I take the word out, "lousy" and go back to
7 Mr. Wessel's concern that the testimony presented by Dow
8 Chemical, presented in a direct fashion rather than in a
9 question-and-answer fashion, might tend to look like, in
10 a separate proceeding where there was litigation between
11 Consumers and Dow over the contract breach, it might tend
12 to look as though Dow didn't support Consumers, do you
13 suppose that that same concern that Mr. Wessel had might
14 be the concern that Mr. Rocco also expressed?

15 MR. POTTER: Again, I have to object. You're
16 asking him now to try to pick the minds of two people and --

17 MR. OLMSTEAD: I am, I'm asking him to give me
18 a feel of the general attitude of the parties at the
19 meeting.

20 MR. POTTER: Well, the objection is on the record.
21 Go ahead, Mr. Durand.

22 MR. OLMSTEAD: Well, I doubt if I'm going to ask
23 it at the hearing, but I would like to know what the
24 general attitude was of the parties at that meeting.

25 MR. CHARNOFF: I'm not sure I even understood

1 the question. Did you say Rosso was concerned whether --

2 MR. OLMSTEAD: I'm asking if the concern that
3 Rosso is expressing here in Mr. Durand's opinion is similar
4 to the concern that Mr. Wessel had about Temple as a witness,
5 because of Mr. Wessel's concern under the Dow-Consumers
6 contract that Dow had to support Consumers, if it's the
7 same type of concern; namely, what Dow found objectionable
8 in Mr. Temple as a witness, Consumers also was finding
9 objectionable.

10 THE WITNESS: Again, I don't have an opinion on
11 that, because just reading through there wouldn't support
12 it. I'd have to speculate.

13 BY MR. OLMSTEAD:

14 Q Okay. Back to the memo of November 15, I notice
15 that your name was not at the top of this memo as it was in
16 all the other memos. Is there any reason for that?

17 A I think it was just inadvertently left off. In
18 fact, I can refer to my original . . .

19 Q Excuse me, those documents you're referring to
20 are the originals of this?

21 A Yes. No . . . wait a minute. It's off of that,
22 too. It must have been a typo. I guess I could go back
23 to my rough, my original longhand.

24 Q You don't happen to have the September 29 longer
25 version in there, do you?

1 A No. No, I don't. I sure don't.

2 Q You can't blame a fellow for asking.

3 (Laughter.)

4 A As I said, I'll go back and look. I didn't
5 throw anything away, so I'm assuming it's there.

6 Q Okay. Were these notes on November 15 your
7 first transcription, or are there other versions.

8 A First transcription.

9 Q You haven't made any other?

10 A No.

11 Q Okay. When did you transcribe these?

12 A I really don't recall.

13 Q And was Consumers Power ever given the opportu-
14 nity to review these notes for accuracy, to your knowledge?

15 A I didn't give them to them, no.

16 Q Page 3, last paragraph, of the 11-15, there's
17 a reference to somebody named Echols there. Does that
18 person have any relationship to the Midland proceeding, to
19 your knowledge?

20 A No.

21 MR. OLMSTEAD: Off the record.

22 (Discussion off the record.)

23 MR. OLMSTEAD: Back on the record.

24 I have no further questions of this witness.

25 MR. JHARNOFF: I just have about three hours

CR-4810
1 worth. I think we ought to go right ahead.

2 (Laughter.)

3 MR. POTTER: Why don't we start around 7:00 in
4 the morning, because I've got about -- I may have about an
5 hour.

6 MR. OLMSTEAD: I intend to just observe.

7 MR. CHARNOFF: Let's compromise and make it
8 7:30.

9 MR. OLMSTEAD: Fine.

10 That's it, until 7:30 tomorrow morning.

11 (Whereupon, at 8:10 p.m., the taking of the
12 deposition was recessed, to be continued at 7:30 a.m.,
13 Tuesday, 15 May 1979.)
14
15
16
17
18
19
20
21
22
23
24
25