

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMANCHE PEAK INTIMIDATION PANEL

Docket No. 50-445-2
50-446-2

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ANN RILEY & ASSOCIATES
Court Reporters
1625 I St., N.W.
Suite 921
Washington, D.C. 20006
(202) 293-3950

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMANCHE PEAK INTIMIDATION PANEL

Friday, June 28, 1985
7920 Norfolk Avenue
Room P-110
Bethesda, Maryland

The Panel met, pursuant to notice, at 9:30 a.m., in
order to hear oral argument from the parties in the
above-entitled matter.

PANEL MEMBERS PRESENT:

- JIM BAGLIARDO, Chairman
- JANE AXELRAD, Member
- DARWIN HUNTER, Member
- JIM LIEBERMAN, Member
- BRUCE KAPLAN, Advisor
- LARRY CHANDLER, Advisor
- CHUCK RICE, Advisor

1 APPEARANCES:

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NICHOLAS S. REYNOLDS, ESQ.

4

BRUCE DOWNEY, ESQ.

5

MC NEIL WATKINS, Esq.

6

Bishop, Liberman, Cook, Purcell & Reynolds

7

1200 17th Street, N.W.

8

Washington, D.C. 20036

9

On behalf of the Applicant

10

ROBERT A. WOOLDRIDGE, ESQ.

11

Worsham, Forsythe, Sampels & Wooldridge

12

2500 2001 Bryan Tower

13

Dallas, Texas 75201

14

On behalf of the Applicant

15

16

ANTHONY Z. ROISMAN, ESQ.

17

Trial Lawyers for Public Justice, P.C.

18

Suite 611, 2000 P Street, N.W.

19

Washington, D.C. 20036

20

On behalf of Intervenor, Citizens Association for

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Sound Energy

22

Ms. BILLIE GARDE

23

Government Accountability Project

24

1555 Connecticut Avenue, N.W.

25

Washington, D.C. 20036

PROCEEDINGS

MR. GAGLIARDO: First of all, I'd like to introduce myself to any of you who don't know me. I am Jim Gagliardo with the NRC, and I am the Chairman of the Comanche Peak Intimidation Panel.

I have with me here at the table today the other members of the Intimidation Panel, Jim Lieberman from ELD, Jane Axelrad who is from our I&E office, and Darwin Hunter who is from Region IV.

We also have with us panel advisor, Bruce Kaplan, from EG&G, and we will be joined later by Mr. Chuck Rice who is also an advisor to the panel. Mr. Kaplan and Mr. Rice have been part of a study team that has been looking into the intimidation issues also.

We have with us today representatives from the intervenors' group and from the utility, and maybe you would introduce yourselves so that the lady knows who we have present here.

MR. ROISMAN: I am Anthony Z. Roisman and I represent the Intervenor, CASE. With me is Ms. Billie Garde, also involved in this case, but today she is appearing here in the capacity of head of the Government Accountability Project's Citizens Clinic Program.

MR. REYNOLDS: I am Nicholas Reynolds, counsel for Application, I'm from Washington, D.C. with me today are my

1 partners, McNeill Watkins and Bruce Downey, and also, Robert
2 Wooldridge from Dallas, Texas.

3 MR. GAGLIARDO: And I might also point out that we
4 have Larry Chandler with us here who has been advisor to the
5 panel and works with ELD and our counselor.

6 The purpose of this meeting is to enable the
7 Intimidation Panel and the study team as we are approaching
8 the completion of our review of the intimidation issues at
9 Comanche Peak, to enable us to hear final statements and
10 arguments from the Intervenor's group and from the Applicants'
11 group with regard to the intimidation issues.

12 The Panel has not yet reached a decision with regard
13 to the intimidation issues, and this is not an adjudicatory
14 process. Before this hearing began -- well, this is not a
15 hearing, but before this meeting began, I was approached and
16 asked if the Applicants' group could go on first as opposed to
17 the initial schedule that we had put forth, asking the
18 Intervenor's group to go on first, followed by the Applicant.

19 I would like to go as we had scheduled and ask the
20 Intervenor's group to go on first and give their statement,
21 after which we will have the Applicants give their statement.
22 If, after the Applicants give their statement, the
23 Intervenor's group would like to have a closing statement, we
24 can allow a few minutes for closing statement and rebuttal.

25 The staff of the Intimidation Panel does not intend

1 to discuss the status of our review or any preliminary
2 findings that we have come up with at this time. This is an
3 opportunity for the Intervenors and the Applicants to give
4 your position on the intimidation issues at Comanche Peak.

5 Again, we will ask the Intervenors to start with
6 their statement. You will have one hour to give your
7 statement. The Applicants will then be given an hour, and if
8 the Intervenors want to follow, we will allow that.

9 The staff may be asking questions during the
10 presentation just as points of clarification or understanding
11 the material that's been presented.

12 Does anyone else from the Panel have anything they
13 want to offer as introductory?

14 Okay. With that, I'd like to ask the Intervenors'
15 group if they would open with their statement.

16 MR. ROISMAN: Mr. Gagliardo, we are not willing to
17 accept the Panel's conclusion that unlike every other matter
18 in this case, that the intervenor should proceed first. We
19 are not aware of any, or we certainly didn't get any, advance
20 notice of any intention to change the schedule. Every meeting
21 that we've attended with the staff, the Applicants have gone
22 first, unless the meeting was exclusively with us and then the
23 Applicant had a small comment at the end.

24 If you remember, originally we thought this Panel
25 was going to meet the workers, not meet us. We were simply

1 going to be there to allow you to hear from the workers
2 themselves.

3 That was changed and eventually changed to what I
4 believe you have described at other times as in the nature of
5 a summation or oral argument.

6 This is an issue on which the Applicant carries the
7 burden of proof. The Applicant always goes first, and they
8 should go first here. We do not feel that it's appropriate
9 for us to go first. It is their burden, not ours. If they
10 carry nothing, we need say nothing in order for them not to
11 have prevailed on the issue.

12 So they should proceed to give you their position
13 and tell you why they think the plant atmosphere was such that
14 they could get Appendix B worked on properly; then we'll tell
15 you why we think they haven't carried their burden and we'll
16 also tell you about affirmative evidence that exists that
17 shows that they actively discouraged that atmosphere.

18 But it just doesn't seem appropriate. We didn't
19 come here prepared to make a presentation as though we carry
20 the burden of proof on this. We came prepared to do what we
21 would normally do. If we were in any other context we would
22 have the Applicant go first and we believe they should go
23 first this morning.

24 MR. GAGLIARDO: But as I indicated in the opening
25 statements, this is not an adjudicatory process. We are just

1 here to get a closing statement from you all. You know, we
2 are nearing the completion of our review now and we want to
3 hear final statements from you with regard to the intimidation
4 issues. And we had asked the same of the Applicants. And I
5 believe that when I talked with you about this initially I did
6 indicate that you all would be first and the Applicant would
7 follow with their presentation.

8 MS. GARDE: Mr. Gagliardo, the evolution of this
9 meeting has gone through a number of stages. It certainly
10 never started as the equivalent of closing arguments. I
11 believe that that was interjected mainly from ELD.

12 It initially started as, you know, based on our
13 concern that you had never talked to the workers. You have
14 changed it into something else. When you changed it into
15 something else, the rules changed, and when I called you two
16 days ago to verify that the meeting, in fact, was going on and
17 this was what was going to be happening, you didn't indicate
18 to me in any way, shape or form that since it had changed to a
19 closing argument that the presentation was still going to be,
20 in some way, different than a regular hearing process.

21 When you started adopting that format, I assumed --
22 and you never contradicted me -- that it was going to follow
23 the closing argument format. Those were your words, not ours.

24 MR. REYNOLDS: Mr. Gagliardo, may I be heard?

25 MR. GAGLIARDO: Yes.

1 MR. REYNOLDS: Each time I spoke with you or
2 Mr. Wooldridge spoke with you about the order of presentation
3 for this meeting it was quite clear from your words that you
4 intended that the Applicants go second and that the
5 Intervenors would go first.

6 I believe that your characterization of this session
7 as a meeting is valid and that the argument that the
8 Intervenor is advancing as to who should go first because of
9 burdens of proof is specious.

10 But if you will give me five minutes to collect my
11 thoughts, I will go first and we can put an end to this
12 discussion.

13 MR. GAGLIARDO: Okay. We'll go off the record for
14 five minutes for you to prepare for your opening comments.

15 [Recess.]

16 MR. GAGLIARDO: We are back on the record.

17 Since you have volunteered to make the opening
18 statement, we will give you an hour to make whatever statement
19 you want with regard to these issues, and then if you wish
20 after the Intervenor group has made their statement, we will
21 allow you 10 or 15 minutes rebuttal statement.

22 MR. REYNOLDS: We appreciate that.

23 We also appreciate the opportunity to appear before
24 you this morning to give you our views and perspectives on the
25 state of the record in Docket 2 and to suggest to you what we

1 believe to be the important elements of that record leading to
2 the formation of a position by this panel on the question of
3 intimidation.

4 I think it is important first to define what the
5 issue is. As framed by the Board, the issue is whether there
6 existed or exists today a pervasive climate of intimidation at
7 the Comanche Peak site of quality control inspectors such that
8 the inspectors performed their jobs in a manner inconsistent
9 with procedures and inconsistent with safety.

10 In short, the question is: Is there or has there
11 been a pattern of intimidation at Comanche Peak?

12 It is important as a starting point to define
13 intimidation. We endorse the definition that the EG&G team of
14 experts presented in its report, and that was that
15 intimidation is the rendering of someone timid because of fear
16 or apprehension such that that person does not do his or her
17 job properly.

18 Our view is that intimidation comprises three
19 elements. First is the conduct of the alleged intimidator;
20 second, the feeling of the recipient of the alleged
21 intimidation; and third, a necessary change in behavior of the
22 recipient.

23 We believe that the intent of the alleged
24 intimidator is an important element in your considerations.
25 We also believe most important is that the panel must

1 establish some objective standard to assure that any perceived
2 threat or intimidation is reasonable in the eyes of the
3 beholder, as opposed to the egg shell inspector who is
4 intimidated by events which are routine to normal people.

5 MR. LIEBERMAN: Could I ask a question? With the
6 egg shell analogy, if your company, or your client's company
7 hires a person to serve as quality assurance worker, and for
8 whatever reason, this person has a thin skin, and a supervisor
9 uses strong language or takes some action that causes that
10 person not to do that person's job, while a more reasonable
11 person might not have been impacted by that, doesn't the same
12 result occur: that improper quality assurance practices may
13 result?

14 MR. REYNOLDS: The important element, to answer that
15 question, is the intent of the supervisor. I would say that if
16 the supervisor knows of the thin skin and nevertheless is
17 harsh with the individual such that the individual may be
18 adversely affected in the performance of his or her job, that
19 that would be blameworthy.

20 On the other hand, if the supervisor is not aware of
21 the quirk in personality that the person may suffer from, I
22 don't think it's the kind of pattern of intimidation that this
23 panel is seeking to find, and I don't think it's the kind of
24 management conduct that is inconsistent with NRC regulations
25 or, indeed, inconsistent with the intent of management to

1 construct a quality plant.

2 So I think the answer, in short, is the intent of
3 the supervisor and the knowledge of the supervisor as to the
4 qualities or the weaknesses in the personality of the
5 inspector.

6 MR. LIEBERMAN: Okay.

7 MR. REYNOLDS: We have evaluated the evidence that
8 is available to this panel, and it is quite substantial, and
9 we believe that there are certain primary building blocks that
10 you must use, or certainly should use, in our view, in order
11 to construct a fair and objective position on the question
12 before you.

13 The building blocks are the facts of record, and we
14 see three kinds of evidence that are presented to you. The
15 first is the setting in which construction occurs at Comanche
16 Peak. We will call that context evidence.

17 The second is the direct measurements of global
18 worker satisfaction or dissatisfaction. That is available in
19 the record.

20 The third is the effect of the testimony on the
21 small number of alleged witnesses who appeared as witnesses.

22 To place the evidence of record in context, I first
23 suggest that we have here a construction project of a
24 substantial magnitude that has been ongoing for over ten
25 years. There have been thousands, if not tens of thousands of

1 workers, who at one time or another have worked at the
2 Comanche Peak site. There have been millions of contacts
3 between inspectors and craft, inspectors and supervisors,
4 employees and employers. This presents millions of
5 opportunities for conflicts of personality, disputes of
6 interpretation to arise.

7 Against that backdrop, what does the record show?
8 Relatively few allegations of intimidation. A very, very
9 small number. EG&G said ten alleged. We calculate between 15
10 and 20 allegations of incidents. EG&G said that very few
11 management were accused. EG&G said five.

12 In the context of this universe, the individual
13 allegations in the record can be fairly evaluated. Assuming
14 for the sake of argument and only for the sake of argument
15 that every allegation in the record is valid, we submit that
16 the record is undoubtedly insufficient for the panel to
17 conclude that there has been a pervasive atmosphere of
18 intimidation at the site.

19 In fact, EG&G assumed the validity of every
20 allegation and concluded unequivocally that no such climate
21 exists at Comanche Peak. Taken at face value, the record
22 shows not only the absence of a pervasive climate, but it also
23 shows affirmative actions by management to detect worker
24 satisfaction, to address the root causes of the
25 dissatisfaction, and to prevent intimidation from occurring.

1 There are three principal direct measurements, in
2 our view, of the global perspective of the climate at Comanche
3 Peak over the last several years. They are the 1979
4 management survey, the 1983 management survey, and the OI
5 reports.

6 The place to start is with the 1979 survey. In 1979
7 site QC management had indications of low morale among the QC
8 inspectors. It's important to note here that this was 1979,
9 prior to the commencement of the Licensing Board hearings
10 involving the operating license application. This is a clear
11 look at the attitude of management and the responsiveness of
12 management when indications of low morale or worker
13 dissatisfaction were brought to its attention.

14 There was no outside stimulus that could even be
15 suggested here that the survey was done for other than the
16 interests of management to get a handle on the concerns of its
17 employees.

18 What did management do? It structured a survey to
19 determine whether there were indications of low morale and, if
20 so, whether they were valid, and if valid, what the root
21 causes of the low morale were. Anonymity in the survey was
22 carefully protected.

23 The survey was a general investigation into the
24 concerns of QC inspectors, QA/QC personnel on site. The most
25 prevalent concerns expressed as a result of the survey were

1 low wages and confusing procedures. Management promptly took
2 action to raise wages and management rewrote the procedures
3 that were causing the confusion.

4 The EG&G team of experts concluded, in effect, that
5 the 1979 survey was reasonably calculated to reveal instances
6 of a climate of intimidation if that situation was of concern
7 to QA/QC personnel on site.

8 We feel very fortunate that the EG&G team of experts
9 was able to apply its expertise in management and behavioral
10 sciences in the review and analysis of this survey because it
11 is the only professional analysis in the record of this case
12 and available to this panel. We believe it is the best
13 evidence on the meaning of the 1979 survey.

14 The results, in sum, of that survey were that only a
15 very small percentage of the inspectors surveyed -- and there
16 were about 150 surveyed -- described or complained about
17 intimidating incidences. Further, over 95 percent of those
18 surveyed indicated that they understood their job, they had
19 the authority necessary to perform their job, they had
20 adequate support from supervision to perform their job, and
21 that they enjoyed their work.

22 The meaning of these results is unmistakable. There
23 was no pervasive climate of intimidation at Comanche Peak in
24 the late 1970s. Indeed, the overwhelming majority of
25 inspectors on the site at that time expressed affirmatively

1 that they enjoyed their jobs.

2 The 1979 survey is the best evidence of record on
3 the question of the climate, the work climate at Comanche Peak
4 during the late 1970s, and that survey indicates convincingly
5 that intimidation was not a factor during that time frame. But
6 it also indicates something equally important. It indicates
7 that when management received signs that there was distress and
8 low morale among workers, they took actions to get to the
9 bottom of the problem and to rectify the problem.

10 The next building block to which we turn is the 1983
11 questionnaire survey, another very important source of data on
12 the climate at Comanche Peak in the 1980s. It was initiated
13 by the then site non-ASME QC supervisor when he thought it
14 appropriate to determine how inspectors felt about their
15 jobs. The response rates were very high.

16 EG&G reviewed the survey and found that it provided
17 wide coverage of QC personnel and was able to generate
18 responses that were fairly reflective of the work environment
19 at that time. EG&G praised the responses as candid. The
20 complaints involved primarily wages, hours, working
21 conditions, red tape and the like; 67 percent of the responses
22 involved those types of complaints.

23 Suggestions of intimidation comprised 2.2 percent of
24 the responses.

25 EG&G concluded objectively that the 1983 survey

1 indicated, and I quote, "little or no evidence of intimidation
2 as anything but a relatively rare, coincidental occurrence."
3 That is page 36 of the EG&G report.

4 In combining the 1979 and 1983 surveys, what do we
5 have? We have a broad sample of data from QC personnel taken
6 on site four years apart which renders the only possible
7 conclusion that we believe can fairly be made from the
8 evidence, and that is that at neither time was there a
9 widespread or pervasive climate of intimidation among QC
10 inspectors.

11 Another inescapable conclusion is that management
12 was responsive to concerns raised to management by inspectors,
13 was concerned about morale problems, concerned about employee
14 complaints, and took aggressive action to learn more about
15 them and to rectify them.

16 It was fair for management to conclude at those
17 times that there was no pervasive atmosphere of intimidation
18 based upon those survey results. As EG&G concluded, at no
19 time is it probable that a climate of intimidation existed at
20 Comanche Peak.

21 I turn now to the third important building block on
22 the direct measurements reflecting on global issues of
23 intimidation at Comanche Peak, and that is the OI
24 investigation report 83-013, which was conducted in July of
25 1983 into whether the termination of a QC inspector for what

1 was then thought to be unlawful reasons had any adverse or
2 intimidating effect on the balance of inspectors at the site.

3 More broadly, OI also inquired in general into
4 whether the inspectors had ever been intimidated or had ever
5 suffered attempts by management or craft to intimidate. So OI
6 did not confine its questions to whether the termination of
7 the inspector unduly influenced; they asked the broader
8 questions, as well.

9 The results of the OI investigation were that 76
10 inspectors were interviewed; that none had failed to report
11 deficiencies; that 75 of the 76 stated that there were never
12 any attempts to intimidate them; and that all 76 stated that
13 they were not influenced by the termination of the inspector
14 to do less than a full and competent job as an inspector.

15 There is no basis upon which to conclude that the OI
16 interviews and the responses to those interviews were less
17 than fully objective and candid. They were performed by NRC
18 employees. The inspectors interviewed were entitled to
19 confidentiality if they wanted it.

20 The results of the OI investigation are strikingly
21 similar to the results of the 1983 survey conducted in the
22 same time frame and the 1973 survey which was conducted four
23 years before. The consistency of these results confirms both
24 the validity of the 1973 and 1983 surveys and confirms the
25 conclusion reached by EG&G that there is no climate of

1 intimidation and was not climate of intimidation at Comanche
2 Peak.

3 So in summary, we would urge the panel to focus
4 carefully on these three important pieces of evidence. They
5 comprise interviews of over 360 inspectors on site over a
6 four-year period, and the results indicate that a very small
7 number of people complained about intimidation.

8 The indirect measurements of climate are primarily
9 the allegations of the individual allegeders presented in the
10 record of this case. In summary, and in candor, this
11 testimony may reveal an instance or two that clearly could
12 have been handled better by managers at the site -- the
13 T-shirt incident comes to mind, and I will address that
14 further -- but it certainly does not establish the existence
15 of a pervasive climate of intimidation. Indeed, it doesn't
16 even establish intimidation at all.

17 This testimony does not fairly support any inference
18 of a problem other than the specific concern expressed by the
19 allegeder.

20 I will attempt briefly to summarize each allegation
21 of the testimony in the case. It is, as you know, quote
22 voluminous, and I will try to highlight it. If you have
23 any specific questions as to any of the allegations, please
24 feel free to interrupt me.

25 We will start with Darlene Stiner, a former welder

1 and QC inspector at the site who testified regarding several
2 incidents of alleged intimidation. Mrs. Stiner testified at
3 great length on the technical docket, Docket 1 in this case,
4 primarily on welding issues, and the Board found in its
5 December 18, 1984 memorandum, at pages 17 and 18, that
6 Mrs. Stiner's testimony was inconsistent in many respects and
7 lacking in credibility.

8 Mrs. Stiner's testimony on Docket 2 was equally
9 lacking in credibility and merit. She contends that she was
10 intimidated by the voiding of an NCR, that she was intimidated
11 by the disposition of an NCR, use as is. Indeed, she defines
12 intimidation as the mere voiding of an NCR by a supervisor
13 unless the inspector agrees with the disposition.

14 Mrs. Stiner's testimony was that it was the
15 obligation of supervision, quality engineers or supervisors on
16 the QC staff, to come to the inspector and to explain each
17 basis for dispositioning an NCR.

18 This is not consistent with site procedures. This is
19 not required by Appendix B. It is, indeed, an unrealistic
20 approach to an inspector's job.

21 Mrs. Stiner contends that the voiding of an NCR she
22 wrote on a piece of equipment that was non-Q was an act of
23 intimidation. She contends that she was intimidated because
24 she wrote an NCR on what she thought was excessive weave
25 welding. Her testimony is inconsistent on whether she even

1 understood that limited weave welding was permissible at
2 Comanche Peak.

3 More importantly, the record reflects that
4 Mrs. Stiner did not even write an NCR involving the weld in
5 question, but rather that she had accepted the weld, and in
6 order to find that evidence, you will have to look in the
7 Docket 1 record.

8 Mrs. Stiner contends that she was intimidated by
9 relocation of her office. Apparently she felt that the move
10 itself was intimidating and she felt that the location of her
11 office was intimidating. In fact, her relocation was part of
12 a larger relocation of all inspectors in the group with which
13 she worked, and the location of her new office was designed to
14 accommodate the physical limitations that accompanied her
15 pregnancy.

16 She was concerned that her office was too close to a
17 road and feared that the office would be run over, she said,
18 accidentally intentionally, by a truck. The present occupant
19 of that office considers it to be a great location, in his
20 words.

21 She had several similar allegations of intimidation
22 of a similar stripe that I don't think we should pause on
23 here. I believe a fair summary of Mrs. Stiner's testimony is
24 that she lacked credibility and, in any event, was an overly
25 sensitive person who apparently was placed in fear by events

1 that most would consider routine.

2 Henry Stiner is a former welder at Comanche Peak.

3 MS. AXELRAD: Could you comment a little bit on one
4 of her allegations about the incident on the bus and the
5 publication in the "Circuit Breaker," the newspaper, about her
6 testimony at the hearing?

7 MR. REYNOLDS: The incident on the bus is discussed
8 at great length in the record, as I'm sure you know.
9 Basically a summary of that is that when Mrs. Stiner arrived
10 to take the bus, which is not owned or occupied by Applicants
11 or by Brown & Root, she was rejected entry to the bus by the
12 owner and driver of the bus because he said there was no room
13 -- or did he say it was because she was pregnant? I think it
14 was both.

15 Mr. Stiner, when he learned of this, reacted
16 violently, went to the site, threatened people. It was a bad
17 situation that we believe was handled badly by Mr. and
18 Mrs. Stiner, but in any event, we believe that it does not
19 reflect on Applicants or on Brown & Root because they simply
20 were not involved in that episode.

21 MS. AXELRAD: Weren't they involved, though, in --
22 maybe you could tell me a little about this, the site
23 newsletter, the "Circuit Breaker," and management or company's
24 involvement in whatever information is published.

25 MR. REYNOLDS: Yes. The site newsletter is called

1 the "Circuit Breaker." It is published by Texas Utilities
2 pursuant to its rights under the First Amendment to express
3 itself on matters relevant to its business. It is distributed
4 widely in corporate headquarters and on site as well.

5 Apparently there was a "Circuit Breaker" that
6 Mrs. Stiner saw or was told about that summarized testimony in
7 a Licensing Board hearing in 1982, I believe. The "Circuit
8 Breaker" in question is in the record, and it reflects a
9 straight factual recitation of what transpired at the
10 hearings.

11 Mrs. Stiner apparently felt that the mere repeating
12 of what had been done and said at the hearing was an act of
13 intimidation, an attempt by management to discourage others
14 from coming forward to testify.

15 We believe that the corporate policy on the "Circuit
16 Breaker" publication and what information is contained in the
17 "Circuit Breaker" is quite clear in the record. We believe it
18 is an honest and objective attempt to advise employees as to
19 matters of interest to employees and nothing more.

20 MR. LIEBERMAN: Mr. Reynolds, is the "Circuit
21 Breaker" published every day or weekly or monthly?

22 MR. REYNOLDS: I believe, Mr. Lieberman, that it is
23 published periodically, frequently, and I think it is as
24 newsworthy events transpire.

25 MR. LIEBERMAN: Do the articles normally include the

1 names of workers?

2 MR. REYNOLDS: I believe so. Let me also point out,
3 Mr. Lieberman, that the newspapers in the Dallas-Ft. Worth
4 metroplex and the television stations in that area both had
5 reported in substantial detail what had transpired at the
6 hearings, including the names of people who testified, before
7 the "Circuit Breaker" was distributed on site. So there was
8 nothing earth-shattering or new that was published in that
9 "Circuit Breaker." It was all previously published in
10 newspapers and discussed on television shows.

11 MR. LIEBERMAN: I understand that is what is stated
12 in the record. I guess the concern I have in looking at this
13 incident is that Ms. Stiner was still working at the site at a
14 time that this article was published. She was doing a GA
15 job. She needs independence to do her job. Here comes a
16 company publishing -- and it may well be the truth -- an
17 article concerning her testimony.

18 Workers, no doubt, are concerned about their jobs,
19 whether this plant will continue to be built, and it raises a
20 question of whether the company was taking steps to decrease
21 her independence and ability to do her job or supporting her
22 in doing her job.

23 I wonder if you have any comments about that.

24 MR. REYNOLDS: Yes, I do. First of all, I would say
25 that, as a matter of law, constitutional law, Atomic Energy

1 law and NRC regulation, there is nothing inconsistent with
2 publishing information for distribution on site as long as it
3 is factual. I would not even agree that it is insensitive to
4 publish such information on site.

5 I think it is a fair way to distribute information,
6 particularly since it was objectively reported, and
7 particularly since it had already been widely distributed
8 through the press. Management, as a matter of fact, was
9 concerned about Mrs. Stiner's ability to function once she had
10 testified. In fact, Mr. Tolson and Mr. Brandt met with
11 Mrs. Stiner and told her that they held nothing against her
12 because she testified, that they wanted her simply to do her
13 job, and that as long as she did her job, there would be no
14 repercussions whatsoever about her involvement in the
15 licensing hearings; and that testimony is in this record.

16 But I think that the "Circuit Breaker" issue is
17 without merit. I think that the company was certainly
18 entitled to publish that "Circuit Breaker," and I believe if
19 you haven't read it, you certainly should because it's an
20 innocuous reporting of the facts that occurred. And after
21 all, that hearing was not confidential, it was not
22 sequestered. It is a free, public hearing. And as Judge Bloch
23 is often inclined to say, we want the truth brought out, we
24 want a full and frank disclosure, and there is nothing
25 inconsistent with that philosophy in publishing the "Circuit

1 Breaker."

2 MS. AXELRAD: But does the company ever use the
3 "Circuit Breaker" for getting a message to employees that
4 intimidation by supervision will not be condoned, and to sort
5 of get the management attitudes out?

6 MR. REYNOLDS: My recollection is that the "Circuit
7 Breaker" is simply a fact reporting device. Messages of
8 corporate policy are communicated in other ways, through
9 posters, through inserts in paycheck envelopes, through direct
10 meetings between corporate management and staff on site and
11 the like. My recollection is that the "Circuit Breaker" is
12 not used to communicate corporate policy to the workers.

13 Mr. Stiner alleged that he was terminated for
14 reporting a deficiency to a GC inspector. He also alleged
15 that the NRC staff was not responsive to his concerns. The
16 Licensing Board in its December 1984 memorandum also addressed
17 Mr. Stiner's credibility and consistency and found it as
18 lacking as Mrs. Stiner's, if not more so.

19 Further, his complaints about Staff conduct are
20 simply not relevant to the issue before this panel and, in any
21 event, are clearly without merit, as the record shows. His
22 complaint about his termination has already been addressed and
23 disposed of by the Licensing Board, which concluded that he
24 was discharged for excessive absenteeism and not for reporting
25 a deficiency to an inspector.

1 William Dunham, a former QC inspector, contends that
2 he was terminated for complaining to management about the
3 intimidation of QC inspectors. Mr. Dunham filed a Section 210
4 case with the Department of Labor on the basis of this
5 allegation, and the issue before the Department of Labor was
6 whether the termination was lawful.

7 By stipulation, the same issue was joined in the NRC
8 case, and the record developed in the Department of Labor case
9 is the record before the NRC. The Department of Labor
10 Administrative Law Judge found after evidentiary hearings that
11 Dunham was terminated for telling his supervisor to "take this
12 job and shove it," and not for complaining about intimidation.

13 The Secretary of Labor's Order serves to
14 collaterally estop the intervenor from pursuing Dunham's claim
15 before the NRC, just as the Licensing Board in this case
16 collaterally estopped Applicants from rebutting the claim of
17 wrongful discharge of another inspector, Mr. Atchison,
18 initially found by the Secretary to be unlawful.

19 Mr. Atchison was a former inspector at Comanche
20 Peak. He contends that he was discharged for writing an NCR.
21 He filed a Section 210 claim with the Department of Labor, and
22 the Secretary of Labor found in June of 1983 that he was
23 terminated unlawfully for writing an NCR.

24 In July of 1983, the Licensing Board held that
25 Applicants were collaterally estopped from litigating the

1 merits of Atchison's claim in the NRC forum. The Licensing
2 Board thus, in effect, adopted the findings of the Department
3 of Labor on the termination question.

4 Last December the United States Court for the Fifth
5 Circuit reversed and vacated the Secretary's decision, finding
6 that the conduct for which Atchison claimed he was terminated
7 is not protected under Section 210. The Fifth Circuit did not
8 reach the question, the challenge to the facts underlying the
9 Secretary's decision, which challenge was raised by Brown &
10 Root in that appeal simply because of the manner in which the
11 Court disposed of the case on a question of law.

12 The time for the petition to the Supreme Court for
13 review has elapsed, and the Fifth Circuit's decision is final.

14 Because case law uniformly holds that vacated
15 decisions are without collateral estoppel effect, the
16 Secretary's findings in the Section 210 case are a nullity and
17 are void. The Board found that the parties were bound by the
18 Secretary's decision, and the parties are likewise bound now
19 by the Fifth Circuit's decision holding that the termination
20 was lawful.

21 MR. LIEBERMAN: Mr. Reynolds, I can accept that the
22 Fifth Circuit held that the termination of Atchison did not
23 constitute a violation of Section 210 of the Energy
24 Reorganization Act because Mr. Atchison did not come to the
25 Commission. I think it is a different question to say whether

1 or not there was discrimination at all because he raised a
2 safety issue.

3 MR. REYNOLDS: I agree with that, and I believe the
4 answer before this panel is that there is insufficient
5 evidence for you to make a judgment because the findings of
6 the Secretary of Labor not longer exist as a matter of law.

7 MR. LIEBERMAN: But the information on the record
8 before the Secretary is there. The reasoning of the Secretary
9 is there. Whether we adopt it or not is another question.

10 MR. REYNOLDS: I disagree because the collateral
11 estoppel decision of the Licensing Board in this case was
12 based upon privity between Brown & Root and Texas Utilities.
13 In the litigation of the case, the ultimate outcome of the
14 litigation is the Secretary's decision. It is based on
15 findings made by the Secretary on the basis of that record.

16 We did not participate in the litigation of that
17 case. We do not accept the facts that are set forth in that
18 record. We believe, in fairness and in law, that this agency
19 must create its own record if it is to make a decision on
20 whether Atchison was intimidated or not.

21 MR. LIEBERMAN: We will have to face that in due
22 course.

23 MR. REYNOLDS: We continue to maintain that Atchison
24 was terminated for incompetence in the performance of his
25 inspections, not for writing NCRs, which the record reflects

1 he was actually encouraged to do.

2 in any event, even if Atchison's termination was not
3 proper, OI report 83-013 confirms that it had no pervasive
4 effect in terms of chilling the atmosphere among QC inspectors
5 or discouraging them from doing their job properly.

6 Corey Allen is a former QC inspector at the site who
7 identified certain technical problems in the coating program.
8 One of those was his observation that coatings in the reactor
9 core cavity had not been DBA qualified. He raised this issue
10 with his supervisor, who told him to write an NCR. He did,
11 and the NCR was dispositioned "use as is," a disposition with
12 which Mr. Allen disagreed.

13 The TRI has concluded that the NCR disposition was
14 sound. If Allen was discouraged by this episode, certainly no
15 one could call it intimidation or harassment. The cause can
16 only be assigned to unusual sensitivity in Mr. Allen's
17 personality.

18 He only complained once about harassment. That was
19 in a memo to his management involving a conflict with the
20 craft. His supervisor immediately convened a meeting among
21 Allen, the craft, craft supervision and QC supervision, and
22 emphasized that such conduct toward inspectors would not be
23 tolerated by QC management.

24 Perhaps Mr. Allen now claims not to have been
25 satisfied with the supervisor's action, but he did not so

1 indicate at the time. The incident, as described both by
2 Mr. Allen and by Applicant's witnesses, is proof that QC
3 management took prompt, aggressive action in response to an
4 incident of alleged intimidation.

5 Mr. Allen testified he never accepted work he
6 thought was unacceptable.

7 Robert Hamilton and Joe Krolak, both former QC
8 inspectors. They claim they were terminated for being
9 aggressive inspectors. The facts show that they were
10 terminated for refusing to perform their assigned duties. The
11 controversy centers on whether they were asked to perform an
12 unsafe inspection.

13 The Licensing board has already found that Hamilton
14 was intimidated, but as you likely know, Applicants objected
15 to that finding, objected to the Board procedure in making the
16 finding because the issue was never identified before the
17 Board and Applicants had no opportunity to present evidence
18 before the Board issued its finding.

19 Applicants made an offer of proof during the
20 evidentiary depositions in Glen Rose last summer, in which
21 convincing evidence is set forth that Hamilton and Krolak were
22 terminated for cause. They refused to conduct an inspection
23 on the polar crane rail because they claimed it was unsafe.

24 The inspection area met all applicable safety
25 requirements. It was clean, it was free of grease, it had all

1 necessary safety equipment in place.

2 Their supervisor and the site safety officer both
3 went up to the rail, polar crane rail, which was the area of
4 inspection, personally and reviewed the area. They found it
5 safe and acceptable for inspections.

6 Craftsmen had been working in that area that
7 morning. The supervisor of Hamilton and Krolak offered them a
8 final opportunity to conduct the inspection after having
9 personally inspected the area himself. They declined.

10 The inspection was performed by other inspectors the
11 same day on the night shift.

12 The panel should consider all sworn testimony and
13 statements before it on this question. Even though the Board
14 denied the offer of proof, the panel should not blind itself
15 to sworn facts before it which show clearly that there was no
16 intimidation involved in this incident but that management
17 acted properly, responded to concerns of unsafe working
18 conditions, satisfied itself that they were not valid, and
19 afforded the inspectors yet another opportunity to do their
20 jobs. Management acted properly in this situation.

21 The T-shirt incident posed the question of whether
22 there was intimidation or harassment of a group of electrical
23 inspectors who wore T-shirts bearing the phrase, "Comanche
24 Peak Nit-Pickers. We're in the business of picking nits."
25 What management did was to place these individuals in a room,

1 asked them to meet individually with the site ombudsman to
2 express any concerns they may have, and then send them home
3 for the rest of the day, with pay, to remove their shirts the
4 next morning.

5 MS. AXELRAD: Weren't those interviews with the site
6 ombudsman scheduled in advance? There is testimony in the
7 record that indicates that those interviews were, in fact, set
8 up in advance and it was only a coincidence that they were
9 supposed to be interviewing those people on that particular
10 day.

11 MR. REYNOLDS: It is correct that an interview had
12 been set up previously, but not with all eight, I believe it
13 was, inspectors involved in the T-shirt incident. One of the
14 eight had a prior interview scheduled.

15 MS. AXELRAD: And didn't Mr. Greer testify that he
16 really, even when he was conducting those interviews, had not
17 been told by management that he was supposed to be
18 particularly interested in the T-shirt incident; that he was
19 not even aware of the T-shirt incident, and that he vaguely
20 noticed that one of the people he interviewed was wearing a
21 T-shirt but didn't think anything of it?

22 MR. REYNOLDS: I think that is correct. But what
23 does that suggest?

24 MS. AXELRAD: Well, you seem to be suggesting that
25 the fact that they were interviewed -- that one of the things

1 that indicates that management was showing sensitivity to this
2 T-shirt incident was that they set up these interviews with
3 the ombudsman and that that is sort of one element of good
4 conduct on the part of management, and I'm saying that it was
5 really coincidental and I'm not sure that it --

6 MR. REYNOLDS: I think you may be implying more than
7 what I meant to convey when I recited the facts.

8 MS. AXELRAD: I guess I wanted to know what you were
9 trying to --

10 MR. REYNOLDS: I was simply reciting what happened
11 as a matter of fact. I wasn't implying that it was proper or
12 improper conduct by management. I will say that in some
13 respects it may be more objective to send people who you
14 suspect have concerns to the ombudsman without tainting the
15 ombudsman as to in what direction he should proceed. Let him
16 do his job, and if these individuals have concerns, let them
17 express them.

18 MR. LIEBERMAN: Do you think, Mr. Reynolds, that
19 after someone is locked up in a room and then the company
20 offers an ombudsman to talk to them, that they are going to
21 feel very comfortable sharing their concerns with the
22 company's ombudsman?

23 MR. REYNOLDS: Well, first of all, I would not agree
24 with the characterization that they were locked up. I don't
25 think the matter was properly handled. Applicants have so

1 admitted. I think the important thing to recognize is that
2 once Applicant's management concluded that the situation had
3 been handled poorly, it took action to rectify the situation.

4 MR. LIEBERMAN: What action did it take?

5 MR. REYNOLDS: Well, it certainly didn't shy away
6 from the problem. Site management and the president of the
7 company met with these inspectors. The president of the
8 company himself confessed error in the way management handled
9 it and assured each inspector that there would be no adverse
10 action because they had worn their T-shirts. The president of
11 the company did this.

12 MS. AXELRAD: Is there evidence in the record on
13 that? Is there testimony on that?

14 MR. REYNOLDS: Yes, Mr. Spence's testimony,
15 Mr. Vega's testimony.

16 MS. AXELRAD: Can you point me in that --

17 MR. REYNOLDS: To a record citation?

18 MS. AXELRAD: Can you give me a record citation for
19 that?

20 MR. REYNOLDS: I would invite you to the appendix to
21 the EG&G report, which has an index of all testimony. I don't
22 know the number off-hand, but Mr. Spence's is listed in there.

23 MS. AXELRAD: I read Mr. Spence's testimony and do
24 not recall that particular, but I can check my notes.

25 MR. REYNOLDS: I may be in error, but I know it is

1 in the record. Incidentally, two of the eight inspectors
2 involved testified during the hearing. Both testified that
3 they were not intimidated by management's action, and one even
4 acknowledged that in hindsight, he thought that wearing the
5 T-shirt was unprofessional.

6 MS. AXELRAD: Did the company take any actions to
7 counter any perhaps misperceptions that might have been set up
8 in the minds of other QC inspectors other than the eight, who
9 may have had less information about what was going on and
10 observed the eight people sequestered in a room and their
11 desks searched and things like that?

12 MR. REYNOLDS: I think I would respond to that with
13 two points. First, Mr. Spence, the president of the company,
14 set up meetings with groups of inspectors following this
15 incident and personally met with them to assure them that the
16 president of the company was behind them, that he wanted them
17 to be vigorous in their performance, that corporate management
18 valued their services and that quality was the first
19 commitment of corporate management.

20 Secondly, I think you also have to recognize that as
21 a result of a culmination of events highlighted by the T-shirt
22 event, Mr. Tolson, the then site QC supervisor, resigned from
23 his position. I think it was the next day or shortly
24 thereafter. The question of whether it was handled properly
25 or not was addressed in an audit report by Mr. Vega, which is

1 in this record. Mr. Vega's conclusion was that it was not
2 handled properly.

3 It was on the basis of that report and other factors
4 that Mr. Spence decided that it was necessary for him to meet
5 with these inspectors to assure them that corporate management
6 was behind them.

7 MS. AXELRAD: What position did Mr. Tolson move to
8 after he resigned from this particular position? Wasn't he
9 just moved? He didn't leave the company.

10 MR. REYNOLDS: He did not leave the company. He
11 moved to the role of a licensing assistant to the vice
12 president in charge of licensing, and that reflected what was
13 perhaps two or three years of overwork and overdemand on
14 Mr. Tolson's time and efforts. He was, in effect, holding
15 down both jobs for too long, and I think it was a fair
16 recognition of overwork, overload, and yet also a recognition
17 that he was a valuable resource in the licensing case.

18 MR. LIEBERMAN: The groups that Mr. Spence spoke
19 with, were these groups of QA workers other than or in
20 addition to the workers involved in the T-shirt incident?

21 MR. REYNOLDS: Yes.

22 MS. AXELRAD: Again, I would be interested in -- a
23 record citation. I would like to go back and read -- I don't
24 recall that stuff. I would like to go back and look at that.

25 MR. REYNOLDS: We will provide that today before we

1 leave.

2 Again, management recognized its error here. It took
3 action to assure that the error did not compound and did not
4 unduly influence the inspectors either to whom it was directed
5 or who may have heard about it later.

6 Sue Neumeyer is a former QC inspector and document
7 clerk. Her allegations are that she was improperly instructed
8 to sign off on liner plate travelers that lacked proper
9 documentation of inspection activities, and that she brought
10 an allegedly falsified document to the attention of her
11 management.

12 As to the first point, the evidence indicates that
13 Ms. Neumeyer did not allege that she was intimidated or that
14 management attempted to intimidate her with regard to the
15 liner plate traveler matter. Thus, her testimony on the
16 question before this panel is irrelevant.

17 MR. LIEBERMAN: Mr. Reynolds, your second point that
18 she alleges no intimidation. I thought the record indicated
19 that she was pressured to do the job in accordance with the
20 instructions and the penalty of a loss of a weekend, the first
21 weekend in a long time -- she had been working long hours.

22 MR. REYNOLDS My recollection of her principal
23 concern was that she would get in trouble for doing something
24 out of procedure. She took that concern to her supervisor,
25 who instructed her to asterisk the notation that she was

1 making on these papers and to refer to a procedure which
2 authorized what she was doing.

3 MR. LIEBERMAN: The procedure she was directed to
4 refer to, was that a current procedure?

5 MR. REYNOLDS: No.

6 MR. LIEBERMAN: Why would management direct her to
7 asterisk a procedure that wasn't a current procedure?

8 MR. REYNOLDS: It was the procedure that was in
9 effect at the time that the chits to which she was referring
10 were issued.

11 MR. LIEBERMAN: Rather than the time that she was
12 actually matching the chits.

13 MR. REYNOLDS: That's correct. It was the relevant
14 procedure at the time the original paperwork was generated.

15 She continued after the traveler incident to work at
16 Comanche Peak for over a year without incident.

17 To be clear, Applicants have conceded in our
18 testimony that liner plate documentation discrepancies
19 existed, and the IRT has confirmed those discrepancies
20 although it found no safety significance to them because the
21 liner plate itself has no safety significance. But the
22 discrepancies do not bear on the question before this panel,
23 that of whether intimidation pervaded the site.

24 MR. LIEBERMAN: Mr. Reynolds, if we assume that the
25 procedures that she was directed to follow were, in fact,

1 wrong -- and I'm not saying they were or they weren't -- but
2 if we assume that they were, in fact, wrong and she questioned
3 those procedures and she wasn't given an adequate explanation
4 other than to do it and get it done by a time certain or else,
5 and then she did it, albeit she --

6 MR. REYNOLDS: Was protected?

7 MR. LIEBERMAN: -- she indicated by an asterisk, is
8 that intimidation, in your judgment?

9 MR. REYNOLDS: Let me first say, Mr. Lieberman, that
10 I think you are reading more into her testimony than is
11 there.

12 Her concern that it was wrong for anyone to sign off
13 for work done by another inspector, that was the crux of her
14 concern. But let me also say that there is a way in which to
15 handle people in which you can accomplish things without
16 placing them in fear or without unduly upsetting them.

17 There is a delicate balance to be drawn between the
18 need for supervision to get the job done -- and I'm not
19 talking about cost and schedule pressure; I'm talking simply
20 about getting the job done -- and the concerns of individuals
21 as to how the job should be done. And most good managers
22 will attempt, at first, to explain to employees why it should
23 be done this way, and that supervision, management, wants it
24 done this way, in an attempt to persuade the employee that
25 it's okay to do it that way.

1 And if the employee balks, one would normally
2 attempt to further explain. But after explaining for so long,
3 any reasonable manager gets to the point where he says, "Well,
4 I am the manager, and you are the employee. Do the job."

5 I don't think we really have anything more than that
6 here. It is simply a situation where the matter was explained
7 to the individual, the individual was uncomfortable with the
8 explanation, it was explained again, still no satisfaction,
9 and then she was instructed to do it.

10 I don't think that's intimidation. I think that's
11 an attempt to get your employee to do the job. And I wasn't
12 there, so I don't know the words that were exchanged or the
13 manner in which the words were spoken. But I think the record
14 fairly reflects that it is as I have summarized.

15 MR. GAGLIARDO: Mr. Reynolds, when you were talking
16 about the Darlene Stiner issues, you made a statement with
17 regard to management's responsibility, with regard to
18 communicating to the employee about the voiding of an NCR, and
19 that you didn't feel that that was a management
20 responsibility.

21 Are you saying that -- are you saying something
22 different here with the Sue Ann Neumeyer case than what you
23 were saying with the Darlene Stiner? Or are you saying with
24 Darlene Stiner, management did provide the explanations to
25 her?

1 As I recall, your statement is, you didn't feel that
2 that was a function or a requirement on management to explain
3 why an NCR was voiced.

4 MR. REYNOLDS: No. I think we are really talking
5 about two different things. On the one hand, first let me say
6 that NCR dispositions were never held back from inspectors.
7 Any inspector can get a copy of any NCR he or she ever writes,
8 and the disposition is on there.

9 what I said about Mrs. Stiner is that there is no
10 requirement that the inspector be satisfied that the
11 disposition is proper. I didn't say that it wouldn't be an
12 appropriate thing for management to tell the inspector, if the
13 inspector questions it, the basis for the disposition. There
14 is a difference between advising and satisfying.

15 MR. LIEBERMAN: Shouldn't management have a concern
16 if quality assurance workers are not satisfied with how NCRs
17 are dispositioned, so that they may obtain an attitude that
18 management doesn't care?

19 MR. REYNOLDS: Yes. I think that management should
20 be concerned about that, and I think, in general, that is the
21 type of attitude that pervaded the management at Comanche
22 Peak.

23 The handful of allegations that we have here, the
24 ten or fifteen incidents described, reflect situations where
25 inspectors would not or could not be satisfied.

1 You can explain to inspectors six times, and if they
2 don't want to hear, they are not going to hear. And I'm not
3 suggesting that in all instances the inspector is dead wrong.
4 It may have been a communication problem. But at bottom, you
5 must proceed with business, and it's the job of the quality
6 engineer and the supervisors to make the final decisions. And
7 even if the inspector may disagree with them, that's not the
8 inspector's ultimate call.

9 That's not to say that the inspector shouldn't
10 question the disposition.

11 MR. KAPLAN: Are you saying that it's appropriate
12 for management to insist that inspectors sign papers, even
13 when the inspector believes it's wrong to sign those papers?

14 MR. REYNOLDS: No, I don't think that's what I'm
15 saying at all. In fact, I believe there are examples in this
16 record where people were unwilling to sign documentation, and
17 management said, "You don't have to do that. Give it to me.
18 I'll do it myself."

19 MR. KAPLAN: Why didn't they do that here?

20 MR. REYNOLDS: You are asking a very surgical
21 question involving one incident that happened many years ago,
22 and I just don't know the answer. I don't think it's in the
23 record.

24 MR. KAPLAN: Well, this seems to be a case where the
25 employee felt that it was wrong to sign these papers, yet

1 management was insisting that they sign them anyway.

2 MR. REYNOLDS: I can't be any more specific than I
3 have. I'm sorry. I wish I could, but I don't think there is
4 anything in the record that bears on your question.

5 MR. KAPLAN: Thank you.

6 MR. GAGLIARDO: I would note that you have about
7 five more minutes left. But since we have interrupted you a
8 number of times, I think we can give you a little latitude.

9 But are you getting close to the end?

10 MR. REYNOLDS: Yes, sir.

11 Linda Barnes was a document reviewer in the ASME/QA
12 organization. Her testimony consists of a single incident
13 involving a discrepancy in entries on a traveler. Her
14 supervisor explained to her that the discrepancy that caught
15 her attention didn't matter, which, as to the technical
16 merits, is confirmed not only by Applicant's witnesses, but
17 also by the TRI finding that the matter, while a recording
18 error, was not important, because the traveler system assured
19 parts traceability. That's in SSER-11 at page 0-125.

20 Barnes testified only that she was discouraged by
21 this incident, and only then, as to reporting discrepancies in
22 the numbers on the disks that were involved in this incident,
23 Totally aside from the fact that the issue was identified --
24 that the issue she identified was not a technical problem, her
25 testimony cannot legitimately contribute to an alleged climate

1 of harassment or intimidation at Comanche Peak.

2 Dennis Coulton raises a unique claim. He accused
3 NRC employees, who interviewed him about his concerns, of
4 harassing and intimidating him. As you know, the Board
5 dismissed the claim upon hearing the tape of the interview.

6 Nevertheless, the situation raised by Coulton is
7 important. He, like virtually every other alleged, said he
8 was intimidated during a private meeting where only the
9 accused and the accuser were present.

10 what differentiates Coulton's claim from the other
11 allegations is that the meeting was tape recorded, and a
12 review of the tape demonstrated that Coulton's claim was
13 frivolous.

14 We regret only that all of the confrontations were
15 not tape recorded, for those tapes would have revealed that
16 all or virtually all of the relatively few allegations of
17 intimidation on this record are equally frivolous.

18 I could spend substantial time on the proactive
19 measures that corporate management has taken in the past to
20 assure that intimidation does not occur at Comanche Peak; for
21 example, the initiation of the Hot Line program, the
22 installation of the site ombudsman, meetings between
23 Mr. Spence, the Corporate Officer and President, and QC
24 inspectors, and the numerous other conspicuous measures taken
25 to communicate clearly to all staff and site personnel that

1 the positive corporate policy toward quality was of foremost
2 important, and that the deviations would not be tolerated.

3 MS. AXELRAD: Are they documented?

4 MR. REYNOLDS: Yes, they are.

5 MS. AXELRAD: Is that pulled together in one place,
6 or is it sprinkled in a bunch of places in the record?

7 MR. REYNOLDS: The documentation?

8 MS. AXELRAD: I would like to see it pulled together
9 in one place, a description of the programs that the Licensee
10 has, that the Applicant has put into place, to make sure that
11 intimidation doesn't occur.

12 MR. REYNOLDS: I believe Mr. Spence's deposition,
13 which is not very thick, has attached to it certain
14 documentation that he issued personally to all site personnel,
15 relating to these kinds of issues.

16 I would also invite you to Mr. Chapman's deposition
17 and Mr. Clements', and if you would prefer that we summarize
18 and file with the Panel, we would certainly do that in
19 writing.

20 MR. GAGLIARDO: We will discuss that later.

21 MS. AXELRAD: All right. We'll discuss that later.

22 So Spence's, Chapman's, and Clements' depositions;
23 okay.

24 MR. HUNTER: During the meeting or the corrective
25 action where Mr. Spence met with the QA/QC people, were

1 meetings held with craft supervision, foremen,
2 superintendents, and craft workers, all or part, to indicate
3 to them the "quality first" attitude?

4 MR. REYNOLDS: I don't think the record has anything
5 on that. On the other hand, there have been a number of
6 additional efforts by Applicants recently to assure that
7 everyone on the site -- managers, supervisors, inspectors, and
8 craft -- realize that their individual responsibility onsite
9 is to report safety concerns, and that they can feel assured
10 that no adverse consequences will suffer from any source for
11 their doing so.

12 By way of example, TUGCU implemented earlier this
13 year the Safe Team program, which was originated by Detroit
14 Edison, to provide an additional, convenient avenue for
15 expressing concerns. There have been meetings between
16 high-level officers of TUGCU and Brown & Root, with craft
17 supervision and inspectors, in which both TUGCU's commitment
18 and Brown & Root's commitment to safety and to assuring the
19 unrestrained reporting of deficiencies has been freely
20 discussed.

21 There are new training programs, classroom training,
22 which have been initiated to make sure that construction is
23 done right the first time in accordance with NRC regulations.
24 A supervisor training program has been developed to aid
25 supervisors in their personal relationships with their

1 workers.

2 A program is presently in process to reemphasize in
3 the strongest terms to all craft supervisors their obligation
4 to encourage, not just permit, the reporting of any safety
5 concerns found by the craft, either to craft supervision, to
6 inspectors, to Safe Team, or to the NRC.

7 MR. LIEBERMAN: Mr. Reynolds, this is 1985, and
8 these programs that you describe seem to be good programs.

9 If you know, why are these programs being instituted
10 now and not back in '83 or earlier when these issues began to
11 surface? What is the change?

12 MR. REYNOLDS: To answer that question is to
13 summarize the record. Management was presented with nothing
14 concrete that indicated that there was any need for programs
15 to reassure people that they would not be intimidated for
16 reporting nonconformances.

17 The evidence is clear on that, in my opinion. The
18 '75 and '83 surveys, the EG&G report, the I&E, the OI reports,
19 all indicate that there were no signs of management -- or to
20 management -- of pervasive problems that would warrant such
21 action. Even today, we feel that there is no serious issue as
22 to intimidation at Comanche Peak.

23 Obviously, you will have personal disputes between
24 people. They happen all the time. If you interviewed 360 NRC
25 employees and asked them if they had ever been intimidated,

1 I'll bet your record would not be as good as what this record
2 reflects about Comanche Peak.

3 There's another concern I have in the implication of
4 your question. As you know, as a member of the Bar, the rules
5 of evidence say that remedial actions taken after events
6 transpire may not be used in evidence to show that there was
7 guilt in the first place.

8 The NRC is very quick to assume that because
9 licensees in general take action, proactive action to address
10 the regulatory responsibilities, that there was something
11 wrong, and now the Licensee has found religion and is
12 correcting the problem. That is not the case, and it is an
13 unfair implication, I think.

14 MR. LIEBERMAN: Well, that was not intended to be my
15 implication.

16 My question was if there was a reason, what that
17 reason was? I wasn't suggesting that --

18 MR. REYNOLDS: I would say that the primary reason
19 is the Licensing Board hearings, the issues that have been
20 raised, which even though we feel certainly do not indicate a
21 pervasive climate, that if anybody feels they were
22 intimidated, whether they feel that fairly or not should be of
23 concern, and it is of concern to this management.

24 I think also this efforts indicates a need to
25 reemphasize what corporate policy has been.

1 Thank you. And I would appreciate an opportunity to
2 respond shortly at the close of Mr. Roisman's comments.

3 MR. GAGLIARDO: Thank you, Mr. Reynolds.

4 Does anyone have any questions right now?

5 [No response.]

6 MR. GAGLIARDO: Okay. What I'd like to do now is
7 take about a ten-minute break, and then we will hear from the
8 intervenors.

9 [Brief recess.]

10 MR. GAGLIARDO: We are back on the record.

11 Mr. Roisman and Ms. Garde, we would like to hear a
12 statement from the intervenors' group with regard to the
13 intimidation issues. We will allow you an hour.

14 MR. ROISMAN: Okay. Thank you, Mr. Gagliardo.

15 At the outset, I want to reiterate, since we are
16 here on the record, our feeling that this Panel should have
17 gone ahead with the original plan to meet with the workers
18 themselves, that we lawyers, in our glib explanations of what
19 the record may mean to you, do not speak at all eloquently of
20 what the workforce really feels and felt at Comanche Peak, and
21 that those workers who have now left the company and who are
22 willing to speak out, either because they no longer have
23 anything more to lose as a result of what has happened to them
24 since they left the company, or for other reasons, could have
25 given you and would still give you, if you chose to go see

1 them and speak to them, a much better insight as to what is
2 really going on here.

3 Those people have no reason not to tell you the
4 truth. They have no \$5 billion plant at stake. The
5 subtleties of the issue of what did you feel and why did you
6 feel it at any given moment in time are more likely to be
7 truthfully told to you by them than anyone. And I think from
8 them you would hear and understand better that this massive
9 worksite with its thousands or perhaps tens of thousands of
10 employees and perhaps millions of contacts was a place which
11 is hardly conducive to compliance with Appendix B, and that,
12 of course, is what the issue is about.

13 The issue is not why, what was the motivation, or
14 what did some particular inspector or craft person or manager
15 or Corporate President intend to do. That answer would be
16 virtually impossible to obtain. It would certainly be
17 impossible to obtain it on the basis of what you have to do,
18 which is to read a dry record. It could only be done if you
19 listened personally to these people speak.

20 But the Nuclear Regulatory Commission is not
21 concerned with intent. It is concerned with public health and
22 safety. And it is concerned with the vital question of
23 whether or not a particular plant, which itself did not build,
24 but someone else built, got built properly. And to answer
25 that question, the agency has established an elaborate, a

1 complex, and a vitally important process in Appendix B by
2 which it assures itself that if a company will go through the
3 procedures of that Appendix as laid out, then the company's
4 allegation at the end of the process, that we have built to
5 the design, will be a credible allegation, testable by looking
6 at documents, not at hardware, by not having to have an NRC
7 inspector at each weld as it's made, at each pipe run while
8 it's being put in, at each individual installation of
9 concrete.

10 But once that Appendix B process breaks down, then
11 what is the NRC left with? It is left with a virtually
12 impossible task of trying to figure out whether this plant did
13 get built properly, and that is the issue that's involved in
14 Docket 2, whether or not the Appendix B requirements were or
15 were not met by this company, and if they were not met, then
16 what consequences flow from it.

17 In the course of doing its work, the agency has,
18 much like the Applicant, had an iterative process. If you
19 look at the posture of the agency in its positions over the
20 years, it has been one of genuine acceptance of the Applicant
21 and the credibility of its programs, and over time,
22 culminating most recently in the publication of SSER-11, with
23 an obvious recognition that something was very wrong at
24 Comanche Peak.

25 Now in Docket 2, what we have attempted to do is to

1 show you where that something wrong had its origin and what
2 happened.

3 The reported work done by EG&G, with which we are
4 already on record as stating we do not agree, is of
5 substantially less relevance at this point than it even was at
6 the time when it was produced. As you know, the EG&G report
7 concluded its investigations in early August of 1984, so that
8 the entire record which was made in Fort Worth -- Lipinski,
9 Corey Allen, Mauser, all of the company officers and
10 executives who returned to the witness stand in Fort Worth to
11 attempt to explain what events had transpired in the summer
12 that the Board found uncertain -- Mr. Vega's tortuous attempt
13 to tell now it was that he could conclude that after the fact
14 a mistake had been made with the T-shirt incident, but that at
15 the time it was done, he was not willing to say that
16 Mr. Tolson had done anything wrong -- that's an incredible
17 piece of testimony to look at, because the Applicant's Counsel
18 this morning continued to hold to it, like pieces of flotsam
19 after the ship has sunk.

20 They continue to hold on to these old philosophies,
21 and when you look at the T-shirt incident, you should look
22 particularly at that, at Mr. Vega's testimony in Fort Worth
23 and his attempt to explain how he still thinks that Mr. Tolson
24 probably did the right thing at the moment, given the data
25 that Mr. Tolson had, and that it was only in hindsight that he

1 was prepared to say that Mr. Tolson was wrong, because what
2 that tells you is that a new T-shirt incident at the site,
3 with the same information available to Mr. Tolson, would be
4 exactly the same. They would do it again. They'd lock them
5 up. They'd send them home. They'd make a big thing out of
6 what they had printed on their T-shirts.

7 They also would, after getting allegations that
8 inspectors had done destructive testing, they would still
9 never follow up on those allegations to find out whether they
10 were true or not. They would neither get to the root of the
11 craft person who alleged that it was destructive, nor would
12 they find out for sure if the QC inspector had done the
13 destructive testing.

14 All those things, they would do again. In hindsight
15 only would they have said that it was wrong.

16 In the course of this discussion, EG&G didn't have
17 the benefit of all of that, and so unless and until EG&G has
18 done what we have been advised by the Staff Counsel that it
19 intends to do -- and that is to complete its investigation of
20 all the remainder of the record -- you have an incomplete
21 report, and you need to factor that in.

22 The company's attitude with regard to compliance
23 with Appendix B is an important issue that we want to be clear
24 on the record where we stand. We have no evidence in this
25 record of any attempt on the part of any company person to

1 intimidate, harass, threaten, or in any other way discourage a
2 GC inspector from doing their job for any motive other than
3 the motive that the company wanted to have the plant built
4 the way they believed was the right way, and in the time
5 schedule that they believed was achievable.

6 No one that we know of told a GC inspector to not do
7 something, honestly believing that they were endangering the
8 safety or the public health, nor is it relevant whether they
9 did or not. Their well-intentioned enthusiasm to build this
10 plant their way, and to deal with the regulations, is much
11 more damning for purposes of what you are concerned with, than
12 some verbal intent on their part to deliberately put in
13 substandard equipment, shave off dollars in order to make
14 payoffs to somebody, or any such thing.

15 We don't have any evidence of any that, and I don't
16 want to suggest that it's there.

17 What is really at the root is that the company said,
18 as you heard their Counsel explain it to you in discussing
19 some of the incidents, "How many times do we have to tell the
20 person that we're right, and the person's wrong, and by God,
21 they'd better get on with the job?"

22 Now there is a way to test what the implications are
23 of that position. It certainly existed. Company management
24 was very much reluctant to accept criticism of its
25 inspectors. If the inspector found a problem that meant

1 generic failure -- Chuck Atchison's NCR, the infamous one over
2 which he was fired -- that was generic failure, the company
3 would come back and give one of two kinds of answers: one,
4 you can find in the testimony of Corey Allen, which he was
5 told when he came in to the plant, "Don't be the engineer."
6 They were worried, because Corey was more educated than their
7 QC inspectors in the paint coatings area, and they were
8 worried that he would begin to question procedures. They
9 said, "Don't do that. That's an engineer's job. You just
10 apply whatever we tell you to apply, and if you don't think
11 it's the right way, don't worry about it. We've got engineers
12 to worry about that. You just do what the procedure says."

13 And that was a very important attitude that the
14 company insisted on. One of those examples was, Corey Allen
15 said, "You know, I don't think the paint coatings in the
16 reactor cavity are going to be able to hold up. I think
17 they're going to fall down in the event of a post-accident
18 situation."

19 The company went through an elaborate process to
20 tell him, first of all, that they didn't like him doing that,
21 because they'd already told him, "I don't want you questioning
22 procedures," and secondly, to go up to Gibbs & Hill and to get
23 some explanation, and I ask you to take a look at the
24 testimony of Mr. Brandt, who attempts to explain during
25 hearings here in Washington in November of 1984, what he

1 thought was the reason that Corey Allen was wrong.

2 It's a wonderful study in incredibility. Mr. Brandt
3 has got a variety of different explanations, none of which are
4 consistent, all of which evolved during the course of the
5 cross-examination, as best as one can tell.

6 But most importantly is that it was ultimately
7 concluded that Corey Allen was sufficiently correct -- that
8 is, that there was no way to tell whether those paint coatings
9 would stay on the wall -- that the company sought and
10 ultimately got from the NRC an exemption for the entire paint
11 coatings program. No more does it matter whether paint
12 coatings stick to the wall in that plant. But when Corey
13 Allen made his report, it mattered a great deal. It was the
14 law for that plant. And Corey Allen was given a specious
15 explanation, and he was told to shut up and do his work.

16 So the management's attitude is one that, "we
17 believe we're right, and you're in trouble if you question us
18 on these fundamental issues," and that -- that is harassment
19 and intimidation within the meaning of Appendix B. That is
20 what the concern is about, because what Appendix B is, it's a
21 standard that the company should actively encourage people to
22 raise these concerns. It's neutrality is not sufficient. A
23 company which did nothing to interfere with the employee, but
24 also nothing to encourage, would flunk the Appendix B test.

25 MR. LIEBERMAN: Mr. Roisman, if there is a line to

1 be drawn, at what point do you permit chaos to let each
2 individual inspector decide what is right for himself, and at
3 what point do you say there has been enough interchange and
4 discussion and questioning, and now we have to make a
5 decision?

6 MR. ROISMAN: I think that's a very difficult line
7 to draw, and if we were stuck with nothing more than the
8 debate, "Did Corey go too far or not," I would say that it
9 would be extremely difficult to know whether management, in
10 that context, went too far.

11 The best evidence, the most persuasive evidence,
12 would be who was ultimately right and how many of them turned
13 out to be right. That would give you a good test. That is
14 sort of a way of testing.

15 Management could make a mistake. They could have
16 thought that Corey was wrong, and they could have been wrong.
17 And in this instance or that instance, then you would say,
18 "Okay, we expect management -- they're the bosses; they tell
19 you."

20 When you get a large number of people complaining
21 and a large number of management people telling them, "Shut
22 up. I don't want to hear from you," and you later run a test
23 and find out that a substantial number of the complainers were
24 right and management was wrong, then you know where the line
25 was drawn. The company went over the line.

1 MS. AXELRAD: Do you think you have a large number
2 -- using your own test, do you think that you had a large
3 number of people saying that management wasn't right, that
4 were ultimately shown to be correct, out of the thousands of
5 people that were involved in the construction on the site over
6 the course of the years?

7 MR. ROISMAN: The short answer is yes. But "large"
8 is a subjective factor.

9 It was clear at this plant that challenging a --
10 well, let me step back a second.

11 Two things were clear. If you take a look at the
12 Lipinski testimony, you will see that Mr. Lipinski discusses
13 the fact that he found that there were a lot of things done at
14 Comanche Peak which were different from things he had seen
15 done at other plants. Comanche Peak believed that they could
16 invent the wheel differently, and they were going to come up
17 with a different way of building a nuclear plant than the most
18 common way.

19 So there were lots of times when employees showed up
20 at this plant, who had worked at other plants, and said, "Gee,
21 we didn't do it this way." Early on, management made clear to
22 the employees that that was not their business. So you would
23 expect -- in fact, this is the Catch-22 of the entire
24 harassment and intimidation issue -- if it works, there's
25 nobody to complain. If the harassment and intimidation

1 succeeds, who will complain? Nobody.

2 If you have some complainers, they are going to, by
3 the very nature of the process, be very courageous, and we had
4 a significant number of those, not all of whom showed up in
5 the hearing, but some 70 or so have now gone to the NRC. The
6 TRT has talked to them. There were some 900 allegations. We
7 understand at a recent meeting that the Applicant indicated
8 that the Safe Team itself has now received 600 allegations.
9 we don't know what the disposition of any of those has been,
10 and we have no idea -- anything except that there have been
11 600 received.

12 MS. AXELRAD: But only a few of those are alleging
13 intimidation and harassment.

14 MR. ROISMAN: Well, we don't really know that. We
15 know that after lunch, the man who told us there were 600
16 allegations of safety problems came back to that same meeting
17 and said, "Most of the, we think, have to do with pay scales."

18 MS. AXELRAD: No. I wasn't referring to the recent
19 stuff that we learned at that last meeting. I'm talking
20 about, even of the 70 people that you said had come forward
21 with 900 allegations --

22 MR. ROISMAN: Oh, you're talking about the TRT ones.

23 MS. AXELRAD: We know of only a few -- well,
24 depending on what -- 16, 20, 27, 30 allegations of
25 intimidation.

1 MR. ROISMAN: That's got to do with how you are
2 defining intimidation. The E&G report's definition is at the
3 bottom of page 5. That definition is not, in our judgment,
4 the definition that either the board required or that you
5 would require.

6 Their definition: "Intimidation is an incident,
7 action, or statement that causes an employee to act contrary
8 to or refrain from acting in compliance" -- excuse me -- "with
9 written procedures, and which includes the three" -- excuse me
10 -- "major components described in the immediately preceding
11 paragraph: the incident, the resulting feeling or emotion,
12 and the ensuing action on the part of the recipient because
13 his fear has forced him to behave, where it otherwise would be
14 rejected."

15 what's wrong with that is that it goes much too far.
16 It asks for more than one needs. The context of the job,
17 probably the bulk of people who come to the job are of the
18 attitude, "I will do my job, and the person who's my boss will
19 tell me what my job is."

20 "Now if I come in, and I think I should be doing A,
21 and the employer quickly tells me that A isn't any of my
22 business, I should stick to B, C, and D, if I'm the average
23 employee, I'll just start doing B, C, and D, and you forget
24 about A."

25 Now in the context of this definition, that wouldn't

1 be intimidation; that would just be following orders. But
2 when the person leaves the plant site, and they continue to
3 believe that there were things that they wanted to say
4 something about but didn't, and they turn around and tell an
5 investigator from the NRC about it, and the investigator
6 investigates it and finds that it was valid, then for purposes
7 of whether or not the QA/QC program was working at Comanche
8 Peak, what happened to that employee was wrong.

9 Now this label -- was he harassed and intimidated --
10 implies a much more aggressive situation. But that
11 presupposes a Darlene or Henry Stiner, a much more aggressive
12 personality on the other side. The meeker ones -- if you look
13 at the testimony of Corey Allen, Corey Allen tells you that he
14 realized relatively quickly that speaking up was not a good
15 thing to do. And during the time that he was there, he had no
16 registered complaints of harassment and intimidation.

17 Then he shows up as a Board witness sometime after
18 that, and he talks about his real feelings and what he really
19 thought about Tom Brandt and what he thought about Ron Tolson
20 and what he thought about the system.

21 Now I think Corey Allen was harassed and intimidated
22 in the sense that he did not tell what he really believed were
23 the problems at the plant. They never got recorded. Corey
24 Allen talked about problems that he never recorded anywhere.

25 That is what we're trying to prevent.

1 MS. AXELRAD: How many people would you say were
2 actually, you know -- does the record show, let's say -- does
3 the record show were actually subjected to intimidation and
4 harassment? Would you say it's the whole number of people who
5 came forward with allegations that ultimately may have proved
6 to be true? Or is it some subset of that that would have
7 actually been subject to intimidation, under whatever
8 definition of intimidation you would choose to use?

9 MR. ROISMAN: No. No, I think it was all those
10 people who came forward and many others who didn't, because we
11 were not talking about a single incident. We weren't talking
12 about one situation where someone pointed a shotgun out the
13 window at somebody and said, "Do it my way, or you're going to
14 get blown away." We're talking about a pervasive atmosphere,
15 an attitude at the plant site.

16 The attitude was, "You do it our way, or you get
17 out." That was the attitude. And the "our way" made a lot of
18 employees very uncomfortable. They thought the "our way" was
19 wrong, and they were subsequently -- and that's what
20 Mr. Lieberman properly asked -- well, where do you draw the
21 line?

22 And one way to find out where you draw the line is
23 to look later and find out, was "our way" usually right or
24 usually wrong. You've now got five SSERs that say it was
25 frequently wrong, that there was a substantial number of

1 problems that never were reported at this plant -- substantial
2 number -- that didn't get found until after the plant people
3 had said, "we're all through. Everything is safe."

4 what does that tell you? It tells you that
5 something was going wrong at the plant. Why didn't those
6 problems get picked up in the system?

7 MR. LIEBERMAN: Was that because the procedures were
8 wrong, the training was wrong? It's not clear to me that
9 there was necessarily harassment and intimidation.

10 MR. ROISMAN: You had people speaking up about the
11 deviations in procedures. The company did not, in a
12 significant number of incidents -- they did in some, but not
13 in a huge number -- go after the employee who reported a
14 particular problem where something was truly out of compliance
15 with existing plant procedures. There are some instances of
16 that, and in a couple of those, there are even some
17 respectable responses by management.

18 what they were most concerned with was someone who
19 wanted to upset the applecart, somebody who wanted to identify
20 a problem which, if they were correct, would undercut the
21 whole system and cause either a retrofit or reinspection or a
22 major change in procedure. And there was a lot of that that
23 was brought to the attention of the TRF and was ultimately
24 found right. I mean, the whole liner plate situation, all the
25 paint coatings at the plant, all the problems about paint

1 coatings.

2 Don't be confused in your own work by the exemption
3 with regard to the paint coatings, because the key from your
4 perspective is, were there any people that were saying all
5 along, "we've got a problem with paint coatings," and did
6 management ever prove that the paint coatings met the paint
7 coating requirements for this company?

8 Paint coatings was an interesting group, because
9 apparently, as best we can tell from the record, paint coating
10 inspectors are kind of a special group. If you read the
11 Lipinsky transcripts, you get that sense from the Lipinsky
12 group also. These aren't your regular GC inspectors, and they
13 sort of considered themselves to have a certain esprit de
14 corps, and the paint coating inspectors know each other around
15 the country, not just from each plant.

16 And so they came in with a much more set attitude
17 about what the right way was to do paint coating and a much
18 greater willingness to speak up and say, "Gee, I don't think
19 that's right."

20 So we've got Dunham in that group, and we've got
21 Corey Allen in that group, and we've got Krolak and Hamilton,
22 and we've got a lot of people in that group. And what we have
23 is -- the record reflects that those paint coatings were not
24 properly put on.

25 But then later we have a change in the requirements,

1 so it didn't matter that they weren't properly put on.

2 MR. LIEBERMAN: But it seems what you're saying is
3 that the root cause of this whole problem is that the
4 procedures fundamentally did not appear to be correct?

5 MS. AXELRAD: Did not appear to comply with
6 requirements is what I thought I heard you say.

7 MR. ROISMAN: Yes. I think that the root cause is
8 that the company tried to build the plant wrong. The job of a
9 QC inspector is to stop them from doing that. They should be
10 sufficiently independent and free that they can stop them.

11 And why didn't it stop? Why didn't it succeed? In
12 other words, the system failed. The QC system failed. The
13 defects were found after the plant was built, not while it was
14 being built.

15 The answer is that they were cut off at the pass.
16 The most outspoken of them were fired, just thrown off the
17 plant site. The next level of them, like the Susie Neumeyers
18 and the Linda Barneses, just got discouraged. They just gave
19 up. And probably the great bulk of the people at the plant
20 simply said, "Okay, I got the message. Keep quiet."

21 MR. LIEBERMAN: And follow the procedures.

22 MR. ROISMAN: And follow these procedures, and don't
23 question the procedures. And then they show up afterwards
24 when they leave the plant site, quote, "quietly," just taking
25 a new job, like, say, Corey Allen, who quietly left the

1 plant. Mauser quietly left the plant.

2 They turn around and come back, and they say to the
3 NRC, "This wasn't right." And it is -- intimidation is a
4 statement, an articulation of what it means that a person who
5 believes that something is wrong won't say so and get that
6 into the system, so that the system can resolve that issue
7 properly. It didn't get resolved until the TRT resolved it.

8 MS. AXELRAD: What significance do you think this
9 whole issue of intimidation will have, given the change in
10 management at the company and the reinspection or
11 reverification program that's been instituted to actually look
12 at the hardware and the work that's been done at the plant to
13 see if it's been done correctly?

14 MR. ROISMAN: Well, insofar as the management change
15 is concerned, the intimidation and this whole management
16 attitude problem, it gives us a test. The fact that today, if
17 this were true, that they had in the right management, it
18 won't mean that the plant got built properly yesterday. So it
19 won't change the substance of it. We can use the past to test
20 the present. And today, as you know, is the day in which the
21 test results are going to be in.

22 Management is now, on this very day, to report to
23 the Board -- and I assume you all will be looking at this --
24 current management's attitude about past management's
25 attitude. What do you think about past management? What do

1 you think they did wrong? What do you think they did right?
2 who do you embrace, and who do you cut off?

3 And you'll learn a lot about current management from
4 that. It's not really, I think, in your Panel, but it will be
5 interesting to see: Will anybody now say, of the team that's
6 gone -- and I hope it's not been lost on you -- the fact that
7 every single GA/QC manager who we have charged with
8 participating in this program of discouragement is gone, and
9 not one of them, has it been said that they left for cause.

10 No one -- I mean, present management's attitude is
11 reflected by the presentation that you heard this morning, is,
12 "we did nothing wrong before, and we're doing everything
13 better now." That's a good summary, I think, of what their
14 position is.

15 If that's true, then they have learned nothing, and
16 the current management is the past management with new suits.
17 It's not changed.

18 MS. AXELRAD: But I guess my question went more to
19 the effect of the reverification program.

20 MR. ROISMAN: We have so little detail on what the
21 reverification program really is that it's very difficult to
22 say.

23 But we do know one thing. Whenever the man who has
24 had responsibility in the GA/QC area is asked, "How are you
25 going to get at the root cause of why" -- let's take the liner

1 plate incident as an example.

2 here we had, starting way back with J.N. Billingham,
3 who was a crafts person, telling the company that, "I don't
4 think the liner plates are being welded properly, and we've
5 got problems here," through Susie Neumeyer who said, "I'm very
6 uncomfortable with signing off on these chits" -- and
7 incidentally, the chit procedure was not followed when Susie
8 did it either; the chit procedure that was in effect at the
9 time that the welding was done on the liner plates was, on the
10 day that you do the welding, if the inspector is in the field
11 without his regular inspection report form, he may write down
12 on the chit what he has observed, and that day, he is to
13 return to his office, write the information from the chit on
14 the inspection report, and send the chit to the vault. The
15 chits that Ms. Neumeyer looked at never saw the vault. They
16 were taken out of some place in the -- in one of the craft
17 workshop areas at the plant. And the entries that she was
18 making were not in compliance with any procedure whatsoever,
19 asterisked or not.

20 But the question that has been put to the current
21 QA/QC manager is, "well, are you going to get at the root
22 cause of that, other than saying, 'well, now it doesn't
23 matter, because the liner plates now don't have to have
24 structural integrity,' so that checkpoint becomes
25 irrelevant?"

1 And his answer has been, "I can't get my arms around
2 that." What does that mean? It means that he cannot
3 comprehend that there are such things as root causes, and that
4 root causes are possible related to management attitudes,
5 which made Ms. Neumeyer's supervisors want to see that that
6 work got done and turned over to the plant as quickly as
7 possible, and to hell with the procedural requirements?

8 That's a root cause that would mean you don't just
9 stop your reinspection at the liner plates, which would go to
10 everything that that management looked at and had under its
11 responsibility, because that management was unwilling to
12 consider the procedural correctness or what was going on
13 whenever it thought it had to get the job done more quickly.
14 And we know from the record that there was a pressure for
15 turnover at that time, to get the liner plates turned over and
16 out of the ASME and into the non-ASME, and in order to do
17 that, you needed an ASME inspector, and Ms. Neumeyer was one,
18 to come forward and say, "Yes, these things are okay. We can
19 sign them off and pass them on to the next team."

20 MR. LIEBERMAN: Would you agree, Mr. Roisman, that
21 there are a number of indications in this record where craft
22 people respected NCRs, and while they argued or differed with
23 the quality assurance workers, they didn't violate holdpoints,
24 and they went through whatever channels were available to
25 persuade QA to modify the holdpoints, but until those

1 holdpoints were changed, they respected them?

2 MR. ROISMAN: Absolutely. I think you're right,
3 that there are instances in the record where that's exactly
4 true.

5 I do think it's important, though, to look at this
6 process and procedure that existed. What the company had set
7 up was a process that automatically converted a disagreement
8 between an individual crafts person and an individual
9 inspector into a management problem.

10 Now all of you are sufficiently low on the
11 totempole, as I was when I was in the government, that you
12 have a sense of what it's like to be called into the boss'
13 office for a meeting when two or three other bosses, all of
14 whom sit over you are there, and you are asked to justify or
15 explain why you took a particular position.

16 That is, in general parlance, called an
17 "intimidating experience." I'm not saying that you shouldn't
18 have to do it. But when it becomes the routine practice that
19 every time that I make a call that the craftsman doesn't agree
20 with me on, I'm going to end up in a meeting where I have to
21 justify my position, and the people in the meeting are going
22 to be my bosses, and rarely, if ever, are they going to come
23 to my personal defense -- I will not have my champion in the
24 room; my bosses will ask me just as tough questions as the
25 craftsman's bosses will ask me -- that creates a feeling on

1 your part that if it's a close call, I'm going to call it the
2 other way.

3 MS. AXELRAD: How would you suggest they resolve it
4 if there is a dispute?

5 MR. ROISMAN: well, again we go back to -- I forget
6 which of the two of you put the point in terms of the root
7 cause procedure -- I think it was you, Mr. Lieberman -- when
8 you start with a company that is building the plant wrong,
9 there is no answer to that question, Ms. Axelrad. It's
10 inevitable that you're going to end up with so many disputes,
11 so many disagreements, that you're going to be forced -- in
12 other words, you start with a bad set of problems, and then
13 everything that you do to deal with them, since one thing you
14 will not do is change the procedures or correct the underlying
15 problem, produces more problems.

16 It was a form of controlled chaos at the plant site.

17 MS. AXELRAD: well, but one of the problems that
18 we've seen is that every time someone questioned, that they
19 did change the procedures. That was one of the things that I
20 think contributed to some of the friction between craft and
21 QC, is that when a QC inspector found something wrong or there
22 was friction, that the procedures were revised, so that it
23 became difficult to --

24 MR. ROISMAN: well, you are talking about revisions
25 that made the QC inspector's decision, then, incorrect and the

1 craft's position all right. That is, they relaxed the
2 standard. And I'm talking about the opposite situation where
3 the QC inspector would complain that something wasn't being
4 done right, and the procedure said what was being done was
5 right, but the QC inspector said, "But I don't think that
6 procedure works." And in that instance, the procedures were
7 not changed to tight -- well, obviously there is no universal
8 here. They didn't always intimidate everybody, and they
9 didn't always encourage everybody, and neither side needs to
10 prove that 100 percent to you for either of us to prevail.

11 One of the things that I think that's important also
12 to look at in the context of this -- and again, I want to
13 stress, I think intimidation is an issue of what was the
14 overall atmosphere at the plant; were they actively
15 encouraging these people to come forward -- and again, I think
16 your most persuasive evidence is how many people's complaints
17 had to be resolved by the TRT.

18 Obviously, as an agency, you do not want a situation
19 in which the ultimate of the plant has to be decided by a
20 40-person NRC team working for a year and looking at 900
21 allegations. From a policy perspective, you want to come out
22 of the Comanche Peak proceeding with a result that makes sure
23 that that is not a recurring situation. In any way, it's not
24 good -- for the public, for the agency, for the company, it's
25 not good, and if this company thinks that this is the right

1 way to do it, you want to make sure that your actions make
2 clear to them that it's not the right way to do it. These
3 problems should have been detected and resolved earlier.

4 Now one thing that we do know about management is
5 that what happened in the past was a relatively steady stream
6 of concerns about the QA/QC program expressed by auditors.
7 The most recent revelation relates to the earliest of those of
8 which we are aware, which is the MAC report in 1976, which
9 found that the system had a number of problems with it. And
10 what is instructive is, how many of those problems were
11 repeated by people who were later discharged or who left and
12 said that they felt that they were not free to speak up, and
13 how many of those problems persisted until today?

14 we did a filing which we euphemistically called
15 the "Evidentiary Standard Filing" in February of this year, in
16 which, with the exception of the MAC report which we didn't
17 have at that time, we tried to sort of trace through the
18 history of NRC, INPO, and other audits that had been done of
19 this plant, indicating failures in the QA/QC program which
20 persisted over the years without corrective action.

21 That's an important element in your assessment of
22 management attitude? How intransigent was management toward
23 the worker who would come forward and say, "I think there's a
24 problem here?" It is measured by how intransigent they were
25 to the audits that were done even by people who they retained

1 themselves.

2 One thing that's important -- and I think I've said
3 this, but I want to sort of put it together in one place -- is
4 to understand the climate of the site. You, of course, know
5 the inherent tensions between inspectors and craft. That's a
6 reality. That's the reason why Appendix B can't be met by a
7 neutral program, because you already have something that you
8 have to overcome. It's a natural tension. It doesn't mean
9 that it's evil, but it's there. People don't like to be told
10 that they're doing something wrong, and crafts people do have
11 quotas, and they do have requirements, they do have schedules
12 to meet, and QC inspectors are potentially deterrents to
13 that. So you start with that reality.

14 Secondly, we're looking at a plant where the
15 problems started, we think, quite early -- in the '70s when --
16 well, for instance, the MAC report. We already began to see
17 MAC identifying certain kinds of problems in 1976.

18 Over the period of time before we get there with our
19 little camera to start taking pictures of the plant, there has
20 already been a significant readjustment of the makeup of the
21 plant. Lots of people had left. The turnover rate in the
22 QA/QC program was rather high, and there weren't a lot of
23 people --

24 MS. AXELRAD: Excuse me. High, compared to what?

25 MR. ROISMAN: Well, just high in the context of us

1 not having people, for instance, in 1983 who had been there in
2 1979, relatively few numbers of those.

3 MS. AXELRAD: Do you know how that compares to other
4 plants?

5 MR. ROISMAN: No. I didn't mean high in comparison
6 to other companies. I merely meant that a purging process was
7 going on at the plant, which may have been just through the
8 normal attrition and turnover rate. I didn't want to suggest
9 that we could prove to you that a lot of people had left in
10 1980 because of the conditions that we tried to identify in
11 the hearings in '84. I don't know that. We don't have any
12 evidence on that one way or the other.

13 MS. AXELRAD: Were you saying that a lot of people
14 had left by -- what year were you talking about? '80?

15 MR. ROISMAN: No. By 1983 and '84, we didn't see
16 very many people who were there -- in fact, the testimony by
17 one of the witnesses -- I'm sorry; I can't remember her name,
18 but it was one of the women who worked on the 1979 survey
19 audit -- testified that the company reviewed the 1979 data as
20 of May of 1980, and they went around and talked to some
21 employees to find out, did they feel better now than they had
22 in '79. And when she was asked the question, "Did you talk to
23 any people who had been the previous persons who had made
24 these complaints," the first answer was, "Well, they were
25 neutral; we didn't know," and I said, "well, did you ask any

1 of them?" And she said, "No, we didn't," and I said, "Did you
2 have any sense of how many of the people who you talked to
3 were there before? In other words, even if they hadn't been
4 the complainers, were they still there?" And she said, "We
5 didn't know."

6 In other words, they had no idea whether they were
7 talking to a different group of people than the ones -- even
8 between November of '79 and May of '80, which suggests that
9 there was probably even at that time -- again, I don't know
10 the reason for it, but a fairly rapid turnover in that
11 department.

12 And the word got out. People came to the plant,
13 knowing after awhile what was expected, like, "Keep your mouth
14 shut about these problems," and not speaking up. So that it
15 is a fact that you have to have an understanding of the
16 limitations that were present in the makeup of the people who
17 we have ultimately found to investigate, the 1984 workforce
18 and some '83 workforce people.

19 A third and, I think, extremely important
20 consideration for you to look at in terms of management's
21 climate and atmosphere at the plant is what has happened to
22 the allegers after they left the plant.

23 Now you know, because you've seen the SSER, that a
24 number of them were found to be right. They were found to
25 have been correct.

1 Are you aware of any of them that have been
2 approached by management to either say, "Hey, we're really
3 sorry. It looks like we cut you off wrong, and we appreciate
4 what you tried to do. We want you to come back. If there's
5 an opening, you're going to be first on the list?"

6 No. In fact, just the contrary. If you look at the
7 record of the hearings in the Department of Labor, if you look
8 at the record of unemployment compensation claims, what you
9 will find is that management has persisted in denying that
10 these employees had any legitimate reason to complain, in
11 attacking them personally in every way legally and in some
12 cases illegally that was available to them, and in making it
13 quite clear to anybody who chose to look, that former allegers
14 from the Comanche Peak nuclear plant are going to get in
15 serious trouble. Most of them are not even employed in the
16 nuclear industry anymore.

17 And that's a reality of the continued fallout from
18 the blast that took place at the plant when these people left
19 or were forced out or fired, as the case may be.

20 Now the company has an affirmative burden. We don't
21 think they have done or met that affirmative burden.

22 This program that you were asking about,
23 Ms. Axelrad, which became known as the Eight Point program
24 after the hearing started, but was not so designated by the
25 company, was a sort of catch-as-catch-can -- and don't be

1 confused by eight points. One point was inserting things into
2 the envelopes, and another point was posting signs. I mean,
3 you know, I guess we could get -- each insert could have been
4 a point, and we could have had a 4000 Point program.

5 The fact is that the program, if you look at the
6 record, accomplished virtually nothing, and it's not clear
7 that it was intended to accomplish much of anything.

8 MS. AXELRAD: what about the ombudsman? wasn't the
9 site ombudsman a part of the Eight Point program?

10 MR. ROISMAN: Yes, that's right.

11 MS. AXELRAD: how effective do you think that was?

12 MR. ROISMAN: well, it was pretty bad, as some of
13 the testimony from people who had taken complaints to the
14 ombudsman indicated, and there is testimony in the record of
15 people who had gone to the ombudsman with complaints.

16 There was a feeling at the time the ombudsman was
17 set up that the neutrality of the ombudsman was not well
18 established. He was physically located not only in the
19 building, but in the same hallway with some of the people
20 whose conduct was the subject -- like Messrs. Tolson and
21 Brandt -- of the claims of harassment and intimidation. And
22 his conduct with regard to the investigation or
23 non-investigation of the T-shirt incident is indicative of the
24 quality of that.

25 Now Counsel for the company tells you that the fact

1 that they've now gotten rid of the ombudsman program and
2 replaced it with the Safe Team cannot be used as evidence that
3 there was anything wrong with the ombudsman. That statement
4 is legally in error.

5 In tort litigation, which this is not, the tort
6 standard would be higher, and it is permissible. At least
7 some courts have so held that a company's decision to improve
8 the safety of a product is evidence that can be used in a tort
9 case over the lack of safety in the product in the first
10 place.

11 But we're not in tort anyway. We're in the real
12 world. We're talking about, will the people in Texas be safe
13 or in danger if this plant is allowed to operate? And I'm
14 sure you're not going to get hung up on those technicalities.
15 The fact is, the company has recognized that a markedly
16 different kind of program to deal with allegations is
17 required, one that brings in essentially an outside team, and
18 that's very, very important.

19 It's also important, I think, that they're not
20 willing to say that they saw any failures in the past
21 program. But that goes to this other issue, you know, of when
22 will management ever be willing to admit that anything was
23 ever done that was wrong at that plant by them?

24 Even on the T-shirt incident, their so-called
25 admission is merely an admission that Mr. Tolson overreacted

1 to the labeling on the T-shirt. No discussion of the fact
2 that Mr. Tolson was really in the midst of a multiweek effort
3 to drive the Post-Construction Task Force in the safeguards
4 building, the electrical inspectors, out because they were
5 delaying the completion and the turnover of that building
6 because of their insistence on compliance with company
7 procedures regarding electrical connections and the like.
8 None of that comes into their discussion. None of that
9 appears in their audit of the program, and none of that
10 possibly relates to their understanding of the T-shirt
11 incident.

12 MR. LIEBERMAN: Do you plan to go into any of the
13 other incidents?

14 MR. ROISMAN: Yes, I do.

15 In terms of the positive evidence that we've
16 presented, putting aside for a moment the lack of what we
17 consider to be positive evidence of the company, I think that
18 the SSER findings, the defects that exist after turnover, the
19 extent of those, the SSER and its finding of widespread QA/QC
20 breakdown, the absence of all of the people from the plant now
21 -- I mean, we are getting beyond coincidence. We should
22 probably ask the EG&G, I know they have some statisticians who
23 work with them, to give us the statistical probability that
24 every single one of the QA/QC managers who had been with the
25 plant as long as these people had should be gone, all within a

1 relatively short period of time coinciding with the beginning
2 of bad news coming out from the IRT about the breakdown of the
3 QA/QC program. I imagine it would be relatively astronomical.

4 In terms of the specific incidents, the Circuit
5 Breaker. The Circuit Breaker was a morale-booster. It's not
6 a newspaper. I agree that the First Amendment allows them to
7 publish anything they want. And the Nuclear Regulatory
8 Commission has the right to see if the company was being
9 insensitive by choosing to publish it. The agency doesn't ban
10 newspapers, but it does look to see whether publishing the
11 names of alleged in a local distribution within the plant
12 company, who have come forward and criticized the company, is
13 going to make them feel happy when they show back up at the
14 plant and loved, or is it going to make them feel a little bit
15 intimidated? And I don't think there's much question about
16 that. I mean, she was even told by Mr. Tolson, "Be careful."

17 Now he tells he meant, "Be careful, because you're
18 six months pregnant." But be careful is be careful, and she's
19 on her way to the hearings, and she's on her way out into a
20 plant site of basically 5000 construction people and a handful
21 of QC inspectors.

22 The 1979 survey, I think again the definitions used
23 by EG&S to define what is harassment and intimidation is what
24 produces these little percentages. If you use a different
25 definition, as we have used, you get different percentages.

1 But one of the things that is crucial is that a lot of people
2 complained about lack of support, and they talked about
3 conditions that existed at the plant between themselves and
4 QC, friction and so forth, and when we asked the people, "what
5 did you do to follow up on those particular allegations,"
6 there's a whole transcript -- Anderson; isn't that her
7 name? -- Ms. Anderson's deposition of her discussion of how
8 they followed up on specific allegations in the 1979 survey,
9 what you find is that they didn't follow up on any of them,
10 none of the ones which we argue represent evidences of
11 intimidation. None of those got followed up on. And the
12 follow-up to the '79 survey was to change one procedure -- not
13 all procedures; "a" procedure that had been identified by
14 several people as being objectionable, and to do something
15 about the pay differential problems that some of the employees
16 had made. And that was it.

17 MS. AXELRAD: What about the '83 survey?

18 MR. ROISMAN: Well, the '83 survey indicated that
19 there were some problems. Neither of the surveys are great
20 scientific surveys. Our expert said that, and I think the
21 EG&G people conceded that as well. The '83 survey identified
22 some problem areas. It was -- there's not any indication,
23 when we asked Mr. Brandt, "Did the problem areas" -- one
24 focused on Mr. Williams' group; that's paint coatings -- "were
25 any of your actions taken in response to the '83 survey with

1 regard to Williams," the answer was no.

2 So we can't find that there was any follow-up to the
3 '83 survey by them.

4 Mr. Dunham. We are told that the finding that he
5 was fired represents collateral estoppel. Let's for a moment
6 accept that as valid.

7 All the other findings that are in there are also
8 collateral estoppel, and I commend to you the entire finding,
9 because what the DOL Board member found was that Mr. Dunham
10 had been engaged, at great personal sacrifice, in protected
11 activity for a long time, and that on one day, he finally lost
12 his cool and snapped. That issue is up on appeal, and I am
13 hopeful that it will be reversed. But irrespective of that,
14 two months of intimidating pressure that Mr. Dunham testified
15 about, the Board basically accepted. They just found that he
16 should have held on a little longer, and they never would have
17 been able to fire him. In other words, he should have
18 continued to exist in a subhuman condition created by the
19 Applicant, and that would have saved him his DOL rights.

20 That's not what you're concerned with. You're
21 concerned with, how did he get to that meeting, and what had
22 transpired in the two months? And the findings, I think, are
23 useful for that.

24 You will also find an equally collateral estoppel in
25 those findings is that the answer to whether Mr. Dunham was a

1 credible witness, because of a prior felony conviction as a
2 young man, was that Mr. Brandt and Mr. Purdy were, on their
3 face, not credible witnesses. Those two witnesses represent a
4 real heart of part of the Applicant's case here on the whole
5 issue of harassment and intimidation.

6 So one, you're taking collateral estoppel notice of
7 the finding there; also take collateral estoppel notice of the
8 credibility of two key Applicant witnesses.

9 Mr. Atchison, I think that the questioning from
10 Mr. Lieberman really said everything that I have to say, which
11 is that there were plenty of findings in there, and they are
12 at least as reliable for you as the EG&G findings. They
13 represent the considered opinion of both the Secretary of
14 Labor and the Hearing Examiner, after receiving evidence. I
15 think they're persuasive as to whether or not Mr. Atchison's
16 firing was -- the pretextual reasons were given.

17 Corey Allen, I've talked about him already.

18 Mr. Hamilton, now we're told by the Applicant,
19 that's not even collateral estoppel that's binding in this
20 case, but on those findings, he tells you, "Disregard that.
21 Don't pay any attention to those findings, even though they
22 represent the ruling of the Hearing Board."

23 I think the proffer of evidence represents, of
24 course, untested evidence. If you are looking at the Hamilton
25 event, I think you need to look at the record that the Board

1 looked at and decide on the basis of it. The proffers are
2 just that -- untested, self-serving testimony from the
3 Applicant.

4 The T-shirt incident, one thing I think that you
5 probably know is that DIA is completing a report that will
6 shortly be out, and that report is designed to look in depth
7 at the question of who shot cockrobin in the T-shirt incident,
8 and I think it is worth waiting for.

9 MR. LIEBERMAN: Did you say DIA? Did you mean DI?

10 MR. ROISMAN: No. I mean DIA.

11 MS. AXELRAD: well, they would be looking at it from
12 the standpoint of whether the Staff did anything wrong.

13 MR. ROISMAN: That's right.

14 MS. AXELRAD: And we've been sort of focusing on the
15 company's conduct.

16 MR. ROISMAN: Yes, but they are also looking at the
17 company's conduct, because part of the question of the Staff
18 is the interrelationship between the Staff and the company.
19 And also it attempts to get at what the bottom of the issue
20 is, which is, what was that event about?

21 For your information, the people that were involved
22 in the T-shirt incident were either transferred or gone from
23 the plant site.

24 MS. AXELRAD: All of them?

25 MR. ROISMAN: Yes.

1 MS. GARDE: Well, you have two groups. You have the
2 Post-Construction Task Force and the T-shirt incident. And
3 three of the people that wore T-shirts were still there, but
4 the whole Post-Construction Task Force was gone.

5 MR. ROISMAN: In other words --

6 MS. AXELRAD: Okay. There were eight people who
7 wore T-shirts.

8 MR. ROISMAN: Some of whom were Post-Construction
9 Task Force people and some who were not. And all the
10 Post-Construction Task Force people were transferred or gone
11 from the site within two months.

12 Incidentally, our analysis of the event is that
13 Mr. Tolson, who admittedly did lose his cool -- but that was
14 not the first occasion -- that Mr. Tolson saw the leaders of
15 the group when they came in and recognized them as the
16 Post-Construction Task Force people and thought what he had in
17 front of him was the Post-Construction Task Force, and that he
18 acted as he did because he thought he had his chance to get
19 these guys who were causing him all this trouble, and to get
20 them over an incident of disruptive behavior.

21 MR. LIEBERMAN: Is there evidence in the record that
22 would state why these individuals were transferred, or is it
23 merely your view --

24 MS. GARDE: Are you asking if the company offered a
25 reason for their transfer, affirmatively? Is that what you're

1 asking?

2 I mean, the company took the position that there was
3 no more work for them to do, so some of them were transferred
4 to Unit-2. But there wasn't any work for them to do on Unit-2
5 either, and then they left. Some of them left voluntarily;
6 some of them were laid off. Only Wayne Whitenead remained and
7 remains. I'm sure you've read his transcript.

8 MR. LIEBERMAN: Is there evidence to indicate that
9 that's not true?

10 MS. GARDE: well, I mean, if the company takes a
11 particular position, I am not sure if you are asking me, was
12 there other work to be done? Yes, there was other work that
13 was to be done and was ongoing.

14 MS. AXELRAD: On Unit-1?

15 MS. GARDE: One Unit-1, yes.

16 Probably more to the point was, did Wayne Whitenead
17 believe, as the only person who was deposed on this issue, did
18 Wayne Whitenead believe that he was transferred for legitimate
19 reasons or not legitimate reasons? And his testimony was that
20 he believed he was transferred due to the T-shirt incident and
21 the Post-Construction Task Force.

22 And more importantly, I think, to your inquiry is
23 Mr. Whitehead's testimony during his deposition that
24 immediately following the T-shirt incident, when the guys came
25 back the next couple of days, that he was personally

1 approached by what he characterized as over 60 percent of the
2 QC inspectors and asked what had happened, what had
3 transpired, because those other QC inspectors believed that
4 the entire T-shirt incident was, in fact, a retaliation for
5 wearing the T-shirts, which led -- which was also coming out
6 of the larger question of the identification problems in the
7 safeguards building.

8 MS. AXELRAD: We were just discussing this among
9 ourselves the other day, and I was just wondering -- I have
10 not gone back to the record to check it -- some of the T-shirt
11 wearers, but not all, were members of the Post-Construction
12 Task Force; is that right?

13 MS. GARDE: That's right.

14 MS. AXELRAD: And the converse is also true, that
15 the Post-Construction Task Force included people other than
16 T-shirt wearers.

17 MR. ROISMAN: For that day. But as you know, on
18 Monday of that same week, everybody wore the T-shirts.

19 MS. GARDE: All the electrical QC inspectors on that
20 crew -- there were between 18 and 21 -- wore the T-shirts on
21 Monday.

22 MS. AXELRAD: I knew 18 or 20 people wore them. Was
23 that literally all of the --

24 MS. GARDE: It was everybody included in the
25 Post-Construction Task Force and everyone under a particular

1 supervisor, who was then removed or was in the process of
2 being removed. Greg Benetson was then sent to Documentation.
3 Mark Welch was transferred in.

4 The Post-Construction Task Force procedures, as you
5 know, were subject to the hearing and went through significant
6 changes immediately prior to that time period, which the
7 Post-Construction Task Force members believed gutted that
8 effort.

9 MS. AXELRAD: Okay. But then there were two of the
10 eight T-shirts who were not members of the Post-Construction
11 Task Force, and they remained two months later?

12 MS. GARDE: I think three.

13 MS. AXELRAD: Three?

14 MS. GARDE: I think there was three. And I believe
15 that they're still there, and I also believe that those are
16 the individuals who the NRC interviewed and then based its
17 various conclusions on, that it was only -- it had nothing to
18 do with safety problems, because everyone from the
19 Post-Construction Task Force was gone except Whitenead.

20 MS. AXELRAD: why do you suppose -- why were three
21 left, if they were retaliating for wearing the T-shirts?

22 MS. GARDE: well, you see, I think that's where
23 there is a significant, subtle difference in these two
24 particular incidents. I think the two incidents stand alone.
25 I think the T-shirt incident could be viewed as a separate

1 incident. It could have happened among any group of GC
2 inspectors. Forget that they were electrical GC inspectors.

3 I think the Post-Construction Task Force incident
4 also could stand alone. I think, as Mr. Roisman characterized
5 it, what Mr. Tolson saw in front of him, because he didn't
6 know everybody's faces, was the Post-Construction Task Force.
7 And in fact, the leader of the group, the spokesman of the
8 group in that room, the one who took out the tape recorder and
9 asked Mr. Tolson if he could tape record the meeting, was one
10 of the more vocal members of the Post-Construction Task Force.

11 And as we will characterize it, at that point, we
12 believe Mr. Tolson saw red, didn't see who else was there.
13 That's why when he called in and gave the names to Mr. Check
14 at Region IV, what he gave was the names of the
15 Post-Construction Task Force. He did not give the names of
16 the people who were in the room. And there was a split.

17 Does that make sense?

18 MS. AXELRAD: Yes.

19 MR. ROISMAN: In other words, it was just one of
20 those weird coincidences. As you know from the history of it,
21 there were already plans to take action against the
22 Post-Construction Task Force people, presumably as a result of
23 the destructive testing, and the record is filled with
24 testimony regarding that, and Mr. Check's notes are in
25 evidence and the like.

1 And that's how the confusion got started. When the
2 call went from Mr. Clements to Region IV, he gave them the
3 names of the Post-Construction Task Force people, because
4 he thought that's who it was that Mr. Tolson was dealing with,
5 and he said, "It's a management problem, and, you know,
6 personnel, and not something that the NRC needs to get
7 involved in."

8 MS. AXELRAD: But not the whole task force. I mean,
9 there were twenty members, right?

10 MS. GARDE: Well, the Post-Construction Task Force
11 was very small. I think six people -- four main inspectors.

12 MR. GAGLIARDI: Mr. Roisman, you are getting near
13 the end of your time. Are you about ready to finish?

14 MR. ROISMAN: That's right. I promised Ms. Garde
15 five minutes here at the end, and I'd like to give her those
16 five minutes, and then I will make two concluding sentences
17 when she gets done.

18 MS. GARDE: My comments deal first of all with the
19 methodology that you have used in doing your work, which is
20 unknown to me at this time.

21 I assume at some point we will get into that, either
22 through depositions or discovery. However, I believe there is
23 a fundamental flaw in the process of your work, based on what
24 I have seen to date, which I think that you need to be very
25 aware of, at least from our perspective.

1 I'm not sure whether or not your work is based
2 solely on the record in the hearings or it also includes the
3 entire regulatory record, if you will, of the NRC, which, of
4 course, includes the TRI and Region IV findings over the last
5 couple of years.

6 If your position is going to be only on what is in
7 the record, then I don't see how you can possibly reach any
8 position until the record in Docket 2 is closed and all the
9 evidence is in, and all of the depositions and discovery have
10 been completed.

11 If, on the other hand, what you intend to do is take
12 a position for the Staff in general that, "This is our
13 position on harassment and intimidation at Comanche Peak from
14 the beginning of construction to now, based on what we have
15 seen," then I think you are charged -- or your charge expands
16 far beyond the record to all the evidence available to the
17 Technical Review Team, as well as all the evidence in the
18 record from the beginning of construction, which, as I am sure
19 you realize, includes complaints of harassment and
20 intimidation, complaints of people leaving the site, giving
21 substantive concerns to the NRC, from as far back as '77 and
22 '78.

23 The liner plate incident is a good example. The
24 initial allegations on the liner plate, the date that I can
25 find, initially start in '77, and those workers who I have

1 talked to that brought those concerns to the NRC at that time
2 period, they only talked to one Region IV investigator. There
3 was no transcripts then of interviews. Dealing with allegations
4 was a whole different ballgame than it is now.

5 Those individuals, if you would call them now, if
6 the NRC would call them now, which they have not, would say
7 they left the site because of the -- one was laid off, and one
8 left in a constructive discharge situation -- because of the
9 problems they were identifying in the liner plates, because
10 they refused to go along with work conditions that they
11 thought were intolerable -- that is, that they were being told
12 to work on the liner plate in a manner that was in violation
13 of procedure, falsify documents -- there was massive amounts
14 of falsification of documents going on around them.

15 That is not -- that was not pursued by the TRT.
16 That issue has not been developed, other than in this one
17 Region IV inspection report, which concludes with essentially
18 nothing. It doesn't look at it, and it doesn't follow up.

19 That's the type of flaw that I'm concerned with in
20 your work. You're not looking at, to the best of my
21 knowledge, the entire record. And if you are looking at the
22 entire record, you apparently are taking it on its face and
23 not going beyond it.

24 I believe, based on my contacts with the workforce,
25 that I would know if you were doing other than that. I would

1 know if you were going beyond that, going back to allegers.

2 Second, there's a major difference between the
3 evidence that was presented in the record and the evidence
4 available to the NRC on exactly the question of harassment and
5 intimidation. We started getting ready for these hearings
6 last year with a much larger witness list than we ultimately
7 ended up with.

8 The first major cut came because the Board decided
9 not to hear, at that time, from craft workers, based on the
10 theory that if the QC program failed, it didn't matter what
11 happened with craft. On the other hand, if the QC program
12 worked, then even if craft was harassed and intimidated, the
13 QC program would have identified the problems.

14 Over the course of procedural events, which I won't
15 get into, that exempted things like documentation. So Double
16 Hatley, all the documentation clerks, of which there's large
17 amounts of complaints, both through the GAI files, which are
18 the company's own independent complaint cycle, and publicly,
19 those have never been pursued, on the record or otherwise,
20 because they were classified as craft personnel.

21 At the same time, the TRT has interviewed a large
22 number of craft personnel -- T.R. Dillingham is an example --
23 who have substantial evidence on harassment and intimidation.
24 He was made to stand essentially in a very small room, which I
25 think was an elevator shaft, for two weeks while Brown & Root

1 and YUGCO figured out what, if anything, they were going to do
2 about their concerns. Dillingham was a senior craft
3 supervisor at the time. Everyone on site knew what was going
4 on with Dillingham.

5 Our concerns on chilling effect stem directly from
6 things that happened to people like Dillingham and Dobie
7 Hatley. That creates an atmosphere which isn't in the minds
8 of the worker so evenly and nicely parsed as a Board decision
9 or how we're going to procedurally try this case.

10 If you are making decisions based only on the
11 evidence so far developed on the QC aspect, I would submit
12 that your conclusions are only as good as the size of the
13 evidence that you looked at.

14 Another thing that I would share with you is that
15 this whole idea of harassment and intimidation is something
16 that GAP has worked on and works in as our specialty, not only
17 for nuclear workers, but also for federal workers. The most
18 comprehensive study that I am aware of ever done in this area
19 of whistleblowing was done by the Merit Systems Protection
20 Board a number of years ago and recently updated by their
21 Office of Technical Assessment.

22 In that study, which is, as I said, I believe the
23 only major study out which attempted to poll large numbers of
24 workers, in that case federal workers, there was very
25 interesting statistics drawn about who raised complaints, who

1 didn't raise complaints, and why.

2 I would submit, of course, that there is a big
3 difference between a federal, largely white collar workforce
4 and a construction workforce and wouldn't want you to stand on
5 that conclusion. But the report itself is something I think
6 that you should review, because the point that it raises --
7 that is, that the bulk of workers in this country go along to
8 get along; they go to a job -- they are essentially what I
9 used to call when I taught college "the people who work to
10 'live.' They have a job; they go home; they live their life,
11 and they go back to work the next morning. They are not cut
12 out to be a one-man or one-woman army, and they're not looking
13 to make waves.

14 That is the bulk of the workforce that is identified
15 in this harassment and intimidation whistleblowing study done
16 by the MSPB, and I think it's pretty much the same.

17 The smaller groups include people who saw or were
18 aware of, in the federal study, waste, fraud, and abuse and
19 did not raise any questions, concerns, or identify any
20 problems to their managers.

21 In that study, slightly over 25 percent of the
22 workforce had knowledge which they did not bring to the
23 management's attention, not because they were afraid of
24 harassment, intimidation, termination, but because they
25 believed that nothing would be done about the problem. It was

1 not taking a risk, because nothing would happen anyway.

2 A much smaller group did not raises problems because
3 they were afraid of reprisals of some sort. And in each of
4 those cases -- and again, this study points to it -- their
5 fear of reprisals is based on not necessarily something they
6 say in their workforce, but because of the well-publicized,
7 well-understood situations within each federal agency. Each
8 agency, just as each nuclear plant site, has got their famed
9 whistleblowers.

10 Charles Atkinson was known to the workforce long
11 before anybody else was and probably known by everyone.
12 within this study, the same point is made. They knew about
13 Ernie Fitzgerald; therefore, the Pentagon generally kept
14 quiet, even though they had major knowledge of cost overruns
15 and the same problems that Mr. Fitzgerald testified about.

16 That's a point that the Board has raised
17 consistently in what I will characterize as dicta -- that is,
18 when we're having conference calls or we're having debates on
19 what is really going on in the hearing, and sometimes those
20 are only over procedural points, whether evidence is going to
21 be in or out of the record, whether this line of questioning
22 is or is not permitted.

23 And Judge Bloch has definitely given that overview
24 of his view of the problem. For instance, in Susie Neumeyer,
25 when there was a debate on whether or not Susie Neumeyer's

1 testimony was going to be permitted, because she didn't say
2 the magic three words, "I was intimidated," at which time the
3 Applicant tried to get her testimony booted out, Judge Bloch
4 came back and said, "Did other people know what had happened
5 to her? were other people aware of what was going on to
6 her?" whether or not she says those three magic words is
7 really irrelevant, because if that situation was known to the
8 workforce -- and certainly in her case, it was among her class
9 of people, among welding QC inspectors, and that tale got told
10 quite a bit over the next couple months, that left an
11 impression. And we'll never know what that impression was.

12 It's, as I see it, certainly impossible for this
13 panel to make a determination that as a result of Susie
14 Neumeier's incident, four people failed to identify problems
15 the next day, the next week, that, I believe, is the charge
16 that you think Mr. Hansel needs to get his arms around it and
17 has not yet done so.

18 It's a difficult task, and I'm not exactly sure how
19 it could be done. As I think some of you heard me say at the
20 meetings, I have some ideas, I have some thoughts on that,
21 which would more properly be shared, I think, with Mr. Hansel
22 and the Applicant than with this Panel -- I don't think it's
23 impossible -- but that atmosphere is not easily determined,
24 based on looking at little set numbers of incidents and
25 determining whether or not that witness is credible, whether

1 or not that witness broke a window and was arrested on a
2 felony when he was seventeen -- that's totally irrelevant to
3 what the workforce thought about what was happening to Bill
4 Dunnam as they're escorting him off the site, or as QC
5 inspectors are affected as they're escorting eight guys
6 wearing T-shirts off the site, who, as Wayne Whitenead's
7 testimony has said, believed -- the QC inspectors who came to
8 him believed it was because of the Post-Construction Task
9 Force's identification of problems in the safeguards building.

10 It doesn't matter that the NRC and the Applicant and
11 all of us sit here and decide, well, the T-shirt incident was
12 an overreaction, and it was badly handled, and it was mistake,
13 and therefore it's not a problem. It is a problem. It's a
14 problem because over 50 percent of the QC inspectors, if
15 Mr. Whitenead's testimony is correct, thought it was because
16 they were identifying problems in the safeguards building.
17 And that is what they believed was really happening there.
18 Nothing the Applicant has done since that time has rebutted
19 that.

20 Greg Benetson still stayed over in documentation.
21 The Post-Construction Task Force continued on the revised
22 procedures. Nothing happened. They saw Ron Jones and the
23 rest of the guys go over to Unit-2 and sit there and twiddle
24 their thumbs for two months. Nothing affirmative was done by
25 the Applicant to undo that incident, whether or not they were

1 paid for the day and whether or not they came back from the
2 day.

3 And the leaders of the Post-Construction Task Force
4 left. And the NRC has never talked to them. They never have
5 gotten any impression, based on what has happened to that
6 time.

7 Two more points that deal with your process. Your
8 root cause concerns, I believe, have to be affirmatively
9 addressed by the Applicant. Nothing to date has addressed
10 that. The record is void of any kind of look at the root
11 cause.

12 Our position is that the management team in place
13 both fostered, encouraged, and tolerated harassment and
14 intimidation, which had the direct effect of keeping problems
15 quiet. Nothing has been done to rebut that.

16 The specific examples given by the Applicant do not
17 include and do not rebut a large part of the evidence that is
18 developed in our findings. I give as an example Cindy Miller,
19 a person who went to the ombudsman, said that she believed she
20 was being terminated for raising problems about drug abuse on
21 the site. She left three days later. The ombudsman, because
22 she left the site, did not pursue that allegation.

23 Cindy Miller's story is very interesting, and it
24 goes long beyond that particular incident of the GAI file.
25 Nothing has been rebutted on that incident. Nothing has been

1 done about it. No evidence has been presented that rebuts
2 that.

3 I mentioned documentation, and the other thing which
4 I think you're all aware of is, there have been new witnesses
5 which GAP has brought to the TRT in the last six to eight
6 months, who did not testify, and whose evidence bears directly
7 on the issues of harassment and intimidation, and I believe
8 that those transcripts should be made available for you to
9 review.

10 MR. GAGLIARDO: You have two sentences?

11 MR. ROISMAN: I have two sentences. Sentence No. 1,
12 I am fully aware that among the minds of lawyers, it is
13 possible, as it was done for the EG&G, to develop a definition
14 of harassment and intimidation that you could find that there
15 was none at this site, but in your heart of hearts and as
16 representatives of the Nuclear Regulatory Commission,
17 concerned with the real question of compliance with Appendix
18 B, Harold Denton said, "This case is a test of the NRC," and
19 your Panel is a test of you and your willingness to call it
20 the way it is undeniably so, and we hope you will do that.

21 Thank you.

22 MR. GAGLIARDO: Thank you, Mr. Roisman and
23 Ms. Garde.

24 At this time, we will allow the Applicants to make a
25 ten to fifteen-minute rebuttal statement.

1 MR. REYNOLDS: I believe that the discussion this
2 morning has provided this Panel with the clear distinctions
3 and differences between the Intervenor's approach to this case
4 and the Applicants' approach.

5 Intervenor's would have the Staff focus almost
6 entirely on innuendo and speculation, based upon the shreds of
7 evidence that they were able to introduce in this case. They
8 argue that when a supervisor and an inspector disagree --
9 Corey Allen and Tom Branot -- the supervisor, by definition,
10 is not concerned about quality, is interested in intimidating
11 the inspector, is wrong, and the inspector is right.

12 They compound their error by arguing, without any
13 supporting evidence, that the alleged indifference to quality
14 that is exhibited in that situation is an indication of a
15 widespread problem on the site, that it is representative of a
16 more pervasive problem. It just ain't so.

17 The evidence doesn't indicate it. Nothing but
18 Mr. Reisman's speculation supports that proposition.

19 MR. LIEBERMAN: Mr. Reynolds, is it your view that
20 the record supports the proposition that the company
21 encouraged people to question procedures?

22 MR. REYNOLDS: Encourage to question procedures? I
23 don't know that there is any evidence in the record to
24 indicate that they were encouraged to question or discouraged
25 to question. I think it's a routine interface between

1 management and inspectors for inspectors, if they have
2 questions, to raise the questions.

3 One example of a concern that was found as a result
4 of the '79 survey was that procedures were complicated and
5 confusing, and in particular, I think they were electrical
6 procedures in that situation. Management changed the
7 procedures, and management made an effort to simplify the
8 procedures.

9 I don't think there is anything in the record that
10 inspectors were discouraged from coming to management.
11 Whether there is any evidence in the record to suggest that
12 there was an overt and conscious encouragement by management
13 to inspectors seeking questions about procedures, I don't
14 recall any evidence to that effect. But that doesn't mean
15 that it wasn't a welcome interchange when it happened, and I'm
16 sure it happened frequently.

17 And I am not suggesting either that inspectors were
18 always satisfied with procedures. It's a complicated job to
19 do what those people have to do down there. The engineers
20 have to write the procedures. The inspectors have to inspect
21 to the procedures. It isn't easy, and it's really a process
22 that requires dynamics, really, to change as change is
23 necessary.

24 MR. LIEBERMAN: Is it the company's position that
25 the workers would be unreasonable, if they perceived the fear

1 of questioning procedures?

2 MR. REYNOLDS: Yes, certainly. There is no rational
3 reason for anyone to fear questioning procedures.

4 MR. LIEBERMAN: Throughout the time of this project?

5 MR. REYNOLDS: Yes.

6 MR. LIEBERMAN: With all the supervisors?

7 MR. REYNOLDS: You are asking me to be too broad. I
8 can't in good conscience say that every person at the site was
9 an angel for ten years, no. I wouldn't agree to that, no.
10 I'm talking about --

11 MR. LIEBERMAN: The majority, though?

12 MR. REYNOLDS: Oh, absolutely, the substantial
13 majority.

14 Mr. Roisman would have you extrapolate backwards
15 from possible hardware problems that have been indicated in
16 the TRT reports to a pervasive climate of harassment and
17 intimidation at Comanche Peak, without any determination of
18 root cause for those problems.

19 There is no evidence to support such speculation.
20 And in any event, there are relatively few of the TRT concerns
21 to date that have been found to be substantial or to be safety
22 concerns. For example, if you look at SSER-10, there were 400
23 allegations addressed by the TRT in that arena; 60 were
24 confirmed in whole or in part; 6 were found to be
25 safety-related, and 5 were issues of potential safety

1 significances.

2 I don't think, on the basis of those numbers, that
3 this Panel can conclude anything by way of backward
4 extrapolation, that the finding of problems indicates a
5 pervasive climate of intimidation.

6 Mr. Roisman would have this panel focus on
7 compliance with Appendix B by this Applicant on this project.
8 That assignment is overly broad, given your scope. You are
9 focusing primarily on Criterion 1 of Appendix B, which is
10 basically organizational freedom of the inspection force. It
11 is for the board to decide whether Appendix B's 16 criteria
12 were met, not for this Panel.

13 Ms. Garce makes the point that the Fitzgerald
14 Pentagon memorandum or document is meaningful here -- that is,
15 that because Fitzgerald was known as a whistleblower, the
16 Pentagon planned up. Nobody talked.

17 That is undercut by the OI investigations, where NRC
18 investigators, in confidence, interviewed people, and in the
19 case of the Atchison situation where OI went in to follow up
20 on the impact of the Atchison termination, 75 of 76 said that
21 they were not even intimidated at Comanche Peak.

22 The Eight Point program was presented, as I'm sure
23 those of you in the Enforcement Division know, in response to
24 the Atchison enforcement action. It was specified clearly in
25 the response that it was created as an integrated program. It

1 was implemented in that same fashion.

2 Ms. Garde suggests that no one has looked into
3 documentation issues at Comanche Peak. This is wrong. The
4 TAT spent a substantial amount of time looking into
5 documentation, and their findings are clear in their SSER.

6 Ms. Garde talks about Cindy Miller and the fact
7 that there is no evidence in the record rebutting her
8 allegations. The reason there is no evidence in the record
9 is because there is no affirmative evidence in the record
10 about Cindy Miller, so there is nothing to rebut.

11 With regard to the discussion on the T-shirt
12 incident, I think you have been led to confusion on the facts
13 surrounding that incident. I think that the best summary of
14 the facts that you can get is in the testimony of Mr. Purdy,
15 Mr. Vega, and the two witnesses who were T-shirt wearers.
16 Ms. Garde is speculating when she describes the outcome of
17 employment for the folks who were involved. I am not going to
18 pretend to know those facts in detail. They are in the
19 record. But I am confident that her recitation to you this
20 morning is in error.

21 Just for example is her statement that Mr. Tolson
22 called Mr. Check. Her memory fails her in that respect. It
23 wasn't Mr. Tolson who called Mr. Check, and her memory fails
24 her in several other respects, which will become clear when
25 you review the record.

1 There is one more important point that I think we
2 should make, and that relates to the testimony of every
3 witness presented by the Intervenor, save the Stiners, whose
4 credibility is, of course highly suspect.

5 Every witness that they have presented, except the
6 Stiners, testified, as I recall, that they did their jobs
7 properly. Not one of them said that he or she failed to
8 report a deficiency because he or she felt pressure or
9 intimidation -- not one. So even if the scant evidence that
10 they have presented is considered by this Panel to be
11 significant, the bottom line is, nobody ever changed their way
12 of doing business because of the inducements that any alleged
13 intimidation may have had.

14 You have heard about three hours of argument this
15 morning, summarizing evidence that took months to compile and
16 thousands and thousands of transcript pages. The evidence
17 boils down to this: weighing in favor of not finding of
18 pervasive intimidation at the site are three important direct
19 measurements of climate, which give the Panel the global
20 perspective. Those are the '79 and '83 surveys and the CI
21 reports.

22 For the reasons I outlined earlier, these
23 convincingly show that inspectors were free from intimidation
24 in the performance of their jobs, and the experts on the AG&G
25 team confirmed this conclusion. These are the only global

1 indications available which bear on the question, and thus are
2 most persuasive.

3 Beyond that, there is substantial additional
4 evidence that bears on the positive attitude of management in
5 preserving the organizational and personal freedom of
6 inspectors to perform their jobs without outside influence.

7 On the other hand, weighing in favor of a finding of
8 pervasive climate is only the indirect measurement that we
9 have from the handful of allegations that have been brought
10 forward, from among the thousands and thousands of people
11 employed on the site.

12 we believe that we have rebutted the testimony of
13 these witnesses with credible and convincing evidence. But
14 even if you assume, arguendo, that every allegation presented
15 on this record is valid, and that each instance cited was, in
16 fact, intimidation, you cannot even come close to a decision
17 that would state that this is a "substantial and pervasive"
18 climate of intimidation at the job site.

19 Even Mr. Goldstein, the Intervenor's expert witness,
20 after being spoonfed the facts by Mr. Roisman, would not opine
21 that there was a pervasive climate of intimidation at the
22 site.

23 At bottom, that it is the summary of the evidence,
24 and in our view, it is not even a close call.

25 MR. GASLIARDU: Thank you, Mr. Reynolds.

1 Does anyone else have any questions or comments?

2 [No response.]

3 MR. GABLIARDO: I would like to express my
4 appreciation to both parties for taking your time to come and
5 give us your statements and your positions on these issues.

6 As I indicated, the Panel is still in the process of
7 doing its review and getting near completion, although not
8 quite completed yet, and assure you that your statements and
9 comments will be factored into our consideration.

10 Thank you all.

11 [Whereupon, at 12:00 o'clock, noon, the Panel
12 meeting was concluded.]

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1 CERTIFICATE OF OFFICIAL REPORTER

2
3
4
5 This is to certify that the attached proceedings
6 before the United States Nuclear Regulatory Commission in the
7 matter of:

8
9 Name of Proceeding: Comanche Peak Intimidation Panel

10
11 Docket No.:

12 Place: Bethesda, Maryland

13 Date: Friday, June 28, 1985

14
15 were held as herein appears and that this is the original
16 transcript thereof for the file of the United States Nuclear
17 Regulatory Commission.

18
19 (Signature)

(Typed Name of Reporter) Suzanne B. Young

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23 Ann Riley & Associates, Ltd.
24
25