

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Investigative Interview of  
Billie Firner Garde

Docket No.

LOCATION: Arlington, Texas

DATE: Friday, October 27, 1989 PAGES: 1 - 91

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1612 K St. N.W., Suite 300  
Washington, D.C. 20006  
(202) 293-3950

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BEFORE THE  
U. S. NUCLEAR REGULATORY COMMISSION

Interview of BILLIE PIRNER GARDE conducted on  
Friday, October 27, 1989, in the 8th Floor Conference  
Room, 611 Ryan Plaza, Arlington, Texas, commencing at  
3:00 p.m.

APPEARANCES:

On behalf of the U.S. Nuclear Regulatory Commission:

VIRGINIA VAN CLEAVE  
611 Ryan Plaza  
Arlington, Texas

On behalf of the Witness, BILLIE PIRNER GARDE:  
(Mr. Johnson appearing telephonically)

VERNON JOHNSON, Attorney  
Jackson and Campbell  
Washington, D. C.

*67A Partiers*

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I N D E X

EXAMINATION OF:	PAGE
BILLIE FIRNER GARDE	
By Ms. Van Cleave	4

EXHIBITS

NUMBER		PAGE
1	[Waiver of Attorney/Client Privilege]	4
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## P R O C E E D I N G S

1  
2 MS. VAN CLEAVE: For the record, this is an  
3 interview of Billie Pirner Garde, who is employed by  
4 Robinson, Peterson & Garde.

5 The location of this interview is the Nuclear  
6 Regulatory Commission, Region IV offices.

7 The date is October 27, 1989, and the time is 3:00  
8 p.m.

9 Present at this interview are Ms. Garde and  
10 myself, Investigator Virginia Van Cleave. This interview is  
11 being transcribed by court reporter, Betty Morgan. We have  
12 on the speaker phone an attorney representing Ms. Garde,  
13 Vernon Johnson.

14 MR. JOHNSON: I'd like to state a couple of things  
15 for the record, too, if I might.

16 MS. VAN CLEAVE: Just a minute, please.

17 Let me put Ms. Garde under oath, and then you can  
18 go ahead and proceed.

19 MR. JOHNSON: Okay.

20 MS. VAN CLEAVE: Ms. Garde, would you please stand  
21 and raise your right hand.  
22 Whereupon,

23 BILLIE PIRNER GARDE

24 was duly sworn and examined as follows:

25 MS. VAN CLEAVE: Okay, Mr. Johnson, if you wanted

1 to make some prefacing remarks, go ahead.

2 MR. JOHNSON: Okay. I'd just like to introduce  
3 myself. My name is Vernon Johnson. I'm with Jackson and  
4 Campbell, the law firm that represents Billie Garde.

5 For the record, we'd like to just point out that  
6 Ms. Garde is testifying today pursuant to a waiver of the  
7 attorney/client privilege, which has been executed by Joseph  
8 Macktal, her former client.

9 We'd like to have -- and I understand it has  
10 already been done. We'd like to have the waiver marked as  
11 Exhibit 1 and introduced into the record at this time.

12 [Exhibit No. 1 was marked for  
13 identification.]

14 MR. JOHNSON: We'd like to make the understanding  
15 that at any time during this interview, Ms. Garde should  
16 want to consult with me about any of the questions that are  
17 being asked, that she should be allowed to do so. We'll  
18 take me off the speaker phone, and I can consult with her in  
19 private.

20 If that's all right, we can proceed.

21 MS. VAN CLEAVE: All right. That's fine.

22 EXAMINATION

23 BY MS. VAN CLEAVE:

24 Q. Ms. Garde, I'd like to start with some background  
25 information concerning your relationship with Mr. Joseph

1 Macktal.

2 A. Yes.

3 Q. You represented Mr. Macktal, and I would like to  
4 know when the relationship with Mr. Macktal began, whether  
5 or not Mr. Macktal contacted you. How did you come to  
6 represent Mr. Macktal?

7 A. Mr. Macktal contacted Juanita Ellis soon after his  
8 leaving employment at Comanche Peak. I can't give you an  
9 exact date. There may be something in the documents I just  
10 opened that would refresh me in terms of the date. But it  
11 would have been around the middle of January of 1986. It  
12 was a couple of days after he was terminated.

13 Mrs. Ellis is the representative of the Intervenor  
14 group, the Citizens Association for Sound Energy, which at  
15 that time was actively intervening in the licensing  
16 hearings.

17 He contacted her. She then contacted the  
18 Government Accountability Project and me personally. I  
19 don't remember if she contacted me at Trial Lawyers for  
20 Public Justice or at GAP.

21 But in any event, she called me and I remember the  
22 conversation, because he was sitting at her kitchen table.  
23 I had a brief conversation with him at that time, and the  
24 representation agreement then formed up over a period of the  
25 next couple of weeks after some investigation into his

1 claim.

2 Q. Who conducted that investigation?

3 A. Well, GAP had a practice when someone contacted  
4 GAP for representation through the Whistleblower Clinic that  
5 we would take a pretty detailed summary statement, either in  
6 person or on the telephone, whatever arrangements could be  
7 worked out with the person who was alleging they were  
8 terminated or harassed in violation of 42 USC 5851, and then  
9 would attempt to validate or verify the information that  
10 that person had provided in some manner.

11 That could be talking to other co-workers over the  
12 phone in an interview or reviewing documents or some  
13 combination of those things.

14 Q. And if GAP believed the case had merit, then GAP  
15 would accept the --

16 A. Well, at that time, January '86, whistleblower  
17 cases were being taken through a joint project of the  
18 Government Accountability Project and Trial Lawyers for  
19 Public Justice.

20 So the case would be screened by GAP, and if it  
21 was deemed to be meritorious, then the case would be  
22 accepted. GAP handled, if you will, the first half of the  
23 case; that is, filing the claim, conducting the  
24 investigation or the preliminary investigation into the  
25 claim, doing discovery, doing the Freedom of Information Act

1 requests, pulling all the documents together.

2 By the time it got to the stage of litigation,  
3 then Trial Lawyers for Public Justice through their  
4 attorneys would take over and litigate the case.

5 That was in theory how it worked, and this was  
6 fairly early into the whistleblower project. So that was  
7 kind of the track that it was on.

8 Did that answer your question?

9 Q. Yes.

10 So was an attorney from the Trial Lawyers also  
11 assigned to this case?

12 A. After the case was accepted, the supervising  
13 attorney at GAP on the case would have been Steven Kohn,  
14 because he was the head of the clinic, the citizens clinic.

15 That's K-o-h-n.

16 There was a Trial Lawyer consulting attorney (if  
17 you will) pretty immediately put on the pleadings and on the  
18 representation agreement. Her name was Jane Saginaw. She  
19 was with a firm -- it's right in front of me -- with  
20 Frederick Baron & Associates in Dallas.

21 Ms. Saginaw did very little with the case right in  
22 the beginning. I think we sent her copies of the complaint,  
23 and she reviewed that.

24 But by the time we got to trial, she was heavily  
25 involved in another case, so she really didn't have much



1 involvement with the case.

2 But there was a Trial Lawyer lawyer in Dallas  
3 assigned to the case.

4 Q. What input or work did Mr. Kohn do on this case?

5 A. Well, in the beginning he probably did very little  
6 actual work on the case. He would have had to have been  
7 involved in the review and acceptance of the case because of  
8 his role in GAP on the executive committee and with the  
9 board.

10 He was also the clinical director. So the work  
11 done in the case would have had to have been done somewhat  
12 under his direct supervision.

13 Now, I was the lead attorney on the case, although  
14 at that time I wasn't an attorney. I was in my third year  
15 of law school.

16 But I was clearly the lead person on the case  
17 pretty early on.

18 Tom Carpenter from GAP also did some work on the  
19 case pretty early on. He's now -- He's still at GAP and  
20 is now the head of the Citizens Clinic for Accountable  
21 Government.

22 Q. What role did Tony Roisman play in this case?

23 A. Tony Roisman's involvement in the case, other than  
24 general knowledge about it -- because I worked with him on a  
25 pretty daily basis and my office was right next to his

1 involvement with the case.

2 But there was a Trial Lawyer lawyer in Dallas  
3 assigned to the case.

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5 A. Well, in the beginning he probably did very little  
6 actual work on the case. He would have had to have been  
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20 is now the head of the Citizens Clinic for Accountable  
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24 general knowledge about it -- because I worked with him on a  
25 pretty daily basis and my office was right next to his

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1 office at Trial Lawyers. He really didn't get involved  
2 until almost right before the hearing.

3 Like within maybe the last ten days before the  
4 hearing, Tony agreed to come down and try the case with me  
5 in November of '86.

6 So he had almost no involvement in the case.

7 I think he may have talked to Mr. Macktal on one  
8 occasion when Macktal came to Washington to be interviewed  
9 by the NRC. He came over to my office, and I think he  
10 talked to Tony at that point.

11 But other than that, I don't remember him really  
12 having much involvement in it.

13 Q. After you accepted the case then, what was the  
14 next step? You filed a case, I suppose -- a complaint with  
15 the Department of Labor; is that correct?

16 A. Well, one of the first things that happened was  
17 that Mr. Macktal was interviewed at length by Juanita Ellis,  
18 who took a statement on tape recording. And as I remember,  
19 we had that statement transcribed. Then that kind of became  
20 the working document for his concerns and his -- the summary  
21 of his experience.

22 That was prepared. Documents that he had in his  
23 possession were mailed to us, collected. The safety issues  
24 kind of were identified, broken down; and the harassment and  
25 intimidation aspects of his complaint were analyzed.

1           Then the complaint was drafted and filed. All  
2 that had to be done by 30 days after his termination. So  
3 things moved quite quickly.

4           I remember there being some Federal Express  
5 packages back and forth between Texas and Washington as we  
6 were getting that ready. But I can't tell you specifically  
7 what happened on what date.

8           Q.   And at some point Mr. Macktal did meet with the  
9 NRC representatives; is that correct?

10          A.   Well, there were two meetings that I remember  
11 between Mr. Macktal and the NRC. Initially after he  
12 contacted GAP, there was some attempt to get Mr. Macktal  
13 interviewed by non-Region IV personnel in Washington.

14               There was some resistance to that by the Executive  
15 Director, who at that time was Mr. Stello.

16               And there was a variety of correspondence between  
17 Tom Carpenter and the NRC. I don't remember what the dates  
18 of this were, but pretty early on -- and there may be some  
19 documentation in front of me that I could look through to  
20 find it.

21               But very early on, Mr. Macktal was interviewed  
22 somewhat anonymously; that is, we didn't give the NRC his  
23 name, and informally interviewed by Vince Nunan, who was the  
24 head of the NRC's technical review team in Washington.

25               That interview was conducted at the Phillips

1 Building in Bethesda, Maryland.

2 Mr. Macktal came to Washington for that purpose.

3 There was then a period of negotiations regarding  
4 who was going to investigate his claims. He had a second  
5 interview here at Region IV by the allegations coordinator.  
6 I think Mark Emerson took it. I was present at that  
7 interview.

8 There were some wrongdoing issues that were  
9 referred to the Office of Investigations, and I don't  
10 remember if he was ever separately interviewed by OI. I  
11 don't remember if OI ever opened an investigation. I don't  
12 think they did. But there were some wrongdoing issues that  
13 I know Region IV wasn't going to pursue.

14 I don't have a recollection of whether he was ever  
15 interviewed by OI in connection with his termination.

16 Q. Do you recall if he was interviewed in Washington?  
17 I believe he was --

18 A. I think he was interviewed in Washington by John  
19 Sinclair.

20 Q. Right. That's correct.

21 A. That's my recollection, that when he was in  
22 Washington that the harassment and intimidation aspects of  
23 his case were raised to OI, and John Sinclair did a  
24 handwritten interview, but not a transcribed interview.

25 Now, there may have been a transcript. I just

1 don't remember one.

2 Q. Our records indicate that he was interviewed by  
3 John Sinclair regarding harassment and intimidation.

4 Following the interviews here and the interviews  
5 with Mr. Sinclair, to your knowledge was there any  
6 additional information that Mr. Macktal had to impart to the  
7 NRC, any information concerning wrongdoing or harassment and  
8 intimidation which he had not related to the NRC as of at  
9 that point?

10 A. Can you try to clarify your question? I mean, if  
11 you're asking what was in Mr. Macktal's mind, and did Mr.  
12 Macktal tell the NRC everything, I can't answer that  
13 question because I'm not Mr. Macktal.

14 If you're asking me if I believed that he had  
15 communicated everything he had to one of those people in the  
16 NRC that he talked to, the answer to that is yes.

17 Q. Well, as you know, Mr. Macktal has claimed  
18 publicly that he had additional concerns, and they were not  
19 all related to the NRC in these meetings, and he was  
20 subsequently prohibited from discussing those due to a  
21 settlement agreement, which we'll get into later.

22 I would like to know whether at that point, after  
23 the meetings here and with Mr. Sinclair in Washington, did  
24 you have any knowledge -- were you aware in any way that Mr.  
25 Macktal had not -- had allegedly not revealed all his safety

1 concerns or harassment and intimidation concerns to the NRC?  
2 Did he tell you that?

3 A. No.

4 Q. Did you have any indication of that?

5 A. No. Mr. Macktal and I had spent a great deal of  
6 time, when he came -- When he came to Washington, he  
7 stayed at my home. That was not unusual. When people came  
8 from out of town, they usually stayed at the home of one of  
9 the GAP attorneys.

10 But one -- The major project that he worked on  
11 before he ever went up to the NRC at all was going through  
12 the transcript of that tape where he was disclosing all of  
13 the information to Mrs. Ellis on harassment and intimidation  
14 and on safety issues and then organizing that information so  
15 that we could make sure all of the information was presented  
16 to the right place in the NRC.

17 We had about a three-page outline of what all the  
18 issues were, and he talked from that outline in his  
19 interview. He may have even attached it to his interview  
20 transcript, I don't know.

21 But I know that we had an outline of all of the  
22 issues and that that was what I used to make sure that he  
23 got all of the information on the record.

24 So if he had additional concerns at that time  
25 which he did not raise, I was not aware of that.

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1 Can I add something here?

2 Q. Sure.

3 A. You made reference to some claim that he has made  
4 publicly that he had additional information. I have  
5 certainly not read all of the pleadings that have been filed  
6 in which he has made various charges.

7 But I did see one pleading in which he alleged  
8 that I had directed him not to tell the NRC everything. I  
9 think the page of the transcript that he attached to that  
10 pleading came from the interview with Emerson at which I  
11 informed Emerson and Macktal that that interview with Region  
12 IV personnel was going to be on safety issues and that the  
13 harassment and intimidation issues had already been raised  
14 to OI, and that Emerson wasn't going to go into that again.

15 That's the only recollection that I have in terms  
16 of the documents that I've read of what he said. I don't  
17 know why the rest of that transcript isn't attached to that  
18 pleading.

19 Q. Okay. I've read that transcript. What is your  
20 explanation for that? Is your explanation that you either  
21 had -- I can't remember the dates -- had already spoken --  
22 Mr. Macktal had already spoken with Mr. Sinclair regarding  
23 harassment and intimidation or planned to do so, and you  
24 considered them to be separate issues?

25 A. Well, I don't have the dates in front of me. But,



1 clearly, Mr. Macktal came to Washington and talked to the  
2 people in Washington before he talked to Region IV  
3 personnel. I think there was a number of months in between  
4 that.

5 I think that he came to Washington in the  
6 February/March time frame and then was interviewed in May, I  
7 think, here in Arlington. I don't remember the dates.

8 But why did I tell him not to tell Emerson the OI  
9 issues? Because Sinclair had already interviewed him on the  
10 OI issue.

11 Q. So you were separating the two?

12 A. Yes.

13 Q. The safety concerns and the harassment and  
14 intimidation issue?

15 A. Yes, separating them along the lines the NRC  
16 investigation was separated on.

17 Q. Mr. Macktal met with the president of Brown &  
18 Root, Lewis Austin, on several occasions. The initial  
19 conversation, I believe, took place in approximately  
20 February 1986.

21 Were you aware that these meetings or  
22 conversations with Mr. Austin were taking place as they were  
23 transpiring?

24 A. No, I was not. I did not learn about the meetings  
25 with Lewis Austin until the end of one of the last

1 depositions in discovery prior to the case going to trial,  
2 which would have been the end of October or early November.

3 At the end of a deposition that I was taking in  
4 Boston, the attorney for Brown & Root, who was McNeal  
5 Watkins, made a comment as he was leaving the room,  
6 something to the effect that "You better have your client  
7 ready to testify about the Lewis Austin meetings."

8 I didn't know what he was talking about. I didn't  
9 know anything about a meeting with Lewis Austin.

10 Q. Why would the attorney make a reference like that?  
11 I don't understand.

12 A. Well, I mean, I can't answer for McNeal Watkins.  
13 I'm not him, and I don't know why he made that comment.

14 I took the comment essentially as a veiled threat,  
15 you know, that I had better have him ready because he was  
16 going to get -- you know, pretty much ripped apart on the  
17 stand in regards to those meetings.

18 Q. Do you know Mr. Austin?

19 A. I have met Mr. Austin on one or two occasions --

20 MR. JOHNSON: Hello.

21 THE WITNESS: Yes.

22 MR. JOHNSON: Okay. I thought I got cut off for a  
23 second.

24 THE WITNESS: No, you're here. I'll stop talking  
25 if you get cut off.

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1           Why don't you sneeze every once in a while so I  
2 know you're still there.

3 BY MS. VAN CLEAVE:

4           Q. All right. You were saying that you had met Mr.  
5 Austin on one or two occasions?

6           A. At public meetings.

7           Q. Did you have any personal or business dealings  
8 with Mr. Austin regarding Mr. Macktal's case?

9           A. Never. And I would not have because Brown & Root  
10 was represented by an attorney. All my dealings regarding  
11 Mr. Macktal's case were with lawyers from the law firm of --  
12 at that time, Bishop, Leiberman, Cook, Purcell & Reynolds.

13           Q. And you did not have any personal dealings then  
14 with -- or direct dealings (I should say) with Mr. Austin  
15 regarding Mr. Macktal's case?

16           A. No, I did not.

17           Q. When that reference was made to you, and you said  
18 you were somewhat surprised, you didn't know what he was  
19 talking about, what did you do?

20           A. Well, to Mr. Watkins I bluffed. I said, "I'll  
21 have him ready to testify on everything."

22                   And then when he left the room, I immediately  
23 called Joe and asked him in, I'm sure, you know, very loud  
24 and direct tones, what the hell McNeal Watkins was talking  
25 about, because I didn't know of any meetings, was not aware

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1 of any meetings, had never been advised of any meetings,  
2 consulted about any meetings.

3 And at this point I had been involved in this case  
4 since January. I've got a case ready to go to trial in  
5 about three weeks. You know, that was something less than a  
6 month, and had no idea what he was talking about, and saw  
7 that it was an obvious mine field in terms of credibility  
8 issues, motivation issues. I didn't know what he was  
9 talking about.

10 I asked him for an explanation. He provided me an  
11 explanation, and then I -- Do you want me to go on into  
12 that?

13 Q. [Nods head.]

14 A. Well, okay. Obviously, this is hearsay and  
15 summarizing what he told me, but he told me that he had  
16 contacted Mr. Austin, who is the president of Brown & Root,  
17 directly and he had met with him on a number of occasions in  
18 an attempt to try to settle the case and that they had  
19 offered him ~~(\$15,000)~~ cash to settle the case if he fired GAP  
20 publicly.

21 That was -- He said, "I refused to do that --  
22 fire GAP publicly." And he said that he'd take care of the  
23 lawyers if he --

24 Q. Excuse me. When you say "he," do you mean Mr.  
25 Austin or Brown & Root or --

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1           A.    He, Mr. Austin, would take care of the lawyers,  
2           and that Joe should just take the money, and that it wasn't  
3           enough money, and so ultimately the settlement fell apart.

4                    His explanation of why he didn't tell me that was  
5           that he didn't think that I needed to know that.  It was  
6           between him and Lewis Austin, man to man.

7           Q.    Did he tell you why he went to Mr. Austin in the  
8           first place since he was represented by you?

9           A.    Well, I don't remember, you know, exactly what his  
10          answer was.  I was so furious at the time that I'm not sure  
11          if I have a real clear recollection of the call.

12                   I know that I asked him if he went to him because  
13          he did not have confidence in me or GAP representing him,  
14          and he didn't think that we were going to be able to handle  
15          the case because I needed to know that in order to decide  
16          whether he really needed new lawyers.

17                   I remember that he said that he had some concerns  
18          and confidence questions in the beginning, but they had all  
19          gone away; and that's why he never told me about it.

20                   But at that point I don't remember what his exact  
21          explanation was.

22          Q.    Did he provide you with anything in writing  
23          regarding his meetings or conversations with Mr. Austin?

24          A.    Yes, he did.  At the end of the conversation, I  
25          told Mr. Macktal what Mr. Watkins had said.  I told him that

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1 he had better assume for the purposes of preparing for trial  
2 that Mr. Austin had been wired during those meetings, and  
3 that everything that had transpired in those conversations  
4 that he'd had had been taped -- tape recorded, and that when  
5 we got to trial, that Mr. Austin was going to get up and  
6 testify that the sole motivation for Mr. Macktal was to try  
7 to get more money and he was willing to go behind his own  
8 lawyer's back to get more money and cut his own deal, and  
9 that if he wanted to be prepared for that, if -- In order  
10 for me to be prepared for how to defend him on the stand,  
11 that I had to have a recollection of everything that  
12 happened at those meetings as clearly as he could remember  
13 it.

14 I instructed him to write that up immediately and  
15 to provide it to me in writing immediately, and he did  
16 prepare a letter or -- it's a memo or a letter to me that  
17 gives a very brief summary of his contacts with Lewis  
18 Austin.

19 He makes reference to having some notes made after  
20 each meeting, which were in storage in Stephenville, Texas.  
21 He never gave me any notes, but I do have a two-page typed  
22 document.

23 Q. All right. Why don't we enter that as Exhibit 2.  
24 [Exhibit No. 2 was marked for  
25 identification.]

1 A. The court reporter has handed me Exhibit 2, which  
2 I'll identify as a poor copy -- but it is the best copy that  
3 I've got -- of a two-page memo to me or a page-and-a-half  
4 memo to me starting with "Dear Billie."

5 Although there's no signature on the second page,  
6 this is the document that I received from Mr. Macktal  
7 shortly after my conversation with him from the telephone in  
8 Boston.

9 Q. Is there a date?

10 A. No, there isn't a date on that document.

11 Q. There's no date on it. All right.

12 This was sometime in November 1986, would that be  
13 --

14 A. That would be, yeah, the time frame.

15 Q. Did Mr. Macktal mention to you whether or not he  
16 had any tape recordings or any other documents to  
17 substantiate the substance of these meetings or  
18 conversations with Mr. Austin?

19 A. I remember asking him if he had tape recordings,  
20 which he denied. And so although I asked him to get me the  
21 notes that he makes reference to in the letter -- in Exhibit  
22 2, he never provided me any of the notes. That's all I had  
23 going into trial was the two-page document.

24 Q. Did Mr. Macktal tell you whether or not any  
25 additional offers were made by Mr. Austin?

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1 A. No, the only things he told me about are what is  
2 recorded in the Exhibit 2.

3 Q. Did he mention anything to you about not -- his  
4 not testifying before the ASLB or talking any further to the  
5 NRC or anything like that being a condition to his accepting  
6 the offer?

7 A. Can I see the memo?

8 Q. Uh-huh.

9 A. No, there's nothing in this memo that talks about  
10 money in exchange for not testifying or money in exchange  
11 for not pursuing these issues with the NRC.

12 I don't have any recollection of him telling me  
13 that that was a condition of the settlement offer by Lewis  
14 Austin.

15 Q. So your recollection is that Mr. Austin made one  
16 offer of ~~(5,000)~~ \$15,000 to Mr. Macktal, contingent upon his  
17 dropping his case and firing GAP publicly; is that accurate?

18 A. Well, remember that the only thing that I know  
19 about these Lewis Austin meetings isn't even told to me till  
20 some -- you know, six, seven months after, apparently, the  
21 last meeting had occurred.

22 So what Mr. Macktal was telling me was a summary  
23 version on something that he knew that I was very distressed  
24 with him about and was very distressed that I had found it  
25 out right before trial. And what he told me is pretty

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6,70 partitions



1 consistent with what's in that memo.

2 I mean, that's the story that he told me in the  
3 beginning when I asked him about it, and that's what he  
4 stuck to.

5 I don't recall him giving me any other additional  
6 details, in terms of information that I would have at my  
7 disposal to use in the trial to protect him.

8 Q. At that point that you found out about these  
9 meetings with Mr. Austin, were you currently in negotiation  
10 with Brown & Root attorneys to try to settle Mr. Macktal's  
11 DOL case?

12 A. There had been ongoing discussions to settle the  
13 case throughout the entire case. I don't know if there was  
14 live settlement discussions at the time that we were in  
15 Boston. They kind of went on again and off again.

16 Q. Did Brown & Root's attorneys make any offers to  
17 you to settle Mr. Macktal's case prior to this time?

18 A. There were a number of offers. I mean, initially  
19 -- prior to the initial investigation stage, Brown & Root  
20 offered to hire Macktal back at his old job, not a foreman  
21 job, but a regular journeyman helper job, and at that level  
22 of salary, but no back pay.

23 That was in the very beginning. And then there  
24 had on occasion been a number of offers. I just can't  
25 remember what they were. They were all pretty low.

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1 Q. Would that initial offer you're referring to be  
2 this letter dated March 13, 1986, to you, or to Mr. Macktal  
3 through you? They make some reference there to not offering  
4 him back pay.

5 A. Yeah, this is what I was just talking about.  
6 Because he was regarded as a competent electrician, you  
7 know, if he drops his claim, they'll hire him back, but no  
8 back pay; they'll just put him back to work.

9 Q. What was your response to this letter?

10 A. Mr. Macktal rejected that offer.

11 Q. And he rejected that offer through you? Did you  
12 tell him about this offer?

13 A. Oh, yes, yeah. He rejected the offer.

14 Q. What did he tell you he wanted at that time, do  
15 you recall?

16 A. Well, I know that he wanted money. I can't  
17 remember the amount of money that we had on the table as a  
18 counter offer. But I also remember that the major issue  
19 that he was offended by in the offer was that they weren't  
20 going to hire him back as a foreman, which was one of the  
21 big issues that he had, that they were only going to hire  
22 him back as a journeyman electrician. He didn't want to go  
23 back to work unless it was as a foreman and have his pay  
24 figured at foreman pay, because he felt that he had been  
25 demoted in retaliation for having raised safety concerns and

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1 that he had been illegitimately demoted from foreman back to  
2 electrician.

3 Q. You don't recall what other type of offers were  
4 made, in terms of figures, amounts of money?

5 A. Well, let me offer this explanation. At the time  
6 that -- From the time that he rejected the offer on the  
7 letter that you just showed me to the time that we got very  
8 close to hearing, I don't remember any settlement  
9 discussions of any substance involving me.

10 When we got into the time period right before the  
11 hearing, I was getting ready for trial and so there were  
12 settlement discussions going on between two other lawyers  
13 that essentially were not involved with trial preparation.  
14 That was Louie Clark from GAP and Richard Walker from Bishop  
15 Leiberman.

16 They had a series of discussions during those last  
17 couple of weeks before trial, but I was very -- only  
18 tangentially involved in those discussions, mainly because  
19 at that time I was getting ready for trial.

20 Q. This case was settled without going to trial. It  
21 was settled, as I understand, for ~~(\$35,000)~~ Mr. Macktal was  
22 to receive ~~(\$15,000)~~ the same amount that Mr. Austin had  
23 offered him; and his attorneys were to receive ~~(20,000)~~ is  
24 that correct?

25 A. It was settled on the day trial was scheduled to

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1 start. I mean, we were in the -- It was not a settlement  
2 on the telephone prior to trial. We were all there; the  
3 witnesses were there; we were ready to start trial. The  
4 case was settled the day of trial, the day trial was  
5 started.

6 It was settled for ~~(35,000)~~. Of the ~~(35,000)~~, your  
7 figures are correct. He got ~~(fifteen)~~. The attorneys -- or  
8 that is, Trial Lawyers for Public Justice and Government  
9 Accountability Project got ~~(twenty)~~.

10 Q. Who made the decision to settle for that amount?

11 A. Well, it was offered -- the amount was -- There  
12 was a number of figures put on the table during the day. It  
13 was a long day.

14 ~~(35,000)~~ was ultimately the most money that we were  
15 able to negotiate and that Rick Walker on behalf of Brown &  
16 Root was authorized to offer.

17 When that was the final offer, we took that to Mr.  
18 Macktal and he accepted that offer.

19 Q. Do you know who was authorizing the figure to Mr.  
20 Walker? Do you know who that was?

21 A. I assume it was Bill Bedman, who was an in-house  
22 attorney for Brown & Root, and is usually the person -- the  
23 attorney that he has to deal with on those amounts of money.

24 I don't know that, and I don't have a specific  
25 recollection of that.

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1 But, as you know, I've done quite a few cases  
2 against Brown & Root and with this law firm. So my  
3 assumption is that he was talking to Bill Bedman.

4 Now, who Bill Bedman was talking to, even if he  
5 was talking to Bedman, I don't know.

6 Q. Do you have any recollection that Mr. Austin was  
7 personally involved in this settlement agreement?

8 A. I have no recollection of Mr. Austin's name coming  
9 up that day.

10 Q. Do you recall ever hearing anyone on the  
11 telephone, any of Brown & Root's attorneys on the telephone,  
12 mentioning Mr. Austin's name?

13 A. Mr. Walker made his telephone calls out of earshot  
14 of where we were, so I didn't overhear anything.

15 Q. So you have no knowledge that Mr. Austin was or  
16 was not involved in this agreement?

17 A. Right.

18 Q. As you know, Mr. Macktal claims that he was  
19 coerced into accepting this ~~(\$35,000)~~ settlement, ~~(15,000)~~ going  
20 to him.

21 Why did you make a recommendation to him to accept  
22 that ~~(\$35,000)~~

23 A. Because Mr. Roisman and I believed that it was a  
24 good settlement offer, that it was more than he was going to  
25 get if he went forward, that he was going to lose if he went

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*617C pictures*

1 forward with the trial, and that even if he lost and we  
2 appealed the case, that the case on both the facts and the  
3 law were so weak that he was ultimately never going to  
4 prevail.

5 Now, if you want me to explain more of both the  
6 basis of my legal -- you know, opinion, I'll be glad to do  
7 that. But that's why the recommendation was to take the  
8 settlement offer.

9 Q. Well, I would like some further explanation  
10 because I have been told from Mr. Macktal that he thought  
11 his case was worth a lot of money. That's probably kind of  
12 common. He was very upset with the ~~(\$35,000)~~ offer.

13 And, of course, he has certainly made no secret to  
14 anyone that he felt like he was forced into accepting a low  
15 ball offer.

16 So if you could explain to me briefly your  
17 reasoning for recommending to him that he accept that offer,  
18 I'd appreciate it.

19 A. Sure.

20 First, let me go into the issues of law. There's  
21 a case in the Fifth Circuit that you may be familiar with  
22 called Atchison versus Brown & Root. It eventually became  
23 Brown & Root versus Donovan.

24 It's a case that argues successfully on behalf of  
25 Brown & Root from another Comanche Peak whistleblower that

1 internal activity -- dissent -- is not protected under 42  
2 USC 5851; that is, that the only type of activity which  
3 earns you protection of the Whistleblower Protection Act  
4 and, therefore, any entitlement to any damages under that  
5 act is if you contact a competent organ of government prior  
6 to being fired.

7 Mr. Macktal had not contacted a competent organ of  
8 government prior to being fired. He had not contacted the  
9 NRC before he went there. He had not contacted the  
10 Department of Labor before leaving his employment with Brown  
11 & Root.

12 So he had no automatic claim on the face of the  
13 facts, and those facts were not in dispute.

14 Now, I had two legal arguments that I was going to  
15 present facts to support in the trial, and I was prepared to  
16 put them on, one of which was to argue that the SAFETEAM,  
17 who he had contacted at Comanche Peak -- that's S-A-F-E-T-E-  
18 A-M -- was a quasi-government body (if you will), that it  
19 had taken on the mantle of the Nuclear Regulatory Commission  
20 by asking workers to come in and tell their allegations and  
21 tell their complaints and then they would investigate them.

22 I was going to raise that as an argument as a  
23 matter of law, so that it could go back up to the Department  
24 of Labor, the Secretary of Labor, and maybe back up to the  
25 Fifth Circuit and try to get them to expand the doctrine set

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1 by Brown & Root v. Donovan.

2 The second theory I was going to put evidence on  
3 was that you could have implied from Macktal's conduct that  
4 he would have gone to the NRC, since he was pretty much  
5 going up a chain of command with his complaints, that he had  
6 gone to the supervisors and then he had gone to the  
7 SAFETEAM, and the logical next step was for him to go to the  
8 Nuclear Regulatory Commission.

9 I was going to present both of those theories and  
10 put the facts on.

11 Well, we had a prehearing conference at the  
12 beginning of the day. We went on the record. The judge,  
13 Judge Vivian Murray, called the case, immediately took us  
14 into chambers and wanted to deal with pleadings that had  
15 been filed by Brown & Root -- outstanding pleadings that she  
16 hadn't ruled on yet, pretrial briefs and motions.

17 One of those was the issue of whether or not there  
18 had been internal versus external protected activity such  
19 that the case should be dismissed outright.

20 She made it very clear to all of the attorneys at  
21 the table -- and there were two attorneys from Brown & Root  
22 and then myself and Mr. Roisman -- that she was not going to  
23 allow me to try to change the Fifth Circuit ruling of Brown  
24 & Root v. Donovan in her court.

25 She said that there may be some theories, but I

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1 wasn't going to put them on in her court, that she was going  
2 to ask -- that I would put my client on the stand and she  
3 was going to make a determination as a matter of fact  
4 whether or not he had ever contacted the Nuclear Regulatory  
5 Commission or any other competent organ of government. If  
6 the answer was no, she was going to dismiss the case.

7 I then argued that she had to let me put on those  
8 issues, all my facts as a matter of proof so that I could  
9 make my record to take up on appeal.

10 She made it very clear, no, she was not going to  
11 let me put those facts on, even to establish a matter of  
12 proof, that I could brief it, that it was a question of law  
13 and not a question of fact.

14 Q. Is there a transcription of this?

15 A. There was no transcription of that.

16 So when she got done telling us that, she  
17 looked -- you know, she looked at both of us and she looked  
18 at the attorneys for Brown & Root and said, "Ladies and  
19 gentlemen, I assume you are now going to want to reconsider  
20 settling this case, and I will leave and let you continue  
21 with your settlement discussions."

22 She had just basically taken the guts out of my  
23 legal case because he had not contacted the NRC. I mean, if  
24 it was just a fact, the answer was no; and if that was the  
25 way she was going to rule the case, then what we were

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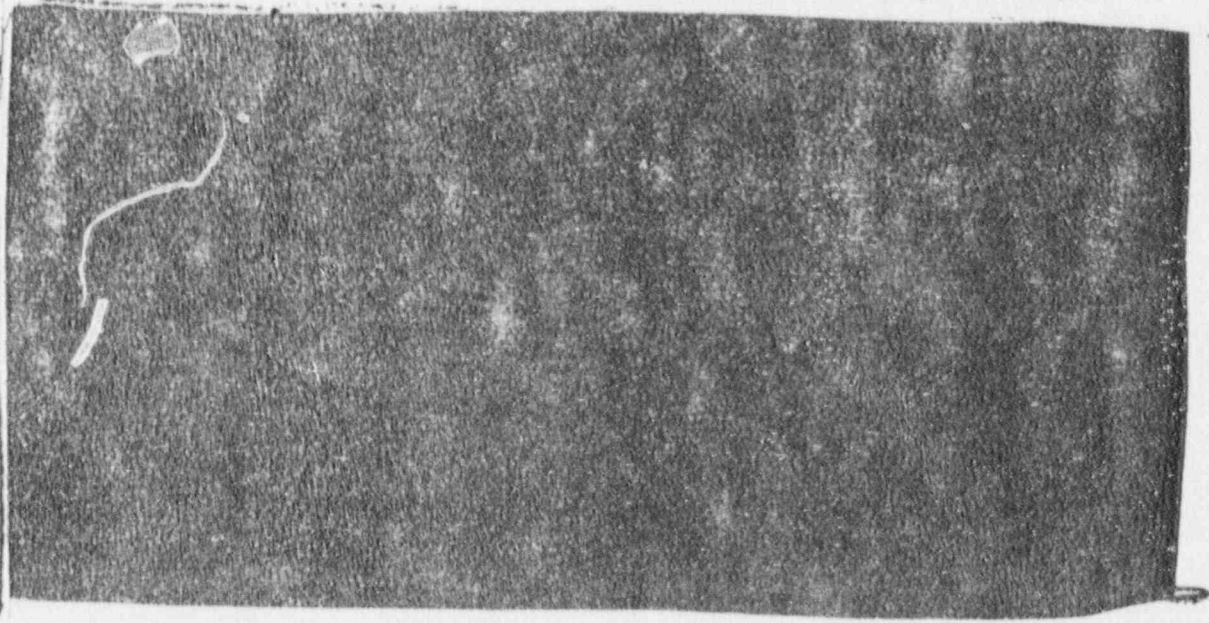
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1 looking at was a long series of appeals, opinions and  
2 Secretary of Labor and time in the Fifth Circuit and  
3 possibly the United States Supreme Court, but we weren't  
4 going to get anything out of her, period.

5 As a matter of fact, his case had pretty much  
6 fallen apart factually in the last couple of weeks as all  
7 the discovery was completed and kind of pulled together.

8 You need to remember that although he argued and  
9 complained of constructive discharge, that he resigned; and  
10 he resigned with Brown & Root having compiled an incredibly  
11 detailed record of attendance violations, impropriety,  
12 inability to be a good foreman (if you will).

13 They had a very strong factual case. And although  
14 he had told me when we took the case and as we developed it,  
15 that there wasn't anything bad that would raise the issue of  
16 his credibility to the height that that was a problem,



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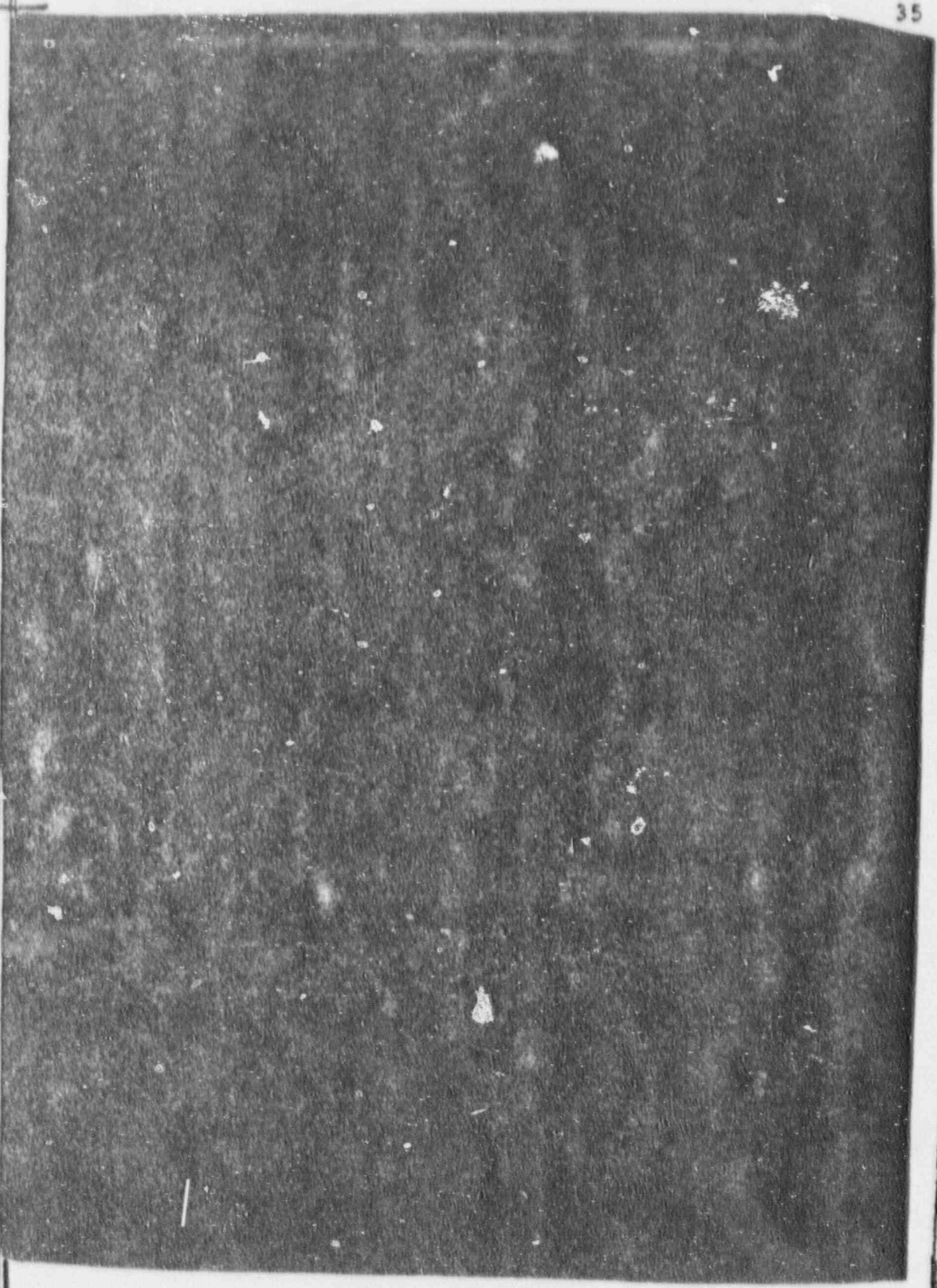


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14 A. Yes. And one of the things about dealing with the  
15 law firm of Bishop Leiberhan that I learned very early on --  
16 and I started litigating and working on cases against that  
17 firm in '84 -- is that one of their -- one of their first  
18 things that they do is hire a private investigative firm  
19 that does a complete, you know, search on a person's  
20 background, criminal record, tax record, everything.

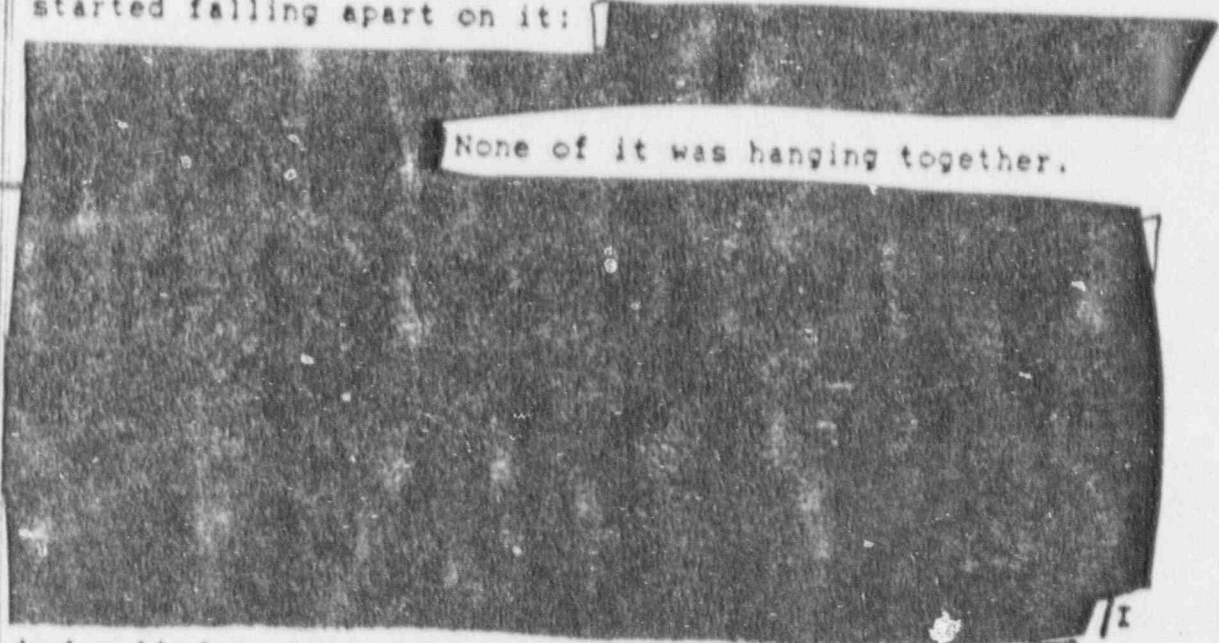
21 They've got the book on your client by the time  
22 they walk into that deposition.

23 And so I regularly did, and still do, advise any  
24 clients of firms that -- of companies or utilities that are  
25 represented by those lawyers, that if they've got any

1 skeletons in their closet, if they have got anything they're  
 2 ashamed of, any arrests, anything at all that they have got  
 3 that would bear on their credibility, no matter how ashamed  
 4 of it they are, they have to assume that Brown & Root's  
 5 lawyers are going to find it, they're going to know about it  
 6 and they're going to use it to the best advantage, and that  
 7 the only way I can protect them is to know it first so I can  
 8 figure out how to deal with it.

9 And by that time I had done a number of cases with  
 10 them, certainly Macktal the same thing and, you know, was  
 11 repeatedly told that the resume that I had to work on was  
 12 legitimate and accurate and complete.

13 It just -- The closer we got to trial, everything  
 14 started falling apart on it:



None of it was hanging together.

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24 had pulled a whole folder together -- which I'm sure now is  
 25 in the possession of the Kohns because they got my trial

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1 preparation materials - [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 But I don't have any of that material. I know  
6 that that was a major problem that we were going to have to  
7 deal with.

8 Q. Was that something that you were aware of when Mr.  
9 Macktal --

10 A. No.

11 Q. -- first approached --

12 A. No. When Mr. Macktal first approached me, he told  
13 he was clean as a whistle and that everything that had been  
14 done to him was not legitimate and in retaliation for having  
15 blown the whistle.

16 For example, when he called up -- when he went to  
17 see Juanita Ellis and then they called us up, and as you  
18 pulled -- you know, the initial information together, he  
19 repeatedly puts down there that his supervisor -- or says  
20 that his supervisor wrote on the bottom of his termination  
21 slip that he had been harassed and intimidated and forced to  
22 resign by his supervisor, or some comment like that. I  
23 assume you either have or can get a copy of his termination  
24 pink slip.

25 It was very clear to us that in his mind his



1 supervisor wrote that. That's what he was telling us, that  
2 his supervisor had written that on there.

3 There is a signature of his supervisor on there.  
4 It isn't until -- I believe his deposition -- that Watkins  
5 finally gets out of him that he wrote it on there. He wrote  
6 the statement on there. He was harassed -- or "I was  
7 harassed and intimidated and forced to resign by my  
8 supervisor," and that that wasn't what his supervisor put  
9 down. That's what Macktal himself put down.

10 Little things like that, where the story that he  
11 had told us and the supporting information he had  
12 demonstrated to us just was falling apart.

13 Because of that, by the time we got to trial -- I  
14 mean, during the last ten days before trial, I was making my  
15 best faith effort to pull the case together.

16 I had an answer to put on in trial for everything.  
17 But I knew that it was highly unlikely that any of those  
18 facts, as he had initially presented them, were going to  
19 survive cross-examination.

20 Q. So you changed your belief in the legitimacy of  
21 Mr. Macktal's case -- would that be accurate -- from the  
22 time that this letter was written in March of 1986 where  
23 they offered him his job back? Did you make any  
24 recommendations to Mr. Macktal at that time as to whether or  
25 not he should take this offer, or it looked reasonable to

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1 you, anything like that?

2 A. I don't have a real clear recollection of having  
3 an opinion on that job offer. I know that there was no  
4 money with it, and he wasn't a foreman, and that he was  
5 adamant about it.

6 I don't -- I would be very surprised if I would  
7 have supported that offer without any money in March, but I  
8 just don't remember real clearly.

9 I mean, I just don't have a real clear  
10 recollection. I'm sure that I either -- I probably  
11 responded to it in writing somewhere, but I don't know  
12 where.

13 Q. I don't have it either, so ....

14 Did you change your opinion of Mr. Macktal's  
15 facts --

16 A. Absolutely.

17 Q. -- story or credibility?

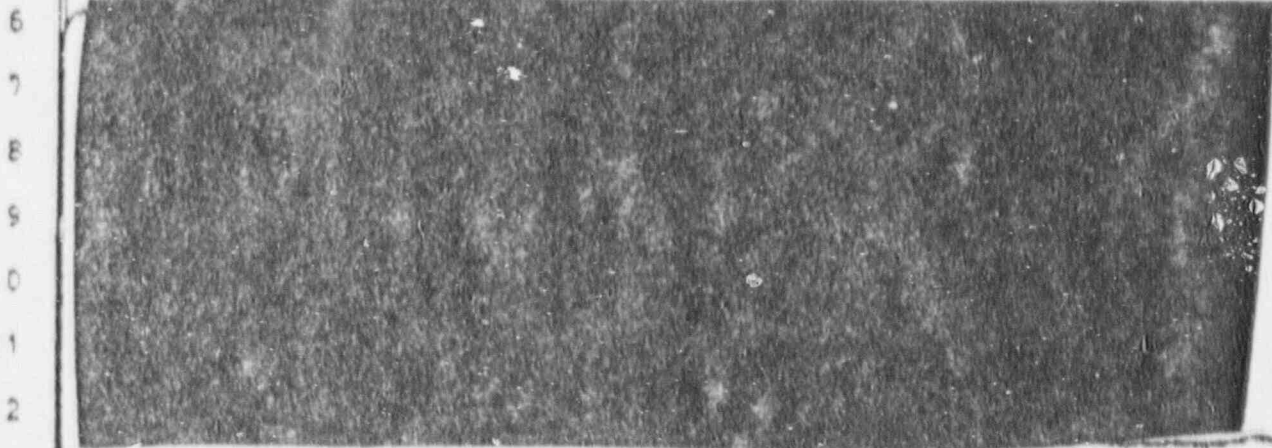
18 A. By the time -- I guess the best way to describe  
19 it is that for me the final straw, because I had already  
20 been working on trying to figure out how I was going to deal  
21 with all these other factual problems in that October time  
22 frame, when I found out about the Lewis Austin meetings,  
23 that that was the last straw for me.

24 At that point I became convinced -- and I don't  
25 know how else to say this -- that I was representing someone

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1 who had an illegitimate claim, and that if -- that we  
2 couldn't win the case because of the problems, but that  
3 beyond that, that he had misled me on a number of occasions  
4 on specific information and that when we got to the stand,  
5 that essentially Watkins had it all set up.



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13 And being that I was a new lawyer -- I had just  
14 been admitted in September of that year -- I was very, very  
15 uncomfortable with the situation I found myself in and went  
16 back to GAP from Boston to essentially present this problem  
17 to the GAP executive committee or executive board and asked  
18 for help.

19 I actually went -- I actually asked to get off  
20 the case. I did not want to try his case.

21 And I did not want to -- I did not believe at  
22 that time that I could have tried his case without coming up  
23 against a problem that I just did not have the experience to  
24 handle.

25 So there was a real need for me to get some

1 guidance and direction when I went back from Boston to GAP  
2 to figure out what to do in the next, you know, two weeks  
3 before the trial.

4 Q. And what did they offer you? Is that when Mr.  
5 Roisman became more involved in the case?

6 A. Well --

7 MR. JOHNSON: I'm going to have to object to any  
8 line of questioning that asks Ms. Garde about a  
9 communication between her and any member of the GAP  
10 executive committee in the context that she's talking about,  
11 for the reason that in the kind of litigation that we're  
12 involved with with Mr. Macktal, we would not want it to be  
13 construed that any statement that Ms. Garde is making today  
14 is some kind of waiver of her attorney/client privilege with  
15 respect to her dealings with the other members of GAP and  
16 the other attorneys that she was consulting in order to  
17 obtain legal advice about representing Macktal.

18 BY MS. VAN CLEAVE:

19 Q. Are these individuals you were consulting at GAP  
20 attorneys --

21 MR. JOHNSON: So I think if we could stay away  
22 from the substance of what went on at that meeting, that  
23 would be best.

24 THE WITNESS: Okay.

25 BY MS. VAN CLEAVE:

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1 Q. Okay. Did you receive any additional assistance?  
2 Was anyone else assigned --

3 MR. JOHNSON: Are we still here?

4 THE WITNESS: Yeah. She's asking me if I did  
5 receive any additional assistance after my meeting with GAP.

6 MS. VAN CLEAVE: Wasn't another attorney assigned  
7 to assist in the case with Ms. Garde?

8 THE WITNESS: Can I answer that?

9 MR. JOHNSON: Yeah, that's fine. The only thing  
10 that I want to stay away from is the substance of any  
11 communications that you might have had with anyone else with  
12 regard to obtaining advice about how to represent Macktal.

13 So to the extent that they did appoint another  
14 attorney to the case, that's fine, you can answer questions  
15 about that.

16 THE WITNESS: It was agreed that I should ask Tony  
17 Roisman if he would try the case with me. And if he did not  
18 try the case with me, then they were going to find somebody  
19 else to try it with me. But Tony agreed to go down there  
20 with me.

21 BY MS. VAN CLEAVE:

22 Q. Was Mr. Roisman then present during the  
23 negotiations and --

24 A. Yes.

25 Q. -- during the -- I've forgotten the judge's

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1 name.

2 A. It was Vivian Murray.

3 Q. -- when she made the statement to you that  
4 indicated perhaps you were going to lose --

5 A. Law.

6 Q. -- the two legal arguments?

7 A. Yes.

8 Q. He was present?

9 A. Yes. In fact, I asked him -- After I gave it my  
10 best shot, I asked him to reargue it; and he didn't win  
11 either.

12 Q. Okay. How did you present the settlement offer to  
13 Mr. Macktal? Was he present during the -- I guess he was  
14 if it was the day that the trial was supposed to start.

15 A. Well, he was certainly present. He was not  
16 present in the prehearing conference (if you will) or the  
17 meeting in chambers between the judge and the lawyers.

18 He wanted to come in at one point in the middle of  
19 the morning, and I went back and asked the judge if he could  
20 come in, and she said no.

21 So it was -- we would be in there talking, and  
22 then we'd come out on these breaks and kind of advise him  
23 where we were at or what was being discussed and tell him  
24 what her rulings were or what the offers were, what the  
25 amounts were, and then we'd go back in there. So throughout

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1 the day we were consulting with him.

2 And certainly by the time we got down to the final  
3 amounts of money and terms and conditions, we were -- both  
4 Tony and I were consulting with him, sometimes together and  
5 sometimes separately.

6 Q. Who told Mr. Macktal that the final offer was  
7 going to be ~~(15,000)~~ to him and ~~(20,000)~~ to GAP?

8 A. Well, he knew going in there that he already owed  
9 GAP expenses of about ~~(13,500)~~ that GAP had expended on case  
10 expenses: depositions, travel, court costs, copies of  
11 depositions, that kind of thing.

12 So he knew that that had to be covered up front.  
13 That came off the top of whatever the figure was.

14 Q. What type of retainer agreement did you have with  
15 him?

16 THE WITNESS: Vernon, can I give her a copy of the  
17 retainer agreement?

18 MR. JOHNSON: Yes. He has waived his  
19 attorney/client privilege with respect to any of the  
20 elements of the representation.

21 So it's fine to give her a copy of the retainer  
22 agreement.

23 THE WITNESS: Okay. I'm going to hand you what  
24 let's mark as Exhibit 3, which is the answer to your  
25 question, which is a copy of the retainer agreement.

1 [Exhibit No. 3 was marked for  
2 identification.]

3 BY MS. VAN CLEAVE:

4 Q. Okay. I've reviewed this agreement. What if Mr.  
5 Macktal's case was dropped, who would reimburse your firm  
6 for expenses?

7 This says, "I agree to" -- Well, let's see.

8 "In the event that no attorney's fees are provided  
9 through settlement or by court order, I agree to reimburse  
10 your firm for the expenses incurred in pursuing this claim."

11 What if it was just dropped and there was no  
12 settlement at all and no court order?

13 MR. JOHNSON: I think the answer to that is the  
14 retainer agreement speaks for itself. I don't know if maybe  
15 Ms. Garde can clarify, but --

16 MS. VAN CLEAVE: I would like some clarification.  
17 I'm not sure I understand that sentence.

18 THE WITNESS: That was a fairly standard agreement  
19 that was modeled after other ones that Trial Lawyers for  
20 Public Justice has used.

21 I guess that the answer to that question is not  
22 clear. I mean, it's just not clear to me right now.

23 I always operated on the assumption that Mr.  
24 Macktal was responsible for his expenses, win, lose or draw.

25 The letter certainly doesn't make that clear. But

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1 that point -- I think it was a moot point because he was  
2 clearly going to pursue that case.

3 I mean, there wasn't any discussion about just  
4 dropping his case.

5 BY MS. VAN CLEAVE:

6 Q. Well, one of Mr. Macktal's complaints (if you  
7 will) is that he was told that he would have to come up with  
8 the twelve or thirteen thousand dollars of expenses if he  
9 did not accept the settlement agreements. So --

10 A. Well, that's different than just dropping his  
11 case.

12 Q. Well, perhaps it is different, yes. But if you  
13 appealed, and, of course, there would be no -- if you were  
14 accurate in your assessment and the case was not foolproof,  
15 to say the least, and he did not win, then he'd have more  
16 expenses.

17 And his belief seems to have been, or so he  
18 claims, that that could occur and he would be piling  
19 attorneys' expenses on top of attorneys' expenses.

20 I think that's really why I was seeking some  
21 clarification of this sentence in this agreement.

22 A. Well --

23 MR. JOHNSON: Is there a question that you have in  
24 mind?

25 THE WITNESS: Yes. Give me the specific question

1 because I've seen Mr. Macktal make a variety of statements  
2 regarding the issue of his debt to GAP (if you will) for his  
3 expenses.

4 So I'd feel more comfortable if you'd ask me a  
5 specific question because I know he has made a variety of  
6 different statements about what he thought or what was  
7 motivating him to settle.

8 BY MS. VAN CLEAVE:

9 Q. Did you or Mr. Roisman, to your knowledge, ever  
10 tell Mr. Macktal that if he wanted to press forward he would  
11 have to come up with the ~~(\$12,000)~~ or so that had been  
12 expended so far in pursuing his claim?

13 A. In order to go forward?

14 Q. Yes.

15 A. No. I mean, I was there ready to try the case  
16 that day. Witness subpoenas were out; witnesses were there.  
17 Everything was ready. Copies -- Everything was ready to  
18 try the case that day, the day we settled.

19 I mean, if I had needed the ~~(13,000)~~ that day to go  
20 forward, that wouldn't have made any sense.

21 I'm sure that I would have always told Mr. Macktal  
22 in any discussion that centered on that that he was  
23 responsible for the ~~(\$13,000)~~.

24 But in terms of payment when -- that is, paying it  
25 now or paying it today in order to go forward, no, I would

1 never have done that, never did do that.

2 Q. How about telling him that if you lost on your  
3 initial trial that was supposed to occur that day, and he  
4 wanted to pursue it further, that he would first have to  
5 come up with ~~(12,000)~~ Do you recall ever telling him  
6 anything like that?

7 A. I don't recall ever telling him anything like  
8 that. However, I would like to add a clarifier, that by  
9 that time -- by the time of the trial, I had lost so much  
10 confidence in him that I was not going to proceed as his  
11 attorney beyond that trial, that GAP would have had to make  
12 a separate decision to continue and assign him another  
13 attorney.

14 I may have said something to him to the effect  
15 that if this case is going to go forward -- if GAP is going  
16 to continue to handle the appeal, they're going to have to  
17 relook at these issues.

18 But in terms of saying, "Give us ~~(12,000)~~" or "Give  
19 us ~~(13,000)~~ or we're not going to go forward," no, that's not  
20 the way GAP operated.

21 We spent all kinds of money on lots of clients who  
22 never paid us back and have never, you know, held anybody  
23 hostage (if you will) for their money, in order to go  
24 forward with the case.

25 Q. Do you recall hearing Mr. Roisman make any kind of

1 statement to that effect?

2 A. No, and he probably wouldn't have anyway because  
3 GAP was out the money, not Trial Lawyers.

4 Q. When a settlement agreement came down to the  
5 (\$35,000) which I believe that you said you thought was the  
6 final figure --

7 A. Right.

8 Q. -- and you talked to Mr. Macktal, what was his  
9 initial reaction to that figure?

10 A. Well, I mean, he didn't think that it was enough.  
11 I mean, no clients ever think a settlement figure is enough.  
12 That's just the business of practicing law, that whatever  
13 you get, they would think that they were entitled to more,  
14 and that they suffered more.

15 You have to spend a lot of time explaining that a  
16 settlement is a compromise of claims, that they don't --  
17 that the defendant doesn't think they owe you anything.

18 And so it's a compromise because it's in the best  
19 interests of buying peace and going on with your life.

20 Mr. Macktal was very concerned about getting money  
21 immediately, and that he wanted the money within 30 days,  
22 that he wanted the money right away as soon as possible.  
23 Could he get his money first.

24 I mean, there was a variety of things that made  
25 him -- It was very clear to both me and Tony that if that

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1 was all that he was going to get, okay, he'd take it, but he  
2 wanted it right away.

3 So there was no unilateral rejection of the ~~(35,000)~~  
4 total or of the ~~(15,000)~~

5 I mean, he knew that that's how much he was going  
6 to get of that money.

7 Q. Did he ever tell you, "No, I'm not going to take  
8 that. I want to go forward; I want more"?

9 A. No.

10 Q. "That's not sufficient"?

11 A. No. He knew if we -- He had to make that  
12 decision on the spot that day because we were going to put  
13 witnesses on and start the trial if he didn't accept the  
14 settlement.

15 He accepted the settlement, authorized us to  
16 settle. He may have not liked the amount of money, but he  
17 was -- you know, at the end of the day he shook my hand; he  
18 shook Tony's hand and he thanked us for everything that we  
19 had done.

20 He felt, I think, denied of having his day in  
21 court, but was glad to have it over with. There was nothing  
22 in his demeanor or behavior that I recall from the day of  
23 the settlement that indicated to me anything other than he  
24 wished he would have got more money.

25 Q. Did he contact you at a later date and tell you he

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1 had changed his mind?

2 A. Well, I'm sure, having reviewed the case, you know  
3 that the money didn't come in within 30 days, that the  
4 settlement papers were not executed within 30 days.

5 As we got closer and closer to the 30-day mark,  
6 and I couldn't get any cooperation out of the Bishop  
7 Leiberman attorneys, Joe started getting increasingly more  
8 anxious and anxiety ridden.

9 He had apparently worked some kind of land deal in  
10 connection with a move that he was involved in. He needed  
11 the money to -- I want to say close on a house or close on  
12 some land, but in any event he had signed some kind of  
13 contract in which he had to give them a certain amount of  
14 money by a certain day. He wanted the money for Christmas.

15 I was hounding Bishop Leiberman to get the papers  
16 out and to get things rolling and was having -- was just  
17 meeting a lot of stone walls.

18 Every day that passed he got more anxious and was  
19 getting more aggravated.

20 Toward the end of that time frame, you know, he  
21 was basically saying in a variety of ways that if they were  
22 just jerking him around and weren't going to pay him the  
23 money, then he wanted to go forward with it.

24 At that point he was almost getting too much for  
25 me to handle, in terms of how angry he was. So I had him

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1 start talking to Tony, and I think also Louie Clark of GAP  
2 as well.

3 I was pushing Bishop Leiberman to get the papers  
4 done.

5 Q. Who signed the settlement agreement? Did you sign  
6 the settlement agreement on Mr. Macktal's behalf?

7 A. Well, the correspondence and the documents on all  
8 of that speak for themselves, and I think I probably have  
9 copies of some of that in here.

10 Just from my recollection, I believe I signed the  
11 settlement agreement; he signed the general release.

12 Q. Do you have a copy of the general release?

13 A. Let me look.

14 THE WITNESS: Are you still there?

15 MR. JOHNSON: Yes, I'm here.

16 THE WITNESS: Could I have a glass of water?

17 MS. VAN CLEAVE: Let's go off the record and take  
18 a short break here.

19 It's about 4:12 p.m.

20 [Recess from 4:12 p.m. to 4:22 p.m.]

21 MS. VAN CLEAVE: Let's go back on the record.

22 THE WITNESS: We're going to identify a stack of  
23 documents which I've pulled out of materials that were  
24 subpoenaed in regards to the development and the execution  
25 of the settlement and general release and the correspondence

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1 between attorneys, both attorneys for Macktal and attorneys  
2 of Macktal and Brown & Root regarding the development and  
3 execution of the settlement documents, the settlement  
4 documents and the submission to the judge.

5 Pursuant to the discussion we had off the record,  
6 I was going to identify each of those documents, and you  
7 were going to mark them all as one stack. Is that correct?

8 MS. VAN CLEAVE: That's correct.

9 THE WITNESS: Okay. Can you put a mark on this?  
10 [Exhibit No. 4 was marked for  
11 identification.]

12 THE WITNESS: I believe these documents are in  
13 chronological order, and I'll just identify who they're to  
14 and from and the date and the number of pages and staple  
15 them together.

16 There's a December 10th document from myself to  
17 McNeal Watkins and Rick Walker saying I hadn't yet received  
18 any of the proposed language and they should send it to me  
19 immediately.

20 A copy of an undated letter from myself to Mr.  
21 Watkins -- this probably came from my correspondence file in  
22 my office because it's like a carbon copy -- in which I  
23 indicate that I have prepared proposed settlement documents  
24 using the Mattie Gregory settlement as a model.

25 Of note to you, Virginia, may be that in conveying



1 the documents that I drafted, I did not put in the gag order  
2 paragraph that had been agreed to at the settlement  
3 discussions.

4 I say that -- here's the draft, but I didn't put  
5 in that language.

6 The third document is a December 18th page-and-a-  
7 half letter from Rick Walker to me where he has redrafted  
8 the settlement papers and reflect the matters you and I  
9 discussed over the telephone and discussing the terms.

10 There's also a December 19th piece of  
11 correspondence from Rick Walker to myself which was revised  
12 in accordance with the telephone conversation this  
13 afternoon.

14 Now, I do not have the attached papers. I don't  
15 have the attached drafts of the settlement agreement. I  
16 just have the letters. Maybe Mr. Walker has them.

17 Then there's a December 29th letter from myself to  
18 Joe Macktal confirming that the settlement amount is for  
19 ~~(35,000.)~~ Of that amount you will receive ~~(fifteen)~~ and GAP  
20 and TLPJ will receive ~~(twenty)~~ and saying that that's his  
21 entire obligation to GAP and Trial Lawyers in the case.

22 There's a January 6 page-and-a-half letter from  
23 Rick Walker to Tony Roissan, which makes reference to an  
24 enclosed check in the amount of ~~(35,000)~~ made to Mr. Macktal  
25 and Billie Garde and also talking about getting the general

1 release signed and conformed so they have that to go with  
2 the settlement agreement.

3 There's a January 6th letter from Tony Roisman to  
4 Joe Macktal saying enclosed is a clean release form for you  
5 to sign. Please sign and return it immediately.

6 There's a January 6th memo or letter from Barbara,  
7 who was the executive secretary at Trial Lawyers, to me  
8 saying here's the check from Rick Walker for Joe Macktal and  
9 directing me what to do with it. You should send us a check  
10 for -- meaning Trial Lawyers -- a check for this amount of  
11 money. She'll send an itemized statement letter.

12 There's a little memo from me to Joe dated January  
13 7th, 1987, saying that -- it must have been including the  
14 check -- should not be deposited or cashed until you verify  
15 with me on whether I have received the (35,000) check from  
16 Brown & Root.

17 There's a January 13th, '87 letter from Tony to  
18 Rick Walker, apparently attaching the original general  
19 release signed and dated by Joe Macktal.

20 There's a January 15th letter from Tony to Joe  
21 Macktal enclosing for his files a copy of the settlement  
22 agreement and the general release in their final signed form  
23 and reminding him to read paragraphs 7 and 8 concerning  
24 disclosure.

25 There's a copy of the settlement agreement, which

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1 is ten pages long. It has a date on the back of it of  
2 January 2nd, 1987.

3 Since we were in two different places, we couldn't  
4 have all signed on January 2nd, 1987, because I was in  
5 Wisconsin; and Tony and Rick were in Washington.

6 But there's the settlement agreement. Mr. Macktal  
7 did not sign the settlement agreement.

8 There is a general release -- two-page general  
9 release which is signed by Mr. Macktal and dated the 7th day  
10 of January 1987.

11 There's a January 2nd cover letter to -- from  
12 myself to Judge Murray saying, "Enclosed please find a copy  
13 of the Joint Motion to Dismiss with Prejudice and a Proposed  
14 Order for your signature," asking her to execute it.

15 She executed the order on January 6th, 1987, and  
16 also sent the file up by memo to Brock, who was Secretary of  
17 Labor at that time. There's a memo to that effect.

18 Then there is a January 26th letter from Tony to  
19 Joe Macktal including a January 16th letter of reference  
20 from Brown & Root to Macktal, which was part of the  
21 settlement agreement.

22 Those are all the documents that we've marked and  
23 are included as Exhibit 4.

24 Those are -- Vernon, are you back?

25 MR. JOHNSON: Yes, I'm back.

1 BY MS. VAN CLEAVE:

2 Q. Is it standard for the attorney to sign this type  
3 of agreement for his or her client?

4 A. You're asking me based on my experience now or my  
5 experience then, or just the general practice?

6 Q. Yeah, the general practice from your knowledge as  
7 an attorney. I don't know.

8 A. In cases where attorneys and clients are in  
9 different locations, I know that it's not unusual for  
10 attorneys to execute settlement agreements on behalf of  
11 their clients.

12 I probably know now that it's much more -- It's  
13 not as common as having the client sign. The preference is  
14 to have the client sign. His name was originally on it to  
15 be signed.

16 The reason his name was taken off of it was  
17 because we wanted to get him his check as soon as possible,  
18 which was something that we cleared with him, because  
19 otherwise we wouldn't be able to send in the notice to the  
20 judge to dismiss the case.

21 Q. Okay. So prior to your signing for him, did you  
22 contact him and tell him you were going to sign for him?

23 A. Yes. I think that the discussion was between  
24 Macktal and Tony, but I may have been on that call as well,  
25 and then also went ahead and talked to him about that

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1 because we wanted to route the documents between Tony, Rick  
2 Walker and me, Federal Express overnight. Then I was going  
3 to go ahead and send the stuff on to Judge Murray.

4 I know that was cleared with him because he wanted  
5 that check, and that was the quickest way to get it to him.

6 And so that discussion was held -- There may  
7 even be some reference to that in the correspondence because  
8 they had to be redrafted with his name off of it in order to  
9 get them, you know, through and get them signed and get them  
10 on the way to the judge.

11 Q. Could you not have sent the agreement to him to  
12 sign it and have him Federal Express it back?

13 A. Uh-huh, we certainly could have. It would have  
14 just taken an extra couple of days' delay.

15 Q. Who decided not to do that?

16 A. Well, I know that the decisions on logistics --  
17 Tony was largely handling logistics because he was in  
18 Washington and so was Rick Walker.

19 I would get into the loop because I had to also  
20 sign the documents and get them on to Judge Murray. I can't  
21 tell you specifically who had the conversation that we  
22 decided to take his name off.

23 I believe that I had the conversation in which I  
24 communicated it to Rick Walker, that that was what the  
25 decision was.

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1 But I know that that decision was made with Mr.  
2 Macktal's consent.

3 Q. Do you have to have any kind of written document,  
4 like a power of attorney, or anything like that to sign for  
5 him?

6 A. Well, I usually have a power of attorney.  
7 Sometimes it's in the retainer agreement. I don't have it  
8 in front of me. I don't know if that's the last sentence in  
9 there or not.

10 Q. "All complaints, notices, court dismissals and  
11 other documents necessary to the proper presentation of this  
12 case," would that fall under those categories --

13 A. Yes.

14 Q. -- one of those? Okay.

15 And when did Brown & Root pay the \$35,000? Do you  
16 recall or do you have -- I know you have some checks.

17 A. I have some checks --

18 THE WITNESS: Did you fax up, Vernon, anything?

19 MR. JOHNSON: Yes. We're faxing over a copy of  
20 the check from Brown & Root made out to Billie Garde and to  
21 Macktal, and also the check that's made out to Macktal. The  
22 two checks are being faxed.

23 THE WITNESS: Okay. Then let me go ahead and mark  
24 these other documents, if you will.

25 We can mark these all as Exhibit 5.

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1 [Exhibit No. 5 was marked for  
2 identification.]

3 THE WITNESS: There is a copy of a check drawn on  
4 Garde Law Office Trust Account. I had a trust acc unt in my  
5 name -- my law firm's name, which was opened the end of  
6 December, I believe.

7 So there was a check drawn on that trust account  
8 to the Government Accountability Project for (\$11,500)

9 There's a check on the same account to Trial  
10 Lawyers for Public Justice for (\$7,494.03.)

11 There is a withdrawal slip from the trust account  
12 -- No. There was a withdrawal from the trust account and a  
13 deposition in the general account of the GAP Midwest Office.  
14 And the banking was being done through my law office's bank  
15 accounts. GAP Midwest did not have its own bank account.  
16 So this is a deposit slip for the remaining (\$1,005) which  
17 then went to the GAP Midwest Office, and we used that money  
18 for fees and expenses and things that we were doing: buying  
19 some furniture and machinery.

20 And there's a copy of my trust account -- client  
21 trust account register, which shows the date it was opened,  
22 that there was a deposit and then what happened to all of  
23 the money.

24 So all of those things are enclosed. To have a  
25 complete package of the checks, we'll have to have the

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G. J. Porters

1 documents that he's faxing up.

2 BY MS. VAN CLEAVE:

3 Q. The check that Brown & Root wrote was jointly to  
4 you and Mr. Macktal?

5 A. I believe so, yeah.

6 Q. And Mr. Macktal did endorse that check?

7 A. Well, I don't have and can't recall or refresh my  
8 recollection from looking at the documents in front of you,  
9 the different correspondence and what was going back and  
10 forth between Macktal and myself and Tony, of sending the  
11 check to Joe for his signature.

12 But I have now looked at the check. The back of  
13 the check has a signature on it that says Joseph J. Macktal,  
14 Jr.

15 I know that I had a discussion with the bank about  
16 what I had to do to have him authorize -- to have the check  
17 deposited in the trust account so I could reissue the  
18 checks.

19 I don't have a clear recollection of what the bank  
20 said I had to do.

21 There was some discussion of having Mr. Macktal  
22 authorize over the telephone the deposit, and there was some  
23 discussion of having him fax up some -- or Federal Express  
24 up an authorization for a power of attorney. I already had  
25 a power of attorney.

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1 In any event, the check -- now that I've gotten a  
2 copy from the bank, I asked them to do a photocopy of the  
3 check -- has on the back of it a signature of mine and a  
4 signature of Mr. Macktal's.

5 It looks to me like Mr. Macktal's signature, but I  
6 don't have a recollection of the check going to Mr. Macktal  
7 and back to the bank.

8 Q. Then is it possible that could be your --

9 A. It's not my handwriting.

10 Q. I would guess you would recognize your own  
11 handwriting.

12 A. Yeah. It's not my handwriting, but I can't tell  
13 you whose it is.

14 I mean, it looks like it very well easily could be  
15 Mr. Macktal's. It's pretty close to his signature, if it  
16 isn't his signature.

17 But I don't have the original check; it's not a  
18 great copy. You'll see it when it comes up.

19 Q. By the time it gets here, I'm sure it will be even  
20 worse.

21 A. It will be even worse, correct.

22 Q. Now, back to the settlement agreement. Did the  
23 Secretary of Labor ever approve the settlement agreement? I  
24 understood that they had not approved the settlement  
25 agreement.

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1 A. No. The documents regarding the submission of the  
2 settlement to the Secretary of Labor I have pulled together  
3 in another stack.

4 Do you want me to do the same thing with that  
5 stack?

6 Q. Okay.

7 A. What are we going to mark this stack? 6.

8 [Exhibit No. 6 was marked for  
9 identification.]

10 A. [continuing] On May 11th the Secretary of Labor  
11 issued an order to submit the settlement agreement, which  
12 apparently was sent to everybody. According to the service  
13 list, it was sent to Mr. Macktal in care of GAP at 1555  
14 Connecticut Avenue, care of me at GAP; and was sent to me in  
15 the Midwest Office.

16 By the time that this was sent on May 11th, I  
17 believe that -- I mean, I know that I had moved. I no  
18 longer either lived or worked at the address that's on here.  
19 So I hadn't got a copy. I didn't get a copy directly to me.

20 The copy that went to GAP for Mr. Macktal, I  
21 didn't get that either.

22 So this was issued, but I didn't get it. And  
23 eventually Rick Walker called me and said what are you going  
24 to do about it. And I told him I didn't know what he was  
25 talking about.

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1 He then sent me -- Rick Walker sent me a copy of  
2 the Secretary's May 11th order, and there's a cover letter  
3 saying, "I learned from your office today you don't have it.  
4 Here's a copy of it," signed by Rick Walker. "I want to  
5 talk to you about it."

6 On May 15th Rick Walker also sent a copy to Tony  
7 Roisman, apparently by hand delivery, to his new office  
8 which sends the Secretary's order.

9 Then I wrote him a letter back on May 22nd -- I  
10 wrote Rick Walker a letter back on May 22nd saying that I  
11 didn't agree with what Walker wanted me to sign as a joint  
12 motion to the Secretary to reconsider his motion.

13 I don't have, apparently, his letter and draft  
14 brief in front of me. Maybe I do.

15 Anyway, there's a letter from me to Mr. Walker  
16 saying I won't sign your thing; I won't oppose it and I  
17 won't file it until you get an answer.

18 Q. Could you clarify that for me a little bit? I  
19 don't really understand what you're talking about there.

20 A. Okay. The Secretary ordered the parties to submit  
21 the settlement agreement for their review. Rick Walker said  
22 that he didn't think the Secretary had the legal authority  
23 to order a sealed agreement between the parties to be made  
24 essentially a public document by submitting it to the  
25 Secretary of Labor, and that parties -- private parties had

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1 a constitutional right (if you will) to settle among  
2 themselves without further government interference.

3 He wanted to raise that argument, and he wanted me  
4 to agree to sign those papers and make it a joint motion on  
5 behalf of Mr. Macktal and on behalf of Brown & Root.

6 I said no, that I wouldn't do that. But,  
7 obviously, if I submitted the settlement papers to the  
8 Secretary, it would make his argument moot. It wouldn't  
9 make any difference what the Secretary ruled because I would  
10 have already complied with the order.

11 So I filed, and agreed that I would file, a motion  
12 which says essentially, "I'm going to wait until you rule on  
13 their motion to reconsider before I act on your directive."

14 And so I filed that within the time frame, and he  
15 filed his motion. And then we didn't hear anything further.  
16 That was in the summer of '87.

17 We didn't hear anything further from the  
18 Secretary's office before the July 1988 settlement between  
19 CASE and Texas Utilities Electric when Mr. Macktal then  
20 reappeared and started filing some other documents.

21 Let me identify the rest of the documents in this  
22 exhibit.

23 There's a June 5th memo from Peter Dykman, another  
24 attorney at Bishop Leiberan, the Office of Administrative  
25 Appeals.

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1           And then there's the Motion for Reconsideration  
2 and the Memorandum in Support of the Motion for  
3 Reconsideration, which was filed by Rick Walker, and a copy  
4 of my response which is dated June 8th.

5           Q.    The Secretary of Labor then never did --

6           A.    Never did and never has yet ruled.

7           Now, that is not the only pleadings. When Macktal  
8 begins representation by the Kohns, it starts a whole other  
9 set of pleadings.

10          Q.    Are they handled separately from this?

11          A.    They're in the same docket. If you would go pull  
12 the docket at the Secretary of Labor, that would be the end  
13 of the pleadings that I was involved with.

14          I don't believe you'll find anything else on the  
15 record until the Kohns then file a notice of appearance a  
16 year later -- over a year later.

17          Q.    Is this standard, that the Secretary of Labor asks  
18 to see the settlement agreements?

19          A.    At that time I think she had only done it -- or it  
20 was he -- had only done it once or twice before that I was  
21 familiar with.

22          Now, it's standard.

23          Q.    Was there any particular reason why this one was  
24 handled that way, or is it just -- to your knowledge?

25          A.    Not to my knowledge.

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1 Q. And were you aware of any reasons that the  
2 attorneys for Brown & Root did not want that settlement  
3 agreement to go to the Department of Labor and become, I  
4 guess, a matter of public record?

5 A. Well, other than the things that Rick Walker told  
6 me about -- and his legal arguments are contained in his  
7 brief -- that was really the only discussions.

8 I mean, he essentially had a belief that there was  
9 a legal right of the parties to settle without the Secretary  
10 of Labor's interference. He was going to raise and pursue  
11 those issues. That's the only things that he told me.

12 Q. Back to the initial settlement agreement, of  
13 course, as you know, the terms of the settlement agreement  
14 have caused some consternation in the Senate and within the  
15 NRC and a lot of places.

16 A. Uh-huh.

17 Q. The main thing that everyone seems to be concerned  
18 about is the language that states, more or less, that  
19 Macktal agreed not to testify before the ASLB, and should he  
20 be called to provide such testimony he would fight it (more  
21 or less).

22 Was that language agreed to by you?

23 A. I don't think the exact words as they finally  
24 appear on the paper were agreed to on the day of the  
25 settlement. But certainly that term and condition was

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1 agreed to.

2 Q. Who proposed that condition?

3 A. Rick Walker.

4 Q. Why did you agree to that condition?

5 A. Okay. Are you asking about Macktal? There's two  
6 elements to that particular paragraph.

7 One is the element about Macktal not voluntarily  
8 testifying and taking -- I don't remember what the exact  
9 words are, but whatever the words are -- taking actions to  
10 resist --

11 Q. Resist a subpoena.

12 A. -- a subpoena.

13 Q. Right.

14 A. -- and notify, I think, the lawyers for Brown &  
15 Root or something.

16 Q. Right. That's what it says.

17 A. And then the other part is the agreement of Tony  
18 and I not to call Macktal as a witness in the NRC licensing  
19 proceedings.

20 So which aspect of that paragraph are you asking  
21 me about?

22 Q. The initial one.

23 A. About him?

24 Q. About Mr. Macktal agreeing to not testify before  
25 the ASLB and resisting any subpoena or any effort to make

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1 him testify before the ASLB.

2 A. Okay. And you're asking me why I agreed to that?

3 Q. Yeah, I am. You know, you worked for GAP;  
4 correct? And to me it's sort of unusual that you would have  
5 agreed to that type of language.

6 A. If you think back to what I just got done telling  
7 you about Mr. Mackt... and the problems with his credibility,  
8 it was -- How can I describe it?

9 It was basically that we were not giving up  
10 anything. You know that at the same time as I represented  
11 Macktal, I also was involved in representing CASE in front  
12 of the Atomic Safety and Licensing Board.

13 Calling Mr. Macktal as a witness in the licensing  
14 hearing was something that Tony and I discussed when they  
15 put the term on the table, you know, among ourselves and  
16 concluded, and then later talked to Mr. Macktal about it,  
17 that we would not call him as a witness (

18  
19  
20

21 I don't know how else I can say it. At that time  
22 we had put on the stand somewhere between 30 and 45  
23 whistleblowers, all who had been strongly screened and  
24 picked by CASE as whistleblowers that were going to  
25 withstand the kind of scrutiny and testimony and cross-

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1 examination that Bishop Leiberman was using.

2 We were winning in terms of the issues that we  
3 were presenting in front of the licensing hearing. It was  
4 our view that Macktal could do nothing but hurt himself and  
5 hurt CASE if he testified in the licensing hearing.

6 [REDACTED]  
7 [REDACTED]  
8 that he was better off having the letter of recommendation,  
9 a closed settlement, and all those issues behind him without  
10 having to confront the lies.

11 It was better for CASE that they did not put him  
12 on the stand. But we did not agree on behalf of Juanita  
13 Ellis, who was also an independent intervenor in the case --  
14 had her own status as a licensing lawyer (if you will) -- we  
15 did not agree on her behalf to not call him.

16 We didn't do agree to do anything that would  
17 encourage her to call him or to discourage her from calling  
18 him.

19 So in the event that Juanita got to someplace on  
20 an issue, or we got to someplace on an issue, and Juanita  
21 wanted to call him, she was always free to do that.

22 Tony and I were not free to do that. Macktal was  
23 not free to voluntarily testify.

24 Now, in the context of the licensing hearings, as  
25 you understand them, that means not show up and give a

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1 limited appearance statement which comes into the record but  
2 has no evidentiary weight, or not walk up to some lawyer or  
3 judge and say, "I want to be a witness."

4 He would have had to have been called as a  
5 witness, just like in any other case.

6 But Judge Bloch in the licensing hearings  
7 frequently called witnesses on his own. So that paragraph  
8 went to try to keep Macktal out of the licensing hearings.  
9 There's no question about that.

10 They didn't want him testifying in the licensing  
11 hearings.

12 At the time, and in hindsight -- obviously,  
13 everything looks a little different -- but in hindsight, at  
14 the time we considered that we thought that was a plus  
15 because it was both giving Macktal an ability to not have to  
16 push his own ~~credibility~~ problems that he had -- that he was  
17 carrying around with him. It protected him from that, and  
18 it protected CASE from having to deal with those problems.

19 So it was not viewed by us as a negative at the  
20 time.

21 Do you understand what I'm saying?

22 Q. It sounds to me like your main rationale then was  
23 to keep Mr. Macktal from testifying because he might have  
24 some negative effect on CASE's --

25 MR. JOHNSON: I'd object to that statement. I

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1 think her testimony speaks for itself. I think she has  
2 outlined several reasons why they did not consider it  
3 important for Macktal to testify.

4 MS. VAN CLEAVE: Okay.

5 BY MS. VAN CLEAVE:

6 Q. Then I had wondered about the CASE -- potential  
7 CASE/TU settlement. Did anyone ever mention to Mr. Macktal  
8 that he might be included in a later settlement agreement?  
9 Did you ever say anything to that effect to Mr. Macktal,  
10 that his case might be included in a later settlement  
11 agreement and, in fact, he might get more money?

12 A. Well, at the time that Macktal's case was going on  
13 -- and certainly beginning in '84 -- any discussions about  
14 settlement with Texas Utilities had always included three  
15 pieces.

16 One of those pieces always was taking care of all  
17 the whistleblowers that had filed claims against Texas  
18 Utilities. And those settlement discussions never got off  
19 the ground.

20 TU would say, "Do you want to settle?"

21 We'd say, "Yes, if you want to consider paying  
22 CASE for all their expenses, giving CASE a continuing  
23 monitoring role in Comanche Peak, you know, opening the  
24 gates and letting us in forever, and taking care of all the  
25 whistleblowers."

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1           So any time we ever talked about potential  
2 settlement, it always had those three pieces. Those three  
3 pieces were on the table (if you will) in front of TU, but  
4 never given any serious consideration and never had any  
5 discussions, you know, beyond them saying, "Is there  
6 anything you want to settle for," and we'd answer and say,  
7 "Yes, these three pieces."

8           And we would tell people that, that were involved  
9 with the case. We made no secret about that.

10           In fact, as it came down, that's exactly what  
11 happened with the settlement. So in terms of did you ever  
12 tell him he would be included in the settlement, certainly  
13 at the time he may have been told, "This is what the CASE  
14 intent and plan is in the event that any settlement occurs."

15           But there wasn't any live settlement discussions  
16 at the time.

17           Q. Why did you go ahead and settle Mr. Macktal's  
18 case? Why did you not, I guess, add his name to the  
19 whistleblowers who were going to be part of the CASE/TU  
20 settlement?

21           A. Well, first of all, Virginia, you know I just got  
22 done telling you there was no live CASE settlement  
23 discussions in 1986, at the time this case was tried.

24           There was no live settlement discussions at all  
25 with Texas Utilities until May of 1988. There was none,

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1 period. They did not exist.

2 Q. Oh, okay. I misunderstood you. I thought you  
3 said that you had been discussing all along since 1984.

4 A. No. Since 1984 whenever TU would say, "Do you  
5 want to settle," we'd say, "If you can offer these three  
6 things." And they would never call us back.

7 Q. Oh, all right. I misunderstood you. I thought  
8 that you were going through a process of negotiations since  
9 '84.

10 A. There was never any negotiations. Those  
11 negotiations started with an invitation from TU to start the  
12 negotiations in earnest in, I believe, May of 1988.

13 And there wasn't any discussions. There were a  
14 lot of lawsuits. There were whistleblower lawsuits filed in  
15 Houston. There were whistleblower 210 cases filed. There  
16 were, you know -- There was a federal case in Houston, the  
17 court, that got sent back to state court by individual  
18 whistleblowers, and I was involved in some of those cases.

19 But Macktal's claim, like maybe 15 or 20 people  
20 before him, had come to the trial date and had either  
21 settled or gone to trial and was in some stage of appeal or  
22 settlement.

23 Macktal wasn't the only person who had a settled  
24 claim against Texas Utilities and/or Brown & Root from the  
25 workers that worked at Comanche Peak who did not ultimately

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1 bring a civil tort lawsuit, like the Atchison plaintiffs  
2 that was settled for a large amount of money, by the time  
3 the Comanche Peak settlement was reached.

4 Q. Do you know, do you have any idea why Brown &  
5 Root's attorneys wished to put that language in the  
6 settlement agreement regarding Macktal's testifying before  
7 the ASLB?

8 A. All I can tell you is what Rick Walker said at  
9 that meeting, which was that he had been trying -- that he  
10 had lost a lot of credibility with his client of late  
11 because every case he settled with Tony and I ended up  
12 coming back to haunt him in some other forum, and that when  
13 he went to the company and said, "Let's settle this case. I  
14 think this is what we should do," that then the company was  
15 turning around and saying, "Why did we settle this case  
16 because we're now having to relitigate the same case and get  
17 egg on our face either in a licensing hearing or in another  
18 lawsuit or in a state lawsuit," and they settled one claim.

19 And so the language that he was going to propose  
20 was going to absolutely bar Brown & Root from having to deal  
21 with Mr. Macktal and his claims anywhere at any time ever  
22 again, so they thought.

23 Q. But wouldn't the release that Mr. Macktal signed  
24 do that? Didn't it say that he releases Brown & Root from  
25 --

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1           A.    But they had signed other releases with clients  
2 represented by me or Tony before, and then those clients  
3 ended up becoming part of the harassment and intimidation  
4 contention before the Licensing Board.

5           So even though the whistleblowers themselves stood  
6 to gain nothing by testifying in the licensing hearing on  
7 harassment and intimidation issues, Brown & Root lawyers and  
8 Texas Utilities lawyers had a lot to lose by the licensing  
9 hearings.

10           Do you follow what I'm saying?

11           Q.    No.  Maybe you could elaborate a little bit.  What  
12 is "a lot to lose"?  What do you mean by that?

13           A.    Well, at the time that Macktal's case arose, if  
14 you know very much about the licensing hearing of Comanche  
15 Peak, Comanche Peak had an ongoing operating license in  
16 which there was one contention left for litigation.  It was  
17 Contention 5.

18           The contention was that there had been a breakdown  
19 in the quality assurance/quality control program at Comanche  
20 Peak historically, such that there would be no reasonable  
21 assurance that the nuclear plant could ever -- was  
22 constructed or could ever operate without endangering public  
23 health and safety.

24           That contention was broken down into two dockets.  
25 One docket was the design modification/quality assurance

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1 issues affecting the design of the plant. The other docket  
2 was harassment and intimidation of quality control  
3 inspectors and others -- but "others" wasn't litigated at  
4 that point -- such that no matter what the written results  
5 on paper were of the QA/QC program, that there was no  
6 reasonable assurance that those results could be relied on  
7 because there had been such an atmosphere of fear,  
8 harassment and intimidation at Comanche Peak so that none of  
9 the documentation was reliable, that the QC inspectors had  
10 been forced to sign things off or didn't sign things off, or  
11 that they were so afraid of their jobs that they didn't do  
12 their job.

13 Tony and I were the lawyers on that docket.  
14 During the summer of '84 and the fall of '84 and the very  
15 early beginning of 1985, Trial Lawyers and GAP put on almost  
16 a hundred witnesses, both our witnesses and TU witnesses, to  
17 demonstrate that such an atmosphere existed and that there  
18 was no assurance of the quality of the plant.

19 When the Board issued preliminary decisions on  
20 those matters, it was clear that we had convinced the  
21 Licensing Board that we were probably right.

22 At the same time the NRC's technical review team  
23 issued a document called SSR-11 -- SSER-11, which included  
24 an Appendix P, that there were so many problems with the  
25 Comanche Peak quality assurance/quality control program that



1 there was no reliability that the plant was safe.

2 Those two things combined forced Texas Utilities  
3 to have to go into the Licensing Board at a time when they  
4 said that their plant was ready to load fuel and operate --  
5 this was in the fall of 1984 -- when the plant cost \$3.5  
6 billion, that they were ready at that time.

7 When the Board issues its preliminary decisions  
8 and orders and concluded that they were not ready, it forced  
9 them to have to do a hundred percent reinspection and rework  
10 and design modification plan. The cost of the plant today  
11 is about \$10 billion.

12 They've spent 6 billion trying to figure out what  
13 they did for the first five years out there. That's what  
14 they had to lose.

15 If we successfully convinced the judge, which we  
16 did, that the plant wasn't constructed and designed in  
17 accordance with the regulations, what they had to lose was  
18 getting approval for licensing the plant.

19 Now, that maybe won't run directly to Brown &  
20 Root, but the other time that that happened in Region IV, if  
21 you know anything about the history of that, is when Brown &  
22 Root built the South Texas Nuclear Plant, the NRC came in  
23 and said, "You didn't build it right," and Houston Light &  
24 Power sued Brown & Root. It ended up in an out-of-court  
25 settlement for billions and billions of dollars, in terms of

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1 the work that was done on the project.

2 Individually, Mr. Macktal had nothing to gain one  
3 way or another by being a witness in a Comanche Peak  
4 licensing hearing. There was nothing to gain as a witness.

5 But TU had a lot to lose, and so did Brown & Root.

6 Q. But if Mr. Macktal had already told about his  
7 concerns to the NRC, and according to your own testimony Mr.  
8 Macktal in your belief had lost a great deal of credibility,  
9 what could he tell the ASLB that could impact negatively on  
10 Brown & Root?

11 A. Well, two things to answer your question. First  
12 of all, he had told his safety concerns to the Nuclear  
13 Regulatory Commission which was investigating those issues,  
14 but had not yet issued its report.

15 My statements about his credibility in this  
16 deposition did not go to whether or not I believed Mr.  
17 Macktal had raised valid concerns. I think he raised some  
18 valid safety issues. The NRC reports substantiate that.

19 I'm saying his credibility, looking at him as a  
20 witness that I had to protect on the stand, could his  
21 credibility -- (redacted) -- withstand cross-  
22 examination. I concluded that it could not.

23 (redacted)  
24 (redacted)  
25 (redacted)

) They just

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1 cared whether or not he had safety concerns, and that's what  
2 they wanted to know, and that's what they were pursuing.

3 But it's my belief that the reason that TU and  
4 Brown & Root lawyers were so insistent on putting that  
5 clause in about the licensing hearing was because Tony and I  
6 had managed to do an extremely effective job of taking  
7 selective whistleblowers and making them as examples of what  
8 was the atmosphere on the whole plant.

9 And at this point, 1986, we were well into a \$4  
10 billion reinspection and reconstruction program, and Mr.  
11 Macktal's case didn't go to the past, '84, before -- they  
12 already lost on that -- it went to the present.

13 He was testifying that at present that atmosphere  
14 still existed. And at that point those issues were not in  
15 front of the Licensing Board, and they were very afraid that  
16 they were going to be brought up in front of the Licensing  
17 Board.

18 Q. I still don't follow the rationale here. On the  
19 one hand you say that you were, as an employee of GAP, did  
20 not mind having that language in the settlement agreement;  
21 and yet it seems to be on the other side you're saying it's  
22 to the advantage of Brown & Root and TU Electric that Mr.  
23 Macktal not testify.

24 A. They certainly had something to gain by it. But  
25 they didn't know and couldn't know our strategic (if you

1 will) thinking behind our case.

2 I mean, now you're getting into essentially the  
3 rationale behind the thinking of CASE lawyers, Tony and I in  
4 representing CASE. I don't have a waiver to share that with  
5 you, although I'm telling you things that I've already  
6 explained to the Senate hearing, and I think I'm on firm  
7 grounds in doing so in terms of a waiver by CASE orally as  
8 to what I could talk about.

9 But you're getting into the strategic reasons of  
10 why it was acceptable. I don't know if I'm -- if you need  
11 me to keep going or not keep going.

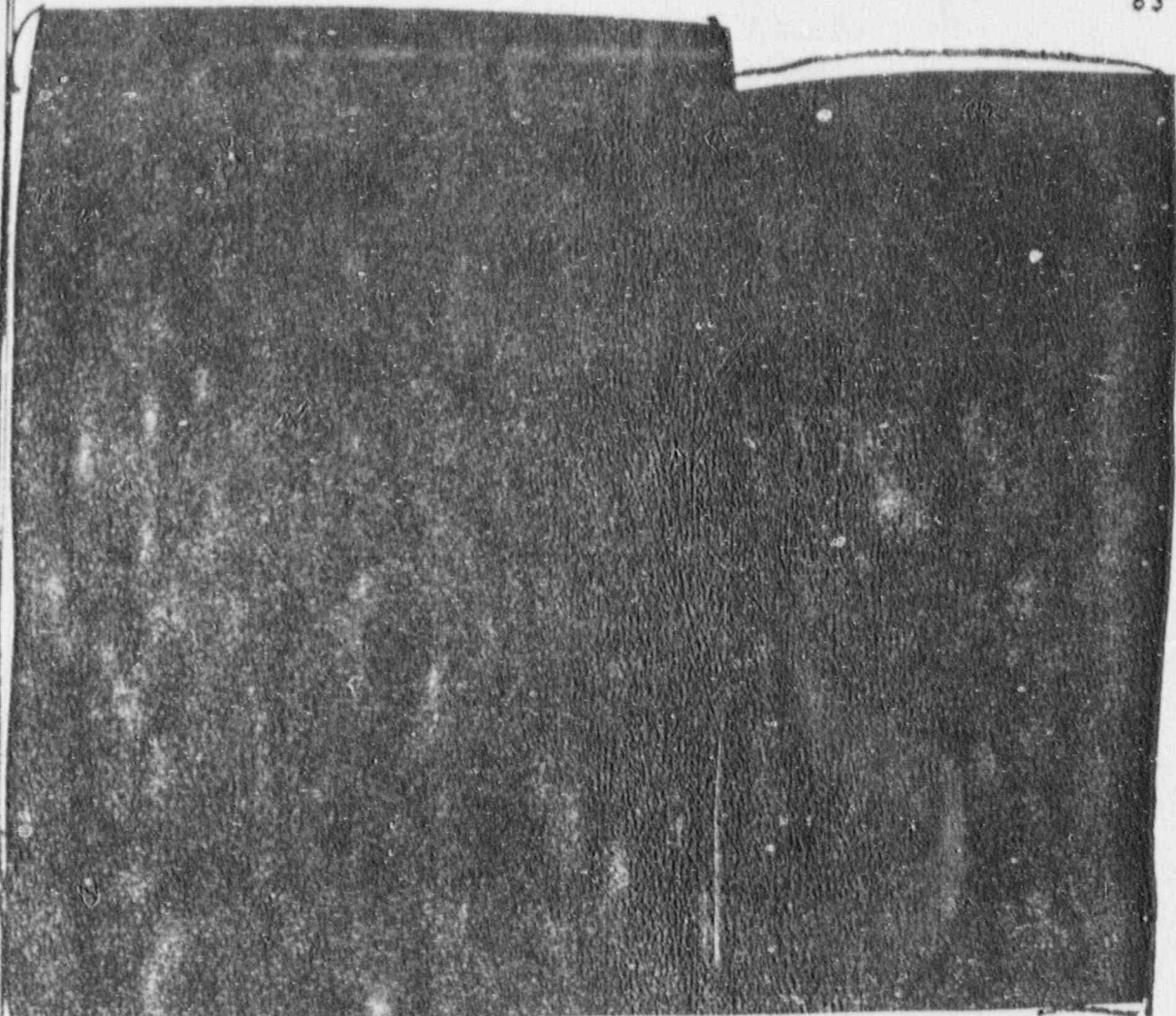
12 Q. I just -- To me I just can't get that straight  
13 in my own mind as to how it is to the advantage of the  
14 intervenors, I suppose, and to the advantage of TU and Brown  
15 & Root, you know, the same thing, this type of language in  
16 the agreement.

17 I mean, I do understand it on the one hand.  
18 However, if Mr. Macktal's testimony could possibly cause TU  
19 that kind of concern and even have some impact on the  
20 licensing hearing, then the fact that you may have believed  
21 he lacked credibility seems like it would be overridden by  
22 that.

23 A. No, because he wouldn't have survived. He  
24 wouldn't have survived on the stand as a credible witness.

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So there's always a risk when you put a witness on. There's a risk that runs both directions.

You're asking me to hypothesize why Brown & Root would offer him any money, and that's what I'm doing. I'm hypothesizing that they had a lot to lose, and they knew it. I mean, that question really is more properly asked to Rick Walker.

Q. I can understand why they would offer him some money. I mean, not even getting into the matter of whether

1 or not his claims have merit. I can understand a <sup>84</sup> (\$35,000) offer.

2  
3 A. It's not much money when you talk about the  
4 discrimination claim.

5 Q. Right. I mean, I can understand that. I suppose  
6 that's not really my question.

7 I'm just trying to understand that particular --  
8 those two sentences in the settlement agreement that has  
9 gotten everyone so upset, how -- you know, it seems to be  
10 advantageous for the Interveners and for TU and Brown &  
11 Root.

12 I'm trying to reconcile the facts and how that can  
13 be. But maybe I won't be able to do that.

14 MR. JOHNSON: Do you have another question or --

15 MS. VAN CLEAVE: No, I'm just hypothesizing.

16 THE WITNESS: Do you think I should go into more  
17 explanation or try again, Vernon, or just leave it?

18 MR. JOHNSON: Well, maybe we should go off the  
19 record for a second.

20 MS. VAN CLEAVE: Okay. Let's go off the record.

21 [Discussion off the record from 5:04 p.m. to 5:10  
22 p.m.]

23 MS. VAN CLEAVE: Let's go back on the record.  
24 It's 5:10 p.m.

25 BY MS. VAN CLEAVE:

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*G. J. Pertusa*

1 Q. I have just a couple of other questions regarding  
2 the settlement agreement. To your knowledge, did Mr. Austin  
3 have any knowledge of the specific terms of the settlement  
4 agreement?

5 A. I have no idea.

6 Q. And again I've asked you this, but to conclude  
7 this interview, did you attempt to coerce Mr. Macktal or  
8 coerce Mr. Macktal in any way into signing this settlement  
9 agreement?

10 A. No, I did not.

11 Q. And to the best of your knowledge, did Mr. Macktal  
12 sign this agreement or agree to the settlement agreement --  
13 I should say, since he did not sign the settlement  
14 agreement. Did he agree to that settlement agreement of his  
15 own free will?

16 A. He agreed to all the terms that are reflected in  
17 the settlement agreement on the day of the settlement  
18 because they were all written out in little points on a  
19 legal pad that Tony and I went over with him, point by  
20 point, including the one that he now takes exception to.

21 The only thing that we did not have was we did not  
22 have the drafted settlement exact language, as it appears  
23 now in the settlement agreement.

24 But the terms and conditions were all gone over  
25 with him. The money was all gone over with him. All of

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1 that was acceptable to him.

2 He authorized us to sign the settlement on his --  
3 you know, authorized us to accept the settlement on the day  
4 of the trial -- that we were supposed to go to trial. He  
5 never wavered in wanting to carry through with the  
6 settlement, even at the time that he was really distressed  
7 in December because the 30 days had either just -- was just  
8 about over and over.

9 All his comments always were, "If I don't get my  
10 money like right now, tomorrow, by the end of the week, if I  
11 don't get my money, then I want to crucify them in the  
12 paper, expose this to the world," do all these things,  
13 because he thought he had been had, and he was never going  
14 to get his money.

15 But I never coerced him into accepting that  
16 settlement. He may have felt pressured by the situation, by  
17 Tony and I both telling him, "There's no law, and the facts  
18 aren't hanging together," but he was never coerced by us.

19 Q. Did he mention at that time regarding that  
20 provision that he not testify before the ASLB that he had  
21 additional safety concerns?

22 A. Never. The first time I ever heard anything about  
23 additional safety concerns was in the time frame after  
24 Macktal hired the Kohns.

25 One of the documents that -- I don't know if



1 you've pulled out of the Senate hearing -- but what I do  
2 want to give you is a handwritten note from Juanita Ellis  
3 when Joe Macktal called her on the 3rd of August of 1988.

4 He called her and left a number, and the note said  
5 that he -- and asks for a copy of the settlement of -- the  
6 licensing settlement.

7 Juanita's note reads, "He also said he had read  
8 about the OL settlement in the papers and that it looked  
9 like he should have waited to settle his DOL case."

10 This note was attached to Juanita Ellis' prefiled  
11 testimony in the Senate hearing. It's a note that she made  
12 contemporaneously with a call from Joe Macktal.

13 You'll notice that in this note, he also didn't  
14 say anything about safety concerns.

15 [Exhibit No. 7 was marked for  
16 identification.]

17 A. [continuing] Virginia, I know you've been  
18 following the newspaper articles, but I would note that  
19 Macktal told the paper -- at least it's reflected in the  
20 paper -- the day he finally came up here and gave his  
21 statement, that he told the NRC everything he had to say in  
22 1986.

23 Q. I noticed that in the paper.

24 A. Which is consistent with what I've been saying all  
25 along, that he told them everything he knew at the time.

1 Q. Yeah, I saw that in the paper.

2 A. Let me respectfully suggest that one way to check  
3 that is to get from Kohns the transcript of the tape  
4 recording of the interview between Macktal and Juanita Ellis  
5 at the time frame that he blew the whistle in January and  
6 February, and compare that to the issues that he raised to  
7 the NRC and in his DOL transcripts.

8 I believe you will see that they are the exact,  
9 same sets of concerns because I had an outline sheet and I  
10 made sure he didn't forget any of them, because I wanted,  
11 for purposes of consistency and for not looking like he's  
12 making up new issues as he goes along, for him to  
13 consistently be raising the same issues in every interview  
14 and deposition that he had.

15 So I worked up a worksheet. He and I both had  
16 that worksheet and worked off of it, so we made sure that we  
17 raised all of those issues.

18 If he had additional safety issues in the time  
19 frame that I represented them, I did not know about them.

20 I want the record to reflect that I would never  
21 have instructed any client to withhold safety issues.

22 I may not like somebody in the NRC who's  
23 investigating them; I may have some concerns about the  
24 competency of Region IV in investigating them, but I would  
25 never instruct a client to not provide safety information to

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1 the NRC once those situations have been worked out and an  
2 investigator and inspector had been assigned to a case.

3 Q. I don't have any other questions right now; you  
4 have a plane to catch.

5 I would like to reserve the opportunity to ask you  
6 additional questions should any arise after I review all  
7 these documents that you've provided to me.

8 A. Okay. I have no problem with that.

9 THE WITNESS: Vernon, do you have a problem with  
10 that?

11 MR. JOHNSON: No, not at all.

12 BY MS. VAN CLEAVE:

13 Q. Okay. Let me go through my standard closing here.

14 Ms. Garde, have I threatened you in any manner or  
15 offered you any rewards in return for this statement?

16 A. What an appropriate question at the end of this  
17 deposition.

18 No, Virginia, you haven't offered me any bribe or  
19 threatened me in any way.

20 Q. Have you given the statement freely and  
21 voluntarily?

22 A. Yes.

23 Q. Is there anything further you care to add to the  
24 record at this time?

25 A. No. Only that I brought with me in response to

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1 the subpoena a whole variety of documents which appear to --  
2 to the extent that they're responsive -- come from the DOL  
3 litigation file of his case regarding discovery and  
4 subpoenas and trial preparation, a copy of the NRC  
5 allegations that he raised to the NRC.

6 Q. Is that the inspection report?

7 A. Yes, it's the inspection report. The cover letter  
8 to him is dated August 12, 1987.

9 This is the copy that I received. It's Inspection  
10 Report 86-15 and 86-12.

11 Q. I have that.

12 A. And I did want to note just for the record, since  
13 the issue of what the Licensing Board knew about this, that  
14 this inspection report which catalogs his concerns was given  
15 to the Licensing Board in the course of the regular NRC  
16 docketing of inspection reports with the Licensing Board.

17 The Licensing Board did have his concerns by fall  
18 of '86. They were in front of them, just like all other  
19 allegations and all other inspection reports.

20 So the theme that came through at the Senate  
21 hearing that the licensing judges were not aware of  
22 allegations raised by Mr. Macktal is completely untrue.  
23 They both knew of the filing of the Macktal Department of  
24 Labor complaint because we provided them notice of that and  
25 a copy of the complaint -- that is, CASE.

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1           They were aware of the progress of the case  
2 because CASE had to file monthly progress reports regarding  
3 what was going on in the other areas, including DOL cases.

4           And the Licensing Board received a copy of the  
5 investigation report into those allegations. Now, it did  
6 not identify in the inspection report who was the source of  
7 the allegations, but they did have independent knowledge of  
8 both the complaint and knowledge of the allegations.

9           So the Senate's concern that the Licensing Board  
10 was acting without information that might affect public  
11 health and safety was simply not true.

12           Q. All right. Is there anything further that you  
13 wish to add --

14           A. No.

15           Q. -- or any further documents that you wish to  
16 provide?

17           A. No. We haven't seen the fax of the checks, so  
18 I'll assume that that's here and you'll put it in your file.

19           Q. That's correct.

20           A. And I'm not going to leave any of the documents  
21 that I haven't identified, but I will keep them separate if  
22 you want to get back with me about them

23           Q. Okay. Thank you very much.

24           MS. VAN CLEAVE: Off the record.

25           [Interview concluded at 5:19 p.m.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

in the matter of:

NAME OF PROCEEDING: Interview of  
BILLIE PIRNER GARDE

DOCKET NUMBER: None

PLACE OF PROCEEDING: Arlington, Texas

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

*Betty Morgan*

BETTY MORGAN  
Official Reporter  
Ann Riley & Associates, Ltd.