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[3] CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE
[4] RE: GARY FISER
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[7] WILSON COOPER McARTHUR
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[10]
[11] November 22, 1999
[12] 1:10 p.m.
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[17] Nuclear Regulatory Commission
Atlanta Federal Center
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(1) **MR. REYES:** Good afternoon, my name is
(2) Luis Reyes. I'm the Regional Administrator for the
(3) Nuclear Regulatory Commission in the Region 2
(4) Office.

(5) This afternoon we'll conduct a
(6) Predecisional Enforcement Conference between the NRC
(7) and Mr. Wilson C. McArthur, which is closed to
(8) public observation and it is transcribed.

(9) The subject of the conference is an
(10) apparent violation of the Commission's regulations
(11) regarding deliberate misconduct and employee
(12) protection. Specifically at issue is your
(13) involvement in apparent discriminatory employment
(14) decisions regarding Mr. Gary L. Fiser, a former TVA
(15) employee.

(16) The agenda for the Predecisional
(17) Enforcement Conference is shown on the viewgraph,
(18) but we gave you a hard copy.

(19) Following my brief opening remarks,
(20) Ms. Anne Boland, the Region 2 Enforcement Officer,
(21) will discuss the Agency's Enforcement Policy.
(22) Mr. Lawrence Plisco, the Director of the Division of
(23) Reactor Projects, will then discuss the apparent
(24) violation and the NRC perspective on the issue. You
(25) will then be given an opportunity to respond to the

(1) Specialist, Office of Enforcement, NRC.
(2) **MR. McNULTY:** William McNulty, Field
(3) Office Director for the Office of Investigations.

(4) **MR. McCREE:** Victor McCree, I'm the
(5) Deputy Director for Reactor Safety in Region II.

(6) **MS. EVANS:** Carolyn Evans, Regional
(7) Counsel.

(8) **MS. EUCHNER:** Jennifer Euchner, Legal
(9) Internal GC.

(10) **MR. SPARKS:** Scott Sparks, Senior
(11) Enforcement Specialist, Region 2.

(12) **MR. McARTHUR:** I had introduced Ed
(13) Viguilucci on the end there from the Office of
(14) General Counsel, and Brent MarQuand from General
(15) Counsel, and Mark Burzynski who I've asked to be
(16) here and knows all the facts that I'm going to
(17) relate today; and I tend to wander sometimes, so
(18) he's here to slug me if I wander too much. And then
(19) Ed Boyles from our Human Resources organization.
(20) I'm Wilson Cooper McArthur.

(21) **MR. REYES:** But what organization is
(22) Mr. Burzynski from?

(23) **MR. BURZYNSKI:** Re: Affairs.

(24) **MR. REYES:** Mr. McArthur, I'm going to
(25) ask you some questions. Are the attendees other

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(1) apparent violation.

(2) In this regard, I wish to reiterate to
(3) you that the decision to hold this conference does
(4) not mean that the NRC has determined that a
(5) violation has occurred or that enforcement action
(6) will be taken. This conference is an important step
(7) in arriving at that decision.

(8) Following your presentation, I plan to
(9) take a ten-minute break so that the NRC can briefly
(10) review what it has heard and determine if we have
(11) any follow-up questions. And lastly, I would
(12) provide some concluding remarks.

(13) At this point I would like to have the
(14) NRC staff introduce themselves and then ask you to
(15) introduce your participants.

(16) **MS. BOLAND:** I'm Anne Boland, I'm the
(17) Region 2 Enforcement Officer here in Atlanta.

(18) **MR. DAMBLY:** Dennis Dambly, Assistant
(19) General Counsel for Materials and Litigation and
(20) Enforcement.

(21) **MR. REYES:** Luis Reyes, I'm the Regional
(22) Administrator for the NRC Office here in Atlanta.

(23) **MR. PLISCO:** Loren Plisco, Director of
(24) Division Rank of Projects.

(25) **MR. STEIN:** Michael Stein, Enforcement

(1) than yourself here at your request?

(2) **MR. McARTHUR:** Yes.

(3) **MR. REYES:** Do you have any objections to
(4) representatives of the TVA organization being
(5) present at this conference?

(6) **MR. McARTHUR:** No.

(7) **MR. REYES:** Also I would like to state
(8) that this is a conference between Mr. McArthur and
(9) the NRC and although counsel is present, we will be
(10) directing our questions directly to you; and if you
(11) need assistance from somebody, it is acceptable to
(12) do that.

(13) Ms. Boland will now discuss the
(14) Enforcement Policy.

(15) **MS. BOLAND:** We're here today because of
(16) your involvement in an apparent violation of NRC
(17) requirements. As a former RadCon Chemistry Manager,
(18) you were responsible for assuring that NRC
(19) requirements were followed.

(20) Based on our review of the OI
(21) investigation, it appears that you may not have
(22) adhered to NRC requirements and, more importantly,
(23) that your actions may have been deliberate.

(24) The purpose of our conference here today
(25) is to provide you an opportunity to address the

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(1) apparent violation that we forwarded to you in our
(2) September 20th, 1999 letter. This conference is
(3) essentially the last step of the enforcement process
(4) prior to the staff making an enforcement decision.

(5) Our purpose here today is not to
(6) negotiate an enforcement sanction. We want to hear
(7) your views on the facts and circumstances
(8) surrounding the apparent violation, whether you
(9) believed at the time that your actions were
(10) appropriate and the decisions that were made and
(11) whether now, after having substantial time to
(12) consider those actions, whether you still have that
(13) same view and if not, why not, and any corrective
(14) actions that you have personally taken to prevent
(15) recurrence of the apparent violation.

(16) Based on these discussions as well as
(17) other information, if the NRC concludes that
(18) deliberate violations did in fact occur, the NRC may
(19) take enforcement action against you. In accordance
(20) with our Enforcement Policy, which I believe you
(21) were provided a copy of attached to our letter, the
(22) potential enforcement sanctions can range anywhere
(23) from a Notice Of Violation to an order prohibiting
(24) involvement in future NRC-licensed activities.

(25) In particular, a notice or an order may

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(1) be issued if we do conclude that any actions on your
(2) part were deliberate in violation of 10 CFR .5,
(3) deliberate misconduct.

(4) As Mr. Reyes has indicated, we want to
(5) make it clear that we have not made a final agency
(6) determination with regard to this case and we have
(7) not decided if violations, in fact, were committed
(8) or if they were deliberate or whether, in fact, an
(9) enforcement action will be rendered in this case.

(10) During the course of this conference the
(11) NRC staff will have questions relative to the case
(12) posed to you for you to answer to help us reach a
(13) decision in this matter. Should you need a question
(14) clarified or if you have any questions yourself
(15) during this proceeding, please feel free to ask. We
(16) emphasize that we expect from you a complete and
(17) accurate response to all questions. If we fail to
(18) ask a proper question that you feel needs to be
(19) answered which may be relevant to the issues we're
(20) discussing, we expect you to come forward with that
(21) information.

(22) I would also like to make sure that
(23) you're aware that any statements of view or
(24) expressions made by the staff, NRC staff of this
(25) conference, or the lack thereof are not intended to

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(1) represent any final agency determinations or
(2) opinions or conclusions relative to this matter.

(3) Following this Enforcement Conference,
(4) Mr. Reyes in conjunction with the Office of General
(5) Counsel and the Office of Enforcement will reach a
(6) final enforcement decision, and that process takes
(7) approximately four weeks to accomplish.

(8) One thing that I did fail to mention
(9) earlier is that there is another enforcement
(10) conference associated with this, with Tennessee
(11) Valley Authority. We will not be rendering any
(12) decisions in this case until following that
(13) conference and that's scheduled now for December the
(14) 10th. So the four weeks may be a little longer than
(15) four weeks.

(16) If the enforcement decision involves a
(17) proposed order or involves an order against you, the
(18) NRC will issue a press release associated with that
(19) issuance of that order. However, we will not do
(20) that until 24 hours after providing that order to
(21) you.

(22) Lastly, as a kind of administrative
(23) matter, we are transcribing the enforcement
(24) conference and obviously it is closed to the
(25) public. We can make a copy of the enforcement

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(1) transcript available to you after we have reached a
(2) final enforcement decision in this case or the staff
(3) has reached an enforcement decision in this case.

(4) If we do make transcripts available to
(5) you, they will be, however, released to the public
(6) and be made available in our public document room.

(7) So I'll be glad to address any questions
(8) related to the Enforcement Policy, if you would
(9) like. We did have a new version of the Enforcement
(10) Policy issued subsequent to our September
(11) correspondence with you. I think TVA has a copy of
(12) that and we'll be glad to provide you one, but
(13) substantively it has the new policy relative to your
(14) case.

(15) MR. REYES: Loren, you want to follow the
(16) agenda.

(17) MR. PLISCO: Our Office of Investigation
(18) completed an investigation in August 1999 regarding
(19) Mr. Gary L. Fiser, a former TVA Nuclear Chemistry
(20) and Environmental Specialist, who was not selected
(21) to fill one of two Chemistry Program Manager
(22) positions created during the 1996 reorganization.

(23) The evidence gathered by the Office of
(24) Investigations indicated that as Mr. Fiser's first
(25) line supervisor, you assisted in implementing and

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(1) influencing the selection process to preclude the
(2) selection of Mr. Fiser to one of the Chemistry
(3) Program Manager positions. The evidence indicated
(4) that these actions were taken in retaliation for
(5) Mr. Fiser's engagement in protected activity, which
(6) was the filing of a prior discrimination complaint
(7) with the Department of Labor in September of 1993.
(8) The issue appears to be in apparent
(9) violation in 10 CFR 50.5, deliberate misconduct, and
(10) 10 CFR 50.7, employee protection. The apparent
(11) violation is shown in the handout and it was also
(12) documented in our letter dated September 20th, 1999.
(13) We place a high value on nuclear industry
(14) employees feeling free to raise potential safety
(15) concerns to their management as well as to the NRC.
(16) The Energy Reorganization Act and the Code Of
(17) Federal Regulations establish strict requirements
(18) for protection of employees against discrimination
(19) for raising nuclear safety concerns.
(20) At this conference we're giving you the
(21) opportunity to provide information regarding your
(22) involvement in this issue and the events as
(23) described in our summary of the OI report provided
(24) to you previously.
(25) As discussed earlier, due to the

(1) Hitman Nuclear and stayed there until they sold the
(2) company to Westinghouse, and left and worked with
(3) two different consulting companies out on the West
(4) Coast, Tara, which some of you have probably heard
(5) of before, and EDS Nuclear, who now I can't remember
(6) the name of the new company, but they were bought
(7) out a few years back.
(8) Then I decided if I can do it for
(9) somebody, why can't I do it for myself, so I started
(10) my own company, KLM Engineering, on the West Coast,
(11) and we were involved primarily with utilities, some
(12) hazardous waste industry stuff and some robotics.
(13) We developed robotics. We sold that company after
(14) about eight years to Quadrex, and I went with
(15) Quadrex for a year to position them to get into the
(16) decommissioning business, that was my primary
(17) assignment, and then I left Quadrex.
(18) Ike Drake, who is now the chief UCA
(19) officer of TVA, used to work for me at CP&L, so
(20) you've got to watch out for yourself all the time.
(21) He asked me to come to TVA to set up a technical
(22) programs organization and that's what I did. I came
(23) as a Manager of Technical Programs.
(24) I have just a few months left in the
(25) business, I am very close, I've been in the business

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(1) significance of the apparent violation and your
(2) substantial role in the matter, you should provide
(3) an explanation as to why you should be permitted to
(4) engage in NCR-licensed activities in the future.
(5) MR. REYES: Mr. McArthur, following the
(6) agenda, we're going to turn over the meeting to you
(7) to respond.
(8) MR. McARTHUR: I'm going to give you a
(9) little background about myself. My name is Wilson
(10) Cooper McArthur, and I was until recently the RadCon
(11) Chemistry Services Manager of TVA. I had been
(12) placed in another position as a Senior Staff
(13) Manager. I have an MS degree in nuclear engineering
(14) and radiological physics from the University of
(15) North Carolina and North Carolina State, and a Ph.D.
(16) in nuclear engineering and beta protection from
(17) Purdue University.
(18) My first job after leaving Purdue was as
(19) a principal engineer for Carolina Power and Light
(20) Company on the Sharon Harris Project, and later was
(21) engineering manager for the Harris project and for
(22) the South River Project, which was later canceled.
(23) I was there for eight or nine years and left there
(24) to go to work with Hitman Nuclear Development
(25) Corporation as vice-president and general manager of

(1) 40 years, and intend to teach [REDACTED]
(2) [REDACTED]
(3) [REDACTED]
(4) [REDACTED]
(5) [REDACTED]
(6) I've done a lot of work in an
(7) International Atomic Energy Agency. I guess to sum
(8) that up, my career has been either in nuclear
(9) engineering, nuclear safety, and then I've tended in
(10) the last 20 years or so to focus primarily on
(11) radiation safety and chemistry, which has to do with
(12) operations and exposure, people and the public,
(13) workers and the public.
(14) In working with the International Atomic
(15) Energy Agency, I worked for Mexico, Laguna Verdi,
(16) Argentina and some other countries directly through
(17) them on several occasions. I am presently the
(18) president of American Nuclear Society in Chattanooga
(19) and have been for, they just won't let me get out,
(20) so I've been in there for a number of years. And
(21) previous to that, I was president of local chapters
(22) in Indiana and in North Carolina and Health Physics
(23) Society and the American Nuclear Society.
(24) I have over 200 published papers mostly
(25) dealing with radiation safety.

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(1) I will make a declaration to you here
 (2) that I have at no time attempted to treat Gary Fiser
 (3) in any incorrect manner. In fact, if you look at
 (4) the document that you read from a little earlier,
 (5) the fourth paragraph talks about me being a culpable
 (6) party in Gary Fiser's DOL. That's totally
 (7) incorrect. I don't know if you handed that out
 (8) earlier or not, but.

(9) **MR. BURZYNSKI:** Wilson, yes, I did hand
 (10) out the 1993 Department of Labor complaint. I have
 (11) additional copies. I think the point we wanted to
 (12) make here is, as Wilson did, that it mentions him as
 (13) a culpable party in some way. He indeed is
 (14) mentioned in the 1993 complaint. All I can do is
 (15) pass these out. What I have done is highlighted
 (16) sections where his name is mentioned in the 1993 DOL
 (17) complaint, and you can briefly review those.

(18) The point we would like to make is that
 (19) actually Dr. McArthur was viewed by Gary Fiser as an
 (20) ally of his and came to his defense in that time
 (21) frame. It only wasn't until 1996 that Gary Fiser
 (22) went back and recharacterized Wilson McArthur as
 (23) somehow having some sort of animosity toward him.
 (24) But in the original 1993 complaint Dr. McArthur is
 (25) actually described as someone who came to his

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(1) defense when he was upset and was happy with Gary
 (2) Fiser and went out of his way to try to retain him
 (3) in the organization.

(4) **MR. McARTHUR:** I indicated I was planning
 (5) on working for another few months and then to leave
 (6) and then teach. However, I recognize the
 (7) seriousness of these allegations. If I leave TVA
 (8) and go to work for [REDACTED], I certainly would
 (9) have a reactor material license and that would
 (10) prevent me from — so I do recognize how serious
 (11) this is.

(12) My understanding is that we're here with
 (13) the same goal, to come to a common understanding of
 (14) facts, and there may be an accusation, but that's
 (15) the primary reason we're here.

(16) Since I've not had the opportunity to
 (17) review your information, I'm somewhat at a
 (18) disadvantage, so what I will tell you is everything
 (19) I feel and know from my viewpoint, and I'm sure
 (20) you'll have questions that we'll have to address.
 (21) I'll do my best to give you the facts as I can give
 (22) them to you.

(23) I was going to read this, but I don't
 (24) think we need to do that since you have already gone
 (25) through the charge. The words just surprise me,

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(1) contrived and disparate treatment and misleading
 (2) just don't make any sense to me. Okay? I feel I've
 (3) served this industry very well. I'm known at TVA as
 (4) the soft puffy guy, the guy that likes everybody.

(5) And one of the first things I wanted to
 (6) address is that there is prevalent throughout all
 (7) the things I've seen in this regard is something to
 (8) say, reporting of two individuals, Gary Fiser and
 (9) [REDACTED] indicating that I was very unfair to
 (10) Gary and that I periodically in meetings, staff
 (11) meetings and other things, in some way put him down
 (12) in some way. I can tell you categorically right
 (13) here that never happened.

(14) And to provide you with some indication
 (15) that others believe that too, I asked all of my
 (16) direct reports to address that issue. This is after
 (17) I changed positions, so I didn't have any influence
 (18) over them. But they all provided their statements
 (19) on behalf of me. This is everybody that reported to
 (20) me, so you would think if they are in staff meetings
 (21) or other meetings, somewhere along the line somebody
 (22) would detect me saying something negative about Gary
 (23) Fiser. So I'll just pass these out. You might just
 (24) read the first one or something just to get a flavor
 (25) of the people that work for me.

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(1) **MR. REYES:** We'll read them at a later
 (2) time.

(3) **MR. McARTHUR:** You'll find that no one
 (4) says in this information that I ever — not only
 (5) Gary Fiser, but not anybody. It's just my style, I
 (6) don't do that kind of thing. I care about the
 (7) people that work for me and I always have in every
 (8) position I've ever had before. I've always set the
 (9) standards for my employees and have welcomed them to
 (10) come with any problems or questions they might
 (11) have. So you know, it is one thing I would like you
 (12) to hear from me.

(13) So I guess in summary, I always liked
 (14) Gary. I don't remember ever having any kind of
 (15) encounter. He, you know, was a nice guy, a hard
 (16) worker. He was a primary water chemist person. I
 (17) gave you the letters, and there's no nobody can say
 (18) that I didn't like Gary. I don't know of any fact.
 (19) I haven't seen yours, so I don't know what you've
 (20) got in there.

(21) I'll further talk with [REDACTED] who
 (22) was the other person that apparently in a DOL
 (23) complaint and in his deposition made the comment
 (24) that I didn't like Gary Fiser. I subsequently met
 (25) with him prior to coming here and discussed this

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(1) with him. He completely denied it. I don't know
(2) what he said in his deposition, but he told me, he
(3) says, I always thought you were Gary's ally. I
(4) never felt like you were his enemy. So I don't know
(5) if there's a disparity there, I just know that's
(6) what he told me, and which I believe is true.

(7) I guess another thing is we all
(8) conspired. We, TVA personnel, conspired to assure
(9) that Gary did not get a job. That doesn't make any
(10) sense to me. It's simply not true. I know that I
(11) was not involved and my boss, Tom McGrath, HR, the
(12) Selection Review Board, we never talked about
(13) individuals and who was qualified to hold those
(14) positions. It just never happened. I never heard
(15) any statement from anybody, the Selection Review
(16) Board, Tom McGrath, my boss, or anybody saying you
(17) must select these guys and not select those guys.
(18) That never happened. There are no facts to support
(19) that. I was actually a Selection Review Board
(20) member on one of Gary Fiser's jobs previously and
(21) selected him, so.

(22) But I think the primary thing that
(23) everybody seems to be concerned about, and again I
(24) haven't read your files, is the Selection Review
(25) Board. I'll briefly review what took place and then

(1) the best thing to do was try and get ahold of the
(2) assistant plant manager of Watts Bar, and he was
(3) unavailable. So then we made the decision to select
(4) Rick Rogers, who knew Gary and Sam, and he had a
(5) very high opinion of Gary. He made it clear it me,
(6) "I know Gary, he's a good guy. I like him." And
(7) along here is the chemistry manager, so he was
(8) placed on the Review Board.

(9) I was not a voting member, neither was
(10) Tom McGrath as far as the Selection Review Board was
(11) concerned, and we went through the process. I
(12) observed the process. I understood from HR that if
(13) something about the review process wasn't like it
(14) should be, that I had the right to intervene. That
(15) did not take place. The Review Board members had
(16) selected the questions and they rotated them to ask
(17) the same question of each person.

(18) I think you've seen a chart that shows
(19) the results. Just basically the summary is that
(20) they ranked them the same, all three people did, and
(21) that was it. As far as I was concerned, I had no
(22) reason to disagree with that board.

(23) I know in the Department of Labor
(24) complaints they make a comment that the Review Board
(25) was a sham. I followed the process. I did exactly

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(1) give you my conclusions from that.
(2) We had an reorganization in 1996 and all
(3) the position in my organization, the RadCon
(4) Chemistry organization, were to be advertised. I
(5) was told that very clearly. And so at one of our
(6) RadCon Chemistry Peer Group meetings, we made the
(7) decision as a body that the RadCon Chemistry
(8) Managers in each of these three sites would be the
(9) Selection Review Board members because they were the
(10) primary customer. So we had all three of them
(11) arrange for that meeting.

(12) Prior to that meeting I had put together
(13) some 16 or 17 questions, technical and management in
(14) nature. This was a technical position, we had some
(15) questions in both areas, and just prior to the
(16) Selection Board meeting, we had the Peer Group
(17) meeting in the morning, in the afternoon was the
(18) only chance to get these three guys together. We
(19) had gotten some word from Jack Cox in Watts Bar that
(20) he could not attend. He could attend the morning
(21) meeting, but he couldn't attend the afternoon
(22) meeting, he had some kind of a schedule problem.

(23) I went immediately — which is a process
(24) of TVA — to my HR representative and to Tom
(25) McGrath, my supervisor, and he said — we decided

(1) what was supposed to be done. We were honest. I
(2) did not in any way indicate to any of the Review
(3) Board members to vote one way or the other. They
(4) did not communicate with each other during the
(5) process. They were able to communicate their
(6) results, and that's all they did, and then sum it up
(7) at the end.

(8) So I have no — I have to disagree with
(9) the conclusion that you come to, that something took
(10) place that wasn't appropriate here. Under the
(11) circumstances.

(12) MR. BURZYNSKI: You had wanted to make a
(13) point of how the 17 questions came about.

(14) MR. McARTHUR: Well, actually I've got
(15) some input from the chemistry manager, Ron Grover,
(16) he gave me a few questions, but most of the
(17) questions were put together by me, and they were
(18) oriented toward the chemistry person in that
(19) particular position. So I developed those and then
(20) they reviewed, the Selection Review Board reviewed
(21) those questions and selected nine and added an
(22) additional one, which I agreed with, so there were
(23) about ten questions I believe on the, I don't
(24) remember exactly, but eight, okay. And so that's
(25) how that decision was made.

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(1) So I have no way of concluding anything
(2) other than we did this in TVA's process, appropriate
(3) manner. Everything that I did involved HR and my
(4) boss at every point in time there was any question.
(5) There's one other item at one point in
(6) time that Jack Cox has indicated that we didn't need
(7) a review board, that I was a Corporate RadCon
(8) Chemistry Manager, I should just be able to pick the
(9) two best and that he would vote for Gary Fiser
(10) anyway, you need to be aware of that. HR felt that
(11) might — and we didn't have to come to that, because
(12) he couldn't make it to the meeting, but that that
(13) might just disqualify him. None of the other Review
(14) Board members ever made a comment in regards to who
(15) they favored, they didn't favor, and I never had any
(16) discussion like that with them.
(17) **MR. BOYLES:** When you did raise the issue
(18) to us of Mr. Cox not being available, we did
(19) recommend to Mr. McGrath and Dr. Wilson that they
(20) fill that third position on the Selection Board.
(21) They agreed with that and Rick Robbins is the one
(22) they selected, because they felt he was fully
(23) qualified because of his site experience and
(24) technical background. So from that standpoint they
(25) did touch base with us, and we did give them input,

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(1) we wanted a third member if at all possible, and
(2) they took our recommendation there.
(3) **MR. DAMBLY:** Dr. McArthur, before you
(4) leave this, after the Review Board that you watched
(5) but didn't participate in when they did the ranking,
(6) what in addition to that, if anything, did you
(7) consider in reaching your decisions?
(8) **MR. McARTHUR:** Well, they are all
(9) qualified. From my standpoint, HR provided me with
(10) a comparison sheet to make sure that all individuals
(11) met the educational requirements, years of
(12) experience and those kind of things, and that meant
(13) to me these people were qualified to bid for the
(14) job, and so I accepted that information. And the
(15) next part was how they handled themselves for the
(16) Selection Review Board.
(17) **MR. DAMBLY:** Yes, but post that, did you
(18) go back and look at anything or you just took the
(19) Review Board's —
(20) **MR. McARTHUR:** I took the Review Board's.
(21) **MR. STEIN:** Dr. McArthur, you're their
(22) manager. You are the manager that all three of them
(23) report to.
(24) **MR. McARTHUR:** You mean the Review
(25) Board?

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(1) **MR. STEIN:** No, no. Fiser —
(2) **MR. McARTHUR:** Yes.
(3) But at that point in time they reported
(4) to Ron Grover, Gary Fiser was. We were going
(5) through a transition I was selected as RadCon
(6) Chemistry Manager. Gary was reporting to Ron Grover
(7) at that time, who was the Chemistry Manager and I
(8) was the RadCon manager. I wasn't both at that point
(9) in time.
(10) **MR. STEIN:** Had you ever seen their
(11) performance appraisals prior to making the selection
(12) of Mr. Harvey over Mr. Fiser?
(13) **MR. McARTHUR:** I know that I had seen
(14) some. In fact, I had written some for Gary
(15) previously, because when he transferred to Sequoia
(16) downtown, I was the one who wrote his performance
(17) evaluation. And if they were included in the
(18) package, I don't recall that being the case. I knew
(19) them very well because I had worked with all three
(20) for, most of them for ten years.
(21) Okay. I want to review the points about
(22) the selection process, because it seems to be so
(23) important.
(24) The normal process was used and it was
(25) augmented since DOL complaint filed to ensure

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(1) fairness. And, Ed, you might mention something.
(2) **MR. BOYLES:** We typically after a
(3) selection process occurs don't go to Labor Relations
(4) or to OGC. In this case since we had been advised
(5) by Mr. Fiser upfront that if we posted the position
(6) that he would file a DOL complaint and then he
(7) subsequently did prior to the Selection Board.
(8) After this Selection Board results came
(9) in, we referred this issue to our Labor Relations
(10) staff, who in turn discussed it with OGC, to make
(11) sure we had followed the process and that everything
(12) was okay at that point in time. So that was an
(13) extra step we took to try to ensure as much fairness
(14) as we possibly could.
(15) **MR. STEIN:** Dr. McArthur, as a selecting
(16) official, you had the final say in this selection of
(17) Harvey over Fiser. Did Mr. McGrath have any
(18) influence in this selection?
(19) **MR. McARTHUR:** None whatsoever.
(20) The SRB, the Selection Review Board, was
(21) made of three qualified members. Neither Tom
(22) McGrath or myself were parties to the selection. I
(23) observed the SRB process, did not evaluate answers
(24) and did not vote, and I did not influence the
(25) Selection Review Board in any way. Mr. Cox removed

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(1) himself due to a schedule conflict. I sought to get
(2) the Watts Bar Assistant Plant Manager to become
(3) involved in and he was unavailable. We then
(4) selected Rick Rogers.

(5) The Selection Review Board scores support
(6) Fiser's nonselection. The same person asked
(7) questions of each candidate. No collaboration on
(8) the scores. And any kind of contrivance here to me
(9) would involve a large number of people; it just
(10) doesn't make any section sense. And Gary had
(11) already filed a second complaint just before all
(12) this took place, and you've seen the display of the
(13) scores which support the selections that we made.

(14) The next issue has to do with Sam Harvey
(15) being preselected. I assume here, and I'm making a
(16) big jump because I haven't seen what you have, but I
(17) know it is true. I know that I never had a
(18) discussion with anybody that was being interviewed.
(19) I have been in this business 40 years and I know and
(20) I have been working for the government for ten years
(21) and I know how strict the rules are, and I knew
(22) beyond any shadow of a doubt that's something you do
(23) not do. So I did not in any way talk with anybody
(24) about "Well, you're going get the job, don't worry,
(25) I'll take care of you." That didn't take place.

(1) process.

(2) **MR. BURZYNSKI:** If I might interject, I
(3) filed a request for the Department of Labor
(4) investigative file. In Sam Harvey's affidavit
(5) you'll note that he says that he tried to interview
(6) and he, in fact, marked it up and gave it back to
(7) them. The copy of the investigative file I got from
(8) the Department of Labor does not include Sam
(9) Harvey's statement in there.

(10) **MR. McARTHUR:** Now the allegation that
(11) Sam Harvey could have been placed in a vacant
(12) Sequoia chemistry position is, you have the wrong
(13) information. There was not a vacant position.
(14) There was no vacant position. I got a call from
(15) Charles Cam, who said would Sam Harvey be able to —
(16) could we transfer him out here? I didn't know if
(17) there was a position or not.

(18) I went to my boss, Tom McGrath, and
(19) passed that information on to him and that was my
(20) total involvement in that situation. But I do know
(21) there was not a vacant position, I found that out
(22) later. It's factually incorrect to say that there
(23) was a position available at Sequoia at that
(24) particular time. I think the record shows that.

(25) The only other issue that I can think of

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(1) There's been that accusation.

(2) The only thing I conclude is that when
(3) Sam Harvey talked to David Voeller, which he said
(4) I'll be here, I'll probably be here, I don't
(5) remember his exact words, Sam explains that in an
(6) affidavit, which I think you've already seen. He
(7) believed that Gary Fiser said he didn't want to work
(8) any longer with TVA, he was going to leave, so
(9) therefore he assumed he was the only probable
(10) candidate for that position. I don't know. I don't
(11) know anything about it, I'm just relating that. But
(12) if somebody jumped to a conclusion, I must have
(13) talked to Sam and said, "You're going to have a
(14) position," and that is absolutely untrue. It is not
(15) true whatsoever, so I deny that. You've seen
(16) Harvey's declaration.

(17) Now one of the strange things is Harvey
(18) was never, Sam Harvey was never interviewed by the
(19) NRC OI. He's one of the main people in this whole
(20) story, but I believe if that had happened, that
(21) question would have never come up, because he was
(22) very clear in his mind as to what took place and
(23) that I did not in any way guarantee him a position.

(24) Sam Harvey also had difficulty with the
(25) DOL investigators. He was very dismayed with their

(1) by going through your summary has to do with me
(2) being selected for the RadCon Chemistry Manager's
(3) position. I was told by Tom McGrath on a continuous
(4) basis that position would be advertised, so I
(5) expected that. I knew I was the best qualified. In
(6) fact, because of that, I went to Tom and I said, I
(7) guess I don't understand, I came here as a Manager
(8) of Technical Programs, which included all these
(9) areas, RadCon, Chemistry, Environmental, RAD Waste,
(10) Laboratories, and previous programs consisted of
(11) Industrial Safety, Fire Protection and Security, I
(12) had those areas too. So I had been in that position
(13) before, plus I had worked in my career in all the
(14) areas. The only other possible person that would
(15) have bid for the job was Chemistry, so I went to
(16) Tom.

(17) Tom didn't say anything to me, but I
(18) understand later that he went to HR and presented
(19) that information, and Ed can explain better what
(20) happened after that.

(21) **MR. BOYLES:** Mr. McGrath approached me
(22) and conveyed Dr. McArthur's concern that in
(23) Dr. McArthur's view, he believed it was his job. He
(24) asked HR to look at that and make a determination.
(25) I asked a Human Resource officer on my staff at the

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(1) time to look at the history and help me in making
(2) that decision. I believe I joined HR in November of
(3) '94 and I wasn't fully aware of the past history.

(4) What we did, we looked at the position
(5) descriptions. The position description of record
(6) for Dr. McArthur was a Technical Programs Manager
(7) position. We did a comparison of that with the new,
(8) with the existing position. Actually in '95 we had
(9) re-created that position and there was an individual
(10) who had been placed there on an acting basis for a
(11) period of time until he retired, and so I compared
(12) those two positions with assistance from my Human
(13) Resource officer, and I made the determination that
(14) Dr. McArthur did have rights to the job. I felt
(15) that he had some valid issues there.

(16) Now, I will point out I did review this
(17) with my supervisor at that time, who was the manager
(18) of HR operations and she reviewed what I had done
(19) and felt that I was following process and that that
(20) was the thing to do, and I will indicate that the
(21) consultant or the HR officer who had assisted me in
(22) that, at some point after I made the decision, did
(23) come to me and talk to me about posting the job,
(24) indicating that there was another individual, and
(25) from that standpoint that we should give this other

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(1) individual an opportunity.

(2) I didn't agree with that assessment. I
(3) felt like we didn't need to focus on either
(4) individual, but on what the job descriptions stated
(5) and that comparison. So while we did discuss it and
(6) TVA's policy on posting, I didn't feel like I had a
(7) vacancy there to post. So again I made the decision
(8) or I reconfirmed the decision that Dr. McArthur had
(9) a right to that position and I subsequently informed
(10) Tom McGrath of that decision.

(11) **MR. McARTHUR:** So you see the only
(12) involvement I had was to discuss with Tom McGrath my
(13) feelings, concerns about it. I didn't expect
(14) anything in particular to happen. I just passed on
(15) my feelings to him.

(16) **MR. STEIN:** If I may ask, what is your
(17) working and social relationship with Tom McGrath.

(18) **MR. McARTHUR:** He was my boss.

(19) **MR. STEIN:** Do you go out socially? Do
(20) you go out?

(21) **MR. McARTHUR:** Never have.

(22) **MR. STEIN:** Over the years you have
(23) you've worked closely together, and can you
(24) relate —

(25) **MR. McARTHUR:** When I first came to TVA,

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(1) he was in a staff position, a technical staff
(2) position, and we worked together on several
(3) projects, and then he became the manager of
(4) Operation Support, in which I was at that point in
(5) time Technical Programs Manager reporting to him.

(6) I don't think other than riding to a
(7) meeting like this and stopping and having a
(8) sandwich, that's about the only social relationship
(9) we've ever had.

(10) But I will tell you he's a straight and
(11) true guy. I enjoyed working with him as much as
(12) I've ever worked with anybody, because he allowed
(13) you to work within your framework. He never told
(14) you what to do. He disagreed with you, but he would
(15) not tell you what to do.

(16) I think that's the major points I wanted
(17) to cover. I'm saddened to be here. This is the
(18) last year of my career and to face an issue like
(19) this. It's amazing, I can't see any facts that
(20) support the conclusions that are drawn by this
(21) investigator at all. Not one. That's what really
(22) bothers me. It's absolutely wrong on a couple of
(23) facts, that I was a culpable party, I was not, in
(24) the first DOL complaint, and there was no vacancy at
(25) Sequoia, it didn't exist, and the fact that Sam

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(1) Harvey was not interviewed to take care of that
(2) particular problem.

(3) How the conclusion was drawn that I have
(4) somehow decided to attack an individual, which is
(5) not my nature anyway, didn't make any sense to me.
(6) It just did not. There was no preselection of Sam
(7) Harvey. I think once you read his testimony and
(8) investigate all the facts, you'll come to that same
(9) conclusion.

(10) The decision about me being put in my
(11) position I had nothing to do with. I just voiced my
(12) opinion, and I do not believe these conclusions that
(13) have been drawn by your Office of Investigation are
(14) consistent with the facts.

(15) **MR. REYES:** Does that conclude your
(16) prepared statement?

(17) **MR. McARTHUR:** Yes.

(18) **MR. REYES:** I'm sure we have some
(19) questions.

(20) **MR. DAMBLY:** I would be interested in,
(21) you worked with Harvey and Fiser and Chandra over
(22) the years?

(23) **MR. McARTHUR:** Yes.

(24) **MR. DAMBLY:** Without this Selection
(25) Review Board results, how would you have ranked

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[1] them.
[2] **MR. McARTHUR:** You want me to tell you
[3] how I would rank those three guys?
[4] Sam Harvey is probably the best PWR
[5] Chemistry person I've ever known in my life. In
[6] fact, we just lost him to — up in the Northeast and
[7] I think it's the biggest loss I've ever suffered.
[8] He just knows the business.
[9] Chandra is an excellent BWR Chemistry
[10] person, somebody who also understands — he's worked
[11] in both BWRs and PWRs.
[12] Gary Fiser's primary strength is in
[13] primary chemistry, fairly weak in secondary
[14] chemistry and weak in management.
[15] My selection would have been the same as
[16] the Review Board, if I was just to say, if I was
[17] just told the two best guys.
[18] **MR. STEIN:** Dr. McArthur, what do you
[19] base rating Sam Harvey so high upon? Is it his
[20] published works?
[21] **MR. McARTHUR:** He is a leading force, he
[22] was a leading force within TVA of any changes to
[23] secondary water chemistry for both sites, Sequoia
[24] and Watts Bar. He was very close to the industry,
[25] very close to EFRE and all the different

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[1] organizations. He knew what was going on and he was
[2] very visionary. In fact, he left me a five-year
[3] plan, that if I was in that position, I would be
[4] working on now, of things to do over the next five
[5] years. He's an extremely intelligent guy and very
[6] well informed. And every time — you know, if a guy
[7] is 90 — a guy told me one time, that guy is only
[8] right 90 percent of the time, I'll take that.
[9] Okay? He was right most of the time.
[10] **MR. BURZYNSKI:** Wilson, everybody may
[11] assume or we may assume that everybody knows why
[12] secondary chemistry is so important to a PWR, but
[13] you might want to elaborate.
[14] **MR. McARTHUR:** It's the generators
[15] primarily, and Sam Harvey was very well versed, in
[16] fact, he worked very close to Dave Getches, who was
[17] on our steam generator guru. Every time we had an
[18] outage, Sam would generally go to the site and work
[19] for Dave Getches as a steam generator chemistry
[20] expert. So a very, very high ranking from my
[21] standpoint as a secondary and primary, but much
[22] stronger in secondary work.
[23] **MR. DAMBLY:** Did he and Mr. Fiser have
[24] basically identical jobs, just with different — for
[25] different plants, supporting different plants before

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[1] this?
[2] **MR. McARTHUR:** They both had the same
[3] PD. Sam spent most of his time at Sequoia. He did
[4] spend of his time at Watts Bar. Gary spent just
[5] about all of his time at Watts Bar. I had one
[6] assigned to each site. They were two PWR guys.
[7] Chandra was the BWR guy and he was assigned to
[8] Browns Ferry.
[9] **MR. DAMBLY:** Was Grover their immediate
[10] supervisor?
[11] **MR. McARTHUR:** At that point, just before
[12] this reorganization took place, he was their
[13] supervisor.
[14] **MR. DAMBLY:** The thing that and I'm sure
[15] you are aware of the issue with the appraisals, but
[16] their supervisor had them rated with Fiser
[17] considerably higher over the past couple ratings
[18] than Harvey.
[19] **MR. McARTHUR:** There was a lot of
[20] conflict in the Chemistry group. Sam Harvey always
[21] felt that Chandra and Gary received higher
[22] recognition than him. I can't comment on that. I
[23] wasn't that much involved at that point in time.
[24] So from Sam Harvey's standpoint, that
[25] would be a true statement, he would expect that. I

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[1] can't really say because I'm not Ron Grover.
[2] **MR. BOYLES:** If I can interject, we did
[3] have a concern expressed by Sam Harvey at one point
[4] in time related to the development of the new
[5] position descriptions, and we eventually met with
[6] Ron Grover, who is the supervisor, and were able to
[7] resolve his concerns, but he did express some
[8] concerns of his about how the jobs were being
[9] written.
[10] His concern was that it was to preclude
[11] or not give him an equal chance. We were able to
[12] resolve that between Sam Harvey and his supervisor,
[13] though.
[14] **MR. REYES:** I have here a question about
[15] the secondary chemistry, if my memory is right,
[16] Watts Bar was not licensed until 1996, so the scope
[17] of the activities were vastly different at Sequoia
[18] than at Watts Bar.
[19] **MR. McARTHUR:** That's true.
[20] **MR. REYES:** At Watts Bar it was wet
[21] layup, period, and Sequoia had been running since
[22] 1981. So I'm just trying to understand, you said
[23] Mr. Fiser had about the same job at Watts Bar as
[24] Mr. Harvey at Sequoia, but knowing the history of
[25] the stations, one had more work than the other, not

(1) only in number of reactors and generators, but just
 (2) the way — the plant had not run.
 (3) **MR. McARTHUR:** You'll recall that Sam
 (4) Harvey was very much involved with Watts Bar along
 (5) with Gary Fiser. He was very well trusted by the
 (6) staff there. In fact, I think they liked both Gary
 (7) and Sam. I didn't see any disparity there. So if
 (8) there were particular things that Sam had a better
 (9) feeling for, he would interject himself and become
 (10) involved, so he was very much involved.
 (11) And, of course, Sequoia was a running
 (12) plant. You know, as I said, he spent some of his
 (13) time there. In fact, even Gary came down to Sequoia
 (14) on occasion with some primary water problems. I
 (15) didn't see that there were boundaries that were put
 (16) up, they could communicate back and forth and help
 (17) each other. That was the whole idea is to be able
 (18) to assist whoever needed help.
 (19) **MR. STEIN:** Just to continue Mr. Dambly's
 (20) line of questioning. If you look at the
 (21) individuals, their performance appraisals, their
 (22) educational backgrounds, it would seem that
 (23) Mr. Fiser was more qualified. And from what I'm
 (24) hearing from you, you think so much more highly of
 (25) Mr. Harvey.

(1) **MR. McARTHUR:** I didn't say so much more
 (2) highly. I just saw —
 (3) **MR. STEIN:** Could you please elaborate,
 (4) because if you just look at them from performance
 (5) appraisal and resume' and educational background,
 (6) you would think that Mr. Fiser would have been
 (7) selected.
 (8) **MR. McARTHUR:** Well, Gary rotated
 (9) downtown from Sequoia, he was a Chemistry Manager
 (10) there, and the plant manager had felt that Gary had
 (11) not done a good job in the chemistry area, so he was
 (12) rotated with another individual to go out to
 (13) Sequoia.
 (14) He came downtown as the Manager of
 (15) Chemistry and that was okay with me, I didn't know
 (16) Gary that well, I knew him through the NSRB and a
 (17) few other contacts and that kind of thing, but it
 (18) was obvious after a very short period of time he
 (19) could not manage very well. So I removed him from
 (20) the management position because he just wasn't
 (21) performing.
 (22) **MR. PLISCO:** People management?
 (23) **MR. McARTHUR:** People manager, yeah. So
 (24) I had written appraisals for him on several
 (25) occasions, so I knew the guys very well, their

(1) technical capabilities. Whether Gary had a higher
 (2) degree? I know that Sam had a B.S. in chemistry and
 (3) Chandra has a Ph.D. in chemistry. Gary I think had
 (4) a Master's degree, I don't think it was in
 (5) chemistry, but it was a related area. I looked at
 (6) how they performed.
 (7) **MR. STEIN:** Were you aware of
 (8) [REDACTED]
 (9) **MR. McARTHUR:** I'm not sure what that
 (10) is.
 (11) **MR. STEIN:** [REDACTED]
 (12) **MR. BOYLES:** I think Mr. Stein is
 (13) referring to an issue that came up involving [REDACTED]
 (14) [REDACTED]
 (15) **MR. McARTHUR:** Oh, yes [REDACTED]
 (16) [REDACTED] that point in time, but I was
 (17) involved because we were going to be later making a
 (18) transition. At TVA we [REDACTED]
 (19) [REDACTED]
 (20) [REDACTED]
 (21) [REDACTED] I
 (22) conducted most of that, and involved HR in selecting
 (23) things for him to read, videos for him to watch.
 (24) And quarterly for a year, which is in the
 (25) record, I [REDACTED]

(1) [REDACTED]
 (2) [REDACTED]
 (3) [REDACTED]
 (4) **MR. BOYLES:** Could I also point out, the
 (5) [REDACTED]
 (6) [REDACTED]
 (7) [REDACTED]
 (8) [REDACTED]
 (9) [REDACTED]
 (10) [REDACTED]
 (11) [REDACTED]
 (12) [REDACTED]
 (13) [REDACTED]
 (14) [REDACTED]
 (15) [REDACTED]
 (16) **MR. STEIN:** Please explain why Mr. Fiser
 (17) was a poorer people manager than Mr. Harvey.
 (18) **MR. McARTHUR:** I guess not getting things
 (19) done on time primarily. I'm a great believer in
 (20) setting up a schedule; and if you're not going to
 (21) meet the schedule, come tell me and tell me why.
 (22) Gary did not do that very well.
 (23) A number of his people came to me with
 (24) complaints about unfairness and that kind of thing.
 (25) There were several issues that were indicative of

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(1) the fact that he was not doing his job well.
(2) I didn't think he was really on top of
(3) some technical issues. I was more on top of those
(4) technical issues than he was and I do a lot of
(5) reading and things, but certainly you'd expect your
(6) chemistry manager to be on top of industry
(7) problems. There were some problems he just was not
(8) very aware of, so. Of course, that's a technical
(9) issue. But his management style was very laid back,
(10) and again, which is not a problem, but just didn't
(11) get the job done.

(12) MR. BOYLES: In our business we have a
(13) lot of very excellent technical people. Many of
(14) those same people don't make excellent managers,
(15) though.

(16) MR. DAMBLY: Dr. McArthur, could you tell
(17) us — it had been brought up this morning and you
(18) brought it up as well — what was your involvement
(19) in '94 when Mr. Fiser went from, I guess, Chemistry
(20) Program Manager to Chemistry Environmental Program
(21) Manager, had to compete for it? Were you in his
(22) chain, were you on the panel or did you make the
(23) selection?

(24) MR. McARTHUR: I believe that's one where
(25) I made a selection and selected him as one of the

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(1) people, but I believe the record will show that I
(2) was very upset when I found that Gary was not going
(3) to be available to fill a position and actually
(4) complained about it to management because they had
(5) decided to eliminate a position.

(6) I had worked up a way which I thought I
(7) could keep Gary in a position and then that position
(8) went away, and that issue for the first complaint
(9) was primarily a Sequoia issue. I was very little
(10) involved; in fact, didn't even know about it for a
(11) long period of time.

(12) MR. DAMBLY: Now the first issue, I guess
(13) the first complaint was in '93 and there was a
(14) settlement where he got this Chemistry Program
(15) Manager job.

(16) MR. McARTHUR: Right.

(17) MR. DAMBLY: And then in '94 that was
(18) eliminated and the new position of Chemistry and
(19) Environmental Program that he had to compete for.

(20) MR. McARTHUR: That's correct.

(21) MR. DAMBLY: What was your involvement in
(22) that competition?

(23) MR. McARTHUR: I'm trying to remember,
(24) but I'm not really sure. I know I was involved in
(25) one of the selection boards in which Gary was

(1) selected for a position.

(2) MR. DAMBLY: I thought this morning
(3) Mr. McGrath indicated you were actually the
(4) Selecting Official for that job.

(5) MR. McARTHUR: No. I don't remember that
(6) being the case.

(7) MR. DAMBLY: Were you in Mr. Fiser's
(8) chain of command in 1994 when he had the Chemistry
(9) Program and Environmental Program?

(10) MR. McARTHUR: My recollection is, and I
(11) may be wrong about this, that he was reporting to
(12) Ron Grover. I don't know if you guys can help me.

(13) MR. BOYLES: I was going to say about
(14) that time didn't you go to the RadCon —

(15) MR. McARTHUR: Yeah, I was a RadCon
(16) manager.

(17) MR. BOYLES: So he would have been —
(18) again, I'm not sure of the exact time frame, so he
(19) would have probably been reporting to Ron Grover at
(20) that time.

(21) MR. McARTHUR: Yes, sir, that's my
(22) recollection.

(23) MR. DAMBLY: Mr. McArthur, you were on
(24) the Selection Board.

(25) MR. McARTHUR: Yes. I believe that's

(1) correct.

(2) MR. DAMBLY: Do you have any recollection
(3) of how many people you interviewed or whatever for
(4) that?

(5) MR. McARTHUR: No. I do know the last
(6) one, when we selected Chandra and Sam, there were
(7) three people that applied for that position and we
(8) were to select two of the three.

(9) MS. BOLAND: A minute ago I thought I
(10) understood you to say something to the effect of,
(11) and I'm not sure what period of time we were talking
(12) about, about losing Mr. Fiser and that you had
(13) talked to someone about that. What period of time
(14) was that? You may have misunderstood —

(15) MR. MARQUAND: He was referring to the
(16) circumstances giving rise to his first Department of
(17) Labor complaint, when Gary was RIF'd; and then as
(18) you see in the highlighted version of the complaint,
(19) it says that Mr. McArthur was dismayed about him
(20) leaving.

(21) MS. BOLAND: Okay, so we're talking 1993
(22) time frame?

(23) MR. MARQUAND: Yes.

(24) MR. McNULTY: Just one question, because
(25) I know you said that you hold no enmity toward

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[1] Mr. Fiser. Were you ever aware of him tape
[2] recording anybody?
[3] **MR. McARTHUR:** Yes.
[4] **MR. McNULTY:** Can you tell me about
[5] that?
[6] **MR. McARTHUR:** All I know is, apparently
[7] it went over a long period of time and I was advised
[8] that he was taping our conversations, and that was
[9] the first I had heard about that.
[10] After that I was just aware that he was
[11] doing that and I thought it was a very
[12] unprofessional and sad situation to do that kind of
[13] thing, but I was aware.
[14] He would make it a point, which was
[15] unusual for him, to come in at lunchtime while I was
[16] eating a sandwich or something and he would ask a
[17] question like, "What do you think of Tom McGrath?"
[18] or, "What do you think of TVA?" And then I would
[19] become aware in my mind he was trying to get me to
[20] say something negative, I don't know why. I had no
[21] idea why he was doing that, because as I said, I
[22] thought it was very unprofessional. But that didn't
[23] change my opinion of his technical capability. I
[24] didn't like what was happening, but that's all I can
[25] tell you about that.

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[1] **MR. STEIN:** I have two questions.
[2] **MR. McNULTY:** Can I follow up?
[3] **MR. STEIN:** Sure.
[4] **MR. McNULTY:** Do you recall when that
[5] occurred, the tapings?
[6] **MR. McARTHUR:** Do I recall one?
[7] **MR. McNULTY:** When?
[8] **MR. McARTHUR:** Oh. No, I don't know the
[9] exact time. I know that I've heard the tape, some
[10] of the tapes. I didn't hear them all.
[11] **MR. McNULTY:** Have you seen any
[12] transcripts of the tapes?
[13] **MR. McARTHUR:** We did see some
[14] transcripts. It was very hard to understand and the
[15] transcriptions were not — nothing came out of any
[16] particular interest, from what I recall. I didn't
[17] hear all of them, but I heard a number of them and
[18] read some transcripts.
[19] **MR. McNULTY:** Did you testify in any
[20] proceedings for TVA in regards to [REDACTED]
[21] **MR. McARTHUR:** Yes.
[22] **MR. McNULTY:** Did you review tapes of
[23] transcripts in preparation for that testimony?
[24] **MR. McARTHUR:** I don't think so. Not
[25] that I recall. I didn't know anybody was taping

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[1] during that period of time.
[2] **MR. STEIN:** When you spoke with Mr. Corey
[3] and Mr. Kent about being on the Selection Panel,
[4] both indicated that they had a few weeks' notice in
[5] preparation for the panel.
[6] When you spoke to Mr. Cox about being on
[7] the panel, how much time do you remember?
[8] **MR. McARTHUR:** It was probably the RadCon
[9] Chemistry Peer Group meeting before, the month
[10] before, when we made the decision that — we made
[11] it, it wasn't my decision, it was the decision of
[12] the group that they would be the members and Cox
[13] indicated — we scheduled in conjunction with the
[14] next RadCon Chemistry meeting so we would have all
[15] the guys there. It was very difficult to get these
[16] three or four gentlemen together for anything.
[17] **MR. STEIN:** So Mr. Cox had about the same
[18] amount of time as Mr. Kent and Mr. Corey?
[19] **MR. McARTHUR:** Sure.
[20] **MR. STEIN:** I have another question and
[21] it has to do with Mr. McGrath. Mr. McGrath's input
[22] into — you said you were the Selecting Official?
[23] **MR. McARTHUR:** That's correct.
[24] **MR. STEIN:** You were completely
[25] independent of any input from Mr. McGrath or anybody

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[1] else from TVA?
[2] **MR. McARTHUR:** That is correct. In fact,
[3] I went to Tom and said these are the people that we
[4] have selected. And if you knew Tom McGrath, you'd
[5] know that he trusts me. I felt that, a very strong
[6] sense of trust. He never said anything.
[7] **MR. STEIN:** Let's take a step back for a
[8] second. Can you explain to us why this was
[9] necessary?
[10] **MR. McARTHUR:** Like what?
[11] **MR. STEIN:** To take three managers and
[12] then to create two positions for those three
[13] managers? You know, budgetary —
[14] **MR. McARTHUR:** Well, we, TVA —
[15] **MR. STEIN:** Because we had been going
[16] along fine until Mr. McGrath.
[17] **MR. McARTHUR:** We're in a competitive
[18] business. I just got through last week spending
[19] three weeks in my new staff position of evaluating
[20] RadCon and Chemistry again. I went to all the
[21] sites, dealt with all the people and said, "What is
[22] the value of Corporate, is it a value add or not?"
[23] So we do this periodically and this is
[24] reorganization, which I think in our industry we are
[25] competitive. We're trying to, you know, to look at

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(1) efficiency, look at costs and those kind of things.
(2) And a decision was made by Tom, along with HR, that
(3) they would combine the RadCon and Chemistry Manager
(4) position, all the other positions were to be
(5) advertised.

(6) And I was not surprised at all. Since
(7) I've been with TVA, I've watched my organization go
(8) down from about 60 people to probably on the order
(9) of 20 something. So there's a lot of people because
(10) of reorganizations and things like that, and we're
(11) still getting the job done, so I can't say that
(12) management was wrong. I have to say they must have
(13) had more insight than maybe I did. I always hated
(14) it when people had to leave.

(15) MR. STEIN: But the decision to
(16) reorganize was Ron Grover's?

(17) MR. McARTHUR: We were involved. Ron
(18) Grover and myself were very heavily involved with
(19) it, but certain decisions he made. He made the
(20) decision about combining RadCon and Chemistry, which
(21) made sense. He didn't tell us how to select
(22) people. He did not tell us anything other than get
(23) it done and we got to do it on a timely basis.

(24) MR. REYES: Is that it?

(25) MS. BOLAND: I have a question. With

(1) way I felt. Now that's no fact at all, that's just
(2) the way I felt.

(3) MS. BOLAND: Did Mr. McGrath at all
(4) discuss with you or provide you any guidance
(5) associated with the prior DOL complaints or the
(6) current DOL complaints or the threat of DOL?

(7) MR. McARTHUR: I do not recall having any
(8) conversation with him. He knew I'd be a fair
(9) person, so I don't think he had a problem with that.

(10) MS. BOLAND: So you all didn't discuss
(11) that at all?

(12) MR. McARTHUR: No.

(13) MR. STEIN: When Mr. Cox couldn't be on
(14) the panel, was there any discussion of Mr. Voeller
(15) replacing him?

(16) MR. McARTHUR: I wouldn't have, because I
(17) was looking— he's a chemistry guy. I was looking
(18) for the big picture guy, the guy that knew RadCon
(19) Chemistry, Environmental; and the RadCon Chemistry
(20) Managers fit that bill and even Rick Rogers fit that
(21) bill. I was not looking for a chemistry and a
(22) RadCon and a RAD Waste guy, I was looking for the
(23) big picture guy.

(24) MR. BURZYNSKI: In fact, you guys were
(25) interviewing for five positions.

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(1) respect to the Review Board meeting, I guess as we
(2) understood it, you sat in on that, but were not a
(3) participant?

(4) MR. McARTHUR: That's correct.

(5) MS. BOLAND: Do you recall any
(6) discussions by any of the three members of the board
(7) regarding Mr. Fiser's potential filing of a DOL
(8) complaint or his prior DOL activities?

(9) MR. McARTHUR: Not in the Review Board.
(10) Nothing at all took place during the Review Board.

(11) MS. BOLAND: Prior to the Review Board,
(12) did you hear anything from Mr. Kent or Mr. Corey.

(13) MR. McARTHUR: We were in the hallway
(14) after a RadCon Chemistry meeting and Charles Kent
(15) made the comment, "Are you guys aware of Gary
(16) Fiser's DOL complaint?" and I said, "That's not for
(17) discussion here."

(18) I didn't even know anything about it, but
(19) I knew that was improper, and at least I felt like
(20) it was something we shouldn't discuss. And that was
(21) the end of it.

(22) I felt like he was saying — and this is
(23) just gut feeling, okay? He was saying that we need
(24) to be extra especially careful during this
(25) evaluation because of that complaint. That was the

(1) MR. McARTHUR: Right. We were
(2) interviewing for all the Rad Waste, Environmental
(3) and RadCon and Chemistry Managers in the same
(4) afternoon.

(5) MR. DAMBLY: Just one follow-up question
(6) to something I asked earlier. You may have answered
(7) it, I just wanted to make sure it is clear.

(8) When you were on the Selection Review
(9) Board, panel, whatever, back in '94, did you
(10) recommend that Mr. Fiser get that position?

(11) MR. McARTHUR: Yes, sir.

(12) MR. DAMBLY: That was your
(13) recommendation, okay.

(14) MR. McARTHUR: Yes, sir.

(15) MR. REYES: Is there something else you
(16) want to say that we haven't asked you? I mean is
(17) there something now, that you have been here now for
(18) a little bit over an hour, is there something that
(19) you want to do after your remarks and recollection.

(20) MR. McARTHUR: The only thing I would
(21) say, and I say the same thing again I'm sure, is I
(22) do not see any fact here. The summary letter refers
(23) to facts; I haven't seen those. I have responded to
(24) you as honestly and as openly as I can. I do not
(25) believe there is one shred of evidence that says

[1] that I discriminated against Gary Fiser in any way.
 [2] And my people, if you read those letters, will tell
 [3] you that's just not the kind of person that I am.
 [4] **MR. REYES:** We're going to follow the
 [5] proposed agenda we gave you, so I think we're to the
 [6] point where we're going to take a small break and
 [7] are going to ask you to stay here or go to the
 [8] facilities. We just want to caucus and make sure
 [9] before we let the group leave we ask you any
 [10] questions.
 [11] **MR. DAMBLY:** Are you all going to provide
 [12] a Sam Harvey affidavit?
 [13] **MR. VIGLIUCCI:** We did.
 [14] **MR. REYES:** We're going to go off the
 [15] record and take a break.
 [16] (A recess was taken.)
 [17] **MR. REYES:** In closing the Predecisional
 [18] Enforcement Conference, I want to remind you of two
 [19] things. First, the apparent violations discussed at
 [20] this Predecisional Enforcement Conference is subject
 [21] to further review and may be subject to change prior
 [22] to any resulting enforcement action.
 [23] And second, the statement of views and
 [24] expressions of opinion made by NRC employees at this
 [25] Predecisional Enforcement Conference are not

[1] intended to represent final agency determinations.
 [2] Now since we have TVA representatives
 [3] here, I need to ask you the following question:
 [4] Given the presence of TVA at the conference, would
 [5] you like to offer — we'd like to offer you the
 [6] opportunity to meet with the members of the NRC
 [7] privately. Would you like to do so?
 [8] **THE WITNESS:** I think I've told you
 [9] everything, unless you have some question yourself,
 [10] so.
 [11] **MR. REYES:** No. I just want to give you
 [12] the opportunity. Thank you. We're going to close
 [13] the conference.
 [14] (Conference concluded at 2:20 p.m.)
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 [2]
 [3] **CERTIFICATE**
 [4]
 [5] **STATE OF GEORGIA:**
 [6] **COUNTY OF FULTON:**
 [7] I hereby certify that the foregoing
 [8] transcript was taken down, as stated in
 [9] the caption, and the questions and answers
 [10] thereto were reduced to typewriting under
 [11] my direction; that the foregoing pages 1
 [12] through 56 represent a true, complete, and
 [13] correct transcript of the evidence given
 [14] upon said hearing, and I further certify
 [15] that I am not of kin or counsel to the
 [16] parties in the case; am not in the regular
 [17] employ of counsel for any of said parties;
 [18] nor am I in anywise interested in the result
 [19] of said case.
 [20] This, the 2nd day of December, 1999.
 [21]
 [22] **COLLEEN B. SEIDL, RPR, CCR-B-1113**
 [23] My commission expires on the
 [24] 7th day of October, 2002.
 [25]

[1]
[2]
[3] CLOSED PREDECISIONAL ENFORCEMENT CONFERENCE
[4]
[5] RE: GARY FISER
[6]
[7] THOMAS McGRATH
[8]
[9]
[10]
[11] November 22, 1999
[12] 10:05 a.m.
[13]
[14]
[15]
[16]
[17] Nuclear Regulatory Commission
Atlanta Federal Center
[18] Suite 23T-85
61 Forsyth Street, S.W.
[19] Atlanta, Georgia
[20]
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Office for TVAM
[19]
[20]
[21]
[22]
[23]
[24]
[25]

(1) **MR. REYES:** Good morning. My name is
 (2) Luis Reyes, I'm the Regional Administrator for the
 (3) Nuclear Regulatory Commission's Region II office.
 (4) This morning we will conduct a Predecisional
 (5) Enforcement Conference between the NRC and
 (6) Mr. Thomas McGrath, which is closed to public
 (7) observation and which will be transcribed.
 (8) This subject of the conference is an
 (9) apparent violation of the Commission's regulations
 (10) regarding deliberate misconduct and employee
 (11) protection. Specifically, at issue is your
 (12) involvement in an apparent discriminatory employment
 (13) decision regarding Mr. Gary L. Fiser, a former TVA
 (14) employee.
 (15) The agenda for the predecisional
 (16) enforcement conference is shown in the viewgraph and
 (17) if you need a copy of that, we can provide you with
 (18) one.
 (19) Following my brief opening remarks,
 (20) Ms. Anne Boland, to my right, the Region II
 (21) Enforcement Officer, will discuss the Agency's
 (22) enforcement policy. Mr. Loren Plisco, to my left,
 (23) who is Director of the Division of Reactor Projects,
 (24) will then discuss the apparent violation and the
 (25) NRC's perspective on the issue. You will then be

(1) given an opportunity to respond to the apparent
 (2) violation. In this regard, I wish to reiterate to
 (3) you that the decision to hold this conference does
 (4) not mean that the NRC has determined that a
 (5) violation has occurred or that enforcement action
 (6) will be taken. This conference is an important step
 (7) in arriving at that decision.
 (8) Following your presentation, I plan to
 (9) take about a ten-minute break so that the NRC can
 (10) briefly review what it has heard and determine if we
 (11) have any follow-up questions, and we physically will
 (12) leave the room to take that break.
 (13) Lastly, I will provide some concluding
 (14) remarks.
 (15) At this point I would like to have the
 (16) NRC introduce themselves and then ask you to
 (17) introduce your participants.
 (18) **MS. BOLAND:** I'm Anne Boland, the Region
 (19) 2 Enforcement Officer.
 (20) **MR. DAMBLY:** Dennis Dambly, Assistant
 (21) General Counsel for Materials Litigation and
 (22) Enforcement.
 (23) **MR. REYES:** Luis Reyes, I'm the Regional
 (24) Administrator for the NRC office in Atlanta.
 (25) **MR. PLISCO:** Lawrence Plisco, Director of

(1) the Division of Reactor Projects, Region 2.
 (2) **MR. STEIN:** Michael Stein, Enforcement
 (3) Specialist in the NRC.
 (4) **MR. McNULTY:** William McNulty, I'm a
 (5) Field Office Director for the Office of
 (6) Investigations.
 (7) **MR. McCREE:** Victor McCree, I'm the
 (8) Deputy Director for Reactor Safety in Region II.
 (9) **MS. EVANS:** Carolyn Evans, Regional
 (10) Counsel.
 (11) **MS. EUCHNER:** Jennifer Euchner, attorney,
 (12) OGC.
 (13) **MR. SPARKS:** Scott Sparks, Senior
 (14) Enforcement Specialist, Region 2.
 (15) **MR. VIGLIUCCI:** Mr. McGrath, my name is
 (16) Ed Vigliucci, Senior Licensing Counsel for Tennessee
 (17) Valley Authority.
 (18) **MR. MARQUAND:** I'm Brent MarQuand. I'm
 (19) Senior Litigation Attorney for the Tennessee Valley
 (20) Authority.
 (21) **MR. McGRATH:** I'm Tom McGrath. A few
 (22) months ago I left the Nuclear Power Program. I was
 (23) the portfolio manager in the power training
 (24) organization.
 (25) **MR. BOYLES:** I'm Ed Boyles. I manage the

(1) Corporate Human Resource Office for TVAM.
 (2) **MR. REYES:** Mr. McGrath, are the
 (3) attendees, other than yourself, here at your
 (4) request?
 (5) **MR. McGRATH:** Yes, they are.
 (6) **MR. REYES:** Do you have any objections to
 (7) representatives of the Tennessee Valley Authority
 (8) being present at this conference?
 (9) **MR. McGRATH:** I have no objection
 (10) whatsoever.
 (11) **MR. REYES:** Also, I would like to state
 (12) that this is a conference between Mr. McGrath and
 (13) the NRC and although counsel is present, we will be
 (14) directing the questions to Mr. McGrath and, of
 (15) course, he can pass the question to somebody else,
 (16) but we'll be asking you the questions.
 (17) **MR. McGRATH:** I understand.
 (18) **MR. REYES:** It's your choice whether you
 (19) want to answer them yourself or turn them over to
 (20) one of your representatives.
 (21) We can go on and continue with the
 (22) agenda.
 (23) **MS. BOLAND:** I would like to just take a
 (24) few moments to go through the enforcement policy,
 (25) which I believe we provided you a copy of attached

(1) to some of our correspondence to you. It has been
(2) recently reissued November 9th, 1999, so if anyone
(3) does need a copy of it, we can make copies available
(4) to you.

(5) As Mr. Reyes has indicated, we're here
(6) today because of your apparent involvement in an
(7) apparent violation of NRC requirements. As the
(8) former manager of Operations Support, you were
(9) responsible for assuring that NRC requirements were
(10) followed. Based on our review of the OI
(11) investigation, it appears that you may not have
(12) adhered to these requirements and, more importantly,
(13) your actions may have been deliberate.

(14) The purpose of this Predecisional
(15) Enforcement Conference today is to provide you the
(16) opportunity to address the apparent violation which
(17) Mr. Plisco will go through in more detail and we
(18) communicated to you in our September 20th, 1999
(19) letter.

(20) This conference is essentially the last
(21) step of our enforcement process before the staff
(22) makes an initial enforcement decision. Our purpose
(23) here is not to negotiate a sanction. We want to
(24) hear your views on the facts and circumstances
(25) surrounding the decision-making regarding Mr. Fiser,

(1) the circumstances surrounding the apparent
(2) violation, whether at the time you believed that
(3) your actions were appropriate, and whether now after
(4) having substantial time to consider those actions,
(5) whether your views have changed in that regard and
(6) if so, why. And the corrective actions that you
(7) have personally taken or plan to take to prevent
(8) recurrence if you are involved in NRC activities in
(9) the future.

(10) Based on these discussions as well as
(11) other information, if we conclude that deliberate
(12) violations did in fact occur, the NRC may take
(13) various enforcement sanctions against you. In
(14) accordance with the NRC enforcement policy and the
(15) commission requirements, enforcement action could
(16) range from a notice of violation to an order
(17) prohibiting your involvement in future NRC
(18) activities should we, in fact, conclude that a
(19) deliberate violation of 50.5 deliberate misconduct
(20) occurred. As I mentioned, if you do need a copy of
(21) any of our regulations 10 CFR 50.5 or the
(22) enforcement policy, we'll be glad to provide them to
(23) you before you depart today.

(24) As Mr. Reyes has indicated, we want to
(25) emphasize to you that we have not, in fact, decided

(1) that a violation occurred or whether it was
(2) deliberate or whether enforcement action will, in
(3) fact, be taken. That's what this enforcement
(4) conference is about, to ensure that we have all
(5) relevant information on which to formulate a final
(6) decision.

(7) During this conference we will have
(8) various questions for you to answer to assist us on
(9) reaching that decision. Should you need any
(10) question clarified or if you have any questions
(11) before this proceeding, please feel free to ask. We
(12) want to emphasize that we expect from you a complete
(13) and accurate response to all our questions. If we
(14) fail to ask a proper question, I'll put that
(15) question in context for you, or you need additional
(16) explanation or you feel that there is additional
(17) relevant information that needs to be presented, we
(18) expect you to come forward with that information and
(19) address that.

(20) I also would like to note that any
(21) statements of view or expressions of opinion or lack
(22) thereof by any members of the NRC staff at this
(23) conference are not intended to represent any final
(24) agency determinations or beliefs relative to this
(25) matter.

(1) Following the conference, Mr. Reyes in
(2) conjunction with our Office of General Counsel, our
(3) Office of Enforcement, will make a final enforcement
(4) decision in this case, an initial staff enforcement
(5) decision in this case. This process generally takes
(6) about four weeks to accomplish.

(7) Lastly, if that enforcement action does
(8) involved a proposed order, the NRC will issue a
(9) press release announcing the issuance of that order,
(10) but will hold that press release for 24 hours after
(11) we've provided that order to you.

(12) One administrative matter. As Mr. Reyes
(13) has indicated, we are transcribing this conference.
(14) A copy of the transcript may be made available to
(15) you after the NRC has made a final enforcement
(16) decision. If we do, however, make the transcript
(17) available to you, it also becomes a matter of public
(18) record and is placed in the public document room.

(19) If you have any questions that you would
(20) like me to address, I'll be happy to at this time or
(21) at any time during or after the conference.

(22) MR. MCGRATH: I have no questions right
(23) now.

(24) MR. REYES: We're going to continue with
(25) the agenda and Loren was going to summarize the

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[1] allegations.
[2] **MR. PLISCO:** Good morning. Before we get
[3] started, I'll take a moment to summarize the
[4] allegations.
[5] The NRC's Office of Investigation
[6] completed an investigation in August of 1999
[7] regarding Mr. Gary Fiser, a former TVA Nuclear
[8] Chemistry and Environmental Specialist, who was not
[9] selected to fill one of two Chemistry Program
[10] Manager positions during a 1996 reorganization.
[11] Mr. Fiser was allegedly not selected to
[12] fill the position for engaging in protected
[13] activity. The evidence gathered by the Office of
[14] Investigations indicated that as Mr. Fiser's second
[15] line supervisor, you influenced the selection
[16] process to preclude the selection of Mr. Fiser for
[17] one of the Chemistry Program Manager positions.
[18] Further, the evidence revealed that the
[19] individual selected for the position of PWR
[20] Chemistry Program Manager was preselected for the
[21] position and that the same individual could have
[22] been placed in a vacant site chemistry position.
[23] Such a placement would have resulted in all
[24] employees affected by the reorganization retaining
[25] their job. The evidence revealed that you rejected

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[1] the request for placement of this individual at the
[2] site.
[3] The evidence also indicated that you
[4] subjected Mr. Fiser to disparate treatment. In this
[5] regard, the evidence reflected that you appointed an
[6] individual to the position of RadCon Chemistry
[7] Manager without competition while Mr. Fiser was
[8] required to compete for one of the two Chemistry
[9] Program Manager positions that were also created in
[10] 1996.
[11] The evidence indicated that these actions
[12] were taken in retaliation for Mr. Fiser's engagement
[13] in protected activity, which was Mr. Fiser's filing
[14] of a discrimination complaint with the Department of
[15] Labor in September of 1993. This issue appears to
[16] be an apparent violation of 10 CFR 50.5, deliberate
[17] misconduct, and 10 CFR 50.7, employee protection.
[18] The apparent violation is shown on the handout and
[19] was documented in our letter to you dated September
[20] 20th, 1999.
[21] We place a high value on nuclear industry
[22] employees feeling free to raise safety concerns to
[23] management as well as the NRC without the fear of
[24] reprisals. The Energy Reorganization Act and the
[25] Code of Federal Regulations establish strict

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[1] requirements for the protection of employees against
[2] discrimination for raising nuclear safety concerns.
[3] At this conference we're giving you the
[4] opportunity to provide information regarding your
[5] involvement in this issue and the events described
[6] in the summary of the Office of Investigation report
[7] provided to you previously.
[8] As Anne discussed, due to the
[9] significance of the apparent violation and your
[10] substantial role in the matter, you should provide
[11] an explanation as to why you should be permitted to
[12] engage in NRC licensed activities in the future.
[13] Are there any further comments?
[14] **MR. REYES:** I think we concluded the part
[15] in the agenda where we talk about the enforcement
[16] and the apparent violation, Mr. McGrath, so we would
[17] like to turn over the conference to you to make your
[18] presentation.
[19] **MR. McGRATH:** Thank you. I appreciate
[20] the opportunity to come be able to talk with you
[21] this morning. I believe there have been some
[22] misunderstandings of the facts and circumstances
[23] involved in this case and I hope we can clarify
[24] those this morning.
[25] I would like to discuss with you a little

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[1] bit about my background and then the process that
[2] was used for the reorganization of the Operations
[3] Support Department and the selection of the
[4] Chemistry positions in 1996, and then I would also
[5] like to address some of these specific findings that
[6] are listed in the summary report.
[7] To begin with my background, I have spent
[8] about 30 years in nuclear power, I have been in it,
[9] until, as I mentioned earlier, just about the
[10] beginning of July, in our Power Training
[11] Organization.
[12] I clearly understand the importance of
[13] reactor safety, the importance of employees being
[14] able to — in fact, are encouraged to identify and
[15] document any kind of problem that could potentially
[16] impact reactor safety, and I also understand the
[17] importance of management support of both of those
[18] principles.
[19] Since 1968, most of the positions I've
[20] held in nuclear power have been directly related to
[21] reactor safety. I began in the Naval Reactors
[22] Program in 1968. I spent many years reporting
[23] directly to Admiral Rikover, he ran that program for
[24] sometime.
[25] The last eight years there I was a field

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(1) representative. As a field representative, my
(2) responsibilities relative to reactor safety were
(3) very similar to those of one of your senior
(4) residents.

(5) One thing that happened there to me that
(6) I have to relate shows the importance of management
(7) involvement in safety. The program had been set up
(8) with a field representative office on shipyards and
(9) we had very clear authority in the shipyards that
(10) were well defined. We decided to increase the scope
(11) of our activities to provide monitoring, not unlike
(12) what your residents do, a number of the operating
(13) nuclear power ships and I began a program of
(14) traveling to San Diego once a quarter with a few of
(15) my assistants to monitor the operations of ships
(16) that were in port.

(17) But this was an informal program, I had
(18) no defined authority at all, I was just down there
(19) monitoring it. I ran into a problem of observing a
(20) ship, which happened to be doing steam generator
(21) hydrostatic tests, and I had a number of safety
(22) concerns with how they were doing it. There were
(23) issues of command in control, failure to follow
(24) regulations, failure to follow their own procedures,
(25) but I decided to direct them to shut down and stop

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(1) the operation. Now as I say, I didn't have any
(2) authority down there, but the only reason I felt I
(3) could do it, I had no doubt in my mind that I had
(4) full management support for anything that I needed
(5) to do where there was a reactor safety concern
(6) involved. So I proceeded to do that.

(7) I subsequently got feedback that my
(8) actions were evaluated and it was concluded, as I
(9) thought, that I had no authority to do what I did,
(10) but I did the right thing. In fact, what I did on
(11) that became part of the training program of field
(12) reps in the future of what was expected of them.

(13) When I left the Naval Reactors Program, I
(14) went to work for a couple years out of nuclear
(15) power, I worked for Lockheed Ship Building Company.
(16) I was the Quality Assurance Director there for a
(17) while. One of the main problems there I had to
(18) correct was a reluctance on the part of many of the
(19) Quality Assurance Inspectors to document quality
(20) problems. We had to get that fixed and get that
(21) documented and into the Corrective Action Program in
(22) that company.

(23) In 1987 I came to TVA. In all my time in
(24) nuclear power there I was in positions where reactor
(25) safety was my primary responsibility. I either

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(1) participated in or led all of the operational
(2) maintenance reviews for the re-start up of units,
(3) both Browns Ferry units and the initial start-up of
(4) North Palm. I also participated in several other
(5) reviews when there were problems, such as the 1993
(6) problems at Sequoia.

(7) In 1989 I was appointed as the nuclear
(8) Safety Review Board chairman, because at that time
(9) the TVA management, the NRC and INPO had all
(10) concluded that our Safety Review Boards were
(11) ineffective. I remained as chairman of that board
(12) through 1997 and I continued on as a member until
(13) mid-1999, when I left the Nuclear Power Program at
(14) TVA. In that area I made the NSRB a very effective
(15) organization and, in fact, the inspection reports
(16) issued by NRC for that entire period noted no
(17) deficiencies and consistently noted that the board
(18) was effective in looking into and raising safety
(19) issues.

(20) In those positions I probably have
(21) personally raised numerous, I don't know what the
(22) number are, of potential reactor safety issues
(23) myself, and I understand the need to go and do
(24) that. I understand the importance of employees
(25) being able to do that, because something like the

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(1) Safety Review Board, which will only meet for a
(2) couple of days at a time, is very dependent upon
(3) either employees having used the Corrective Action
(4) Program or being willing to talk to the board
(5) members and tell them about what is going on in
(6) order for us to effectively do our job.

(7) While I was Nuclear Safety Review Board
(8) Chairman, I did have other responsibilities at TVA.
(9) I also tried to use these same principles in those
(10) jobs. In fact, the only unsatisfactory performance
(11) rating I ever gave a manager was due to a recurrent
(12) problem with him not documenting issues in the
(13) Corrective Action Program.

(14) In summary, my entire career has been
(15) focused on nuclear safety and I understand the
(16) importance of it and the importance of employees
(17) being free to raise any sort of issue.

(18) I would like to go on now and discuss the
(19) reorganizational selection process with you.

(20) In October of 1995 I was appointed as the
(21) Acting General Manager of Operations Support,
(22) because the incumbent had health problems and, in
(23) fact, a few months later he died from cancer. When
(24) I first took the job, the Chief Nuclear Officer at
(25) the time requested that I look at the organization.

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(1) He had requested the incumbent to do it, but because
(2) of his health problems, he was not able to finish
(3) that review. So he turned that over to me, so right
(4) about that time I started looking at the
(5) reorganization.

(6) In early '96, I think about the first
(7) week of March is when it came out, we got the budget
(8) guidelines for fiscal year '97, including projected
(9) targets all the way out through 2001. The guidance
(10) I had was basically to reduce the budget of the
(11) organization by at least 17 percent. The budget of
(12) a corporate organization is overwhelmingly personnel
(13) salaries and benefits, so the only way to reduce
(14) that is to reduce the number of people.

(15) The approach I elected to take was to try
(16) to look at where should we be in 2001, which was a
(17) targeted 40 percent reduction from where you are
(18) now, and take the logical first step to get there.
(19) I feel it's unfair to employees to get all these
(20) little increments while sitting there waiting for
(21) the next shoe to drop, and when it's my job, we will
(22) try to target where we were going to be in 2001 and
(23) take a logical step to go there.

(24) In looking at the organization, the
(25) purpose of the reorganization was to better align

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(1) the corporate organization with the needs of the
(2) sites and we looked all the way across all of
(3) Operations Support. In the Chattanooga office, on
(4) average we reduced the number of people by 24
(5) percent. Now that varied between different
(6) organizations. The RadCon Chemistry area did reduce...
(7) from twelve to six, but a comparable number in the
(8) maintenance area went from seventeen to nine. The
(9) Steam Generator area actually increased from three
(10) to five, because that was a time period where not
(11) only were we bringing more generators into service
(12) at Watts Bar, but steam generators were becoming a
(13) much bigger problem in the industry and we felt we
(14) needed more resources added to it. So there's quite
(15) a bit of variability throughout the organization as
(16) to the size of the change in any one place.

(17) We created new position descriptions for
(18) all of those positions and provided them to union
(19) resources for review to determine which positions
(20) were required to be posted and repeated. The answer
(21) I got back from Mr. Boyles and his staff was that we
(22) needed to post all of the new positions.

(23) I would like Ed now to tell you what
(24) process they used to make that determination.

(25) MR. BOYLES: Again I'm Ed Boyles, I

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(1) manage the Human Resource Office for TVA Nuclear
(2) Corporate. In 1996 I was also in Human Resources
(3) and was involved in the '96 reorganizations that
(4) were occurring.

(5) As Tom described, we had the budget
(6) guidelines and a business planning process underway
(7) in the spring of '96. We were looking at major
(8) reorganizations in Engineering, Human Resources,
(9) Nuclear Assurance and Licensing, Op Support, and
(10) several areas. The process that we used and we used
(11) the standard process laid out by TVA policy and
(12) total federal regulations is to compare the new
(13) position descriptions that are developed by the line
(14) organization to the existing position descriptions;
(15) and based on those descriptions, we make
(16) determinations, is this job interchangeable, is it
(17) the same, does a person have a right to it or is it
(18) a new position?

(19) And in this case, as I said, we had
(20) several reorganizations going on. I had two
(21) consultants who worked for me and at that time they
(22) would evaluate these position descriptions and do
(23) this comparison. We would make these calls, this
(24) was a fairly routine activity in 1996, so we made
(25) the determination that the Chemistry Program Manager

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(1) positions required posting at that time and I gave
(2) that information to Tom McGrath.

(3) MR. STEIN: And the RadCon didn't?
(4) Mr. McArthur was transferred into his position and
(5) that position did not require posting?

(6) - MR. BOYLES: Early on in the process, Tom
(7) may want to add, Tom McGrath came to me with a
(8) concern that had been expressed by Wilson McArthur.
(9) In the initial discussions of the organization, I
(10) had told him I thought that most of the positions
(11) would require posting. Tom had passed that on to
(12) Wilson McArthur. Tom came to me, and I don't
(13) remember the time frame, but it was early on because
(14) we wanted to resolve the management positions before
(15) we got into the other positions. Tom came to me and
(16) indicated that Wilson had expressed concern about
(17) our decision to post that job. He felt that it was
(18) his position, that he had held the position before
(19) and in his view had performed the position during
(20) this interim time. So Tom McGrath asked me to look
(21) at that position, and I agreed that we would look
(22) and make a determination.

(23) I assigned one of the Human Resources
(24) officers who worked for me to look at the history
(25) and make some determinations. What we found was

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[1] that Mr. McArthur had held the position Technical
[2] Programs Manager previously. He had been moved into
[3] another position, but he had not been issued a new
[4] position description, so his position description of
[5] record was that of Technical Program Manager. When
[6] I compared the new, the existing position that was
[7] being done by another individual in the interim and
[8] the position that McArthur had previously performed,
[9] we made the decision that he had rights to that job
[10] based on his job description of record.

[11] Again his job description of record was
[12] the 1990 position description. There were some
[13] differences, but I felt that the differences weren't
[14] significant and that he had rights to the job. I
[15] reviewed my assessment with my supervisor, who was a
[16] manager of Human Resource Operations at that time,
[17] and she agreed I was proceeding in the right
[18] direction.

[19] MR. STEIN: [REDACTED] I believe, also
[20] came to you with some concerns because he was on the
[21] same level as Mr. McArthur and his position had
[22] disappeared when you merged those two positions
[23] together.

[24] MR. BOYLES: He came to us at a later
[25] time, probably weeks, months later, and he was in a

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[1] situation where once we determined Wilson McArthur
[2] had rights to the position and we didn't
[3] competitively bid it, he was without a position. He
[4] came to me and expressed his disagreement in that.

[5] We discussed this with my supervisor, my
[6] next level supervisor, who was a general manager of
[7] Human Resources at that time [REDACTED] as a
[8] manager we wanted to keep. We sat down and worked
[9] out a compromise where he requested an assignment to
[10] INPO and we worked out the details of that
[11] assignment and ultimately [REDACTED] pent 15 months with
[12] INPO. He's currently back in Chattanooga working on
[13] projects and he has a developmental plan that he has
[14] agreed to, so yes, I recognize the problem with
[15] [REDACTED] position and the fact that not
[16] competitively bidding the McArthur position caused
[17] him a problem, but I think we did the right thing
[18] with Wilson McArthur. I think ultimately he had
[19] rights to the job and he had already expressed
[20] concern.

[21] It was a situation, Wilson McArthur
[22] should have been given a position description when
[23] he was placed in another job. He was not. It was a
[24] situation we inherited and we tried to do the right
[25] thing.

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[1] MR. STEIN: Well, you found a place for
[2] [REDACTED] but in Mr. Fiser's example, when you
[3] look at what actually occurred, someone wasn't
[4] transferred to the site, so you had three becoming
[5] two. What's the difference? Why wasn't Mr. Fiser
[6] treated in a similar fashion as [REDACTED]

[7] MR. McGRATH: I believe we need to talk
[8] about two different things. If you go back to
[9] Mr. McArthur's position, the position in which he
[10] was placed was not a new position created in 1996.
[11] The particular position had been created sometime in
[12] early '95, before he was involved. An individual
[13] had been placed in there on an acting basis who
[14] retired about February or March of '96, so there was
[15] an existing position to which the RadCon Chemistry
[16] Manager reported. So we're not creating a new
[17] position.

[18] Mr. McArthur asked the question and the
[19] reason I thought it was reasonable to refer it to HR
[20] and also the answer I got back was reasonable,
[21] several years before having been involved in a
[22] reorganization and getting HR's advice as to how to
[23] go about it, one thing I was cautioned about was the
[24] way we were going to go. If you created a situation
[25] where you eliminated a position, then shortly

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[1] thereafter re-created the same or a very similar
[2] position, a person who had been eliminated for it
[3] would have rights to that position.

[4] What I knew of the circumstances with
[5] McArthur, there had been a reorganization in 1994
[6] which had eliminated his position and in which he
[7] was the RadCon Manager or had a comparable position,
[8] a different title but it was the same position.
[9] When there was a change in general managers over
[10] Operations Support and a new individual coming in
[11] re-created that position and placed someone in on an
[12] acting basis, who subsequently retired within about
[13] a year.

[14] From what I had been advised before, when
[15] that position was re-created at that time, at that
[16] time McArthur had rights to that position and
[17] probably should have been put in that position back
[18] in 1995.

[19] The situation you talk about at a site,
[20] the OI report is factually incorrect stating that
[21] there was a vacancy at the site. There was no
[22] vacant position at the site. We have confirmed that
[23] with Human Resources at the site and with the
[24] manager who is over there. So there was no position
[25] to transfer someone to.

[1] In fact, a question was asked of me,
 [2] moving on, what I said to him was that if Sequoia
 [3] site had a position, they would have to advertise it
 [4] just as we do in Corporate. They never advertised
 [5] it because there was no position.
 [6] **MR. STEIN:** Then why was Mr. Charles Kent
 [7] asking for Mr. Harvey to be transferred to Sequoia
 [8] if there wasn't a position there?
 [9] **MR. BOYLES:** Let me try to address that.
 [10] The Human Resource officer that worked for me and
 [11] Tom McGrath came to me when that question came up.
 [12] What they asked for was that an individual be
 [13] transferred to Sequoia as a transfer function. They
 [14] didn't have a vacancy in Chemistry at Sequoia. They
 [15] asked us to transfer the function, the Chemistry
 [16] Organization out of Chattanooga there. There were
 [17] three incumbents at that time. You cannot transfer
 [18] the function of that organization to another
 [19] competitive area without eliminating the functions
 [20] in the organization that the position is leaving.
 [21] So Charles Kent is a line manager, I
 [22] don't expect him to implement a chart of
 [23] regulations. He made a request and we didn't think
 [24] we could legally abide by that request. Again,
 [25] there was no vacancy. We could not transfer the

[1] function and that was our response to the site.
 [2] **MS. BOLAND:** Before you move on, I had a
 [3] question regarding Mr. McArthur.
 [4] You said that Mr. Boyles, that the PD, I
 [5] guess, for Mr. McArthur being in the Technical
 [6] Services Manager position was his official PD of . . .
 [7] record and that he had occupied another position,
 [8] but that the PDs were never updated.
 [9] Had his PD been updated appropriately,
 [10] would that have changed the process?
 [11] **MR. BOYLES:** We would have compared the
 [12] position description of record at that time with the
 [13] new one.
 [14] **MS. BOLAND:** And what would that have
 [15] required you to do if this PD was different, had the
 [16] current PD been in the file?
 [17] **MR. BOYLES:** We would have utilized the
 [18] current PD to do the comparison with the new PD.
 [19] **MS. BOLAND:** And it would have had to
 [20] have compared directly?
 [21] **MR. BOYLES:** When you say directly, but
 [22] to use terms as preponderance or the majority of the
 [23] activities, that it be interchangeable and that an
 [24] individual can do this job within a reasonable
 [25] period of time.

[1] **MS. BOLAND:** What position was he in at
 [2] that time?
 [3] **MR. BOYLES:** I believe it was the RadCon
 [4] Manager.
 [5] **MR. McGRATH:** Yes.
 [6] **MR. DAMBLY:** Is that the same position as
 [7] [REDACTED] was in?
 [8] **MR. BOYLES:** No. He was Chemistry.
 [9] **MR. DAMBLY:** He was Chemistry Manager?
 [10] **MR. BOYLES:** Yes.
 [11] **MR. REYES:** I'm confused.
 [12] **MS. BOLAND:** Yeah, I am too.
 [13] **MR. REYES:** Let me ask another question.
 [14] You say that Mr. McArthur's PD was not
 [15] updated when he was in another position, but
 [16] somebody also stated that since Mr. McArthur had
 [17] previously held the position and it was not a new
 [18] position being created, it was a position that was
 [19] vacant and in your view he had the right to be
 [20] moving into that position. Did I understand that
 [21] right?
 [22] **MR. BOYLES:** Could you restate the
 [23] question? Maybe I can —
 [24] **MR. McGRATH:** The scenario was in the
 [25] early 1990's, I think about 1994, Mr. McArthur held

[1] a position, the title of which was Technical
 [2] Programs Manager. In a long line of reorganizations
 [3] that position was eliminated and Mr. McArthur became
 [4] the Radiological Controls Manager. He was not given
 [5] a position description for that, so the Technical
 [6] Programs Manager one stayed on the books as his
 [7] official position.
 [8] Sometimes in early 1995, I don't know the
 [9] date, the position of Radiological Controls and
 [10] Chemistry Manager, which was essentially equivalent
 [11] to Technical Programs Manager, was created and
 [12] another individual was placed in that on an acting
 [13] basis. That individual retired in early 1996,
 [14] leaving that position vacant.
 [15] I believe had the review that Mr. Boyles
 [16] did as part of this been done in 1995 when that
 [17] position was re-created, at that time it would have
 [18] been determined that Mr. McArthur had rights to that
 [19] position and he should have been put in that
 [20] position rather than the individual that was put in
 [21] there on an acting basis.
 [22] **MR. REYES:** So the decision to move
 [23] Mr. McArthur to that position was based on, if I
 [24] understand you right, two issues. One, he was not
 [25] given a new position description for the position he

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(1) held and, two, you were of the view that he had
 (2) rights to the position that was vacated based on
 (3) similarity of the position. Is that the point
 (4) you're trying to make?
 (5) **MR. BOYLES:** Correct.
 (6) **MR. REYES:** I'm not agreeing with you,
 (7) I'm just restating it, because we're all a bit
 (8) confused.
 (9) **MR. BOYLES:** Similarities with his
 (10) position description of record.
 (11) **MS. BOLAND:** But Mr. McArthur did not
 (12) have to be reevaluated when you made that decision
 (13) because he had an incorrect position of record.
 (14) **MR. BOYLES:** Correct. We didn't look at
 (15) qualifications.
 (16) **MS. BOLAND:** Had he had a correct PD, he
 (17) would have had to have been evaluated?
 (18) **MR. BOYLES:** The PDs would have had to
 (19) have been evaluated.
 (20) **MS. BOLAND:** And there was a difference,
 (21) if I understood what you said, the difference was
 (22) Chemistry.
 (23) **MR. BOYLES:** Yes.
 (24) **MR. DAMBLY:** Let me ask a question. I'm
 (25) kind of confused here on Mr. Fiser. His position

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(1) was Chemistry and Environmental Program Manager and
 (2) then you changed it to drop environmental, so the
 (3) new one initially had less duties ostensibly than
 (4) the old one? Although Mr. Fiser said he wasn't
 (5) doing any environmental.
 (6) So if you decrease the scope of work, you
 (7) have to compete that, somebody's held to that and
 (8) something else would have to be competed for a
 (9) lesser scope?
 (10) **MR. BOYLES:** In my view, the position,
 (11) you are talking about two specialties, Environmental
 (12) and Chemistry. From a PD standpoint they are
 (13) significantly different. In the process that
 (14) occurred when Mr. Fiser was moved to Chattanooga, he
 (15) was placed in a position. Shortly thereafter there
 (16) was a reorganization that put the Chemistry and
 (17) Environmental together. They posted those jobs
 (18) because they were viewed as different. He applied.
 (19) **MR. DAMBLY:** Before that he had the
 (20) Chemical Program Manager position?
 (21) **MR. BOYLES:** Correct.
 (22) **MR. DAMBLY:** Just like Mr. McArthur
 (23) before that had a RadCon position.
 (24) **MR. BOYLES:** And what occurred in '96 was
 (25) much the opposite of that, and again they posted the

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(1) positions just as they had previously and incumbents
 (2) had to compete.
 (3) **MR. DAMBLY:** My concern here is
 (4) Mr. Fiser, and apparently as a result of a DOL
 (5) complaint in '93, there was a position for Chemistry
 (6) Program Manager created. Then that got reorganized
 (7) somehow out of it and he had to compete for
 (8) Chemistry and Environmental Program.
 (9) **MR. BOYLES:** Correct.
 (10) **MR. DAMBLY:** Now you reinstate the former
 (11) position and he has to compete for that again even
 (12) though you're reducing his duties and he's held it
 (13) in the past.
 (14) **MR. BOYLES:** That's correct.
 (15) **MR. DAMBLY:** But Mr. McArthur in a
 (16) parallel situation because of the screwup in his PD
 (17) didn't have to do that?
 (18) **MR. BOYLES:** The fact that he didn't have
 (19) a current position description was a major factor.
 (20) It was an important issue. Now under the Code Of
 (21) Federal Regulations it says the official position.
 (22) In our practice we view that as the position
 (23) description of record.
 (24) **MR. DAMBLY:** When you say the Code Of
 (25) Federal Regulations, are you speaking TVA? TVA

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(1) follows OPM?
 (2) **MR. BOYLES:** Yes.
 (3) **MR. STEIN:** Mr. Boyles, there was not
 (4) total agreement among members of your staff. There
 (5) were people on your staff who thought that it should
 (6) have been posted.
 (7) **MR. BOYLES:** When I initially had it and
 (8) I have, I think I brought copies of some notes that
 (9) we utilized to make this decision. They are rough
 (10) notes, but Ms. Boland, if I could, these are a part
 (11) of the record.
 (12) **MS. BOLAND:** Okay. As long as you are
 (13) aware that they become part of our record.
 (14) **MR. BOYLES:** They already are. They are
 (15) a part of the record. I just thought that this
 (16) would....
 (17) When I initially was contacted by
 (18) Mr. McGrath to look at this, I consulted with my
 (19) staff, a Human Resource Officer on my staff named
 (20) Ben Easley to look at that. I had come into the
 (21) position in 1994 and was not totally familiar with
 (22) the history of the organization. He pulled up most
 (23) of the history for me. He did the research and gave
 (24) me the background that I utilized to make the
 (25) decision.

[1] Initially Ben had no problem with that.
[2] He did come to me later on, after I had already made
[3] the decision, and told me that we should post that
[4] position according to [REDACTED] which was a poor
[5] case we had previously decided. I didn't agree. I
[6] didn't agree because I thought that Ben Easley, who
[7] had worked for me for a short period of time, I
[8] thought he was focusing on an individual and a
[9] friend that he had that he had become concerned
[10] about, [REDACTED] who was without a position at
[11] that time, and I've already talked about how we
[12] addressed [REDACTED] situation.

[13] Again I thought he was focusing on an
[14] individual. We would have had to have posted the
[15] job had we not decided that Wilson McArthur had
[16] rights to the job. Once we decided that, posting no
[17] longer was an issue.

[18] MR. DAMBLY: If you're under OPM, why
[19] didn't you follow RIF regulations if you had gone
[20] from three positions to two?

[21] MR. BOYLES: We do follow RIF regulations
[22] in establishing competitive areas, because
[23] ultimately those reorganizations can result in
[24] downsizing and loss of positions. So in the three
[25] Chemistry-Environmental Program Managers, that was

[1] one competitive area, so we did that.

[2] MR. DAMBLY: And if all three of them
[3] qualified for the two positions, why didn't you
[4] follow seniority?

[5] MR. BOYLES: The new positions were
[6] different.

[7] MR. DAMBLY: They had reduced
[8] responsibilities from the old positions.

[9] MR. BOYLES: Again, in our view this was
[10] very similar to what we had done previously and they
[11] were different. And I think that Mr. Easley, who
[12] made that call, still agrees in that area.

[13] MR. STEIN: Mr. McGrath, can you describe
[14] your relationship with Mr. McArthur, your work
[15] relationship, your social relationship?

[16] MR. MCGRATH: For one thing I have
[17] absolutely no social relationship with
[18] Mr. McArthur.

[19] My relationship at work, he was a
[20] subordinate manager for the period of time that I
[21] was the General Manager of Operations Support. I
[22] had previously worked with him since he had been a
[23] member of the Safety Review Board for a number of
[24] years. I would describe my relationship with him as
[25] being professional, as well as with several managers

[1] working for him.

[2] Mr. Dambly, let me bring up one thing
[3] that may help you. We have one very similar
[4] position to the Chemistry one, if I might. It had
[5] to do with the Steam Generator Program, and I think
[6] some of the staff here is familiar with [REDACTED]
[7] [REDACTED] It was a very similar item where he had
[8] been the Steam Generator Program Manager. As a
[9] result of a reorganization, he had been promoted to
[10] a position of a Technical Manager over steam
[11] generator and other maintenance areas. We decided,
[12] as I mentioned to you earlier, to increase the Steam
[13] Generator staffing to what was going on and, in
[14] fact, he was probably, he was spending a vast
[15] majority of his time on steam generator issues only
[16] at this time because of what was going on, to go
[17] back to a single Steam Generator manager,
[18] essentially the identical position to what he had
[19] held a few years before that.

[20] However, the decision from Human
[21] Resources was that it was a different position from
[22] the one he was currently in. The decision was not
[23] based on what he was actually doing day-to-day, it
[24] was based on what his position description said. We
[25] made that decision even though we knew that he was

[1] probably one of only a handful of people in the
[2] entire country who were qualified to hold the job,
[3] but that same one, just like the chemistry ones, we
[4] advertised that position and competed it. And it
[5] was based upon what the position description said.

[6] My understanding, as Mr. Boyles has
[7] talked to you, by our process, the decisions are
[8] based on what the position description said.

[9] Mr. McArthur's situation was complicated
[10] that in the past there had been an error made, so
[11] his current position description was not current,
[12] but that was the situation that HR had to deal
[13] with. As Ed said, he even took it to his supervisor
[14] to make sure he was making the proper decision and
[15] he tried to make that decision in accordance with
[16] the rules under which they operated.

[17] MR. DAMBLY: Do you all have bumping and
[18] retrieve rights under OPM?

[19] MR. MARQUAND: You raised an issue I
[20] wanted to address, and that is throughout nuclear at
[21] that time while they were reorganizing, what they
[22] would do, as he indicated, is they would rewrite
[23] position descriptions. Of course, there were a
[24] number of early outs going on at TVA, but what would
[25] happen was that employees who were in existing jobs

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(1) would be informed that their positions were surplus
 (2) and that they might be subject to a reduction in
 (3) force at some point in time.
 (4) So what would happen was that old jobs
 (5) would disappear, new jobs would reappear. Employees
 (6) in the old jobs did not have reassignment rights or
 (7) retrieve rights or anything like that to the new
 (8) jobs unless it was determined to be essentially
 (9) identical or similar under the OPM regulations that
 (10) Ed referred to. So if there was not a right to
 (11) reassignment to the new job, that is, if it wasn't
 (12) substantially similar, then the employees in the
 (13) surplus jobs would be subject to reduction in
 (14) force.
 (15) They wouldn't have — the only employees
 (16) with retrieve rights or rollback rights are
 (17) employees under the bargaining units that are
 (18) covered by the contracts. Managers such as
 (19) Mr. Fiser and his peers do not have those rights
 (20) because they are not subject to the collective
 (21) bargaining agreement. Is that right, Ed?
 (22) **MR. BOYLES:** That's correct.
 (23) **MR. DAMBLY:** Then your managers are not
 (24) under the OPM regs?
 (25) **MR. MARQUAND:** They are under the OPM

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(1) regs. We have to remember TVA is not a competitive
 (2) civil service. We're an excepted civil service, so
 (3) the managers don't have those types of retrieve
 (4) rights.
 (5) **MR. DAMBLY:** Am I correct that Mr. Fiser
 (6) was the senior of the three?
 (7) **MR. MARQUAND:** He had more TVA seniority
 (8) was my understanding.
 (9) **MR. McGRATH:** Going on to how we handled
 (10) the Chemistry positions, Mr. McArthur and Mr. Grover
 (11) recommended that the two positions should be one to
 (12) support PWRs and one to support BWRs. Mr. Grover
 (13) with input from the incumbent Chemistry Specialist
 (14) prepared the position descriptions for those jobs.
 (15) I had no involvement in what the position
 (16) description said and I normally would not have any
 (17) involvement in position descriptions at that level.
 (18) As we were proceeding toward advertising
 (19) them, Mr. Fiser came to Human Resources and he did
 (20) raise a concern that if we were to go ahead and
 (21) advertise those positions, that that would not be in
 (22) accordance with the settlement of his 1993 DOL
 (23) complaint.
 (24) **MR. STEIN:** How do you know that? Who
 (25) informed you of this conversation that Mr. Fiser had

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(1) with HR?
 (2) **MR. McGRATH:** I'll let Mr. Boyles tell
 (3) you. He came to Mr. Boyles and Mr. Boyles told him
 (4) that.
 (5) **MR. STEIN:** I'm just thinking about
 (6) confidentiality and employees going to HR with
 (7) concerns, this type of concern, that would get back
 (8) to line management.
 (9) **MR. McGRATH:** Well, we do keep things
 (10) confidential. At the time when he did come and
 (11) raise this was the first time that I ever knew, this
 (12) was in June of '96, that he had even submitted a DOL
 (13) complaint in 1993. So I had no knowledge of the
 (14) existence of that complaint prior.
 (15) He brought it up and Mr. Boyles needed to
 (16) come to me because he was affecting the
 (17) reorganization. It was a decision that had been
 (18) made to post the positions. What Mr. Boyles told me
 (19) he was going to do is to bring this information to
 (20) our Labor Relations people who deal with the DOL and
 (21) OGC to look at this matter and give us advice.
 (22) And, Ed, do you want to cover what you
 (23) did there?
 (24) **MR. BOYLES:** Yes. After we had made the
 (25) decision to post the Chemistry positions, Ben Easley

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(1) came to my office and asked me if I would talk to
 (2) Gary Fiser. I agreed, and he went back and brought
 (3) Gary to the office. Gary told me that he had had a
 (4) DOL complaint previously and that as a part of that
 (5) complaint he had reached a settlement and was placed
 (6) in the position in Corporate Office, and that he
 (7) didn't agree with posting the job and that if we
 (8) posted the position, that he would file a second DOL
 (9) complaint.
 (10) I told Gary that I would look at it, I
 (11) was not aware of this. We basically stopped the
 (12) process for a period of time. I contacted our Labor
 (13) Relations staff, they handle complaints, grievances
 (14) and DOL issues. I asked — I told them what was
 (15) going on and what Mr. Fiser had said to me and they
 (16) in turn contacted OGC to discuss what the settlement
 (17) was and how we should proceed.
 (18) They came back to me shortly thereafter,
 (19) a day or so, and told me that they had talked to OGC
 (20) and that we should proceed as we were, that they'd
 (21) looked at the settlement and it didn't preclude, it
 (22) had no guarantee of a permanent position in the
 (23) organization.
 (24) So after we got that feedback, I told
 (25) Mr. McGrath about it and we moved forward.

[1] MR. STEIN: After meeting with him and
[2] after you spoke with OGC and you got the
[3] information, you proceeded with the posting and the
[4] selection. What was the need to get back to
[5] Mr. Fiser's management to discuss the threat of a
[6] second DOL complaint?

[7] MR. BOYLES: I actually may have told Tom
[8] McGrath before we even heard from OGC and from our
[9] Legal Relations staff. I felt like he needed to
[10] know what the issues were, we had a reorganization
[11] going on, and I discussed this with him.

[12] MR. MARQUAND: I was contacted by Labor
[13] Relations, who was asking whether or not the
[14] previous settlement agreement guaranteed him a new
[15] position and the question was basically, well, is he
[16] guaranteed a position for life? I said, no, the
[17] settlement agreement specifies a specific job he was
[18] to be placed in.

[19] And I learned that after assuming the
[20] Chemistry Program Manager position, that there had
[21] been this subsequent reorganization and that he had
[22] applied and been selected for a new position and
[23] thus abandoned the previous position he had been
[24] given in the settlement agreement. And the question
[25] then was, does he have some right as a result of the

[1] settlement agreement to a new position? And my
[2] response back was no, the settlement agreement
[3] provided the position he was to be given and if he
[4] chose to abandon that or seek a different position
[5] or if it was subsequent reorganization, there's no
[6] guarantee of a position for life. And my advice was
[7] that the right thing to do was to post the position
[8] and to proceed with the selection without regard to
[9] whether he filed the previous DOL complaint. He
[10] should not have anything taken away from him and he
[11] shouldn't have anything added to him by virtue of
[12] the fact that he filed a complaint. You know, we
[13] don't want to be unfair to him or unfair to anyone
[14] else by virtue of the fact that he filed a DOL
[15] complaint.

[16] MR. DAMBLY: Let me ask a question. Your
[17] use of the term "abandoned the prior position that
[18] he got," it's my understanding that position was
[19] eliminated and he was forced to compete for a new
[20] position.

[21] MR. MARQUAND: That's correct, and at the
[22] time he chose not — I mean it's interesting that
[23] when he decided to file a complaint in '96 and say
[24] you're eliminating the position, eliminating my
[25] position and that's unfair and I'm going to go file

[1] a Department of Labor complaint, but in '94 when
[2] they eliminated the Chemistry Program Manager and
[3] combined to make it Chemistry and Environmental, he
[4] did not choose at that time to say that's unfair.
[5] He didn't choose —

[6] MR. DAMBLY: Of course. He got that job.

[7] MR. MARQUAND: But he didn't know ahead
[8] of time. In this case before they even posted the
[9] job, he said I'm going to file a Department of Labor
[10] complaint if you even post it.

[11] MS. BOLAND: Were there numbers being
[12] eliminated in that '94 reorg?

[13] MR. MARQUAND: I don't know that.

[14] MS. BOLAND: I mean clearly we were going
[15] from three to two in the '96 reorg.

[16] MR. MARQUAND: I don't know if ultimately
[17] they eliminated anyone in that reorganization or
[18] not. The three chemistry — the three individuals
[19] who had Chemistry Program Manager jobs all were
[20] successful in obtaining a position in '94, but I
[21] don't know if other individuals lost theirs.

[22] I know that from '94 on we have had an
[23] enormous number of employees leave through early
[24] outs.

[25] MR. STEIN: Mr. MarQuand, there's a very

[1] big difference between 1994 and '96 and it has to do
[2] with the line supervision. In 1994 he was reporting
[3] to different first and second line supervisors than
[4] he was in 1996.

[5] MR. MARQUAND: As I understand, in '94
[6] Mr. McArthur was on the Selection Review Panel that
[7] made the selection and, in fact, was the selecting
[8] manager for that job.

[9] MR. STEIN: But he wasn't reporting to
[10] Mr. McArthur in 1994.

[11] MR. MARQUAND: I don't recall who he was
[12] reporting to, because at some time in '94 McArthur
[13] was made the RadCon manager. But as I said,
[14] Mr. McArthur was on that Selection Review Board and
[15] was a selecting official in 1994 and was responsible
[16] for selecting him.

[17] MS. BOLAND: Did I understand you to say,
[18] Mr. Boyles, that you were not aware of Mr. Fiser's
[19] DOL complaint until Mr. Easley came to you?

[20] MR. BOYLES: The previous?

[21] MS. BOLAND: The '93 complaint? Or when
[22] was the first time you became aware of that?

[23] MR. BOYLES: I don't know if I knew
[24] before. In Human Resources oftentimes we are
[25] aware. I don't know if that was the first time I

[1] heard of that or not. It's been a period of time.
 [2] Let me say if I did, I knew no details,
 [3] was not aware of how the settlement evolved, was
 [4] completely unaware of what Mr. Fiser told me on the
 [5] day he came to my office.
 [6] **MS. BOLAND:** Mr. McGrath, when was the
 [7] first time you became aware of the '93 DOL
 [8] complaint?
 [9] **MR. McGRATH:** When Mr. Boyles informed me
 [10] of it in June of 1996.
 [11] **MR. SPARKS:** Why did you make your
 [12] decision to inform Mr. McGrath of that information?
 [13] **MR. BOYLES:** As I said, we were involved
 [14] in a reorganization. I believe I told Mr. McGrath
 [15] about the same time that I contacted Labor Relations
 [16] and OGC. I felt that it was a concern being
 [17] expressed to us about how we would fill in the
 [18] position and I felt I should let him know what was
 [19] going on as the manager of Op Support.
 [20] **MR. McGRATH:** If I could add, I think
 [21] that was a prudent thing for him to do. This was a
 [22] situation where an employee was saying, "If you do
 [23] something, I will submit a DOL complaint."
 [24] Certainly one option would be to not do that
 [25] something. And, in fact, if the answer reviewed by

[1] our Labor Relations and OGC had been that what we
 [2] were going to do would somehow infringe upon the
 [3] prior settlement of the case, we would have had to
 [4] go back and relook at the reorganization and make
 [5] some changes.
 [6] **MR. STEIN:** This is a good place for me ...
 [7] to ask this question. We have conflicting testimony
 [8] in the OI report. Did you at any time in 1993 or
 [9] 1994 tell someone else at TVA that Mr. Fiser is
 [10] trouble or something like that and that we need to
 [11] get rid of him?
 [12] **MR. McGRATH:** Absolutely not.
 [13] **MR. STEIN:** Thank you.
 [14] **MR. McGRATH:** After I got the advice back
 [15] from Human Resources and as I was aware they had
 [16] consulted with Labor Relations and OGC that we could
 [17] proceed, we proceeded with the selection process.
 [18] I'll let you know, however, we did do some
 [19] augmentation of the process to ensure it was fair.
 [20] I will get to that in a minute.
 [21] The next thing that occurred about the
 [22] same time of interest is that one of the other
 [23] incumbent Chemistry Specialists, Mr. Harvey, came to
 [24] Human Resources and complained that the position
 [25] descriptions that had been prepared by Mr. Grover

[1] were slanted in favor of Mr. Fiser and that he felt
 [2] that if we proceeded on, we would be discriminating
 [3] against him. So Ed took that view as well.
 [4] **MR. McNULTY:** How would you be
 [5] discriminating against Mr. Harvey, just out of
 [6] curiosity?
 [7] **MR. McGRATH:** The impression of
 [8] discrimination on the issue was Mr. Harvey's
 [9] concern. From whatever he read in the position
 [10] description, he felt the position description had
 [11] been slanted in favor of Mr. Fiser's
 [12] qualifications. That was Mr. Harvey's judgment.
 [13] **MR. McNULTY:** Did he use the word favor
 [14] or did he use the word discriminate?
 [15] **MR. McGRATH:** I did not talk with
 [16] Mr. Harvey. Discriminate is just a term I picked
 [17] today. Perhaps that it favored Mr. Fiser.
 [18] **MR. BOYLES:** What happened is Ben Easley,
 [19] who worked for me, came to my office and told me
 [20] that Sam Harvey had raised an issue on how the job
 [21] position descriptions had been written and that he
 [22] felt that they were slanted or favored or whatever,
 [23] I don't remember the exact term, toward the other
 [24] incumbents.
 [25] **MR. REYES:** Which were who?

[1] **MR. BOYLES:** Gary Fiser and Chandra. The
 [2] manager who had prepared those was Ron Grover. Ben
 [3] Easley met with Ron Grover and discussed how the job
 [4] descriptions had been prepared. They ultimately met
 [5] with Sam Harvey. I think they did make a minor
 [6] change to the position description as was initially
 [7] written and they resolved his concern and we were
 [8] ultimately given those position descriptions.
 [9] **MR. McGRATH:** We advertised the positions
 [10] prior to holding the Selection Review Board and
 [11] Mr. Fiser actually filed a DOL complaint, and the
 [12] TVA Office, the Inspector General had commensed
 [13] their investigation of it.
 [14] At the time we were going to make the
 [15] selection via Selection Review Board, the Selection
 [16] Review Board was being convened to look at five
 [17] positions, two in Corporate RadCon and two in
 [18] Chemistry, and one which was in Rad Waste
 [19] Environmental position.
 [20] Mr. McArthur had recommended to me that
 [21] we make, that the Selection Review Board make the
 [22] members the three site RadChem Managers. That
 [23] technically made sense to me because they had
 [24] responsibility over all three, all of the technical
 [25] areas that were being looked at in the five

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(1) positions.

(2) It's a little unusual, we normally do not
(3) have — Corporate Selection Review Boards are
(4) normally not all site people, but it was a
(5) reasonable board based upon the technical background
(6) of the people who were involved.

(7) A problem we were faced with is a few
(8) days prior to the board, Mr. Cox, who was the Watts
(9) Bar Chemistry and RadCon manager, removed himself
(10) from the board. He stated that he had a schedule
(11) conflict and that he would not be able to sit and
(12) serve on the board. Now we're faced with coming up
(13) with a replacement for him.

(14) MR. DAMBLY: How long in advance did he
(15) know?

(16) MR. McGRATH: It was just a few days in
(17) advance that he let us know. I don't remember the
(18) exact date.

(19) MR. DAMBLY: How long in advance was he
(20) notified that was going to be on this board?

(21) MR. McGRATH: I think he had several
(22) weeks' notice. He had agreed to serve on the board
(23) and then some conflict came up. It's really not
(24) that unusual. I serve on a board in my new
(25) organization here and one of the members of the

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(1) board had a conflict that arose the morning of the
(2) board and could not attend.

(3) We decided and we talked with Mr. Boyles
(4) on it and felt the best way to do this was to
(5) replace him, and just from my experience in my new
(6) job, it's good I didn't do that. The board I ended
(7) up with now only had two members and while we each
(8) had the same top two people, we had them reversed,
(9) so now the selection manager had a 50/50 vote, so
(10) it's better to have the full three members.

(11) And the logistics of moving on was such
(12) because we were reviewing five positions and it must
(13) have been 15 people involved and we did need to get
(14) on with filling the positions in time to have them
(15) replaced for the next fiscal year when we were
(16) implementing the reorganization.

(17) MR. STEIN: They were all Rad-Chem
(18) positions?

(19) MR. McGRATH: Five positions, there were
(20) two RadCon, two Chemistry and the fifth one was a
(21) Rad Waste Environmental position.

(22) So we felt we did need to move on and
(23) meet the schedule. It wasn't practical to go look
(24) for another to substitute. We first tried to get
(25) the Watts Bar System Plan Manager, again someone at

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(1) a level who would have involvement in all of these
(2) areas; he was not available. We then picked a
(3) qualified manager from Corporate, Mr. Rick Rogers.

(4) MR. STEIN: I want to explore that for a
(5) second, because you did testify that Mr. Rogers was
(6) selected for his chemistry background or that he had
(7) a background in chemistry.

(8) MR. McGRATH: He was selected not for his
(9) chemistry background. He had had positions at both
(10) Watts Bar and Sequoia throughout his career. He was
(11) in the technical support, I believe he was Technical
(12) Support Manager at Sequoia for a while. In that
(13) position he provides support to RadCon and Chemistry
(14) and Environmental, so he was someone by his
(15) background who had a technical background in all of
(16) these areas based on his career.

(17) MR. STEIN: Why wasn't Mr. Voeller asked
(18) to serve since —

(19) MR. McGRATH: Mr. Voeller was a Chemistry
(20) Manager and would not have been qualified to be on
(21) the board for the other three positions.

(22) MR. STEIN: The reason I'm saying this is
(23) because Mr. Corey knew Chandra's background and
(24) Mr. Kent worked very closely with Mr. Harvey and
(25) Mr. Fiser did not have anyone from his Watts Bar.

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(1) MR. McGRATH: We don't constitute boards
(2) for popularity of the individual. Like I said, it's
(3) unusual to set up a board with representatives from
(4) all three sites. A corporate board will normally
(5) have a couple of corporate managers and one
(6) customer. The board was not selected from each site
(7) to make sure that each site had a representative on
(8) the board.

(9) MR. STEIN: But it was originally
(10) comprised that way.

(11) MR. McGRATH: But that was just because
(12) technically that made sense. It was the way it was
(13) originally comprised, and the reason for it, as
(14) Mr. McArthur told me, and it made sense to me to
(15) have it that way, was that these were the three
(16) individuals who were responsible for those areas
(17) across the company at the current time and they made
(18) sense to be put in there.

(19) If one of them had not been available
(20) from the beginning, I'm sure we would have selected
(21) someone else to fill the position. I don't know who
(22) that would have been, but.

(23) MR. STEIN: And Mr. Voeller was not
(24) qualified to sit on this board with his background?

(25) MR. McGRATH: There were probably

(1) hundreds of other selections that could have sat
(2) there, but you seem to be coming from we should have
(3) had a Watts Bar representative. That is not the way
(4) the board is normally set up. The boards are set up
(5) to listen to the answers to questions that are asked
(6) during the board and to rate the people on the
(7) answers to the questions.

(8) **MR. STEIN:** But the selection was made
(9) strictly on the interview, on the questions that
(10) were asked, not so much on the background and the
(11) resumes and the paper that was supplied to each. Is
(12) that fair?

(13) **MR. McGRATH:** That's correct. Let me
(14) tell you one more thing, and then I would ask
(15) Mr. MarQuand to cover some of that.

(16) When we went ahead with the board, okay,
(17) the board met and convened with their
(18) recommendations and their recommendations were
(19) Mr. McArthur was to select an officer, but he did
(20) select exactly what the board recommended.

(21) The board did have the normal Human
(22) Resources oversight of having a Human Resources
(23) consultant as they are participating in the board to
(24) facilitate the board and make sure it's handled in
(25) accordance with our requirements.

(1) As I mentioned before, we looked at did
(2) we need to augment the process here to ensure we
(3) were doing it fairly. What we did as an extra
(4) review here was the results of the board were then
(5) provided to Labor Relations and Mr. MarQuand in OGC
(6) for their review to ensure that the board did indeed
(7) look and see if it was fair and that we were making
(8) our selection in accordance with the board
(9) recommendation.

(10) I would like Mr. MarQuand to cover what
(11) they did.

(12) **MR. DAMBLY:** Before you get there, in
(13) terms of assuming the board is fair and followed its
(14) mandate or whatever; since apparently the answers to
(15) technical questions made up a major part, if not the
(16) determining factor in who got selected, what
(17) background would you have to judge the legitimacy of
(18) those questions versus another set of questions that
(19) might have been more favorable to Mr. Fiser?

(20) **MR. MARQUAND:** I don't have that
(21) background.

(22) **MR. DAMBLY:** So basically you're looking
(23) at the process devoid of the substance.

(24) **MR. MARQUAND:** Correct. And what
(25) happened was that following the Selection Board's

(1) meeting and making its recommendations, I was
(2) contacted by Labor Relations and what I have learned
(3) is that — and I did not review the questions at the
(4) time and I didn't look at the scores, but what I had
(5) learned is that was contained in these volumes which
(6) have been provided already, that each of these
(7) volumes, one of each of these volumes was given to
(8) each of the Selection Review Board members, one for
(9) Charles Kent, one for John Corey, one for Rick
(10) Rogers, and one for the Human Resource officer who
(11) facilitated. Each of these volumes contains not
(12) just the material for that particular Chemistry
(13) Manager position Mr. Fiser was competing for, but
(14) for all five positions that were being selected on
(15) that particular day.

(16) They sat down and they had a very
(17) detailed agenda of all the people that they were
(18) interviewing from noon until late at night and had
(19) information on each of these individuals. What was
(20) provided to the board looks like simply a resume' or
(21) an application, not even a resume', and what the
(22) board did was then looked at a number of questions
(23) that Dr. McArthur had drafted. He had drafted some
(24) suggested questions, I believe there were sixteen,
(25) and the Board then decided that they would ask eight

(1) of those questions and then they made up a ninth
(2) question of their own that they posed. And
(3) Dr. McArthur was not a voting member, he did not
(4) evaluate the individuals. The three evaluators,
(5) Rogers, Corey and Kent, evaluated each individual on
(6) each of those questions. Each evaluator asked the
(7) same question each time to each of the three
(8) candidates and then they scored them. They took
(9) notes of their answers to the questions and they
(10) scored them on the questions. I believe we've got a
(11) chart that I put together.

(12) **MR. STEIN:** I've got a question for you,
(13) though. You were looking for a manager, two
(14) managers, and you had three qualified candidates.
(15) Did the rating panel get resumes, performance
(16) appraisals and the background material, articles
(17) that these people have written and given at
(18) symposiums, and just who these people actually are
(19) versus a test that was given to them?

(20) **MR. MARQUAND:** My understanding is the
(21) Selection Review Board received what's in this
(22) package. That is, they got an application and a
(23) short resume' and then they asked the questions that
(24) they chose to ask, and that they evaluated the
(25) individuals based solely — their evaluation is

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(1) based solely on what happened in that room.
(2) **MR. STEIN:** Let me flip this on its
(3) head. Why didn't the rating panel get performance
(4) appraisals? I understand [REDACTED]
(5) [REDACTED]
(6) [REDACTED]
(7) **MR. DAMBLY:** Mike, before we go into
(8) that, a different question. Mr. Boyles and then
(9) Mr. MarQuand. You're excepted service, right? So
(10) is NRC. I have a little familiarity. You are
(11) required to have an annual appraisal of record by
(12) OPM, right?
(13) **MR. BOYLES:** Yes.
(14) **MR. DAMBLY:** I believe the regulation
(15) requires that that be used, must be used for making
(16) decisions on promotions and selections, et cetera;
(17) is that correct?
(18) **MR. MARQUAND:** I don't know that that's
(19) correct for management positions or not, but it is
(20) used and it was used, not only the annual
(21) appraisals, but also the past job history is used by
(22) Human Resources with a job description when the job
(23) is posted and advertised and they receive a whole
(24) raft of applications. Somebody in HR normally goes
(25) through that whole sheet of applicants and compares

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(1) the applicants against the minimum qualifications
(2) required for the position to make sure they meet the
(3) minimum qualifications, and they normally prepare a
(4) spreadsheet that will list minimum qualifications
(5) against the requirements for the job against the
(6) individuals, and then they whittle it down to the
(7) short list of the people who apply or who are going
(8) to be interviewed.
(9) In this case I understand there were six
(10) applicants for the job, but only three, the three
(11) who are listed here, Chandra, Harvey and Fiser, met
(12) the minimum qualifications and based on all their
(13) back, past job history.
(14) **MR. DAMBLY:** That would not include — in
(15) doing a minimum qual check, you don't check
(16) performance appraisals. You're looking to see what
(17) skills, background, positions they have held, not
(18) how well they did.
(19) **MR. McGRATH:** While I was not involved in
(20) reviewing the package, other positions that I have
(21) reviewed, the package which is given to you for that
(22) initial review to determine which people will go on
(23) to the interview normally includes the information
(24) about the former performance of persons.
(25) **MR. BOYLES:** And that's normally

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(1) provided. The employee provides the package that is
(2) included in here, including copies of any
(3) performance reviews. Typically we like to see the
(4) last three performance reviews. In addition, HR and
(5) the selecting supervisor can go to the personnel
(6) history record and review material there. In our
(7) contract we are required to review that, to look at
(8) performance and other issues.
(9) **MR. MARQUAND:** The Selection Review
(10) Board, as I said, focuses on what is done in the
(11) room. It then makes a recommendation to the
(12) selecting manager and the selecting manager then can
(13) consider what the Selecting Review Board's
(14) recommendation is plus all of the information in the
(15) individual's personal history record, which would
(16) include performance appraisals.
(17) **MR. REYES:** Let me ask you a basic
(18) question. We may be confusing your process with
(19) ours. Is your point that you follow the TVA process
(20) that you typically have for situations where
(21) managers are competing for jobs?
(22) **MR. MARQUAND:** My understanding —
(23) **MR. BOYLES:** Yes.
(24) **MR. REYES:** Because we're getting
(25) confused between your process and ours and you need

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(1) to make it clear.
(2) **MR. McGRATH:** In our process, we do
(3) follow our process and we tried — in this
(4) particular case, we had Human Resources' involvement
(5) throughout it, and as an extra measure we added the
(6) additional reviews in this particular case to give
(7) us further checks that we were indeed following our
(8) process.
(9) **MR. MARQUAND:** Normally Labor Relations
(10) is not involved and normally OGC is not called as a
(11) check to see whether the process has been followed.
(12) **MR. BOYLES:** That was an extra step, but
(13) we had been put on notice by Mr. Fiser that he was
(14) going to file a DOL complaint. From that point on
(15) we did our best to see that it was as fair — and we
(16) do this in every case, we wanted the selection
(17) process to be fair, but we did go an extra step in
(18) this case.
(19) **MR. DAMBLY:** The reason I asked the
(20) question, maybe I got Luis confused there.
(21) TVA is an excepted service agency and NRC
(22) is an excepted service agency. As an excepted
(23) service agency, there are certain requirements that
(24) we're exempted from and certain ones we have to
(25) comply with, same as they do.

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(1) The use of performance appraisals, I mean
 (2) they said the reason they had to post this is
 (3) because OPM regs required it. OPM regs also require
 (4) that you use performance appraisals in making
 (5) selections. They didn't apparently and that was my
 (6) question, why if you're going to follow them one
 (7) time don't you follow them the other time? There's
 (8) nothing logically to except yourself, that I'm aware
 (9) of, from use of performance appraisals.

(10) **MR. REYES:** I thought you stated you use
 (11) it in the front of the process, not necessarily in
 (12) the back of the process.

(13) **MR. BOYLES:** The line manager and HR.

(14) **MR. McARTHUR:** Yeah, but the front of the
 (15) process is determined, do you meet the minimum
 (16) qualifications for the job? The performance
 (17) appraisal has no part in that.

(18) **MR. BOYLES:** Oftentimes you may have 20
 (19) applicants and 15, 18 may meet the minimum
 (20) qualifications. We'll go beyond and identify the
 (21) top candidates, maybe five that we're actually going
 (22) to interview. So it does when necessary go beyond
 (23) the minimum qualifications.

(24) **MR. STEIN:** Let me ask you about the TVA
 (25) process. Do you make it a habit of selecting your

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(1) management core by a technical test without looking
 (2) at the ability to actually manage through
 (3) performance?

(4) **MR. BOYLES:** It is our practice to use
 (5) management selection boards to make our selections
 (6) for management specialists.

(7) **MR. STEIN:** The reason I'm asking this is
 (8) because you gave all three of these people a
 (9) technical chemistry exam and then you selected your
 (10) manager by the results of the exam.

(11) **MR. McGRATH:** Mr. Stein, the way the
 (12) process is normally handled, the individual's
 (13) qualifications, their former performance appraisals
 (14) are normally used at the front end of the process to
 (15) determine which candidates will be interviewed. As
 (16) Ed pointed out, normally we get 20 people of whom 15
 (17) meet the minimum qualifications and then you take
 (18) into consideration things like their performance
 (19) appraisal in deciding which ones based on the paper
 (20) are qualified for the job. But it then goes to the
 (21) Selection Review Board to basically say, "You now
 (22) have X candidates who based on our review of all the
 (23) paperwork appear to be the best candidates we have
 (24) for this position." Inherently, that is meeting the
 (25) minimum qualifications, but they are also in the

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(1) judgment of Human Resources and the Selecting
 (2) Manager the best ones to meet it. The questions are
 (3) questions that are asked by the board —
 (4) **MR. DAMBLY:** Could you help me there.
 (5) Again, Luis is saying we're confusing the process.
 (6) I'm sure we are. Because the way things work here,
 (7) if you met the minimum qualifications, you would go
 (8) to rating panel and they would rate everybody from
 (9) an A to a C or whatever. C being the lowest, A
 (10) being the best, and then they go on to the manager
 (11) who makes the selection.

(12) Your process, HR looks at and says
 (13) minimum quals, but then they don't send everybody
 (14) who meets the minimum, they get together with the
 (15) selecting official and choose the best qualified
 (16) before it goes to the —

(17) **MR. BOYLES:** The line manager and HR
 (18) typically review the package and determine who the
 (19) top candidates are and who should be interviewed.

(20) Let me address one issue that I think
 (21) we're coming back to. Did we use a technical
 (22) evaluation to determine who was going to be a
 (23) manager? These positions are technical positions,
 (24) they do not supervise anyone, so from that
 (25) standpoint they may manage projects and activities

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(1) effecting the sites, but they are not what we think
 (2) of typically as management positions.

(3) **MR. MARQUAND:** Let me add two sentences
 (4) to that. It's not entirely a technical test. The
 (5) specific questions they were asked were what
 (6) strengths do you have that will benefit this
 (7) position? What weaknesses do you have that you need
 (8) to address? Describe three projects or programs you
 (9) helped to initiate, develop and complete. Describe
 (10) the level of responsibility this position should
 (11) have in contributing to the success of the site
 (12) chemistry program. Discuss your specific management
 (13) experience and training. And yes, there are some
 (14) technical questions on here, such as Describe
 (15) jenting and define molar ratio and primary
 (16) functions, but there's clearly some issues here that
 (17) go beyond beyond simple technical chemistry issues,
 (18) but also program management types of things that
 (19) they were looking to evaluate. Those were specific
 (20) questions that they evaluated these individuals on.

(21) **MR. STEIN:** And if I have a bad day, I
 (22) could be the greatest chemistry, you know, the
 (23) leader of my field and I have a bad day, a bad
 (24) interview, and all the rating panel sees is that
 (25) day?

[1] MR. MARQUAND: That's correct.

[2] MR. REYES: Good or bad, that's your

[3] process?

[4] MS. BOLAND: Just one more question, and

[5] not to belabor this further, on the front end of the

[6] process, is the selecting official involved in

[7] whittling down the list from everybody who applied

[8] to those people that are reviewed by the board?

[9] MR. BOYLES: Typically yes.

[10] MS. BOLAND: Was that the case in this

[11] case?

[12] MR. BOYLES: I don't know the extent that

[13] an HR person assisted. I don't know if that's

[14] something you will have to address to the —

[15] MR. DAMBLY: One other point is, and I

[16] think you answered it earlier, but I don't recall

[17] what the answer was.

[18] Typically, does a Selection Review Board

[19] have appraisals or not?

[20] MR. MARQUAND: I've seen it both ways.

[21] I've litigated these and I've seen where they did a

[22] whole package and I've seen more frequently what we

[23] have here, where they are provided applications and

[24] then a copy of simply where they just go through the

[25] questioning.

[1] MR. BOYLES: And they may actually vary.

[2] The employee may provide service performance

[3] evaluations as a part of their resume', they may be

[4] attached to it. Another employee may not, so. It

[5] may vary even from selection board to selection

[6] board.

[7] MR. STEIN: Does Human Resources or OGC

[8] ever share conduct files, history of letters of

[9] reprimand?

[10] MR. MARQUAND: If the letter of reprimand

[11] or suspensions are in the personnel history record,

[12] those would be available certainly to the selecting

[13] manager and HR. If they are not in the PHR,

[14] typically they would not be. I don't believe they

[15] would be considered, would they?

[16] MR. BOYLES: No, they wouldn't.

[17] MR. MARQUAND: You mentioned in this case

[18] [REDACTED]

[19] [REDACTED]

[20] [REDACTED]

[21] [REDACTED]

[22] [REDACTED]

[23] [REDACTED]

[24] MR. BOYLES: [REDACTED]

[25] [REDACTED]

[1] [REDACTED]

[2] [REDACTED]

[3] [REDACTED]

[4] MR. DAMBLY: To finish up. Once you get

[5] the Selection Review Board results here, whatever,

[6] then these folks Corey, Kent, Chandra, Harvey and

[7] Fiser get submitted to Mr. McArthur with their

[8] scores or whatever, does Mr. McArthur then review

[9] everybody's package and appraisals or does he just

[10] go, "Well, this is how they did on the scores," and

[11] pick from there? Is there a normal process?

[12] MR. MARQUAND: The selecting manager

[13] receives a recommendation and then he's free to

[14] consider paper in addition. Is that right, Ed?

[15] MR. BOYLES: Yes.

[16] MS. BOLAND: The books and the files? So

[17] he can see the books and the answers?

[18] MR. BOYLES: Yes.

[19] MR. DAMBLY: But he can also go back and

[20] look at appraisals and anything else.

[21] MR. MARQUAND: In this case, from my

[22] understanding, Mr. McArthur was actually present in

[23] the room but did not participate in any fashion in

[24] asking the questions or evaluating them or in

[25] discussing the evaluations.

[1] MR. STEIN: What was the plan to do with

[2] Mr. Fiser since you selected two other individuals?

[3] Is there any thought in HR or OGC or his line

[4] management about, you know, what was going to happen

[5] to Gary Fiser now that he wasn't selected?

[6] MR. BOYLES: At that time TVA had two

[7] programs. One, a service organization where

[8] employees could go utilize their talents and skills

[9] and also help them find jobs within TVA, so we had

[10] the TVA Services Organization. We also had an early

[11] out incentive where an employee could get up to one

[12] year's pay plus the other benefits that they would

[13] be entitled to. Those two things were available to

[14] all those who were affected.

[15] MS. EVANS: I was wondering if this was

[16] the same selection process that was used when

[17] Mr. Fiser applied out of the settlement position in

[18] '94 or if you know?

[19] MR. MARQUAND: There was a Selection

[20] Review Board. I believe we were provided a copy of

[21] one of the Selection Review Board packages for a

[22] different position, but my understanding was there

[23] was about about three or four people on that

[24] Selection Review Board and I don't know what

[25] questions were asked or how they were evaluated, but

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[1] a Selection Review Board process has been used for
[2] sometime.

[3] **MR. BOYLES:** We've been using the process
[4] since about 1988.

[5] **MR. McGRATH:** In summary, on the
[6] selection process we made every effort to make this
[7] process fair. We rigorously followed our HR
[8] requirements and our process we're going through
[9] throughout the entire reorganization. The decision
[10] on which positions had to be advertised and such, we
[11] involved HR throughout that and then followed their
[12] recommendations in all cases.

[13] As we just discussed, after Mr. Fiser
[14] told us he was going to and then actually did submit
[15] a DOL complaint, we did take some extra efforts
[16] involving Labor Relations and OGC in the process to
[17] ensure that we were maintaining it fairly and
[18] following the process.

[19] **MR. STEIN:** Did you ever go behind the
[20] scenes and speak with managers who had contact and
[21] experience with all three, Mr. Grover, for example,
[22] had experience, and ask him what his advice was as
[23] far as who he would select to have the PWR
[24] positions?

[25] **MR. McGRATH:** No, I did not. Just like

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[1] we were probably selecting over a dozen new
[2] positions throughout our entire organization, I do
[3] not go down and canvas people to see who we should
[4] select for various positions. All of those
[5] positions were selected in accordance with our
[6] normal process.

[7] **MS. BOLAND:** Did you give Mr. McArthur as
[8] a selecting official any expectations or any
[9] guidance, anything along those lines in his
[10] decision-making process?

[11] **MR. McGRATH:** No. I think I knew that it
[12] very clear to to him at the time that we had to make
[13] this fair. In fact, if you knew Wilson McArthur,
[14] he's one of the fairest people I know. You know,
[15] there was no question in my mind that he wouldn't
[16] have to be counseled to not do something held
[17] inappropriate.

[18] He understood a number of — on this I
[19] knew that he was consulting with both Ed and coming
[20] back and consulting with me on some ones, which you
[21] wouldn't do under a normal selection, just because
[22] he was now aware of the DOL complaint and he also
[23] was making a real effort to make sure that we were
[24] doing all this properly.

[25] **MR. STEIN:** Let me ask you something

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[1] else. I've read your views of Mr. Harvey and that
[2] you wanted to keep Mr. Harvey Corporate.

[3] If Mr. Fiser had been selected over
[4] Mr. Harvey by Mr. McArthur, what would have been
[5] your reaction?

[6] **MR. McGRATH:** First let me address that I
[7] believe that something that occurred in one of the
[8] reports relative to keeping Mr. Harvey in Corporate
[9] may have been a misinterpretation of that I wanted
[10] to keep the function in Corporate.

[11] Secondly, we wouldn't. But in function,
[12] the function in corporate was that we were going to
[13] need a PWR and BWR Chemistry Manager, a Chemistry
[14] Specialist, and that these positions were most
[15] appropriately held in Corporate so that it supports
[16] individual sites.

[17] By talking about the function, we had
[18] decided that we did need a Chemistry Specialist
[19] position to support our PWR plants and a second one
[20] to support RBWR plants and we felt those were most
[21] appropriately maintained in Corporate, as opposed to
[22] an alternate way which would be to try to supplement
[23] the chemistry staff at each individual site, and
[24] that's what we wanted to keep in Corporate.

[25] Whoever was selected for the positions

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[1] would have been put in the position, whatever
[2] candidates, and recognized while only three
[3] qualified for PWR position, I believe more than
[4] three qualified for the BWR; and more than these
[5] three applied for the position, so they may not have
[6] even been any of these people, it could have been
[7] someone else in the position if that's how it came
[8] out. But we would put the best qualified person for
[9] the Corporate positions in there as determined by
[10] the process.

[11] The other individual, at the time Ed
[12] explained to you there were programs for people who
[13] were leaving, they would be offered those particular
[14] programs. They would have the option of applying
[15] for other jobs in TVA.

[16] **MR. STEIN:** So, in other words, you
[17] really didn't care whether it was Fiser or Harvey
[18] who was in that position as long as that position
[19] remained in Corporate?

[20] **MR. McGRATH:** That's correct. In fact,
[21] further, I really didn't care who it was as long as
[22] they were qualified. This one got it down to those
[23] three people and I wanted the best qualified person
[24] in there.

[25] **MR. DAMBLY:** Let me ask you one other

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(1) question on appraisals. Let me just check my notes
(2) to be sure. I believe Mr. Easley told OI that at
(3) the time he prepared those folks for the panel, he
(4) included the appraisals and then he provided them to
(5) Mr. McGrath and somehow when they got to the panel,
(6) they didn't have the appraisals.

(7) Does anybody what happened?

(8) **MR. MARQUAND:** I don't know what
(9) happened.

(10) **MR. McGRATH:** May I make a correction to
(11) you? You said supplied to me. I had nothing at all
(12) to do with what information was provided to the
(13) board and I normally do not, would not have that for
(14) that level position.

(15) **MR. STEIN:** Have you ever seen the
(16) appraisals? Have you ever seen Mr. Harvey's
(17) appraisals versus Mr. Fiser's appraisals for the
(18) last couple of years?

(19) **MR. McGRATH:** No, I did not at the time
(20) we were doing this.

(21) When we responded to the DOL complaint
(22) long after this, since there were some statements by
(23) Mr. Fiser relevant to the context of it, and as a
(24) response, I had some information about Mr. Fiser,
(25) but that was long after this happened.

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(1) **MR. STEIN:** In hindsight how do you feel
(2) about the selection after seeing the appraisals and
(3) knowing what is in certain conduct files? I'm
(4) trying to get to —

(5) **MR. McGRATH:** The conduct file goes back
(6) to Mr. MarQuand [REDACTED] had a problem for
(7) which, in our progressive discipline, it was a
(8) counseling thing. He had done what was required of
(9) him and we had no other problems with him afterwards
(10) relative to that.

(11) Some of the things I read later in our
(12) response to DOL relative to Mr. Fiser were
(13) irrelevant to the position. They had to with
(14) management weaknesses he had in various positions in
(15) the past, but we weren't looking for a management
(16) job here, so.

(17) **MR. STEIN:** So you're maintaining today
(18) that you are still fine with the selection of
(19) Mr. Harvey over Mr. Fiser based on the TVA
(20) policies?

(21) **MR. McGRATH:** We followed the policy. We
(22) put a qualified person in the job who did the job
(23) well after he was selected for it. There is no
(24) basis on which to compare how well he may have done
(25) the job against another individual who wasn't

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(1) selected for the job.

(2) **MS. EUCHNER:** Janet Euchner for the OGC.

(3) I had a question about why Mr. Kent was permitted to
(4) serve on the Selection Panel. Mr. Easley said he
(5) did not serve as the HR representative because he
(6) knew about Fiser's 1993 DOL complaint and wanted to
(7) make it appear fair, so he withdrew from that.

(8) Mr. Kent not only knew about it but had
(9) been interviewed in regard to it and just prior to
(10) the Selection Panel had sought to have Harvey
(11) transferred out to work for him, so quite obviously
(12) thought highly of Mr. Harvey and thought he was a
(13) well qualified person.

(14) So doesn't that sort of suggest a slight
(15) bias in favor of Mr. Harvey that Mr. Fiser could
(16) say, hey, this is not a fair process?

(17) **MR. McGRATH:** When we set up the boards,
(18) just by the nature of the organizations, people know
(19) each other. I didn't know what involvement
(20) Mr. Harvey had in the 1993 complaint — not
(21) Mr. Harvey, I'm sorry, Mr. Kent.

(22) Perhaps the way to answer your question
(23) is since after you guys told me about the 1993
(24) complaint and I read it, the 1993 complaint was
(25) pointed out that Kent wanted to make Fiser the site

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(1) chemistry manager, so perhaps he liked Fiser better
(2) than Harvey. There was no reason to doubt that
(3) Mr. Kent could not make a fair selection.

(4) **MR. BOYLES:** Let me also point out,
(5) Mr. Easley asked for a substitute on the Selection
(6) Board. He came to me and explained to me that he
(7) wanted to make sure that the process was fair and he
(8) asked me to pick another Human Resource officer to
(9) facilitate that selection, and I agreed with him to
(10) do that.

(11) **MS. EUCHNER:** Also just prior to the
(12) convening of these interviews, there was some
(13) testimony that Mr. Kent announced to the people in
(14) the room that Mr. Fiser had filed a 1993 DOL
(15) complaint. Wasn't that some cause for concern that
(16) maybe you should have said, "Wait a minute, this is
(17) completely not relevant," and done something about
(18) it then, because that gave knowledge to people who
(19) otherwise did not have knowledge of a new
(20) complaint?

(21) **MR. BOYLES:** I was not present and don't
(22) know the context of what was said.

(23) **MR. McGRATH:** If he said something, I was
(24) not present there; and prior to our proceeding, I
(25) had no knowledge that he made any kind of complaint.

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[1] **MR. MARQUAND:** Obviously by the time of
[2] the Selection Review Board, everybody at TVA was
[3] aware, everybody involved was aware that Mr. Fiser
[4] had filed a Department of Labor complaint and the
[5] concern was let's be sensitive about it, let's be
[6] fair about it.

[7] My understanding from having sat in with
[8] Mr. Kent on a number of occasions is that that was
[9] the context in which he was raising this same
[10] matter.

[11] **MR. VIGLIUCCI:** And also, to say that he
[12] announced it to the room is also incorrect from the
[13] testimony that we looked at, and we did sit in with
[14] each one of the individuals who were interviewed.

[15] For instance, I sat in with Rick Rogers
[16] and he recalled hearing no such statement, and
[17] Mr. Corey could not even recall if he heard such a
[18] statement and that he was generally aware, but he
[19] couldn't tell where that came from or in what
[20] context it was. So to characterize that as
[21] announcing it to the room I think is a
[22] mischaracterization.

[23] **MS. BOLAND:** Mr. McGrath, were you aware
[24] of or did anybody make you aware of statements made
[25] by any of the three people who were on the board or

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[1] Mr. Cox about any bias that they may have had toward
[2] a selectee or a good feeling or a bad feeling about
[3] a person who was put in for a job?

[4] **MR. McGRATH:** After Mr. Cox said that he
[5] could not serve on the board, when Mr. McArthur
[6] reported that to me, he also told me that in the
[7] same conversation that Mr. Cox had indicated a bias
[8] in the Chemistry position and also in the
[9] Environmental positions, that he had already decided
[10] who should have them.

[11] **MS. BOLAND:** Both positions?

[12] **MR. McGRATH:** Both positions. Those
[13] things were not, however, relevant to his not being
[14] on the board because he had already taken himself
[15] off the board and would not be able to serve and we
[16] needed to move on.

[17] **MR. STEIN:** Just to keep the record
[18] straight, I believe that Mr. Corey said that he
[19] drove for two hours from Alabama and that he was
[20] sharing a cup of coffee with Mr. Kent and Mr. Kent
[21] mentioned this 1993 DOL. So I can go back, but I
[22] think that was Mr. Corey's testimony.

[23] **MR. MARQUAND:** I think he was vague about
[24] what he said he heard.

[25] **MS. BOLAND:** Anyone else that you got

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[1] information from, even secondhand?

[2] **MR. McGRATH:** No one else.

[3] If we could go on, I would like to
[4] address some of the specific items in the OI
[5] summary.

[6] Relating to Mr. Fiser's 1993 complaint,
[7] the summary says the employee named as party to his
[8] discrimination the individual who served as chairman
[9] of the organization of Safety Board in 1993. It
[10] goes on to say the individual who served as NSRV
[11] chairman was named as a culpable party in the
[12] Employee's 1993 DOL complaint.

[13] Those statements are factually
[14] incorrect. I have reviewed the complaint of
[15] Mr. Vigliucci and Mr. MarQuand here and I am not
[16] named as a culpable party. In fact, I'm not even
[17] mentioned anywhere in the complaint by name or by
[18] position. If you'd like, Mr. Reyes, a copy, if you
[19] would like a copy of that.

[20] As I mentioned to you earlier, I was not
[21] aware that this complaint even existed until June of
[22] 1996, and, in fact, I was unaware that there was any
[23] characterization of my culpability until I received
[24] the letter from NRC here, the September 20, 1999
[25] letter.

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[1] Mr. Stein is a little bit worried here
[2] about confidentiality on this. I have never seen
[3] this until after you wrote the letter and said I was
[4] a culpable party, I felt that I ought to go read it
[5] and see what I was accused of doing. But as I said,
[6] I can't even find my name or my position anywhere in
[7] this.

[8] I would contest this question as to what
[9] my motivation would be to take retaliation for this
[10] 1993 complaint if it in no way involved me.

[11] **MR. MARQUAND:** Let me suggest that the
[12] way this issue arose was in 1996, when Mr. Fiser
[13] filed his 1996 Department of Labor complaint,
[14] attached to his complaint or throughout his
[15] complaint and attached to his complaint is a
[16] synopsis in which he characterizes what happened to
[17] him in 1993, and I believe he may have taken some
[18] liberties in 1996 describing what happened to him in
[19] 1993 and recast the events, and certainly that's the
[20] language used I believe in the Department of Labor's
[21] preliminary report about Mr. McGrath being a
[22] culpable party. I don't believe it's found anywhere
[23] in the 1993 complaint.

[24] **MR. McGRATH:** Additionally, as part of
[25] investigating this, neither our Inspector General's

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[1] office nor the Department of Labor interviewed me as
[2] part of their investigation of that particular
[3] complaint.

[4] MR. STEIN: Can you, if you can remember
[5] back to 1993, give us your take of this disagreement
[6] that Mr. Fiser had with your Safety Board?

[7] MR. McGRATH: The actual lead-in to which
[8] he refers occurred in November of 1994. He
[9] characterized a disagreement with one of those
[10] subcommittees. The particular issue he brought up
[11] of training I don't recall even being discussed in
[12] the portion of the meeting that I sat in on. But
[13] perhaps it's best to take that whole line of NSRB
[14] and take a look at how that subcommittee
[15] characterized what went on that day.

[16] The minutes prepared by the chairman of
[17] that subcommittee —

[18] MR. STEIN: Who was Mr. McArthur.

[19] MR. McGRATH: It was Mr. Peterson, he was
[20] from outside TVA and served on the Safety Review
[21] Boards in that capacity for a number of other
[22] utilities at the time.

[23] They noted that the subcommittee had
[24] reviewed a number of deficiencies which had been
[25] identified by Quality Assurance and Corporate

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[1] Chemistry. They identified over half of those in
[2] areas of which data training was one. They
[3] concluded that Corporate Chemistry, the site
[4] chemistry manager who was Mr. Fiser, and the
[5] subcommittee are in agreement that there is an
[6] apparent lack of technical strength in key areas
[7] within the chemistry staff. The subcommittee
[8] concurs with Chemistry Management, which would
[9] include Mr. Fiser, that the series of QA findings
[10] point to programmatic deficiencies that need prompt
[11] attention. They go on to indicate that the
[12] Corporate Chemistry staff is assigned as well to
[13] help them on the training.

[14] The findings of that subcommittee were
[15] brought to the full board meeting the next day on
[16] which I was the chairman. Again, the overall
[17] discussion of it again points out the issue being
[18] deficiencies, which I've already brought up, by Site
[19] Chemistry and Corporate Chemistry identified them
[20] again. I believe we did include again trending,
[21] which was one of those examples, not a specific
[22] item, and pointed out that the Plant Manager and the
[23] Technical Programs Manager, who was Mr. McArthur at
[24] that time, were working together to develop a
[25] Corrective Action Program, and then gave support

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[1] saying that the Chemistry Improvement Program that
[2] was being considered by the Chemistry staff, which
[3] was Mr. Fiser's staff, should be promptly and
[4] aggressively developed and implemented.

[5] MR. STEIN: You mentioned at the
[6] beginning of this meeting that you have no problem
[7] with people raising safety concerns and issues.

[8] MR. McGRATH: That's correct.

[9] MR. STEIN: So back at that time period
[10] you had no problem with Mr. Fiser raising these
[11] concerns?

[12] MR. McGRATH: None whatsoever. In fact,
[13] his 1993 complaint, one of the issues he brings up
[14] related to the post accident sampling one, which had
[15] actually been an issue brought up by NSRE. That was
[16] an issue he was pursuing that I had no problem
[17] with. I could bring you years of minutes here and
[18] you could see that NSRB routinely raised issues of
[19] potential safety. So we needed to do that to do our
[20] job, that was our role.

[21] But that meeting that he had at the time
[22] really, I don't know what conversation he was
[23] characterizing. I think it's indicated what
[24] happened, the minutes that were issued of the
[25] meeting were a fair reflection of the perspective in

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[1] which that issue was raised.

[2] I think it's also important to note that
[3] meeting was in November of 1991. The minutes had
[4] been issued. They had been on the street for a long
[5] time and they were widely distributed, so we knew
[6] what was in the minutes. However, when he filed his
[7] 1993 complaint, there was no mention whatsoever of
[8] anything done by NSRB, given the subcommittee, the
[9] board as a whole, or any member of NSRB was in any
[10] way related to his complaint in which he was talking
[11] about him being not given a job some 14 months after
[12] that meeting, and I would contend that there is no
[13] relationship between that meeting and his 1993
[14] complaint.

[15] MR. MARQUAND: Did you make any
[16] recommendations to relieve him or do anything about
[17] Mr. Fiser himself as a result of the meeting?

[18] MR. McGRATH: No. In fact, the NSRB
[19] stays out of the business of making any kind of
[20] recommendation relative to people. Perhaps a bit
[21] like you guys have to do, you may see management
[22] problems, but you can't intervene and say we'll
[23] change this individual. And likewise, that is not
[24] our function.

[25] We will raise issues in an area,

[1] programmatic issues, specific technical issues, but
[2] NSRB does not issue recommendations relative to
[3] specific individuals.

[4] MR. McNULTY: During the period of time
[5] that you were chairman of the NSRB, did you have any
[6] other duties?

[7] MR. McGRATH: Sometimes. We had many
[8] reorganizations and, yes, I did have other duties at
[9] times which included the management of various other
[10] technical staffs in Corporate. Technical
[11] administrative staffs.

[12] MR. McNULTY: While you were the chairman
[13] of the NSRB, were you ever Mr. McArthur's
[14] supervisor?

[15] MR. McGRATH: No, sir, I was not. The
[16] first time — well, in October of 1995, when I
[17] assumed that position of the Operations Support
[18] Manager, I was still the Chairman of the NSRB at
[19] that time. So at the time I became the Acting
[20] General Manager of Operations Support in October of
[21] 1995, I was still the Chairman of the NSRB and at
[22] that time I became Mr. McArthur's supervisor.

[23] MR. STEIN: Wasn't Mr. McArthur a
[24] subcommittee chair?

[25] MR. McGRATH: He was a subcommittee

[1] member.

[2] MR. STEIN: So really you were overseeing
[3] his work on the committees as the chair of the
[4] overall NSRB?

[5] MR. McGRATH: Yes. As chairman of the
[6] thing, I still had the function of the entire NSRB.

[7] MR. DAMBLY: Let me ask a very important
[8] question. Is your presentation going to take — I
[9] know we've interrupted the heck out of it, but is it
[10] going to take much longer, because the reporter
[11] needs a break. If it's something, if you have a few
[12] more minutes, then we could do that and then take
[13] the break we were going to. But if it's going to
[14] be awhile, we should go ahead and take a break now.

[15] MR. McGRATH: Why don't we go ahead and
[16] take a break. I could use a drink of water anyway.

[17] (A recess was taken.)

[18] MR. REYES: Back on the record.

[19] MR. McGRATH: To continue on with the
[20] summary of your OI investigation, the report states
[21] that the evidence indicated that I influenced a
[22] selection process to preclude the selection of the
[23] employee.

[24] To summarize, and I think we've already
[25] discussed this at length, but we followed the normal

[1] TVA HR process for doing this and as we noted, we
[2] augmented it to ensure fairness once we were aware
[3] there was a DOL complaint. The Selection Review
[4] Board was made up of three qualified members and I
[5] was not a party at all to the board.

[6] The question of Mr. Cox's participation,
[7] he removed himself from the board. And as I told
[8] you before, we did try to get a Watts Bar Assistant
[9] Plant Manager and when he was not available, we
[10] selected another qualified replacement.

[11] The SRB made the final decision as to
[12] what questions they would ask and the SRB scores
[13] reflect their recommendation; and Mr. McArthur, who
[14] is the Selecting Official, made that selection in
[15] accordance with the Board's recommendations.

[16] In the letter to the company, the OI
[17] summary states that the process was contrived. I
[18] would really question how we could do that? That
[19] would be asking in an environment where we were
[20] aware there was an active DOL complaint and an
[21] active Inspector General investigation going on,
[22] that I would have somehow tried to influence several
[23] Human Resources managers, three independent
[24] Selection Review Board managers, and the Office of
[25] General Counsel to deviate from our normal selection

[1] process and somehow make it unfair, and I don't see
[2] any evidence that I tried to do that.

[3] The report further goes on to say that
[4] the individual who was selected for the position of
[5] PWR Chemistry position, Mr. Harvey was preselected
[6] for that position. We deny that. He was not
[7] preselected for that position.

[8] Ed, do you have something else to add
[9] with regard to that?

[10] MR. VIGLUICCI: Yeah. You'll talk to
[11] Dr. McArthur later this afternoon as part of his
[12] effort to address the concerns raised as far as his
[13] conduct.

[14] One of the issues was, did you speak
[15] favorably in front of staff members and the like
[16] about the fact that you have problems with Gary
[17] Fiser, and Wilson feels very personal about that
[18] and, in fact, he would never do something like
[19] that. And in the course of that, his exercise to
[20] address that, he asked various managers who worked
[21] with him throughout the years to write just a short
[22] testimony about the fact that he's always been fair
[23] and has never spoken unfavorably about anybody in
[24] front of anyone.

[25] When he did that, and he'll present those

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[1] testimonies to you this afternoon, one of the people
[2] he asked to get testimony from along those lines was
[3] Sam Harvey. Sam is no longer with TVA. In response
[4] back, Mr. McGrath got a fairly lengthy testimony
[5] from — Mr. McArthur did get back from Sam Harvey a
[6] fairly lengthy testimony about what did occur and
[7] why Mr. Harvey felt that he was not preselected. In
[8] fact, he feels that Gary Fiser was the one who
[9] contrived the process, that he confided in him that
[10] he did so.

[11] I'll distribute not only a copy of an
[12] affidavit that was filed — that was filled out by
[13] Sam Harvey, and I would like to distribute that.

[14] It is also important to note that
[15] Mr. Harvey was never interviewed by the Office of
[16] Inspector Investigations or —

[17] MR. STEIN: Was Mr. Harvey's departure
[18] from TVA voluntary?

[19] MR. VIGLUICCI: I don't know all the
[20] details.

[21] MR. BOYLES: Yes, it was. He accepted a
[22] position with another utility.

[23] MR. VIGLUICCI: So I'll provide at least
[24] ten copies to Loren and you can review that. I wish
[25] you would review that, especially before your

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[1] meeting with Dr. McArthur, and that will put it into
[2] some more context as to Sam Harvey's perspective to
[3] our own position.

[4] MR. MCGRATH: To go on and wrap up, the
[5] report also stated that Mr. Harvey could have been
[6] placed in a vacant site chemistry position, and as
[7] we previously discussed, that is factually
[8] incorrect. There was no vacant site chemistry
[9] position.

[10] And finally, the report says we subjected
[11] the employee, that is Mr. Fiser, to disparate
[12] treatment, and that is based upon by the report
[13] Mr. McArthur's position which he says was created in
[14] mid-1996 and he was transferred to this position
[15] without competition in contravention of TVA policy.

[16] As we discussed at length earlier, this
[17] was an existing position and that was reviewed by
[18] Human Resources and it was Human Resources'
[19] recommendation that he be placed into that position
[20] and it indeed was in accordance with our policy,
[21] even the problem of his position descriptions that
[22] had occurred previously.

[23] To wrap up and summarize, I really hope
[24] you would agree that it is inconceivable that I
[25] would take action here to discriminate against

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[1] someone for raising a safety issue. We've discussed
[2] my background quite a bit. I really spent, almost
[3] 30 years of my primary responsibility was reactor
[4] safety, was raising reactor safety issues. As I
[5] took it on, I clearly understand the importance of
[6] employees being able to do that.

[7] And likewise, I would say the 1993
[8] complaint, I didn't know of the 1993 complaint. Now
[9] that I have seen it, I am not in any way a party to
[10] that complaint, so I would lack any kind of

[11] motivation to take any action against this
[12] individual for something that I didn't even know
[13] about and, in fact, was not a party to.

[14] And finally, as we talk of it, I'd say,
[15] because I don't think it is as strong as the other
[16] two, I would hope the other two are very clear that
[17] I would have no motivation and it would be contrary
[18] to my whole career to try and do it. But as we just
[19] discussed, when we were going through this, we were
[20] clear that Mr. Fiser first said he would and then
[21] actually filed a DOL complaint. Our Inspector
[22] General was actively investigating this process as
[23] we were doing it. And with everyone we involved,
[24] there were several Human Resource Managers and
[25] Specialists involved, the Office of General Counsel,

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[1] a number of senior managers who were on the
[2] Selection Review Board, I would contend it's
[3] inconceivable I could have influenced or even
[4] attempted to influence that wide a number of people
[5] across TVA in order to go influence who would be
[6] selected for a position.

[7] We really did this whole thing trying to
[8] be fair and trying to ensure that we selected the
[9] best individual for the position.

[10] You asked me earlier why I should remain
[11] in nuclear power. I think it is more, really the
[12] most important to me thing here is that I clear my
[13] name. I've devoted my whole career to reactor
[14] safety. It is very important to me that we clarify
[15] this. I don't believe that I did anything wrong in
[16] this case. We tried our best to do what was
[17] required in accordance with all of our procedures.

[18] I will be glad to provide you whatever
[19] additional information you may feel you need from me
[20] or anything that would help you in your
[21] deliberations on this, and we intend here to pursue
[22] this through whatever forum is available to me to
[23] ensure that I can clear my name.

[24] And I thank you for your attention and
[25] listening to my presentation.

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(1) MR. REYES: We have one question that we
(2) need to clarify.

(3) MS. DAMBLY: Actually I guess I have
(4) two. One, your transfer when you switched out of
(5) nuclear, did that have anything to do with any of
(6) this at all or?

(7) MR. McGRATH: No, it doesn't. I have
(8) been working — we have a large business
(9) transformation project. I've been leading a team
(10) and had a lot of exposure to other parts of TVA and
(11) it was an opportunity available here that I thought
(12) would be interesting and consumptive.

(13) MR. DAMBLY: Then the other one is really
(14) for Mr. Boyles. I mean you provided us some notes
(15) this morning on the prior position Mr. McArthur
(16) held, which was Technical Programs/Operations
(17) Services Manager, which was the PD of record, I
(18) guess, rather than the correct PD of record.

(19) MR. BOYLES: Yes, sir.

(20) MR. DAMBLY: You said by comparing that
(21) with the new one, you decided they were essentially
(22) the same job, so he was entitled to it.

(23) When I look at what you gave me, in his
(24) PD of record, Mr. McArthur had six functions. In
(25) the job that he was ultimately slid into, he lost

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(1) three of those functions, Industrial Safety,
(2) Emergency Preparedness and Protective Services; they
(3) were no longer part of it. On the other hand,
(4) Mr. Fiser had two functions, Chemistry and
(5) Environmental, and he lost one of the two.

(6) I don't see why there's a difference
(7) there. Both of them lost half, but in one case you
(8) considered it as something you could slide somebody
(9) in and the other you couldn't.

(10) MR. BOYLES: I understand the question.
(11) Let me describe my perspective on comparing a
(12) manager's job which supervises several functions and
(13) comparing a job which is more technically oriented.

(14) Our managers supervise possibly six or
(15) seven functions, oftentimes we will go and take an
(16) industrial safety function and move it to our
(17) nuclear support organization. I don't view that as
(18) a significant change for that manager. They are
(19) still managing an organization, they are still
(20) supervising several functions.

(21) I didn't do the comparison on the
(22) Chemistry Program Manager, that was done by the
(23) Human Resource officer that worked for me, but that
(24) is a very technical, specialized position. When you
(25) change something like the environmental portion of

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(1) that, in my opinion, that's more of a significant
(2) change, and that was my perspective when we were
(3) looking at these positions.

(4) And I hope that answers your question.

(5) MR. DAMBLY: I guess not really, because
(6) I still have a problem. If he was qualified and was
(7) managing both Chemistry and Environmental and you
(8) eliminated a technical manager and not managing as
(9) in people and you eliminated half of it so he was
(10) doing even less, he certainly would appear to be
(11) performing that function before and why he has to
(12) compete for half his job I don't understand.

(13) MR. BOYLES: In my view it was very
(14) similar to what we had done previously. When the
(15) jobs were combined, I viewed it as a significant
(16) change. I agreed with the Human Resource officer
(17) that did the evaluation and did the evaluation twice
(18) of the positions, prior to Mr. Fiser informing us
(19) that he was going to file a DOL complaint, and at
(20) that time I asked Mr. Easley to look at that job
(21) again and come back to me with a recommendation. He
(22) returned with the same recommendation after we had
(23) talked with the OGC and after we had talked with our
(24) Labor Relations staff.

(25) MR. DAMBLY: Mr. Grover was a people

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(1) manager, right?

(2) MR. BOYLES: Yes.

(3) MR. DAMBLY: Didn't he have the Chemistry
(4) and Environmental function under him?

(5) MR. BOYLES: Yes.

(6) MR. DAMBLY: So he had half of it new
(7) duties and he was a manager, so why didn't you
(8) consider as a manager picking up a function or
(9) whatever is not that important like you figured
(10) dropping a function wasn't that important?

(11) MR. BOYLES: As I said, we made the
(12) determination that Wilson McArthur had a right to
(13) that new position because of the position
(14) description of record that he held. It did leave
(15) Ron Grover without a position to compete with.

(16) As I said, Ron Grover raised that issue
(17) and I think we've addressed his concerns.
(18) Mr. Grover is still an employee with TVA and at his
(19) request went on an INPO assignment.

(20) So I think we tried to deal with that
(21) situation, the situation that we had inherited from
(22) previous actions, as fairly as we could for both
(23) individuals, for Dr. McArthur and for Ron Grover.

(24) MR. VIGLIUCCI: I just want to make sure
(25) we have the right focus here.

(1) Tom, did you have any actions whatsoever,
 (2) any responsibilities for deciding whether that job
 (3) was completed or not?
 (4) **MR. McGRATH:** No, I referred it to Human
 (5) Resources and I took action based — I went along
 (6) with their recommendations as to how that should be
 (7) handled and went ahead based on their determination.
 (8) **MR. STEIN:** Let me ask you one question.
 (9) We have been exploring your interactions with people
 (10) who report to you. Have you had any interactions in
 (11) this matter on who selected the people you report to
 (12) up the chain of TVA?
 (13) **MR. McGRATH:** No, I do not. When I did
 (14) the reorganization, the reorganization was reviewed
 (15) with the chief nuclear officer and the
 (16) vice-president, senior vice-president of operations
 (17) at the time; but that was from the organization, not
 (18) any individuals.
 (19) **MR. STEIN:** So you never discussed
 (20) individuals with anyone?
 (21) **MR. McGRATH:** No, I did not discuss
 (22) individuals with anyone I reported to. There was
 (23) knowledge of what went on obviously when we evolved,
 (24) when the DOL complaint became part of it, obviously
 (25) I informed my manager that that existed and that I

(1) was proceeding along the line of working with Human
 (2) Resource and OGC to ensure that we handled that
 (3) properly.
 (4) **MR. STEIN:** Who was your manager that you
 (5) were discussing this with?
 (6) **MR. McGRATH:** At the time it was Zeran
 (7) and the Chief Nuclear Office was Oliver Kingsley at
 (8) the time.
 (9) **MR. REYES:** I think we covered all the
 (10) questions, so let me close the conference.
 (11) In closing this Predecisional Enforcement
 (12) Conference, I want to remind you of two things
 (13) Mr. McGrath. First, the apparent violation
 (14) discussed at this Predecisional Enforcement
 (15) Conference is subject to further review and may be
 (16) subject to change prior to any resulting enforcement
 (17) action.
 (18) And second, the statements of views or
 (19) expressions of opinion made by NRC employees at this
 (20) Predecisional Enforcement Conference or lack thereof
 (21) are not intended to represent final agency
 (22) determinations or beliefs.
 (23) Given the presence of TVA at the
 (24) conference, the company representative, we would
 (25) like to offer you the opportunity to meet with

(1) members of the NRC staff privately. Would you like
 (2) to do so?
 (3) **MR. McGRATH:** No, sir. I see no need for
 (4) that.
 (5) **MR. REYES:** With that, we're going to
 (6) close the enforcement conference. Thank you.
 (7) (Conference concluded at 12:20 p.m.)
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(1)
 (2)
 (3) **CERTIFICATE**
 (4)
 (5) **STATE OF GEORGIA:**
 (6) **COUNTY OF FULTON:**
 (7) I hereby certify that the foregoing
 (8) transcript was taken down, as stated in
 (9) the caption, and the questions and answers
 (10) thereto were reduced to typewriting under
 (11) my direction; that the foregoing pages 1
 (12) through ^ NO. represent a true, complete, and
 (13) correct transcript of the evidence given
 (14) upon said hearing, and I further certify
 (15) that I am not of kin or counsel to the
 (16) parties in the case; am not in the regular
 (17) employ of counsel for any of said parties;
 (18) nor am I in anywise interested in the result
 (19) of said case.
 (20) This, the 1st day of December, 1999.
 (21)
 (22)
 (23) **COLLEEN B. SEIDL, RPR, CCR-B-1113**
 (24) My commission expires on the
 (25) 7th day of October, 2002.

GARY L. FISHER

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[1]
[2]
[3] PREDECISIONAL ENFORCEMENT CONFERENCE
TENNESSEE VALLEY AUTHORITY

[4] Re: Gary L. Fiser

[5] D.O.L. Complaint

[6]
[7]
[8]
[9] December 10, 1999
[10] 1:05 p.m.

[11] 61 Forsyth Street
[12] Atlanta, Georgia

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[21]
[22] Janet K. Wilson, CCR-B-1108, RPR

[23] BROWN REPORTING, INC.
[24] 1740 PEACHTREE STREET
ATLANTA, GEORGIA 30309-2335
[25] (404) 876-8979

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[1] MR. REYES: Let's go on the record.
[2] Good afternoon. My name is Luis
[3] Reyes. I'm the regional administrator for
[4] the Nuclear Regulatory Commission Region II
[5] office. This afternoon we will conduct a
[6] predecisional enforcement conference between
[7] the NRC and TVA which is closed to public
[8] observation and is being transcribed. The
[9] subject of the conference is an apparent
[10] violation to 10 CFR 50.7 involving
[11] discrimination against Mr. Gary L. Fiser, a
[12] former TVA employee in the corporate
[13] chemistry department.

[14] Now, this is the third enforcement
[15] conference in this case. The first two
[16] enforcement conferences were with individuals
[17] since the agency could take actions against
[18] individuals themselves. This particular
[19] conference is with TVA, the entity that —
[20] the organization.

[21] Now, following the presentation by TVA
[22] and follow-up questions by the NRC, Mr. Fiser
[23] will be given the opportunity to make a
[24] statement regarding his position and interest
[25] in this case. Following Mr. Fiser's

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[1] statement, TVA will be provided an
[2] opportunity to make a rebuttal statement. I
[3] wish to emphasize that although Mr. Fiser is
[4] attending this conference, he is not a
[5] participant during the main portion of the
[6] conference. The interaction will be between
[7] TVA and the NRC. However, to ensure that all
[8] relevant positions and facts are expressed in
[9] this meeting, the NRC wishes to hear from Mr.
[10] Fiser in this case.

[11] Although TVA will have the opportunity
[12] for a rebuttal brief, there is no opportunity
[13] being provided in this forum for direct
[14] exchange or questioning between Mr. Fiser and
[15] TVA.

[16] Does everybody understand the protocol
[17] of this proceeding? Mr. Fiser?

[18] MR. FISER: Yes.

[19] MR. REYES: Any questions from TVA or
[20] Mr. Fiser on the protocol? Okay. The agenda
[21] of the predecisional enforcement conference
[22] is shown on the view-a-graph.

[23] Following my brief opening remarks, Ms.
[24] Anne Boland, the Region II enforcement
[25] officer sitting to my right, will discuss the

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[1] agency's enforcement policy very briefly. I
[2] will then provide introductory remarks
[3] concerning my perspective on the events to be
[4] addressed today. Then Mr. Loren Plisco to my
[5] left, the director of the Division of Reactor
[6] Projects, will discuss the apparent
[7] violation. TVA will then be given an
[8] opportunity to respond to the apparent
[9] violation.

[10] Following your presentation, I plan to
[11] take a break so that the NRC can briefly
[12] review what it has heard and determine if we
[13] have any follow-up questions.

[14] What I'd like to do is, we have a lot
[15] of attendees, and I'm not sure that everybody
[16] knows all the participants. So I'd like to
[17] go around the room and have everybody state
[18] their name and their title. Counsel?

[19] MS. EVANS: Carolyn Evans, regional
[20] counsel.

[21] MR. DAMBLY: Dennis Dambly, assistant
[22] general counsel for materials litigation and
[23] enforcement.

[24] MR. PLISCO: Loren Plisco, director of
[25] Division of Reactor Projects, Region II.

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[1] MR. REYES: Luis Reyes. I'm the
[2] regional administrator for the NRC office in
[3] Atlanta.
[4] MS. BOLAND: Anne Boland. I'm the
[5] Region II enforcement officer.
[6] MR. STEIN: Mike Stein, I'm a
[7] discrimination enforcement specialist for
[8] NRC.
[9] MR. McNULTY: William McNulty, I'm the
[10] field office director for the Office of
[11] Investigations.
[12] MR. SPARKS: Scott Sparks, senior
[13] enforcement specialist, Region II.
[14] MR. FISER: I'm Gary Fiser,
[15] unemployed.
[16] MR. COX: I'm Jack Cox, Watts Bar
[17] training manager, former radiological and
[18] chemistry manager for Watts Bar.
[19] MR. ROGERS: My name is Rick Rogers,
[20] and I'm with Sequoyah TVA, and I'm a system
[21] engineering manager at Sequoyah.
[22] MR. COREY: John Corey, manager of
[23] radiological chemistry controls at Browns
[24] Ferry Nuclear Plant TVA.
[25] MR. KENT: I'm Charles Kent. I'm the

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[1] manager of radiological and chemistry
[2] controls at Sequoyah Nuclear Plant TVA.
[3] MR. REYNOLDS: Phil Reynolds, vice
[4] president nuclear support, TVA.
[5] MR. BOYLES: Ed Boyles, human resource
[6] manager, TVA nuclear corporate office.
[7] MR. SCALICE: John Scalice, chief
[8] nuclear officer at TVA.
[9] MS. WESTBROOK: Melissa Westbrook,
[10] human resource consultant, TVA nuclear
[11] office.
[12] MR. MARQUAND: Brent Marquand, senior
[13] litigation attorney, TVA Office of General
[14] Counsel.
[15] MR. BURZYNSKI: Mark Burzynski, TVA
[16] corporate licensing manager.
[17] MR. VILIGUICI: My name is Ed
[18] Viliguici, senior nuclear licensing counsel,
[19] Office of the General Counsel.
[20] MS. GREEN: Donna Green, TVA labor
[21] relations consultant.
[22] MR. McCREE: My name is Victor McCree.
[23] I'm the deputy director for reactor safety,
[24] OGC.
[25] MS. EUCHNER: Jennifer Euchner,

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[1] attorney, OGC.
[2] MR. de MIRANDA: Oscar de Miranda,
[3] Region II senior allegation coordinator.
[4] MS. BENSON: Diane Benson, special
[5] agent, Office of Investigations, Atlanta.
[6] MS. BOLAND: I'd like to take just a
[7] few minutes to go through the enforcement
[8] policy.
[9] After an apparent violation is
[10] identified, in this case an apparent
[11] violation of 50.7 is assessed in accordance
[12] with commission policy which has been
[13] published in New Reg 1600. New Reg 1600 has
[14] been recently revised on November the 9th,
[15] 1999 to publish some provisions to our
[16] policy. I only have a copy available — also
[17] for you, Mr. Fiser. There has been no
[18] significant changes in the enforcement policy
[19] as republished that affect this particular
[20] proceeding, however.
[21] The NRC assessment process involves
[22] categorizing the apparent violation into one
[23] of four severity levels based on the safety
[24] significance of the issue. For cases where
[25] there is a potential for escalated

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[1] enforcement action; that is, where the
[2] severity level of the apparent violation may
[3] be categorized as severity level 1, 2 or 3, a
[4] predecisional enforcement conference of this
[5] nature is typically conducted.
[6] There are three primary enforcement
[7] sanctions available to the NRC, and they
[8] include notices of violation, civil
[9] penalties, and orders.
[10] In this particular case, the decision
[11] to hold this predecisional enforcement
[12] conference is based on the conclusions of our
[13] Office of Investigations as the result of its
[14] investigation of the process underlying Mr.
[15] Fiser's D.O.L., Department of Labor,
[16] complaint. This is essentially the last step
[17] of the investigatory process before the staff
[18] makes an informative decision.
[19] The purpose of this conference today is
[20] not to negotiate an enforcement sanction.
[21] Our purpose here today is to obtain
[22] information directly from TVA that will
[23] assist the NRC staff and also Mr. Fiser in
[24] determining the appropriate enforcement
[25] action in this case, such as an understanding

[1] of the facts, the root causes or missed
[2] opportunities associated with the apparent
[3] violation, and understanding of any
[4] corrective actions that you may have taken
[5] regardless of whether you agree or disagree
[6] with the apparent violation, and a common
[7] understanding of the significance of the
[8] issues surrounding the apparent violation and
[9] any potential chilling effect that it might
[10] have.

[11] We would also appreciate your views as
[12] to whether there is any information that may
[13] be relevant to the application of the
[14] enforcement policy in this case as well as
[15] your position on the investigative summary
[16] that was provided to you prior to this
[17] conference. And in that regard, any
[18] information that you feel is relevant to this
[19] case, this is the opportunity for TVA to
[20] present that information to us.

[21] The apparent violation discussed at
[22] this conference is subject to further review
[23] and may be subject to change prior to any
[24] resulting enforcement action. It is
[25] important to note that the decision to

[1] conduct this conference does not mean the NRC
[2] has determined that a violation has occurred
[3] or, in fact, an enforcement action will
[4] ultimately be taken.

[5] I would also like to iterate to
[6] everyone that any statements of you or
[7] expressions of opinion made by any of the NRC
[8] employees at this conference or the lack
[9] thereof are not intended to represent any
[10] agency final determinations or beliefs
[11] relative to this matter before us today.

[12] Following the conference, Mr. Reyes, in
[13] conjunction with our Office of General
[14] Counsel and the Office of Enforcement, will
[15] reach an enforcement decision. This process
[16] typically takes about four weeks to
[17] accomplish.

[18] Finally, if the enforcement action
[19] involves proposed civil penalty or involves
[20] issuance of any type of order, the NRC will
[21] issue a press release 24 hours after that
[22] enforcement action is provided to TVA.

[23] Also, as obvious here, we are
[24] transcribing this enforcement conference. It
[25] is closed to public observation with the

[1] exception of Mr. Fiser and his spouse. We
[2] will make copies of the transcripts available
[3] to any of the parties at this enforcement
[4] conference at your request; however, if we do
[5] make them available to anyone, they do become
[6] a matter of public record and will be placed
[7] in the public document room.

[8] I'll be glad to address any questions
[9] that anyone might have.

[10] The other thing that I would like to
[11] point out is — and I know TVA is aware of
[12] this, and I've made Mr. Fiser aware of it as
[13] well — any documents that are provided to us
[14] in the course of this conference also become
[15] a matter of public record and will be placed
[16] in the public document room.

[17] **MR. REYES:** Thanks, Anne.

[18] Proceeding with the agenda for this
[19] afternoon, let me make some remarks.

[20] As will be discussed by Mr. Plisco, it
[21] appears that TVA discriminated against Mr.
[22] Fiser for his engaging in prior protected
[23] activities when he was not selected for a
[24] corporate chemistry position within TVA
[25] corporate organization in 1996. The NRC

[1] places a high value on the freedom of nuclear
[2] industry employees to raise potential safety
[3] concerns to licensee management as well as
[4] the NRC.

[5] Section 211 of the Energy
[6] Reorganization Act and 10CFR 50.7 establishes
[7] strict requirements for protection of
[8] employees against discrimination for raising
[9] nuclear safety concerns. Our purpose today
[10] is for you to provide the basis for your
[11] decisions in this case.

[12] With that, Mr. Plisco will discuss a
[13] background and the apparent violation.

[14] **MR. PLISCO:** I'll just take a moment to
[15] summarize the apparent violation.

[16] The NRC's Office of Investigation
[17] completed an investigation in August 1999
[18] regarding Mr. Gary Fiser, a former TVA
[19] nuclear chemistry and environmental
[20] specialist, who was not selected to fill one
[21] of two chemistry program manager positions
[22] following a 1996 reorganization. Mr. Fiser
[23] was allegedly not selected to fulfill the
[24] position for engaging in protective
[25] activity.

(1) The protective activity involved Mr.
(2) Fiser's filing of a discrimination complaint
(3) with the Department of Labor in September of
(4) 1993. This issue appears to be an apparent
(5) violation of 10CFR 50.7, employee protection,
(6) which prohibits discrimination by a licensee
(7) against an employee engaged in protective
(8) activities. The apparent violation is shown
(9) in this view-a-graph and also was handed out
(10) and was documented in our letter to you dated
(11) September 20th, 1999.

(12) At this conference, we're giving you
(13) the opportunity to provide information
(14) regarding this issue and the events described
(15) in the summary in the Office of Investigation
(16) report, which we provided to you previously
(17) in that same letter September 20th, 1999.

(18) Are there any further comments or
(19) questions before we begin?

(20) **MR. REYES:** I guess we're at the point
(21) in the agenda that we're going to turn over
(22) the meeting to TVA.

(23) **MR. BURZYNSKI:** Thank you. For this
(24) part, I will move up here and work as kind of
(25) a master of ceremonies for our presentation.

(1) General Counsel reviewed the issues and
(2) reaffirmed the kinds of decisions that were
(3) made in the Inspector General's report. A
(4) second time, we reviewed it when we were
(5) notified of this predecisional enforcement
(6) conference, and we had a broader team of
(7) people involved with TVA's human resource
(8) office, Office of General Counsel, and
(9) licensing at this time re-review the facts
(10) again and look at the conclusion. Based on
(11) these reviews, TVA does not agree with the
(12) conclusions reached in the OI report
(13) summary.

(14) What I'd like to do now is introduce
(15) Mr. Phil Reynolds, vice president of nuclear
(16) support, and ask him to provide you with some
(17) background information about the
(18) reorganization that was occurring in TVA
(19) during the 1996 time frame. Phil?

(20) **MR. REYNOLDS:** Thank you, Mark.
(21) The events of the 1996 radiation
(22) control chemistry and environmental
(23) reorganization is what brings us here today;
(24) and since that's been about four years ago,
(25) it may be helpful for us to reflect a little

(1) We have a number of people that will be
(2) speaking, and I'll be introducing them and
(3) also summarizing the key points that we want
(4) to make.

(5) For today's presentation, we're going
(6) to have some introductory remarks and some
(7) background information. Then we'll discuss
(8) the five points that were identified in the
(9) OI summary report that was attached to the
(10) enforcement letter. Then we'll provide some
(11) summary remarks and then some closing
(12) remarks.

(13) As a way of an introduction, I just
(14) want to say that TVA conducted a prompt and
(15) thorough review of the issues raised in Mr.
(16) Fiser's 1996 complaint. In fact, the
(17) investigation was initiated by TVA's
(18) inspector general office once Mr. Fiser
(19) announced his intentions to file a complaint
(20) in 1996.

(21) TVA also re-reviewed these issues two
(22) times. The first time was when we were
(23) notified of the Office of Investigations'
(24) investigation. At that time, both TVA's
(25) human resource department and the Office of

(1) bit about where TVA had been at that point
(2) and what was occurring specifically in 1996.

(3) In late '95 and early '96, we were
(4) anticipating having five nuclear operating
(5) units on line at that point, and we were in
(6) the process of going through our business
(7) plan in early 1996. In that business
(8) planning cycle, we had three primary goals
(9) that we were looking at. We wanted to
(10) finalize the meaning of our organization from
(11) a construction to an operating organization;
(12) we wanted to develop the strategies for the
(13) organization so we could compete in the
(14) deregulated electricity department; and
(15) three, we had to bring our labor costs in
(16) line with nuclear industry averages. In
(17) doing that, we also wanted to be at a point
(18) where we could begin to stabilize our work
(19) force; because as you can see in this chart
(20) that we've had up here that Mark's displayed,
(21) we had learned some very painful lessons
(22) since 1988 in what had happened in the
(23) organization.

(24) As you can see, in 1988, we had a TVA
(25) nuclear head count of over 11,000 employees

[1] and decreased that by the end of fiscal year
[2] '96 to 3,796 employees. We've learned a lot
[3] of lessons during that period of time, we've
[4] been down here several times as a result of
[5] some of our efforts in our downsizing; and
[6] the senior management team at that time, we
[7] knew where we needed to go to prepare for the
[8] future, we knew what our Year 2000 head
[9] counts were going to look like; and we made
[10] the decision at that time that we were going
[11] to try to accelerate our move to try to get
[12] to our 2000 numbers as quickly as possible
[13] and then let attrition handle the rest of the
[14] reductions we were going to need in the
[15] organization.

[16] Now, during that period in 1996, I want
[17] to make the point that this just wasn't a
[18] reorganization that was occurring in the
[19] corporate radchem and chemistry and
[20] environmental industry; this was a
[21] reorganization throughout all of TVA nuclear
[22] that involved about 900 employees who were
[23] impacted by the reorganization. This was in
[24] our engineering organizations, at Browns
[25] Ferry, Sequoyah, Watts Bar, and our corporate

[1] office. It was occurring in our human
[2] resource organizations, not only at the sites
[3] but within the corporate office also. It was
[4] going on in nuclear assurance and licensing
[5] at the corporate office and our sites, and
[6] occurring in our operation support
[7] organization, where our radchem chemistry
[8] environmental organization was and has since
[9] located in Chattanooga.

[10] As a result of this, there were many,
[11] hundreds of jobs that were reevaluated,
[12] posted, up for selection. There were
[13] approximately 150 employees who were issued
[14] surplus notices at that time. In that point,
[15] Mr. Fiser was one of those 150 employees that
[16] was issued a surplus notice. There were 86
[17] of the 150 —

[18] **MR. DAMBLY:** Is a surplus notice
[19] different than a written notice in TVA?

[20] **MR. REYNOLDS:** Yes, sir, it is.

[21] **MR. DAMBLY:** What's the difference?

[22] **MR. REYNOLDS:** A surplus notice was a
[23] notification to an employee that they were
[24] going to either go to the TVA services
[25] organization or have the opportunity to

[1] resign their employment, receive one year's
[2] severance pay, and receive immediate
[3] retirement benefits.

[4] **MR. DAMBLY:** What's the difference
[5] between that and a RIF notice?

[6] **MR. REYNOLDS:** A RIF notice would be
[7] that you just give the employee the notice,
[8] and they would separate their employment
[9] directly at that time. At that point when
[10] you issue an employee a surplus notice — and
[11] that's kind of where I was heading next, so
[12] I'll kind of continue with that and maybe it
[13] will help.

[14] TVA had created a services
[15] organization. The purpose of the service
[16] organization was to provide the employees an
[17] opportunity for further training to be
[18] retrained for new skills or seek employment
[19] either internally within TVA or externally.
[20] Like I said earlier, in that '96 time frame,
[21] if an employee received a surplus notice,
[22] they had an opportunity to transfer into this
[23] TVA services organization and continue their
[24] employment as a TVA employee, full benefits,
[25] no loss of pay, none of that, and continue to

[1] look for employment or retrain as I mentioned
[2] earlier; or they could choose the option to
[3] resign their employment, receive one year's
[4] severance pay — a year's pay for severance,
[5] and their severance pay which would have been
[6] available to them, which is equal to five
[7] days for every year of employment they had.

[8] **MR. STEIN:** If a TVA employee opted to
[9] go into the TVA services group, how long
[10] could they remain in that group before they
[11] were taken —

[12] **MR. REYNOLDS:** Typically about a year.
[13] We had had employees — the TVA services
[14] organization was kind of what I will refer to
[15] as some of our first attempt at the employee
[16] transition program, and then it changed to
[17] the services organization. But it was
[18] typically about a year unless they found
[19] another employment or something like that.

[20] **MR. STEIN:** And what was your success
[21] rate for employees leaving the TVA services
[22] organization to go back into the operations
[23] or maintenance or engineering departments,
[24] wherever they came from?

[25] **MR. REYNOLDS:** I don't know the answer

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[1] to that question. The services organization
[2] was not part of the nuclear organization; it
[3] was part of an overall TVA corporate, so I do
[4] not know that answer.

[5] MR. STEIN: Thank you.

[6] MR. REYNOLDS: So those were the
[7] options available to employees at that time.

[8] The second point I'd like to talk a
[9] little bit about is the role of TVA nuclear
[10] human resources, and TVA nuclear expects our
[11] managers to provide the leadership and
[12] direction so that our organization can become
[13] an industry leader. The TVA nuclear managers
[14] are not expected to be subject matter experts
[15] in the areas of TVA policies and procedures
[16] or practices on personnel matters, but we do
[17] expect them to handle those day-to-day
[18] supervisory functions.

[19] In TVA human resources, which I am
[20] responsible for, we provide what I'll call
[21] the guardianship and the subject matter
[22] experts for these TVA rules and policies and
[23] practices on personnel matters. And in times
[24] of surplus and reorganizing the
[25] organizations, our role is not to collaborate

[1] Thank you.

[2] MR. BURZYNSKI: With that background —
[3] sorry.

[4] MR. DAMBLY: I didn't catch it. Did
[5] you say that PD's control or the actual
[6] duties control?

[7] MR. REYNOLDS: In determining
[8] competitive level, it is not the duties; it
[9] is the position description or job
[10] description of record.

[11] MR. DAMBLY: Okay.

[12] MR. BURZYNSKI: With that background
[13] information, what I'd like to do now is move
[14] into discussions on the five particular
[15] points that were identified in the OI report
[16] summary that form the basis for the
[17] predecisional enforcement conference.

[18] In terms of the first point, the OI
[19] report summary states that Mr. McGrath and
[20] Dr. MacArthur were named as culpable parties
[21] in Mr. Fiser's 1993 D.O.L. complaint. On
[22] this point, TVA finds that the OI report
[23] summary is incorrect. Mr. McGrath was not
[24] named personally or by position. Mr. McGrath
[25] was not interviewed by the Department of

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[1] with management but to ensure that we comply
[2] with our practices and regulations that
[3] govern us at that time. We apply the office
[4] of personnel management regulations when
[5] establishing competitive levels, and Mr.
[6] Boyles to my right is going to discuss that
[7] in this presentation.

[8] In the TVA organization, human
[9] resources makes the determination and makes
[10] the calls on the competitive levels; not line
[11] managers. By us doing this, this prevents a
[12] manager from determining competitive levels
[13] based on personal knowledge of what an
[14] employee does versus what the official
[15] position description or job description of
[16] record states, and that's a real key when we
[17] get into discussion. Once HR determines
[18] those competitive levels, we inform the
[19] managers what those levels are.

[20] Our practice in a reorganization and a
[21] surplus was to require and is today to
[22] require competitive level call be made on
[23] effective positions to determine if and which
[24] employees have rights to new positions within
[25] the organization.

[1] Labor or the TVA Inspector General as part of
[2] that 1993 complaint. As Mr. McGrath
[3] testified in his individual enforcement
[4] conference, he was unaware of the '93
[5] complaint until informed by TVA nuclear human
[6] resources in 1996 when Mr. Fiser informed
[7] them of his intention to file a second
[8] Department of Labor complaint. And Mr.
[9] McGrath also informed you that he was unaware
[10] of the characterization of culpability until
[11] he received your letter inviting him to his
[12] own individual enforcement conference.

[13] Similarly, Dr. MacArthur is not named
[14] as a culpable party. Instead, as he
[15] indicated to you, he thought he was portrayed
[16] as a favorable supporter of Mr. Fiser in the
[17] complaint, and he provided information
[18] through his enforcement conference to that
[19] effect. We are providing the same
[20] information to you now, which is a copy of
[21] the 1993 complaint. We've highlighted the
[22] areas when Mr. MacArthur is mentioned, and
[23] you can see the characterizations there.

[24] MR. STEIN: I have a question, and I'm
[25] going to get to this a little bit later I

(1) think in presentation; but given the fact
(2) that Mr. McGrath is prominently named in a
(3) TVA internal investigation report of a very
(4) senior TVA official — and Mr. Peterson as
(5) well — don't you think that TVA IG should
(6) have interviewed Mr. McGrath and Mr. Peterson
(7) in 1993?

(8) **MR. BURZYNSKI:** Brent, you want to take
(9) a shot at this?

(10) **MR. MARQUAND:** I don't know that—

(11) **MR. STEIN:** Let me be more specific.

(12) Dan Kiter in his investigation report
(13) and TVA's internal report mentions both Tom
(14) Peterson and Tom McGrath as being opposed to
(15) Mr. Fiser going to corporate chemistry. I
(16) would think it would be incumbent upon TVA's
(17) IG to speak with those two individuals.

(18) **MR. MARQUAND:** Well, I mean, the TVA IG
(19) is not here to speak for themselves —

(20) **MR. STEIN:** Your statement is that
(21) McGrath was not interviewed by D.O.L. or TVA
(22) Inspector General; therefore, he didn't do
(23) anything that —

(24) **MR. MARQUAND:** The point is that the
(25) synopsis — we haven't seen the OI report in

(1) In terms of your response about Mr.
(2) McGrath not named personally by position, are
(3) you providing what I'll call a legalistic
(4) response by referring to the D.O.L. complaint
(5) that is this document, or are you saying that
(6) to your knowledge McGrath was not involved in
(7) the investigation in terms of being mentioned
(8) and the activities that Mr. Fiser is talking
(9) about not being mentioned —

(10) **MR. MARQUAND:** He made two points.
(11) Literally, he's not named either nominally or
(12) by title; but the investigation by TVA's own
(13) IG didn't turn up anything that would suggest
(14) that he was involved in the '93 complaint.
(15) Not only was he not named, but to his
(16) knowledge — I mean, he didn't have knowledge
(17) of it, but the TVA's investigation didn't
(18) show that he was involved in the issues of
(19) the '93 complaint. The '93 complaint, Mr.
(20) Fiser was complaining about the people at the
(21) plant. He wasn't complaining about the
(22) people in corporate.

(23) **MR. DAMBLY:** I guess the problem I'm
(24) having is I've reviewed the responses you all
(25) made to the '96 D.O.L. complaint in which Mr.

(1) this case; all we've seen is the synopsis.
(2) The synopsis suggests that — it doesn't
(3) suggest; it says — that the two individuals
(4) were named as culpable parties. Well, that
(5) doesn't mean they did wrong here. The reason
(6) that is there is to suggest that they had
(7) some reason to herald some hostility or to
(8) retaliate against Mr. Fiser subsequently.
(9) That's their alleged knowledge supposedly of
(10) — gives the foundation for why they were
(11) going to retaliate. The point is not whether
(12) or not they should have been told, but the
(13) point is did they know in 1996 — what did
(14) they know in '96 what formed the basis for
(15) this supposed animosity that they had towards
(16) Mr. Fiser. And our point here is not that
(17) they should have been told or they shouldn't
(18) have been told, but simply Mr. McGrath didn't
(19) know in 1996 that he had been targeted in Mr.
(20) Fiser's '93 complaint. He therefore couldn't
(21) have an animosity toward Mr. Fiser as a
(22) result of the '93 complaint. He didn't even
(23) know about it. I mean, that's a logical
(24) impossibility.

(25) **MR. DAMBLY:** Let me ask one question.

(1) Fiser made similar allegations about Mr.
(2) McGrath and Dr. MacArthur, and I didn't see
(3) anywhere in there that you're making the
(4) statements that you're making to us about
(5) them not being involved in '93.

(6) **MR. MARQUAND:** We addressed the literal
(7) language in the summary of the OI report.
(8) We're addressing the report that's been laid
(9) in front of us.

(10) **MR. REYES:** Can we explore that?
(11) Because — what's the date of the documents
(12) you're referring to, Dennis?

(13) **MR. DAMBLY:** I don't have it in front
(14) of me; but their response and their motion
(15) for summary judgment and whatever the '96 —

(16) **MR. MARQUAND:** Subsequently, yes. And
(17) our point there was in Mr. Fiser 1996
(18) complaint, he revised, so to speak, what he
(19) said he had said in '93, and he
(20) recharacterized it. And we addressed the
(21) merits of it. I mean, you go to these judges
(22) a lot of times, and they don't want to hear
(23) something like, I didn't know about it; they
(24) want to know. Well, did you retaliate against
(25) this guy? Well, no, we didn't retaliate

[1] against him.
[2] **MR. REYES:** So your answer to our
[3] question is that the statement — and I'm not
[4] agreeing or disagreeing; I just want to make
[5] sure we convey information here today. Your
[6] statement is that you address in that
[7] document what the accusation was —
[8] **MR. MARQUAND:** The '96 acquisition.
[9] **MR. REYES:** The '96; not that you were
[10] trying to explain what happened.
[11] **MR. MARQUAND:** In response to the '96
[12] complaint, I believe both the response to
[13] wage and hour and in our summary judgment
[14] documents we addressed the accusations in '96
[15] that Mr. McGrath had some animosity toward
[16] Mr. Fiser arising out of the NSRB minutes in
[17] 1991. And we've addressed that issue and
[18] said there wasn't any reason for any
[19] animosity; in fact, it was totally different
[20] than as Mr. Fiser had characterized it in
[21] 1996.
[22] **MR. REYES:** Does that help?
[23] **MR. DAMBLY:** Yeah, it helps; but by my
[24] reading of the documents, you filed and made
[25] statements like the issue concerning I guess

[1] McGrath and Mr. MacArthur were discussed?
[2] **MR. MARQUAND:** My understanding, Mr.
[3] McGrath was not interviewed with respect to
[4] the '93 complaint.
[5] **MR. DAMBLY:** Well, I'm not saying that
[6] he was interviewed, but he was mentioned in
[7] interviews, and the incident that Mr. Fiser
[8] has focused on was mentioned in interviews in
[9] 1993.
[10] **MR. MARQUAND:** Yes.
[11] **MR. DAMBLY:** Okay. That's my only
[12] question.
[13] **MR. BURZYNSKI:** Let me see if I can get
[14] myself back on track.
[15] **MR. DAMBLY:** Sorry about that.
[16] **MR. BURZYNSKI:** No problem.
[17] Okay. The second point that we wanted
[18] to talk about, the OI report summary states
[19] that Dr. MacArthur's appointment contravened
[20] TVA policy, and as a result, Mr. Fiser was
[21] subjected to disparate treatment. On this
[22] point, TVA finds that Dr. MacArthur's
[23] appointment was made in accordance with OPM
[24] regulations on job rights. And I'd like to
[25] introduce Mr. Ed Boyles, human resource

[1] how many parameters he was supposed to report
[2] on a daily basis the chemistry issue — I may
[3] not be phrasing that right — but you put in
[4] material that said that was only one of the
[5] things mentioned for why he was transferred.
[6] And you put that in responses, which tells me
[7] that you considered that part of the reason
[8] for whatever was going on in '93. And now
[9] Mr. Fiser's saying that's why he was
[10] retaliated against there, and you're telling
[11] us that these people were not — are you —
[12] again, you're responding right now to the
[13] literal words of the OI summary and not
[14] necessarily whether in point of fact in '93
[15] there were these interactions that Mr. Fiser
[16] is complaining about.
[17] **MR. MARQUAND:** Mr. Fiser in '93 did not
[18] complain about the 1991 and '92 interactions
[19] with the NSRB; he complained about something
[20] totally different in '93.
[21] **MR. DAMBLY:** And you're basing that on
[22] the complaint only; not the investigation —
[23] **MR. MARQUAND:** Right.
[24] **MR. DAMBLY:** — and all those
[25] statements that were taken in which Mr.

[1] manager, who will discuss with you the
[2] process we used and the decisions we made
[3] regarding both Dr. MacArthur's job and Mr.
[4] Fiser's.
[5] **MR. BOYLES:** Thanks, Mark.
[6] I'd like to use an overhead to walk
[7] through the process that we utilize for
[8] evaluating during a reorganizations decision
[9] on whether to post positions or whether or
[10] not to post positions. The overhead outlines
[11] the basic steps that are taken in this
[12] decision process.
[13] During a reorganization, management
[14] determines the functions that are going be
[15] performed, and they propose the organization
[16] structure. Management also develops position
[17] descriptions based on the functions they have
[18] laid out in this proposal. Now, at that
[19] point, there's a hand off as the line shows
[20] here to human resources. I've referenced the
[21] OPM regulations that do apply during this
[22] process.
[23] Once that hand off is made to human
[24] resources, the existing employee competitive
[25] levels are determined based on a review of

[1] the existing PD, and it's what Mr. Reynolds
[2] referred to earlier, the official position
[3] description of record. The new PD that is
[4] compared to this existing PD and human
[5] resources makes the determination on
[6] interchangeability.
[7] Based on this determination, we make
[8] the decision of whether to post or not to
[9] post. If it's determined to be
[10] interchangeable, we don't post the position.
[11] We view the attached employee to have rights
[12] to the job. If we view it as not
[13] interchangeable, the position is posted, as I
[14] show here. I'd like —
[15] **MR. STEIN:** Excuse me. At what level
[16] of OHR is this decision made and how much
[17] input does line management have in deciding
[18] one way or the other?
[19] **MR. BOYLES:** I'm going to walk through
[20] a scenario regarding Mr. Fiser's decision and
[21] Mr. MacArthur's, and I'll indicate who was
[22] involved in that level of decision. I think
[23] that will answer that question.
[24] **MR. DAMBLY:** Before you get to that
[25] question, if you decided in Mr. Fiser's case

[1] that the jobs were interchangeable, then at
[2] that point, instead of posting, there would
[3] be job rights; but since you had three, you
[4] would have had to run a RIF? If you had
[5] three people that were interchangeable and
[6] you had two jobs —
[7] **MR. BOYLES:** We had a surplus
[8] situation. We were not in a RIF situation.
[9] We had given the individual this option of
[10] TVA services or the option to resign TVA with
[11] one year's pay and appropriate severance pay.
[12] I'd like to ask —
[13] **MR. DAMBLY:** Isn't 351 the OPM RIF
[14] regulations?
[15] **MR. MARQUAND:** Let me address that.
[16] Part 351 deals with the RIF regulations,
[17] and the RIF regulations only address a
[18] separation from employment through a
[19] reduction of force —
[20] **MR. DAMBLY:** My question was why are
[21] you citing me 5 CFR 3551 for a surplus if you
[22] don't have to follow — what do the
[23] competitive levels have to do with a
[24] surplus?
[25] **MR. BOYLES:** We had to determine

[1] competitive levels in order to make a
[2] determination on interchangeability of PDs
[3] similar to PDs.
[4] **MR. MARQUAND:** 351 403 establishes what
[5] competitive level is and provides the legal
[6] test as to whether or not a position
[7] description — an individual has a right to a
[8] new job or in this case, if there is not a
[9] new job that's interchangeable, whether that
[10] individual would be surplus.
[11] **MR. DAMBLY:** Surplused?
[12] **MR. MARQUAND:** That's our term,
[13] surplus.
[14] **MR. DAMBLY:** But you're into 351, which
[15] is RIF rates, and you're talking about a
[16] different process; so I'm not sure what the
[17] applicability is. Also, can you point out
[18] for me in 351 where it says you check the PDs
[19] to determine whether they're
[20] interchangeable?
[21] **MR. MARQUAND:** I believe it's 351 —
[22] **MR. DAMBLY:** — 403. There you talk in
[23] terms of duties. I don't recall an official
[24] position description —
[25] **MR. MARQUAND:** I think 301 403A

[1] requires a comparison with the official
[2] position description; and within TVA, what we
[3] use as official position description is a
[4] position description of record. That's what
[5] the MSPB, the Merit System Protection Board,
[6] that's what they hold us to.
[7] **MR. DAMBLY:** Okay.
[8] **MR. BOYLES:** As I said, I want to walk
[9] through the scenario.
[10] Mark, if you would take us to the next
[11] slide, please.
[12] **MR. BURZYNSKI:** Yes, sir.
[13] **MR. BOYLES:** What I've done here is I
[14] show you the scenario utilized as it involved
[15] Mr. Fiser, and I've listed in bold here —
[16] and I believe you have the handouts — who
[17] was involved in the decision at that time.
[18] Again, as I said, when management is
[19] determining the functions to be performed in
[20] proposing the future organization, in this
[21] case, this was operation support, and Tom
[22] McGrath was the acting general manager of
[23] operation support who was involved in that
[24] process at the time.
[25] In the development of the new position

1) descriptions based on those functions, both
 2) Mr. MacArthur — Dr. MacArthur and Don
 3) Grogran were involved in that with unput from
 4) others, including Gary Fiser, Sam Harvey, and
 5) Shondra. They were all involved in the
 6) development of those position descriptions.
 7) I've listed some of the issues involved
 8) in the changes in position descriptions. I'd
 9) like to point out there were two new position
 0) descriptions, one BWR and one PWR, developed
 1) as a result of that. At that point, there is
 2) a hand off to human resources of the PDs.
 3) Now, in this case, Mr. Easley, Ben Easley,
 4) who worked for me, reviewed the existing PDs
 5) of record to establish the competitive
 6) level.

7) In this case, Mr. Fiser, Mr. Harvey,
 8) and Mr. Shondra were determined to be at the
 9) same competitive level. At that point, he
 0) compared Mr. — Mr. Easley compared the new
 1) chemistry program managers PDs, PWR and BWR,
 2) and the existing chemical environmental
 3) protection PDs. His decision and with my
 4) concurrence was that they were not
 5) interchangeable and we were required to post

1) those jobs.
 2) **MR. STEIN:** Can you walk us through
 3) from 1993 to this point what Mr. Fiser's PD
 4) looked like? Because Mr. Fiser went back
 5) into a position in 1993 as a result of an
 6) earlier case, and then he had to compete when
 7) you threw environmental back into the mix,
 8) and then you took environmental out. So —

9) **MR. BOYLES:** It's a good point. I can
 10) address it in general terms. I don't have
 11) the PDs in front of me, but my recollection
 12) of the events involved — Mr. Fiser was
 13) placed in the corporate chemistry office in
 14) '93, I believe, as a result of settlement
 15) D.O.L. made. He was placed in a chemistry
 16) program position description.

17) **MR. STEIN:** Is that similar to a
 18) position description for the chemistry
 19) manager in 1996?

20) **MR. BOYLES:** I'd have to compare them,
 21) the job titles; because chemistry's specific
 22) and didn't include the environmental PDs.
 23) Shortly, maybe a year later, seems like in
 24) '94, there was a reorganization which
 25) included — added chemistry; and at that

1) time, they were not viewed as
 2) interchangeable. I think that's a good
 3) point. They were posted; and it's my
 4) understanding that Mr. Fiser didn't question
 5) the posting of the position at that time,
 6) that he applied on this new position
 7) description, which was chemistry and
 8) environmental, and was selected on that
 9) position.

10) Now, interchangeability needs to go
 11) both ways, so that's —

12) **MR. STEIN:** The point I'm trying to
 13) make is that by 1996, you had took
 14) environment out of this PD; and if it's the
 15) same as he was working under in 1993 when he
 16) got the position in settlement, then
 17) shouldn't he have gone into that position as
 18) a right as Mr. MacArthur did on the next
 19) page?

20) **MR. BOYLES:** His position description
 21) of record at that time was the chemistry
 22) environmental position description. That was
 23) what was used to do the comparison.

24) Again, the interchangeability needs to
 25) go both ways. It seems very logical that if

1) it was posted in '94 that the decision to
 2) post it again when a change occurred, which
 3) pretty much reversed earlier decisions, that
 4) that confirms the decision of '96, that it
 5) was posted in '94; and no one contested that
 6) decision at that time.

7) **MS. BOLAND:** Were the same three people
 8) involved in the '93 reorganization?

9) **MR. BOYLES:** I don't know. I was not
 10) present at that time.

11) **MS. BOLAND:** Because you gained a
 12) function in the first reorg but lost a
 13) function in the second reorg.

14) **MR. BOYLES:** Let me say the individuals
 15) present at the time wouldn't have had any
 16) effect on interchangeability.

17) **MR. MARQUAND:** My understanding in '94
 18) when it was posted and competed for, the same
 19) three individuals were involved; but there
 20) were other applicants who were not successful
 21) in '94. And then when they reversed the
 22) decision and took the jobs apart for '96,
 23) again, there were the same three individuals,
 24) but there were also other applicants.

25) **MS. BOLAND:** So the first reorg, the

[1] three individuals were there, they applied,
[2] and were all able to retain their jobs
[3] through the selection process?
[4] **MR. MARQUAND:** Yes.
[5] **MS. BOLAND:** Same individuals again,
[6] but we were going from 3 to 2 positions?
[7] **MR. MARQUAND:** But there were six
[8] applicants in '96 but only two positions.
[9] **MS. BOLAND:** No; I understand —
[10] **MR. STEIN:** Was Mr. Fiser's 1994 PD
[11] accurate in truly reflecting what he did?
[12] Because there is some evidence to say that
[13] even though you posted a new position, he had
[14] a new title, he really wasn't doing
[15] environmental work; it was still very much
[16] the same thing as 1993?
[17] **MR. MARQUAND:** The testimony was that
[18] in 1994 that what they were doing was
[19] intending to cross train, cross-pollinate
[20] people and that they selected people with
[21] chemistry backgrounds to be in chemistry
[22] environmental positions. I believe they also
[23] selected someone who had an environmental
[24] background to be in a chemistry and
[25] environmental position. And the intent was

[1] that over time that they would cross train
[2] each other so that they would be broader
[3] specialists. And that never fully came to
[4] fruition, and they recognized that we would
[5] be better off not only specializing in
[6] chemistry, but having somebody who
[7] specialized in chemistry PWR plants and
[8] somebody who specialized in chemistry BWR
[9] plants. So they didn't quite go back to
[10] where they were in '93, but they went to a
[11] more highly specialized position. But you
[12] are correct that when they initially were put
[13] in the positions, they were not accurate; and
[14] they were not intended to be. They were
[15] intended to learn a new responsibility and
[16] new —
[17] **MR. BOYLES:** Okay. Mark, if you would,
[18] just go to the next slide, which includes the
[19] scenario involved in Mr. MacArthur's position
[20] description.
[21] Again, in the conceptual phase, Mr.
[22] McGrath was the acting general manager of
[23] operation support. Mr. McGrath had decided
[24] to utilize an existing PD radiological
[25] control and chemistry control manager, which

[1] had been vacated by the retirement of Mr.
[2] Sorrell earlier. The position wasn't created
[3] in 1996; it had actually been created prior
[4] to that when an individual filled that, Mr.
[5] Sharod. We utilized that position to
[6] establish the competitive level. Mr. Easley,
[7] who again worked for me, and I reviewed that;
[8] and as indicated underneath, it shows the
[9] basic elements of the job. Above that, I
[10] show the basic contents of the — I show the
[11] basic contents of the radiological control
[12] and chemistry control manager and utilized
[13] the position description of the record, which
[14] was technical program manager's position.
[15] Let me say, this was a 1990 position
[16] description. Dr. MacArthur had not been
[17] issued a new position description in 1994
[18] during the reorganization; but as we
[19] indicated earlier, our position is that we
[20] utilized the position description of record,
[21] and that's what we utilized to establish this
[22] competitive level.
[23] **MR. STEIN:** How is this performed? Do
[24] you use your elements and standards like we
[25] do and come out with position descriptions?

[1] I would assume Mr. McGrath's performance
[2] appraisal in this time period should have
[3] been reflected in the position description —
[4] I'm sorry; Mr. MacArthur.
[5] When you gave Mr. MacArthur a
[6] performance appraisal — when he didn't get
[7] his new position description, at that point,
[8] I would think it would have been picked up
[9] that he was working under a different set of
[10] elements and standards.
[11] **MR. BOYLES:** I did not review his
[12] performance appraisals; they do annual
[13] performance appraisals. I don't know —
[14] **MR. MARQUAND:** Well, as you know in TVA
[15] nuclear, we do try to cross train people and
[16] we put people in rotational positions for
[17] periods of time, and the new position
[18] descriptions are not necessarily issued then
[19] during those periods. They maintain their
[20] official position description and personal
[21] history record is wherever they came from,
[22] but they're on a rotational cycle. In fact,
[23] as you know, Dr. MacArthur during this 1994
[24] through '96 period was acting in the capacity
[25] as radiological control manager while another

(1) individual by the name I believe it was
(2) Sorrell —
(3) **MR. BOYLES:** That's correct.
(4) Let me back up for a second, too, to
(5) mention one other issue that involved — when
(6) Mr. McGrath was in conceptual phase of the
(7) organization and he was discussing it with
(8) me, I told him that from the appearance of
(9) the changes, that I thought most of the
(10) positions would end up being posted. As we
(11) progressed through that and he informed
(12) people who worked for him, Dr. MacArthur in
(13) the early part of 1996 approached Tom McGrath
(14) with concern. His concern was that he
(15) believed that the position description of
(16) radiological control and chemistry control
(17) manager was his position. He believed he had
(18) held it before; and, in fact, Mr. Sorrell was
(19) in the process of retiring and Mr. MacArthur
(20) often did perform functions of the job. He
(21) raised that concern with Mr. McGrath in '96,
(22) who asked me to look at it. At the time I
(23) had told him we would probably post the
(24) position, we hadn't established competitive
(25) levels, we had not looked at the PDs at all;

(1) States to do that job, technical
(2) qualification. But Tom McGrath did ask me,
(3) Do we really have to post that position? We
(4) ultimately did post the job; but to my
(5) recollection, that's the only position that
(6) he politely questioned me on.
(7) **MR. STEIN:** Well, Mr. Easley disagreed
(8) with that decision. Can you go into a little
(9) bit of the give and take you had with your
(10) staff —
(11) **MR. BOYLES:** Yes; I'll be glad to.
(12) I had asked someone who had been in the
(13) organization for quite a while to do a
(14) comparison for me and to dig up the records,
(15) the history, and he did. We discussed it;
(16) and initially, Mr. Easley agreed that it was
(17) an interchangeable position. But he did come
(18) to me later, and he spoke with me about Mr.
(19) Grover. He indicated to me that if we did
(20) this and did post the position, that Mr.
(21) Grover wouldn't have an opportunity to bid on
(22) the position, and it appeared that he would
(23) be without a job. I, too, was concerned that
(24) Mr. Grover would be without a job, although
(25) he could have applied. But I didn't think we

(1) but I told Mr. McGrath that we would do that,
(2) and that's what we did in the rest of this
(3) process.
(4) **MR. STEIN:** It looked like Dr.
(5) MacArthur actively lobbied to get the
(6) position since he considered it was his
(7) position.
(8) **MR. BOYLES:** He raised a concern.
(9) **MR. STEIN:** Did Mr. McGrath come to you
(10) in an active mode as well, or was it just,
(11) Here HR, take a look at it —
(12) **MR. BOYLES:** No, it wasn't. Dr.
(13) MacArthur raised a concern, Will you look at
(14) this issue and tell me what to do, and that's
(15) what we did. I'm confident that had we
(16) returned and told him he had to post the
(17) position that he would have agreed and posted
(18) the position. We had hundreds of calls like
(19) that made. I can only recall one position
(20) that he questioned me on; that was involving
(21) the current manager of steam generators. We
(22) had changed that job fairly significantly,
(23) and I felt we needed to post it; but the
(24) incumbents, weren't probably only three
(25) people in the eastern part of the United

(1) needed to focus on an individual who we were
(2) making an interchangeability call on a PD.
(3) So I talked with Mr. Easley about that,
(4) and we basically disagreed on that call. I
(5) did review it with my supervisor as the next
(6) step and went over my process and her
(7) position, and she had no problem with what I
(8) was doing.
(9) Similar to the other, we did make the
(10) decision in this case; and as I've indicated,
(11) I take full credit for that. Mr. Easley did
(12) ultimately disagree with me; but I decided
(13) that Dr. MacArthur had rights to the job as I
(14) viewed it as interchangeable with his
(15) existing PD of record.
(16) And let me say this: Based on many of
(17) these that we've done, I think had I made a
(18) decision to post this job, I believe that Dr.
(19) MacArthur would have a pretty good case
(20) against us for not utilizing his job
(21) description of record in acquiring that
(22) posting.
(23) **MR. DAMBLY:** I asked this question the
(24) last time we were together, and I still have
(25) a problem. I notice on the chart you gave us

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[1] today, you left off a duty which you told us
 [2] he had last time on this PD of record on
 [3] technical programs, which was protective
 [4] services —
 [5] **MR. BOYLES:** Sorry; we were typing this
 [6] last night.
 [7] He —
 [8] **MR. REYES:** Is that an accurate
 [9] adjustment that we should make to the
 [10] record?
 [11] **MR. BOYLES:** He did have in the
 [12] technical program a management position, and
 [13] I believe we provided it previously in a copy
 [14] of a worksheet, protective services was
 [15] listed. That's correct, so we can make the
 [16] adjustment —
 [17] **MR. REYES:** For the record, how should
 [18] we note your handout, for the record.
 [19] **MR. BOYLES:** Protective services was a
 [20] function under the technical programs manager
 [21] position in the 1990 position description.
 [22] **MR. BURZYNSKI:** That would be right in
 [23] this area here, (indicating).
 [24] **MR. DAMBLY:** So basically, his PD of
 [25] record contained a couple of functions which

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[1] were not in the PD of the new position?
 [2] **MR. BOYLES:** That's correct.
 [3] **MR. DAMBLY:** And comparing those two,
 [4] you decided that they were — that's okay and
 [5] you could roll that over. But when you
 [6] compared Mr. Fiser's PD of record with the
 [7] new PD, which as I recall you all put in your
 [8] briefs, basically Mr. Fiser wrote, you
 [9] decided those were so different that you
 [10] couldn't roll him over even though it was
 [11] basically the duties he was performing?
 [12] **MR. BOYLES:** In comparing the PDs, we
 [13] did not view the chemistry environmental
 [14] program management position interchangeable
 [15] with the new chemistry program manager, BWR
 [16] or PWR.
 [17] **MR. BURZYNSKI:** But I think there's
 [18] also a distinction here that for the program
 [19] manager jobs, those are technical specialists
 [20] in those areas where this is a department
 [21] level manager job, and the focus is more on
 [22] the managerial skills rather than the listing
 [23] of the functions. It's more management
 [24] skills —
 [25] **MR. DAMBLY:** You brought that up last

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[1] time, so then I'll ask the same question. If
 [2] that's true, then why wasn't Mr. Grover, who
 [3] was at the same level as Mr. MacArthur,
 [4] eligible and you still would have had to
 [5] compete? Because he was a manager, and it
 [6] would have added some additional areas to
 [7] him. If we're looking at management skills,
 [8] I didn't hear anybody say Mr. Grover couldn't
 [9] handle the management —
 [10] **MR. BOYLES:** We did not look at
 [11] management skills or qualifications in making
 [12] the competitive level. Mr. Grover had a PD
 [13] of record that was utilized in that
 [14] comparison, and that was not the same
 [15] competitive level.
 [16] **MS. BOLAND:** Is there something — and
 [17] I don't mean to belabor a point here — that
 [18] distinguishes — Mr. Burzynski mentioned
 [19] management, and I seem to recall hearing that
 [20] the manager level positions can be created
 [21] differently. But you still get back to
 [22] MacArthur's position lost function from PD to
 [23] PD, and so did Mr. Fiser's position lost
 [24] function. How can you treat the two of those
 [25] differently per your procedures?

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[1] **MR. BOYLES:** I think we go back to what
 [2] Mark was saying, but let me use the term —
 [3] and maybe give an example. It's a standard
 [4] control issue. We paid that senior level
 [5] manager to manage a variety of functions.
 [6] Now, we may move industrial safety from one
 [7] organization to the other organization, and
 [8] we do, and we have reason. We don't re-post
 [9] those positions every time we move one out of
 [10] six or seven. We look at the job; and moving
 [11] one function from a standard level manager to
 [12] another organization is not a major change to
 [13] that position description in our judgment.
 [14] **MR. STEIN:** Let me ask you a
 [15] hypothetical. If Dr. MacArthur had his
 [16] accurate PD of record that he was functioning
 [17] under in 1994 and then this new
 [18] reorganization occurred and, you know, you
 [19] had two managers, Mr. Grover and Dr.
 [20] MacArthur vying for one position, you would
 [21] have then had to post it?
 [22] **MR. BOYLES:** Correct.
 [23] **MR. STEIN:** That's what you're
 [24] arguing?
 [25] **MR. BOYLES:** That's correct.

[1] MR. DAMBLY: If Mr. Fiser's PD had
[2] accurately reflected the duties he was
[3] actually performing, it would not —
[4] MR. MARQUAND: If his had just said
[5] chemistry program manager, then there would
[6] have needed to be a comparison between that
[7] and the chemistry PWR and the chemistry BWR
[8] to see if they were interchangeable; and that
[9] sounds a lot more interchangeable than
[10] chemistry and environmental.

[11] But to get back to the question you
[12] raised, which was Mr. Grover's right to
[13] compete for this senior level position, one
[14] other aspect of the RIF raising comparing
[15] apples and oranges requires you also to
[16] establish separate competitive levels for
[17] different pay positions. The pay position
[18] level that Dr. MacArthur was at was what we
[19] term a senior manager position. The level
[20] that Ron Grover was at was either a 10 or
[21] 11 —

[22] MR. BOYLES: I believe an 11.

[23] MR. MARQUAND: — which is not on the
[24] same level. So it would not have — under
[25] the law 351, 403(b)(3) requires separate

[1] determination; that's a similar position
[2] determination. There's no requirement that
[3] that be based on the PD of record; it's on
[4] the duties actually performed.

[5] MR. MARQUAND: Well, where we end up
[6] with this issue, the only place it can be
[7] raised and litigated with TVA is in front of
[8] the merit system protective board under a
[9] RIF. That's the only rights an individual
[10] has to raise that issue. And the way it
[11] comes up is if someone is RIF'd, they say,
[12] No; I should have been compared with my
[13] official position description of record and I
[14] should have had job rights to that position.
[15] Or conversely someone says, I was improperly
[16] RIF'd, you looked at my — and what was
[17] upheld all the time by the merit system
[18] protection board is where we establish the
[19] competitive levels based on the official
[20] position description of record. And we'll be
[21] glad to supply you with copies of those
[22] decisions.

[23] MR. DAMBLY: On competitive levels?

[24] MR. MARQUAND: On competitive levels.
[25] And the competitive level is what determines

[1] competitive levels for different pay levels.
[2] MacArthur was already at that pay level. It
[3] was a question — span of control and the
[4] management functions, are they similar or not
[5] to be interchangeable here.

[6] MR. DAMBLY: Do you have a cite to the
[7] thing that says you have to use PDs as
[8] opposed to comparison of the duties actually
[9] performed?

[10] MR. MARQUAND: 351 403(a)(2) requires
[11] competitor level determinations be based on
[12] employee's official position, and we will be
[13] glad to provide you — after this we'll send
[14] you the copies of various system protective
[15] board decisions in TVA's cases that says,
[16] TVA, you've made RIF determinations based on
[17] what they were doing and not on what their
[18] position description is, and you lose. They
[19] hold us to that standard.

[20] MR. DAMBLY: I'm not talking about for
[21] competitive level purposes. I'm talking
[22] about when you determine whether there's a
[23] similar position that has to be posted or
[24] whether somebody has rights to that position,
[25] which is not a competitive level

[1] whether or not the jobs are interchangeable
[2] and whether the individual has a right to
[3] that changed position description.

[4] MR. DAMBLY: And just again so you can
[5] clarify so I understand, in this particular
[6] case, we weren't in a RIF situation, so none
[7] of these rules apply.

[8] MR. MARQUAND: We have to apply them,
[9] because there's a potential down the road of
[10] somebody in services if they don't get a job
[11] a year later being RIF'd. And when we do
[12] conduct the RIF, we can't say, Okay, you've
[13] been in services — we've got to look at the
[14] person who has the least seniority on that
[15] retention register. So if we surplus some
[16] but not all the people in a job, we send the
[17] people with the least seniority on the
[18] retention register, we prepare a retention
[19] register — and, in fact, one was prepared in
[20] this case a year out to determine seniority.

[21] MR. SCALICE: I can't help but ask a
[22] question, so I'm going to ask both of you. I
[23] read these regulations here; 351.201 says,
[24] This includes determining when there is a
[25] surplus of employees. The terms I'm hearing

(1) is — apparently you don't like the term
(2) surplus, so I'm going to say it says it in
(3) the rules, and maybe you can explain it.

(4) Secondly, it says in here on the second
(5) part, When there is a reassignment requiring
(6) replacement, all of which I'm hearing. So
(7) I'm curious myself as responsible for this,
(8) not the point you're trying to make but why
(9) these regulations don't apply to the function
(10) and the actions we took. You obviously don't
(11) believe they do.

(12) **MR. DAMBLY:** I'm trying to find out why
(13) you think they do if in point of fact you
(14) didn't run to your retention register and go
(15) through the process. Because if you're in
(16) those regs, then there's a certain process
(17) you go through including preparing retention
(18) registers. You don't say, Well, they're
(19) different jobs, so we don't really have to
(20) follow the rest of it; we'll post these and
(21) find out who goes out the door. Any RIFs
(22) I've been associated with, you go down the
(23) pecking order as to who gets the jobs that
(24) were left; you don't decide to post the ones
(25) so you can keep who you want.

(1) **MR. MARQUAND:** TVA started the
(2) downsizing that Phil mentioned. We went
(3) through drastic downsizing. And the TVA
(4) board of directors recognized the tremendous
(5) impact it was having on individuals. At one
(6) point in time, people only had to have a
(7) 30-day notice before they were separated from
(8) TVA. Then Congress changed and made it 60
(9) days. Still, a TVA board of directors said,
(10) We're putting so many people on the streets,
(11) these people have been loyal employees; we
(12) owe them a debt. We're not going to throw
(13) them out the door in 60 days; we're going to
(14) give them more notice. We're going to give
(15) them surplus notice. We'll let them know if
(16) there is a possibility that their services
(17) won't be needed; and, in fact, we'll try to
(18) use their services and keep them on in a
(19) separate organization called services. And
(20) some of them kept for as long as 2 or even 4
(21) years, depending on the period of time, to
(22) try to meliorate the hardship of losing a
(23) job. The regulations only require giving a
(24) 60-day notice of termination to a reduction
(25) in force. TVA said, We're not going to tell

(1) you right now we're going to terminate you,
(2) but if your job is surplus, you've got good
(3) notice to think, I need to start retraining,
(4) I need to start looking for another job. So
(5) these people were put into services
(6) organization; and the way we decided who went
(7) in there was by seniority using retention
(8) registers just as described in here. And a
(9) retention register was prepared in this case
(10) that would show an effective date of 1997, a
(11) year after the events in this situation took
(12) place.

(13) **MR. DAMBLY:** I assume — you tell me.
(14) Where was Mr. Fiser — in terms of the three
(15) people, Mr. Fiser —

(16) **MR. MARQUAND:** He would have had more
(17) seniority had there been a RIF.

(18) **MR. DAMBLY:** So if he had gone into
(19) services and come down through a year and
(20) didn't have a job, then you would have gone
(21) back to this retention register, and he would
(22) have stayed and somebody else would have
(23) gone?

(24) **MR. MARQUAND:** If the other people on
(25) the retention register were still on the

(1) retention register. The regulations are very
(2) clear about is that you have to establish
(3) your retention register as of the date that
(4) the employee is released from service with
(5) the agency. In this case, Mr. Fiser, in our
(6) hypothetical situation given a year from the
(7) end of September to October 1 of 1997, you
(8) would have a retention register as of that
(9) date, and you'd look and see who's on the
(10) retention register as of October 1, 1997; in
(11) other words, who has that job description?

(12) Well, what happened in the meantime was
(13) they had a reorganization. They advertised
(14) the position, and the two other people who
(15) were in the same job descriptions were
(16) selected for other jobs. At that point, they
(17) would come off the retention register. He
(18) would have been the only person left on the
(19) retention register had he stayed in services
(20) and not found another job. But what people
(21) in services were doing was they were actively
(22) encouraged, Find another job. Look within
(23) TVA, apply to something else.

(24) **MR. DAMBLY:** And I guess that still
(25) doesn't answer the question I've asked.

(1) Where is it stated in 351 or anywhere else
(2) that in determining which jobs have to be
(3) posted as opposed to who's in what
(4) competitive level, you look at the PD of
(5) record and not at the duties performed?
(6) **MR. MARQUAND:** Our interpretation based
(7) upon what the Merit System Protection Board
(8) has ruled is when it says official position,
(9) is we're required to use our official job
(10) descriptions that we — that management
(11) signs, human resource signs, and it is
(12) approved and put in the individual's official
(13) personal history record. That's his official
(14) — for federal regulation purposes, that's
(15) his official position.
(16) **MR. DAMBLY:** And that's in terms of
(17) determining competitive levels. But when you
(18) determine rights to positions created, you
(19) look to similar positions, which I think are
(20) defined in there as positions in which the
(21) duties performed, not the official PD, are
(22) such that somebody could move from one to the
(23) other with minimal training.
(24) **MR. MARQUAND:** It doesn't say duties
(25) performed, Rule 3(a)(1) says, Similar duties,

(1) in your records.
(2) **MR. MARQUAND:** The Merit System
(3) Protection Board insists that we do it in
(4) terms of these regulations, and that's their
(5) interpretation as applied to TVA.
(6) **MR. BOYLES:** And that is how we
(7) implement this —
(8) **MR. BURZYNSKI:** Our interpretation is
(9) based on our lessons learned through
(10) interactions with the Merit Protection Review
(11) Board. We can provide them those particular
(12) cases; but let me suggest that maybe we move
(13) on from this point, because we're going
(14) around in kind of a circular argument.
(15) **MR. DAMBLY:** The only other question on
(16) this point at all is: I heard Mr. Marquand
(17) earlier say that in point of fact, the PD
(18) that Mr. Fiser was under was incorrect. The
(19) idea was that they would hope that there
(20) would be cross training and whatever, but
(21) that didn't happen.
(22) **MR. MARQUAND:** Right.
(23) **MR. DAMBLY:** So under your policies,
(24) even if you know the PDs are not accurate,
(25) that's still what you follow.

(1) qualification requirements, pay schedules and
(2) working conditions so that an agency may
(3) reassign the incumbent of one position to any
(4) of the other positions without undue
(5) interruption. And that's the regulation, the
(6) Merit System Protection Board in our case,
(7) that's the only place we have given any
(8) interpretation says you've got to look at the
(9) official position description, the official
(10) job description, and the official personnel
(11) file.
(12) **MR. REYNOLDS:** If I could add one thing
(13) here. I've been with Human Resources, and
(14) I'm not joking, I've probably done 10,000 of
(15) these in terms of our reorganizations and
(16) reorganizing the organization and posting new
(17) jobs, and that's a process that — I mean,
(18) I've been here since 1987, and that's the
(19) process we have used since that period of
(20) time. We have not deviated from that.
(21) **MR. DAMBLY:** I don't have any problems
(22) if you want to tell me TVA's interpretation
(23) and the rules you follow are X. My problem
(24) is when people keep telling me OPM demands
(25) that you do it that way, and I don't see that

(1) **MR. BOYLES:** If an employee knows their
(2) position description is inaccurate, they
(3) should talk to their manager. But as Mark
(4) indicated earlier, too, we do a lot of cross
(5) training, and it's rotational assignments;
(6) and they may be given something at any point
(7) in time that's not exactly in their position
(8) description; that's not unusual.
(9) If we could go on to the next slide,
(10) slide 7. I have another overhead.
(11) **MR. BURZYNSKI:** Let me just introduce
(12) this one for you. The next point — I've
(13) kind of lost count; I think it's the third
(14) point — the OI report summary states that
(15) the selection process was contrived to
(16) preclude the selection of Mr. Fiser.
(17) TVA has found that the selection
(18) process was fair and conducted in accordance
(19) with TVA nuclear procedures. And now, Ed, if
(20) you'll explain that to us.
(21) **MR. BOYLES:** Thanks, Mark.
(22) We use a structured process in our
(23) selections. BP-102 — and I do have another
(24) overhead that I'd like to — Business
(25) Practice 102 gives us our guidelines both in

[1] management and specialist selection. What
[2] I've listed there are the basic elements of
[3] the BP that we — I can refer to — we made
[4] the decision to post on the previous slide.
[5] Once we've made that decision, we advertise
[6] those positions within the TVA system. HR
[7] processes the applications. HR is also
[8] involved in a screening. We identify late
[9] applicants. We review for minimum
[10] qualifications. We also provide some
[11] additional information at that time on
[12] education, a diversity status report that we
[13] provide.

[14] In the next step, the package goes to
[15] the selecting supervisor, who will identify
[16] the candidates that we're going to
[17] interview. They do that based on experience,
[18] education, performance, and identified
[19] competencies, and so forth.

[20] In the next step, structured interviews
[21] use a job-related selection criteria
[22] developed by the selected supervisor. TVAN's
[23] case involves selection review boards. Since
[24] the early 1990's, we've been implementing
[25] these selection review boards. Our

[1] experience has been very positive in that
[2] it's a better process than having one
[3] selecting manager conducting one-on-one
[4] interviews. It may remove any potential bias
[5] that one individual would have, so we utilize
[6] the selection review boards.

[7] The next step provides feedback from
[8] the selection review board to the selecting
[9] supervisor, who then makes the decision on
[10] who the selectee will be. The package comes
[11] back to Human Resources, and the job offer is
[12] made through Human Resources. That's the
[13] basic elements of BP-102.

[14] Mark, if you would go to the next
[15] slide. What I've done is list the actions
[16] taken in the specific case of the chemistry
[17] program manager PWR position. What I've
[18] listed here are when the vacant position
[19] announcement was posted, the closing date on
[20] the position. We received from Human
[21] Resources six applications, which we
[22] screened. That package was provided to Dr.
[23] MacArthur, who identified three candidates to
[24] be interviewed. Those candidates were Mr.
[25] Fiser, Mr. Shondra, and Mr. Harvey.

[1] We convened a selection review board on
[2] July the 18th. The selection review board
[3] interviewed all of those candidates. That
[4] feedback —

[5] MR. STEIN: When you say interviews,
[6] was it an actual interview, or was it a test
[7] that —

[8] MR. BOYLES: It was an interview. And
[9] we have the selection review board here, and
[10] we plan to cover in detail the events of the
[11] selection review board.

[12] MR. STEIN: Because you did at the
[13] earlier enforcement conferences go into great
[14] detail about the questions that were given to
[15] these folks, both technical and I guess
[16] managerial, and what people scored in a raw
[17] base score. So it was more of tests than an
[18] interview.

[19] MR. BOYLES: No. I view it more of an
[20] interview than a technical test. But there
[21] were questions involving management
[22] experience and people skills and so forth.
[23] There were some technical questions.

[24] Let me point out, this job was not a
[25] supervising manager position. This is a

[1] technical specialist. They do not supervise
[2] anyone. So it is a very technical job, so
[3] there were technical questions. But if it
[4] will be okay, I'll let the selection review
[5] board, which we have here, cover all those
[6] issues. We can talk specific questions or
[7] whatever we need to do.

[8] Where was I? The results of the
[9] selection review board were forwarded to Dr.
[10] MacArthur. Dr. MacArthur selected Sam Harvey
[11] for that —

[12] MR. STEIN: I'm sorry. It says,
[13] Selecting supervisor makes selection based on
[14] information, personnel history, record,
[15] feedback. I asked that question at an
[16] earlier enforcement conference whether the
[17] selection was made strictly based on that
[18] day, that the answers to the questions given
[19] that day, and the answer to my question was
[20] yes; so if you had a bad day and a bad
[21] interview, you weren't getting the job. But
[22] this says you're making a selection based on
[23] personnel history, which I gather is resumes
[24] and awards and authorship of articles and who
[25] you are versus one day's worth of interviews.

(1) MR. BOYLES: I remember the question,
(2) and my recollection of the question was could
(3) an individual who may have a fine career ruin
(4) their chances for a position in that one
(5) interview by having a bad day, I think it was
(6) something like that; and my answer was yes,
(7) an individual can eliminate their chances of
(8) being selected in one day and one interview.
(9) And I guess my view is that happens —

(10) MR. STEIN: Since we have the panel
(11) here, let me just ask the question.

(12) In selecting Mr. Harvey over Mr. Fiser
(13) for this position, was the entire OPE, the
(14) entire performance file in TVA, looked at,
(15) including awards, including performance
(16) appraisals for three years, the full packet
(17) of who these people are, or was it strictly
(18) based on answers to 16 questions given on
(19) one —

(20) MS. WESTBROOK: It was not all looked
(21) at that day. That was done prior to our
(22) meeting with the selection review board.

(23) MR. BOYLES: Let me point out, we had
(24) six candidates for the position. There was
(25) screening prior to the selection review

(1) board. The selection review board only
(2) looked at the material they had in front of
(3) them that day and the interview result.

(4) MS. WESTBROOK: But that's a normal
(5) process, and that's how we always do
(6) business.

(7) MR. STEIN: So the rating panel did not
(8) have the full personnel jackets of the
(9) individual candidates that were being —

(10) MS. WESTBROOK: We had what the
(11) employees turned in with their application.
(12) Sometimes they'll turn in a service review,
(13) sometimes they'll turn in that they've got
(14) their P.E. license, you know.

(15) MR. STEIN: Did Mr. MacArthur as the
(16) selecting official have the full files of
(17) everybody?

(18) MS. WESTBROOK: Yes; and he should have
(19) looked at that and chosen the most qualified
(20) people for us to meet as the review board.
(21) And obviously, he must have done that;
(22) because we know that it was narrowed to 3
(23) candidates out of the 6 that applied.

(24) MR. BOYLES: Thank you. Where was I?
(25) As I mentioned earlier, Dr. MacArthur

(1) selected Sam Harvey to fill BVA 6702
(2) consistent with the selection review board
(3) results. The package was forwarded to us,
(4) and we made the offer, Mr. Harvey accepted,
(5) and it became effective on August the 5th.

(6) Let me point out here, too, there were
(7) two positions created; PWR and BWR. Mr.
(8) Fiser only applied for one of those
(9) positions. It appears that he felt that one
(10) of the new positions was more similar to his
(11) old job than another — or qualifications;
(12) but he only applied on PWR. This process is
(13) the process that we use in all these
(14) management specialist selections.

(15) In this case we did augment this
(16) process with our labor relations staff in OEC
(17) based on the fact that in June sometime, Mr.
(18) Fiser contacted Ben Easley on my staff, and
(19) Mr. Easley brought him to my office. At that
(20) time, Mr. Fiser told me that he had filed a
(21) 1993 Department of Labor complaint and that
(22) as a result of that complaint, he had been
(23) given a job in the corporate chemistry
(24) program and that by my posting the job, he
(25) felt that it was violating that settlement

(1) agreement; and he said if I did that, he
(2) threatened to file a second Department of
(3) Labor complaint. At that point in time, I
(4) told him I would have to look at that and get
(5) back. I immediately contacted our labor
(6) relations staff and asked them to check out
(7) the settlement agreement. They in turn
(8) contacted OGC and did that. I also advised
(9) Tom McGrath, who was the acting general
(10) manager, of the concerns that Mr. Fiser had
(11) raised.

(12) Shortly after that, our labor relations
(13) staff came back to me and indicated that yes,
(14) they had checked it with MGC, there had been
(15) a settlement agreement and Mr. Fiser had been
(16) placed in a position in corporate chemistry.
(17) They also indicated that there were no
(18) guarantees of specific periods of time for
(19) employment and that we should proceed with
(20) our process for determining whether we needed
(21) to post the job and go through the selection
(22) process.

(23) At that point in time, I advised Mr.
(24) McGrath that we made the decision to post the
(25) job, and we did at that time, because we knew

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[1] we had a potential there on the plant to
[2] relook at the issue. I asked Mr. Easley, who
[3] did confirm that in his view, we needed to
[4] post the position. So in June as we went
[5] into these processes, we knew we had
[6] potential — we did everything we could to
[7] make sure that the process was as fair as it
[8] could be.

[9] (A recess was taken.)

[10] **MR. BOYLES:** Thank you, Mark.

[11] I'm through with what I've described is
[12] the process that we went through, the general
[13] process that we went through, the decision to
[14] post jobs, the process that we go through in
[15] posting and making selections, and I've gone
[16] through specific processes as it relates to
[17] this case.

[18] We do have the selection review board
[19] with us today, and I'd like to introduce
[20] Melissa Westbrook, who is a human resource
[21] consultant on my staff. Ms. Westbrook
[22] facilitated the selection review board for
[23] this position. Melissa.

[24] **MS. WESTBROOK:** Thanks, Ed.

[25] I facilitated this selection review

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[1] process; and in doing so, it was my
[2] responsibility to ensure that it was fair,
[3] consistent, and impartial. It was also my
[4] responsibility to ensure that the process was
[5] not discriminatory among any of the
[6] candidates who were interviewed for the
[7] position.

[8] I've facilitated approximately 30 to 40
[9] selection review boards. In doing so, this
[10] was no different than any of the others that
[11] I've ever facilitated. My role is to be an
[12] impartial party. I'm not a voting member of
[13] the board. Oftentimes —

[14] **MR. STEIN:** Excuse me, was it your
[15] responsibility to create the board to —

[16] **MS. WESTBROOK:** No, it was not.

[17] **MR. STEIN:** Who was it that actually
[18] put the board together?

[19] **MS. WESTBROOK:** Ben Easley and Mr.
[20] MacArthur, it would have been their
[21] responsibility.

[22] **MR. STEIN:** So your responsibility is
[23] once the board is put together to coordinate
[24] the actual selection —

[25] **MS. WESTBROOK:** Ben asked me to sit on

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[1] the board in his place. I do human resource
[2] services for our engineering organization and
[3] corporate organization. Ben particularly had
[4] this organization that he provided service
[5] for.

[6] **MR. STEIN:** Would it be your
[7] responsibility to schedule the interviews and
[8] to make sure that the board members could be
[9] there for their role as —

[10] **MS. WESTBROOK:** No, that was not my
[11] responsibility; that was Ben's
[12] responsibility.

[13] **MR. STEIN:** The reason I'm asking —
[14] and, Mr. Cox, if you could help with this —
[15] is we have certain information that people
[16] were notified within certain time frames, and
[17] I'd be real interested to know how much
[18] notification you got from HR or from line
[19] management that you were sitting on this
[20] particular —

[21] **MR. COX:** I recall that Wilson
[22] MacArthur was the one that contacted me, and
[23] it was several days prior.

[24] **MR. STEIN:** Several days? A week?
[25] Less than a week?

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[1] **MR. COX:** I'd say 3 to 5 days.

[2] **MR. STEIN:** 3 to 5 days?

[3] **MR. COX:** Yeah, that's my recollection.

[4] **MR. STEIN:** And do you recall why you
[5] weren't able to serve on this particular —

[6] **MR. COX:** No; I had some evening
[7] commitment; I don't recall what it was. When
[8] he called me, he said that it would be set up
[9] after a peer team meeting, which is a meeting
[10] of all three sites, people in radchem in all
[11] three sites. And they would start in the
[12] afternoon, and there were I don't remember
[13] how many interviews scheduled and it was
[14] going to go into the evening. At that time,
[15] I told him no, I couldn't go into the
[16] evening; would you like me to participate up
[17] until the point I have to leave, or would you
[18] like to get a replacement? And he said for
[19] continuity purposes, he'd like to get a
[20] replacement.

[21] **MR. STEIN:** But you did give your
[22] recommendation to Mr. MacArthur at that time
[23] who —

[24] **MR. COX:** Just prior to the selection
[25] board, we were standing in the hall, Mr.

[1] Kent, Mr. Floyd, Mr. MacArthur, and myself.
[2] And I mentioned to him that for what it's
[3] worth, if the information is even needed, Mr.
[4] Fiser when he worked at Watts Bar for the
[5] previous year or so, that I considered his
[6] performance good, and if he needed that,
[7] that's for what it's worth.

[8] MR. STEIN: Did you ever made a
[9] recommendation to Dr. MacArthur as to who
[10] should sit —

[11] MR. COX: No, I did not.

[12] MR. STEIN: Maybe somebody from Watts
[13] Bar?

[14] MR. COX: No, I did not.

[15] MR. STEIN: Thank you.

[16] MS. WESTBROOK: As the facilitator, I
[17] also answered questions from the selection
[18] board and any of the candidates that were
[19] interviewing during that period of time, and
[20] I ensured that each candidate was asked the
[21] same questions.

[22] Before the interview started, we
[23] reviewed all of the questions for the
[24] candidates. Time was limited, and we were
[25] given a long set of questions. We picked out

[1] any input into the questions that were
[2] selected, either.

[3] MS. BOLAND: Including the new one, the
[4] miller ratio? Which one of you came up —

[5] MR. KENT: I suggested that.

[6] MS. WESTBROOK: Also, the way I do
[7] selection review boards is that I ask each of
[8] the managers to ask one or two questions, how
[9] many ever we have; and then they ask the same
[10] questions of each of the candidates. And
[11] then at the end of the interviews after the
[12] candidate leaves, we discuss strengths and
[13] weaknesses of that candidate. There is a 1
[14] to 10 rating system, 10 being the highest.
[15] They rated each candidate as they asked the
[16] question of them.

[17] When we got finished, we did not go
[18] over the ratings that they had. I took notes
[19] on the strengths and weaknesses of each
[20] candidate. There was no collaboration of the
[21] interview scores after the employee left nor
[22] at the end of the interviews. When we left
[23] that day, we gave our books to Ben at the end
[24] of the night; I think they finished around
[25] 7:00 or 8:00 o'clock that night. He

[1] the ones that we wanted to ask each
[2] candidate, and each was asked the same
[3] questions.

[4] MS. BOLAND: Who picked out those
[5] questions?

[6] MS. WESTBROOK: All of us did, the
[7] board did.

[8] MS. BOLAND: Because there was an
[9] original list of maybe 16 or 17 questions.

[10] MS. WESTBROOK: Right.

[11] MS. BOLAND: So from that body, the
[12] board selected the questions?

[13] MS. WESTBROOK: The board selected the
[14] questions. We added one additional question
[15] to those. That question was to define miller
[16] ratio.

[17] MS. BOLAND: Did Mr. MacArthur have
[18] input into what questions were asked?

[19] MS. WESTBROOK: He should have
[20] developed the questions, the original
[21] questions, and given those to us. The day of
[22] the interviews, he was present; he did not
[23] say anything during the interviews that I
[24] recall.

[25] MR. KENT: I don't recall him having

[1] tabulated them either that night or the next
[2] day. And you can tell his writing is
[3] different from mine, so — but he did that
[4] part.

[5] Let me pass out to you, if I may, the
[6] results of the interviews for that day; and
[7] this document shows all of the selections
[8] that were made that day —

[9] MS. BOLAND: Are there any notes of the
[10] strengths and weaknesses that were discussed
[11] afterward —

[12] MS. WESTBROOK: I have those; if you'd
[13] like a copy of those —

[14] MS. BOLAND: It might be easier to look
[15] at them. You can discuss them; that's fine.

[16] MS. WESTBROOK: And the purpose of
[17] handing out the selection review board
[18] results is to show you that each of the board
[19] members participated in each of the
[20] selections.

[21] The documentation also shows that Dr.
[22] MacArthur's selection decisions followed the
[23] results of the selection review board in
[24] every case. He selected the candidate that
[25] had the highest score, and no pressure was

[1] ever placed on the selection review board
 [2] while I was present to not select Mr. Fiser.
 [3] **MR. STEIN:** I have a question. It's
 [4] addressed to Mr. Kent.
 [5] Do you think it was fair for you —
 [6] first of all, you did know about the 1993
 [7] D.O.L. filing that Mr. Fiser had made?
 [8] **MR. KENT:** Yes, I did.
 [9] **MR. STEIN:** You were interviewed by —
 [10] **MR. KENT:** Yes.
 [11] **MR. STEIN:** Do you remember the
 [12] interview and some of the responses that you
 [13] gave to the investigator for TVA?
 [14] **MR. KENT:** For the '93?
 [15] **MR. STEIN:** For '93.
 [16] **MR. KENT:** Well, I would say yes, I
 [17] remember some of it.
 [18] **MR. STEIN:** Do you think it's fair that
 [19] you were actually sitting on the board to
 [20] rate Mr. Fiser in 1996 given what you told
 [21] TVA IG about his performance in 1993?
 [22] **MR. KENT:** Yes, I think it was fair. I
 [23] think I like everybody else on the board
 [24] based any decision or recommendation I would
 [25] make on selection based on the responses of

[1] the individuals to the questions we asked
 [2] them that day regardless of what prior issues
 [3] or knowledge or whatever —
 [4] **MR. STEIN:** Quite frankly, I was very
 [5] confused when I read this report of
 [6] investigation; because you — what I'm
 [7] reading from is the TVA record of interview
 [8] of Mr. Charles Kent. Your conclusion is that
 [9] you didn't believe Mr. Fiser was RIF'd
 [10] because of filing of safety concerns; rather,
 [11] you believed he was RIF'd because he was not
 [12] the right person for the chemistry program
 [13] and had numerous performance problems. In
 [14] this same time frame, you were very active in
 [15] trying to recruit Mr. Fiser to your Sequoyah
 [16] program.
 [17] **MR. KENT:** Uh-huh.
 [18] **MR. STEIN:** So much so that you went to
 [19] Mr. Powers, and he approved of it; went to
 [20] corporate —
 [21] **MR. KENT:** No; you're mistaken. I
 [22] don't think I ever went to Mr. Powers — oh,
 [23] Ken Powers, that's right.
 [24] **MR. STEIN:** He told you he would
 [25] support any suggestion you made. The first

[1] time you went to Mr. MacArthur, he was
 [2] supportive of the move, the transfer, to
 [3] Sequoyah; and then something happened in
 [4] corporate where you were told no, you can't
 [5] have Mr. Fiser.
 [6] **MR. KENT:** You remember a lot more
 [7] details about that than I do, because you
 [8] have it in front of you; unfortunately, I
 [9] don't. If you want me to address those
 [10] issues, I'll be glad to do that.
 [11] **MR. STEIN:** Well, I'm just a little
 [12] confused because on the one hand, you're
 [13] saying he had performance problems — there
 [14] were problems in the program; and on the
 [15] other hand, you were really pushing hard to
 [16] get him to your program. So I was a little
 [17] confused when I read the testimony from the
 [18] same —
 [19] **MR. COREY:** Can we give you a copy of
 [20] those so he can read those —
 [21] **MR. STEIN:** Absolutely; it's your
 [22] document.
 [23] **MR. DAMBLY:** While you're looking at
 [24] that, I had one question of Ms. Westbrook.
 [25] It was my understanding from all the

[1] stuff I read over the past week that Mr.
 [2] Shondra — I don't pretend to know how to
 [3] pronounce it — was top rated for both PWR
 [4] and BWR, but this would seem to indicate
 [5] otherwise.
 [6] **MR. MARQUAND:** Ben made a — transposed
 [7] the numbers, he came up with 235.7 and 235.5,
 [8] but he transposed the numbers between
 [9] Shondra's and Mr. Harvey's name on the PWR
 [10] job. His tabulations showed that Shondra was
 [11] the high score, and I don't think anybody
 [12] realized that he was not the high score until
 [13] the IG began investigating this and let
 [14] everybody know that Ben has made this
 [15] mistake.
 [16] **MR. DAMBLY:** Okay. And I don't have a
 [17] copy — was the chart you showed us last time
 [18] the —
 [19] **MR. MARQUAND:** The chart has the
 [20] correct number, and candidate A on here, in
 [21] fact, is Mr. Harvey. And when Dr. MacArthur
 [22] made his selection, he was under the
 [23] impression that Harvey was the second highest
 [24] candidate with two-tenths of a point behind
 [25] Shondra. And he made his decision and said,

(1) I select Shondra for the BWR job because he
(2) is the best candidate there; and because he's
(3) not available for the PWR job, I select
(4) Harvey for the PWR job.
(5) MR. SCALICE: May I mention just a
(6) couple of things? Let me talk to you a
(7) little bit about the selection board, because
(8) I was intimately involved in the
(9) establishment of the selection board; in
(10) fact, I started it in 1991. And the purpose
(11) of that was sort of two-fold. First, it was
(12) to certainly get a broad perspective and
(13) select the best candidate as possible; and
(14) second, it was to eliminate the possibility
(15) of one individual as used in the past to
(16) happen to select with favoritism a candidate;
(17) because in the past, these jobs may have been
(18) posted and the supervisor responsible would
(19) be able to look at a bunch of applicants and
(20) then pick whoever he wanted. And so I
(21) established the selection board to eliminate
(22) those sort of prejudices that occur if you
(23) have someone working for you over time and
(24) you establish relationships rather than
(25) picking the right candidate.

(1) consider these recommendations plus their
(2) whole background, etcetera?
(3) MR. SCALICE: Actually, the way it
(4) would work is there would be a series of
(5) questions that would be able to allow a
(6) person to really look at what the knowledge
(7) level was, what their managerial skills were,
(8) what their attitude was; so I wanted to make
(9) sure, because you use the word test. An
(10) interview is an interview; and there are
(11) questions in it, so you can define it as you
(12) choose; but it wasn't meant to be a board
(13) examination or a test. But it was also my
(14) intention that once these people would be
(15) selected or at least interviewed and there
(16) would be some sort of a grading process, that
(17) would be presented to the supervisor, and the
(18) supervisor actually had a right to change
(19) that decision with some concurrence of his
(20) supervisor above him if there was good reason
(21) to question the board's selection. And that
(22) was my intent at the time, and we've carried
(23) it through the years. Some of it's been
(24) refined a bit because of the lessons that
(25) we've learned as we perform the selection

(1) Second, I established some parameters
(2) originally which were put in some business
(3) practices later on, and that was to utilize a
(4) group of people, and they were generally the
(5) peer team as we've now called it. But if you
(6) are hiring in the chemistry area or
(7) maintenance area in a plant, you would get
(8) the maintenance managers from each of the
(9) three sites, somebody from HR, and usually
(10) the supervisor was there, not to necessarily
(11) contribute, and wasn't a voting member. So I
(12) just wanted you to understand why perhaps the
(13) people that were selected or on the board
(14) were put on the board; because that's the
(15) practice we utilize is to take the people
(16) from each of the sites that knew the most
(17) about that particular area and then would be
(18) able to get a varied point of view in
(19) selecting an individual with the best
(20) qualifications.
(21) MR. DAMBLY: Well, when you said this,
(22) was it your intent that the selecting
(23) official or manager, whatever you called it,
(24) would then be bound by the determination of
(25) the selecting panel, or were they supposed to

(1) processes, but I wanted to point out —
(2) MR. DAMBLY: I think Mr. Boyles
(3) indicated and it's on his chart that the
(4) selecting supervisor makes a selection based
(5) on information, personal history record,
(6) feedback, the lists, and I believe Dr.
(7) MacArthur told us — I just looked at the
(8) transcript, so I don't just believe it; he
(9) said he just took the selection review board,
(10) and that was it. He didn't look at anything
(11) else; he took those numbers.
(12) MR. BOYLES: That was Dr. MacArthur's
(13) statement during a previous conference, and I
(14) don't know if we discussed it, but he did
(15) follow the recommendations of the selection
(16) board in every case here. And as John
(17) indicated, he has a right to consider other
(18) information if you think there's a problem
(19) there. But if he were to choose to make
(20) another selection that had come out of this
(21) process, he would need to justify that.
(22) MR. DAMBLY: And he would have needed
(23) to justify that to Mr. McGrath?
(24) MR. BOYLES: To his management at HR.
(25) MR. DAMBLY: Okay. Thank you.

[1] **MS. WESTBROOK:** It was my experience
 [2] from working in HR and having facilitated
 [3] quite a few selection boards that this
 [4] process was no different than any of the
 [5] other ones I had facilitated —
 [6] **MR. STEIN:** Why did Mr. Easley take
 [7] himself off the board?
 [8] **MS. WESTBROOK:** Ben approached me
 [9] several days before the selection review
 [10] board, and I knew that he had handled Gary's
 [11] 1993 complaint. And he said he would — he
 [12] felt uncomfortable and he preferred that I do
 [13] it for him.
 [14] **MR. BOYLES:** Could I add that he also
 [15] discussed that with me and indicated that he
 [16] didn't want any questions because of his
 [17] previous knowledge of the '93 D.O.L.
 [18] complaint and he asked me about having
 [19] Melissa Westbrook facilitate it, and I
 [20] agreed. I thought it was a prudent thing to
 [21] do.
 [22] **MR. STEIN:** Now, were you aware of the
 [23] backgrounds of your panel members as far as
 [24] their knowledge of the 1993 incident that
 [25] took Mr. Easley off the panel?

[1] **MS. WESTBROOK:** No; and I didn't know
 [2] what Gary's complaint consisted of.
 [3] **MS. BOLAND:** Did you, Mr. Boyles, know
 [4] the background — with respect to the
 [5] complaint?
 [6] **MR. BOYLES:** I knew there had been a
 [7] complaint because of my role in HR; I didn't
 [8] know the details of the complaint that I
 [9] remember.
 [10] **MS. BOLAND:** Do you know whether any of
 [11] the panel members knew of the complaint?
 [12] **MR. BOYLES:** No. No.
 [13] **MS. WESTBROOK:** Anne, you wanted to
 [14] talk about the strengths and weaknesses.
 [15] Would you prefer I do that or —
 [16] **MS. BOLAND:** Yeah; your notes will be
 [17] fine. And just for my purposes, just Mr.
 [18] Harvey and Mr. Fiser will be fine.
 [19] **MS. WESTBROOK:** Before I go over the
 [20] strengths and weaknesses, let me go over the
 [21] first question asked, What strengths do you
 [22] have that would benefit this position? And I
 [23] had a comment that Gary had spoken in the
 [24] second and third person; he said he needed
 [25] people skills and good rapport, and he was

[1] supposed to be talking about his strengths
 [2] for the position. At the time, he also
 [3] referred to himself and his ability to
 [4] coordinate. This was a management level job,
 [5] and although there is coordination in a
 [6] management level job, I think what we were
 [7] looking for was some technical knowledge and
 [8] skills that would have made him the best
 [9] person for that job.
 [10] **MR. STEIN:** Were you aware at this time
 [11] when you were interviewing Mr. Fiser that he
 [12] had filed a 1996 D.O.L. complaint?
 [13] **MS. WESTBROOK:** No. I knew — I've
 [14] known after that and I've talked with Diana
 [15] before that; but the other day, we were
 [16] talking about it, and I didn't realize that
 [17] he had filed before the selection board.
 [18] Because most people wouldn't file until they
 [19] didn't get the job.
 [20] **MR. STEIN:** But in my experience,
 [21] people that file prior to the adverse action
 [22] occurring know it's coming and that perhaps
 [23] there's pre-selection involved and may not
 [24] give the best interview —
 [25] **MS. WESTBROOK:** And I don't know. It

[1] made me wonder if Gary really wanted the job,
 [2] because you normally don't answer the
 [3] questions — and that's the only reason I'm
 [4] going over my notes with a first and second
 [5] question. But I don't know. I mean, I don't
 [6] know if he really wanted it or not. And I
 [7] don't know Gary very well, but I do know for
 [8] Gary to have been in the positions he's been
 [9] in, he's a very intelligent man. I don't
 [10] know.
 [11] The second question, Indicate
 [12] weaknesses that you need to address if you
 [13] fill this position, and Gary said he tends to
 [14] trust people too much, he needs to follow
 [15] through more. So when I wrote down strengths
 [16] and weaknesses — and what I did, I asked the
 [17] panel to tell me what their strengths and
 [18] weaknesses that they saw in Gary, and they
 [19] said that he realizes — and I've got it
 [20] documented here in his answers — he realizes
 [21] he can't succeed — these are strengths —
 [22] that he can't succeed if the site fails. So
 [23] in other words, he wants the site to succeed;
 [24] and whoever we put in that position, that was
 [25] very important, the site succeeds. He said

(1) he didn't mind going out and asking for help;
(2) that's his strengths.
(3) He had an average response on the
(4) definition of — you'll have to ask the
(5) technical experts what that was.
(6) He was extremely relaxed in the
(7) interview, although he was difficult to
(8) hear. He spoke in a real soft voice, and I
(9) sat closest to him and I had difficulty
(10) sometimes understanding what he was saying.
(11) Another strength was he was technically
(12) direct and to the point in.
(13) Weaknesses — and he identified this
(14) weakness, trusts in people too much. He had
(15) a real hard time discussing what his
(16) strengths were.
(17) Another weakness, he discussed problems
(18) frequently on projects instead of positive
(19) issues. He evidently had had some problems
(20) at Sequoyah that he rebuilt what those were
(21) in the interview. He didn't present his
(22) projects well. He was very focused on line
(23) details instead of management issues. He
(24) discussed not succeeding because of lack of
(25) resources, and that I think had been a great

(1) But then later on you said you had a problem
(2) because he was discussing technical details
(3) and it was a management position. So I'm not
(4) sure what it is he was supposed to be
(5) discussing or what the functions of this job
(6) are.
(7) **MS. WESTBROOK:** No; I said he focused
(8) on line details instead of management
(9) issues. This was a management position; not
(10) a salary, policy, or engineering —
(11) **MR. DAMBLY:** Was he supposed to make
(12) technical decisions, or was he supposed to
(13) coordinate amongst all three sites' issues or
(14) — I mean, I'm not sure what it is he was
(15) supposed to be doing. If someone would just
(16) tell me what that — the management aspect of
(17) this.
(18) **MR. BOYLES:** Why don't we let one of
(19) the peer team members —
(20) **MS. WESTBROOK:** These were their
(21) comments.
(22) **MR. KENT:** What was the question
(23) again? Would you mind restating it?
(24) **MR. DAMBLY:** Yeah. What are the
(25) management functions of this position as

(1) frustration to Gary when he was at Sequoyah.
(2) He had a lack of ownership of the problems;
(3) appeared to be someone else's problem rather
(4) than his own.
(5) I have a note that he didn't know
(6) chemistry index even for the Year 2000. He
(7) didn't know Sequoyah was a target for Watts
(8) Bar chemistry index. He talked negatively
(9) about his experience at Sequoyah and
(10) management, he said, I wasn't ready for the
(11) job, but it was a good experience. And
(12) that's about all I have for him.
(13) And you wanted Shondra —
(14) **MS. BOLAND:** No; Harvey.
(15) **MR. DAMBLY:** Maybe before you go to
(16) that, I guess I'm having trouble — and it
(17) has nothing to do with whether what you did
(18) is right or wrong, but I don't quite
(19) understand — you start off by saying he made
(20) some inappropriate responses because this was
(21) a management position and he was talking
(22) about coordination, which I would have
(23) thought would go under management. But
(24) putting that aside, instead you said it was
(25) supposed to be a technical expert position.

(1) opposed to the technical functions, or is it
(2) all a technical function? Is he the world's
(3) foremost authority in corporate on PWR
(4) chemistry, or is he to be coordinated amongst
(5) the two or three sites depending on their
(6) needs and issues? I mean —
(7) **MR. KENT:** My understanding of the
(8) position is the position was supposed to be a
(9) person, very knowledgeable person in PWR
(10) chemistry dedicated to support TVA's
(11) pressurized water reactor plants, so their
(12) focus would be on the pressurized water plant
(13) as opposed to the boiling water plant. The
(14) person who was meeting the needs of that
(15) position were that that person be a very
(16) strong technical person. Also, though, we
(17) needed someone that had good communication
(18) skills, good facilitation skills; because a
(19) large part of making program changes that we
(20) needed was facilitating between corporate
(21) organizations and the site organizations to
(22) get support to make those program changes.
(23) So there were a lot of soft skills required
(24) as well as technical skills. And I think the
(25) questions that we used were really aimed at

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(1) trying to differentiate those skills between
(2) candidates that we were providing.
(3) **MR. DAMBLY:** Okay. Thank you.
(4) **MR. STEIN:** I'm sorry, but Mr. Kent had
(5) a chance to read his TVA OIG interview, and
(6) I've got a number of questions for Mr. Kent
(7) if it's all right.
(8) I've got really three issues that I'd
(9) like to address with you. First is given
(10) that Mr. Easley stepped aside from the panel
(11) because of what he felt was the
(12) appropriateness of or inappropriateness of
(13) him being on the panel given what he knew
(14) about 1993, after you've just read your 1993
(15) statement to the TVA OIG, do you feel that it
(16) was appropriate for you to sit on this panel
(17) given some of the performance things that you
(18) said about Mr. Fiser back in 1993?
(19) **MR. KENT:** Yes, I think it was fair for
(20) me to sit on the panel.
(21) **MR. STEIN:** That you could make a fair
(22) appraisal in 1996?
(23) **MR. KENT:** Yes.
(24) **MR. STEIN:** The second issue is I was
(25) very confused with what you said about his

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(1) performance at Sequoyah. You wanted him back
(2) in 1993 to fill a particular position for
(3) you, and I was confused about why you would
(4) push so hard for your site — your site
(5) management and your corporate management to
(6) get him there if on the other hand you felt
(7) his performance wasn't up to —
(8) **MR. KENT:** Well, let me explain what
(9) pushing so hard actually is.
(10) When we reorganized the chemistry
(11) program and reg protection program, I had the
(12) radchem program at that time, and I assumed
(13) responsibility for chemistry and
(14) environmental. One of the objectives that we
(15) had looking at the problems we had with plant
(16) chemistry at that time was to restructure
(17) plant chemistry; and I felt and so did my
(18) site management that — and we were going to
(19) do that restructuring at Sequoyah first. I
(20) felt and my site management agreed that we
(21) would not have a chemistry manager per se,
(22) that we would have 7 direct reports reporting
(23) directly to me, which were the principal
(24) managers in all the various areas of the
(25) radchem and chemistry and environmental

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(1) program. So that's the way we set up the
(2) structure.
(3) Because of efforts within the company
(4) to standardize organizations at all three
(5) sites, we were not successful in convincing
(6) everybody that that was the right thing to
(7) do, so we had to drop back and regroup. When
(8) we did that, we wrote the position
(9) descriptions for chemistry superintendent, a
(10) radchem superintendent, and a radchem waste
(11) environmental superintendent. We went out to
(12) the industry to try to find — you know, what
(13) I wanted to get was the best staff we
(14) possibly could. One of the things that had
(15) happened at Sequoyah over the previous years
(16) was that we had lost a lot of our technical
(17) knowledge in the chemistry program, so the
(18) first thing I did was try to go out and bring
(19) back in technical expertise into the program;
(20) and we were somewhat successful in that.
(21) In our efforts, however, to recruit a
(22) person that I felt was the right kind of
(23) person to work with me and for the chemistry
(24) program — I mean, initially when we were
(25) going to have the program set up with no

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(1) chemistry superintendent, I was going to be
(2) heavily involved in everything related to
(3) chemistry, obviously, because I would have
(4) been the responsible manager for that program
(5) area. Once we decided, though, that we were
(6) going to have to have a chemistry
(7) superintendent's position, then I felt like I
(8) needed to get somebody in that job that I
(9) could turn it over to so that I wouldn't have
(10) to be committing so much of my time. So we
(11) went out looking for the best we could find.
(12) We were unsuccessful at that time in
(13) getting and attracting a good candidate to
(14) Sequoyah. If you remember, Sequoyah's
(15) performance in 1991 to '93 wasn't stellar; we
(16) didn't have the reputation we have today, so
(17) it was not perceived as being necessarily the
(18) best site to go to.
(19) We interviewed several people for the
(20) position, we had a manager on staff in
(21) corporate who was a VP level manager, Dan
(22) Kiter, who had come to us from Trojan. Dan
(23) knew Gordon Rich from Trojan, and Dan
(24) suggested that we look at Gordon for that
(25) job. And I said, Okay, I'll be glad to talk

(1) to him. Dan brought him in for an interview
(2) for a corporate position, and we also talked
(3) to him. And I thought a lot of Gordon; he
(4) seems a very nice person, I think technically
(5) he was a pretty good person; however, he was
(6) very mild-mannered, and he wasn't quite pushy
(7) enough I didn't think to push the major
(8) program changes we were going to have to make
(9) in a way that I could just turn it over to
(10) him and say, Go for it and we'll get where we
(11) need to be. So I didn't initially pursue
(12) hiring Gordon.

(13) We continued to look for some time for
(14) a candidate; and basically in the meantime,
(15) corporate hired Gordon. As a matter of fact,
(16) we eventually did make Gordon an offer, but
(17) corporate also made him an offer, and he took
(18) the corporate position. So Gordon was now
(19) working in corporate; and my manager, site
(20) vice president, was putting an awful lot of
(21) pressure on us to get somebody —

(22) **MR. STEIN:** Was that Powers?

(23) **MR. KENT:** Beakin was the plant manager
(24) during part of this time period, and then he
(25) left and went to Watts Bar and Powers came

(1) Gary back? And they said, We would support
(2) that. They thought Gary was a good guy; they
(3) would support it. They got along with him
(4) fine while he was there. So I did have their
(5) support to do what I felt was best, yes.

(6) Mr. Finnick asked me to talk to Mr.
(7) MacArthur, who he knew was in charge of the
(8) corporate chemistry program, and get some
(9) feedback and to talk to Wilson, so I did.
(10) Wilson said the same thing, We'll support you
(11) any way we can. That's basically his
(12) response.

(13) Following that, I called Gary and asked
(14) him to come out and talk with me, and he did;
(15) and as referenced in my statement there, we
(16) talked about the position, we talked about
(17) what we really wanted to accomplish, and Gary
(18) expressed an interest in the position but he
(19) offered that I think, you know, you really
(20) need to think seriously before you bring me
(21) back; because I'm not thought of very well,
(22) and I might be more of a liability than an
(23) asset to you. And I was, you know, really
(24) kind of surprised that he said that, but he
(25) did. And so I told him, I said, Well, I'm

(1) in. And so we were under, you know, a lot of
(2) — our management wanted us to fill that job
(3) to complete the organization. And so at that
(4) point, I talked to Gary about it, about
(5) coming back to Sequoyah in the position,
(6) realizing that if I did that, I was going to
(7) be a lot more involved in the program than I
(8) may have wanted to be at that time, but that
(9) was the way it was going to have to be.

(10) **MR. STEIN:** Well, you had your site on
(11) board with your decision, and then it looked
(12) like Dr. MacArthur in June was okay with it
(13) and then went to speak with others in
(14) corporate TVA, and by July, you were told no.

(15) **MR. KENT:** I talked with my site
(16) management, which at that time was Ken
(17) Powers, in July and Bob and told both of them
(18) that there was a person in corporate that I
(19) would be willing to consider if they would,
(20) you know, support me going and talking to
(21) this guy. He had been at Sequoyah once
(22) before, and I did not know if there was a lot
(23) of hard feelings about his previous work at
(24) Sequoyah, so I talked with my staff and I
(25) said, What do you think about me bringing

(1) not aware of any significant, you know,
(2) opinion about your abilities that would — in
(3) other words, I wasn't aware you were tainted,
(4) and I think Gary told me he thought he had a
(5) gun to his back; and I said, I don't know
(6) anything about that, but I'll inquire some
(7) more. I did that. I called Wilson back and
(8) I related to him what Gary had told me and
(9) asked him to look into it and give me some
(10) feedback, and he did. A few days later,
(11) probably a day or two later, he called me
(12) back and said he had made some inquiries, and
(13) he didn't tell me who he talked to, but he
(14) did tell me that Gary's perception was right,
(15) that he wasn't thought very highly of and
(16) maybe I should reconsider. So I told Gary
(17) that.

(18) **MR. STEIN:** So you are on a panel now
(19) flipping three years ahead to rating this
(20) individual for another management position,
(21) and Dr. MacArthur, who got all that feedback
(22) that Mr. Fiser is not thought highly of, is
(23) the selecting official?

(24) **MR. KENT:** Yes. And most of the
(25) people, I think — well, I shouldn't

[1] speculate — we had a major turnover in staff
 [2] during that time interval, too, so there was
 [3] a lot of new players —
 [4] **MR. STEIN:** I have one issue. Flip
 [5] ahead three years again. You were interested
 [6] in bringing Mr. Harvey to Sequoyah, and, in
 [7] fact, had you brought Mr. Harvey to Sequoyah
 [8] — and we understand there wasn't a position
 [9] at Sequoyah for him to fill; we got that
 [10] information at the last enforcement
 [11] conference — but then there wouldn't have
 [12] been three managers for two slots. What
 [13] induced you to want to bring Mr. Harvey to
 [14] Sequoyah, and did you get any feedback from
 [15] HR that you couldn't do this because — you,
 [16] I guess, assumed there was a slot in order to
 [17] go to Mr. Harvey and say, Are you interested
 [18] in coming to Sequoyah?
 [19] **MR. KENT:** Let me give you the details
 [20] of that scenario.
 [21] **MR. STEIN:** Please.
 [22] **MR. KENT:** I was aware and made aware
 [23] by corporate chemistry manager that there
 [24] were going to be some changes in the
 [25] corporate chemistry organization and that

[1] they would probably be losing somebody from
 [2] the staff. He thought they were going to go
 [3] from three persons to two. My chemistry
 [4] manager and I think he had probably been
 [5] talking with Sam, and Sam Harvey thought that
 [6] he was probably going to lose his job at
 [7] corporate and was interested since Sam was
 [8] providing support directly to Sequoyah was
 [9] interested in coming to Sequoyah.
 [10] Ron Grover approached me one day while
 [11] he was visiting the site and asked me if I
 [12] would consider hiring Sam at Sequoyah, and I
 [13] told Ron that if — I believe I told him that
 [14] I didn't have a position, but if corporate
 [15] would transfer him to Sequoyah, yes, I'd be
 [16] glad to take him; because he was a good
 [17] person and he was providing support to our
 [18] site. Ron said, Great. I'll talk to my
 [19] management about transferring him out there.
 [20] He did that, and the response he got was
 [21] based on the way the positions were, staff
 [22] downtown the way the jobs were written, that
 [23] we couldn't just transfer a person. If I
 [24] wanted to post a job, I could post one and
 [25] fill it, I can advertise a vacancy and fill

[1] it, but they couldn't just transfer
 [2] someone —
 [3] **MS. BOLAND:** So you did not have a
 [4] vacancy?
 [5] **MR. KENT:** I did not, and I did not
 [6] pursue getting approval to fill a vacancy; I
 [7] just dropped it right there. I was going to
 [8] pursue it as long as it was an issue that
 [9] corporate wants to transfer somebody to me
 [10] that was already supporting me, I was glad to
 [11] take them; but beyond that —
 [12] **MR. STEIN:** Sounds like Mr. Grover was
 [13] in line with what you wanted to do at
 [14] Sequoyah. Did you get any feedback from him
 [15] about who up the management chain at TVA said
 [16] no, the function had to stay here in
 [17] corporate —
 [18] **MR. KENT:** I don't think I know who
 [19] made that decision. I believe —
 [20] **MR. BOYLES:** I do. Let me address this
 [21] issue.
 [22] Tom McGrath did come to me and asked me
 [23] about the inquiry of transferring Sam Harvey
 [24] to Sequoyah, and I think it appears from
 [25] reading the OI summary report that we could

[1] have fixed this whole thing if it saved Gary
 [2] Fiser's job by just sending Sam Harvey to
 [3] Sequoyah; that's not the case.
 [4] Number one, I would have been violating
 [5] OPM regulations. I've got three incumbents
 [6] in Chattanooga; I couldn't do that. Number
 [7] 2, it would have appeared to me to be a
 [8] pre-selection of one of those individuals,
 [9] Sam Harvey, to go to Sequoyah. And number 3,
 [10] it wasn't consistent with what we were doing
 [11] in this whole reorganization, which was
 [12] attacking labor cost, reducing head count.
 [13] We couldn't transfer that function without
 [14] eliminating —
 [15] **MR. STEIN:** I'm still confused; it's a
 [16] management prerogative on assignment of
 [17] work. Couldn't you have transferred him and
 [18] his work to Sequoyah without posting it —
 [19] **MR. MARQUAND:** Let me address that.
 [20] We've talked about the OPM regulations
 [21] over and over, and again, this is in part
 [22] 351. And there's a specific subpart C on
 [23] transfer of functions, and it prohibits — it
 [24] allows you to transfer a function if it's
 [25] eliminated in one competitive area totally

(1) and arises completely in a new competitive
(2) area. So in order to transfer Sam in his
(3) function, what would have had to happen is
(4) all the chemistry and environmental program
(5) manager functions has to cease in corporate
(6) and re-arise at the sites, and that was not
(7) where they were going. They weren't
(8) decentralizing that function and distributing
(9) it to the sites; it was a corporate
(10) function. And the only way that could happen
(11) was if they eliminated all three jobs in
(12) corporate and dealt them out to the sites,
(13) and that was not happening.

(14) **MR. SCALICE:** You want to appreciate
(15) something else? When I asked the same
(16) question you asked or similar, I have
(17) managers at all other sites, and although
(18) that was not my — I was not in charge at the
(19) time, let me tell you the thinking process.
(20) If it's okay for me to transfer and give head
(21) count to everybody, they'll take it. That's
(22) not the way it works. He didn't have the
(23) ability to take that transfer, it was no head
(24) count issue, there's nothing to do with any
(25) individual; it's just that when you're

(1) went back and looked at my actual head count
(2) at that time. And I had the time sequence
(3) out of line, and I thought that Bruce Bender,
(4) who I hired during the early part of '93, I
(5) think, I thought he had left the site. He
(6) worked for us for about a year and left and
(7) went back to Virginia Power, I think. And I
(8) believe I was confused — if I said I had a
(9) vacancy, I was probably thinking about
(10) Bruce's position. And Bruce was actually in
(11) that position at the time I was talking to
(12) Gary.

(13) **MR. DAMBLY:** I guess the question comes
(14) then: Were you told that Mr. Fiser couldn't
(15) come to the position you thought you had
(16) because you didn't have one, or were you told
(17) he couldn't come there because Mr. McGrath
(18) didn't want him to come to Sequoyah?

(19) **MR. BOYLES:** Are you talking about Mr.
(20) Fiser or Mr. Harvey?

(21) **MR. DAMBLY:** Harvey. I'm sorry.

(22) **MR. KENT:** I was told that Mr. Harvey
(23) would not be transferred to Sequoyah because
(24) corporate could not transfer a single person
(25) out of that job classification to the site.

(1) reducing costs and expenditures and reducing
(2) the way you organize or reorganize, all my
(3) management would say, Yeah, if John's willing
(4) to give me three more people, I'll take them
(5) because it's not going to be a problem.
(6) That's the context of some of what he had in
(7) mind, and it just doesn't work that way.

(8) **MR. DAMBLY:** Can you address — and
(9) maybe you did address — from what I had read
(10) — and maybe it was in the OIG interview or
(11) maybe it was in an earlier D.O.L. interview
(12) — but I could swear at some point you
(13) thought you had a vacancy at Sequoyah,
(14) somebody, and you named them specifically and
(15) I don't recall the name now, had left, and
(16) you had a vacant position, and that's the
(17) position that you were planning on putting
(18) Mr. Harvey into.

(19) **MR. KENT:** I would have to go back and
(20) look at all these — this has been going on
(21) now since '93. There have been lots of
(22) statements and lots of interviews, and I
(23) don't remember how I responded to all the
(24) questions in all of those. But I know for a
(25) fact that recently I was confused until I

(1) And as has been stated, that would have
(2) required them to transfer everybody in a job
(3) classification and eliminate that function
(4) from the corporate office.

(5) At the time I asked or agreed to a
(6) transfer, I did not know how positions were
(7) constructed in the corporate office. But as
(8) Mr. Grover approached me, I said, Sure, I'll
(9) be glad to do that.

(10) **MR. STEIN:** Mr. Kent, I have one more
(11) question for you.

(12) Mr. Rogers and Mr. Corey were both part
(13) of this selection panel. You were the only
(14) one with knowledge of the 1993 D.O.L.
(15) complaint that Mr. Fiser had filed. Why
(16) would you share this information, which
(17) really is not relevant to the selection for
(18) the 1996 position, with your fellow selection
(19) panel members?

(20) **MR. KENT:** I didn't, and I think that's
(21) a misperception.

(22) As Jack mentioned earlier, on the
(23) morning of the selection panel, we were at
(24) lunch. I think Jack, myself, Wilson
(25) MacArthur, and Mr. Corey were standing

[1] outside the room, and I made a statement
[2] really directed to Wilson MacArthur that
[3] since there was a D.O.L. issue, it would be
[4] better for the process if Wilson did not
[5] participate in any way in the questioning or
[6] the rating of the candidates, and Wilson
[7] agreed. That's the extent of the discussion
[8] we had —

[9] **MR. STEIN:** Why didn't you go further
[10] in the selection, not to be rated and not to
[11] be selected, that he wouldn't be the
[12] selecting official since —

[13] **MR. KENT:** I just didn't — I did not.
[14] I was only concerned about the process that
[15] we were about to enter into and the selection
[16] committee. I want the selection committee to
[17] be as clean as possible in terms of the way
[18] it was conducted, and I thought it would be
[19] better for the process if Wilson did not
[20] participate. So I didn't really inform them;
[21] I made a statement to that effect to Wilson.
[22] I have no knowledge whether they knew about a
[23] past D.O.L. complaint or the current one; but
[24] I was thinking about the current issue; not
[25] the previous —

[1] **MS. BOLAND:** Mr. Corey, through some of
[2] the review and the testimony, it's my
[3] understanding that you indicated to the
[4] Office of Investigations that you were aware
[5] or that someone made you aware of the 1993
[6] D.O.L. complaint. Do you remember who that
[7] was or how you came to know that information
[8] at all.

[9] **MR. COREY:** I don't recall as to who
[10] told me or when, and I didn't know the
[11] specifics of it. When Charlie mentioned
[12] conversation with Mr. Wilson, in my mind, I
[13] thought he was talking about the 1993
[14] complaint. That to me was past history, and
[15] it really didn't make a bearing to me at all.

[16] **MS. BOLAND:** So you did overhear the
[17] comment that he made to Mr. MacArthur?

[18] **MR. COREY:** Only a portion of it. He
[19] was having the conversation with Wilson — I
[20] didn't realize there was another complaint in
[21] '96. I just — you know, it didn't have a
[22] bearing to my decisions.

[23] **MS. BOLAND:** So you were at the time,
[24] if I understand what you said, you were not
[25] aware at all of the '96 filing?

[1] **MR. COREY:** That's correct.

[2] **MS. BOLAND:** But you were aware to some
[3] degree of the existence of the '93
[4] complaint?

[5] **MR. COREY:** That's correct.

[6] **MS. BOLAND:** Although maybe not the
[7] comments?

[8] **MR. COREY:** I did not know the
[9] specifics of the 1993 D.O.L. complaint. I
[10] just knew he submitted one.

[11] **MR. DAMBLY:** I guess I'm a little
[12] confused. Why is it that you didn't want Dr.
[13] MacArthur to participated in the panel
[14] because of the D.O.L. complaint?

[15] **MR. KENT:** Well, I thought — I believe
[16] Gary told me a week or so before we went
[17] through this process that he had filed a
[18] complaint and the basis of his complaint was
[19] that he didn't think it was fair to announce
[20] his job — to announce that position; he
[21] thought they were announcing his position,
[22] and he was having to compete for it; and he
[23] didn't think that was right, and he filed a
[24] complaint. So I simply informed Wilson that
[25] I thought it would be best for the process,

[1] that is, the selection board process, if he
[2] took notes and did not participate in any
[3] real material way in the questioning of the
[4] candidates or the rating of the candidates.

[5] **MR. DAMBLY:** That's what I'm having
[6] trouble with. What would his —

[7] **MR. KENT:** He was obviously involved in
[8] the decision to some degree or may have been
[9] perceived to be involved in the position to
[10] some degree, and I thought our selection
[11] process could be made, the panel part of it
[12] could be made better if Wilson did not
[13] participate.

[14] **MR. STEIN:** But the next logical step
[15] would be to refuse Mr. MacArthur for making
[16] the selection; because really you didn't
[17] decide who was to be put in that position.
[18] You just made your recommendations to Wilson
[19] MacArthur, and he made the selection.

[20] **MR. KENT:** That's right.

[21] **MR. STEIN:** So if you thought it was
[22] unfair for him to sit and question the
[23] candidates, why would you think that it was
[24] fair for him to make the ultimate decision?

[25] **MR. KENT:** I didn't say I thought it

(1) was unfair. I thought it would improve the
(2) process we were going through. I would not
(3) suppose that Wilson couldn't make an unbiased
(4) decision; that was not the purpose of it at
(5) all.

(6) **MR. BURZYNSKI:** When you say through
(7) the process, do you mean make the board
(8) independent of Wilson?

(9) **MR. KENT:** Right, independent of
(10) Wilson.

(11) **MS. BOLAND:** Just as a point of
(12) clarification, did you say that Mr. Fiser
(13) came to you and indicated that he had filed a
(14) 1996 D.O.L. complaint?

(15) **MR. KENT:** If I'm not mistaken,
(16) sometime prior to our panel meeting, I was in
(17) the corporate office, I was talking with the
(18) guys just, you know, How are you doing,
(19) everything like that; and I think Gary is the
(20) one that told me that he had filed a D.O.L.
(21) complaint because of them posting a job.

(22) **MS. BOLAND:** Okay. Question for Mr.
(23) Rogers.

(24) At any time prior to or during the
(25) selection process, were you aware of either a

(1) earlier; but before that, did you — you said
(2) you had had a discussion with Mr. Easley and
(3) he made you aware of the filing of the 1996
(4) D.O.L. complaint, correct, before you —

(5) **MS. WESTBROOK:** No. I knew there was a
(6) complaint, but now I know it was the '93
(7) complaint.

(8) **MS. BOLAND:** So he made you aware of
(9) the '93 complaint.

(10) Did you hear any discussions by Mr.
(11) MacArthur or any of the panel members during
(12) the pre-discussions of the panel or during
(13) the panel about any D.O.L. matters?

(14) **MS. WESTBROOK:** No. No. And I was not
(15) out there before we went into the meeting to
(16) hear that conversation. But nothing was said
(17) in the room when we were all in there about
(18) any D.O.L. complaints, nor was anything said
(19) about, Don't select Gary Fiser for this job.

(20) You know, and I guess if we had been
(21) instructed not to select him, we would have
(22) at least added up the scores and made sure he
(23) didn't get the highest number before we left
(24) there, and that didn't happen. So, you know,
(25) that wasn't —

(1) 1996 or a 1993 D.O.L. complaint filed by Mr.
(2) Fiser?

(3) **MR. ROGERS:** No, I was not.

(4) **MS. BOLAND:** At what point in time did
(5) you become aware of that?

(6) **MR. ROGERS:** Subsequent to our IG —

(7) **MR. DAMBLY:** Mr. Kent, do you consider
(8) it appropriate to bring up D.O.L. protected
(9) activity, if you will, in front of panel
(10) members before they're going to be doing a
(11) selection review?

(12) **MR. KENT:** Well, I didn't consider it
(13) inappropriate, because I did it. I thought
(14) that the comment I made was really to Wilson,
(15) and it was really intended to ask Wilson if
(16) he would consider not participating in any
(17) significant way in that selection board
(18) process; and he agreed to do that.

(19) **MR. BOYLES:** That comment was made to
(20) the peer team; the entire panel was not
(21) there, —

(22) **MR. KENT:** Right.

(23) **MS. BOLAND:** I have two questions for
(24) you, Ms. Westbrook.

(25) I want to get back to a question I had

(1) **MS. BOLAND:** Very briefly, because I
(2) don't want to belabor the issue, but can you
(3) just briefly go through for me the strengths
(4) and weaknesses that the panel members
(5) discussed on Mr. Harvey?

(6) **MS. WESTBROOK:** Right; I'll be glad to.
(7) I've got confident in PWR, good
(8) communication skills, technically sound,
(9) understands PWR, knows steam generators, very
(10) familiar with Watts Bar generators, good
(11) discussion in his — oh, involvements and
(12) projects, successful projects that he was
(13) working on that were very successful. He was
(14) very direct. He would do whatever it took to
(15) find resources, even look at the industry.
(16) That was impressive; because it was obvious
(17) that Mr. Fiser was really caught up in trying
(18) to find resources.

(19) He was up front with problems and
(20) confronts problems head-on, knew what sprung
(21) Sequoyah ratios, felt chemistry index — good
(22) common ground, verbalizes well, outspoken and
(23) aggressive.

(24) Weaknesses was hydrogen water chemistry
(25) and BWR.

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(1) **MS. BOLAND:** Question. On the
(2) interviews, you had a specific set of
(3) questions to ask?
(4) **MS. WESTBROOK:** Right.
(5) **MS. BOLAND:** What kind of discussions
(6) took place outside those particular
(7) questions? Are the panel members held to the
(8) question list?
(9) **MS. WESTBROOK:** They're held to a
(10) question list. If they don't understand
(11) something, they can ask something about that
(12) question.
(13) **MR. BURZYNSKI:** That would be like
(14) clarifying questions?
(15) **MS. WESTBROOK:** Right; to elaborate on,
(16) What do you mean by that.
(17) **MS. BOLAND:** Are the panel members
(18) supposed to strictly stick to the questions
(19) and answers that were provided by the
(20) individual?
(21) **MS. WESTBROOK:** Yes. And we did add
(22) one additional question.
(23) **MS. BOLAND:** In listening to some of
(24) the issues that you brought up about Mr.
(25) Fiser, there was a lot of — it appeared on

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(1) the list of strength and weaknesses regarding
(2) past Sequoyah issues.
(3) **MS. WESTBROOK:** Yes. He did talk about
(4) that in his answers to some of the questions
(5) that were asked, and I have each question
(6) that was asked and the responses that he
(7) gave.
(8) You know, some of the answers were very
(9) strong and very good; but then he would
(10) interject something like, for example, he
(11) said — and this was on question 9 — he
(12) would establish priorities and fix it; then
(13) he said, We haven't fixed anything. So, I
(14) mean, you're just — and for me to be an
(15) outsider looking in, that was a strange
(16) comment to me. Because if you're wanting a
(17) job and you're wanting to show your
(18) strengths, you're going to want to tell what
(19) you have fixed over that period of time.
(20) He said, My role is to get involved and
(21) to get things fixed, so that was real good.
(22) He went on after he said that to say that.
(23) But then he said, My biggest concern is
(24) staying abreast of technology. Then he said,
(25) You need to budget money to purchase new

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(1) technology. Then he said, I don't know what
(2) new widgets are on the horizon, but I do know
(3) how much it costs to lose power. So it was
(4) obvious he wasn't really abreast with what
(5) was going on in the industry, but he did know
(6) his plant. So that was positive, but
(7) interjected with a little bit of negativism.
(8) He was having a difficulty with some of
(9) the negative issues, and you could tell there
(10) were some things that were bothering him.
(11) **MR. BURZYNSKI:** Melissa, you had
(12) indicated that there was no collaboration on
(13) the score and that all of these people were
(14) interviewed, some 14 or more people.
(15) **MS. WESTBROOK:** Right.
(16) **MR. BURZYNSKI:** The scores that the
(17) people provided to the individual panel
(18) members, they kept that in their own book and
(19) turned the book into — the group didn't
(20) total up the scores or compare notes on the
(21) scores before the panel broke up?
(22) **MS. WESTBROOK:** No; there wasn't time.
(23) They did all those interviews that day and
(24) were supposed to finish around 7:00 or 8:00
(25) that night.

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(1) **MR. BURZYNSKI:** And that was something
(2) that Ben took the score sheets and totaled
(3) the scores up later?
(4) **MS. WESTBROOK:** Right. I turned my
(5) book in when I left as did the rest of the
(6) panel members. And then we keep these in our
(7) office.
(8) **MR. KENT:** Can I interject something
(9) just to make sure that it's clear?
(10) After each individual was interviewed,
(11) the score sheets were turned in on that
(12) individual so that when we interviewed the
(13) next person, we did not even have in front of
(14) us the score sheet from the previous person.
(15) So there was no mechanism to reference back
(16) other than just recollection how somebody
(17) responded. So we really tried to evaluate
(18) each person independently.
(19) **MR. DAMBLY:** Just to follow up on that,
(20) are you saying that when you did the three
(21) interviews for PWR giving the overall scores
(22) are quite divergent and Mr. Fiser was
(23) considerably lower, you didn't have any idea
(24) when you gave somebody a 10 and somebody a 5
(25) on the same question that the 5 person was

(1) going to be the lower of the — in the
(2) overall of doing three people?
(3) MR. KENT: Well, obviously, if you rank
(4) one person higher than another, you're going
(5) to recollect that. But when we completed the
(6) first candidate's interview, we turned in the
(7) score sheet. We did not total the scores,
(8) and we did not know how the person did
(9) overall. We did the same thing on everybody
(10) all day.

(11) MR. DAMBLY: But when you did the three
(12) for PWR, you knew at the end of the three
(13) pretty much where they stood.?

(14) MR. KENT: I knew pretty much how I had
(15) rated the three. I had no idea how the
(16) others —

(17) MR. DAMBLY: How the others — okay.

(18) MR. BURZYNSKI: I've got this slide
(19) here. I'm not sure that we need to spend
(20) much more time talking on it; we've covered
(21) these points.

(22) There was a question earlier, though,
(23) from Mr. Stein, I think, about the selection
(24) review board.

(25) As we indicated in previous enforcement

(1) three to five days was what his notice. Do
(2) you ever any recollection —

(3) MR. KENT: I would have thought it
(4) would have been further in advance than that,
(5) but I'm not sure.

(6) MR. DAMBLY: Mr. Corey, do you recall?

(7) MR. COREY: I don't recall as to when
(8) the notice went out that they were going to
(9) do it.

(10) MR. MARQUAND: I believe there may be a
(11) notice in front of somebody's book, a
(12) memorandum, telling you when the next peer
(13) team meeting was.

(14) MR. COREY: A memo dated July 18th?

(15) MR. REYES: Can you provide a copy of
(16) that for the record?

(17) MR. MARQUAND: We will.

(18) MR. DAMBLY: And that's the same time
(19) you found out when the panel was going to
(20) be or that you were going to be on the panel
(21) or —

(22) MR. COREY: May have called us in
(23) advance to the memo coming out, but —

(24) MR. COX: We all knew we were going to
(25) be on the panel initially; we talked about it

(1) conference — and I think these gentlemen can
(2) corroborate — they recommended themselves
(3) that the peer team should be the selection
(4) review board, and that was accepted by Dr.
(5) MacArthur. I think we've covered the other
(6) points on here unless you have any additional
(7) questions.

(8) MR. DAMBLY: One question I had,
(9) because I guess maybe it was Mr. Stein, I
(10) don't know, somebody asked Mr. Cox about when
(11) he learned about the panel and — did the
(12) other two of you, Mr. Kent and Mr. Corey, did
(13) you learn at the same time when the panel
(14) would be?

(15) MR. KENT: I don't really recall
(16) exactly when I was informed of the panel's
(17) date — I was informed that they wanted me to
(18) sit in on a panel, that that would be
(19) appropriate. We already had agreed it was
(20) going to be immediately following our next
(21) peer team meeting, and I don't really know
(22) how far in advance that peer team meeting
(23) that I was aware that was the date we were
(24) going to do it on.

(25) MR. DAMBLY: I think Mr. Cox said about

(1) at the last peer team meeting a month prior.

(2) MR. DAMBLY: So you knew a month in
(3) advance that the peer team was supposed to be
(4) the panel?

(5) MR. COX: Yes.

(6) MR. DAMBLY: You just didn't know until
(7) maybe the same time when that was going to
(8) be?

(9) MR. COX: The exact date and time,
(10) correct.

(11) MR. COREY: It's very difficult to get
(12) everybody in on the same day. It was quite
(13) an undertaking.

(14) MR. DAMBLY: Yeah; it's taken us a
(15) while to get here.

(16) MR. BURZYNSKI: We've kind of gotten a
(17) little bit off of the way we planned to
(18) present this. What I wanted to do was just
(19) give the selection review board members an
(20) opportunity to say anything in particular
(21) that they wanted to about their evaluations
(22) of the candidates they interviewed for the
(23) PWR chemistry manager job.

(24) MR. COREY: I'll go first, if I might.

(25) I'm John Corey, manager of radiological

(1) chemistry controls at Browns Ferry Nuclear
(2) Plant. I've held this position since January
(3) of 1995. I participated on the selection
(4) board, as you know. I felt it was important
(5) to participate on this board as the corporate
(6) radchem position to support the site radchem
(7) programs.

(8) Ms. Westbrook described to you in
(9) detail about how the protocol was handled
(10) that day. We came in, and we had this list
(11) of 16 questions, a 17th question was added.
(12) The peer team selected the questions that
(13) would be asked that day. We made sure the
(14) same person asked the same question of all
(15) three candidates, trying to make everything
(16) as fair and equitable as possible. We took
(17) down notes of the responses that we got to
(18) the questions. I thought it was a very fair
(19) process. There was no collaboration on the
(20) grading.

(21) When you look at this exhibit and you
(22) look at the numbers, you'll see it was fairly
(23) close agreement as far as between Mr. Kent
(24) and myself as far as the ratings that we gave
(25) Mr. Fiser. These were independently rated,

(1) the questions were selected that morning
(2) before the interview started for that
(3) session. There was no collaboration, and
(4) they were all independently graded and we all
(5) turned in our sheets. And until earlier this
(6) week when we were preparing to come down here
(7) was the first time I actually saw this spread
(8) sheet of data as well as the earlier exhibit
(9) as far as the point totals. So it was

(10) completely independent, and the grading was
(11) completely independent; and it looks to me
(12) the data was protected, but I didn't know.

(13) As shown on both exhibits, Mr. Fiser
(14) was graded lower than the other two
(15) candidates on the individual questions and
(16) point title overall.

(17) My recollection of Mr. Fiser's
(18) interview is very similar to what Melissa
(19) Westbrook mentioned to you earlier. In
(20) general, he was not as aggressive as the
(21) other candidates in answering the questions.
(22) Some of his responses weren't in depth and
(23) required follow up. He appeared very laid
(24) back and very casual, and some of his
(25) responses, I got the impression at times he

(1) felt he was the victim as far as not being
(2) able to control his destiny or coordinating
(3) resources to get things done.

(4) These positions were going to a fewer
(5) number of people, and they had to be the top
(6) caliber people. When you're down to a fewer
(7) number of folks and you have to turn out the
(8) same product or even better, you have to make
(9) sure you've got the very best talent to do
(10) it. And part of it is you have to find
(11) people who are aggressive, who look at
(12) problems, find solutions, and tackle them.

(13) And it's very frustrating when you're trying
(14) to orchestrate things among —

(15) MR. STEIN: I'm sorry. Do you think
(16) it's fair to judge somebody's aggressiveness
(17) or ability to manage on the basis of 16
(18) questions asked on one day, or possibly it's
(19) a fairer process to have the entire person's
(20) performance appraisals, history, awards, you
(21) know, who they are and how they manage over a
(22) period of time rather than make that
(23) assessment all in one day?

(24) MR. COREY: This process as was
(25) mentioned to you earlier was a step in the

(1) right direction as far as I was concerned as
(2) an employee and a manager as far as being
(3) selected for a position or not. It used to
(4) be as a selecting supervisor, you did the
(5) interviews, you made the selection, and that
(6) was it. This is a much more arduous process,
(7) and to make it just, there are a lot of

(8) hurdles you have to go over to make sure it's
(9) fair. And it's not timely and it's not easy,
(10) but it is impartial. It does work. You may
(11) not always agree with the conclusion to it,
(12) but it's been my experience that it's been
(13) fair. And as in any other company in this
(14) country, if you go in, you may have been a
(15) star performer, but the day you step in front
(16) of your boss or the panel that's making a
(17) decision, and if you have a bad day, if you
(18) clutch it, you might not get the position.

(19) The guy who did as well as you but did better
(20) presenting himself may be the person they
(21) selected. That's part of it. It's not a
(22) perfect process, but it's a whole lot better
(23) than what was done 6, 7 years ago.

(24) I believed it was a fair process. I
(25) believe it was unbiased and we fairly

[1] assessed his performance during the interview
[2] that day.

[3] **MR. DAMBLY:** Did you all have the
[4] appraisals or the personnel file or anything
[5] to look at before this?

[6] **MR. COREY:** No, sir, I did not. And
[7] the selection boards as it was mentioned
[8] earlier, they go through a spread sheet, they
[9] put down all this information, and they pick
[10] the top candidates. You may have different
[11] candidates apply, but you pick out the 2 to 5
[12] people who are going to be the best
[13] candidates and stick in front of the board;
[14] because on this day it took all my afternoon.
[15] I didn't get home until around 9:00, 10:00
[16] o'clock at night.

[17] **MR. DAMBLY:** The selection board panel,
[18] whatever, review board, when you all meet and
[19] you do the interviews, you are just strictly
[20] asking a given set of questions and grading
[21] the responses irrespective of anything else
[22] that person may ever have done in the past or
[23] any personal knowledge or anything —

[24] **MR. COREY:** That's correct.

[25] **MR. DAMBLY:** They dive into the pool

[1] **MR. REYNOLDS:** It's also felt that
[2] reviews of the personal history records by
[3] individuals who are on a selection committee
[4] are inappropriate, and let me tell you why.
[5] There's information in there about what
[6] benefits, what kind of pay they received,
[7] what kind of arrangements they may have with
[8] the company. They could have identified
[9] disabilities, they could have identified if
[10] there's another candidate. And I tell you
[11] what, I'm going to be in big trouble if I
[12] spread that information out and let it be
[13] available throughout the organization. So
[14] selection board members will not see a
[15] personal history record.

[16] They will have a resume that will track
[17] that employee's history of where they worked
[18] throughout the organization. If the employee
[19] chooses to submit their performance
[20] appraisals or any other letters that they've
[21] received or anything like that, they're free
[22] to do that. But I'm not going to let
[23] personal history records out for review of
[24] someone that's not in that chain of command
[25] of that individual; it's not right.

[1] and you hold up a number.

[2] **MR. STEIN:** In other words, a Nobel
[3] Prize winning chemist comes to TVA and a
[4] bunch of chemistry students, and the Nobel
[5] Prize winning chemist has a very bad day,
[6] doesn't interview well, you're going to
[7] select one of those students?

[8] **MR. COREY:** Probably.

[9] **MR. BOYLES:** I think if they go to
[10] DuPont and have a bad day, the same result is
[11] going to occur.

[12] **MR. SCALICE:** Why don't you look at it
[13] a different way, that if it was unfair to one
[14] candidate, it's equally unfair to all the
[15] candidates rather than going the other way
[16] around? Everybody was subjected to the same
[17] fairness or unfairness, and it was there as a
[18] process to improve on what we previously
[19] had. I don't know that it's a perfect system
[20] and I don't know if we have a perfect system;
[21] maybe you do. If you do, I'd like to see it.

[22] **MR. STEIN:** We don't.

[23] **MR. SCALICE:** That's the way we do
[24] business in TVA; and in nuclear, we're going
[25] to instill the best process we possibly can.

[1] **MR. DAMBLY:** There's nothing —
[2] whatever a candidate submits in his or her
[3] application package is given to the selection
[4] review board —

[5] **MR. REYNOLDS:** Yes.

[6] **MR. DAMBLY:** — ahead of time? They
[7] don't come in there with, Here's a set of
[8] questions; they have reviewed if Mr. Fiser
[9] had included his appraisals and Mr. Harvey —
[10] they would have had reviewed all that before
[11] they did the questioning?

[12] **MR. REYNOLDS:** Yes.

[13] **MR. DAMBLY:** That's different than what
[14] I thought was said a minute ago, that they
[15] just came in there with a blank slate. All
[16] right.

[17] **MR. BURZYNSKI:** Any other?

[18] **MR. KENT:** I'd like to make a statement
[19] about the selection review board process and
[20] my perception of this as it relates to this
[21] particular selection review board.

[22] I believe that the members of the
[23] selection review board base their ratings and
[24] their recommendations on the responses to the
[25] questions that were asked that day. I

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(1) believe that we were not biased in any manner
(2) against or for any of the candidates. I
(3) certainly was not.

(4) I believe that the fact that one of the
(5) candidates may or may not have filed a D.O.L.
(6) complaint had nothing to do with the
(7) selection process or the ratings that we gave
(8) the candidates, and certainly there was no
(9) attempt to influence me in any way in how I
(10) would rate any candidate on any question or
(11) overall by anybody.

(12) **MR. ROGERS:** I'm Rick Rogers from
(13) Sequoyah, as I said; and at the time, I
(14) worked in corporate as technical support
(15) manager, and Dr. MacArthur asked me about two
(16) days before the interviews were to take place
(17) if I could sit in and help him out in the
(18) selection board. I looked at my schedule, I
(19) was free that afternoon, I told him I could
(20) do that. We frequently supported each other
(21) in the spirit of teamwork.

(22) As was said earlier, each interviewer
(23) provided a notebook which contained
(24) information we've already talked about here
(25) in detail. We scored each person. I scored

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(1) each person based on the responses to the
(2) questions. Scored that person and then
(3) turned the books in, turned the sheets in.
(4) There was no discussion among the interview
(5) board concerning pre-selection of anyone or
(6) not selecting anyone. The process was fair.

(7) I sat in on interview boards of other
(8) candidates. I've also been interviewed
(9) myself as similar type board, and there was
(10) no evidence of anyone being biased in this
(11) process.

(12) **MR. COX:** One other point. Mr. Stein
(13) stole all my thunder a little while ago, so I
(14) didn't get to make my presentation; but I'd
(15) like to make sure that everybody understands
(16) that no one discouraged me from participating
(17) in this process; it was strictly my decision
(18) not to participate. Nobody encouraged me not
(19) to. As a matter of fact, they encouraged me
(20) to.

(21) And the other thing I wanted to make a
(22) point of was I remember the conversation that
(23) Mr. Kent was talking about in the hallway
(24) when he was recommending to Mr. MacArthur
(25) that he not participate and not ask any of

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(1) the questions and that sort of thing, and it
(2) was strictly from the standpoint of making
(3) sure that there was nothing even perceived to
(4) be inappropriate as part of the selection.
(5) There was no attempt whatsoever to either
(6) select, pre-select, or deselect anybody
(7) through this process, and I believe from what
(8) I've seen that it was unbiased.

(9) **MR. BURZYNSKI:** Moving on to the next
(10) point. This has to do with a topic we've
(11) touched on some that the OI report summary
(12) states that Mr. Harvey was pre-selected.

(13) TVA found that there was no
(14) pre-selection that occurred. Both Mr.
(15) McGrath and Dr. MacArthur denied any
(16) pre-selection when they came before you
(17) several weeks ago.

(18) I also wanted to mention that in
(19) response to some queries from Dr. MacArthur
(20) when he queried his employees and former
(21) employees to get statements about whether he
(22) ever made any disparaging remarks about Mr.
(23) Fiser to help in his character defense, the
(24) response that came back from Mr. Harvey
(25) included information that was we thought

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(1) important and provided important perspective
(2) on conversations that occurred between Mr.
(3) Harvey and Mr. Voler, the chemistry manager.
(4) We thought that that was important
(5) information. He provided a declaration on
(6) that point; and we want to submit that
(7) information to you, because as we understand
(8) it, the —

(9) **MR. DAMBLY:** This is the Harvey —

(10) **MR. BURZYNSKI:** The Office of
(11) Investigation did not interview Mr. Harvey in
(12) this, and we wanted to put —

(13) **MR. STEIN:** I'm sorry. Can you repeat
(14) what you just said, that Dr. MacArthur never
(15) made any statements regarding Mr. Fiser —

(16) **MR. BURZYNSKI:** No. What I said was in
(17) his preparation for his enforcement
(18) conference, he solicited statements from his
(19) employees and former employees as to whether
(20) or not they ever heard him make disparaging
(21) remarks. That was part of his preparation to
(22) provide some character witness kind of
(23) information to you in his defense. In
(24) response to that request, Mr. Harvey provided
(25) this additional information that we, TVA,

[1] then became aware of. We thought it was
[2] relevant because it was related to Mr.
[3] Harvey's conversations with Mr. Voler, and we
[4] wanted to be sure you had it because your
[5] organization had not interviewed Mr. Harvey
[6] as part of this investigation.

[7] **MR. STEIN:** Okay. This is a good place
[8] to get back to Dan Kiter I think at this
[9] point, because we have a TVA record of
[10] interview of Mr. Kiter which sheds some light
[11] on a few points dealing with Mr. McGrath and
[12] Dr. MacArthur.

[13] I already mentioned before about Tom
[14] Peterson and Tom McGrath being mentioned in
[15] Dan Kiter's record of interview. I recall
[16] that Mr. McGrath was making statements at the
[17] last enforcement conference that being the
[18] director or the committee chair of the
[19] Nuclear Safety Review Board, he approved of
[20] people coming forward with safety concerns,
[21] he never retaliated, wouldn't retaliate,
[22] would have no motive for doing so.

[23] We have the statement from Mr. Kiter
[24] that Mr. McGrath was opposed to Mr. Fiser
[25] going to corporate when Mr. Jaquard and Mr.

[1] Fiser were switching positions. Mr. Kiter
[2] made the final decision to give Fiser a
[3] chance as the corporate chemistry manager.
[4] Three months after the swap of positions
[5] between Mr. Fiser and Mr. Jaquard, McGrath
[6] and Wilson MacArthur, manager of operation
[7] services, indicated that Fiser was not
[8] working out as the corporate chemistry
[9] manager. And then there was a consensus
[10] reached between Dan Kiter and MacArthur to
[11] promote Mr. Fiser to a program management
[12] position. I find that very interesting given
[13] what Mr. McGrath was saying of his
[14] non-involvement in the 1993 issues; and if
[15] Mr. McGrath was the equivalent of let's say
[16] our committee, our ACRS committee, running
[17] like a safety review board type program, I
[18] just don't understand what his interest would
[19] be in Mr. Fiser going or not going to the
[20] corporate position and how his performance
[21] was in that position given he had no line
[22] management responsibility.

[23] **MR. SCALICE:** ACRS, to my
[24] understanding, includes technically competent
[25] people that evaluate issues, and in general,

[1] issues in the NRC. The NSRB is a little bit
[2] different in that they're involved not only
[3] in issues, but they're involved in
[4] management, how the plant's run, attitudes of
[5] the people; that's part of their chart.
[6] They're there at the plant interviewing the
[7] people. This is not something that just sits
[8] back and says, Let's evaluate how steam
[9] generators denting and how the industry is
[10] responding to it. It's the specifics of how
[11] the plants are run, and it's specifics of the
[12] oversight of the plant operations. And
[13] that's —

[14] **MR. STEIN:** So it was part of Mr.
[15] McGrath's charter to be reviewing the
[16] performance of a first line chemistry
[17] manager —

[18] **MR. SCALICE:** No; but it's part of his
[19] charter to review the overall operation of an
[20] area, such as maybe how chemistry runs. We
[21] have subcommittees. We have subcommittees
[22] that look at operations, subcommittees that
[23] look at maintenance of the plant; and they'll
[24] go into an area, perhaps talk to an
[25] operations manager, maintenance manager,

[1] etcetera, they talk to the people, and they
[2] want to know how the plant is dealing with
[3] issues. Are you getting the work done? Are
[4] you getting the resources necessary? That's
[5] part of the overall safety aspects of the
[6] operation of a plant. And they report that
[7] in a meeting with site management as well as
[8] corporate management.

[9] **MR. STEIN:** The reason I'm raising this
[10] is in the swap between Jaquard and Fiser,
[11] McGrath interposed his own opinion that, We
[12] don't want Mr. Fiser at corporate. And then
[13] three months later when he is performing at
[14] corporate, McGrath is again coming forward
[15] and saying, He's performing poorly. So —

[16] **MR. SCALICE:** I'm not going to defend
[17] or explain that, because I'm not even aware
[18] of those statements. I was trying to explain
[19] to you the difference between ACRS and NSRB.

[20] **MR. DAMBLY:** Was Mr. McGrath as
[21] chairman of the NSRB, was that his full-time
[22] job? I mean, some people thought it's a
[23] collateral duty and some think it's a
[24] full-time job. And he seemed to say that's
[25] all he did, but I don't know.

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[1] **MR. SCALICE:** For a long period of
[2] time, his responsibility was basically NSRB
[3] chairman, as I recall it.
[4] **MR. DAMBLY:** As a full-time position?
[5] **MR. SCALICE:** As a full-time position.
[6] Understand one thing. If this was a one unit
[7] facility, that would not have been a
[8] full-time responsibility; but because what we
[9] do is he's looking at three different sites
[10] and evaluating it, it then becomes a
[11] responsibility to rotate and go from site to
[12] site and then conduct meetings and do the
[13] scheduling, etcetera.
[14] **MR. BURZYNSKI:** He also at that point
[15] in time I think had a small support staff
[16] that reported to him when we were having
[17] frequent NSRB meetings when our plants
[18] weren't performing well.
[19] **MS. BOLAND:** At that time when it was a
[20] full-time position, who did it report to?
[21] **MR. SCALICE:** It reported to I believe
[22] — might have reported to Oliver Kingsley.
[23] **MR. REYNOLDS:** I think it reported to
[24] Metford with a dotted line to Oliver —
[25] **MR. SCALICE:** You're right.

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[1] **MR. REYNOLDS:** He did have a small
[2] staff of 3 to 5 folks to help set up the
[3] meetings.
[4] **MR. DAMBLY:** So basically, his was a
[5] full-time position, but the rest of the
[6] people that served, served as a collateral
[7] function?
[8] **MR. SCALICE:** Well, some of them were
[9] contractors, some of them were members of the
[10] site that would go from site to site. For
[11] instance, one individual from one site may
[12] review the operations of another site. So
[13] yes, those were not full-time positions.
[14] **MR. REYES:** Is there any way at a later
[15] time you can confirm for us that reporting
[16] arrangement so it's clear in our
[17] deliberation?
[18] **MR. BURZYNSKI:** Sure.
[19] **MR. MARQUAND:** To get back to something
[20] Mr. Stein said, at some short period of time,
[21] apparently after Mr. Fiser went downtown as
[22] the corporate chemistry manager, Mr. McGrath
[23] reported problems with Mr. Fiser's
[24] performance; but if you recall at the
[25] previous enforcement conference, Dr.

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[1] MacArthur said he had problems as well and at
[2] that point in time, they moved him from the
[3] corporate chemistry manager to a program
[4] manager position.
[5] **MR. DAMBLY:** If I could just back up
[6] one second to make sure I had the right
[7] people, Mr. Kent and Mr. Corey, I'm sure
[8] you're aware that there has been brought up
[9] certainly in the '96 complaint a meeting that
[10] Mr. Fiser was attending on behalf of Mr.
[11] Grover and was excluded from at some point
[12] because you were going to talk about
[13] sensitive issues, at least that's the way
[14] it's been presented. And it's been
[15] represented it was because somehow he was
[16] untrustworthy because people knew he had
[17] taped conversations or because he had filed a
[18] '93 complaint. But anyway, tell me what
[19] happened to the best of your recollection why
[20] he was sent out if he was sent out.
[21] **MR. KENT:** I think I remember the
[22] meeting you're talking about. It was a peer
[23] team meeting, and we do that occasionally at
[24] peer team meetings. If we're going to be
[25] discussing an issue such as staffing, where

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[1] we want to go with staffing, potential staff
[2] reductions, things like that, we do it just
[3] with the responsible managers, and we would
[4] have asked anybody else in the meeting to
[5] leave at that time. It's closed from then
[6] on.
[7] We were not aware of any issue of
[8] recording anything; I mean, that wasn't
[9] brought up. That's the reason we asked him
[10] to leave. And we would have probably asked
[11] Grover to leave had he been there. We may
[12] very well have asked him to leave had he been
[13] there. He was the corporate chemistry
[14] manager. We were meeting of the radchem
[15] managers. So our comments and deliberations
[16] involved the whole program; not just the
[17] chemistry piece of it. And we might very
[18] well have asked Grover to leave.
[19] **MR. STEIN:** Because you were talking
[20] about sensitive issues on the other side of
[21] the fence?
[22] **MR. KENT:** Yeah.
[23] **MR. MARQUAND:** Their peer was Dr.
[24] MacArthur, not Mr. Grover where Dr. MacArthur
[25] became one level down.

[1] MR. DAMBLY: At the time that Mr. Fiser
[2] worked for Mr. Grover, Grover had chemistry
[3] and environmental and MacArthur had radchem,
[4] and so —

[5] MR. MARQUAND: Depending on when the
[6] meeting —

[7] MR. DAMBLY: You guys had both
[8] functions?

[9] MR. KENT: Yes.

[10] MR. DAMBLY: So you had the combined
[11] MacArthur and Grover job?

[12] MR. MARQUAND: Previously, Allen
[13] Sorrell had that.

[14] MR. DAMBLY: And I'm not — I mean, we
[15] would do the same thing, a manager was about
[16] to discuss personnel issues and a non-manager
[17] would be in there, they would be asked to
[18] leave. I mean, there are statements all
[19] over, and I want to know your views on why he
[20] was asked to leave.

[21] MR. BURZINSKY: The final point I
[22] wanted to make, as you heard, we have found
[23] that we used a structured selection process
[24] to fill the new positions in the
[25] organization. We've kind of hit on this

[1] being contrived, we think it was conducted
[2] fairly and in accordance with TVA nuclear
[3] procedures. We would suggest that no
[4] pre-selection occurred based on the evidence
[5] we've had provided and that there was no
[6] comparable vacant position at Sequoyah.

[7] With that I'd like to turn it over to
[8] Mr. Scalice to make some closing remarks.

[9] MR. DAMBLY: If I could ask one
[10] question before you do that. There are
[11] statements made by Grover in particular that
[12] the '96 downsizing in the corporate and
[13] chemistry, environment, radchem, whatever
[14] area, there was a '96 through 2000 plan and
[15] it would require 17 percent the first year
[16] and whatever to get — and Mr. McGrath told
[17] us he decided he was doing the whole thing.
[18] Now, according to Mr. Grover, they had
[19] presented — he and I guess MacArthur had
[20] presented a plan involving the 17 percent
[21] that would have kept everybody in their jobs,
[22] and that was rejected, and they were
[23] demanding to pull 40 percent out of
[24] chemistry. But according to Grover, only
[25] chemistry had to eat it all the first year;

[1] topic, too, regarding the vacant position at
[2] Sequoyah. I don't know if we need to talk
[3] anymore on it.

[4] MS. BOLAND: Now, this says no
[5] comparable vacant position at Sequoyah.

[6] MR. BOYLES: Sequoyah had many
[7] vacancies, but there was not a chemistry
[8] vacancy.

[9] MR. BURZYNSKI: I'm just trying to be
[10] precise that if you had a chemistry
[11] technician vacant position, I didn't want you
[12] to come back and hit me with a 50.9
[13] violation.

[14] MS. EVANS: We wouldn't do that.

[15] MR. BURZINSKY: Just in summary,
[16] regarding the five points that were
[17] identified, on the first point, we think that
[18] the OI report is incorrect regarding the
[19] statement on culpable parties.

[20] On the second point regarding Dr.
[21] MacArthur's appointment and the decision to
[22] post the chemistry positions, we believe they
[23] were made in accordance with the regulations
[24] and that there was no disparity treatment.

[25] In terms of the collection process

[1] everybody else had the 17 percent.

[2] MR. REYNOLDS: At that time, I had
[3] worked for Human Resources, and I had 39
[4] people; and I went to 18, 18 or 19.

[5] MR. DAMBLY: But do you know if under
[6] Mr. McGrath he only demanded the chemistry
[7] function go down 40 percent the first year
[8] and not the other functions?

[9] MR. MARQUAND: I think if you look at
[10] the testimony Mr. McGrath had at his
[11] conference he had, he had similar reductions
[12] in other organizations. He did say the steam
[13] generator — he cited specific examples in
[14] other organizations under himself that had
[15] similar reductions.

[16] MR. DAMBLY: Again, my only point is if
[17] you have the numbers of in the various
[18] organizations or subdivisions reporting to
[19] Mr. McGrath what the cuts were for that time.

[20] MR. MARQUAND: We'll be glad to send
[21] that if we can find —

[22] MR. DAMBLY: Mr. McGrath said his were
[23] the only one that had to make the cut the
[24] first year.

[25] MR. ROGERS: I was in the operating

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[1] organization at the time. The reorganization
[2] — there was a technical support manager
[3] which was the position I had that had
[4] specialists in it, and then a maintenance
[5] support manager that had specialists in it.
[6] Those two organizations were done away with,
[7] and one organization was put in place that
[8] turned out to be about half the size of those
[9] two organizations combined. So I know in our
[10] organization it went down also nearly 50
[11] percent.

[12] **MR. DAMBLY:** Did your organization
[13] report to Mr. McGrath also?

[14] **MR. ROGERS:** Yes, it did; and my
[15] position went away, and I had to bid on my
[16] position at that point.

[17] **MR. DAMBLY:** I'm not saying one way or
[18] another; I'd be interested if you've got the
[19] numbers to show that this was across the
[20] board.

[21] **MR. MARQUAND:** We'll be glad to provide
[22] those. But as I recall from looking at Mr.
[23] McGrath's notes, he said that radiological
[24] control of chemistry went from 12 to 6, but
[25] maintenance went from 17 to 9; but we'll be

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[1] glad to provide all the numbers throughout
[2] his organization next week.

[3] **MR. DAMBLY:** Okay. Thank you. That
[4] was all I had.

[5] **MR. SCALICE:** My closing remarks —
[6] obviously come right up here and say
[7] notwithstanding the position on this
[8] particular case, we continue to take actions
[9] to ensure that an effective environment
[10] exists for the employees to raise all
[11] concerns. I'm not sure I understand the pure
[12] definition of the safety concerns and I'm not
[13] sure you can explain it to me, because I've
[14] asked for that explanation on some cases.

[15] We have met with Region II staff and,
[16] in fact, on June 11 to discuss all of our
[17] initiatives, and the results we achieved —
[18] as you know, we spend a great deal of time in
[19] getting feedback from the employees on how we
[20] do on this. Some of the initiatives we have
[21] are star 7 employee training, which is really
[22] a team building training program throughout
[23] the nuclear program but more so throughout
[24] all of TVA, actually. And we introduced a
[25] little bit more into the TVAN, of the TVA

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[1] nuclear portion of that, do what's right,
[2] building and maintaining a safe work
[3] environment and work together and talk
[4] together so that the issues you're discussing
[5] are not misconstrued when you gather
[6] information from each other. Sort of a
[7] Golden Rules type of training program, too.

[8] Plus, we have employee bulletins that
[9] reinforce TVA Nuclear's policy against
[10] discrimination. I personally signed them,
[11] and I periodically send them out.

[12] **MR. STEIN:** Do you have all your
[13] managers take the Section 211, 50.7 type
[14] training in TVA Nuclear?

[15] **MR. SCALICE:** For—

[16] **MR. STEIN:** — employment protection.

[17] **MR. SCALICE:** Yes.

[18] **MR. REYNOLDS:** It's contained within
[19] the Do What's Right page about how to handle
[20] complaints. Actually, we hand them out to
[21] all employees within the TVA Nuclear.

[22] **MR. SCALICE:** As far as the results we
[23] achieved from these initiatives, we think,
[24] there has been a significant and sustained
[25] reduction in a number of ARC complaints. I

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[1] think your data could bear that out in terms
[2] of allegations, and certainly our own
[3] internal employee concerns and complaints
[4] have been reduced over the years. Our most
[5] recent survey indicated very good response
[6] where all of our people or almost a majority
[7] of the people or 100 percent were willing to
[8] discuss or provide or bring forth a concern,
[9] and about 97 or 98 percent of them will bring
[10] them to the first line supervisor.

[11] We do employee exit interviews with all
[12] of the employees that leave TVA or TVA
[13] Nuclear and all of our contractors to discuss
[14] with them whether there was anything that
[15] they want to share with us and do they feel
[16] they have the freedom to discuss those issues
[17] and concerns with all — with management or
[18] with anybody else in the organization.

[19] **MR. STEIN:** Do you track employees'
[20] concerns and allegations? For example, I had
[21] a Region IV plant where all of a sudden we
[22] were getting a lot of OI reports coming from
[23] one maintenance group within the plant, so I
[24] had our allegations person go and see what is
[25] happening here that we're getting all these

(1) discrimination complaints. Do you have a
(2) similar mechanism —
(3) **MR. SCALICE:** I don't look to see if
(4) it's coming from one particular group. In
(5) fact, I don't want to know whose complaint —
(6) if there's a concern, we're going to deal
(7) with the concern. In fact, I wouldn't
(8) encourage people to say, It's in this
(9) organization at Sequoyah. We have an
(10) employee concerns organization that does know
(11) where those concerns are and where they come
(12) from, and he monitors it. And it's sort of
(13) an independent consideration, because I don't
(14) get into the details of the individual; I
(15) look at the processing — there's a specific
(16) item listed or a complaint, it usually just
(17) says individual is concerned about this at
(18) this particular plant. It doesn't go into
(19) the details that you're talking about.
(20) **MR. BURZYNSKI:** But in response to your
(21) question, as we indicated when we were down
(22) here on June 11th, when we see indications
(23) that there are numbers that are not typical
(24) in an area, we have done some targeted
(25) surveys; and we have as part of the general

(1) **MR. DAMBLY:** One quick question.
(2) It's always a fatal statement to say, but
(3) anyway —
(4) **MR. MARQUAND:** Especially for lawyers.
(5) **MR. DAMBLY:** Yeah; you know that one
(6) last question can go for an hour-and-a-half.
(7) But OI collected in its report a BP dash 102
(8) signed by Mr. Reynolds on 9/30/93 which says,
(9) All vacant permanent positions must be
(10) posted. And apparently, it's implementing
(11) something that was from March of '93 signed
(12) by John E. Long, Jr., vice president of
(13) employee work life. And I guess my question
(14) was because the way it was in the report, it
(15) would seem to indicate that would say you
(16) needed to post Mr. MacArthur's job if there
(17) was a vacancy. And why that wasn't followed
(18) if that's the case?
(19) **MR. REYNOLDS:** Mark, can you go back to
(20) that chart that's got the terms — on a
(21) decision on whether to post or not?
(22) **MR. BURZYNSKI:** This one here?
(23) **MR. REYNOLDS:** Briefly, when you do the
(24) review — and what had been done with Mr.
(25) Boyles and Mr. Easley during this period of

(1) annual employee questionnaire added specific
(2) questions in those target groups that are
(3) trying to solicit additional information to
(4) help us understand what may be going on.
(5) **MR. SCALICE:** The employee concerns
(6) manager would look at that.
(7) We have and I personally have a
(8) commitment to maintaining an environment
(9) where employees offer to bring forth all the
(10) concerns possible. My theory is that every
(11) time they come forth with even a maintenance
(12) work request be prepared, that sort of can be
(13) construed to be a concern. If some piece of
(14) equipment out there needs to be fixed, we're
(15) going to fix it and get on with doing the
(16) work. We're getting the work done and that's
(17) the principal we work by, and I think that
(18) the people are entitled to an environment
(19) where they can report the concerns. And I
(20) think if you ask them you will see that
(21) that's the case, they feel like they have
(22) that forum.
(23) I want to thank you for your time. I
(24) know this is a long meeting, and I'm sure
(25) there are still pieces —

(1) time on those positions, when that
(2) determination was made that there was
(3) interchangeability on those positions,
(4) there's no requirement for them to post that
(5) job at that point in time because I had not
(6) created a, quote, new vacant position within
(7) the organization.
(8) **MR. DAMBLY:** Even though nobody's in it
(9) and you're rolling over somebody — you don't
(10) consider that a vacancy?
(11) **MR. REYNOLDS:** No; I'm considering that
(12) someone that has rights to that position
(13) because of the review we have done.
(14) **MS. BOLAND:** On the determination of
(15) interchangeability, I recall something I
(16) think in your testimony previous Mr. Boyles
(17) where you have discussed evaluation of the
(18) duties, and I believe you meant the position
(19) descriptions, that it had to meet 65 percent
(20) similar to be considered interchangeable. Am
(21) I recalling that —
(22) **MR. BOYLES:** I've heard the term
(23) prominence or 65 percent; but a majority of
(24) the duties —
(25) **MS. BOLAND:** Is that across the board

[1] when you evaluate these positions?
 [2] **MR. BOYLES:** Yes; it's the same
 [3] process.
 [4] **MS. BOLAND:** So that would have applied
 [5] to Mr. Fiser's position as well?
 [6] **MR. BOYLES:** Yes; same exact process.
 [7] **MR. STEIN:** Mr. Scalice, how was this
 [8] published? How did it get disseminated, the
 [9] October 19th, 1999 letter?
 [10] **MR. ROGERS:** It's sent out E-mail.
 [11] **MR. REYNOLDS:** Electronically and then
 [12] in those areas — if I may answer — we send
 [13] it out electronically to everyone who has an
 [14] E-mail station or a work station, and then we
 [15] make it available for those areas where
 [16] employees don't have computers so they can
 [17] see it.
 [18] **MR. BOYLES:** Instructions with that
 [19] E-mail indicated that sites should distribute
 [20] that to anyone including contractors.
 [21] **MR. STEIN:** All right.
 [22] **MR. REYES:** I think we're on item 6 of
 [23] the agenda. What I suggest we do is the NRC
 [24] will leave the room and have a caucus. I
 [25] suggest for everybody else you take a break

[1] or whatever. The goal is to be back here in
 [2] 10 minutes.
 [3] If we were not to have any follow-up
 [4] questions when we get back, Mr. Fiser, we'll
 [5] then ask you the protocol I discussed earlier
 [6] to make a presentation. So we're going to
 [7] take a break.
 [8] (A recess was taken.)
 [9] **MR. REYES:** Let me see if we can
 [10] continue.
 [11] We have no additional questions for
 [12] TVA. We all asked them through the process,
 [13] so we're going to ask Mr. Fiser to make his
 [14] presentation. And if you don't mind getting
 [15] closer to the court reporter.
 [16] **MR. FISER:** All right. Are we ready?
 [17] **MS. BOLAND:** Yes.
 [18] **MR. FISER:** About 12 years ago, I
 [19] received a call from TVA's corporate
 [20] chemistry manager. He wanted me to come to
 [21] TVA and help out in their restart and
 [22] recovery efforts in their nuclear power
 [23] chemistry program. It had been shut down for
 [24] some time due to safety concerns. I
 [25] resisted, and he continued to pitch the

[1] company, finally asking that my wife and I
 [2] fly out to see the area. I told him that I
 [3] would do that but I would feel bad about it
 [4] because I would feel like I was taking TVA's
 [5] money for nothing, because I had no good
 [6] reason to leave Arkansas. Following months
 [7] of persuasion, I decided to leave Arkansas
 [8] and 14 years that I spent there and join
 [9] TVA's nuclear power recovery effort in
 [10] September of 1987.
 [11] Now, over the past 7 years, I have been
 [12] performing in my mind a root cause
 [13] determination. This root cause was to
 [14] determine exactly where, when, and why my
 [15] professional career began to unravel right
 [16] before my eyes. In the beginning, I was
 [17] unconcerned believing that honesty,
 [18] truthfulness, and hard work would exonerate
 [19] me. I had always been told that sooner or
 [20] later, the truth would surface and the truth
 [21] would win. I still believe that, but not
 [22] necessarily in this life.
 [23] Several years ago, I was asked to
 [24] perform a pre- and post-assessment of the
 [25] chemistry program at Sequoyah Nuclear Plant,

[1] and an evaluation schedule to be performed in
 [2] 1992. My instructions from Bill Lautergen
 [3] was as follows: I want you to do the
 [4] assessment using the IMPO criteria. I want
 [5] you to be very critical. If the IMPO
 [6] documents and guidelines tell you to do
 [7] something and you don't do it for whatever
 [8] reason, I want that documented. If the IMPO
 [9] guideline said for you to do something a
 [10] particular way and your program accomplishes
 [11] the same thing a different way, I want to
 [12] know that. In the same manner, even if they
 [13] say do something and you accomplish it in
 [14] what you feel is a far superior way, I want
 [15] that documented as well. You see, what he
 [16] was looking for was a list of discrepancies.
 [17] Then after the list was compiled, Bill sat
 [18] down with us and started in the review
 [19] process. He wanted to provide a detached and
 [20] objective input as to what really needed to
 [21] be fixed prior to the IMPO visit. He made it
 [22] very plain that the list was for our internal
 [23] use only and it would not be going any
 [24] further barring the discovery of some
 [25] condition or conditions adverse to quality.

1) I followed his instructions to the
2) letter, and the resulting list was some 120
3) or 130 items. Mr. Lauderger was delighted
4) with my efforts remarking several times how
5) pleased he was that I provided exactly what
6) he wanted.

7) Out of the long list of items, only
8) about half a dozen actually resulted in some
9) tweaking of the chemistry program.
0) Unfortunately, what to one man was a job well
1) done was to another man a job undone.

2) Shortly after I submitted the results
3) of the pre-assessment to Mr. Lauderger, Mr.
4) John LePoint, Sequoyah's vice president,
5) called Dr. Don Adams and me into his office
6) on a Saturday and lit into us for four
7) hours. He was livid, yelling, cursing,
8) swearing, and levied all kinds of accusations
9) against the chemistry program and me. The
0) end result — and this is critical — was
1) that he instructed me to enter every one of
2) these items into TROY, Sequoyah's
3) computerized system for tracking and
4) reporting of open items.

5) I heard him reporting in to his

1) flourishes in TVA's nuclear program. The
2) first time I lost my job, my position, was
3) back in 1993 when [REDACTED] placed me in
4) TVA's employee transition program. They said
5) they no longer needed a chemistry
6) superintendent, and therefore my job had been
7) eliminated.

8) Shortly after being placed in ETP,
9) another letter came from [REDACTED] and it
10) was circulated around stating that the
11) chemistry superintendent position at Sequoyah
12) was being reinstated; he had lied when he
13) said the job had been eliminated. This was
14) only pretense used to get rid of me. Not
15) only was it being reinstated, but the
16) position was being upgraded from a PG-9 to a
17) PG-10. Let me hasten to point out that this
18) is the same [REDACTED]
19) [REDACTED]
20) [REDACTED]
21) [REDACTED]
22) that [REDACTED] had lied under oath. TVA chose to
23) retain [REDACTED] services, simply moving
24) him out of the none — into the non-nuclear
25) program. Today, [REDACTED] continues to be

1) supervisor, Mr. Joe Bynum, that he felt
2) Sequoyah was ready for the upcoming IMPO
3) assessment with the exception of chemistry.
4) Note, remember that name, Joe Bynum; because
5) it's going to be coming up a lot.

6) Well, LePoint was wrong. My review was
7) a resounding success, and at the conclusion
8) of IMPO's assessment, for the first time ever
9) IMPO said there was no findings and no
10) concerns with Sequoyah's chemistry program.
11) I told you that entering the information was
12) a critical step. Once this huge list of open
13) items appeared in TROY, every auditing and
14) oversight group in TVA was unleashed on
15) Sequoyah chemistry, and me in particular,
16) with a vengeance. What for Mr. Lauderger was
17) a source for giving me a performance bonus
18) became a festering tumor for others that
19) ultimately led to the loss of my position
20) three times.

21) I can state with certainty that using
22) the corrective action process at TVA is
23) tantamount to professional suicide. NRC,
24) take note. I can assure you beyond
25) reasonable doubt that the chilling effect

1) handsomely rewarded by TVA. He continues to
2) enjoy benefits of employment, retirement,
3) salary increases, annual bonuses since that
4) time. The fact of the matter is that even if
5) you get caught doing the wrong thing, as long
6) as it benefits TVA in the process, you get to
7) keep your job and even get a raise. If,
8) however, you do the right thing, like use the
9) corrective action process to document
10) problems, you will find yourself harassed
11) right out of a job.

12) At first, I was delighted to hear about
13) my position being upgraded, thinking that
14) they would follow the rules, bring me out of
15) EPT, place me in my job, and give me a
16) raise. It did not happen. I was interviewed
17) for the new position and offered the job on
18) the spot by Mr. Charles Kent, the department
19) head, and the new Sequoyah plant manager. I
20) was given a raise commensurate with the PG-10
21) position. Charles Kent told me he knew all
22) that had gone on before, he knew I had been
23) unjustly treated, that it was wrong, and that
24) he had already brought the new Sequoyah plant
25) manager up to speed on my case. They were

(1) both in agreement that I should be
(2) reinstated. Charles told me to lay low, stay
(3) quiet, and he would get this thing done
(4) quietly and quickly before those who
(5) masterminded the previous shenanigans had a
(6) chance to find out what was going on. This
(7) is all undeniably documented.

(8) Shortly thereafter, Charles Kent called
(9) me back out to Sequoyah and told me that it
(10) was not going to work out. He said that
(11) others had found out about his plan, and it
(12) was like he had kicked a hornets' nest. He
(13) said it would be unfair for me — for him to
(14) subject me to that kind of treatment that was
(15) in store for me. He said it would be unfair
(16) for him to subject — I said that. I was
(17) summarily discharged back to TVA's employee
(18) transition program. The same guys that
(19) targeted me before, guys that still enjoy the
(20) benefits of TVA employment [redacted] and
(21) Wilson MacArthur and Tom McGrath, got another
(22) chance to teach me a lesson, and for the
(23) second time, I lost my position. Wilson
(24) MacArthur found out about Kent's plan to
(25) reinstate me, and he personally informed [redacted]

(1) [redacted] of Sequoyah's intentions.
(2) Bewildered and dejected, I went to
(3) MacArthur's office, thinking he was my
(4) friend, and told him what had happened and
(5) that I was going to find out who was hiding
(6) in the bushes and shooting me in the back.
(7) MacArthur confessed that he was the one who
(8) told [redacted]. Shocked, I asked him why he
(9) would do that, and he simply stated that [redacted]
(10) had to know. The truth is that [redacted]
(11) MacArthur, and McGrath were all three
(12) responsible for having me removed in the
(13) first place.
(14) Following these developments, I filed a
(15) complaint with the Department of Labor, which
(16) was settled in '93. In order to keep from
(17) being terminated, I reluctantly agreed to a
(18) settlement offer. I was not only denied the
(19) PG-10, but was also removed from the Sequoyah
(20) chemistry program and busted from a PG-9 to a
(21) PG-8. I was very much reluctant to take this
(22) offer until a chance face-to-face meeting
(23) with the director of Human Resources, Mr.
(24) Phil Reynolds. Mr. Reynolds reassured me
(25) that all those responsible for my demise had

(1) been reassigned or in some way moved out of
(2) my chain of command and I could come back
(3) without fear of reprisals. He personally
(4) encouraged me to put all this behind me and
(5) get back to work.

(6) For the record, NRC never performed a
(7) thorough investigation of this first
(8) complaint. Mr. Vorace was assigned the case,
(9) but following the initial meeting never once
(10) contacted me, never answered a single phone
(11) call, never returned a phone call or
(12) anything. For years I have wondered if I
(13) would have been spared further misery if he
(14) had done his job, and I call upon NRC's IG to
(15) investigate the disposition of this former
(16) case. Now, back to this one.

(17) After approximately a year in this
(18) lower position following the death of my
(19) general manager, Mr. Don Moody, Mr. Tom
(20) McGrath, chairman of the Nuclear Safety
(21) Review Board, and Wilson MacArthur, a
(22) long-standing member of the Nuclear Safety
(23) Review Board, were directly in my chain of
(24) command. These two [redacted]
(25) [redacted] dusted off their old bag

(1) of dirty tricks and, you guessed it, I was
(2) for the third time surreptitiously
(3) reorganized out of another position. I was
(4) in line for my third and final lesson from
(5) these guys.

(6) Older and wiser now, I recognized what
(7) was going on early in the development stages,
(8) and hoping to avoid trouble, went to Human
(9) Resources to discuss my concerns directly
(10) with the personnel department, specifically
(11) Mr. Ed Boyles and Mr. Phil Reynolds. I told
(12) them plainly in advance what McGrath and
(13) MacArthur were scheming. I also told them
(14) what I would be forced to do if this course
(15) of action was not turned around.

(16) The Human Resources department,
(17) specifically Mr. Phil Reynolds and Mr. Ed
(18) Boyles, chose to stand aside and abide by the
(19) dictates of McGrath and MacArthur with Mr.
(20) Oliver Kingsley's full knowledge and
(21) support. Therefore, I submitted my second
(22) D.O.L. complaint.

(23) Phil Reynold met with me and told me
(24) that he would allow me to keep my job working
(25) for MacArthur and McGrath if I dropped the

[1] D.O.L. complaint. I refused, knowing that
[2] short of holding in my hand hard and fast
[3] D.O.L. and NRC rulings on this case, I would
[4] be in for the same treatment again.
[5] As a matter of routine with the filing
[6] of the D.O.L. complaint, I met with TVA's
[7] IG. I carefully went over the evidence that
[8] I have today, and the inspector documented
[9] the conversation and said he would look into
[10] it. The report he submitted was a farce. It
[11] was filled with remarks like, He said one
[12] thing, they said something else; therefore, I
[13] cannot decide who was telling the truth. It
[14] was laughable. This investigative body
[15] having commanded the same set of facts as
[16] D.O.L. and NRC was incapable of dealing with
[17] those facts. NRC and D.O.L. had no problem
[18] understanding what went on and got to the
[19] bottom of the matter at least preliminarily.
[20] Never, never, never trust what you hear from
[21] TVA's IG.
[22] Thanks to Ms. Benson, NRC in concert
[23] with D.O.L. has successfully and correctly
[24] arrived at the preliminary conclusion that
[25] TVA has once again discriminated against an

[1] the intimidation and harassment of employees
[2] for raising safety concerns will stop now.
[3] Well, here we are again. I wonder, and I
[4] just found out, if TVA has already circulated
[5] that stupid little letter around and lied
[6] again after this case.
[7] TVA lies when they say they will not
[8] tolerate discrimination. TVA lies when they
[9] say that people should feel free to submit
[10] concerns and use the corrective action
[11] process. TVA lies when they say they will
[12] deal seriously with those who discriminate
[13] against employees. Check it out. MacArthur,
[14] McGrath [REDACTED] are still gainfully employed
[15] by TVA.
[16] NRC and TVA, you have no credibility
[17] when it comes to the protection of those who
[18] raise concerns using the corrective action
[19] process. Indeed, it's now to the point that
[20] it appears there may be collusion between
[21] your two agencies. How can NRC allow the
[22] systematic destruction of people like me to
[23] continue? TVA, have you hired a consulting
[24] firm to come in and interview our personnel
[25] and verify that everyone has a warm feeling

[1] employee engaged in corrective activities.
[2] I find it incomprehensible that I am
[3] standing before this group. Do you realize
[4] that TVA has discriminated and removed three
[5] chemistry managers for engaging in protected
[6] activity? I can remember not too long ago
[7] when [REDACTED] was removed from his
[8] position for refusing to be pressured into
[9] signing off on a start-up plan he knew did
[10] not meet commitments made by TVA to NRC. He
[11] filed a complaint, you investigated it; sure
[12] enough [REDACTED] was right. But he never
[13] again served another day as a chemistry
[14] superintendent at Watts Bar. TVA sent out a
[15] little form letter stating that they would
[16] not tolerate this type of discrimination and
[17] that people should feel free to voice
[18] concerns without fear of reprisals.
[19] Shortly thereafter, we see [REDACTED]
[20] [REDACTED] being
[21] removed from his position. He, too, filed a
[22] complaint. Here comes that little letter
[23] again stating that TVA will not tolerate
[24] discrimination. Saying to myself, I'll bet
[25] they learned their lesson this time, surely

[1] about submitting safety concerns? If you
[2] did, please tell me it's not the same one
[3] they used to verify it was okay in the past.
[4] By the way, strangely enough, they
[5] didn't talk to me. How many times is it
[6] going to take? Let me state it as plainly as
[7] I know how.
[8] First, TVA should be assessed the
[9] maximum fine possible in cases like this.
[10] Second, TVA has no business holding a license
[11] to operate a nuclear power facility until
[12] they can prove with reasonable assurance that
[13] the intimidation, harassment, and ruin of
[14] individuals raising legitimate safety issues
[15] is no longer tolerated. Third, NRC should
[16] insist that I be made whole again and force
[17] TVA to reinstate me at or above a PG-10 level
[18] which they denied me with no loss in pay, no
[19] loss in benefits, and no break in service.
[20] This and only this would send them a
[21] resounding message that there are
[22] consequences to illegal behavior. The
[23] issuance of letters and independent
[24] verification by consulting firms functioning
[25] at their direction is not sufficient proof;

[1] it's all lies and should not be tolerated by
[2] you, NRC, unless you, too, are willing to
[3] stand aside and allow the chilling effect to
[4] run its course.

[5] Well, NRC, what are you going to do
[6] this time? Anything short of the maximum
[7] enforcement possible with my reinstatement
[8] means TVA has beat the system again. Nothing
[9] else will result in a change of TVA's heart
[10] of hearts. History has repeated itself three
[11] times for me personally. You called us down
[12] here years after the fact with a preliminary
[13] ruling in my favor. Now they can once again
[14] repeat their old line. These problems
[15] happened years ago, the people responsible
[16] have been reassigned to the non-nuclear team
[17] or left TVA, we take discrimination very
[18] seriously and we will not tolerate it
[19] anymore. It's all lies. I know it and so do
[20] you. Are you willing to let them get away
[21] with it? Well, what about me? What about
[22] the guy who thinks right will win, the cream
[23] will rise to the top, truth triumphs and on
[24] and on?

[25] Let me tell you about me. I signed a

[1] settlement agreement and after paying taxes
[2] and attorneys' fees, I had enough money to
[3] last a few months, and I can't tell what or
[4] they'll sue me for that. You would think
[5] this would have been sufficient time to find
[6] replacement employment. My first try was at
[7] IMPO. I filled out applications, did the
[8] telephone thing, everything was going so
[9] well, and then I hit a brick wall. While I
[10] was in the process of being scheduled in for
[11] an interview, the IMPO person went to people
[12] asking for verbal references from anyone who
[13] knew me, Dr. Jim Corbick, one of the
[14] chemistry evaluators, said something like
[15] this, Well, I don't really know the facts,
[16] but I do know that TVA has been trying to get
[17] rid of him for years. Needless to say, I
[18] never got the interview and every attempt
[19] since then has been met with rejection. This
[20] blackballing is real, tangible, purposeful,
[21] and undeniable.

[22] Other interesting facts, my wife is not
[23] insurable due to a congenital heart defect.
[24] We were not allowed to purchase health
[25] insurance using TVA's group retirement plan.

[1] I cannot find work in the Chattanooga area
[2] that will pay me what I was making. I am
[3] faced with the fact that I must sell my home
[4] in the very near future. My son has been
[5] undoubtedly scarred by the fact that somebody
[6] can do the right thing and suffer so —
[7] retirement for me is out of the question.
[8] This is what happens to someone who does the
[9] right thing at TVA. On the other hand, the
[10] person who lies under oath gets a new job,
[11] gets a raise and bonuses every year, all the
[12] benefits an agency the size of TVA offers.

[13] To TVA, I must say, my hat is off to
[14] you. You won. It may appear from these
[15] proceedings that I may be winning or ahead,
[16] but I will not. I cannot provide for my
[17] family, I cannot provide for retirement, I
[18] cannot even hold onto my house. Your goal
[19] was to silence and get rid of me, and you met
[20] your objective. You may have to pay a fine,
[21] but what's that to you? When you compare
[22] TVA's net worth to mine or to yours, it would
[23] be about like us getting fined a penny.
[24] Actually, it's far less than that. No wonder
[25] there's no real change.

[1] I am most concerned with the fact that
[2] many people had to stand up on my behalf and
[3] tell the truth not counting the cost in order
[4] for TVA to have been found guilty at least
[5] preliminarily. I fear for their future in
[6] TVA's nuclear program for they will face the
[7] same intimidation and harassment as I was
[8] subjected to if this preliminary ruling does
[9] not stand. I was going to mention their
[10] names in this presentation, but I do not feel
[11] TVA can be trusted with that information. I
[12] know TVA has already made life miserable for
[13] some. I was going to give the list to NRC,
[14] but I fear it will end up in TVA's hands so
[15] TVA can be sure these people are properly
[16] treated. If the ruin their lives as they
[17] have mine, I will make it public at that
[18] time. It probably will not matter for as we
[19] have already seen once, when TVA decides to
[20] harass and intimidate someone with clear
[21] resolve to run him or her off, they will be
[22] dauntless on their mission.

[23] I have trouble understanding how it is
[24] that TVA continues to get away with the
[25] systematic assassination of the careers of

1) their employees. NRC has been ineffective at
2) preventing this. NRC's IG should investigate
3) why you have not taken stronger enforcement
4) action before now. It's your job to see to
5) it that this does not happen. How is it that
6) you allow them to continue to get away with
7) it again? There's the appearance of
8) collusion; three chemistry managers, and all
9) three times TVA sends the same stupid letter
0) around saying the exact same thing as the one
1) I just read. Do you believe me this time?

2) What was my sin? Well, first, let's
3) face the facts. A fine for TVA is exactly
4) what they would like to settle for at this
5) juncture. It not only means nothing to them
6) monetarily, but they can say all this
7) happened years ago and they are therefore
8) absolved of culpability. What TVA does not
9) want is for you to insist that they reinstate
0) me. This would encourage their employees
1) showing them that the system works and that
2) NRC has credibility and clout. It could be
3) proved that the little guy could win. This
4) must be a terrifying thought for you.

5) What was my sin or what was my crime?

1) date I had already been sent to IMPO and the
2) six findings, six findings in that evaluation
3) were or should have been charged to the
4) previous chemistry administration. I
5) succeeded, but it has cost me my career and
6) my future in nuclear power and my family has
7) paid an unspeakable price. In TVA's employ,
8) doing the wrong thing is a vehicle for
9) continued prosperous employment, lying under
10) oath, making life miserable for those who
11) uncover problems, protecting TVA's name at
12) any cost, standing aside when you know
13) federal law is being violated. What was my
14) sin? I did the right thing.

15) I conclude with this quote, For what
16) credit is there if when you sin and are
17) harshly treated, you endure it with patience,
18) but if you do what is right and suffer for it
19) and patiently endure it, this finds fair with
20) God? 1 Peter 2:20.

21) MR. REYES: Thank you, Mr. Fiser.

22) Counsel, can you put the agenda back?
23) I believe we're on number 9 on the agenda,
24) and you have an opportunity of rebuttal of
25) any information that we just received.

1) I was tried and found guilty by members of
2) the Nuclear Safety Review Board of all
3) things, Tom McGrath and Wilson MacArthur. I
4) was found guilty of performing the letter and
5) spirit of Bill Lauderger's wishes. I did not
6) create the problems; I simply discovered
7) them.

8) Since taking the Sequoyah chemistry
9) superintendent position back in 1988, I've
10) found thousands of problems. Never once do I
11) recall receiving the third degree for finding
12) and fixing problems. But when I placed the
13) list in TROY and the problems entered the
14) public domain, all hell broke loose. That
15) remains the root cause of the unraveling of
16) my professional career.

17) I left a secure position at Arizona
18) Nuclear I to go to TVA, and I contributed to
19) their recovery effort. I also brought every
20) aspect of Sequoyah's chemistry program
21) solidly into IMPO's best plant category. I
22) never had even one IMPO finding while I was
23) in charge of the program. The first IMPO
24) evaluation came six weeks after I was placed
25) in charge of Sequoyah's chemistry group, the

1) MR. MARQUAND: Can we have five minutes
2) to consider that, please?

3) MR. REYES: Yes. Let's go off the
4) record for five minutes.

5) (A recess was taken.)

6) MR. BURZYNSKI: Thank you.

7) First I would like to say that we sense
8) the deep pain that Gary feels, and we are
9) sympathetic to that; but I do want to make
10) the point that a number of employees over the
11) years have had the same kind of situation of
12) job loss at TVA. You've heard us discuss
13) earlier in our presentation the kinds of
14) programs and policies that the board was
15) interested in promulgating to try to
16) ameliorate the discomfort associated with the
17) loss of job when we went through the kinds of
18) downsizing we had. Those programs were made
19) available to people, and, in fact, even Gary
20) took advantage of some of those.

21) I think he makes some suggestions about
22) the cheapness of the letter we sent out, and
23) it's easy to focus on that piece of paper
24) without really understanding that paper and
25) TVA's commitment in TVA Nuclear to really

[1] improve and maintain a positive culture to
[2] raise and react to safety concerns. I think
[3] when you look behind it, you'll find the
[4] commitment is there with the training. We
[5] spoke of Star 7 training, we spoke of the Do
[6] What's Right training. We told you about
[7] survey results, and those are all good. But
[8] more importantly, I think you know and you've
[9] seen the data. The data is there. The
[10] trends on allegations, the trends on
[11] complaints are down, and the performance in
[12] the corrective action program is remarkably
[13] improved. In fact, your inspector sits in on
[14] our daily management review committee
[15] meetings daily at the plant, and you see the
[16] environment we have for people to bring
[17] forward issues, use the corrective action
[18] program, and ultimately put them in the
[19] corrective action program tracking system.
[20] And that's something that has been a clear
[21] thing to us, a secret behind our success in
[22] improved plant performance; and we're not
[23] willing to let that go. That's a fundamental
[24] for our program, and the data is there for
[25] it.

[1] I think there has been suggestions that
[2] several people conspired and influenced a
[3] whole number of decisionmakers. I think we
[4] laid out for you today the types of processes
[5] and checks and balances we have put in place
[6] to ensure that our selection process and the
[7] decisions associated with personnel decisions
[8] are carried out in an impartial, fair manner
[9] consistent with the regulations and our
[10] internal procedures to ensure that we do the
[11] right things and that we do it fairly for all
[12] people. Unfortunately, we have learned
[13] through the personnel actions we've taken
[14] over the years that fairness usually means
[15] equally unfair to everybody, and some people
[16] don't react to that as well as we would all
[17] like them to. We are not in a position to
[18] change that completely, but in summary, we
[19] are sympathetic to his feelings. But the
[20] company commitment is there to do the right
[21] things to ameliorate transitions for
[22] employees, to do the right thing on the
[23] safety conscious work place, and promotion of
[24] the corrective action program and in
[25] providing the checks and balances and

[1] processes and procedures to ensure that
[2] personnel decisions are carried out in a fair
[3] and consistent manner in an impartial way.
[4] And I think that's it.

[5] MR. REYES: Okay. Bring us to the last
[6] item on the agenda.

[7] I'd like to make Anne Boland, the
[8] enforcement officer, the contact with
[9] information you agreed to provide us, and we
[10] have two items right now.

[11] MS. BOLAND: I have that you were going
[12] to get back with us on a discussion of the
[13] other departments and how they were reduced
[14] in the '96 reorganization, and particularly
[15] also emphasizing those groups under Mr.
[16] McGrath's purview. And then also the second
[17] item is Mr. McGrath's reporting chain when he
[18] was the NSRB chairman.

[19] MR. BURZYNSKI: And I think the third
[20] thing we wanted to offer to you is the merit
[21] cases that outline the way we interpret the
[22] regulations and some of the reasons behind
[23] that, so we'll get those three things to you
[24] next week and —

[25] MR. REYES: And Anne will be your

[1] contact.

[2] MR. REYES: With that I want to thank
[3] you for a long afternoon but very informative
[4] for us, and now we'll proceed with our
[5] process. Thank you.

[6] (Meeting adjourned at 5:25 p.m.)

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1) STATE OF GEORGIA:
2) COUNTY OF FULTON:

3) I hereby certify that the foregoing
4) transcript was reported, as stated in the caption,
5) and the questions and answers thereto were reduced
6) to typewriting under my direction; that the
7) foregoing pages 1 through 188 represent a true,
8) complete, and correct transcript of the evidence
9) given upon said hearing, and I further certify that
0) I am not of kin or counsel to the parties in the
1) case; am not in the employ of counsel for any of
2) said parties; nor am I in anywise interested in the
3) result of said case.

4) Disclosure Pursuant to O.C.G.A. 9-11-28 (d):
5) The party taking this deposition will receive the
6) original and one copy based on our standard and
7) customary per page charges. Copies to other parties
8) will be furnished based on our standard and
9) customary per page charges. Incidental direct
0) expenses of production may be added to either party
1) where applicable. Our customary appearance fee will
2) be charged to the party taking this deposition.

3) This, the 15th day of December 1999.

4) JANET K. WILSON, CCR-B-1108

5) My commission expires on the
16th day of November 2002.