

Official Transcript of Proceedings

2002 MAY -3 AM 10:46

NUCLEAR REGULATORY COMMISSION

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Title: Tennessee Valley Authority
Watts Bar Nuclear Plant, Unit 1
Sequoyah Nuclear Plant, Units 1 and 2
Browns Ferry Nuclear Plant, Units 1,2,3

Docket Number: 50-390-CivP; ASLBP No.: 01-791-01-CivP

Location: Chattanooga, Tennessee

Date: Tuesday, April 23, 2002

Work Order No.: NRC-338

Pages 262-445

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

-----X
: In the Matter of: :
: TENNESSEE VALLEY AUTHORITY : Docket Nos. 50-390-CivP
: : 50-327-CivP; 50-328-CivP
: : 50-259-CivP; 50-260-CivP
: (Watts Bar Nuclear Plant, Unit 1; : 50-296-CivP
: Sequoyah Nuclear Plant, Units 1&2; :
: Browns Ferry Nuclear Plant, Units : ASLBP No. 01-791-01-CivP
: 1, 2 & 3) : EA 99-234
-----X

Courtroom A
U.S. Bankruptcy Court
31 E. 11th Street
Chattanooga, TN

Tuesday, April 23, 2002

The above entitled matter came on for hearing
pursuant to Notice at 9:55 a.m.

BEFORE:

CHARLES BECHHOEFER, Chairman
ANN MARSHALL YOUNG, Administrative Judge
RICHARD F. COLE, Administrative Judge

APPEARANCES OF COUNSEL:

On behalf of the Nuclear Regulatory Commission:

DENNIS C. DAMBLY, Attorney
JENNIFER M. EUCHNER, Attorney
NICHOLAS E. HALTON, Attorney
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

On behalf of Tennessee Valley Authority:

BRENT R. MARQUAND, Attorney
JOHN E. SLATER, Attorney
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1499

-amd-

DAVID A. REPKA, Attorney
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005-3502

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
James Luehman	281	311	--	--
Katherine Welch	322	354	359	--
Thomas McGrath	364	--	--	--

<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
------------------	---------------------------	--------------------

Staff:

29	418	418
170	282	283
166	329	

Joint:

34	343	355
44	321	321
47	294	295
53	308	309

P R O C E E D I N G S

CHAIRMAN BECHHOEFER: On the record.

Good morning, ladies and gentlemen, we're here for the evidentiary hearing in a proceeding which concerns a May 4, 2001 order imposing a civil monetary penalty of \$110,000 against the Tennessee Valley Authority (TVA) based on a claimed violation by TVA of 10 CFR Section 50.7 for alleged discrimination against the former TVA employee for engaging in protected activities.

This evidentiary hearing is scheduled as noticed in our Notice of Evidentiary Hearing which was dated March 25, 2002 and issued by the Board and published in the *Federal Register*.

At the outset, let me introduce first the Board members and then for the record, we'll have all the parties introduce themselves. On my left is Judge Richard Cole and on my right is Judge Ann Marshall Young and my name is Charles Bechhoefer and I'm the Chairman of the Board.

For the record now, would the parties wish to introduce themselves?

MR. DAMBLY: For the NRC staff, this is Dennis C. Dambly, D-a-m-b-l-y, from the Office of General Counsel.

MS. EUCHNER: Jennifer M. Euchner from the Office of General Counsel.

MR. HALTON: Nicholas E. Halton, H-a-l-t-o-n,

1 Office of General Counsel.

2 CHAIRMAN BECHHOEFER: TVA.

3 MR. MARQUAND: Your Honor, my name is Brent
4 Marquand, I'm with the Office of General Counsel for
5 Tennessee Valley Authority. My co-counsel is John E.
6 Slater, he's also with the Office of General Counsel,
7 Tennessee Valley Authority and David Repka with Winston,
8 Strawn in Washington, D.C.

9 We also have with us at counsel table Don Green, a
10 human resource and labor relations expert; Kathy Welch, who
11 is also a labor relations expert and Ed Vigluicci, who is an
12 attorney with the Office of General Counsel, TVA.

13 CHAIRMAN BECHHOEFER: Are there any preliminary
14 matters that any party wishes to raise before we start?

15 MS. EUCHNER: Yes, Your Honor, the staff has a
16 supplemental document list. I have already provided a copy
17 of this to TVA's counsel. Here are copies for each of the
18 Judges.

19 JUDGE YOUNG: Is this part of what you've already
20 provided us or do you have that separated.

21 MS. EUCHNER: This has not been provided yet. We
22 had a little technical difficulty with the faxes and we'll
23 have copies of those tomorrow.

24 CHAIRMAN BECHHOEFER: Any objection?

25 MR. MARQUAND: Your Honor, we would like to

1 reserve the objections until such time as either the
2 documents are testified to or tendered. This is rather late
3 in the day to be supplementing exhibit lists, particularly
4 with documents that were never identified and produced in
5 discovery.

6 JUDGE YOUNG: Have you ever seen them before?

7 MR. MARQUAND: I have not seen the first one and I
8 don't have the other four documents here to even know
9 whether I've seen them or not.

10 CHAIRMAN BECHHOEFER: Well, the first one I'm
11 aware of is the staff's published policy on enforcement
12 actions that's been approved by the Commission actually, and
13 we can almost take official notice of that one. That's the
14 foundation for investigative actions, so that you could
15 almost take official notice of, I believe.

16 I think it has a NUREG number, but whatever.

17 MS. EUCHNER: I believe it does.

18 Your Honor, the other four documents on the list
19 were all provided to the staff from TVA during discovery,
20 they are all TVA documents.

21 JUDGE YOUNG: Do you want us to have them at this
22 point or do you have any objection to us going ahead and
23 having them among or collection so we'll be able to refer to
24 them quickly when we get to them?

25 MR. MARQUAND: I certainly don't have any

1 objection to the Board having them, but we don't have them
2 either.

3 JUDGE YOUNG: Why don't you go ahead.

4 MS. EUCHNER: The only one that I have right now
5 is the enforcement policy and I already gave counsel for TVA
6 a copy of that.

7 (Brief pause.)

8 CHAIRMAN BECHHOEFER: Any further preliminary
9 matters?

10 MS. EUCHNER: This morning, counsel for the staff
11 and counsel for TVA also reached agreement on two joint
12 stipulations, as we discussed in the last prehearing
13 conference. One related to a document signed by Carolyn
14 Evans of Region II and the other related to the Ronald
15 Grover/TVA OIG Report and Mr. Marquand has signed copies of
16 those and I believe he'll be able to provide copies at a
17 later time.

18 MR. MARQUAND: That's correct.

19 CHAIRMAN BECHHOEFER: Thank you.

20 Any further matters? Otherwise, do the parties
21 wish to have opening statements? I assume you probably do.

22 MR. DAMBLY: Actually the staff didn't plan to
23 make an opening statement. I think it's pretty well laid
24 out in our response to the Motion for Summary Disposition
25 and I don't see any need to repeat all that at this point.

1 MR. MARQUAND: Your Honors, I would like to make
2 some brief opening remarks.

3 As Your Honor has already noted, we're here
4 because of TVA's appeal of a Notice of Violation issued to
5 Tennessee Valley Authority. There were also separate
6 Notices of Violation issued to two individuals -- Thomas
7 McGrath and Wilson McArthur. The Notice of Violation to
8 TVA, of course, alleges that TVA took discriminatory action
9 against an individual.

10 We would point out that a corporate entity is not
11 capable of forming that specific intent, it has to be based
12 on the intent of individuals. And that's what we're here to
13 examine -- did Dr. McArthur and Mr. McGrath have the
14 necessary intent to discriminate against Gary Fiser -- can
15 the NRC staff prove by a preponderance of the evidence that
16 the actions that were allegedly taken against him were done
17 so as a discriminatory animus.

18 The events that this case arises out of occurred
19 in 1996. TVA, as we've already noted, for years had been in
20 a construction mode, we had some 50,000 workers at some
21 point in time, and as the five nuclear units all came on
22 line, there was no longer a need for a large construction
23 force. In addition, over time, the electric industry has
24 become very -- much more competitive. And beginning in 1988
25 and stretching even up to the present, TVA continues to look

1 for ways to streamline its work force, to do more with less
2 and the current work force within the nuclear organization
3 of TVA is around 3400 people. In 1996, they were looking at
4 downsizing and specifically looking at the plants and at the
5 corporate organization, now to accomplish what they needed
6 to do in an operating organization and be competitive in the
7 nuclear industry.

8 Mr. McGrath took over the operations support
9 organization in 1995 when his predecessor became very ill,
10 and Mr. McGrath inherited a task to look at how to organize,
11 reorganize operations support. The further they got into
12 1996 and began the budget planning process, he got even
13 further directives about reducing the size of the
14 organization, reducing the head count in the organization.
15 As a result, a number of jobs in operation support were
16 eliminated, functions were combined or even completely
17 eliminated at the corporate organization. Some of them were
18 shifted to site organizations, were simply not done any more
19 corporately.

20 As a result of the elimination of a number of
21 jobs, new jobs were created. This is the process that's
22 followed in TVA. TVA is a federal agency, it is, however,
23 an excepted civil service, meaning it doesn't follow the
24 classified and competitive civil service rules. It operates
25 under Section 3 of the TVA Act.

1 And one mistake I believe that staff has made
2 throughout this is assuming that TVA operates the same way
3 as the NRC does, and that's not the case. TVA has its own
4 personnel system, has its own processes and simply to put
5 TVA in the same pigeon hole and say TVA has to operate the
6 same way as the NRC staff is a mistake. TVA has its own
7 processes and follows them.

8 In the reorganization process, the way that it
9 happened in 1996, not just with respect to operations
10 support, not just with respect to corporate TVAN, but with
11 respect to all of TVA Nuclear, all three of the nuclear
12 sites, corporate nuclear and operations support, jobs were
13 eliminated, new jobs were created and the process then in
14 TVA is to look and see whether people have a right to new
15 jobs as a result of Office of Personnel Management
16 Regulations; that is, are they at the same competitive
17 level. If they're not, it's TVA policy that the jobs be
18 posted for competition. The first step is to determine if
19 somebody's got a right to somebody -- whether an incumbent
20 to an old job has a right to a new job. If they don't, the
21 job is posted for competition.

22 And that's what happened in operations support. A
23 number of jobs were eliminated, jobs were created --
24 functions were combined, functions were eliminated, new jobs
25 were created. When the new jobs were created, they were

1 then posted for competition, if an incumbent didn't have a
2 right to the new job.

3 In this case, we're talking about the chemistry
4 organization in corporate. It had been chemistry and
5 environmental, there was a combination of functions, they
6 decided we'll combine radiological control organization with
7 chemistry and environmental. In the process, they also
8 decided we're going to eliminate the environmental functions
9 in the corporate organization.

10 When they did that, there were existing jobs for
11 program managers or specialists, they didn't manage people,
12 they managed programs. There were existing jobs, there were
13 three people who had the title Chemistry and Environmental
14 Program Manager Specialist. You'll hear these three people
15 mentioned over and over.

16 Gary Fiser, who is the complainant who filed the
17 Department of Labor complaint which initiated the NRC Office
18 of Investigations and ultimately culminated in the NOV. Two
19 other individuals -- Sam Harvey and an individual by the
20 name of E.S. Chandrasekaran, and everybody will refer to him
21 as Chandra because his name is difficult to pronounce.
22 Those three individuals, their jobs, their positions, were
23 eliminated and new position descriptions were created simply
24 as Chemistry Program Manager and those were specialist
25 positions. They were going to create one as a specialist to

1 minister to the pressurized water reactors, so it was
2 Chemistry PWR. And another specialist to minister to the
3 boiling water reactors at Browns Ferry, that was Chemistry
4 BWR. And they posted those jobs in accordance with their
5 normal process, just like the grand majority of jobs are
6 posted for competition.

7 They then proceeded to have a selection. TVA's
8 got a selection process. They followed the selection
9 process. The selection process provides for people to apply
10 for the jobs, they submit their applications. The selecting
11 manager then looks at the various applicants, he looks at
12 personnel records, service reviews, resumes and whittles
13 down the list of applicants to the people who meet the
14 minimum qualifications for the job. The selecting official
15 then, along with the human resource consultant, retains the
16 services of other individuals to sit on a selection review
17 board. As a part of the process, the selection review board
18 interviews the candidates.

19 In this case, there were a number of candidates
20 for the particular position Mr. Fiser sought. Everybody
21 obviously couldn't be selected for one position. The
22 selection review board determines ahead of time the
23 questions that are going to be asked. Every candidate is
24 asked the same questions. In fact, the three member board
25 of the selection review board decides ahead of time that

1 each board member will ask the same questions of each
2 candidate so you get the same nuances. They then
3 independently score those candidates and at the end
4 accumulate the scores.

5 Mr. Harvey and Mr. Chandra scored far and away
6 better than Mr. Fiser. The selecting official then took
7 the scores from the selection review board and the
8 recommendation from the selection review board based on
9 those questions and made his selection in accordance with
10 the selection review board's recommendation.

11 Now what we're here about is whether or not, TVA's
12 following of those processes and decisions to reorganize and
13 the downsizing were done for good and legitimate reasons or
14 whether they were discriminatory.

15 NRC has the burden of proof to show by a
16 preponderance of the evidence that the decisions that
17 affected Mr. Fiser were done for discriminatory reasons. I
18 will suggest to you that when you see the numbers of
19 employees who all went through this process, there can be no
20 conclusion but that these were for legitimate purposes only.

21 The staff's NOV has been based upon a number of
22 circumstances, none of which goes to show that Mr. Fiser was
23 better qualified or should have been selected.

24 In every selection, there's going to be
25 differences because of human nature, the different

1 compositions of the selection review boards and different
2 circumstances of individuals. The fact that Mr. Fiser had
3 filed a complaint some three years previously, there's no
4 evidence that that had any bearing upon his nonselection
5 here.

6 As we previously remarked to the Board, this is a
7 unique proceeding. TVA does not lightly appeal a Notice of
8 Violation. Obviously the \$110,000 penalty is not all that's
9 at stake. We feel that this retrospective second guessing
10 of what could have happened, ways that could have made the
11 selection process better. The inferences that staff would
12 draw, negative inferences, in every situation putting them
13 in the darkest possible light of the circumstances that did
14 occur casts a chill on management's ability to manage these
15 plants in a safe and effective manner. And that's why we're
16 here, is because this type of violation where nothing
17 untoward happened makes it difficult to manage these plants
18 effectively and safely. For managers to be having to make
19 decisions which they know will later be second-guessed and
20 Mr. McGrath and Dr. McArthur, who spent their entire career
21 raising safety concerns and seeing that they're properly
22 addressed, to have to make management decisions, casts a
23 chill on their effective management skills.

24 There are a couple of issues that I'd like to
25 briefly touch on.

1 Tom McGrath was the Chairman of what's called
2 TVA's Nuclear Safety Review Board. TVA's Nuclear Safety
3 Review Board is an independent body that looks at the safety
4 and operation of plants, it does it on a quarterly basis.
5 They go out and they look at every aspect of the plant and
6 it's their job to monitor those plants and make sure they're
7 being done safely. That was his function.

8 And in this case, it's suggested that Dr. McGrath
9 -- Tom McGrath and Dr. McArthur, who is also the Chairman of
10 the Chemistry Subcommittee, had some animosity towards Mr.
11 Fiser for issues he supposedly raised. And I will suggest
12 to you that what the evidence will show is that it was the
13 Nuclear Safety Review Board which was raising issues about
14 the effective and safe operation of plants and particularly
15 the chemistry program at Sequoyah where Mr. Fiser worked.
16 There was no reason in the world for them to harbor any
17 animosity towards him for some five years for them to wait
18 in the weeds until they had some chance to retaliate against
19 him.

20 The evidence will show that they go out to these
21 plants on a quarterly basis and they raise numerous issues.
22 And Mr. Fiser, on the contrary, was not raising issues to
23 them, they were raising issues about the effective
24 performance of the chemistry organization.

25 Further, the protected activity which the staff

1 has identified to us so far is not any protected activity
 2 that Tom McGrath ever had any knowledge of. He didn't work
 3 at the plant where Mr. Fiser worked. His knowledge was
 4 based on his review of the chemistry operation at Sequoyah.
 5 And the particular concerns that staff has identified that
 6 Mr. Fiser supposedly had protected activity were actually
 7 concerns raised by other people when Mr. Fiser was assigned
 8 elsewhere. Until this proceeding was initiated, until Mr.
 9 Fiser filed his complaint, Mr. McGrath was unaware of those
 10 issues, he was unaware that Mr. Fiser had filed a previous
 11 Department of Labor complaint.

12 We previously briefed the issue of temporal
 13 proximity and I'd like to address the unreasonableness of
 14 the staff's assumption of retaliation. I've previously
 15 mentioned how --

16 JUDGE YOUNG: Excuse me. I don't want to cut you
 17 off, but I'm not sure that making legal arguments at this
 18 point is appropriate.

19 MR. MARQUAND: I understand that. I do not intend
 20 to make legal argument.

21 JUDGE YOUNG: Okay.

22 MR. MARQUAND: What I would like to address is we
 23 all understand what the prima facie case is, and there is an
 24 assumption that -- presumption in the law -- that having
 25 raised some sort of safety concern, which is protected

1 activity, and subsequently some adverse action, there's a
2 legal inference then of discrimination. And that's based
3 upon an assumption of human nature that somebody raises a
4 concern that causes a disruption to your program, that maybe
5 there's some motivation to retaliate.

6 In this particular case, I've already mentioned
7 that it was Mr. McGrath's and Dr. McArthur's job themselves
8 to look at these plants and raise safety concerns. I would
9 also point out that the unreasonableness of the assumption
10 that Mr. Fiser raised a concern in '91 or filed a Department
11 of Labor complaint in '93 and the unreasonableness of
12 assuming that they waited in the weeds, as I said, until
13 1996 to do him in. In fact, the evidence will show that in
14 1994, Mr. Fiser returned to work directly under Dr. McArthur
15 and Dr. McArthur was involved in a selection review board
16 that selected Mr. Fiser for a job that he applied on. If he
17 had wanted to retaliate, why didn't he retaliate in 1994
18 when he had an opportunity to do so, when he had an
19 opportunity to not select him for a job? Why did he wait
20 another two years and then through some machinations set up
21 a selection review board, which he was not a part of, to try
22 to do in Mr. Fiser. It simply defies logic.

23 As I said, the staff has the burden to prove by a
24 preponderance of the evidence discrimination. It doesn't do
25 just to suggest that there are fact from which an inference

1 may be drawn. At the close of the day, there will not be
2 any evidence to support a finding of discrimination that Tom
3 McGrath or Dr. McArthur had discriminatory animus that
4 caused Mr. Fiser not to be selected in 1996.

5 Thank you.

6 JUDGE YOUNG: Do you mind if I ask a question?

7 CHAIRMAN BECHHOEFER: No, not at all.

8 JUDGE YOUNG: You mentioned that there were
9 separate Notices of Violation against TVA, Mr. McGrath and
10 Mr. McArthur. We only have before us the Notice of
11 Violation against TVA, correct?

12 MR. MARQUAND: The only violation that has been
13 appealed is the one against TVA. However, the staff and TVA
14 have both, for their own independent reasons, designated the
15 violations issued against Dr. McArthur and Mr. McGrath as
16 exhibits and they are Joint Exhibits 48 and 49.

17 JUDGE YOUNG: I just wanted to clarify that, thank
18 you.

19 MR. DAMBLY: There were no orders issued against
20 Mr. McGrath or Dr. McArthur, just violations.

21 JUDGE YOUNG: Thank you.

22 CHAIRMAN BECHHOEFER: I guess the staff may
23 proceed.

24 MS. EUCHNER: Your Honor, the staff calls James
25 Luehman to the stand.

1 JUDGE YOUNG: That raises another question. Are
2 there -- are any of the other people in the audience
3 witnesses? Because if they are, I think we had discussed
4 earlier sequestering the witnesses.

5 MS. EUCHNER: I believe there are at least two TVA
6 witnesses in the courtroom at the moment.

7 MR. MARQUAND: There are.

8 JUDGE YOUNG: Okay. So do you have any objection
9 to having them sequestered? And I guess, when we say
10 "sequestered," I guess -- is there a place in the hall or
11 somewhere, a snack bar or something?

12 MR. SLATER: There's an area in the hallway, Your
13 Honor. There's some benches out there.

14 JUDGE YOUNG: I think they've got two -- they've
15 got two. Is there any issue with the two people that TVA
16 has staying that we need to deal with at this point?

17 MS. EUCHNER: Yes, when we call the next witness,
18 we'll want the other witness to leave. But they can stay
19 for Mr. Luehman's testimony.

20 JUDGE YOUNG: Well, we'll leave it up to you to
21 raise any further issues about that.

22 MS. EUCHNER: Okay, Your Honors.

23 CHAIRMAN BECHHOEFER: Could you spell his name,
24 please.

25 MS. EUCHNER: L-u-e-h-m-a-n.

1 COURT REPORTER: L-u-e-h...

2 MS. EUCHNER: M-a-n.

3 CHAIRMAN BECHHOEFER: Thank you.

4 COURT REPORTER: Thank you.

5 Whereupon,

6 JAMES G. LUEHMAN

7 appeared as a witness herein, and having been first duly
8 sworn, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. EUCHNER:

11 Q Please state your name for the record.

12 A My name is James G. Luehman, L-u-e-h-m-a-n.

13 Q What is your current position at the Nuclear
14 Regulatory Commission?

15 A My position, I'm the Deputy Director of the Office
16 of Enforcement.

17 Q What are your duties in that position?

18 A In that position, I supervisor -- I'm the first
19 line supervisor of all the enforcement specialists and
20 senior enforcement specialists assigned to the Office of
21 Enforcement in headquarters. And in that role, I also am
22 the management representative from the Office of Enforcement
23 who sits on all the enforcement review panels that review
24 enforcement cases for possible escalated action.

25 Q What guidance does the NRC staff use to implement

1 the Commission's enforcement program?

2 A The staff uses two primary documents: the
3 enforcement policy, which is a Commission-approved document;
4 and the enforcement manual, which is a staff-generated
5 document which provides guidance for the implementation of
6 the Commission's improved enforce -- approved enforcement
7 policy.

8 (The documents referred to were
9 marked for identification as
10 Staff's Exhibit #170.)

11 Q I show you what I have marked as Staff Exhibit 170
12 for the record. Do you recognize this document?

13 A Yes, I do.

14 Q Please identify it.

15 A The document is a copy of the -- the Commission's
16 enforcement policy. By the date, it's a copy of the -- it's
17 a version of the policy that would have been in effect that
18 the time the notice of violation in this case was issued.

19 Q Okay.

20 MS. EUCHNER: For the record, Your Honors, this is
21 a document I've provided you this morning, and I would move
22 to have that entered into evidence.

23 CHAIRMAN BECHHOEFER: Any objection?

24 MR. MARQUAND: No objection.

25 CHAIRMAN BECHHOEFER: This is Staff 170? 1-7-0?

1 MS. EUCHNER: 1-7-0.

2 CHAIRMAN BECHHOEFER: The document's admitted.

3 (The documents, heretofore marked
4 as Staff's Exhibit #170, were
5 received in evidence.)

6 BY MS. EUCHNER:

7 Q Under this policy, how does the NRC categorize the
8 significance of a violation?

9 A The NRC -- under the enforcement policy,
10 violations are categorized by four severity levels; Severity
11 Level 1 being the most significant violations, and then on
12 down to Severity Level 2, 3, and 4.

13 Q What part of the enforcement policy does the staff
14 use to determine the severity level of a violation?

15 A The primary portion of the policy that the staff
16 uses to determine the severity level of violation are what's
17 called the supplements, which are in the -- towards the end
18 of the enforcement policy.

19 Q How many supplements are there?

20 A There are eight supplements to the enforcement
21 policy.

22 Q What categories do the supplements cover?

23 A Well, I can just read them. The -- Supplement 1
24 is reactor operations; Supplement 2 is Part 50 facility
25 construction; Supplement 3 is safeguard; Supplement 4 is

1 health physics; Supplement 5, transportation; Supplement 6
2 is fuel cycle and material operations; Supplement 7 is a
3 supplement called miscellaneous matters; and then Supplement
4 8 is emergency preparedness.

5 Q How do these supplements aid the staff in
6 determining the severity level of a violation?

7 A The supplements provide examples in the relevant
8 areas that I -- that I read in the titles, provide examples
9 for violations that the staff would normally classify at the
10 various severity levels for the subject matter in that
11 particular supplement.

12 Q What supplement applies to a Section 50.7
13 violation?

14 A The examples for 50.7 violations would be found in
15 Supplement 7 in the enforcement policy, which is the
16 miscellaneous matters section.

17 Q What page of the policy is Supplement 7 on?

18 A In the -- in the exhibit, that would be found on
19 -- it's hard to see where it is. Got to take the --
20 Supplement 7 would be found on 61164 of the copy that I have
21 before me.

22 Q How does Supplement 7 distinguish between a
23 Severity Level 1 violation of 50.7 and a Severity Level 4
24 violation of 50.7?

25 A The easiest way to explain that is to probably

1 read -- is to read the examples. Under Severity Level 1, a
2 Severity Level 1 violation for 50.7 violation is an action
3 by senior corporate management in violation of 50.7 or
4 similar regulations against an employee. Under Severity
5 Level 2, the example is an action by plant management or
6 mid-level management in violation of 50.7 or similar
7 regulations against an employee. Under Severity Level 3, an
8 -- the example is an action by first-line supervision or
9 low-level management in violation of 50.7 or similar
10 regulations against an employee.

11 Q What is the focus of these examples of 50.7
12 violations?

13 A The focus of the examples is -- the primary focus
14 is the level of the individual that -- that caused the or
15 performed the discriminatory act or caused the discrimination,
16 his level -- his or her level in the organization.

17 Q Are there any other issues that you could consider
18 when determining the severity level of the violation?

19 A The -- yes. The examples in the -- in the policy
20 are guidance, and we typically follow them. However, there
21 may be -- there may be case where the -- just looking at the
22 level of the individual that -- that caused the
23 discrimination alone is not -- is not completely
24 appropriate, because the -- the actual act of discrimination
25 itself may have been relatively minor for a senior corporate

1 official, or vice-versa, a low-level individual who -- who
2 conducted a particularly significant act of discrimination.

3 Q Okay. Once the staff has determined the severity
4 level of a violation, what does the staff do next?

5 A Once the -- once the staff determines the severity
6 level, if that severity level is a Severity Level 1, 2, or
7 3, the staff would then typically consider whether that
8 violation warrants a civil penalty.

9 Q Under this policy, how does the staff determine
10 what the appropriate civil penalty for a particular
11 violation is?

12 A For that we would go to the base civil penalties
13 section under a section of the policy called "Enforcement
14 Actions," and there's a Table 1-A in that section which we
15 -- is the first place we would consider.

16 Q What page is Table 1-A on in the enforcement
17 policy?

18 A Table 1-A, in the copy that I have, is on Page
19 61150.

20 Q What does Table 1-A provide?

21 A Table A provides the base civil penalty for the
22 Severity Level 1 violations for various types of licensees.

23 Q And how does it distinguish the licensees?

24 A Primarily, the licensees are distinguished by
25 their -- their size and ability to pay.

1 Q After you get the base civil penalty from table 1-
2 A, what's the next step?

3 A Then you proceed to Table 1-B, which is located in
4 the policy directly below Table 1-A. And, based on the
5 severity level of the violation, you use the -- basically
6 the -- the percentage adjustment factors that are given
7 there, 100% for a Severity Level 1 violation, 80% for a
8 Severity Level 2 violation, or 50% of the base penalty from
9 Table 1-A for a Severity Level 3 violation.

10 Q So, to summarize these two tables, Table 1-A
11 determines what the base civil penalty is, based on the type
12 of licensee and their ability to pay? And then Table 1-B
13 adjusts the civil penalty based on what severity level the
14 violation is?

15 A That's correct.

16 Q What other factors does the staff consider in
17 determining civil penalty?

18 A Once the -- the base civil penalty for the -- has
19 been determined using the two tables, you then proceed to
20 the civil penalty assessment flowchart which is located on
21 the next page of the enforcement policy I was provided.

22 MS. EUCHNER: For the record, that's Page #61151.

23 BY MS. EUCHNER:

24 Q What are the main considerations for determining
25 the civil penalty using this flow chart?

1 A Well, the first -- starting on the lefthand side,
2 the first consideration is the -- is the severity level of
3 the violation in the first decision block. The severity
4 level of the violation; whether the violation was willful or
5 not; and if it was non-wilful, whether it occurred in the
6 first -- in the last two years or the last two inspections.

7 Q If this is the first Severity Level 3 non-willful
8 violation within the last two years or two inspections, what
9 is the next step that you would take?

10 A Well, in that case you would answer the first
11 decision block, "yes," and you would be up on the upper
12 line. And going into the second decision block which has
13 "Credit for corrective action," and there's a question mark
14 there.

15 Q If the staff gives the licensee credit for
16 corrective action, what happens next?

17 A Then, again, you answer that decision block "yes,"
18 and you end up at the box -- the top box on the right-hand
19 side, which would -- which would indicate there would be no
20 -- there would be a notice of violation but no civil
21 penalty.

22 Q And if the staff does not give the licensee credit
23 for corrective action, what happens?

24 A Then you would be -- you would answer "no" in that
25 decision box, and you would come over to the second box, the

1 middle box on the right-hand side, which is a notice of a
2 violation and a base civil penalty.

3 Q Okay. If this is a Severity Level 1, Severity
4 Level 2, or a willful Severity Level 3 violation, what is
5 the first consideration?

6 A Well, in that case, if you have either a Severity
7 Level 1, 2, or it's a willful violation, then the answer in
8 the first box in the left-hand side is going to be "no,"
9 rather than the "yes" for the -- for the non-willful
10 Severity Level 3.

11 Q Okay. And what's the first consideration for
12 credit?

13 A Then you would come over to the decision block
14 which has "credit for identification" in it. And that's the
15 next consideration you would make.

16 Q Under what circumstances does the staff usually
17 give a licensee credit for identification?

18 A The staff typically gives the licensees credit for
19 identifying violations if they identify a problem at the
20 plant and -- and properly report it, if it's required to
21 report -- be reported under NRC regulations, or they place
22 it in their corrective action system as a deficiency and --
23 and start taking corrective actions for -- for that issue.

24 Q Does the staff typically give a licensee credit
25 for identification if they deny the violation occurred?

1 A I think it would be very difficult to give license
2 -- a licensee credit for identification for an issue that
3 they deny occurred in those cases where they would take no
4 actions based on that denial.

5 Q If the staff gives the licensee credit for
6 identification, what is the next step?

7 A If you answer the credit for identification
8 question "yes," then you're back up on the upper line, and
9 the next block you're in is the credit for -- credit for
10 corrective action block again.

11 Q If the licensee gets credit for both
12 identification and corrective action, what does the staff
13 do?

14 A Again, you would be to a notice of violation with
15 no civil penalty.

16 Q If they get credit for identification but they do
17 not get credit for corrective action, what does the staff
18 do?

19 A And then again you would be in the middle block on
20 the right-hand side, "Notice of violation and base civil
21 penalty."

22 Q If the staff gives the licensee credit for
23 identification but does not give them credit for corrective
24 action, what does the staff do?

25 A If we do give them credit for identification and

1 not for corrective action, then, like I think I just said,
2 the notice of violation -- they get a notice of violation
3 and the base penalty.

4 Q Okay. What happens if the staff does not give the
5 licensee credit for either identification or corrective
6 action?

7 A Well, then you -- then you answer the credit for
8 identification block "no"; you answer the credit for
9 corrective action block "no"; and you're at the very bottom
10 box, which is "Notice of violation and two times the base
11 civil penalty."came

12 Q What types of corrective action would the staff
13 consider for giving credit to a licensee?

14 A Typically, the staff is looking for two types of
15 corrective action. They're looking for -- we're looking for
16 corrective action for the -- the particular example of
17 violation that's been identified. In other words, very
18 specific to the -- to the case or the issue at hand. And
19 then we're also looking for broader corrective action that
20 -- that would look at correcting other possible violations
21 that may exist that are similar to this, or corrective
22 actions that would prevent additional examples that would be
23 similar to the violation that occurred, from occurring.

24 Q Do you require the licensee to take both specific
25 and broad corrective action in order to give them credit for

1 corrective action?

2 A Yes.

3 Q Are there any limits to the amount of a civil
4 penalty that the staff can issue?

5 A The -- the staff's -- the staff is limited by the
6 statutory maximum of \$110,000 per day, or in the -- at the
7 time that this violation was issued, we -- if we were
8 issuing it at a per-day -- per-day civil penalty, we'd be
9 \$110,000. And typically, most violations are issued as
10 violations that are -- are one-time occurrences, and
11 therefore that would be considered for one day of civil
12 penalty, or \$110,000.

13 Q What does the staff do if the civil penalty
14 exceeds the \$110,000 limit?

15 A If you get to the block -- that would occur if you
16 get to that bottom block. It could occur if you get to a
17 base penalty that's two times the base for a power reactor,
18 because, for instance, for a Severity Level 1 violation,
19 that would come out to \$220,000, which would be above or
20 even the two-times the base for a Severity Level 2
21 violation, which would come out to \$168,000, and therefore
22 we would cap the civil penalty at \$110,000 for that single
23 violation.

24 Q What information does the staff use in reaching
25 its determination on the violation and the civil penalty?

1 A The staff uses various sources of information to
2 -- to reach that decision. Typically, we have -- we have an
3 inspection report or an investigation report; we have
4 information provided by the licensee in written documents,
5 such as -- such as reports that they're required to make for
6 particular violations; or information that they provide us
7 at an enforcement conference or after an enforcement
8 conference. So we have a wide range. And, of course, in
9 discrimination cases, we may also rely on information that
10 is -- that is provided in the Department of Labor process to
11 reach our decision.

12 Q If there is a report and exhibits by NRC Office of
13 Investigations, do the conclusions of OI's report bind the
14 NRC staff?

15 A No. The -- Office of Investigations is a fact-
16 finding organization. They do reach their conclusions, and
17 then the staff independently reviews their conclusions and
18 evidence before reaching its -- it's own determination.

19 Q After the staff determines that there is a notice
20 of violation and that there should be a civil penalty
21 imposed, how does the staff notify the licensee of its
22 decision?

23 A The first step in the process when we've reached
24 that decision that we think that it warrants a Severity
25 Level 3 or above, is we offer the licensee an opportunity

1 for an enforcement conference, which, depending upon the
2 issue, may be open or closed to the public.

3 Q What usually happens at an enforcement conference?

4 A The staff typically lays out what we see as the
5 potential violation to the licensee, and the licensee has an
6 opportunity at that enforcement conference to make their --
7 to make arguments why we're incorrect either on the facts or
8 on the application of the policy or on the law.

9 Q After the enforcement policy, what does the staff
10 do if it decides that there should be a notice of violation
11 and proposed civil penalty?

12 A After the enforcement conference, what typically
13 happens is there is a meeting of the -- of the decision
14 makers in the relevant staff offices to evaluate the
15 information provided by the licensee. If the licensee has
16 failed to persuade us, then -- of their position, then we
17 would go ahead and issue a notice of violation and, if
18 appropriate, based on following the escalated enforcement
19 process, a proposed civil penalty.

20 Q Are you familiar with the staff's proposed action
21 in this case?

22 A Yes, I am.

23 (The documents referred to were
24 marked for identification as Joint
25 Exhibit #47.)

1 Q I show you what has been marked as Joint Exhibit
2 47 for identification. Do you recognize this document?

3 A Yes, I do.

4 Q Please identify it.

5 A This is the notice of violation and proposed
6 imposition of civil penalty that was issued to the Tennessee
7 Valley Authority in this case.

8 MS. EUCHNER: Your Honors, I'd like to move Join
9 Exhibit 47 into evidence.

10 MR. MARQUAND: No objection, Your Honor.

11 CHAIRMAN BECHHOEFER: Without objection, the Joint
12 Exhibit 47 will be admitted.

13 (The documents, heretofore marked
14 as Joint Exhibit #47, were received
15 in evidence.)

16 BY MS. EUCHNER:

17 Q What is Joint Exhibit 47, in a little bit more
18 detail?

19 A The joint exhibit is a cover letter that transmits
20 a notice of violation to the Tennessee Valley Authority.
21 And attached is the notice of violation -- to that letter is
22 the notice of violation, which provides the -- the violation
23 that the staff has determined occurred, and the -- in this
24 case, also transmits and informs TVA of the civil penalty
25 that we're seeking for that violation.

1 Q Would you please read the violation as it appears
2 in the notice of violation.

3 MR. MARQUAND: Objection. Document speaks for
4 itself, Your Honors. No reason to have him read things that
5 are already in the record, unless there's a question about
6 it.

7 MS. EUCHNER: Well, Your Honor...

8 MR. MARQUAND: I'm not sure it's helpful.

9 MS. EUCHNER: ...TVA continually, throughout our
10 hearing conferences, seems to believe that the staff is
11 bound by what is in the cover letter as opposed to what is
12 in the notice of violation, and I really wanted to emphasize
13 the limited nature of what's in the notice of violation.

14 MR. MARQUAND: We can read the notice of
15 violation, as Your Honors can. I'm not sure it's helpful to
16 ask witnesses to read the entirety of documents into the
17 record.

18 MS. EUCHNER: For the record, it's two paragraphs,
19 Your Honor, that I'm seeking to have him read.

20 CHAIRMAN BECHHOEFER: Well, overrule the
21 objection.

22 BY MS. EUCHNER:

23 Q Please read the notice of violation.

24 A "... 50.7 prohibits discrimination by a
25 commissioned licensee against an employee for engaging in

1 certain protected activities. Discrimination includes
2 discharge or other actions relating to compensation, terms,
3 conditions, and privileges of employment. The activities
4 which are protected include but are not limited to:
5 providing a commission -- the licensee with information
6 about nuclear safety at an NRC licensed facility, or
7 testifying at any federal proceeding regarding any provision
8 related to the administration or enforcement of a
9 requirement imposed under the Atomic Energy Act or the
10 Atomic -- or the" -- excuse me, "or the Energy
11 Reorganization Act.

12 "Contrary to the above, the Tennessee Valley
13 Authority, TVA, discriminated against Mr. Gary L. Fiser, a
14 former corporate employee, for engaging in protected
15 activities. Specifically, in July 1996, TVA eliminated Mr.
16 Fiser's position of chemistry and environmental protection
17 manager, operations support, as part of a reorganization,
18 and took subsequent actions to insure he was not selected
19 for one of two new positions within operation support. TVA
20 took these actions at least in part in retaliation for Mr.
21 Fiser's involvement in protected activities. Mr. Fiser's
22 protected activities included the identification of
23 chemistry-related nuclear safety concerns in 1991 through
24 1993, and in the subsequent filing of a Department of Labor,
25 DOL, complaint in September of 1993, based, in part, on

1 these chemistry-related nuclear safety concerns."

2 Q Thank you.

3 JUDGE YOUNG: Just for the record, you may have
4 said this before, but you -- what you read was the indented
5 portion of the first page of Enclosure 1 to Exhibit 47;
6 correct?

7 THE WITNESS: That's correct.

8 JUDGE COLE: Joint Exhibit 47. Yeah.

9 THE WITNESS: Yeah.

10 JUDGE YOUNG: Thanks.

11 BY MS. EUCHNER:

12 Q According to this notice of violation, what level
13 of violation did the staff issue to TVA in this case?

14 A Under Supplement 7 of the enforcement policy, this
15 was classified at Severity Level 2.

16 Q Now I'd like you to go back to Supplement 7 of the
17 enforcement policy. What were the positions of the TVA
18 individuals that the staff concluded were the discriminating
19 officials?

20 A The positions were that...

21 MR. MARQUAND: I'm going to object. Up to this
22 point in time, the witness has testified about NRC policies.
23 Now he's apparently going to testify about his know of the
24 facts of the case. We don't have any foundation to
25 establish that he has any knowledge of the facts of this

1 case.

2 In addition, I would note that he's never been
3 identified as anyone with knowledge, if that's the case. We
4 specifically sent interrogatories to staff on two different
5 occasions and asked them that question, and he was never
6 identified, nor was anyone in the Office of Enforcement
7 identified as anyone with knowledge of the facts of the
8 case. So there apparently can't be a foundation for him to
9 testify about facts in this case.

10 JUDGE YOUNG: Your question was: What was his
11 position?

12 MS. EUCHNER: What were the positions.
13 Essentially, I...

14 JUDGE YOUNG: What were the...

15 MS. EUCHNER: What were the positions of the two
16 TVA individuals that the staff concluded were the
17 discriminating officials?

18 MR. MARQUAND: And my objection goes to his
19 foundation for that knowledge. And he apparently can't have
20 that foundation.

21 JUDGE YOUNG: When you say "positions," are you
22 talking about their points of view or their -- or their
23 personnel positions?

24 MS. EUCHNER: I'm talking about what level of
25 management they are within TVA, and that goes to the

1 application of the...

2 JUDGE YOUNG: Can't that be stipulated?

3 CHAIRMAN BECHHOEFER: Let's cool it for a minute.

4 JUDGE YOUNG: Can't that be stipulated?

5 CHAIRMAN BECHHOEFER: No. Not...

6 MR. MARQUAND: We can certainly stipulate to it,
7 but we object to this witness testifying about facts of the
8 case when he's never been identified to us as an individual
9 with knowledge.

10 CHAIRMAN BECHHOEFER: Well,...

11 MS. EUCHNER: Your Honors,...

12 CHAIRMAN BECHHOEFER: ...let me clarify something.
13 I assume you're asking not for his knowledge of the facts of
14 the case, but the -- the facts upon which the Office of
15 Enforcement took action.

16 MS. EUCHNER: That is correct. The reason I'm
17 asking is because...

18 CHAIRMAN BECHHOEFER: And he -- he's testifying as
19 to how OE arrived at its position.

20 MS. EUCHNER: Yes, that is correct, Your Honor.

21 CHAIRMAN BECHHOEFER: And (indiscernible)
22 perfectly acceptable, so...

23 JUDGE YOUNG: I think they could probably
24 stipulate what the positions -- what positions they held.
25 Is this really a matter of dispute, what positions they

1 held?

2 MS. EUCHNER: No, Your Honor, it is not. I think
3 we agreed that at the time of the event, what positions they
4 held.

5 MR. MARQUAND: And we stipulate they were senior
6 level management.

7 MS. EUCHNER: Okay. Then I don't need him to
8 answer that question.

9 MR. MARQUAND: Further, Your Honor, we are not
10 disputing the severity level of the notice of violation
11 position. We are disputing the violation occurred.

12 BY MS. EUCHNER:

13 Q When there is more than one discriminating
14 official, how does the staff determine what the severity
15 level should be?

16 A The staff uses the position of the -- the highest
17 position within the organization at which discrimination
18 occur.

19 Q How did the staff reach its determination that
20 this was a severity Level 2 violation?

21 A The staff would go to Supplement 7 under
22 miscellaneous matters, and go to the applicable examples,
23 starting with Severity Level 1 first, reading that example,
24 and -- and then going to Severity Level 2, and proceeding
25 down into Severity Level 3, and determining, based on these

1 general examples, because obviously the examples talked
2 about people being senior managers and mid-level managers.
3 So these are general examples, and we try to take the -- the
4 specifics within a given organization of the managers
5 involved and find the correct fit for their positions under
6 the severity levels.

7 Q And what was the best fit?

8 A We felt in this case, given not only their level
9 in the organization, but the type of people that they
10 supervised, that the best fit was the example under Severity
11 Level 2, action by plant management or mid-level management
12 in violation of Tennessee APAR 50.7.

13 Q Once the staff determined that this was a Severity
14 Level 2 violation, how did the staff determine the proposed
15 civil penalty?

16 A Again, the staff in this -- in this case, as in
17 the other cases, would have gone back -- would go to the --
18 Table 1-A and define the type of licensee to determine the
19 base civil penalty for a -- for a Severity Level 1 violation
20 for that type of licensee.

21 Q Okay. Please go to Table 1-A in your policy.

22 A Right.

23 Q What would the base penalty under TVA be for this
24 policy?

25 A Any of the TVA power reactor licenses, they would

1 fit under the A -- under Table 1-A, which is power reactors
2 and gaseous defusion plants, which has a base civil penalty
3 of \$110,000 for a Severity Level 1 violation.

4 Q Once you have the \$110,000 base civil penalty,
5 what was the next step?

6 A The next step would be to go to Table 1-B and make
7 the adjustment for the severity level. And in this case,
8 that would be a Severity Level 2, which means that the base
9 civil penalty would be 80% of the Severity Level 1 amount,
10 which would make it \$88,000.

11 Q After making this initial determination of the
12 base civil penalty, how did the staff reach it's final
13 determination as to the amount of the civil penalty?

14 A We proceed over to the next page of the
15 enforcement policy, back to the flowchart, and enter the
16 flowchart to make that determination.

17 Q Okay. And the first box in the flowchart is first
18 non-willful Severity Level 3 in two years or two
19 inspections.

20 A Right. And this...

21 Q Does that apply to this case?

22 A No, it doesn't, for two reasons. One is that it
23 was a Severity Level 2 violation, so we would answer "no" on
24 that basis. Also the -- it was -- it was not a non-willful
25 violation, it was a -- it was a wilful violation. So the

1 staff -- that was the staff's determination, so we would
2 answer "no" in that first decision block.

3 Q Okay. After reaching that conclusion, what was
4 the next step the staff considered?

5 A The staff considered whether the licensee
6 warranted credit for identifying the violation.

7 Q In this case did the staff give TVA credit for
8 identification?

9 A No, we did not.

10 Q Why not?

11 A Primarily because TVA alleged that -- that no
12 violation existed.

13 Q After the staff determined that TVA should not get
14 credit for identification, what did the staff consider next?

15 A The staff considered the corrective actions taken
16 by the Tennessee Valley Authority.

17 Q Okay. In this case, did the staff give TVA credit
18 for corrective action?

19 A No, we did not.

20 Q Why not?

21 A Because the staff made the determination that the
22 corrective actions that TVA took were not sufficient to
23 warrant credit for corrective action.

24 Q Why didn't the staff give the licensee credit for
25 taking a comprehensive corrective action?

1 A The -- again, going back to my -- what I stated
2 earlier, typically the staff is looking for corrective
3 actions of two types, corrective actions for the specific
4 case. In this case, because TVA denied that a violation
5 occurred. Their corrective actions with regard to the
6 specific case didn't warrant it. And then, in -- with
7 regard to general corrective action to prevent similar type
8 of violations, TVA did do some things. I think that their
9 summary of those are discussed in the -- in the cover letter
10 to the notice of violation. They issued, I think, some kind
11 of note or advisory at their plants, but that was very
12 similar to previous advisories that they'd given to their
13 employees in this regard and in the past; that those hadn't
14 proven very effective, so we didn't think the mere
15 reissuance of that was a -- was a comprehensive action to
16 prevent recurrence of other violations.

17 Q Based on your conclusions -- well, the staff's
18 conclusion that TVA did not get credit for either
19 identification or corrective action, what civil penalty,
20 under the flowchart, could the staff have issued?

21 A We would answer the identification block "no"
22 which would take us to the corrective action block, decision
23 block, which we would answer "no." And that would take us
24 to a notice of violation and a -- and a civil penalty of two
25 times the base civil penalty for a Severity Level 2.

1 Q What would two times the base civil penalty have
2 been in this case?

3 A It would have been \$168,000.

4 Q What civil penalty did the staff propose?

5 A The staff proposed the statutory maximum of
6 \$110,000.

7 Q What information did the staff rely upon in
8 reaching its conclusion that TVA committed a violation of
9 Section 50.7, and that a proposed civil penalty should be
10 issued?

11 A Well, the staff relied on the -- the Office of
12 Investigations report that was issued in this case. The
13 staff also had access to information that dealt with the --
14 with DOL complaint that was filed by Mr. Fiser. We also had
15 information that -- that the -- that TVA provided at -- in
16 enforcement conferences or at enforcement conference.
17 Excuse me.

18 Q When you say that -- when you say that the staff
19 relied upon NRCOI, did you rely upon the conclusions of
20 NRCOI, or the information they gathered at their
21 investigation?

22 MR. MARQUAND: Objection; leading. Let's ask him
23 what he did rely upon, rather than put the words in his
24 mouth, since that's an issue in this case.

25 MS. EUCHNER: I have no problem with that, Your

1 Honors.

2 BY MS. EUCHNER:

3 Q What information from NRCOI did the staff rely
4 upon?

5 A The staff -- as the staff does in every case, we
6 relied on the facts gathered. Obviously their -- their
7 conclusions and why they reached those conclusions would be
8 considered.

9 Q Do those conclusions bind the staff?

10 A No, they do not.

11 Q After the staff issued the notice of violation and
12 the proposed civil penalty, what happened?

13 A Once that action was taken, the -- the Tennessee
14 Valley Authority, under the Freedom of Information Act,
15 requested the information that the staff had relied on, that
16 we would have previously held as predecisional in this case.
17 But once we took our -- you know, issued our proposed notice
18 of violation, then the Tennessee Valley was free, under
19 Freedom of Information Act, to request the documents that
20 the staff would have withheld up to that point, and that's
21 in fact what they did. They filed a FOIA request for staff
22 documents.

23 Q Once TVA received their response to the FOIA
24 request, what did they do?

25 A They -- a response to the notice of violation and

1 proposed imposition of civil penalty was provided to the
2 staff.

3 Q After the staff received that reply, what did it
4 do?

5 A The staff then -- the staff, like it does in -- in
6 al cases, would review the appropriate offices, which in
7 this case would have been the Office of Enforcement, the
8 Office of the General Counsel, the Region 2 office, as well
9 as the Office of Investigation would review the licensee's
10 response. Then the office of -- the offices would meet and
11 a decision would be made whether to adjust in any way either
12 the civil penalty or the notice of violation that we had
13 issued based on the licensee's response.

14 (The documents referred to were
15 marked for identification as Joint
16 Exhibit #53.)

17 Q I show you what has been marked as Joint Exhibit
18 53 for identification. Do you recognize this document?

19 A Yes, I do.

20 Q Please identify it.

21 A This document is a cover letter and -- and the
22 order imposing the civil penalty in this case.

23 MS. EUCHNER: Your Honors, I'd like to move Joint
24 Exhibit 53 into evidence.

25 MR. MARQUAND: No objection, Your Honor.

1 CHAIRMAN BECHHOEFER: Joint Exhibit...

2 MS. EUCHNER: I'm sorry.

3 CHAIRMAN BECHHOEFER: ...Joint Exhibit 53 will be
4 admitted.

5 (The documents, heretofore marked
6 as Joint Exhibit #53, were received
7 in evidence.)

8 BY MS. EUCHNER:

9 Q And what does this cover letter and order provide
10 for?

11 A This cover letter and order -- the order provides
12 for -- basically, it's the staff's response to the
13 licensee's response to the notice of violation. Basically,
14 it concludes that -- in essence, that the staff does not --
15 did not accept TVA's arguments against the notice of
16 violation and proposed imposition of civil penalty, and the
17 enclosed order imposes that civil penalty, and under the --
18 under Part 2 of Tennessee (Indiscernible) Part 2, the
19 licensee could either pay the civil penalty, or contest it
20 and request a hearing.

21 MS. EUCHNER: Your Honors, I have nothing further
22 of this witness.

23 CHAIRMAN BECHHOEFER: I have one clarifying
24 question before the cross-examination. And I think we'll
25 take a short break before we get into that. But, Mr.

1 Luehman, did the staff in any way rely on -- can't see the
2 number. It's on Page 61153. Rely on what's termed under
3 Paragraph small "D," and I guess, when you track it back,
4 there are some other numbers. But exercise its discretion?
5 Did the staff in any way, in this -- in instituting this
6 notice of violation, use that authorization?

7 THE WITNESS: Well, anytime we have a notice --
8 anytime we have a proposed imposition of civil penalty, we
9 always have, as -- if you go back to the -- to the
10 flowchart, you'll see on the flowchart that there are --
11 there are little "D"s indicated on the decision making
12 flowchart. And those are -- those "D"s indicate
13 opportunities for the staff to exercise enforcement
14 discretion. The staff, in making a determination whether
15 enforcement discretion should be granted, would consider the
16 discussion and the criteria in the enforcement policy, part
17 of which you pointed to. In this case, I'm not aware of
18 what specific discussions the staff had on whether
19 discrimination -- I mean, excuse me, whether discretion was
20 warranted, or if there were any such discussions.

21 CHAIRMAN BECHHOEFER: Let's come back about --
22 assuming that time is right, about 11:20.

23 (Brief recess.)

24 CHAIRMAN BECHHOEFER: Okay, Mr. Marquand, you
25 ready to go or do you need a couple of minutes?

1 MR. MARQUAND: I need about two more minutes.

2 CHAIRMAN BECHHOEFER: All right.

3 (Brief recess.)

4 CROSS-EXAMINATION

5 BY MR. MARQUAND:

6 Q Good morning, Mr. Luehman.

7 A Morning.

8 Q I'm Brent Marquand. I'm the attorney for
9 Tennessee Valley Authority. I have a few -- just a few
10 questions.

11 In your direct examination you used the term "we"
12 when you were describing the staff's assessment of this
13 case. Were you involved in that assessment?

14 A I was involved in a portion of the staff's
15 assessment of this case.

16 Q Okay. You were one of the people, then, that
17 relied upon the OI report and the information gathered by
18 the OI?

19 A To the extent that I was involved in the case,
20 once I came to the Office of Investigation; that's correct.

21 Q Now, you identified notice of violation issued to
22 TVA which is Joint Exhibit 47.

23 A Yes.

24 Q And I believe Joint Exhibit 47 includes a
25 transmittal letter. Do you have that in front of you?

1 A No, I do not. I -- I have the order now, but I
2 don't have the...

3 Q You don't have the entire Joint Exhibit 47?

4 A I have the two -- two...

5 MS. EUCHNER: Mr. Marquand, it's on the binder.

6 BY MR. MARQUAND:

7 Q I've handed you Joint Exhibit 47 which includes
8 the February 7th, 2000 letter, and Enclosure 1, which is
9 entitled, "Notice of Violation and Proposed Imposition of
10 Civil Penalty"; you see that?

11 A Yes.

12 Q You were aware of both of these documents?

13 A I'm aware of both of these documents; yes.

14 Q You've seen them before?

15 A Yes.

16 Q All right. Is there anything in the letter
17 inconsistent with the notice of violation?

18 A Inconsistent with the violation? I don't...

19 Q Is the letter consistent with the notice of
20 violation?

21 A In my opinion, yes, it is.

22 Q I'm going to ask you to look at Joint Exhibit 53,
23 which is a May 4, 2001 letter entitled, "Order." I'm sorry,
24 let me -- strike that.

25 I'm going to ask you to look at Joint Exhibit 44,

1 which is a September 20, 1999 letter from the NRC to TVA
2 entitled, "Apparent violations, employment discrimination
3 requirements."

4 MR. MARQUAND: And, with the Court's indulgence,
5 I'm going to write on the bottom of it "JX-44," so we can
6 remember where it came out of the volumes.

7 JUDGE YOUNG: We're looking at the September 20th
8 letter.

9 MR. MARQUAND: Yes, Your Honor.

10 BY MR. MARQUAND:

11 Q Mr. Luehman, do you see the September 20, 1999,
12 "Apparent violation, employment discrimination
13 requirements," letter before?

14 A Yes, I think I have.

15 Q That was -- was that something that the staff
16 considered prior to issuing notice of violation in this
17 case?

18 A I think it's pretty clear from the February 7th,
19 2000 letter that -- that the staff did consider it, because
20 there's references made to this letter in that letter.

21 Q Okay. And, in fact, the notice of violation which
22 you read to us previously states, does it not, that -- the
23 initial sentence, "As a result of an NRC Office of
24 Investigation report issued on August 4, 1999, a violation
25 of NRC requirements was identified." If you look at Joint

1 Exhibit 47.

2 A Yes.

3 Q Okay. And the Joint Exhibit 44, the letter dated
4 September 20, 1999, has, as enclosure 1, a synopsis of the
5 Office of Investigation.

6 JUDGE YOUNG: Hold on one second. Do you have the
7 right page?

8 CHAIRMAN BECHHOEFER: I think mine's different
9 than yours.

10 JUDGE YOUNG: It's the staff joint exhibit
11 document. It's the one says "Joint Exhibits 24 through 65."

12

13 CHAIRMAN BECHHOEFER: Right.

14 JUDGE YOUNG: Exhibit 44, September 20th letter.

15 JUDGE COLE: Yeah, it's identified at the top as
16 IA99-043 to Wilson C. McArthur.

17 MR. MARQUAND: It's Joint Exhibit 44. It's to
18 John Scolese. I think 43 is the one to Wilson McArthur.

19 JUDGE COLE: Well, it's 44 in my book.

20 JUDGE YOUNG: Better check the record copy. Let's
21 take a second, make sure we have the right one in the record
22 copy.

23 MR. MARQUAND: Exhibit -- I'm sorry, Exhibit 45
24 should be the one to Dr. McArthur. Exhibit 44 should be --
25 is the one we're talking about. And it should have been

1 addressed to TVA.

2 JUDGE YOUNG: Can we just stop for a second and
3 let the court reporter make sure the record copy's right.

4 (Off the record.)

5 BY MR. MARQUAND:

6 Q You have seen the synopsis of the OI report which
7 is Enclosure 1 to Joint Exhibit 44?

8 A Yes.

9 Q And you've seen the summary of the Office of
10 Investigation's report which is Enclosure 2 to Joint Exhibit
11 44.

12 A I think that in the past sometime I have reviewed
13 it; yes.

14 Q And in the staff's consideration of issuing the
15 notice of violation and the order of civil penalty, you
16 would have seen the Office of Investigation's report and the
17 evidence gathered by the Office of Investigation?

18 A Yes, the staff would have seen that information.
19 Personally, I did not because I had not arrived in the
20 Office of Enforcement at the time the notice of violation
21 and proposed imposition of civil penalty was issued.

22 Q I thought you said -- your testimony was that --
23 phrased in the context of "we" arrived at these decisions
24 and "we" felt in this case the best fit was this or the best
25 fit was that.

1 A I was speaking on behalf of the staff. I was -- I
2 was -- I arrived in the -- in the Office of Enforcement
3 prior to the issuance of the order imposing a monetary civil
4 penalty, and, therefore, that's when my personal review of
5 that information started.

6 Q All right. All right, so did you personally
7 review the Office of Investigation's report and the evidence
8 gathered prior to the issuance of the civil penalty?

9 A Prior to the issuance of the civil penalty?

10 Q Yes.

11 A Have I reviewed that information? Yes. Did do a
12 -- did I review it prior to that document being written, the
13 answer is no.

14 Q So did you just review it to prepare for your
15 testimony today, then?

16 A No. In my responsibility as the Deputy Director
17 of the Office of Enforcement, I reviewed it as part of the
18 staff's decision to issue the May 4th, 2001 order imposing
19 civil penalty.

20 Q That was my question. Did you review it prior to
21 the May 4th, 2001 order?

22 A Yes. I thought you said the proposed. Excuse me.

23

24 Q When you reviewed the Office of Investigation's
25 report and investigation, did you learn that the

1 investigation did not include a review of the 1993
2 Department of Labor complaint?

3 A I don't recall what -- what I knew when about the
4 Department of Labor complaint.

5 Q Okay. Did you ever learn that the Office of
6 Investigation never reviewed the 1993 Department of Labor
7 complaint in issuing their -- this -- their report and their
8 investigation?

9 A I recall that there was -- we -- there was
10 discussion on the staff to the -- to the extent that the
11 Office of Investigation looked at the issues raised with the
12 Department of Labor complaint, whether that was a -- I don't
13 recall whether that was that they had never looked at it.

14 Q If the investigative file shows that that
15 complaint was never included in that investigation, would
16 you agree that they had never looked at it?

17 A I think that's a question you'd have to ask OI. I
18 mean, I don't know what they've -- they're required to put
19 in their investigative files.

20 Q Let me ask you to look at Joint Exhibit 44,
21 Enclosure 2, which is a summary of the Office of
22 Investigation report.

23 A Yes.

24 Q If you will look at the second paragraph of that
25 summary, the very last sentence, do you see the sentence

1 that says, "In his DOL complaint the employee named as
2 parties to his discrimination the individuals who served as
3 committee member, Nuclear Safety Review Board, NSRB, and
4 chairman NSRB in 1993." Do you see that?

5 A Yes, I see that.

6 Q Did you ever learn that, in fact, Mr. Fiser's 1993
7 Department of Labor complaint did not name Tom McGrath, who
8 was the Chairman of the NSRB, and did not mention Dr.
9 McArthur, the committee member, as an individual he accused
10 of discrimination?

11 A I think I -- the answer to that is yes, I learned
12 that because of the -- in the notice that -- of violation
13 and proposed imposition of civil penalty cover letter
14 there's a discussion of that, of whether individuals were
15 named or not.

16 Q Right. And did you learn, in reviewing the file
17 and the information TVA provided, that the first time that
18 the NRC Office of Investigations -- or that it was called to
19 the attention of staff the contents of the 1993 DOL
20 complaint was at the predecisional enforcement conference
21 when TVA brought it to their attention?

22 A Well, that -- I -- I have no reason to dispute
23 that, and I think that's part of the reason that we have a
24 predecisional enforcement conference, is to make sure that
25 any -- any facts that the staff has that are incorrect, that

1 needed to be corrected, are -- are corrected, and that the
2 staff properly considers them. So the conference, I guess,
3 accomplished it's part of it's purpose, by getting those
4 facts from TVA.

5 Q Let me ask you to look at Joint Exhibit 47.

6 A Okay.

7 Q If you'd look at the very bottom line of the first
8 page, do you see the sentence that begins, "The nature of
9 the nuclear safety concerns included is identification of
10 various chemistry-related issues at the Sequoyah facility in
11 the 1991 to 1993 time frame. Do you see that sentence?

12 A Yes.

13 Q Did you ever ascertain from the Office of
14 Investigation's report that, in fact, Mr. Fiser had not
15 raised any chemistry-related issues at Sequoyah in that time
16 frame?

17 A I -- I never reached that conclusion; no.

18 Q You never ascertained that one way or the other?

19 A I never...

20 Q Is that your conclusion?

21 A My conclusion is what?

22 Q Is your conclusion that he identified chemistry-
23 related issues at Sequoyah from 1991 to 1993.

24 A It's the staff's position.

25 Q Well, you said you reviewed it and that you

1 concurred in the order. Is that...

2 A And I concurred in the -- I concurred in the
3 staff's position. So that the extent that the staff
4 concluded that, I had no objection to the staff's
5 conclusions.

6 Q But in reviewing the Office of Investigation
7 report investigation, did you ever ascertain any specific
8 chemistry-related issues he purportedly raised in that time
9 frame?

10 A Personally, I don't think that my review of the
11 Office of Investigation's report, again, coming in prior to
12 the order imposing civil penalty, would have gone to that
13 depth of review.

14 Q I have no further questions. Thank you.

15 A Uh-huh (affirmative).

16 MS. EUCHNER: Your Honors, the staff has no
17 further questions.

18 CHAIRMAN BECHHOEFER: Okay, thank you.

19 MR. MARQUAND: Your Honor, we would tender Joint
20 Exhibit 44 at this time. We tender Joint Exhibit 44, the
21 letter to TVA which Mr. Luehman testified was the September
22 20, 1999, letter from the NRC to TVA.

23 MS. EUCHNER: No objection, Your Honor.

24 CHAIRMAN BECHHOEFER: The Joint Exhibit 44 will be
25 entered.

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

(The documents referred to were
marked as Joint Exhibit #44 and
received in evidence.)

(Whereupon, a luncheon recess was taken at
11:44 a.m., the hearing to resume at 1:00 p.m.,
the same day.)

1 AFTERNOON SESSION

2 CHAIRMAN BECHHOEFER: Back on the record. Hope
3 you all enjoyed your lunch.

4 MR. DAMBLY: Oh, yeah, it was great.

5 MS. EUCHNER: Staff would like to call Kathy Welch
6 to the stand, please.

7 Whereupon,

8 KATHERINE WELCH

9 appeared as a witness herein, and having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. EUCHNER:

13 Q Ms. Welch, what is your current position with the
14 TVA?

15 A My current position with TVA is Senior Manager,
16 Shared Resources, Corporate TVA Human Resources.

17 Q Corporate TVA what?

18 A Human resources.

19 Q Human resources. What is your educational
20 background?

21 A I have a Bachelor's Degree in Business
22 Administration.

23 Q When you completed your schooling, what was your
24 first job?

25 A I was a TVA employee when I completed my schooling.

1 Q Were you a TVA employee during your schooling?

2 A Yes, I was.

3 Q What was your position while you were in school?

4 A I held various positions while I was in school.

5 Q Okay.

6 A I held administrative positions as well as
7 management positions.

8 JUDGE YOUNG: Can everyone hear?

9 CHAIRMAN BECHHOEFER: Not too well.

10 JUDGE YOUNG: Can you speak up a little bit?

11 THE WITNESS: Okay.

12 JUDGE YOUNG: See if you can get closer to --
13 thanks.

14 THE WITNESS: Okay.

15 BY MS. EUCHNER:

16 Q When were you first hired by TVA?

17 A In 1986.

18 Q In what position?

19 A In a clerical position.

20 Q How long did you hold that position?

21 A Somewhere in the neighborhood of two to three
22 years.

23 Q What was your next position with TVA?

24 A Information systems specialist.

25 Q Was that a promotion?

1 A Yes, it was.

2 Q Did you compete for that position?

3 A As far as I recall; yes.

4 Q What were your duties in that position?

5 A Document control and records management duties.

6 JUDGE YOUNG: You're still going to have to speak
7 up a little bit.

8 THE WITNESS: Okay.

9 CHAIRMAN BECHHOEFER: I didn't hear that name.

10 JUDGE YOUNG: Document control? Document control;
11 is that what you said?

12 THE WITNESS: Yes, I did, Your Honor.

13 CHAIRMAN BECHHOEFER: Okay.

14 BY MS. EUCHNER:

15 Q Approximately how long did you hold the
16 information systems specialist position?

17 A A year or two.

18 Q What was your next position?

19 A Entry level management position in the document
20 control and records management organization.

21 Q Was that a promotion?

22 A Yes, it was.

23 Q Did you have to compete for that position?

24 A Yes.

25 Q After that, what was your next TVA position?

1 A The next position was labor relationships
2 specialist.

3 Q Can you tell me approximately what year you became
4 a labor relations specialist?

5 A 1994.

6 Q Okay. Was that a promotion?

7 A Yes, it was.

8 Q Did you compete for that position?

9 A Yes, I did.

10 Q What were your duties in that position?

11 A Primarily, my duties were to coordinate Department
12 of Labor complaints and EEO complaints.

13 Q When you say "coordinate," what exactly does that
14 involve?

15 A That involved keeping track of the complaints that
16 we had open, briefing management on decisions or statuses of
17 those cases that came along; coordinating with management on
18 some fact-finding when complaints were received; and keeping
19 the records of complaints.

20 Q How long did you hold that position?

21 A Somewhere in the neighborhood of three years.
22 Probably a little longer than that.

23 Q All right. And what was your next position?

24 A The next position I went into was human resource
25 manager at Sequoyah Nuclear Plant.

1 Q Was that a promotion?

2 A Yes, it was.

3 Q Did you compete for it?

4 A Yes, I did.

5 Q Approximately what year did you head out to
6 Sequoyah as human resources?

7 A '87 -- or, excuse me, '97 or '98.

8 Q Okay. How long did you hold that position?

9 A Two-and-a-half to three years.

10 Q And what was your next position?

11 A My next position was labor relations manager for
12 nuclear.

13 Q Was that a promotion?

14 A Yes, it was.

15 Q Did you compete for it?

16 A Yes, I did.

17 Q Now, was that a corporate position?

18 A Yes, it was a corporate position.

19 Q And what position did you take after that?

20 A The position I am currently in.

21 Q Okay. Is your current position -- was that a
22 promotion?

23 A Yes, it was.

24 Q Did you compete for it?

25 A Yes, I did.

1 Q Now, you mentioned earlier that you went to
2 college and graduated during your TVA employment; is that
3 correct?

4 A Yes.

5 Q When did you go to school?

6 A Actually, I went to school prior to coming to work
7 for TVA. When I came to work for TVA, I had two associate's
8 degrees.

9 Q Okay.

10 A One in business, and one in information systems.
11 After being hired by TVA, I returned to school and achieved
12 my bachelor's degree.

13 Q And when did you receive your bachelor's degree.

14 A Sometime in the early '90s.

15 Q Okay. You said in about 1994 you became a labor
16 relations specialist. Did you have any training to be a
17 labor relations specialist prior to taking that position?

18 A On-the-job training.

19 Q Okay. And what kind of...

20 A I also -- I also had -- most of my courses going
21 for my bachelor's degree were focused in the area of human
22 resources. Most of my senior level courses. Human
23 resources and labor relations.

24 Q What kind of on-the-job training did you do for
25 that position?

1 A I -- as a matter of doing my job, I had access to
2 other professionals in the HR and labor relations community
3 that served as mentors and coaches.

4 Q Did you ever take any in-house training that was
5 designed for TVA employees?

6 A Yes, I did.

7 Q What kind of training?

8 A Supervisory training, labor relations training.
9 Primarily those types of courses. And, of course, the
10 general employee training and fitness for duty training, et
11 cetera.

12 Q What was involved in the labor relations training?

13 A Labor relations training covered the environment
14 that the -- the labor environment that TVA worked in. It
15 was an overview of the contractual agreements that we had
16 with the labor unions, and there was some information in
17 those courses, as I recall, on federal complaints.

18 Q Have you ever taken any external training on labor
19 relations or personnel matters?

20 A No, I have not.

21 Q What position were you holding in 1996?

22 A I believe I was still in the labor relations
23 position.

24 Q Now, according to a statement that we have from
25 TVA OIG, I think it'd be document number, for the record,

1 this is Staff Exhibit 166 for the record.

2 (The documents referred to were
3 marked for identification as
4 Staff's Exhibit #166.)

5 Q According to that document, your title was federal
6 appeals specialist. Can you explain what you were doing in
7 that position?

8 A Federal appeals -- I said earlier, labor
9 relations, specialist, those terms...

10 JUDGE YOUNG: Excuse me for a second.

11 MS. EUCHNER: I'm sorry?

12 JUDGE YOUNG: You said it was 166?

13 MS. EUCHNER: Yes, Staff Exhibit 166, Your Honor.

14 JUDGE YOUNG: Which volume is that in?

15 MS. EUCHNER: It should be in Volume 8 of the
16 staff's exhibits. Would you like me to repeat the previous
17 question, Ms. Welch?

18 THE WITNESS: Yes.

19 BY MS. EUCHNER:

20 Q What were your duties as a federal appeals
21 specialist?

22 A The duties of a federal appeals specialist were,
23 as I previously stated -- and I may have stated my title as
24 labor relations specialist. The official title of record
25 was federal appeals specialist beginning in 1994.

1 Q All right. And you had mentioned, among the
2 duties for that position, that you coordinated DOL
3 complaints, that you would brief management on status, that
4 you were involved with coordinating and fact-finding.

5 A Uh-huh (affirmative).

6 Q Specifically, when a DOL complaint is filed at
7 TVA, what were your duties?

8 A My duties were to review the complaint that was
9 filed, and to do some fact-finding based on the complaint
10 that was received, report that fact-finding back to
11 management so that appropriate action could be taken and TVA
12 could prepare a response to the initial complaint.

13 Q What kind of fact-finding did you engage in?

14 A Interviewing employees and managers, those who
15 were involved in the issue.

16 Q Did you take written statements from these
17 employees?

18 A No, I did not.

19 Q Did you keep any notes about what you found?

20 A I kept some notes about what I found; yes.

21 Q Okay. In terms of preparing a response, does that
22 mean that you worked with the attorneys who were
23 representing TVA before the Department of Labor?

24 A Yes.

25 Q When TVA decided that they wanted to settle a DOL

1 complaint, would you be involved in the settlement, as well?

2 A Yes, I could be.

3 Q What would your duties be when considering a
4 settlement?

5 A It could be gathering information; it could be
6 actually talking with a complainant about a settlement
7 agreement.

8 Q Would you be involved in drafting a settlement
9 agreement?

10 A I did participate in drafting a couple of
11 settlement agreements, I think; yes.

12 Q Okay. If you didn't draft the settlement
13 agreement, would you get a change to review settlement
14 agreements that had been drafted by other TVA employees?

15 A I have been involved in reviewing some settlement
16 agreements; yes.

17 Q Okay. Now, you had mentioned that you conduct
18 some fact-finding, some interviews of employees. Is this a
19 parallel investigation to what TVA Office of the Inspector
20 General does?

21 MR. SLATER: Your Honor, I object. I believe, as
22 a basis for Ms. -- for TVA stipulating that the witness list
23 could be supplemented at this late date, the subject of Ms.
24 Welch's testimony would be the advice that was given by the
25 Office of General Counsel with respect to Mr. Fiser's 1990

1 -- with respect to Mr. Fiser's threat of filing a DOL
2 complaint with respect to his 1996 -- or the 1996 posting of
3 the job at issue.

4 JUDGE YOUNG: Do we have that -- I don't think we
5 have your stipulations yet, do we?

6 MR. SLATER: Your Honor, the stipulation was on
7 the record that, in lieu of calling Mr. Marquand as a
8 witness, Ms. Welch would be substituted to talk about what
9 advice the Office of General Counsel gave with respect to
10 the posting of the job or the titlement of the job under the
11 1994 settlement agreement.

12 MS. EUCHNER: Your Honor, the staff didn't have
13 the opportunity to depose Ms. Welch, so we actually don't
14 know what her job history is, what her duties are, which are
15 directly relevant to the questions I'm going to get to about
16 this case.

17 MR. SLATER: Well, it's a little late to -- to be
18 conducting discovery when, in fact, they've had information
19 about -- or had the statement of Staff Exhibit 166 for an
20 awful long time. They could have asked to take her
21 deposition.

22 MS. EUCHNER: Let's...

23 JUDGE YOUNG: Mr. Slater, there was a -- you
24 referred to the record. Could you direct us to the place in
25 the record that this...

1 MR. SLATER: I believe it was the -- that during
2 the fifth prehearing telephonic conference in which we had a
3 -- of course, there were several...

4 JUDGE YOUNG: Right. But that -- and I'm asking
5 for a citation to the record so that we could look at that.

6 MS. EUCHNER: Your Honors, I don't believe that
7 the staff stipulated that it would only question Ms. Welch
8 as to Mr. Marquand's advice. What the staff agreed to was
9 that, in lieu of calling Mr. Marquand at that point, we
10 would agree to accept Ms. Welch as a witness. We also added
11 Ms. Welch to our witness list. And being that she is on our
12 witness list, I believe the staff should be permitted to
13 question her as to all areas of her knowledge in the Fiser
14 case.

15 MR. SLATER: Well, Your Honor, I disagree. I
16 believe during that prehearing conference, specifically when
17 Mr. Marquand was going to be -- was named as a witness to
18 testify about the legal advice provided to Ms. Welch
19 concerning the 1994 settlement agreement. And as a -- as a
20 -- to avoid that -- not to avoid, but to -- to resolve that
21 issue, it was agreed, I believe, that Ms. Welch would be
22 substituted as a witness to testify about that particular
23 advice. And further, Your Honor, in -- in the supplemental
24 witness list, itself, it quote -- quote, "Welch -- Welch
25 worked in labor relations -- in the labor relations

1 organization during the events relevant in this proceeding.
2 Welch can testify to legal advice provided by Brent
3 Marquand, related to whether or not the 1994 settlement
4 agreement between Fiser and TVA guaranteed Fiser a
5 position." And that's the extent of it.

6 JUDGE YOUNG: Before we go any further, can anyone
7 provide us to a citation to the record to what you're
8 talking about? Because that's what you're basing this on,
9 and I think we need to look at that.

10 MR. SLATER: Well, I don't believe we have a copy
11 of the transcript.

12 JUDGE YOUNG: I do. Do you know what page that
13 was said on? My highlighting, by the way, is merely for the
14 purpose of drafting an order, so don't draw any conclusions
15 from that.

16 MR. SLATER: We're on Page 245 of this transcript.
17 It's question from you. It says, "Mr. Daniel, given what
18 you -- what you just heard from Mr. Marquand, what is your
19 argument at this point, and is there anything further that
20 you would want to ask Mr. Marquand? What would it be?" Mr.
21 Daniel: "Let me make two points, Your Honor. First, as to
22 the advice on the 1994 settlement agreement, we'll take Ms.
23 Welch and her statement and we can put her on the witness
24 list and not worry about Mr. Marquand on that."

25 MS. EUCHNER: Your Honor, I'd like to note that

1 that doesn't state that we're going to limit her testimony
2 to that. That says we were willing to accept her testimony
3 on that in lieu of Mr. Marquand's testimony.

4 JUDGE YOUNG: Was she on your witness list before?

5
6 MS. EUCHNER: Originally, no. Because, quite
7 frankly, we would have preferred Mr. Marquand. But the
8 questions that I'm asking right now, I can't ask her
9 questions about her review of the settlement agreement until
10 I know what her duties were and what she normally would do
11 when reviewing such things. So that is what these questions
12 are going for, so that when I do get to asking her about the
13 Fiser matter, I can limit myself to questions that are
14 directly related to her duties.

15 JUDGE YOUNG: What page were you reading from?

16 MR. SLATER: 245.

17 JUDGE YOUNG: 245. And your question again?

18 MS. EUCHNER: My question was: When conducting
19 her fact-finding when she interviews employees, is this a
20 parallel investigation to what the TVA Office of the
21 Inspector General conducts, or does she work in conjunction
22 with the Office of the Inspector General?

23 JUDGE YOUNG: And your objection was that that
24 went beyond the advice of the '94 settlement agreement?

25 MR. SLATER: That is correct, Your Honor. That

1 doesn't seem to be background information to me.

2 JUDGE YOUNG: And your argument as to why you
3 should be permitted to ask her questions that go farther
4 than on the advice on the '94 settlement agreement?

5 MS. EUCHNER: Well, I have two responses to that.
6 First, we never said that we would only question her on that
7 matter. We put her on our witness list, specifically, so
8 that we could ask her other questions. And related to the
9 OIG investigation, she was interviewed by a TVA OIG in the
10 1996 complaint. And we're trying to get a sense of does she
11 work with the people that she was interviewed by; is she
12 familiar with the interviews that they have conducted when
13 she was doing her review of the Fiser settlement agreement;
14 was she familiar with all of the interviews that had been
15 done. Matters such as that. I don't intend to take this
16 very far, Your Honor. I just want to know if she was
17 working in conjunction with OIG, or if OIG did one
18 investigation and she did another.

19 MR. SLATER: Now, that's still -- that goes way
20 beyond simply what the -- the Office of General Counsel,
21 what advice did that office provide to Ms. Welch regarding
22 the 1994 settlement agreement.

23 JUDGE YOUNG: Let me just ask you, Ms. Euchner.
24 In agreeing -- and maybe Mr. Dambly -- sorry, Euchner. In
25 agreeing to take Ms. Welch as a substitute witness for Mr.

1 Marquand, are you saying that -- that you should be able to
2 ask her questions that you would not have asked Mr.
3 Marquand, or are you saying that this is a question that you
4 would have asked Mr. Marquand?

5 MS. EUCHNER: We would have asked him similar
6 questions related to his job, related to what he did
7 normally when he reviews DOL complaints. So we would have
8 asked him parallel questions. Obviously they're going to be
9 a little bit different because Ms. Welch is not an attorney
10 and Mr. Marquand is.

11 But, yes, we would have asked him what are his
12 duties, do his duties include, you know, fact-finding,
13 settlements, that sort of thing.

14 MR. DAMBLY: Your Honor, if I could be heard on
15 this, also. If you recall the prehearing conference, the
16 board was very concerned with the issue of two attorneys
17 being called. And to help the board out and help Mr.
18 Marquand out, because he had...

19 JUDGE YOUNG: Well, not to help us out.

20 MR. DAMBLY: ...really put himself -- well, you
21 all seem to be very anxious not to have to make that ruling.
22 We agreed to take Ms. Welch, but I did not agree to take Ms.
23 Welch to just parrot whatever Marquand told her. That's not
24 saving anybody anything.

25 JUDGE YOUNG: Okay, but let...

1 MR. DAMBLY: We agreed to take her as a witness,
2 as a TVA person who is supposed to know about this, how they
3 got there and put Mr. Marquand's advice into the context of
4 their background and experience. Not just say, "Well, Brent
5 said 'X'." If that's all we're going to do, then we would
6 have taken Brent.

7 JUDGE YOUNG: Okay, let me make something real
8 clear from this point on. At least from my point of view,
9 and Judge Cole and Judge Bechhoefer can -- can say their
10 point of view on it if they differ from me. But I advise
11 all of you, do not do anything to do us a favor. This is
12 your case, and you have a responsibility to represent your
13 clients. And you should never agree to anything just to do
14 the judges a favor. And we do not consider that you agree
15 to anything on that basis. You agree to whatever you agree
16 to based on your best assessment of what is in the best
17 interest of your clients.

18 Now, with that said, it doesn't sound as though
19 this is going to go very far. Do we need to discuss it
20 among ourselves? Okay, go ahead.

21 CHAIRMAN BECHHOEFER: The board will --
22 unanimously agrees to overrule the objection. So...

23 MS. EUCHNER: Thank you, Your Honors.

24 JUDGE YOUNG: Well, I didn't state my opinion on
25 it. Actually, I do think that we need to limit this

1 somewhat in terms of the agreements that were made on these
2 issues, given that this appears to be a small foray into a
3 related matter, I'm not going to disagree with my
4 colleagues. But, I do think that -- that we don't want to
5 just open the door to everything beyond what -- what was
6 discussed in our previous conference.

7 MS. EUCHNER: I'll repeat the question for you,
8 Ms. Welch.

9 BY MS. EUCHNER:

10 Q When you conducted your fact-finding into DOL
11 complaints, were you doing a parallel investigation to the
12 Office of Inspector General's investigation, or did you work
13 with the Office of Inspector General?

14 A Actually, the two things are totally separate and
15 different. What I did was a fact finding to gather some
16 facts so that management could make some initial decisions.
17 What the OIG did was something entirely separate from what I
18 was doing. They did a full-blown investigation and issued
19 an investigative report. And it was independent of anything
20 that I did, and much more comprehensive.

21 Q When you work on DOL cases, is there a group at
22 TVA that's designated as the individuals who always work on
23 DOL issues?

24 A At any given time, primarily, yes, there is.

25 Q Okay. Are there -- are the people who work on

1 this, are they all in similar positions to you, like a labor
2 relations specialist, or are there people from other areas
3 involved?

4 A I don't know that I understand what you mean.

5 Q Do you work with all people from human resources,
6 all people from labor relations, all people from OGC, or is
7 it a combined effort when you're reviewing these DOL cases?

8 A It would involve the people who were -- had a need
9 to know related to the specific case.

10 Q Okay. Typically, would "need-to-know" include the
11 managers who were involved in the case?

12 A Perhaps.

13 Q Okay. When a DOL case is being litigated before
14 the Department of Labor, what are your duties during the
15 case?

16 A At that point, the attorneys are handling the
17 case, and I might have provided documents for them or
18 something along those lines.

19 Q Do you participate in the determination of what
20 TVA's position is going to be before the Department of
21 Labor?

22 A I provide information.

23 Q Well, what it would be -- right now I'm talking
24 hypothetically.

25 A I provided the facts that were gathered, and

1 information.

2 Q Do you have any experience or training regarding
3 reading or analyzing contracts?

4 A There are a lot of kinds of contracts.

5 Q Specifically settlement agreements.

6 A No formal training.

7 Q Okay. Do you have informal training?

8 A I've had on-the-job training on interpretation of
9 agreements; yes.

10 Q During June 1996, were you contacted by someone in
11 human resources regarding a 1994 settlement agreement
12 between TVA and Gary Fiser?

13 A I'm not sure that I'm understanding the time frame
14 that we're talking about here.

15 MS. EUCHNER: Your Honors, I'm going to approach
16 the witness with staff Exhibit 166.

17 JUDGE COLE: 1-6-6?

18 MS. EUCHNER: 1-6-6.

19 MR. SLATER: Your Honor, I don't believe that Ms.
20 Euchner has -- you know, has brought out that Ms. Welch has
21 made an inconsistent statement so that...

22 COURT REPORTER: Excuse me, if you could speak
23 just a little...

24 MR. SLATER: Yes.

25 She is showing the witness the statement. For

1 what purpose, I don't know. She hasn't indicated that --
2 whether she...

3 JUDGE YOUNG: What's your purpose?

4 MS. EUCHNER: The purpose is to refresh the
5 witness's recollection as to the time. She's -- she did
6 indicate that she was not familiar with the time frame, and
7 I'm showing her this document to refresh her recollection.

8 JUDGE YOUNG: Okay, thank you.

9 BY MS. EUCHNER:

10 Q Who contacted you from human resources?

11 A Ben Easley.

12 Q Okay. And what did he ask of you?

13 A He asked me to review the settlement agreement to
14 determine if it entitled Mr. Fiser to any position at TVA.

15 Q Did he specify what position they were talking
16 about, or did he just say in general review it?

17 A To review the settlement agreement to see if it
18 entitled him to a position with TVA.

19 Q Okay. What did you do in response to Mr. Easley's
20 request?

21 A In response to his request, I reviewed the
22 settlement agreement to determine if there was any words in
23 that agreement that would have guaranteed him a position for
24 any length of time at TVA.

25 Q Did you look at any other related documents, other

1 than the settlement agreement?

2 A I don't recall looking at other documents.

3 Q Did you contact anyone to find out the history of
4 the 1993 DOL case that led to the settlement agreement?

5 A I contacted the Office of the General Counsel
6 attorney, Brent Marquand, to ask him if I was interpreting
7 the settlement agreement correctly based on the question
8 that was asked of me.

9 Q Did you have any involvement in drafting or
10 negotiating of the settlement agreement which Mr. Easley
11 requested you to review?

12 A No, I did not.

13 Q Did you review any other documents when you
14 conducted this review of the settlement agreement?

15 A I don't recall reviewing any others.

16 MS. EUCHNER: Your Honor, I'm approaching the
17 witness with Joint Exhibit 34.

18 (Brief pause.)

19 BY MS. EUCHNER:

20 Q Ms. Welch, do you recognize this document?

21 A Yes, I do.

22 Q Would you please identify it?

23 A It is a Memorandum of Understanding and Agreement
24 between TVA and Mr. Gary Fiser.

25 Q Is this a settlement agreement that you reviewed?

1 A Yes, it is.

2 Q After reviewing this settlement agreement, what
3 was your conclusion?

4 A My conclusion was that Mr. Fiser was not entitled
5 to any continued -- let me say he was not guaranteed a job
6 with TVA, by virtue of this settlement agreement, forever.

7 Q What language in the settlement agreement led you
8 to that conclusion? And if you need a moment to review it,
9 take your time.

10 A Okay.

11 (The witness reviews the document.)

12 A On page number 2, item number 1 stated that Mr.
13 Fiser was going to be placed in a position and that that was
14 going to be retroactive. Mr. Fiser -- and there as no other
15 language in this settlement agreement that I could find that
16 went on to say anything about the length of time that he
17 would stay in that position, the length of time that he
18 would stay with TVA or anything of that nature.

19 Q So essentially the language of the settlement
20 agreement is silent as to the question that Mr. Easley asked
21 you.

22 A Yes.

23 JUDGE YOUNG: Does this have a specific date? Is
24 the 3/24/94 the date of the actual agreement or is that just
25 some --

1 MS. EUCHNER: I believe the date of the agreement
2 is on the second line of the agreement, the 5th day of
3 April.

4 JUDGE YOUNG: Okay, thank you.

5 BY MS. EUCHNER:

6 Q Would it be a reasonable interpretation of the
7 language of this settlement agreement that Gary Fiser was
8 entitled to the chemistry position so long as it was in
9 existence and he didn't do something such as, you know,
10 commit misconduct to result in getting him fired? That so
11 long as this position existed, that it was his position?

12 A State that question again, please.

13 Q So long as this position was in existence at TVA,
14 was Mr. Fiser entitled to it, barring some misconduct or
15 something else that would result in him being removed from
16 TVA?

17 A I don't think there's anybody at TVA that has a
18 guarantee that they'll have a position for any length of
19 time.

20 Q That's not what I asked, Ms. Welch. I asked if
21 the position existed, whether he would be able to stay in
22 it. So that if from 1994 to 1996, it was the same position
23 and that position still existed, would he still be entitled
24 to it?

25 A And your question is?

1 Q Is there anything in the settlement agreement that
2 says that he's not entitled to the position if it still
3 exists?

4 A No, there's nothing in the settlement agreement.

5 Q In reaching your conclusion, did you consider
6 anything other than just the language in the settlement
7 agreement?

8 A The only other fact that I can recall that I was
9 aware of at this time, was that Mr. Fiser was not in the
10 position that's stated in the settlement agreement at the
11 time I was asked to look at this. He was in another
12 position.

13 Q Okay, who told you that?

14 A Mr. Easley.

15 Q Did you accept what Mr. Easley told you at face
16 value or did you conduct an examination to determine if he
17 was in fact not in the same position?

18 A I either accepted what he told me or I looked up
19 the information on the human resource system.

20 JUDGE YOUNG: Human resource system?

21 THE WITNESS: Yes, ma'am.

22 BY MS. EUCHNER:

23 Q Did you review any of Mr. Fiser's position
24 descriptions?

25 A I don't recall reviewing them.

1 Q In making a determination as to whether Mr. Fiser
2 was guaranteed a position, would it have changed your
3 conclusion if Mr. Easley had told you he was still in the
4 same position?

5 A I can't see where it would, no.

6 Q Are you familiar with TVA's selection policies?

7 MR. SLATER: Objection, Your Honor, she's going
8 way beyond the advice that the Office of General Counsel
9 provided with respect to the settlement agreement.

10 MS. EUCHNER: Your Honor, I'm trying to understand
11 what she reviewed, whether she just reviewed the settlement
12 agreement or whether she actually conducted a review to
13 determine whether what HR told her was in fact true.

14 MR. SLATER: Your Honor, I think Ms. Welch has
15 already answered that question. I think still this is a
16 continuation of the fishing expedition, Your Honor. If
17 staff wanted to get at this type of information, they knew
18 about Ms. Welch and they could have taken her deposition. I
19 still think this is going well beyond the agreement to
20 resolve the issue in the fifth prehearing conference.

21 MS. EUCHNER: Your Honor, if Mr. Marquand had been
22 called to the stand, I would have asked him the same
23 questions.

24 JUDGE YOUNG: What Ms. Welch relied on?

25 MS. EUCHNER: No, I would have asked him obviously

1 what he relied upon, instead of what Ms. Welch relied upon.
2 And according to the statement that we do have from Ms.
3 Welch, she conducted her own review and then went to Mr.
4 Marquand. What I'd like to do is find out what her review
5 was, what she based it on, whether she reviewed any
6 selection policies to determine whether her conclusion was
7 in accordance with the selection policies.

8 MR. SLATER: Your Honor, I still think the
9 question has been asked and answered.

10 JUDGE YOUNG: I think we are going a little bit
11 far afield. Do you have any further argument you want to
12 make?

13 MS. EUCHNER: I can go ahead and move on, Your
14 Honors.

15 BY MS. EUCHNER:

16 Q In reviewing this settlement agreement, is it your
17 position that under the terms of the agreement, TVA could
18 have eliminated this chemistry position given to Mr. Fiser
19 one week later and Mr. Fiser would have no recourse because
20 it didn't specifically guarantee him the position for any
21 length of time?

22 A Based on what I read in the settlement agreement,
23 Mr. Fiser was to be placed in a position. That was to be
24 made retroactive and that was done. I can't speculate about
25 what may or may not have occurred. I reviewed the

1 settlement for what TVA agreed to do and that was the extent
2 of my review.

3 Q After you reviewed it, what action did you take
4 then?

5 A After I reviewed it and spoke with Mr. Marquand, I
6 responded back to Mr. Easley.

7 Q I'd like to go back to your conversations with Mr.
8 Marquand. Specifically what did you ask Mr. Marquand when
9 you called him?

10 A Whether or not this settlement agreement
11 guaranteed Mr. Fiser a position.

12 Q Okay. Did Mr. Marquand give you a response
13 immediately or did he get back to you?

14 A I don't recall. I know that he himself reviewed
15 the settlement agreement. Whether he pulled it while I held
16 on the phone or called me back, I don't recall.

17 Q Do you know whether he reviewed anything other
18 than the settlement agreement?

19 A No, I do not.

20 Q Do you know whether Mr. Marquand was involved in
21 the negotiating and drafting of that settlement agreement?

22 A I do not know if he was involved.

23 Q Does Labor Relations normally ask an attorney who
24 did draft or negotiate a settlement agreement to also
25 interpret the same settlement agreement?

1 A Not necessarily. Attorneys change.

2 Q Why did you call Mr. Marquand?

3 A Because Mr. Marquand was the attorney in the
4 Office of General Counsel who had primary responsibility for
5 working on Department of Labor complaints.

6 Q Do you know whether Mr. Marquand was the attorney
7 who represented TVA before the Department of Labor in Mr.
8 Fiser's 1993 DOL complaint?

9 A I don't know.

10 Q What did Mr. Marquand tell you after completing
11 his review of the settlement agreement?

12 A That the settlement agreement didn't guarantee a
13 position forever for Mr. Fiser.

14 Q Did he make any recommendation as to what you
15 should tell Human Resources?

16 A Just that.

17 Q Did he recommend that you tell TVA Human Resources
18 that they could go ahead and post the position?

19 A I don't recall him saying that.

20 Q Did he explain his rationale for why the
21 settlement agreement didn't guarantee Mr. Fiser a position?

22 A Because the agreement was silent, there was
23 nothing in the agreement that provided for that.

24 Q Did he ever tell you that Mr. Fiser had abandoned
25 the position that he got in the settlement agreement when he

1 competed for and was selected for the chemistry and
2 environmental program manager position?

3 A As I recall, Mr. Easley told me that.

4 Q After you spoke to Mr. Marquand, what did you do?

5 A I responded back to Mr. Easley on the question
6 that he posed about the settlement agreement.

7 Q Did you advise that HR could go ahead and post the
8 chemistry position that was in question?

9 A That wasn't what I was asked to do, I was just
10 asked to interpret the settlement agreement.

11 Q If you or Mr. Marquand had advised Human Resources
12 that the settlement agreement did guarantee Mr. Fiser the
13 chemistry position, would Human Resources have posted the
14 position?

15 MR. SLATER: Objection, calls for speculation,
16 Your Honor.

17 JUDGE YOUNG: Do you know what the normal course
18 of action is? Is there any general procedure such that you
19 would know the answer to that question?

20 THE WITNESS: Your Honor, there are
21 determinations that a human resource person can make on
22 whether or not a position is posted. I am not an expert in
23 that area of classification and competitive levels, et
24 cetera. So in speculation, given the question that was asked
25 of me on the settlement agreement, was asked because they

1 were trying to make a determination on whether or not they
2 were going to go forward with what they believed to be the
3 thing to do, and that is to post the job, then I would think
4 they would go ahead and post the job, because the settlement
5 agreement was not posing a barrier, as Mr. Fiser was
6 alleging.

7 BY MS. EUCHNER:

8 Q Ms. Welch, I believe that I asked you earlier and
9 you said that you were not involved in the 1993 Fiser DOL
10 complaint, is that correct?

11 A Yes.

12 Q Do you know why Mr. Easley then called you to
13 review the settlement agreement?

14 A Because I was in the federal appeals position at
15 the time.

16 MS. EUCHNER: Your Honor, I have nothing further
17 of this witness.

18 CHAIRMAN BECHHOEFER: Before you start your cross
19 examination, just for my own education, when a person is
20 placed in a position, is not that position -- assuming it's
21 a permanent position as distinguished from a two week or two
22 year or whatever limited appointment -- isn't there a
23 presumption that a person will stay in that position for as
24 long as it exists -- or may stay. Not saying that he will
25 or won't, but may stay, may occupy that position as long as

1 the position continues?

2 THE WITNESS: Your Honor, they could stay in a
3 position as long as the position existed, or they could, of
4 their own choosing, move on to another position.

5 CHAIRMAN BECHHOEFER: Correct. But there's no
6 limitation on the position description, if you will, which
7 says that after a certain amount of time a person can be
8 transferred without his consent, is there -- or is there?

9 THE WITNESS: No, but positions change over time
10 and the way that the work is performed changes over time,
11 which could result in a position description changing, and
12 therefore, a determination then is made if people move with
13 the position or if the position is then posted for
14 competitive bid.

15 CHAIRMAN BECHHOEFER: I see. Does TVA have
16 temporary limited position descriptions, X position will be
17 a two year position or a one year position or whatever?
18 Does it use that type of system at all?

19 THE WITNESS: No, Your Honor.

20 CHAIRMAN BECHHOEFER: Okay, thank you.

21 JUDGE YOUNG: I had a question I wanted to clarify
22 about your earlier testimony also. Did I understand you
23 correctly that in effect you based your questions to Mr.
24 Marquand and your general understanding of the situation on
25 the settlement agreement, and I think you also said your

1 knowledge that Mr. Fiser was at that time in a different
2 position than the position described in the settlement
3 agreement -- did I understand that right?

4 THE WITNESS: Yes, Your Honor.

5 JUDGE YOUNG: Okay, I just wanted to clarify that.
6 Mr. Slater, go ahead.

7 MR. SLATER: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. SLATER:

10 Q Ms. Welch, I just want to get the time sequence
11 down. Could you take a look at Joint Exhibit 34 that Ms.
12 Euchner asked you to look at earlier? It's the settlement
13 agreement.

14 What is the date of that settlement agreement?

15 A The date of the settlement agreement is April 5 of
16 1994.

17 Q And when Mr. Easley came to you concerning whether
18 or not -- came to you with respect to Mr. Fiser's complaint,
19 when was that?

20 A That was in June of 1996.

21 Q That was a couple of years later, is that correct?

22 A Yes.

23 Q Now I believe you testified that TVA did what it
24 was supposed to have done under this agreement, is that
25 correct?

1 marked as Joint Exhibit Number 34
2 and received in evidence.)

3 BY MR. SLATER:

4 Q Now I believe on direct you said that Mr. Easley
5 came to you because Mr. Fiser had indicated that he thought
6 he was entitled to this job under Joint Exhibit 34, is that
7 correct?

8 A Yes.

9 Q And in response to Mr. Easley's concern, you
10 reviewed the settlement agreement, is that correct?

11 A Yes, that's correct.

12 Q And your review of that settlement agreement --
13 after reviewing that settlement agreement rather, you came
14 to the conclusion that Mr. Fiser was not entitled to the job
15 that HR was seeking to post, is that correct?

16 A That's correct.

17 Q Was not entitled to it under the agreement.

18 A Under the agreement, that's right.

19 Q Was it your understanding at the time Mr. Easley
20 came to you that HR had already made a decision to post the
21 position, but wanted to check to make sure that the
22 settlement agreement did not -- as you put it, was not an
23 obstacle or barrier to that posting.

24 A That's correct.

25 Q And your review -- or pursuant to your review, you

1 came to the conclusion that this agreement did not contain
2 words that TVA owed the job that HR was thinking about
3 posting -- owed him that particular job.

4 A That's correct.

5 Q And that job was different from the job that was
6 given to him in 1994.

7 MS. EUCHNER: Your Honor, I'm going to object to
8 that question, the witness said on direct that she didn't
9 have any direct knowledge of that and that she only went on
10 what Mr. Easley told her.

11 JUDGE YOUNG: I think that's correct. Is that
12 correct -- your recollection of what you said earlier?

13 THE WITNESS: Yes, Your Honor.

14 BY MR. SLATER:

15 Q So Mr. Easley told you that it was another job.

16 A Yes.

17 Q And -- strike that. Once you had completed your
18 review and came to the conclusion that the settlement
19 agreement did not entitle Mr. Fiser to this job in 1996,
20 then you contacted the Office of General Counsel, is that
21 correct?

22 A Yes, it is.

23 Q And could you tell us why did you contact the
24 Office of General Counsel?

25 A Because they are our legal advisors and they're

1 involved in the settlement agreements that we use and I
2 wanted to ensure that the interpretation that I was -- or
3 the conclusions that I was reaching in my review of the
4 settlement agreement was consistent with what the Office of
5 the General Counsel would think.

6 Q Now after consulting with the Office of General
7 Counsel, what advice was given to you?

8 A That there was no guarantee of a position for any
9 length of time under this agreement.

10 JUDGE YOUNG: Did you say the position or a
11 position? Just what did you say, I didn't catch it.

12 THE WITNESS: I'm sorry, I said that there was no
13 guarantee of a position under the settlement agreement.

14 JUDGE YOUNG: A position.

15 THE WITNESS: Yes.

16 BY MR. SLATER:

17 Q And after getting the advice from the Office of
18 General Counsel, what did you do?

19 A I let Mr. Easley know.

20 Q What did you let Mr. Easley know?

21 A I let him know that there was no guarantee under
22 this settlement agreement for Mr. Fiser to have a position.

23 Q I want to back up just a little bit. When you
24 spoke to Mr. Easley, did he lead you to believe or lead you
25 to understand that the new job that HR sought to post was a

1 different job than he was currently occupying?

2 A Yes.

3 MR. SLATER: Thank you.

4 JUDGE YOUNG: Anything further?

5 REDIRECT EXAMINATION

6 BY ME. EUCHNER:

7 Q At the time that Mr. Easley called you and asked
8 you to review the settlement agreement, did he also inform
9 you that Mr. Fiser was threatening to file another
10 Department of Labor complaint?

11 A Yes, he did.

12 Q Did you make your determination that the
13 settlement agreement didn't guarantee Mr. Fiser a position
14 before or after Mr. Fiser filed his Department of Labor
15 complaint?

16 A His complaint came later as I recall.

17 Q Were you involved in the 1996 DOL complaint?

18 A Very, very briefly.

19 JUDGE YOUNG: Judge Bechhoefer.

20 CHAIRMAN BECHHOEFER: I couldn't hear your last
21 answer.

22 THE WITNESS: I'm sorry. What was the question
23 again?

24 MS. EUCHNER: I believe the question was did you
25 make your determination that the settlement agreement didn't

1 guarantee the position before or after Mr. Fiser filed his
2 1996 DOL complaint.

3 THE WITNESS: This decision was made before then.
4 BY MS. EUCHNER:

5 Q You said that Mr. Easley told you that Mr. Fiser
6 was in a different position and that they were seeking to
7 post a new position, is that correct?

8 A Yes.

9 Q Do you know for a fact whether Mr. Fiser's
10 position had in fact changed?

11 A He was not holding the job title at that time that
12 is reflected here in the settlement agreement.

13 Q Did you review the job functions of the job title
14 in the settlement agreement and the job title of his current
15 position to determine if it was in fact a different position
16 or did you rely solely on the titles of the positions being
17 different?

18 A I relied upon the titles being different.

19 Q If the position that HR was seeking to post and
20 Mr. Fiser's positions were the same as opposed to different
21 positions, would that have changed your advice?

22 A If the -- ask the question again, please.

23 Q If the position that HR was seeking to post was
24 the same position that Mr. Fiser was currently holding,
25 would your advice on the settlement agreement have changed?

1 A My advice on the settlement agreement would have
2 stayed the same.

3 JUDGE YOUNG: If Mr. Fiser was in the same
4 position described in the settlement agreement, would you
5 have advised them that they could still post that position?
6 If Mr. Fiser were in the same position. I think that's what
7 she's asked.

8 MS. EUCHNER: That is, Your Honor.

9 THE WITNESS: Can you ask the question again,
10 please?

11 BY MS. EUCHNER:

12 Q If the position that Human Resources was seeking
13 to post was the same position that Mr. Fiser had been given
14 in the settlement agreement and it was the same position he
15 was currently holding, would you have advised Human
16 Resources that they could post the position or that the
17 settlement agreement didn't guarantee?

18 MR. SLATER: Your Honor, that's the sixth time
19 she's asked that question and in fact it's a compound
20 question. I believe Ms. Welch's role in this matter was to
21 advise whether or not there was a guarantee under the
22 settlement agreement to continued employment, not whether or
23 not to post the job. That was an HR matter.

24 THE WITNESS: Right.

25 MS. EUCHNER: Your Honors, that's not the question

1 that I'm asking her. What I'm asking her is she said she
2 made this interpretation after Mr. Easley told her they were
3 going to post a different position, and I'm asking her would
4 her determination have changed if she knew that it was the
5 same position that Mr. Fiser had been granted in the
6 settlement agreement, that they were seeking to post. I'm
7 asking if that fact would have changed your interpretation
8 of the settlement agreement.

9 JUDGE YOUNG: Ms. Welch testified that -- and
10 that's what I clarified before -- that she based her
11 understanding and advice and so forth on the settlement
12 agreement and her knowledge that Mr. Fiser was in a
13 different job than that stated in the settlement agreement.
14 So on that basis, I think the question is appropriate. Go
15 ahead.

16 BY MS. EUCHNER:

17 Q Would the fact that the position was the same as
18 the position granted in the settlement agreement have
19 changed your interpretation of the settlement agreement?

20 A So you're asking me if --

21 JUDGE YOUNG: Let me see if I can clarify. My
22 understanding of your testimony earlier was that Mr. Easley
23 came to you about a new job. Mr. Fiser had raised a
24 problem, you looked at the settlement agreement, you were
25 aware that Mr. Fiser was at that time in a different job --

1 THE WITNESS: Yes, Your Honor.

2 JUDGE YOUNG: -- and her question is if you had
3 not been aware that Mr. Fiser was in a different job and in
4 fact he was in the same job described in the settlement
5 agreement, which was -- and that that same job was also
6 being posted -- as I understood the question -- what would
7 you have advised Mr. Easley in that circumstance?

8 THE WITNESS: In that circumstance, I would have
9 advised him not to post the position.

10 MS. EUCHNER: Thank you, Your Honor.

11 CHAIRMAN BECHHOEFER: I have one follow up
12 question perhaps. If the position that Mr. Fiser was
13 occupying had the same duties as the position named in the
14 settlement agreement but a different title, what would your
15 response have been then. If they changed the title but not
16 the substance of the duties of the position.

17 THE WITNESS: So if the position was the same?

18 CHAIRMAN BECHHOEFER: With a different title.

19 THE WITNESS: With a different title.

20 CHAIRMAN BECHHOEFER: Yes, would you have then
21 advised them to post or not to post?

22 THE WITNESS: Yes, Your Honor. If the position
23 was the same and the only difference was the title?

24 CHAIRMAN BECHHOEFER: Yes.

25 THE WITNESS: Then I would have advised them not

1 to post.

2 CHAIRMAN BECHHOEFER: Not to post.

3 THE WITNESS: Not to post.

4 CHAIRMAN BECHHOEFER: Okay.

5 MR. SLATER: No further questions.

6 CHAIRMAN BECHHOEFER: Thank you.

7 (Witness excused.)

8 CHAIRMAN BECHHOEFER: Before we go off, Mr.
9 Damby, do you intent to introduce Staff Exhibit 166, to
10 which you referred?

11 MS. EUCHNER: Oh, no, Your Honor, I was not going
12 to introduce it into evidence, I was merely using it to
13 refresh the witness' recollection.

14 CHAIRMAN BECHHOEFER: Okay. We'll take a ten
15 minute break.

16 (A short recess was taken.)

17 CHAIRMAN BECHHOEFER: Back on the record.

18 MR. DAMBLY: At this time, the staff wishes to
19 call Thomas McGrath.

20 Whereupon,

21 THOMAS MCGRATH
22 appeared as a witness herein and, having been first duly
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. DAMBLY:

1 Q Mr. McGrath, where are you presently employed?

2 A Tennessee Valley Authority.

3 Q In what position?

4 A I'm the Senior Project Manager for System
5 Integration and Optimization.

6 Q Okay.

7 JUDGE YOUNG: Say that again?

8 THE WITNESS: The Senior Project Manager for
9 System Integration and Optimization.

10 BY MR. DAMBLY:

11 Q What's your educational background?

12 A I have a bachelor's degree in chemical engineering
13 and I'm also a graduate of the Atomic Energy Commission's
14 Bettis Reactor Engineering School.

15 Q When did you get your B.S. in chemical
16 engineering?

17 A 1968.

18 Q From where?

19 A University of Notre Dame.

20 Q Notre Dame. And when did you go to the Bettis
21 Reactor School?

22 A 1969.

23 JUDGE YOUNG: Give us that name again, Atomic --

24 THE WITNESS: Well, the Atomic Energy Commission
25 ran what's called the Bettis Reactor Engineering School. It

1 was a school for the staff of the Naval Reactors Division of
2 the AEC.

3 BY MR. DAMBLY:

4 Q And at the time you went to Bettis, were you in
5 the Navy?

6 A Yes, I was.

7 Q When did you join the Navy?

8 A Immediately on getting out of college, I had been
9 in college in ROTC.

10 Q Okay. And following your attendance at Bettis, do
11 you have any further formal education?

12 A I took several graduate classes in chemical
13 engineering at Catholic University, but did not get a
14 degree.

15 Q What was the first job you had after getting out
16 of Bettis?

17 A In Naval Reactors, I was assigned to what was
18 called the Primary Components Division, I worked on
19 equipment for Naval nuclear reactor plants such as heat
20 exchangers and filters and ion exchangers.

21 Q And how long were you in that position?

22 A I worked for Naval Reactors a total of about 16-
23 1/2 years, that particular job I was probably in for a year
24 or two, I don't remember exactly.

25 Q And that was Naval Reactors under Admiral

1 Rickover?

2 A Yes, it was.

3 Q Did you ever work on Admiral Rickover's staff?

4 A Well, the entire group was called Admiral
5 Rickover's staff, I was a direct report to Admiral Rickover
6 from about 1978 to 1982.

7 Q And what was your function as a direct report to
8 Admiral Rickover?

9 A I was the head of the Naval Reactors field office
10 in Bremerton, Washington.

11 Q When you left the Navy I guess after 16-1/2 years?

12 A That's when I left the Naval Reactors program, I
13 was only on active duty in the Navy the first five years,
14 after that I was in civilian job working first for the Navy
15 and then I believe when I switched over, it had evolved into
16 ERDA rather than the AEC at the time.

17 Q When you worked on Admiral Rickover's staff, were
18 you -- formally in the Naval military or were you in civil
19 service?

20 A I was only in the formal military the first five
21 years I was there.

22 Q When you were on Admiral Rickover's staff, how
23 many civilians did you supervise or manage?

24 A I'm not sure -- I might have at various times had
25 one, the biggest office I had, while it was like 17 people,

1 there were two civilian secretaries, the rest were active
2 duty military.

3 Q Did you ever conduct any reductions in force while
4 you were in the Naval civil service?

5 A No, I did not.

6 Q Following your Naval career and Naval civilian
7 career, where did you go next?

8 A I went to work for Lockheed Shipbuilding in
9 Seattle, I was there from 1984 to 1987.

10 Q This was a civilian position or civil service
11 position?

12 A No, you asked when I left the Navy program.

13 Q Right.

14 A I went to work for Lockheed Shipbuilding, a
15 private company, from '84 to '87.

16 Q Work on government contracts?

17 A Yes, primarily so.

18 Q What was your responsibilities at Lockheed?

19 A I was originally the director of quality
20 assurance. After nine months to a year, I guess about nine
21 months, I was promoted to the director of the LSD program,
22 LSDs are large amphibious ships that were being built for
23 the Navy and I was subsequently promoted to the director of
24 program management, and all the program directors for the
25 various different product lines we had worked for me.

1 Q Now was your work at Lockheed -- did it involve
2 nuclear materials, nuclear reactor powered ships?

3 A There was no nuclear work.

4 Q Okay. Following Lockheed, what was your next
5 position?

6 A In May of 1987, I went to work for TVA.

7 Q As what?

8 A After a couple of months of orientation, I was
9 assigned to Watts Bar where my initial position was the
10 manager of projects.

11 Q Manager of projects?

12 A Yes.

13 Q All projects or a specific area, or what?

14 A Watts Bar at the time was under construction, it
15 wasn't directly responsible for the overall construction
16 project, but there were various smaller capital projects,
17 upgrades which had been put in place and the project
18 managers for those worked for me.

19 Q Okay, and how did you obtain your job at TVA, your
20 first job? Did you respond to a nationwide --

21 A No, I had decided to leave Lockheed. In making
22 some contacts in looking for other jobs, one day I got a
23 call from TVA who had heard from someone else who I had
24 talked to that I was looking for a job and I got a call from
25 someone who was on the head of nuclear power's staff at the

1 time and asked me if I wanted to come in for an interview.

2 Q And who was the head of nuclear power at the time?

3 A Admiral Stephen White.

4 Q Had you worked with Admiral White during your
5 Naval career?

6 A I met him once, but I can't really say I worked
7 with him.

8 Q In obtaining your first position at TVA, was there
9 a formal competition, to the best of your knowledge?

10 A I don't know what the process was. I did have to
11 go through a number of interviews. TVA was hiring a large
12 number of people at that time.

13 Q And how long were you the manager of projects at
14 Watts Bar?

15 A Probably for only about six months after I was
16 assigned as the -- I moved into an acting position as the
17 maintenance superintendent at Watts Bar.

18 Q That's still in '87, or '88?

19 A It would have been either late '87 or early '88,
20 I'm not sure.

21 Q During your tenure as manager of projects, were
22 there any reductions in force that you were responsible
23 for?

24 A No.

25 Q Were you responsible for removing anyone for

1 misconduct, taking adverse actions?

2 A Not at TVA, no.

3 Q Now what were your duties as acting maintenance
4 supervisor and how long were you in that position?

5 A I was the maintenance -- the acting maintenance
6 superintendent until sometime in 1989, I don't remember
7 exactly what the months were, and I ran the maintenance
8 department in the plant manager's organization.

9 Q And again during that period, there were no
10 reductions in force or downsizing going on?

11 A The only reduction -- we had a -- I'm not sure of
12 the exact size of the work force, but a number of them were
13 hourly workers as opposed to annual -- hourly trades and
14 labor vice annual trades and labor and within the nuclear
15 program, they had made a decision to eliminate all the
16 hourly trades and labor. That was done during the period I
17 was there. My recollection is that was all taken care of
18 out of corporate, I really had nothing to do directly with
19 it.

20 Q When you joined TVA -- all the positions you've
21 held in TVA -- we'll get them -- you were in a management
22 position, is that correct?

23 A That's correct.

24 Q During that first I think you said two months of
25 orientation, were you given any management training related

1 to personnel issues?

2 A Somewhere within my first year or so, I remember
3 going to a class where I had this huge binder, supervisor's
4 notebook, of items, I don't know for sure if it was in the
5 first two months or not, but --

6 Q And what subjects were covered there?

7 A I no longer recall, that was 14-15 years ago.

8 Q I don't blame you. I'm having trouble with 14-15
9 minutes ago.

10 Do you recall ever receiving any training on 10
11 CFR 50.7, employment discrimination or Section 211 of the
12 Energy Reorg Act of DOL cases?

13 A I know that I was very familiar with those
14 requirements because of the -- TVA has policies on nuclear
15 safety and on -- actually the procedures, the rights of
16 employees to take differing positions to resolve problems
17 and I was very familiar with those. I do not recall whether
18 I specifically took a class on it, but I was familiar.

19 Q Okay. And I'm not sure, did I ask you how did you
20 become acting maintenance supervisor, was it just a transfer
21 or was there a competition?

22 A There was not a competition. I believe the
23 maintenance superintendent may have been on loan to one of
24 the other plants at the time.

25 Q And how long were you in that position?

1 A It was between six months and a year, but I don't
2 remember exactly.

3 Q And where did you go next?

4 A And also during that period of time, I got a
5 series of assignments where I was assigned to the
6 operational readiness review teams at the restart for
7 Sequoyah and subsequently in later years for Browns Ferry
8 and Watts Bar's startup. But in those first couple of
9 years, I probably spent close to half my time working on
10 those teams. But my next assignment after Watts Bar is I
11 was transferred downtown to take a position as a corporate
12 outage manager in the corporate maintenance organization.

13 Q Do you recall when that was?

14 A Either in the second -- probably second half of
15 1988, maybe early 1989.

16 Q And the operational readiness teams you were
17 working on, that as in parallel with when you were the
18 acting maintenance supervisor?

19 A Yes, in fact, I started it while I was still the
20 manager of projects.

21 Q Oh. And when you went to the corporate outage
22 management position, was that a permanent job or were you
23 acting in that job?

24 A I think it was a permanent job.

25 Q Do you recall how you got that one?

1 A I know I was transferred to it -- at the
2 particular pay level I was at then, the different -- putting
3 people into those -- selections for those positions were a
4 process that eventually sent the paperwork up to the board
5 that frequently took -- the Board of Directors of TVA and so
6 the paperwork to get in a position sometimes would not get
7 done until months after you were actually in it.

8 Q You say you were placed in the corporate outage
9 manager's position and sometime later the TVA Board of
10 Directors approved that?

11 A Yes.

12 Q And again, was there, to your knowledge, a formal
13 competition or someone decided --

14 A I was not aware of a formal competition.

15 Q What were your duties as corporate outage manager?

16 A The primary duties I was assigned initially was to
17 assist Sequoyah in the planning for the first outage that
18 they would have after they had restarted their first unit.
19 It was 1988 we restarted the first unit I think, and to
20 assist them in planning the refueling outage for that unit.

21 Q During your time in corporate outage management,
22 did you -- were you responsible for any reductions in
23 force?

24 A No, I was not.

25 Q Any downsizing efforts?

1 A No.

2 Q Any adverse actions?

3 A No.

4 Q And where did you go from corporate outage
5 management?

6 A From corporate outage management, my supervisor
7 was at that time a contractor, he left TVA. For a short
8 while I was made acting corporate maintenance manager after
9 this contractor left.

10 Q How short a time?

11 A I don't -- I think it was less than six months, I
12 don't remember exactly though.

13 Q And there were no reductions in force in that --

14 A No.

15 Q What did you do after that at TVA?

16 A I became the manager of the staff for the chief
17 nuclear officer.

18 Q And who was the CNO at that point?

19 A Oliver Kingsley.

20 Q Do you remember what year we're talking about now?

21 A I started that -- I believe I started that
22 somewhere around mid-1989.

23 Q And was there a competition for that?

24 A No.

25 Q How did you come to get the job? Did they just

1 call you up and say we want you to be in this position?

2 A I really don't recall the mechanics of it. I
3 suspect that Mr. Kingsley asked me if I wanted to take that
4 position.

5 Q And how long did you work as the manager of the
6 staff for Mr. Kingsley?

7 A That position -- it was probably for about two
8 years. There was one change in late 1989, in addition to
9 those positions, I took over as the chairman of the nuclear
10 safety review board.

11 Q Before we get to the NSRB, what were your
12 functions as manager of the staff for Mr. Kingsley?

13 A It covered a variety of things, some were
14 preparing responses to the things that -- items that had to
15 come out of his office. A lot of my time was spent
16 reviewing documents that came in for his signature or his
17 approval, to review and give him my recommendations on it.
18 There were various periodic reports that he had to make like
19 to the Board of Directors or something and my staff was
20 responsible for handling those.

21 Q How big was the staff that you managed?

22 A It was typically about three people.

23 Q Three people. And what functions did they do?

24 A They all worked on the same kinds of things that I
25 did and within it we had a number of special projects that

1 we'd get for short whiles and as I said I also continued in
2 that period to do things like operational readiness reviews.

3 Q Mr. Kingsley's staff, did it have an HR person on
4 it, directly on his staff or --

5 A He had a person who had an HR background, they
6 were not in the HR organization, and that person did not
7 work for me.

8 Q Who was that?

9 A Sue Wallace was the person's name.

10 Q How many people who worked directly for Mr.
11 Kingsley didn't work for you?

12 A Well, all of his vice president level individuals
13 all worked directly for him. All of his regular line
14 management reported to him, such areas as engineering,
15 operations, the sites. There was an HR manager for nuclear
16 who reported directly to him. There was another vice
17 president over nuclear assurances, licensing managers, I
18 don't remember exactly how many there were.

19 Q I'm sorry, I didn't -- you answered the question I
20 asked but I was speaking of on Mr. Kingsley I guess personal
21 staff. You said you were the manager of his staff. How
22 many other people, not in line organizations reporting up to
23 him, but just on his staff, worked for Mr. Kingsley but
24 weren't under your supervision?

25 A I remember Sue Wallace who I had and who obviously

1 was his administrative assistant, his secretary and I think
2 she may have had an assistant who worked with her. That's
3 all that was on the staff.

4 Q And during that time frame -- how long did you
5 continue on Mr. Kingsley's staff -- manager of his staff?

6 A Until -- it was probably late 1990 sometime.

7 Q Were there any reductions in force or downsizing
8 that occurred during the time that you were managing Mr.
9 Kingsley's staff?

10 A No.

11 Q Did you have any social relationship with Mr.
12 Kingsley?

13 A Very little. Over the years, he invited me to a
14 couple of his children's weddings.

15 Q Y'all didn't regularly have dinner or go out and
16 have drinks or anything?

17 A No.

18 Q Okay, where did you go in late '90?

19 A In late 1990, there was a reorganization. We had
20 had one of the vice presidents who had left who was over
21 materials and contracts and finance also at the time, but
22 the materials and contracts group was temporarily assigned
23 to me while they sorted out how to handle the organization
24 and the loss of this vice president. About 1990, there was
25 a reorganization which resulted in my becoming the general

1 manager of materials, contracts and administrative support
2 and I reported to Mark Medford, he was a vice president, I'm
3 not sure what his title was at that time. I also continued
4 as the NSRB chairman, with that hat on having a direct
5 reporting relationship to Kingsley.

6 When that reorganization was made, the original
7 intent was that I would just temporarily remain chairman --

8 Q Of the NSRB?

9 A -- of the NSRB, because of a plan of another
10 position under Medford which covered some other areas, there
11 was a hope to hire someone into that position who would also
12 be qualified to be the NSRB chairman. However, that never
13 happened and I continued on as the NSRB chairman.

14 Q Okay. Now who did -- when you were the general
15 manager of materials, contracts and admin support, you
16 reported to Medford, who did Medford report to?

17 A Kingsley.

18 Q But then in your NSRB position, you reported
19 directly to Kingsley?

20 A That's correct.

21 Q And since we've been there, I guess it's time to
22 clear up what that is. What is the Nuclear Safety Review
23 Board?

24 A The Nuclear Safety Review Board is a board that we
25 are required to have by the Tech Specs for Sequoyah and

1 Browns Ferry. Later on I believe it got in the FSAR of
2 Watts Bar, but basically by regulation, we have to have this
3 board, which is to provide an independent safety oversight
4 of the operations at all of our operating nuclear plants.

5 Q Okay. And was there one board or more than one
6 board?

7 A There actually were three separate boards. One
8 for Browns Ferry, one for Sequoyah and one for Watts Bar.
9 However, as the chairman, I was actually chairman of all
10 three of them. And through the years, there were a lot of
11 common members between the boards.

12 Q Okay. While we're on the NSRB subject, how long
13 did you remain chairman of the NSRB or the NSRBs, I guess
14 would be more appropriate?

15 A Until 1997.

16 Q What happened in '97?

17 A In 1997, I actually became the vice chairman for
18 awhile. As part of some reorganizations at the time, the
19 chairmanship was assigned -- I believe it was the vice
20 president of engineering and technical support took over as
21 the chairman of the NSRB.

22 Q And who was that?

23 A Jack Bailey.

24 Q Bailey?

25 A Bailey.

1 Q Now how long did you stay in the position of
2 general manager in materials, contracts and admin support?

3 A I'm not sure of the exact time on that because
4 there was -- some time within the next two years, there was
5 a small reorganization that had moved the materials function
6 out of nuclear to more central item in TVA and I picked up
7 the nuclear fuels organization at that time and so there was
8 a change in my title to like general manager of nuclear
9 assurance, but there wasn't a whole lot of change in what I
10 was doing.

11 I then continued to do that until 1995 at which my
12 job was just changed to NSRB chairman only as part of our
13 efforts to get better aligned with having five operating
14 plants as opposed to plants still in restart and
15 construction.

16 Q So late '90 you became the general manager of
17 materials, contracts and admin support, sometime later that
18 changed a little bit and you became nuclear assurance
19 manager?

20 A Nuclear support manager.

21 Q Nuclear support manager. And then in '95, you
22 formally became -- I mean your sole position at that point
23 was chairman of the NSRBs?

24 A That's correct.

25 Q And did you occupy any positions after 1995 other

1 than the chairman of the NSRB?

2 A In October of 1995, I was assigned as the acting
3 general manager of operation support. I continued in that
4 acting position until some time in 1997, at which I was
5 assigned as a senior project manager to work on a special
6 project we were having related to potential tritium
7 production at one or more of our plants. While I was in
8 that position, I started working in part of a company-wide
9 effort on business transformation and was assigned to a team
10 on asset optimization to which I eventually became the team
11 leader.

12 Q When did that occur?

13 A I started working on that team some time in 1998.

14 Q And that led to the position you're in now?

15 A That led to me being assigned to a developmental
16 position in the bulk power trading organization where I went
17 to in July of 1999. I stayed there until September of 2001
18 when I moved into the position I'm in now.

19 Q Now at what point did you move out of TVA Nuclear
20 and into the --

21 A July of 1999.

22 Q July of 1999. Into the bulk power position?

23 A Yes.

24 Q Now I guess I forgot to ask, but back when you
25 were the general manager of materials, contracts and admin

1 and then became the nuclear support manager or whatever, did
2 you conduct any reductions in force, were there any under
3 you at that time, any downsizing?

4 A I know in a number of years as part of our budget
5 efforts, that there were reductions. Most of the time, I
6 recall the reductions being achieved by not filling
7 vacancies. There might have been a reduction in force, one
8 or two persons here or there, I do not specifically recall
9 any, but there might have been.

10 In addition, there were some reorganization items,
11 such as the NSRB support staff, although I remained
12 chairman, was moved over and combined with another nuclear
13 review staff in order to eliminate duplication of functions.
14 I don't know if there was any reduction involved with that,
15 but it was done not in my organization, in another one.

16 Q Now when you were the acting general manager of
17 operations support, were there any reductions done then?

18 A Yes, there were as part of the reorganization done
19 in the spring and summer of 1996.

20 Q Do you know if there were any reductions in force
21 then?

22 A Well, I forget the terminology of it. There were
23 people whose jobs were eliminated within operations support.
24 At that time, for an individual, if they were to have lost
25 their job as a result of reorganization, TVA had a program

1 called the services organization I believe was the name of
2 it, and an individual who lost his position had a choice of
3 either going to that services organization, in which case
4 they kept a job, or they could take what I think was a
5 pretty generous package to leave the company.

6 I believe within the words -- and I'm not in Hr --
7 they were not formally RIF'd. When you asked me before
8 about previous ones, we had previous other programs prior to
9 the services program so where people may have left some of
10 those other organizations, they probably went to a program
11 like that as opposed to actually being RIF'd by civil
12 service type terminology.

13 Q Okay. Now during your tenure at TVA, have you ever
14 either terminated somebody for misconduct or recommended
15 somebody be terminated?

16 A No, I've not.

17 Q Now at the NSRB -- and how did you come to get
18 appointed chairman of the NSRB or NSRBs? How did that come
19 about?

20 A I was appointed chairman because (1) our NSRBs in
21 1989 were not functioning well, both internal reviews in
22 TVA, INPO and NRC evaluations were indicating it wasn't
23 effective. Because of my background, both in the Navy
24 nuclear program and in participating in these operational
25 readiness reviews at TVA, Mr. Kingsley considered me to be

1 well qualified to run those boards.

2 Q What are the duties or what were your duties and
3 responsibilities as chairman of the NSRB? What's NSRB's
4 function?

5 A Well, as I mentioned when you asked me this about
6 ten minutes ago, the NSRB is set up by the Tech Specs and
7 we're required to have the NSRBs. Their primary function is
8 safety oversight at the operations of our plants. Within
9 the Tech Spec there's a list of about a dozen items that
10 NSRB is required to review, items such as audit reports,
11 LERs that were sent to NRC, and the purpose of reviewing
12 those as really functional areas is to look for potential
13 safety problems. And really, our focus was on trying to
14 look at precursors to safety problems, not wait until there
15 really was one there.

16 In addition, we did have a specific Tech Spec
17 function that we had to concur with any Tech Spec changes
18 that were submitted to NRC.

19 Q Okay, and how big was the NSRB staff at that time?

20 A It varied a little over time, but it was in the
21 order of three to six people.

22 Q And that would have been support staff. That's
23 not members or does that include members?

24 A That does not include members.

25 Q How many members would be on say a Sequoyah NSRB?

1 A Originally -- it's approximately 10.

2 Q And how did the NSRB go about conducting its
3 business? How did you operate?

4 A We received many documents review, both those
5 which we were required to review and others which might be
6 of interest. An example of that would be an INPO evaluation
7 or a self-assessment done by one of the internal
8 organizations within TVA, plus items such as LERs and audit
9 reports. Once we reviewed those documents, they were sent
10 out to the individual members for review. Depending on the
11 specific documents, it was sent either to the entire board
12 or to a specific subcommittee.

13 The NSRB was set up -- over time, we had either
14 four or five subcommittees, the exact structure varied a
15 little bit over time. We would review those documents to
16 look for potential areas that we'd want to look into
17 further. In addition, over the years, each board either had
18 four or five outside members who were very valuable to us
19 because they brought information of problems they had seen
20 elsewhere in the industry that we might want to go look into
21 to help us avoid it. In addition, the NSRB staff would look
22 at items like the TVA nuclear experience review program to
23 see if there were items coming up there that were potential
24 subject matters.

25 Based upon that subject matter, we would set up

1 agendas for the meetings. Typically the first day of the
2 meeting was devoted to subcommittee activities in which each
3 subcommittee had an agenda where they would go and pursue
4 topics, typically through interviewing various personnel at
5 the sites.

6 The second day of the meeting was a full board
7 meeting. The full board meeting would constitute perhaps a
8 few reports back to the whole board that were of general
9 interest to the board. There would be reports back from
10 each of the subcommittees. Additionally, there could be
11 discussion of action items. If something was felt to be
12 important enough where NSRB really wanted to know what was
13 done -- and recognize, we did not have the authority to tell
14 anybody to do things, but if we thought something was enough
15 of a problem that we really wanted it evaluated and a report
16 back to us as to what was going on with it, we would create
17 an action item and we would get responses back to them.
18 Depending on the nature of the item, it could be a written
19 response, it could be a presentation at the meeting, and it
20 would take a vote of the whole board to close one of those
21 items, to say that it was done.

22 Subsequent to the meetings, -- and we normally met
23 quarterly, which was more frequently than required by
24 regulation, but we felt that was about -- and occasionally
25 more frequently if we thought there were problems going on

1 at a plant. After each of those meetings, we issued a set of
2 minutes from the meeting. The minutes included an executive
3 summary that went to the TVA Board of Directors and more
4 detailed minutes that did not go beyond the chief nuclear
5 officer unless he felt there was really something in the
6 details he wanted to pass higher up.

7 Q So the Sequoyah NSRB back in the early '90s, any
8 reports from there would go to who?

9 A The reports from those would go to the chief
10 nuclear officer, who was Oliver Kingsley. And to correct
11 what I said, in addition, the reports -- the reports minus
12 the attachments, which were the subcommittee reports, would
13 also go to the Board of Directors of TVA. They had further
14 distribution among the site vice presidents, the vice
15 president responsible for licensing. There would be other
16 individuals who would get it as well.

17 Q Now when you said there were 10 members
18 approximately at Sequoyah, was that including the four or
19 five outside people?

20 A Yes.

21 Q And those outside -- they were consultants, were
22 they from other utilities with nuclear power plants or --

23 A They had a number of different ones. Like in the
24 early 1990s, on the Sequoyah board at the time was the
25 nuclear advisor to the Board of Directors, who was an

1 outside consultant that the Board had hired. There was a
2 former NRC regional director on the Board, there was a
3 person in radiological controls. I knew his work had
4 started in the Navy program and he moved on acting as a
5 consultant to a lot of utilities. One individual who was on
6 a lot of our boards was a retired vice president of General
7 Electric's nuclear engineering department.

8 Q Now you said when you'd have these quarterly
9 meetings, if I understood you, the first day -- were those
10 subcommittee meetings?

11 A The first day was subcommittee -- we normally
12 started off with a meeting of the full board in which we got
13 a briefing of what was going on at the site, whether there
14 were any emergent issues, something we ought to know about.
15 That briefing was typically by the plant manager. Then the
16 subcommittee would break up and go off to do their own
17 agendas. Typically, we would reconvene the whole board late
18 in that day to review any Tech Spec changes that we had to
19 cover.

20 Q Then you had the formal meeting the second day?

21 A The second day was then the formal meeting, right.

22 Q Now I think you said earlier when these
23 subcommittees went off, they'd go to individuals in the
24 plant, talk to individuals in the plant?

25 A Right, they might go actually out into the plant,

1 to the control rooms, they might meet with the manager in
2 his office, they might follow a maintenance crew around for
3 awhile, a lot of different things they could do.

4 Q And formally those were considered subcommittee
5 meetings if they just went and met with somebody in an
6 office and then it would show up in the minutes?

7 A Yes, they issued in their minutes a summary of
8 what they had done during the day. It wasn't a narrative,
9 it was a summary of what kind of items they had reviewed and
10 whether they had any findings based on their review.

11 Q How many members in 1991-'92 were there on the
12 chemistry subcommittee of NSRB at Sequoyah?

13 A At that time, I believe the subcommittee was just
14 two people, would have been an outside consultant named Tom
15 Peterson and Wilson McArthur. The subcommittees were
16 typically two or three people.

17 Q Can you spell Mr. Peterson's last name?

18 A P-e-t-e-r-s-o-n.

19 Q Thank you. You indicated earlier you didn't have
20 any authority over -- I mean you could not order somebody to
21 do something at a plant.

22 A That's correct.

23 Q You'd have these action items but if somebody said
24 we're not interested, what was the result of that? What
25 authority did you have or how could you bring something to

1 pass you would like to pass?

2 A I'd say there were two approaches. The normal
3 approach was that we felt that when we put together an
4 issue, there was enough behind that issue that it was a
5 question about the site pursuing it, the site pursued it.
6 It was not a problem that -- we had a problem in the early
7 1990s at Sequoyah with their not pursuing those generally
8 and that was brought to the attention of the chief nuclear
9 officer.

10 Q Mr. Kingsley?

11 A Mr. Kingsley. And it was brought to his attention
12 as an example of some of -- there were a number of
13 performance deficiencies at Sequoyah in that time frame and
14 it was really brought to his attention more as indicative of
15 a more general problem out there of not getting problems
16 quickly addressed and solved in that time frame.

17 Q What interactions do you recall, if any, having
18 with Gary Fiser while you were on the NSRB for Sequoyah?

19 A I sat in on one subcommittee meeting where the
20 subcommittee was meeting with him.

21 Q Do you recall when that was?

22 A November of 1991.

23 Q Do you recall what was discussed at that meeting?

24 A There are two specific things that stick out in my
25 mind because they were recurring issues. About six to nine

1 months earlier, the NSRB had questioned whether or not
2 Sequoyah could meet the NRC requirements on post accident
3 sampling, to take samples and analyze them within three
4 hours. It was a concern brought by one of my outside people
5 from another utility. It really originally started in this
6 case because other utilities had found problems by the time
7 they dressed out people in all their anti-contamination
8 things, they could not get it done. We had brought up that
9 particular issue.

10 One thing that was at issue at this subcommittee
11 is that issue had been open for six to nine months, had not
12 yet been adequately addressed by the site, and in fact the
13 site and corporate chemistry were in disagreement over what
14 they needed to do and weren't working on resolving their
15 disagreements.

16 There was a second item of a more -- not as
17 important but -- that was an action item assigned by NSRB.
18 There was a second action item where we had asked the site
19 to take a look at potential unmonitored release path where
20 you could potentially get radioactivity to some liquid
21 effluent which was either not being continuously monitored
22 or periodically sampled. I believe NSRB brought up that
23 issue because corporate chemistry had looked and said they
24 thought there were four of them at Sequoyah and we had
25 raised that issue to be -- as something that needed to be

1 pursued.

2 The main items I remember from that particular
3 subcommittee meeting when I sat in on it was that neither
4 one of those actions were being addressed in a timely
5 manner. And that was the item that was of most concern to
6 me.

7 During the course of that where I was listening to
8 the subcommittee, there -- the subcommittee discussed a lot
9 of different items, I was not in their meeting for the
10 entire day. They discussed some other things but the two I
11 mentioned to you were the items that were important to me
12 and had also been reflected as NSRB action items.

13 Q Do you recall any discussion in that meeting --
14 well, first, who was present at that meeting -- Mr. Fiser?

15 A Mr. Fiser was there, Mr. Jocher was there, the
16 subcommittee was there.

17 Q That was McArthur and Peterson?

18 A McArthur and Peterson. I think there may have
19 been a couple of people from Fiser's staff, but I don't
20 recall exactly who they were.

21 Q Do you recall any discussion in that meeting on
22 problems with data trending in the chemistry department at
23 Sequoyah?

24 A I think it was mentioned, but not something that I
25 saw to be a major issue and if you read the subcommittee's

1 report of that meeting, data trending is listed. They wrote
2 up an item about general issues with performance in
3 chemistry. It was based on audits that had been done by
4 quality assurance reviews which had been done by the
5 corporate chemistry staff and their report issued eight or
6 ten examples in a two or three word example such as failure
7 to follow procedure, changes to QA records, buying chemicals
8 to the wrong specification and one of them that was there
9 said poor data trending.

10 JUDGE YOUNG: What was the last one?

11 THE WITNESS: Poor data trending was the last
12 one.

13 JUDGE YOUNG: Second and third again?

14 THE WITNESS: Second and third? There were items
15 -- one of them items was buying chemicals to an incorrect
16 specification, another one had to do with a quality
17 assurance record being modified. It was just kind of a
18 summary list of items that had really been identified by
19 other groups, not identified by the NSRB. What the
20 subcommittee felt was that many deficiencies were indicative
21 of a more general performance problem in chemistry.

22 BY MR. DAMBLY:

23 Q Do you recall there being a meeting in January of
24 1992 at Sequoyah discussing data trending?

25 A There was no NSRB meeting in January of 1992.

1 Q Was there a meeting that you attended in Mr.
2 Fiser's office in January 1992 with Fiser and Peterson and
3 Jocher and McArthur?

4 A The only meeting I've ever had in Fiser's office
5 with McArthur and Peterson and those people was the November
6 1991 subcommittee meeting.

7 Q Do you recall being in any meeting with Mr. Fiser
8 where data trending was a big issue with you?

9 A No, I do not. In fact I can tell you there was no
10 such meeting.

11 Q You can tell me there was no such meeting?

12 A There was no meeting that I was in where data
13 trending was a big issue with me.

14 Q All right.

15 JUDGE YOUNG: Where data trending was a big issue

16 --

17 THE WITNESS: With me.

18 JUDGE YOUNG: -- with you.

19 THE WITNESS: Yes, ma'am, that was the question I
20 was asked.

21 JUDGE YOUNG: No meeting with you where data
22 trending was an issue with anyone?

23 THE WITNESS: As I mentioned, the subcommittee
24 meeting I was at, there was some discussion of data
25 trending, but not with me. I recall there was some

1 discussion of it, but it wasn't a particular concern to me
2 that I was pursuing. Mr. Hamby (sic) asked me if there was
3 a meeting which I had at which data trending was a
4 significant concern to me and no, there was no such meeting.

5 BY MR. DAMBLY:

6 Q Let me call your attention -- and I'll get it for
7 you too -- to Exhibit -- Staff Exhibit 95.

8 JUDGE COLE: What volume is that in?

9 MS. EUCHNER: Volume 5.

10 (Brief pause.)

11 JUDGE YOUNG: Did you make an overall index to all
12 the exhibits, did each of you do that, to all of your
13 separate exhibits?

14 MR. MARQUAND: Your Honor, if you will look in the
15 front of any of the notebooks we gave you, there is an
16 overall index of all the TVA exhibits and which exhibits are
17 in which volume --

18 JUDGE YOUNG: Okay.

19 MR. MARQUAND: -- of each of the TVA exhibit
20 books. And I believe we put one in the front of each of the
21 joint exhibit books --

22 JUDGE YOUNG: Pardon?

23 MR. MARQUAND: We also put an index of the joint
24 exhibits in the joint exhibits books which we prepared.

25 JUDGE YOUNG: So if we took one of those out, we

1 could tell which volume any of yours were in?

2 MR. MARQUAND: Yes, ma'am.

3 JUDGE YOUNG: Okay, did we get that from you?

4 MR. DAMBLY: You have in the front of each of
5 those volumes a complete exhibit list, going from 1 to
6 whatever we have in that particular --

7 JUDGE COLE: But not identifying which volume
8 they're in?

9 MR. DAMBLY: But identifying -- we will provide on
10 the side of your books for tomorrow what -- it's on the
11 front of the book --

12 JUDGE COLE: Okay.

13 MR. DAMBLY: You're working on it, I'm sorry. But
14 that just says 5 of 8, it doesn't say what the exhibit -- we
15 will put spines in there for you in the morning that will
16 tell you which volume has which documents.

17 JUDGE YOUNG: Well, just give them to us and we'll
18 put them in. Thank you.

19 MR. DAMBLY: Let's make sure we all have the same
20 document. In my book, Staff Exhibit 95 is an April 24, 1997
21 U.S. Department of Labor Employee Personal Interview
22 Statement for Wilson McArthur. Is that what everybody is
23 looking at?

24 BY MR. DAMBLY:

25 Q And if you could turn to the next to the last

1 page, Mr. McGrath. The second paragraph starts, "In January
2 1992, I do recall a meeting where Peterson, Fiser, McGrath
3 and I, along with others present. The meeting involved
4 various issues -- post accident sampling system, unmonitored
5 radiation release point, the big issue dealt with the data
6 trend. There were scenarios by the -- I'm sorry -- there
7 was concerns by the Nuclear Safety Review Board (NSRB) that
8 the data was not being analyzed in looking for trends. Tom
9 Peterson was concerned that we were not doing a good job in
10 dealing with the trend data. Fiser's position was he did
11 not have the time to get it done. We all had concerns about
12 them not trending which later became an INPO issue in
13 dealing with trends. I do not recall McGrath getting upset
14 with Fiser and just walking out of the office. I do know
15 that he was upset about the trend data."

16 MR. MARQUAND: Can we finish reading the sentence
17 please, counsel?

18 MR. DAMBLY: What else, as to the job offer to --

19 MR. MARQUAND: It says "...trend data and other
20 issues."

21 MR. DAMBLY: "...and other issues." Okay.

22 BY MR. DAMBLY:

23 Q Now was Mr. McArthur wrong? And I'm sure you're
24 aware Mr. Fiser has testified that in January 1992 this
25 meeting took place.

1 A In January 1992, there was no such meeting. If
2 you will look at the NSRB minutes, all of which the NRC has,
3 you will see that there was a meeting in November of 1991.

4 Mr. Peterson, as a contractor, could not just show
5 up at TVA and have a meeting with someone.

6 JUDGE YOUNG: What?

7 THE WITNESS: He was a contractor for the NSRB,
8 he only came to TVA for NSRB meetings. The NSRB meetings,
9 in that time frame, were held in November of 1991 and feb-
10 of 1992. You'll see that the first two items, the post
11 accident sampling system and the unmonitored radiation
12 release paths, are the two items that I mentioned to you
13 which I specifically remember being discussed at the
14 November 1991 meeting. And those were the two issues that
15 were of concern to me. I'll also point out that I did not
16 attend the entire meeting, it is quite possible that there
17 was extended discussion on trending when I wasn't even in
18 the room. I went to part of the meeting. As I said to
19 you, I was concerned about, on the post accident sampling
20 system and the unmonitored radiation release paths, that
21 those were not being addressed. Post accident sampling was
22 a particular concern, as it was a potential regulatory
23 violation if we were not able to do what we're required to
24 do there.

25 I would really think here that Wilson may have

1 been a little bit confused on the date. If you recall
2 Fiser's DOL complaint, he says the meeting was January '92,
3 that may have affected Wilson's recollection but I think if
4 you read the minutes, you'll find it was November '91 and I
5 was concerned about the first two items. The trending item
6 was not a concern -- was not a big concern to me and if you
7 read the minutes, you'll see the minutes which were written
8 by Peterson and McArthur does not portray the trending as
9 being a major issue at that meeting.

10 BY MR. DAMBLY:

11 Q Do you think Mr. Fiser's DOL complaint also
12 confused Dr. McArthur as to what the big issue at the
13 meeting was?

14 A It may very well have. Recall that these
15 interviews were years after the meeting. I would suggest
16 that the minutes that were written the day after the meeting
17 are perhaps the most accurate summary of what actually
18 happened in that meeting.

19 MR. DAMBLY: About being upset about the trend.

20 MR. MARQUAND: Objection. That's not his
21 testimony. He said he denied it; he didn't say he didn't
22 recall.

23 BY MR. DAMBLY:

24 Q Okay. You denied being upset with the data?

25 A I was not upset about trending. The trending was

1 one of a list of many -- of many things that were indicative
2 of overall chemistry problems. But the trending, per se,
3 was not a significant issue.

4 Q Do you recall at all, during that meeting, you and
5 Mr. Peterson demanding that Mr. Fiser prepare or adopt a
6 procedure requiring trends to be done daily?

7 A I never asked for a procedure. There is nothing
8 in the minutes written by Mr. Peterson that indicates that
9 he asked for a procedure. And relative to what you asked
10 before about NSRB, how it works, and what Peterson's report
11 would have been back to the full board, NSRB also did not
12 assign any action item relating to either trending or the
13 use of a procedure for trending. And if it had been a major
14 issue with NSRB, it would have resulted in an action item
15 being assigned.

16 Q But do you recall Mr. Fiser making any statements
17 about procedure being a bad idea for trending or result in
18 violations because they couldn't comply with the procedure?

19 A No.

20 Q Did you have any concern at that time at Sequoyah
21 about procedural violations? Had there been procedural
22 violations in nuclear chemistry at Sequoyah?

23 A Believe that the minutes of the meetings in that
24 time reflect that there were procedural violations as one of
25 the list of potential concerns that had been identified.

1 Q Do you recall leaving that meeting and telling Dr.
2 McArthur that you wanted Fiser out of the position?

3 A That absolutely did not happen.

4 Q Go to Joint Exhibit 27.

5 MR. DAMBLY: Maybe, if it's -- if it's okay with
6 the Court, we can take like a five minute break, maybe set
7 the speakers up here.

8 JUDGE YOUNG: Let's make sure we're also talking
9 about the same exhibit. Is this the sequence of events?

10 MR. DAMBLY: Sequence of events.

11 JUDGE YOUNG: Okay. Okay.

12 MR. DAMBLY: And we'll be referencing Page 22, if
13 we could take a break.

14 JUDGE COLE: Let's make it ten minutes.

15 MR. DAMBLY: Ten? Okay.

16 JUDGE YOUNG: And just for your planning purposes,
17 we need to be out of the room by 5:00, so we need to start
18 winding down...

19 CHAIRMAN BECHHOEFER: Slightly before that.

20 JUDGE YOUNG: ...4:30 or quarter to 5:00, so we
21 can all pack up.

22 (Brief recess.)

23 CHAIRMAN BECHHOEFER: Back on the record.

24 MR. DAMBLY: Again, we're -- we're now dealing
25 with Joint Exhibit 27. It's a document entitled, "Sequence

1 of Events." And let me represent to the board these are a
2 series of both notes and recorded conversations. Mr. Fiser,
3 who will be here tomorrow to authenticate, spent time during
4 the I guess '91 to '93 time frame with a pocket recorder,
5 recording certain conversations which he took home and
6 transcribed.

7 JUDGE YOUNG: These are the ones we discussed in
8 the telephone conference?

9 MR. DAMBLY: Right. Well, not these notes; no.
10 We had the -- the transcriptions -- this -- this is a -- Mr.
11 Fiser's...

12 JUDGE YOUNG: These are his notes, these are not
13 the transcriptions?

14 MR. DAMBLY: Well, part of it is -- is a
15 transcription. He will tell you what it is.

16 MR. MARQUAND: These are purported transcriptions
17 with notes?

18 MR. DAMBLY: Right. What we'll be into in a
19 moment is the enhanced version on CD that the staff had made
20 and will play for you of the pertinent point of the
21 conversation, and you can decide whether you can hear it or
22 not. But...

23 And, again, Mr. Fiser will explain to you exactly
24 what this document is supposed to be. Okay?

25 BY MR. DAMBLY:

1 Q And with that, Mr. McGrath, if you could turn to
2 Page 22 of this document, about in the middle it starts off,
3 "McArthur: Do you know when the downhill slide started on
4 you?"

5 MR. MARQUAND: Your Honor, first of all, I'm going
6 to object. This is a purported conversation between
7 McArthur and Fiser. It's not -- we don't know the accuracy
8 of this document. If it's being used to refresh his
9 recollection, it can be shown to him. He can be asked if it
10 refreshes his recollection, and he can go on from there. He
11 can't be impeached with it, it's clear. And it's not
12 admissible on its own two feet. It's inappropriate for
13 counsel to read it into the record. The witness can be
14 shown...

15 JUDGE COLE: This concerns Mr. McArthur, not Mr.
16 McGrath?

17 MR. MARQUAND: That's right, it's of Mr. -- of Dr.
18 McArthur, it is not...

19 MR. DAMBLY: It is Dr. McArthur saying what
20 happened after that meeting.

21 MR. MARQUAND: And I -- I'm going to...

22 JUDGE YOUNG: What's your -- stop. What's your
23 purpose of -- of...

24 MR. DAMBLY: My purpose is, Mr. McGrath has said
25 nothing bothered him at the meeting, he walked out, and he

1 made no comments about Mr. Fiser.

2 JUDGE YOUNG: And -- and this is the document of
3 -- this is the trend...

4 MR. DAMBLY: You will hear the -- the actual
5 recorded...

6 JUDGE YOUNG: Hold...

7 MR. DAMBLY: ...conversation.

8 JUDGE YOUNG: ...hold -- hold on just a second.
9 My question is, I see Mr. McArthur and Mr. Fiser. Is this a
10 purported meeting at which Mr. McGrath was supposed to be
11 present?

12 MR. DAMBLY: No. This was a recorded conversation
13 subsequently between Mr. Fiser and Dr. McArthur, who was the
14 subcommittee chairman at the meeting that Mr. McGrath was
15 at, and Mr. McArthur stating what happened after that
16 meeting to Mr. Fiser.

17 JUDGE YOUNG: And so you want to get -- you want
18 to use this for what purpose again?

19 A To see -- I mean, to -- to see if he -- if it
20 refreshes his recollection as to whether or not he made any
21 comments or not after the meeting about removing Mr. Fiser
22 from positions.

23 JUDGE YOUNG: But I think it'd be better if you
24 just showed him the part.

25 CHAIRMAN BECHHOEFER: Well, why?

1 MR. DAMBLY: All right.

2 CHAIRMAN BECHHOEFER: Why?

3 JUDGE YOUNG: Rather than read it into the record.

4

5 CHAIRMAN BECHHOEFER: Oh. Oh, of course it's
6 going to be part of the record.

7 BY MR. DAMBLY:

8 Q Let me -- let me ask you if you'd look at starting
9 in the middle of the page, Dr. McArthur's statements. His
10 first statement being, you know, when the slide started, and
11 then his follow-up statement. If you could read those.

12 (The witness reviews certain material.)

13 A All right.

14 Q It does refresh your recollection? Did you ever
15 make any statements to Dr. McArthur about Mr. Fiser being
16 removed from the Sequoyah chemistry position?

17 A No. And I'd like to correct a statement you just
18 made a few minutes ago.

19 Q Yes, sir.

20 A You -- you stated that nothing concerned me at
21 that meeting in November '91.

22 Q About trending.

23 A As I pointed out to you several times, the issues
24 of post-accident sampling and the unmonitored release pass
25 and the -- the failure of the management to address those

1 issues was a significant concern to me.

2 Q And you've also said that when Dr. McArthur told
3 DOL that the big issue was data trending, the that was
4 incorrect?

5 A That's -- that is correct. And as I pointed out
6 to you, if you'll read the minutes of that meeting you will
7 see that data trending is not a big issue.

8 Q And who prepares the minutes of that meeting?

9 A The minutes were prepared by Mr. Peterson and Mr.
10 McArthur.

11 Q And if, during the course of that meeting, Mr.
12 Peterson or yourself raised an issue which Mr. Fiser pointed
13 out to you was not too bright, would that make it into the
14 minutes? I mean, if your response is, "I want a procedure
15 written," and Mr. Fiser says, "You know, we write a
16 procedure we're going to violate it. We don't need any NRC
17 violations you go, "Oops." Would you write into the minutes
18 yourself that we just made this big mistake and Gary pointed
19 it out to us, or would that not show up in the minutes?

20 A I suggested it in a discussion of such things, and
21 a member may suggest a solution for something and he gets
22 some information from the plant that he might have
23 overlooked, that that wasn't a very good solution, I would
24 not expect in the minutes for him to recommend that that
25 solution be pursued.

1 Q So the fact that this isn't in the minutes doesn't
2 mean it didn't occur?

3 A The fact that it isn't in the minutes does not
4 mean that it was a big issue. Means it was not a big issue.

5 Q Or it was an embarrassment to the people who
6 raised it?

7 A No, it was not...

8 Q And who wrote the minutes?

9 A The -- no, because they also did not report it to
10 the NSRB, so it never became an overall NSRB issue.

11 Q Well, the -- the...

12 JUDGE YOUNG: Couldn't hear the last part of that.

13

14 A Oh. I say it was not -- if you look at -- if you
15 looked into minutes of your...

16 JUDGE YOUNG: Just restate what you said

17 A Okay. I said they did not report it to the NSRB,
18 to the full board, so it did not become an NSRB issue.

19 JUDGE YOUNG: Okay.

20 Q But who's the "they" did not report it?

21 A The subcommittee. The subcommittee members and...

22 Q And -- and at that meeting you were present, and
23 McArthur was present and Peterson was present?

24 A The subcommittee meeting, I was present for part
25 of the meeting.

1 Q And so if there is -- was something raised by you
2 or Peterson, and Mr. Fiser pointed out the error of your
3 suggestion, and it didn't make it into a subcommittee
4 meeting minutes because Mr. Peterson and Mr. McArthur had
5 control of those, you wouldn't expect it to make it into the
6 NSRB meeting minutes, either, would you?

7 A You're asking me did I raise the issue of the
8 trending. I did not.

9 Q Was it raised in your presence?

10 A There was not a discussion of it as a big issue.
11 It might have been one of many smaller items mentioned
12 during the meeting.

13 Q And -- and neither you nor Mr. Peterson...

14 A The -- the item that I remember from the minutes
15 -- as I told you, the minutes that I remember from that
16 meeting were the two issues of the post-accident sampling
17 and the unmonitored release pass.

18 Q And that's based on your review of minutes?

19 A That's based on my memory of the meeting.

20 Q Your memory of the meeting ten years ago?

21 A And my memory is consistent with the minutes.

22 Q And, again, the minutes were prepared by Mr.
23 Peterson and Mr. McArthur or Dr. McArthur?

24 A That's correct.

25 Q So if Mr. Peterson suggested setting up a

1 procedure which would result in violations, it's not likely
2 they'd put that in the minutes, is it?

3 MR. MARQUAND: Objection. We've had this question
4 asked several times. It's entirely hypothetical and
5 speculative. The witness has said...

6 MR. DAMBLY: It's not hypothetical or speculative.
7

8 MR. MARQUAND: ...it wasn't raised in his
9 presence.

10 JUDGE YOUNG: I think it's been asked and
11 answered. I think we get the -- the point.

12 CHAIRMAN BECHHOEFER: I think the question has
13 been asked and answered, so...

14 MR. DAMBLY: Exhibit -- Staff Exhibit 80.

15 CHAIRMAN BECHHOEFER: 80?

16 MR. DAMBLY: 80. Are we all there?

17 MR. MARQUAND: Your Honors, I think it's
18 inappropriate for counsel to put hearsay statements in front
19 of the board if he's attempting to refresh the recollection
20 of the witness. And until it's shown that it does -- even
21 if it does refresh his recollections, he should be
22 testifying from his memory, rather than directing the
23 board's attention to hearsay statements of people that are
24 not witnesses.

25 MR. DAMBLY: Hearsay is perfectly admissible in

1 NRC proceedings.

2 CHAIRMAN BECHHOEFER: That's what I was going to
3 comment. Hearsay is admissible.

4 MR. DAMBLY: I intend to ask him whether or not he
5 ever told Dan Keuter statements about Mr. Fiser. This is a
6 TVA supplied IG -- TVA IG document, their report of
7 interviews. The TVA IG will be here to tell us whether they
8 made this up or not.

9 JUDGE YOUNG: Probably the best procedure would be
10 to first ask the question and then, if there needs to be any
11 refreshing of memory, then let the witness see it. We're
12 not a jury, we're judges. We understand that if -- if it's
13 not appropriate, we won't give it any attention. And if it
14 comes in, I presume it would be brought in through a witness
15 who is able to authenticate it and testify to it. But at
16 this point, if you're just using them to refresh memory,
17 first see whether you need to, is -- is my suggestion.

18 MR. DAMBLY: All right. I will ask the question
19 first.

20 BY MR. DAMBLY:

21 Q Mr. McGrath, did you ever tell Dan Keuter --
22 well, tell me who Dan Keuter was back in the '91, '92, '93
23 time frame with TVA.

24 A I believe at that time he was the vice president
25 over the operations support area.

1 Q And do you recall back in that time frame there
2 being a switch between Mr. Jocher and Mr. Fiser, with Mr.
3 Fiser going to corporate, Mr. Jocher going to Sequoyah?

4 A Yes, I recall there was such a switch. It was a
5 switch that I knew nothing about until after it had
6 happened.

7 Q Okay. And it is your testimony you didn't talk to
8 Mr. Keuter before then to say, "Don't make that switch"?

9 A That is correct, because I had nothing to do with
10 the switch. I did not know it was happening. In fact,
11 subsequently, the next time I had an NSRB meeting and was
12 meeting with the Sequoyah site vice president---Jack Wilson
13 was his name---Jack Wilson told me that he was the one who
14 made the decision to swap Jocher and Fiser. He relayed to
15 me a -- a story -- sorry, an incident which occurred on a
16 weekend where they had chemistry problems at the plant,
17 chemistry was out of specification in some systems.

18 Wilson found that he personally, as the site vice
19 president, had to come in to take charge of it because there
20 were no chemistry supervisors assigned for the weekend,
21 there were no chemistry supervisors or managers on call to
22 assist with the problem. He came in and found other
23 problems, like the technicians who were on duty were not
24 qualified to do the analyses necessary to recover from the
25 situation.

1 What he told me was that it wasn't until that
2 weekend that he realized how big a problem he had in
3 chemistry. That he'd been hearing all these different
4 reports he was getting, but it really hadn't all come
5 together for him yet that he really had a big problem in
6 chemistry, and it was subsequent to that thing that he had
7 made the decision to ask for Jocher to be sent out to -- to
8 Sequoyah. He -- this conversation I had...

9 Q Who's the "he" you're talking about now?

10 A Excuse me?

11 Q Who's the "he" that...

12 A That was Jack Wilson. He was the site vice
13 president at Sequoyah. We had this conversation in like May
14 of '92, which was about two months or so after the switch
15 had been made. But I had no involvement in or any knowledge
16 that the switch was going to happen.

17 Q And you never talked to Dan Keuter beforehand?
18 You were -- and Peterson to tell him, "Do not make that
19 switch. Do not send Fiser to corporate"?

20 MR. MARQUAND: Objection. Compound question. The
21 question -- first question was, "Did you have that
22 conversation?" he said, "Or Mr. Peterson." One or the
23 other, but...

24 MR. DAMBLY: Okay, forget Mr. Peterson. He'll be
25 here.

1 BY MR. DAMBLY:

2 Q Did you ever have a conversation with Mr. Keuter,
3 before the switch was made...

4 A No.

5 Q ...in which you said, "Don't transfer Fiser to
6 corporate"?

7 A No.

8 Q You made no recommendation, whatsoever?

9 A No. And as I just finished telling you, I didn't
10 even know the switch was being considered. So I would have
11 not even had any opportunity to discuss anything about it
12 with anybody.

13 Q Okay, referring to -- to the Staff Exhibit 80, Mr.
14 Keuter's statement to the IG, does that in any way refresh
15 your recollection as to any conversation you might have had
16 with him?

17 A No.

18 Q How often did you talk to Mr. Keuter in that time
19 period, '91 and '92?

20 A Not very often.

21 Q What was your relationship with Mr. Keuter? Did
22 he come before the NSRB?

23 A Mr. Keuter at one point became a member of the
24 NSRB, but I don't remember exactly what the date was. I
25 don't even remember exactly when Keuter came to work for

1 TVA. And I guess he obviously was there in 1992, but I
2 don't specifically remember when he got there. And my -- my
3 normal -- duties outside of NSRB were not anything that had
4 any routine interface with Mr. Keuter. So I did not have
5 routine discussions with him. I know at one point he was
6 added as an NSRB member, but I really don't remember when
7 that occurred.

8 Q Would you turn to Staff Exhibit 29.

9 JUDGE COLE: NRC Exhibit 29?

10 MR. DAMBLY: 29. It's the August 16th letter to
11 the Honorable James Sasser.

12 BY MR. DAMBLY:

13 Q First of all, Mr. McGrath, do you know who's the
14 Honorable James Sasser?

15 A At this period of time, I believe he was a senator
16 from the State of Tennessee.

17 JUDGE YOUNG: Pardon?

18 THE WITNESS: He was a senator from the State of
19 Tennessee at that time frame.

20 JUDGE YOUNG: Oh, senator.

21 BY MR. DAMBLY:

22 Q Have you ever seen this document before?

23 A The only time I've seen this document before,
24 first I saw it is when you handed it to me at the deposition
25 you took in November of -- of 2000.

1 Q That'd be 2001, I believe.

2 A 2000 -- yeah, 2001.

3 Q It only seems that long ago.

4 A Yes.

5 Q Now, on -- on Page 3 of that document, there's a
6 statement that there was identified to NSRB a material false
7 statement made to the NRC. Did anybody ever talk to you
8 about that issue?

9 A No. In all the time I had NSRB, no one ever
10 brought an issue up to NSRB about TVA having made a material
11 false statement. I'm rather positive of that, because that
12 would have been a very big issue to me which I would have
13 immediately raised to the chief nuclear officer and others
14 if such a thing was brought up.

15 Q And why would that be a very big issue?

16 A I feel that it is a significant regulatory issue,
17 and that it's a safety issue, as I understand the definition
18 of a material false statement, which would say that we had
19 deliberately made some sort of a false statement to mislead
20 NRC.

21 Q And did you understand it was also a criminal
22 issue, potentially?

23 A I'm not sure I knew that before you just said it,
24 that it potentially was. But whether it was or it wasn't,
25 to me it would be a significant issue.

1 Q All right. Did anyone -- now, you're saying you
2 haven't seen it. Did anybody discuss that such a letter
3 existed with you, before I talked to you at your deposition?

4 A No, no one had.

5 Q And nobody asked you any questions? You reviewed
6 the document back then about the issues raised in that
7 letter?

8 A That's right, no one asked me any questions about
9 it.

10 Q You had no interaction with TVA's IG in any
11 responses that were prepared?

12 A That's correct, I had no interaction with anyone
13 on it.

14 Q If you would turn to Staff Exhibit 30, which is a
15 September 9, 1993 document.

16 MR. MARQUAND: Your Honors, since we have
17 identified Staff Exhibit 29 and there has been questioning
18 about it, the witness has said he was never aware of it, and
19 it does go to a point in this case, which is the fact that
20 he was not aware of any claimed protected activity of Mr.
21 Fiser, we would tender NRC Staff Exhibit 29 into evidence at
22 this point.

23 JUDGE YOUNG: Any objection?

24 MR. DAMBLY: Well, personally I think it's a
25 little premature for them to tender during my examination.

1 But, nonetheless, I was planning on it, so I don't have an
2 objection.

3 CHAIRMAN BECHHOEFER: Okay, exhibit will be
4 admitted. I'm not sure as whose, but...

5 MR. DAMBLY: Well, hopefully it's...

6 CHAIRMAN BECHHOEFER: Staff exhibit.

7 MR. DAMBLY: ...Staff Exhibit 29, because it's in
8 our list.

9 (The documents referred to were
10 marked as Staff's Exhibit #29 and
11 received in evidence.)

12 MR. DAMBLY: Now, if you would go to Staff Exhibit
13 30. This is a September 9, '93, letter to the Honorable
14 James Sasser from William Hinshaw, II. Says, "Inspector
15 General."

16 BY MR. DAMBLY:

17 Q Now, at the bottom of the second page, under Mr.
18 Hinshaw's signature, there are some people named. Edward S.
19 Christenberry. Can you tell me who Edward S. Christenberry
20 was -- is?

21 A He was a former general counsel of TVA.

22 Q How about Craven Crowell?

23 A He was a former chairman of the board.

24 Q And Oliver Kingsley?

25 A He was the former chief nuclear officer.

1 Q At the time of -- this was in 1993. Was he the
2 CNO?

3 A Yes.

4 Q And in 1993, you had a direct reporting
5 relationship, through the NSRB, to Mr. Kingsley?

6 A Yes. If I could correct this, I got a little
7 mixed up in the time. At this time it says in here that Mr.
8 Kingsley was the president of the TVA generating group.
9 There was a period of time in there where TVA reorganized
10 both fossil power and nuclear power under Oliver Kingsley as
11 president of the generating group. At that time it was an
12 individual named Dan Nauman in there who became the chief
13 nuclear officer. And my reporting relationship would have
14 been to him in this time period where Kingsley was the
15 generating -- president of the generating group.

16 Q Okay. September 22nd, 1993. I think that's a
17 memo to W. C. McArthur from E. B. Ditto, II. First, could
18 you identify for us who E. B. Ditto is. I mean, do you
19 know? Other than reading his title there?

20 A Other than reading his title here, I...

21 Q Do you happen to know who M. R. Harding is?

22 A Mr. Harding did at one time -- he'd become the
23 manager of the concerns resolution staff. I don't know
24 exactly what...

25 Q Mr. McArthur was your subcommittee chairman for

1 chemistry at Sequoyah on the NSRB?

2 A The subcommittee chairman for like Sequoyah was
3 Tom Peterson, not Mr. McArthur. Mr. McArthur was a member
4 of the subcommittee, but he was not the chairman of the
5 subcommittee.

6 Q Oh. I thought earlier we had -- there were two
7 members?

8 A There were two members.

9 Q Peterson and McArthur?

10 A Correct.

11 Q Oh, maybe I was confused because I -- maybe it was
12 Mr. Marquand's opening where he said McArthur was the
13 chairman.

14 On the -- in the second paragraph of this memo
15 says, "The alleged issues are received in -- on September
16 21, 1993, from M. O. Medford in a letter from Sasser to the
17 inspector general. Who was M. O. Medford?

18 A Mark Medford was a vice president in nuclear
19 power. I don't recall exactly what his title was at that
20 time. He had several of the corporate support groups, and
21 nuclear assurance and licensing were most likely under him
22 in that time period.

23 Q Was he one of the people you either replaced or
24 worked for earlier?

25 A Yeah. In fact, in 1993 I was -- I forget in which

1 job title, but was in charge of one of the support groups
2 that worked for Medford at that time. However, Mr. McArthur
3 did not work for me at...

4 Q Excuse me?

5 A Mr. McArthur did not work for me; nor was he in
6 the same organization as I was.

7 Q Okay. I mean, at that point the only relation
8 between yourself and Dr. McArthur was on the NSRB?

9 A That's correct.

10 Q Okay, if you'd go to exhibit...

11 MR. MARQUAND: Is there a question about the
12 document, or are we just flashing documents in front of the
13 witness?

14 MR. DAMBLY: There will be.

15 BY MR. DAMBLY:

16 Q Can you go to Exhibit 32, which is another letter
17 dated, I guess, October 23, 1993, to Sasser from Hinshaw.
18 And the copies at the bottom are Carmichael -- can you --
19 Allen J. Carmichael. Can you identify him? Do you know?

20 A I think in that time he was involved in the
21 communications portion of TVA. I'm not positive, but I
22 think that's where he was.

23 Q Okay. Then we have Christenberry, Crowell, and
24 Kingsley.

25 Finally, if you'd look at Exhibit 33, which is the

1 final response that we've been given. Sasser -- this one's
2 from, I guess, a new inspector general, George T. Prosser.
3 And the cc's on that, do you know Ronald Loving?

4 A In that time frame, I believe that he was in
5 charge of our Washington office.

6 Q And Brent Marquand.

7 A He's right next to you.

8 Q So your testimony is that a letter which accused
9 the NSRB of a material false statement came into TVA, was
10 sent to everybody above you, people in -- on your
11 subcommittees, and nobody ever told you about it,
12 whatsoever?

13 A This letter did not accuse NSRB of a material
14 false statement. This letter of Senator Sasser's on Page 3
15 of your exhibit indicates that Mr. Jocher said he identified
16 to NSRB that a material false statement was made to NRC. It
17 does not say that NSRB made a material false statement. As
18 I'd previously answered, in the years I've been on NSRB no
19 one ever identified to us that TVA had made a material false
20 statement.

21 Q Okay. Then I'll change the question, if that's
22 your reading of the letter. Nobody, even though there was
23 an allegation that came in from Jocher, Fiser, and Matthews
24 that material false statements had been identified to you,
25 along with all the rest of these items on here, and it went

1 to Kingsley and Medford, who you reported to, it went to
2 McArthur, who was the subcommittee under you, and it went to
3 everybody in the general counsel's office, somehow you never
4 heard about the letter until November of 2001?

5 A That's correct. I was not involved in it. And
6 going to McArthur here was in -- as I read this, it was sent
7 to him in his line position, not due to his NSRB position.

8 JUDGE YOUNG: Pardon me?

9 THE WITNESS: It was -- it was sent to Mr.
10 McArthur in his line position. At that time, he was the
11 manager of technical programs and would have been over
12 corporate rad con and chemistry, and would have been the
13 logical person in corporate to send to for statements for a
14 review of concerns in the chemistry or radiological controls
15 area. So he...

16 JUDGE YOUNG: And you...

17 THE WITNESS: I'm sorry, Your Honor.

18 JUDGE YOUNG: ...you ended your sentence earlier
19 by saying, "not in his" what?

20 MR. DAMBLY: NSRB.

21 THE WITNESS: Not in -- he was not sent it in his
22 NSRB function

23 JUDGE YOUNG: Okay, NSRB capacity.

24 THE WITNESS: This is -- you know, this was not
25 answered by an NSRB subcommittee. He answered it as -- in

1 his line position. And that is correct; I was not involved
2 in this letter. No one told me of this letter.

3 BY MR. DAMBLY:

4 Q How often, in your experience, do letters come in
5 from senators to TVA?

6 A I don't know. I've not been in a job where I saw
7 how big that -- how much of that traffic there was.

8 Q Well, I said in your experience. How many have
9 you ever responded to, if any?

10 A I don't think I've responded to any.

11 Q Would you expect...

12 A I'm trying to remember in the time period I was on
13 Kingsley's staff whether there might have been something. I
14 -- I recall when I worked for naval reactors and did have a
15 job with doing it, that we used to get many, many letters
16 from Congress that were very simple questions and were --
17 were answered. But I have not been involved in answering
18 any significant letter from a congressman or a senator.

19 Q So, at least as far as you know,...

20 JUDGE YOUNG: Let me ask you...

21 Q ...when a -- when a letter comes in accusing TVA
22 of wrongdoing by three people and forwarded by a senator and
23 says, "I'd like a response," and it mentions the
24 organization you're chairman of as having been reported the
25 material false statement, that nobody would bring that to

1 your attention?

2 MR. MARQUAND: Objection; asked and answered.

3 A As I've answered, I knew...

4 MR. MARQUAND: Your Honors, I object to the
5 question. It's been asked and answered. It's
6 argumentative.

7 JUDGE YOUNG: We're not all clear, so go ahead and
8 answer.

9 BY THE WITNESS:

10 A As I guess I've told you a few -- I knew nothing
11 at all about this letter. Normally on items like this I --
12 I would suspect on one of this nature that it was primarily
13 -- and most of the letters that went back, it looked like it
14 was assigned to the inspector general for review. Why --
15 how the inspector general decides, in reviewing something,
16 as to -- to whom they will talk to, how they will pursue
17 that, I cannot speak to that.

18 Q Well, in your relation...

19 A I can just tell you on this one specific example,
20 that this particular letter was never brought to my
21 attention.

22 Q In your relationship with Kingsley, if there --
23 something came in indicating a problem with the NSRB or
24 something had been reported to the NSRB and he got a copy of
25 it, he wouldn't share that with you?

1 A In the -- in the case of an item like this one,
2 when Kingsley was briefed on it, he could have very well
3 have been briefed that this had been looked at and there was
4 no basis for the allegation, and therefore saw no reason to
5 carry it any further.

6 JUDGE YOUNG: Carry that further?

7 THE WITNESS: Carry that any further with me; yes.

8
9 JUDGE YOUNG: Could I ask a clarifying question at
10 this point, and any of you can answer. What does "SQN"
11 stand for?

12 MR. DAMBLY: Sequoyah.

13 THE WITNESS: Sequoyah.

14 MR. DAMBLY: Sequoyah Nuclear.

15 MR. MARQUAND: Your Honor, we -- we use a lot of
16 acronyms. And so we call our plants by different acronyms
17 and...

18 JUDGE YOUNG: Most of them I know. That one I
19 just didn't...

20 MR. MARQUAND: There are two other plants. One is
21 BFN. That's Browns Ferry. And the other is WBN, which is
22 Watts Bar. And you'll see both of those acronyms as well.

23 JUDGE YOUNG: Thanks. That gets me back on track.

24

25 BY MR. DAMBLY:

1 Q Would you expect to have heard, as chairman of the
2 NSRB, about allegations concerning the NSRB that were, again
3 -- these indicate not just that Mr. Kingsley was briefed,
4 but he received a copy, says with attachments. And Mr.
5 Christenberry.

6 A Based on my working relationship with Mr.
7 Kingsley, I feel confident he would have brought to my
8 attention something that he saw was a valid concern about
9 NSRB. I don't know whether even -- you know, to me it is
10 just speculation. Did he know this was in here? This is
11 one line buried in a multi-page -- seven-page letter. We're
12 speculating as to whether he picked it up when he read it,
13 if he noted the significance of it. I don't know. The only
14 thing that I can tell you is that he never discussed it with
15 me.

16 Q And at this time you were a direct report of
17 Medford's; is that correct?

18 A That's correct, I reported directly to Medford,
19 and continued to have a reporting relationship to the chief
20 nuclear officer, who at the time Kingsley was in this
21 position would have been Dan Nauman.

22 Q And Medford did not...

23 JUDGE YOUNG: Dan -- I couldn't hear you.

24 THE WITNESS: Dan Nauman.

25 Q Can you spell that?

1 A Yeah. I believe it was N-a-u-m-a-n.

2 Q Nauman. And Mark Medford didn't tell you about
3 this letter?

4 A That's correct. As I said to you, no one told me
5 about this letter.

6 Q Anybody from the IG's office or from the general
7 counsel's office ever ask you any questions responding to
8 any of the technical issues raised in this letter? Not --
9 not saying "this letter," but, "Please, we got something in.
10 Can you give us an answer?" or any question, whatsoever?

11 A No, I don't -- I do not -- I don't recall any
12 conversation of anyone asking me a question relating -- and
13 there's a lot of subjects in this letter. And -- and
14 definitely not a call from the inspector general or the
15 general counsel's office or something, asking me for
16 information on these matters.

17 MR. DAMBLY: I'm going to go into, next, the '96
18 reorg, and that could take us quite a while, if you want to
19 break now or run up -- I mean, I -- somewhere in the middle
20 of it or...

21 CHAIRMAN BECHHOEFER: More than 15 minutes or so?

22 MR. DAMBLY: Oh, I think it'll take more than 15
23 minutes to go through the '96 reorg. I think that's fair to
24 say.

25 JUDGE YOUNG: Would it...

1 MR. MARQUAND: We don't have any objection, given
2 the shortness of the...

3 JUDGE YOUNG: Hold on one second. Here's the
4 question. We don't know, but do you think that your
5 questioning of Mr. McGrath on the subjects that Mr. Dambly
6 just asked would take longer than 15 or 20 minutes?

7 MR. MARQUAND: Yes.

8 JUDGE YOUNG: Okay. So if you want to go ahead
9 with some introductory material on the reorganization, go
10 ahead, and -- and we'll just pick up from wherever we end up
11 at a quarter to 5:00 tomorrow.

12 MR. DAMBLY: Okay.

13 JUDGE COLE: Quarter till 5:00 tonight.

14 JUDGE YOUNG: I mean we'll pick up tomorrow where
15 we end up at a quarter till 5:00 today.

16 MR. DAMBLY: I'm glad to hear we're not starting
17 at a quarter till 5:00. Thank you, Judge. All right.

18 BY MR. DAMBLY:

19 Q In 1995, you assumed a position as acting manager
20 of nuclear operations; is that correct?

21 A I assumed the job of acting general manager of
22 operations support.

23 Q And was that job sort of double-encumbered at that
24 time, initially? If you know what I mean.

25 A No. Explain what you mean by "double-encumbered."

1 Q Well, who was the person you replaced?

2 A Don Moody. When I initially was assigned it, Don
3 Moody was quite ill with cancer. And he was not able to
4 come to work all the time. And as -- as his health
5 deteriorated over the next few months, the amount of time
6 that he was there got progressively less.

7 Q Okay.

8 JUDGE YOUNG: What was the last thing you said?

9 THE WITNESS: His name was Don Moody and he...

10 JUDGE YOUNG: Just the last couple of words.

11 THE WITNESS: Oh, the last couple of words. As
12 his health deteriorated, I believe he eventually died in
13 March of '96 from cancer. As his health deteriorated, the
14 amount of time he spent at work got progressively less
15 from...

16 JUDGE YOUNG: Progressively less. Thank you.

17 THE WITNESS: Right.

18 BY MR. DAMBLY:

19 Q Okay. And so during an initial transition period,
20 both you and he were there; he some days, and you all the
21 days?

22 A Yes, that's correct.

23 Q Okay. And when did he no longer come and you were
24 full-time acting?

25 A I don't recall exactly, but probably by about

1 January he was rarely there.

2 Q January of '96?

3 A Yes.

4 Q Okay. How did the reorganization that took place
5 in '96 come about?

6 A Back in the summer of '95, Kingsley had initiated
7 a relook at all of corporate nuclear. What we were
8 approaching at the time is we had restarted two Sequoyah
9 units and two Browns Ferry units, and were approaching the
10 startup of the Watts Bar plant.

11 Q Okay, now, hold one second. Kingsley was now back
12 to CNO?

13 A Yes.

14 Q Okay. He had gone to this other job for awhile
15 and returned?

16 A Right. TVA reorganized one more time in there and
17 split fossil and nuclear again, like they had been
18 previously.

19 Q Okay.

20 A And -- and he was now the chief nuclear officer
21 again. And he had initiated this review of all of corporate
22 because, one, we were moving out of restart, new
23 construction mode, into five operating reactors.
24 Additionally, in the time, there was a lot of effort going
25 on in the entire nuclear industry to improve the efficiency

1 of how nuclear did work. And in this time frame there were
2 efforts going on by NEI to benchmark best practices, and to
3 provide information to look at how do we get to a
4 organization (sic) that is both effective, but also can
5 competitive.

6 JUDGE YOUNG: Also what?

7 THE WITNESS: Also can be competitive.

8 JUDGE YOUNG: You're sort of trailing off at the
9 ends of your sentences. Maybe if you'd sit a little closer
10 to the microphone.

11 THE WITNESS: Sorry. I'll try to do better on
12 that.

13 JUDGE YOUNG: Thanks.

14 BY THE WITNESS:

15 A So Kingsley initiated some actions. There were --
16 there were other corporate organizations---engineering,
17 human resources---had all taken on those efforts. He had
18 initiated the same sort of effort in operations support.

19 In -- I believe it was in September, but the month
20 before I was assigned over there, the results of operations
21 support review was reviewed with him by a number of the
22 managers. I don't really know whether Moody was even --
23 whether his health permitted him to even attend that
24 meeting. But I knew that when Kingsley asked me to come and
25 take it -- take over the organization and run it while Moody

1 was ill, the first thing he told me was that he was
2 dissatisfied, the results had not -- he had many questions
3 related to the result. He was concerned about such things
4 as duplication of effort, corporation performing operations
5 in the corporate office that should be done at the sites,
6 corporate maintaining extra personnel just to provide staff
7 augmentation to the site were some of the kind of examples.

8 And he really asked me to get started looking at
9 that, because he felt with Moody's state of health, that he
10 would not be able to do it. So when I took over the
11 organization, after some time of getting a handle on what
12 everybody did for a couple of months, I started looking at
13 the organization and comparing it to information like NEI
14 was putting out, of what the similar organizations looked
15 like at good performing nuclear utilities. So I started
16 looking at that organization.

17 Now, the next step that came was the -- the fiscal
18 year '97 budget planning process. In that there was --
19 there was planning guidelines which were put out in a memo--
20 -it -- it was issued like the second week of March of 1996--
21 -that established goals for the next year. Those goals for
22 all corporate organizations---and I want to stress these
23 were high-level organizations, it was all of operations
24 support, for example, it was not the individual subgroups
25 within it---we were given a goal to reduce our budget that

1 year by a minimum of 17%.

2 There also were budget targets that ran out
3 through fiscal year 2001. But those further-out year ones
4 really -- they already fit into the first assignment I had
5 which said, "Hey, go look at what this organization should
6 look like." The expectation that I had from Kingsley was
7 that this organization be set up in the most efficient way
8 to support five operating plants as soon as we could
9 logically get to that configuration. It was not tied to out
10 year budget numbers, but it was, "We need to get there. Go
11 and start working on this."

12 JUDGE YOUNG: What was the end of that sentence?

13 THE WITNESS: "We need to get there. Go and start
14 working on this."

15 JUDGE YOUNG: Go and start working on this?

16 THE WITNESS: To work on the organization.

17 JUDGE YOUNG: Okay, thank you.

18 BY MR. DAMBLY:

19 Q Well, was the -- was the goal -- the overall goal
20 by the year fiscal 2001 to reduce by 40%?

21 A The budget numbers for 2001 was a reduction of
22 about 40%.

23 Q And you mentioned earlier you'd reviewed NEI and
24 the data on what -- what the corporate outfit looked like
25 for good performing plants?

1 A Yes.

2 Q Op support. What data did you review? What plant
3 data?

4 A In the time, NEI had some meetings that I recall
5 going to that -- where information was given. They were
6 just like presentations by various plants. In that
7 particular time period, one of the best performing nuclear
8 utilities, both from a regulatory perspective, INPO
9 performance ratings, and overall cost, was VEPCO. I
10 specifically recall that VEPCO had a...

11 JUDGE YOUNG: What's PEPCO again?

12 THE WITNESS: Well, VEPCO.

13 MR. DAMBLY: VEPCO.

14 THE WITNESS: Virgilia Electric Power. Virginia
15 Electric Power Company. They were another nuclear utility.
16 They had four nuclear plants, if I recall correctly.

17 BY THE WITNESS:

18 A And they had changed their organization to a --
19 one number I happen to recall now at the time is that the --
20 their rad con and chemistry organizations were like two
21 people in rad con and two people in chemistry. In the same
22 time frame, Florida Power and Light had drastically cut
23 their corporation -- corporate staff back from 300 people to
24 50 people. The general trend of the numbers that were
25 coming out in the nuclear power industry was to go to more

1 of the work being done at the sites, rather than a central
2 corporate location.

3 Q How did you go about deciding what organization
4 should have what numbers after the initial year, the 1996
5 reductions?

6 A I had a meeting with my direct reports and I gave
7 them some guidelines to...

8 JUDGE YOUNG: With your direct reports?

9 THE WITNESS: The managers who worked for me at
10 the time, the -- within operations support there were about
11 five functional organizations, such as...

12 JUDGE YOUNG: The managers who reported directly
13 to you?

14 THE WITNESS: The managers who reported to me;
15 yes.

16 BY THE WITNESS:

17 A And I gave them guidelines for what they needed to
18 go and look at. And certain criteria, such as corporate
19 should only be doing things if it's the most cost-effective
20 way to do it, or you have a unique technical requirement
21 that might say, well, we only want to have one of these. We
22 don't need these at every -- this expertise at each site.

23 There were a set of criteria I set for the people.
24 Now, and I also said what I wanted to do was set up that --
25 what should the organization look like. Don't worry about

1 exactly what year you're going to get there. What should be
2 our steady state organization?

3 Q Who were your direct reports?

4 A At that particular time...

5 Q At that point that you talked to?

6 A There was the manager of nuclear training. His
7 name was Larry Durham. There was a group called maintenance
8 and technical support which was headed up by a David
9 Goetcheus. There was the -- the corporate rad chem manager
10 job was vacant at the time, so I -- both Wilson McArthur,
11 who was the head of rad con, reported to me, and Ron Grover,
12 who was the head of chemistry.

13 Initially we had a performance assessment group.
14 I believe that manager's name was Tom Knight. And then, in
15 addition to that, I had a few miscellaneous small groups who
16 were one person or two persons in -- one was operations, one
17 was fire protection, and one was outage support. And each
18 of those groups was one or two people. And -- and one
19 projects manager who reported to me.

20 But I provided all the input to -- asked for their
21 input back to me. What I really told them was the guidance
22 that I wanted was to come up with what should be our long-
23 term steady state organization. What we need to do this
24 first year is to make the logical first step to get there.
25 That I really did not think in one year, just -- and we're

1 really talking here in one year that, you know, I'm starting
 2 an effort early in the year and I have about a month --
 3 month or two here to make a decision, that they'd be able to
 4 answer all the questions and do the transition of what it
 5 would take to get to the final end state. So the plan for
 6 FY '97 was to take the logical first step. Now, our budget
 7 guidance said that logical first step had to be a minimum --
 8 result in a minimum reduction of 17% in the budget.

9 Q Okay.

10 A And I asked those people to group together and
 11 bring the information back to me as to what they should do
 12 based upon functions related -- based on that functional
 13 guidance I gave them, and to come back to me with their
 14 recommendation.

15 Q And do you recall in this time period any
 16 discussions with the -- your direct reports about problems
 17 you were having with generic position descriptions?

18 A One of the criteria I had was not to use the
 19 generic position descriptions, that I felt we should have
 20 position descriptions that clearly identified the
 21 responsibilities of the position. Not just a flat -- the
 22 generic ones tended -- as I said, they were not that
 23 specific in it, specific position descriptions assist in
 24 achieving the accountability and making clear to the
 25 incumbent in the job what's expected of them.

1 Q Did you also convey to your direct reports that
2 you would like to take as big a cut as possible the first
3 year?

4 A I told them that what I wanted to do was to take
5 the logical first step.

6 Q Did you make any indication that you felt it was
7 better for employees if they found out initially everybody's
8 going, rather than so many a year?

9 A In the meeting I had with my direct reports, I
10 don't believe I told them that. That was my opinion, that
11 in doing a reorganization of this nature, that it is better
12 for the employees if you just make it clear what you're
13 doing, and getting on and do it. It also gave those
14 employees, given TVA's policy at the time, they would have
15 the opportunity to move into the service organization, and
16 one of those -- one of the things you could do in the
17 service organization is preparations to qualify for other
18 jobs in TVA. So it would also give them the best
19 opportunity, long term, to find another job within TVA.

20 Q Okay. So, and we've had this discussion before,
21 but you thought it was better to remove people up front,
22 rather than having people retain employment for a year or
23 two years, during which time they would still get benefits
24 and could be looking for a job? From a morale perspective.

25 A From a morale perspective, and also from a

1 business perspective. For the situation you're describing,
2 I'd be keeping a person for whom we did not have a
3 functional need. And in our -- the direction I had from Mr.
4 Kingsley to make the unit -- the organization as efficient
5 as possible and to be as competitive as possible, keeping
6 personnel just because I could have justified enough budget
7 to keep them would not have been consistent with his
8 direction.

9 Q Okay. So why didn't you take the whole cut the
10 first year?

11 A Because in a number of areas, when I looked at --
12 let's take the example of nuclear training. There were too
13 many open items in nuclear training. At the time, TVA was
14 starting up a corporate-wide training group called the TVA
15 University. A large portion of that was also coming up with
16 a company-wide computer program software, so that all
17 training data could be kept centrally within the company.
18 Nuclear had one, and there were isolated other pockets. Our
19 nuclear training group, one, was very involved in that
20 particular project. Until that project would finish, you
21 could not -- the need for that project would stretch out
22 about another year and then it would go away. It was a one-
23 time project, but you could not eliminate it now, because we
24 hadn't finished the project.

25 There also were open questions of the relative

1 functions of the corporate chemistry group, training group,
2 and that was still being developed, relative to the
3 corporate nuclear group, relative to the site nuclear
4 training organizations. And there were too many open issues
5 there in order to make the decision. That particular group
6 was not -- they were not reduced at that time, other than to
7 lose a vacant position. And losing the vacant position was
8 very -- clearly you didn't want to bring somebody into a
9 position that you might just turn around and eliminate a
10 short time later.

11 The following year, nuclear in 1997 time frame did
12 another -- a functional review of all of nuclear. It was
13 done a different way. It was made up of what was a pure
14 team of a lot of employees. The pure team ran from mid-
15 level managers down to secretary and -- secretaries and
16 first line engineers who looked at all the functions that
17 corporate was doing, they then went to the various
18 customers, who were primarily the sites, and said, "This is
19 what they're doing. Does this meet your needs? Is this
20 important to you or isn't it?" And based on that, came back
21 and recommended another reorganization.

22 That particular reorganization a year later, in
23 the case of nuclear training, totally eliminated the
24 corporate training group. That once we'd gotten through
25 this project, settled what TVA University was going to do,

1 concluded there was no need for nuclear to have a separate
2 corporate training group. That particular review then
3 concluded the organization that we had gone to in rad con
4 and chemistry was correct relative to the expectations of
5 the customers and their need.

6 JUDGE YOUNG: Of the customers what?

7 THE WITNESS: The customers and their needs.

8 JUDGE YOUNG: And their needs.

9 BY MR. DAMBLY:

10 Q The changes you made to rad con and chemistry in
11 '96 were -- I mean, they ultimately ended up that's the way
12 the organization stayed, as far as you know?

13 A That's correct.

14 Q Let me -- Book 7.

15 JUDGE COLE: Enclosure 2?

16 MR. DAMBLY: That's what the exhibit is; yes. At
17 the bottom it even has a Bate stamp number on it.

18 BY MR. DAMBLY:

19 Q Mr. McArthur, could you identify this document for
20 us, please.

21 MR. MARQUAND: This is Mr. McGrath.

22 Q I mean McGrath. I'm sorry. It's getting late.

23 A Well, I'm -- identify the document? No, I'm
24 really not sure what it is. It's not a document that I
25 prepared. I -- I know I have seen it, but I can't, per se,

1 identify it for you.

2 Q Okay. Well, to the best of -- well, let me ask
3 one question to it. Did you ever not -- end up not being
4 acting, but actually in the nuclear operations manager
5 position?

6 A No, I remained in it acting. And in the 1997
7 reorganization, which we talked about, that position was
8 eliminated.

9 Q Do the numbers reflected on this, which are head
10 count before and head count after the 1996 reorg for nuclear
11 operations, shows as acting GM, T. McGrath, are those
12 numbers accurate, best of your recollection?

13 A To be honest with you, I'm not sure, because it
14 has the organization split up differently than I set the
15 organization up. So I can't -- for example, I'll tell you
16 that performance assessment did not have 11 people. I think
17 the -- before I believe the...

18 JUDGE YOUNG: What assessment?

19 THE WITNESS: The last group called performance
20 assessment. This actually -- oh, okay. Now I'm reading --
21 I tell you what I'm reading, and let me read it to you back.

22

23 BY THE WITNESS:

24 A You notice this says at the top, "Nuclear
25 Operations."

1 Q Right.

2 A Now, my org -- the statement that said, "acting
3 general manager, T. McGrath," there is a little bit
4 misleading. I only had part of what's on this list under
5 here. The nuclear operations was the higher level
6 organization to which I reported. I had the operations
7 support organization. For example, the performance
8 assessment group that's there then was -- I'd mentioned
9 earlier performance assess -- there was a performance
10 assessment group within operations support. As part of this
11 reorganization, it was moved into another group, which was
12 process and methods improvements, and those two
13 organizations were combined, which resulted in this number
14 of 11. But I -- the numbers here look reasonable, but I
15 can't tell you that every one is exactly correct.

16 Q If you could have a quick look at Exhibit 130,
17 which is an organization chart from February of '95, it
18 looks like, which shows Don Moody -- Moody as the acting
19 general manager of operations support. Is that the
20 organization that you and...

21 A Excuse me, what -- what...

22 Q 130.

23 A 130?

24 Q Yeah. It's just a one-page organization chart.

25 A That -- that is the organization chart of the

1 radiological and chemistry control portion of the
2 organization. Don Moody had a much larger organization than
3 that.

4 Q He had a larger. With respect with -- back to
5 Staff Exhibit 128, the before and after head count.

6 JUDGE YOUNG: Is this -- are you getting close to
7 a stopping point?

8 MR. DAMBLY: This is as good as any. We can stop
9 right now.

10 JUDGE YOUNG: Okay. You sounded like you were
11 going to start on a new subject, so I thought -- we thought
12 maybe...

13 MR. DAMBLY: Well, this -- this is
appropriate. I have no problem.

14 JUDGE YOUNG: Okay, very good.

15 CHAIRMAN BECHHOEFER: When we -- we'll start again
16 -- we'll adjourn now and start again at 9:00 a.m. tomorrow
17 in this same room.

18 (Whereupon, the hearing was adjourned at 4:48
19 p.m., to resume at 9:00 a.m. on Wednesday, April
20 24, 2002.)

21
22
23
24
25

CERTIFICATE

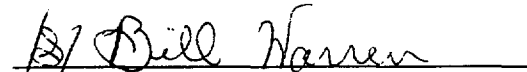
This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: Tennessee Valley Authority
Watts Bar Nuclear Plant,
Unit 1, Sequoyah Nuclear
Plant, Units 1 and 2, Brown
ferry Nuclear Plat, Units
1,2,3

Docket Number: 50-390-CivP;
ASLBP No. 01-791-01-CivP

Location: Chattanooga, Tennessee

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


Bill Warren
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealgross.com