

# Official Transcript of Proceedings

## NUCLEAR REGULATORY COMMISSION

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: Friday, April 26, 2002

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

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

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

Friday, April 26, 2002

The above entitled matter came on for hearing  
pursuant to Notice at 9:00 a.m.

BEFORE:

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

PAGES: 867 THROUGH 959

APPEARANCES OF COUNSEL:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas McGrath	--	872	883	919

<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Staff:		
107	--	955

P R O C E E D I N G S

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CHAIRMAN BECHHOEFER: Back on the record again.

Mr. McGrath is still on the stand and you're still under oath.

Whereupon,

THOMAS MCGRATH

RESUMED his status as a witness herein and, having been reminded of his oath, was examined and testified further as follows:

CHAIRMAN BECHHOEFER: Are there preliminary matters before we start?

MR. MARQUAND: Your Honor, at the end of the day, we were talking about whether or not -- or how to handle the NRC staff's responses to discovery. We are having prepared a document that specifically identifies -- a cut and paste of their answers to interrogatories and it's simply omitting certain of the interrogatories that aren't pertinent and we're just going to have included in that their interrogatory responses to particular interrogatories that we are going to offer into the record, and I think maybe the thing to do is wait until it's copied and brought over here and we'll let the staff look at those interrogatory responses as well as all the supplemental responses to those particular interrogatories and see if maybe that does not address their concerns and then we can proceed from there

1 and determine if they do still have any concerns about it or  
2 not. We can proceed with any arguments or rulings that  
3 might be necessary at that time with respect to that excised  
4 version of the interrogatory responses.

5 CHAIRMAN BECHHOEFER: Fine.

6 MR. DAMBLY: I don't have any problem, we'll be  
7 glad to wait and see. As I said yesterday, we supplemented  
8 -- we did check last night and no one has been able to  
9 determine any case law pertaining to staff interrogatories -  
10 - at least any NRC staff interrogatories.

11 CHAIRMAN BECHHOEFER: I personally am not aware of  
12 any.

13 MR. DAMBLY: I called back and had people look at  
14 it and no one is aware of the issue. But the major issue  
15 that we had and may still have is even if one reads the  
16 rules to say they could bring them in, they still have to  
17 come in as relevant to some material issue in this case and  
18 what the staff knew when is not an issue in this case. So  
19 unless there's a demonstration that they go to prove  
20 something about what Mr. McArthur or Mr. McGrath or any of  
21 the other people did -- the admissions we have no problem  
22 with.

23 MR. MARQUAND: We're not going to argue that right  
24 now since we're not proposing to put all of them in at this  
25 point. And when we have them here, we'll show them to Mr.

1 Dambly and if he's still got a problem with it, we can talk  
2 about how to address it then, if that's all right with Your  
3 Honor.

4 JUDGE YOUNG: If you don't get that done by the  
5 time we have to adjourn for today, then you can work on that  
6 over the weekend, it'll obviously be a long weekend.

7 MR. MARQUAND: By the way, what time are we going  
8 to --

9 CHAIRMAN BECHHOEFER: We're going until 12:00  
10 today and then we'll start again at 9:00 Tuesday.

11 MR. MARQUAND: Okay, that's fine.

12 Can I proceed now with Mr. McGrath?

13 CHAIRMAN BECHHOEFER: Yes, you may.

14 MR. MARQUAND: I just have a very few questions to  
15 ask him.

16 CROSS EXAMINATION (continued)

17 BY MR. MARQUAND:

18 Q Mr. McGrath, you've been here, this is the third  
19 day, and you understand that the staff has accused you in  
20 this particular matter of being one of the discriminating  
21 officials against Mr. Fiser; you understand that?

22 A Yes.

23 Q And did the staff also issue a Notice of Violation  
24 to you over the same issue?

25 A Yes.

1 Q Did you -- did you act with any animus towards Mr.  
2 Fiser in 1995 or '6 because of his raising safety concerns?

3 A No.

4 Q Would you explain -- do you agree with the Notice  
5 of Violation issued to you and the basis of the violation  
6 issued to TVA?

7 A No, I don't.

8 Q Could you explain?

9 MR. DAMBLY: I guess I would object to the NOV  
10 issued to him because it's not an issue in this case. If he  
11 wants to tell us why the NOV issued to TVA is wrong, he can  
12 do that.

13 MR. MARQUAND: I think we've already established  
14 that the basis for the NOV issued to him was the same as the  
15 basis issued to TVA and it accuses him in this case and I  
16 think he -- why he disagrees -- and he certainly has never  
17 been given an opportunity, which is his constitutional  
18 right, for a name clearing hearing. And I think his  
19 reaction to his Notice of Violation as well as the Notice of  
20 Violation issued to TVA is pertinent to this case.

21 CHAIRMAN BECHHOEFER: Has he challenged the NOV?

22 MR. MARQUAND: He can't, they have not given him -  
23 - under the Constitution, if they besmirch his character,  
24 he's entitled to a name clearing hearing. The regulations -  
25 - you heard Mr. Dambly say he wasn't entitled to a hearing.

1 JUDGE YOUNG: They never went forward with it.

2 CHAIRMAN BECHHOEFER: Oh, they never made it into  
3 a Notice of Civil Penalty or anything like that?

4 MR. MARQUAND: No, they just issued a release  
5 available to the entire industry that he was a harasser and  
6 a discriminator and has ruined his career in the nuclear  
7 industry but not given him a right to clear his name.

8 JUDGE YOUNG: We'll allow it.

9 CHAIRMAN BECHHOEFER: We will allow it.

10 MR. MARQUAND: Thank you, Your Honor.

11 THE WITNESS: Generally my reaction to the  
12 violation, considering my career in the nuclear power  
13 industry -- and I worked in nuclear power for about 30  
14 years. Almost all of that time, I have either on a full  
15 time or a part time basis been assigned jobs where my  
16 responsibility has been to go out and identify reactor  
17 safety issues or precursors to those issues so they could be  
18 corrected ahead of time.

19 I could probably bring here a stack of reports  
20 that wouldn't quite challenge the size of all the exhibits  
21 we have here, but pretty close to it, of the hundreds of  
22 issues that I have personally raised that appear to meet the  
23 criteria of being a protected activity. And before I came to  
24 TVA, my main job for the last eight years I was in the Naval  
25 reactors program was to do exactly the same kind of thing,

1 is to go out and look and identify reactor safety problems  
2 or precursors to those problems. So for years, that's been  
3 my job to do that. And in order to do that job, I certainly  
4 needed to work in an environment where people are able to  
5 raise those kinds of concerns themselves and identify those  
6 kind of problems.

7           When you get down to the specifics of chemistry  
8 issues at Sequoyah, one item in one of the NSRB minutes we  
9 talked about, if you look at the February 1992 minutes,  
10 pointed out that a number of the problems being identified  
11 there appear to be recurrences of the same issues that were  
12 raised on the Sequoyah operational readiness review team. I  
13 was part of that team. I'm really saying in those minutes  
14 these are the same kind of issues that that myself and  
15 others on the same team raised a couple of years ago,  
16 they're coming back again.

17           By my initial vote, this is all rather incredible  
18 that somebody would say that I would have animus against any  
19 individual for raising issues, even if I knew that  
20 individual did raise them. They're similar to issues that  
21 I've been raising myself for years prior to that time period  
22 and continued to raise for years afterwards.

23           When I read the NRC's violation, what concerns me  
24 is that the rationale behind the violation just keeps  
25 changing. I'm kind of under the impression that yes, it is

1   unfortunate that Mr. Fiser ended up without a job, but that  
2   was all done for a legitimate business reason and it just  
3   looks like we're trying to find someone to blame.  Initially  
4   I'm blamed because I was a culpable party in the 1993  
5   complaint.  Well, as we've discussed before, that is a  
6   completely false statement.  It concerns me, I have to  
7   assume that NRC would not deliberately make a false  
8   statement; therefore, I would assume that it was based on an  
9   incompetent evaluation.  But it appears we move on and just  
10  push that aside as being an administrative error, so the  
11  next time there's a violation, it says we can't prove you  
12  knew about it, but we assume you must have known about it.  
13  Well now that's not working, we change again.  It's coming  
14  up like this Sasser letter that was shown the other day.  
15  That first came up in November of 2001, that's 10 years  
16  after this thing first came up, that that comes up as a  
17  possibility.

18               I've got this feeling, and I don't know what the  
19  motive behind it is, they're looking for someone to blame, I  
20  happen to be in a position that's convenient to blame  
21  because I previously held a position where I had a lot of  
22  exposure to reactor safety issues.

23               Now it concerns me not only because of the fact  
24  that I have NRC, without basis, attacking my integrity; I  
25  also worry about what does that do to other people like on

1 safety review boards throughout the industry. Are you going  
2 to be set up now so that if you sat on a safety review board  
3 and you heard about a safety concern and somewhere years  
4 later as part of your normal line responsible you happen to  
5 take an action that would say impact whether or not an  
6 individual who happened to raise one of those safety  
7 concerns had a job. They're going to say well, hey, you  
8 heard about that safety concern five years ago, therefore,  
9 you must have done this because that person raised that  
10 concern.

11           This is not only a concern for myself, but do we  
12 set a precedent here that's going to end up saying if you  
13 ever become aware of a safety concern raised by an  
14 individual, even indirectly, not even necessarily knowing  
15 that person did it, but somehow they were involved in the  
16 area, that subsequently if you take some legitimate business  
17 action, you're going to be subject to a great deal of  
18 scrutiny and attack on your personal character and I think  
19 even receiving a violation that has no logical rationale  
20 behind it.

21           I mean we've gone far enough on this -- and I  
22 mentioned yesterday, when I first learned about the 1993  
23 complaint, it was my discussion with Human Resources that  
24 said hey, bring the Office of General Counsel in, bring the  
25 Labor Relations people in, we want to make sure we do this

1 correctly. Our Inspector General was investigating it.  
2 Even they made a totally incredulous argument that would say  
3 I'd wait five years and then I'd come in and under all this  
4 scrutiny that was ongoing in TVA at the time and likewise  
5 even more subsequently, would say yeah, but I have to do it  
6 right now. An analogy I think about is I've been waiting  
7 five yrs to come rob this bank and I was going to go pick  
8 the day to do it, I find out that day the FBI is going to be  
9 there testing out the security system and just to top it off  
10 I go tell the local police come and watch me that day and  
11 I'm still going to go try to pull off a bank robbery that  
12 day. That seems to be the kind of thing that I'm being  
13 accused of doing and I would contend that's just incredible  
14 that anyone would even try to do that, if they had any  
15 motive.

16 But really my feeling is I had no motive to take  
17 any action against any person based upon raising reactor  
18 safety concerns. Throughout my career, I've actually tried  
19 to encourage people to do that and have done it many times  
20 myself. It's not going to add anything to this for me to  
21 add hundreds of pages of documents that I issued raising  
22 reactor safety concerns.

23 I guess I've got to say I think I've been unfairly  
24 accused, I've had my integrity attacked without any logical  
25 basis.

1 MR. MARQUAND: Thank you, Mr. McGrath. You may  
2 question.

3 JUDGE YOUNG: Mr. McGrath, just to follow up on  
4 that, you're sort of giving your side of the story here.  
5 You said that you would never have any problem with someone  
6 raising safety issues, obviously there's a phenomenon that  
7 occurs from time to time where even though in an institution  
8 one might not mind safety issues being raised within the  
9 institution, going outside and reporting to an outsider is  
10 something that it's not unusual that that kind of thing  
11 might cause hard feelings. I heard a lot of personnel cases  
12 when I worked as an administrative law judge in Tennessee  
13 and from time to time these allegations came up. And so I  
14 just want to make sure that you have the opportunity to  
15 address that issue since that's the one we're being called  
16 upon to decide. Not so much the raising of the safety  
17 issue, but the retaliation against someone for making a  
18 complaint outside the institution.

19 THE WITNESS: Let me answer that first on the  
20 specific and the specific being in this case I was not aware  
21 that a complaint had been made by this individual outside  
22 the institution. But on the other hand, I don't see -- an  
23 individual having to go and feel they have to go outside to  
24 report it, to me is an indication of a weakness in the  
25 internal program, that a person has to do that. But I don't

1 really see a problem with that. Many of these reports we  
2 wrote, in addition to going to TVA management in the case of  
3 like these various operational readiness reviews before  
4 restart, we also reported all that information to the NRC.  
5 I mean we were doing this to show that we were doing these  
6 kinds of evaluations and providing them.

7           Many of the things that I raised myself, while not  
8 going outside in lieu of inside, went outside as well as  
9 inside. And I don't see that to be a problem. As I  
10 mentioned, the only problem I see with it is if we have a  
11 problem of a lot -- we get a number of instances of people  
12 feeling that's the only way they can get their concerns  
13 addressed, then that says we've got a problem internally  
14 we've got to fix. We have to do that. But that is not a  
15 problem with me at all.

16           CHAIRMAN BECHHOEFER: Would you have a problem  
17 with somebody going outside and raising the question but not  
18 going inside, not raising it inside?

19           THE WITNESS: No, I don't. My thought is that if  
20 somebody did that, they at least probably in their mind  
21 thought for some reason they would not be able to get it  
22 resolved inside. But no -- and in fact, I understand very  
23 much in this industry -- we talked yesterday about these  
24 policies and practices of TVA, I believe some of these tell  
25 employees they have the right to go to OSHA, other -- it's

1 not just nuclear.

2 CHAIRMAN BECHHOEFER: I understand that.

3 THE WITNESS: I understand that people may do  
4 that, they have the right to do that. I don't have any  
5 problem with people doing that. As I said, I still believe  
6 if a person feels that's the route they have to take, then  
7 we've got a problem internally as to why they couldn't raise  
8 it internally first. But I guess I just don't see that to  
9 be a problem.

10 BY MR. MARQUAND:

11 Q Mr. McGrath, that raises one question that I have  
12 for you and that is when you were involved in writing and  
13 having TVA adopt the principle on commitment to nuclear  
14 safety --

15 A Yes.

16 Q -- do you remember that testimony, that's TVA  
17 Exhibit 65.

18 A Yes.

19 Q Does that include any provision -- did you include  
20 any provision in there ensuring an employee's right to go  
21 outside TVA to raise issues?

22 A I believe those words are in there that make it  
23 clear that the employee does have the right to go outside to  
24 the NRC.

25 Q Let me direct your attention to it and ask you to

1 specifically show us the language that was included in this  
2 document, of which you were an author.

3 (The witness reviews a document.)

4 A Yes. In this particular document, and if I could  
5 read you the third paragraph, "TVA complies with applicable  
6 laws and regulations dealing with nuclear power and with  
7 environmental protection. TVA encourages employee awareness  
8 and the expression of safety concerns associated with the  
9 design, construction, operation, decommissioning of TVA  
10 nuclear facilities. TVA provides protective measures to  
11 ensure that employees may express concerns differing those  
12 without fear of recrimination or reprisal. This protection  
13 extends to any employee providing information to regulatory  
14 officials either voluntarily or as part of their official  
15 duty."

16 Q So as I understand your testimony, Mr. McGrath,  
17 it's not only your personal feeling, but you were  
18 instrumental in ensuring that that was a principle adopted  
19 by TVA.

20 A That's correct.

21 MR. MARQUAND: Thank you, Mr. McGrath.

22 CHAIRMAN BECHHOEFER: Mr. Dambly, you have an  
23 opportunity both for rebuttal and for cross examination of  
24 any matter. I'm not sure there's much difference but cross  
25 examination of new material that Mr. McGrath raised as part

1 of their direct case.

2 MR. DAMBLY: I have some. May I get a drink of  
3 water? Just one second.

4 CHAIRMAN BECHHOEFER: Yes.

5 (Brief pause.)

6 REDIRECT EXAMINATION

7 BY MR. DAMBLY:

8 Q Mr. McGrath, yesterday -- I think it was  
9 yesterday, could have been the day before yesterday, time is  
10 running together -- when you were discussing TVA's Exhibits  
11 65 and 66, you indicated that one of your concerns was -- I  
12 believe it was in TVA 66 -- was managers who discriminate  
13 could be subject to removal; is that correct?

14 A Yes, I stated that I knew that was a possible  
15 consequence of discrimination.

16 Q Do you know anybody at TVA that's been removed  
17 because of discrimination?

18 A I would not know that since TVA does not publicize  
19 disciplinary action taken with individuals.

20 Q Do you have any knowledge of any actions taken  
21 with respect to Mr. Bynum?

22 JUDGE YOUNG: Mr. who?

23 MR. DAMBLY: Bynum, B-y-n-u-m.

24 A I'm aware that NRC issued a violation, I believe  
25 they issued some sanctions against his being in nuclear

1 power for a certain period of time.

2 BY MR. DAMBLY:

3 Q Was he removed from TVA?

4 A Mr. Bynum is still in TVA.

5 Q Was he disciplined, do you know?

6 A I do not know.

7 Q You also indicated that the NSRB sometimes meets  
8 more than quarterly, do you recall that?

9 A Yes.

10 Q When you have a nonquarterly meeting are there  
11 minutes kept of those meetings?

12 A Yes, there are minutes issued of all meetings.

13 Q Let me direct you to, I think it's Joint Exhibit  
14 3.

15 (Brief pause.)

16 JUDGE YOUNG: November 20-21 minutes, is that what  
17 you're looking at?

18 MR. DAMBLY: Yes, Your Honor, I believe this is an  
19 excerpt of the minutes. I'd have to look to see where the  
20 full minutes are.

21 JUDGE YOUNG: Executive summary is what this says.

22 BY MR. DAMBLY:

23 Q You were the chairman of the NSRB at that time?

24 A I was at this time.

25 Q And the minutes were your responsibility?

1           A     Yes, that's correct.

2           Q     And this is the meeting that you think the  
3 conversation that Mr. Fiser and Dr. McArthur think happened  
4 in January, actually January of '92 took place during this  
5 meeting, is that correct?

6           A     That's correct.

7           Q     And you recall -- God knows when it is now,  
8 probably Tuesday when I asked you about whether or not the  
9 data trending was a big issue and showed you Dr. McArthur's  
10 DOL statement in which he said the big issue was data  
11 trending; do you recall that?

12          A     Yes, I recall that statement.

13          Q     And if you look at the minutes, Joint Exhibit 3, I  
14 guess the third paragraph down, "Discuss key items from the  
15 meeting", do you see those words?

16          A     Yes.

17          Q     And under site chemistry program, do you see that?

18          A     Yes.

19          Q     When you look under site chemistry program, you  
20 see "For example, required data trend analyses were not  
21 being performed." Then you see "Chemicals not being  
22 purchased." Training, procedural preparations and  
23 deficiencies." Do you see that?

24          A     Yes.

25          Q     Do you see PASS written in there anywhere?

1           A     PASS was a separate issue that was here in another  
2 part of the minutes, but --

3           Q     Not listed under key issues.

4           A     No, when we put this together, the key issue that  
5 I wanted to pass on, which I knew the Board of Directors  
6 would see, is that we had overall problems with the site  
7 chemistry program.

8           Q     And you see unmonitored pathway release listed as  
9 a key issue.

10          A     That is addressed elsewhere in the minutes.

11          Q     And these are your minutes and you said those were  
12 the two big issues in site chemistry, during your testimony,  
13 did you not?

14          A     I said those were the two big issues in the  
15 meeting in which we talked about them. And I'd like to note  
16 I believe even in the description that Mr. Fiser put in his  
17 1996 DOL complaint indicated that most of the discussion on  
18 trending occurred before I ever came to that meeting.

19          Q     It made it as a key issue in your minutes, didn't  
20 it?

21          A     It made it -- the key issue here is the first  
22 sentence that says "There are many problems in the chemistry  
23 program which if uncorrected could impact plant chemistry  
24 control." The executive summary gave a few examples. There  
25 are more examples back further in the minutes. If you even

1 go back -- if you look at the next page, you'll see the base  
2 minutes, that the same paragraph adds a few more examples  
3 and if you get back into the subcommittee minutes, there are  
4 even more examples. In here, my intention in writing  
5 something like this is to get the point across that there  
6 were a number of findings that were indicative of problems  
7 in the overall program, and giving a few examples. It was  
8 not intended in this executive summary to discuss at length  
9 what any of those examples were.

10 Q You were free to choose what you considered  
11 appropriate examples to put as key issues, were you not?

12 A The key issue was that the problems that existed  
13 were indicative that if we did not start doing something  
14 about them, we were going to have real chemistry problems in  
15 the plant. The examples that were listed I didn't consider,  
16 in writing this, to be particularly important.

17 Q So why did you put them under key issues?

18 A The key issue was that the aggregation of problems  
19 was indicative that we needed to take action to prevent  
20 there being problems in the plant, not that any one of those  
21 problems is, in and of itself, going to create chemistry  
22 problems in the plant.

23 Q And I think you told us that there was no action  
24 item on data trending, is that correct?

25 A There was no action item for data trending, but

1 there was an action item to cover the entire issue of site  
2 chemistry program, which is assigned on the next page.

3 CHAIRMAN BECHHOEFER: Mr. McGrath, did you say you  
4 were the chairman of the NSRB at that time?

5 THE WITNESS: Yes, I would.

6 CHAIRMAN BECHHOEFER: How can the meeting start  
7 before the chairman gets there?

8 THE WITNESS: Oh, the meeting which I was  
9 referring to was the subcommittee's meeting.

10 CHAIRMAN BECHHOEFER: I see.

11 THE WITNESS: The subcommittee meeting in Mr.  
12 Fiser's office, they did their work separate from me, I just  
13 occasionally would join them for awhile.

14 CHAIRMAN BECHHOEFER: I see, okay.

15 (Brief pause.)

16 BY MR. DAMBLY:

17 Q Do you recall how long the PASS issues remained  
18 open

19 A I believe they remained opened for approximately a  
20 year.

21 Q And was that unusual, for an item to remain open  
22 that long?

23 A For an action item to remain open that long, in  
24 some cases they stayed open because we elected to leave them  
25 open to follow the corrective actions. It was unusual for

1 one to stay open that long because no action had been taken  
2 to even address the problem.

3 Q And I believe you testified in response to --  
4 actually it could have been in response to a question by the  
5 Board, but we have excerpts in Joint Exhibit 3, but we have  
6 the whole documents. The excerpts go to the chemistry  
7 issues.

8 A Yes.

9 Q The full documents indicate a wide range of  
10 problems at Sequoyah back in that period of time.

11 A That is correct.

12 Q Nothing unusual about the chemistry program versus  
13 any of the other programs.

14 A The chemistry program was one of several areas  
15 that had problems at Sequoyah. And as reflected in the  
16 minutes, I think we mentioned yesterday the fact that it was  
17 the May '92 meeting that was attended by Mr. Kingsley  
18 specifically for the purpose of getting an overall  
19 assessment from the NSRB of those problems, resulting in his  
20 directing the site to come up with a comprehensive  
21 corrective action plan to address the overall performance  
22 problems at Sequoyah.

23 Q And part of the problems in the chemistry program  
24 had to do with failing to follow procedures, isn't that  
25 correct?

1           A     I think so.

2           Q     I think in TVA 48, which we can supply if you'd  
3 like, it says INPO raised procedural violation issue; we've  
4 gone through that?

5           A     Yes.

6           Q     So procedures in the chemistry program were an  
7 issue back in '91 and '92, failure to follow procedures,  
8 there was a concern with procedural violations?

9           A     Yes, there were examples of procedural violations.

10          Q     And you also, I think have stated probably  
11 numerous times over the last several days that the initial  
12 issue concerning the ability to comply with PASS  
13 requirements was raised by Mr. Peterson, is that correct?

14          A     Yes, that's correct.

15          Q     Do you recall a dispute between Mr. Jocher and  
16 Fiser with Jack Wilson concerning how one measured the three  
17 hour time frame in which the sample had to be taken?

18                JUDGE YOUNG: The sample had to be what?

19                MR. DAMBLY: Taken.

20                THE WITNESS: Taken.

21                JUDGE YOUNG: Taken.

22          A     No, I don't. Subsequently in all the paperwork on  
23 this, I read about that, but that particular issue of when  
24 you started the three hours was not brought to the NSRB's  
25 attention. I assume that was something they resolved

1 internally at Sequoyah.

2 BY MR. DAMBLY:

3 Q From reviewing the papers, did you find that Mr.  
4 Fiser and Jocher were right or whether Mr. Wilson was right?

5 A No.

6 Q With regard to the data trending question, in the  
7 first place, trending refers more than to a single data  
8 point, is that correct?

9 A That's correct.

10 Q You don't draw a trend from one point of data.

11 A By definition, you can't.

12 Q And the use of data trending is to predict future  
13 potential problems, is that correct?

14 A Well, that's a rather -- that's an over-  
15 simplification of it, data trending has a lot of features to  
16 it. You could look for a trend that say chemical  
17 concentrations are moving towards a limit. It might be  
18 useful in going back to see whether you had certain problems  
19 in the past. Having the data and trending it and analyzing  
20 it, not just creating charts, but actually how you analyze  
21 it -- and I believe some of the detailed parts of these  
22 minutes indicate that there were questions as to how well  
23 they were being analyzed -- can provide you a lot of useful  
24 technical information. Yes, some looking ahead, some  
25 looking back to help you resolve problems.

1           Q     But the day-to-day operation of the plant, for  
2     example over the weekends, if some chemistry parameter got  
3     outside spec, that would not be something that you'd look  
4     for as a trending issue, that'd be something that would be  
5     dealt with by the operators at that point.

6           A     If it went out of specification, that is correct,  
7     that would not be a trending issue at that time.

8           Q     Now Mr. Marquand asked you a question on  
9     apparently Mr. Fiser's statement that they couldn't do the  
10    study over the weekends and all, that that was an  
11    administrative issue I guess indicating they didn't want to  
12    work weekends. Did it matter whether for trending purposes,  
13    data was collected over the weekend and plotted on Monday?

14          A     That would depend on specific information.

15          Q     Well, if you are doing trending on one data point  
16    and there's two data points maybe.

17          A     You would not be looking at two data points. If I  
18    may give you an example, since I have familiarity with the  
19    specific types of graphs. When I was in the Navy nuclear  
20    program, in their chemistry area, there were certain  
21    parameters that the trending and the plotting was done on a  
22    longer term basis. There were other parameters that were  
23    considered quite key to the operation where those things  
24    were entered into the trend plots and most times in the  
25    submarines they were hand kept within immediately after

1 taking and analyzing the samples, because it was important  
2 to look to see - that would give you the opportunity that  
3 perhaps you would see on Saturday morning that the  
4 concentration was going in a direction different from  
5 Friday, which would tell you if you didn't take some action  
6 before Monday, you'd be out of spec. The purpose of looking  
7 at the trending is to prevent you from going out of  
8 specification. So for certain parameters, it may be quite  
9 important that you trend it each time you do an analysis.

10 JUDGE COLE: That would be a more short-term  
11 operation.

12 THE WITNESS: That'd be for more short-term  
13 operation, but to look at am I drifting out here in a few  
14 days. Trending has both long-term and short-term uses.

15 BY MR. DAMBLY:

16 Q So you're saying the trends that were being kept,  
17 the trending data, by the Sequoyah chemistry environment,  
18 was such, you're aware it was something that had to be  
19 plotted every day.

20 A You are asking me in general can you wait over  
21 weekends on trending. I do not know exactly what parameters  
22 they were trending.

23 Q Well, do you know if historically they had plotted  
24 the data on weekends and there was a change in that  
25 practice?

1           A     I do not know.

2           Q     I believe you also indicated in response to -- it  
3 could have been a Board question -- but in terms of problems  
4 with Sequoyah chemistry in the '91-'92 time frame, you're  
5 unable to say whether the problem was a result of the  
6 chemistry program manager, higher up people, lack of  
7 budgeting from even higher than that. You don't know what  
8 would have led to any of the problems personally. But  
9 first, did you say that yesterday or the day before?

10          A     In answer to your question, what I said is we  
11 raised issued with the management of the chemistry program.  
12 It was the responsibility of the site management to look  
13 into and find the cause of those problems and to make a  
14 determination on the decision. There were clear indications  
15 that the chemistry program was being poorly managed. That  
16 may have been solely in response to problems and weakness of  
17 the chemistry manager, there may have been other things that  
18 contributed to it. That would be something the site  
19 management had to go and look into and determine what the  
20 proper corrective action was.

21          Q     And isn't it true that over a number of years one  
22 of the issues that was brought to NSRB's attention and I  
23 think it's in the INPO report, is that the budget for the  
24 chemistry upgrade program was cut every year at Sequoyah?

25          A     NSRB did not raise an issue on the budget being

1 cut. I believe one of the reports which is referenced  
2 through all these, which was actually done by a different  
3 review group, referred to the budgets. What was an issue is  
4 that there was a program that was so enormous in its size  
5 and not well phased out as to be requesting an amount of  
6 money that was unrealistic to either obtain, probably even  
7 spend in one year.

8 Q I assume you mean efficiently. I haven't run into  
9 an amount of money I couldn't spend in one year.

10 A Could they spend efficiently, but as I say the  
11 ability to spend it -- the bureaucracy of buying things and  
12 doing design changes in a nuclear plant are such that to  
13 implement -- and at this time, I believe they were asking  
14 for \$30 million -- i'd be hard just to get through the  
15 paperwork to spend it.

16 JUDGE COLE: Exactly who was asking for \$30  
17 million, sir?

18 THE WITNESS: I believe the \$30 million was the  
19 money being requested for a chemistry improvement plan.  
20 That's my recollection right now that that's roughly what  
21 that number was.

22 JUDGE COLE: At Sequoyah?

23 THE WITNESS: At Sequoyah.

24 BY MR. DAMBLY:

25 Q Yesterday, you were asked by Mr. Marquand, when

1 you first learned about the '93 DOL complaint.

2 A Yes, he asked me that.

3 Q And do you recall responding the first time you  
4 knew was "when NRC sent me the violation enforcement  
5 conference letter in September of 1999"?

6 A No, I believe that was the answer to the question  
7 of when did I first see it. I first knew of it in June of  
8 1996, after Mr. Fiser went to Human Resources and raised a  
9 concern that if we posted those positions, it would violate  
10 the settlement agreement to the DOL complaint. At that  
11 time, I knew there was a complaint, I did not see the  
12 complaint, I did not know the substance of it. All I was  
13 told at the time is that it involved Sequoyah, not  
14 corporate. That was the extent of the information that I  
15 was given about it. I did not see the document until  
16 September 1999, because when it was then cited in the  
17 violation, I requested and was given access to the document  
18 because at that time I did then have a legitimate need to  
19 have access to that document.

20 Q So when you testified "I was not aware of the case  
21 until NRC sent me the violation enforcement conference  
22 letter in September of '99", that wasn't true. You meant to  
23 say you did not see the complaint?

24 A I did not see the complaint until September 1999.  
25 I knew there was a complaint beginning in June of 1996.

1 Q And in point of fact, you were specifically  
2 involved in the 1996 complaint.

3 A Yes, I was involved in the 1996 complaint.

4 Q And at no time during your involvement did General  
5 Counsel staff or anybody else provide you with specifics  
6 about the '93 complaint?

7 A That's correct, they did not.

8 JUDGE YOUNG: That is correct, what?

9 THE WITNESS: That is correct, they did not show  
10 me any of the specifics from the 1993 complaint.

11 JUDGE YOUNG: Okay.

12 BY MR. DAMBLY:

13 Q I believe you also testified yesterday that DOL  
14 information -- in fact you said earlier this morning -- was  
15 held very close at TVA.

16 A That's correct.

17 Q And only those with a need to know are provided  
18 the information.

19 A That's correct.

20 Q Did Mr. Corey have a need to know before the SRB  
21 about Mr. Fiser's DOL activity?

22 A No.

23 Q I'd like to talk to you about the McArthur  
24 situation back in '96 when he was put into the rad chem  
25 manager position without competition. Remember discussing

1 that yesterday?

2 A Yes.

3 Q Mr. Marquand showed you Staff Exhibit 4 and I'd  
4 like to show you Staff Exhibit 4 also.

5 (A document was proffered to the witness.)

6 MR. MARQUAND: Excuse me. What exhibit number are  
7 we looking at?

8 MR. DAMBLY: Staff Exhibit Number 4, Mr. Boyles'  
9 DOL interview from 1997.

10 (The witness reviews a document.)

11 BY MR. DAMBLY:

12 Q Now I would ask you to look at the bottom of the  
13 first page of that exhibit and the top of the second page  
14 where Mr. Boyles said, "We went back to 1990 and '94  
15 position descriptions and compared those positions with --

16 MR. MARQUAND: I'll object to reading somebody  
17 else's statement into the record. I used it to refresh his  
18 recollection, I didn't read it into the record. I don't  
19 know how you can cross examine on somebody else's statement.  
20 You can't cross examine him on somebody else's statement.  
21 He can read it and if he wants to refresh his recollection  
22 about something, ask him to read it and then ask him if it  
23 refreshes his recollection. If it doesn't, he can't put it  
24 in the record.

25 MR. DAMBLY: I believe that he was allowed to read

1 from it after it supposedly refreshed his recollection  
2 yesterday.

3 MR. MARQUAND: I showed it to him --

4 JUDGE YOUNG: You did use it yesterday.

5 MR. MARQUAND: I used it to refresh his  
6 recollection. I pulled it away from him before I asked him,  
7 I didn't read it directly.

8 JUDGE YOUNG: Have you got it, Mr. McGrath, in  
9 front of you?

10 THE WITNESS: Yes, I do.

11 JUDGE YOUNG: Just point him to the part and --

12 MR. DAMBLY: I'm not asking him -- I'm asking him  
13 whether or not Mr. Boyles made these statements that are in  
14 there to him.

15 BY MR. DAMBLY:

16 Q Is that correct, when he told you his rationale  
17 back in '96 for why Dr. McArthur could be noncompetitively  
18 placed in the position?

19 A There's nothing in this report that states exactly  
20 what Mr. Boyles said to me. This report says he conferred  
21 with me. As I said yesterday, he told me that because of  
22 McArthur's prior position, he had the rights to that  
23 position. As we explained at some length yesterday, I  
24 understood later I was incorrect in my assumption that I  
25 assumed that was the case because of the timing of the

1 changes in the positions before. As I explained at some  
2 length, that was something that had been explained to me  
3 previously by another human resource officer or manager,  
4 Naomi Lindsey. When Mr. Boyles came and told me this was the  
5 decision that had been approved by Ms. Lindsey, I assumed  
6 that it was for the reason that she had told me a couple of  
7 years before. There's nothing in here that says exactly  
8 what Mr. Boyles said to me.

9 Q Well, it does say that in 1997, Mr. Boyles looked  
10 at a 1994 position description issued to Mr. -- Dr. McArthur  
11 as the rad com manager, chemistry manager? See the '94 PD?

12 A Yes.

13 Q Is that consistent with what he told you and the  
14 position you represented to NRC in your enforcement  
15 conference?

16 A I don't understand the question.

17 Q Did you not, during the enforcement conference and  
18 what your testimony was the other day, indicate you were  
19 told that the reason Dr. McArthur -- you later learned the  
20 reason he had to be put in there was because his position  
21 description of record was his 1990 PD for technical program  
22 manager?

23 A I -- as I said yesterday, I subsequently learned  
24 that was the reason. At the time in 1996, I assumed that it  
25 was for a different reason. And I subsequently found that

1 my assumption was incorrect.

2 Q Do you see now that at least in '97, there was a  
3 '94 position description?

4 MR. MARQUAND: Objection. Now he's trying to  
5 impeach the witness' testimony with someone else's hearsay  
6 statement. That's inappropriate. He can bring that witness  
7 in, who is scheduled to come in and testify, and ask him  
8 those questions. But to ask him if he now believes that he  
9 was wrong or does he believe he was incorrect based on  
10 somebody else's hearsay statement is inappropriate and we  
11 object.

12 CHAIRMAN BECHHOEFER: I think it is.

13 JUDGE YOUNG: I think that given the fact that  
14 we're taking Mr. McGrath out of order, a little leeway is in  
15 order, so I think we would overrule the objection.

16 BY MR. DAMBLY:

17 Q Let me ask it this way -- in 1996 when Mr. Boyles  
18 advised you, did he tell you that he looked at both the 1990  
19 and the 1994 positions?

20 A I do not recall Mr. Boyles mentioning to me dates  
21 of position descriptions when he told me that conclusion.

22 Q I believe also when I asked you -- God knows  
23 whether it was Tuesday or Wednesday -- about Dr. McArthur's  
24 former position as technical program manager and you said  
25 you remembered that position and you thought it was the same

1 position that was recreated and Mr. Sorrell went into; do  
2 you recall that?

3 A Yes, I said that my opinion is they were very  
4 similar positions.

5 Q And I asked you about the security function that  
6 Dr. McArthur had and you told me you thought it was four or  
7 five people, do you recall that?

8 A Yes.

9 Q Would it surprise you to know that Dr. McArthur  
10 told us in his deposition that there were 400 security  
11 people reporting to him in that position?

12 A When you asked me the question yesterday, I read  
13 the paragraph in his position description. That paragraph  
14 that I read, as I read it, indicated that he was responsible  
15 for the corporate program staff, that's the basis on which I  
16 answered that question.

17 Q I thought you answered the question based on your  
18 knowledge, you thought the positions were virtually the  
19 same.

20 A You're asking me two different questions.

21 MR. MARQUAND: Objection, asked and answered. He  
22 already said what the basis of his answer was. Now you're  
23 saying in our view, we thought -- what Dambly thought the  
24 question was.

25 JUDGE YOUNG: I need clarification. He's not out

1 of line, I don't think.

2 BY MR. DAMBLY:

3 Q When you answered the question I asked you and you  
4 talked to me -- in fact, we went through all the statements  
5 where you said they were the same, you understood them to be  
6 virtually identical -- well, what was the basis on which you  
7 made those statements?

8 A My basis at that time was my understanding of what  
9 Mr. McArthur was doing. If all the security officers at the  
10 sites worked for Mr. McArthur at some period of time there,  
11 I did not know that.

12 Q Okay. Would it also surprise you to know,  
13 according to his deposition, he had 140 additional people  
14 besides the security people under him?

15 A I do not recall what the size of those  
16 organizations were in that time frame.

17 Q How many people reported to Mr. Sorrell when he  
18 was the rad chem manager?

19 A It was probably between 30 and 40.

20 Q And he didn't have the security function, is that  
21 right?

22 JUDGE YOUNG: And he did not have the security  
23 function?

24 MR. DAMBLY: Did not have the security function.

25 A That's correct.

1 BY MR. DAMBLY:

2 Q Do you think a position managing 540 people -- in  
3 fact, after the reorg, how many people did Dr. McArthur have  
4 under him as the rad chem manager?

5 A It was 20, 22 -- 22 or so.

6 Q So something that's roughly five percent of his  
7 former staff. You think those positions were  
8 interchangeable and identical and had essentially the same  
9 functions.

10 A You asked me on what basis did I make that  
11 particular decision in 1996 or had that impression that they  
12 were very similar positions. My impression was based on my  
13 understanding of what his positions had been. I did not  
14 understand that he had working for him all the security  
15 people. In earlier days, the same laboratory that was still  
16 under him was larger at the time. I didn't know what the  
17 number of people was. The real factor of my belief that  
18 they were similar to each other was a basis in my decision.  
19 My decision was to refer it to HR. So my decision was I  
20 thought they were similar positions, so I referred it to HR  
21 for disposition. HR made the decision that they were indeed  
22 similar positions. That final decision was not made by me,  
23 it was made by Human Resources.

24 JUDGE YOUNG: Did you address any indication of  
25 what you wanted to occur to Human Resources or what your

1 preference would be or what direction you'd like to go in?

2 THE WITNESS: No, I did not.

3 BY MR. DAMBLY:

4 Q Again, I think you told us that your understanding  
5 from an earlier event -- and I don't recall which employee  
6 it dealt with, might have been Mr. Goetcheus -- that you  
7 were told by Mr. Boyles you don't go back and review a  
8 person's employment history to determine whether they have  
9 rights because they held the job at some point earlier; is  
10 that correct?

11 A What I had nothing to do with -- I'm not sure what  
12 you mean by the employee's employment history. I had  
13 commented to him that, as in the case of Mr. Goetcheus --

14 JUDGE COLE: Mr. who, sir?

15 THE WITNESS: Mr. Goetcheus, the steam generator  
16 manager. As I told you the other day, I questioned why we  
17 needed to post that. As I said, my main concern was there  
18 was only one qualified person in the company, why go through  
19 all this administrative effort, and I also said to him at  
20 the same time, and isn't this the same position he  
21 previously held some number of years ago, I don't know how  
22 many years ago. I knew he was in that position when he  
23 worked for me in 1989. I didn't know what had happened in  
24 between.

25 Human Resources told me what position he held back

1 then was not relevant to the current decision, what was  
2 relevant was the position he was in at that time, which was  
3 the manager of maintenance and technical support.

4 BY MR. DAMBLY:

5 Q And if Mr. Boyles' statement to DOL was correct,  
6 that there was a '90 position and a '94 position, then by  
7 that same line of reasoning, the '90 position would be  
8 irrelevant to the decision, is that correct?

9 A Mr. Boyles' statement here is -- he did not say he  
10 looked at a 1994 position description for Wilson McArthur.  
11 He said he looked at a 1994 position description for the rad  
12 con chemistry manager. That was not Mr. McArthur's position  
13 description.

14 Q Okay. And if Mr. McArthur had a rad con position  
15 description, would it be appropriate to look at an earlier  
16 time?

17 A No, by the rules, it would not have been. At the  
18 enforcement conference and the subsequent information that I  
19 received from Human Resources, the basis of which is that  
20 there was not a position description for the rad con manager  
21 position that Mr. McArthur had taken responsibility for in  
22 1994.

23 Q Go to TVA 62 and the file folder and whatever it  
24 was.

25 (Brief pause.)

1 Q Now in this document that was put in yesterday, do  
2 you recall telling me on I think it was Tuesday, it could  
3 have been Wednesday, that one reason you didn't have to  
4 comply with that business process requirement to post all  
5 vacancies was because there was no vacancy?

6 A What position are you talking about?

7 Q The rad chem manager position.

8 A Rad chem. Yes, that's correct. Once HR had made  
9 the decision that Mr. McArthur should rightfully be in that  
10 position, then there was no vacancy.

11 Q Well, he wasn't in it, was he?

12 A At that particular time, it was just a matter of  
13 time to put him in the position.

14 Q If you'd look at page BI-159, please in your --  
15 whatever it was you filed in the reorg, TVA Exhibit 62.

16 MR. MARQUAND: And what number under that?

17 JUDGE YOUNG: 159.

18 MR. DAMBLY: BI-159.

19 BY MR. DAMBLY:

20 Q At the top of that page, the box labeled rad chem  
21 manager, PG senior, does it have the word vacant in it?

22 A Yes, it does. Now this was a document -- this is  
23 not an official Human Resources document. This is a  
24 document that was probably prepared by someone in the chem  
25 rad con areas and it was probably also prepared prior to

1 this question coming up.

2 Q And if you turn to page 160, does it have a  
3 similar chart with rad chem manager position as vacant?

4 A Yes, these two documents were prepared together,  
5 they are not Human Resources documents and I believe in the  
6 sequence of things these documents were prepared prior to  
7 the question coming up about Mr. McArthur's rights to the  
8 position and the evaluation by Human Resources.

9 Q As far as you knew in the planning process, that  
10 position was vacant.

11 A Yes, we originally -- throughout the planning  
12 process until the time this question came up, we were  
13 proceeding on the basis -- you may recall this, that the  
14 initial report I got back from Human Resources said that was  
15 a position that had to be posted and we were going to post  
16 it. It wasn't until after the decision was made that said  
17 that needed to be posted that Mr. McArthur raised his  
18 question.

19 Q Now also with regard to Exhibit 62, TVA Exhibit  
20 62, yesterday Mr. Marquand asked you a question about is  
21 there anything in there that specifically mentions or  
22 singles out Mr. Fiser; do you recall that?

23 A Yes.

24 Q And your answer was?

25 A No, I don't know of anything in here.

1 Q And this was your file, is that correct?

2 A Yes.

3 Q And you're the one that decided what went in that  
4 file, is that correct?

5 A Yes, I threw pieces of paper in there.

6 Q And so assuming for the moment that you would have  
7 been dumb enough to write down on a piece of paper we're  
8 going to use this to get Mr. Fiser, do you think you would  
9 have put it in the file that you produced to the NRC? Does  
10 it surprise you you don't have anything in this file that  
11 says that?

12 A Are you asking me to speculate on what I might  
13 write if I tried to discriminate against a person?

14 Q I'm asking you if you had written something, would  
15 you stick it in this file and give it to the NRC.

16 A I had no intention or took any effort to  
17 discriminate against Mr. Fiser.

18 Q That wasn't the question.

19 A How can I answer a speculative question that says  
20 if you were really trying to discriminate against him, would  
21 you have produced a document to say that and what would you  
22 have done with the document.

23 Q Well, you had no problem telling Mr. Marquand that  
24 this shows that this has nothing to do with Mr. Fiser  
25 because there's no document in there. Would you have put

1 one in there if it did?

2 MR. MARQUAND: Objection, asked and answered. He  
3 already said --

4 MR. DAMBLY: He hasn't answered that question.

5 MR. MARQUAND: -- how could you speculate about  
6 something like that.

7 CHAIRMAN BECHHOEFER: I think it's slightly  
8 different. I think it's a slightly different emphasis. You  
9 may answer.

10 THE WITNESS: Judge, may I ask you a question?  
11 This sounds to be have you stopped beating your wife  
12 questions.

13 CHAIRMAN BECHHOEFER: Well, have you?

14 (Laughter.)

15 CHAIRMAN BECHHOEFER: I was just kidding.

16 THE WITNESS: In order to answer it, I would have  
17 to speculate that I was trying to discriminate against Mr.  
18 Fiser, and I was not. So how can I speculate on what I  
19 would have done if I was trying to discriminate against Mr.  
20 Fiser?

21 MR. MARQUAND: Your Honor, I think the answer is  
22 he can't answer the question.

23 JUDGE YOUNG: I think the point is made in asking  
24 the question, you can move on.

25 MR. MARQUAND: I guess that means it can't be

1 answered, your point is made in the question. And the  
2 question is argumentative and should be stricken from the  
3 record.

4 JUDGE YOUNG: If it's argument, we'll consider it  
5 to be argument and no more and obviously a question is not  
6 evidence, but the point that Mr. Dambly is trying to make is  
7 clear. What conclusion can be drawn from that point is  
8 something that we will withhold for our final decision.

9 MR. MARQUAND: Thank you, Your Honor.

10 JUDGE YOUNG: And that's what I meant to imply  
11 earlier.

12 BY MR. DAMBLY:

13 Q In the reorg, you decided you only needed two  
14 chemistry positions after the '96 reorg -- or in the '96  
15 reorg, corporate chemistry positions?

16 A In the '96 reorganization, the final  
17 reorganization, which wasn't just mine, we concluded we only  
18 needed two chemistry positions.

19 Q And if you only needed two chemistry positions,  
20 why did Mr. Reynolds offer Mr. Fiser a chemistry position?

21 A I don't know.

22 JUDGE YOUNG: Why did or did not?

23 MR. DAMBLY: Why did he?

24 JUDGE YOUNG: I'm sorry, I still don't have the  
25 question.

1 BY MR. DAMBLY:

2 Q Why did Mr. Reynolds offer Mr. Fiser a third  
3 chemistry position, if you know?

4 A I do not know.

5 Q We were talking about the McArthur selection --  
6 maybe Brent has succeeded in infecting me, I'm not sure --  
7 you mentioned that even if the job had been posted, you  
8 didn't even know that Mr. Grover would be qualified for a  
9 position because to your knowledge he had no background  
10 other than chemistry, is that correct?

11 A What I said to you yesterday was because his  
12 background was -- that his background was managing two  
13 corporate chemistry organizations, one at TVA and one at  
14 another utility, and he did not have the site experience and  
15 there was a line in there that said one of the requirements  
16 was that the person be capable of filling in and performing  
17 the duties of a site rad con manager, which is running what  
18 was probably about a 100 person operational organization at  
19 a site. And it said he may not have been qualified, had we  
20 gone through a full selection process, it would have  
21 evaluated whether or not he was qualified, but just on the  
22 face, there were questions as to whether he was qualified.

23 Q Do you know what Mr. Grover did in the Navy?

24 A He was a rad con assistant on board the  
25 Enterprise, that's a very -- in his line, that's a very

1 junior position which probably supervised a few people.

2 Q Do you know in point of fact -- and Mr. Grover  
3 went to the Naval Academy, correct?

4 A Going to the Naval Academy is a fine university  
5 and academic degree, it has not very much bearing probably  
6 over 15 years later on his ability to manage a fairly large  
7 organization. I'm very familiar with the Enterprise because  
8 while I was at Puget Sound Naval Shipyard, it was in there  
9 for a three-year overhaul and I spent many, many hours  
10 working on the Enterprise.

11 Q Do you know whether or not he was in fact in  
12 charge of the radiological control and chemistry group for  
13 the Enterprise for three and a half years?

14 A I do not know exactly what his position was on  
15 board the Enterprise.

16 Q You mentioned, I think it was yesterday, that you  
17 thought Mr. Kent's advice to McArthur that he shouldn't be  
18 involved in the SRB process was good advice; do you recall  
19 that?

20 A Yes.

21 Q Do you think -- if Dr. McArthur was involved in  
22 the '93 complaint and apparently was at issue in the '96  
23 complaint, do you think it made a difference whether he was  
24 in the SRB as long as he was the selecting official?

25 A I believe you asked about two different things.

1 The first one was Mr. Kent's position, which I believe I  
2 understand from his subsequent statements was intended that  
3 he was worried about perhaps an appearance issue if Mr.  
4 McArthur was to actually ask questions during this. That  
5 was Mr. Kent's impression, that that could be a problem. It  
6 really was not an issue because Mr. McArthur had not  
7 intended to ask any questions.

8           Relative to Mr. McArthur being the selecting  
9 official, as Mr. McArthur and I and Human Resources were  
10 working very closely together to try and ensure that we kept  
11 this a very fair process, that we followed all the rules, I  
12 had no question at all in my mind of the fairness of Mr.  
13 McArthur, and I knew that he was not influenced by the fact  
14 that Mr. Fiser had submitted a DOL complaint.

15           Q     So you had no concern about appearance?

16           A     I had no concern about Mr. McArthur's ability to  
17 be fair.

18           Q     Then to the extent you thought Mr. Kent's advice  
19 from Mr. Kent's perspective on appearance, would it make a  
20 difference whether he asked the questions or was just the  
21 one that wrote the questions?

22           A     You know, I can't tell you why Mr. Kent thought  
23 what he thought. I guess you'll have to ask him. Mr.  
24 McArthur writing the questions, again, number one, as I told  
25 you, I felt Mr. McArthur was being completely fair in the

1 process. Number two, the way Mr. McArthur elected to do it,  
2 he wrote many more questions than were necessary and allowed  
3 the board to select the ones that they would use. So the  
4 final set of questions that were used were selected by the  
5 board members and not by Mr. McArthur. In fact, the board  
6 members added an additional question.

7 Q Do you know what that question was?

8 A I can't tell you exactly what it was, I knew in  
9 some of the testimony along there I read something about it,  
10 but I don't remember.

11 Q Do you know who added it?

12 A No.

13 Q You don't know Mr. Kent is the one that added it?

14 A No, I don't.

15 MR. DAMBLY: Can we take five minutes?

16 JUDGE YOUNG: Yes.

17 CHAIRMAN BECHHOEFER: Yes.

18 (A short recess was taken.)

19 MR. DAMBLY: Just a few more questions and  
20 hopefully you can go off to wherever it is you need to go  
21 off to. And I wish I was joining you.

22 JUDGE COLE: Could you speak up a little bit, Mr.  
23 Dambly, I can't hear you.

24 MR. DAMBLY: You didn't want to hear that anyway.

25 (Laughter.)

1 BY MR. DAMBLY:

2 Q You spent some time yesterday with Mr. Marquand  
3 going over various NRC documents that indicated involvement  
4 or knowledge or staff imputed knowledge of the '93 events  
5 and complaint to you; do you remember that?

6 A Yes.

7 Q And amongst those was I guess it's TVA Exhibit 51,  
8 being the '95 OI report. He asked you to look through that  
9 and tell him where in there was there anything mentioning  
10 you or any evidence developed by them concerning you in the  
11 '93 time frame; do you recall that?

12 A I don't recall him specifically asking me to go  
13 through that report, I recall the two of you getting into  
14 some discussion on it.

15 Q That would be fair. In point of fact, in that  
16 report, if you consider all the exhibits, the Keuter  
17 interview is in there, is it not?

18 A I don't know. The two of you were talking about  
19 the exhibits back there.

20 Q Well, if the Keuter TVA OIG interview is part of  
21 the '95 NRC OI investigative report and exhibits, do you  
22 know what's in the Keuter statement?

23 A Yes, I've seen that statement.

24 Q And that does mention you?

25 A Mr. Keuter's statement mentions me, not with

1 regard to that DOL complaint. If I may make a statement  
2 about Mr. Keuter's statement there, we've talked sometime  
3 about when does NSRB meet. Mr. Keuter has a statement in  
4 there that says Tom Peterson and Tom McGrath objected to Mr.  
5 Fiser being transferred to the corporate chemistry position.  
6 As I've discussed, I have no involvement in that decision,  
7 that decision to remove him from Sequoyah was made by the  
8 site vice president at Sequoyah. I have no idea what kind  
9 of discussions that site vice president had with Mr. Keuter  
10 about putting him there. That decision was made subsequent  
11 to the February NSRB meeting, I believe it was made sometime  
12 in March. It was made prior -- it had already been  
13 implemented prior to the May NSRB meeting. Mr. Peterson was  
14 not even at TVA during that time period, so I really don't  
15 know how he could have told Mr. Keuter, as Mr. Keuter  
16 implies, as part of the decision-making process that he  
17 didn't think that was a good idea. So I very much question  
18 the accuracy of Mr. Keuter's statement there.

19 Q Okay. Now you also testified that it would make  
20 no sense whatsoever for you to wait in the weeds I guess for  
21 five years or whatever it was to get even with Mr. Fiser, is  
22 that correct?

23 A Yes, I said that assuming that I wanted to do  
24 something, which I did not want -- had no reason to do nor  
25 wanted to do.

1           Q     And I know you disagree with this, but McArthur  
2 will be here and Mr. Fiser -- in point of fact, you came out  
3 of a meeting in either November of '91 or January of '92 and  
4 made a statement to McArthur that Mr. Fiser had to go.  
5 Would that constitute some activity on your part at that  
6 point in time?

7           MR. MARQUAND: That calls for a legal conclusion  
8 and some speculation about what happened. Certainly this  
9 witness hasn't testified he came and said that.

10           CHAIRMAN BECHHOEFER: I don't believe he's asking  
11 for a legal conclusion, he's asking whether certain  
12 circumstances would make you react in a particular way.

13 BY MR. DAMBLY;

14           Q     Did you have direct authority over anyone for that  
15 matter, I guess in '91-'92, other than maybe your secretary  
16 on the NSRB?

17           A     In that time frame, I did have another corporate  
18 staff that did work such as contracts, materials, other  
19 items like that, so I did have a staff that was unrelated to  
20 NSRB activities.

21           Q     Did you have any authority over Mr. Fiser?

22           A     No, I did not.

23           Q     So would it have been possible for you to take an  
24 action personally against Mr. Fiser in 1992-'93?

25           A     No, I could not have.

1 Q But you could recommend actions to other people.

2 JUDGE YOUNG: You could recommend actions what,  
3 what was the last word?

4 MR. DAMBLY: Make recommend -- recommend actions  
5 to other people.

6 JUDGE YOUNG: To others.

7 A Just repeat the question to make sure I understand  
8 what you're asking.

9 BY MR. DAMBLY:

10 Q I said back in the '92-'93 time frame while you  
11 had no direct authority over Mr. Fiser, you had the ability  
12 to make recommendations to others as to what should happen  
13 to Mr. Fiser.

14 A I guess I could have made such a recommendation, I  
15 did not make a recommendation as to what should be done with  
16 Mr. Fiser. As I mentioned, NSRB was pointing out problems  
17 with the management in the chemistry department but we were  
18 not making recommendations as to what should be done with  
19 specific individuals.

20 MR. DAMBLY: I have no further questions at this  
21 time.

22 RE CROSS EXAMINATION

23 BY MR. MARQUAND:

24 Q Mr. McGrath, I just have one or two questions.  
25 With respect to counsel's inquiry about the questions that

1 the selection review board used, do you recall he asked you  
2 whether or not you knew that Mr. Kent added a question. Do  
3 you know now whether or not if the selection review board  
4 had totally disregarded the question that Mr. Kent used and  
5 disregarded the scores of the candidates on that question,  
6 whether that would have affected the rankings of the  
7 candidates who were interviewed for the PWR program manager  
8 job?

9 MR. DAMBLY: I guess I would object unless there's  
10 a foundation laid for how he would know anything.

11 MR. MARQUAND: I don't think I'm required to ask  
12 him the foundation. I didn't ask him what that was, I asked  
13 him if he knew if it would affect it.

14 JUDGE YOUNG: Do you know?

15 THE WITNESS: Yes.

16 During our preparations for the enforcement  
17 conference, it was a review of how the scoring had gone in  
18 the selection review board. I remember that that review  
19 covered that each of the three members on all questions, Mr.  
20 Fiser got the lowest grade on each individual question. So  
21 deleting any one question from the exam would not have  
22 impacted the final result.

23 BY MR. MARQUAND;

24 Q Counsel asked also about whether the questions  
25 were slanted towards secondary chemistry versus primary

1 chemistry, which supposedly was Mr. Fiser's strength. If  
2 the questions had been deleted regarding secondary chemistry  
3 and only the other questions scored, would that have  
4 affected the relative rankings of the candidates for the  
5 job?

6 A On the same basis, if he got the lowest score on  
7 every question, deleting any question from it would not have  
8 affected the relative ranking.

9 CHAIRMAN BECHHOEFER: One clarification. Are you  
10 talking about lowest total score? The result, the score on  
11 a particular question relevant to a person's expertise may  
12 well be different than whatever the total -- the average is.

13 THE WITNESS: Your Honor, it does not make a  
14 difference if you got the lowest score on every question.  
15 If he did not receive the lowest one on every question --

16 CHAIRMAN BECHHOEFER: Oh, he got everything --  
17 okay.

18 THE WITNESS: On every question, he got the lowest  
19 score, so deleting any one question or any group of  
20 questions would not change the relative ranking.

21 CHAIRMAN BECHHOEFER: I see, thank you.

22 JUDGE YOUNG: Let me clarify something. Were you  
23 saying he got the lowest score on every question, are you  
24 talking about the lowest average score of the three  
25 interviewers?

1 THE WITNESS: No, the lowest score from each  
2 interviewer.

3 JUDGE YOUNG: In other words, all of the  
4 interviewers gave him the lowest score on every single  
5 question.

6 THE WITNESS: Yes, that is my understanding.

7 MR. MARQUAND: No further questions.

8 JUDGE YOUNG: Do you have any comment, Mr. Dambly?  
9 Go ahead.

10 MR. DAMBLY: If you eliminated all the secondary  
11 chemistry questions that were asked of him, there would be  
12 no technical questions left asked by that board, would  
13 there?

14 THE WITNESS: I don't know, I don't know what all  
15 the questions were.

16 MR. DAMBLY: So you didn't review the questions  
17 and the answers?

18 THE WITNESS: No, I did not.

19 MR. DAMBLY: You're just telling us basically if  
20 you eliminated any answer, it wouldn't have made any  
21 difference.

22 THE WITNESS: That's correct, I've just seen a  
23 mathematical statistical analysis of the results, I did not  
24 review the questions or the answers to the questions.

25 MR. DAMBLY: Do you know what criteria was applied

1 by individual board members in giving somebody a score  
2 between 1 and 10 on any one of the questions?

3 THE WITNESS: No, I cannot speak to what  
4 individual board members would have done.

5 MR. DAMBLY: Do you know if there was any  
6 objective criteria at all applied to scoring by the board  
7 members?

8 THE WITNESS: I don't know.

9 MR. DAMBLY: Is it normal to set up prior to an  
10 SRB meeting, a board meeting, a ranking criteria for if you  
11 say X on this question, that's a 10, Y is a 5, Z is a zero?  
12 Or is it totally subjective scoring by board members?

13 THE WITNESS: The boards that I have sat on, which  
14 have not been technical boards, have not set a specific  
15 criteria. There have been some discussions on some of them  
16 by board members ahead of time of perhaps an agreement that  
17 knowledge of some particular aspect of something was  
18 particularly important in answering a question. But the  
19 normal way the board is run -- the question is asked by the  
20 same person each time, to make sure it gets asked the same  
21 way of each candidate, so it's not a different question  
22 every time it's asked, which helps to get consistent rating.  
23 But I don't know what they did on this board.

24 MR. DAMBLY: Well, one of the questions asked was  
25 tell me your strengths. What's a good answer to tell me

1 your strengths? And another one was tell me your  
2 weaknesses. How do you grade that between 1 and 10?

3 MR. MARQUAND: Your Honor, I'm going to object.  
4 There's no evidence this witness was involved with the  
5 selection review board, that he was involved in selecting  
6 questions, that he was involved in rating the answers. He  
7 said I don't know how they did it. What does this add, how  
8 is this helpful to the decisions that he's alleged to have  
9 made in a discriminatory fashion?

10 MR. DAMBLY: Again, he started asking about it,  
11 went back and looked at all the stuff. I want to know what  
12 he looked at and how he would have judged that or whether it  
13 was fair and objective.

14 JUDGE YOUNG: What was your question again?

15 MR. DAMBLY: I said what would be a good answer to  
16 either tell me what your strengths are or tell me what your  
17 weaknesses are. And how would you objectively grade that.

18 CHAIRMAN BECHHOEFER: You may respond.

19 THE WITNESS: I do not know what all of the  
20 questions were and know in context what questions followed  
21 them or were ahead of them. That is a -- I have seen that  
22 as a fairly common question relative to a given job, what  
23 may or may not be a good answer on that depends on what job  
24 you're looking for. If I can give you a for example, if on  
25 a clerical job, someone was to note that their weakness was

1 using word processing programs, that may be a serious  
2 weakness. So exactly what you're being asked for, how you  
3 would rate a given answer is very dependent upon the  
4 individual job, how it fits in with the other questions that  
5 you've had on the board. So I really just can't answer that  
6 in a hypothetical way.

7 MR. DAMBLY: Well, let me ask you this, if one of  
8 the panel members indicated that basically he scored Mr.  
9 Fiser on all of the questions based on his demeanor, would  
10 that be an appropriate response?

11 THE WITNESS: Did a board member indicate that?

12 MR. DAMBLY: I asked you the question, would you  
13 answer my question?

14 THE WITNESS: I can't answer that question.

15 MR. DAMBLY: Well, is it appropriate? When you  
16 sat on boards, would you just -- no matter what the  
17 question, depending on whether you're rocking back in your  
18 chair or whatever at this point, you'd decide that's a 5?

19 THE WITNESS: I don't think it's a realistic  
20 question to say that someone would make a rating based on  
21 that. What I'm kind of concerned about is you could ask me  
22 next whether they could make the rating whether it's raining  
23 or not that day? I don't --

24 MR. DAMBLY: Would you be surprised if it that  
25 would have been the case? That's not the question I asked.

1           THE WITNESS: The board is convened to score the  
2 individuals based on their answers to the question on the  
3 board. We put people on the board who we feel are qualified  
4 to properly evaluate the answers to those questions. We  
5 would not put someone on the board who we felt was -- had  
6 such little knowledge of the subject areas that they would  
7 feel compelled to start making ratings on some sort of  
8 arbitrary basis.

9           MR. DAMBLY: Let me ask a final question. If in  
10 point of fact, Mr. Fiser's PD -- as you are well aware, Mr.  
11 Fiser, at the time of this was performing -- almost 100  
12 percent of his duties were chemistry and they were all in  
13 the PWR area. If Mr. Fiser's position description had been,  
14 as required by TVA's RIF regulations, an up to date,  
15 accurate PD, it in point of fact would have been the PD that  
16 was posted, would it not?

17           MR. MARQUAND: Objection. That's way beyond the  
18 scope of my recross and I think we are just continuing to  
19 beat things over the head. Counsel could have gone into  
20 this long ago but elected not to.

21           MR. DAMBLY: This goes into the whole issue that  
22 he raised about the relative scoring. My question is if  
23 he'd have done this, we wouldn't have had any scoring if Mr.  
24 Fiser's PD was up to date and accurate, you would have had  
25 to follow the reduction in force regulations, would you not?

1 MR. MARQUAND: That's way beyond the scope.

2 CHAIRMAN BECHHOEFER: I think it's sufficiently  
3 related. You may answer.

4 THE WITNESS: I have no reason to believe that Mr.  
5 Fiser's PD was not accurate. Remember, we discussed these  
6 were very generic PDs, they covered any kind of chemistry  
7 work. So the fact that he -- well, if it's fact. I did not  
8 know how much of his time he was spending on which item, I'm  
9 not sure that the PD designates how much time they spend on  
10 each of the various items. The fact that something is -- if  
11 I had 10 things listed on a PD does not mean you spend 10  
12 percent of your time on each of them.

13 MR. DAMBLY: I couldn't agree more.

14 JUDGE YOUNG: You answered that you don't know  
15 what he was doing enough to answer the question.

16 THE WITNESS: Yes, I don't know what he was doing  
17 on a day-to-day basis.

18 MR. DAMBLY: But you do know if the position had  
19 not been posted, but it had been a position subject to  
20 reduction in force procedures, Mr. Fiser had seniority.

21 THE WITNESS: After the fact, I saw sometime well  
22 down the line a listing of seniority and saw that he was  
23 first on the list. I did not know that at the time nor did  
24 I ask about it.

25 MR. DAMBLY: Thank you.

1           CHAIRMAN BECHHOEFER: I believe the board has a  
2 few questions.

3           JUDGE COLE: Just a couple of questions, Mr.  
4 McGrath.

5           You used the term SCAR, S-C-A-R, what does that  
6 acronym mean, sir?

7           THE WITNESS: It means significant corrective  
8 action report.

9           JUDGE COLE: Thank you.  
10           How are items brought before the NSRB for their  
11 consideration?

12           THE WITNESS: There were several ways. The  
13 simplest one, a tech spec change is required to come to us.  
14 Other items, when we put together -- really NSRB put  
15 together their own agenda, the subject matter that was  
16 looked at -- as I said, I had a support staff, the support  
17 staff was, on an ongoing basis, reviewing various documents  
18 being generated from the sites or the nuclear industry to  
19 come up with potential subject matter. In addition to that,  
20 by the tech specs, there were certain group of documents;  
21 for example, quality assurance audits, LERs, that had to be  
22 submitted to the members for review.

23           In looking at those, one thing, we would get back  
24 input from individual members. For example, a member might  
25 say I want to review this LER in more detail at the next

1 meeting.

2 JUDGE COLE: A member of the NSRB?

3 THE WITNESS: A member of the NSRB. In some  
4 cases, one of my staff people in reviewing the particular  
5 LER may think it's worthwhile and suggest it be put on. So  
6 it could come from the staff, it could come from NSRB  
7 members. At times, we got suggestions from even like the  
8 site vice president who would want us to look into something  
9 while we were out there.

10 And based on those various kinds of input, we  
11 would put together an agenda, whether we would have a  
12 subcommittee look into it or whether we would want some sort  
13 of presentation and discussion at the full board meeting  
14 depended on what the item was.

15 JUDGE COLE: Okay, so this is then similar to the  
16 advisory committee on reactor safeguards, if you're familiar  
17 with that.

18 THE WITNESS: I'm familiar with what they are, I  
19 don't know how they generate their agenda.

20 JUDGE COLE: What fraction of the items on your  
21 agenda are automatically handled by the NSRB and what  
22 portion of them are generated by you and your colleagues?

23 THE WITNESS: Only a very small part was  
24 automatic. The two automatic ones were any tech spec  
25 changes, which in the line of a given meeting has ranged

1 anywhere from zero to seven or eight. So certain meetings  
2 it was a large percentage of the agenda. And there always  
3 were a couple of generic items put on each one, like a  
4 report from the site vice president of his assessment of how  
5 things were going on the site. Most of -- so I would really  
6 say that overall about 90 percent of the agenda was  
7 generated through the input from NSRB members, the staff or  
8 others.

9 JUDGE COLE: All right, sir. Now with respect to  
10 situations and problems, items discussed by the NSRB, you  
11 then come forth with a report, possible recommendations.  
12 How does the site respond to those recommendations by the  
13 NSRB? For example, with respect to chemistry problems, does  
14 that chemistry group then get a chance to come back to the  
15 NSRB and say well, you didn't get it quite right because  
16 this and this and this are so, this is the case. How do  
17 they respond, if they do respond.

18 THE WITNESS: And I'd say they varied. Let me  
19 cover a couple of different ways. Each board had somewhat  
20 of their own character, depending on the people who were  
21 involved, but number one is when the issue -- before  
22 something could become an action item, it has to be  
23 discussed at the full board meeting. At the full board  
24 meeting, you would always have the site vice president and a  
25 few of his key managers.

1           When the issue came up, before we made it an  
2 action item, there would be times when they would discuss it  
3 then and they would say -- you know, question whether we got  
4 it right. And we didn't always get it right.

5           One of the things that I bowed to over time, it  
6 was later than 1991, but on each of the subcommittees, we  
7 added to the subcommittee a manager from the site. Not the  
8 manager over the functional area they were looking at, for  
9 example, the site engineering manager might be on the site  
10 operation's subcommittee. One very useful thing they  
11 provided to the subcommittees was not missing the point  
12 because they hadn't gotten the whole story. They looked at  
13 one little thing, they generally were senior enough to know  
14 what was going on on site, so they could point out to the  
15 subcommittee, wait, there's something more going on here,  
16 you need to go look at that. So that was worked into it.

17           Now once an item got to the point of being an  
18 action item, the site could provide a written response.  
19 That was the most normal way to do it.

20           JUDGE COLE: By the vice president or his  
21 appointee?

22           THE WITNESS: Right, and it would be discussed at  
23 the full board meeting. In some cases, the specific action  
24 item was assigned to a subcommittee, the subcommittee would  
25 look into what the site did, they would look into -- or they

1 might sit down with the cognizable functional manager who  
2 might go through showing them. So rather than a written  
3 answer, for example, might show them a SCAR that was issued  
4 by -- the ones that ended up there were the straight-forward  
5 noncontroversial ones. If we had one where the site  
6 disagreed with us, that would be discussed at the full board  
7 meeting.

8           Through time, we got better at making sure our  
9 issues were well established so we didn't really get into a  
10 problem with them disagreeing it was an issue. One of the  
11 problems I had when I first took over the board is the board  
12 did issue a lot of things -- a number of the outsiders were  
13 academics and they were raising some real off-the-wall  
14 things.

15           JUDGE COLE: You have to watch those academics.

16           (Laughter.)

17           THE WITNESS: Which really weren't legitimate  
18 things that the site should have even been worrying about.  
19 We tried hard from the beginning not to address those kinds  
20 of issues.

21           JUDGE COLE: All right, sir, thank you.

22           You're familiar with the site chemistry problem  
23 associated with Sequoyah back in the time of '90, '91, '92.

24           THE WITNESS: Yes.

25           JUDGE COLE: Do you know the details of the post-

1 accident sampling program? Do you know how that's supposed  
2 to operate and what the problems were associated with that?

3 THE WITNESS: I do not know all of the details of  
4 it. There were several types of problems in that time  
5 frame. INPO had raised issues with equipment not being  
6 operational, with errors in procedures and errors in the  
7 technicians using the procedures. The issue that NSRB first  
8 took on was because when you train the people, you're not  
9 reflecting actual conditions which would be full NICs and  
10 respirators, you're not training them in the condition in  
11 which they're going to actually have to do the work. But  
12 those are the areas that were being addressed.

13 JUDGE COLE: And I assume that NSRB followed  
14 through with that program. Did they? Did they carry it as  
15 an item and then follow it through to see what problems were  
16 associated with it and whether they were being resolved or  
17 not and whether they did in fact get resolved?

18 THE WITNESS: The item followed through -- it was  
19 closed in May of 1992 because at that time the subcommittee  
20 (1) agreed with the corrective action; (2) had some  
21 documented items that said some of the people had been  
22 trained and they had subsequently passed the test. And at  
23 that time we closed the item.

24 I honestly don't remember whether there was follow  
25 up in subsequent years. At Sequoyah in that time frame, I

1 believe it was in 1993, that Sequoyah ended up effectively  
2 in a regulatory shutdown and specific items got overtaken by  
3 bigger items. I don't remember how much specific follow up  
4 there was on this.

5 JUDGE COLE: Getting back to the general situation  
6 at the time where the problem of being able to perform the  
7 post-action sampling program adequately, do you know whether  
8 it was a situation such that the equipment and training and  
9 personnel and the conditions under which they had to perform  
10 their tasks made it an impossible task for the chemistry  
11 group there, with their present situation? Or was it  
12 something else?

13 THE WITNESS: After they took the corrective  
14 actions, they were able to do it. One corrective action was  
15 not having enough people on shift, so just having another  
16 technician available to help do the procedure sped up the  
17 time of doing it. I remember that being one of the  
18 corrective actions.

19 JUDGE COLE: Did the budgetary considerations have  
20 an effect on them being able to do that?

21 THE WITNESS: I don't know the answer to that.  
22 One of the main issues -- when we first raised the issue,  
23 what made it a bigger issue is once we raised the issue,  
24 they were doing nothing in response. It wasn't that they  
25 had tried to do something and ran into a road block. They

1 were doing nothing.

2 JUDGE COLE: All right, sir, thank you.

3 JUDGE YOUNG: I just had one further clarification  
4 question on the first subject that Judge Cole asked you.  
5 People other than the board members themselves who wanted to  
6 bring issues to your attention, what was the practice they  
7 would use?

8 THE WITNESS: In doing --

9 JUDGE YOUNG: You had staff and I assume -- any  
10 TVA employee who wanted to bring a subject to your  
11 attention, what would they do?

12 THE WITNESS: They could talk to one of the  
13 members of my staff and just ask to have something put on.  
14 Our process was not normally something that just a TVA  
15 employee would bring something. They could call me if they  
16 wanted to, they could talk to my staff.

17 JUDGE YOUNG: When you said staff, you meant your  
18 staff.

19 THE WITNESS: I meant my staff.

20 JUDGE YOUNG: Not all of TVA.

21 THE WITNESS: No, I did not mean all of TVA, I  
22 meant I had about a three or four person staff working on  
23 supporting NSRB.

24 JUDGE YOUNG: So from your answer, am I correct in  
25 understanding that to mean that that would not be a norman

1 thing, but if someone did want to bring something to your  
2 attention, they would go talk to one of your staff members  
3 and ask if it could be put on your agenda?

4 THE WITNESS: Yes, I only remember like one  
5 specific case where someone from a plant called one of our  
6 staff members who was concerned about something and that  
7 staff member came and talked to me and actually on the thing  
8 he was concerned about, we did say well, you've got to wait  
9 three months until the next meeting, let's go resolve the  
10 question.

11 JUDGE YOUNG: I'm sorry?

12 THE WITNESS: Particularly I took some action just  
13 to resolve the question the individual had, not to say we'll  
14 wait a few more months and put it on the agenda for the next  
15 quarterly meeting. In fact, the particular one at issue was  
16 a question and we were able to resolve the question, it was  
17 not a safety issue.

18 JUDGE YOUNG: What was the process if a TVA  
19 employee had a safety concern, where would they take it, if  
20 not to your board?

21 THE WITNESS: In the line of a safety concern,  
22 there were several options available to a TVA employee.  
23 First, you could just go to your supervisor. Second, we had  
24 the corrective action program, any employee could enter -- a  
25 SCAR was the name in the time period we're talking about.

1 It's changed over time, it's currently called a problem  
2 evaluation report and any employee can issue one of the hose  
3 and get it into the corrective action process.

4 In addition, we have the concerns resolution staff  
5 which is a staff -- it was called years ago the employee  
6 concerns program, but this is a program that if for whatever  
7 reason you don't feel your supervisor or you don't feel the  
8 corrective action program which if you actually issued one  
9 of these would go up your supervisory chain, will address  
10 your issue, you can go to the concerns resolution staff.  
11 The concerns resolution staff is a way in which you can  
12 anonymously identify a concern and that staff will take  
13 action to go and evaluate the concern which you raised.

14 JUDGE YOUNG: Are there representatives of that  
15 group at each site or is that something that someone would  
16 call into the corporate office or --

17 THE WITNESS: They are at each site, they have an  
18 office. In fact the office is located away from most of the  
19 management offices so people won't even have to worry about  
20 someone might see you walking in the door. The employees  
21 are also told that if you're not -- if none of those will  
22 address your issue, you are free to go to the NRC resident  
23 or to the NRC, the resident or however you might want to go  
24 to the NRC.

25 CHAIRMAN BECHHOEFER: Could they go to the NRC

1 first?

2 THE WITNESS: Yes.

3 CHAIRMAN BECHHOEFER: If they didn't wish to  
4 follow --

5 THE WITNESS: Yes, or simply go directly to the  
6 NRC, if that's what they wanted to do.

7 CHAIRMAN BECHHOEFER: I just have a couple. In  
8 connection with Dr. Cole's question about how the issues are  
9 brought to the NSRB, are all subcommittee reports which may  
10 recommend certain action considered by the NSRB or do the  
11 subcommittees make recommendations of that report?

12 THE WITNESS: The subcommittees make  
13 recommendations. What the subcommittees will do is when  
14 they pull together their findings, the subcommittee chairman  
15 reports back to the full board. If the subcommittee  
16 chairman wants a recommendation made as an NSRB action item,  
17 he has to recommend that to the full board and the full  
18 board has to agree to make that an action item.

19 CHAIRMAN BECHHOEFER: So every subcommittee  
20 chairman that wants to make an action item goes through  
21 another level of review.

22 THE WITNESS: Yes, that's correct.

23 CHAIRMAN BECHHOEFER: Before it actually becomes  
24 an action item.

25 THE WITNESS: Yes, that's correct.

1 CHAIRMAN BECHHOEFER: Are there -- do you have any  
2 idea of what percentage where you have a request for an  
3 action item, do you know approximately what percentage are  
4 made action items or not?

5 THE WITNESS: It's a very high percentage. I'll  
6 say 90 percent, but I don't know if that's right, but it's a  
7 very high percentage that are going to become action items.

8 CHAIRMAN BECHHOEFER: Okay. And I have one really  
9 a detail question. It revolves around Staff Exhibit 130,  
10 according to my notes. It's an organization chart.

11 THE WITNESS: I think it's one I tried to draw.  
12 (Brief pause.)

13 CHAIRMAN BECHHOEFER: On 130, I was wondering why  
14 in the boxes which appear to be at the same level there are  
15 different scales of pay, like why is Mr. Raines listed as a  
16 PG-10 and Messrs. Grover and McArthur PG-11 when their rank,  
17 at least on the chart, appears to be equivalent?

18 THE WITNESS: The pay grade rating was based upon  
19 a process that Human Resources has and the exact process  
20 over the years I've worked for TVA has changed, in which  
21 they rate the responsibilities of the position against a set  
22 of criteria. The reporting relationship of the position is  
23 only one of the requirements. There's much more weight to  
24 exactly what the duties of that position are and you  
25 particularly frequently see that like under a manager -- for

1 example, the job I moved into on an acting basis, I was a  
2 direct report to the senior vice president of operations,  
3 his other three direct reports were site vice presidents who  
4 had 1000 or more people working for them and I had a staff  
5 of 50 something. We all reported to the same place, but I  
6 wasn't a vice president, because it considers not only your  
7 reporting relationship, but the scope of your duties.

8 CHAIRMAN BECHHOEFER: I see. So each of these  
9 positions is not necessarily considered of equivalent status  
10 or stature.

11 THE WITNESS: They are not equivalent positions  
12 just by virtue of reporting to the same manager.

13 CHAIRMAN BECHHOEFER: And then I have one further  
14 question. In terms of your description of the selection  
15 process and how it worked, et cetera, you mentioned that  
16 interviews would have taken place. My question is were  
17 these interviews either -- was a transcript kept or was  
18 there any record of what happened in the interview itself,  
19 as distinguished from the overall conclusion?

20 THE WITNESS: There is no transcript kept of them.  
21 My -- the normal way is that the board is given a page with  
22 the question with room under the question to write their  
23 comments and put their score. Those documents are given to  
24 Human Resources after the selection is over, and I honestly  
25 don't know what Human Resources does with them after that,

1 as to how long they keep them or anything, but there is not  
2 a formal transcript of the interviews.

3 CHAIRMAN BECHHOEFER: I think that covers it.

4 JUDGE YOUNG: Does either counsel have any follow  
5 up to any of our questions?

6 MR. MARQUAND: Mr. McGrath, I have just one  
7 question.

8 You were asked about the various avenues by which  
9 employees may raise safety concerns, including anonymously  
10 to the employee through concerns resolution, through  
11 management, through a SCAR, et cetera, through the NRC. And  
12 you said they're told about that. Is there some formal  
13 mechanism to ensure that employees are aware of the various  
14 avenues by which they may raise concerns?

15 THE WITNESS: One thing which we have posted  
16 around all of our sites and our corporate offices -- and I  
17 forget which number it is, it's an NRC form --

18 MR. MARQUAND: Three.

19 THE WITNESS: Is it three? I know it's three,  
20 four or five -- which is posted everywhere to inform  
21 employees of their right to take any concern to the NRC.  
22 The other areas I know are handled in training as people  
23 come up.

24 MR. MARQUAND: Are you familiar with a training  
25 module called GET which is an acronym for general employee

1 training?

2 THE WITNESS: Yes, I am. It's been years since I  
3 took it, but yes.

4 MR. MARQUAND: Are you aware that that includes --  
5 all the people who work at the sites are required to take  
6 that yearly, aren't they?

7 THE WITNESS: Yes.

8 MR. MARQUAND: Are you aware that that training  
9 includes informing every employee of their rights to raise  
10 concerns and their avenues by which they may raise those  
11 concerns?

12 THE WITNESS: Yes, I think that's correct. As I  
13 said, it's been years since I took it, but my recollection  
14 is yes, that information is in there.

15 MR. MARQUAND: Thank you.

16 JUDGE YOUNG: Anything else?

17 MR. DAMBLY: I have no further questions.

18 JUDGE YOUNG: Thank you, Mr. McGrath. Oh, I'm  
19 sorry, go ahead.

20 CHAIRMAN BECHHOEFER: Mr. McGrath, we appreciated  
21 your assiduous attention to all the questions asked and we  
22 appreciate your appearance and you're excused.

23 THE WITNESS: Thank you.

24 CHAIRMAN BECHHOEFER: Let's take a short, about a  
25 five or ten minute break.

1 JUDGE YOUNG: Just one thing. Obviously we've  
2 talked about this among ourselves a couple of days ago,  
3 obviously both attorneys notified all your witnesses not to  
4 talk to other witnesses about their testimony and so forth.

5 MR. MARQUAND: Yes, Your Honor.

6 JUDGE YOUNG: Okay.

7 MR. DAMBLY: Before we take a break, I would like  
8 to -- at this point staff would like to move in Staff  
9 Exhibit 107 which is Mr. McGrath's deposition.

10 MR. MARQUAND: No way. He was on the stand. They  
11 could ask him about it, you can't put it in after the fact.

12 MR. DAMBLY: Doesn't matter. We just heard Mr.  
13 Marquand yesterday explain eloquently how under the federal  
14 rules it can be used against him -- or used by us against a  
15 manager from TVA for any purpose, including substantive  
16 evidence, and that's what we'd like it in for.

17 MR. MARQUAND: We're talking about of a party.  
18 He's not a party, he's an employee. It doesn't come in. He  
19 was on the stand, he could have been cross examined about  
20 any part of this. He was available during the entire  
21 hearing to be asked about it.

22 JUDGE YOUNG: Mr. McGrath, hold on just a second.

23 CHAIRMAN BECHHOEFER: We've got to look at it.

24 JUDGE YOUNG: You know, in some circumstances,  
25 managerial level people are considered to be the equivalent

1 of a party and I don't know whether there are any federal  
2 rules, decisions, for example, on that or not. But --

3 MR. MARQUAND: He's not an officer, he's not a  
4 vice president.

5 JUDGE YOUNG: Do you know what the law is on that,  
6 do you know whether there are any decisions interpreting  
7 that provision of the Rules of Civil Procedure?

8 MR. MARQUAND: I'm certain there are numerous  
9 rules but I couldn't tell you right off the top of my head  
10 what they are.

11 JUDGE YOUNG: I think obviously if we let it in,  
12 if there are any concerns that you have about it, that you  
13 should have the opportunity to straighten those out while  
14 Mr. McGrath is here.

15 MR. MARQUAND: Yesterday, counsel objected to a  
16 file that Mr. McGrath identified and he insisted that  
17 because he didn't know what every single page was, that we  
18 had to go through every single page. I have the same  
19 concern. If he wants to tell us what portions of the  
20 deposition he wants to put in and ask Mr. McGrath about  
21 those while he's here, that's the appropriate way to do it.  
22 He's a declarant who is available to testify.

23 We don't even get -- there's not even a reason to  
24 have to make a hearsay objection. He's here, let him  
25 testify, have him testify about it.

1 MR. DAMBLY: Hearsay is not an objection.

2 MR. MARQUAND: Hearsay can be an objection.

3 CHAIRMAN BECHHOEFER: No, it can't, not in these  
4 proceedings, it can't.

5 MR. MARQUAND: Hearsay is a way to provide for  
6 guidance whether it's reliable, trustworthy and should be  
7 admitted.

8 CHAIRMAN BECHHOEFER: That the Board may consider.

9 MR. MARQUAND: That is a matter for the Board to  
10 consider. But we can obviate any issue with respect to  
11 that, he's here.

12 JUDGE YOUNG: The rule says -- the rule refers to  
13 a party or an officer, director or managing agent and I  
14 think the question is whether or not he would constitute a  
15 managing agent. If he would, then I think the deposition --

16 CHAIRMAN BECHHOEFER: It doesn't matter.

17 JUDGE YOUNG: Just referring to the Rules of Civil  
18 Procedure for guidance.

19 CHAIRMAN BECHHOEFER: Well, I don't want to even  
20 look for guidance at that because --

21 JUDGE YOUNG: Do you want to confer on it?

22 CHAIRMAN BECHHOEFER: No, I want to rule it in.

23 JUDGE YOUNG: Why don't we take a break, we'll  
24 confer and if you have any further argument.

25 CHAIRMAN BECHHOEFER: We'll be back in 10 minutes.

1 (A short recess was taken.)

2 CHAIRMAN BECHHOEFER: Back on the record. You may  
3 make your explanation.

4 MR. MARQUAND: Your Honor, I want to clarify  
5 something. We're not objecting to the deposition on the  
6 grounds of hearsay. I understand hearsay -- that's not  
7 necessarily an objection in this proceeding. That's not the  
8 basis of objecting to this.

9 The NRC's regulations respecting depositions upon  
10 oral examination which are at 2.740(a) talks about how to  
11 take a deposition. And then, of course, the NRC has its own  
12 rules respecting the admission of trustworthy and reliable  
13 evidence and I understand the NRC then looks to the federal  
14 rules for guidance.

15 And a particular federal rule which we are  
16 involved with here is, as Judge Young mentioned earlier,  
17 would be Federal Rules of Civil Procedure, Rule 32, which  
18 deals with use of depositions in court proceedings. And  
19 under rule 32, as we've already been through with the  
20 witness numerous times, prior statements can be used to  
21 contradict or impeach the testimony of the deponent as a  
22 witness. That's under Rule 32(a)(1).

23 Under Rule 32(a)(2), it provides for the  
24 deposition of a party that will be a natural person, or  
25 anyone who at the time of the taking of the deposition was

1 an officer, director or managing agent or person designated  
2 in Rule 30(b)(6) or 31(a) to be used for any purpose. Well,  
3 Mr. McGrath is not an officer, director, managing agent or  
4 person designated under Rule 30(b)(6). And the reason I say  
5 he's not -- obviously he wasn't designated under Rule  
6 30(b)(6) or managing agent, the purpose of that rule is to  
7 have the deposition of a person who speaks for a corporate  
8 legal entity, to be used against that corporate legal entity  
9 for any purpose. He is not speaking for TVA, he's a fact  
10 witness, he's been the person accused of discrimination.  
11 He's not any more a managing agent for TVA in this  
12 circumstance than would be a truck driver who accidentally  
13 ran over a child could speak for the trucking company.

14 JUDGE YOUNG: Isn't he the highest --

15 MR. MARQUAND: No, he's not the highest --

16 JUDGE YOUNG: I'm sorry -- isn't he the highest  
17 person in TVA management who has been present this week  
18 sitting with you or as a witness? I mean your  
19 representative --

20 MR. MARQUAND: He's the highest person who's been  
21 here as a witness. We certainly will have other people here  
22 who are officers of the corporation, they will be here later  
23 on. He is not a managing agent, he does not speak for TVA  
24 in this matter. He has been called -- he was called as  
25 staff's fact witness, he was not called to speak on behalf

1 of TVA.

2 CHAIRMAN BECHHOEFER: But he was on your list.

3 MR. MARQUAND: Pardon me?

4 CHAIRMAN BECHHOEFER: He was on your list.

5 MR. MARQUAND: He is a witness to the facts of  
6 this matter, but Rule 32(a)(2), if you look at the purpose  
7 of that, the first part is the deposition of a party, and  
8 that refers to a natural person who would be a named  
9 individual. In the situation where you have a corporate  
10 legal entity such as a corporation or government agency or a  
11 corporation, obviously the corporation can't speak for  
12 itself, it has to speak through individuals and it defines  
13 the types of persons who may speak for that legal entity --  
14 an officer or director, which he is not, or a managing agent  
15 --

16 CHAIRMAN BECHHOEFER: Wait a minute, what about as  
17 chairman of the Nuclear Safety Review Board?

18 MR. MARQUAND: The Nuclear Safety Review Board is  
19 not a party to this particular proceeding, TVA is the party  
20 and TVA will have officers here, TVA does not have any  
21 directors who are going to be testifying and he is certainly  
22 not a managing agent, that's in the terms of a partnership,  
23 or a person designated. He was never designated pursuant to  
24 Rule 30(b)(6) to speak on behalf of the corporation. That's  
25 the purpose of Rule 32(a)(2).

1 JUDGE YOUNG: Let me just ask you, in the incident  
2 at issue in which Mr. Fiser was not selected for one of the  
3 two chemical --

4 MR. MARQUAND: Chemistry program manager.

5 JUDGE YOUNG: -- chemistry program managers. Mr.  
6 McGrath was the acting operations --

7 MR. MARQUAND: Support manager.

8 JUDGE YOUNG: -- support manager and he was the  
9 one who made the decisions for TVA -- who was ultimately in  
10 charge for TVA of the group or the division or part of the  
11 organization that took the action that's at issue in this  
12 proceeding and I don't have annotated rules, and I don't  
13 know what the decisions are on interpreting managing agent.  
14 In other contexts, someone like him would -- might be  
15 considered to be a manager in terms of allowing statements  
16 against interest, for example, or in terms of whether an  
17 attorney could or could not talk to that person without  
18 going through the corporation's attorney in, you know,  
19 pretrial discovery or whatever.

20 And I'm just frankly not familiar enough with how  
21 that term has been interpreted in the case law on Rule 32.

22 MR. MARQUAND: We'll be glad to provide Your  
23 Honors with -- on Tuesday when we next convene with a legal  
24 interpretation. But my reading of that is that that is  
25 someone who speaks for the corporate legal entity, and as

1 you know, when you look at 30(b)(6), the purpose of 30(b)(6)  
2 is for a party to request the other party to designate  
3 someone who speaks for the corporate legal entity and can  
4 bind the legal entity in a deposition.

5 JUDGE YOUNG: Who are the people from -- the  
6 higher level management from TVA who you intend to call?

7 MR. MARQUAND: Well, we will bring Phil Reynolds  
8 in, who is the manager -- he's a vice president and the  
9 chief operating officer of an organization which includes  
10 the nuclear organization, operations support. We will have  
11 other -- I'm certain other high level managers here. Mr.  
12 McGrath is no longer even in the nuclear organization and  
13 obviously can't speak for the nuclear organization in any  
14 sort of legally binding fashion.

15 And that's the purpose of Rule 32(a)(2), is that  
16 you have someone who has been deposed, who can currently  
17 speak in a legally binding fashion for the corporate legal  
18 entity.

19 JUDGE YOUNG: Well, it says a deposition of a  
20 party who at the time of taking the deposition, I don't know  
21 when this deposition was taken --

22 MR. MARQUAND: At the time of the deposition, he  
23 was not in the nuclear organization, he was not an officer,  
24 director, managing agent or person that could -- who even  
25 could have been designated under Rule 30(b)(6) to speak for

1 the nuclear organization.

2 My point is that when you get down to Rule  
3 32(a)(3), 32(a)(3) is the deposition of a witness, whether  
4 or not a party. Mr. McGrath is not a party, he's not  
5 speaking for a party. And then it goes on to say that it  
6 may be used by any party for any purpose if the Court finds  
7 the witness is dead -- not applicable here -- at a greater  
8 distance than 100 miles from the place of trial and cannot  
9 be procured, in other words, he can't be brought in live to  
10 speak and can't compel his presence, or the witness is  
11 unable to attend because of age, illness or infirmity. He  
12 was certainly here, able to attend. But the party offering  
13 the deposition has been unable to procure the attendance --  
14 he was here. That's the whole purpose of 32(a)(3), is  
15 you're allowed to use the deposition of a nonparty if you  
16 can't get them there and there's a legally legitimate reason  
17 for not bringing them in to testify. He was here, he was  
18 live, he could be asked these questions.

19 Apparently counsel thinks they want to dump the  
20 whole thing into the record, stir it up and then argue later  
21 on that he's made some impeaching statement. It's clear  
22 that that's the purpose. If it's being used for impeaching  
23 or conflicting or inconsistent statements, it has to be used  
24 as in 32(a)(1), it has to be used for impeachment while he's  
25 on the stand.

1 JUDGE YOUNG: Let me just ask you one last  
2 question and then Judge Bechhoefer and Judge Cole may have  
3 other things to ask or say.

4 Mr. McGrath's availability ceases when?

5 MR. MARQUAND: He is leaving shortly, within a few  
6 hours, he's going up to MIT for a short seminar. He will be  
7 back certainly by the close of the proceedings. And I'm not  
8 threatening --

9 JUDGE COLE: We're not going to finish next week?

10 (Laughter.)

11 MR. MARQUAND: My understanding was we had three  
12 weeks set aside. Mr. Dambly keeps telling me he doesn't  
13 think he can do it.

14 JUDGE YOUNG: Well, the reason I asked that is  
15 because I do think that the concern that you expressed at  
16 the beginning about not using it for impeachment and not --  
17 there not being an opportunity to respond to any apparent  
18 inconsistencies is well taken. On the other hand, you've  
19 had the deposition as well and so presumably if you were  
20 aware of any inconsistencies, you would have addressed  
21 those.

22 But with that said, I think the concern that you  
23 stated is well taken and so if he will be available at a  
24 later date, I would not be opposed to allowing for that if  
25 the decision is made to allow the deposition in. In other

1 words, I would not be opposed to allowing him to provide any  
2 explanations of any inconsistencies that the staff may want  
3 --

4 MR. MARQUAND: If staff wants to question him  
5 about any sort of inconsistencies, it seems to me that the  
6 long established rule on impeachment and inconsistencies is  
7 for them to put him on the stand and confront him with that  
8 inconsistency. I mean every --

9 JUDGE YOUNG: I understand, and my statement was  
10 just made in terms of if the decision is to let it in, I  
11 just want to complete my statement on how we should proceed  
12 from this point forward.

13 MR. MARQUAND: Yes, Your Honor.

14 Obviously the hour is late and it would be --  
15 there's no way we can resolve the issue either with respect  
16 to interrogatories that we propose to submit in the record  
17 and I would suggest that we save that issue for another day.

18 JUDGE YOUNG: We could take it under advisement  
19 and ask them to brief the issue.

20 (The Judges confer.)

21 CHAIRMAN BECHHOEFER: The Board -- myself and Dr.  
22 Cole believe that the document should be admitted at this  
23 time. The Board will only rely -- or Dr. Cole and myself  
24 would only look at those portions which deal with subjects  
25 upon which the witness has been questioned. We don't know

1 what's in the deposition, I guess I haven't read it -- I  
2 know I haven't read it. So if there are matters extraneous  
3 to things that Mr. McGrath testified about, we won't rely on  
4 that. We will permit TVA to recall Mr. McGrath if they  
5 think -- either TVA or the staff wishes to address certain  
6 areas where there are apparent conflicts. We will permit  
7 TVA to recall Mr. McGrath for that purpose at such date as  
8 he's available.

9 MR. MARQUAND: Yes, Your Honor. Might I request  
10 that if the staff believes that there is anything in there  
11 that they wish to argue at a later time that might be  
12 inconsistent or impeachment, that they be required to  
13 designate that at some point during the hearing so that we  
14 may bring Mr. McGrath in to allow him to explain his answer,  
15 as required since the English established it in common law  
16 as proper impeachment.

17 JUDGE YOUNG: I think that would appropriate.

18 JUDGE COLE: Mr. Dambly, would you like to respond  
19 to that?

20 MR. DAMBLY: I certainly don't believe that it's  
21 appropriate for Mr. Marquand to try to assign me some work.  
22 Beyond that, I think what the staff's view of whether there  
23 are inconsistent statements or not and what they would be  
24 inconsistent with, to the extent that we would intend to  
25 argue them at some point may well fall within the

1 attorney/client work product interpretation of various  
2 things, and I'm not required to divulge that, just to make  
3 his life easier. Again, he's the one who brought up the  
4 whole issue yesterday and, as far as I can see under  
5 2.740A(g) anybody can offer a deposition into evidence,  
6 there's no restriction on putting a deposition into evidence  
7 under NRC's rules.

8 JUDGE YOUNG: Go ahead and make your ruling and  
9 then I'll just --

10 (The Judges confer.)

11 CHAIRMAN BECHHOEFER: The Board -- at least Dr.  
12 Cole and myself -- we will allow the document in the record  
13 and -- what's the exhibit?

14 MR. DAMBLY: 107.

15 CHAIRMAN BECHHOEFER: -- Staff 107 will be  
16 admitted. We will not require the staff to designate which  
17 portions they believe create conflict, we will permit, and  
18 as we said before, TVA may offer Mr. McGrath later to  
19 further testify on this if TVA finds it necessary.

20 MR. MARQUAND: Yes, Your Honor.

21 (The document, heretofore marked as  
22 Staff Exhibit Number 107, was  
23 received in evidence.)

24 JUDGE YOUNG: And I'll, just for the record, not  
25 to repeat everything I said before, but I'm not necessarily

1 disagreeing with the ruling. I would withhold a ruling  
2 until after I had received a briefing on the issue of what  
3 constitutes a managing agent and I do find the arguments  
4 about not going -- pointing to particular portions of the  
5 deposition and using that for impeachment and allowing the  
6 witness to respond well taken in terms of general fairness  
7 issues.

8 So with that said --

9 CHAIRMAN BECHHOEFER: I might add, the question  
10 that Judge Young was referring to concerning managing agent  
11 is --

12 JUDGE YOUNG: To use that for guidance.

13 CHAIRMAN BECHHOEFER: Yes. -- using it for  
14 guidance, I believe the federal rules are used for guidance  
15 only when NRC does not have a specific rule that covers the  
16 situation, for areas that aren't even mentioned at all by  
17 the NRC rules. I think this one is and that's the basis of  
18 Dr. Cole and myself believing the document should be  
19 admitted.

20 JUDGE COLE: And I also think that it would have  
21 been better to handle it with a direct confrontation with  
22 the witness with the deposition in front of him.

23 MR. MARQUAND: Your Honors, I don't wish to be  
24 argumentative, but you did state that the federal rules  
25 would be looked to for guidance when there is not a specific

1 NRC rule addressing it. And I would like to inquire for  
2 purposes of the record and for my edification, what NRC rule  
3 provides for admission of a deposition and what the  
4 standards are in the NRC rules for admission of depositions.

5 CHAIRMAN BECHHOEFER: The standards themselves are  
6 not included in the deposition rule, plus the general rule  
7 on relevance, materiality, et cetera.

8 MR. MARQUAND: Thank you, Your Honor.

9 CHAIRMAN BECHHOEFER: But it's that one which ends  
10 in a (j) -- it's (g), I'm sorry -- 2.740A(g), which I  
11 believe is the rule cited by Mr. Dambly.

12 So with that, we will adjourn for the weekend -- a  
13 long weekend --

14 MR. DAMBLY: Before we adjourn for the weekend, we  
15 have some discussion of scheduling.

16 CHAIRMAN BECHHOEFER: Pardon?

17 MR. DAMBLY: A discussion of scheduling. (1) next  
18 week, Friday, if I understood the order right, we're going  
19 all day?

20 JUDGE COLE: Right.

21 CHAIRMAN BECHHOEFER: Right, Tuesday through  
22 Friday.

23 MR. DAMBLY: Tuesday through Friday. That seems  
24 like more than a whole week then.

25 CHAIRMAN BECHHOEFER: And the following week

1 Monday through Friday.

2 JUDGE YOUNG: Monday through Thursday noon, I  
3 think, right?

4 CHAIRMAN BECHHOEFER: Yes.

5 JUDGE YOUNG: Or whenever we need to quit in order  
6 to catch the plane.

7 CHAIRMAN BECHHOEFER: Noon is approximately right.

8 MR. DAMBLY: The other thing, just for the Board's  
9 information and I assume Mr. Marquand has no problem, we  
10 will put on Mr. Fiser on Tuesday, but on Wednesday, Mr.  
11 Easley is coming in, subject to subpoena, and we will have -  
12 - there'll probably be a break in Mr. Fiser's testimony  
13 because we need Mr. Easley, and then Thursday, Dr. McArthur  
14 is apparently driving from Utah on his way to Florida and  
15 will be here Thursday, so we would take him and then finish  
16 with Mr. Fiser.

17 Any objection from anybody?

18 (No response.)

19 MR. DAMBLY: We'll do him until he's done and then  
20 we'll resume.

21 JUDGE COLE: Is that okay with you, Mr. Marquand?

22 MR. MARQUAND: Your Honor, that's fine with us and  
23 I don't know how long Mr. Fiser will take or Mr. Easley. I  
24 think either one of them could run into extra innings.

25 CHAIRMAN BECHHOEFER: Well, with that, we're

1 adjourned and we will see you Tuesday.

2 MR. MARQUAND: Thank you.

3 (Whereupon, the hearing was adjourned at  
4 12:06 p.m., to reconvene at 9:00 a.m. on Tuesday,  
5 April 30, 2002.)  
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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  
Bill Warren  
Official Reporter  
Neal R. Gross & Co., Inc.

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