

**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: Wednesday, May 1, 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  
 ) 50-327-CivP; 50-328-CivP  
 ) 50-259-CivP; 50-260-CivP  
(Watts Bar Nuclear Plant, Unit 1; ) 50-296-CivP  
Sequoyah Nuclear Plant, Units 1&2; )  
Browns Ferry Nuclear Plant, Units ) ASLBP No. 01-791-01-CivP  
1, 2 & 3) ) EA 99-234

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

Wednesday, May 1, 2002

The above entitled matter came on for hearing  
pursuant to Notice at 9:13 a.m.

BEFORE:

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

PAGES: 1159 THROUGH 1378

APPEARANCES OF COUNSEL:

On behalf of the Nuclear Regulatory Commission:

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-and-

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I N D E X

WITNESSES:                      DIRECT   CROSS   REDIRECT   RECROSS

Ben G. Easley

EXHIBITS:                      FOR IDENTIFICATION   IN EVIDENCE

Staff:

21, 22, 24, 25, 2, 27	Premarked	1259
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TVA:

24	Premarked	1274
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113	--	1163
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Joint:

20, 21, 22, 23	Premarked	1322
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65	Premarked	1227
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P R O C E E D I N G S

CHAIRMAN BECHHOEFER: Good morning, ladies and gentlemen.

Before we start the session today, we would like to conclude with respect to at least one exhibit that we were considering last night at the close and there was going to be -- staff was going to check to see whether the particular exhibit, which is --

MR. MARQUAND: TVA Exhibit 113, Your Honor.

CHAIRMAN BECHHOEFER: -- TVA 113, I guess it is. -- was complete and whether the staff would have any further objection to that exhibit or its predecessor.

Mr. Dambly or Mr. Marquand.

MR. DAMBLY: We have no objection to 113 with the pages we discussed being added.

JUDGE COLE: As supplemented.

CHAIRMAN BECHHOEFER: As supplemented.

MR. MARQUAND: And Your Honor, I have those here. Let me explain that I've labeled them Addendum to TVA Exhibit 113. The first page of this addendum is page 18 of the second set of answers to interrogatories in what is now TVA Exhibit 113 and that simply needs to be noted.

The other document is a January 24, 2002 e-mail from Jennifer Euchner to myself and if that can be also added to TVA Exhibit 113. Those were the supplemental

1 responses that the staff felt were necessary to add to the  
2 document, and I'll get an original to the court reporter and  
3 one to each of you members of the Board.

4 JUDGE YOUNG: This would go in the TVA last  
5 volume?

6 MR. MARQUAND: TVA 113, I think that's the very  
7 last volume and we already provided TVA 113 yesterday and  
8 this is appended to that.

9 (The Judges confer.)

10 CHAIRMAN BECHHOEFER: We will admit TVA 113 as  
11 amended and supplemented, as describe by Mr. Marquand this  
12 morning. And I assume that's what the staff does not object  
13 to at this stage.

14 MR. DAMBLY: That's correct, Your Honor.

15 CHAIRMAN BECHHOEFER: Okay, it will be admitted.

16 (The document, heretofore marked as  
17 TVA Exhibit Number 113, was  
18 received in evidence.)

19 MR. DAMBLY: At this time, the staff would call  
20 Ben Easley.

21 Whereupon,

22 BEN G. EASLEY

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

25 THE WITNESS: Judge, when I refer to you three,

1     how do I address you, please?

2             CHAIRMAN BECHHOEFER:  I can't hear.

3             THE WITNESS:  I said when I refer to you three,  
4     how do I address you -- Your Honor --

5             CHAIRMAN BECHHOEFER:  Oh, that's okay.

6             JUDGE COLE:  Judge Bechhoefer, Judge Young and  
7     Judge Cole.

8             THE WITNESS:  Beg pardon?

9             JUDGE COLE:  Judge Bechhoefer, Judge Young, Judge  
10    Cole.

11            THE WITNESS:  Okay.  The middle one, I didn't get  
12    that name.

13            JUDGE COLE:  Bechhoefer.

14            CHAIRMAN BECHHOEFER:  Bechhoefer.

15            THE WITNESS:  Bechhoefer.

16                                 DIRECT EXAMINATION

17    BY MR. DAMBLY:

18            Q     Mr. Easley, would you please state your full name  
19    for the record?

20            A     My name is Ben, initial G., Easley, E-a-s-l-e-y.

21            Q     Are you currently employed?

22            A     No, I'm retired.

23            JUDGE YOUNG:  We're going to have to tell you what  
24    we've told every witness -- the acoustics aren't real good,  
25    so if you could speak up and try to bring the microphone

1 closer to your mouth.

2 THE WITNESS: May I make an opening statement,  
3 please?

4 MR. DAMBLY: An opening statement?

5 THE WITNESS: I mean may I make a statement  
6 concerning the reason I'm not talking loud.

7 MR. DAMBLY: Oh, okay, sure.

8 CHAIRMAN BECHHOEFER: If it's about acoustics or  
9 something like that, that's fine.

10 THE WITNESS: I have already informed attorney  
11 Euchner and attorney Marquand at the present time I have a  
12 medical problem. It seems like every time I have to come to  
13 give testimony, deposition, affidavit, I have had a medical  
14 problem. This time I have had an acute case of poison ivy,  
15 which the doctor has been treating me ever since the latter  
16 part of July, I've been taking lots of medication, which  
17 consists of Prednisone, antibiotics, different ointments to  
18 rub on the skin to get the colors back in, and also to  
19 antihistamines. And recently, the latter part of December  
20 and January, my body started getting heavy and the  
21 pharmacist, when I went to get some medication, told me I  
22 was taking too much of the antihistamines. I went back to  
23 my Dr. Banks, who is treating me, and he wanted me to get a  
24 second opinion, so I went to my internist, Dr. Cleveland and  
25 his diagnosis is that I have too much antihistamines in my



1 body and they cut out one and kept me on one, cut the doses  
2 because every time they curtail all the medication, I will  
3 break out again and have a tendency to scratch all the skin  
4 from place to place.

5 One of the side effects of the antihistamines is  
6 fatigue and also, based on what Dr. Cleveland have said or  
7 diagnosed, is that it makes your body, especially your legs  
8 and your feet heavy. A couple of months ago, I barely could  
9 walk, whereas prior to then I was an avid jogger and  
10 exercise person.

11 At the present time, I'm very fatigued, my voice  
12 is not strong as it was the last time I was here, and it  
13 probably won't be as strong. I'm just having problems and I  
14 want y'all to know that I'm having problems.

15 JUDGE YOUNG: You may need to rely on the  
16 microphone a little bit more then and we'll be understanding  
17 of your condition.

18 CHAIRMAN BECHHOEFER: Yes, we will. But if we ask  
19 you to repeat what you said, it's just because the acoustics  
20 here are very poor, the barriers here block the voice when  
21 it comes up here.

22 THE WITNESS: Okay. And also I may --

23 CHAIRMAN BECHHOEFER: So we're not -- it won't be  
24 a criticism or anything like that if we ask you just to  
25 repeat something, it's just that --

1 THE WITNESS: Okay. And I may need a break from  
2 time to time.

3 CHAIRMAN BECHHOEFER: Well, that's fine.

4 JUDGE YOUNG: Just say so.

5 CHAIRMAN BECHHOEFER: Just say so and we'll  
6 accommodate you. I know I personally will need a break at a  
7 certain point in time and the parties are used to it by this  
8 time. So we accommodate.

9 BY MR. DAMBLY:

10 Q Mr. Easley, what's your post-high school  
11 education?

12 A Repeat that please.

13 Q What is your post-high school education?

14 A You mean after high school?

15 Q Yes.

16 A B.S. degree in vocational industrial education,  
17 which is building construction at Tennessee State University  
18 in Nashville.

19 Q And what's your professional experience after  
20 college?

21 A Primarily personnel officer, human resource  
22 officer with TVA.

23 Q When did you start with TVA?

24 A I started in April of '66, 1966.

25 Q And what was your first job with TVA?

1           A     I came in as an engineering aide.

2           Q     An engineering aide?

3           A     Yes, sir.

4           Q     How long were you in that position?

5           A     I was in that position approximately five yrs.

6           JUDGE YOUNG:   About a year?

7           THE WITNESS:   Five years.

8           MR. DAMBLY:    Five years.

9     BY MR. DAMBLY:

10          Q     And after that five years, what was your next job  
11     at TVA?

12          A     Personnel officer.

13          Q     And where was that position located?

14          A     Chattanooga, Tennessee.

15          Q     In the headquarters organization?

16          A     It was in -- it's hard to recall exactly and I'm  
17     not going to try to pinpoint every job, pinpoint every  
18     position because it is very difficult. But it was in the old  
19     steam and hydro, which eventually nuclear generation became  
20     a part of.

21          Q     So from approximately '71 until -- that one  
22     doesn't work unfortunately.

23          A     I would like to look at you when I answer.

24          Q     From '71 until the time you retired, you were in a  
25     personnel officer position in various places with TVA?

1           A     I have been in a personnel officer-personnel  
2 manager position, human resource position -- all are similar  
3 jobs -- yes.

4           Q     And during the time you were at TVA, did you  
5 receive any outside training on personnel matters, federal  
6 personnel law, federal RIF regulations, anything like that?

7           A     Most of the training I received was internal.

8           Q     And who put on the training?

9           A     It was through TVA.

10          Q     And in 1992, do you recall where you were working?

11          A     In 1992? In 1992, I was in nuclear human  
12 resources.

13          Q     Okay. Do you recall a situation in '92 where Mr.  
14 Jocher and Mr. Fiser switched positions?

15          A     Repeat that, please.

16          Q     I said do you recall back in 1992 at a time when  
17 Gary Fiser and Bill Jocher switched jobs?

18          A     I'd better not comment on that, because it's been  
19 so long ago and I would like to refer you back to one of my  
20 testimonies, one of my depositions, affidavit that I have  
21 given before.

22          Q     Well, I'm just asking do you recall them switching  
23 jobs.

24          A     I said I couldn't recall, sir.

25          Q     Okay.

1           A     I think they may have, but I can't recall.

2           Q     In '93, where were you working?

3           A     I was still in nuclear human resources.

4           Q     Were you involved in Mr. Fiser's being surplussed  
5 in '93?

6           A     Involved in him being surplussed?

7           Q     Were you the personnel person involved in that  
8 process?

9           A     May I ask you a question? Where was he located at  
10 the time, because that would have a bearing on my decision.

11          Q     He was working for Mr. McArthur in the corporate  
12 chemistry organization.

13          A     And that was, you said '93, sir?

14          Q     Yes.

15          A     I'd better not answer that sir, because my memory  
16 over the past six years, some of it has escaped me and for  
17 me to try to continue to answer these questions that I've  
18 already given you the answer, whereas you can refer back to  
19 my deposition before or my testimony before, I'd rather  
20 leave it like that.

21          Q     Do you recall whether or not you were the one that  
22 prepared the paperwork having to do with Mr. Fiser's  
23 surplussing in '93?

24          A     I would like to refer you back to my last  
25 response.

1           Q     I think if we could get an answer -- I mean, it's  
2 not a trick question, either you were or you weren't.

3           MR. MARQUAND: Your Honor, I think the witness has  
4 already indicated that this was six yrs ago, he's been  
5 retired for six years, and he's having difficulty  
6 remembering that in light of the medical problems he told us  
7 about. And for counsel to keep asking, I think is not  
8 fruitful.

9           CHAIRMAN BECHHOEFER: I think counsel is merely  
10 trying to refresh his recollection perhaps.

11          MR. DAMBLY: I don't think it's appropriate in  
12 this de novo proceeding to get only answer that just say see  
13 what I said before. He can tell us what he remembers or  
14 doesn't remember, but "I don't want to answer it because I  
15 might have said something different", I don't think is  
16 appropriate.

17          JUDGE YOUNG: Mr. Easley --

18          THE WITNESS: Mr. Dambly, may I respond this way.  
19 I'm pretty sure you and your staff, TVA and their staff,  
20 they have the last affidavit that I gave and also, you have  
21 had the opportunity to go back and look it over to bring  
22 yourself up to date. And each time I have given one, I've  
23 been told that a copy will be given to someone where I could  
24 look it over, just in case there was something in there that  
25 I didn't agree with, that maybe I could change. And you

1 never do send me one and then we come back and you ask me  
2 these questions which is very hard for me to be consistent.

3 JUDGE YOUNG: Mr. Easley, I understand. I've had  
4 in my family members who've had memory problems, so I  
5 understand what you're talking about. Whenever either Mr.  
6 Dambly or Mr. Marquand asks you a question, just answer to  
7 the best of your memory and if you simply don't remember,  
8 you can say you don't remember. But you don't need to tell  
9 anyone to go back and look at something else, because they  
10 know to do that if they need to. So just say what you  
11 remember the best you can and if you can't remember, say you  
12 can't remember. Okay? Does that make sense?

13 THE WITNESS: Yes, ma'am.

14 JUDGE YOUNG: Okay.

15 BY MR. DAMBLY:

16 Q Let me ask you this, do you recall having been  
17 involved in that and being concerned that you were preparing  
18 papers to surplus Mr. Fiser from a Sequoyah position when he  
19 was actually here in headquarters?

20 A This is what I thought you were trying to get to,  
21 and that's the reason I have stated what I have stated  
22 before. I was trying to determine if you were talking about  
23 if I was involved after he was surplused from Sequoyah over  
24 into the ETP program, Employee Transition Program. And I'm  
25 still trying to determine is that what you're talking about,

1 if I were involved in that.

2 JUDGE YOUNG: Isn't that what you're talking  
3 about, Mr. Dambly?

4 MR. DAMBLY: I'm asking maybe something slightly  
5 different.

6 BY MR. DAMBLY:

7 Q Weren't you involved -- weren't you the one who  
8 was told to prepare the paperwork to surplus Mr. Fiser while  
9 you were in headquarters and he was in headquarters, but the  
10 paperwork was to surplus him from a Sequoyah position?

11 A No, I did not prepare the paperwork.

12 Q Were you involved in that?

13 A Yes.

14 Q How were you involved?

15 A I was the one that -- if I'm understanding you  
16 right, your question right, I was the one to serve the  
17 reduction in force letter and information.

18 Q You're the one that provided that to Mr. Fiser?

19 A Beg pardon?

20 Q You're the one that gave Mr. Fiser a copy, is that  
21 what you're saying?

22 A Right. In fact, -- and the Judge told me not to  
23 go back to the last affidavit -- but in fact, I shouldn't  
24 have been the one to serve those papers. Those papers  
25 should have been served by Sequoyah management. In case



1 they need a personnel officer to help them, that's what  
2 should have been done. However, it was determined that the  
3 paperwork would be done by the human resource office in the  
4 central office downtown, and at the current time, my  
5 supervisor was Mike Pope, which he had me to serve the  
6 papers.

7 Q Do you recall at the time Mr. Fiser was surplussed  
8 in '93, was there a vacant position in the headquarters  
9 chemistry organization under Dr. McArthur?

10 Let me ask this, do you remember a man named Don  
11 Adams?

12 A Vaguely.

13 Q Do you know if he was at one time working for Mr.  
14 McArthur and then transferred to Sequoyah?

15 A I can't recall.

16 Q When Mr. Fiser went to the PTP I guess back in '93  
17 and was there in the '94 time frame, did you have any  
18 involvement in an effort to bring him back to Sequoyah as a  
19 chemistry manager -- remember anything about that at all?

20 A No, I was not involved in that.

21 Q Okay. Do you recall Mr. Fiser filing a DOL back  
22 in that time frame, in '93?

23 A Repeat that please.

24 Q Do you recall Mr. Fiser filing a DOL complaint in  
25 1993?

1 JUDGE YOUNG: Department of Labor.

2 MR. DAMBLY: Department of Labor complaint.

3 A I heard about him filing one.

4 BY MR. DAMBLY:

5 Q When did you hear, do you recall?

6 A I can't recall.

7 Q Was it in the '93 time period, '93 to '94 or some  
8 time later?

9 A I can't recall.

10 Q Do you remember TVA's IG interviewing you about  
11 issues raised by Mr. Fiser back in that time frame?

12 A The IG did interview me. I don't know what year  
13 it was in, '93, '94, '95, but I was interviewed by the IG.

14 Q Are you aware that Mr. Fiser's Department of Labor  
15 complaint was settled with TVA?

16 A I heard that it was.

17 Q Did you ever see the settlement agreement or know  
18 what it involved?

19 A No, sir.

20 Q In '94, where were you working?

21 A In '94, I think I was still in the central office.

22 Q Do you recall Mr. Fiser returning in '94 to the  
23 corporate chemistry organization?

24 A It's hard for me to answer that yes or no without  
25 maybe me asking you to expound somewhat or me asking you a

1 question. I know I'm not here to ask you questions, I  
2 understand that. But I'm trying to get --

3 Q Let me put it to you this way.

4 A -- the information so I can give you a truthful  
5 answer.

6 Q Do you recall him coming back to work and being  
7 assigned to a position in corporate chemistry working for  
8 Wilson McArthur, out of the transition into the corporate  
9 chemistry organization?

10 A Are you saying after he had been --

11 Q After he had been surplussed and came back.

12 A Right.

13 Q Okay, he worked for Wilson McArthur for awhile?

14 A He was reassigned due to a settlement, if we're  
15 talking about the same thing, and hopefully we're talking  
16 about the same thing. He was reassigned based on an  
17 arbitrator or someone else's decision, and we were to place  
18 him in a similar or identical position.

19 Q All right, now did you remember a reorg that took  
20 place in 1994 where the chemistry positions and the  
21 environmental positions were combined and posted as  
22 chemistry/environmental program manager positions?

23 A Repeat please.

24 Q Do you remember --

25 A Could you speak up a little louder, please?

1           Q     Okay. Do you recall a situation in '94 where the  
2 chemistry program manager positions and the environmental  
3 program manager positions -- there was a combination of  
4 functions and it became a chemistry/environmental program  
5 manager position -- remember that?

6           A     I think I do, sir.

7           Q     I mean were you involved in the posting of those  
8 positions?

9           A     And this is back in '9 --

10          Q     '94.

11          A     -- '94 and this was a combination of the chemistry  
12 and environmental --

13          Q     Right.

14          A     -- positions. Yes, I think I was involved. To  
15 what degree, I can't tell you at this time due to trying to  
16 remember, but I think I was involved.

17          Q     Do you recall if, I guess at about the same time,  
18 -- at one point, Dr. McArthur was the technical -- I guess  
19 he was in charge of technical support organization, do you  
20 recall that? And in this reorg, he became the rad con  
21 manager and Mr. Grover became the chemistry/environmental  
22 manager, do you recall that at all?

23          A     I think I know what you're trying to refer to, but  
24 the way you're approaching me with it --

25          Q     Well, tell me what you remember about it.

1           A     Are we talking about when we had reduced some  
2 positions and where Mr. Grover and Mr. Wilson McArthur at  
3 that time they were at the same level?

4           Q     I'm talking they went -- at one point, Mr.  
5 McArthur or Dr. McArthur, was the technical support program  
6 manager, whatever. And then there was a reorg and he came  
7 down and became the rad con manager and Mr. Grover became  
8 the chemistry/environmental manager. That's what I'm  
9 talking about now.

10          A     Yes, I remember that.

11          Q     Not the later one.

12          A     Yes, sir.

13          Q     Did Dr. McArthur compete for the rad con manager  
14 position, were those positions announced?

15          A     I can't remember. It may have been treated  
16 different at that time, I can't remember exactly what  
17 guidelines applied at that time.

18          Q     Do you recall whether or not there was a position  
19 description for the rad con manager position that Dr.  
20 McArthur filled?

21          A     Yes, there was one.

22          Q     Do you know who prepared the position description  
23 for that position?

24          A     Wilson McArthur and his supervision, and I can't  
25 recall who was the supervisor at the time, probably wrote

1 the job description and it was probably passed to Human  
2 Resources to be checked and Human Resources probably checked  
3 it with Labor Relations and that was the process.

4 Q Are you aware that TVA has claimed there was no  
5 position description for that position?

6 A Yes, because you mentioned that the last time.

7 Q Is that the first time you'd heard that?

8 A Beg pardon?

9 Q I say was that the first time you'd heard that?

10 A Right.

11 Q I want to show you an exhibit.

12 (Brief pause.)

13 JUDGE YOUNG: I'd like to clarify something.  
14 Where's Mr. Damby?

15 Yes. You were talking about a 1994 time period.  
16 I guess I'm confused, because I was -- the things you were  
17 describing I recalled as being in 1996. And if that  
18 would...

19 MR. DAMBLY: Okay, '96 is the period where the rad  
20 con chemistry -- or the rad con position that McArthur was  
21 in and the Grover position for chemistry environmental were  
22 combined to rad con chemistry. Before that...

23 JUDGE YOUNG: Okay, you are...

24 MR. DAMBLY: ...back in '94, when I think McArthur  
25 was in tech op, they reorganized immediately after that

1 and...

2 JUDGE YOUNG: Okay, I -- I...

3 MR. DAMBLY: I'm in Book 7, Staff Exhibit 130.

4 JUDGE YOUNG: 130?

5 CHAIRMAN BECHHOEFER: 130?

6 MR. DAMBLY: 1-3-0.

7 BY MR. DAMBLY:

8 Q Have you had a chance to look at that?

9 A Yes, sir.

10 Q And does that represent what you understand the  
11 organization under -- under Don Moody to have been after the  
12 '94 time period and before the '96 reorganization?

13 A As of 2/13/95?

14 Q Right.

15 A Yes.

16 Q Now, to the best of your recollection, is there  
17 any doubt in your mind that Wilson McArthur occupied the  
18 position shown in this chart of rad control manager?

19 A No.

20 Q Anybody ever tell you he was only acting in that  
21 position?

22 A No.

23 Q And the radiological and chemistry control  
24 management position, who was in that one?

25 A Allen Sorrell, acting.

1           Q     Okay. I'm going to go to Volume 5, Exhibit 99,  
2 staff exhibit.

3                   JUDGE YOUNG: Which number?

4                   MR. DAMBLY: 99.

5                   JUDGE YOUNG: 99.

6 BY MR. DAMBLY:

7           Q     First of all, Mr. Easley, can you tell me what  
8 this document is?

9           A     No, sir.

10          Q     No? You never saw anything like this when you  
11 were in TVA human resources?

12          A     I don't recall.

13          Q     I'm not talking about this specific one on -- on  
14 Wilson McArthur. But, I mean, is -- are you familiar with  
15 the employee actions reasons format?

16          A     I don't recall seeing -- seeing this.

17          Q     Okay. How about if you go down to the third page  
18 in that exhibit. Are you familiar with seeing pages like  
19 this in your job as TVA human resources officer?

20          A     There's a possibility, but I don't remember, sir.

21          Q     Let me take back the first page of that exhibit.  
22 And this document was supplied to us by TVA as representing  
23 the actions that occurred to Dr. McArthur. If you'd look  
24 down at the -- at the middle of the page on the third column  
25 from the right, you'll see that the grade steps were still



1    seen as SR.  You see that?  About halfway down the page it  
2    says...

3           A     That's on Page 1, sir?

4           Q     On Page 1.

5           A     Yes.  Mr. Dambly,...

6           Q     Yes, sir.

7           A     ...maybe I can clear this up.  This seem like the  
8    information that another department in human resources  
9    handled.  And we very seldom got involved in this, if we got  
10   involved in this at all.

11          Q     All right.

12          A     That's the reason I'm telling you that I'm not  
13   familiar with it.

14          Q     I just want to ask a question about what's here,  
15   not -- if -- if you look at -- on the date listed, 11/15/94,  
16   you'll see that Wilson McArthur was in a senior grade  
17   position.

18          A     You said 11/15/94?

19          Q     Yeah.  That's the one in the middle of the page,  
20   the last one that says "senior" before it.  And if you go up  
21   to the date, it says 11.

22          A     Wilson, 11/15.  Oh, over here.

23          Q     All right.  If you see the one -- the 11/15/94  
24   action date and it still has Mr. McArthur as a senior,  
25   that's his grade.  And if you look at I guess the -- above

1 it, the next thing says 1/19/95---although the effective  
2 date is 10/17/94---just to the left of it, it says he's an  
3 11.

4 A He was. And, like I said, another department  
5 handled when it came to the base compensation rate. And  
6 they may have just froze his pay at that level. Now, but  
7 his -- his actual level, he was not a senior manager  
8 because...

9 Q Right.

10 A ...he was a pay grade 11 due to the reorganization  
11 at the time.

12 Q And in your experience at TVA, if somebody was in  
13 a senior position or was put in an acting position, did they  
14 normally receive a downgrade as part of going to an acting  
15 position?

16 A I don't recall. I know there have been time when  
17 (sic) someone may have been demoted or may have been, due to  
18 a reorganization, selected at a lower level where they kept  
19 the current compensation.

20 Q But if it was a temporary acting position?

21 A I can't say that.

22 Q Let me ask you if you'd flip over two exhibits and  
23 you'll get to Staff Exhibit 102. It's in -- just look --  
24 there's a tab with 102.

25 A Beg your pardon?

1 COURT REPORTER: You've got the microphone covered  
2 up. Can you move your exhibit all to one side.

3 THE WITNESS: Oh, I'm -- I'm sorry.

4 COURT REPORTER: That's all right. Thank you.

5 BY MR. DAMBLY:

6 Q Do you recognize this document or what this  
7 document represents? I'll put it that way.

8 A It's a performance review and development plan.

9 Q And it's for Wilson McArthur?

10 A Yes, it says for Wilson C. McArthur.

11 Q And do you see the dates it covers?

12 A 10/94 through 9/95.

13 Q All right. And -- and what position was it for?

14 A It says manager, radiological control.

15 Q And that's the position we looked at at that  
16 organizational chart that McArthur was in at that time?

17 A This is what we looking at (sic). But let me  
18 respond this way. We're talking about performance review  
19 and development plan. To my knowledge, I was not involved  
20 with this.

21 Q I'm not asking you for -- let me ask you, is the  
22 -- is that performance review and development plan for the  
23 same position as represented for Wilson McArthur on Staff  
24 Exhibit 130, rad con control?

25 A It is not the same there.

1           Q     Is it the position he was in? This one says  
2 radiological control, this one says rad control. Are those  
3 the same positions, that you recall?

4           A     I don't understand what you are trying to get to.

5           Q     It's a simple question. The question is: Have  
6 you ever, in your TVA experience, seen anyone given a -- a  
7 performance appraisal for a position they did not occupy?

8           A     I have had no involvement in...

9           Q     I'm not asking if you had it. I'm just saying  
10 does TVA normally -- did you ever get a position description  
11 for a job you weren't in? I mean, not a position -- a  
12 performance appraisal for a job you weren't in?

13          A     No. No, sir.

14          Q     Do you know of anybody else that got one for a job  
15 they weren't in?

16          A     Not to my knowledge.

17          Q     Okay.

18          A     And let me expound on this. This say a  
19 development plan. This doesn't say that he was -- to my  
20 knowledge, that he was in that position. This says  
21 development plan.

22          Q     Well, do you see he got -- do you see down in the  
23 middle of the page where it says, "Performance ratings  
24 definitions"?

25          A     I better not expound on that problem, sir, because

1 I'm not familiar with this, and I'm not familiar with how  
2 you're trying to connect the two. And...

3 Q Well, if you look at the page -- look at the page  
4 under the first page. Does that appear to you to be a  
5 performance rating?

6 A Yes, sir.

7 Q Now -- excuse me -- going back to the time when  
8 the -- and I think it's shown on the organizational chart  
9 that I showed you, that the chemistry and environmental  
10 positions were combined, so that Mr. Fiser, Mr. Chandra, and  
11 Mr. Harvey had a chemistry environmental program manager  
12 position. Do you recall that?

13 A You going back to the -- to the organizational  
14 chart that we were talking about? Yes, I recall that.

15 Q Book 7, 125. Staff 1 -- Exhibit 125. Show you  
16 this document, Mr. Easley. Do you recall this document,  
17 receiving this document in September of '94?

18 A Yes, I think I have.

19 Q And on the second page it's signed by both R. O.  
20 Grover and W. C. McArthur.

21 A Yes, sir.

22 Q And actually shows you as sitting in on the board  
23 for 9/22/94. And it has Gordon Rich Volar -- slash, Volar;  
24 Sabados, Sabados, I guess; Pat Hughes, slash, Wilson  
25 McArthur; Ron Grover; Ben Easley. Do you recall -- is this

1     working? Doesn't seem to be making a difference anymore, so  
2     I don't know.

3             Do you recall who was the selecting official for  
4     the chemistry and environmental specialist position?

5             A     It should have been Ron Grover.

6             Q     Okay. And do you recall, if you look at that  
7     second page where it says, Gordon Rich, slash, Dave  
8     Voellerr; and the third line of board members as Pat Hughes,  
9     slash, Wilson McArthur. Do you recall whether the board  
10    members -- whether all of those people were at each of the  
11    interviews on that date, or whether, for example, Pat Hughes  
12    was on the -- on the panel for the chemistry environmental  
13    and Wilson McArthur was on the panel for the rad control  
14    specialist position?

15            A     Mr. Dambly, will you repeat that.

16            Q     Sure. Again, with reference to the second page  
17    which talks about two different boards on two different  
18    dates. The first date's 9/22/94. And if we look at the  
19    first page, we see that on 9/22/94, chemistry environmental  
20    specialist panel was held, and the radiological control  
21    specialist panel was held. Okay? So for those two we'd be  
22    looking at the board members Gordon Rich, slash, Dave  
23    Voeller; John Sabados; Pat Hughes, slash, Wilson McArthur;  
24    Ron Grover; Ben Easley.

25                   Now, my question is: Do you recall whether all --

1 all seven of those people sat on the board for both cases,  
2 or whether certain ones sat on for the chemistry position,  
3 you know, with the -- say Volar or Rich, and then Hughes or  
4 -- or McArthur, one of those -- each of those where the  
5 slash is sat on one panel, and one sat on the other panel?  
6 Do you remember that?

7 MR. MARQUAND: Your Honor, I object to the  
8 question. It's been going on for several minutes and I  
9 still don't understand it.

10 MR. DAMBLY: It seems like a fairly clear -- clear  
11 question.

12 BY MR. DAMBLY:

13 Q Did -- were all seven people sat on both boards  
14 (sic)?

15 A I don't think so. I -- I can't recall.

16 Q Okay. Now, do you recall learning at some point  
17 that Gary Fiser had been taping conversations between you  
18 and he?

19 A Repeat, please, sir.

20 Q Did you -- do you recall at some point learning  
21 that Mr. Fiser had been taping...

22 A Yes, sir.

23 Q ...conversations between you and he?

24 A Yes, sir.

25 Q And how did you learn that?

1           A     Some of his friends, that's supposed to be  
2 friends, and...

3                 JUDGE YOUNG:   His what friends?

4                 THE WITNESS:   I said some of his friends.

5                 JUDGE YOUNG:   And then you said his "something"  
6 friends.

7                 THE WITNESS:   Or supposed to be friends.   Reason I  
8 say that, because they informed me that I was being taped.  
9 And after checking his pocket, you could tell that he had a  
10 tape recorder here.   And I went and informed my -- I think  
11 someone in the general counsel office that I had been taped.

12

13 BY MR. DAMBLY:

14                 Q     Do you recall who the someone in the general  
15 counsel's office was?

16                 A     No, because of the different one I have talked to.  
17 At the time, I know I were dealing with Attorney Marquand,  
18 Attorney Fine, Attorney Finley, Attorney Susan Dunn.   May  
19 not be Susan Dunn.   I think I got the name wrong.

20                 But, anyway, I was informed that I had been taped,  
21 however, the tape did not come out clearly.

22                 Q     Do you -- why were you dealing with those  
23 attorneys at OGC?

24                 A     Repeat, please, sir.

25                 Q     Why were you dealing with the various attorneys



1 you've just named at OGC at the time you found out about  
2 this statement?

3 A On different matters. And I don't remember --  
4 recall exactly the matter at the time.

5 Q Were you ever involved with one of the attorneys  
6 at OGC concerning Mr. Fiser's '93 Department of Labor  
7 complaint?

8 A I can't remember.

9 Q Do you recall working with any of the attorneys in  
10 9gc concerning Mr. Jocher's -- I don't know if it was '92 or  
11 '93 Department of Labor complaint?

12 A Yes, sir.

13 Q Okay, now, I'd like to turn your attention to the  
14 reorganization that occurred in 1996; okay? Do you remember  
15 that? The one that combined the Grover and McArthur  
16 position.

17 A Is there a copy in here?

18 Q Let me see if I can find an org chart for that.  
19 Go to Staff Exhibit 131.

20 Now, Mr. Easley does that represent your  
21 recollection of what the organization under McArthur looked  
22 like after the reorganization in '96?

23 A I think so, sir.

24 Q And if we step back just a second, do you recall,  
25 before this reorganization coming about, did you have any

1 involvement in an issue where there was a consideration of  
2 transferring Mr. Harvey out to Sequoyah?

3 A Yes, there was some consideration to transfer him  
4 to Sequoyah.

5 Q How did you learn about that?

6 A Well, I learned it through maybe -- may have been  
7 Mr. Grover or could have been Mr. McArthur.

8 Q Okay.

9 A And it could have been some of the employees in  
10 that department.

11 Q Okay. Did you have any interaction in that -- in  
12 the decision making process on whether that would happen or  
13 not, in your position?

14 A No, I didn't have any.

15 Q Did you ever have any discussions with Tom McGrath  
16 about that situation of Harvey potentially going to  
17 Sequoyah?

18 A I could have, but I don't remember.

19 Q Now, to the best of your recollection, who made  
20 the decision to reorganize this -- the chemistry functions  
21 in 1996?

22 A It came down from the head of technical support,  
23 not -- and I may have I wrong. In fact, this was during the  
24 time when all of the different departments and division were  
25 told that they would have to reduce their head count by so

1 many position (sic) in the next three years. And I don't  
2 know what year it began. And this is when this occurred.

3 Q Do you recall what the specific goals were for  
4 reductions?

5 A Well, primarily in the radiological and chemistry  
6 control on the operation support, which McGrath was the  
7 manager or acting manager at the time, I don't remember  
8 exact which one, he as -- the other managers were told that  
9 they could do it within three years. But McGrath decided  
10 that he would do his all at one time.

11 Q Do you know why he made that decision?

12 A Well, I think on the affidavit that I gave before,  
13 that I say he may have been trying to impress his  
14 management, he may have done it for other reason.

15 Q Did you discuss the reorg with him at all, the '96  
16 reorg?

17 A I think I did.

18 Q To the best of your recollection within this  
19 organization, the operations -- operations support  
20 organization, did you provide HR guidance or whatever,  
21 perform the HR function for the entire operations support  
22 group under McGrath?

23 A I think I did. I may not had all of it, but I  
24 think I had the majority of it at the time. It's hard to  
25 remember, sir. But I did -- I did have what we are talking

1 about here, mainly.

2 Q Okay. Do you recall for the part of the  
3 organization that you were involved with, how many positions  
4 were rolled over, through RIF, into an employee's from one  
5 position, and kept it through a retention register kind of  
6 thing, and how many employees were -- had to compete for the  
7 jobs? I mean, was there anybody put in through a retention  
8 register into a position that you recall in the '96 reorg?

9 A I don't recall, Mr. Dambly.

10 Q I mean, you know Dr. McArthur was placed in a  
11 position without competition. You recall that? The  
12 combined rad con and chemistry manager position, you recall  
13 Dr. McArthur being placed into that?

14 A Yes, I remember.

15 Q And that was not through competition; is that  
16 correct?

17 A It should have been done through competition.

18 Q Well, we're going to get to that. That's one you  
19 can rest assured we will discuss. But do you recall anybody  
20 else being placed in a position, other than by applying for  
21 a job and competing, going through a board in this reorg?

22 A I don't recall.

23 Q Okay. Tell me what you recall about how Dr.  
24 McArthur came to go from the rad con manager position up to  
25 the rad con chemistry manager position without competition.

1           A     And you're referring to this reorganization;  
2 right?

3           Q     Right. In that reorganization.

4           A     Okay. At the time when we had the reorganization,  
5 Mr. McArthur was Pay Grade 11, and also Ron Grover was a Pay  
6 Grade 11. And there was guidelines that came out of the Wes  
7 Motley...

8           JUDGE YOUNG: Out of the West...

9           THE WITNESS: Motley, M-o-t-l-e-y.

10          MR. MARQUAND: That's the name of a plaintiff in a  
11 lawsuit, Your Honor.

12          JUDGE YOUNG: Okay.

13          MR. MARQUAND: And it was -- I think he's  
14 referring to a settlement in that case.

15          THE WITNESS: Right.

16 BY THE WITNESS:

17          A     Wes Motley was a minority, and he had filed a  
18 complaint concerning not getting the consideration that he  
19 should have gotten on a particular job after he had applied.  
20 I will not go into detail because I don't know the specifics  
21 of it.

22                But, anyway, after he filed a complaint or made a  
23 complaint, a decision came down saying that all positions  
24 from Pay Grade 1 to Pay Grade 8 had to be -- had to be  
25 advertised. And then later, and I don't know exactly what

1 year it was in, another guideline came saying that all  
2 position Pay Grade 1 through Pay Grade 11 had to be  
3 advertised, unless a waiver was gotten from head of human  
4 resources in Knoxville.

5 And then finally, another guideline came down  
6 saying that all positions, Pay Grade 1 through senior  
7 management, had to be advertised or a waiver had to be given  
8 prior to filling that position.

9 JUDGE YOUNG: In reorganizations is what you're  
10 talking about?

11 THE WITNESS: Yes, ma'am.

12 JUDGE YOUNG: So am I understanding you correctly  
13 to be saying that in reorganizations there was no longer any  
14 continuation of any job for anybody?

15 THE WITNESS: I'm not understanding you, Judge.

16 JUDGE YOUNG: If all the -- all the jobs had to be  
17 posted, I'm understanding that to mean that no one would  
18 keep their same job and continue in it, or sort of -- what  
19 was the word?

20 THE WITNESS: If you were going to put an  
21 employee, a manager in a permanent position or select them  
22 for a permanent position, Judge, the guidelines said that  
23 the position had to be advertised or you had to get a waiver  
24 from Knoxville giving reasons why you did not advertise the  
25 position. Like you did not have the expertise out there,

1 you did not have any minority to be considered, you didn't  
2 have any women to be considered and things of this nature.

3 JUDGE YOUNG: So...

4 MR. MARQUAND: Your Honor...

5 JUDGE YOUNG: ...excuse me.

6 MR. MARQUAND: ...I think the two of you are  
7 missing each other on this. What Mr. Easley is referring to  
8 is that vacant positions had to be advertised, not just all  
9 existing positions. The existing positions were still  
10 there; they remained in the reorganization. Because if a  
11 new -- is that right? If a new position was created that  
12 was vacant, it had to be advertised.

13 THE WITNESS: Right.

14 JUDGE YOUNG: So you're -- what you were saying  
15 was limited to vacant positions? If people were already in  
16 positions, they didn't necessarily have to post those  
17 positions and compete?

18 THE WITNESS: Unless you had a -- okay, if you had  
19 a reorganization where you were going to limit the amount of  
20 position that you had, yes, you had to advertise.

21 JUDGE YOUNG: Where you were cutting down...

22 THE WITNESS: And this is the reason that we had  
23 the management review board on the lower level positions,  
24 like the Pay Grade 8 and Pay Grade 7.

25 CHAIRMAN BECHHOEFER: Do you remember the

1 approximate dates of the three types of positions that had  
2 to be advertised, for instance, PG-1 through 8, then 1  
3 through 11, and later 1 through senior manager. Do you  
4 remember the dates?

5 THE WITNESS: Judge, at one time I did, but I -- I  
6 don't -- I don't remember exactly the dates. And one time,  
7 see, I had the information and I could, you know, just lay  
8 the information out.

9 CHAIRMAN BECHHOEFER: Oh, I just wondered if you  
10 remembered.

11 THE WITNESS: But I don't remember, Judge.

12 MR. MARQUAND: Your Honor, I believe that that's a  
13 document that's already admitted in the record as Staff  
14 Exhibit 152, and the date of it is March 23, 1993.

15 MR. DAMBLY: I was about to show the witness. I  
16 direct your attention to Staff Exhibit 152.

17 CHAIRMAN BECHHOEFER: 1...

18 MR. DAMBLY: 1-5-2. It's in Book 8.

19 BY MR. DAMBLY:

20 Q Is Staff Exhibit 152 the document that lays out  
21 the requirements for posting PG-1 to PG senior positions.

22 A Yes, sir.

23 Q And it speaks of waivers. Who could get a waiver  
24 under this policy?

25 A I think it explains itself right here.



1           Q     Basically if you have a qualified minority or  
2 woman, you could seek a waiver from the posting  
3 requirements.

4           A     Yes, sir, or disabled --

5           Q     Or disabled.

6           A     -- employee.

7           Q     Anybody that falls within the EEO guidelines.

8           A     In fact, I think you could ask for a waiver on a  
9 nonminority if you didn't have a minority or you did not  
10 have a female or disabled individual, saying that you did  
11 not have anyone with the expertise.

12          Q     Okay. So if you had a situation where you had one  
13 person, you could ask for a waiver from the posting  
14 requirements.

15               MR. MARQUAND: Object, the document speaks for  
16 itself.

17               JUDGE YOUNG: Was there any particular portion of  
18 it that you were asking him to interpret?

19               MR. DAMBLY: No, I'm talking about what he just  
20 said. The document does speak to women and minorities, but  
21 he indicated you could also seek a waiver for a nonwoman,  
22 minority, handicapped individual if nobody else was  
23 qualified.

24 BY MR. DAMBLY:

25          Q     Is that right?

1           A     I said if you didn't have anyone with the  
2 expertise to do the job.

3           Q     And to the best of your knowledge, this is the  
4 policy that was in fact in effect in 1996 when the  
5 McArthur/Grover situation was considered.

6           A     Yes, sir.

7           Q     Let me back up just to fill in a question that I  
8 think Judge Young asked earlier, this would not -- in a RIF  
9 situation, if you decided that there were surviving  
10 positions, this wouldn't apply, you'd follow the RIF  
11 regulations and determine who had rights to those positions;  
12 is that correct?

13          A     Repeat that.

14          Q     If you had positions that you were going to roll  
15 people over to in a reduction in force because the same  
16 position survived the reduction, but there were just fewer  
17 of them, you would not post those under this, you would  
18 follow the OPM reduction in force regulations.

19          A     I think you would follow the other guidelines if  
20 you had to advertise the position. Are you talking about  
21 manager positions or are you talking about other positions?

22          Q     Suppose you had five PG-8 chemistry program  
23 managers and you were doing a reduction in force and you  
24 were going to have three PG-8 chemistry program managers,  
25 identical PDs, no change whatsoever, just getting rid of

1 two. You wouldn't post the three, you'd follow the RIF  
2 regs, right?

3 JUDGE YOUNG: Follow the RIF --

4 MR. DAMBLY: Regulations, the OPM RIF regulations.

5 THE WITNESS: I totally don't understand. Are you  
6 saying we had three positions and that we were going down to  
7 two?

8 BY MR. DAMBLY:

9 Q I'm giving you a hypothetical at the moment.  
10 Forget about the actual reorg. Just assume for a moment  
11 that you had five PG-8 chemistry program members.

12 A Uh-huh.

13 Q You decided you only needed three and so you're  
14 doing a reduction or downsizing. You didn't change any PDs,  
15 you're just going from five to three and they're staying in  
16 identical position descriptions that they've been in before.  
17 Would you follow the reduction in force regulations or would  
18 you post the three vacancies?

19 A Based on what I'm understanding that you're asking  
20 me, it would be a reduction in force.

21 Q Okay. I just wanted to clear up, in a true  
22 reduction in force situation, you didn't post vacancies, you  
23 followed the RIF regulations.

24 A Right.

25 JUDGE YOUNG: You said something earlier that I'm

1 a little confused about. I thought you said something  
2 earlier about when there's a reduction in the number of -- I  
3 can't remember whether you said persons in a position or --  
4 you said something to the effect that when there was a  
5 reduction in positions, you had to post something and I  
6 wasn't clear on what you meant when you said that.

7 THE WITNESS: That was -- Your Honor, I was  
8 referring to the reduction in force that we had, whereas we  
9 may have been going from four positions to two positions.  
10 Okay, and you didn't keep the same position description, you  
11 changed the position description where it was different from  
12 the last one, totally different, like 35 percent different;  
13 you would have to advertise the position, so all four could  
14 apply if they wanted to apply for the new positions, and be  
15 interviewed for the positions.

16 Does that answer your question?

17 JUDGE YOUNG: Yes, thank you.

18 CHAIRMAN BECHHOEFER: One follow up. If only five  
19 percent or ten percent of the duties were different, then  
20 what would you do, would you use straight RIF --

21 THE WITNESS: Okay, if you're going to have to  
22 reduce --

23 CHAIRMAN BECHHOEFER: -- if you only had five or  
24 ten percent rather than 30 or 40 percent?

25 THE WITNESS: And if you're going to have to cut?

1 CHAIRMAN BECHHOEFER: Yes.

2 THE WITNESS: Reduction in force.

3 JUDGE YOUNG: The 35 percent was the cut off?

4 THE WITNESS: Yes, ma'am.

5 JUDGE YOUNG: And how did you determine that 35  
6 percent?

7 THE WITNESS: That came from the guidelines and I  
8 can remember exactly the guideline. At the time, we dealt  
9 primarily with Labor Relations and we dealt primarily with  
10 OGC concerning what the guidelines were in determining what  
11 percentage. And there were some guidelines that had 35  
12 percent, but I can't remember exactly where I could put my  
13 hands on that 35 percent.

14 JUDGE YOUNG: Thank you.

15 MR. DAMBLY: You've saved me a few questions and I  
16 appreciate it.

17 JUDGE YOUNG: Pardon?

18 MR. DAMBLY: I said you have saved me some  
19 questions, I appreciate your help.

20 CHAIRMAN BECHHOEFER: Oh, okay.

21 BY MR. DAMBLY:

22 Q Tell me what you recall now about the situation  
23 with Dr. McArthur going into the rad con chemistry manager  
24 position where he and Grover were both PG-11s, how that came  
25 about.

1           A     Well, I didn't think he should have. The position  
2 should have been advertised, waivers should have been asked  
3 for, which in my mind we probably wouldn't have gotten the  
4 waiver because of the criteria here. But it was someone  
5 else who decided to go ahead and place him in that position.

6           Q     And who decided to place him in the position?

7           A     I think originally it came from Mr. Tom McGrath,  
8 who was the acting manager or manager of operations support  
9 at the time and he had talked to my supervisor, Ed Boyles  
10 concerning placing Mr. McArthur in that position.

11          Q     Did you ever discuss that with Mr. McGrath  
12 yourself?

13          A     Yes.

14          Q     What do you recall about those discussions?

15          A     He went back and discussed it with my supervisor,  
16 Ed Boyles.

17                JUDGE YOUNG: I didn't hear.

18                THE WITNESS: He went back and discussed it with  
19 my supervisor, Ed Boyles.

20 BY MR. DAMBLY:

21          Q     What did you tell Mr. McGrath?

22          A     That the position should be advertised, based on  
23 the guidelines and based on this guideline here.

24          Q     What did you understand the reasons for placing  
25 McArthur in that position without competition were? What'd

1 they tell you?

2 A I can't remember exactly what I was told, but I  
3 was told by Mr. Boyles that he was going to do it. And I  
4 asked Mr. Boyles not to do it because I knew that it was  
5 going to create a problem and that we would be deviating  
6 from the criteria or guidelines set up in filling that type  
7 of position.

8 Q Now you mentioned a minute ago, the guidelines are  
9 35 percent -- if the duties change by more than 35 percent,  
10 you post as opposed to following RIF procedures.

11 A Yes, sir.

12 Q To your knowledge, did the duties between  
13 McArthur's rad con manager position and the rad con  
14 chemistry manager position, were those more than 35 percent  
15 different?

16 A Repeat that.

17 Q Before I ask you that one -- can you ever use RIF  
18 procedures if you're going from an 11 to a senior?

19 MR. MARQUAND: Objection. I think there was a  
20 question pending. What is this, we ask a question and we  
21 don't get the answer we want --

22 MR. DAMBLY: I said I'm asking another one and  
23 then I'll go back to it. I don't think I need any help.

24 THE WITNESS: You're confusing me, Mr. Dambly.

25 MR. DAMBLY: That's because we're being

1 interrupted.

2 BY MR. DAMBLY:

3 Q For the moment, can you use reduction in force  
4 regulations to take somebody and put them from a grade 11 to  
5 a senior position?

6 A Can you use the reduction in force to put someone  
7 from --

8 Q To promote someone.

9 A Reduction in force is not there to promote.

10 Q They have to be at the same grade level, is that  
11 correct?

12 A It's not there to promote.

13 Q And were the duties for the rad con manager  
14 position that Dr. McArthur held ion '96 before the reorg --  
15 were those more than 65 percent of the duties that he held  
16 after he became rad con chemistry/environmental control  
17 manager? In other words, was there more than a 35 percent  
18 change if you skip the grade difference?

19 A Repeat that again.

20 Q Was there more than a 35 percent --

21 A No, no, start at the beginning.

22 Q Okay. McArthur had a rad con manager position in  
23 '96 before the reorg, is that correct?

24 A Right.

25 Q And after he had the rad con



1 chemistry/environmental manager position, is that correct?

2 A You mean after he was placed in the position that  
3 was not advertised?

4 Q Right.

5 A Okay, now what are you asking?

6 Q Was there more than a 35 percent difference in  
7 those two positions?

8 A I don't know how to answer your question because  
9 you're saying in order to advertise the position, when a  
10 position should be advertised, is when the duties or  
11 responsibilities are changed at least 35 percent. Okay.  
12 Now you're asking me about Mr. McArthur Wilson (sic) going  
13 from pay grade 11 to senior. Are you asking me were the  
14 duties -- were the duties more than 65 percent, because if  
15 they were --

16 Q Were the duties -- forget grades now, we've dealt  
17 with that, that --

18 A No, no, I'm forgetting the grades. You asked me  
19 were the duties and responsibilities more than 65 percent.

20 Q Were the duties of the new position, the rad con  
21 chemistry/environmental position that he was rolled over  
22 into --

23 A You're talking about --

24 Q -- was that more than 35 percent different than  
25 the one held before as just the radiological control

1 manager.

2 A I can't answer your question because I don't know  
3 what you're trying to get to, because you asked if it  
4 changed from 35 percent to more --

5 Q No, I'm asking --

6 A -- and I have told you if it's 35 percent, sir,  
7 then the position should be advertise.

8 Q Right.

9 A Okay, then you asked me 35 percent or more.

10 Q No, I'm asking you was there at least a 35 percent  
11 difference between the rad con manager position and the rad  
12 con chemistry/environmental manager position.

13 A Let me see if I can answer it this way. The  
14 position was more than 65 percent.

15 CHAIRMAN BECHHOEFER: Sixty five percent the same?

16 THE WITNESS: Sir?

17 CHAIRMAN BECHHOEFER: Sixty five percent the same  
18 duties?

19 THE WITNESS: That he was doing? I don't  
20 understand, Judge.

21 CHAIRMAN BECHHOEFER: Well, what I was trying and  
22 what I think --

23 THE WITNESS: I don't know what he is asking.

24 CHAIRMAN BECHHOEFER: Well, I think what he wants  
25 to know is between the two specific positions, rad con

1 manager and the rad con chemistry and environmental manager,  
2 if I've got the names straight, was there more than a 35  
3 percent difference in the duties of those two specific  
4 positions.

5 THE WITNESS: It seems like I'm not understanding  
6 exactly what is being asked.

7 JUDGE YOUNG: A little while ago, you said that  
8 you thought Mr. McArthur's new job should have been posted.

9 THE WITNESS: Right.

10 JUDGE YOUNG: And you also said that the standard  
11 for whether a job should be posted is whether the new  
12 position was 35 percent or more different than the earlier  
13 position, right?

14 THE WITNESS: Right.

15 JUDGE YOUNG: And so I think all Mr. Dambly is  
16 asking is was Mr. McArthur's new position more than 35  
17 percent different than his earlier position. Is that the  
18 reason that you said you thought that it should have been  
19 posted or was there another reason?

20 THE WITNESS: Judge, the reason I'm hesitant to  
21 answer that is because I said if the duties changed 35  
22 percent or more, they should be posted. Okay. And when Mr.  
23 McArthur went back to his position -- not to his position,  
24 went back to the old position that was similar to what he  
25 had had once before --

1 JUDGE YOUNG: When he went back, now you're  
2 talking about before the reorganization?

3 THE WITNESS: No, no, when they placed him in the  
4 position without advertising.

5 JUDGE YOUNG: And that was the rad con chemistry  
6 manager position?

7 THE WITNESS: I'm saying that that position --  
8 maybe y'all can understand what I'm trying to say -- I'm  
9 saying that the position was more than 65 percent, it may  
10 have been 99 percent or 100 percent, the total job --

11 JUDGE YOUNG: More than 65 percent different?  
12 Are you saying the jobs were more than 65 percent the same?

13 THE WITNESS: For him to go back from -- okay, for  
14 him to be placed from a pay grade 11 back to a senior  
15 manager where whoever was placed in the position would have  
16 complete control of the whole department --

17 JUDGE YOUNG: Where whoever was placed in the  
18 position would have control over the complete department?

19 THE WITNESS: Right, right. I'm saying that it  
20 were more than 65 percent -- I think we may be saying the  
21 same thing.

22 JUDGE YOUNG: More than 65 percent --

23 BY MR. DAMBLY:

24 Q More than 65 percent different than the job he had  
25 before?

1           A     Beg pardon?

2           Q     More than 65 percent different than just the rad  
3     con manager position?

4           A     Right.

5           JUDGE COLE:   So it was well over the 35 percent,  
6     which was the guideline for posting it, the difference in  
7     the jobs.

8           THE WITNESS:   Oh, I've got you now, you cleared me  
9     up.   Right, more than 35 percent.

10          JUDGE COLE:   So Mr. McArthur's final position as  
11     rad con environmental/chemistry manager was significantly  
12     different than the rad con manager; is that what you're  
13     saying sir, the job he held before?

14          THE WITNESS:   Right, right, right.   I think I  
15     understand what you're saying.

16          CHAIRMAN BECHHOEFER:   And therefore, it should  
17     have been posted.

18          THE WITNESS:   Yes, sir.

19          CHAIRMAN BECHHOEFER:   Thank you.

20     BY MR. DAMBLY:

21          Q     I'll show you again the organizations chart that's  
22     Staff Exhibit 130 and 131 --

23          CHAIRMAN BECHHOEFER:   Both of them?

24          MR. DAMBLY:   Yes, they're one right behind the  
25     other.

1 CHAIRMAN BECHHOEFER: Right.

2 BY MR. DAMBLY:

3 Q -- the position on 130 that Allen Sorrell  
4 occupied, which supervised the rad con, the  
5 chemistry/environmental and the ERMI whatever -- that  
6 position in 131 is essentially the position that Dr.  
7 McArthur is shown in in 131, which is after the reorg  
8 position?

9 A I think so.

10 Q And the manager of that had a much broader range  
11 of duties than any of the subordinate managers?

12 A Yes, sir.

13 MR. DAMBLY: Maybe this would be a good time to  
14 take a break.

15 CHAIRMAN BECHHOEFER: Yeah, that would be good.  
16 Let's take a break until 11:00.

17 (A short recess was taken.)

18 BY MR. DAMBLY:

19 Q Mr. Easley, let me show you Staff Exhibit 176,  
20 pages 4 and 5.

21 (The witness reviews a document.)

22 Q And Staff Exhibit 175, which is TVA's responses to  
23 the NRC staff's second set of interrogatories. If you'd  
24 turn to page 4, which is Interrogatory Number 3, there's a  
25 question that says "In regard to the reorganization in 1194,

1 that resulted in Wilson McArthur becoming the radiological  
2 control manager, please provide the following" and there's a  
3 list of information. And then there's the response.

4 The response says, "TVA objects to this  
5 interrogatory to the extent it assumes that Dr. McArthur  
6 officially assumed the position in 1994 of radiological  
7 control manager."

8 Are you aware of anything -- you were the HR  
9 person and we discussed this before -- was Dr. McArthur  
10 officially put -- placed in the radiological control manager  
11 position in 1994?

12 A He was placed in that position and I think it was  
13 1994.

14 Q There's no doubt in your mind, nobody ever told  
15 you he's acting, he's not there, he's still in his old job -  
16 -

17 A Oh, we're talking about the one with the  
18 organization chart where he was pay grade 11?

19 Q Right.

20 A Yes, he was placed in the position.

21 Q Now in your experience at TVA, if a person held a  
22 position, we'll say the chemistry -- well, pick something  
23 besides chemistry -- they were a rad con specialist, a grade  
24 8, and then they went to a different position where they  
25 were a rad con and laboratory specialist at grade 8 and then

1 later they posted a position that was similar to the rad  
2 con, plain rad con grade 8 position, would they have any  
3 rights to go back to an old position?

4 A They have to apply and be considered on an  
5 advertisement.

6 Q Let me direct you to Staff Exhibit 4, a statement  
7 by Mr. Boyles in the DOL proceeding involving Mr. Fiser. Let  
8 me ask you to take a second to read that.

9 (The witness reviews a document.)

10 MR. MARQUAND: Your Honor, we're showing the  
11 witness somebody else's statement and it's inappropriate to  
12 do that. He may be asked a question, if he doesn't know the  
13 answer, it may be shown to him and asked if it refreshes his  
14 recollection but to ask -- to show him something and ask him  
15 to comment about somebody else's testimony is inappropriate.

16 MR. DAMBLY: I've already asked him the question  
17 if he knows why the decision was made and how the decision  
18 on Dr. McArthur was made by Mr. Boyles at all. And he said  
19 he didn't recall.

20 JUDGE YOUNG: So you're using this to refresh --

21 MR. DAMBLY: I'm going to ask him to read it and I  
22 was going to ask him if it refreshes his recollection.

23 CHAIRMAN BECHHOEFER: Proceed.

24 MR. DAMBLY: Thank you.

25 (The witness reviews a document.)



1 BY MR. DAMBLY:

2 Q Have you read the statement?

3 A Yes, sir.

4 Q Does that refresh your recollection about how  
5 McArthur's roll over came about?

6 A We are referring to the manager of radiological  
7 and chemistry control position senior manager?

8 Q Yes, the radiological --

9 A We're talking about the senior manager.

10 Q Right, talking about the '96 roll over where  
11 McArthur went up to that position without competition.

12 A This is not true.

13 Q This does not refresh your recollection or you  
14 disagree with it?

15 A He did not discuss this with me.

16 Q Okay.

17 A In fact, as I said before, I told him that we  
18 should not do that, the position needed to be advertised.

19 Q Are you familiar with the term position  
20 description of record?

21 A PD of record?

22 Q Yes, are you familiar with that?

23 A R-e-c-o-r-d?

24 Q R-e-c-o-r-d, yes.

25 A I can't recall.

1           Q     In conducting a reduction in force in determining  
2 what people went to what levels, if you reviewed position  
3 descriptions and found that a position -- that there was a  
4 position description either missing from the file or the  
5 wrong one was in there, would you use the wrong one in  
6 determining someone's rights in a reduction in force?

7           A     No.

8           Q     Now with respect again to the '96 reorg and the  
9 determination to post the chemistry/environmental position -  
10 - what had been the chemistry/environmental program manager  
11 position, there were three PG-8s and now there were going to  
12 be two PG-8s, a BWR and a PWR -- are you with me?

13          A     Repeat that again, I'm sorry.

14          Q     You remember in the '96 reorg, there were three  
15 PG-8 chemistry/environmental program manager positions.

16          A     Yes, sir.

17          Q     And as a result of the reorg, there were going to  
18 be two positions, one a BWR chemistry and the other a PWR  
19 chemistry, do you recall that?

20          A     I think you're right, sir.

21          Q     Do you recall how -- (1) were you involved in  
22 making the determination that the PWR chemistry and the BWR  
23 chemistry positions needed to be posted?

24          A     I was one of the parties, yes.

25          Q     And how did you go about making that decision?

1           A     Well, it was based on the position in -- let me  
2 repeat that please -- strike that please.

3                     It was based on the duties and responsibilities  
4 had changed more than 35 percent and the supervisor -- and I  
5 can't remember exactly who the supervisor was at the time --

6           Q     Mr. Grover.

7           A     -- decided that there would be someone  
8 representing PWR and someone representing BWR, but the  
9 reason the position had to be posted was the 35 percent  
10 change.

11          Q     Did you talk to Mr. Grover or any other manager  
12 about what duties were actually being performed by Chandra,  
13 Harvey and Fiser?

14          A     Oh, yes, right.

15          Q     Do you recall Mr. Grover telling you that they  
16 were doing no more than 15 percent environmental work?

17          A     That's wrong and I don't think he said 15 percent.  
18 I think he said in the affidavit -- and I'm sorry, Your  
19 Honors, but I have to say this -- he said in the affidavit  
20 that he thought it was 15 percent and I said no, that's  
21 wrong, I said I told him 35 percent.

22          Q     But do you recall --

23          A     No, he did not tell me that it was 15 percent, no.

24          Q     Did you have a discussion with him where he told  
25 you what percentage of environmental work was being

1 performed by Chandra, Harvey and Fiser?

2 A Not to my knowledge, can't remember, can't recall.  
3 But it wasn't based on that, it was based on change in the  
4 job description or position description.

5 Q I understand, but in evaluating the change in a  
6 position description, do you look at all the duties and  
7 assume if it's got ten duties listed that that's 10 percent  
8 for each duty?

9 A Repeat that again, Mr. Dambly.

10 Q If a position description listed ten duties or  
11 functions, do you apply -- do you just look at the position  
12 description and then go well then each one is worth 10  
13 percent and if more than three changed, then there's a  
14 change in --

15 A We may talk to the supervisor about approximately  
16 what percent of the time that they do this duty.

17 Q And if the chemistry and environmental PG-8  
18 program managers were performing -- 90 or 95 percent of  
19 their duties were PWR and BWR chemistry, would you post  
20 those jobs?

21 A But that wasn't determined when I was involved in  
22 it.

23 Q Well, did you ask?

24 A Yes, we talked about the percentage, but what  
25 happened when you -- okay, we were told and I was told that

1 they were doing them on an equal basis, however they may  
2 have --

3 JUDGE YOUNG: They were doing what?

4 THE WITNESS: Equally basis -- equally basis.

5 JUDGE YOUNG: They were doing what on an equal  
6 basis?

7 THE WITNESS: Chemistry and environmental. You  
8 may have listed 1, 2, 3 or 4 duties under chemistry, you may  
9 have two duties listed under environmental, but they told me  
10 they were doing them equally.

11 JUDGE YOUNG: And who is "they" that told you  
12 that?

13 THE WITNESS: The supervisor.

14 CHAIRMAN BECHHOEFER: So 50 percent each one, 50  
15 percent environmental, 50 percent chemistry.

16 THE WITNESS: Right, right, equally.

17 JUDGE YOUNG: And the supervisor is --

18 BY MR. DAMBLY:

19 Q Which supervisors did you talk to about that? Who  
20 told you it was being done equally?

21 A Well, when we were doing the job description or  
22 when they did the job description, it would have been Grover  
23 and it would have been Wilson McArthur.

24 Q And Grover would have been the one you talked to  
25 about the chemistry/environmental?

1           A     On the chemistry, right; yes, sir.

2           Q     Now let me ask you to assume for a moment that Mr.  
3     Cox, Mr. Kent, Mr. Corey have indicated that those people --  
4     let's see, for Cox, Fiser was supporting Watts Bar and the  
5     overwhelming majority of his duties were PWR chemistry; for  
6     Sequoyah, it was Harvey and he did very little  
7     environmental, it was almost all PWR chemistry; and for  
8     Chandra, he was at Browns Ferry and it was almost all BWR  
9     chemistry.

10           JUDGE YOUNG: Which did you say for Watts Bar, P  
11     or B?

12           MR. DAMBLY: Watts Bar is BWR -- PWR. Watts Bar  
13     is where Mr. Fiser was, that's PWR.

14           MR. MARQUAND: Watts Bar and Sequoyah are  
15     pressurized water reactors; Browns Ferry is a boiling water  
16     reactor.

17           JUDGE YOUNG: That's why I wanted to clarify that.

18           MR. DAMBLY: I guess I'm not speaking clearly.

19     BY MR. DAMBLY:

20           Q     But anyway, if Fiser was performing very little  
21     environmental and almost exclusively PWR chemistry for Watts  
22     Bar and Harvey was doing almost no environmental and almost  
23     exclusively PWR chemistry for Sequoyah and you were  
24     considering a reduction to one PWR chemistry position, would  
25     you compete those or follow the RIF regs?

1           A     I would have to answer like this, the PDs were  
2 written where they could provide services to any of the  
3 plants. Now as far as where they utilized them the most, I  
4 really don't know.

5           JUDGE YOUNG: As far as what they knew about those  
6 people, is that what you said?

7           THE WITNESS: No, no, Judge, I said that the PDs  
8 were written where they could provide service to any of the  
9 plants. Now where they were utilized the most I don't know.  
10 But that wouldn't have anything to do with it, if you  
11 changed the job description and it changed more than 35  
12 percent, 35 percent or more.

13 BY MR. DAMBLY:

14           Q     Let me show you Joint Exhibit 65.

15                     (The witness reviews a document.)

16           Q     Are you familiar with what this document is?

17           A     Talking about reduction notices.

18           Q     Reduction in force and layoff procedures for TVA,  
19 is that it?

20           A     Yes, sir.

21           Q     And were those the procedures that were in effect  
22 for the '96 reorg, to the best of your knowledge?

23           A     I don't know how up to date this is, it says '87  
24 and I don't know whether we had one past '87. So whatever  
25 we had at the time, that's the one we used.

1           Q     If you would turn to page 15, at the bottom it  
2     says page 15, in the top two sentences, "In setting  
3     competitive levels, determinations are not based on the  
4     personal qualifications or performance level of individual  
5     employees. The determinations must be based solely on the  
6     content of accurate, up to date job descriptions." Do you  
7     see that?

8           A     Yes, sir.

9           Q     Was there any attempt made to assure that  
10    employees had accurate, up to date job descriptions before  
11    the '96 reorg?

12          A     In my opinion, I think they had accurate, up to  
13    that time.

14          Q     What did you do to verify it?

15          A     I can't answer that, I didn't do anything to  
16    verify it, because I don't know what point you're trying to  
17    get to, Mr. Dambly.

18          Q     Let me ask you very simply, as a part of your  
19    normal -- if you're getting into reduction situations, as  
20    part of your normal practice as an HR for TVA, do you go  
21    back to the file, pull PDs and assure their accuracy, check  
22    with the managers, check with the employees, find out is  
23    this an accurate description of your job duties and  
24    responsibilities?

25          A     Are you saying when we get ready to change?



1           Q     When you're getting ready to do a downsizing, is  
2     there any requirement or normal practice that you follow  
3     that you actually go pull the position descriptions for  
4     individuals and check to make sure they're accurate and up  
5     to date.

6           A     You're talking about in reductions in force.

7           Q     Right, downsizing.

8           A     Right, in a reduction in force, yes, right.

9           Q     In the '96 reorg, did you go and check --

10          A     This was not a reduction in force.

11          Q     Well, if you change the position description, it  
12     might have been. Did you check to see if they were  
13     accurate?

14                JUDGE YOUNG: How were position descriptions done  
15     and if they changed, how did all that work, just to clarify.

16                THE WITNESS: Position descriptions were done  
17     primarily by the supervisors saying what incumbents in these  
18     positions were doing. They may have had one or two position  
19     descriptions, they may have had one or two people in there,  
20     and they're the ones that wrote out the duties and  
21     responsibilities and they may have checked it with their  
22     supervisors, they may have communicated with the employees  
23     when those were given to them, to make sure that those were  
24     accurate at the time.

25                JUDGE YOUNG: I'm sensing that there's -- maybe

1 I'm not understanding -- maybe I'm the only one who is not  
2 understanding, but --

3 THE WITNESS: No, go ahead, Judge.

4 JUDGE YOUNG: -- but the role that HR played in  
5 drawing up position descriptions or checking them for  
6 accuracy, am I understanding you correctly to be saying that  
7 HR did not really take part in that, that that was a job of  
8 the supervisors?

9 THE WITNESS: The supervisors would write them up  
10 and then they would communicate with us for coordination of  
11 the PD.

12 JUDGE YOUNG: But it sounds like you're saying  
13 that HR did not review what the supervisors did. Am I  
14 understanding that right, or not?

15 THE WITNESS: Yes, we did if we were -- like we  
16 were talking about having a reorganization.

17 JUDGE YOUNG: Uh-huh.

18 THE WITNESS: We made sure -- okay, at the time  
19 and also we would check with Labor Relations, sometimes we  
20 would send the job description to the Hay committee, Hay  
21 classification in Knoxville.

22 JUDGE YOUNG: Hay?

23 THE WITNESS: Hay classification, that was the  
24 title of the department that would look at PDs and job  
25 descriptions. And sometimes we would check with OGC to make

1 sure that we were right in whatever we were doing, but to  
2 answer his question directly, I just can't. It's very  
3 difficult for me to respond to how he asked me the question,  
4 Your Honor.

5 BY MR. DAMBLY:

6 Q Switching back to the McArthur situation again for  
7 just a moment, who made the decision -- who's responsible  
8 for making decisions on positing or roll over, who has the  
9 authority -- was that Mr. McGrath or was that HR, or is it a  
10 combination?

11 A You said who has --

12 Q The authority to make the decision whether a  
13 position is going to be rolled over or competed. Is that  
14 solely an HR function?

15 A When you say rolled over, what do you mean?  
16 Placed in there without --

17 Q Competition.

18 A No, you go by the guidelines.

19 Q No, but who is the one that has the authority to  
20 effectuate that action? Is that an HR only or is that Mr.  
21 McGrath who has that authority or is it a sharing between HR  
22 and --

23 A In this particular case, what we've been talking  
24 about, Mr. Dambly, Human Resources in Knoxville would have  
25 been the one to say yes, you can put him in that position

1 based on, you know, not having any minorities, you do not  
2 have any women, you do not have any disabled individuals,  
3 just a unique position, he is the only one that has the  
4 qualifications to fill the position. They are the only ones  
5 in my opinion that could have made the decision.

6 Q Well, you're talking about --

7 A Not McGrath.

8 Q You're talking about --

9 A Not Ed Boyles, not myself, not Phil Reynolds.

10 Q When someone makes a selection for a position, who  
11 has the authority to make the selection, is that an HR  
12 function or is that a management function or is it a shared  
13 function?

14 A Oh, you're talking about selection after you have  
15 --

16 Q However you select someone.

17 A After you have done the interviews, after you have  
18 posted the position and done the interviews, who makes the  
19 selection?

20 Q Yes, we'll start with that one.

21 A That's the manager. Okay, now --

22 Q And if Mr. McArthur was placed in the rad con  
23 chemistry manager position, in effect he was selected by Mr.  
24 McArthur?

25 A Beg pardon?

1           Q     Did McArthur -- I mean McGrath -- did McGrath  
2 select McArthur for -- forget competition, was he the one  
3 that made the decision to place McArthur in the rad con  
4 chemistry program?

5           A     I think he's the one that told Ed Boyles not to  
6 advertise it and not to get a waiver.

7           Q     And who had the authority to decide that McArthur  
8 was going into that position? Can HR tell you you must put  
9 him in there?

10          A     We, as human resource officers and managers, the  
11 human resource managers should have been the ones to say no,  
12 we cannot do that.

13          Q     But as an HR manager, do you have the authority to  
14 tell Mr. McGrath, you must place so and so in that position  
15 and you have no say in it?

16          A     We are there to follow the guidelines, rules and  
17 regulations that govern selections, reductions in force, and  
18 we are there to advise the managers on what to do.

19          Q     Can you force a manager to do something?

20          A     No. Maybe you can influence, which I try to  
21 influence.

22               MR. DAMBLY: I would like to move Staff Exhibit --  
23 I'm sorry -- Joint Exhibit 165 into the record -- 65 --  
24 Joint Exhibit 65, the RIF procedures for TVA.

25               MR. MARQUAND: No objection, Your Honor.

1 CHAIRMAN BECHHOEFER: Without objection, Joint  
2 Exhibit 65 will be admitted.

3 (The document, heretofore marked as  
4 Joint Exhibit Number 65, was  
5 received in evidence.)

6 BY MR. DAMBLY:

7 Q Mr. Easley, do you know as between Chandra, Harvey  
8 and Fiser, who had seniority if a RIF was conducted?

9 A I can't recall, I would have to look at it.

10 Q If I can find TVA Exhibit 93.

11 (Brief pause.)

12 Q Let me direct your attention to the page which is  
13 marked at the bottom EH000033.

14 CHAIRMAN BECHHOEFER: Where are you looking?

15 JUDGE YOUNG: 000033.

16 MR. DAMBLY: Page 33 in the document, Bates stamp  
17 number starts with EH and a bunch of zeroes, but I think  
18 it's 33 in TVA Exhibit 93.

19 BY MR. DAMBLY:

20 Q Have you read that? Do you see that?

21 A Yes, sir.

22 Q Does that refresh your recollection as to the  
23 seniority between those three?

24 A It's based on -- this form here, the retention  
25 register that Fiser would have been at the top.

1 Q Thank you.

2 A Now that's not a reduction in force document.

3 Q Right. Let me show you Joint Exhibit 63.

4 JUDGE YOUNG: Fifty three?

5 MR. DAMBLY: Sixty three, Joint Exhibit 63. It's  
6 a document at the top that says Management Specialist  
7 Selection Process BP-102.

8 (The witness reviews a document.)

9 BY MR. DAMBLY:

10 Q Are you familiar with that document, Mr. Easley?

11 A I think I've seen this.

12 Q Are these the procedures that were to govern  
13 competitive selections back in the '96 time frame?

14 A I haven't read the whole thing, sir.

15 Q Take your time.

16 CHAIRMAN BECHHOEFER: Are these the procedures  
17 with a date of 9/30/93 on them?

18 MR. DAMBLY: Right.

19 MR. MARQUAND: To expedite the matter, we believe  
20 it's in the record, I believe he's going directly to what we  
21 stipulated, these were in effect in 1996. I believe it says  
22 that they're guidelines, I don't have the document in front  
23 of me.

24 JUDGE YOUNG: It's already been admitted, you say?

25 MR. DAMBLY: Yes, I believe so.

1           MR. MARQUAND: It's already been admitted through  
2 Tom McGrath. I don't know why we need to have the witness  
3 go through, it's already been admitted in evidence and it  
4 says it's a guideline and it was in effect at the time.

5           MR. DAMBLY: Your Honor, I just asked him if -- he  
6 said he thinks he's seen it, but he wasn't sure if it was  
7 the one that he was supposed to follow.

8 BY MR. DAMBLY:

9           Q     Are you now aware --

10          A     Yes.

11          Q     Okay.

12          A     Mr. Dambly.

13          Q     Yes, sir.

14          A     May I read something out of here?

15          Q     Are you going to respond to what I asked you  
16 before?

17          A     Beg pardon?

18          Q     Does it respond to the last question I asked you?

19          A     No, it's to back up the things I have said. Read  
20 (a) please.

21          Q     You're referring to in (a) as to what must be  
22 posted.

23          A     Right.

24          Q     By the way, as long as we're on (a) where it says  
25 all vacant permanent positions, if there is a vacant



1 position, even though somebody else may have held a similar  
2 position in the past and supposedly has rights, is there a  
3 vacant position until it's filled?

4 A No, it was saying all positions, pay grade 1  
5 through senior management must be advertised. That's the  
6 only thing I'm saying.

7 Q I was asking a different question. Mr. Mcgrath  
8 told us that the rad con chemistry position that resulted in  
9 the '96 reorganization wasn't vacant because McArthur was in  
10 it all along.

11 A He was not. And the organization chart shows that  
12 he was not.

13 Q Okay, now what was your involvement in the actual  
14 posting and selection process for the PWR chemistry position  
15 that resulted in the '96 reorganization?

16 A I'm trying to remember. I think I was involved in  
17 sitting down with the selecting supervisor concerning the  
18 questions that was going to be asked and also preparing a  
19 booklet. The booklet consisted of organization chart, it  
20 consisted of the questions that were going to be asked and  
21 it had some other things pertinent to the job.

22 Q Did it have the employees' submissions or  
23 applications for the positions?

24 A And also I was responsible for getting a letter  
25 out to the supervisors that were going to be on the hearing

1 board.

2 Q Okay. Now again, we'll go to the notebooks first,  
3 do you recall whether or not you placed the performance  
4 appraisals -- I guess service reviews is what y'all call  
5 them -- for the individuals who were applying for that job  
6 into the notebooks?

7 A I don't recall. I don't remember whether those  
8 were in there or not.

9 Q Okay. Now as to the choice of people to be on the  
10 selection review board, did you have any involvement in  
11 that? Do you remember any issues concerning who was going  
12 to be on it?

13 A Primarily it was done by the selecting supervisor.

14 Q He made the selection as to who would be on the  
15 panel or the board?

16 A Right.

17 Q And that selecting supervisor was Mr. McArthur?

18 A Are you talking about on what position now?

19 Q The PWR chemistry position -- PWR.

20 A And this is back in '96?

21 Q Right. Do you remember McArthur being placed in  
22 the rad con chemistry position before the rest of the  
23 positions were filled?

24 A I think I do but I don't recall. I rather not try  
25 to answer that.

1           Q     Do you remember who actually sat -- who was chosen  
2 originally to be on the selection review board?

3           A     Whoever was doing the selection, I probably did  
4 work with them, I'll put it like that.

5           Q     But do you remember the rad con chemistry managers  
6 from each of the three sites being the original selection  
7 review board -- Corey, Cox and Kent?

8           A     I think I do; yes, sir.

9           Q     Do you remember there being any issue about Mr.  
10 Cox' availability?

11          A     Was he the one at Watts Bar?

12          Q     He was the one at Watts Bar.

13          A     Yes, sir.

14          Q     What do you recall?

15          A     He was asked to participate and he refused to  
16 participate, saying that he had another commitment or he had  
17 something more important to do at that time.

18          Q     And did you make any recommendations on who should  
19 fill that slot or whether or not they should reschedule?

20          A     I thought they should reschedule, I thought they  
21 should encourage him to be there or have someone to  
22 encourage him to be there.

23          Q     And why did you think that?

24          A     Because he was familiar with the type of work that  
25 had been done by whoever was serving at that location.

1           Q     Okay. And were you told why it wasn't  
2 rescheduled?

3           A     Beg pardon?

4           Q     Were you told why they couldn't reschedule that  
5 board?

6           A     Because I think he told McGrath also that he could  
7 not make it and I think Wilson was told to get someone else,  
8 a substitute.

9           JUDGE YOUNG: What was the last name you said?

10          THE WITNESS: To get a substitute, someone else to  
11 help.

12          JUDGE YOUNG: What was the beginning of the  
13 sentence, he was told or someone was told, or who told who?

14          CHAIRMAN BECHHOEFER: Or were you told?

15          THE WITNESS: Beg pardon?

16          CHAIRMAN BECHHOEFER: Were you told that a  
17 substitute had to be obtained?

18          THE WITNESS: No, I said I think Mr. McGrath, he  
19 had told Mr. McGrath --

20          JUDGE YOUNG: Who is he, Mr. Cox?

21          THE WITNESS: Mr. Cox, I'm sorry. Mr. Cox had  
22 told Mr. McGrath that he could not participate and Mr.  
23 McGrath told Mr. Wilson to get someone else. And I'm not  
24 sure --

25          MR. MARQUAND: Mr. Wilson?

1 THE WITNESS: -- I'd rather not speculate on it.

2 MR. DAMBLY: Wilson McArthur.

3 THE WITNESS: Wilson McArthur.

4 JUDGE YOUNG: Okay.

5 BY MR. DAMBLY:

6 Q Who wrote the actual questions that the board  
7 used?

8 A Beg pardon?

9 Q Who -- in the selection for the PWR chemistry  
10 position, who wrote the questions that the board used to do  
11 the interviews, do you know?

12 A The supervisor came up with the questions. Now he  
13 could have communicated with the people that was going to be  
14 on the board. The only thing that we did, we serve as the  
15 facilitator and we ask questions primarily related to  
16 personnel responsibilities.

17 Q Okay. And what's the purpose of the board  
18 interview in this process?

19 A To select someone for the job.

20 Q Is the job supposed to be -- the selection  
21 supposed to be made exclusively on the outcome of the  
22 interviews?

23 A I've been told that the selecting supervisor,  
24 although he has a board there --

25 JUDGE YOUNG: He has more --

1 THE WITNESS: He has a board there.

2 JUDGE YOUNG: A board.

3 THE WITNESS: To help him with the selection;  
4 however, if he wants to select someone differently, then he  
5 has that right. But in most cases, the selection is based  
6 on the selecting board's recommendation.

7 BY MR. DAMBLY:

8 Q Okay. If you would refer again to Joint Exhibit  
9 63 and first, before I move to the section I was going to,  
10 on the Purpose section on page 1, do you see it says "This  
11 business practice establishes standardized requirements  
12 which must be met when selecting a candidate for  
13 management." Do you see anything that says these are just  
14 guidelines?

15 A Beg pardon?

16 Q Do you see anything that says what Mr. Marquand  
17 represented, these are just general guidelines?

18 A I don't understand your question.

19 Q Well, are these requirements that must be met, is  
20 that what it says?

21 A Right.

22 Q Is that your understanding of a general guideline?

23 A Oh, yes.

24 Q A general guideline is something that must be met?

25 A Yes.

1           Q     Okay. Then maybe you and Mr. Marquand are in  
2 agreement on that.

3                     If we could turn to --

4           MR. MARQUAND: Your Honor, I'm going to object to  
5 the little commentary by counsel. That's not a question,  
6 it's not appropriate.

7           MR. DAMBLY: Well, since Mr. Marquand was doing  
8 testifying about it before as to what they were, I think it  
9 is appropriate.

10          JUDGE YOUNG: Well, maybe at lunch time we can all  
11 sort of chill out and not make those kind of comments on  
12 anybody's part.

13          CHAIRMAN BECHHOEFER: At this stage, would you  
14 like to explain -- there's a reference to a nuclear power  
15 selection guide, do you know what that is, in the first  
16 paragraph?

17          THE WITNESS: In my opinion, what Mr. Reynolds is  
18 saying here is that we also have or had at the time, a  
19 nuclear power selection guide -- just a minute, Judge, let  
20 me look at this.

21                     (The witness reviews a document.)

22          I think what he's trying to say here, in any  
23 office, human resource or department, other than specific  
24 guidelines and different processes that you have, you always  
25 have your own guidelines that you have written up yourself

1 for that department or for that division or for human  
2 resources, that you use in relation to what has been set  
3 down by higher control. And I think this is probably what  
4 he was saying here. I may not be explaining it to you right  
5 the way you wanted it, but I think that's what he's trying  
6 to say.

7 JUDGE COLE: But there is a document that could be  
8 referred to as the nuclear power selection guide?

9 THE WITNESS: I think that's what he said, there's  
10 some type of document. I couldn't tell you exactly what the  
11 document is, I don't recall, I don't remember, but there's -  
12 - he's referring to some type of nuclear power selection  
13 guide that we had there.

14 CHAIRMAN BECHHOEFER: Could that be a guide for  
15 interpreting areas, words used on this document, which you  
16 said is mandatory? Does this say look to the guide for what  
17 this means?

18 THE WITNESS: I don't recall, Your Honor. I'd  
19 rather not try to be specific on that.

20 CHAIRMAN BECHHOEFER: Okay.

21 THE WITNESS: I don't really know.

22 BY MR. DAMBLY:

23 Q Referring to this document and on the second page,  
24 paragraph 3.4(b) -- well, maybe before I get to that one,  
25 I'm sorry -- were you actually at the board interviews for



1 the candidates for the PWR chemistry positions?

2 A You're talking about the position --

3 Q That Fiser applied for.

4 A No, I was not there.

5 Q Why were you not there?

6 A I wasn't there because Fiser had told me -- he had  
7 come down to my office and told me if we advertised the  
8 position, then he was going to file a complaint. He also  
9 told me that that was his position and that it shouldn't be  
10 advertised. He also told me --

11 JUDGE YOUNG: And it shouldn't?

12 THE WITNESS: It should not be advertised. And I  
13 told him why we were advertising the position. He also had  
14 informed his supervisor at the time, Ron Grover, that he  
15 shouldn't have to apply on the position?

16 JUDGE YOUNG: He should not?

17 THE WITNESS: He should not have to apply on the  
18 position. And if he had to apply on the position, that he  
19 was going to file a complaint. And another reason I did not  
20 is because based on the tape that you mentioned earlier,  
21 that he could have had a tape in his pocket, and at the time  
22 when he was telling me all this, I asked him to go with me  
23 to my supervisor, Ed Boyles, and tell Ed Boyles the same  
24 thing, which he did. And Ed explained to him that we had to  
25 advertise the position, gave him the rationale of why we had

1 to advertise the position.

2 BY MR. DAMBLY:

3 Q Well, would you normally -- just because somebody  
4 said if this position is posted, I'm going to file a  
5 complaint, would that normally be a reason for you to recuse  
6 yourself from sitting with the board?

7 A I didn't want to be in on the board because I  
8 think he had accused me of colluding with others against  
9 him.

10 Q Now, as far as this particular selection went, you  
11 prepared the notebooks that all the selecting review board  
12 members got, right?

13 A Beg pardon?

14 Q For this selection, you prepared the notebooks  
15 that all the board members got?

16 A I think I did, I can't remember because Ed decided  
17 to send my counterpart when they had the selection board.

18 JUDGE YOUNG: Send your --

19 MR. DAMBLY: Counterpart.

20 JUDGE YOUNG: Counterpart.

21 THE WITNESS: Counterpart, Ms. Westbrook, and I  
22 have forgotten to what extent that she may have gotten  
23 involved. I may have done it all, as far as the booklet.

24 BY MR. DAMBLY:

25 Q Do you recall who tallied up the scores after the

1 interviews?

2 A The scores were there. Now I may have transferred  
3 the scores to a sheet, but I did not do any scoring myself.

4 Q Understand that. The only ones that do scoring is  
5 the board, right, the board members?

6 A Beg pardon?

7 Q The board members are the only ones that do  
8 scoring in the interview?

9 A Right.

10 Q Your lack of involvement in this process was  
11 strictly you did not attend the interviews. You handled it  
12 up the interviews and then you collected the scores and did  
13 whatever you would normally do afterwards, you just were not  
14 physically present.

15 A I can't recall exactly to what extent I was  
16 involved after, but I may have been involved in tallying up  
17 the scores, but I was not involved in the interviews. And  
18 in my opinion, I felt that it was right for them not to have  
19 me to sit in on the interviews based on what Mr. Fiser had  
20 said to me and based on the taping and based on what his  
21 friend, supposed to be friend, was saying about him taping  
22 me. "Ben, be careful."

23 Q Okay. I'm not in disagreement with you, I'm just  
24 asking where you were in or out of the process.

25 Now if we go back to Joint Exhibit 63 and

1 paragraph 3.4 and then subparagraph (b) where it says the  
2 final candidate selected by the immediate supervisor based  
3 on a whole bunch of things. To your knowledge, was that  
4 paragraph complied with in the selection for the PWR  
5 chemistry position?

6 A I think so, I was told it was.

7 CHAIRMAN BECHHOEFER: You think or you were told?

8 MR. DAMBLY: Who told you?

9 THE WITNESS: Well, I think so. He asked me if --  
10 repeat the question.

11 BY MR. DAMBLY:

12 Q To the best of your knowledge, was this paragraph  
13 complied with?

14 A And I said I think so.

15 Q And based on what do you think so?

16 A Based on what I was told by Ms. Westbrooks.

17 Q If you'd look at this paragraph, this is talking  
18 about after the interviews, this is what the final candidate  
19 selected by the immediate supervisor based on and it says a  
20 whole bunch of things that it's based on. So we're not  
21 talking about the part that Ms. Westbrook sat on the  
22 interviews, we're talking about the selection itself. To  
23 your knowledge, did Dr. McArthur do all the stuff that's on  
24 -- that's in 3.4(b)?

25 A I can't respond to that because I was not involved

1 in that. The only thing I was involved prior to was getting  
2 the booklets together. Okay? And also I may have tallied  
3 up the scores at the end.

4 And if I can espouse on what -- I was told by Ms.  
5 Westbrooks that Mr. Fiser may have had a chance for the  
6 position, if he had answered the questions, that basically  
7 he didn't represent himself well.

8 Q What --

9 A They said he acted like he didn't really care.

10 Q Okay. Do you know if any reference checks were  
11 conducted by Mr. McArthur?

12 A When you say reference checks, clarify that, sir.

13 Q If you look at 3.4(c), the immediate supervisor of  
14 the vacant position conducts reference checks.

15 (The witness reviews a document.)

16 Q From your experience at HR, can a selecting review  
17 board panel member use personal knowledge in rating  
18 candidates?

19 A I would like to answer that like this -- from a  
20 human standpoint, in my opinion sometimes we may not be able  
21 to take the personal part out of it. Now as far as using it,  
22 I can't say yes or no.

23 Q Well, suppose a person was asked a question and  
24 they gave a fairly poor answer, but the board members knew -  
25 - one of them in particular had worked with this individual

1 before and they had just worked on a project involving this  
2 and had done a great job, is the board member supposed to  
3 score that response strictly based on well, he didn't give  
4 me a very good answer, so he gets a whatever number or can  
5 he take into acct that I know he knows that and he's done  
6 it.

7 A No, it should be based on the response given.

8 Q Only the response given. Can a review board  
9 member ask a question to take advantage of a known strength  
10 of one of the candidates?

11 A No the questions are there, they have outlined 1  
12 through 8, 1 through 9, 1 through 10.

13 Q What if just before the interviews, one of the  
14 board members added a question that dealt with a specific  
15 area in which one of the members had worked, is that  
16 appropriate?

17 A No. The facilitator should throw that out, say  
18 strike it from the record.

19 CHAIRMAN BECHHOEFER: Have you inquired yet, I  
20 don't recall, who the facilitator was during that particular  
21 -- or were you going to ask?

22 MR. DAMBLY: I believe when he said facilitator,  
23 he was talking about Ms. Westbrook, is that right?

24 THE WITNESS: Meiissa Westbrook.

25 CHAIRMAN BECHHOEFER: Miissa Westbrook?

1 MR. DAMBLY: Westbrook.

2 CHAIRMAN BECHHOEFER: Okay.

3 MR. DAMBLY: The HR person who sits in on the  
4 panel, or on the interviews, is --

5 THE WITNESS: She was the one I was talking about,  
6 my counterpart.

7 CHAIRMAN BECHHOEFER: Okay, I just didn't  
8 understand putting the two together.

9 BY MR. DAMBLY:

10 Q Were you aware at the time of the selection that  
11 McArthur had been interviewed in connection with Fiser's '93  
12 complaint?

13 A Repeat that, sir.

14 Q I said at the time of the selection review board  
15 meetings, were you aware that McArthur had been interviewed  
16 in connection with Fiser's '93 complaint?

17 A I don't think so, sir, I don't recall it.

18 Q Were you aware that Kent had been involved or  
19 interviewed in regard to the '93 complaint?

20 A I don't recall.

21 Q Let me ask another question about the selection  
22 review board. Did members typically get together ahead of  
23 time and say okay, here's the 10 questions we're going to  
24 ask and discuss what would get a 10 or a 5 or a 3 on a given  
25 question in terms of a response?

1           A     No, not to my knowledge.

2           Q     So they're free -- you could give whatever answer  
3 and get a 10 by --

4           A     That's up to the supervisor. That's just like,  
5 take you, Mr. Dambly, and Mr. Marquand, and Ms. Euchner and  
6 myself, if we're on the board, it would be up to each of us  
7 to give our own rating. Where you may give a 5, I may give  
8 a 6 based on the response.

9           Q     So there's nothing to prevent one board member  
10 from giving a 10 to an answer and --

11          A     One can give a 10 and one can give a 2, right.

12          Q     Okay.

13          A     But if I could say, I think most of them are  
14 close, they weren't too far apart in response.

15               MR. DAMBLY: Okay. I just have one last area of  
16 inquiry, so we can probably finish up before lunch.

17               CHAIRMAN BECHHOEFER: What's the general scope?

18               MR. DAMBLY: I don't think it's going to take more  
19 than 10 minutes or less -- maybe less with any luck.

20               CHAIRMAN BECHHOEFER: I'd just as soon have you  
21 finish.

22 BY MR. DAMBLY:

23           Q     I'd like to direct you to Staff Exhibit 22, book  
24 2.

25               (Brief pause.)



1           Q     Do you recall being interviewed by the TVA OIG  
2     July 10 of '96?

3           A     I recall being interviewed, yes.

4           Q     Do you recall a statement that one of the reasons  
5     that the jobs, PWR, BWR, were posted was so that everybody  
6     would have an equal chance to apply for them and compete for  
7     them?

8           A     I think I see that.

9           Q     Just so we're clear, in a reduction in force  
10    situation, people compete for positions, don't they?

11          A     Beg pardon, Mr. Dambly?

12          Q     I said in a reduction in force situation, people  
13    compete for positions, don't they?

14          A     Are you saying a reduction in force?

15          Q     Yes.

16          A     When you say compete, clarify that.

17          Q     Well, what are the areas called that you divide  
18    employees into, competitive areas?

19          A     Right, on a retention register.

20          Q     And you have competitive levels underneath that?

21          A     Yes, sir, right.

22          Q     And then there's criteria mandated by OPM on how  
23    one competes and who gets selected.

24          A     Right, right.

25          Q     So those are competition.

1       A     I don't know whether I would call them  
2 competition, I would just say those are the guidelines that  
3 you use in order to determine --

4       Q     Well, everybody gets put under those guidelines.

5       A     Beg pardon?

6       Q     Everybody gets put under those guidelines, is that  
7 correct?

8       A     Yes, sir.

9       Q     And everybody has an equal chance, depending on if  
10 they've got the seniority or they're a veteran or whatever.

11      A     Right, whatever.

12      Q     And those are the Congressionally mandated --

13      A     Whatever the requirements are.

14      Q     Requirements for how you compete in a downsizing.

15      A     Right.

16      Q     So there is a competition. It's not the kind you  
17 normally think of, but it's a competition.

18      A     If you want to call it competition, sir, it's  
19 competition.

20           MR. DAMBLY: That's all the questions I have. I  
21 would like to, however, -- we just discussed Staff Exhibit  
22 22, --

23           CHAIRMAN BECHHOEFER: 22 was the --

24           MR. DAMBLY: Okay, if you'd look at Staff Exhibit  
25 21 also.

1 BY MR. DAMBLY:

2 Q Do you recall being interviewed in October of '93  
3 by the TVA OIG?

4 A I was interviewed by OIG, yes.

5 Q If you would turn to Staff Exhibit 25. Do you  
6 recall being interviewed by a Department of Labor  
7 investigator in connection with Mr. Fiser's '96 DOL  
8 complaint?

9 A Yes, sir.

10 Q And if you would turn to Staff Exhibit 26. Do you  
11 recall being interviewed by the NRC Office of Investigations  
12 in October of 1998 in connection with this case that we're  
13 dealing with now? By Ms. Vincent.

14 A By Ms. Diane Vincent? Yes.

15 Q And do you recall my taking your deposition in  
16 November of 2001 in this case?

17 A Yes.

18 Q As you said earlier today, those all have a better  
19 recollection than your present recollection of the events  
20 concerning -- that we've discussed today?

21 A Repeat that please, sir.

22 Q You said earlier today those statements represent  
23 a better understanding -- you don't really have that much of  
24 a recollection today. You were more accurate in your  
25 assessments back in that period of time, is that correct?

1           A     What I said is that over a six year span and  
2     trying to be consistent, that I would refer you back to  
3     those. And I agree, as of today, yes, there's some things  
4     that I don't recall that I may have said back in November of  
5     2001.

6           Q     And I guess I forgot, Joint Exhibit 41, the record  
7     of interview from October of '96 by the TVA OIG. Do you  
8     remember them talking to you?

9           A     Repeat that.

10          Q     Joint Exhibit 41.

11          A     Yes. Mr. Dambly.

12          Q     Yes, sir.

13          A     That's the reason that I have said that I have  
14     been interviewed, have given my testimonies, given an  
15     affidavit, deposition, five, six or seven times. And like I  
16     said before, I'm trying to be consistent and to keep from  
17     not being consistent, I am not going to try to remember or  
18     recall everything I said in the past because I don't think  
19     it would be fair to you, I don't think it would be fair to  
20     TVA, I don't think it'd be fair to Mr. Fiser because I have  
21     given, to the best of my knowledge, a true testimony  
22     concerning the events, concerning what has occurred, and for  
23     this thing to keep going on and on and on over the yrs and  
24     with my medical problems, with other things happening in my  
25     life, it's just hard to recall. And like I said, you have

1 the booklets and I don't have anything to refresh my memory.

2 And to the Judges, I may be wrong, I just don't  
3 think it's fair. I know this is his job, he has to do this,  
4 and this is your job, and I think y'all have been very fair,  
5 but for me to continue for six yrs -- where does it stop?

6 JUDGE YOUNG: I think what he was trying to ask  
7 you was from what you had said at the beginning of your  
8 testimony, it sounded as though you were saying that your  
9 memory would have been better in the earlier statements,  
10 that you couldn't remember now quite as well.

11 THE WITNESS: Right.

12 JUDGE YOUNG: Is that correct?

13 THE WITNESS: I can't.

14 JUDGE YOUNG: Is it correct that your memory was  
15 better then than it is now?

16 THE WITNESS: Oh, sure.

17 JUDGE YOUNG: I think that's all he was asking.  
18 Maybe I misunderstood it.

19 MR. DAMBLY: Right. At this time --

20 CHAIRMAN BECHHOEFER: Mr. Dambly, you did not  
21 identify the November 29 deposition, is that Staff Exhibit  
22 27?

23 MR. DAMBLY: I'm sorry, Staff Exhibit 27.

24 At this time, staff would move in Exhibits --  
25 Staff Exhibits 21, 22, 24, 25, 26, 27 and Joint Exhibit 41.

1 CHAIRMAN BECHHOEFER: Repeat the numbers slowly.

2 MR. DAMBLY: I'm sorry. Staff Exhibits 21, 22,  
3 24, 25, 26, 27 and Joint Exhibit 41.

4 MR. MARQUAND: Your Honor, we object very  
5 strenuously to those. If he wants to show the witness those  
6 -- I mean the witness has said my recollection is not good.  
7 If he has specific questions about problems with Mr.  
8 Easley's recollection, he's entitled to refresh his  
9 recollection. But to dump all this stuff in the record and  
10 make vegetable soup out of it and then come back later and  
11 say well, he said something at some point in one of those  
12 statements or depositions or even some of them aren't even  
13 statements, they're just summaries -- is inappropriate.  
14 There is not a court in this land that would allow it. It  
15 is clearly prejudicial, it is clearly objectionable and it  
16 is clearly reversible error under any standard.

17 CHAIRMAN BECHHOEFER: Is this any different in  
18 theory or scope from the interrogatories that we considered  
19 earlier?

20 MR. MARQUAND: The interrogatories are their  
21 contentions as to what happened, it's the staff's  
22 contention. This is different than that and it's different  
23 than Mr. McGrath, who was arguably a managing agent. Mr.  
24 Easley has been gone from TVA since 1996 and there can be no  
25 contention that he was a managing agent under Rule 32(a)2).

1           CHAIRMAN BECHHOEFER: Well, that rule doesn't  
2 apply.

3           MR. MARQUAND: I understand, but it's certainly  
4 guidance.

5           CHAIRMAN BECHHOEFER: We may use it as guidance in  
6 the absence of something else and I think as I remarked at  
7 least, there is something else on the use of depositions and  
8 that type of thing.

9           MR. MARQUAND: Yes, and as Mr. Dambly likes to  
10 remind us, this is a de novo proceeding, this is not what  
11 Mr. Easley told TVA's IG six years ago, it's not what he  
12 told OI four years ago, it's what he testifies to here in  
13 this courtroom. If Mr. Dambly wants to refresh his  
14 recollection, that's appropriate, but to drag in the  
15 summaries, somebody's notes of what Mr. Easley told them six  
16 yrs ago and not tell him well, is this correct, is it not  
17 correct, does this refresh your recollection -- that's  
18 inappropriate.

19           CHAIRMAN BECHHOEFER: Mr. Dambly.

20           MR. DAMBLY: I have a couple of responses. First  
21 place, it's certainly not inappropriate to admit documents  
22 when a witness has said he really doesn't remember the stuff  
23 earlier and he gave statements. And secondly, Mr. Marquand  
24 keeps complaining about a TVA OIG report and interviews, but  
25 even if we were in federal rules, a record of regularly

1 conducted activity, report made by or from INPO transmitted  
2 by a person with knowledge, if kept in the course of a  
3 regularly conducted business activity would be an exception  
4 anyway, and that's what those are.

5           These are TVA OI business, regularly kept records,  
6 this is how they do their work, this is what they put in,  
7 this is what they give to Mr. Marquand and other people to  
8 base actions on and I find it very unsettling to have him  
9 continuously TVA OIG got it all wrong all the time and you  
10 can't trust their reports. That's what they rely on, that's  
11 what everybody else is supposed to rely on and I think it's  
12 not prejudicial to them whatsoever.

13           JUDGE YOUNG: Are there particular portions of any  
14 of these interview reports or depositions that you want to  
15 rely on in making your argument in this case that would be  
16 different than what Mr. Easley testified to?

17           MR. DAMBLY: Well, he testified he didn't remember  
18 a lot of the early stuff about who was involved in what  
19 activities back in '93 and any of transfers between Jocher,  
20 Fiser and settlements and whatever, he didn't remember any  
21 of that.

22           JUDGE YOUNG: As I recall, you showed him a couple  
23 of things and asked him if that helped him to remember. And  
24 I don't know whether you did that with the others in terms  
25 of specifics.



1           MR. DAMBLY: I didn't go back over all the early  
2 stuff and go line by line with what he said when he said it,  
3 because he said he didn't remember that stuff. I mean, I  
4 can read it all into the record and say does that refresh  
5 your recollection and hand it to him and he can read it  
6 again and then we can go over it and we can be here for two  
7 days. But he's told us at the beginning, he made a speech  
8 that said, you know, I really don't remember, I'm on  
9 medicine and it affects my memory to a certain extent, and I  
10 think it's perfectly legitimate -- most of his exceptions  
11 are hearsay anyway and we don't have hearsay as a problem in  
12 NRC proceedings, and all of these can come in and should  
13 come in at this point.

14           THE WITNESS: May I --

15           MR. MARQUAND: I do have one response to Mr.  
16 Dambly. Mr. Dambly's comment is that the IG's records  
17 should come in the federal rules of evidence, which now he  
18 thinks do apply.

19           CHAIRMAN BECHHOEFER: I don't think Mr. Dambly  
20 said that. He said even under the federal rules.

21           MR. MARQUAND: They wouldn't come in under the  
22 federal rules because this --

23           CHAIRMAN BECHHOEFER: We're not really here --  
24 federal rules are guidelines, if that, and I think they're  
25 guidelines where the NRC rules omit any mention of a

1 particular subject. There is an NRC rule here, so I'm not  
2 sure the federal -- at least in my mind, the federal rules  
3 are not -- and interpretations thereof -- are not either  
4 controlling or even very persuasive.

5 MR. MARQUAND: I wouldn't think they would be  
6 persuasive because I don't think they would apply in this  
7 situation because the IG investigation is done of a  
8 complaint filed, it's in litigation and certainly an  
9 investigative report done when a case is in litigation  
10 before that body is not admissible, it's self-serving as all  
11 get out, just like the OI report is.

12 CHAIRMAN BECHHOEFER: I think the precedent in NRC  
13 proceedings is that OI reports at least are admissible. I  
14 mean we then judge the weight they should be given in light  
15 of whatever the testimony is. They're routinely admitted.

16 MR. MARQUAND: We're not talking about TVA's IG  
17 report, we're talking about somebody's notes of their  
18 interviews of Mr. Easley.

19 But my primary objection is, as Mr. Dambly keeps  
20 reminding us, this is a de novo proceeding. Mr. Easley is  
21 here to testify. If he says he doesn't recall, then his  
22 memory can be refreshed. But to dump all this in the record  
23 and make vegetable soup of it, is clear error.

24 CHAIRMAN BECHHOEFER: Mr. Dambly, anything  
25 further?

1           MR. DAMBLY: Again, I believe clearly all of these  
2 are admissible under NRC rules and beyond that, I kind of  
3 find it -- it'll be interesting to ask Mr. Hickman if TVA's  
4 IG performs a staff function in helping them in litigation,  
5 which is what he seems to have said. I thought they were  
6 supposed to be independent.

7           MR. MARQUAND: That's a mischaracterization of  
8 what I said.

9           JUDGE YOUNG: You go ahead and make your ruling  
10 and I'll add a couple of words.

11          CHAIRMAN BECHHOEFER: Okay. The Board will admit  
12 all of these exhibits. The Board will treat -- will know  
13 that many of them are hearsay type documents and we treat  
14 that in terms of the weight we give it. And we will be able  
15 to evaluate what weight to give it based on the entire  
16 record which we will have before us. So we will admit that  
17 document.

18          CHAIRMAN BECHHOEFER: I think Judge Young has one  
19 further statement.

20          JUDGE YOUNG: Yes, I'd just like to add, at the  
21 beginning, I actually looked back to Rule 32 for guidance  
22 and wondered whether we might be in a situation where,  
23 because of Mr. Easley's illness and medical problems and how  
24 that affected his memory problem, instead of his testimony,  
25 his deposition, for example, might have been offered. But

1 then as he testified, he obviously had a fair memory of a  
2 lot of things. I guess the only thing I would say is this  
3 has come up twice now in terms of a deposition and now other  
4 similar documents coming in after a party has testified.  
5 And to the degree that the party offering such a document  
6 wants to rely on parts of the document that are different  
7 than what the witness testified to, I do think there is --  
8 as I think we said yesterday -- a basic fairness issue of  
9 not showing them any inconsistent parts that you might want  
10 to rely on and giving them an opportunity to refresh their  
11 memory and make any corrections or whatever that might be  
12 appropriate. So to the degree this is going to be happening  
13 with future witnesses, I think it creates a better record  
14 and allows the witness to give the best testimony that they  
15 can give by allowing them to see the particular parts that  
16 you want to rely on and then explain or refresh their  
17 memory.

18 MR. DAMBLY: If I might just address that; as far  
19 as I'm aware, I'm not putting those in as prior inconsistent  
20 statements, I don't know that Mr. Easley has told me  
21 anything different today. There are areas he didn't  
22 remember, so this will be a complete record of what he's  
23 said in a proceeding over the course of time and it will be  
24 better than what he couldn't remember today. But I'm not  
25 representing that he made any prior inconsistent statements

1 per se.

2 JUDGE YOUNG: I realize that, and I guess what I  
3 was getting to is we expect that the parties will file  
4 proposed findings of fact and conclusions of law after the  
5 end of the hearing, and in that make references to the  
6 record, to exhibits, and to the degree you may want to rely  
7 on any of these exhibits and it happens to be something that  
8 the witness did not testify to or didn't have an opportunity  
9 to explain or something like that, I think it would just be  
10 better, to the degree you might want to rely on anything  
11 like that and the witness doesn't seem to remember or said  
12 something different -- not that you're trying to impeach  
13 them, but that you just refreshed -- allow them to refresh  
14 their memory.

15 That's just my view of it.

16 CHAIRMAN BECHHOEFER: Well, my recollection is  
17 that all of the information that Mr. Easley had trouble  
18 remembering related to his past positions. Now maybe that's  
19 a little overstated, but at least the majority of the  
20 statements that I remember where Mr. Easley said that the  
21 various depositions or interviews, as you will, may provide  
22 better information, I thought that wholly was his past  
23 positions. Now maybe I'm wrong on that, but at least I  
24 can't see any major difference between the parties on what  
25 actually -- what positions Mr. Easley actually, in fact I

1 should say, occupied. Perhaps in the description of those  
2 positions, there might be differences in the description of  
3 the duties of the positions.

4 Any further comments? We are going to admit the  
5 exhibits.

6 MR. DAMBLY: Nothing further from the staff.

7 CHAIRMAN BECHHOEFER: Okay.

8 MR. MARQUAND: No, Your Honor.

9 CHAIRMAN BECHHOEFER: With that, Exhibits 21, 22,  
10 24, 25, 26, 27 and Joint Exhibit 41 are admitted.

11 (The documents, heretofore marked  
12 as Staff Exhibits 21, 22, 24, 25,  
13 26, 27 and Joint Exhibit 41, were  
14 received in evidence.)

15 Let's adjourn for lunch, quarter to one, we'll be  
16 back at quarter to two. But before we set that, am I  
17 correct that Mr. Fiser is going to resume at that time?

18 MR. DAMBLY: I assume TVA may want to do cross  
19 examination --

20 CHAIRMAN BECHHOEFER: Oh, you've got cross first,  
21 before Mr. Fiser gets his. Okay.

22 MR. DAMBLY: We're planning on having Mr. Fiser on  
23 call if he's needed.

24 CHAIRMAN BECHHOEFER: I see.

25 JUDGE YOUNG: Do you think there's any likelihood

1 that we'll get to him?

2 MR. MARQUAND: Slim to none.

3 MR. DAMBLY: Then I'll tell Mr. Fiser not to stand  
4 around. Because tomorrow we do have to do Dr. McArthur.

5 CHAIRMAN BECHHOEFER: No, I realize that.

6 JUDGE YOUNG: And you're expecting McArthur to  
7 take tomorrow -- let's see, what day is today -- Wednesday,  
8 right?

9 MR. DAMBLY: We'll have Mr. Fiser ready Friday.  
10 I'm sure Mr. McArthur will take -- he was involved in more  
11 than Mr. McGrath, so I think it's fair to say he'll take  
12 more than one day.

13 JUDGE YOUNG: Okay.

14 CHAIRMAN BECHHOEFER: Okay, well, I guess you  
15 might tell Mr. Fiser to enjoy the rest of the afternoon,  
16 whether that stops him from going to Atlanta or not, I don't  
17 know, but --

18 MR. DAMBLY: It turns out he wasn't going to be  
19 going today anyway.

20 CHAIRMAN BECHHOEFER: Let's get off the record.

21 (Whereupon, a luncheon recess was taken at  
22 12:41 p.m., the hearing to resume at 1:45 p.m.,  
23 the same day.)  
24  
25

AFTERNOON SESSION

CHAIRMAN BECHHOEFER: I would like to suggest that the staff, if -- if you can do this. You may not be able to. When you get to -- to your rebuttal, or perhaps -- I can't remember if Mr. Easley is a witness of both parties. But it could be cross-examination as well. You try to, if you can, connect some of those earlier documents where statements were made, with the -- whatever question you're intending to ask. We're not asking you to go through all of it at this time. But if -- if you get to questions that were answered or referenced earlier, you may want to -- for ease of following things, it might be useful for...

Mr. Marquand, go ahead.

MR. MARQUAND: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. MARQUAND:

Q Mr. Easley, good afternoon.

A Good afternoon.

Q In your testimony this morning you said -- let me direct your attention to 1993, when you said you were the person who was directed to serve a reduction in force letter to Gary Fiser, and you said that you felt that should have been served by somebody from Sequoyah; do you remember that?

A Yes, sir.

Q Why did you think it should have been served by



1 somebody from Sequoyah?

2 A Because, to my understanding, he were placed in  
3 the ETP program by Sequoyah.

4 Q And how did Sequoyah place him there? Whose  
5 employee was he?

6 A Sequoyah at the time.

7 Q All right. And at the time that he was working in  
8 Chattanooga, was he still Sequoyah's employee?

9 A Can you give me a specific date?

10 Q Back in 1993, when you served him his papers.

11 A Repeat that again.

12 Q In 1993, when you served him his RIF papers and  
13 you felt that Sequoyah should have been serving those  
14 papers, even though he was working downtown, was he still  
15 Sequoyah's employee?

16 A Oh, yes.

17 Q You were earlier asked about -- do you remember in  
18 your testimony this morning you were asked -- were asked  
19 about if you were aware of a rotation between Gary Fiser and  
20 Bill Jocher in 1992, and you said you didn't really remember  
21 that. Did you know that Gary Fiser had been assigned to  
22 work downtown, even though he was a Sequoyah chemistry  
23 manager?

24 A Was it prior to '93 or...

25 Q In the -- in the '92-'93 time frame.

1           A     I don't -- I don't recall.

2           Q     All right. I'm going to show you Staff's Exhibit  
3 177. And attached to Staff Exhibit 177 are a number of  
4 exhibits, and I'm going to show you what's Exhibit 5 to that  
5 particular staff exhibit, and it is a record of interview of  
6 yourself when you were interviewed by TVA's inspector  
7 general back in 1993.

8           MR. MARQUAND: And this, Your Honors, is in a  
9 separate book the staff provided us yesterday.

10          Q     Let me direct your attention to the second  
11 paragraph of this record of interview of yourself. Do you  
12 see where it says, "Easley advised Fiser had been surplused  
13 from his position as the Sequoyah chemistry manager because  
14 that position had been revised and was not the same position  
15 Fiser originally held." Do you see that?

16          A     Uh-huh (affirmative).

17          Q     All right. And below that, in the third  
18 paragraph, do you see where it says, "Easley stated that Rob  
19 Beeken, plant manager, Sequoyah Nuclear Plant, parens, SQN,  
20 and Robert Fennick, site vice president, SQN, did not want  
21 Fiser to come back to Sequoyah after his one-year temporary  
22 assignment in corporate, and wanted corporate chemistry to  
23 find a position for him." Do you see that?

24          A     Yes.

25          Q     All right. Does that refresh your recollection

1 that Mr. Fiser had been assigned to work in corporate for a  
2 one-year temporary assignment, even though he was an  
3 employee of the Sequoyah Nuclear Plant?

4 A Yes.

5 Q Okay. And the fact that Mr. Fiser was RIF'd or  
6 surplusd as a Sequoyah chemistry manager -- well, let me  
7 back up.

8 If Mr. Fiser testified that his actual position  
9 was in corporate chemistry, would that be -- at this point  
10 in time, would that be correct?

11 A Repeat that, please.

12 Q All right. From 1993, when you handed Mr. Fiser  
13 his surplus papers, surplusing him from Sequoyah chemistry  
14 manager, would it be correct for Mr. Fiser to say that he  
15 was in fact actually the corporate chemistry program  
16 manager?

17 A At the time he was surplusd?

18 Q Right. He was the Sequoyah chemistry program  
19 manager, wasn't he?

20 A Right, right, right. Yes. Right.

21 Q Now, let me direct your attention to 1994. You  
22 testified -- do you recall testifying this morning that you  
23 said in 1994 that new position descriptions were written for  
24 chemistry and environmental protection specialists?

25 A Yes.

1           Q     Okay. I'm going to show you TVA Exhibit 24. If  
2 you would, take your time and just kind of look through this  
3 so you can tell us what it is. This is a many-page  
4 document. Just look through, and I think you'll see what it  
5 is real quickly.

6           JUDGE YOUNG: You're looking at 24?

7           MR. MARQUAND: Exhibit -- TVA Exhibit 24.

8           CHAIRMAN BECHHOEFER: Are you referring to any  
9 particular page?

10          MR. MARQUAND: Right now I'm -- the witness hasn't  
11 seen this for many years, and I'm trying to show it to him  
12 and...

13          CHAIRMAN BECHHOEFER: Right.

14          MR. MARQUAND: ...see if he can -- there's pages  
15 here, for example, HH-8 on the right-hand side. That's a --  
16 when we copied this, this is a copy of a tab; okay? Says,  
17 "Interview questions."

18 BY MR. MARQUAND:

19          Q     Looking through this, does this refresh your  
20 collection that this is a selection package?

21          A     Yes; right.

22          Q     Okay. Can you tell by looking at it what the  
23 selection package -- what particular job the selection  
24 package is for?

25          A     I think it's the package when Wilson McArthur were

1 placed as the radiological control manager and -- and Ron  
2 Grover as the chemistry and environmental protection  
3 manager.

4 Q Is it a...

5 A Pay Grade 11.

6 Q All right. Is it a selection package for any  
7 particular jobs?

8 A For the chemistry and environmental protection  
9 specialist.

10 Q All right. And I'm referring now to Page HH-4.  
11 That's a memorandum addressed to you dated September 14th,  
12 '94, and that is the same, is it not, as the document you  
13 looked at this morning, the NRC Staff Exhibit 125?

14 A Yes.

15 Q Okay. Now, did you play any part in putting this  
16 selection package together?

17 A Yes.

18 Q And what did you do?

19 A Far as putting the booklet together.

20 Q All right. And for everybody's benefit, I believe  
21 this is a whole package of -- I need you to turn over here a  
22 couple of pages. It identifies the board members for the  
23 various positions, doesn't it?

24 A Yes, it does.

25 Q All right. On Page HH-7, we've heard discussion

1 of these. It's entitled, "Vacant Position Announcement."  
2 Can you tell the Court what that is.

3 A A description of the duties and qualifications.

4 Q When we talk about posting jobs, what do we mean?  
5 What does "posting" refer to?

6 A Advertising.

7 Q Okay. Is this the advertisement for a job?

8 A Yes, sir.

9 Q And it's the advertisement for which job?

10 A That is the advertisement for chemistry and  
11 environmental protection specialist.

12 Q Does it have a number, a unique number associated  
13 with it?

14 A Four positions.

15 Q No, I mean, a number like a serial number.

16 A Oh, yes. Announcement 6621.

17 Q All right. And the very first page of this  
18 exhibit has a 6621 in the front, doesn't it?

19 A Yes.

20 Q And how were these vacant position announcements  
21 posted?

22 A They are placed on different bulletin boards.

23 Q Are they available elsewhere, if you know? Are  
24 they available by computer?

25 A I don't recall on that.

1           Q     All right.  If you'll look at Page HH-8, I  
2 referred to that earlier.  That's a page -- a copy of a page  
3 that simply had a tab on it, and that's a tab for interview  
4 questions.  What does that refer to?

5           A     Those are the questions that was made out by the  
6 supervisor that was going to be asked at the management  
7 review board.

8           Q     And if you look at HH-9, what is that page?

9           A     That is a interview of Sam Harvey, III.

10          Q     And are those the questions that would have been  
11 posed to him during the selection review board?

12          A     Yes, sir.

13          Q     And...

14          A     Excuse me.

15          Q     ...if you can, can you see whether or not there  
16 are scores to the right of those questions?  You don't have  
17 to be able to read them, they may not be legible due to the  
18 copying, but were they scored?

19          A     Yes.

20          Q     And did somebody take notes of his answers?

21          A     Yes.

22          Q     Right behind Page HH-9 is HH-10.  What is that?

23          A     That is the application of Sam H. Harvey.

24          Q     That's his application for the job?

25          A     When he applied for the job; right.

1           Q     All right. And if you look at Page HH-12 and 13,  
2 is that Mr. Harvey's resume?

3           A     That's his resume; yes, sir.

4           Q     All right. And when we go to Page 14, those are  
5 more interview questions. Is that for a different  
6 candidate?

7           A     Yes.

8           Q     And who is that candidate?

9           A     Chanda (sic).

10          Q     Okay. And does it show the scores for him?

11          A     Yes, sir.

12          Q     And notes of his answers?

13          A     Yes.

14          Q     And then Page 15 is his application?

15          A     Yes, sir.

16          Q     Page 16, his resume?

17          A     Yes, sir.

18          Q     And if we continue to go through this, we would  
19 see interview questions and applications and resumes for the  
20 different candidates, wouldn't we?

21          A     Yes, sir.

22          Q     All right. We've seen Mr. Sorrell's interview  
23 questions in his section on Page 19 through...

24          A     Yes.

25          Q     ...23; a fellow by the name of Al Dyson on Page



1 24.

2 A Yes.

3 Q Gary Fiser on Page 28. Beginning at Page 28.

4 A Yes.

5 Q Joe Cleveland, beginning at Page 32. And then we  
6 get to Page 37 and we come up again with it looks like the  
7 same memo again and some of the same questions following  
8 that. Is that because this is the selection package that  
9 was provided to one selection review board, and then we get  
10 to the package provided to the next selection review board  
11 member?

12 A Yeah.

13 Q All right. And so this full package is this --  
14 this whole exhibit is a collection of the packages provided  
15 each selection review board member for that job; is that  
16 right?

17 A Right. Of the scores and their comments.

18 Q Right. Well, that continues on to Page 146. And  
19 then we get to Page 148. What is that?

20 A This right here is vacancy selection worksheet.

21 Q All right. And following that is Page 149. This  
22 is all computerized, isn't it?

23 A Yes.

24 Q All right, what's on Page 149?

25 A Vacancy selection worksheet, giving the

1 information on the candidates that applied.

2 Q Are those all the people that applied on the left-  
3 hand side?

4 A Right

5 Q Okay. So we know they were looking for -- to  
6 select four people, but we see that there's a whole lot more  
7 people that applied than just four people; right?

8 A Yes, sir.

9 Q Continues for Page 149 and page 150?

10 A Right.

11 Q And then on Page 151 we see the same applicants,  
12 and we see their educational background?

13 A Yes.

14 Q And then we get to Page 154, and we see the same  
15 applicants, and we their job history?

16 A Yes.

17 Q Now, when we talked earlier, we noted that there  
18 were a number of people interviewed, but the number of  
19 people interviewed didn't correspond to the number of people  
20 who applied, as shown on Page 149 to 150. For example, we  
21 didn't see interviews with Eiford Lee (phonetic), with  
22 Charles Hodge, or Steven Crowe, for example; right?

23 A Right.

24 Q Why wasn't everybody -- why weren't all the  
25 candidates interviewed? What do you have -- what's the

1 process?

2 A The process is to look at the personal information  
3 that was supplied to the manager of human resources, and to  
4 determine who were the best qualified candidates, to limit  
5 to a specific member of people to interview.

6 Q So you come up with a shorter list of people to  
7 interview?

8 A Yes.

9 Q Okay.

10 A And based on that, some may not have met the  
11 minimum qualifications, some may not have met the education  
12 requirement.

13 Q As we go through this exhibit, I don't see any  
14 performance appraisals in here. Is it typical -- is this a  
15 typical package?

16 A That's a typical package.

17 Q Are performance appraisals considered in this  
18 process?

19 A To my recollection, I don't think so.

20 Q Are they considered in making the short list of  
21 candidates to interview, the ratings?

22 A Repeat that.

23 Q When you're making -- when you've got a large list  
24 of candidates and you want a short list of candidates to  
25 interview, you look at minimum qualifications. Do you also

1 look at past ratings to determine who would be the best  
2 qualified candidates?

3 A Right.

4 Q And who would make that determination? It  
5 wouldn't be the selection review board, would it?

6 A No, no. A manager in human resources.

7 Q The second manager at human resources?

8 A Right.

9 Q Okay. And would there be any need to provide  
10 performance appraisals to the selection review board?

11 A No.

12 MR. MARQUAND: Your Honors, I tender TVA Exhibit  
13 24.

14 MR. DAMBLY: Can I have voir dire first?

15 CHAIRMAN BECHHOEFER: Yes.

16 VOIR DIRE EXAMINATION

17 BY MR. DAMBLY:

18 Q Mr. Easley, do you recall whether that's the  
19 entire package put together? Do you have any recollection  
20 of that?

21 A Repeat that, sir.

22 Q Do you know sitting here whether this is the  
23 entire, complete package that was put together for that  
24 vacancy selection process?

25 A Yes, I think so, sir.

1           Q     You remember that now exactly what you put in  
2 there?

3           A     After he -- after he showed it to me. Right.

4           Q     Okay. You're positive you had nothing else in  
5 there at any time?

6           A     To my knowledge, no.

7           Q     You know all -- there was not 197, there was not  
8 198?

9                   MR. MARQUAND: Objection. How many times are we  
10 going to ask the witness. He's demonstrated this morning  
11 that his recollection on these matters is not perfect. He's  
12 testified to the best of his recollection.

13                   JUDGE YOUNG: I think you've probably gone about  
14 as far as you can go with that.

15 BY MR. DAMBLY:

16           Q     You don't have any recollection of there being any  
17 performance appraisals in any of these files?

18           A     No.

19                   MR. DAMBLY: No objection.

20                   CHAIRMAN BECHHOEFER: Without objection, TVA  
21 Exhibit 24 will be admitted.

22                                   (The documents, heretofore marked  
23 as TVA Exhibit #24, were received  
24 in evidence.)

25                   JUDGE YOUNG: Is this the same volume?

1           MR. MARQUAND: Yes. I'm just going to ask a few  
2 more questions about it, assuming I can find what I'm  
3 looking for here.

4                   CROSS EXAMINATION (continued)

5 BY MR. MARQUAND:

6           Q     Mr. Easley, I'm going to show you Staff Exhibit  
7 43.

8                   JUDGE COLE: 43?

9                   MR. MARQUAND: 43.

10                  JUDGE YOUNG: Which binding is that in?

11                  MR. MARQUAND: Book 3.

12                  JUDGE YOUNG: I can't see that...

13 BY MR. MARQUAND:

14           Q     Mr. Easley, I'm going to show you Staff Exhibit  
15 43. It's previously been admitted into evidence as Mr.  
16 Fiser's job description as the chemistry and environmental  
17 protection senior program manager for which he was selected  
18 in the selection we just talked about.

19                   Do you know why or what the circumstances were for  
20 advertising the position for chemistry and environmental  
21 protection program manager jobs?

22           A     Because -- excuse me -- it was determined at the  
23 time that chemistry and environmental protection would fall  
24 under the chemistry and environmental protection manager.

25           Q     Well, had there been previously a separate manager

1 for each of those two organizations?

2 A At one time, if my memory serve me right, you had  
3 chemistry, and also you had environmental -- environmental  
4 separate.

5 Q Separate organizations?

6 A Yes; right.

7 Q So they combined the two organizations?

8 A Right.

9 Q And when -- in the process, did they combine the  
10 functions of chemistry and environmental into a single  
11 position?

12 A Yes.

13 Q Previously, there had been a chemistry program  
14 manager position, and there had also been a separate  
15 environmental protection program manager position?

16 A Yes.

17 Q So were those old positions the same as this new  
18 position?

19 A No.

20 Q Is that why they had to advertise these new  
21 positions?

22 A Yes.

23 Q I showed you the selection package for 6621, which  
24 was TVA Exhibit 24. That was the chemistry, environmental  
25 protection program manager job. Let me show you this

1 organizational chart we talked about this morning, which is  
2 Staff Exhibit 130.

3 After the selection in 1994, you ended up with Sam  
4 Harvey and Mr. Chandrasekaran and Mr. Fiser all selected for  
5 that PG-8 chemistry program manager job; right?

6 A Yes, sir.

7 Q And they worked for Ron Grover?

8 A Yes.

9 Q Now, when -- in 1994, when this organization was  
10 set up, did you sit in on other selection review boards for  
11 some of these other positions?

12 A What position are you referring to?

13 Q Let me show you. Just go back a minute. Let's go  
14 back to TVA Exhibit 24. You said that was the selection  
15 package for the chemistry environmental protection program  
16 manager job?

17 A Right; uh-huh.

18 Q And on Page 4 is the memo to you asking you to set  
19 up interviews for various jobs. And the first one was  
20 chemistry environmental specialist. That was the PG-8 job?

21 A The answer is yes to your question.

22 Q All right. And then...

23 A Right. On the job; yes.

24 Q ...then you had to set up an interview board for  
25 the radiological control specialist?



1           A     Yes.

2           Q     And those would be the people who ended up  
3 reporting on the left-hand side to Wilson McArthur; correct?

4

5           A     Yes.

6           Q     And then, down at the bottom, it shows chemistry  
7 environmental specialist PG-7; do you see that?

8           A     Yes.

9           Q     And that's the job that eventually, by 1995,  
10 Deidra Nida was in?

11          A     Yes.

12          Q     All right. So you sat in on all these various  
13 selection review boards?

14          A     To my best memory; yes.

15          Q     All right. So on Page 1 -- on Page HH-4, there  
16 are four separate jobs you sat in on?

17          A     Yes.

18          Q     4 and 5 are the same. Okay.

19                Do you recall if you sat in on a selection review  
20 board for Mr. Grover -- for the -- for the board that  
21 selected Mr. Grover?

22          A     Not to my knowledge.

23          Q     Okay. Do you recall if you sat in on a selection  
24 review board that sat in for the selection of Mr. Raines?

25          A     Not to my knowledge.

1           Q     And do you recall sitting in a selection review  
2 board for the board that selected Wilson McArthur?

3           A     Not to my knowledge.

4           Q     Okay, thanks.

5                     Again, let me return you to -- apologize for going  
6 back and forth. Returning to NRC Staff Exhibit 130, and in  
7 the box for radiological and chemistry control, it shows A.  
8 W. Sorrell, parens, acting.

9           A     Yes.

10          Q     Correct? Did he -- while he was acting, was --  
11 was he, in fact, acting in that job?

12          A     Yes, he was acting.

13          Q     Do you recall, did he have a permanent position of  
14 record while he was serving in that position?

15          A     No, he wasn't permanent.

16          Q     Did he have some other permanent position  
17 somewhere else?

18          A     If my recollection serve me right, I think he had  
19 a job at Browns Ferry at one time.

20          Q     All right. Now, if during this time period that  
21 this organizational chart is -- was in existence in '95, if  
22 he was in this acting position, and if there had been a  
23 reduction in force and an elimination of the radiological  
24 and chemistry control job, would he have been RIF'd out of  
25 that job or some other job?

1           A     Some other job.

2           Q     And is that -- what other -- would have been the  
3 job that he held a permanent position description for?

4           A     Yes.

5           Q     This morning you were asked about learning that  
6 Gary Fiser had been surreptitiously tape recording people,  
7 including yourself.

8           A     Yes.

9           Q     And you said that you were told by people who  
10 thought they were Gary's friends?

11          A     Yes.

12          Q     And you said you also discussed it with an  
13 attorney at OGC?

14          A     Yes.

15          Q     But you don't remember who?

16          A     No, not really.

17          Q     All right. And counsel asked you and you gave him  
18 a whole bunch of names. Is that -- would that be unusual,  
19 for you to be interacting with a number of different  
20 attorneys in the general counsel's office?

21          A     No.

22          Q     Why not?

23          A     Because, depending on what we were working on at  
24 the time, and due to the unavailability of the attorneys,  
25 sometime you would talk to another attorney.

1           Q     Well, I mean, first of all he mentioned the Jocher  
2 lawsuit and litigation. You were contacted with respect to  
3 that, weren't you?

4           A     Yes.

5           Q     And in your HR capacity, did you have any  
6 functions with respect to, for example, merit system  
7 protection board appeals?

8           A     Yes.

9           Q     And would you be involved with dealing with  
10 attorneys in those kinds of cases?

11          A     Yes, I think we were. I really don't recall to  
12 what extent.

13          Q     I'm not asking names of specific cases. But you'd  
14 get involved in the attorneys that represent TVA, wouldn't  
15 they?

16          A     Yes.

17          Q     You were asked extensively about Wilson McArthur  
18 and the process by which he was placed in 1996 in the new  
19 radiological control and chemistry manager position. And  
20 you were asked whether or not he was placed in that job  
21 without competition. In 1996 there were -- were there a  
22 number of jobs -- new jobs created in operations support?

23          A     You mean in '96?

24          Q     Yes.

25          A     Yes.

1           Q     Are you aware of anyone being placed in any other  
2 jobs in operation support without competition?

3           A     No.

4           Q     As far as you know, were those other jobs all  
5 posted?

6           A     Yes.

7           Q     All right. So you had a disagreement over whether  
8 or not the job that Wilson McArthur was placed in should  
9 have been posted for competition?

10          A     Yes.

11          Q     Okay. Now, what's the purpose of posting jobs for  
12 competition to allow people to apply?

13          A     Beg pardon?

14          Q     What's the purpose of posting the jobs to allow  
15 people to apply on them?

16          A     To select the best qualified person for the job,  
17 and also to adhere to the guidelines.

18          Q     And why -- why do you have those guidelines?

19          A     So everyone will be treated fairly.

20          Q     All right. So that everybody will have a fair  
21 chance to -- to apply and be considered for the job?

22          A     Right.

23          Q     It's not just limited to -- I mean, although we've  
24 seen the waiver criteria that deal with minorities or  
25 gender, it's so that everybody has an equal chance to apply;

1 right?

2 A That's true.

3 Q Now, in the case of Wilson McArthur and Ron  
4 Grover, counsel asked you, well, could TVA -- could nuclear  
5 have received and -- could they have sought and received a  
6 waiver to place Ron Grover in that job and not advertised  
7 it, and not even consider Wilson McArthur? Could they have  
8 done that, based on the fact that Mr. Grover was a minority?

9 A They could have.

10 Q They could have sought one; right?

11 A Repeat, please.

12 Q They could have sought a waiver to put Mr. Grover  
13 in that job?

14 A Yes.

15 Q But my question is: What would be the basis for  
16 doing that?

17 CHAIRMAN BECHHOEFER: For seeking the waiver?

18 MR. MARQUAND: For seeking the waiver to put a  
19 minority in a position when you had a well-qualified white  
20 applicant as well.

21 A This is where you may be short when it come to  
22 representation of minorities, even women, disabled  
23 employees.

24 Q Right.

25 A Or even some others.

1 Q Right. Where you're short in representation.

2 Do you recall telling Mr. Dambly in your  
3 deposition that if they had done that, they couldn't have --  
4 that they couldn't do that; that that would be reverse  
5 discrimination?

6 A I don't really recall at this time.

7 Q Okay. Were you involved in the determination --  
8 well, we've already established that you were involved in a  
9 determination in 1996 that the chemistry program manager  
10 jobs needed to be advertised; right?

11 A Repeat that, please.

12 Q In 1996, a determination was made that the  
13 chemistry program manager jobs needed to be advertised?

14 A Yes.

15 Q And you were involved in that determination?

16 A Yes.

17 Q What was the basis for making that determination?

18 A Due to the changing of the position, where the  
19 position had changed.

20 Q And how did you go about determining if the  
21 position had been changed? What'd you look at?

22 A Look at the duties and responsibilities.

23 Q And how did you determine what those duties and  
24 responsibilities were? Did you go out and observe the  
25 people in the field and see what they were doing?

1           A     No.

2           Q     How did you determine their duties and  
3 responsibilities?

4           A     I think -- well, not "I think." Another position  
5 was -- job description or position description was written,  
6 and you took and compared that with the other one that you  
7 had.

8           Q     You compare the two position descriptions?

9           A     Right.

10          Q     The two pieces of paper?

11          A     Yes.

12          Q     And if you had determined in a -- not in that  
13 situation, but in a different case, if you look at two  
14 position descriptions and you decide these look pretty much  
15 alike, what's the result?

16          A     Now, if they didn't meet the 35% change criteria?

17          Q     Right.

18          A     Then you wouldn't have advertised.

19          Q     Why not?

20          A     Well, if you had to eliminate a position, then you  
21 would have gone to a reduction in force.

22          Q     Okay. Well, let's suppose we've got -- let's  
23 suppose we've got three people and they've got position  
24 descriptions. Then you rewrite a position description and  
25 you say, "I still need three people. I'm just going to



1 change the position description," but you don't change it  
2 35%. What happens?

3 A Repeat that again.

4 Q You got three people doing a job. They all got  
5 the same position description.

6 A Uh-huh (affirmative).

7 Q You come up with a new position description, but  
8 you still need three -- three positions. But the position  
9 descriptions, when you look at them, look almost alike.  
10 They don't meet the 35% change.

11 A You're saying all three?

12 Q Yeah.

13 A Okay.

14 Q The same position descriptions.

15 A Right.

16 Q What happens?

17 A Well, you keep -- keep those three.

18 Q And what do they -- what do they do? Do they --  
19 what happens to their old position description?

20 A Well, you get rid of the old position description  
21 and keep the new one.

22 Q And so they just move to the new position  
23 description?

24 A Yes.

25 Q They have a right to move to that job?

1           A     Yes.

2           Q     Is their -- is that new job considered to be  
3 vacant for purposes of posting it for competition?

4           A     No, because you have three people who meet the  
5 criteria and who were basically doing that job.

6           Q     Okay. So it's not a vacant position?

7           A     No.

8           Q     You keep coming back to when you were talking  
9 about comparing -- comparing these position descriptions,  
10 you keep coming back and telling us, "Well, I looked to see  
11 whether the jobs changed by 35% or more." And you told  
12 counsel this morning, "Well, I don't count -- I don't go  
13 down the position description and count the number of  
14 duties, but I do compare the position descriptions."

15                What -- where is this 35% standard? Is it written  
16 down in the regulations somewhere?

17           A     It's in one of the guidelines. And as I told Mr.  
18 Dambly this morning, I can't recall exactly where it is  
19 written. And as I said this morning, I think I referred to  
20 a labor relation -- we confer with them concerning the  
21 percent. And I think they confer with OGC. But, anyway,  
22 it's in the guidelines somewhere.

23           Q     Okay.

24           A     And I can't recall exactly where.

25           Q     Counsel this morning asked you if, in making these

1 comparisons between these position descriptions, if you  
2 asked Mr. Grover how much of the time they did this or how  
3 much of the time they did that. Would the fact that an  
4 employee wasn't assigned to do something for a certain  
5 period of time, would that make any difference in your  
6 comparison -- comparing those two position descriptions?

7 A Based on what I said this morning, I think I said  
8 that you may have one, two, or three, or four duties under  
9 chemistry, and you may have one or two under environmental.  
10 However, the position was set up for them to do both of the  
11 jobs.

12 Q Okay.

13 JUDGE YOUNG: Say that over again. However, the  
14 position...

15 THE WITNESS: The position description was set up  
16 for them to do the chemistry and environmental work. And  
17 they may have been assigned to do more chemistry, but when  
18 it was set up, it was set up on a equal basis.

19 Q You're saying when it was set up in '94, the  
20 selection package we looked at?

21 A Right.

22 Q And, in comparing these position descriptions --  
23 in comparing these position descriptions, you look at the  
24 new position description. What other -- do you look at some  
25 other -- you look at some preexisting position description;

1 right?

2 A Yes.

3 Q Is that the position description that's in the  
4 employee's personnel file, the incumbent's personnel file?

5 A It should be. Should have been.

6 Q That would be their official position description;  
7 right?

8 A Right.

9 Q And it's signed indicating that it's been issued  
10 to them?

11 A Yes, sir.

12 Q It's signed and filled out just like Staff Exhibit  
13 43?

14 A Yes.

15 Q Okay. Now, we talked about the 1994 selection  
16 package. I want to show you Joint Exhibits 3, 4, 5, and 6.  
17 And they are in -- I'm sorry. I'm sorry, Joint Exhibits 20,  
18 21, 22, and 23. And they're in Volumes 3, 4, 5, and 6.

19 Let's start with one of them. Let's start with  
20 Exhibit #22, staff.

21 JUDGE COLE: TVA?

22 MR. MARQUAND: This is Joint 22.

23 JUDGE COLE: Staff or TVA?

24 MR. MARQUAND: This is Joint #22.

25 JUDGE COLE: Oh, joint.

1 MR. MARQUAND: And it's in Volume 5. This is  
2 about a one-and-a-half inch black ring binder.

3 JUDGE COLE: Starting with volume...

4 MR. MARQUAND: Volume 5. The whole volume is one  
5 exhibit.

6 BY MR. MARQUAND:

7 Q Now, Mr. Easley, if you'll ignore -- I'm putting  
8 this -- where I'm getting this exhibit list. But if you'll  
9 look behind Tab 22, the first page is a Xerox of the spine  
10 of a notebook. And it says, "VPA's 10702, 10703, 10705,  
11 10706, 10707." It says, "Book 3 & 4." The next page is...

12 JUDGE YOUNG: If you could just refresh my memory  
13 on what "VPA" stands for again.

14 MR. MARQUAND: Vacant position announcement.

15 JUDGE YOUNG: Thank you.

16 MR. MARQUAND: It is what's posted -- we post the  
17 vacant job.

18 JUDGE YOUNG: Right.

19 MR. MARQUAND: And that's what we call...

20 JUDGE YOUNG: I just couldn't remember the  
21 acronym.

22 MR. MARQUAND: It's an advertisement for the job.

23 BY MR. MARQUAND:

24 Q The Page GG-397 is the cover of a notebook. Do  
25 you recognize it?

1           A     Yes.

2           Q     All right, tell us what it is.

3           A     This is selection review board sheet for program  
4 manager, Pay Grade 8 positions.

5           Q     Well, is it more than just that program manager  
6 Pay Grade 8?

7           A     Chemistry; BWR; PWR; rad control, programmatic;  
8 rad control, tech support; and rad waste, environmental  
9 protection.

10          Q     All right. So is this a selection review board  
11 package for five different jobs?

12          A     Yes, sir.

13          Q     All right. And I'll note in the right-hand corner  
14 it says, "Ben Easley," slash, "Milissa Westbrook."

15          A     Yes.

16          Q     Is there any significance to that?

17          A     I think because of the position that Fiser was  
18 considered for, where she...

19          Q     No, I mean, but why -- why those names in the  
20 front of that notebook?

21          A     You mean this here?

22          Q     Yes. Why does it say "Ben Easley," slash,  
23 "Milissa Westbrook"? I mean, is it for you guys?

24          A     I can't really recall, other than, like I said,  
25 unless it were because of Milissa helping on the -- on the

1 job.

2 Q All right. Well, let me show you exhibit -- Joint  
3 Exhibit 20, and it's in Volume 3. It's very similar. If we  
4 go to Page GG-1 in that one, again, this is -- was the cover  
5 -- is a Xerox of the cover of a notebook. And this one, the  
6 only difference, says, "HR Rick Rogers."

7 A I don't recall.

8 Q All right. Were you involved in helping put  
9 together notebooks for the selection review board?

10 A Yes; right.

11 Q And did you prepare a notebook for each member of  
12 the selection review board?

13 A Yes.

14 Q And was Rick Rogers one of the members when Mr.  
15 Cox became unavailable?

16 A Yes, okay, now I'm...

17 Q And you and Milissa Westbrook were facilitators  
18 for some of these selections?

19 A Yes.

20 Q Okay. Now,...

21 CHAIRMAN BECHHOEFER: Both, or one or the other?

22 Q Well, let's be clear here. This morning you said  
23 you stepped out of the selection for the chemistry program  
24 manager jobs; right?

25 A Right.

1 Q And Milissa handled those; right?

2 A Yes.

3 Q And the other three, after those -- those were  
4 earlier in the afternoon, and then they proceeded on for the  
5 other three, the rad control, programmatic and rad control,  
6 tech support, and rad waste, environmental. You came in and  
7 you finished up; right?

8 A We may have done those first.

9 Q Okay. We can look at the schedule. Were all of  
10 these selections conducted by -- were all the interviews  
11 conducted by the selection review board in one afternoon?  
12 In the evening?

13 A Are you talking about all the jobs or are you...

14 Q Right, for all these jobs.

15 JUDGE YOUNG: Is the schedule part of...

16 MR. MARQUAND: Yes.

17 Q Look at Page GG-408. Is that the interview  
18 schedule for the selection review board for all these jobs?

19 A That's the schedule; yes.

20 Q Okay. Does it show each of the candidates and  
21 which jobs each of them was being interviewed for?

22 A Yes.

23 CHAIRMAN BECHHOEFER: Did you say 4-0-8 or 4  
24 through 8?

25 MR. MARQUAND: It's Page...



1 JUDGE YOUNG: 4-0-8.

2 MR. MARQUAND: ...GG-408.

3 CHAIRMAN BECHHOEFER: Okay, 408.

4 BY MR. MARQUAND:

5 Q And, for example, in Mr. Fiser's case it shows  
6 that he was supposed to be interviewed from 12:30 to 1:15  
7 for the PWR job, which is VPA-10703?

8 A Yes.

9 Q And then it shows Sam Harvey was going to be  
10 interviewed right after that for two jobs, the PWR and the  
11 BWR job; right?

12 A Yes.

13 Q And if you go down further, it shows that John  
14 Traynor was interviewing for the BWR chemistry program  
15 manager job and for the rad waste, slash, environmental job;  
16 right?

17 A Yes.

18 Q Okay. So some of these people were interviewing  
19 for one or more jobs?

20 A Yes.

21 Q And all these interviews shows that they were  
22 scheduled to be done that day?

23 A Yes.

24 Q And, in fact, over in the left-hand column  
25 somebody's written -- handwritten in, it says, "Okay," and

1 we've got checkmarks by people's names as they came in, with  
2 interviewed?

3 A Yes.

4 Q Is that your handwriting on this page?

5 A Yes.

6 Q Okay.

7 A To the left.

8 Q To the left? What about at the very bottom of the  
9 page?

10 A This right here. This is not my handwriting.

11 Q Okay. Now, if we go to Page 410, that's a Xerox  
12 of a page of a tab that says "Candidates"; right?

13 A Uh-huh (affirmative).

14 Q And right behind that it shows the candidates for  
15 all the five jobs that were being interviewed?

16 A Yes.

17 Q Immediately following that's again another  
18 interview schedule. And if we go then to Page 414, there's  
19 a tab, "Gary Fiser." Do you see that?

20 A Yes.

21 Q And right behind it is his application. On his  
22 application, beginning at Page 417 is his resume?

23 A Yes.

24 Q Page 419 is the VP -- the vacant position  
25 announcement for the job?

1           A     Yes.

2           Q     And when you come over to Page 420 and 421, what  
3 is that page?

4           A     That is one of the sheets of the -- no, no. That  
5 is where Milissa took notes.

6           Q     Okay. She took notes, and this is a -- was a  
7 form, a blank form that she filled out; right?

8           A     Right.

9           Q     And it shows questions on the left-hand column?

10          A     Uh-huh (affirmative).

11          Q     And response rating in the second column, and then  
12 comments in the far right column; right?

13          A     Those are her comments.

14          Q     Okay. And she put in there three columns under  
15 response ratings for Corey, Kent, and Rogers, didn't she?

16          A     Yes. Then again, that look like that's my  
17 writing.

18          Q     That does?

19          A     Where I may have transferred from what -- from  
20 each sheet.

21          Q     From something else?

22          A     Right, from what she had.

23          Q     Okay. And on Page 422, do you see that?

24          A     Yes.

25          Q     422 and 423. Do you know what that is?

1 A Those are the questions.

2 Q Do you know if all those questions were asked?

3 A No, just the one that are circled.

4 Q Okay.

5 CHAIRMAN BECHHOEFER: Just the ones circled?

6 MR. MARQUAND: Circled.

7 THE WITNESS: Circled.

8 JUDGE YOUNG: Circled.

9 BY MR. MARQUAND:

10 Q On Page 423 there is a handwritten question, and  
11 it's numbered and circled as well; right?

12 A Yes; right.

13 Q Okay.

14 CHAIRMAN BECHHOEFER: What's the difference, when  
15 you see a circle than an "X" through the circle? Go back to  
16 the 420...

17 THE WITNESS: Those are the question that they  
18 decide to ask (sic).

19 Q No, he's saying, for instance, on #10 had been  
20 circled, and then there's an "X." If you look at the score  
21 sheet, does it appear that #10 was asked?

22 A No.

23 CHAIRMAN BECHHOEFER: So that's a cross-out of the  
24 circle?

25 THE WITNESS: Right. And, Judge, I did not do

1 this. Ms. Westbrook's...

2 JUDGE YOUNG: So let me see if I understand. This  
3 whole list of questions, only the ones that are circled,  
4 with the exception of maybe 10...

5 MR. MARQUAND: Right.

6 JUDGE YOUNG: ...that has an "X" through it...

7 MR. MARQUAND: Your Honor, I think you can look at  
8 Page 422 and 23 and compare it with 420 and 21 and see that  
9 the circled questions on 22 and 23 correspond with the  
10 question numbers that are handwritten in on 20 and 21.

11 JUDGE YOUNG: And were the -- were the circled  
12 questions the only ones that were asked by all the members  
13 of the board, or just that particular member of the board?

14 MR. MARQUAND: All of them.

15 THE WITNESS: All of them.

16 MR. MARQUAND: All the board.

17 THE WITNESS: They had to ask the same question.

18 JUDGE YOUNG: So they selected from among the  
19 listed questions and they all decided together that these  
20 were the questions that the board -- selection board would  
21 ask?

22 THE WITNESS: Yes, Your Honor.

23 JUDGE YOUNG: Right?

24 THE WITNESS: Yes.

25 JUDGE YOUNG: Okay, thanks.

1 BY MR. MARQUAND:

2 Q In fact, we'll go over now to Page 426, there's a  
3 tab which has been cut off. Right behind that is an  
4 application for Sam Harvey; right?

5 A Yes.

6 Q And that's at Page 427. At Page 428 is Mr.  
7 Harvey's resume?

8 A Yes.

9 Q And to clarify for the board, there's two  
10 applications in here, I believe, for Mr. Harvey.

11 JUDGE COLE: You said 428 was the resume. You  
12 meant 429?

13 MR. MARQUAND: And if I -- yes, Your Honor, I did.

14 Q 427 is an application.

15 A Right.

16 Q And 432 is an application?

17 A Right. That's because he applied on PWR and BWR.

18 Q And, in fact, if you look at Item #6, those show  
19 different announcements, and Item #7, and had different  
20 titles for the jobs; right?

21 A Yes.

22 Q Okay. Now, moving to Page 439.

23 A Yes.

24 Q Is that a score sheet for Mr. Harvey?

25 A Yes.

1           Q     And if we could, before -- Page 440 is a score  
2 sheet, too; right?

3           A     Yes.

4           Q     All right. Now, Page 439 is a score sheet for  
5 which position?

6           A     PWR.

7           Q     And 440 is a score sheet for which position?

8           A     BWR.

9           Q     All right. So 439 is the PWR job that Mr. Fiser  
10 applied on. If you would, if you can -- let me just pull  
11 these out. If you'd look at the score sheet for Mr. Fiser  
12 at Page 420 and the score -- 420 and 421. If you look that  
13 the score sheet for Mr. Fiser on 420 and 21, and Harvey on  
14 439 and 40...

15          A     Yes.

16          Q     ...can you tell if the same questions were asked  
17 to both candidates?

18          A     Yes.

19          Q     Okay. And is that the process?

20          A     Yes.

21          Q     You ask each candidate the same questions?

22          A     Yes.

23          Q     And then again on Mr. Harvey, on Page 439, it's  
24 got three columns, "Corey, Kent, and Rogers," and it's got  
25 numbers under each of the names.

1           A     That's how they rated them.

2           Q     Is that your handwriting?

3           A     Yes.

4           Q     Okay. You said Milissa Westbrook, though, sat in  
5 on these interviews?

6           A     Right.

7           Q     After the interviews were over, did you gather up  
8 the score sheets and accumulate the scores?

9           A     They would give them to me and I would transfer  
10 them to here. Right.

11          Q     Okay.

12          A     Yes.

13          Q     Now, if you'll look at Page 443, that's a tab for  
14 Mr. Chandrasekaran. And again we see his application; his  
15 resume; more than one application, he apparently applied on  
16 two jobs.

17          A     Right.

18          Q     And if we come to Page 456, what do we see there?

19          A     We see the question numbers that he was asked, and  
20 also the ratings.

21          Q     All the scores?

22          A     All the scores.

23          Q     Okay. Well, so far we've talked just about the  
24 PWR, but we've also got BWR. If you'll go to Page 460, are  
25 those the questions that were asked for the BWR job?



1 A Yes.

2 Q So far we've only talked about the PWR and BWR  
3 jobs that we've known for all the interviews that day.

4 A Yes.

5 Q But if we go over to Page 463, we see a divider  
6 for Hubert Huie, H-u-i-e. And this is BWR, so he was  
7 applying for one of the chemistry program manager jobs?

8 A Yes.

9 Q And then we see at 464 his application; 465, his  
10 resume; his Page 470 the score sheet for Mr. Huie?

11 A Yes.

12 Q For that other chemistry job?

13 A Right.

14 Q And then we come over to Page 472, there is a tab  
15 for John Traynor?

16 A Yes.

17 Q And he applied for looks like a BWR and the rad  
18 waste job?

19 A Yes.

20 Q At Page 482, do you see a score sheet for Mr.  
21 Trainer?

22 A Yes.

23 Q Now, as we've gone through this, did you see any  
24 service reviews?

25 A No.

1           Q     It was just like the one we looked at awhile ago,  
2 wasn't it?

3           A     Yes, sir.

4           Q     And we -- we could continue going through this,  
5 and I continue to see applications and resumes and score  
6 sheets until we get over to Page 554. And behind 554 is a  
7 computerized VPA; right?

8           A     Yes.

9           Q     Okay. So apparently the VPAs were on the  
10 computer, besides being on the hard copies on the bulletin  
11 board; right?

12          A     Yes.

13          Q     And on Page 556, again we see what's called a  
14 selection worksheet, and we see, on 557, are those the  
15 applicants for the BWR job?

16          A     Yes.

17          Q     Okay. If we go to Page 562, that's the divider  
18 page for the chemistry PWR program manager job; right?

19          A     Yes.

20          Q     That's the job Mr. Fiser applied for?

21          A     Yes.

22          Q     And 563 again is the VPA for that?

23          A     Yes.

24          Q     And 565 is the selection worksheet?

25          A     Yes.

1 Q Showing the applicants?

2 A Yes.

3 Q Now, for example, in this particular job in this  
4 particular vacancy we see a number of applicants here. And  
5 if we look at the interview schedule, if you look and  
6 compare Page 565 with the interview schedule in the front of  
7 the book, can you tell if everybody who applied on the job  
8 was even considered for an interview? For example, was  
9 Deidra Nida interviewed for the PWR chemistry program  
10 manager job?

11 JUDGE YOUNG: What page was the interview...

12 A No.

13 JUDGE YOUNG: ...list?

14 MR. MARQUAND: The interview was way -- list is  
15 way up the front.

16 JUDGE YOUNG: The schedule, I mean.

17 MR. MARQUAND: Okay, there's one at...

18 JUDGE YOUNG: 565?

19 MR. MARQUAND: ...408. Shows all of the people  
20 who were being interviewed and the jobs they were being  
21 interviewed for.

22 JUDGE YOUNG: Thanks.

23 BY MR. MARQUAND:

24 Q All right, Deidra Nida had applied, but she wasn't  
25 being interviewed?

1           A     Right.

2           Q     Was James Kearney -- it shows James Kearney as an  
3     applicant. Was he being interviewed for the PWR chemistry  
4     program manager job?

5           A     No.

6           Q     It also shows, in this selection worksheet, an  
7     individual by the name of James D. Norman. Was he being  
8     interviewed for the PWR chemistry program manager job?

9           A     No.

10          Q     Okay. Now, I want to return back to the front of  
11     the notebook that has your name on it. If you'll look at  
12     page -- Pages 404 to 407. Can you tell us what those pages  
13     are?

14          A     This is a selection -- I mean, not a selection,  
15     this is a worksheet showing their experience, minimum  
16     qualification, their education. Has the Social Security  
17     number and -- and also have a column showing the detail  
18     knowledge of techniques and equipment use.

19          Q     If you look at page -- if I can find it. It's got  
20     a date in the bottom of that selection worksheet that shows  
21     9/30/96. Do you see that?

22          A     Yes.

23                 JUDGE YOUNG: On page what?

24                 MR. MARQUAND: 9/30/96. That's on Page 404.

25          Q     When we pulled these out of the human resources

1 files, this is the way we found them in the notebooks. Do  
2 you know why these selection worksheets would have a date of  
3 9/30/96 if the interviews were in July?

4 A No.

5 Q Were they -- did people continue to update these  
6 as more information became available?

7 A I don't recall.

8 Q All right. Let me show you the beginning of Page  
9 1-0 -- Page 398. That's the July 31, '96 memorandum to you  
10 from Wilson McArthur. Do you see that?

11 A Yes.

12 Q And what is -- how -- what do you think that --  
13 how do you characterize that document?

14 A This is a memo from him to me to extend the offer  
15 to the selectee for the BWR position.

16 Q Does he give his reasons in there for his  
17 selection?

18 A Yes.

19 Q And it's dated also after the interviews; right?

20 A Right.

21 Q And Page 399 is what?

22 A Also an offer from -- a memo from Mr. McArthur to  
23 myself, asking me to extend a offer to Sam Harvey for the  
24 PWR position, Pay Grade 8.

25 Q And does he give his reasons for the selection in

1 that?

2 A Yes.

3 Q All right. Were these -- these documents  
4 obviously were generated after the selection review board  
5 met.

6 A Yes.

7 Q And they obviously were added after the fact,  
8 weren't they?

9 A Yes.

10 Q Okay. I'm going to show you exhibit -- Joint  
11 Exhibit 20, and on Page 1...

12 CHAIRMAN BECHHOEFER: TVA exhibits?

13 MR. MARQUAND: Joint exhibit. Joint.

14 CHAIRMAN BECHHOEFER: Joint exhibits. Okay.

15 Q It's on Page GG-1, and it's just like the first  
16 page of the notebook that had your name on it, except this  
17 one says, "HR Rick Rogers." Do you see that?

18 A Yes.

19 Q So would this have been Mr. Rogers' notebook?

20 A Yes.

21 Q All right. And if we move over to page -- we see  
22 a -- we see a selection memo which is at Page 21 for the  
23 BWR, and at Page 22 for the PWR chemistry program manager  
24 jobs; right?

25 A Right.

1           Q     Then at Page 31 we see the same interview  
2 schedule?

3           A     Yes.

4           Q     Page 34, it tells us which candidates were being  
5 interviewed and which jobs; right?

6           A     Yes.

7           Q     And then we move to Page 37, and we see the same  
8 sort of tab for Gary Fiser with his application and then his  
9 resume and then questions for the chemistry program manager  
10 circled?

11          A     Yes.

12          Q     And then at Page 44, a score sheet; right?

13          A     Yes.

14          Q     And under the column "Comments" on Page 44, it  
15 says, "See question page," doesn't it? On -- on Page 44?

16          A     Yes.

17          Q     Okay. And if we go back to the question page at  
18 42, there are handwritten comments behind each circled  
19 question. Do you see that?

20          A     Yes.

21          Q     And behind Mr. Fiser is attached Mr. Harvey at  
22 Page 45 with the same sort of information?

23          A     Yes.

24          Q     Page 56, the questions with handwritten comments;  
25 Page 58, a score sheet.

1           A     Yes.

2           Q     Page 62, again, a tab for Chandra; followed by an  
3 application at 63; a resume at 65; questions at 73 and 74;  
4 and score sheet at 77; right?

5           A     Yes.

6           Q     And it continues on just like your notebook;  
7 right?

8           A     Right, right, right.

9           Q     Well, let's go to the front of the notebook. At  
10 Page 2 is a memorandum that we haven't seen before. And  
11 it's a memorandum to those listed from John Corey dated July  
12 12th, 1996.

13                   CHAIRMAN BECHHOEFER: Page 2?

14                   MR. MARQUAND: Page GG-2.

15                   CHAIRMAN BECHHOEFER: Oh, GG-2.

16           Q     You see that memorandum?

17           A     Yes.

18           Q     And you're one of the people who's listed as an  
19 addressee?

20           A     Yes.

21           Q     And in that memorandum, Mr. Corey says, "Here is  
22 the next rad," slash, "chem peer group meeting date is going  
23 to be July 18th in Chattanooga," and he gives a date, and a  
24 time, and a place.

25           A     Yes.



1           Q     Can you tell the Court what a rad, slash, chem  
2 peer group is? What was it? If you know.

3           A     I can't recall the peer group, exactly what it  
4 meant. But...

5           Q     Well, with rad, slash, chem, were -- those were  
6 the managers in radiological control and chemistry  
7 organizations; right?

8           A     I can't really recall.

9           Q     All right. Do you know who John Corey was?

10          A     John Corey was I think a rad chem manager at one  
11 of the sites, and I can't remember exactly.

12          Q     Well, if it says "BFN," would that be Browns  
13 Ferry?

14          A     Oh, Browns Ferry; right. Okay.

15          Q     All right. And Jack Cox, was he a rad chem  
16 manager?

17          A     That's Watts Bar Nuclear Plant.

18          Q     All right. And was Charles Kent a rad chem  
19 manager?

20          A     At Sequoyah Nuclear Plant.

21          Q     Okay. And by this time, July 12th, 1996, had Dr.  
22 McArthur been installed as the corporate rad chem manager?

23          A     By July what date?

24          Q     By July 12th.

25          A     Yes.

1           Q     Okay. And then it shows, on Page ggg-3, the,  
2     quote, "draft agenda for the rad chem peer group meeting" on  
3     July 18th; right?

4           A     Yes.

5           Q     All right. And then Page 4 is just like in your  
6     notebook, an interview schedule?

7           A     Yes.

8           Q     Page 5, somebody even went to the trouble of  
9     figuring out a menu for the day to have. Was that catered  
10    in? Must have been. There's prices associated with it.

11          A     To my recollection; yes.

12          Q     Okay. Now, I'm going to show you real quickly,  
13    because I don't want to belabor the point, Exhibit 21. It's  
14    Joint Exhibit 21. It's in Volume 4. And on Page GG-209 is  
15    also a cover page for this same sort of notebook with John  
16    Corey's name on it.

17          A     Yes.

18          Q     And Joint Exhibit #23 in Volume 6 is another  
19    similar notebook, and at Page ggg-596 is a cover page for  
20    another selection review board notebook with Charles Kent  
21    being on it.

22          A     Yes.

23          Q     Okay.

24                CHAIRMAN BECHHOEFER: And what's that joint  
25    exhibit for the latter?

1 MR. MARQUAND: 23. 20, 21, 22, and 23.

2 JUDGE YOUNG: You're pointing out the similarities  
3 in the four notebooks?

4 MR. MARQUAND: Right. And I don't believe we need  
5 to go into every single notebook to show every page is the  
6 same, because I think that we can make that determination  
7 ourselves. But we sort of talked about the structure of it.

8

9 BY MR. MARQUAND:

10 Q You were responsible, you and your staff, for  
11 assembling these notebooks?

12 A Yes.

13 MR. MARQUAND: Now, Your Honors, I would tender  
14 Joint Exhibits 20, 21, 22, and 23, the notebooks provided to  
15 and used by the selection review board for July 18th, 1996,  
16 for these five different jobs.

17 CHAIRMAN BECHHOEFER: Okay, repeat the numbers.

18 MR. MARQUAND: Joint Exhibit 20, Joint Exhibit 21,  
19 Joint Exhibit 22, and Joint Exhibit 23.

20 CHAIRMAN BECHHOEFER: And you're offering these at  
21 this time?

22 MR. MARQUAND: Yes, Your Honor.

23 MR. DAMBLY: Could I have voir dire, please.

24 CHAIRMAN BECHHOEFER: Yes.

25 VOIR DIRE EXAMINATION

1 BY MR. DAMBLY:

2 Q While you're up there, Mr. Easley, do you have...

3 COURT REPORTER: I can't hear you.

4 Q I'm sorry. Joint Exhibit 21. And on Page GG-210,  
5 which is at the beginning of 21, if you could look at that.

6 A On page -- what page, sir?

7 Q 210. Do you see that page?

8 A Yes, sir.

9 Q Do you know what that page has to do with the  
10 selection notebook? A description of McArthur's technical  
11 program operations and position in the various functions and  
12 whatever. Why is that included?

13 A I'm trying to figure it out, sir, by reading it.

14 No, I -- I can't recall.

15 Q Likewise, the -- the document that Mr. Marquand  
16 showed you earlier that had the -- the food and drink for  
17 the program manager or the rad chem manager's next meeting  
18 and the -- and the agenda. Does that have anything to do  
19 with the selection?

20 A Now, repeat that again, sir.

21 Q That Exhibit 20, and Page 2.

22 A I don't have it.

23 Q You don't have 20?

24 A I have 21.

25 Q I'll show you my copy. Mr. Marquand had asked you

1 about Page 2, which is the rad chem peer group meeting on  
2 July 18th.

3 A Right, and that's the one I said I didn't really  
4 understand the peer group.

5 Q Right. Did you put those into these notebooks?  
6 Into this notebook?

7 A I'm not sure.

8 JUDGE YOUNG: Let me see if I understand  
9 something. These notebooks are the -- are the notebooks of  
10 the various people?

11 THE WITNESS: Yes.

12 JUDGE YOUNG: You, Mr. Rogers, and so forth?

13 THE WITNESS: Now, these notebooks here, may I  
14 answer Attorney Marquand?

15 CHAIRMAN BECHHOEFER: Yes.

16 THE WITNESS: This is what have been transferred  
17 -- these books here; right? These weren't the actual books;  
18 right?

19 MR. MARQUAND: No, there were -- what we found in  
20 the files were little white notebooks very similar to this.

21 THE WITNESS: Right, they were white notebooks.  
22 Okay.

23 MR. MARQUAND: And -- and the spine of the  
24 notebook is -- if you're looking at Exhibit 21, the spine of  
25 the notebook is the first page following Tab 21, and Page

1 GG-209 is a Xerox of the front of the notebook. It is a  
2 page slipped in the front just like this one.

3 JUDGE YOUNG: Right. That's not my question,  
4 though.

5 MR. MARQUAND: And as I understand it, Mr. Easley,  
6 you prepared notebooks; you gave them to each of the  
7 selection review board members?

8 THE WITNESS: Right.

9 MR. MARQUAND: And they used them during the  
10 selection review board?

11 THE WITNESS: Yes.

12 MR. MARQUAND: And at the conclusion of the  
13 selection review board, you gathered up those notebooks with  
14 whatever notes that they'd made on or whatever things they'd  
15 inserted into the notebook?

16 THE WITNESS: Right.

17 JUDGE YOUNG: That gets it.

18 MR. MARQUAND: They got put in there that day?

19 THE WITNESS: Yes.

20 JUDGE YOUNG: That was the question I had. That  
21 helped. That answers it.

22 MR. DAMBLY: I just have one other question.  
23 Let's see.

24 BY MR. DAMBLY:

25 Q Exhibit 21. Do you have 21 in front of you?

1 MR. MARQUAND: That's Exhibit 21.

2 A No, we chased it. Yes, sir.

3 MR. MARQUAND: Oh, this is 21.

4 Q If you'd turn to Page 217.

5 JUDGE YOUNG: Two what?

6 MR. DAMBLY: 2-1-7.

7 THE WITNESS: Hold on just a minute here.

8 BY MR. DAMBLY:

9 Q If you look at 217 and 218 and 219 and 220, none  
10 of those are the worksheets for the PWR chemistry position,  
11 is it or are they?

12 A This is for the waste.

13 Q Well, I'm asking you to look at all four of them.

14 A Rad waste.

15 Q There are -- there are four pages in here, one for  
16 each of four different jobs; is that correct?

17 A Repeat that, sir.

18 Q Take -- we'll start at 217.

19 A Okay.

20 Q 217 is a worksheet for the BWR position; is that  
21 correct?

22 A Yes.

23 Q Mr. Fiser's not on there; correct?

24 A No.

25 Q And 218 is the worksheet for the rad waste

1 environmental position?

2 A Yes, sir.

3 Q And Mr. Fiser's not on that one?

4 A No, sir.

5 Q And 219 is the worksheet for the rad -- rad con  
6 program manager position; is that right?

7 A Rad con program manager; yes.

8 Q And Mr. Fiser's not on that worksheet?

9 A No.

10 Q And if we go to 220, we have the worksheet for the  
11 rad con -- another rad con, looks like program manager  
12 position?

13 A Yes.

14 Q And Mr. Fiser's not on that one?

15 A No, sir.

16 Q And if you go to any one of the other workbooks,  
17 because I've looked at them, the sheets for the PWR -- the  
18 PWR worksheet's missing from all those books. Was it in the  
19 books you assembled?

20 A You're saying the position for the PWR were  
21 missing?

22 Q This worksheet we just went through. There's one  
23 for the BWR and these other -- four out of the -- you talked  
24 about there were five selections. In each one of these  
25 notebooks there's worksheets for four of them. None of them



1 have notes -- worksheets for Mr. Fiser's positions. When  
2 you put these books together, did they have that in them?

3 A I don't recall.

4 Q Is there any reason they wouldn't be in there?

5 A Not to my knowledge.

6 MR. DAMBLY: Well, I guess I'd object. It doesn't  
7 appear to me that we have the complete notebooks.

8 MR. MARQUAND: He's testified these are the  
9 notebook he put together, and counsel has muddied the  
10 waters. The witness has already said that these particular  
11 pages weren't there, because they're dated two months after  
12 the selection was made. They were added by somebody else  
13 after the fact. All we did was produce the notebooks as  
14 they were kept in the records. These worksheets are  
15 irrelevant to anything, such they've been made two months  
16 before.

17 MR. DAMBLY: Well, then, they don't belong in the  
18 books. I don't understand why we have...

19 MR. MARQUAND: I'm sorry, that's the authentic  
20 document.

21 MR. DAMBLY: ...books with a bunch of irrelevant  
22 stuff in it for dates that are after the fact.

23 MR. MARQUAND: All I did was establish that these  
24 may not be relevant to the selection review board. These  
25 are the documents that were in the records, but they

1 certainly weren't in existence at the time of the selection  
2 board. I think the documents are well identified as to what  
3 was in existence and what was used.

4 MR. DAMBLY: If I can be heard, as I recall the  
5 testimony, the selecting official's supposed to do this  
6 worksheet thing before they make a choice as to who's going  
7 to be interviewed. So I don't understand why it would be  
8 prepared several months after the selection. There should  
9 have been one prepared before the selection, so I don't know  
10 what we're talking about.

11 MR. MARQUAND: Well, those questions need to be  
12 addressed to Dr. McArthur, not Mr. Easley. Dr. McArthur's  
13 the selecting official.

14 JUDGE YOUNG: Is what?

15 MR. MARQUAND: Dr. McArthur was the selecting  
16 official.

17 JUDGE YOUNG: And he's the one who produced those  
18 for...

19 MR. MARQUAND: I mean, he stuck -- Mr. Dambly said  
20 the selecting official, Mr. McArthur -- Dr. McArthur, should  
21 have prepared a selection worksheet which doesn't  
22 necessarily go to the selection review board. The selection  
23 worksheet's prepared by the selecting official to decide  
24 which of the candidates he wants to have interviewed.

25 JUDGE YOUNG: Right.

1           MR. MARQUAND: And we've already testified there  
2 were several candidates who were interviewed, and they --  
3 that -- he made a short list of people to be interviewed,  
4 which Mr. Easley then put together notebooks for the  
5 selection review board to look at, for the people to be able  
6 to do it.

7           JUDGE YOUNG: And when you got them, that was what  
8 was in them, and you don't -- you don't know...

9           MR. MARQUAND: I don't have an explanation.

10          JUDGE YOUNG: ...and Mr. Easley doesn't know  
11 why...

12          MR. DAMBLY: And I don't -- I don't have any  
13 solution.

14          JUDGE YOUNG: ...the worksheet for the PWR was not  
15 in their?

16          MR. MARQUAND: No. But the -- these worksheets  
17 are...

18          JUDGE YOUNG: Are the four remaining sheets  
19 relevant and something that you want to offer?

20          MR. MARQUAND: No. They are part of the document.  
21 I don't know why they're here. They could simply be  
22 somebody updated them two months later, because this appears  
23 to be a repository for the entire selection process.  
24 Somebody could have updated and replaced previous worksheets  
25 that were in here, but that was six years ago.

1 JUDGE YOUNG: And with regard to the relevance  
2 argument, what do you want to...

3 MR. MARQUAND: Well, I think that these are -- Mr.  
4 Easley, are these examples of the types of worksheets that  
5 would be prepared for candidates who applied on various  
6 jobs?

7 A Yes.

8 Q I think it's relevant to show the kinds of  
9 considerations they look at in considering minimum  
10 qualifications, and who meets the minimum qualifications  
11 need needs to be interviewed for the job.

12 JUDGE YOUNG: It explains why they narrowed down  
13 the...

14 MR. MARQUAND: Right.

15 JUDGE YOUNG: ...the field to who was interviewed.

16

17 MR. MARQUAND: Explains that process very well.

18 MR. DAMBLY: I'll go ahead and withdraw the  
19 objection...

20 CHAIRMAN BECHHOEFER: No, I was...

21 MR. DAMBLY: ...and we'll deal with it on cross-  
22 examination of various people, including Dr. McArthur.

23 CHAIRMAN BECHHOEFER: Okay. So you no longer have  
24 any objection to the...

25 MR. DAMBLY: No. That's fine. We were going to

1 use the notebooks and the rest of the material with the  
2 witnesses, anyway. That's why it's a joint exhibit.

3 CHAIRMAN BECHHOEFER: Okay.

4 MR. DAMBLY: Because I don't recall these being in  
5 the ones that we had before. Saying they were? Okay.

6 CHAIRMAN BECHHOEFER: Okay. Under those  
7 circumstances, we will admit Joint Exhibits 20, 21, 22, and  
8 23.

9 (The documents, heretofore marked  
10 as Joint Exhibits #20 through #23,  
11 were received in evidence.)

12 JUDGE YOUNG: Are you about to move to a new item?

13

14 MR. MARQUAND: I'm going to ask one more series of  
15 questions about these notebooks, and then we'll be done with  
16 them and we can leave it.

17 JUDGE YOUNG: Okay. Because I -- I wanted to...

18 CHAIRMAN BECHHOEFER: We wanted to eventually take  
19 a break.

20 MR. MARQUAND: Well, we can take one now. I mean,  
21 I was going to cover one short topic here, but we can take a  
22 break. And, I mean, it's a convenient stopping place.

23 JUDGE YOUNG: I also had a clarification question.  
24 I'm not sure whether it's something you're going to be  
25 moving into or moving out of. And so maybe I can ask it,

1 and if that's something that you're going to go into, you  
2 can save it for that. But it's been something that there's  
3 been discussion around all morning. And, Mr. Easley, I  
4 don't know whether you've -- you've explained this before or  
5 not, but I didn't catch the whole explanation if you did.

6 When there's going to be a downsizing or budget  
7 cutting, and from what I understand from your testimony and  
8 other testimony, it can be done through a RIF or a  
9 reorganization.

10 THE WITNESS: Yes.

11 JUDGE YOUNG: And my question is: How is it  
12 decided whether, with regard to a particular job, it's going  
13 to be done by a RIF or by a reorganization which would  
14 involve the new position descriptions? And are there  
15 standards on when to do which, or when to define a position  
16 as being vacant, when it's okay to write new job  
17 descriptions, new position descriptions.

18 MR. MARQUAND: I think we can cover that later,  
19 Your Honor. I've got a series of questions that deal with  
20 it.

21 JUDGE YOUNG: Okay, if you're going to do it  
22 later, that's fine. I just...

23 CHAIRMAN BECHHOEFER: If you're going to do it  
24 later, that's fine.

25 JUDGE YOUNG: Ten minutes?

1 CHAIRMAN BECHHOEFER: Is a ten-minute break  
2 enough? Would you like a little more? Fifteen (15)  
3 minutes? We'll say 20 -- 20 minutes before 4:00.

4 (A short recess was taken.)

5 CHAIRMAN BECHHOEFER: Back on the record.

6 BY MR. MARQUAND:

7 Q Referring to Joint Exhibit 21, which is in volume  
8 4, if you look at page GG-210, which is the third page of  
9 the exhibit, there is a page there talking about Wilson  
10 McArthur's job history; do you see that?

11 A Yes, sir.

12 Q Does that information look accurate to you?

13 A This is what I told Mr. Dambly I wasn't familiar  
14 with this.

15 Q All right. Can you review that information and  
16 tell me if it looks accurate?

17 (The witness reviews a document.)

18 A After reading it the second time, yes.

19 Q Do you recall being involved in preparing that  
20 document?

21 A I don't recall this.

22 Q You don't recall that document?

23 A No. I don't remember.

24 Q Do you see in the lower left hand corner, I think  
25 it's -- on the bottom left hand side of it --

1 A Right.

2 Q -- there's a 2407Y, do you see that?

3 A Yes, sir.

4 Q Isn't that the sort of format or designation that  
5 the old Wang systems used to use at TVA?

6 A Yes.

7 Q And do you recall in '96, they were phasing the  
8 Wang systems out and they were going to PCs, personal  
9 computers?

10 A Vaguely, yes.

11 Q Do you recall that that looks like Ed Boyles'  
12 handwriting at the bottom of the page where it says Allen  
13 Sorrell, temp/rotation over rad con chem?

14 A That could be his handwriting, I can't say yes or  
15 no.

16 Q Now during your deposition last November 29, 2001,  
17 let me refer you to page 109, and at that time, that  
18 document is referred to as an exhibit in your deposition as  
19 Easley Exhibit 3 and I asked you, "Did you help prepare this  
20 document?"

21 And you said, "I'll tell you, seems like that this  
22 is something I may have been involved with."

23 Does that refresh your recollection that you  
24 helped prepare this page, GG-210?

25 A I could, but I don't recall. Based on this, I'll



1 say I could have been involved in it. I didn't say yes or  
2 no.

3 JUDGE COLE: What's the exhibit number of the  
4 deposition, sir?

5 MR. MARQUAND: This particular page I believe was  
6 Exhibit 3 to Mr. Easley's deposition last fall.

7 MR. DAMBLY: The deposition is Staff Exhibit 27.

8 MR. MARQUAND: Oh, yes, and Mr. Dambly submitted  
9 the deposition this morning as Staff Exhibit 27.

10 JUDGE COLE: Thank you.

11 MR. MARQUAND: And I was referring to page 109 of  
12 that where I asked him if he helped prepare the document.

13 THE WITNESS: And at the time I said that I could  
14 have been involved in it, I didn't say yes or no.

15 CHAIRMAN BECHHOEFER: Are you saying you have no  
16 greater recollection --

17 THE WITNESS: Beg pardon?

18 CHAIRMAN BECHHOEFER: You have no greater  
19 recollection right now as to whether it was yes or no?

20 THE WITNESS: I can't say yes or no, Judge. I  
21 could have, may have.

22 BY MR. MARQUAND:

23 Q Page 10, I asked you, "But you think you may have  
24 been involved in" -- and you said, "Yes, I" -- you  
25 interrupted me and I said, "-- involved in helping to put

1 this document together?" And you said, "All this is true,  
2 yes; and if I didn't, they wrote it up just like it  
3 occurred." Do you see that?

4 A Right.

5 Q Okay. And then I asked you if you discussed this  
6 document with your supervisor, Ed Boyles, and you said,  
7 "Yes, everything I did, I discussed with my supervisor."

8 A Right. Now after reading this, this is what  
9 occurred.

10 Q You discussed that with Ed Boyles -- you would  
11 have discussed this same information with Ed Boyles.

12 A I'm not understanding your question .

13 MR. MARQUAND: We'll move on.

14 BY MR. MARQUAND:

15 Q Let me show you Joint Exhibit 65 and I'll refer  
16 you to page 15.

17 JUDGE COLE: What was the exhibit again?

18 MR. MARQUAND: Joint Exhibit 65, page 15 -- well,  
19 actually let's look at page 14 and 15.

20 BY MR. MARQUAND:

21 Q Page 14 at the bottom, there's a paragraph 4 that  
22 defines competitive level; do you see that?

23 A Yes.

24 Q And by the way, this whole thing is an instruction  
25 on how reductions in force are to be carried out at TVA,

1 right?

2 A Yes.

3 Q And so beginning at the bottom of page 14, there's  
4 a description of how TVA is going to establish competitive  
5 levels. As you go to the top of page 15, I want to refer to  
6 the language that Mr. Dambly asked you about this morning.  
7 In the very top paragraph on page 15, it says, in the second  
8 sentence, do you see where it says "The determinations of  
9 competitive levels must be based solely on the content of  
10 accurate, up to date job descriptions." Do you see that?

11 A Yes.

12 Q And he asked you, did you perform some sort of  
13 audit or whatever in 1996 to make sure Mr. Fiser had an  
14 accurate, up to date job description; do you remember that?

15 A Yes.

16 Q And you said no, we didn't do that. Right before  
17 this reorganization, you didn't go out and you didn't look  
18 at Mr. Fiser's job description to make sure it was accurate  
19 and up to date, right?

20 A Not --

21 Q That wasn't part of your process.

22 A No.

23 Q Did you -- during this -- before putting this  
24 reorganization in place, did you go out and check anybody's  
25 job description to make sure it was accurate and up to date?

1           A     On the reorganization that we had?

2           Q     Right.

3           A     Are you talking about before we wrote the new job  
4 descriptions?

5           Q     Yeah, before you made a determination whether they  
6 had to be posted or whether they had to be RIF'd, is that  
7 something you normally did?

8           A     Yes, I told Mr. Dambly that we compared the  
9 current job description with --

10          Q     We're not talking about the same thing.

11          A     Okay.

12          Q     You compared the old position description with the  
13 proposed ones.

14          A     Yes.

15          Q     To see if they were the same competitively.

16          A     Right.

17          Q     But as part of this reorganization, did you go out  
18 and take the old job descriptions and make sure that they  
19 were accurate, to make sure that you weren't RIF'ing  
20 somebody or moving somebody that you shouldn't be moving or  
21 RIF'ing.

22          A     No.

23          Q     Okay. You didn't do that to Fiser and you didn't  
24 do that to anybody else.

25          A     No.

1           Q     Let me ask you -- let's suppose you had decided to  
2 do that and you went out there and you found hey, Sam  
3 Harvey's job description is not accurate, I'm going to give  
4 him a different job description and as a result he doesn't  
5 have to bid on a new job, he stays in a different job and  
6 Fiser gets RIF'd. What happens then? Get a lawsuit?

7           A     Then you'd be in trouble, you'd get a lawsuit,  
8 complaints.

9           Q     If you go monkeying with job descriptions right  
10 before a reduction in force?

11          A     Right, that's true.

12          Q     Judge Young, before the break, asked a good  
13 question about RIFs and reorganizations -- are they  
14 necessarily the same thing?

15          A     Reorganization could be RIF and it could be where  
16 you have to advertise positions.

17          Q     All right. Are there federal regulations that  
18 apply to TVA with respect to reductions in force?

19          A     Yes, you just had it there.

20          Q     That was a TVA procedure, right?

21          A     Right.

22          Q     Is a reorganization governed by specific  
23 instructions, regulations or anything -- just a plain  
24 reorganization?

25          A     I think everything is governed by some type of

1 guideline.

2 Q Well, have you seen regulations for  
3 reorganizations per se?

4 A Are you talked about -- when we talk about  
5 reorganization now, we could be talking about reduction in  
6 force, or --

7 Q You could be talking a lot of things.

8 A And advertising positions. Just a change in  
9 reorganization -- in the organization.

10 Q Okay.

11 JUDGE YOUNG: What I was trying to get at was if  
12 you know you have to cut your budget by X amount and you're  
13 going to have to cut positions and you're -- one way you  
14 could do it is you could say well we have three people in  
15 this position and the one with the least seniority goes --  
16 that's over-simplifying it.

17 THE WITNESS: Right.

18 JUDGE YOUNG: Or you might say well, you need to  
19 look at the job functions in this way and we're going to  
20 redefine these functions and create some new jobs and in  
21 that circumstances, you do what, you post the new jobs and  
22 you do what happened with Mr. Fiser, Mr. Harvey and Mr.  
23 Chandra?

24 THE WITNESS: Right.

25 JUDGE YOUNG: And my question was what are the

1 standards -- or what standards would govern whether -- when  
2 it would be appropriate to do away with jobs and create new  
3 job positions such that people had to compete for the new  
4 job rather than it being done by seniority as in a RIF.

5 THE WITNESS: This is when you determine that you  
6 need a new structure or you need to do the job differently  
7 from how the job has been done in the past or present.

8 JUDGE YOUNG: Right, and my question was is there  
9 -- are there any standards, is there any set of guidelines  
10 on how to do that, when to do that, when it's all right to  
11 do that, when it's not all right to do that, so forth.

12 THE WITNESS: I don't recall, Your Honor. But I  
13 do recall when you have to use a retention register, when  
14 you have to have a RIF, a reduction in force, because you  
15 have guidelines that come down from Office of Personnel --

16 JUDGE YOUNG: And those are comparable, if not the  
17 same, as what's in this Exhibit 65, right?

18 THE WITNESS: You're right, ma'am.

19 JUDGE YOUNG: Okay, and I was just trying to  
20 understand what the standard was for when you decide to  
21 create new jobs and do a --

22 THE WITNESS: Well, like I said before, when you  
23 decide to change the structure of the work --

24 JUDGE YOUNG: Right.

25 THE WITNESS: -- you may decide that the work can

1 be done better this way --

2 JUDGE YOUNG: Right.

3 THE WITNESS: -- by eliminating this position and  
4 by adding these two positions.

5 JUDGE YOUNG: Exactly. Are there any rules or  
6 standards on when you do that, when it's permissible to do  
7 that, how to do that, et cetera?

8 THE WITNESS: I think management is the one that  
9 determines when that is necessary. Did I answer your  
10 question?

11 CHAIRMAN BECHHOEFER: Well, when manage does that,  
12 my understanding is that they have to follow the 35 percent  
13 guideline, is that not correct?

14 THE WITNESS: You're talking about when they  
15 rewrite?

16 CHAIRMAN BECHHOEFER: Yes.

17 THE WITNESS: Okay, the 35 percent guideline is  
18 when you have to advertise the position. If the job changes  
19 35 percent or more, then you have to advertise the position.  
20 If it does not change 35 percent or more, you still can  
21 consider those people who are already in the position. And  
22 this may cause a reduction in force, if they have decided  
23 that we can do without one position, we need to eliminate  
24 one position because of budget, because of head count  
25 reasons. Then you handle it this way or that way.



1           CHAIRMAN BECHHOEFER: Right, but my question was  
2 is the 35 percent rule or guideline a standard at least that  
3 would be applied in approaching a reorganization.

4           JUDGE YOUNG: That's a different question than  
5 what I was asking.

6           CHAIRMAN BECHHOEFER: Oh, okay.

7           MR. MARQUAND: Judge, I agree with you, when you  
8 have RIFs, when you have new jobs, what you're talking  
9 about, this rule of comparing them whether it's 35 percent  
10 or whatever the standard is, is part of determining what a  
11 competitive level is under the Office of Personnel  
12 Management's regulations and it appears in Joint Exhibit 65  
13 and it's on page 14 and 15, competitive level determination.  
14 That's part of the regulation that has to be followed.

15           CHAIRMAN BECHHOEFER: Thank you.

16 BY MR. MARQUAND:

17           Q     Mr. Easley, with respect to selection review board  
18 --

19           JUDGE YOUNG: Excuse me one second.

20           MR. MARQUAND: Okay.

21           JUDGE YOUNG: Now what you just said was directed  
22 to what Judge Bechhoefer said. Was it directed to what I  
23 said? Because I didn't understand that. That's what I'm  
24 not clear about.

25           MR. MARQUAND: I'm not sure that I understood your

1 question to be much different.

2 JUDGE YOUNG: Okay, the staff is arguing, as I  
3 understand it, that the reorganization was used as a means  
4 to discriminate against Mr. Fiser. I believe I heard Mr.  
5 Dambly say that last week sometime. And if you do a -- if  
6 TVA does a RIF, they're required to follow all these  
7 regulations.

8 MR. MARQUAND: Right.

9 JUDGE YOUNG: If -- let's talk a hypothetical  
10 company, if a hypothetical company that had these rules had  
11 three people in the same job and did not want to do a RIF  
12 which would result in the person with the least seniority,  
13 to over-simplify, losing their job and they wanted to  
14 redefine the jobs in such a way that it would create a 35  
15 percent difference so that they would not have to do a RIF,  
16 but could open it up to competition. My question is not  
17 whether the 35 percent rule would govern, my question is  
18 when is it all right to change the jobs? Are there any  
19 standards for when it's all right to start that whole  
20 process going.

21 MR. MARQUAND: I think Mr. Easley answered your  
22 question, but let me reiterate it. No. Reorganizations  
23 happen all the time, there's not a regulation that says you  
24 can only reorganize every six months, nor is there a  
25 regulation that says you have to meet a certain criteria to

1 reorganize.

2           What Mr. Easley said is it's management's call.  
3 Management defines the work that needs to be done and  
4 management decides how to get the work done and then  
5 management decides here are the functions we need to have  
6 done and therefore, we're going to write job descriptions  
7 around those functions and they organize and say okay, we're  
8 going to say functions A through L will be in a certain job  
9 description, M through S in another one. And there's no  
10 magic to how you define the job description, but it's  
11 management's call how to write those job descriptions. Am I  
12 right, Mr. Easley?

13           THE WITNESS: Yes.

14           MR. MARQUAND: And they write the job descriptions  
15 and then having written them, it's up to Human Resources and  
16 Labor Relations then to classify them, decide how much  
17 they're paid, decide whether they're different or not and  
18 there's RIF regulations. You recall Mr. McGrath's testimony  
19 was that the reorganization was he had to decide what  
20 functions his organization needed to do as corporate and  
21 then decide what the organizational structure needed to be  
22 and then what positions in each of those -- that needed to  
23 be in those boxes to do those different functions. And that  
24 is exclusively a province of management, whether it's in TVA  
25 or whether it's in the private sector and there aren't

1 regulations that say here's a threshold of how to do  
2 reorganization or when you can approach reorganization, but  
3 having written that position description --

4 JUDGE YOUNG: You said there are not or are  
5 regulations?

6 MR. MARQUAND: There's not a threshold, there's  
7 not a regulation that says how to do a reorganization. It  
8 happens all the time.

9 JUDGE YOUNG: So if a company were to want to  
10 discriminate against someone and went to the trouble of  
11 writing the position descriptions in such a way that it  
12 would result in a 35 percent change so that you did not go  
13 through the RIF process, that would be possible. I mean I'm  
14 trying to fit in the --

15 MR. MARQUAND: It's conceivable that somebody in  
16 management could say okay, I'm going to rewrite the job  
17 descriptions to force a competitive selection because I know  
18 this guy over here is the weakest and he won't be selected.  
19 But then having done it, he's going to have to -- the whole  
20 theory is then he has to enlist people on the selection  
21 review board to make sure they make it come out the way he  
22 wants it, he's going to have to enlist people in Human  
23 Resources.

24 JUDGE YOUNG: I'm just talking about that --

25 MR. MARQUAND: Yes, it is a conceivable theory.

1 JUDGE YOUNG: Okay.

2 MR. MARQUAND: It's a possibility.

3 JUDGE YOUNG: Well, that's what I --

4 MR. MARQUAND: It happens in movies.

5 JUDGE YOUNG: That's what I understood the staff  
6 to be arguing and so I wanted to get a handle on that step  
7 in the process.

8 MR. MARQUAND: Yes, Your Honor.

9 JUDGE YOUNG: Thanks.

10 MR. DAMBLY: Just so it's clear on the record, I  
11 haven't agreed with the points he was making before and I'll  
12 be glad to address that at some other time. There are  
13 regulations.

14 CHAIRMAN BECHHOEFER: Oh, well, let's find out. I  
15 think we should probably address that right now, because it  
16 goes to a point that's been raised right now.

17 MR. DAMBLY: We have in the exhibits, I guess it's  
18 Joint Exhibit 62, the OPM RIF regulations that were  
19 applicable and they define -- I'm not sure what the pages  
20 are -- I guess it must be 198, talks about competitive  
21 levels and how one determines what's a competitive level for  
22 these purposes.

23 JUDGE YOUNG: Is that the one that's a really bad  
24 copy that's hard to read?

25 MR. DAMBLY: Yes.

1           MR. MARQUAND: But you can find a good copy at 5  
2 CFR Part 351.

3           JUDGE YOUNG: 5 CFR Part 51 --

4           MR. MARQUAND: 351, 3-5-1. And this particular  
5 one -- these regulations begin at 351.201.

6           MR. DAMBLY: And scope of competition is defined  
7 under 351.401 and goes through and explains what competitive  
8 levels are. And these are mandated by OPM under  
9 Congressional direction and the staff's view is it is not  
10 appropriate or legitimate to subvert the Congressionally  
11 mandated rights people have in downsizing by claiming you  
12 changed job descriptions. That would not be consistent with  
13 anybody's rights, that would subvert an agency's regulations  
14 if by changing something, you say well, it doesn't apply to  
15 me. That's not the intent that Congress had when it passed  
16 the statute and that's not the intent of the regulations.

17           JUDGE YOUNG: This may be more a legal issue.

18           MR. MARQUAND: It is.

19           JUDGE YOUNG: I just wanted to clarify what I  
20 understand.

21           MR. DAMBLY: But I wanted to respond.

22           JUDGE YOUNG: Okay, I wanted to clarify what I  
23 understood you to be saying and since this is the first  
24 witness we've had from Human Resources and we've been sort  
25 of talking the whole issue and touching on it and I just

1 wasn't clear and it sounds like it's a legal issue that you  
2 can argue.

3 MR. MARQUAND: It is.

4 BY MR. MARQUAND:

5 Q Mr. Easley, returning to the selection review  
6 board, you testified earlier that Mr. Cox was originally  
7 scheduled to be part of the selection review board.

8 A Yes.

9 Q And that he indicated he had some sort of  
10 conflict.

11 A Yes.

12 Q And then you said that you thought it should be  
13 rescheduled and he encouraged to attend.

14 A Yes.

15 Q Do you recall if he was asked if there was a time  
16 he could attend?

17 A No, I think he finally told management -- and when  
18 I say management, I think he told McGrath or McArthur that  
19 he had something else to do and he had other commitments and  
20 that he couldn't make it. And I think I indicated that I  
21 had talked to Mr. McGrath about it and Mr. McGrath told Mr.  
22 McArthur to go ahead and choose someone else.

23 Q But my question is did you try to reschedule and  
24 Mr. Cox said he still wouldn't be available?

25 A Beg pardon?

1           Q     Did you try to reschedule and Mr. Cox tell you  
2     that he still couldn't be available?

3           A     Yes, he told us he wouldn't be available.   And  
4     when I say us, he primarily came through McArthur.

5           Q     But he said even if you reschedule it, I can't be  
6     available.

7           A     Yes.

8           Q     And we looked at the selection notebook and you  
9     were making selections for five different jobs and I don't  
10    remember how many people, but there was a number of people,  
11    and you had yourself and the members of the selection review  
12    board.  Would it have been feasible to reschedule it to a  
13    time when Mr. Cox could be available, assuming he would make  
14    himself available?

15          A     I think it would have.

16          Q     What I'm talking about, what's the feasibility of  
17    -- let's see, you had Sam Harvey, Gary Fiser,  
18    Chandrasekaran, Hubert Hughey, John Traynor, Deidra Nida,  
19    Lynn Riales, John Laudell, James Flannigan, Reese Nichols,  
20    they were all applicants and had to be interviewed, right?

21          A     Yes.

22          Q     And then you had the three members of the  
23    selection review board and yourself, that'd be four, right?

24          A     Right.

25          Q     And Milissa Westbrook is five, right?  Correct?



1 What's the feasibility of on that short a notice of finding  
2 a date and time that everybody could reschedule to?

3 A Well, it would have been --

4 Q Difficult?

5 A No, I was getting ready to say it would have been  
6 fairer to Mr. Fiser by having Mr. Cox there.

7 Q Are the selection review board members supposed to  
8 be biased?

9 A Beg pardon?

10 Q Are the selection review board members supposed to  
11 be biased or partial towards any candidate?

12 A I don't think anyone should be biased or partial.

13 Q Supposed to go into it impartially?

14 A Beg pardon?

15 Q Are they supposed to go into it with an open mind?

16 A Yes.

17 Q Are they supposed to support any particular  
18 candidate?

19 A In a selection, the best qualified -- in their  
20 opinion, the best qualified.

21 Q Counsel asked you whether or not the selection  
22 review board met ahead of time and agreed on how to score  
23 each question and you said no. Is that the usual situation?

24 A Yes, and it should be.

25 Q It should be what?

1           A     They should not discuss how to score each  
2 candidate.

3           Q     I noticed when we went to the selection notebooks,  
4 they scored all the candidates on a zero to 10 basis, is  
5 that right?

6           A     Yes, 10 being the high.

7           MR. MARQUAND: Just a second.

8                 (Brief pause.)

9     BY MR. MARQUAND:

10          Q     Let me return to the position that Dr. McArthur  
11 got, the radiological control and chemistry manager. We've  
12 already established that you disagreed with the fact that  
13 that was not advertised. You felt it should have been  
14 advertised.

15          A     Yes.

16          Q     And the job that Mr. Fiser was interested in was  
17 advertised.

18          A     Yes.

19          Q     And all of the other new jobs in operations  
20 support were also advertised.

21          A     Yes.

22          Q     Now if Mr. Boyles was incorrect and if he made a  
23 mistake and he should have advertised the radiological  
24 control and chemistry manager job, assuming he made a  
25 mistake and you're right, who was harmed by the failure to

1 advertise that job?

2 A You're saying who was harmed?

3 Q Uh-huh.

4 A Well --

5 Q Who else possibly could have applied for it and  
6 been considered for that job, if it should have been  
7 advertised?

8 A Grover could have been considered, Ron Grover, and  
9 there could have been some others to apply.

10 Q So was any harm limited to the people who would  
11 have applied on that particular job if it had been  
12 advertised?

13 A Repeat that please.

14 Q If there was any harm in making the mistake and  
15 not advertising the radiological control and chemistry job,  
16 was that harm limited to the people who could have applied,  
17 such as Ron Grover?

18 A Yes.

19 Q Was there any -- did it affect the selection  
20 process for the job Mr. Fiser applied on?

21 A No.

22 Q As far as you know, did anybody besides Mr. Fiser  
23 disagree with the decision to post for competition the new  
24 position for chemistry program manager for PWR?

25 A Repeat that again please.

1           Q     Referring to the new chemistry program manager  
2 job, PWR, as far as you know, did anybody disagree with the  
3 decision to post that job for competition besides Mr. Fiser?

4           A     No.

5           Q     You and Mr. Boyles saw eye to eye that that should  
6 be posted?

7           A     Yes.

8           Q     Now when Mr. Fiser came in to you and he  
9 threatened to file a lawsuit if you posted that job, you  
10 took him to Mr. Boyles to explain his position, right?

11          A     Yes, sir.

12               CHAIRMAN BECHHOEFER: Mr. Fiser or Mr. Grover?

13               MR. MARQUAND: I'm sorry if I misspoke. Mr. Fiser  
14 came to you and said if you post that job, it's going to  
15 violate my settlement agreement and I'm going to file a  
16 Department of Labor complaint, right?

17               THE WITNESS: He said he was going to file a  
18 complaint.

19 BY MR. MARQUAND:

20           Q     He didn't give you the details of it?

21           A     I don't recall, no.

22           Q     So then you took him to Mr. Boyles.

23           A     Yes.

24           Q     And at that point in time, had you already made a  
25 decision it needed to be posted?

1           A     Yes.

2           Q     So you took him to Mr. Boyles and he explained his  
3 situation to Mr. Boyles, right?

4           A     Yes.

5           Q     What did Mr. Boyles do about it, if you know?

6           A     He tried to explain to him that we had to  
7 advertise that position and that the position that we were  
8 advertising was not his position per se.

9           Q     Did Mr. Boyles do any further study or research on  
10 it?

11          A     I'm pretty sure he talked to Labor Relations and  
12 I'm pretty sure he talked to his supervisor, Phil Reynolds -  
13 - I'm not sure, but he should have. And I'm pretty sure  
14 Labor Relations probably talked to OGC, your office.

15          Q     As far as you know, did anybody disagree with the  
16 decision to post the job?

17          A     Other than he?

18          Q     To post the chemistry program manager job, other  
19 than Fiser?

20          A     No.

21               MR. MARQUAND: Just a second, Your Honor.

22               (Brief pause.)

23               JUDGE YOUNG: Mr. Marquand and Mr. Dambly, I've  
24 looked at these rules that you pointed me to, and I've also  
25 looked back at the TVA standard on competitive level, and I

1 think I'm understanding it a little bit better now. And let  
2 me see whether I've got it clear. And while we have Mr.  
3 Easley here, since I presume he's from the department that  
4 would be responsible for implementing this; correct?

5 MR. MARQUAND: I believe you were six years ago;  
6 is that right, Mr. Easley?

7 THE WITNESS: I didn't hear the question.

8 MR. MARQUAND: Would you or your organization  
9 would do competitive level determinations and conduct  
10 reductions in force when you were there six years ago?

11 THE WITNESS: You're saying if we did...

12 MR. MARQUAND: Yes.

13 THE WITNESS: ...terminations?

14 MR. MARQUAND: Right.

15 THE WITNESS: On a reduction in force?

16 MR. MARQUAND: Right. Was that you all or labor  
17 relations or a different department within your  
18 organization?

19 THE WITNESS: Human resources.

20 JUDGE YOUNG: So when you're looking at  
21 competitive levels---I'm reading on Pages 14 and 15---we had  
22 looked more closely at Page 15 before of Joint Exhibit 65, I  
23 think it is. Yes, joint exhibit. And the two paragraphs on  
24 the bottom of Page 14, I think the last sentence, "In a  
25 nutshell, this means that an incumbent in Job A is qualified

1 based on requirements to do Job B work, and vice-versa. And  
2 if that's true, then they'd be in the same competitive  
3 level."

4 THE WITNESS: Can you repeat that, Judge.

5 JUDGE YOUNG: Probably be easier if you had -- I  
6 mean...

7 MR. MARQUAND: Well, Your Honor, I think you're  
8 asking him what that means. And if you'll -- that whole  
9 paragraph is pertinent. And the standard there, it says  
10 that the jobs have to be interchangeable. And it's talking  
11 about -- and the next paragraph, of course, talks about  
12 position descriptions, and it says that that determination  
13 is based on the contents of the position descriptions. So  
14 what you do is, you compare the position descriptions, not  
15 the individuals.

16 JUDGE YOUNG: Right.

17 MR. MARQUAND: And you look at the position  
18 descriptions and you determine if those jobs were  
19 interchangeable. In other words, can somebody who does "A"  
20 also do "B," and can somebody who does "B" also do "A."

21 JUDGE YOUNG: Right.

22 MR. MARQUAND: And the first paragraph talks about  
23 interchangeability being a two-way street. In other words,  
24 it has to go back and forth. "A" has to be able to do "B";  
25 "B" has to do "A."

1 THE WITNESS: That's true. That's true.

2 MR. MARQUAND: In other words, you can't be a  
3 subset of the other. Have to be pretty much the same.

4 JUDGE COLE: And I see Mr. Easley nodding his head  
5 to your comment.

6 THE WITNESS: That's true.

7 JUDGE YOUNG: And so I would assume that this  
8 plays in when you're looking at -- at different positions  
9 and whether they're -- whether they meet the 35% difference  
10 level?

11 THE WITNESS: Are you talking to me or to each  
12 other? I'm sorry. Go ahead, please.

13 JUDGE YOUNG: When you're -- when you're looking  
14 at competitive levels, are you doing that in the same  
15 process that you're performing when you're looking at  
16 whether the position descriptions meet the 35% standard?

17 THE WITNESS: No. Competitive levels, you're  
18 looking at jobs that have the same duties and same  
19 responsibilities.

20 JUDGE YOUNG: Do you -- do you make this  
21 determination before you make the position -- I mean, I'm  
22 just trying to understand how it works, because I'm not...

23 THE WITNESS: Are we talking about reduction in  
24 force or are we talking about...

25 JUDGE COLE: Reorganization.



1 THE WITNESS: ...reorganization?

2 CHAIRMAN BECHHOEFER: Reorganization.

3 THE WITNESS: Okay, that's what I'm -- I'm sorry,  
4 Judge, I...

5 JUDGE YOUNG: Well, competitive level, I guess  
6 it's under the reduction in force...

7 THE WITNESS: Right, that's...

8 JUDGE YOUNG: ...standards, though. So I'm not --  
9 I'm not entirely clear how they interrelate. You had said  
10 that they can sometimes -- reorganization can be a RIF or it  
11 can be something else. But both of you directed me to  
12 competitive level to answer my earlier clarifying question,  
13 and I -- I was just asking Mr. Easley whether this is part  
14 of what you look at, or when do you look at the competitive  
15 level?

16 THE WITNESS: When you're looking at a reduction  
17 in force.

18 MR. MARQUAND: Your Honor, if I can -- and see if  
19 Mr. Easley agrees with this. When you've got a  
20 reorganization, the management decides we no longer need  
21 these jobs. We're going to rewrite them and create new  
22 jobs. They have to make a competitive level determination  
23 to see are the old jobs -- they have to compare those old  
24 jobs with the new jobs. That's a competitive level  
25 determination, too.

1           In other words, they're looking, does the person  
2 -- does the incumbent in this old job that's being  
3 eliminated have a right to this new job by virtue of the  
4 fact they're on the same competitive level. Is that right,  
5 Mr. Easley? If you followed me.

6           THE WITNESS: I'm still...

7           MR. MARQUAND: What we're saying is you -- you  
8 compare position descriptions to see if they were similar.

9           THE WITNESS: Right.

10          MR. MARQUAND: And if they were similar enough,  
11 then the incumbent has a right to the new job.

12          THE WITNESS: Yes.

13          MR. MARQUAND: That's a competitive level  
14 determination, isn't it?

15          THE WITNESS: You're right; yes. He right (sic),  
16 Your Honor.

17          MR. MARQUAND: So it's our view that these RIF  
18 regulations come into play whether you call it -- whether  
19 it's just a plain downsizing, you're cutting your workforce  
20 by 40% across the board, or whether you've got a  
21 reorganization which will eliminating jobs (sic), you still  
22 have to look at your RIF regulations to determine if the  
23 incumbent of a job that's being eliminated has a right,  
24 under the RIF regulations, to some new job that's out there.  
25

1           And if you determine -- Mr. Easley, if you  
2 determine that person doesn't have a right to that new job,  
3 then the new job is vacant and has to be posted under TVA's  
4 procedures; right?

5           THE WITNESS: Yes.

6           JUDGE YOUNG: And where again does the 35% rule --  
7 is that part of Exhibit 65? Is there a...

8           MR. MARQUAND: Well, that's why I asked Mr.  
9 Easley. I asked him if it was written anywhere, because  
10 that may be -- it may be his working understanding of how it  
11 works.

12          THE WITNESS: No, it came from labor relation.

13          MR. MARQUAND: Okay, it's guidance from labor  
14 relations?

15          THE WITNESS: Right. Who I thought had conferred  
16 with OGC or conferred with someone else.

17          MR. MARQUAND: It's not based on your reading of  
18 the regulations, though, is it? I mean, you didn't read the  
19 regulations and say, "Oh, there's the 35%"? Somebody in  
20 labor relations said, "Here's sort of the guidance we want  
21 you to use"?

22          THE WITNESS: Right.

23          MR. MARQUAND: Okay. I've got...

24          THE WITNESS: But there should be some guidelines  
25 somewhere concerning that 35%.

1           MR. MARQUAND: I've got one last area of  
2 questions.

3 BY MR. MARQUAND:

4           Q     In the making the decision that the chemistry  
5 program manager job had to be posted, the job Mr. Fiser was  
6 interested in, when you made the determination that that job  
7 needed to be posted for advertisement for competition, did  
8 Mr. McGrath or Mr. McArthur come to you and make any  
9 recommendations, say, "We think this job should be posted?"  
10 Did they give you any input?

11          A     I can't recall them coming to me or coming to  
12 human resources. I think we informed them that the position  
13 had to be posted.

14           JUDGE YOUNG: Now, who informed who?

15           THE WITNESS: He were asking if Mr. McGrath or Mr.  
16 McArthur came to us when we post the position.

17           JUDGE YOUNG: Right. And you said -- and you  
18 think -- you think that they...

19           THE WITNESS: I think we told the managers...

20           JUDGE YOUNG: Who is "he," is what I'm trying to  
21 understand?

22           MR. MARQUAND: He said "we."

23           JUDGE YOUNG: Did you say "we" or "he"?

24           THE WITNESS: Right. When I say "we," I'm talking  
25 about human resources, Ed Boyles, myself. Okay...

1 JUDGE YOUNG: You told -- you told the managers it  
2 had to be posted?

3 THE WITNESS: Right. Ed Boyles and myself, labor  
4 relations. Someone out of labor relation in our department.

5  
6 BY MR. MARQUAND:

7 Q One last question. In your direct counsel asked  
8 you what HR's function was, and you said, "Well, we provide  
9 guidance, we tell management here's what the rules are, the  
10 -- what they ought to be doing."

11 A Yes.

12 Q And he asked you, "Well, could they do it anyway?"  
13 If you disagreed with them and you didn't think they were  
14 doing it right, could you not take it -- well, whose --  
15 could you not take it to Phil Reynolds, your vice president?

16 A Yes. At the time he was manager of human  
17 resources.

18 Q He was the general manager of human resources?

19 A Right.

20 Q And he could take it up the chain if you all  
21 disagreed with what management was doing?

22 A Yes.

23 Q All right. Thank you, Mr. Easley.

24 CHAIRMAN BECHHOEFER: Mr. Dambly?

25 REDIRECT EXAMINATION

1 BY MR. DAMBLY:

2 Q Maybe I'll start at the end and go backwards. You  
3 also told Tom McArthur -- Tom McGrath, I'm sorry, that the  
4 rad con chemistry manager position should be posted, as well  
5 as the rest of those positions; is that correct?

6 A Yes.

7 Q And that one was not posted; is that correct? The  
8 rad con chemistry manager was not posted.

9 A A senior manager position?

10 Q Yeah. The one that Mr. McArthur was rolled over  
11 into.

12 A Right. Yes, sir.

13 Q And Mr. Marquand asked you some questions about  
14 who was affected by the decision to put Mr. McArthur in the  
15 rad con chemistry position and you said no one except maybe  
16 Mr. Grover; is that right?

17 A No, I said it could have been others, depending on  
18 if we advertise a position, who applied on the positions,  
19 who met the qualification, who had the expertise.

20 Q Others that could have applied for that position?

21 A Yes.

22 Q Do you recall Mr. Marquand asked you a similar set  
23 of questions. Well, let me back up.

24 You said -- he also asked you was Mr. Fiser  
25 affected and you said no; is that correct?

1           A     Yes, that's correct.

2           Q     And do you remember, during your deposition, when  
3 he asked you a similar set of questions, and then I asked  
4 you, "Do you recall who Mr. Grover indicated would have been  
5 his selection for the position had he been in the position  
6 McArthur was put in?"

7           A     Repeat that again, sir.

8           Q     I said do you recall during the deposition, after  
9 Mr. Marquand asked you a similar set of questions, I asked  
10 you, "Were you familiar with who Mr. Grover said he would  
11 have picked for the PWR position had he been the selecting  
12 official...'

13                   MR. MARQUAND: Before refreshing the witness'  
14 recollection, can counsel give the page and line so I can  
15 look at, please.

16           A     I don't recall that.

17           Q     You don't recall that?

18           A     No, sir.

19           Q     Okay. Let me get you Staff Exhibit 27.

20                   CHAIRMAN BECHHOEFER: Exhibit what?

21                   MR. DAMBLY: 27.

22                   CHAIRMAN BECHHOEFER: 27.

23 BY MR. DAMBLY:

24           Q     Let me direct your attention to Page 125.  
25 Starting on Line 9 on Page 125, question: "I know. I

1 understand that. But then going on to the issue of whether  
2 McArthur was improperly placed or not maybe had an adverse  
3 affect on Grover, but it had no affect on Fiser?"

4 Answer: "Had no affect on Fiser." Now...

5 MR. MARQUAND: Where are you reading from,  
6 Counsel? That's not a...

7 MR. DAMBLY: Page 125, Line...

8 JUDGE COLE: What exhibit, sir?

9 MR. DAMBLY: Staff 27.

10 JUDGE YOUNG: 27, Easley deposition.

11 MR. DAMBLY: I think I noticed a similar problem.  
12 You were using a mini-script earlier, and I don't think it  
13 has the same lines. I don't know why, but...

14 CHAIRMAN BECHHOEFER: Well, we -- we can't even  
15 find the exhibit.

16 MR. DAMBLY: It's in Book 2. 2 of 8. Staff  
17 Exhibit 27.

18 CHAIRMAN BECHHOEFER: Wait till we -- wait till we  
19 get the right book. Okay, Page 125.

20 MR. DAMBLY: Okay, are we all there, now?

21 BY MR. DAMBLY:

22 Q All right. Okay, going back again, Mr. Easley,  
23 starting on Line 9.

24 A Please speak a little louder, please, sir.

25 Q Starting on Line 9 of Page 125 on the exhibit in



1 front of you. Question was: "I know. I understand that.  
2 But then going on to the issue of whether McArthur was  
3 improperly placed or not maybe had an effect on Grover, but  
4 it had no effect on Fiser."

5 Answer: "Had no effect on Fiser."

6 Question: "Now, can you say from a personal  
7 knowledge that..."

8 Answer: "Well, if -- if Grover was the selecting  
9 official," answer, "If Grover were up there..."

10 Question: "...that it wouldn't have made a  
11 difference in who he picked."

12 Answer: "It may have."

13 Question: "He may well have?"

14 Answer: "It may have."

15 "So if somebody didn't..."

16 Answer: "Because..."

17 Question: "They thought that Grover was close to  
18 Fiser and they wanted to make sure that McArthur was the  
19 selecting official, there'd be a reason."

20 Answer: "Because it's my understanding that  
21 Grover is backing Fiser, and backing him in a DOL which I  
22 know nothing about. I know something about it, but I don't  
23 know the actual thing. And to me they're -- they're saying  
24 this is part of it."

25 Question: "Okay, that's all I wanted, because I

1 think Mr. Grover said in his OI interview that it's quite  
2 possible, if he was the one in that position, Fiser would be  
3 selected."

4 Answer: "And Harvey wouldn't."

5 Question: "So it could have had an impact on Mr.  
6 Fiser?"

7 "Yes, if he were there..." I mean, answer: "Yes,  
8 if he were there. But Grover never would have been there,  
9 in my opinion." Okay, do you recall that exchange?

10 A I recall that exchange.

11 Q So if -- if Grover was, in fact, the selecting  
12 official, he would have been the one to select the panel  
13 members?

14 A Can I expound? Why I said, "but Grover never  
15 would have been there, in my opinion,"...

16 Q Well, we'll get to that in a minute. But if he  
17 were there, he would have been -- if he was the selecting  
18 official, who would have made the questions for the panel  
19 members to ask?

20 A Grover and...

21 Q And who would have been the selection review board  
22 members?

23 A He may have communicated with his supervisor. He  
24 may have communicated with others to come up with the  
25 questions.

1 Q But that would have been his responsibility?

2 A Right.

3 Q And do you know from your job in HR who Mr. Grover  
4 had rated higher in performance appraisals between Mr. Fiser  
5 and Mr. Harvey?

6 A I think it were Mr. Fiser. Now, can I expound?

7 Q Sure.

8 A I'd like to go further, please.

9 Q Because I'm sure it'll be...

10 JUDGE YOUNG: Go ahead and explain.

11 Q Go ahead and explain.

12 A Okay. The reason I said that Mr. Grover probably  
13 wouldn't be there was because in his position, the position  
14 that -- in the reorganization, and -- and placing Mr.  
15 McArthur in that position wasn't the right thing to do. And  
16 I even told McGrath, and I also told Ed Boyles, and I may  
17 have told someone else, that in my opinion, if that position  
18 had been advertised and had gone through a review board...

19 JUDGE YOUNG: A what?

20 THE WITNESS: A review board.

21 JUDGE YOUNG: Review board.

22 THE WITNESS: Management review board.

23 JUDGE YOUNG: Uh-huh (affirmative).

24 BY THE WITNESS:

25 A That, in my opinion, Mr. McArthur probably would

1 have been the one selected because he had been in a similar  
2 identical position before. The position were almost the  
3 position that he had before. Okay.

4 And if they had advertised the position, then they  
5 would have avoided the complaint from -- probably from  
6 Grover, and they wouldn't have set themselves up where we have  
7 to go through the testimonies, the affidavits, or whatever.  
8 If they had advertised the position as the guidelines said  
9 it should have been advertised, if they had had a management  
10 review board to come in and look at the qualifications of  
11 the people that applied, more than likely, and as I said  
12 before, in my opinion Mr. McArthur would have been the one  
13 selected. And we would not have had to go through all of  
14 this here.

15 Q Now, a couple of things about what you just said.  
16 First of all, going back to the waiver policy, you said you  
17 would use that in a situation where there were a lack of  
18 minorities in a given organization as a potential reason to  
19 seek a waiver for a posting position; is that right?

20 A Yes, sir.

21 Q Besides Mr. Grover, how many African male --  
22 African-American male managers were there in that  
23 organization?

24 A You mean in operation support?

25 Q Yeah.

1           A     In the central office we had just the one.

2           Q     And so after the reorganization you had none? Mr.  
3 Grover was gone?

4           A     I think I'm right in saying yes.

5           Q     Now, let me direct you to Joint Exhibit 21.

6           A     No, we had one more. We had Chandra.

7           Q     Chandra?

8           A     Right.

9           Q     He was African-American or an Indian?

10          A     Oh, he's a minority. He's...

11          Q     I said African-American.

12          A     Beg your pardon?

13          Q     I said -- I was talking about African-American  
14 males.

15          A     A minority is non-white. So Chandra is of some  
16 other race.

17          Q     Was he a manager?

18          A     So he -- so he's a minority.

19          Q     Was he a manager?

20          A     He was a pay grade.

21          Q     Did he manage people?

22          A     Not at the time.

23          Q     All right, now...

24                MR. MARQUAND: Your Honor, I've already checked,  
25 as well. Counsel's already introduced an exhibit that shows

1 that Mr. Grover continued to be in operations support after  
2 the reorganization, although he -- and he was given a  
3 promotion and put on the developmental position description  
4 for senior manager. BY MR. DAMBLY:

5 Q And I believe Mr. McGrath testified that that  
6 organization chart with Mr. Grover on it was inaccurate and  
7 he no longer...

8 A No, that is accurate. That is very accurate. And  
9 the reason they did it was because he came not only in -- he  
10 say he were going to file a complaint...

11 Q And they put him back on the job?

12 A And they also increased his salary and he got some  
13 type of monetary -- I don't know how much it was, but  
14 settlement, because of them not advertising the position.

15 Q All right. Would it be, though, when Mr. McGrath  
16 told us that that was not accurate because he had no account  
17 for Grover on his organization chart, then that is not  
18 correct?

19 A That is accurate. If you look at the  
20 organizational chart that you showed me---and I can't  
21 remember what booklet it was in---it showed Mr. Grover as a  
22 senior manager, with an asterisk.

23 JUDGE YOUNG: This tells me how many senior  
24 managers or how many managers were minorities; right?

25 MR. MARQUAND: Yes.

1 JUDGE YOUNG: And is there a whole lot of dispute  
2 about who was and who wasn't?

3 MR. DAMBLY: I don't think so. I think the only  
4 people manager in that organization that was a minority was  
5 Mr. Grover; is that right?

6 MR. MARQUAND: Well, counsel's drawing a spurious  
7 distinction. The issue is who's on the active pay schedule,  
8 and it was Chandra and Mr. Grover.

9 THE WITNESS: Right. You had two.

10 MR. MARQUAND: And whether they're managing people  
11 or whether they're program managers really is sort of a  
12 spurious distinction.

13 MR. DAMBLY: And I would take exception to that.  
14 And you will hear it. Because we've heard plenty of  
15 testimony and plenty of stories from TVA that they have more  
16 leeway with what they can do with a people manager than  
17 somebody who's called a program manager, is really just a  
18 technical person.

19 JUDGE YOUNG: But the issue's out there and --  
20 and...

21 MR. MARQUAND: This isn't a race discrimination  
22 case, anyway.

23 JUDGE YOUNG: I think we can probably move on from  
24 it.

25 MR. MARQUAND: If counsel thinks all we're

1 involved in is race discrimination, we should leave, because  
2 that's not what this is about.

3 CHAIRMAN BECHHOEFER: I don't think anybody  
4 suggested that.

5 MR. MARQUAND: I understand.

6 JUDGE YOUNG: As I say, I think we can probably  
7 move on to it. I notice we're getting close to the end of  
8 our time, so maybe we better move on.

9 BY MR. DAMBLY:

10 Q Well, let me just ask real quick. To the best of  
11 your knowledge, subsequent to the reorganization, did Mr.  
12 Grover actually supervise Mr. Harvey and Mr. Chandra?

13 A He had -- yes, he had the chemistry and  
14 environmental.

15 Q And he supervised them? Did he write appraisals  
16 for them?

17 A Yes. I mean, he had the chemistry people.

18 Q Which was Harvey and Chandra?

19 A Yes.

20 Q And he -- and then he was off at INPO, as it shows  
21 on that chart. He never actually supervised in that  
22 position; is that correct?

23 A You mean in this position here?

24 Q Right.

25 A No. But he was set up to that level because of



1 the position not being advertised, and he were going to file  
2 a complaint.

3 Q I understand that. And if you would, I think I  
4 gave you Joint Exhibit 21 and the -- and the page that Mr.  
5 Marquand talked to you about in the front of there, 210.

6 A Hold on just a minute, sir.

7 Q That's it. And this is the -- a description Mr.  
8 Marquand went through with you before, and it talks about  
9 what Mr. McArthur's functions were as the manager of  
10 technical programs from 12/20/90 to 8/10/94; correct?

11 A Yes.

12 Q And in that, he had not only rad con and chemistry  
13 environmental, he had protective services, fire protection  
14 security, he had emergency preparedness, and he had  
15 industrial safety; is that correct?

16 A Yes, sir.

17 Q And are you aware that Mr. McArthur's testified  
18 that he supervised 540-some people in that position?

19 A I don't remember how many people he had in his  
20 organization, but whatever number was in that organization,  
21 he's -- he was the supervisor.

22 Q And you see the new position down there at the  
23 bottom where it has rad con, chemistry, environmental rad  
24 waste, and ERMI, with a total of 21 positions listed.

25 A Yes.

1           Q     And that's the positions you said were virtually  
2 identical?

3           A     I'm saying the job responsibility, the structure  
4 were primarily the same. He had supervised the work -- the  
5 same organization that were going to be placed under the new  
6 structure.

7           Q     Well, in this little writeup here he lost  
8 protective services, he lost emergency preparedness, he lost  
9 industrial safety.

10          A     But he had all the others.

11          Q     And Mr. Fiser lost environmental and still had  
12 chemistry. What's the difference?

13          A     Beg pardon?

14          Q     Mr. Fiser lost the environmental part of his title  
15 and still had the chemistry part. What's the difference?

16          A     But he never had the other that McArthur had, the  
17 others.

18                JUDGE YOUNG: That who had?

19                THE WITNESS: McArthur.

20          Q     Well, are you saying before the chemistry and  
21 environmental were combined, he was not performing a  
22 chemistry manager position with virtually the same duties as  
23 after the reorg?

24          A     He had the rad con, he had the chemist, he had the  
25 environmental rad waste, and he had ERMI. Grover never did

1 have all that. He never supervised...

2 Q I'm not asking about Grover, I'm asking Fiser.  
3 I'm asking you to compare -- you said McArthur's positions,  
4 the top of Page 210 and the bottom.

5 A Well, I misunderstood. I thought you said...

6 Q Okay. I said McArthur...

7 A ...Grover.

8 Q ...had a position that's up at the top. It lists  
9 six functions: rad con, chemistry environmental, protective  
10 services, emergency preparedness, ERMI, and industrial  
11 safety.

12 Down at the bottom he's got rad con, he's got  
13 chemistry, he's got environmental rad waste, and he's got  
14 ERMI. He no longer has industrial safety, he no longer has  
15 emergency preparedness, he no longer has protective  
16 services, and he no longer has 520 people that he had  
17 before.

18 A I'm not sure he had 520 people. I'm not sure  
19 about that. If I were you, I would question that.

20 Q Well, I asked him and that's what he told me.  
21 Actually, I think it was -- yeah, 540 people is what he  
22 said.

23 A I don't think he had...

24 JUDGE COLE: Didn't someone also say that half of  
25 that was security? Fire protection and security was about

1 half of that 540?

2 MR. DAMBLY: It was about 400 of it.

3 MR. MARQUAND: I think that so far this is the  
4 only testimony we've had, is counsel...

5 MR. DAMBLY: But let me...

6 MR. MARQUAND: When Mr. McGrath testified, Mr.  
7 McGrath's testimony was that he had the corporate program  
8 which defined those organizations, not the actual cop-on-  
9 the-street.

10 BY MR. DAMBLY:

11 Q All right, let me show you staff exhibit -- I  
12 think it's Staff Exhibit 100. Do you recognize this as the  
13 position description for Wilson McArthur, manager of  
14 technical programs, an effective date of April 2nd, 1990?

15 A Yes, I -- I'm looking at it, and I'm looking at  
16 the 587.

17 Q And you see employees, direct, indirect, 635. And  
18 that comes down, management, professional, technical, 587,  
19 trades and labor, 48.

20 A I see it.

21 Q Does that refresh your recollection as to how many  
22 people Mr. McArthur had?

23 A That's probably how many he had, then.

24 Q Does a job with 635 people under him sound  
25 identical to one with 21 people under him?

1           A     I'm talking about the structure and I'm talking  
2 about what he had managed before. He had rad con before; he  
3 had chemistry before; he had environmental before; he also  
4 had ERMI before. Now, he may have lost technical support  
5 and I think you're saying industrial safety.

6           Q     Industrial safety, emergency preparedness.

7           A     Uh-huh (affirmative).

8           Q     Okay. Now, my question to you was...

9           A     But, still, in my opinion -- I say in my opinion.  
10 In my opinion, since he had this before, I'm pretty sure,  
11 and I may be wrong, that based on his expertise in these  
12 area here (sic) and having supervised the areas before, that  
13 he probably would have been the person selected for the  
14 position.

15          Q     Okay.

16          A     Now, I say in my opinion.

17          Q     You're not saying that the rad con chemistry  
18 position was interchangeable with the technical program,  
19 you're just saying he held that one before, and you think  
20 that would have given him a leg up in a competition?

21          A     Right, and his expertise that he had.

22          Q     Okay.

23                JUDGE YOUNG: I think we probably need to wrap up.

24

25                MR. DAMBLY: See if there's anything earth-

1 shattering I need to ask. If there is, I'll be surprised.  
2 That's all I have.

3 JUDGE YOUNG: All right.

4 MR. MARQUAND: I have two questions for Mr.  
5 Easley. I don't want him to have to come back.

6 CHAIRMAN BECHHOEFER: I have a couple.

7 MR. MARQUAND: Okay. Let me ask them, real  
8 briefly.

9 RECROSS-EXAMINATION

10 BY MR. MARQUAND:

11 Q Mr. Easley, earlier today I tried to find this  
12 reference. I couldn't. And I ask you whether or not you  
13 could have gotten a waiver to post -- not to post the job,  
14 to give it to Ron Grover?

15 A Right.

16 Q And I asked you whether or not they would have  
17 been prevented from doing that because it was reverse  
18 discrimination. And I wasn't able to find the reference,  
19 and I just did. In my -- in your deposition where Mr.  
20 Dambly asked you -- and this is right before the material he  
21 read to you awhile ago. And his question to you was: "Now,  
22 can you say that had Mr. Grover been the selecting  
23 official..."

24 And you said, "But they would -- they would not  
25 have done that for Grover because of the expertise that

1 Wilson had."

2 Question: "Okay."

3 Answer: "See, you have to explain why you want  
4 this waiver. You just don't send up and say, 'I want a  
5 waiver.' You got to say why you want the waiver, and this  
6 and that. And they would have thought that, 'Okay, this is  
7 reverse discrimination.' You see what I'm saying?"

8 You agree that that...

9 A Yes.

10 Q ...couldn't have selected Grover because that  
11 would have been -- without going through a posting, either.  
12 That would have been reverse discrimination?

13 A Yes.

14 Q Now, you -- the other question I have is, you  
15 mentioned to Mr. Damblly several times today and also in this  
16 section I just read about the expertise that Wilson McArthur  
17 had. Can you briefly tell us what you're referring to. Is  
18 he, as far as you know, considered to be -- have expertise  
19 and known throughout the industry in his area?

20 A Yes.

21 MR. MARQUAND: That's all.

22 MR. DAMBLY: I need to ask one more question.

23 MR. DAMBLY: If you can't use the waiver policy  
24 for minorities because it would be a reverse discrimination,  
25 why do you have a waiver policy that says that's what you

1 can use it for?

2 THE WITNESS: I don't know if I can answer your  
3 question.

4 MR. DAMBLY: Okay.

5 CHAIRMAN BECHHOEFER: Mr. Easley,...

6 THE WITNESS: Yes, sir.

7 CHAIRMAN BECHHOEFER: ...a few questions from me,  
8 anyway. Could you go over the efforts you made with Mr. Cox  
9 when he said he was not available, even if rescheduled? Did  
10 you raise the feasibility of rescheduling on a differing  
11 number of dates?

12 THE WITNESS: Yes, sir, we talked about  
13 rescheduling, but he made it quite clear that he would not  
14 be available.

15 CHAIRMAN BECHHOEFER: At any time, or at any time  
16 in the near future?

17 THE WITNESS: At any time.

18 CHAIRMAN BECHHOEFER: I see.

19 JUDGE YOUNG: He didn't want to be on the panel,  
20 it sounds like you're saying?

21 THE WITNESS: Right.

22 JUDGE COLE: Do you know why that is?

23 THE WITNESS: No, I really don't know why, but I  
24 think -- well, I know I even talked to Mr. McGrath about it.  
25 And I think he talked to Wilson McArthur, and he also may



1 have talked to Mr. Cox. But finally Mr. McGrath told Wilson  
2 to go ahead and get a substitute for him, get someone to  
3 replace him.

4 CHAIRMAN BECHHOEFER: As far as you know, before  
5 he told you that, he had discussed the situation with Mr.  
6 Cox about Mr. Cox remaining on the board at some...

7 THE WITNESS: When you say "he," who are you  
8 referring to?

9 CHAIRMAN BECHHOEFER: McGrath. He had discussed  
10 with Mr. Cox...

11 THE WITNESS: I don't think he had talked...

12 CHAIRMAN BECHHOEFER: ...before he gave -- before  
13 he gave you the direction?

14 THE WITNESS: Before he gave Wilson the direction.  
15 Mr. McArthur. To go ahead and get someone.

16 CHAIRMAN BECHHOEFER: Oh, yes. Yes.

17 THE WITNESS: Okay. He didn't tell me to go ahead  
18 and get someone else.

19 CHAIRMAN BECHHOEFER: I see.

20 Now, when an SRB selection review board is set up  
21 initially, are the members known to have predilections for  
22 certain persons? Maybe not have decided for them, but to  
23 be...

24 THE WITNESS: Are you asking if there are  
25 preselection between the managers before they get there?

1           CHAIRMAN BECHHOEFER: No, if the individual  
2 persons who were selected for the selection review board are  
3 known to have predilections for a particular candidate?

4           JUDGE YOUNG: Are you saying is that common?

5           CHAIRMAN BECHHOEFER: Yes. Yes. Is that common  
6 that they would be -- that it would happen in some  
7 circumstances?

8           THE WITNESS: I'm still not understanding your  
9 question, Judge, Your Honor.

10          CHAIRMAN BECHHOEFER: Well, when a board is set  
11 up, is -- would it be known that one member, for instance,  
12 was friendly to one or more of the candidates?

13          THE WITNESS: It could be true. I can't say yes  
14 or no.

15          CHAIRMAN BECHHOEFER: Well, yeah, it would vary...

16          THE WITNESS: Right. Right.

17          CHAIRMAN BECHHOEFER: ...from particular boards.

18          Was there any such knowledge, to your -- or  
19 information about concerning the board that you testified  
20 about, the rad chem board?

21          THE WITNESS: Not to my knowledge.

22          CHAIRMAN BECHHOEFER: So you didn't hear anything  
23 to that effect?

24          THE WITNESS: No, sir.

25          CHAIRMAN BECHHOEFER: From the -- presumably the

1 persons who would replace...

2 THE WITNESS: No, sir.

3 CHAIRMAN BECHHOEFER: ...Mr. Cox?

4 THE WITNESS: No, sir.

5 CHAIRMAN BECHHOEFER: That's all I have. Do any  
6 of the parties have follow-up questions to the ones I just  
7 asked, at least?

8 MR. DAMBLY: None for the staff, Your Honor.

9 MR. MARQUAND: I have one follow-up to Judge  
10 Bechhoefer's question.

11 MR. MARQUAND: Do you want to have people on the  
12 board who have openly expressed a preference for one  
13 candidate or another?

14 THE WITNESS: No.

15 Judge, may I say something?

16 CHAIRMAN BECHHOEFER: Certainly.

17 THE WITNESS: As I said earlier, I have given a  
18 affidavit, deposition, and testimonies about six times. And  
19 I have tried to be honest and fair in my responses. And  
20 it's not easy to continue to remember exactly what you have  
21 said before. And I don't want to be inconsistent where it  
22 would harm someone, anyone in the case here.

23 And I think that all supervisors should be  
24 unbiased and unprejudiced in making selections. And also I  
25 tried, when I was there, to give the advice that I thought

1 that should have been given to the managers. And most of  
2 the time, before I even gave the advice, I talked to someone  
3 else, a higher manager, out of concern of the advice that I  
4 were going to give.

5 And I appreciate you all bearing with me during  
6 this particular time where I may not be totally up to par.  
7 But I have tried to be fair in my testimony. And I may have  
8 been a little inconsistent, but hopefully not too  
9 inconsistent where a fair decision can be made.

10 JUDGE YOUNG: Thank you very much for your  
11 testimony.

12 CHAIRMAN BECHHOEFER: Thank you very much.

13 JUDGE YOUNG: And staying here all day.

14 CHAIRMAN BECHHOEFER: Yes. Yes.

15 MR. MARQUAND: Thank you, Mr. Easley.

16 CHAIRMAN BECHHOEFER: With that, we will...

17 MR. MARQUAND: May the witness be excused?

18 CHAIRMAN BECHHOEFER: Yes. I was just about to  
19 say we will excuse the witness. We not only excuse you, but  
20 thank you very much for your efforts and for your being here  
21 and your persistence in attempting to answer all the various  
22 questions that were put to you. We appreciate your efforts.

23 With that, we'll return tomorrow morning at 9:00,  
24 and we're adjourned.

25 (Whereupon, the hearing was adjourned at 4:59 p.m., to

1 reconvene at 9:00 on Thursday, May 2, 2002.)

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  
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