

RAS 4398.

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, April 24, 2002

OFFICE OF THE SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

2002 MAY -6 AM 11:06

DOCKETED
USNRC

Work Order No.: NRC-338

Pages 446-645

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

Template = SECY-032

SECY-02

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

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

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

Wednesday, April 24, 2002

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

BEFORE:

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

APPEARANCES OF COUNSEL:

On behalf of the Nuclear Regulatory Commission:

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

-and-

NICHOLAS HILTON, Enforcement Specialist
Office of Enforcement
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

On behalf of Tennessee Valley Authority:

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

-and-

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

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Thomas McGrath	449	584		

<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
Joint:		
1, 2, 3	Premarked	634
4	Premarked	644
7	Premarked	639
48	Premarked	613
65, 66	Premarked	591

P R O C E E D I N G S

CHAIRMAN BECHHOEFER: On the record.

Are there any preliminary matters that parties wish to raise before we resume the testimony of Mr. McGrath?

MR. DAMBLY: None for the staff, Your Honor.

MR. MARQUAND: No, Your Honor.

CHAIRMAN BECHHOEFER: Okay, Mr. Dambly.

Mr. McGrath, you're still under oath.

THE WITNESS: Okay.

Whereupon,

THOMAS MCGRATH

RESUMED his status as a witness herein and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (continued)

BY MR. DAMBLY:

Q Good morning, Mr. McGrath.

A Morning.

Q As I recall, when we finished up yesterday, we were about to discuss Exhibit Number 128, Staff Exhibit 128.

JUDGE YOUNG: I'm having a little bit of a hard time hearing you.

MR. DAMBLY: It doesn't seem to me that the mics are on today.

Can you hear me now?

JUDGE YOUNG: Yes.

1 CHAIRMAN BECHHOEFER: Oh, that's better.

2 BY MR. DAMBLY:

3 Q Staff Exhibit 128 is a document that TVA provided
4 to the staff at the TVA pre-decision enforcement conference.

5 You told us yesterday --

6 MR. MARQUAND: I'm going to object. Is that
7 counsel testifying it is or it's his belief or was it done
8 that way? I think the record needs to clearly reflect that.

9 MR. DAMBLY: A representation. We will have Mr.
10 Boyles and the people who gave it to us, unless you disagree
11 with that.

12 MR. MARQUAND: I just wanted to know. I think the
13 record needs to be clear.

14 BY MR. DAMBLY:

15 Q At any rate, yesterday you were telling us you
16 intended to take a logical first step in '96 and with the
17 goal of 17 percent and an alternate goal of 40 percent
18 reduction in your organization; is that right?

19 A One correction to what I said. I said I was going
20 to take a logical first step. The 17 percent was a minimum
21 requirement, it was not a goal to meet 17, it was a minimum
22 requirement that the reduction had to be at least 17 percent
23 in the first year.

24 Q Now with respect to Staff Exhibit 128, under
25 chemistry and environment, it shows a head count before of

1 five and after of three; is that correct?

2 A This table, as I told you yesterday, which I did
3 not prepare, is based upon the organizations as they existed
4 prior to the reorganization. After the reorganization,
5 there was not a chemistry and environmental group. That's
6 what I said yesterday, these numbers look approximately
7 correct. After the reorganization there were two chemistry
8 specialist positions, there was one rad waste environmental
9 position. This may be those three positions.

10 Q That third position was not Mr. Grover's position?

11 A I'll tell you what, as I did not prepare it, I'm
12 just trying to tell you what the positions might be. The
13 after head count does not reflect what the reorganization
14 looked like, so I'm not exactly sure when this was prepared
15 where they put each particular head count.

16 Q Okay. The radiation control head count which was
17 five before and five after; does that refresh your memory of
18 what happened?

19 A The head count afterwards -- I'm assuming that the
20 head count afterwards must include the radiation -- the rad
21 con and chemistry manager's position, which was over the
22 whole new group. There were two rad con specialists, there
23 was a secretary in the organization. I'm not exactly sure
24 what the extra person would be. As I said, it's difficult
25 for me to figure it out because it is not structured the way

1 the final organization was.

2 Q To your knowledge, the reduction in the chemistry
3 and environmental which actually went down to chemistry
4 only, where you had prior to the reduction a supervisor, Mr.
5 Grover, chemistry/environmental on board; Mr. Fiser, Mr.
6 Harvey and Mr. Chandrasekaran, which I'll ask Ms. Euchner to
7 spell for the court reporter.

8 MS. EUCHNER: C-h-a-n-d-r-a-s-e-k-a-r-a-n.

9 THE WITNESS: That's the one they referred to as
10 Mr. Chandra.

11 MR. DAMBLY: Mr. Chandra, that's what I'll be
12 calling him from now on, but for the first time, we would
13 get that.

14 BY MR. DAMBLY:

15 Q Do you remember there being a Ms. Nida, Deidra
16 Nida, in that organization also?

17 JUDGE YOUNG: Do you have a spelling on that one?

18 MR. DAMBLY: N-i-d-a.

19 A Yes.

20 JUDGE YOUNG: What was your answer?

21 THE WITNESS: Yes, I believe that was correct.

22 BY MR. DAMBLY:

23 Q If you would please refer to Staff Exhibit 130.
24 Is that, in essence, the organization before the
25 reorganization?

1 A Yes, that is correct. There is one minor thing on
2 it, that the secretary position, which shows up on this one
3 under rad con, served the entire organization.

4 Q That would be, I guess, S.M. Edwards?

5 A That's correct.

6 Q All right, now with reference to Staff Exhibit
7 130, after the reorganization, Mr. Grover's position had
8 been eliminated; is that correct?

9 A That's correct.

10 Q The vacant position was obviously gone. One of
11 the PGA chemistry positions was eliminated.

12 A No, that's not correct.

13 Q It wasn't?

14 A The reorganization created two new positions.
15 These were three chemistry and environmental positions.

16 Q All right.

17 A The reorganization created a position of a PWR
18 chemistry specialist and a BWR chemistry specialist,
19 reflecting the two types of reactors that we had. Those
20 were new positions which HR had said would be advertised and
21 were open for -- could be selected from anyone within TVA.

22 Q So all three of these slots were eliminated.

23 A That's correct.

24 Q And two new ones were created.

25 A That's correct.

1 Q And Ms. Nida's position was removed.

2 A That also was eliminated, that's correct.

3 Q So from the organization prior to the reorg, you
4 had five people on board; afterwards, you have two slots for
5 the PWR and BWR chemists.

6 A And the environmental position duties, those that
7 would remain in corporate within nuclear were combined into
8 a new position description which covered a rad waste
9 position -- which covered duties of a rad waste position.

10 JUDGE YOUNG: Hold the microphone there.

11 THE WITNESS: Okay. When we did the
12 reorganization, there was a radiological waste position in
13 the rad con area, it was an environmental position solely,
14 the one that was listed here as a PG-7, in the chemistry and
15 environmental group.

16 BY MR. DAMBLY:

17 Q Where was that located afterwards?

18 A Those two positions --

19 JUDGE YOUNG: I'm sorry to bother you again, but
20 would you put that right in front of your mouth like Mr.
21 Dambly has his, we can really hear you. We were talking
22 last night about how the three of us all had trouble hearing
23 the ends of your sentences. So if you could really make an
24 effort to speak up so we can hear you, we'd appreciate it.

25 THE WITNESS: Okay, thank you, I'll try better.

1 MR. MARQUAND: Let's ask the court reporter, it
2 may be the metal mic as opposed the snaked mike that would
3 be amplification.

4 THE WITNESS: No, it's this one, it's the snake.

5 JUDGE YOUNG: I think if you just get closer to it
6 and try to speak into it, we'll be able to hear you better
7 without having to constantly interrupt.

8 BY MR. DAMBLY:

9 Q Now where did Ms. Nida's -- the environmental
10 position end up after the reorg?

11 A Following the reorganization, there was a position
12 responsible for radiological work, waste and environmental.
13 That position was in the new rad chem organization, which
14 was created. If I may clarify, subsequent to the
15 reorganization, there was not a chemistry organization,
16 there was a radiological control and chemistry combined
17 organization, and within that organization, there were the
18 two chemistry specialists, one for each type of reactor we
19 had. There were two radiological control specialist
20 positions, one was a position specifically made for someone
21 who had a health physics background, the other was a more
22 radiological control programs position, and there was an
23 additional position to handle radiological waste and
24 environmental matters.

25 Q If you'll look I guess at Staff Exhibit 131. Is

1 that the organization as it existed after the '96 reorg?

2 A The only thing I disagree is that Mr. Grover was
3 not in the organization, there was not a position there.
4 Since he was in INPO, I assume HR put him on this list for
5 the sake of somewhere to write his name.

6 JUDGE YOUNG: INPO is?

7 THE WITNESS: It's the Institute of Nuclear Power
8 Operations, it's an industry --

9 JUDGE YOUNG: Not what it is, but what was the
10 sentence you used, it was an INPO something.

11 THE WITNESS: Oh, Mr. Grover was on loan to INPO,
12 there is a program by which utilities loan individuals to
13 INPO, both to help INPO do their work and as developmental
14 opportunities for those individuals.

15 BY MR. DAMBLY:

16 Q And that's indicated on this organization chart by
17 an asterisk next to Mr. Grover and at the bottom it says "On
18 loan to INPO", is that correct?

19 A He was on loan to INPO, the box that they have him
20 here, there was no such position in the organization.

21 Q Okay. So basically the difference between Staff
22 Exhibit 130 and 131, the before and after, basically under
23 this box on 130 that says chem and environmental protection,
24 Grover -- there's a vacant position and four people under
25 it, that came to be over here the chemistry with Harvey and

1 Chandra and Mr. Grover is not part of that organization.

2 A That's correct, and some of those duties also went
3 under the box here of rad waste and environmental.

4 Q The position Ms. Nida held?

5 A It was environmental duties. You'll recall that
6 the three chemistry program and environmental manager
7 positions also had environmental duties.

8 Q In their PDs?

9 A That's correct.

10 Q But they were not performing any?

11 CHAIRMAN BECHHOEFER: Mr. McGrath, just a
12 clarification. Turning to Staff Exhibit -- the second one,
13 131. Are you saying you just cut out the box that says
14 chemistry, and if you do, where do the people reporting to
15 that box -- where do they go? I just need clarification.
16 If you take a box out and people reporting to those boxes.

17 THE WITNESS: Those people both reported to the
18 box that's in the center here that Mr. Wilson McArthur was
19 in, one labeled chemistry and radiological control -- sorry,
20 radiological and chemistry control. They were direct
21 reports to Mr. McArthur.

22 CHAIRMAN BECHHOEFER: So Mr. Harvey and Mr.
23 Chandra reported in that way?

24 THE WITNESS: That's correct.

25 MR. DAMBLY: I think, Judge Bechhoefer, if you

1 look at that chart, you'll see under rad control, there's a
2 box with that title but there's no person, that's just an
3 indication that's a function, not a position.

4 CHAIRMAN BECHHOEFER: I see, but it's not like
5 it's vacant or anything like that either.

6 THE WITNESS: You know, I'm not sure why HR drew
7 the org chart this way, they were not separate
8 organizations, even on a sublevel. The two radiological
9 control specialists and the two chemistry specialists, as
10 well as the rad waste environmental specialists were all
11 direct reports to Mr. McArthur.

12 BY MR. DAMBLY:

13 Q So the two boxes on the right -- well, at least
14 the rad waste environmental, L.J. Riales, is that how you
15 pronounce that?

16 A I believe he pronounced it Riales.

17 Q Riales, okay. That is a one person box there,
18 right?

19 A That's correct.

20 Q And the one next -- and that was a PG-08?

21 A That's correct.

22 Q And then Mr. Raines had a separate organization.

23 A It was a separate organization, which was a
24 radiological -- it was a radio-chemistry laboratory and a
25 radiation survey instrument repair and calibration facility

1 and he was the manager of that facility.

2 Q Did Ms. Nida, Deidra Nida, end up with a job after
3 the reorg, as part of your organization or McArthur's
4 organization?

5 A I do not know where Ms. Nida went. If she did not
6 get another specific job within TVA Nuclear, she would have
7 gone to the TVA services organization, so she would have had
8 a job.

9 Q And to the best of your knowledge, when you
10 reduced the corporate, in '96, chemistry, if you will,
11 function down to two people, PWR and BWR, did that change in
12 subsequent reorganizations to a smaller number?

13 A Through the remaining time that I was in Nuclear,
14 it stayed at that level, did not change. I don't know what
15 has happened since 1999, I haven't been in Nuclear, but the
16 reorganization which I talked to you about which occurred a
17 year later, which on a functional basis concluded that we
18 needed to continue with a BWR and PWR chemistry specialist.

19 Q So in essence, the cut in the chemistry area
20 occurred all in the first year.

21 A That particular organizational change occurred
22 within the first year. In the -- with the environmental
23 areas, the original plan, which we had thought would happen,
24 was that the rad waste environmental position would only be
25 necessary for an additional year or so, although within two

1 to three months of making this reorganization, the events
2 changed in the industry having to do with the availability
3 of sites for radiological waste dumping. That particular
4 area, the workload in it became much higher than we had
5 anticipated and that one was looked to be readdressed for
6 the next year as to whether the original plan to eliminate
7 it after an additional year or 18 months was still the right
8 thing to do. And in fact, we concluded it wasn't.

9 Q Did anyone propose to you that you not eliminate
10 one of the PG-08 -- or when you rewrote positions, that you
11 have three PG-08 chemistry positions in the surviving
12 organization?

13 A Such an organization was never recommended to me.
14 There was one recommendation which would have resulted in a
15 larger number of technical positions. That particular
16 recommendation to me was that I combine all the positions
17 into a generic rad con chemistry environmental position and,
18 for some reason, without any justification, proposed that
19 those exist at three different pay grades. There was never
20 an organization shown to me that kept three specific
21 chemistry specialists.

22 Q Did Mr. Grover or Dr. McArthur ever talk to you
23 about keeping, not necessarily they showed you a formal
24 chart, but that they would keep three chemistry positions
25 for the first year and they could reach the 17 percent by

1 making other cuts?

2 A There was no such specific recommendation made to
3 me. When Mr. McArthur and Mr. Grover came to see me to show
4 me what was Mr. Grover's recommendation which Mr. McArthur
5 told me he did not agree with prior to the meeting. But
6 Grover's recommendation was the one I just described, which
7 converted all of the people into a rad con chemistry
8 environmental general specialist type position. I'm not
9 even sure how you'd find people to fit that kind of
10 position, but there was never an organization handed to me
11 that kept three chemistry specialists with designated duties
12 for those people.

13 Q Yesterday we discussed briefly your concern with
14 people having generic position descriptions and the need for
15 them to have accurate, up to date position descriptions that
16 had some degree of accountability to them; is that correct?

17 A Yes, we discussed that.

18 Q And you were trying to have people do that?

19 A Yes, that's correct.

20 Q And were you told by Human Resources that if you
21 produced accurate position descriptions for people and the
22 actual duties, that you have to advertise those jobs?

23 A I really don't understand your question. You seem
24 to be asking me if a position is accurate does that mean it
25 has to posted. I don't understand that question.

1 Q I'm asking you if you were told by Human Resources
2 that if you went from a generic position description to one
3 that actually reflected what employees were doing, that
4 would have to be posted and competed.

5 A I never had such a discussion with Human
6 Resources. The particular topic never came up. The
7 decisions that they made relative to whether or not
8 positions had to be advertised had nothing to do with going
9 from generic to specific. It was related on what were the
10 duties in the new position description and whether or not
11 those were the same as duties in prior position
12 descriptions.

13 Q If you would look at Exhibit 103.

14 COMMISSIONER BAKER: Staff exhibit?

15 MR. DAMBLY: Staff Exhibit 103.

16 MR. DAMBLY: Are we all there?

17 BY MR. DAMBLY:

18 Q First of all, Mr. McGrath, could you tell us what
19 this document is?

20 A It appears to be a summary of an Inspector
21 General's interview with me which is a summary that
22 paraphrases the investigator's recollection, it's not a
23 verbatim transcript of the discussion.

24 Q All right, and you were in fact interviewed on
25 July 23, 1996 by Mr. Van Bockern of the TVA IG's office, is

1 that correct?

2 A That's correct.

3 Q Were you placed under oath when they interviewed
4 you, do you recall?

5 A I don't remember.

6 Q On the top of page 2, the top paragraph, if you
7 would read that, please, to yourself.

8 (The witness reviews the document.)

9 A I've read it.

10 Q And this deals with what we were just talking
11 about, is that correct?

12 A Yes.

13 Q And it does say that HR told you that you'd have
14 to advertise --

15 MR. MARQUAND: Objection, objection. This is not
16 proper impeachment, it's not a sworn statement. It's
17 somebody else's notes of this. He may use it to refresh his
18 recollection but not to impeach him. There may be a
19 transcript of this if he wants to use it to impeach him, but
20 I don't believe it says this.

21 BY MR. DAMBLY:

22 Q To your knowledge, does the official IG
23 investigative report from the 1996 Fiser DOL complaint, does
24 it have your report of interview in it?

25 JUDGE YOUNG: Does it have your what interview?

1 MR. DAMBLY: This report of interview, Exhibit
2 103.

3 BY MR. DAMBLY:

4 Q Is that not part of the official OIG
5 investigation?

6 A I don't know.

7 Q You've never seen it?

8 A I don't know what's in that document. I am not
9 sure -- if I've seen the document, it's been so long ago I
10 don't remember the document.

11 Q Have you ever seen OIG reports from TVA?

12 A Yes.

13 Q Do they typically have reports of interviews in
14 them?

15 A I don't know, I really don't remember what they
16 attach to them.

17 Q Now, Mr. McGrath, if you would look at Exhibit
18 104, please. Staff Exhibit 104. If you would -- this is a
19 transcription of the interview. I will represent that TVA
20 provided us -- the IG provided us the actual cassettes, and
21 we had them transcribed.

22 If you would refer to Pages 10 through 12, 10 and
23 11. Is that consistent with the writeup and report of
24 interviews that we just looked at?

25 A No, it isn't.

1 Q And why is that?

2 A If you read into the discussion, we were
3 discussing some -- using examples of positions within the
4 steam generator group. Where I noted that as we went to
5 write specific position descriptions, if the duties were the
6 same, it would be possible to come up with two position
7 descriptions that were the same, and you'd have to look at
8 the specific duties within the position description.

9 When you get to the next page, it's sort of a
10 partial sentence that I'm saying with the situation was that
11 as we were writing in the rad con area new position
12 descriptions, HR told me I had to advertise them. They did
13 not tell me I had to advertise them because they were
14 generic, they told me I had to advertise them because when
15 they had reviewed the duties within those positions and the
16 qualifications for the individuals, it met their criteria as
17 being a different position. Whether it was a generic
18 position description or not was not a relevant factor in it.

19 Q I certainly agree, but that wasn't my question.
20 My question was: When you take a position description that
21 is generic, which you didn't think this should be because
22 there's no accountability in a generic position description,
23 and you write it to reflect -- rewrite it to reflect the
24 actual duties performed, what this says is when you did
25 that, on Page 11, "Situation throughout the whole rad con

1 chemistry area with these generic ones is, what HR said, you
2 need to advertise the new one, the one that reflects the
3 actual duties." Is that what they told you?

4 A Actually, HR told me I had to advertise all of the
5 new positions in operations support. The reason was not
6 because they went from generic to specific. Going from
7 generic to specific, you could have a position where the
8 functions that within there and the qualifications of the
9 individuals who could fill that are sufficiently similar
10 that HR could have made the decision, as I understand
11 basically what their process was, that advertising it was
12 not required.

13 Q But as you understand the process, if you had a --
14 a person performing certain functions, and they were under a
15 generic position description, and you said, "Rewrite that
16 and actually reflect what that person was doing," did you
17 understand you could do that without advertising the
18 person's position, because you put down what he was really
19 doing?

20 A We -- first off, we did not rewrite these to
21 reflect what any individual was actually doing. These
22 position descriptions were rewritten to reflect the
23 functions that we felt were necessary to do in the future.
24 They were not written based on what any individual in a
25 current position was actually doing.

1 Q You indicated yesterday that you wanted all the
2 generic ones replaced with specific ones; is that not
3 correct?

4 A That's correct.

5 Q Nobody ever did that?

6 A When we -- the new position descriptions that were
7 written for the new organization were not generic position
8 descriptions.

9 Q Were the old ones?

10 A Some of the old ones were.

11 Q Going to need Books 3 and 4 at the moment.

12 JUDGE COLE: I'm sorry, Mr. Dambly, what did you
13 say?

14 MR. DAMBLY: Books 3 and 4.

15 JUDGE COLE: Books 3 and 4.

16 MR. DAMBLY: In Book 3, we're looking at Staff
17 Exhibit 43. Book 4, Staff Exhibit 64.

18 BY MR. DAMBLY:

19 Q Now, Mr. McGrath, Staff Exhibit 64 purports to be
20 the position -- is that the position description that -- for
21 the position Mr. Harvey occupied after the reorg?

22 A Based on the date on it, I would say yes.

23 Q Well, prior to the reorg, was there a PWR
24 chemistry program manager?

25 A I was just having a little trouble reading this.

1 Yes, that was his -- but yes, that would be the new
2 position.

3 Q And if you refer to Staff Exhibit 43, does that
4 appear to be the position description for Mr. Fiser in the
5 chemistry and environmental protection position that he
6 occupied before the reorganization?

7 A Yes.

8 Q And Mr. Fiser and Mr. Chandra and Mr. Harvey had
9 identical positions at the time?

10 A That was my understanding.

11 Q All right. Now, if you'd look at those two,
12 please, and explain the difference in accountability between
13 the two. Difference in specificity and duties, if any.

14 A Now, I've never reviewed these documents before.
15 I was not involved in this level. Do you want it -- take
16 the time for me to do a detailed review of these?

17 Q Well, I'd be interested in your view to the
18 accountability change. Was there a change here in -- in
19 function, other than deleting the word "environmental" in a
20 couple of places and substituting "PWR"?

21 MR. MARQUAND: Your Honors, the witness has
22 already testified he hasn't reviewed these before. And if
23 he's going to be asked that question, he either needs to
24 give him the time to review them or move on. Let's -- once
25 again, as I mentioned earlier, it's staff's contention that

1 Mr. McGrath discriminated against Mr. Fiser. If he was not
2 involved in these documents, which they haven't shown that
3 he was, and that their contention is somehow somebody
4 rewrote these documents and required them to be posted for
5 some discriminatory animus, they haven't tied it to Mr.
6 McGrath. And he -- they need to move on or to show that he
7 had some knowledge of what was in these position
8 descriptions, and that he had some involvement in requiring
9 them to be posted or not posted, or how they were written.

10 JUDGE YOUNG: Let me ask you something, just to
11 clarify for myself whether my understanding is correct. My
12 understanding was that whether or not human resources told
13 Mr. McGrath that they had to be posted, that the ultimate
14 position descriptions were done at Mr. McGrath's direction,
15 decision to create the -- or to characterize positions
16 descriptions as accurately reflecting what the positions
17 covered.

18 MR. MARQUAND: I think it's a fair question for
19 Mr. McGrath, but my understanding is he was over the
20 organization and gave direction as to how he wanted the
21 organization to look. It's also my understanding that the
22 position descriptions were written by the subordinates,
23 including Mr. Fiser.

24 MR. DAMBLY: Well, I'm going to object to -- to
25 Mr. Marquand testifying and trying to suggest answers to Mr.

1 McGrath at this point.

2 JUDGE YOUNG: Maybe just give -- give Mr....

3 CHAIRMAN BECHHOEFER: Well, let's -- I was going
4 to say let's...

5 JUDGE YOUNG: ...McGrath time.

6 CHAIRMAN BECHHOEFER: ...give Mr. McGrath the time
7 to look over those two descriptions.

8 MR. DAMBLY: It's not -- let me -- let me switch
9 the question.

10 CHAIRMAN BECHHOEFER: All right. Do you know
11 about how much...

12 MR. DAMBLY: ...in point of fact...

13 CHAIRMAN BECHHOEFER: Pardon?

14 MR. DAMBLY: I'm going to switch the question.
15 That way...

16 CHAIRMAN BECHHOEFER: Do you know how much time
17 we'll need for that or -- for him to look it over?

18 JUDGE YOUNG: Why don't you direct Mr. McGrath to
19 the parts that you want him to look at and give him a few
20 minutes to look at them.

21 BY MR. DAMBLY:

22 Q Well, let me ask, who made the decision on
23 posting? Whose responsibility ultimately in the reorg was
24 whether they had to be posted or not?

25 A The decision to repost them was made by HR. They

1 came and -- the -- Mr. Boyles from HR told me, based upon
2 HR's review, these required reposting.

3 Q That was a recommendation or a requirement?

4 A The final decision belongs to them. I did not
5 object. There was one position description that I
6 questioned why, and the only reason I questioned it was
7 because there was only one qualified individual in the
8 company, and questioned whether we needed to go through the
9 whole process. They told me yes, you do. So we went ahead
10 and -- and followed those. But the -- the rules relative to
11 posting are the responsibilities of HR, and I followed their
12 decision.

13 Q And -- and...

14 JUDGE COLE: So who ultimately made the decision
15 to post it? Was that you or someone else?

16 THE WITNESS: The decision was made by human
17 resources they had to be posted. They told me they needed
18 to be posted, and I -- I didn't object to that. I -- I
19 concurred with that.

20 JUDGE YOUNG: Let me clarify something while we're
21 waiting. You said that -- that you had told your people
22 that you wanted the position descriptions to more accurately
23 reflect what the person in the position would be doing for
24 accountability purposes; did I understand that right?

25 THE WITNESS: Yes, that's correct.

1 JUDGE YOUNG: And so some -- whoever it was that
2 you gave that directive to would have been the person that
3 defined the position; correct?

4 THE WITNESS: That is correct.

5 JUDGE YOUNG: And that position description would
6 have been what ended up in the posting; would that be
7 correct, also?

8 THE WITNESS: That's correct, also.

9 JUDGE YOUNG: Okay, that's what I thought, and I
10 just wanted to make sure.

11 BY MR. DAMBLY:

12 Q And if we can get it back out, I believe it's 104
13 again, but your -- the transcript of your TVA OIG record of
14 interview on Page 10, Special Agent Van Barker (phonetic),
15 "Oh, so HR made the call, then, basically, to advertise and
16 post it?" Mr. McGrath, "Yeah, but I think it's more
17 appropriate to say we jointly made the decision"; is that
18 correct?

19 A Yes. What I meant by that, as I said, is HR came
20 and told me they made the review. This was their
21 conclusion. As I told you, I questioned one position
22 description. They resolved my question. And I said, "Go
23 ahead and post it." I really don't know in the rules of TVA
24 does it -- who says you have to post it. The rules on what
25 requires posting come out of corporate human resources. I

1 think the final decision is with HR. I could not fill a
2 position without posting if they felt posting was required.
3 The reason I called it, in that discussion, a joint decision
4 is they came and told me what their decision was, why they
5 had made the decision, and I concurred with that.

6 Q Okay. And so if you were told by HR that a
7 position needed to be posted, you couldn't fill it without
8 posting?

9 A I could not fill it without posting; that's
10 correct.

11 JUDGE YOUNG: Let me ask either Mr. Dambly or Mr.
12 McGrath or Mr. Marquand. Are Exhibits 43 and 64, are they
13 the postings or is that what we're talking about?

14 MR. DAMBLY: No, they're the official position
15 descriptions for the -- the position descriptions of record,
16 I guess is what...

17 MR. MARQUAND: There is a separate document that
18 is put on the bulletin board, and it's called an
19 announcement of a vacant position or a vacant position
20 announcement, and it says there's going to be a job opening.
21 You have "X" number of days to submit an application. You
22 may -- and it's also on the computer system. And it says
23 you can get all the information you need off the computer,
24 and send us your applications. And those will come into the
25 record, too.

1 JUDGE YOUNG: So these obviously -- now -- now I
2 see. These have the names on them, so they would not be the
3 postings.

4 MR. MARQUAND: These were issued after the fact
5 when people were selected for the jobs.

6 MR. DAMBLY: These are the position descriptions
7 for the positions that they were -- they're not the vacancy
8 announcements.

9 JUDGE YOUNG: Thanks.

10 BY MR. DAMBLY:

11 Q And, Mr. McGrath, you never had any involvement,
12 whatsoever, in discussing with your subordinates how these
13 positions were drawn up, the Exhibit -- Staff Exhibit 64?
14 And you had no discussions with Dr. McArthur about the
15 position description, what should be in it? You never
16 reviewed it? You never saw it?

17 A That's correct.

18 Q And nobody talked to you about there being a
19 slanted field involved in the writing of this or any of
20 that?

21 JUDGE YOUNG: Nobody talked to him about what?

22 MR. DAMBLY: About it being slanted in favor of
23 one person or another.

24 A At -- at one point human resources informed me
25 that Mr. Harvey had raised a concern as to whether or not

1 this position description -- the -- whether the position
2 description for the PWR chemistry position was slanted in
3 favor of Mr. Fiser. He brought that concern to human
4 resources. I asked human resources to resolve that issue
5 with Mr. Harvey and Mr. McArthur. I understand they had
6 some meetings with it.

7 I recall from it that the resolution was that Mr.
8 Harvey, who, like the other chemistry incumbents there, had
9 been given an opportunity to review this, had felt that some
10 comment he made had not been incorporated. I believe the
11 resolution I got is that, in actuality, the comment had been
12 incorporated, and he was satisfied with the position
13 description. It was either that he was satisfied or there
14 was some very minor change made. But I -- I did not
15 personally get involved in reviewing exactly what his
16 concern was, or the position description. I left that with
17 human resources and McArthur to resolve.

18 Q Did you tell anybody your expectation, that it
19 should have specific accountable functions in it?

20 A As I've already answered before, for my entire
21 department, not just chemistry, but across it, is that we
22 needed to have specific -- specifically accountable
23 functions in position descriptions.

24 Q Okay.

25 MR. DAMBLY: I won't ask Mr. McGrath to go through

1 a line-by-line. When we have somebody from HR in here who I
2 can identify or Mr. Fiser can identify their position, we'll
3 place them in the record and the board can draw their own
4 conclusion.

5 Can I go back to Exhibit 130, please.

6 JUDGE COLE: Is that Book 7, Mr. Dambly?

7 MR. DAMBLY: I'm sorry. I believe it is, Your
8 Honor. It's the organizational chart again.

9 BY MR. DAMBLY:

10 Q On that organizational chart, which is the
11 radiological and chemistry control organization prior to the
12 reorganization; correct? We talked about that earlier.

13 A Yes.

14 Q And on that, Mr. Grover and Mr. McArthur are
15 peers; is that correct?

16 A That's correct.

17 Q And they're both in PG-11 positions; is that
18 correct?

19 A That's what this organization chart shows; yes.

20 Q Do you have any knowledge contrary to that?

21 A As I believe HR eventually found out, in looking
22 to it, is that no position description had ever been issued
23 for that job that McArthur was in. So I'm not sure where
24 his PG level was based on this box or whether it was based
25 on his position description of record at the time. I don't

1 know the answer to that.

2 Q Well, we'll get to that in a minute.

3 When did you first learn that supposedly there was
4 no position description written to this for Mr. McArthur's
5 position?

6 A I know it was well after we had done the
7 reorganization. I'm not sure exactly when I specifically
8 learned that.

9 Q Nobody from HR, during the reorganization or your
10 decision to put Mr. McArthur in the combined position, told
11 you it was because he didn't have a position description for
12 the job he was in, did they?

13 A No.

14 Q And do you know what -- what grade McArthur was in
15 when he was the technical program -- technical support
16 program manager or technical program manager?

17 A I think that was a senior manager position.

18 Q It was not a PG-11 position?

19 A I said I think it was a senior manager position.

20 Q Is there anything on Staff Exhibit 30 that
21 indicates Mr. McArthur is in an acting position?

22 JUDGE COLE: Is this 130? Did you -- I thought
23 you just said Staff Exhibit 30. You meant 130?

24 MR. DAMBLY: 130. I think I -- I hope to have
25 said -- I could have. Who knows. But, anyway, I'm talking

1 still the same organization chart here.

2 BY MR. DAMBLY:

3 Q Is there anything on that chart says McArthur's in
4 an acting position?

5 A There's nothing on this chart that says that.

6 Q It does say Mr. Sorrell's in an acting position,
7 doesn't it?

8 A That's correct.

9 Q And it says that actually Don Moody was acting,
10 doesn't it?

11 A Correct.

12 Q Would you draw a conclusion from that that when
13 TVA provides -- or prepares an organization chart, they know
14 who's acting and who's not?

15 A I can't speculate about the basis for making this
16 chart.

17 Q In your experience with TVA, when you take a
18 acting (sic) position, does that normally involve a pay
19 grade reduction?

20 A From my personal experience, it does not.

21 Q And you've been on a lot of acting positions in
22 your career?

23 A Yes.

24 Q Okay, please tell the Court how you came -- I
25 mean, in point of fact, we went from McArthur and Grover in

1 parallel positions; you eliminated both of those and came to
2 a rad con chemistry manager position? Combined those two
3 into one; is that right?

4 A Actually, I eliminated those two, the rad con
5 chemistry manager position or a -- as you see this -- this
6 chart you've been using reflects that that position existed
7 already.

8 Q That position was identical to the one that
9 existed afterwards?

10 A I don't know the -- functionally it was identical.
11 There may have been -- because there weren't as many
12 separate organizations reporting to it, there probably was
13 some minor changes.

14 JUDGE YOUNG: Hold the microphone as you -- talk
15 into it a little bit more.

16 THE WITNESS: Okay.

17 JUDGE YOUNG: In front of your face. Pull it in
18 front of your face and I think it'll be easier to...

19 THE WITNESS: Okay.

20 JUDGE YOUNG: You really have to make an effort.
21 I know it's unnatural, but you have to make an effort.

22 CHAIRMAN BECHHOEFER: Or shout. Or else shout.

23 THE WITNESS: All right.

24 BY THE WITNESS:

25 A The decision that was made on the organization is

1 we had three management positions going into it. One with
2 rad chem manager position which at that time was vacant
3 since Mr. Sorrell had retired. And then there were the
4 chemistry and the rad con positions.

5 The decision was given to reduce size of the
6 organization. There was no longer a need to have three
7 managers, and so the two subordinate positions would be
8 eliminated and we would continue with a rad chem manager
9 position.

10 Q Okay. And again, if you refer to Staff Exhibit
11 130, the organization reflected there had Mr. Sorrell in a
12 position that supervised not only rad con, but also
13 chemical, environmental, and a third organization,
14 environmental rad monitoring and instrumentation; is that
15 correct?

16 A Yes. And that was that laboratory that I
17 mentioned, and when we discussed on the -- one of your other
18 exhibits, which was the new organization, that was that
19 group under Mr. Rains which reported to Mr. McArthur under
20 the new organization.

21 Q Okay. If the position was identical to the
22 vacancy that you said Mr. Sorrell was no longer there, why
23 did Mr. McArthur write a new PD for the position after he
24 was put in it?

25 A We would still have to come up with -- the

1 position descriptions would reflect the new organization.
2 So while the positions functionally would have been the
3 same, there'd be changes.

4 Q So you had a slot there, but the actual duties
5 changed?

6 A The only change that I would see, relative to the
7 duties, would be in the reflection of the administrative --
8 administratively how the organization was set up.

9 Q Okay, please, if you would, explain to the board
10 how you came to take Mr. McArthur and Mr. Grover, who were
11 in parallel positions, and not competitively put Mr.
12 McArthur in the new position as Mr. Grover, or eliminate Mr.
13 Grover's and Mr. McArthur's and, without competition, put
14 McArthur in the Sorrell position.

15 A When human resources originally looked at the
16 reorganization, they had told me that we would have to
17 compete the position of the rad chem manager. Sometime
18 after that decision, Mr. McArthur came to me and asked a
19 question as to why did he have to compete for that position.
20 His concern dated back to the 1994 reorganization in which
21 he had been in the technical program manager position which
22 functionally was very similar to the rad waste position -- I
23 mean, the rad chem manager position. TVA had done a
24 reorganization in 1994 which eliminated that position. It
25 had just a rad con manager and a chemistry manager to report

1 back to the general manager of operations support.

2 Shortly afterwards, within a few months after
3 that, the position of rad chem manager was created, and Mr.
4 Sorrell was put in there on an acting basis. McArthur
5 questioned why should he not have been put in that position,
6 since it was essentially the same position he had been in
7 right before the reorganization.

8 Q Okay, he questioned that when?

9 A He questioned that sometime in the -- in 1996,
10 after we had worked out what the reorganization looked like
11 and I had told him that he would have to compete for the rad
12 chem manager position.

13 Q Okay. He didn't question it in '94?

14 A I don't know what he did or did not question in
15 1994.

16 Q Okay.

17 A When -- when he came to me with that question, I
18 had been involved several years before in a reorganization.
19 And in considering possible ways to do that reorganization,
20 the human resources manager I was working with on -- on it
21 had totally -- because one option -- in evaluating the
22 options as to how we would do it, that we could not do a
23 reorganization -- or if we did a reorganization where we
24 eliminated a position, and a short time later---my
25 recollection is perhaps six months, I don't remember the

1 exact timing---but within some time period thereafter if we
2 recreated a similar position to one that had been
3 eliminated, the people who had previously been in that
4 position or positions would have rights to that new job.

5 The situation that McArthur explained to me
6 appeared to be very analogous to what this other human
7 resource manager had told me about several years before.

8 Q And who was that other human resource manager?

9 A Her name was Naomi Lindsay.

10 When -- so when he brought me this question, I
11 felt it was a legitimate question. So I referred the
12 question to Mr. Boyles and asked him to review it. Mr.
13 Boyles came back to me sometime later---I don't remember
14 exactly how long it was---told me that HR had looked at it,
15 and they had concluded that Mr. McArthur had rights to the
16 rad chem manager position.

17 Q Based on what?

18 A Well, they told me they concluded that he had
19 rights to the position. At the time, I assumed it was for
20 the reason that I had heard a couple of years before that,
21 because that was something that I had been told previously,
22 so they came back to me with an answer that was very
23 consistent with the guidance that I had received two or
24 three years previously in another reorganization. So at
25 that particular time, I did not question why they had made

1 the decision.

2 Q But didn't -- didn't you, in fact -- weren't you
3 told by Mr. Boyles that McArthur had rights because he
4 previously held that position?

5 A When Mr. Boyles came back and talked to me about
6 it...

7 Q Yes.

8 A ...and at this point I don't remember exactly the
9 words he said, but even if he -- even if he was to have said
10 those words, that was exactly consistent with what guidance
11 I had been given before, and that guidance from a few years
12 before was that if someone had held a position which was
13 eliminated, and within a short period of time the company
14 recreated that position, they had rights to it. And since
15 this position had been recreated by TVA shortly after
16 eliminating it one time, that statement was totally
17 consistent with the prior guidance I'd gotten. So I did not
18 pursue and quiz him to give me further detailed basis. I
19 did not attempt to independently evaluate whether HR's
20 decision was correct or not.

21 I understood their decision, and in the framework
22 of this -- again, of this information I had from a couple of
23 years before, I basically felt that they were telling me
24 that not only did he have rights to it, we were required to
25 put him into the position, that I had no option.

1 Q And again, what exactly did they tell you? What
2 did Mr. Boyles tell you? Why did he tell you that McArthur
3 had rights to the position?

4 MR. MARQUAND: Objection. That's been asked and
5 answered. He said he didn't...

6 MR. DAMBLY: Well, I don't think so.

7 MR. MARQUAND: ...inquire. And that he assumed
8 the basis for it.

9 BY MR. DAMBLY:

10 Q Well, did Mr. Boyles tell you why?

11 A As I just answered to you a few minutes ago, at
12 this time many years later I don't remember the exact words
13 he said when he came to my office. When he told me that
14 McArthur had rights to the position, I assumed it was for
15 the reason that I had referred it to him. And I did not
16 pursue with him the details of how he reached that decision,
17 because it was consistent with prior guidance I had received
18 from human resources.

19 JUDGE YOUNG: You said you didn't understand the
20 exact words. Do you remember the general words that he
21 used?

22 THE WITNESS: Generally, he probably said
23 something to the effect that because he was in the position
24 before, which fit very well with what I understood
25 previously, and that was -- but I -- but, to be honest with

1 you, it's been so long, I don't remember when he came in,
2 and getting an answer that was consistent with my
3 assumptions, I accepted the answer. I know I did not quiz
4 him on the answer.

5 MR. DAMBLY: 105.

6 BY MR. DAMBLY:

7 Q On Page 3 of Staff Exhibit 105, which is your
8 signed statement to the DOL investigator that was looking
9 into Mr. Fiser's complaint in '96; is that correct?

10 A That's correct.

11 Q And on Page...

12 CHAIRMAN BECHHOEFER: Pardon me. Is this -- was
13 this statement to OIG?

14 MR. DAMBLY: This was to a Department of Labor
15 investigator.

16 CHAIRMAN BECHHOEFER: Oh, Department of Labor.
17 Okay.

18 MR. DAMBLY: As indicated, I think, on the first
19 page up at the top, U.S. Department of Labor.

20 CHAIRMAN BECHHOEFER: Okay. Okay.

21 BY MR. DAMBLY:

22 Q On the third page, in the middle of the top
23 paragraph, "According to HR Officer Ed Boyles, who
24 determined that since McArthur was in that position before,
25 then that position need not be advertised, and rightfully

1 so, McArthur should be given the position, since he lost the
2 position due to past reorganization."

3 A Yes. That statement is exactly consistent with
4 what I've been explaining to you was my assumption. My
5 understanding was that if an individual was within a
6 position, that position was eliminated due to a
7 reorganization, and then TVA recreated that position within
8 a short period of time, which is what they did in this case,
9 that McArthur had rights to that position. And these --
10 these words are exactly consistent. That's what I -- this
11 is a -- this is a...

12 Q These same words indicate Mr. Boyles told you
13 something.

14 A This is a -- first off, this is a paraphrase of
15 whatever I discussed with the DOL person.

16 Q Did you sign it?

17 A Yes. And it is an accurate -- he represented it
18 -- when he came back and told me if -- as I said, I don't
19 remember at this time exactly what he said to me. If he
20 came back and he told me that it was because he was in the
21 position and he had lost it in a prior reorganization, which
22 is what this says, that was exactly consistent with what I
23 understood. He probably told me because he had been in --
24 that was in the position before, and within my framework I
25 was thinking about it, it fit exactly the scenario that I

1 understood were requirements.

2 Now, later on, as Mr. Boyles testified at the
3 enforcement conference, the decision on which they made it
4 was not the basis on which I assumed they made the decision.
5 But I did not...

6 Q Well, we'll let Mr. Boyles tell us what he decided
7 later.

8 MR. MARQUAND: Objection. The witness is entitled
9 to explain anything he's shown...

10 MR. DAMBLY: No, he's not.

11 MR. MARQUAND: ...as a purported impeachment. And
12 he was giving an explanation, and he's not -- counsel has no
13 right to cut him off.

14 MR. DAMBLY: He was asked specifically what it
15 says Mr. Boyles said. It's not asked what Mr. Boyles said
16 five years or six years later at an enforcement conference.

17 MR. MARQUAND: He's entitled to -- he's entitled
18 to explain...

19 JUDGE YOUNG: Do you have any explanation you want
20 to give us further?

21 THE WITNESS: Yes, Your Honor. I -- I said I
22 think it's important to note here that when I got -- when
23 Mr. Boyles came back to me, I was really thinking in the
24 framework when I've already explained a few times of what I
25 had understood to be a set of requirements within TVA. And

1 I did not drill and grill Mr. Boyles on exactly how did you
2 make this decision.

3 Okay, when later on, as we -- I know at the time
4 of the enforcement conference that Mr. Boyles had said the
5 reason that HR did it, it came to that conclusion, was that,
6 for whatever reason, there had never been a position
7 description issued nor McArthur put in it for that rad con
8 manager position, the PG-11 position shown on this org
9 chart; and that by his human resources records, he was still
10 in the position of the manager of technical programs.

11 HR looked at that position description of the
12 manager of technical programs, concluded it was equivalent
13 to the rad chem manager's position, and on that basis
14 concluded that position was rightfully McArthur's. And that
15 is -- that's my understanding now of what review they had
16 done.

17 When they first came and told me that the position
18 was still rightfully McArthur's, I assumed that it was for
19 this other reason, because when they said to me -- and going
20 back here, which was closer to the time frame, if -- if Mr.
21 Boyles came in and said to me because he had been in that
22 position before, and due to the prior reorganization, that
23 fits his explanation, his review well, because the prior
24 reorganization failed to put him in a new position
25 description, so he was still in the old one. My

1 interpretation of that was it was -- the position was
2 eliminated; it was recreated within a few months afterwards;
3 therefore, he had rights to the position. That was my
4 assumption. I now know that my assumption was wrong as to
5 the reason why they came to it, but either well, I -- I felt
6 that they had told me that it was his position, there was no
7 -- I had no option other than to put Mr. McArthur in that
8 position, which is what we did.

9 BY MR. DAMBLY:

10 Q And, so, what you have just explained was not
11 anything that anybody told you in the '96 time frame?

12 JUDGE YOUNG: In the '96 what?

13 THE WITNESS: Time frame.

14 MR. DAMBLY: In the '96 time frame.

15 JUDGE YOUNG: Time frame.

16 MR. MARQUAND: Objection. He's already answered
17 the question what he knew, what he was told, and when he was
18 told it.

19 JUDGE YOUNG: Well, to the degree we need any
20 further clarification, I think that's fine. There seems to
21 be some...

22 BY MR. DAMBLY:

23 Q Nobody in HR told you in 1996 that Dr. McArthur
24 was still operating under his position description for 1991
25 or '2 or whatever, technical program manager?

1 A I do not recall anyone telling me that in 1996.

2 Q And if you would turn to Exhibit 104, the
3 transcript of your IG interview, Page 51. The bottom half
4 is a discussion, and if we go down to Line 12, "Well, when
5 HR looked at it all they said, 'Well, if you look at the
6 history, though, Wilson McArthur was in the job. We
7 reorganized, abolished his job, but then a short time later
8 reorganized and recreated his job and didn't give him an
9 opportunity to get his job back again.' And they looked at
10 it and said, 'Hey, what we've really done here to Wilson
11 McArthur is you hold the job -- you abolish your job, we
12 split it. Now we come back and we're reestablishing the
13 same identical job you have. Your performance in it was
14 good.' The conclusion was that he had rights to the job."

15 Did they tell you that or not?

16 A As I have told you several times here now, based
17 on what I had been told two years before by HR when they
18 told me he had the rights to the job, I assumed this was
19 their basis.

20 Q So when you were interviewed by Agent Van Barker,
21 you just gave assumptions? When you said HR said this
22 stuff, they didn't really say this stuff, this is what you
23 thought they were thinking?

24 A In line from what these say at the time, if HR
25 walked in and said to me that McArthur had previously been

1 in the job and due to the way the reorganization was handled
2 before, he had the rights to the job, that explanation fit
3 perfectly with my framework of what I understood the
4 requirements to be. That explanation also fits what Mr.
5 Boyles later testified was the exact basis on which they had
6 made the decision.

7 Q Do you know if Mr. Boyles told that in 1996 to DOL
8 or OIG?

9 A I do not know what he said in 1996.

10 Q And, again, if, as it says on Page 51 here, they
11 reestablished the same identical job that McArthur had, why
12 was there a new PD written for the same identical job,
13 particularly if he already had that PD and that was his job?

14 A If nothing more for being that administratively
15 the name was changed. But I -- I don't know what was
16 involved in writing PDs in that time period. My
17 understanding is the jobs were functionally the same.

18 Q Well, here it says identical. Do you know if the
19 technical program manager position he had in -- prior to
20 '94, I guess '92, '93 time frame, was identical to the
21 position he had afterwards in '96?

22 A Based on the information which was discussed at
23 the enforcement conference, it's equivalent but not
24 identical. At -- at the time of -- back here, since I had
25 not gone and reviewed the PDs and involved in detail, I did

1 not know that. I assumed they were the same.

2 Q All right. You indicated that your belief was
3 that since in '93, I guess, McArthur held a position that
4 was eliminated and then recreated shortly, he had rights to
5 that position, how long did he have rights to that position
6 for?

7 A I don't know what the rules are in that regard.

8 Q Do you think he can sit on his new position for
9 two years, and then when there's another reorganization go,
10 "Oh, gosh, here's my 'get out of jail free' card. I get to
11 keep this forever"?

12 A I do not know what the HR rules are with regard to
13 that.

14 Q Well, if -- if Mr. Fiser was in a position that
15 was eliminated and recreated, does he have rights to that
16 one? Or just Mr. McArthur?

17 A In my mind, the difference the time -- the case of
18 the issue with McArthur's had to do with the proximity of
19 the two actions being taken. I believe that the -- in that
20 particular case, the rad chem manager was recreated within
21 the matter of a few months. That was my understanding.
22 And, as I told you, that fit what was explained to me before
23 as something that would give the individuals the right to
24 the position.

25 I believe from back then that HR told me then---

1 but I don't remember---there was a time limit related to
2 when the position was recreated. It was something less than
3 a year, probably like -- but I -- but I don't remember the
4 exact time frame.

5 MR. DAMBLY: I believe I'll switch books again,
6 but would you all like to take a break? Would this be an
7 appropriate...

8 JUDGE YOUNG: If you're at a good stopping point,
9 that might -- that might be a good idea. Why don't we go
10 ahead for another half hour or so. If you need five minutes
11 now, take it. But -- but there's another witness and we may
12 need to break at 11:00.

13 MR. DAMBLY: Just get a quick drink of water for
14 me, but...

15 JUDGE COLE: We have to break at 11:00, regardless
16 of whether we take a break now or not.

17 MR. DAMBLY: Oh, we do?

18 JUDGE COLE: Yes.

19 MR. DAMBLY: Oh, in that case I'll just -- it's
20 not a problem.

21 MR. MARQUAND: Why don't we take...

22 MR. DAMBLY: Give the witness a chance to get a
23 drink of water, and I may just -- oh, he's got a bottle.
24 Well, good for him.

25 JUDGE YOUNG: In the break let me tell you again.

1 Hold the microphone closer so you don't have to lean over.

2 Pull it right in front of where you're talking.

3 THE WITNESS: Yeah, I'll just -- I may move my
4 chair.

5 MR. DAMBLY: Could we take five minutes? Mr.
6 Marquand and I could both use a...

7 (Brief recess.)

8 MR. DAMBLY: Book 5, Exhibit -- Staff Exhibit 100.

9
10 COURT REPORTER: I'm sorry, exhibit what?

11 MR. DAMBLY: 100.

12 JUDGE YOUNG: The other courtroom is smaller.
13 Maybe that it has better acoustics, which would be nice.

14 BY MR. DAMBLY:

15 Q What is -- what does Staff Exhibit 100 purport to
16 be?

17 A Said is the position description for the manager
18 of technical programs from 1990.

19 Q And that was Dr. McArthur's position that you said
20 that he had previously and got abolished and reestablished?

21 A That's correct.

22 Q And if you would look at Staff Exhibit 101. And
23 Staff Exhibit 101 is McArthur's position description for the
24 rad con chemistry manager position he assumed as part of the
25 reorg?

1 A That's correct.

2 Q All right. And if you'll take a look at the two
3 of those and tell me how they're identical.

4 A The two of these were evaluated by human resources
5 in accordance with their requirements, and they concluded
6 that they were equivalent positions. I'm not familiar with
7 the requirements that HR uses to make such an evaluation.
8 And I -- all the decision was based on HR's evaluation. I
9 did not independently evaluate it.

10 Q Well, we just looked at your testimony to the IG
11 where you said you were told they were identical positions
12 so he was entitled to it. Are they identical?

13 A I was not -- I was -- I did not tell them I was
14 told they were identical positions. The word "identical"
15 was my assessment based on my understanding of what McArthur
16 had been doing over the years. As I mentioned to you before
17 the break, I did not go back and review the position
18 description as technical programs manager. I had -- I had
19 never seen it. Just based upon the functions and what
20 McArthur had been doing, it seemed to me that they were
21 basically the same position.

22 Q Okay. When we look at the '90 PD for manager
23 program -- technical programs, Staff Exhibit 100, on the
24 second page where it's "Nature and scope of duty," the
25 second paragraph, "The incumbent has corporate

1 responsibility for the nuclear power protective services
2 programs to insure the adequate security systems, security
3 forces, security training, security clearance activities are
4 conducted and confirm to the security plan requirements."

5 Do you know how many people were involved that he
6 supervised in that function? How big is nuclear security
7 forces?

8 A This referred to the nuclear security programs
9 group, which was a small group of people. A few. I don't
10 know what the exact number was. Probably less than half a
11 dozen.

12 Q He didn't have the actual security forces under
13 him in this job?

14 A No, he did not. Not based on what this says.

15 Q Fire protection, the next paragraph. Is that in
16 the rad con control position? Go ahead, backing up, is the
17 nuclear protective services part of the '96 position that
18 McArthur went into?

19 A That was not, but I don't -- are you asking me to
20 go do a reevaluation here of what HR did? I mean, human
21 resources...

22 Q I'm saying you told us that it was because the
23 same position was reestablished. I'm trying to tell you to
24 take a look and tell me if these are the same positions.

25 MR. MARQUAND: I'm going to object, Your Honors.

1 Whether or not Mr. McGrath today would do an analysis that
2 HR did in 1996 and come up with the same result is not an
3 issue in this case. What's at issue in this case is what
4 was decided in '96, and whether or not there was
5 discriminatory animus. And to ask him to second-guess the
6 HR people now, six years later, doesn't add anything. It's
7 not helpful.

8 CHAIRMAN BECHHOEFER: I would overrule the
9 objection. I might say that studying one position
10 description against another and against the claim that one
11 -- that the positions were either similar or -- or
12 identical, whatever word you want to use, I don't think
13 we're asking for an analysis today. I think we're asking
14 whether a legitimate analysis was made back '96 or so. So,
15 we have the situation where a person was placed in a
16 position, rather than going through the posting process.
17 And we have other people who had to go through the posting
18 process. So I think that's the heart of what we're actually
19 looking at. So objection overruled.

20 BY MR. DAMBLY:

21 Q And, again, in 1996 you told the Office of the
22 Inspector General, Exhibit 104, Page 51, that McArthur's new
23 position as rad con chemistry manager was exactly the job he
24 had before. Or what was your basis for that?

25 A My basis for that was in my dealings with McArthur

1 over the prior five or six years, is that McArthur spent,
 2 from my observations, the overwhelming majority of his time
 3 on radiological controls, chemistry, and items related to
 4 that. In fact, some of the other positions here, I'm not --
 5 they -- I'm not sure I knew they were under him at that
 6 time. So it was based upon my observations of what McArthur
 7 had been working on. I did not go back and review the
 8 position descriptions.

9 When the question came up, and as I mentioned to
 10 you, McArthur represented to me that it was essentially the
 11 same job he had been doing, and I referred that to HR for
 12 their review. I relied on HR's review as to whether or not
 13 that was correct.

14 Q Are you supposed to make posting decisions on
 15 functions in a PD or actual duties performed?

16 A Posting decisions are made by human resources.
 17 And they make...

18 Q Well, do you know what they make them on?

19 A They base them on what's in the position
 20 description. And in making the decision on McArthur here,
 21 human resources went back and reviewed the position
 22 descriptions. My words to the IG were based on my
 23 impression of what McArthur was doing. My impression was
 24 not a factor in the decision.

25 Q And I think you told us yesterday that prior to

1 '96 the only interactions with Mr. McArthur were on the
2 NSRB, and that's how you knew him.

3 A That's correct.

4 Q You didn't interact with him on a day-to-day
5 basis?

6 A From the NSRB, where he was in the rad con and
7 chemistry area, I knew that he was working on rad con and
8 chemistry primarily. But on a normal day-to-day basis I was
9 not...

10 Q How did you know that? How do you know what he
11 did on a given day in his job as technical program manager?

12 A It was my impressions from my discussions with
13 him.

14 Q Basically, HR gave you an answer you were looking
15 for, and you could avoid a posting; is that correct?

16 A That is not correct.

17 Q All right. Did you comply with all the TVA
18 procedures for posting vacancies?

19 A HR made the decision on posting the vacancies, and
20 I believe they were in compliance with all the requirements.

21 Q In fact, you told us during your predecision
22 enforcement conference that all TVA procedures were followed
23 in the '96 reorg; is that correct?

24 A To the best of my knowledge, we followed all
25 procedures. In fact, we try very exceedingly hard on this

1 one to make sure we did.

2 Q Will you go to Book 8, please, Exhibit 152.

3 Again, you mentioned...

4 JUDGE YOUNG: Before you -- before you continue, I
5 just want to say one thing. Earlier Judge Bechhoefer said,
6 "What we are asking..." I think we need to clarify that --
7 that in making the rulings, we're making them based on what
8 the issues are as they appear to us, not what we're asking.
9 We're not asking any -- any questions. And so if there was
10 any appearance to the contrary, we want to make that clear.

11 MR. DAMBLY: All right.

12 BY MR. DAMBLY:

13 Q Referring to Staff Exhibit 152, have you seen this
14 document before?

15 A You showed it to me at the deposition last nov.

16 Q And that's the first time you saw it?

17 A Yes.

18 Q So when you told us at your enforcement conference
19 that all the procedures were complied with, you didn't even
20 know of this procedure?

21 A I do not know the details of all of the human
22 resources procedures in the company. That's why, in doing
23 these selections, we are assisted by human resources. It is
24 human resources' responsibility to insure that we are in
25 compliance with all the requirements. It's certainly my...

1 Q But it was you who said, "All the procedures were
2 complied with"; is that correct?

3 MR. MARQUAND: Is that in quotes? Was counsel
4 paraphrasing, or what are we talking about here?

5 Q I'm asking is that what you told us?

6 A I -- I don't remember word for word what I said
7 during the enforcement conference. My intention was that it
8 was based upon -- and for the enforcement conference, you
9 know, as -- as you would expect, we prepared for it. And
10 based upon the preparations for that and the meetings we had
11 with HR, I think I was convinced that we had followed all of
12 the requirements. And at the time of the selection, we were
13 trying our best to do that, including all of the ones that
14 HR was responsible for compliance with.

15 CHAIRMAN BECHHOEFER: Let me ask a quick question
16 on Staff Exhibit 152. Apparently that was authored by
17 somebody named John Long, and my question is: Who's he?

18 THE WITNESS: John Long was the -- I believe at
19 the time he was the senior vice president of human resources
20 for all of TVA.

21 CHAIRMAN BECHHOEFER: I see.

22 BY MR. DAMBLY:

23 Q All right, looking at Exhibit 152, this says,
24 "Announcement of vacancies in the manager and specialist pay
25 schedule revision..."

1 JUDGE YOUNG: Where are you reading from?

2 MR. DAMBLY: Pardon?

3 JUDGE YOUNG: Which part are you reading from?

4 MR. DAMBLY: That's the first -- just the top.

5 JUDGE YOUNG: Oh, the top. Okay.

6 BY MR. DAMBLY:

7 Q Heading, "Revised selection waiver policy," and
8 it's dated March 23, 1993. Then it says, "Number 1. All
9 vacant management schedule positions PG-1 through senior
10 management -- manager will be announced TVA-wide, subject
11 only to the following limited exceptions." Did any of those
12 exceptions apply?

13 A This letter does not apply because HR's decision
14 was no vacancy existed. They concluded that McArthur had
15 rights to the position and would -- essential it was his
16 position; therefore, there was no vacant position, and this
17 memo doesn't even apply to that position.

18 Q That's your interpretation or did somebody tell
19 you that?

20 A That's my interpretation.

21 Q And why was there no vacancy if Mr. Sorrell was
22 not in that job? Was Mr. McArthur in the job? We looked at
23 that and it didn't say he was in the job.

24 A When HR looked at it, and as I told you before, HR
25 initially said post the position. After Mr. McArthur raised

1 his concern and they evaluated it, HR concluded that
 2 McArthur had the rights to the position and should have been
 3 in the position. I would guess, if you went back, and had
 4 McArthur raised the question earlier, and evidently did, the
 5 same evaluation perhaps having been done in 1994 would have
 6 concluded that perhaps we should have put McArthur in the
 7 position then. But I -- but the -- their decision was there
 8 wasn't a vacancy, it was McArthur's position.

9 Q That their decision was he had rights to a
 10 position. Doesn't mean the position wasn't vacant as --
 11 you're not telling me he was in the job, are you?

12 A I told that the requirements were such that the
 13 job was correctly his, was the same as -- they determined
 14 that it was equivalent to his position of record, so I guess
 15 you could say they determined he effectively was in the job.

16 Q They determined -- well, you're talking now about
 17 what we heard at the enforcement conference, his position
 18 description of record?

19 A That's correct.

20 Q That's not what they told you in 1996? They never
 21 said anything about his position of record to you, did they?

22 A We've discussed this quite a bit before. As I
 23 told you, when they gave me a summary of what their
 24 conclusion with -- was, since it was consistent with a prior
 25 situation I had been involved with a few years before, I

1 assumed what basis they had used. I did not pursue with
2 them the basis they had used. As it turns out, they made
3 the decision on a different basis than what I assumed they
4 had used.

5 Q And you first learned about this different basis
6 preparing for the predecisional enforcement conference in
7 the year 2001? Oh, '99. I'm sorry. 1999. That's right.
8 It's taken us a long time to get here. I'm sorry.

9 A It may have been then; it may have been a bit
10 earlier than that. I don't remember exactly when I first
11 heard that.

12 Q As we discussed earlier in the org chart, Dr.
13 McArthur was, in point of fact, in a PG-11 position, was he
14 not, prior to the reorg?

15 A That org chart you showed me, which I had not seen
16 before today, says that. I really don't know exactly his
17 personnel record said.

18 JUDGE YOUNG: Could you clarify, what was the
19 relationship -- and you may have said before, but if you
20 could just clarify -- what was the relationship between you
21 and HR and the persons whom you were directing to write the
22 new position descriptions?

23 THE WITNESS: Within Human Resources, there was
24 one human resource manager, his name was Ed Boyles, who was
25 assigned to support my organization. I think he supported

1 some others as well. And a human resources consultant
2 within his group, who also assisted in supporting us in
3 human resources matters.

4 Everything we did in the reorganization was
5 reviewed by them. The human resources consultant who worked
6 with Mr. Boyles, worked with my subordinate managers in
7 preparing the position descriptions. Those position
8 descriptions were worked out jointly between Human Resources
9 and the line managers. On any given one, I don't know why
10 may have written the draft vice who reviewed it, I didn't
11 get involved in that, but they basically were jointly
12 prepared by Human Resources and the line management with the
13 line management's job to make sure that it accurately
14 reflects the job duties and the proper qualifications for
15 the job. HR, in addition to ensuring the right format,
16 needs to make sure it complies with all of HR's requirements
17 to take care of checking the appropriate pay grades for the
18 position.

19 As we discussed earlier, HR then looks at them and
20 makes a determination on a new position description, whether
21 that is something that needs to be posted or whether it
22 perhaps is just a small change from some incumbent's
23 position so they're just given a revised position
24 description.

25 JUDGE YOUNG: And your capacity at that point and

1 the line managers that you're describing, clarify for me
2 again.

3 THE WITNESS: The line managers who worked for
4 me, on all the position descriptions --

5 JUDGE YOUNG: That was like Mr. McArthur, Mr.
6 Grover, Mr. Sorrell, Mr. Moody or --

7 THE WITNESS: That was a prior org -- Mr. Moody
8 and Mr. Sorrell were both gone by this time. Those who
9 worked for me at the time were Mr. McArthur and Mr. Grover.
10 In addition to that, there were people like the nuclear
11 training manager, the maintenance and technical support
12 manager, some other specialists I had in the areas of
13 operations, outage control, fire protection.

14 JUDGE YOUNG: And what was your capacity? Was it
15 other than as head of NSRB?

16 THE WITNESS: Yes. At that time, Your Honor, I
17 was given an additional duty of being the acting general
18 manager of operations support. I replaced Mr. Moody because
19 of his illness and subsequent passing away.

20 JUDGE YOUNG: Okay, so what I had clarified
21 earlier, the line managers were the ones who were acting at
22 your direction, they were interacting with Human Resources.

23 THE WITNESS: That's correct.

24 JUDGE YOUNG: Okay.

25 MR. DAMBLY: Volume 5, Staff Exhibit 99.

1 BY MR. DAMBLY:

2 Q Mr. McGrath, are you familiar with what this
3 document is -- not this particular document, but do you have
4 one for yourself at TVA?

5 A HR might. I don't hold such a record. I assume
6 this is a document HR keeps.

7 Q It was given to us as a list of all actions in Dr.
8 McArthur's TVA career.

9 If you look at this document, which is in I guess
10 reverse chronological order, if we look down about the
11 middle of that page, you'll seen on 10/3/1994, Dr. McArthur
12 was in a senior position. On 10/17/1994, he was in a grade
13 11.

14 MR. MARQUAND: I'll object to counsel reading from
15 the document. If there's a question pending, I'm going to
16 ask that he lay a foundation for any testimony by this
17 witness about this document that he said he's apparently
18 never seen or even seen one like it.

19 MR. DAMBLY: I'm just trying to get -- he just
20 said before if you could show me something, you know, from
21 McArthur's file, I don't know what his file, what his grade
22 was. He didn't want to accept the one on the PD, so -- I
23 mean on the organizational chart. This is an official
24 document given to us by TVA and it lays it out and I want
25 him to take a look at it.

1 JUDGE YOUNG: If you can tie it up later.

2 MR. DAMBLY: We will have personnel people in here
3 and we'll move all of these in when we have somebody.

4 MR. MARQUAND: My objection goes to any basis to
5 ask this witness to interpret or tell us what this document
6 means. It's appropriate to ask an HR person. Most line
7 management works with these kinds of things and knows what
8 they are, that testimony is totally misleading and all we're
9 hearing so far is counsel's reading from it and his
10 interpretations of what it might mean.

11 CHAIRMAN BECHHOEFER: Mr. Dambly, it would be
12 useful I think for you to at least get some description of
13 the document which is being shown to the witness, where it
14 comes from, what it's dated and that type of thing, if you
15 know that.

16 MR. DAMBLY: Staff Exhibit 99?

17 CHAIRMAN BECHHOEFER: Yes.

18 MR. DAMBLY: Is entitled "Employee Action Reasons,
19 Page 1 of 2." There's a date at the top of something 23,
20 looks like 1999.

21 CHAIRMAN BECHHOEFER: Well, what's the 2 Friday
22 December blank 2100?

23 MR. DAMBLY: This entire document was provided to
24 us by TVA when we made a request for Dr. McArthur's what we
25 would call OPF but they call PHR I guess, personal history

1 record. This is the equivalent of Dr. McArthur's official
2 personnel file.

3 MR. MARQUAND: And I'm going to object to
4 testimony by counsel, this is a portion of Dr. McArthur's
5 personnel file maintained by personnel, it's not equivalent
6 to OPF and it's inappropriate for counsel to testify to
7 that.

8 JUDGE YOUNG: Do you have any dispute over what it
9 is?

10 MR. MARQUAND: I don't know what he thinks it is.
11 I know what it is, I don't know that the witness does.

12 JUDGE YOUNG: Has Mr. Dambly characterized it
13 incorrectly?

14 MR. MARQUAND: Yes. This is not equivalent to an
15 OPF.

16 JUDGE YOUNG: Pardon?

17 MR. MARQUAND: This is a computerized printout
18 showing data with respect to Dr. McArthur.

19 JUDGE YOUNG: Okay.

20 MR. MARQUAND: It doesn't show -- I'm not sure
21 what else it does show, but I don't know whether it's
22 appropriate without asking the witness if he can interpret
23 it.

24 BY MR. DAMBLY:

25 Q Have you ever seen one of these before?

1 A I don't think so.

2 Q Well, in reviewing it, can you tell us whether or
3 not, at least according to the document supplied here, Dr.
4 McArthur went from a senior to an 11 in 1994 and then back
5 up to a senior after the reorg?

6 MR. MARQUAND: Same objection, lack of foundation
7 to show this witness can interpret this for us.

8 JUDGE YOUNG: If you can look at it, Mr. McGrath
9 and make any determination, do so. If you cannot, explain
10 why you cannot.

11 THE WITNESS: I mean if I look at the column that
12 says pay grade it shows a change from SR to 11.

13 MR. DAMBLY: And we will have personnel
14 representatives from TVA and they can identify all this and
15 tie it up. We took Mr. McGrath now because he had some
16 commitments and he needed to be here this week and I find it
17 quite objectionable for Mr. Marquand to keep complaining
18 that we haven't put on the personnel people when he wanted
19 him first.

20 JUDGE YOUNG: Mr. McGrath, what you just said, was
21 that a statement or a question?

22 THE WITNESS: It was a statement, if I read the
23 column that's on here that says grade, which I assume means
24 pay grade, it indicates that at one time in his career he
25 changed from a senior to a pay grade 11 and back again,

1 according to this sheet of paper.

2 BY MR. DAMBLY:

3 Q And assuming this sheet of paper is accurate,
4 would that be consistent that he was still in the senior
5 position during the period 1994, October of '94 through
6 whatever it is in '96 where he goes back up to the senior
7 position?

8 A What I don't know relative to it is because of
9 HR's subsequent decision on what was his official position
10 description, it may mean that this piece of paper is
11 incorrect.

12 Q And so at the time they did this and printed this
13 out, they didn't know or they hadn't made any changes to
14 reflect what they later determined was the case?

15 A You're asking me to speculate about what HR may or
16 may not have done.

17 CHAIRMAN BECHHOEFER: Mr. McGrath, would you know,
18 assuming for a moment that the transition from a senior
19 position to a PG-11 position and back to a senior position,
20 would there be pay differences or when one goes from a
21 senior position to a lesser position, do you have like
22 rights to retain your pay for X years, something like that?
23 How would that work?

24 THE WITNESS: My understanding on the pay is two
25 fold. One, within our organization, there is a large

1 overlap in the pay for a given pay grade. And the pay grade
2 11 is the one directly below the senior manager one, so I
3 would think there are pay grade 11s in the company who make
4 as much or more money than some senior managers.

5 In my experience with situations where people
6 because of like a reorganization step down to a lower pay
7 grade, I believe there are provisions, I don't know the
8 details of it, which hold their salary so they don't take a
9 loss in salary. I can't speak to the details of it but I
10 believe there are some provisions like that.

11 CHAIRMAN BECHHOEFER: Thank you.

12 MR. DAMBLY: Judge Bechhoefer, if you look at the
13 exhibit, in the last column, it actually represents -- shows
14 the pay, the salary, and you'll see going from an 11 to a
15 senior, he stayed the same, he got promotions while he was
16 an 11 and when he went back to a senior, he didn't get any
17 more money. So there's an overlap.

18 JUDGE COLE: Well, I don't know if that's true.
19 He went from 99,000 to 115,000.

20 MR. DAMBLY: But he was an 11 --

21 JUDGE COLE: But he was making 115 as an 11.

22 MR. DAMBLY: And he went to a senior and stayed
23 there.

24 JUDGE COLE: Okay.

25 CHAIRMAN BECHHOEFER: Would it be suitable to take

1 a fairly short break now?

2 MR. DAMBLY: This is the time.

3 CHAIRMAN BECHHOEFER: Okay, about 10 minutes.

4 MR. DAMBLY: Can we leave everything here?

5 JUDGE COLE: Yeah, leave everything here.

6 JUDGE YOUNG: We'll start right up where we left
7 off.

8 (A short recess was taken.)

9 CHAIRMAN BECHHOEFER: Back on the record.

10 BY MR. DAMBLY:

11 Q I think, Mr. McGrath, at least I hope, you have in
12 front of you at the moment Staff Exhibit 152?

13 A No.

14 CHAIRMAN BECHHOEFER: 152.

15 BY MR. DAMBLY:

16 Q And again, prior to your deposition, you'd never
17 seen this document?

18 A That is correct.

19 Q Had anybody ever talked to you about waivers for
20 posting requirements?

21 A I'm aware that there were provisions to allow for
22 waivers without knowing what the detailed requirements were.
23 And I had requested and had used a waiver sometime in the
24 early '90s. I don't remember the date any more. I used a
25 waiver in the contracts organization to select a highly

1 qualified minority female to a position.

2 Q And if you look at this specific document, Staff
3 Exhibit 152, this does provide that waivers can be gotten
4 from the posting requirements for minorities, is that
5 correct?

6 A It's my understanding that's allowed.

7 Q Now between McArthur and Grover, to the extent a
8 waiver could have been obtained, who would it have been
9 obtained for?

10 A A waiver could not have been obtained, there was
11 no vacancy.

12 Q Assume for the moment -- I'm asking between Grover
13 and McArthur, was either one a minority?

14 A Mr. Grover was a minority.

15 CHAIRMAN BECHHOEFER: Mr. McGrath, as far as you
16 know -- and I know you're not in that position and maybe
17 somebody else will have to answer, but was this policy which
18 was in I guess the 1993 notice, did that continue in effect
19 without any changes through say '96, if you know?

20 THE WITNESS: I really do not know the answer to
21 that.

22 CHAIRMAN BECHHOEFER: Okay.

23 MR. DAMBLY: We will have some person who will
24 tell you that this is the policy that was in effect in the
25 1996 reorganization.

1 CHAIRMAN BECHHOEFER: Okay. That's all I wanted
2 to find out.

3 BY MR. DAMBLY:

4 Q And you said a moment ago this didn't apply
5 because there was no vacancy, is that correct?

6 A That's correct.

7 Q And your basis for saying there was no vacancy is
8 what?

9 A As we have already discussed, it was based on
10 Human Resources informing me that McArthur had rights to
11 that position and should be in the position.

12 Q Did you equate having rights to a position with
13 being in the position?

14 MR. MARQUAND: Objection, that's been asked and
15 answered.

16 MR. DAMBLY: I don't recall even asking that.

17 JUDGE YOUNG: Just to clarify, he asked you before
18 on what basis did you determine and your answer was that it
19 was not vacant and I think he's asking you to try to get the
20 basis for your position that it was not vacant. If I
21 misunderstood, correct me.

22 MR. DAMBLY: My present question -- he told us why
23 he thought, because he said he had rights to it and I'm
24 asking whether having rights to a job, to the extent that
25 that's accurate, is the same as being in the job.

1 THE WITNESS: I will give you my interpretation,
2 which may not be consistent with HR's rules and exactly how
3 they define the terms. My interpretation if you have rights
4 to the job means you should have been in the job, and the
5 company is obligated to put you in that job. And therefore,
6 there is not a vacant position that can be considered for
7 other candidates.

8 BY MR. DAMBLY:

9 Q Well, is it your understanding that McArthur
10 actually held the combined rad con chemistry position in '96
11 before the reorg, before you put him in it, that he was
12 actually in that position? Is that the understanding you
13 got from HR?

14 A HR told me that he had rights to the position. As
15 part of the reorganization, we put him in that position.

16 JUDGE YOUNG: If Mr. Sorrell had still been in it,
17 what would the situation have been?

18 THE WITNESS: That sounds to me like -- well,
19 since Sorrell was acting -- that's really be something the
20 HR people would have to sort out, that's beyond my knowledge
21 of how they would have handled that situation.

22 BY MR. DAMBLY:

23 Q If we would go now to book 5, Staff Exhibit 102.

24 CHAIRMAN BECHHOEFER: What number?

25 JUDGE YOUNG: 102.

1 JUDGE COLE: Got it right here.

2 CHAIRMAN BECHHOEFER: Did you say 102?

3 MR. DAMBLY: 102.

4 BY MR. DAMBLY:

5 Q Is Exhibit 102 -- Staff Exhibit 102 purport to be
6 a performance appraisal for Wilson McArthur in the position
7 manager radiological control?

8 A That's correct.

9 Q Is there anything on there says he was acting in
10 that position?

11 A No.

12 Q In your experience in TVA, do people get
13 performance appraisals and elements and standards for jobs
14 they're not in?

15 A I'm not sure I understand your question.

16 Q Well, have you ever got an appraisal for a
17 position you didn't occupy?

18 A I've seen appraisals given to people reflecting
19 acting positions, I've received appraisals for acting
20 positions.

21 Q Does this say anything act acting on it?

22 A No, it doesn't.

23 Q Even if you got one for an acting position, it was
24 for a position you were acting in, wasn't it?

25 A That's correct.

1 Q You wouldn't get one for a position you weren't
2 either occupying or acting in, would you?

3 A I never have.

4 Q Do you know of anybody that did? Have you ever
5 given an appraisal to somebody for a job they didn't have?

6 A No.

7 Q Did Dr. McArthur ever tell you that he was not in
8 the rad con manager position?

9 A I believe, as I answered when you asked me before,
10 that he first brought that question up after we had decided
11 on the reorganization and that we would be posting the rad
12 chem manager position.

13 Q And during that conversation, he said I'm really
14 not the rad con manager, I'm the technical program manager,
15 did he tell you that?

16 A I believe, as I said earlier, he came and told me
17 that he had been in the comparable position when the
18 technical programs manager position had been eliminated and
19 then, as I discussed before, a few months later, it was
20 recreated and at that time, Sorrell had been put in it on an
21 acting basis and he just questioned why he had to compete
22 for that position because of the circumstances we discussed
23 before, his position had been eliminated and it had been re-
24 established a short time thereafter.

25 Q Do you know if McArthur competed for the radiation

1 control manager position back in '94?

2 A I do not know anything about the selection process
3 that was done in 1994 for those positions.

4 Q Have you ever heard the term abandonment of a
5 position?

6 A In all the paperwork I've read on this particular
7 subject between testimony, enforcement conferences, I seem
8 to have heard the word abandonment of a position somewhere
9 in there, but I can't tell you right now exactly the context
10 of who said it or anything.

11 Q Did you ever hear it in the context of Mr. Fiser
12 abandoned his position when he accepted the chemistry and
13 environmental position?

14 A That may have been the context in which it appears
15 somewhere, but I can't tell you where it appears.

16 Q Now did Ron Grover ever tell you before you went
17 to HR and HR came back and told you you could put McArthur
18 in the job noncompetitively, did Grover tell you he wanted
19 to compete for that job?

20 A I do not remember him coming saying that. I'd
21 remember it if he came and made it as some sort of an issue.
22 Could he have said something in passing? Perhaps. Also,
23 you'll note in this particular time period that by April of
24 1996, he had submitted a memo requesting that he be
25 considered for loan to INPO.

1 JUDGE YOUNG: For what?

2 THE WITNESS: He put in a memo requesting that he
3 be considered to be loaned to INPO.

4 BY MR. DAMBLY:

5 Q Do you know whether that was before or after he
6 found out McArthur was getting the job?

7 A All of this went on in a very compressed time
8 period. We began working on the reorganization in the
9 middle of March, he submitted that particular memo on the
10 22nd of April, but I know he orally discussed wanting to go
11 to INPO, and that's the particular conversation I recall
12 with him, as to what he would like to do, because before he
13 wrote that memo, I did some checking with the responsible
14 people in TVA Nuclear for that program, to see whether or
15 not that was a possibility and whether we had any open
16 positions. And I had given him feedback that yes, there was
17 an open position if he wanted to pursue that.

18 Q Now when HR came back and told you you didn't have
19 to advertise, you could put McArthur in the job, did you
20 raise any questions about well, now I have two PG-11
21 managers, one's an African-American, one's not and I'm going
22 to put the white male in the job without competition. Did
23 you raise any questions is there an EEO implication, is
24 there a problem here?

25 A Again, when HR came back with the answer, they

1 basically told me that I had to put McArthur in the
2 position, so that there weren't any alternatives to consider
3 could I put someone else in the position, was there some
4 other qualified candidate who for some reason we would want
5 to put in the position really was not a relevant question at
6 the time, because my understanding was I had no -- there was
7 no choice, McArthur had to go in the position.

8 Q My question was when they said well, McArthur's
9 got rights to the position, you said well, wait a minute,
10 shouldn't we be a little concerned here, am I going to need
11 okays, am I going to get something filed? We have two people
12 on the same level and we're stopping a black male from a
13 shot at the promotion. You didn't raise that and say are
14 you sure I don't have to consider Grover?

15 A Once again, my understanding was there was not a
16 vacant position. It would be no different from saying --
17 are you suggesting that if there was a position that I
18 should consider in essence violating HR rules just because
19 there's a minority available who might be someone who could
20 bump a white male out of the position?

21 Q Well, in the first place, I think if you looked at
22 policy 152, it says you can avoid following HR rules and get
23 waivers for minorities, so I think that was part of the
24 policy, but beyond that, you keep saying there's no vacancy
25 and we just talked about McArthur was not in that job. We

1 just looked at performance appraisals, we will have
2 testimony from Reynolds, Boyles that he was officially
3 appointed to the radiological control manager position and
4 you're telling me there was no vacancy for a position that
5 he wasn't in?

6 MR. MARQUAND: I'm going to object. Is there a
7 question or is that just an argument or statement by
8 counsel?

9 MR. DAMBLY: That was a question.

10 BY MR. DAMBLY:

11 Q Are you telling me that Sorrell's position was not
12 vacant?

13 A Since HR's determination and what they told me was
14 that McArthur had the rights to it and should have been in
15 it, my understanding was then it was not a vacant position.

16 Q Do you have any EEO goals or performance
17 objectives in your performance plan for your position?

18 A The typical way that has been covered in TVA in
19 recent years has been at an organizational level with
20 meeting certain hiring goals with women, minorities, other
21 under-represented classes. Any of those goals are based
22 upon using qualified candidates. You are, it appears in
23 this argument, making the assumption that Mr. Grover was a
24 qualified candidate. That's questionable.

25 Q And you base that on what?

1 A Mr. Grover's commercial nuclear power background
2 was entirely at TVA and another utility in a corporate
3 chemistry position. One of the qualification requirements
4 of that rad chem manager position was the ability to take
5 over and run the rad chem department at a site. I would say
6 it was questionable as to whether he met that requirement.
7 I can tell you now he definitely did not but it wasn't at
8 all clear that he was qualified for the position.

9 I'd rather just bring it out now because you seem
10 to be telling me that I should have considered him for the
11 position despite what I was told by HR that I had to do just
12 because he was a minority. Any position relative to
13 minorities is also intended to apply to people who are well
14 qualified for the position in question. There'd be a lot of
15 things that would have to be considered, just not the color
16 of his skin.

17 But to go back in this particular question, my
18 understanding was that HR had told me I had no choice, the
19 position was McArthur's. So any other optional
20 considerations really weren't relevant.

21 Q At the time that you made the decision to put Dr.
22 McArthur in that position and before -- I guess certainly
23 not before Dr. McArthur wrote the PD, but have you seen the
24 PD he wrote for that position subsequent to his being put in
25 it? I showed it to you earlier.

1 A Yes.

2 Q Did you review that and make a determination as to
3 whether or not Mr. Grover was qualified for the position?

4 A As I mentioned to you, HR told me he had to be in
5 the position. You said after I made the decision to put
6 McArthur in the position. HR made the decision to put HR
7 (sic) in there and I felt I had no option other than to do
8 that.

9 Q HR just gave you something that said here is a we
10 call it Standard Form 50, I don't know what you do, but
11 anyway we have placed Wilson McArthur in that job, there's
12 nothing you can do about it, he's got it, it's his. That's
13 what they told you? They made the appointment.

14 A We discussed earlier what HR told me. What HR
15 told me was totally consistent with my understanding of the
16 rules. If HR tried to tell me to do something that I
17 thought was in violation of our rules, I certainly would
18 have the ability to appeal that to higher levels, but as
19 I've mentioned to you several times this morning, what they
20 came back and told me was consistent with my understanding
21 of the requirements, so I had no reason to appeal that
22 decision to higher levels.

23 Q And your understanding of the requirements was
24 based on an incident that you were involved in several years
25 before that?

1 A Several years ago with direct advice coming from
2 an HR manager who also at that time was the supervisor of
3 Mr. Boyles, and this particular thing I understood had also
4 been reviewed with her at that time. So it was not
5 surprising to me that I got back -- that the answer that
6 came back was consistent with what that HR manager had told
7 me a couple of years before.

8 Q And do you know who Ben Easley is?

9 A Yes.

10 Q And who was Ben Easley or is Ben Easley -- what
11 position did he occupy back then?

12 A Ben Easley worked for Ed Boyles and he was a human
13 resources consultant who worked on operations supporting my
14 organization.

15 Q And when you say human resources consultant, you
16 don't mean an outside consultant, you mean --

17 A No, that was the title of his job.

18 Q Right. Did Mr. Easley tell you that you needed to
19 compete the rad con chemistry manager position?

20 A No, he did not.

21 Q He never told you that?

22 A That is correct, he never did. If I may add to
23 that, if he had come to me and given me a different answer
24 than Ed Boyles had given me, I would certainly have raised
25 that up another level of management in HR to get resolution.

1 So I'm sure he did not come and tell me that.

2 Q Okay, turning to the chemistry positions that
3 resulted from the '96 reorg, how did you determine those
4 positions should be advertised rather than following normal
5 reduction in force procedures?

6 A I did not make that determination. HR reviewed
7 those position descriptions and decided that they needed to
8 be advertised.

9 Q Did you have any involvement in that process at
10 all?

11 A No, other than they brought the results and told
12 me that and I agreed and it's the same thing they -- in
13 fact, that was their original position on all of the
14 positions within operations support. And at the same time,
15 there were reorganizations ongoing in other corporate
16 nuclear areas and they were also reviewing all those
17 position descriptions so I assume they were all reviewed on
18 a comparable basis.

19 Q Do you know who amongst Chandra, Fiser and Harvey
20 had seniority?

21 A I did not know at that time. A couple of days
22 ago, I saw a retention register that said Fiser had it, but
23 I did not know in 1996.

24 Q And during the time you were in the acting
25 operations I guess support manager position back in '96, did

1 you know -- did you review appraisals for Fiser and Harvey?

2 A The appraisals for those people would have been
3 done by Grover. Our requirement is the appraisals are
4 approved by one supervisory level next up. What I'm really
5 not positive for 1995 and the time period of transition with
6 Mr. Moody, there were a number of those things where he was
7 still performing that function. I'm not really sure -- I
8 really don't remember whether I reviewed their fiscal year
9 1995 performance appraisals or not.

10 Q Are you aware that Mr. Fiser got better appraisals
11 from Mr. Grover than Mr. Harvey did?

12 A I read that somewhere in all the paperwork related
13 to this case.

14 Q Do you know the requirements for how it's
15 determined whether a job has to be posted or whether it's
16 subject to rollover in a RIF?

17 JUDGE YOUNG: Rollover in a...

18 MR. DAMBLY: Reduction in force, RIF.

19 JUDGE YOUNG: RIF. Okay.

20 BY THE WITNESS:

21 A The detailed requirements I do not know. I would
22 comment on two things. I believe our HR people discussed at
23 the enforcement conference that, given the services
24 organization that TVA had set up, that this technically did
25 not meet the requirements for a RIF, and I can't comment on

1 whether rollover requirements that I'm not familiar with
2 would or would not apply.

3 What I do know is that when these cases -- in --
4 in the positions throughout operations support, not just
5 chemistry, in looking at the new position descriptions, the
6 process HR used was to look at the functions of the
7 positions. The incumbents who were in that position were
8 not -- were irrelevant topic in reviewing the position
9 descriptions and making -- making a decision on whether or
10 not it would require reposting.

11 Q Well, did you have any involvement with HR at all
12 about, you know, you made a decision that based on what the
13 jobs are different, why were they different? What'd they
14 tell you they were different because of?

15 A There were many positions within operations
16 support, and I did not go down and review any of them to
17 second-guess HR's, as they told me they all needed them.
18 The one I raised a question on was the steam generator
19 technology manager. The reason I raised that question
20 really had nothing to do with the position description, but
21 rather that it was very well known that we had one
22 individual in the company who was a recognized national
23 expert in that area, who clearly was the only qualified
24 candidate we had for it. And did we need to go through the
25 administrative effort of posting in order to fill that

1 position. And they told me yes, I had to. That we had to
2 do that. So we went ahead and posted that position. And,
3 interestingly enough, only one person applied on it.

4 CHAIRMAN BECHHOEFER: Same person?

5 THE WITNESS: Same person.

6 BY MR. DAMBLY:

7 Q What -- what knowledge did you have of the duties
8 that Fiser, Harvey, and Chandra were performing before the
9 reorg?

10 A Very little. My way of doing the business was to
11 deal through the managers. I just knew in general that they
12 were providing chemistry support to the sites, and which
13 sites they were giving primary support to. I also knew that
14 Mr. Harvey was part of the steam generator team who worked
15 steam generator inspection and chemical cleaning outages.
16 But the -- the day-to-day work that they were doing I did
17 not get involved in.

18 Q Did anybody tell you they were performing any
19 significant environmental duties?

20 A I don't know whether they were or they weren't.

21 Q All your interactions and all your knowledge had
22 to do with them performing chemistry functions?

23 A I was aware they were supporting the sites. I did
24 not get into the details of exactly what they did in
25 supporting the sites, because they were -- I believe the

1 chemical -- chemistry and environmental groups were together
2 at the sites.

3 Q Are you aware of the rules and procedures in TVA
4 that -- that govern how one determines which jobs get posted
5 and which jobs employees can roll over to in a RIF, in a
6 reduction in force situation?

7 A I think you just asked me that a few minutes ago.
8 Told you I do not know all the details of those. Those are
9 HR's requirements, and -- and anytime that I get involved in
10 any sort of situation like that, rely heavily on HR to tell
11 me what the requirements are.

12 Q But, I mean, do you even know where they're
13 located? Have you ever read them?

14 A I have not read the detailed HR procedures.

15 Q Do you have any knowledge whether the position
16 descriptions for Fiser, Harvey, and Chandra were up-to-date
17 and accurate as of the time of the reorganization?

18 A As you showed me here, they had been issued in
19 1994. I had no reason to believe that they were inaccurate,
20 but I had not done a review of them.

21 Q You indicated you knew which sites those three
22 individuals---Fiser, Harvey, and Chandra---were supporting.
23 Which sites were they supporting, primarily?

24 A Chandra primarily supported Browns Ferry; Harvey
25 primarily supported Sequoyah; and Fiser primarily supported

1 Watts Bar. I do emphasize "primarily," because they did all
2 -- do some work for all the sites.

3 Q And before you posted the position, before the
4 positions were posted, were you informed that Mr. Fiser
5 would file a DOL complaint if the positions were posted?

6 A In about June of 1996, after we had said we were
7 going to post them but they had not yet been posted, Mr.
8 Fiser went to the HR, I believe to Mr. Easley and Mr.
9 Boyles, and, as I understand, stated to them that he felt
10 that posting these would be in violation of the settlement
11 of a prior DOL case. And that if we posted the positions,
12 he would file a DOL complaint.

13 Q Okay. And what did you do when you learned about
14 that?

15 A And when I learned, that was the first I had ever
16 learned that he had ever submitted a DOL complaint in the
17 past. When I did, and Mr. Boyles reported that to me, we
18 decided that we needed to have the labor relations group in
19 HR who deals with DOL matters, and also the Office of the
20 General Counsel, who's involved in a review of the
21 situation, review the prior agreement, because the initial
22 reaction is we certainly did not want to take any action
23 whatsoever that would be contrary to the prior settlement
24 agreement.

25 Q And what result did you get back from asking that

1 question?

2 A The result that I got back was that by posting
3 that position, we were not in any way violating the prior
4 settlement agreement.

5 Q And what position had Mr. Fiser been given as a
6 result of the '94 settlement?

7 A I don't know. I mean, I did not know at that
8 time. Subsequently, from reading things, I mean, there was
9 a chemistry position that he was given. But at that time I
10 did not -- you know, it is not -- it is not our policy to
11 widely disseminate DOL complaints or settlement agreements,
12 and I did not have access to those at that time.

13 Q Well, at the time they told you, did you
14 understand that Mr. Fiser was saying, "The position you're
15 about to post is the same one they gave me in '94"?

16 A I understood that what he was saying, that by
17 posting it, was considered to violate his settlement
18 agreement.

19 Q And you had just been through with McArthur a
20 situation where he said, "I was in this job, and then I
21 moved out of this job, and then they recreated it." And you
22 were told he had rights to it. Now Mr. Fiser comes, says,
23 "I got rights to this job from a settlement agreement and
24 then they changed it and now they're changing it back," and
25 you didn't say, "Well, how come we don't treat them the

1 same"? Or you just got the answer you wanted?

2 A The circumstances were different.

3 Q Why? Because HR gave you a different answer?

4 A No. Because my understanding of what the -- the
5 ones on McArthur, as -- as I explained to you before, was an
6 incorrect assumption on my part, but I thought that was
7 coming from having recreated essentially the identical
8 position within a few months of having eliminated it, and
9 dropped him out of it. That was not an applicable question
10 to Fiser. That was a very specific reason as to why
11 McArthur's had rights (sic) to that position. Now, we said
12 I subsequently learned they actually made that decision on a
13 different basis, but I didn't know that at that time.

14 As far as Fiser's one, what I knew at the time was
15 he had said it was in violation of his settlement agreement.
16 Now, in referring...

17 Q Didn't he say it goes -- didn't -- didn't
18 Boyles...

19 MR. MARQUAND: Objection. Can the witness
20 complete his answer.

21 MR. DAMBLY: Sure he may.

22 CHAIRMAN BECHHOEFER: Say it again, please. You
23 can complete your answer.

24 THE WITNESS: Yeah.

25 BY THE WITNESS:

1 A Mr. Boyles had referred that question to the
2 department of -- the labor relations people in HR who were
3 the experts in this area, who had also been consulted with
4 the Office of the General Counsel, who, when I felt that I
5 got the answer back, since I was not privy to the details of
6 the prior settlement, that given the level of review it got,
7 it was a very reasonable answer that had been looked at at
8 the appropriate -- by the appropriate people within TVA.

9 Q Okay. Now, I'm asking a different question. When
10 Boyles -- who was it told you about Fiser was going to file
11 a DOL?

12 A Boyles.

13 Q Did Boyles tell you that Fiser said, "This is the
14 same -- your about to post the same position that I got in
15 the '94 settlement, and if you post it, I'm going to file a
16 DOL complaint." Is that what he told you?

17 A What I remember is him telling me that -- that
18 Fiser was concerned about it violating his settlement
19 agreement. That's what I remember right now.

20 Q And so you got an answer, does this violate his
21 settlement agreement. And you -- that's the question you
22 asked, and you got an answer that said no; is that correct?

23 A That's correct. And the answer we got is that we
24 could go ahead and post the positions.

25 Q And did you ever say, "Well, is the position he

1 got in '94 the same position we're posting now or similar?"

2 A I don't think so. I...

3 Q It never occurred to you there were any parallels
4 between the McArthur situation and the Fiser situation?

5 A In this particular area of the DOL related things,
6 I relied upon the company's experts to advise me as to what
7 actions to take. And, as we continued through the selection
8 on this, we kept those experts involved in the process on
9 the chemistry one to insure that we continued to comply,
10 that we didn't do anything that violated either prior
11 agreements or the intent of any of the DOL related
12 requirements.

13 Q And, again, I didn't ask you about the DOL
14 requirements. I'm asking you about didn't you notice any
15 parallel between Fiser saying, "I had the job. They
16 eliminated it, put it back, and you're going to post it,"
17 and McArthur saying, "I had the job. They eliminated it.
18 They came back. And I don't have to post that one." That
19 didn't at all cross your mind? Forget DOL. Just as
20 personnel policy practice, they're both making the same
21 claim. Why was one different in your mind?

22 A They were different, as I explained to you.
23 McArthur's one, I understood what I thought was the reason
24 why he had the rights to the job. In the case of the DOL
25 one, and not knowing the details of what went into the

1 settlement, everything else, I relied upon the advice I got
2 from the company experts. And those -- the actions we
3 continued with were based upon those decisions made by human
4 resources and the Office of the General Counsel.

5 JUDGE YOUNG: So you -- just so -- just so I can
6 understand you, you're saying that you did not understand
7 the basis of the DOL -- or, I'm sorry, you did not
8 understand that the basis of Mr. Fiser's referring back to
9 the DOL complaint had to do with a job that he had been
10 given as a result of that settlement?

11 THE WITNESS: I eventually learned that, but I'm
12 not sure when I learned that down -- down the line, with all
13 these -- as much testimony and stuff has gone on in this, I
14 know right now...

15 JUDGE YOUNG: When all the discussions were going
16 on back at the time -- I'm not sure what you're saying. I'm
17 not sure whether you're saying...

18 THE WITNESS: I think the -- my -- in thinking
19 back, what I was told, the first question that I really
20 asked is: Are we violating the settlement? And I was told
21 -- by posting these positions. And so the answer to that
22 was: No, we can go ahead and post the positions. I...

23 JUDGE YOUNG: What I'm trying to understand and
24 get clarified from you is during the course of those
25 communications, you were told, no, we can go ahead and post

1 the position, you had no knowledge of the basis of -- of the
2 complaint that was essentially being made by Mr. Fiser,
3 being related to the nature of the job he had before,
4 compared to the nature of the job that was now at issue, or
5 that was then at issue?

6 THE WITNESS: What I can most honestly tell you is
7 I don't remember exactly when I learned that. And if we
8 look at it, if I could bring up for you an analogous
9 position, when I talked about the steam generator manager
10 position...

11 JUDGE YOUNG: Well, let's -- just for a second, I
12 want -- I really want to try to understand this, because
13 this seems to be fairly critical. You don't remember when
14 you understood it. What I'm trying to understand is are you
15 saying that you did not understand it when all the
16 conversations were taking place about it? I'm just not
17 clear on that from what you're saying.

18 THE WITNESS: When I understood that was the
19 issue, I also understood it was not the same as the McArthur
20 issue. And...

21 JUDGE YOUNG: But I'm -- I'm not sure I'm
22 understanding you.

23 THE WITNESS: Well, in my mind the McArthur issue
24 was related very specifically to the timing of the situation
25 where a position he had been in had been eliminated, and

1 then shortly thereafter recreated. That -- that to me was
2 the issue with McArthur.

3 The question of was a person previously in a
4 similar position, the only discussion I had with -- with HR
5 -- the reason I bring up the steam generator manager, I've
6 said along that line that, you know, we only had one
7 qualified person. Are we going through this? I also
8 remember in the conversation saying, "But he previously held
9 this job," to which HR told me, "But that's of no
10 relevance." So I -- in a question at the point at which I
11 understood he said he would file the DOL if we -- complaint
12 because you had previously given me -- I previously held
13 this position, in my mind that was very much analogous to
14 the steam generator manager one, where we had an individual
15 who had previously held that position and then had been
16 promoted to additional responsibilities. And in my mind,
17 that was the analogous situation. The McArthur situation
18 was very different. Said the McArthur one, in my mind, was
19 a questioning of timing of eliminating the position and then
20 recreating the position.

21 JUDGE YOUNG: Thank you.

22 BY MR. DAMBLY:

23 Q Okay. Since you brought that up, if I just
24 understood you correctly, I think you were talking about Mr.
25 Goetcheus?

1 A Yes.

2 Q You said that earlier you'd been told by HR that
3 if he held the position previously, and then just because
4 later that position came back, you -- it didn't mean
5 anything, he didn't have any rights to it. And somehow
6 that's consistent with them saying for McArthur, he held the
7 job previously, and then when it was recreated, he had
8 rights to it?

9 A And my understanding of that, as we've discussed
10 before, was a question of timing. The position was
11 eliminated and then, within a few months, was recreated. We
12 take the question of the steam generator job, it would have
13 been -- I know in that case it was several years later. In
14 the case of the chemistry one and the position that was
15 previously held by Mr. Fiser, after the -- as part of the
16 settlement -- now, I've never reviewed the position
17 description of that one, so I can't tell you whether it was
18 or wasn't the same job we were creating. But in any case,
19 like, two years had intervened. We weren't talking about a
20 few months.

21 Q Well, and in the McArthur case, two years had
22 intervened also, hadn't it?

23 A No.

24 Q Really?

25 A The relative timing was when the action was taken

1 it -- now, in my mind. Again, I'm telling you what my
2 understanding was based on the old case, but you're asking
3 me what I was thinking. The relative timing was from when
4 his position had been abolished until it was recreated. His
5 position was abolished sometime in the second half of 1994,
6 and his new position was created shortly thereafter.

7 Q And -- and somebody told you that if that was, in
8 fact, the case, that you didn't have to exercise your rights
9 at that point, you could just wait around till you felt like
10 it was convenient?

11 A I never discussed that aspect of it with anyone.

12 Q Well, did you question it?

13 A No.

14 Q You mentioned earlier that...

15 MR. DAMBLY: Well, actually, I'm going to go into
16 a whole 'nother area now. Would you -- be appropriate to
17 break lunch?

18 CHAIRMAN BECHHOEFER: Well, we could have our
19 lunch break now. I think this would be an appropriate time
20 to break, so approximately an hour.

21 MR. DAMBLY: An hour's fine, Your Honor.

22 CHAIRMAN BECHHOEFER: It's 12:00. We'll be back
23 at 1:00.

24 (Whereupon, a lunch recess was taken at 12:01
25 p.m., the hearing to resume at 1:00 p.m.)

1 CHAIRMAN BECHHOEFER: Are you all ready?

2 BY MR. DAMBLY:

3 Q Okay. Mr. McGrath, prior to the posting of
4 chemistry positions back in '96 during the reorg, do you
5 recall any -- an issue concerning Mr. Harvey going to
6 Sequoyah?

7 A I recall that there was a question about that;
8 yes.

9 Q What do you remember?

10 A I had talked with Mr. Grover, as I understood that
11 he was involved in some consideration of moving Mr. Harvey
12 to Sequoyah. As I -- as I recall from his enforcement
13 conference testimony by Mr. Kent, that request was initiated
14 by Mr. Grover. But in considering moving someone from
15 corporate to a site, first, if Sequoyah or any of the other
16 sites had filled a vacant position and had selected any
17 member of the chemistry staff for that position, we would
18 have released that individual to the site to fill that job.

19 This particular case that was asked about was a
20 transfer of function. And a transfer of function created
21 some problems. First, the one position description that
22 existed in corporate, the one we've referred to before as
23 the generic position description, had -- there were three
24 individuals filling that position. My understanding of the
25 HR requirements, there is no way to take one of those three

1 people and move that position, change that function to
2 another function. That -- because they are in a position
3 description which says they have this certain set of duties,
4 and these are duties to be performed in corporate.

5 Moving such an item, the types of problems it
6 would have created, one, that would have required changing
7 the position description. As soon as we changed the
8 position description, you're now talking about probably
9 having to advertise the position because it is no longer a
10 corporate function, it would be a site function, and you're
11 just back to if the site had a position they could have
12 filled the vacancy.

13 The -- the other problems it would have had would
14 have been like the transfer of three people, was far beyond
15 my authority to transfer all -- the functions to all of the
16 sites, because that involved transferring budget, that
17 involved transferring head count, and by my understanding,
18 we would have had to have moved all of the positions. You
19 could not have just selectively said send Mr. Harvey or any
20 other individual just to Sequoyah.

21 In my mind at the time there was a third problem,
22 and that was to selectively pick any one of the people who
23 were -- who I knew their current job was going away, and
24 just placing them in another position, would have, in
25 effect, been a question of preselection to protect that

1 person from losing their job, while the remaining people
2 would be required to compete for the jobs. It's important
3 to recognize here that the decision that was made by HR to
4 post the two corporate positions was based upon the duties
5 of the position, not the number of people in corporate, not
6 the qualifications of people in corporate. They were two
7 positions. There were many people within the company who
8 would be qualified to fill those positions. It's very
9 possible that one of those could have been filled. If one
10 of those qualified people at the site had elected to apply
11 on it, one of those people might have been selected to one
12 of those new corporate positions.

13 So, basically, the situation was there was not any
14 way that you could just transfer the -- a function, which
15 was filled by multiple people, and just designate one of
16 those people and just move it to a site. Additionally, as I
17 said, it was -- would be beyond my authority to move them
18 all, but also, based on the review we did, it would be wrong
19 to transfer all the corporate chemistry positions to the
20 site, because I felt we needed to maintain corporate
21 chemistry functions.

22 Q And that -- back at the time, do you recall that
23 Mr. Kent and I think Mr. Rich expressed interest in having
24 Harvey come to the site?

25 A Either...

1 JUDGE YOUNG: Have what?

2 MR. DAMBLY: Pardon?

3 JUDGE YOUNG: In having what?

4 MR. DAMBLY: Mr. Harvey come to the site, take a
5 position at the site.

6 BY THE WITNESS:

7 A Neither Mr. Kent and -- Mr. Kent was the rad con
8 and chemistry manager at Sequoyah, or Mr. Rich, who was the
9 chemistry manager at Sequoyah at the time, ever talk to me
10 about this topic. Neither one of them expressed any
11 interest to me. I believe at the enforcement conference Mr.
12 Kent said that this transfer had been suggested by Mr.
13 Grover.

14 Q Okay. Do you know if Mr. Kent had a vacancy in
15 '96 out at Sequoyah?

16 A At the time that I was making the decision,
17 talking to Mr. Grover, that wasn't relevant. If there was a
18 vacancy, that was a different position and -- and he could
19 advertise it. Subsequently, like in preparations for the
20 enforcement conference, I learned that he did not have a
21 vacancy.

22 Q And who did you learn that from?

23 A I'm not sure. I know it came up during some of
24 the meetings we had preparing for the enforcement
25 conference. I can't tell you exactly who said that.

1 Q Is this the same time frame in which you learned
2 that the -- the rationale for the McArthur non-competitive
3 selection was different than what you had understood in '96?

4 A Probably.

5 CHAIRMAN BECHHOEFER: Mr. McGrath, could you
6 clarify one thing. Maybe it's apparent. But when you talk
7 about a site position, is that position located on the site
8 of the particular reactor, or is it just another office in
9 Chattanooga giving directions to a site? I mean, does a
10 person actually move or not?

11 THE WITNESS: Yes. In -- in our organization a
12 site position means one that is physically located at the
13 site of that reactor.

14 CHAIRMAN BECHHOEFER: Thank you.

15 BY MR. DAMBLY:

16 Q And, just so it's clear, as a corporate manager,
17 you had no personnel authority whatsoever over personnel
18 actions and decisions at Sequoyah or any of the other sites?

19 A That is correct.

20 Q That the sites report independent of your
21 organization?

22 A That's correct. The site vice presidents report
23 independently up through a vice president of operations.

24 Q Did -- did you ever tell Mr. Grover, in the
25 consideration about Mr. Harvey and possibly him going to

1 Sequoyah, that you wanted to keep Mr. Harvey's expertise in
2 headquarters?

3 A In the conversation that we had about Mr. Harvey
4 going to Sequoyah, I know that I made the point, because I
5 -- as I explained to you here, that if -- to move people to
6 Sequoyah would mean not just Sequoyah, the -- the only
7 possible way, if approval could have been obtained, would be
8 to move all the chemistry functions to the sites. That we
9 needed to maintain the chemistry expertise in corporate.

10 Q Okay. You don't recall ever making any statement
11 that you wanted Mr. Harvey to remain in corporate?

12 A I recall making the statement that I just said to
13 you.

14 Q Now, earlier, as long as we're talking about Mr.
15 Harvey, you indicated that at some point you became aware
16 that Mr. Harvey was concerned that the position descriptions
17 written for the '96 reorg were slanted toward Fiser's
18 strengths and not his; is that correct?

19 JUDGE YOUNG: Fiser's what?

20 MR. DAMBLY: Strengths.

21 JUDGE YOUNG: Strengths and not...

22 MR. DAMBLY: Strengths and not Harvey's.

23 JUDGE YOUNG: Okay.

24 BY MR. DAMBLY:

25 Q Slanted in favor of Fiser, let's put it that way.

1 A Yes. As I answered you earlier, yes, I heard
2 that.

3 Q Okay. And you got that resolved; is that correct?

4 A That's correct. As I mentioned earlier, I asked
5 human resources to work with Mr. McArthur to resolve that.

6 Q And to your knowledge, what part did the position
7 description play in the selection process for those jobs?

8 A The position description defines the position for
9 which we are selecting individuals.

10 Q But in the selection process, itself, did anybody
11 -- to your knowledge, anybody consult that in deciding what
12 questions to develop? SRB look at it?

13 A I don't know.

14 Q Okay, tell me how you understand the selection
15 process is supposed to work at TVA.

16 A After a position has been advertised, all of the
17 applications are reviewed. This is something normally done
18 by the selecting manager with the assistance of human
19 resources. The -- a common way to do it is to set up a
20 matrix that evaluates their qualifications based on their
21 applications, against the requirements of the position
22 description.

23 Based on that, the selecting manager looks to
24 determine how many -- is there -- let's see. The selecting
25 manager reviews it to determine whether or not he needs to

1 hold interviews, and who should hold the interviews. I
2 mean, who should be interviewed. An example to say where
3 you would not hold the interviews if, based on the situation
4 -- based on the applications, there was one individual who
5 was so much more qualified than anyone else, you could make
6 that selection.

7 That review is all done in consultation with human
8 resources. What I am used to is human resources goes over
9 and checks what has been done, may perhaps recommend
10 interviewing an extra person or something like that, if they
11 felt the qualifications were fairly close.

12 So based upon that, and having ranked the
13 candidates just based upon -- based upon their applications
14 and their personal history records, the documentation on
15 them, the selecting manager decides who would go to be
16 interviewed.

17 In the interview process, I'm not aware of any
18 specific rules as to the exact -- as to the makeup of the
19 board. Normally the requesting manager asks for some
20 people. The practice varies. In nuclear, the requesting
21 manager normally is not a member of the board, although my
22 experience in other organizations there, frequently the
23 selecting manager is a member of the board. There is put
24 together a set of questions to be asked of all the
25 candidates.

1 Q By whom?

2 A By...

3 Q Who puts the questions?

4 A It's the responsibility of the selecting manager.

5 In many cases I've found that human resources would help out
6 on say a relatively standard position, perhaps a secretarial
7 position, they may have some suggested questions that might
8 typically be used on one of those type ones. But it's up to
9 the selecting manager to put together a list of questions.
10 That those questions are then provided to the members of the
11 board. The members of the board can add or delete or modify
12 questions. I've been involved in, like, one board where
13 when it came up, I ask that one change, because I didn't
14 think the candidates would understand the question.

15 And then, when the board is conducted, a typical
16 way to handle it is to have the same board member ask the
17 same question of all the candidates. The board members
18 record what they heard of the answers, give the candidates a
19 ranking on each of the questions, and then develop a -- a
20 ranking of the candidates based upon the oral board.

21 The selecting manager then takes the board
22 results, and also has the matrix they did before, and makes
23 a final selection. My experience has been that normally if
24 you have the interview, those individuals who have been
25 interviewed, their qualifications, based on their

1 application, the review of their records, are very close
2 together in their qualifications. So the manager will
3 normally pick the person who finishes first on the board,
4 but you're not required to do that. It's after that
5 selection it's reviewed and concurred in by human resources.

6
7 Q Did-- would a -- a selection that Mr. McArthur
8 made in the chemistry thing, would that require your
9 concurrence as well?

10 A In the time period was -- that I know I -- he came
11 in and informed me of it, my understanding is the current
12 procedures require approval; I believe back in that time
13 frame it was an informal approval. It was normal that
14 people would tell me who they selected and on what basis
15 they would.

16 Q With respect to the actual selection process for
17 the PWR chemistry position, what knowledge did you have of
18 it at that time? Who was on the board, how they got there,
19 what they did.

20 A Mr. McArthur had decided to interview for all five
21 of the positions in the chem and rad con organization, and
22 hold those all on the same days -- on the same day,
23 particularly because there were some individuals who had
24 applied on more than one of them. So there were five
25 positions being interviewed for that day; two rad con

1 positions, two chemistry positions, and the rad waste
2 environmental position.

3 McArthur had decided to use as the review board
4 the rad chem managers from each of the sites, because he
5 felt that they had the broad technical expertise that would
6 allow them -- would make up a good board for these five
7 positions, and considering the broad view across the five
8 positions. I know that it is somewhat unusual for a
9 corporate one to have three site people. Most corporate
10 boards have one, maybe two site individuals on the boards.
11 But in this particular case, not because they were from the
12 sites, but because of the spectrum of positions being
13 interviewed that day, he felt that those individuals would
14 make up a good board. He discussed it with them. They
15 agreed to do it. And originally that was the schedule, that
16 was how he intended to do the board.

17 Q And who were those three individuals?

18 A The original three people were Charles Kent from
19 Sequoyah; John Corey from Browns Ferry; and Jack Cox from
20 Watts bar.

21 Q Okay.

22 A As we neared the time, Jack Cox removed himself
23 from the board about -- it was just a few days before the
24 board was going to be convened, because of a personal
25 schedule conflict. We decided at that time we needed to go

1 ahead with the board. We wanted to have the new
 2 organization in place by the beginning of the fiscal year,
 3 and depending on who was selected for jobs, it could take up
 4 to two months to get individuals to be released from their
 5 current job and moved in. And, additionally, given the
 6 number of positions being filled, I -- we probably would
 7 have been talking -- we didn't think it was practical in a
 8 couple of days notice to ask what was probably about 15
 9 people to change their schedules, even if we could find --
 10 even if we could find another date. So we decided it was
 11 impractical to look at -- to do that, so we selected another
 12 board member.

13 Q All right. Now, when you said it was impractical
 14 to ask 15 people, if you had rescheduled the interviews just
 15 for the PWR/BWR chemistry positions, how many people would
 16 have had a problem or been inconvenienced?

17 A I -- why would we want to treat that one
 18 differently than the others?

19 Q Well,...

20 A You ask me should I select...

21 Q ...you've already had...

22 A I don't know how many people were involved, but we
 23 were going to interview for them all.

24 Q Okay. I think you...

25 A We did not consider breaking them up.

1 Q ...I think you've testified many times today you
2 were aware that Mr. Fiser had threatened DOL complaints.
3 You went out of your way on this particular selection to
4 make sure everything was complied with and there was no
5 bias. You didn't think that going forward when a person who
6 Mr. Fiser was supporting -- the plant he's spent most of his
7 time supporting, Watts Bar, Mr. Cox wasn't there, you didn't
8 think that would raise an issue? That didn't cause you any
9 concern?

10 MR. MARQUAND: Objection. The witness has already
11 said, "Why would we do it any differently? Why would we
12 make a special consideration?" The question is was he
13 discriminated against negatively. He's not entitled to some
14 special entitlement.

15 JUDGE YOUNG: Okay, I think first of all there was
16 a question, and you answered it with a question. So maybe
17 we'd better go back to that point.

18 BY MR. DAMBLY:

19 Q My question was: You've testified you were aware
20 this was a very sensitive issue. Mr. Fiser had said he was
21 going to DOL and file a complaint. You had gone to the
22 trouble of going to general counsel's office and HR to check
23 this out. You wanted to make sure everything was fair,
24 above-board, objective, no hint, no question. The one
25 person on the board who Mr. Fiser supported, he supported

1 the Watts Bar plant, primarily, couldn't make it, and you
2 couldn't reschedule that one? That didn't cause you any
3 concern at all?

4 A Well, first off, the boards are not chosen to be a
5 popularity contest and try to staff them with people who
6 happen to be friendly with any of the particular candidates.
7 The boards...

8 Q But in this particular case, one supported one
9 plant, one supported the other plant. So each one had a
10 different plant, and you've already testified to that.

11 JUDGE YOUNG: I think we've got Mr. Marquand
12 standing up. I think we need to get away from arguing back
13 and forth. Mr. Dambly asks the questions and you answer the
14 questions and that'll probably get us back on track a little
15 bit.

16 MR. MARQUAND: Well, it was...

17 JUDGE YOUNG: And I think the question that --
18 that started this whole little interchange was: How many
19 people would have been inconvenienced by changing the
20 schedule when Mr. Cox couldn't make it on the -- on the --
21 the day that it was first scheduled. That was the question
22 that started the interchange.

23 BY THE WITNESS:

24 A When I think about the numbers of people -- the
25 number of people involved in handling all five interviews I

1 believe was approximately 15. Given board members and HR
2 support, that number could have been eight to ten just to
3 redo one of them.

4 Q Did you check with Mr. Cox, Mr. Kent, Mr. Corey to
5 see if they would have a problem coming on another date to
6 handle the chemistry positions?

7 A The approach that we took...

8 Q Answer my question, please. Did you check with
9 them?

10 A I would not have checked with them because I
11 already told you we did not -- we did not intend and
12 consider breaking them up and doing them on different days.

13 Q All right. Now, how many boards have you selected
14 or been involved with where the primary applicants each
15 supported one of the board members?

16 A You know, I have not -- I don't remember all the
17 boards I've been on, so I really can't answer that.

18 Q Well, did you ever have one where Candidate A
19 works directly with Board Member A and Candidate B works
20 directly with Board Member B and Candidate C works directly
21 with Board Member C before?

22 A Typically, like this one, you will see that, if
23 you look at the board, taking the example of Mr. Fiser, Mr.
24 Fiser had worked with both Mr. Kent and Mr. Cox; in fact,
25 had worked with Mr. Kent for many more years than Mr. Cox,

1 because Mr. Cox was a relatively recent hire to TVA. We did
2 not set up the board to try to align it to specific sites.
3 We set up the board because of the broad technical
4 expertise.

5 When the question first came up, the first thought
6 we had to replace Cox, we said, well, could we move to
7 someone else at Watts Bar who would have a similar breadth
8 of knowledge. We attempted to get the Watts Bar assistant
9 plant manager. And, but he was also not available. We then
10 decided, all right, we would now fill it with someone from
11 corporate, and we selected Mr. Rogers, who was eventually on
12 it. And, by the way, Mr. Rogers, from his prior experience
13 at both Sequoyah and Watts Bar, had also worked quite a bit
14 with Mr. Fiser.

15 Q Was Mr. Rogers in chemistry?

16 A Mr. Rogers had a broad technical background. This
17 was not a chemistry review board. This was a review board
18 to look at rad con, chemistry, rad waste, and environmental.
19 He had a background as the technical support superintendent
20 at Sequoyah where he supported all those areas technically.
21 He was also a qualified shift technical adviser, which
22 includes having to be knowledge about chemistry and
23 radiological control managers. So he had the kind of broad
24 technical background that we felt that was appropriate for
25 being on a board for all five positions.

1 Q At the -- at the time of this selection, as I
2 think you've testified, Mr. Harvey was primarily supporting
3 Sequoyah; is that correct?

4 A That's correct.

5 Q And Mr. Chandra was primarily supporting Browns
6 Ferry?

7 A That's correct.

8 Q And Mr. Fiser was primarily supporting Watts Bar?

9 A That's correct.

10 Q And -- and it didn't bother you that in a
11 potential DOL complaint situation, that you were going to
12 eliminate the one person that Mr. Fiser was working directly
13 with from that board?

14 A As I told you, our boards were not set up as
15 popularity contests. The boards were set up to review the
16 technical competence of the people for the job. The
17 questioning was along that line. And where exactly which of
18 our sites or something the makeup -- the board members came
19 from, I didn't see how that was relevant.

20 Q Well, did you have any concerns on appearance,
21 since you were concerned about a DOL complaint?

22 A We...

23 JUDGE YOUNG: Start by answering yes or no, and
24 then explain.

25 A Okay. No, my concern was that we maintain a

1 competent board, and that the best way to go about holding
2 such a board would be to insure that we had competent
3 members on it, so that we could make a fair decision. Not
4 that we had a board that appeared to be appropriate, but may
5 not have been appropriate.

6 Q Well, you're not suggesting that the board with
7 Mr. Cox on it was not appropriate, because that was the
8 first selection that was made, wasn't it?

9 A Oh, but you seem to be still suggesting that
10 perhaps I should just go and pick anybody from Watts Bar and
11 put them on it so I could have someone from each site.

12 Q No, I'm suggesting you could have reconvened the
13 board. What stopped you from doing that with the original
14 members present?

15 A Our concern at the time was our needs to meet what
16 the schedule were, to have new organization in place prior
17 to the beginning of the next fiscal year, and our experience
18 that once you hold a board it can frequently take up to two
19 months in order to get the necessary personnel moves to fill
20 the positions. And at this time I believe we were in about
21 the 18th of July already, so we only had about two months
22 remaining.

23 CHAIRMAN BECHHOEFER: I didn't hear that. What?
24 Dates?

25 THE WITNESS: The date was that we -- the

1 interview panel had been scheduled for the 18th of July, and
2 we had to have the new organization in place by the end of
3 September. So we were down to about all we had left was the
4 two months' time that it would take to -- could take up to
5 two months to get positions filled.

6 BY MR. DAMBLY:

7 Q And did you attempt to reschedule at all for the
8 following day, the following week? Did you ask Mr. Cox,
9 "Well, what day could you make it?"

10 A I've already told you, we did not attempt to
11 reschedule it. Perhaps Mr. McArthur saw it as he had to in
12 order to even be able to get these people -- the original
13 board members in, was to schedule it coincidence with the
14 day of a rad chem manager's pure team meeting. The next one
15 of those meetings would not be for another month. And he,
16 in order to get them on the first date, had to schedule it
17 on the same day as one of those meetings where he could get
18 to where even two of them could be in Chattanooga on the
19 same day.

20 Q Did Mr. Easley tell you that you should reschedule
21 so Mr. Cox could be present?

22 A No, he did not.

23 Q Are you familiar with TVA business process, I
24 guess it is, BP-102?

25 A I believe it's a business practice that relates to

1 -- it's in the human resource area back in nuclear. As I've
2 been out of nuclear for quite a few years, I don't remember
3 exactly what it says now.

4 Q Okay.

5 MR. DAMBLY: We're going to the joint exhibits.
6 This is Joint Exhibit 63.

7 JUDGE COLE: Is that Book 4?

8 JUDGE YOUNG: Joint. It'd be joint.

9 JUDGE COLE: A joint exhibit.

10 JUDGE YOUNG: It's the one that the staff gave us.
11 The book that the staff gave us of the joint exhibits. This
12 is the regulations?

13 MR. DAMBLY: It says, "Management and Specialist
14 Selection Process" at the top. Joint Exhibit 63.

15 JUDGE YOUNG: Oh, 63?

16 MR. DAMBLY: 63.

17 JUDGE YOUNG: Oh, I thought you said 62. Okay,
18 thanks.

19 JUDGE COLE: What number?

20 CHAIRMAN BECHHOEFER: 63.

21 MR. DAMBLY: 63.

22 BY MR. DAMBLY:

23 Q Mr. McGrath, are you familiar with this document?

24 A Yes, I -- I know it exists and where I can find
25 it.

1 Q Back at the time of the '96 reorganization were
2 you familiar with it?

3 A Again, I was familiar with the existence of it and
4 knew where to go find it if I needed to look up anything
5 from it.

6 Q Okay. And just the "approved" up at the top
7 there, the signature, who is that?

8 A It's Phil Reynolds.

9 Q What was his position, do you recall?

10 A I believe he was in charge of nuclear human
11 resources at the time.

12 Q All right. And to the best of your knowledge,
13 were these procedures complied with in the selection process
14 for the PWR chemistry position in '96?

15 A Just looking over it, to the best of my knowledge,
16 they were. I was not involved in every little detail of
17 reviewing spreadsheets and everything. But to the best of
18 my knowledge, these all were complied with.

19 Q Were you aware at the time that Mr. McArthur -- in
20 fact, I think you testified earlier just -- he took the --
21 the recommendation from the board and used that exclusively
22 in reaching a decision?

23 A Mr. McArthur first would have had to have gone
24 through the reviews in order to determine who would be
25 interviewed. My understanding is more people applied than

1 were selected for interview. So the reviews of the other
2 items on here under this category Paragraph 3.2 that talks
3 to screening candidates, he obviously had to have gone
4 through that process in order to determine who was to be
5 selected to be interviewed.

6 If, based on that process, he concluded that the
7 three people had roughly comparable qualifications, at that
8 point the remaining open item would be the results of the
9 selection review board. So at that point in time, for him
10 to make the final decision based on the board having already
11 done the screening before, it would be appropriate.

12 Q All right. Now, if you would look at 3.4 on the
13 second page and 3.4-B.

14 JUDGE YOUNG: "B"?

15 MR. DAMBLY: Yes, 3.4-B. "A" just says
16 interviewers give feedback to the selecting official. "B:
17 The final candidate is selected by the immediate supervisor
18 based on information contained in the personnel history
19 record, interview assessment results, a thorough review of
20 the qualifications of candidates to compare with the
21 requirements of the position, input from upper level
22 management involved in the process, information obtained
23 from references, and affirmative employment considerations."
24 And, as a matter of fact, C says, "The immediate supervisor
25 of the vacant position conducts reference checks."

1 Did Mr. McArthur do all that?

2 A You'll have to ask Mr. McArthur exactly what he
3 did. The point that I was making for you is a large part of
4 those items related to all of the records is typically done
5 during the screening process, and would have been done -- my
6 practice that I've always used is to review those before
7 making the decision on the interview.

8 Q Did you or did Mr. McArthur obtain input from
9 upper level management, which would have been you, in making
10 the decision?

11 A Input from upper level management, says upper
12 level management involved in the process. I was not
13 involved...

14 Q Well, this was your organization, wasn't it?

15 A It was my organization but...

16 Q And your reorganization?

17 JUDGE YOUNG: Did he obtain...

18 A Yes.

19 JUDGE YOUNG: ...input from you?

20 THE WITNESS: At the -- after he made the -- after
21 he took the results of the board, and prior to officially
22 selecting that through HR, he came and told me what
23 selections he was planning to make and the basis on which he
24 was making them, which was based upon what he had received
25 from the board. So you'll say yes, he got upper level

1 management input, in that he informed me of what it was,
2 what his -- what actions he was going to take, which
3 certainly gave me the opportunity to object to that if I
4 felt that was appropriate.

5 Q And did he talk to you before the selection,
6 before he came up with, "Here's the results and this is what
7 I'm going to do about this selection process for this
8 position?

9 Let me make it -- did he ask you who you felt were
10 the better candidates?

11 A No, he did not. And I don't think that would be
12 appropriate because I did not have the qualification
13 packages, I was not a member of the board. This is not
14 intended to mean that you're supposed to go up and ask upper
15 level management who they think is best qualified for the
16 position. I do not believe at all that that is the intent
17 of this particular requirement. In fact, the entire -- the
18 process that was put in place on -- on this business
19 practice with the board and everything, one of its key
20 considerations was to eliminate the possibility of just one
21 manager sitting there and just picking someone. Perhaps
22 that's -- they like better. And it's -- that's what I'm
23 saying, these words are not intended to be, "Go to your boss
24 and see who he thinks you ought to pick."

25 Q Okay. And how does this prevent that from

1 happening?

2 A BY going through this entire practice, documenting
3 all these items that happened is -- when you go to make the
4 selection and go back to human resources, they look at and
5 review the basis on which you make that decision. And the
6 basis on that decision is not only the spreadsheet that's
7 talked through here, and it talks about the qualifications
8 of various people, but is also the results of the selection
9 review board. And as you're aware, human resources attends
10 all those selection panels, so they're -- they are aware of
11 what the outcome of that board is -- is, as well. They know
12 that what's reported from the board is accurate, since they
13 attended the -- the actual board. So this provides a check
14 and balance here to say that, yes, the selections are being
15 made in accordance with the requirements.

16 Q Now, you said they know what's reported from the
17 board is accurate because they attend the boards? Is that
18 correct?

19 A Yes. In fact, human resources is normally the one
20 that -- human resources is the one who normally collects all
21 the scores, pulls -- accumulates the scores from the
22 different board members, and comes up with the ranking of
23 the candidates based on those scores.

24 Q Okay. But the accuracy of the scores, I mean,
25 they physically are aware of what numbers was put down on a

1 piece of paper by a given board member, but they don't know
2 whether that's the appropriate number or they don't judge
3 whether that was an appropriate number; is that correct?

4 A I mean, they do never a role there of insuring
5 that the whole process is fair. It is not the intention
6 that a human resources person there be a technical expert.
7 I would expect them to raise an issue if they did see, just
8 based on common sense, something -- that there was something
9 that appeared inappropriate in the scoring.

10 Q And, again, going into this process, were you
11 aware that Dr. -- Mr. McArthur was involved in the interview
12 in the 1963---or, '63, I'm sorry---'93 complaint, DOL
13 complaint filed by Mr. Fiser?

14 A No.

15 Q Were you aware that he was his supervisor at the
16 time of the complaint in '63? '93.

17 A No, I wasn't, 'cause as I mentioned to you
18 previously, I did not have access to the prior complaint.
19 In looking at whether there was anything in the prior
20 complaint that should influence the selection process, such
21 as to who might have participated and then, 'I relied on the
22 evaluation of the labor relationships, human resources, and
23 OGC staff's.

24 Q Were you aware that Mr. Kent had been interviewed
25 as part of the '93 complaint by Mr. Fiser?

1 A As I just answered, since I was not familiar with
2 the content of the complaint at all, I relied on those in
3 TVA who were, to let me know if there was anything in those
4 that should impact who would participate in the selection
5 process.

6 Q Did you indicate to anybody in HR or OGC that you
7 didn't want anybody involved in the selection process that
8 was involved in the earlier complaint, or, for that matter,
9 any of the DOL issues concerning Mr. Fiser?

10 A My indication was not no one who was involved, but
11 no one who was -- I believe I used the words "intimately
12 involved," which I -- which to me meant someone who was
13 either involved in or accused of wrongdoing or was a key
14 part of the case.

15 As I said to you, I did not have access to that
16 complaint until September of 1999, when NRC falsely accused
17 me in violation of having been mentioned as a culpable party
18 in that complaint.

19 At that time I asked OGC, since I have now been
20 accused of being a party to this, to give me access to it.
21 Having read it at that time, I found that the judgments that
22 were made by the DOL, the labor relations, human resources,
23 and OGC staff back in 1996 was perfectly reasonable. Wilson
24 McArthur was only mentioned in that complaint as an ally, as
25 someone who tried to help Mr. Fiser.

1 Charles Kent was mentioned as someone who wanted
2 to bring Mr. Fiser back out to Sequoyah and make him the
3 chemistry manager. Nethr one of those would in any way
4 indicate that either one of those individuals were in any
5 way biased against Mr. Fiser.

6 Q Okay, now, that's with 10/20 hindsight after
7 reviewing those, in preparation for the PEC and in talking
8 to OGC and others. If, back in 1996, you have been told
9 that Mr. McArthur was the person who handed the RIF notice,
10 I guess, to Mr. Fiser, or that Mr. Kent had turned him down
11 for a job and being interviewed by it because he was told
12 not to do that, would that have caused you any concern?

13 MR. MARQUAND: Objection. That's ambiguous. I'm
14 not sure I understand the question. We've backtracked a
15 little so...

16 JUDGE YOUNG: Rephrase your question.

17 BY MR. DAMBLY:

18 Q Okay, in '96, when the selection was going on, if
19 you were told going into that selection Mr. McArthur was
20 involved in the '93 complaint. He was a supervisor of Mr.
21 Fiser at the time, and in charge, I guess, of the position
22 that he was RIF'd from, although it's not real clear when
23 that was, would you have said that was okay for him to be
24 the selecting official?

25 A Since I did not have access to what was actually

1 in the complaint, if HR and OGC had come to me and said,
2 "Because of some circumstances, because of a position held
3 by Mr. McArthur or an action taken by anyone in that time
4 frame, they felt that it would have been inappropriate, then
5 we would not have involved that person in the selection
6 process.

7 Q Well, did you learn, along with the rest of the
8 stuff you learned later, that Mr. Kent told McArthur before
9 the thing that he should stay out of it because of his '93
10 involvement?

11 A That -- well, number one, I was not aware of any
12 statement made by Kent relative to that prior to the board.
13 Secondly, if you ask me about what I learned about it, from
14 what I read in it, it appeared that what Mr. Kent was saying
15 to Mr. McArthur was because of the 1996 complaint, that he
16 felt that Mr. McArthur should not ask questions, which he
17 did have the right to do. He could have made himself a
18 member of the board. But, rather, should just listen. It
19 is not related back...

20 Q And how did you come to that conclusion?

21 A That's the conclusion that I came from reading the
22 various documents that were involved. And I believe Mr.
23 Kent was referring to the 1996 complaint, not to the 1993
24 complaint. There would be no basis for him to say that
25 based on the 1993 complaint, because one side was allowed

1 access after the false charges by the NRC to the -- to the
2 item. In reading it, McArthur is only in there, discussed
3 in there in places as being an ally of someone trying to
4 help Fiser. So...

5 Q Okay. And in any...

6 A ...not likely that anyone who may have been
7 familiar with the complaint in that time would conclude that
8 Mr. McArthur being mentioned in that complaint would be a
9 problem.

10 Q And you're referring to the 1993 complaint as the
11 -- say a three-page document that was initially filed with
12 DOL by Mr. Fiser?

13 A I don't remember the size of the document.

14 Q Well, three, five.

15 A I thought it was...

16 Q I'm not trying to trick you on the pages.

17 A ...I thought it was something quite a bit longer
18 than three pages.

19 Q The formal document that Mr. Fiser sent to the
20 Department of Labor with his -- his issues, that's what
21 you're referring to?

22 A Yes, I think that's what it is. I...

23 Q Okay. You're not referring to the entire
24 information gathered as part of that complaint?

25 A No. No. It's the actual complaint which he sent

1 to DOL.

2 Q Did you learn that Mr. Kent made a statement in
3 front of Mr. Corey before the panel indicating that Mr.
4 Fiser had DOL complaints or issues?

5 A As I said, I did not know anything about any
6 conversations taking part. In fact, the day of the
7 interviews, I wasn't even in town.

8 CHAIRMAN BECHHOEFER: Mr. McGrath, would the day
9 of the interview even be relevant to respond to that last
10 question? If the board were set up some time before the
11 interview, wouldn't the appropriate time frame be --

12 THE WITNESS: Your Honor, I thought the question
13 was whether Mr. Kent had made such a statement to Mr. Corey
14 the day of the board -- that's what I thought the question
15 was.

16 CHAIRMAN BECHHOEFER: Oh, I see, okay.

17 MR. DAMBLY: That was the question. I asked if he
18 was aware that that had occurred.

19 CHAIRMAN BECHHOEFER: Oh, okay.

20 BY MR. DAMBLY:

21 Q Would you consider that appropriate, if such had
22 occurred?

23 A I do not know what Mr. Corey said, so I cannot
24 make a judgment on the appropriateness of what he said or
25 what Mr. Kent said.

1 Q Would you consider mentioning so and so has a DOL
2 complaint as an appropriate conversation before a selection
3 board?

4 MR. MARQUAND: Objection, that's rather vague. I
5 think counsel knows what the comment was. If he wants to
6 ask the witness the appropriateness of it.

7 MR. DAMBLY: I asked him the question I'd like to
8 ask, Your Honor, and I'd like an answer.

9 JUDGE YOUNG: Is there any dispute over what the
10 actual comment was?

11 MR. DAMBLY: Well, I think there may well be. Mr.
12 Kent gives kind of a different story every time he talks,
13 I'm not sure exactly which one he's going to come out with.

14 MR. MARQUAND: Well, I think counsel has asked Mr.
15 Kent that question and I think in their interrogatory
16 answers, they took the position exactly what that comment
17 was, and I don't think they made any dispute of it there. I
18 think he's asked Dr. McArthur what it was and there wasn't a
19 dispute of it. I don't think he answered your question
20 whether there was a dispute with respect to it.

21 JUDGE YOUNG: Well, is there?

22 MR. DAMBLY: I'm not sure whether there is or not.

23 JUDGE YOUNG: Have the different people who were
24 present given different versions of it?

25 MR. DAMBLY: I don't know that they've all said

1 exactly the same thing, but essentially. We could try and
2 find one of them.

3 JUDGE YOUNG: Characterize it as best you can and
4 then --

5 MR. MARQUAND: They said essentially the same
6 thing. Given that it was six years ago, I think their
7 memories are pretty clear on it.

8 (Brief pause.)

9 BY MR. DAMBLY:

10 Q While we look for quote, please, I would like your
11 opinion of whether it's appropriate to mention, prior to a
12 selection review board, that one of the candidates is
13 involved in DOL activity.

14 A I read somewhere in all the various testimonies
15 and things that people have given in the past that Mr. Kent
16 had stated that he knew of Mr. Fiser's DOL activities
17 because Mr. Fiser had told him. I think somewhere else in
18 the same things I've read and I can't tell you exactly
19 where, were other people likewise saying Fiser had told
20 them. Mr. Kent could very well have been under the
21 impression, as he himself knew and knew others whom Fiser
22 had told about it, to be assuming that since Fiser was
23 making it public knowledge, that by mentioning it, he wasn't
24 providing any new information but was just cautioning the
25 other board member that since Mr. Corey likewise had a lot

1 of involvement in the rad con and chemistry area and likely
2 would have heard it, that we do need to make sure that we
3 don't let this influence us in any way. If he was
4 cautioning them and he felt that he had knowledge that this
5 was widely spread information, it doesn't sound to me that
6 that would be inappropriate.

7 JUDGE COLE: You don't think that would poison the
8 well?

9 THE WITNESS: I say it sounded to me from what I
10 read on other items, that Mr. Kent was under the impression
11 that the others already knew this, because Mr. Fiser had
12 been telling people he submitted it.

13 JUDGE YOUNG: Did you hear about it at the time?

14 THE WITNESS: No, I did not.

15 BY MR. DAMBLY:

16 Q And the question I asked, which you didn't even
17 come close to responding to was do you consider it
18 appropriate, prior to selection review board meeting and
19 interviews, for one of the panel members to tell other
20 members that so and so is involved with DOL?

21 MR. MARQUAND: Objection, Your Honor, doesn't that
22 call for speculation and a legal conclusion.

23 JUDGE YOUNG: Well, there's been a lot of
24 testimony about what TVA's general program was and I think
25 probably given Mr. McGrath's position, he's qualified to

1 talk about TVA's procedures.

2 MR. DAMBLY: I'm asking whether he thinks it's
3 appropriate, just as a manager in charge of that.

4 BY MR. DAMBLY:

5 Q Do you think it's appropriate for somebody to
6 raise that one of the candidates engaged in protected
7 activity and went to DOL? Do you think that's appropriate
8 before a board?

9 A I would not think that would be normally
10 appropriate. When you asked me the question the first time,
11 what I was trying to answer would be under what might be a
12 fairly unique set of circumstances, Mr. Kent may have
13 believed that the other board members already knew about it
14 and was cautioning them to not let that influence it. That
15 was my impression from reading the various testimony.

16 In general, I would agree that that is not an
17 appropriate subject to bring up prior to a selection board.

18 Q To the best of your knowledge, has anyone at TVA
19 filed a DOL complaint and subsequently been promoted up in
20 the management chain?

21 A I do not know who has --

22 MR. MARQUAND: Objection, I don't understand the
23 relevance of talking about what happens in other Department
24 of Labor complaints with respect to other managers, what
25 kind of findings were made in other cases. I don't know if

1 we're going to get involved in mini trials with respect to
2 other situations or not, but it certainly seems to me to be
3 very collateral to this case.

4 MR. DAMBLY: One, I don't intend to get involved
5 in any mini trials although clearly counsel over here would
6 like to try to grow the case. But I think it's clearly
7 relevant to the issue of poisoning the well. If somebody
8 files a DOL complaint, is that a positive thing at TVA.

9 BY MR. DAMBLY:

10 Q Do you know if anyone has been promoted after
11 filing that, into a management position?

12 A I do not have access to information about who
13 filed complaints, so therefore, I cannot answer that
14 question.

15 Q So you don't know of anyone that filed one and got
16 promoted. You don't know of anyone that ever filed one.

17 A Other than the involvement we're talking about
18 here, Mr. Fiser's.

19 CHAIRMAN BECHHOEFER: Mr. McGrath, if a DOL
20 complaint were filed and it was either dismissed or acted
21 upon, would the final result of that be publicized or made
22 available within TVA? This is a complaint by a TVA
23 employee.

24 THE WITNESS: To my knowledge, we never
25 publicized information relative to specific actions taken

1 with regard to an employee. Over the years, there have been
2 communications that have been put out stating TVA's policies
3 with this regard about both the policies against any sort of
4 discrimination action against people taking safety concerns.
5 And I know that there have been some different ones that
6 have showed up in newspaper articles. I don not recall any
7 of those items where TVA publicized exactly what was done
8 with the person or that the person was involved. There has
9 been communications given to us on the general policies.

10 CHAIRMAN BECHHOEFER: So there would not be a
11 general announcement that an employee of TVA has filed a
12 complaint and DOL has either rejected the complaint or
13 accepted a settlement proposed by both parties -- along that
14 line?

15 THE WITNESS: That's correct, no, there would not
16 be such an announcement.

17 CHAIRMAN BECHHOEFER: Not be such an announcement.
18 Okay, thank you.

19 BY MR. DAMBLY:

20 Q Did you have any concern for fairness during the
21 process by the fact that just slightly before the selection
22 board, there had been an attempt to move Mr. Harvey out to
23 work for Mr. Kent?

24 A The question about Mr. Kent going to Sequoyah --

25 Q Actually Mr. Harvey.

1 A I'm sorry -- Mr. Harvey going to Sequoyah; first,
2 I think it probably came up two or three months prior to the
3 board. Actually, I viewed the initial conversation as a
4 fairly minor issue. I took it as Mr. Grover suggesting a
5 way that he might get a job for one of his employees and the
6 conversation was along the line of it could not be done in
7 accordance with HR rules and I did not consider that to be a
8 very significant item. And as for my perception and I think
9 the later testimony from Mr. Kent confirms that, that this
10 was an idea of Mr. Grover's to send him out there anyway.

11 JUDGE YOUNG: Not to --

12 CHAIRMAN BECHHOEFER: Neither of us heard your
13 last comment.

14 THE WITNESS: Oh. The potential -- it was my
15 understanding -- my impression at the time of the
16 discussions with Mr. Grover and the subsequent testimony
17 from Mr. Kent that the enforcement conference confirms that
18 moving Mr. Harvey to Sequoyah was suggested by Mr. Grover,
19 it was not an initiative of Mr. Kent.

20 BY MR. DAMBLY:

21 Q Did you ever ask Mr. Kent about that?

22 A No, I did not. And as I told you before, Mr. Kent
23 never talked to me about it.

24 Q Prior to the selection review board meeting, were
25 you aware of any controversy involving discussions between

1 Mr. Harvey and Mr. Voller?

2 A I believe I learned about that later. I did not
3 hear anything at all about such discussions prior to the
4 selection review board.

5 Q And would you identify Mr. Voller for the record?

6 A Mr. Voller was the chemistry manager at Watts Bar.

7 Q I hesitate to say one last thing, but I'll try --
8 we're in book 7 of 8, Staff Exhibit 133.

9 JUDGE COLE: Are you referring us to a page in
10 that document?

11 MR. DAMBLY: Not at the moment. In fact, probably
12 not at all.

13 BY MR. DAMBLY:

14 Q Mr. McGrath, Staff Exhibit 133 is a transcript of
15 the enforcement conference that was held with you on
16 November 22, 1999; is that correct?

17 A That's what it says it is.

18 Q Do you have any reason to believe it's not?

19 A No.

20 Q And the purpose for that conference, I think you
21 heard yesterday, but you came to provide information to the
22 staff concerning the events regarding Mr. Fiser, is that
23 correct?

24 A The purpose of the conference was to discuss the
25 facts relative to the violation NRC had sent me or potential

1 violation, whatever the right name is for it.

2 Q And you conveyed information to the staff which
3 you wanted them to rely on in reaching a decision concerning
4 potential violation?

5 A Yes.

6 MR. DAMBLY: All I would have, Your Honor, at this
7 point, I'd like to move Staff Exhibit 133 into the record.

8 JUDGE YOUNG: Any objection?

9 MR. MARQUAND: Well, Your Honor, I don't think I
10 understand why counsel is submitting testimony that occurred
11 at some other point in time in the record. If he's got
12 questions for Mr. McGrath, he should ask them. As I
13 understand, I think everybody else who was there is going to
14 be available to testify. The comments by the staff -- I
15 don't think the staff members want to testify but if
16 counsel's got questions for Mr. McGrath, he's here, he's
17 live, you can observe his demeanor -- this is the
18 appropriate time and place to ask him those questions and
19 elicit that information.

20 JUDGE YOUNG: What's the purpose of proffering
21 this?

22 MR. DAMBLY: Again, this was part of the
23 enforcement process. It was a formal part of the process in
24 which an individual involved provides information. We've
25 heard Mr. Marquand arguing for weeks about what the staff

1 relied on and what they didn't rely on, what we knew and
2 what we didn't know. This is one of the pieces of
3 information that was submitted to the staff. This was their
4 proffer of evidence that the staff had in reaching its
5 conclusions.

6 JUDGE YOUNG: My question was what is your purpose
7 in proffering it here today and is it to impeach Mr.
8 McGrath? If so, I think Mr. Marquand is right. Ask him
9 questions and if they're inconsistent, then you can point
10 them out.

11 MR. DAMBLY: I'm not aware particularly of any
12 specific inconsistencies. I mean there may be but I didn't
13 put it in to say well he said this on today and last time he
14 said something different. That may apply to other people,
15 but I don't know that --

16 CHAIRMAN BECHHOEFER: Well, would it make a
17 difference if you -- other than a question of time, if you
18 asked the same questions now as were asked before? Would
19 that make a difference other than the time and you'd have to
20 make clear what time frame the questions were covering, but
21 --

22 MR. DAMBLY: But we can go through all the
23 questions and take up another few hours and see if there are
24 differences, but --

25 JUDGE YOUNG: For what purpose -- what do you want

1 us to use this for?

2 MR. DAMBLY: As part of the complete record of
3 what information was available and given to the staff.

4 JUDGE YOUNG: But I think you've argued before
5 that since this is a de novo proceeding, we're not really
6 looking at what the staff did before, so I guess again, my
7 question is what do you want us to do with this.

8 MR. DAMBLY: Well again, if you're going to rule
9 that way, I have no problem. If we keep out everything the
10 staff had and when they try to put in the OI report and the
11 rest of the stuff, we're not going to put that in.

12 JUDGE YOUNG: We're just talking about this one
13 now. What do you want us to do with this one.

14 MR. DAMBLY: I'll withdraw my request at this
15 point and later on if there's motions to submit evidence of
16 a similar nature by TVA, then we'll talk then.

17 (The Judges confer.)

18 MR. DAMBLY: I've withdrawn the motion.

19 CHAIRMAN BECHHOEFER: Oh, okay.

20 MR. DAMBLY: And with that, I am finished with Mr.
21 McGrath.

22 CHAIRMAN BECHHOEFER: Do you need a break, Mr.
23 Marquand?

24 MR. MARQUAND: Yes, please.

25 JUDGE YOUNG: Ten minutes?

1 CHAIRMAN BECHHOEFER: Ten minutes will be fine.

2 (A short recess was taken.)

3 CROSS EXAMINATION

4 BY MR. MARQUAND:

5 Q Good afternoon, Mr. McGrath. You've already given
6 us a detailed explication of your career and without going
7 back through it, is there a common trend throughout your
8 career?

9 A Most of my career while I was still in nuclear
10 power was focused on the area of reactor safety. I started
11 my nuclear career in Admiral Rickover's organization. In
12 1976, I went out to one of his field offices, in 1978
13 becoming head of one of his field offices. The function of
14 those field offices is very similar to an NRC senior
15 resident where my responsibility and that of my staff was
16 performing assessments and inspections, evaluation of the
17 work that was going on in nuclear power program at that
18 shipyard. Later, I was assigned to go out and evaluate some
19 operating ships with a real focus on determining were there
20 any problems that would potentially affect reactor safety.

21 Likewise, when I moved to TVA, early in my career
22 at TVA, I began getting the special assignments to
23 participate in the initial operational readiness review for
24 Sequoyah prior to the restart of the first Sequoyah plant
25 after the TVA nuclear program had been shut down for several

1 years. I was continued to be assigned as either a member or
2 the head of the team to do similar reviews for the second
3 Sequoyah plant, both Browns Ferry plants and the initial
4 startup of Watts Bar.

5 In between there and in addition to my assignments
6 as the head of the Nuclear Safety Review Boards, I also, at
7 the request of the chief nuclear officer, did a number of
8 specific reviews related to nuclear safety-related
9 performance at each of the plants.

10 In these jobs, I personally raised many --
11 probably hundreds -- of issues which would probably fall
12 under the category of being some sort of a nuclear safety
13 concern, they weren't necessarily all labeled that way. So
14 I very much understood the necessity of identifying those
15 kind of problems to the overall success of any nuclear power
16 program, be it the Navy or a commercial reactor program.

17 Q Why is it important to be able to raise safety
18 concerns?

19 A It's important to be able to do them in order to
20 address problems, particularly be able to address them very
21 early, before they ever grow to where they are an issue that
22 would affect safety. In doing that, it is very important
23 that you have, throughout the organization, an understanding
24 of all the people in the organization that not only is it
25 permissible but it's expected they raise such type issues.

1 For example, in order to successfully execute the
2 duties of a nuclear safety review board, we are very
3 dependent on the willingness of the individuals involved in
4 nuclear power to talk to us, to tell us what was going on,
5 to tell if there was something they saw as a problem because
6 by the very nature of our job, once a quarter we were at the
7 sites for two days. We weren't there where we could observe
8 every activity that was going on. So it was very important
9 -- throughout all the jobs I had, I was in the position of
10 raising nuclear safety concerns myself. It was also very
11 important to the success of that and success of the overall
12 programs that the individuals involved in those programs
13 understand the necessity to identify problems.

14 Q Besides encouraging employees to raise safety
15 concerns, what mechanisms are available to make them feel
16 free to raise safety concerns?

17 A Well, within TVA, it exists as a -- the lowest
18 level thing and the mechanism by which they could do so is a
19 corrective action program, which makes it very easy for
20 people to identify any actual problem or even potential
21 problem to get evaluated. That is really -- it's an
22 implementation of many requirements, but at the high level
23 TVA there is a company policy on nuclear safety which I was
24 instrumental in getting issued, and additionally there is
25 another company practice I believe it's called that has to

1 do with employees' expressions of views and problems. That
2 applies not only to nuclear, but applies across the board in
3 all of TVA. So there are very clear management policies of
4 an expectation that we have a very -- we put a very high
5 level of importance on nuclear safety and that employees are
6 not only expected to identify problems, it also provides
7 protection and indicates that within the TVA system, that
8 someone who would attempt to take action against an
9 employees because raising a concern is subject to
10 disciplinary action up to and including termination.

11 Q Let me ask you to look at TVA Exhibits 65 and 66.

12 (The witness reviews the documents.)

13 Q I've handed you TVA Exhibit 65. Can you identify
14 it, please?

15 A Number 65 is the TVA principle that I referred to
16 on the commitment to nuclear safety.

17 Q And who or what organization would approve or
18 adopt this principle?

19 A The Board of Directors.

20 Q And for this board's edification, what is the TVA
21 Board of Directors?

22 A The TVA Board of Directors is a full time board of
23 three people who are appointed by the President and
24 confirmed by the U.S. Senate who, under the TVA Act, are
25 responsible for the total operation of TVA.

1 Q They're the head of TVA?

2 A That's correct.

3 Q And they approved this principle?

4 A That's correct.

5 Q Would you very quickly explain to us what this
6 principle commits TVA to do with respect to raising safety
7 concerns?

8 A Give me a second to look at it, it's been a little
9 while since I read it.

10 (The witness reviews the document.)

11 Q I think you could shortcut this if you looked at
12 the very last paragraph on page 3.

13 CHAIRMAN BECHHOEFER: Of 65?

14 MR. MARQUAND: Exhibit 65.

15 A That particular paragraph specifically relates to
16 the Inspector General looking into employee concerns. TVA
17 Nuclear also has an employee concerns program, I believe the
18 current proper name is Concerns Resolution, which is put in
19 place in addition to the normal corrective action program to
20 provide a means for employees to raise any kind of safety
21 issue which, for whatever reason, they may feel
22 inappropriate to raise either through corrective action
23 program or directly to their supervisors.

24 Q Is there anything in this principle that commits
25 TVA to protecting employees from retaliation for a

1 threatened safety concern? Let me direct your attention to
2 the third paragraph on the first page.

3 A Yes, when you point it out, this paragraph
4 specifically says we encourage employee awareness and
5 expression of safety concerns. I won't try to read the
6 entire -- provide protective measurements to ensure our
7 employees may express concerns and differing views without
8 fear of recrimination or reprisal. That's in this
9 particular document.

10 Q Aside from the fact that the Board adopted this,
11 did you have any involvement in this particular document,
12 Mr. McGrath?

13 A This particular document, which was based on an
14 earlier document that had been written around the time when
15 TVA started to recover their nuclear program, when we had
16 gotten a new Board chairman in Mr. Marvin Runyan, he wanted
17 one of the key -- he wanted key principles, key important
18 values to TVA to be expressed in a small number of
19 principles documents. And I was involved in making sure
20 that this particular document got written and put in at that
21 level.

22 Q When you say a small number, on the order of what?

23 A I believe there are less than half a dozen
24 principles.

25 Q So this is one of the key TVA principles?

1 A That's correct.

2 Q If you would look at TVA Exhibit 66, please. Can
3 you tell by looking at the last page of this document who
4 approved and adopted this particular practice?

5 A Yes, this was also approved by the Board of
6 Directors.

7 Q And what is this document?

8 A This document is actually a practice, it is one
9 tier below the principles, but there are still a relatively
10 small number of these, and it really extends that same
11 principle you just talked about into nuclear about
12 encouraging employees to express concerns and protecting
13 employees from any sort of retaliation for it, and extends
14 it TVA-wide. It is not unique just to nuclear.

15 Q Do you know if either of these documents makes it
16 TVA policy to take any sort of disciplinary action against
17 managers responsible for engaging in reprisal and
18 retaliation?

19 A It is my understanding that actually -- I believe
20 it's specifically stated in this practice, but it's my
21 understanding that it is the policy that disciplinary action
22 would be taken to any manager involving in said practice.

23 Q If you'll look at paragraph 2 of the practice, TVA
24 Exhibit 66. Does that reference discipline for managers or
25 any persons guilty of reprisal?

1 A Yes, it indicates any personnel taking reprisal is
2 subject to disciplinary action up to and including
3 termination.

4 Q Were you aware of this TVA policy, this TVA
5 practice throughout the events that we've been discussing
6 the last two days with respect to the reorganization of
7 operation support and Mr. Fiser?

8 A Yes, I was.

9 Q And you were aware that it was TVA policy that
10 managers who are guilty of reprisal are subject to
11 disciplinary action?

12 A Yes.

13 MR. MARQUAND: Your Honor, I tender TVA Exhibits
14 65 and 66.

15 CHAIRMAN BECHHOEFER: Any objection?

16 MR. DAMBLY: We have no objection.

17 CHAIRMAN BECHHOEFER: Without objection, TVA
18 Exhibits 65 and 66 will be admitted.

19 (The documents, heretofore marked
20 as TVA Exhibits 65 and 66, were
21 received in evidence.)

22 BY MR. MARQUAND:

23 Q On a like note, do you know whether or not the NRC
24 can take punitive action against managers responsible for
25 retaliating against employees who raise safety concerns?

1 A Yes, it is my understanding that the NRC can take
2 punitive action.

3 Q Did you know that at the time of these events that
4 we're talking about these two days?

5 A Yes, I did.

6 Q Let me turn to the subject of the Nuclear Safety
7 Review Board so that we can make sure we understand what it
8 is. Can you explain it, please -- what it is and why TVA
9 has a nuclear safety review board.

10 A As part of the licenses for operating the plants,
11 there's a technical specification. The technical
12 specification makes part of the license sets of
13 requirements, most of them are technical requirements, they
14 address actions required such as if certain instrumentation
15 is out of service in the plant, certain systems are out of
16 service. But in addition, there's an administrative section
17 of the technical specifications. One of the requirements of
18 that is for TVA to set up a nuclear safety review board.
19 Now within those specifications, NRC specifies some of the
20 general types of things the board has to look at that is
21 really defined by two ways. One is a list of types of
22 documents that the board is required to review; the other,
23 among the members, there is a statement relative to the
24 qualification which has certain areas of technical
25 expertise, engineering, quality assurance, of which at least

1 one of the board members has to have expertise in those
2 areas. And that really sets up what is there as a
3 regulatory requirement. There's one additional requirement
4 in there and that is that should TVA submit a revised change
5 to the technical specifications, there is requirement in
6 there for internally for the nuclear safety review board to
7 approve that change before it can be submitted to NRC.

8 Q And my understanding yesterday, you said that
9 there is a separate nuclear safety review board for each of
10 TVA's three plants?

11 A That's correct. The requirements were set up in
12 the technical specifications for Browns Ferry and Sequoyah
13 to each have a board. Watts Bar's happens to be in a
14 different document, but basically the requirements are the
15 same.

16 Q And that even though there's some overlap among
17 the membership of those boards, there are three separate
18 boards.

19 A That's correct.

20 Q Now those boards come out to the plant and review
21 operations and all of the various organizations and what's
22 been happening, is that right?

23 A The purpose of the boards -- and we typically met
24 quarterly at each site, although at times when there were
25 problems at sites, we met more frequently than that -- if

1 the board focuses on -- and the focus was toward safety
 2 issues. The board came out to look at what was going on at
 3 the site, there's a particular emphasis on critical self-
 4 assessment, on looking at what kind of a questioning
 5 attitude there was at the site, as to whether they were
 6 raising their own problems. Very often within the area of
 7 NSRB, you would see that NSRB might be raising up to
 8 management something they've come across that was identified
 9 at a lower level of the plant. It'd be in the corrective
 10 action system somewhere, but through either discussions with
 11 employees, reviewing quality assurance audits, to try to
 12 take a bigger picture to look at and see how did these
 13 things fit together, were they telling us that there were
 14 some sort of problems, some sort of train that was coming.

15 Q Does the NSRB get involved in the detail, so that
 16 they would be reviewing everything going on at the plant?

17 A No.

18 Q Why not?

19 A The NSRB is only a group of 10 to 12 people, it's
 20 a part time job on their part to do it. All the TVA
 21 employees have a regular line job and the outside people who
 22 do this typically have other consulting activities, many of
 23 them actually serve on similar boards at other utilities.

24 Within the realistic scheduling of the time, the
 25 board can review some documents, the board really gets to

1 spend about no more than two days a quarter at the site.
2 That does not allow enough time whatsoever to review
3 everything, and there's a general hierarchy of safety review
4 groups within nuclear. You have quality assurance who is
5 out at the site all the time, varying from inspections up
6 through audits. Back in this time frame, there was a
7 requirement -- I'm not sure it exists any longer -- but in
8 the mid-1990s, there was a requirement for what was called
9 an independent safety engineering group, which also existed
10 at the site, which did safety-related reviews and reported
11 their results to the NSRB as well. So there was a hierarchy
12 of safety review measures where NSRB was the highest level
13 one which was intended to bring in more management people
14 and have people on it with the expertise who could also
15 provide advice and recommendations to senior management.

16 Q Does the NSRB review all corrective action
17 documents at the plant?

18 A No, actually NSRB very rarely looks at specific
19 corrective action documents.

20 Q Is it able to look at open action items?

21 A We have access to any information we want on the
22 site, but again, open action items are usually a very large
23 volume of information and so we don't specifically have the
24 time to go and look at that.

25 Q Now does the NSRB have the authority to take

1 action to direct that certain things be done?

2 A We have no authority to take action to direct that
3 anything be done.

4 Q Does it have authority to hire and fire?

5 A No.

6 Q Does it issue performance appraisals of employees?

7 A No.

8 Q Does it even look at those kinds of things?

9 A No, we do not look at any performance appraisals
10 or any sort of personnel records.

11 Q Do you get involved in making recommendations to
12 management about this person needs to be moved here, that
13 person needs to be moved there, or removed from their
14 position?

15 A No, we very specifically stayed away from
16 personnel items. We -- the issues we raise, we try to focus
17 them on performance and to note where we saw performance
18 problems.

19 Q Performance of what, people or --

20 A I'd say performance of the programs, whether that
21 be how well operations did -- I'm a little bit unsure in
22 answering your question -- an issue we might raise that had
23 to do with operators not following procedures, we raise that
24 as an operations program issue, but deeper down it involved
25 the activity of individuals but the report -- but the NSRB

1 did not raise issues relative to specific operators.

2 CHAIRMAN BECHHOEFER: Mr. McGrath, one
3 clarification. When you said that the NSRB meets quarterly
4 at each site, does that mean 12 or 16 meetings a year or
5 does that mean quarterly at one site or another?

6 THE WITNESS: It means 12 or 16 meetings a year.
7 The normal schedule would be, we have three nuclear power
8 sites and it would be four meetings at each site and
9 sometimes additional meetings beyond that.

10 CHAIRMAN BECHHOEFER: Okay.

11 JUDGE COLE: Mr. Marquand, are you going to
12 continue on with the NSRB issue?

13 MR. MARQUAND: Yes, a little bit.

14 JUDGE COLE: Okay, fine.

15 MR. MARQUAND: But Your Honor, I'm going to sort
16 of shift gears.

17 JUDGE COLE: But you're not finished with it?

18 MR. MARQUAND: I'm not finished with the NSRB.

19 JUDGE COLE: Then I'll hold my questions.

20 MR. MARQUAND: I need to lay a predicate for that
21 first.

22 BY MR. MARQUAND:

23 Q In your testimony on direct, you referenced -- and
24 I think you said that you had -- I don't remember whether
25 you said unfairly or incorrectly been accused by the NRC of

1 a matter. What was that?

2 A In the violation notice which the NRC originally
3 sent to me in September of 1999, NRC stated that I had been
4 named as a culpable party in Mr. Fiser's 1993 DOL complaint.
5 That statement was false. In fact, I am not mentioned by
6 either name or position anywhere in that report.

7 Q I'm going to show you Joint Exhibit 44. I'm also
8 going to show you Joint Exhibit 46. Can you identify Joint
9 Exhibit 46, please?

10 A This was the letter that NRC sent to me about
11 holding an enforcement conference and telling me that they
12 concluded I had caused a violation of NRC requirements.

13 Q I note on page 2 that it lists some enclosures
14 which have not been included with this copy of this exhibit.
15 Do you see where it references OI synopsis, summary of OI
16 reports at the bottom?

17 A Yes.

18 Q If you'll now look at Joint Exhibit 44, that
19 should also be a September 20, 1999 letter from the NRC to
20 TVA, the subject apparent violation of employee
21 discrimination complaint, do you see that?

22 A Yes.

23 Q Are there enclosures with that?

24 A Yes, there are two enclosures with that.

25 Q All right, are those the same enclosures -- is the

1 first enclosure a synopsis?

2 A Yes.

3 Q Enclosure two is a summary of Office of
4 Investigations OI report?

5 A That's correct. My recollection from the time is
6 that what's in here are not the enclosures that were on the
7 letter to me, my recollection is the enclosures to me were
8 slightly different from these.

9 Q But they were similar?

10 A They were similar but they were not the same.

11 Q Maybe somebody could make that complete document
12 if necessary. Anyway, have you seen Joint Exhibit 44
13 before?

14 A Yes, I have.

15 Q Anyway, if you'll look at the summary of Office of
16 Investigations Report, which is enclosure two to that one,
17 do you see in the fourth paragraph, second line -- do you
18 see the fourth paragraph of that document?

19 A Yes.

20 Q Do you see the language that says "Late '95 and
21 early '96, the two individuals who served as NSRB committee
22 member and chairman in 1993 and were named as culpable
23 parties of the employee's 1993 DOL complaint" et cetera. Do
24 you see that?

25 A Yes.

1 Q And is that reference to the chairman of the NSRB
2 in 1993 you?

3 A Yes.

4 Q Were you surprised when you got this to see that
5 you -- that the NRC considered you to have been named as a
6 culpable party in Mr. Fiser's 1993 DOL complaint?

7 A Yes, I was not only surprised, my initial reaction
8 was to be very angry with you.

9 Q Why?

10 A Because as I previously talked, back at the time
11 we were working on these selections, I relied upon the labor
12 relations staff and OGC -- and you were the one in OGC
13 working on it -- to let me know if there was anything in
14 these prior concerns that would in any way impact the
15 selection process. And when I received this and read it,
16 not thinking there could be this gross an error in a
17 document being sent out, my initial reaction was anger at
18 you for not having told me about this.

19 Q Had you ever seen this 1993 DOL complaint before
20 you got this letter?

21 A No, I had not.

22 Q And did you subsequently see the 1993 DOL
23 complaint?

24 A Yes, afterward, I requested and was provided a
25 copy.

1 Q Were you named as a culpable party in it?

2 A No, in fact I'm not named or mentioned in any way
3 in the complaint.

4 Q Are you even alluded to?

5 A No.

6 Q And similarly in the second paragraph, the last
7 sentence says, "In his DOL complaint, the employee named as
8 parties to his discrimination, the individuals who served as
9 committee member, Nuclear Safety Review Board (NSRB) and
10 chairman NSRB in 1993." Do you see that?

11 JUDGE COLE: It doesn't say that in my document.

12 MR. MARQUAND: I thought I read that correctly.
13 Second paragraph, last sentence.

14 JUDGE COLE: That's where I'm reading it from,
15 "who served as committee chairman, Nuclear Safety Review
16 Board (NSRB) in 1993."

17 JUDGE YOUNG: Excuse me. Mine is different than
18 that. Is this Exhibit 44?

19 MR. MARQUAND: Yes. You don't have the right one.
20 We established yesterday that they had put in the wrong --
21 staff had put that under the wrong number.

22 JUDGE YOUNG: Right, yours is 43, I think it was.
23 Why don't we give that book to them at the end of
24 the day and let them make it right.

25 JUDGE COLE: Yes there is, and it does say "and

1 chairman".

2 CHAIRMAN BECHHOEFER: Okay.

3 BY MR. MARQUAND:

4 Q Now that we've got the confusion in the documents
5 clarified, did I read that correctly, Mr. McGrath?

6 A Yes.

7 Q And were you surprised to see that you had been
8 named as a party to Mr. Fiser's discrimination complaint?

9 A Yes.

10 MR. MARQUAND: Your Honors, we haven't tendered
11 this yet but I'm going to tender Joint Exhibit 44.

12 THE REPORTER: 44 has already been admitted.

13 MR. MARQUAND: It has?

14 THE REPORTER: At 11:44 yesterday.

15 JUDGE COLE: Yes, 44 has been admitted.

16 MS. EUCHNER: Your Honor, that was Staff 44.

17 MR. MARQUAND: Joint Exhibit 44.

18 THE REPORTER: Joint Exhibit 44 was admitted at
19 11:44 yesterday.

20 MR. MARQUAND: Okay.

21 JUDGE YOUNG: I think actually you asked to have
22 it admitted during --

23 MR. MARQUAND: You're right, Your Honor, I stand
24 corrected.

25 BY MR. MARQUAND:

1 Q Mr. McGrath, I'm going to show you NRC Staff
2 Exhibit 34.

3 JUDGE YOUNG: Staff 34.

4 Q Mr. McGrath, do you recognize Staff Exhibit 34,
5 which is captioned "Gary L. Fiser, September 23, 1993, it's
6 a letter to Carol Merchant with the Department of Labor?

7 A Yes, I do.

8 Q What do you recognize it as being?

9 A This is what I referred to as Mr. Fiser's 1993 DOL
10 complaint.

11 Q And does it mention you anywhere in here, either
12 by name or by position or by function or in any other
13 respect?

14 A No.

15 Q Now in this complaint, Mr. Fiser references
16 several issues that apparently came up at Sequoyah and he
17 references them beginning on page 2. Do you see in the
18 second complete paragraph on page 2 a reference to
19 management's dissatisfaction with him because of "the rad
20 monitor effluent calculations not accounting for the
21 vacuum." Do you see that?

22 A Yes.

23 JUDGE YOUNG: Excuse me, which one are you on now?

24 MR. MARQUAND: Okay, I'm on Staff Exhibit 34.

25 JUDGE YOUNG: Page 2.

1 MR. MARQUAND: Page 2, if you look at the second
2 complete paragraph.

3 JUDGE YOUNG: Oh, second complete.

4 MR. MARQUAND: In the sixth line, it says -- this
5 is a long sentence, it actually begins on the very first of
6 that paragraph, it says, "Rob Bekins stated one of the
7 reasons he didn't want me back at Sequoyah..." skipping down
8 to line 6, it says "was because of the rad monitor effluent
9 calculations not accounting for vacuum." Do you see that?

10 (The Judges confer.)

11 MR. MARQUAND: Are we all on the same page yet?

12 JUDGE YOUNG: Have you got it yet?

13 JUDGE COLE: No. Go ahead.

14 BY MR. MARQUAND:

15 Q Mr. McGrath, do you see in the second complete
16 paragraph, it says, "In an interview with the plant manager,
17 Mr. Rob Bekin, on December 9, Mr. Bekin stated that one of
18 the reasons he did not want me back at Sequoyah" -- go down
19 to line 6, it says "was because of the rad monitor effluent
20 calculations not accounting for the vacuum." Do you see
21 that?

22 A Yes.

23 Q All right. And then if you go further down to the
24 very bottom of that paragraph, it says, "Subsequently,
25 significant corrective action report or SCAR was initiated

1 delineating the problem as well as the necessary corrective
2 action to bring the monitoring into compliance." Do you see
3 that?

4 A Yes.

5 Q Now regardless of whether or not Mr. Fiser raised
6 that or not, we won't get into that right now, were you ever
7 aware of a significant corrective action report about rad
8 monitor effluent calculations not accounting for vacuum at
9 Sequoyah in March of '93?

10 A No, we would normally not in NSRB see SCARs. From
11 the topic of this, this could have generated an LER which
12 was something that was sent to NSRB and if one was
13 generated, I probably read it somewhere, but I really have
14 no recollection of this issue.

15 Q All right. And so that we all understand what it
16 is, what is a SCAR?

17 A A SCAR was a significant corrective action report.
18 In the TVA corrective action program as it existed at that
19 time, there were corrective action reports and significant
20 corrective action reports, and there was some criteria that
21 designated what caused that difference to occur.

22 Q That's the -- is that the formal mechanism within
23 TVA Nuclear for identifying and documenting a nuclear safety
24 concern?

25 A Yes.

1 Q So that issue which Mr. Fiser was claiming Mr.
2 Bekin didn't want him at Sequoyah for, you were not aware
3 of?

4 A That's correct.

5 Q And if you will look at the very bottom two lines
6 on page 2, do you see where it says, "Another reason Mr.
7 Bekin cited for not wanting me back was the filter change
8 out scenario." Do you see that?

9 A Yes.

10 Q Were you aware of any issues at Sequoyah that were
11 raised about a filter change out scenario?

12 A No.

13 Q All right. And in fact, he mentions in the middle
14 of that same paragraph at the top of page 3 that the
15 incident was entered into the corrective action process
16 using a SCAR, do you see that?

17 A Yes.

18 Q Did you ever see a SCAR on a filter change out
19 scenario?

20 A No.

21 Q At the bottom of page 3 is another paragraph, do
22 you see the paragraph that begins "As another example, Bill
23 Jocher and I determined that Sequoyah personnel could not
24 meet NRC's three hour requirement for conducting post-
25 accident sampling analysis." Do you see that?

1 A Yes.

2 Q What is the post-accident sampling analysis,
3 what's it referred to as?

4 A It was a requirement that was put in after Three
5 Mile Island for plants to have the ability to take samples
6 after -- from the reactor coolant system following a
7 significant accident. The -- in I believe it was May of
8 1991, but early 1991, NSRB raised a question as to whether
9 or not --

10 Q Hold on a second. This letter is '93.

11 A That's correct.

12 Q Have we already heard testimony about the post-
13 accident sampling system yesterday?

14 A It was a subject that was discussed at the
15 subcommittee meeting in November '91.

16 Q Is that what's also referred to as PASS, P-A-S-S,
17 the acronym?

18 A That's correct.

19 Q I think you've got TVA Exhibit 48 there.

20 JUDGE YOUNG: Thirty eight?

21 MR. MARQUAND: Forty eight.

22 BY MR. MARQUAND:

23 Q For simplification, these are simply extracts from
24 three INPO reports. Do you see that, Mr. McGrath?

25 A Yes.

1 Q All right and INPO is what, again? Is it the
2 Institute of Nuclear Power Operations?

3 A That's correct.

4 Q Is that TVA?

5 A No, that's an independent agency that operates out
6 of Atlanta.

7 Q And do they evaluate nuclear plants, TVA's?

8 A Yes, they have a program of evaluating all
9 commercial nuclear power plants.

10 Q Are their standards -- how do their standards
11 relate to NRC standards? Are they the same, different, more
12 difficult?

13 A I would relate it in two ways. INPO's standards
14 take the NRC standards as minimums.

15 Q Right.

16 A And in cases, they actually then look for higher
17 standards and improved performance.

18 Q So they're looking at performance as well as
19 safety, is that right?

20 A Their initial focus -- their overall focus is on
21 operational safety of the plants. And how you perform is a
22 key activity in safety of the plants. It's very important
23 from a safety standpoint that you really look at things from
24 a precursor, you don't really want to wait until there's
25 real safety problems. And INPO is focused on finding

1 problems in actual operation or in programs that could lead
2 you to a safety problem if you didn't correct it.

3 Q As a part of your function in NSRB, do you look at
4 INPO reports?

5 A Yes, we did.

6 Q Why?

7 A Because they were a valuable input to us as an
8 independent assessment of performance at the sites.

9 Q Would you look at the first of these three
10 extracts, a 1989 INPO report. Is there any mention in there
11 about problems at Sequoyah with the post-accident sampling
12 system?

13 A On page 2 --

14 Q If you'll refer to the number at the bottom, the
15 AJ-number.

16 A Okay, the AJ-number. On page 299, then the
17 finding that starts at the bottom of that, finding CY1-1, it
18 said some significant problems impacting the chemistry
19 program that has not gotten sufficient management attention.
20 The first example there has to do with problems with the
21 PASS system.

22 Q And it talks about inabilities, the testing of the
23 ability to take the samples and demonstrate deficiencies
24 with procedures, equipment and technician knowledge, is that
25 correct?

1 A This particular one is a little bit more specific
2 than that. If you would go up to page -- I missed what you
3 were reading; yes, that is correct, that at this spot, INPO
4 did say a test of the PASS system demonstrated significant
5 deficiencies in procedures, equipment and technician
6 knowledge. I'm sorry, I missed that when I looked at it
7 there.

8 Q Was there also -- did INPO also have problems
9 with technician knowledge in chemistry?

10 A Yes, if you move on up to page 301, under another
11 finding there, and that finding was related towards the PASS
12 system itself and the finding B towards the end of the page
13 had to do with technicians being familiar with the
14 equipment.

15 Q And did they also make a finding of procedural
16 problems at Sequoyah chemistry?

17 A That continues on the next page.

18 Q Is that the case?

19 A On page 304, paragraph C in the middle of the
20 page. That particular one I guess is problems with -- oh,
21 sorry, if I go up that page a little bit, for example,
22 towards the top of that page, paragraph numbered 3 at the
23 top of the page, procedure steps were admitted by one
24 technician. That's a procedure compliance issue.

25 Q Now I see a reference on page 305 -- I guess

1 that's a recommendation, isn't it, not necessarily a
2 finding.

3 A Yes, the way INPO wrote those reports at that
4 time, they made their findings and then they followed them
5 up with a recommendation.

6 Q Let me ask you to turn to the 1992 portion of this
7 document, portion of the INPO report for 1992. Did INPO
8 make any findings about post-accident sampling system in
9 1992? Let me direct your attention to page 324.

10 A Yes. As I was turning to that, at 321, there are
11 some post-accident sampling system deficiencies in the
12 middle of that page.

13 Q Which page?

14 A Page 321.

15 Q Page 321 is an appendix. I think these pages may
16 have been extracted out of order by the Inspector General.

17 A Okay.

18 Q If you look at page 324, would that not come as
19 part of the general document first, before the appendix?

20 A Yes, I think so.

21 Q And what is the problem with the post-accident
22 sampling system noted on page 324?

23 A At the bottom of the page, the first thing was
24 talking about the ability to -- that sampling was not
25 reliable due to continuing equipment problems.

1 Q If you would look at page 323, do they make an
2 overall finding with respect to chemistry equipment and
3 instrumentation?

4 A Yes, the overall finding on that page is that
5 there were longstanding chemistry equipment and
6 instrumentation problems and pointed out that management has
7 been aware of these problems in some cases since 1988.

8 MR. MARQUAND: Your Honors, I would tender TVA
9 Exhibit 48.

10 JUDGE YOUNG: Any objection?

11 CHAIRMAN BECHHOEFER: Any objection?

12 MR. DAMBLY: May I have voir dire?

13 JUDGE YOUNG: Go ahead.

14 CHAIRMAN BECHHOEFER: Yes, go ahead.

15 VOIR DIRE EXAMINATION

16 BY MR. DAMBLY:

17 Q Did you actually receive these reports, not
18 excerpt, but the full reports, at the time they were
19 written?

20 A NSRB received the full INPO reports.

21 Q Did you yourself get and review all these?

22 A Yes.

23 Q So you know personally these are accurate?

24 A These particular pages, yes, these are accurate
25 pages taken out of those reports. This is the exact format

1 INPO uses and I recognize these as being INPO reports.

2 MR. DAMBLY: Okay.

3 CHAIRMAN BECHHOEFER: Okay, TVA 48 will be
4 admitted.

5 (The document, heretofore marked as
6 TVA Exhibit Number 48, was received
7 in evidence.)

8 BY MR. MARQUAND:

9 Q Mr. McGrath, I've handed to your right, Joint
10 Exhibit notebook 1. First document I would like to look at
11 is Joint Exhibit 1.

12 (The witness reviews the document.)

13 Q Mr. McGrath, do you know what that document is?

14 A These are excerpts from minutes of the May 1991
15 NSRB meeting at Sequoyah.

16 MR. MARQUAND: And for the benefit of the record,
17 rather than to burden it with a massive document, we've
18 simply extracted the portions pertinent to the chemistry
19 organization. So that's why, if you'll look, you've got
20 Page 1, Page 3, and Page 14 of the three pages of this
21 particular exhibit.

22 BY MR. MARQUAND:

23 Q Did you tell us what the date of this meeting was?

24 A May 22nd and 23rd of 1991.

25 Q All right. Were there any findings or any

1 conclusions that the NSRB or the NSRB chemistry subcommittee
2 had with respect to the chemistry organization?

3 A At this particular meeting, the one item related
4 to chemistry that I see here was on Page 3 that...

5 Q Labeled Page 3. It's actually the second page of
6 this document?

7 A Yeah, the second -- the second page of this
8 document, at the bottom of the page, the synopsis here of
9 the radiation and chemistry subcommittee report, the -- the
10 numbered items within that Paragraph #4 was when we first
11 raised the issue about the ability to take pass samples
12 within the required time, who was...

13 Q Who raised that issue?

14 A It was really raised by Tom Peterson, who was the
15 outside consultant. We had -- I believe he raised it based
16 on problems he was familiar with at other utilities. And he
17 brought it up because, as -- if you turn to the next page
18 there...

19 Q Well, let's -- let's hold on here. Let's go
20 ahead. You see the -- I'm going to make sure we understand
21 this language. It says, "The subcommittee identified a
22 number of areas where performance could be improved," and
23 you go down to Item 4, it says, "by use of more realistic
24 training for the post-accident sampling system." Is that
25 what you're talking about?

1 A Yes.

2 Q Now, there's parens there, A132-6.

3 A That annotation means that we set up a formal
4 action item, which meant that the site was required to give
5 us a -- a formal response on what action they were going to
6 take in regard to that issue.

7 Q All right. Now, you were explaining to Mr.
8 Peterson what his concern was. You started to refer to the
9 last page of this, document, page -- which is labeled 14.
10 What was that?

11 A Page 14 is a page out of the subcommittee's full
12 report.

13 Q Right.

14 A The -- the second bullet in the center of the page
15 further explains what his issue was, and that was that in
16 training for the technicians, they were not getting
17 realistic training covering all the restraints that they
18 would actually apply should you have to take a post-accident
19 sample.

20 Q And was one of those restraints or constraints
21 time?

22 A Well, the issue of what he was seeing at the time
23 was that since the individuals were not required to do their
24 training wearing respirators and anti-contamination
25 clothing, which would be necessary in reality, and those are

1 known to significantly reduce your efficiency at doing
2 anything, that if you train people without imposing those
3 constraints, then any judgment you made about the time would
4 not be realistic. From these words, I can't tell for sure
5 whether he checked on whether they were timing it, just
6 rather that the way they were doing it would not give you
7 realistic...

8 Q All right.

9 A ...condition.

10 Q Now, you said that you assigned this an action
11 item that the organization, the chemistry organization be
12 required to respond to you?

13 A Assigned an action item, and the only -- that is,
14 it's an action item that Sequoyah management is required to
15 respond.

16 Q And is Sequoyah management normally good about
17 responding to you on these matters?

18 A As you'll see in some of the later minutes of this
19 year, in this particular time frame Sequoyah management was
20 not particularly good at that.

21 Q Well, I'm saying normally, in the normal, general
22 situation?

23 A In the general situation, we had, over the years,
24 had very good response to these from the plants.

25 Q All right. Now, if you will look at Joint Exhibit

1 2.

2 JUDGE COLE: Joint Exhibit 2?

3 MR. MARQUAND: Joint Exhibit 2. It's the next
4 document in that same notebook.

5 THE WITNESS: Yes.

6 BY MR. MARQUAND:

7 Q What is it?

8 A That's the minutes of the next Sequoyah NSRB
9 meeting which took place in August of 1991.

10 Q Now, is there a reference in this to the post-
11 accident sampling system?

12 A On the page -- on the page you have marked with
13 the double "C's" and ends up 92, it's the last page in that
14 exhibit.

15 Q Last page, last paragraph, isn't it?

16 A Last page, last paragraph. But the last bullet
17 item relative to the action item just said that the post-
18 accident system training concerns have not been addressed,
19 which basically meant Sequoyah took no action to address it
20 in the -- in the intervening three months.

21 Q So between May and August they didn't address your
22 concerns?

23 A That's correct.

24 Q Now, yesterday you said that one of the issues at
25 the November '91 NSRB meeting was unmonitored radiation

1 release pathways. Was there some mention of that in this
2 document?

3 A Yes. It's at the -- the top of this page that
4 we're on right now.

5 Q What is that -- what is that issue?

6 A The -- the issue is that there would be some -- a
7 release pass, such as a path of waste water leaving the
8 plant where the potential would exist to get radioactive
9 contamination into that system, but on the outflow of that
10 system there was neither instrumentation or periodic
11 sampling to insure that you were not discharging anything in
12 excess of limits.

13 Q Did you assign an action item to that?

14 A Yes, an action item was assigned at this meeting.

15 Q And that action item was A133-9, as shown here?

16 A That's correct.

17 Q Now, if you'll turn to the very next joint
18 exhibit, Joint Exhibit 3.

19 JUDGE YOUNG: Excuse me. Okay, the reference to
20 A133-9 is up at the top of the page? Is that what you're
21 referring to?

22 MR. MARQUAND: Yes.

23 THE WITNESS: That's correct.

24 JUDGE YOUNG: Okay.

25 MR. MARQUAND: In the paragraph that begins, "The

1 subcommittee requested the site chemistry investigate
2 several suspected, unmonitored radiation release liquid and
3 gas pathways."

4 JUDGE YOUNG: Okay, thanks. I've got it.

5 BY MR. MARQUAND:

6 Q Do you see Joint Exhibit 3?

7 A Yes.

8 Q What is it?

9 A That is the minutes of the next NSRB meeting at
10 Sequoyah which took place in November of 1991.

11 Q Now, is that the meeting that you and Mr. Dambly
12 discussed yesterday about whether or not trending was a big
13 issue or not?

14 A That's correct.

15 Q All right. I notice on this particular document,
16 I guess in all of them, but on this particular document the
17 first page is called "Executive Summary."

18 A Yes.

19 Q What was that page intended to convey or that
20 executive summary intended to convey?

21 A To let senior management, including the board of
22 directors, know what I saw as chairman to be the most
23 significant issues within the minutes. We -- we forwarded
24 the base minutes, the executive summary, and the next five
25 or six pages that had the more detailed minutes were

1 forwarded on up to the board of directors.

2 Shortly after I took over, the board of directors
3 had asked that the minutes be written in such a way to kind
4 of quickly get to the point so they could see what was
5 important in them. So the action taken to do that was to
6 start it off with what was typically a one-page executive
7 summary, followed by the base minutes.

8 Q Then followed by the subcommittee?

9 A Then followed by the subcommittee minutes.

10 Q All right. In other words, you start out very
11 general, and it got more specific as you went on?

12 A That's correct.

13 Q Was there a key item with respect to the chemistry
14 program?

15 A Is the -- the key item was what -- is the
16 paragraph listed, "Site chemistry program," right here in
17 the middle of the page, in which we're really -- we're
18 trying to point out that based upon findings particularly of
19 site quality assurance and corporate chemistry in many areas
20 were beginning to show deficiencies, which we felt, if they
21 weren't properly corrected, could result in actual chemistry
22 problems in the plant.

23 The executive summary gives a few examples, such
24 as data trend analysis, chemicals. I don't know if I need
25 to read it all. As you go back down the next two levels, by

1 the time you get to the subcommittee minutes, that list is
2 somewhat longer. But if you ask relative to trend analysis,
3 in the -- each time it is discussed here, it is just one of
4 a list of examples. And the action there was to press the
5 plant manager, also the technical program manager, who was
6 Mr. McArthur at the time, to develop a corrective action
7 plan.

8 Q Let me ask you to look and tell me if there were
9 any issues in this about the post-accident sampling system.

10 A If you continue back to the -- the page with the
11 serial number 95, which has a -- a Page 3 from the original
12 minutes at the bottom, the item -- the paragraph at the
13 bottom of the page labeled "Post-accident sampling
14 training," this -- if I could -- summarized what our
15 initial issue was, what we found, and was really the issue
16 at this subcommittee meeting; that the site had come up with
17 a response; but at the meeting we had, the site chemistry
18 manager and the corporate chemistry manager, who were both
19 at the subcommittee meeting, disagreed over the adequacy of
20 the response. And I believe corporate chemistry said that
21 what the site was proposing would not address the issue.

22 Q Does the subcommittee report on post-accident
23 sampling also reflect on the very last page of this
24 document, Page CC-100?

25 A Yes, on that particular page. That was back in

1 their subcommittee report. That was the status they gave to
2 the...

3 Q All right. It says there that the corporate
4 chemistry -- that the subcommittee reviewed the site
5 response and discussed it with the site and corporate
6 chemistry managers. Do you see that?

7 A That's correct.

8 Q And it says corporate chemistry had not reviewed
9 it, and the site chemistry manager withdrew it until they
10 could come to some resolution; correct?

11 A Correct.

12 Q Who was the site chemistry manager at the time?

13 A Mr. Fiser.

14 Q Who was the corporate chemistry manager at the
15 time?

16 A Mr. Jocher.

17 Q All right. So they apparently were not working
18 together on this matter?

19 A That's correct.

20 Q Did you have some discussion with them about
21 addressing this issue?

22 A Yes. At the meeting, the discussion that I had
23 with them was that, given that this had now been an open
24 item for at least six months and questioned our ability to
25 meet NRC requirements, I told both Mr. Fiser and Mr. Jocher

1 that if they did not get on with the resolution of the
2 problem, that the issue could become their ability to manage
3 resolution of problems, rather than just the specific issue
4 of whether they could get the samples taken in the required
5 period of time.

6 Q All right. Now, is there also a discussion on
7 unmonitored release pathways in these particular NSRB
8 minutes? If you'll look right above where we just were, on
9 Page 100.

10 CHAIRMAN BECHHOEFER: What page is this?

11 THE WITNESS: Yes, it's...

12 MR. MARQUAND: CC-100. It's the last page of
13 Joint Exhibit 3. Maybe I'm jumping ahead. If you'd
14 start...

15 BY THE WITNESS:

16 A Well, on that -- that particular issue had not
17 been resolved at the prior meeting. In August, when it came
18 up, we had pointed out a disagreement where the site had
19 felt they had none, but corporate chemistry felt that there
20 were four unmonitored release paths. But this particular
21 one, while they had not yet come to resolution, they did not
22 even have an answer to us because they said the answer was
23 still in site management review.

24 Q So they still didn't have a response?

25 A They still did not have a response at this time.

1 Q Now, yesterday counsel asked you repeatedly
2 whether or not data trending was a big issue at this
3 meeting. Do you see any indication in this document that it
4 was ever an action item, were ever anything that the NSRB
5 was insistent upon the plant responding to?

6 A Within the minutes of the meeting, one, it was
7 never -- is not identified as a specific action item. And
8 even back at the subcommittee level, if you'd go back to
9 Page 98...

10 Q I'm sorry, what page?

11 A 98. Go back two pages at the -- the first
12 paragraph there that's labeled, "Chemistry program review,"
13 you'll see, in the middle of the paragraph, what the
14 subcommittee was identifying as weaknesses in chemistry,
15 were because of many deficiencies, and that there was a
16 fairly lengthy list, about four lines worth of deficiencies.

17
18 And poor data trending is just one of a numerous
19 list. That's the extent to which it's mentioned in these
20 minutes. And then, further down, as far as the -- there's
21 no mention about putting -- insisting on a procedure to be
22 written. What was taken is that the subcommittee---and as
23 Wilson McArthur was part of it he could commit to this---
24 said that the...

25 Q Refer us to the language you're talking about

1 here.

2 A Okay, sorry. Under "Chemistry program review,"
3 the third paragraph. It's about a one-sentence paragraph.
4 At the end, as part of it, Mr. McArthur committed to see if
5 he could provide someone to help the site in the trending
6 area.

7 Q And you're referring now to the language that
8 says, "To address the lack of adequate data analysis,
9 trending, and review, technical programs manager is
10 considering providing an individual to assist site chemistry
11 in this area." Is that...

12 A That's correct. And that -- that's more than just
13 issuing trend gaps. This is -- that's referring here to
14 actually analyzing the data that comes out of chemistry, to
15 look for any out-of-spec conditions or adverse trends.

16 Q Were you angry about this? About the trending
17 issue?

18 A No.

19 Q Was Tom Peterson?

20 A Not that I...

21 Q Was Dr. McArthur?

22 A No.

23 Q In fact, Dr. McArthur was -- said he was going to
24 offer somebody from his staff to help them with that issue?

25 A That's correct.

1 Q Now, I'm going to set these aside for a moment.

2 MR. MARQUAND: Now, first, I would like to tender
3 Joint Exhibits 1, 2, and 3 into evidence.

4 MR. DAMBLY: And staff will object to Joint
5 Exhibits 1, 2, and 3. It was our understanding that what
6 would be put in would be the minutes. We had concerns, as
7 you heard -- for all we know, there are minutes we don't
8 have. This is excerpts that they've decided supposedly
9 cover everything. I think an entire minute ain't more than
10 15, 20 pages, and they could put the whole thing in, if
11 there is a whole thing.

12 JUDGE YOUNG: Did you -- do you have the rest
13 of...

14 MR. DAMBLY: I don't know if we do or we don't.
15 We have something, but I don't know if it's everything.
16 That's why we said they should put in the whole minutes.

17 JUDGE YOUNG: Did you ever ask?

18 MR. MARQUAND: They're here. And if he wants to
19 put them in, he can put them in. Joint Exhibits 1, 2, and
20 3, as I said, are extracts to keep from burdening the
21 record. But the complete documents, if counsel wants to put
22 them up there and go through them, are Joint Exhibits 5, 8,
23 and I believe there -- the other one is in there several
24 times in different places.

25 MR. DAMBLY: If what he has represented is true,

1 Joint Exhibit 5 is not a whole lot bigger than some of the
2 excerpts, so I don't see why we can't have the whole report,
3 if they're going to put them in, and they can tender them as
4 a complete report.

5 MR. MARQUAND: We want to go into -- that's fine
6 with me. But the other ones specifically referenced in the
7 record as to page numbers. If counsel wants to ask about
8 operations and radiologic control or maintenance or
9 modifications at the plant, he can, but I don't see the
10 relevance.

11 JUDGE YOUNG: If you want to put...

12 CHAIRMAN BECHHOEFER: Well, could you -- could you
13 perhaps confer and report back to us tomorrow as to what you
14 conclude about...

15 MR. DAMBLY: Well, they're already here as joint
16 exhibits.

17 CHAIRMAN BECHHOEFER: Pardon?

18 MR. DAMBLY: I don't see what the problem -- if
19 you're going to put in a document, why isn't it proper to
20 put in all 15 pages instead of two or three. If they're
21 going to represent it's the full minutes, then let them
22 represent it's the full minutes.

23 CHAIRMAN BECHHOEFER: Well, will the page numbers
24 correspond?

25 MR. MARQUAND: The page numbers are different.

1 The page numbers are different. I'd have to go back through
2 this whole bit of testimony again. If he wants to put them
3 in, that's fine. And the rules provide if it's unfair, he
4 can put the whole documents in. We have got it here. If he
5 wants to put it in, fine, let him. But I'm offering the
6 extracts.

7 CHAIRMAN BECHHOEFER: Well, if they're extracts,
8 why would they be numbered differently rather than just --
9 are they more than just photocopies of particular pages?
10 I'm just asking this, now.

11 MR. MARQUAND: It's because that's -- we've
12 produced them twice or three times, and we produced every
13 copy we had at different places. And this is the one that's
14 pertinent to chemistry.

15 JUDGE YOUNG: If you...

16 CHAIRMAN BECHHOEFER: Well, will the material in
17 the extract also appear in the full?

18 MR. MARQUAND: It does, but it's not paginated the
19 same way, and the testimony will not be coherent.

20 JUDGE YOUNG: Why don't...

21 MR. MARQUAND: That's what I'm offering.

22 JUDGE YOUNG: Between now and tomorrow, if you
23 want the whole thing in, why don't you -- you go back and --
24 and maybe be able to tell us tomorrow morning which pages
25 correspond to which pages, just so we'll be clear.

1 MR. DAMBLY: Well, I mean, the pages that were
2 referred to a minute ago, the actual numbers on the pages
3 themselves should be the numbers on the pages...

4 MR. MARQUAND: They're not.

5 JUDGE YOUNG: But in the regular...

6 CHAIRMAN BECHHOEFER: Well, that's what I
7 suggested.

8 MR. DAMBLY: He decides to use the Bates stamp
9 number, but he could have used his Page 3.

10 CHAIRMAN BECHHOEFER: Right, that's what I
11 suggested, and apparently that's not going to be the case.

12 MR. DAMBLY: Right. And I won't object to the
13 excerpts if Mr. McGrath is willing to certify them and say
14 that 5, 7, and 8, or whatever, are complete and accurate
15 sets of the entire minutes of those meetings, so that we
16 know, if we look at those, that there's nothing else that
17 should have been in here.

18 JUDGE YOUNG: So, in other words, put in both the
19 experts -- and the excerpts and the complete sets, and that
20 sounds like that way we can compare as necessary.

21 MR. MARQUAND: That's fine.

22 CHAIRMAN BECHHOEFER: Would you have any
23 objection, Mr. Dambly, to that?

24 JUDGE YOUNG: That's what he just said.

25 MR. DAMBLY: I said as long as Mr. McGrath is

1 willing to swear that what's represented here is the
2 complete minutes, are in fact the complete minutes.

3 MR. MARQUAND: I guess that's an appropriate
4 question to ask on Mr. Dambly's examination. I'm offering
5 Joint Exhibits 1 through 3 at this time.

6 JUDGE YOUNG: Okay, so you're want -- you're
7 offering 1 through 3 as the excerpts from the -- from these
8 three meetings?

9 MR. MARQUAND: Yes.

10 JUDGE YOUNG: And, Mr. Dambly, you want the whole
11 minutes in, and you don't -- but you don't have any
12 objection to the excerpts going in as well, as long as Mr.
13 McGrath certifies that the complete exhibits, the complete
14 minutes are, in fact, the complete minutes?

15 MR. DAMBLY: If Mr. McGrath is willing now to say
16 that what is represented in here is the complete set of
17 minutes in the other tabs, I'm willing to withdraw an
18 objection, let him put in just the excerpts and not burden
19 you with that. I just want somebody to tell me that we have
20 complete sets of minutes in here so we can compare and see
21 if there's any difference.

22 JUDGE YOUNG: Okay. And, so -- so, in other
23 words, then, once you compare, then you can make a
24 determination whether you want to put in additional
25 excerpts? Are we understanding you right?

1 MR. DAMBLY: Yes.

2 CHAIRMAN BECHHOEFER: Or are you...

3 MR. DAMBLY: If somebody -- if Mr. McGrath is
4 willing to tell me that what is in here is, I guess -- Mr.
5 Marquand said 5 is the complete minutes for the May 20...

6 MR. MARQUAND: No, that's 1992.

7 MR. DAMBLY: Well, he threw out some numbers as to
8 what were the complete minutes. If Mr. McGrath is willing
9 to say that those are the complete set of minutes, then I'll
10 withdraw any objection, he can put in the excerpts, and if I
11 have a problem that something else should have been in, I'll
12 put it in.

13 JUDGE YOUNG: Mr. McGrath, could you look at 5 --
14 and what were the other two?

15 CHAIRMAN BECHHOEFER: 5. What were the others?
16 There were at least two other...

17 MR. MARQUAND: Compare the 1 -- it would be to
18 compare 1 and 7; and 2 and 8.

19 JUDGE YOUNG: Didn't you say there was one -- one
20 that was 5?

21 MR. MARQUAND: 1 is the same as 7, it appears to
22 me; and 2 is the same as 8.

23 CHAIRMAN BECHHOEFER: And what's 5?

24 MR. MARQUAND: 5 is -- is the next year, and
25 I'm...

1 THE WITNESS: 5 was incorrect. It's -- it's not
2 one of the minutes to which he discussed.

3 CHAIRMAN BECHHOEFER: Well, what's equivalent to
4 3?

5 MR. MARQUAND: Well, it's somewhere else in
6 another volume. And I've seen it. I -- I can't speak to
7 this joint exhibit list. We didn't prepare the joint
8 exhibit list.

9 CHAIRMAN BECHHOEFER: Okay, why don't we take a
10 five minute break and you can look through, and we'll --
11 we'll be back quickly. So off the record.

12 (Brief recess.)

13 BY MR. MARQUAND:

14 Q Mr. McGrath, could you -- have you had a chance to
15 look at joint exhibit -- and compare Joint Exhibit 1 and
16 Joint Exhibit 7?

17 A Yes.

18 Q Is Joint Exhibit 1 an extract from Joint Exhibit
19 7?

20 A Yes.

21 Q Is Joint Exhibit 7 complete?

22 A Yes.

23 Q Have you had a chance to compare Joint Exhibit 2
24 with Joint Exhibit 8?

25 A Yes.

1 Q Is Joint Exhibit 2 an extract from Joint Exhibit
2 8?

3 A Yes.

4 Q Joint Exhibit 8 complete?

5 A Yes.

6 Q Have you had a chance to compare Joint Exhibit 3
7 with TVA Exhibit 70?

8 A Yes.

9 CHAIRMAN BECHHOEFER: 7-0?

10 MR. MARQUAND: TVA Exhibit 70, 7-0.

11 CHAIRMAN BECHHOEFER: 7-0. Okay.

12 BY MR. MARQUAND:

13 Q Is Joint Exhibit 3 an extract of TVA Exhibit 70?

14 A Yes.

15 Q Is TVA Exhibit 70 complete?

16 A Yes.

17 MR. MARQUAND: Your Honor, I tender once again TVA
18 Exhibits -- I mean, excuse me, Joint Exhibits 1 through 3.

19 MR. DAMBLY: No objection.

20 MR. MARQUAND: Let me ask you, while we are on
21 this topic, if you will turn to Joint...

22 CHAIRMAN BECHHOEFER: They'll be admitted, by the
23 way.

24 MR. MARQUAND: Thank you, Judge.

25 CHAIRMAN BECHHOEFER: Without objection.

1 (The documents, heretofore marked
2 as Joint Exhibits #1, #2, & #3,
3 were received in evidence.)

4 BY MR. MARQUAND:

5 Q If you would turn to Joint Exhibit 7. Joint
6 Exhibit 7 has got two cover memorandums on it. First two
7 pages. Do you see those?

8 A Yes.

9 Q The first cover memorandum is a memorandum from
10 you to those listed, dated June 10, 1991?

11 A Yes.

12 Q And the subject is "Minutes of Meeting #132."
13 It's Nuclear Safety Review Board, May 22-23, 1990. You see
14 that?

15 A Yes.

16 Q Is that correct?

17 A The 1990 is a typographical error. It should be
18 1991.

19 Q All right. Now, immediately below your -- the
20 subject -- I mean, the body of your short little memo there
21 is a list of people beginning with R. R. Calabro.

22 A Calabro.

23 Q Calabro. And that's -- those are the people
24 listed; right?

25 A Yes.

1 Q And what's the significance of sending your
2 memorandum to those people?

3 A The -- the people on that list are the members of
4 the NSRB, plus several key Sequoyah managers, such as the
5 site vice president, the site licensing manager, and the
6 site quality assurance manager. A copy was also sent to the
7 plant manager at Watts Bar at the time because we thought
8 Sequoyah information would be of interest to Watts Bar in
9 getting ready for startup.

10 Q All right. There's a list...

11 MR. DAMBLY: Your Honor, just for clarification, I
12 think the cover page that you're referring to, does it have
13 the wrong date on it?

14 MR. MARQUAND: He said it did.

15 MR. DAMBLY: Excuse me, I didn't hear that.

16 JUDGE COLE: He corrected that.

17 CHAIRMAN BECHHOEFER: He just corrected it.

18 JUDGE YOUNG: You need to repeat what you said,
19 Mr. Dambly.

20 MR. DAMBLY: I just asked if he -- if the cover
21 page had the wrong date on it. I must have missed when he
22 said that.

23 MR. MARQUAND: And I agreed it did, and the
24 witness has already testified yes, there is a typo that's --
25 it should be 1991, not 1990.

1 MR. DAMBLY: Okay, I'm sorry.

2 BY MR. MARQUAND:

3 Q There's a list of people attached -- there's two
4 lists of cc's here. This first list of cc's, Rims is the
5 former record storage at TVA?

6 A That's correct.

7 Q J. R. Bynum is who?

8 A He was the vice president of operations at the
9 time.

10 Q All right. Mr. Cobean was who?

11 A He was the nuclear advisor to the board of
12 directors.

13 Q What was his background? Is he a former nuclear
14 navy guy, too?

15 A He was former nuclear navy, but he did have
16 commercial nuclear background as well, but I don't remember
17 what it was.

18 Q And I seem to recall having seen his picture in
19 Admiral White's office; is that correct? As having been --
20 was it the captain of the Nautilus or whatever, that went
21 under the North Pole?

22 A I don't remember.

23 Q Okay. There is a Mr. Harmon here. Who's he?

24 A He was the NRC senior resident at Sequoyah.

25 Q So he got copies of all your NSRB minutes, too?

1 A That's correct.

2 Q Mr. Medford was who?

3 A He was the vice president responsible for nuclear
4 assurance and licensing.

5 Q All right. The second page -- well, just so we
6 get this in the right sequence, if you'll look at the very
7 last page of Joint Exhibit 7, it's another -- what appears
8 to be another cover memorandum from you to an individual by
9 the name of Dan A. Nauman, N-a-u-m-a-n, dated June 6, 1991.

10 A Correct.

11 Q Who is he?

12 A He was the chief nuclear officer in that time
13 period.

14 Q And is this a cover memorandum sending him the
15 NSRB minutes?

16 A That's correct.

17 Q All right. Now,...

18 JUDGE YOUNG: Hold on one second. It says to
19 those listed from Dan Nauman.

20 MR. MARQUAND: I was -- I -- excuse me, Your
21 Honor. I jumped and misled you. I jumped to the very last
22 page of Joint Exhibit 7.

23 JUDGE YOUNG: Okay.

24 BY MR. MARQUAND:

25 Q So you sent this also to the chief nuclear officer

1 in TVA?

2 A That's correct.

3 Q All right. Now let's look at the second page of
4 Joint Exhibit 7. That's a memorandum from Dan Nauman to
5 those listed, dated June 10, 1991. Do you see that?

6 A Yes.

7 Q And who are the four individuals listed under
8 those listed?

9 A Mr. Runion, Waters, and Canoi were the members of
10 the board of directors. Mr. Willis was what was known at
11 that time as the senior executive officer of TVA.

12 Q You mean like a chief operating officer?

13 A Someone like that. I don't remember any more
14 exactly what our duties. But he was -- he was essentially
15 the senior manager in TVA below the board of directors.

16 Q All right. And you drafted this? In fact, that's
17 your initials, TJM?

18 A That's correct.

19 Q All right. Was this the normal course, for NSRB
20 minutes to be sent to all of these people, the board of
21 directors, all senior management, and the NRC?

22 A Yes, this is the normal distribution.

23 MR. MARQUAND: Your Honors, just so that we've got
24 this in the record and it shows the distribution, I'm also
25 going to tender Joint Exhibit 7.

1 MR. DAMBLY: I have no objection.

2 CHAIRMAN BECHHOEFER: No objection? Joint Exhibit
3 7 will be admitted.

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

7 BY MR. MARQUAND:

8 Q Now, all of this was some digression, because I
9 was asking you at one point about Mr. Fiser's 1993
10 complaint, which is Staff Exhibit 34. Could you retrieve
11 that.

12 JUDGE YOUNG: Wait a minute, now. This is the one
13 where -- you've got the wrong one, I think. This is to Ms.
14 Merchant?

15 MR. MARQUAND: Yes, to Ms. Merchant, September 23,
16 1993. It is...

17 JUDGE COLE: Joint exhibit?

18 MR. MARQUAND: ...Staff Exhibit 34.

19 JUDGE COLE: Oh, staff.

20 BY MR. MARQUAND:

21 Q Do you have that document, Mr. McGrath?

22 A Yes.

23 Q If you'll turn to Page 3, the very bottom
24 paragraph, I had asked you earlier about the paragraph that
25 addresses post-accident sampling analysis.

1 A Yes.

2 Q When -- do you know who was responsible for
3 raising the issue of whether Sequoyah chemistry could meet
4 the NRC requirements?

5 A It was raised by NSRB in May of 1991.

6 Q And that was an action item you gave site to
7 respond to?

8 A That's correct.

9 Q And that's what we were seeing in Joint Exhibits
10 1, 2, and 3?

11 A That's correct.

12 Q Now, let me also ask you to look at Joint Exhibit
13 4.

14 JUDGE YOUNG: 4?

15 MR. MARQUAND: Yes.

16 BY MR. MARQUAND:

17 Q And just so we don't have any problem with that,
18 would you compare Joint Exhibit 4 with Joint Exhibit 9 very
19 quickly, Mr. McGrath, and tell me if Joint Exhibit 4 is an
20 extract of Joint Exhibit 9.

21 A Yes, 4 is an excerpt from 9.

22 Q And is Joint Exhibit 9 a complete copy of the NSRB
23 meeting -- meeting minutes for February 19 and 20, 1992?

24 A Yes, it is.

25 Q All right. Now, returning to Joint Exhibit 4,

1 does that document reflect that the open item that the NSRB
2 had on the post-accident sampling system continued to remain
3 open? I'll direct your attention to Page CC-103, the thrd
4 page of this document.

5 A Yes, the paragraph -- the third paragraph under
6 the title of "Radiological control and chemistry
7 subcommittee," states that it remained open. That while the
8 -- a plan was being developed to address the problem, it had
9 not yet been completed or implemented.

10 Q All right. And would you also look at the very
11 last page of Joint Exhibit 4. Does that also address post-
12 accident sampling?

13 A Yes, the item at the top -- the paragraph...

14 JUDGE YOUNG: Where's that?

15 THE WITNESS: It's the last item. It's typed Page
16 22, stamped Page 105.

17 JUDGE YOUNG: Okay.

18 BY THE WITNESS:

19 A The paragraph labeled "B" at the top of the page
20 addresses a little bit more specifically what the status
21 was, and that is the plan was intended to begin...

22 Q Was the NSRB having some concern over the length
23 of time that it had taken Sequoyah chemistry to address this
24 issue?

25 A Yes, as indicated by -- we rarely wrote a

1 statement to indicate how long an item was open. That kind
2 of a statement at the top indicates the subcommittee's
3 concern.

4 Q And you're referring to the statement, "Item A132-
5 6 has been on the agenda since May 1991"?

6 A That's correct.

7 Q You see that?

8 A Right.

9 Q And was it an issue with you about whether or not
10 Sequoyah could satisfy the three-hour requirement for doing
11 a post-accident sampling?

12 A Yes.

13 Q Is that reflected in the language here, and what
14 -- if so, what specific language?

15 A I guess starting in the fourth line, it says, "One
16 issue developed during discussions pointed out the potential
17 for not satisfying the three-hour requirement for taking and
18 analyzing the samples."

19 Q Did the committee have any recommendation about
20 the expedition with which Sequoyah chemistry should proceed
21 to resolve that issue?

22 A The NSRB felt that this thing should have been
23 resolved expeditiously...

24 Q Is it reflected here?

25 A ...when it was first...

1 It is reflected by the way the first sentence is
2 written.

3 Q What about the second sentence?

4 A Oh, okay, you're right. Yes. All right.

5 Q What does it say?

6 A Says, "The subcommittee recommended this item be
7 resolved as soon as possible."

8 Q In Mr. Fiser's '93 complaint, were you ever aware
9 that Mr. Jocher and Mr. Fiser purportedly determined that
10 Sequoyah chemistry personnel could not meet the three-hour
11 post-accident sampling requirement?

12 A I was aware that when they finally implemented the
13 action plan that we had pressed them to put in place, that
14 the action plan -- that the training, the proficiency exams
15 given as a result of that, resulted in showing that many of
16 the technicians could not meet the requirements.

17 Q You know the action plan they put together still
18 couldn't meet what you had asked them to do? Meet the NRC
19 requirements?

20 A In implementing the action plan, part of which was
21 to go check the proficiency of all, and they found that they
22 were not in compliance with the NRC requirements, so that
23 further action would be required to...

24 Q Were you aware of any corrective action document
25 generated with respect to their inability to meet post-

1 accident sampling requirements? Specifically a SCAR?

2 A Yeah, I believe in a later set of minutes here the
3 subcommittee reported that eventually a SCAR was issued
4 sometime in the spring of '92, documenting that the
5 requirements could not be met.

6 Q Did you disagree with the issuance of that SCAR?

7 A No.

8 Q Why not?

9 A Because that was the appropriate action to be
10 taken by the corrective action program. A significant
11 deficiency, such as the inability to meet an NRC
12 requirement, was appropriately documented in a SCAR.

13 Q Was that consistent with the position that you and
14 the NSRB had been taking for the last year-and-a-half? The
15 generation of a SCAR?

16 A Yes, the generation of a SCAR was certainly
17 appropriate, consistent with our positions.

18 MR. MARQUAND: Your Honors, I would tender Joint
19 Exhibit #4 at this time.

20 CHAIRMAN BECHHOEFER: 4?

21 MR. DAMBLY: No objection.

22 CHAIRMAN BECHHOEFER: Without objection, Joint
23 Exhibit 4 will be admitted.

24 (The documents, heretofore marked
25 as Joint Exhibit #4, were received

1 in evidence.)

2 JUDGE YOUNG: You need to probably finish up in
3 the next five minutes or so.

4 MR. MARQUAND: I'm about to move to a new topic,
5 if it would be a good place to break.

6 CHAIRMAN BECHHOEFER: Well,...

7 MR. MARQUAND: Otherwise, it would be just at
8 the...

9 JUDGE YOUNG: Okay. What do you think?

10 CHAIRMAN BECHHOEFER: About how long did you think
11 the topic will take? Longer than five minutes?

12 MR. MARQUAND: We're going to start on going into
13 how we get into the '96 reorganization. So it took a while
14 to discuss earlier; it's going to take a while to discuss it
15 now.

16 CHAIRMAN BECHHOEFER: Yeah, I think, given our
17 requirement that we quit in five or six minutes, we better
18 adjourn, and resume tomorrow morning...

19 MR. MARQUAND: That'd be fine.

20 CHAIRMAN BECHHOEFER: ...in the other Courtroom B
21 at 9:00 a.m.

22 (Whereupon, the hearing was adjourned at 4:25
23 a.m., to reconvene at 9:00 a.m. on Thursday, April
24 25, 2002)

25

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: Tennessee Valley Authority
Watts Bar Nuclear Plant,
Unit 1, Sequoyah Nuclear
Plant, Units 1 and 2, Brown
ferry Nuclear Plant, Units
1,2,3

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

Location: Chattanooga, Tennessee

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

151 Bill Warren
Bill Warren
Official Reporter
Neal R. Gross & Co., Inc.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com