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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

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

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

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

Thursday, May 2, 2002

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

BEFORE:

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

PAGES: 1379 THROUGH 1589

APPEARANCES OF COUNSEL:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Wilson C. McArthur	1382	1535	--	--

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

31	Premarked	1447
84 through 88	Premarked	1532
91	Premarked	1472
93	Premarked	1532
95 through 98	Premarked	1532
134	Premarked	1532

Joint:

24	Premarked	1532
45, 48, 51	Premarked	1541

P R O C E E D I N G S

1
2 CHAIRMAN BECHHOEFER: Good morning, ladies and
3 gentlemen. We're prepared to resume our hearing and we
4 understand that we have a particular witness for this
5 morning.

6 Are there preliminary matters before we begin?

7 MR. DAMBLY: I have none, Your Honor.

8 MR. MARQUAND: None here, Your Honor.

9 CHAIRMAN BECHHOEFER: Okay, Mr. Dambly.

10 MR. DAMBLY: Staff would call Wilson McArthur to
11 the stand.

12 Whereupon,

13 WILSON COOPER MCARTHUR

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

16 DIRECT EXAMINATION

17 BY MR. DAMBLY:

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

20 A Wilson Cooper McArthur.

21 Q Cooper?

22 A Cooper, C-o-o-p-e-r.

23 Q And what's your current occupation?

24 A I'm retired.

25 Q Lucky you. Please tell us about your educational

1 background.

2 A I have a B.S. in physics, a Masters degree from
3 the University of North Carolina in radiation physics and a
4 Ph.D. in radiation physics from Purdue University.

5 Q And after you got out of college, what has been
6 your employment history?

7 A First job was with Nuclear Chicago --

8 Q Pardon?

9 A Nuclear Chicago.

10 Q Nuclear Chicago?

11 A Right, out of Chicago -- that makes sense. And
12 that same company was in Texas with their subsidiary Texas
13 Nuclear.

14 Q What did you do for them?

15 A Accelerator Division. I was the technical guy
16 that installed accelerators and started them up, that kind
17 of thing. Also did research on instrumentation.

18 Q For radiation monitoring?

19 A Yes, right.

20 Q What'd you do after that?

21 A After that I went with -- gosh, I hadn't thought
22 about this for awhile -- with Carolina Power & Light Company
23 and I was project engineer for the Shearon Harris Project,
24 which is now an operating nuclear power plant.

25 Q At that time, it was in construction?

1 A Yes, I was over engineering and construction for
2 that particular reactor facility.

3 And left there and was vice president and general
4 manager of a company called Hittman Nuclear out of Columbia,
5 Maryland.

6 Q What did that company do?

7 CHAIRMAN BECHHOEFER: Hickman Nuclear?

8 THE WITNESS: Hittman, H-i-t-t-m-a-n.

9 CHAIRMAN BECHHOEFER: Hittman, okay.

10 THE WITNESS: Hittman Nuclear.

11 JUDGE YOUNG: Dr. McArthur, we've been having real
12 bad problems with the acoustics in here, so if you could
13 pull the microphone a little closer.

14 THE WITNESS: Okay. This is the right one, right?

15 JUDGE YOUNG: It's the little small black one.

16 THE WITNESS: Oh, yeah.

17 JUDGE YOUNG: Thank you very much.

18 THE WITNESS: There he did radioactive waste
19 processing, had units that would go out to the field and
20 solidify radioactive low-level waste. He also did
21 consulting work and we solved -- in fact, we were one of the
22 first people at Three Mile Island when they had the problem
23 there -- in solving problems and that kind of thing.

24 I left there and went with a company called Tera
25 out on the west coast and I was the vice president of

1 engineering and the same thing with a company called EDS
2 Nuclear.

3 BY MR. DAMBLY:

4 Q Is that EES or EDS?

5 A EDS.

6 Q D as in David?

7 A In David, EDS Nuclear. And left there and went
8 with a company called Quadrex out of Pittsburgh and I was in
9 Gainesville, Florida for a period of time.

10 Then I came to TVA after that.

11 Q You were in Gainesville as part of your Quadrex
12 employment?

13 A I'm sorry, I left out a part too. After Tera and
14 EDS Nuclear, I had my own company called KLM Engineering out
15 on the west coast and had that for about seven years and
16 sold that company to Quadrex and then made a commitment to
17 go to work for them for a year to start them in
18 decontamination/decommissioning business and did that, then
19 left there and went with the Tennessee Valley Authority as
20 manager of technical programs.

21 Q Okay, now when you were in Gainesville, Florida
22 you worked with Quadrex?

23 A Yes.

24 Q And what was your function there?

25 A I was starting them in the business to do

1 decontamination work and decommissioning.

2 JUDGE YOUNG: Could I interrupt here for a second?
3 Are the microphones turned up as high as they normally are,
4 because both of you sound very faint to me and I see other
5 people nodding in agreement.

6 (Brief pause.)

7 JUDGE YOUNG: Seems like they were turned up more
8 before.

9 (Brief pause.)

10 THE WITNESS: Can you hear me a little better now?

11 JUDGE YOUNG: It's just the room really.

12 THE WITNESS: Yeah.

13 JUDGE YOUNG: So we all have to sort of bear with
14 it.

15 BY MR. DAMBLY:

16 Q How did you come to be employed by TVA?

17 A When I was at Carolina Power & Light Company, Ike
18 Zeringue -- teaches you always to be good to the people that
19 you work with -- worked for me. He was actually a part time
20 student and part time working with Carolina Power & Light
21 Company. So I knew him then and then when this technical
22 programs position became available at TVA, I happened to get
23 in contact with him and he said we've got just the right
24 position for you here at TVA. So --

25 Q And that was in 1990?

1 A 1990.

2 Q Did you get -- have to compete? Was there a
3 posting or Mr. Zeringue just --

4 A I just came and interviewed several different
5 people here and came to work for TVA. I don't know if they
6 talked to other people or not.

7 Q Let me show you Staff Exhibit 100 from the book
8 box. Dr. McArthur, is this the position description for
9 your position as technical program manager?

10 A It appears to be, it has my signature on it.

11 Q And down at the bottom of the cover page, do you
12 see where it talks about employees direct and indirect?

13 A Yes.

14 Q How many employees were under your supervision?

15 A It says here 635.

16 Q Does that square with what you remember?

17 A Yeah, a large portion of that was the security
18 force.

19 THE REPORTER: Excuse me, Doctor, please don't
20 cover the microphone up.

21 THE WITNESS: Oh, okay.

22 THE REPORTER: Thank you.

23 BY MR. DAMBLY:

24 Q And what functions did you supervise when you were
25 in that position?

1 A I had rad con, chemistry, environmental, Muscle
2 Shoals which is a laboratory, emergency preparedness,
3 industrial safety and security and fire protection.

4 Q Between 1990 and '94, did you lose any of those
5 functions?

6 A Somewhere along the line, I don't know the exact
7 date, security -- I had recommended to Oliver Kingsley that
8 we transfer security to the sites. I didn't know anything
9 about security, I was a technical person in rad con and
10 chemistry. And every place I'd ever worked before, security
11 always reported to the sites. So we recommended that
12 security report to the sites and that took place. That was
13 a large portion of the 635.

14 Then later fire protection went to the fossil
15 organization.

16 Q Did that go before or after you left the technical
17 program manager position?

18 A I didn't understand the question.

19 Q Was fire protection transferred out from under you
20 while you were still in the technical program manager
21 position?

22 A I'm not exactly sure, but I think that would be
23 the case.

24 Q When they transferred security to the sites, did
25 they update your position description?

1 A I don't remember.

2 Q While you were the technical program manager, did
3 you have any other functions at TVA?

4 A I was on the Nuclear Safety Review Board.

5 Q What was your function on the Nuclear Safety
6 Review Board?

7 A I headed up the support portion, rad con,
8 chemistry, environmental, rad waste, that kind of areas.

9 Q Were you on the NSRB for each of the three sites?

10 A Yes.

11 Q Was there a chemistry subcommittee of the NSRB?

12 A No, it was part of the support function.

13 Q There was a support subcommittee?

14 A Yes.

15 Q Who was on it besides you?

16 A We had a fellow by the name of Tom Peterson, who
17 was a consultant and at that time I believe we were the only
18 two.

19 Q Was there a chairman to the subcommittee?

20 A Yes.

21 Q Who was it?

22 A Tom McGrath -- not for themselves -- I was the
23 subcommittee --

24 Q Chairman?

25 A Yes. I don't know if they called it chairman, I

1 think it was just lead person.

2 Q Was Mr. Peterson a member of the NSRB?

3 A He was an outside consultant.

4 JUDGE COLE: But also a member of the NSRB?

5 THE WITNESS: Yes, he was.

6 BY MR. DAMBLY:

7 Q Let me show you what's marked, I believe it's
8 Joint Exhibit 7, which are the minutes for a May 22-23, '91
9 Sequoyah NSRB meeting.

10 A We want to switch books?

11 Q Keep that one hand.

12 A Okay, we'll come back to it.

13 Q If you look at Joint Exhibit 7 and I think it's
14 about the fourth page in -- right here -- which says Minutes
15 and then has Members and you see a list that includes
16 yourself and then it has advisors.

17 A That's correct, Tom Peterson was an advisor, he
18 was not a member -- that's a correct term.

19 Q Now some of the people that were members were
20 outside of TVA or were they all inside of TVA?

21 A All these people are TVA.

22 Q So the advisors were outside people, they weren't

23 --

24 A Yes, that's correct.

25 Q What did NSRB do -- what did the full committee do

1 when it met?

2 A What was its function?

3 Q Right.

4 A We were to review the nuclear activities at the
5 site, programmatic issues and that kind of thing, to
6 determine if things were working well.

7 Q And how did you go about doing that, how did you
8 establish an agenda for the meetings?

9 A I would normally tour various areas of the plant
10 just to look at how things were working. Then we would
11 interview various people, lead people and technicians, and
12 assess from those activities -- sometimes we would have
13 preplanned activities like reduction in radiation exposure,
14 quantities of rad waste shipped. So we'd have an agenda
15 ahead of time as to what things we were going to look at.

16 Q What did -- how did the subcommittees determine
17 what they were going to do and how did the subcommittee
18 operate?

19 A Pretty well the same way. We were continuously
20 looking at daily information coming from the sites, so we
21 knew what was going on. Also we would know the new
22 regulations that were coming out or problems in the
23 industry, keeping up with problems in the industry, so we
24 would look to see lessons learned from other sites, we'd
25 look at our site to make sure we didn't have those same

1 problems. So we'd make an agenda from those kind of things,
2 general aspects of running a rad con program, chemistry
3 program, rad waste program.

4 Q And when you and Mr. Peterson, as the
5 subcommittee, was there a formal agenda or did you just go
6 out and talk to people in the plant? How did that work?

7 A We had a formal agenda.

8 Q And people came in and talked to you?

9 A Yes, or we'd go see them. Generally we would try
10 not to impact the plant as much as -- we'd minimize the
11 impact and we'd go to the people themselves.

12 Q Okay, and what authority did the NSRB have over
13 operations?

14 A We were a recommendation organization, we would
15 come up with our questions and the site -- the plant
16 manager, senior level people in TVA would be at the meeting
17 and we would discuss those issues. So our authority was
18 limited to being recommendations, detecting if things seemed
19 to be going in a wrong direction, that kind of thing.

20 Q Okay. And do you recall the NSRB having action
21 items?

22 A Yes.

23 Q What were those?

24 A If we detected a problem that required some
25 activity on the part of the site to correct that issue or to

1 take a look at that issue, it'd become a part of the agenda
2 for the next meeting.

3 Q And how were the minutes for an NSRB meeting
4 prepared, who did it?

5 A Either Tom or I would write the one for our
6 subcommittee.

7 Q That's Tom Peterson?

8 A Yes. And we would issue those to Tom McGrath, who
9 was the NSRB chairman, and they would put those together in
10 a formal minutes that was issued throughout the company.

11 Q Do the NSRB minutes for your subcommittee and for
12 the entire NSRB full committee -- or full board, I should
13 say -- do they reflect all the items that are discussed at a
14 meeting?

15 A Reflect all the items?

16 Q Yes.

17 A If it was identified and talked about in the
18 subcommittee, we would determine there if it was an action
19 item or not -- in the entire -- at the end of the tours and
20 all the things we would do, we'd have a formal meeting with
21 the site people and some senior TVA people and we would
22 determine in that meeting if there were to be action items
23 or not.

24 Q And I want to ask about action items. I'm sorry I
25 wasn't very clear. Do the minutes reflect all of the items

1 addressed or talked about, irrespective of whether there was
2 an action item that came out?

3 A I don't know how to respond to that question, to
4 say all.

5 Q Well, if you had a discussion in the I guess
6 support subcommittee on several issues dealing with
7 chemistry or dealing with rad con, whatever, would you put
8 all those issues in the subcommittee minutes?

9 A If it was a big enough issue, we would discuss it
10 in the meeting, and if it was determined by the committee
11 that this should become an action item, it would become an
12 action item. There were some issues that we would discuss
13 that we would decide weren't big enough and therefore they
14 would not become --

15 Q How long did you serve on the NSRB?

16 A Most of the time I was with TVA, I believe.

17 Q And how long were you with TVA?

18 A About 11 years.

19 Q From 1990 to 2001?

20 A I don't think I served on it the last year.

21 Q But in 2001, you left TVA, is that when you
22 retired?

23 A January 2001. My wife's shaking her head, so --

24 Q She was probably very happy.

25 Do you recall what problems there were with the

1 Sequoyah plant in the chemistry area in '91-'92 time frame?

2 A I don't know if I could recall them all, but we
3 did have some problems.

4 Q Do you recall any of them?

5 A We had some problems with unmonitored releases,
6 with the PASS system and during that period of time an
7 action list had been put together and then after that -- in
8 fact, continuously we were looking at putting together a
9 problem list and trying to correct those and put them on the
10 corrective action plan.

11 Q At that time that there were some problems in
12 Sequoyah in '91-'92, who was the chemistry superintendent
13 for Sequoyah?

14 A I believe during that period of time it was Gary
15 Fiser. He had been in outage management for awhile, I don't
16 know exactly when he came back in as the chemistry manager,
17 but somewhere during that period of time, he became the
18 chemistry manager.

19 Q And before he went to outage management, he was
20 also the chemistry manager?

21 A I think so.

22 Q Let me direct you to Joint Exhibit 3, November
23 1991 minutes, volume 1 of the TVA exhibits.

24 (Brief pause.)

25 Q And I believe Joint Exhibit 3 is some excerpts

1 from the November 20-21, 1991?

2 A Yes.

3 Q Does that look familiar to you?

4 A It's an executive summary.

5 Q And what were the significant items listed as key
6 issues in the chemistry program?

7 A It says "Recent findings by site quality assurance
8 and corporate chemistry indicated significant problems
9 existed in the Sequoyah chemistry program, which if not
10 promptly corrected could impact plant chemistry control.
11 For example, required data trend analyses are not being
12 performed; chemicals were purchased to incorrect
13 specifications; some training was delinquent and several
14 procedure preparations and use deficiencies were
15 identified."

16 Q Okay, who puts in what's the key items in the
17 executive summary? Was that you?

18 A I would write for my subcommittee and Tom McGrath
19 would summarize in the executive summary. He would not put
20 everything that was in my minutes, but what he considered
21 key areas of concern.

22 Q Do you know if in November of '91, Mr. Fiser was
23 still in outage management or was he back as superintendent
24 -- chemistry superintendent at Sequoyah?

25 A I'm not sure exactly when he came back in as

1 chemistry manager.

2 Q Now do you recall a meeting in January of '92
3 where the trending was discussed in Mr. Fiser's office with
4 Mr. Peterson?

5 A I don't know the exact date but I do remember
6 discussing trending, yes.

7 Q Could it have been at the November 21, meeting?

8 A I could not respond to that, I don't remember the
9 exact date.

10 Q Let me show you Staff Exhibit 95.

11 (Brief pause.)

12 Q Dr. McArthur, do you recognize what that document
13 is?

14 A Not yet.

15 (The witness reviews a document.)

16 A It looks like a Department of Labor -- let's see
17 who signed it. It's an interview I had with the Department
18 of Labor.

19 Q And on the last page of that, is that your
20 signature?

21 A Yes.

22 Q And if you'd turn to the next to the last page,
23 there's a discussion in I guess the second paragraph about a
24 meeting.

25 A Okay.

1 Q Does that refresh your recollection as to when you
2 had a meeting concerning trending?

3 A I just know this meeting took place, I couldn't
4 tell you the date.

5 Q It says in here in January of 1992.

6 A Okay.

7 MR. MARQUAND: Well, I'm going to object to
8 testimony by counsel. He already asked him to read it and
9 asked if it refreshes him and he said no, I just know there
10 was a meeting. Now if counsel testifies, that's
11 inappropriate about when it was.

12 MR. DAMBLY: This is essentially examination of
13 one of their witnesses who is -- I'm entitled to lead and I
14 can ask him if January 1992 -- he wrote in here.

15 THE WITNESS: I signed this on 5/29/97.

16 BY MR. DAMBLY:

17 Q At the time you signed it, the statements you put
18 in here, you thought were true, is that correct?

19 A Yes -- well, I need to talk about this issue a
20 little bit. This was a DOL guy that wrote these -- this
21 document. He had to write it a number of times, very poor
22 English, very poor understanding of the situation. And I
23 refused to sign it on a number of occasions. I probably
24 should never have signed it -- I did. After a period of
25 time I just finally gave up because I couldn't understand --

1 he had an agenda that was different than mine and so I was
2 very disappointed with his effort.

3 Q But in fact you did sign it.

4 A Yes, I did.

5 Q And you read it before you signed it.

6 A Yes, read it several times.

7 Q Was this date of the meeting that's discussed in
8 the second paragraph on the next to the last page an item
9 that you asked him to correct?

10 A I completely rewrote the thing a couple of times
11 but he would not take my input and wrote it the way he
12 wanted to write it.

13 Q But do you recall any discussions over what the
14 date of the meeting that you describe on the next to the
15 last page?

16 A No, I don't recall that being a problem.

17 JUDGE YOUNG: We're starting to lose you a little
18 bit.

19 THE WITNESS: Oh, are you?

20 JUDGE YOUNG: Thank you.

21 THE WITNESS: I'm trying to go to the book over
22 here and the mic over here.

23 JUDGE YOUNG: I know it is --

24 MR. DAMBLY: It would have been much better if
25 they had the mic on the other side, but unfortunately --

1 THE WITNESS: Yeah. It says in January 1992.

2 BY MR. DAMBLY:

3 Q Do you recall that meeting, whatever date it
4 happened, do you recall the meeting?

5 A I do recall the meeting.

6 Q And do you recall what were the major issues
7 discussed?

8 A PASS was a major issue, unreleased monitoring
9 (sic) were probably the two major issues. And we had some
10 trending concern, trending analysis that were kind of a
11 secondary issue.

12 Q Again, you're referring to the document in front
13 of you in that paragraph? Do you see where it says "The big
14 issue"?

15 A Yeah, that dealt with the data trend.

16 Q Was that a secondary issue or the big issue?

17 A It was one of the three issues.

18 Q What happened at that meeting?

19 A The subcommittee was concerned about what was
20 being tracked in the chemistry organization and we were
21 recommending that other information be tracked, pretty
22 consistent with the rest of the industry. I had been down
23 to Florida Power & Light Company and had seen what they
24 tracked in their chemistry group and what we did in Carolina
25 Power & Light Company, and felt that we were not trending

1 enough data to know what was going on in the plant.

2 Q Do you recall a statement by Mr. Peterson or Mr.
3 McGrath in Mr. Fiser's office that they needed to put the
4 requirement to do more trending in the procedure?

5 A Yes.

6 Q What was Mr. Fiser's response?

7 A He did not want to do that, he felt that he did
8 not have enough personnel -- his comment was I don't have
9 enough people to do the trending that you're asking me to
10 do.

11 Q And had procedural violations been a problem at
12 Sequoyah?

13 A Yes.

14 Q And the procedural violation -- if it had been put
15 into a procedure and then that procedure violated, would
16 that have been an NRC concern?

17 A Our concern was when you have a problem, you
18 identify the problem and you take it to your senior
19 management and identify that problem and try to get it
20 corrected. We didn't feel like that Gary was even
21 attempting to do that at that time. He was not trying to
22 get a fix on a problem.

23 Q Was there an action as a result of that NSRB
24 meeting having to do with trending?

25 A I know that the unmonitored release points and

1 PASS were, I can't remember if that one was identified or
2 not.

3 Q Do you recall who was at the meeting besides
4 yourself and Fiser and Peterson and at some point McGrath?

5 A I think Dick Mullee was in that meeting, he was
6 part of the NSRB at that time.

7 Q Was Mr. Jocher there, do you recall?

8 A I don't think so, I'm not really sure, but I don't
9 think so.

10 JUDGE YOUNG: Do you recall the specifics of -- of
11 what the board wanted done with regard to trending, and what
12 Mr. Fiser wanted to do?

13 THE WITNESS: Well, basically, we wanted more
14 trending analysis. He didn't want to do anything.

15 JUDGE YOUNG: He didn't want to do any trending?

16 THE WITNESS: He didn't want to add any trending
17 to what he -- any more than what he was currently doing.

18 JUDGE YOUNG: Do you recall the extent of what he
19 was currently doing and what -- how that was deficient in
20 the board's...

21 THE WITNESS: It was -- it was very minimal
22 compared to the rest of the industry.

23 BY MR. DAMBLY:

24 Q Do you recall, that prior to that meeting there
25 had been a -- two or three weeks, I think, where the -- I

1 think even before Mr. Fiser came back, where trending hadn't
2 been done because of computer equipment problems?

3 A It was -- could you repeat the question.

4 Q Do you recall a period of time in Sequoyah where,
5 because of some kind of computer related problems, there
6 were no trends being plotted?

7 A I know there was a period of time there were no
8 trending plotted. I didn't know particularly what the
9 problem was.

10 Q And at the time of this meeting, though, do you
11 recall whether they were, in fact, doing trending at that
12 point?

13 A Again, they were doing very minimal trending.

14 Q Do you remember a point in the conversation where
15 Mr. Fiser offered to call INPO and see if they were doing
16 less than anybody else or more than anybody else?

17 A No.

18 Q Did you step out of that meeting at any time?

19 A Yes.

20 Q After that meeting, did Mr. McGrath and Mr.
21 Peterson discuss with you their views of Mr. Fiser?

22 A I know we discussed the fact of his not accepting
23 responsibility for the recommendation by the committee. And
24 we were -- we were concerned about that, that he was not
25 doing enough trending.

1 Q Do you recall any statements by Mr. McGrath that
2 Mr. Fiser needed to be moved out of the Sequoyah chemistry
3 position?

4 A No.

5 Q You don't recall that?

6 A No.

7 Q Do you recall ever telling Mr. Fiser that that
8 statement was made?

9 A Repeat the question.

10 Q Do you recall ever telling Mr. Fiser that after
11 that meeting McGrath and Peterson came out, and McGrath told
12 you Mr. Fiser can't stay in that position anymore, we need
13 to get him out of that position in Sequoyah?

14 A No, he was -- he was concerned -- Tom McGrath and
15 Tom Peterson both were very concerned about the direction
16 that chemistry was taking, but I don't remember them ever
17 saying we ought to take him out of the position. That was
18 not normally our function.

19 Q Well, and if you refer again to the exhibit that's
20 in front of you, Staff Exhibit 95. And do you recall Mr.
21 McArthur being very upset about the trend data?

22 JUDGE YOUNG: Mr. McArthur?

23 Q I'm sorry. Mr. McGrath. I knew I was going to do
24 that at least once.

25 Do you recall Mr. McGrath being very upset about

1 the trend data as a result of that meeting?

2 A I wouldn't agree with the term "very upset." He
3 was concerned, as we were about any -- any of those issues
4 we had brought up. But I -- to use the word "very
5 concerned," I can't say that.

6 Q Now go to staff's book of joint exhibits. And
7 specifically, Joint Exhibit 27.

8 CHAIRMAN BECHHOEFER: 27?

9 MR. DAMBLY: 27. Sequence of events.

10 Q You've seen this document before; is that correct?

11 A I don't really recognize it.

12 Q Well, we discussed it at your deposition.

13 A Okay.

14 Q If you could turn to Page 22.

15 A 22?

16 Q 22.

17 A 22 out of 85?

18 Q Pardon?

19 A What page? 22? Okay.

20 Q Down at the bottom of the page.

21 A Okay, I'm -- I'm there.

22 Q Now, there's a conversation in the middle of that
23 page, starting with, "McArthur: Do you know when the
24 downhill slide started?" Could you read that, but not out
25 loud.

1 A Read the one where I say...

2 Q Yes, down through -- down through the end of that
3 page.

4 A "Do you know when the downhill slide started on
5 you?"

6 Q Right. No, not out loud. Just read it, see if --
7 read it to yourself.

8 A Read it to myself. Okay.

9 Q Yeah.

10 A I don't know where this comes from. Is this -- is
11 this from minutes of a meeting or...

12 Q No. Do you recall having this conversation with
13 Mr. Fiser?

14 A No.

15 Q Recall Mr. Fiser taping you at any time?

16 A I knew he was taping me.

17 Q And how'd you know that?

18 A I was told by legal counsel.

19 Q But you don't ever recall this being a part of a
20 conversation you had with Mr. Fiser?

21 A I know he was -- he was trying to find out why he
22 was not doing an effective job out at Sequoyah. And my
23 tendency was to try to help people, and I was trying to help
24 him understand what was going on.

25 Q Do you recall ever telling Mr. Fiser that McGrath

1 walked out of this meeting we've been talking about and
2 said, "We can't have this guy in Sequoyah chemistry
3 position"?

4 A I do not recall that.

5 MR. MARQUAND: Objection. That's not even what
6 this purported transcript says. Where does counsel get off
7 trying to suggest to him that that's what was said.

8 MR. DAMBLY: Excuse me, that was a direct quote.
9 Might try reading it.

10 Do you recall ever making that statement.

11 MR. MARQUAND: Excuse me. I don't see that. The
12 quote I see says, "Tom McGrath said we have a chemistry
13 manager at Sequoyah that is not effective." That's not to
14 say that he should be -- we can't have him here.

15 MR. DAMBLY: Excuse me.

16 JUDGE YOUNG: There's a place...

17 MR. DAMBLY: I'm talking Page 22. It says...

18 CHAIRMAN BECHHOEFER: Yes, there -- I see where
19 you're...

20 MR. DAMBLY: ..."McArthur: "Well, you know and I
21 don't. When I walked out of that meeting Tom McGrath said,
22 'We can't have this guy in the Sequoyah chemistry
23 position.'" Is that what it says?

24 MR. MARQUAND: And we listened to the CDs, and
25 that's not what I recall -- you know, this doesn't -- just

1 because we listened to a CD doesn't make this gospel as to
2 what was said.

3 MR. DAMBLY: Oh, we're going to play the CD.

4 MR. MARQUAND: This is full of all -- this is full
5 of all sorts of mistakes.

6 CHAIRMAN BECHHOEFER: I think the witness is being
7 asked whether it was said. And I think that's relevant to
8 the record. Let us know.

9 BY THE WITNESS:

10 A I don't recall Tom McGrath saying, "This guy out
11 to be taken out of his position."

12 Q All right.

13 A That was not -- that was not a function of the
14 NSRB.

15 Q Well, I appreciate it's not a function. But did
16 you -- do you recall ever telling Mr. Fiser Mr. McGrath said
17 that?

18 A No.

19 MR. DAMBLY: If we could take like five minutes to
20 set up the...

21 CHAIRMAN BECHHOEFER: That's fine.

22 (Brief recess.)

23 MR. DAMBLY: At this time, Dr. McArthur, I'd like
24 to play you a recording of the conversation that Mr. Fiser
25 had with you. And it's starting on the middle of Page 22,

1 just above where I showed you before. Okay, if you'd play
2 that.

3 (CD was played.)

4 BY MR. DAMBLY:

5 Q Recognize your voice on the tape?

6 A I think so. I couldn't hear it very well.

7 Q Well, do you recall having that conversation with
8 Mr. Fiser?

9 A I don't recall specifically; no.

10 Q Does that refresh your recollection of what Mr.
11 McGrath said to you when he came out of the meeting that we
12 were talking about?

13 A The only thing I can tell you is McGrath was
14 upset, just like I was. And Tom Peterson was upset at the
15 chemistry program at Sequoyah. They were also upset that --
16 over the trending analysis. I do not recall Tom Peterson
17 ever saying, "We ought to take that guy out of his
18 position."

19 JUDGE YOUNG: By saying you don't recall Tom
20 Peterson...

21 THE WITNESS: Tom McGrath or Tom Peterson.

22 MR. DAMBLY: One of the Toms.

23 THE WITNESS: Yeah, one of the Toms. In fact, we
24 were told explicitly not to judge the individuals who were
25 looking at the programs.

1 BY MR. DAMBLY:

2 Q In early 19 -- in 1991 and early 1992, who was the
3 corporate chemistry manager?

4 A I believe that was Bill Jocher.

5 Q Okay. And at some point in '92 did Fiser and
6 Jocher switch positions?

7 A Sequoyah -- there was enough concern about the
8 Sequoyah chemistry program that the plant manager was
9 looking for some way to solve the problem. And it was
10 thought maybe that Bill Jocher might be able to make a
11 difference. And so the plant manager at Sequoyah asked for
12 an interchange for one year for Bill Jocher to go to
13 Sequoyah and Gary Fiser to come to corporate.

14 Q Okay. And did that work out? I mean, did that
15 happen?

16 A Yes.

17 Q Were you in favor of that?

18 A I enjoyed working with Bill Jocher. I didn't know
19 Gary Fiser very well at that point in time. I know that
20 Bill Jocher was very concerned about Gary coming to
21 corporate, because he felt that Gary was not performing very
22 well, and he felt that -- that Gary might do injury to a
23 position in corporate. In fact, he went to my boss at that
24 point in time---I can't remember what his name was---but
25 went to him and complained, he says, "I don't think Gary

1 ought to come into this position." And anyway, he made the
2 choice to go ahead and let him come into that position.

3 Q Okay. You don't recall who your...

4 A Dan -- Dan Keuter. Dan Keuter.

5 Q Oh, Dan Keuter.

6 A Yeah.

7 Q Let me show you Joint Exhibit 43, in the same
8 book, I believe. Do you recognize this document?

9 A I don't recognize it, but I see what it is.

10 Q And it does say some agreement between Fiser, and
11 then lists a bunch of people, including yourself. And do
12 you recall that this...

13 A Agreement; yes.

14 Q In fact, I think it says, "Coordinated by Wilson
15 C. McArthur, Manager of Technical Programs" on the bottom.

16 A Right.

17 Q Okay, and under that agreement when -- when was
18 Mr. Fiser entitled to return to Sequoyah as the chemistry
19 manager superintendent?

20 A I don't remember the date, but it was one year
21 from the date he came to corporate.

22 Q Is there anything in here that says that Sequoyah
23 management has the right to refuse bringing him back?

24 A No, although they did refuse to take him back.

25 Q Did you write the Fiser performance appraisal when

1 he was the acting corporate -- when he was in the Jocher
2 position in corporate?

3 A Yes.

4 Q I think if you'd look at Joint 33, which is again
5 in that same book.

6 A 33?

7 Q 33.

8 A Okay.

9 Q Is that the appraisal that you gave Mr. Fiser?

10 A I've signed it, so -- I don't know what the date
11 is. I think the overall -- yes, this -- I recognize it.

12 Q All right. And did you write this alone or did
13 you talk to his prior supervisors at Sequoyah, get input in
14 writing this?

15 A I talked to other people.

16 Q What did they tell you?

17 A They didn't think that he would be -- at Sequoyah?

18 Q Right.

19 A They didn't feel he was performing very well.

20 Q Do you recall ever referring to this document as
21 the worst performance appraisal you'd ever written?

22 A Yes, I would say that.

23 Q Well, what about this is bad? What about the
24 appraisal is...

25 A I would never think of a corporate chemistry

1 manager or a site chemistry manager as being a C-plus. That
2 would not be acceptable to me. "Adequate" is not acceptable
3 in that position. They need to be high performers. So if
4 anybody was evaluated as adequate, I would consider that as
5 unacceptable.

6 Q So the worst performance appraisal you've ever
7 written was "adequate"?

8 A Well, I don't recall other -- offhand, any other
9 particular ones I've written. But that was -- I thought
10 this -- I thought this was very performance -- a very poor
11 performance appraisal.

12 JUDGE COLE: Dr. McArthur, you indicated C-plus.
13 How do you get that from this form?

14 THE WITNESS: "Adequate."

15 JUDGE COLE: Okay.

16 JUDGE YOUNG: When you said that you had talked
17 with his previous supervisors, do you recall who?

18 THE WITNESS: Lagergren, site plant manager, and
19 that's the only two I remember offhand.

20 CHAIRMAN BECHHOEFER: Who was the latter? I
21 didn't hear the word.

22 JUDGE YOUNG: Plant manager.

23 THE WITNESS: The plant manager.

24 CHAIRMAN BECHHOEFER: Did you put a name?

25 THE WITNESS: I'm trying to remember his name now.

1 He's now head of operations support at TVA. I can't -- I
2 can't recall his name offhand.

3 CHAIRMAN BECHHOEFER: That's all right.

4 BY MR. DAMBLY:

5 Q Did you get any input from Mr. Keuter on this
6 appraisal?

7 A Mr. Keuter's the one who decided to let Gary go
8 into that position, even though Jocher was unfavorable of
9 him going into that position. He was a believer in giving
10 people a chance, letting them see if they could perform. In
11 fact, he related a story to me about a guy up in Salem who
12 was ranked very low and given a chance to perform and
13 excelled, so...

14 Q Did Mr. Keuter ever mention to you any
15 conversation he had with McGrath or Peterson about Mr.
16 Fiser?

17 A No.

18 Q At the time you wrote the appraisal, how long had
19 Mr. Fiser worked for you?

20 A I honestly don't know. Must have been several
21 months.

22 Q Would four months sound approximately correct.

23 A I -- I don't know when the exchange took place, so
24 it's...

25 Q And if you look back at the Joint Exhibit 43, the

1 date of the exchange agreement was March 16th of '92.

2 A March. So this was 9 -- in September. So that
3 means it'd be several months. Yeah.

4 Q So about half the year he worked for you?

5 A Well, he worked for me longer than that. But in
6 that position it was about -- it was several months.

7 Q I mean about half of the year that you appraised
8 him?

9 A Yes.

10 Q Do you recall attending a management meeting where
11 supervisors were ranking the various employees under them
12 and considering whether they'd get a pay increase or not
13 during the time period for this appraisal?

14 A We did that each year.

15 Q And do you recall Fiser being rated high on your
16 list and Mr. Keuter telling you to take him off there, he
17 was getting no increase?

18 A No, I don't recall that.

19 JUDGE YOUNG: Mr. -- Dr. McArthur, on the first
20 page of this evaluation there's a list of things that you
21 put under "Summary statement of employee's performance and
22 potential."

23 THE WITNESS: Okay.

24 JUDGE YOUNG: Could you clarify what these were
25 intended to reflect, since there are no exact marks on

1 there.

2 THE WITNESS: Gary was trying to highlight some of
3 the things he'd done during the year. Just kind of a
4 summary of things he had accomplished during the year. We
5 usually try to do that, just to indicate what a person had
6 accomplished in some period of time. And sometimes this was
7 information from others. It wasn't always directly
8 information from myself, it was information from others.

9 MR. DAMBLY: I wasn't sure if you were done with
10 the question.

11 JUDGE YOUNG: Oh, yes.

12 MR. DAMBLY: I'm sorry.

13 BY MR. DAMBLY:

14 Q Dr. McArthur, if you could go now back to Joint
15 Exhibit 27. Fortunately, it's still in the same book.

16 A 27?

17 Q Yes, sir. That sequence of events we talked about
18 with the taped conversation before.

19 A 27. Okay. Any particular page?

20 Q Page 20.

21 A Okay.

22 Q And starting -- if you would just read starting
23 with, say, "McArthur: Okay," to yourself from there through
24 the top of the next page.

25 (The witness reviews certain material.)

1 Q Does that refresh your recollection of an
2 interaction between yourself and Mr. Keuter about Mr.
3 Fiser's increase?

4 A I -- that's just not in my memory. I don't
5 remember that. I don't remember Mr. Keuter ever telling me
6 that he would not get an increase. We had -- we had...

7 Q Do you recall telling that to Mr. Fiser?

8 A No.

9 Q Would you like to hear this tape?

10 A What's that?

11 Q We can play that conversation if you'd like to
12 listen to it.

13 A I -- I just don't remember it. I don't -- we
14 would go through a large number of people each year in the
15 salary evaluation. I don't remember Mr. Keuter telling me
16 not to give him an increase. I just don't remember that.

17 CHAIRMAN BECHHOEFER: Dr. McArthur, at TVA was
18 there any more or less automatic increase year-to-year, a
19 percentage, like that, applicable for across the board?

20 THE WITNESS: There was a -- if I remember
21 correctly, we did have an annual increase. I believe that's
22 the case. Small amounts, two or three percent, that kind of
23 thing.

24 CHAIRMAN BECHHOEFER: Yes.

25 THE WITNESS: I believe that's the case.

1 CHAIRMAN BECHHOEFER: So this -- was you were --
2 when pay increases are paid, levels were being considered,
3 this was something in addition to the automatic percentage
4 increase?

5 THE WITNESS: Yes. Yes.

6 CHAIRMAN BECHHOEFER: I see.

7 BY MR. DAMBLY:

8 Q This would be sort of like -- was this a pay
9 increase or a bonus?

10 A This would be -- it was a pay increase.

11 Q So in addition to the 2% or something, you might
12 give him an extra 3% and -- and that would be a permanent
13 increase?

14 A Yes.

15 Q Okay. And that -- that's what was discussed at
16 these annual...

17 A Yes.

18 Q Okay.

19 A And it was...

20 Q It wasn't a one-time bonus issue?

21 A ...it was always based on how well they did on
22 performance appraisals and that kind of thing. Usually.
23 And we would sit down at a meeting with all the managers and
24 we'd discuss the high performers, middle performers, low
25 performers, and that kind of thing, so...

1 Q Did you have a budget that you had to apply to for
2 your staff?

3 A Usually we did.

4 Q So you had so many dollars.

5 A Yes.

6 Q And you could allocate that amongst people based
7 on performance?

8 A Yes.

9 Q But you don't recall a conversation where at one
10 of these meetings where Dan Keuter told you, "Do not give
11 any increase to Mr. Fiser"?

12 A I've already responded to that. I don't recall
13 that.

14 Q Okay. Prior to the performance appraisal we
15 discussed, did you ever talk to Mr. Fiser and tell him that
16 you weren't pleased with his performance?

17 A Oh, yes.

18 Q What'd you tell him?

19 A I told him that he was not meeting deadlines, for
20 one. And that he was not getting the cooperation of his
21 people reporting directly to him. They were coming to me
22 constantly, complaining about their assignments and the way
23 he would -- the way he treated them. And so, no, I was not
24 very pleased with his performance.

25 Q But were you aware that Fiser was having

1 difficulties with his subordinates because they were loyal
2 to Mr. Jocher?

3 A Mr. Jocher wasn't there then.

4 Q I appreciate that. But do you recall ever
5 discussing with Mr. Fiser that part of the problems he was
6 facing in corporate were his subordinates were people that
7 Mr. Jocher had brought in, and they were loyal to Jocher?

8 A Oh, there -- there were people that were very
9 heavily in favor of Bill Jocher, no question about that.

10 Q And they didn't want Mr. Jocher -- they didn't
11 want Mr. Fiser in the corporate position, they wanted Mr.
12 Jocher there?

13 A I -- I don't remember having specific
14 conversations with those of the individuals, with them
15 saying they didn't like Gary Fiser.

16 Q Okay. Did Fiser remain as the acting corporate
17 chemistry manager?

18 A No, I took him out of that position.

19 Q Why?

20 A He was not performing well.

21 Q How came initially -- who initially came up with
22 the idea to remove him, demote him from that position?

23 A Myself.

24 Q Did anyone suggest it to you?

25 A No.

1 Q Did Bynum and/or Keuter suggest you should demote
2 him?

3 A No.

4 Q Okay, if you'd go again to Joint Exhibit 27. And
5 I think you have it in front of you. Page 15.

6 A 15?

7 JUDGE COLE: Before you leave this page we were
8 on, in regard to this -- this raise that was being
9 considered at this meeting of managers, what fraction of the
10 -- what percentage of the employees normally got a raise
11 during that time? Half of them, a third of them or most of
12 them?

13 THE WITNESS: It was based on how their
14 performance was. If they were a high performer, most of
15 those would get some raise. Middle performers, most of them
16 would get a small amount. Low performers would get
17 basically nothing.

18 JUDGE COLE: So would it be fair to say, then,
19 that about a third of them didn't get raises, or would it
20 be...

21 THE WITNESS: I would be careful to guess at a
22 number. I don't know what -- some of -- most of them would
23 get some increase unless they were a low performer.

24 JUDGE COLE: I guess I have no feeling how many
25 low performers there were in the group you evaluated.

1 THE WITNESS: Not very many. There would be one
2 or two.

3 JUDGE COLE: So it was a big deal, then, not
4 getting a raise?

5 THE WITNESS: Oh, yeah.

6 JUDGE COLE: Because most of them would probably
7 expect it?

8 THE WITNESS: Yes.

9 JUDGE COLE: All right, sir. Thank you.

10 THE WITNESS: 15?

11 MR. DAMBLY: Yes.

12 THE WITNESS: What is this document I'm reading
13 from?

14 MR. DAMBLY: This is a document that Mr. Fiser put
15 together based on his notes and on the various tape
16 recordings he made.

17 THE WITNESS: Okay.

18 MR. DAMBLY: This particular thing we're looking
19 at now is a taped conversation. Then if you turn back to
20 Page 6, indicates it's a November 16th, 1992 discussion he
21 had with you. Again, this is a taped conversation.

22 BY MR. DAMBLY:

23 Q In the middle of that page is a long paragraph.
24 And if you could read that down through the bottom of that
25 page.

1 A Okay.

2 (The witness reviews certain material.)

3 Q Does this refresh your recollection as to whether
4 or not Mr. Keuter or Mr. Bynum recommended Mr. Fiser's
5 demotion?

6 A I wouldn't -- I wouldn't say it was a recommend --
7 I had made the decision that Gary was not performing well.
8 I was trying to get him to recognize that he was having a
9 negative impact on the organization. Now, I did talk it
10 over with Joe Bynum and Keuter myself, and I'm not sure
11 right now what exactly their response was, but they left
12 that decision to me.

13 Q But did they suggest that you should get him out
14 of there?

15 A No.

16 Q If you would turn -- oh, I guess you can't -- back
17 to Staff Exhibit 90.

18 A Okay.

19 Q Do you recognize that document, Dr. McArthur?

20 A Yes.

21 Q And what is it?

22 A Just indicating that Sam Harvey would be assigned
23 as the acting corporate chemistry manager, and Gary Fiser
24 would be assigned to the position of program manager in
25 corporate chemistry.

1 Q And what's the date -- effective date?

2 A Effective Monday, November 23rd.

3 Q The date of the document is November 18th?

4 A November 18th.

5 Q And if Mr. Fiser's date for the conversation is
6 correct, the conversation we've been looking at was on
7 November 16th?

8 A I don't remember.

9 Q Do you recall having a conversation in a car with
10 Mr. Fiser a couple of days before the demotion?

11 A No, I do not. No.

12 Q Why did you choose Harvey to be the acting
13 corporate chemistry manager?

14 A Well, I looked at him and Chandra, and there may
15 have been an Adams, I believe were the people in that
16 position. I felt he was the most qualified person to take
17 that position. We had two PWRs and one BWR. We spent most
18 of our time with the PWRs. And so I thought he would be the
19 most effective person for that position.

20 Q Okay. And did Mr. Fiser not have PWR experience?

21 A Yes, he did. That was all of his experience.

22 Q Okay. So was part of the reason for the demotion
23 that Mr. Fiser didn't have BWR experience?

24 A No.

25 Q What was the reason?

1 A He was an ineffective manager.

2 Q Ineffective manager.

3 Do you recall any discussion you had with -- well,
4 first, who is -- who was Rob Beecken at the time?

5 A He was the plant manager at Sequoyah.

6 Q Okay. Do you recall having any discussions with
7 Mr. Beecken about whether or not Mr. Fiser would be
8 returning to Sequoyah?

9 A Yeah. He would not take him back. He told -- I
10 called him and I said, "It's time to make the exchange for
11 Jocher to come back here and Gary to go back to site --
12 site."

13 And he says, "I don't want him back here." I was
14 -- I was surprised. I didn't expect that response, so...

15 Q Did he give you any reasons?

16 A No. Just didn't want him back.

17 JUDGE YOUNG: Just what?

18 THE WITNESS: Just didn't want him back.

19 Q Okay. So, in effect, the agreement, the swap
20 agreement that we have talked about earlier that said he
21 would be going back at the end of the year, was not honored;
22 is that correct?

23 A That's the reason I was surprised, because we did
24 have that agreement.

25 Q Well, when -- did Jocher stay at Sequoyah?

1 A He wanted to. But he ended up coming back
2 downtown.

3 Q Back to his old position?

4 A Yes.

5 Q And what happened to Mr. Harvey when Mr. Jocher
6 went into that position?

7 A Harvey just went back to program manager position.
8

9 Q Was Harvey given a temporary promotion when he
10 became acting?

11 A No, that generally wasn't the -- I had been acting
12 site -- not site VP, but the corporate VP over operations
13 support before for about a six-month period of time, and no
14 pay increase, no changes, you just acted in that position
15 for a period of time. So it was not uncommon for that to
16 happen.

17 Q When Mr. Fiser went from acting corporate
18 chemistry manager down to a subordinate position, did he get
19 a reduction in grade?

20 A He would be a PG -- I guess that would be a PG-8,
21 I believe.

22 Q Was he a PG-9 when he came over to your
23 organization?

24 A I don't recall if we made that change or not,
25 because he was acting in that position, so...

1 Q But was Jocher's position a 9?

2 A You know, I actually don't know.

3 Q What happened when -- when Jocher returned to his
4 old position and Fiser was still -- they wouldn't take him
5 back at the site, what happened to Fiser?

6 A He stayed downtown.

7 Q Working for you?

8 A Yes.

9 Q Did they increase your budget, personnel budget,
10 so that you had an extra position?

11 A I think I had enough vacancies at that point in
12 time, because I believe a guy by the name of Adams went to
13 the site somewhere along there, so...

14 Q Don Adams?

15 A Yeah.

16 Q As of March 4th of '92, was there any
17 reorganizations going on at the Sequoyah rad con chemistry
18 organization that you recall?

19 A I don't recall offhand.

20 Q Do you remember there being an issue of whether
21 they were going to have a chemistry manager position or not?

22 A Oh, yeah. It was -- I had developed a standard
23 organization for all sites with a rad con manager and a
24 chemistry manager. And Charles Kent -- I don't remember his
25 exact position, but he did not want to abide by the

1 corporate position, the approved, new position at that point
2 in time. And he kind of liked to have more control than
3 some of the other site rad con chemistry managers. So there
4 was some resistance on his part to adapt the -- the approved
5 organization Joe Bynum had signed off on.

6 Q And did Mr. Bynum eventually prevail on that --
7 with that corporate...

8 A Yes.

9 Q ...or the site structure was going to...

10 A Yes.

11 Q When Jocher returned to corporate, did you discuss
12 what should happen with anyone -- what should happen with
13 Fiser and Jocher with anybody in corporate? Did you have
14 any discussions with Mr. Bynum about what should happen to
15 Jocher and Fiser?

16 A Eventually there was a decision made in a meeting
17 between Joe Bynum, Dan Keuter, and myself, where Joe Bynum
18 said Jocher does not fit in the organization and we need to
19 make a change, and you're the one that needs to take care of
20 that.

21 Q And so I met with Jocher. Jocher and I had always
22 discussed on several occasions -- he said, "If management
23 does not want me, I'll go find another job." So I called
24 Bill Jocher in and said, you know, that, "You're not fitting
25 into the organization. You should perhaps start looking,

1 find a position someplace else." And the Gary Fiser portion
2 of it, I don't remember all the details, other than there
3 was a head count reduction, and the decision was that he
4 would also be given a RIF notice.

5 Q Was Jocher given a RIF notice?

6 A I don't think so, because he first of all said,
7 "Well, if you'll give me six months' pay, then I'll leave."
8 And I went to Joe, and Joe -- Joe Bynum, and Joe Bynum said,

9
10 "Well, I'll give him three months' pay."

11 And I said, "Well, if you'll give him six months'
12 pay we won't have any trouble. He'll just go ahead and
13 he'll go find another job." And they resistance to do that
14 (sic). And about that time I went into the hospital for
15 cancer surgery, so I -- I lost contact with everything that
16 was going on, so...

17 Q Okay. Do you recall what position it was that Mr.
18 Fiser was RIF'd from?

19 A I believe he still held the corporate -- the
20 position out at site as chemistry manager.

21 Q Out at Sequoyah?

22 A Yes.

23 Q And that's a position that ultimately was part of
24 the organization that you had drafted and Bynum had...

25 A Say again.

1 Q What we talked about earlier, where Joe Bynum had
2 approved this corporate-wide, what the site organizations
3 were going to look like, and they all had chemistry manager
4 positions; right?

5 A All I can tell you is my position was not going to
6 be filled. I -- that was going to be a vacant position. It
7 was going to be eliminated.

8 Q No, I'm talking about the one out at Sequoyah.

9 A I can't talk about Sequoyah. I did -- I don't
10 know what they were doing.

11 Q Okay. Did you -- do you recall a discussion you
12 had with Joe Bynum about you have the slot that Don Adams
13 left when he went to Sequoyah and you could put Fiser in
14 that?

15 A I was -- I was pleading to save Gary's -- but the
16 position was taken away.

17 Q By Mr. Bynum?

18 A He made the decision to reduce head count.

19 JUDGE YOUNG: Did I understand you correctly, you
20 said you were pleading to save Gary's job?

21 THE WITNESS: Yeah. I wanted to -- yeah, I wanted
22 to keep -- I didn't want to -- I've always been a guy that
23 likes to give a person a chance. So I felt like I could
24 save his position. And then this decision was made to
25 eliminate that position. I didn't have any choice then but

1 to -- to notify him that his position was going away.

2 CHAIRMAN BECHHOEFER: You're saying that happened
3 because of orders given by Bynum?

4 THE WITNESS: Yes.

5 CHAIRMAN BECHHOEFER: Thank you.

6 BY MR. DAMBLY:

7 Q At the -- at the time that Mr. Fiser was RIF'd
8 from the Sequoyah chemistry manager position, was -- was the
9 organization at Sequoyah final? I mean, were they in a
10 state of flux as to whether there was going to be that
11 position or not, do you know?

12 A I know they were going to have a chemistry manager
13 because Joe Bynum was very strongly in favor of that.

14 Q And in your experience at TVA, is a person
15 normally reduced from a position that's in existence?

16 A Say it again.

17 Q Your experience at TVA, do you normally give RIF
18 notices to people for positions that they're occupying and
19 are still in existence?

20 A I can't respond to that. I'm not very good at the
21 HR portion of how TVA operates, so...

22 Q Do you know who signed the reduction in force
23 notice for Mr. Fiser?

24 A No.

25 JUDGE YOUNG: I may have missed it, but what again

1 was the reason that Jocher was -- it sounded as if you were
2 saying he was being encouraged to -- to leave.

3 THE WITNESS: Yes. He had gotten in trouble with
4 some of the site plant managers. For example, at -- at
5 Browns Ferry I was told by the plant manager he was not
6 welcome on the site. They didn't get along with him. He --
7 somehow he had interfered with a selection board some way
8 that made the plant manager very unhappy. And he called me
9 and says, "Don't let him come back to this site again." So
10 you can't have a corporate chemistry manager who can't go to
11 the sites. It doesn't work.

12 JUDGE YOUNG: Thank you.

13 BY MR. DAMBLY:

14 Q I present to you staff exhibit -- or is this
15 joint? Joint Exhibit 59, which I...

16 JUDGE YOUNG: 50...

17 MR. DAMBLY: Joint Exhibit 59.

18 THE WITNESS: This one?

19 MR. DAMBLY: I think we're in the joint...

20 BY MR. DAMBLY:

21 Q Do you recognize that -- that exhibit?

22 A I'm trying to find -- I -- I don't see myself on
23 distributions. I don't know if I saw this or not.

24 Q Well, can you look at it? Do you understand what
25 it is?

1 A This -- his position as chemistry PG-9 at Sequoyah
2 plant has been determined to be surplus.

3 Q And who signed it?

4 A Joe Bynum.

5 Q Is it normal in your experience that Mr. Bynum
6 would sign reduction in force or surplus notice -- notices
7 for people at plants?

8 A He was over the plants.

9 Q Did he normally sign those?

10 A I -- I don't know.

11 Q Is it normal for corporate to reduce somebody from
12 a plant?

13 A No, we would never do that.

14 Q And what was the -- the employee transition
15 program, do you recall?

16 A It was a program which people would go to. They
17 would try to use them throughout TVA in various functions,
18 if they could. They gave them time to look for another job
19 or to find another position within TVA.

20 Q All right. Do you recall a time, while Mr. Fiser
21 was in the employee transition program, where he interacted
22 with Mr. Kent about coming back out to the site as the
23 Sequoyah chemistry manager?

24 A I understood that did take place.

25 Q Did you have any involvement in that?

1 A No.

2 Q Did you talk to Kent about it at all?

3 A He mentioned it to me, and I said, "Well, you got
4 to consider the fact that he didn't work effectively before,
5 and that he did not work out as a corporate chemistry
6 manager." He said he was taking that into account.

7 Q And did you tell him that he should have some
8 concerns about bringing him back there because it hadn't
9 worked out before?

10 A That was his decision, not...

11 Q Did you tell him to look into that?

12 A No.

13 JUDGE YOUNG: That was a different position than
14 the one you were trying to keep for him...

15 THE WITNESS: Yes.

16 JUDGE YOUNG: ...in the first place? And the
17 difference between those was...

18 THE WITNESS: The one in corporate was a PG-8
19 position; the one at the site was a PG-9 position.

20 JUDGE YOUNG: So the PG-8 position was the one
21 that you were trying to keep him in?

22 THE WITNESS: Yes.

23 JUDGE YOUNG: And a PG-9 position, you expressed
24 concerns about that one?

25 THE WITNESS: Yes.

1 MR. DAMBLY: And the -- and the corporate
2 chemistry -- I mean, I'm sorry, the Sequoyah chemistry
3 manager position?

4 CHAIRMAN BECHHOEFER: Dr. McArthur, would you keep
5 a grade -- well, assuming a person was a Grade 9 and was
6 filling in on a Grade 8, would the person, if he stayed in
7 the Grade 8 position, assuming it were to continue to exist,
8 but would that person then be demoted to a Grade 8 with
9 salary reduction or how would that work?

10 THE WITNESS: Well, I'm not an expert in that
11 area. I don't believe Gary got a pay reduction. I'm not
12 really sure of that. But...

13 CHAIRMAN BECHHOEFER: But he could be kept in a
14 Grade 8 position, even though he were a 9?

15 THE WITNESS: Yes.

16 CHAIRMAN BECHHOEFER: And then you'd let personnel
17 worry about -- worry about...

18 THE WITNESS: That's correct.

19 CHAIRMAN BECHHOEFER: ...how many dollars he
20 actually got paid?

21 THE WITNESS: That's right.

22 CHAIRMAN BECHHOEFER: And I know it's -- in the
23 NRC it works that way, and then after general pay increases
24 it catches up.

25 THE WITNESS: Yeah.

1 CHAIRMAN BECHHOEFER: Then -- then you convert it.
2 But...

3 MR. MARQUAND: Sorry, Judge, but I couldn't hear
4 what you were saying.

5 CHAIRMAN BECHHOEFER: I said in the NRC you, I
6 think, would stay at the -- in the lower level position, but
7 paid at your higher level until general grade increases
8 caught up, and then you might be transferred to -- to the
9 lower level, but at the same salary.

10 MR. MARQUAND: In fact, if you recall, Mr. McGrath
11 said TVA has pay bands, instead of just rungs on a ladder.
12 And those pay bands overlap. And so if you were moved from
13 one to another, you could easily stay within that pay band,
14 the new -- that even if you were demoted, you could stay at
15 your old salary until -- until the salaries caught up as-
16 cost-of-living increases.

17 CHAIRMAN BECHHOEFER: Proceed, as far as I'm
18 concerned.

19 BY MR. DAMBLY:

20 Q Okay. And just so it's clear, when Judge Young
21 asked you, the PG-9 position out at Sequoyah, the chemistry
22 manager, that was the job that Fiser had been in when he
23 came to the organization and switched to start with?

24 A That's correct. That's correct.

25 Q And then when they wouldn't take him back, you had

1 this vacancy that Mr. Adams had -- the position Mr. Adams
2 had vacated. He went out to Sequoyah, and that's the one
3 you were trying to keep him in?

4 A Yes.

5 Q And now we're talking about a PG-9 position again,
6 back out at Sequoyah, that Mr. Kent eventually had in his
7 organization?

8 A That's right.

9 Q And you don't recall ever saying that you told Mr.
10 Kent to -- to watch out because plant management didn't want
11 Mr. Fiser in that job?

12 A No. In fact, somewhere in that period of time we
13 were looking outside for a chemistry manager for corporate.
14 And so we were looking for somebody to come into the
15 corporate organization outside of TVA.

16 Q Okay. Let me show you Staff Exhibit 85.

17 First of all, do you recall being interviewed by
18 the TVA Office of the Inspector General in August of '93?

19 A Yes.

20 Q Okay. If you'd go to Page 6.

21 A 6?

22 Q Yes.

23 A Okay.

24 Q And if you'd look at Paragraph 3 at the top and
25 just read that to yourself.

1 Do you recall telling Kent that plant management
2 did not want Fiser back?

3 A That's right.

4 JUDGE YOUNG: Were you aware of why they did not
5 want him back?

6 THE WITNESS: Not specifically. Beecken did not
7 think he performed very well and just didn't want to have
8 him -- didn't want to have the problem come back to the
9 site, I guess. I'm just giving my own opinion now.

10 JUDGE YOUNG: Didn't want to have the problem? Is
11 that what you said?

12 THE WITNESS: The same problem that he had before.
13 He tried to resolve it by having Jocher come out there.

14 MR. DAMBLY: All right. Do you...

15 JUDGE COLE: Jocher was in the position before,
16 wasn't he?

17 THE WITNESS: No, he came into TVA as a corporate
18 chemistry manager. He'd never been at the site until he
19 went to Sequoyah.

20 JUDGE COLE: Well, Fiser was having problems in
21 his position because of a strong predecessor. Who was his
22 predecessor.

23 MR. DAMBLY: That was at -- at the corporate, when
24 there was the switch and Jocher went to the site and Fiser
25 came to corporate, that's the time that there was this

1 strong loyalty issue.

2 MR. MARQUAND: The sequence was: Fiser was at the
3 plant and Jocher was hired downtown. Then in '92 they
4 switched places for a year. And what you just referenced
5 about Fiser saying that people were still loyal to Jocher
6 was when Fiser was downtown with corporate chemistry
7 manager's job. At the end of the year, they didn't want
8 Fiser back at the plant, and Jocher went downtown. And then
9 this issue with Kent occurred in the summer of '93, after
10 Mr. Fiser had received this notice sending him to the
11 employed transition program.

12 MR. DAMBLY: At that point, Fiser was not in
13 corporate, he was over in a separate organization.

14 JUDGE YOUNG: And then in the meantime, just to
15 make sure I'm clear -- in the meantime, after Fiser was not
16 brought back to Sequoyah, he was -- he was demoted?

17 MR. MARQUAND: No. He -- in November of '92, he
18 all along had been -- when he went downtown, he started as
19 the acting corporate chemistry manager, which is a PG-9
20 level job supervising the corporate staff.

21 JUDGE YOUNG: Right.

22 MR. MARQUAND: And then in November of '92, which
23 is the conversation in the car, he is told, "I think we need
24 to take you out and put somebody else in," and they make him
25 a program manager where he's simply in charge of technical

1 parts, and that's a PG-8 level job. Although on paper he
2 remains a PG-9 and on paper he remains the chemistry manager
3 at Sequoyah.

4 JUDGE YOUNG: Okay. So it...

5 MR. MARQUAND: And he's -- although he's working
6 in this lower-level job, his pay stays the same, he
7 continues in the same position description. And, in fact,
8 when he gets his notice in the spring to go to ETP, the
9 notice says we're eliminating the job at Sequoyah, the PG-9
10 level job, and you're going to ETP.

11 JUDGE YOUNG: Okay. That -- when I said
12 "demoted," that's what I was referring to.

13 MR. MARQUAND: Correct.

14 JUDGE YOUNG: But it was not an official demotion,
15 it was...

16 MR. MARQUAND: It's more like a reassignment.

17 JUDGE YOUNG: Pardon?

18 MR. MARQUAND: It's more like a reassignment, I
19 guess, is what I would call it.

20 JUDGE YOUNG: Right.

21 MR. MARQUAND: It's not a demotion because it's
22 not -- they don't change his permanent level job.

23 JUDGE YOUNG: Because he kept his same grade
24 level. Right.

25 MR. MARQUAND: They don't change his pay, they

1 don't change his position description. Just what he's doing
2 changes.

3 JUDGE YOUNG: Okay. Yeah. Thanks for clarifying
4 that.

5 BY MR. DAMBLY:

6 Q Do you recall talking to Keuter and Bynum about
7 Mr. Fiser returning to the Sequoyah chemistry manager
8 position?

9 A All I know -- all I can tell you there is the
10 decision was made to RIF that -- to eliminate that position
11 in corporate.

12 Q I'm talking now Mr. Fiser's in the ETP.

13 A Okay.

14 Q And Mr. Kent's talking to him about coming back
15 now as the Sequoyah chemistry manager.

16 A Okay.

17 Q And you -- we just looked at some where you
18 indicated to Mr. Kent that he ought to be concerned because
19 management at the plant didn't want him.

20 A That's right; yeah.

21 Q Do you remember talking to Mr. Keuter or Mr. Bynum
22 about Mr. Fiser returning to the position as Sequoyah
23 chemistry manager?

24 A The only one I remember talking about is Bill
25 Jocher.

1 JUDGE YOUNG: Bill...

2 THE WITNESS: Jocher.

3 JUDGE YOUNG: Talking about or talking with?

4 THE WITNESS: Talking about him in the corporate
5 position that -- that he should -- he should look for
6 another job someplace else. And that -- because of his
7 problem with -- at Browns Ferry and other concerns that Joe
8 Bynum had. I don't remember any details about Gary Fiser,
9 other than his position was to -- I went, trying to keep the
10 position in corporate so Gary could stay in that position.
11 I was told that position was being eliminated.

12 BY MR. DAMBLY:

13 Q And if -- go back to Joint Exhibit 27. And this
14 is the sequence of events that Mr. Fiser prepared.

15 JUDGE YOUNG: Are you about to start on a new line
16 of questioning such that...

17 MR. DAMBLY: I think after this question...

18 JUDGE YOUNG: Okay.

19 MR. DAMBLY: ...we'll be starting on something.

20 JUDGE YOUNG: Okay.

21 MR. DAMBLY: This -- this goes to the response.

22 BY MR. DAMBLY:

23 Q If you read on Page 78, down toward the bottom...

24 A What is this -- what is this document?

25 Q Same document we've been talking about, the Mr.

1 Fiser sequence of events and the taped conversations.

2 A Oh, okay.

3 Q This is one of the tapes.

4 Do you -- if you start reading down about, I
5 guess, two-thirds, three-quarters of the way, says,
6 "McArthur: Well, I think it really comes..." read it to
7 yourself. And then over at the top of the next page.

8 A What am I looking at?

9 Q Starting here.

10 A Okay.

11 Q And going to the top of the next page.

12 (The witness reviews certain material.)

13 A Okay.

14 Q All right. Does -- well, one, do you remember
15 having this -- and I believe this conversation occurred in
16 the hospital room. Do you remember Mr. Fiser coming to the
17 hospital?

18 A No, I don't think he ever came to the hospital.

19 Q Were you at -- did he visit you when you were at
20 home? No?

21 MR. MARQUAND: Referring to the first two lines,
22 because I think that might refresh his recollection a bit.

23 CHAIRMAN BECHHOEFER: On page...

24 MR. DAMBLY: On the same page, Page 78, this is a
25 conversation...

1 BY MR. DAMBLY:

2 Q Do you remember where you were on July 14th of
3 '93?

4 A See, I had the operation April of '93. It was
5 about eight weeks recovery. April, May, June. I should
6 have been back at work, I think.

7 MR. MARQUAND: Look at the first two lines and see
8 if that refreshes your recollection.

9 THE WITNESS: First two lines on the...

10 MR. MARQUAND: Page 78.

11 MR. DAMBLY: On Page 78.

12 THE WITNESS: 78? I mean, I don't know where this
13 took place. I can't -- I know he never came to the
14 hospital.

15 MR. DAMBLY: All right.

16 THE WITNESS: I don't think. I don't recall that.

17

18 BY MR. DAMBLY:

19 Q Well, as far as you know, you weren't in the
20 hospital on July 14th?

21 A No, I don't think so.

22 Q Again, referring to the parts that you looked at,
23 does that refresh your recollection of whether or not you
24 talked to Mr. Keuter and Mr. Bynum about Fiser going back to
25 Sequoyah?

1 A We probably -- we probably did have a discussion
2 somewhere along the line. Not a detailed discussion.

3 Q Okay. Do you recall having a conversation about
4 that with Mr. Fiser?

5 A No, I don't recall it offhand.

6 MR. DAMBLY: Your Honor, this would be an
7 appropriate...

8 A I think I was trying to give him a -- let him
9 know, same an advisor. I was kind of the guy that -- I
10 never liked confrontation. I liked to -- and I liked to
11 help people out. I was trying to get -- for him to
12 recognize that he was not standing very well with
13 management, and he needed to start looking around to see
14 what else -- find some other position or something like
15 that. It was more of friendly advice than anything else.

16 MR. DAMBLY: This would be an appropriate time to
17 take a break.

18 CHAIRMAN BECHHOEFER: Let's -- let's take -- we'll
19 be back at ten minutes after 11:00.

20 MR. DAMBLY: Thank you, Your Honor.

21 (A short recess was taken.)

22 BY MR. DAMBLY:

23 Q Dr. McArthur, let me direct you to Staff Exhibit
24 29.

25 CHAIRMAN BECHHOEFER: 2-9?

1 MR. DAMBLY: 2-9.

2 JUDGE YOUNG: Staff?

3 MR. DAMBLY: Staff, volume 2.

4 BY MR. DAMBLY:

5 Q Dr. McArthur, have you seen that letter before?

6 A I think the first time that I remember seeing it
7 is when a TVA attorney showed it to me. I don't recall
8 seeing it before.

9 Q Was that in preparation for your deposition?

10 A Yes.

11 Q If you'd just turn to Staff 31?

12 A 31?

13 Q Yes.

14 A By the way, can I make a comment? I am really
15 bothered by this comment that you couldn't use a corrective
16 action program at TVA. That's the biggest bunch of bull
17 I've ever heard in my life. TVA is a very, very positive
18 organization and they were very much supportive of the
19 corrective action program. This letter does not reflect the
20 general attitude of management and workers at TVA.

21 Q If you'd look at Staff Exhibit 31.

22 A 31. Okay.

23 Q Do you recall this document?

24 A Yes.

25 Q Mr. E.B. Ditto sent this memo to you?

1 A Yes.

2 Q And can you please identify Mr. Ditto?

3 A You know, I don't know. He's -- it says site
4 representative of the concerns resolution staff.

5 Q Okay. In this memo on the first page, it
6 indicates that this has to do with a letter from Sasser, is
7 that correct?

8 A Yes.

9 Q In responding to this, did you inquire about the
10 letter from Senator Sasser?

11 A All I remember is my responsibility was to address
12 the concerns that were identified. If I remember correctly,
13 all of these concerns had been identified and were on a
14 corrective action --

15 JUDGE YOUNG: And were what?

16 THE WITNESS: On a corrective action list.

17 JUDGE YOUNG: Were on a corrective action --

18 THE WITNESS: Yes.

19 MR. DAMBLY: Staff would move Staff Exhibit 31
20 into the record.

21 MR. MARQUAND: No objection.

22 CHAIRMAN BECHHOEFER: Staff Exhibit 31 will be
23 admitted.

24 (The document, heretofore marked as
25 Staff Exhibit Number 31, was

1 received in evidence.)

2 BY MR. DAMBLY:

3 Q The exhibit also indicates -- Staff Exhibit 31 --
4 in the same paragraph, it mentions Senator Sasser, talks
5 about a Department of Labor filing dated June 29, 1993. Do
6 you know what that was?

7 A That's when I was in the hospital during this
8 period of time, so I don't -- I can't identify with that too
9 well.

10 Q Did you learn in the 1993-'94 time frame that Mr.
11 Fiser filed a Department of Labor complaint?

12 A I don't think in that period of time I knew about
13 it. DOL complaints were not generally distributed
14 throughout the company, so it was very seldom we knew about
15 those, what was going on, unless we were told directly.

16 Q Do you recall being interviewed by the TVA Office
17 of Inspector General in '94 about issues Mr. Fiser raised?

18 A It could be, I don't recall that specifically.

19 Q It's in the Joint Exhibit book, Joint Exhibit 24.
20 Joint Exhibit 24, do you recall after looking at this being
21 interviewed by TVA's Office of Inspector General in January
22 of '94?

23 A Apparently I was.

24 Q During the course of that interview, did they
25 indicate to you that they were looking into issues raised in

1 Fiser's Department of Labor complaint?

2 A Ask the question again, I don't --

3 Q I said during the time when they were talking to
4 you, when they interviewed you, did they indicate to you
5 that they were looking into Fiser's Department of Labor
6 complaint?

7 A I don't recall that, but that's a possibility.

8 I would like to make a comment. It says in the
9 third paragraph, Jocher and McArthur were very upset about
10 the possibility of Fiser becoming the corporate chemistry
11 manager. That's not a true statement. Mr. Jocher was the
12 one that was very upset and he went to Dan Keuter and talked
13 to him about. I was not upset about it.

14 Q You don't recall making that statement to anybody?

15 A That I was upset?

16 Q Right.

17 A About Fiser coming into a corporate position? No.

18 Q That's not what you told Beth Thomas during this
19 interview?

20 A I don't remember ever telling her that. I knew
21 there were some concerns by others.

22 Q Do you know what happened to Mr. Fiser's '93 DOL
23 complaint?

24 A No.

25 Q Do you recall there being a settlement that --

1 A Oh, there was a settlement, he came back to the
2 chemistry position.

3 Q In corporate?

4 A I believe that's correct.

5 Q And do you recall when that was?

6 A No.

7 Q When he came back, who was his supervisor?

8 A I believe during that period of time it was Gordon
9 Rich, but I'm not absolutely sure.

10 Q Do you recall any discussions that you may have
11 had with Mr. Grover concerning Fiser returning as part of
12 the settlement agreement?

13 A Not specifically -- I know that I would usually
14 sit down -- I hired Ron Grover to come into that position
15 and I probably discussed all the individuals that would be
16 reporting to him, but I don't know what exactly was said.

17 Q Okay. In '94, do you remember that there was a
18 reorganization of the corporate technical support
19 organization that you were in charge of?

20 A We kind of did it as a routine matter.

21 Q What happened to the technical program manager
22 position in the '94 reorg?

23 A If I'm not mistaken, that was the period of time
24 that John Majewski decided to have a rad con manager and a
25 chemistry manager instead of a rad con chemistry manager.

1 That was his independent decision and I became the rad con
2 and rad waste manager and Ron Grover became the
3 chemistry/enviromental manager; I believe that's correct.

4 Q That's the one I'm talking about.

5 A Okay.

6 Q And who was John Majewski?

7 A He was then the -- I don't know if he was acting
8 or fully the operations support.

9 Q Do you recall there being a VPA, vacancy position
10 announcement, for the rad con manager position that you
11 ended up in?

12 A All I can tell you is that John called me in one
13 day and said that he was going to eliminate the rad con
14 chemistry manager position and make a rad con manager
15 position and a chemistry position. I did write a new
16 position description for that position.

17 Q For which position?

18 A Rad con manager. Submitted it to John. I don't
19 know what took place after that and I know that he called me
20 in -- I thought there was going to be a review board, it
21 didn't take place, he just called me in one day and said
22 you'll be the rad con manager.

23 Q Okay. And do you recall the PG level that that
24 position was?

25 A I believe it was a PG-11.

1 Q And prior to that, you had been a PG Senior?

2 A Yes.

3 Q Did the change affect your pay in any way?

4 A No.

5 Q Let me show you what is Staff Exhibit 130, Dr.

6 McArthur, it's book 7 of 8, Staff 130 is an organizational
7 chart.

8 JUDGE YOUNG: Volume 7?

9 MR. DAMBLY: Volume 7.

10 JUDGE YOUNG: 131?

11 MR. DAMBLY: 1-3-0.

12 JUDGE YOUNG: 1-3-0.

13 (Brief pause.)

14 CHAIRMAN BECHHOEFER: We're still looking for the
15 book.

16 (Brief pause.)

17 BY MR. DAMBLY:

18 Q Is this the organization that resulted in the '94
19 reorganization, Staff Exhibit 130?

20 A It does look familiar, I think that is it.

21 Q And prior to the reorganization, you were the
22 technical --

23 A Programs manager.

24 Q -- programs manager.

25 A Yes.

1 Q I think a minute ago you said they eliminated the
2 rad con chemistry manager position.

3 A Well, technically -- whatever that previous
4 position was was eliminated.

5 JUDGE YOUNG: Whatever that --

6 THE WITNESS: The technical programs.

7 JUDGE YOUNG: -- previous description -- you said
8 whatever the previous description was?

9 THE WITNESS: Well, they eliminated that technical
10 programs manager position.

11 BY MR. DAMBLY

12 Q But they did have Mr. Sorrell filling a position
13 as the rad con and chemistry program manager.

14 A He never really filled the position, I filled that
15 position.

16 Q It says he was acting, he was not in it?

17 A He just wasn't there.

18 Q Where was he?

19 A He stayed down at Browns Ferry. I fulfilled
20 responsibilities of that position, Sorrell never functioned
21 in that position.

22 Q Did you write appraisals for Mr. Grover?

23 A You know, I don't remember if I did or not.
24 Sorrell was just kind of a figurehead that stayed down at
25 Muscle Shoals, he was interested in the laboratory, he had

1 other -- his agenda was totally different than the position
2 as described here, so I functioned in both of those
3 positions -- rad con manager position and the rad con and
4 chemistry manager position.

5 Q Did you supervise Mr. Grover on a day-to-day
6 basis?

7 A Pretty well.

8 Q He reported to you?

9 A He was actually supposed to be reporting to
10 Sorrell, but he didn't.

11 Q Did you write appraisals for him?

12 A I don't recall. Sorrell would do some of the
13 things in that position, but not all the things he was
14 supposed to do. It was a very strange situation.

15 Q What was your official position at that point?

16 A Rad con manager -- rad con control, I think they
17 called it.

18 Q And how many employees did you supervise in that
19 position?

20 A It was about -- I'm pretty sure one, two, three --
21 four or five positions and a couple of open positions.

22 Q Did anybody ever tell you you were only acting in
23 the rad con control manager position?

24 A No.

25 Q You understood that to be your permanent TVA

1 position?

2 A Yes.

3 Q Did you ever get a copy of the position
4 description for that position

5 A No, I didn't. Like I said, I did write one,
6 submitted it to John Majewski and that's the last I saw of
7 it.

8 Q Back to the Joint book, Joint Exhibit 64.

9 JUDGE YOUNG: Do you want us to keep out volume
10 seven?

11 MR. DAMBLY: It'll probably come up again.

12 (Brief pause.)

13 MR. DAMBLY: Is everybody there?

14 BY MR. DAMBLY

15 Q Does that -- is that the position description you
16 recall writing?

17 A This is the one I wrote, yes. It never was signed
18 or approved.

19 Q Pardon?

20 A It never was signed or approved.

21 Q The one you have here?

22 A Yeah.

23 Q You sent it up and you don't know what happened to
24 it?

25 A No.

1 Q And many -- on that position description, Joint
2 Exhibit 64, -- how many employees does it say the rad
3 control manager --

4 A Nine.

5 Q And what was the budget?

6 A Million, nine.

7 Q \$1.9 million?

8 A Yes.

9 Q And do you recall what happened during the '94
10 reorganization to the chemistry program manager -- the
11 former chemistry program manager positions?

12 A Previously they were chemistry and environmental
13 and in this new organization, I think they just became
14 chemistry.

15 Q I think it's the other way around.

16 A It may be -- you may be right, I don't know, I
17 can't keep up with it.

18 Q Okay. You recall there was a change, and they
19 posted them.

20 A Yeah.

21 Q And the individuals had to compete.

22 A You're right, they were chemistry and
23 environmental.

24 Q Were you -- who made the selections for the
25 positions of chemistry and environmental program mgrs?

1 A I assume it came under Ron Grover.

2 Q Because he was the chemistry and environmental
3 manager?

4 A Yes.

5 Q Do you recall there being a selection review board
6 set up for those positions?

7 A I believe there was and in fact I think I even
8 served on that.

9 Q Did you serve on the selection review board for
10 the PG-8 chemistry and environmental?

11 A I think so, I recall that's the case.

12 Q Let me show you TVA Exhibit 24.

13 JUDGE YOUNG: Is that volume one?

14 MR. MARQUAND: Yes, Your Honor.

15 (Brief pause.)

16 MR. DAMBLY: Let me tell you --

17 CHAIRMAN BECHHOEFER: We're still looking for it.

18 MR. DAMBLY: Oh, I'm sorry.

19 JUDGE YOUNG: Number --

20 MR. DAMBLY: 24, TVA Exhibit 24. It's a selection
21 package that Mr. Easley identified yesterday.

22 (Brief pause.)

23 BY MR. DAMBLY:

24 Q If you go -- this is the selection package for the
25 chemistry and environmental and other positions back in '94

1 that Mr. Easley identified yesterday.

2 A Okay.

3 Q And the pages are numbered sequentially, if you'll
4 look at the bottom HH00001 through whatever, so it's 1
5 through whatever page numbers at the bottom.

6 If you go to page 6.

7 A Six?

8 Q Yes. And it indicates on page 6 that the -- for
9 the interviews on 9/22/94 the board members were and it has
10 a list of names. For yours, it has Pat Hughes/Wilson
11 McArthur; do you know what that meant?

12 A It meant that either one of the two of us had
13 other assignments that day and so we were going to divide up
14 some of the interviews. I think I took the chemistry and he
15 took the rad con, I believe.

16 Q If you'd go to page 108.

17 A 108?

18 Q Yes.

19 A It's blank.

20 Q It is blank except up at the top. Do you
21 recognize the initials that are at the top of that page?

22 A It looks like PWH.

23 Q Whose --

24 A I guess that would be Pat Hughes, but I'm not
25 sure.

1 Q Okay. And they have in here six interviews were
2 conducted and six interviews score sheets. If you go to
3 page 134.

4 A Okay.

5 Q That's a score sheet for Al Dyson, do you remember
6 Al Dyson?

7 A Yes.

8 Q And you see the initials above the scoring there?

9 A That's my initials, yes.

10 Q That's your initials. Does that indicate you
11 scored Mr. Dyson?

12 A Yes.

13 Q Go to 143. That one was the score sheet for Mr.
14 Pleva?

15 A Right.

16 Q Do you see your initials up there?

17 A Yes.

18 Q So you recall the board member that did the
19 scoring on --

20 A Yes.

21 Q Go back to 117.

22 A 117?

23 Q Right. That's the score sheet for Mr. Harvey.

24 A Right.

25 Q Do you see WCM on this page anywhere?

1 A No.

2 Q Is this your handwriting?

3 A Doesn't look like it, I don't make 8s like that,
4 so I don't think it's mine.

5 Q Do you recall whether or not you interviewed Mr.
6 Harvey for the position?

7 A I don't remember.

8 Q 123.

9 A 123.

10 Q Score sheet for Chandra.

11 A I don't believe that's my handwriting. I'm not
12 sure, but it doesn't look like it.

13 Q Well, on the ones for Dyson and Pleva, you put
14 your initials above the scores, right?

15 A Yes.

16 Q Go to 139. That's the score sheet for Mr. Fiser?

17 A Yes.

18 Q Again, it doesn't have your initials?

19 A No.

20 Q Doesn't appear to be your handwriting?

21 A I don't think so.

22 JUDGE COLE: Is Fiser's name spelled wrong on
23 that?

24 THE WITNESS: Yeah.

25 MR. DAMBLY: Yes.

1 THE WITNESS: Gary Fisher.

2 JUDGE COLE: You're sure it's not Fisher?

3 MR. DAMBLY: I'm pretty sure we didn't have a Gary
4 Fisher, but --

5 MR. DAMBLY: If you look at the page after that on
6 140, you'll see the name and whatever for that, it says
7 Fiser and his resume is in there.

8 BY MR. DAMBLY:

9 Q So does this refresh your recollection that you
10 actually sat in on the interviews for the rad con positions
11 and not the chemistry positions?

12 A I don't recall, I know that Pat Hughes and I were
13 going to share those and -- because -- I don't remember what
14 the activities were, but I think we had something to do with
15 the NSRB that day and so I was out quite a bit.

16 Q And the two that we saw where your initials were,
17 those were rad con positions, right?

18 A No, I think Dyson was chemistry.

19 Q He was chemistry also?

20 A Pleva, I'm not sure what his was.

21 Q Okay. They were all chemistry, so you only sat in
22 on some of the interviews for the chemistry position and not
23 all of the interviews?

24 A Apparently that's the case.

25 Q Is that normal practice for an SRB?

1 A Not normal, no.

2 Q Okay. Do you recall -- we talked earlier about --
3 and obviously you've seen the results of Mr. Fiser's taping
4 -- do you recall ever discussing Fiser taping conversations
5 with Ron Grover?

6 A I may have told him that when he came on board and
7 I was telling him about all of his people. I don't recall
8 that specifically, but it certainly would have been an item
9 I would have mentioned.

10 Q And do you recall who first told you about the
11 tapes?

12 A Legal staff.

13 Q Legal staff?

14 A Yes.

15 Q Mr. Marquand?

16 A Yes.

17 Q Did he or anyone else from the legal staff ever
18 show you any transcripts of Mr. Fiser's recordings?

19 A I don't remember ever seeing -- I know that I was
20 told that they were very garbled and hard to understand and
21 read, I don't recall hearing any or reading anything
22 specifically. I quite honestly was not interested. I
23 usually say what I feel and I didn't feel uncomfortable
24 about somebody taping me actually.

25 Q Let me show you TVA Exhibit 66, if I can find it.

1 (Brief pause.)

2 JUDGE YOUNG: Which volume?

3 MR. DAMBLY: Volume 4.

4 BY MR. DAMBLY:

5 Q Did you have any involvement in preparing TVA
6 Exhibit 66?

7 A I don't even remember the document.

8 Q How about TVA Exhibit 65, which is just in front
9 of that one?

10 A 65?

11 Q Yeah, the one before that.

12 A Oh. I don't believe I had any particular input to
13 it.

14 Q Do you ever recall reading either one of those?

15 A No.

16 Q Anybody ever tell you somebody who discriminated
17 against a person for raising concerns was subject to
18 discipline?

19 A Oh, yes.

20 Q Yes? Are you aware of anybody that was ever
21 disciplined for discrimination at TVA?

22 JUDGE YOUNG: For discrimination --

23 MR. DAMBLY: At TVA.

24 JUDGE YOUNG: -- at TVA.

25 MR. DAMBLY: Anyone at TVA --

1 A Offhand I don't recall.

2 BY MR. DAMBLY:

3 Q Do you recall any action against Mr. Bynum in
4 regard to the Jocher case?

5 MR. MARQUAND: Objection, Your Honor, it's the
6 appeal from this particular case that we're talking about.
7 The results of some other case, what some other individual
8 did in some other case -- that's irrelevant to this
9 proceeding and whether somebody in another case was deemed
10 to have violated TVA's expression -- policy of expressing
11 concerns of commitments to nuclear safety is not relevant to
12 this case.

13 MR. DAMBLY: Your Honor, I don't know why we put
14 it in here in the record if it's not relevant.

15 MR. MARQUAND: What's relevant is to show this
16 gentleman's state of mind, not somebody else's state of mind
17 or somebody's action in another case.

18 JUDGE YOUNG: What did you say, Mr. Dambly?

19 MR. DAMBLY: I said they put this in the record
20 and had Mr. McGrath testify to it, about how he was scared
21 to death because of these. I think it's relevant to find
22 out if anybody knows if they've ever been used.

23 CHAIRMAN BECHHOEFER: Well, I believe it is
24 relevant, if only to show that there may have been
25 contemporaneous actions taken against various persons who

1 raised safety issues. I believe if that's what was going on
2 at particular points in time, the staff is free to try to
3 show that.

4 JUDGE YOUNG: There have been times --

5 CHAIRMAN BECHHOEFER: That is relevant, in my mind
6 anyway.

7 JUDGE YOUNG: There have been comments about the
8 atmosphere at TVA in terms of reporting things, so I think
9 probably I would find it relevant to that.

10 MR. MARQUAND: I thought we had an objection the
11 other day as to whether or not the staff's theory dealt with
12 whether or not there was a pervasive atmosphere of TVA of
13 hostility for whistleblowers and that objection was
14 sustained on the grounds, as I understood it, that that was
15 not a theory of their case and that is a separate cause of
16 action in the discrimination of whistleblower law which has
17 not been pleaded here. And to now let them change horses in
18 the middle of the stream is prejudicial to TVA, it's not
19 what anybody has taken discovery on and not a contention
20 that they've identified.

21 JUDGE YOUNG: What I was referring to was Mr. --
22 Dr. McArthur's earlier statement about TVA's open atmosphere
23 and I think that probably would open the door for this.

24 MR. DAMBLY: I believe he testified with regard to
25 the Sasser letter, he wanted to make a little statement

1 about how he was offended by the statements in there
2 concerning people using the corrective action program,
3 because everything was open and above-board and people were
4 encouraged to do all this. And I think it's relevant.

5 MR. MARQUAND: I understand Your Honors rulings
6 and as I understand it, the basis is to show his state of
7 mind about what was going on in TVA at that time, is that
8 correct?

9 JUDGE YOUNG: The basis of mine is that I think
10 that he opened the door by talking about the general
11 atmosphere at TVA and how TVA handled problems that arose.

12 CHAIRMAN BECHHOEFER: It's my understanding that
13 Mr. McGrath also testified generally on this subject. I
14 can't point to the place in the transcript at this point,
15 but I recollect that, I have some notes to that effect.

16 MR. DAMBLY: I recall these exhibits came in
17 through Mr. McGrath, who testified he had a hand in
18 preparing them.

19 CHAIRMAN BECHHOEFER: Yes.

20 BY MR. DAMBLY:

21 Q Do you recall whether anybody at TVA was subject
22 to disciplinary action as a result of the Jocher case?

23 A I believe in this case, Joe Bynum was.

24 Q And what action was taken against Mr. Bynum?

25 A I don't know, we never were reall told a whole lot

1 about it, I know that he transferred over to the fossil
2 organization during that period of time.

3 Q Was that as a result of actions TVA took or as a
4 result of actions that the NRC took?

5 A I assume it was the NRC, I don't really know a lot
6 about it.

7 MR. MARQUAND: For the record, Mr. Bynum was
8 transferred to the fossil organization long before the NRC
9 got involved.

10 MR. DAMBLY: I guess we don't need to get into
11 that, but we did have Mr. Marquand on our list of witnesses
12 and if he wishes to testify, we'll be glad to put him back
13 on.

14 BY MR. DAMBLY:

15 Q As a result of the Jocher case, did you receive a
16 memorandum yourself?

17 A I believe that Ike Zeringue gave me a memorandum -
18 - I can't remember if it was specific to the Jocher case or
19 not, but I believe it was, not to be involved in -- I can't
20 remember the specifics of the letter, but it was --

21 Q Let me show you Staff Exhibit 91.

22 A Okay.

23 (Brief pause.)

24 Q Do you recall receiving that?

25 A Yes, I do.

1 Q Was that in regard to the Jocher case?

2 A I believe so, I'm not -- yes -- yes, it says that.

3 Q Does it also indicate that even though there was
4 an adverse finding, TVA disagrees with that but they sent
5 you just to make sure you do something different the next
6 time?

7 A Yes.

8 CHAIRMAN BECHHOEFER: Dr. McArthur, who is O.J.
9 Zeringue?

10 THE WITNESS: He is the chief executive officer
11 now under the chairman.

12 CHAIRMAN BECHHOEFER: Okay, at this time?

13 THE WITNESS: At that time, he was senior vice
14 president of nuclear operations.

15 BY MR. DAMBLY:

16 Q And that was over your position?

17 A Yes -- oh, yeah.

18 By the way, let me comment, I was very offended by
19 the letter and I went to management. I said what to you
20 mean, this situation as well as others, and I said what are
21 you talking about. And nobody was ever able to identify
22 what others they were talking about. So I was very offended
23 by the letter.

24 MR. DAMBLY: Staff would move Exhibit -- Staff
25 Exhibit 91 into the record.

1 CHAIRMAN BECHHOEFER: 91?

2 MR. DAMBLY: Staff Exhibit 91.

3 CHAIRMAN BECHHOEFER: Any objection?

4 MR. MARQUAND: Yes, Your Honor, we're going to
5 object to that. Counsel had led us to believe that --
6 through his questioning that regarding TVA policy on
7 expressing concerns of commitment to nuclear safety, which
8 talk in terms of disciplining employees for violating that.
9 This letter does not indicate that Dr. McArthur violated the
10 TVA commitment to nuclear safety or the principles regarding
11 free expression of concerns, it simply states -- it states
12 in there that TVA disagreed with the ruling in the Jocher
13 case and indicated in this case that Dr. McArthur's
14 involvement was a lack of attention to appropriate personnel
15 practices and didn't indicate that he was guilty or that TVA
16 believed that he had attempted to take any sort of
17 retaliation or reprisal against anyone for expressing safety
18 concerns. This letter is simply not relevant to the issues
19 that counsel has suggested that he wants to offer it for.

20 THE WITNESS: It talks about perception, if
21 there's a perception that you've done something wrong,
22 whether you have or not -- I thought that was very poor
23 judgment.

24 MR. MARQUAND: It indicates that he had a lack of
25 attention to appropriate personnel practices, it is not an

1 indication that Dr. McArthur retaliated against anyone for
2 expressing a concern and this is irrelevant to these issues
3 in this case except for the fact that maybe in 1993 through
4 '5, that there was something there that indicated that Dr.
5 McArthur had a lack of attention to appropriate personnel
6 practices. And if that's what it's here for, you know, that
7 doesn't show discrimination, it doesn't show animosity.
8 That's the issue we have to decide in this case -- is there
9 animosity towards someone for raising safety concerns. If
10 all that's proven is a lack of attention to appropriate
11 personnel practices, we could go home.

12 CHAIRMAN BECHHOEFER: Are those code words for
13 perhaps other matters?

14 MR. MARQUAND: Pardon me?

15 CHAIRMAN BECHHOEFER: Are those code words for
16 other matters?

17 MR. MARQUAND: No, Your Honor.

18 JUDGE YOUNG: Do you want to respond, Mr. Dambly?

19 MR. DAMBLY: I think it shows clearly a point that
20 the staff was making. They put in 65 and 66 to show how
21 concerned they were, Dr. McArthur took exception to the
22 Sasser letter, we heard Mr. McGrath say discipline was a
23 big issue. Here's a case in which there was a specific
24 finding by the Department of Labor and the result of that
25 was well, we disagree with the Department of Labor, they

1 don't get this stuff right, but next time, be sure you do
2 things a little different so they might not get the wrong
3 impression. I think it goes to the attitude that was
4 pervasive. And we heard plenty about Mr. Bynum's
5 involvement this morning in this case as well as Dr.
6 McArthur's.

7 MR. MARQUAND: Now that we've raised Mr. Bynum, I
8 would like to address that as well. The theory that the
9 staff has put before you in their contentions is that Mr.
10 McGrath and Dr. McArthur manipulated the '96 reorganization
11 and the nonselection of Mr. Fiser. Mr. Bynum, who has been
12 discussed this morning and who allegedly had some reasons to
13 have Mr. Fiser taken out of Sequoyah and not sent back to
14 Sequoyah; Mr. Keuter, who was also mentioned; the plant
15 manager, Rob Beecken, who was also mentioned are not part of
16 this theory of this big conspiracy -- I mean unless we have
17 some conspiracy reaching back to 1992, I don't know if
18 that's what the staff is now morphing their theory of the
19 case into or not, but as they've espoused this morning, Dr.
20 McArthur attempted to save Mr. Fiser's job in 1993, and find
21 him a job rather than have him reduced in force.

22 What are we supposed to think? That all these
23 other people had some animosity and somehow that they
24 transferred that to Dr. McArthur and Mr. McGrath in 1996? I
25 fail to understand the relevance of the staff's evidence

1 this morning.

2 MR. DAMBLY: Just as a response to that, I think
3 we've heard Mr. Marquand take Mr. McGrath through a whole
4 bunch of interrogatory responses from the staff, which dealt
5 with both the '93 DOL area and Mr. Fiser's activities in '93
6 as well as '96. So for him to suggest now that he's never
7 heard about the '93 issues before, I don't know where that
8 comes from.

9 MR. MARQUAND: I've heard about the '93 issues.
10 The point is that in 1993, Dr. McArthur was named as an ally
11 of Gary Fiser, he tried to find him a job and Tom McGrath
12 wasn't mentioned. According to Mr. Fiser, the people who
13 were trying to do him in in 1993 were Bynum, Keuter and
14 Beecken.

15 (The Judges confer.)

16 MR. MARQUAND: Your Honors, the NOV had to do with
17 the 1996 reorganization. The 1993 matters, if they were
18 relevant, could only be background.

19 CHAIRMAN BECHHOEFER: I think we will allow the
20 document to be admitted, which is Staff Exhibit 91, am I
21 correct?

22 MR. DAMBLY: Yes, Staff Exhibit 91, Your Honor.

23 CHAIRMAN BECHHOEFER: Will be admitted.

24 (The document, heretofore marked as
25 Staff Exhibit Number 91, was

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received in evidence.)

JUDGE YOUNG: And in making this ruling, I think the last sentence in the second paragraph about safety-related issues and perceptions of impropriety would make it relevant with regard to this witness.

MR. DAMBLY: We're about to go into a whole other section, different section of questions. Would this be an appropriate time for lunch?

CHAIRMAN BECHHOEFER: Yes, it would be. Why don't we be back at 1:15.

MR. DAMBLY: That's fine with us. Thank you.

(Whereupon, a luncheon recess was taken at 12:11, the hearing to resume at 1:15 p.m., the same day.)

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AFTERNOON SESSION

CHAIRMAN BECHHOEFER: Back on the record. Mr. Dambly.

MR. DAMBLY: Thank you.

DIRECT EXAMINATION (continued)

BY MR. DAMBLY:

Q Dr. McArthur, I'd like to now discuss with you the '96 reorg.

A Okay.

Q Do you recall --

CHAIRMAN BECHHOEFER: The '96 what?

MR. DAMBLY: Reorganization.

CHAIRMAN BECHHOEFER: Oh, okay.

MR. DAMBLY: Downsizing, if you will.

BY MR. DAMBLY:

Q How did that come about?

A Well, throughout the industry, utilities were downsizing and so it was just common practice. A lot of businesses were doing that kind of thing anyway. And so the decision was made to downsize by senior management.

Q Do you recall who the senior management was?

A I assume it started with Oliver. I really don't know the answer to that, I just know my boss told me we were downsizing.

Q When you say Oliver, you're talking Oliver

1 Kingsley?

2 A Yes.

3 Q And who was your boss at that time?

4 A Tom McGrath, I believe -- yeah, in fact I'm sure.

5 Q And what did Mr. McGrath tell you about what was
6 going to occur?

7 A He just said that we needed to cut forces, for us
8 to -- Ron Grover and myself -- to look at various
9 organizations and give him recommendations and he would
10 consider those. He was feeling we should go down to two rad
11 con people, two chemistry people -- he was looking in that
12 direction. So we did give him some recommendations and he
13 finally made a final decision as to how many staff members
14 we would have.

15 Q Okay. Did you have any -- well, he told you he
16 thought you should go down to two and two in rad con and
17 chemistry?

18 A Well, that actually goes back to Oliver Kingsley,
19 when I first came to TVA. He felt that we ought to be about
20 in that number range and we were -- in fact, I was kind of
21 surprised when I came to TVA because we had more people in
22 each of the organizations than most other organizations I
23 had bene familiar with. And I did a study comparing our
24 organizations to other organizations in the industry and we
25 were larger than other organizations.

1 Q Did Mr. McGrath tell you anything about a 40
2 percent reduction over a period of time?

3 A Yes.

4 Q Do you know how long that period of time was?

5 A He wanted to get to it as quickly as possible.

6 Q Okay.

7 A I don't know if he had a defined period of time,
8 but --

9 Q Who decided how many chemistry positions there
10 would be?

11 A That came from Tom McGrath. I don't know if it
12 went above that or not, but that's where my direction came
13 from.

14 Q And who determined that one position would be a
15 PWR chemist and one would be a BWR chemist?

16 A We had discussed that on several occasions, I
17 think it ws kind of a mutual agreement, that made sense.

18 Q Mutual agreement between who?

19 A Tom McGrath, Ron Grover and myself.

20 Q Okay. Was there any thought to have one primary
21 chemist and one secondary chemist?

22 A No, it was BWR and PWR.

23 JUDGE YOUNG: Could you explain something for me
24 that I've wondered about before, and maybe now's a good
25 time. Tell me the difference between primary and secondary

1 chemistry.

2 THE WITNESS: Well, primary is the reactor part
3 of the facility and secondary is the steam generation
4 portion, the steam generators, pressurizers and that kind of
5 thing.

6 JUDGE YOUNG: Thank you.

7 THE WITNESS: Much different than a BWR.

8 BY MR. DAMBLY:

9 Q Do you recall at any time Mr. Grover proposing
10 that the three chemistry positions be retained for some
11 period of time?

12 A The only thing I remember is he saw his position -
13 - he knew that his particular position was going to be going
14 away, there was not going to be a chemistry manager and he
15 came to me with an organization which when I looked at it, I
16 knew that Tom McGrath would not approve -- or at least that
17 was my opinion -- in which he was trying to save his
18 position. He had an intermediary person between the rad con
19 chemistry manager and the chemistry and rad con people, it
20 was just an extra head count from my standpoint, but I
21 didn't interfere. He went to Tom and talked to him about it
22 and Tom said he didn't agree with it, so --

23 Q That's Tom McGrath?

24 A Tom McGrath.

25 Q When did the staff first learn about that there

1 was going to be a downsizing in the organization

2 A I can't really give you a particular date but
3 somewhere in that time frame, I'm sure.

4 CHAIRMAN BECHHOEFER: What staff are you referring
5 to, NRC's or theirs?

6 MR. DAMBLY: Theirs.

7 BY MR. DAMBLY:

8 Q And what time frame are we talking about? When
9 did you first learn or get your instructions from Mr.
10 McGrath about we're going to do a downsizing and --

11 A I don't know the particular date, but he just
12 called me in and said that -- in fact, I think he called Ron
13 and I both in and said we needed to start looking at various
14 organizational concepts and thoughts with a 40 percent
15 reduction which he wanted to meet as quickly as possible.

16 Q Do you recall, was that in early '96?

17 A I can't give you a date.

18 Q Do you recall the selection for the PWR and BWR
19 chemistry -- do you know when those were made?

20 A We had a -- we did have a review board?

21 Q I know, do you know when those selections were
22 made?

23 A You mean date?

24 Q Yes.

25 A No, I'm not good with dates, except with my wife.

1 Q Do you recall prior to announcing the downsizing
2 or maybe prior to the selection process for the PWR and BWR
3 positions, a situation where there was discussions about Mr.
4 Harvey going to Sequoyah?

5 A Charles Kent had come to me and asked me would I
6 directly transfer Sam to the site. You have to remember
7 that in the corporate organization, our goals were to have
8 the best people we possibly could at the sites, so in fact
9 I'd sent Gordon Rich out to the site, Don Adams, a number of
10 people had gone to the sites. He asked for him to be
11 directly transferred and I told him we couldn't do that,
12 that we'd have to advertise the position and people would
13 have to have an opportunity to bid on it, and so I mentioned
14 it to Tom McGrath and Tom McGrath said the same thing.

15 I think he and Charles Kent talked about it and he
16 was told directly that it would have to be advertised.

17 Q He was told that any position he had had to be
18 advertised?

19 A Yes, he would not directly transfer. I don't know
20 if TVA policy would allow that to happen or not.

21 Q Mr. Kent's the one that approached you about it?

22 A Yes.

23 Q Did he tell you he wanted Mr. Harvey at the site?

24 A Yes.

25 Q And why did he tell you that, what did he say his

1 reason was?

2 A Because they were having significant steam
3 generator problems and that was one of Sam's expertises.

4 Q Do you recall Gordon Rich being involved in that
5 also, discussions with you at any time?

6 A I don't recall Gordon being involved. He was at
7 that point -- somewhere along in there, he transferred to
8 the site. They advertised that position and he was selected
9 as the site chemistry manager.

10 Q Do you recall any discussions about Harvey going
11 to Sequoyah with Tom McGrath?

12 A With Tom McGrath?

13 Q Did you discuss with Tom McGrath the issue of Mr.
14 Harvey going --

15 A I just mentioned, as I said earlier, that Charles
16 was asking me the question and that perhaps Charles might be
17 getting in contact with him about it.

18 Q Did he express to you his feelings on the subject?

19 A He just said that we would not direct transfer
20 anyone, it would have to be an advertised position.

21 Q Did you -- do you recall Mr. McGrath making any
22 statements to you along the nature that he would like to
23 keep Mr. Harvey's expertise in headquarters?

24 A Not specifically, but he felt that Sam was a good
25 contribution to the corporate organization because we had

1 two PWRs with Sequoyah and Watts Bar.

2 Q Did he express to you any views on Mr. Fiser's
3 contribution to the corporate staff?

4 A No, not specifically.

5 Q Please tell me how you went from the rad con
6 manager position to the rad con chemistry manager position
7 in '96 without a competition?

8 A I was told by Tom McGrath the position would be
9 advertised and I went and talked to him and I told him I
10 said well I used to be the technical programs manager and it
11 had all those entities plus some others and he said well, we
12 still will advertise the position.

13 So very shortly thereafter, I don't remember the
14 time frame, I was called into his office and he said well,
15 you will be the rad con chemistry manager.

16 Q Did he tell you why?

17 A I think he had Human Resources to do some kind of
18 evaluation and based on the fact that I used to be the
19 technical programs manager and had that expertise, that I
20 would fill that position. I know very little about that. I
21 just know what I was informed of.

22 Q Did anybody tell you it was because you were still
23 in that position?

24 A No.

25 Q Do you recall anybody telling you back in '96 that

1 the reason you were placed in that position was because the
2 only position description they could find for you was for
3 the technical program manager position?

4 A No.

5 Q Do you recall anybody telling you prior to being
6 placed in the rad con chemistry manager position -- I'll
7 start over again for you -- do you recall anyone telling you
8 prior to you being placed in the rad con chemistry manager
9 position that you were only acting in the rad con manager
10 position?

11 A No, I thought I was full rad con manager.

12 Q And let me show you Staff 102.

13 (Brief pause.)

14 Q I think we discussed this this morning, this is
15 the appraisal you actually received as the rad con manager?

16 A Let me see here -- it's signed by myself and Tom
17 McGrath.

18 Q Okay and if you would refer to page 6 of that
19 document.

20 A Six?

21 Q Six.

22 (The witness reviews a document.)

23 A Okay.

24 CHAIRMAN BECHHOEFER: Wait until we get there.

25 (Brief pause.)

1 BY MR. DAMBLY:

2 Q In the middle of page 6, there's a box entitled
3 Career Objectives, do you see that?

4 A Yes.

5 Q And what were your career objectives?

6 A Well, at one time I was rad con manager -- to be
7 rad con chemistry manager or operations support general
8 manager.

9 Q That would have been the two positions above you
10 in the organization?

11 A Yes.

12 Q Let me show you Staff Exhibit 176.

13 (Brief pause.)

14 Q Dr. McArthur, Staff 176 is TVA's second --
15 responses to NRC staff's second set of interrogatories. And
16 if you'd turn to page 5 of that -- I'm sorry, page 4.

17 A Four? Okay.

18 JUDGE COLE: Fourth page or page 4?

19 MR. DAMBLY: The page with the number 4 at the
20 bottom.

21 JUDGE COLE: Thank you.

22 BY MR. DAMBLY:

23 Q It's Interrogatory Number 3 and it says "In regard
24 to the reorganization in '94 resulting in Wilson McArthur
25 becoming radiological control manager. Please provide the

1 following information:" and it goes on and asks a number of
2 questions.

3 And then the response on the next page says "TVA
4 objects to this interrogatory to the extent it assumes that
5 Dr. McArthur officially assumed the position in 1994 of
6 radiological control manager."

7 Was there any doubt in your mind you assumed that
8 position in 1994?

9 A Excuse me?

10 Q Is there any doubt in your mind that you assumed
11 the position of rad con manager in 1994?

12 A That's what Don Majewski --

13 Q Told you.

14 A -- told me, I was the rad con manager, yes.

15 Q And nobody ever told you you weren't.

16 A No.

17 JUDGE YOUNG: Who did you say told you?

18 THE WITNESS: Majewski was the -- I don't know if
19 he was acting or -- I never could keep up with that --
20 acting or full time operations support manager, he was over
21 rad con and chemistry and training and several other
22 organizations.

23 JUDGE YOUNG: Thank you.

24 CHAIRMAN BECHHOEFER: Dr. McArthur, were you ever
25 told that at that time you were occupying the position on an

1 acting basis?

2 THE WITNESS: No.

3 CHAIRMAN BECHHOEFER: As distinguished from full
4 tiome?

5 THE WITNESS: I thought it was a full time
6 position. We had reorganized, eliminated the rad con
7 chemistry manager position and we had a rad con and a
8 chemistry manager.

9 CHAIRMAN BECHHOEFER: Thank you.

10 BY MR. DAMBLY:

11 Q Dr. McArthur, based on your knowledge of TVA
12 personnel practices, if you hold a job at one point in time,
13 you accept another job and then later a job similar to the
14 first one opens up, do you have any rights to that position?

15 A I'm not an expert on human resources activities, I
16 wouldn't respond to that for any reason, I just don't know.

17 Q Okay.

18 A I left those kind of things up to Human Resources.

19 Q Do you recall when they -- we talked about the
20 reorg in '94 and they took the chemistry manager's position
21 and turned them into chemistry and environmental, do you
22 recall that?

23 A Yes.

24 Q Do you recall -- did anybody tell you what the
25 purpose of adding the environmental function to that?

1 A They wanted the chemistry person to be able to
2 rotate between environmental and chemistry. At that point
3 in time, they were looking for -- an objective was to have
4 people be able to perform in more than one position.

5 Q And there was also an environmental person who was
6 put into that position as well, is that correct? Didn't
7 they make four selections?

8 A I believe Deidra -- I can't remember her name --
9 but I think there was one person.

10 Q Okay. Now during the '94 to '96 time frame, did,
11 to the best of your knowledge, the former chemistry managers
12 -- Chandra, Harvey and Fiser -- did they actually start
13 performing all the environmental functions?

14 A I know that Chandra -- some of them did. I wasn't
15 really involved daily with that, but I know that some of
16 them did. I can't relate that all three did.

17 Q Did it become half of their job?

18 A I would say no, but --

19 Q And in fact, if you had four positions, one
20 environmental and three chemistry and you combined them into
21 four positions, you wouldn't expect any one to be doing more
22 than a quarter of the environmental, would you?

23 A I wouldn't say that, I just know the goal was that
24 the chemistry people were to learn environmental -- they
25 were supposed to have a period of time in which they would

1 learn environmental techniques and programs and that kind of
2 thing and phase more into the environmental efforts.

3 Q And at the time of the reorg in '96, what was Mr.
4 Fiser doing?

5 A Again, he did not report to me, so I can't -- I
6 know he was doing chemistry at Watts Bar and beyond that I
7 can't really respond.

8 Q Okay, so when you told us earlier that you were
9 actually doing the Sorrell function as well as your own
10 function, --

11 A Yes.

12 Q You didn't know what the chemists under Grover
13 were doing?

14 A I knew that they were given directions to learn
15 more about the environmental area. Some of them were
16 involved with the resource group, I was very much involved
17 with the resource group. The resource group did a lot of
18 consulting work and other things for us in the environmental
19 area and we were trying to have a better interface between
20 the two organizations.

21 Q Again, at the time of the reorg ion '96, Fiser was
22 supporting Watts Bar, is that correct?

23 A He was supporting Watts Bar and Sam was
24 responsible for Sequoyah and Chandra was responsible for
25 Browns Ferry.

1 Q Did you ever --

2 A Wait, wait, let me back up. That was during the
3 time before -- that was before the final reorganization,
4 right?

5 Q Yeah, I'm talking before the reorg; afterwards,
6 there was only two of them.

7 A That was under Ron Grover. My recollection is
8 that Sam spent most of his time -- he did spend some time at
9 Watts Bar, but he spent most of his time at Sequoyah and
10 Grover -- Fiser spent most of his time at Watts Bar.

11 Q Okay. Did you ever talk to Mr. Kent, Mr. Corey,
12 Mr. Cox -- well, first, would you identify what their
13 positions were in '96?

14 A Charles Kent was the rad con chemistry manager at
15 Sequoyah, John Corey had the same position at Browns Ferry
16 and Jack Cox had the same position at Watts Bar.

17 Q Did you ever talk to them about what duties were
18 being performed by Chandra, Fiser and Harvey?

19 A Talk to them about what duties?

20 Q Yes, how much time they were spending on
21 environmental versus PWR/BWR chemistry.

22 A I'm not sure if I understand the question, but we
23 knew that Sam and Gary were both PWR people and Chandra was
24 BWR, they knew that. And they performed most of their
25 duties in those areas.

1 Q Do you know if -- did you ever talk to them and
2 ask them how much environmental work, if any, they were
3 doing in '96?

4 A No. They were very disappointed that we -- we had
5 previously had a fairly large environmental organization
6 downtown, we did a lot of the rules and regulations review
7 and that kind of thing and that was eliminated and they were
8 very unhappy because it was just all of sudden one day said
9 it's yours, take it over. That was not a very good way to
10 do thgs, but that's what was done.

11 Q Okay.

12 JUDGE YOUNG: Were you saying that most of the
13 work involved in the environmental area was rules and
14 regulations or -- was that what you were suggesting or --

15 THE WITNESS: What I was saying was we had
16 previously did a lot more of the environmental work, we had
17 a staff of probably six people when I first came to TVA and
18 we pretty well eliminated that staff down to one person,
19 then we eliminated it down to one half of a person.

20 JUDGE YOUNG: I guess what I was getting at, I
21 thought you said that when you earlier had the larger staff
22 of those environmental people, that they mainly did rules
23 and regulations, did I understand that right?

24 THE WITNESS: That was their -- any changes from
25 EPA and those kind of things were reviewed by that

1 organization.

2 JUDGE YOUNG: Okay, so am I understanding
3 correctly -- if I assume from that that they spent most of
4 their time downtown working on rules and regulations, that
5 they did not go out to the plants very much --

6 THE WITNESS: Oh, they went out a lot. I had a
7 requirement that everybody spend a lot of time at the sites,
8 probably half of their time, and they would go out and they
9 would assist. They did a lot of work -- we had a major
10 contract with a resource group in which they did a lot of
11 environmental field things like monitoring and those kind of
12 things and they would be involved in that.

13 JUDGE YOUNG: Okay, thanks for clarifying that.

14 BY MR. DAMBLY:

15 Q And that was prior to the '94 reorganization where
16 you went down to the one?

17 A Yes.

18 Q And then in '96, you went down to a half a person
19 doing environmental?

20 A Yes.

21 Q What did the other half of that person do?

22 A Rad waste.

23 Q Do you know if, in 1996, Mr. Harvey and Mr. Fiser
24 were performing more than -- spending more than 35% of their
25 time, more than 35% of their duties involved in

1 environmental?

2 A They were working for me, but I would assume, if
3 they were doing what they were directed to do, is learn more
4 about the environmental area, they would have been spending
5 more time in environmental.

6 Q Do you know how much time was being spent there?

7 A No.

8 Q How did the decision get made to post the PWR and
9 BWR chemistry positions?

10 A Human resources.

11 Q Well, how did they make the decision? Did they
12 talk to you?

13 A No.

14 Q Did they talk to Grover?

15 A I -- not that I'm aware of. I don't know the
16 answer to that question. I was just told we'd have -- we
17 met with Tom McGrath and we decided that we'd have a PWR and
18 a BWR, and we were told they would be advertised.

19 Q You were told that by...

20 A Tom McGrath.

21 JUDGE YOUNG: And they were going to be located
22 downtown?

23 THE WITNESS: Yes.

24 JUDGE YOUNG: But be available to the plants?

25 THE WITNESS: Yes. They were to spend, my

1 direction was, at least half of their time on the sites.

2 JUDGE YOUNG: And so the -- again, maybe I --
3 pardon me. Before I assume things that are incorrect, I
4 want to make sure and clarify that -- that they are. Watts
5 Bar and Sequoyah were both PWR, and Browns Ferry was BWR?

6 THE WITNESS: Right.

7 JUDGE YOUNG: And those were the three plants that
8 we were talking about?

9 THE WITNESS: That's correct.

10 JUDGE YOUNG: Okay. Thank you.

11 THE WITNESS: We did a little bit at Bellafont,
12 but it wasn't an operating nuclear power plant.

13 JUDGE YOUNG: That was not?

14 THE WITNESS: It was not operating, but we did
15 some of the -- like keeping up with the chemistry equipment,
16 those kind of things, so...

17 JUDGE YOUNG: What kind of thing was it, or is...

18 THE WITNESS: It was PWR.

19 JUDGE YOUNG: "P"?

20 THE WITNESS: PWR.

21 JUDGE YOUNG: Thanks.

22 BY MR. DAMBLY:

23 Q Okay. And just so it's clear, Browns Ferry is how
24 many units?

25 A Three.

1 Q Browns Ferry has three units?

2 A Uh-huh (affirmative).

3 Q And how many does Watts Bar have?

4 A It has one operating, one not completed
5 construction. Sequoyah has two.

6 Q Two. Okay. So there were three operating PWRs,
7 plus whatever you do in Bellafont?

8 A Three reactors.

9 Q Three reactors and three at...

10 A Browns Ferry.

11 Q ...three BWR reactors?

12 A No, the Browns Ferry Unit 1 was not operational.

13 Q Oh, okay. All right, let's talk about the actual
14 posting and selection process for the PWR position. Were
15 you the selecting official?

16 A We had a selection board. I would have been the
17 final decision, but the selection board was used to
18 interview all the candidates for -- there was many positions
19 for rad con chemistry environmental, rad waste, emergency
20 preparedness. So we interviewed a number of people.

21 Q And there were actually five positions that were
22 interviewed for on the day that the interviews were
23 conducted; is that correct?

24 A Well, there were two chemistry, two rad waste --
25 excuse me, two rad con. And I can't remember what other

1 positions were up. But there's certainly something that
2 tells that, but...

3 Q Let me show you Joint Exhibit 63.

4 A Okay.

5 Q Have you seen that document before, Dr. McArthur?

6 A Yes.

7 Q Did -- was that the requirements that you were
8 told were applicable to the posting and selection involved?

9 A Yes.

10 Q Did you follow it?

11 A I think so.

12 Q Okay. And how did you go about selecting the SRB
13 members?

14 A Well, first of all, I thought I had a rad con, a
15 chemistry, environmental rad waste type person on the board.
16 And then at one of our rad con chemistry manager's meetings,
17 which was me, Cox, Kent, and Corey, the decision was made --
18 was suggested by one of the members that we have the rad con
19 chemistry managers be the selection review board because
20 they were the principal key person at the site. So it was
21 decided they would be the -- we decided, and I went to Tom
22 McGrath and to human resources to discuss that with them.
23 They said that would be fine.

24 Q Okay. And did that end up being the final
25 selection review board membership?

1 A No.

2 Q Why not?

3 A Jack Cox was not able to attend. He said that he
4 would not be able. So I then -- I said, "Well, we need
5 somebody from Watts Bar. How about if we have Pat Hughes,
6 who was the rad con manager at that point in time." And he
7 said no, he would not be available. His people were very
8 busy in -- in operating the plant. So then I thought maybe
9 we could use a site assistant plant manager. I can't
10 remember his name. But I was told he was not available.

11 So then I knew I had a -- I wanted to get a third
12 person, because we had to -- the review board coming up. So
13 I went to Tom McGrath and human resources. And after
14 thinking about it, Tom came back and said, "Well, why don't
15 we use a fellow from Sequoyah." And now all of a sudden his
16 name escapes me. I can't believe it.

17 Q Mr. Rogers?

18 A Yeah, Rick -- Rick Rogers. That he be a member of
19 the board, because he does have -- in his operational
20 experience, deals with rad con and chemistry. And that was
21 fine with me. So he was selected to be the third member of
22 the board.

23 Q Did you ever consider rescheduling the interviews
24 for the PWR and BWR positions until Mr. Cox...

25 A Well, in TVA, if you try to reschedule a meeting,

1 you might as well forget it. Normally, when we had a rad
2 con and chemistry manager meeting, if somebody couldn't make
3 it, we just canceled it for that month and had it the next
4 month. So it was very difficult to get these guys together.
5 And so we did not reschedule it.

6 Q Do you recall Mr. Easley ever telling you that the
7 interview should be rescheduled so Mr. Cox could make it?

8 A No.

9 Q Recall Mr. Grover ever saying that to you?

10 A No.

11 Q And what would have stopped you from holding the
12 interviews for the PWR/BWR chemistry position at the next
13 rad con manager's meeting -- I mean, rad con chemistry, the
14 next meeting of your group of Corey, Cox, Kent, and you?

15 A We were trying to get the selections made. I had
16 been selected as the rad con chemistry manager, and we
17 wanted to get the job done.

18 Q And if it was a month later, that would have been
19 a problem how?

20 A It would have had an effect in making all the
21 selections.

22 Q Why?

23 A Well, it just holds up the organization --
24 reorganization. I wouldn't be assured that he'd be
25 available the next month.

1 Q Did it give you any concern that you were -- had a
2 panel or a selection review board where the person that Mr.
3 Harvey was primarily supporting was on it, and the person
4 that Mr. Chandra was primarily supporting was on it, and the
5 person Mr. Fiser was primarily supporting was not on it?

6 A No, because Charles Kent knew Gary Fiser very
7 well, and so did Rick Rogers. They both had worked with him
8 and had a very high opinion of him, as far as I knew.
9 Especially Rick Rogers. He had a very high opinion of Gary
10 Fiser. I thought it was a very fair board.

11 Q Well, did -- how long ago had Mr. Kent worked
12 directly with Mr. Fiser?

13 A He was -- he was the rad con manager previously,
14 and Gary was the chemistry manager. They worked together
15 quite often.

16 Q And that -- that's the Mr. Kent we talked about
17 this morning that Fiser got RIF'd, surplused from the
18 position as the Sequoyah chemistry manager, went over to
19 ETP. Mr. Kent considered hiring him back...

20 A Yes.

21 Q ...and was told that wouldn't be a good idea, and
22 he didn't do it?

23 A Same guy.

24 Q Same guy? And that was the last interactions,
25 really, he had on a regular basis with Mr. Fiser?

1 A I don't know.

2 Q You do recall that just shortly before this Mr.
3 Kent had talked to you that he wanted to get Harvey out to
4 Sequoyah?

5 A Yes.

6 Q Did that appear to you like a predisposition on
7 Mr. Kent's part?

8 A No.

9 Q Did you receive any complaints from Mr. Cox about
10 Fiser's work at Watts Bar?

11 A No, he was -- he was very high on his work.

12 Q Did you receive any complaints from Kent about
13 Harvey's work?

14 A No.

15 Q Any complaints from Corey about Chandra's work?

16 A No.

17 Q You think it would be natural for managers who had
18 been getting good support to be somewhat predisposed to the
19 people that were supporting them?

20 A That wasn't the -- the concept was, from my
21 standpoint, all three guys were qualified. I had gone
22 through their resumes and all their training and -- prior to
23 selecting the people. We eliminated some people. And those
24 three guys were the main three.

25 As far as I was concerned, there was one step

1 left. That step was to pick two of three. We couldn't pick
2 three, we could only pick two. Okay. And so then the
3 concept was we'd put together a set of questions, we'd
4 evaluate those people based on those questions, and the
5 selection board made the selection of the questions. And
6 then however they were graded, then I would evaluate that
7 and we'd determine who would fill those positions.

8 Q Well,...

9 A They would make a recommendation to me.

10 Q And who wrote those questions?

11 A I -- well, I had a lot of input from chemistry,
12 rad con, environmental, rad waste. Out of those, I put
13 together a set of about -- on the order of 20 questions. I
14 can't remember the exact number. And the selection board
15 reviewed the questions, picked I believe ten or so. They
16 added one about molar ratio. And those were the questions
17 that were asked. All the same questions were asked of the
18 candidates.

19 Q And who added the question on molar ratio?

20 A I don't remember specifically. I -- I really
21 don't know. I just know...

22 Q Do you recall it being Mr. Kent who added that
23 question?

24 A I -- it could have been, because he was having a
25 problem in that area at Sequoyah.

1 Q And to your knowledge, was Mr. Harvey working with
2 him on the molar ratio issue at Sequoyah?

3 A I think both Gary and -- at Watts Bar, and Sam at
4 Sequoyah were working on that particular problem. Because
5 Sequoyah was -- Watts Bar was having problems, too.

6 Q Do you recall an incident prior to the interviews
7 in which Dave Voeller indicated that Harvey had talked to
8 him and told him he'd been preselected for the job?

9 A No.

10 MR. MARQUAND: Objection. That's a
11 mischaracterization.

12 Q Do you recall a conversation, any kind of -- did
13 you ever hear anything about Harvey talking to Voeller?

14 A No, not aware of anything.

15 JUDGE YOUNG: The answer was "no"?

16 THE WITNESS: "No."

17 Q And who is Dave Voeller?

18 A He was that -- he was kind of responsible for
19 steam generators at all PWR sites. He was kind of the chief
20 guru of steam generators.

21 Q Was he located at Sequoyah?

22 A He was a corporate person. He reported to Tom
23 McGrath.

24 Q Oh, so he was -- he was corporate at the time?

25 A Yes.

1 MR. MARQUAND: I think the witness is confused
2 about the persons you're asking about, Counselor.

3 Q Are you -- are you -- since this is -- I kind of
4 thought myself Goetcheus was the world's foremost authority
5 on steam generators.

6 A Yes. Isn't that what you...

7 Q We're talking about Voeller.

8 A Oh, Voeller. I'm sorry. He was Watts Bar
9 chemistry.

10 Q Watts Bar. That's right.

11 A I'm sorry. I didn't catch that for some reason.

12 Q I was kind of confused myself there for a minute,
13 but...

14 A Yeah. To make it clear, Goetcheus was the steam
15 generator person.

16 Q Okay. But Goetcheus didn't -- did Goetcheus talk
17 to you about any preferences for who should be selected?

18 A No.

19 Q Prior to -- prior to the time the job was even
20 posted, did you get any information that Mr. Fiser had
21 indicated if the job was posted he was going to file a
22 complaint?

23 A I didn't know about that until afterwards.

24 Q Till after when? When did you learn about it?

25 A Sometime after the selection board. I don't

1 remember -- only thing I knew about it was there had been
2 one DOL complaint years back, which he'd come to chemistry.
3 And if I'd heard anything, I wouldn't have paid much
4 attention to it. Because I always felt like people had a
5 right to file complaints. That was their right with TVA.
6 So, therefore, it didn't bother me.

7 Q Well, do you recall Mr. Kent making a statement to
8 you before the selection review board actually started the
9 interviews, about you should maybe recuse yourself or not be
10 involved or whatever because...

11 A He started to mention the DOL, Gary Fiser. I said
12 "That's not an appropriate topic -- topic for us to be
13 talking about." I didn't want anything to enter into our
14 selection review process, so I just kind of stopped it right
15 there. I don't think the other guys -- at least John Corey
16 didn't know anything about it.

17 Q But he heard when Kent made the comment?

18 A Yes, he made the comment that -- that Gary was
19 filing a DOL complaint. We -- I don't -- I don't know if I
20 even knew what it was about at that point in time.

21 Q Well, did you think, when he made that comment,
22 that he was talking about Fiser's '93 complaint or a new
23 complaint?

24 A I don't -- I don't know if I even knew.

25 Q What did Mr. Kent suggest that you do?

1 A He didn't really say a whole lot. He just said,
2 "Why don't you not be a voting member."

3 And I said, "That's fine." Be just the three guys
4 would do the -- be a member of the selection review process.
5 I'd still be the final decision maker, but they would be the
6 ones that would do the interviews.

7 Q And, again, what -- tell me what you remember
8 about what -- why Mr. Kent told you maybe you shouldn't be a
9 voting member.

10 A I don't know if I even knew. He just -- you know,
11 because I was directly involved with Gary, I suppose. But I
12 didn't have any problem with that.

13 Q Okay. Now, and just for an overall appearance,
14 what difference would it make if you were a voting member,
15 when you're ultimately the selecting official, anyway?

16 A Well, I didn't -- I would depend very heavily on
17 the selection review board. That was kind of my policy,
18 that if they selected someone it'd be very difficult for me
19 to change that decision.

20 Q Did you ever inform Mr. McGrath or the HR person
21 involved in the selection review board process or the
22 posting -- either Mr. Easley or Ms. Westbrook, that Mr. Kent
23 had made a statement about Mr. Fiser's DOL activities?

24 A I usually pretty well reported everything to Tom.
25 So, although I can't recall specifically, I'm sure we

1 discussed that.

2 Q And -- and Mr. -- did Mr. Kent make any indication
3 to you that maybe he shouldn't be involved, since he knew
4 about the complaint?

5 A No. We were the people that were going to be
6 dealing with these people on a daily basis. Didn't make any
7 sense to me to have us not involved. Because I was going to
8 be the guy that Gary, if he was selected, would be working
9 for. Not to be involved in the -- in the decision didn't
10 make any sense. To me, anyway.

11 Q But, on the other hand, Mr. Kent -- if you'd
12 eliminated him from the board, put somebody else on, that
13 wouldn't have made any difference to the process, would it?

14 A Would it have made any difference?

15 Q Right. I mean, you had no problem replacing Mr.
16 Cox.

17 A I had no -- I had no problem in replacing anybody
18 I had to replace. But it'd just hold up the process.

19 Q Now, after the job was posted, individuals applied
20 for the position, what did you do to screen the applicants?

21 A Well, you have -- in the package you have the
22 educational background, the work background, their
23 appraisals, peers. So I'd review those. So that was a
24 preliminary effort that was done.

25 And when you get through with it, your goal is to

1 have people that are all qualified for the position. And
2 the separating criteria were the questions that were going
3 to be asked.

4 Q Did HR traditionally prepare some kind of
5 spreadsheet with people's...

6 A Yes.

7 Q Did they do that in this case, or did you do that?

8 A They did that.

9 Q Let me show you Joint Exhibit 22. I guess it's
10 identified as Ben Easley/Milissa Westbrook SRB notebook.

11 CHAIRMAN BECHHOEFER: Wait'll we get there. We're
12 still not there.

13 JUDGE YOUNG: It's Volume 5.

14 MR. DAMBLY: It's Volume 5.

15 BY MR. DAMBLY:

16 Q And in this notebook, on Page 404 is -- they're
17 all identified with "GG" in there. And 405, 406, 407 are
18 spreadsheets?

19 A Uh-huh (affirmative).

20 Q Those are the ones that were prepared by HR?

21 A I believe so.

22 Q Now, in this notebook and the others we've been
23 supplied, there are no spreadsheets for the PWR position.
24 Did you have one?

25 A Have we got one for the PWR position?

1 Q I can show you the other three notebooks, if you'd
2 like to see them.

3 A I would assume they'd have one for each position.
4 I don't -- I can't -- well, here's -- what's this one for?

5 Q That's the BWR?

6 A Yeah, I see that. Yeah. I can't respond to that,
7 because usually we'd have one for each -- each position.

8 Q Do you recall receiving one?

9 A Not offhand. I would usually expect to have one
10 for each position.

11 Q You'll notice at the bottom of each one of those
12 pages a date of 9/30/96.

13 A Okay.

14 Q That's a date after the selection was made.

15 A I don't know. Is that after? I don't know.

16 Q I believe they all took effect July 31st.

17 A I don't know the exact date.

18 COURT REPORTER: I'm sorry, I couldn't hear you.

19 A I don't know the exact date. Spreadsheets were
20 prepared after the selection?

21 Q Well, I mean, the date on these is after the
22 selection. I don't know when they were prepared. Do you
23 recall?

24 A No. We saw this -- all I can tell you is we saw
25 the spreadsheets before the selection review board.

1 Wouldn't make any sense to have them after the selection
2 review board.

3 Q I certainly would agree with you. It also doesn't
4 make any sense to me that there's not one for the PWR.

5 A I can't respond to that, because I don't know.

6 Q And you're the one that made the decision on who
7 was going to be interviewed?

8 A I made a recommendation.

9 Q To who?

10 A To HR and to Tom McGrath, and I reviewed it with
11 him and told him that -- why certain people were eliminated,
12 because of either their education or non-experience, that
13 kind of thing. And he would agree with who I selected to be
14 interviewed.

15 Q And you reviewed, in making the screening on who
16 was going to be interviewed, you reviewed the -- the
17 individual's PHR and their application?

18 A Yes. Whatever was in the package.

19 Q Did you review service reviews?

20 A Yes.

21 Q Do you recall that specifically?

22 A Oh, yes.

23 Q Between Mr. Fiser and Mr. Harvey, who had the
24 better service reviews under Mr. Grover?

25 A Well, under Grover, or just all -- all total?

1 Q Under Grover.

2 A If I remember correctly, they were both "meets."
3 I -- I don't recall. I know that -- I know that Gary had
4 some negative ones from Sequoyah, and Sam -- they were
5 mostly "meets," from what I remember.

6 JUDGE YOUNG: Mostly...

7 THE WITNESS: That's what's called outstanding or
8 something, and then "meets."

9 JUDGE YOUNG: Oh, "meets expectations." Okay.

10 THE WITNESS: Meets some and like that. And they
11 were both -- from what I recall. I don't know this in
12 detail. They were both fairly similar, although Sam had
13 general complaints against Ron Grover for his management
14 style. But I think they were fairly close.

15 BY MR. DAMBLY:

16 Q Do you recall any complaints that Mr. Grover
17 received about Mr. Harvey?

18 A That Grover received about...

19 Q Remember any information concerning Trisha Landers
20 and the complaints...

21 A Oh, yes. Yeah. She had complained that Sam
22 Harvey had been harassing her, not in a sexual way, but in
23 some way was harassing her.

24 Q And was that prior to the selection?

25 A Yes.

1 THE WITNESS: Can we take a break?

2 MR. DAMBLY: Sure

3 JUDGE YOUNG: Yes.

4 JUDGE COLE: We're going to take a break for 12
5 minutes.

6 MR. DAMBLY: Sounds like a good number.

7 (Brief recess.)

8 BY MR. DAMBLY:

9 Q Dr. McArthur, if you would look, you still have in
10 front of you Joint Exhibit 22. If you'd look at Page 422 in
11 that.

12 A 422?

13 Q Where it says -- not in -- I mean, it says 4-2-2
14 at the bottom. It's not that far in there.

15 COURT REPORTER: Did you say staff exhibit?

16 MR. DAMBLY: No, Joint Exhibit 22.

17 COURT REPORTER: 22?

18 MR. DAMBLY: Right.

19 THE WITNESS: Yes.

20 BY MR. DAMBLY:

21 Q Do you recognize Page 422 and 423 as a list of the
22 questions that were prepared by you?

23 A Yes.

24 Q And the one handwritten one, "Define molar ratio"
25 on #17 on Page 423, that's the one that was added by...

1 A Somebody. Yeah.

2 Q And I guess, looking that the first page, 422,
3 there's -- there's circled and then an "X" through #10. #10
4 was not actually asked; is that correct?

5 A I'm just looking. I think the ones that are
6 circled are the ones that were asked.

7 Q All right.

8 CHAIRMAN BECHHOEFER: But #10 has a circle but an
9 "X" through the circle.

10 THE WITNESS: I think we decided not to ask that
11 one, but I'm not really sure.

12 CHAIRMAN BECHHOEFER: Okay.

13 THE WITNESS: But can I -- can I make something
14 clear?

15 CHAIRMAN BECHHOEFER: Sure.

16 THE WITNESS: I think I -- I think I confused
17 everybody. The preliminary work was done by myself. In any
18 of these selection review board processes you have a lot
19 more information than the selection review board sees. They
20 see what they would see is the questions and how to -- what
21 question we're going to ask, and that's how they -- they
22 would rate.

23 So when I was indicating about the -- the PWR
24 chemistry thing, from my standpoint I remember seeing that.
25 I don't know what could have happened. But all I know is I

1 saw a lot more information than the selection review board
2 people would have seen.

3 BY MR. DAMBLY:

4 Q Who put together what the selection review board
5 people would have seen?

6 A We review the questions. They would have some
7 information about education background, accomplishments, and
8 their history with TVA and that kind of thing.

9 Q And why would they have that?

10 A Because I'm the one who would select the ones that
11 were qualified for that position.

12 Q Why would the selection review board need to see
13 resumes or these...

14 A They wouldn't see all that information.

15 Q Well, these are the books for the various --
16 there's four of them. You have 22. I can show you the
17 others. There's one for Mr. Kent, one for Mr. Corey, and
18 one for Mr....

19 A Each one of them had.

20 Q Right.

21 A They did not have the same information I would
22 have had. I would have had the reviews, annual reviews and
23 that kind of thing, review. And that's how I would select
24 the people that were qualified to be interviewed.

25 Q Okay. Do you have a booklet somewhere that had

1 all that in it?

2 A No.

3 Q Do you know why in these booklets there are
4 resumes and the applications and, for most of the positions,
5 a spreadsheet?

6 A Human resources makes those decisions about what
7 goes in those books.

8 Q Do selection review boards take into account past
9 experience and service reviewed or appraisals in -- in
10 ranking?

11 A They don't go into that much detail because that's
12 my job. My job is to select the people that were qualified.
13 When I present the people that are going to be interviewed,
14 those people are qualified for that position.

15 Q Okay. So is there a reason that they would have
16 anything more than score sheets and questions for the
17 individuals?

18 A No, I don't know of any reason.

19 Q Now, with respect to the ten questions that...

20 A I can't remember if it was ten or -- it was
21 somewhere in that area.

22 Q Well, with respect to the circled questions.

23 A Okay.

24 Q How many of those deal with a -- ask a technical
25 question?

1 A #1 doesn't; #2 doesn't; #3 -- #7 could; #9, I
2 believe, could; and #11 could; #12 is specifically a
3 technical question; 15 is a technical question; #16 is not;
4 and #17 is.

5 Q Okay. So the ones that are specifically technical
6 are 12, 15, and 17?

7 A I would think so; yes.

8 Q Did those deal with primary or secondary
9 chemistry?

10 A 17 deals with secondary chemistry; 15 deals with
11 both; and 11 deals with secondary.

12 Q You mean 12?

13 A 12.

14 CHAIRMAN BECHHOEFER: 17, you mean?

15 A 12. 12 deals with secondary chemistry; 15 deals
16 with both; 17 deals with secondary.

17 JUDGE YOUNG: Did you say 11 deals with secondary?

18 THE WITNESS: 11 deals -- it could. It could --
19 whatever you identify as two chemistry concerns.

20 JUDGE YOUNG: Could it also deal with primary?

21 THE WITNESS: Yes.

22 JUDGE YOUNG: Are any of the others like that?

23 THE WITNESS: #7 could. It could be a primary or
24 a secondary, according to what your experience would be.

25 JUDGE YOUNG: But -- but as I understand you, 12

1 and 17 could only be secondary?

2 THE WITNESS: 12 is definitely secondary and 17 is
3 secondary.

4 BY MR. DAMBLY:

5 Q And tell me again, in your -- how you understand
6 these selection review boards are supposed to operate.

7 A How they're supposed to operate?

8 Q Right.

9 A Well, we select the questions they're going to
10 ask. They -- they have to go under the assumption the
11 people that are now being presented to them are qualified
12 for the position; okay? They have to make that assumption.

13

14 Now their responsibility is to ask them a number
15 of management and technical questions, and then score those,
16 and then add those scores up and determine what the ranking
17 would be. And then we discuss those rankings. And they
18 make a recommendation to me.

19 Q And they make a recommendation to you.

20 CHAIRMAN BECHHOEFER: Dr. McArthur, when you would
21 review the files to determine which candidates are
22 qualified, does qualifications mean some experience or more
23 experience than others? Would people be dropped from a
24 qualified list because they had less experience in an area
25 than someone else on the list? I mean, would preferences be

1 taken into accident in preparing the list?

2 THE WITNESS: The INPO has some criteria for
3 chemistry manager, rad con chemistry manager, those kind of
4 things. So they're guiding lights right there. They tell
5 you the kind of background, what kind of education, how many
6 years of experience, those kind of things. So those are the
7 kind of things I would look for.

8 CHAIRMAN BECHHOEFER: I see.

9 THE WITNESS: Is the kind of things that would say
10 this would make a good chemistry manager, because they have
11 to have five years in operating PWR, for example.

12 CHAIRMAN BECHHOEFER: Well, are position
13 applicants aware of those criteria?

14 THE WITNESS: Yeah, but that doesn't prevent them
15 from applying.

16 CHAIRMAN BECHHOEFER: Okay.

17 THE WITNESS: I've had people to apply that had
18 absolutely no experience at all.

19 CHAIRMAN BECHHOEFER: I see.

20 THE WITNESS: In a completely different field.
21 But they're looking for a job, so they...

22 CHAIRMAN BECHHOEFER: I see. Okay. That I didn't
23 understand, how you came -- came to your evaluations.

24 BY MR. DAMBLY:

25 Q Your understanding of selection review board

1 practices at TVA, if the selection review board asks a
2 question, are they allowed to take into account, in rating a
3 response to that question, their knowledge of the
4 individual?

5 A I didn't give that direction, but I would assume a
6 person would do that.

7 Q So if -- if, for example, Mr. Kent asked a
8 question about molar ratio and he had been working with Mr.
9 Harvey on that issue at Sequoyah, Mr. Harvey gave a bad
10 example, Mr. Kent could still rate him high because he knew
11 he knew the stuff and just screwed up the answer?

12 A I would hope he wouldn't do that.

13 Q You would hope. So he's supposed to ignore, then,
14 what he's...

15 A He's supposed to be independently assessing the
16 answer to the question.

17 Q Okay. Are there any criteria set up for what's an
18 appropriate answer to a question?

19 A Not -- not specifically. Again, you have to
20 recognize these three guys are qualified. They understand
21 that area, they've been in those positions before, they have
22 the knowledge in that area. So, therefore, they have the
23 right, at least in my opinion, to evaluate a person's
24 knowledge in that area.

25 Q Well...

1 A I can't think of a better way of doing it than
2 that.

3 Q If you look at Question 2, "Indicate weaknesses
4 you need to address if you fill this position." How does a
5 review board member decide what's a 10 and what's a 1
6 response?

7 A I am sure each individual has their own process,
8 but I would look at it and say, "Are you honest? Are you a
9 person that says I do have some weaknesses."

10 Maybe I need to work harder on listening to
11 people. I'm not a very good listener. So, therefore, I --
12 I would think that would be an honest answer.

13 Q And that would get you a 10?

14 A No, not necessarily. It's just, you know, if
15 somebody just said, "I don't have any weaknesses," I'd be
16 concerned.

17 Q If somebody said, "I have a lot of weaknesses,"
18 would you be concerned?

19 A Yeah, I'd be concerned there, too.

20 Q If we look at Question 7.

21 A 7?

22 Q Yes. You had already reviewed all the backgrounds
23 of these people; is that correct?

24 A That's correct.

25 Q And they had -- you would not expect somebody to

1 leave off their resume significant projects they'd worked
2 on.

3 A I can't guarantee what anybody put in, but I would
4 be looking for what major projects they'd worked on. And
5 probably, in my experience on the NSRB and that kind of
6 thing, I knew what projects they'd worked on, anyway.

7 Q So what was this question supposed to elicit that
8 you didn't already know?

9 A Their opinions of the projects, what their
10 involvement was, did they -- were they successful in getting
11 the job done, that kind of thing.

12 CHAIRMAN BECHHOEFER: Dr. McArthur, on that same
13 question, #7, does this -- does that statement mean that a
14 person who may not have, quote, "initiated," end quote, a
15 project, but gets involved in it, develops, completes a
16 project, would that person be disqualified...

17 THE WITNESS: No.

18 CHAIRMAN BECHHOEFER: ...because he didn't
19 initiate a project?

20 THE WITNESS: No, definitely not. In fact, that
21 happens quite often.

22 CHAIRMAN BECHHOEFER: Pardon?

23 THE WITNESS: That happens quite often, where
24 somebody gets in the middle -- takes over a position, is in
25 the middle of a project, and completes it or doesn't

1 complete it, whatever the case may be.

2 CHAIRMAN BECHHOEFER: So it should be initiate,
3 develop, or complete?

4 THE WITNESS: Right.

5 CHAIRMAN BECHHOEFER: Rather than end.

6 BY MR. DAMBLY:

7 Q Okay. And if I understood what you said, each
8 review board member is free to score between 1 and 10 any
9 given answer?

10 A That's correct. That's the reason you have more
11 than one where you can get an overall picture, which
12 actually happened in this case. You got an overall picture.
13 When we were through, you'll see that they ranked them very
14 closely as the same. So that was a good -- that was a good
15 indication that our job was successful.

16 Q Okay. And this was a technical position, this is
17 not a -- no people involved, they don't manage any
18 individuals?

19 A No, but they don't -- they do not manage people,
20 but they are program people, also. So, therefore, they may
21 be involved in buying equipment, that kind of thing. So,
22 therefore, they have to interface with a lot of people. So
23 you have to have some management skills to do those kind of
24 things.

25 Q And I think you have in front of you -- I think

1 it's Joint Exhibit 63.

2 A 63?

3 Q Yeah. It's right in front of you now, the VP-102.

4 A Okay.

5 Q If you turn to the second page, Section 3.3C.

6 A 3.3? Okay.

7 Q And then Paragraph C. It says, "The interviews
8 are conducted using structured job-related selection
9 criteria developed by the immediate supervisor of the
10 position being filled."

11 Are the ten questions that we have here, those are
12 the structured job-related criteria?

13 A Yes.

14 CHAIRMAN BECHHOEFER: Is this from Page 8-5-1?

15 MR. MARQUAND: Yes, Your Honor.

16 MR. DAMBLY: Yes. Bates stamp 8-5-1.

17 BY MR. DAMBLY:

18 Q After the interviews, what did you do?

19 A We had a discussion session about the candidates,
20 how they were ranked. We looked at the rankings. In this
21 case, we found that the three board members -- selection
22 review board members ranked them pretty well the same, with
23 Chandra and Sam kind of at the top and Gary kind of down
24 below those two.

25 I can't remember -- if I remember correctly, the

1 human resources guy did some number adding that wasn't quite
2 correct, but I believe that Chandra -- I can't remember this
3 exactly, but may have scored high on both. But I'm not
4 sure. And Sam -- but they were close. They were very close
5 together. But Gary was pretty well down below those two.

6 Q And did -- on this particular of the interviews
7 for the PWR position, Mr. Easley did not sit in on those,
8 Ms. Westbrook did?

9 A I think so; yeah.

10 Q Do you know why?

11 A Not specifically.

12 Q All right. If you'd look at the same document at
13 a couple of paragraphs below, 3.4B.

14 A 3.4.

15 Q "B."

16 A "B."

17 Q There's a paragraph that says what's supposed to
18 happen after the interviews, how the final selection is
19 made.

20 A Uh-huh (affirmative).

21 Q Did you go back and do all that before you made
22 the final selection?

23 A Oh, yes.

24 Q You did?

25 A Uh-huh (affirmative).

1 Q You re-reviewed all -- everybody's application?
2 A Oh, absolutely.
3 Q You look at their appraisals again?
4 A Yes, I did.
5 Q You checked their references?
6 A References?
7 Q Well, if you look at 3.4C, "The immediate
8 supervisor of the vacant position conducts reference
9 checks." Did you do that?
10 A References probably pertained to people from
11 outside the company that were coming in. These people were
12 TVA people.
13 Q Did you check with Mr. Grover for any
14 recommendation on -- because he was the supervisor of the
15 three before this?
16 A I don't remember if I talked to Ron or not.
17 Q Did you talk to -- it says in 3.4B, did you get
18 input from upper level management when you made a selection?
19 A I -- I went, sat down with Tom McGrath, talked to
20 him about the selections I had made. He approved them.
21 Q He approved them? Did he -- he didn't put input,
22 he just approved your selections?
23 A Well, he asked questions. He wanted to know what
24 the rankigns were.
25 Q What questions did he ask?

1 A Yeah, wanted to know what rankings they were; were
2 the people consistent in their rankings; how far apart were
3 -- he even actually interviewed -- reviewed the questions
4 that were asked.

5 Q When did he review those?

6 A Before and after.

7 Q Before and after? Well, what -- what did he
8 review before?

9 A The questions that were going to be asked.

10 Q All 16 or the ones that were going to be asked?

11 A I don't -- I don't know how heavy he looked at
12 them. I know he was given a copy.

13 Q Well, did he -- I thought what you had said
14 earlier was the SRB, on the day of the selections, went
15 through and chose the...

16 A He was given a copy of the whole list.

17 Q Of the whole list. Okay.

18 CHAIRMAN BECHHOEFER: Dr. McArthur, did -- when
19 Mr. McGrath reviewed the questions first, did he make any
20 recommendations or directions that certain of those should
21 be asked?

22 THE WITNESS: Sir, he just said he -- he just said
23 he thought they were good questions.

24 CHAIRMAN BECHHOEFER: But did he recommend or
25 state that...

1 THE WITNESS: No.

2 CHAIRMAN BECHHOEFER: ...certain ones should be
3 asked and certain others should not be asked?

4 THE WITNESS: I don't recall him doing that.

5 CHAIRMAN BECHHOEFER: Would he...

6 THE WITNESS: He pretty well depended on me to do
7 those kind of things, so...

8 CHAIRMAN BECHHOEFER: I see. I see.

9 BY MR. DAMBLY:

10 Q Okay, now, do you recall that in November of 1999
11 you had a predecisional enforcement conference with the NRC?
12 Came down to Atlanta?

13 A Yeah.

14 Q Yeah. Show you Staff Exhibit 134. It's a copy of
15 the predecisional enforcement conference. And if you would
16 look at Page 24.

17 A Okay.

18 Q Okay, now, if you look at lines -- well, we'll
19 start with Line 8. Mr. McArthur: "Well, they're all
20 qualified from my standpoint. HR provided me with a
21 comparison sheet to make sure all individuals met the
22 education requirements, years of experience, those kinds of
23 things, and that meant to me these people were qualified to
24 bid for the job, and so I accepted that information. The
25 next part was how they handled themselves for the selection

1 review board."

2 Mr. Dambly: "Yes, but post that, did you go back
3 and look at anything, or you just took the review
4 board's..."

5 Mr. McArthur: "I took the review board's." Is
6 that consistent with what you just told me?

7 A Yeah.

8 Q It is? Didn't you just tell me you went back and
9 looked at everything again before you made the selection?

10 A I always do that.

11 Q Well, is that what you said here? You said you
12 took the review board's, period. You didn't go back and do
13 anything else.

14 A I -- I took their input as that would be my
15 decision unless I found something different.

16 Q Well, did you go back and look for anything
17 different?

18 A Yes, I did.

19 Q Is that what you told us in November?

20 MR. MARQUAND: Objection. He didn't ask him if he
21 looked at anything else after that.

22 Q Excuse me. The question is: "Yes, but post that,
23 did you go back and look at anything, or you just took the
24 review board's..."

25 And your answer is: "I just took the review

1 board's," or, "I took the review board's."

2 A I took that, unless I had something different.

3 Q Well, how do you know if you had something
4 different if you didn't go back and look?

5 A I looked.

6 Q Is that what you told us back then?

7 A I didn't think I told you anything, other than I
8 took the review board's recommendation.

9 Q Period.

10 A That's what I did.

11 Q And that was in response to, "Did you do anything
12 afterwards or..." And you said no, you just took the review
13 board's.

14 A Well, I did both.

15 Q Couple of last questions.

16 A See, I had to also write a recommendation letter.
17 And before writing the recommendation letter, I made sure I
18 got the review board's recommendation and I got the
19 information from the packages which I had reviewed before,
20 and I reviewed again.

21 Q After the '96 reorg, did Mr. Grover ever supervise
22 Chandra and Harvey?

23 A After?

24 Q After the reorg, when they combined it into the
25 one rad con chemistry manager.

1 A I don't think so.

2 Q He went off to INPO?

3 A Yes. He was planning to go to INPO well before
4 that, even before the selection review board.

5 MR. DAMBLY: And at this time, Your Honor, we're
6 finished with the questioning of Dr. McArthur, but we would
7 like to move in Joint Exhibit 24, an OIG record of interview
8 from 1994; Staff Exhibits 84, 85, 86, 87, 88, and 93, which
9 are TVA OIG interviews with Dr. McArthur.

10 JUDGE YOUNG: You're going to have to repeat
11 those.

12 CHAIRMAN BECHHOEFER: You'll have to repeat the
13 numbers when you get through.

14 MR. DAMBLY: Staff 84 -- well, first, Joint 24;
15 Staff Exhibit 84; Staff Exhibit 85; Staff Exhibit 86; Staff
16 Exhibit 87; Staff Exhibit 88; and Staff Exhibit 93. All of
17 those from Joint 24 through 93 are OIG interviews, TVA OIG
18 records of interview. Staff Exhibit 95, which is the DOL
19 personal statement that we talked about this morning.

20 CHAIRMAN BECHHOEFER: So eight exhibits you're
21 moving?

22 MR. DAMBLY: No, we -- then Staff Exhibit 97,
23 which is the NRC OI interview with Dr. McArthur; Staff 98,
24 which is his deposition; and Staff 134, which is the
25 predecisional enforcement conference.

1 JUDGE YOUNG: 134?

2 MR. DAMBLY: Is the -- yes, that's the
3 predecisional enforcement conference we just talked about.
4 And Staff Exhibit 96, which is a DOL declaration by Dr.
5 McArthur, also.

6 CHAIRMAN BECHHOEFER: So am I correct there are 12
7 documents at this stage? I want to make sure we've got them
8 all.

9 MR. DAMBLY: Twelve (12). Yes, Your Honor.

10 CHAIRMAN BECHHOEFER: Any objection to some or
11 any?

12 MR. MARQUAND: Your Honor, we raised this issue
13 before. These are previous summaries of interviews with Dr.
14 McArthur, previous declarations of Dr. McArthur, the
15 predecisional enforcement conference, we've raised the
16 objection about these coming in. This is a *de novo*
17 proceeding, and we've raised the objection over and over,
18 and I'll continue to reiterate that objection.

19 I would also note that the predecisional
20 enforcement conference, again, we've been told this is a *de*
21 *nov*o proceeding, but now they're wanting you to consider
22 what was done at the predecisional enforcement conference.

23 Finally, I would note that Your Honors yesterday
24 admonished counsel, if he wanted to bring these things in,
25 to confront the witness with them and let him know and let

1 him -- and confront him with them out of fairness to the
2 witness. And that hasn't -- still hasn't been done. I
3 don't understand the point of the board admonishing counsel
4 to do it, and counsel continuing to ignore the board's
5 requests.

6 MR. DAMBLY: Your Honor, first of all, I don't
7 recall any admonishment. Secondly, I think we've gone
8 through most of these, if not all of them, with Dr. McArthur
9 today. And thirdly, I find it amazing that, after hearing
10 all the complaints from Mr. Marquand about the staff
11 changing its position, he would object to putting in what we
12 were told was TVA's position back in 1999, in which Dr.
13 McArthur---I just went through---gave us a different answer
14 today on this stuff. So I'm not sure -- that at least would
15 come in, even under the federal rules, as a prior
16 inconsistent statement.

17 THE WITNESS: Can I ask what the inconsistent
18 statement was?

19 JUDGE YOUNG: He can explain to you later.

20 MR. MARQUAND: Well, if -- if Mr. Dambly now
21 asserts it's an inconsistent statement, I think, under any
22 -- if anything, Dr. McArthur is entitled to explain it, once
23 he's confronted with it. Counsel didn't ask him if he had
24 an explanation.

25 JUDGE YOUNG: I sort of took what -- what he was

1 saying, but -- but since he raised this, do you mind?

2 CHAIRMAN BECHHOEFER: I don't mind.

3 JUDGE YOUNG: Dr. McArthur, when Mr. Dambly showed
4 you the statement from the predecisional conference where
5 you said you took the review board's, I understood your --
6 your responses to him as explaining what you meant. Did you
7 want to add any further explanation?

8 THE WITNESS: It's just normal procedure, at least
9 in my case, for selection review board processes, to review
10 everything well ahead of time, select the people to be
11 interviewed.

12 Okay, then after the review board, then they give
13 me a recommendation. I take all that stuff back to my
14 office and I take their recommendation and I take the
15 information I have and I write a recommendation to my boss.
16 And I always take a look at the information I have, make
17 sure things are consistent. That's what I did.

18 I don't see why there's any consistency here at
19 all (sic). I did respond and say I took -- I did take the
20 review board's recommendation. And it's like anything else,
21 you go back and say, "Well, am I missing anything?" And I
22 didn't feel like anything was missing. I felt like we had
23 -- we had done an adequate job. I don't think that's
24 inconsistent, whatsoever.

25 CHAIRMAN BECHHOEFER: Mr. Dambly?

1 MR. DAMBLY: Yes, Your Honor.

2 CHAIRMAN BECHHOEFER: Either -- other than the
3 just one prior inconsistent statement that the -- in these
4 various documents, either in or referenced in these
5 documents that the staff would propose to rely on, because
6 you ought to -- it would be better to question the witness
7 about those, if there are.

8 MR. DAMBLY: As far as I know, again, as I have
9 said before, if there's anything significant, I think we
10 addressed it today and we dealt with those. Some of those
11 answers were a little different than what was in the past
12 records, and he was shown those and commented on them.

13 CHAIRMAN BECHHOEFER: I see. So you -- you have
14 questioned already on those...

15 MR. DAMBLY: I'm not leaving out all the biggies
16 so we can write it in a brief. That would be kind of a
17 waste of our time to be here. But I think the record
18 deserves to have the entire record in the -- and they're all
19 basically hearsay objections, in the first place. And
20 that's not a proper objection.

21 CHAIRMAN BECHHOEFER: The board will accept all
22 these documents, I think there were 12, into the record.
23 And I -- well, just -- just for the reporter's benefit---if
24 I'm wrong you can correct me---but it was Joint Exhibit 24,
25 Staff Exhibits 84, 85, 86, 87, 88, 93, 95, 97, 98, 134, and

1 I guess 96. That's probably a little out of order, but...

2 JUDGE YOUNG: And I would just -- I would just add
3 that your objection we'll certainly take into account as to
4 weight. And also the -- whether we're talking about actual
5 transcripts or summaries written by other persons.

6 MR. MARQUAND: Yes, Your Honor. Thank you.

7 (The documents, heretofore marked
8 as Joint Exhibit #24, were received
9 in evidence.)

10 (The documents, heretofore marked
11 as Staff Exhibits #84 through #88,
12 #93, #95 through #98, and #134,
13 were received in evidence.)

14 JUDGE YOUNG: You've completed your examination?

15 MR. DAMBLY: Yes, Your Honor.

16 JUDGE YOUNG: Mr. Marquand?

17 CHAIRMAN BECHHOEFER: Mr. Marquand?

18 THE WITNESS: Can I make a comment at the end of
19 his? Is that appropriate?

20 MR. MARQUAND: What is your comment, Mr. McArthur
21 -- Dr. McArthur?

22 THE WITNESS: Okay. I guess I have to say I'm
23 appalled at what's going on here. I've been in this
24 industry for 40 years. This is the first time I've ever had
25 any kind of blemish against my record.

1 And I feel that I am -- I'm being told I
2 discriminated against somebody, which I know beyond any
3 shadow of a doubt I did not discriminate against. I also
4 know that Tom McGrath and Charles Kent and Jack Cox and John
5 Corey, we never conspired. We -- I always thought that Gary
6 Fiser was an adequate employee. I thought he had -- lacked
7 some management skills. I felt that he -- he got a lot of
8 coaching from me, a lot of help. I'm just very surprised
9 that somebody with my kind of background in this industry
10 can be considered doing something wrong when I know that
11 nothing was done. Nothing was done wrong.

12 It was -- we followed general business practices.
13 We've been criticized by selecting somebody to replace Jack
14 Cox. We didn't have any other choice. We had to do that.
15 I think it's appalling to have to sit through this kind of
16 thing and see these kind of things take place. They're not
17 very professional.

18 JUDGE YOUNG: This legal proceeding is a
19 proceeding to determine whether the allegations are true.

20 THE WITNESS: So far -- so far, what I've seen is
21 -- from the NRC is they make decisions without taking the
22 facts into account.

23 JUDGE YOUNG: Just to clarify, for anybody who
24 doesn't understand, our job sitting up here is to be neutral
25 decision makers. And we have a responsibility not to have

1 any communications with the lawyers for the NRC. Their
2 responsibility is to prosecute the case; ours is to hear all
3 the evidence and make a decision, after we've heard both
4 sides.

5 MR. MARQUAND: Your Honor, I don't believe that
6 Dr. McArthur's comments, when he was talking about the NRC,
7 were directed to the board. I believe he was...

8 THE WITNESS: No, not at all.

9 MR. MARQUAND: ...directing them to the staff...

10 THE WITNESS: Not at all.

11 MR. MARQUAND: ...that drug him down to the
12 predecisional enforcement conference in Atlanta.

13 JUDGE YOUNG: I didn't take it as criticism. I
14 was just explaining. Because sometimes people don't
15 understand the nature of administrative hearings.

16 CHAIRMAN BECHHOEFER: I've also heard it said that
17 if the board is criticized by both parties, we must be doing
18 something right.

19 MR. MARQUAND: Depends on the nature of the
20 criticisms and whether they're the same or not, I guess.

21 JUDGE YOUNG: Right.

22 MR. MARQUAND: It might be helpful if we took a
23 short break so I could organize these documents in the
24 sequence I need them.

25 JUDGE COLE: How much time do you need, sir?

1 MR. MARQUAND: Ten minutes would be fine.

2 CHAIRMAN BECHHOEFER: There'll be a break for ten
3 minutes.

4 (Brief recess.)

5 CROSS-EXAMINATION

6 BY MR. MARQUAND:

7 Q Dr. McArthur, I want to take one matter out of
8 sequence here and return and sort of try to do these in some
9 sort of sequence. You were asked about -- you were asked
10 about -- you mentioned complaints against Ron Grover by Sam
11 Harvey, and then you were asked whether or not there had not
12 been a complaint made against Sam Harvey by a lady by the
13 name of Trisha Landers.

14 A Yes.

15 Q Did that come to your attention before the
16 selections were made?

17 A I believe so.

18 Q You mentioned that she complained that he was
19 harassing her, but it wasn't sexual harassment?

20 A That's correct. He denied those.

21 Q He denied them. Did you consider that in your
22 decision, one way or the other, in this selection process?

23 A Well, prior to the selection review process...

24 Q Answer my question yes or no and then explain it.

25 A Well, I have to tell you the -- she came and said

1 she was dropping the charges.

2 Q All right. So did you consider the complaint or
3 anything about it?

4 A No.

5 Q Tell me why.

6 A Because she dropped the charges and he also denied
7 the charges.

8 Q Was there any investigation done, that you're
9 aware of, prior to the selection?

10 A The only thing is that Ron Grover and myself met
11 and we decided that maybe Sam needed some sensitivity
12 training. So I worked with the HR people to give him some
13 sensitivity training. He did not like that, because he felt
14 like he was not guilty.

15 Q Did Sam express any concern about this allegation
16 being made against him?

17 A Yes. He thought it was a plot against him.

18 Q What kind of plot?

19 A With Trish and with Ron and -- he just felt like
20 that they were anti-Sam Harvey.

21 Q What was the timing of the -- if you recall, the
22 timing of the allegations made against him? When -- when,
23 in the sequence of things, was this allegation made against
24 Sam?

25 A Against Sam?

1 Q Yes.

2 A Prior to the selection review board.

3 Q Do you know...

4 A I don't know the exact date.

5 Q Okay. Do you know if it was prior to or about the
6 time the jobs were first posted for competition?

7 A Yes, it was somewhere in that area.

8 Q All right. I want to go back to the beginning of
9 your testimony this morning when you told us what your
10 educational background and what your job history was. Do
11 you belong to any industry groups or industry associations?

12 A I've been chairman of the American Health Physics
13 Society and chairman of the local committee, and also the
14 American Nuclear Society. I remain members of those
15 organizations now. So I've also been involved in a lot of
16 what used to be Atomic Industrial Forum, NEI groups, on a
17 task force recently to evaluate terrorist attacks against
18 nuclear power plants, that kind of thing, so...

19 Q What did you do on AIF, on American -- you called
20 it American Industrial Forum?

21 A Yeah. I did steam generator blow-down problems; I
22 did rad waste -- we had some real serious problems with
23 burial grounds for low level radioactive waste, so I was
24 very much involved in those activities.

25 JUDGE COLE: Is that the Atomic Industrial Forum?

1 THE WITNESS: Used to be called that; yes.

2 JUDGE COLE: What's its name now?

3 THE WITNESS: NEI, I believe, isn't it?

4 JUDGE COLE: Oh, okay. I thought you said
5 American...

6 MR. MARQUAND: Oh, I'm sorry.

7 JUDGE COLE: ...you said American Industrial
8 Forum.

9 MR. MARQUAND: I'm a layman, so you'll have to
10 forgive me. AIF.

11 BY MR. MARQUAND:

12 Q And how recent has your involvement with those
13 organizations been?

14 A Oh, very recent. Just even after retirement.

15 Q Okay. Continuing?

16 A Not right now, but I...

17 Q Okay. Did your involvement with those
18 organizations continue while you were employed by TVA?

19 A Yes.

20 Q Did you, yourself, receive a notice of violation
21 from the NRC about the same matters that are involved in
22 this particular proceeding?

23 A Did I receive a notice of violation?

24 Q Yes.

25 A On -- that included my name?

1 Q Yes.

2 A Yes.

3 Q All right. Counsel already showed us a
4 predecisional enforcement conference transcript that you
5 were invited to in a separate proceeding against you.

6 MR. MARQUAND: Your Honors, I'm going to show the
7 witness Joint Exhibit 48 -- 45, 48, and 51.

8 CHAIRMAN BECHHOEFER: 48?

9 MR. MARQUAND: 45, 48, and 51.

10 THE WITNESS: This book here?

11 MR. MARQUAND: Yes, it is. If you'll look at 45.

12 THE WITNESS: 45. I think I've got it.

13 BY MR. MARQUAND:

14 Q Do you see Exhibit 45, Joint Exhibit 45?

15 A Yeah.

16 Q Is that a letter to you dated September 20th,
17 1999, from NRC?

18 A Let's see. I don't see who it's from yet. It is
19 to me. It's from Loren Plisco, Director, Division of
20 Reactor Projects.

21 Q All right. And is that the letter that asked you
22 to come to a predecisional enforcement conference with
23 respect to this matter?

24 A Yes.

25 Q And if you'll look, you see Enclosures 1 and 2 at

1 the very last two pages of the exhibit.

2 JUDGE COLE: You're on Joint 48?

3 MR. MARQUAND: 45.

4 CHAIRMAN BECHHOEFER: 45.

5 Q You see the two enclosures?

6 A Yes.

7 Q Those are a synopsis as well as a summary of an
8 Office of Investigations report investigating the matters in
9 this case; correct? And they were provided to you to
10 explain the basis for why staff wanted to drag you down to
11 Atlanta for a predecisional enforcement conference?

12 A Yes.

13 Q All right. And if you'll look at Joint Exhibit
14 48, is that also a letter from the NRC to you dated February
15 the 7th, 2000?

16 A 48? #48?

17 Q #48.

18 A Yes.

19 Q That's the notice of violation that the NRC issued
20 to you following the predecisional enforcement conference;
21 is that correct?

22 A That's correct.

23 Q And finally, if you'll look at Joint Exhibit 51.

24 A Okay.

25 Q Is that your reply to the NRC with respect to the

1 notice of violation they issued to you?

2 A Let's see. Yes.

3 MR. MARQUAND: Your Honors, I tender Joint
4 Exhibits 45, 48, and 51.

5 MR. DAMBLY: No objection.

6 CHAIRMAN BECHHOEFER: Joint Exhibits 45, 48, and
7 51 will be admitted.

8 (The documents, heretofore marked
9 as Joint Exhibits #45, #48, and
10 #51, were received in evidence.)

11 CHAIRMAN BECHHOEFER: Point of inquiry. Was the
12 enforcement conference that we received the transcript of
13 solely with respect to Dr. McArthur...

14 MR. MARQUAND: Yes, Your Honor.

15 CHAIRMAN BECHHOEFER: ...or was it with respect to
16 TVA, the complaint against TVA?

17 MR. MARQUAND: There was a separate enforcement
18 conference for Dr. McArthur, and there was an enforcement
19 conference for Mr. McGrath, and sometime later there was an
20 enforcement conference with respect to TVA. And the
21 transcript that you have that was submitted a while ago was
22 the transcript of the enforcement conference for Dr.
23 McArthur.

24 CHAIRMAN BECHHOEFER: Thank you. Thank you.

25 BY MR. MARQUAND:

1 Q Now, let me return to sequentially the events that
2 led up to all of this. Dr. McArthur, counsel asked you if
3 you had seen or knew of Mr. Fiser's 1993 Department of Labor
4 complaint. Do you recall the first time you ever saw that
5 complaint?

6 A I don't know if I ever saw the complaint, but you
7 had told me about it at some point in time.

8 CHAIRMAN BECHHOEFER: Do you know about when?

9 THE WITNESS: I don't have any idea.

10 Q It would have been a long time later, wouldn't it?

11 A Yeah.

12 Q If you -- if you've even seen it?

13 A Yeah. I don't remember reading the document,
14 so...

15 Q All right. And, in fact, when Mr. Fiser filed a
16 1996 complaint accusing you and Mr. McGrath of
17 discrimination, did you even recall at that time that Mr.
18 Fiser had filed a Department of Labor complaint?

19 A No.

20 Q If you know, do you know if, in Mr. Fiser's 1993
21 complaint, he named you as a party to the discrimination
22 taken against him?

23 A I learned later that he did not.

24 Q Okay.

25 JUDGE YOUNG: When did you learn about the taping,

1 just -- I'm trying to clarify for myself the sequence of
2 this.

3 THE WITNESS: I don't -- I don't even know that
4 date. I just know that one day Brent and I were talking.
5 He just said, "Just be aware that you are being taped."

6 JUDGE YOUNG: Was that with regard to the first
7 one or the second?

8 THE WITNESS: Oh, I don't know. Don't think it'd
9 be in regard -- I really don't know the answer, because I
10 was not involved in the first one at all. I know it took
11 place back in '92, '93.

12 Q The complaint was in '93. You're aware that Mr.
13 Jocher filed a complaint; correct?

14 A Yes.

15 Q And that you were a witness in that case?

16 A Yes.

17 Q And, in fact, that's how you and I met?

18 A Yeah.

19 Q I'm going to show you -- I'm going to show you
20 Staff Exhibit 34. Staff Exhibit 34 is -- has been admitted
21 into the record as Mr. Fiser's 1993 DOL complaint.

22 A Yeah. I don't have anything in here.

23 Q You don't have a 34 there?

24 A No.

25 Q Let me share my copy with you. This is my copy of

1 it. Let me ask you -- direct your attention specifically to
2 the statement on the first page on the bottom, three lines
3 from the bottom where it mentions your name. And it says --
4 do you see where it says, "Dr. Wilson McArthur was dismayed
5 about decision to put Mr. Fiser in ETP"?

6 A Uh-huh (affirmative).

7 Q Were you at that time attempting to help Mr. Fiser
8 find a job?

9 A Yes, sir.

10 Q Let me direct your attention to Page 2 of Staff
11 Exhibit 34. In the paragraph that begins, "In an interview
12 with plant manager..." further on down it says, in that same
13 sentence, it says, "Mr. Beecken stated one of the reasons he
14 didn't want me back at Sequoyah..." skipping over the
15 parenthetical there, "...was because of, quote, 'the rad
16 monitor effluent calculations not accounting for the
17 vacuum.'"

18 A Yes.

19 Q Are you familiar with that particular problem?

20 A Yes.

21 Q Was Mr. Fiser even in the chemistry manager
22 position when that problem was identified?

23 A I don't think so.

24 Q Mr. Jocher was, wasn't he?

25 A Yes.

1 Q Okay. Are you aware that Mr. Fiser had no
2 responsibility for raising that issue or identifying that
3 issue?

4 A That's correct. That's correct.

5 Q At the bottom of Page 2 it says, "Another reason
6 Mr. Beecken cited for not wanting me back was the, quote,
7 'filter change-out scenario.'" Do you see that?

8 A Yes.

9 Q Are you familiar with that problem, what it was?

10 A Yes.

11 Q What was that problem?

12 A We have periodic change-out of the filters, filled
13 up with radioactivity.

14 JUDGE YOUNG: I'm -- I'm sort of losing...

15 MR. MARQUAND: You'll have to speak up so the
16 board...

17 A Well, we periodically pull the filters out because
18 of buildup of radioactivity and pressure changes across a
19 filter.

20 Q Do you recall what the problem was in that
21 particular scenario?

22 A They weren't being done often enough.

23 Q All right. I think in this particular case it
24 says, referring to Page 2, and I believe you are correct,
25 there was a problem with that. But on this particular

1 problem here is, it says that it was discovered that a
2 containment radiation monitor had been improperly aligned
3 after sampling the activities.

4 A That is correct. Right.

5 Q In other words, when they changed the filter,
6 they're supposed to close the valves?

7 A That's correct.

8 MR. DAMBLY: Objection to counsel testifying.

9 Q Can you tell us what the problem was that occurred
10 there?

11 A They were not -- the valve was not being closed
12 properly.

13 Q All right. Do you know what Mr. Fiser's
14 involvement in this particular issue was?

15 A I don't think he was involved in that -- that
16 issue.

17 Q Is that consistent with the statement that Mr.
18 Fiser, on Page 3, at the first line, beginning of the first
19 line, the first full paragraph, where he says, "Thus, even
20 though I was not directly responsible for either of the
21 underlying conditions leading to these situations, I was
22 charged with them by Mr. Beecken"?

23 A I know very little about that because I wasn't...

24 Q Okay.

25 A ...directly involved.

1 Q In the very bottom paragraph on Page 3 it refers
2 to post-accident sampling analysis. Do you see that?

3 A Yes.

4 Q Do you know who -- or were you involved in raising
5 the issue of post-accident sampling analysis while you were
6 on the NSRB?

7 A Yes.

8 Q And what was that issue?

9 A Issue was they weren't -- didn't have enough time.
10 It was a two-hour time span. And the technicians couldn't
11 meet that two-hour time span.

12 Q Was that issue raised by Fiser?

13 A No.

14 JUDGE COLE: Do you mean a three-hour time span or
15 two-hour time span? I believe it was three, wasn't it?

16 THE WITNESS: I think it was two hours, I think.
17 I remember two hours, but it could have been...

18 MR. MARQUAND: It could have been three?

19 THE WITNESS: Yeah. I'm pretty sure it was two-
20 hour time span. That's about how long it took us to do it,
21 about three hours.

22 CHAIRMAN BECHHOEFER: And you said you raised that
23 particular issue?

24 THE WITNESS: I believe Bill Jocher raised the
25 issue. Or some of his people.

1 BY MR. MARQUAND:

2 Q It was raised to the NSRB, wasn't it?

3 A It was raised to the NSRB.

4 Q This morning -- I want to -- you indicated that
5 the plant manager, Ron Beecken, initiated a request to
6 rotate Mr. Fiser and Mr. Jocher. Why?

7 A That's correct.

8 Q Why did he initiate that request?

9 A Well, he felt that Gary was not successful as a
10 chemistry manager and he wanted to try somebody else.

11 Q Right. At that time you were the manager of
12 technical programs; right?

13 A Yes.

14 Q Did you have responsibility for corporate
15 chemistry?

16 A Yes.

17 Q Did you have an opportunity to observe Mr. Fiser's
18 performance as chemistry manager at Sequoyah?

19 A Yes.

20 Q And the chemistry program at Sequoyah?

21 A Yes.

22 Q How would you assess the chemistry program at
23 Sequoyah prior to this rotation occurring?

24 A It was in very bad shape.

25 Q Was that the conclusion of the NSRB?

1 A Yes.

2 Q Did you concur in the rationale for Mr. Beecken's
3 request to rotate Mr. Fiser and Mr. Jocher?

4 A Yes.

5 Q Now, you said that Mr. Fiser came downtown, and he
6 came under your direct supervision at that point in time?

7 A That's correct.

8 Q And you issued a service review to him, and
9 counsel elicited from you that you characterized it as the
10 worst service review you'd ever issued.

11 A It was not a good -- especially for that kind of a
12 position.

13 JUDGE YOUNG: For that kind of...

14 THE WITNESS: The management senior -- senior
15 level position.

16 JUDGE YOUNG: Position?

17 THE WITNESS: Yes.

18 CHAIRMAN BECHHOEFER: The words die out. It's
19 hard to hear you.

20 THE WITNESS: I'm sorry.

21 BY MR. MARQUAND:

22 Q You were shown Joint Exhibit 33 this morning.
23 That is the September 8th or 9th, 1992 service review you
24 gave to Mr. Fiser?

25 A Yes.

1 Q First of all, you -- counsel asked a -- I believe
2 one of the judges asked you about these items on the first
3 page which had the little bullets beside them. And those
4 are listed as...

5 A Trying to give a positive aspect of what a person
6 had done in a year.

7 JUDGE YOUNG: Is this while he was on rotation or
8 while he was at Sequoyah?

9 THE WITNESS: He was -- he was at downtown.

10 MR. MARQUAND: He was on rotation downtown.

11 JUDGE YOUNG: So this was an evaluation of his
12 performance downtown?

13 THE WITNESS: Yes.

14 MR. MARQUAND: Well, actually, Your Honor, what
15 time period does this service review cover? Does it say,
16 Dr. McArthur?

17 THE WITNESS: See, I had gotten some input from
18 the site, because he had not been downtown for a whole year.

19

20 JUDGE YOUNG: Oh, okay.

21 THE WITNESS: So I did get input from others for
22 the evaluation.

23 BY MR. MARQUAND:

24 Q And it does state in here, doesn't it, that this
25 covers the fiscal year ending September 30th, 1992?

1 A Right.

2 Q So it covered a period of time that you had him,
3 as well as the people at Sequoyah?

4 A That's right.

5 Q Now, tell us again why you put these bullets in
6 here. You said you wanted to put a positive...

7 A I -- usually on any survey appraisal I do, I try
8 to indicate the things that happened during the year that
9 were successful.

10 Q And why do you do that?

11 A Just a good way to start out an appraisal, I
12 think, just to indicate the successes that -- so that when
13 they look at it, they can see the things they accomplished
14 during the year.

15 Q All right.

16 A From my perspective.

17 Q Now, you indicated...

18 JUDGE COLE: What's the exhibit number of that
19 appraisal?

20 MR. MARQUAND: This is Joint Exhibit 33.

21 JUDGE COLE: 33?

22 Q Counsel asked you this morning if, in this time
23 frame, you had previously told Mr. Fiser the problems in his
24 performance.

25 A Yes.

1 Q And you said you did.

2 A Yes.

3 Q Are you the kind of person who gets in your face
4 and jumps up and screams about...

5 A No.

6 Q ...problems like that? How do you approach those?

7 A Mr. Kingsley called me the "fuzzy guy." Whenever
8 we had real serious problems, quite often he'd put me in the
9 middle of it to solve the problem. If it was a very, you
10 know, touchy type situation. But I -- I never felt like I
11 was one to confront people. I was there to build it. My
12 success centered around the success of the people that work
13 with me. I never thought about it as working for me, but
14 working with me.

15 So my concept was to build them and make them a
16 better person. And try to get them taking courses and
17 having success in their career as opposed to feeling they
18 weren't successful. And I don't know if that was unique at
19 TVA or not, but I didn't feel that it was. And so my idea
20 was not to be confrontational, but to be supportive.

21 Q All right. Tell us what aspects of this service
22 review were -- when you said it was the worst service review
23 you ever gave, how Mr. Fiser would read it, what -- what
24 references in here to his -- the problems you note?

25 A Just the rankings, that he -- he came out to be --

1 you know, that his rankings were such that he was not high.
2 In some cases he wasn't even medium. And...

3 JUDGE YOUNG: He wasn't even what?

4 THE WITNESS: Middle-of-the-road.

5 JUDGE YOUNG: Okay.

6 A That he was -- he actually came out as a C, C-plus
7 type ranking. And that was not appropriate for somebody in
8 that kind of a position, from my viewpoint.

9 Q You see in the -- on the very first page, under
10 the caption, "Summary statement of employee's performance
11 and potential," you see that caption?

12 A Where's this?

13 Q First page where it -- the caption, "Summary
14 statement..."

15 A Yeah, okay.

16 Q All right. Referring to that paragraph, then, you
17 see the second sentence that says, "Sequoyah needs a
18 different approach to solving problems in chemistry..."

19 A "...problems in chemistry..."

20 Q "...and the rotations initiated faced that issue."
21 What's that a reference to?

22 A That Gary wasn't successful at Sequoyah.

23 Q In your opinion, should he have been aware that he
24 was not successful at Sequoyah?

25 A Yes.

1 Q And how should he have been aware of that?

2 A Well, his management should have told him that.

3 Q Well, do you know -- were there other inputs that
4 he received as well?

5 A Oh, yes. The NSRB.

6 JUDGE YOUNG: When you say he was not successful,
7 could you clarify for me what you mean by that, and -- and
8 in answering it, one thing that's confusing me a little bit
9 is the bullet that says, "Where -- there have been no
10 chemistry related findings by INPO for Sequoyah Nuclear."
11 This is a record for Sequoyah Nuclear.

12 THE WITNESS: That was actually prior to his
13 involvement, while he was in outage management, most of
14 that. But it was -- some of it came under his tutelage.
15 But what I -- what I was referring to is we had major
16 problems. Gary was very reluctant to raise those issues to
17 management because he was afraid he'd be turned down or
18 something. I'm not sure what his reasons were. But
19 problems didn't get resolved. The unmonitored release paths
20 were not -- that was not resolved. The -- number of issues
21 like that were not resolved during his time frame. And they
22 were issues that could be resolved.

23 JUDGE YOUNG: Are those the type of things that
24 would be -- would precipitate an INPO finding?

25 THE WITNESS: Not necessarily. INPO's a short --

1 very short site visit for a couple of weeks, sometimes a
2 week. And they don't always find everything, and they find
3 some things, and just according to what they look at.

4 JUDGE YOUNG: I guess the reason I'm confused, and
5 just to let -- to have you clarify while you're here, just
6 as a non-scientist reading particular the one I read, there
7 have been no chemistry related findings. This is a record
8 for SQN. And you had said that you put these down to show
9 some good things about the person.

10 THE WITNESS: That's correct.

11 JUDGE YOUNG: That sounds, just reading it on its
12 face, to be a pretty good thing.

13 THE WITNESS: But you couldn't -- you couldn't
14 attribute that to his time frame there. Part of it. He was
15 there for like three or four months, as opposed to whoever
16 was there before him. But it wasn't -- it did occur during
17 -- when INPO came in, they came in, and Gary had been back
18 into that position for a short period of time.

19 So you couldn't attribute all those successes to
20 him. But the report came out during that period of time,
21 and I was trying to show it as, well, it was a success,
22 although he had little to contribute to it.

23 CHAIRMAN BECHHOEFER: Well, had INPO made numerous
24 findings with respect to Sequoyah previously?

25 THE WITNESS: Later on. Later on they did.

1 Previously, they had some findings, but actually --
2 actually, that was a good year.

3 BY MR. MARQUAND:

4 Q What year are you talking about, Dr. McArthur?

5 A To -- when Gary first came back into chemistry;
6 yes.

7 Q '91? Well, did -- are you aware of whether INPO
8 made findings in '92, sometime after he returned?

9 A Yes. Yes.

10 Q And there were programmatic deficiencies, weren't
11 there?

12 A That's correct. Yes. That's the one you'd really
13 grade his success by, is the one after he was in that
14 position for a period of time. And there were a number of
15 findings by INPO in that particular review.

16 JUDGE YOUNG: After this evaluation?

17 THE WITNESS: Yes.

18 CHAIRMAN BECHHOEFER: I asked had there been many
19 befor, because he had been there before, to my
20 understanding.

21 THE WITNESS: I don't know, I can't relate back
22 that far, because I wasn't here at TVA.

23 CHAIRMAN BECHHOEFER: Oh, okay.

24 BY MR. MARQUAND:

25 Q Is INPO and whether INPO makes findings the sole

1 measure of success in an organization?

2 A Oh, no, no.

3 Q Let me refer you to the second page of Joint
4 Exhibit 33. Do you see in the middle of the page, there's a
5 typewritten paragraph?

6 A Okay.

7 Q And it talks about Gary having a difficult time
8 under the cloud -- managing the organization because the
9 previous manager's strong influence, that's Bill Jocher,
10 right?

11 A Right.

12 Q It says it's been a difficult task. And do you
13 see where it says "Efforts to bring this group into full
14 cooperation have been slow and the technical leadership
15 needs attention." Do you see that?

16 A Yeah.

17 Q What's that a reference to?

18 A The fact that a number of chemistry people in the
19 corporate chemistry organization had come to me with
20 complaints about how it was being managed and how the
21 organization was being handled, plus I had observed that
22 myself. I had a task sheet, I'd say you have these tasks to
23 complete over a period of time, and Gary was not completing
24 those tasks in a timely manner.

25 Q Let me refer you to page 3 of Joint Exhibit 33.

1 On the paragraph number 2, decision-making, do you see the
2 column where it says Comments: "Sometimes has to be
3 motivated to fully accept and solve a problem." Do you see
4 that?

5 A Yes.

6 Q Was that your comment?

7 A Yes.

8 Q What do you mean by that?

9 A It meant that he would be given particular
10 assignments and he and I would agree -- each week, we agreed
11 to certain things to be accomplished and then during the
12 next week when we sat down and had our review, I would go
13 over those assignments, and in general he would either have
14 no progress or very little progress.

15 CHAIRMAN BECHHOEFER: Are these weekly?

16 THE WITNESS: Weekly meetings.

17 BY MR. MARQUAND:

18 Q Under paragraph number 5, Influencing Others, do
19 you see where it says "Has some difficulty in relating to
20 the chemistry managers?

21 A Especially to Browns Ferry.

22 Q What was that problem?

23 A He had some kind of personality problem with John
24 Sabados.

25 Q Was that -- does that impact him in this corporate

1 chemistry manager position?

2 A Oh, yes, because his job is to support the site
3 chemistry people. That's his job. If you can't communicate
4 with the guy, you certainly can't support him very well.

5 Q All right. Let me refer you to paragraph 7, do
6 you see where it says "Full knowledge of the chemistry area
7 needs to be developed, should learn more about other
8 operating facilities and their chemistry programs."

9 A See, Gary's experience had primarily been at TVA.
10 He had a little bit of experience prior to coming, but he
11 didn't have a lot of knowledge about the industry, and I was
12 always concerned about communicating with other power
13 plants. He could do that, but there are many ways of doing
14 it, through INPO or through the mail system, there are
15 various techniques of finding out what's happening at other
16 power plants and Gary didn't seem to be very interested in
17 that particular area.

18 Q It says "Full knowledge of the chemistry area
19 needs to be developed." Did he have full knowledge of BWR
20 chemistry?

21 A Not BW or secondary, his strength was the primary
22 chemistry area.

23 Q Was he making efforts to learn those areas?

24 A I didn't think he was doing that.

25 CHAIRMAN BECHHOEFER: Could you turn back for a

1 minute -- the same page, paragraph 5, there's an omission
2 from the comment and it's hard to read.

3 THE WITNESS: "Has some difficulty in relating to
4 other chemistry managers."

5 CHAIRMAN BECHHOEFER: Well, is that word "other"
6 or "site" or what --

7 THE WITNESS: Site chemistry managers.

8 CHAIRMAN BECHHOEFER: Okay, I just wondered what
9 word should be in there, it's hard to read.

10 THE WITNESS: Yeah.

11 MR. MARQUAND: Other would also mean site.

12 THE WITNESS: Yeah, that's right.

13 JUDGE COLE: But site chemistry managers would be
14 appropriate?

15 THE WITNESS: Yes.

16 CHAIRMAN BECHHOEFER: Okay, it's just the
17 intelligibility -- readability.

18 BY MR. MARQUAND:

19 Q The next page under paragraph 11, do you see the
20 comment under the paragraph Supervising that says "Has some
21 supervision problems that were mostly 'inherited'; however,
22 changes did not take place as quickly as they should." What
23 was that a reference to?

24 A Well, he had a lot of difficulty in getting people
25 to respect him in his position. That's what it really came

1 down to. They knew he had not done well out at Sequoyah,
2 they were wondering why he was downtown, first off, if he'd
3 been unsuccessful. I think Gary thought that this was a
4 promotion to him, but it really wasn't. It was a rotation
5 to send somebody out to the site that could handle the
6 problems. Gary was not functioning very well in the
7 position.

8 Q If you'll look at paragraph 14, Supervisory
9 Impartiality. What is that comment a reference to?

10 A Well, the chemistry group was divided. There were
11 those who were very strongly supportive of Jocher and there
12 were those that were willing to follow Gary. But I told him
13 his assignment was to get everybody in line and make sure
14 they were supporting him but he failed very miserably in
15 that area. He was not able to do that.

16 JUDGE YOUNG: Which ones were which?

17 THE WITNESS: Sam Harvey and Don Adams just
18 couldn't get along with Gary and Chandra did okay and I was
19 trying to remember who else was in there then. I can't
20 remember, there was another person that tried to work with
21 Gary, but he had a real split in his organization.

22 BY MR. MARQUAND:

23 Q Now you sand in November of '92, you took Gary out
24 of that acting role and put Sam Harvey in it.

25 A That's correct.

1 Q Did Sam Harvey have these same kinds of problems?

2 A No. Sam was respected for his technical
3 capabilities. I wouldn't say he was the greatest manager in
4 the world, but he was better than Gary was, for sure. But
5 technically he was very, very competent. And that's what
6 you primarily need in the corporate organization, somebody
7 to understand all the technical problems in the industry.

8 Q Let's talk about that a little. Explain to me
9 what the role is of the corporate chemistry organization,
10 why it's there.

11 A Okay. The site, their day is filled with
12 operational things that are going on at the plant. If they
13 run into unusual difficulties or they want to evaluate a new
14 piece of equipment that's going to take some time, then they
15 give that to the corporate organization. We take up the
16 slack, try to take the major items that will take a lot of
17 their time -- evaluating NUREG guides, those kind of things,
18 we would do in the corporate organization to give them time
19 just to run the plant. They didn't have a lot of time to
20 sit down and review reg guides and take official positions,
21 didn't have time to evaluate vendors and to go out and buy
22 new equipment, so that was our job to do that.

23 And if they needed support, if they had a
24 particular problem and it was a short-term problem and we
25 could send a man down to spend two or three weeks solving

1 that problem, we'd do that, so they could run the plant on a
2 daily basis. Just meeting all the tech spec requirements
3 and those kind of things on a daily basis took all of their
4 time.

5 Q Let me ask you to turn to Joint Exhibit 43 in the
6 notebook in front of you. That's the transfer of the
7 rotation agreement that sent Gary Fiser downtown for a year
8 and then it says that he's going to return after a year,
9 correct?

10 A Yes.

11 Q It includes you were one of the people that says
12 the agreement is between.

13 A Right.

14 Q Counsel raised the issue about well, TVA didn't
15 abide by that, they refused to send him back to Sequoyah,
16 correct?

17 A Beecken did not want him to come back.

18 Q Beecken was the plant manager?

19 A Yes. Actually, this was done by William C.
20 McArthur.

21 Q So it's not you?

22 A That's not me.

23 JUDGE YOUNG: There's another --

24 THE WITNESS: I'm just kidding. It's supposed to
25 be, they just got it wrong.

1 JUDGE YOUNG: Oh.

2 MR. MARQUAND: Was that funny?

3 (Laughter.)

4 MR. MARQUAND: Look at the paragraph above it
5 where it does say Wilson C. McArthur.

6 THE WITNESS: Yes.

7 MR. MARQUAND: Maybe William C. McArthur did
8 coordinate it.

9 THE WITNESS: That's the guy we ought to get in
10 here.

11 BY MR. MARQUAND:

12 Q In any event, do you know anyone at TVA who's ever
13 guaranteed a job?

14 A No, I wasn't guaranteed mine.

15 Q This wasn't a guarantee that Mr. Fiser's position
16 was going to continue ad infinitum, was it?

17 A No.

18 Q Just simply an agreement that he would have a
19 right to that job if it existed at the end of the year.

20 A Yes, that's correct.

21 Q And would you explain to us what happened to that
22 job when -- let's see, when he first left Sequoyah, he was
23 under the supervision of operations, right?

24 A That's correct.

25 Q And when that year was up, what had happened to

1 the chemistry organization?

2 A It went under the rad con chemistry organization.

3 Q And that was supervised by Mr. Kent?

4 A That's correct.

5 Q What did Mr. Kent do with that particular job?

6 A He didn't want to fill that job.

7 Q He wanted to eliminate it?

8 A Yes.

9 Q And have the people report directly to him?

10 A Yes.

11 CHAIRMAN BECHHOEFER: Dr. McArthur, would an
12 agreement such as the temporary transfer agreement
13 guarantee, perhaps not a return to the particular job but an
14 equivalent job in the area?

15 THE WITNESS: I don't know. You know, I can't
16 really respond to that because it's very seldom do you ever
17 find a situation at TVA where you're guaranteed any
18 particular position for any length of time.

19 CHAIRMAN BECHHOEFER: No, but I mean a comparable
20 job such as oh, for an example, if somebody goes off and
21 serves for awhile at IAEA, they're guaranteed to have a
22 comparable position, maybe not the same one, but a
23 comparable one.

24 THE WITNESS: I just had the feeling that Rob
25 Beecken did not want him back on the site because of his

1 lack of ability to run the chemistry organization before.
2 That was my interpretation, it's my opinion.

3 CHAIRMAN BECHHOEFER: But you did not feel that
4 this particular agreement gave him the right to maybe not
5 the same job, but --

6 THE WITNESS: Well, I assumed he'd go back to the
7 site. Like I said before in my testimony, I was surprised
8 when I was told he wouldn't go back, because it gave me a
9 problem, I had an extra head count I couldn't -- you know,
10 I'd have to deal with, because he was supposed to go back to
11 the site.

12 Could we take a five minute break?

13 CHAIRMAN BECHHOEFER: Yes, we certainly can.

14 (A short recess was taken.)

15 CHAIRMAN BECHHOEFER: Back on the record.

16 BY MR. MARQUAND:

17 Q Dr. McArthur, if you'll turn to Joint Exhibit 64
18 and I also believe there's Staff Exhibit 100 in front of
19 you.

20 A I've got 64 here -- yeah, 100 too.

21 Q Let's deal first with Staff Exhibit 100. If
22 you'll look down toward the bottom under the heading
23 Dimensions, there's an entry for employees and it says
24 "Direct - indirect" and it says 635. How many employees did
25 you actually directly supervise when you were the manager of

1 technical programs?

2 A About a half dozen.

3 Q And you said this morning at some point in time,
4 you convinced Oliver Kingsley that the protective services
5 people should be moved out from under you?

6 A Yes.

7 Q And how many -- what is protective services?

8 A Protective services consisted of security and fire
9 protection.

10 Q The guards at the plants?

11 A Yes.

12 Q And so how many people were moved out from you
13 when they moved out protective services?

14 A There were probably 450 or so guards and then
15 probably about 12 in the fire protection area.

16 Q Twelve total or 12 at each site?

17 A That included the fire training academy and the
18 corporate people downtown which was about three, there were
19 about four out at the academy.

20 Q All right. Now if you'll look at Joint Exhibit
21 64, in the Dimensions subheading down below, it says
22 "Employees Supervised," how many employees did you directly
23 supervise when you were the rad con manager?

24 A Well, I had rad con, chemistry, ERMI, which is the
25 laboratory and emergency preparedness.

1 Q So how many employees did you directly supervise?

2 A Probably about five.

3 Q Five or six?

4 A Yes.

5 Q And Joint Exhibit 64, as I understand it, is a
6 draft or that was the position description you drafted up
7 and gave to Mr. Majewski.

8 A Yes.

9 Q And did he ever sign it and give it back to you?

10 A No.

11 Q As far as you know, was it ever officially issued?

12 A Not that I'm aware of.

13 Q Do you have any idea why?

14 A No. It's kind of like sometimes in Human
15 Resources, you send things and they never appear again.

16 Q Now if you'll turn over to Staff Exhibit 101.

17 A 101.

18 Q Right. That's the position description and this
19 one is signed, isn't it?

20 A Yes.

21 Q So it was issued to you and signed?

22 A Yes.

23 Q That's the position description for your position
24 as corporate radiological and chemistry control manager,
25 right?

1 A That was a reorganization that took place in '96.

2 Q And how many people did you directly supervise in
3 that position?

4 A I don't know if it's on here or not, it says here
5 it was 10.

6 Q As far as you know, did you ever have an official
7 position description between the issuance of Staff Exhibit
8 100 and your receipt of Staff Exhibit 101? Did you receive
9 any other officially issued and signed --

10 A Not that was signed.

11 Q Okay, nothing was ever officially issued to you?

12 A No.

13 CHAIRMAN BECHHOEFER: Any further drafts?

14 THE WITNESS: I think I only submitted one draft.
15 I did ask occasionally why it was not signed and I can't
16 respond to -- all I was told was it was being looked at.

17 BY MR. MARQUAND:

18 Q Now let's turn to --

19 THE WITNESS: I thought it was cold in Utah, it's
20 colder here than it is there.

21 (Laughter.)

22 BY MR. MARQUAND:

23 Q Let me show you Staff Exhibit 27. Is that in your
24 book too?

25 A I don't know, let's see. I don't think so --

1 well, yeah, I guess it is.

2 Q I believe that book is Joint Exhibit 27, is that
3 right?

4 A I don't know what it is.

5 JUDGE COLE: It is Joint.

6 MR. MARQUAND: Thank you, Judge Cole.

7 BY MR. MARQUAND;

8 Q If you'll turn -- this morning you were questioned
9 about page 22.

10 A Of this document?

11 Q Yes. This is Mr. Fiser's -- you kept asking what
12 this document is, and before I ask you questions I'll tell
13 you my understanding is it's Mr. Fiser's version of a
14 transcript he prepared of one of the tape recorded
15 conversations he made with you in November of '92.

16 At this point in the center, according to Mr.
17 Fiser, it says something like "Tom McGrath said we can't
18 have this guy in the Sequoyah chemistry position." At least
19 that's what it says that you said to Fiser.

20 Do you recall a conversation with Tom McGrath and
21 Tom Peterson with the NSRB in November of '91 in which
22 McGrath and Peterson said we don't want Fiser in the
23 chemistry position?

24 A No. We would have discussions about things, that
25 was our job.

1 Q Right.

2 A And if we didn't think somebody was performing
3 well, we'd talk about it and say well, what can we do to get
4 some corrective action here.

5 Q Did you all think that Mr. Fiser was performing
6 well in chemistry?

7 A No.

8 Q And what was there about -- that the NSRB observed
9 that made you think that you didn't think Fiser was
10 performing well in Sequoyah chemistry?

11 A He just wasn't responsive to solving problems.
12 Problems would be identified, but they weren't corrected.

13 Q You mentioned this morning that there was an issue
14 about trending and that the issue with trending was raised
15 to Mr. Fiser. Did you think he responded to that
16 appropriately?

17 A No.

18 Q What was there about that that he did not respond
19 appropriately to?

20 A Well, it was obvious he wasn't going to do
21 anything.

22 Q Well, he said he couldn't do anything.

23 A Well, in a case like that, the appropriate measure
24 is to go to your senior management and say I've got a
25 difficult problem, I need additional head count or

1 additional money or whatever it takes. You go fight for it.
2 It was obvious that Gary was not going to fight for it.

3 Q If you all perceived that there was a problem in
4 Mr. Fiser's management of the Sequoyah chemistry, was there
5 anything inappropriate about the three of you commenting
6 amongst yourselves about that?

7 A No.

8 Q Would there have been anything inappropriate about
9 the NSRB chemistry subcommittee mentioning that to the plant
10 manager?

11 A No. It was not our position to hire or fire.

12 Q Was there -- your all's view of Mr. Fiser's
13 performance, were you all in any way critical of him for
14 raising any safety issues?

15 A No.

16 Q And if you would turn to page 78 of the same
17 document.

18 A 78?

19 Q Page 78 of Joint Exhibit 27. This again is
20 another transcript of a conversation Mr. Fiser says that he
21 taped of you on July 14, '93.

22 A Okay.

23 Q And let me put this in context. You were asked
24 this morning about whether or not you had a discussion with
25 Mr. Kent about Mr. Fiser coming out to Sequoyah in the

1 summer of '93 as the Sequoyah chemistry manager.

2 JUDGE YOUNG: Excuse me, which page are you on?

3 MR. MARQUAND: 78.

4 JUDGE YOUNG: Oh, I thought you said 28. Thank
5 you.

6 BY MR. MARQUAND:

7 Q And you said you gave Mr. Kent -- tell me what
8 feedback you said you gave Mr. Kent?

9 A I told him he ought to consider the fact that Gary
10 did not do very well out at Sequoyah and he didn't do very
11 well downtown at corporate and he needed to take that into
12 consideration.

13 Q All right. At the bottom of page 78, do you see
14 where it says, "When Charles' phone call said check it out,
15 tell me how you think it will go." Do you see that?

16 A Uh-huh.

17 Q Did Mr. Kent ask you your opinion about putting
18 Fiser in that job?

19 A Yes, he did. He did not -- we had a lot of
20 conversations, it's hard for me to remember specific
21 conversations, but I'm sure that Charles and I talked about
22 it, may be in a rad con chemistry meeting.

23 Q Charles is your counterpart at Sequoyah?

24 A The counterpart for Sequoyah.

25 Q And your job was to support him.

1 A That's correct. He would ask me my opinion about
2 a lot of things.

3 Q So immediately beneath that, it says "I talked to
4 Keuter and I talked to Joe Bynum." Do you see that?

5 A Yeah.

6 Q Why would you talk to Keuter and Bynum about Gary
7 Fiser being put in that position?

8 A I felt it was my job. You know, any time I was
9 making employee changes or other changes were taking place,
10 I'd bring those up and make sure they were aware.

11 Q Did Keuter and Bynum have responsibility for
12 Sequoyah?

13 A Bynum did.

14 Q Did Keuter have responsible for supporting
15 Sequoyah?

16 A Yes.

17 Q And what were Keuter and Bynum's opinion with
18 respect to Mr. Fiser?

19 A I don't remember them being negative. I don't
20 know what Keuter's opinion was of Gary. I know that Joe
21 didn't think he did a very good job as far as the chemistry
22 -- operation of the chemistry program. He thought he did a
23 good job in the outage management.

24 Q Did Mr. Bynum ever express any misgivings to you
25 about Fiser for raising safety concerns?

1 A No.

2 CHAIRMAN BECHHOEFER: Dr. McArthur, would there
3 have been anything about raising safety concerns through the
4 wrong channels, other than through the specific programs?

5 THE WITNESS: Safety concerns -- everybody is
6 told, in fact we had different management memos that came
7 out that related to the fact that we were supposed to be
8 very responsive to any safety concerns that were raised by
9 anybody. So I don't think -- I never felt there was a veil
10 there that said you can't raise safety concerns.

11 CHAIRMAN BECHHOEFER: Well, like through the
12 corrective action program or --

13 THE WITNESS: Yeah.

14 CHAIRMAN BECHHOEFER: And you didn't think that
15 was the only way such concerns could be properly raised?

16 THE WITNESS: No. Well, the correct thing to do
17 was identify a concern and you make sure yourself that it
18 gets into the corrective action program.

19 CHAIRMAN BECHHOEFER: But if you don't and you
20 just --

21 THE WITNESS: It can go by the wayside if you
22 don't do that.

23 CHAIRMAN BECHHOEFER: I see, okay.

24 THE WITNESS: It could. I could see where if
25 somebody raised an issue and didn't enter it in, it becomes

1 a nonissue unless somebody picks up on it and says I really
2 think -- I'll take that concern over. I've seen that
3 happen, but I have seen things fall through the crack that I
4 thought should have been in the corrective action program
5 that didn't end up in the corrective action program.

6 CHAIRMAN BECHHOEFER: Would Mr. Fiser have been
7 aware of the corrective action program?

8 THE WITNESS: Oh, absolutely.

9 CHAIRMAN BECHHOEFER: As a way of raising safety
10 concerns.

11 THE WITNESS: Yes.

12 CHAIRMAN BECHHOEFER: Thank you.

13 THE WITNESS: He raised a lot of issues. Each
14 chemistry manager had the responsibility to enter any
15 problems into the corrective action program.

16 CHAIRMAN BECHHOEFER: So he was well aware of how
17 that system worked.

18 THE WITNESS: Yes.

19 BY MR. MARQUAND:

20 Q Were you aware of Mr. Fiser raising any concerns
21 outside the corrective -- going around management and
22 raising anywhere else?

23 A There was an issue one time about some people
24 raising some issues to INPO without going through TVA
25 management. I don't know who all was involved, I just

1 became aware of that.

2 Q So were you aware that Mr. Fiser ever went around
3 management to raise issues?

4 A No.

5 Q This morning, you were asked about Mr. Jocher
6 having a concern and you said that he had gone to Dan Keuter
7 and complained about Gary Fiser being the corporate
8 chemistry manager.

9 A That's correct.

10 Q Can you explain that

11 A He didn't think that Gary was a very effective
12 manager, he didn't know how to handle technical issues, and
13 he was very concerned that Gary would come into his -- what
14 he considered his position he was coming back to, and he
15 would somehow taint that position such that when he came
16 back, it would not be as effective as it had been before.

17 Q When Mr. Fiser was still the Sequoyah manager,
18 chemistry manager, and Jocher was still downtown as
19 corporate chemistry manager, when you attended NSRB
20 meetings, did Mr. Jocher sometimes attend as well?

21 A On occasion.

22 Q Was Mr. Jocher, in those meetings, critical of --
23 very vocally critical of Mr. Fiser's performance?

24 A I think he pretty well held it to our discussions,
25 I don't remember him being vocal to the NSRB committee in

1 specifics. He could have been, I just don't remember that.
2 I know that he was not pleased Gary's efforts, but who he
3 expressed his concerns with, I don't know.

4 Q And when you had conversations with Gary, did you
5 ever indicate to him that Bill Jocher was not his friend and
6 that Bill Jocher was causing problems for Gary by
7 criticizing him to management?

8 A I don't --

9 Q You don't recall that?

10 A -- recall that. It's possible, but I don't recall
11 it. There were a lot of things going on during that period
12 of time with Sequoyah chemistry.

13 Q If you'll look at page 12 of Joint Exhibit 27, as
14 an example.

15 A 27?

16 Q No, page 12 of Joint Exhibit 27, yes.

17 A Page 12 of 27. Okay.

18 Q All right. If you'll look in the middle of the
19 page, do you see where it says, by Mr. Fiser, he says "I
20 wish I knew, I wish I knew why I was in the outs with
21 Keuter." And then right below that, you see where you told
22 him, "He was very strongly in favor of you coming down and
23 getting a chance downtown." Do you see that?

24 A That's right, he was.

25 Q And immediately below that, there's a longer

1 paragraph in which you told Mr. Fiser about Jocher
2 criticizing him to Mr. Keuter. Do you see that?

3 A Yes.

4 Q Does that refresh your recollection that you were
5 telling Fiser about Jocher's criticisms of him to
6 management?

7 A To Jocher?

8 Q That Jocher was criticizing Fiser --

9 A Yeah.

10 Q -- to senior management.

11 A Yeah. That would have been Dan Keuter.

12 Q But you understood that that's what Jocher was
13 doing, was criticizing Fiser.

14 A Yes, that's correct.

15 (Brief pause.)

16 Q Let me show you Staff Exhibit 29 and Staff Exhibit
17 31.

18 A 29?

19 Q 29 and 31.

20 A Okay.

21 Q I think you've got the wrong book.

22 A Oh, I've got the wrong book?

23 Q I think you've got the Joint book.

24 A Yeah.

25 (Brief pause.)

1 A Okay.

2 Q I believe Staff Exhibit 29 is a letter that Mr.
3 Fiser testified that he and Jocher and Dr. Matthews sent to
4 Senator Sasser. You never saw that prior to preparing for
5 your deposition last fall?

6 A Did not.

7 Q If you'll look at Staff Exhibit 31, that is a list
8 of items that Employee Concerns is asking you to do what
9 with that list of items?

10 A Resolve the issues. First of all, to identify
11 that they weren't in the corrective action program.

12 Q What did you determine?

13 A I determined all of them were in the corrective
14 action program.

15 Q Okay.

16 JUDGE YOUNG: All of them what?

17 THE WITNESS: All in the corrective action
18 program.

19 JUDGE YOUNG: Were already in?

20 THE WITNESS: They were already in.

21 BY MR. MARQUAND:

22 Q Does that mean that the issues had already been
23 identified?

24 A Yes.

25 Q And that somebody was working on those items.

1 A Yes.

2 Q So that whatever these -- whoever sifted these
3 issues out of that letter from -- to Senator Sasser, you
4 looked at the issues and determined that somebody had
5 already identified them to TVA and they were being fixed.

6 A That's correct.

7 CHAIRMAN BECHHOEFER: At the time, did Mr. Fiser
8 know that?

9 THE WITNESS: I --

10 CHAIRMAN BECHHOEFER: At the time he attempted to
11 raise particular issues.

12 THE WITNESS: I don't know, I can't respond to
13 that.

14 JUDGE YOUNG: Do you know who had issued the
15 corrective actions?

16 THE WITNESS: You could go back to the list and
17 find out. It also identified a person who was responsible
18 for resolving the issue too.

19 JUDGE COLE: And all of them were before the
20 August 16, '93 letter?

21 THE WITNESS: Yes.

22 JUDGE YOUNG: Could they have been issued by Mr.
23 Fiser or his subordinates?

24 THE WITNESS: That's a possibility, some of them
25 could have been, yes.

1 CHAIRMAN BECHHOEFER: Was the list of items that
2 were in the corrective action program available before the
3 items were resolved?

4 THE WITNESS: Yes.

5 CHAIRMAN BECHHOEFER: Could somebody look and see
6 what was in the system?

7 THE WITNESS: Oh, yes, you could go to the
8 computer and get the whole complete printout.

9 CHAIRMAN BECHHOEFER: Okay.

10 JUDGE YOUNG: Your testimony is that there was no
11 discouragement of issuing corrective actions.

12 THE WITNESS: No, absolutely not, it was
13 encouraged.

14 BY MR. MARQUAND:

15 Q I'm going to show you TVA Exhibit 57.

16 (A document was proffered to the witness.)

17 JUDGE YOUNG: And Mr. Marquand -- not on the
18 record --

19 (Discussion off the record.)

20 BY MR. MARQUAND:

21 Q Staff Exhibit 57.

22 JUDGE YOUNG: Staff Exhibit 57?

23 MR. MARQUAND: I need to ask him one more question
24 on Staff 31 and then we're going to have TVA 57.

25 THE WITNESS: 31.

1 BY MR. MARQUAND:

2 Q That's a memorandum to you asking you to research
3 those issues, right?

4 A To see if they were safety concerns or not.

5 Q What organization sent that to you?

6 A Concerns Resolution at Sequoyah, I believe. Let me
7 check, I'm pretty sure that's who it was. Site
8 representative, Concerns Resolution staff.

9 Q All right. Now let's look at TVA 57.

10 A Okay.

11 Q This is an internal document from the Concerns
12 Resolution staff closing a number of issues.

13 A Uh-huh.

14 Q Are the issues that are numbered 1 through 10, are
15 these the various issues that they had asked you to
16 research?

17 A Let me make sure.

18 Q Staff 31 and numbers 6 through 10.

19 A Okay.

20 Q Do those correspond with their closure of items 6
21 through 10?

22 A Yes.

23 Q And had they earlier asked you to research issues
24 1 through 5?

25 A Yes.

1 Q All right. Now the Judges asked you about how
2 those issues -- they were in the corrective action program.

3 A That's correct.

4 Q And they indicated how they'd been raised.

5 A Yes.

6 Q The first issue, it says "Technician job knowledge
7 is deficient." Do you see that?

8 A Yes.

9 Q Do you recall if that was an issue raised by INPO
10 back in '89?

11 A Yes.

12 Q What about the second issue about "Significant
13 process instrument availability problems." Was that an
14 issue raised --

15 MR. DAMBLY: Objection to leading.

16 BY MR. MARQUAND;

17 Q Who raised that issue, do you know?

18 A I'd have to go back and check, but I believe INPO
19 raised that one. A number of these were raised by INPO.

20 Q What about number 3.

21 A Yes, that was INPO.

22 Q INPO. Number 4, "Technicians could not draw post-
23 accident sampling system in three hours." Who raised that?

24 A INPO and we also were aware of that.

25 Q We being who?

1 A TVA, Jocher, Bill Jocher.

2 Q And that was in the NSRB notes, right?

3 A Yes.

4 Q "Yearly scheduled maintenance and calibration had
5 not been performed on some instruments as required since
6 1984." Do you know who raised that?

7 A I know Bill Jocher raised that, I'm not sure if
8 INPO raised that one or not.

9 Q Number 6, "Incorrect nuclear containment high
10 radiation set points necessitating a licensing event
11 report." We talked about that earlier.

12 A Yeah.

13 Q That was Mr. Jocher as well, right?

14 A That's correct.

15 Q Number 7, "PASS equipment availability."

16 A Most of the PASS ones were raised by Bill Jocher.

17 Q All right. Number 8, "Problems with emergency
18 diesel generator seven day storage." Do you know who raised
19 that?

20 A I believe that was INPO, but I'm not really --

21 Q Number 9, do you know who raised that?

22 A Not sure.

23 Q Number 10.

24 A I believe that was INPO.

25 Q That's the rad monitor valve that we looked at

1 earlier.

2 A Yeah, that would be Jocher. Jocher had a long
3 list of concerns.

4 Q Counsel asked you this morning about your
5 discussions with Ron Grover about the various individuals
6 who worked for Ron Grover. Did you tell Mr. Grover about
7 the fact that Mr. Fiser had been involved in surreptitious
8 tape recording of co-employees?

9 A I believe that I did.

10 Q What did you tell him about it?

11 A I just told him to be aware that Gary was one that
12 would use tape recordings to gain information.

13 Q Did you suggest to him that he take any sort of
14 action at this point?

15 A No, just to make him aware of it.

16 JUDGE YOUNG: When was this now?

17 THE WITNESS: '92-'93 time frame.

18 MR. MARQUAND: Grover didn't come until '94.

19 THE WITNESS: '94? I really don't know, I just
20 know that I told him that he needed to be aware that Gary
21 Fiser is one that would use tape recordings.

22 BY MR. MARQUAND:

23 Q And why would that be -- why would you want to
24 tell somebody that?

25 A I think it's very offensive, it's an attack on the

1 person to have somebody in the room that's taping your
2 conversation without you knowing it. I don't know the legal
3 implications, I just know it's not a very pleasant thing to
4 be aware of.

5 Q Did you ever do anything to Mr. Fiser on acct of
6 the fact that he tape recorded?

7 A No. I could basically tell when he was doing it.

8 Q How?

9 A Because of the way he'd ask questions. He would
10 ask leading questions about what I thought of Tom McGrath or
11 something of that nature. His usual lead in was "You're
12 always honest with me, give me an honest answer." Then I
13 knew something was going on.

14 Q This morning -- I think I want to cover one more
15 topic, Your Honors, and then it would be a good time to
16 break -- let me show you Staff Exhibit 91. This was a
17 letter that was issued to you by Mr. Zeringue in 1996. Did
18 anyone ever inform you that the reason you were getting this
19 letter was because they considered you guilty of having
20 undertaken retaliation against Mr. Jocher for raising safety
21 concerns?

22 A No.

23 Q As far as you know, did anybody ever make such a
24 finding against you?

25 A No.

1 MR. MARQUAND: If Your Honors want to break for
2 the evening, this would be a good place to stop.

3 CHAIRMAN BECHHOEFER: Okay, I have one question.
4 Dr. McArthur, on TVA Exhibit 57, which we were talking about
5 a minute or two ago, there's a statement that -- and I'm not
6 sure I understand it correctly -- that some issues raised
7 are being investigated by OIG and that portions of the file
8 would be closed. Would those be issues other than those
9 specifically listed or would they be issues listed but still
10 being resolved through OIG?

11 THE WITNESS: Can I see that?

12 CHAIRMAN BECHHOEFER: That's on page 2 of 2 of the
13 exhibit.

14 MR. MARQUAND: Your Honor, I'm not sure the
15 witness can speak to this, because I indicated this is an
16 internal concerns document. The Inspector General will be
17 here, the acting Inspector General will be here, and he can
18 identify -- maybe Dr. McArthur knows what those
19 abbreviations are.

20 CHAIRMAN BECHHOEFER: Well, what I really wanted
21 to know is if you looked through the tracking system for
22 corrective actions, would you find any that were being
23 looked into by OIG or would that be dropped completely from
24 the list of issues available to employees to look at.

25 MR. MARQUAND: Again, the IG will be here, but I

1 don't believe intimidation, harassment and discrimination
2 issues are part of nuclear power's tracking system.

3 THE WITNESS: No.

4 CHAIRMAN BECHHOEFER: Okay.

5 I guess we can go off the record for the day.

6 With that we will adjourn until tomorrow morning at 9:00
7 a.m. Dr. McArthur, we will see you then.

8 (Whereupon, the hearing was adjourned at 4:43
9 p.m., to resume at 9:00 a.m. on Friday, May 3,
10 2002.)

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CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: Tennessee Valley Authority
Watts Bar Nuclear Plant,
Unit 1, Sequoyah Nuclear
Plant, Units 1 and 2, Brown
ferry Nuclear Plat, Units
1,2,3

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

Location: Chattanooga, Tennessee

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.


Bill Warren
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