

RAS 4436

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

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

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

Location: Chattanooga, Tennessee

Date: Thursday, May 9, 2002

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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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HEARING

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In the Matter of: TENNESSEE VALLEY AUTHORITY Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 & 2; Browns Ferry Nuclear Plant, Units 1, 2 and 3.	Docket Nos: 50-390-CivP; 50-327-CivP; 50-328-CivP; 50-259-CivP; 50-296-CivP; ASLBP No.: 01-791-01-CivP EA 99-234
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Thursday,
 May 9, 2002

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

The above-entitled matter came on for Hearing,
 pursuant to notice, at 9:00 a.m.

BEFORE:

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

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P-R-O-C-E-E-D-I-N-G-S

9:05 a.m.

1
2
3 CHAIRMAN BECHHOEFER: Good morning, ladies
4 and gentlemen. We welcome you for the last day of
5 this Hearing session. We expect that we will break by
6 11:30.

7 Before we begin Judge Young has a
8 statement which, well, Judge Cole and myself don't
9 necessarily join in, but you are welcome to make it.

10 ADMINISTRATIVE JUDGE YOUNG: In my
11 experience I found that it is very helpful to direct
12 counsel to address issues that the Judges find to be
13 possibly relevant, without suggesting, in any way,
14 what our ruling will be. Because we have not, by any
15 means, heard all the evidence.

16 An issue arose yesterday, with regard to
17 the relevance of performance. And both of you
18 indicated that that was only relevant, as I understood
19 you, only relevant to the '93 action.

20 But, and TVA has pretty much taken the
21 position of there was no violation, and there is
22 nothing between no violation and a violation.

23 But for me, anyway, and I think it -- if
24 you -- if it would help counsel to know issues that we
25 may be thinking about, and may appreciate your --

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1 whatever briefing you want to provide, the issue of
2 the relevance of performance with regard to the '96
3 action.

4 In other words, if, and this again does
5 not in any way suggest how we will rule. The only
6 reason I asked Mr. Fiser not to be in the room is
7 because I don't want him to think that this is
8 suggesting that this is how we would rule. And I
9 don't want TVA to think that is how we would rule.

10 But if we were to find that the posting of
11 the position might be inappropriate under the RIF
12 standards, regulatory, statutory policy, whatever
13 standards there are; but that it was motivated by
14 performance, I think you ought to have the
15 opportunity, and may wish to brief that particular
16 issue.

17 Because obviously performance has been an
18 issue with both sides in the presentation of the
19 evidence and Mr. Dambly pointed out yesterday that you
20 are not -- it is not, strictly speaking, relevant to
21 the last action. And TVA takes somewhat of an all or
22 nothing violation, or no violation position.

23 But if that is helpful in giving you some
24 guidance on the kinds of things that you might want to
25 address in your proposed findings and briefs, after

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1 the Hearing, that would be helpful to me.

2 MR. MARQUAND: Just so I can clarify, I
3 don't disagree with what you said with respect to
4 whether or not posting, whether there was some other
5 issue or reason for the motivation of the posting.

6 ADMINISTRATIVE JUDGE YOUNG: Right.

7 MR. MARQUAND: As you know under the
8 Supreme Court's guidance in Title 7 arena, which we
9 look to, to interpret discrimination laws, the
10 Plaintiffs, in this case the Staff, has a burden to
11 prove discrimination was the motivating factor.

12 ADMINISTRATIVE JUDGE YOUNG: Right.

13 MR. MARQUAND: And it is not enough for
14 them to say that we are wrong with respect to the
15 reason we posted it. Because we can be wrong and
16 still not have a discriminatory animus.

17 ADMINISTRATIVE JUDGE YOUNG: That is the
18 point I'm getting to.

19 MR. MARQUAND: Yes, I agree.

20 ADMINISTRATIVE JUDGE YOUNG: And that is
21 why I think it ought to be clarified, at this point,
22 that if that were the outcome, I mean, if we were to
23 find those as the facts, I want everyone -- I think it
24 would be helpful for everyone to be clear on that may
25 be an issue that we may need to look at.

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1 And I wouldn't want to get all your
2 briefs, and have someone not brief the issue because
3 it never was clearly defined, and to make sure that we
4 were all on the same page.

5 MR. MARQUAND: We certainly understand
6 that that is the law, and that the issue is not
7 whether OPM would say we are right. This Court does
8 not sit here as an NRC protection board to determine
9 is TVA right or wrong.

10 We are entitled to be wrong, just not
11 discriminatory. And we understand that.

12 ADMINISTRATIVE JUDGE YOUNG: That is your
13 argument, okay.

14 MR. MARQUAND: We understand --

15 ADMINISTRATIVE JUDGE YOUNG: And if both
16 parties understood the argument already, that is fine.
17 And, again, I'm not suggesting in any way how we would
18 rule.

19 But with both of you, rather than being
20 one side at one end of the spectrum, and the other
21 side at the other end of the spectrum, you may want to
22 consider alternatives in the middle, were that the way
23 we were to come down on the facts.

24 If that is helpful, that is good. And if
25 you want to say anything, Mr. Dambly?

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1 MR. DAMBLY: The only thing I would say,
2 Your Honor, is that I'm not sure that I agree with the
3 statement of the law. We've addressed that in the
4 brief. And if they say they did it for X reason, and
5 that doesn't hold water, that is enough, in and of
6 itself, to derive the inference.

7 Reeves overruled the prior case, the St.
8 Mary's case, which would say, no. In this case if
9 they gave us a reason and it turns out to be false,
10 that is sufficient to draw that the real reason was
11 discrimination.

12 They can't, they don't get the benefit of
13 saying, well we said we did it for this reason, we
14 lied to you, but the real reason was something else,
15 and it wasn't discrimination. They don't have that
16 option.

17 ADMINISTRATIVE JUDGE YOUNG: I think what
18 we are getting to, here, is the pretext issue. If
19 there is a prima facie case of discrimination, the
20 company provides a legitimate non-discriminatory
21 reason, then the burden shifts back to the Plaintiff,
22 here the Staff, to establish that the business reason
23 offered by the Defendant, here TVA, was a pretext for
24 discrimination.

25 And the difference between the two of you

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1 on that particular point, whether you have to show it
2 with a pretext for discrimination, and if the facts
3 were that there was a business reason which may not
4 have been legitimate under RIF regulations, but there
5 were no discrimination, that is the issue I think you
6 ought to have the opportunity to brief.

7 And, quite frankly, I'm not going to
8 suggest how you do it. But sometimes I find that when
9 issues like these arise it is good just to make sure
10 that everyone knows what they are, and are on the same
11 page, so that you can have the opportunity to address
12 it in your closing arguments and briefs, and proposed
13 findings and conclusions.

14 MR. MARQUAND: Let me just briefly state.
15 I disagree with counsel, Reeves doesn't overrule St.
16 Mary's, it simply reaffirms it and says --

17 ADMINISTRATIVE JUDGE YOUNG: We don't need
18 to argue that.

19 MR. MARQUAND: I understand that. But it
20 does say they still have the burden of proof. And
21 even if we are wrong, we are entitled to be wrong.

22 And what we've said all along is, this is
23 the reason we had, right or wrong, it was a good faith
24 reason.

25 ADMINISTRATIVE JUDGE YOUNG: You can make

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1 your arguments later. Having done a lot of these
2 discrimination cases, the law is constantly
3 developing, and there are all sorts of fine nuances.

4 And so that is why I thought it would be
5 a good idea to just sort of let you know that should
6 it become an issue for us you would have an
7 opportunity to brief it.

8 Okay, that is all I had to say.

9 CHAIRMAN BECHHOEFER: Well, I might add
10 that I believe the parties, to the extent they believe
11 certain evidence supports, or doesn't support their
12 case, they will brief it, they should brief it.

13 And I'm not sure it is appropriate for a
14 Board to tel parties exactly what, particularly if it
15 is a factual issue, what they should include in their
16 proposed findings.

17 I think to the extent they wish to do so,
18 they obviously may do so. So nothing that -- my not
19 joining Ms. Young's statement does not, or Judge
20 Young's statement does not mean I don't find it
21 pertinent.

22 But I think it should be left to the
23 parties to shape their proposed findings. And
24 particularly where it involves factual matters.

25 ADMINISTRATIVE JUDGE YOUNG: And we are

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1 not in disagreement about that. It is totally up to
2 you all to brief whatever you want, and whatever
3 guidance you can obtain from what I said, you may use
4 it or not use it as you please.

5 MR. MARQUAND: Your Honors, we understand
6 that it is our burden to decide what issues in the
7 case to brief. But as Your Honors had questions for
8 the witnesses, if you have any questions for us about
9 what we think the issues are, or what is troubling
10 you, or what you need to make the decision, we would
11 be more than happy to address them.

12 CHAIRMAN BECHHOEFER: Are there further
13 preliminary matters this morning before we resume Mr.
14 Fiser's testimony?

15 (No verbal response.)

16 CHAIRMAN BECHHOEFER: Seeing both counsels
17 shaking their heads, let's bring in Mr. Fiser.
18 Whereupon,

19 GARY L. FISER

20 was recalled as a witness by Counsel for the Staff
21 and, having been previously duly sworn, assumed the
22 witness stand, was examined and testified as follows:

23 CROSS EXAMINATION

24 BY MR. MARQUAND:

25 Q Mr. Fiser, I'm going to show you Joint

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1 Exhibit 27.

2 (Pause.)

3 BY MR. MARQUAND:

4 Q This has previously been admitted into
5 evidence, and you identified Joint Exhibit as a
6 document called Sequence of Events, which you claimed
7 to have prepared from your memory, from your notes,
8 and from transcribing the surreptitious tapes that you
9 secretly recorded. Is that right?

10 A That is correct.

11 Q Now, yesterday we had a long discussion
12 about whether or not at some point in time you ever
13 learned that your management was dissatisfied with
14 your performance as the Sequoyah chemistry manager.
15 Do you recall that?

16 A Yes, I do.

17 Q And I even showed you a statement made by
18 Bill Lagergren, and you said even in 1995, when you
19 read that statement, you did not accept the fact that
20 your management at Sequoyah, or your management
21 period, was dissatisfied with your performance as
22 Sequoyah chemistry manager. Is that correct?

23 A That is correct.

24 Q All right. Now, then your testimony last
25 week was that you began doing this secret tape

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1 recording at some point in time when you became aware
2 that things were awry. Is that right?

3 A That is correct.

4 Q What do you mean awry? It was after your
5 service review, right?

6 A That is correct. It was --

7 Q And at some point in time when Wilson
8 McArthur, it was before he suggested, even, that you
9 be removed as corporate chemistry manager, correct?

10 A I think that was the very conversation
11 that where that statement occurred.

12 Q You tape recorded that conversation?

13 A That is correct.

14 Q All right. So you began taping before he
15 suggested to you that you come out of the corporate
16 chemistry manager position, right?

17 A That is correct.

18 Q So it couldn't have been that suggestion
19 that prompted you to tape record, it had to be
20 something else?

21 A That is correct.

22 Q All right. You received your service
23 review in September of '92, and the first conversation
24 you have here, as tape recorded, is November 16th of
25 '92?

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1 A That is correct.

2 Q What prompted you to begin tape recording?

3 A As I had said earlier I knew something
4 wasn't right, something was awry. I knew that Dr.
5 McArthur was being told, or forced to do things that
6 he did not feel like were justifiable in his own mind
7 regarding my service review, in particular.

8 So I knew something was not right, I just
9 did not know what.

10 Q For instance, you knew that you had been
11 ranked with the other managers such that you would not
12 get a performance increase for 1992?

13 A That is incorrect. I had been ranked such
14 that I would have received a performance increase, but
15 that meeting was, as you will recall, those
16 discussions were stopped by Mr. Dan Keuter, a vice
17 president wherein he instructed Wilson to place me in
18 a position where I would not get an increase.

19 Q All right. Ultimately what happened was
20 that you didn't get a performance increase, correct?

21 A Ultimately that is correct.

22 Q And your ranking within the entire
23 operation support organization was such that you
24 didn't get a performance increase?

25 A I don't know what the ranking was, but I

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1 know I did not get one.

2 Q All right. We've heard testimony that the
3 way the performance increases worked is that all of
4 the individuals on the management schedule, within
5 operations support, were ranked from A to Z, and a
6 curve essentially was applied, and the people at the
7 bottom end of the curve didn't get a performance
8 increase.

9 You were present for that meeting, weren't
10 you?

11 A That is correct.

12 Q And it wasn't an issue of Wilson McArthur
13 being able to rank his people and apply a curve to his
14 people. His people had to be distributed throughout
15 the operation support organization, and the ranking
16 that was done for the entire organization.

17 Were you aware of that?

18 A I don't think that is true.

19 Q Were you aware of that?

20 A No.

21 Q Because you weren't at the meeting?

22 A As I've already stated, I was not at the
23 meeting.

24 CHAIRMAN BECHHOEFER: What did you say?

25 THE WITNESS: As I've already stated, I

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1 was not at that meeting.

2 BY MR. MARQUAND:

3 Q All right. So regardless of how Wilson
4 McArthur, if that is the way that the operations
5 support organization determined to distribute
6 performance increases, you wouldn't have any knowledge
7 about how you were ranked relative to the performance
8 of other managers within that organization, would you?

9 A The only information I had was that with
10 respect to those people that reported directly to Dr.
11 McArthur I was ranked very high.

12 Q But he could have ranked all of his
13 people very high, couldn't he?

14 A No, somebody had to be high, and somebody
15 had to be low.

16 Q Did he tell you --

17 A I've done this many times in the past with
18 my own people. And the statement you just made is
19 categorically incorrect.

20 ADMINISTRATIVE JUDGE YOUNG: You are
21 saying that when you give performance evaluations you
22 could not give everyone good ones, you were somehow
23 required to give, to have some at the top and some at
24 the bottom?

25 THE WITNESS: At times that is entirely

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1 correct. We were instructed that there would be a
2 certain percentage of people who would be, who would
3 not be ranked high. That is correct.

4 ADMINISTRATIVE JUDGE YOUNG: Even if they
5 did high performance you are saying that you would
6 still give them a lower mark?

7 THE WITNESS: At times we were instructed,
8 by our management, that a certain percentage of people
9 would not be ranked high.

10 BY MR. MARQUAND:

11 Q There would be a forced distribution over
12 a bell curve, essentially, correct?

13 A That is correct.

14 Q And with respect to your evaluation by Dr.
15 McArthur, isn't it true that what he said was he rated
16 you high, but he didn't tell you how he ranked you
17 with respect to the other people who reported you?

18 A That is incorrect.

19 Q What did he tell you that you ranked with
20 respect to, your relative ranking with respect to the
21 other individuals?

22 A I was told, as I recall, that I was in the
23 top two or three.

24 Q That is what he told you?

25 A It was either Dr. McArthur or Mr. Ben

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1 Easley, one of the two, or both.

2 Q Now, in your sequence of events, let's
3 see, Dr. McArthur gave you your service review in
4 September of '92. In your sequence of events you have
5 no entry reflecting that, did you?

6 A I don't recall.

7 Q Well, take a look at page 6 of Joint
8 Exhibit 27.

9 Do you see in the middle of the page
10 August 1992 appraisal; attachment 6, do you see that?

11 A That is correct.

12 Q And that is the service review we looked
13 at yesterday that you got from Dr. McArthur?

14 A That would be consistent, yes. This says
15 August, and I think that one was in September. Maybe
16 I'm wrong there, but that does appear to be
17 consistent.

18 Q And there is no entry in the August-
19 September time frame reflecting your supposed
20 conversation with Dr. McArthur in which he told you
21 your relative ranking among his direct reports? Is
22 that correct?

23 A I don't think it was because that was a
24 part of a taped conversation.

25 Q It is not here in this August -- between

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1 August and October, when the service reviews came out,
2 do you see an entry on this page for such a
3 conversation?

4 A Well, not on that page, but it is part of
5 the transcribed tapes that I did have attached here.
6 Wherein he admitted that I was ranked very high. And,
7 also, one between, as I recall, Mr. Ben Easley where
8 he confirmed that.

9 ADMINISTRATIVE JUDGE YOUNG: You said that
10 is in the transcript in this exhibit here?

11 THE WITNESS: As I recall, Your Honor,
12 that is correct.

13 ADMINISTRATIVE JUDGE COLE: Mr. Fiser, you
14 indicated that Wilson McArthur said that you were in
15 the top two or three of how many direct reports, how
16 many direct reports did he have?

17 THE WITNESS: Your Honor, I don't recall
18 specifically. It seemed like there were seven or
19 eight.

20 CHAIRMAN BECHHOEFER: Mr. Fiser, let me
21 understand, then. If you had six brilliant
22 performers, you would have to rate one or two of
23 those, at least, as unsatisfactory, or marginal, or at
24 the bottom of the heap so that those people, even
25 though they were performing better than average, they

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1 would not get any performance increases?

2 THE WITNESS: At times that is what we
3 were instructed to do, yes, sir.

4 CHAIRMAN BECHHOEFER: I see.

5 BY MR. MARQUAND:

6 Q At that point in time, in 1992, do you
7 know if in fact the ratings were required to be
8 distributed over a bell curve, or just the rankings
9 were required to be distributed over a bell curve?

10 And let me refresh your recollection.
11 Isn't it true that the forced ratings came about when
12 Marvin Runyon was the chairman, and there were no
13 forced ratings in 1992, only forced rankings?

14 A Well, I don't know, since I was not a part
15 of those proceedings, I cannot say. I can say that it
16 was customary for there to be forced ratings and
17 rankings in the group.

18 ADMINISTRATIVE JUDGE YOUNG: Both, you are
19 saying both ratings and --

20 THE WITNESS: At times that is correct,
21 yes, Your Honor.

22 ADMINISTRATIVE JUDGE YOUNG: At times,
23 meaning some times?

24 THE WITNESS: Yes, some times the word
25 would come down that these ratings and rankings would

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1 be forced. And this was verbally communicated to us,
2 as I recall. It may have been in writing, I don't
3 know.

4 But at times we had to target a certain
5 percentage to be in -- to be forced into this bell
6 shaped curve that they are referring to.

7 ADMINISTRATIVE JUDGE YOUNG: Well, say if
8 you had, I think it was a 4 point scale on here. Say
9 you had six people, and they were 3.1, 3.2, 3.3, 3.5,
10 3.8, 4. So they would all be good scorers, but there
11 might be a forced ranking in that only -- how many of
12 those six would, for example, get a raise, a
13 performance raise?

14 Which is, if I'm not using the right word,
15 but which is what I understand was at issue in this
16 '92 appraisal. Whether you would get a performance
17 raise.

18 THE WITNESS: How many would get a
19 performance raise?

20 ADMINISTRATIVE JUDGE YOUNG: Right.

21 THE WITNESS: I really could not answer
22 that. It depends on the circumstances and the
23 guidance from upper management at the time. And since
24 I was not a part of it I really could not answer that
25 question.

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1 ADMINISTRATIVE JUDGE YOUNG: Okay.

2 BY MR. MARQUAND:

3 Q Let me refer you to page 20 of your
4 sequence of events. This is a conversation you
5 supposedly had with Dr. McArthur, is that right?

6 A That is correct.

7 Q Look at the bottom, look at the middle of
8 the page where Dr. McArthur says, I can tell you very,
9 and then there are some omissions, I shouldn't tell
10 you that kind of thing, where I, more omissions.

11 And then you said, well, it wasn't you.
12 Well he made it very, more omissions, he just said,
13 omissions. At one point in time we were ranking
14 people, omissions. And he said, I want to put Gary
15 Fiser on no increase, I said why? He said that is my
16 decision, end of discussion.

17 There is no discussion in there by Dr.
18 McArthur that you were ranked two, or three, or that
19 your ranking, your relative ranking among his direct
20 reports was very high, only that he was told by Dan
21 Keuter to rank you low enough to put you on no
22 increase, correct?

23 A That is correct. And what he was
24 referring to was the fact that I had just brought that
25 to his attention, where he had me ranked very high in

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1 the group.

2 Q Does he say in here that he ranked you two
3 or three among his direct reports? He does not, does
4 he?

5 A As a matter of fact he did. The problem
6 was --

7 Q He did? Why isn't in your transcript?

8 A No, you are incorrect, let me answer the
9 question. As a matter of fact he did tell me that.
10 But, as I have stated to you before, if I could not
11 clearly hear it on the tape, I did not include it in
12 this transcript.

13 As much as I wanted to I would not include
14 stuff that I could not clearly hear and understand.
15 So you are incorrect. He did in fact say that. But
16 since I could not hear it, I could not include it. And
17 I did not want this document to be misleading in that
18 regard.

19 Q So it is --

20 ADMINISTRATIVE JUDGE COLE: You couldn't
21 get it off the tape?

22 THE WITNESS: That is correct. Now I may
23 be able --

24 CHAIRMAN BECHHOEFER: Perhaps the
25 omissions here, perhaps the --

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1 THE WITNESS: Yes, Your Honor. Plus there
2 is the possibility that I could go back now and listen
3 to the enhanced tape and pick that out. I don't know
4 if I could or not.

5 BY MR. MARQUAND:

6 Q Well, we went through the exercise last
7 week of listening to the enhanced version, and we
8 couldn't hear anything any better than is in your
9 transcript.

10 A Well, I listened to some tapes where I,
11 indeed, could hear more information than is here.

12 Q Now, we began this discussion by me asking
13 you what prompted you to do taping.

14 A Right.

15 Q And you said, well it couldn't have been
16 Dr. McArthur saying you were going to come out of the
17 corporate chemistry job, because you tape recorded
18 that conversation. And you tape recorded the
19 conversation where he told you Dan Keuter said not to
20 give you an increase.

21 So now my question is, what prompted you
22 to begin the tape recording?

23 A When Dr. McArthur was forced to write,
24 essentially rewrite the service review to support not
25 giving me an increase, and was being forced to do that

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1 by a vice president.

2 That is when, I guess, I got the strong
3 sense that something was awry, and I needed to try to
4 find out what was going on. I think that is what I
5 said earlier.

6 Q We are trying to establish the
7 chronological sequence. In this November 16th, '92
8 conversation you had with Mr. McArthur is where he
9 tells you that Keuter says he didn't want you to have
10 an increase.

11 So something had to prompt you to have
12 tape recorded that conversation. And my question is,
13 what was it?

14 A The fact that he was forced to write a
15 service review --

16 Q No, you tape recorded that tape
17 conversation. What prompted you to tape record that
18 conversation?

19 A The fact that he was forced --

20 ADMINISTRATIVE JUDGE YOUNG: How did you
21 know that fact?

22 THE WITNESS: How did I know --

23 ADMINISTRATIVE JUDGE YOUNG: Yes, how did
24 you know, what did you hear, and from whom, that that
25 caused you to conclude that the fact was that he was

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1 being told to mark you, or to not give you an
2 increase?

3 THE WITNESS: I heard that directly from
4 Mr. Ben Easley, my personnel manager. And I had
5 already heard parts of it even from Dr. McArthur, when
6 he told me that he was going to have to rewrite that
7 service review in August-September to support not
8 giving me an increase.

9 And he was, or he at least reported to me,
10 that he was not happy about having been forced to do
11 that, about having to do that. So that is how I found
12 out.

13 ADMINISTRATIVE JUDGE YOUNG: But were you,
14 at that point, you had already seen, or you knew that
15 there was already an evaluation, or a performance
16 appraisal, that had been marked with higher marks, and
17 then he said he had to rewrite; did you ever see the
18 first one?

19 THE WITNESS: I did not see the first one.
20 He just was upset about the fact that he was having
21 to, as he put it, and as I recall, he was having to
22 rewrite the service review to support the conclusion
23 that Dan Keuter told him he wanted to come out of this
24 review.

25 And that is what led me to start recording

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1 conversations to find out what the heck was going on
2 behind my back.

3 BY MR. MARQUAND:

4 Q Mr. Fiser, there is nothing in this
5 conversation with Dr. McArthur, that you recorded,
6 where he said he had to rewrite your service review,
7 only that Dan Keuter wanted him to rank you lower with
8 respect to the other direct reports.

9 A I told you that was a conversation I had
10 with Dr. McArthur.

11 Q Why didn't you make a note of that?

12 A Why didn't I make a note of that?

13 Q Yes. You have the sequence of events you
14 said you compiled from your notes. Why didn't you
15 have a note of that prior to the November 16th, '92
16 conversation, why didn't you make an entry for that?

17 A I don't know. I may have had one and just
18 forgot to put it in there. I may have had notes of it
19 in my day planner, or something, and just failed to
20 put it in there.

21 Q Now, you produced your day planner, and we
22 have those day planners, and we've looked, and we
23 can't find it, Mr. Fiser.

24 A That doesn't mean it wasn't there. You
25 thumbed through it very quickly.

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1 Q No, I think we spent two days in your
2 deposition.

3 A Yes, and you had a lot to go through.

4 Q Now, you began tape recording in November
5 of '92, correct?

6 A Correct.

7 Q You didn't begin taping sooner?

8 A Not that I recall, no.

9 Q And according to this sequence of events
10 there are conversations that you taped as late as July
11 14th of 1993, which -- and that one begins on page 78.
12 Do you see that?

13 A Yes, I do.

14 Q Did you make any tape recordings after
15 that?

16 A I don't recall any recordings after that.

17 Q Now, you were concerned about your future
18 employment at TVA, is that right?

19 A I was concerned about the service review
20 that I had received, yes.

21 Q You were concerned about your service
22 review, and you were taping Dr. McArthur and Ben
23 Easley, initially, to try to find out the basis for
24 the service review you got?

25 A That is correct.

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1 Q You weren't tape recording anything in
2 furtherance of pursuit of any safety related concern,
3 were you?

4 A I didn't know where it would lead.

5 Q Well, I mean, there is no discussion in
6 these conversations about any safety concern, is
7 there? In your discussion with Dr. McArthur, in
8 November 16th, '92, that begins on page 6, is there
9 discussion of any safety related concern?

10 A Is there -- let's see.

11 Q You've got the document in front of you,
12 take a look if you need to.

13 A Okay.

14 (Witness reviews document.)

15 BY MR. MARQUAND:

16 Q Have you finished looking?

17 A No, I'm still looking.

18 (Witness reviews document.)

19 BY MR. MARQUAND:

20 Q Well, I've looked from page 6 to 26 of
21 your sequence, which includes the November 16th, 1992
22 conversation, and I don't see it. Do you see anything
23 related to any specific safety related concern that
24 you were seeking to pursue with Dr. McArthur?

25 A There was a point in time when we were

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1 required to enter a bunch of information into TROI,
2 that is --

3 Q We know what TROI is, it is a tracking,
4 reporting of open items.

5 A And I can't remember if that was in here.
6 Now, and again, the problem that I have is if you use
7 the corrective action process --

8 Q I'm not talking about your generalization,
9 and your problems that you think management had with
10 you. I'm talking about this conversation with Dr.
11 McArthur. You weren't discussing with him a specific
12 safety related concern.

13 You were talking about your, how
14 management perceived your performance, and your
15 service review, and whether you got an increase or
16 not, and whether you are going to go back to chemistry
17 at Sequoyah, isn't that right?

18 A That is partially correct, I'm not sure it
19 is completely correct until I look at the document.

20 Q Now, moving on to page 29, there is a
21 November 19, 1992 --

22 MS. EUCHNER: Objection, Your Honor. Mr.
23 Fiser has indicated that he still hasn't had a chance
24 to completely review that conversation. I think he
25 should be entitled to answer Mr. Marquand's question

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1 about whether there was a safety concern, rather than
2 just having Mr. Marquand's statement stand.

3 ADMINISTRATIVE JUDGE YOUNG: Well, I think
4 probably the document speaks for itself.

5 BY MR. MARQUAND:

6 Q If you look at page 29, Mr. Fiser --

7 CHAIRMAN BECHHOEFER: Had you completed
8 your review for the previous question?

9 THE WITNESS: No, sir, I had not.

10 CHAIRMAN BECHHOEFER: I think he should be
11 allowed to.

12 MR. MARQUAND: That is fine.

13 CHAIRMAN BECHHOEFER: Just to complete his
14 answer.

15 MR. MARQUAND: That is fine. I think in
16 that situation, Your Honor, the record will be very
17 clear whether or not he thinks that there is a safety
18 related concern, a particular safety related concern
19 he was trying to discuss with Dr. McArthur.

20 (Witness reviews document.)

21 THE WITNESS: After reviewing the document
22 what I see here is a vain attempt by Dr. McArthur, and
23 myself, to try to ascertain the reasons for the,
24 either the service review, or the fact that he was
25 being asked to demote me.

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1 So I would have to agree with you. At
2 this point we did not, either one of us, I think, have
3 a clue as to what was going on.

4 BY MR. MARQUAND:

5 Q Yesterday, towards the end of the day,
6 counsel asked you whether or not you had considered
7 Wilson McArthur to be your friend and ally at some
8 point in time. And then asked you did you later
9 change your opinion.

10 And you went through a long discussion at
11 which point you concluded that he lied to your face,
12 and telling you one thing, and doing something else
13 behind your back. Do you recall that?

14 A Yes, I do.

15 Q Do you think that secretly tape recording
16 a conversation with your friend is the act of a
17 friend?

18 A Is the act of a friend?

19 A Yes, do you think that your actions in
20 secretly tape recording your conversations with Dr.
21 McArthur were the acts of a friend?

22 A I can tell you that I have been recorded
23 by friends before and it didn't bother me.

24 Q That doesn't answer my question.

25 ADMINISTRATIVE JUDGE YOUNG: It did not

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1 bother you?

2 THE WITNESS: It did not bother me.

3 ADMINISTRATIVE JUDGE YOUNG: They did it
4 without your knowledge and you later found out?

5 THE WITNESS: That is correct. And that
6 didn't bother me because I try never to say anything,
7 whether I was being taped or not, that was not true.
8 So let them tape.

9 BY MR. MARQUAND:

10 Q Let's turn to page 71 of Joint Exhibit 27.

11 A Page what?

12 Q 71. I'm sorry, that is the wrong page.
13 Turn further over to the last one, I believe that this
14 is in July. July 14th, it is page 78.

15 A Okay.

16 Q And you've got a date on there of July
17 14th, 1993?

18 A That is correct.

19 Q What was going, tell the Court what was
20 going on in Dr. McArthur's life at that point in time.

21 A He had returned to work from some surgery,
22 or something.

23 Q Surgery for what?

24 A As I recall it was lung cancer.

25 Q And how long had he been out?

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1 A I don't know.

2 Q A considerable period?

3 A I don't know.

4 Q More than a week?

5 A I don't recall. I'm sure he was, because
6 he was in the hospital.

7 Q Now, in this conversation, the, when this
8 conversation occurred, how long had he been back at
9 work?

10 A I think that was the day he came back, I
11 think it was the day.

12 Q The first day?

13 A I'm not sure.

14 Q The first day he came back. And the
15 conversation begins off with Dr. McArthur asking you
16 how you are doing, and he says: How did they get you
17 in here. Do you see that?

18 A That is correct.

19 Q What is that in reference to, what does
20 that mean? Are you sure he was at work?

21 A Absolutely, without question. We were in
22 his office.

23 Q How did they get you in here, what does
24 that mean?

25 A Because I was in the employee transition

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1 program at that time.

2 Q You were still a TVA employee, right?

3 A That is correct.

4 Q And you had access to TVA buildings and
5 offices?

6 A That is correct.

7 Q So when he says, how do they get you in
8 here, what is that in reference to? I mean, this was
9 in a TVA office, right?

10 A That is correct.

11 Q What is it in reference to?

12 A I don't have a clue. I think in passing
13 it was more said in jest or joking.

14 Q Was Dr. McArthur through with his cancer
15 treatment?

16 A Well, I don't have a clue.

17 Q Well, look further down the page. Didn't
18 you ask him?

19 A I know that he had made mention of the
20 fact that they were going to have to do some surgery
21 or cut on him, and I was shocked to hear that.

22 Q And he, in fact, mentioned that he was
23 going to be getting radiation treatments?

24 A That is correct, later on.

25 Q The first day back at work?

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1 A That is correct.

2 Q And do you think, you were tape recording
3 that conversation?

4 A I was, yes.

5 ADMINISTRATIVE JUDGE YOUNG: Pardon?

6 THE WITNESS: I was, that is correct.

7 BY MR. MARQUAND:

8 Q Was that the act of a friend?

9 A At that time I had some doubts as to
10 whether he really was, I didn't know.

11 Q No, was your act in tape recording him the
12 act of a friend?

13 A Yes, it was, because I still considered
14 him my friend. And I still considered Bill Lagergren
15 my friend, and I tape recorded him too.

16 Q Who?

17 A Bill Lagergren.

18 Q I guess some people have different
19 standards than others, don't they?

20 A Yes, some people --

21 MS. EUCHNER: Your Honor, I'm going to
22 object to that question. That is an irrelevant
23 question here.

24 THE WITNESS: Would you object to having
25 your people follow Ron Grover's kids around?

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1 BY MR. MARQUAND:

2 Q I'm asking the questions, Mr. Fiser.

3 A Sorry.

4 ADMINISTRATIVE JUDGE YOUNG: Let's try to
5 get back on track.

6 BY MR. MARQUAND:

7 Q So you were tape recording at least from
8 November through July, November of '92 through July of
9 '93. WE've just looked at two conversations with Dr.
10 McArthur.

11 A That is correct.

12 Q And during this time frame you were
13 concerned about your continued employment with TVA?

14 A At first I was concerned about the service
15 review that I had received, where Wilson McArthur was
16 forced to write one that he indicated he was not in
17 favor of.

18 Q Now, on page 78, at the beginning of that
19 conversation with Dr. McArthur, on July 14th, the
20 first day back after his cancer surgery. Do you see
21 anything in that conversation which you were tape
22 recording, of Dr. McArthur, dealing with a specific
23 nuclear safety concern?

24 A I will have to look at it again.

25 Q Please do.

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1 (Witness reviews document.)

2 CHAIRMAN BECHHOEFER: Page 78?

3 MR. MARQUAND: Beginning on page 78, and
4 it looks like that conversation continues through page
5 81.

6 (Witness reviews document.)

7 THE WITNESS: I think indirectly yes, I
8 do.

9 BY MR. MARQUAND:

10 Q Please enlighten me.

11 A Among other things, as I've already
12 recalled --

13 Q Where?

14 A In entering a bunch of chemistry problems
15 into the TROI, the computerized data base, also in
16 sending a letter to Senator Sasser, where I had
17 discussed some problems at Sequoyah, I had -- let's
18 see, I can't remember at this time.

19 I was in the process, at this time, of
20 drawing up the, my submittal to the Department of
21 Labor and contacting attorneys. And I think that when
22 I sent that information --

23 Q Mr. Fiser, the question was, where in the
24 transcript of this conversation, were you raising a
25 specific nuclear safety concern?

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1 A I said indirectly.

2 Q Okay, show me indirectly where.

3 A Where Mr. Joe Bynum --

4 Q Which page?

5 A Right here on page 18, when I asked Wilson
6 McArthur, let's see, hang on one second.

7 (Witness reviews document.)

8 THE WITNESS: You know, you make mention
9 of the fact that this was --

10 BY MR. MARQUAND:

11 Q Can you answer the question?

12 A I am answering the question, I told you it
13 was indirect.

14 Q Where on page 78?

15 A You make mention of the fact that Dr.
16 McArthur, this was his first day back at work --

17 Q Can you answer the question, then you can
18 explain your answer. Where on page 78 does it refer
19 to nuclear safety concern that you were pursuing?

20 A It does not, I said it was indirect, and
21 I'm trying to explain that, if you will give me a
22 chance.

23 Q Can you show us where the language is that
24 indirectly refers to it? And then you can explain
25 your answer.

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1 A Where it says that Dr. McArthur talked to
2 Mr. Joe Bynum, and that subsequently led to the denial
3 of my being able to take my job back at Sequoyah. And
4 the reason is why.

5 Q Is your taking your job back at Sequoyah
6 a pursuit of a nuclear safety concern?

7 A If indeed it is because I raised issues
8 with a U.S. Congressman, yes, I think it is.

9 Q All right. You are talking about a letter
10 sent to Senator James Sasser, written by yourself,
11 Bill Jocher, and Dr. Ralph Matthews?

12 A Yes. And I'm also talking about all the
13 entries that I made into --

14 Q Let's just deal with --

15 A -- TROI.

16 Q -- one at a time. You mentioned the
17 letter to Sasser, and I'm just trying to confirm what
18 that letter to Sasser is.

19 Is that what you are talking about? You
20 said you sent a letter to a congressman.

21 A That is the letter I'm talking about. I
22 don't recall the exact date, it would be either --

23 Q If I told you the letter was dated
24 September 9, 199, excuse me, August 16, 1993, would
25 that refresh your recollection as to the date of the

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1 letter?

2 A Yes, and that is what --

3 ADMINISTRATIVE JUDGE YOUNG: Hold on one
4 second.

5 (Interruption.)

6 BY MR. MARQUAND:

7 Q Mr. Fiser, if I told you that the date of
8 the letter was dated August 16th, 1993, would that
9 refresh your recollection?

10 A Yes, it would, that is what I was looking
11 for.

12 Q And the letter then was sent some two
13 months after this conversation with Dr. McArthur?

14 A That is correct, even though there had
15 been verbal discussions of that letter, of the
16 contents of that letter before. Plus the fact that I
17 had entered over 100 items into TROI.

18 And I think using the corrective action
19 process, and documenting problems at Sequoyah is what
20 gets you into trouble with upper management. And I
21 would relate that --

22 Q That is not what you said in your
23 conversation with Dr. McArthur, what you were
24 concerned about --

25 A I told you indirectly it was safety

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1 related. And I believe that that poisoned the well,
2 so to speak, by using the corrective action process.
3 So indirectly, yes, I think it is a safety related
4 issue, although nobody would come out and say that.

5 Q Now, in this conversation with Dr.
6 McArthur, about two thirds of the way down on page 78,
7 you talk about a call from Charles. You are talking
8 about Charles Kent there, right?

9 A That is correct.

10 Q Let's go back to page 73. And at page 73
11 is a reference to a conversation on May 5, 1993 with
12 Charles Kent, correct?

13 A That is correct.

14 Q And at that point in time you were calling
15 him to enquire about the possibility of a position
16 working for him, is that right?

17 A That is correct.

18 Q Now, to make it clear, it says, he is the
19 chemistry RADCON manager at Sequoyah?

20 A That is correct.

21 Q Until the spring of 1993 he had been the
22 radiological control manager at Sequoyah, right?

23 A That is correct.

24 Q And chemistry reported to operations?

25 A That is correct.

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1 Q And at some time in the spring chemistry
2 was reorganized and was placed under Charles Kent, who
3 became the radiological control and chemistry manager
4 at Sequoyah, right?

5 A That is correct.

6 Q And in May of '93 you had already received
7 a surplus notice, and you were in the employee
8 transition program?

9 A That is correct.

10 Q All right. So you were looking for a job,
11 and you called Charles Kent. Was there a vacant
12 position posted anywhere that prompted you to call him
13 about that?

14 A I do not recall if there was or not. I do
15 recall having discussions with management of the ETP
16 program, Mr. Mannis and Mr. Brock, and it was their
17 opinion that since, indeed, my job -- this was based
18 on a letter we received from a Mr. Eytchison, and I
19 think --

20 Q You are getting ahead --

21 A -- of Mr. Joe Bynum.

22 Q You are getting ahead of us
23 chronologically. I'm talking about May 5. May 5, all
24 I ask you was the reason that prompted you to call was
25 that there was a vacant position posted, or not?

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1 A I can't recall.

2 Q Then you made another attempt to call
3 Charles Kent on May 7th, is that right? It refers to
4 the --

5 CHAIRMAN BECHHOEFER: Does 1452 refer to
6 Mr. Kent?

7 MR. MARQUAND: Yes.

8 BY MR. MARQUAND:

9 Q Where it says: Asking to speak to him.
10 That refers to Charles Kent too, doesn't it?

11 A That does. And the 1452 is the time of
12 day.

13 Q But the pronoun him refers to Charles
14 Kent?

15 A Yes, that is correct.

16 Q And then there is an entry for May 10th
17 where it says Charles Kent called you, correct?

18 A Yes.

19 Q All right. The May 5, the May 7th, and
20 the May 10th entries are not transcriptions of any
21 tape recordings you made, correct?

22 A That is correct.

23 Q And did you tape record this May 10, 1993
24 conversation? It doesn't appear so, does it?

25 A No, I don't recall.

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1 Q Either you tape recorded it and you didn't
2 transcribe it, or you didn't tape it.

3 A I don't think I taped that conversation at
4 all.

5 Q You, in addition to face to face
6 conversations, you were also tape recording telephonic
7 conversations?

8 A At times, yes.

9 Q And this was a time when you were calling
10 Charles Kent, and you were interested in pursuing a
11 job in the organization which you had been surplused
12 out of, out of the chemistry organization?

13 A Well, I was -- let's see, I was in the
14 corporate organization when I was surplused.

15 Q Doesn't the surplus notice say you have
16 been surplused out of the Sequoyah chemistry manager's
17 job?

18 A It does.

19 Q You had been surplused out of the Sequoyah
20 chemistry manager job, and you are pursuing a job at
21 Sequoyah chemistry, correct?

22 A That is correct.

23 Q But you say you didn't tape record that
24 conversation?

25 A That is correct.

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1 Q Now, the May 10th conversation, you assert
2 here that Charles Kent called you and said that the
3 organization had been standardized, and that there was
4 a RADCON and chemistry manager job. That is him,
5 right?

6 He is the RADCON and chemistry manager,
7 right?

8 A Yes.

9 Q And then he says: He further said he was
10 recruiting for the technical support manager job. Do
11 you see that?

12 A That is correct.

13 Q Now, the technical support manager would
14 be one notch below the chemistry manager, right, in
15 the organizational chart?

16 A I think that is correct.

17 Q All right. And then do you see the
18 statement: He further stated that Rob Beecken was not
19 of the opinion that I was not aggressive enough. Do
20 you see that?

21 A That is correct.

22 Q Double negative.

23 A Let's see.

24 Q The last sentence in the entry for May 10,
25 1993, on page --

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1 A That is correct.

2 Q In other words, he was -- he had checked
3 with Rob Beecken, because supposedly you had been
4 criticized for not being aggressive enough?

5 A That is correct.

6 Q And Rob Beecken didn't have that opinion?

7 A That is what he told me, yes.

8 Q All right. Are you sure of that?

9 A Yes, I am. I'm sure that was Charles'
10 opinion.

11 Q Did Charles tell you he had checked with
12 Beecken, and Beecken did not have that opinion?

13 A Well, he didn't come out in those exact
14 words, but that is certainly what he was trying to
15 communicate to me.

16 ADMINISTRATIVE JUDGE YOUNG: Let me
17 understand. The May 10th entry says Rob Beecken was
18 not of the opinion -- oh, Kent says that Rob Beecken
19 was not of the opinion that you were not aggressive
20 enough?

21 THE WITNESS: That is correct, Your Honor.

22 BY MR. MARQUAND:

23 Q And to make it clear, this double
24 negative, you had heard criticisms that you were not
25 aggressive enough?

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1 A Yes, that was after the December
2 conversation I had with, directly with Mr. Beecken.

3 Q So you had heard those criticisms. And
4 here Kent is saying, I checked with Beecken and no, he
5 doesn't have that opinion?

6 A That is what he expressed to me, yes.

7 Q And you are certain that that is correct?

8 A I am certain that that is his opinion of
9 his conversations, or whatever, with Mr. Beecken.

10 Q Okay. And did you make any -- you didn't
11 tape record this, so we don't have a tape recording of
12 it?

13 A That is correct.

14 Q Let me show you TVA exhibit 123. Mr.
15 Fiser, I've handed you TVA exhibit 123. I will
16 represent to you that this was an exhibit at your
17 deposition, and it was a copy of a page from your
18 Franklin planner for May 10th, 1993. Is that correct?

19 A That is correct.

20 Q If you will look at paragraph 2 on this
21 entry, do you see where it says: Charles Kent, colon?

22 A Yes.

23 Q Do you see where it says: Standardize the
24 organization, and it is approved?

25 A Yes.

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1 Q Do you see where it says, it includes a
2 RADCON chemistry manager job. He is recruiting the
3 tech support manager. Do you see that?

4 A That is correct.

5 Q Then do you see where it says: Rob
6 Beecken, he did not have the opinion that I was, and
7 then there is a word not, inserted --

8 A That is correct.

9 Q -- aggressive enough. Do you see that?

10 A That is correct.

11 Q And doesn't it appear to you that the word
12 not is written in a finer line of either pen or pencil
13 than the rest of the words, and that it has been
14 inserted?

15 A It has been inserted. I don't know if it
16 was pen or pencil.

17 Q But it does appear that it is also written
18 in a finer line, suggesting that it might have even
19 been written in a different ink, or with a different
20 instrument?

21 A No, that is incorrect, I would not say
22 that at all.

23 Q You do not agree that the line, the
24 thickness of the line, and the strength of the line
25 for the word not is different than the rest of the

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1 words on that page?

2 A No, I would not. Look at the word he, it
3 is not as strong as the word aggressive.

4 Q And you agree the word not was inserted?

5 A I do agree that the word not was inserted.

6 MR. MARQUAND: Your Honors, I tender TVA
7 exhibit 123.

8 MS. EUCHNER: No objection, Your Honors.

9 CHAIRMAN BECHHOEFER: Without objection
10 TVA 123 will be admitted.

11 (The document referred to,
12 having been previously marked
13 for identification as TVA
14 Exhibit No. 123 was received in
15 evidence.)

16 BY MR. MARQUAND:

17 Q So you wrote down here, according to you,
18 that Beecken didn't have the opinion that you were not
19 aggressive enough?

20 A That is correct.

21 Q All right. Did that not come as a
22 surprise to you?

23 A Yes, it did.

24 Q In fact when we look at Joint Exhibit 27
25 you had -- yesterday you told us that this came as a

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1 shock to you when you heard that management was -- it
2 comes as a shock to you now when you hear that
3 management was dissatisfied with your performance at
4 Sequoyah, right?

5 A Repeat that question?

6 Q Well, I asked you yesterday, in 1995, when
7 you read Pat Lydon's statement, where he said that you
8 were not effective, that the chemistry program at
9 Sequoyah was inadequate, you didn't agree with that,
10 and that was a surprise to you?

11 A As a matter of fact I believe his words
12 were completely different from that. It said that
13 Bynum was of the opinion that I was not competent.

14 Q And so in 1995, when you saw the statement
15 by Lydon where it said that Bynum and Beecken wanted
16 Lydon to fire you because you were not competent, that
17 was a surprise to you?

18 A Absolutely, I never heard that before in
19 my life. So you see, you have interchanged words
20 here, and tried to get me to say something that was
21 not true.

22 Q When Lydon described, when you read the
23 fact where it says: Lydon described the chemistry
24 program as "unbelievably bad", that was a surprise to
25 you?

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1 A No. What we had discussed was -- I don't
2 think, since he had only been there a few weeks, that
3 he had a good grasp. This is the same man, as you
4 pointed out, that was calling chemistry traffic
5 control, chemistry upgrade.

6 He did not understand --

7 Q You are not --

8 A -- the terms --

9 Q You are digressing.

10 A -- and the terminology. How can you
11 expect him to understand what is meant by the
12 chemistry program, if he doesn't --

13 Q This is --

14 A -- even understand things that are outside
15 the chemistry program?

16 Q You are assuming he doesn't understand
17 that. This is somebody else's --

18 A By his own words --

19 Q -- this is somebody else's notes of that
20 conversation.

21 A So we can't trust those, I see.

22 ADMINISTRATIVE JUDGE YOUNG: Let's try to
23 get to questions, answers.

24 BY MR. MARQUAND:

25 Q When you read Mr. Lydon's statement, in

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1 1995, that you were taken out in order to allow Jocher
2 to see if he could fix these longstanding problems,
3 that was a surprise to you?

4 A I think I had already heard that from Dr.
5 McArthur in the appraisal that he was forced to write.
6 So no, I can't say that was a surprise.

7 Q When we went through your service reviews
8 yesterday, and we asked you whether or not you agreed
9 or not with whether or not you were effective at
10 Sequoyah, that was a surprise, you didn't agree with
11 those?

12 A In 1989, the one by Mr. Steve Smith?

13 Q Or 1990, or even now?

14 A No, no, no. That was the one in 1989 by
15 Mr. Steve Smith.

16 Q All right. When you were in --

17 A And I think I pretty clearly delineated,
18 for you, the reasons I was in disagreement with what
19 Mr. Smith had said in that service review, yes.

20 Q When you were in the downtown corporate
21 chemistry organization did anybody ever tell you that
22 you were not aggressive enough as Sequoyah chemistry
23 manager?

24 A As I recall in my discussions with Dr.
25 McArthur in November of '92, his statement was, as he

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1 was grabbing at straws to try to figure out how to
2 explain why he was doing the things he was doing, he
3 made mention of the fact that the chemistry problems
4 at Sequoyah were being blamed on me. That is what I
5 recall.

6 Q But yesterday when I asked you about that
7 you said, well, that wasn't first hand, so you didn't
8 accept that, that you were the responsible party.

9 A I think we would have to look at that
10 testimony.

11 ADMINISTRATIVE JUDGE YOUNG: We would have
12 to what?

13 THE WITNESS: We would have to look at
14 that testimony because --

15 BY MR. MARQUAND:

16 Q Well, let me ask --

17 A -- I think that you are, once again, being
18 misleading in your statement.

19 Q Let me ask you this, without referring to
20 your testimony. When you talked to Dr. McArthur and
21 he told you that you were being blamed for the
22 chemistry problems at Sequoyah --

23 A He did make that statement, yes.

24 Q -- did you accept the fact that Sequoyah
25 management had the perception that you were not an

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1 effective manager?

2 A Not at that time, no, I didn't.

3 Q So even though he told you that, you did
4 not accept it?

5 A As a matter of fact that is why I set up
6 the meeting with Mr. Rob Beecken.

7 Q You had a meeting with Rob Beecken, he was
8 the plant manager at Sequoyah, right?

9 A That is correct.

10 Q And Mr. Beecken told you, among other
11 things, that chemistry was broken, and that he wanted
12 it fixed, correct?

13 A Among other things, yes.

14 Q And he told you that as far as he was
15 concerned the question is, that the issue was not did
16 you find it out, and it wasn't good enough for you to
17 find something out after the fact, he wanted you to
18 have it fixed, and not to have chemistry be an issue?

19 A As I recall that was a part of the
20 conversation, yes.

21 Q And then he told you that the program was
22 less than fully effective for a long time while you
23 were there?

24 A I don't think if those words were used in
25 exactly that context, but we did have discussions

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1 regarding that.

2 Q He told you, with respect to the chemistry
3 manager position, he told you he wanted somebody who
4 was very sharp in chemistry, and a guy who is very
5 effective?

6 A At times those conversations did come up.
7 But I think when he was talking about somebody who was
8 sharp in chemistry he was referring to the
9 technicians, because he wanted somebody to come in and
10 to be able to evaluate them, and walk away and say,
11 you know, I won't use his exact words, but he said,
12 boy these guys are sharp.

13 Q But he also told you he wanted a manager
14 who was very effective, and is going to hold his
15 people to standards? In other words hold those people
16 accountable?

17 A Well, can you just refer to the statement,
18 and we will look at --

19 Q Look at page 54.

20 A Okay.

21 Q There is, in the middle of the page, some
22 statements by Mr. Beecken, in the last paragraph, in
23 the middle of the page, statements by Mr. Beecken.

24 He says: Well, yes, I'm upset with you.
25 I said, okay if I bring Gary back, the same old

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1 routine. I guess I want to get somebody, in my mind,
2 very, very sharp in chemistry, a guy that is real
3 effective and is going to hold his people to
4 standards.

5 He is talking about a chemistry manager
6 there, isn't he? And then if he brings you back he is
7 going to get the same old routine?

8 A That is what he indicated at this time,
9 yes.

10 Q All right. And didn't he also tell you
11 that as far as he was concerned chemistry was broken,
12 things weren't being fixed, and he wanted to get it
13 fixed. And then he told you, how am I going to get it
14 fixed?

15 And then he made the rhetorical statement,
16 make the same guy that was here when I said it was
17 weak, broken, and in trouble, get by and let him get
18 back?

19 A Yes, until I reminded him that when I was
20 there we had no INPO findings and no concerns. And
21 then he makes this statement, on page 58, but I want
22 to make sure we get an objective viewpoint, and I'm
23 not getting it.

24 You know, I'm getting older, and I
25 couldn't pick that out. You know this is, I'm sorry,

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1 but he says, this is dicked-up, that is dicked up. So
2 I want to make sure that I'm objective and fully
3 forthright, and I will make the right choice, I have
4 to make the right choice. This is all I want to do,
5 is to make the right, blank, choice.

6 I want chemistry, I want a strong, solid,
7 fundamental chemistry program. I don't want all the
8 bells and whistles, I don't need any adjunct
9 professors. This is some stuff that --

10 What he had told me there, essentially, he
11 was going to go back and talk to Wilson McArthur and
12 see if, as a matter of fact I think he makes mention
13 of the fact, see if he is just being crass, or just
14 being unobjective, or just making a decision based
15 upon anger.

16 Because I truly do not think that he had
17 made the connection that when I was there we did not
18 have findings and concerns. I don't think he had made
19 the connection. I had been gone, at this point,
20 almost two years. That had not crossed his mind.

21 And so he was second-guessing himself as
22 to whether he was acting rationally or not.

23 Q He said --

24 ADMINISTRATIVE JUDGE YOUNG: Could you
25 point out, did you point out to him that the year you

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1 had been there, there were no findings, and that the
2 things he was concerned about had occurred when you
3 were not there?

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

5 ADMINISTRATIVE JUDGE YOUNG: Is that in
6 there?

7 THE WITNESS: Yes, Your Honor, it is.

8 ADMINISTRATIVE JUDGE YOUNG: Can you tell
9 me where?

10 THE WITNESS: Yes, I can, I will just have
11 to look at this conversation.

12 (Witness reviews document.)

13 THE WITNESS: If you will look, even on
14 page 50, right at the beginning of our conversation --

15 ADMINISTRATIVE JUDGE YOUNG: Page 50?

16 THE WITNESS: Yes, Your Honor. Basically
17 he asked me what I'm doing there. I had arranged this
18 meeting at six o'clock in the morning, after working
19 out there until, like, two o'clock in the morning, on
20 a problem, went home.

21 The only time he would meet with me was at
22 that time, that is the only time I could get him. So
23 I went back out at six, or thereabouts.

24 And he says, and I just asked him, I sat
25 down in his office and said, what is the matter? And

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1 he says, what, what do you want to talk about? I
2 said, what is the matter, I just wanted to find out
3 what is going on. Obviously I feel that you are upset
4 with me for something.

5 I wanted a perfect INPO evaluation, that
6 is how come. And he goes on. And then the next
7 statement is, let me say something about that Rob. I
8 honestly believe that if I had been here you may have
9 had one finding, not three. I may have been able to
10 get you out of the equipment problem again, but I
11 can't state that unequivocally, because we had an
12 excursion the first day they were here, as I
13 understood.

14 And we went into action level 2, and DO
15 because somebody jerked some bags off the, there were
16 some valves that they had -- and so I had made mention
17 of the fact that I was not even there.

18 And then later on, let me find it.

19 (Witness reviews document.)

20 BY MR. MARQUAND:

21 Q Look at page 57, about halfway down, isn't
22 that your reference to the fact that you didn't think
23 that INPO was making findings when you were there, Mr.
24 Fiser?

25 A Yes, the six findings were in reference to

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1 that evaluation I had with Mr. Steve Smith, when I
2 first came in there, that he held me accountable for,
3 even though the data had already been collated and
4 sent to INPO.

5 No, that is not it. Let me look back
6 here.

7 Q Well, didn't you say we fixed it, we
8 haven't had a finding since, isn't that what you are
9 referring to?

10 A Well, that is part of it, but what Judge
11 Young has asked is, did I point out that I had been
12 out of the program for almost two years. And I did
13 that, and I've got to find that reference.

14 (Witness reviews document.)

15 THE WITNESS: If you will look at page 52,
16 Judge Young, about three-quarters of the way down the
17 page you will see an entry for Mr. Beecken. And that
18 paragraph before that it says:

19 I say, I make this statement: Now, you've
20 got to also understand that I've been gone for 18
21 months. I haven't been in chemistry, my gosh, I'm in
22 trouble for something that happened in the past 18
23 months, and I haven't even been here.

24 ADMINISTRATIVE JUDGE YOUNG: Thanks.
25

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1 BY MR. MARQUAND:

2 Q You don't disagree that Mr. Beecken was
3 telling you that he thought you had been ineffective,
4 is that right?

5 A Nor do I disagree with the fact that he
6 was second-guessing himself, and going to check with
7 the --

8 Q He said he was going to be fair to you,
9 and he was going to get some other data?

10 A That is correct.

11 Q Some other inputs.

12 A That is correct.

13 Q And at any point in time did he ever come
14 back and say, well Gary, my perception was wrong, and
15 I would like to welcome you back, and have you in
16 Sequoyah chemistry?

17 A I think that is what he was telling
18 Charles.

19 Q Did he ever come to you and offer you a
20 job in Sequoyah chemistry?

21 A That I recall he never spoke to me again.

22 Q Now, he is the plant manager. You also
23 talked, the plant manager reports to the site vice
24 president, correct?

25 A That is correct.

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1 Q The site vice president is the highest
2 ranking manager on-site at Sequoyah Nuclear Plant?

3 A That is correct.

4 Q And did the site vice president also not
5 tell you that you weren't effective, because you
6 weren't aggressive enough?

7 A Well, I think that is only a partial
8 representation of the truth.

9 Q Did he tell you that, or not?

10 A At one time, and then he backed off and he
11 said -- well, we can look at his statements, and I
12 think I can --

13 Q Can you answer the question? Didn't he
14 tell you that you were not effective, and his
15 assessment was that you were not aggressive enough?

16 A And at the same time he said, you can't
17 carry that too far, because as I recall, you tick
18 people off, and then you can't get anything done,
19 either.

20 Q He said you can't be too aggressive, but
21 in your case you were not effective, and he said you
22 were not aggressive enough?

23 A Yes. Again, you are only telling half the
24 story. But, yes, I have to agree with that.

25 Q So when you made this entry into your

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1 planner notes, when you made the entry in your planner
2 notes, which is TVA exhibit 123, and you heard Kent
3 tell you that Beecken said you didn't have -- he did
4 not have the opinion that you were not aggressive
5 enough.

6 Did that not come as a surprise to you
7 after --

8 A No.

9 Q -- you had heard this conversation, told
10 to you by your face by both Beecken and the site vice
11 president, that they didn't think you were effective
12 because you weren't aggressive enough?

13 A Again, you have only told half the truth.
14 But, yes, it was a surprise to me, because I had never
15 heard from him again, in any official capacity after
16 that December the 9th meeting.

17 Q That was 180 degrees from what they had
18 told you in November and December of 1992.

19 A Which was 180 degrees from what they had
20 told me at the stairwell. So, yes, the story kept
21 changing.

22 Q We know, at least you claim that you tape
23 recorded, and you claim that you transcribed it. And
24 we know, at least based on your transcription, that
25 they both told you that you weren't effective because

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1 you weren't aggressive enough.

2 A Partially that is true, yes.

3 Q And then we have your Franklin planner
4 note where you wrote down, initially you wrote down:
5 He did not have the opinion that I was aggressive
6 enough. And then you went back and added in the word
7 not?

8 A That is correct.

9 Q And changed it, at that point you changed
10 the meaning, so that it was exactly opposite of the
11 tape recordings that you had made of both of those
12 gentlemen?

13 A The way you have characterized that is
14 incorrect. I was taking notes as we were talking.
15 And sometimes when you are trying to take notes, you
16 are trying to talk, and you are trying to listen, I
17 would leave it out.

18 And rather than just scratch it out, or go
19 find a new day planner and make it look like something
20 it was not, I purposefully put the not in above, so
21 anyone could look at it and say, yes, that was added.

22 But you are incorrect in saying I went
23 back and changed it so it would be 180 degrees out.
24 You have mischaracterized that again.

25 Q I wasn't implying any intent on your part.

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1 I'm saying the change you made is 180 degrees
2 different from what they told you in November and
3 December.

4 A That is correct.

5 Q Now, you claimed later on, you've got this
6 conversation in July 6, 1993, and I believe your
7 testimony yesterday also was that Kent offered you a
8 job as the chemistry manager at Sequoyah on July 6th,
9 1993?

10 A That is correct.

11 Q But you didn't tape record that supposed
12 offer he made to you?

13 A It was not a supposed offer, I did not
14 tape the offer he made me.

15 ADMINISTRATIVE JUDGE YOUNG: You did not
16 what?

17 THE WITNESS: I did not tape record the
18 offer. It was an actual verbal offer.

19 BY MR. MARQUAND:

20 Q You didn't tape record that conversation?

21 A No.

22 Q And that supposedly happened on July 6th,
23 1993?

24 A That is correct.

25 Q So you didn't tape record Mr. Kent making

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1 that supposed offer to you, and you didn't tape record
2 the conversation where Powers approved him making that
3 offer to you?

4 A That is correct.

5 Q But you've got an entry in it, beginning
6 at page 74 of your sequence of events.

7 A Beginning on page 74?

8 (Witness reviews document.)

9 THE WITNESS: That is correct.

10 BY MR. MARQUAND:

11 Q Is there any explanation for why you don't
12 have any notes of that in your Franklin planner, as
13 well?

14 A I was -- this was an interview. I don't
15 think it is proper to sit there, during an interview,
16 and copy down notes in a planner.

17 Q No, but you could have made notes
18 afterwards, and you didn't do that, did you?

19 A Not that I recall.

20 ADMINISTRATIVE JUDGE YOUNG: Did you make
21 any other notes in that general time period, late
22 June, July?

23 THE WITNESS: Your Honor, I don't recall.
24 This, obviously, by me being called out there, and
25 being interviewed, being offered a job and the site VP

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1 confirming it, this was so indelibly etched in my
2 mind, I didn't feel like I had to take a note.

3 Plus I thought I would be at work, I
4 think, a couple of days after this.

5 ADMINISTRATIVE JUDGE YOUNG: Well, I was
6 just asking if you made notes on other days in July,
7 or in late --

8 THE WITNESS: I'm certain I did.

9 CHAIRMAN BECHHOEFER: Do you have any of
10 those?

11 THE WITNESS: Not with me, no, Your Honor.

12 BY MR. MARQUAND:

13 Q But you produced them at your deposition?

14 A Yes, I produced everything you asked for.

15 CHAIRMAN BECHHOEFER: Would this be a good
16 time to take a short break?

17 MR. MARQUAND: That is fine, Your Honor.

18 (Whereupon, the above-entitled matter
19 went off the record at 10:36 a.m. and
20 went back on the record at 10:52 a.m.)

21 CHAIRMAN BECHHOEFER: Back on the record.
22 Before Mr. Marquand resumes, Mr. Fiser, I just have a
23 clarifying question.

24 THE WITNESS: Yes, Your Honor.

25 CHAIRMAN BECHHOEFER: And it is suggested,

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1 I believe, on pages 50 and 51, and that is -- does --
2 when you service INPO and come back with one or more,
3 what are those, adverse findings? Maybe I'm
4 mischaracterizing them.

5 Do you, or does the person who prepares
6 the material to go to, to be given to INPO, or shown
7 to INPO, do anything to change the results that come
8 back?

9 I mean, are there efforts to either cover
10 up, or minimize problems that may, in fact, exist?

11 THE WITNESS: Can we look at --

12 CHAIRMAN BECHHOEFER: And it comes from
13 pages, I think, 50 and 51, maybe elsewhere.

14 THE WITNESS: Yes.

15 CHAIRMAN BECHHOEFER: But there are --

16 (Pause.)

17 THE WITNESS: Your Honor, can you give me
18 a specific paragraph that --

19 CHAIRMAN BECHHOEFER: Well, I was
20 referring to page 50, for instance. I honestly
21 believe that if I had been here you may have had one
22 finding, not three.

23 THE WITNESS: That is correct.

24 CHAIRMAN BECHHOEFER: So what do you do to
25 produce that kind of a result; do you massage the

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1 data, so to speak, or --

2 THE WITNESS: What I was referring to
3 here, and I would have to go back and look at the
4 exact --

5 CHAIRMAN BECHHOEFER: There was another
6 section or two later on that implied that you could
7 have done the INPO work better than your replacement.

8 THE WITNESS: Had I been there, the year
9 and a half, or however long it had been in between the
10 INPO evaluations, I think I would have had the
11 personnel in better shape to respond to INPO
12 questions. I had a better presentation of
13 the chemistry program, and how it was functioning. I
14 did a better job reviewing and documenting adverse
15 trends in data. I did a better job in preparing my
16 personnel for questions that INPO might have.

17 For example, usually in that day INPO
18 would call, take a look at the roster of people that
19 were working in the laboratory, technicians. And they
20 would choose four, five, six, to call aside and to
21 just get in a room, alone, and just ask them
22 questions, to check their knowledge level, to see if
23 they knew what they were doing, to see if they
24 understood the test they were performing, why they
25 were performing the various tests.

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1 And that is a very stressful environment
2 for a technician to be in. And so in preparation for
3 INPO coming in I would have sessions, much as an
4 attorney would do with a client, to prepare them for
5 being questioning on a witness stand.

6 I would prepare the technicians to be
7 interviewed by INPO and just ask them, I mean, we
8 don't know what INPO is going to ask, they might ask
9 define PH, what is the negative log of the hydronium
10 ion concentration. I don't know if they are going to
11 ask that question.

12 But what I would try to do was get them
13 comfortable being in a setting where somebody is just
14 going to walk in, call them aside, and start asking
15 what tests are you running, what does it mean when you
16 add monitrol to a boran titration, what does that do,
17 how does that help you in performing the analysis?

18 To just get them accustomed to somebody
19 asking questions, when that may not be the normal
20 routine. And so I would have prepared them, I think,
21 better to answer those questions.

22 And you had this training finding in here,
23 where INPO comes in, certainly when I had them, there
24 were no training issues, and then 18 months later, or
25 however long it had been, there is a training issue.

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1 And Ron Beecken looked at me and he said,
2 my gosh, these people did not even know that boran, in
3 a PWR, decreases across the cycle, to maintain one
4 hundred percent power. He said, Gary, that is not
5 something you forget. And he is exactly right.

6 That is like asking a truck driver if you
7 turn the wheel to the right, which way does the truck
8 go? And he can't answer it, because these people,
9 they are the ones that run the test every day.

10 And so not knowing how the question was
11 asked, not knowing if he was talking to a secondary
12 chemist when he should have been talking to a primary
13 chemist, not knowing any of the information, I could
14 not answer the question.

15 But I know had I been there the people
16 would have been better prepared for the INPO
17 evaluation, because I had done it so many years. And
18 I just wanted to make them comfortable, and to be able
19 to answer the questions in a relaxed environment.

20 Even to the point where if they ask a
21 question you don't know, you look at the INPO
22 evaluator and you say, you know, I don't know the
23 answer to that, I'm going to find it, and get back
24 with you. I don't know if they did that.

25 That helps in INPO's perspective of an

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1 employee. So all I'm saying is, I would have been
2 better prepared for the INPO evaluation than these
3 guys were. And they would have, perhaps, had one
4 finding.

5 Because I don't think they would have had
6 the training finding had I been there. I may be
7 wrong, I don't know. But I think they would not have.
8 And one of the other findings, I can't remember which
9 one it was, that data review problem, I believe it
10 was.

11 We generated these trends almost every
12 day, as I've already mentioned. Another thing we
13 would do is, as a staff, that is not the technicians,
14 that is the next level up, we would get together every
15 day, and we would go through the trends.

16 And I would say, why is Iodide 131
17 increasing when Zenon 133 is not? That doesn't make
18 sense to me. And you go and you find out, and you
19 say, operations isolated the RCS demineralizer.

20 Well then what you do is you make a note
21 on that trend that says, this perturbation in data is
22 due to an operational event for maintenance. INPO
23 then looks at the data and says, by gosh, these people
24 generate the data, and they look at the data, and they
25 make sense out of the data, they are on top of it.

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1 See, I don't even know if that was done in
2 my absence. But all I'm saying is, had I been there,
3 you know, he may have had, may have had another
4 perfect INPO evaluation, although I can't state
5 unequivocally.

6 But I think that that would have been the
7 case. That is all I'm trying to communicate, is these
8 guys were not properly prepared, by their management,
9 for the evaluation. Had I been there, they would
10 have.

11 ADMINISTRATIVE JUDGE YOUNG: There is an
12 entry on page 51 where you are talking, right after
13 the interruption, 41-74 --

14 THE WITNESS: Yes, Your Honor.

15 ADMINISTRATIVE JUDGE YOUNG: It says,
16 there is another thing on that training, Rob, that I
17 can't prove, but Bill may have wanted to get training
18 in trouble so he could clean house over there,
19 etcetera, etcetera.

20 THE WITNESS: Yes, Your Honor.

21 ADMINISTRATIVE JUDGE YOUNG: Bill is Bill?

22 THE WITNESS: That is Bill Jocher.

23 ADMINISTRATIVE JUDGE YOUNG: Bill Jocher,
24 okay.

25 Two sort of more general issues that I'm

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1 not real clear on, if you could clarify for me.
2 First, to the extent that you know the types of
3 findings that INPO was making, could you tell me
4 those, and give some context in terms of the gamut of
5 issues that they would look at, and whether it was a
6 standardized list of things, or whether it was pretty
7 much what they chose to ask, or look at, at the time
8 they came in?

9 And then, secondly, there have been
10 various references to Mr. Jocher, and sometimes you
11 joined with him in writing that letter, and then other
12 times he made that statement that maybe Bill was
13 trying to -- I read it as saying that maybe Bill
14 Jocher was trying to make them get a low rating on
15 training, so that would make you look bad, which
16 indicates that there was some hostility between you,
17 or might indicate that.

18 THE WITNESS: There was, in this specific
19 example you have just mentioned, there was a
20 tremendous animosity between Bill Jocher and the
21 training group.

22 ADMINISTRATIVE JUDGE YOUNG: The training
23 group being whom?

24 THE WITNESS: There was an on-site person
25 in charge of doing the training for the chemistry

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1 group. He did not feel like this person or persons,
2 at that time, was qualified.

3 ADMINISTRATIVE JUDGE YOUNG: What I was
4 really getting at was some problem between you and
5 Bill Jocher.

6 THE WITNESS: Oh, there had been --

7 ADMINISTRATIVE JUDGE YOUNG: That is one
8 area. And then the other is just what INPO looks at,
9 and what a general INPO visit consists of.

10 THE WITNESS: INPO has documents that they
11 use to develop their, essentially their audit plan for
12 the site.

13 ADMINISTRATIVE JUDGE YOUNG: Is it a
14 standardized list of things that they look at?

15 THE WITNESS: Yes, it is. That does not
16 mean everything they look at is included in that list.
17 For example, if they get feedback from the industry
18 that they are having problems with a diesel jacket
19 cooling water being out of spec, even though that
20 might not be called out, they would definitely go look
21 at that, or something of that matter.

22 So it is not an exclusive list, but they
23 definitely have their guidelines, they are well
24 published, and every plant has a copy of the INPO
25 documents, and what they look at.

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1 ADMINISTRATIVE JUDGE YOUNG: And then with
2 regard to Bill Jocher, there have been vague
3 references to him not wanting you to go to corporate,
4 and here on page 51 I see this reference, you are
5 suggesting that he may have --

6 THE WITNESS: That is correct.

7 ADMINISTRATIVE JUDGE YOUNG: -- tried to
8 make things so that he could get people out?

9 THE WITNESS: That is correct. At that
10 time, of course, I did not have all the information.
11 I did not, as I recall, I don't even remember who the
12 INPO evaluator was. I don't know what questions were
13 asked, I don't know of whom.

14 So I could only speculate. But I do know
15 that at one time I had suggested that he spend a
16 little time to prepare his RLAs, as I had done in the
17 past --

18 ADMINISTRATIVE JUDGE YOUNG: His?

19 THE WITNESS: Radio technicians.

20 ADMINISTRATIVE JUDGE YOUNG: That you had
21 suggested that to Bill Jocher?

22 THE WITNESS: Yes, I had suggested that.

23 ADMINISTRATIVE JUDGE YOUNG: In what
24 context?

25 THE WITNESS: To Bill Jocher through Sam

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1 Harvey. In my context as corporate chemistry manager.

2 ADMINISTRATIVE JUDGE YOUNG: Okay.

3 THE WITNESS: Just to say, hey, don't
4 forget, we need to make sure the guys are accustomed
5 to being pulled aside and asked questions similar to
6 what INPO would ask.

7 We, again, don't know what they are going
8 to ask, but we know how they conduct the interviews.
9 And he refused to do that, stating, it is fine, they
10 will do fine, I'm not worried about it.

11 And I thought that was a little strange.
12 Well, they did not do well. And I had to sit back and
13 say, why did he not do that? And I was just
14 speculating, because I knew of the problems he had
15 with people who were inside the training organization.

16 And I wondered if he may have been
17 purposefully not preparing them, so that they might
18 not do well, so that he could then clean house and get
19 some people in over there that he wanted.

20 I didn't know, I was just speculating with
21 Rob. But when Rob Beecken told me that an RLA, radio
22 chemistry laboratory analyst, a technician, who runs
23 a boron test at a nuclear power plant, PWR, several
24 times a day, year after year, after year, does not
25 know that across a cycle boron has to go down to keep

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1 the reactor at one hundred percent power, I know
2 something is not right.

3 And I even suggested to Rob, maybe the
4 RLAs were upset, and wanting to make Bill Jocher look
5 bad. I mean, I did not have the information. I just
6 was wondering, I know that if I could go in and get
7 the INPO notes, if I could go in and talk to the
8 person asking the questions, if I could go in and talk
9 to the radio chemistry laboratory analyst, that they
10 questioned, I know I could find the answer to that,
11 and come back and tell him, this is what happened, and
12 this is why you had the training factor.

13 But there is a heck of a lot more going on
14 than meets the surface here, because you don't have to
15 tell a truck driver which way to turn the wheel to get
16 off the road.

17 ADMINISTRATIVE JUDGE YOUNG: Thank you.

18 BY MR. MARQUAND:

19 Q Mr. Fiser, I'm not sure I heard an answer
20 to Judge Young's question. There was some
21 considerable tension at this point in time between you
22 and Bill Jocher, wasn't there?

23 A At this point in time that is incorrect.
24 It had been pretty well resolved.

25 Q In early 1992, when he was your vocal

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1 critic, and you were downtown, and he was going to Dan
2 Keuter, and he was --

3 A I'm sorry, this is in December, after we
4 had made the swap, and the transition, and we had
5 worked a lot of these problems out.

6 Q Did you never hear that Bill Jocher was
7 responsible for going to Dan Keuter and complaining
8 about you being the corporate chemistry manager?

9 A Oh, that was months before.

10 Q So you had that all ironed out too?

11 A Yes, we did.

12 Q Okay. So first he is throwing rocks at
13 you while you are Sequoyah chemistry manager, and he
14 is your critic, and he causes you to be removed from
15 that position.

16 Then he goes to Dan Keuter and he is your
17 critic once again, and he causes you to be removed as
18 corporate chemistry manager, and you later ironed out
19 all your differences, and you guys proceeded to be
20 friends?

21 A That is basically true.

22 Q Okay.

23 A And I have examples, if you would like to
24 go into them.

25 Q Now, earlier, before we took a break, you

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1 had referred to -- once again you referred to this
2 conversation, allegedly on the stairwell, with Rob
3 Beecken and Jack Wilson, in which they told you what
4 a great job you had been doing as the chemistry
5 manager of Sequoyah.

6 Did you make any notes of that
7 conversation?

8 A I don't recall.

9 Q It doesn't appear that you did. I don't
10 see it anywhere.

11 A I really, honestly, I don't think I did.
12 And --

13 Q Did you tape record it?

14 A I did not tape record that. That is why
15 I did go back later and I had tape recorded the
16 conversation where I made mention of it to both these
17 guys, and they acknowledged the gist of that
18 conversation in the stairwell.

19 Q The jest or the gist?

20 A The gist.

21 Q You told us, yesterday, it was a very
22 jocular conversation, they were kidding you about
23 taking an easy job going downtown?

24 A Well, that was part of it, that is
25 correct.

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1 Q Now, with respect to Judge Bechhoefer's
2 question about trying to avoid INPO findings, first of
3 all, INPO comes in what, every 18 months?

4 A Approximately.

5 Q And that is not the only measure of
6 performance of a nuclear plant, is that correct?

7 A That is correct.

8 Q They are only there for a short period of
9 time, and as Judge Young asked you, they only look at
10 a certain list of things, and interview only a few
11 people, they just do a quick and dirty broad overview
12 of the plant?

13 A That is incorrect.

14 Q It is not a quick overview?

15 A That is correct, it is not a quick
16 overview.

17 Q How long are they there?

18 A They are on-site for two weeks, but they
19 are sequestered and reviewing your data and trends for
20 weeks leading up to the INPO evaluation.

21 Q But you agree that there are a lot of
22 other measures of performance of the plant?

23 A That is correct.

24 Q And the management of the plant is there
25 every day?

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1 A That is correct.

2 Q Now, with respect to Judge Bechhoefer's
3 question about attempting to avoid findings by INPO,
4 you said that what you did was you took your
5 technicians aside and gave them mock interviews, that
6 you would come up with a set of questions, and give
7 them the answers, and have them practice those
8 answers, isn't that right?

9 A Well, that is incorrect. Certainly if you
10 ask them a question and they don't have the answer you
11 want to provide that answer, or have training provide
12 the documentation for the answer, so that they can
13 refresh their memory.

14 Q What you said you would do is you would go
15 to the various utilities and find out the questions
16 that INPO was asking?

17 A No, I would not go to the various
18 utilities, but I would get feedback, you know, if
19 there were any particular hot topics.

20 Q You would get feedback from the other
21 utilities about hot topics, then?

22 A From time to time if you could.

23 Q In other words, you would find out the
24 areas that INPO was asking about?

25 A You could not find out all the areas, no,

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1 because you don't know what they are going to ask.

2 Q But you find out what has been asked of
3 other utilities?

4 A Yes, I would find out, some times, some of
5 the questions, some of the areas that were being asked
6 at other utilities.

7 Q So then you came up with a set of
8 questions that you would have the technicians practice
9 answering?

10 A Well, not necessarily, no. What I would
11 want to get them used to was my first line
12 supervisors, or myself, or even the staff, just
13 finding somebody doing work, and then asking questions
14 like, do you understand the importance of this
15 monitor, do you understand why you are on this
16 particular test? Do you understand why you add this
17 particular reagent --

18 Q You answered more than I asked. Would you
19 come up with a set of questions?

20 A No, it was more impromptu than that.

21 Q Well, let me refer you to page 50 of Joint
22 Exhibit 27. Look at the bottom paragraph, the lone
23 bottom paragraph. The fourth line down, do you see
24 where it says, according to -- this is your
25 transcript, you told Rob Beecken, I would come up with

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1 a set of questions, just like they do.

2 Do you see that?

3 A I did that at one time.

4 Q And further down, two more lines, it says:
5 We got some sample questions that INPO was asking. Do
6 you see that?

7 A Yes, I do.

8 Q And then you would -- do you see where it
9 says, we got them used to providing answers and
10 presenting themselves. Well, I did that every time.

11 A Yes, I would get them accustomed to
12 answering questions.

13 Q Now, have you referred to that as pumping
14 up your technicians?

15 A No, Mr. Beecken referred to that as
16 pumping up technicians.

17 Q All right. Now, wasn't he critical of you
18 for doing that, instead of providing them general
19 broad training with a broad foundation?

20 A He was, but he was incorrect in doing so.

21 Q So he criticized you for pumping them up
22 instead of providing training, but he was wrong?

23 A That is right, because we did provide the
24 training.

25 ADMINISTRATIVE JUDGE COLE: In addition to

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1 this --

2 THE WITNESS: Yes, sir, that is correct.

3 ADMINISTRATIVE JUDGE COLE: -- other
4 training?

5 THE WITNESS: That is correct. As a
6 matter of fact there was -- there were very few
7 technicians that had degrees, and I was sending them
8 to get their degrees. I was sending Debbie Bodine to
9 get her degree, I sent Deidra Nida to get her degree.
10 I had sent Wayne, I can't remember his last name, to
11 get his degree, I had sent Johnny Barker, who was in
12 a staff position, to get his chemistry degree.

13 ADMINISTRATIVE JUDGE YOUNG: What
14 chemistry degree, a bachelor's degree?

15 THE WITNESS: That is correct, Your Honor.
16 And so there was a huge deficit, as far as the
17 knowledge level of these technicians, compared to what
18 I was accustomed to at Arkansas Nuclear, where I hired
19 only degreed personnel that had a science related
20 degree, or out of the nuclear Navy program.

21 Here that was not the case, so we started
22 at a tremendous deficit, and I was --

23 BY MR. MARQUAND:

24 Q Now, TVA has a program --

25 A -- to take care of.

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1 Q -- that any individual can go to school,
2 and TVA reimburses them for job related courses?

3 A That is correct, and I was doing that.

4 Q That is what you were sending people to
5 do. Now, at Sequoyah Nuclear Plant, the plant has a
6 training center, doesn't it?

7 A That is correct.

8 Q And there is on-site training specific to
9 the job tasks that the individuals have to do, not
10 just general BS degrees in chemistry, but specific
11 training with respect to the job tasks the employees
12 have to do, correct?

13 A That is basically correct.

14 Q And did anything happen to the training
15 program for chemistry while you were the manager?

16 A While I was the manager I think it is
17 while I was the manager, that it was basically,
18 several of the instructors were RIFd, or they did away
19 with it. We ended up with one instructor who did not
20 have a degree.

21 ADMINISTRATIVE JUDGE YOUNG: You ended up
22 with one instructor who did not have a degree?

23 THE WITNESS: As I recall, Your Honor,
24 that is correct.

25 ADMINISTRATIVE JUDGE YOUNG: And you said

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1 they were RIFd?

2 THE WITNESS: That is correct. The budget
3 for the training center was cut by Mr. Kingsley and
4 Mr. Bynum, as I understood. And these people had to
5 find other jobs. So whereas we had --

6 ADMINISTRATIVE JUDGE YOUNG: Were you in
7 charge, did you make those decisions?

8 THE WITNESS: No, Your Honor, I did not.
9 I was very much opposed to it.

10 ADMINISTRATIVE JUDGE YOUNG: No, I mean,
11 who got RIFd.

12 THE WITNESS: No, that was based on -- I'm
13 not sure if that was based on seniority, or what. I
14 don't recall.

15 ADMINISTRATIVE JUDGE YOUNG: But you are
16 not, you are saying that you were not the person who
17 was in charge of making decisions about the RIF?

18 THE WITNESS: No, Your Honor, I was very
19 much against it.

20 ADMINISTRATIVE JUDGE YOUNG: The question
21 I'm trying to get answered is, when a RIF is done,
22 someone makes a decision about how it is to be done.
23 I know you were against it. Were you the person who
24 made the decisions about how it was to be done, or was
25 that someone else?

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1 THE WITNESS: That would be someone else.

2 ADMINISTRATIVE JUDGE YOUNG: Okay, thank
3 you.

4 BY MR. MARQUAND:

5 Q And while you were the chemistry manager,
6 you discontinued using the laboratory in the training
7 center?

8 A Well, that is basically incorrect. It was
9 turned into a storage room, that is correct.

10 Q While you were the chemistry manager?

11 A I don't know if that was while I was the
12 chemistry manager or not, because if you would recall,
13 Mr. Kingsley put a letter out, that would be in
14 January of 1991, wherein he delineated that the
15 training department at Sequoyah, in chemistry, was
16 going from an instructor based, as I recall, to an in-
17 plant -- I can't remember the exact terminology, we
18 can look at the letter, self-study type program.

19 That letter came out in January, basically
20 120 days later I was gone, I was in outage management,
21 and then I was downtown corporate chemistry. So I
22 don't think that is an accurate representation.

23 Q See, 120 days is four months, right?

24 A That is correct. That is approximately
25 correct, it was three or four months later I was out

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1 of there. So they were in the process of converting
2 over to this self-study type program, which I think
3 obviously was problematic.

4 Q Before we broke, I just want to finish
5 this one topic, we will be ready to go.

6 Before we broke we were talking about the
7 conversations you had with Charles Kent about an
8 attempt to find a job out at the plant, and the fact
9 that you had not made any notes, or tape recorded this
10 supposed offer he made to you.

11 If you would turn to page 75, 76, that is
12 the conversation which Charles Kent tells you that,
13 and you referred to this yesterday, that he had
14 attempted to get some feedback from Wilson McArthur
15 about talking to the right people, about whether or
16 not he could further consider you for the chemistry
17 manager position at Sequoyah, correct?

18 A I think that is correct, yes.

19 Q Now, Mr. Kent worked for the plant manager
20 and the site vice president at Sequoyah, right?

21 A That is correct.

22 Q And the site vice president in return
23 reported to Joe Bynum, who was the vice president of
24 nuclear operations?

25 A I don't know. I know at that time that he

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1 was taking another job, I don't know when he took
2 another job. I don't know if he was even in that --

3 Q When you had been the Sequoyah chemistry
4 manager, Joe Bynum was the vice president over nuclear
5 operations?

6 A That is correct. But at this time I don't
7 think he was. Wasn't there a Mr. Eytchison that was
8 in charge?

9 Q I'm not sure when he came in. But let's
10 refer back to somebody who had knowledge of your
11 experience as a Sequoyah chemistry manager, and that
12 was Joe Bynum, the vice president of nuclear
13 operations, right?

14 A That had knowledge of mine --

15 Q He was in your management chain when you
16 were the Sequoyah chemistry manager?

17 A That is correct.

18 Q And then you went, the corporate chemistry
19 function was managed, was under the management of
20 Wilson McArthur?

21 A That is correct.

22 Q In that capacity he would interface with
23 the plant, and also Sequoyah chemistry, and had a
24 chance to observe your performance, as well as
25 management's perception of your performance?

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1 A He who?

2 Q Wilson McArthur.

3 A Yes.

4 Q And Wilson McArthur in turn reported to
5 Dan Keuter, who was operations support?

6 A Yes.

7 Q And Mr. Keuter also reported to Joe Bynum?

8 A I don't know if that is correct at that
9 time, because as you recall, at some point Mr. Bynum
10 took another job, and I don't remember --

11 Q I'm talking about when you were Sequoyah
12 chemistry manager.

13 A We are talking about when this
14 conversation took place on July --

15 Q I'm talking right now, when the Sequoyah
16 chemistry manager, Wilson McArthur had an opportunity
17 to observe your performance, and also to observe
18 management's perception of your performance?

19 A I would say that is correct.

20 Q And when you were Sequoyah chemistry
21 manager, Wilson McArthur reported to Dan Keuter?

22 A That is correct.

23 Q And at the same time Dan Keuter reported
24 to Joe Bynum?

25 A You know, at some point in time, in the

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1 time I was at Sequoyah, Wilson McArthur reported to a
2 Mr. Barker. So I don't know --

3 Q And his management chain ended up
4 reporting to Joe Bynum, correct?

5 A That is correct, at the time I was the
6 Sequoyah chemistry manager.

7 Q So you were having discussions with Mr.
8 Kent about installing you at Sequoyah as the chemistry
9 manager?

10 A That is correct.

11 Q And that would have been a position that
12 reported ultimately to Joe Bynum?

13 A That is incorrect. I think at that time,
14 I don't think he was any longer in that position. And
15 you can check the record for July the 6th, and find
16 out. I'm not absolutely sure of that.

17 But I think at that time Mr. Bynum was no
18 longer in that position.

19 Q In this earlier conversation, prior to the
20 one referenced on page 76, when you were having a
21 discussion with Charles Kent, and he said he needed to
22 talk to Wilson to approach the right people, the
23 conversation referenced on page 75, on July 6th. Do
24 you see that?

25 A I see that.

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1 Q He determined he needed to talk to Wilson
2 McArthur because you brought up the subject that some
3 people in management might have the perception that
4 your performance at Sequoyah might not make you
5 welcome back there?

6 A No. No, I think either I or Charles, I
7 can't remember which one of us, made the comment that,
8 you know, we need to take a look and make sure you
9 don't have a target on your back, or something, for
10 some reason.

11 And, honestly, I can't remember which one
12 of us made that statement, either Charles or -- this
13 statement that, you know, we need to look and make
14 sure you don't have a target on your back.

15 ADMINISTRATIVE JUDGE YOUNG: You are not
16 sure whether he said that, or you said that?

17 THE WITNESS: That is correct, Your Honor,
18 I can't remember who said it first.

19 ADMINISTRATIVE JUDGE YOUNG: What did you
20 mean by target?

21 THE WITNESS: The only reason that I would
22 have said that would have been to say Charles, I don't
23 want you to do something if it is going to cost you
24 your career. That would be, basically, the only
25 reason I would say that.

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1 It is because he could take these -- he
2 could --

3 ADMINISTRATIVE JUDGE YOUNG: I didn't ask
4 why you said it, I said what did you mean by having a
5 target on your back?

6 THE WITNESS: That he --

7 MR. MARQUAND: I think he is explaining
8 that, Your Honor.

9 THE WITNESS: Obviously somebody, from a
10 very high up level, was directing these people below
11 them to do things they were not in agreement with.
12 Dr. McArthur not giving me an increase, Rob Beecken
13 going from you've done a wonderful job, we love you,
14 go downtown, to I don't want you back.

15 So I felt like, you know, from some place,
16 somebody at a very high level, was calling the shots
17 that people below them were not necessarily in
18 agreement with. And I was concerned, I would have
19 been concerned that if Charles just moved me out
20 there, as he was intending to do, that he might,
21 indeed, put his own career in jeopardy. That is why
22 I would have said it.

23 ADMINISTRATIVE JUDGE YOUNG: Did you have
24 any idea why you would have been a target if you were
25 a target?

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1 THE WITNESS: I was trying to figure it
2 out, I did not know. I assumed it was because I had
3 found problems, documented them, used the corrective
4 action process, and these people, some people do not
5 like to see their problems in writing. That is the
6 only thing I could come up with.

7 But I was trying very desperately to
8 figure out what was going on.

9 BY MR. MARQUAND:

10 Q You assumed that somebody was torpedoing
11 you, as you said, that you had a target on your back
12 because you documented safety concerns, right?

13 A Yes. Or used the corrective action
14 process.

15 Q And you made that assumption despite
16 having been told by the site vice president, and the
17 plant manager, that you were not effective because you
18 were not aggressive enough?

19 A Yes, when those same two people had, just
20 a few months ago --

21 Q It doesn't require an explanation, just
22 yes or no. You made that assumption in the face of
23 being told that by both of those gentlemen?

24 A Yes.

25 Q And then you have seen Mr. Lydon's

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1 statement where he says the chemistry program was
2 terrible, and he didn't think you were competent, and
3 that Beecken and Bynum wanted you fired because you
4 were not competent.

5 And you still made the assumption that it
6 was because you raised and documented safety concerns?

7 A Yes.

8 Q Now, my question to you was, who, was it
9 you, or was it Kent who raised the issue about whether
10 upper management might have a problem with placing you
11 in that job?

12 A As I said, I can't completely recall. It
13 seems to me like it was Charles, but I'm not sure.
14 One of the two of us.

15 Q Do you remember when I took your
16 deposition on December 11th?

17 A Yes.

18 Q Referring to page 117. You don't have it
19 there, I'm just going to read these questions and
20 answers to you, and ask if it refreshes your
21 recollection.

22 You were telling me that Kent told you to
23 be out at the plant. And I said, did you? And you
24 said, no. Question: Why not? In the process of
25 assuming that job Charles Kent talked to what he

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1 stated would be the right people to make sure the
2 transition was going to go well, or smoothly. One of
3 those right people was Wilson McArthur.

4 Question: Do you know why he talked to
5 Wilson? Answer: He did not tell me. Question: Did
6 you ever suggest to him that he should do so? Answer:
7 I expressed to him that I had some concerns about the
8 fact that it appeared that I had a target on my back,
9 that I did not understand, and that I did not want him
10 to do something that would get him into trouble, so I
11 wouldn't deny that I did that.

12 I don't specifically explicitly recall it,
13 but that would, if I did, it should be a part of the
14 record.

15 A Again, that does not answer --

16 Q Does that refresh your recollection that
17 you told him you had concerns about having a target on
18 your back, not understanding it, not wanting to get
19 him in trouble, and suggesting that maybe he should
20 talk to some people to make sure that it was all right
21 to put you in that job?

22 A Yes.

23 Q All right. And wouldn't it make sense
24 that he talked to the people in his upper management
25 chain, including people who had been in his upper

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1 management chain, and had observed their performance
2 previously?

3 A I don't know who he was going to talk to.

4 Q Doesn't it make sense that he would do
5 that?

6 A Not if he was trying to get me out there
7 and get me in the chair before anybody, quote, found
8 out and had a chance to raise opposition. No, that
9 does not make sense to me.

10 Q So you would expect him to install you in
11 that job before his management --

12 A His management already knew about it and
13 approved it.

14 Q Okay. Rob Beecken still worked for TVA?

15 A No, Rob Beecken was -- yes, he was in TVA.

16 Q He still worked for TVA?

17 A He had been removed as a Sequoyah --

18 Q He still worked in nuclear power?

19 A At Watts Bar.

20 Q And Joe Bynum still worked for TVA?

21 A Somewhere.

22 Q Wilson McArthur still worked for TVA?

23 A Yes.

24 Q Dan Keuter still worked for TVA?

25 A Don't know.

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1 Q And what would happen to Charles Kent if
2 he installed you in such a position, and his
3 management later found out that all the people in his
4 management chain, or your management chain, who had
5 previously observed your performance, and found it to
6 be lacking, that he had gone around his management's
7 back and installed you in that position?

8 A His management --

9 Q What would happen to Kent?

10 A His management already knew it.

11 Q What would happen to Kent if his
12 management --

13 A His management already knew it.

14 Q -- found out that you had been removed
15 from that job for not being effective?

16 A His management already knew it.

17 CHAIRMAN BECHHOEFER: Mr. Marquand, we
18 should be looking to a break.

19 MR. MARQUAND: We can break now, if you
20 would like, Your Honor.

21 CHAIRMAN BECHHOEFER: Okay. We will break
22 now, we will return, and I guess it will be in the
23 same room, on June 11th, 9 a.m.

24 (Whereupon, at 11:35 a.m. the above-
25 entitled matter was adjourned.)

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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.

Ed Johns
Ed Johns
Official Reporter
Neal R. Gross & Co., Inc.

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