

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

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

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

Location: Chattanooga, Tennessee

Date: Friday, May 3, 2002

2002 MAY 16 PM 1:22
OFFICE OF THE SECRETARY
RULEMAKING AND
ADJUDICATIONS STAFF

DOCKETED
USNRC

Work Order No.: NRC-338

Pages 1590-1801

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

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

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

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

Friday, May 3, 2002

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

BEFORE:

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

PAGES: 1590 THROUGH 1801

APPEARANCES OF COUNSEL:

On behalf of the Nuclear Regulatory Commission:

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

-and-

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

On behalf of Tennessee Valley Authority:

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

-and-

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

I N D E X

WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Wilson C. McArthur	--	1593	1648	1700
Jack Cox	1744	1763	1780	1793

EXHIBITS:

FOR IDENTIFICATION IN EVIDENCE

Staff:

12	Premarked	1706
----	-----------	------

P R O C E E D I N G S

CHAIRMAN BECHHOEFER: Good morning, ladies and gentlemen.

Before we resume the testimony of Dr. McArthur, are there any preliminary matters that any party wishes to raise?

MR. DAMBLY: Not for the staff, Your Honor.

MR. MARQUAND: No, Your Honor.

CHAIRMAN BECHHOEFER: Okay. I guess Mr. Marquand, you're --

MR. MARQUAND: Thank you, Judge.
Whereupon,

WILSON COOPER MCARTHUR

RESUMED his status as a witness herein, and was examined and testified further as follows:

CROSS EXAMINATION (continued)

BY MR. MARQUAND:

Q Dr. McArthur, I'm going to show you Joint Exhibits 3 and 27. If you'll look at Joint Exhibit 27, page 20. Referring --

CHAIRMAN BECHHOEFER: Hold on a minute, we're still trying to get it out.

MR. MARQUAND: Okay.

(Brief pause.)

BY MR. MARQUAND:

1 Q Dr. McArthur, we talked about this before, in the
2 middle of the page is the interchange between -- beginning
3 with you where you said "You know when the downhill slide
4 started and what Tom Peterson, McGrath said in your office,
5 I don't know what happened."

6 And then Gary Fiser responds to you and says
7 "Well, it had to do with something with trending."

8 Did you ever tell Mr. Fiser that Tom McGrath and
9 Tom Peterson were upset with him, as far as you know or
10 recall, about trending?

11 A No.

12 JUDGE YOUNG: The answer was no?

13 THE WITNESS: No. Yes, it was no.

14 (Laughter.)

15 JUDGE YOUNG: Thank you.

16 BY MR. MARQUAND:

17 Q Joint Exhibit 3 which was already introduced into
18 evidence as the minutes of the NSRB meeting for November 20
19 and 21, '91 and that's the one that mentions PASS, it
20 mentions unmonitored release points for radioactivity and it
21 mentions trending.

22 As you review that, is there any way you can tell
23 what the NSRB considered to be the more important items
24 among those three issues?

25 A The unmonitored release points and PASS were the

1 specific ones. Trending did not -- if I recall correctly,
2 was not considered an action item.

3 Q Is that how you can tell which of the items is
4 more important?

5 A Yes.

6 JUDGE YOUNG: Which was the other one besides
7 PASS?

8 THE WITNESS: Unmonitored release points.
9 BY MR. MARQUAND:

10 Q Now Dr. McArthur, there's been testimony variously
11 from Mr. Fiser and also from the staff, from their exhibits,
12 that this conversation either happened on February 25 of '92
13 or in January of '92. Could you ascertain by looking at the
14 NSRB minutes whether in fact it was even possible to have
15 such a conversation in January of '92 or February?

16 I'm not talking about that one specifically. If I
17 show you other NSRB minutes, would you be able to tell us
18 whether or not that conversation could have even happened
19 either way in January of '92 or February 25 of '92?

20 MR. DAMBLY: Can we get clarification of which
21 conversation, because he's talking about Joint Exhibit 27
22 and that's not a -- that's a whole different date, so I'm
23 not sure which conversation we're talking about.

24 MR. MARQUAND: Thank you for clarifying that,
25 counsel.

1 BY MR. MARQUAND:

2 Q I'm talking about the conversation of the NSRB
3 with Mr. Fiser regarding PASS and unmonitored pathways and
4 trending. If you look at the NSRB minutes, could you tell
5 us when those conversations could have occurred?

6 A Well, it would have been dated and Tom Peterson,
7 for example, as a consultant, only came down for the NSRB
8 meetings, he was a paid consultant, so you could tell by the
9 date of the minutes if all the members of the committee were
10 there.

11 Q Let me show you Joint Exhibit 5 -- well, let's do
12 this chronologically -- Joint Exhibit 2. That's been
13 introduced as the minutes of an NSRB meeting for August 21
14 and 22, '91

15 A Right, executive summary.

16 Q Would Tom Peterson and Mr. McGrath have been there
17 for that?

18 A Yes.

19 Q And I believe it mentions unmonitored release
20 pathways and PASS on -- unmonitored release pathways are
21 mentioned on page 2 of the exhibit, which is Bates stamped
22 CC90, and PASS is mentioned on page CC92, which would be
23 page 4 of the exhibit, and also unmonitored release
24 pathways, do you see that?

25 A Yes.

1 Q Okay. Now when would the next meeting have
2 occurred after this August '91 meeting?

3 A They were scheduled on an annual basis, so --

4 Q Annual or monthly?

5 A No, the schedule for the complete year was set
6 ahead of time, so we knew when the meetings would be held.

7 Q How frequently?

8 JUDGE YOUNG: Excuse me, we're losing the tail
9 ends of your sentences.

10 THE WITNESS: Oh, I'm sorry. The NSRB meetings
11 were scheduled usually a year ahead of time, so we knew when
12 that would be.

13 BY MR. MARQUAND;

14 Q Were they monthly, biweekly -- how frequently
15 would they be?

16 A I can't remember exactly, it was more like
17 quarterly or every six months, that kind of thing.

18 Q And in fact, is the -- are the minutes for the
19 NSRB meeting of August 21 and 22, is there a meeting number
20 associated with that?

21 A Meeting number, 133.

22 Q Then there are minutes for November '91.

23 A 136.

24 Q All right. The next exhibit I want to show you is
25 Joint Exhibit 4 and those are minutes for what date?

1 A February 19 through 20, meeting number 137.

2 Q So that would be the next meeting following the
3 November '91 meeting?

4 A Yes.

5 CHAIRMAN BECHHOEFER: And this is Exhibit 5?

6 MR. MARQUAND: I just showed him Joint Exhibit 4.

7 CHAIRMAN BECHHOEFER: Oh, 4.

8 MR. MARQUAND: Three and four. Those appear to be
9 consecutive mtgs, one in November 19 and 20, '91 and the
10 next one February 19 and 20 of '92.

11 MR. DAMBLY: And I would object to the
12 characterization of 2, 3 and 4 as minutes of the meetings, I
13 believe they were put in as excerpts from the minutes of the
14 meetings.

15 CHAIRMAN BECHHOEFER: Mr. Marquand, is that
16 correct?

17 MR. MARQUAND: Yes, and the complete -- that's
18 sort of a picky little objection because we put the complete
19 document in before. The issue here is are these consecutive
20 meetings and these minutes establish the dates of the
21 meetings. That objection is totally irrelevant to the
22 question.

23 JUDGE COLE: Are the full meeting minutes
24 exhibits?

25 MR. MARQUAND: Yes, Your Honor, the full meeting

1 minutes are Joint Exhibit 9 and they don't show a different
2 date and they don't show a different meeting number.

3 CHAIRMAN BECHHOEFER: Okay, I just wanted to
4 inquire.

5 MR. MARQUAND: We went through this days ago with
6 counsel, we put the entire minutes in. They are not relevant
7 to anything, the only thing that's relevant is the excerpts.

8 JUDGE YOUNG: It's tough for us sometimes to know
9 exactly what we're looking at since we have all these
10 volumes of exhibits.

11 MR. MARQUAND: I understand.

12 JUDGE YOUNG: To point us where the complete ones
13 are, so thank you for doing that.

14 You said the point of your question was to show
15 the sequence?

16 MR. MARQUAND: The sequence of the meetings and
17 the dates of the meetings show that Mr. Fiser's claim about
18 the date of the meeting is simply wrong.

19 JUDGE YOUNG: My question that I wanted to get
20 some clarification on was the August 21-22 was meeting
21 number -- Sequoyah meeting number 133 and then the February
22 19-20, '92 was Sequoyah meeting number 137. So we can
23 assume that 134, 135, 136 occurred somewhere between --

24 MR. MARQUAND: 136 was November 20 and 21, which
25 is Joint Exhibit 3.

1 JUDGE YOUNG: Joint Exhibit 3?

2 MR. MARQUAND: Joint Exhibit 3, and then the next
3 meeting after November '91 is February 20, and so there was
4 not an intervening meeting.

5 JUDGE YOUNG: Okay, I see.

6 BY MR. MARQUAND:

7 Q I'm going to show you Staff Exhibit 95.

8 (Brief pause.)

9 MR. MARQUAND: It's Staff Exhibit 95 and it's in
10 book number 5.

11 (Brief pause.)

12 BY MR. MARQUAND:

13 Q Dr. McArthur, is that your handwriting in this
14 handwritten statement?

15 A No.

16 Q Whose handwriting is it?

17 A It was the person from the Department of Labor,
18 I'm not sure what his name is.

19 Q Did you provide him all these details that are in
20 this document?

21 A No, he originally, after the interview, went back
22 and wrote a document and submitted it to me on several
23 occasions. We had a very difficult time due to English and
24 content in coming to any kind of agreement whatsoever.

25 Q Did you make any attempt to verify independently

1 the details that are in this document?

2 A You mean did I investigate all the --

3 Q Right.

4 A No.

5 JUDGE YOUNG: You indicated yesterday that you had
6 looked at it and had problems with it and you went over
7 several versions I think.

8 THE WITNESS: Yes. I finally just gave up, which
9 probably was a mistake, I shouldn't have done that. I just
10 finally said we're never going to get this thing done and I
11 signed it.

12 BY MR. MARQUAND:

13 Q Did anybody assist you in meeting with this
14 gentleman and trying to get these things right?

15 A I don't think so.

16 Q You didn't have an attorney present?

17 A No.

18 Q Or any kind of representative?

19 A No.

20 Q Did you ask anybody at TVA to verify any of these
21 details for you?

22 A No.

23 Q I'm going to refer you to --

24 JUDGE YOUNG: Can I just ask another clarifying
25 question? On the second page of it, there's a couple of

1 places where something is marked out and other words put in.
2 Did you do the markouts or did the interviewer do the mark
3 outs and adding in the words?

4 MR. MARQUAND: The words "and two other positions"
5 is marked out and it says "chemistry".

6 THE WITNESS: I believe that's my writing.

7 JUDGE YOUNG: That is your writing?

8 THE WITNESS: I think so. I'm not positive, but
9 it looks like it.

10 BY MR. MARQUAND:

11 Q At the bottom of page 4, beginning with the bottom
12 paragraph, it says "I do not recall discussing Fiser's DOL
13 complaint with Ron Grover." Does that refresh your
14 recollection as to whether or not you informed Mr. Grover
15 about Fiser's previous Department of Labor complaint?

16 A "I don't recall discussing Fiser DOL complaint...."

17 Q Does that refresh your recollection that you
18 probably didn't discuss it with Grover?

19 A I just don't recall.

20 Q At the top of page 5 in the first paragraph
21 beginning on page 5, you see where it begins, "In January
22 '92, I do recall a meeting with Peterson, Fiser, McGrath and
23 I along with others present." Do you see that?

24 A Yes.

25 Q Based on our review of the NSRB minutes, could

1 such a meeting have occurred in January of '92?

2 A Not based on the NSRB minutes. I would not have
3 checked that date, so --

4 Q Yesterday, you mentioned that this investigator
5 seemed to have a different agenda. What were you talking
6 about?

7 A Well, his first write up was just horribly
8 incorrect.

9 JUDGE YOUNG: Just what?

10 THE WITNESS: Horribly incorrect.

11 JUDGE YOUNG: Horribly. Okay.

12 THE WITNESS: Yes. It was horribly incorrect. In
13 fact, it continued to be incorrect even to the very last
14 issue of the document.

15 BY MR. MARQUAND:

16 Q Was it simply incorrect or did it seem that he was
17 --

18 A In my opinion, he had an agenda of his own, he
19 wanted to prove his points, whatever they were. Because he
20 would not listen to my discussion as to why he should change
21 something.

22 JUDGE YOUNG: Did he let you make as many changes
23 as you wanted, like the mark outs on page 2?

24 THE WITNESS: He would argue with just about every
25 change.

1 JUDGE YOUNG: But did he try to stop you from
2 making changes if you wanted to make changes in it before
3 you signed it?

4 THE WITNESS: He would challenge -- if I'd say I
5 need to change this, he would challenge you on each issue.

6 CHAIRMAN BECHHOEFER: Could the January 1992
7 meeting that's mentioned here, could that have been a
8 supplementing meeting?

9 THE WITNESS: No, we didn't have supplementing
10 meetings. We had scheduled NSRB meetings, we did not have
11 meetings in between NSRB meetings.

12 BY MR. MARQUAND;

13 Q If you had a meeting, for example, to review tech
14 specs instead of just a generalized meeting for the plant,
15 would you issue minutes for those?

16 A Yes.

17 Q Would they also be numbered in sequence with these
18 minutes we've also seen?

19 A They'd be numbered, I can't tell you how they'd be
20 numbered.

21 JUDGE YOUNG: Could there be a meeting, just a --
22 not a meeting of the NSRB, but just a meeting between
23 several people about certain subjects that one person or
24 another would call?

25 THE WITNESS: Not involving some of the

1 participants on the committee, because they were paid
2 consultants and they came in for the NSRB meetings.

3 JUDGE YOUNG: Mr. Peterson.

4 THE WITNESS: Yes.

5 JUDGE YOUNG: And so Mr. Peterson never came there
6 unless it was for --

7 THE WITNESS: I don't recall him ever coming other
8 than for scheduled meetings.

9 BY MR. MARQUAND;

10 Q Let me return Joint Exhibit 27, page 20.

11 JUDGE COLE: I'm sorry, which exhibit?

12 MR. MARQUAND: Joint Exhibit 27, Mr. Fiser's
13 sequence of events, and I want to refer to page 20.

14 (Brief pause.)

15 BY MR. MARQUAND:

16 Q Yesterday, counsel referred you to this
17 conversation and the segment in the center of the page
18 dealing with whether or not Mr. Fiser got a bonus based on
19 his performance for that fiscal year.

20 A Okay.

21 Q And --

22 A Whether Mr. Fiser got one?

23 Q Whether or not he received it and what the
24 rationale was for that.

25 A Oh, okay. Maybe I need to explain to you how this

1 process took place.

2 Q Please do.

3 A I would -- and each one of the managers -- would
4 write your individual people as to where you thought they'd
5 fall on the scale.

6 Q The people that worked for yourself.

7 A Yes.

8 Q Okay.

9 A And then there'd be a larger meeting in which all
10 the managers would attend, with senior management present,
11 and at that point in time, we would rank again. An
12 individual you thought might be a high level person may end
13 up in the middle because of his competition with some better
14 qualified people. So in that meeting, the rankings were
15 changed.

16 Q Let me make sure I understand. Assuming, for
17 example, that maybe you had six people working for you,
18 you'd rank those people 1 through 6?

19 A Yes.

20 Q Based on their performance?

21 A Yes.

22 Q And then you would have a meeting of the entire
23 organization -- the management of the entire organization?

24 A Right. And basically you'd fight for your
25 individuals.

1 Q And so then would there be a force ranking from A
2 to Z of all the subordinates in the organization?

3 A Yes.

4 Q All right. And what happened with respect to Mr.
5 Fiser?

6 A He went down in the level and then senior
7 management would review that list after it was completed by
8 the individuals and make their comments. And in this case,
9 I don't recall Mr. Keuter taking Gary Fiser out, but I can
10 see from the standpoint of his problems at Sequoyah and also
11 his problems at corporate, how that could have happened, but
12 I do not recall that.

13 Q What problems would Mr. Keuter have been aware of,
14 of Mr. Fiser's performance at Sequoyah?

15 A He was involved in NSRB, he was involved with me
16 in my contacts with him.

17 Q So would Mr. Keuter have been aware of the reasons
18 Mr. Fiser was taken out of Sequoyah chemistry management?

19 A Yes.

20 Q And then Mr. Fiser, you said had problems in
21 corporate?

22 A He'd be aware of that.

23 Q And how would he be aware of that?

24 A Because I would tell him.

25 Q All right.

1 JUDGE YOUNG: You would tell him.

2 THE WITNESS: Yes.

3 BY MR. MARQUAND;

4 Q Why would you tell Mr. Keuter, what was his
5 management relationship to you?

6 A He was my supervisor.

7 Q I'm going to show you TVA Exhibit 24.

8 A 24 is there.

9 Q TVA.

10 A Oh, TVA.

11 (Brief pause.)

12 MR. MARQUAND: Dr. McArthur, that's the --

13 JUDGE YOUNG: You're going to have to give us a
14 minute here.

15 MR. MARQUAND: Okay, it's in volume 1 of the TVA
16 exhibits.

17 (Brief pause.)

18 BY MR. MARQUAND:

19 Q TVA Exhibit 24, we talked about yesterday, is the
20 selection package for what was VPA, vacant position
21 announcement, 6621 in 1994 for the chemistry and
22 environmental protection specialist, PG-8, jobs. And
23 counsel walked through that with you yesterday and saw that
24 you rated Al Dyson and Joe Pleva as -- you were a member of
25 the SRB and at pages 137 and 143, you scored them.

1 A Yes.

2 Q And then at pages 117, 123, 129 and I believe it's
3 139, apparently somebody else scored them in place of you.

4 A That's correct.

5 Q Do you recall that?

6 A Yes.

7 Q Now assuming, as the staff asserts in this
8 proceeding, that you had some animosity towards Mr. Fiser,
9 that you waited until 1996 -- and this animosity was so
10 strong, you waited until -- and you still had it in 1996
11 such that you would go to the machinations that they have
12 accused TVA of, to nonselect him for discriminatory reasons.
13 Would you think that in 1994, you could have made yourself
14 available to be on the selection review board and rate Mr.
15 Fiser?

16 A Oh, absolutely, I could have done that.

17 Q Did you -- was there any reason for you to do so?

18 A No.

19 Q Could you have -- if you had that animosity toward
20 Mr. Fiser in 1994, have rated Mr. Pleva and Mr. Dyson much
21 higher than you did in order to cause Mr. Fiser's
22 nonselection.

23 A I think I was a fair person, I did have no
24 animosity towards Gary Fiser or anybody on that review
25 board.

1 Q Let me show you Staff Exhibit 102, that is the
2 performance appraisal for you by I believe Mr. Sorrell in
3 fiscal year '95.

4 (Brief pause.)

5 MR. MARQUAND: And Your Honors, it's in book 5 of
6 the staff exhibits.

7 (Brief pause.)

8 BY MR. MARQUAND;

9 Q That's your performance review for fiscal year
10 1995, isn't it, period 10/1/94 to 9/30/95?

11 A Correct, yes.

12 Q And --

13 MR. DAMBLY: I'm going to object to his
14 characterization. This is a rating by Mr. Sorrell -- at
15 least the copy I have -- signed by Mr. McGrath.

16 MR. MARQUAND: I'll stand corrected. I should ask
17 the witness.

18 BY MR. MARQUAND;

19 Q On the first page, this shows four quarterly
20 review discussions, doesn't it?

21 A Yes.

22 Q Can you tell who -- if there was anybody who
23 evaluated you in the first quarter?

24 A It looks like somebody did there, again I can't
25 read the name. Second and third, no.

1 Q You didn't have a review by anybody in the second
2 and third quarter?

3 A That's correct.

4 Q And then in the fourth quarter was Tom McGrath,
5 right?

6 A That's correct.

7 Q Yesterday, you said that for the most part that
8 you functioned as the radiological control and chemistry
9 manager because Mr. Sorrell wasn't there.

10 A That's correct.

11 Q Is that consistent with not getting a review in
12 the second and third quarter?

13 A Yes.

14 Q Now Staff Exhibit 102 says here, position: manager
15 radiological control.

16 A That's correct.

17 Q Did you question -- ever question why -- whether
18 or not you had a position description?

19 A Yes. I went to John Maciejewski on several
20 occasions and asked where my position description was
21 located.

22 JUDGE YOUNG: You went to whom?

23 THE WITNESS: John Maciejewski. He was then
24 manager of operations support.

25 JUDGE YOUNG: What's the last name?

1 THE WITNESS: Maciejewski.

2 JUDGE YOUNG: Maciejewski?

3 THE WITNESS: Yes.

4 JUDGE YOUNG: That's not anyone we've heard about?

5 MR. MARQUAND: Yes, we have. He preceded -- he
6 was a predecessor of Tom McGrath. The sequence was
7 Maciejewski, Moody, McGrath.

8 JUDGE YOUNG: Okay, spell his name for us.

9 MR. MARQUAND: M-a-c-i-e --

10 THE WITNESS: I don't know.

11 MR. MARQUAND: It's difficult.

12 JUDGE YOUNG: Okay. Do you know how to spell it?

13 MR. DAMBLY: No, sir.

14 Laughter.)

15 MR. MARQUAND: It ends in s-k-i and starts out M-
16 a-c-i-e.

17 THE WITNESS: Macejewski is the way I used to say
18 it.

19 JUDGE COLE: If we see it again, we'll recognize
20 it.

21 MR. MARQUAND: If you see it, you'll recognize it,
22 that's right.

23 BY MR. MARQUAND;

24 Q And what did Mr. Maciejewski tell you about
25 whether or not -- why you hadn't been issued a position

1 description?

2 A He never really gave me an answer.

3 Q Did you ever look in your personnel file to
4 determine if you had a position description?

5 A I asked HR if they had one and they said the only
6 thing they had was my draft of one, it was not signed.

7 Q Besides making those inquiries, you still got
8 paid, right?

9 A Yes.

10 Q Same salary, same level you had previously.

11 A That's correct.

12 Q Was there any reason for you to pursue that any
13 more than the few inquiries you made?

14 A No. I assumed I was the rad con manager. That's
15 what I was told.

16 Q Who were you told was the rad chem manager?

17 A Who told me that?

18 Q No, who told you -- no, that's not the right
19 question. With respect to the position of radiological
20 control and chemistry manager, the position that would be
21 above you in the organizational chart, who were you told
22 occupied that position?

23 A Allen Sorrell.

24 Q Were you told that he was issued a position
25 description?

1 A No.

2 Q Are people sometimes assigned to do jobs and they
3 just don't get a position description?

4 A Yes.

5 Q Was that the case with Mr. Fiser in 1992 when he
6 was sent downtown to be the corporate chemistry manager?

7 A I don't recall, I don't know if we -- we did have
8 a position description for that position.

9 Q And that had been Bill Jocher's.

10 A Yes.

11 Q But do you know if Mr. --

12 A I don't think there was a change made -- I don't
13 recall making a change with his name on it.

14 Q Okay. And you know in fact when he was surplussed
15 in '93, he was surplussed as the Sequoyah chemistry
16 superintendent.

17 A I didn't know that at that time, but --

18 JUDGE YOUNG: Now he being --

19 MR. MARQUAND: He being Fiser.

20 THE WITNESS: I didn't know that at that time, but
21 I found out later that was the case.

22 BY MR. MARQUAND;

23 Q Even though he was functioning as the corporate
24 chemistry manager, then the corporate chemistry program
25 manager, he was surplussed from the job at Sequoyah where he

1 had a position description.

2 A That's correct.

3 Q Yesterday, you told us about that originally Cox,
4 Kent and Corey were going to be on the SRB and you said
5 later Cox came to you and said I can't be there or I won't
6 be there, and you reported that to Tom McGrath.

7 A Yes.

8 Q Did Cox tell you anything else about his view of
9 the pending selections that you repeated to Tom McGrath?

10 A He said that he didn't really need to be there .
11 anyway because he would pick Gary Fiser anyway, he'd already
12 preselected Gary Fiser.

13 Q In your view, was that appropriate for somebody
14 who was being considered to be a member of the SRB, to have
15 made up their mind before the selection process began?

16 A No. In fact, Tom McGrath's comment was that he
17 does not qualify to be on that board. It turns out that
18 didn't make any difference because he wasn't going to be on
19 it anyway.

20 JUDGE COLE: What prompted Mr. McGrath to make
21 that comment, sir, do you know?

22 THE WITNESS: He thought if a person was going to
23 be a member of a selection board and already made their mind
24 up, that wasn't fair.

25 JUDGE COLE: All right, sir.

1 THE WITNESS: And that would be consistent with my
2 thoughts too.

3 JUDGE YOUNG: How did Mr. Cox's comment about
4 choosing Mr. Fiser arise?

5 THE WITNESS: We were -- it was a coffee break
6 during a rad con chemistry managers' meeting, we were
7 standing outside and we were talking about the board -- we
8 were scheduling the meeting, getting the meeting all
9 scheduled. And he made his comment saying I don't think we
10 -- why don't we just select the guys, let's don't even have
11 a selection review board, because he said I would pick Gary
12 Fiser anyway. He had preselected Gary before we had the
13 selection review board.

14 BY MR. MARQUAND:

15 Q Is that the reason he told you he couldn't be on
16 the board?

17 A No, I -- he had other scheduling problems of some
18 kind. I don't know what they were.

19 Q And the reason he couldn't be on the board was
20 because of his scheduling conflict?

21 A Yes.

22 Q All right.

23 A Mr. Cox was known, whenever we'd have radiological
24 and chemistry control meetings, he would always want to
25 leave early in the afternoon. He had a farm, and my -- my

1 opinion is he was taking care of the farm in the afternoons.
2 He'd leave just about every meeting early.

3 Q He wasn't known to stay late, was he?

4 A No.

5 Q I'm going to show you Joint Exhibit 22, which is
6 in Volume 5 of the joint exhibits. Mr. McArthur -- Dr.
7 McArthur, this is one of the four notebooks that was
8 provided to the selection review board. And counsel asked
9 you -- yesterday counsel asked you, well, why aren't the
10 performance appraisals in here. And then it talked about
11 whether or not there was -- whether or not you had prepared
12 a spreadsheet or there was a spreadsheet at the front end of
13 the selection process, to look at whether or not the
14 candidates met the minimum qualifications or whether they
15 were well qualified for the job.

16 A That was my job, to take the appraisals, and
17 actually human resources provided me a spreadsheet, showed
18 education, experience, and those kind of things. And I
19 would evaluate all of the candidates that had applied for
20 the position, and eliminate those that didn't meet
21 qualifications.

22 Q Now, let me show you some -- there are some
23 computerized documents in the back of this notebook that
24 list, for example, Page GG-556 through 557. It shows the
25 candidates, their ethnicity, disability, whether they're

1 full- or part-time, et cetera. Then there is a spreadsheet
2 at 558, and again, it's computerized, showing educational
3 levels, whether -- whether matriculated. Page --
4 spreadsheet at 560 showing work history.

5 Was a -- are you saying that you prepared a --
6 there was additionally a different spreadsheet?

7 A Well, normally what I would do is I would take a
8 sheet, which it would not go to the review board, which I'd
9 put down.

10 Q You'd handwrite something?

11 A Handwrite something. It would say these are the
12 ones I have selected. In this case it would have been Gary
13 and Harvey and Chandra. I'd put down their specific
14 information for my information.

15 Q The people you selected for...

16 A Yes.

17 Q ...the job, or selected to be interviewed?

18 A To be interviewed.

19 Q Okay. And why wouldn't that go to the SRB?

20 A It was not their job to review that info -- that
21 was just for me.

22 Q Okay. Shouldn't have taken that exhibit away from
23 you. Let's remain with Joint Exhibit 22, turning to page, I
24 believe, GG-422.

25 A 422?

1 Q And 23.

2 A 23.

3 Q All right. What are Pages 420 -- GG-422 and 423?

4 A These are the questions that I had prepared for
5 the selection review board to select questions from.

6 Q Okay.

7 A They could add any more they wanted to.

8 Q All right. And, in fact, there's a handwritten
9 question somebody -- you testified somebody else added?

10 A Right.

11 Q Now, did you write those questions in order to
12 favor any particular candidates' strengths?

13 A Absolutely not.

14 Q What were you looking for when you wrote those
15 questions?

16 A I was looking for somebody that could manage --
17 both manage and technically handle all aspects of PWR
18 individually.

19 Q Now, there was a question that came out from one
20 of the judges yesterday, and I frankly have to confess I'm a
21 layperson and don't understand as well. What's -- let's
22 talk about, you said to handle a PWR plant?

23 A Right.

24 Q What's the difference between a PWR plant and a
25 BWR plant?

1 A Well, a PWR is -- has a primary and a secondary,
2 which is not the case with a BWR. The primary is a reactor,
3 itself, and where the -- the heating of the water takes
4 place. A secondary...

5 JUDGE YOUNG: You're going to have to speak up
6 just a little bit.

7 THE WITNESS: Heating of the water takes place.

8 JUDGE YOUNG: Where the heating and the water...

9 MR. MARQUAND: The heating of the water.

10 JUDGE YOUNG: Of the water.

11 THE WITNESS: Yeah.

12 A And then there's an exchange over into the
13 secondary, where the steam generators and pressurizers and
14 that kind of thing are located. They're -- they're separate
15 entities; okay? Sometimes there are leakage problems and
16 that kind of thing. But that's -- that's the basic concept,
17 that they're separate.

18 Q So there's a water -- there's water and then
19 reactor that's self -- that's contained?

20 A Yes. Just like when you think of a -- two pipes,
21 a pipe here and a pipe -- those pipe's hot.

22 Q Right.

23 A And this one has cold water. You put them next to
24 each other, this one's going to become hot, too.

25 Q All right. So does the secondary system have --

1 when you said it's a steam generator, that's where...

2 A Yeah.

3 Q ...you generate steam to generate electricity;
4 correct?

5 A That's correct.

6 Q Is there some sort of water system in that, too?

7 A Yes.

8 Q Is it separate from the primary system?

9 A Yes.

10 Q So you've got two separate water systems?

11 A That's correct.

12 Q And exchange the heat between the two?

13 A That's correct.

14 Q All right. And then the water system in the
15 reactor is primary?

16 A Yes.

17 Q And the water system in the steam generator path
18 is secondary?

19 A Is secondary. That's right.

20 Q All right. Are there different chemistry issues
21 -- stand over here so you'll talk up. Are there different
22 chemistry issues between the primary side and the secondary
23 side?

24 A Yes. If you look at the history of -- of PWRs,
25 when we bought the reactors they were bought to have a 40-

1 year life. That was the projected life. And in the
2 industry there had been major, major problems with the
3 secondary side with the steam generators. Tube corrosion,
4 that kind of thing. And, in fact, in some cases, steam
5 generators lasting like 15 years, 20 years, and that kind of
6 thing, we were having those same problems.

7 We were always changing the water chemistry from
8 sodium to phosphate to all volatile treatment. All those
9 kind of things were going on, seeking something that would
10 prolong the life of these steam generator tubes. It was
11 always a -- it was probably the biggest problem in the
12 plant, and the most expensive correcting, because if you've
13 got to go changing steam -- exchange steam generators 15
14 years or 20 years after the plant's started up, that's a
15 very expensive -- and it's a long outage. And a lot of
16 plants have already done that. That's taken place in the
17 industry. Many plants have shut down for long periods of
18 time and replaced the steam generators.

19 Q Now, okay, we've talked now about PWRs and
20 secondary and primary. Quickly distinguish PWR, pressurized
21 water reactor...

22 A Right.

23 Q ...to a BWR, the boiling water reactor.

24 A It doesn't have the primary and secondary sides.

25 Q It's just got one system?

1 CHAIRMAN BECHHOEFER: The BWR?

2 THE WITNESS: BWR; yes.

3 Q All right. And the PWR program manager job is the
4 job Mr. Fiser was interested in?

5 A That's correct. I don't think he applied -- some
6 of the guys applied for both positions. I -- my memory
7 tells me he didn't apply for the BWR position. He applied
8 only for PWR.

9 Q Now, let me return to my question about the -- the
10 list of questions you wrote, which appear on Pages 422 and
11 23, Joint Exhibit 22, did you have legitimate business
12 reasons for writing the questions that you did?

13 A Oh, yes.

14 Q And what -- what -- tell us what those reasons
15 are.

16 A Well, whoever's going to be the chemistry manager,
17 the biggest problem he'd be dealing with during this period
18 of time would be the secondary side of the reactors -- of
19 the -- of the system.

20 CHAIRMAN BECHHOEFER: I didn't hear the last.

21 THE WITNESS: The -- most of the attention in
22 chemistry at this point in time was dealing with the
23 secondary side, with the steam generators, with the problems
24 we were having with those. Now, there was attention paid to
25 the primary side, also. But the biggest attention was this

1 corrosion problems that we were having, tube leakage and
2 that kind of thing on the -- on the secondary side. So
3 you'd want to have a good understanding of the secondary
4 side.

5 Q Was it necessary to have a good understanding of
6 the primary side?

7 A Oh, yes.

8 Q Is that as difficult an issue as dealing with the
9 secondary side?

10 A Not in my opinion.

11 Q You said that this is a problem in the industry.
12 In 1996, when the selection was going on, was Sequoyah and
13 Watts Bar, the two PWR plants, having problems with their
14 secondary chemistry?

15 A Yes, we were.

16 Q Were they having to consider the possibility of
17 replacing their steam generators in the near term?

18 A Yes. In fact, a presentation was given to
19 management sometime before I left TVA, estimating the cost
20 to replace the steam generators for Sequoyah. And I don't
21 know what the status of that is now, but it was -- it was
22 being looked at.

23 Q And you said it's expensive. Can you give us an
24 order of latitude?

25 A Oh, we're talking about hundreds of millions of

1 dollars.

2 Q When -- you knew Tom McGrath for a considerable
3 period of time before you began being under his direct
4 management supervision, when he became the acting general
5 manager of operations support; isn't that right?

6 A That is correct.

7 Q And how did you know him?

8 A He was chairman of NSRB. And we had just enjoyed
9 getting together and talking about technical things. He was
10 an ex-Navy guy, and I was interest in his concepts and
11 experiences in the Navy with reactors.

12 Q Did you ever have an occasion to tell him that
13 Gary Fiser had filed a 1993 Department of Labor complaint?

14 A Not that I recall.

15 Q Did you ever tell him that Gary Fiser was going
16 around tape recording people?

17 A I don't think so. I don't recall doing that.

18 Q In the 1996 time frame, when these new jobs --
19 when the reorganization is taking place, and at some point
20 you said that Tom McGrath told you that you were going to be
21 installed as the radiological control chemistry manager.

22 A Right.

23 Q Do you recall that? Was there ever a discussion
24 -- do you recall a discussion involving Mr. Easley and Mr.
25 Grover about whether or not you should take that position?

1 A I was called in by Ron Grover and Easley and one
2 other individual. There were three African-Americans, and
3 they called me in their office. And I can't remember their
4 -- Wood. And they called me in and said, "Wilson, why don't
5 you consider retiring so Ron Grover can have that position."
6 I was stunned at the -- the comment. And...

7 JUDGE YOUNG: You were stunned at the...

8 THE WITNESS: Stunned at the comment they made.

9 JUDGE YOUNG: ...comment.

10 A They said, "Why don't you go ahead need retire now
11 so Ron Grover can take this position." Because he was the
12 other possibility.

13 And I said, "No, I'm not ready to retire." So I
14 was surprised that they made that comment to me. And Ben
15 Easley was very -- he's the one who made the comment.

16 Q I'm going to share with you my copy of TVA Exhibit
17 113.

18 JUDGE YOUNG: What volume is that in?

19 MR. MARQUAND: That was provided late, and that's
20 the...

21 JUDGE YOUNG: Okay.

22 MR. MARQUAND: ...staff's responses to TVA's
23 discovery. And it should be -- and I handed it to you
24 probably loose, although I think we put some holes in the
25 side so you could put it in your notebook.

1 JUDGE YOUNG: Yes. That helps.

2 BY MR. MARQUAND:

3 Q I'm going to refer you to some of the contentions
4 of the staff. Beginning on Page 2, under "Response B," you
5 see where it says, "McGrath became knowledgeable of Fiser's
6 protected activities in his position as chairman of the
7 NSRB. In this position he attended meetings with Fiser
8 about the chemistry problems Fiser identified." Do you see
9 that?

10 A Yes.

11 Q When you were with the NSRB, in the meetings you
12 were -- subcommittee meetings you attended involving Mr.
13 Fiser, do you recall Mr. Fiser discussing or any discussion
14 about specific concerns that Mr. Fiser had raised?

15 A About...

16 Q About any nuclear safety-related concerns?

17 A No.

18 Q Do you recall any discussions in those meetings
19 about Mr. Fiser's 1993 Department of Labor complaint?

20 A No.

21 Q All right. Referring you to Paragraph C on Page
22 2, you see where it says, "Ron Grover stated McGrath made
23 negative comments about Fiser."

24 A Not in my presence.

25 Q McGrath did not; is that right?

1 A No.

2 Q Do you see where it said, "Rob Beecken told Fiser
3 McGrath was so upset with Fiser after meeting with NSRB
4 members, that McGrath stated Fiser was a problem." Did
5 McGrath ever get so upset in your presence that he told
6 Beecken that Fiser was a problem and TVA needed to get rid
7 of him"?

8 A No. In fact, just to -- could I elaborate on that
9 a second?

10 Q If you need to explain your answer, do.

11 A Ron Grover, for some reason, had a habit of making
12 this comment about others being negative. In fact, he'd
13 made the comment that I had been negative about Gary Fiser
14 in my staff meetings.

15 JUDGE YOUNG: I'm sorry, repeat that.

16 THE WITNESS: That Gary Fiser had...

17 Q You said Ron Grover made the comment?

18 A Ron Grover had made the comment I had been
19 negative about Gary Fiser in my staff meetings. So I was
20 very concerned about that, because that's just not my
21 approach to doing things.

22 JUDGE YOUNG: That's just not your...

23 THE WITNESS: Not my approach to handling
24 business.

25 JUDGE YOUNG: ...approach.

1 A And so I asked everybody that attended my staff
2 meetings, everybody, every single one, there was -- I can't
3 remember the number of people, to write me a memo and tell
4 me if I made negative comments about anybody in the staff
5 meeting. And I didn't specifically identify Gary Fiser.
6 And those are on the record someplace, because every --
7 every individual wrote and said that I was a -- the comment
8 was "I was a rose among the thorns." I just always
9 remembered that comment.

10 JUDGE YOUNG: So you had all of your subordinates
11 write you a letter...

12 THE WITNESS: Yes, because I wanted to clarify...

13 JUDGE YOUNG: ...telling you whether you had been
14 negative about anyone?

15 THE WITNESS: Yes. And they all -- 100% of them
16 said no, that was just not my way of doing things. I -- I
17 was concerned about the people and their welfare and how
18 they did, and I did not put people down.

19 So that -- and my reason I did that was to respond
20 to Ron Grover's comment that I made negative comments. So
21 it's not surprising that he would make that comment about
22 Tom McGrath, also. But it's incorrect.

23 Q You're saying that's just the way Grover...

24 CHAIRMAN BECHHOEFER: Dr. McArthur...

25 MR. MARQUAND: Excuse me, Judge.

1 CHAIRMAN BECHHOEFER: ...when you -- you mentioned
2 you were -- may not have been present the entire meeting.
3 Did you describe that? Did you come in and go out or...

4 THE WITNESS: This is my staff meetings.

5 CHAIRMAN BECHHOEFER: Yes.

6 THE WITNESS: Yes. I would -- I would be there
7 for the entire staff meeting.

8 CHAIRMAN BECHHOEFER: Oh, you would? Because you
9 said certain comments might not have been...

10 MR. MARQUAND: I think we're talking about two --
11 you're talking about an NSRB meeting.

12 CHAIRMAN BECHHOEFER: Oh.

13 MR. MARQUAND: And I think yesterday Dr. McArthur
14 said there was a meeting that he was not in the room for.

15 THE WITNESS: Yes.

16 MR. MARQUAND: I think he's talking now about a
17 staff meeting where Grover accused him of making negative
18 comments about Fiser.

19 CHAIRMAN BECHHOEFER: Yes. But -- but Dr.
20 McArthur said that when you asked him whether certain
21 comments were made, he said, "Not while I was present."

22 MR. MARQUAND: Correct.

23 CHAIRMAN BECHHOEFER: And so that's why I was
24 asking.

25 MR. MARQUAND: Yes, you're right. He wasn't

1 present throughout one of the subcommittee meetings in
2 chemistry, as I recall.

3 THE WITNESS: That's correct. That's correct.

4 CHAIRMAN BECHHOEFER: And these were -- this was
5 at your weekly staff meeting you're talking about?

6 THE WITNESS: Weekly staff meeting; yes. I was
7 very, very hurt by the fact that someone would say I would
8 do that. And so therefore I wanted to make sure it was
9 clear in the record, so I had those -- in fact, at the
10 predecisional conference I presented those letters to say
11 that it was not a -- was not a fact.

12 JUDGE YOUNG: Just to clarify, do you think that
13 -- I mean, I don't -- we've heard a lot of testimony about
14 TVA and the work atmosphere and so forth. Do you think that
15 if a person were asked by their boss to write a letter
16 saying whether their boss had ever said anything negative,
17 that there could be any shading of their response to please
18 the boss.

19 THE WITNESS: I don't think the people that
20 reported to me felt that way. I felt they were very open.
21 They were very open. If they felt -- if they wanted to say
22 something negative, they would tell me. If they felt they
23 were -- they were very open with me. I felt like I had a
24 very good rapport with the people I worked with. In fact, I
25 still talk to them now, a year after I've left TVA. I was

1 just talking to Jim Flanagan and Regis Nichol. Regis Nichol
2 went through a cancer operations, and one of the people --
3 Bill Raines's wife passed away. So I continue to
4 communicate with them even today. We had that kind of
5 rapport with each other.

6 JUDGE COLE: So you didn't think it was just
7 sufficient to ask them at this meeting what their thoughts
8 were? You wanted it in writing?

9 THE WITNESS: No. Yes.

10 MR. MARQUAND: Well, this was -- this was for the
11 predecisional enforcement conference.

12 THE WITNESS: That's correct.

13 MR. MARQUAND: And these were statements you
14 submitted in support of your position at the predecisional
15 enforcement conference; right?

16 THE WITNESS: That's correct.

17 JUDGE YOUNG: So these were statements you asked
18 for during the same period that the -- that the -- was this
19 the Jocher or...

20 MR. MARQUAND: He asked for the...

21 JUDGE YOUNG: Pardon?

22 MR. MARQUAND: He asked for these statements in
23 conjunction with responding to the predecisional enforcement
24 conference in 1999. When he was -- was he first learned
25 that Grover was making these accusations about him some

1 years later, he went back to his staff. And I don't even
2 know if you were in the same position that...

3 THE WITNESS: I think it was -- I think it was rad
4 con and chemistry manager, then.

5 JUDGE YOUNG: So this was done after the fact,
6 during the investigation...

7 THE WITNESS: That's correct.

8 JUDGE YOUNG: ...on Mr. Fiser's 1996 complaint?

9 MR. MARQUAND: It's actually after the
10 investigation was concluded and they drug him down to
11 Atlanta in a predecisional enforcement conference.

12 JUDGE YOUNG: And so, in preparation for that, you
13 went back and asked your earlier subordinates; is that what
14 you're saying?

15 THE WITNESS: All of them; yes.

16 BY MR. MARQUAND:

17 Q Did all of them continue to work for you, or did
18 some of them move on?

19 A Some of them moved on.

20 Q And they were no longer under your supervision?

21 A That's correct.

22 Q And did those people respond in favor of your...

23 A 100%.

24 Q Let me direct your attention to Page 9 of TVA
25 Exhibit 113. In a response to Interrogatory 14, #1, it says

1 -- and it's referring to other reasons for concluding that
2 there was discrimination. And the first one is that,
3 "Easley was removed from the SRB as a facilitator.

4 A He made the decision. He was not removed. I
5 didn't remove him. Nobody else removed him. He made a
6 decision himself not to be a part.

7 Q He -- he removed himself?

8 A Yes.

9 Q And then it says, "Because of his knowledge of
10 Fiser's DOL activity, that Corey and Kent were permitted to
11 participate as voting members, despite having knowledge."
12 Was it appropriate to have them on their, despite their
13 knowledge of DOL activities?

14 A Absolutely.

15 Q Why?

16 A Well, to me a DOL complaint -- everybody has a
17 right, if they have a concern, as TVA was -- I felt was a
18 very open place. You could file complaints. You were not
19 -- that was -- you had no reason to retaliate against a
20 person for doing that.

21 And most time we just didn't even know what the
22 complaints were. We were not knowledgeable of the
23 complaints.

24 Q Did Corey and Kent give you any indication at all
25 that they couldn't be fair?

1 A No.

2 JUDGE YOUNG: Mr. -- excuse me, Dr. McArthur, let
3 me clarify something. And I'm trying to sort of get a
4 handle on this. Yesterday you indicated some distress over
5 a complaint being filed against you. And I think probably
6 most people would be somewhat bothered if a complaint were
7 filed against them saying that they'd done something wrong.

8 And so I guess I'm -- I'm wanting some
9 clarification on why you'd think knowledge of a Department
10 of Labor complaint would not necessarily provoke any
11 feelings on the part of people who might be in the
12 organization against whom the complaint was filed.

13 MR. MARQUAND: Your Honor, if I might clarify, I
14 think the distress he indicated was not based on the
15 complaint by Fiser, but by the -- the charges by the
16 regulator, the judge and the jury.

17 JUDGE YOUNG: I'm just asking if you want to
18 clarify that any more, because I'm -- I guess I'm trying to
19 get a better handle on the -- the...

20 THE WITNESS: I guess I'm not sure which one I was
21 distressed about, so...

22 MR. MARQUAND: Well, I think you objected to being
23 brought in here and...

24 THE WITNESS: Oh, yeah, because I think -- I know
25 beyond any shadow of a doubt -- I'm one individual that does

1 know that we did not -- we did not conspire, we did not do
2 anything to -- we went through a normal process at TVA to
3 select two people out of three. That's what we had to do.
4 So we could only pick two chemistry people out of three.
5 And we used the right process, the selection review board,
6 we had good people on that board.

7 So I believe honestly in my heart we did the right
8 thing. Because I know there was no vindictiveness towards
9 Gary Fiser, whatsoever. In fact, I thought he was a nice
10 guy. And that -- that's the reason my feelings have been
11 bothered, because I feel like the charges are without merit,
12 whatsoever.

13 BY MR. MARQUAND:

14 Q Were you resentful towards Fiser are filing a '93
15 complaint or his '96 complaint?

16 A No. In fact, it's very clear in the record I was
17 not. I supported him getting -- I was on a selection review
18 board and picked him to fill a position during that period
19 of time. So there was never any vindictiveness towards Gary
20 Fiser, whatsoever.

21 CHAIRMAN BECHHOEFER: Well, at that time did you
22 know about his filing complaints?

23 THE WITNESS: I don't think at that point in time
24 I did. It was later that I became aware.

25 MR. MARQUAND: Well, actually, I think...

1 THE WITNESS: I don't know.

2 MR. MARQUAND: ...counsel showed you an OIG
3 interview...

4 THE WITNESS: Yeah.

5 MR. MARQUAND: ...in January of '94 which ord
6 before the reorganization.

7 THE WITNESS: Yeah.

8 MR. MARQUAND: And it says that you were told
9 about it at that time, if that refreshes your recollection.

10 THE WITNESS: Yeah. Right.

11 BY MR. MARQUAND:

12 Q Did you have other things going on in your life at
13 that time that were of more consequence than Gary Fiser's
14 DOL complaint?

15 A Right. At that point in time I had cancer. I was
16 out of work for a long period of time. March of '93, had
17 the operation, and was out of work for a couple of months.

18 JUDGE YOUNG: Actually, my earlier question was
19 directed more at how Kent and Corey might have reacted to
20 knowing about a Department of Labor complaint if they felt
21 it was justified or unjustified or...

22 THE WITNESS: I can't judge them, so...

23 JUDGE YOUNG: ...how they -- how they -- if
24 someone knew about it, whether they would have any feelings
25 about the person that brought it. I guess that's what I was

1 trying to get at. Given...

2 THE WITNESS: I can't speak for them, I can only
3 speak for myself. But I know that it didn't affect me.

4 JUDGE YOUNG: Okay.

5 MR. MARQUAND: But, Your Honor, instead of us
6 speculating about how they could have or was it human nature
7 for them to feel resentment, we're going to bring them in
8 here and let them testify.

9 JUDGE YOUNG: Right. I was trying to clarify Dr.
10 McArthur's testimony about that, which you had asked him
11 about. But thank you.

12 THE WITNESS: These two individuals I had known
13 for a long period of time because we worked together every
14 day. And they're very high character and very fair
15 individuals or they wouldn't be in the positions they're in.
16 So I -- my feeling would be they would figure that a DOL
17 complaint was a right of an individual. And there are many
18 pathways to go for complaints and concerns. And they would
19 promote the fact that people would have the right to -- to
20 issue their complaints, see if they could have some
21 resolution to those complaints. That's my opinion.

22 BY MR. MARQUAND:

23 Q Dr. McArthur, moving down the page on Page 9 of
24 TVA Exhibit 113. In the sixth line of the response you see
25 where it's -- where it -- actually the preceding line it

1 begins, "This contradicts McGrath and McArthur's repeated
2 statements that they were trying to get a fair and impartial
3 SRB." Do you see that?

4 A Yeah.

5 Q Do you know whether the SR -- in your opinion, was
6 the SRB fair and impartial?

7 A Extremely so; yes. I guess this question wouldn't
8 even be coming up if Jack Cox would have fulfilled his
9 responsibilities.

10 Q I'm sure somebody would have found a way to have
11 woven some sort of conspiracy theory.

12 MR. DAMBLY: Objection to counsel's comments. But
13 we will put him back on the list if he wants to testify.

14 MR. MARQUAND: You might not like that.

15 JUDGE YOUNG: Let's -- let's try to all of us stay
16 on a -- on a professional level.

17 BY MR. MARQUAND:

18 Q And referring you to the bottom...

19 Do you need a break, Dr. McArthur? I'm almost
20 done, if you would like to finish.

21 A No, I'm okay.

22 Q Okay. At the bottom of Page 9, #2, do you see
23 where it says, "McArthur did not report Kent's statement
24 about Fiser's DOL activity, which could have impacted the
25 impartiality of members of the SRB." I believe yesterday

1 you told counsel that you think you told Tom McGrath about
2 that.

3 A Yes.

4 Q In your opinion, did Mr. Kent's statement impact
5 the impartiality of the members of the SRB?

6 A I don't think so. Nothing -- nothing was actually
7 really said, other than the fact that he made the comment
8 and I stopped the comment.

9 JUDGE YOUNG: Other than maybe what?

10 MR. MARQUAND: That he made the comment.

11 THE WITNESS: He made the comment, and I said,
12 "Let's don't talk about it. Let's just go ahead with the
13 selection review board process. Let's don't pay any
14 attention to these things."

15 JUDGE YOUNG: What did Kent actually say?

16 THE WITNESS: We were standing at another one of
17 these coffee breaks outside the radiological chemistry
18 manager's meeting. We were just standing around, and the
19 comment was made there.

20 JUDGE YOUNG: What -- what did he actually say, if
21 you recall?

22 THE WITNESS: He said, "Are you guys aware of --
23 of Gary Fiser's recent DOL complaint?" Now, I -- I don't
24 know if at that point in time I even knew anything about it
25 or not. But I just felt it was an -- I didn't want anything

1 negative to impact the selection review board.

2 BY MR. MARQUAND:

3 Q Did he make any suggestions?

4 A No.

5 Q About you?

6 A No.

7 Q About your participation in the SRB?

8 A He just said I may not want to be a voting member,
9 that -- turned out I didn't. I was the final selection...

10 JUDGE YOUNG: Kent said you might not want to?

11 THE WITNESS: Yes.

12 Q In your view, was he exhibit -- trying to exhibit
13 some sensitivity in making this a fair process?

14 A Yes.

15 Q Refer you to the top of Page 10 of #4. Do you see
16 where it says, "The performance appraisal of the candidates
17 for the PWR position were not included in the interview
18 packages provided the SRB members." Do you know why they
19 weren't?

20 A No.

21 Q No, the performance appraisals. Do you know...

22 A Oh, the performance appraisals were there. And...

23 Q In what was given to the SRB members? In the SRB
24 packages?

25 A Oh, they were not -- they were not given to them.

1 Q And why not?

2 A Because I'm the one who -- I'm the one who selects
3 the people who are qualified to be interviewed by the
4 selection review board process.

5 Q Do you see where it says, "A review of Fiser's
6 performance appraisals demonstrate that he consistently
7 received higher ratings than Harvey." Do you see that?

8 A Yes.

9 Q Was that true?

10 A No.

11 Q Did you feel Kent was biased in favor of Harvey?

12 A No. He dealt -- he dealt more with Harvey than
13 Sequoyah, but he didn't...

14 Q Had he dealt previously with Fiser?

15 A Fiser worked with him before.

16 Q And when he attempted to find Fiser a job?

17 A Yes.

18 Q Okay. Referring you to the top of Page 12 on TVA
19 Exhibit 113, do you see where it says the staff contends
20 that McGrath and Ed Boyles decided that the new chemistry
21 manager positions had to be advertised?

22 A I would think HR would have done that.

23 Q Why?

24 A That's their responsibility.

25 Q Why would you -- okay.

1 JUDGE YOUNG: You -- say -- say again.

2 THE WITNESS: That human resources would have made
3 the decision about whether to advertise or not to advertise
4 a position. That's their responsibility.

5 JUDGE YOUNG: What you said earlier was you were
6 not involved? I just didn't catch the words.

7 MR. MARQUAND: He said, "I would think HR would do
8 that."

9 JUDGE YOUNG: "I would think HR would do that."
10 Thank you.

11 CHAIRMAN BECHHOEFER: So that's Mr. Boyles?

12 MR. MARQUAND: Yes.

13 THE WITNESS: Yes.

14 BY MR. MARQUAND:

15 Q One final matter, Dr. McArthur. We mentioned
16 yesterday that the NRC issued the NOV against you for the
17 same matters involved in this proceeding. Do you agree with
18 the rationale by the staff for issuing you an NOV and
19 issuing TVA an NOV?

20 A NO.

21 Q Why not?

22 A I know that the things that the -- that the NRC
23 have in their statement is incorrect. I know that -- I know
24 that there was no discrimination. If anybody looks at the
25 process, you can see it was a standard TVA process. We had

1 to select another individual to be on that board, and I did
2 everything I could to try to get somebody from Watts Bar and
3 it just didn't happen.

4 But we did get an equally qualified individual to
5 be on that board, so I think it was a very fair board. I
6 think the selection shows you they -- all three came up with
7 the same conclusions. I think that's consistent with good
8 management.

9 Q Do you know of anyone making any attempt to
10 influence the decision of that selection review board?

11 A Not at all.

12 Q You or Mr. McGrath or anybody else?

13 A No.

14 Q Thank you, Dr. McArthur.

15 MR. MARQUAND: Maybe this would be a good time to
16 take a break.

17 CHAIRMAN BECHHOEFER: Let's take about a ten
18 minute break.

19 (Brief recess.)

20 CHAIRMAN BECHHOEFER: We're back on the record.

21 MR. MARQUAND: Your Honors, on my check, Mr.
22 Hickman has a previous engagement. He's supposed to leave
23 Knoxville this afternoon, will -- will not be available this
24 afternoon. I also checked with Mr. Rogers. He is the
25 engineering manager on duty today, during the day for the

1 outage, and he can't leave the plant. There's some event
2 going on.

3 I did check to see if Mr. Kent's available, and I
4 think he can be here by 2:30. He's -- of course, he's the
5 rad con and chemistry manager at the plant during the
6 outage, but he could be here by 2:30. But my question is:
7 If he comes down today, is he going to have to turn around
8 and come back next week, as well?

9 JUDGE YOUNG: Well, Mr. Dambly had said that Mr.
10 Kent would take longer, but he thought that Mr. Cox would be
11 a short one that would fit in in the afternoon.

12 MR. DAMBLY: Or Mr. Rogers.

13 MR. MARQUAND: Well, like I said, Rogers is...

14 JUDGE YOUNG: Rogers can't...

15 MR. DAMBLY: Oh, Rogers is...

16 MR. MARQUAND: ...Rogers is...

17 MR. DAMBLY: Cox is not available?

18 MR. MARQUAND: Not as far as I know.

19 MR. DAMBLY: Messrs. Cox and Rogers are both
20 short.

21 JUDGE YOUNG: Did you check on Cox? Because...

22 MR. MARQUAND: He's at Watts Bar, and I don't know
23 what his -- I'm not thinking he's available, but we can
24 check.

25 JUDGE YOUNG: If he left in an hour, he could

1 probably be here by the afternoon.

2 MR. MARQUAND: We'll check right now and see what
3 his availability is.

4 JUDGE YOUNG: Are there any other alternative
5 short witnesses, Mr. Dambly, maybe you could be thinking
6 about?

7 MR. MARQUAND: I know Mr. Boyles is not available.
8 Of course, he's not short, but he's not available. He's had
9 surgery.

10 MR. DAMBLY: My guess is that we'll only need a
11 couple of hours this afternoon. I don't know that Reynolds
12 would finish, but -- I don't know if he's available, either.

13

14 COURT REPORTER: I'm sorry, I can't hear.

15 MR. MARQUAND: Phil Reynolds.

16 MR. DAMBLY: Phil Reynolds. I don't know if he's
17 available or not. He may take...

18 JUDGE YOUNG: Well, you've got someone looking,
19 and you all can be thinking, so why don't we go ahead and
20 start back up with Dr. McArthur.

21 You were finished?

22 CHAIRMAN BECHHOEFER: Mr. Marquand, are you -- you
23 finished with Dr. McArthur?

24 JUDGE YOUNG: For the moment?

25 MR. MARQUAND: Just a second.

1 MR. DAMBLY: I have no other suggestions, except
2 for Mr. Rogers and Mr. -- you know, who's not going to be
3 here. Let me give her a call.

4 CHAIRMAN BECHHOEFER: Okay, we'll wait till...

5 MR. MARQUAND: Let me ask one more question, Your
6 Honor. Judge Young, you raised this, and I think it's a
7 good question.

8 BY MR. MARQUAND:

9 Q In 1996, when the selection review board -- or
10 when you were preparing for the selections, did you know
11 Fiser filed a 1996 DOL complaint?

12 A Before the selection review board? I probably was
13 aware.

14 Q All right.

15 A I don't recall offhand.

16 Q Now -- now, of course, we're aware of it. And
17 we're aware of what it says. But at the time that he filed
18 this, and in June of '96, of course, the complaint -- at
19 that point in time the selection hadn't taken place and the
20 selection review board hadn't met?

21 A Correct.

22 Q You're aware that at that point in time---and I'm
23 referring to Staff Exhibit 37---you're aware that the
24 complaint was about the posting, whether or not the job
25 should be posted? You're aware of that now?

1 A Yes.

2 Q And who did you say made the call, who made the
3 determination that the job should be posted for competition?

4 A Human resources.

5 Q All right. So in -- if you had known about this
6 in '96 at the time of the selections, did you -- would you
7 have even thought that the complaint was directed against
8 you?

9 A No.

10 Q Would you have any reason to have any sort of
11 animosity toward Mr. Fiser during this selection in '96?

12 A None, whatsoever.

13 MR. MARQUAND: You may question.

14 MR. DAMBLY: May I have a moment.

15 (Brief recess.)

16 CHAIRMAN BECHHOEFER: Mr. Dambly, back on the
17 record.

18 MR. DAMBLY: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. DAMBLY:

21 Q Dr. McArthur, you indicated yesterday that Fiser's
22 management skills were somewhat lacking; do you recall that?

23 A Yes.

24 Q How were Fiser -- I mean, Harvey's management
25 skills?

1 A To be quite straight, Harvey was strong
2 technically. He didn't have a lot of strong management
3 skills, but he was adequate.

4 Q He was adequate. Did you ever get any complaints
5 from Sequoyah about Mr. Harvey's attitude when he was at the
6 plant?

7 A No, I didn't.

8 Q Mr. Kent ever talk to you about that?

9 A No. Not that I -- not that I recall.

10 Q You do recall the issue with Trisha Landers?

11 A Yes, I do.

12 Q Do you recall yesterday, when Mr. Marquand asked
13 you, where you indicated you'd never been accused of
14 discrimination before and Mr. Marquand showed you I think
15 it's Staff Exhibit 91, the memo that you got after the
16 Jocher case. Do you recall that?

17 A From Ike Zeringue?

18 Q From Ike Zeringue; right.

19 A Yes.

20 Q And he asked you, and you indicated or you stated
21 that that document does not say you discriminated; is that
22 correct?

23 A That's correct.

24 Q And that document also says that TVA disagrees
25 that Mr. Jocher was discriminated against; is that correct?

1 A That's correct.

2 Q And that's even after a DOL finding of
3 discrimination; correct?

4 JUDGE YOUNG: What was your question?

5 CHAIRMAN BECHHOEFER: I didn't...

6 MR. DAMBLY: I said and that's even after...

7 MR. MARQUAND: Objection. Objection. That was --
8 case was settled. I don't believe there was a decision by
9 the Secretary of Labor or the administrative review board.
10 It's a mischaracterization of the record to ask him about a
11 case that was settled.

12 BY MR. DAMBLY:

13 Q I believe the document itself says there was a
14 finding by an administrative law judge of discrimination.
15 Do you recall that? Should we show you the document?

16 A I don't remember exactly what the letter says.

17 Q Referring to staff...

18 CHAIRMAN BECHHOEFER: What is this? Staff 91?

19 MR. DAMBLY: Staff 91.

20 Q The first sentence says, "TVA's recently received
21 an adverse recommended decision order from the Department of
22 Labor, Office of the Administrative Law Judges, involving a
23 complaint by Jocher." Okay, and then it goes on, "While TVA
24 does not agree with that..."

25 A Yes.

1 Q Okay. Do you recall yesterday when you discussed
2 I guess it's Staff Exhibit 34, Mr. Fiser's '93 DOL complaint
3 with Mr. Marquand, he asked you questions about that?

4 A Yes.

5 JUDGE YOUNG: Staff 34?

6 MR. DAMBLY: Staff 34.

7 Q And do you recall pointing out that the document
8 says you were trying to help Mr. Fiser and trying to save a
9 position for him during the RIF?

10 A That's correct.

11 Q And subsequent to your attempt, when Mr. Bynum
12 told you you didn't have a position anymore and Mr. Fiser
13 was surplused, Mr. Fiser, while he was in the ETP, had at
14 least come close to securing a Sequoyah chemistry position
15 through Mr. Kent?

16 A Yes.

17 Q And that's when you talked to him and you told him
18 about discussions with Keuter and Bynum?

19 A Yes.

20 Q And that effectively killed that job?

21 A I don't think so.

22 Q You don't think so?

23 A It was still Charles Kent's decision.

24 JUDGE YOUNG: Say that over.

25 THE WITNESS: I say that's Charles Kent's

1 decision.

2 Q Did it occur to you that if Mr. Bynum had told you
3 you didn't have a vacancy to put Mr. Fiser in during the
4 reduction, that Mr. Bynum would not have been in favor of
5 Mr. Fiser going back to the position at Sequoyah?

6 A I -- I have no comment on that. I don't know what
7 his feelings were.

8 Q Do you recall yesterday saying you reviewed all
9 the resumes and all the applicants' materials as part of the
10 '96 -- your job as selecting official for the chemistry and
11 environmental positions in '96?

12 A That is -- that is correct.

13 Q You carefully reviewed all that material?

14 A Yes.

15 Q Well, if that's the case, and let me quote it to
16 you, and this is on Page 15-59 of the transcript from
17 yesterday.

18 JUDGE YOUNG: Yesterday's transcript?

19 MR. DAMBLY: Yes.

20 Q You stated, on Line 9, "See, Gary's experience had
21 primarily been at TVA. He had a little bit of experience
22 prior to coming to TVA, but didn't have a lot of knowledge
23 about the industry."

24 A He was -- he was with Grand Gulf before he came to
25 TVA.

1 JUDGE YOUNG: Pardon?

2 THE WITNESS: He was with Grand Gulf before he
3 came to TVA.

4 JUDGE YOUNG: I'm -- we're having trouble hearing
5 you. I still didn't...

6 THE WITNESS: I said he had been with Grand Gulf
7 before coming to TVA.

8 JUDGE YOUNG: With Grand...

9 JUDGE COLE: Gulf.

10 CHAIRMAN BECHHOEFER: Grand Gulf.

11 THE WITNESS: It's a nuclear power plant. Yeah.

12 BY MR. DAMBLY:

13 Q Now, do you know whether or not in fact Mr. Fiser
14 had spent 14 years at Arkansas Nuclear before coming to TVA?

15 A Yeah. Yes.

16 Q And so he'd been at TVA for nine years, and he'd
17 had 14 years experience prior to coming.

18 A Yes.

19 Q And you thought most of his experience was at TVA?

20 A He had nine years of experience at TVA. I didn't
21 remember how long he'd had at Arkansas.

22 Q And he had 14 years before that?

23 A Yeah.

24 Q And, in fact, he had more experience than Mr.
25 Harvey.

1 A Not in my opinion. Not -- technically, he was not
2 as competent as Sam Harvey was.

3 Q We're not talking competent, we're talking
4 experience. You said Mr. Fiser's experience was primarily
5 at TVA. Is that a true statement?

6 A Well, I didn't remember how many years he'd been
7 with Arkansas.

8 Q Well, earlier you thought he was at Grand Gulf.

9 A Yeah.

10 JUDGE YOUNG: Could you -- could you explain, when
11 you say Harvey was technically more competent, could you
12 explain what you mean by that?

13 THE WITNESS: He was a problem solver. He -- he
14 was very effective at solving technical problems. He was a
15 member of many national committees and was recognized by
16 others as being very competent. Does that answer your
17 question?

18 JUDGE YOUNG: Well, I guess I was trying to
19 understand maybe the examples what kinds of things would
20 show you that he was more competent.

21 THE WITNESS: Well, he was very strong -- in fact,
22 David Goetcheus always wanted him out at the site whenever
23 we were doing a steam generator lancing and repairs of steam
24 generators because of his technical competence.

25 And my -- my -- let me go back to the comment

1 about -- when I talked about experience, I'm talking about
2 management experience. Gary's...

3 JUDGE YOUNG: You're talking about what
4 experience?

5 THE WITNESS: Management experience. Most of his
6 management experience was at TVA.

7 BY MR. DAMBLY:

8 Q Where was Harvey's management experience?

9 A Houston Light & Power Company.

10 Q Did he have management experience there?

11 A He had some management experience; yes.

12 Q You're sure about that?

13 A Yes.

14 Q All right, let -- let me direct you to Joint
15 Exhibit 22 Mr. Marquand asked you about this morning. It's
16 the selection package.

17 A Okay.

18 Q We all there? Could you turn to Page 399.

19 A 399.

20 Q 399. This is a -- I guess a memo you wrote to Mr.
21 Easley explaining your selection for the PWR vacancy
22 position?

23 A Okay.

24 Q Is that -- is that true? Is that what that is?

25 A Yes.

1 Q And for Mr. Fiser, your statement was, "Has
2 experience with PWRs primarily at TVAN." Now, is that -- is
3 that an accurate statement?

4 A Management -- management experience, yes.

5 Q Do you see "management" written there?

6 A No, but that's my intent.

7 Q What kind of a plant is -- is Arkansas Nuclear?

8 A PWR.

9 Q And how do you -- how did you determine what's
10 management experience and what's not management experience?

11 A Being called a manager. Not a technician.

12 Q So program -- this position is a management
13 position? Is this position that was being posted a manager
14 position?

15 A It's called a program manager.

16 CHAIRMAN BECHHOEFER: Did someone mention that Mr.
17 Fiser had been at Grand Gulf?

18 THE WITNESS: Not at Grand Gulf. That was a
19 mistake and it was -- I knew it was a southern utility. He
20 was at Arkansas Nuclear One.

21 CHAIRMAN BECHHOEFER: Well, I understood that.
22 But someone said Grand Gulf earlier.

23 THE WITNESS: Yeah, I -- I said that.

24 CHAIRMAN BECHHOEFER: Oh, okay. And that was just
25 a mistake?

1 THE WITNESS: Yes.

2 CHAIRMAN BECHHOEFER: Okay.

3 BY MR. DAMBLY:

4 Q If you would turn to Page 417.

5 A 17?

6 Q Right. Mr. Fiser's resume. And you see down at
7 the bottom of the first page where it says, "Arkansas Power
8 & Light, 1973 to 1987."

9 A Okay.

10 Q And he lists nuclear quality specialist from '86
11 to '87. And then you go to the second page, radio chemistry
12 supervisor from '79 to '86.

13 A Okay.

14 Q Is that not in your idea manager?

15 A That's a -- that's a team leader. It's not -- a
16 management to me is program manager or manager of a
17 chemistry program. That's what I was alluding to. He was
18 not in control of a complete program, he was in control of a
19 small portion of a program.

20 Q Okay. Well, in that case, let's go to Page 430.

21 A 430?

22 Q Yeah. This is Mr. Harvey's resume that was in the
23 package.

24 A Okay.

25 Q And if we go to employee history and we skip the

1 TVA history, which we did with Mr. Fiser -- and, by the way,
2 Mr. Fiser was here four years longer than Mr. Harvey; is
3 that correct?

4 A Say that again.

5 Q Mr. Fiser got here in, I think, '87, to TVA; is
6 that right?

7 A I'm not sure of his exact date.

8 Q Well, we can go back again to wherever we were
9 before. Okay, Mr. Fiser, on 417, and it says, "Work
10 experience, Tennessee Valley Authority, 1987 to present."
11 And he had been in management positions there -- here? He
12 was a chemistry superintendent at Sequoyah for a number of
13 years.

14 A Yes.

15 Q And he was a program manager in the corporate
16 chemistry department?

17 A That's correct. That's right. He was also
18 corporate chemistry manager for a period of time, too.

19 Q Right. And if we look at Mr. Harvey on 429.

20 A 429?

21 Q 429, Mr. Harvey's resume.

22 A Okay.

23 Q And you see employment history down at the bottom?

24 A Okay.

25 Q And if you go to the next page, where he starts

1 with 1987 to '91, staff chemist that Houston Lighting &
2 Power.

3 A Right.

4 Q '87 to '87, senior chemist under contract to
5 Georgia Power. '85 to '87, senior shift chemist. '81 to
6 '87, senior health physics technician.

7 A Yeah.

8 Q And then '80 to '81, chemical radiation
9 technician. Which one of those is a program manager
10 position?

11 A Well, the last two are technician positions.
12 Senior shift chemist would be equivalent to a program
13 manager. Staff nuclear chemist would be a management
14 position.

15 Q And a radio chemistry supervisor wouldn't...

16 A It's according if you -- from my standpoint, in
17 charge of a laboratory is not equivalent to a person who
18 writes specifications and develops treatment programs.
19 That's my opinion.

20 Q Yeah. And what was your -- where did you get your
21 basis for who had what experience, that knowledge?

22 A Ask -- what was the question?

23 Q What was your basis for how you decided who had
24 what kinds of experience between Fiser and Harvey?

25 A Well, they -- Harvey worked for me and Gary worked

1 for me, so I knew about their experience. I knew their
2 technical capabilities.

3 Q Did you review their resumes, like you said?

4 A Yes.

5 Q And you still think that statement that Harvey's
6 PWR experience is primarily at TVA is an accurate statement?

7 A At what, now?

8 Q Mr. Fiser's...

9 A Management experience; yes.

10 Q Doesn't say "management," it says just PWR
11 experience.

12 A I'm -- I'm telling you his management experience
13 is what I'm talking about.

14 Q So every time you write "PWR experience" down, you
15 mean management experience?

16 A In this particular position. These guys were
17 being -- competing for a management position.

18 Q Do you recall yesterday testifying that Mr. Fiser
19 was a poor performer, in response to a question by Mr.
20 Marquand, while he was at Sequoyah?

21 A That was not my -- not only my opinion. It was
22 the opinion of myself and others.

23 Q And who were the others?

24 A Rob Beecken, for example.

25 Q Did you -- did you ever review the performance

1 appraisals Mr. Fiser got while he was at Sequoyah?

2 A Yes.

3 Q What kind of ratings did he get?

4 A He got some poor ones and he got some adequate
5 ones.

6 JUDGE YOUNG: He got some poor ones and some...

7 THE WITNESS: Poor ones and adequate -- adequate.

8 Q Are you aware whether he got any bonuses while he
9 was at Sequoyah chemistry?

10 A No.

11 Q You're not aware? Did you ever discuss Mr.
12 Fiser's performance with Bill Lagergren?

13 A Yes.

14 Q What'd he tell you?

15 A He had pretty good -- pretty good opinion of Gary
16 Fiser.

17 Q And was he Mr. Fiser's supervisor?

18 A For a period of time he was.

19 Q And do you recall telling Mr. Fiser that Mr.
20 Lagergren had said because he had a good INPO score,
21 chemistry was doing pretty well at Sequoyah?

22 A In fact, I think that Lagergren was one of the
23 guys that gave him a poor review at one point in time.

24 JUDGE YOUNG: Lagergren gave him a poor review?
25 Is that what you said?

1 THE WITNESS: Yes. I think -- pretty sure the
2 record will show that.

3 Q Gave him a poor review? Do you know what kind of
4 review he got in 1990 from Mr. Lagergren?

5 A In 1990?

6 Q Right.

7 A I wasn't here for part of that year, so I don't
8 know.

9 Q So you didn't get here until the end of '90?

10 A Came in April of 1990.

11 Q So you didn't have any firsthand interaction or
12 anything to do with what was going on at Sequoyah prior to
13 that period?

14 A No.

15 Q Now, do you recall yesterday Judge Young, in the
16 afternoon, asked you a question about your testimony
17 concerning Mr. Fiser's performance, in light of the fact
18 that on I think it's Joint Exhibit 33 Mr. Fiser -- Mr.
19 Fiser's appraisal, that there's the statement that there
20 were no INPO findings, and that that was unprecedented?

21 A Yes.

22 Q And as I recall, you indicated to her that INPO
23 was not that strict.

24 A No, I didn't say that. INPO is very strict. They
25 are just there for a short period of time.

1 Q In point of fact, at least according to Mr.
2 McGrath, INPO has more stringent requirements than the NRC?

3 A They're very strict; yes.

4 Q So an INPO -- a clean INPO finding is a very good
5 thing?

6 A Oh, yes.

7 Q And it's unprecedented at Sequoyah?

8 A Well,...

9 Q That's what you wrote.

10 A ...I guess, based on a short period of time.
11 Sometimes they find things they should find; sometimes they
12 don't find things.

13 Q And do you recall telling, I guess it was actually
14 Judge Bechhoefer in response to another question that this
15 good INPO finding, you indicated he was only there part of
16 the year, and while that was good, the subsequent ones were
17 poor. And that was Fiser's problem, is that correct?

18 A Say it again.

19 JUDGE YOUNG: Tell us the page.

20 MR. DAMBLY: I'm on page 1555. And starting on
21 line 4:

22 "JUDGE YOUNG: I guess the reason I'm
23 confused, and just to let -- to have you clarify
24 while you're here, just as a non-scientist reading
25 particular the one I read, there have been no

1 chemistry related findings. This is a record for
2 SQN. And you had said that you put these down to
3 show some good things about the person.

4 "THE WITNESS: That's correct.

5 "JUDGE YOUNG: That sounds, just reading it
6 on its face, to be a pretty good thing.

7 "THE WITNESS: But you couldn't -- you
8 couldn't attribute that to his time frame there.
9 Part of it. He was there for like three or four
10 months as opposed to whoever was there before him.
11 But it wasn't -- it did occur during -- when INPO
12 came in, they came in and Gary had been back into
13 that position for a short time."

14 THE WITNESS: He'd been in outage management for a
15 period of time. yes.

16 MR. DAMBLY: And you continued:

17 "So you couldn't attribute all those
18 successes to him. But the report came out during
19 that period of time, and I was trying to show it
20 as, well, it was a success, although he had little
21 to contribute to it."

22 THE WITNESS: I think he should receive whatever
23 credit he deserved for that period of time.

24 MR. DAMBLY: Then Chairman Bechhoefer said:

25 "Well, had INPO made numerous findings with

1 request to Sequoyah previously?

2 "THE WITNESS: Later on. Later on, they did.
3 Previously they had some findings, but actually --
4 actually that was a good year.

5 "BY MR. MARQUAND: What year are you talking
6 about, Dr. McArthur?

7 "A To -- when Gary first came back into
8 chemistry; yes.

9 "Q '91? Well, did -- are you aware of
10 whether INPO made findings in '92, sometime after
11 he returned?

12 "A Yes.

13 "Q And there were programmatic
14 deficiencies, weren't there?

15 "A That's correct. Yes. That's the one
16 you'd really grade his success by."

17 THE WITNESS: Yes.

18 BY MR. DAMBLY:

19 Q And that was subsequent to the one that you talked
20 about in his appraisal that you gave.

21 A Say again now?

22 Q The INPO findings you're talking about here are
23 subsequent to the --

24 A There were some before and after.

25 Q Well, you're talking -- the '91 was very good, it

1 was clear.

2 A Yes.

3 Q And then you're talking about the subsequent one
4 is the one that you were talking about that was bad.

5 A I just know later, the one later was bad, I can't
6 recall --

7 Q My question to you, since Mr. Fiser never went
8 back to Sequoyah, how could that be his problem?

9 A To me, the chemistry problems built up over a
10 period of time. They don't happen overnight. When you
11 have program problems, they usually result from long periods
12 of time.

13 Q So when there are successes, they don't build up,
14 they're just a one shot deal, but if there's a problem, you
15 pin them back as far as it's appropriate, according to you,
16 is that right?

17 A No, you can pretty well take a finding and track
18 its history and find out if a person is responsible for
19 solving the issues or not.

20 Q Were the problems at Sequoyah different than the
21 problems, chemistry problems, at the other sites?

22 A At --

23 JUDGE COLE: At what, sir?

24 MR. DAMBLY: At other TVA sites.

25 A Other TVA sites? You're talking about like Watts

1 Bar?

2 BY MR. DAMBLY:

3 Q Watts Bar, Browns Ferry.

4 A They had similar problems.

5 Q Similar problems. So there was nothing
6 particularly unique about the Sequoyah problems?

7 A Some problems would be unique. They had some raw
8 water problems that were unique, so they had a few problems
9 that were unique to Sequoyah.

10 Q Okay.

11 JUDGE YOUNG: They had a few or few?

12 THE WITNESS: A few problems that were unique.

13 JUDGE YOUNG: A few or just few?

14 THE WITNESS: A few -- a few.

15 JUDGE YOUNG: Okay, thanks.

16 BY MR. DAMBLY

17 Q Did any of the chemistry superintendents in the
18 '90 to '92, '3 time frame at Watts Bar or Browns Ferry get
19 replaced by corporate people?

20 A Not -- by corporate people?

21 Q Were any of them removed, to the best of your
22 knowledge?

23 A See, I can't remember when Voeller came in. I
24 don't recall any -- the rad con chemistry manager -- we had
25 a new rad con chemistry manager. Voeller, I can't remember

1 if Voeller was TVA or came from outside, I just don't
2 remember.

3 Q And Voeller went to where?

4 A Watts Bar.

5 Q Do you recall saying in your testimony yesterday
6 that Fiser had personality problems with Sabados?

7 A Yes.

8 Q Did Jocher have personality problems with Sabados?

9 A Yes.

10 Q Everybody have personality problems with Sabados?

11 A I can't say everybody did, I know those two guys
12 did, yes.

13 JUDGE COLE: How do you spell that name, sir?

14 THE WITNESS: S-a-b-a-d-o-s.

15 BY MR. DAMBLY

16 Q Do you recall testifying yesterday that Fiser did
17 not want to go -- or didn't go back to Sequoyah position
18 because Kent didn't want it filled?

19 A No, I said that Rob Beecken didn't want him back
20 there. You're talking about after the year where they
21 rotated? Is that what you're talking about, the end of the
22 year rotation, Fiser was supposed to go back to Sequoyah and
23 Rob Beecken said he didn't want him back.

24 JUDGE COLE: That's correct, isn't it?

25 MR. DAMBLY: Pardon?

1 JUDGE COLE: Is that the time period, the year
2 after the one year exchange.

3 MR. DAMBLY: We're talking about the time he was
4 in the employee transition program -- or actually no, I'm
5 talking about the time that he was surplusssed, I'm sorry.

6 THE WITNESS: Oh, I don't understand the question.
7 BY MR. DAMBLY:

8 Q At the time that he was surplusssed, he worked for
9 you but he was given a surplus notice from the chemistry
10 superintendent position at Sequoyah.

11 A Okay.

12 Q That was the position he was surplusssed from,
13 correct?

14 MR. MARQUAND: Can we formulate a single question
15 instead of having it all strung out so that we can't
16 understand? I'm going to object on the grounds that it's
17 ambiguous and incapable of being answered.

18 JUDGE YOUNG: Why don't you rephrase it.

19 BY MR. DAMBLY:

20 Q Back at the time Mr. Fiser was surplusssed --

21 A Okay, that's when he was downtown.

22 Q When he was downtown, but he was occupying -- his
23 official position was the chemistry superintendent I believe
24 at Sequoyah, is that correct?

25 A (Nods head.)

1 JUDGE YOUNG: Your answer was yes?

2 THE WITNESS: Yes.

3 BY MR. DAMBLY:

4 Q And in that period, Mr. Kent wasn't sure he was
5 going to use that position in the future, he didn't want
6 that in his organization, is that correct?

7 A That's correct.

8 Q But the standard organization that you created and
9 Bynum approved required them to have that position.

10 A That's correct.

11 Q Now can you surplus a person from a position
12 that's in existence?

13 A Surplus a person --

14 Q Can you reduce somebody through a reduction in
15 force from a position that you're occupying and is still
16 going to exist afterwards?

17 A I don't know if I really understand the question.

18 Q Let me phrase it this way --

19 A Should be an HR decision, from my standpoint.

20 Q -- if you have performance problems with an
21 individual, are you supposed to take a performance-based
22 action in whatever you want to do because they're not
23 performing well, or you just say we've decided to reduce you
24 even though your job is still here, because then we don't
25 have to go through the performance?

1 A I still don't comprehend what we're getting at, so
2 --

3 Q Anybody ever tell you to use reduction in force or
4 surplussing procedures to eliminate people that you didn't
5 think were performing well?

6 A No, I never -- I don't think that's an appropriate
7 technique.

8 Q Prior to today, in all of the interviews you've
9 given to TVA OIG and the Department of Labor statements and
10 the NRC OI, the deposition, have you ever before said you
11 inquired of Mr. Maciejewski and how come your PD, and you
12 wanted one for the '94 position and you never got it?

13 A The rad con position?

14 Q The rad con position.

15 A I don't remember ever seeing an official signed
16 document.

17 Q I understand that. Do you ever remember telling
18 anybody that you made an inquiry about it and whatever it
19 was you said this morning Mr. Maciejewski told you?

20 A I talked to Maciejewski about it, yes.

21 Q What did he say?

22 A All I can remember is I just never got one.

23 Q Never got one. Did you tell anybody before today
24 that you'd talked to Mr. Maciejewski about it, in any of the
25 statements you've given?

1 A I don't know.

2 Q Now in going back to the trending issue at
3 Sequoyah, was there anything different in the trending being
4 done at Sequoyah chemistry in late '91 when there was this
5 meeting, according to the minutes apparently in November of
6 '91 -- was anything different in what was going on there in
7 trending than what had been being done at Sequoyah in '89 or
8 '90, to your knowledge?

9 A Back when Dave Goetcheus was in chemistry, he was
10 very interested in trending and did a lot of trending.

11 Q When was that?

12 A I don't remember, it was before Gary came into the
13 position.

14 Q That was '87.

15 A Somewhere in that time frame.

16 JUDGE YOUNG: Could I clarify something? When you
17 say he did a lot of trending, do you know whether he was
18 doing it on the weekends as well as the week days or are you
19 aware --

20 THE WITNESS: He was doing it -- each shift would
21 do the various trends.

22 JUDGE YOUNG: Including on the weekends?

23 THE WITNESS: Yes. The reason I know that is I
24 reviewed some of the documents they had during that period
25 of time that showed what he was trending. I was looking at

1 trending at other plants trying to determine what kind of
2 trending we should have at our PWRs and BWRs, so I actually
3 traveled to Florida Power & Light Company, to St. Lucie, and
4 to some other plants and looked at their trending to try to
5 get a feeling of what other people in the industry were
6 doing.

7 JUDGE YOUNG: Maybe you could explain something to
8 help me out here. As I understood Mr. Fiser in talking
9 about what he did, -- and anybody feel free to correct me if
10 I didn't understand this right -- but the information that
11 was produced over the weekend was gathered and then the
12 trending was done sometimes late Monday, but generally
13 Tuesday morning.

14 THE WITNESS: Yes.

15 JUDGE YOUNG: And so there were trending reports
16 or whatever you call them Tuesday, Wednesday, Thursday and
17 Friday, but the weekend information was incorporated in the
18 Tuesday morning reports.

19 THE WITNESS: That's the way Gary did it, yes.

20 JUDGE YOUNG: And the difference would be that Mr.
21 Goetcheus you said would --

22 THE WITNESS: He would do it on a daily basis.

23 JUDGE YOUNG: He would produce the reports every
24 day.

25 THE WITNESS: Yes.

1 JUDGE YOUNG: And just to clarify one more thing,,
2 the use of these reports, could you just sort of explain
3 that a little bit?

4 THE WITNESS: It would give you -- you could see
5 if you had leakage, end leakage, if you had any particular
6 problems. There are various techniques you use to see if
7 fission products or certain things were getting into the
8 system and it's just a concept that some utilities use a lot
9 more than others, just to look and see if they have problems
10 upcoming.

11 Some utilities do a lot less trending than TVA
12 does too, so you've got to be fair -- and some do a lot more
13 than TVA does.

14 JUDGE YOUNG: When they're produced on the
15 weekends, are they used -- are people reading them on the
16 weekends and making use of them to do --

17 THE WITNESS: You usually have a shift supervisor
18 there that would review the trends on the weekend.

19 JUDGE YOUNG: And then if they saw that there was
20 some leakage, then that would take some action?

21 THE WITNESS: Yes, ma'am.

22 JUDGE COLE: Some of these measurements are
23 operational tools.

24 THE WITNESS: Yes.

25 JUDGE COLE: He mentioned something like 50 data

1 points or something, or 50 measurements. What fraction of
2 those would be an operational tool and what would be -- have
3 more use for long term trends?

4 THE WITNESS: You could probably pick about a
5 dozen that would be very important to see on a daily basis,
6 and others are long term. You have some that are short
7 term, some are long term trends.

8 JUDGE COLE: All right, sir.

9 CHAIRMAN BECHHOEFER: In terms of staffing, the
10 number of people who are required to do trending, is greater
11 staffing required if you're going to do daily --

12 THE WITNESS: Oh, yes.

13 CHAIRMAN BECHHOEFER: -- over the weekends?

14 THE WITNESS: Yes. Gary is right about that, he
15 needed more people to do additional trending, there's no
16 question about it. He'd have to have more money and more
17 people to do the kind of trending that some utilities do.

18 JUDGE YOUNG: Do you think he could have gotten
19 those extra people, if he --

20 THE WITNESS: That's a difficult question. If I
21 had been the plant manager, I would have authorized it,
22 let's just put it that way. I would have felt like it was
23 very important to have those trending charts but some other
24 people wouldn't feel that way.

25 JUDGE YOUNG: How did that fit with the

1 downsizing? Was that going on at that point?

2 THE WITNESS: I don't know if Sequoyah wad
3 downsizing then or not, I can't really say.

4 JUDGE YOUNG: Okay, thank you.

5 BY MR. DAMBLY:

6 Q And back to the question I had, from '87 to
7 sometime in late '91, trending at Sequoyah was being done
8 with this Tuesday through Friday by Mr. Fiser.

9 A That's correct.

10 Q Was there anything other than the fact that for
11 some period of time, and I can't remember whether it was two
12 weeks or a month or whatever, that it wasn't being done when
13 the computer was out. Was there anything different about
14 what was being done at Sequoyah in trending prior to 1991
15 from what had been done from '87 up to there?

16 A There wasn't as much trending being done as had
17 previously been done.

18 JUDGE YOUNG: There was not as much?

19 THE WITNESS: Not as much.

20 BY MR. DAMBLY:

21 Q And when did the cutback occur?

22 A I can't give you a specific time. I'd have to go
23 back to the data charts.

24 CHAIRMAN BECHHOEFER: Mr. Dambly, are you coming
25 to a place where we could take a break?

1 MR. DAMBLY: We can take a break now, that's fine.

2 CHAIRMAN BECHHOEFER: We'll take about a ten
3 minute break please.

4 (A short recess was taken.)

5 CHAIRMAN BECHHOEFER: Back on the record. Judge
6 Young would like to ask a clarifying question.

7 JUDGE YOUNG: Yes. Judge Cole may help me out on
8 this -- just so I can get a better understanding of what
9 trending is about, could you describe what the reports
10 looked like? For example, trending sounds as though you
11 plot somehow, on a graph or something, data over time.

12 THE WITNESS: Yes.

13 JUDGE YOUNG: And so I guess what I'm trying to
14 get an understanding of is how that's done and what they
15 look like and how they would differ from one day to the next
16 day.

17 THE WITNESS: Let's take a BWR with iron, iron
18 content in the reactor. They'll take a sample periodically,
19 like every six hours or something and they'll watch this
20 trend. And there are certain levels you don't want to go
21 to, you want to stay down below those levels. Sometimes you
22 approach those levels and you will want to know ahead of
23 time if you're approaching that level or not, because it can
24 have an impact on the operation of the system. So
25 therefore, you want to make sure you know ahead of time

1 you're trending in the wrong direction..

2 JUDGE YOUNG: So every six hours, there would be a
3 graph and it would show --

4 THE WITNESS: They'd go take a sample --

5 JUDGE YOUNG: -- one point at this time, one point
6 at this time and --

7 THE WITNESS: Yes, that's right.

8 JUDGE COLE: Are all these presented in graphical
9 form or --

10 THE WITNESS: Yes.

11 JUDGE COLE: -- are some of them presented just in
12 tables?

13 THE WITNESS: Most of them in graphical form.

14 JUDGE YOUNG: Thank you, that's helpful.

15 CHAIRMAN BECHHOEFER: Mr. Dambly, you may proceed.

16 MR. DAMBLY: Thank you.

17 BY MR. DAMBLY:

18 Q Dr. McArthur, going back to the meeting in
19 apparently November of '91 in Mr. Fiser's office concerning
20 trending.

21 A Okay.

22 Q Do you recall at that meeting, you heard a tape of
23 it yesterday, Mr. McGrath coming out and telling you that
24 Mr. Fiser couldn't stay in the Sequoyah position?

25 MR. MARQUAND: Objection, that's a

1 mischaracterization, there was not a tape of that meeting,
2 it was not a tape of the conversation after the meeting. It
3 was a tape apparently of a conversation between Dr. McArthur
4 and Fiser a year later.

5 MR. DAMBLY: Okay. I didn't mean to suggest that
6 either was taped. If it came out that way, I'm sorry.

7 BY MR. DAMBLY:

8 Q But you heard a tape of a conversation between
9 yourself and Mr. Fiser yesterday, and in that you told Mr.
10 Fiser that after that meeting Mr. McGrath made certain
11 statements about Mr. Fiser, do you recall that?

12 A Yes.

13 Q And the meeting, that meeting is the meeting in
14 November of -- at least that you think is the meeting in
15 November of '91, the NSRB meeting?

16 A I don't know specifically when it was.

17 Q Well, was there any other meeting you recall, NSRB
18 meeting, where Mr. McGrath, Mr. Peterson were upset about --

19 A I know that conversation took place at an NSRB
20 meeting.

21 Q Okay, you don't know which one.

22 A No.

23 Q To your knowledge, did Mr. McGrath or Mr. Peterson
24 ever make any comments to you that they were opposed to Mr.
25 Fiser going to the corporate position to switch with Jocher?

1 A No.

2 Q Now do you recall your testimony yesterday that
3 TVA is very open and encourages everyone to file corrective
4 I guess action reports?

5 A That's correct, or get it on the corrective action
6 list.

7 Q Or get it on the list?

8 A Yeah. In fact, they're open in all -- contacting
9 the NRC, EPA -- the concept is any methodology you can use
10 to raise complaints is acceptable and encouraged.

11 Q Let's look at Joint Exhibit 27, the sequence of
12 events.

13 A Uh-huh.

14 (Brief pause.)

15 Q And if I could refer you to page 71.

16 A 71? Is there a page -- oh, I see.

17 Q And if you would look at the conversation on that
18 page --

19 A Okay.

20 Q Go ahead, take a minute to read it.

21 A The whole page?

22 Q Sure.

23 (The witness reviews a document.)

24 A Okay.

25 Q Do you recall having a discussion with Mr. Fiser

1 about what's -- this discussion with Mr. Fiser?

2 A Not specifically.

3 Q Do you recall the incident relayed in here between
4 yourself and Mr. Kingsley?

5 A I know that he was not very happy about the
6 chemistry program.

7 Q But do you ever remember -- I guess it's two-
8 thirds of the way down, it says, "I'm saying to myself how
9 do you do this. If you find a problem, do you just say
10 nothing, this is the message you kind of get."

11 Do you remember drawing that conclusion at some
12 point from your interaction with Mr. Kingsley?

13 A I was questioning myself, I was saying to myself,
14 what do you do when you find a problem. And Kingsley was
15 telling me, I want to know the problems first-hand, I want
16 to be involved and -- he was very close to certain areas and
17 chemistry was an area he was very -- and rad con, for
18 example. Those are areas he wanted to make sure things were
19 under control.

20 Q Did he want them written down?

21 A Yes.

22 Q He did?

23 A He wanted them on an action list.

24 Q So you didn't get a message that says you do
25 nothing?

1 A No.

2 Q With respect to Mr. Fiser taping conversations, do
3 you recall telling me yesterday that you had no problem with
4 that?

5 A Well, my feeling was I was told he was doing that
6 and I knew it would not change my way of managing because I
7 was a pretty straight person, I thought I was honest, so I
8 didn't fear that. I don't like the concept of somebody
9 taping me, but I didn't -- I wasn't that concerned about it.
10 In fact, I think I even pretty well forgot about it after
11 that, didn't pay attention to it.

12 JUDGE YOUNG: Who forgot about it?

13 THE WITNESS: I did. It wasn't a big deal,
14 because I wasn't going to say anything that I wouldn't say
15 anyway.

16 BY MR. DAMBLY:

17 Q And you recall in the afternoon, after telling me
18 in the morning you had no problem and it was okay because
19 you'd say whatever you want, in response to a similar
20 question from Mr. Marquand, indicating it was very offensive
21 and you had to -- "I think it's very offensive, it's an
22 attack on a person to have somebody in the room that's
23 taping your conversation without you knowing it.

24 A I don't think it's very professional.

25 Q But did you have a problem with it or didn't you?

1 A I really didn't have a problem with it.

2 Q And you found out about it from Mr. Marquand?

3 A Yes.

4 Q And that was as part of the Jocher case, right?

5 A Part of what?

6 Q Part of the Jocher case is when that occurred?

7 A I don't know exactly when it was, I just remember
8 he told me about it.

9 Q And prior to Mr. Marquand informing you about
10 that, you didn't know you were being taped?

11 A No.

12 Q And then yesterday you told us that you could tell
13 when the taping was going on because it was --

14 A Afterwards, I could tell, by the way the questions
15 were asked.

16 Q Okay.

17 CHAIRMAN BECHHOEFER: Well, did he ask -- were
18 questions asked differently you think when --

19 THE WITNESS: Yes.

20 CHAIRMAN BECHHOEFER: -- the tape --

21 THE WITNESS: For example, I remember on question
22 he asked me "What do you think of Tom McGrath." He was
23 trying to get me to say something negative, I presume. So
24 he'd ask questions like that and I could tell they were
25 questions trying to elicit -- he would always say -- and

1 this was a warning to me -- he'd say, "You're always honest
2 with me, tell me your real feelings." So I could tell that
3 it was a setup to give some negative response.

4 BY MR. DAMBLY:

5 Q And you assumed from those questions that Mr.
6 Fiser was taping you?

7 A Yes.

8 Q But you couldn't actually tell, you just assumed
9 from the questions.

10 A No way I could really tell.

11 Q This morning you told us again that you were on
12 the SRB and you selected Mr. Fiser for the
13 chemistry/environmental position in '94.

14 A I didn't. The board selected him.

15 Q Didn't Mr. Grover select him?

16 A He would be the final decision, that's correct.

17 Q The board just interviews and scores.

18 A That's correct.

19 Q They don't make selections.

20 A But my point was if I was going to do anything
21 negative, that'd be the time to do it, I could have been the
22 one that could have interviewed Gary, given him negative
23 points, and by being a senior manager, I could have entered
24 into some discussion about he did perform poorly at Sequoyah
25 and downtown, I could have been negative, but I didn't do

1 that because I had no desire to do that.

2 Q And this was in 1994, correct?

3 A Yes.

4 Q Mr. Fiser's settlement agreement bringing him back
5 into the position was in 1994, correct?

6 A I believe that's correct.

7 Q And would it be, in your opinion, a very wise
8 thing when somebody just came back from a DOL proceeding
9 with a settlement agreement putting him in a job, to
10 immediately take some kind of an action?

11 A No.

12 Q So even if you wanted to get him, that wouldn't be
13 a good time to try, would it?

14 A I don't even like the question because I have no
15 desire to get at Gary. He was the least of my problems.

16 (Sirens.)

17 THE WITNESS: They're not coming here, are they?

18 MR. DAMBLY: You never know.

19 BY MR. DAMBLY:

20 Q And by the way, I think from what you told us
21 yesterday, that with SRBs, they're set up so that one member
22 can't really skew all the results, is that correct?

23 A You can have an impact, I would think. If a
24 person was really out to get somebody, it could appear
25 obvious if somebody scored somebody that everybody else

1 scored low -- high and you scored them low, that would be
2 obvious to me that something wasn't quite right.

3 Q That's one reason you had an HR facilitator.

4 A That's correct, part of the reason. Plus the
5 other fact is when you were through, you would compare how
6 everybody ranked the person. Just like in this case,
7 everybody ranked Harvey, Chandra and Gary pretty well the
8 same. That's a good indicator to me that the board has been
9 fair.

10 Q And back in the '94 time frame, if Mr. Grover
11 looked at the ratings and saw that yours were noticeably
12 different from everybody else, he could make the decision
13 himself under that policy that we say.

14 A Sure.

15 Q If we could go to Joint Exhibit 3.

16 (Brief pause.)

17 Q And, again, this is some excerpted pages from the
18 minutes of the November 20, 21, 1991 NSRB meeting; correct?

19 A Correct.

20 Q And as we discussed the other day, Mr. McGrath
21 prepared this executive summary? That's his responsibility?

22 A That's correct.

23 Q And he's the one who made the determinations as to
24 what were key items to go in it?

25 A Actually, the board would do that during the --

1 during the meeting. We would all agree as to whether an
2 item was to be an action item or not.

3 Q Well, there's a section up front called "Key
4 Items," and then there's a section in the back called
5 "Action Items."

6 A Yes.

7 Q They're not necessarily interchangeable, are they?

8 A He would -- he would review all of the minutes of
9 the various subcommittees and he would glean from that those
10 things he thought were important for senior management.
11 Sometimes senior management may just see the executive
12 summary.

13 Q All right. And in this particular executive
14 summary for the site chemistry, the PASS issue and the
15 unmonitored pathway -- release pathways are not mentioned;
16 is that right?

17 A That's correct.

18 Q But the data trending issue was?

19 A That's correct.

20 Q And there was no action item on the data trending;
21 right?

22 A I think, if I'm reading this correctly, that
23 corporate chemistry was given the responsibility to go out
24 and assist the site in solving that problem.

25 Q And this is -- do you recall Mr. Peterson

1 indicating he wanted -- and Mr. McGrath, a procedure put in
2 place requiring the data trending?

3 A During the discussions we had with -- with Gary
4 Fiser, that was -- that was presented.

5 Q And Mr. Fiser explained how he didn't have the
6 staff and he couldn't do it, that he'd be in violation of
7 procedures if they put it in?

8 A That's correct.

9 Q So, given his explain -- and that would be a true
10 statement, wouldn't it? We don't have the people, and you
11 make a procedure out that you can't follow, you're going to
12 get in violation?

13 A I think the reason the board was concerned, there
14 was no effort to try to solve the problem. The effort was
15 just to blunt it off and to leave it alone.

16 Q Would it have been a good move, in your opinion,
17 to mandate a procedure which couldn't be met under the
18 circumstances that existed at that time?

19 A That's not the way I would have tackled the
20 problem. I would have gone...

21 JUDGE YOUNG: That's not the way you would have
22 what?

23 THE WITNESS: That's not the way I would have
24 handled the problem. I would have gone to my management and
25 said, "I have a problem. Here's what I need. And I need

1 this much manpower and this much money to do it. Do I get
2 authorization to do it?" And then you proceed in that
3 manner. If not, you'd put it in the budget for the next
4 year.

5 Q And speaking of the budgets, are you aware that
6 for several years the chemistry upgrade program at Sequoyah,
7 the budget was cut every year?

8 A Yeah, I was very much involved with that; yes.

9 Q With cutting the budget?

10 A No, not of cutting it, but putting it forth.

11 Q And it got cut?

12 A Yes.

13 Q Is that Mr. Fiser's fault?

14 A That's a difficult question. It is -- to me, when
15 I met by Jack Wilson about that at one point in time, he
16 says, "Nobody's fighting for it."

17 JUDGE YOUNG: Nobody's...

18 THE WITNESS: Nobody's fighting for it. I looked
19 at him, I said, "Why -- Jack, why do we keep cutting the
20 chemistry upgrade program?"

21 He said, "Well, the chemistry people come in to me
22 and they say, 'We want these things done.' And then he'll
23 say, 'Well, I've got to cut someplace,' and they would say,
24 'Well, we better cut the chemistry upgrade program. We
25 can't cut these areas.'" So he did not feel at that point

1 in time that there was a real concerted effort to support
2 the full chemistry upgrade program.

3 Q A real concerted effort from whom?

4 A From the chemistry manager.

5 JUDGE YOUNG: Could we back up for just a second.
6 I want to clarify something. In your discussion with Fiser
7 where the trending issue was discussed and he told you that
8 he didn't have the people to do it, was there any discussion
9 with him about suggesting, for example, that he try to get
10 more people?

11 THE WITNESS: Yes.

12 JUDGE YOUNG: And could you describe that.

13 THE WITNESS: I remember -- in fact, it was
14 recommendation, I said, "You ought to put together a report
15 just saying what the problem is." And that's the reason I
16 was saying, "You need to see what the rest of the industry
17 is doing and say we're insufficient in the data trending
18 we're doing, and here's what we need to do, and here's what
19 I need to get it done."

20 JUDGE YOUNG: And what was his response?

21 THE WITNESS: He didn't want to do it.

22 JUDGE YOUNG: He didn't want to do the report?

23 THE WITNESS: He -- he did not -- he felt that he
24 -- where he was right now was adequate for his needs, and he
25 did not want to go after any more money.

1 JUDGE YOUNG: Was there any discussion about the
2 likelihood of getting more money?

3 THE WITNESS: There's always some money there.
4 It's according to priorities. Now, he'd -- he'd probably
5 have to fight against several other organizations. But it's
6 -- you know, it has a lot to do with will, how much
7 willpower you had to get something done.

8 BY MR. DAMBLY:

9 Q And that would be a good place to go to Staff
10 Exhibit 95.

11 A This one 95? Okay.

12 Q And this again is the report interview of your --
13 in the DOL matter in '90 -- this is dated April 24th, '97.

14 A Okay.

15 Q And if you'd go to the second page of that.

16 A Okay.

17 Q And if you look up -- well, maybe we'll look down
18 to the bottom -- or about a little over halfway down the
19 bottom, and there's a change, says, "Rad con," and then it
20 says, "Under," something or other, which I can't read.

21 But you see your initials there?

22 A Yes.

23 Q And I think, if you look up a little higher in
24 there where it says, "Chemistry," and there's a "W," which
25 was the start of your initials, also?

1 A Yes.

2 Q Appears to have gotten cut off. And the other
3 change above that one, there's a "W" under that, too.

4 A Yes.

5 Q So you made changes to this document and initialed
6 all the changes you made?

7 A Yes.

8 Q Did the DOL investigator threaten you if you
9 didn't sign it?

10 A He didn't -- he didn't threaten me. He just had.
11 -- he'd gone back several times and rewritten the document.
12 And this was the last presentation he gave to me. And I
13 went through there and made some changes. So, no, there was
14 never a threat.

15 Q Did you leave anything in here that you felt you
16 were uncomfortable saying?

17 A I was comfortable -- uncomfortable with the whole
18 report.

19 Q Well, why didn't you just write your own and sign
20 it and give it to him?

21 A Well, that's -- what'd you say?

22 Q Why didn't you just write your own statement, sign
23 it, and give it to him?

24 A Well, at one point in time I did that. I wrote a
25 document for him, and he did not use it.

1 Q So why didn't you say, "I've already given you a
2 statement"?

3 A I -- I told you before, even signing this thing
4 was a mistake on my part.

5 Q And why did you sign it?

6 A Out of frustration.

7 Q Do you normally sign documents in a...

8 A No.

9 Q ...DOL proceeding or any proceeding or
10 complaint...

11 A Not generally. But with this -- this guy was --
12 he was very unqualified for what he was doing. I should
13 have complained to HR, but I didn't do that. I already told
14 you it was a mistake on my part. I should not have signed
15 it.

16 Q And on page -- I guess the next-to-the-last page,
17 which is the one that talks about meeting with -- says
18 January of '92, but...

19 A Okay.

20 Q ...apparently may have been November of '91.

21 A Yeah.

22 Q Down at the bottom of that page, on the right-hand
23 side, there's another correction with your initials. You
24 see that?

25 A Yes.

1 Q Okay. And in this, on that same page it does say,
2 "The big issue dealt with the data trends."

3 A That's right.

4 Q Was that correct?

5 A I -- I felt that way because I was a data trend
6 person.

7 Q And tell me again what you recall Mr. Cox saying
8 to you and when he said it.

9 A About...

10 Q About his view of Mr. Fiser.

11 A He said, at a coffee break at a rad con and
12 chemistry manager meeting, we were discussing this -- the
13 selection review board, and he said, "Well, I don't even
14 know why we're even holding a selection review board. Why
15 don't we just pick the guys we want," he said, "because I
16 would vote for Gary Fiser."

17 Q Okay.

18 A I don't know if those are the exact words, but
19 something close to that.

20 Q Did he make that statement after he had told you
21 he was -- he couldn't make the -- the SRB interviews?

22 A We were discussing the schedule for it then.

23 Q And did he say, "I can't be there"?

24 A I don't know. I can't give you the exact time and
25 sequence, but somewhere along the line he did say -- I don't

1 know if it was later or not, but he just said -- he did say,
2 "I will not be able to make it." In fact, I believe it was
3 that afternoon we were going to do the selection review
4 board, we had the rad con and chemistry meeting in the
5 morning.

6 Q Right.

7 A And that's when he said he couldn't stay.

8 Q Well, it's my understanding that's when he said --
9 he made the statement about Mr. Fiser, but you didn't get
10 somebody to sit in on his -- you didn't contact Mr. Rogers
11 between the meeting of the rad con chemistry managers...

12 A No, that -- no, it couldn't have been that day.
13 It had to be later.

14 Q I mean, earlier he told you that he couldn't make
15 it?

16 A That's right.

17 Q But on the day of the interviews he said something
18 about his view of Mr. Fiser?

19 A Yes.

20 Q He had already been recused and wasn't going to be
21 on the board?

22 A I -- I can't -- I'm not clear on that. It could
23 have been the rad con manager meeting before the next
24 meeting which we were going to do the interviews. I believe
25 that's correct. I'm not really sure.

1 Q And I believe this morning---and I could have
2 gotten this wrong---but I believe you indicated that Watts
3 Bar and Sequoyah, back in '96, were having steam generator
4 problems and replacement problems.

5 A Yes.

6 Q How long had Watts Bar been running at that time?

7 A I can't remember their startup date. They hadn't
8 been running very long.

9 Q And they already were in replacement mode?

10 A No, they weren't looking at replacement. Sequoyah
11 was. But usually you -- you see the same trends at one
12 plant, you expect you're going to have the same problems at
13 the other plant.

14 Q Okay. And I believe also you said this morning
15 that you didn't have any distress from the DOL complaint, it
16 was just the NRC's investigation; is that correct?

17 A DOL complaint?

18 Q When Mr. Fiser filed his '96 complaint and he
19 named you and Mr. McGrath and -- as people who had
20 discriminated against him, that didn't bother you at all?

21 A Yeah. I knew it wasn't true.

22 Q But when NRC investigated you, that bothered you?
23 When the staff did?

24 MR. MARQUAND: That's not -- that's a
25 mischaracterization. He said what he -- what bothered him

1 was being charged and tried by the staff in the NOV.

2 Q Well, tell us what it was that bothered you.

3 A Well, I've been in -- like I said the other day,
4 I've been in the industry for a long time. It's the first
5 time anything of that type had ever happened to me. I knew
6 that it was a fair selection process, I knew that we had a
7 tough job in selecting two out of three. I knew that was
8 very difficult. But I knew that it was very fair. I'd
9 always had a good opinion of Gary. I didn't think he was
10 the best chemistry person I ever dealt with, but he was
11 good. He was -- he was an adequate chemistry person. But
12 it was no vindictiveness on my part in any way to hurt him.
13 I know that beyond any shadow of a doubt.

14 Q Okay. When you say it's the first time anything
15 like that had ever happened, you're talking about the staff
16 investigation?

17 A Yes.

18 Q You'd had DOL complaints against you before?

19 A I don't -- not that I recall.

20 Q So there was a DOL complaint was the first -- Mr.
21 Fiser's '96 is the first one that you're aware of?

22 A That I'm aware of. I don't know of any others.

23 Q Okay. And what was different about the staff's
24 investigation in the Department of Labor issue involving
25 you?

1 A I guess it was in writing, to say that you had
2 discriminated against somebody and you -- and you knew you
3 didn't. I didn't think there was any evidence, whatsoever,
4 to support that kind of a position.

5 JUDGE YOUNG: Say that over again. I didn't hear
6 you.

7 THE WITNESS: I didn't think there was any
8 evidence, whatsoever, to support the position that there'd
9 been discrimination.

10 Q You also indicated this morning that HR's
11 responsible for determining which position has to be
12 advertised; is that correct?

13 A That's my understanding.

14 Q A manager has no say in that?

15 A Well, you can go argue your position, but they'll
16 make the final decision.

17 Q And who prepares the position descriptions to
18 determine which jobs are going to be changed and which
19 aren't?

20 A Excuse me?

21 Q When you're doing a reorg or a downsizing, who's
22 responsible for determining what position are going to be
23 kept, and whether they're going to be renamed and a new PD
24 issued or...

25 A Well, in my case, I would go to Tom McGrath and

1 make a presentation to him, and he would make the final
2 decision.

3 Q And the decision...

4 JUDGE YOUNG: You say you would make the
5 presentation to him?

6 THE WITNESS: I'd make one to him, and then I'm
7 not sure who he dealt with. I'm sure he was dealing with
8 other people, too.

9 Q And the decision as to whether you were going to
10 rename or put in new duties in a position description
11 actually dictated the outcome of whether HR would tell you
12 you had to post it or not?

13 A I'm not -- I can't respond to that, because I
14 don't know their basis.

15 Q And it is true that Mr. McGrath told you, from --
16 from the beginning, that there would be one PWR and one BWR?

17 A That's correct.

18 Q He didn't ask you, "Do you think we ought to do
19 primary, secondary, or how do you want to divide it?" He
20 said, "One PWR and one BWR"; correct?

21 A That's the decision that was made.

22 JUDGE YOUNG: Say that again. We're losing you up
23 here.

24 THE WITNESS: Oh.

25 JUDGE YOUNG: That decision was made? Is that

1 what you said?

2 THE WITNESS: By Tom McGrath; yes.

3 JUDGE YOUNG: Okay.

4 MR. DAMBLY: That's all for the staff, Your
5 Honors.

6 MR. MARQUAND: Just a very few questions, and
7 hopefully we can get Dr. McArthur out of here in time for
8 lunch.

9 RECROSS-EXAMINATION

10 BY MR. MARQUAND:

11 Q On redirect, counsel asked you and you said that
12 you felt Gary Fiser's management skills were lacking. Had
13 he -- had you had a chance to determine his -- the adequacy
14 of his management skills in your observation at Sequoyah?

15 A Yes.

16 Q Did you have a chance to observe his management
17 skills as corporate chemistry manager?

18 A Yes.

19 Q Did you have a chance to observe his management
20 skills as chemistry program manager?

21 A Yes.

22 Q You also testified that you felt Sam Harvey was
23 more technically competent. Could you explain that a little
24 more, please.

25 A Well, it's -- it's observation over a period of

1 time, watching him solve problems. And the same feeling was
2 held by others---Dave Goetcheus, Charles Kent---in that Sam
3 was technically a very qualified individual.

4 Q When you say "solved problems," why is -- is that
5 important?

6 A Yes.

7 Q What kind of problems are you talking about?

8 A A good example, the steam generators, with the
9 tubing problems that we had, he was very much into
10 evaluating the various -- you know, all volatile treatment,
11 sodium phosphate treatment, that kind of thing for the steam
12 generators. And he was very much in contact with other --
13 other utilities, becoming aware of their techniques. And --
14 and he -- he was very much involved in committees and
15 finding out what other people were doing.

16 Q Okay. You indicated that problem solving was
17 important. Was that in -- why was that an important aspect
18 of this program manager position?

19 A Well, that's what -- the sites come to us with
20 their problems, with things they don't have time to resolve,
21 and they assign them to us to resolve. So you've got to
22 have somebody that's quick on their feet and has --
23 understands the industry, has contacts outside of TVA that
24 he can get other techniques for solving problems, so...

25 Q Now, let me turn your attention to 1993. After

1 Gary Fiser had been surplused from his position, was in ETP,
2 and there was testimony that Kent determined he didn't want
3 to have a chemistry manager underneath him; is that right?

4 A That's correct.

5 Q Was that before or -- did he make that
6 determination and was the surplusng of Gary Fiser before or
7 after Bynum had announced the standardized organization?

8 A I don't remember the -- the time sequence, but...

9 Q Go ahead with your answer.

10 A I don't remember the exact time sequence. I know
11 that Charles Kent was against -- not completely against the
12 new rad con chemistry organization, but he did want to have
13 more direct reports to him, and he lost that battle after a
14 period of time, because Joe Bynum said, "We will have this
15 kind of organization at all sites."

16 Q So he was resistant to implementing the standard
17 organization?

18 A Yes.

19 Q Were you involved in -- and I believe I heard you
20 the first day. Were you involved in helping to shape what
21 the standardized rad con chemistry environmental
22 organization would look like?

23 A I pretty well put it together, and went to Joe
24 Bynum and to the rad con chemistry managers for their review
25 and approval.

1 Q All right. First I'm going to show you Staff
2 Exhibit 59, and then I'm going to show you Staff Exhibit 12.
3 Staff Exhibit 59 is in Book 4.

4 A 59?

5 Q Yes. Try Exhibit 12.

6 JUDGE YOUNG: Joint or staff?

7 JUDGE COLE: Joint 12.

8 MS. EUCHNER: Are you looking for the April 27th
9 memo from Bynum?

10 JUDGE YOUNG: That's Staff 12.

11 MR. MARQUAND: I'm looking for the April 2, '93
12 memorandum to Gary Fiser.

13 MR. DAMBLY: That's Joint 59.

14 MR. MARQUAND: Okay. Thank you. All right, let's
15 go to -- I'm sorry. That's been admitted into the record as
16 the notice transferring Mr. Fiser to the employee transition
17 program, where it says that his position of chemistry
18 manager, Sequoyah, was determined to be surplusd. In other
19 words, it was being eliminated.

20 Now let me show you, if you can get the number
21 right this time, Staff Exhibit 12. It should be in Book #1.

22

23 JUDGE YOUNG: Staff 12 is the April 27th, '93...

24 MR. MARQUAND: Yes, Your Honor.

25 BY MR. MARQUAND:

1 Q Can you tell us what Staff Exhibit 12 is?

2 A Administrative confidential rad con and chemistry
3 environmental organization, Sequoyah and Browns Ferry.

4 Q What's the date of it?

5 A April 27th, 1993.

6 Q Is this the memorandum from Mr. Bynum to the
7 various sites telling them what he thought the standardized
8 rad con chemistry organization should be?

9 A That's correct.

10 Q Actually, it just addresses Sequoyah and Browns
11 Ferry, it doesn't address Watts Bar; right?

12 A I think Watts Bar was considered -- since they had
13 one unit, they would probably be handled different. At that
14 point in time he wasn't sure exactly what he was going to do
15 at Watts Bar.

16 Q And I notice that you are not one of those listed
17 on here, are you?

18 A No.

19 Q And you are not a -- you didn't receive a cc, did
20 you?

21 A See, but I'm the one who put it together, let's
22 put it that way.

23 Q Okay. And how can we tell you put it together?

24 A I don't know.

25 Q Well, look down at the initials in the lower left-

1 hand corner.

2 A Of what?

3 Q Right above where it says, "Attachment." Right
4 here.

5 A Oh, yeah, okay. That means I wrote it.

6 Q You wrote it?

7 A Yeah.

8 Q "WCM." All right. Now, does this refresh your
9 recollection that the standardized organization was -- Joe
10 Bynum sent this memorandum of the standardized organization
11 out nearly a month after Mr. Fiser's position was eliminated
12 and he was sent to chemistry -- I mean, to employee
13 transition program?

14 A Yes.

15 MR. MARQUAND: Your Honors, I tender Staff Exhibit
16 12.

17 MR. DAMBLY: No objection.

18 Q Now, when Mr. Bynum sent this memorandum out
19 saying this is -- he wanted to have this organization
20 implemented, did it happen overnight?

21 A No.

22 Q And was Charles Kent still resistant to...

23 A Yes.

24 Q ...having a chemistry manager?

25 A Yes.

1 JUDGE YOUNG: To having one?

2 MR. MARQUAND: To creating a chemistry manager
3 job.

4 Q Is that right?

5 A That's correct.

6 CHAIRMAN BECHHOEFER: Without objection, we'll
7 admit the Staff Exhibit 12.

8 MR. MARQUAND: Thank you, Your Honor.

9 (The documents, heretofore marked
10 as Staff Exhibit #12, were received
11 in evidence.)

12 MR. MARQUAND: Let's keep out Staff Exhibit 12 for
13 one second.

14 MR. DAMBLY: Your Honor, just so we're clear, did
15 you say you were admitting Staff Exhibit 59? I think it's
16 Staff 12, is it not?

17 CHAIRMAN BECHHOEFER: Staff 12 is what I said.

18 MR. DAMBLY: Okay.

19 CHAIRMAN BECHHOEFER: I haven't been asked about
20 the other one.

21 MR. MARQUAND: I think the other one...

22 MR. DAMBLY: The other one's already in.

23 CHAIRMAN BECHHOEFER: It's already in.

24 BY MR. MARQUAND:

25 Q If you'll turn to Page 2 of Staff 12, do you see

1 an organization chart?

2 A Yes.

3 Q You were previously asked about the various work
4 experience of Mr. Harvey and Mr. Fiser; remember that?

5 A Yes.

6 Q And if you would, look at I believe it is Joint
7 Exhibit 22. Have you looked -- looking at Joint Exhibit 22,
8 you were looking at the resumes of Mr. Fiser and Mr. Harvey,
9 and counsel was trying to ask you about the various
10 experience and whether or not it was comparable or not. And
11 I'm going to show you those resumes once again.

12 If you look at Exhibit 417 and...

13 CHAIRMAN BECHHOEFER: You mean Page 417?

14 Q Page 417 of Joint Exhibit 22, that's Mr. Fiser's
15 resume. All right, let's see, 417 is the first page of his
16 resume; 418 is the second page.

17 And on Page 418, it indicates he was working as a
18 radio chemistry supervisor at Arkansas Power & Light. When
19 you read the duties that are there, what does the radio
20 chemistry supervisor do?

21 A He's responsible for taking the -- taking the
22 samples throughout the plant and analyzing the samples.

23 Q He does that, or does he...

24 A His technician to do that (sic).

25 Q So it's a technician type of job? Shift

1 supervisor of technicians, isn't it?

2 A Yes.

3 Q All right. The next job under that is radio
4 chemist, February '74 to '79. What kind of job is that,
5 when you read those duties?

6 A That's principally responsible for analyzing the
7 data that comes back to the technicians.

8 Q That's what TVA calls a radio chemistry lab
9 analyst or something?

10 A Yes.

11 Q Okay. Is that equivalent to a program manager
12 job?

13 A No.

14 Q Is the radio chemistry supervisor equivalent to
15 TVA's program manager job?

16 A No.

17 Q Below that he's got chemist, slash, health
18 physics. When you look at the duties there, what kind of
19 job is that?

20 A It sounds like they combined chemistry and health
21 physics in the same -- the same category. He apparently was
22 doing both. Surveillance, primarily.

23 Q Technician?

24 A Surveillance of the chemist -- yeah, more chemist
25 -- more a technician doing chemistry and health physics.

1 Q Is that equivalent to a program manager job?

2 A No.

3 Q And if you move to...

4 CHAIRMAN BECHHOEFER: While you're still there...

5 MR. MARQUAND: Yes, Your Honor.

6 CHAIRMAN BECHHOEFER: ...there's a sentence that
7 says, "Assisted in the initial startup effort for both a B&W
8 and CE nuclear plant." What kind of...

9 THE WITNESS: What'd he say?

10 MR. MARQUAND: I can't hear you, Judge.

11 CHAIRMAN BECHHOEFER: ...activity is that?

12 I said there's a sentence which -- under the radio
13 chemist section, which said, "Assisted the initial startup
14 effort for both a B&W and CE nuclear plant." And I'm just
15 asking what kind of activity would that be considered?

16 THE WITNESS: There's -- that's getting initial --
17 whenever you start a reactor up you get initial primary
18 readings of all the chemistry parameters you're going to
19 trend, so that that's -- that's the initial conditions, is
20 what it's called. So you -- you do the initial conditions
21 for the plant prior to startup.

22 CHAIRMAN BECHHOEFER: But that is not a managerial
23 type of...

24 THE WITNESS: It's -- it's a...

25 CHAIRMAN BECHHOEFER: ...or is it?

1 THE WITNESS: ...it's a technical level type
2 thing, going into the plant and taking samples and -- and
3 recording the data, analyzing the data. It's a function but
4 it's not a management responsibility.

5 CHAIRMAN BECHHOEFER: I see. Would the person
6 carrying out the function be instructed on each one to do,
7 or would he do it on his own?

8 THE WITNESS: Well, he'd have technicians doing
9 it. He actually could take some samples, but primary
10 technicians would take the samples.

11 JUDGE COLE: You have characterized the radio
12 chemistry supervisor position as -- did you say that was a
13 technician position?

14 THE WITNESS: No, no, no.

15 JUDGE COLE: He supervises the training...

16 THE WITNESS: It's a lead position. It's not a
17 management position, but it's a lead position.

18 JUDGE COLE: Okay. And what's the difference
19 between a lead position and a management position?

20 THE WITNESS: "Lead" just means that under a
21 chemistry manager you may have five or six principal
22 functions: surveillance, laboratory, equipment, those kind
23 of things. So those would be the integral parts reporting
24 to the chemistry manager. It's one function in the
25 operation of the plant.

1 JUDGE COLE: All right, sir.

2 BY MR. MARQUAND:

3 Q This would be the individual who -- who might
4 himself be a technician?

5 MR. DAMBLY: Objection to testifying by counsel.

6 MR. MARQUAND: I'm not testifying.

7 Q This might be the individual who also is a
8 technician, who supervises other technicians?

9 MR. DAMBLY: Objection again; leading question and
10 he's testifying.

11 JUDGE YOUNG: Why don't you rephrase.

12 CHAIRMAN BECHHOEFER: Yeah, why don't you
13 rephrase.

14 BY MR. MARQUAND:

15 Q How does -- how does TVA radio chemical lab
16 analysts, how are they classified; do you know?

17 A How are they classified? Technicians.

18 Q Right. They're technicians. Do they have a
19 supervisor?

20 A Yes.

21 Q And what is that supervisor's position?

22 A The technician supervisor.

23 MR. DAMBLY: I'm going to object under relevance,
24 because we're talking about what he did today, and now he's
25 trying to say, well, if I gave him that name at TVA he

1 wouldn't have been something. Unless he knows what it means
2 at ANO, I don't see why it's relevant.

3 JUDGE YOUNG: Describe the basis of the...

4 BY MR. MARQUAND:

5 Q Do you have the same functions, but just at
6 different plants?

7 A They're pretty well the same.

8 Q I mean, you have to take samples?

9 A Yes.

10 Q And you have technicians doing it?

11 A Yes.

12 Q Do they have to be supervised at both plants?

13 A Yes.

14 Q And how is this supervision reviewed -- regarded
15 -- how did you regard the supervisors and the technicians at
16 TVA?

17 A They were a senior level technician.

18 Q Is this radio chemistry supervisor described in
19 Mr. Fiser's resume any different than that?

20 A It's -- I would call it a lead position, in that
21 the laboratory guy -- head of the laboratory had a pretty
22 important responsibility.

23 CHAIRMAN BECHHOEFER: Speak up.

24 A Not a management responsibility, but he ran the
25 lab.

1 Q Is it equivalent to program manager...

2 A No.

3 Q ...or a managerial position?

4 A No.

5 Q Now, if you'll look at Mr. Harvey's resume, which
6 is on...

7 JUDGE YOUNG: What page?

8 Q ...Page 429 and 430, and we need to look at his
9 experience prior to TVA. You said that -- if I recall your
10 testimony, was that the senior health physics technician and
11 the chemical radiation technician, this are technician jobs?

12 A Technician; that's right. He was their contractor
13 technician for a period of time.

14 Q What is the -- we look at senior shift chemist
15 where he says he's under contract to Carolina Power & Light.

16 A That means he -- that means he was responsible for
17 either a day shift or a back shift, and all the chemistry
18 activities that were going on. So he was the shift manager.

19

20 Q All right. And when -- in April of '87 and
21 December of '87, when it says he's senior chemist under
22 contract to Georgia Power, what kind of position was he
23 performing there?

24 A He was doing the same thing. He was probably a
25 shift manager.

1 Q All right. And in December '87 to April of '91,
2 staff nuclear chemist for Houston Lighting & Power, what did
3 he do there?

4 A That's when the plant was starting up, so they
5 were -- they were taking -- they were doing a lot of
6 procedure writing, specifications, and that kind of thing.

7 Q And how did procedure writing and specifications
8 compare to the program manager job at TVA?

9 A That's something that the program manager could do
10 and would do.

11 CHAIRMAN BECHHOEFER: Would you consider those as
12 managers?

13 THE WITNESS: Mid-level management.

14 CHAIRMAN BECHHOEFER: Pardon?

15 THE WITNESS: Mid-level management.

16 CHAIRMAN BECHHOEFER: Well, why is that different
17 from the -- what I asked you about.

18 JUDGE YOUNG: 418.

19 CHAIRMAN BECHHOEFER: The radio chemist on Page
20 418?

21 THE WITNESS: Radio chemist is an important
22 position. It's a lead -- I'll call to a lead position. And
23 that's the guy that supervised technicians. He did not
24 supervise, you know, procedure writing, specification
25 writing, and that kind of thing. He was over a number of

1 technicians.

2 CHAIRMAN BECHHOEFER: So this assistance of the
3 initial startup effort for B&W and CE nuclear plant, that's
4 different in terms of comparing the two?

5 THE WITNESS: That means he was setting up a
6 laboratory.

7 CHAIRMAN BECHHOEFER: But I'm saying that -- that
8 isn't managerial and some of these others are?

9 THE WITNESS: No, it's not -- it's not
10 considered...

11 CHAIRMAN BECHHOEFER: Sort of escapes me what the
12 difference is.

13 THE WITNESS: Yeah. Well, that's -- normally in a
14 power plant the laboratory person is -- radio chemist is a
15 lead position. That's -- that's just the way it's done.

16 MR. MARQUAND: Your Honor, I'm not sure I can hear
17 you, but if you're referring on Page 418 where it says,
18 "Radio chemist from February '74 to June '79," is that the
19 section you were referring to?

20 CHAIRMAN BECHHOEFER: Just the last sentence of
21 that is what I was referring to.

22 MR. MARQUAND: And -- and both of them indicate
23 that he is -- the first sentence talks about assisting in
24 the initial setup of the lab, and the last sentence talks
25 about assisting in the initial startup effort for both a B&W

1 and CE nuclear plant.

2 CHAIRMAN BECHHOEFER: That's correct. That's
3 correct. That was what I...

4 THE WITNESS: Yeah. The Arkansas Nuclear One
5 had...

6 CHAIRMAN BECHHOEFER: ...was trying to
7 differentiate that between some of Mr. Harvey's duties that
8 you were describing.

9 THE WITNESS: Well, the only thing I'd really tell
10 you here, Judge, is that most of the positions at -- when .
11 you -- that's what I saw when I looked at Sam Harvey's
12 resume. He was more involved in the management aspects of
13 the startup of the plant; okay? Now, Gary was involved very
14 much in the analytical laboratory portion of the plant, but
15 not all of the -- the big things such as writing the
16 procedures, writing specifications, and that kind of thing.
17 That's what I'm trying to -- to indicate.

18 MR. MARQUAND: And with respect to...

19 THE WITNESS: I don't know if that's clear enough
20 or not, but...

21 MR. MARQUAND: Dr. McArthur,...

22 THE WITNESS: You're a chemist. You know.

23 BY MR. MARQUAND:

24 Q With respect to Judge Bechhoefer's question about
25 the entry for radio chemist and the specific language where

1 it says he assisted in these matters.

2 A Yeah.

3 Q Is there any way you can look at those and
4 determine what his responsibility was in that initial
5 startup effort when he says he assisted?

6 A That tells me that he reported to somebody else
7 that had the primary responsibility.

8 Q And can you tell what his responsibility was with
9 respect to that, though, when all he does is tell you that
10 he assisted?

11 A That means -- that means to me that he was over a
12 number of technicians. And he was responsible for managing
13 those technicians.

14 Q Okay.

15 A Or making sure they got their job done.

16 Q Let me refer you to Joint Exhibit 27. If you'll
17 look at Page 71, and once again we return to the sequence of
18 events.

19 A 71?

20 Q Page 71.

21 A Okay.

22 Q I'm not -- I mean, given the -- the omissions in
23 this, I'm not sure I understood entirely what happened here.
24 But when Kingsley indicated to you that he had some
25 difficulties about problems, was he having difficulties

1 about the fact that you identified problems, or the fact
2 that the problems were there?

3 A No, he was concerned. He had heard the chemistry
4 program was in the -- in the garbage heap, I guess. And he
5 wanted to know why...

6 JUDGE YOUNG: I'm sorry. The chemistry program
7 was in the what?

8 THE WITNESS: Garbage heap.

9 MR. MARQUAND: Garbage heap.

10 JUDGE YOUNG: Garbage heap.

11 A In trouble. And he said, "I need to know these
12 kind of things early on. I need to know that a master
13 plan's been put together for resolving these issues, and
14 there is -- all these items are put onto a -- a hit list
15 such that they can be resolved." He said, "That's what I
16 expect. I don't like to find out about a chemistry problem
17 sometimes after it has happened. I want to know ahead of
18 time what's happened."

19 Q Okay.

20 JUDGE YOUNG: I thought you were referring, in
21 your question, to the first paragraph, the -- the longest
22 paragraph on that page, talking about the fire protection
23 problem.

24 THE WITNESS: No.

25 MR. MARQUAND: I was talking about the second

1 paragraph.

2 JUDGE YOUNG: Oh, okay.

3 THE WITNESS: Fire protection was also a
4 significant problem at that point in time, so...

5 BY MR. MARQUAND:

6 Q And what was his difficulty about the problems in
7 fire protection?

8 A That they had not been all identified. His
9 biggest problem was: I want to know...

10 Q Sooner?

11 A ...immediately that we have a -- there's some kind
12 of trending process that tells you we're heading in a wrong
13 direction. We need to have corrective action taking place
14 before we get into the dump.

15 JUDGE YOUNG: Is this correct in saying that you
16 had, in fact, identified the fire protection problem? But
17 it sounds as though, if this is an accurate transcript...

18 THE WITNESS: Well, I -- I was concerned because I
19 thought we were on the right path. We had identified the
20 problem. What he was saying was I was not aware of it.
21 Remember, I have a chain of command. I report my position
22 to somebody else, and they go to -- he was a couple of
23 layers up above me, or more than that. And what he was
24 concerned about is he -- he wanted more contact with
25 operating people and knowing the problems existed. Somehow

1 the information wasn't getting up the chain.

2 Q He was being left in the dark?

3 A Yeah. That was his complaint.

4 Q All right. Let me direct your attention to the
5 1994 reorganization and Mr. Fiser's ultimate selection for
6 chemistry environmental program manager. Counsel said you
7 knew at some point in time Fiser had settled his complaint
8 in '94 and come back to work. And he asked you would it be
9 wise, if you were trying to retaliate against someone, to
10 immediately retaliate, or would it be better to wait some
11 time and go after them then.

12 A I consider that a moot question, because I had no
13 desire to retaliate against him.

14 Q Okay. All right. But in -- let me ask you this.
15 In 1996, when the reorganization was going on and Fiser
16 says, "If you post the job I'm going to file a DOL
17 complaint," and the job gets posted and he files a DOL
18 complaint. How wise would it be, asking the same questions,
19 with all the scrutiny that's going on, to immediately, under
20 everybody's eyes, try to retaliate by causing his non-
21 selection?

22 A It's not wise to retaliate at any time. There is
23 no basis for that.

24 Q The last question I wanted to ask was, you said
25 that human resources determined whether these new jobs would

1 be posted or not, and in fact, determined that the -- in '96
2 the chemistry program manager job would be posted. And
3 counsel elicited from you that, well, maybe the position
4 descriptions, the way they're written, could determine
5 whether they should be posted.

6 With respect to the PWR program manager job, who
7 drafted that position description?

8 A The chemistry position?

9 Q Yes, the chemistry program manager PWR job.

10 A I don't remember. Probably it was a combination
11 of Ron Grover and myself. I don't know that.

12 Q Okay. Did you get any complaints by Harvey about
13 the way it was drafted?

14 A He -- let's see, this -- which one -- which...

15 Q Chemistry program manager.

16 A Okay, program manager.

17 Q The job that Fiser was applying for.

18 A Okay. That -- Ron Grover wrote that one.

19 Q All right. And did Fiser complain about that one?

20 A Yes. He complained that he did not see it, didn't
21 have a chance to comment on it.

22 Q Did Fiser have a chance to comment on it?

23 A Yes.

24 Q And what was the nature of Harvey's complaint?

25 A That he didn't have a -- he didn't have input to

1 it. And so I had to...

2 Q And as a result, what -- why was he complaining
3 about that?

4 A He wanted to make sure that it was oriented
5 towards his expertise just like I'm sure Gary would want it
6 oriented towards his expertise.

7 Q Did Fiser have input into it as well?

8 A Yes. I had to send out again to everybody, and
9 they made some changes to it.

10 Q Thank you, Dr. McArthur.

11 JUDGE YOUNG: I'd like to clarify just on that
12 topic of the writing of the position descriptions and so
13 forth. I thought I understood you to say before something
14 to the effect people at your level would write the initial
15 position descriptions, and then they would be recommended to
16 Mr. McGrath, who would then ask human resources to give
17 their opinion on it. And...

18 THE WITNESS: Well, if it was a new position, you
19 would -- you'd draft the PD. The PD would then go before
20 the Hay Committee, in which it would be ranked.

21 JUDGE COLE: What committee, sir?

22 THE WITNESS: It would be ranked is it a PG-6, PG-
23 7, PG-8, PG-9.

24 JUDGE COLE: You said the rate committee?

25 JUDGE YOUNG: Hay. Hay.

1 THE WITNESS: Hay, H-a-y.

2 JUDGE YOUNG: Is that a person's name?

3 THE WITNESS: It's a committee -- I was a member
4 of that committee, also. We would evaluate any new PD, to
5 rank it among all other TVA PDs. The system -- try to make
6 the system that was fair for payee and that kind of thing.
7 So therefore it would go before that committee. Then it
8 would come back. Then the position could be filled.

9 JUDGE YOUNG: What I would -- what I'd like to get
10 some clarification on is, prior to the 1996 reorganization
11 and writing of the new position descriptions for the BWR and
12 PWR chemistry program manager positions, there -- as I
13 recall, there were Fiser, Harvey, and Chandra in the
14 chemistry, possibly slash environmental program manager
15 positions? Is that right? Am I remembering that right?

16 THE WITNESS: Well, during that period of time we
17 -- we only were going to have -- we were going to have two
18 chemistry people; BWR...

19 JUDGE YOUNG: No, I'm talking about prior.

20 THE WITNESS: Oh, prior to that?

21 JUDGE YOUNG: Prior. There was Fiser -- there
22 were Fiser, Harvey, and Chandra, and they were program
23 managers doing chemistry, but with some environmental?

24 THE WITNESS: And environmental -- and
25 environmental; yes.

1 JUDGE YOUNG: Right. How was the assistance that
2 was provided to the sites divided up between the PWR and BWR
3 issues that arose?

4 THE WITNESS: Well, at that point in time we had
5 -- Gary was assigned to Watts Bar; Sam was assigned to
6 Sequoyah; and Chandra was assigned to Browns Ferry.
7 However, we would meet on a weekly basis in which we'd
8 discuss problems, because Gary may have an expertise that
9 could be used at Browns Ferry or Sequoyah. And sometimes we
10 would interchange the guys to solve some particular
11 problems. But they had primary responsibility for knowing
12 all of the problems at their particular site.

13 JUDGE YOUNG: What was the -- I wasn't clear
14 earlier. I think you said that Mr. McGrath wrote the
15 descriptions for the PWR and BWR...

16 THE WITNESS: No.

17 JUDGE YOUNG: ...or -- or he was the one that
18 decided that's how it would be done.

19 THE WITNESS: He decided we would have one PWR
20 person and one BWR person.

21 JUDGE YOUNG: And was -- I thought I had heard you
22 say that -- that in writing the position descriptions, he
23 started with you, and you made a recommendation. Did you
24 have any recommendations on whether approaching it in that
25 way was -- was the best way to handle...

1 THE WITNESS: Yes, I thought it was a good way to
2 do it. And basically, between Ron Grover and myself, we
3 wrote the PDs; okay? And Tom McGrath would review them, but
4 not -- it wasn't a major review, because we were the experts
5 in those areas.

6 JUDGE YOUNG: What was it that -- that you -- that
7 was viewed -- what was it about the earlier way things were
8 handled with the three of them assigned to the different
9 plants, but with the weekly meetings to discuss problems
10 back and forth, what was it about that -- that model that
11 was such that you thought dividing it up into PWR and BWR
12 was better?

13 THE WITNESS: We were cutting heads.

14 JUDGE YOUNG: You were cutting heads?

15 THE WITNESS: Yeah, that...

16 JUDGE YOUNG: Meaning people?

17 THE WITNESS: Cut back.

18 JUDGE YOUNG: And so -- but what I'm trying to
19 understand -- from my understanding of the way things
20 operate, and if -- if you understand it differently, please
21 tell me. But from my understanding of the way things
22 operate, if a RIF had been done, various things, including
23 seniority, would be looked at, and generally speaking---
24 oversimplifying---but generally speaking, the person with
25 the least seniority would be the one whose head got cut?

1 THE WITNESS: That's correct.

2 JUDGE YOUNG: And -- but if a position description
3 -- if new position descriptions were written that were
4 different enough from the earlier ones, there would -- the
5 jobs would be posted and the people would be selected
6 according to how well they did on -- in the interview
7 process...

8 THE WITNESS: That's correct.

9 JUDGE YOUNG: ...and their experience and so
10 forth?

11 THE WITNESS: Yes.

12 JUDGE YOUNG: And so what I'm trying to get
13 clarified from you is, when I asked you before, what was it
14 about the way things were done earlier where each person was
15 assigned to a plant and you had weekly meetings to go back
16 and forth and share ideas, what was it about how things were
17 done at that point, were such that you felt that -- not from
18 a head-cutting perspective, but from a functional
19 perspective, that you felt was better about dividing it up
20 into BWR and PWR position descriptions?

21 THE WITNESS: I didn't think it was better.

22 JUDGE YOUNG: You did not?

23 THE WITNESS: No. I liked the idea of having a
24 guy at each site and meeting periodically and interchanging
25 the people as you needed to do that. But when somebody

1 comes to you and says, "Well, you got three; make it two."
2 Then you got to come up with another concept.

3 Okay, you could have one guy assigned to one plant
4 and one assigned to the other plant, and then the two of
5 them assigned to another plant. You could do that. We
6 thought about that. Then we said, with Tom McGrath and Ron
7 Grover and myself sitting together, we said, well, we really
8 have PWRs and BWRs. And I think counsel had mentioned that
9 it could have been primary and secondary. It could have
10 been that. But that decision wasn't made. The decision was
11 made -- Tom McGrath liked the BWR/PWR concept.

12 JUDGE YOUNG: Before the position descriptions
13 were all generalized, more or less?

14 THE WITNESS: Yeah.

15 JUDGE YOUNG: And even though the people in the
16 positions were assigned to different plants, the position
17 descriptions allowed you to interchange information and so
18 forth and so on?

19 THE WITNESS: That's correct.

20 JUDGE YOUNG: So what I'm trying to understand is
21 what was it about having those generalized position
22 descriptions that was such that you felt having more
23 specific BWR and PWR position descriptions was a better way
24 to go?

25 THE WITNESS: Again, I -- I would agree, I liked

1 the concept where we had a guy at each site; okay? That's
2 all I can tell you. The manager made the decision that we
3 have to have less people, so therefore we tried to fit those
4 people with the positions we had, the number of people into
5 the best way we could handle the sites.

6 JUDGE YOUNG: Well, the question that I ask,
7 though, is what was it about having one generalized position
8 description that all three persons were in...

9 THE WITNESS: Oh, I see. I see.

10 JUDGE YOUNG: ...that was such that rather than
11 continue with two generalized -- two people in one -- under
12 one generalized position description, that -- what was it
13 about proceeding in that way that was...

14 THE WITNESS: Okay. There's a significant...

15 JUDGE YOUNG: ...deemed to be less satisfactory
16 than proceeding by making more specialized position
17 descriptions?

18 THE WITNESS: I think I know what -- yeah.
19 There's a significant difference between a PWR and a BWR.
20 You want a guy in the PWR that has a good understanding of
21 the secondary -- primary and secondary, but a lot of
22 emphasis on the secondary side because of the particular
23 problems.

24 JUDGE YOUNG: And you didn't think you could do
25 that with the generalized descriptions?

1 THE WITNESS: No. No, we didn't.

2 JUDGE YOUNG: Why not?

3 THE WITNESS: And then with the BWR you've got
4 iron problems and other things like that, so you want
5 somebody -- for example, Chandra had expertise in those
6 areas. He had expertise in PWR, too. But he had a much
7 stronger experience in BWR. So the concept is...

8 JUDGE YOUNG: But I'm still not understanding why
9 couldn't you have done that with the generalized position
10 description with two people in it and using them whatever
11 way you deemed was...

12 THE WITNESS: Well, when you fill the position,
13 you want to fill the position with a person who's an expert
14 in PWR concepts and BWR concepts. If you're looking for
15 somebody out there in the industry that had -- in other
16 words, I wouldn't want to bring a BWR guy and put him in a
17 PWR right away, because he wouldn't know all those problems.

18

19 JUDGE YOUNG: But before, you had three people all
20 in the same position...

21 THE WITNESS: That's right.

22 JUDGE YOUNG: ...with the same position
23 description, and -- and both -- both PWR and BWR issues were
24 addressed by those three people.

25 THE WITNESS: Well, they -- they were assigned

1 basically on their backgrounds. The PWR guys were Sam and
2 Gary, and the BWR guy was Chandra. He had more experience
3 in BWRs. So we really assigned them, before then, based on
4 BWR and PWR.

5 JUDGE YOUNG: So you -- so the position
6 descriptions may not have -- the generalized position
7 description may not have been that accurate...

8 THE WITNESS: That's right.

9 JUDGE YOUNG: ...in terms of what they were
10 actually doing?

11 THE WITNESS: It would not identify expertise in
12 secondary chemistry and -- it may -- it may do that, but it
13 -- it would be much more generalized.

14 JUDGE COLE: So that when they were assigned to a
15 plant, that determined what their specialist...

16 THE WITNESS: That's right.

17 JUDGE COLE: ...specialty would be, either BWR or
18 PWR...

19 THE WITNESS: That's correct.

20 JUDGE COLE: ...because they'd lived with the
21 problems?

22 THE WITNESS: Yeah. And sometimes they would
23 interchange, based on instrument techniques and, you know,
24 abilities to buy a piece of equipment. You may take a BWR
25 guy and -- and put him on a PWR for a short period of time.

1 But that didn't happen a lot. Basically, the BWR guy was
2 assigned to BWRs, and the PWR guy was assigned to PWRs.
3 It's difficult to keep up with all the technology with both
4 of them.

5 BY MR. MARQUAND:

6 Q Before the '96 reorganization, had you had
7 generalists in the area of rad con?

8 A In...

9 Q Well, you ended up with two rad con positions.

10 A Yeah.

11 Q One was rad con programmatic, and the other one
12 was rad con technical; right?

13 A That's correct.

14 Q Had those positions been -- had those -- had your
15 -- in your previous -- or prior to the reorganization, had
16 the people who worked in rad con had generalist...

17 A That's correct.

18 Q ...position descriptions?

19 A That's correct.

20 Q Did you get any direction from up above about
21 writing specific job descriptions to address the specific
22 functions that...

23 A We wrote them differently for the two positions
24 because one position was related towards, you know, suits
25 against TVA for radiation exposure. For example, rex --

1 dealing with rex. So we had expert...

2 JUDGE YOUNG: What's rex? Say -- say that again.

3 THE WITNESS: That's rex, r-e-x. It's -- it's the
4 tracking of all the radiation exposure of the TVA employees.
5 We had an expert in that particular area.

6 JUDGE YOUNG: Okay.

7 THE WITNESS: We had -- in fact, we were buying a
8 brand new piece of equipment, several million dollars worth
9 of equipment, so all the plants could be the same. And one
10 of the rad con guys was an expert in that area. So his PD
11 was written to make sure that was taken into account.
12 Because if we ever replaced him, we'd want to replace him
13 with somebody that had expertise in that area.

14 BY MR. MARQUAND:

15 Q But you wrote specific position descriptions to
16 identify specific rad con functions?

17 A That's correct.

18 Q Whereas, previously you'd had generalists; right?

19 A That's correct.

20 MR. DAMBLY: May I ask a few questions?

21 FURTHER REDIRECT EXAMINATION

22 BY MR. DAMBLY:

23 Q Let me go back to this Joint Exhibit 22.

24 A Is that one I've got here?

25 JUDGE YOUNG: I keep putting this away.

1 Q All right. And if we turn again to be looking at
2 Pages 418 and 430.

3 A 418?

4 Q The resumes for Harvey and -- and Fiser.

5 A 418. What was the other? 430?

6 Q 430.

7 A Okay.

8 Q All right. And if -- if we look at 418,...

9 A Okay.

10 Q ...Judge Bechhoefer asked you some questions about
11 assisting in the initial startup effort for both the B&W and
12 CE nuclear plant.

13 A Yeah.

14 Q And above that it says, "This job also included
15 writing procedures and programs and setting up
16 instrumentation controls."

17 A Uh-huh (affirmative).

18 Q And you told us before writing procedures and
19 whatever is...

20 A Yeah, they're very important. They're
21 programmatic things.

22 Q So then why isn't this a programmatic function?

23 A Well, it says he's a radio chemical person.

24 Q Well...

25 A He must have written procedures just for that

1 particular area, not for the whole plant.

2 Q ...and so when you say you're a senior chemist,
3 that means you're writing stuff for the whole plant and not
4 just for the chemistry area?

5 A Oh, yes. No, there are some people that have
6 overall programmatic knowledge. They can write procedures
7 for any area in the chemistry area. Some people are
8 specific instrumentation, for example, or a LARA and a rad
9 con area, or a radio chemistry. And they can only write
10 procedures in those areas. It's obvious to me that Gary
11 wrote procedures in a radio chemistry area, not the whole
12 program.

13 Q I see. Have you ever worked at ANO?

14 A As a consultant.

15 Q And when it says radio chemistry supervisor
16 responsible for 17 radio chemists training, 17 radio
17 chemistry and three supervisors, radio chemists. And you
18 decide that's -- that's a technician kind of position?

19 A No, I didn't say that.

20 Q Lead technician?

21 A I said it's a lead person over technicians. I did
22 not say it was a technician.

23 Q But that was not programmatic?

24 A Not it would not be programmatic.

25 Q But then when we get down to Mr. Harvey's resume

1 from July 1985 to '87 where he's senior shift chemist and
2 says he supervised three technicians, that became a
3 programmatic position?

4 A Which one is that?

5 Q The one that says senior shift chemist.

6 A The thing that that tells me -- I don't know how
7 many people he supervised. But senior shift chemist means
8 he has a total responsibility on a shift. That means he's
9 responsible for the operation of the chemistry program on a
10 shift, and that's a management responsibility.

11 Q Over three technicians?

12 A I -- maybe that's all they had on that shift.

13 Q If they have 17, that's just a -- doesn't count.

14 A I don't know how to respond to the question,
15 because apparently the shift he was responsible for only had
16 the three technicians. Now, if he had needed other people,
17 he could call in a radio chemist or he could call in a
18 effluent (sic) guy or whatever he had to do. That's his
19 responsibility. He would coordinate with operations. And
20 whatever is needed on that shift, he'd bring that person in.
21 So he may be responsible for three technicians, because
22 that's who was working on a shift. But if you needed an
23 effluent person, you'd go get that person, and he'd be
24 responsible for that person.

25 Q So basically, if you find something in here that

1 said Mr. Harvey wrote procedures, that was a program
2 function; and if Mr. Fiser wrote them, it was some kind of
3 limited technician function?

4 A No. No.

5 Q And if he supervised technicians, he's a lead
6 technician.

7 A You're -- you're not quoting my words.

8 Q Well, that's what I'm getting out of every
9 statement you've made so far.

10 A What I'm saying is, if you're writing programs for
11 the total chemistry program, that's different than writing
12 for one segment of the program. That means you have overall
13 knowledge of the chemistry program, not a limited knowledge
14 to one area. That's very clear to me.

15 Q But did -- did you say that the radio chemistry
16 supervisor position was program management?

17 A Was not a -- not a program management.

18 Q It was not. Major responsibilities include
19 chemistry and radio chemistry and primary systems of both
20 plants.

21 A It's an important function, but it's a lead
22 function. That's just the way the plants operate. You can
23 go to any plant and that's what you'll find.

24 Q I have nothing further.

25 CHAIRMAN BECHHOEFER: Dr. McArthur, I would like

1 to get back...

2 COURT REPORTER: Excuse me, Judge, I can't hear
3 you.

4 CHAIRMAN BECHHOEFER: Oh, I got to get the
5 microphone.

6 I'd like to go back several days in your
7 testimony. One day.

8 THE WITNESS: Several days? I know it feels that
9 way, but...

10 CHAIRMAN BECHHOEFER: Yeah. When you were talking
11 about Mr. Cox and his replacement, I was a little bit
12 confused about the difference about whether you would try to
13 reschedule the SRB meeting for when Mr. Cox could attend,
14 whether you would take that approach, or just replace him.
15 And I was not clear why you didn't try to find out when Mr.
16 Cox would have been available.

17 THE WITNESS: Well, we actually asked...

18 CHAIRMAN BECHHOEFER: I understand he was not
19 available, but were attempts made to find out when he would
20 be available so the meeting could be rescheduled?

21 THE WITNESS: Yes, we talked about that. And it
22 was -- it was obvious to me---I give you my opinion---that
23 Jack didn't particularly care about being a part of this
24 selection review board. That's just my...

25 JUDGE YOUNG: "Jack" is Mr. Cox?

1 THE WITNESS: Yeah, that's right.

2 CHAIRMAN BECHHOEFER: But did he ever tell you
3 that?

4 THE WITNESS: No. But we tried -- in fact, you
5 have to remember, now, we tried to set this selection review
6 board up several times already. This wasn't the first time.
7 And it was very, very difficult to get the rad con and
8 chemistry manager -- just like we said today, Charles Kent's
9 involved in the outage. And Rogers. These guys are tied
10 up. So it's very difficult to reschedule things.

11 In fact, as I told you before, whenever we had rad
12 con and chemistry managers, the day before, if -- if John
13 Corey called and says, "I can't make it tomorrow," I'd call
14 the other two guys and cancel the meeting. Because we just
15 couldn't do it without all three and myself. There were
16 four of us.

17 And so rescheduling is very difficult at TVA.
18 That's been my experience. So that would have been the last
19 thing I'd want to do, is to reschedule one of those kind of
20 meetings. Because you also had to have Ben Easley and other
21 people involved, and all let people that were scheduled to
22 come for interviews. They had already been notified that
23 there were going to be interviews. So you have all these
24 people scheduled to come in at one time, and all of a sudden
25 you're going to say, well, let's reschedule to next week.

1 It's just not that easy to do.

2 Now, we did try to get somebody from Watts Bar.
3 We made several attempts to get people from Watts Bar, but
4 we were unsuccessful.

5 JUDGE YOUNG: Before I...

6 CHAIRMAN BECHHOEFER: Well, I -- well, I think I
7 have a follow-up.

8 JUDGE YOUNG: Okay. I just wanted to ask him
9 something about something he just said.

10 CHAIRMAN BECHHOEFER: Oh, okay. Go ahead.

11 JUDGE YOUNG: What was it that made you think that
12 Mr. Cox did not want to be a part of it?

13 THE WITNESS: Previous experience. He always left
14 meetings early in the afternoon. It was just part of his
15 habit. He...

16 JUDGE YOUNG: So you got the impression that he
17 didn't want to -- to come to this meeting because...

18 THE WITNESS: All I knew is if we scheduled an
19 afternoon meeting -- because, see, these -- these reviews
20 take all day. They go from early in the morning till
21 sometimes 8:00 and 9:00 at night. I knew...

22 JUDGE YOUNG: You thought he was trying to get out
23 of it because he -- you thought he would want to go back and
24 take care of things at the farm?

25 THE WITNESS: He had a -- he had other priorities.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE YOUNG: Okay. Thanks.

CHAIRMAN BECHHOEFER: Well, considering the same meeting, you had mentioned that Mr. Kent had previously, before -- before the meeting started, at least, had expressed a preference.

THE WITNESS: No, not Mr. Kent, Mr. Cox.

CHAIRMAN BECHHOEFER: Oh, I had noted that this also happened with Mr. Kent, had expressed -- you had mentioned that he had said that -- or someone had said that he had formed an opinion that he would likely select Mr. Harvey.

THE WITNESS: No, I -- I never -- I never stated that. Not that he -- he was respectful of Sam Harvey's technical capabilities, but he never, ever expressed to me, at least, that he would select him on the board. And he had worked with Gary and Sam, both. He knew both of their technical capabilities.

My next question is about scoring. And I think you mentioned that there were some persons who a score sheet was prepared by -- well, either you or else I think you said by -- was Westbrook who you named?

THE WITNESS: Well, the questions were formulated by me.

CHAIRMAN BECHHOEFER: I see.

1 THE WITNESS: Now, the scoring was up to the
2 individual board members.

3 CHAIRMAN BECHHOEFER: I see. Now, when a board
4 member didn't sit in on all of it, or did they always sit in
5 on them?

6 THE WITNESS: The best concept is that the same
7 individuals stay through the whole -- that didn't always
8 happen because of meetings and somebody called out. But the
9 best concept is to have the same person interview all the
10 people. That, to me, is a more fair situation.

11 CHAIRMAN BECHHOEFER: Right. Well, if -- if it
12 doesn't happen, how is the scoring handled, then? I mean,
13 if a person doesn't...

14 THE WITNESS: Each individual provides his own
15 score.

16 CHAIRMAN BECHHOEFER: And are the scores
17 comparable? Not for a different individual, obviously,
18 but...

19 THE WITNESS: I can't -- I can't state. I know in
20 this case they were comparable. And they -- of course, we
21 brought in another person well ahead of time. In this case,
22 Rick Rogers came in. And he knew most of the individuals
23 that were being interviewed. He knew Gary more than he knew
24 anybody on the -- on the panel that was being reviewed. So
25 I -- but for me to say that they would all score alike, I

1 can't -- I couldn't say that.

2 CHAIRMAN BECHHOEFER: I don't mean to say -- the
3 score's not going to be the same, but the same rationale for
4 reaching the particulars.

5 THE WITNESS: Yeah. There's not any particular
6 rationale written. There's nothing that says these are the
7 ten points you take into account. You just listen to the
8 individual and you say is this guy expert enough; does he
9 understand this question; did he respond in a proper way;
10 did he answer the technical question with a managerial
11 question or not?

12 It is subjective. There's no question about it.
13 We've asked the NRC before what other technique would you
14 suggest, and they said we don't know of any other technique.
15 We've asked that -- in fact, our John Scalice asked that at
16 NRC, didn't he? Asked the question: Do you have any other
17 way of selecting people? And they said, "No, we don't know
18 of any other way." If you can think of another way, we'd
19 sure like to try it.

20 CHAIRMAN BECHHOEFER: Any follow-up questions from
21 any of the parties?

22 MR. DAMBLY: Not for the staff, Your Honor.

23 MR. MARQUAND: No, Your Honor.

24 CHAIRMAN BECHHOEFER: Dr. McArthur, I guess --
25 we've appreciated your attendance here and hope we didn't

1 wear you out too much, and we thank you.

2 THE WITNESS: It's been the highlight of my year.

3 CHAIRMAN BECHHOEFER: You better not say that.

4 And you're excused for a witness. We're going to break for
5 lunch.

6 THE WITNESS: Thank you.

7 (Whereupon, a luncheon recess was taken at
8 1:02 p.m., the hearing to resume at 2:30 p.m., the
9 same day.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

CHAIRMAN BECHHOEFER: Back on the record.

Staff, do you wish to call a witness?

MS. EUCHNER: I'm sorry, Your Honor?

CHAIRMAN BECHHOEFER: Do you wish to call Mr. Cox
as your witness?

MS. EUCHNER: Staff calls Jack Cox.

JUDGE COLE: We appreciate you coming on such
short notice, Mr. Cox.

MR. COX: Thank you, I apologize for my dress.

JUDGE COLE: That's fine.

Whereupon,

JACK COX

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

DIRECT EXAMINATION

BY MS. EUCHNER:

Q Would you please state your name for the record?

A Jack Cox.

Q What's your educational background?

A I have a high school degree and a Bachelor of
Science degree in radiation nuclear technology at Oklahoma
State University.

Q When did you first come to TVA?

A 1989, September of 1989.

1 Q And what was your first position?

2 A As radiological control manager.

3 Q At which of the --

4 A At Watts Bar.

5 Q Did you compete for that position?

6 A No, I was selected from the outside, it was an
7 outside hire.

8 Q And what were your duties in that position?

9 A I was responsible for, at that time, setting up
10 and implementing the radiological control program for the
11 station.

12 Q Did you do any chemistry work in that position?

13 A No.

14 Q How long were you the rad con manager at Watts
15 Bar?

16 A Approximately four yrs.

17 Q And what position did you take after that?

18 A Radiological and chemistry control manager.

19 Q Was that a promotion for you?

20 A Yes, it was.

21 Q Did you compete for that position?

22 A Yes, I did.

23 Q Was there a selection review board done for that
24 position?

25 A Yes, there was.

1 Q What were your duties in that position?

2 A I was responsible for the radiological control,
3 the chemistry and rad waste environmental sections at the
4 station.

5 Q What were your interactions with the corporate rad
6 chemistry organization?

7 A The corporate rad chemistry organization is a
8 support organization to each of the TVA nuclear plants and
9 they offered us support, helped us with technical projects,
10 that sort of thing.

11 Q Did the rad chemistry managers from each of the
12 sites meet together on any regular basis?

13 A Typically monthly, yes.

14 Q And is that's what's referred to as a peer team or
15 peer group meeting?

16 A That's correct.

17 Q And you said that was monthly?

18 A Yes.

19 Q What would you do at these meetings?

20 A We would discuss issues that potentially affect
21 all three sites, even though it may be currently affecting
22 one site, it had the potential to affect the other sites. We
23 also discussed industry issues, challenges, priorities,
24 those kinds of things.

25 Q Who would normally attend these meetings?

1 A Each of the rad chemistry managers from the three
2 sites and Wilson McArthur at the time, but the corporate rad
3 chemistry manager.

4 Q Now at the time, what time frame are we talking
5 about here?

6 A From I think '94 when I was promoted to that
7 position until '97.

8 Q And you said that Dr. McArthur would participate
9 in these as well?

10 A Yes.

11 Q How long were you the rad chemistry manager?

12 A Until October of 1997.

13 Q And what was your position after that?

14 A I took the training manager position.

15 Q Also at Watts Bar?

16 A Yes.

17 Q Was that a promotion?

18 A No, it was a lateral rotational assignment.

19 Q Rotational, so it wasn't a permanent assignment?

20 A Not at that time, no.

21 Q Did it ever become a permanent assignment?

22 A Yes.

23 Q When?

24 A Approximately a year, year and a half later.

25 Q Is that the position you're currently in?

1 A That's correct.

2 Q Do you know Gary Fiser?

3 A How did you come to know him?

4 A He was in the corporate rad chemistry
5 organization, I think he was corporate chemist, I think was
6 his position at the time, and as the rad chemistry manager,
7 he was one that helped us at Watts Bar with chemistry
8 issues.

9 Q From 1994 to 1996, who were the rad chem managers
10 at the other sites?

11 A Charles Kent for Sequoyah and John Corey at Browns
12 Ferry.

13 Q Did Ron Grover ever attend any of your peer team
14 meetings?

15 A Infrequently, but yes.

16 Q How about Allen Sorrell?

17 A I don't recall a peer team meeting that he --
18 well, yes, there was a time -- and I don't remember what
19 position he was in, but he was in a corporate position and
20 he may have attended a few.

21 Q Did Mr. Fiser ever attend peer team meetings on
22 behalf of either Mr. Grover or Dr. McArthur?

23 A Possibly, but I don't specifically recall.

24 Q Do you recall whether there was a meeting where
25 Mr. Fiser attended and he was later asked to leave the room?

1 A No, I don't.

2 Q Is there any particular reason why an individual
3 other than a rad chem manager would be excluded from one of
4 your meetings?

5 A Yeah, there's certain confidential or personnel
6 issues that we discuss from time to time. That might be the
7 only reason I could think of.

8 Q Were you aware that Mr. Fiser had on previous
9 occasions tape recorded conversations with his coworkers?

10 A No.

11 Q No one ever mentioned that to you?

12 A No, not that I recall.

13 Q When Mr. Fiser was working at Watts Bar, what kind
14 of work was he doing?

15 A He was supporting the chemistry organization, we
16 were going through our start up phase at Watts Bar in the
17 1995 time frame and he was helping the chemistry manager at
18 the time.

19 Q Who was the chemistry manager?

20 A Dave Voeller.

21 Q And for the record that's V-o-e-l-l-e-r. Was Mr.
22 Fiser doing primary chemistry, secondary chemistry or both?

23 A Both.

24 Q Was he doing any work with the steam generators at
25 Watts Bar?

1 A Yes, that's part of the secondary system.

2 Q Do you know whether Mr. Fiser ever performed any
3 environmental duties while he was assisting at Watts Bar?

4 A Not that I can recall.

5 Q Was there anyone from the corporate support area
6 that did do environmental work at Watts Bar?

7 A Yes, the guy's name was Sorrell but I can't recall
8 his first name -- David Sorrell maybe?

9 Q Did you become aware sometime in 1996 that the
10 corporate organization was going to reorganize?

11 A Yes.

12 Q What was your knowledge of that?

13 A I was informed by Wilson McArthur and also heard
14 that not only his organization but several in corporate were
15 being reorganized.

16 Q What, if anything, did you know about the
17 chemistry organization in particular as a result of that
18 reorganization?

19 A That they were going to lose one position, one
20 head count.

21 Q Do you know when you became aware of that?

22 A No.

23 Q Do you recall at some time in 1996, Mr. Kent
24 seeking to have Sam Harvey transferred out to Sequoyah?

25 A Yes, I just heard about it, I didn't have any

1 personal involvement with it.

2 Q What had you heard about it?

3 A I'd just heard that since corporate was losing a
4 head count, that at the time I assumed that Charles Kent had
5 a vacancy and was asking if the possibility existed that Mr.
6 Harvey could be transferred to Sequoyah.

7 Q Do you know whether Mr. Kent was happy with Mr.
8 Harvey's performance?

9 A I believe that he was.

10 Q Do you know whether Mr. Harvey ever was
11 transferred to Sequoyah?

12 A I don't think so.

13 Q Do you know why not?

14 A No, I never heard the resolution.

15 Q During your employment at TVA, have you served on
16 selection review boards?

17 A Yes.

18 Q About how many?

19 A Maybe half a dozen.

20 Q How does a typical selection review board work?

21 A As the selecting manager or as a participant?

22 Q Let's start first with as the selecting manager.

23 A I assume you want to start at the beginning of the
24 process. Once there is a vacancy or a need to fill a
25 position, we contact Human Resources and ask them to post

1 what's called a vacant position announcement. That's
2 derived from the job description for the position that
3 you're wanting to fill. That is posted for I believe 10
4 working days and at that point, once all the applications
5 are received, those are put together in a package along with
6 a couple of other pieces of information like a compilation
7 of the individual's background, the -- whether or not any of
8 them are diversity candidates or handicapped, that sort of
9 thing. And that package is forwarded to the selecting
10 manager for review.

11 Q Does that package usually include past service
12 reviews or appraisals?

13 A Only if that people submit them as part of their
14 application. At that point, there's a matrix that's also
15 sent from Human Resources that we use to start evaluating
16 the candidates. You evaluate them from the standpoint of
17 education, experience, service reviews and those kinds of
18 things. For those service reviews that weren't submitted as
19 part of the package, it's up to the selecting manager to go
20 to Human Resources and find those to fill out that matrix.

21 From that, those people who are qualified to meet
22 the position then are set up for an interview panel.
23 Typically as a selecting manager, we would pick a peer, a
24 subordinate and maybe even a supervisor for that individual,
25 even though the selecting manager is typically the

1 supervisor for the position, to make up the selection board.
2 The selection manager typically selects the questions to be
3 used, we'll take those to the selection board and those will
4 be discussed and the selection review board will decide
5 which questions each person will ask, and those questions
6 are asked of all the candidates.

7 When the candidates are interviewed, there is a
8 sheet, an interview record or an interview summary form that
9 each of interviewers will fill out at the completion or
10 during the interview, to take notes, that sort of thing.

11 From that, all that information is given to the
12 selecting manager, at the end of the selection review board
13 and from that, with the other information that's received,
14 work with Human Resources to make a selection and make an
15 offer to the individual.

16 Q Now is the selection based solely on the scores
17 received in the interviews?

18 A No.

19 Q What other information do you consider when making
20 a selection?

21 A All the other information that's, for example, on
22 that matrix -- experience, education, service review, past
23 performance, special projects that the people have been
24 involved with. There are a number of things.

25 Q Does the selecting manager sit in the review board

1 of a participating member asking questions or do they merely
2 observe the selection?

3 A I've seen it done both ways. The ones that I've
4 done personally, I participate, but I've seen instances
5 where they left it up to, you know, the other interviewers
6 to conduct the selection review board.

7 Q Now you mentioned that often you would have a
8 peer, a subordinate and a supervisor. Is that of the
9 positions being selected, that you would have those three?

10 A Yes.

11 Q Let's go back to how it works when you're a member
12 of the selection review board.

13 A It's a lot simpler. Typically you're just
14 contacted and asked to be a member of the selection review
15 board. Once the selecting manager selects a date, you're
16 notified of it. Sometimes you're sent a package of resumes
17 ahead of time, sometimes you only get them the day of the
18 interviews. As an interviewer, you ask the questions, you
19 record notes to help you remember what the responses are,
20 and make an evaluation, fill out the interview sheet and
21 turn that in to the selecting manager.

22 Q Is there any discussion that goes on among the
23 members of the selection review boards about each candidate?

24 A Typically yes. At the -- I can really only speak
25 for the ones that I conduct, because some of the others are

1 handled different ways. But typically I will ask for a
2 discussion of what do you think this particular individual's
3 strengths and weaknesses were, primarily, and then ask them
4 to fill out their sheets and they hold those until the end
5 and then give them all to me.

6 Q When you're scoring or ranking each candidate,
7 what are those scores based on?

8 A Subjective attributes I guess I should call them.
9 It's teamwork, communication -- I don't remember all the
10 things that are on the list, but they're all soft skills
11 more than technical expertise.

12 Q Even for a technical position?

13 A Yes.

14 Q Is it normal to consider your personal knowledge
15 of the candidate being interviewed when scoring them?

16 A When scoring them, I would say no. As a selecting
17 manager, any time that I've scored them, I've tried to keep
18 my previous knowledge of the candidates independent, because
19 that can always be factored in at a later date if you need
20 to. I try to keep the selection review board as objective
21 as possible.

22 Q As a member of a selection review board, would you
23 think it was appropriate to share your personal knowledge of
24 candidates with the other members of the selection review
25 boards?

1 A Yes, I don't see why not.

2 Q Okay. So if a candidates gives say a subpar
3 answer on a particular question, but you have personal
4 knowledge that that candidate works on that area every day
5 and does a great job, but just sort of flopped in the
6 interview, would you share that information with the other
7 managers?

8 A Quite possibly in the context of I don't know why
9 he performed so poorly on that question or whatever.

10 Q And conversely, if a candidate said something in
11 an interview that you knew to not be true, would you share
12 that with the other members of the selection review board?

13 A Probably.

14 Q We mentioned Dave Voeller, was he a direct report
15 to you at Watts Bar?

16 A Yes, he was.

17 Q Did Mr. Voeller ever mention to you a phone call
18 that he received from Sam Harvey prior to the selections for
19 the chemistry positions in 1996?

20 A You'll need to be more specific because he talked
21 with all the corporate chemistry people a lot.

22 Q Did he ever mention that Mr. Harvey called him up
23 and said that he would be working with him a lot more
24 closely in the future?

25 A Yes, he did.

1 Q What did he tell you about that conversation?

2 A That's basically it, that Mr. Harvey called and
3 made that statement and basically Mr. Voeller was asking me
4 why would he make that statement, do you have any idea why
5 he would make that statement, and I did not at the time.

6 Q What was your reaction?

7 A I was surprised.

8 Q Now I'd like to go to the 1996 selection review
9 board. Were you asked to serve on the selection review
10 board for the chemistry positions?

11 A Yes, I was.

12 Q By whom?

13 A Dr. McArthur.

14 Q Do you know when you were asked?

15 A Some probably two to three weeks prior is my best
16 recollection.

17 Q Who else was asked to serve on the board?

18 A Mr. Corey, Mr. Kent and I was told somebody from
19 Human Resources, I didn't know who at the time.

20 Q What's the relationship between the rad chem
21 managers at the site and the positions that were being
22 advertised and were going to be selected?

23 A I don't understand your question.

24 Q Were these people who were going to be selected
25 for the positions, were you essentially their customer?

1 A Yes.

2 Q Did you initially agree to serve on the selection
3 review board?

4 A Yes.

5 Q At some point, did you discover you would be
6 unable to

7 A Yes, I did.

8 Q Why was that?

9 A Because of some previous commitment that I can't
10 specifically recall. I do have a farm and I have
11 commitments every night that I have to attend to, and Mr.
12 McArthur did tell me that the interviews were going to start
13 at noon or thereabouts and were going to go late into the
14 evening, be held in Chattanooga and I live an hour and a
15 half from here. So it would have put it pretty late.

16 Q Did you ever request that Dr. McArthur reschedule
17 the interviews so that you could attend?

18 A Yes, I asked him if it was a possibility that they
19 could be done starting first thing in the morning, early in
20 the morning or whether they could be split up over two days
21 or if there were any other options.

22 Q And what was his response to you?

23 A His response was that because of the difficulty in
24 getting all the candidates and the selection review board
25 members together, that it was virtually impossible to

1 reschedule at that point.

2 Q Do you know in your past experience with selection
3 review boards, is it possible to have two people share
4 duties in the interviews so that one person would do the
5 morning interviews and another person would do the afternoon
6 interviews?

7 A Not typically. I wouldn't do one that way anyway,
8 because you want continuity with the same individual.

9 Q Did you ever tell Dr. McArthur that he didn't need
10 to hold a selection review board for these positions?

11 A That he did not need to call --

12 Q That he did not need to.

13 A No.

14 Q Did you ever tell Dr. McArthur that he could
15 simply choose the two best candidates without the assistance
16 of a selection review board?

17 A Not that I recall, because all the selections that
18 we do are with a selection review board, with only a few
19 exceptions.

20 Q After you told Dr. McArthur you wouldn't be able
21 to serve, did he ask you to recommend anyone to be on the
22 board in your place?

23 A I mentioned that I would see if Mr. Voeller would
24 be available, as I recall.

25 Q What was his response to that suggestion?

1 A I don't recall what his response was.

2 Q Did you ever seek -- when you first thought you
3 were going to be on the selection review board, did you seek
4 any input from Mr. Voeller as to how the corporate chemistry
5 managers were performing at Watts Bar?

6 A Yes, I did.

7 Q What did he tell you about Mr. Fiser?

8 A He told me that Mr. Fiser had been very
9 supportive, that he'd done anything that he'd been asked to
10 do and come out to the plant any time he was needed.

11 Q The morning of the interviews, did you have a peer
12 team meeting?

13 A Yes.

14 Q Who attended this peer team meeting?

15 A Myself, Dr. McArthur and Corey and Kent.

16 Q At some point, either during this meeting or
17 during a break or afterwards, did you make a comment about
18 Mr. Fiser's performance to the other rad chem managers?

19 A Yes, I did.

20 Q What was that comment?

21 A Told them that since I was not going to be able to
22 participate in the board, that I just wanted to let them
23 know that Mr. Fiser performed very well for us, that we were
24 pleased with their performance and I just wanted to make
25 sure that that was considered.

1 Q Had you preselected Fiser for that position; if
2 you had sat on the board, would you have automatically
3 selected him?

4 A No.

5 Q Did you discuss any of the other candidates for
6 the other positions?

7 A No, because Mr. Fiser supported Watts Bar almost
8 exclusively and Mr. Harvey supported Sequoyah and Chandra
9 supported Browns Ferry, so I really didn't have first hand
10 knowledge of the other two's performance.

11 Q Did you perceive that your statement about Mr.
12 Fiser giving good support indicated a bias on your part in
13 favor of Mr. Fiser?

14 A Yes, because I worked with him very closely, but
15 there again, I didn't know the performance of the other two.

16 Q So would you have expected that Mr. Kent might
17 have had a bias towards Mr. Harvey because Mr. Harvey worked
18 at Sequoyah often with him --

19 MR. SLATER: Objection, calls for speculation. He
20 doesn't know what's in Mr. Kent's head.

21 MS. EUCHNER: I'll ask a specific question about
22 Mr. Kent then.

23 BY MS. EUCHNER:

24 Q Did you view Mr. Kent's attempts to have Mr.
25 Harvey transferred to Sequoyah as evidencing a bias on Mr.

1 Kent's part towards Mr. Harvey, in the same regard as you
2 just told me that you would be a little biased towards Mr.
3 Fiser, because you knew his work had been good?

4 A I didn't view it as a bias per se, I viewed it as
5 this guy is familiar with our program and our procedures, he
6 would be a good one to select. I don't know if you can say
7 that was perceived as a bias or what.

8 JUDGE YOUNG: You're talking about Mr. Fiser now?

9 THE WITNESS: I was talking about Mr. Harvey.

10 CHAIRMAN BECHHOEFER: Oh, I'm sorry.

11 BY MS.EUCHNER:

12 Q You were talking about Mr. Kent's view of Mr.
13 Harvey, correct?

14 A Mr. Kent's view of Mr. Harvey, yes.

15 Q At some point during that peer team meeting, did
16 Mr. Kent make a statement about Mr. Fiser's DOL activities?

17 A Wasn't during the peer team meeting, but it was
18 after, I believe at lunch or after lunch.

19 Q Okay. Who was present when Mr. Kent made this
20 statement?

21 A Myself, Mr. Corey and Dr. McArthur.

22 Q What did Mr. Kent say?

23 A I don't remember his exact words, but something
24 about we should be sensitive to the fact that Mr. Fiser has
25 filed a DOL case and possibly Dr. McArthur should not be

1 directly involved with the selection review board.

2 Q And what was Dr. McArthur's response to that?

3 A I don't recall his response.

4 Q Did you know about Mr. Fiser's DOL complaint prior
5 to Mr. Kent's statement?

6 A I assumed Mr. Kent was talking about a previous
7 DOL case, I did not know about a current one and did not
8 know until later that that's what he was talking about. I
9 didn't know that there was a current one.

10 Q Did you know whether Mr. Corey knew of the current
11 one?

12 A No, I don't know.

13 MS. EUCHNER: I think I'm done, Your Honor.

14 CROSS EXAMINATION

15 BY MR. SLATER:

16 Q Good afternoon, Mr. Cox.

17 A Hello.

18 Q Now I believe in your direct testimony, you
19 indicated that you participated in SRBs or participated in
20 selections as a selection manager and also as a SRB member,
21 is that correct?

22 A That's correct.

23 Q And you've also been an interviewee in an SRB, is
24 that correct?

25 A Yes, I have.

1 Q Now if I understood your direct testimony, you
2 said as the selecting manager, when you were in that
3 capacity, that once the job has been posted for the 10 days
4 or so, that HR then would bring information to you, is that
5 correct, the selection package?

6 A That's correct.

7 Q And that you would then go through that selection
8 package to whittle down the number of applicants down to a
9 workable number, is that correct?

10 A That's correct.

11 Q Could you tell us how that process works?

12 A The whittling down, if you will?

13 Q Yes, sir.

14 A Through that matrix, you go through the
15 information that's been provided, the applications and the
16 resumes that are submitted and from that you determine, to
17 the extent that you can, the individual's background, be it
18 their educational level, their experience and basically the
19 variety of jobs, the different kinds of jobs that they have
20 had. And then at that point, if they didn't provide the
21 performance appraisals or service reviews, you would go to
22 Human Resources and investigate those, typically going back
23 I believe about four yrs.

24 Q And once you've done that research and that
25 evaluation and you've come up with a list that will be your

1 list of interviewees, is that correct?

2 A That's correct.

3 Q And what happens after that?

4 A Then you go through the process of coming up with
5 SRB members, selection review board members, and from that
6 you set up interviews with those interviewees for the
7 selection review board.

8 Q Now do you also prepare questions that will be
9 asked in the interviews?

10 A Yes.

11 Q What happens next after you prepare the questions?

12 A Once the selection review board meets, you discuss
13 the questions, you pick the ones typically that each of the
14 members will ask, pick what they -- you know, the board
15 thinks is the best questions for that particular job and
16 also the other members are provided with copies of the
17 resumes.

18 Q So do you prepare more questions than are actually
19 asked?

20 A Sometimes a selection review board member will
21 come to the board with questions they would like to ask and
22 at that point you make a determination whether those are
23 appropriate or not.

24 Q So do you and the -- if you're one of the SRB
25 members and one member wants to add a question or two, then

1 there is a discussion among the SRB members?

2 A Yes, there's a discussion to make sure, because
3 you want all the questions to be asked to all the
4 interviewees.

5 Q And in your experience, has -- or have questions
6 been added to the list of questions?

7 A Prior to the selection review board?

8 Q Yes, sir.

9 A Yes.

10 Q So that's not out of the ordinary for a question
11 to be added?

12 A Oh, no.

13 Q Now once you come up with the questions to be
14 asked, who generally asks the questions during the various
15 interviews?

16 A Each of the review board members typically asks
17 two to three of the questions.

18 Q And they ask those same two to three questions to
19 each of the interviewees, is that correct?

20 A That's correct.

21 Q Now in your direct testimony, you were asked about
22 having prior knowledge of an interviewee and would that play
23 a role in scoring. Does it play a role in scoring?

24 A For me?

25 Q Yes.

1 A Typically no. I tried to keep those things
2 separate from the selection review board process.

3 Q Why is that?

4 A You want the process to be as objective as
5 possible.

6 Q So that if you knew candidate B, you know what
7 kind of performer he is, and he comes to the interview and
8 there's a question that's asked that you thought that, you
9 know, based on your knowledge of him, that he should have
10 knocked it out of the park, but he flunked on it. Would you
11 base your scoring on your prior knowledge of what kind of
12 performer he is or was, or would you grade him on the
13 interview -- on his response to the interview question?

14 A For the selection review board, I would grade it
15 on the response to the question.

16 Q So would it be fair to say that the role of the
17 SRB members, that role is to grade and score the candidates
18 based on the questions that are asked?

19 A And their responses to the questions that are
20 asked, right, yes.

21 Q And past knowledge of performance, past
22 affiliations should not come into play.

23 A No, they're not the function of the selection
24 review board.

25 Q Now you indicated that you were initially asked to

1 participate in the 1996 SRB that was put together to make
2 the selection of the PWR chemistry position and the BWR
3 chemistry position, do you know how many other positions
4 there were that were being filled by that particular SRB?

5 A At least three, three to five.

6 Q So there were more than just that chemistry --
7 those chemistry positions.

8 A Yes, I know for a fact there was at least the
9 radiological control position and the rad waste
10 environmental position.

11 MR. SLATER: May I approach, Your Honor?

12 BY MR. SLATER:

13 Q I've just put in front of you Joint Exhibit 22
14 which has been introduced into evidence -- previously
15 introduced into evidence -- and I'd like you to take a look
16 at -- turn over to page 397 and take a look at the bottom,
17 there's some Bates numbers.

18 A Okay.

19 Q Do you see that?

20 A Yes.

21 Q I represent to you that this is the notebook for
22 Ben Easley/Milissa Westbrook, do you see that?

23 A Yes.

24 Q To the left, do you see the positions that were
25 being -- that interviews were being held for?

1 A Right.

2 Q How many positions are there?

3 A Five.

4 Q And if you would turn over to page 413 --

5 A Okay.

6 Q -- and that's the list of interviewees, is that
7 correct?

8 A Yes.

9 Q Or an interview schedule.

10 A Yes.

11 Q How many interviews were scheduled?

12 A Ten.

13 Q Now in your experience as being a selection
14 manager and also sitting on SRBs, how difficult would it be
15 to reschedule an SRB that was looking to hold interviews on
16 five different positions and with candidates -- up to 10 or
17 so candidates?

18 A And the selection board members, it'd be extremely
19 difficult.

20 Q And in your discussion with Dr. McArthur, did he
21 indicate to you that he thought it would be extremely
22 difficult to reschedule the SRB to handle five separate
23 positions with 10 or so candidates, the SRB members and the
24 HR person?

25 A Yes, that's what he told me is the reason why he

1 preferred not to reschedule.

2 Q And you don't have any reason to doubt that it
3 would be very difficult?

4 A None whatsoever.

5 Q Now on direct, you were asked about initially
6 being asked to sit on the board and you had a conflict, is
7 that correct?

8 A That's correct.

9 Q And you said you didn't recall what that conflict
10 was?

11 A Not specifically, no.

12 Q Now I believe you mentioned that you have a farm.

13 A Yes.

14 Q And that you need to attend to that farm, is that
15 correct?

16 A Yes, every evening.

17 Q And interviewing five positions with 10 or so
18 candidates, it would typically run a fair amount of time, is
19 that correct?

20 A I was told it would go late into the night.

21 Q And isn't it also true that probably you would
22 have a standing conflict with trying to fit this into your
23 schedule?

24 A Right.

25 Q You would have to drive from Watts Bar all the way

1 to Chattanooga, is that correct?

2 A That's correct.

3 Q That's an hour and half.

4 A Hour and a half.

5 Q And then you would have all day of these
6 interviews, is that correct?

7 A Well, with them starting at noon, --

8 Q Or even starting at 7:00 or 8:00 in the morning.

9 A Yeah, that's true.

10 Q And breaking for lunch or whatever, it would take
11 you past 5:00 or 6:00; is that correct?

12 A Yes, I assume it would.

13 Q And then plus you then would have to drive back
14 home to your farm, is that correct?

15 A That's correct.

16 Q So it would be difficult for you to sit on a board
17 that was asked to interview for five different jobs with
18 these many candidates.

19 A Yes, it is.

20 Q So it would not be unreasonable for Dr. McArthur
21 to come to the conclusion then that you could not
22 participate because of a conflict.

23 A That's correct.

24 Q Not only as to the date that was set in July, July
25 18, 1996, but whether it was in August or September or

1 November or December or six months from then.

2 A Correct.

3 Q And as I understand it, during this time, TVA was
4 going through or chemistry and all these other positions --
5 there was a reorganization.

6 A Right.

7 Q And that the reorganization -- at least management
8 wise, this reorganization would be over and done with by the
9 beginning of the fiscal year.

10 A I don't know what the deadline was.

11 Q But they wanted this part of it done, is that
12 correct?

13 A Yes.

14 Q Now you were also asked about a comment that you
15 made about Mr. Fiser being a good candidate for the PWR
16 position.

17 A Uh-huh.

18 Q Did you have -- do you recall when you had the
19 first discussion with Mr. Kent or Mr. Corey or Dr. McArthur
20 or anybody about the relative qualifications of the
21 candidates for the PWR job?

22 A No, but I do -- we had at least annual
23 conversations with Dr. McArthur prior to that when it was
24 service review time, because Dr. McArthur would call and ask
25 for our assessment of his people's performance.

1 Q Did you have any discussions with Mr. Voeller
2 about his opinion of the candidates for the position?

3 A Yes.

4 Q And did you have more than one conversation with
5 him?

6 A Ongoing conversations, yes.

7 Q Numerous conversations with him?

8 A Yes.

9 Q And did Mr. Voeller express an opinion as to who
10 he thought would be a good fit or the best person for the
11 job?

12 A From the perspective of Watts Bar, he thought it
13 was probably Mr. Fiser, because he was most familiar with
14 our procedures.

15 Q And these conversations that you had with Mr.
16 Voeller occurred before you indicated to Dr. McArthur that
17 you could not participate in the SRB.

18 A Yes.

19 Q And did Mr. Voeller indicate to you his
20 preference?

21 A Yes.

22 Q And who was that?

23 A Mr. Fiser.

24 Q And during these conversations with Mr. Voeller,
25 did you express an agreement or disagreement with his

1 assessment?

2 A Agreement.

3 Q So Mr. Voeller's opinion, prior to the time that
4 you declined the invitation to participate on the SRB, was
5 that Mr. Fiser was the guy, is that correct?

6 A For Watts Bar.

7 Q For Watts Bar. And you did not disagree with that
8 assessment.

9 A Correct.

10 Q And then at some point after these conversations
11 with Mr. Voeller is when you indicated to Dr. McArthur that
12 you could not participate, is that correct?

13 A That's correct.

14 Q And at the time or at some point in time -- I
15 think you testified that between the time of the peer team
16 meeting and the beginning of the SRB with respect to these
17 1996 positions, you then put in, for what it's worth, your
18 opinion as to the selections, is that correct?

19 A Correct.

20 Q And basically it was the same expression or same
21 opinion that you and Mr. Voeller had previously discussed on
22 numerous occasions.

23 A Yes, that's correct.

24 Q Ms. Euchner also asked you about a phone call that
25 Mr. Voeller received from Sam Harvey, do you remember that?

1 A Yes.

2 Q And I believe the substance of it was that he
3 thought that he was going to be working closer with Mr.
4 Voeller in the future. Do you have any -- do you know when
5 that conversation took place?

6 A All I recall is it was prior to the selection
7 review board.

8 Q But was it after the posting of the jobs?

9 A Yes.

10 Q Have you ever applied on a job that you thought
11 that you were well qualified and you thought you were the
12 best person for that position?

13 A Yes.

14 Q And then, if you know or if you have an opinion,
15 would it be unreasonable in your circumstance if you applied
16 for the job and you thought that you were the best man for
17 that job, best person for that job, would it be unreasonable
18 to say well, I'm going to get that job and would it be
19 unreasonable then maybe if you knew a friend or a
20 counterpart who was at that location to pick up the
21 telephone and say I might be working more closely with you
22 in the future.

23 A Wouldn't be unreasonable.

24 Q Now with respect to this telephone call from Mr.
25 Harvey, did Mr. Voeller indicate to you that any mention of

1 Mr. McGrath, that Mr. McGrath said that Harvey was going to
2 be preselected for the PWR job?

3 A You lost me, you're going to have to repeat the
4 question, please.

5 Q Okay. There was no discussion about Harvey being
6 preselected for the PWR job.

7 A Not to my knowledge.

8 Q Was there any mention of Mr. McGrath, that Mr.
9 McGrath had expressed an opinion that Harvey should be
10 preselected?

11 A No.

12 Q What about Dr. McArthur?

13 A No.

14 Q You also mentioned in response to a question on
15 direct about breaking up the SRB, maybe having one person or
16 part of the board sitting for the afternoon and part of it
17 sitting in the morning, and you said that you wouldn't do
18 that. Why not?

19 A Because for continuity, you need to have the same
20 people on there from start to finish, in my opinion, so that
21 you don't have any influence of just -- or any variables
22 associated with a different person.

23 Q Is Watts Bar a BWR plant or a PWR?

24 A PWR.

25 Q Do you think it would be fair in an interview for

1 the program manager for the PWR job to ask questions about
2 secondary chemistry?

3 A Yes.

4 Q It would be fair or unfair?

5 A It would be fair.

6 Q And why is that?

7 A Because actually secondary chemistry is the most
8 difficult part of a PWR chemist's job.

9 Q Before we -- could you turn over to -- and is it
10 important?

11 A Very important?

12 Q Why so?

13 A Because it affects the service life of the steam
14 generators.

15 Q And is that a big and costly, expensive item?

16 A Replacing steam generators can cost millions.

17 Q Was that an issue in 1996 around the time that
18 these selections were taking place?

19 A Yes.

20 Q Would you turn to page 422 in Joint Exhibit 22?

21 JUDGE COLE: Page again, Mr. Slater?

22 MR. SLATER: 422.

23 BY MR. SLATER:

24 Q Are you there?

25 A Yes.

1 Q I represent to you that this is the list of
2 questions that were asked during the PWR interviews. Do you
3 see question number one that's circled?

4 A Yes.

5 Q During -- in those times or in those instances
6 that you sat on SRBs, is that a typical question?

7 A It's typical to ask for strengths and weaknesses,
8 yes.

9 Q Let me ask you about number 12, it says "Define
10 the term denting and where and how does it occur." Is that
11 a secondary chemistry question?

12 A Yes, it is.

13 Q In your opinion, is that a fair question to ask?

14 A For a chemistry program manager? Yes.

15 Q Are there more difficult questions that you could
16 ask with respect to secondary chemistry?

17 A Yes, you could ask much more difficult questions?

18 Q Would you expect a person who was going to be or
19 who desired to hold the PWR chemistry position to know the
20 response or be able to respond to that particular question?

21 A Yes, definitely.

22 Q Could you turn over to the next page, 423?

23 A Okay.

24 Q There's a question written in concerning it says
25 "Define molar ratio." Do you see that?

1 A Yes.

2 Q Is that also a secondary chemistry question?

3 A Yes, it is.

4 Q Would you expect a candidate who is seeking the
5 PWR position to be able to respond to that particular
6 question?

7 A Yes, that's a fundamental question.

8 Q Let me ask you this, if you knew, you were aware -
9 - we've talked about this a few minutes ago, but you were
10 aware that a person -- of a person's performance background
11 and they should know the response to question number 12 and
12 number 17, but did a very poor job of responding in the
13 interview. Would you rate that person based on the response
14 in the interview, or based on your knowledge of his
15 performance in the past?

16 A Response to those two questions.

17 Q Could you just take a moment to look at the rest
18 of questions, just read them to yourself?

19 (The witness reviews a document.)

20 A All of them or just those that are circled?

21 Q Just the ones that are circled.

22 A Just the ones that are circled.

23 (The witness reviews a document.)

24 Q After looking at those questions and based on the
25 fact that you were initially asked to sit on the board,

1 overall in your opinion, were these questions fair?

2 A Yes, they're fair.

3 Q Would you have objected to any of the questions
4 that are circled on pages 422 and 423 that were asked during
5 the PWR interview?

6 A No, I wouldn't have objected to any.

7 Q Now I believe you testified earlier on direct that
8 Dr. McArthur was a member of the peer team?

9 A That's correct.

10 Q Was he functioning as a rad chem manager, in your
11 opinion?

12 A Yes.

13 MR. SLATER: If I could have a moment, Your Honor.

14 (Brief pause.)

15 MR. SLATER: Thank you.

16 REDIRECT EXAMINATION

17 BY MS. EUCHNER:

18 Q Mr. Slater asked you whether it's appropriate for
19 selection review board members to add questions that they
20 might think are good for that particular position that are
21 being interviewed and I believe you said that yes, that's an
22 appropriate thing to do.

23 A Yes.

24 Q Would it be an appropriate thing for a selection
25 review board member, who works fairly closely with one of

1 the candidates, to add a question on a project which that
2 candidate had specifically been involved in?

3 A Typically no; if -- because the selection review
4 board typically agrees with the question. And if they would
5 think that it's biased toward one or the other, I would
6 think that they would object to the question being asked.

7 Q Now you had said as a scoring member of the
8 selection review board, you try to only score their
9 responses and not take into acct your knowledge of their
10 past performance.

11 A Right.

12 Q As a selecting manager, is it important to take
13 into acct past performance?

14 A Not during the selection review board.

15 Q Afterwards, when you're making the final
16 selection, is that important?

17 A Yes, the selecting manager considers a lot of
18 other things other than just the selection review board
19 recommendation.

20 Q So if someone who was a superb performer in the
21 past just had a horrible day at the interview, you would
22 just take into consideration that maybe they were having a
23 bad day?

24 A That could be taken into consideration.

25 Q As a selecting manager, would you select someone

1 who had in the past been a poor performance, but who just
2 had a great day at an interview?

3 A No.

4 Q Mr. Slater asked you a number of questions
5 related to the difficulties of rescheduling, and you had
6 indicated to me on direct exam that you had requested that
7 it be rescheduled for the morning. If it had been
8 rescheduled for the morning, would you have been able to
9 serve on the selection review board?

10 A Provided that it didn't go late into the evening,
11 yes.

12 Q So essentially if it had been done during what's
13 considered a regular business day, you probably could have
14 sat in on the selection review board?

15 A Probably.

16 Q Regarding the phone conversation that Mr. Harvey
17 and Mr. Voeller had, you said you would consider it
18 reasonable for someone who considered themselves very
19 qualified to be confident that they would get the position,
20 is that correct?

21 A I believe I said it would not be unreasonable.

22 Q Would not be unreasonable.

23 A Right.

24 Q Would it be unreasonable for that person to call a
25 friend, a coworker, to say I'm going to be working more

1 closely with you but interviews will be done to keep it
2 legal -- do you think that would be an unreasonable
3 statement?

4 A I would consider it an unreasonable statement, I
5 don't know about others.

6 Q You would or you wouldn't?

7 A I would consider it to be an unreasonable
8 statement.

9 Q You talked a little bit before about it's
10 important to have continuity for a selection review board.
11 Would it be important to have continuity for the selection
12 of five different positions or simply within each position?
13 So for example, if we're talking about the chemistry
14 positions, is it merely important to have continuity in
15 deciding -- when doing the interviews for all of the
16 candidates for those chemistry positions?

17 A For the two chemistry positions, I would think the
18 continuity would need to be for those two chemistry
19 positions.

20 Q But would it necessarily matter whether an
21 entirely new selection review board had been used to do the
22 rad con positions, so long as they were the same selection
23 review board members for all the rad con interviews? You
24 would have continuity within the rad con positions.

25 A Yes.

1 JUDGE COLE: That would be reasonable?

2 THE WITNESS: Yes.

3 BY MS. EUCHNER:

4 Q In conducting an interview for a PWR chemistry
5 program manager position, would it be appropriate to ignore
6 primary chemistry?

7 A That's a judgment call on the selection review
8 board.

9 Q Is primary chemistry an important part of what
10 someone would be doing at a PWR?

11 A Yes, but it's very fundamental and not nearly as
12 difficult as the secondary.

13 Q You said that Dr. McArthur was functioning as the
14 rad chem manager. Were you aware that he wasn't in fact the
15 rad chem manager?

16 A I don't recall. I know he -- I believe he was in
17 charge of the department at that time.

18 Q Do you know whether Mr. Allen Sorrell had been the
19 rad chem manager for a time during 1995?

20 A I knew he was for a time, but I don't remember the
21 time frame.

22 JUDGE YOUNG: Is that the same person you referred
23 to earlier as possibly David Sorrell or are those two --

24 THE WITNESS: No, they're different people, not
25 related.

1 JUDGE YOUNG: Okay, thank you.

2 BY MS. EUCHNER:

3 Q If you were the selecting official for a
4 particular vacancy and two of the candidates had been your
5 direct reports and one had been performing better than the
6 other, would you base your selection solely on the SRB
7 results or would you take into consideration that one of
8 them had been a better performer?

9 A As a selecting manager, I would take that and
10 several other things into consideration.

11 Q What other things would you take into
12 consideration?

13 A The kind of projects they'd worked on, the kind of
14 continuing training I'll call it to better themselves, you
15 know, their experience, the variety of their experience, a
16 number of things.

17 Q But you would not base your selection on the
18 scores they received in the interviews alone?

19 A No.

20 MS. EUCHNER: Thank you.

21 MR. SLATER: No further questions, Your Honor.

22 JUDGE YOUNG: I'd like to get some clarification
23 on something, not being a -- I took chemistry in college,
24 but it's been a long time.

25 These two questions that were about the secondary

1 chemistry, the denting and the molar ratio. In here, in
2 this exhibit, there are the interviewers' notes on the three
3 candidates' answers to the various questions. If you can
4 read them, would you mind just telling -- helping me out and
5 explaining their answers to the degree you understand them
6 and --

7 MS. EUCHNER: Your Honor, just for the record, I
8 think we're looking at Joint Exhibit 22, which is the
9 notebook used by the Human Resources people, who did not
10 score the candidates. So if you wanted to ask him that
11 question, you would have to use the other three notebooks.

12 JUDGE YOUNG: Oh, I see what you're saying. That
13 might be a little --

14 MR. MARQUAND: They still wrote down what they
15 heard.

16 JUDGE YOUNG: You could probably look at all of
17 them. I don't know how long it would take. It just would
18 clarify those issues a little bit that both parties have
19 talked about, for me. I don't know how long that would --

20 MR. MARQUAND: Your Honors, by the way, each of
21 the members of the SRB will be here and they will be able to
22 explain to you their own notes with respect to each of these
23 answers given by each of the candidates in their own
24 notebook.

25 JUDGE YOUNG: Right. I guess the reason I was

1 asking Mr. Cox was because he's here now and because he had
2 expressed some opinion about Mr. Fiser.

3 Just looking at the one you have in front of you,
4 number 22, on page 420, 440 and 456 are the three pages that
5 Milissa Westbook filled out. I don't know if they make any
6 sense to you or not, on questions 12 and 17.

7 THE WITNESS: To be honest, I'm having trouble
8 reading her writing.

9 JUDGE YOUNG: Well, that's like doctor's notes I
10 guess.

11 THE WITNESS: Right.

12 JUDGE YOUNG: And that's why I said I don't know
13 if you can read them, how well you can read them.

14 (The witness reviews a document.)

15 THE WITNESS: That was on page 420 and what were
16 the others?

17 JUDGE YOUNG: 440 I think was the next one and
18 456. 420, '21, 440, '41 and 456, '57.

19 What I'm reading on page 420 is denting - Sequoyah
20 Nuclear dented in 200 days, one-half cycle, something --

21 THE WITNESS: That's as far as I got on that one
22 too.

23 JUDGE YOUNG: Something, something that causes the
24 dent const -- iron not really there, not really true or --
25 if you can't make sense of it, that's okay, I just -- since

1 you were asked questions about that, I thought --

2 THE WITNESS: I can read the one on 440.

3 JUDGE YOUNG: Uh-huh.

4 THE WITNESS: Denting occurs in tube intersection
5 cause something of steam generator.

6 JUDGE YOUNG: Corrosion?

7 THE WITNESS: Corrosion possibly, corrosion of
8 steam generator.

9 And on 457, denting tube support area in steam
10 generator 2, expands from corrosion, iron oxide cause maybe.

11 JUDGE YOUNG: Does that give you enough
12 information to draw any conclusions, or not? If not, we can
13 move on.

14 THE WITNESS: No, I have trouble with that.

15 JUDGE YOUNG: Thank you.

16 JUDGE COLE: Just a couple of questions, Mr. Cox.

17 THE WITNESS: Okay.

18 JUDGE COLE: Do you have an opinion as to why Mr.
19 Kent would mention the DOL filing by Mr. Fiser?

20 THE WITNESS: I believe his intent was to
21 encourage Dr. McArthur not to participate because he might
22 be perceived to be biased in some way. But not knowing even
23 which DOL case he was referring to at the time, that's just
24 speculation after the fact on my part.

25 JUDGE COLE: Do you think it might also have a

1 tendency to bias the other members of the SRB?

2 THE WITNESS: Not to bias against him, no. It's
3 just to maybe sensitize them that we need to make sure that
4 the process is extremely fair.

5 JUDGE COLE: Do you think that management might
6 assign a stigma to employees that file Department of Labor
7 complaints?

8 THE WITNESS: No, sir, that's part of our process.
9 That's one of the avenues to file complaints in TVA.

10 JUDGE COLE: All right, sir. In the instance of
11 the SRB that was set up for these five different positions
12 and 10 employees, is that a typical set up for the SRBs?
13 Would you usually have multiple positions and multiple
14 applicants?

15 THE WITNESS: Typical is multiple applicants for
16 one position and one SRB. This is unique in that it was for
17 those five positions.

18 JUDGE COLE: You have served on several SRBs?

19 THE WITNESS: Yes.

20 JUDGE COLE: And in any of those SRBs, did you
21 have a time problem associated with conducting the reviews?

22 THE WITNESS: No, and because the ones I've sat on
23 have always been for single positions, not multiple
24 positions.

25 JUDGE COLE: And you could do that during your

1 normal work day.

2 THE WITNESS: That's correct. I never had one
3 that extended beyond the normal work day.

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

5 CHAIRMAN BECHHOEFER: Mr. Cox, you sort of
6 implied, to me at least, that setting up a selection review
7 board to begin at noon or after noon would always present a
8 conflict for you; is that only because there was more than
9 one position involved?

10 THE WITNESS: It was only because it was going to
11 extend well past the end of the normal business day.

12 CHAIRMAN BECHHOEFER: I see. Didn't Dr. McArthur,
13 I guess who set this up, recognize your work day problems --
14 did he know about them?

15 THE WITNESS: He didn't know about them
16 beforehand, no.

17 CHAIRMAN BECHHOEFER: Okay, because I was
18 wondering, you said he was reluctant to reschedule.

19 THE WITNESS: No, he was not aware at the time.

20 CHAIRMAN BECHHOEFER: So he just asked you or --
21 and you just accepted, I take it.

22 THE WITNESS: Yeah, he called and let me know that
23 this is when they were scheduled for.

24 CHAIRMAN BECHHOEFER: I see, and you didn't raise
25 any problem with him at the time about scheduling.

1 THE WITNESS: I don't remember if I said it at
2 that time -- I did let him know well prior to that I
3 wouldn't be able to do it if it was going to extend into the
4 evening.

5 CHAIRMAN BECHHOEFER: I see.

6 JUDGE YOUNG: Do you remember whether you said the
7 thing about extending into the evening before you knew the
8 actual hours or after you found out?

9 THE WITNESS: after I knew the actual hours,
10 because I guess I just assumed that with that many
11 candidates, it would start early in the morning, so it was
12 just an assumption on my part.

13 CHAIRMAN BECHHOEFER: You responded to certain
14 questions from Ms. Euchner about adding questions,
15 particularly questions that might have been based on
16 previous projects, previous experience I guess with the
17 members of the SRB.

18 MS. EUCHNER: Judge Bechhoefer, could you speak up
19 a little bit, I think we're all having a little bit of
20 trouble hearing you back here.

21 THE WITNESS: And the creaking chairs aren't
22 helping me up here.

23 CHAIRMAN BECHHOEFER: I don't speak very loud.
24 You were questioned earlier about adding questions to be
25 asked of various candidates. And based on previous projects

1 in which the candidate -- one or more candidates I should
2 say -- and review board members might have been involved.
3 Would that have ruled out asking such questions?

4 THE WITNESS: No, it would not have ruled it out,
5 but typically all the board members agree on which questions
6 are to be asked. So that if one board member felt that a
7 question was not fair, then typically it would not be asked.

8 CHAIRMAN BECHHOEFER: I see. So the board member
9 who had had such prior association would raise that or would
10 mention that to the board prior to the questions being asked
11 -- or finalized, I should say.

12 THE WITNESS: Quite possibly, yes.

13 CHAIRMAN BECHHOEFER: So that the intent was to
14 consider past performance only later by the selecting
15 official, selecting manager?

16 THE WITNESS: Ask that again, please?

17 CHAIRMAN BECHHOEFER: So the intent was to have
18 only the selecting manager consider past performance in a
19 particular project.

20 THE WITNESS: Yes, past performance consideration
21 is the responsibility of the selecting manager.

22 CHAIRMAN BECHHOEFER: I see.

23 JUDGE COLE: Just one more question, Mr. Cox. I'm
24 looking at the list of the specialties that were being
25 examined for that day, five different categories of program

1 managers.

2 THE WITNESS: Yes.

3 JUDGE COLE: And you have one group of three
4 members of the SRB for all of those five categories, is that
5 correct?

6 THE WITNESS: One group of three --

7 JUDGE COLE: Judges, SRB members, correct?

8 THE WITNESS: Yes.

9 JUDGE COLE: Is it typical to find people that
10 would be qualified to examine these people over these five
11 areas or are these five areas sufficiently common that you
12 can easily find people to examine?

13 THE WITNESS: They're sufficiently common and also
14 typically they're not judging the correctness of the answer
15 as much as they are judging the response to the question.
16 It's not the technical expertise nearly as much as it is the
17 response to the question and how they're fielded.

18 JUDGE COLE: All right, sir.

19 CHAIRMAN BECHHOEFER: Mr. Slater, further
20 questions?

21 MR. SLATER: Yes, sir, Your Honor.

22 RECROSS EXAMINATION

23 BY MR. SLATER:

24 Q Just a couple of follow up questions. Is molar
25 ratio a project?

1 A No.

2 Q What is it?

3 A It's a parameter, molar ratio is a ratio of
4 certain chemicals in the secondary system and when that
5 ratio gets outside of certain parameters, it can adversely
6 affect steam generator longevity.

7 Q And what about denting, is that a project?

8 A Denting is not a project, denting is a result of
9 chemical interactions in the steam generator. And denting
10 is a phenomenon that occurs when some of these chemicals get
11 out of tolerance.

12 Q Now Judge Cole asked you a question about whether
13 or not the five positions that the board was set up to hear,
14 to conduct interviews were common, sufficiently common, that
15 it would require the peer team members, do you remember
16 that?

17 A Yes.

18 Q How are they common?

19 A They're common in that they all report within the
20 rad chem organization.

21 MR. SLATER: Thank you.

22 CHAIRMAN BECHHOEFER: Ms. Euchner.

23 MS. EUCHNER: I just have one follow up question.

24 You just said that when you're sitting on a
25 selection review board, you're not there to judge the

1 correctness of the answers, you're sort of there to get an
2 idea of how the person is --

3 JUDGE COLE: I didn't hear that, I didn't hear him
4 say that.

5 MS. EUCHNER: Well, I believe he said that you
6 don't focus on the correctness of the answer. And if you
7 didn't say that, please explain what you did say because
8 that's what I heard.

9 THE WITNESS: What I was trying to convey is, for
10 example, the human resources person on a selection review
11 board for these technical positions cannot judge the
12 correctness of the answer. Their job is to evaluate the
13 process and see how the questions are asked, you know. A
14 lot of what comes across through the interviews is body
15 language, demeanor, confidence, those kind of things that
16 are also considered in the response to the questions. So
17 it's not strictly the technical correctness of the answer
18 that is the one thing to evaluate.

19 MS. EUCHNER: Now --

20 JUDGE YOUNG: For just the HR person or for all
21 the interviewers?

22 THE WITNESS: It depends on the position and the
23 people that are selected on the review board. Trying to
24 think of an example --

25 JUDGE YOUNG: Well, on denting and molar ratio,

1 wouldn't the interviewers judge the answer according to
2 whether it accurately described what denting and molar ratio
3 --

4 THE WITNESS: And the degree of what they were
5 able to answer that, right. There are some specific
6 technical attributes it looks like that they looked for
7 here, but there are also the non-technical attributes as
8 well.

9 JUDGE YOUNG: Okay. Excuse me, thank you.

10 MS. EUCHNER: If a person -- you know, you said
11 demeanor is important -- if the person has a great demeanor,
12 sitting up straight in their chair, looking you in the eye
13 when they're answering you, comes across as very self-
14 confident and gives a completely wrong answer to the
15 question, such as what is denting; are they going to get a
16 very low score or a very high score because they did it with
17 confidence?

18 THE WITNESS: It depends on who is doing the
19 rating.

20 MS. EUCHNER: So it's possible that someone could
21 say well, you know, the fact that this person is self-
22 confident is more important than the fact that they can't
23 answer the technical question?

24 THE WITNESS: No. That's why you have two kinds
25 of people on the selection review board. You do have some

1 technical expertise as well.

2 JUDGE YOUNG: You meant it depends on who's doing
3 the answer, you mean whether the interviewers knew the
4 answer to the question.

5 THE WITNESS: True.

6 MS. EUCHNER: In your experience on selection
7 review boards, do the Human Resources participants normally
8 score the candidates?

9 THE WITNESS: Sometimes yes, sometimes no.

10 MS. EUCHNER: Okay. So if a technical selection
11 review board member knew that the answer was wrong, should
12 they score that person high just because he has a good
13 demeanor?

14 THE WITNESS: Which individual again?

15 MS. EUCHNER: If a technical member, such as one
16 of the rad chem managers.

17 THE WITNESS: Oh, no, they shouldn't score him
18 high.

19 MS. EUCHNER: Thank you.

20 JUDGE COLE: Mr. Cox, is any guidance provided to
21 the SRB members as to how they should evaluate the responses
22 to questions? Are they told how they should judge the
23 responses, the answers to the questions?

24 THE WITNESS: The only guidance is the sheet
25 that's provided that they fill out at the end and a lot of

1 those things are non-technical in nature. There are things
2 that are evaluated, such as communication skills, team work
3 and I don't remember what the specific attributes were, but
4 there is no specific guidance given them to tell them how to
5 rate a response to an answer (sic).

6 JUDGE COLE: In the exercise wherein the SRB
7 members determine which questions to ask, do you discuss the
8 answers to the questions when you're trying to determine
9 which questions to ask, so that all of the members at least
10 have some background in what the answer is?

11 THE WITNESS: Not typically I wouldn't think.

12 JUDGE COLE: Do you think that maybe some of the
13 SRB members would just not know the answer to questions if
14 they hadn't discussed it beforehand?

15 THE WITNESS: Yes, some of them might not.

16 JUDGE COLE: Thank you.

17 CHAIRMAN BECHHOEFER: Well, a little bit along the
18 same line, is there any guidance whatsoever, either in
19 written form or otherwise, that you get -- that an SRB
20 member gets as to how many points should be awarded for one
21 answer or another, three points, five points, ten points?

22 THE WITNESS: No, I don't know of any specific
23 guidance because there's such a range of positions that
24 these guidelines are set up for.

25 CHAIRMAN BECHHOEFER: I see. Mr. Slater, further

1 questions?

2 MR. SLATER: Just a couple more questions.

3 You have indicated that in the SRBs that you set
4 up, typically will have a customer, a peer and a supervisor
5 I believe.

6 THE WITNESS: Yes.

7 MR. SLATER: Why that mix?

8 THE WITNESS: Well, the customer obviously, to
9 provide input on basically which of the candidates would
10 want to, you know -- they would want to have support them.
11 It's just to get a different perspective from each of the
12 people. I really don't know how to answer that other than a
13 peer looks for different attributes than a supervisor does
14 in a lot of cases, or a subordinate -- you know, a peer
15 will likely look for somebody that they feel like they can
16 work with well.

17 MR. SLATER: So this mix, the customer, the peer,
18 the supervisor, could come away with -- after hearing the
19 response, could come away with a different level with
20 respect to scoring, they could -- maybe one would give a 9,
21 one would give an 8, one would give a 7.

22 THE WITNESS: Absolutely. There's a range.

23 MR. SLATER: And you said that there is no magic
24 bullet as to how to grade or rate the responses to the
25 questions.

1 THE WITNESS: Not to my knowledge.

2 MR. SLATER: Thank you.

3 CHAIRMAN BECHHOEFER: Ms. Euchner.

4 MS. EUCHNER: I have no further questions.

5 CHAIRMAN BECHHOEFER: Mr. Cox, we appreciate your
6 coming down and making the effort to be here this afternoon.
7 You're lucky you get a little time off from doing your other
8 work anyway. You are excused and we thank you very much.

9 THE WITNESS: All right, you're welcome.

10 JUDGE YOUNG: Thank you.

11 (Witness excused.)

12 CHAIRMAN BECHHOEFER: With that, I guess we'll go
13 off the record.

14 (Discussion off the record.)

15 CHAIRMAN BECHHOEFER: Back on the record. After a
16 discussion with various parties, the Board has determined
17 that there will be further hearings scheduled from June 11,
18 which is a Tuesday, through June 20, we'll start at the
19 usual 9:00 and at the end, we'll see when we can adjourn,
20 but June 20, at least tentatively a full day.

21 JUDGE COLE: And they're the dates, barring
22 unforeseen circumstances between now and then.

23 CHAIRMAN BECHHOEFER: Right.

24 JUDGE YOUNG: Flood, earthquake --

25 CHAIRMAN BECHHOEFER: Well, looking at my calendar

1 in Rockville, because I don't have it here. But I don't
2 think there's anything significant.

3 So we'll set those dates and we will let you know
4 about location. We will investigate at least keeping the
5 hearings here and what we can do with the documents and
6 exhibits, et cetera. And since we don't know the plans for
7 this building yet, we'll do it as soon as we can.

8 So we're off the record now and adjourned.

9 (Whereupon, the hearing was adjourned at 4:40
10 p.m., to reconvene on at 9:00 a.m. on Monday, May
11 6, 2002.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

This is to certify that the attached proceedings
before the United States Nuclear Regulatory Commission
in the matter of:

Name of Proceeding: Tennessee Valley Authority

Watts Bar Nuclear Plant,

Unit 1, Sequoyah Nuclear

Plant, Units 1 and 2, Brown

ferry Nuclear Plant, Units

1,2,3

Docket Number: 50-390-CivP;

ASLBP No. 01-791-01-CivP

Location: Chattanooga, Tennessee

were held as herein appears, and that this is the
original transcript thereof for the file of the United
States Nuclear Regulatory Commission taken by me and,
thereafter reduced to typewriting by me or under the
direction of the court reporting company, and that the
transcript is a true and accurate record of the
foregoing proceedings.

/s/ Bill Warren

Bill Warren

Official Reporter

Neal R. Gross & Co., Inc.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com