

RAS 4537

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: Tuesday, June 11, 2002

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

2002 JUN 14 PM 12: 27

DOCKETED
USNRC

Work Order No.: NRC-420

Pages 2577-2818

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

Template=SECY-032

SECY-02

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

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

Chickamauga Room
Read House Hotel
827 Broad Street
Chattanooga, TN

Tuesday, June 11, 2002

The above entitled matter came on for hearing
pursuant to Notice at 9:04 a.m.

BEFORE:

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

PAGES: 2577 THROUGH 2818

APPEARANCES OF COUNSEL:

On behalf of the Nuclear Regulatory Commission:

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

-and-

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

On behalf of Tennessee Valley Authority:

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

-and-

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

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Gary Fiser	--	2586	--	--
	--	2699	--	--
Linda Moore	2697	--	--	--

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

TVA:

124	--	2775
130	2675	2698

P R O C E E D I N G S

1
2 CHAIRMAN BECHHOEFER: Good morning, ladies and
3 gentlemen. This is a continuation of the evidentiary
4 hearing in a civil penalty proceeding brought by the NRC
5 staff against the Tennessee Valley Authority or TVA, for
6 alleged violation of NRC's employee protection requirements.

7 The Atomic Safety & Licensing Board, consisting of
8 Administrative Judges Ann Marshall Young on my right and Dr.
9 Richard F. Cole on my left, and myself, Charles Bechhoefer,
10 who is serving as chairman, welcomes you back.

11 I see that at least some of you have successfully
12 survived a month of leisurely or other pursuits. We have
13 done likewise. We note that during this period, TVA filed
14 its fourth supplemental exhibit list, which we all received.

15 You will also notice that we're in a new location
16 for the hearing. The primary reason is to accommodate the
17 space needed by three Judges to sit and the size of the
18 bench needed for our examination of the numerous exhibits
19 being utilized by the parties and the parties need for
20 further space to do likewise. Beyond that, coffee and other
21 refreshments are much more accessible, for better or for
22 worse.

23 Details of the hearing dates during this two week
24 period were set forth in what I understand was sort of a
25 confusing order, entitled "Continuation of Evidentiary

1 Hearing" dated May 22, 2002.

2 We understand that we will commence with the
3 completion of the testimony of Mr. Gary Fiser -- good
4 morning, Mr. Fiser -- which will likely require the rest of
5 the day today. Beyond that, we would like the parties to
6 attempt to apprise us of proposed schedules for other
7 witnesses, particularly to let us know whether there's any
8 need to contemplate continuation of the hearing beyond
9 Friday, June 21, which is the last date for this scheduled
10 series.

11 JUDGE YOUNG: Which we do not encourage.

12 (Laughter.)

13 CHAIRMAN BECHHOEFER: We're not encouraging it,
14 but I think it would be useful for us to know sometime in
15 advance what the likelihood is.

16 Before we begin, are there any preliminary matters
17 the parties which to raise?

18 MR. MARQUAND: Your Honor, we did discuss the
19 proposed.

20 JUDGE YOUNG: Hold on one second.

21 THE REPORTER: Please use the microphone.

22 CHAIRMAN BECHHOEFER: Yeah, we can't hear you.

23 JUDGE YOUNG: Sir, court reporter, is you want us
24 to turn that off, they've told us to turn it on at lunch and
25 at night. If you just can't hear, let us know and we'll

1 turn it off.

2 THE REPORTER: It's fine for a few minutes. I
3 just want everybody to be able to hear.

4 CHAIRMAN BECHHOEFER: Well, we want to be able to
5 hear too.

6 JUDGE YOUNG: But he has to get every word.

7 MR. MARQUAND: Your Honor, we have discussed with
8 NRC staff counsel a tentative schedule of witnesses and if
9 you'd like, I can tell you what that schedule is.

10 CHAIRMAN BECHHOEFER: Yes, I would. But let me
11 get something here to write it down.

12 MR. MARQUAND: We had discussed doing the
13 completion of Mr. Fiser's testimony hopefully today.
14 Beginning tomorrow, John Corey would --

15 JUDGE COLE: Could you bring the microphone
16 closer? I can't hear you.

17 MR. MARQUAND: Beginning tomorrow, John Corey
18 would testify, followed by Charles Kent.

19 Wednesday --

20 JUDGE YOUNG: Thursday.

21 MR. MARQUAND: Today's Tuesday -- okay, Thursday,
22 Dave Voeller and Phil Reynolds.

23 MS. EUCHNER: No, no, no. Thursday, we are going
24 to be finishing Kent, there's no way Kent is finishing on
25 Wednesday.

1 MR. MARQUAND: All right. Hopefully finishing
2 Kent, followed by Dave Voeller and Phil Reynolds.

3 CHAIRMAN BECHHOEFER: Followed by who?

4 JUDGE YOUNG: Dave Voeller.

5 MR. MARQUAND: Fiser, Corey, Kent, Dave Voeller
6 and then Phil Reynolds to finish up this week.

7 Gary Fiser today; John Corey and Charles Kent,
8 hopefully get as far as we can with Kent tomorrow, they're
9 two of the SRB members we've discussed. Dave Voeller
10 picking up Thursday, followed by Phil Reynolds. We're
11 anticipating that will round out this week.

12 CHAIRMAN BECHHOEFER: And who is the last person?

13 MR. MARQUAND: Philip Reynolds.

14 CHAIRMAN BECHHOEFER: Oh, okay, I've got him.

15 MR. MARQUAND: Beginning Monday, conclude with Ron
16 Grover's redirect examination, hopefully that will not take
17 too long in the morning. Then followed -- he would be
18 followed by Ed Boyles.

19 JUDGE COLE: Could you spell that?

20 MR. MARQUAND: B-o-y-l-e-s.

21 And then we would have to take some witnesses out
22 of order because the staff wants to depose Donald Hickman,
23 TVA's acting Inspector General and he's not available until
24 the 19th. So on the 18th, Tuesday, we would pick up with
25 Robert J. Beecken -- you've heard him mentioned, he was the

1 Sequoyah plant manager back in the '92-'93 time frame.

2 We had discussed doing Milissa Westbrook on June
3 19, but she's had an unexpected death in the family and she
4 probably will not be available this week or next week.

5 After that, Alex Sewell, who is a records
6 custodian. On the 20th, we'll be getting some more of TVA's
7 witnesses -- Keith Fogelman and then Cary Peters on the 20th
8 or 21st. Mike Harding on the 20th or 21st and possibly Al
9 Black on the 20th or 21st.

10 JUDGE YOUNG: Al?

11 MR. MARQUAND: Al Black.

12 JUDGE YOUNG: Black.

13 MR. MARQUAND: Right. And then, as I said, I
14 don't think we're going to get to Ms. Westbrook these two
15 weeks because of the family crisis.

16 We have four other witnesses who we would like to
17 squeeze in, but I don't know if the schedule is going to
18 permit it, but they're available -- three of them are
19 available -- five witnesses.

20 You've heard Rick Rogers mentioned, he is not
21 available either of these two weeks, he is on a special
22 assignment to INPO evaluating another utility's engineering
23 organization. Sam Harvey, who no longer is employed by TVA,
24 is not available these two weeks. David Goetcheus is
25 available but I'm not anticipating that we'll get to him.

1 He's a short witness. Rob Ritchie is available. We may be
2 able to get to him, depending on time; and Chandra, who you
3 have heard mentioned as well.

4 I discussed with counsel, and if we're limited to
5 a number of what we anticipate to be very short witnesses,
6 it seems to us that maybe the thing to do would be to come
7 to Rockville and finish the hearing, we can bring up there,
8 we'll know what the schedule is with respect to them and
9 have much more control over their schedules.

10 JUDGE YOUNG: We had discussed that as well and I
11 think that's an excellent idea.

12 CHAIRMAN BECHHOEFER: I think that's a good idea,
13 but I might let you know that at least for three or four
14 weeks, the hearing room in Rockville is going to be taken up
15 by PFS matters.

16 MR. MARQUAND: Okay, we can --

17 CHAIRMAN BECHHOEFER: So, we'll have to work
18 around that.

19 JUDGE YOUNG: If TVA -- I don't know -- we also
20 have video-conferencing capability, if --

21 CHAIRMAN BECHHOEFER: No.

22 MR. MARQUAND: We can talk about that. I've never
23 done that in the context of a hearing. I certainly don't
24 mind bringing those people to Washington.

25 JUDGE YOUNG: Good.

1 CHAIRMAN BECHHOEFER: Okay, are there other
2 matters that either part would like to raise before we
3 resume Mr. Fiser's testimony?

4 MS. EUCHNER: No, Your Honor.

5 MR. MARQUAND: No, Your Honor.

6 CHAIRMAN BECHHOEFER: Mr. Fiser, I guess the
7 witness box is that direction.

8 Whereupon,

9 GARY FISER

10 RESUMED his status as a witness herein, and having been
11 reminded of his oath, was examined and testified further as
12 follows:

13 THE REPORTER: Before we start, would you spell
14 you name again for me?

15 THE WITNESS: First name, G-a-r-y; last name, F-i-
16 s-e-r.

17 THE REPORTER: Thank you, sir.

18 CHAIRMAN BECHHOEFER: I believe Mr. Marquand is
19 not through his cross examination yet.

20 MR. MARQUAND: Thank you, Judge.

21 CHAIRMAN BECHHOEFER: That's my recollection and I
22 read it last night, so I know it's accurate.

23 CROSS EXAMINATION (Continued)

24 BY MR. MARQUAND:

25 Q Mr. Fiser, I want to clarify one matter which we

1 had discussed previously and that is the issue of whether or
2 not you were made aware that management of Sequoyah was
3 dissatisfied with your performance and didn't want you to
4 return? It's true, isn't it, in 1992, that you were told by
5 Wilson McArthur that management was dissatisfied with your
6 performance and didn't want you to return to Sequoyah?

7 A I think at some time in '92, Wilson did make that
8 statement.

9 Q All right. And it's true that you then spoke with
10 Jack Wilson, the Sequoyah site vice president and he
11 indicated to you that, rightly or wrongly, they didn't think
12 you were effective and he didn't want you to return to
13 Sequoyah.

14 A As I recall, that was in December of '92.

15 Q Does that mean yes?

16 A Yes.

17 Q And you also spoke to Robert Beecken, Rob Beecken,
18 the plant manager, and he told you essentially the same
19 thing.

20 A I think that's correct in December of '92.

21 Q Now in your direct testimony on April 30, you
22 indicated that -- and this is referring back to the '92 time
23 frame when you were in outage management -- you said that at
24 that point in time, that Bill Lagergren, your former
25 supervisor, had told you that you needed to return to

1 chemistry, since the NSRB and Tom McGrath and Tom Peterson
2 were raising issues and claiming that chemistry was out of
3 control. Do you recall that?

4 A No.

5 Q You don't recall that in your testimony?

6 A No. I do recall that, but as I recall, he said
7 Bill Jocher.

8 Q Ah -- that's what I thought was the situation, but
9 I just wanted to clarify.

10 A I think that's correct. He very well may have
11 mentioned NSRB too, but --

12 Q Let me refer you to page 1017 of your April 30,
13 2002 testimony. I asked you a question at line 9:

14 "At some point, did anyone from the Nuclear
15 Safety Review Board or NSRB raise this issue with
16 you?"

17 "Yes, they did."

18 "When?"

19 "As I recall, that was in a meeting that was
20 conducted in my office of February, I think
21 February 25th. I have notes about it -- anyway, I
22 think it's February 25th."

23 JUDGE YOUNG: "Of which year?"

24 ANSWER: "That would be 1992."

25 JUDGE YOUNG: You're not reading from a deposition

1 MR. MARQUAND: No, I'm reading from the transcript
2 of this hearing on April 30, 2002.

3 MS. EUCHNER: And what page number are you on?

4 MR. MARQUAND: Page 1017 of the miniscript
5 version. I don't know if it's paginated the same way.

6 BY MR. MARQUAND:

7 Q Anyway, your answer was:

8 "Plus, as you will recall, the original
9 intention was for me to help manage both outages
10 and after the first outage, Bill Lagergren told me
11 I needed to get back to chemistry because he had
12 heard that NSRB was raising some issues with
13 regard to chemistry and I needed to get that
14 straightened out right away."

15 A It very well may have been.

16 Q All right. Now my question is, isn't it true in
17 fact that what you've said all along is that -- what you
18 said in that time frame was Bill Jocher was raising issues
19 and that you were informed by Wilson McArthur that you
20 needed to return to chemistry because Jocher was claiming
21 that chemistry was out of control.

22 A That is what Wilson McArthur said.

23 Q All right.

24 A There are two people involved here.

25 MR. MARQUAND: Does the staff wish to offer any

1 exhibits to the witness?

2 MS. EUCHNER: Those were kept by either the Judges
3 or the court reporters, not us. We didn't take any of the
4 witness copies.

5 JUDGE COLE: What do you need?

6 MS. EUCHNER: You can use mine.

7 MR. MARQUAND: I'll show Mr. Fiser my copy.

8 JUDGE YOUNG: I think that was the court
9 reporter's set. Was there not a complete set?

10 MS. EUCHNER: What are those back there? Are
11 those empty boxes?

12 MR. MARQUAND: I will share my copy of Joint
13 Exhibit 27 with the witness.

14 (A document was proffered to the witness.)

15 BY MR. MARQUAND:

16 Q Mr. Fiser, is Joint Exhibit 27 the sequence of
17 events which you prepared back in the '92-'93 time frame?

18 A Yes, it appears to be.

19 Q And referring to page 1 of Joint Exhibit 27, do
20 you see the entry at the bottom of the first page for
21 November 1991?

22 A That's correct.

23 Q And in that entry, do you see that that references
24 a telephone call you got from Wilson McArthur regarding
25 chemistry being "out of control".

1 A That's correct.

2 Q And in that note, do you not indicate that it says
3 that Wilson McArthur told you that Bill Jocher had told the
4 NSRB that Sequoyah chemistry group at Sequoyah was out of
5 control?

6 A That's correct.

7 Q Now if you need to refer to this to refresh your
8 recollection, the rest of entry, what was Bill Jocher
9 referring to about the chemistry group being out of control?

10 A He did not elaborate.

11 Q But he did indicate that there was a long list of
12 issues that Bill Jocher was raising, correct?

13 A Yes, as I recall, that's correct.

14 Q And what was your response to Dr. McArthur about
15 that long list of issues that Bill Jocher was raising?

16 A Well, I would need to read this to really --

17 Q Go ahead, take your time.

18 A Okay, let me take a minute.

19 (The witness reviews a document.)

20 A Now could you repeat the question?

21 Q I'm not sure I remember it. My question was I
22 said didn't Bill Jocher indicate that there were a number of
23 issues wrong with chemistry at Sequoyah?

24 A That's correct.

25 Q And what was your response to Dr. McArthur about

1 those issues?

2 A I had discussed this with the fellow that I placed
3 in charge while I was gone. As I recall, I was in the
4 control room after midnight when this telephone call came --
5 oh, I'm not sure about that.

6 The response that I made to Dr. McArthur was that
7 indeed we did have a long list, Jocher had a long list. The
8 things that were on Jocher's list had already, for the most
9 part with very few exceptions, been listed and were on our
10 own internal corrective action list. In other words, we had
11 captured these items that we wanted to fix and we had
12 prioritized the work in accordance to the degree of
13 importance that we placed on the various items and that they
14 were in fact being resolved over a period of time.

15 I also made the comment that, you know, in my
16 mind, that was not an example of being out of control, but
17 due to the fact that we have these things captured and that
18 we were working them off the list and repairing these things
19 was an indication that in fact is was in control, not out of
20 control. Had there been no list at all and were we totally
21 unaware of the things that we needed to work on to enhance
22 and improve the chemistry program at Sequoyah, then in fact
23 it would have been out of control.

24 Q So in November of '91, McArthur told you you
25 needed to get back to chemistry because Jocher was saying

1 chemistry at Sequoyah was out of control.

2 A Yes, that is what Dr. McArthur said.

3 Q And then if you'll look on page 2 of Joint Exhibit
4 27, do you see the entry for December of '91 for Mr.
5 Lagergren's discussion with you?

6 A Yes.

7 Q And does that also include a suggestion to you by
8 Mr. Lagergren that you needed to get back to chemistry
9 immediately because Bill Jocher was stirring up a lot of
10 trouble for the entire chemistry organization?

11 A Yes, it does.

12 Q Now take your time, if you need to look at Joint
13 Exhibit 27, and tell me in there if there's any place in
14 there where Mr. Lagergren or Dr. McArthur or anyone else
15 tells you, "Gary, you have got to get back to chemistry
16 immediately because Tom McGrath is saying that chemistry is
17 out of control."

18 A It is implicit in the fact that in the discussions
19 with Dr. McArthur, that he mentions that Bill has -- Bill
20 Jocher has had communications with NSRB, the head of which
21 is Tom McGrath.

22 Q Mr. Fiser, take your time if you need to and
23 review Joint Exhibit 27, to show me any language in there in
24 which it says, by Dr. McArthur or Bill Lagergren, where they
25 tell you you need to get back to chemistry because Tom

1 McGrath is saying that chemistry is out of control.

2 A So you want him by name, not by title or by
3 organization?

4 Q Show me where it says that Dr. -- that Tom McGrath
5 is saying chemistry is out of control and you need to get
6 back to Sequoyah chemistry.

7 A Well, you're picking at words. I just want to
8 make sure I understand. So you're just looking for the name
9 Tom.

10 Q I'm asking for where is it in Joint Exhibit 27, in
11 your sequence of events.

12 (The witness reviews a document.)

13 A Now Joint Exhibit 27 is fairly long.

14 Q Do we need to take a break for you to look at your
15 own document?

16 A Well, let's see, this was 11 years ago, so you
17 might.

18 Q Do we need to take a break for you to review this
19 document?

20 A I think that would be appropriate, if I need to
21 look through the whole thing -- I think that would be
22 appropriate if I need to review the whole document.

23 MR. MARQUAND: If the witness needs to review it,
24 Your Honor, can we take whatever time he needs to answer the
25 question?

1 CHAIRMAN BECHHOEFER: Yes, but I would like to
2 just have one -- while you're looking, there's a statement
3 here that Mr. Lagergren suggested that you initiate a
4 request for INPO assistance. Now could that be a reflection
5 of what either Mr. McGrath or Dr. McArthur wanted?

6 THE WITNESS: No, sir, that was a specific request
7 from Mr. Lagergren because, as I recall, in our discussion,
8 he had trouble believing that this guy was coming in raising
9 concerns and saying it's out of control when he had seen our
10 work, when he had seen the INPO visits and seen the results
11 of it. And so he says well, let's just call INPO in and
12 have a visit and we'll see if it's out of control or not,
13 and we'll document that, whether it is or isn't, fully
14 thinking in advance, INPO is going to come in and find
15 nothing wrong. Again, that was his intent.

16 CHAIRMAN BECHHOEFER: Thank you. Well, you may
17 want the break --

18 BY MR. MARQUAND;

19 Q Mr. Fiser, in order to facilitate your review of
20 this document, my question was whether or not your document
21 reflects that somebody told you you needed to return from
22 outage management to Sequoyah chemistry because somebody was
23 saying it was out of control. And I asked you does it say
24 that McGrath said it was out of control.

25 Now when was the period of time you were in outage

1 management? That concluded in December of '91, didn't it?

2 A As I recall, that's correct.

3 Q So you returned to Sequoyah chemistry by January
4 of '92, right?

5 A That's about correct.

6 Q So is you received the advice that you needed to
7 return to Sequoyah chemistry, it would have been prior to
8 January of '92, correct?

9 A That's correct.

10 Q And the entries in your sequence of events prior
11 to January of '92 are contained on pages 1 and 2 -- it's
12 chronological, right?

13 A It is chronological.

14 Q So if you received that advice, it would have been
15 prior to January of '92 and if any -- it would have been
16 reflected on pages 1 and 2 of your sequence of events.

17 A And as I have said, I think it was.

18 Q Can you show us where it would be located on pages
19 1 and 2, if it is so located.

20 A And also, I just might add, as I recall, later on
21 in the document again, where Tom McGrath or Peterson's names
22 both were mentioned. Just because of the fact that it was
23 not mentioned here does not mean it did not occur.

24 Q I just asked you is it in the document.

25 A Implicitly it is, when it says that --

1 Q I asked you if it's in the document.

2 A And I'm answering the question as best I can.
3 Implicitly it is there, by virtue of the fact that it says
4 here that Wilson told me that Bill Jocher had been raising
5 this issue with NSRB. I think that adequately addresses
6 your question.

7 Q So are you telling me it's not expressly in this
8 document?

9 A Tom McGrath's name is not in this first two pages.

10 Q It doesn't say that Tom McGrath said chemistry is
11 out of control.

12 A Not in these first two pages, no.

13 Q And now as you pointed out, you prepared this some
14 11 yrs ago, correct?

15 A Well, I would have prepared this in '93.

16 Q '92 or '93 -- '93?

17 A Well, the notes would have been compiled all
18 along, so yeah, '92-'93.

19 Q Right. And you've already indicated to us that
20 you would have to review this document because it's been
21 prepared some 10 or 11 years ago, if I asked you what was in
22 it.

23 A Certainly.

24 Q Because you don't remember everything that's in it
25 or everything that happened, correct?

1 A I think if you asked a specific question about a
2 specific name, I would have to go back and look to find
3 that.

4 Q Now you've agreed with me that it doesn't
5 specifically say Tom McGrath or the Chairman of the NSRB is
6 saying that chemistry is out of control.

7 A Just implicitly, yeah.

8 Q But as you sit here today now, you're amplifying
9 on that and telling us that Tom McGrath in fact -- you were
10 told that Tom McGrath in fact said that.

11 A As I'm sitting here today?

12 Q Yes.

13 A I told you what?

14 Q As you're sitting here today, your testimony is
15 that Bill Lagergren told you that Tom McGrath said chemistry
16 is out of control.

17 MS. EUCHNER: Objection, that's a
18 mischaracterization of the witness' testimony.

19 CHAIRMAN BECHHOEFER: Mr. Fiser, did Bill
20 Lagergren in fact mention to you that his statement or his
21 view that chemistry was out of control at Sequoyah came from
22 Mr. McGrath or elsewhere? Did he give you a source of...

23 THE WITNESS: He just -- let's see, I think I have
24 -- I think I have a -- some notes in here about his
25 comments. Could I take a look at that just a second, Your

1 Honor?

2 CHAIRMAN BECHHOEFER: Yes, you may.

3 THE WITNESS: On Page 2, Your Honor, I have a note
4 from Bill Lagergren, December of '91, wherein he states that
5 Bill Jocher had been stirring up a lot of trouble for the
6 entire chemistry organization, and that I needed to start
7 straightening it out right away.

8 So I would -- in answer to your question, at this
9 point in time -- at this point in time, I think he was
10 referring to Bill Jocher. And, again, he was not in
11 agreement with what Mr. Jocher was saying. And by
12 "straighten it out," he was wanting me to get back, get
13 plugged in, reestablish communication with this guy, and
14 pull INPO in to do an independent look at the organization,
15 an assist visit. I assume Your Honors are familiar with
16 that. Just to have them come in, take a close look at
17 chemistry in an assist mode instead of an inspection
18 evaluation mode, to see what's really there and how they
19 could help us put together a program to address whatever
20 issues they found.

21 CHAIRMAN BECHHOEFER: Thank you. I think we
22 talked about that the other day...

23 THE WITNESS: Yes, Your Honor.

24 CHAIRMAN BECHHOEFER: ...a little bit.

25 BY MR. MARQUAND:

1 Q Mr. Fiser, referring again to the testimony --
2 your testimony on April 30th of 2002, Page 1017, you see
3 right here, line 22, where it said, "Bill Lagergren told me
4 that I needed to get back to chemistry because he had heard
5 that NSRB was raising some issues with regard to chemistry,
6 and I needed to get that straightened out right away."

7 A Uh-huh. That's correct.

8 Q Now, are you telling us today that it was the NSRB
9 and Tom McGrath or, as you said on April 30th of this year,
10 or was it Bill Jocher, as you noted in your notes back in
11 December of 1991 who said that chemistry was out of control
12 and you need to get back?

13 A As I recall, from my conversations with Dr.
14 McArthur, he was referring specifically to -- to Bill
15 Jocher.

16 Q All right.

17 A But I could also say that Dr. McArthur was a
18 member of the NSRB and...

19 Q I'm not talking about what Dr. McArthur told you.
20 I'm referring again to your entry here from Mr. Lagergren's
21 discussion with you.

22 A Correct.

23 Q Isn't it true that Mr. Lagergren told you Jocher
24 was stirring up trouble and you needed to get it
25 straightened out right away?

1 A Yes. But at the same time, I cannot absolutely
2 and unequivocally (sic) state that he did not also mention -
3 - this was not a recorded conversation, this was just taken
4 from my notes. He also may have very well mentioned NSRB at
5 this same time. It's possible.

6 Q Well, I guess it's possible. But, in fact, you
7 prepared this sequence of events in connection with your
8 1993 Department of Labor complaint some nine years ago;
9 correct?

10 A Uh-huh. That's correct.

11 Q And you tried to make it as accurate as possible,
12 and complete and pertinent to that case as possible; right?

13 A That's correct.

14 Q And you didn't include any reference in there to
15 Mr. Lagergren referring to Tom McGrath saying that chemistry
16 was out of control, that -- that McGrath said -- or
17 McGrath's stirring up trouble. All you said was that Jocher
18 was stirring up trouble.

19 A Yes. And that is because -- if I went back to my
20 notes and it said Bill Jocher, even though from my memory I
21 distinctly recall it may have been both, I would not have
22 written that down as both because it was not documented that
23 way in my notes.

24 Q You've never produced those notes to us, have you?

25 A Oh, yes, I have.

1 Q You've -- you've never produced any notes
2 concerning this conversation in December of '91 with Bill
3 Lagergren.

4 A Oh, yes, you have received everything I've got.

5 Q I may have received everything you've got, but
6 we've never seen that note, have we?

7 A If -- yeah, and the -- because you got every note
8 that I took from 1991 to about 2002. And you had -- and you
9 looked over it. Whether or not you saw it or not, I don't
10 know.

11 Q In your testimony earlier, you testified about an
12 NSRB meeting in which the issue of trending was raised. Do
13 you recall that?

14 A I do.

15 Q I'm sorry, I can't hear you.

16 A I said, "I do."

17 Q All right. And your testimony was that that
18 occurred on February 25 of 1992.

19 A I think that's approximately correct; yeah.

20 Q All right. In fact, Mr. Fiser, there was no NSRB
21 meeting on February 25 of '92, was there?

22 A There was a -- a meeting with NSRB. If you're
23 saying it might have been the 21st or the 19th, I don't know.
24 That's possible.

25 Q All right. I'm going to show you Page 3 of Joint

1 Exhibit 27. Page 3 of Joint Exhibit 27 in fact indicates
2 that that was the date of the INPO assist visit that you
3 mentioned earlier; correct? February 24th through 28th of
4 1992.

5 A That is the date I have listed as the assist
6 visit.

7 Q Mr. Fiser, I want to show you Joint Exhibit 3,
8 which is already in the record. It is an excerpt from the
9 NSRB minutes of November 20 and 21, 1991. Take your time
10 and review that with an eye to answering this question:
11 Isn't that, in fact, the minutes of the meeting in which the
12 issue of data trending was included?

13 JUDGE YOUNG: What page are you looking at?

14 MR. MARQUAND: It would be -- it's the whole
15 document. It's an excerpt from the -- it's Joint Exhibit 3.

16 JUDGE YOUNG: I've got that. I thought you were
17 referring to a specific page in your last question.

18 MR. MARQUAND: Well, I'm asking him to look at it
19 and tell me if that doesn't refresh his recollection that
20 the November 20 and 21, 1991, meeting was the meeting in
21 which the issue of data trending was discussed.

22 (The witness reviews certain material.)

23 CHAIRMAN BECHHOEFER: Go ahead. I was going to
24 ask a further question, but...

25 THE WITNESS: I'm sorry, Your Honor.

1 CHAIRMAN BECHHOEFER: Well, what I was going to
2 ask is whether there's a difference between official
3 meetings of the Nuclear Safety Review Board and meetings of
4 members of the Nuclear Safety Review Board with individuals
5 which would not be deemed an official meeting, and therefore
6 would not be in the list of -- or in the -- in the schedule
7 of meetings, formal meetings? And I refer you to Page 1017
8 of the transcript which we were looking at just shortly,
9 just a few minutes ago. And there, where you say there was
10 a meeting that was conducted in my -- in your office in
11 February, February the 20 -- 25th.

12 THE WITNESS: That's correct.

13 CHAIRMAN BECHHOEFER: And that, to me, might not
14 be the same kind of meeting that would be referenced in the
15 official list of meetings. It's like if a commissioner
16 comes down to somebody's office maybe with another
17 commissioner, I don't think that's an official commission
18 meeting, referring to the Nuclear Regulatory Commission.

19 MR. MARQUAND: Your Honor, I believe, on Page 10-7
20 -- 1018, Mr. Fiser was talking about the people present, and
21 he referred to NSRB members Dr. Wilson McArthur, Mr.
22 Peterson, and Mr. McGrath.

23 If you recall Mr. McGrath's testimony, Tom
24 Peterson was a paid outside consultant, and his testimony
25 was that those paid outside consultants don't show up on a

1 casual or informal basis; only as they are formally
2 requested to appear. And so, with respect at least to Mr.
3 Peterson, no, there was not such an informal meeting.

4 CHAIRMAN BECHHOEFER: I see. Well, contracts can
5 be...

6 MR. MARQUAND: That's true.

7 CHAIRMAN BECHHOEFER: ...can be...

8 JUDGE COLE: Wasn't that a meeting of a
9 subcommittee?

10 MR. MARQUAND: The subcommittee -- when the --
11 when the NSRB meets, they then adjourn to their
12 subcommittees. And the subcommittees are conducted in
13 conjunction with the meeting of the NSRB as a whole. Just
14 like these notes reflect, there was a meeting in November
15 and the -- and also includes the subcommittee notes with
16 respect to that same meeting.

17 CHAIRMAN BECHHOEFER: No, I -- I was just
18 referring to the fact that it just may be a getting together
19 of certain persons, and some of whom were on the NSRB and...

20

21 MR. MARQUAND: That's a possibility.

22 CHAIRMAN BECHHOEFER: ...one of whom may have been
23 a consultant who may have shown up for other reasons. We
24 don't know. I don't know what the scope of his contract
25 was. But we have consultants who come in for somewhat

1 different reasons than their major -- their major activity
2 for which they're hired. And I'm just trying to explore
3 whether this one meeting -- so-called meeting was just a
4 group of people getting together.

5 THE WITNESS: Right.

6 CHAIRMAN BECHHOEFER: On a common subject, true.

7 THE WITNESS: And that very well could have been
8 the case, Your Honor. I would say -- the thing I was fixing
9 to mention is that this took place in November. And these -
10 - this official meeting minutes that I'm holding now,
11 apparently this took place in November. In November, I was
12 very much involved with the -- the refueling outage. I had
13 nothing to do with chemistry. The meeting I'm referring to
14 in February, thereabouts, was, in fact, in my office where I
15 was very distinctly sitting in my chair.

16 Now, had I just dropped in in November, I would
17 assume Rob Ritchie, the guy I had placed in charge, would
18 have been sitting in my chair in my office, and I would have
19 just been more or less a -- a visitor. Because he would
20 have been conducting the meeting.

21 And counsel has asked me if this is, in fact, the
22 meeting where all of these trending issues were raised, and
23 I would call that into question, after reviewing this. It
24 does make reference to the fact that there was a problem in
25 trending, but that may have very well been the thing that

1 led us to the big meeting; and that being that they were
2 having computer problems and may have been trending at that
3 time; they may have not been. I don't know. This is not
4 the meeting I was referring to.

5 BY MR. MARQUAND:

6 Q All right, have you had a chance to review Joint
7 Exhibit 3?

8 A In part; yes.

9 Q All right. If you'll look at the first page of
10 it, in the third paragraph you see where it says, "Discuss
11 below are key items from the meeting."

12 A In the third paragraph?

13 Q Third paragraph, first page.

14 A Yes, I see that.

15 Q And immediately below that, do you see the entry
16 for "site chemistry program," which is underscored?

17 A That's correct.

18 Q And in the very next paragraph, it indicates that
19 there are recent findings, and then the next sentence says,
20 "Among those, as examples, are required data trend analysis
21 not being performed."

22 A Correct.

23 Q All right. Now, if you'll look at Page 2, in the
24 third paragraph it says, "The following topics of interest
25 were discussed." Do you see that in the third paragraph?

1 A In the third paragraph. Yes.

2 Q And the next entry is "site chemistry program,"
3 underscored?

4 A Yes.

5 Q Refers to recent findings by site quality
6 assurance that could impact plant chemistry control, and it
7 notes deficiencies, including failure to perform required
8 analysis, and poor data trending. Do you see that?

9 A Yes, I do.

10 Q All right. If you will, look at the...

11 A But I think that makes my point.

12 Q All I'm asking you is do you see those entries.

13 Page 6 of this document, which has got a Page #21
14 at the bottom.

15 A Yes.

16 Q This is the chemistry subcommittee's findings. Do
17 you see in the second paragraph "chemistry program review,"
18 underscored?

19 A Yes.

20 Q Do you see where it says, "The subcommittee
21 reviewed with site chemistry, corporate chemistry, and
22 quality assurance recent weaknesses, and among the
23 deficiencies noted were failure to perform required
24 analysis, and poor data trending"?

25 A Yes, I do.

1 Q All right. Now, would you agree, after reviewing
2 Joint Exhibit 3, that the issue of poor data trending came
3 up during the November 20 and 21, 1991, NSRB meeting?

4 A Of poor data trending; yes, I would.

5 Q All right. Now, turn over to the next tab. It's
6 Joint Exhibit 4. That is the NSRB minutes for the February
7 19 and 20, 1992 meeting, which have been previously admitted
8 into the record. Do you see those minutes?

9 A Yes, I do.

10 Q All right. By that point in time had you returned
11 to Sequoyah chemistry?

12 A Yes, I had.

13 Q All right. So you would have been one of the
14 contact persons that the chemistry subcommittee talked with;
15 correct?

16 A That's -- that's correct.

17 Q And if you look at the fourth page of this
18 document, you'll see a paragraph Roman numeral IV,
19 "chemistry." Do you see that?

20 A Yes.

21 Q And it indicates that you and Bill Jocher were two
22 of the contacts for the chemistry subcommittee; correct?

23 A Correct.

24 Q All right. Now, Mr. Fiser, your testimony earlier
25 was February 25, '92, was the date of the NSRB meeting in

1 which you attended, which the issue of trending came up.
2 Could it -- you have been mistaken, and it in fact been
3 February 19 and 20 of 1992 in which that issue was brought
4 to your attention?

5 A Like I've said, it may have been plus or minus
6 four or five days. I...

7 Q All right.

8 A But I certainly had some -- something recorded on
9 the 25th regarding NSRB.

10 Q All right. But as your sequence of events
11 indicates, in fact, there was an INPO visit from February
12 24th through the 28th?

13 A Yes. I mean, an assist visit.

14 Q And, in fact, if you will look on the first page
15 of Joint Exhibit 4, in the second paragraph it talks about
16 key items discussed in the meeting, and the very next entry
17 is "site chemistry program," underscored. Do you see that?

18 A Yes.

19 Q And about midway through the next paragraph it
20 says, "An Institute of Nuclear Power Operations, INPO,
21 assist visit which began on February 24th, 1992, was also
22 arranged." Do you see that?

23 A Yes.

24 Q Does that refresh your recollection that that was
25 the beginning date for the INPO assist visit?

1 A That's certainly approximately correct; yeah.

2 Q All right. Do you see in the next sentence where
3 it says, "The NSRB noted program deficiencies, including
4 trending analysis"?

5 A Yes.

6 Q All right. Does that refresh your recollection
7 that that is the date of the meeting in which trending
8 analysis was again discussed?

9 A It is very possible; yeah.

10 Q All right. Now, at this meeting with the NSRB,
11 did you get involved in a disagreement with Bill Jocher as
12 to whether or not chemistry was having serious program
13 problems?

14 A I had been in a disagreement with him. I do not
15 know that it was at this meeting.

16 Q Pardon me?

17 A I was -- I had been in a disagreement with him,
18 because, remember, he was unaware of the fact that these
19 things that he was finding, we had already found and had
20 already entered into our own internal program for correcting
21 deficiencies in the program as we had...

22 Q That's what you -- you'd previously expressed that
23 to Dr. McArthur. And my question is: At the meeting of the
24 NSRB, didn't you and Jocher become engaged in a disagreement
25 as to whether or not there were serious chemistry problems

1 at Sequoyah?

2 A I cannot remember if it was at this meeting or
3 not. Certainly we did have disagreements.

4 Q All right. Did -- and you had disagreements
5 before the NSRB. Your disagreement was a public
6 disagreement with Bill Jocher in front of the NSRB as to
7 whether or not there were serious problems with Sequoyah
8 chemistry?

9 A Well, I do not recall that, like I said. But I --
10 I do know that Jocher and I had discussions, trying to reach
11 an agreement as to whether or not these problems had been
12 properly captured and were being addressed.

13 Q But if you'll look...

14 JUDGE YOUNG: Excuse me. Mr. Jocher was the
15 corporate chemistry manager at the time; correct?

16 MR. MARQUAND: Yes, Your Honor.

17 JUDGE YOUNG: Thanks.

18 BY MR. MARQUAND:

19 Q All right, if you'll look at Page 4 of Joint
20 Exhibit 4. That's under Roman numeral IV, "chemistry." Do
21 you see that entry?

22 A Yes, I do.

23 Q All right. In the context were you, r. E.
24 Ritchie, and w. F. Jocher; correct?

25 A I think that's correct.

1 Q All right. And at the time -- at that time you
2 were the Sequoyah chemistry superintendent?

3 A That's correct.

4 Q Mr. Ritchie had been -- had been acting Sequoyah
5 chemistry superintendent while you were in outage
6 management?

7 A That's correct.

8 Q And Mr. Jocher was the corporate chemistry
9 manager?

10 A That's correct.

11 Q All right. And this refers to the chemistry
12 corrective action plan, and it's -- you see where it says,
13 "The subcommittee reviewed the Sequoyah chemistry corrective
14 action plan"?

15 A No. I see...

16 Q Under letter "A."

17 A Uh-huh. Yes.

18 Q And further down in that paragraph, do you see
19 where it says, "There was a difference of opinion between
20 Sequoyah and corporate chemistry regarding the seriousness
21 of chemistry problems at Sequoyah"?

22 A Yes.

23 Q All right. Does that refresh your recollection
24 that you engaged in a disagreement with Mr. Jocher about the
25 seriousness of the Sequoyah chemistry problems before the

1 NSRB?

2 A Before this meeting; yes.

3 Q No, no. I meant to say in front of the NSRB...

4 A Oh, absolutely not.

5 Q ...you and Mr. Jocher had your little disagreement
6 about the seriousness of the problems at Sequoyah chemistry?

7 A Absolutely not. They had already been resolved.

8 Q At the point in time of this NSRB meeting?

9 A Oh, yes.

10 Q Why does it indicate that there was a difference
11 of opinion?

12 A Well, there -- as I -- I have -- I have no idea.
13 I mean,...

14 Q So the...

15 A ...I didn't write these minutes.

16 Q ...so the NSRB -- NSRB was just...

17 A That's just -- that was one of the things that
18 Bill Jocher -- I mean that -- no. As a matter of fact, that
19 was one of the things that Bill Lagergren was so insistent
20 about me getting back into chemistry and reestablishing some
21 communications that had broken down in my absence between
22 corporate chemistry, Bill Jocher, and site chemistry at that
23 time, Rob Ritchie. And we did that. We came to an
24 agreement. And, as I recall, when we went into this meeting
25 with NSRB subcommittee, there was no disagreement because it

1 had been worked out.

2 Because, as you will recall, when Bill Jocher
3 finally saw the huge list that we had compared to the
4 relatively shorter list that he had, he just says, "My gosh,
5 I wish I had already known about this. I would have never
6 raised this to the level that I did," was his statement.

7 JUDGE YOUNG: And when -- and when did that occur?

8 THE WITNESS: Your Honor, that would have been
9 very shortly after I got -- I was returned from outage
10 management to the chemistry superintendent position.

11 JUDGE YOUNG: And when was that?

12 THE WITNESS: In approximately January of 1992.

13 JUDGE YOUNG: And you're saying that you resolved
14 your -- any disagreement with Mr. Jocher -- how soon after
15 you came back?

16 THE WITNESS: Oh, very shortly. Within a matter
17 of -- of a few conversations or a few days.

18 JUDGE YOUNG: A few days?

19 THE WITNESS: Yes, Your Honor. As I recall. That
20 was a long time ago. It did not take long at all, once we
21 compared lists, for him to throw up his hands and say, "My
22 goodness, I wish I had known this." And I distinctly recall
23 that -- that conversation and that statement by Mr. Jocher,
24 which was, "If I had known this, I would never have raised
25 this to the level that I did."

1 CHAIRMAN BECHHOEFER: Mr. Fiser, let me just ask
2 you a further question about this Paragraph 4, Roman IV.
3 Where -- when it says, "There was a difference of opinion
4 between Sequoyah and corporate chemistry," does -- does that
5 mean there was a difference of opinion at the meeting, or
6 does it mean -- is that background statement for what action
7 the safety review board took?

8 THE WITNESS: In my mind, it was background
9 information, Your Honor.

10 CHAIRMAN BECHHOEFER: So that you could understand
11 what corrective action they -- they voted on or...

12 THE WITNESS: I suppose. Because certainly Bill
13 Jocher and I were in agreement at that time, and -- and were
14 very shortly, as I said earlier, after I got back and
15 restored communication with him.

16 CHAIRMAN BECHHOEFER: Right.

17 BY MR. MARQUAND:

18 Q I had the impression you were in agreement with
19 Mr. Jocher after the rotation occurred and he was assigned
20 to act as the Sequoyah chemistry manager and you were sent
21 downtown.

22 A Well, certainly the agreement that we had come to
23 earlier in the January time frame was solidified more once
24 he got out there, got in charge of the program and really
25 got a close view and understanding of what we were doing,

1 yes, certainly. But that would just be part and partial of
2 the earlier agreement that we had already come to.

3 Q I want to ask you to look at Joint Exhibit 27 once
4 again.

5 JUDGE YOUNG: Did you provide an index of the
6 staff's joint exhibits?

7 MS. EUCHNER: It should be in the front of the
8 book.

9 JUDGE YOUNG: In the front of the book?

10 MS. EUCHNER: Yes.

11 BY MR. MARQUAND:

12 Q Mr. Fiser, again referring to Joint Exhibit 27,
13 which is your sequence of events, if you'll look at page 6,
14 do you see the entry at the bottom of the page that begins
15 November 16, 1992?

16 A Yes, I do.

17 Q That's a conversation you tape recorded with Dr.
18 McArthur?

19 A That's correct.

20 Q That's the conversation with Dr. McArthur in which
21 he told you that the plant manager didn't want you to come
22 back to Sequoyah.

23 A That's correct.

24 Q If you'll look at the bottom of page 8 -- and
25 during this conversation, you were being told by Dr.

1 McArthur that Mr. Beecken and Mr. Lagergren -- or Mr.
2 Beecken didn't want you to come back because Mr. Beecken was
3 holding you responsible for the problems at Sequoyah,
4 correct?

5 A As I recall.

6 Q And you were pleading your case with him, trying
7 to tell him, I was in outage management, I really wasn't
8 there when these things happened.

9 A That's correct.

10 Q All right. Now at the bottom of page 8, do you
11 see where it says -- your statement: "The only thing I can
12 figure out is, you know, I don't know what Jocher has been
13 telling Beecken, I don't know what Jocher has been telling
14 Lydon; do you see that?

15 A Correct.

16 Q So in November of '92, you were still attributing
17 statements by Jocher as undermining you at Sequoyah,
18 correct?

19 A Yes, but that's a totally separate issue.

20 Q My question is in November of '92, were you
21 attributing statements to Jocher as undermining your
22 position at Sequoyah?

23 A Possibly.

24 Q Isn't that what this --

25 A As I said, I don't know.

1 Q Isn't that what this says at the bottom of page 8,
2 where you were pleading your case with Dr. McArthur?

3 A No, it says I don't know.

4 Q Yo say I don't know what he's been telling me, I
5 don't know what he's been telling Beecken, I don't know what
6 he's been telling Lydon, --

7 A Precisely, I said I --

8 Q -- this is the only thing I can figure out. Do
9 you see that?

10 A Yeah, I said I don't know.

11 Q And Dr. McArthur reaffirms to you at the top of
12 page 9 that Jocher is not your friend and --

13 A Right.

14 Q -- and you say "I know that emphatically."

15 A Right.

16 JUDGE YOUNG: What page was that reference?

17 MR. MARQUAND: That was the bottom of page 8 and
18 the top of page 9 of Joint Exhibit 27.

19 JUDGE YOUNG: Okay.

20 Mr. Fiser, do you see what he's talking about at
21 the top of page 9?

22 THE WITNESS: Yes, Your Honor, I do.

23 JUDGE YOUNG: And what was your understanding of
24 what was being said?

25 THE WITNESS: My understanding was that I knew at

1 the time the swap occurred where Bill Jocher was instructed
2 to go to Sequoyah chemistry and take my position, I was
3 instructed to go to corporate chemistry and take his
4 position, he was very upset about that.

5 JUDGE YOUNG: Who?

6 THE WITNESS: Bill Jocher was very upset and
7 thought that -- in some ways, he blamed me for that,
8 thinking I had arranged this or suggested it to my
9 management or something, and so there was a problem. That's
10 a different problem than what we were talking about earlier.
11 And it took us awhile to work through that, I can assure
12 you, because he was of the impression that there was
13 something entirely sinister going on here with upper
14 management. I at that time was not of that impression at
15 all. And so there was some tension that resulted from this
16 swap and that's why I did not know what he was saying to
17 these people behind my back, because I was obviously aware
18 now that there's something seriously wrong and so there was
19 a tremendous shift in there thinking from everything's
20 positive to everything is negative.

21 JUDGE YOUNG: Tremendous shift in whose thinking?
22 Excuse me.

23 THE WITNESS: In obviously Dr. McArthur's thinking
24 and Mr. Beecken's thinking and perhaps even Jack Wilson's
25 thinking.

1 JUDGE YOUNG: When did you and Mr. Jocher write
2 your letter to Senator Sasser?

3 THE WITNESS: The letter to Senator Sasser was
4 written in '93.

5 JUDGE YOUNG: August? Thank you. I was just
6 trying to get that situated.

7 BY MR. MARQUAND:

8 Q Now Mr. Fiser, just so we're -- I want to return
9 to Joint Exhibit 4, page 4, Roman Numeral IV. In the middle
10 of paragraph A where it said there was a difference of
11 opinion between Sequoyah and corporate chemistry regarding
12 the seriousness of chemistry problems at Sequoyah. You're
13 telling us that whatever -- that this is in the past and
14 that by the time of this February '92 NSRB meeting, that
15 this difference of opinion between you and Jocher was a
16 thing of the past.

17 A Yes, and I don't even know specifically what they
18 are referring to here. Give me explicit evidence, were they
19 talking about the time limit between the time you say go get
20 a PASS sample and you have to have it, or what disagreement?
21 I don't even know. Of course, I was not present.

22 Q But you're telling me though in February of '92
23 that that was a reproachment between you and Jocher with
24 respect to Sequoyah chemistry program.

25 A By NSRB.

1 Q Yes.

2 A Yes, but the only thing in question is what
3 reproachment and when.

4 Q All right, but with respect to Sequoyah chemistry,
5 you're saying in February of '92, you and Jocher were seeing
6 eye to eye.

7 A About the issue of chemistry being out of control,
8 yes.

9 Q All right. Now who is Rob?

10 A I don't know.

11 Q Rob Ritchie?

12 A In what context?

13 Q Who --

14 A It could be Rob Beecken, I don't know what you're
15 talking about.

16 Q All right. I'd like for you to turn now to page 9
17 of Joint Exhibit 27. This is still your November 16, '92
18 conversation with Dr. McArthur in which you were pleading
19 your case.

20 A What page?

21 Q Page 9.

22 A Okay.

23 Q And you're discussing why Sequoyah management
24 doesn't want you back, and you're pleading your case. Do
25 you see the third entry on page 9 for Dr. McArthur in which

1 he says:

2 "One thing I will do after we finish our
3 discussion, I will tell others [omissions]. I
4 don't have any basis to tell others you are the
5 one that messed up chemistry. I think what
6 happened to chemistry in my own opinion, is that
7 money wasn't available and a lot of things didn't
8 happen, and you survived."

9 Do you see that?

10 A I do.

11 Q And you're discussing your stint as Sequoyah
12 chemistry manager with Dr. McArthur there, aren't you?

13 A That's correct.

14 Q Now in the next paragraph where you respond to Dr.
15 McArthur, you say:

16 "Right. Well, that's it and I got by and we
17 did well, but then you see we had Jocher. When I
18 pulled out of chemistry and Jocher had a real rift
19 with Rob and Scott."

20 Who are Rob and Scott?

21 A Rob Ritchie and Scott Watson.

22 Q And they're two people who worked for you in
23 Sequoyah chemistry, right?

24 A That's correct.

25 Q And then it says, "And Jocher started elevating

1 all this."

2 A Correct.

3 Q "And since then, he has made statements like even
4 with the NSRB, just the other day, he said 'you know, after
5 getting out here and looking at things, things are not
6 really as bad as what I thought.'" Do you see that?

7 A That's correct.

8 Q So Jocher didn't come to the conclusion that
9 Sequoyah chemistry wasn't as bad as he had thought until
10 after he got out to Sequoyah chemistry, and you refer to
11 this conversation as happening "just the other day" and that
12 reference was made in November of '92.

13 A Yes.

14 Q Not in February of '92.

15 A Yeah, but that statement is misleading. This is
16 in reference to the statement that Bill Jocher made to NSRB
17 which was elevated all the way to Oliver Kingsley, which
18 said all of Sequoyah -- I'm paraphrasing -- he made a
19 statement like Sequoyah's chemistry procedures are wrong.
20 And of course, he was questioned, what do you mean, wrong.
21 Well, you can't follow them, they're incorrect, they're
22 inaccurate. And so as I recall, Kingsley said well then,
23 let's fix them. And then he says something like well, okay,
24 we have this plan and we're going to take four years and
25 Kingsley comes back and says -- and I'm getting this through

1 Wilson McArthur.

2 JUDGE YOUNG: And this is a conversation between
3 Kingsley and?

4 THE WITNESS: And apparently NSRB and/or Wilson
5 McArthur because --

6 JUDGE YOUNG: The dialogue that you were just
7 describing.

8 THE WITNESS: Oh, the dialogue is taking place --

9 JUDGE YOUNG: Between whom?

10 THE WITNESS: -- between Bill Jocher and
11 NSRB/ultimately Oliver Kingsley because he was reading the
12 reports or the summaries.

13 JUDGE YOUNG: I just wanted to make clear.

14 THE WITNESS: Yes, Your Honor, thank you for
15 pointing that out.

16 JUDGE YOUNG: Thank you.

17 THE WITNESS: And then basically it went from if
18 the chemistry procedures in Sequoyah are wrong, then you
19 need to fix them right now. That's the statement. And so
20 Jocher then sort of looks at them and says well, okay, we'll
21 fix them in two years -- and I'm paraphrasing again -- and
22 then the statement is, no, you don't understand, why am I
23 operating a plant essentially if I have incorrect chemistry
24 procedures. Well, they're not really wrong, they're just
25 kind of hard to read. Okay, well, which ones are kind of

1 hard to read, because we have hundreds.

2 JUDGE YOUNG: I think it would be helpful if you
3 said who was speaking. You appear to be going back and
4 forth between two people.

5 THE WITNESS: Okay. According to Dr. Wilson
6 McArthur, this was a conversation -- he was relating to me
7 words from Mr. Kingsley.

8 JUDGE YOUNG: What I'm asking you to do is when
9 you quote someone, say who you're quoting. I think --

10 THE WITNESS: Okay, all right.

11 So Dr. McArthur then told me, he says, "Well, then
12 the response from Kingsley and NSRB was well, if the
13 chemistry procedures are wrong, we want them fixed and we
14 don't want to take two years, we want to fix them right
15 now."

16 And so Jocher says, "Well, I looked at it a little
17 closer and they're not really wrong."

18 JUDGE YOUNG: Excuse me --

19 CHAIRMAN BECHHOEFER: That's Mr. Kingsley, right?
20 It's obvious, that's Mr. Kingsley, right?

21 THE WITNESS: Yes, I'm sorry, I will try harder.

22 JUDGE YOUNG: And you said a moment ago that this
23 conversation you learned about because Mr. McArthur told you
24 or because you were there?

25 THE WITNESS: He told me.

1 JUDGE YOUNG: So all of this conversation is you
2 recounting what Mr. McArthur told you about the
3 conversation.

4 THE WITNESS: Yes, Your Honor, and these
5 conversations took place, as I recall over a couple of weeks
6 or something like that.

7 MR. MARQUAND: It's more like --

8 JUDGE YOUNG: And that was based on what Mr.
9 McArthur told you?

10 THE WITNESS: Yes, because he would come to me for
11 feedback, because I was the corporate chemistry manager at
12 that time.

13 MR. MARQUAND: I think it's more like an
14 interchange or a continuing dialogue between management, not
15 necessarily an individual such as Mr. Kingsley.

16 THE WITNESS: Dr. McArthur said it was Mr.
17 Kingsley and he says, "Yeah, I call him and he calls me all
18 the time." That's the feedback Dr. McArthur told me. As a
19 matter of fact, I think it's reflected in one of the tapes.

20 So basically what happened, it went from Bill
21 Jocher saying all your chemistry procedures are wrong to
22 "there are a couple that are difficult to follow and we need
23 to fix them." And that's why I made this statement that I
24 just made that we just went over on page 9. You know, after
25 getting out here and looking at things, things are really

1 not as bad as what I thought. Do you recall him saying that
2 -- Dr. McArthur -- yes, because that's what we were
3 referring to. It's a conversation that we had intimate
4 knowledge of that you did not. So it's hard to pick that
5 up.

6 JUDGE YOUNG: When you say we and you, I'm not
7 clear --

8 THE WITNESS: Dr. McArthur and I had intimate
9 knowledge of this.

10 JUDGE YOUNG: Who is you?

11 THE WITNESS: Me personally, Dr. McArthur and I.

12 JUDGE YOUNG: So right then, you were quoting Dr.
13 McArthur.

14 THE WITNESS: Right then, I was speaking directly
15 to Dr. McArthur.

16 JUDGE YOUNG: I'm talking about what you said a
17 moment ago, you said -- you used the words I and you.

18 THE WITNESS: Correct.

19 JUDGE YOUNG: Who was I and who was you?

20 THE WITNESS: Well, it depends on -- obviously
21 I've --

22 JUDGE YOUNG: Just then, what you were talking
23 about.

24 THE WITNESS: I'm sure that had direct bearing on
25 the conversation between me personally and Dr. Wilson

1 McArthur personally when we were recounting all of these
2 exchanges that were taking place between Mr. Oliver Kingsley
3 and NSRB or Dr. McArthur.

4 And as a matter of fact, Dr. McArthur says -- if
5 you'll look just a little further down where -- the next to
6 the last entry on page 9 by Dr. McArthur, he makes the
7 statement, "And I believed him and I went to" -- and I
8 couldn't quite make it out -- "I even screwed myself up. I
9 reported that we've got to rewrite procedures, probably four
10 years to rewrite procedures and then when it really got down
11 to it, we were talking about 12 procedures." And I say,
12 "And they really were not wrong, they were just heavy,
13 cumbersome, whatever you want to call it."

14 So you see, he has done that about a lot of things
15 and he has done that about me. And it is a great disservice
16 to me and to the work Don and I did when we were out there.

17 So this whole conversation is really about the way
18 Bill Jocher can blow a situation entirely out of proportion
19 and entirely out of balance in an irascible manner and then
20 have to settle back to a more amenable position once
21 confronted with the facts. That's all I was say. This went
22 on time and time again about other issues, this was about
23 procedures. Earlier it was about the chemistry being out of
24 control issues -- same type of thing happened.

25 BY MR. MARQUAND;

1 Q Let me make sure I understand what you're saying,
2 Mr. Fiser. When Jocher was downtown as the corporate
3 chemistry manager and you were Sequoyah chemistry
4 superintendent, Mr. Jocher was, as you said, inflating
5 issues about Sequoyah chemistry, which was a disservice to
6 you.

7 A According to his own words, yes.

8 Q He was raising these issues to management, he was
9 claiming Sequoyah chemistry was out of control.

10 A That's correct.

11 Q And that's what he was telling his management, he
12 was telling your management, he was telling the NSRB.

13 A That's correct.

14 Q And ultimately, people questioned whether Sequoyah
15 chemistry was out of control and they rotated Jocher out to
16 the plant to see if he could perform as well as he could
17 identify issues.

18 A I had heard that, I'm not sure that's exactly
19 everything that was going on.

20 Q All right. And that's the same time you were sent
21 downtown. When Jocher was sent to Sequoyah, you were sent
22 downtown.

23 A That's correct.

24 CHAIRMAN BECHHOEFER: You had heard that from
25 where?

1 THE WITNESS: From Mr. Bill Lagergren, from Dr.
2 Wilson McArthur for sure. And then from my people, Rob
3 Ritchie, Scott Watson.

4 BY MR. MARQUAND:

5 Q So you had heard that because he was raising these
6 issues, management was thinking well, there might be
7 something here, let's send Jocher out there to see if he can
8 fix it.

9 A I don't know that for sure.

10 Q But that's what you'd heard.

11 A That's what Pat Lydon told me, I don't know how
12 much he knew about it.

13 Q All right. And that's what Dr. McArthur told you
14 too, right?

15 A That is what Dr. McArthur told me.

16 Q And Rob Beecken and Jack Wilson also had the
17 impression, at least based in part on Jocher, that you
18 weren't effective as the Sequoyah chemistry manager.

19 A Don't know that.

20 Q You don't think that they got input from Jocher
21 too?

22 A Don't know that. I would imagine, but I don't
23 know that.

24 Q Well, McArthur told you that they had input from
25 Jocher, didn't he?

1 A Well, yes, McArthur told me a lot of things.

2 Q And when Jocher got out to chemistry at Sequoyah,
3 he continued to raise issues about Sequoyah and said that
4 there were problems, for instance, with Sequoyah's chemistry
5 procedures.

6 JUDGE YOUNG: Refresh my memory, when did Jocher
7 go out to Sequoyah?

8 MR. MARQUAND: About the first of April, towards
9 the end of March of '92, same time Gary came downtown.

10 THE WITNESS: I think he had already raised those
11 issues.

12 BY MR. MARQUAND:

13 Q But Jocher continued raising them and you said
14 that was a disservice to you.

15 A No, it was a disservice when he raised issues that
16 were not true.

17 Q Okay. So you disagreed with the issues he was
18 raising.

19 A Certainly.

20 Q And when he was at Sequoyah, he complained about
21 the procedures at Sequoyah.

22 A No, no.

23 Q Once he got to Sequoyah --

24 A You're wrong again.

25 Q When did he raise issues about the Sequoyah

1 chemistry procedures?

2 A I'm sorry, when I was -- that's correct, you're
3 correct.

4 Q So when he got to Sequoyah, he raised issues and
5 said --

6 A About procedures.

7 Q -- and said that the Sequoyah chemistry procedures
8 --

9 A He incorrectly stated that the procedures were all
10 wrong.

11 Q All right, and so at least at the outset when he
12 made that statement, people had the impression again that
13 Sequoyah chemistry was out of control, correct?

14 A No, I don't know that for sure. I know that they
15 had the impression that all the procedures were wrong, or at
16 least somebody said they were, until they found out that was
17 not true.

18 JUDGE YOUNG: And when did they find out it was
19 not true?

20 THE WITNESS: Like I said, this conversation, Your
21 Honor, took place over about three or four weeks perhaps,
22 and it would have been in approximately mid-1993 -- mid-
23 1992, I'm sorry, just after we did the swap.

24 BY MR. MARQUAND;

25 Q Well, we were talking on page 9 and you said it

1 was -- on page 9, the conversation was November 16 of '92 in
2 which you said Jocher told me just a few days ago it wasn't
3 as bad as he thought.

4 A I heard that before too.

5 Q In the Joint Exhibit 4 which we were looking at,
6 the February '92 NSRB minutes, is trending analysis -- was
7 it made an action item by the NSRB?

8 A If it is, I missed it.

9 Q We were looking at page 4.

10 A Page 4.

11 Q If you'll look at the very next page, page 5 --
12 well, the bottom of page 4 indicates that action item 136-1.

13 A At the bottom of page 4 it says page 21?

14 Q Right. In the very last paragraph there, it says
15 "Subcommittee will continue to monitor progress on
16 development and implementation of the chemistry improvement
17 program, action item A-36-1 remains open." Do you see that?

18 A The chemistry improvement program, yes.

19 Q Right. So the chemistry improvement program was
20 an action item, right?

21 A Yeah, and it had been for I guess some time, I
22 don't know.

23 Q And there's also reference under IV about A-132-6,
24 that's another action item, right?

25 A No, it just says -- that is not another, I think

1 that's the same one, it just says it remains open.

2 Q You understand what an NSRB action item is?

3 A Yes.

4 Q What is an NSRB action item?

5 A It's just an item that they view with particular
6 interest, maybe there has been a corrective action plan or
7 something and they would want to track progress.

8 Q So it's something that they view as of more
9 significance and that they assign an action item number to
10 it so they can track it, right?

11 A Of more significance than what?

12 Q Than something that's not -- a more significant
13 matter is given an action item number.

14 A I don't know the level of significance, what the
15 trigger is for an action item, I don't know.

16 CHAIRMAN BECHHOEFER: Mr. Fiser, does an action
17 item include both directions to take certain steps or just
18 to keep an item open for observation, to see how progress is
19 made?

20 THE WITNESS: As I recall --

21 CHAIRMAN BECHHOEFER: Is there a difference
22 between those --

23 THE WITNESS: There very well could be, Your
24 Honor. TROY, which is a computerized tracking and reporting
25 of open items, as I recall, would list the item and the

1 specific steps that you had to take and the dates at which
2 you were expected to complete those steps. This could just
3 be an item that says, hey don't forget to make sure they're
4 making progress over here. It could be something as general
5 as that.

6 CHAIRMAN BECHHOEFER: And an action item could
7 include both types.

8 THE WITNESS: Certainly, I would think it could.

9 CHAIRMAN BECHHOEFER: Thank you.

10 BY MR. MARQUAND:

11 Q If you'll look on page 5 of Joint Exhibit 4,
12 paragraph B, post-accident sampling --

13 JUDGE YOUNG: You're referring to the page numbers
14 at the top, right?

15 MR. MARQUAND: I'm referring to the fourth sheet
16 of the document -- fifth sheet of the document and it's got
17 page 4 of 4 actually on that page and page 22 at the bottom.
18 So maybe I should refer to --

19 CHAIRMAN BECHHOEFER: Take your pick, huh?

20 MR. MARQUAND: Bates number CC105, that's the
21 unique number.

22 JUDGE YOUNG: Okay.

23 BY MR. MARQUAND:

24 Q Do you see paragraph B?

25 A Yes.

1 Q Post-accident sampling, correct?

2 A That's correct.

3 Q And that particular matter has an action item,
4 right?

5 A That's correct.

6 Q Did the Board express some frustration in February
7 of '92 about the length of time that that item had been
8 open?

9 A Oh, gosh -- well, it just says it has been open
10 since May of '91.

11 Q My question was: During the meeting, do you
12 recall NSRB or the subcommittee -- chemistry subcommittee
13 expressing some frustration over the length of time that
14 item had been open?

15 A Well, I just don't recall that. The frustration
16 part. I do recall them just matter-of-factly stating it has
17 been open since May of '91.

18 Q Mr. Fiser, I'm going to turn now to the Department
19 of Labor complaint you filed in 1993. It's NRC Staff
20 Exhibit 34.

21 MR. MARQUAND: Does anyone need a break, or should
22 we proceed to 11:00?

23 JUDGE COLE: Yeah, why don't we proceed til 11:00.

24 CHAIRMAN BECHHOEFER: Yeah.

25 MR. MARQUAND: Okay.

1 CHAIRMAN BECHHOEFER: Depending on what a -- what
2 a good point is...

3 MR. MARQUAND: Yes, Your Honor.

4 CHAIRMAN BECHHOEFER: ...for -- for the parties.

5 MR. MARQUAND: I'm flexible.

6 CHAIRMAN BECHHOEFER: Yeah. Unlike the supreme
7 court, we don't stop people in the middle of a sentence and
8 all that.

9 MR. MARQUAND: Appreciate that.

10 BY MR. MARQUAND:

11 Q Mr. Fiser, Joint Exhibit -- I mean, Staff Exhibit
12 34 is dated September 23, 1993. It's been previously
13 admitted as the complaint you filed in 1993 with the
14 Department of Labor; is that correct?

15 A That's correct.

16 Q And in that complaint, if you would, turn to Page
17 2. And is it correct that in that complaint, beginning at
18 Page 2, you discuss some of the issues which you felt were
19 the cause of management not wanting you to come back to
20 Sequoyah?

21 A That's correct.

22 Q All right. And beginning in the second complete
23 paragraph on Page 2, the first issue you discuss, as I read
24 this, is, quote, "The rad monitor effluent calculations not
25 accounting for the vacuum," and that's all in quotes. Do

1 you see that?

2 A Yes.

3 Q Is -- that's an issue that you understood was one
4 of the reasons Rob Beecken didn't want you to come back to
5 Sequoyah; correct?

6 A Well, that's one of the two or three that he
7 mentioned...

8 Q Right.

9 A ...in our December conversation; yes.

10 Q All right, that's one. Let's talk about that one
11 first. That issue was identified after you were rotated to
12 the corporate chemistry manager in downtown Chattanooga;
13 correct?

14 A Well, I think that's when the--what do you we call
15 them---the SCAR, significant corrective action---that's when
16 the -- the final investigation had completed, and they
17 initiated a SCAR or a PER or whatever we call it. It
18 started before I left.

19 Q All right. You -- you were downtown when the
20 issues was identified; correct?

21 A No, I was downtown when the issue was completed.
22 In other words, when they finished their investigation and
23 wrote the significant corrective action report, I was
24 downtown.

25 Q Okay. When...

1 A There's a difference.

2 Q I'm sorry, I don't understand the difference.
3 You're saying...

4 A Well, the -- the work had already started when I
5 was out there. As a matter of fact, I had asked many
6 questions and...

7 Q All right.

8 A ...began to question in my mind whether everything
9 had been properly addressed long before I left and went
10 downtown.

11 Q All right. All right, let's see, you came to
12 Sequoyah initially in 1998; is that correct?

13 A That's correct.

14 Q What month? May?

15 JUDGE YOUNG: What year?

16 MR. MARQUAND: 19...

17 CHAIRMAN BECHHOEFER: '98?

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

19 JUDGE YOUNG: '88?

20 MR. MARQUAND: '88. '88.

21 BY THE WITNESS:

22 A Excuse me. In approximately April, May time.

23 Q April of -- of '88, you were assigned as the
24 Sequoyah chemistry superintendent?

25 A Right.

1 Q All right. And in your letter, which is Staff
2 Exhibit 34, on Page 2 you refer to a 1982 evaluation.

3 A Let's see. Where is that?

4 Q Well, let's back up a little bit. You refer to an
5 NRC technical bulletin, which you call an I&E bulletin, sent
6 out in 1982; do you see that?

7 A Yes.

8 Q All right. You weren't even employed by TVA in
9 '82; right?

10 A Tr.

11 Q You were in Arkansas?

12 A That's correct.

13 Q All right. And so in '82, the NRC warns various
14 nuclear sites of conditions that could compromise
15 containment radiation monitor set points?

16 A That's correct.

17 Q All right. And it's sent to TVA, and apparently,
18 according to you, an evaluation was done but it wasn't
19 adequate because they didn't consider negative pressure in a
20 noble gas chamber.

21 A As I recall, that's correct.

22 Q All right. So you then -- they didn't adequately
23 consider that, and as a result, the rad monitor set points
24 were inaccurate?

25 A Not only the set points, but the readings,

1 themselves, were...

2 Q All right. So...

3 A ...were not conservative.

4 Q All right. So then you later on came to TVA and
5 you were sent out to Sequoyah in April of 1988?

6 A Correct.

7 Q Correct?

8 A Correct.

9 Q All right. And if you'd read further down on Page
10 2 of NRC Exhibit 34, you say, "After I assumed my position
11 at Sequoyah, I was informed several times by plant chemistry
12 and engineering personnel, in direct response to my
13 questions, that the rad monitor readings had been properly
14 established and did, in fact, correct for negative
15 pressure."

16 A That's correct.

17 Q All right. So you asked somebody, "Did you take
18 into account this I&E bulletin from the NRC in setting the
19 rad monitor set points and readings?"

20 A That's correct.

21 Q All right. And somebody said, "Yes, we did. It's
22 not a problem"?

23 A Right.

24 Q And you accepted that?

25 A Let's see. I -- yes, I accepted that some -- some

1 additional information was probably needed.

2 Q All right. But, in any event, they continued to
3 be wrong?

4 A That's correct.

5 Q All right. Then in the spring of '92, you and
6 Jocher rotated, and you went downtown to corporate
7 chemistry, and Jocher came to Sequoyah?

8 A That's correct.

9 Q All right. Once Jocher got to Sequoyah, the issue
10 of the rad monitor set points came up, and somebody
11 identified it as an issue, and a SCAR was written?

12 A That's correct.

13 Q A SCAR is a significant corrective action report?

14 A Right.

15 Q All right.

16 JUDGE YOUNG: And so you're in agreement that that
17 was done after you were sent to corporate?

18 THE WITNESS: That's correct.

19 Q All right. And, in fact, it was done under
20 Jocher's auspices, and the initiator was somebody out of
21 operations; correct?

22 A That I don't know.

23 Q You don't even know who initiated the SCAR and the
24 corrective action document?

25 A Well, I -- I don't recall ever seeing the SCAR.

1 It was done while I was gone.

2 Q Okay.

3 A But I do remember the circumstances.

4 Q All right. In your complaint to the Department of
5 Labor, in essence, you were saying this was a mistake. It
6 was made before I got to TVA, and it was found after I got
7 downtown. And it's not fair that I'm being held responsible
8 for it.

9 A For something that took place five years before I
10 went to work there; yeah.

11 Q All right. You're not claiming that you
12 identified it and documented that problem?

13 A Oh, I'm claiming that I started the initial
14 investigation into it. It's while I was gone and downtown
15 that they had to raise the set point on that monitor, and
16 that monitored this particular one, was monitoring air
17 inside the containment building. And they started getting
18 some alarms.

19 JUDGE YOUNG: What did you say?

20 THE WITNESS: And they started getting -- this
21 monitor would then go to an alarm.

22 BY THE WITNESS:

23 A And so, when it goes into an alarm, as I recall,
24 that causes a containment vent isolation. And so...

25 JUDGE YOUNG: Within what?

1 THE WITNESS: A containment vent isolation, which
2 causes the operators some problems, they have to fill out
3 paperwork, they have to investigate, you know, what's going
4 on with this monitor. And it's at that time that they go
5 back and look at this previous work.

6 JUDGE YOUNG: Who is "they"?

7 THE WITNESS: "They" would be engineering and
8 chemistry personnel.

9 JUDGE YOUNG: If you -- if you -- you say that you
10 initiated the investigation that led to the SCAR. I'm -- I'm
11 not real clear on whether you're saying in this letter that
12 the SCAR came about as a result of your -- let's see. As
13 you say on the first page of the letter, that you or people
14 under your direction had found and/or corrected and/or
15 reported problems which affected plant safety.

16 What I'm not clear on is, first, were you saying
17 that -- that the initiation of the SCAR was done as a result
18 of something you did? And if -- if that is what you're
19 saying by telling us today that you initiated the
20 investigation, why didn't you put your role in that in your
21 letter?

22 THE WITNESS: In the letter? Oh, in -- in the
23 letter that...

24 JUDGE YOUNG: In the Department of Labor -- your
25 letter to the Department of Labor dated September 23rd,

1 1993.

2 THE WITNESS: The -- the point that I was trying
3 to -- to make was the fact that, okay...

4 JUDGE YOUNG: Excuse me. First I'd like you to
5 answer my question, and then relate what you were about to
6 say to the question I asked. Because I'm not understanding
7 the point you're trying to make. When, where?

8 THE WITNESS: When I wrote this letter, when I
9 wrote to -- to Ms. Carol Merchant with the Department of
10 Labor.

11 JUDGE YOUNG: And now you're -- you're answering
12 the part of my question that deals with: Were you raising
13 this issue of the SCAR to show that that was something that
14 you and/or people under your direction had found and/or
15 documented and/or reported and/or corrected?

16 THE WITNESS: That's correct.

17 JUDGE YOUNG: Okay, go ahead.

18 THE WITNESS: That's correct. I can...

19 CHAIRMAN BECHHOEFER: Well, when the SCAR issues,
20 does that mean the issue, in effect, is terminated?

21 THE WITNESS: No, that's just the -- a very simple
22 form that we fill out that say, "Hey, we have found a
23 problem. We need to send it before the PORC, which is a
24 plant operating and review committee, to evaluate, to
25 concur, yes, it is a problem, or no, it's not. If it is a

1 problem, what do we do about it.

2 JUDGE YOUNG: And the SCAR was issued after you
3 left?

4 THE WITNESS: That's correct.

5 JUDGE YOUNG: And you were about to explain how
6 that was done as a result of your initiation of something.

7 THE WITNESS: Right. I had already started asking
8 a lot of questions of Don Amos, the person on the chemistry
9 staff who helped answer the IE notice or whatever it was
10 back in 1982.

11 JUDGE YOUNG: '82?

12 THE WITNESS: That's correct.

13 JUDGE YOUNG: Okay.

14 THE WITNESS: And the questions that I had for
15 him, because I had addressed a similar problem to this at
16 Arkansas Nuclear One when we were purchasing effluent
17 radiation monitors. And this came about after TMI, of
18 course. There were some concerns about the adequacy of some
19 of our effluent radiation monitors at the sites.

20 To get into the technicalities, if you have a
21 vacuum pump...

22 JUDGE YOUNG: Go ahead and explain it, but I -- I
23 would really like to get to the point of how you discovered
24 and/or reported and/or documented this at Sequoyah, and --
25 and how that resulted in -- in the action taken against

1 you...

2 THE WITNESS: Right.

3 JUDGE YOUNG: ...and why you did not explain that
4 part of it in your letter.

5 THE WITNESS: Okay. Now, let me go ahead and --
6 and just try to clarify what was actually taking place here
7 and what I was writing about in this letter. So I knew that
8 there was a potential for problems when you have a vacuum
9 pump taking suction out of a vent -- out of a vent stack.
10 And in-between the vacuum pump and the vent stack, you have
11 a radiation detector, because that vacuum pump can draw a
12 vacuum on that chamber. And let's say you've got some
13 radioactive gas in there and it's reading -- well, just make
14 it simple, 100 counts a minute, but it's under half an
15 atmosphere. Well, in actuality, if it was at one
16 atmosphere, it would be reading 200 counts a minute. So it
17 could be inaccurate.

18 So I would go back to Don Amos in my group, who
19 was a part of the 1982 team that addressed this issue, and I
20 said, "Don, I notice that we have vacu-pumps that are
21 drawing a suction on this vent stack. What did you find?"

22 "Well, we found there was a problem."

23 "Well, what did you do about it?"

24 "We corrected for the problem because of the
25 vacuum."

1 "Okay, so you did, in fact, discover there was a
2 problem in this monitor and you corrected it? Is that what
3 you're telling me?"

4 "Yes, it is. As a matter of fact, we reported
5 this to NRC, and NRC looked over the corrections that we had
6 done, and NRC said it's fine."

7 JUDGE YOUNG: And you're talking -- you're talking
8 about back in 1982, now?

9 THE WITNESS: Yes, Your Honor, I am.

10 "And so again, we have addressed this issue, we
11 found there was a problem, we implemented the fix for the
12 problem, and the NRC has bought off -- and engineering, site
13 engineering has bought off on our fix for this problem, so
14 don't worry about it."

15 And I -- I said, "Well, okay." And then I would
16 call him back in later on because I had several questions
17 over the couple of years or whatever it was, to the time I
18 left to go to outage management, and I would say, "Don, I
19 want to see the documentation. I want to see what you sent
20 to NRC."

21 And so he went and retrieved it from records and
22 brought in a portion of the document which showed me where
23 the monitor was drawing a vacuum, how much vacuum, what the
24 correction factor was. And he said, "See, I told you
25 everything is okay." And then I leave. I go downtown to

1 corporate.

2 JUDGE YOUNG: What was it that -- that made you
3 think there was a problem?

4 THE WITNESS: I just wanted to make sure that they
5 had properly addressed this, because if they did not...

6 JUDGE YOUNG: Excuse me. My question was: What
7 was it that made you think that there was a problem? Did
8 you think there was a problem, or were you simply going back
9 to see whether they had corrected for the problem identified
10 in the 1982 bulletin?

11 THE WITNESS: Yes.

12 JUDGE YOUNG: I&E bulletin.

13 THE WITNESS: I simply was just going back to make
14 sure they had done it, and done it properly.

15 JUDGE YOUNG: Okay.

16 THE WITNESS: I was just inquisitive because of my
17 knowledge with this problem and the fact that I had already
18 faced it at Arkansas.

19 CHAIRMAN BECHHOEFER: Well, did you need to rely
20 on some document that reflected, well, not only that the
21 engineering fix was appropriate, but that it had been
22 carried out appropriately, and would there have been a
23 document that reflected whether they were carrying out the
24 procedures appropriately?

25 THE WITNESS: Yes.

1 CHAIRMAN BECHHOEFER: I don't know the titles of
2 these particular documents in TVA terms, at least, but...

3 THE WITNESS: Yes, Your Honor, there would be.
4 And that's part of the documentation that I wanted to see
5 with my own eyes.

6 CHAIRMAN BECHHOEFER: When you were in corporate?

7 THE WITNESS: No, this was when I was...

8 CHAIRMAN BECHHOEFER: Oh.

9 THE WITNESS: ...the Sequoyah chemistry...

10 CHAIRMAN BECHHOEFER: Oh, I see. Okay.

11 THE WITNESS: ...manager.

12 CHAIRMAN BECHHOEFER: Okay.

13 THE WITNESS: And this...

14 JUDGE YOUNG: And so you looked at those
15 documents?

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

17 JUDGE YOUNG: And?

18 THE WITNESS: And -- and, of course, he was in the
19 room with me and talking about the work that they had done.
20 And so I...

21 JUDGE COLE: Who is "he," sir?

22 THE WITNESS: "He" is Don Amos.

23 JUDGE COLE: Okay.

24 THE WITNESS: And he is a chemical engineer that
25 worked for me in the chemistry group, in concert with

1 engineering. There was a joint project where they worked
2 together. I forgot the engineer's name. I don't know. The
3 -- I don't recall.

4 And so this inquisition, if you will, started a
5 long time before I left to go to corporate.

6 JUDGE YOUNG: And you -- you were just describing
7 looking at a document that -- that Don Amos provided to you?

8 THE WITNESS: That's correct. And it appeared to
9 me, from reviewing that document, that they did indeed find
10 the problems I was looking for. And they indeed did provide
11 the calculations to properly relate the counts or the
12 instrument readings, I should say, to actual conditions. So
13 it looked good.

14 JUDGE YOUNG: And so when did you -- when did you
15 find out there was a problem? When did you identify a
16 problem?

17 THE WITNESS: One of the things -- this would have
18 been in -- the problem was actually discovered after I went
19 downtown.

20 JUDGE YOUNG: Did you...

21 THE WITNESS: In 1992. Mid-1992.

22 JUDGE YOUNG: So you -- so when you said that --
23 that you started an investigation, you're talking about just
24 -- you were just going back to check to see whether they...

25 THE WITNESS: That's correct.

1 JUDGE YOUNG: ...whether they had -- whether the
2 people at Sequoyah, back in '82, had done what they were
3 supposed to do? You did not identify any problem?

4 THE WITNESS: That's correct, I did not.

5 Then, after I had gone downtown, they had some
6 problems with an alarm set point on one of the containment
7 monitors.

8 JUDGE YOUNG: How is -- how -- what I'm not
9 understanding is, you're saying that the SCAR was issued as
10 a result of actions that you had previously initiated. How
11 -- what's the connection there between something you did,
12 and the issuance of the SCAR?

13 THE WITNESS: It was my understanding---and I may
14 have been wrong---that Don Amos, the guy who worked for me
15 that I had originally started talking to a year or so
16 before, had issued that SCAR.

17 JUDGE YOUNG: And so, as a result of his issuing
18 the SCAR, you're saying that that was because of something
19 you did? What was it that you did?

20 THE WITNESS: The only thing that I had done at
21 that time was start looking at the way they had responded to
22 this issue back in 1982.

23 JUDGE YOUNG: And you're -- so you're saying that,
24 had you not done that, no one would have discovered the
25 problem?

1 THE WITNESS: No, I'm just saying that that's when
2 all this began. Because I'm saying, "Don, how could there
3 be a problem after I left and went downtown, when there was
4 not one when I was out here. What did you fail to do? What
5 happened? What went wrong?" I was trying to come to a
6 complete understanding.

7 JUDGE YOUNG: What did you find out?

8 THE WITNESS: I found out that in 1982, that they
9 had -- there are two instruments that are affected by
10 negative pressure: the noble gas chamber, as I've discussed
11 before, and the flow instruments.

12 JUDGE YOUNG: Flow instruments?

13 THE WITNESS: Right. The amount of flow going
14 through that instrument, if it's under a vacuum, is
15 inaccurate. They had only addressed one of those issues,
16 and it's been so many years, I can't remember which now.
17 They had either only addressed the flow issue and forgotten
18 about the noble gas channel, or they addressed the noble gas
19 channel and forgotten about the flow. I think they had only
20 addressed the flow. Their method was right, their
21 calculations were right. They were just inadequate in the
22 scope of the investigation that they did. I did not get
23 that far in my investigation of the issue, and it would not
24 have come to light.

25 JUDGE YOUNG: What I'm -- I'm still not

1 understanding is, what I thought you said before was that
2 when you asked Don Amos to see the documents and they
3 appeared to show that everything had done -- been done
4 correctly to...

5 THE WITNESS: Right.

6 JUDGE YOUNG: ...to correct the problem identified
7 in 1983, it sounded as though that was the end of the
8 inquiry for you at that point.

9 THE WITNESS: At that point it was, because my
10 concern was: Did you find this problem? Because I know
11 it's there.

12 JUDGE YOUNG: Okay. And so you were satisfied at
13 that point. So I'm still not understanding the connection
14 between anything that you did and the issuance of the SCAR.

15 THE WITNESS: It's just the matter of the people
16 that I had working for me, I had already started questioning
17 what was going on with the effluent radiation monitors. I
18 had not...

19 JUDGE YOUNG: But I thought you had reached a
20 point of being satisfied that it had been done correctly.

21 THE WITNESS: I reached a point of being satisfied
22 that the problem existed, they had found the problem, they
23 had applied the correction factor. They just had done it in
24 a piecemeal fashion that I was unaware of. And that's what
25 was found after I left, and that's what is found as a result

1 of some issues of activity raising the set point on that
2 monitor, and then getting into an alarm, which surprised
3 everybody. Because it should not have alarmed if they had
4 done everything correctly.

5 JUDGE YOUNG: But this was all discovered after
6 you left?

7 THE WITNESS: That part of it was, yes, Your
8 Honor.

9 JUDGE YOUNG: What part was discovered before you
10 left?

11 THE WITNESS: The fact that they had done an
12 investigation on the monitor; there was a problem with the -
13 - with the alignment of the vacuum pump to the -- to the
14 containment or the vent stack; and the fact that they did,
15 therefore, have to apply correction factors to get the
16 correct readings.

17 JUDGE YOUNG: But you had come to the conclusion
18 that they had corrected the problem completely; is that
19 correct?

20 THE WITNESS: They -- yes, because the assumption
21 I made was that they applied it to both flow and noble gas
22 channel. They had not done that.

23 CHAIRMAN BECHHOEFER: Did you see documentation at
24 that time which indicated how -- what scope they had used
25 and applied it to one or both problems when you said -- when

1 you determined that everything was okay? Before you left.

2 THE WITNESS: I cannot remember. It's been too
3 long.

4 CHAIRMAN BECHHOEFER: I see. But after the fact,
5 when you looked at it, you determined...

6 THE WITNESS: After we got the...

7 CHAIRMAN BECHHOEFER: ...that they had not
8 initially addressed both legs or elements of the problem?

9 THE WITNESS: That's correct. That's correct.
10 Once we got those alarms, that triggered everybody to go
11 back and relook at everything again and figure out why we're
12 getting an alarm when we should not be. And that's when it
13 was discovered that the corrections that I had seen in the
14 1989-90 time frame, even though they were correct, they were
15 improperly applied to both instruments. And this was done
16 easily, what, five years before I had gone into work at
17 Sequoyah Nuclear Plant.

18 JUDGE COLE: So they were applied only to one of
19 the instruments, not both?

20 THE WITNESS: That's -- that's correct.

21 JUDGE COLE: All right.

22 JUDGE YOUNG: So when Mr. Beecken said that one of
23 the reasons that he did not want you back at Sequoyah was
24 because of the add monitor effluent calculations not
25 accounting for the vacuum, in fact, you had not discovered

1 what -- that there was a problem or what the source of the
2 problem was?

3 THE WITNESS: At that time I had not; that's
4 correct.

5 JUDGE YOUNG: Did you ever?

6 THE WITNESS: No, but, of course, we had never
7 been faced with a situation where we had had this spurious
8 alarm and had to deepen the investigation to find out what
9 really happened in 1982. My problem was the fact...

10 JUDGE YOUNG: Okay. Okay. What I was trying to
11 get at is Mr. Beecken said that one of the reasons you -- he
12 didn't want you back was because you didn't find the
13 problem, and that was correct, wasn't it?

14 THE WITNESS: No. What he actually said was this
15 rad monitor vacuum problem -- that's on the tape, what he
16 said. You know, he -- he was blaming me for the entire
17 issue, even though I wasn't even employed at Sequoyah. And
18 in my mind, he should have been very happy that the blooming
19 problem was found, rather than holding me responsible for
20 finding and documenting something that -- that took place
21 five years before I ever went to work there, by people that
22 were looking into an issue that happened after I'd left.
23 His problem, in my mind, was the fact that this had to be
24 documented and reported. The problem that you get into at
25 Sequoyah is if you find or document problems, that's what

1 seems to lead to a short tenure. And that'she, in my mind,
2 what happened.

3 JUDGE YOUNG: But I'm -- what I'm not
4 understanding is what problem you found and identified.

5 THE WITNESS: I did not find it, but I started the
6 -- the look into and the questioning did we do everything
7 right. And then this continued, of course, after I left.
8 Had I stayed there -- had I stayed there and not been
9 rotated downtown, this would have merely been a continuation
10 of the same discussions we had already had. So, in essence,
11 it had already started, in my mind. We had just not been
12 presented with the problem that led to the discovery of the
13 -- the fact that they had improperly applied the correction
14 to this issue for the entire monitor, rather than just part
15 of it.

16 CHAIRMAN BECHHOEFER: I think we'll take a short
17 break, 15 minutes or so.

18 MR. MARQUAND: Yes, Your Honor.

19 CHAIRMAN BECHHOEFER: Back on the record. Mr.
20 Marquand.

21 BY MR. MARQUAND:

22 Q Mr. Fiser, I want to return to the issue in page 2
23 of NRC Exhibit 34, the issue with respect to the rad monitor
24 set points.

25 You did not yourself identify any problem with

1 respect to that, is that correct?

2 A With what?

3 Q With respect to the rad monitor set points.

4 A That's correct.

5 Q And the -- you say a SCAR was initiated later on
6 after you went downtown.

7 A That's correct.

8 Q And did the person or persons who initiated that
9 SCAR receive any information from you that caused them to
10 look into that and find the problem?

11 A It was my understanding that that was Don Amos and
12 he -- it was my understanding that he may have even been the
13 one that initiated the SCAR or perhaps he did the work in
14 response to the SCAR that was initiated. So he had the full
15 knowledge of all my previous questions regarding the way
16 they had handled the disposition of the 1982 notice from
17 NRC.

18 Q Are you saying he's one of the people you
19 questioned about --

20 A Yes.

21 Q You questioned him about it and he came back to
22 you and he told you it's been handled, it's been resolved
23 already?

24 A That's correct.

25 Q Now who -- in your testimony, who are you saying

1 found this problem later on?

2 A It was my understanding that Don Amos was one of
3 the ones who found it. Of course, I wasn't there, but
4 that's my understanding.

5 Q You understood that later on. You're not claiming
6 any responsibility for finding the problem or documenting
7 the problem in the SCAR, is that right?

8 A Due to the fact that the problems with the set
9 point monitor happened after I left; no, we did not get into
10 it to that level until after I had left to go downtown.

11 CHAIRMAN BECHHOEFER: Mr. Fiser, are you saying
12 that you did not either direct Don Amos to initiate a SCAR
13 or initiate the process which would lead to a SCAR or that
14 you did not even discuss with him the circumstance? This is
15 before you left, but discuss with him the circumstances that
16 would indicate that a SCAR might be warranted?

17 THE WITNESS: No, Your Honor, I did not.

18 CHAIRMAN BECHHOEFER: I see, thank you.

19 BY MR. MARQUAND:

20 Q Let me return you to Staff Exhibit 34, the bottom
21 of page 2, do you see the paragraph that begins, "Mr.
22 Beecken was not at all pleased with the fact that the issue
23 was reported and documented."

24 A That's correct.

25 Q When you talked to Mr. Beecken, he was upset by

1 the fact that the problem continued to exist and had not
2 been previously discovered and fixed.

3 A Well, as you can see from the tape recording,
4 there were many times when he said he just wanted the
5 problem fixed.

6 Q Okay.

7 A He didn't care, apparently -- in my mind part of
8 fixing the problem is documenting that there is a problem
9 when you find it. That again is where you get in trouble
10 with NRC.

11 Q He was upset with the fact that the problem had
12 not previously been fixed, correct?

13 A Well, he did not say that.

14 Q Pardon me?

15 A He just said he wanted the problem fixed. And
16 there are times when you wonder if these people just want
17 you to fix problems and not document them.

18 Q Now looking at the bottom of page 2 of NRC Exhibit
19 34, you state there, "Another reason Mr. Beecken cited for
20 not wanting me back was the filter change-out scenario."

21 A Correct.

22 Q Do you see that?

23 A That's correct.

24 JUDGE YOUNG: Before you move on to that, I'd like
25 to clarify one thing. Are you saying that Mr. Beecken told

1 you that he held you responsible for the SCAR being issued
2 and the problem being reported?

3 THE WITNESS: For the SCAR being issued -- in
4 essence, Your Honor, that's what it appeared to me.

5 JUDGE YOUNG: What did he say to you?

6 THE WITNESS: Just repeatedly he was upset about
7 the fact that there was this problem that had been found and
8 the problem was five yrs before I ever went to work there.

9 JUDGE YOUNG: But he was upset that the problem
10 had not been fixed earlier?

11 THE WITNESS: Correct, and just fixed and not
12 documented, all he wanted to do was he wanted the problem
13 fixed. To me, there were times when --

14 JUDGE YOUNG: Let me interrupt. What did he say
15 to indicate to you that he did not want the problem
16 reported?

17 THE WITNESS: The fact that he was upset with the
18 fact that I just did not just go fix the problem -- just go
19 fix the problem, don't worry about documenting the problem,
20 just fix the problem.

21 JUDGE YOUNG: Are you quoting him?

22 THE WITNESS: Yes, ma'am.

23 JUDGE YOUNG: He said to you on the day that he
24 talked to you about why he didn't want you back a Sequoyah,
25 you're saying at that point, he said go fix the problem, I

1 don't want it reported?

2 THE WITNESS: He did not say it in those words;
3 no, Your Honor, he did not.

4 JUDGE YOUNG: What words did he say?

5 THE WITNESS: Just fix the problem.

6 JUDGE YOUNG: But by that time, he had been fixed.

7 THE WITNESS: By that time it had been fixed.

8 JUDGE YOUNG: So why would he have been telling
9 you go fix the problem? I'm not understanding.

10 THE WITNESS: In my mind, he was saying why didn't
11 you just find and fix this problem and just be done with it,
12 sweep it under the carpet or whatever.

13 JUDGE YOUNG: What did he say to make you think
14 that he wanted the problem not to be reported? I'm not
15 understanding that and I'd really like some clarification.

16 THE WITNESS: Just the fact that he was very upset
17 with the fact that we or people that reported to me -- it
18 was my understanding it was Don Amos -- had found and
19 documented this problem. And we would have to go back and
20 look at the taped conversation for sure, because it's been
21 too long.

22 JUDGE YOUNG: It sounds as though another
23 plausible interpretation of his being upset with you about
24 that problem was that you had not found it earlier and fixed
25 it earlier, plain and simple.

1 THE WITNESS: That would be plausible but for the
2 fact that we had never had a problem with that monitor. It
3 didn't show up until after I'd left.

4 JUDGE YOUNG: You're giving your reason for why he
5 shouldn't --

6 THE WITNESS: Yes, Your Honor.

7 JUDGE YOUNG: -- have blamed you. What I'm
8 talking about is what was in his mind. It seems that it
9 would be equally as plausible to assume that he was simply
10 upset that you had not found and fixed the problem earlier
11 and didn't care anything about -- he wasn't even addressing
12 the issue of reporting -- as to take your interpretation
13 which was that he was upset that the problem had been
14 reported and he didn't really care anything about whether it
15 was really fixed or not.

16 THE WITNESS: But of course, the problem here is
17 it's when you document things that you get in trouble, as
18 you're fixing to see in the issue that Mr. Marquand has just
19 presented with this rad monitor. You know, the fact I had
20 told my people if you have a problem, you fill out the
21 paperwork, you document it, you fill out the SCAR.

22 JUDGE YOUNG: Okay, I'm not --

23 THE WITNESS: He's upset with me. You see, I'm
24 looking before and after and I'm trying to figure out why
25 has this man suddenly changed his opinion and why is my

1 career coming apart here. And I'm trying to figure out from
2 some hindsight what the heck he's really saying and what I
3 think he was saying was yeah, I wish you had found the
4 problem, but I wish you had just fixed the problem and I'd
5 have never been faced with this.

6 JUDGE YOUNG: Go ahead.

7 THE WITNESS: It certainly could depend on how you
8 look at it; it certainly could.

9 BY MR. MARQUAND:

10 Q Mr. Fiser, I'm going to direct your attention once
11 again to Joint Exhibit 27. I'm going to direct your
12 attention to page 50 of that exhibit which is your
13 transcript of your taped conversation with Mr. Beecken.

14 A Correct.

15 JUDGE YOUNG: Page what?

16 MR. MARQUAND: That conversation begins at page 50
17 and it's got a date of December 9, 1992.

18 JUDGE YOUNG: Thank you.

19 BY MR. MARQUAND:

20 Q Mr. Fiser, where -- where in that conversation
21 does Mr. Beecken say "I wish you had fixed that problem and
22 not documented it." Where does he ever indicate to you that
23 he didn't want it documented?

24 A When he makes mention of the fact that he just
25 wants the problem fixed.

1 Q If you'll look at the bottom of page 52, that's
2 the beginning of the discussion of the rad monitor effluent
3 calculations. At the bottom of 52, he says, "What I'm
4 concerned about, I don't want chemistry to be an issue." Do
5 you see that?

6 A I see that.

7 Q And then he talks about the filter change-out
8 scenario and at the beginning, the top of the next page, he
9 says, "The rad monitor effluent calculation is not
10 accounting for a vacuum."

11 A Right.

12 Q and he's talking -- he says yeah, but this was a -
13 - you were talking about -- you gave him your excuse to say
14 that we looked at this no less than half a dozen times.

15 A That's right.

16 Q And you asked about it and you said, "I did it
17 myself." And he says, "Yeah, but it was still a chemistry
18 procedure." He doesn't tell you not to document it, he
19 never suggests it shouldn't have been documented, does he?

20 A Yeah, it is implied, he does not come out and say
21 that, no; he would not, he's too smart a man for that.

22 Q All right. At the beginning -- let's talk about
23 the filter change-out scenario, which he mentioned at the
24 bottom of page 52; do you see that?

25 A Yes.

1 Q And it's also mentioned in your complaint, NRC
2 Exhibit 34 at the bottom of page 2.

3 A Right.

4 Q The filter change-out scenario, correct?

5 A That's correct.

6 Q In that situation, that involves a situation where
7 one of the people in chemistry, one of the technicians,
8 makes a change of the -- daily, they're supposed to change
9 the filter and when they change the filter, they're supposed
10 to shut off a valve and when they've completed changing the
11 filter, they're supposed to reopen the valve, is that
12 correct?

13 A I think that's correct. I wasn't at Sequoyah at
14 the time, I was downtown. But that's approximately correct.

15 Q When that problem occurred, you were downtown,
16 right?

17 A That's correct.

18 Q And Mr. Beecken again was holding you responsible
19 for it, wasn't he?

20 A Yes.

21 Q And the problem there is that apparently one of
22 the technicians shut the valve, changed the filter and then
23 failed to reopen the filter and it was discovered the next
24 day that he failed to reopen the filter.

25 A Again, it's been too many years, but I think

1 that's approximately correct.

2 Q And your complaint to the Department of Labor was
3 I shouldn't be being held responsible for this because I was
4 downtown, it didn't happen on my watch.

5 A Essentially, that's correct, with the added
6 proviso that I had issued explicit instructions to all of my
7 people that worked for me that if they have a problem like
8 this, they fill out a SCAR, they document it, they report
9 it. The easy thing to do would be to just oh, my gosh, I
10 did this, if I just open that valve nobody will ever know
11 it, but I had instructed them that we're not going to get
12 better by covering up our mistakes. The only way you get
13 better is to admit it and to take the appropriate corrective
14 action to fix the problem.

15 JUDGE YOUNG: Were SCARs issued when you were at
16 Sequoyah?

17 THE WITNESS: Yes, Your Honor.

18 BY MR. MARQUAND;

19 Q Now at the bottom of page 52, we discussed the
20 part where Mr. Beecken says, "What I'm concerned about, I
21 don't want chemistry to be an issue." Do you see that?

22 A Yes, I do.

23 Q And then he goes on, he says, "There are some of
24 those guys that you can send them to training and they don't
25 even pass. How are we dealing with that?" Do you see that?

1 A That's correct.

2 Q And what he was complaining about to you was that
3 people in chemistry didn't appear to be adequately trained.

4 A I don't recall. I was gone at that time.

5 Q I'm talking about his conversation to you. He's
6 complaining that they didn't appear to be adequately
7 trained.

8 A Yes, but I'm not sure what he is referring to
9 specifically.

10 Q Well, previously he's talking about the INPO
11 evaluation and one of the problems that INPO had was the
12 lack of adequate job knowledge on the part of the
13 technicians, isn't that right?

14 A In part, that is correct.

15 Q And he's complaining that INPO found that they
16 didn't have adequate training, that they didn't have
17 adequate job knowledge.

18 A Well, yes.

19 Q And immediately right after that, he says, "Some
20 practices, like that filter change-out scenario where the
21 guy" -- and then there are omissions because we can't hear
22 it. But what he's complaining about, about the guy is that
23 the guy was supposed to know what he was doing, he was
24 supposed to have been trained, he went out, changed the
25 filter and then evidently his training was so inadequate

1 that he didn't know to open the valve after he had changed
2 the filter.

3 A That's pure supposition on your part, that's not
4 what it says. It says the guy knew what to do, it says that
5 the guy swears he checked the valve. His allegation was
6 somebody had come behind him and shut it.

7 Q Somebody came along and sabotaged him?

8 A Yes, that's what he was wondering because he said
9 he definitely remembered his training, he definitely
10 remembered doing it right.

11 Q All right.

12 A But the valve was subsequently found closed and he
13 reported it.

14 Q In any event, the mistake was made while you were
15 not the chemistry superintendent, you were not acting in
16 that position.

17 A And had not been for almost two years.

18 Q All right. And you didn't document it and you
19 didn't identify the problem.

20 A No, the people were acting on my explicit
21 instructions to fill out the SCARs and document their
22 problems.

23 Q The guy didn't come to you and say I found a
24 problem, what do I do and you didn't tell him to go document
25 it, is that correct?

1 A I had told them many times in the past when you
2 have a problem, the only way we're going to get better is to
3 document it, fix the problem, address the issues. That's
4 what they were doing.

5 Q Now Mr. Fiser, everybody gets that training,
6 everybody is told, as part of their training at the plant,
7 if you find a problem, to document it, aren't they?

8 A I would imagine.

9 Q What do you mean you imagine, didn't you receive
10 that training?

11 A Well, yeah, but it had been two years, I don't
12 know what training they had received.

13 Q Wait a minute, everybody gets that training on an
14 annual basis.

15 A They got it from me.

16 Q Okay, everybody gets that training on an annual
17 basis, it's required, isn't it?

18 A I don't recall.

19 JUDGE YOUNG: I want to clarify something. Tell
20 me again the dates that you went -- that you came back from
21 your outage time and came back to Sequoyah and then came
22 from Sequoyah to the central office.

23 THE WITNESS: Your Honor, it seems to be -- and
24 this will have to be approximate because it's been so long
25 ago -- that I came back from outage management to the

1 Sequoyah chemistry superintendent position in about January
2 of '92.

3 JUDGE YOUNG: And how long did you stay there?

4 THE WITNESS: I was there until, it seems like it
5 was March.

6 JUDGE YOUNG: So it had been about nine months
7 since September?

8 THE WITNESS: Three months approximately.

9 JUDGE YOUNG: So it had been about nine months
10 from the time that you had left Sequoyah and been at the
11 central office when this discussion took place. The two
12 years is what confused me.

13 THE WITNESS: Oh, well, you see -- yes, it had
14 been about nine months since I had left Sequoyah and gone
15 downtown, but it had also been nine months before that that
16 I had I think gone into outage management.

17 JUDGE YOUNG: Okay, I understand.

18 THE WITNESS: So we're talking I guess a year and
19 a half.

20 JUDGE YOUNG: Okay, thank you for clarifying that.

21

22 THE WITNESS: That's approximate.

23 JUDGE YOUNG: Go ahead.

24 BY MR. MARQUAND:

25 Q You went to outage management in April of '91,

1 correct?

2 A I don't recall, that's about right.

3 Q Well, you've got Joint Exhibit 27 in front of you,
4 the first page, April 29, it says Bill Lagergren asked you
5 about going to outage management and then at the very end of
6 that April 29 entry, it says from about May 1 '91 through
7 the end of the outage, I was not in charge of chemistry.

8 A So as I said, that's about correct.

9 Q May 1, '91 you went to outage management.

10 A That says about.

11 Q And at the end of December, outage management
12 concluded and you came back to chemistry.

13 A That's correct.

14 Q And then somewhere in March of '92, you went
15 downtown as acting corporate chemistry manager.

16 A That's correct.

17 Q And it's your testimony that this incident about
18 the filter change-out scenario occurred when you were
19 downtown?

20 A That's correct.

21 Q When were you downtown?

22 A I don't recall.

23 Q Well, you've got a reference to it in your
24 December conversation with Mr. Beecken. Is there any other
25 reference to that issue coming up?

1 A I don't recall.

2 Q Well, you filed the complaint with the Department
3 of Labor claiming that you were discriminated against and
4 this is one of the matters. When did it occur?

5 A Well, I don't recall when it occurred, it was when
6 I was downtown.

7 Q You're sure of that.

8 A Well, since by virtue of the fact that he
9 mentioned it on December 9, I'm fairly certain that's
10 correct.

11 Q Mr. Fiser, I'm going to hand you a document which
12 we've marked as TVA Exhibit 130.

13 (The document referred to was
14 marked for identification as TVA
15 Exhibit Number 130.)

16 MS. EUCHNER: And Your Honor, I'm going to object
17 to TVA giving us new documents without us having the chance
18 to review it.

19 JUDGE YOUNG: Is this one of the ones that you
20 sent to us prior to our coming down here?

21 MR. MARQUAND: I don't know if we have sent that.
22 This is purely a rebuttal document and I need to give the
23 court reporter two more copies?

24 JUDGE YOUNG: I think generally on rebuttal, it's
25 not required to be disclosed.

1 MS. EUCHNER: Well, Your Honor, I'd at least like
2 to have a few minutes to review it so that I can ensure he's
3 using it for proper purposes.

4 JUDGE YOUNG: I think that's appropriate.

5 MR. MARQUAND: I don't have a question pending yet
6 about it.

7 MS. EUCHNER: And I won't know to object to your
8 questions until I've had a chance to read it.

9 MR. MARQUAND: That's fine.

10 CHAIRMAN BECHHOEFER: Is it going to take a long
11 time?

12 MS. EUCHNER: It should really take me less than
13 five minutes.

14 CHAIRMAN BECHHOEFER: Oh, okay.

15 MS. EUCHNER: Just to see what it is.

16 CHAIRMAN BECHHOEFER: Because we can take a lunch
17 break if you want.

18 MS. EUCHNER: I don't need to break for lunch,
19 it'll just take me a couple of minutes.

20 CHAIRMAN BECHHOEFER: Okay.

21 (Brief pause.)

22 CHAIRMAN BECHHOEFER: Some of these pages are hard
23 to read, it must be a reproduction problem.

24 MR. MARQUAND: It was not really reproduction
25 actually, Your Honor, these were all off of microfilm -- I

1 think they're off of microfilm and I think that just may be

2 --

3 CHAIRMAN BECHHOEFER: Maybe we can make out all
4 the words.

5 MR. MARQUAND: I think we can make out all the
6 words we need to for purposes of our questions.

7 (Brief pause.)

8 MS. EUCHNER: Your Honor, I've had a chance to
9 read the document.

10 BY MR. MARQUAND:

11 Q Mr. Fiser, have you had a chance to review TVA
12 Exhibit 130?

13 A Yeah, I've scanned over it.

14 Q That is not what is called a SCAR or Significant
15 Corrective Action Report, correct?

16 A That's correct.

17 Q This is another type of corrective action
18 document, isn't it?

19 A That's correct.

20 Q It's called an Incident Investigation Report.

21 A That's correct.

22 Q And this particular Incident Investigation Report
23 deals with what you call the filter change-out scenario,
24 right?

25 A That's correct.

1 Q And it was initiated apparently in July of 1991.

2 A That's correct.

3 Q And that's not when you were downtown, right?

4 That's when you were in outage management.

5 A That's correct. I knew I was gone, I just didn't
6 remember if I was downtown or in outage.

7 Q Outage management. And it does say that the
8 problem was that the filter wasn't properly realigned after
9 the filter was changed out, right?

10 A I think I recall seeing that, yes.

11 Q If you look at the bottom of page 5 of the
12 exhibit, which it says page 4 in the upper right hand
13 corner, if you'll look at the very bottom of the page, do
14 you see where it says that contributing causes to event
15 occurrences, do you see that?

16 A Yes, I do.

17 Q And it indicates that one of the causes is that
18 the verification -- under the procedure, verification was
19 allowed after the fact rather than during performance of the
20 operation.

21 A Yes, I read that.

22 Q And that therefore, part of the corrective action
23 is to rewrite the procedure.

24 A That's correct.

25 Q And that's the procedure that was in effect while

1 you were the chemistry superintendent.

2 A That's correct. .

3 CHAIRMAN BECHHOEFER: Is what you just quote from
4 the line that's missing from our copy?

5 MR. MARQUAND: No, I didn't quote, I was
6 paraphrasing it, Your Honor.

7 CHAIRMAN BECHHOEFER: The last line is missing.

8 MR. MARQUAND: Yes, I understand that. But it
9 says, "This monitor provides" -- no, I'm sorry. The
10 language that I was referring to was where it says "Since
11 verification is documented after performance rather than
12 during performance" and that's what I was saying that
13 whoever is checking it simply writes it down after the fact
14 rather than at the time. And that was the problem with the
15 procedure.

16 CHAIRMAN BECHHOEFER: But where is the
17 recommendation that you referenced?

18 MR. MARQUAND: Well --

19 CHAIRMAN BECHHOEFER: I don't see it, that's what
20 I'm asking for.

21 MR. MARQUAND: I think you go to corrective
22 actions for that.

23 CHAIRMAN BECHHOEFER: Oh, okay.

24 MR. MARQUAND: And corrective action appears on
25 page -- part of the corrective action is on page 3 under

1 Executive Summary, it's labeled page 1, Bates number FI213.

2 BY MR. MARQUAND:

3 Q Mr. Fiser, do you see under Roman I, Executive
4 Summary, in the last paragraph, it says "Corrective actions
5 include procedure revision to provide independent
6 verification of valve alignment including detailed checkoff
7 steps for individual valves and will contain extra steps to
8 verify proper operation of rad monitor -- radiation
9 monitor."

10 A That's correct, I see that.

11 Q And that was the corrective action to deal with
12 the fact that verification could occur after the fact rather
13 than as the procedure is being performed, correct?

14 A Repeat that, please.

15 Q Well you earlier talked about the fact that the
16 verification was documented after performance, rather than
17 during performance. And that corrective action to revise
18 the procedure was to provide independent verification of
19 valve alignment, including detailed checkoff steps.

20 A To complete independent verification of valve
21 alignments, yes.

22 Q Okay. Now just to make sure we've dealt with this
23 properly, on page 2 of this document, which is page FI212,
24 it says "Initiator name, Allen K. Barringer." He's the
25 person who identified the problem, right?

1 A Don't know that.

2 Q That's what the document says, doesn't it?

3 A No, it says he's the initiator of the
4 investigation form, I guess.

5 Q Did he initiate it on July 14 of '91?

6 A Yeah, or 15th, one of the two.

7 Q Well, the 15th on mine is lined out and 7/14/91 is
8 put in there, isn't it?

9 A Well, if you'll look on the next line, the date
10 and time was 7/14/91, 10:20 and also a date --

11 Q Okay, it says the event occurred on July 14th and
12 it was discovered on July 15th.

13 A I think that's correct.

14 Q All right. So he apparently performed the
15 procedure incorrectly on the 14th and on the 15th when he
16 went back, he discovered --

17 A Allen Barringer would not be doing this.

18 Q Why? What was Allen Barringer?

19 A He was one of the staff positions.

20 Q Okay.

21 JUDGE YOUNG: One of the what?

22 THE WITNESS: He was in a staff position, an RLA,
23 a radio-chemistry laboratory analyst, would have been the
24 one that was actually out doing the filter change-out.

25 BY MR. MARQUAND:

1 Q An RLA would.

2 A Allen Barringer, like I'm telling you, is the one
3 that initiated the event investigation form to start looking
4 into what happened, try to figure out what went wrong.

5 Q If you look at page FI216, it's labeled page 4 in
6 the upper right hand corner, we've already looked at that
7 page. Under paragraph B, Event Occurrence --

8 A Right.

9 Q -- in the second paragraph at the bottom, it says
10 "One of the two RLAs who performed filter change-out, which
11 initiated the event, was also instrumental in discovery of
12 the problem and assisted in immediate notification of proper
13 plant personnel." Do you see that?

14 A Yes, I do.

15 Q So one of the RLAs caused the problem and he then
16 reported it to the proper personnel.

17 A That's apparently correct.

18 Q That wasn't you.

19 A Oh, no, I was gone.

20 Q You didn't report it.

21 A But they were acting on the explicit instructions
22 I had given them earlier, don't just cover stuff up,
23 document it and fix it.

24 Q That's the instructions everybody gets at the
25 plant, Mr. Fiser, isn't it?

1 A There was some evidence, I think that a lot of
2 times we just fix things and don't really document it and I
3 did not want that to happen.

4 Q Mr. Fiser, isn't the training that everybody gets
5 on an annual basis says if you find a problem, document it
6 and report it?

7 A I'm certain that is the training. I would assume
8 it's annual.

9 Q If you look at page 2 of this, Allen Barringer
10 then initiated this incident investigation form and it is
11 the corrective action document, right?

12 A He is the one that initiated it, that's correct.

13 Q You didn't initiate it.

14 A No.

15 Q And if you look down in the next block, it says
16 "Initiator's Supervisor: R.E. Ritchie; Organization:
17 Chemistry." Do you see that?

18 A That's right.

19 Q Mr. Ritchie then reviewed it after Mr. Barringer
20 initiated it, right?

21 A That's correct.

22 MR. MARQUAND: Okay. Your Honors, I tender TVA
23 Exhibit 130.

24 MS. EUCHNER: Staff objects, for lack of
25 foundation. This document has not been authenticated and Mr.

1 Fiser has indicated that he has no personal knowledge that
2 this document is accurate. .

3 MR. MARQUAND: I'm tendering this as a business
4 record of TVA, Your Honors.

5 MS. EUCHNER: In that case, he needs to call the
6 records custodian to authenticate the document.

7 CHAIRMAN BECHHOEFER: I think technically at
8 least, that's correct. Is there any way that you could
9 indicate that it was prepared by Mr. Barringer and --

10 MR. MARQUAND: This is an official record of TVA,
11 Your Honors, it's a QA record. The serial number in the
12 upper right hand corner is a serial number of the document
13 by which it's retrieved. I don't know -- in fact, I thought
14 we had a stipulation with the NRC staff that authentication
15 was not going to be an issue with respect to the business
16 records and if they now want to revisit the stipulations on
17 which we're trying this case, I guess we can do that. But -
18 -

19 MS. EUCHNER: First of all, there was no official
20 stipulation as to that. And second of all, this was a
21 document that was not included in their original exhibit
22 list. I just got this and the staff is not willing to
23 accept that on what Mr. Marquand says that this is an
24 authentic document. Now he's indicated that he's planning
25 on calling Mr. Ritchie as a witness. If he's like Mr.

1 Ritchie to authenticate it, that would be acceptable, but
2 Mr. Fiser is not the appropriate witness in which to admit
3 this document.

4 JUDGE YOUNG: Let me ask you this -- we're not
5 following the rules of evidence, the rules of evidence don't
6 apply in NRC proceedings. And you'd be right under the
7 rules of evidence, I think, but since we're not under the
8 rules of evidence, I guess I would ask you what is the basis
9 for asserting that it's unreliable and inauthentic?

10 MS. EUCHNER: I'm not arguing that it's
11 unreliable. What I'm stating is that we have no way to
12 determine if it is unreliable or not, without personal
13 knowledge. Mr. Ritchie could give us personal knowledge and
14 say yes, I signed this form; yes, it is accurate. Mr. Fiser
15 has indicated that he has no knowledge and I don't believe
16 that staff should be forced to accept a document as accurate
17 with at least not having the opportunity to question one of
18 the witnesses who was involved in its drafting. I'm not
19 saying that we think it's unreliable. I'm saying Mr. Fiser
20 is not the appropriate witness for this document to be
21 admitted. Either the records custodian or Mr. Ritchie will
22 be.

23 JUDGE YOUNG: I think there's no question that
24 you're right under the rules of evidence. But I guess what
25 I'm asking is if the rule -- if the NRC rule says that we

1 don't follow the rules of evidence and if we're looking at
2 general reliability -- everything you say is right if we
3 were under the rules of evidence, but since we're not --

4 CHAIRMAN BECHHOEFER: Well, we're not under the
5 rules of evidence, but at least -- Mr. Fiser, you've never
6 seen this document before, is that correct?

7 THE WITNESS: That's correct, Your Honor, to my
8 knowledge, I've never seen it.

9 MS. EUCHNER: And in addition, Your Honors, I'd
10 also like to point out it's an incomplete document. There
11 are lines missing, there are sections that are sort of
12 whited out because it was microfiched, and it's not exactly
13 the best copy of a document. And quite frankly, we could
14 ask them to show up with the original and we would never ask
15 them to do that, so -- again, Your Honor, Judge Young, I'm
16 not stating that I necessarily think it's unreliable, what
17 I'm stating is that we have a witness who TVA has said that
18 they are going to call. The staff should be allowed to
19 question that witness as to the authenticity of this
20 document in order to ensure we're not admitting a document
21 that's not accurate.

22 JUDGE YOUNG: I've got a question mark beside Rob
23 Ritchie's name. Is Mr. Ritchie going to be called?

24 THE WITNESS: He's available. He doesn't add
25 anything other than -- I mean if we have to bring in all

1 these records custodians, we can lengthen this hearing
2 indeterminably. I don't see that there's really any
3 legitimate question about the authenticity of this document
4 or what it would add to lengthen this hearing just to call
5 somebody to authenticate each of these documents.

6 As you indicated, we don't follow the rules of
7 evidence and we haven't required the witnesses to speak on
8 their own personal knowledge. He was clearly back as the
9 chemistry superintendent after this document was issued. I
10 would have been surprised -- I was frankly surprised that he
11 doesn't -- isn't familiar with this document or having seen
12 this document, having returned to Sequoyah a few months
13 after it was issued. He certainly is familiar with the
14 situation, I don't know why he doesn't remember having seen
15 this document.

16 JUDGE YOUNG: Let me just ask --

17 CHAIRMAN BECHHOEFER: Well, Mr. Beecken is going
18 to be here too, and he's --

19 MR. MARQUAND: Right, but I don't know what
20 purpose it serves to go through all of the formalities that
21 we would if we were in federal court, to document these
22 matters with these people having personal knowledge. We've
23 certainly allowed them to testify to hearsay matters. I
24 don't know -- this is the official business record of TVA.

25 MS. EUCHNER: And the staff has no way to verify

1 that.

2 CHAIRMAN BECHHOEFER: Well, what bothers me is
3 that the document is incomplete as far as I can see. Some of
4 the matters that you asked some questions on were some of
5 the matters that I couldn't track on mine, part of which was
6 missing. And I think that's, at least from the view of
7 myself, I think it's important. And I think if the copies we
8 could get would be complete copies, I might feel differently
9 but aside from the rules of evidence -- I'm not going on the
10 rules of evidence -- I think documents that are being --
11 have to be at least readable and they have to be complete or
12 they should be complete unless there's specific omissions
13 that are indicated, which are not pertinent to whatever the
14 questions are. What I view as incomplete from my document
15 was something upon which questions were asked.

16 MR. MARQUAND: Your Honor, I apologize that some
17 of the lines were cut off in the microfiching process, but
18 this is the business record. But as you indicated, the
19 information would need to be pertinent and the witness was
20 able to identify the fact that he wasn't involved in
21 discovery, initiation or management of this issue. He was
22 able to look at this and determine what the cause of the
23 problem was and what the corrective action was. It seems to
24 me that all of the pertinent information the witness was
25 able to glean from this document as it exists here.

1 JUDGE YOUNG: I would allow it, I don't know what
2 Judge Cole feels -- I would allow it in.

3 MR. MARQUAND: We can certainly make an effort to
4 find --

5 JUDGE YOUNG: Excuse me.

6 MR. MARQUAND: Excuse me, Your Honor.

7 JUDGE YOUNG: I would allow it in subject to -- if
8 it's possible to get a better copy, I think it'd be good to
9 substitute, but I would allow it in because I think it's
10 clearly relevant to the reporting of the item described by
11 Mr. Fiser in his letter to the Department of Labor. And it
12 is an impeachment exhibit.

13 JUDGE COLE: How difficult would it be to get a
14 complete copy of this, Mr. Marquand?

15 CHAIRMAN BECHHOEFER: At least page 4.

16 MR. MARQUAND: I can certainly see if there is a
17 better copy but if this what's on microfiche, this is all
18 there would be.

19 JUDGE YOUNG: Right.

20 MR. MARQUAND: I can check.

21 JUDGE YOUNG: You can see, maybe they didn't run
22 the viewer down low enough to get the whole page.

23 MR. MARQUAND: I don't know that.

24 JUDGE YOUNG: But I think it's possible at this
25 point to -- I mean even on page 4, the --

1 CHAIRMAN BECHHOEFER: I think it's crucial.

2 JUDGE YOUNG: On the bottom of page 4, it seems
3 fairly obvious that the word that would follow would be
4 particularly if more than one filter change-out is involved,
5 something to that effect.

6 JUDGE COLE: Like the word "necessary".

7 JUDGE YOUNG: Right, right.

8 MR. MARQUAND: There's also a line cut off on the
9 bottom of page 5.

10 MS. EUCHNER: And pages 3 and 2.

11 MR. MARQUAND: But I will check and possibly I can
12 do that at lunch, to see if we -- and if Your Honors would
13 like to reserve ruling, we could take our lunch break and I
14 will check on that.

15 MS. EUCHNER: And Your Honors, just to note, if
16 TVA is planning on calling Mr. Ritchie, it will not take me
17 more than five minutes for him to authenticate this
18 document. I just think it's inappropriate to ask a witness
19 who has never seen a document before and admit it using that
20 witness, especially when they are planning on calling a
21 witness who can appropriately authenticate the document.

22 JUDGE YOUNG: But Ms. Euchner, it is being used in
23 impeachment of Mr. Fiser and it is relevant in impeachment
24 of him on the subjects that he raised in that initial
25 Department of Labor complaint, and quite frankly, I think

1 really to doubt the authenticity of this, you would have to
2 be questioning what counsel has done as officers of the
3 court and I'm not willing to presume that they have
4 falsified a document.

5 So I would let it in.

6 MS. EUCHNER: And I would merely request that Your
7 Honors reserve ruling until I have the opportunity to
8 question Mr. Ritchie about it.

9 (The Judges confer.)

10 CHAIRMAN BECHHOEFER: At this point, and I guess
11 by a two to one vote, the Board will reserve ruling on this
12 document at least until we get a copy that is complete.

13 JUDGE COLE: Or the best copy available.

14 CHAIRMAN BECHHOEFER: Or the best copy available,
15 and which I think is important to illustrate some of the
16 points that you were directly questioning Mr. Fiser about.

17 JUDGE YOUNG: Just get the best available and
18 we'll look at that after lunch.

19 CHAIRMAN BECHHOEFER: Yeah, and we'll look at that
20 when we get it and we will allow authentication later on in
21 any event, but I don't think we should allow it in unless we
22 know what it says.

23 MR. MARQUAND: Thank you, Your Honor.

24 CHAIRMAN BECHHOEFER: Okay. Is this otherwise a
25 good point to break for lunch?

1 MR. MARQUAND: Could I just ask a couple of more
2 questions of Mr. Fiser about this document before we go on?

3 CHAIRMAN BECHHOEFER: Okay, fine.

4 BY MR. MARQUAND:

5 Q Mr. Fiser, we've established that in fact the
6 issue with respect to the filter change-out scenario
7 occurred and arose while you were in outage management, not
8 after you'd been sent downtown, correct?

9 A That's correct.

10 Q And after your stint with outage management was
11 over, you returned to the position of Sequoyah chemistry
12 superintendent, correct?

13 A For a few weeks, that's correct.

14 Q Well, from January to March.

15 A Yes.

16 Q Three months.

17 A Twelve weeks.

18 Q During that time period, when did you learn about
19 the issue with respect to the filter change-out scenario?

20 A Oh, I had heard about it when I was in outage
21 management.

22 Q Did you ever review any documents with respect to
23 it?

24 A Not at that time, no.

25 Q When you returned to the position of Sequoyah

1 chemistry superintendent, did you review any documents with
2 respect to it?

3 A I can't recall.

4 Q You don't recall ever looking at the incident
5 investigation report with respect to the filter change-out
6 scenario?

7 A I don't deny I did, I just can't recall.

8 MR. MARQUAND: I have no further questions before
9 lunch, Your Honor.

10 CHAIRMAN BECHHOEFER: Let's break for about an
11 hour, which would mean be back at 1:30 if my watch is right.

12 MR. MARQUAND: Thank you, Your Honor.

13 (Whereupon, a luncheon recess was taken at
14 12:30 p.m., the hearing to resume at 1:30 p.m.,
15 the same day.)

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

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

CHAIRMAN BECHHOEFER: Mr. Marquand.

MR. MARQUAND: Yes, Your Honor. Your Honor, during the lunch break, we got a copy of the incident investigation report from the hard copy and with the Board's permission, what I'd just like to do is substitute this one for what we had previously tendered as TVA Exhibit 130, and in doing so, I would also like to let you know that we apparently had another document attached to the incident investigation report which I didn't really intend to use and I'm not going to -- we didn't ask the witness about it. It's attached to the back end of it and it's really not pertinent to the report itself.

CHAIRMAN BECHHOEFER: The one about maintenance procedures?

MR. MARQUAND: It's the last --

CHAIRMAN BECHHOEFER: Yes, maintenance procedures.

MR. MARQUAND: I don't think it's pertinent, I'd just like to substitute this document for the one I had this morning.

CHAIRMAN BECHHOEFER: Okay.

JUDGE YOUNG: Thank you.

MR. MARQUAND: I can just retrieve the other one.

CHAIRMAN BECHHOEFER: I don't think I made notes, but if I did, they're not significant.

1 JUDGE COLE: You said the last 20 pages?

2 MR. MARQUAND: The last 20 pages, this is the
3 complete document here.

4 BY MR. MARQUAND;

5 Q Mr. Fiser, I believe I've handed you TVA Exhibit
6 130, which I've marked as TVA X-130 with a red pen on the
7 bottom of the page.

8 A That's correct.

9 Q And this is otherwise -- this is complete, it's
10 got all the lines at the bottom of the page and in fact we
11 talked this morning, for example, on page -- what is page 6
12 of 11, the line at the bottom was cut off that said "If more
13 than one filter change-out" and then it says "is performed."
14 Do you see that?

15 A Yes, I do.

16 CHAIRMAN BECHHOEFER: One query, maybe just the
17 first -- at the bottom of page 5 of 11, it says "all filter"
18 and at the top of page 6 of 11 -- oh, I see, "assemblies" --
19 that's okay. Okay, I've got it.

20 BY MR. MARQUAND:

21 Q Mr. Fiser, now that you have the complete document
22 does that change any of your answers to the questions this
23 morning about whether or not you were the discoverer or
24 initiator or the documenter or the reviewer with respect to
25 this issue?

1 A No.

2 MR. MARQUAND: Your Honors, I tender TVA Exhibit
3 130 as substituted.

4 MS. EUCHNER: And the staff would make the same
5 objection, it merely asked that if the Board admits it, that
6 they admit it pending appropriate authentication by Mr.
7 Ritchie.

8 MR. MARQUAND: Your Honors, I'm prepared to
9 address the authentication issue, if we could just briefly -
10 - I have a witness in the courtroom who could briefly
11 authenticate this document.

12 MS. EUCHNER: That would be fine with the staff.

13 CHAIRMAN BECHHOEFER: That would be fine.

14 MR. MARQUAND: Okay. Your Honors, we call Linda
15 Moore to testify.

16 JUDGE YOUNG: You can take a seat for just a
17 minute -- another seat I guess I should say.

18 (Witness temporarily excused.)

19 CHAIRMAN BECHHOEFER: How do you spell the name?

20 MS. MOORE: My name? Linda Moore, M-o-o-r-e.

21 CHAIRMAN BECHHOEFER: Okay.

22 Whereupon,

23 LINDA MOORE

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

DIRECT EXAMINATION

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

BY MR. MARQUAND:

Q Good afternoon, Ms. Moore. Would you -- who are you employed by?

A Tennessee Valley Authority.

Q What's your position?

A I'm a records officer for the corporate licensing department.

Q You have before you a document which I've marked with a red pen TVA X-130.

A Yes, sir.

Q Do you recognize that document?

A Yes, sir, I do.

Q What is it, please?

A It's an Incident Investigative Report.

Q And did you have any responsibility for maintaining custody of this record?

A Yes, sir, I do.

Q What is that responsibility?

A I keep all the Incident Investigative Reports back to the early '80s. I have file cabinets that are locked and I maintain the files on these.

Q As part of your official responsibilities?

A Yes, sir, it is.

Q In the licensing organization.

1 A That's correct.

2 Q And is this document from those files?

3 A Yes, sir, it is.

4 Q Is this a complete and accurate copy of that
5 Incident Investigation Report?

6 A Yes, sir, it is.

7 MR. MARQUAND: Your Honor, we tender TVA Exhibit
8 130.

9 CHAIRMAN BECHHOEFER: Any objection?

10 MS. EUCHNER: I just have a couple of questions.

11 CHAIRMAN BECHHOEFER: Okay.

12 VOIR DIRE EXAMINATION

13 BY MS. EUCHNER:

14 Q Were you in the same position, as records officer
15 for corporate licensing, in 1991?

16 A Yes, I was.

17 Q And you would have filed this document in the file
18 cabinets?

19 A Yes, ma'am, I did.

20 MS. EUCHNER: Fine, Your Honor.

21 CHAIRMAN BECHHOEFER: Okay, TVA Exhibit 130 will
22 be admitted.

23 (The document, heretofore marked as
24 TVA Exhibit Number 130, was
25 received in evidence.)

1 CHAIRMAN BECHHOEFER: Ms. Moore, I guess we thank
2 you.

3 THE WITNESS: Thank you.

4 MR. MARQUAND: Thank you, Ms. Moore. I apologize
5 for this unexpected trip down here.

6 (Witness excused.)

7 (The Judges confer.)

8 Whereupon,

9 GARY FISER

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

12 CROSS EXAMINATION (Continued)

13 BY MR. MARQUAND:

14 Q Mr. Fiser, I've placed before you Volume 1 of the
15 Joint Hearing Exhibits. If you would look at Joint Exhibit
16 Number 1, that's the NSRB minutes for May 22 and 23 of 1991.
17 And if you'll look at page -- well, first of all, when that
18 NSRB meeting was held, you had already been transferred to
19 outage management, correct?

20 A You said Joint Exhibit Number 1?

21 Q Correct.

22 A I'm looking at number 4.

23 Q Okay, turn to Tab Number 1.

24 A I'm sorry. Okay.

25 Q And that's the May 22-23, 1991 NSRB minutes,

1 correct?

2 A That's what it appears to be, yes.

3 Q And by that point in time, you had been
4 transferred to outage management.

5 A That's correct.

6 Q So you weren't present during that NSRB meeting.

7 A Not that I recall, no.

8 Q Not on behalf of chemistry.

9 A No.

10 Q If you'll look at page 2 of the minutes, under the
11 subheading for Radiation and Chemistry Subcommittee, do you
12 see that paragraph?

13 JUDGE COLE: We don't have page 2.

14 JUDGE YOUNG: What I've got is page, small Roman
15 numeral (i), then it goes to regular page 3.

16 MR. MARQUAND: That's an excerpt, yes, and the
17 Bates number is CC87.

18 JUDGE YOUNG: So page 3?

19 MR. MARQUAND: Yes.

20 JUDGE YOUNG: Okay, thanks.

21 MR. MARQUAND: The second page of the exhibit.

22 JUDGE YOUNG: And there's only three pages?

23 MR. MARQUAND: Yes.

24 JUDGE YOUNG: Okay, gotcha, thank you.

25 BY MR. MARQUAND;

1 Q And under the subheading Radiation and Chemistry
2 Subcommittee, do you see that, Mr. Fiser?

3 A Yes, I do.

4 Q And it says "The Subcommittee identified a number
5 of areas where performance can be improved" and number 4 is
6 "by use of more realistic training for the post-accident
7 sampling system." Do you see that?

8 A Yes, I do.

9 Q That was an issue that the NSRB identified to
10 chemistry, according to these minutes, right?

11 A I don't know.

12 Q I mean according to the minutes, that's what it
13 says, right? You weren't there.

14 A I can assume so.

15 Q And on the next page which is page CC88 --

16 A Okay.

17 Q -- the second bullet on the page says "PASS
18 training does not recognize time/exposure constraints on
19 collecting and analyzing samples." Do you see that?

20 A Yes, I do.

21 Q That's another issue with respect to PASS that the
22 NSRB identified to Sequoyah?

23 A That I don't know, if they identified it to
24 Sequoyah or Sequoyah identified it to them.

25 Q You didn't identify it, did you?

1 A There was a lot of issues with PASS.

2 Q But at this point in time, May of '91, you were
3 not identifying and documenting this issue with respect to
4 PASS, the issue of recognizing time/exposure constraints.

5 A Not that I recall, but again, a lot of back and
6 forth had taken place over PASS training.

7 Q All right. You continued after May of '91 to
8 remain in outage management until December of '91, right?

9 A Right.

10 Q If you will look at Joint Exhibit 2, which is
11 under Tab 2 --

12 A Uh-huh.

13 Q -- if you will look at the fourth page of this
14 document, which is CC92, the last bullet on that page, do
15 you see where it says "Post-Accident Sampling System
16 training concerns have not been addressed and this action
17 item remains open." Do you see that?

18 A Yes, I do.

19 Q You weren't present for this August '91 NSRB
20 meeting either, were you?

21 A Not that I recall, no.

22 JUDGE YOUNG: I'm sorry to interrupt, but I think
23 I need to ask my clarification questions as we go because
24 I'm afraid I'll forget them if we wait until the very end.

25 MR. MARQUAND: Okay.

1 JUDGE YOUNG: Mr. Fiser, you said that there had
2 been discussion, on and off discussion, or ongoing
3 discussion about PASS training --

4 THE WITNESS: Yes, Your Honor.

5 JUDGE YOUNG: -- while you were there and while
6 you were the chemistry manager at Sequoyah.

7 THE WITNESS: Yes, Your Honor.

8 JUDGE YOUNG: Can you tell me the nature of that?

9 THE WITNESS: It's been a long time. I know that
10 there were issues regarding training because to actually use
11 the system, as I recall -- and it's been a long time -- you
12 had to open some containment isolation valves. When you
13 open the containment isolation valves, you interrupt a
14 three-hour time clock in which those valves have to be
15 reclosed or you shut down.

16 JUDGE YOUNG: Or what -- or you shut down.

17 THE WITNESS: Or you shut down. Operations was
18 always terrified that if they closed them and they leaked,
19 that we would have to shut down. So there were many times -
20 -

21 JUDGE YOUNG: You're saying shut down, right?

22 THE WITNESS: Shut the plant down, correct.

23 JUDGE YOUNG: Okay, it sounds like you're saying
24 shut out.

25 THE WITNESS: I'm sorry, I'll get closer. That's

1 one of the issues. There were many others, but that's why I
2 can't --

3 JUDGE YOUNG: How were they raised, who raised
4 them and what was the nature of the discussions about them?

5 THE WITNESS: I raised them, people on my staff
6 raised them because of concerns that we had about making
7 sure that our technicians were completely trained in the
8 operation of the entire system and not just have to
9 simulate. Simulation is different from actually using the
10 system.

11 JUDGE YOUNG: Were you responsible for the
12 training that was done at that time, as chemistry manager?

13 THE WITNESS: I was responsible to make sure that
14 the training got done, in coordination with the training
15 department.

16 JUDGE YOUNG: And so you arranged to have that
17 training done while you were there?

18 THE WITNESS: Oh, yes, many times, many times.

19 JUDGE YOUNG: So training had taken place when you
20 were there prior to the NSRB discussing these problems.

21 THE WITNESS: Yes, Your Honor.

22 JUDGE YOUNG: And when you said there were ongoing
23 discussions about training while you were there, before you
24 left to become the outage -- temporary outage manager --
25 were any concerns about training brought to your attention?

1 THE WITNESS: Yes, Your Honor, they were.

2 JUDGE YOUNG: And so what had you done?

3 THE WITNESS: One of issues was -- involved a very
4 significant expenditure of money which had to be approved,
5 to replace some equipment. At this time, I can't even
6 remember what it was, it was so long ago.

7 JUDGE YOUNG: But it had to do with training?

8 THE WITNESS: Well, it had to do with replacing
9 the equipment so we could use it and make sure everybody was
10 properly trained. If the equipment was not functioning, I
11 can simulate certain things, but I can't absolutely
12 guarantee that my technicians could operate the equipment
13 unless they can actually use the equipment. That's one of
14 the issues.

15 JUDGE YOUNG: Do you know what -- pardon me.

16 THE WITNESS: There were many.

17 JUDGE YOUNG: Do you know what training concerns
18 still remained open at the time you went to become outage
19 manager?

20 THE WITNESS: Not at this time, I just can't
21 remember.

22 JUDGE YOUNG: Thank you.

23 CHAIRMAN BECHHOEFER: Mr. Fiser, is the training
24 you're talking about now separate and apart from the general
25 training that we've heard something about that TVA employees

1 apparently get once or twice a year? We heard some
2 allusions to that this morning.

3 THE WITNESS: Yes, Your Honor, this would be --
4 since it's a kind of unique operating post-accident sampling
5 equipment, and you have to coordinate this training, as I
6 have said before, with certain conditions of the plant where
7 maybe the plant is shut down because the operator would not
8 agree to open the valves to let us use the equipment for
9 fear of it not resetting when they close it. So it is
10 separate.

11 CHAIRMAN BECHHOEFER: Thank you.

12 THE WITNESS: But it is under the umbrella of
13 training, there's just some unique problems associated with
14 this post-accident sampling equipment.

15 BY MR. MARQUAND:

16 Q Mr. Fiser, when you were functioning as the
17 Sequoyah chemistry superintendent, one of the issues
18 regarding the post-accident sampling that came to your
19 attention had to do with the availability of the gas
20 chromatograph, not specifically the training and ability of
21 the technicians to perform the post-accident sampling?

22 A Honestly, I can't recall.

23 Q You don't remember.

24 A I do not.

25 Q If you will look at Joint Exhibit 3. Mr. Fiser,

1 that's the November 20-21, 1991 NSRB minutes, do you see
2 that?

3 A Yes.

4 Q If you would look at page 3 of the document which
5 is Bates stamped CC95.

6 A Okay.

7 Q Do you see the very bottom item on that page,
8 entitled "Post-Accident Sampling Training".

9 A That's correct.

10 Q And it indicates, does it not, that the NSRB was
11 concerned the training on post-accident sampling system did
12 not recognize time or radiation exposure constraints that
13 exist when collecting and analyzing samples. That's what it
14 says, right?

15 A I do recall reading that.

16 Q You weren't present for this meeting, because you
17 were in outage management, right?

18 A That's --

19 Q November of '91.

20 A Oh, that would be correct.

21 Q And further it says, does it not, that corporate
22 chemistry didn't agree with the site response on this action
23 item and it remained questionable whether the sampling time
24 requirements specified in the procedure could be met.

25 A That's correct.

1 Q All right. So apparently the NSRB was concerned
2 about whether training was adequate and the NSRB was
3 documenting and they had their own action item with respect
4 to PASS training, right?

5 A There's some supposition in that question, but I
6 would have to say that's the gist of it.

7 Q Now you returned to the chemistry superintendent
8 position in late December, early January of '9 -- late
9 December '91, early January of '92, correct?

10 A That's correct.

11 Q And if you'll look at Joint Exhibit 5, page -- the
12 fifth page of the document which is Bates stamped CC105.

13 JUDGE YOUNG: CC --

14 MR. MARQUAND: 105.

15 MS. EUCHNER: Are you looking at Joint 4?

16 MR. MARQUAND: I'm sorry, Joint 4, thank you,
17 counsel.

18 Tab 4.

19 THE WITNESS: Okay.

20 BY MR. MARQUAND:

21 Q Tab 4 is the February '92 NSRB minutes and the
22 fifth page of the document, which is CC page 105, do you see
23 the paragraph B, Post-Accident Sampling?

24 A Yes.

25 Q And it indicates there that this action item has

1 been on the agenda since May of '91, correct?

2 A Correct.

3 Q And then it says, "One of the issues developed
4 during discussions pointed out the potential for not
5 satisfying the three hour requirement for taking and
6 analyzing samples." Do you see that? In the middle of the
7 paragraph.

8 A Yes.

9 Q Okay. You were present for that meeting?

10 A Yes.

11 Q All right. Now then you rotated to corporate
12 sometime in the middle of March of '92, right?

13 A As I recall, that's right.

14 Q And sometime after that, Sequoyah chemistry, under
15 Mr. Jocher's guidance, conducted the test to determine
16 whether the technicians could perform the PASS test within
17 the three-hour constraints, right?

18 A That's correct.

19 Q And they determined that the technicians -- many
20 of the technicians could not meet that requirement.

21 A That's correct, some of the technicians couldn't.

22 Q And a SCAR was initiated.

23 A I can only assume.

24 Q Well, okay, Sequoyah chemistry initiated a SCAR
25 with respect to the inability to meet the three-hour

1 sampling requirement, correct?

2 A Right, okay.

3 Q Is that right?

4 A I suppose, I would have to see the SCAR.

5 Q You were downtown.

6 A That's right.

7 Q If Sequoyah chemistry initiated it, you wouldn't
8 have been involved in it?

9 A Well, it was Bill Jocher and I that set up the
10 time to run the test to see if they could in fact do the
11 three-hour -- meet the three-year clock. As I recall, the
12 two of us set that test up together.

13 JUDGE YOUNG: Who initiated it?

14 THE WITNESS: This was actually started when I was
15 still out there, we just had to have the sequence -- had to
16 have the plant in the proper conditions to allow the test to
17 be done.

18 JUDGE YOUNG: Who initiated and conceived of the
19 idea of doing this test?

20 THE WITNESS: It seems like it was me, it seems
21 like I said well, Bill, all we have to do is just set this
22 thing up and we'll just do a test and we'll use a stop watch
23 and we'll see who can and who can't. I can't remember for
24 sure if that was me or if that was Bill or if it was us
25 jointly. But it was more or less a team approach to the

1 problem.

2 BY MR. MARQUAND:

3 Q Let's talk about who initiated that, to impact
4 that. Joint Exhibit 3, the November '91 NSRB minutes. If
5 you'll turn to the last page of the exhibit, let's -- first
6 of all, you weren't at the November '91 NSRB meeting?

7 A That's correct.

8 Q You were in outage management, you weren't in
9 chemistry; correct?

10 A That's correct.

11 Q If you'll turn to the last page, it's Bates
12 stamped CC100.

13 A Correct.

14 Q If you'll look at Action Item A132-6.

15 A Correct.

16 Q "Post-accident sampling -- post-accident system
17 training." Do you see that?

18 A Yes.

19 Q It says, "The subcommittee reviewed the site
20 response, discussed it with site and corporate chemistry
21 managers. Corporate chemistry had not reviewed the item,
22 and the site chemistry manager withdrew the response until
23 the question as to whether all individuals could meet the
24 NUREG 0737 sampling requirements had been addressed." You
25 see that?

1 A Yeah.

2 Q All right, so the question as to whether the
3 individuals could meet the requirements was raised by -- was
4 raised at this NSRB meeting which you were not in attendance
5 at, and when you were not in chemistry; correct?

6 A Well, that's when the action item was -- was...

7 Q That's when somebody said, "This needs to be done.
8 We need to test these individuals to see if they can meet
9 the requirements"?

10 A Oh, you're incorrect.

11 Q It doesn't say that to you?

12 A No, you're incorrect. That's when the action item
13 was included. These discussions had been going on for a
14 long time.

15 Q All right.

16 A So that's why I say you're incorrect.

17 Q All right, it says here that there was a question
18 at this meeting whether the individuals could meet the
19 sampling requirements, doesn't it?

20 A No, it says here that this was included as an
21 action item. And this meant that discussions had been going
22 on for a long time.

23 Q Well, that's correct. Now, if you'll turn back
24 to...

25 JUDGE YOUNG: Just one second. Who -- who was the

1 site chemistry manager while you were in outage?

2 THE WITNESS: I placed Rob Ritchie in charge while
3 I was in...

4 JUDGE YOUNG: So is -- would he -- if you know,
5 would he have been the person to whom this is referring as
6 the site chemistry manager withdrawing the response until
7 the question as to whether all individuals could meet NUREG
8 737 sampling requirements had been addressed?

9 THE WITNESS: I would -- yes, Your Honor, I would
10 think that is correct.

11 JUDGE YOUNG: Okay, thank you.

12 BY MR. MARQUAND:

13 Q Mr. Fiser, if you'll go back to -- okay, first of
14 all, this Page 1 says, "A132-6." That's the designation for
15 this action item, isn't it?

16 A Go back to page what?

17 Q The page we were on.

18 A Okay.

19 Q CC100.

20 A Okay.

21 Q Action Item 132-6, if you'll look at Joint Exhibit
22 1 under Tab 1.

23 A Okay.

24 Q If you'll look at the first page, that indicates
25 it's the NSRB minutes from May 22 and 23 of '91, and is for

1 Meeting #132. Do you see that?

2 A Yes.

3 Q And when you turn to the second page of that
4 document, we looked at this earlier, under the heading
5 "Radiation Chemistry Subcommittee," the subcommittee
6 identified some areas where performance could be improved,
7 and the fourth item was, "Use of more realistic training for
8 post-accident sampling system." And there is an action item
9 assigned, at that particular point in time, of A132-6. Do
10 you see that?

11 A I think that's correct.

12 Q All right. So that action item began while you
13 were in outage management?

14 A That's when the action item was included in NSRB
15 minutes; yes.

16 Q All right. And if you'll look at the second page
17 -- the next page, I'm sorry. It's the third page, CC88.

18 A Okay.

19 Q And we talked about this earlier, the bullet,
20 "PASS training does not recognize time," slash, "exposure to
21 strengths." And then there's a recommendation from the
22 NSRB. Do you see that?

23 A Yes.

24 Q And the recommendation was to include proficiency
25 parameters in training to insure original design criteria

1 can be met in accordance with NUREG 737. Do you see that?

2 A Yes, I do.

3 Q And essentially, what they -- they go on to say,
4 "Insure the above is performed in the same anti-C," slash,
5 "respiratory protection anticipated for post-accident
6 sampling conditions."

7 A Yes.

8 Q And there's an action item.

9 A Yes.

10 Q And what they mean is that these people ought to
11 be trained so that they can do this post-accident sampling
12 wearing anti-C, slash, respiratory gear?

13 A Yes.

14 JUDGE YOUNG: What is anti-C? Do you know?

15 THE WITNESS: Anti-contamination clothing.

16 JUDGE YOUNG: Thank you.

17 Q So, in other words, they had to be able to wear
18 their protective gear to do this. That they shouldn't be --
19 just go around -- running around in shirt sleeves, but to
20 try to see if they could perform the testing in the more
21 cumbersome anti-C protective gear?

22 A Yeah, to make sure that if it took a little
23 longer, they'd factor that into an exposure...

24 Q All right.

25 A ...regulation.

1 Q So that -- that recommendation and that concern
2 became an action item at the May '91 NSRB meeting?

3 A That's when it was entered in as an action item;
4 yes.

5 Q All right.

6 A The concern existed long before.

7 JUDGE YOUNG: Had you raised that specific concern
8 about...

9 THE WITNESS: Your Honor...

10 JUDGE YOUNG: ...about training in the same
11 circumstances with the protection equipment on or...

12 THE WITNESS: I definitely did.

13 JUDGE YOUNG: ...clothing and equipment?

14 THE WITNESS: I can't -- it's been so long ago, I
15 don't know if it was here or Arkansas. But I know that's
16 always been a concern of mine is, yeah, it's one thing to be
17 able to simulate that you can do this, but what about
18 putting a fellow in a respirator where the breathing is more
19 difficult, anti-contamination clothing, gloves, rubber
20 booties. Can they still do it? I just can't -- it's been
21 so long ago, I can't recall if that was at Sequoyah or if
22 that was at Arkansas Nuclear One or both. But it very well
23 could have been an issue. That sounds like something,
24 having come out of that background and having been in RLA
25 and having been faced with that very issue, that would be

1 something that would be a concern of mine, in saying, "Hey,
2 we need to redo this and we need to make sure everybody can
3 do it." But I can't state that unequivocally (sic). It's
4 just been too long ago.

5 JUDGE YOUNG: So you can't recall whether you did
6 any training on that problem before you went to outage?

7 THE WITNESS: I can't recall whether I said,
8 "Guys, we need to do this." And then maybe that we even
9 tried it. I don't know.

10 JUDGE YOUNG: How long...

11 THE WITNESS: But, again, there were other issues
12 of the equipment not being available, operations not wanting
13 to open the -- there were a lot of issues of post-accident
14 training sampling. The clothing issue was just one.

15 JUDGE YOUNG: And -- and when was it, again, that
16 you became the -- the chemistry superintendent at Sequoyah?
17 '88?

18 THE WITNESS: Initially?

19 JUDGE YOUNG: Uh-huh.

20 THE WITNESS: I think it was like April or May of
21 1988. That's correct.

22 BY MR. MARQUAND:

23 Q Did you ever -- did you ever document this issue
24 with respect to the training of RLAs to be able to do PASS
25 sampling in three hours?

1 A Do I have a document?

2 Q Did you ever document that issue?

3 A I don't know. I just don't recall.

4 Q I'm going to direct your attention to TVA Exhibit
5 73.

6 JUDGE YOUNG: 70?

7 MR. MARQUAND: 73.

8 Q Now, Mr. Fiser, when you were answering Judge
9 Young's question about whether you had this concern, you
10 pointed to your forehead and said you had this concern. My
11 question is: Did you ever articulate this concern and
12 document it to anyone, or was it just something that you
13 held in your head? And my -- I'm going to ask you to look
14 at Joint Exhibit 73. In fact, this is the SCAR...

15 CHAIRMAN BECHHOEFER: Oh, wait.

16 JUDGE YOUNG: TVA Exhibit 73?

17 CHAIRMAN BECHHOEFER: TVA or joint?

18 MR. MARQUAND: I'm sorry. I'm sorry, Judge. TVA
19 Exhibit 73.

20 CHAIRMAN BECHHOEFER: Yeah. No, that's okay.
21 Hey, that's okay.

22 MR. MARQUAND: It's in Volume 4 of TVA exhibits.

23 BY MR. MARQUAND:

24 Q All right, this is a SCAR, isn't it?

25 A Yes, it is.

1 Q And it indicates it was initiated on -- discovered
2 on April 23 of '92; correct?

3 A That's correct.

4 Q And in April 23 of '92 you were downtown's
5 corporate chemistry manager?

6 A That's correct.

7 Q All right. It indicates it was initiated by Greg
8 Taylor; correct?

9 A Yes.

10 Q And his supervisor at the time was Mr. Jocher.
11 And it says he signed it on May the 11th of '92; right?

12 A That's correct.

13 Q Does it indicate anywhere on here that you were
14 responsible for discovering or documenting the problem with
15 respect to the post-accident sampling system ability of the
16 RLAs to perform the test?

17 A Not on this particular document.

18 Q Okay.

19 A Not that I see.

20 Q And, in fact, if you look at Page 3 of the
21 document, and it's Page CG3, it's in Block #6A, requirement
22 violated. Do you see that?

23 A Yes.

24 Q And it says, "The requirement is that the combined
25 time for sampling analysis should be three hours or less,"

1 and then it goes down and says, under "Description of
2 condition," that, "The boron analysis," slash, "method
3 cannot be performed in three hours or less, and that
4 approximately 25 percent of the personnel are capable of
5 meeting the time restrictions." You see that?

6 A Yes.

7 Q Is your name anywhere on there as having
8 discovered or initiated or documented this issue?

9 A No. No.

10 JUDGE YOUNG: Did you ever do anyone similar to
11 this (sic) about the PASS training when -- when you were at
12 the plant between 1988 and 1991?

13 THE WITNESS: Yes, we did similar things, Your
14 Honor.

15 JUDGE YOUNG: You did SCARs on -- with regard to
16 the PASS training?

17 THE WITNESS: Yes, we did PASS training when I was
18 there at Sequoyah.

19 JUDGE YOUNG: You did a SCAR?

20 THE WITNESS: A SCAR? Not that I recall; no.

21 CHAIRMAN BECHHOEFER: Mr. Fiser, didn't you work
22 with Mr. Ritchie about this time period?

23 THE WITNESS: Yes, Your Honor. He was...

24 CHAIRMAN BECHHOEFER: And I notice his name is on
25 this.

1 THE WITNESS: Yes, Your Honor. The same people
2 were involved.

3 CHAIRMAN BECHHOEFER: So to -- would this indicate
4 in any way that you were involved?

5 THE WITNESS: Just as I have mentioned before, I
6 wanted to set up a test and I -- Bill Jocher and I had
7 discussed this where we would put the technicians through a
8 very rigorous training simulation to see if they could or
9 could not meet the three-hour requirements. As you can see,
10 only 25 percent of the personnel were capable of meeting it
11 that were tested at this time. And so we had to go into
12 some additional requirements to address whatever deficiency
13 there was. And, honestly, I can't even remember what it was
14 at this time.

15 Now, in the past we had done similar things. But
16 at that time, due to the inoperability of the equipment, we
17 may have simulated parts in saying, "Okay, we can't really
18 run this, but we'll go through the steps with the procedure
19 and we'll turn the dials and buttons." Even though it may
20 not have power, we had to simulate it and do the best we
21 could. Obviously, at this time we had made some equipment
22 repairs or whatever, and then sent them through a very
23 rigorous program to assess whether or not they could all
24 meet the three hour requirement, and all of them could not.

25 JUDGE YOUNG: If...

1 CHAIRMAN BECHHOEFER: Did you...

2 JUDGE YOUNG: Go ahead.

3 CHAIRMAN BECHHOEFER: ...did you discuss this
4 report at all with Mr. Taylor, who apparently initiated it?
5 Maybe the word "initiated" isn't right, but he signed it,
6 anyway.

7 THE WITNESS: I wouldn't be surprised, but I just
8 can't recall.

9 CHAIRMAN BECHHOEFER: I see.

10 JUDGE YOUNG: Back when you were there -- back
11 when you were there and you were having these discussions
12 and you said that you were hindered by not having the right
13 equipment, did I understand you correctly?

14 THE WITNESS: With certain -- certain portions of
15 the equipment, and therefore -- were not operable, and
16 therefore we had to simulate certain parts of the training
17 until we got the equipment repaired.

18 JUDGE YOUNG: Could you have done a SCAR or other
19 report on not having the equipment necessary to meet the
20 requirements?

21 THE WITNESS: The thing that would cause us to
22 initiate a SCAR would be inability to meet a requirement.

23 JUDGE YOUNG: But you just said you couldn't meet
24 the requirement because you didn't have the equipment.

25 THE WITNESS: No, what I said was that we could

1 not fully test to make sure if we could or could not,
2 because we had to simulate certain aspects of the training.
3 Once we got the equipment operable where we could actually
4 perform the test, then we could hit the stopwatch, and then
5 we could say, "Hey, we've got a lot of people who need some
6 additional training," or maybe they had not operated this
7 portion of the equipment in a long time, because it's simply
8 was not operable.

9 JUDGE YOUNG: So -- so there was an inadequate --
10 there was an inadequacy in terms of equipment that prevented
11 training to -- to occur to insure that the requirement was
12 met?

13 THE WITNESS: Yes, Your Honor.

14 JUDGE YOUNG: But you didn't think that -- that
15 you could do a SCAR until you got all those things corrected
16 and then did the training and then looked at the results of
17 the training?

18 THE WITNESS: That's correct, Your Honor.
19 Because, until we did that, we didn't know if -- if we could
20 actually meet the requirement or not.

21 JUDGE YOUNG: But, given your philosophy of -- of
22 reporting whenever there's a problem, and you had difficulty
23 getting the equipment, wouldn't that have warranted a
24 report?

25 THE WITNESS: The fact that that -- it was

1 verbalized to many people, to my boss, and that we would
2 then, in the budgeting process, try to get the funds, as I
3 recall, to replace this equipment, or get the technicians to
4 come in and replace it. Seems like it was \$100,000 to get
5 this work done, and that took a special authorization from
6 plant management to spend that amount of money. And that's
7 my recollection. But, again, it's been many years.

8 CHAIRMAN BECHHOEFER: On April 1, '92, what was
9 Mr. Taylor's position at the time? Do you remember? At
10 least in general, if you don't remember the title.

11 THE WITNESS: Well, there were so many changes.
12 It -- it seems like, Your Honor, he was still a part of the
13 training staff, but I can't -- I can't recall for sure.

14 CHAIRMAN BECHHOEFER: I see. Okay.

15 JUDGE YOUNG: One more question. On this Page 3
16 of Exhibit 73, under Paragraph 6A, the requirement violated,
17 the combined time allotted for sampling and analysis should
18 be three hours or less from the time a decision is made to
19 take a sample, and Item 2, equipment provided for backup,
20 parens, rad sampling shall be capable of providing at least
21 one sample per day for seven days following onset of acc,
22 and at least one sample per week until acc condition no
23 longer exists.

24 Were your people able to meet those requirements
25 during the time you were at Sequoyah?

1 THE WITNESS: As far as we could tell, they were,
2 Your Honor. Even here in this Section 8A you will see that
3 even at this time, which was after I had left, 25 percent of
4 the people were still capable. And I don't know what 25
5 percent that was. I don't know any -- I just don't recall
6 any of the issues. It's been too many years. So...

7 JUDGE YOUNG: So, but looking back at 6A, you did
8 the sampling and you had the equipment that was capable,
9 that enabled the personnel to do the correct sampling? Am I
10 reading that wrong?

11 THE WITNESS: No, that is the requirement. And we
12 had demonstrated, albeit through simulation in many
13 instances, that we could do that.

14 JUDGE YOUNG: But you said you did have an
15 equipment problem?

16 THE WITNESS: Oh, yes.

17 JUDGE YOUNG: So, theoretically, under this
18 requirement about the equipment, you could have done a SCAR;
19 correct? Or am I missing something?

20 THE WITNESS: I'm not even sure at that time that
21 we -- that it's correct to assume that we could not do a --
22 I think that there were many times where we could. There
23 were certain times when the equipment was just not
24 functioning and we could not.

25 JUDGE YOUNG: Well, if it was...

1 THE WITNESS: But then we would get it repaired.
2 There are no time limits for the equipment, for getting it
3 repaired. If -- for post-accident sampling equipment as
4 there are with LCOs in the plant. If you find something
5 that is, quote, "not operable," you might have three days to
6 get it functioning again. That's not the case. All you
7 have to do is identify and have an action plan to get it
8 repaired. So, technically, we were -- we were in compliance
9 with the requirement.

10 JUDGE YOUNG: You had identified -- you had
11 identified the...

12 THE WITNESS: Oh, yes. Many times.

13 JUDGE YOUNG: And was there some form that you
14 filled out to ask for an equipment repair?

15 THE WITNESS: Oh, I'm certain; yes.

16 JUDGE YOUNG: And so you say those were done?

17 THE WITNESS: Oh, I'm certain they were; yes.

18 JUDGE YOUNG: And the requirement for having
19 equipment in working order so as to enable personnel to do
20 post-accident sampling would not have been violated by
21 having the equipment down or inoperable?

22 THE WITNESS: That's correct.

23 JUDGE YOUNG: Then what if there were an accident
24 on one of the days when the equipment was inoperable?

25 THE WITNESS: Then you would have to -- to go back

1 to your grab sampling methods and take a grab sample. There
2 are alternate ways to do, for example, a boron analysis.
3 You can do it by dilution. There are other ways to get the
4 analysis, rather than using this equipment. And so you --
5 you have a -- a fallback position where ideally this system
6 is supposed to function as designed. But if it does not,
7 then I can also come up with a method to take a sample, a
8 grab sample, dilute it, run a boron test behind a shielded
9 glass, and I -- if I'm understanding your question, there
10 are alternate methods to get this done.

11 Or we also have a backup where we can send it off
12 site to like Oak Ridge, and they can do it, as well. So
13 there are other ways to address this issue.

14 CHAIRMAN BECHHOEFER: Do any of your reporting
15 forms on a particular matter include a requirement that you
16 set forth public health and safety significance pending
17 completion of corrective action or something along that
18 line? A number of NRC reports have similar requirements.

19 THE WITNESS: Not for -- not for post-accident
20 sampling, Your Honor.

21 CHAIRMAN BECHHOEFER: Okay.

22 THE WITNESS: You just have to have the ability to
23 run it by installed equipment or by a grab sample alternate
24 method or a contract in place to send a sample offsite.

25 CHAIRMAN BECHHOEFER: Well, would there be any

1 documentation about the availability of -- pending repair,
2 of the alternates?

3 THE WITNESS: I'm certain there would be. Yes,
4 Your Honor.

5 CHAIRMAN BECHHOEFER: So, well, that's the kind of
6 thing I was asking for. Didn't see it on these forms,
7 but...

8 THE WITNESS: Right. I did not, either.

9 CHAIRMAN BECHHOEFER: Okay. Thank you.

10 JUDGE YOUNG: With regard to the backup procedures
11 that you described, could you have done a test to see
12 whether the personnel could -- could meet the three-hour
13 requirement using the backup procedure?

14 THE WITNESS: Yes, Your Honor.

15 JUDGE YOUNG: Did you ever do that?

16 THE WITNESS: As I recall, we did.

17 JUDGE YOUNG: Did they pass?

18 THE WITNESS: Yes, Your Honor.

19 JUDGE YOUNG: And would that have been documented?

20 THE WITNESS: Yes, Your Honor. It would be a part
21 of the training records.

22 BY MR. MARQUAND:

23 Q So, as I understand it, Mr. Fiser, because you
24 were able to document that you could perform a backup method
25 and you were able to meet the requirements for this backup

1 method, there was -- you never had a need to document any
2 problems, yourself, with respect to PASS?

3 A I don't know that that's true at all.

4 Q Well, did you ever document a problem with respect
5 to PASS?

6 A Well -- well, let's see, that was ten years ago.
7 I don't recall.

8 Q Mr. Fiser, you still have in front of you NRC
9 Exhibit 34, your September 23, 1993 Department of Labor
10 complaint?

11 A Yes. Yes, I do.

12 Q If you'll look at Page 3 of that document, on the
13 bottom paragraph it says, "As another example, Bill Jocher
14 and I determined Sequoyah chemistry personnel could not meet
15 NRC's three-hour requirement for conducting post-accident
16 sampling systems," parens, "Exhibit C." Do you see that?

17 A Yes, I do.

18 Q Now, in your Department of Labor complaint, you
19 were taking credit for this particular SCAR, TVA Exhibit 73
20 regarding the post-accident sampling that Mr. Taylor
21 initiated under Mr. Jocher's supervision?

22 A Yes. As I told you, as a corporate chemistry
23 manager, Bill and I worked together on setting this thing
24 up.

25 Q All right. So at least in your Department of

1 Labor complaint, you were claiming that you had been
2 involved in raising an issue with respect to PASS?

3 A Yes. That's what resulted in the SCAR.

4 Q All right. You didn't claim in your Department of
5 Labor complaint that you were involved in documenting any
6 other concerns with respect to the post-accident sampling
7 system? Is that correct?

8 A I'm not sure I completely understand your
9 question.

10 Q All right, look at your Department of Labor
11 complaint, Page 3. The only issue with respect to PASS --
12 with respect to post-accident sampling system that you were
13 claiming as protected activity related to this particular
14 SCAR which we've talked about, TVA Exhibit 73?

15 JUDGE YOUNG: Is -- what is Exhibit C that's
16 referred to in the department's...

17 MR. MARQUAND: This is the staff's exhibit. I
18 don't know why they didn't tender a complete document.

19 MS. EUCHNER: Because it wasn't in the one that
20 TVA provided us in discovery. If you notice, there's a
21 Bates stamp number on the bottom. These were provided to us
22 by TVA.

23 MR. MARQUAND: No, this Bates stamp number was put
24 on by us after we received it from the NRC. If you look at
25 the first page, they've redacted it. It's their redacted

1 version.

2 JUDGE YOUNG: Do you recall what...

3 MS. EUCHNER: We redacted this afterwards, Your
4 Honor, after we received it in discovery.

5 JUDGE YOUNG: Mr. Fiser, do you recall what
6 Exhibit C to your complaint was?

7 THE WITNESS: Honestly, I do not. It's been too
8 long.

9 MR. MARQUAND: Your Honor, I believe we -- TVA
10 raised this issue when -- early on in the case. And if --
11 let me refer you to Staff Exhibit 177. That is the OI
12 report with respect to Mr. Fiser's '93 complaint. And, in
13 fact, you'll see that on page -- I don't know, well over
14 into it there is an exhibit which is, in fact, the September
15 23, '93 Department of Labor complaint, and attached to it
16 are some -- are the exhibits that Mr. Fiser had attached to
17 his original complaint.

18 JUDGE YOUNG: How far into it? Do you want to
19 show me? Oh, here it is. September 20 -- no.

20 MR. MARQUAND: That's -- that's not -- I mean,
21 that's...

22 JUDGE YOUNG: No, that's a different one.

23 MR. MARQUAND: That's the cover letter. And about
24 two pages over is Mr. Fiser's letter. That's what they
25 copied and sent to us.

1 JUDGE YOUNG: Okay.

2 MR. MARQUAND: And then attached, if you go on, a
3 couple of -- there's Exhibit A. That says -- and then you
4 keep going, there's Exhibit B and Exhibit C.

5 JUDGE YOUNG: Exhibit B, Exhibit C. Okay. And
6 A132 -- oh, oh, the Exhibit 177 was in a different volume,
7 did...

8 CHAIRMAN BECHHOEFER: No, he said 173. Is it
9 170...

10 MS. EUCHNER: No, 177. And it's in its own
11 volume.

12 JUDGE YOUNG: This is one of the two small ones
13 that we got from the staff?

14 MR. MARQUAND: Yeah, 177.

15 JUDGE YOUNG: Have you got that in front of you?

16 THE WITNESS: Yes, Your Honor.

17 JUDGE YOUNG: Just before Mr. Marquand asks you
18 about it, if it is, I asked you earlier whether you had done
19 the testing.

20 THE WITNESS: Yes, Your Honor.

21 JUDGE YOUNG: And you said yes.

22 THE WITNESS: Yes, Your Honor.

23 JUDGE YOUNG: Do you want to rethink that answer
24 in light of this?

25 THE WITNESS: No, Your Honor. The -- the test had

1 been done. We had many people who could meet the three-hour
2 requirement. What this is saying is that we need to do it
3 to make sure that all can meet the three-hour requirement.
4 So we went back and sent -- as I recall, and that was based
5 upon the fact, you know,...

6 JUDGE YOUNG: Hold on one second. Read the
7 second...

8 THE WITNESS: Right.

9 JUDGE YOUNG: ...on Exhibit C.

10 THE WITNESS: "Time exercises have not been
11 conducted to insure that all personnel can meet the three-
12 hour requirement for NUREG 037 -- 0737."

13 Now, the difference is, in the past we had done it
14 maybe for the RLAs that were on day shift, when the exercise
15 were conducted (sic). But we noticed that there were some
16 that had never been completely tested, or perhaps they had
17 been hired after the testing was done. I don't recall the
18 exact circumstances. But then we get this apparently -- we
19 got this information from INPO as completely revised, their
20 post-accident good practice 88005. The new good practice is
21 91019. Site chemistry just received this guidelines in mid-
22 January. A review of these guidelines for incorporation
23 into site procedure is in progress.

24 I think that's where we got to looking and saying,
25 "Hey, let's just go back and make sure." Perhaps there were

1 some words in here from INPO that said, "Okay, no longer is
2 it just, you know, meet the requirement, but we want to make
3 sure that all of your -- of your technicians can." Perhaps
4 that's where it came from. I do not recall at this time.

5 But we said, "Hey, we haven't done this." Bill
6 Jocher and I got together, discussed it, and we said, "Let's
7 set up a test where we run everybody through." And I think
8 that's what resulted in this SCAR, was when we ran everybody
9 through the training. That's when we discovered that there
10 were problems where they all could not, even though even
11 here 25 percent of them could.

12 JUDGE YOUNG: And you say "we." Are you -- are
13 you saying that you were -- that you were involved in the
14 testing that led to the SCAR in...

15 THE WITNESS: Well, you'll see that...

16 JUDGE YOUNG: ...April of '93? Excuse me.

17 THE WITNESS: ...you'll see that I signed this
18 document, and Bill Jocher signed...

19 JUDGE YOUNG: No, I'm referring to what you just
20 said.

21 THE WITNESS: Okay. Then I would have to ask you
22 to repeat that question. Maybe I didn't understand.

23 JUDGE YOUNG: A moment ago I thought I heard you
24 say that -- that you were involved in making sure that all -
25 - underline "all" personnel got trained, and then testing

1 them. Did I mishear you?

2 THE WITNESS: I think so.

3 JUDGE YOUNG: Okay.

4 THE WITNESS: Either that, or I misstated.

5 JUDGE YOUNG: With regard to this Exhibit C, this
6 was your response to the NSRB Action Item A132-6; correct?

7 THE WITNESS: And the INPO 88005.

8 JUDGE YOUNG: When -- when -- tell me if I'm
9 misunderstanding your earlier testimony. I thought your
10 earlier testimony was that you had done things prior to the
11 NSRB raising the concern.

12 THE WITNESS: Yes, Your Honor.

13 JUDGE YOUNG: Did -- did you -- am I -- is there
14 anything in this response that indicates that you had done
15 anything prior to the NSRB raising the concern?

16 THE WITNESS: In this particular letter that we're
17 looking at here?

18 JUDGE YOUNG: In your -- right, your response.

19 THE WITNESS: No, there would be nothing in here.
20 All this is doing is saying we're going to address and see
21 if we meet the new requirements for the newly revised INPO
22 Good Practice 91019. And it's more restrictive than -- as
23 is usually the case with INPO. It's -- the INPO good
24 practices are far more restrictive and have a far higher
25 standard than anything, any requirements from NRC. And so

1 what we're doing is saying, "Well, we'll just -- we'll just
2 see how...", as I recall now, I'm looking at this, and it's
3 been years since I have seen it. "Let's see how we do at
4 meeting 91019, and we'll set up a test to do that."

5 JUDGE YOUNG: Here's what I'm a little confused
6 about, if you could clarify for me. In your letter to the
7 Department of Labor you cite this Exhibit C as an example of
8 Bill Jocher and you determining that personnel could not
9 meet the three-hour requirement in the context of saying
10 that people got in trouble for reporting things.

11 THE WITNESS: Yes.

12 JUDGE YOUNG: And Exhibit C is a response to the
13 NSRB action item.

14 THE WITNESS: Well, NSRB and INPO. This is just
15 showing that Bill and I were working together to resolve
16 this issue. That's -- that's what it's in here for. It was
17 a joint effort from corporate chemistry---me---and site
18 chemistry---Bill---to address...

19 JUDGE YOUNG: But wasn't the point -- wasn't the
20 point of mentioning it to give examples of how you had
21 reported things, and how that was the cause of...

22 THE WITNESS: Yes.

23 JUDGE YOUNG: ...of action against you?

24 THE WITNESS: Yes. Yes, Your Honor, it was. As a
25 result of us doing this test which led to this SCAR.

1 JUDGE YOUNG: But -- but, Mr. Fiser, the test was
2 done in response to the NSRB action item, wasn't it?

3 THE WITNESS: Partly. Partly the NSRB action
4 item, and also, as I'm reading this years later, a part of
5 the new requirements of INPO Good Practice 91019. It would
6 have been both.

7 JUDGE YOUNG: Okay. I'm just trying to clarify so
8 that I can understand. Go ahead.

9 CHAIRMAN BECHHOEFER: Well, some clarification,
10 just based on this Exhibit C. You have -- in the second
11 paragraph, says, "Timed exercises have not previously been
12 conducted to insure that all," underlined, "can meet." Did
13 some meet that prior -- prior to this?

14 THE WITNESS: Yes, Your Honor.

15 CHAIRMAN BECHHOEFER: And there was testing for...

16 THE WITNESS: Yes, Your Honor.

17 CHAIRMAN BECHHOEFER: ...isolated persons? Then,
18 going to the last paragraph, this means that six months from
19 this memo, by July 30th, the procedures will be amended to
20 require. And when does that -- would that result in, in
21 fact, testing to make sure that personnel did meet the
22 requirement? All personnel met the requirement?

23 THE WITNESS: Your Honor, you said procedures. In
24 here I think what we refer to as documentation, and that
25 would be the results of the -- the testing that we did,

1 placing all of the people through the exercise to see and
2 document that they all could do it, or if they couldn't,
3 then we had to go back, find out what the problem was, and
4 address those issues, so that then they all could.

5 CHAIRMAN BECHHOEFER: So that the July 30th
6 reference -- July 30th, 1992 reference, refers both to the
7 fact that the test would be incorporated into the
8 regulations requiring such tests, and to the fact that all
9 personnel satisfied the test?

10 THE WITNESS: As I recall...

11 CHAIRMAN BECHHOEFER: Is that -- is that...

12 THE WITNESS: As I recall, that's correct. Let me
13 read that last paragraph again, though, just a moment.

14 Yes, that's as I understand it. We would provide
15 the documentation and it would be incorporated in a training
16 procedure saying semi-annually we're going to do the test to
17 make sure everybody is still okay.

18 CHAIRMAN BECHHOEFER: Okay. So the -- all
19 personnel would be tested by -- relevant personnel would be
20 tested by July 30th, '92?

21 THE WITNESS: That's as I understand it from
22 looking at it ten years hence; yes.

23 CHAIRMAN BECHHOEFER: Okay. That's all I --
24 that's all I was after.

25 JUDGE YOUNG: Who -- who did you test when you

1 were at Sequoyah between 1988 and 1991?

2 THE WITNESS: I do not recall. We'd have to get
3 the training records for that.

4 JUDGE YOUNG: But you say you do recall doing the
5 test?

6 THE WITNESS: Yes, Your Honor.

7 JUDGE YOUNG: Is there any reason why you would
8 not have tested all the chemistry personnel?

9 THE WITNESS: Just our -- our understanding of
10 NUREG 0737 was that we would make sure that we had people
11 available that could do that testing. There was never a
12 requirement for how many could do it. And then, as I recall
13 again, you get this INPO Good Practice 80 -- 910119, and
14 that said, "Hey, let's just make sure they can all do it,"
15 so that -- as I'm trying to put this into memory after
16 years, so that if you're on a weekend over a holiday and you
17 have a problem and need it, you don't have to call somebody
18 in, although that's perfectly acceptable...

19 JUDGE YOUNG: Why...

20 THE WITNESS: ...you have people here.

21 JUDGE YOUNG: If -- if you had been training
22 people and testing them when you were out there between 1988
23 and 1991, why would you not have included everyone in the
24 training and also in the testing?

25 THE WITNESS: Well, I'm not so sure that we

1 didn't, because I don't know which people we're talking
2 about. They could have been new and just hadn't had the
3 training yet. Or it could be that we were in a training
4 cycle and everybody had not worked through the training
5 cycle. Or it could be that in the middle of the training
6 cycle maybe a piece of equipment broke down. There are a
7 lot of reasons why.

8 JUDGE YOUNG: Well, let me just interrupt you. If
9 -- if you had done all those things, wouldn't you have
10 wanted to include that in your response to the NSRB, saying,
11 "We have trained almost everyone, and tested almost
12 everyone. But we haven't previously conducted tests to
13 insure that all personnel..."

14 THE WITNESS: Oh, I'm certain that we did.

15 JUDGE YOUNG: Well, you didn't -- I'm saying
16 wouldn't that have been something that you would have
17 included in the response to the NSRB raising the safety
18 concern?

19 THE WITNESS: I am -- I am -- I am certain that
20 they were fully aware, completely aware...

21 JUDGE YOUNG: I'm talking about your written
22 response dated February 19, 1992, that's attached to your
23 Department of Labor complaint as Exhibit C.

24 THE WITNESS: Well, that's why "all" was
25 underlined, was to make sure that the -- it was understood

1 that we were -- that the requirement here had changed, and
2 that we did have a lot of people---I don't recall how many--
3 -that had received the training.

4 JUDGE YOUNG: Do you think that someone reading
5 this letter would be likely to -- to think that some of the
6 personnel had -- had been trained and tested earlier?

7 THE WITNESS: Yes, I would think so from reading
8 this. Of course, I'm a chemist, not an English major. But
9 yes, I do. Certainly people like in my position are
10 responsible for a chemistry organization and the training.
11 Certainly they would be aware of it.

12 BY MR. MARQUAND:

13 Q Mr. Fiser, if you'll look at the TVA Exhibit 73,
14 the SCAR regarding post-accident sampling system, if you'll
15 turn to the Bates page marked CG64.

16 A Okay.

17 Q That page is entitled, "Investigation Report." Do
18 you see that?

19 A Yes.

20 Q And it's an investigation of the failure to meet
21 NUREG 737 requirements for post-accident sampling?

22 A Yes.

23 Q You were not involved in preparing that
24 investigation report, were you?

25 A No.

1 Q All right. That investigation report, which is
2 included with this SCAR, indicates, under Paragraph 1.1,
3 that the boron analyses, slash, method cannot be performed
4 in three hours or less, even with the most proficient
5 personnel. Do you see that? And that NUREG 737 requires
6 the PASS sample analysis within three hours after decision
7 is made to collect samples.

8 A And go on.

9 Q Right. Do you see that?

10 A "And approximately 25 percent of the personnel are
11 capable..."

12 Q "...of meeting the restrictions."

13 A Right.

14 Q "...less -- excluding the..." In other words,
15 they could only meet some of the restrictions. They can't
16 even do the boron analysis in three hours; right?

17 A Yeah. That's not as I recall it, but that's what
18 it is saying.

19 Q And in Paragraph 1.2, do you see where it says
20 that, "The number of personnel capable of performing the
21 PASS analysis does not meet the frequency and duration
22 required by NUREG 737." You see that?

23 A Yeah. Those two seem to be mutually exclusive
24 there. Those two points.

25 Q All right, prior to this SCAR, when you said that

1 you had trained and tested some of your people, you said
2 that...

3 A Right.

4 Q ...you hadn't previously tested all, you trained
5 some of them, had you determined that some of your people
6 could perform the PASS analysis, including the boron
7 analysis, within the required three hours?

8 A Oh, yes.

9 Q You had determined that?

10 A Oh, yeah, as I recall, that's correct.

11 Q All right. Including the boron analysis, slash,
12 method?

13 A As I recall, that's correct.

14 Q And had you determined that you had an adequate
15 number of personnel capable of performing PASS sampling to
16 meet the frequency and duration requirements of NUREG 737?

17 A As I recall, that's correct.

18 Q All right. So you had never previously documented
19 any deficiencies with respect to PASS?

20 A Well, now, that's incorrect. Because as we would
21 go through the training, if somebody had a problem then we
22 would have to go back and do remedial training to bring them
23 up to speed on this. Because it's an infrequently performed
24 function.

25 Q Had you ever written a SCAR or any other

1 corrective action document indicating any problems with PASS
2 prior to this SCAR which is TVA Exhibit 73?

3 A I can't say we did not. I don't recall.

4 Q You just don't recall?

5 A I don't recall.

6 Q All right. But we do know about SCAR Sequoyah
7 920004, which is TVA Exhibit 93, and was -- 73, in April of
8 '92. And your name's not on it as an initiator or
9 discoverer or documenter?

10 A That's correct.

11 Q Now, we've talked, Mr. Fiser, about the rad
12 monitor set points, about the filter change-out scenario,
13 and now about the post-accident sampling system proficiency
14 of the RLAs. Those are the safety concerns, as I read them,
15 in your September 23, 1993 Department of Labor complaint;
16 correct?

17 A Well, the concern is that when you document these
18 things...

19 Q No, no. Those are the specific concerns set forth
20 in your Department of Labor complaint; correct?

21 A Those are the concerns that I did document; yes.

22 Q In this complaint?

23 A Yes.

24 Q All right. We're not missing any safety concerns
25 that you mentioned in your Department of Labor complaint;

1 correct?

2 A No, I don't think so.

3 Q All right. Now, in this Department of Labor
4 complaint, NRC Exhibit 34, you do not assert in here
5 anywhere expressly that either Wilson McArthur or Tom
6 McGrath had any animosity towards you for raising those
7 concerns, do you?

8 A I don't recall.

9 Q Well, take your time, look at the document, and
10 answer my question.

11 (The witness reviews certain material.)

12 Q Can you answer my question?

13 A Yeah, in just a minute.

14 (The witness continues to review certain
15 material.)

16 A I don't see them mentioned by name; no.

17 Q Okay. I'm not asking if they're mentioned. I'm
18 asking is there an indication there, either by name or by
19 title, that either of them had some animosity towards you
20 for raising concerns?

21 A I do not see them mentioned by name or title.

22 Q All right. Now, in your direct testimony you
23 mentioned another issue. On April 30th in the previous
24 session of this hearing, Judge Young asked you -- and she
25 asked you this question this morning, as well. You had a

1 conversation with Robert Beecken, the plant manager, in
2 December of '92, about why he didn't want you to come back
3 to Sequoyah.

4 A Right.

5 Q And he mentioned several issues, one being the rad
6 monitor effluents, and the other being the filter change-out
7 scenario. Or the rad monitor set points, I'm sorry, and the
8 filter change-out scenario.

9 A That's true.

10 Q And in your testimony you indicated that Mr.
11 Beecken had a problem or expressed displeasure at the
12 corrective action documents or your reporting of the issues.
13 And she -- Judge Young asked you, "What led -- what did he
14 say that led you to think that?"

15 And your response was, you gave an example of a
16 previous situation regarding diesel generator seven-day
17 tanks at Sequoyah. Do you recall that answer?

18 A Yes, I do.

19 Q All right. Do you recall when that issue came up?
20 The issue of the diesel generator seven-day storage tanks?

21 A I don't recall the exact date.

22 Q All right.

23 A It would have been in -- it was -- it was the day
24 that Cal Vondrove (phonetic) was taking over as plant
25 manager.

1 Q All right.

2 A I don't recall the exact date.

3 Q Okay. In response to Judge Young, you said,
4 "Well, this is an example. I reported it -- I filled out
5 the SCAR and we fixed the problem, and then somebody told me
6 that they were considering -- actually considering
7 disciplinary action against me."

8 A That's correct.

9 Q And you used that as an example to Judge Young to
10 say that's why Robert Beecken was displeased with your
11 reporting these issues.

12 A No, that's an example of how, when you find
13 problems and document them, you get in trouble at Sequoyah.

14 Q Judge -- Judge Young's question to you was, "What
15 led you to believe that Robert Beecken was displeased with
16 you for reporting things?"

17 And you said, "He didn't say it directly, Your
18 Honor. What I'm referring to is the fact that -- may I give
19 you an example?" And then you went through this issue with
20 the diesel generator storage tanks.

21 A Yes. Yes.

22 Q About how somebody told you they were considering
23 taking disciplinary action against you.

24 A That's correct.

25 Q All right. Now, you said that this issue came up

1 when Cal Vondrove was taking over as the plant manager.

2 A That's correct.

3 Q That's before Robert Beecken even worked at
4 Sequoyah, isn't it?

5 A No.

6 Q Where was Beecken then?

7 A Maintenance manager.

8 Q All right. So he was the maintenance manager. Is
9 he the person who was considering taking disciplinary action
10 against you?

11 A No.

12 Q No?

13 A That's just an example of the way, when you find
14 problems, even though they've been longstanding, you're the
15 one - because you found the problem, you're the one that
16 can be in trouble for finding it.

17 Q All right.

18 A At this same period in time, when I had determined
19 that there was a problem, they had Rick Rogers -- the same
20 Rick Rogers that was on the selection review board later on,
21 came into my office, sat at my desk in my chair. I was on
22 the front side of my desk, along with Don Adams, who had
23 discovered the problem, and we said, "This is what we found.
24 You guys have not been recircling these tanks properly since
25 day one." And he looks at our documentation and he looks at

1 the drawing and he looks at Don and he looks at me and he
2 says, "Are you sure you want to do this? Do you know what
3 is about to happen?"

4 And I looked at him and I said, "What else can I
5 do? I've found a problem. I have to document it. I have
6 to write the SCAR."

7 And he says, "Well, okay." So you can see even
8 his apprehension at reporting such an ominous finding as
9 that.

10 Q Let's talk about this problem seven -- the problem
11 with the seven-day storage tanks. Is it your testimony that
12 you found the problem?

13 A That's correct.

14 Q Is it your testimony that you reported it?

15 A That's correct.

16 Q And your testimony you filled out the SCAR?

17 A Well, I don't recall if I did or somebody else.

18 Q Well, in your testimony in April 30th you said, at
19 Page 1146, Line 13, "I reported it, filled out the SCAR, I
20 think it was called at that time, and we fixed the problem."

21 A Yeah, I'm not even sure what it was called at that
22 time. But that's correct.

23 Q All right. So you say you reported it and you
24 filled out the corrective action document, whatever it was
25 called?

1 A As I recall, that's correct. Or I instructed
2 somebody to do it.

3 Q How did the problem come to your attention? How
4 did you -- how did you discover this problem?

5 A We were seeing, as I recall, intermittent
6 particulate problems with the diesel fuel and I couldn't
7 figure out how this was occurring. And so finally I asked
8 to see the drawings for the tank and the recirc pump, to see
9 where it was taking suction...

10 Q All right. So your...

11 A ...discharge.

12 Q ...your testimony is that as you were taking
13 samples, you found problems and particulates in the diesel
14 fuel, and that led you to think that maybe there's a
15 problem, and then you went and researched it?

16 A Well, we did some -- we found some -- I don't know
17 if it was particulates or if it was some other parameter.
18 But, yeah, we were seeing intermittent problems, and I
19 couldn't figure out how that was occurring.

20 Q Now, this issue with respect to the seven-day
21 diesel storage generator tanks is not an issue you raised in
22 your Department of Labor complaint in '93?

23 A Oh, no. No. As I said, that's just an example of
24 how, if you use the corrective action process, you get in
25 trouble.

1 MR. MARQUAND: Your Honor, could we take a brief
2 interlude?

3 CHAIRMAN BECHHOEFER: Yes, we -- let's go about --
4 let's go 15 minutes.

5 (A short recess was taken.)

6 CHAIRMAN BECHHOEFER: Okay, back on the record.

7 BY MR. MARQUAND:

8 Q Mr. Fiser, I'm going to direct your attention to
9 Staff Exhibit 29. Mr. Fiser, Staff Exhibit 29 has been
10 previously admitted into the record and it is an August 16,
11 '93 letter from yourself, Dr. Matthews and Bill Jocher to
12 Senator Sasser dated August 16, '93.

13 A That's correct.

14 Q And you're a signatory to this letter?

15 A That's correct.

16 Q All right. The last page of the letter indicates
17 some CC's to the Chairman of the NRC and Oscar deMiranda of
18 the NRC, correct?

19 A That's correct.

20 Q Did you send CC's to anyone within TVA?

21 A I don't recall.

22 Q And beginning at page 4, the bottom of page 4, it
23 discusses you -- on page 3 it discusses you and says that
24 you reported and documented safety-related problems, and at
25 the top of page 4, there's some bullet items about issues

1 that you claim to have raised in this letter. Do you see
2 that?

3 A That's correct.

4 Q Did you ever bring this letter to Dr. McArthur's
5 attention?

6 A I don't recall.

7 Q How about Tom McGrath's attention, did you bring
8 it to his attention?

9 A I don't recall.

10 Q Did you ever bring it to any of your management's
11 attention?

12 A My management's attention? Yes.

13 Q Who?

14 A I feel certain I would have mentioned it in
15 passing, not specific details, to Ron Grover, possibly also
16 --

17 Q Possibly what?

18 A -- possibly also to Bill Lagergren. It's
19 possible, because it was pretty common knowledge that it was
20 out there and had been passed around within TVA.

21 Q You say it was common knowledge.

22 A Uh-huh.

23 Q How do you know it was common knowledge?

24 A Because this letter I think was submitted to TVA's
25 IG.

1 Q TVA's IG is separate from line management. Was it
2 -- do you know whether it was ever --

3 A TVA's IG is separate from line management?

4 Q Yes, it is.

5 A Yeah, but they would have then distributed it. I
6 wouldn't be a bit surprised --

7 Q Let's stick to what you know. Do you know if
8 McGrath saw this letter?

9 A Not in my presence, he didn't.

10 Q You didn't send a copy to him?

11 A No.

12 Q Did he ever discuss the letter with you?

13 A No.

14 Q Do you know if Dr. McArthur ever saw this letter?

15 A I don't recall for sure, it's been too long.

16 CHAIRMAN BECHHOEFER: Did Mr. Jocher, by any
17 chance, mention the letter to Mr. McGrath or Dr. McArthur?

18 THE WITNESS: I can't imagine Mr. Jocher missing
19 an opportunity to do so, but I can't answer that for sure.

20 CHAIRMAN BECHHOEFER: What about Mr. -- Dr.
21 Matthews?

22 THE WITNESS: I can't speak for them honestly,
23 Your Honor. I don't know.

24 CHAIRMAN BECHHOEFER: Okay.

25 JUDGE YOUNG: Just one sort of combined follow-up

1 question. This SCAR that was done on the PASS three-year
2 testing by Mr. Taylor, did you discuss that with Mr. Taylor
3 before he filed it, issued it, whatever?

4 THE WITNESS: Not that I recall, Your Honor, no.
5 Even that I can't state unequivocally because it's just been
6 so long ago.

7 JUDGE YOUNG: So you did not know he was filing it
8 -- you did not know he was planning to or did?

9 THE WITNESS: Oh, when I found out that we had
10 several people that were unable to meet the requirement, I
11 feel certain that I knew that they would issue it. I don't
12 know -- you know, I would think that communication though
13 would have come directly through Bill Jocher because we were
14 working together on this thing.

15 JUDGE YOUNG: Is there any reason why one of you
16 would not have done the SCAR?

17 THE WITNESS: Yes, normally the person that finds
18 the problem is the one who initiates the SCAR. In other
19 words, if an operations person discovers it, the chemistry
20 person does not write the SCAR, the operations person does.
21 In this case, it was a chemistry training person who
22 discovered, he's the one that is supposed to write the SCAR.

23 JUDGE YOUNG: So he found and identified the
24 problem.

25 THE WITNESS: That's what I understand.

1 JUDGE YOUNG: Okay.

2 BY MR. MARQUAND:

3 Q Now Mr. Fiser, following the settlement of your
4 1993 Department of Labor complaint -- and that was settled
5 in April of '94, correct?

6 A That's approximately correct, yeah.

7 Q -- you returned to work as chemistry program
8 manager.

9 A Correct.

10 Q All right. In '94, chemistry and environmental
11 were combined and the functions of the chemistry program
12 managers were combined with the functions of the
13 environmental program managers, correct?

14 A That's what they alleged, yes.

15 JUDGE YOUNG: Mr. Marquand, I'm sorry, I'm
16 interrupting you a lot, but I want to ask one more question
17 on the PASS thing before we move on. You said in your
18 letter to Senator Sasser that you and Mr. Jocher tested the
19 technicians' ability to meet the three-year criteria, which
20 led to 75 percent failing the test -- or that resulted in 75
21 percent failing the test. And I just don't recall your
22 saying that you had done that earlier, did you say that
23 earlier in your testimony, did I just not catch it?

24 THE WITNESS: Well, what I said was we were
25 working together, that's when you saw that joint letter

1 between Bill Jocher and I saying we're going to do this --
2 so it was a joint effort, corporate chemistry/site
3 chemistry.

4 JUDGE YOUNG: Joint effort to test them?

5 THE WITNESS: Well, in developing -- mine was in
6 helping set out the criteria -- let's just test everybody,
7 let's just see how we do. And in discussing that with Bill
8 and he said well, you know, I'm out here, I'll set it up,
9 we'll do it, type of thing. And I was in complete agreement
10 with him to go ahead and to do that testing based on the new
11 guidance I think it was that we had from INPO. So that's
12 how I'm saying it was a joint effort. I was not out there
13 doing the tests, but just in saying, conceptually in coming
14 up with the criteria for what they would do and who all
15 would be tested and participate in it, who was going to do
16 it, how it would be done. That's what I recall.

17 JUDGE COLE: Mr. Fiser, when you say all, are you
18 talking about everybody in the chemistry staff?

19 THE WITNESS: No, all of the people in the
20 chemistry section that would be doing that work in a real
21 accident.

22 JUDGE COLE: And how many people are involved in
23 that section, when you say they all should be trained,
24 roughly how many people -- 20, 30?

25 THE WITNESS: No, roughly perhaps 18 to 20.

1 JUDGE COLE: And based upon your knowledge back
2 then when you were in that section, how many people were
3 qualified to conduct that test?

4 THE WITNESS: Before we did the testing?

5 JUDGE COLE: Yes.

6 THE WITNESS: Oh, I would have to go back to the
7 training records.

8 JUDGE COLE: Less than 25 percent?

9 THE WITNESS: Oh, no, no, it would be more than
10 that, but I don't recall the exact percentage.

11 JUDGE COLE: And in an event, how many people
12 would be necessary to do the testing?

13 THE WITNESS: One or two could do the testing.
14 You'd have to have somebody in the counter and you'd have to
15 have somebody obtaining the samples for counting or for
16 running. So I'm going to guess maybe two.

17 JUDGE COLE: So you might very well have had that
18 situation covered, but you'd have to call people in from the
19 field?

20 THE WITNESS: Oh, absolutely, yes.

21 JUDGE COLE: All right, sir, thank you. Or call
22 them from home.

23 THE WITNESS: Yes, that's correct.

24 CHAIRMAN BECHHOEFER: What's the timing of that
25 sampling after an accident?

1 THE WITNESS: Yes, actually, Your Honor, that's a
2 good question we did ask in our drills every year when we're
3 doing these simulated meltdowns. You have to have the
4 sample three hours after you determine, the decision is
5 made, I want a sample, you've got three hours to get it.

6 Now that's into an accident and that's after
7 you're into the recovery phase, you don't want to go take
8 that sample when you're still having core problems because
9 if you're melting down and I go get a sample right now, two
10 or three hours from now when they finally get it under
11 control, then I have to go back and get it. So it's well
12 into an accident, after you're in the recovery phase of an
13 accident that you say let's see how much damage we did. You
14 don't want to fire that bullet prematurely because of the
15 useless radiation exposure that would be incurred by
16 personnel obtaining the sample. You wait until you're in
17 the recovery phase.

18 CHAIRMAN BECHHOEFER: Well, is that a matter of
19 hours or days or --

20 THE WITNESS: It could be days.

21 CHAIRMAN BECHHOEFER: Could be, thank you.

22 THE WITNESS: Yes, sir.

23 BY MR. MARQUAND:

24 Q Mr. Fiser, we were talking, in 1994, the functions
25 of the chemistry program manager and the functions of the

1 environmental protection program manager were combined and a
2 new job was created, chemistry and environmental protection
3 program manager, do you recall that?

4 A Yes, I do.

5 Q And a vacant position announcement was posted for
6 that position, correct?

7 A That's correct.

8 Q And I believe you applied for that, is that also
9 correct?

10 A That's correct.

11 Q At the same time, I believe September of '94, you
12 received what's called an at-risk notice, didn't you?

13 A That's correct.

14 Q And would you tell the Board what the effect of
15 that at-risk notice was?

16 A Would I tell the Board what?

17 Q That at-risk notice basically said your previous
18 job as chemistry program manager was being eliminated and
19 that if you were not selected or transferred to some other
20 position, you would be sent to the TVA services
21 organization.

22 A That's as I recall, yes.

23 Q And you avoided the effect of being sent to the
24 services organization because you applied for and were
25 selected for the new chemistry and environmental program

1 manager position.

2 A That's correct.

3 Q Now when you -- in 1994 when you received that at-
4 risk notice, and when they eliminated your previous
5 chemistry program manager position, you did not file a
6 Department of Labor complaint about that, did you?

7 A That's correct.

8 Q Instead, you applied on the new job.

9 A That's correct.

10 Q Interviewed for the job and you were selected.

11 A That's correct.

12 Q Do you recall who you interviewed with?

13 A I think I do, yes.

14 Q Who did you interview with?

15 A It should be a matter of record and we could
16 probably refer to that, but as I recall, it was the various
17 chemistry superintendents at the sites and that would be
18 Dave Voeller, Mr. John Sabados from Browns Ferry and Gordon
19 Rich at Sequoyah and I'm not sure who the personnel rep was,
20 seems like it was Ben Easley, but I'm not sure. And Ron
21 Grover may have been there, may not, I don't recall.

22 Q Mr. Fiser, TVA Exhibit 24 has been admitted in the
23 record as the selection package for Vacant Position 6621,
24 the chemistry and environmental protection program manager
25 job. Now you said that you thought that the people who you

1 interviewed with would be a matter of record and I asked you
2 whether or not you filed a Department of Labor complaint and
3 obviously you did not file one regarding this 1994 vacant
4 position announcement. Prior to the selection board
5 meeting, were you aware that Wilson McArthur and Ron Grover
6 and Ben Easley were going to be involved with the selection
7 review board?

8 A I don't recall, it's just been too long.

9 Q You don't recall if you knew that they were going
10 to be involved?

11 A I would have assumed Ron Grover would have been,
12 yeah.

13 Q Would you assume that Ben Easley would have been?

14 A I would assume that, that's why I mentioned his
15 name.

16 Q Would you assume that Wilson McArthur would be
17 involved?

18 A Not necessarily, no.

19 Q Would you assume that Gordon Rich or Dave Voeller
20 or John Sabados would be involved?

21 A Yes, I would.

22 Q All right. It's true, isn't it, that you knew at
23 that time that various of these gentlemen knew about your
24 1993 Department of Labor complaint, correct?

25 A Yes.

1 Q And I'm going to refer you now also to Joint
2 Exhibit 28. I can't put my finger on it, but you received a
3 September, I believe, '94 notice that your job was being
4 eliminated and that you were going to have to apply on a new
5 job in 1994, which you did, and you were going to go in
6 front of the selection review board and some of those people
7 were aware of your '93 Department of Labor complaint,
8 correct?

9 A I'm going to have to say that was correct.

10 Q Okay.

11 A I'm just trying to remember for sure who was on
12 it.

13 Q Well, we've shown you the list of people who you
14 were interviewing with.

15 A Oh. Yes.

16 Q Okay. Why did you tell Ron Grover about your 1993
17 Department of Labor complaint?

18 A I don't have a clue.

19 Q But you did, didn't you?

20 A Yeah.

21 Q I guess it wasn't any big secret, was it, as far
22 as you were concerned?

23 A No, not at this time.

24 CHAIRMAN BECHHOEFER: You mean not during August
25 1996, is that -- when you say not at this time?

1 THE WITNESS: That's correct, Your Honor.

2 CHAIRMAN BECHHOEFER: Okay.

3 BY MR. MARQUAND:

4 Q No, I'm talking about 1994.

5 A Oh, I'm not even sure.

6 CHAIRMAN BECHHOEFER: I thought he answered but
7 based on this.

8 THE WITNESS: I'm not even sure --

9 MR. MARQUAND: Your Honor, I'm sorry, I'm still
10 referring to TVA Exhibit Number 24, the 1994 selection
11 package.

12 CHAIRMAN BECHHOEFER: Oh, okay.

13 BY MR. MARQUAND:

14 Q Mr. Grover had been there only a short time, you
15 worked for him but you still -- you went ahead and told him
16 about your 1993 Department of Labor complaint and the
17 settlement.

18 A I think -- I'm not sure exactly when I told Ron
19 about it. My assumption was since he hired me out of the HP
20 program, that he already knew about it, but I'm not
21 absolutely sure when he became aware of it.

22 (Brief pause.)

23 Q I'm going to refer you to TVA Exhibit 117. Mr.
24 Fiser, in 1994, the fact that the chemistry and
25 environmental functions were being combined into a chemistry

1 and environmental protection program manager job was not a
2 big secret, was it, you knew it was coming?

3 A I can't say that I knew it was coming, but was it
4 a big secret? No.

5 Q Okay. And TVA Exhibit 117 is your planner notes
6 for June 16 of 1994, do you see that?

7 A Yes, I do.

8 Q All right, in that, item number 2 is a discussion
9 with Ron Grover in which he tells you about coming
10 reductions.

11 A Yes.

12 Q And he expressed -- this was in the context,
13 remember, of a newspaper article which you were interviewed
14 for.

15 A Yes.

16 Q And he said he had a concern that if you continued
17 to participate in newspaper interviews that somebody might
18 tell him not to keep you in the reorganization, is that
19 correct?

20 A That's correct.

21 Q And at the very conclusion of that, he advised you
22 to stay out of it.

23 A Yes. As I recall -- let's see -- yeah, as I
24 recall, he had a concern that the publicity was not going to
25 be good for me.

1 Q Mr. Fiser, would you agree that someone certainly
2 could have interpreted that conversation Mr. Grover had with
3 you as a suggestion that you should not talk to the press,
4 that you should keep your mouth shut and not talk to the
5 press or you might not be selected for this new job?

6 A Oh, you could certainly make that inference.

7 CHAIRMAN BECHHOEFER: Did you follow that advice?

8 THE WITNESS: Yes, sir, I did. As I recall, that
9 was the last time I discussed it with a news reporter.
10 There might have been one more time I said hey, I can't talk
11 to you, but that was about the end of it.

12 BY MR. MARQUAND:

13 Q In 1996, you were informed that there would be a
14 reorganization in which the environmental functions would be
15 removed and there would be two chemistry program manager
16 positions advertised.

17 A That's correct.

18 Q And you were informed who was going to be on the
19 selection review board ahead of time.

20 A I think that's correct.

21 Q And you knew ahead of time that the selection
22 review board officials would be Charles Kent and John Corey
23 and initially you thought that Charles -- I mean --

24 A Jack.

25 Q -- Jack Cox would be on there, correct?

1 A That's correct.

2 Q And Ben Easley. .

3 A That seems correct.

4 Q Now although you didn't file a complaint in 1994
5 over the elimination of your job and the advertisement of
6 new program manager jobs, you chose to file one in '96
7 before the selection even occurred, didn't you?

8 A That's correct.

9 Q And you knew -- you'd been told many years before
10 that chemistry was going to be cutting back to two to three
11 chemistry program managers, this was no big surprise in '96,
12 was it?

13 A That was the rumor.

14 Q That rumor had been going around for a long time
15 that eventually corporate chemistry would be cut back to two
16 to three people.

17 A As I recall, that was the rumor -- and I might add
18 no one really believed it, but that was the rumor.

19 JUDGE YOUNG: Let me clarify your question. It
20 would be cut back to two to three people. Do you mean by
21 that two to three including --

22 THE WITNESS: Total.

23 JUDGE YOUNG: Total, including Mr. Grover's
24 position?

25 THE WITNESS: Yes.

1 CHAIRMAN BECHHOEFER: Was this Sequoyah chemistry
2 or --

3 MR. MARQUAND: Corporate chemistry.

4 THE WITNESS: Yes, Your Honor, corporate.

5 CHAIRMAN BECHHOEFER: Okay, thank you.

6 THE WITNESS: We had other rumors for the sites.

7 CHAIRMAN BECHHOEFER: Okay.

8 BY MR. MARQUAND:

9 Q In '96, you had input into the drafting of the
10 position description, correct?

11 A That's correct.

12 Q And you provided that input to Ron Grover.

13 A I think that's true, either that or Ben Easley,
14 I'm not sure exactly who. I think it was Ron who asked us
15 to provide input to him.

16 Q Now at some point, you approached Ed Boyles and
17 Ben Easley and you told them if they posted a vacant
18 position announcement for this new job, you were going to
19 file a Department of Labor complaint.

20 A That's correct.

21 Q I think it was June 10.

22 A I could not deny that, that's approximately right.

23 Q And in that conversation with them, you indicated
24 that you weren't even sure you wanted a TVA job -- you
25 weren't even sure you wanted to apply in this new job.

1 A I don't recall that, but I can certainly remember
2 debating the issue in my own mind.

3 Q And approximately a week later when Tom McGrath
4 conducted an all-hands meeting and announced -- formally
5 announced the reorganization -- that was on June 17, do you
6 recall that presentation?

7 A Yes, I do.

8 Q After that presentation, do you remember having a
9 discussion with Sam Harvey?

10 A I can't remember if it was after or before or
11 when, but I had many discussions with him.

12 Q Right. Do you recall a discussion with him in
13 which you accused him of being pre-selected for the job and
14 he said -- he denied it and he said he thought that the job
15 had been tailored for you because of specific job duties
16 that you had had with respect to the CECC.

17 A I don't recall all the details of it. If that's
18 what Sam says, you know, that's what Sam says.

19 Q Okay. Do you recall in that discussion with Sam
20 Harvey indicating -- or in any other discussion with Sam
21 Harvey -- indicating that you weren't interested in applying
22 on the job?

23 A Repeat that question.

24 Q Do you recall ever telling Sam Harvey that you
25 weren't interested in the job?

1 CHAIRMAN BECHHOEFER: Were or were not?
2 MR. MARQUAND: Were not.
3 A No, I do not recall that.
4 Q You don't recall it?
5 A No.
6 Q It's possible you did?
7 A And it's possible I did not.
8 Q Is it possible that you did?
9 A All things are possible.
10 Q Well, I mean sometimes you might recall -- be
11 specific and know --
12 A I cannot recall it.
13 JUDGE YOUNG: Is it possible that you said that?
14 THE WITNESS: Is it possible that Sam said that?
15 Certainly.
16 JUDGE YOUNG: That you told Sam that you were not
17 interested.
18 THE WITNESS: I rather doubt it, because at that
19 time I had decided, you know, to go ahead and post on the
20 job. The option of a year's severance did not seem to me to
21 be all that valuable, after thinking about it. So I think
22 at that time, you know, I would go ahead and post on the
23 job.
24 JUDGE YOUNG: So you doubt it, but was it
25 possible?

1 THE WITNESS: I doubt it -- I doubt that I would
2 have told Sam that.

3 JUDGE YOUNG: Was it possible is the question.

4 THE WITNESS: I just have no recollection of the
5 exact conversation that I had with Sam. I cannot answer
6 that. I seriously doubt that I would have said that to him
7 at that time. A couple of week before when I was
8 contemplating it, it could have happened, but at that time,
9 after discussions with my wife, I had pretty well decided to
10 go ahead and apply on the job.

11 BY MR. MARQUAND:

12 Q Well, you said several weeks before -- I mean you
13 were having conversations with Ron Grover and Deidra Nida
14 and Sam about job prospects all throughout this period,
15 weren't you? In the May time frame?

16 A About job prospects? I'm certain, since we were
17 cutting back, that would --

18 Q And I mean, Sam -- there was discussions about
19 whether Sam might be transferred to Sequoyah.

20 A Oh, yes.

21 Q And there was discussions about whether Deidra
22 Nida might find a job at Sequoyah.

23 A That's correct.

24 Q And is it likely -- you had discussions during
25 this time frame with Sam about what his job prospects were

1 at Sequoyah.

2 A Yes.

3 Q And you subsequently learned that he could not be
4 transferred to Sequoyah.

5 A Right.

6 Q And during this time frame in May, as opposed to
7 June, when you said you were possibly not considering
8 applying on the job, did you tell Sam that fact, that you
9 were considering not applying on the job?

10 A I absolutely have no memory of that.

11 Q When did you begin your sign business?

12 A When did I begin -- when I was in the ETP program.

13 Q Back in '93?

14 A That's correct.

15 Q And for the Board's benefit, you began -- started
16 an outside business, with TVA's encouragement, of course,
17 and approval.

18 A But I think it was more '94. As a matter of fact,
19 while I was away at the school to learn how to run this
20 thing, I got notification that Ron was going to hire me or
21 there was going to be a job offer.

22 Q Anyway, you started an outside business when you
23 were in the employee transition program.

24 A In '94, yes.

25 Q And was that an ongoing business in '96?

1 A Yes.

2 Q So what I'm asking, in May of '96, when there was
3 a lot of rumors going around about the elimination of jobs,
4 were you considering not applying on the job and going full
5 time working on your outside sign business?

6 A Initially yes, until I discussed it with my wife.

7 Q And so initially, before you discussed it with
8 your wife, it's possible you may have given Sam Harvey the
9 impression that you might not apply on the job, that you
10 might leave TVA and take the one year severance pay.

11 A I absolutely have no recollection of that. I have
12 no recollection either way of telling him that. I have a
13 recollection of contemplating it, myself, but not of
14 discussing this with Sam Harvey.

15 Q It was something you were certainly considering;
16 right?

17 A Early on.

18 Q Okay. Sam was aware you had this sign company,
19 didn't he?

20 A It was not a secret. I don't recall discussing it
21 with him, but certainly it was no secret.

22 Q Now, it wasn't any secret, either, that Ron Grover
23 and Sam Harvey didn't get along, was there?

24 A Well, I think they did get along. I do think they
25 had problems, but I can't say they did not get along.

1 Q Do you recall in December of 2001, when I took
2 your deposition, and I asked the question on Page 49, "I've
3 noticed a number of conversations in here where Ron is
4 coming to you to talk about the possibility of you being
5 selected, almost as if Ron's taking sides with you. Do you
6 ever get that impression when you read these notes?"

7 Answer: "I haven't read these notes in years, so
8 you'll have to be more specific."

9 Question: "Well, in terms of the way the dynamics
10 of your office worked, did -- was there alignment of you and
11 Ron on one side, and Sam as being the guy on the outs with
12 Ron?"

13 Answer: "Sam and Ron did not get along all the
14 time, as I mentioned earlier."

15 Question: "And you got along with Ron?"

16 Answer: "Yes." Does that refresh your
17 recollection that Sam and Ron didn't get along very well?

18 A They didn't get along all the time, which is, I
19 think, what I just reiterated to you. I did say that they
20 didn't get along, just not all the time. So I think that's
21 almost verbatim what I had told you earlier.

22 Q All right. And Ron did come to you and talk about
23 your prospects of being selected with -- in favor of Sam,
24 didn't he?

25 A No more so than the prospects of anyone else. I

1 mean, everybody was discussed from time to time.

2 Q Was -- were you and Ron Grover having discussions
3 about your prospects of being selected, and the best
4 possible combination of people on the selection review board
5 for you?

6 A No. We were probably having discussions about the
7 worst possible selection on the review board, not the best.

8 Q I'm going to show you TVA Exhibit 124. Mr. Fiser,
9 TVA Exhibit 124 is a May 8th, 1996 page from your planner,
10 isn't it?

11 A Yes, it does appear to be.

12 Q And under Item #4 is a discussion with Ron Grover;
13 correct?

14 A That does appear to be the case; yes.

15 Q And he called you and told you you didn't have to
16 worry about McGrath being the -- on the selection board
17 because it was going to be the -- according to him, the
18 chemistry managers, and they would be split between Watts
19 Bar, Sequoyah, and Browns -- with Browns Ferry being the
20 swing vote; right?

21 A I'm not sure if he called or if we were together
22 or in a meeting or what.

23 Q Well, that's what he -- he told you that?

24 A But that's the gist of that conversation; yes.

25 Q All right.

1 JUDGE YOUNG: I'm sorry, I didn't understand.

2 A Mr. Voeller did not elaborate on why he told me
3 this. He just...

4 Q I didn't say he said that. I said but in fact, in
5 terms of the dynamics, Mr. Voeller didn't get along with Sam
6 Harvey?

7 A Oh, no, I -- I do not recall that.

8 Q All right. In your deposition on December the
9 12th of 2001, referring to Page 51, let me see if this
10 refreshes your recollection. "Do you know why Voeller told
11 you this?"

12 Answer: "I could only speculate."

13 "Well, what's your speculation?"

14 "I'm not sure."

15 "Well, I asked you what your speculation was."

16 "I'm not sure."

17 "I know you're not sure. That's why you said it
18 was speculation. What is it?"

19 "Perhaps he didn't get along with Sam. I don't
20 know."

21 A No.

22 Q "Perhaps since he didn't get along with Sam?"

23 "That's correct."

24 A That's "perhaps." I mean, I don't know.

25 Q "Okay, we're seeing some little clicks here.

1 Goetcheus and Sam, Voeller versus Sam, you and Ron as a
2 click. There's a lot of dynamics going on there; right?"

3 Answer: "That's your opinion." Is that correct?

4 A That is your opinion. That's correct.

5 Q All right. Is that correct, though, that there
6 was some people who were taking sides on these issues?

7 A Oh, there were some people taking sides; yes.

8 Q Did Dave Voeller tell you that he lobbied Wilson
9 McArthur on your behalf?

10 A It was, as I recall, Wilson McArthur went down to
11 inquire of Dave about what kind of support he had been
12 getting, asking for feedback. And he told him about the job
13 I had been doing for them, and how hard I had been working.
14 I guess if you want to call that lobbying or if Dave wanted
15 to call that lobbying, that's just getting feedback.

16 Q All right. My question was: Did Dave Voeller
17 tell you that he gave---all right, we'll call it feedback---
18 that he gave very positive feedback to Wilson McArthur on
19 your behalf?

20 A Yes, as I recall, that's correct.

21 Q All right. In fact, I think what you said was
22 that it was a sales job. Not just feedback, but a sales
23 job.

24 A Could have been. I sort of remember that, you
25 know, that he was -- he was very -- Dave was always very

1 pleased with the work I had been doing to support Watts Bar
2 chemistry getting started up.

3 Q All right. And did Ron Grover, at this same time
4 frame, tell you that he and Chandra would have a discussion
5 with John Sabados at Browns Ferry on your behalf?

6 A I -- I sort of do remember that; yeah. I do.
7 They were very supportive, too, of the work that I had been
8 doing.

9 Q Now, in -- you knew that Sam Harvey was being
10 considered or was considering taking a job at Sequoyah;
11 correct?

12 A Yes.

13 Q And were you in favor of that?

14 A Yes.

15 Q You were in favor of that because, if he accepted
16 a job at Sequoyah, you wouldn't have to compete with Sam
17 Harvey for a job in the corporate chemistry position;
18 correct?

19 A As I recall, my concern was that everybody find a
20 job, not just me and Sam Harvey, but also Deidra Nida and
21 others.

22 Q So...

23 A And Trish Landers, as well. That was my concern,
24 was that everybody find a position.

25 Q Well, you weren't just concerned about Sam for

1 Sam's sake, but you were also concerned because that would
2 be one less person for you to compete with for that job
3 downtown?

4 A Oh, absolutely. Absolutely.

5 Q All right. And you subsequently learned that Sam
6 couldn't be transferred to Sequoyah consistent with and
7 legally with TVA's personnel regulations, didn't you?

8 A No, that's a misstatement. What I learned was
9 that Mr. McGrath had just blocked it. That's what I
10 learned. It had nothing to do with legally and consistent
11 with TVA practices. It's just that what I had heard was
12 that he had blocked it.

13 Q All right.

14 A So that's incorrect.

15 Q I'm going to show you TVA Exhibit 120.

16 MS. EUCHNER: Did you say 120?

17 MR. MARQUAND: 120.

18 Q This is the May 7th, '96 page from your planner.
19 You recognize it?

20 A Yes.

21 Q All right. It's your handwriting; correct?

22 A Yes.

23 Q All right. If you'll look at Item #2, is that a
24 conversation with Ron Grover?

25 A It does appear to be; yes.

1 Q All right. And does it say, "He told me that he
2 has visited with Sam out at Sequoyah yesterday." You see
3 that?

4 A Yes.

5 Q "He said Sam's job..."

6 A Sam's job.

7 Q "...was up in the air. They were probably trying
8 to do something illegal. He said Sam may not have a job,
9 and that they would have to post the one he is interested
10 in." Do you see that?

11 A Yes, the one at Sequoyah that he was interested
12 in.

13 Q All right. Now, in other words, Grover was
14 telling you they couldn't just move him out there, that
15 wouldn't be legal. If he was interested in a job at
16 Sequoyah, they had to post it.

17 A Well, he didn't say that. He said they were
18 probably, as I recall. That's what he said. They may have
19 been trying to do something illegal. It's as if he didn't
20 know if this direct transfer was legal or not. He didn't --
21 he didn't have the knowledge to know that. That's what it
22 says.

23 Q All right. It then goes on to say, "He also said
24 McGrath would probably going to use this opportunity to
25 rewrite the PDs, such that he can keep Sam and get rid of

1 me."

2 A That's...

3 Q "He wants to do this because of the NRC concerns I
4 raised in the past. He said McGrath had a very low opinion
5 of me. I told him this feeling was mutual."

6 A That's correct.

7 Q All right. Did he say that McGrath said...

8 A Yes.

9 Q ...that he was going to get rid of you?

10 A That is, as I recall, pretty much what he...

11 Q Well, no. I said did he say that McGrath told him
12 he was going to use that as an opportunity to get rid of
13 you? Or was he simply speculating about that?

14 A No, as -- as -- again, as I call -- as I recall,
15 it was more direct than that. It was as if McGrath -- and I
16 didn't write this down anywhere, I don't think. As if
17 McGrath said to him at one point in time---and Ron does not
18 recall this, by the way, I don't think---that, "Hey, Ron,
19 sometimes you got to make these things turn out the way you
20 want to."

21 Q And that's your discussion with Ron that you say
22 Ron doesn't remember?

23 A Yes. I'm saying I don't -- I don't think he
24 remembers McGrath being that direct, but that is the sense
25 of what Ron was communicating to me.

1 MR. MARQUAND: I tender to you Exhibit 120, Your
2 Honors.

3 MS. EUCHNER: No objection, Your Honors.

4 JUDGE YOUNG: I think that came in last time.

5 CHAIRMAN BECHHOEFER: Well, which number was this?
6

7 MR. MARQUAND: TVA Exhibit 120.

8 CHAIRMAN BECHHOEFER: Didn't this come in last
9 time?

10 MR. MARQUAND: It was identified by Mr. Grover,
11 but I don't think it was admitted.

12 JUDGE YOUNG: Oh, right.

13 MR. MARQUAND: But if it wasn't admitted, I would
14 tender...

15 CHAIRMAN BECHHOEFER: Well, okay, without
16 objection, we will admit TVA Exhibit 120, if it hasn't
17 already been admitted. I'm not sure whether that means we
18 give it double weight if it has been, but it's admitted.

19 BY MR. MARQUAND:

20 Q Now, I'm going to show you Staff Exhibit 37.

21 JUDGE COLE: My records indicate that 120 was
22 admitted on May 8th.

23 MR. MARQUAND: Thank you.

24 CHAIRMAN BECHHOEFER: What staff exhibit is this?

25 MR. MARQUAND: It should be Mr. Fiser's 1996

1 complaint.

2 CHAIRMAN BECHHOEFER: Now, which number?

3 MR. MARQUAND: 37.

4 CHAIRMAN BECHHOEFER: 37. Okay. We have that up
5 here someplace. 37. That was a separate -- no. We looked
6 at it earlier today, I think. No, wait a minute, this --
7 these are TVA's, weren't they?

8 JUDGE COLE: What are we looking for? TVA...

9 CHAIRMAN BECHHOEFER: No, staff. Staff 37.

10 MR. MARQUAND: Staff 37. It's in Book 2.

11 BY MR. MARQUAND:

12 Q This is your complaint to the Department of Labor
13 in 1996; correct, Mr. Fiser?

14 A That's correct.

15 Q All right. Attached to this first page is a cover
16 letter, is a document which you call "Sequence of Events."

17 A That's correct.

18 Q This sequence of events is different than the
19 sequence of events we looked at earlier, which is Joint
20 Exhibit 27, isn't it?

21 A That's correct.

22 Q All right. In the first page you have an entry
23 for January of '92 that goes on for a page-and-a-half;
24 correct?

25 A That's correct.

1 Q Now, this sequence of events isn't based on your
2 transcription of any tape recordings, is it?

3 A Is not?

4 Q Is it based on transcription of tape recordings?

5 A Just as a history from the previous case.

6 Q All right. This January '92 entry, is there a
7 tape recording that supports this? Did you tape record this
8 January '92 conversation and meeting?

9 A No.

10 Q All right. Your sequence of events in connection
11 with your 1993 complaint doesn't contain this January '92
12 entry, does it?

13 A January '92 entry? My 1993 case does in the tape
14 recordings.

15 Q You have a tape recording of this January '92
16 meeting with Wilson McArthur, Tom Peterson, and later Tom
17 McGrath?

18 A No, but I do have the recording of me discussing
19 this with Wilson McArthur.

20 Q My question is: Do you have an entry of this
21 January '92 meeting, not some reference to it, but is there
22 an entry for this January '92 meeting in your '93 sequence
23 of events?

24 A No.

25 Q What did you prepare this sequence -- this entry

1 from this sequence of events from?

2 A Just a compilation of the facts leading up to the
3 1996 case.

4 Q All right. But this January -- I'm talking about
5 in this sequence of events, which is part of NRC Exhibit 37,
6 you have an entry for January of '92.

7 A Right.

8 Q In 1993, you had another document which you called
9 sequence of events.

10 A Uh-huh.

11 Q And that's Joint Exhibit 27.

12 A That's correct.

13 Q Now, there is not a corresponding January '92
14 entry in Joint Exhibit 27, is there?

15 A No.

16 Q My question: In 1993, when you did your sequence
17 of events, you claim to have prepared it from tape
18 recordings and your personal planner.

19 A Right.

20 Q My question is -- in 1996, when you did this
21 sequence of events and you had this entry for January of
22 '92, we know you don't have a tape recording for that.

23 A Right. Uh-huh.

24 Q We haven't seen a planner note for this. What did
25 you prepare this particular entry from?

1 A Just a -- a compilation of the -- of the
2 information that I felt like was germane in substantiating
3 my claim for 1996. And they are summaries of a lot of the
4 information that was here, rather than just reproduce this
5 document in its entirety (sic), and add to it, I just
6 summarized some of the information leading up to the 1996
7 case.

8 Q What documents did you rely upon -- tell me which
9 specific documents you relied upon to prepare this entry for
10 January '92.

11 A Various documents, conversations.

12 Q What document?

13 A Like I said, it would be various documents. For
14 example, this subcommittee that Mr. Overlit (phonetic)
15 headed up, I had that report. I had -- by that time I had
16 documents from Bill Jocher's case that I did not have
17 previously where it explained certain aspects of the
18 previous case that was learned in the discovery phase.
19 There was a lot of stuff that came into existence after this
20 1993 phase that I then was -- had in my possession. So
21 there was a lot of stuff.

22 Q Mr. Fiser, let me direct your attention to the
23 second page of Staff #37.

24 A Yes.

25 Q That is entitled, "Sequence of Events." There is

1 an entry there dated January of '92. Do you see that?

2 A Yes.

3 Q It refers to a meeting that occurred between you,
4 Dr. McArthur, Tom Peterson, later Tom McGrath, and witnessed
5 by Jocher, Ritchie, Debbie Bowdine, and Don Adams. Do you
6 see that?

7 A Yes. Yes.

8 Q What documents did you have that referred
9 specifically to what happened during this meeting?

10 A That was my -- probably my recollection of the
11 meeting where McGrath gets up and storms out of my office.
12 Probably should have been February of '92.

13 Q All right. So in '96, when you were in danger of
14 losing your job, you produced this document regarding a
15 meeting in which you claim Tom McGrath stormed up and
16 stormed out of your office? But you didn't produce -- you
17 didn't have such a document in '93, when you were claiming
18 that you had lost your job? It wasn't part of your sequence
19 of events in '93?

20 A Well, it was a part of the recordings, whenever
21 you look at Beecken's comments, whenever you look -- so
22 you're wrong. I mean, you're just dead wrong.

23 Q Show me an entry in the 1993 sequence of events
24 for January -- this January '92 meeting.

25 A Yeah. It was actually February, as I recall.

1 Q Show me an entry for this meeting.

2 A And that would have been when I was talking to Mr.
3 Beecken on December the 9th, and he makes some comment about
4 Peterson and those guys. Do you recall that?

5 Q I'm asking you for the entry for the meeting, not
6 somebody's reference to it some nine months later.

7 A Well, that would have been -- that would have been
8 in my day planner, and you've already looked at that,
9 wherein I think I had it written February the 25th.

10 JUDGE YOUNG: You're -- you're talking about
11 Exhibit 27?

12 CHAIRMAN BECHHOEFER: 30 -- 37.

13 JUDGE YOUNG: I know. The earlier...

14 MR. MARQUAND: I'm comparing staff...

15 JUDGE YOUNG: ...the earlier sequence of events
16 was Staff Exhibit 27; right?

17 MR. MARQUAND: No, it's Joint Exhibit 27.

18 JUDGE YOUNG: Joint Exhibit 27. Right. Okay.
19 And that's -- that's what you're asking him?

20 MR. MARQUAND: Yes. Your Honors, we're obviously
21 not going to get done with Mr. Fiser today, and I'm going to
22 request that the board issue a subpoena to him for these
23 elusive planner notes he keeps referring to that we have not
24 seen, that we did subpoena for his deposition.

25 MS. EUCHNER: I'm going to object to that.

1 MR. MARQUAND: And that when he returns, that he
2 brings those notes with him. Because they weren't produced
3 at his deposition the first day. And I insisted that he go
4 back to his -- wherever he had them squirreled away, and we
5 still didn't see any notes for this supposed meeting.

6 MS. EUCHNER: Your Honors,...

7 MR. MARQUAND: But I'm going to request the
8 issuance of a subpoena to Mr. Fiser for those documents
9 which have never been produced.

10 MS. EUCHNER: First of all, Mr. Marquand did
11 subpoena those documents for Mr. Fiser's deposition, and Mr.
12 Fiser provided everything that he had to Mr. Marquand. Now,
13 just because Mr. Marquand didn't find what he was looking
14 for doesn't mean Mr. Fiser didn't produce them. I was at
15 that deposition. Mr. Fiser produced everything that he had.

16

17 JUDGE YOUNG: Let's put this aside for one minute.
18 Mr. Fiser, I understood the question to be, and then I
19 checked to make sure, whether there was anything in this
20 sequence of events that you wrote -- well, that's Joint
21 Exhibit 27 that we've looked at, that refers to the January
22 1992 incident where Mr. McGrath and Mr. Peterson jumped up
23 and left your office. And is there any reference in there?

24 THE WITNESS: In the 1993 document? Yes, there
25 is.

1 JUDGE YOUNG: In Exhibit 27. Is that -- was that
2 written in 1997?

3 THE WITNESS: Yes.

4 JUDGE YOUNG: I mean, was that written in -- in
5 1993?

6 THE WITNESS: Yes, Your Honor. Or -- that's
7 correct.

8 JUDGE YOUNG: Is there anything in there referring
9 to that...

10 THE WITNESS: To that meeting?

11 JUDGE YOUNG: ...incident?

12 THE WITNESS: Yes, Your Honor.

13 JUDGE YOUNG: To the incident at which Mr. McGrath
14 and Mr. Peterson got up abruptly and left your office?

15 THE WITNESS: Yes, Your Honor.

16 JUDGE YOUNG: Where?

17 THE WITNESS: Okay, I'm going to have to go
18 through and find it. There's an 80-something...

19 MR. MARQUAND: There is a page in which, on Page
20 52, Your Honor, in December of '92 where Mr. Beecken started
21 to say something about Peterson and those guys, and
22 according to the transcript, the rest of that is
23 unintelligible. It's at the top of Page 52.

24 THE WITNESS: Yes.

25 MS. EUCHNER: And, Your Honor, there's another

1 reference to it on Page 22 of that document, the November
2 16th, 1992 conversation between Dr. McArthur and Mr. Fiser
3 in which Dr. McArthur states that that's when the downhill
4 slide started on Mr. Fiser.

5 MR. MARQUAND: No, that's the question he asked.
6 "Do you know when it started?" He didn't say...

7 MS. EUCHNER: And he answered his own question.

8 MR. MARQUAND: ...he didn't state it.

9 MS. EUCHNER: He answered his own question.

10 THE WITNESS: Yes, he did.

11 MR. MARQUAND: He says, "I don't know what
12 happened." He...

13 MS. EUCHNER: That's your interpretation, Counsel.

14
15 MR. MARQUAND: That's what the document...

16 JUDGE YOUNG: Okay. Okay, let's tone everything
17 down here.

18 MS. EUCHNER: They can read what the document
19 says.

20 MR. MARQUAND: In any event, my question, Your
21 Honor, as you've noted, is there's not a note of January '92
22 entry in this sequence of events. If Mr. Fiser's claiming
23 that Mr. McGrath was the author of his misery in '93, why
24 does he wait until '96 to supposedly document that meeting?
25 If he was the author of his misery, why isn't it in the 1993

1 sequence of events which underlies the 1993 Department of
2 Labor complaint?

3 MS. EUCHNER: That's not the question you asked
4 him.

5 JUDGE YOUNG: Okay.

6 MS. EUCHNER: Why don't you ask him that question
7 and let him answer it.

8 JUDGE YOUNG: Well, I -- the two pages, 52 and 22,
9 have been provided. Were there any other parts of the 1993
10 sequence of events, Exhibit 27, that contain references to
11 the incident with Mr. McGrath and Mr. Peterson?

12 THE WITNESS: I think so, Your Honor. I think
13 there was a conversation that took place between Mr. Bill
14 Lagergren and myself wherein this was discussed, as well.
15 But I would -- I would have to go through here and find it.

16 JUDGE YOUNG: Okay. Well, maybe between now and
17 when you come back you can do that.

18 But let me ask you another question. You just
19 made mention a minute ago about some day planner notes about
20 the meeting.

21 THE WITNESS: Yes, Your Honor.

22 JUDGE YOUNG: Do you have those?

23 THE WITNESS: Yes, but that's -- that's what I was
24 referring to earlier. I have a note that says NSRB meeting
25 is taking place. I had it down on February the 25th, and

1 obviously that...

2 JUDGE YOUNG: February 25th of what...

3 THE WITNESS: 1992.

4 JUDGE YOUNG: Okay. So you have the day planner
5 notes that you're talking about. Have they -- does either
6 counsel know whether those have been introduced as an
7 exhibit?

8 MR. MARQUAND: No, they're not an exhibit.

9 CHAIRMAN BECHHOEFER: Pardon?

10 MR. MARQUAND: They are not an exhibit.

11 CHAIRMAN BECHHOEFER: We've had testimony about
12 this.

13 MR. MARQUAND: Not -- Mr. Fiser's day planner
14 notes from February of '92 are not an exhibit.

15 CHAIRMAN BECHHOEFER: No, I say we have had
16 testimony about it.

17 MR. MARQUAND: Yes, we have.

18 CHAIRMAN BECHHOEFER: Yeah. No, I...

19 MR. MARQUAND: And he's claiming that he basis
20 that testimony upon those day planner notes. I am
21 representing that we subpoenaed those for his deposition on
22 December the 11th, and on December the 11th he showed up
23 without a scrap of paper.

24 JUDGE YOUNG: Okay. And do you dispute that --
25 that those notes have been -- have not been introduced into

1 evidence at this point?

2 MS. EUCHNER: The notes have not been introduced
3 into evidence; no.

4 JUDGE YOUNG: Okay.

5 MS. EUCHNER: But I do dispute that Mr. Fiser
6 didn't provide them. He didn't bring them the first
7 morning, but he immediately, as soon as you requested them,
8 ran home and got them and gave you ample time to look
9 through them. So I -- I would like to get that straight for
10 the record.

11 JUDGE YOUNG: Okay.

12 MS. EUCHNER: Mr. Fiser did respond adequately to
13 the subpoena.

14 JUDGE YOUNG: Was it a situation of your bringing
15 in your day planner, and then only certain pages being
16 copied, or what?

17 THE WITNESS: No, Your Honor. It just -- the only
18 reason I did not bring it the first day is because I had so
19 many documents to bring in. And that was dealing...

20 JUDGE YOUNG: Wait, wait, wait, wait, wait. The
21 only reason you didn't bring it the first day of what?

22 THE WITNESS: Right. The first day of my
23 deposition.

24 JUDGE YOUNG: Okay.

25 THE WITNESS: Was because...

1 JUDGE YOUNG: Okay, did you bring them at any
2 point in your deposition?

3 THE WITNESS: Oh, yes. The next day they were
4 there.

5 JUDGE YOUNG: Okay. So my question again is: Is
6 it a situation of your bringing them in and only certain
7 pages being copied, or what?

8 THE WITNESS: The fact is, I brought them in and
9 TVA went through every single page.

10 JUDGE YOUNG: Did they copy any of them?

11 THE WITNESS: Yes, they did.

12 JUDGE YOUNG: Okay.

13 THE WITNESS: Many times.

14 JUDGE YOUNG: Okay. You still have them; correct?

15 THE WITNESS: Yes.

16 JUDGE YOUNG: Okay. Well, is there any reason why
17 you cannot bring them in the next time? Well, they're a
18 book, apparently; right?

19 CHAIRMAN BECHHOEFER: One page from that book?

20 JUDGE YOUNG: Is it a book?

21 THE WITNESS: Yes, Your Honor.

22 JUDGE YOUNG: Or is it something that you can take
23 the page out of?

24 THE WITNESS: It is a -- it is a book, but I can
25 take the pages out.

1 JUDGE YOUNG: Well, why don't you just bring in
2 the book the next time you come.

3 MR. MARQUAND: They're like this, Your Honor.
4 They're these types of pages, right here.

5 CHAIRMAN BECHHOEFER: I would think that maybe,
6 even if you produce these, which are -- I understand you
7 have done so, it might be useful to bring in a copy, if it's
8 not too burdensome to bring in a copy of the single -- what
9 I understand would be a single page about the events that
10 we're talking about today. Could you do that?

11 THE WITNESS: I could.

12 CHAIRMAN BECHHOEFER: Without too much burden
13 to...

14 THE WITNESS: I could. But I'm not even sure, on
15 that day planner on that day there is anything...

16 CHAIRMAN BECHHOEFER: I see.

17 THE WITNESS: ...except a note that says, "NSRB
18 meeting." And then the rest of it is from my memory and
19 these tape recordings that you already have. So I don't
20 know what value it's going to be. That meeting was, let me
21 assure you, indelibly etched in my mind. Because that was
22 the meeting that took place when...

23 JUDGE YOUNG: Mr. Fiser, let me interrupt before
24 we get into another description of it.

25 COURT REPORTER: Excuse me, Judge. Move a little

1 closer to the microphone. I'm having trouble hearing you.

2 JUDGE YOUNG: Sorry. Okay, let me interrupt
3 before we get into another long description of what
4 happened. I think the simplest thing is for you to just
5 bring in the day planner, the little booklet next time, and
6 then if there's any question about when the meeting took
7 place, if there's any confusion at all, it can be
8 straightened out at least in terms of what you've put into
9 your day planner.

10 THE WITNESS: That is absolutely no problem.

11 JUDGE YOUNG: Okay.

12 THE WITNESS: I state that.

13 BY MR. MARQUAND:

14 Q Mr. Fiser, you filed a 1996 Department of Labor
15 complaint, Staff #37, prior to the selections taking place
16 in '96?

17 A That's correct.

18 Q All right. And before the selections took place,
19 you made sure that you told Ben Easley and Phil Reynolds
20 that you were going to file a Department of Labor complaint?
21 Correct? Who'd I say?

22 You told Ed Boyles and Ben Easley; correct?

23 A As I recall, I did have discussions with them. I
24 don't know what you mean by "made sure."

25 Q Well, you -- you told them?

1 A Yes.

2 Q You made it a point to tell them, "If you file --
3 if you post that job, I'm going to file a complaint"?

4 A That's right.

5 Q Did you tell Wilson McArthur you had filed a
6 complaint?

7 A I don't recall.

8 Q Did you tell Charles Kent?

9 A I don't recall.

10 Q Is there any reason you would have told Charles
11 Kent?

12 A No, other than the fact that if he had asked. I
13 would not just volunteer that information.

14 Q Did you tell Ron Grover you'd filed a complaint?

15 A Yes.

16 Q You tell Sam Harvey you'd filed a complaint?

17 A Don't recall.

18 Q You didn't request the Department of Labor to keep
19 it a secret until after the selections occurred, so that you
20 could not poison the well, did you?

21 A I don't even recall when the Department of Labor
22 started looking into it.

23 Q All right. You filed the complaint June 20 -- you
24 sent it to Carol Merchant on June 25 of '96; right?

25 A That's -- that's when I typed it. I would assume

1 I got it in probably the next day.

2 Q If you would look at Staff Exhibit 22. Staff 22
3 is an interview by TVA's inspector general of Ben Easley
4 concerning a Department of Labor complaint filed by you. And
5 it's dated -- the investigation occurred on July 10th, '96.

6 A That's what time they had this discussion with
7 Ben; correct.

8 Q Correct?

9 A Okay.

10 Q And your interview for the job didn't even occur
11 til -- was it July the 18th?

12 A That's about correct.

13 Q All right. So my question to you was: If you
14 were concerned about people knowing about your protected
15 activity, why did you go to the Department of Labor prior to
16 the selection, or why didn't you ask them to hold it in
17 their back pocket so that people wouldn't know that you had
18 had a Department of Labor complaint prior to the selection?

19 A My concern was that TVA had RIF'd, in essence, the
20 very job that they had offered me to settle the complaint in
21 1994. And that was my concern by virtue of the fact that
22 they decided to -- to do away with these functions in
23 environmental. Now, we never did -- they were never part of
24 my job responsibilities. That they had...

25 Q That's not my question, Mr. Fiser. I wasn't

1 asking you what -- what was your complaint, I'm saying if
2 you were concerned about people being biased towards you for
3 your protected activity, why did you make this a publicly
4 known thing? Why wouldn't you ask the Department of Labor
5 to keep this in their back pocket, to find out what happened
6 in the selection, so that the people involved wouldn't be
7 apprized of it as part of the normal course of the
8 investigation?

9 A My goodness, that's not a public disclosure.
10 That's a file of a complaint to a -- to an agency.

11 Q Right.

12 JUDGE YOUNG: Mr. Fiser,...

13 THE WITNESS: Yes, Your Honor.

14 JUDGE YOUNG: ...do you think that anyone who had
15 any role in deciding who got those two positions, that it
16 would have made any -- that it could conceivably have made
17 any difference to anyone in that position to know that you
18 had filed your Department of Labor complaint?

19 MS. EUCHNER: Your Honor, I know it comes from
20 Your Honor, but I'm going to object to that, because it's
21 asking the witness to speculate on something that he has no
22 knowledge about.

23 JUDGE YOUNG: Well, I think, Mr. Fiser, you've
24 been making a lot of -- you've been drawing a lot of
25 conclusions about what the people at TVA's motivations were;

1 correct?

2 THE WITNESS: That's correct.

3 JUDGE YOUNG: Based on your general understanding
4 of the -- of the motivations of people at TVA, do you think
5 it would have done you more good, more harm, or made no
6 difference in people selecting you -- in selecting the --
7 the people who were to fill those two positions to know that
8 you had filed another Department of Labor complaint?

9 THE WITNESS: I -- I honestly don't necessarily
10 think it would have mattered. Certainly, if I'd been in
11 their position and knew there was one, I would just want to
12 make sure everything was above-board. But the whole reason
13 that I did it in advance was to -- to give these guys in
14 personnel, Reynolds, others, pause for thought that, hey,
15 what are we doing? Why are we RIF'ing or getting rid of the
16 very job that we offered this fellow to settle his
17 complaint? Why, in my opinion, and what I was trying to get
18 them to think about was: Why are we not pulling a retention
19 register?

20 JUDGE YOUNG: So you thought that it might prevent
21 the -- your losing your job?

22 THE WITNESS: Well, my -- my understanding was
23 when you're in a position where you're downsizing, you
24 simply pull a retention register based on seniority. They
25 chose not to do that, they chose to RIF the position,

1 advertise the jobs.

2 JUDGE YOUNG: So -- so, by filing your Department
3 of Labor complaint, you thought you might prevent your
4 losing the job by making them, as you say, pause to reflect?

5 THE WITNESS: Right.

6 JUDGE YOUNG: Okay.

7 THE WITNESS: And -- and to -- and to rethink
8 TVA's policy, which is, as I understand, was whenever you're
9 -- you're downsizing...

10 JUDGE YOUNG: Okay.

11 THE WITNESS: ...you just pull a retention
12 register and keep based on seniority.

13 JUDGE YOUNG: Okay. When you -- when did you file
14 the complaint? What was the exact date? Do you recall?

15 MR. MARQUAND: June 25, Your Honor. I believe
16 it's even date stamped.

17 JUDGE YOUNG: June 25. And when were the
18 interviews done?

19 MR. MARQUAND: The first -- well, some of them
20 were early as July the 11th. And I believe Mr. Easley's is
21 -- is it the 12th, Mr. Fiser?

22 THE WITNESS: Seemed like it was July the 18th,
23 wasn't it?

24 MS. EUCHNER: Yes, Your Honor.

25 MR. MARQUAND: Oh, are you talking about the

1 interviews for the job?

2 JUDGE YOUNG: Uh-huh.

3 MR. MARQUAND: I think that was the 18th.

4 JUDGE YOUNG: Okay. Did you -- did you have any
5 concern that if -- if things did not go your way, that you
6 might not want people in a position of selecting those jobs
7 to know that you'd filed the complaint?

8 THE WITNESS: Honestly, at the time I filed it I
9 did not know they would find out. There's no way I could
10 know that.

11 JUDGE YOUNG: Did you seek to have it kept
12 confidential or anything like that?

13 THE WITNESS: I just thought that was a standard
14 operating procedure with the Department of Labor.

15 JUDGE YOUNG: Okay. Okay.

16 BY MR. MARQUAND:

17 Q Well, actually, Mr. Fiser, I'm intrigued by your
18 answer that you filed this so that personnel, who was --
19 your testimony was personnel was responsible for eliminating
20 this job and posting the new job; right? You wanted
21 personnel to rethink the elimination of the job and the
22 posting of the new job?

23 A Right.

24 Q All right. And you thought that by letting them
25 know about this, that they would be sensitized to this and

1 they would be extra cautious in how they handled the matter?

2 A No, actually, if you'll look at the discussions
3 that I had I think it was with Mr. Ed Boyles, and -- and
4 with Mr. Ben Easley, you know, Ben just flat out told me,
5 said, "Gary, this is wrong. What these guys should be doing
6 is pulling a retention register and keeping two people in
7 those positions based on seniority."

8 Q That's strange, Mr. Fiser.

9 A So what they are doing...

10 Q That's not what Mr. Easley told us.

11 A I don't care.

12 Q He told us that it was appropriate to post it.

13 A That's what Mr. Easley told me. That's what he
14 told me. Was the fact that since the position had not
15 changed, granted, they took away environmental functions
16 that we never did, that they were supposed to then,
17 according to the -- the rules that were in existence, they
18 should, by all rights, be pulling a retention register,
19 since it's a classic reduction in force, and keeping based
20 on seniority.

21 CHAIRMAN BECHHOEFER: Mr. Fiser,...

22 A Which would mean I would get a job.

23 CHAIRMAN BECHHOEFER: ...in -- in effect, were you
24 seeking the same treatment that I understand Wilson McArthur
25 got at the time?

1 THE WITNESS: If I understand your question, I
2 think that's correct. He was looking to be retained based
3 on seniority.

4 CHAIRMAN BECHHOEFER: Right.

5 THE WITNESS: And so was I.

6 CHAIRMAN BECHHOEFER: Yes.

7 THE WITNESS: I think that's correct, Your Honor.

8 CHAIRMAN BECHHOEFER: So you were, in effect,
9 seeking similar treatment?

10 THE WITNESS: Yes, Your Honor.

11 CHAIRMAN BECHHOEFER: And were not -- and were not
12 getting it, in your opinion?

13 THE WITNESS: Yes, Your Honor.

14 CHAIRMAN BECHHOEFER: Yes. Thank you.

15 JUDGE YOUNG: So you -- you knew or understood
16 that -- that Mr. McArthur -- that there had been a
17 possibility, perhaps, that they might post his job, but that
18 -- that a decision had been made not to post it, but to
19 determine it based on his prior experience?

20 THE WITNESS: Well, all of this would be in
21 hindsight, and I'm not sure exactly the sequence, Your
22 Honor. But certainly that is the way it turned out.

23 BY MR. MARQUAND:

24 Q Mr. Fiser, if you'll look at Staff Exhibit 22, of
25 which I've put before you, it's the record of interview by

1 the inspector general.

2 A Of Mr. Ben Easley. Yes.

3 Q Yes. In that, Mr. Easley indicates that he felt
4 they had to -- on Page 2, states that he thought that they
5 had to post the position because the position descriptions
6 had been changed. He doesn't say that they should have
7 proceeded with a retention register. You see that?

8 A Well, you're partially correct. It is my
9 understanding that that's exactly what Mr. Ben Easley
10 thought until he discovered that they were getting rid of
11 functions that we never did. Therefore, in his mind, it
12 was...

13 Q I'm asking you to look at the document. Is that
14 what the document says?

15 A I don't know. I've never seen this before in my
16 life.

17 Q Look at the -- take whatever time you need.

18 A Okay, I will read this document.

19 Q Mr. Fiser, let's come back to that later, since
20 it's going to take you a while to review that.

21 I'd like to address the question Judge Bechhoefer
22 had for you. And that was: When you went to Ben Easley and
23 Ed Boyles and you told them you didn't think they should be
24 posting your job or the -- the new job, that you thought
25 that was your job by right of the settlement agreement,...

1 A Yes.

2 Q ...Judge Bechhoefer asked you if you were seeking
3 the same treatment that Dr. McArthur received.

4 A Yes.

5 Q And is that -- is that the case?

6 A I think, as I understood the question and as I
7 understand what happened with Mr. McArthur, and I don't know
8 all of the information and details there, but I think that's
9 essentially the case.

10 Q All right. And what you understood is that Dr.
11 McArthur was -- that the new position was deemed to be the
12 same as the position he previously held, so he was
13 transferred into it?

14 A Essentially; yes.

15 Q All right. Other than Dr. McArthur, were you
16 aware that there were other jobs in the operation support
17 organization that were being eliminated?

18 A I don't recall.

19 Q You don't know of any other jobs being eliminated?

20 A In the operations support?

21 Q Right.

22 A I know there were some environmental jobs that
23 were going away.

24 Q All right. What about in the -- Mr. Goetcheus'
25 organization? Did the jobs go away there?

1 A I -- I don't remember.

2 Q What jobs about -- in Mr. Rogers' organization,
3 were there jobs going away there?

4 A Don't remember.

5 Q You attended the June 17th all hands meeting;
6 right?

7 A Yes.

8 Q And the new organization was announced?

9 A Yes.

10 Q Did they not announce that there were a number of
11 jobs being eliminated and a number of jobs being posted?

12 A I don't recall.

13 Q You don't recall that at all?

14 A Well, I don't recall. I don't deny it, but I
15 don't recall.

16 Q So all you recall is that you went to this
17 meeting, and that you understood the job you had was being
18 eliminated, and that the new job was being posted, and
19 that's all you came away with?

20 A I was primarily focusing on -- on our own group, I
21 would imagine; yeah.

22 Q How many jobs, other than Dr. McArthur's, do you
23 know of in which the incumbent was transferred into the new
24 job?

25 A I don't know.

1 Q How many...

2 A How would I know?

3 Q Well, you were aware of Dr. McArthur's situation.

4 A Well, yes. I was made aware of it in that
5 meeting.

6 Q Are you aware that that's the only one in the
7 entire operations support organization that occurred that
8 way?

9 A No, I don't know. I don't know what happened in
10 the rest.

11 Q Do you know how many others were eliminated and
12 how many others were posted?

13 A No.

14 Q Are you aware that, in fact, all of the other jobs
15 were -- that were eliminated, people had to apply on new
16 jobs that were being posted?

17 A No, I have no idea.

18 Q You're not aware that Dr. McArthur's is the only
19 exception?

20 A Don't know. I don't even know if that's true.

21 Q All right. If you would look at Page 2 of Staff
22 Exhibit 22. That's the record of interview for Mr. Easley.

23 A Yes.

24 Q In about the sixth paragraph down, do you see
25 where it said, "Easley said they had to post both positions

1 because they had changed the position description by
2 eliminating the environmental portion of the job"? You see
3 that?

4 A Yes, I see that.

5 Q That's not consistent with Mr. Easley saying what
6 you claim he said, that they should have used a retention
7 register, is it?

8 A That is not consistent. Also he states in this
9 same document here that they had to post because half of the
10 job functions were going away. Where did I see that? I saw
11 that on this page.

12 JUDGE COLE: Middle of the page. "Easley said..."

13 Q Towards the bottom, very...

14 A "Easley said..." Okay.

15 Q ...very bottom paragraph, it says, "Easley
16 reiterated in stating positions were posted because the
17 position descriptions were changed..."

18 A Yeah. Keep going.

19 Q "...eliminating one-half of the position
20 descriptions duties by taking away the environmental
21 portion."

22 A That's a lie. That's incorrect. There were only
23 a couple of little functions in the whole PD that changed.
24 I say that's a lie; that's a misrepresentation by somebody.
25 Either the I GUESS or from Ben's memory. Because there were

1 only two or three little bullet items that went away in the
2 entire PD. And to make a statement that environmental was
3 responsible for half of the job functions of the chemistry
4 person is factually incorrect. There was a minute change...

5 Q Mr. Fiser,...

6 A ...to the job description. And those jobs --
7 functions that were removed were not even being performed.
8 So are you saying we were only doing half our job for two
9 years?

10 Q All right, Mr. Fiser, you...

11 A That's laughable.

12 Q ...you were chemistry and environmental program
13 manager; correct?

14 A I'm sorry, I was laughing. Would you repeat that
15 question.

16 Q In '96 you were the chemistry and environmental
17 program manager; correct?

18 A That's -- well, since about '90 -- that happened
19 in '94, '90...

20 Q From '94 -- '94 to '96?

21 A Correct.

22 Q All right. And previously, you worked in
23 chemistry?

24 A Yes.

25 Q Had you ever worked in human resources at TVA?

1 A No.

2 Q Had you ever had any human resources training?

3 A Yes.

4 Q As a human resource officer?

5 A No.

6 Q Okay. Did you -- did you ever have any
7 responsibility for classifying position descriptions?

8 A For classifying them?

9 Q Yes. That's an HR function, isn't it?

10 A Classifying them?

11 Q Classifying a position description.

12 A No, not that I recall. I had the responsibility
13 to develop a lot of them.

14 Q Okay. And isn't the determination of how a job
15 fits on a competitive level a function of the human resource
16 organization?

17 A Yes.

18 Q Okay.

19 JUDGE YOUNG: Did you -- did you understand your -
20 - did you ever understand your job duties as chemistry and -
21 - and environmental program manager to include any
22 environmental duties?

23 THE WITNESS: No. We had the duties in there.
24 But what Ron had set up was a slow transition to -- to train
25 people on the environmental functions that we were supposed

1 to do. That never happened. And we always had people in
2 the environmental group. Deidra Nida, Trish Landers, even,
3 to a certain extent, and others, that always picked up and
4 did those functions. And we never had time to do the cross-
5 training; therefore, we never performed those functions. So
6 they took away functions we never did. And there were only
7 a couple of them.

8 JUDGE YOUNG: What do you mean they took away
9 functions?

10 THE WITNESS: They -- when they posted the job...

11 JUDGE YOUNG: Oh, when they posted the job.

12 THE WITNESS: ...in 1996, they took away functions
13 we were not doing.

14 JUDGE YOUNG: Okay. I understand.

15 CHAIRMAN BECHHOEFER: Mr. Fiser,...

16 THE WITNESS: Which then...

17 CHAIRMAN BECHHOEFER: Whoops.

18 THE WITNESS: ...returned it to exactly, almost
19 verbatim, the same job they had offered me to settle the
20 case in 1994.

21 CHAIRMAN BECHHOEFER: Mr. Fiser,...

22 THE WITNESS: Yes, sir.

23 CHAIRMAN BECHHOEFER: ...could you estimate, was
24 the environmental functions that you actually performed as
25 much as, say, five percent of the duties that you performed?

1 THE WITNESS: I can estimate it was zero.

2 CHAIRMAN BECHHOEFER: I see. Thank you.

3 BY MR. MARQUAND:

4 Q Mr. Fiser, but you did indicate that there were
5 other people in the organization who performed the
6 environmental functions; correct?

7 A That's correct.

8 Q And they had chemistry and environmental
9 specialist position descriptions as well; correct?

10 A I don't recall that.

11 Q Debra Nida? Deidra Nida?

12 A Deidra Nida. I don't recall what her title was.
13 It was strictly in environmental, as I recall.

14 Q You had, at one point, in the organization Jim
15 Mantouse (phonetic) was a chemistry environmental
16 specialist, and he did the environmental functions?

17 A At one time. But I don't recall when he left.

18 Q All right. Allen Sorrell? David Sorrell?

19 A David Sorrell.

20 Q He was a chemistry and environmental specialist,
21 as well?

22 A That's correct.

23 Q He performed the environmental functions?

24 A At -- at times, yes.

25 Q And so the intent was, over time, for him to learn

1 to perform the chemistry functions, and for you and Chandra
2 to learn to perform the environmental functions; right?
3 When you assumed the job.

4 A With -- with specific reference to Sorrell, David
5 Sorrell, you know, I know he left early on. I don't recall
6 if he was given a part of this at this time. I don't...

7 Q When you were...

8 A I suppose he was.

9 Q Okay. When you were selected for the job, he was
10 selected for the same job at the same time as you, wasn't
11 he?

12 A Yes. Oh, I think that's correct.

13 Q In '94?

14 A Or '95, whenever.

15 Q When you went -- well, we talked about the
16 selection earlier, the selection review board in '94.

17 A Yeah. I just don't recall the exact date. But
18 that's about right.

19 Q All right. He was selected in the same process
20 that you were for the same job description, and he performed
21 the environmental functions, you performed the chemistry
22 functions. And the intent, over time, was for the two of
23 you to learn each other's areas of expertise?

24 A Right. As I recall, that's correct. That cross-
25 pollination never took place.

1 Q Okay. He had the same position description you
2 did. He performed some of the functions, you'd perform some
3 of the others?

4 A But he was doing environmental. Right. I never
5 did them. I am assuming he was in the same position
6 description. I think so. But it's been too long.

7 MR. MARQUAND: Your Honors, we're obviously not
8 going to get finished today, and if you have any other
9 commitments you'd like to make tonight, maybe this would be
10 a good time to break.

11 JUDGE YOUNG: If -- I mean, it sounds as if you
12 don't think you're going to finish in the next half hour or
13 so.

14 MR. MARQUAND: Well, I understood Judge
15 Bechhoefer's told me he had something else he wanted to do
16 this evening.

17 JUDGE YOUNG: Oh, okay.

18 CHAIRMAN BECHHOEFER: It's something I could miss.

19

20 MR. MARQUAND: Well, I don't think -- I don't
21 think we're going to get done anytime soon.

22 JUDGE COLE: By "anytime soon," what does that
23 mean in terms of minutes, half-hour units, or hour units?

24 MR. MARQUAND: I don't know.

25 JUDGE COLE: All right.

1 MR. MARQUAND: I'll be honest with you.

2 CHAIRMAN BECHHOEFER: Okay, we'll adjourn. But
3 before we do, let's clarify a day or two schedules, just --
4 and perhaps define when Mr. Fiser will return, if -- if
5 possible.

6 MS. EUCHNER: Your Honor, we are going to go ahead
7 and put Mr. Corey on the stand first thing tomorrow morning.
8 And when he is done, we're going to call Mr. Kent, who will
9 continue on into Thursday. And then, after that, counsel
10 and I will have to sit down and talk about when would be the
11 best time to fit in Mr. Fiser, based on the rest of the
12 schedule that we had already worked out.

13 CHAIRMAN BECHHOEFER: Okay. All right.

14 JUDGE YOUNG: I had a question, and I'm trying to
15 find my sheet on which I made -- oh, here. I had noticed --
16 I had noticed that some of the exhibit numbers between 124
17 and 129 and -- and 115 of the TVA exhibits were not there.
18 Is that just because you haven't...

19 MR. MARQUAND: I have a couple of rebuttal
20 exhibits between 124 and 129 that we haven't introduced.

21 JUDGE YOUNG: Okay. That's what I thought. And I
22 just wanted to make sure that I -- that none had been
23 introduced that I didn't have copies of.

24 And I think I had a question mark by Rob Ritchie's
25 name. Is Greg Taylor going to be called?

1 MR. MARQUAND: No. I don't know who he is.

2 JUDGE YOUNG: He's the one that signed the...

3 MR. MARQUAND: Oh, I know he signed it. I just
4 don't...

5 JUDGE YOUNG: Okay.

6 MR. MARQUAND: Other than having ever seen that
7 signature, I know nothing about the man.

8 JUDGE YOUNG: Okay. That's all I had to ask.

9 CHAIRMAN BECHHOEFER: Okay, thank you all. We'll
10 -- we're adjourned for the day. We'll return tomorrow at
11 9:00 a.m.

12 MR. MARQUAND: Thank you, Judge.

13 CHAIRMAN BECHHOEFER: This same location.

14 MS. EUCHNER: Thank you, Your Honor.

15 (Whereupon, the hearing was adjourned at 5:30
16 p.m., to resume at 9:00 a.m., on Wednesday, June
17 12, 2002.)

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 Browns
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.

15/ William Warren
William 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