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Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

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

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

Location: Chattanooga, Tennessee

Date: Thursday, June 13, 2002

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

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

Chickamauga Room
Read House Hotel
827 Broad Street
Chattanooga, Tennessee

Thursday, June 13, 2002

The above entitled matter came on for hearing
pursuant to Notice at 9:11 a.m.

BEFORE:

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

PAGES 3046 THROUGH 3338

APPEARANCES OF COUNSEL:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Charles E. Kent, Jr.	3049	3183	3266 3297	3295
David Voeller	3303	3326	3335	3336

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

25	Premarked	3182
36	Premarked	3325

Staff:

70 through 74	Premarked	3182
135	Premarked	3182

TVA:

12	Premarked	3285
80	Premarked	3244
131	3186	3200

P R O C E E D I N G S

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CHAIRMAN BECHHOEFER: Good morning, ladies and gentlemen. Before we resume the testimony of Mr. Kent -- good morning, Mr. Kent.

MR. KENT: Good morning.

CHAIRMAN BECHHOEFER: -- are there any preliminary matters that the parties wish to raise?

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

MR. MARQUAND: No, Your Honor.

CHAIRMAN BECHHOEFER: Well, Mr. Dambly.

MR. DAMBLY: All right.

Whereupon,

CHARLES E. KENT, JR.

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

DIRECT EXAMINATION (continued)

BY MR. DAMBLY:

Q Mr. Kent, you recall yesterday when we talked about some statements that it was alleged you had made concerning some bird falling out of the nest and a hornet's nest; do you remember that discussion?

A Yes, I remember that discussion.

Q If you would turn to Joint Exhibit 27, please. And on page 76 in that exhibit. Do you see on page 76, about halfway down it says:

1 "Kent: He talked to other folks." and then
2 Fiser says "Pardon my back."

3 And then there's a statement "Kent: That
4 would say hey it doesn't matter where he's going
5 to be dead meat. I'm not kidding you, it's like
6 throwing a rock in a hornet's nest. I'm trying to
7 be honest with you, they came out of the
8 woodworks, comments came out the woodwork."

9 "Fiser: Who did?"

10 "Kent: I don't know, I don't really know,
11 but I know several people called Fenech and I
12 asked Wilson to not let anyone talk to Fenech
13 until I get back with him, but several people
14 talked to Fenech so Bob and I talked and decided
15 not to be fair to you -- I now that sounds
16 strange, but it'd be like a baby bird had fell out
17 of the nest and putting it back in the nest, the
18 mamma bird would pick you to death, and I think
19 you were doomed from the start."

20 Do you recall having a conversation like that with
21 Mr. Fiser?

22 A I don't recall -- what is this document?

23 Q This is an exhibit that Mr. Fiser put together of
24 his transcriptions of conversations that were recorded.

25 A I'm not -- I can't remember this conversation. Is

1 this one of the conversations we would have discussed
2 yesterday?

3 Q Would have discussed?

4 A Yes.

5 Q Well, this is a -- I asked you yesterday whether
6 you made these statements to Mr. Fiser and you didn't recall
7 making these statements. So yes, we discussed it.

8 A So this is -- it looks like from the way this is
9 laid out that on July 9, I would have talked with him and
10 this is the transcript of our conversation?

11 Q This is Mr. Fiser's transcription of what he
12 recorded, what he could hear that he recorded. This is one
13 of those taped conversations. Remember we talked about
14 taped conversations?

15 A Yes, I'm aware of that. I don't remember
16 specifically making these statements.

17 Q Okay. At this point, I'd like to play for you the
18 conversation.

19 (Whereupon, a tape recording was played.)

20 Q Does that help you recall the conversation?

21 A No, it doesn't.

22 Q It doesn't. Did you recognize yourself on the
23 tape?

24 A I assume it's my voice on the tape, but it's a
25 very poor quality recording.

1 Q Did you have any trouble hearing the bird's nest
2 and the hornet's nest?

3 A I did hear that comment, yeah.

4 Q Do you recall -- whether you recall the words or
5 not, do you recall that in fact the message you got back was
6 there was a very severe reaction to putting Mr. Fiser in
7 that position?

8 A What I recall of that time period was I made the
9 phone call to Mr. Wilson McArthur at Gary's request and
10 Wilson called me back within a few days and told me that he
11 didn't think -- he told me that there were comments that
12 he'd gotten back from individuals he didn't name and they
13 indicated a lack of confidence in Gary's management
14 abilities.

15 I did relay that to Gary in a conversation within
16 a few days of Wilson's call to me. At that time period,
17 there was an issue with Fenech and people calling Fenech
18 that I remember, because I had talked to Bob Fenech about
19 the possibility of bringing Gary back out to the plant and
20 Bob had said that was fine with him, go ahead, and you can
21 discuss the issue with him, determine his interest, that
22 kind of thing. So I did that. Fenech asked me to talk to
23 McArthur and see if he had a problem with me pursuing that
24 line. I did talk to McArthur and McArthur said I'll be glad
25 to support you in that. That was prior to me having the

1 first conversation with Gary about the possibility of coming
2 back out to the plant.

3 About -- within a day or so of that conversation
4 with Wilson, Fenech got several phone calls from corporate.
5 I know he called Wilson McArthur back and -- at least I
6 believe he called Wilson McArthur back because Bob addressed
7 the issue to me one morning that he had gotten negative
8 feedback from Wilson and that -- about bringing Fiser out
9 there and that I had told him that Wilson would support it,
10 and he kind of felt like I was setting him up.

11 And I told him, no, that's not the case. Let's
12 get on the phone with Wilson right now and so we did, we
13 called Wilson from Fenech's office and had a follow up
14 conversation with Wilson on it.

15 So I guess there was some negative -- I know there
16 was some negative feedback coming to Bob about it. I don't
17 know who it was coming from. He had talked with Wilson, I
18 don't know what Wilson had told him but Bob's impression was
19 that Wilson didn't think it would be that good an idea.
20 Just prior to that, Wilson had told me he thought it would
21 be fine and he'd support me in doing that.

22 So, you know, there was some disconnect there
23 somewhere and we did try to correct that with a conversation
24 that Fenech and I had with Wilson. That's really the only
25 conversations that I'm aware of at the time.

1 MR. MARQUAND: Excuse me. What happened in the
2 follow up conversation that you and Fenech had with Wilson?

3 MR. DAMBLY: Objection, I'm asking the questions.

4 JUDGE YOUNG: You can clarify.

5 MR. MARQUAND: It just seemed to make sense to
6 have it in this same sequence instead of referring back to
7 it several hours from now. I'm sorry.

8 JUDGE YOUNG: It would make sense, Mr. Dambly, if
9 you wanted to ask him that.

10 MR. DAMBLY: I thought he just told us what he did
11 in the follow up conversation with Wilson. They called him
12 on the phone, he and Fenech; is that correct?

13 THE WITNESS: Yes, that's correct. And to clarify
14 that, in the conversation that Bob Fenech and I had with
15 Wilson, Wilson did confirm that -- and I can't remember if
16 this was before or after I talked to Gary the first time, I
17 believe this was before I talked to Gary the first time --
18 Wilson confirmed that he would support whatever we wanted to
19 do at the site. And that's what he had basically told me
20 before and that's what I had communicated to Fenech and so I
21 was afraid that Fenech thought I had lied to him because,
22 you know, he had gotten some negative feedback too,
23 supposedly from the same guy giving me positive feedback.

24 BY MR. DAMBLY:

25 Q Did you ever ask Mr. Fenech who he was getting the

1 feedback from in corporate that Fiser was a no-go?

2 A No, I kind of assumed who it might have been, I
3 could surmise who it might have been because there were a
4 lot of people in corporate that would have liked to -- that
5 wanted to direct what was going on at the site at that time.
6 So we got a lot of feedback from a lot of different people
7 at corporate. So, you know, I could probably surmise who it
8 may have been, but I don't really know, didn't ask.

9 JUDGE YOUNG: When you say wanted to direct, you
10 mean just generally wanted to have control or influence?

11 THE WITNESS: Influence, yes.

12 JUDGE YOUNG: Okay.

13 BY MR. DAMBLY:

14 Q You were getting more help than you wanted.

15 A Yes, getting more help than I wanted, that's true.

16 Q Probably not unusual.

17 A That's not unusual, no, especially in times -- at
18 this time in the life of Sequoyah, performance was not good.
19 We were in a pretty poor performing plant condition, we had
20 I think maybe both units shut down for an extended outage.
21 We had a steam leak on the secondary side on one unit, it
22 was shut down for an extended outage. There were lots of
23 issues related to erosion, corrosion and that kind of thing
24 on the secondary plant and so, you know, there was a lot of
25 change needed to be made in the way we were doing business

1 and there was a really major effort to restructure, refocus
2 and restart the units. So we were getting a tremendous
3 amount of support from all sides.

4 Q Now going back to the organization when you were
5 the radcon manager at Sequoyah.

6 A Uh-huh.

7 Q And Mr. Fiser was the chemistry superintendent.
8 Your position was a PG-10 or 11, is that correct?

9 A Eleven, yes.

10 Q Eleven. And his was a 9?

11 A Yes, I believe that's correct.

12 Q And when you combined radcon and chemistry and you
13 became radcon chemistry manager, you became a PG-senior?

14 A Senior, yes.

15 Q What level was -- PG level was the radcon manager
16 in the new organization?

17 A In the new organization, it went to a 10.

18 Q It went down to a 10, okay.

19 Now if we look at the org chart for the new -- I
20 think it's Staff Exhibit 12 --

21 JUDGE YOUNG: Twelve, did you say?

22 MR. DAMBLY: Twelve.

23 BY MR. DAMBLY:

24 Q I guess we need to compare that with 58, Joint
25 Exhibit 58.

1 A Fifty-eight, did you say?

2 Q Yes, Staff Exhibit -- sorry -- Joint Exhibit 58
3 and Staff Exhibit 12. Joint is the one you were just in.

4 Now referring to Joint Exhibit 58, the interim
5 organization you proposed --

6 A Yes.

7 Q -- prior to your becoming -- this says radcon
8 manager but it was actually radcon chem manager?

9 A I had both responsibilities, we hadn't changed the
10 title of my position yet as part of this transition.

11 Q Okay, so prior to combining the two organizations,
12 Mr. Fiser as the chemistry superintendent would have had
13 responsibility for what's under Mr. Ritchie, Ms. Bodine and
14 Mr. Adams and part of Mr. Osborne?

15 A That's correct.

16 Q And you would have had responsibility for what's
17 under Mr. Vincelli and Mr. Palmer or Ms. Palmer, whatever.

18 A And the rest of Mr. Osborne.

19 Q And the rest of Mr. Osborne.

20 A Yes.

21 JUDGE YOUNG: And who would have had the rad
22 responsibility, did you say?

23 THE WITNESS: I had responsibility for a good part
24 of the function under Mr. Osborne, all of Mr. Vincelli's
25 area as shown here and all of Mr. Palmer's area.

1 JUDGE YOUNG: You're talking about prior to this.

2 THE WITNESS: Prior to this, yes.

3 BY MR. DAMBLY:

4 Q And your position was two grades higher than Mr.
5 Fiser's, is that correct?

6 A Yes, that's correct.

7 Q Would it be fair to say that the radcon program is
8 a higher priority or considered more important than the
9 chemistry program?

10 A No, I don't think that would be fair to say.

11 Q You don't think so. When it comes to budget time,
12 what gets cut first, radcon or chemistry?

13 A Well, I can't tell you about prior to 1993, I can
14 tell you about since 1993. Since 1993, both programs are
15 pretty much equal. We don't really -- you know, we have
16 adequate budget to do what we need to do and even in times
17 when budgets are extremely tight, as they are this year, we
18 still have resources that we need to do everything that's
19 required in both program areas.

20 Q Do you know who Pat Lydon is?

21 A I know the name, I have met Pat. He was at
22 Sequoyah I believe just prior to my coming to Sequoyah in
23 '89 and he may have been there for some period after.

24 If I could make a comment about the grade level
25 discrepancy or difference, one of the differences -- this is

1 my perception -- one of the differences in the way jobs are
2 graded out in the two organizations is really a function of
3 how much management support that group is already getting
4 from other places. And in the case of the chemistry
5 organization, chemistry reported to operations and it was
6 expected that the operations manager would provide a degree
7 of support to the chemistry program so that the chemistry
8 superintendent wouldn't be wholly responsible for
9 everything, as an example.

10 In my case, I was a direct report to the plant
11 manager, there was no other support resource for the
12 program, so that's the reason I think the grades were
13 different, not level of importance.

14 Q Okay. And I believe yesterday you said you
15 thought Mr. Fiser needed to have been more aggressive in
16 seeking money for the problems in the chemistry program.

17 A Yes, I do believe -- I don't know if I made that
18 specific comment yesterday, but I feel that way. I feel
19 like the chemistry program needed extra support, maybe not
20 money, but direction and focus and emphasis. They may have
21 had adequate budget.

22 Q I'm not sure you have it up there, TVA Exhibit
23 122, it's a fax to Jim Vorse from Gary Fiser dated 11/14/95.

24 A I don't think I have anything --

25 Q I'm not sure that it's in any of the books or that

1 they brought it back up there.

2 On the last page, this is one of those TVA OIG
3 interviews, it's an interview of Pat Lydon.

4 JUDGE YOUNG: Mr. Dambly, what number exhibit
5 again?

6 MR. DAMBLY: This is TVA Exhibit 122, it's one not
7 in their books. I'll just read to you the last paragraph on
8 page 3 of the interview:

9 "When questioned about the chemistry use
10 program (CUP), Lydon advised CUP was set up to
11 identify, label and control chemicals that came
12 into the plant. This program was designed to
13 ensure the clear usage of chemicals in the plant.
14 There were problems getting in place the final
15 procedures and management wanted to show a 30-
16 minute videotape to the employees to show that TVA
17 had met the training requirement. Lydon stated
18 Beecken was a master at quick fixes. Lydon
19 believed the program was unacceptable, although
20 Lydon was responsible for the CUP budget, he and
21 his line managers completed a detailed budget
22 which Bynum 'slashed to hell'. Bynum and Beecken
23 were always asking him to do more with less."

24 Now Mr. Lydon at that point was Mr. Fiser's
25 supervisor, correct?

1 A I don't know who would have been his supervisor.

2 Q He was the ops manager.

3 A Then he would have been his supervisor, that's
4 correct. There is a -- can I clarify something on this
5 thing?

6 Q Sure.

7 A We have two programs at the plant and have for a
8 long time. The chemistry upgrade project, CUP, is a
9 different issue than chemical traffic control. And it
10 appears that those were mixed up in that.

11 The chemistry upgrade project was something I got
12 involved in very early on in '93 and what had -- chemistry
13 instruments, operability of chemistry instruments, was a
14 major issue during that time interval and I think, if I
15 recall the numbers correctly, 40 to 60 percent of on line
16 chemistry instruments were in operable. They couldn't be
17 maintained, they were obsolete, that kind of thing. A
18 chemistry upgrade project had been developed by the
19 chemistry staff and had been proposed to management and it
20 was like a \$22 to \$24 million project. We could not afford
21 \$22 to \$24 million, it was a Cadillac, definitely. The
22 project that had been proposed was truly a Cadillac
23 monitoring system, not only for what was needed day to day,
24 but you could do research with it. I mean it was that kind
25 of chemistry upgrade program.

1 However, there was a real problem and the real
2 problem was we didn't have enough operable instruments to
3 tell what we really -- you know, we were doing a lot of
4 graph sampling because the on line instruments weren't
5 available. As soon as we took over the chemistry program
6 and we laid out our chemistry improvement plan, which we
7 presented to management on April 1 of '93, and it was
8 immediately approved and endorsed and we went forward with,
9 part of that was to resize CUP to be what we needed, not
10 what everybody maybe would have wanted. And we did that and
11 it was approved and it was implemented and it was about \$9
12 to \$10 million.

13 So there was -- I mean I could see the response of
14 many levels of management to a \$22 to \$24 million Cadillac
15 system when it wasn't needed and we didn't have the money to
16 do it. They were very responsive to the proposal that we
17 made for the chemistry upgrade project on the scale of \$9 to
18 \$10 million, and we did fully implement that.

19 Q Mr. Fiser has testified that he had major problems
20 with the computers, his computers weren't working and I
21 guess the instrumentation that you're talking about, and he
22 tried to get money for those and that got slashed as well.
23 If they proposed a \$22 million budget and only needed 9 or
24 10, do you just deny the whole thing and not give him what's
25 necessary?

1 JUDGE YOUNG: Excuse me. I would like to ask both
2 of you to get a little closer to your microphones because
3 you tend to fuzz out on some words.

4 THE WITNESS: Sorry.

5 Can I approach that question this way?

6 MR. DAMBLY: Sure.

7 THE WITNESS: I've always believed it was my
8 responsibility and would have been everybody's, every
9 manager at my level in the organization's responsibility to
10 help upper management understand what's the right thing to
11 do, and to do it. If I've been successful in my career,
12 it's because of my ability to do that.

13 If I am not successful at doing that, it's my
14 problem, it's not necessarily my upper management's problem,
15 it's my problem. If I can't convince them of the right
16 thing to do and show them where we need to invest resources,
17 then that's my issue, not theirs, because that's my job.
18 I'm the technical expert, I'm responsible for the program,
19 I'm responsible for convincing them that they need to
20 support me. And if I had proposed a \$24 million Cadillac
21 system to management, I would have expected the same
22 response.

23 BY MR. DAMBLY

24 Q You would have expected them to deny the whole
25 thing?

1 A I would have expected them to tell me to go back
2 to the drawing board and come up with something reasonable.

3 Q And do you know how many years Mr. Lydon and Mr.
4 Fiser proposed additions to the budget that were slashed?

5 A No, I do not.

6 Q Going back to Mr. -- picking up where we left off
7 yesterday with Mr. Fiser's surplussing or RIF in '93, you
8 were aware that he filed a DOL complaint on that issue?

9 A Ultimately, yes, I was aware of that.

10 Q And how did you become aware?

11 A Probably when I was interviewed by the IG or some
12 internal review in TVA would have been probably the first
13 inkling I would have had, I'm not sure.

14 Q To the best of your knowledge, were Dr. McArthur
15 and Mr. McGrath involved in that complaint at all?

16 JUDGE YOUNG: In that what?

17 MR. DAMBLY: Complaint, the DOL complaint.

18 JUDGE YOUNG: I missed one word there, in that
19 complaint what?

20 MR. DAMBLY: Complaint, that's all.

21 MR. MARQUAND: Objection, lack of foundation.
22 There's not even been a discussion yet as to whether Mr.
23 Kent saw the '93 complaint.

24 MR. DAMBLY: I'm not talking about the specific
25 document which Mr. Marquand would like to dwell on. I'm

1 talking about the complaint as the process, the DOL
2 investigation, IG investigation, all the issues surrounding
3 Mr. Fiser's complaint in 1993 about his surplussing.

4 THE WITNESS: I don't know that in '93 -- I cannot
5 recall in '93 knowing who in upper management would have
6 been involved or a subject of that complaint.

7 BY MR. DAMBLY

8 Q Do you know how the complaint got resolved?

9 A I believe Mr. Fiser was given a position in the
10 corporate organization as a result of that complaint.

11 Q Did you have any interactions with him after he
12 returned to the corporate chemistry organization?

13 A Yes, I did.

14 Q How often?

15 A Occasionally. I mean he was in our corporate
16 staff, so he would provide support to the site over -- you
17 now, on different issues, so I would have an occasion to
18 interface with him from time to time, primarily his
19 interface would have been with my chemistry manager.

20 Q And that was who?

21 A Mr. Rich.

22 Q Rich, Gordon Rich?

23 A Yes.

24 Q In the '95-'96 time frame, which of the three
25 corporate chemistry managers -- Mr. Fiser, Mr. Harvey or Mr.

1 Chandrasekaran -- worked most closely with Sequoyah?

2 A You're talking '95-'96 time frame?

3 Q Right.

4 A Probably during that time frame it was Mr. Harvey
5 who was probably the most closely involved in issues that
6 were of interest to Sequoyah.

7 Q Now when he was working with Sequoyah, was he
8 doing environmental work?

9 A No, most of the things that he was involved in
10 were helping us with corporate-wide contracts. One of the
11 things we did in '93 when we laid out our chemistry
12 improvement plan, it was pretty comprehensive and it was
13 like a five-year duration plan. And one element of that
14 plan was to replace our on site makeup water plant with
15 vendor service water, because our makeup water plant was
16 difficult to maintain and the operators really didn't know
17 how to operate it that well, it wasn't that high a focus
18 area. So the performance wasn't that good and it was
19 providing chemical contaminant inputs to the system that we
20 wanted eliminated and the best way we knew of to do that in
21 a cost-effective manner was to go to vendor service water,
22 and so we were negotiating a major contract TVAN-wide,
23 nuclear-wide, for that service water and Mr. Harvey was an
24 integral part of that negotiation. So that was a major area
25 that he supported us in.

1 Q Do you recall if anybody from corporate provided
2 environmental support to Sequoyah in the '95-'96 time frame?

3 A There was a gentleman in corporate, I can't recall
4 the exact time frame, but it was -- I think it was in that
5 time frame, his name was David Sorrell, he was on the
6 corporate staff and he was sort of our environmental expert
7 on the corporate staff during his tenure there. Sometime
8 probably in the '96 to '98 time frame, he left our corporate
9 organization and took a position in Muscle Shoals, Alabama.

10 Q Were you happy with the work Mr. Harvey was doing
11 for you at the site?

12 A Pretty much.

13 Q Do you think he had strong technical capabilities?

14 A I really don't know that much about his technical
15 abilities, I really wasn't day-to-day involved with him on
16 technical issues. He did have or did appear to have a
17 certain amount of knowledge in how to get contracts
18 coordinated and negotiated and he did appear to have a
19 certain amount of knowledge in resin performance issues,
20 such as would be used in demin systems and things like that.
21 Those were both important issues to us, so in that regard,
22 you know, I was aware of his -- some of his technical
23 abilities. Other than that, I wouldn't really know.

24 Q Did he do steam generator work for Sequoyah,
25 issues related to the steam generators?

1 A Well, all of these issues are related to the steam
2 generators that -- every -- almost everything we were doing,
3 every problem we had in that time period was focused on
4 improving chemistry performance to lengthen the life of our
5 steam generator. So I would say yes, you know, everything
6 everybody was working on was related to steam generators.

7 Q Okay. What kind of contracts was he negotiating
8 related to steam generators?

9 A The makeup water contract. That was -- that was
10 of major importance to us. Because what we tried to do was
11 eliminate the source of contaminants getting to the steam
12 generators. And we had really three major sources. One was
13 the makeup water, which we dealt with by implementing vendor
14 service water; one was our condensate polishers, which we
15 dealt with by...

16 JUDGE YOUNG: Your what polishers?

17 THE WITNESS: Condensate polishers. In the
18 primary -- in the secondary system of the plant, when the
19 steam comes through the turbine it condenses.

20 JUDGE YOUNG: Condensate? Condensate?

21 THE WITNESS: Condensation; yes.

22 JUDGE YOUNG: All right.

23 A It condenses in a -- in a condenser that basically
24 cools it off, returns it to a water state, and then it is
25 processed and cleaned up by some manner and reinjected into

1 the feed water system, which goes back into the steam
2 generators to make more steam in that cycle.

3 Our second biggest source was -- well, not in
4 scale of source, but our second area of focus was improving
5 or mitigating the contaminants that are put into the system
6 by operation of the condensate polishers. They're
7 demineralizer beds, and they throw contaminations of
8 different types because of the process you have to go
9 through to regenerate the resin to make it -- to renew its
10 ability to absorb...

11 JUDGE YOUNG: Regenerate the what?

12 THE WITNESS: Resin.

13 JUDGE YOUNG: That's what I thought you said.

14 A So that was a major issue, and he was involved in
15 that.

16 And then the -- the third issue that was most
17 pressing for us was our condenser. We -- we had a brass
18 condenser -- condenser tubes, which is largely copper.
19 Brass condensers have a tendency to leak. They are -- they
20 can be attacked by all kinds of corrosion mechanisms, and
21 the tubes tend to have a -- a tendency to leak. So the leak
22 leaks raw water into the plant system, which is a source of
23 contaminants. And -- and then also, the condensers being
24 copper, you -- you have to maintain your Ph in a secondary
25 system fairly low or you will erode the copper away and

1 deposit it in your steam generators, which causes another
2 problem with copper deposits. So there were three major
3 areas we were focused on. Sam was probably involved, to some
4 degree, in most of those.

5 Q Okay. Now, you're aware in 1996 there was a
6 reorganization of the corporate rad con chemistry arena?

7 A Yes, I am.

8 Q When did you first learn about it?

9 A I can't remember the date I learned about it. I
10 mean, I was aware of it probably from discussions with
11 Wilson McArthur and others. We were made aware that -- that
12 there was a proposal -- there were -- we were reorganizing
13 and restructuring at the sites and in corporate, so there
14 was -- there was a lot of change taking place everywhere. I
15 can't really recall exactly when I would have first become
16 aware of that.

17 Q It was prior to the implementation of the
18 reorganization?

19 A Oh, yes. Yeah, it would have been prior to.

20 Q Were you aware that the three chemistry manager
21 positions were going to go down to two positions?

22 A Ultimately I was, because I ultimately sat on the
23 board that participated in the selection. I think initially
24 there was a lot of talk that they may eliminate one of the
25 three positions, but up until the really -- the proposal was

1 finalized by corporate management and -- and they really
2 understood what their long-term needs were going to be, I
3 think there was a -- there was a long period there of maybe
4 anticipation without any real hard proposals.

5 Q Okay. And during that time frame, did you
6 initiate any action concerning transferring Mr. Harvey to
7 Sequoyah?

8 A I would -- I did discuss the possibility of
9 transferring Mr. Harvey to Sequoyah. I wouldn't really say
10 I initiated the action. I don't know that that's correct
11 characterize it (sic). Mr. Harvey, as we've discussed, was
12 one of the -- of one of the corporate staff, he was
13 primarily assigned responsibility for providing support on a
14 day-to-day, as-needed basis to Sequoyah. What had happened
15 over the two or three years, say '95 to '96 time period, was
16 instead of having all of the corporate staff support all the
17 sites in different functional areas, the corporate staff
18 decided that it would be best if they sort of focused a
19 person on each site. Because truly the needs of each site
20 were somewhat different, and they thought it would be better
21 if they had a focused person for each site. And that would
22 improve -- they thought that would improve that interface
23 between the site and corporate, also, improve communications
24 and interface and support.

25 So Mr. Harvey had been assigned to Sequoyah. And

1 the way that transpired was, there were -- you know, I guess
2 when I first found out, that may have been how I first found
3 out about the possibility of a corporate reorganization, was
4 that my chemistry manager, which was Mr. Rich at the time,
5 approached me and told me that there was a proposal that
6 there would be a corporate reorganization, and that Mr.
7 Harvey expressed an interest in coming to Sequoyah, if we
8 could effect that. So that's probably how I first learned
9 about it.

10 Q And did you then make an effort to bring Mr.
11 Harvey to Sequoyah?

12 A Well, as I recall, you know, Mr. Rich really -- he
13 wanted me to do that. He wanted me to pursue that. I
14 really didn't have any strong feelings one way or another,
15 because I don't believe at that time the corporate
16 organization had really been defined as to what it was going
17 to be, you know. Sam may have felt he was going to lose his
18 job or -- or whatever. But I don't think that was really a
19 definite.

20 There were a lot of transitions in the
21 organization at the site, also. So, you know, I really
22 wasn't extremely hot about pursuing anything along those
23 lines, but, as I recall, to -- to really accommodate my
24 chemistry manager, I did tell him that I would discuss it
25 with them.

1 And shortly after that conversation, Mr. Grover,
2 Ron Grover, who was the corporate, I think, chemistry lead
3 at that time, was on site. And as I recall, Mr. Grover was
4 walking across the campus and -- and I met him on a
5 sidewalk, and he asked me if I had talked with Gordon about
6 the possibility of bringing Sam to the site, and I told him
7 that I had. And he asked me what I thought about it. And I
8 told him, "Well, you know, if you guys can transfer him out
9 here, that would be fine." I -- you know, we would be glad
10 to have him. Because he was doing a pretty good job for us.

11

12 Q Did you ask your staff whether or not they wanted
13 Mr. Harvey, any of the subordinate people below Mr. Rich?

14 A Yes, I did.

15 Q What kind of feedback did you get?

16 A I discussed with -- with some of the technical
17 staff, and the -- the response I got -- well, really, if --
18 I was -- I was trying to figure out how -- you know, if we
19 were to bring him out to the plant, what we would do with
20 him, you know. Because we didn't really have a -- a
21 position that was -- you know, I didn't know what position
22 he would go in.

23 So I did discuss the possibility of bringing him
24 out with my technical staff, and whether or not he would fit
25 in that group. And I got some negative feedback from the

1 staff on bringing him out in a role like that such as a
2 technical program supervisor or something like that. I got
3 some negative feedback related to his, I guess, management,
4 interpersonal skills.

5 Q But you pursued the -- the issue, anyway?

6 A Well, I -- as far as I talked to Mr. Grover on the
7 sidewalk, you know, on that day. That was my pursuit.

8 Q Okay, if you would, go to the Staff Exhibits
9 Volume 4. Staff Exhibit 70.

10 CHAIRMAN BECHHOEFER: 7-0?

11 MR. DAMBLY: 7-0.

12 Q This is another TVA OIG record interview from
13 August 15th, 1996. On Page 9 and 10. Okay.

14 A I must have the -- did you say 70?

15 Q 7-0. Right.

16 JUDGE YOUNG: 70 only has three pages.

17 MR. DAMBLY: Yes, I'm sorry. Page 1.

18 THE WITNESS: Okay, Page 1.

19 BY MR. DAMBLY:

20 Q At the bottom of that page, the last paragraph
21 says, "Kent said that Harvey was assigned to corporate,
22 spent much of his time working at SQN. Kent was familiar
23 with Harvey's qualifications and work skills, and he wanted
24 to retain Harvey at SQN. Kent said that he and Gordon Rich,
25 SQN, initiated a verbal request from Tom McGrath, corporate

1 senior manager over chemistry, requesting that corporate
2 transfer Sam Harvey's position to Sequoyah -- to SQN," I'm
3 sorry, "because they had a vacancy at SQN."

4 Did you initiate the request?

5 A No, I did not really initiate the request. This
6 is, as is typical of our IG's reports, a synopsis of a
7 conversation that we would have had, and this is the IG
8 investigator's perspective on -- on that conversation. You
9 know, it's -- in total, it's probably not in error, but
10 specifically I never talked with Mr. McGrath about Mr.
11 Harvey, personally. I never spoke with Mr. McGrath about
12 bringing Mr. Harvey to the site. That was done, as I said,
13 through Mr. Grover.

14 And probably the statement here about Mr. Harvey's
15 qualifications and work skills, you know, I -- I would have
16 -- I'm assuming that I would have been responding to a
17 question, "Are you familiar with Mr. Harvey and his
18 qualifications," and I would have said, "Yes, I am somewhat
19 familiar with Mr. Harvey and his qualifications." That
20 would have been -- because I really don't know Mr. Harvey's
21 background. I've probably never seen his resume.

22 Q If you'd turn to Staff 72.

23 A Same book?

24 Q Same book. And we'll go to 72 through 74,
25 actually. Do you recognize what is Staff 72 as a

1 statement...

2 A Yes.

3 Q ...signed by you in the DOL proceeding?

4 A Yes, I recognize this.

5 Q Okay.

6 A This is Stripling; yes.

7 Q And you signed it at the end; correct?

8 A Yes. This -- this is not my handwriting.

9 Q Right.

10 A You understand that; right?

11 Q I understand it's not your handwriting.

12 A This is -- this is Mr. Stripling's notes of our
13 conversation.

14 Q And right above your signature it says, "I have
15 read this statement and it is correct." Is that what it
16 says?

17 A Yes, that's what it says. And, you know, for the
18 most part I think it is. I mean...

19 Q Would you normally sign things that are for the
20 most part correct in legal proceedings?

21 A I would say I -- I always attempt to sign things
22 that I believe are mostly correct.

23 Q But when you signed it, was there something you
24 knew was wrong in it?

25 A Well, when I signed it, you know, there are

1 grammatical errors in it, there are a number of things in it
2 that I didn't like when I signed it. However, you know,
3 this is not up to the standards normally I would prepare a
4 statement. However, I, in fact, did sign off on it because
5 I think for the most part it portrays a fairly accurate
6 picture of what was going on.

7 Q I appreciate the -- the grammatical problems, et
8 cetera. But when you signed off, were you aware of any
9 factual inaccuracies in this?

10 A Well, I haven't read this. I would say...

11 Q You read it when you signed it?

12 A I read it when I signed it. I would say no, I
13 would not be -- have been unaware -- I would -- would not
14 have known there were factual inaccuracies in it and -- and
15 signed it. I did, as you can see, change a few things in it
16 that I thought maybe were not exactly right. Like on the
17 third page. And, you know, there's a few strike-throughs.
18 I know I did those strike-throughs.

19 Q Okay. And -- and the start of this statement
20 deals with the transfer issue of Mr. Harvey at Sequoyah;
21 right? That's what the first part of this is about?

22 A Yes. And it -- and it says there the end result
23 was that a request was made that corporate would give a
24 directed transfer from corporate to Sequoyah.

25 Q And that you would need to advertise the position

1 of technical support supervisor -- supervisor?

2 A Well, I'm not -- I'm not an expert on personnel
3 issues, but I don't think a direct transfer and advertising
4 a position doesn't really go together. I mean, you don't
5 have to advertise a position if it's a -- I would think, if
6 it's a directed transfer of one individual from one site to
7 another. Then there's no advertisement of a position.

8 Q But that would be what we talked about yesterday
9 as a lateral transfer, a person of the same grade just moves
10 from one place to another?

11 A Well, I really don't -- I really don't know
12 whether it would have been a lateral or what. But if -- my
13 perception would be that if there were a directed transfer,
14 then that means the person and the function is moving from
15 one organization to another, or -- or there's a vacant
16 position and at one site -- that another site in the
17 organization in the same competitive area, there's a
18 reduction taking place. And you might ask for volunteers to
19 transfer, you might direct somebody to transfer. I don't --
20 you know, like I said, I'm not an HR expert. But I don't
21 think that you would have to advertise a position in order
22 for a person to be directed to transfer.

23 Q Okay. Toward the bottom of the first page it
24 says, "During the time I talked with the Inspector General
25 Office we had a vacancy where we lost a chemistry person at

1 SQN a while back, and we had not filled that position.
2 Position I had in mind for Harvey was technical support
3 supervisor, which now is presently filled with," I guess
4 that's, "R. Ritchie." Rob Ritchie? Is that the name?

5 A Yes, that would probably be right.

6 Q "The extra vacancy we had, we lost it. I made a
7 request to Ron Grover about the possibility of Harvey
8 transferring to Sequoyah."

9 A Yes.

10 Q Okay. You initiated the conversation with Mr.
11 Grover? And you had a vacancy at the time?

12 A Well, let me -- let me address the -- the issue of
13 whether or not I had a vacancy at the time. Our
14 organization, just like corporate's organization in '96, was
15 undergoing a lot of review and rethinking and of how we were
16 going to be structured and that kind of thing. And as I
17 recall, in late '94, maybe early '95---I can't recall the
18 date---I had an individual that -- that worked for us. He
19 was the technical program supervisor in chemistry. He --
20 that individual left the organization and went to work for
21 CP&L. So in my mind, there was a vacant position there.

22 I believe what was transpiring in the company was
23 there was a major review of all positions at all
24 organizational sites. You know, as we just talked, there
25 was some restructuring ongoing at corporate. I believe we

1 were doing the same thing. I know in the '96 time frame we
2 were -- we were negotiating on what our long-term
3 organization structure at the three nuclear sites would --
4 would be. We were really trying to standardize everything.
5 There was a lot of discussions about how far in the
6 organization, how down -- how far down you had to go in
7 terms of standardization, what exactly the same meant and
8 all those kind of things.

9 So I believe that I -- I did have a position. It
10 was -- it was occupied by a gentleman who left and went to
11 CP&L. I viewed that as a vacancy. Whether or not the org
12 structure that was on the books at the time showed a vacancy
13 or not, I don't -- I don't recall. But I -- I also was
14 looking forward to a long-term organization which would have
15 had that position in it. And so it was my way of thinking,
16 I could have had a position.

17 On the first page of this document it talks about
18 that I didn't want to advertise a position because we were
19 going through a reorganization and -- due to corporate
20 wanting to standardize the organization at all three sites.

21 Q Okay. Now, if we continue with the rest of the --
22 it says, "The response that we got back from Grover was that
23 McGrath didn't want to just transfer Harvey out of
24 corporate. My reason for soliciting Harvey for SQN site is
25 because he had a lot of expertise in secondary chemistry. I

1 wanted his expertise," and I can't read this, "our -- on
2 site, because we needed to make improvement in our secondary
3 chemistry program."

4 Does this indicate that you solicited Harvey to
5 come to the site, as a matter of fact?

6 A No. No. Only in the context of I did -- I did
7 agree with Mr. Rich that I would pursue talking with Mr.
8 Harvey's management, an opportunity to transfer him to
9 Sequoyah. I did meet with his supervisor on the sidewalk,
10 as we talked about, and we did discuss it on the sidewalk.
11 And I did get feedback from Mr. Grover that he had talked
12 with Mr. McGrath, and Mr. McGrath had expressed to him that
13 he didn't think it was appropriate for us to direct transfer
14 or whatever mechanism you would use, terms you would use to
15 move Mr. Harvey from corporate to the site. That if we
16 wanted to hire Mr. Harvey, we should post a vacancy and hire
17 him.

18 Q Okay. Also, if you would turn to Staff Exhibit
19 71. And this is a -- a transcript. TVA's IG's office
20 provided us their tape recordings of certain of the records
21 of interviews. We didn't get tapes for all of them. The
22 ones we got, we had transcribed.

23 MR. DAMBLY: And for the board's clarification, on
24 the second page of this document this was transcribed by the
25 -- your contracted court reporters, and I guess they assumed

1 it was an OI interview, because it was an interview. It's
2 actually an OIG for TVA. You can see the Special Agent
3 Vanbocker. And I think on all of the ones we had
4 transcribed they put OI instead of -- but if you turn to
5 Page 9.

6 THE WITNESS: Okay, I have it.

7 MR. MARQUAND: Your Honors, before we ask Mr. Kent
8 any questions about this document, I'm going to voice an
9 objection. I previously voiced an objection about this
10 manner of examining witnesses about things, and this is
11 particularly egregious here, and let me explain why. First,
12 before counsel even elicited Mr. Kent's views about any
13 conversations with Mr. Grover, he turned to Staff Exhibit
14 70, which Mr. Kent correctly identified as the OIG's notes
15 of a conversation. And he said, "Oh, here's the notes of
16 this conversation. Isn't this what happened?"

17 Now we're going to...

18 JUDGE YOUNG: Excuse me, I think he did mention
19 the -- asked him about the discussion with Grover prior to
20 doing that.

21 MR. MARQUAND: Correct. And -- and he said -- and
22 he didn't -- he didn't say, "I don't..." -- yes, he did do
23 that. And Mr. Kent didn't purport to say, "I don't recall
24 it." And then there was no impeachment with respect to
25 Exhibit 70.

1 Now, the problem I've got is, Exhibit 71, which
2 counsel has now put before him, is a purported transcript of
3 this same conversation. And counsel has put a document in
4 front of the man and said, "Here's what happened," and asked
5 him to adopt it. Now he's going to try to come back with a
6 transcript and try to impeach him with his -- with a
7 different document regarding the same conversation.

8 And maybe, even under your relaxed rules, you
9 allow him to refresh recollections with respect to a
10 document. But now, to play this little game and say, "Well,
11 here's a second document regarding the same conversation,"
12 smacks me in the face as being patently unfair to this
13 witness.

14 MR. DAMBLY: Well, to the extent you want to
15 respond to that, first of all, I asked him who initiated the
16 transfer, and he said it wasn't him. Now, we have a whole
17 series of documents to go through in the form of
18 impeachment, because Mr. Kent's told about four or five
19 different stories on that subject, and the same holds true
20 for whether he had a vacancy or not, who initiated the
21 transfer request, whether he had a vacancy, whether he was
22 told he couldn't transfer somebody. It's all -- he's
23 already been asked about it. And he brought up the fact,
24 well, Staff Exhibit 70 is a -- the agent's recollection of
25 what they wanted to put in, and called into question the

1 validity of -- of the TVA OIG report; 71's a transcript.

2 JUDGE YOUNG: Why didn't you just go directly to
3 the transcript and ask him about what he said then?

4 MR. DAMBLY: Well, TVA relies on 70. This is just
5 -- I'm only going to 71 because he -- he denied what was in
6 -- there's not an inconsistency between 70 and 71 that I'm
7 aware of. He just doesn't like 70, so I'm showing language
8 in 71.

9 JUDGE YOUNG: Well, I think it might be more
10 efficient to go straight to the -- to the actual transcript,
11 without going through the other one first and -- and get to
12 it a little more quickly.

13 CHAIRMAN BECHHOEFER: I would not think that. I
14 think that would be less efficient. But I think the witness
15 should have a chance to read the document. I think -- I'm
16 sorry. I think the witness should be -- should have an
17 opportunity, before he's asked questions about it, to read
18 the particular document, or at least the portion of the
19 document that's pertinent.

20 MR. DAMBLY: Well, I mean, if you want to take a
21 break and let him read the 23 pages of Staff Exhibit 71,
22 that's fine with me. I only have one -- one question.

23 MR. MARQUAND: It's a very short document.

24 CHAIRMAN BECHHOEFER: Oh.

25 JUDGE COLE: Could you identify the page, and show

1 him the page you're going to be referring to, if it's only
2 going to be...

3 MR. DAMBLY: Sure. I was only going to ask him
4 about Page 9. On Page 9 there's a -- a statement at the
5 bottom that says, Special Agent Vanbocker, "Okay, so you and
6 then Rich made a -- you initiated a request?"

7 Mr. Kent: "Right. We initiated the request to
8 transfer him." Then that's consistent with -- with what was
9 in Staff Exhibit 70, that he initiated the request, and
10 inconsistent with what he said when I asked him the
11 question.

12 THE WITNESS: If I could comment on that.

13 MR. DAMBLY: Well, do you want to read the whole
14 document?

15 THE WITNESS: No, I don't think I need to. I
16 mean...

17 CHAIRMAN BECHHOEFER: Well, read as much as you
18 think you need to read to understand the context.

19 JUDGE YOUNG: I think he's ready to make a
20 comment.

21 CHAIRMAN BECHHOEFER: Right.

22 MR. MARQUAND: Well, I mean, I think it's
23 appropriate, since counsel's made an argument already and --
24 and made representations about what's consistent and what's
25 not, to let the witness respond to that.

1 JUDGE YOUNG: That's what I was suggesting. Go
2 ahead.

3 THE WITNESS: Your Honors, I don't really see
4 these as being inconsistent, and I would not in any way
5 imply that the other document that was a report of the IG,
6 the IG's report was inaccurate in whole. You know, I was
7 just trying to make a comment that that was not a transcript
8 of what I had said, that was his words. I was responding to
9 a question. I did not know what the question was. All I
10 could see is what they reported that I had communicated to
11 them.

12 And in fact, you know, in this case, you know, the
13 -- the agent asked me, "Okay, so you and Rich made a
14 request, you and -- you know, you initiated a request." I
15 mean, I did talk to Mr. Grover about it. You know, is that
16 -- I don't think the agent had in his heart or intent to
17 trick me into saying I initiated a request. That's the way
18 he phrased the question and, you know, in -- in whole, I did
19 talk to Mr. Grover about Mr. Harvey coming to the site, you
20 know. So, I mean, on the big picture, that's not inaccurate
21 to say I did -- I did pursue that.

22 Now, whether or not it was at my own initiative in
23 the very beginning that I went searching for Mr. Grover to
24 discuss it with him? No, I did not. Did I -- did I go to
25 Mr. McGrath to discuss it? No, I did not. It happened just

1 as I described. I really did it to accommodate my chemistry
2 manager. He was concerned about the program a lot more than
3 I was. He was concerned about Mr. Harvey a lot more than I
4 was. He felt Mr. Harvey thought he was not going to --
5 going to have a position when the reorganization smoke and
6 dust settled, a lot more than I was.

7 So I was really -- I had already made up my own
8 mind, I think, at this time, as -- as we have discussed,
9 that I had discussed with my staff the possibility of -- of
10 where he might fit, got some negative feedback about his
11 interpersonal skills, so I really wasn't interested in
12 putting him in a position like a chemistry technical support
13 manager's job. So, the bottom line is, I was willing to
14 accept Mr. Harvey in -- at the site if there was a mechanism
15 to transfer him out there.

16 JUDGE YOUNG: Do we really need to spend a whole
17 lot more time on this particular point, which is not --
18 doesn't appear to be all that central?

19 MR. DAMBLY: I think it -- it is central.

20 JUDGE YOUNG: Whether he initiated it or not.

21 MR. DAMBLY: And whether he had a vacancy or not,
22 and why it was stopped.

23 JUDGE YOUNG: Well, I'm talking about whether --
24 who initiated it and why it was initiated and how it
25 happened.

1 MR. DAMBLY: Well, yeah, I think, Your Honor, it
2 makes a big difference if -- I mean, again, Mr. Kent is one
3 of the people that's on the SRB. He's one of the rating
4 people. If he's initiating a request to get Mr. Harvey out
5 to his site because he wants him, I think that's relevant to
6 the rest of the questions in this case.

7 JUDGE YOUNG: Do you have many more questions
8 about it?

9 MR. DAMBLY: Well, yeah, I'd like to go through
10 the -- there's six or seven different statements he's made,
11 sometimes saying he initiated it, sometimes saying Grover
12 initiated it. I think it goes to his credibility, as well.

13 MR. MARQUAND: Your Honor, I think Mr. Kent's
14 already explained that how you characterize this...

15 JUDGE YOUNG: Go ahead.

16 MR. MARQUAND: Your Honor, I think Mr. Kent's
17 explained that how you characterize it, whether you call it
18 initiation or not is really irrelevant. He said the fact is
19 that his chemistry manager asked him to look at it, and he
20 said he ran into Grover on the sidewalk and they had a
21 discussion. He says, "I've explained the facts of it." He
22 says, "How you want to characterize it, you can characterize
23 it any way you want to." Says, "That's the fact."

24 JUDGE YOUNG: I think we understand, and I think
25 the -- the majority wants to -- to continue. So move on.

1 Go ahead, Mr. Dambly.

2 MR. DAMBLY: Thank you.

3 BY MR. DAMBLY:

4 Q If you would turn to Staff Exhibit 73.

5 A Seventy-three?

6 Q Right. Which is the OI interview you gave with
7 Ms. Benson on October 22, 1998.

8 A Yes, I have that.

9 Q If you would turn to page 15, please, and starting
10 on line 9, question:

11 "And did you attempt at any time during this
12 time frame after you heard about the downsizing to
13 request that Mr. Harvey be transferred out to
14 Sequoyah?"

15 Answer: "Yes, I did. When it was brought to
16 my attention that they were going to do downsizing
17 in corporate and they probably would only have two
18 positions remaining of the three and since Mr.
19 Harvey was essentially full time support to
20 Sequoyah, I did approach his supervision and asked
21 that, you know, why don't you just transfer him to
22 Sequoyah and that'll solve the problem of your
23 head count in corporate. I've got a vacancy and
24 I'll just pick him up."

25 Do you recall making that statement to Ms. Benson?

1 MR. MARQUAND: Excuse me. What was the date of
2 this interview?

3 MR. DAMBLY: It's on the front, you can read it.

4 JUDGE BECHHOEFER: It was identified, October 22,
5 '98.

6 MR. MARQUAND: 1998.

7 JUDGE BECHHOEFER: October 22, 1998.

8 MR. MARQUAND: Thank you, Your Honor.

9 JUDGE BECHHOEFER: Assuming the title page is
10 accurate.

11 BY MR. DAMBLY:

12 Q Do you recall having that discussion with Ms.
13 Benson?

14 A I do recall the conversation with Ms. Benson.

15 Q And you indicated (1) that you sought to have him
16 brought out to the site and you had a vacancy.

17 A I did. I don't remember these exact words, I
18 can't remember that conversation, but this is a transcript,
19 so I would assume it is accurate.

20 Q You were under oath at the time?

21 A Do what?

22 Q You were placed under oath for this statement?

23 A Yes, I'm sure I was. And, you know, when I said
24 to her -- when I answered her question, did you attempt at
25 any time to request Mr. Harvey transfer to Sequoyah, yes, I

1 did attempt to do that.

2 Q Okay.

3 A And I think that's consistent with the other
4 comments I made about it. I did attempt to do that.

5 JUDGE BECHHOEFER: Well, when you said, "I've got
6 a vacancy", were you referring to a technical position
7 vacancy or just lack of the person who had left or absence
8 of the person who had left?

9 THE WITNESS: Well, you know, this was in 1998 --
10 what was the time frame on this -- October of '98?

11 JUDGE BECHHOEFER: Yes.

12 THE WITNESS: You know, it's really difficult for
13 me to recall, you know, from October '98 to now exactly what
14 I was thinking, you know, on October of '98, especially
15 about events that happened in '96.

16 I've got a couple of foggy periods in my memory
17 because of health problems and so I'm not sure of the
18 accuracy of my recollection for a couple of periods, but I
19 know that in late '94, early '95, I lost an individual who
20 went to CP&L. That left an opening in my organization at
21 that time. Also, at that time, there was a lot of
22 restructuring going on and I believe that there was an
23 interim organization that was basically issued to the sites
24 for my department and that organization I don't think had
25 that position in it. The other sites, I believe at that

1 time, did not have a position like that in their
2 organization. We were negotiating with upper management
3 during that entire time interval on what our long-term
4 organization would be and we had agreed with our upper
5 management that -- we had agreement on what our long-term
6 organization was going to be and on a time frame for moving
7 toward that. In that long term organization, which we began
8 implementing in '96 through maybe '98 at the three sites,
9 that position -- an equivalent position to the one I had had
10 that was vacated by the individual who went to CP&L, was in
11 that long-term organization.

12 JUDGE BECHHOEFER: I see, okay.

13 THE WITNESS: So in my mind, you know, there's a
14 position at my site. I may have had a technician vacancy at
15 the time and I may have had a vacant position somewhere else
16 in my organization at that time and, you know, my thinking
17 could have been, you know, I've got the head count. But
18 really, the fact is, it didn't really matter and just like
19 today, it didn't really matter if I had a slot in my
20 organization or not, there is a process you've got to go
21 through to get approval to fill any position and if I had
22 wanted to have hired Mr. Harvey, to post a vacancy
23 announcement and hire Mr. Harvey, I would have had to gone
24 through that process of getting approval to do that.

25 And for whatever reason in 1996 after it became

1 obvious that corporate did not want to simply transfer Mr.
2 Harvey to the site, that if I wanted him, I needed to post a
3 vacancy, I decided not to post the vacancy, probably because
4 of the organizational change that was taking place and the
5 difficulty it would have been to have gotten management
6 approval all the way up the line to bring a person into the
7 organization without that -- you know, the final structure
8 and everything being approved. They're not going to let you
9 hire a person into a position if it may go away due to a
10 pending reorganization, that wouldn't be fair to anybody
11 either.

12 JUDGE BECHHOEFER: Thank you.

13 BY MR. DAMBLY:

14 Q All right, now if I could get a different book for
15 you, book 7 of the staff exhibits.

16 JUDGE YOUNG: Did you say Volume 7?

17 MR. DAMBLY: Yes.

18 JUDGE BECHHOEFER: What exhibit?

19 MR. DAMBLY: 135.

20 THE WITNESS: Okay.

21 BY MR. DAMBLY:

22 Q And 135 is the predecisional enforcement
23 conference in this case, December 10, 1999.

24 JUDGE YOUNG: Before we go on, could you just
25 explain what a predecisional enforcement conference is and

1 who did it?

2 MR. DAMBLY: A predecisional enforcement
3 conference is -- when the staff is proposing or thinks there
4 might be a violation and is considering taking enforcement
5 action, it offers the licensee an opportunity to come in and
6 provide its views on the subject. It's a transcribed
7 conference.

8 JUDGE YOUNG: So it's not like a mini-hearing,
9 it's just a conference.

10 MR. DAMBLY: No, it's a conference. It's an
11 opportunity for the licensee to come and explain why they
12 didn't do what we think they did.

13 JUDGE BECHHOEFER: At the time, is it not true,
14 these were not public hearings?

15 MR. DAMBLY: It depends on the issue. For an
16 issue of discrimination, which would involve individuals,
17 they're closed.

18 JUDGE BECHHOEFER: Yeah.

19 MR. DAMBLY: If it was a technical issue, they'd
20 be an open conference.

21 JUDGE BECHHOEFER: Even back in those days?

22 MR. DAMBLY: Of course by that day, we don't have
23 many conferences on technical issues any more because the
24 new revised reactor oversight program normally doesn't
25 result in enforcement, traditionally.

1 MR. MARQUAND: Whether or not this conference was
2 closed to the public, Mr. Fiser was invited and allowed to
3 attend. So he was present, he heard everything that was
4 said, he made his own response.

5 JUDGE BECHHOEFER: I see, thank you.

6 BY MR. DAMBLY:

7 Q If you'd turn to page 106 -- actually I guess we
8 could start on 105 if you want to read from the bottom of
9 105, it says:

10 "Mr. Kent: Let me give you the details of
11 that scenario about Harvey being transferred to
12 Sequoyah."

13 "Mr. Stein: Please."

14 "Mr. Kent:" And then it goes through a
15 discussion, "My chemistry manager and I think
16 Keith probably had been talking with Sam and Sam
17 Harvey thought he was probably going to lose his
18 job at corporate and was interested. Since Sam
19 was providing support directly to Sequoyah and was
20 interested in coming to Sequoyah, Ron Grover
21 approached me one day while he was visiting the
22 site and asked me if I would consider hiring Sam
23 at Sequoyah and I told Ron that if -- I believe I
24 told him I didn't have a position. But if
25 corporate would transfer him to Sequoyah, yes, I'd

1 be glad to take him."

2 Now is that consistent with what you told Ms.
3 Benson when you said you had a position and you approached
4 Mr. Grover?

5 A Well, as I said in this, I believe, I told them
6 that I didn't have a position.

7 Q Did you believe you had one when you told Ms.
8 Benson you had one?

9 A Obviously I did.

10 Q So what led you to change your mind in the your
11 between the OI interview and the predecisional enforcement
12 conference about whether you had a vacancy or not?

13 A Well, I'm not sure. I mean, you know, there's a
14 lot of things. As I mentioned, you know, there were a lot
15 of transitions taking place between '96 and the '98 time
16 frame. The site organization was being restructured and in
17 I think early '96 we had agreement from our upper management
18 to implement a standard organization which included a
19 technical program, two program manager positions, one of
20 which would have been equivalent to the one that had been
21 vacated by the gentleman who went to CP&L. So it depends on
22 the timing and the way I was looking at the situation then,
23 you know, at that time. I don't -- there's nothing -- no
24 one told me you don't have a position, you didn't have a
25 position, there were a lot of transitions. I do believe

1 there was an organization chart on the books in that time
2 interval between '95 and '96 that didn't show a position on
3 it. You know, so it could have been that I went back and
4 looked at the organizational chart and sure enough found,
5 hey, there's not a slot on this chart. There was before and
6 there was after, but there wasn't maybe one on the day that
7 I talked to them. So I really don't know what would have
8 made me do that.

9 I attempted at the time of each interview to
10 recall the facts as I saw them and accurately answer the
11 questions I was asked.

12 Q So when you gave this statement to the DOL
13 investigator and you signed it, you knew that was an
14 official government investigation into Mr. Fiser's
15 complaint.

16 A I knew it was an official government
17 investigation, I did not know very much, had no experience
18 with DOL complaints at that time, I did not know what the
19 outcome or the use of that document would be. Certainly I
20 didn't know I was going to see it 47 times in the future and
21 be impugned on every statement and word that was in it. Had
22 I, I would have made sure it was accurate. I did not have a
23 good relationship with Mr. Stripling when he interviewed me,
24 it was a difficult conversation. I answered his questions,
25 he pushed in front of me a poorly worded document, and not

1 realizing the, maybe ultimate end and use of that document
2 many, many times over, it probably was poor judgment on my
3 part to sign it unless I was 100 percent satisfied with it,
4 but I did.

5 Q And when you did sign it, you said you had a
6 vacancy but you didn't want to post it.

7 A Yes. My intent was if I could explain, had I been
8 willing to go to my management and appeal for the
9 opportunity to post a vacancy, whether it was on my
10 organization chart or not, I always have that option I
11 guess. I would have had the option to have gone to my site
12 management and said we need this person in our organization,
13 we need this expertise in our organization, we need to
14 change our organization to accommodate some future need. I
15 did not pursue doing that, I did not pursue doing it at my
16 own wishes. No one asked me not to pursue it, no one
17 directed me not to pursue it, it was my own will not to
18 pursue it.

19 Q And you then told Ms. Benson that "I've got a
20 vacancy and I'll just pick him up."

21 A At that time, that was my recollection with Mr.
22 Grover, yes. And I may very well have said those words when
23 I first talked to Grover about it and it may have been that
24 I talked to my staff between when I talked to Mr. Grover
25 about it and when he finally came back to me and gave me the

1 answer, and I was not willing to put Mr. Harvey in the only
2 position that I believe I felt I had that he could fit into
3 the organization, which was that technical support
4 supervisor's job. I wasn't willing to put him in there
5 because of feedback I had gotten from the staff.

6 So if I felt like I had a vacancy when I first
7 talked to Grover and I talked to my staff about it and I got
8 negative feedback on his interpersonal skills and I decided
9 that I'm not going to do that, that wouldn't be the right
10 thing to do, and when Grover came back to me and he said we
11 can't transfer him, then I dropped it right there.

12 Q Now you just said you didn't want to put him in
13 the technical program manager position because of what your
14 staff told you about his I guess interpersonal skills.

15 A Yes, I believe that's correct.

16 Q But you told Mr. Grover and you told Ms. Benson
17 and you told DOL people you had a vacancy and that was the
18 vacancy you were talking about. Did you have another
19 vacancy?

20 A No, I don't think so. I'm not sure, I don't know
21 what my organization looked like exactly at that time
22 period, but --

23 Q Well, you would have known in '96 when you were
24 talking to the DOL investigator?

25 A Was that '96? If that was, I would have probably

1 known in '96.

2 Q It was '97.

3 A '97. I don't know, it's possible that I would
4 have known exactly what my organization looked like in '96
5 during a period of transition. I mean over a period of
6 months, things were changing so I would have had a better
7 recollection in '97 than I do today.

8 Q You're saying now that you only were interested in
9 Mr. Harvey because corporate approached you, somebody,
10 Grover, and said hey, will you take Sam if we transfer him?

11 A No, no, I'm not saying that. I'm saying that with
12 regard to Mr. Harvey, Mr. Harvey had been talking with my
13 chemistry manager, Mr. Rich. Mr. Rich approached me and
14 told me that Sam felt like he was going to lose his job in
15 corporate, would we be willing to bring him to the site and
16 we discussed it, he was providing support to us, he was
17 providing what we thought would be good support to us at the
18 time, we could have used him, and whether -- as I recall the
19 conversation with Grover, it was on the sidewalk on site.
20 Had I not met him on the sidewalk on site, I'm not saying I
21 wouldn't have called him, I mean I probably would have
22 because I'd already told Mr. Rich that I would discuss it
23 with corporate. So, you know, it was fortuitous that we met
24 on the sidewalk. I'm not going to argue and say that if I
25 hadn't met him on the sidewalk, I would never have called

1 and asked about the possibility of transferring him, because
2 I probably would have. I told Mr. Rich that I would have, I
3 was going to pursue it.

4 Q When you met him on the sidewalk, did you ask Mr.
5 Grover -- did you initiate the conversation concerning the
6 transfer or did Mr. Grover come up to you and say hey, will
7 you take Harvey if we sent him out to you?

8 A As I recall that conversation, he was walking from
9 one building toward the plant office building and I was
10 walking away from the plant office building and there is a
11 sidewalk that runs along the road there and I saw him coming
12 and I was on that sidewalk, we just stopped and we started
13 talking. In the course of that conversation -- and it was
14 just a few minutes -- he said he'd been out talking to
15 Gordon and I can't recall specifically whether Grover said
16 to me "I've been talking to Gordon about Harvey" --

17 JUDGE COLE: That's Gordon Rich?

18 THE WITNESS: Gordon Rich, yes.

19 JUDGE COLE: Okay, that's your chemistry man.

20 THE WITNESS: Yes, sir.

21 I believe that's the way it transpired that Mr.
22 Grover told me he'd been talking with Gordon, asked me if
23 Gordon had talked to me about Sam, I think I would have said
24 -- I think I said yes, he has, you know, and we're willing
25 to do that if you guys can transfer him out here.

1 Now I'm not going to argue over whether I
2 initiated it or Grover initiated it, because I don't recall
3 the details of that conversation enough -- I mean in the
4 context of everything, I didn't avoid Grover knowing he was
5 going to talk to me about it. I had already promised Gordon
6 Rich that I would follow up on it. Had I not met Grover on
7 the sidewalk, I would have sometime within the next few
8 days, I'm sure, called Grover in Chattanooga and asked him
9 about it.

10 So in that case, I mean my intent was to have the
11 conversation with Grover, whether I started it or he started
12 it I think is irrelevant really.

13 Q Did you tell Mr. Grover, as you told Ms. Benson
14 you did, that you had a vacancy and you'd just pick him up?

15 A I thought -- you know, I can't recall the details
16 of that conversation with Mr. Grover, to that extent. I
17 mean, I may have said I've got a slot on my org right now,
18 to Grover.

19 Q And so when you talked to Ms. Benson, you just --

20 A I believe that's what I told him at that time,
21 yeah, that's the way I recalled it at that time.

22 Q And that's what you told the DOL person, that's
23 what you told TVA's IG, that you had a vacancy.

24 A It appears so, as recorded in all these documents,
25 yes.

1 Q And then when you got to the predecisional
2 enforcement conference, you didn't have a vacancy.

3 A Well, let's look at that part, I don't remember
4 what I said at the predecisional conference.

5 Q It's right there in front of you, it's on 106.

6 A It's on page 106.

7 Q And 107. In the middle of 106,
8 "I believe I told him I didn't have a
9 position."

10 And then on the top of 107, Ms. Boland asked you,
11 "So you did not have a vacancy?"

12 "Kent: I did not and I did not pursue
13 getting approval to fill a vacancy, I just dropped
14 it."

15 A That is true, I did not pursue filling the
16 vacancy.

17 Q Is it true you didn't have one, the one that you
18 told the other three investigators you had?

19 A Well, as I've tried to portray, this was in '99,
20 the end result of my conversations with Mr. Grover about it
21 could very well have been that he and I met initially and we
22 talked about it and I thought I had a position I could put
23 him in. I followed up with him and we discussed it and I
24 told him that I didn't have a position I was willing to put
25 him in. And that is the fact, I did not have a position --

1 whether there was a vacancy on my org chart or not at that
2 time, I did not have a vacancy that I was willing in 1996 to
3 put him in. Now if somebody were to ask me did you have a
4 vacancy on your org chart, and I believed at that time that
5 I did have a position that would have been available, then I
6 would have answered yes. But in fact, when Mr. Grover told
7 me that corporate was not willing to just transfer him out,
8 head count and all, I was not willing to pursue anything
9 beyond that in terms of getting Mr. Grover (sic).

10 Now apparently in 1999 when we had the
11 predecisional conference, I made a statement or this might
12 have been as a result of Ms. Boland's interview, I don't
13 really remember, but I made a statement that I actually
14 didn't have a vacancy and that could have very well been
15 true, because I don't have the three org charts in front of
16 me right now, the one that existed before '95, the one that
17 existed in '95 and the one that existed in '96 and beyond.
18 So I really can't tell you what was technically on the books
19 at that time.

20 Q Now the statement you signed for the DOL
21 investigator, Staff Exhibit 72, we talked about that before
22 on the second page, "My reason for soliciting Harvey for SQN
23 site is because he had a lot of expertise in secondary
24 chemistry, I wanted his expertise for our site because we
25 needed to make improvement in our secondary chemistry

1 program."

2 Now you wanted his expertise, you solicited it,
3 but you weren't willing to put him in your vacancy, is that
4 what you're telling us?

5 A Where is that on 72?

6 Q 72, second page. First full paragraph, starting
7 about in the middle of that paragraph, "My reason for
8 soliciting Harvey". You wanted his expertise, but now
9 you're telling us you weren't willing to put him in the
10 position you had.

11 A Well, and I think those are compatible statements.
12 As I said, this is Mr. Stripling's notes of our
13 conversation.

14 Q That you signed.

15 A That I signed. I've already admitted I signed it,
16 you know.

17 Q Which you represented as true and accurate.

18 A Good, bad or ugly, yeah. And I think for the most
19 part, this is a fairly true statement. I mean at this time
20 when I talked to Mr. Stripling -- and this was in '97, when
21 I talked to Mr. Stripling, I feel like -- and he asked me a
22 bunch of questions and I was responding to his questions and
23 at the time, I would have remembered what the question was.
24 Right now, I can't remember what the question was Mr.
25 Stripling asked me, but if he asked me did I talk to Grover

1 about the possibility of transferring Sam Harvey to the
2 site; yes, I did. And then he presents me with a statement
3 that says I made a request. I did make a request, I don't
4 see that as being a hanging point in terms of whether or not
5 I initiated some request. The response that I got back from
6 Grover -- this is fairly accurate -- is that McGrath did not
7 want to just transfer Harvey out to the site. If I wanted
8 him, I should post a position and hire him that way. And my
9 reason -- if I was asked why did you -- why were you
10 interested in Mr. Harvey coming to Sequoyah, my reason was
11 Mr. Harvey had expertise in secondary chemistry, we had
12 secondary chemistry problems. That's true. I wanted his
13 expertise at the site. That's true. I mean if he hadn't had
14 expertise that would have contributed to my program, why
15 would I have been interested in him at all? You know, he
16 would have been a burden for me in terms of payroll if he
17 hadn't had expertise that would have contributed to my
18 program. So yes, I'm sure he had expertise that I felt like
19 would contribute to the chemistry program at Sequoyah.

20 Q Okay and in 1996 when you talked to the TVA OIG
21 and in 1997 when you signed the DOL statement and in 1998
22 when you were interviewed by Ms. Benson, you had a vacancy,
23 and in 1999 when you went to the enforcement conference, the
24 vacancy vanished.

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

1 Counsel -- I've objected previously about confronting this
2 witness and not giving him an opportunity to review these
3 documents and counsel keeps saying well you said here you
4 had a vacancy and there you said you didn't. And he pointed
5 to one particular line on the predecisional enforcement
6 conference and he hasn't given the witness an opportunity to
7 review the document, he hasn't pointed him to all the stuff.
8 The rules say that whatever is in there that is
9 inconsistent, he has to balance with what is consistent, or
10 at least let the witness have an opportunity to do it. And
11 at the predecisional enforcement conference, Mr. Dambly
12 asked him the same question at page 110 and the witness
13 explained it, and he said "I was wrong, I went back and I
14 looked at the documents." That is what Mr. Kent has been
15 telling him all morning. If you put those documents in
16 front of me, he said, let me look at the org charts, I can
17 tell you whether I was wrong there or whether I was wrong,
18 and he explained at the predecisional enforcement conference
19 and he's trying to plow this into something that it's not.
20 Because he explained it at the predecisional enforcement
21 conference, that apparent inconsistency, and he explained
22 what was going on and what he had looked at. And we're
23 getting a lot of distortion here that's not appropriate.

24 MR. DAMBLY: I certainly disagree with that
25 entirely and I would object to Mr. Marquand trying to coach

1 the witness in how he should answer questions, but beyond
2 that, I believe I'm entitled to ask him about the various
3 inconsistent statements and I'm not required to accept that
4 he decided to make up another story sometime later. And
5 we'll get to his next story in a moment, but if you'd like
6 to take a break for him to read his PEC transcript, that's
7 fine.

8 JUDGE BECHHOEFER: Well, I had asked before
9 whether he had had a chance -- whether, Mr. Kent, you had
10 had a chance to read the context of the entire relevant
11 portions of the document and I still -- I think you said you
12 needed to just look over that page.

13 MR. DAMBLY: And let me make it clear that Mr.
14 Kent was deposed in this case and we'll be getting to the
15 deposition and all of these documents were gone over with
16 him at that time and if he hasn't read them, it's his
17 counsel's fault because we discussed each one we've talked
18 about so far in detail in his deposition.

19 JUDGE BECHHOEFER: Well, nonetheless, I think the
20 witness should be familiar with the document and its context
21 before having to answer particular questions. I think
22 that's fair and whether he should have been told to look it
23 over earlier or not, that's not for me to judge, but I think
24 before me today, I would like the witness to be familiar
25 enough to know whether the question is coming out of context

1 or an answer is coming out of context. I think he should be
2 able to rely on the entire gist of the conversation.

3 MR. DAMBLY: If you want to take a break at this
4 point, it's fine with me.

5 JUDGE YOUNG: I think that would be appropriate.
6 And I just want to add just for myself possibly, but I do
7 find the discussion at length about the degree to which what
8 Mr. Kent did with regard to having Mr. Harvey come out to
9 Sequoyah, the degree to which that was him initiating it or
10 him responding to something is quite collateral and
11 peripheral to the issue of whether Mr. Fiser was
12 discriminated against or retaliated against because of the
13 filing of a DOL complaint, and I think that it would be
14 good, especially in view of the time that we have, for all
15 the witnesses that we need to hear, to try to get as soon as
16 possible without preventing you from presenting your case,
17 to try to get to the actual issues that we're here on and
18 I'm personally finding it a little difficult to make the
19 connection between the nature of Mr. Kent's discussion about
20 Mr. Harvey coming out to Sequoyah and its relationship to
21 alleged retaliation against Mr. Fiser for filing a DOL
22 complaint.

23 MR. DAMBLY: Well, to the extent you'd like me to
24 address that, I'll be happy to.

25 We had Mr. Grover testify that Mr. McGrath

1 specifically blocked the transfer because he wanted to keep
2 Mr. Harvey in headquarters for the PWR position, which is
3 central to this case.

4 JUDGE YOUNG: Right, that is.

5 MR. DAMBLY: Mr. Kent was on the selection review
6 board and obviously, as the staff is concerned, had made up
7 his mind. He went to significant efforts to get Mr. Harvey
8 transferred out to that site because he wanted him there
9 just before the selection.

10 JUDGE YOUNG: But that would have helped Mr.
11 Fiser, would it not have?

12 MR. DAMBLY: Yeah. It shows his bias for Harvey's
13 favor. He's on the SRB. It also shows that corporate
14 wouldn't let that happen because they wanted Fiser out, they
15 wanted Harvey in headquarters. If Harvey went out, we
16 wouldn't even be here, if Harvey had been transferred to
17 Sequoyah. We've heard all kind of stories about he didn't
18 have a vacancy, he did have a vacancy. The story changes
19 constantly to fit whatever forum we're talking about now, as
20 to whether they could have just lateraled him out there.
21 There was a vacancy, he could have picked him up, that's
22 what he said, and it was blocked. And he wanted him.

23 JUDGE YOUNG: The difficulty I'm having, and this
24 is just to assist you in whatever way it may, is if Mr.
25 McGrath or someone at corporate wanted to block the

1 transfer, I could see that as being relevant, but the nature
2 of how the idea to transfer Harvey out there was initiated,
3 whether it came full blown from Mr. Kent or from Mr. Rich or
4 from Mr. Grover, it seems to be undisputed that Mr. Kent
5 made some effort to get Mr. Harvey out to Sequoyah, which
6 would obviously have helped Mr. Fiser, and however the
7 people at corporate may or may not have or whatever
8 intention they may or may not have had with regard to
9 blocking that, allegedly blocking that, I'm just finding it
10 difficult to make a connection between the nature of Mr.
11 Kent's effort and whether corporate may have blocked that or
12 not.

13 You know, you take it for what it's worth, but
14 you've spent an awful lot of time on that small issue, which
15 is somewhat peripheral to all the other central ones, in my
16 mind at this point. So I'm offering that so if we can
17 proceed a little bit more efficiently and quickly, I think
18 it would be good for all concerned.

19 MR. DAMBLY: I think we'll tie it up for you in
20 the post-hearing brief, but I think again, it's fairly
21 clear.

22 First of all, he sat on the SRB shortly after --
23 Mr. Cox, we heard from Mr. McGrath, was excused because he
24 expressed a preference for Mr. Fiser. This man tried to
25 bring out one of the people to the site, solicited him

1 coming to the site, was the initiator according to most of
2 his statements, said he had a vacancy, they blocked it; then
3 he sat on the panel and rated guess who, better than Mr.
4 Fiser.

5 JUDGE YOUNG: Would that have been for the purpose
6 of discriminating against Mr. Fiser?

7 MR. DAMBLY: Yeah, I think so. We've already
8 cited you plenty of case law that if there's pre-selection,
9 that's sufficient.

10 JUDGE YOUNG: But if he wanted Mr. Harvey --

11 MR. DAMBLY: If the whole process is skewed in one
12 direction, that can be pretext, yes.

13 JUDGE YOUNG: Okay. We probably don't need to get
14 too far into this, but the purpose for my offering my
15 individual comments to you is to see if we can move along
16 and talk about the SRB and talk about all the things where
17 you alleging the discrimination could have taken place. If
18 we're going to spend this much time on each step in the
19 process, we're going to be here a long time.

20 MR. DAMBLY: I think that's fairly obvious, we're
21 going to be here a long time anyway, but beyond that, it
22 also goes to his credibility and how many different stories
23 he's told and we'll hear from other witnesses who have told
24 us numerous different stories. I keep hearing from Mr.
25 Marquand about the staff changing its position. Mr. Kent

1 has already changed it at least once or twice and we'll get
2 to some more. And they're not consistent and they can't
3 reconciled by well, on a certain day I thought I did this
4 and later I thought I did something different. The story
5 changes to fit the forum and I'm entitled to show that.

6 MR. MARQUAND: Your Honors, counsel made a big
7 speech about all this and the fact of the matter is he has
8 been approached on this several times, people have asked him
9 off the top of his head years afterwards what was the
10 situation, did you have a vacancy or not; yeah, at some
11 point in time he had a vacancy. Could he fill it? He said
12 I don't know if I could fill it, I never asked my upper
13 management. I wasn't even willing to do that, I wasn't even
14 willing to go to upper management to try to fill it.

15 Now whether or not he made a big effort to try to
16 transfer Harvey out, which is a completely different
17 mechanism than having a vacancy and posting it and going
18 through a selection process -- whether he made an effort to
19 have him transferred, he said yeah, I asked Grover one time
20 could he see about transferring him. He came back and said
21 no, management says that's not the appropriate process to
22 follow, the appropriate process is if you've got a vacancy,
23 seek approval to fill it and post it.

24 You're right, this is a collateral issue. It
25 doesn't show any predisposition, it doesn't show that he is

1 prevaricating about this. All it simply means is every time
2 somebody has asked him about it off the top of his head,
3 nobody has been willing to sit down, as counsel hasn't, to
4 show him org charts and say what was the situation in your
5 organization in '95 or '96, did you or did you not have a
6 vacancy which you sought to post. And nobody has gone back
7 and looked to see did you in fact fill any vacancies.

8 JUDGE BECHHOEFER: Mr. Marquand, I would disagree
9 myself with the off the top of his head analogy. These were
10 under oath, many of them, and that's not off the top of your
11 head, I hope.

12 MR. MARQUAND: Well, my point was nobody said
13 would you look at your documents, can you consult your
14 organizational charts, can you look at your postings, did
15 you post a vacancy, did you attempt to fill a vacancy. That
16 has never happened. Nobody has asked him to go back and
17 research any of these documents.

18 JUDGE BECHHOEFER: Not knowing all the history, I
19 can't tell you.

20 MR. MARQUAND: Well, I think it's pretty apparent
21 that that's the case. Nobody has asked him today if that's
22 the case.

23 JUDGE BECHHOEFER: Right.

24 MR. DAMBLY: Let me ask one question of Mr. Kent
25 before we take the break then.

1 JUDGE BECHHOEFER: Okay.

2 BY MR. DAMBLY:

3 Q Prior to the predecisional enforcement conference,
4 in preparing for the conference, did your counsel provide
5 you, did you look up your org charts and all the rest of
6 that and decide you didn't have a position?

7 A I can't recall. I don't remember if we did any
8 kind of review at that time or not.

9 MR. DAMBLY: Can we take a break?

10 JUDGE BECHHOEFER: Okay, let's break until 11:20.

11 (A short recess was taken.)

12 CHAIRMAN BECHHOEFER: Back on the record. Mr.
13 Dambly, Judge Young would ask -- like you to make an
14 explanation. Why don't you explain it.

15 JUDGE YOUNG: Well, let me -- let me say what I'd
16 like. If you could give us a concise summary of where
17 you're going with the questioning about the -- who -- how
18 the effort to bring Harvey to Sequoyah was initiated, and
19 whether or not there was a vacancy, if you could give me a
20 concise summary of where you're going with that, I think
21 that would be helpful.

22 MR. DAMBLY: Well, I'll be glad to do that, but
23 I'm about done with it. But where we're going, and I think
24 it's laid out in our response to the motion for summary
25 judgement.

1 JUDGE YOUNG: Well, just summarize it for us.

2 MR. DAMBLY: Mr. -- Mr. Harvey---and we'll get to
3 it with Mr. Voeller---told Mr. Voeller that he was being
4 preselected basically for the PWR position. Earlier, Mr.
5 Kent had, as it says in these statements, solicited
6 headquarters, corporate, to have Mr. Harvey come out. He
7 wanted his expertise, he needed him at the plant, he had a
8 vacancy. He told that to DOL, he told that to TVA IG, he
9 told that to NRC OI.

10 They get to the enforcement conference, and
11 suddenly they didn't have a vacancy because that doesn't fit
12 in anymore and there's a problem with it, as -- as is going
13 to be clear with Mr. Boyles and others on a lot of these
14 things. This story changes when people have come up and
15 said, "Well, that's not going to fly."

16 We also heard from Mr. McGrath that Mr. Cox
17 shouldn't sit on the board because he's expressed a
18 preference for Mr. Fiser, and in fact, he said there was
19 some conflict, and he shouldn't be allowed to sit because he
20 was biased. We've got a man who, shortly before, made
21 efforts, significant efforts to have Mr. Harvey and his
22 expertise kept and put in his vacant position, and that was
23 blocked by Mr. McGrath, who indicated to Mr. Grover he
24 blocked it because he wanted Harvey in headquarters, and he
25 wanted him in the PWR position.

1 It all gets back to everything was set up to put
2 Harvey in and get Fiser out. And it goes to Mr. Kent's
3 credibility, as well, and to his bias in sitting on the
4 selection review board. He didn't want Mr. McArthur -- or
5 Dr. McArthur to participate because there might be some
6 question because of a DOL complaint. We'll get into -- Mr.
7 Kent obviously was involved in the earlier DOL complaint.
8 But also had, just before sitting on the board, tried to get
9 one of the people that he was reviewing transferred to him
10 and working for him.

11 And that goes to bias in the whole selection
12 process that Mr. Fiser talked about. It was a setup from
13 the beginning. And that's what it all deals with. And it
14 also deals with credibility and the constant changing
15 stories to fit whatever forum you're talking to, we change
16 our story so, you know -- it's inconvenient to have had a
17 vacancy, and it's more convenient not to have had a vacancy,
18 because then you could say you have to transfer the whole
19 budget from headquarters, and then you got into the whole
20 discussion by Mr. McGrath about you can't just transfer one
21 person from a corporate function, you'd have to transfer the
22 whole function.

23 Well, that's just, as far as I'm -- smoke and
24 mirrors. There was a vacancy, and they didn't have to
25 transfer budget or anything else. And he wanted him there.

1 And then he came out later this morning and said but --
2 yeah, I wanted him, I solicited, but I didn't want him
3 enough to actually put him in the job I said I had, because
4 some of my people didn't like him. That's -- that's what it
5 all has to do with.

6 And I'm, quite frankly, done with it. In large
7 part. I mean, I'm going to skip the stuff in the
8 deposition, and we'll just ask him if he wants to comment on
9 what was in the PEC. But I would remind the board that the
10 last time we were together everybody kept telling me if
11 there's inconsistent statements, please point them out. I'm
12 trying to point them out, and it's taking too much time. So
13 I won't point them out. We'll just put all this stuff,
14 which we were going to put in, in the record anyway. But if
15 he wants to comment on the PEC, having read it now, I
16 assume, I'll be glad to give him an opportunity.

17 JUDGE YOUNG: Well, let me just clarify one thing.
18 I don't know -- when you say everybody was telling you that
19 if there were inconsistent statements, to point them out. I
20 don't know to what you were referring, and if you're
21 referring to the board. But obviously any party has the
22 right to point out inconsistent statements.

23 My question to you was the relevance of the -- of
24 who -- of how the effort to get Harvey out there was
25 initiated, and the relevance of the vacancy or not. And --

1 and I think that -- that your point of view on it is all
2 clear. And proceed. But don't feel -- don't feel hindered
3 in trying to point out inconsistent statements, if they're
4 relevant, and make whatever argument you want to make on why
5 they're relevant.

6 MR. MARQUAND: Counsel's made a little speech, and
7 I think I...

8 COURT REPORTER: Excuse me. Turn the microphone
9 on.

10 MR. MARQUAND: I would like to make a response to
11 that. About the effort to...

12 JUDGE YOUNG: Well, I'm not sure that you need to
13 make a very long...

14 MR. MARQUAND: It's not -- it won't be as long.
15 About the effort to get Sam Harvey transferred out to
16 Sequoyah. There's no question there was a -- that there was
17 an issue about can he be transferred out there. First of
18 all, counsel's conflating the issue or the mechanisms. One
19 is transfer; another is posting of a vacancy. Whether
20 there's a vacancy is irrelevant to the issue of transfer.

21 But, apart from that, you raised the question
22 about relevance of who initiated what with respect to the
23 issue of transfer. And as it's become very apparent, during
24 the '96 reorganization everybody was scurrying around trying
25 to find a job. And it's very clear that Mr. Harvey was

1 concerned about a job, and Mr. Grover was concerned, for
2 whatever reason, about getting Sam transferred out to
3 Sequoyah. And that simply consistent (sic) with the fact
4 that everybody knew it was coming, and there was all sorts
5 of shell games going on, where do we put people to avoid
6 head count problems at corporate.

7 And as Mr. Kent explained, he was having his own
8 head count problems, they were going through their own
9 reorganizations, and whether or not he could get approval
10 from his management to fill what appeared to be an empty box
11 on the org chart, a vacancy, whether they would approve him
12 to fill a job and then -- which they knew they'd have to
13 turn around themselves and reduce in force in a
14 reorganization is another issue.

15 Aside from that, counsel made a representation to
16 you that Sam Harvey told Dave Voeller he was being
17 preselected. That is counsel's statement. Sam Harvey
18 didn't tell Dave Voeller that; Dave Voeller doesn't say
19 that. That is counsel's statement. That is clearly not the
20 case.

21 He also said that McGrath said Cox shouldn't sit
22 on the board because he was biased. That is not what
23 McGrath said. McGrath...

24 JUDGE YOUNG: Well,...

25 MR. MARQUAND: I mean, counsel's made a lot of...

1 JUDGE YOUNG: ...you don't need to recount all the
2 -- I mean, we know...

3 MR. MARQUAND: I understand that.

4 JUDGE YOUNG: ...not to take statements of counsel
5 as evidence, so...

6 MR. MARQUAND: And with respect to whether there's
7 changing stories or not, you know, the witness hasn't ever
8 been asked does he have an explanation, what was the story
9 here. He hasn't -- you know, I would assume that, as Mr.
10 Dambly says, he's ready to ask him that question. We may
11 hear an explanation or not.

12 JUDGE YOUNG: Okay, if that's all, proceed.

13 CHAIRMAN BECHHOEFER: And -- and, of course, you
14 may on cross...

15 MR. MARQUAND: I understand, Your Honor.

16 CHAIRMAN BECHHOEFER: ...ask him for an
17 explanation, as well.

18 BY MR. DAMBLY:

19 Q You've had a chance to review the predecision
20 enforcement conference transcript now; is that correct?

21 A Yes. Yes, I did look at a few pages of that
22 transcript.

23 Q Is -- is there anything you wanted to add after
24 reviewing that?

25 A Well, yes, if I could. On Page 110---and this is

1 a few pages further than what we've been talking about---I
2 did clarify, in the previous -- in the preenforcement
3 conference, that I had been confused about the issue of
4 whether or not there was a vacancy, and that I had gone back
5 and -- and looked at the actual head count during that time
6 interval, and in fact there was not a vacancy on the books
7 at the time of this issue with Harvey. And I -- and I
8 admit, I -- and I said so in this document, it's on Page 110
9 and 111, that I had -- I had been confused about the
10 position and whether or not that vacancy existed on the
11 books at that time. So I had attempted to clarify that in
12 response to a question from Mr. Danby in this -- in the
13 preenforcement conference.

14 And as I mentioned earlier, I did have a couple of
15 foggy periods. And I'll explain a little bit what that was,
16 so, you know, you understand. Every -- every time I've been
17 interviewed, and I've been interviewed many times over the
18 period of '93, '94, to date, I have not gone back and
19 researched everything I've said in the past, and I don't
20 have -- I may not have the transcripts of all those
21 conversations, and in some cases I may choose not to
22 because, you know, it's confusing to go back and research
23 all those documents. Plus I have a full-time job doing
24 something else.

25 But I will -- I will say that in late '94 I know I

1 was going through a period of foggy recollection because of
2 health reasons. And in April of '94, April the 30th, '94, I
3 had a massive heart attack. I had had two heart attacks. I
4 had angioplasty in -- in early May of '94. And for a period
5 of months, six months to a year after that, you know, as I
6 get further away from that period, I could see that -- and
7 my staff have told me, you know, there's -- I would ask them
8 things, and I'd turn around and ask them the same thing
9 again.

10 Your priorities change, you know, when you're in a
11 situation of trauma like that. That same thing happened in
12 April of '98, on my four-year anniversary, as a matter of
13 fact, I had quadruple bypass surgery for a heart problem
14 again. So in -- in the period of -- of April, for a few
15 months after that, maybe six, and a period of '98 and '94,
16 there are some foggy periods there. And while I've not gone
17 back, and maybe I'm remiss in not going back and trying to
18 review ten, 12, 13 years worth of transcripts that may or
19 may not be available, when I was interviewed by the DOL, you
20 know, I didn't -- didn't understand that he was going to ask
21 me about an organization I would have had sometime in the
22 past, so I didn't have an opportunity to go review that
23 beforehand.

24 Same thing with the IG. You know, I wouldn't have
25 known that -- to prepare and to review that information. So

1 I -- I did not make comments and I do not make comments off
2 the top of my head in response to questions from anyone in a
3 proceeding like this. But I have done my best over the
4 years, to the best of my recollection, to state the facts as
5 I saw them and as I know them. But clearly in -- in this
6 preenforcement conference I did correct that I had reviewed
7 the org structure and the org charts at the time, and in
8 fact I had -- I was confused and there was not a vacancy on
9 the books at that time.

10 Q All right. Now, since you just said that, if you
11 would go to Staff Exhibit 74, which is your deposition.

12 A Yes, I have it.

13 Q And this was after the enforcement conference;
14 correct?

15 A This was my interview with you in November of last
16 year. Yes, this was after.

17 Q Okay. We'll just skip to the -- to the end on
18 Page 196.

19 A 196?

20 Q 196. Well, actually, if you want to take a second
21 to look at 1 -- let's see, 193 through the end, through to
22 the -- in order to put in context. What I'm interested is
23 at the bottom of 196 it says, "If asked did I have a vacancy
24 at Sequoyah, I obviously answered yes, I have a vacancy, and
25 that is a position that he possibly could have filled. I

1 made no effort to put in in that vacancy, and had no intent
2 to put him in the vacancy, and I think IG notes there, I
3 think, are consistent with that. Because if you read it, it
4 says I had a position I could have put him in, that is true.
5 I had a position I could have put him in, if I'd been
6 willing to do whatever it took to make that happen. I did
7 not attempt to do that at all." And it goes on. If you
8 want to read whatever context before that.

9 A Is this the IG from -- what time period that we're
10 talking about here, do you know?

11 Q Well, the same one we've talked about. I think
12 this would had to have been the '96 IG interview.

13 A Okay.

14 Q You -- you wouldn't have been talking in the '93
15 or '94 context because it didn't happen.

16 (The witness reviews certain material.)

17 A Is this the IG report that we had a transcript of
18 earlier that we were looking at, do you know?

19 Q I assume it is.

20 A Because all of them we didn't have transcripts
21 for; right?

22 Q Right. And we didn't have a transcript of it at
23 that time, as a matter of fact.

24 A Do we have it now? I mean, you know, for me to
25 understand what I was responding to here...

1 Q It should be 71.

2 A 71?

3 Q I believe that's the number. It's Staff Exhibit
4 71.

5 A Okay, in looking at this, these statements in the
6 Exhibit #71, when I was being interviewed by Agent
7 Vanbrocken, and this is in -- this is in '96, and I don't
8 remember exactly the date of when we ultimately put I
9 believe Mr. Ritchie in this position, in the position of the
10 program manager, technical support group manager, whatever
11 we would have called it at that time, that happened, I
12 believe, in '96. But apparently at this time, when I was
13 talking to Mr. Vanbrocken, that was in August of '96, we had
14 not made that -- that change at that time.

15 And I said to Mr. Vanbrocken, I talked to him and
16 he asked me about the conversation regarding Mr. Harvey.
17 And, you know, I -- what I expressed to him was that Mr.
18 Harvey was in corporate, he was providing support to our
19 site, you know, we thought he was doing a good job. He had
20 expertise that we didn't want to see gone from the company,
21 so I made an effort to pick him up permanently at Sequoyah.
22 That's -- I've already said we did that.

23 And at this time I also made a statement that we
24 needed and we still need some extra management support in
25 our group, and I think that's because we really needed a

1 person over technical at that time, and a person over the
2 operational piece of the organization. And we had a
3 tremendous amount of -- this was a lot of change going on,
4 the five-year chemistry upgrade program that -- that we had
5 implemented was -- was being implemented. My other key
6 resource management person was heavily involved in special
7 projects at that time, so I probably did need support there.
8 And I said I had a slot that I was looking at putting him
9 in, that we hadn't filled. And that was the one from Mr.
10 Fender who had left and gone back to CP&L.

11 I also said -- I told -- told Mr. Vanbrocken that
12 after Mr. Fender had left---and I discussed that position
13 with Mr. Vanbrocken---that the position had been vacant and
14 not refilled for some time because there's a lot of pressure
15 to go to a standard organization with the other sites. The
16 other sites did not have that position filled in their
17 organizations. And then I explained it was really kind of
18 complicated. There was a lot of transition taking place.
19 But to explain a little bit about the standard org, the rad
20 chem across the company we were trying to standardize, and
21 we had been working for two or three years to implement a
22 standard organization, because our upper management---and
23 I'm talking really upper management---in the company wanted
24 to go to standard org structures across the site -- all
25 three sites. We were working toward that.

1 We had had a position that Mr. Fender had occupied
2 that was a position in the org structure as approved by Mr.
3 Bynum in early '93.

4 JUDGE YOUNG: Now, who -- Mr. Fender, did you say?

5 THE WITNESS: Bruce Fender; yes. Mr. Fender. He
6 was hired in '93.

7 JUDGE YOUNG: Oh, he's who you referred to?

8 THE WITNESS: Right. He's the person I referred
9 to as leaving to go to CP&L. He had -- he had come from
10 CP&L, and his family decided they really wanted to move back
11 to North Carolina, so he relocated back to North Carolina.

12 JUDGE YOUNG: Right.

13 BY THE WITNESS:

14 A But Mr. Bynum, in '93, the organization he
15 approved, had three direct reports in the chemistry area.
16 One of those was over technical functions; one was over
17 operational functions; and I forget what the other one was,
18 but I believe there were three. It's in the record. The
19 org chart's in the record.

20 The other two sites did not fully implement that
21 organization. They partially implemented it, but they did
22 not fully implement the organization. In the time period of
23 '95 and '96 there were a lot of reviews going on within the
24 company of organizations across the company to look at
25 standardization, to look at how it can be more efficient, to

1 look at reduction of levels of management. I mean, all that
2 stuff was -- was continuing to go on. And in this time
3 period, when I talked to Mr. Vanbrocken, I had not filled --
4 I hadn't posted the Bruce Fender position or hadn't --
5 hadn't filled it, up until August -- at least August of '96,
6 because of that ongoing organizational review and
7 transition. And I believe -- and I -- as I stated in the
8 preenforcement conference, when I actually went back and
9 looked at what we had on the books in the org manual for the
10 -- for my organization at the time, that position wasn't
11 there. I did not have it there. Now, I had had it before.
12 It was in the April organization structure that Bynum had
13 signed, and I had it also showing up in the organizational
14 plan that had been approved by Mr. Zeringue in probably late
15 '96 for us -- the one we finally agreed to, this is the way
16 we're going as a team. But I actually did not have a
17 vacancy on the books at -- at the time we were having this
18 discussion.

19 CHAIRMAN BECHHOEFER: Just a clarification. Mr.
20 Kent, does the term on Page 197, Line 13, "directed
21 transfer," is that -- does that equate with the description
22 on the previous page, Line 21, 2, 3, a directed transfer?
23 Does that always include the function and the budget, or
24 does it -- can a directed transfer just be you -- you show
25 up for work and -- at the site, individually, and the

1 site'll assume the dollar cost, et cetera? I'm trying to
2 know what your -- what the words mean.

3 THE WITNESS: To me. I'll tell you what they mean
4 to me.

5 CHAIRMAN BECHHOEFER: Well, yeah, it's your
6 statement, so...

7 THE WITNESS: Functionally, I'll tell you what
8 they mean to me. You know, not being an HR expert, I don't
9 try to talk in HR legalese. It was my understanding that
10 when we were talking about the transfer of Mr. Harvey to the
11 site, we were talking about transfer of head count, budget,
12 everything.

13 CHAIRMAN BECHHOEFER: I see.

14 THE WITNESS: The whole -- the whole ball of wax.
15 Function, head count, budget. Primarily because I didn't
16 want to go have to defend to my management why we wanted to
17 add that much budget impact to the site.

18 Now, if corporate had the function and corporate
19 was willing to give up the function, which was the support
20 to Sequoyah, and transfer it to me, then certainly we were
21 willing to accept that.

22 CHAIRMAN BECHHOEFER: But would the person then be
23 acting as a corporate employee or as a site employee?

24 THE WITNESS: Well, we would have had -- he would
25 have been acting...

1 CHAIRMAN BECHHOEFER: How does that work?

2 THE WITNESS: ...as a site employee. We would
3 have had to worked out, you know, I'm sure, some kind of
4 agreement as to what his function would actually be once he
5 got to the site, because he was still doing things that
6 supported all three sites. You know, in the context of --
7 of technical support for Sequoyah, he was doing that. But
8 I'm sure during that time period, if we were negotiating a
9 contract---and -- and Mr. Harvey did a lot of that, they
10 were company-wide contracts---he would have been also in
11 that sense providing support to the three sites. So, you
12 know, there would have been a hybrid function, I think, for
13 that position, had it come to Sequoyah.

14 CHAIRMAN BECHHOEFER: I see. Thank you.

15 BY MR. DAMBLY:

16 Q Now, Mr. Kent, the question I asked you, and I --
17 you just testified a moment ago that before the PEC you went
18 back and you looked and you found you didn't have a
19 position, and that's why you told us during the enforcement
20 conference you didn't have one.

21 Now, on Page 197, when I was taking your
22 deposition, it says, in the middle on -- or starting on Line
23 7, "Because if you read it, it says I had a position I could
24 have put him in. That is true." Now, this was a statement
25 taken after the enforcement conference. Now, what did you

1 review between the enforcement conference and your
2 deposition that changed your mind that you did have a
3 position?

4 A Well, in this case I was responding to -- I
5 believe I was responding to you and your questions about
6 what I had told Mr. Vanbrocken, and I was trying to talk in
7 context of the time that I had spoken with Mr. Vanbrocken.
8 I believe that's correct. And when I -- when I reviewed the
9 statement I gave Mr. Vanbrocken, I talked to him about that
10 position. And so, you know, I...

11 Q And that position was Mr. Fender's position?

12 A It would have been an equivalent one to -- to the
13 one Mr. Fender would have had; yes.

14 Q And it was vacant at the time of your discussions
15 with Mr. Harvey, and it's still on your organization chart
16 and somebody occupies it today; correct?

17 A It was -- there was no position. Actually, I
18 believe there was no position on my org chart at the time I
19 was talking to Mr. Harvey. If you look -- if you go back
20 and research---and I did when we went to the PEC---go back
21 and research to see what we actually had on the books, and
22 at that time I did not have a vacant position. I don't even
23 know that I was aware that that organization chart was in
24 the book. I mean, I'm -- I'm working from what was approved
25 by Bynum, what we were going to long-term. There was an

1 interim org chart. We were not satisfied with it. No one
2 in rad chem at any of the three sites were satisfied with
3 it. We had tacit approval from our senior management not to
4 implement it because we were working to transition to this
5 long-term permanent thing. And, you know, I don't -- I
6 don't know what I was thinking at that time. I -- I'm -- I
7 believe I was looking more at the long-term, whether or not
8 the position would be there, not what was actually on the
9 books at the time. And I -- I tried to explain that in the
10 PEC.

11 Q Again, Page 197 of your deposition,...

12 A Yes, this is to you.

13 Q ...Line 7, if you read it, it says, "I had a
14 position that I could have put him in. That is true." What
15 did you mean by "that's true"?

16 A Well, I'm responding to a question you asked me
17 about you told the IG you had a -- that you wanted Harvey
18 and you were concerned about it and you had a vacant
19 position that he could have filled, and you go on to explain
20 why you didn't, why it didn't come about. I was responding
21 to that question.

22 Q You respond -- well, when you said, "That is
23 true," are you saying that you didn't mean to indicate that
24 you had a position -- the statement that you had a position
25 you could have put him in was true?

1 A At the time that I was being deposed by you?

2 Q Yeah.

3 A We were discussing this. I believed at the time I
4 talked with the IG that I had a position that I could have
5 put him in. And that's what I said. And that's how I
6 responded to you. In that context.

7 I mean, I'm -- I'm not trying to play a shell game
8 with positions. There are periods in all organizations
9 where you go through a lot of flux. And over the -- since
10 '96 time period, you know, seven years -- six, seven years
11 or so, I don't know how many times I've been interviewed
12 about this. But I did not, in any case, prior to the
13 interview, go back and look at the org chart that I had
14 available to me in 1994. The one that was on the books.
15 The only time I did that was prior to the PEC. I did not go
16 back and look at my statement that I made to the PEC before
17 Mr. Danby deposed me.

18 So there are periods of time in that six-year
19 intervals where obviously, you know, if you asked me a
20 question a certain way, I responded the best I could to the
21 question that I was asked. I didn't -- I didn't go back and
22 try to review all that material. Had I done that before Mr.
23 Danby deposed me, I would have probably at this point
24 explained, as I did in the PEC conference, that I had been
25 mistaken when I talked with the IG, and that I actually did

1 not have a position.

2 Now, that doesn't mean -- just because I didn't
3 have a position on the books doesn't mean I couldn't have
4 gone to my management and asked for a special dispensation
5 anyway to bring Mr. Harvey out there. But I chose not to do
6 that. Not because anybody told me not to do it, not because
7 anybody asked me not to do it. I chose not to do it because
8 -- simply because the response I got from Mr. McGrath was he
9 didn't think it was the appropriate thing just to transfer
10 him to Sequoyah, and his function. We were undergoing a lot
11 of organizational change at the site, anyway, and I didn't
12 think it was appropriate to do -- an appropriate thing to
13 do, to go try to run the gauntlet with my management to get
14 approval to add a position to my organization. And I -- I
15 will confess, and -- and did in the PEC, I have been
16 confused about the issue of exactly when and when I didn't
17 have a position on the org chart over the years.

18 Q And after the PEC?

19 A Even -- and after the PEC, obviously. Possibly.

20 Q I mean, you -- you didn't say in response, "Well,
21 I thought at the time I talked to the IG person I had a
22 vacancy. That's not true." You said, "That's true, I had a
23 position I could have put him in." You didn't qualify that
24 with that's what you thought back then; that's what you told
25 me. That you had a position you could have put him in. And

1 that's subsequent to the PEC; is that not true?

2 A Yes, it is subsequent to the PEC. And if I
3 remember this conversation, you were pressing me really hard
4 on this issue, as you have today, and obviously I made that
5 statement that you're -- this is a transcript. I believe it
6 to be accurate. Exactly how I was -- what I was responding
7 to at this particular time, I don't know. But, Mr. Danby,
8 if you look at the PEC, all of us are subject to make
9 mistakes. You also made a mistake on Page 110 of the PEC,
10 when you said it was Mr. Fiser we were trying to put in the
11 position instead of Mr. Harvey. And had Mr. Boyles from TVA
12 not corrected you on that, that would have been in the
13 record, sir. It would have been in the record, and it would
14 have been wrong. But Mr. Boyles from TVA corrected that
15 statement, and therefore you benefit from that. I didn't
16 have anybody coaching me on nine years worth of statements.

17 Q Oh, really? You never talked to Mr. Marquand at
18 all the various statements he represented you in?

19 A I have talked to Mr. Marquand from time to time.

20 Q And you didn't prepare for the PEC before you went
21 into it?

22 A I obviously did prepare at least one element of
23 the PEC. I looked back at my organization. I didn't
24 prepare for this interview to any significant degree. I
25 mean...

1 Q Did anybody tell you you were not allowed to
2 prepare yourself?

3 A No.

4 JUDGE YOUNG: Let me see if I can just clarify for
5 my own understanding. You were willing at one point to take
6 Mr. Harvey out at Sequoyah. Then, through whatever
7 channels, you heard that Mr. McGrath did not think that
8 would be appropriate. You thought that -- you understood
9 that if you were going to do that, you would have to go
10 through posting a position and allowing competition for it
11 and so forth. And you decided not to do that as a result of
12 what you heard Mr. McGrath had directed; correct?

13 THE WITNESS: That is -- that is, for the most
14 part, correct. Mr. -- I -- I did approach Mr. Harvey's
15 supervision and discuss with them the possibility of moving
16 Sam to the site.

17 JUDGE YOUNG: Right. You were willing to do that
18 at one point?

19 THE WITNESS: I was willing to do that.

20 JUDGE YOUNG: And then -- and then you heard that
21 Mr. McGrath had said you could not do it in the way you were
22 thinking about doing it?

23 THE WITNESS: That's correct.

24 JUDGE YOUNG: And you decided not to do it in the
25 only way you understood that you could have done it?

1 THE WITNESS: Well, the only way Mr. McGrath would
2 have wanted me to do it or would have -- he was not willing
3 to transfer the function and the head count, you know, and
4 the budget, and I understand -- I understand that now. I
5 mean, Mr. -- that's been discussed that that would have
6 really been inappropriate. So I understand that. And I
7 understand Mr. McGrath's position, because I think he -- he
8 counseled with HR.

9 JUDGE YOUNG: But -- but not getting into his
10 position, your testimony is that the reason you didn't
11 transfer him was because you heard, through whatever
12 channels, that Mr. McGrath said you could not do it that
13 way, and you chose not to do it the only way you understood
14 you would be permitted to do it?

15 THE WITNESS: Which was posting a vacancy.

16 JUDGE YOUNG: Right.

17 THE WITNESS: That is correct.

18 JUDGE YOUNG: Okay.

19 THE WITNESS: I chose personally and solely,
20 without input from anybody else, not to pursue it any
21 further, because I didn't want to go through the process of
22 requesting permission to post a vacancy. And there was no
23 one that coached me on that, there was no one that said,
24 "Don't do this," you know, "You don't really want to do
25 this." I got -- I simply got back in one conversation from

1 Mr. Grover a comment from Mr. McGrath that said he didn't
2 think that was the appropriate way for you -- for us to move
3 a person from corporate to the site. If you really want
4 Harvey, you should post a vacancy. And I didn't want him
5 that bad.

6 JUDGE YOUNG: Okay.

7 THE WITNESS: I didn't want him enough to post a
8 vacancy.

9 CHAIRMAN BECHHOEFER: Mr. Kent, is there any
10 procedure within TVA where you could designate a particular
11 person as having certain unique competence and have -- in
12 waiving the -- the advertising procedures or publication
13 procedures, saying Mr. Harvey has unique competence in this
14 area, unique professional expertise and we need this person,
15 and advertising is not practicable?

16 THE WITNESS: Well, I'm -- like I said, I'm not an
17 expert on those -- on those -- I've not done that, and so I
18 really would not be familiar with whether that's possible or
19 not. You know, that -- that would be, I guess -- if I had a
20 desire to do something like that, I would approach our HR
21 organization and -- and get them to advise me on the proper
22 process. Whether or not there is a possibility to do that
23 or not, I wouldn't be familiar.

24 CHAIRMAN BECHHOEFER: I see. Thank you.

25 MR. DAMBLY: Would this be an appropriate time to

1 break for lunch?

2 CHAIRMAN BECHHOEFER: Is it a good breaking point?

3 MR. DAMBLY: Yeah. I'm going to go to the
4 selection review board at this point.

5 CHAIRMAN BECHHOEFER: Oh, okay. Okay, why
6 don't...

7 JUDGE COLE: Why don't we start at 1:15.

8 CHAIRMAN BECHHOEFER: 1:15 sounds good.

9 MR. DAMBLY: Thank you.

10 (Whereupon, a luncheon recess was taken at
11 12:06 p.m., the hearing to resume at 1:15 p.m.,
12 the same day.)

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AFTERNOON SESSION

CHAIRMAN BECHHOEFER: Back on the record.

BY MR. DAMBLY:

Q Mr. Kent, are you familiar with the selection review board policy at TVA?

A I'm familiar with it functionally. I have served on the selection review board.

Q Okay. And functionally what do you understand how it's supposed to work?

A Well, I understand that in the selection review board process, the selecting manager, responsible supervisor for the position, would look throughout the organization and select people to be on the selection review board that would have technical or managerial ability to evaluate candidates and that they would basically outline the way the interviews were supposed to go, develop a protocol for questioning and that kind of thing, and then the selection review board would go through the process of interviewing the candidates and make a recommendation to the selecting manager.

Q Now many SRBs have you served on?

A I really don't know, I can't recall. More than one, maybe more than 10, I don't know.

Q More than five?

A I really don't know. I have made myself available as needed over the 24 years or so I've been with the company

1 and I really don't have any idea how many there could have
2 been. Less than 20 or 30.

3 Q You're not unfamiliar with the process?

4 A No.

5 Q And you've also been a selecting official?

6 A Yes, I have.

7 Q And what would your function in a posted vacancy
8 be as a selecting official?

9 A Well, in a position that had an SRB? Or in
10 general?

11 Q A selecting official where you had a posted job
12 and have an SRB.

13 A Okay, and have an SRB. Well, as a selecting
14 official, I would be responsible for, of course, looking at
15 the needs of the group, defining the needs of the position,
16 having the vacancy announcement posted that described the
17 needs and requirements of the position. This is of course
18 all working through our HR organization. And then selecting
19 the members, contacting the members that I wanted on the
20 SRB, based on their ability to contribute and availability.
21 Notifying -- I think HR would probably notify the candidates
22 of the meeting of the SRB. As selecting manager, I would
23 probably design the questions that I wanted the SRB to ask
24 the candidates and then be involved in the SRB process.

25 Then after that, as a selecting supervisor, I

1 would be responsible for taking input from the SRB along
2 with other inputs, you know, such as performance reviews
3 from the individual, complete work history type information,
4 and making a decision and then going to HR with my
5 recommendation on which candidate we propose to select, and
6 why. And then that would be evaluated by HR. We would come
7 to agreement and they would proceed with making an offer.

8 Q Did you understand that as a selecting official,
9 you were supposed to or required to take whatever the SRB
10 gave you or were you supposed to do something beyond that?

11 A As selecting official, I think the SRB is an input
12 to the selection process, it is not the selection process.
13 I believe it to be responsible manager's role to take that
14 as an input and evaluate it, but not -- that wasn't the
15 process as a whole. The SRB did not have the final say on
16 who got what position or anything else.

17 Q When you prepare the selecting official questions
18 for a SRB to ask, what do you look at to determine what
19 questions you want asked?

20 A I would look at the nature of the position and
21 what we desired to have in terms of knowledge, managerial
22 skills, ability to communicate, a number of factors. And we
23 would design questions that would basically give us an
24 opportunity to evaluate all the candidates on those
25 attributes.

1 Q Can an SRB member add a question to the list
2 provided them by the selecting official?

3 A Yes, I think so. I mean I don't believe the list
4 of questions is that rigid, you know, and I've been involved
5 in SRBs where the members would review the questions and
6 make a suggestion, you know, that we edit the wording of a
7 question to make it more clear for the candidates that you
8 were going to interview, things like that. So I believe you
9 could do that.

10 Q As an SRB member, how do you rate the candidates
11 in response to a question?

12 A Well, I think from my past experience, we would
13 look at -- it depends on the question, you know. If it's a
14 technical question of course, you're rating the candidate on
15 his technical knowledge and there may be technical questions
16 that are intended to determine if a candidate knows some
17 fact or process or really understands something and you
18 know, that could be pretty involved. You would try to rate
19 the candidate on his technical knowledge of that particular
20 issue. And you sort of develop your own scale of what, you
21 know, is a good answer and what is not a good answer. Part
22 of the rating process would I think have -- for a management
23 position in particular, would look at and I would consider
24 the person's ability to communicate ideas and concepts.
25 That's critical to management positions.

1 Q Would the chemistry program manager position that
2 Mr. Fiser and Mr. Harvey and Mr. Chandra -- the PWR position
3 -- applied on be considered a management position?

4 A Yes, it was.

5 Q It was?

6 A Yes.

7 Q So you use management not just over people, but
8 over programs?

9 A Right, technical areas, and the roles that those
10 positions were designed to have, they would be interfacing
11 with all the sites, you know, on a number of issues and it
12 would be very important that in that position, they would
13 communicate to the sites what they felt was the best
14 practice, what they'd observed from their interface with
15 industry groups and that kind of thing and solicit
16 cooperation and change at the sites in effecting, you know,
17 needed improvements to the program.

18 Q And interpersonal skills would be important in
19 that position?

20 A Yes.

21 Q Now in terms of just numerically, how do you score
22 a candidate? Do you use a 1 to 10 scale?

23 A Typically, yeah, I would say we try to do it on a
24 10 to 10 scale.

25 Q Is there any meeting of board members beforehand

1 or the board members and the manager to develop criteria for
2 what's a 2, what's a 5, what's a 7, what's a 10 answer to a
3 question?

4 A I don't think that's required. There may be,
5 there may not be. I think it depends upon the selecting
6 manager and how much, you know, how much input he may want
7 to have to the board. On the positions you're talking about
8 in particular, there was no meeting beforehand to discuss,
9 you know, scale and what was good, what wasn't good, that
10 kind of thing.

11 Q So each SRB member for the position we're talking
12 about, the chemistry program manager PWR position, both
13 yourself and Mr. Corey and Mr. Rogers -- that's the SRB
14 members, correct?

15 A Uh-huh.

16 Q You were free to each have -- one person could say
17 we asked question X and the person answered the question we
18 asked and that's a 7, he gave me the right answer because I
19 wanted him to go beyond that. The next person could say he
20 went beyond that and I only wanted him to answer what he was
21 asked and so I'm going to give him a lower score. Y'all
22 could have had totally inconsistent rating criteria.

23 A That's true. Like I said, there was no discussion
24 up front on what a good answer would be, what would be an
25 unacceptable response. So there could have been a large

1 discrepancy in the grading for responses to individual
2 questions, I mean that's possible.

3 Q And when you ask questions to individuals, if you
4 wanted more or a broader response than you got or would have
5 given a higher grade is somebody had gone beyond the
6 question, did you ask follow up questions like what would
7 you do about that problem, instead of just tell me what the
8 problem is?

9 A Yes, the SRB members, you know, generally and in
10 this particular case, it was decided up front who on the SRB
11 would ask specific questions, and we had the latitude, any
12 of us really, if we thought the question wasn't understood
13 or the individual maybe had more knowledge than they
14 communicated, a follow up could have been asked by anybody
15 to elicit that.

16 Q Do you recall that being done on this particular
17 SRB?

18 A I mean I would assume so, it's sort of a natural
19 thing. I would be surprised if there weren't follow up
20 questions.

21 Q And the reason I'm asking, yesterday Mr. Corey
22 told us I think in response to a question what is denting
23 that he wanted individuals to discuss not just want is
24 denting but how you would take care of the problem, solve it
25 or prevent it or whatever.

1 If an individual answered the question what is
2 denting with an explanation that was correct as to what
3 denting is, but didn't go any farther, would you or did you
4 or Mr. Corey or somebody else say well, what would you do
5 about it or how would you fix it or prevent it?

6 A That's possible. I don't recall in this
7 particular case, you know, how far we pursued any candidate
8 on that particular question. I just don't recall the
9 details of the interview that well.

10 Q Is it possible -- I'm sorry, permissible or
11 acceptable for an SRB member to take into account their
12 personal knowledge of a candidate during a board meeting,
13 during the interview process? If an individual gives you an
14 answer that you know they know more information --

15 A Well, I think you'd have to be careful about that
16 because you would need to make sure that you're being fair
17 with all the candidates and if you -- for instance, on a
18 given question, if you feel like it takes a follow up
19 question to get the full information from an individual, I
20 would think you would want to try to do that with all the
21 individuals, so that you're basically giving them all of
22 them the same opportunity.

23 Q And if somebody -- you ask a question, tell me
24 three projects that you've worked on, I think was one of the
25 questions. And you knew that the individual, shall we say,

1 puffed and misrepresented his involvement in a given
2 process, said I was the team leader and he was really a
3 minor player -- can you share that with the rest of the
4 board or would you share that with the rest of the board or
5 would you accept their answer at face value?

6 A Well, just from a personal perspective, I think if
7 I ask a question about something that an individual -- ask
8 them to state something that they had done and outline a
9 project that they were responsible for and that they had a
10 key role in, and if that was a question, regardless of who
11 asked it, and the individual made a statement that I knew
12 was in error, I cannot believe that I would not factor that
13 into my rating of that individual, but I don't believe it
14 would be appropriate for me to express that to everybody
15 else on the board. I probably wouldn't do that.

16 CHAIRMAN BECHHOEFER: Would you cross examine the
17 individual after he gave an answer, he or she gave an answer
18 that you knew was incorrect or not completely correct?

19 THE WITNESS: Well, in the example we're
20 discussing here where somebody grossly inflated their role.
21 If it was a minor misstatement of what their involvement
22 would have been, I think you'd just blow it off as everybody
23 feels like they're more important than they generally are,
24 and that kind of thing you would put aside. But if it was
25 really a gross overstatement, then you might. If you

1 thought they were communicating something that was so
2 grossly in error to the whole board, then yeah, I might
3 follow up with a question to probe a little bit further to
4 get them to either rescope their involvement or show the
5 limit of their knowledge to a certain -- to the subject. I
6 think that would be fair.

7 Q And if they didn't rescope their knowledge and
8 continued to represent that they were a lot more important
9 or had a much more key role than they did, you wouldn't
10 share that with the other people, but you'd take that into
11 account in your rating?

12 A Well, we're speculating, of course, but I would
13 say probably I would -- I mean, I don't know how I could
14 avoid maybe taking that into account. If we've asked a
15 specific question and we've gotten a grossly erroneous
16 answer from a person, I would think it would be very hard
17 for me as an individual to totally disregard all that
18 information and give the person a high rating when I knew
19 they didn't deserve it. I don't think -- and we did not in
20 this SRB or in any other SRB that I can recall -- ask a
21 question and then at any time either during the interview
22 process or after, share with the other board members any
23 information that would influence them to change their grade
24 on a given question.

25 Q And conversely, if you asked say a technical

1 question and the individual failed open, as was discussed
2 yesterday, but you knew -- you had worked with that person,
3 you'd worked with him on a project on a specific topic and
4 you knew they were really sharp and knew it, they just had a
5 bad day; would you take that into account as well in your
6 rating?

7 A Well, I think you would definitely factor in the
8 fact that they failed open. I mean for most management
9 positions, part of responsibility of the position and one of
10 the key elements of being in a supervisory or management
11 position is the be able to communicate. And if you can't
12 communicate your thoughts and ideas, then you can't be very
13 effective in any role. And so I would think that would be
14 factored into my rating of the individual.

15 I suspect the individual would be rated down
16 because they failed open.

17 Q When did you first get notified you were going to
18 be on this SRB?

19 A I don't really recall the exact date that I was
20 notified, but I believe it to have been approximately maybe
21 four weeks before the SRB. We have peer team meetings
22 approximately once a month and I believe that at the
23 previous peer team meeting, it was discussed that they were
24 going to have an SRB and would we be willing to serve on it,
25 and my recollection is that we talked about it briefly and

1 agreed that it would be on the day of our next peer team
2 meeting, so all of us could be together at the same time.
3 So I think it was probably about four weeks.

4 Q And when you say peer team, you're speaking of the
5 rad chem managers at the sites?

6 A Yes, the three rad chem managers at the sites.

7 Q You and Mr. Cox and Mr. Corey?

8 A Yes, that's correct.

9 Q And was that your understanding that originally
10 was going to be the SRB, was the three of you?

11 A I really don't know that I ever really knew who
12 all would make up the SRB, I only understood that the three
13 of us were requested to be a part of that. It could have
14 been, you know, five people, it could have been seven
15 people, it's whatever the selecting supervisor wanted, but I
16 thought at least we were going to be a part of that.

17 Q When did you learn Mr. Cox would not be part of
18 that?

19 A I believe it was the morning of the SRB in our
20 peer team meeting or just following our peer team meeting, I
21 think he informed us -- myself, Mr. Corey, and you know, Mr.
22 McArthur was there -- that he would not be able to stay,
23 that he had a commitment in the afternoon and he wouldn't be
24 able to stay. That was the first.

25 Q Did he say anything else about any of the

1 candidates?

2 A He made a comment about one of the candidates,
3 about Mr. Fiser, he said for what it's worth, you know, Mr.
4 Fiser has done a good job at Watts Bar, and you know, he
5 just wanted to provide that to us for what it's worth.

6 Q Did he tell you he had preselected Mr. Fiser for
7 the position?

8 A No. He did not communicate to us in any way that
9 he was predisposed toward Mr. Fiser. He was not the
10 selecting person, so he couldn't have preselected him
11 anyway, it would have been Mr. McArthur's responsibility.

12 Q Okay, did he indicate that he would have rated Mr.
13 Fiser first for the PWR position because that's who he
14 wanted to put in that position?

15 A No, he did not.

16 Q He just made a statement, "Gary's done a fine job
17 for us."

18 A Yes.

19 Q For what it's worth.

20 A For what it's worth. And that's just the way we
21 took it, for what it's worth.

22 Q Basically in the SRB process, it was worth
23 nothing.

24 A It was worth nothing, that's true.

25 Q Now following the peer team meeting, but before

1 the SRB commenced, did you make any statements about Mr.
2 Fiser's DOL complaints or activity in any way?

3 A Yes, I did.

4 Q What did you do or say?

5 A Well, the setting was like this, we were -- Mr.
6 Corey, Mr. Cox and myself, Mr. McArthur -- were standing in
7 the hallway and we were chatting. Jack Cox had informed us
8 that he was not going to be able to participate and we were
9 jus chatting. We had been in the meeting all morning, so we
10 were just chatting. And I addressed to Wilson McArthur an
11 issue, and it just occurred to me while we were standing
12 there, knowing that we were going to be on the SRB, I
13 addressed a comment to Mr. McArthur that since there was
14 this issue, the DOL issue that Fiser had raised, that I
15 thought it would be best if he did not actively participate
16 in the SRB.

17 Q Okay, and what did you understand and when you
18 said this DOL activity or complaint or issue, what issue
19 were you talking about?

20 A Mr. Fiser had informed me, you know, prior to this
21 meeting, just he made a comment to me that he had filed a
22 complaint because Mr. McArthur had posted what Fiser called
23 was his job. And that was the complaint that had been
24 filed, and I thought it would be best for the process and
25 really only looking at the integrity of the process of the

1 SRB, if there was a complaint against posting the job, which
2 McArthur obviously had to be a part of that decision, that
3 he not actively participate in the SRB for these positions.

4 CHAIRMAN BECHHOEFER: So this was the 1996 DOL
5 complaint?

6 THE WITNESS: Yes.

7 CHAIRMAN BECHHOEFER: Thank you.

8 JUDGE YOUNG: How was it that Mr. Fiser came to
9 tell you about that and what were the circumstances?

10 THE WITNESS: He informed me that he had filed a
11 complaint.

12 JUDGE YOUNG: Where were you and what was the
13 context?

14 THE WITNESS: Well, it was sometime before the
15 SRB, I don't really know how many weeks or days before the
16 SRB, but it was before the SRB and I was in the corporate
17 office on business and as I tried to do when I was down
18 there, I would visit several of the individuals that
19 provided support to the sites, both in the radcon group and
20 in the chemistry group, you know, just to say hi, maybe talk
21 to them about a little bit of business or something like
22 that. And so I was sort of making my rounds, you know,
23 talking to a few of those folks, and Mr. Fiser came up to me
24 -- you know, I was in the hallway, he walked up to me and we
25 stood there and chatted for a minute and he informed me that

1 he had filed a complaint about it.

2 JUDGE YOUNG: And what did he say?

3 THE WITNESS: He just said -- I don't remember the
4 exact words, but something to the effect that, you know, I
5 filed a complaint about them posting my position. And that
6 was the gist of it.

7 JUDGE YOUNG: Did you have any further
8 conversation about that?

9 THE WITNESS: No.

10 JUDGE YOUNG: You just said see you around or
11 whatever?

12 THE WITNESS: Yeah, I didn't have anything to do
13 with the decision to post the position one way or the other,
14 so I mean there was nothing I could add. And he didn't
15 really seem inclined to want to have a long discussion about
16 it, it was just sort of oh, by the way, you know, I did file
17 a complaint about them posting my position.

18 JUDGE YOUNG: And so that was all that you knew
19 about the DOL complaint when you talked to Mr. McArthur?

20 THE WITNESS: That's correct.

21 JUDGE YOUNG: Thanks.

22 CHAIRMAN BECHHOEFER: But did Mr. Fiser in his
23 comments specifically mention that Dr. McArthur had been
24 responsible for posting?

25 THE WITNESS: No, I don't think he said -- well,

1 he may have said that he had filed a complaint because
2 Wilson posted the job. I don't recall him specifically
3 singling Wilson out. Wilson McArthur was though the
4 responsible supervisor, so ultimately he would have been
5 responsible for posting the job.

6 CHAIRMAN BECHHOEFER: Oh, I see. Okay.

7 BY MR. DAMBLY:

8 Q And ultimately he would have been responsible for
9 selecting the individual in that position.

10 A That's correct.

11 Q And your concern was that if Dr. McArthur asked
12 questions at the SRB interviews, that that would somehow
13 taint the SRB process?

14 A Well, I really wasn't concerned that it would
15 actually taint the SRB because, you know, my personal
16 feeling was we're all professionals, we can conduct
17 ourselves in a professional manner and objectively evaluate
18 candidates based on their answers. However, I thought it
19 would potentially remove any perception of a problem from
20 that process if he didn't. It was really a perception
21 thing. If he didn't participate, then no one could ever
22 say, hey, you really influenced the SRB by the way you asked
23 questions, you know; by the way you followed up on
24 questions, you led certain people to do certain things, you
25 know. It would just make it cleaner if he didn't play. And

1 he agreed to do that. He probably had already made up his
2 mind to do that, but I didn't know that.

3 Q He'd already made up his mind not to participate?

4 A Not to participate.

5 Q Okay. And he was in fact the one who prepared the
6 questions.

7 A Yes, I believe that to be correct.

8 Q So his questions would have been part of the SRB
9 process.

10 A Yes.

11 Q And he was going to be the one making the
12 selection after the process.

13 A That's true.

14 Q So I'm a little confused as to what perception it
15 is that was going to be avoided by him just being quite for
16 half an hour.

17 A The perception was on my part and it was of the
18 part of the process that I was involved in.

19 Q And why did you feel the need to mention this
20 before -- Mr. Fiser was the first interview, right?

21 A I don't remember the order. There were a lot of
22 candidates interviewed that day and I don't remember the
23 order of the interviews. He may have been first, he may
24 have been 12th.

25 Q And did Mr. Corey overhear your statements about

1 DOL issues with Mr. Fiser?

2 A He may have, I mean I know now that he did, but I
3 didn't -- I really wasn't addressing the comment to him, I
4 didn't know that he had overheard it at the time.

5 Q And you consider it appropriate before going into
6 an SRB to rate people for a position to bring up that one of
7 them has a DOL complaint?

8 A I would consider it probably inappropriate for --
9 to bring up the issue to the SRB that an individual has
10 filed a complaint. I did not consider it inappropriate for
11 me to discuss that issue with Wilson because Wilson was the
12 selecting supervisor, he was involved in all of the
13 decisions related to that position and I assumed he
14 certainly knew about the DOL complaint. As a matter of
15 fact, I assumed everybody knew about it. Gary had told me
16 about it just nonchalantly, I would have been surprised that
17 anybody didn't know about it. It wasn't like it was a
18 secret.

19 Q But do you know if Mr. Rogers knew about it?

20 A I don't know if he knew about it or not. He
21 wasn't there.

22 Q Do you know if Mr. Corey knew about it before you
23 mentioned it?

24 A No.

25 Q Do you know if Mr. Cox knew about it?

1 A No.

2 Q Now did you add any questions to the list Dr.
3 McArthur provided to the SRB?

4 A I think once we went inside the room and looked --
5 we were all handed a notebook that had a series of questions
6 in it, and we picked which questions we were going to ask
7 out of the series of questions. There may have been 15 or
8 so questions on the list. We picked 9 or 10 of those and I
9 suggested that we ask one additional question of the PWR
10 candidates about molar ratio control.

11 Q Okay. Why did you add that one?

12 A Molar ratio control issues were a significant
13 issue to PWR plants at that time and I thought it would be
14 good -- it would be a good opportunity to ask the question,
15 get the candidates to express themselves on that particular
16 issue, the importance in the industry, the effects molar
17 ratio could have on steam generator longevity and those kind
18 of things. I thought it was an appropriate question to ask
19 of PWR chemists.

20 Q Is there a relationship between molar ratio
21 control and denting?

22 A Not specifically. Molar ratio control is more of
23 a corrosion inhibiting process, not directly related to
24 denting.

25 Q Would you have expected a candidate to discuss

1 molar ratio control as one way to help alleviate denting
2 issues?

3 A Well, I'm not a chemist, but I would not have
4 expected a person to necessarily talk about molar ratio
5 control and denting. Denting is a problem that makes -- in
6 steam generators, that really makes molar ratio control a
7 more important issue because denting instills in those tubes
8 stresses and in those stress regions intergranular stress
9 corrosion tracking can occur and because of that phenomenon,
10 molar ratio control is more important.

11 Q Now with respect to actually scoring the
12 candidates, when you asked an individual a question, when
13 they responded, did you write down a number at the end of
14 that question?

15 A Yes.

16 Q Did you go back and revisit those or when you
17 finished rating the candidate on the 10 questions, you just
18 turned in your score sheet?

19 A When we -- each of us would ask the question or
20 listen to the question asked by the individual who had
21 responsibility for it, observe the candidate's response,
22 rate the candidate. Generally there was no discussion other
23 than a follow up -- I would say not just generally, there
24 was no discussion other than a follow up question maybe by
25 one of the members of the SRB. We would then provide a

1 numerical ranking on that candidate's response to that
2 question. When we finished with that candidate, we would
3 turn in our rating sheets to the HR representative that was
4 there and move on to the next candidate. There was really
5 no discussion of how we rated the candidates on different
6 things, there was no discussion of that.

7 Q Okay, so you and Mr. Corey and Mr. Rogers didn't
8 get together with -- I guess Ms. Westbrook was there also?

9 A Yes, Ms. Westbrook was there.

10 Q -- and Dr. McArthur, after a candidate finished
11 responding to all the questions, you didn't sit around and
12 go how did you rank him on number 3 because this is what I
13 had, or anything like that?

14 A No, I don't recall that at all.

15 Q Basically how did you personally determine what
16 kind of a score you would give what kind of an answer, how
17 did you set your 1 to 10 scale?

18 A Well, I just set it based on, you know, what the
19 question was, how the individual responded to the question.
20 Like I said, I was -- if it was a technical question, I'd be
21 looking for a good understanding of the technical issues,
22 maybe even an understanding that was better than mine
23 because I'm not a chemist, but I would be looking for that
24 person to be able to explain the technical issues related to
25 that question and then how they communicated, you know,

1 those kind of things also. And I had I guess an unwritten
2 scale that I ranked everybody on.

3 Q And there was no discussion between the three
4 board members of what their individual scales were, ahead of
5 time?

6 A That's correct.

7 Q Did you consider individuals' appraisals in any
8 way in the ratings that you gave?

9 A No, we did not.

10 Q You had a big notebook that was provided you
11 before the interviews?

12 A That's correct.

13 Q And that had a resume and other things in it, as I
14 recall?

15 A I believe it had a resume -- it had in it whatever
16 the individual would have submitted with their expression of
17 interest in the position. It could have included a resume,
18 it could have included a lot of things, but I think whatever
19 they submitted is what was in the package.

20 Q Did you review it ahead of time?

21 A The package?

22 Q Yes.

23 A No. We were given the package, we spent maybe I
24 don't know, a few minutes, 30 maybe max, at the beginning of
25 the SRB, with HR sort of going over the process, talking

1 about how many candidates there were to be interviewed for
2 which positions and that kind of thing and that was the gist
3 of the discussion we had. Other than that, it was pretty
4 new information. I mean we had approximately 30 minutes I
5 think before the first candidate came in and we could have
6 thumbed through the packages and looked at them and seen
7 what was in there and may have done that, but there was
8 really no discussion of that material or opportunity for
9 that kind of thing.

10 Q And with your understanding of how SRBs are
11 supposed to work, you wouldn't have been able to use the
12 information there any way in rating the candidates, correct?

13 A Well, I can't say you wouldn't be able to. I know
14 -- I mean I'm not familiar enough with if there's a protocol
15 for SRBs, a procedure that outlines in detail how SRBs are
16 supposed to function, I'm not that familiar with that
17 procedure if there is one. I wouldn't think there'd be a
18 prohibition against looking at what any candidate submitted
19 with their application. However, --

20 Q I'm not asking whether there was a prohibition,
21 but as I understood your answer before, or your answers, you
22 ask a question and you score the answer you get.

23 A That's true. Functionally, that's exactly what we
24 did. We asked the questions, we scored the candidates on
25 their response to that question, period.

1 Q So it wouldn't matter if you looked at their
2 resume and it had 50 years of experience in XYZ, that didn't
3 come into play.

4 A That's true, that would not have been factored in.

5 Q So basically nothing that was in this package were
6 you supposed to use in rating the candidates, just their
7 responses.

8 A Functionally, that's exactly the way it worked.
9 We rated the candidates based on their responses to the
10 questions and any other material that was in there, you
11 know, may have been provided for background or whatever, but
12 it really didn't have anything to play with the way the
13 candidates were rated.

14 Q I think I asked and just to be clear, when you
15 finished the first interview, candidate number one, you
16 turned in the score sheet for candidate number one before
17 candidate number two came in.

18 A That's correct.

19 CHAIRMAN BECHHOEFER: Mr. Kent, could or would the
20 candidates' background and experience be factored into how
21 one would evaluate a particular answer to a question? Like
22 if a person had one background and then his answer might
23 well focus more on certain aspects of the problem than if he
24 had a different background, and would the SRB members take
25 that into account in coming up with a numerical grade for

1 the answer to the question?

2 THE WITNESS: Well, I believe I can answer that
3 based on, you know, my personal --

4 CHAIRMAN BECHHOEFER: Yeah.

5 THE WITNESS: -- experience in this process.

6 CHAIRMAN BECHHOEFER: Right, I'm asking for your
7 experience, right.

8 THE WITNESS: I would say that generally the
9 questions should be designed, and I think were designed, to
10 solicit a specific type of information from an individual
11 and if they had that information and they communicated that
12 clearly, they would have been rated high. If they didn't
13 have it or didn't communicate it clearly, they would have
14 been rated lower. You know, an individual who doesn't know
15 anything about a subject or has limited knowledge on a
16 subject may try to put into their answer other things that
17 are peripheral and, you know, personally I would try to
18 discount that information more than factor it in.

19 If we wanted a certain thing, if I wanted to hear
20 a certain thing in a response, I'd be looking for that and
21 if the candidate didn't give me what I was looking for,
22 regardless of their background, you know, 50 years of
23 experience or Ph.D. with a thesis on whatever, I don't think
24 I would have taken that into much consideration than the
25 fact that they really didn't address the question that was

1 asked. Now what we might do in a circumstance like that
2 where a candidate really didn't address the question that
3 was asked, we might follow up with a question to see if they
4 had gotten off track in their response and they really knew
5 what we were looking for and just hadn't given it to us.

6 CHAIRMAN BECHHOEFER: What if you got a question
7 like -- and I'm just remembering this as one of them -- what
8 are the three most important problems facing TVA Nuclear,
9 TVAN, is the way I think the question was worded? Would
10 that answer depend in part on the candidate's background and
11 experience?

12 THE WITNESS: Well, that's a pretty broad scope
13 question.

14 CHAIRMAN BECHHOEFER: That was one of the
15 questions.

16 THE WITNESS: Yeah, that was a pretty broad scope
17 question and I think really if you're talking about it from
18 the perspective of the positions that you're looking at,
19 then I would have expected the candidate to understand the
20 kind of issues that were major, of major importance to
21 nuclear, to TVA Nuclear and how their position may relate to
22 those. That may or may not be the three major issues, you
23 know, that TVA Nuclear is facing, I mean it could be that
24 TVA Nuclear is facing an issue of competition and that's the
25 number one thing that Nuclear is focused on, is how to deal

1 with open market competition. Well if the candidate didn't
2 tell us that open market competition is the number one
3 thing, you know, if he went down that road, I would probably
4 ask a follow up question, well, what's the most important
5 thing to chemistry, you know, that's related to the
6 chemistry program?

7 I don't know if I really answered your question or
8 not.

9 CHAIRMAN BECHHOEFER: Well, I was just wondering
10 whether the particular background of each individual, which
11 is going to be slightly different -- or it may not be
12 slightly different -- whether the particular background of
13 candidates -- and several that I recognize had similar
14 backgrounds, but I don't know that all of them did -- might
15 view questions like that in somewhat of a different
16 perspective from other candidates, for instance.

17 THE WITNESS: I would tend to believe that if
18 asked a question of a candidate and the candidate gave us
19 the response they wanted to give and if we needed to, we
20 would do a follow up to further probe that candidate's
21 response. Other than that, I think we would disregard -- I
22 would disregard any perspective of the candidates'
23 background, limited or vast as it may be in other areas,
24 knowing that all candidates are a little bit different. You
25 seldom have people that are exactly the same.

1 So I think in my case, I would have -- a person's
2 background would have not played a significant part in how I
3 rated the candidate on a given response.

4 CHAIRMAN BECHHOEFER: Thank you.

5 BY MR. DAMBLY:

6 Q And just one other question on that. If you asked
7 a question that you could give a complete answer to the
8 question like what is denting, and you could give a complete
9 answer to the question, but you really wanted them to go
10 beyond that and discuss ways to prevent it or to correct it,
11 would you have asked the individual that just answered the
12 question that was asked, the expand on causes and
13 preventions and whatever? If that's what you were looking
14 for for a better score or are they just supposed to be the
15 amazing Creskin and figure that out on their own?

16 A No, I think if we were -- you know, if the
17 question said what is denting, then I would think the full
18 credit answer would have been describe the process of
19 denting and what causes it and possibly its impacts. I
20 would not think that it would have been required for full
21 credit to have expanded on, you know, things you can do to
22 prevent it, you know, mitigating actions you can take to
23 minimize the impact of denting. I would not have thought
24 that would have been required for a full credit answer. If
25 someone had that information and they volunteered it, I

1 don't believe I would give them necessarily extra credit for
2 it. If I'd wanted it to start with, I think I would ask a
3 follow up question to see if they knew that.

4 Q Let me get you Joint Exhibit 23.

5 A Is that in one of the books I've already got?

6 JUDGE COLE: Mr. Dambly, what volume is that?

7 MR. DAMBLY: It's Joint Exhibit 23, it's a volume
8 unto itself. It may be Volume 6.

9 MR. MARQUAND: It's a black binder, Judge, it says
10 Volume 6 of 6, Exhibit 23.

11 MR. DAMBLY: Of the joint exhibits.

12 If you want to take a moment, Mr. Kent, I'll ask
13 you is this the package you were provided for the selection
14 review board that involved Fiser, Chandra, Harvey?

15 THE WITNESS: It appears to have some of the
16 information in it that I would have been provided. You
17 know, it's got rating sheets and notes and things like that
18 that wouldn't have been in the original package that we
19 would have been given. But it does look like it contains
20 some of the information we would have been given.

21 BY MR. DAMBLY:

22 Q And I guess it's three pages in, the 597 at the
23 bottom, preceded by five zeroes.

24 A 597, okay. I found it.

25 Q It's a scoring sheet for PWR and it looks like it

1 started to be Chandra but it says Harvey. Is that the one
2 you have?

3 A Yes.

4 Q Was this in there with all the individual scores
5 for all three candidates in the book you had?

6 A No, sir.

7 Q And if you go to 613.

8 A Okay, I have it.

9 Q PWR and BWR for Chandra. Is that your writing
10 under the comments?

11 A No, that's not my writing.

12 Q That's not your writing?

13 A No.

14 Q Maybe just to make sure, if we go back to page
15 596, which is the second page in this document --

16 A Yes.

17 Q -- it does have down at the bottom right, Charles
18 Kent, this is supposedly the book that was given to you, is
19 that correct?

20 A Which page are you on now?

21 Q 596, it would be the second page in the document.

22 A Yes, it does have Charles Kent. Yes, this page
23 has Charles Kent on it, that's all I can tell you about it.
24 This is not my -- I mean, some of these documents are my
25 writing, I could direct you to those pages if you'd like,

1 but an example of my writing so you can see, but for
2 instance if you flip over to the 598, I believe that to be
3 my writing, all except the notes on the bottom and the
4 summing of the scores is not my writing. But I believe that
5 is my writing, the notes and I would think in this case that
6 I wrote Sam H at the top of the page and the numbers would
7 have corresponded to the questions that we asked and my
8 notes that I made during the answering of the question and
9 then to the left of the numbers with circles, there would --
10 and it's not a very good copy, but in most cases I think
11 that would be the score that I gave the individual on that
12 question. But I did not make the notes at the bottom of
13 page, which look like they tried to do some sum up of the
14 scores, that would have been done by somebody else after.

15 Q And we just went to 613, if we go to 615, which is
16 another I guess rating sheet for PWR, Gary Fiser, and this
17 one says review board member Melissa Westbrook. You didn't
18 have a sheet in your book when you had it or turned it in
19 that had Melissa Westbrook's ratings in it, did you?

20 A No, this appears to be comments that Melissa maybe
21 made during the course of the interview and then annotated
22 later with the rating of the individuals by the different
23 board members.

24 Q But it wasn't part of any package you had or
25 turned in?

1 A No. The package I had simply had in it the
2 questions that we were supposed to ask, a list of the
3 candidates that were going to be interviewed for each
4 position. There was a tab for each position and there would
5 have been a copy of any materials that the candidate would
6 have submitted with their expression of interest. That's
7 all that was in there, there were no pre-handwritten rating
8 sheets, summary sheets or anything like that in the package

9 Q Okay. And if you go to 617, which is a one-page
10 document about how Wilson McArthur I guess went from a
11 manager technical programs and what the similarities were
12 for that, to a different job, was that in your rating
13 package?

14 A No, that would not have been in the rating
15 package.

16 Q Do you know how many of these documents got into
17 the package that was supposedly yours?

18 A Well, I'm assuming that this package or a package
19 was used to compile information on all the candidates and
20 this information was put in there for some purpose that had
21 nothing to do with the selection of the candidates. Like,
22 for instance, responding to questions about how this process
23 evolved and what decisions were made and that kind of thing.
24 None of this kind of thing would have been in there.

25 If you flip to the next page, 618, that's the kind

1 of information that would have been in the package, 618 has
2 the questions that we would have selected from and in this
3 case, it looks like these were questions for BWR candidates
4 and probably some individual, I don't know whose package
5 this would have come from, but some individual would have
6 circled the questions 1 and 2 and 7 and 13, probably
7 indicating that they were going to ask those questions. But
8 this doesn't look like this was in my original package, my
9 personal copy of the notebook.

10 Q Well, this has been represented and was provided
11 by TVA as your notebook. We have a separate notebook for
12 the other three individuals that were there.

13 MR. MARQUAND: Your Honor, I'm going to object.
14 That is not exactly what was represented. We had a long
15 discussion with counsel, we discussed every single page as
16 to what was there, we documented to them in a letter which
17 they agreed to and said some of this was added to these --
18 this is a repository of the documentation of the whole
19 selection process and the HR people gathered these notebooks
20 up afterwards and it's apparent some things were added to
21 them and we had that discussion with counsel and there was
22 an agreement between counsel that that's what happened and
23 they know that. And for him now to represent to Mr. Kent
24 something different is not appropriate.

25 JUDGE YOUNG: Let me ask you a question. If

1 you'll look back at pages 598 and 598-A, 599, 600 and then
2 601, 602. To me, those appear to be Mr. Kent's notes and
3 scores on the questions that were asked to Sam Harvey, Mr.
4 Chandrasekaran and Mr. Fiser. Is there any dispute about
5 that, any reason not to just go straight to those?

6 MR. DAMBLY: I hadn't even planned to go to those.

7 JUDGE YOUNG: Okay.

8 THE WITNESS: I believe that is correct, Your
9 Honor. As a matter of fact, if I could make one comment.

10 MR. DAMBLY: Sure.

11 THE WITNESS: I may be able to clear up my
12 specific package. I believe that I have in my personal
13 possession my original package. I believe that when we went
14 to Region for a discussion on this issue, I along with the
15 other SRB members, were given our packages as a document
16 that we were going to be asked to discuss and I honestly
17 believe that I have in my possession -- now that was
18 probably, I don't know, years after the original interview
19 process, but I believe I still have that package and if I'm
20 not mistaken, it has my handwritten -- not copies of, but
21 actually my handwritten in pencil pages in it. I was not
22 asked to return it, we split up after the meeting was over
23 and I saved it and I think I've still got it thinking that
24 some day I may need it.

25 We're probably going to go through this some more,

1 so I'll just hang onto it.

2 MR. MARQUAND: Mr. Kent is partly correct. Prior
3 to the PEC, each of them was given their original notebooks
4 back, which had been retained by HR and the additional
5 documents that Mr. Dambly is stumbling over are documents,
6 some of them were added to these as the process went on, to
7 document the selection. I mean there's selection memos in
8 here that occurred in fact after the SRB. For example, at
9 page 619 is a selection memo that occurred sometime after
10 the SRB in which Dr. McArthur writes a memo on July 31 to
11 Ben Easley and said the candidates applied, we had an SRB
12 and here's the results of the SRB and who we recommend
13 selecting. So this was a repository, not just of the SRB's
14 documents, but also some additional documents that were
15 placed into this as a historical way to retain these things
16 by Human Resources, after the fact.

17 And it's not appropriate to suggest that these,
18 for whatever reason, were added inappropriately or anything,
19 it was just that was the process.

20 MR. DAMBLY: Just so it's clear, I have no idea
21 what agreement Mr. Marquand is talking about, that's the
22 first I've heard about it, but we specifically asked and
23 were given notebooks that were represented to be the
24 notebooks for the individuals. We have asked questions in
25 the past and we asked questions last time with Dr. McArthur,

1 as I recall, why some stuff is in here that wouldn't appear
2 to have been in the notebooks.

3 MR. MARQUAND: Ms. Euchner and I had a half a day
4 telephone conversation in which I went through page by page
5 all four notebooks and explained to her and then sent her a
6 letter documenting what pages were in the notebooks.

7 MS. EUCHNER: I recall that conversation and for
8 the record, that conversation was to ensure that the copies
9 of the notebooks that we had were the same and contained all
10 of the exact same pages as the copies that Mr. Marquand's
11 copies had. There was no part of that conversation where I
12 agreed to anything, saying that these were the original
13 notebooks and that we agree that those are the original
14 notebooks. I made no such stipulation to counsel.

15 JUDGE YOUNG: What's the real dispute here, what's
16 the real issue here that you're wanting to get to in terms
17 of what's in the book? If we've got the pages that Mr. Kent
18 wrote and even though they're bad copies, we might be able
19 to have him read what was there to the best of his ability
20 and then perhaps provide the note book that he has. But
21 what's the issue or dispute?

22 MR. DAMBLY: There's not necessarily a dispute, it
23 was to make clear -- Mr. Kent had indicated he didn't see
24 anybody else's scores or hadn't seen them, but they're
25 represented in the notebook with the summaries of

1 everybody's scores and Ms. Westbrook's comments as if
2 they're in his notebook.

3 JUDGE YOUNG: And is there any dispute that that
4 would have been done afterwards?

5 MR. DAMBLY: Well, I don't know when it would have
6 been done, but as long as he's never seen them, that's fine
7 with me, that was my only question.

8 JUDGE YOUNG: Okay.

9 MR. MARQUAND: And we're going to call Ms.
10 Westbrook as a witness and she can explain how she
11 accumulated these scores.

12 THE WITNESS: And it is accurate, sir, that I had
13 never seen those summary scores or any other information
14 sheets from the other raters.

15 MR. DAMBLY: At this point, staff has no further
16 questions. We would, however, like to move in Staff Exhibit
17 70, 71, 72, 73 --

18 JUDGE YOUNG: Seventy through what?

19 MR. DAMBLY: Seventy through 74, Staff 135, which
20 was the predecisional enforcement conference we discussed
21 this morning, and Joint Exhibit 25, which was the '94 TVA
22 OIG report for Mr. Kent.

23 JUDGE YOUNG: Any objection to any of those?

24 MR. MARQUAND: To the extent that --

25 CHAIRMAN BECHHOEFER: The predecisional

1 enforcement conference, are you moving in only selected
2 pages?

3 MR. DAMBLY: Well, I was just going to put the
4 whole thing in.

5 CHAIRMAN BECHHOEFER: Oh, okay.

6 MR. MARQUAND: I'm not sure how appropriate it is
7 to put the whole thing in. To the extent that counsel
8 questioned the witness about certain entries in there, I
9 think it's appropriate to have those, but I don't think it's
10 appropriate for the Board to consider all those other
11 matters that -- and as we've talked, this is a hearing de
12 novo -- to consider all those other matters that are
13 contained in those statements, but to the extent he relied
14 on them, I don't object.

15 JUDGE YOUNG: Do you have any problem with
16 selecting out the pages that you relied on?

17 MR. DAMBLY: Well, I would, yes, because Mr.
18 Boyles is going to be in here, Mr. Reynolds is going to be
19 in here and various other people are going to be in here and
20 this is the position that they put forth to the staff as to
21 why they did it. It's relevant to the entire proceeding, it
22 was their position back in 19 -- whatever it was now -- '99,
23 which differed from a lot of the earlier positions. But it
24 is the TVA positions that they put forward and it's
25 different from the ones he said before and after. So I

1 think the entire thing is relevant and will be used to
2 question other individuals.

3 MR. MARQUAND: Mr. Dambly has objected when we
4 attempted to suggest that the staff took another position,
5 he didn't want to hear about that and he didn't want to hear
6 about the investigation, he didn't want to hear about the
7 position they took in the letter regarding the notice of
8 violation. This is a hearing de novo and I think he ought
9 proceed with respect to the evidence he's put before the
10 witness.

11 (Whereupon, the Judges confer.)

12 MR. MARQUAND: Your Honors, maybe I could suggest
13 a solution.

14 CHAIRMAN BECHHOEFER: Okay.

15 MR. MARQUAND: It's been very apparent in the
16 record what pages counsel is relying upon when he questioned
17 the witness. And I don't have an objection to those
18 documents coming into evidence to be considered with respect
19 to specific pages he said he was relying upon and cited. We
20 can put the whole document in and then I think it's
21 appropriate for the record then to be based upon the pages
22 that he specifically referred to. I think the whole
23 document can come in, but to be considered for what it is
24 that he has specifically requested and directed the Board's
25 attention be directed to.

1 CHAIRMAN BECHHOEFER: And that would apply to Mr.
2 Boyles' testimony I assume as well, which we are told is
3 much broader.

4 What I would like to have understood though is
5 that if the whole document were put in and I remember at
6 least two, three, four pages were discussed and there was at
7 least one page which I believe one of the witnesses referred
8 to that explained a previous answer. It may have been you,
9 Mr. Kent. That certainly should be included as part of what
10 was discussed today.

11 MR. MARQUAND: Yes.

12 CHAIRMAN BECHHOEFER: But I would want to have
13 anything that Mr. Boyles was questioned about included in
14 what we're admitting today, or at least included in pages
15 that could be utilized.

16 MR. MARQUAND: I agree and I think let's include
17 the whole document and then the Board in its deliberations
18 can consider the pages that Mr. Kent discusses or that Mr.
19 Boyles discusses. That way we don't have to clip the thing
20 all to pieces, but let's just consider those pages.

21 JUDGE YOUNG: Good solution.

22 CHAIRMAN BECHHOEFER: That's a good solution.

23 JUDGE YOUNG: One thing that I would just add is
24 to the degree -- I would suggest that it might be a good
25 course to first ask the witnesses the questions you want to

1 ask and then if you want to bring out a prior inconsistent
2 statement, then go to the document. It might get --

3 MR. DAMBLY: And if I might respond to that,
4 apparently nobody was listening this morning when I asked,
5 but I asked the questions first, got denials, different
6 stories or I don't recalls, before I went to the documents.

7 JUDGE YOUNG: Okay. Then we're all on the same
8 page it sounds like.

9 CHAIRMAN BECHHOEFER: Right. We will admit --
10 make sure I've got the right numbers now -- 70 through 74,
11 135 and Joint Exhibit 25. Is that correct?

12 MR. DAMBLY: That's correct.

13 CHAIRMAN BECHHOEFER: The first ones were staff
14 exhibits. We will admit those documents to be used -- the
15 portions of those documents to be used as they become
16 pertinent to questions asked the witnesses.

17 (The documents, heretofore marked
18 as Staff Exhibits 70 through 74,
19 135 and Joint Exhibit 25, were
20 received in evidence.)

21 MR. DAMBLY: Now let me clarify that because I
22 understood Mr. Marquand was talking about the predecisional
23 enforcement conference. We've already visited the ground in
24 this hearing on at least three prior occasions about prior
25 depositions, statements to OI and OIG and they weren't

1 limited to whatever mention was made of them, they were
2 brought in under the rules, they're admissible and they're
3 prior inconsistent statements anyway.

4 The things other than Staff 135 are specifically
5 Mr. Kent's statements.

6 CHAIRMAN BECHHOEFER: Right.

7 MR. DAMBLY: 135 has a broad cast of characters in
8 it.

9 CHAIRMAN BECHHOEFER: Okay, well we'll limit the
10 qualification I guess to Staff Exhibit 135. Those documents
11 will be admitted.

12 MR. MARQUAND: Thank you, Your Honor.

13 CHAIRMAN BECHHOEFER: About ten minutes.

14 MR. MARQUAND: That would be fine.

15 (A brief recess was taken.)

16 CHAIRMAN BECHHOEFER: Mr. Marquand, do you need
17 some more time?

18 MR. MARQUAND: Give me about two or three minutes
19 here.

20 (A brief recess was taken.)

21 CHAIRMAN BECHHOEFER: Back on the record. Mr.
22 Marquand?

23 MR. MARQUAND: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. MARQUAND:

1 Q Good afternoon, Mr. Kent.

2 A Good afternoon.

3 Q I believe you have Joint Exhibit 25 somewhere.

4 JUDGE YOUNG: Which exhibit? 25?

5 MR. MARQUAND: I think it's Joint Exhibit 25.

6 JUDGE YOUNG: Yours or...

7 MR. MARQUAND: Joint.

8 CHAIRMAN BECHHOEFER: Joint.

9 JUDGE YOUNG: Joint. Okay. 23?

10 MR. MARQUAND: 25.

11 CHAIRMAN BECHHOEFER: 25. The one we just

12 admitted. One of the ones we just admitted.

13 JUDGE YOUNG: Staff exhibits. Must be this one.

14 BY MR. MARQUAND:

15 Q And I believe this notebook also has in it Joint

16 Exhibit 35, which is -- Joint Exhibit 25 is a copy of the

17 record of interview, typewritten, by the Office of Inspector

18 General, of an interview of you on January 11th, '94. Joint

19 Exhibit 35 -- do I have the right one? No, I don't. Try

20 33. Joint Exhibit 33. Can't read my own writing. Sorry.

21 A Position description?

22 Q No, Joint Exhibit 33.

23 A It's a position description.

24 Q No, it should be a service review.

25 A Oh, okay. Yes, it is.

1 Q It's called employee appraisal.

2 A Yes.

3 Q Now, I'm going to direct your attention to
4 testimony -- to questions by counsel yesterday. He directed
5 your attention to Joint Exhibit 25, and I believe it's on --
6 beginning at the bottom of Page 3, he directed your
7 attention to the very last line that says, "Kent further
8 stated that the Institute of Nuclear Power Operations had a
9 finding against chemistry in '91, and from that point on
10 Fiser should have been more aggressive in finding and fixing
11 the problems." Counsel directed your attention to that.

12 And then he proceeded to show you Joint Exhibit
13 33, the service review for Mr. Fiser for fiscal year '92, in
14 which there's a statement that -- in the fourth bullet on
15 the first page, "During a recent INPO assist trip no items
16 were identified that had not already been assigned action to
17 resolve." Do you see that?

18 A Yes.

19 Q And the next one, "There have been no chemistry-
20 related findings by INPO for Sequoyah, and this is a record
21 for Sequoyah." Do you see that?

22 A Yes.

23 Q And counsel showed those to you, apparently to
24 impeach the statement you gave to the IG, or to show you
25 didn't know what you were talking about.

1 MR. MARQUAND: I'm going to -- let's have this
2 marked as the next TVA exhibit. What is it?

3 COURT REPORTER: I'm sorry, I didn't hear you.

4 MR. MARQUAND: I'd like to -- I'm going to mark
5 this as TVA Exhibit #131.

6 (The documents referred to were
7 marked for identification as TVA
8 Exhibit #131.)

9 MR. MARQUAND: Mark as TVA Exhibit -- TVAX 131.

10 JUDGE YOUNG: And -- and what is it that you're
11 marking as 131?

12 MR. MARQUAND: I'm going to hand it to you in a
13 second.

14 JUDGE YOUNG: Okay.

15 BY MR. MARQUAND:

16 Q Now, to explain for the record what I've handed
17 you is, is basically the same thing as Joint Exhibit 25, two
18 copies of it. If you'll look in the lower right-hand
19 corner, it begins AJ344. Those are the Bates numbers that
20 we stamped on this when we produced it to the staff. And it
21 goes AJ344 to 350, and that's the first copy of this
22 document from the IG's files.

23 Then, beginning at AJ351 through 357 is a second
24 copy of the same document produced -- these two documents
25 were produced right directly together from the IG's files to

1 the NRC staff. The second copy of this document has some
2 handwriting and some interlineation on it. The same record
3 of interview with some handwriting -- some handwritten
4 corrections.

5 Mr. Kent, do you recognize the handwritten
6 interlineations and corrections beginning at Page AJ351 to
7 Page AJ357?

8 A Yes, I do.

9 Q Tell us whose those are.

10 A Those are my corrections to the document.

11 Q All right. Would you look at -- beginning at the
12 bottom of Page 3 and the top of Page 4. Did you make some
13 changes and some corrections to this document which counsel
14 did not ask you about?

15 A Yes, I did. I corrected to reflect what period of
16 time we were discussing in terms of problems at Sequoyah,
17 and corrected the date on the top of Page 4 that counsel
18 asked me about this morning.

19 Q Okay.

20 MR. MARQUAND: Your Honor, I'm going to tender TVA
21 Exhibit 131.

22 Q Does it show that you were not saying that there
23 were INPO findings against chemistry in '91, but in fact
24 that they were earlier, Mr. Kent?

25 A Yes, that's correct. I believe that this would

1 have been corrected or -- or edited by me to reflect that
2 the INPO findings that we were discussing with the IG were
3 actually in 1998.

4 Q Okay.

5 JUDGE YOUNG: '98?

6 MR. MARQUAND: '88?

7 THE WITNESS: '88. Excuse me. '88.

8 CHAIRMAN BECHHOEFER: '88.

9 MR. DAMBLY: May I have voir dire?

10 CHAIRMAN BECHHOEFER: Yes. Yes.

11 VOIR DIRE EXAMINATION

12 BY MR. DAMBLY:

13 Q Mr. Kent, when did you make these changes?

14 A I would assume, sir, that these changes were made
15 shortly after the IG would have provided me this to review,
16 to validate that it was correct. That was sometimes their
17 practice, that they would -- they would come back to the
18 individual they interviewed and -- and show them the
19 document and get you to make sure that it was accurate. And
20 if -- if not, to make whatever edits would have been
21 appropriate. I think it would have been contemporary with
22 the time I was interviewed.

23 Q So, in point of fact, you had seen the IG
24 interview contemporaneously or close to it?

25 A Yes, I would think so.

1 Q And -- and it's your understanding you made this
2 at that time, and this was part of their official record?

3 A Yes, I believe so. I mean, I -- I hadn't seen
4 this particular edited document in many years. May not have
5 even been aware of it.

6 CROSS-EXAMINATION

7 BY MR. MARQUAND: (Cont.d)

8 Q Mr. Kent, if you'll at the very bottom of Page
9 AJ351 to 357, you'll see a telecopy legend. Do you know
10 whose telecopy number that was sent from and what the date
11 is that's reflected there?

12 A The date on the telecopy is 1994. And the
13 telecopy number is Area Code 615 number. I don't recognize
14 the 6060, but...

15 Q It indicates it's from the Sequoyah plant, doesn't
16 it?

17 A Yes, very possibly from Sequoyah plant.

18 Q It says SQN plant, doesn't it?

19 A Oh, yes, it does. Yeah, in the -- in the date
20 stamp it says, "9/22/94, 7:35, from Sequoyah plant."

21 JUDGE YOUNG: And so am I understanding you said
22 this was what was provided both copies?

23 MR. MARQUAND: Both -- this -- they asked for the
24 entire inspector general investigation. We gave them the
25 entire inspector general investigation. And what they do

1 is, they make their original 0-2, which is 344 to 350. In
2 this case, they then sent that to Mr. Kent and asked him to
3 read through it and correct it. And what they do then, is
4 they call that a confirmed 0-2, just the same thing as the
5 FBI's practice. And then they include both of those in
6 their file, and we produced this entire thing to the NRC
7 staff, and that's why they're Bates stamped consecutively.
8 They're right there together. And I'm concerned about why
9 the staff would ask him about a document, knowing that
10 that's not what he had in fact -- the information he in fact
11 provided.

12 MR. DAMBLY: And just so it's clear, if you look
13 at staff exhibit -- what is it, 177, which is the --
14 admitted into evidence as the OI report of investigations,
15 which -- for the '93 complaint of Mr. Fiser's, you would
16 find that, as represented by Joint Exhibit 25, this is the
17 official copy that -- that OI was provided by the IG, and
18 you will find no corrections nine months later by Mr. Kent
19 in there.

20 MR. MARQUAND: I can't help what -- I can't help
21 what OI puts in their records. And our problem all along --
22 and counsel didn't want to do this. Counsel didn't want to
23 talk about the OI investigation, they didn't want to go into
24 that. We had problems with the quality of OI's
25 investigation. If they want to go into the quality of OI's

1 investigation, we can. But we know what's in the OIG's
2 records, and I know that we produced this to the NRC staff.

3 JUDGE YOUNG: And you're disputing that?

4 MR. DAMBLY: I'm disputing that this is any part
5 of the official OIG records. As far as I know, OI got --
6 obtained and put in what's 177, the official OIG document.
7 We have got no OIG documents that were given to us as the
8 official records. He may have turned over something in
9 discovery with some handwriting on it, but it's -- it's not
10 part of the official record that was produced to OI by the
11 IG. I don't know what this is.

12 MR. MARQUAND: There is no discovery process
13 between the OI and OIG. The process is OI is free to come
14 and look and make copies of whatever our inspector general
15 has. And if they fail to copy everything, that's OI's
16 fault. And if OI failed to recognize everything that's
17 pertinent, that's OI's fault. There's no discovery process
18 between them. They share their files freely. They don't
19 copy everything, and that's part of the problem we've got
20 with the investigation here, is the investigation was very
21 slipshod.

22 JUDGE YOUNG: Well,...

23 MR. MARQUAND: But we did produce this entire
24 document to this gentleman and this lady during discovery,
25 and then they proceeded to question Mr. Kent as though he

1 had made some gross misstatement. And all I'm saying is
2 here's the record, we produced it, and I'm -- I'm offering
3 it into the record.

4 JUDGE YOUNG: Well, then -- then let's -- let's
5 just start from where we are now. And it might be helpful
6 to have Mr. Kent read the -- the changes, because the copy I
7 have, anyway, is sort of hard to read. So maybe you could
8 help us out there.

9 THE WITNESS: Okay, on -- starting on Page 351, as
10 is marked -- my copy is not that great.

11 MR. MARQUAND: That's a function of the fact that
12 this is a copy of a telecopy.

13 JUDGE COLE: You need a magnifying glass, too.

14 THE WITNESS: Yeah, I need a magnifying glass.

15 JUDGE YOUNG: "Since Kent did not..."

16 THE WITNESS: Looks like, "Kent did not believe
17 the..."

18 JUDGE YOUNG: "...the old chemistry
19 organization..."

20 THE WITNESS: "...provided sufficient management
21 or technical resources, Kent began creating a new
22 organizational structure." And then at the bottom of the
23 page there in the last line, "Kent stated that it was his
24 decision to do away with the positions. Kent decided the
25 trend in the industry was to reduce layers of management."

1 That's "reduce layers of management."

2 On the next page, in the first paragraph, it said,
3 "Kent felt that he could manage the six direct reports, but
4 needed more people with technical expertise in the chemistry
5 area." And then in the fourth paragraph, "Prior to
6 submission of the new position descriptions, Kent had
7 discussed them with Bill Lagergren, Wilson McArthur, the
8 manager of operations services, and members of the Hay
9 Committee. However, with the exception of approving Kent's
10 new position, the Hay Committee refused to approve the other
11 position descriptions pending corporate approval of the new
12 organization."

13 And then in the next line it said, "Vice
14 president, nuclear operations, wanted the site organizations
15 to be standardized." And then in the last full paragraph on
16 the page, or the -- I guess it's the second from the bottom
17 of the page it says, "In addition, McArthur was tasked with
18 coordination -- coordinating a standard -- standardized
19 organization."

20 JUDGE YOUNG: Does it just go back to the regular
21 print, "organizational structure"?

22 THE WITNESS: Yes, "...a standardized
23 organizational structure. At the end of April, Bynum
24 approved the standardized organization, and it was
25 implemented at Sequoyah."

1 Then on Page 3, the top paragraph would -- reads,
2 "Kent admitted that the chemistry organization was in limbo
3 for several weeks." And then there's a sentence added to
4 the third paragraph that says...

5 MR. MARQUAND: "This was necessary..."?

6 THE WITNESS: "This was necessary..." Right.
7 "This was necessary to..."

8 JUDGE YOUNG: "Free"?

9 THE WITNESS: "...free up a position for the new
10 chemistry technical support manager." And then in the
11 fourth paragraph, "According to Kent, Fiser's old position,
12 i.e., chemistry superintendent, was the only..." I don't
13 know if the note...

14 MR. MARQUAND: Is that, "...chemistry position
15 eliminated..."?

16 THE WITNESS: "...was the only chemistry position
17 eliminated when the new organization was implemented." And
18 on the bottom of the page it said, "Kent has no personal
19 knowledge of Fiser's performance. However, he is aware that
20 Beecken did not consider Fiser to be a strong manager.
21 According to Kent, the Sequoyah chemistry program had
22 numerous problems when Fiser was the chemistry manager, and
23 even back to 1998 -- 1988," excuse me. "However, the
24 training issues became more widely known after Bill Jocher,
25 the corporate chemistry manager, became the Sequoyah

1 chemistry manager on a temporary rotational assignment.
2 Kent stated that the training program was far from where it
3 should have been, and that it was reasonable to hold Fiser
4 and previous management accountable."

5 And then the -- the last sentence in the beginning
6 of the next page is, "Kent further stated that the Institute
7 of Nuclear Power Operations had a finding against chemistry
8 in 1998," excuse me, "1988, and from that point on Fiser and
9 prior management should have been more aggressive at finding
10 and fixing the problems. This was not a new issue." And
11 then the next sentence is stricken. The third paragraph,
12 "When Kent became the rad chem manager in '93, Jocher was
13 still on loan to Sequoyah as the chemistry superintendent."
14 That's the title of position at that time.

15 In the next paragraph it again corrects the
16 position title as chemistry superintendent, in two places.
17 And then there's a sentence added to the end of that
18 paragraph that says, "The new organization was discussed
19 with Jocher and he supported what Kent had written," looks
20 like...

21 MR. MARQUAND: "Wanted to do"?

22 THE WITNESS: "...wanted to do." "...what Kent
23 had wanted to do." Then the next paragraph says that, "Once
24 it was agreed that the standardized rad chem organization
25 should have a chemistry manager position, Kent decided to

1 make some changes to the position. Kent stated that the new
2 chemistry manager position description has more stringent
3 experience and educational requirements than the old
4 chemistry superintendent position." Then another line down,
5 "However, Kent acknowledged that the new chemistry manager
6 position lacks some of the responsibility of the old
7 chemistry superintendent position because the environmental
8 program was removed from under chemistry. This was to
9 provide additional focus on both plant chemistry and
10 environmental protection."

11 Then on the page labeled 355, in the second
12 paragraph it reads, "In addition, Kent did not want to hire
13 Rich as the Sequoyah chemistry manager because he felt Rich
14 was not a driver, and that Rich was being pushed on him by
15 Dan Keuter." The next paragraph reads, "By July '93, Kent
16 was receiving significant pressure from his management to
17 fill the chemistry manager position." And then the next
18 paragraph, "Kent stated that the three of them chatted about
19 five to ten minutes." That's regarding the interview or the
20 discussion that we had with Powers. And states that, "Kent
21 advised that Powers certainly did not interview Fiser."

22 And then in the last paragraph or the next-to-the-
23 last one there, there's a sentence added that says, "Also
24 during the July 6th, '93 meeting, Fiser told Kent that
25 hiring him could be a liability, and suggested that Kent

1 test it -- test it out with corporate. He didn't want to do
2 anything that would hurt the Sequoyah program." Then on
3 Page 356, in the third paragraph, there's a change there.
4 It says, "After Kent told McArthur of his consideration of
5 hiring Fiser," and in the last paragraph, "According to
6 Kent, Fennick felt like Kent had," originally it said, "lied
7 to," "misled," is what it was changed to, "...had misled
8 him." And then the last change is on the last page, and it
9 says, "Kent does not believe Fiser was RIF'd because of
10 filing safety concerns. Instead, believes Fiser was RIF'd
11 because he was not the right person for the chemistry
12 program which had numerous problems." I deleted
13 "performance."

14 I believe those are all my edits to this document.

15 JUDGE YOUNG: Thank you. So can we proceed? Did
16 you have something further? No?

17 MR. DAMBLY: Oh, I had no other question on that.
18 I -- I would object, because we still -- absent Ms. Thomas
19 or somebody verifying what's the official copy, I don't
20 know.

21 VOIR DIRE EXAMINATION

22 BY MR. DAMBLY: (Cont.d)

23 Q I guess I would ask are these corrections that you
24 made because you think this is what you said and she got it
25 wrong, or these are corrections that you wish to have made

1 to your testimony that you gave to her?

2 A I believe that these corrections were made to
3 improve the accuracy of the document. That I -- she asked
4 questions. I answered the questions. I thought she hadn't
5 fully understood what I was trying to convey in the answer,
6 and made these edits, and then faxed it back to her, it
7 appears.

8 Q And how many times have you been given IG records
9 to correct?

10 A I would say it's -- it's -- well, probably -- I
11 don't know how many times. It's not uncommon for the IG to
12 do an interview, write up the results of the interview, send
13 it back to the individual they interviewed to verify that it
14 was correct and accurate. And that's not uncommon. You
15 know, I would -- it could have been every time I've been
16 interviewed by the IG, although I do believe there have been
17 a few times when I wasn't provided that opportunity over the
18 years. I mean, this -- you know, we're talking about 20
19 years worth of -- plus work experience, so I can't say it
20 was done every time, but it's fairly common. And it may be
21 their -- their practice, their standard practice to do that.

22

23 MR. DAMBLY: Okay. We have no way of knowing,
24 absent somebody from the IG, what's the record copy and what
25 isn't.

1 MR. MARQUAND: They're both record copies.

2 JUDGE YOUNG: Well, do you dispute that he made
3 these changes back in 1994? Do you...

4 MR. DAMBLY: I don't know.

5 JUDGE YOUNG: Do you -- are you disputing what he
6 is testifying regarding his having made these changes?

7 MR. DAMBLY: Well, clearly he's testified he made
8 the changes. I don't know what the date that the changes
9 were made (sic). I mean, there's a fax thing on there but,
10 again -- and I don't know if that was -- became an official
11 part of the IG report or not.

12 JUDGE YOUNG: Well, in terms of this coming in as
13 an exhibit here to show what Mr. Kent intended to say at
14 that point, whether or not it was an official record, do you
15 have an objection to it being admitted into this record?

16 MR. DAMBLY: If I might ask one more question.

17 BY MR. DAMBLY:

18 Q Mr. Kent, as you made the changes, this document
19 is true and accurate, to the best of your recollection?

20 A Yes, I would say it's -- it represents --
21 obviously I was given an opportunity to have input, and I
22 had my input, and it -- it is accurate as -- to the best of
23 my recollection.

24 Q Okay.

25 CHAIRMAN BECHHOEFER: Okay. Mr. Kent, is this the

1 only edited version of this document that you worked on?

2 THE WITNESS: Sir, I would -- I would have to say
3 that generally my experience has been if you're given an
4 opportunity to make comments, you get one opportunity. I
5 don't recall ever making any other comments to this document
6 at any time, other than on this occasion. So, I guess, to
7 answer your question, this -- as far as I know, I was given
8 an opportunity to make comments on the document. It was
9 about -- it was several months after the original interview,
10 and I did make those and provided them back to the IG, and
11 that's the only time I've made changes to the -- or
12 recommended changes to the document.

13 CHAIRMAN BECHHOEFER: The board will accept both
14 versions into evidence.

15 MR. MARQUAND: Thank you, Your Honor.

16 CHAIRMAN BECHHOEFER: And that's TVA Exhibit 131.

17 MR. MARQUAND: Yes, Your Honor.

18 CHAIRMAN BECHHOEFER: Which includes both
19 versions; correct?

20 MR. MARQUAND: Yes.

21 CHAIRMAN BECHHOEFER: Okay. Well, that's
22 admitted.

23 (The documents, heretofore marked
24 as TVA Exhibit #131, were received
25 in evidence.)