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PREDECISIONAL ENFORCEMENT CONFERENCE
TENNESSEE VALLEY AUTHORITY

Re: Gary L. Fiser
D.O.L. Complaint

December 10, 1999

1:05 p.m.

61 Forsyth Street
Atlanta, Georgia

Janet K. Wilson, CCR-B-1108, RPR

BROWN REPORTING, INC.
1740 PEACHTREE STREET
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MR. REYES: Let's go on the record.

2 Good afternoon. My name is Luis
3 Reyes. I'm the regional administrator for
4 the Nuclear Regulatory Commission Region II
5 office. This afternoon we will conduct a
6 predecisional enforcement conference between
7 the NRC and TVA which is closed to public
8 observation and is being transcribed. The
9 subject of the conference is an apparent
10 violation to 10 CFR 50.7 involving
11 discrimination against Mr. Gary L. Fiser, a
12 former TVA employee in the corporate
chemistry department.

14 Now, this is the third enforcement
15 conference in this case. The first two
16 enforcement conferences were with individuals
17 since the agency could take actions against
18 individuals themselves. This particular
19 conference is with TVA, the entity that --
20 the organization.

21 Now, following the presentation by TVA
22 and follow-up questions by the NRC, Mr. Fiser
23 will be given the opportunity to make a
24 statement regarding his position and interest
25 in this case. Following Mr. Fiser's

statement, TVA will be provided an
2 opportunity to make a rebuttal statement. I
3 wish to emphasize that although Mr. Fiser is
4 attending this conference, he is not a
5 participant during the main portion of the
6 conference. The interaction will be between
7 TVA and the NRC. However, to ensure that all
8 relevant positions and facts are expressed in
9 this meeting, the NRC wishes to hear from Mr.
10 Fiser in this case.

11 Although TVA will have the opportunity
12 for a rebuttal brief, there is no opportunity
13 being provided in this forum for direct
14 exchange or questioning between Mr. Fiser and
15 TVA.

16 Does everybody understand the protocol
17 of this proceeding? Mr. Fiser?

18 MR. FISER: Yes.

19 MR. REYES: Any questions from TVA or
20 Mr. Fiser on the protocol? Okay. The agenda
21 of the predecisional enforcement conference
22 is shown on the view-a-graph.

23 Following my brief opening remarks, Ms.
24 Anne Boland, the Region II enforcement
25 officer sitting to my right, will discuss the

agency's enforcement policy very briefly. I
2 will then provide introductory remarks
3 concerning my perspective on the events to be
4 addressed today. Then Mr. Loren Plisco to my
5 left, the director of the Division of Reactor
6 Projects, will discuss the apparent
7 violation. TVA will then be given an
8 opportunity to respond to the apparent
9 violation.

10 Following your presentation, I plan to
11 take a break so that the NRC can briefly
12 review what it has heard and determine if we
13 have any follow-up questions.

What I'd like to do is, we have a lot
15 of attendees, and I'm not sure that everybody
16 knows all the participants. So I'd like to
17 go around the room and have everybody state
18 their name and their title. Counsel?

19 MS. EVANS: Carolyn Evans, regional
20 counsel.

21 MR. DAMBLY: Dennis Dambly, assistant
22 general counsel for materials litigation and
23 enforcement.

24 MR. PLISCO: Loren Plisco, director of
25 Division of Reactor Projects, Region II.

MR. REYES: Luis Reyes. I'm the
2 regional administrator for the NRC office in
3 Atlanta.

MS. BOLAND: Anne Boland. I'm the
4 Region II enforcement officer.
5

MR. STEIN: Mike Stein, I'm a
6 discrimination enforcement specialist for
7 NRC.
8

MR. McNULTY: William McNulty, I'm the
9 field office director for the Office of
10 Investigations.
11

MR. SPARKS: Scott Sparks, senior
12 enforcement specialist, Region II.
13

MR. FISER: I'm Gary Fiser,
14 unemployed.
15

MR. COX: I'm Jack Cox, Watts Bar
16 training manager, former radiological and
17 chemistry manager for Watts Bar.
18

MR. ROGERS: My name is Rick Rogers,
19 and I'm with Sequoyah TVA, and I'm a system
20 engineering manager at Sequoyah.
21

MR. COREY: John Corey, manager of
22 radiological chemistry controls at Browns
23 Ferry Nuclear Plant TVA.
24

MR. KENT: I'm Charles Kent. I'm the
25

manager of radiological and chemistry
2 controls at Sequoyah Nuclear Plant TVA.

3 MR. REYNOLDS: Phil Reynolds, vice
4 president nuclear support, TVA.

5 MR. BOYLES: Ed Boyles, human resource
6 manager, TVA nuclear corporate office.

7 MR. SCALICE: John Scalice, chief
8 nuclear officer at TVA.

9 MS. WESTBROOK: Melissa Westbrook,
10 human resource consultant, TVA nuclear
11 office.

12 MR. MARQUAND: Brent Marquand, senior
litigation attorney, TVA Office of General
13 Counsel.

14 MR. BURZYNSKI: Mark Burzynski, TVA
15 corporate licensing manager.

16 MR. VILIGUICI: My name is Ed
17 Viliguici, senior nuclear licensing counsel,
18 Office of the General Counsel.

19 MS. GREEN: Donna Green, TVA labor
20 relations consultant.

21 MR. McCREE: My name is Victor McCree.
22 I'm the deputy director for reactor safety,
23 OGC.
24

25 MS. EUCHNER: Jennifer Euchner,

attorney, OGC.

2 MR. de MIRANDA: Oscar de Miranda,
3 Region II senior allegation coordinator.

4 MS. BENSON: Diane Benson, special
5 agent, Office of Investigations, Atlanta.

6 MS. BOLAND: I'd like to take just a
7 few minutes to go through the enforcement
8 policy.

9 After an apparent violation is
10 identified, in this case an apparent
11 violation of 50.7 is assessed in accordance
12 with commission policy which has been
published in New Reg 1600. New Reg 1600 has
14 been recently revised on November the 9th,
15 1999 to publish some provisions to our
16 policy. I only have a copy available -- also
17 for you, Mr. Fiser. There has been no
18 significant changes in the enforcement policy
19 as republished that affect this particular
20 proceeding, however.

21 The NRC assessment process involves
22 categorizing the apparent violation into one
23 of four severity levels based on the safety
24 significance of the issue. For cases where
25 there is a potential for escalated

enforcement action; that is, where the
2 severity level of the apparent violation may
3 be categorized as severity level 1, 2 or 3, a
4 predecisional enforcement conference of this
5 nature is typically conducted.

6 . There are three primary enforcement
7 sanctions available to the NRC, and they
8 include notices of violation, civil
9 penalties, and orders.

10 In this particular case, the decision
11 to hold this predecisional enforcement
12 conference is based on the conclusions of our
13 Office of Investigations as the result of its
14 investigation of the process underlying Mr.
15 Fiser's D.O.L., Department of Labor,
16 complaint. This is essentially the last step
17 of the investigatory process before the staff
18 makes an informative decision.

19 The purpose of this conference today is
20 not to negotiate an enforcement sanction.
21 Our purpose here today is to obtain
22 information directly from TVA that will
23 assist the NRC staff and also Mr. Fiser in
24 determining the appropriate enforcement
25 action in this case, such as an understanding

of the facts, the root causes or missed
opportunities associated with the apparent
violation, and understanding of any
corrective actions that you may have taken
regardless of whether you agree or disagree
with the apparent violation, and a common
understanding of the significance of the
issues surrounding the apparent violation and
any potential chilling effect that it might
have.

We would also appreciate your views as
to whether there is any information that may
be relevant to the application of the
enforcement policy in this case as well as
your position on the investigative summary
that was provided to you prior to this
conference. And in that regard, any
information that you feel is relevant to this
case, this is the opportunity for TVA to
present that information to us.

The apparent violation discussed at
this conference is subject to further review
and may be subject to change prior to any
resulting enforcement action. It is
important to note that the decision to

conduct this conference does not mean the NRC
2 has determined that a violation has occurred
3 or, in fact, an enforcement action will
4 ultimately be taken.

5 I would also like to iterate to
6 everyone that any statements of you or
7 expressions of opinion made by any of the NRC
8 employees at this conference or the lack
9 thereof are not intended to represent any
10 agency final determinations or beliefs
11 relative to this matter before us today.

12 Following the conference, Mr. Reyes, in
13 conjunction with our Office of General
14 Counsel and the Office of Enforcement, will
15 reach an enforcement decision. This process
16 typically takes about four weeks to
17 accomplish.

18 Finally, if the enforcement action
19 involves preposed civil penalty or involves
20 issuance of any type of order, the NRC will
21 issue a press release 24 hours after that
22 enforcement action is provided to TVA.

23 Also, as obvious here, we are
24 transcribing this enforcement conference. It
25 is closed to public observation with the

1 exception of Mr. Fiser and his spouse. We
2 will make copies of the transcripts available
3 to any of the parties at this enforcement
4 conference at your request; however, if we do
5 make them available to anyone, they do become
6 a matter of public record and will be placed
7 in the public document room.

8 I'll be glad to address any questions
9 that anyone might have.

10 The other thing that I would like to
11 point out is -- and I know TVA is aware of
12 this, and I've made Mr. Fiser aware of it as
13 well -- any documents that are provided to us
14 in the course of this conference also become
15 a matter of public record and will be placed
16 in the public document room.

17 MR. REYES: Thanks, Anne.

18 Proceeding with the agenda for this
19 afternoon, let me make some remarks.

20 As will be discussed by Mr. Plisco, it
21 appears that TVA discriminated against Mr.
22 Fiser for his engaging in prior protected
23 activities when he was not selected for a
24 corporate chemistry position within TVA
25 corporate organization in 1996. The NRC

2 places a high value on the freedom of nuclear
3 industry employees to raise potential safety
4 concerns to licensee management as well as
5 the NRC.

6 Section 211 of the Energy
7 Reorganization Act and 10CFR 50.7 establishes
8 strict requirements for protection of
9 employees against discrimination for raising
10 nuclear safety concerns. Our purpose today
11 is for you to provide the basis for your
12 decisions in this case.

13 With that, Mr. Plisco will discuss a
14 background and the apparent violation.

15 MR. PLISCO: I'll just take a moment to
16 summarize the apparent violation.

17 The NRC's Office of Investigation
18 completed an investigation in August 1999
19 regarding Mr. Gary Fiser, a former TVA
20 nuclear chemistry and environmental
21 specialist, who was not selected to fill one
22 of two chemistry program manager positions
23 following a 1996 reorganization. Mr. Fiser
24 was allegedly not selected to fulfill the
25 position for engaging in protective
activity.

2 The protective activity involved Mr.
3 Fiser's filing of a discrimination complaint
4 with the Department of Labor in September of
5 1993. This issue appears to be an apparent
6 violation of 10CFR 50.7, employee protection,
7 which prohibits discrimination by a licensee
8 against an employee engaged in protective
9 activities. The apparent violation is shown
10 in this view-a-graph and also was handed out
11 and was documented in our letter to you dated
12 September 20th, 1999.

13 At this conference, we're giving you
14 the opportunity to provide information
15 regarding this issue and the events described
16 in the summary in the Office of Investigation
17 report, which we provided to you previously
18 in that same letter September 20th, 1999.

19 Are there any further comments or
20 questions before we begin?

21 MR. REYES: I guess we're at the point
22 in the agenda that we're going to turn over
23 the meeting to TVA.

24 MR. BURZYNSKI: Thank you. For this
25 part, I will move up here and work as kind of
a master of ceremonies for our presentation.

2 We have a number of people that will be
3 speaking, and I'll be introducing them and
4 also summarizing the key points that we want
5 to make.

6 For today's presentation, we're going
7 to have some introductory remarks and some
8 background information. Then we'll discuss
9 the five points that were identified in the
10 OI summary report that was attached to the
11 enforcement letter. Then we'll provide some
12 summary remarks and then some closing
13 remarks.

14 As a way of an introduction, I just
15 want to say that TVA conducted a prompt and
16 thorough review of the issues raised in Mr.
17 Fiser's 1996 complaint. In fact, the
18 investigation was initiated by TVA's
19 inspector general office once Mr. Fiser
20 announced his intentions to file a complaint
21 in 1996.

22 TVA also re-reviewed these issues two
23 times. The first time was when we were
24 notified of the Office of Investigations'
25 investigation. At that time, both TVA's
human resource department and the Office of

1 General Counsel reviewed the issues and
2 reaffirmed the kinds of decisions that were
3 made in the Inspector General's report. A
4 second time, we reviewed it when we were
5 notified of this predecisional enforcement
6 conference, and we had a broader team of
7 people involved with TVA's human resource
8 office, Office of General Counsel, and
9 licensing at this time re-review the facts
10 again and look at the conclusion. Based on
11 these reviews, TVA does not agree with the
12 conclusions reached in the OI report
13 summary.

14 What I'd like to do now is introduce
15 Mr. Phil Reynolds, vice president of nuclear
16 support, and ask him to provide you with some
17 background information about the
18 reorganization that was occurring in TVA
19 during the 1996 time frame. Phil?

20 MR. REYNOLDS: Thank you, Mark.

21 The events of the 1996 radiation
22 control chemistry and environmental
23 reorganization is what brings us here today;
24 and since that's been about four years ago,
25 it may be helpful for us to reflect a little

1 bit about where TVA had been at that point
2 and what was occurring specifically in 1996.

3 In late '95 and early '96, we were
4 anticipating having five nuclear operating
5 units on line at that point, and we were in
6 the process of going through our business
7 plan in early 1996. In that business
8 planning cycle, we had three primary goals
9 that we were looking at. We wanted to
10 finalize the meaning of our organization from
11 a construction to an operating organization;
12 we wanted to develop the strategies for the
13 organization so we could compete in the
14 deregulated electricity department; and
15 three, we had to bring our labor costs in
16 line with nuclear industry averages. In
17 doing that, we also wanted to be at a point
18 where we could begin to stabilize our work
19 force; because as you can see in this chart
20 that we've had up here that Mark's displayed,
21 we had learned some very painful lessons
22 since 1988 in what had happened in the
23 organization.

24 As you can see, in 1988, we had a TVA
25 nuclear head count of over 11,000 employees

1 and decreased that by the end of fiscal year
2 '96 to 3,796 employees. We've learned a lot
3 of lessons during that period of time, we've
4 been down here several times as a result of
5 some of our efforts in our downsizing; and
6 the senior management team at that time, we
7 knew where we needed to go to prepare for the
8 future, we knew what our Year 2000 head
9 counts were going to look like; and we made
10 the decision at that time that we were going
11 to try to accelerate our move to try to get
12 to our 2000 numbers as quickly as possible
13 and then let attrition handle the rest of the
14 reductions we were going to need in the
15 organization.

16 Now, during that period in 1996, I want
17 to make the point that this just wasn't a
18 reorganization that was occurring in the
19 corporate radchem and chemistry and
20 environmental industry; this was a
21 reorganization throughout all of TVA nuclear
22 that involved about 900 employees who were
23 impacted by the reorganization. This was in
24 our engineering organizations, at Browns
25 Ferry, Sequoyah, Watts Bar, and our corporate

1 office. It was occurring in our human
2 resource organizations, not only at the sites
3 but within the corporate office also. It was
4 going on in nuclear assurance and licensing
5 at the corporate office and our sites, and
6 occurring in our operation support
7 organization, where our radchem chemistry
8 environmental organization was and has since
9 located in Chattanooga.

10 As a result of this, there were many,
11 hundreds of jobs that were reevaluated,
12 posted, up for selection. There were
13 approximately 150 employees who were issued
14 surplus notices at that time. In that point,
15 Mr. Fiser was one of those 150 employees that
16 was issued a surplus notice. There were 86
17 of the 150 --

18 MR. DAMBLY: Is a surplus notice
19 different than a written notice in TVA?

20 MR. REYNOLDS: Yes, sir, it is.

21 MR. DAMBLY: What's the difference?

22 MR. REYNOLDS: A surplus notice was a
23 notification to an employee that they were
24 going to either go to the TVA services
25 organization or have the opportunity to

1 resign their employment, receive one year's
2 severance pay, and receive immediate
3 retirement benefits.

4 MR. DAMBLY: What's the difference
5 between that and a RIF notice?

6 MR. REYNOLDS: A RIF notice would be
7 that you just give the employee the notice,
8 and they would separate their employment
9 directly at that time. At that point when
10 you issue an employee a surplus notice -- and
11 that's kind of where I was heading next, so
12 I'll kind of continue with that and maybe it
13 will help.

TVA had created a services
15 organization. The purpose of the service
16 organization was to provide the employees an
17 opportunity for further training to be
18 retrained for new skills or seek employment
19 either internally within TVA or externally.
20 Like I said earlier, in that '96 time frame,
21 if an employee received a surplus notice,
22 they had an opportunity to transfer into this
23 TVA services organization and continue their
24 employment as a TVA employee, full benefits,
25 no loss of pay, none of that, and continue to

look for employment or retrain as I mentioned
2 earlier; or they could choose the option to
3 resign their employment, receive one year's
4 severance pay -- a year's pay for severance,
5 and their severance pay which would have been
6 available to them, which is equal to five
7 days for every year of employment they had.

8 MR. STEIN: If a TVA employee opted to
9 go into the TVA services group, how long
10 could they remain in that group before they
11 were taken --

12 MR. REYNOLDS: Typically about a year.
13 We had had employees -- the TVA services
14 organization was kind of what I will refer to
15 as some of our first attempt at the employee
16 transition program, and then it changed to
17 the services organization. But it was
18 typically about a year unless they found
19 another employment or something like that.

20 MR. STEIN: And what was your success
21 rate for employees leaving the TVA services
22 organization to go back into the operations
23 or maintenance or engineering departments,
24 wherever they came from?

25 MR. REYNOLDS: I don't know the answer

1 to that question. The services organization
2 was not part of the nuclear organization; it
3 was part of an overall TVA corporate, so I do
4 not know that answer.

5 MR. STEIN: Thank you.

6 MR. REYNOLDS: So those were the
7 options available to employees at that time.

8 The second point I'd like to talk a
9 little bit about is the role of TVA nuclear
10 human resources, and TVA nuclear expects our
11 managers to provide the leadership and
12 direction so that our organization can become
13 an industry leader. The TVA nuclear managers
14 are not expected to be subject matter experts
15 in the areas of TVA policies and procedures
16 or practices on personnel matters, but we do
17 expect them to handle those day-to-day
18 supervisory functions.

19 In TVA human resources, which I am
20 responsible for, we provide what I'll call
21 the guardianship and the subject matter
22 experts for these TVA rules and policies and
23 practices on personnel matters. And in times
24 of surplusings and reorganizing the
25 organizations, our role is not to collaborate

with management but to ensure that we comply with our practices and regulations that govern us at that time. We apply the office of personnel management regulations when establishing competitive levels, and Mr. Boyles to my right is going to discuss that in this presentation.

In the TVA organization, human resources makes the determination and makes the calls on the competitive levels; not line managers. By us doing this, this prevents a manager from determining competitive levels based on personal knowledge of what an employee does versus what the official position description or job description of record states, and that's a real key when we get into discussion. Once HR determines those competitive levels, we inform the managers what those levels are.

Our practice in a reorganization and a surplus was to require and is today to require competitive level call be made on effective positions to determine if and which employees have rights to new positions within the organization.

Thank you.

2 MR. BURZYNSKI: With that background --
3 sorry.

4 MR. DAMBLY: I didn't catch it. Did
5 you say that PD's control or the actual
6 duties control?

7 MR. REYNOLDS: In determining
8 competitive level, it is not the duties; it
9 is the position description or job
10 description of record.

11 MR. DAMBLY: Okay.

12 MR. BURZYNSKI: With that background
13 information, what I'd like to do now is move
14 into discussions on the five particular
15 points that were identified in the OI report
16 summary that form the basis for the
17 predecisional enforcement conference.

18 In terms of the first point, the OI
19 report summary states that Mr. McGrath and
20 Dr. MacArthur were named as culpable parties
21 in Mr. Fiser's 1993 D.O.L. complaint. On
22 this point, TVA finds that the OI report
23 summary is incorrect. Mr. McGrath was not
24 named personally or by position. Mr. McGrath
25 was not interviewed by the Department of

1 Labor or the TVA Inspector General as part of
2 that 1993 complaint. As Mr. McGrath
3 testified in his individual enforcement
4 conference, he was unaware of the '93
5 complaint until informed by TVA nuclear human
6 resources in 1996 when Mr. Fiser informed
7 them of his intention to file a second
8 Department of Labor complaint. And Mr.
9 McGrath also informed you that he was unaware
10 of the characterization of culpability until
11 he received your letter inviting him to his
12 own individual enforcement conference.

13 Similarly, Dr. MacArthur is not named
14 as a culpable party. Instead, as he
15 indicated to you, he thought he was portrayed
16 as a favorable supporter of Mr. Fiser in the
17 complaint, and he provided information
18 through his enforcement conference to that
19 effect. We are providing the same
20 information to you now, which is a copy of
21 the 1993 complaint. We've highlighted the
22 areas when Mr. MacArthur is mentioned, and
23 you can see the characterizations there.

24 MR. STEIN: I have a question, and I'm
25 going to get to this a little bit later I

2 think in presentation; but given the fact
3 that Mr. McGrath is prominently named in a
4 TVA internal investigation report of a very
5 senior TVA official -- and Mr. Peterson as
6 well -- don't you think that TVA IG should
7 have interviewed Mr. McGrath and Mr. Peterson
8 in 1993?

8 MR. BURZYNSKI: Brent, you want to take
9 a shot at this?

10 MR. MARQUAND: I don't know that--

11 MR. STEIN: Let me be more specific.

12 Dan Kiter in his investigation report
13 and TVA's internal report mentions both Tom
14 Peterson and Tom McGrath as being opposed to
15 Mr. Fiser going to corporate chemistry. I
16 would think it would be incumbent upon TVA's
17 IG to speak with those two individuals.

18 MR. MARQUAND: Well, I mean, the TVA IG
19 is not here to speak for themselves --

20 MR. STEIN: Your statement is that
21 McGrath was not interviewed by D.O.L. or TVA
22 Inspector General; therefore, he didn't do
23 anything that --

24 MR. MARQUAND: The point is that the
25 synopsis -- we haven't seen the OI report in

this case; all we've seen is the synopsis.
2 The synopsis suggests that -- it doesn't
3 suggest; it says -- that the two individuals
4 were named as culpable parties. Well, that
5 doesn't mean they did wrong here. The reason
6 that is there is to suggest that they had
7 some reason to herald some hostility or to
8 retaliate against Mr. Fiser subsequently.
9 That's their alleged knowledge supposedly of
10 -- gives the foundation for why they were
11 going to retaliate. The point is not whether
12 or not they should have been told, but the
13 point is did they know in 1996 -- what did
14 they know in '96 what formed the basis for
15 this supposed animosity that they had towards
16 Mr. Fiser. And our point here is not that
17 they should have been told or they shouldn't
18 have been told, but simply Mr. McGrath didn't
19 know in 1996 that he had been targeted in Mr.
20 Fiser's '93 complaint. He therefore couldn't
21 have an animosity toward Mr. Fiser as a
22 result of the '93 complaint. He didn't even
23 know about it. I mean, that's a logical
24 impossibility.

25 MR. DAMBLY: Let me ask one question.

1 In terms of your response about Mr.
2 McGrath not named personally by position, are
3 you providing what I'll call a legalistic
4 response by referring to the D.O.L. complaint
5 that is this document, or are you saying that
6 to your knowledge McGrath was not involved in
7 the investigation in terms of being mentioned
8 and the activities that Mr. Fiser is talking
9 about not being mentioned --

10 MR. MARQUAND: He made two points.
11 Literally, he's not named either nominally or
12 by title; but the investigation by TVA's own
13 IG didn't turn up anything that would suggest
14 that he was involved in the '93 complaint.
15 Not only was he not named, but to his
16 knowledge -- I mean, he didn't have knowledge
17 of it, but the TVA's investigation didn't
18 show that he was involved in the issues of
19 the '93 complaint. The '93 complaint, Mr.
20 Fiser was complaining about the people at the
21 plant. He wasn't complaining about the
22 people in corporate.

23 MR. DAMBLY: I guess the problem I'm
24 having is I've reviewed the responses you all
25 made to the '96 D.O.L. complaint in which Mr.

Fiser made similar allegations about Mr.
2 McGrath and Dr. MacArthur, and I didn't see
3 anywhere in there that you're making the
4 statements that you're making to us about
5 them not being involved in '93.

6 MR. MARQUAND: We addressed the literal
7 language in the summary of the OI report.
8 We're addressing the report that's been laid
9 in front of us.

10 MR. REYES: Can we explore that?
11 Because -- what's the date of the documents
12 you're referring to, Dennis?

13 MR. DAMBLY: I don't have it in front
14 of me; but their response and their motion
15 for summary judgment and whatever the '96 --

16 MR. MARQUAND: Subsequently, yes. And
17 our point there was in Mr. Fiser 1996
18 complaint, he revised, so to speak, what he
19 said he had said in '93, and he
20 recharacterized it. And we addressed the
21 merits of it. I mean, you go to these judges
22 a lot of times, and they don't want to hear
23 something like, I didn't know about it; they
24 want to know, Well, did you retaliate against
25 this guy? Well, no, we didn't retaliate

against him.

2 MR. REYES: So your answer to our
3 question is that the statement -- and I'm not
4 agreeing or disagreeing; I just want to make
5 sure we convey information here today. Your
6 statement is that you address in that
7 document what the accusation was --

8 MR. MARQUAND: The '96 acquisition.

9 MR. REYES: The '96; not that you were
10 trying to explain what happened.

11 MR. MARQUAND: In response to the '96
12 complaint, I believe both the response to
13 wage and hour and in our summary judgment
documents we addressed the accusations in '96
15 that Mr. McGrath had some animosity toward
16 Mr. Fiser arising out of the NSRB minutes in
17 1991. And we've addressed that issue and
18 said there wasn't any reason for any
19 animosity; in fact, it was totally different
20 than as Mr. Fiser had characterized it in
21 1996.

22 MR. REYES: Does that help?

23 MR. DAMBLY: Yeah, it helps; but by my
24 reading of the documents, you filed and made
25 statements like the issue concerning I guess

2 how many parameters he was supposed to report
3 on a daily basis the chemistry issue -- I may
4 not be phrasing that right -- but you put in
5 material that said that was only one of the
6 things mentioned for why he was transferred.
7 And you put that in responses, which tells me
8 that you considered that part of the reason
9 for whatever was going on in '93. And now
10 Mr. Fiser's saying that's why he was
11 retaliated against there, and you're telling
12 us that these people were not -- are you --
13 again, you're responding right now to the
14 literal words of the OI summary and not
15 necessarily whether in point of fact in '93
16 there were these interactions that Mr. Fiser
17 is complaining about.

18 MR. MARQUAND: Mr. Fiser in '93 did not
19 complain about the 1991 and '92 interactions
20 with the NSRB; he complained about something
21 totally different in '93.

22 MR. DAMBLY: And you're basing that on
23 the complaint only; not the investigation --

24 MR. MARQUAND: Right.

25 MR. DAMBLY: -- and all those
statements that were taken in which Mr.

McGrath and Mr. MacArthur were discussed?

2 MR. MARQUAND: My understanding, Mr.
3 McGrath was not interviewed with respect to
4 the '93 complaint.

5 MR. DAMBLY: Well, I'm not saying that
6 he was interviewed, but he was mentioned in
7 interviews, and the incident that Mr. Fiser
8 has focused on was mentioned in interviews in
9 1993.

10 MR. MARQUAND: Yes.

11 MR. DAMBLY: Okay. That's my only
12 question.

13 MR. BURZYNSKI: Let me see if I can get
14 myself back on track.

15 MR. DAMBLY: Sorry about that.

16 MR. BURZYNSKI: No problem.

17 Okay. The second point that we wanted
18 to talk about, the OI report summary states
19 that Dr. MacArthur's appointment contravened
20 TVA policy, and as a result, Mr. Fiser was
21 subjected to disparate treatment. On this
22 point, TVA finds that Dr. MacArthur's
23 appointment was made in accordance with OPM
24 regulations on job rights. And I'd like to
25 introduce Mr. Ed Boyles, human resource

1 manager, who will discuss with you the
2 process we used and the decisions we made
3 regarding both Dr. MacArthur's job and Mr.
4 Fiser's.

5 MR. BOYLES: Thanks, Mark.

6 I'd like to use an overhead to walk
7 through the process that we utilize for
8 evaluating during a reorganizations decision
9 on whether to post positions or whether or
10 not to post positions. The overhead outlines
11 the basic steps that are taken in this
12 decision process.

13 During a reorganization, management
14 determines the functions that are going to be
15 performed, and they propose the organization
16 structure. Management also develops position
17 descriptions based on the functions they have
18 laid out in this proposal. Now, at that
19 point, there's a hand off as the line shows
20 here to human resources. I've referenced the
21 OPM regulations that do apply during this
22 process.

23 Once that hand off is made to human
24 resources, the existing employee competitive
25 levels are determined based on a review of

2 the existing PD, and it's what Mr. Reynolds
3 referred to earlier, the official position
4 description of record. The new PD that is
5 compared to this existing PD and human
6 resources makes the determination on
interchangeability.

7 Based on this determination, we make
8 the decision of whether to post or not to
9 post. If it's determined to be
10 interchangeable, we don't post the position.
11 We view the attached employee to have rights
12 to the job. If we view it as not
13 interchangeable, the position is posted, as I
show here. I'd like --

15 MR. STEIN: Excuse me. At what level
16 of OHR is this decision made and how much
17 input does line management have in deciding
18 one way or the other?

19 MR. BOYLES: I'm going to walk through
20 a scenario regarding Mr. Fiser's decision and
21 Mr. MacArthur's, and I'll indicate who was
22 involved in that level of decision. I think
23 that will answer that question.

24 MR. DAMBLY: Before you get to that
25 question, if you decided in Mr. Fiser's case

1 that the jobs were interchangeable, then at
2 that point, instead of posting, there would
3 be job rights; but since you had three, you
4 would have had to run a RIF? If you had
5 three people that were interchangeable and
6 you had two jobs --

7 MR. BOYLES: We had a surplus
8 situation. We were not in a RIF situation.
9 We had given the individual this option of
10 TVA services or the option to resign TVA with
11 one year's pay and appropriate severance pay.

12 I'd like to ask --

13 MR. DAMBLY: Isn't 351 the OPM RIF
regulations?

15 MR. MARQUAND: Let me address that.
16 Part 351 deals with the RIF regulations,
17 and the RIF regulations only address a
18 separation from employment through a
19 reduction of force --

20 MR. DAMBLY: My question was why are
21 you citing me 5 CFR 3551 for a surplus if you
22 don't have to follow -- what do the
23 competitive levels have to do with a
24 surplus?

25 MR. BOYLES: We had to determine

2 competitive levels in order to make a
3 determination on interchangeability of PDs
4 similar to PDs.

5 MR. MARQUAND: 351 403 establishes what
6 competitive level is and provides the legal
7 test as to whether or not a position
8 description -- an individual has a right to a
9 new job or in this case, if there is not a
10 new job that's interchangeable, whether that
11 individual would be surplus.

12 MR. DAMBLY: Surplused?

13 MR. MARQUAND: That's our term,
14 surplused.

15 MR. DAMBLY: But you're into 351, which
16 is RIF rates, and you're talking about a
17 different process; so I'm not sure what the
18 applicability is. Also, can you point out
19 for me in 351 where it says you check the PDs
20 to determine whether they're
21 interchangeable?

22 MR. MARQUAND: I believe it's 351 --

23 MR. DAMBLY: -- 403. There you talk in
24 terms of duties. I don't recall an official
25 position description --

MR. MARQUAND: I think 301 403A

requires a comparison with the official
2 position description; and within TVA, what we
3 use as official position description is a
4 position description of record. That's what
5 the MSPB, the Merit System Protection Board,
6 that's what they hold us to.

7 MR. DAMBLY: Okay.

8 MR. BOYLES: As I said, I want to walk
9 through the scenario.

10 Mark, if you would take us to the next
11 slide, please.

12 MR. BURZYNSKI: Yes, sir.

13 MR. BOYLES: What I've done here is I
14 show you the scenario utilized as it involved
15 Mr. Fiser, and I've listed in bold here --
16 and I believe you have the handouts -- who
17 was involved in the decision at that time.
18 Again, as I said, when management is
19 determining the functions to be performed in
20 proposing the future organization, in this
21 case, this was operation support, and Tom
22 McGrath was the acting general manager of
23 operation support who was involved in that
24 process at the time.

25 In the development of the new position

descriptions based on those functions, both
2 Mr. MacArthur -- Dr. MacArthur and Don
3 Grogran were involved in that with unput from
4 others, including Gary Fiser, Sam Harvey, and
5 Shondra. They were all involved in the
6 development of those position descriptions.

7 I've listed some of the issues involved
8 in the changes in position descriptions. I'd
9 like to point out there were two new position
10 descriptions, one BWR and one PWR, developed
11 as a result of that. At that point, there is
12 a hand off to human resources of the PDs.

13 Now, in this case, Mr. Easley, Ben Easley,
14 who worked for me, reviewed the existing PDs
15 of record to establish the competitive
16 level.

17 In this case, Mr. Fiser, Mr. Harvey,
18 and Mr. Shondra were determined to be at the
19 same competitive level. At that point, he
20 compared Mr. -- Mr. Easley compared the new
21 chemistry program managers PDs, PWR and BWR,
22 and the existing chemical environmental
23 protection PDs. His decision and with my
24 concurrence was that they were not
25 interchangeable and we were required to post

those jobs.

2 MR. STEIN: Can you walk us through
3 from 1993 to this point what Mr. Fiser's PD
4 looked like? Because Mr. Fiser went back
5 into a position in 1993 as a result of an
6 earlier case, and then he had to compete when
7 you threw environmental back into the mix,
8 and then you took environmental out. So --

9 MR. BOYLES: It's a good point. I can
10 address it in general terms. I don't have
11 the PDs in front of me, but my recollection
12 of the events involved -- Mr. Fiser was
13 placed in the corporate chemistry office in
14 '93, I believe, as a result of settlement
15 D.O.L. made. He was placed in a chemistry
16 program position description.

17 MR. STEIN: Is that similar to a
18 position description for the chemistry
19 manager in 1996?

20 MR. BOYLES: I'd have to compare them,
21 the job titles; because chemistry's specific
22 and didn't include the environmental PDs.
23 Shortly, maybe a year later, seems like in
24 '94, there was a reorganization which
25 included -- added chemistry; and at that

time, they were not viewed as
2 interchangeable. I think that's a good
3 point. They were posted; and it's my
4 understanding that Mr. Fiser didn't question
5 the posting of the position at that time,
6 that he applied on this new position
7 description, which was chemistry and
8 environmental, and was selected on that
9 position.

10 Now, interchangeability needs to go
11 both ways, so that's --

12 MR. STEIN: The point I'm trying to
make is that by 1996, you had took
14 environment out of this PD; and if it's the
15 same as he was working under in 1993 when he
16 got the position in settlement, then
17 shouldn't he have gone into that position as
18 a right as Mr. MacArthur did on the next
19 page?

20 MR. BOYLES: His position description
21 of record at that time was the chemistry
22 environmental position description. That was
23 what was used to do the comparison.

24 Again, the interchangeability needs to
25 go both ways. It seems very logical that if

1 it was posted in '94 that the decision to
2 post it again when a change occurred, which
3 pretty much reversed earlier decisions, that
4 that confirms the decision of '96, that it
5 was posted in '94; and no one contested that
6 decision at that time.

7 MS. BOLAND: Were the same three people
8 involved in the '93 reorganization?

9 MR. BOYLES: I don't know. I was not
10 present at that time.

11 MS. BOLAND: Because you gained a
12 function in the first reorg but lost a
function in the second reorg.

14 MR. BOYLES: Let me say the individuals
15 present at the time wouldn't have had any
16 effect on interchangeability.

17 MR. MARQUAND: My understanding in '94
18 when it was posted and competed for, the same
19 three individuals were involved; but there
20 were other applicants who were not successful
21 in '94. And then when they reversed the
22 decision and took the jobs apart for '96,
23 again, there were the same three individuals,
24 but there were also other applicants.

25 MS. BOLAND: So the first reorg, the

2 three individuals were there, they applied,
3 and were all able to retain their jobs
4 through the selection process?

5 MR. MARQUAND: Yes.

6 MS. BOLAND: Same individuals again,
7 but we were going from 3 to 2 positions?

8 MR. MARQUAND: But there were six
9 applicants in '96 but only two positions.

10 MS. BOLAND: No; I understand --

11 MR. STEIN: Was Mr. Fiser's 1994 PD
12 accurate in truly reflecting what he did?
13 Because there is some evidence to say that
14 even though you posted a new position, he had
15 a new title, he really wasn't doing
16 environmental work; it was still very much
17 the same thing as 1993?

18 MR. MARQUAND: The testimony was that
19 in 1994 that what they were doing was
20 intending to cross train, cross-pollinate
21 people and that they selected people with
22 chemistry backgrounds to be in chemistry
23 environmental positions. I believe they also
24 selected someone who had an environmental
25 background to be in a chemistry and
environmental position. And the intent was

2 that over time that they would cross train
3 each other so that they would be broader
4 specialists. And that never fully came to
5 fruition, and they recognized that we would
6 be better off not only specializing in
7 chemistry, but having somebody who
8 specialized in chemistry PWR plants and
9 somebody who specialized in chemistry BWR
10 plants. So they didn't quite go back to
11 where they were in '93, but they went to a
12 more highly specialized position. But you
13 are correct that when they initially were put
14 in the positions, they were not accurate; and
15 they were not intended to be. They were
16 intended to learn a new responsibility and
17 new --

18 MR. BOYLES: Okay. Mark, if you would,
19 just go to the next slide, which includes the
20 scenario involved in Mr. MacArthur's position
21 description.

22 Again, in the conceptual phase, Mr.
23 McGrath was the acting general manager of
24 operation support. Mr. McGrath had decided
25 to utilize an existing PD radiological
control and chemistry control manager, which

had been vacated by the retirement of Mr. Sorrell earlier. The position wasn't created in 1996; it had actually been created prior to that when an individual filled that, Mr. Sharod. We utilized that position to establish the competitive level. Mr. Easley, who again worked for me, and I reviewed that; and as indicated underneath, it shows the basic elements of the job. Above that, I show the basic contents of the -- I show the basic contents of the radiological control and chemistry control manager and utilized the position description of the record, which was technical program manager's position.

Let me say, this was a 1990 position description. Dr. MacArthur had not been issued a new position description in 1994 during the reorganization; but as we indicated earlier, our position is that we utilized the position description of record, and that's what we utilized to establish this competitive level.

MR. STEIN: How is this performed? Do you use your elements and standards like we do and come out with position descriptions?

1 I would assume Mr. McGrath's performance
2 appraisal in this time period should have
3 been reflected in the position description --
4 I'm sorry; Mr. MacArthur.

5 When you gave Mr. MacArthur a
6 performance appraisal -- when he didn't get
7 his new position description, at that point,
8 I would think it would have been picked up
9 that he was working under a different set of
10 elements and standards.

11 MR. BOYLES: I did not review his
12 performance appraisals; they do annual
13 performance appraisals. I don't know --

14 MR. MARQUAND: Well, as you know in TVA
15 nuclear, we do try to cross train people and
16 we put people in rotational positions for
17 periods of time, and the new position
18 descriptions are not necessarily issued then
19 during those periods. They maintain their
20 official position description and personal
21 history record is wherever they came from,
22 but they're on a rotational cycle. In fact,
23 as you know, Dr. MacArthur during this 1994
24 through '96 period was acting in the capacity
25 as radiological control manager while another

individual by the name I believe it was
2 Sorrell --.

3 MR. BOYLES: That's correct.

4 Let me back up for a second, too, to
5 mention one other issue that involved -- when
6 Mr. McGrath was in conceptual phase of the
7 organization and he was discussing it with
8 me, I told him that from the appearance of
9 the changes, that I thought most of the
10 positions would end up being posted. As we
11 progressed through that and he informed
12 people who worked for him, Dr. MacArthur in
13 the early part of 1996 approached Tom McGrath
14 with concern. His concern was that he
15 believed that the position description of
16 radiological control and chemistry control
17 manager was his position. He believed he had
18 held it before; and, in fact, Mr. Sorrell was
19 in the process of retiring and Mr. MacArthur
20 often did perform functions of the job. He
21 raised that concern with Mr. McGrath in '96,
22 who asked me to look at it. At the time I
23 had told him we would probably post the
24 position, we hadn't established competitive
25 levels, we had not looked at the PDs at all;

2 but I told Mr. McGrath that we would do that,
3 and that's what we did in the rest of this
4 process.

5 MR. STEIN: It looked like Dr.
6 MacArthur actively lobbied to get the
7 position since he considered it was his
8 position.

9 MR. BOYLES: He raised a concern.

10 MR. STEIN: Did Mr. McGrath come to you
11 in an active mode as well, or was it just,
12 Here HR, take a look at it --

13 MR. BOYLES: No, it wasn't. Dr.
14 MacArthur raised a concern, Will you look at
15 this issue and tell me what to do, and that's
16 what we did. I'm confident that had we
17 returned and told him he had to post the
18 position that he would have agreed and posted
19 the position. We had hundreds of calls like
20 that made. I can only recall one position
21 that he questioned me on; that was involving
22 the current manager of steam generators. We
23 had changed that job fairly significantly,
24 and I felt we needed to post it; but the
25 incumbents, weren't probably only three
people in the eastern part of the United

States to do that job, technical
2 qualification. But Tom McGrath did ask me,
3 Do we really have to post that position? We
4 ultimately did post the job; but to my
5 recollection, that's the only position that
6 he politely questioned me on.

7 MR. STEIN: Well, Mr. Easley disagreed
8 with that decision. Can you go into a little
9 bit of the give and take you had with your
10 staff --

11 MR. BOYLES: Yes; I'll be glad to.

12 I had asked someone who had been in the
13 organization for quite a while to do a
14 comparison for me and to dig up the records,
15 the history, and he did. We discussed it;
16 and initially, Mr. Easley agreed that it was
17 an interchangeable position. But he did come
18 to me later, and he spoke with me about Mr.
19 Grover. He indicated to me that if we did
20 this and did post the position, that Mr.
21 Grover wouldn't have an opportunity to bid on
22 the position, and it appeared that he would
23 be without a job. I, too, was concerned that
24 Mr. Grover would be without a job, although
25 he could have applied. But I didn't think we

needed to focus on an individual who we were making an interchangeability call on a PD.

3 So I talked with Mr. Easley about that,
4 and we basically disagreed on that call. I
5 did review it with my supervisor as the next
6 step and went over my process and her
7 position, and she had no problem with what I
8 was doing.

9 Similar to the other, we did make the
10 decision in this case; and as I've indicated,
11 I take full credit for that. Mr. Easley did
12 ultimately disagree with me; but I decided
13 that Dr. MacArthur had rights to the job as I
14 viewed it as interchangeable with his
15 existing PD of record.

16 And let me say this: Based on many of
17 these that we've done, I think had I made a
18 decision to post this job, I believe that Dr.
19 MacArthur would have a pretty good case
20 against us for not utilizing his job
21 description of record in acquiring that
22 posting.

23 MR. DAMBLY: I asked this question the
24 last time we were together, and I still have
25 a problem. I notice on the chart you gave us

2 today, you left off a duty which you told us
3 he had last time on this PD of record on
4 technical programs, which was protective
5 services --

6 MR. BOYLES: Sorry; we were typing this
7 last night.

8 He --

9 MR. REYES: Is that an accurate
10 adjustment that we should make to the
11 record?

12 MR. BOYLES: He did have in the
13 technical program a management position, and
14 I believe we provided it previously in a copy
15 of a worksheet, protective services was
16 listed. That's correct, so we can make the
17 adjustment --

18 MR. REYES: For the record, how should
19 we note your handout, for the record.

20 MR. BOYLES: Protective services was a
21 function under the technical programs manager
22 position in the 1990 position description.

23 MR. BURZYNSKI: That would be right in
24 this area here, (indicating).

25 MR. DAMBLY: So basically, his PD of
record contained a couple of functions which

were not in the PD of the new position?

2 MR. BOYLES: That's correct.

3 MR. DAMBLY: And comparing those two,
4 you decided that they were -- that's okay and
5 you could roll that over. But when you
6 compared Mr. Fiser's PD of record with the
7 new PD, which as I recall you all put in your
8 briefs, basically Mr. Fiser wrote, you
9 decided those were so different that you
10 couldn't roll him over even though it was
11 basically the duties he was performing?

12 MR. BOYLES: In comparing the PDs, we
13 did not view the chemistry environmental
14 program management position interchangeable
15 with the new chemistry program manager, BWR
16 or PWR.

17 MR. BURZYNSKI: But I think there's
18 also a distinction here that for the program
19 manager jobs, those are technical specialists
20 in those areas where this is a department
21 level manager job, and the focus is more on
22 the managerial skills rather than the listing
23 of the functions. It's more management
24 skills --

25 MR. DAMBLY: You brought that up last

time, so then I'll ask the same question. If
2 that's true, then why wasn't Mr. Grover, who
3 was at the same level as Mr. MacArthur,
4 eligible and you still would have had to
5 compete? Because he was a manager, and it
6 would have added some additional areas to
7 him. If we're looking at management skills,
8 I didn't hear anybody say Mr. Grover couldn't
9 handle the management --

10 MR. BOYLES: We did not look at
11 management skills or qualifications in making
12 the competitive level. Mr. Grover had a PD
of record that was utilized in that
13 comparison, and that was not the same
14 competitive level.
15

16 MS. BOLAND: Is there something -- and
17 I don't mean to belabor a point here -- that
18 distinguishes -- Mr. Burzynski mentioned
19 management, and I seem to recall hearing that
20 the manager level positions can be created
21 differently. But you still get back to
22 MacArthur's position lost function from PD to
23 PD, and so did Mr. Fiser's position lost
24 function. How can you treat the two of those
25 differently per your procedures?

MR. BOYLES: I think we go back to what
2 Mark was saying, but let me use the term --
3 and maybe give an example. It's a standard
4 control issue. We paid that senior level
5 manager to manage a variety of functions.
6 Now, we may move industrial safety from one
7 organization to the other organization, and
8 we do, and we have reason. We don't re-post
9 those positions every time we move one out of
10 six or seven. We look at the job; and moving
11 one function from a standard level manager to
12 another organization is not a major change to
13 that position description in our judgment.

MR. STEIN: Let me ask you a
15 hypothetical. If Dr. MacArthur had his
16 accurate PD of record that he was functioning
17 under in 1994 and then this new
18 reorganization occurred and, you know, you
19 had two managers, Mr. Grover and Dr.
20 MacArthur vying for one position, you would
21 have then had to post it?

22 MR. BOYLES: Correct.

23 MR. STEIN: That's what you're
24 arguing?

25 MR. BOYLES: That's correct.

MR. DAMBLY: If Mr. Fiser's PD had
2 accurately reflected the duties he was
3 actually performing, it would not --

MR. MARQUAND: If his had just said
4 chemistry program manager, then there would
5 have needed to be a comparison between that
6 and the chemistry PWR and the chemistry BWR
7 to see if they were interchangeable; and that
8 sounds a lot more interchangeable than
9 chemistry and environmental.
10

11 But to get back to the question you
12 raised, which was Mr. Grover's right to
13 compete for this senior level position, one
14 other aspect of the RIF raising comparing
15 apples and oranges requires you also to
16 establish separate competitive levels for
17 different pay positions. The pay position
18 level that Dr. MacArthur was at was what we
19 term a senior manager position. The level
20 that Ron Grover was at was either a 10 or
21 11 --

22 MR. BOYLES: I believe an 11.

23 MR. MARQUAND: -- which is not on the
24 same level. So it would not have -- under
25 the law 351, 403(b)(3) requires separate

competitive levels for different pay levels.
2 MacArthur was already at that pay level. It
3 was a question -- span of control and the
4 management functions, are they similar or not
5 to be interchangeable here.

6 MR. DAMBLY: Do you have a cite to the
7 thing that says you have to use PDs as
8 opposed to comparison of the duties actually
9 performed?

10 MR. MARQUAND: 351 403(a)(2) requires
11 competitor level determinations be based on
12 employee's official position, and we will be
13 glad to provide you -- after this we'll send
14 you the copies of various system protective
15 board decisions in TVA's cases that says,
16 TVA, you've made RIF determinations based on
17 what they were doing and not on what their
18 position description is, and you lose. They
19 hold us to that standard.

20 MR. DAMBLY: I'm not talking about for
21 competitive level purposes. I'm talking
22 about when you determine whether there's a
23 similar position that has to be posted or
24 whether somebody has rights to that position,
25 which is not a competitive level

determination; that's a similar position
2 determination. There's no requirement that
3 that be based on the PD of record; it's on
4 the duties actually performed.

5 MR. MARQUAND: Well, where we end up
6 with this issue, the only place it can be
7 raised and litigated with TVA is in front of
8 the merit system protective board under a
9 RIF. That's the only rights an individual
10 has to raise that issue. And the way it
11 comes up is if someone is RIF'd, they say,
12 No; I should have been compared with my
official position description of record and I
14 should have had job rights to that position.
15 Or conversely someone says, I was improperly
16 RIF'd, you looked at my -- and what was
17 upheld all the time by the merit system
18 protection board is where we establish the
19 competitive levels based on the official
20 position description of record. And we'll be
21 glad to supply you with copies of those
22 decisions.

23 MR. DAMBLY: On competitive levels?

24 MR. MARQUAND: On competitive levels.

25 And the competitive level is what determines

whether or not the jobs are interchangeable
2 and whether the individual has a right to
3 that changed position description.

4 MR. DAMBLY: And just again so you can
5 clarify so I understand, in this particular
6 case, we weren't in a RIF situation, so none
7 of these rules apply.

8 MR. MARQUAND: We have to apply them,
9 because there's a potential down the road of
10 somebody in services if they don't get a job
11 a year later being RIF'd. And when we do
12 conduct the RIF, we can't say, Okay, you've
13 been in services -- we've got to look at the
14 person who has the least seniority on that
15 retention register. So if we surplus some
16 but not all the people in a job, we send the
17 people with the least seniority on the
18 retention register, we prepare a retention
19 register -- and, in fact, one was prepared in
20 this case a year out to determine seniority.

21 MR. SCALICE: I can't help but ask a
22 question, so I'm going to ask both of you. I
23 read these regulations here; 351.201 says,
24 This includes determining when there is a
25 surplus of employees. The terms I'm hearing

is -- apparently you don't like the term
2 surplus, so I'm going to say it says it in
3 the rules, and maybe you can explain it.

4 Secondly, it says in here on the second
5 part, When there is a reassignment requiring
6 replacement, all of which I'm hearing. So
7 I'm curious myself as responsible for this,
8 not the point you're trying to make but why
9 these regulations don't apply to the function
10 and the actions we took. You obviously don't
11 believe they do.

12 MR. DAMBLY: I'm trying to find out why
13 you think they do if in point of fact you
14 didn't run to your retention register and go
15 through the process. Because if you're in
16 those regs, then there's a certain process
17 you go through including preparing retention
18 registers. You don't say, Well, they're
19 different jobs, so we don't really have to
20 follow the rest of it; we'll post these and
21 find out who goes out the door. Any RIFs
22 I've been associated with, you go down the
23 pecking order as to who gets the jobs that
24 were left; you don't decide to post the ones
25 so you can keep who you want.

1 MR. MARQUAND: TVA started the
2 downsizing that Phil mentioned. We went
3 through drastic downsizing. And the TVA
4 board of directors recognized the tremendous
5 impact it was having on individuals. At one
6 point in time, people only had to have a
7 30-day notice before they were separated from
8 TVA. Then Congress changed and made it 60
9 days. Still, a TVA board of directors said,
10 We're putting so many people on the streets,
11 these people have been loyal employees; we
12 owe them a debt. We're not going to throw
13 them out the door in 60 days; we're going to
14 give them more notice. We're going to give
15 them surplus notice. We'll let them know if
16 there is a possibility that their services
17 won't be needed; and, in fact, we'll try to
18 use their services and keep them on in a
19 separate organization called services. And
20 some of them kept for as long as 2 or even 4
21 years, depending on the period of time, to
22 try to meliorate the hardship of losing a
23 job. The regulations only require giving a
24 60-day notice of termination to a reduction
25 in force. TVA said, We're not going to tell

2 you right now we're going to terminate you,
3 but if your job is surplus, you've got good
4 notice to think, I need to start retraining,
5 I need to start looking for another job. So
6 these people were put into services
7 organization; and the way we decided who went
8 in there was by seniority using retention
9 registers just as described in here. And a
10 retention register was prepared in this case
11 that would show an effective date of 1997, a
12 year after the events in this situation took
13 place.

14 MR. DAMBLY: I assume -- you tell me.
15 Where was Mr. Fiser -- in terms of the three
16 people, Mr. Fiser --

17 MR. MARQUAND: He would have had more
18 seniority had there been a RIF.

19 MR. DAMBLY: So if he had gone into
20 services and come down through a year and
21 didn't have a job, then you would have gone
22 back to this retention register, and he would
23 have stayed and somebody else would have
24 gone?

25 MR. MARQUAND: If the other people on
the retention register were still on the

retention register. The regulations are very
2 clear about is that you have to establish
3 your retention register as of the date that
4 the employee is released from service with
5 the agency. In this case, Mr. Fiser, in our
6 hypothetical situation given a year from the
7 end of September to October 1 of 1997, you
8 would have a retention register as of that
9 date, and you'd look and see who's on the
10 retention register as of October 1, 1997; in
11 other words, who has that job description?

12 Well, what happened in the meantime was
13 they had a reorganization. They advertised
14 the position, and the two other people who
15 were in the same job descriptions were
16 selected for other jobs. At that point, they
17 would come off the retention register. He
18 would have been the only person left on the
19 retention register had he stayed in services
20 and not found another job. But what people
21 in services were doing was they were actively
22 encouraged, Find another job. Look within
23 TVA, apply to something else.

24 MR. DAMBLY: And I guess that still
25 doesn't answer the question I've asked.

1 Where is it stated in 351 or anywhere else
2 that in determining which jobs have to be
3 posted as opposed to who's in what
4 competitive level, you look at the PD of
5 record and not at the duties performed?

6 MR. MARQUAND: Our interpretation based
7 upon what the Merit System Protection Board
8 has ruled is when it says official position,
9 is we're required to use our official job
10 descriptions that we -- that management
11 signs, human resource signs, and it is
12 approved and put in the individual's official
13 personal history record. That's his official
14 -- for federal regulation purposes, that's
15 his official position.

16 MR. DAMBLY: And that's in terms of
17 determining competitive levels. But when you
18 determine rights to positions created, you
19 look to similar positions, which I think are
20 defined in there as positions in which the
21 duties performed, not the official PD, are
22 such that somebody could move from one to the
23 other with minimal training.

24 MR. MARQUAND: It doesn't say duties
25 performed, Rule 3(a)(1) says, Similar duties,

1 qualification requirements, pay schedules and
2 working conditions so that an agency may
3 reassign the incumbent of one position to any
4 of the other positions without undue
5 interruption. And that's the regulation, the
6 Merit System Protection Board in our case,
7 that's the only place we have given any
8 interpretation says you've got to look at the
9 official position description, the official
10 job description, and the official personnel
11 file.

12 MR. REYNOLDS: If I could add one thing
13 here. I've been with Human Resources, and
14 I'm not joking, I've probably done 10,000 of
15 these in terms of our reorganizations and
16 reorganizing the organization and posting new
17 jobs, and that's a process that -- I mean,
18 I've been here since 1987, and that's the
19 process we have used since that period of
20 time. We have not deviated from that.

21 MR. DAMBLY: I don't have any problems
22 if you want to tell me TVA's interpretation
23 and the rules you follow are X. My problem
24 is when people keep telling me OPM demands
25 that you do it that way, and I don't see that

in your records.

2 MR. MARQUAND: The Merit System
3 Protection Board insists that we do it in
4 terms of these regulations, and that's their
5 interpretation as applied to TVA.

6 MR. BOYLES: And that is how we
7 implement this --

8 MR. BURZYNSKI: Our interpretation is
9 based on our lessons learned through
10 interactions with the Merit Protection Review
11 Board. We can provide them those particular
12 cases; but let me suggest that maybe we move
13 on from this point, because we're going
14 around in kind of a circular argument.

15 MR. DAMBLY: The only other question on
16 this point at all is: I heard Mr. Marquand
17 earlier say that in point of fact, the PD
18 that Mr. Fiser was under was incorrect. The
19 idea was that they would hope that there
20 would be cross training and whatever, but
21 that didn't happen.

22 MR. MARQUAND: Right.

23 MR. DAMBLY: So under your policies,
24 even if you know the PDs are not accurate,
25 that's still what you follow.

2 MR. BOYLES: If an employee knows their
3 position description is inaccurate, they
4 should talk to their manager. But as Mark
5 indicated earlier, too, we do a lot of cross
6 training, and it's rotational assignments;
7 and they may be given something at any point
8 in time that's not exactly in their position
description; that's not unusual.

9 If we could go on to the next slide,
10 slide 7. I have another overhead.

11 MR. BURZYNSKI: Let me just introduce
12 this one for you. The next point -- I've
13 kind of lost count; I think it's the third
14 point -- the OI report summary states that
15 the selection process was contrived to
16 preclude the selection of Mr. Fiser.

17 TVA has found that the selection
18 process was fair and conducted in accordance
19 with TVA nuclear procedures. And now, Ed, if
20 you'll explain that to us.

21 MR. BOYLES: Thanks, Mark.

22 We use a structured process in our
23 selections. BP-102 -- and I do have another
24 overhead that I'd like to -- Business
25 Practice 102 gives us our guidelines both in

management and specialist selection. What
2 I've listed there are the basic elements of
3 the BP that we -- I can refer to -- we made
4 the decision to post on the previous slide.
5 Once we've made that decision, we advertise
6 those positions within the TVA system. HR
7 processes the applications. HR is also
8 involved in a screening. We identify late
9 applicants. We review for minimum
10 qualifications. We also provide some
11 additional information at that time on
12 education, a diversity status report that we
provide.

14 In the next step, the package goes to
15 the selecting supervisor, who will identify
16 the candidates that we're going to
17 interview. They do that based on experience,
18 education, performance, and identified
19 competencies, and so forth.

20 In the next step, structured interviews
21 use a job-related selection criteria
22 developed by the selected supervisor. TVAN's
23 case involves selection review boards. Since
24 the early 1990's, we've been implementing
25 these selection review boards. Our

1 experience has been very positive in that
2 it's a better process than having one
3 selecting manager conducting one-on-one
4 interviews. It may remove any potential bias
5 that one individual would have, so we utilize
6 the selection review boards.

7 The next step provides feedback from
8 the selection review board to the selecting
9 supervisor, who then makes the decision on
10 who the selectee will be. The package comes
11 back to Human Resources, and the job offer is
12 made through Human Resources. That's the
basic elements of BP-102.

14 Mark, if you would go to the next
15 slide. What I've done is list the actions
16 taken in the specific case of the chemistry
17 program manager PWR position. What I've
18 listed here are when the vacant position
19 announcement was posted, the closing date on
20 the position. We received from Human
21 Resources six applications, which we
22 screened. That package was provided to Dr.
23 MacArthur, who identified three candidates to
24 be interviewed. Those candidates were Mr.
25 Fiser, Mr. Shondra, and Mr. Harvey.

2 We convened a selection review board on
3 July the 18th. The selection review board
4 interviewed all of those candidates. That
5 feedback --

6 MR. STEIN: When you say interviews,
7 was it an actual interview, or was it a test
8 that --

9 MR. BOYLES: It was an interview. And
10 we have the selection review board here, and
11 we plan to cover in detail the events of the
12 selection review board.

13 MR. STEIN: Because you did at the
14 earlier enforcement conferences go into great
15 detail about the questions that were given to
16 these folks, both technical and I guess
17 managerial, and what people scored in a raw
18 base score. So it was more of tests than an
19 interview.

20 MR. BOYLES: No. I view it more of an
21 interview than a technical test. But there
22 were questions involving management
23 experience and people skills and so forth.
24 There were some technical questions.

25 Let me point out, this job was not a
supervising manager position. This is a

1 technical specialist. They do not supervise
2 anyone. So it is a very technical job, so
3 there were technical questions. But if it
4 will be okay, I'll let the selection review
5 board, which we have here, cover all those
6 issues. We can talk specific questions or
7 whatever we need to do.

8 Where was I? The results of the
9 selection review board were forwarded to Dr.
10 MacArthur. Dr. MacArthur selected Sam Harvey
11 for that --

12 MR. STEIN: I'm sorry. It says,
13 Selecting supervisor makes selection based on
14 information, personnel history, record,
15 feedback. I asked that question at an
16 earlier enforcement conference whether the
17 selection was made strictly based on that
18 day, that the answers to the questions given
19 that day, and the answer to my question was
20 yes; so if you had a bad day and a bad
21 interview, you weren't getting the job. But
22 this says you're making a selection based on
23 personnel history, which I gather is resumes
24 and awards and authorship of articles and who
25 you are versus one day's worth of interviews.

MR. BOYLES: I remember the question,
2 and my recollection of the question was could
3 an individual who may have a fine career ruin
4 their chances for a position in that one
5 interview by having a bad day, I think it was
6 something like that; and my answer was yes,
7 an individual can eliminate their chances of
8 being selected in one day and one interview.
9 And I guess my view is that happens --

10 MR. STEIN: Since we have the panel
11 here, let me just ask the question.

12 In selecting Mr. Harvey over Mr. Fiser
13 for this position, was the entire OPF, the
14 entire performance file in TVA, looked at,
15 including awards, including performance
16 appraisals for three years, the full packet
17 of who these people are, or was it strictly
18 based on answers to 16 questions given on
19 one --

20 MS. WESTBROOK: It was not all looked
21 at that day. That was done prior to our
22 meeting with the selection review board.

23 MR. BOYLES: Let me point out, we had
24 six candidates for the position. There was
25 screening prior to the selection review

board. The selection review board only
looked at the material they had in front of
them that day and the interview result.

MS. WESTBROOK: But that's a normal
process, and that's how we always do
business.

MR. STEIN: So the rating panel did not
have the full personnel jackets of the
individual candidates that were being --

MS. WESTBROOK: We had what the
employees turned in with their application.
Sometimes they'll turn in a service review,
sometimes they'll turn in that they've got
their P.E. license, you know.

MR. STEIN: Did Mr. MacArthur as the
selecting official have the full files of
everybody?

MS. WESTBROOK: Yes; and he should have
looked at that and chosen the most qualified
people for us to meet as the review board.
And obviously, he must have done that;
because we know that it was narrowed to 3
candidates out of the 6 that applied.

MR. BOYLES: Thank you. Where was I?

As I mentioned earlier, Dr. MacArthur

selected Sam Harvey to fill BVA 6702
2 consistent with the selection review board
3 results. The package was forwarded to us,
4 and we made the offer, Mr. Harvey accepted,
5 and it became effective on August the 5th.

6 Let me point out here, too, there were
7 two positions created; PWR and BWR. Mr.
8 Fiser only applied for one of those
9 positions. It appears that he felt that one
10 of the new positions was more similar to his
11 old job than another -- or qualifications;
12 but he only applied on PWR. This process is
13 the process that we use in all these
management specialist selections.

15 In this case we did augment this
16 process with our labor relations staff in OEC
17 based on the fact that in June sometime, Mr.
18 Fiser contacted Ben Easley on my staff, and
19 Mr. Easley brought him to my office. At that
20 time, Mr. Fiser told me that he had filed a
21 1993 Department of Labor complaint and that
22 as a result of that complaint, he had been
23 given a job in the corporate chemistry
24 program and that by my posting the job, he
25 felt that it was violating that settlement

2 agreement; and he said if I did that, he
3 threatened to file a second Department of
4 Labor complaint. At that point in time, I
5 told him I would have to look at that and get
6 back. I immediately contacted our labor
7 relations staff and asked them to check out
8 the settlement agreement. They in turn
9 contacted OGC and did that. I also advised
10 Tom McGrath, who was the acting general
11 manager, of the concerns that Mr. Fiser had
12 raised.

13 Shortly after that, our labor relations
14 staff came back to me and indicated that yes,
15 they had checked it with MGC, there had been
16 a settlement agreement and Mr. Fiser had been
17 placed in a position in corporate chemistry.
18 They also indicated that there were no
19 guarantees of specific periods of time for
20 employment and that we should proceed with
21 our process for determining whether we needed
22 to post the job and go through the selection
23 process.

24 At that point in time, I advised Mr.
25 McGrath that we made the decision to post the
job, and we did at that time, because we knew

1 we had a potential there on the plant to
2 relook at the issue. I asked Mr. Easley, who
3 did confirm that in his view, we needed to
4 post the position. So in June as we went
5 into these processes, we knew we had
6 potential -- we did everything we could to
7 make sure that the process was as fair as it
8 could be.

9 (A recess was taken.)

10 MR. BOYLES: Thank you, Mark.

11 I'm through with what I've described is
12 the process that we went through, the general
13 process that we went through, the decision to
14 post jobs, the process that we go through in
15 posting and making selections, and I've gone
16 through specific processes as it relates to
17 this case.

18 We do have the selection review board
19 with us today, and I'd like to introduce
20 Melissa Westbrook, who is a human resource
21 consultant on my staff. Ms. Westbrook
22 facilitated the selection review board for
23 this position. Melissa.

24 MS. WESTBROOK: Thanks, Ed.

25 I facilitated this selection review

process; and in doing so, it was my
responsibility to ensure that it was fair,
3 consistent, and impartial. It was also my
4 responsibility to ensure that the process was
5 not discriminatory among any of the
6 candidates who were interviewed for the
7 position.

8 I've facilitated approximately 30 to 40
9 selection review boards. In doing so, this
10 was no different than any of the others that
11 I've ever facilitated. My role is to be an
12 impartial party. I'm not a voting member of
13 the board. Oftentimes --

14 MR. STEIN: Excuse me, was it your
15 responsibility to create the board to --

16 MS. WESTBROOK: No, it was not.

17 MR. STEIN: ~~Who was it that actually~~
18 ~~put the board together?~~

19 MS. WESTBROOK: ~~Ben Easley and Mr.~~
20 ~~MacArthur, it would have been their~~
21 responsibility.

22 MR. STEIN: So your responsibility is
23 once the board is put together to coordinate
24 the actual selection --

25 MS. WESTBROOK: Ben asked me to sit on

2 the board in his place. I do human resource
3 services for our engineering organization and
4 corporate organization. Ben particularly had
5 this organization that he provided service
6 for.

6 MR. STEIN: Would it be your
7 responsibility to schedule the interviews and
8 to make sure that the board members could be
9 there for their role as --

10 MS. WESTBROOK: No, that was not my
11 responsibility; that was Ben's
12 responsibility.

13 MR. STEIN: The reason I'm asking --
14 and, Mr. Cox, if you could help with this --
15 is we have certain information that people
16 were notified within certain time frames, and
17 I'd be real interested to know how much
18 notification you got from HR or from line
19 management that you were sitting on this
20 particular --

21 MR. COX: I recall that Wilson
22 MacArthur was the one that contacted me, and
23 it was several days prior.

24 MR. STEIN: Several days? A week?
25 Less than a week?

1 MR. COX: I'd say 3 to 5 days.

2 MR. STEIN: 3 to 5 days?

3 MR. COX: Yeah, that's my recollection.

4 MR. STEIN: And do you recall why you
5 weren't able to serve on this particular --

6 MR. COX: No; I had some evening
7 commitment; I don't recall what it was. When
8 he called me, he said that it would be set up
9 after a peer team meeting, which is a meeting
10 of all three sites, people in radchem in all
11 three sites. And they would start in the
12 afternoon, and there were I don't remember
13 how many interviews scheduled and it was
14 going to go into the evening. At that time,
15 I told him no, I couldn't go into the
16 evening; would you like me to participate up
17 until the point I have to leave, or would you
18 like to get a replacement? And he said for
19 continuity purposes, he'd like to get a
20 replacement.

21 MR. STEIN: But you did give your
22 recommendation to Mr. MacArthur at that time
23 who --

24 MR. COX: Just prior to the selection
25 board, we were standing in the hall, Mr.

1 Kent, Mr. Floyd, Mr. MacArthur, and myself.
2 And I mentioned to him that for what it's
3 worth, if the information is even needed, Mr.
4 Fiser when he worked at Watts Bar for the
5 previous year or so, that I considered his
6 performance good, and if he needed that,
7 that's for what it's worth.

8 MR. STEIN: Did you ever made a
9 recommendation to Dr. MacArthur as to who
10 should sit --

11 MR. COX: No, I did not.

12 MR. STEIN: Maybe somebody from Watts
Bar?

13 MR. COX: No, I did not.

14 MR. STEIN: Thank you.

15 MS. WESTBROOK: As the facilitator, I
16 also answered questions from the selection
17 board and any of the candidates that were
18 interviewing during that period of time, and
19 I ensured that each candidate was asked the
20 same questions.
21

22 Before the interview started, we
23 reviewed all of the questions for the
24 candidates. Time was limited, and we were
25 given a long set of questions. We picked out

the ones that we wanted to ask each
2 candidate, and each was asked the same
3 questions.

4 MS. BOLAND: Who picked out those
5 questions?

6 MS. WESTBROOK: All of us did, the
7 board did.

8 MS. BOLAND: Because there was an
9 original list of maybe 16 or 17 questions.

10 MS. WESTBROOK: Right.

11 MS. BOLAND: So from that body, the
12 board selected the questions?

13 MS. WESTBROOK: The board selected the
14 questions. We added one additional question
15 to those. That question was to define miller
16 ratio.

17 MS. BOLAND: Did Mr. MacArthur have
18 input into what questions were asked?

19 MS. WESTBROOK: He should have
20 developed the questions, the original
21 questions, and given those to us. The day of
22 the interviews, he was present; he did not
23 say anything during the interviews that I
24 recall.

25 MR. KENT: I don't recall him having

1 any input into the questions that were
2 selected, either.

3 MS. BOLAND: Including the new one, the
4 miller ratio? Which one of you came up --

5 MR. KENT: I suggested that.

6 MS. WESTBROOK: Also, the way I do
7 selection review boards is that I ask each of
8 the managers to ask one or two questions, how
9 many ever we have; and then they ask the same
10 questions of each of the candidates. And
11 then at the end of the interviews after the
12 candidate leaves, we discuss strengths and
13 weaknesses of that candidate. There is a 1
14 to 10 rating system, 10 being the highest.
15 They rated each candidate as they asked the
16 question of them.

17 When we got finished, we did not go
18 over the ratings that they had. I took notes
19 on the strengths and weaknesses of each
20 candidate. There was no collaboration of the
21 interview scores after the employee left nor
22 at the end of the interviews. When we left
23 that day, we gave our books to Ben at the end
24 of the night; I think they finished around
25 7:00 or 8:00 o'clock that night. He

2 tabulated them either that night or the next
3 day. And you can tell his writing is
4 different from mine, so -- but he did that
5 part.

6 Let me pass out to you, if I may, the
7 results of the interviews for that day; and
8 this document shows all of the selections
9 that were made that day --

10 MS. BOLAND: Are there any notes of the
11 strengths and weaknesses that were discussed
12 afterward --

13 MS. WESTBROOK: I have those; if you'd
14 like a copy of those --

15 MS. BOLAND: It might be easier to look
16 at them. You can discuss them; that's fine.

17 MS. WESTBROOK: And the purpose of
18 handing out the selection review board
19 results is to show you that each of the board
20 members participated in each of the
21 selections.

22 The documentation also shows that Dr.
23 MacArthur's selection decisions followed the
24 results of the selection review board in
25 every case. He selected the candidate that
had the highest score, and no pressure was

ever placed on the selection review board
2 while I was present to not select Mr. Fiser.

3 MR. STEIN: I have a question. It's
4 addressed to Mr. Kent.

5 Do you think it was fair for you --
6 first of all, you did know about the 1993
7 D.O.L. filing that Mr. Fiser had made?

8 MR. KENT: Yes, I did.

9 MR. STEIN: You were interviewed by --

10 MR. KENT: Yes.

11 MR. STEIN: Do you remember the
12 interview and some of the responses that you
13 gave to the investigator for TVA?

14 MR. KENT: For the '93?

15 MR. STEIN: For '93.

16 MR. KENT: Well, I would say yes, I
17 remember some of it.

18 MR. STEIN: Do you think it's fair that
19 you were actually sitting on the board to
20 rate Mr. Fiser in 1996 given what you told
21 TVA IG about his performance in 1993?

22 MR. KENT: Yes, I think it was fair. I
23 think I like everybody else on the board
24 based any decision or recommendation I would
25 make on selection based on the responses of

the individuals to the questions we asked
2 them that day regardless of what prior issues
3 or knowledge or whatever --

4 MR. STEIN: Quite frankly, I was very
5 confused when I read this report of
6 investigation; because you -- what I'm
7 reading from is the TVA record of interview
8 of Mr. Charles Kent. Your conclusion is that
9 you didn't believe Mr. Fiser was RIF'd
10 because of filing of safety concerns; rather,
11 you believed he was RIF'd because he was not
12 the right person for the chemistry program
13 and had numerous performance problems. In
14 this same time frame, you were very active in
15 trying to recruit Mr. Fiser to your Sequoyah
16 program.

17 MR. KENT: Uh-huh.

18 MR. STEIN: So much so that you went to
19 Mr. Powers, and he approved of it; went to
20 corporate --

21 MR. KENT: No; you're mistaken. I
22 don't think I ever went to Mr. Powers -- oh,
23 Ken Powers, that's right.

24 MR. STEIN: He told you he would
25 support any suggestion you made. The first

1 time you went to Mr. MacArthur, he was
2 supportive of the move, the transfer, to
3 Sequoyah; and then something happened in
4 corporate where you were told no, you can't
5 have Mr. Fiser.

6 MR. KENT: You remember a lot more
7 details about that than I do, because you
8 have it in front of you; unfortunately, I
9 don't. If you want me to address those
10 issues, I'll be glad to do that.

11 MR. STEIN: Well, I'm just a little
12 confused because on the one hand, you're
13 saying he had performance problems -- there
14 were problems in the program; and on the
15 other hand, you were really pushing hard to
16 get him to your program. So I was a little
17 confused when I read the testimony from the
18 same --

19 MR. COREY: Can we give you a copy of
20 those so he can read those --

21 MR. STEIN: Absolutely; it's your
22 document.

23 MR. DAMBLY: While you're looking at
24 that, I had one question of Ms. Westbrook.

25 It was my understanding from all the

stuff I read over the past week that Mr.
2 Shondra -- I don't pretend to know how to
3 pronounce it -- was top rated for both PWR
4 and BWR, but this would seem to indicate
5 otherwise.

6 MR. MARQUAND: Ben made a -- transposed
7 the numbers, he came up with 235.7 and 235.5,
8 but he transposed the numbers between
9 Shondra's and Mr. Harvey's name on the PWR
10 job. His tabulations showed that Shondra was
11 the high score, and I don't think anybody
12 realized that he was not the high score until
13 the IG began investigating this and let
14 everybody know that Ben has made this
15 mistake.

16 MR. DAMBLY: Okay. And I don't have a
17 copy -- was the chart you showed us last time
18 the --

19 MR. MARQUAND: The chart has the
20 correct number, and candidate A on here, in
21 fact, is Mr. Harvey. And when Dr. MacArthur
22 made his selection, he was under the
23 impression that Harvey was the second highest
24 candidate with two-tenths of a point behind
25 Shondra. And he made his decision and said,

1 I select Shondra for the BWR job because he
2 is the best candidate there; and because he's
3 not available for the PWR job, I select
4 Harvey for the PWR job.

5 MR. SCALICE: May I mention just a
6 couple of things? Let me talk to you a
7 little bit about the selection board, because
8 I was intimately involved in the
9 establishment of the selection board; in
10 fact, I started it in 1991. And the purpose
11 of that was sort of two-fold. First, it was
12 to certainly get a broad perspective and
13 select the best candidate as possible; and
14 second, it was to eliminate the possibility
15 of one individual as used in the past to
16 happen to select with favoritism a candidate;
17 because in the past, these jobs may have been
18 posted and the supervisor responsible would
19 be able to look at a bunch of applicants and
20 then pick whoever he wanted. And so I
21 established the selection board to eliminate
22 those sort of prejudices that occur if you
23 have someone working for you over time and
24 you establish relationships rather than
25 picking the right candidate.

2 Second, I established some parameters
3 originally which were put in some business
4 practices later on, and that was to utilize a
5 group of people, and they were generally the
6 peer team as we've now called it. But if you
7 are hiring in the chemistry area or
8 maintenance area in a plant, you would get
9 the maintenance managers from each of the
10 three sites, somebody from HR, and usually
11 the supervisor was there, not to necessarily
12 contribute, and wasn't a voting member. So I
13 just wanted you to understand why perhaps the
14 people that were selected or on the board
15 were put on the board; because that's the
16 practice we utilize is to take the people
17 from each of the sites that knew the most
18 about that particular area and then would be
19 able to get a varied point of view in
20 selecting an individual with the best
21 qualifications.

21 MR. DAMBLY: Well, when you said this,
22 was it your intent that the selecting
23 official or manager, whatever you called it,
24 would then be bound by the determination of
25 the selecting panel, or were they supposed to

1
2 consider these recommendations plus their
whole background, etcetera?

3 MR. SCALICE: Actually, the way it
4 would work is there would be a series of
5 questions that would be able to allow a
6 person to really look at what the knowledge
7 level was, what their managerial skills were,
8 what their attitude was; so I wanted to make
9 sure, because you use the word test. An
10 interview is an interview; and there are
11 questions in it, so you can define it as you
12 choose; but it wasn't meant to be a board
13 examination or a test. But it was also my
14 intention that once these people would be
15 selected or at least interviewed and there
16 would be some sort of a grading process, that
17 would be presented to the supervisor, and the
18 supervisor actually had a right to change
19 that decision with some concurrence of his
20 supervisor above him if there was good reason
21 to question the board's selection. And that
22 was my intent at the time, and we've carried
23 it through the years. Some of it's been
24 refined a bit because of the lessons that
25 we've learned as we perform the selection

1 processes, but I wanted to point out --

2 MR. DAMBLY: I think Mr. Boyles
3 indicated and it's on his chart that the
4 selecting supervisor makes a selection based
5 on information, personal history record,
6 feedback, the lists, and I believe Dr.
7 MacArthur told us -- I just looked at the
8 transcript, so I don't just believe it; he
9 said he just took the selection review board,
10 and that was it. He didn't look at anything
11 else; he took those numbers.

12 MR. BOYLES: That was Dr. MacArthur's
13 statement during a previous conference, and I
14 don't know if we discussed it, but he did
15 follow the recommendations of the selection
16 board in every case here. And as John
17 indicated, he has a right to consider other
18 information if you think there's a problem
19 there. But if he were to choose to make
20 another selection that had come out of this
21 process, he would need to justify that.

22 MR. DAMBLY: And he would have needed
23 to justify that to Mr. McGrath?

24 MR. BOYLES: To his management at HR.

25 MR. DAMBLY: Okay. Thank you.

MS. WESTBROOK: It was my experience
2 from working in HR and having facilitated
3 quite a few selection boards that this
4 process was no different than any of the
5 other ones I had facilitated --

MR. STEIN: Why did Mr. Easley take
7 himself off the board?

MS. WESTBROOK: Ben approached me
9 several days before the selection review
10 board, and I knew that he had handled Gary's
11 1993 complaint. And he said he would -- he
12 felt uncomfortable and he preferred that I do
13 it for him.

MR. BOYLES: Could I add that he also
15 discussed that with me and indicated that he
16 didn't want any questions because of his
17 previous knowledge of the '93 D.O.L.
18 complaint and he asked me about having
19 Melissa Westbrook facilitate it, and I
20 agreed. I thought it was a prudent thing to
21 do.

MR. STEIN: Now, were you aware of the
23 backgrounds of your panel members as far as
24 their knowledge of the 1993 incident that
25 took Mr. Easley off the panel?

MS. WESTBROOK: No; and I didn't know
2 what Gary's complaint consisted of.

MS. BOLAND: Did you, Mr. Boyles, know
3 the background -- with respect to the
4 complaint?
5

MR. BOYLES: I knew there had been a
6 complaint because of my role in HR; I didn't
7 know the details of the complaint that I
8 remember.
9

MS. BOLAND: Do you know whether any of
10 the panel members knew of the complaint?
11

MR. BOYLES: No. No.
12

MS. WESTBROOK: Anne, you wanted to
13 talk about the strengths and weaknesses.
14 Would you prefer I do that or --
15

MS. BOLAND: Yeah; your notes will be
16 fine. And just for my purposes, just Mr.
17 Harvey and Mr. Fiser will be fine.
18

MS. WESTBROOK: Before I go over the
19 strengths and weaknesses, let me go over the
20 first question asked, What strengths do you
21 have that would benefit this position? And I
22 had a comment that Gary had spoken in the
23 second and third person; he said he needed
24 people skills and good rapport, and he was
25

2 supposed to be talking about his strengths
3 for the position. At the time, he also
4 referred to himself and his ability to
5 coordinate. This was a management level job,
6 and although there is coordination in a
7 management level job, I think what we were
8 looking for was some technical knowledge and
9 skills that would have made him the best
10 person for that job.

11 MR. STEIN: Were you aware at this time
12 when you were interviewing Mr. Fiser that he
13 had filed a 1996 D.O.L. complaint?

14 MS. WESTBROOK: No. I knew -- I've
15 known after that and I've talked with Diana
16 before that; but the other day, we were
17 talking about it, and I didn't realize that
18 he had filed before the selection board.
19 Because most people wouldn't file until they
20 didn't get the job.

21 MR. STEIN: But in my experience,
22 people that file prior to the adverse action
23 occurring know it's coming and that perhaps
24 there's pre-selection involved and may not
25 give the best interview --

MS. WESTBROOK: And I don't know. It

made me wonder if Gary really wanted the job,
2 because you normally don't answer the
3 questions -- and that's the only reason I'm
4 going over my notes with a first and second
5 question. But I don't know. I mean, I don't
6 know if he really wanted it or not. And I
7 don't know Gary very well, but I do know for
8 Gary to have been in the positions he's been
9 in, he's a very intelligent man. I don't
10 know.

11 The second question, Indicate
12 weaknesses that you need to address if you
fill this position, and Gary said he tends to
14 trust people too much, he needs to follow
15 through more. So when I wrote down strengths
16 and weaknesses -- and what I did, I asked the
17 panel to tell me what their strengths and
18 weaknesses that they saw in Gary, and they
19 said that he realizes -- and I've got it
20 documented here in his answers -- he realizes
21 he can't succeed -- these are strengths --
22 that he can't succeed if the site fails. So
23 in other words, he wants the site to succeed;
24 and whoever we put in that position, that was
25 very important, the site succeeds. He said

he didn't mind going out and asking for help;
2 that's his strengths.

3 He had an average response on the
4 definition of -- you'll have to ask the
5 technical experts what that was.

6 He was extremely relaxed in the
7 interview, although he was difficult to
8 hear. He spoke in a real soft voice, and I
9 sat closest to him and I had difficulty
10 sometimes understanding what he was saying.

11 Another strength was he was technically
12 direct and to the point in.

13 Weaknesses -- and he identified this
14 weakness, trusts in people too much. He had
15 a real hard time discussing what his
16 strengths were.

17 Another weakness, he discussed problems
18 frequently on projects instead of positive
19 issues. He evidently had had some problems
20 at Sequoyah that he rebuilt what those were
21 in the interview. He didn't present his
22 projects well. He was very focused on line
23 details instead of management issues. He
24 discussed not succeeding because of lack of
25 resources, and that I think had been a great

frustration to Gary when he was at Sequoyah.
2 He had a lack of ownership of the problems;
3 appeared to be someone else's problem rather
4 than his own.

5 I have a note that he didn't know
6 chemistry index even for the Year 2000. He
7 didn't know Sequoyah was a target for Watts
8 Bar chemistry index. He talked negatively
9 about his experience at Sequoyah and
10 management, he said, I wasn't ready for the
11 job, but it was a good experience. And
12 that's about all I have for him.

13 And you wanted Shondra --

MS. BOLAND: No; Harvey.

15 MR. DAMBLY: Maybe before you go to
16 that, I guess I'm having trouble -- and it
17 has nothing to do with whether what you did
18 is right or wrong, but I don't quite
19 understand -- you start off by saying he made
20 some inappropriate responses because this was
21 a management position and he was talking
22 about coordination, which I would have
23 thought would go under management. But
24 putting that aside, instead you said it was
25 supposed to be a technical expert position.

1 But then later on you said you had a problem
2 because he was discussing technical details
3 and it was a management position. So I'm not
4 sure what it is he was supposed to be
5 discussing or what the functions of this job
6 are.

7 MS. WESTBROOK: No; I said he focused
8 on line details instead of management
9 issues. This was a management position; not
10 a salary, policy, or engineering --

11 MR. DAMBLY: Was he supposed to make
12 technical decisions, or was he supposed to
13 coordinate amongst all three sites' issues or
14 -- I mean, I'm not sure what it is he was
15 supposed to be doing. If someone would just
16 tell me what that -- the management aspect of
17 this.

18 MR. BOYLES: Why don't we let one of
19 the peer team members --

20 MS. WESTBROOK: These were their
21 comments.

22 MR. KENT: What was the question
23 again? Would you mind restating it?

24 MR. DAMBLY: Yeah. What are the
25 management functions of this position as

opposed to the technical functions, or is it
2 all a technical function? Is he the world's
3 foremost authority in corporate on PWR
4 chemistry, or is he to be coordinated amongst
5 the two or three sites depending on their
6 needs and issues? I mean --

7 MR. KENT: My understanding of the
8 position is the position was supposed to be a
9 person, very knowledgeable person in PWR
10 chemistry dedicated to support TVA's
11 pressurized water reactor plants, so their
12 focus would be on the pressurized water plant
as opposed to the boiling water plant. The
14 person who was meeting the needs of that
15 position were that that person be a very
16 strong technical person. Also, though, we
17 needed someone that had good communication
18 skills, good facilitation skills; because a
19 large part of making program changes that we
20 needed was facilitating between corporate
21 organizations and the site organizations to
22 get support to make those program changes.
23 So there were a lot of soft skills required
24 as well as technical skills. And I think the
25 questions that we used were really aimed at

trying to differentiate those skills between
2 candidates that we were providing.

3 MR. DAMBLY: Okay. Thank you.

4 MR. STEIN: I'm sorry, but Mr. Kent had
5 a chance to read his TVA OIG interview, and
6 I've got a number of questions for Mr. Kent
7 if it's all right.

8 I've got really three issues that I'd
9 like to address with you. First is given
10 that Mr. Easley stepped aside from the panel
11 because of what he felt was the
12 appropriateness of or inappropriateness of
him being on the panel given what he knew
14 about 1993, after you've just read your 1993
15 statement to the TVA OIG, do you feel that it
16 was appropriate for you to sit on this panel
17 given some of the performance things that you
18 said about Mr. Fiser back in 1993?

19 MR. KENT: Yes, I think it was fair for
20 me to sit on the panel.

21 MR. STEIN: That you could make a fair
22 appraisal in 1996?

23 MR. KENT: Yes.

24 MR. STEIN: The second issue is I was
25 very confused with what you said about his

performance at Sequoyah. You wanted him back
2 in 1993 to fill a particular position for
3 you, and I was confused about why you would
4 push so hard for your site -- your site
5 management and your corporate management to
6 get him there if on the other hand you felt
7 his performance wasn't up to --

8 MR. KENT: Well, let me explain what
9 pushing so hard actually is.

10 When we reorganized the chemistry
11 program and reg protection program, I had the
12 radchem program at that time, and I assumed
13 responsibility for chemistry and
14 environmental. One of the objectives that we
15 had looking at the problms we had with plant
16 chemistry at that time was to restructure
17 plant chemistry; and I felt and so did my
18 site management that -- and we were going to
19 do that restructuring at Sequoyah first. I
20 felt and my site management agreed that we
21 would not have a chemistry manager per se,
22 that we would have 7 direct reports reporting
23 directly to me, which were the principal
24 managers in all the various areas of the
25 radchem and chemistry and environmental

program. So that's the way we set up the
2 structure.

3 Because of efforts within the company
4 to standardize organizations at all three
5 sites, we were not successful in convincing
6 everybody that that was the right thing to
7 do, so we had to drop back and regroup. When
8 we did that, we wrote the position
9 descriptions for chemistry superintendent, a
10 radchem superintendent, and a radchem waste
11 environmental superintendent. We went out to
12 the industry to try to find -- you know, what
13 I wanted to get was the best staff we
14 possibly could. One of the things that had
15 happened at Sequoyah over the previous years
16 was that we had lost a lot of our technical
17 knowledge in the chemistry program, so the
18 first thing I did was try to go out and bring
19 back in technical expertise into the program;
20 and we were somewhat successful in that.

21 In our efforts, however, to recruit a
22 person that I felt was the right kind of
23 person to work with me and for the chemistry
24 program -- I mean, initially when we were
25 going to have the program set up with no

1 chemistry superintendent, I was going to be
2 heavily involved in everything related to
3 chemistry, obviously, because I would have
4 been the responsible manager for that program
5 area. Once we decided, though, that we were
6 going have to have a chemistry
7 superintendent's position, then I felt like I
8 needed to get somebody in that job that I
9 could turn it over to so that I wouldn't have
10 to be committing so much of my time. So we
11 went out looking for the best we could find.

12 We were unsuccessful at that time in
13 getting and attracting a good candidate to
14 Sequoyah. If you remember, Sequoyah's
15 performance in 1991 to '93 wasn't stellar; we
16 didn't have the reputation we have today, so
17 it was not perceived as being necessarily the
18 best site to go to.

19 We interviewed several people for the
20 position, we had a manager on staff in
21 corporate who was a VP level manager, Dan
22 Kiter, who had came to us from Trojan. Dan
23 knew Gordon Rich from Trojan, and Dan
24 suggested that we look at Gordon for that
25 job. And I said, Okay, I'll be glad to talk

1 to him. Dan brought him in for an interview
2 for a corporate position, and we also talked
3 to him. And I thought a lot of Gordon; he
4 seems a very nice person, I think technically
5 he was a pretty good person; however, he was
6 very mild-mannered, and he wasn't quite pushy
7 enough I didn't think to push the major
8 program changes we were going to have to make
9 in a way that I could just turn it over to
10 him and say, Go for it and we'll get where we
11 need to be. So I didn't initially pursue
12 hiring Gordon.

13 We continued to look for some time for
14 a candidate; and basically in the meantime,
15 corporate hired Gordon. As a matter of fact,
16 we eventually did make Gordon an offer, but
17 corporate also made him an offer, and he took
18 the corporate position. So Gordon was now
19 working in corporate; and my manager, site
20 vice president, was putting an awful lot of
21 pressure on us to get somebody --

22 MR. STEIN: Was that Powers?

23 MR. KENT: Beakin was the plant manager
24 during part of this time period, and then he
25 left and went to Watts Bar and Powers came

1 in. And so we were under, you know, a lot of
2 -- our management wanted us to fill that job
3 to complete the organization. And so at that
4 point, I talked to Gary about it, about
5 coming back to Sequoyah in the position,
6 realizing that if I did that, I was going to
7 be a lot more involved in the program than I
8 may have wanted to be at that time, but that
9 was the way it was going to have to be.

10 MR. STEIN: Well, you had your site on
11 board with your decision, and then it looked
12 like Dr. MacArthur in June was okay with it
13 and then went to speak with others in
14 corporate TVA, and by July, you were told no.

15 MR. KENT: I talked with my site
16 management, which at that time was Ken
17 Powers, in July and Bob and told both of them
18 that there was a person in corporate that I
19 would be willing to consider if they would,
20 you know, support me going and talking to
21 this guy. He had been at Sequoyah once
22 before, and I did not know if there was a lot
23 of hard feelings about his previous work at
24 Sequoyah, so I talked with my staff and I
25 said, What do you think about me bringing

2 Gary back? And they said, We would support
3 that. They thought Gary was a good guy; they
4 would support it. They got along with him
5 fine while he was there. So I did have their
6 support to do what I felt was best, yes.

7 Mr. Finnick asked me to talk to Mr.
8 MacArthur, who he knew was in charge of the
9 corporate chemistry program, and get some
10 feedback and to talk to Wilson, so I did.
11 Wilson said the same thing, We'll support you
12 any way we can. That's basically his
13 response.

14 Following that, I called Gary and asked
15 him to come out and talk with me, and he did;
16 and as referenced in my statement there, we
17 talked about the position, we talked about
18 what we really wanted to accomplish, and Gary
19 expressed an interest in the position but he
20 offered that I think, you know, you really
21 need to think seriously before you bring me
22 back; because I'm not thought of very well,
23 and I might be more of a liability than an
24 asset to you. And I was, you know, really
25 kind of surprised that he said that, but he
did. And so I told him, I said, Well, I'm

not aware of any significant, you know,
2 opinion about your abilities that would -- in
3 other words, I wasn't aware you were tainted,
4 and I think Gary told me he thought he had a
5 gun to his back; and I said, I don't know
6 anything about that, but I'll inquire some
7 more. I did that. I called Wilson back and
8 I related to him what Gary had told me and
9 asked him to look into it and give me some
10 feedback, and he did. A few days later,
11 probably a day or two later, he called me
12 back and said he had made some inquiries, and
13 he didn't tell me who he talked to, but he
14 did tell me that Gary's perception was right,
15 that he wasn't thought very highly of and
16 maybe I should reconsider. So I told Gary
17 that.

18 MR. STEIN: So you are on a panel now
19 flipping three years ahead to rating this
20 individual for another management position,
21 and Dr. MacArthur, who got all that feedback
22 that Mr. Fiser is not thought highly of, is
23 the selecting official?

24 MR. KENT: Yes. And most of the
25 people, I think -- well, I shouldn't

speculate -- we had a major turnover in staff
2 during that time interval, too, so there was
3 a lot of new players --

4 MR. STEIN: I have one issue. Flip
5 ahead three years again. You were interested
6 in bringing Mr. Harvey to Sequoyah, and, in
7 fact, had you brought Mr. Harvey to Sequoyah
8 -- and we understand there wasn't a position
9 at Sequoyah for him to fill; we got that
10 information at the last enforcement
11 conference -- but then there wouldn't have
12 been three managers for two slots. What
13 induced you to want to bring Mr. Harvey to
14 Sequoyah, and did you get any feedback from
15 HR that you couldn't do this because -- you,
16 I guess, assumed there was a slot in order to
17 go to Mr. Harvey and say, Are you interested
18 in coming to Sequoyah?

19 MR. KENT: Let me give you the details
20 of that scenario.

21 MR. STEIN: Please.

22 MR. KENT: I was aware and made aware
23 by corporate chemistry manager that there
24 were going to be some changes in the
25 corporate chemistry organization and that

2 they would probably be losing somebody from
3 the staff. He thought they were going to go
4 from three persons to two. My chemistry
5 manager and I think he had probably been
6 talking with Sam, and Sam Harvey thought that
7 he was probably going to lose his job at
8 corporate and was interested since Sam was
9 providing support directly to Sequoyah was
10 interested in coming to Sequoyah.

11 Ron Grover approached me one day while
12 he was visiting the site and asked me if I
13 would consider hiring Sam at Sequoyah, and I
14 told Ron that if -- I believe I told him that
15 I didn't have a position, but if corporate
16 would transfer him to Sequoyah, yes, I'd be
17 glad to take him; because he was a good
18 person and he was providing support to our
19 site. Ron said, Great. I'll talk to my
20 management about transferring him out there.
21 He did that, and the response he got was
22 based on the way the positions were, staff
23 downtown the way the jobs were written, that
24 we couldn't just transfer a person. If I
25 wanted to post a job, I could post one and
fill it, I can advertise a vacancy and fill

it, but they couldn't just transfer
2 someone --

3 MS. BOLAND: So you did not have a
4 vacancy?

5 MR. KENT: I did not, and I did not
6 pursue getting approval to fill a vacancy; I
7 just dropped it right there. I was going to
8 pursue it as long as it was an issue that
9 corporate wants to transfer somebody to me
10 that was already supporting me, I was glad to
11 take them; but beyond that --

12 MR. STEIN: Sounds like Mr. Grover was
13 in line with what you wanted to do at
14 Sequoyah. Did you get any feedback from him
15 about who up the management chain at TVA said
16 no, the function had to stay here in
17 corporate --

18 MR. KENT: I don't think I know who
19 made that decision. I believe --

20 MR. BOYLES: I do. Let me address this
21 issue.

22 Tom McGrath did come to me and asked me
23 about the inquiry of transferring Sam Harvey
24 to Sequoyah, and I think it appears from
25 reading the OI summary report that we could

2 have fixed this whole thing if it saved Gary
3 Fiser's job by just sending Sam Harvey to
4 Sequoyah; that's not the case.

5 Number one, I would have been violating
6 OPM regulations. I've got three incumbents
7 in Chattanooga; I couldn't do that. Number
8 2, it would have appeared to me to be a
9 pre-selection of one of those individuals,
10 Sam Harvey, to go to Sequoyah. And number 3,
11 it wasn't consistent with what we were doing
12 in this whole reorganization, which was
13 attacking labor cost, reducing head count.
14 We couldn't transfer that function without
15 eliminating --

16 MR. STEIN: I'm still confused; it's a
17 management prerogative on assignment of
18 work. Couldn't you have transferred him and
19 his work to Sequoyah without posting it --

20 MR. MARQUAND: Let me address that.

21 We've talked about the OPM regulations
22 over and over, and again, this is in part
23 351. And there's a specific subpart C on
24 transfer of functions, and it prohibits -- it
25 allows you to transfer a function if it's
eliminated in one competitive area totally

2 and arises completely in a new competitive
3 area. So in order to transfer Sam in his
4 function, what would have had to happen is
5 all the chemistry and environmental program
6 manager functions has to cease in corporate
7 and re-arise at the sites, and that was not
8 where they were going. They weren't
9 decentralizing that function and distributing
10 it to the sites; it was a corporate
11 function. And the only way that could happen
12 was if they eliminated all three jobs in
13 corporate and dealt them out to the sites,
and that was not happening.

4 MR. SCALICE: You want to appreciate
5 something else? When I asked the same
6 question you asked or similar, I have
7 managers at all other sites, and although
8 that was not my -- I was not in charge at the
9 time, let me tell you the thinking process.
10 If it's okay for me to transfer and give head
11 count to everybody, they'll take it. That's
12 not the way it works. He didn't have the
13 ability to take that transfer, it was no head
14 count issue, there's nothing to do with any
15 individual; it's just that when you're

2 reducing costs and expenditures and reducing
3 the way you organize or reorganize, all my
4 management would say, Yeah, if John's willing
5 to give me three more people, I'll take them
6 because it's not going to be a problem.
7 That's the context of some of what he had in
8 mind, and it just doesn't work that way.

9 MR. DAMBLY: Can you address -- and
10 maybe you did address -- from what I had read
11 -- and maybe it was in the OIG interview or
12 maybe it was in an earlier D.O.L. interview
13 -- but I could swear at some point you
14 thought you had a vacancy at Sequoyah,
15 somebody, and you named them specifically and
16 I don't recall the name now, had left, and
17 you had a vacant position, and that's the
18 position that you were planning on putting
19 Mr. Harvey into.

20 MR. KENT: I would have to go back and
21 look at all these -- this has been going on
22 now since '93. There have been lots of
23 statements and lots of interviews, and I
24 don't remember how I responded to all the
25 questions in all of those. But I know for a
fact that recently I was confused until I

1
2 went back and looked at my actual head count
3 at that time. And I had the time sequence
4 out of line, and I thought that Bruce Bender,
5 who I hired during the early part of '93, I
6 think, I thought he had left the site. He
7 worked for us for about a year and left and
8 went back to Virginia Power, I think. And I
9 believe I was confused -- if I said I had a
10 vacancy, I was probably thinking about
11 Bruce's position. And Bruce was actually in
12 that position at the time I was talking to
Gary.

13
14 MR. DAMBLY: I guess the question comes
15 then: Were you told that Mr. Fiser couldn't
16 come to the position you thought you had
17 because you didn't have one, or were you told
18 he couldn't come there because Mr. McGrath
19 didn't want him to come to Sequoyah?

20 MR. BOYLES: Are you talking about Mr.
21 Fiser or Mr. Harvey?

22 MR. DAMBLY: Harvey. I'm sorry.

23 MR. KENT: I was told that Mr. Harvey
24 would not be transferred to Sequoyah because
25 corporate could not transfer a single person
out of that job classification to the site.

1 And as has been stated, that would have
2 required them to transfer everybody in a job
3 classification and eliminate that function
4 from the corporate office.

5 At the time I asked or agreed to a
6 transfer, I did not know how positions were
7 constructed in the corporate office. But as
8 Mr. Grover approached me, I said, Sure, I'll
9 be glad to do that.

10 MR. STEIN: Mr. Kent, I have one more
11 question for you.

12 Mr. Rogers and Mr. Corey were both part
13 of this selection panel. You were the only
14 one with knowledge of the 1993 D.O.L.
15 complaint that Mr. Fiser had filed. Why
16 would you share this information, which
17 really is not relevant to the selection for
18 the 1996 position, with your fellow selection
19 panel members?

20 MR. KENT: I didn't, and I think that's
21 a misperception.

22 As Jack mentioned earlier, on the
23 morning of the selection panel, we were at
24 lunch. I think Jack, myself, Wilson
25 MacArthur, and Mr. Corey were standing

1 outside the room, and I made a statement
2 really directed to Wilson MacArthur that
3 since there was a D.O.L. issue, it would be
4 better for the process if Wilson did not
5 participate in any way in the questioning or
6 the rating of the candidates, and Wilson
7 agreed. That's the extent of the discussion
8 we had --

9 MR. STEIN: Why didn't you go further
10 in the selection, not to be rated and not to
11 be selected, that he wouldn't be the
12 selecting official since --

13 MR. KENT: I just didn't -- I did not.
14 I was only concerned about the process that
15 we were about to enter into and the selection
16 committee. I want the selection committee to
17 be as clean as possible in terms of the way
18 it was conducted, and I thought it would be
19 better for the process if Wilson did not
20 participate. So I didn't really inform them;
21 I made a statement to that effect to Wilson.
22 I have no knowledge whether they knew about a
23 past D.O.L. complaint or the current one; but
24 I was thinking about the current issue; not
25 the previous --

2 MS. BOLAND: Mr. Corey, through some of
3 the review and the testimony, it's my
4 understanding that you indicated to the
5 Office of Investigations that you were aware
6 or that someone made you aware of the 1993
7 D.O.L. complaint. Do you remember who that
8 was or how you came to know that information
9 at all.

10 MR. COREY: I don't recall as to who
11 told me or when, and I didn't know the
12 specifics of it. When Charlie mentioned
13 conversation with Mr. Wilson, in my mind, I
14 thought he was talking about the 1993
15 complaint. That to me was past history, and
16 it really didn't make a bearing to me at all.

17 MS. BOLAND: So you did overhear the
18 comment that he made to Mr. MacArthur?

19 MR. COREY: Only a portion of it. He
20 was having the conversation with Wilson -- I
21 didn't realize there was another complaint in
22 '96. I just -- you know, it didn't have a
23 bearing to my decisions.

24 MS. BOLAND: So you were at the time,
25 if I understand what you said, you were not
aware at all of the '96 filing?

1 MR. COREY: That's correct.

2 MS. BOLAND: But you were aware to some
3 degree of the existence of the '93
4 complaint?

5 MR. COREY: That's correct.

6 MS. BOLAND: Although maybe not the
7 comments?

8 MR. COREY: I did not know the
9 specifics of the 1993 D.O.L. complaint. I
10 just knew he submitted one.

11 MR. DAMBLY: I guess I'm a little
12 confused. Why is it that you didn't want Dr.
13 MacArthur to participated in the panel
because of the D.O.L. complaint?

15 MR. KENT: Well, I thought -- I believe
16 Gary told me a week or so before we went
17 through this process that he had filed a
18 complaint and the basis of his complaint was
19 that he didn't think it was fair to announce
20 his job -- to announce that position; he
21 thought they were announcing his position,
22 and he was having to compete for it; and he
23 didn't think that was right, and he filed a
24 complaint. So I simply informed Wilson that
25 I thought it would be best for the process,

2 that is, the selection board process, if he
3 took notes and did not participate in any
4 real material way in the questioning of the
5 candidates or the rating of the candidates.

6 MR. DAMBLY: That's what I'm having
7 trouble with. What would his --

8 MR. KENT: He was obviously involved in
9 the decision to some degree or may have been
10 perceived to be involved in the position to
11 some degree, and I thought our selection
12 process could be made, the panel part of it
13 could be made better if Wilson did not
participate.

14 MR. STEIN: But the next logical step
15 would be to refuse Mr. MacArthur for making
16 the selection; because really you didn't
17 decide who was to be put in that position.
18 You just made your recommendations to Wilson
19 MacArthur, and he made the selection.

20 MR. KENT: That's right.

21 MR. STEIN: So if you thought it was
22 unfair for him to sit and question the
23 candidates, why would you think that it was
24 fair for him to make the ultimate decision?

25 MR. KENT: I didn't say I thought it

1 was unfair. I thought it would improve the
2 process we were going through. I would not
3 suppose that Wilson couldn't make an unbiased
4 decision; that was not the purpose of it at
5 all.

6 MR. BURZYNSKI: When you say through
7 the process, do you mean make the board
8 independent of Wilson?

9 MR. KENT: Right, independent of
10 Wilson.

11 MS. BOLAND: Just as a point of
12 clarification, did you say that Mr. Fiser
13 came to you and indicated that he had filed a
14 1996 D.O.L. complaint?

15 MR. KENT: If I'm not mistaken,
16 sometime prior to our panel meeting, I was in
17 the corporate office, I was talking with the
18 guys just, you know, How are you doing,
19 everything like that; and I think Gary is the
20 one that told me that he had filed a D.O.L.
21 complaint because of them posting a job.

22 MS. BOLAND: Okay. Question for Mr.
23 Rogers.

24 At any time prior to or during the
25 selection process, were you aware of either a

1 1996 or a 1993 D.O.L. complaint filed by Mr.
2 Fiser?

3 MR. ROGERS: No, I was not.

4 MS. BOLAND: At what point in time did
5 you become aware of that?

6 MR. ROGERS: Subsequent to our IG --

7 MR. DAMBLY: Mr. Kent, do you consider
8 it appropriate to bring up D.O.L. protected
9 activity, if you will, in front of panel
10 members before they're going to be doing a
11 selection review?

12 MR. KENT: Well, I didn't consider it
13 inappropriate, because I did it. I thought
14 that the comment I made was really to Wilson,
15 and it was really intended to ask Wilson if
16 he would consider not participating in any
17 significant way in that selection board
18 process; and he agreed to do that.

19 MR. BOYLES: That comment was made to
20 the peer team; the entire panel was not
21 there --

22 MR. KENT: Right.

23 MS. BOLAND: I have two questions for
24 you, Ms. Westbrook.

25 I want to get back to a question I had

earlier; but before that, did you -- you said
2 you had had a discussion with Mr. Easley and
3 he made you aware of the filing of the 1996
4 D.O.L. complaint, correct, before you --

5 MS. WESTBROOK: No. I knew there was a
6 complaint, but now I know it was the '93
7 complaint.

8 MS. BOLAND: So he made you aware of
9 the '93 complaint.

10 Did you hear any discussions by Mr.
11 MacArthur or any of the panel members during
12 the pre-discussions of the panel or during
13 the panel about any D.O.L. matters?

14 MS. WESTBROOK: No. No. And I was not
15 out there before we went into the meeting to
16 hear that conversation. But nothing was said
17 in the room when we were all in there about
18 any D.O.L. complaints, nor was anything said
19 about, Don't select Gary Fiser for this job.
20 You know, and I guess if we had been
21 instructed not to select him, we would have
22 at least added up the scores and made sure he
23 didn't get the highest number before we left
24 there, and that didn't happen. So, you know,
25 that wasn't --

MS. BOLAND: Very briefly, because I
2 don't want to belabor the issue, but can you
3 just briefly go through for me the strengths
4 and weaknesses that the panel members
5 discussed on Mr. Harvey?

MS. WESTBROOK: Right; I'll be glad to.

6 I've got confident in PWR, good
7 communication skills, technically sound,
8 understands PWR, knows steam generators, very
9 familiar with Watts Bar generators, good
10 discussion in his -- oh, involvements and
11 projects, successful projects that he was
12 working on that were very successful. He was
13 very direct. He would do whatever it took to
14 find resources, even look at the industry.
15 That was impressive; because it was obvious
16 that Mr. Fiser was really caught up in trying
17 to find resources.
18

19 He was up front with problems and
20 confronts problems head-on, knew what sprung
21 Sequoyah ratios, felt chemistry index -- good
22 common ground, verbalizes well, outspoken and
23 aggressive.

24 Weaknesses was hydrogen water chemistry
25 and BWR.

2 MS. BOLAND: Question. On the
3 interviews, you had a specific set of
4 questions to ask?

5 MS. WESTBROOK: Right.

6 MS. BOLAND: What kind of discussions
7 took place outside those particular
8 questions? Are the panel members held to the
9 question list?

10 MS. WESTBROOK: They're held to a
11 question list. If they don't understand
12 something, they can ask something about that
13 question.

14 MR. BURZYNSKI: That would be like
15 clarifying questions?

16 MS. WESTBROOK: Right; to elaborate on,
17 What do you mean by that.

18 MS. BOLAND: Are the panel members
19 supposed to strictly stick to the questions
20 and answers that were provided by the
21 individual?

22 MS. WESTBROOK: Yes. And we did add
23 one additional question.

24 MS. BOLAND: In listening to some of
25 the issues that you brought up about Mr.
Fiser, there was a lot of -- it appeared on

the list of strength and weaknesses regarding
2 past Sequoyah issues.

3 MS. WESTBROOK: Yes. He did talk about
4 that in his answers to some of the questions
5 that were asked, and I have each question
6 that was asked and the responses that he
7 gave.

8 You know, some of the answers were very
9 strong and very good; but then he would
10 interject something like, for example, he
11 said -- and this was on question 9 -- he
12 would establish priorities and fix it; then
13 he said, We haven't fixed anything. So, I
14 mean, you're just -- and for me to be an
15 outsider looking in, that was a strange
16 comment to me. Because if you're wanting a
17 job and you're wanting to show your
18 strengths, you're going to want to tell what
19 you have fixed over that period of time.

20 He said, My role is to get involved and
21 to get things fixed, so that was real good.
22 He went on after he said that to say that.
23 But then he said, My biggest concern is
24 staying abreast of technology. Then he said,
25 You need to budget money to purchase new

2 technology. Then he said, I don't know what
3 new widgets are on the horizon, but I do know
4 how much it costs to lose power. So it was
5 obvious he wasn't really abreast with what
6 was going on in the industry, but he did know
7 his plant. So that was positive, but
8 interjected with a little bit of negativism.

9 He was having a difficulty with some of
10 the negative issues, and you could tell there
11 were some things that were bothering him.

12 MR. BURZYNSKI: Melissa, you had
13 indicated that there was no collaboration on
14 the score and that all of these people were
15 interviewed, some 14 or more people.

16 MS. WESTBROOK: Right.

17 MR. BURZYNSKI: The scores that the
18 people provided to the individual panel
19 members, they kept that in their own book and
20 turned the book into -- the group didn't
21 total up the scores or compare notes on the
22 scores before the panel broke up?

23 MS. WESTBROOK: No; there wasn't time.
24 They did all those interviews that day and
25 were supposed to finish around 7:00 or 8:00
that night.

2 MR. BURZYNSKI: And that was something
3 that Ben took the score sheets and totaled
4 the scores up later?

5 MS. WESTBROOK: Right. I turned my
6 book in when I left as did the rest of the
7 panel members. And then we keep these in our
8 office.

9 MR. KENT: Can I interject something
10 just to make sure that it's clear?

11 After each individual was interviewed,
12 the score sheets were turned in on that
13 individual so that when we interviewed the
14 next person, we did not even have in front of
15 us the score sheet from the previous person.
16 So there was no mechanism to reference back
17 other than just recollection how somebody
18 responded. So we really tried to evaluate
19 each person independently.

20 MR. DAMBLY: Just to follow up on that,
21 are you saying that when you did the three
22 interviews for PWR giving the overall scores
23 are quite divergent and Mr. Fiser was
24 considerably lower, you didn't have any idea
25 when you gave somebody a 10 and somebody a 5
on the same question that the 5 person was

going to be the lower of the -- in the
2 overall of doing three people?

3 MR. KENT: Well, obviously, if you rank
4 one person higher than another, you're going
5 to recollect that. But when we completed the
6 first candidate's interview, we turned in the
7 score sheet. We did not total the scores,
8 and we did not know how the person did
9 overall. We did the same thing on everybody
10 all day.

11 MR. DAMBLY: But when you did the three
12 for PWR, you knew at the end of the three
pretty much where they stood. ?

15 MR. KENT: I knew pretty much how I had
16 rated the three. I had no idea how the
others --

17 MR. DAMBLY: How the others -- okay.

18 MR. BURZYNSKI: I've got this slide
19 here. I'm not sure that we need to spend
20 much more time talking on it; we've covered
21 these points.

22 There was a question earlier, though,
23 from Mr. Stein, I think, about the selection
24 review board.

25 As we indicated in previous enforcement

1 conference -- and I think these gentlemen can
2 corroborate -- they recommended themselves
3 that the peer team should be the selection
4 review board, and that was accepted by Dr.
5 MacArthur. I think we've covered the other
6 points on here unless you have any additional
7 questions.

8 MR. DAMBLY: One question I had,
9 because I guess maybe it was Mr. Stein, I
10 don't know, somebody asked Mr. Cox about when
11 he learned about the panel and -- did the
12 other two of you, Mr. Kent and Mr. Corey, did
13 you learn at the same time when the panel
14 would be?

15 MR. KENT: I don't really recall
16 exactly when I was informed of the panel's
17 date -- I was informed that they wanted me to
18 sit in on a panel, that that would be
19 appropriate. We already had agreed it was
20 going to be immediately following our next
21 peer team meeting, and I don't really know
22 how far in advance that peer team meeting
23 that I was aware that was the date we were
24 going to do it on.

25 MR. DAMBLY: I think Mr. Cox said about

1 three to five days was what his notice. Do
2 you ever any recollection --

3 MR. KENT: I would have thought it
4 would have been further in advance than that,
5 but I'm not sure.

6 MR. DAMBLY: Mr. Corey, do you recall?

7 MR. COREY: I don't recall as to when
8 the notice went out that they were going to
9 do it.

10 MR. MARQUAND: I believe there may be a
11 notice in front of somebody's book, a
12 memorandum, telling you when the next peer
13 team meeting was.

MR. COREY: A memo dated July 18th?

15 MR. REYES: Can you provide a copy of
16 that for the record?

17 MR. MARQUAND: We will.

18 MR. DAMBLY: And that's the same time
19 you found out when the panel was going to
20 be or that you were going to be on the panel
21 or --

22 MR. COREY: May have called us in
23 advance to the memo coming out, but --

24 MR. COX: We all knew we were going to
25 be on the panel initially; we talked about it

at the last peer team meeting a month prior.

1
2
3 MR. DAMBLY: So you knew a month in
4 advance that the peer team was supposed to be
5 the panel?

6 MR. COX: Yes.

7 MR. DAMBLY: You just didn't know until
8 maybe the same time when that was going to
9 be?

10 MR. COX: The exact date and time,
11 correct.

12 MR. COREY: It's very difficult to get
13 everybody in on the same day. It was quite
14 an undertaking.

15 MR. DAMBLY: Yeah; it's taken us a
16 while to get here.

17 MR. BURZYNSKI: We've kind of gotten a
18 little bit off of the way we planned to
19 present this. What I wanted to do was just
20 give the selection review board members an
21 opportunity to say anything in particular
22 that they wanted to about their evaluations
23 of the candidates they interviewed for the
24 PWR chemistry manager job.

25 MR. COREY: I'll go first, if I might.

I'm John Corey, manager of radiological

chemistry controls at Browns Ferry Nuclear Plant. I've held this position since January of 1995. I participated on the selection board, as you know. I felt it was important to participate on this board as the corporate radchem position to support the site radchem programs.

Ms. Westbrook described to you in detail about how the protocol was handled that day. We came in, and we had this list of 16 questions, a 17th question was added. The peer team selected the questions that would be asked that day. We made sure the same person asked the same question of all three candidates, trying to make everything as fair and equitable as possible. We took down notes of the responses that we got to the questions. I thought it was a very fair process. There was no collaboration on the grading.

When you look at this exhibit and you look at the numbers, you'll see it was fairly close agreement as far as between Mr. Kent and myself as far as the ratings that we gave Mr. Fiser. These were independently rated,

the questions were selected that morning
2 before the interview started for that
3 session. There was no collaboration, and
4 they were all independently graded and we all
5 turned in our sheets. And until earlier this
6 week when we were preparing to come down here
7 was the first time I actually saw this spread
8 sheet of data as well as the earlier exhibit
9 as far as the point totals. So it was
10 completely independent, and the grading was
11 completely independent; and it looks to me
12 the data was protected, but I didn't know.

As shown on both exhibits, Mr. Fiser
was graded lower than the other two
15 candidates on the individual questions and
16 point title overall.

My recollection of Mr. Fiser's
18 interview is very similar to what Melissa
19 Westbrook mentioned to you earlier. In
20 general, he was not as aggressive as the
21 other candidates in answering the questions.
22 Some of his responses weren't in depth and
23 required follow up. He appeared very laid
24 back and very casual, and some of his
25 responses, I got the impression at times he

2 felt he was the victim as far as not being
3 able to control his destiny or coordinating
4 resources to get things done.

5 These positions were going to a fewer
6 number of people, and they had to be the top
7 caliber people. When you're down to a fewer
8 number of folks and you have to turn out the
9 same product or even better, you have to make
10 sure you've got the very best talent to do
11 it. And part of it is you have to find
12 people who are aggressive, who look at
13 problems, find solutions, and tackle them.
And it's very frustrating when you're trying
to orchestrate things among --

15 MR. STEIN: I'm sorry. Do you think
16 it's fair to judge somebody's aggressiveness
17 or ability to manage on the basis of 16
18 questions asked on one day, or possibly it's
19 a fairer process to have the entire person's
20 performance appraisals, history, awards, you
21 know, who they are and how they manage over a
22 period of time rather than make that
23 assessment all in one day?

24 MR. COREY: This process as was
25 mentioned to you earlier was a step in the

right direction as far as I was concerned as
2 an employee and a manager as far as being
3 selected for a position or not. It used to
4 be as a selecting supervisor, you did the
5 interviews, you made the selection, and that
6 was it. This is a much more arduous process,
7 and to make it just, there are a lot of
8 hurdles you have to go over to make sure it's
9 fair. And it's not timely and it's not easy,
10 but it is impartial. It does work. You may
11 not always agree with the conclusion to it,
12 but it's been my experience that it's been
13 fair. And as in any other company in this
14 country, if you go in, you may have been a
15 star performer, but the day you step in front
16 of your boss or the panel that's making a
17 decision, and if you have a bad day, if you
18 clutch it, you might not get the position.
19 The guy who did as well as you but did better
20 presenting himself may be the person they
21 selected. That's part of it. It's not a
22 perfect process, but it's a whole lot better
23 than what was done 6, 7 years ago.

24 I believed it was a fair process. I
25 believe it was unbiased and we fairly

assessed his performance during the interview
2 that day.

3 MR. DAMBLY: Did you all have the
4 appraisals or the personnel file or anything
5 to look at before this?

6 MR. COREY: No, sir, I did not. And
7 the selection boards as it was mentioned
8 earlier, they go through a spread sheet, they
9 put down all this information, and they pick
10 the top candidates. You may have different
11 candidates apply, but you pick out the 2 to 5
12 people who are going to be the best
13 candidates and stick in front of the board;
14 because on this day it took all my afternoon.
15 I didn't get home until around 9:00, 10:00
16 o'clock at night.

17 MR. DAMBLY: The selection board panel,
18 whatever, review board, when you all meet and
19 you do the interviews, you are just strictly
20 asking a given set of questions and grading
21 the responses irrespective of anything else
22 that person may ever have done in the past or
23 any personal knowledge or anything --

24 MR. COREY: That's correct.

25 MR. DAMBLY: They dive into the pool

and you hold up a number.

2 MR. STEIN: In other words, a Nobel
3 Prize winning chemist comes to TVA and a
4 bunch of chemistry students, and the Nobel
5 Prize winning chemist has a very bad day,
6 doesn't interview well, you're going to
7 select one of those students?

8 MR. COREY: Probably.

9 MR. BOYLES: I think if they go to
10 DuPont and have a bad day, the same result is
11 going to occur.

12 MR. SCALICE: Why don't you look at it
a different way, that if it was unfair to one
candidate, it's equally unfair to all the
15 candidates rather than going the other way
16 around? Everybody was subjected to the same
17 fairness or unfairness, and it was there as a
18 process to improve on what we previously
19 had. I don't know that it's a perfect system
20 and I don't know if we have a perfect system;
21 maybe you do. If you do, I'd like to see it.

22 MR. STEIN: We don't.

23 MR. SCALICE: That's the way we do
24 business in TVA; and in nuclear, we're going
25 to instill the best process we possibly can.

MR. REYNOLDS: It's also felt that
2 reviews of the personal history records by
3 individuals who are on a selection committee
4 are inappropriate, and let me tell you why.
5 There's information in there about what
6 benefits, what kind of pay they received,
7 what kind of arrangements they may have with
8 the company. They could have identified
9 disabilities, they could have identified if
10 there's another candidate. And I tell you
11 what, I'm going to be in big trouble if I
12 spread that information out and let it be
available throughout the organization. So
1 selection board members will not see a
15 personal history record.

16 They will have a resume that will track
17 that employee's history of where they worked
18 throughout the organization. If the employee
19 chooses to submit their performance
20 appraisals or any other letters that they've
21 received or anything like that, they're free
22 to do that. But I'm not going to let
23 personal history records out for review of
24 someone that's not in that chain of command
25 of that individual; it's not right.

MR. DAMBLY: There's nothing --
2 whatever a candidate submits in his or her
3 application package is given to the selection
4 review board --

5 MR. REYNOLDS: Yes.

6 MR. DAMBLY: -- ahead of time? They
7 don't come in there with, Here's a set of
8 questions; they have reviewed if Mr. Fiser
9 had included his appraisals and Mr. Harvey --
10 they would have had reviewed all that before
11 they did the questioning?

12 MR. REYNOLDS: Yes.

13 MR. DAMBLY: That's different than what
14 I thought was said a minute ago, that they
15 just came in there with a blank slate. All
16 right.

17 MR. BURZYNSKI: Any other?

18 MR. KENT: I'd like to make a statement
19 about the selection review board process and
20 my perception of this as it relates to this
21 particular selection review board.

22 I believe that the members of the
23 selection review board base their ratings and
24 their recommendations on the responses to the
25 questions that were asked that day. I

2 believe that we were not biased in any manner
3 against or for any of the candidates. I
4 certainly was not.

5 I believe that the fact that one of the
6 candidates may or may not have filed a D.O.L.
7 complaint had nothing to do with the
8 selection process or the ratings that we gave
9 the candidates, and certainly there was no
10 attempt to influence me in any way in how I
11 would rate any candidate on any question or
12 overall by anybody.

13 MR. ROGERS: I'm Rick Rogers from
14 Sequoyah, as I said; and at the time, I
15 worked in corporate as technical support
16 manager, and Dr. MacArthur asked me about two
17 days before the interviews were to take place
18 if I could sit in and help him out in the
19 selection board. I looked at my schedule, I
20 was free that afternoon, I told him I could
21 do that. We frequently supported each other
22 in the spirit of teamwork.

23 As was said earlier, each interviewer
24 provided a notebook which contained
25 information we've already talked about here
in detail. We scored each person. I scored

2 each person based on the responses to the
3 questions. Scored that person and then
4 turned the books in, turned the sheets in.
5 There was no discussion among the interview
6 board concerning pre-selection of anyone or
7 not selecting anyone. The process was fair.

8 I sat in on interview boards of other
9 candidates. I've also been interviewed
10 myself as similar type board, and there was
11 no evidence of anyone being biased in this
12 process.

13 MR. COX: One other point. Mr. Stein
14 stole all my thunder a little while ago, so I
15 didn't get to make my presentation; but I'd
16 like to make sure that everybody understands
17 that no one discouraged me from participating
18 in this process; it was strictly my decision
19 not to participate. Nobody encouraged me not
20 to. As a matter of fact, they encouraged me
21 to.

22 And the other thing I wanted to make a
23 point of was I remember the conversation that
24 Mr. Kent was talking about in the hallway
25 when he was recommending to Mr. MacArthur
that he not participate and not ask any of

2 the questions and that sort of thing, and it
3 was strictly from the standpoint of making
4 sure that there was nothing even perceived to
5 be inappropriate as part of the selection.
6 There was no attempt whatsoever to either
7 select, pre-select, or deselect anybody
8 through this process, and I believe from what
9 I've seen that it was unbiased.

10 MR. BURZYNSKI: Moving on to the next
11 point. This has to do with a topic we've
12 touched on some that the OI report summary
13 states that Mr. Harvey was pre-selected.

14 TVA found that there was no
15 pre-selection that occurred. Both Mr.
16 McGrath and Dr. MacArthur denied any
17 pre-selection when they came before you
18 several weeks ago.

19 I also wanted to mention that in
20 response to some queries from Dr. MacArthur
21 when he queried his employees and former
22 employees to get statements about whether he
23 ever made any disparaging remarks about Mr.
24 Fiser to help in his character defense, the
25 response that came back from Mr. Harvey
included information that was we thought

2 important and provided important perspective
3 on conversations that occurred between Mr.
4 Harvey and Mr. Voler, the chemistry manager.
5 We thought that that was important
6 information. He provided a declaration on
7 that point; and we want to submit that
8 information to you, because as we understand
9 it, the --

10 MR. DAMBLY: This is the Harvey --

11 MR. BURZYNSKI: The Office of
12 Investigation did not interview Mr. Harvey in
13 this, and we wanted to put --

14 MR. STEIN: I'm sorry. Can you repeat
15 what you just said, that Dr. MacArthur never
16 made any statements regarding Mr. Fiser --

17 MR. BURZYNSKI: No. What I said was in
18 his preparation for his enforcement
19 conference, he solicited statements from his
20 employees and former employees as to whether
21 or not they ever heard him make disparaging
22 remarks. That was part of his preparation to
23 provide some character witness kind of
24 information to you in his defense. In
25 response to that request, Mr. Harvey provided
this additional information that we, TVA,

2 then became aware of. We thought it was
3 relevant because it was related to Mr.
4 Harvey's conversations with Mr. Voler, and we
5 wanted to be sure you had it because your
6 organization had not interviewed Mr. Harvey
as part of this investigation.

7 MR. STEIN: Okay. This is a good place
8 to get back to Dan Kiter I think at this
9 point, because we have a TVA record of
10 interview of Mr. Kiter which sheds some light
11 on a few points dealing with Mr. McGrath and
12 Dr. MacArthur.

13 I already mentioned before about Tom
14 Peterson and Tom McGrath being mentioned in
15 Dan Kiter's record of interview. I recall
16 that Mr. McGrath was making statements at the
17 last enforcement conference that being the
18 director or the committee chair of the
19 Nuclear Safety Review Board, he approved of
20 people coming forward with safety concerns,
21 he never retaliated, wouldn't retaliate,
22 would have no motive for doing so.

23 We have the statement from Mr. Kiter
24 that Mr. McGrath was opposed to Mr. Fiser
25 going to corporate when Mr. Jaquard and Mr.

2 Fiser were switching positions. Mr. Kiter
3 made the final decision to give Fiser a
4 chance as the corporate chemistry manager.
5 Three months after the swap of positions
6 between Mr. Fiser and Mr. Jaquard, McGrath
7 and Wilson MacArthur, manager of operation
8 services, indicated that Fiser was not
9 working out as the corporate chemistry
10 manager. And then there was a consensus
11 reached between Dan Kiter and MacArthur to
12 promote Mr. Fiser to a program management
13 position. I find that very interesting given
14 what Mr. McGrath was saying of his
15 non-involvement in the 1993 issues; and if
16 Mr. McGrath was the equivalent of let's say
17 our committee, our ACRS committee, running
18 like a safety review board type program, I
19 just don't understand what his interest would
20 be in Mr. Fiser going or not going to the
21 corporate position and how his performance
22 was in that position given he had no line
23 management responsibility.

24 MR. SCALICE: ACRS, to my
25 understanding, includes technically competent
people that evaluate issues, and in general,

2 issues in the NRC. The NSRB is a little bit
3 different in that they're involved not only
4 in issues, but they're involved in
5 management, how the plant's run, attitudes of
6 the people; that's part of their chart.
7 They're there at the plant interviewing the
8 people. This is not something that just sits
9 back and says, Let's evaluate how steam
10 generators denting and how the industry is
11 responding to it. It's the specifics of how
12 the plants are run, and it's specifics of the
13 oversight of the plant operations. And
14 that's --

1 MR. STEIN: So it was part of Mr.
2 McGrath's charter to be reviewing the
3 performance of a first line chemistry
4 manager --

5 MR. SCALICE: No; but it's part of his
6 charter to review the overall operation of an
7 area, such as maybe how chemistry runs. We
8 have subcommittees. We have subcommittees
9 that look at operations, subcommittees that
10 look at maintenance of the plant; and they'll
11 go into an area, perhaps talk to an
12 operations manager, maintenance manager,

2 etcetera, they talk to the people, and they
3 want to know how the plant is dealing with
4 issues. Are you getting the work done? Are
5 you getting the resources necessary? That's
6 part of the overall safety aspects of the
7 operation of a plant. And they report that
8 in a meeting with site management as well as
9 corporate management.

10 MR. STEIN: The reason I'm raising this
11 is in the swap between Jaquard and Fiser,
12 McGrath interposed his own opinion that, We
13 don't want Mr. Fiser at corporate. And then
14 three months later when he is performing at
15 corporate, McGrath is again coming forward
16 and saying, He's performing poorly. So --

17 MR. SCALICE: I'm not going to defend
18 or explain that, because I'm not even aware
19 of those statements. I was trying to explain
20 to you the difference between ACRS and NSRB.

21 MR. DAMBLY: Was Mr. McGrath as
22 chairman of the NSRB, was that his full-time
23 job? I mean, some people thought it's a
24 collateral duty and some think it's a
25 full-time job. And he seemed to say that's
all he did, but I don't know.

MR. SCALICE: For a long period of
2 time, his responsibility was basically NSRB
3 chairman, as I recall it.

4 MR. DAMBLY: As a full-time position?

5 MR. SCALICE: As a full-time position.
6 Understand one thing. If this was a one unit
7 facility, that would not have been a
8 full-time responsibility; but because what we
9 do is he's looking at three different sites
10 and evaluating it, it then becomes a
11 responsibility to rotate and go from site to
12 site and then conduct meetings and do the
scheduling, etcetera.

4 MR. BURZYNSKI: He also at that point
15 in time I think had a small support staff
16 that reported to him when we were having
17 frequent NSRB meetings when our plants
18 weren't performing well.

19 MS. BOLAND: At that time when it was a
20 full-time position, who did it report to?

21 MR. SCALICE: It reported to I believe
22 -- might have reported to Oliver Kingsley.

23 MR. REYNOLDS: I think it reported to
24 Metford with a dotted line to Oliver --

25 MR. SCALICE: You're right.

2 MR. REYNOLDS: He did have a small
3 staff of 3 to 5 folks to help set up the
4 meetings.

5 MR. DAMBLY: So basically, his was a
6 full-time position, but the rest of the
7 people that served, served as a collateral
8 function?

9 MR. SCALICE: Well, some of them were
10 contractors, some of them were members of the
11 site that would go from site to site. For
12 instance, one individual from one site may
review the operations of another site. So
yes, those were not full-time positions.

15 MR. REYES: Is there any way at a later
16 time you can confirm for us that reporting
17 arrangement so it's clear in our
deliberation?

18 MR. BURZYNSKI: Sure.

19 MR. MARQUAND: To get back to something
20 Mr. Stein said, at some short period of time,
21 apparently after Mr. Fiser went downtown as
22 the corporate chemistry manager, Mr. McGrath
23 reported problems with Mr. Fiser's
24 performance; but if you recall at the
25 previous enforcement conference, Dr.

MacArthur said he had problems as well and at
2 that point in time, they moved him from the
3 corporate chemistry manager to a program
4 manager position.

5 MR. DAMBLY: If I could just back up
6 one second to make sure I had the right
7 people, Mr. Kent and Mr. Corey, I'm sure
8 you're aware that there has been brought up
9 certainly in the '96 complaint a meeting that
10 Mr. Fiser was attending on behalf of Mr.
11 Grover and was excluded from at some point
12 because you were going to talk about
sensitive issues, at least that's the way
it's been presented. And it's been
15 represented it was because somehow he was
16 untrustworthy because people knew he had
17 taped conversations or because he had filed a
18 '93 complaint. But anyway, tell me what
19 happened to the best of your recollection why
20 he was sent out if he was sent out.

21 MR. KENT: I think I remember the
22 meeting you're talking about. It was a peer
23 team meeting, and we do that occasionally at
24 peer team meetings. If we're going to be
25 discussing an issue such as staffing, where

2 we want to go with staffing, potential staff
3 reductions, things like that, we do it just
4 with the responsible managers, and we would
5 have asked anybody else in the meeting to
6 leave at that time. It's closed from then
7 on.

8 We were not aware of any issue of
9 recording anything; I mean, that wasn't
10 brought up. That's the reason we asked him
11 to leave. And we would have probably asked
12 Grover to leave had he been there. We may
13 very well have asked him to leave had he been
14 there. He was the corporate chemistry
15 manager. We were meeting of the radchem
16 managers. So our comments and deliberations
17 involved the whole program; not just the
18 chemistry piece of it. And we might very
19 well have asked Grover to leave.

20 MR. STEIN: Because you were talking
21 about sensitive issues on the other side of
22 the fence?

23 MR. KENT: Yeah.

24 MR. MARQUAND: Their peer was Dr.
25 MacArthur, not Mr. Grover where Dr. MacArthur
became one level down.

1 MR. DAMBLY: At the time that Mr. Fiser
2 worked for Mr. Grover, Grover had chemistry
3 and environmental and MacArthur had radchem,
4 and so --

5 MR. MARQUAND: Depending on when the
6 meeting --

7 MR. DAMBLY: You guys had both
8 functions?

9 MR. KENT: Yes.

10 MR. DAMBLY: So you had the combined
11 MacArthur and Grover job?

12 MR. MARQUAND: Previously, Allen
Sorrrell had that.

13 MR. DAMBLY: And I'm not -- I mean, we
14 would do the same thing, a manager was about
15 to discuss personnel issues and a non-manager
16 would be in there, they would be asked to
17 leave. I mean, there are statements all
18 over, and I want to know your views on why he
19 was asked to leave.
20

21 MR. BURZINSKY: The final point I
22 wanted to make, as you heard, we have found
23 that we used a structured selection process
24 to fill the new positions in the
25 organization. We've kind of hit on this

1 topic, too, regarding the vacant position at
2 Sequoyah. I don't know if we need to talk
3 anymore on it.

4 MS. BOLAND: Now, this says no
5 comparable vacant position at Sequoyah.

6 MR. BOYLES: Sequoyah had many
7 vacancies, but there was not a chemistry
8 vacancy.

9 MR. BURZYNSKI: I'm just trying to be
10 precise that if you had a chemistry
11 technician vacant position, I didn't want you
12 to come back and hit me with a 50.9
violation.

MS. EVANS: We wouldn't do that.

15 MR. BURZINSKY: Just in summary,
16 regarding the five points that were
17 identified, on the first point, we think that
18 the OI report is incorrect regarding the
19 statement on culpable parties.

20 On the second point regarding Dr.
21 MacArthur's appointment and the decision to
22 post the chemistry positions, we believe they
23 were made in accordance with the regulations
24 and that there was no disparity treatment.

25 In terms of the collection process

1 being contrived, we think it was conducted
2 fairly and in accordance with TVA nuclear
3 procedures. We would suggest that no
4 pre-selection occurred based on the evidence
5 we've had provided and that there was no
6 comparable vacant position at Sequoyah.

7 With that I'd like to turn it over to
8 Mr. Scalice to make some closing remarks.

9 MR. DAMBLY: If I could ask one
10 question before you do that. There are
11 statements made by Grover in particular that
12 the '96 downsizing in the corporate and
13 chemistry, environment, radchem, whatever
14 area, there was a '96 through 2000 plan and
15 it would require 17 percent the first year
16 and whatever to get -- and Mr. McGrath told
17 us he decided he was doing the whole thing.
18 Now, according to Mr. Grover, they had
19 presented -- he and I guess MacArthur had
20 presented a plan involving the 17 percent
21 that would have kept everybody in their jobs,
22 and that was rejected, and they were
23 demanding to pull 40 percent out of
24 chemistry. But according to Grover, only
25 chemistry had to eat it all the first year;

everybody else had the 17 percent.

2 MR. REYNOLDS: At that time, I had
3 worked for Human Resources, and I had 39
4 people; and I went to 18, 18 or 19.

5 MR. DAMBLY: But do you know if under
6 Mr. McGrath he only demanded the chemistry
7 function go down 40 percent the first year
8 and not the other functions?

9 MR. MARQUAND: I think if you look at
10 the testimony Mr. McGrath had at his
11 conference he had, he had similar reductions
12 in other organizations. He did say the steam
13 generator -- he cited specific examples in
14 other organizations under himself that had
15 similar reductions.

16 MR. DAMBLY: Again, my only point is if
17 you have the numbers of in the various
18 organizations or subdivisions reporting to
19 Mr. McGrath what the cuts were for that time.

20 MR. MARQUAND: We'll be glad to send
21 that if we can find --

22 MR. DAMBLY: Mr. McGrath said his were
23 the only one that had to make the cut the
24 first year.

25 MR. ROGERS: I was in the operating

organization at the time. The reorganization
2 -- there was a technical support manager
3 which was the position I had that had
4 specialists in it, and then a maintenance
5 support manager that had specialists in it.
6 Those two organizations were done away with,
7 and one organization was put in place that
8 turned out to be about half the size of those
9 two organizations combined. So I know in our
10 organization it went down also nearly 50
11 percent.

12 MR. DAMBLY: Did your organization
report to Mr. McGrath also?

13 MR. ROGERS: Yes, it did; and my
14 position went away, and I had to bid on my
15 position at that point.
16

17 MR. DAMBLY: I'm not saying one way or
18 another; I'd be interested if you've got the
19 numbers to show that this was across the
20 board.

21 MR. MARQUAND: We'll be glad to provide
22 those. But as I recall from looking at Mr.
23 McGrath's notes, he said that radiological
24 control of chemistry went from 12 to 6, but
25 maintenance went from 17 to 9; but we'll be

glad to provide all the numbers throughout
2 his organization next week.

3 MR. DAMBLY: Okay. Thank you. That
4 was all I had.

5 MR. SCALICE: My closing remarks --
6 obviously come right up here and say
7 notwithstanding the position on this
8 particular case, we continue to take actions
9 to ensure that an effective environment
10 exists for the employees to raise all
11 concerns. I'm not sure I understand the pure
12 definition of the safety concerns and I'm not
sure you can explain it to me, because I've
4 asked for that explanation on some cases.

15 We have met with Region II staff and,
16 in fact, on June 11 to discuss all of our
17 initiatives, and the results we achieved --
18 as you know, we spend a great deal of time in
19 getting feedback from the employees on how we
20 do on this. Some of the initiatives we have
21 are star 7 employee training, which is really
22 a team building training program throughout
23 the nuclear program but more so throughout
24 all of TVA, actually. And we introduced a
25 little bit more into the TVAN, of the TVA

1 nuclear portion of that, do what's right,
2 building and maintaining a safe work
3 environment and work together and talk
4 together so that the issues you're discussing
5 are not misconstrued when you gather
6 information from each other. Sort of a
7 Golden Rules type of training program, too.

8 Plus, we have employee bulletins that
9 reinforce TVA Nuclear's policy against
10 discrimination. I personally signed them,
11 and I periodically send them out.

12 MR. STEIN: Do you have all your
13 managers take the Section 211, 50.7 type
training in TVA Nuclear?

14 MR. SCALICE: For--

15 MR. STEIN: -- employment protection.

16 MR. SCALICE: Yes.

17 MR. REYNOLDS: It's contained within
18 the Do What's Right page about how to handle
19 complaints. Actually, we hand them out to
20 all employees within the TVA Nuclear.

21 MR. SCALICE: As far as the results we
22 achieved from these initiatives, we think
23 there has been a significant and sustained
24 reduction in a number of ARC complaints. I
25

1 think your data could bear that out in terms
2 of allegations, and certainly our own
3 internal employee concerns and complaints
4 have been reduced over the years. Our most
5 recent survey indicated very good response
6 where all of our people or almost a majority
7 of the people or 100 percent were willing to
8 discuss or provide or bring forth a concern,
9 and about 97 or 98 percent of them will bring
10 them to the first line supervisor.

11 We do employee exit interviews with all
12 of the employees that leave TVA or TVA
13 Nuclear and all of our contractors to discuss
14 with them whether there was anything that
15 they want to share with us and do they feel
16 they have the freedom to discuss those issues
17 and concerns with all -- with management or
18 with anybody else in the organization.

19 MR. STEIN: Do you track employees'
20 concerns and allegations? For example, I had
21 a Region IV plant where all of a sudden we
22 were getting a lot of OI reports coming from
23 one maintenance group within the plant, so I
24 had our allegations person go and see what is
25 happening here that we're getting all these

discrimination complaints. Do you have a
2 similar mechanism --

3 MR. SCALICE: I don't look to see if
4 it's coming from one particular group. In
5 fact, I don't want to know whose complaint --
6 if there's a concern, we're going to deal
7 with the concern. In fact, I wouldn't
8 encourage people to say, It's in this
9 organization at Sequoyah. We have an
10 employee concerns organization that does know
11 where those concerns are and where they come
12 from, and he monitors it. And it's sort of
an independent consideration, because I don't
get into the details of the individual; I
15 look at the processing -- there's a specific
16 item listed or a complaint, it usually just
17 says individual is concerned about this at
18 this particular plant. It doesn't go into
19 the details that you're talking about.

20 MR. BURZYNSKI: But in response to your
21 question, as we indicated when we were down
22 here on June 11th, when we see indications
23 that there are numbers that are not typical
24 in an area, we have done some targeted
25 surveys; and we have as part of the general

annual employee questionnaire added specific
2 questions in those target groups that are
3 trying to solicit additional information to
4 help us understand what may be going on.

5 MR. SCALICE: The employee concerns
6 manager would look at that.

7 We have and I personally have a
8 commitment to maintaining an environment
9 where employees offer to bring forth all the
10 concerns possible. My theory is that every
11 time they come forth with even a maintenance
12 work request be prepared, that sort of can be
13 construed to be a concern. If some piece of
14 equipment out there needs to be fixed, we're
15 going to fix it and get on with doing the
16 work. We're getting the work done and that's
17 the principal we work by, and I think that
18 the people are entitled to an environment
19 where they can report the concerns. And I
20 think if you ask them you will see that
21 that's the case, they feel like they have
22 that forum.

23 I want to thank you for your time. I
24 know this is a long meeting, and I'm sure
25 there are still pieces --

MR. DAMBLY: One quick question.

2 It's always a fatal statement to say, but
3 anyway --

4 MR. MARQUAND: Especially for lawyers.

5 MR. DAMBLY: Yeah; you know that one
6 last question can go for an hour-and-a-half.
7 But OI collected in its report a BP dash 102
8 signed by Mr. Reynolds on 9/30/93 which says,
9 All vacant permanent positions must be
10 posted. And apparently, it's implementing
11 something that was from March of '93 signed
12 by John E. Long, Jr., vice president of
employee work life. And I guess my question
15 was because the way it was in the report, it
16 would seem to indicate that would say you
17 needed to post Mr. MacArthur's job if there
18 was a vacancy. And why that wasn't followed
if that's the case?

19 MR. REYNOLDS: Mark, can you go back to
20 that chart that's got the terms -- on a
21 decision on whether to post or not?

22 MR. BURZYNSKI: This one here?

23 MR. REYNOLDS: Briefly, when you do the
24 review -- and what had been done with Mr.
25 Boyles and Mr. Easley during this period of

time on those positions, when that
2 determination was made that there was
3 interchangeability on those positions,
4 there's no requirement for them to post that
5 job at that point in time because I had not
6 created a, quote, new vacant position within
7 the organization.

8 MR. DAMBLY: Even though nobody's in it
9 and you're rolling over somebody -- you don't
10 consider that a vacancy?

11 MR. REYNOLDS: No; I'm considering that
12 someone that has rights to that position
because of the review we have done.

13 MS. BOLAND: On the determination of
14 interchangeability, I recall something I
15 think in your testimony previous Mr. Boyles
16 where you have discussed evaluation of the
17 duties, and I believe you meant the position
18 descriptions, that it had to meet 65 percent
19 similar to be considered interchangeable. Am
20 I recalling that --

21 MR. BOYLES: I've heard the term
22 prominence or 65 percent; but a majority of
23 the duties --

24 MS. BOLAND: Is that across the board
25

when you evaluate these positions?

2 MR. BOYLES: Yes; it's the same
3 process.

4 MS. BOLAND: So that would have applied
5 to Mr. Fiser's position as well?

6 MR. BOYLES: Yes; same exact process.

7 MR. STEIN: Mr. Scalice, how was this
8 published? How did it get disseminated, the
9 October 19th, 1999 letter?

10 MR. ROGERS: It's sent out E-mail.

11 MR. REYNOLDS: Electronically and then
12 in those areas -- if I may answer -- we send
it out electronically to everyone who has an
E-mail station or a work station, and then we
15 make it available for those areas where
16 employees don't have computers so they can
17 see it.

18 MR. BOYLES: Instructions with that
19 E-mail indicated that sites should distribute
20 that to anyone including contractors.

21 MR. STEIN: All right.

22 MR. REYES: I think we're on item 6 of
23 the agenda. What I suggest we do is the NRC
24 will leave the room and have a caucus. I
25 suggest for everybody else you take a break

1 or whatever. The goal is to be back here in
2 10 minutes.

3 If we were not to have any follow-up
4 questions when we get back, Mr. Fiser, we'll
5 then ask you the protocol I discussed earlier
6 to make a presentation. So we're going to
7 take a break.

8 (A recess was taken.)

9 MR. REYES: Let me see if we can
10 continue.

11 We have no additional questions for
12 TVA. We all asked them through the process,
so we're going to ask Mr. Fiser to make his
presentation. And if you don't mind getting
15 closer to the court reporter.

16 MR. FISER: All right. Are we ready?

17 MS. BOLAND: Yes.

18 MR. FISER: About 12 years ago, I
19 received a call from TVA's corporate
20 chemistry manager. He wanted me to come to
21 TVA and help out in their restart and
22 recovery efforts in their nuclear power
23 chemistry program. It had been shut down for
24 some time due to safety concerns. I
25 resisted, and he continued to pitch the

company, finally asking that my wife and I
2 fly out to see the area. I told him that I
3 would do that but I would feel bad about it
4 because I would feel like I was taking TVA's
5 money for nothing, because I had no good
6 reason to leave Arkansas. Following months
7 of persuasion, I decided to leave Arkansas
8 and 14 years that I spent there and join
9 TVA's nuclear power recovery effort in
10 September of 1987.

11 Now, over the past 7 years, I have been
12 performing in my mind a root cause
determination. This root cause was to
determine exactly where, when, and why my
15 professional career began to unravel right
16 before my eyes. In the beginning, I was
17 unconcerned believing that honesty,
18 truthfulness, and hard work would exonerate
19 me. I had always been told that sooner or
20 later, the truth would surface and the truth
21 would win. I still believe that, but not
22 necessarily in this life.

23 Several years ago, I was asked to
24 perform a pre- and post-assessment of the
25 chemistry program at Sequoyah Nuclear Plant,

and an evaluation schedule to be performed in
2 1992. My instructions from Bill Lautergen
3 was as follows: I want you to do the
4 assessment using the IMPO criteria. I want
5 you to be very critical. If the IMPO
6 documents and guidelines tell you to do
7 something and you don't do it for whatever
8 reason, I want that documented. If the IMPO
9 guideline said for you to do something a
10 particular way and your program accomplishes
11 the same thing a different way, I want to
12 know that. In the same manner, even if they
say do something and you accomplish it in
4 what you feel is a far superior way, I want
15 that documented as well. You see, what he
16 was looking for was a list of discrepancies.
17 Then after the list was compiled, Bill sat
18 down with us and started in the review
19 process. He wanted to provide a detached and
20 objective input as to what really needed to
21 be fixed prior to the IMPO visit. He made it
22 very plain that the list was for our internal
23 use only and it would not be going any
24 further barring the discovery of some
25 condition or conditions adverse to quality.

1 I followed his instructions to the
2 letter, and the resulting list was some 120
3 or 130 items. Mr. Laudergen was delighted
4 with my efforts remarking several times how
5 pleased he was that I provided exactly what
6 he wanted.

7 Out of the long list of items, only
8 about half a dozen actually resulted in some
9 tweaking of the chemistry program.
10 Unfortunately, what to one man was a job well
11 done was to another man a job undone.

12 Shortly after I submitted the results
13 of the pre-assessment to Mr. Laudergen, Mr.
14 John LePoint, Sequoyah's vice president,
15 called Dr. Don Adams and me into his office
16 on a Saturday and lit into us for four
17 hours. He was livid, yelling, cursing,
18 swearing, and levied all kinds of accusations
19 against the chemistry program and me. The
20 end result -- and this is critical -- was
21 that he instructed me to enter every one of
22 these items into TROY, Sequoyah's
23 computerized system for tracking and
24 reporting of open items.

25 I heard him reporting in to his

1 supervisor, Mr. Joe Bynum, that he felt
2 Sequoyah was ready for the upcoming IMPO
3 assessment with the exception of chemistry.
4 Note, remember that name, Joe Bynum; because
5 it's going to be coming up a lot.

6 Well, LePoint was wrong. My review was
7 a resounding success, and at the conclusion
8 of IMPO's assessment, for the first time ever
9 IMPO said there was no findings and no
10 concerns with Sequoyah's chemistry program.
11 I told you that entering the information was
12 a critical step. Once this huge list of open
13 items appeared in TROY, every auditing and
14 oversight group in TVA was unleashed on
15 Sequoyah chemistry, and me in particular,
16 with a vengeance. What for Mr. Lauderger was
17 a source for giving me a performance bonus
18 became a festering tumor for others that
19 ultimately led to the loss of my position
20 three times.

21 I can state with certainty that using
22 the corrective action process at TVA is
23 tantamount to professional suicide. NRC,
24 take note. I can assure you beyond
25 reasonable doubt that the chilling effect

flourishes in TVA's nuclear program. The
2 first time I lost my job, my position, was
3 back in 1993 when Joe Bynum placed me in
4 TVA's employee transition program. They said
5 they no longer needed a chemistry
6 superintendent, and therefore my job had been
7 eliminated.

8 Shortly after being placed in ETP,
9 another letter came from Joe Bynum, and it
10 was circulated around stating that the
11 chemistry superintendent position at Sequoyah
12 was being reinstated; he had lied when he
13 said the job had been eliminated. This was
14 only pretense used to get rid of me. Not
15 only was it being reinstated, but the
16 position was being upgraded from a PG-9 to a
17 PG-10. Let me hasten to point out that this
18 is the same Joe Bynum that TVA removed from
19 their nuclear program after losing Mr. Bill
20 Jaquard's D.O.L. and NRC cases. NRC's
21 investigation of Bill Jaquard's case revealed
22 that Bynum had lied under oath. TVA chose to
23 retain Mr. Bynum's services, simply moving
24 him out of the none -- into the non-nuclear
25 program. Today, Mr. Bynum continues to be

2 handsomely rewarded by TVA. He continues to
3 enjoy benefits of employment, retirement,
4 salary increases, annual bonuses since that
5 time. The fact of the matter is that even if
6 you get caught doing the wrong thing, as long
7 as it benefits TVA in the process, you get to
8 keep your job and even get a raise. If,
9 however, you do the right thing, like use the
10 corrective action process to document
11 problems, you will find yourself harassed
12 right out of a job.

12 At first, I was delighted to hear about
my position being upgraded, thinking that
4 they would follow the rules, bring me out of
15 EPT, place me in my job, and give me a
16 raise. It did not happen. I was interviewed
17 for the new position and offered the job on
18 the spot by Mr. Charles Kent, the department
19 head, and the new Sequoyah plant manager. I
20 was given a raise commensurate with the PG-10
21 position. Charles Kent told me he knew all
22 that had gone on before, he knew I had been
23 unjustly treated, that it was wrong, and that
24 he had already brought the new Sequoyah plant
25 manager up to speed on my case. They were

both in agreement that I should be
2 reinstated. Charles told me to lay low, stay
3 quiet, and he would get this thing done
4 quietly and quickly before those who
5 masterminded the previous shenanigans had a
6 chance to find out what was going on. This
7 is all undeniably documented.

8 Shortly thereafter, Charles Kent called
9 me back out to Sequoyah and told me that it
10 was not going to work out. He said that
11 others had found out about his plan, and it
12 was like he had kicked a hornets' nest. He
13 said it would be unfair for me -- for him to
14 subject me to that kind of treatment that was
15 in store for me. He said it would be unfair
16 for him to subject -- I said that. I was
17 summarily discharged back to TVA's employee
18 transition program. The same guys that
19 targeted me before, guys that still enjoy the
20 benefits of TVA employment, Joe Bynum and
21 Wilson MacArthur and Tom McGrath, got another
22 chance to teach me a lesson, and for the
23 second time, I lost my position. Wilson
24 MacArthur found out about Kent's plan to
25 reinstate me, and he personally informed Joe

Bynum of Sequoyah's intentions.

2 Bewildered and dejected, I went to
3 MacArthur's office, thinking he was my
4 friend, and told him what had happened and
5 that I was going to find out who was hiding
6 in the bushes and shooting me in the back.
7 MacArthur confessed that he was the one who
8 told Bynum. Shocked, I asked him why he
9 would do that, and he simply stated that Joe
10 had to know. The truth is that Bynum,
11 MacArthur, and McGrath were all three
12 responsible for having me removed in the
 first place.

4 Following these developments, I filed a
15 complaint with the Department of Labor, which
16 was settled in '93. In order to keep from
17 being terminated, I reluctantly agreed to a
18 settlement offer. I was not only denied the
19 PG-10, but was also removed from the Sequoyah
20 chemistry program and busted from a PG-9 to a
21 PG-8. I was very much reluctant to take this
22 offer until a chance face-to-face meeting
23 with the director of Human Resources, Mr.
24 Phil Reynolds. Mr. Reynolds reassured me
25 that all those responsible for my demise had

2 been reassigned or in some way moved out of
3 my chain of command and I could come back
4 without fear of reprisals. He personally
5 encouraged me to put all this behind me and
6 get back to work.

7 For the record, NRC never performed a
8 thorough investigation of this first
9 complaint. Mr. Vorace was assigned the case,
10 but following the initial meeting never once
11 contacted me, never answered a single phone
12 call, never returned a phone call or
13 anything. For years I have wondered if I
14 would have been spared further misery if he
15 had done his job, and I call upon NRC's IG to
16 investigate the disposition of this former
17 case. Now, back to this one.

18 After approximately a year in this
19 lower position following the death of my
20 general manager, Mr. Don Moody, Mr. Tom
21 McGrath, chairman of the Nuclear Safety
22 Review Board, and Wilson MacArthur, a
23 long-standing member of the Nuclear Safety
24 Review Board, were directly in my chain of
25 command. These two underlinks of Joe Bynum,
professional thugs, dusted off their old bag

of dirty tricks and, you guessed it, I was
2 for the third time surreptitiously
3 reorganized out of another position. I was
4 in line for my third and final lesson from
5 these guys.

6 Older and wiser now, I recognized what
7 was going on early in the development stages,
8 and hoping to avoid trouble, went to Human
9 Resources to discuss my concerns directly
10 with the personnel department, specifically
11 Mr. Ed Boyles and Mr. Phil Reynolds. I told
12 them plainly in advance what McGrath and
MacArthur were scheming. I also told them
what I would be forced to do if this course
15 of action was not turned around.

16 The Human Resources department,
17 specifically Mr. Phil Reynolds and Mr. Ed
18 Boyles, chose to stand aside and abide by the
19 dictates of McGrath and MacArthur with Mr.
20 Oliver Kingsley's full knowledge and
21 support. Therefore, I submitted my second
22 D.O.L. complaint.

23 Phil Reynold met with me and told me
24 that he would allow me to keep my job working
25 for MacArthur and McGrath if I dropped the

2 D.O.L. complaint. I refused, knowing that
3 short of holding in my hand hard and fast
4 D.O.L. and NRC rulings on this case, I would
5 be in for the same treatment again.

6 As a matter of routine with the filing
7 of the D.O.L. complaint, I met with TVA's
8 IG. I carefully went over the evidence that
9 I have today, and the inspector documented
10 the conversation and said he would look into
11 it. The report he submitted was a farce. It
12 was filled with remarks like, He said one
13 thing, they said something else; therefore, I
14 cannot decide who was telling the truth. It
15 was laughable. This investigative body
16 having commanded the same set of facts as
17 D.O.L. and NRC was incapable of dealing with
18 those facts. NRC and D.O.L. had no problem
19 understanding what went on and got to the
20 bottom of the matter at least preliminarily.
21 Never, never, never trust what you hear from
22 TVA's IG.

23 Thanks to Ms. Benson, NRC in concert
24 with D.O.L. has successfully and correctly
25 arrived at the preliminary conclusion that
TVA has once again discriminated against an

employee engaged in corrective activities.

2 I find it incomprehensible that I am
3 standing before this group. Do you realize
4 that TVA has discriminated and removed three
5 chemistry managers for engaging in protected
6 activity? I can remember not too long ago
7 when Dr. Matthews was removed from his
8 position for refusing to be pressured into
9 signing off on a start-up plan he knew did
10 not meet commitments made by TVA to NRC. He
11 filed a complaint, you investigated it; sure
12 enough, Dr. Matthews was right. But he never
again served another day as a chemistry
4 superintendent at Watts Bar. TVA sent out a
15 little form letter stating that they would
16 not tolerate this type of discrimination and
17 that people should feel free to voice
18 concerns without fear of reprisals.

19 Shortly thereafter, we see Mr. Bill
20 Jaquard, TVA's corporate manager, being
21 removed from his position. He, too, filed a
22 complaint. Here comes that little letter
23 again stating that TVA will not tolerate
24 discrimination. Saying to myself, I'll bet
25 they learned their lesson this time, surely

the intimidation and harassment of employees
for raising safety concerns will stop now.

Well, here we are again. I wonder, and I
just found out, if TVA has already circulated
that stupid little letter around and lied
again after this case.

TVA lies when they say they will not
tolerate discrimination. TVA lies when they
say that people should feel free to submit
concerns and use the corrective action
process. TVA lies when they say they will
deal seriously with those who discriminate
against employees. Check it out. MacArthur,
McGrath, Bynum are still gainfully employed
by TVA.

NRC and TVA, you have no credibility
when it comes to the protection of those who
raise concerns using the corrective action
process. Indeed, it's now to the point that
it appears there may be collusion between
your two agencies. How can NRC allow the
systematic destruction of people like me to
continue? TVA, have you hired a consulting
firm to come in and interview our personnel
and verify that everyone has a warm feeling

about submitting safety concerns? If you
2 did, please tell me it's not the same one
3 they used to verify it was okay in the past.

4 By the way, strangely enough, they
5 didn't talk to me. How many times is it
6 going to take? Let me state it as plainly as
7 I know how.

8 First, TVA should be assessed the
9 maximum fine possible in cases like this.
10 Second, TVA has no business holding a license
11 to operate a nuclear power facility until
12 they can prove with reasonable assurance that
the intimidation, harassment, and ruin of
13 individuals raising legitimate safety issues
14 is no longer tolerated. Third, NRC should
15 insist that I be made whole again and force
16 TVA to reinstate me at or above a PG-10 level
17 which they denied me with no loss in pay, no
18 loss in benefits, and no break in service.
19 This and only this would send them a
20 resounding message that there are
21 consequences to illegal behavior. The
22 issuance of letters and independent
23 verification by consulting firms functioning
24 at their direction is not sufficient proof;
25

1
2 it's all lies and should not be tolerated by
3 you, NRC, unless you, too, are willing to
4 stand aside and allow the chilling effect to
5 run its course.

6 Well, NRC, what are you going to do
7 this time? Anything short of the maximum
8 enforcement possible with my reinstatement
9 means TVA has beat the system again. Nothing
10 else will result in a change of TVA's heart
11 of hearts. History has repeated itself three
12 times for me personally. You called us down
13 here years after the fact with a preliminary
14 ruling in my favor. Now they can once again
15 repeat their old line, These problems
16 happened years ago, the people responsible
17 have been reassigned to the non-nuclear team
18 or left TVA, we take discrimination very
19 seriously and we will not tolerate it
20 anymore. It's all lies. I know it and so do
21 you. Are you willing to let them get away
22 with it? Well, what about me? What about
23 the guy who thinks right will win, the cream
24 will rise to the top, truth triumphs and on
25 and on?

Let me tell you about me. I signed a

2 settlement agreement and after paying taxes
3 and attorneys' fees, I had enough money to
4 last a few months, and I can't tell what or
5 they'll sue me for that. You would think
6 this would have been sufficient time to find
7 replacement employment. My first try was at
8 IMPO. I filled out applications, did the
9 telephone thing, everything was going so
10 well, and then I hit a brick wall. While I
11 was in the process of being scheduled in for
12 an interview, the IMPO person went to people
13 asking for verbal references from anyone who
14 knew me, Dr. Jim Corbick, one of the
15 chemistry evaluators, said something like
16 this, Well, I don't really know the facts,
17 but I do know that TVA has been trying to get
18 rid of him for years. Needless to say, I
19 never got the interview and every attempt
20 since then has been met with rejection. This
21 blackballing is real, tangible, purposeful,
22 and undeniable.

23 Other interesting facts, my wife is not
24 insurable due to a congenital heart defect.
25 We were not allowed to purchase health
insurance using TVA's group retirement plan.

1 I cannot find work in the Chattanooga area
2 that will pay me what I was making. I am
3 faced with the fact that I must sell my home
4 in the very near future. My son has been
5 undoubtedly scarred by the fact that somebody
6 can do the right thing and suffer so --
7 retirement for me is out of the question.
8 This is what happens to someone who does the
9 right thing at TVA. On the other hand, the
10 person who lies under oath gets a new job,
11 gets a raise and bonuses every year, all the
12 benefits an agency the size of TVA offers.

To TVA, I must say, my hat is off to
you. You won. It may appear from these
15 proceedings that I may be winning or ahead,
16 but I will not. I cannot provide for my
17 family, I cannot provide for retirement, I
18 cannot even hold onto my house. Your goal
19 was to silence and get rid of me, and you met
20 your objective. You may have to pay a fine,
21 but what's that to you? When you compare
22 TVA's net worth to mine or to yours, it would
23 be about like us getting fined a penny.
24 Actually, it's far less than that. No wonder
25 there's no real change.

1 I am most concerned with the fact that
2 many people had to stand up on my behalf and
3 tell the truth not counting the cost in order
4 for TVA to have been found guilty at least
5 preliminarily. I fear for their future in
6 TVA's nuclear program for they will face the
7 same intimidation and harassment as I was
8 subjected to if this preliminary ruling does
9 not stand. I was going to mention their
10 names in this presentation, but I do not feel
11 TVA can be trusted with that information. I
12 know TVA has already made life miserable for
some. I was going to give the list to NRC,
but I fear it will end up in TVA's hands so
15 TVA can be sure these people are properly
16 treated. If they ruin their lives as they
17 have mine, I will make it public at that
18 time. It probably will not matter for as we
19 have already seen once, when TVA decides to
20 harass and intimidate someone with clear
21 resolve to run him or her off, they will be
22 dauntless on their mission.

23 I have trouble understanding how it is
24 that TVA continues to get away with the
25 systematic assassination of the careers of

2 their employees. NRC has been ineffective at
3 preventing this. NRC's IG should investigate
4 why you have not taken stronger enforcement
5 action before now. It's your job to see to
6 it that this does not happen. How is it that
7 you allow them to continue to get away with
8 it again? There's the appearance of
9 collusion; three chemistry managers, and all
10 three times TVA sends the same stupid letter
11 around saying the exact same thing as the one
12 I just read. Do you believe me this time?

13 What was my sin? Well, first, let's
14 face the facts. A fine for TVA is exactly
15 what they would like to settle for at this
16 juncture. It not only means nothing to them
17 monetarily, but they can say all this
18 happened years ago and they are therefore
19 absolved of culpability. What TVA does not
20 want is for you to insist that they reinstate
21 me. This would encourage their employees
22 showing them that the system works and that
23 NRC has credibility and clout. It could be
24 proved that the little guy could win. This
25 must be a terrifying thought for you.

 What was my sin or what was my crime?

1 I was tried and found guilty by members of
2 the Nuclear Safety Review Board of all
3 things, Tom McGrath and Wilson MacArthur. I
4 was found guilty of performing the letter and
5 spirit of Bill Lauderger's wishes. I did not
6 create the problems; I simply discovered
7 them.

8 Since taking the Sequoyah chemistry
9 superintendent position back in 1988, I've
10 found thousands of problems. Never once do I
11 recall receiving the third degree for finding
12 and fixing problems. But when I placed the
list in TROY and the problems entered the
public domain, all hell broke loose. That
15 remains the root cause of the unraveling of
16 my professional career.

17 I left a secure position at Arizona
18 Nuclear I to go to TVA, and I contributed to
19 their recovery effort. I also brought every
20 aspect of Sequoyah's chemistry program
21 solidly into IMPO's best plant category. I
22 never had even one IMPO finding while I was
23 in charge of the program. The first IMPO
24 evaluation came six weeks after I was placed
25 in charge of Sequoyah's chemistry group, the

2 date I had already been sent to IMPO and the
3 six findings, six findings in that evaluation
4 were or should have been charged to the
5 previous chemistry administration. I
6 succeeded, but it has cost me my career and
7 my future in nuclear power and my family has
8 paid an unspeakable price. In TVA's employ,
9 doing the wrong thing is a vehicle for
10 continued prosperous employment, lying under
11 oath, making life miserable for those who
12 uncover problems, protecting TVA's name at
any cost, standing aside when you know
federal law is being violated. What was my
sin? I did the right thing.

15 I conclude with this quote, For what
16 credit is there if when you sin and are
17 harshly treated, you endure it with patience,
18 but if you do what is right and suffer for it
19 and patiently endure it, this finds fair with
20 God? 1 Peter 2:20.

21 MR. REYES: Thank you, Mr. Fiser.

22 Counsel, can you put the agenda back?
23 I believe we're on number 9 on the agenda,
24 and you have an opportunity of rebuttal of
25 any information that we just received.

MR. MARQUAND: Can we have five minutes
2 to consider that, please?

MR. REYES: Yes. Let's go off the
3 record for five minutes.
4

(A recess was taken.)
5

MR. BURZYNSKI: Thank you.
6

7 First I would like to say that we sense
8 the deep pain that Gary feels, and we are
9 sympathetic to that; but I do want to make
10 the point that a number of employees over the
11 years have had the same kind of situation of
12 job loss at TVA. You've heard us discuss
earlier in our presentation the kinds of
programs and policies that the board was
15 interested in promulgating to try to
16 ameliorate the discomfort associated with the
17 loss of job when we went through the kinds of
18 downsizing we had. Those programs were made
19 available to people, and, in fact, even Gary
20 took advantage of some of those.

21 I think he makes some suggestions about
22 the cheapness of the letter we sent out, and
23 it's easy to focus on that piece of paper
24 without really understanding that paper and
25 TVA's commitment in TVA Nuclear to really

2 improve and maintain a positive culture to
3 raise and react to safety concerns. I think
4 when you look behind it, you'll find the
5 commitment is there with the training. We
6 spoke of Star 7 training, we spoke of the Do
7 What's Right training. We told you about
8 survey results, and those are all good. But
9 more importantly, I think you know and you've
10 seen the data. The data is there. The
11 trends on allegations, the trends on
12 complaints are down, and the performance in
13 the corrective action program is remarkably
14 improved. In fact, your inspector sits in on
15 our daily management review committee
16 meetings daily at the plant, and you see the
17 environment we have for people to bring
18 forward issues, use the corrective action
19 program, and ultimately put them in the
20 corrective action program tracking system.
21 And that's something that has been a clear
22 thing to us, a secret behind our success in
23 improved plant performance; and we're not
24 willing to let that go. That's a fundamental
25 for our program, and the data is there for
it.

I think there has been suggestions that
2 several people conspired and influenced a
3 whole number of decisionmakers. I think we
4 laid out for you today the types of processes
5 and checks and balances we have put in place
6 to ensure that our selection process and the
7 decisions associated with personnel decisions
8 are carried out in an impartial, fair manner
9 consistent with the regulations and our
10 internal procedures to ensure that we do the
11 right things and that we do it fairly for all
12 people. Unfortunately, we have learned
through the personnel actions we've taken
1 over the years that fairness usually means
15 equally unfair to everybody, and some people
16 don't react to that as well as we would all
17 like them to. We are not in a position to
18 change that completely, but in summary, we
19 are sympathetic to his feelings. But the
20 company commitment is there to do the right
21 things to ameliorate transitions for
22 employees, to do the right thing on the
23 safety conscious work place, and promotion of
24 the corrective action program and in
25 providing the checks and balances and

processes and procedures to ensure that
2 personnel decisions are carried out in a fair
3 and consistent manner in an impartial way.

4 And I think that's it.

5 MR. REYES: Okay. Bring us to the last
6 item on the agenda.

7 I'd like to make Anne Boland, the
8 enforcement officer, the contact with
9 information you agreed to provide us, and we
10 have two items right now.

11 MS. BOLAND: I have that you were going
12 to get back with us on a discussion of the
13 other departments and how they were reduced
14 in the '96 reorganization, and particularly
15 also emphasizing those groups under Mr.
16 McGrath's purview. And then also the second
17 item is Mr. McGrath's reporting chain when he
18 was the NSRB chairman.

19 MR. BURZYNSKI: And I think the third
20 thing we wanted to offer to you is the merit
21 cases that outline the way we interpret the
22 regulations and some of the reasons behind
23 that, so we'll get those three things to you
24 next week and --

25 MR. REYES: And Anne will be your

contact.

2 MR. REYES: With that I want to thank
3 you for a long afternoon but very informative
4 for us, and now we'll proceed with our
5 process. Thank you.

6 (Meeting adjourned at 5:25 p.m.)
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STATE OF GEORGIA:
COUNTY OF FULTON:

2

3 I hereby certify that the foregoing
4 transcript was reported, as stated in the caption,
5 and the questions and answers thereto were reduced
6 to typewriting under my direction; that the
7 foregoing pages 1 through 188 represent a true,
8 complete, and correct transcript of the evidence
9 given upon said hearing, and I further certify that
10 I am not of kin or counsel to the parties in the
11 case; am not in the employ of counsel for any of
12 said parties; nor am I in anywise interested in the
result of said case.

4

Disclosure Pursuant to O.C.G.A. 9-11-28 (d):
15 The party taking this deposition will receive the
16 original and one copy based on our standard and
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20 expenses of production may be added to either party
21 where applicable. Our customary appearance fee will
22 be charged to the party taking this deposition.

23

This, the 15th day of December 1999.

24

25

JANET K. WILSON, CCR-B-1108
My commission expires on the
16th day of November 2002.