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Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

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

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

Location: Chattanooga, Tennessee

Date: Wednesday, June 19, 2002

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

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

Chickamauga Room
Read House Hotel
827 Broad Street
Chattanooga, Tennessee

Wednesday, June 19, 2002

The above entitled matter came on for hearing
pursuant to Notice at 9:00 a.m.

BEFORE:

CHARLES BECHHOEFER, Chairman
ANN MARSHALL YOUNG, Administrative Judge
RICHARD F. COLE, Administrative Judge
Assisted by Lee Dewey, Chief Counsel
and Raju Goyal, Law Clerk

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
George Donald Hickman	4153	4221	4249	4250
Gary L. Fiser	--	4253	4420	4427

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

30, 32, 33	Premarked	4208
162	Premarked	4208
174, pages 628, 630 and 631	Premarked	4221
174, pages 721-733	Premarked	4234
178	Premarked	4425
179	Premarked	4427

TVA:

4	Premarked	4302
11	Premarked	4229
13	Premarked	4231
18	Premarked	4375
135	Premarked	4293
136	Premarked	4309

P R O C E E D I N G S

CHAIRMAN BECHHOEFER: Good morning, ladies and gentlemen.

MR. MARQUAND: Good morning, Judge.

CHAIRMAN BECHHOEFER: Are there any preliminary matters this morning before we start the next witness?

MR. DAMBLY: None for the staff.

MR. MARQUAND: No, Your Honor.

CHAIRMAN BECHHOEFER: Staff wish to call --

MR. DAMBLY: Yes, Your Honor, at this time, staff would call Mr. Hickman.

Whereupon,

GEORGE DONALD HICKMAN

appeared as a witness herein and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DAMBLY:

Q Good morning, Mr. Hickman, would you please state your name and spell your name for the record?

A Yes, my name is George Donald Hickman, my last name is spelled H-i-c-k-m-a-n.

Q And what's your present occupation?

A I am presently the acting Inspector General at the Tennessee Valley Authority.

Q And how long have you been in that position?

1 A I've been in the acting IG position since November
2 of last year.

3 Q And can you please tell us what your educational
4 background is?

5 A Yes, sir, I have a bachelor's degree and some post
6 bachelor graduate study.

7 Q In what field?

8 A My undergraduate field was sociology and
9 psychology and my master's study was in educational
10 administration.

11 Q And when did you go to work for TVA?

12 A I became an employee of the Tennessee Valley
13 Authority in March 1986.

14 Q In what capacity?

15 A Initially I was hired as a special agent.

16 Q In the IG's office?

17 A Yes, sir.

18 Q And prior to coming to TVA, had you worked as a
19 special agent elsewhere?

20 A Yes, I had worked for about eight and a half years
21 as a special agent with the Federal Bureau of Investigation.

22 Q And during your entire tenure at TVA, you've been
23 in the IG's office?

24 A That is correct.

25 Q Do you know when TVA's OIG became statutory?

1 A The IG became statutory in 1988, with the IG Act
2 amendment of '88.

3 Q And when did the IG position itself become a
4 Presidential appointment?

5 A The position itself became Presidentially
6 appointed or it was designated to be a Presidentially
7 appointed position in the year 2000, I'm not exactly sure of
8 the month that the bill passed, but it was in the year 2000.

9 Q Okay, and has there been a Presidential appointee
10 yet?

11 A No.

12 Q So have you been acting since that time?

13 A Yes, I'm acting in accordance with the Federal
14 Vacancy Reform Act, which basically -- with the concurrence
15 of the White House, I serve as the acting until the
16 President chooses to appoint a permanent IG.

17 Q And when did you become acting IG?

18 A I became the acting IG I believe the date was
19 November 27 of 2001, but it was in November of last year.

20 Q And prior to that, I guess I didn't ask you, but
21 were you the Inspector General before that?

22 A No, sir. My permanent position is the Assistant
23 Inspector General for Investigations.

24 Q And so when the position became Presidential -- a
25 Presidential appointment kind of position, the prior IG left

1 or --

2 A The prior IG retired from government service and
3 took a job in the private sector. Under the Vacancy Reform
4 Act that I mentioned earlier, his first assistant or his
5 deputy, whichever, becomes the acting IG until the President
6 appoints someone. And I was serving in that role as the
7 former IG's first assistant.

8 Q Have you been nominated for the position?

9 A No, sir, I have not.

10 Q Within the Office of Inspector General at TVA, and
11 since it became statutory, do you have within your office
12 legal counsel?

13 A Yes, sir, I do.

14 Q And is that where you get your legal advice?

15 A Yes.

16 Q Do you use TVA's OGC for legal advice?

17 A TVA's what, sir?

18 Q Office of General Counsel.

19 A For legal advice? No, sir, we do not. In fact,
20 currently we have not just a legal advisor, we've always had
21 two or three attorneys in our office, currently we have
22 three attorneys who work in our legal counsel office.

23 Q And that would be throughout the '90s?

24 A Throughout the '90s, we had two or three people,
25 yes, a minimum of two.

1 Q And I guess from '88 on, when you became -- or
2 when the office became a statutory designated Office of
3 Inspector General, you have been independent from the rest
4 of TVA?

5 A Yes, that is correct.

6 Q During the time that you've been in TVA in the
7 IG's office, how many whistleblower discrimination
8 investigations, Section 211 or 210, have you conducted?

9 A Have I personally conducted?

10 Q Yes.

11 A Probably no more than one or two where I've
12 actually done the interviews. I may have been involved --
13 sat in on some witness interviews because I was the manager
14 of the department that handled the whistleblower
15 investigations for a number of years. So I didn't actually
16 go out and do all of the interviews, but from time to time I
17 might have been asked to sit in on an interview with one of
18 the investigators. But I have supervised -- the direct
19 answer to your question, I have supervised -- I want to say
20 hundreds of cases.

21 Q Most of those come from the plant sites?

22 A Either from the plant sites or in some rare
23 instances, they might be -- we're talking nuclear
24 whistleblower cases I am assuming.

25 Q Right.

1 A Okay. Most of them come from the plant sites,
2 yes, but in some instances they might be from individuals
3 who work in administrative positions in nuclear power as
4 well.

5 Q Okay. Do you know -- can you give us an
6 approximation for what percentage of those cases that were
7 investigated your office substantiated the whistleblower's
8 claim?

9 MR. MARQUAND: Your Honor, I'm going to object.
10 Mr. Hickman has been called as a witness to address the
11 Sasser letter. If we're going to start talking about
12 whistleblower cases in general and what the trends are and
13 things, that's way beyond the scope of what he was
14 identified for as a witness during the prehearing
15 conference. It's certainly beyond the scope of the Notice
16 of Violation.

17 This isn't a hostile work environment case and
18 this is not relevant to any of the issues in this case.

19 MR. DAMBLY: Let me just say, you know, we've been
20 over this ground before. He's on our witness list as a
21 witness. There's no limitations when we put him on the
22 witness list. There are many documents in this case that
23 are directly applicable to him, some of which he wrote,
24 having nothing to do with the Sasser letter.

25 MR. MARQUAND: He's very limited on their list,

1 it's only the Sasser letter and that's the only basis on
2 which he was listed on their list and it specifically says
3 that. He was identified by the staff following the
4 prehearing conference when they said that they would not
5 call Mr. Vigluicci with respect to Sasser letter and that's
6 the only basis that they said that they would call him. The
7 issue of hostile work environment is not an issue in this
8 case and it's not an issue in the Notice of Violation.

9 JUDGE YOUNG: Do you have a copy of the staff
10 witness list, either of you?

11 MR. MARQUAND: I'm sure we do.

12 MR. DAMBLY: I have a supplemental list, I'm not
13 sure --

14 MR. MARQUAND: It's a supplemental list following
15 I think the fourth prehearing conference.

16 The NRC staff supplemental witness list dated
17 April 9, 2002, in which they proposed to remove Mr.
18 Vigluicci says "The staff has agreed to accept the testimony
19 of G. Donald Hickman of the TVA OIG in place of testimony by
20 Vigluicci," and they listed him and said Mr. Hickman works
21 in the TVA Office of Inspector General and stated in a
22 declaration of April 4, 2002 that he prepared and reviewed -
23 -

24 JUDGE YOUNG: Without reading it, if either of you
25 have a copy that I could look at.

1 (A document was proffered to Judge Young.)

2 JUDGE YOUNG: What's the relevance of what we're
3 talking about, the whistleblower complaints?

4 MR. DAMBLY: Dr. McArthur and Mr. McGrath have
5 said what a wonderful working environment it was and I think
6 it's relevant for that. I hadn't planned to spend a lot of
7 time on -- this is background. And I also will be dealing
8 with a comment by counsel that these are self-serving in-
9 house reports prepared for litigation, which I'm sure you've
10 seen before by now.

11 CHAIRMAN BECHHOEFER: Well, I personally -- but I
12 wouldn't do it if the parties did it first -- I wanted to
13 question Mr. Hickman a little bit about Ms. Landers.

14 JUDGE YOUNG: About what?

15 MR. DAMBLY: Ms. Landers' complaint?

16 CHAIRMAN BECHHOEFER: Yeah.

17 MR. DAMBLY: I had intended also to ask him some
18 questions on how they conduct investigations because we've
19 had testimony about how certain documents get in or don't
20 get in. There are documents in the case that he sent to Mr.
21 Fiser that are in the record. Mr. Fiser has talked about
22 them, I don't see any reason why relevant evidence should be
23 excluded. I mean, just because Mr. Marquand tends to list
24 witnesses that are going to talk about personnel, I don't
25 see why that should make a big difference here.

1 JUDGE YOUNG: I think that TVA witnesses did open
2 the door to the work environment issue, so I would allow it.

3 CHAIRMAN BECHHOEFER: We'll overrule the objection
4 at this stage.

5 BY MR. DAMBLY:

6 Q If you could tell us to the best of your
7 recollection how -- what percentage of the hundreds of
8 nuclear whistleblower complaints your office has
9 substantiated.

10 A May I qualify my answer first by saying that when
11 we substantiate a case, we are not making a determination as
12 to whether there was a Section 211 violation.

13 Q Okay.

14 A To take action against a nuclear employee for
15 raising a differing staff view is a violation of the TVA
16 policy. Our investigations are not designed specifically to
17 make a call as to whether there is or is not a Section 211
18 violation, even though we will generally be looking at the
19 same set of circumstances.

20 JUDGE YOUNG: Section 211, refresh my memory on
21 that, please.

22 THE WITNESS: Section 211 of the Energy
23 Reorganization Act is what I'm referring to.

24 JUDGE YOUNG: The whistleblower section?

25 THE WITNESS: Yes.

1 JUDGE YOUNG: Thank you.

2 THE WITNESS: So when we do an investigation, we
3 generally consider it to be an investigation to determine if
4 an individual may have violated TVA policy. The decision on
5 whether there is or is not a Section 211 violation is
6 entrusted to the Department of Labor.

7 So having said that -- and of course, I don't have
8 numbers in front of me and this certainly is speculation on
9 my part, and it depends on how far back you want me to go.
10 Do you want me to go back to 1986 or do you want me to start
11 with 1988 when we became a statutory office? Because when
12 the office was initially formed in 1986, there were
13 literally hundreds of concerns at our doorstep when the
14 office was created that came from the nuclear program. Some
15 of those were -- they were all characterized as
16 whistleblower concerns, even though many of them were
17 management and personnel issues.

18 Q Why don't we just take it from the '90s.

19 A My estimate -- and this is a guess -- since 1988,
20 my estimate is that we've probably substantiated, in the
21 nuclear area, cases from whistleblowers of somewhere between
22 10 to 15 percent of the allegations. That's an estimate.
23 I'd have to go back and pull the hard numbers, but that's
24 just my sense of having -- since I've been involved.

25 Q Okay. When the IG's office conducts an

1 investigation, is it the normal practice of your
2 investigators to place people being interviewed under oath?

3 A It is not a normal practice, no.

4 Q No?

5 A We have the authority to administer an oath;
6 however, it is not a normal practice to place a person under
7 oath.

8 Q Okay. Do you normally tape record conversations
9 or interviews?

10 A Currently or what time frame are we speaking of,
11 because our policy has been different --

12 Q '93 through the present.

13 A In 1993, the only way that an agent could tape
14 record an interview was by permission of the Inspector
15 General himself. In 1994, that policy changed and we gave
16 the agent discretion to decide when a witness interview
17 would be tape recorded. But it's not required. We do not
18 require tape recorded interviews.

19 Q And if you tape record them, are they transcribed
20 normally?

21 A No, not normally.

22 Q So what's normal practice to record written --
23 what's your normal practice to take whatever you hear and
24 turn it into a written document of what the employee said,
25 how does that work?

1 A Okay, we record witness statements on an OIG Form
2 02. It is what we call a Report of Interview. We have one
3 of three procedures that we use. If the interview is for
4 general information, while it may or may not be testimonial
5 -- generally is not testimonial -- the agent will simply
6 write up a narrative summary of the conversation.

7 If, in the agent's view, the information is
8 testimonial in nature and it might in some way impact the
9 finding in the case, we encourage the agent to use what we
10 call a confirmed 02. With a confirmed 02, the special agent
11 writes a narrative, he submits that narrative writeup back
12 to the witness along with a certificate and the witness is
13 asked to make whatever appropriate changes to the narrative
14 that the witness believes is appropriate. After those
15 changes are made, we ask the witness to sign a certificate
16 indicating that he or she made the changes and that the
17 narrative accurately reflects the conversation that he had
18 with our special agent. Both the original narrative and the
19 narrative with changes made by the witness would be placed
20 in our file.

21 Now that's one procedure, one process. A third
22 process -- and I guess I said there were three, there really
23 could be four. A third process could be simply to ask the
24 witness to give us a written signed statement.

25 And then a fourth process would be the situation

1 where a witness is interviewed and the witness consents to
2 allow us to tape record the conversation. In that process,
3 the cassette tape itself becomes our interview notes and
4 that taped conversation becomes a part of the file.

5 Q Okay.

6 A The special agent would still write a narrative
7 summary, but the burden then is on the special agent to
8 ensure that that narrative summary accurately reflects the
9 same information that is on the tape.

10 If, for some reason, that conversation became very
11 significant in an investigation, we might take the time to
12 transcribe the entire interview. We developed a policy or a
13 practice of not transcribing every single tape because of
14 the volume of work that that created for us.

15 Q Now with regard to method two where you send -- an
16 agent would send back to an individual a writeup narrative
17 for them to make corrections to and certify -- they're
18 certifying that this is what they told the agent?

19 A They are certifying that the narrative accurately
20 reflects the conversation that he or she had with our
21 special agent, yes.

22 Q Okay, and if when they review the writeup of the
23 agent, they don't disagree that that's what they told the
24 agent, but they see they made a mistake, how are they
25 supposed to deal with that?

1 A We encourage them to use pen and ink to make
2 changes on our document. We also encourage them, if
3 necessary, to attach a separate sheet of paper that puts
4 that particular part of the conversation into its proper
5 context.

6 Q The pen and ink changes are supposed to be -- you
7 know, I told the agent it was so and so and she got the name
8 wrong or he got the name wrong or the context is a little
9 goofy and they make a pen and ink change. But are they
10 supposed to make that pen and ink change if they told the
11 agent they did a certain act at a certain time involving
12 certain individuals, and then they go back and they look and
13 they say well, that's not true, I didn't really do that.
14 And so they want to correct that. How do they correct that,
15 they don't just make a change on that and certify that's
16 what they told the agent?

17 A Let me make sure I understand your question. If
18 we submit the narrative back to the witness and the witness
19 wants to change his story; is that your question?

20 Q That's basically the question. That's more blunt
21 than I would have been, but that's good.

22 A Well, that's exactly why we went to the confirmed
23 02 because that was very common. For many instances when a
24 witness saw his statement -- his or her statement in
25 writing, they had a change of heart about exactly what they

1 had said to us initially, which is why we always keep the
2 original narrative along with the revised narrative so that
3 we can compare the two. It is not uncommon in this business
4 for a witness to change his or her story once they see what
5 they've said in writing.

6 Q But my question was the mechanism for changing
7 your story, is that the pen and ink changes and the
8 certification that this accurately reflects what you told
9 the agent or is that a separate paper saying I know I told
10 him this, but this is really what happened?

11 A Depends on the magnitude of the change in the
12 story. If it's a situation that you point out where our
13 agent said there were five minutes involved in a
14 conversation when in fact there were only two minutes in a
15 conversation, obviously we would allow them to make the pen
16 and ink changes on the document and initial them. If the
17 change was substantive and they wanted, let's say, to add
18 another paragraph, they certainly would have the right and
19 the ability to simply type out or write out another
20 paragraph on a bond sheet of paper, sign it and attach it to
21 the 02 along with the certificate and send it back to us.

22 CHAIRMAN BECHHOEFER: Now would that latter apply
23 to a change, for instance, the initial report would have
24 said I saw Mr. X doing whatever he was doing and then there
25 was a change and the person was really Mr. Y. And that kind

1 of a change. Now how would that type of a change be made?

2 THE WITNESS: We would -- Your Honor, we would
3 simply ask the witness to use his pen and cross out Mr. X's
4 name and write in Mr. Y's name and initial the change that
5 he or she had made.

6 CHAIRMAN BECHHOEFER: Thank you.

7 JUDGE YOUNG: You said you sent them to the
8 witnesses to correct and then the witness would send them
9 back, correct?

10 THE WITNESS: Yes.

11 JUDGE YOUNG: So the witness could make whatever
12 kind of change they wanted on there, right?

13 THE WITNESS: That is correct, yes. Any change
14 that the witness feels is appropriate, they can make.

15 JUDGE YOUNG: Thank you.

16 THE WITNESS: And counsel raised the question,
17 Your Honor, as to why we do that or something to that
18 effect. What we discovered in the early days, particularly
19 as we did a number of these kinds of cases, witnesses would
20 in fact change their story and we simply had a narrative
21 report of interview. We elected to go to what we call the
22 confirmed 02, so that our agent, when he or she went to
23 court or to a hearing, we had a more definitive statement
24 from the witness that we felt strongly accurately reflected
25 the witness' statement at the time that the investigation

1 was conducted.

2 JUDGE YOUNG: Thank you.

3 BY MR. DAMBLY:

4 Q And I personally applaud you for that because I
5 have that problem occasionally with various agents that we
6 have. Trying to use this is what I think they said doesn't
7 necessarily work.

8 A And I would say too, sir, that the confirmed 02
9 process, because of the volume of cases that we were
10 handling at one time, it was practically impossible for us
11 to do written signed statements in every investigation. It
12 was significantly slowing up the process and we developed
13 the confirmed 02 process as a mechanism, certainly for
14 ensuring accuracy, but also to help us to move the
15 investigative process along to ensure that we didn't get
16 backlogged in our inquiries.

17 Q Now we talked about your independence and I'm sure
18 you've heard this quote before, but I'd like to ask your
19 response to a statement made by Mr. Marquand in this
20 hearing, at transcript page 1255. Mr. Marquand, on line 5
21 says:

22 "I wouldn't think they would be persuasive
23 because I don't think they would apply in this
24 situation because the IG investigation is done of
25 a complaint filed. It's in litigation and

1 certainly an investigative report done with a case
2 is in litigation before that body is not
3 admissible. It's self-serving as all get out,
4 just like the OI report is."

5 Does that accurately reflect the way you do your
6 job? Do you do self-serving reports?

7 A No, sir, we don't do self-serving reports, but
8 that was such a long statement by Mr. Marquand, I'm not sure
9 I understood all that -- the point he was making there.

10 Q Well, do you do reports to support the Office of
11 General Counsel, is that your function in litigation?

12 A No, sir, that is not our function.

13 Q With respect to Mr. Fiser, you're aware that he
14 tape recorded conversations back in the '93 time frame?

15 A Am I aware that Mr. Fiser tape recorded
16 conversations?

17 Q Right.

18 A I am aware that Mr. Fiser provided us some tapes
19 that he said he had made with some individuals he had
20 conversations with, if that's what you're referring to.

21 Q Yes.

22 A Yes.

23 Q And how did you come into possession or how did
24 the IG's office come into possession of Mr. Fiser's tapes?

25 A Mr. Fiser, as I recall, he volunteered those tapes

1 to us as a piece of evidence in one of the inquiries that we
2 were doing.

3 Q There should be a skinny book in front of you --
4 that one. If you would turn to Staff Exhibit 173, please.

5 JUDGE YOUNG: 173?

6 MR. DAMBLY: 173, it's a very thin notebook.

7 BY MR. DAMBLY:

8 Q Do you recognize that document?

9 A Yes, sir, I do.

10 Q And this is a letter from you to Mr. Fiser,
11 correct?

12 A It is a copy of a letter that I sent to Mr. Fiser,
13 yes.

14 Q And this concerns the tapes we were just talking
15 about?

16 A I believe it does, yes.

17 Q Now you said Mr. Fiser voluntarily provided the
18 tapes to your office, is that correct?

19 A Yes, sir, he did.

20 Q And was there an agreement with the agent that
21 they wouldn't be disclosed without his permission?

22 A I'm not sure exactly what the agreement was. My
23 recollection is that Mr. Fiser was told that we would try to
24 protect those tapes to the extent that we could. However,
25 there might require -- some situation might arise that would

1 require us to turn those tapes over. I'm sure we would have
2 said something like that because that is generally the
3 statement that we always tell a witness any time that we get
4 involved in a grant of confidentiality. We cannot guarantee
5 absolute confidentiality.

6 Q And what was the genesis for this letter to Mr.
7 Fiser. What caused you to feel you had to turn over the
8 tapes to the General Counsel's Office?

9 A My recollection is that Mr. Fiser's case was going
10 before an Administrative Law Judge and a discovery request
11 had been made, is my recollection. And my legal counsel told
12 us that we would probably have to turn over the tapes that
13 Mr. Fiser gave because they were considered evidence in the
14 DOL inquiry.

15 JUDGE YOUNG: When you say legal -- were you going
16 to ask that?

17 MR. DAMBLY: I was going to ask both of those, but
18 that's okay, go ahead.

19 JUDGE YOUNG: I was just going to ask, when you
20 say legal counsel, are you talking about the office that Mr.
21 Marquand is in or your own legal counsel?

22 THE WITNESS: My own legal counsel would have
23 received a discovery request for documents and he would have
24 advised that we would have to turn over the Fiser tapes,
25 yes. It would have been the OIG legal counsel.

1 JUDGE YOUNG: So all along the last few minutes,
2 you've been talking about your own legal counsel?

3 THE WITNESS: Yes, yes, I have.

4 JUDGE YOUNG: What are the names of your legal
5 counsel?

6 THE WITNESS: The legal counsel is Rick Levy who
7 formally worked for the NRC years ago. His deputy is Ann
8 Ferrell and the third person is David Winstead.

9 JUDGE YOUNG: Thank you.

10 CHAIRMAN BECHHOEFER: I have one further question.
11 Do you have a method for keeping, shall we say, confidential
12 documents or tapes or whatever confidential, such as
13 requiring in camera hearings or -- as if it were classified
14 information, for instance? Maybe not the same degree of
15 protection, but --

16 THE WITNESS: Yes.

17 CHAIRMAN BECHHOEFER: -- do you have a method that
18 you can use to keep material confidential, even though it
19 must be turned over to another tribunal, Department of Labor
20 or whatever?

21 THE WITNESS: Yes, sir, Your Honor, we do. It
22 depends on whether it's physical evidence or documentary
23 evidence. Documentary evidence, where there is a formal
24 grant of confidentiality between the IG and a witness, is
25 segregated from the main case file and it is kept separately

1 from the main case file. If it is physical evidence, that
2 information is logged into a controlled evidence room.

3 CHAIRMAN BECHHOEFER: Well, was the tape -- were
4 the tapes given that kind of treatment?

5 THE WITNESS: Yes, sir, I believe they were.

6 CHAIRMAN BECHHOEFER: I see. Okay, thank you.

7 THE WITNESS: They were not generally available to
8 our investigative staff, if that is your question.

9 CHAIRMAN BECHHOEFER: Or to the general public.

10 THE WITNESS: Nor to the general public, that is
11 correct. They were kept in a secure location.

12 CHAIRMAN BECHHOEFER: Thank you.

13 BY MR. DAMBLY:

14 Q Let me see if I can refresh your recollection
15 because Mr. Fiser's '93 case never went to a hearing. If
16 you would look in Staff Exhibit 174 and if you can find
17 something that's EE628. Down at the bottom there are
18 various Bates stamp numbers, this is toward the very end of
19 that document, 174.

20 JUDGE YOUNG: 628 or 728?

21 MR. DAMBLY: 628, it's Staff Exhibit 174, but two
22 pages in from the back of that document the Bates stamp
23 number is EE000628.

24 JUDGE YOUNG: Oh, okay, I was starting from the
25 beginning.

1 MR. DAMBLY: And there's different kinds of
2 designations, there are some GB documents in here and then
3 there are some Bates stamped EE documents in there.

4 BY MR. DAMBLY:

5 Q Have you seen that document before?

6 A I don't know if I have or not, I don't think I
7 have.

8 Q If you take a look at it, does it refresh your
9 recollection that it was the Jocher case that was at issue
10 in Mr. Fiser's tapes?

11 A Okay, that may be true -- that may be true.

12 Q You're aware that Mr. Jocher had a case --

13 A I'll amend my statement to say that the tapes were
14 at issue in a hearing. I'm not sure if it was the Fiser
15 hearing.

16 Q I wasn't trying to trip you up on that.

17 A Okay, I just know that it was certainly a hearing.
18 I just assumed it was the Fiser hearing, but it could very
19 well have been the Jocher hearing.

20 But I do know that it was some type of hearing,
21 because we would not have voluntarily provided those tapes
22 outside our office unless required to do so.

23 Q And the reason you said that you turned those over
24 to the General Counsel's Office was because your legal
25 counsel had reviewed a discovery request and determined that

1 --

2 A They had relevance to a hearing, a discovery
3 request, yes.

4 Q In responding to a discovery request.

5 A Yes, sir.

6 Q If you go back to EE628, the one in 174, Staff
7 174.

8 A Okay.

9 Q And if we look at the second paragraph there, it
10 says:

11 "Mr. Hickman indicated the IG's office gave
12 us copies of your tape to determine the relevancy
13 to a proceeding. The case has now been set for
14 trial and it appears to us it may be necessary to
15 make the contents and existence of certain tapes
16 public in that proceeding. In order to use them,
17 we would have to disclose them to Mr. Jocher and
18 you may also have to appear as a witness at the
19 hearing to authenticate them and testify as to
20 conversations you recorded."

21 If these were relevant to a discovery request, how
22 come five months later they hadn't been turned over and were
23 only going to be made known in a hearing?

24 A I can't answer that question. I was not handling
25 the discovery request, so I don't know.

1 Q Your letter also indicates that -- in Staff
2 Exhibit 173 (sic), that they were being turned over to the
3 General Counsel's Office to allow the General Counsel's
4 Office to make transcripts of the tape recordings.

5 A Yes, sir.

6 Q Did the General Counsel's Office make transcripts
7 of those tape recordings, to the best of your knowledge?

8 A I don't know. I recall when this discussion was
9 ongoing, there were a number of tapes and while I was
10 interested in turning over the tapes, I was not interested
11 in tying my staff up for a number of days in transcribing
12 those tapes.

13 Q I can appreciate that. But the General Counsel's
14 Office told you they wanted them so they could transcribe
15 them?

16 A I don't know that that was the purpose
17 necessarily. I made the statement to my General Counsel
18 when we turned over the tapes that we would turn the tapes
19 over but I was not willing to tie up my staff to do the
20 transcription of the tapes. So if a transcription of the
21 tapes was to be done, it would have to be done by the
22 General Counsel's Office. I was not willing to create a
23 document that didn't already exist in our files.

24 Q And in your letter to Mr. Fiser, it says:

25 "Consequently, we are writing to inform you

1 that we are going to allow the General Counsel to
2 make transcripts of the tape recordings."

3 Did you get the tapes themselves back after they
4 made -- or did you just turn the tapes over? Did you
5 maintain the originals?

6 A I would -- I don't know, I'd have to defer to the
7 General Counsel and my technical folks in the office.
8 Typically what we would do is make copies of the tapes and
9 turn those over. We have the ability to make copies of the
10 tapes in our office. I don't recall because this was
11 several years ago; the specifics of how we did it, I just
12 don't recall. Our normal practice, however, would be to
13 simply make copies of those cassette tapes and turn the
14 tapes over.

15 Q Did you ever see any transcripts that were made
16 from those tapes?

17 A No, sir, I didn't.

18 Q And who in the General Counsel's Office did you
19 turn them over to?

20 A I was not directly involved with that, you'd have
21 to ask my legal counsel.

22 Q Okay. When you disclosed those tapes to the
23 General Counsel or turned them over to the General Counsel's
24 Office, were there any restrictions on their use or further
25 disclosure?

1 A I'm sure there was some discussion between the
2 General Counsel's Office and my legal advisor, but I wasn't
3 privy to all those discussions.

4 Q If you turn over tapes that someone has given you
5 and indicated they'd like kept confidential, if you give
6 them to the General Counsel's Office, is it your normal
7 practice for the General Counsel's Office to have no
8 restrictions, they could just play them for anybody they
9 felt like? Or do you have some kind of agreement?

10 A Obviously there would have been some discussion
11 between the lawyers in terms of how that information should
12 be protected. I was not privy to that conversation.

13 CHAIRMAN BECHHOEFER: Mr. Hickman, in turning over
14 tapes or documents to the General Counsel, could you not
15 make them subject to the same confidentiality requirements
16 as your office treated them?

17 THE WITNESS: To the extent that we could control
18 that, yes. If those tapes were going to be used in an
19 administrative hearing, obviously my office could not
20 restrict how those --

21 CHAIRMAN BECHHOEFER: Well, could you require that
22 they be given, say, in-camera treatment?

23 THE WITNESS: I could not require that. I
24 couldn't tell you, sir, how to do your business once the
25 tapes were presented to this body or to another

1 administrative body.

2 CHAIRMAN BECHHOEFER: Well, if confidential
3 information is presented to us, we would have to treat it
4 differently. We would have to have controlled transcripts,
5 limited distribution transcripts. We'd have an in-camera
6 hearing and make sure that everyone here in the room is
7 authorized to have access to the information.

8 JUDGE YOUNG: If there's a legal requirement,
9 you're talking about.

10 CHAIRMAN BECHHOEFER: I was just wondering how TVA
11 did it. This is how we would do it under guidelines and
12 Commission policy statements, for that matter, which are
13 focused more on confidential informants than anything else,
14 but do apply broader than that.

15 THE WITNESS: Yes, sir. Your Honor, when we got
16 those tapes from Mr. Fiser, there was a conversation with
17 him about the fact that we might have to use those some day
18 in an evidentiary type hearing or some other administrative
19 forum. He understood that we would protect those to the
20 extent that we could.

21 In turning those over to the General Counsel's
22 Office, it was our assumption that we were doing so, so that
23 the information could be evaluated and used in some
24 administrative hearing. We did not impose a formal
25 agreement with the General Counsel's Office beyond the fact

1 that they were obtained and that they should be protected
2 from general disclosure to the public. We didn't ask them
3 to sign any statement or anything like that, to my
4 knowledge.

5 CHAIRMAN BECHHOEFER: I see. But if you had
6 turned over classified information, would you have done it
7 differently? To OGC or TVA OGC, to use in litigation.
8 There are probably procedures in most forums to protect
9 classified information. We have them.

10 THE WITNESS: You are correct. If it were
11 classified information, I couldn't turn it over to the
12 General Counsel unless I got the permission of the owner of
13 the document.

14 CHAIRMAN BECHHOEFER: I see. But I presume that
15 you could require that further treatment also be under
16 procedures applicable to classified information, such as in-
17 camera proceedings or similar type of -- so that disclosure
18 to the public would not be permitted.

19 THE WITNESS: Yes, sir, I understand what you're
20 saying. I'm not sure that I necessarily agree that if those
21 tapes came to this body, that in my view, that's a public
22 disclosure.

23 CHAIRMAN BECHHOEFER: No, we would take steps to
24 make sure that it wasn't a public disclosure -- we might not
25 succeed, but we would --

1 THE WITNESS: Yes, sir.

2 CHAIRMAN BECHHOEFER: We would close the hearing
3 except to interested parties, we would have to get agreement
4 that the parties would not reveal the information outside
5 the confines of this proceeding.

6 THE WITNESS: Yes, sir.

7 JUDGE YOUNG: But you're not saying that these
8 tapes were classified, correct?

9 THE WITNESS: They were not classified. No, I am
10 not. They were simply conversations that were covertly
11 recorded between Mr. Fiser and other individuals that he was
12 acquainted with. When he came to us, he said I've got
13 information on tape that you need to hear, but I don't want
14 others to know that I made these tapes.

15 And we committed to him at that time, to the
16 extent that we can protect this information we will. It was
17 not classified information at all. In fact, I suppose one
18 could argue, you know, whether or not he had the authority
19 to make those tapes since the other party didn't know that
20 he was wearing a recorder the day that those conversations
21 were recorded. But that's a different issue.

22 Our concern simply was he had provided us with
23 information that was relevant to our investigation at the
24 time. The second party did not know that those tapes
25 existed, and we committed to him that we would not publicly

1 disclose that we had those tapes unless we were required to
2 turn them over through some legal process.

3 When my office learned that there was a discovery
4 request in Jocher and that the information that Mr. Fiser
5 had covertly recorded could be relevant to the Jocher
6 hearing, we didn't want to be placed in a situation of
7 having evidence that we withheld from the administrative
8 process. For that reason, our legal advisor said I believe
9 we need to make the existence of these tapes known, so that
10 it can be decided if they're relevant to the hearing, and he
11 insisted that we should turn those tapes over as a part of
12 that request. And I didn't argue with that.

13 I suppose in hindsight perhaps we could have said
14 to the General Counsel, to ensure that these tapes are only
15 played in camera, before the Administrative Law Judge. We
16 weren't smart enough to think of that at the time.

17 CHAIRMAN BECHHOEFER: I might say, we apply these
18 procedures to certain non-- not formally classified
19 information, proprietary data, for instance, which may
20 become involved in some of our proceedings.

21 THE WITNESS: Yes, sir.

22 CHAIRMAN BECHHOEFER: And we protect that.

23 THE WITNESS: I think what we were trying to
24 protect, quite honestly, sir, was Mr. Fiser's reputation
25 because there were a number of people that had been secretly

1 recorded and he didn't want them to know that he had made
2 those recordings, but he want us to hear the recordings. We
3 were taking the position that we would certainly like to
4 hear the tapes, but we don't want to be bound strictly -- we
5 didn't want to put ourselves in a situation where we were
6 granting Mr. Fiser absolute confidentiality with respect to
7 the existence of those tapes.

8 CHAIRMAN BECHHOEFER: I see. Thank you.

9 MR. MARQUAND: Your Honor, to address that
10 confidentiality matter, I might point out that Mr. Jocher's
11 attorney, who was involved in that case, was also Mr.
12 Fiser's attorney. And if Mr. Fiser had a concern about the
13 way his attorney was using those tapes or disclosing those
14 tapes, he certainly had the opportunity to speak with his
15 attorney and request whatever he wanted from his own
16 attorney, how to use those tapes.

17 CHAIRMAN BECHHOEFER: I take it that he was aware
18 that those tapes were going to be used.

19 MR. MARQUAND: I don't know what his attorney told
20 him about whether or not he was going to use them. Mr.
21 Fiser certainly was talked to in that case as a witness by
22 both sides. So his attorney certainly -- I mean obviously
23 knew of the tapes and Mr. Fiser knew that they were being
24 released. He certainly could have whatever conversation he
25 wanted with his own attorney about not using those tapes or

1 keeping them confidential. I mean it's between him and his
2 own attorney.

3 MR. DAMBLY: With regard to Mr. Marquand's
4 testimony here, I think the documents indicate, that we've
5 just looked, at these tapes were apparently relevant and
6 determined to be relevant to a discovery request, but they
7 were not turned over in discovery, they were saved to be
8 used at a hearing where they might spring them on Mr.
9 Jocher, is what the documents say.

10 MR. MARQUAND: I don't believe it says that. It
11 doesn't say anything about springing tapes on Jocher.

12 MR. DAMBLY: You'd have to disclose them to Jocher
13 before you could use them. But you didn't turn them over in
14 discovery, but that's the reason you got them, because they
15 were relevant to a discovery request.

16 I don't know what that has to do with Mr. Fiser's
17 attorney, but anyway back to the questions --

18 MR. MARQUAND: Fiser's attorney was Jocher's
19 attorney. He represented both of them. And if they were
20 disclosed to Jocher's attorney, then obviously Mr. Fiser's
21 attorney, the same person, would know of those tapes and Mr.
22 Fiser could tell him, beginning whenever the IG told Mr.
23 Fiser back in August of '94 that he didn't want that
24 attorney to use them or tell him how he wanted the attorney
25 to use them. That attorney had a continuing obligation, as

1 I understand it under the rules of ethics, to represent Mr.
2 Fiser's interests.

3 JUDGE YOUNG: So you're saying that back when your
4 office got them, you notified Mr. Jocher's attorney that --

5 MR. MARQUAND: I don't remember when that
6 happened. I certainly know at some point in time, Mr.
7 Jocher and Mr. Fiser's attorney was aware of the tapes. And
8 I don't recall that they were even used in that case. I
9 don't recall ever seeing a transcript produced by the
10 General Counsel's Office. I think that the tapes are such
11 poor quality that nobody determined that they were usable.

12 MR. DAMBLY: And again, in response to what he
13 just said, if you look at the document we just looked at,
14 which is EE000628 in Staff Exhibit 174, you will see that
15 they were not turned over in discovery. It says in order to
16 use them at the hearing, we would have to disclose them to
17 Mr. Jocher.

18 So obviously, five months after they were turned
19 over to the General Counsel's Office as relevant to a
20 discovery request, they still had not been turned over to
21 Mr. Jocher, and Mr. Fiser's attorney is not the one that
22 played them for various managers at TVA.

23 BY MR. DAMBLY:

24 Q Now you were aware, Mr. Hickman, that there was
25 sensitive matter on those tapes. One, the managers who had

1 been taped didn't know they'd been taped.

2 A Yes, sir, I did know that.

3 Q And you were aware that there were various
4 allegations on those tapes about what managers had done what
5 in regard to Mr. Fiser's protected activities, or at least
6 what he thought was the basis for what happened to him in
7 '93.

8 A That was the reason that he presented those tapes
9 to us, yes, as a piece of evidence, yes, about his case.

10 Q And so you would understand that disclosing that
11 to people who were potentially accused of some kind of
12 discrimination would be a sensitive matter.

13 A I was certainly aware that I had an agreement with
14 Mr. Fiser that I was going to try to protect that
15 information to the extent that I could. And the reason that
16 I wanted to protect it is because it was sensitive
17 information on those tapes and the individuals -- there were
18 individuals on the tapes who did not know that they had been
19 recorded; yes, I knew that.

20 Q And just one question on the page after 628, 630
21 and 631, and I'm interested in 631 really, on Staff Exhibit
22 174. Who is Mark Winter?

23 A I think Mr. Winter is a TVA manager, is or was a
24 TVA manager, and he was involved in some way in the
25 processing of FOIA information.

1 Q I see, so requests for IG documents went through
2 the normal TVA process, you didn't have a separate person in
3 the IG's office who responded to those requests?

4 A We have a person who works with the TVA FOIA
5 officer in deciding what IG information is released, yes.

6 Q And I notice that in the response to Mr. Fiser
7 which turned down everything in the Inspector General's
8 report, one of the grounds is exemption 5, which is the
9 deliberative process exemption. If you're an independent
10 organization and you've issued a final report, where is the
11 deliberative process for exemption 5 to apply?

12 MR. MARQUAND: Objection. This case has nothing
13 to do with whether or not TVA properly complied with FOIA or
14 not. Whether it does or doesn't or how it handles FOIA is
15 not an issue in this case.

16 MR. DAMBLY: Again, it goes to the question that
17 was raised, are they independent or are they working with
18 the OGC in litigation. It could be a deliberative process
19 if they're working with OGC. If they're an independent
20 organization and issue a final report, it doesn't apply.
21 That's why I asked the question.

22 JUDGE YOUNG: As I understand it, this is part of
23 your allegation of retaliation, is what was done with the
24 tapes, correct?

25 MR. MARQUAND: This doesn't have to do with the

1 tapes.

2 MR. DAMBLY: This has to do with their report on
3 Mr. Fiser's case. This is Mr. Fiser, and I'm trying to find
4 out the degree to which it's independent, in which case
5 exemption 5 wouldn't apply, or which they're just feeding
6 information to the General Counsel's Office, as Mr. Marquand
7 indicated months ago now.

8 CHAIRMAN BECHHOEFER: Are there --

9 MR. DAMBLY: And it's a simple question, he can
10 answer yes or no.

11 CHAIRMAN BECHHOEFER: Would there be standard
12 methods of treating all final OIG reports or IG reports, in
13 terms of confidentiality, or do they differ?

14 THE WITNESS: Are they standard?

15 CHAIRMAN BECHHOEFER: Is there a standard method
16 of treating final IG reports?

17 THE WITNESS: Your Honor, all IG investigative
18 reports are subject to both the Privacy Act and FOIA and we
19 would not release an investigative report unless it were
20 processed as a FOIA request. That is the standard process.
21 My deputy legal advisor is the person in my office who
22 handles all of the FOIA requests that come through our
23 office, and that is our standard practice, and she would
24 coordinate the actual release with the TVA information
25 officer.

1 BY MR. DAMBLY:

2 Q I guess is it standard practice to deny all
3 requests for IG investigative reports in toto?

4 A It is standard practice to deny the release in
5 toto, we would required that they be processed through FOIA
6 because they are subject to both FOIA and the Privacy Act.

7 Q Well, what we just looked, which denied it in
8 toto, was a response to a FOIA request. If you want to see
9 the FOIA request, it was on the previous page to the one
10 you're looking at.

11 JUDGE YOUNG: Was this FOIA request made to TVA or
12 to TVA IG, can you tell?

13 Are you asking -- I got the impression from
14 something that you said, that you are assuming that the
15 request had been made to the TVA IG's office, but --

16 MR. DAMBLY: The request is made -- I guess he
17 said they work with the organization Mr. Winter was in. The
18 request was made for the IG report.

19 JUDGE YOUNG: To TVA.

20 MR. DAMBLY: To -- I'm sure they have a rule that
21 says this is where you send your Freedom of Information Act
22 requests, same as NRC does.

23 CHAIRMAN BECHHOEFER: Yeah, it doesn't matter.

24 MR. DAMBLY: And once they got it, it's processed
25 and the response came out saying you can't have it under the

1 Freedom of Information Act.

2 JUDGE YOUNG: But what I understood from you was
3 that you had a separate -- you had a deputy general counsel
4 in your office, who was not Mark Winter, who handled
5 requests to your office.

6 THE WITNESS: Yes, sir -- excuse me -- yes, ma'am,
7 that is correct.

8 JUDGE YOUNG: And so what I'm wondering is if the
9 request is made to TVA and this Mark Winter responded to it,
10 did your office ever receive notification that a request had
11 been made with regard to the report by Mr. Fiser -- that Mr.
12 Fiser had requested it.

13 THE WITNESS: I don't specifically know the answer
14 to that question. I can speculate that if Mr. Fiser's
15 request went to TVA, Mark Winter would have to contact my
16 deputy legal advisor because we have custody of the records.
17 It is possible certainly that Mr. Winter could have written
18 this response without contacting my office. I simply don't
19 know the answer to that because I don't know where the
20 request was made.

21 BY MR. DAMBLY:

22 Q Well, you indicated earlier your office does not
23 perform the formal response to FOIA requests, you work
24 through the organization Mr. Winter was in, is that correct?

25 A Mr. Winter is the FOIA officer for the agency and

1 we do not have a formal FOIA process, a separate FOIA
2 process set up in our office. However, we do have input into
3 what is released.

4 Q And to the best of your recollection, are you ever
5 aware of a case where somebody made a request for an IG
6 report, TVA IG report where Mr. Winter's organization didn't
7 even contact you about it and responded on their own?

8 A That would be unusual, yes. I don't know if it's
9 ever happened, but that would be unusual.

10 Q Okay, if you'd like to turn -- book 2 of 8, I'll
11 get to it. We're going to get to the Sasser letter. Staff
12 Exhibit 29, if you would turn to 29, Mr. Hickman.

13 Do you recognize that document?

14 A This is Tab 29?

15 Q Right.

16 A Tab 29 is a letter written to Senator Sasser by
17 Mr. Fiser; is that --

18 Q Right, Fiser, Jocher and Matthews.

19 A I don't know that I've specifically ever seen this
20 letter, no.

21 Q Were you responsible for responding to it and
22 preparing the responses to this letter from the IG's office?

23 A My recollection is we got a letter from Senator
24 Sasser, which basically summarized the concerns of these
25 individuals. I don't specifically recall him enclosing

1 their letter, but it may have been, but I don't recall that
2 it was. What I recall receiving was a letter from Senator
3 Sasser, asking us to respond to a summary of their concerns.

4 Q If you look in -- I have to go to 8 of 8 now, Tab
5 162.

6 CHAIRMAN BECHHOEFER: This is Staff 162?

7 MR. DAMBLY: Staff 162.

8 (Brief pause.)

9 BY MR. DAMBLY:

10 Q And Staff Exhibit 162 is a declaration you made
11 for this case, is that correct?

12 A Yes, sir.

13 Q And attached to it is the correspondence that was
14 relevant?

15 A Exhibit A which is attached is a letter from
16 Senator Sasser to former Inspector General Hinshaw. I do
17 recall seeing this letter.

18 Q And that letter says in the first sentence, "I
19 have received the enclosed correspondence from Mr. Jocher,
20 Mr. Fiser and Mr. Matthews." Does that refresh your
21 recollection that the letter didn't have a summary but
22 actually enclosed the letter we just looked at, Staff
23 Exhibit 29?

24 A That's what the letter says, sir, yes. Maybe I'll
25 amend my statement, maybe I have seen this letter, but I

1 don't recall seeing the details of this letter.

2 Q Is it true that you were the one that prepared the
3 responses for Mr. Hinshaw?

4 A Yes, sir, it is.

5 Q And you prepared the responses -- in preparing the
6 responses, as part of your normal duties, you would have
7 carefully considered a letter from a Senator and what he
8 enclosed.

9 A I would have carefully considered the allegations
10 that were raised in the cover letter and I would have
11 responded to those specific concerns of the Senator. I
12 would not necessarily have been responding to the letter
13 from Mr. Jocher and others to the Senator.

14 Q Well, what concerns are in the cover letter that
15 you were responding to?

16 A Management practices and the corrective actions at
17 TVA. They allege the use of significant action reports are
18 discouraged. Mr. Sasser's letter simply summarizes their
19 concerns in a capsule form. He did not go through this
20 eight or nine page letter in his cover letter to us.

21 Q But in the last paragraph, it says, "I am very
22 concerned about the events detailed in the enclosed letter."
23 Did you not understand that to mean everything that was in
24 the enclosed letter?

25 A No, sir, I didn't necessarily take it that way.

1 He was concerned about the allegations that had raised by
2 these gentlemen. If you will recall in my response to the
3 Senator, I informed him I believe that we had also received
4 an allegation from these gentlemen. What I was able to
5 respond to was based on the inquiry that we had conducted.
6 Specifically -- and I'll go a step farther -- if Mr. Jocher
7 or Mr. Fiser or others had raised safety concerns, my office
8 wouldn't investigate the safety concerns, for example. They
9 would be referred to another body. So to say that I would
10 have been concerned about every paragraph in this letter is
11 not in fact correct. I would have been concerned about
12 ensuring that the safety significant issues were addressed,
13 but I would not have been concerned about responding
14 specifically to every paragraph in this letter because I
15 didn't have the authority to conduct an inquiry about some
16 of the safety issues that he raises here.

17 Q But you did have the authority to investigate
18 whether or not there were any actions taken against these
19 gentlemen because of the safety issues.

20 A I had the authority to investigate safety-related
21 wrongdoing; yes, sir, I did. I did not have the authority
22 to conduct safety investigations.

23 Q And in doing -- preparing the three responses --
24 and I guess there's Staff Exhibit 30, 32 and 33, are the
25 three responses that were sent to Senator Sasser?

1 A Thirty --

2 Q Thirty two and 33.

3 A Thirty two and 33.

4 (The witness reviews documents.)

5 A Yes, sir, there are three responses here.

6 Q Well, are those the three responses that you
7 prepared?

8 A I'm sure that I prepared response in Tab 30. If
9 you'll look at the end of the letter, my initials as the
10 preparer are there. LU is Lois Underwood, who was my
11 secretary at the time.

12 Thirty two was actually prepared by the
13 investigator Beth Ballard-Thomas and I reviewed it and it
14 was typed by Lois Underwood.

15 What was the other number, sir?

16 Q Thirty three.

17 A In 1994, sir, I was not the department manager, so
18 I would not have been directly involved in preparing this
19 letter, it was prepared, according to the initials, by Beth
20 Ballard-Thomas and was reviewed by the IG's deputy legal
21 counsel, who is Ann Ferrell.

22 Q Okay, did you review this one in '94 before it
23 went out, Staff Exhibit 33?

24 A I may have, I don't have a specific recollection
25 of doing so, but I probably did.

1 Q Well, let me refer you again to the declaration
2 you signed in this case which is 162, Staff Exhibit 162,
3 page 2, paragraph 4. "A review of the OIG record shows the
4 OIG sent three responses to Senator Sasser dated September 9
5 and October 22 of 1993 and April 22, 1994. Copies of those
6 responses are attached as Exhibits B, C and D respectively.
7 I was involved in the preparation of each of those
8 responses, either as the initial preparer or as a reviewer."

9 Did you review this one?

10 A I probably did. My initials don't appear on it,
11 but I probably did review it.

12 Q Well, how did you certify that you did if you
13 don't know that you did?

14 A Because as the Assistant Inspector General for
15 Investigations, nothing goes to the IG for signature prior
16 to my reviewing of it. I do not specifically know if I was
17 in the office on August 22, I probably was.

18 Obviously you don't have the OIG file copy here,
19 what you have here is the file copy of someone else. If you
20 look at the OIG file copy, there would probably be initials
21 of everyone who reviewed this document.

22 Q There's a stamp on the front of it that says
23 "Sensitive" --

24 A This is a -- if you'll notice on the last page,
25 the underlined copy, you have the copy that went to Oliver

1 D. Kingsley. If you had the IG copy, it would have initials
2 of the preparer and the individuals in our office who
3 reviewed it. That's why I said I probably did review this,
4 but since this is not the OIG's file copy, I cannot be
5 absolutely certain that I was there, but I probably did
6 review it. If I didn't review it, my designee would have
7 reviewed it in my absence, and he had the authority to do
8 so.

9 CHAIRMAN BECHHOEFER: One question on Exhibit D to
10 Staff Exhibit 162, there is a sensitive stamp. Do you know
11 who -- apparently this was received on April 25 and then the
12 sensitive stamp was marked April 29. Do you know who put
13 that on or whose stamp that is and what protection that
14 stamp was intended to provide?

15 THE WITNESS: I'm sorry, I don't know which
16 exhibit we're referring to.

17 CHAIRMAN BECHHOEFER: Exhibit D as in dog --

18 MR. MARQUAND: To Staff Exhibit 162.

19 MR. DAMBLY: It's an attachment to your
20 declaration that he's talking about, Staff 162 at the back
21 has all three of these responses.

22 THE WITNESS: Exhibit D?

23 CHAIRMAN BECHHOEFER: D.

24 JUDGE YOUNG: It also says AJ669 at the bottom.

25 THE WITNESS: AJ669?

1 JUDGE YOUNG: Uh-huh.

2 CHAIRMAN BECHHOEFER: Yes. There's a big
3 sensitive stamp there.

4 THE WITNESS: That is -- according to what I'm
5 seeing here, it looks like it's a sensitive stamp by the
6 Concerns Resolution staff. This would have been their file
7 copy. When we submitted a courtesy copy to that office,
8 they stamped it sensitive.

9 CHAIRMAN BECHHOEFER: So that's not your --

10 THE WITNESS: That is not a stamp made by my
11 office; no, sir.

12 CHAIRMAN BECHHOEFER: I see.

13 MR. MARQUAND: As Your Honor noted, this was
14 received in Chattanooga by the nuclear officer on April 25,
15 the handwritten initials at the top were placed there --
16 that their way they do things in nuclear. And you see MRH
17 underscored, that's Mr. Harding, he was the manager of
18 Concerns Resolution, which is also known as Employee
19 Concerns, which is part of the nuclear organization.

20 CHAIRMAN BECHHOEFER: I see, thank you.

21 BY MR. DAMBLY:

22 Q I am somewhat concerned -- are you in the habit of
23 certifying under penalty of perjury that you were either the
24 initial preparer or a reviewer on a document and you don't
25 know of you were the reviewer or not on that document?

1 A I'm in the habit of trying to be accurate with my
2 testimony, sir, and this document is not an OIG file copy.
3 When I gave my certificate, my certification, I'm sure I was
4 looking at an OIG file copy which would have had the
5 reviewing officials' initials on it. If I said in the
6 affidavit that I reviewed the document, I probably did. But
7 it was not based on this document that you are showing me
8 today, but it is based on the OIG's file and not a file that
9 you obtained elsewhere.

10 Q I'm just having a little trouble with the word
11 "probably, when you certified it. If you looked at the IG's
12 copy when you signed this declaration that says under
13 penalty of perjury, then you were definitely sure that you
14 were involved?

15 A If my certificate says that I reviewed the
16 document, then I did. This is not the same document that
17 would have looked at when I rendered my certificate. My
18 certificate is based on OIG files, is what I'm telling you.
19 So there must be a file copy in my office where there is a
20 notation that I did in fact see this document, but this is
21 not the exact document. This is a courtesy copy of the
22 document that I would have seen.

23 JUDGE YOUNG: If you could clarify for me, what
24 were the circumstances of the preparation and signing of the
25 April 4, 2002 declaration?

1 THE WITNESS: I've given a number of these, so
2 I'll have to look.

3 JUDGE YOUNG: It's 162, your declaration.

4 MR. DAMBLY: Could we take like a five minute
5 break?

6 JUDGE YOUNG: Yes, and you can look at it while
7 we're --

8 THE WITNESS: As I recall, I was asked to give
9 this certificate in response to a question about who
10 prepared a response to the Sasser letter.

11 MR. DAMBLY: This was strictly in response to the
12 staff's request for Mr. Vigluicci as a witness and this was
13 to indicate --

14 JUDGE YOUNG: I understand that. What I'm asking
15 is much more nuts and bolts, the circumstances of how it was
16 prepared.

17 THE WITNESS: It was prepared by my legal advisor
18 in concert with whoever asked TVA to provide this. But my
19 legal advisor would have asked me to sign this. My legal
20 advisor would have pulled all the pertinent documents and
21 would have been involved in the preparation and verification
22 of the accuracy of this statement. He would have brought
23 all of those documents to me and said here are the documents
24 that are in question, here is where you reviewed them, and
25 we are recommending that you sign this affidavit.

1 My point with counsel was this is not the file
2 copy from my office that I would have reviewed when I signed
3 the certificate. I'm more accustomed to seeing my initials
4 --

5 JUDGE YOUNG: I'm a little bit confused, let me
6 just clarify. When you say "this is not a file copy" from
7 your office, are you referring to the declaration of G.
8 Donald Hickman or are you referring to the three or four
9 exhibits, A, B, C and D to your declaration?

10 THE WITNESS: I am referring to the letter in Tab
11 33. And my point was this is a courtesy copy that was
12 provided to Oliver Kingsley. It is not the file copy from
13 OIG files.

14 JUDGE YOUNG: Then I'm even more confused. When
15 you did your declaration, you said your legal counsel
16 prepared that and showed you the letters where you had
17 signed off on them. Are you looking at Exhibit 162, do you
18 have that in front of you?

19 MR. DAMBLY: 162, he has in front of him.

20 JUDGE YOUNG: It's your declaration.

21 THE WITNESS: Yes, yes.

22 JUDGE YOUNG: And then attached to that were four
23 letters, the letter from Senator Sasser, the first, second
24 and third letters back to him, and the last of those is the
25 one that is also found at Exhibit 33. And so my question is

1 if your legal counsel helped you or, you know, brought you
2 the declaration and then brought you the three letters and
3 said see where you signed off on them as reviewing them, why
4 would the copies that were attached, which apparently did
5 not come from your office, from what I understand you to be
6 saying -- why would they have been attached to the
7 declaration?

8 THE WITNESS: That's a good question.

9 MR. MARQUAND: Those are the documents, Your
10 Honor, that counsel gave us and said we want -- he wants to
11 ask Mr. Vigluicci about. We took them to the IG's office
12 and said can you address whether or not Mr. Vigluicci was
13 involved in the preparation of these documents.

14 As I understand the witness today, he's saying
15 when he looks at Exhibit D to Staff Exhibit 162, or when he
16 looks at Staff Exhibit 33, he cannot determine, looking at
17 those pieces of paper, whether he was involved in the
18 preparation of them. But as I read his declaration, he says
19 when I reviewed the IG records, when I reviewed the IG's
20 file copy of this document, he was able to discern that he
21 had in fact reviewed those documents. All he's saying is I
22 can't tell you when I look at this piece of paper that the
23 staff brought forward, that he reviewed it, but he's saying
24 when he looked at the IG's files, he was able to discern
25 that he reviewed it prior to its going out.

1 MR. DAMBLY: I would just like to correct one
2 thing. I don't know what this "the staff brought forward",
3 these are TVA documents, this is what they gave us. We
4 don't have copies of something different.

5 MR. MARQUAND: That's what they showed us as the
6 reason they said they wanted to question Mr. Vigluicci
7 about.

8 JUDGE YOUNG: And I knew what I was asking and I
9 think Mr. Hickman knew what he was answering, and your
10 answer was you don't know why these particular copies would
11 have been attached rather than the copies you were shown by
12 your legal counsel, who prepared the declaration.

13 THE WITNESS: That's correct, that's the emphasis
14 of my response. I'm not saying that I never reviewed this
15 document, I'm just saying that this is not the file copy
16 from OIG files.

17 JUDGE YOUNG: Are those easily located?

18 THE WITNESS: Yes.

19 JUDGE YOUNG: Are you in Chattanooga?

20 THE WITNESS: No, I'm not, I'm in Knoxville.

21 JUDGE YOUNG: Maybe they could be faxed here.

22 THE WITNESS: But I am not challenging the
23 authenticity of the content of the letter. I'm just saying
24 that if I had my office files, the person or persons who
25 reviewed the letter, their initials generally are on the

1 document. My response to counsel was I probably did review
2 this, I can't tell you definitely that I did because I don't
3 have my office file here. But if my affidavit says that our
4 file copy had my initials on it, then I probably did review
5 it.

6 BY MR. DAMBLY:

7 Q Where would your initials be on the document?

8 A It'd be down near the courtesy count.

9 Q Right above it where it's got the BBT for Ms.
10 Thomas and --

11 A Yes.

12 Q -- ABF and SAB. Do you know whose those are?

13 A SAB is Susan A. Butler, who was a secretary in our
14 office at the time.

15 Q And ABF?

16 A ABF is Ann Boles Ferrell, who is our deputy legal
17 advisor. BBT is Beth Ballard-Thomas who would have been an
18 investigator in our office who worked at the time for Ron
19 Taylor who was the department manager.

20 Q So if you were to have your file copy, there would
21 also be, somewhere beyond Ms. Thomas', the GDH initials?

22 A There would probably be GDH before it went to the
23 IG for his signature, because as a normal practice, the IG
24 would not sign an outgoing document like this unless I had
25 reviewed it. And that's why I said, I probably did review

1 it, I'm sure I probably did.

2 Q The problem and the reason we've wasted a lot of
3 time here, for which I apologize, is you keep using the word
4 "probably" and you certified under penalty of perjury that
5 you did.

6 A And you showed me a different document, sir.

7 Q Well, you certified that copies of B, C and D,
8 those responses are attached, B, C and D -- "I was involved
9 in the preparation of each of those responses, either as the
10 initial preparer or as a reviewer." You didn't say well for
11 B and C, I know I was, but for D I'm not sure because the
12 copy I attach doesn't show that.

13 A I wasn't looking at this piece of paper the day
14 that I gave my affidavit either.

15 Q So the D that you looked at --

16 A I'm assuming -- I won't quibble with you, if it's
17 the same letter, if it's identical with what's in my files,
18 I did review it, is my point.

19 I know, I know.

20 CHAIRMAN BECHHOEFER: Well, Mr. Hickman, this is
21 on page 2 of Staff Exhibit 162, I guess. That's your
22 signature, is it not?

23 THE WITNESS: On which page, sir?

24 CHAIRMAN BECHHOEFER: Two, second page -- three,
25 I'm sorry.

1 THE WITNESS: Page 3?

2 CHAIRMAN BECHHOEFER: Page 3.

3 THE WITNESS: Of the affidavit?

4 CHAIRMAN BECHHOEFER: Yeah.

5 THE WITNESS: Yes, sir, it is.

6 CHAIRMAN BECHHOEFER: So you're affirming that you
7 did review it.

8 THE WITNESS: If this is the same letter with the
9 same content, I did review it; yes, sir.

10 CHAIRMAN BECHHOEFER: Right, thank you.

11 MR. DAMBLY: Okay, can we take a five minute break
12 now?

13 CHAIRMAN BECHHOEFER: Yes, yes.

14 (A short recess was taken.)

15 CHAIRMAN BECHHOEFER: Back on the record.

16 BY MR. DAMBLY

17 Q Mr. Hickman, you don't dispute that the three
18 documents which are attached to your affidavit are copies of
19 the three documents that went back to Senator Sasser from
20 the IG's office, do you?

21 A No, sir, I do not.

22 MR. DAMBLY: Staff would move -- those three
23 documents happen to be Staff Exhibits 30, 32 and 33 and we'd
24 like to move those into evidence now.

25 JUDGE YOUNG: Not 162?

1 JUDGE COLE: 30, 32 and 33, Staff exhibits.

2 MR. MARQUAND: No objection.

3 CHAIRMAN BECHHOEFER: Okay, without objection,
4 Staff Exhibits 30, 32 and 33.

5 (The documents, heretofore marked
6 as Staff Exhibits 30, 32 and 33,
7 were received in evidence.)

8 CHAIRMAN BECHHOEFER: Have you made any -- are you
9 going to do anything with I think it's --

10 MR. DAMBLY: 162?

11 CHAIRMAN BECHHOEFER: -- 162, or does that come
12 later?

13 MR. DAMBLY: Well, I'd be happy to move it into
14 the record now.

15 MR. MARQUAND: I have no objection to that either.

16 CHAIRMAN BECHHOEFER: Okay, Staff Exhibit 162 will
17 be admitted, including all the attachments.

18 (The document, heretofore marked as
19 Staff Exhibit Number 162, was
20 received in evidence.)

21 BY MR. DAMBLY:

22 Q Now Mr. Hickman, can you tell me what your
23 involvement in preparing I guess 30, 32 and reviewing Staff
24 Exhibit 33, do you recall who you talked to or what you did
25 in preparing those responses?

1 A At the time that 32 -- is it --

2 Q 30, 32 and 33.

3 A I was the department manager responsible for
4 supervising nuclear investigations prior to April 1, 1994.
5 I would have been directly involved on a day-to-day basis
6 with the investigator on any letter that was written prior
7 to April 1, 1994. In preparing the response to the Sasser
8 letter that is dated prior to 1994, I would have had
9 conversations with the investigator along with a review of
10 the investigative file, and in reviewing the investigative
11 file, I would have had access to all interviews and other
12 documentary evidence that had been collected.

13 Q Okay, so to the best of your recollection the
14 responses that were prepared were based on whatever you had
15 in the IG files?

16 A That's correct.

17 Q You don't recall going out and separately looking
18 into or talking to anybody about the various incidents that
19 are set forth in the letter that those three gentlemen wrote
20 to Senator Sasser?

21 A I suppose there's a possibility I would have had
22 conversations with my legal advisor as those letters were
23 being prepared, but I have no recollection of going outside
24 the IG's office to obtain information to respond to the
25 Sasser letter.

1 Q Now if we take a look at the first letter, which
2 is Staff Exhibit 30, and if you want to take a moment to
3 look at that --

4 (The witness reviews a document.)

5 Q In that, you indicate some findings about Dr.
6 Matthews, where you basically substantiated his claim.

7 A Yes, sir, we did.

8 Q And you indicate that for Jocher and Fiser, you're
9 still investigating. I guess Fiser's case, you hadn't even
10 gotten the complaint yet.

11 A Correct.

12 Q And you also talk about two issues that NRC is
13 looking at, one of which was an alleged false or misleading
14 information to the NRC by TVA in response to an NRC Notice
15 of Violation.

16 Did the IG's office institute a separate
17 investigation on that?

18 A No, our normal practice is that if OI was looking
19 at an issue, we would defer to OI.

20 Q If we look at Staff Exhibit 32, the second letter,
21 it indicates that some more information on Mr. Matthews, Dr.
22 Matthews and then says you're still investigating Mr.
23 Jocher's case; is that right? It's 32.

24 A Yes, sir.

25 Q And on Staff Exhibit 33, it indicates more about

1 Jocher's case and what findings you made in Jocher's case,
2 but doesn't mention Mr. Fiser's case.

3 A Exhibit 33 in my book is just the last page of an
4 April 22 letter.

5 CHAIRMAN BECHHOEFER: I think he needs another
6 page.

7 THE WITNESS: Maybe that was the problem earlier,
8 we were looking at different documents.

9 MR. DAMBLY: You can take that one.

10 THE WITNESS: You want me to put this in here?

11 MR. DAMBLY: Yes.

12 BY MR. DAMBLY:

13 Q If you look at that, that's the same document
14 that's Exhibit D I think in your affidavit.

15 A Okay.

16 Q That indicates getting back to Senator Sasser on
17 Jocher's issues.

18 A Yes, sir.

19 Q Did you ever write a response to Senator Sasser on
20 the Fiser issues?

21 A I don't recall.

22 Q But the Fiser issues were some of the issues that
23 Senator Sasser forwarded to you for response?

24 A Yes, sir.

25 Q Is it normal when the IG at TVA gets a inquiry

1 from a Congressman or a Senator not to complete a response
2 to them?

3 A Normally we would, yes.

4 Q But you have no recollection of whether you did or
5 you didn't prepare one that would have covered the rest of
6 the allegations?

7 A And the reason I don't recall, sir, is as I said
8 earlier, I became the Assistant Inspector General in April
9 of '94 and another person was appointed as the department
10 manager and he would have had the action item to finish this
11 response. So I don't specifically recall if there was
12 feedback to Senator Sasser or not.

13 Q All right. You did, in preparing the declaration,
14 go through the IG's files, is that correct, on responses to
15 the Sasser letter.

16 A Yes, sir.

17 Q I mean you personally or somebody went for you and
18 checked all the -- and you found no further response.

19 A We found no written response. I guess I should
20 say it's not unusual for the Senator's staffer to correspond
21 with us telephonically as well. That would not -- it is not
22 outside the realm of possibility that there was some type of
23 telephonic conversation that was not documented, but I do
24 not have a specific recollection of reviewing or preparing a
25 letter to the Senator in response to Mr. Fiser.

1 CHAIRMAN BECHHOEFER: If there were a telephonic
2 conversation would someone from your staff normally write a
3 memo to the files setting forth that that conversation took
4 place and then putting it in the relevant investigative
5 file?

6 THE WITNESS: I would. That doesn't necessarily
7 mean that another person -- for example, if the staffer had
8 called and said that they wanted an update, they might have
9 gotten a verbal update from the then department manager.
10 It's not required that we do a memo to file. It would be a
11 good practice, yes. I don't recall seeing such a document,
12 however.

13 CHAIRMAN BECHHOEFER: I see. Thank you.

14 BY MR. DAMBLY:

15 Q Now again referring to your affidavit or your
16 declaration, I'm sorry, Staff Exhibit 162, on the second
17 page, paragraph 3 indicates that you read the NRC staff's
18 representation that Edward J. Vigluicci, an attorney in
19 TVA's Office of General Counsel, drafted the response to the
20 August 24, 1993 letter from then Senator Jim Sasser to
21 William Hinshaw. And then you go on in the next paragraph
22 to say, to the best of your knowledge, Vigluicci did not
23 prepare, review or comment on any of the responsive letters
24 before they were released.

25 Your answer and your representation is limited to

1 documents in the IG's files, is that correct?

2 A Yes, sir, it is.

3 Q Do you have any knowledge whatsoever if anybody
4 else in TVA, when they got the letter, which is attached as
5 part of your responses to an awful lot of people, whether
6 there were any responses prepared outside of the IG's office
7 about the allegations or the safety issues that went back to
8 Senator Sasser?

9 A I don't have any knowledge in that regard.

10 Q On Staff Exhibit 33, the last document, do you
11 know why Mr. Crowell, Mr. Kingsley and Mr. Marquand would
12 have been given blind carbon copies of this document?

13 A That's not unusual for our office to send courtesy
14 copies to relevant managers or to the Board at TVA when we
15 are responding to a Congressional concern about a TVA
16 problem. It's a general practice that to this day we still
17 do that.

18 Q So the copy sent to Mr. Marquand was a courtesy
19 copy?

20 A Mr. Marquand was the General Counsel, the TVA
21 counselor who was handling this matter, is probably why he
22 received a copy.

23 Q Let me show you Staff Exhibit 130.

24 (Brief pause.)

25 Q Now Mr. Hickman, looking at Staff Exhibit 130,

1 which is an organizational chart for the nuclear operations,
2 ops, support and radiology and chemistry control. I think
3 there's a date down in the bottom right hand corner that
4 says 2/13/95. To your knowledge, how many people on that
5 organizational chart filed DOL or whistleblower complaints
6 with your office or that were referred to your office?

7 A The whistleblower complaints would not have been
8 referred to my office initially.

9 Q Right.

10 A But we would have been involved in conducting --

11 Q How many did you investigate a whistleblower
12 complaint for?

13 A How many?

14 Q Yes, which ones of the people on here, that are
15 mentioned.

16 A Just from my memory?

17 Q Yes.

18 A G.L. Fiser, for sure; I'm not sure about Mr.
19 Harvey; and with respect to Mr. Grover, I know we've been
20 involved in two or three issues where he was a complainant,
21 I'm not sure if one was a Section 211 complaint or not, but
22 I do know that he had a concern that he filed with the
23 Office of Special Counsel or someone, but we would have been
24 involved in a concern that he filed.

25 Q All right. What about Mr. Sorrell?

1 A I don't recall offhand -- I'm not sure. I'm not
2 saying that we didn't, I just don't recall.

3 Q If you'd turn again in the small book that we
4 looked at this morning, the little skinny one.

5 A Okay.

6 Q To Tab 174 and look at the first page there.

7 A Okay.

8 Q Does that refresh your recollection that Mr.
9 Sorrell filed one?

10 A Yes, sir, it does.

11 Q And you're aware obviously that Mr. Jocher filed
12 one and was in the corporate chemistry organization at one
13 point.

14 A Yes, sir.

15 Q Does your office look at trends in complaints at
16 all?

17 A Trends in compliance?

18 Q In complaints. In mean do you look and say well,
19 here we have an org chart where I guess three people on it
20 have filed complaints and we know Mr. Jocher has filed a
21 complaint in chemistry, should we look and see if there's an
22 issue there? Do you do any of that kind of stuff?

23 A Actually our audit staff does a survey, a formal
24 survey. They use a survey instrument where they evaluate
25 nuclear employees' willingness and ability to file -- to

1 freely express safety concerns. That's something that our
2 audit staff has done for a number of years now.

3 Q Did they ever do any auditing of the corporate rad
4 chem organization that you can recall?

5 A We very well may have.

6 Q You don't' recall.

7 A I don't specifically recall being involved in it.
8 That would have been handled by my audit counterparts, but
9 it is possible when we -- if we find trends, it is possible
10 that the auditors would go into a particular unit and look
11 for trends. That's not something that I'm directly involved
12 with.

13 MR. DAMBLY: Okay. I have no further --

14 CHAIRMAN BECHHOEFER: Could you do that absent a
15 request for investigation?

16 THE WITNESS: Can we do the audit trending --

17 CHAIRMAN BECHHOEFER: Yes.

18 THE WITNESS: -- absent a request? Yes, sir.

19 CHAIRMAN BECHHOEFER: Thank you.

20 MR. DAMBLY: And at this point, staff would also
21 like to move in Staff Exhibit 174, the pages at the end,
22 628, 630 and 631, which is the last three dealing with the
23 tapes issue and --

24 CHAIRMAN BECHHOEFER: Which pages again?

25 MR. DAMBLY: The last three in there, they're

1 EE000618, 630 and 631.

2 JUDGE YOUNG: Those are the only three pages
3 you're moving in?

4 MR. DAMBLY: I don't think we need the other. I
5 mean they were all attached at some point, but I'm not even
6 sure why they're in the same place, quite frankly. They
7 deal with different subjects.

8 THE WITNESS: Sir, may I make an observation about
9 this document?

10 MR. DAMBLY: Which one?

11 THE WITNESS: 174.

12 MR. DAMBLY: The whole thing or --

13 THE WITNESS: Yes. I note from our file number
14 that while Mr. Sorrell may have filed a Department of Labor
15 concern, the file number suggests that our initial
16 involvement in the concern was a direct contact with either
17 Mr. Sorrell or with TVA nuclear, it was not based on a
18 Department of Labor Section 211 concern.

19 MR. DAMBLY: I was just looking at people who had
20 raised harassment and intimidation allegations.

21 THE WITNESS: Right. And you asked about Section
22 211. This may not have strictly been a 211 concern. It may
23 have been later on, but when we became involved in the
24 inquiry, based on the file number, it was not a 211 concern.

25 MR. DAMBLY: Okay.

1 CHAIRMAN BECHHOEFER: And these are what, three
2 letters to Mr. Fiser?

3 MR. DAMBLY: The pages I'm talking about, yes,
4 Your Honor. The first one, 628, is the one dealing with
5 they might be using the tapes in the Jocher hearing and then
6 630 and 631 are Fiser's -- deal with Mr. Fiser's FOIA
7 request for the IG report.

8 CHAIRMAN BECHHOEFER: Any objection to those
9 particular pages, because I understand that's all that's
10 being offered.

11 MR. MARQUAND: Well, as I understood the witness'
12 testimony, he had not seen and there was no indicia on these
13 that he had seen pages 628, 630 and 631. But I won't object
14 to 628 since it apparently was generated in the Office of
15 General Counsel, but I don't see any basis to authenticate
16 pages 630 and 631.

17 MR. DAMBLY: Well, I guess I would say we've heard
18 an awful lot from Mr. Marquand about self-authentication.
19 These obviously are official TVA documents produced to us
20 and they've got Bates stamps.

21 MR. MARQUAND: Counsel didn't seem earlier to
22 think documents are self-authenticating. I guess I'll have
23 to agree with him and will have to object to those pages.

24 MR. DAMBLY: There's a difference between
25 producing a TVA document and TVA producing a document, a

1 declaration by somebody who is not here, saying it's self-
2 authenticating. These are official records produced to us in
3 course of this case.

4 MR. MARQUAND: Counsel wanted to draw an awful lot
5 of conclusions from them and my objection will have to
6 stand, that we don't have the custodian of the document, the
7 author of the document here to authenticate them.

8 JUDGE YOUNG: You did produce them in response to
9 discovery requests?

10 MR. MARQUAND: Yes, I can tell from the Bates
11 stamp that they were produced, but counsel drew all kinds of
12 conclusions about what this FOIA request was on page 630 and
13 it certainly doesn't say what the FOIA request was
14 specifically requesting.

15 MR. DAMBLY: I believe it does.

16 MR. MARQUAND: Well, it doesn't say that on that
17 document.

18 MR. DAMBLY: The IG report, is what it says right
19 on the first page.

20 MR. MARQUAND: Doesn't say that on page --

21 MR. DAMBLY: We will bring -- Mr. Fiser is coming
22 back in, if you really have a problem, we can have him
23 authenticate it.

24 MR. MARQUAND: Well, since counsel seems to be
25 hung up with authentication, maybe that's the appropriate

1 way to go.

2 (The Judges confer.)

3 CHAIRMAN BECHHOEFER: The Board has decided we
4 will allow those three pages to be admitted. We will permit
5 TVA to come back and demonstrate later that we should
6 reconsider, based on authenticity, but for the moment, we
7 will accept these documents into evidence.

8 MR. MARQUAND: Thank you, Your Honor.

9 (The documents, heretofore marked
10 as Staff Exhibit Number 174, pages
11 628, 630 and 631, were received in
12 evidence.)

13 MR. DAMBLY: We have nothing further for Mr.
14 Hickman. Thank you, sir.

15 CHAIRMAN BECHHOEFER: Do you need a break before
16 you...

17 MR. MARQUAND: No, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MARQUAND:

20 Q Mr. Hickman, I'm going to show you TVA Exhibits 11
21 and 13. Can you identify TVA Exhibit 11, please.

22 A Exhibit 11 is an October 31st, 1994 OIG report.
23 It is a report of our investigation of the circumstances
24 surrounding Gary L. Fiser's September 1993 Section 2-11
25 complaint.

1 Q What caused the IG to initiate its investigation
2 in this case?

3 A Like all of our inquiries involving Section 2-11
4 complaints, we would have received a request from the chief
5 nuclear officer to conduct a parallel investigation of this
6 concern, to determine if a TVA employee violated TVA code
7 with respect to the way Mr. Fiser was treated in these
8 instances.

9 Q Did the OIG substantiate or not Mr. Fiser's
10 allegations that because he reported safety concerns,
11 certain actions were taken against him?

12 A According to the report that I have in front of
13 me, we did not find evidence of misconduct on the part of a
14 TVA manager with respect to the treatment of Mr. Fiser.

15 Q Did the OIG determine the basis for the actions
16 taken against Mr. Fiser?

17 A Did we determine the basis of the actions taken?

18 Q Yes.

19 A Generally in a report like this we would try to
20 identify what the basis for the action was. This is a
21 fairly extensive report and I haven't seen it since 1993,
22 but I'm sure we -- we generally try to do that. 1994. I'm
23 sorry.

24 Q Is there -- is there a cover memorandum
25 transmitting the report?

1 A Yes, it is.

2 Q And is there an executive summary, so to speak, in
3 that transmittal memorandum?

4 A Yes, there is.

5 Q Does the executive summary state the basis for
6 the...

7 A Yes, it does. The summary on -- the summary memo
8 does state our relevant findings.

9 Q All right. And does it state your relevant
10 findings with respect to the basis for the actions taken
11 against Mr. Fiser?

12 A Yes. I think in the -- the initial bullet on Page
13 1 of the cover memo or the cover letter states that we
14 concluded that Mr. Fiser was a weak manager because there
15 were -- because there were problems falling under his
16 management responsibility which he did not identify or
17 correct.

18 Q It says that management made that conclusion;
19 correct?

20 A I'm sorry, I can't hear you.

21 Q It says management made that conclusion; correct?

22 A Yes. Yes.

23 Q Does it -- and does the next bullet state the
24 basis for Mr. Fiser's RIF?

25 A Yes. It concludes that his RIF was due primarily

1 to miscommunication and misunderstanding among managers
2 regarding what position was being RIF'd, specifically
3 whether Mr. Fiser's position as a program manager in
4 corporate chemistry or as a Sequoyah chemistry manager was
5 being RIF'd.

6 MR. DAMBLY: And I guess, for the staff, I would
7 object to the whole line of inquiry. The IG's conclusions
8 are totally irrelevant in terms of you reaching conclusions.
9 They're also, as Mr. Marquand said earlier, self-serving,
10 prepared for litigation documents.

11 The staff has used reports of interview, which
12 would be evidence. But the conclusions drawn by the IG's
13 office are totally irrelevant. They have nothing to do with
14 this. They can't -- you're not bound by them. It's Mr.
15 Hickman's opinion or whoever wrote it's opinion, so it's not
16 relevant. The information that would be contained in the
17 reports of interview and attachments, which aren't here,
18 would be relevant.

19 JUDGE YOUNG: But if -- if -- earlier I think I
20 stated that since TVA had opened the door to the general
21 climate at TVA, then general inquiry of Mr. Hickman about
22 other...

23 MR. MARQUAND: Complaints.

24 JUDGE YOUNG: ...whistle blower complaints would
25 be relevant. And in that same vein, wouldn't this be

1 relevant to the general climate of how TVA handled whistle
2 blower complaints? Not -- not...

3 MR. DAMBLY: I'm not sure how it's -- I mean, we
4 know how they handle them. They investigate them. But this
5 doesn't show how they handled them, it shows what
6 conclusions an individual drew in a case, and that's not --
7 you know, I mean, we'd certainly be willing to stipulate
8 that they concluded Mr. Fiser wasn't discriminated against
9 in '93, and again in '96. That's obvious. We wouldn't be
10 here if they concluded otherwise.

11 JUDGE YOUNG: I think the general climate --
12 everyone has -- has agreed that the general climate at TVA
13 and in how TVA handled whistle blower complaints, either IG
14 or -- how people who raised complaints were treated by other
15 people in the general TVA organization or how the IG office
16 handled those complaints falls within that general...

17 MR. DAMBLY: This doesn't show how people who...

18 JUDGE YOUNG: ...falls within that general issue
19 of the -- of the climate at TVA, which is -- is indirectly
20 relevant to the issue that -- that you're raising.

21 MR. DAMBLY: Well, again, I don't see how this
22 shows how people treated people who raised issues. It's
23 been already stated before that it's a requirement, if they
24 get a complaint, that the IG investigate. So they did an
25 investigation. This has -- this does not show -- the

1 attached documents, if they were attached, would show what
2 various people said was going on with Mr. Fiser. What you
3 have here is the IG's I guess gloss on what information they
4 think they collected. But it's not the information, it's
5 what they chose to right.

6 JUDGE YOUNG: I understand. I understand that.
7 But what I'm trying to get you to address is if -- since you
8 have raised the question about how IG handled complaints
9 generally, the manner in which the IG analyzed a particular
10 complaint would be relevant to the issue that you have
11 raised about the general climate and the -- and how --
12 actually, how TVA raised about the general climate, but you
13 also raised in questioning how the IG's office handled
14 complaints generally. So if the -- if the -- if a
15 particular report would show that a reasoned analysis was
16 done as -- not necessarily for its truth, but a reasoned
17 analysis as opposed to a slipshod analysis, or vice-versa,
18 then it seems to me that would be relevant to the general
19 issue of how these complaints were handled, which issue you
20 were going into with Mr. Hickman earlier.

21 MR. DAMBLY: No, I -- I never -- the only -- how
22 you handled them was the general investigative process. It
23 had nothing to do -- that -- that was because of issues
24 raised with Mr. Kent on his -- that we said we'd deal with
25 Mr. Hickman on.

1 JUDGE YOUNG: Well, each party opens the door a
2 little bit -- a little bit further. But once the door is
3 opened, I'm not sure you can just close it halfway and say -
4 - either party can do this. Can open it just far enough to
5 get what evidence they want in, and then close it to any
6 other evidence on the same general issue.

7 MR. DAMBLY: Well, and the general issue, the only
8 general question was what percentage of the cases that come
9 to you do you substantiate. There was no indication or
10 otherwise that they're doing a lousy job or a great job or
11 anything. And this only goes...

12 JUDGE YOUNG: What was that -- what was that
13 relevant to?

14 MR. DAMBLY: As to the climate and -- and what
15 they...

16 JUDGE YOUNG: Right. Right.

17 MR. DAMBLY: But that's climate. That's not...

18 JUDGE YOUNG: Right.

19 MR. DAMBLY: ...did they write a good report.
20 That wasn't an issue.

21 JUDGE YOUNG: A lot of things go into climate.

22 MR. MARQUAND: And then counsel...

23 JUDGE YOUNG: I would allow it in for that reason.

24

25 MR. MARQUAND: ...counsel further asked about the

1 number of allegations that came out of that specific
2 organization. And, Your Honor, I agree with your point.

3 The further point that I would make is that the IG
4 is statutorily authorized and has statutory authority to
5 investigate these matters, and did investigate these matters
6 pursuant to statute, and that...

7 JUDGE YOUNG: I'm going to stop you, because I
8 would not go so far as to give this document any deference
9 for its truth or for any -- or for its conclusions. Merely
10 for the purpose which I've already explained. That's how I
11 would treat it.

12 Judge Bechhoefer?

13 MR. DAMBLY: And, again, just one last comment, as
14 I may have made before. This is one of those that Mr.
15 Marquand referred to as the self-serving, prepared for
16 litigation only purposes document.

17 JUDGE YOUNG: And -- and both parties seem to, as
18 -- as it fits your purposes, argue that the rules should be
19 deferred to or should not because the rules of evidence
20 don't apply. So obviously there are a lot of things that
21 would not come in under the rules of evidence, that have
22 come in on both parties' request.

23 CHAIRMAN BECHHOEFER: Well, I'm not really that
24 interested in what the rules of evidence would provide. I
25 do believe that this document, as long as we know that it's

1 an authentic report of the IG and it bears on a subject
2 that's relevant to what we're considering in this
3 proceeding, should be admitted. And I would vote to admit
4 it. And, Judge Young, all of us...

5 JUDGE YOUNG: So we can move on.

6 CHAIRMAN BECHHOEFER: ...would vote to admit it.

7 MR. MARQUAND: Thank you, Your Honors.

8 (The documents, heretofore marked
9 as TVA Exhibit #11, were received
10 in evidence.)

11 BY MR. MARQUAND:

12 Q Mr. Hickman, would you turn to Tab 13 in the
13 notebook in front of you.

14 CHAIRMAN BECHHOEFER: Tab which?

15 MR. MARQUAND: Tab 13.

16 CHAIRMAN BECHHOEFER: 13? I just didn't know
17 what...

18 Q Mr. Hickman, what is the document appearing as TVA
19 Exhibit 13?

20 A This is also an OIG investigative report. It is a
21 report of a -- of concerns or complaints by Gary L. Fiser.
22 The complaint is that TVA management violated Section 2-11
23 of the Energy Reorganization Act by discriminating against
24 him because he raised safety concerns.

25 Q What caused the IG's office to investigate those

1 circumstances?

2 A We investigated this matter based on a request
3 from the chief nuclear officer that we look at the
4 circumstances surrounding the treatment of Mr. Fiser and his
5 allegation or in his complaint.

6 MR. MARQUAND: Your Honors, I tender TVA Exhibit
7 13 on the same basis I previously tendered TVA Exhibit 11.

8 CHAIRMAN BECHHOEFER: Do we have the same
9 objection?

10 MR. DAMBLY: Again, the only thing this thing
11 shows is how the IG's office thinks you should do your job,
12 and I would object.

13 JUDGE YOUNG: I think we'll do our job the way we
14 think we should do our job. However, since questions have
15 been raised about how IG did its job, for the same reasons,
16 I would allow it in, not giving it any deference,
17 whatsoever, on the truth of it, but on the issue you have
18 raised about the climate and how the IG may or may not have
19 played into any alleged retaliation against Mr. Fiser.

20 CHAIRMAN BECHHOEFER: And I would agree, but I
21 think it's -- under NRC rules, is relevant to the subject
22 matter of the proceeding. And we can consider it for what
23 it's worth. And I would allow it in on that basis.

24 JUDGE COLE: I agree. I think it's relevant.

25 (The documents, heretofore marked

1 as TVA Exhibit #13, were received
2 in evidence.)

3 MR. DAMBLY: Well, just so the record's clear,
4 back on 11 I objected to the line of questioning, and I
5 think you overruled the objection. I'm not sure that the
6 document was admitted. Maybe you admitted the document, but
7 it hadn't been offered.

8 JUDGE YOUNG: We were...

9 CHAIRMAN BECHHOEFER: Well, we just -- I thought
10 we just admitted it.

11 JUDGE YOUNG: The previous discussion was about
12 the document.

13 CHAIRMAN BECHHOEFER: Yeah.

14 JUDGE YOUNG: You objected to the admission of the
15 document, Exhibit 11.

16 MR. DAMBLY: No, I objected to the inquiry about
17 the document. It hadn't been offered, but you did admit it.

18 JUDGE YOUNG: I think it had been.

19 MR. DAMBLY: No, it was in the middle of
20 questioning.

21 MR. MARQUAND: If I had failed to tender TVA
22 Exhibit 11, I do so now.

23 CHAIRMAN BECHHOEFER: I thought you did so.

24 MR. MARQUAND: I thought I did.

25 CHAIRMAN BECHHOEFER: And I acted as if you had

1 done so.

2 MR. MARQUAND: I heard all three board members
3 indicate that they were voting to admit it.

4 CHAIRMAN BECHHOEFER: That's correct.

5 JUDGE YOUNG: Could we just break for one second.

6 (A brief recess was taken.)

7 JUDGE YOUNG: Just for the record, I think we all
8 thought -- on the board thought that Mr. Marquand had
9 offered the exhibit, and we're treating your objection as
10 being to the exhibit. And I think probably I would make the
11 same ruling on the line of questioning as I -- in terms of
12 the relevance.

13 MR. DAMBLY: Well, obviously, if the document's
14 going to come in, the line of questioning is going to come
15 in. I mean, you...

16 BY MR. MARQUAND:

17 Q Mr. Hickman, I'm now going to refer you to NRC
18 Staff Exhibit 174. And, for the record, there appear to be
19 a number of documents here. I wanted to ask you to look at
20 the pages which are Bates stamped in the lower corner GB721
21 through 733. Can you identify those pages from Staff
22 Exhibit 174?

23 A The first, 721, is the cover memoranda --
24 memorandum of an investigation -- an IG investigation of
25 allegations raised by Mr. Allen Sorrell to the TVA board

1 chairman in February of 1997. 722 through 731 -- I'm sorry,
2 through 733 is the IG's report pertaining to those issues.

3 Q And if you would, look at Page 723. Can you
4 determine the basis for the IG's initiating this
5 investigation?

6 A Do I confirm the basis for initiating the
7 allegation?

8 Q Can you -- can you tell us what the basis...

9 A Yes. We completed this -- or undertook this
10 investigation based on Mr. Sorrell's letter of complaint to
11 the TVA chairman -- board chairman, and his subsequent
12 statements to the IG based on our follow-up on that letter.

13 Q All right.

14 A Specifically, we investigated whether Mr. Sorrell
15 was intimidated or harassed by TVA management for raising
16 safety concerns, and whether he was forced to resign for the
17 same reason.

18 Q Did Mr. Sorrell -- based on your review of this,
19 did Mr. Sorrell file a Department of Labor complaint?

20 A Based on my review of this document, he -- he did
21 not file a Department of Labor Section 2-11 complaint.

22 MR. MARQUAND: Your Honors, I tender TVA exhibit -
23 - Staff Exhibit 174, Pages GB721 to 733.

24 MR. DAMBLY: Do we have any of 174 left that's not
25 admitted with that?

1 MR. MARQUAND: Yes. Pages 734 through 736.

2 JUDGE YOUNG: Record of interview with Mr. Boyles
3 with a lot of it -- a lot of it crossed out.

4 MR. MARQUAND: Yes. Well, that's not -- I don't
5 believe that's a crossing out. Those serve another
6 function.

7 JUDGE YOUNG: Oh, okay.

8 JUDGE COLE: What were the range of pages?

9 MR. MARQUAND: 721 to 733.

10 JUDGE YOUNG: Any objection?

11 MR. DAMBLY: No objection.

12 CHAIRMAN BECHHOEFER: Well, without objection, the
13 Staff Exhibit 174, Pages 721 through 733 are admitted.

14 (The documents, heretofore marked
15 as Staff Exhibit #174, Pages 721
16 through 733, were received in
17 evidence.)

18 MR. DAMBLY: And I guess at this point if no one
19 has an objection, can we just remove the three pages that
20 aren't in from the exhibit?

21 MR. MARQUAND: Well, I thought the board, at the
22 conclusion of the hearings, wanted the parties to look at
23 all the documents and remove those things which were not
24 proffered. And maybe it would be wise to wait till the
25 conclusion to go through that process of excising exhibits.

1 JUDGE YOUNG: Do you want to put sticky papers to
2 remind you?

3 MR. MARQUAND: Well, I think we'll have to do
4 it...

5 JUDGE YOUNG: Either now or later or both. It
6 doesn't make any difference to us.

7 MR. MARQUAND: ...I think we'll have to do it
8 based on the record.

9 CHAIRMAN BECHHOEFER: Mine are back in Washington,
10 for whatever that's worth.

11 MR. MARQUAND: Yes, Your Honor.

12 MR. DAMBLY: I just -- it's probably much more
13 efficient to do it now. Mr. Boyles already testified, so I
14 don't know how this other three pages are going to come in
15 through somebody besides Mr. Boyles or Mr. Hickman.

16 JUDGE YOUNG: I don't see any problem with going
17 ahead and taking things out starting now, and then complete
18 the job later.

19 MR. SLATER: You have three copies over here. You
20 going to take them out of these, too?

21 MR. DAMBLY: Well, eventually everything's got to
22 come out of those.

23 MR. MARQUAND: Yeah, eventually. I'm just
24 thinking in general principle, to get everything the same at
25 the same time. But I don't...

1 MR. DAMBLY: Whatever works.

2 MR. MARQUAND: ...whatever counsel wants to do
3 right now is fine with me.

4 CHAIRMAN BECHHOEFER: Well, does the staff intend
5 to have any rebuttal case?

6 MR. DAMBLY: We're not going to call Mr. Boyles to
7 talk about this; no.

8 CHAIRMAN BECHHOEFER: You're sure?

9 MR. DAMBLY: We may call him. You know, I'm not
10 sure what's going to come up. But I'm not going to ask him
11 about these three pages. That much I can guarantee you.

12 JUDGE YOUNG: Well, Mr. Slater raised a good
13 point, though. If we stop to do each one, we're going to
14 have to go through every -- every set, so...

15 MR. DAMBLY: That's fine. We'll wait till the
16 end.

17 JUDGE YOUNG: ...it'll be inconsistent. So it's
18 probably better to just wait.

19 CHAIRMAN BECHHOEFER: I could give Lee Dewey the
20 job of doing it on my copy back in Rockville, but he's left
21 already.

22 MR. DAMBLY: Yeah, I noticed you waited till he
23 left before you said that.

24 JUDGE COLE: He'd probably assign it to Raj.

25 BY MR. MARQUAND:

1 Q The next document I'd like you to look at is TVA
2 Exhibit 81.

3 CHAIRMAN BECHHOEFER: 8-1?

4 MR. MARQUAND: Yes, Your Honor.

5 CHAIRMAN BECHHOEFER: 81.

6 MR. MARQUAND: Actually, before we do that, I need
7 to -- let me begin with TVA Exhibits 99 and 100.

8 CHAIRMAN BECHHOEFER: 99?

9 JUDGE COLE: Volume 10.

10 BY MR. MARQUAND:

11 Q And, Mr. Hickman, TVA Exhibit 99 has been
12 previously admitted in the record as an EEO complaint that
13 Mr. Grover filed in October of 2000. And it's TVA exhibit -
14 - oh, I'm sorry, I've got it backwards. 99 is the
15 Department of Labor complaint filed in October of 2000; and
16 TVA Exhibit 100 is an EEO complaint filed -- signed by Mr.
17 Grover on December 3 of 2000.

18 Do you know Mr. Grover?

19 A Yes, sir, I do.

20 Q Was he under investigation by the inspector
21 general's office?

22 A Yes, sir, he has been.

23 Q And approximately when, if you know, was that
24 investigation begun?

25 A It was, gosh...

1 Q And if you need to refer to TVA Exhibit 81 to
2 refresh your recollection, please do so.

3 A I'd like to do so, because I'm not sure of the --
4 the dates, specifically. Looks like our investigation was
5 probably in, what, '97 or '98, I think.

6 Q So he was under investigation for a period of
7 time?

8 A Yes, sir, he was.

9 Q All right. And at some point in time, are you
10 aware that he filed -- I showed you the Department of Labor
11 complaint and EEO complaints. Did he file those after some
12 event occurred with respect to your investigation?

13 A I'm not exactly sure of the timing, but I do know
14 that the Department of Labor complaint and the EEO complaint
15 was filed well after our investigation was underway. In
16 fact, we were getting very close to a completion of our
17 investigation, as I recall, when these complaints were
18 filed.

19 Q If you could let me know, tell me, does the IG's
20 final report indicate the date of -- that the draft report
21 was sent to Mr. Grover?

22 A Maybe in the -- there should be a response
23 somewhere here.

24 Mr. Marquand, I don't see it readily. This is a
25 pretty thick report.

1 Q Right.

2 A But I do know that it is a part of our
3 investigative practice to send a draft report for comment...

4 Q Right.

5 A ...to -- to the person -- the subject of the
6 inquiry.

7 Q If you would look on Page GA1162, it's date
8 stamped in the lower right-hand corner.

9 A Okay, I have it here.

10 Q Does that...

11 A That's the page I was looking for.

12 Q All right. Does that indicate a date that you
13 received comments back from Mr. Grover on the draft report?

14 A Yes, it does. Our report indicates that Mr.
15 Grover was allowed to review the report, and his comments
16 were provided to us on October 31st of 2000.

17 Q So he had the draft report in hand prior to filing
18 both the EEO and the Department of Labor complaints; is that
19 correct?

20 A Yes, sir, it is.

21 Q Just for clarification of the record, let me ask
22 you to identify TVA Exhibit 81.

23 A TVA Exhibit 81 is, again, an OIG investigative
24 report. It is the report of alleged misconduct by Ronald O.
25 Grover, who was a senior manager in TVA nuclear's

1 engineering and technical services unit.

2 Q Let me refer you to Page GA1077.

3 A Okay.

4 Q And at the conclusion of the very first paragraph
5 is a notation that begins with an exclamation point, set off
6 in exclamation points. You see that?

7 A The conclusion?

8 Q At the beginning of -- end of the very first
9 paragraph.

10 A Okay.

11 Q It begins, exclamation point, OB2, comma.

12 A Okay.

13 Q What is that?

14 A That's the annotation to our file where the
15 evidence in our files would be located with respect to the
16 information in that paragraph.

17 Q And as I look through this document, I see all
18 sorts of annotations like that.

19 A Yes.

20 Q Is this an internal version that would show
21 evidence that supported all the statements and assertions in
22 this?

23 A Yes, sir, that is correct.

24 Q All right. Now, when you look at Page GA1075 and
25 1076, it's a table of contents showing page numbers.

1 A Yes, it is.

2 Q Those page numbers don't correspond with this
3 particular annotated copy, do they?

4 A The page numbers in the table of contents don't
5 correspond with the annotated copy?

6 Q Right. Because the annotated copy is what I would
7 call an exploded version.

8 A Yes.

9 Q Okay. But is this a complete copy of the IG's
10 annotated version of that report?

11 A It appears to be; yes.

12 MR. MARQUAND: Your Honors, I tender TVA Exhibit
13 81.

14 MR. DAMBLY: And I'm going to say this is just
15 totally outrageous. We have had a stipulation from day one
16 in this case that the only thing that was coming into this
17 record was that stipulation. We did not go through this
18 with Mr. Grover because of the stipulation. To try and come
19 in now and put in something in direct contravention with the
20 representations he's made to this court and to the staff, I
21 ought to call for sanctions.

22 MR. MARQUAND: Counsel opened the door on this,
23 Your Honor.

24 CHAIRMAN BECHHOEFER: Well, I believe that I was
25 going to ask Mr. Boyles some -- some questions, and the

1 parties advised me about the stipulation, and I declined to
2 ask those questions yesterday, that is.

3 MR. MARQUAND: I appreciate that, Your Honor. But
4 what happened was, they -- instead of calling Mr. Hickman to
5 the stand and asking him about this letter to Sasser and who
6 had input into it, they then proceeded to ask about whistle
7 blower complaints and the IG's investigation of whistle
8 blower complaints. They suggested that there were a number
9 of complaints.

10 JUDGE YOUNG: I think you're putting this in for a
11 reason other than just general looking at investigations.

12 MR. MARQUAND: No. I think, as the witness has
13 testified, Mr. Grover filed his Department of Labor
14 complaint and his EEO complaint as a offensive tactic to try
15 to head off this IG report that he knew was coming out.
16 He'd already got the draft report. He turned around and
17 filed those complaints, which essentially went to the *bona*
18 *fides* of the IG.

19 JUDGE YOUNG: I would -- I would sustain the
20 objection on this one, because this has been subject of
21 several conversations. And, in addition, whatever --
22 whatever value it might have in -- with regard to the
23 general climate at TVA is outweighed by the prejudice. And
24 obviously we would not consider it, nor any of the others,
25 for the truth of what is in the documents. But in this case

1 I think the prejudice outweighs the -- any potential weight
2 it should be given in this proceeding on the more general
3 issue.

4 CHAIRMAN BECHHOEFER: Yeah, the -- the board
5 unanimously will sustain the objection to that document.

6 MR. MARQUAND: Thank you, Your Honor.

7 BY MR. MARQUAND:

8 Q Mr. Hickman, did the inspector general also
9 investigate and issue report with respect to Mr. Grover's --
10 the circumstances surrounding Mr. Grover's Department of
11 Labor complaint?

12 A I don't recall. I don't think we did, because I
13 think the concerns that he was raising in his DOL complaint
14 we had previously looked at in -- in Exhibit 81, is my
15 recollection.

16 Q What were the IG's conclusions with respect to the
17 circumstances surrounding Mr. Grover's Department of Labor
18 complaint?

19 A What was our finding with respect to his concerns?

20 Q Yes.

21 MR. DAMBLY: I guess I'm going to object. I
22 thought he said the just -- he didn't do an inquiry, so I'm
23 not sure what his findings are going to be.

24 MR. MARQUAND: No, he said that he -- they didn't
25 need to readdress the matter.

1 JUDGE YOUNG: What's the relevance of his
2 findings?

3 MR. MARQUAND: As counsel went into it, he pointed
4 out the fact that all these individuals had filed Department
5 of Labor or whistle -- had raised whistle blower issues.

6 JUDGE YOUNG: But you didn't ask about the
7 findings with regard to any of the others. And I
8 specifically, in my comments on why I voted to admit the
9 others, specifically excluded relying on them for the truth
10 of anything asserted therein. And they were not offered for
11 any findings, and no questions were asked about findings
12 made.

13 MR. MARQUAND: I'll withdraw the question. No
14 further questions.

15 CHAIRMAN BECHHOEFER: Mr. Dambly, do you have any
16 further questions? I have at least one on a...

17 MR. DAMBLY: Go ahead.

18 CHAIRMAN BECHHOEFER: ...sort of -- I got to get
19 one of your exhibits out, and make sure it's the right one
20 before I get it out. I want to see if this is the right
21 exhibit first. No, that's not the right exhibit.

22 The one I'm looking for, and I had the wrong one
23 starred, I guess. It's the one -- the informal report that
24 the staff produced concerning the informal investigation of
25 Ms. Landers' complaints. Do you know the document I'm

1 referring to? We talked about it yesterday.

2 MR. DAMBLY: Joint exhibits, I think. It would be
3 Joint Exhibit 55, I think.

4 CHAIRMAN BECHHOEFER: Yeah. Yes. Yes.

5 Mr. Hickman, first, could you identify the
6 difference between an informal investigation and a formal
7 investigation of the OIG?

8 THE WITNESS: The difference between an informal
9 investigation and a formal investigation?

10 CHAIRMAN BECHHOEFER: Yes.

11 THE WITNESS: I'm not sure I...

12 CHAIRMAN BECHHOEFER: If there -- I mean...

13 THE WITNESS: ...I don't -- I don't understand the
14 term. There is -- I can delineate, I think, the difference
15 between a primarily investigation and a -- and a full
16 investigation. But I'm not sure I understand the context of
17 your question, the difference between an informal and a
18 formal investigation.

19 CHAIRMAN BECHHOEFER: Well,...

20 THE WITNESS: It's not a term that -- that we
21 would typically use in my office, an informal investigation.
22 We might do a preliminary investigation.

23 CHAIRMAN BECHHOEFER: Well, we had some previous
24 testimony concerning this incident referenced in Joint
25 Exhibit 55. Was this while you were in -- in that -- in the

1 inspector general's office this period of time?

2 THE WITNESS: In 1996 I would have been the
3 assistant IG for investigations; yes.

4 CHAIRMAN BECHHOEFER: I see. We had some
5 testimony that Ms. Landers, but apparently other, also
6 (sic), co-op students or interns or whatever, had been
7 harassed in some manner by a Mr. Harvey. And do you have
8 any recollection of the extent to which the OIG office
9 investigated this? The testimony was that Ms. Landers did
10 not wish to institute a formal investigation, but just
11 wanted certain actions to be taken which would prevent Mr.
12 Harvey from further pursuing some of the activities that the
13 complaint concerned. Do you have any recollection of that?

14 THE WITNESS: I don't have any specific
15 recollection of that fact pattern. However, with a respect
16 to a -- an allegation of harassment, it would not be unusual
17 for us to initiate an inquiry, and for the victim or the
18 complainant to ask that we not conduct a full investigation,
19 but rather give the affected manager or managers an
20 opportunity to take corrective action rather than being told
21 to do so based on a formal report from the IG.

22 In many instances, for example, a victim might
23 say, "I don't want to undergo the public ridicule that I
24 might undergo if an IG investigator comes in and starts
25 interviewing my co-workers to establish what really happened

1 in my complaint." So they might ask us, on the front end,
2 if we would defer to the -- to manager or to some other
3 form, to allow the corrective action to be taken. That is,
4 assuming the victim or the complainant is satisfied that the
5 appropriate action will be taken.

6 CHAIRMAN BECHHOEFER: I see. So was that the
7 process or procedure that was used in this instance?

8 THE WITNESS: Without looking at the case file,
9 Your Honor, I couldn't tell you. I noted -- I note here
10 that our investigator, Blake Daniel, did do an interview
11 with Ms. Landers, and it is tied to an investigative case
12 file. 2A361 would -- would be the file where all of that
13 information would be contained.

14 CHAIRMAN BECHHOEFER: Right. Well, I was more
15 interested in the procedure.

16 THE WITNESS: But I -- I don't have a
17 recollection.

18 CHAIRMAN BECHHOEFER: In the procedure you
19 followed with respect to this particular either complaint or
20 -- or comment from Ms. Landers.

21 THE WITNESS: If -- if Ms. Landers had been the
22 victim of some harassment or intimidation, and if she came
23 to us with a -- an affirmative belief that her manager or
24 managers could correct the problem, and if management
25 indicated to us they were willing to work with Ms. Landers

1 to fix whatever problem she was having, it is quite possible
2 that we would defer to management and close our
3 investigation at that point. And that is done quite often.

4 CHAIRMAN BECHHOEFER: I see. Well, that was the
5 extent of my inquiry, as to procedures, more -- more than
6 substance.

7 THE WITNESS: Yes. Our -- our primary concern,
8 Your Honor, is that in an instance where an employee
9 believes they've been subjected to some adverse treatment,
10 either by a co-worker or by someone in the management chain,
11 our primary focus is to insure that appropriate corrective
12 action is taken. And if that action can occur without us
13 doing a formal, full field investigation and baring the
14 souls of a lot of people, it -- it would not be unusual for
15 us to defer and -- and go directly to management and request
16 that they get involved in the corrective action process.

17 CHAIRMAN BECHHOEFER: I see. Would your office
18 inquire as to the adequacy of the remedy that management
19 would elect to pursue?

20 THE WITNESS: Yes, we would. And we would -- we
21 would typically ask them to give us a response...

22 CHAIRMAN BECHHOEFER: I see.

23 THE WITNESS: ...as to the corrective action that
24 they took. And that -- that response would also be
25 documented in our case file.

1 CHAIRMAN BECHHOEFER: I see. Thank you. That was
2 the scope of my inquiry on this matter. Do other parties
3 wish to ask some questions?

4 MR. DAMBLY: I just had...

5 CHAIRMAN BECHHOEFER: Pardon?

6 MR. DAMBLY: ...I had a couple.

7 REDIRECT EXAMINATION

8 BY MR. DAMBLY:

9 Q First, Mr. Hickman, we looked at TVA Exhibit #11,
10 which was the -- your investigation of Mr. Fiser's '93
11 issues. Do you recall that?

12 A Yes, sir.

13 Q It was during that investigation that Mr. Fiser
14 provided the tapes to Ms. Thomas?

15 A We had two investigations. I believe that it was
16 the '93 investigation. I wouldn't swear to that at this
17 point. There were -- but there were two investigations
18 where Mr. Fiser was the complainant.

19 Q And with respect to the big document, 81, is there
20 some way you can look through that document and tell me when
21 you initiated your investigation? Because I don't see a
22 date of initiation in there.

23 A The -- the document Mr. Marquand showed me?

24 JUDGE YOUNG: You said 81?

25 Q 81. The one -- he asked about what the date that

1 you showed it to Mr. Grover, I think, establish it was
2 before he filed his formal complaints. Can you -- can you
3 look at it and tell us when the investigation was initiated,
4 a date?

5 (The witness reviews certain material.)

6 A Without the benefit of the case file, I -- I don't
7 know that I can. The specific date. There is a document in
8 the case file---it may not be included in the summary
9 report---when the allegation was actually received.

10 Q Is there any indication in the thing you have
11 there of when Mr. Grover was first contacted?

12 A When he was first interviewed by our office?

13 Q Yes.

14 A I don't know. This is about a -- what, a 100 page
15 report. I don't recall if it's in the report or not.

16 Q Okay. Thank you. I was...

17 A I know -- I do know that he was there several
18 times.

19 Q Right. That's all.

20 RE CROSS-EXAMINATION

21 BY MR. MARQUAND:

22 Q Mr. Hickman, would you look at Joint Exhibit 55,
23 Ms. -- the '02 report of interview of Ms. Landers.

24 A 55?

25 MR. DAMBLY: The one you were just looking at a

1 minute ago with Ms. Landers' statement.

2 A Okay, go ahead.

3 Q Can you -- if you would review the first paragraph
4 of that, can you tell us whether or not she raised that
5 allegation to the IG, or whether that allegation was brought
6 to the IG by some other party?

7 (The witness reviews certain material.)

8 A Based on the wording in this document, I would
9 conclude that Ms. Landers contacted our office. The first -
10 - the first sentence says that she telephonically
11 contacted...

12 Q Read the next sentence.

13 A ...interviewing agent. "The agent advised Ms.
14 Landers of his identity and interviewed her regarding a
15 concern referred to the OIG by the concerns resolution staff
16 pertaining to the conduct of Sam Harvey." So it is possible
17 that the concerns resolution staff referred it to us. The
18 file number, 2A, designates it as a concerns resolution
19 concern of intimidation and harassment. That's what that 2A
20 designation generally means.

21 Q So it appears that she went -- somehow the
22 concerns resolution had an issue that they referred to you
23 for investigation?

24 A Yes, that is correct.

25 Q I have nothing further.

1 MR. DAMBLY: Nothing further for the staff.

2 JUDGE YOUNG: Thank you.

3 CHAIRMAN BECHHOEFER: Mr. Hickman, you're excused.

4 And we thank you for your coming down here.

5 THE WITNESS: Thank you.

6 MR. DAMBLY: This be a good time for lunch?

7 CHAIRMAN BECHHOEFER: Yes. Yes.

8 (Whereupon, a luncheon recess was taken at
9 12:12 p.m., the hearing to resume at 1:15 p.m.,
10 the same day.)
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1 AFTERNOON SESSION

2 CHAIRMAN BECHHOEFER: Back on the record.

3 Mr. Fiser, you may resume the witness stand,
4 Welcome back.

5 JUDGE COLE: Welcome back, Mr. Fiser.

6 CHAIRMAN BECHHOEFER: It's my understanding that
7 Mr. Marquand had not yet completed his cross examination of
8 Mr. Fiser, so Mr. Marquand, are you ready to go?

9 MR. MARQUAND: Thank you, Judge.
10 Whereupon,

11 GARY L. FISER

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

14 CROSS EXAMINATION (continued)

15 BY MR. MARQUAND:

16 Q Good afternoon, Mr. Fiser.

17 A Good afternoon.

18 Q I want to direct your attention to an individual
19 by the name of Trisha Landers. You knew her, correct?

20 A That's correct.

21 Q At some point in time, she told you she was having
22 some problems with Sam Harvey, is that right?

23 A That's correct.

24 Q And what did you understand to be the nature of
25 the problem?

1 A The way she presented it to me, she felt like it
2 was some type of harassment, intimidation.

3 Q Did she tell you she was concerned about sexual
4 harassment?

5 A It's been a long time ago, but it seems like that
6 might be the case, yes.

7 Q Did you tell her that she should file a complaint
8 with Human Resources about it?

9 A As I recall, I think I told her that she should
10 probably discuss it with someone in Human Resources or
11 perhaps her supervisor or something.

12 Q Did you bring it to Ron Grover's attention?

13 A I don't recall doing that, no.

14 Q When you were employed at TVA, that was when you
15 were in the chemistry and environmental program manager
16 position, correct?

17 A That's correct.

18 Q And your grade was PG-8, you were on the
19 management and specialist pay schedule.

20 A That's correct.

21 Q You understood that as an individual on the
22 management and specialist pay schedule, you had some
23 obligations with respect to allegations of sexual
24 harassment, is that right?

25 A That's correct.

1 Q To make sure that they were appropriately
2 addressed.

3 A That's correct.

4 Q Did you bring those allegations to the attention
5 of anyone else in management?

6 A Not that I recall. My advice to her was that she
7 should take it up with Personnel or her supervisor.

8 Q Did you bring those allegations to the attention
9 of Human Resources?

10 A Not that I recall.

11 Q Did you bring them to the attention of any EEO
12 counselor?

13 A Not that I recall.

14 Q What about the Inspector General?

15 A Not that I recall.

16 Q At some point in time, you're aware that a letter
17 was written and placed in Sam Harvey's file?

18 A That's correct.

19 Q And how did you learn about that?

20 A Through Ms. Landers.

21 Q Did you have discussions with Ron Grover about it?

22 A Not that I recall, but I would not doubt that at
23 all.

24 Q At some point in time, you're fairly certain you
25 did discuss it with Ron Grover?

1 A I'm not absolutely certain of that. I just can't
2 remember, it's been too long ago.

3 Q Did you ever receive a copy of that memorandum?

4 A Yes, I did.

5 Q Where did you get a copy of it?

6 A From Ms. Landers.

7 Q Did Ms. Landers ever inform you that she did not
8 think that her problems with Mr. Harvey amounted to sexual
9 harassment?

10 A Not that I recall; no, sir.

11 Q Did you discuss the letter with Ben Easley?

12 A I honestly can't remember whether I did or not.

13 Q And it was your position that the letter to Sam
14 Harvey should have been included in the material provided to
15 the selection review board in July of '96, is that correct?

16 A I don't know that the was my position, that was
17 the position of some.

18 Q Pardon me?

19 A That was the position of some.

20 Q Who?

21 A I can't remember, it seemed like it may have been
22 Mr. Easley, I just don't remember, it's been too long ago.

23 Q And how did you learn that other people thought
24 that the letter should have been included in the material
25 provided the selection review board?

1 A I can't -- I don't remember, honestly.

2 Q How did you learn that it wasn't included in the
3 material?

4 A I can't even remember that for sure.

5 Q But it was your position as well that the letter
6 should have been included in the material provided the
7 selection review board, isn't that correct?

8 A You know, I don't recall the rules at the time. I
9 don't know exactly what should have been included and what
10 should not have been.

11 Q Let me direct your attention to the August 6, 1998
12 interview by the Office of Investigations, which I'm sure is
13 an NRC Staff Exhibit --

14 MS. EUCHNER: It's Staff 39.

15 MR. MARQUAND: Thank you.

16 BY MR. MARQUAND:

17 Q -- and at page 57, you made the statement
18 beginning at line 21, "Plus there was a letter on sexual
19 harassment that was written to Sam and that should have been
20 included too, but that was mysteriously left out because,
21 you know, that would have biased the group in favor of me
22 rather than McGrath and Wilson's choice, which was Sam."

23 Does that refresh your recollection that you
24 contended that the letter should have been included in the
25 material given to the selection review board?

1 A Actually that refreshes my memory that somebody
2 told me that they felt like it should have been included.

3 Q All right.

4 A I'm just trying to remember who it was.

5 Q Well, does that refresh your recollection that you
6 told Ms. Benson from the Office of Investigations that the
7 letter should have been included in the SRB material?

8 A Ms. Benson?

9 Q Dianne Benson.

10 MS. EUCHNER: Counsel, maybe it would be easier if
11 you showed him a document, so that way he could get the
12 context of what his statement was.

13 Q Does that refresh your recollection --

14 JUDGE YOUNG: Would someone give him the volume
15 with it?

16 (A document was proffered to the witness.)

17 MS. EUCHNER: What page was that?

18 MR. MARQUAND: Page 57.

19 THE WITNESS: So this would have been in '98?

20 MR. MARQUAND: This interview was August 6, '98.

21 BY MR. MARQUAND:

22 Q My question is does that refresh your
23 recollection, the bottom of 57, that you stated that the
24 letter should have been included but was mysteriously left
25 out and it would have biased the group in favor of you

1 rather than Sam.

2 A I remember having that discussion now with Ms.
3 Benson, yes.

4 Q You said it refreshed your recollection that
5 someone else told you that as well.

6 A Yeah.

7 Q Who told you?

8 A I cannot recall for sure who it was.

9 Q You can't recall for sure. Well, who do you think
10 it was?

11 A I can't answer that question, it could have been
12 several people.

13 Q You have no idea. Who could it have been?

14 A It could have been Ben Easley, I don't know that
15 it was or not. It could have been Ron Grover, I don't know
16 that it was or not. I just don't know.

17 Q Did Ben Easley tell you that it should have been
18 included and was left out of the SRB material

19 A It's possible, I just don't recall.

20 Q Well, would it surprise you to learn that Mr.
21 Easley has testified he didn't think it should have been
22 included, and he put the material together and provided it
23 to the SRB?

24 A I don't -- I can't honestly say what Mr. Easley
25 was thinking.

1 Q You're aware that most personnel actions are -- of
2 any disciplinary nature are confidential, aren't you?

3 A Yes.

4 Q My concern is how you would have learned of this
5 prior to the SRB.

6 A Honestly, that's been six years ago, I cannot
7 remember who told me.

8 Q Let me direct your attention to I believe TVA
9 Exhibit 21 -- Joint Exhibit 21.

10 CHAIRMAN BECHHOEFER: Twenty one?

11 MR. MARQUAND: Yes.

12 BY MR. MARQUAND:

13 Q I am going to direct your attention to pages 232
14 and 233 of Joint Exhibit 21. Are those the interview
15 questions that are circled that were asked during the
16 interviews for the PWR chemistry program manager jobs?

17 A Yes, I think they are.

18 Q There's been an allegation that the questions were
19 unfair and that they were unfair in that they were slanted
20 towards one of the applicants. You were of that opinion,
21 weren't you?

22 A Repeat that question.

23 Q You were of the opinion that the questions were
24 slanted towards one of the applicants.

25 A Yes.

1 Q And that that particular person was not you but
2 was Sam Harvey, is that right?

3 A That's correct.

4 Q Now, what I would like to do is look at the
5 particular questions that were asked and have you tell the
6 Board, in your opinion, was the first question that was
7 asked slanted towards Sam?

8 A The first question?

9 Q The first question states "What strengths do you
10 have that will benefit this position."

11 A No, I do not.

12 Q You're saying no, you don't think the first
13 question is slanted towards Sam Harvey?

14 A That's correct.

15 Q Do you remember when I took your deposition
16 December 12 of 2001?

17 A Yes.

18 Q All right, on page 105, I asked you that question
19 and you said:

20 Answer: "It could be."

21 Question: "It could be slanted?"

22 Answer: "It could be."

23 Question: "How?"

24 Answer: "Sam, had been heavily involved with
25 EPRI. Sam had been appointed to the chemistry TAG

1 team by Goetcheus. Sam had served on several
2 boards, EPRI meetings, things like that. He was
3 really, really up to date on secondary chemistry
4 issues because of his position on these various
5 boards. I would think that would be an
6 opportunity for him to really present himself
7 well."

8 Question: "So an opportunity for somebody to
9 shine in front of the board in the area of
10 secondary chemistry, you think, if it happened to
11 be in the area of secondary chemistry, would cause
12 a bias against you?

13 Answer: "It could be, because due to the
14 fact I was an ETP, I was off of everything."

15 A Right.

16 Q "I wasn't on any boards, I came back, we were
17 following up Watts Bar, I didn't have time to.
18 Sam was assigned to such things as the primary and
19 secondary leak task force or whatever with EPRI.
20 Sam was assigned to something having to do with
21 the shutdown of cooling chemistry, things like
22 that that I have not had an opportunity to do."

23 Question: "Okay, so when the question of
24 what strength do you have that will benefit this
25 position, the answer, your opinion is that Sam's

1 strengths in the area of his background and what
2 he had done would make him shine better than you."

3 Answer: "Due to the fact he was plugged into
4 all of these various organizations, boards,
5 subcommittees, et cetera, TAG team, especially
6 assigned by Goetcheus to that TAG team, you know,
7 you could make that argument."

8 Do you recall that?

9 A Yes, I do.

10 Q Does that change your answer that you thought that
11 question number one could slanted to make Sam Harvey look
12 good?

13 A I think that the point that I am making is the
14 question in and of itself, I have no problem with it. The
15 fact of the matter is while I was removed, placed in ETP, I
16 just lost, of course, all opportunity to --

17 JUDGE YOUNG: I'm sorry, when you were removed
18 what?

19 THE WITNESS: When I was placed in the employee
20 transition program, when I lost my job.

21 JUDGE YOUNG: Back in 1993?

22 THE WITNESS: Yes, Your Honor. You know, I was
23 just removed from everything and so that's the only
24 distinction I was trying to make when I was having this
25 discussion with you, and now. I do not think the question

1 per se is problematic, it's just the fact that I had been
2 removed from participation in any of these outside boards,
3 et cetera. And that's the point I was trying to make.

4 BY MR. MARQUAND:

5 Q Do you see question number seven, it's circled?
6 Question number 7 on page 232 of Joint Exhibit 21.

7 A Yes, I do.

8 Q And that question, correct me if I'm wrong, reads:
9 "Describe three projects/programs you helped to initiate,
10 develop and complete in the chemistry areas." Do you see
11 that?

12 A Correct.

13 Q Would that question make Sam shine more than you?

14 A In light of the fact that it's hard to complete
15 something when you're in ETP.

16 Q Now wait a minute. In '93, you were sent to ETP,
17 your case was settled and you came back and worked in
18 corporate chemistry as a corporate chemistry program
19 manager, beginning in April '94, correct?

20 A Correct.

21 Q Now my question is would that question make Sam
22 shine more than you.

23 A Perhaps not.

24 Q Do you recall in your deposition at page 107, I
25 asked you that very question, and you said:

1 "It very well could have due to the fact he
2 was on all these subcommittees and things; yes, it
3 is possible."

4 Question: "Was it a question which would
5 make him look better because it spotlighted
6 secondary as opposed to primary chemistry?"

7 Answer: "Possibly due to the fact he was
8 involved in all these committees and things, it's
9 possible."

10 Do you recall that?

11 A Yes. That's why I said perhaps not.

12 Q Well, in your deposition, you indicated that it
13 possibly could have made him shine more than --

14 A Well, I say perhaps, I mean I could take it either
15 way, I could make an argument either way.

16 Q Look at question number 12.

17 A Uh-huh.

18 Q That's one of the circled questions and was asked
19 by the selection review board, isn't it?

20 A That's correct.

21 Q Was that designed to make Sam shine more than you?
22 Was it a neutral question, or not?

23 A I think it's fairly neutral. Again, I think due
24 to the fact that Sam had opportunity to participate in all
25 of these EPRI task forces, subcommittees, whatever, that

1 certainly he would have an opportunity to present himself as
2 being more on top of these types of issues.

3 Q I'm not sure I understood your answer. My
4 question was was it neutral or did it make Sam shine more
5 than you. And I think I heard you say you thought it was
6 neutral but maybe Sam had more information about that than
7 you did?

8 A No, I think what I said was that he had been
9 assigned to these various chemistry subcommittees and task
10 forces and TAG teams, which could certainly give him an
11 advantage there.

12 Q So you think that question gave Sam an advantage?

13 A It's possible.

14 JUDGE YOUNG: I want to -- could you clarify for
15 me when you refer to Mr. Harvey being on all these
16 subcommittees and so forth and so on, are you suggesting
17 that he had opportunities that were refused to you? I mean,
18 did you ask to be put on subcommittees? How did one get on
19 these committees and boards that you're talking about?

20 THE WITNESS: Yes, Your Honor, in essence, by
21 virtue of the fact that I was placed in ETP and then brought
22 out of that ETP program and immediately assigned to Watts
23 Bar startup, there were a lot of things that I just could
24 not participate in that I did formerly participate in, these
25 subcommittees.

1 JUDGE YOUNG: You did formerly?

2 THE WITNESS: Before -- yes, Your Honor.

3 JUDGE YOUNG: Okay.

4 THE WITNESS: I just had not had the opportunity
5 to. And I can't even remember --

6 JUDGE YOUNG: You didn't have the opportunity
7 because you were so busy at Watts Bar, or what?

8 THE WITNESS: That is one reason; yes, Your Honor,
9 and the other reason was because, quite frankly, I was in
10 the ETP program and I was constantly 30 days away from or 60
11 days away from being terminated, so you could not get on any
12 --

13 JUDGE YOUNG: How much time had there been since
14 you came back to work and this interview was held?

15 THE WITNESS: Two years.

16 JUDGE YOUNG: So in two years -- you're saying in
17 two years, you didn't have any opportunity to get on any
18 committees?

19 THE WITNESS: That's correct because I was pretty
20 well consumed by the initial startup of Watts Bar, Unit 1.
21 And people had already been assigned to these subcommittees,
22 et cetera, and unless you know, they just make a command
23 decision to bump them off and put me in their place, they're
24 going to stay on them until that task is completed.

25 JUDGE YOUNG: So you're saying that it just so

1 happened that all the appointments were made prior to -- was
2 it '94 when you came back?

3 THE WITNESS: That's correct. Those appointments
4 had already been made.

5 JUDGE YOUNG: And no new openings came available
6 during the two year interval?

7 THE WITNESS: That I recall, that's correct.

8 BY MR. MARQUAND:

9 Q Let me direct your attention to page 233, "Discuss
10 the INPO chemistry index."

11 A Correct.

12 Q The one that says "What is its significance."

13 What is the INPO chemistry index?

14 A It's a value that is computed that INPO uses as a
15 measure of the performance of various nuclear plant
16 chemistry programs across the nation.

17 Q And that index applies both to the primary and
18 secondary side of the plant?

19 A I can't recall -- at this time, I do not recall.

20 Q Was that question biased toward Sam Harvey?

21 A I felt like it was, yes.

22 Q And would you tell the Board why you thought it
23 was biased toward Sam Harvey?

24 A Well, just by virtue of the fact that Sam, of
25 course, was assigned to Sequoyah and it's an operating -- it

1 was an operating nuclear plant, both units, and they had to
 2 compute the chemistry INPO index at least monthly or more
 3 often for both units to report that to management and to
 4 INPO itself. Since the plant where I was assigned, Watts
 5 Bar, had not been started up or was in the very initial
 6 phases of startup, we had never even computed that number.
 7 Also, the fact that the chemistry index, as I was accustomed
 8 to using it, back when I had responsibilities at Sequoyah,
 9 had been changed. It was a completely new index and we did
 10 not even know the formula for calculating it until I had
 11 called someone at INPO just to find out what the formula
 12 was. So I think I'd seen the new formula one time.

13 Q So based on the fact that Sam Harvey had
 14 experience at an operating plant while your most recent
 15 experience was at a plant that wasn't operating, he gained
 16 experience that allowed him to answer this question better
 17 than you.

18 A Because he had recent experience at an operating
 19 plant, that's correct.

20 JUDGE YOUNG: Was there any difference in the
 21 significance of the INPO index when you were at Sequoyah or
 22 Arkansas, for that matter, and in the '94-'95 time period?

23 THE WITNESS: No, Your Honor, there's no
 24 difference in the significance.

25 JUDGE YOUNG: And you recalled what the

1 significance was?

2 THE WITNESS: It was a very important parameter
3 because INPO would use that to measure how our chemistry
4 program stood with respect to the entire nation.

5 JUDGE YOUNG: So you knew the significance of it
6 just as well, you just didn't know what the current numbers
7 were.

8 THE WITNESS: Yes, Your Honor.

9 JUDGE YOUNG: And I presume you could have
10 explained that since you were in startup at Watts Bar, you
11 weren't as familiar with the current numbers, but this is
12 what they were when you were at Sequoyah and this is the
13 significance of the index generally.

14 THE WITNESS: As I recall, that's exactly what I
15 did.

16 BY MR. MARQUAND:

17 Q Let me direct your attention to number 16, the
18 question that says "Discuss your specific management
19 experience and training."

20 A Yes.

21 Q Was that a neutral question or was it designed to
22 make Sam Harvey shine?

23 A Well, certainly when you talk about recent
24 experience, that would not put me in as positive a light as
25 it would somebody who had been placed on all of these boards

1 and things. It certainly could have been biased toward Sam.

2 Q As I recall, what your testimony was, was that Sam
3 had the inside track and had been assigned to all these
4 wonderful task forces in EPRI that would have helped him; is
5 that right?

6 A I assume you're reading it, so I don't recall that
7 statement, but --

8 Q This isn't a question that was slanted towards Mr.
9 Harvey's expertise in secondary chemistry, is it, but simply
10 just a general question?

11 A I guess that would depend upon where his
12 experience and training was.

13 JUDGE YOUNG: I'm sorry, I didn't understand --

14 THE WITNESS: That would depend upon exactly where
15 Mr. Harvey's experience and training resided.

16 BY MR. MARQUAND:

17 Q Look at the last question, number 17. Do you see
18 the one that says "Define molar ratio and primary factors
19 affecting it."

20 A Correct.

21 Q Is molar ratio something that is of concern in
22 secondary chemistry?

23 A That's correct.

24 Q Is that a concern -- was that of concern at Watts
25 Bar Nuclear Plant where you were assigned?

1 A Yes.

2 Q Was that a concern at Sequoyah Nuclear Plant where
3 Mr. Harvey was assigned?

4 A Yes.

5 Q In fact, they're what we would call sister plants,
6 aren't they?

7 A Yes.

8 Q Essentially the same design.

9 A Yes.

10 Q So they both have generally the same issues?

11 A Generally.

12 Q In your opinion, was that a neutral question or
13 designed to make Mr. Harvey shine?

14 A I think that would be fairly neutral.

15 Q Even though it was one in the area of secondary
16 chemistry?

17 A Yes, you're primarily concerned with molar ratio
18 once you get started up and your systems are stable, and
19 you're at 100 percent power, et cetera. That's when the
20 primary concern is. As I recall, we had not even reached
21 that point, but I would see that as a fairly neutral
22 question.

23 CHAIRMAN BECHHOEFER: I take it when you were at
24 Sequoyah, that question might be applicable?

25 THE WITNESS: Absolutely.

1 JUDGE YOUNG: That question might be what?

2 CHAIRMAN BECHHOEFER: Applicable.

3 JUDGE YOUNG: Applicable.

4 CHAIRMAN BECHHOEFER: To his experience.

5 Applicable to your experience.

6 THE WITNESS: Absolutely. Yes, Your Honor.

7 BY MR. MARQUAND:

8 Q Now, earlier I asked you about the issue -- the
9 Question #12, the one with respect to -- I think I asked you
10 about it, with respect to denting.

11 A I don't recall whether you did or not.

12 Q Maybe I -- maybe I missed...

13 JUDGE YOUNG: You asked.

14 MR. MARQUAND: Pardon me?

15 JUDGE YOUNG: You did ask.

16 Q All right, that -- denting is a -- is a concern
17 and an issue in the secondary side of the PWR plant, as
18 well, isn't it?

19 A That's correct.

20 Q That was a concern at Watts Bar; correct?

21 A Denting is a concern at all nuclear plants. PWR.

22 Q All PWRs. So it would be a concern at Watts Bar
23 and Sequoyah?

24 A Yes.

25 Q And you're saying it would have been a concern at

1 all PWR plants. Why wouldn't it have been of the same
2 significance as the question on molar ratio? When you said
3 molar ratio a neutral question, why wasn't the question on
4 denting a neutral question?

5 A I don't recall -- I don't recall answering the
6 question on denting. Could we perhaps review the record?

7 Q My question on denting, I asked you is that a
8 neutral question or not. And your answer was along the
9 lines that because Sam was involved in all those outside
10 organizations, he had more current information than you did.

11 A Yeah, it's possible. See, I don't recall what all
12 subcommittees, et cetera, Sam was assigned to. I say it's
13 possible.

14 Q My question is: If that's a concern at the plant
15 you were assigned, why is that a question that's slanted
16 towards Sam as opposed to you?

17 A Just -- just because I do not know what current
18 information he may have had. I don't know that it was or
19 was not. It's possible.

20 Q In other words, it's possible Mr. Harvey had more
21 information on this issue which was of concern at your
22 plant?

23 A It -- it's possible. I don't know that for sure.
24 Denting is a -- is a -- basically a -- an issue at nuclear
25 power facilities, PWRs, that has been basically resolved.

1 So...

2 Q It's been resolved?

3 A Yes.

4 Q Was it resolved at Watts Bar when you were
5 assigned there in 1996?

6 A As far as the issues that cause it and the way you
7 prevent it, yes.

8 Q All right, let's make sure that I understand what
9 causes it. As I understand it, it has to do with
10 accumulation for sodium in intergranule stress cracks; is
11 that right?

12 A Not just the sodium, no. There are other things
13 that can cause -- that can collect in the crevice that can
14 possible cause it to close up on you.

15 Q But including sodium?

16 A That would be one of them; yes.

17 Q And it would be an imbalance of basically your pH;
18 is that right?

19 A Sodium has nothing to do with pH What are you
20 referring to?

21 Q Well, if you've got too much -- is it sodium
22 hydroxide?

23 A Sodium hydroxide has something to do with pH; yes.

24 Q All right. And...

25 A Sodium, itself, does not.

1 Q And explain, then, how I'm missing this. If
2 you've got too much sodium hydroxide, what's the problem?

3 A It depends on what the anion is. You got sodium,
4 which is a cation. You could be -- what's your anion?
5 You're assuming it's hydroxide. Who's to say it's not
6 chloride. If it's sodium chloride, then you have a problem
7 with acidic, you don't have a problem with the basic. So it
8 depends on what your anion is. If it's sodium sulfate, you
9 see, it -- there is a -- there's a big difference on -- on
10 the problem that could be imposed, if you will, upon the
11 crevice, depending upon what your anion is, not just your
12 cation.

13 Q We're talking about a problem, though, of having,
14 what, too much -- too many -- imbalance of cations and
15 anions?

16 A An imbalance of cations and anions?

17 Q Is that what we're talking about?

18 A No. You've got to have a balance.

19 Q That's what I'm saying. Is that the problem, is
20 when you have an imbalance?

21 A Are we talking about denting or are we talking
22 about molar ratio?

23 Q I'm talking about denting.

24 A Let's say that you dump the bottoms of your --
25 some purification, demineralizer, which is what they did at

1 Sequoyah, and dumped a lot of crud into the secondary
2 system.

3 Q Sulfates and iron?

4 A All kinds of crap. They dented their generators
5 in record time, in days after they initially started up.
6 So, you see, it was a whole mess of things, filth that they
7 introduced into the secondary side of the plant. This would
8 have been back in the '80s. And they dented their
9 generators. And within a few days after they had started
10 up. It's a lot more complex issue than what you're trying
11 to present. And what you do to prevent it is keep your
12 secondary side clean.

13 Q So your testimony is...

14 A Pristine.

15 Q ...that the issue of denting is pretty well under
16 control?

17 A Pretty well under control; yes.

18 Q What about the issue of molar ratio? Is that
19 under control at Watts Bar?

20 A Yes.

21 Q In '96 when you were there?

22 A Yes.

23 Q Does molar ratio have to do with the concentration
24 of sodium cations?

25 A Of -- yeah. If it's a -- a balance of sodium to

1 chloride; that's correct.

2 Q And your testimony is that there were no problems
3 with excess sodium cations in the system at Watts Bar in the
4 summer of '96 when you were there?

5 A I am -- I am testifying that we had installed a
6 system to introduce I think it was ammonium chloride to
7 address the molar ration issue.

8 Q And were there problems with spike with sodium
9 cations during the summer of '96 at Watts Bar?

10 A With what?

11 Q Spiking of the concentration of sodium cations?

12 A That's correct.

13 Q Now, earlier, I believe -- let's -- I want to
14 direct your attention to the time when you went and talked
15 to Ben Easley and Ed Boyles regarding your threat to file a
16 Department of Labor complaint if they posted the vacant
17 position announcement for the chemistry program manager. Do
18 you recall that conversation?

19 A Yes, I do.

20 Q And if I recall your testimony correctly, you said
21 something along the lines that you wanted -- that you told
22 them that you wanted to give them a chance not to post the
23 VPA, and to proceed on the basis of the retention registers.

24 A As I recall, that's correct.

25 Q All right. And your basis for that was that you

1 felt that the job they were considering posting was yours by
2 virtue of the settlement agreement of your '93 Department of
3 Labor complaint? Correct?

4 A That's right.

5 Q All right. And when you went to talk to them
6 about whether or not they should post that position, your
7 disagreement at that time was with their determination to
8 post the job; is that right?

9 A Well, there were a lot of issues. McGrath and
10 McArthur being among them. But, yeah, that was part of it.

11 Q All right. And when you talked to them, or even
12 now, do you have any basis at all to conclude that McGrath
13 was responsible for making the determination to post that
14 vacant position announcement?

15 A Oh, yes.

16 Q What?

17 A Well, there are -- there are several reasons why.
18 First of all, he was in charge. He had recently been placed
19 back in charge.

20 Q In charge of operations support; right?

21 A That's right.

22 Q Okay.

23 A Of which Ron Grover and Wilson McArthur reported
24 to him. He is also the one, as I understand it or I was
25 told he was the one that blocked any efforts to move Sam out

1 to Sequoyah and place him in a vacant position out there.

2 Q Now...

3 A Other reasons. But mainly because of -- of these
4 two guys -- he's also the one, as I understand, that
5 selectively removed Ron from -- from his position and placed
6 Wilson in there without interviewing or anything.

7 JUDGE YOUNG: Say that -- start that sentence over
8 again. You ran a few words together at the beginning.

9 THE WITNESS: Okay. I'm sorry. He was also --
10 Mr. McGrath was also the person who made the decision to
11 place Wilson McArthur in the position that Ron was holding
12 or the joint position or whatever. As opposed to
13 interviewing for it, he just removed him. And by
14 removing...

15 JUDGE YOUNG: As opposed to an interview in
16 which...

17 THE WITNESS: In interviewing...

18 JUDGE YOUNG: Pardon?

19 THE WITNESS: Having him compete for the job, just
20 as I had to compete for my job. His decision was to place
21 Wilson in there, to remove Ron. And in doing that, now,
22 Wilson would be in charge of the selection board instead of
23 Ron. And I felt like those were cold and calculated moves
24 on his part to get Ron out of the way so that he could do
25 what he wanted to do.

1 JUDGE YOUNG: You can move the microphone closer.

2 THE WITNESS: Okay. Well, sometimes I get in
3 trouble when I do that. Okay.

4 COURT REPORTER: Yeah, you see, it distorts it
5 after a while.

6 THE WITNESS: Okay.

7 COURT REPORTER: You get too close, it distorts
8 it.

9 JUDGE YOUNG: Oh, well,...

10 THE WITNESS: That's what I'm trying to prevent.

11 JUDGE YOUNG: ...whatever the balance is. It
12 looks like you're straining.

13 THE WITNESS: I am. And I apologize for the way I
14 sound.

15 BY MR. MARQUAND:

16 Q What I'd like for you to focus on, Mr. Fiser, is
17 the decision whether or not to post the vacant position
18 announcement for the new chemistry program manager job.

19 A Right.

20 Q And we've heard testimony from Mr. Easley and Mr.
21 Boyles that they made the determination the job should be
22 posted. And my question to you is: What basis do you have
23 to say that Mr. McGrath played any part in that
24 determination?

25 A Just conversations with the -- with Ron Grover,

1 Ben Easley, and perhaps Ed Boyles, as well.

2 JUDGE YOUNG: Could you describe the nature of
3 those conversations, who said what, when?

4 THE WITNESS: Well, when I -- of course, Ron had
5 discussions with me. I can't remember exactly when. Just
6 about some concerns and -- and problems that he had with the
7 way things were being handled. And that was before I ever
8 submitted my Department of Labor complaint. Also, Mr....

9 JUDGE YOUNG: You're being a little general. What
10 I'd like for you to do is clarify. You said it was based on
11 conversations that you had with Mr. Grover, Mr. Easley, and
12 also Mr. Boyles. So what I'd like you to do is clarify for
13 us what those conversations consisted of. Not just
14 generalizations, but actual subject matter, who said what,
15 to the best of your ability to recall them.

16 THE WITNESS: Okay. Probably a lot of these are
17 based upon some notes that we have already gone over in
18 testimony.

19 JUDGE YOUNG: Well, just what you remember.

20 THE WITNESS: Okay. As I recall discussing them
21 with Ron, he was very concerned that McGrath's mind had
22 already been made up, and that this thing was kind of being
23 orchestrated in such a way to insure that Sam was selected
24 for that position and I was not.

25 JUDGE YOUNG: So it was his opinion?

1 THE WITNESS: Yes, Your Honor.

2 JUDGE YOUNG: Was there any indication what that
3 opinion was based on?

4 THE WITNESS: Yes. As I recall, it was based upon
5 conversations that he had with -- directly with Mr. McGrath.
6 As I recall.

7 JUDGE YOUNG: Did you know what -- did you know
8 what was included in those conversations?

9 THE WITNESS: It seems like at times he would
10 summarize some of the conversations; yes, Your Honor. And
11 they were very negative, of course, towards me, in spite of
12 the fact that Ron said he would try to make sure Mr.
13 McGrath, who came in on the scene kind of late, knew of my
14 performance and of what I had been doing at Watts Bar. But
15 he was just not interested in hearing it.

16 JUDGE YOUNG: You said he was negative. Clarify
17 for me. Negative based on what?

18 THE WITNESS: Based on feedback Ron gave to me,
19 face-to-face or over the phone.

20 JUDGE YOUNG: No, what I'm trying to understand
21 is, when Ron said that Mr. McGrath said negative things
22 about you, can you be more specific? Can you clarify what -
23 - I mean, he could say negative things about you, he didn't
24 like the way you combed your hair. What negative things, to
25 the extent...

1 CHAIRMAN BECHHOEFER: In what respect were
2 negative comments made, to your knowledge?

3 THE WITNESS: Okay, let me think just a second.
4 It's been a long time. It seems like Ron mentioned the fact
5 that -- that he was aware of some of the complaints that I
6 had filed and letters I had written, articles in the
7 newspaper that had showed up from time to time. Although I
8 cannot -- this was kind of spread out over several weeks or
9 months. But that's the feedback I was getting.

10 CHAIRMAN BECHHOEFER: Were you talking about your
11 1993 DOL complaints, or the later '96 complaint?

12 THE WITNESS: About the -- as I recall, at that
13 time it was about the '93. The '96 had not even taken
14 place.

15 CHAIRMAN BECHHOEFER: Well, I had understood it
16 took place before the SRB...

17 THE WITNESS: That's correct.

18 CHAIRMAN BECHHOEFER: ...questioning sessions.

19 THE WITNESS: And these conversations, as I
20 recall, a lot of them were leading up to that. And a lot of
21 that is the reason that I decided I had better go talk to
22 personnel, to Ben Easley and to Mr. Boyles, and also
23 ultimately to Mr. Reynolds.

24 JUDGE YOUNG: I'd like to have you clarify your
25 conversations with Mr. Easley and Mr. Boyles, also. But was

1 there anything else with Mr. Grover that you recall, that
2 led you to believe that Mr. McGrath was somehow behind the
3 posting of the new positions?

4 THE WITNESS: Well, there was a time, and I
5 mentioned this last week or whenever I was here last. I
6 almost hate to mention it because a few years ago I
7 discussed it with Mr. Grover and he does not recall it --
8 this conversation. I do. There was a conversation that Mr.
9 Grover had with Mr. McGrath where Mr. McGrath looked at Ron
10 and said, and I'm going to pretty much quote, "You know,
11 Ron, sometimes you have to make these things turn out the
12 way you want them to." Now, I know I heard that
13 conversation, and I know it came from Ron Grover. But he
14 does not recall it. But I do. I do recall that
15 conversation. And it was just about that short and just
16 about that blunt.

17 So there are specific conversations that I do
18 recall. But I wish I could sit here and look you in the eye
19 and say, "And Ron Grover remembers saying that," but I
20 can't.

21 CHAIRMAN BECHHOEFER: Is there any reference in
22 your day planner to that conversation?

23 THE WITNESS: I think there is; yes, Your Honor.
24 There is.

25 JUDGE YOUNG: You said you thought that the

1 conversations had to do with complaints and -- and so forth.
2 Do you recall there ever being -- do you recall Mr. Grover
3 ever telling you that Mr. McGrath was negative about you
4 because of your work performance?

5 THE WITNESS: Not specifically; no. But I could
6 not deny that. I just do not recall that.

7 JUDGE YOUNG: Anything else with Mr. Grover? And
8 then if you could clarify Mr. Easley and Mr. Boyles'
9 conversations that led you to believe that McGrath was --
10 was the one who made the decision or -- or did whatever
11 needed to be done to -- to cause the jobs to be posted, and
12 then I'll allow you to start back, after clarifying this,
13 Mr. Marquand.

14 THE WITNESS: With respect to Ron, not that I can
15 recall right now. I'm sure there were, though, if I could
16 go through my notes. The thing with Mr. Easley, I went to
17 him first, after I had all of these issues and concerns in
18 my mind. I went to talk to Mr. Easley, but I barely got two
19 sentences out until he stopped me and said, "We need to have
20 this discussion in front of or with Mr. Ed Boyles." So that
21 was very short. And I just mentioned a couple of concerns I
22 had about the way things were being handled. And Ben
23 stopped it right there, and we got up and we walked in, and
24 I had the remainder of the conversation directly with Mr. Ed
25 Boyles, and Mr. Easley was present during that.

1 And so I then had a conversation with Mr. Ed
2 Boyles. And I think those -- the salient points of that
3 conversation are delineated in my day planner somewhere.
4 They are.

5 JUDGE YOUNG: Do you recall anything being said?
6 You -- you indicated that the conversations with Mr. Easley
7 and Mr Boyles also led you to believe that Mr. McGrath was
8 behind the posting of the positions. And what do you recall
9 of the nature of those conversations that suggested that to
10 you?

11 THE WITNESS: When I discussed it with Mr Boyles,
12 I explained my position. And he listened very intently
13 (sic), taking notes, and basically he said, "Well, I am
14 going to have discussions with Mr. Reynolds." I think he
15 called him Phil. Phil Reynolds. "And also Mr. McGrath. I
16 will get back to them, I will talk to them, and then I will
17 come back to you and I will tell you what the decision is."
18 I know that that's what he told me. And I know those
19 individuals, and perhaps also Dr. McArthur, although I would
20 have to look in my notes for sure on that one. But I know
21 it was Phil Reynolds and I know it was Tom McGrath that he
22 was going to discuss. And then, once he had those
23 discussions -- and he said he would get back to me fairly
24 shortly. Fairly shortly. And he did. As I recall, it was
25 the very next day, or for sure the day after that. It was

1 within a couple of days that he called me and -- and said
2 that he had discussions with -- with those guys, and they
3 had decided to go ahead and post the positions.

4 MS. EUCHNER: Your Honors, could we take a quick
5 two minute break, please.

6 CHAIRMAN BECHHOEFER: Yes.

7 MS. EUCHNER: Thank you.

8 (A brief recess was taken.)

9 CHAIRMAN BECHHOEFER: Back on the record.

10 BY MR. MARQUAND:

11 Q Mr. Fiser, I had asked you about who -- what the
12 basis was for your conclusion that Mr. McGrath was involved
13 in the determination to post the vacant position
14 announcement. And you mentioned conversations with Grover,
15 Easley, and Boyles.

16 A That's correct.

17 Q And you said that Grover had said something to you
18 along the lines about that Grover didn't have -- that
19 McGrath didn't have a high opinion of you, among other
20 things.

21 A Among other things; yeah.

22 Q And I want to show you TVA Exhibit 120. It is a
23 May 7th, 1996, page -- let me find it.

24 CHAIRMAN BECHHOEFER: Is this one that's in
25 evidence yet?

1 MR. MARQUAND: Yes, Your Honor.

2 Q You've previously testified about this, and this
3 is an entry you made. And I want to focus on Paragraph #2,
4 where you've got an entry for Ron Grover. You see that?

5 A Yes.

6 Q And in the middle of that -- and this discusses
7 the issue with Sam Harvey and Ron saying Sam's job was up in
8 the air, and they were trying to do something illegal, and
9 Sam may not have a job, and they would have to post the one
10 he's interested in. And then you go on, and your note says,
11 "He also said McGrath was probably going to use this
12 opportunity to rewrite the PDs such that he can keep Sam and
13 get rid of me. He wants to do this because of the NRC
14 charges I raised in the past. He said McGrath had a very
15 low opinion of me." You see that?

16 A Yes.

17 Q Is this one of the conversations you were -- that
18 you identified to Judge Young as your basis for concluding
19 that McGrath was involved in the decision to post the job?

20 A Well, certainly it would have been one of them;
21 yes.

22 Q All right. Now, what I want to know is -- and
23 I'll tell you, Mr. -- we asked Mr. Grover about this
24 particular conversation yesterday, and he denied telling you
25 that -- this second part here where you state that McGrath

1 was probably going to use this as an opportunity to rewrite
2 the PDs such that he can keep Sam and get rid of me. He
3 denied saying that as you have stated in your planner.

4 A Right.

5 Q And my question to you is: Is -- did you write
6 down verbatim what Ron Grover told you, or is this what you
7 came away with the conversation thinking?

8 A No. As I recall, that's what he said.

9 Q So Mr. Grover wasn't telling us the truth
10 yesterday when he denied telling you this?

11 A I think what you said was he said he did not
12 recall.

13 Q No, he said he didn't say it.

14 A I can't testify as to whether he's lying or not.
15 I can say that he may not remember it.

16 Q All right. Your notes said, "He also said that
17 McGrath was probably going to use this opportunity..."

18 A Right.

19 Q And, to me, when somebody says something is
20 probably going to happen, that -- I infer from that that the
21 individual is hypothesizing or speculating as opposed to
22 having knowledge of such an occurrence.

23 A Well, as...

24 Q Is that what you inferred, when Mr. Grover
25 supposedly told you this?

1 A No. What I -- what I am saying is, as accurately
2 as I could reflect what he actually said, believe me, if he
3 had been more direct than that, I would have certainly tried
4 to capture that. And as I recall, he just said, "You know,
5 he's probably going to use this as an opportunity." And so
6 that's why I wrote it that way. And I did not put it any
7 stronger than what I recall him actually stating it.

8 CHAIRMAN BECHHOEFER: Mr. Fiser, is this the day
9 planner date that you were referring when I asked you
10 whether there was a record of the conversation just a few
11 minutes ago?

12 THE WITNESS: Yes.

13 CHAIRMAN BECHHOEFER: So is it this one, or could
14 it have been another...

15 THE WITNESS: Well, it -- there could have been
16 and were most likely others. But certainly this would have
17 been one of them; yes, Your Honor.

18 CHAIRMAN BECHHOEFER: Thank you.

19 BY MR. MARQUAND:

20 Q Going to ask you to look at TVA Exhibit 117. It's
21 a June 16th, '94, page from your day planner. We previously
22 discussed this, and I direct your attention to Paragraph 2,
23 the entry for Ron Grover. That's the entry that you
24 testified, I believe, that Mr. Grover cautioned you about
25 interviews with the newspaper because it was possible that

1 he might be directed not to keep you in the coming
2 reductions; is that right?

3 A I think that's the gist of it; yes.

4 Q I'm going to show you now a June 20th, 1994, entry
5 from your day planner, which I'm marking as TVA Exhibit 135.

6 CHAIRMAN BECHHOEFER: TVA?

7 MR. MARQUAND: TVA Exhibit 135.

8 CHAIRMAN BECHHOEFER: 135. Okay.

9 JUDGE COLE: We don't have that yet.

10 MR. MARQUAND: I know. I'm marking it right now,
11 Your Honor. Actually, Mr. Slater is marking it at my
12 request. It's June 20th, 1994.

13 JUDGE COLE: 1996 or '94?

14 MR. MARQUAND: '94.

15 BY MR. MARQUAND:

16 Q This is, in fact, a page from your day planner,
17 isn't it, Mr. Fiser?

18 A Yes, it appears to be. That's correct.

19 Q And that's your writing in the upper right-hand
20 corner?

21 A Yes, it is.

22 Q All right. And this is immediately following -- I
23 mean, four days following the entry of your conversation we
24 just discussed with -- about -- with Mr. Grover; correct?

25 A That's correct.

1 Q And the entry reads---correct me if I'm wrong---
2 "WCM," that would be Dr. McArthur?

3 A That's correct.

4 Q "...and I discussed my conversation with Ron
5 Grover," parens, "(the 16th) with Wilson. He said that he
6 still felt that I should continue talking with the reporter
7 and stick with the truth." You see that?

8 A I do.

9 Q All right. So you got advice from Ron Grover not
10 to talk to the newspaper because you might not be selected
11 for these upcoming organizational -- for the upcoming -- in
12 the upcoming reorganization, and Dr. McArthur then telling
13 you he didn't see a problem. Just tell the truth. Is that
14 correct?

15 A As I recall, that's correct.

16 MR. MARQUAND:. Your Honors, I tender TVA Exhibit
17 135.

18 MS. EUCHNER:. No objection, Your Honors.

19 CHAIRMAN BECHHOEFER:. Board will admit TVA 135.

20 (The documents, heretofore marked
21 as TVA Exhibit #135, were received
22 in evidence.)

23 BY MR. MARQUAND:

24 Q When you talked to Ed Boyles on June 10th, 1996,
25 and threatened to file a Department of Labor complaint if

1 they posted the job, you expressed to him some uncertainty
2 about whether you would even apply on the job if they posted
3 it, didn't you?

4 A Don't recall. It's -- it's possible. At some
5 point in time I was having discussions with my wife as to
6 whether or not I should just take the early out and -- or
7 not. It's possible. I can't recall for sure.

8 Q And Mr Boyles encouraged you very strongly, in
9 fact, to apply for the job?

10 A Yes, he did.

11 Q And you said you had discussions with your wife
12 about taking the job. And as I recall your testimony
13 earlier, you said at some point you resolved that you would
14 not take the early out and you would stay with the company
15 and seek this new job that was being posted; correct?

16 A Yes.

17 Q All right. And then, when you weren't selected,
18 you opted to take the early out, the year's salary, the
19 severance pay, and the cash payment for your annual leave?

20 A And that's incorrect. When I was not selected,
21 that was automatic.

22 Q No, you had a choice to stay.

23 A No, I did not.

24 Q You had a choice to stay and be assigned to go to
25 services.

1 A To go to services; that's correct.

2 Q Or you could elect -- or you could take -- you
3 could exercise your option and take the money and leave?
4 You could stay on the payroll and go to services, or you
5 could take the money and leave?

6 A Or I could go into services; is that correct.

7 Q All right. And you chose to take the money and
8 leave?

9 A Right.

10 Q All right. Did you have a discussion with your
11 wife at that point in time that, no, you wouldn't pursue
12 further TVA employment, and would instead elect to leave
13 TVA?

14 A Well, I don't recall. But after being married now
15 for over 32 years, I can't imagine me making that decision
16 without consulting her. But I just -- I'm sure I did.

17 Q What caused you to change your mind about your
18 decision in July, according to you, to stay and pursue
19 further TVA employment, and your decision, at the end of
20 August, to leave TVA?

21 A If you will read the -- the letter that we
22 received, which would essentially place us in the services
23 organization, there was some verbiage that said, you know,
24 if in the future you were offered a job of a certain amount
25 of pay and you refused it, that would, in fact, be your last

1 day.

2 Q All right.

3 A So...

4 JUDGE YOUNG:. Who is "we"? You said "that we
5 received."

6 THE WITNESS:. Yes. Everybody who did not get
7 selected for a position received this letter saying, well,
8 you can have a year's severance or you can go into services.

9 JUDGE YOUNG:. Thank you.

10 THE WITNESS:. Now, going into services put you at
11 risk of not having a job within a very few days, if you
12 should be offered one.

13 MR. MARQUAND:. Now,...

14 JUDGE YOUNG:. Did you have a -- did you have more
15 to that sentence? If you should be offered one?

16 THE WITNESS:. Yes. Yes, Your Honor, there was
17 more. But there were some limits. In other words, you
18 could take a -- you could be offered a position at a
19 sizeable reduction in pay. And if you elected not to take
20 it, they could come in and say, "This is your last day.
21 You're out of here." And I was very concerned about that.

22 CHAIRMAN BECHHOEFER:. If you -- if you were to
23 take such a position, would there not have been, at least
24 for some period of time, a salary retention provision where
25 you would be -- whether or not the position was a lower

1 grade, you would be paid whatever you had been paid for a
2 certain period of time? And then, if your other job caught
3 up, you would join the pay scale of the other job. If it
4 didn't, you -- you would -- for however many years, perhaps
5 two -- I say two, because I think you see it in NRC, once,
6 they had a provision like that. But you would only retain
7 it for that period of time. Was that your understanding of
8 how the system worked?

9 THE WITNESS:. No, Your Honor, that was not my
10 understanding.

11 CHAIRMAN BECHHOEFER:. So you would not have
12 retained your -- the pay of your former position?

13 THE WITNESS:. That's correct.

14 CHAIRMAN BECHHOEFER:. I see. Thank you.

15 THE WITNESS:. That was my understanding.

16 BY MR. MARQUAND:

17 Q Mr.. Fiser, subsequently you had another discussion
18 with Phil Reynolds in which he offered you the chemistry
19 program manager PWR position.

20 A Correct.

21 Q The same sort of position for which you had sought
22 in July before the selection review board; correct?

23 A Correct.

24 Q And you still elected not to stay with TVA, and to
25 turn down that position?

1 A That's correct.

2 Q I want to show you TVA Exhibit 4. TVA Exhibit 4
3 is a memorandum dated September 27th, '96, from Mr. Reynolds
4 to you; correct?

5 A Correct.

6 Q And that is a memorandum in which he offered that
7 position to you; correct?

8 A That's correct.

9 Q Now, you sought that job in -- in July of '96.
10 Why did you turn it down when Mr. Reynolds offered it to you
11 in September?

12 A Well, this is not the job that I sought. The job
13 that I sought was filled by Mr. Sam Harvey.

14 Q This is identical job description that Mr. Sam
15 Harvey has; is that correct?

16 A I would assume so; yes.

17 Q Well, you wanted -- you wanted the job, instead of
18 Sam Harvey. And if Sam Harvey was going to get it, you
19 didn't want it; is that right?

20 A No. You have mischaracterized what's going on
21 here. The way I looked at this, I was offered a job that
22 did not exist, that was not on the org chart, working for a
23 manager who had already demonstrated that he had a problem
24 with issues and concerns I had raised in the past.

25 JUDGE YOUNG:. And who -- who were you referring

1 to there?

2 THE WITNESS:. That would be Mr. McGrath and Dr.
3 McArthur, both.

4 BY THE WITNESS:

5 A And -- and I knew that if I accepted this job,
6 when Mr. McGrath or Dr. McArthur found out about it, faced
7 with the requirements to cut head count, that what TVA
8 agrees to one day could be gone the next. So if I take this
9 and they changed their mind, as they often did at TVA, I
10 could literally be on the street without a severance
11 package, without a year's salary, without anything the next
12 day. So that's the concern that I had with accepting this
13 job offered by Phil Reynolds, a job that did not even exist
14 working for people who did not want me to be around.

15 Q Now, when you filed your complaint...

16 CHAIRMAN BECHHOEFER:. Well...

17 MR. MARQUAND:. Go ahead, Judge.

18 CHAIRMAN BECHHOEFER:. ...my question is if you
19 accepted this particular job and a place for the job was not
20 found in the organization, would you not have been required
21 to have been RIF'd again, and then still you could have gone
22 into services, could you not?

23 THE WITNESS:. Yes, but they may not have even
24 offered the services at that time. This was a -- a blanket
25 deal to a whole group of employees, not just one. They

1 could have done away with the job, and I could have been
2 left with nothing.

3 JUDGE YOUNG:. It was a special buyout offer.

4 CHAIRMAN BECHHOEFER:. I see.

5 THE WITNESS:. That's correct.

6 JUDGE COLE:. It had time limits associated with
7 it, too, didn't it?

8 THE WITNESS:. Sir?

9 JUDGE COLE:. It had a time limit associated with
10 it, didn't it? Sometime in '97?

11 THE WITNESS:. You know, I think...

12 JUDGE COLE:. The special buyout offer.

13 THE WITNESS:. ...I think that's correct. It's
14 just been a while since I've -- I've looked at it.

15 CHAIRMAN BECHHOEFER:. So then all you could have
16 gotten would have been severance pay, which we heard defined
17 yesterday as something different from the buyout offer?

18 THE WITNESS:. I may not have even had that with
19 this offer. You know, had -- had I accepted this and
20 withdrew my agreement to accept the severance package, see,
21 those would have been commensurate acts. I would have had
22 to, as I understood it, withdrawn my voluntary retirement
23 and accepting the severance package, accepted this job, and
24 then McGrath finds out about it the next week, and if he
25 takes action to get rid of that position, I have nothing.