

1 BY MR. MARQUAND:

2 Q As I understand it, what you're telling me, Mr.
3 Fiser, is if you took the job, you were concerned that you
4 might be working for McGrath and McArthur, who you were
5 concerned would take discriminatory action against you and
6 dismiss you or terminate you?

7 A Absolutely.

8 Q All right. So why is it in July of '96 you sought
9 the job of program -- chemistry program manager? You had
10 already filed a Department of Labor complaint against
11 McGrath and McArthur, and apparently felt that they were
12 discriminating against you at that point in time.

13 A As I recall, the...

14 Q What's the difference?

15 A ...as I recall, the McGrath's move to place Wilson
16 McArthur in the position that Ron Grover was hoping to get
17 was not announced until the day before the interviews. Is
18 that not correct?

19 Q That's not correct.

20 A I think it was. I think that's when we -- as a
21 matter of fact...

22 Q It was June 17th.

23 A Then when were the interviews?

24 Q July 20-something-or-other.

25 MS. EUCHNER:. July 18th.

1 A Oh, I thought that was June 18th.

2 Q No. Look at Joint Exhibit 21.

3 A Well, I'm willing to -- I'm willing to accept
4 that. It was just shortly before that, anyway.

5 Q All right.

6 MR. MARQUAND:. Your Honors, I tender TVA Exhibit
7 4 into the record.

8 MS. EUCHNER:. And, just for the record, the staff
9 would note that because this goes to what happened after TVA
10 discriminated against Mr. Fiser, it's really not relevant.
11 But we have no objection to you admitting it for whatever
12 weight it's worth.

13 MR. MARQUAND:. I wouldn't think so, since they
14 brought it up on direct.

15 CHAIRMAN BECHHOEFER:. The board will accept TVA
16 Exhibit 4; right? That one? 4?

17 MR. MARQUAND:. Thank you, Your Honor.

18 CHAIRMAN BECHHOEFER:. 4?

19 MR. MARQUAND:. 4.

20 CHAIRMAN BECHHOEFER:. Admitted.

21 (The documents, heretofore marked
22 as TVA Exhibit #4, were received in
23 evidence.)

24 BY MR. MARQUAND:

25 Q Mr. Fiser, I'm going to now show you another page

1 from your planner dated May 10th, 1996, which I've marked as
2 TVA Exhibit 136. Is that, in fact, the May 10th, 1996 page
3 from your planner?

4 A That's correct.

5 Q And that's your handwriting?

6 A That's correct.

7 Q Now, I know this is a little out of sequence, but
8 Paragraph 2 is a reference to a conversation with Dave
9 Voeller; is that right?

10 A That's correct.

11 Q Dave Voeller was the chemistry manager at Watts
12 Bar?

13 A That's correct.

14 Q He's the individual who told you about a
15 conversation in which Sam Harvey indicated that Sam Harvey
16 felt that he was going to be the one selected as one of the
17 two chemistry program managers?

18 A That's correct.

19 Q All right. And in this May 10th conversation,
20 Voeller states to you he said -- let me see if I read this
21 correctly. "Dave Voeller said Wilson McArthur came into..."

22 A "See him."

23 Q "...see him..."

24 A "Wanting feedback."

25 Q "...wanting feedback on my usefulness. Dave said

1 Wilson had nothing but positive things to say about me, and
2 that he appeared supportive. Dave said that he did a sales
3 job on..."

4 A "Me."

5 Q "...me, and that it was well received by WCM,"
6 Wilson McArthur.

7 A That's correct.

8 Q All right. And when he's talking about giving
9 Wilson feedback on your usefulness and giving a sales job,
10 he's talking about what he's doing with respect to the
11 upcoming anticipated selections; is that right?

12 A Well, he did not say that.

13 Q Is that what you understood?

14 A What I -- what I understood was Wilson was just
15 looking for feedback. He probably did this on all of the
16 employees, I would think.

17 Q Well, this is at a point in time everybody knew
18 that there was going to be a reorganization, everybody knows
19 there's going to be a reduction, everybody knows at this
20 point in time there's going to be fewer slots and that
21 they're going to have to apply on the new jobs; correct?

22 A Yeah.

23 Q All right. And so Voeller is telling you he's
24 giving Wilson this feedback, not for purposes of your
25 performance review, but for whatever purposes Wilson might

1 seek to use it in the reorganization?

2 A Well, he did not say that.

3 Q That's what you understood; isn't that correct?

4 A Well, I'm -- I'm not sure I understood what Wilson
5 -- Wilson may have been giving some positive feedback hoping
6 for some negative. I don't have any idea.

7 Q All right. But Voeller is apparently saying he's
8 siding with you and helping you try to get -- get good
9 information and good vibes with Wilson McArthur?

10 A It's my understanding he answered the guy's
11 questions.

12 Q All right. Now, the third paragraph is a
13 telephone call with Ron Grover; is that right? Or a
14 conversation.

15 A I don't know if it was a phone call.

16 Q One or the other; right?

17 A Well, let me look at it just a second.

18 (The witness reviews certain material.)

19 A Oh, okay. Go ahead.

20 Q All right. It's a -- some sort of conversation in
21 person or on the telephone with Ron Grover; right?

22 A That's correct.

23 Q And correct me if I misread this, but tell me --
24 I'm going to read it. "Ron Grover said he and Chandra would
25 appearance John Sabados about DFG and make sure DFG does not

1 back door me."

2 A That's correct.

3 JUDGE YOUNG:. Does not back what?

4 MR. MARQUAND:. "Back door me."

5 JUDGE YOUNG:. Back door me.

6 Q When you wrote this, what did you mean by the term
7 "back door me"?

8 A I'm -- I'm not...

9 JUDGE YOUNG:. Who's DFG?

10 THE WITNESS:. David Goetcheus.

11 JUDGE YOUNG:. And what was his position again?

12 THE WITNESS:. Steam generator chemical engineer.

13 JUDGE YOUNG:. Corporate?

14 MR. MARQUAND:. Yes.

15 THE WITNESS:. Yes, Your Honor.

16 BY THE WITNESS:

17 A I think at that time, and there are probably some
18 other mentions of it in my notes or some -- somebody's
19 notes, there was some concern about Dave Goetcheus calling
20 around trying to make sure that Sam was retained as the PWR
21 chemist. But I think that's what it was addressing.

22 Q All right. So...

23 A And they were afraid, I'm sure, that he would also
24 call John Sabados, as he had already called -- I think at
25 this time he had already called Dave Voeller. And that was

1 the concern, that he was trying to back door me.

2 Q All right. To undermine you in the selection;
3 right? In relation to Sam Harvey.

4 A Well, it doesn't say that, but...

5 Q Was that what you meant?

6 A That's what I understood; yeah.

7 Q Okay. And to make it clear, John Sabados was the
8 chemistry manager at Browns Ferry, and he worked for John
9 Corey?

10 A That's correct.

11 Q All right. And so the concern was that Dave
12 Goetcheus would basically campaign with John Sabados for Sam
13 Harvey as opposed to you to be retained?

14 A On your previous question, you said he worked for
15 John Corey. I think that's correct at that time. At some
16 point in time, he worked for a fellow by the name of
17 Sorrell. I'm sure John Corey was in this position.

18 Q In '96.

19 A I apologize. Go ahead with your next question.

20 Q All right. So my question was: Your -- you and
21 Grover had a concern that Goetcheus would campaign with
22 Sabados to have Sam Harvey retained or selected, rather than
23 you, for the chemistry program manager job?

24 A Well, you said that was my concern. I'm not sure
25 if that was mine or if that was Ron or if that was Ron and

1 Chandra. I don't recall.

2 Q All right. There was a concern?

3 A Yes.

4 Q Okay. And you said that Goetcheus had already
5 called Voeller and -- along the same lines and said
6 something, expressing some -- campaigning for Sam over you
7 to be retained?

8 A I know that he did. I do not know if it was by
9 May the 10th or not.

10 Q Okay. But there was a lot of this -- I mean,
11 there was a lot of uncertainty in the workplace about who
12 was going to get a job and who was going to be out of a job;
13 right?

14 A There was on my part.

15 Q Pardon?

16 A There was on my part.

17 Q Okay. And, I mean, there was a lot of discussions
18 between the employees, and back and forth to the sites, to
19 see -- as getting feedback, getting sales jobs to managers,
20 making sure -- you know, some employees campaigning for
21 other employees, et cetera?

22 A Well, I do not see a lot of that. I do see some
23 of it.

24 MR. MARQUAND: Your Honors, I tender TVA Exhibit
25 136.

1 CHAIRMAN BECHHOEFER: 136?

2 MR. MARQUAND: Yes.

3 MS. EUCHNER: No objection, Your Honors.

4 CHAIRMAN BECHHOEFER: Without objection -- okay,
5 without objection, TVA 136 will be admitted.

6 (The documents, heretofore marked
7 as TVA Exhibit #136, were received
8 in evidence.)

9 MR. MARQUAND: I think I'm about done. But before
10 I am, I'd like to ask if Mr. Fiser brought the planner that
11 we had asked did he bring the last time he was here.

12 CHAIRMAN BECHHOEFER: Well, you may ask him.

13 MR. MARQUAND: Well, is it here, Mr. Fiser?

14 THE WITNESS: Yes, it is.

15 MR. MARQUAND: Could we see it?

16 THE WITNESS: Sure.

17 JUDGE YOUNG: You want to take a break?

18 CHAIRMAN BECHHOEFER: Well, I thought we'd take a
19 break before we get some redirect, but if the staff...

20 MS. EUCHNER: I can prep for my redirect while
21 he's looking through it.

22 CHAIRMAN BECHHOEFER: Pardon?

23 MS. EUCHNER: That's fine. I can prepare for my
24 redirect while he's flipping through the day planner.

25 JUDGE YOUNG: Okay. Why don't we do that now.

1 CHAIRMAN BECHHOEFER: Okay. Why don't we -- what,
2 15 minutes? Take a 15 minute break.

3 (A short recess was taken.)

4 MR. MARQUAND: I'm ready.

5 CHAIRMAN BECHHOEFER: Back on the record. Have
6 you had a chance to look through the day planner or --

7 MR. MARQUAND: I've looked through two months of
8 it.

9 CHAIRMAN BECHHOEFER: Well, all of it you wish to
10 look through.

11 MR. MARQUAND: Well, I could spend a long time
12 looking at some of this, but I'll just look at those two
13 months for the moment. I'm ready to proceed.

14 CHAIRMAN BECHHOEFER: Pardon?

15 MR. MARQUAND: I'm ready to proceed.

16 CHAIRMAN BECHHOEFER: Oh, okay. Are you finished
17 or do you wish --

18 MR. MARQUAND: I have some questions.

19 CHAIRMAN BECHHOEFER: Oh, okay, good.

20 BY MR. MARQUAND:

21 Q Mr. Fiser, I've put before you Staff Exhibit
22 Number 37 which is in book 2 of 8 for the staff's exhibits.
23 And that's your June 25, 1996 Department of Labor complaint,
24 correct?

25 A Correct.

1 Q And attached to that is the document which you
2 entitled --

3 JUDGE YOUNG: I'm sorry, we were looking for the -
4 -

5 MR. MARQUAND: Staff Exhibit 37, it's in book 2 of
6 8.

7 (Brief pause.)

8 BY MR. MARQUAND;

9 Q That's your Department of Labor complaint, one
10 page, and attached to it is a document you entitled
11 "Sequence of Events" and that's what I want to ask you
12 about.

13 The reason we asked you to bring your planner
14 today was because the very first entry is a January '92
15 entry that you have typed up with respect to the nuclear
16 safety review board. And so we had previously shown you
17 minutes of the NSRB and there were no minutes for January of
18 '91 but there were minutes for February 19 and 20, '92.

19 What I want to do is show you your day planner --

20 JUDGE YOUNG: Excuse me, did you mean to say there
21 were no entries for January of '91 or '92?

22 MR. MARQUAND: Excuse me, Your Honor, I meant to
23 say that there are no NSRB meeting minutes for January of
24 '92.

25 CHAIRMAN BECHHOEFER: Oh, '92, okay.

1 MR. MARQUAND: And that there is one NSRB meeting
2 minute for February 19 and 20 of '92, which is Exhibit
3 Number 4 -- Joint Exhibit 4.

4 BY MR. MARQUAND:

5 Q Now what I want to do, Mr. Fiser, is show you your
6 day planner and walk through it with you.

7 MS. EUCHNER: Your Honors, I'd like to see what
8 pages he's going to show him first so that I can determine
9 that they are relevant to the issue of why this day planner
10 was brought.

11 MR. MARQUAND: Well, we're beginning with January
12 of '92.

13 JUDGE YOUNG: Why don't you go over there and
14 stand with him so we can proceed a little bit more
15 efficiently. Show it first to her and maybe if you got on
16 the other side of him.

17 CHAIRMAN BECHHOEFER: And identify the particular
18 dates.

19 JUDGE COLE: Show her the page first, Mr.
20 Marquand.

21 MR. MARQUAND: This is the calendar for January of
22 '92.

23 BY MR. MARQUAND:

24 Q Right, Mr. Fiser?

25 A Correct.

1 Q And on January 27, you have an entry 1000.

2 A Correct.

3 Q That's the only entry on that particular page for
4 January of '92.

5 A That's correct.

6 JUDGE YOUNG: Can you see all right?

7 MS. EUCHNER: Yes.

8 BY MR. MARQUAND:

9 Q If we'll turn to January 1 and we go through the
10 pages like we --

11 A Correct.

12 Q Both pages, as TVA Exhibit 135, it's got two
13 pages, a left hand page and a right hand page for January 1.
14 You've got no entries on January 1.

15 A Correct.

16 Q Likewise, January 2, you have no entries.

17 A Correct.

18 Q No entries for January 3?

19 A Correct.

20 MS. EUCHNER: Before we continue, I just have a
21 question for you. Are we just going to go through January
22 to show that there are no notes showing an NSRB meeting in
23 January of '92? If that's the case, we can just have Mr.
24 Fiser go through it quickly.

25 THE REPORTER: I'm sorry, I couldn't hear you.

1 MS. EUCHNER: I said if we're just going to go
2 through every single page of notes in January of '92 to note
3 that there's no notation for an NSRB meeting minute, why
4 don't we just let Mr. Fiser take one minute to flip through
5 it and then we can do the whole month of January at once,
6 rather than sitting here going page by page.

7 MR. MARQUAND: That'd be great. I'm asking the
8 questions.

9 JUDGE COLE: Doesn't seem like a very efficient
10 way to do it, Mr. Marquand.

11 BY MR. MARQUAND:

12 Q Mr. Fiser, if you'd look at your planner, are
13 there any entries for January of '92 for the NSRB?

14 A No.

15 Q All right, let's look at the calendar for February
16 of '92, do you see it?

17 A That's correct.

18 Q Did you make any entries on the calendar for
19 February of '92?

20 A No, I did not.

21 Q Now we're looking at Saturday, Sunday, I assume
22 that you have no entries for NSRB meetings on February 1 or
23 2, for the NSRB.

24 A That's correct. I can tell you the first entry
25 that I noticed and the only entry that I noticed was on

1 January 19 at 12:00.

2 Q Let me back up. I had some questions about some
3 earlier pages.

4 A Okay.

5 Q There's an entry on an inserted page that's
6 inserted on February 6. Is there a page there, correct?

7 A Correct.

8 Q And there's an entry that says "Jocher
9 told/provided INPO with his hit list."

10 MS. EUCHNER: Objection, Your Honor, that is not
11 relevant to the NSRB meeting minutes, which is the sole
12 purpose for which this book was provided today.

13 JUDGE YOUNG: Is that correct?

14 MR. MARQUAND: We had a question when we did this
15 and I asked the witness -- and I tried to get him to respond
16 to this in the previous examination -- that in fact the NSRB
17 meetings showed that the NSRB was February 19 and 20 of '92,
18 not January '92 and if in fact there was an INPO meeting on
19 the 24th through the 28th of February, which he did not
20 confirm at the time. And I think I'm entitled to ask him
21 that now so he can refresh his recollection.

22 JUDGE YOUNG: And your objection was based on the
23 fact that when the day planner was asked for, the request
24 was limited in scope?

25 MS. EUCHNER: Yes, Your Honor, and this day

1 planner was provided to TVA during discovery, they had ample
2 opportunity to read through it then and decide what was
3 relevant. It was asked for by Mr. Marquand here because he
4 wanted go to through and find out when the NSRB minutes
5 were, because I remember him specifically asking Mr. Fiser,
6 well what notes were you basing the January 1992 entry in
7 your sequence of events on, I want the notes. And that's
8 what we were discussing is where were those notes. And
9 that's why Mr. Fiser was requested to bring this book so
10 that we could show those notes.

11 JUDGE YOUNG: When was it?

12 MR. MARQUAND: I don't remember the last time he
13 testified.

14 MS. EUCHNER: June 11.

15 MR. MARQUAND: But the testimony was he was
16 confusing the NSRB meeting with the INPO meeting, he had his
17 dates wrong, he even had his months wrong, and that was
18 clear at the last meeting that Mr. Fiser testified at, and
19 that's one of the reasons we wanted to ask about this. But I
20 think to put all of this into context, we need to ask him
21 about the INPO meeting as well, which he was confusing with
22 the NSRB meeting.

23 JUDGE YOUNG: Well, that sounds like that would be
24 related enough, but where is the --

25 MS. EUCHNER: I'm trying to find the first page of

1 the discussion, we were talking about it on page 2794
2 through '96, but I don't know where it started on that page.

3 JUDGE YOUNG: I've got an index with mine.

4 MS. EUCHNER: What I'm trying to make sure that
5 Mr. Marquand doesn't do is expand this into discovery. He
6 already had discovery. He should simply limit it to what we
7 discussed last Tuesday.

8 JUDGE YOUNG: Was it near the end of Mr. Fiser's
9 testimony?

10 MS. EUCHNER: Yes, it's probably within the last
11 20 to 30 pages of Mr. Fiser's testimony on June 11.

12 JUDGE YOUNG: Is there another word instead of day
13 planner that you could have used? I've got an index in
14 mine.

15 MR. MARQUAND: We were talking about INPO, I-N-P-O
16 and NSRB.

17 JUDGE YOUNG: Are acronyms -- let's go off the
18 record for one second.

19 (Discussion off the record.)

20 JUDGE YOUNG: Okay, let's see.

21 MR. MARQUAND: I'm very certain that it happened,
22 Your Honor, on the record, I asked him about INPO, NSRB, he
23 gave me certain dates and I said no, that's the date of the
24 INPO meeting. And I asked him couldn't it have been at a
25 different time with respect to the NSRB and he was mixing up

1 the dates for the INPO meeting and the NSRB meeting.

2 MS. EUCHNER: I don't see that anywhere near --
3 maybe I'm missing it and Your Honor can find it, I don't see
4 it anywhere near the discussion of bringing in his day
5 planner book, the mention of INPO. All of the discussion --

6 JUDGE YOUNG: I still haven't found the
7 discussion. Have you?

8 CHAIRMAN BECHHOEFER: 2794 --

9 MS. EUCHNER: It looks like 283 is where Mr.
10 Marquand first brings up Staff Exhibit 37, which is the DOL
11 complaint with its sequence of events. And he starts in
12 asking about the January '92 notation. And again, I may be
13 missing it, but I didn't see anywhere that he mentioned
14 INPO. I'm looking again to make sure.

15 JUDGE YOUNG: Well, first, I'm trying to find the
16 place where bringing in the day planner is discussed.

17 MS. EUCHNER: Well the day planner is --

18 MR. MARQUAND: It wasn't just the day planner, it
19 was a whole discussion around the sequence of events.

20 JUDGE YOUNG: Look, all I want to do is find the
21 page, so I can get a point of reference.

22 MR. MARQUAND: I can't help you on that.

23 MS. EUCHNER: The day planner notes conversation
24 begins on 2793 where you asked, Your Honor, did he or
25 counsel know whether the pages were introduced as an exhibit

1 and Mr. Marquand said no, they are not an exhibit. And then
2 we start getting into a discussion about day planner notes
3 in general. And he requested to see them.

4 JUDGE YOUNG: Hold on now.

5 MR. MARQUAND: Why don't you look for the word
6 subpoena --

7 CHAIRMAN BECHHOEFER: There's a discussion on 2796
8 which I made.

9 JUDGE COLE: 2793, you used the term subpoenaed.

10 CHAIRMAN BECHHOEFER: Well, I had suggested it on
11 2796.

12 JUDGE YOUNG: Okay, on page 2791, Mr. Marquand
13 asked a question about if Mr. Fiser is making a claim now,
14 why didn't he make a reference to it earlier. I asked about
15 the day planner notes on 2792 and asked if he had them. And
16 I asked does either counsel know whether those have been
17 introduced as an exhibit, Mr. Marquand said no.

18 And Mr. Marquand said Mr. Fiser is claiming that
19 the basis -- he's claiming that he based that testimony upon
20 those day planner notes; I'm representing that we subpoenaed
21 those for his deposition on December 11 and he showed up on
22 December 11 without a scrap of paper.

23 Ms. Euchner says do you dispute that he did not
24 provide -- he didn't bring them the first morning but he
25 brought them later.

1 (The Judges confer.)

2 JUDGE YOUNG: And I suggested why don't you just
3 bring the book in the next time you come.

4 You asked if it was too much of a burden and he
5 said no.

6 CHAIRMAN BECHHOEFER: Yes.

7 MS. EUCHNER: And on page 2797, Judge Young states
8 "I think the simplest thing is for you to just bring in the
9 day planner, the little booklet, next time and then if
10 there's any question about when the meeting took place, if
11 there's any confusion at all, it can be straightened out, at
12 least in terms of what you put into your day planner."

13 So that's the reason why this book was provided
14 today, so that we can look and see if there are any notes in
15 here on the date of the NSRB meeting, and as Mr. Fiser just
16 pointed out, he does have a notation of what date the NSRB
17 meeting is and it is not on February 5, as Mr. Marquand was
18 questioning him about that date.

19 MR. MARQUAND: Further though, the confusion was
20 not just was it January '92 as in the sequence of events.
21 We were talking about a number of documents, we showed him
22 the -- then he claimed the NSRB meeting was the February 24
23 time frame, I showed him the meeting minutes, which are
24 Joint Exhibit 4 and they show they were on February 19 and
25 20. And they further show that an INPO assist visit began

1 on February 24.

2 So I think it's imperative to show the entire
3 sequence of events that was occurring in that time frame,
4 because he was confused, he certainly didn't have the right
5 date on this alleged sequence of events and I think we need
6 to look and see what was the sequence of events with
7 respect to the NSRB meeting and the INPO meeting, and that's
8 what I've asked him about here.

9 MS. EUCHNER: There should be no need for that,
10 being that there is a note that definitely establishes in
11 the day planner what date the NSRB meeting was. That should
12 be the only page that's relevant to that question.

13 JUDGE YOUNG: And the reference to the INPO
14 meeting, your objection to that is simply because that's not
15 what we were talking about?

16 MS. EUCHNER: That's not what we were talking
17 about. That is additional discovery which he could have
18 done on December 12, the first time he had this book. And
19 if he's going to be allowed to look through everything,
20 we're going to be here a lot longer. He already had his
21 chance for discovery, this book is here simply to clarify
22 the date of a meeting. Mr. Fiser can do that very quickly
23 by merely pointing to a page in his day planner book,
24 without having to go through every day in February.

25 JUDGE YOUNG: And what's the relevance or need for

1 the entry relating to the INPO meeting?

2 MR. MARQUAND: This is one of the INPO meetings, I
3 believe, in which there were some issues raised. I don't
4 know that's the case or not, but Mr. Jocher certainly raised
5 a number of issues to INPO and this is one of items which
6 Mr. Fiser had incorrect in his previous testimony about the
7 date of the meeting. He had the INPO meeting -- or the NSRB
8 meeting happening the day of the INPO meeting and I think
9 it's imperative that we get these matters clear.

10 JUDGE YOUNG: So the INPO meeting was on the date
11 that you originally thought the NSRB meeting was on, Mr.
12 Fiser?

13 MR. MARQUAND: Not originally, because originally
14 he said it happened in January and then in his last
15 testimony, he said it happened February 24.

16 JUDGE YOUNG: Was there a point at which there was
17 confusion between the two meetings?

18 THE WITNESS: Normally what I do is you will see a
19 specific date; for example, on March 29, if I could not find
20 those meetings -- those minutes, notes in my day planner, so
21 I just summarized. That's why it just says January. Because
22 I thought it was in January and it was in February. I put a
23 specific date by everything, but since I did not have notes
24 on that in this book, I could not put a specific date.
25 That's why I put January.

1 JUDGE YOUNG: And my question, not to you
2 necessarily, but if you know -- to all three of you really -
3 - was there some confusion at any point between the INPO
4 meeting and the NSRB meeting?

5 MR. MARQUAND: That's what I've been say.

6 MS. EUCHNER: I think there was and I also think
7 it can be very cleared up by pointing to February 19 in his
8 day planner, and that will clear up -- I mean one of the
9 disputes about this whole thing is that people have their
10 dates mixed up for when this NSRB meeting is. Mr. Fiser has
11 a day planner notebook and he can look up those dates when
12 it is. That clears up the issue. There should be no
13 further need for going through this day planner. It
14 resolves the issue.

15 JUDGE YOUNG: And I guess what I'm wondering is --
16 I agree with you in terms of going through every single
17 page. I guess what I'm wondering is you seem to have a very
18 strong objection to the entry relating to the INPO meeting,
19 and if there is some relationship between the two of those,
20 it seems that it would make a more complete record to
21 include both of those references, if there's some
22 relationship.

23 MS. EUCHNER: My concern is not that we shouldn't
24 look through and see if there's a mark for the date of the
25 INPO meeting, if that's Mr. Marquand's concern. But as he

1 just stated, he wants to go through -- well, Jocher raised
2 some concerns to INPO and what those were. That's
3 extraneous to the issue of what are the dates that were
4 mixed up. If he wants to go through here and determine if
5 there are notes that the INPO visit occurred on February 24
6 to 28, or whatever the dates were, I have no problem with
7 that. I don't want --

8 JUDGE YOUNG: That's what I understood him to be
9 saying that he wanted to do.

10 MS. EUCHNER: He just said that he wanted to go
11 through what Mr. Jocher was raising issues to INPO. That's
12 extraneous to the date of the INPO.

13 JUDGE YOUNG: I did not get a context for that.
14 Mr. Marquand, you were wanting to do more than just look at
15 the two -- the date or dates of the INPO meeting and the
16 date of the NSRB meeting?

17 MR. MARQUAND: It's clear that what happened was
18 Mr. Jocher raised a number of issues to INPO.

19 JUDGE YOUNG: Well, first, yes or no.

20 MR. MARQUAND: Yes. Mr. Jocher raised a number of
21 issues to INPO and when Mr. Fiser approached Mr. Beecken in
22 December of '92 and asked him why Mr. Beecken didn't want
23 him to come back to the plant, part of the reason was that
24 there were a number of issues that had begun to surface,
25 including at the INPO visit, and Mr. Fiser in that

1 conversation, which he tape recorded and which is included
2 as part -- part of that conversation is in Joint Exhibit 27
3 -- was stating that Mr. Jocher was undermining him by
4 raising issues or causing issues to surface to the INPO
5 visit. And Mr. Fiser has here characterized what Mr. Jocher
6 did with respect to INPO.

7 JUDGE YOUNG: And that's a different date than the
8 INPO meeting or the NSRB meeting?

9 MR. MARQUAND: This is preparatory to the INPO
10 meeting.

11 MS. EUCHNER: But that doesn't go to the dispute
12 over the date of the meeting. He just basically proved what
13 my objection was, which is he wants to discuss the actual
14 substance of this rather than the actual dates. And that's
15 additional discovery, that's not appropriate at this time,
16 he had his chance to look through this document.

17 MR. MARQUAND: I question why the staff wants to
18 exclude relevant evidence as to the issues that INPO found
19 that were surfacing, which were the reasons that Mr. Beecken
20 -- some of the reasons Mr. Beecken didn't want Mr. Fiser to
21 return to Sequoyah.

22 JUDGE YOUNG: Okay, I agree in terms of the
23 discovery. If they weren't taken advantage of, then that
24 mitigates against allowing them to be brought up at this
25 point. However, I will say this, I have some questions for

1 Mr. Fiser trying to clarify the whole situation with regard
2 to which concerns he raised at which point and that was sort
3 of left hanging from the last time he testified. So, you
4 know, I think we can certainly at this point look at the
5 dates, but quite frankly if something comes up that would
6 cut either way, it might help Mr. Fiser -- I don't know --
7 but that would clarify the nature of those concerns that he
8 said he raised and that were sort of left hanging. I think
9 that would be helpful.

10 MS. EUCHNER: Well then, Your Honor, I'm going to
11 request that I have a chance to read this document, because
12 Mr. Marquand had his chance, didn't find anything relevant
13 the first time around and if now he's going to argue there's
14 something relevant, I think I should have the opportunity to
15 make sure it's relevant before he shows it to the witness.
16 Because quite frankly, really the only issue here is the
17 dates. Anything that needs clarification, Mr. Fiser can
18 testify to without having to introduce this evidence.

19 JUDGE YOUNG: Let's take five minutes and you show
20 her what it is that you want to ask him about first and then
21 she can object to specific parts of it, or all of it for
22 that matter.

23 (The Judges confer.)

24 CHAIRMAN BECHHOEFER: Okay, we're off the record
25 now.

1 (A short recess was taken.)

2 JUDGE YOUNG: Just for the benefit of both
3 counsel, obviously --

4 CHAIRMAN BECHHOEFER: Do you want this on the
5 record?

6 JUDGE YOUNG: Yes.

7 CHAIRMAN BECHHOEFER: Back on the record.

8 JUDGE YOUNG: We were just discussing this,
9 obviously when something has been provided and one party
10 doesn't take advantage of it and the other party doesn't
11 know what's being raised at this point, obviously that is
12 good grounds for raising an objection. It's not necessarily
13 definitive and final grounds for ruling on an objection, if
14 there's not that much prejudice and there is something
15 that's quite relevant that you could, with appropriate
16 preparation, ready yourself to counter in whatever way you
17 found appropriate. And it may be that Mr. Fiser would want
18 us to look at some pages that Mr. Marquand might not find
19 appropriate.

20 We're not encouraging you to open the door and we
21 certainly don't want that whole book, but I do think that
22 there were several issues left hanging and so with that
23 said, Ms. Euchner, you say you've looked at what Mr.
24 Marquand showed you and what is your position at this point?

25 MS. EUCHNER: On the date that we were first

1 looking at, which is February 6, it doesn't appear to me at
2 least that this has anything to do with either scheduling an
3 INPO meeting or an NSRB meeting. But I wouldn't have any
4 objection to Mr. Marquand asking him that limited question,
5 does this relate to scheduling the INPO, and if the answer
6 to that is yes, then moving on. And if the answer is no, it
7 has nothing to do with the INPO visit, then him not asking
8 any further questions about it.

9 The only one of these that doesn't look to me like
10 I can find an entry that relates to one of those two issues
11 is Saturday, February 15, and I just don't know which
12 entries that he was referring to that relates to those. So
13 I'll wait until he gets to that date and asks the question
14 before determining what it is. But every other page that he
15 has tabbed and pointed out to me has specifically to do with
16 scheduling NSRB or INPO and I do not object to any of those
17 dates.

18 JUDGE YOUNG: Okay, so do you want to go through
19 them one by one or concentrate on the two that there are
20 questions about?

21 MR. MARQUAND: Let me start with the February 6
22 entry?

23 CHAIRMAN BECHHOEFER: Sixth?

24 MR. MARQUAND: February 6, 1992.

25 BY MR. MARQUAND:

1 Q This page that was inserted into your planner.

2 A Uh-huh.

3 Q It wasn't originally -- this page wasn't part of
4 the February 6 planner as it was originally provided to you,
5 you inserted it.

6 A That's what we call a meeting planner, it's an
7 additional page you can insert to give you room to make
8 comments or whatever about a meeting.

9 Q So are these entries for one or more than one
10 upcoming meeting, you're making comments about?

11 A Oh, that would be -- as I recall, that was about
12 the INPO assist visit.

13 Q The upcoming INPO assist visit.

14 A That's correct.

15 Q That was scheduled for February 24?

16 A I don't remember the exact date.

17 Q If you'll look at Joint Exhibit 4 --

18 A It was the INPO assist visit, whenever it was.

19 Q Joint Exhibit 4, on page 1, it refers to an INPO
20 assist visit beginning on February 24, '92, correct?

21 A That's what that says, yes.

22 Q And so is this reference to the -- at that point
23 in time, it would have been an upcoming INPO assist visit.

24 A That's correct.

25 Q And it references the fact that Mr. Jocher had

1 told/provided INPO with a hit list.

2 A That's correct.

3 Q What did you mean by hit list?

4 A I have no idea. That could have been -- one of
5 the things that they could have been looking at on the
6 assist visit --

7 CHAIRMAN BECHHOEFER: INPO could be looking at?

8 THE WITNESS: Yes, Your Honor.

9 CHAIRMAN BECHHOEFER: I asked him if he meant INPO
10 would be looking at.

11 THE WITNESS: Yes, Your Honor, that's correct.

12 JUDGE YOUNG: Would you read that entry again,
13 with the words "hit list" in it?

14 MR. MARQUAND: "Jocher told/provided INPO with his
15 hit list."

16 JUDGE YOUNG: Jocher what-slash?

17 MR. MARQUAND: Told.

18 JUDGE YOUNG: Oh, told.

19 MR. MARQUAND: Or provided INPO with his hit list.

20 THE WITNESS: Right. That could have been simply
21 these are the things we as corporate are doing that we want
22 to make sure you know about, to make sure that you, Mr. INPO
23 evaluator, that you know were plugged into the sites and
24 we're looking at. I viewed that as a very --

25 JUDGE YOUNG: That you know were plugged into?

1 THE WITNESS: That's correct. In other words,
2 what he's trying to demonstrate through the INPO evaluator
3 on the assist visit is the fact that corporate chemistry is
4 in tune with the sites, working hand-in-hand with them. As
5 a matter of fact, here's a list of things we're working on
6 right now to support these guys. It does not at all
7 indicate something negative, although it might, but it
8 probably is just trying to demonstrate how we are working
9 together and doing our job and not sitting back here at
10 corporate twiddling our thumbs, doing nothing at all.

11 JUDGE YOUNG: Thank you.

12 BY MR. MARQUAND:

13 Q You never suggested when you at Sequoyah, Mr.
14 Jocher was twiddling his thumbs, did you?

15 A No, he would not like that.

16 Q In fact, as you said earlier, he was a very vocal
17 critic of the chemistry program at Sequoyah.

18 A Not only was he a vocal critic, he could also be a
19 very vocal advocate at times too -- both.

20 Q There is an entry on Saturday, February 15 and
21 there's a list of people's names -- Dave Goetcheus, Don
22 Adams, somebody Buchanan, somebody Gates, Beecken, Jocher,
23 you, Rob Ritchie, is that Skip?

24 A That's correct.

25 Q Skip L., who is Mr. Skip L.?

1 A I'm going to guess that it was a fellow by the
2 name of Lonus, but I'm not sure.

3 Q Jack Wilson.

4 A Correct.

5 Q Was that an HDT meeting?

6 A HDT.

7 CHAIRMAN BECHHOEFER: A what meeting?

8 MR. MARQUAND: HDT.

9 THE WITNESS: I don't now what that is.

10 BY MR. MARQUAND:

11 Q Over in the left hand column, it's got number 7
12 HDT and 3 HDT.

13 JUDGE YOUNG: What's HDT?

14 THE WITNESS: That's a heater drain tank.

15 BY MR. MARQUAND:

16 Q Was this an incident investigation team?

17 A Oh, no, I don't know what it was.

18 Q You don't have any idea what this is an entry for?

19 A No, I don't.

20 Q Let me ask you about February 17th, '92. It says
21 II on event. Is that a reference to what we just talked
22 about, the list of names on February 15th?

23 A No. I don't know what that list of names is for
24 to tell you the truth.

25 Q II stands for incident investigation, doesn't it?

1 A Normally yes.

2 Q And that wouldn't be an incident investigation
3 team?

4 A I can -- I can guarantee you Jack Wilson is not
5 going to be assigned to an incident investigation team.

6 Q All right. Now if you'll look at February the
7 18th, '92, in the left-hand column you have -- in the left-
8 hand column it says prioritize daily lists, right?

9 A Yes.

10 Q And you've got in red letters NSRB?

11 A Yes.

12 Q You've got nine entries, it looks like, even in --
13 is that pencil?

14 A I don't know.

15 Q Okay. In a different color of writing tool and
16 another one, it looks like it's in blue ink, correct?

17 A Yes.

18 Q All right. And by the NSRB you have a check mark?

19 A Yes.

20 Q Now on the right hand -- that's normally where you
21 put the tasks are that you're going to complete?

22 A That's correct.

23 Q The next column on that page would be the
24 appointment schedule. There is where you would list the
25 schedules for different meetings and appointments, correct?

1 A That's correct.

2 Q And the far side, February 18th is where you would
3 make notes of meetings and conversations, right?

4 A Yes.

5 Q All right. And the only note you have there is
6 full SRO license?

7 A That's correct.

8 Q That doesn't refer to an NSRB meeting, right?

9 A I wouldn't think so, no.

10 Q In fact, at that point in time you were
11 considering seeking an SRO license for yourself?

12 A I had had some discussions about that, yes.

13 Q All right. And --

14 JUDGE YOUNG: Senior resident operator?

15 MR. MARQUAND: Senior resident --

16 THE WITNESS: Reactor.

17 MR. MARQUAND: Senior reactor operator.

18 JUDGE YOUNG: Reactor operator, okay.

19 BY MR. MARQUAND:

20 Q You were thinking about asking for training?

21 A That's correct.

22 Q All right. And so this has -- that entry has no
23 reference to the NSRB?

24 A I don't think so, no.

25 Q Now you've got a meeting planner page inserted

1 here.

2 A Correct.

3 Q Is this an agenda for a meeting? It says items to
4 be discussed.

5 A Correct. I would think that was either an agenda
6 or perhaps some things that came out of a meeting I had with
7 my staff perhaps. I don't know who. You know, things that
8 we needed to get accomplished.

9 Q Are there any references to an NSRB meeting?

10 A Yes.

11 Q What?

12 A It says item number 4 to be discussed. Ready for
13 NSRB meeting.

14 Q All right. So you're talking with your staff
15 about getting ready for the NSRB meeting?

16 A That appears to be what that was for, yes.

17 Q And there are two references to INPO, right?

18 A That's correct.

19 Q One is INPO, get a plan to get the data in. You
20 had to submit the data to INPO, right?

21 JUDGE YOUNG: Did you say get a plan, get the data
22 in?

23 MR. MARQUAND: Get a plan to get the data in. As
24 I understand it, prior to INPO coming in, you submit data
25 for them to analyze.

1 THE WITNESS: Without question we do. I just
2 don't know what data this is referring to.

3 BY MR. MARQUAND:

4 Q All right. And further -- on the last entry it
5 says INPO --

6 CHAIRMAN BECHHOEFER: What date are we reading
7 from?

8 MR. MARQUAND: February the 18th.

9 CHAIRMAN BECHHOEFER: The 18th. Okay.

10 BY MR. MARQUAND:

11 Q The last entry is INPO, colon, answer Debbie's
12 questions.

13 A Correct.

14 Q Is that Debbie Bodine?

15 A I would assume so, yes.

16 JUDGE YOUNG: What was the word after INPO?

17 MR. MARQUAND: Answer Debbie's -- Debbie Bodine's
18 questions.

19 JUDGE YOUNG: You said -- there was another word
20 after INPO.

21 MR. MARQUAND: INPO colon.

22 JUDGE YOUNG: Colon?

23 MR. MARQUAND: Yes.

24 JUDGE YOUNG: Okay, thank you.

25 MR. MARQUAND: I read the punctuation.

1 JUDGE YOUNG: Thank you.

2 THE WITNESS: And we're assuming that's Debbie
3 Bodine. I think that would be correct.

4 BY MR. MARQUAND:

5 Q All right. So there's no other references on
6 February the 18th to the NSRB?

7 A That's correct.

8 Q February the 19th -- we have two pages for
9 February the 19th, right?

10 A Correct.

11 Q In the appointment schedule you have NSRB, 1200 to
12 1330, correct?

13 A That's correct.

14 Q Are there any other entries on February the 19th
15 for NSRB?

16 A No, I don't see any.

17 MR. MARQUAND: The reason we're chuckling, there's
18 a reference to give blood and we decided it didn't have
19 reference to --

20 (Laughter.)

21 THE WITNESS: Sorry.

22 BY MR. MARQUAND:

23 Q Now February the 20th, according to Joint Exhibit
24 4, was the second day of the NSRB meeting at Sequoyah, is
25 that right?

1 A Yes.

2 Q Are there any entries on your planner for February
3 20th for the NSRB meeting?

4 A No.

5 Q All right. And February 21, that's a -- in the
6 itemized, prioritized daily task force there is a note to
7 call INPO. Do you see that?

8 A Yes.

9 Q And there's an X beside it.

10 A Correct.

11 Q What does the X mean?

12 A It probably means for some reason that was
13 canceled.

14 Q I don't have any other questions about the
15 planner. Did you find any other references to that NSRB
16 meeting -- alleged NSRB meeting in your planner?

17 A No, I did not.

18 Q Okay. Now you've got Joint Exhibit 4 in front of
19 you and it indicates that there was this NSRB meeting on
20 February 19th and 20th of '92. When you look at page 1
21 under site chemistry program, one of the key items was
22 trending analysis. That was a program deficiency. Do you
23 see that?

24 A No, I don't see that right now.

25 Q In the sixth line of the paragraph headed site

1 chemistry program there's a sentence that begins the NSRB
2 noted that these program deficiencies, which included
3 trending analysis. Do you see that now?

4 A Oh, yes, I do.

5 Q All right. You didn't have an entry in your day
6 planner with any discussion about other than the fact that
7 the NSRB had scheduled a meeting with you from 12:00 to 1:30
8 in the afternoon to support the entry in Staff Exhibit 37 on
9 your sequence of events, is that correct?

10 A That's correct.

11 Q Now if you'll look at Joint Exhibit 3, that's also
12 an NSRB meeting minute, but it's for November 20 and 21,
13 '91.

14 A Correct.

15 Q If you'll look at the third line in the paragraph
16 headed site chemistry program, do you see the sentence that
17 begins, for example, required data trend analysis were not
18 being performed?

19 A That's correct.

20 Q All right. I'm putting before you Joint Exhibit
21 27, which is in the white covered notebook for the joint
22 exhibits.

23 MS. EUCHNER: What page are you on, counsel?

24 MR. MARQUAND: I've turned to page 3 of Joint
25 Exhibit 27.

1 MS. EUCHNER: Okay. Thank you.

2 BY MR. MARQUAND:

3 Q Let's turn back to page 2. Page 2 has an entry
4 for a January '92 meeting with Rob Ritchie.

5 A Correct.

6 Q Is it correct that you don't have any entry in
7 this sequence of events for the January -- for what you
8 claim to be the January '92 NSRB meeting, correct?

9 A That's correct.

10 Q You don't have any entry for the November '91 NSRB
11 meeting, which is reflected -- as shown by Joint Exhibit 3?

12 A That's correct.

13 Q And you don't have an entry in February of '92
14 either that would -- corresponds to Joint Exhibit 4, the
15 February 19 and 20, '92 NSRB meeting, correct?

16 A (No response.)

17 Q There's no entry in here for November, December of
18 '91, or January or February of '92 with respect to the NSRB
19 meetings?

20 A Not at -- not in the sequence, no.

21 Q Right. And my question to you the last time you
22 appeared here to testify was what do you have to support the
23 January '92 entry in Staff Exhibit Number 37, and your
24 testimony was at that time that you had a day planner note.
25 My question is, what entry do you have to support all of

1 these words on the second page of Joint Exhibit 37 where
2 you've made an entry for January of '92 regarding an NSRB
3 meeting.

4 A That was the February and January NSRB meeting?

5 Q What entry -- what do you -- what entry in any of
6 your planners, as you said the last time you testified, do
7 you have to support all of these words that you put on page
8 2 and page 3 of Staff Exhibit Number 37?

9 A If you'll recall, what I said the last time was
10 that the -- that the entry I made for January probably
11 should have said February. That's what I said last time.
12 You can check the record. Because that was approximate. If
13 it was an exact date, had I had meeting minutes, I would
14 have put the exact date as I did throughout this document.
15 Now, as I have told you before, I had several members of my
16 staff that were in attendance at that meeting and I
17 specifically recall having them take notes of the various
18 items of discussion during that NSRB minutes so that would
19 indeed free me up to concentrate on the questions and to
20 address the issues that Mr. -- Dr. McArthur, Peterson and
21 McGrath were raising. Just as here, we have a court
22 reporter and it frees me up to listen to you. And these
23 people had notes and they had very specific and explicit
24 memories of that meeting, as did I.

25 Q Did they give you those notes?

1 A Did I get the notes? I don't recall if I got the
2 notes. I'll be glad to pull in Rob Ritchie and I'll be glad
3 to pull in Don Adams and I'll be glad to pull in Debbie
4 Bodine and we'll just ask them if they remember what
5 happened.

6 Q When you prepared this sequence of events did you
7 pull them in and consult their notes?

8 A Oh, I discussed it with them for sure.

9 JUDGE YOUNG: I'd like to clarify a couple of
10 things about that meeting as described under January 1992
11 and as in Exhibit 37, whenever it actually happened. Your
12 description of it there, as well as your earlier verbal
13 description of it in this hearing and your reference to --
14 or actually I think one of -- one of your transcripts of a
15 discussion with Mr. McArthur. If I'm recalling it right,
16 Mr. McArthur made a reference to Mr. McGrath and Mr.
17 Peterson saying something after they left the room or
18 something to that effect.

19 THE WITNESS: Yes, Your Honor.

20 JUDGE YOUNG: Okay, here's what I would like to
21 get clarified. I recall from your testimony, either when we
22 were here earlier or last week, I can't remember which. I
23 think it was in May -- April or May. At one point you said
24 that you refused to put the data trending procedure that Mr.
25 McGrath was suggesting -- or Mr. Peterson was suggesting --

1 I think the word you used was, you refused to put that in
2 the procedures.

3 THE WITNESS: That's correct, Your Honor.

4 JUDGE YOUNG: Okay. In looking at Exhibit 37,
5 your sequence of events that went with the 1996 complaint --

6 JUDGE COLE: Exhibit 37 or 27?

7 JUDGE YOUNG: Exhibit 37.

8 MR. MARQUAND: Staff Exhibit 37, Judge Cole.

9 JUDGE YOUNG: Under where you've said January
10 1992, you -- let's see, one, two, three, four, the fifth
11 paragraph down under January 1992 underlined.

12 THE WITNESS: Yes.

13 JUDGE YOUNG: In the first line it says Mr.
14 Peterson somewhat dismayed at my recalcitrant stand, left
15 the room and returned a few minutes later with Mr. Tom
16 McGrath who was the NSRB chairman.

17 THE WITNESS: That's correct.

18 JUDGE YOUNG: What I'd like to get clarified is,
19 you described yourself as being recalcitrant, and earlier
20 you said that you had refused to do what they wanted you to
21 do.

22 THE WITNESS: Yes.

23 JUDGE YOUNG: I guess what I'd like to have
24 clarified is in what way does that show that they mistreated
25 you in some way or that they were discriminatory against

1 you. If they asked you to do something and you refused and
2 you were recalcitrant --

3 MS EUCHNER: Your Honor, I think I can clarify
4 that for you.

5 JUDGE YOUNG: Well I'd like to hear his
6 clarification.

7 MS. EUCHNER: But I think you're confusing when
8 the discrimination took place.

9 JUDGE YOUNG: Okay.

10 MS. EUCHNER: It took place after the meeting, not
11 during the meeting.

12 JUDGE YOUNG: Okay. Strike -- not -- don't
13 strike. Forget the word discrimination. My understanding
14 of your reference to this is that you considered it to be
15 significant in terms of showing how TVA had not treated you
16 right, otherwise you wouldn't have put it in, I'm assuming.
17 Yes?

18 THE WITNESS: That's part of it, yes, Your Honor.

19 JUDGE YOUNG: Okay. And I understand from what
20 you've said that you felt that they were making an
21 unreasonable request of you to put the data trending
22 procedures -- daily data trending procedure -- daily data
23 trending into required procedures because that would
24 guarantee your failure?

25 THE WITNESS: That's correct.

1 JUDGE YOUNG: The actual merits of that I'm not
2 totally clear on, and I'm not clear on how you see the
3 picture of a -- of a manager refusing and being
4 recalcitrant.

5 THE WITNESS: Right.

6 JUDGE YOUNG: I think to a lot of people that
7 would come across as painting you in a negative light rather
8 than them in a negative light. And so, I'd really like to
9 get some clarification from you as to how you saw this whole
10 interaction that occurred at that NSRB or NSRB subcommittee
11 meeting, because there's several references to this being
12 the thing that started the whole ball rolling downhill
13 against you.

14 THE WITNESS: That's correct.

15 JUDGE YOUNG: So I would like for you to clarify
16 for me a little bit more of how you see this as painting
17 them negatively and not you negatively.

18 THE WITNESS: Correct.

19 JUDGE YOUNG: And I want to give you this
20 opportunity, because in some ways, I have to tell you, you
21 don't come off looking that good. Usually when a supervisor
22 talks to an employee and the employee is described as being
23 recalcitrant or is refusing to do something rather than as
24 discussing something and trying to arrive at a compromise or
25 resolution, that employee does not look very good.

1 THE WITNESS: Right.

2 MS EUCHNER: Judge Young, before he answers that
3 question, I just want to clarify something in your question.
4 Mr. McGrath was in no way shape or form Mr. Fiser's
5 supervisor. He had no authority over him whatsoever.

6 JUDGE YOUNG: Okay, thank you.

7 Whatever role he had. I understand that the NSRB
8 did have some role -- oversight role at TVA to identify
9 safety problems and ask employees to address them. So if I
10 misstated that he was your supervisor, I'm being a little
11 loose with words. Did you consider that he had -- as NSRB
12 chairman that he had any authority to raise concerns? How
13 did you consider him?

14 THE WITNESS: Oh, absolutely, he had authority to
15 raise any concerns. First of all, this is in no way safety
16 related. Second of all, I was already -- I had already
17 reinstated the trends. That was one of the first things I
18 did after I got back, because I did not appreciate or like
19 the fact that we had -- while I was gone, they had these
20 problems and had stopped generating these trends. So we
21 already had it going again, had the computer fixed and we
22 were generating the trends very shortly after I got back.
23 The only -- the only issue was, in my mind, he was asking me
24 to commit to something in the procedure, and this is
25 definitely NRC related. When I put a requirement in a

1 procedure that says you will do this 53 times a day, seven
2 days a week, I have no option but to do it, and do it on
3 Saturday and do it on Sunday and do it on Christmas day.
4 Whatever day it is, I had no option.

5 Commensurate with that, he could not give me the
6 authority to work the overtime. I had to get that approved
7 through my management. Also, my management was not in
8 agreement that I should put this into procedures and
9 generate it every day, seven days a week. And I pointed all
10 of this out to him. I said you're asking me to put
11 something in a procedure that I cannot comply with. I do
12 not have the authority to comply with it. I do not have the
13 manpower to comply with it. I do not have the equipment on
14 hand to comply with it. I do not have the computer power to
15 comply with it. I cannot do it; therefore, I'll be writing
16 in a procedure something that I will violate. I said I have
17 a problem with that. I can't do it.

18 JUDGE YOUNG: I actually did understand most of
19 that before. What I was not clear on, and maybe I -- thank
20 you for bringing up the relationship between you and Mr.
21 McGrath and the NSRB. What was the nature of the
22 relationship? Did you view him as a peer, that he was just
23 making a suggestion, or did you view him as having any clout
24 or authority to raise issues with you? Was this just sort
25 of a discussion? What was the general --

1 THE WITNESS: It was a discussion.

2 JUDGE YOUNG: -- understanding of the -- of the
3 role of the NSRB? Would people in TVA normally treat it
4 like sort of a suggestion of a peer or of more than that?

5 THE WITNESS: More or less, it would be a
6 suggestion for a comment and for resolution. Now you do not
7 have to do what they say do, but you better have a darn good
8 reason for not -- for not complying with a request of
9 theirs.

10 JUDGE YOUNG: Why?

11 THE WITNESS: Because they report directly to
12 Oliver Kingsley, you know, and it could --

13 JUDGE YOUNG: And he's your ultimate supervisor?

14 THE WITNESS: Well he's the head of Nuclear Power,
15 that's correct.

16 JUDGE YOUNG: Right. That's what I meant.

17 THE WITNESS: That's correct. So, I mean, you
18 better have your ducks in order. And I felt like they were.
19 First of all, we were already doing it. Second of all, we
20 had been doing it for years. Third, to put that requirement
21 in a procedure would guarantee my failure. Fourth, no one
22 in the country or the world was generating 53 trends a day.
23 I would be the only one. I would be the Lone Ranger out
24 there working all this overtime to generate trends that were
25 stacking up on somebody's desk that were not even there.

1 JUDGE YOUNG: Did you understand him to be asking
2 you to do 53 trends a day or just to do data trending every
3 day?

4 THE WITNESS: Fifty-three a day.

5 JUDGE YOUNG: He specified that?

6 THE WITNESS: Absolutely.

7 JUDGE YOUNG: And so --

8 CHAIRMAN BECHHOEFER: I'd like to ask a question.

9 JUDGE YOUNG: Go ahead.

10 CHAIRMAN BECHHOEFER: Mr. Fiser, at that point in
11 time, I guess -- I guess this was January of '92 or February
12 of '92.

13 THE WITNESS: February.

14 CHAIRMAN BECHHOEFER: Were there procedures
15 instituted where data trending could be done with almost no
16 manpower effort by just entering a few data points into the
17 computer and letting it do it automatically? I had
18 understood there was some sort of procedure that either had
19 been or was being introduced that would allow data trending
20 to be done with no particular manpower effort -- or extra
21 manpower effort.

22 THE WITNESS: Yes. I think what Your Honor is
23 referring to would be a part and parcel of the chemistry
24 upgrade project where you have online instrumentation -- new
25 state of the art online instrumentation that would take a

1 sample, analyze it and take that data and automatically plug
2 it into a computer. Then various people on the site could
3 log into that computer and get a display of that trend.
4 That's what we were shooting for. As a matter of fact, I
5 offered to Mr. McGrath and Peterson, I said now once we get
6 this new spiffy chemistry upgrade project, that's possible,
7 but I said right now with this state-of-the art equipment
8 that we had in service, it could not be done.

9 CHAIRMAN BECHHOEFER: So at the time that
10 direction was given to you, you did not have the equipment
11 that could do it automatically on line?

12 THE WITNESS: That's correct.

13 CHAIRMAN BECHHOEFER: Thank you.

14 THE WITNESS: Yes, sir.

15 JUDGE YOUNG: Again, I want to give you my
16 impressions so you can respond to them --

17 THE WITNESS: Yes, Your Honor.

18 JUDGE YOUNG: -- because I really do want to get
19 as clear a picture as possible of what was going on and how
20 you saw it.

21 THE WITNESS: Correct.

22 JUDGE YOUNG: Because it does appear -- and I
23 think you agreed -- that this was the event that triggered
24 everything that followed from every description I've heard.

25 THE WITNESS: This is an event. I would not

1 necessarily say it was the event.

2 JUDGE YOUNG: Okay.

3 THE WITNESS: There were several.

4 JUDGE YOUNG: And I want you to feel free to tell
5 me the other ones, and if you want to tell me the other ones
6 now you can do that.

7 THE WITNESS: Well like writing letters to
8 senators and sending reports to NRC based on -- I think it
9 was Mr. Overlid, who was at that time working on a
10 subcommittee for NSRB. I'm not sure of that.

11 JUDGE YOUNG: And when did those occur?

12 THE WITNESS: That occurred when actually I was
13 down town as the corporate chemistry manager in the 1992
14 time frame.

15 JUDGE YOUNG: And so when I said triggered, I
16 meant was the beginning point. Was there anything else that
17 happened prior to this?

18 THE WITNESS: Oh, there were many things that I
19 had done, not the least of which, on the preceding INPO
20 evaluation under explicit instructions from Mr. Bill
21 Lagergren --

22 JUDGE YOUNG: Mr. Bill?

23 THE WITNESS: Lagergren.

24 JUDGE YOUNG: Lagergren?

25 THE WITNESS: My manager. I had -- he wanted us

1 to go out and to do a pre-INPO assessment and to log any
2 instance where if INPO said do this, whatever. You fill in
3 the blank. We did that a little differently, or even
4 better, to log that as a difference. We came up with 120
5 some-odd, it seems like, items that were different and I had
6 to enter all of those into TROI. TROI, our computerized
7 tracking and reporting of open items. It looked horrible,
8 but, in fact, what I was doing was exactly what my manager
9 had requested. Well this was not met with a very positive -
10 - in a very positive light with the site vice president at
11 that time --

12 JUDGE YOUNG: Who was that?

13 THE WITNESS: That would be Mr. LaPoint. It's
14 when -- as I have said repeatedly, it's when you find and
15 document things and enter them into the corrective action
16 process, whether it's TROI or a SCAR or whatever, that's
17 when you get in trouble.

18 JUDGE YOUNG: Did you, in any of the letters you
19 wrote or complaints you filed, make reference to the list of
20 things that you entered into TROI?

21 THE WITNESS: I think I did but I can't recall.

22 JUDGE YOUNG: Okay.

23 THE WITNESS: I can't recall.

24 JUDGE YOUNG: Any others that you want to recount
25 before we...

1 THE WITNESS: Well there will be others having to
2 do with the post accident sampling system being out of
3 service all the time and making mention of that to NSRB and
4 to my corporate chemistry managers, my own management and
5 others. You know, that would be another issue of problems
6 that were beyond my scope to repair because of the dollar
7 value involved. The chemistry upgrade project itself not
8 getting funding for it year after year after year and
9 raising that as an issue to my management. And as I have
10 mentioned, after I went downtown and Bill Jocher went to
11 Sequoyah, this fellow Tom Overlid was commissioned to do an
12 investigation to find out why it was that chemistry had -- I
13 can't remember the exact words -- so many equipment problems
14 or whatever. He does a study and he meets with me as part
15 of that, and others. Me from corporate at that time, site
16 chemistry, site engineering and others. And he decides well
17 the reason Sequoyah doesn't get all these problems fixed is
18 simply the fact that this chemistry upgrade project is so
19 voluminous and huge and massive and expensive. And if you
20 would simply break this down into phase one, two, three, why
21 you would have had this done years ago. And I said, Tom,
22 that's not true.

23 JUDGE YOUNG: Tom?

24 THE WITNESS: Tom Overlid was his name. I said
25 that is not true. I said, as a matter of fact, one of the

1 first things we did -- and we have done it -- cut this pie
2 many times before. But specifically when Mr. Jack Wilson
3 became our site vice president, that's one of the things he
4 wanted us to do, and he directed the project manager, Ms.
5 Donna Wilson, to divide it into phase one, two and three,
6 and that did not get approved either. I looked at him and I
7 said, so that's not true. What you have just said is
8 incorrect. I don't care. That's what I found and that's
9 what I'm going to report. And I said, the fact of the
10 matter is, it has nothing to do with phase one, two or three
11 because we've already done it. All you have to do is talk
12 to Donna Wilson. The truth is the money was never allocated
13 as Mr. Kingsley, in his 1991 letter, said he was going to
14 do. And you, Mr. Overlid, are afraid to say that. And he
15 said I don't care what you say, that's what I found and
16 that's what I'm going to write. And I said, fine, you write
17 it, but if you do, I will send that straight to NRC.

18 JUDGE YOUNG: Did you?

19 THE WITNESS: Yes, I did.

20 JUDGE YOUNG: When?

21 THE WITNESS: With a cover letter --

22 JUDGE YOUNG: When?

23 THE WITNESS: It was in 1992. With a cover letter
24 that says this was Mr. Vorse -- I sent it to him. I think
25 that's correct. I said Mr. Vorse, -- I can't remember my

1 exact words -- this is why we don't get things done at TVA,
2 because people are afraid to tell the truth, because if they
3 tell the truth, it could cost them their jobs, and the truth
4 is that Mr. Kingsley and others did not allocate the money.
5 And what he has stated is a lie.

6 JUDGE YOUNG: Okay.

7 THE WITNESS: And I sent that to them.

8 JUDGE YOUNG: Did you mention that in your
9 complaint with Ms. Merchant?

10 THE WITNESS: I can't recall.

11 JUDGE YOUNG: Okay. I want staff counsel and
12 counsel to follow up on that and bring out any other aspects
13 of that that need to be brought out, but for a moment, I'd
14 like to get back to this and I'd like to get to an
15 impression that has in part been created about you and the
16 way you managed.

17 THE WITNESS: Okay.

18 JUDGE YOUNG: And that appears to be TVA's
19 position with regard to your problems. And that is that you
20 were not a very strong manager, that by, for example, being
21 recalcitrant and refusing rather than going out and trying
22 to aggressively get the funds, convince, persuade, do
23 whatever was necessary to solve problems rather than give
24 reasons why you couldn't solve them, that you were not
25 acting as a leader or a manager or as a solver of problems.

1 And a lot of what I hear you saying, apart from
2 this NRC complaint, which I'd like you to go into further,
3 but a lot of what I hear you saying is responding to other
4 people who raise problems and telling why they couldn't be
5 resolved, rather than approaching them from the standpoint
6 of this is a challenge, let's see how we can figure this
7 out, let's see what we can do to get it resolved.

8 THE WITNESS: Right.

9 JUDGE YOUNG: That's what I'd like you to respond
10 to, because I think that that impression has been argued and
11 to some extent has been created successfully about you.

12 THE WITNESS: You know, I hear this a lot. I
13 cannot imagine a situation where a manager like myself could
14 be more upfront, more forthcoming, more bold than to state
15 what you have written is a lie and if you send it in that
16 way, I'm going to report it to NRC. So I don't even agree
17 with the premise that I was not strong enough as a manager.
18 That is just incorrect. I'm kind, I work with people, I
19 build coalitions, I work behind the scenes, I worked with my
20 manager directly, Bill Lagergren specifically and others, I
21 worked with the corporate chemistry manager, you can talk to
22 Bill Jocher and you can talk to Jim Bates before him.

23 JUDGE YOUNG: Well, let's not talk about who I can
24 talk to, because I'm only going to consider what's presented
25 to me and the rest of us in this hearing.

1 THE WITNESS: I'm trying to answer your question
2 specifically.

3 JUDGE YOUNG: But don't assume that I'm going to
4 go talk to anyone, because I'm not.

5 THE WITNESS: I understand. I'm just saying that
6 I disagree wholeheartedly with that.

7 As a matter of fact, I had a very similar
8 discussion to what you and I are having right now with Mr.
9 Bill Lagergren and where I was saying, you know, they're
10 just saying that I didn't get the job done, and he looked at
11 me and he just couldn't believe it and he said, it has
12 nothing to do -- this is a taped conversation, transcribed
13 in here somewhere -- he says it had nothing to do with you
14 or with Bill Lagergren or with Bill Jocher or with Jack
15 Wilson or with anybody. It had everything to do with show
16 me the money essentially, release the funds. He says they
17 built the dadblamed cafeteria, why couldn't we have taken
18 those funds and improved the chemistry program. He was very
19 upset that anybody would accuse me of not raising this to
20 the proper level. He looks me directly in the eye and said,
21 it had nothing to do with you. It had everything to do with
22 the fact that there was not enough money to handle all the
23 projects.

24 JUDGE YOUNG: At this meeting with Mr. McGrath and
25 Mr. Peterson,...

1 THE WITNESS: Correct.

2 JUDGE YOUNG: ...when they were pressing you...

3 THE WITNESS: Right.

4 JUDGE YOUNG: ...to add this to the procedures,
5 did you ever say anything to them like, "Look, here's my
6 problems. I'd really like to do what you -- you're
7 suggesting here. Would you help me go to Kingsley and ask
8 for the money to do it?"

9 THE WITNESS: Oh, I certainly did. And that's why
10 I said, "Guys, if you will help me get this chemistry
11 upgrade project through where we can have this new online
12 equipment that will plug the data directly into a computer,
13 and everybody's sitting there with a computer screen on
14 their desk and they can pull it up instantly," I said,
15 "we'll be there. We'll have it. Help me do that." I sure
16 did.

17 JUDGE YOUNG: Why -- why didn't you say that
18 earlier, rather than saying that you refused, and referring
19 to yourself here as being recalcitrant? Because those are
20 two different pictures to me.

21 THE WITNESS: Well, it is. It is. And I probably
22 used the wrong words. I apologize. But the appearance was
23 that I was just being dogmatic with these guys. It was not
24 -- I'd come in to them and I'd say, "Guys, I agree. I was
25 appalled when I got back and saw that they weren't being

1 done, and I got the computer fixed, and I got it going right
2 away, and we're still doing it, and we have always done it.
3 And I'm doing more right now than any other nuclear plant in
4 the country. And I can do the whole ball of wax once we get
5 the chemistry upgrade project approved." And that's --
6 that's quite frankly what I told them. So I apologize. I
7 probably could have done a better job writing this.

8 JUDGE YOUNG: I'm interested in hearing more about
9 the complaint you made to the NRC, but I'm not going to ask
10 about that now, unless you want to explain it further now.
11 I'm going to leave that up to counsel to -- to bring out
12 further.

13 THE WITNESS: And I will leave that up to them, as
14 well, because I think they do have some questions regarding
15 that later.

16 JUDGE YOUNG: Thank you. Go ahead. I interrupted
17 you for quite some time there.

18 MR. MARQUAND: I don't remember where I was.

19 CHAIRMAN BECHHOEFER: I thought you had signed off
20 and weren't...

21 MR. MARQUAND: I thought I was, but...

22 CHAIRMAN BECHHOEFER: Yeah.

23 JUDGE YOUNG: I thought you had sort of more or
24 less finished with the NSRB, and -- and you were at a
25 breaking point between subjects. I don't know whether you

1 were finished with -- with -- okay, if you were finished
2 with your exam.

3 MR. MARQUAND: Well, I have -- since you brought
4 this subject up, I guess I should ask.

5 BY MR. MARQUAND:

6 Q You mentioned a review, Mr. Fiser, of the
7 chemistry programs by Mr. Overlid.

8 A Correct.

9 Q His name is Terry, not Tom.

10 A I'm sorry.

11 Q And he was requested -- he was a part of the
12 quality assurance organization; right?

13 A I don't recall. It seems like there was a special
14 assignment from an NSRB subcommittee, but that's been way
15 too many years.

16 Q He did a review of why corporate and Sequoyah
17 chemistry programs had longstanding problems that had not
18 been corrected; correct?

19 A Don't know. I don't recall.

20 Q Well, I thought you said you reviewed it and you
21 had complaints about it and sent it to the NRC?

22 A Well, that was in 1992. It's been ten years.

23 Q Well, you were quoting to us from a conversation
24 you thought you had with him.

25 A I -- I didn't think I had it.

1 Q And so my question is: Don't know what the
2 subject of this review was?

3 A As I said earlier, it's why certain things in
4 chemistry had not been fixed or repaired or -- or done.

5 JUDGE YOUNG: Was part of the quality assurance
6 process and what he was telling you about what was going to
7 go in his quality assurance report?

8 THE WITNESS: I -- I don't remember quality
9 assurance having anything at all to do with it.

10 Q You don't remember?

11 A No. As I said earlier, it's my understanding that
12 Terry Overlid---I apologize---and the others on this group
13 were trying to answer a question: Why don't we have -- why
14 have we not made the improvements to the chemistry
15 equipment, online equipment or whatever? Why is it still
16 recurrent issue with INPO and others. That's what I recall.

17 Q There were issues about instrumentation
18 availability; right?

19 A Oh, yes.

20 Q And questions about repair or maintenance of
21 existing instrumentation?

22 A Your repeated maintenance; yes.

23 Q And Mr. Overlid's findings included a finding that
24 the CUP, the chemistry upgrade program, was overscoped and
25 excessively expensive; correct?

1 A That's -- as I recall, that's correct.

2 Q Did you disagree with that?

3 A Absolutely.

4 Q All right. So you thought that -- that there --
5 you were asking for the right amount of money and the right
6 scope with respect to the CUP as you -- when you were the
7 chemistry program -- chemistry superintendent at Sequoyah?

8 A I was asking for the funds to be approved to fix -
9 - to implement the chemistry upgrade project.

10 Q Did he also...

11 A I think it was improvement plan. It was a -- it
12 changed names several times.

13 Q Did he also make a finding that instrumentation
14 was not being repaired because of a failure to develop an
15 adequate implementation strategy?

16 A I do recall words to that effect; yes. But that
17 was having to do with the cumbersome process that was
18 imposed upon us through the work control process.

19 Q So that wasn't your fault, either?

20 A No. My job was to find the problems, submit the -
21 - the work request to get the work done, and to then elevate
22 this to -- to management whenever I felt like it was not
23 being done. And I can tell you that was an almost daily
24 thing.

25 JUDGE YOUNG: What, taking it to management or...

1 THE WITNESS: Yes. Yes, Your Honor, it was.

2 MR. MARQUAND: Did you...

3 CHAIRMAN BECHHOEFER: And would you have been
4 obligated, yourself, to put a request in for the -- would
5 you have been obligated, yourself, to put in a request for
6 the CUP upgrades?

7 THE WITNESS: Oh, many times. Many times.

8 CHAIRMAN BECHHOEFER: And is that a formal written
9 request or just verbal request to the individuals?

10 THE WITNESS: Both. And especially during the
11 times when we were preparing our annual budgets. It would
12 have been both.

13 BY MR. MARQUAND:

14 Q To make it clear, you were responsible for
15 preparing and having input into the proposed budget for the
16 chemistry organization; right?

17 A Certainly.

18 Q And you would -- it was your responsibility to
19 submit that to upper management for approval.

20 A Certainly.

21 Q And, to the extent you were preparing budget, you
22 were supposed to provide justification for what you were
23 asking for?

24 A Certainly. In my case, specifically; yes.

25 Q And that would include the CUP?

1 A Yes, although CUP certainly was not -- the funds
2 for it would not be coming out of my budget. You understand
3 that.

4 Q You would ask for additional funds to fund CUP?

5 A Yes, to keep it in -- to keep it from being kicked
6 out of the -- the budgeting process for each year.

7 Q And it would be your responsibility to provide
8 adequate justification for the amounts of funds you were
9 requesting for CUP?

10 A Well, that was already included in the -- in the --
11 - what do they call it? The scoping documents, I think.
12 That was already a part of -- part and parcel of the same
13 process.

14 Q All right. Let's move on.

15 A It was already there.

16 JUDGE YOUNG: Just to clarify, did you not view --
17 once you had put it down on paper and made the request, did
18 you sort of figure that that was the end of your job? Is
19 that what you're saying? Or did you -- what did you -- did
20 you consider that it was part of your job to -- to go talk
21 to whoever you needed to talk to and...

22 THE WITNESS: Oh, yes, Your Honor.

23 JUDGE YOUNG: ...to try to persuade them and...

24 THE WITNESS: Yes. And that's what I would do
25 with -- with Bill Lagergren, even the plant manager. And

1 the corporate personnel as well. My corporate counterparts
2 in engineering and whatever. I would talk to -- to anybody
3 that I felt like had input into whether or not that project
4 was tagged, to use Bill Lagergren's words, was sacrosanct.
5 In other words, it was in there and it was not going to get
6 kicked out due to other higher priorities. That was -- I
7 felt like that was my job.

8 JUDGE COLE: This chemistry upgrade -- this
9 chemistry upgrade, wasn't that for all three plants, three
10 sites? Or were you dealing with just one site this time?

11 THE WITNESS: I was primarily dealing with
12 Sequoyah. Certainly whatever we implemented would hopefully
13 eventually be implemented at Watts Bar, or something very
14 similar to it. Browns Ferry being a BWR, it was a little
15 different.

16 CHAIRMAN BECHHOEFER: But would it -- would there
17 have been or was there a separate request from Watts Bar,
18 for example, for that program to be implemented there?

19 THE WITNESS: There would have been a separate...

20 CHAIRMAN BECHHOEFER: Well, do you know if there
21 was?

22 THE WITNESS: I'm trying to recall. I'm fairly
23 certain that there was. That's -- I think so.

24 JUDGE YOUNG: You recall the -- the reference in
25 the discussion about Dave Voeller, there was a reference in

1 one of your day planner notes about somebody said that they
2 had tried to do a sale on you.

3 THE WITNESS: Correct.

4 JUDGE YOUNG: Okay. When you just said, "I saw it
5 as part of my job to make sure that -- that my request
6 didn't get kicked out of the budget"...

7 THE WITNESS: Right.

8 JUDGE YOUNG: ...do you see that as being the same
9 thing as going and trying to do a sale on your part of the
10 budget, to make sure that it got approved? Do you see those
11 two things as being the same thing or different approaches?

12 THE WITNESS: Well, they're different approaches,
13 but very similar. Just the fact that I wanted to make sure
14 that those positions -- the people in various positions that
15 had direct input into the budgeting process were keenly
16 aware of how important it was to get this equipment
17 upgraded, because we could no longer even get parts for a
18 lot of it. We could no longer get parts to repair a lot of
19 the equipment. It was very important. And it was a -- a
20 matter of profound disappointment to Bill Lagergren, my
21 direct supervisor, that he, too, was unable to prevail in
22 getting this thing included and the funds allocated to
23 upgrade this equipment.

24 CHAIRMAN BECHHOEFER: Now, did you believe that
25 there was any nuclear safety significance to whether or not

1 Sequoyah or Watts Bar was able to obtain authorization to
2 upgrade the chemistry program, the CUP program?

3 THE WITNESS: Well, if -- if you mean nuclear
4 safety, could we meet NRC requirements, yes, we could. We
5 could do that with grab samples.

6 JUDGE YOUNG: With what?

7 THE WITNESS: We could do that with grab samples.
8 And on a lot less frequent basis than what we were doing.
9 There's a difference in saying can we meet NRC requirements,
10 and can we meet Institute of Nuclear Power requirements,
11 because they're a lot more stringent. And you have to see
12 to a lot lower levels, and you have to look more frequently,
13 et cetera, et cetera.

14 CHAIRMAN BECHHOEFER: So to meet INPO
15 requirements, you needed to have this CUP program approved
16 and -- the implementation of it, I should say, approved for
17 both Sequoyah and -- not you, but Watts Bar.

18 THE WITNESS: Yes, Your Honor.

19 CHAIRMAN BECHHOEFER: Right.

20 THE WITNESS: That's correct.

21 CHAIRMAN BECHHOEFER: Thank you.

22 BY MR. MARQUAND:

23 Q At the time you were the Sequoyah chemistry
24 manager, though. You had no responsibility for Watts Bar's
25 instrumentation.

1 A No. No.

2 CHAIRMAN BECHHOEFER: But I -- this is by analogy.

3 Q When Mr. Overlid and his -- it wasn't just Mr.
4 Overlid, there was a number of people involved in this
5 review, and he was the head of the review team; isn't that
6 correct?

7 A That's -- that is as I recall; yes.

8 Q All right. When this review team, headed by Mr.
9 Overlid, made their findings, they found that the scope of
10 the CUP was excessive, and a lack of multi-year
11 implementation strategy; correct?

12 A A multi-year implementation schedule or something
13 like that.

14 Q But you disagreed with that?

15 A Yes. We had already tried that. That didn't
16 work, either.

17 Q And you basically approached Mr. Overlid and said
18 he was lying, and if he released this report, you were going
19 to take it to the NRC?

20 A That's correct.

21 Q All right. When you -- you sent it to you say Jim
22 Vorce?

23 A That's -- as far as I recall, that's correct.

24 Q With the office of investigations?

25 A That's correct.

1 Q Did you send it to anybody else?

2 A I don't recall.

3 Q Did you send it to -- your dissent from that to
4 anybody within TVA?

5 A It's possible, but I don't recall.

6 Q Do you have any records of whether or not you sent
7 it to anybody within TVA?

8 A No. No.

9 Q Okay. Mr. Overlid's review team found -- analyzed
10 deficiencies in data analysis and trending; correct?

11 A I don't...

12 Q Pardon me?

13 A As I recall---and again it's been a long time
14 since I've seen that---they were mainly dealing with the
15 fact that the chemistry upgrade project had not been -- why
16 had it not been approved, as Mr. Kingsley said it would be.

17 Q My question is: Did Overlid and his review team
18 look at data analysis and trending to try to determine why
19 there were problems in that the area?

20 A As I recall, no, because we were doing the
21 trending.

22 Q Isn't it true that 1994 INPO made evaluation
23 findings in that area indicating problems?

24 A '94?

25 Q Yes.

1 A I don't know. I never saw that report.

2 Q You saw the Overlid report, though; right?

3 A I did see the Overlid report.

4 Q All right. And didn't the Overlid report in fact
5 address the basis for the findings made by INPO in 1994 in
6 the area of data analysis and trending?

7 A Oh, I think that's correct.

8 Q Okay. Wasn't one of the findings of the Overlid
9 report as to why there were problems in data analysis and
10 trending, was that management was not conveying clear
11 expectations to all the employees?

12 JUDGE COLE: Sorry? I didn't get that.

13 MR. MARQUAND: To employees.

14 A Let's see. At that time I was working at Watts
15 Bar. I don't -- they may have. He may have said that. I
16 don't know. I don't know what management expectations for
17 Sequoyah were at that time.

18 JUDGE YOUNG: Which -- which report are you
19 quoting from there, the '92 or the '94?

20 MR. MARQUAND: Mr. Overlid's report.

21 JUDGE YOUNG: Of...

22 MR. MARQUAND: That Mr. Fiser claimed was a lie.

23 JUDGE YOUNG: No, I'm just trying to...

24 MR. MARQUAND: It was 1994.

25 JUDGE YOUNG: '94.

1 THE WITNESS: '94.

2 JUDGE YOUNG: Okay.

3 THE WITNESS: That is as I recall about the time.

4 BY MR. MARQUAND:

5 Q Did you disagree with Mr. Overlid's analysis?

6 A Yes, I did.

7 Q Did you convey that disagreement to anyone within
8 TVA?

9 A Yes, I did.

10 Q Who?

11 A I know I conveyed it to Sam Harvey. I'm sure I
12 conveyed it to Ron Grover.

13 JUDGE YOUNG: To whom?

14 THE WITNESS: Ron Grover.

15 JUDGE YOUNG: Ron Grover.

16 THE WITNESS: He was my manager at that time.

17 BY THE WITNESS:

18 A I'm not -- I'm certain of other people. I was
19 very upset about that bogus report.

20 Q You were primarily upset about what Mr. Overlid's
21 report had to say about the scoping and planning for
22 implementation of the chemistry upgrade program, though,
23 weren't you?

24 A I was primarily concerned with the fact that he
25 was not truthful.

1 JUDGE YOUNG: About which part? About what?

2 THE WITNESS: About the -- the real reason that
3 the chemistry upgrade project had not been implemented.
4 It's because management would never release the funds to do
5 it.

6 JUDGE YOUNG: And he was saying...

7 THE WITNESS: He was saying it's just because it
8 was overscoped and should have been a proposal of phases and
9 multi-year implementation.

10 JUDGE YOUNG: Right.

11 THE WITNESS: Which had already been tried.

12 BY MR. MARQUAND:

13 Q He was saying the funds hadn't been released
14 because it was overscoped and there was a lack of multi-year
15 implementation; right?

16 A That's what he said.

17 Q Didn't he also say that there was turnover in
18 upper management which caused disruption in continuity?

19 A Oh, absolutely. Yeah.

20 Q Did you agree with that?

21 A Oh, there was turnover. But I did not necessarily
22 agree that was the reason. As I recall, Mr. Kingsley did
23 not -- his position did not have a lot of turnover.

24 Q Well, now, eventually the CUP was approved for
25 Sequoyah, wasn't it?

1 A I don't know.

2 Q You don't know?

3 A No.

4 Q Well, you continued to work for TVA until...

5 A '96.

6 Q ...September of '96. And you don't know whether
7 it was approved?

8 A I do not know if they have -- to this day, I do
9 not know if they have implemented that thing completely or
10 not. I have no -- no idea.

11 CHAIRMAN BECHHOEFER: "Approval" I think is
12 different from implementation.

13 THE WITNESS: Either one.

14 CHAIRMAN BECHHOEFER: Did you know of either one?

15 THE WITNESS: No, sir, I have no knowledge that
16 they have totally implemented or approved this thing. I
17 don't know that they haven't. I just -- I just don't know.

18 CHAIRMAN BECHHOEFER: Okay. I have a question of
19 the staff. Is there, among these hundreds or thousands or
20 documents, whatever it may be, a copy of the report that Mr.
21 Fiser said he made to an OI, office of investigations
22 representative?

23 MS. EUCHNER: No. The staff had no intention of
24 offering that as an exhibit, and I don't even know that we
25 have in our possession a copy of it. "We" meaning OGC. I'm

1 sure somebody at the NRC has it. But I've never requested
2 it of anyone.

3 MR. MARQUAND: I would also note, Your Honors,
4 that the staff has not claimed that anything he said about
5 the Overlid report was protected activity.

6 JUDGE COLE: How do you spell that?

7 MR. MARQUAND: Just like it sounds, it's phonetic.
8 Overlid.

9 JUDGE COLE: Overlid.

10 BY MR. MARQUAND:

11 Q And just for completeness of the record, Mr.
12 Fiser, I'm going to show you TVA Exhibit 18, which is the
13 Overlid report. Mr. Fiser, I've put before you TVA Exhibit
14 18. It's a memorandum from E. R. Barren, and it's signed
15 Raoul Barren to O. J. -- well, I guess it's R. R. Barren.
16 Signed Raoul Barren to O. J. Zeringue, dated September 6,
17 '94. And there is initials in the lower left-hand corner,
18 "TWO." Would that be Terry W. Overlid?

19 A I think that's correct.

20 Q And then it says, "At the request of senior TVA
21 nuclear management, a review of corporate and Sequoyah
22 chemistry has been performed." And then it goes on to say
23 that it's attached, and the attachment is, in fact, a review
24 of corporate and Sequoyah chemistry programs, seven pages --
25 eight pages. Is that the Overlid report that you were

1 referring to?

2 A As I recall, that's it.

3 MR. MARQUAND: Your Honors, I tender TVA Exhibit
4 18.

5 CHAIRMAN BECHHOEFER: Any objection?

6 MS. EUCHNER: Just give me a minute, Your Honors.
7 No objection.

8 CHAIRMAN BECHHOEFER: Okay, TVA 18 will be
9 admitted.

10 (The documents, heretofore marked
11 as TVA Exhibit #18, were received
12 in evidence.)

13 BY MR. MARQUAND:

14 Q Mr. Fiser, you've worked in the nuclear industry a
15 number of years and you're familiar with the quality
16 assurance functions; is that correct?

17 A That's correct.

18 Q Isn't it true that the expectation is that
19 management is supposed to embrace findings of a quality
20 assurance organizations (sic) and seek to solve quality
21 programs, rather than assert that the QA auditors are liars?

22 A I would agree with the first part of your
23 statement.

24 JUDGE YOUNG: Which -- which part of...

25 CHAIRMAN BECHHOEFER: I think the assertion was

1 that the report was incorrect, not...

2 THE WITNESS: Correct.

3 CHAIRMAN BECHHOEFER: ...not biased.

4 MR. MARQUAND: I didn't say "biased."

5 CHAIRMAN BECHHOEFER: Oh, I'm sorry.

6 JUDGE YOUNG: I think he said -- he said liars.

7 CHAIRMAN BECHHOEFER: Oh. Oh, okay. I'm sorry.

8 I'm sorry.

9 JUDGE YOUNG: And just to clarify...

10 CHAIRMAN BECHHOEFER: I thought I heard the word
11 "biased."

12 JUDGE YOUNG: ...now that we have this in front of
13 us, which part of it did you tell Mr. Overlid was a lie?

14 THE WITNESS: I'll have to review the...

15 MR. MARQUAND: If you'll -- beginning -- let me
16 refer Mr. Fiser to Page 6-20, executive summary, Bullet 1,
17 and Page 6-22, numbered 1, on instrumentation.

18 THE WITNESS: Your Honor, certainly that first
19 bullet on Page 6-20, under executive summary, I had a
20 problem with.

21 JUDGE YOUNG: And would I be correct in assuming
22 that that was because you took the reference to "overscoped
23 and excessively expensive, and thus deferred from year to
24 year" as referring back to when you were the chemistry
25 manager at Sequoyah?

1 THE WITNESS: And before and after.

2 JUDGE YOUNG: Okay. I take it you -- you're
3 agreeing with that, that that is what you...

4 THE WITNESS: Yes. There's another part here that
5 I think clarifies this bullet somewhere. I just have to
6 find it.

7 MS. EUCHNER: Your Honors, I'd just like to point
8 out that Mr. Marquand just noted that the staff didn't claim
9 that this was protected activity, and he's correct.
10 Because, although we're not going to argue about its
11 protected nature, this isn't part of the protected activity
12 for which we are alleging that Dr. McArthur and Mr. McGrath
13 retaliated against Mr. Fiser. So I'm not entirely sure that
14 going through it in depth is relevant to the case in terms
15 of determining that Dr. McArthur or Mr. McGrath
16 discriminated against him. It may very well be protected,
17 but it's not the protected activity upon which we are basing
18 our case.

19 JUDGE YOUNG: Since -- since it came out in
20 response to a question that I asked, let me -- let me just
21 let the staff and Mr. Fiser know sort of how I'm viewing
22 this at this point. And that is, I was giving and I want to
23 give you, Mr. Fiser, an opportunity to respond to any
24 negative things that have been said about you or any
25 negative impressions that may have been created. And -- and

1 in one way, what we're being asked to decide is -- there's
2 no question that you were not chosen for the job in 1996,
3 and that a decision was made to post the job. And for
4 whatever -- for whatever reasons, a bad thing happened to
5 you and you ended up leaving TVA and not continuing in your
6 same job.

7 THE WITNESS: Correct.

8 JUDGE YOUNG: It's alleged in your 1996 complaint
9 that the reason that the job was posted was in retaliation
10 for your prior filing of a DOL complaint in 1993. Your 1993
11 complaint alleged that you were being surplused because you
12 had raised safety concerns, and I think there were three
13 that we -- that were listed in your letter to Ms. Merchant,
14 that there was some testimony about earlier.

15 THE WITNESS: Correct.

16 JUDGE YOUNG: As I recall that testimony, you
17 agreed that you had not actually been the one to raise the
18 safety concerns in any of those three instances, but that
19 people who had previously worked under you had done it, in
20 effect, as a result of your earlier involvement with them;
21 and, therefore, the reporting of the safety activities was,
22 in effect, due to your action, your previous supervision of
23 people who actually did raise concerns.

24 If the impression or the position of TVA is
25 correct, that the original surplusing of your job was based

1 not on your having reported any safety concerns, but rather
2 on management's view of you as not being a good manager, and
3 as not dealing effectively with perceived problems in the
4 chemistry program...

5 THE WITNESS: Correct.

6 JUDGE YOUNG: ...and if whatever attempt may have
7 been made to, quote, "Get rid of you" in 1996 was also as a
8 result of TVA management's perception of you as being not a
9 good manager, not a good worker, then your assertion that
10 both of these actions were taken against you as a result of
11 either reporting safety concerns in 1993, or having filed
12 the 1993 Department of Labor complaint would not necessarily
13 hold up.

14 THE WITNESS: Sure.

15 JUDGE YOUNG: And -- and so what I'm trying to
16 ascertain, from listening to you talk today and from
17 listening to all the evidence, is to what degree were these
18 actions taken against you because of your protected
19 activity, your reporting safety concerns, your filing your
20 Department of Labor complaint, and to what degree were these
21 actions taken against you, correctly or incorrectly, fairly
22 or unfairly, but because of perceptions that you were not a
23 good employee, that you were not a good manager.

24 THE WITNESS: I understand.

25 JUDGE YOUNG: And so, to whatever degree you would

1 like to address those, I'd like you to feel free. Earlier
2 you raised this report, in response to my asking you...

3 THE WITNESS: Correct.

4 JUDGE YOUNG: ...was this thing that happened in
5 January 19 -- or February 1992, with the NSRB sort of the
6 trigger. Or I indicated that it sounded as though that was
7 sort of the trigger that started the whole ball rolling.
8 And you said you had reported safety concerns, and you
9 mentioned this -- your interchange with Mr. Overlid where
10 you said he was lying, and then sent in your complaint to
11 the NRC...

12 THE WITNESS: Correct.

13 JUDGE YOUNG: ...as an example of your reporting
14 safety concerns. When you were talking about that, I was
15 thinking that that had happened prior to the NSRB meeting in
16 early 1992. Now I see that it's in 1994.

17 THE WITNESS: Yeah, it was after.

18 JUDGE YOUNG: I provided all that explanation to
19 you so that you, and also the staff, can respond to it in
20 any way you see fit.

21 MR. DAMBLY: Well, I'd like to make one comment,
22 Your Honor, for the staff. You seem to be operating under
23 the misimpression that this is Gary Fiser versus TVA. And
24 what Gary Fiser thought is what counts, or what he wrote in
25 his '93 complaint counts. This is the staff against TVA.

1 JUDGE YOUNG: I understand that.

2 MR. DAMBLY: It's what we've alleged, not what he
3 thought.

4 JUDGE YOUNG: But...

5 MR. DAMBLY: Doesn't matter if he's totally wrong
6 on what he did. If we produced evidence that he engaged in
7 protected activity, and I would cite you again to 10 CFR
8 50.7...

9 JUDGE YOUNG: Right.

10 MR. DAMBLY: ...that says telling them he refused
11 to engage -- to put in a procedure which would be a
12 violation if it wasn't complied with is protected activity.
13 It's in the regulations. Whether they thought so, whether
14 anybody else thought so or not, refusal to engage in a
15 practice which would end up in a violation is specifically
16 set out in 50.7. That's enough, in and of itself.

17 JUDGE YOUNG: Okay. Well, now I understand
18 something I didn't understand before. But let me explain
19 further so you can understand what my understanding is at
20 this point, and address it.

21 MR. MARQUAND: May I say one thing before you do
22 with respect to what he said?

23 JUDGE YOUNG: Go ahead.

24 MR. MARQUAND: A management directive to an
25 employee to violate a procedure might be 50.7 if the

1 employee refused to do so. But management's -- management
2 can hold employees to high expectations.

3 JUDGE YOUNG: All right, let's not get off on this
4 now. Right. I understand what you're saying, and I think
5 that's something that definitely needs to be addressed.

6 MR. MARQUAND: Thank you.

7 JUDGE YOUNG: But let's not go off on that tangent
8 at this point.

9 The staff alleges that TVA has retaliated against
10 Mr. Fiser based on protected activities. The question is
11 whether the actions that TVA took -- this is how I
12 understand the issue: Whether the actions that TVA took
13 were, in fact -- were, in fact, in retaliation for engaging
14 in protected activity. Or were, as TVA asserts, based on
15 his poor job performance.

16 MR. DAMBLY: Right.

17 JUDGE YOUNG: And that's what we need to look at.

18 MR. DAMBLY: First of all, TVA has never asserted
19 in any document in this record that they took an action in
20 1996 for poor performance. And if they did, it would be on
21 its face a violation to have -- or the '93. If they
22 conducted a RIF in '93 because of poor performance, there
23 must be case law all the way down the line says that's
24 invalid on its face. You can't do that. They have not
25 alleged once that they did any postings in 1996 because of

1 poor performance, nor could they. We talked about the OPM
2 regs and the TVA regs. It's irrelevant to this case for
3 them -- and, for that matter, as we've put in our brief
4 before, they came to the NRC in a predecisional enforcement
5 conference, under the requirements of 50.9, required to give
6 us complete and accurate and total information, and they set
7 forth the reasons. And not one of their reasons was Mr.
8 Fiser's performance. They can't raise it now.

9 MR. MARQUAND: That's not entirely true.

10 MR. DAMBLY: And -- and the Reeves case would
11 say...

12 JUDGE YOUNG: What reasons -- what reasons did
13 they give?

14 MR. MARQUAND: We're not talking about '96.

15 MR. DAMBLY: They said they just posted it because
16 it wasn't interchangeable and it was a downsizing and it had
17 nothing to do with anything else. It was just a straight,
18 legitimate business decision, having nothing to do with
19 anything Mr. Fiser had done, period.

20 JUDGE YOUNG: Okay, let me ask you something then.
21 If you don't think it's legitimate for TVA to assert that
22 the actions to -- the RIF actions, the surplus and/or RIF
23 and/or reorg actions in 1993 and 1996 were as a result of
24 his poor job performance, why didn't you object when
25 testimony was brought in about that on numerous occasions?

1 MR. DAMBLY: We've objected before to going beyond
2 this. And we've only dealt with -- because they keep
3 throwing it up as a defense. And we dealt with his
4 performance appraisals. And if you'll look at them, because
5 we spent time with him on them, they don't support the
6 statements, and the performance appraisals in '95 and '96
7 don't support them.

8 JUDGE YOUNG: We're not -- let's stay away from
9 arguing the merits of it. Let's -- what we're trying to do
10 here is define issues. The issues, as I understand them, is
11 whether TVA retaliated against Mr. Fiser in -- based on his
12 protected activities, based on what you assert to be his
13 protected activities.

14 MR. DAMBLY: That's correct.

15 JUDGE YOUNG: If, in fact, TVA took actions
16 against Mr. Fiser, not based on protected activities, but
17 based on their perception of him as not being a good
18 manager, not being a good performer, even if OPM personnel
19 regulations were violated, that's what I've been asking you
20 to brief. Because I'm not...

21 MR. DAMBLY: And -- and...

22 JUDGE YOUNG: Let me finish my sentence, now, Mr.
23 Dambly. Because I'm not so sure -- I think what you seem to
24 be arguing is that if OPM regulations were violated, there's
25 no way that TVA can win in this case, and I'm not so sure

1 you're right about that. That's what I want you to brief.
2 Because -- and I ask you this, whether or not -- just to
3 understand you, whether or not TVA asserted poor job
4 performance at any point along the way, are you saying that
5 that could not be asserted as a -- as a reason?

6 MR. DAMBLY: In this proceeding?

7 JUDGE YOUNG: For doing -- for -- for taking the
8 actions that TVA took?

9 MR. DAMBLY: In this proceeding, it cannot be
10 asserted. They have not asserted it before in this case. .
11 They have said it was a reorganization, and they followed
12 their legitimate practice, that the legitimate reason...

13 JUDGE YOUNG: My question -- my question...

14 MR. DAMBLY: ...they've given...

15 JUDGE YOUNG: ...my question is not -- putting
16 aside whether they've asserted it or not, I'm saying could -
17 - could a company assert that as a -- as a defense to an
18 action, the legitimate business reason of getting rid of an
19 employee that they didn't think was a good employee?

20 MR. DAMBLY: Well, could they -- could a -- you're
21 just asking the general question...

22 JUDGE YOUNG: Right. That's exactly -- right.

23 MR. DAMBLY: ...can a company get rid of a poor
24 performer?

25 JUDGE YOUNG: Right. Right.

1 MR. DAMBLY: Well, I mean, obviously the answer to
2 that is yes.

3 JUDGE YOUNG: Okay.

4 MR. DAMBLY: That's a no-brainer.

5 JUDGE YOUNG: I've understood that that's what TVA
6 has been saying. Now, if I'm mistaken, I want both of you
7 to correct me, but that's what I've been understanding, and
8 that's what I've repeatedly said to you that I would like to
9 have briefed the issue of -- even if TVA violated OPM
10 regulations, and they may well have. Even if they did, if
11 it was not to retaliate against an employee, namely Mr.
12 Fiser, for engaging in protected activities, but was instead
13 to get rid of an employee they saw as being a poor employee,
14 then I'm not so sure you win in that event.

15 MR. DAMBLY: Well, and again -- Sanderson -- what
16 was it, plumbing or whatever a couple of years ago, that
17 says if you come in and assert, as your legitimate business
18 or reason for taking an action, non-discriminatory reason,
19 something which is shown to be false, namely that you did it
20 because you were downsizing and you had to -- this is what
21 was required under the OPM regs, and you followed
22 everything, and this was all legitimate, you are not free,
23 if you come in here later and say, "Well, the real reason we
24 did it was something else," that, in and of itself, is
25 sufficient to find pretext. Moreover, we're only dealing

1 with contributing factor. It doesn't have to be the only
2 reason.

3 JUDGE YOUNG: So you're...

4 MR. DAMBLY: We've also cited cases in our
5 prehearing brief that says if they don't follow their own
6 rules and regulation, that's sufficient for you to find that
7 that was a pretext for discrimination.

8 JUDGE YOUNG: Okay. Okay, I understand all that.
9 If...

10 MR. DAMBLY: And under 50-4-8-9, they couldn't
11 come up with another...

12 JUDGE YOUNG: ...if -- if -- if TVA has not
13 asserted poor job performance as part of the basis for the
14 action they took against Mr. Fiser, I have understood that
15 they have been asserting that?

16 MR. DAMBLY: When?

17 MR. MARQUAND: Can I talk?

18 CHAIRMAN BECHHOEFER: My understanding is they've
19 been asserting it throughout this proceeding. But -- but I
20 think I would tend to agree that if engagement in protected
21 activities of any sort was part of the motivation, then the
22 staff prevails, in my mind. That may be a little
23 simplifying it. But I -- I agree that it does not have to
24 be -- the protected activities do not have to be the sole
25 reason why a person may have discharged. If they were any

1 significant portion of the reason, I would think our rule
2 has been violated, and the staff will prevail. So that's
3 just my own view.

4 MR. MARQUAND: Well, that's a legal issue which
5 nobody's briefed yet. But, aside from that...

6 CHAIRMAN BECHHOEFER: That's correct. I'm not
7 saying -- I'm not...

8 MR. MARQUAND: ...aside from that, Your Honor is
9 partially correct. What we've been saying throughout this
10 is that in 1993 the Sequoyah plant management did not want
11 Mr. Fiser to return because of poor performance.

12 JUDGE COLE: Because of corporate...

13 MR. MARQUAND: Because of poor performance. He
14 was a weak manager. But then...

15 CHAIRMAN BECHHOEFER: And I -- and I expect that
16 one of your future witnesses will -- will address that.

17 MR. MARQUAND: Well, I think we've established
18 that through him. But one of our witnesses will address
19 that. In any event...

20 JUDGE YOUNG: In 1996, you did not allege...

21 MR. MARQUAND: Well, '96 performance had nothing
22 to do with it.

23 JUDGE YOUNG: Well, maybe Mr. Dambly's right.

24 MR. MARQUAND: He was simply not...

25 MR. DAMBLY: Well, he's made that statement before

1 on the record.

2 MR. MARQUAND: ...he was simply not selected. He
3 wasn't the -- one of the top two candidates for -- well, the
4 top candidate for the PWR position. They didn't -- I mean,
5 to the extent that they looked at the questions and all that
6 to arrive at the short list, that's what they did. They
7 didn't go back and say, "He wasn't very good at Sequoyah
8 chemistry." That wasn't what the SRB did.

9 What happened in '92 and '93, he was rotated out.
10 They said, "You need to broaden your horizons. You need to
11 not come back here. We don't want you to come back to
12 Sequoyah." He had a meeting with Jack Wilson which he
13 taped, which supports the findings Mr. Overlid made. He had
14 a meeting -- Jack Wilson was the site vice president. He
15 had a meeting with the plant manager, Rob Beecken, who told
16 him the same thing. He said, "You're a weak manager. I
17 didn't perceive you to be effective. We had all kinds of
18 problems. I don't want you back here."

19 Then they mistakenly RIF'd him from downtown.
20 That's what the '93 complaint was about and Mr. Reynolds
21 addressed. They put him back to work as one of a number of
22 program managers in chemistry downtown. And when they
23 reduced the numbers, he wasn't one of the ones selected for
24 one of the new jobs, in accordance with TVA procedures. And
25 the selection didn't rest upon his performance back in 1990

1 or '91 or '92. The issues about performance have to do with
2 why they didn't want him to return in '93 at Sequoyah.

3 JUDGE YOUNG: So you're not in any way asserting
4 poor performance as justification for the 1996 action?

5 MR. MARQUAND: Except to the extent that he failed
6 to answer the questions in such a way that would score him
7 higher than the other candidates.

8 JUDGE YOUNG: I think the question is -- I think
9 the question is, and this is what I've been trying to say to
10 you all several times throughout here, and that is if -- and
11 putting aside for a moment the mixed motive case, and Judge
12 Bechhoefer may be right. I mean, there -- I know that
13 there's some remedy -- there's some remedy case law that may
14 or may not apply here. Given that we are not called upon to
15 decide a remedy, I think that Judge Bechhoefer may be right
16 about that.

17 But assuming for a moment that it's undisputed
18 that TVA violated OPM personnel regulations in the
19 interchangeability determination and the determination to
20 post the jobs, but that the reason they did it was not
21 because of protected activity, but because they wanted to
22 get rid of the least effective employee, that's the issue
23 that I've been repeatedly trying to get you all to...

24 MR. MARQUAND: Okay. Let me address that issue.

25 JUDGE YOUNG: ...let you know that I'm looking at.

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MR. MARQUAND: That's not our view. Our view is...

JUDGE YOUNG: Okay, but -- but...

MR. MARQUAND: ...our view is that we think we did the right thing. Maybe there was a mistake, maybe there wasn't. But, as you said, if there was a mistake, it wasn't for...

JUDGE YOUNG: Do you agree with -- do you agree with the staff that you lose if you violated OPM regulations?

MR. MARQUAND: No. If there was a mistake -- if there was a mistake with respect to OPM regulations, with respect to the way McArthur was treated, that wouldn't show retaliation -- it wasn't for retaliatory reasons, and it wasn't -- it's a mistake. You don't penalize the employer if they make a mistake in business judgement. And it doesn't show retaliation.

JUDGE YOUNG: What you said...

MR. MARQUAND: But there's not a mistake with respect to how Gary Fiser was treated, and whether or not that job should have been posted.

JUDGE YOUNG: So if -- if we were to find as fact that TVA violated OPM regulations in the decision to post the chemistry manager position,...

1 MR. MARQUAND: You would still have to determine
2 whether that was for retaliatory reasons, or whether it was
3 a good faith mistake.

4 JUDGE YOUNG: What about the third option, but...

5 MR. MARQUAND: Well, I don't see a third option.

6 JUDGE YOUNG: ...that it was because of poor
7 performance?

8 MR. MARQUAND: I don't think there's any testimony
9 to support that anybody -- there's been no evidence that the
10 decision to post or not post was based on performance.

11 MR. DAMBLY: And I think all the testimony on
12 performance has come in in relation to Mr. Fiser's '93
13 activities.

14 MR. MARQUAND: Yes.

15 MR. DAMBLY: Where he refused to institute a
16 procedure which he knew he'd have to violate, and therefore
17 be in violation of the NRC requirements. And they've been
18 trying to show that he was doing a poor job on the
19 chemistry, and that was what the issue was. So it's all
20 been dealing with the NSRB interactions and -- and stuff in
21 '93.

22 JUDGE YOUNG: I understand that. But -- but what
23 I'm trying to get you all both to address is if we draw an
24 inference from all the evidence that's been presented that
25 the '96 action was taken because they wanted to get rid of

1 Fiser because they didn't like him, for whatever reason,
2 they didn't think he was a good employee -- well, not for
3 whatever reason, but because they didn't think he was a good
4 employee, and not because he had filed the 1993 DOL
5 complaint, that's the issue which I have at least twice
6 during this hearing asked you to address. And so you've
7 known that that was an issue that was in my mind, and I
8 still think you need to -- to address that issue.

9 MR. DAMBLY: And we will address it, and I think
10 we have addressed it before, and I think it's -- it's clear
11 that, under the precedent, this board is not free to
12 substitute a reason it thinks something happened. You're
13 stuck with what they said or what we say.

14 JUDGE YOUNG: Well, we're...

15 MR. DAMBLY: I mean, you can't come up with the
16 third one saying, "Well, I think what they really did was
17 'X,'" because that's not the function...

18 MR. MARQUAND: I don't think this is...

19 JUDGE YOUNG: Mr. Dambly and Mr. Marquand,...

20 MR. MARQUAND: Yes, Your Honor.

21 JUDGE YOUNG: ...we find facts based on the
22 evidence presented.

23 MR. MARQUAND: Yes.

24 JUDGE YOUNG: And if we draw an inference that "X"
25 happened, based on all the facts presented, based on all the

1 evidence presented, then we can find that as fact. The
2 question is -- the question is what is the legal
3 significance if we were to find that as fact. Because
4 certainly the evidence is there that it would be arguably
5 possible to find that as fact. Now...

6 MR. DAMBLY: I'm not sure that the evidence is
7 there, but that's a different question.

8 JUDGE YOUNG: Well, I know you disagree with that.
9 I know you disagree with that. But...

10 MR. DAMBLY: And, again, we'll cite the case law
11 that says you don't get to pick a third reason, but that's
12 okay.

13 MR. MARQUAND: Well, I don't agree that this is a
14 multiple choice test for the board. But I'm not sure I see
15 any evidence that -- anywhere that the decisions in '96 were
16 based on performance. And I think that's all a matter for
17 the brief.

18 JUDGE YOUNG: Well, let's not argue over what the
19 factual finding is. The question that -- that I think you
20 are going to need to address, and that I would like to have
21 you address is if we were to find that as fact, what would
22 be the legal significance of that. You have not, until now,
23 argued anything like performance cannot be raised because it
24 was not pled in effect by TVA. Now, if that's what you're
25 saying, because TVA did not, quote, "plead it" in their

1 answer to the complaint, that's another issue.

2 MR. DAMBLY: That was cited in the brief that you
3 asked to be filed before this case, and it's already in our
4 prehearing legal brief.

5 JUDGE YOUNG: Right. And we considered that
6 several months ago, and, Mr. Dambly, I have not looked at it
7 in the last six weeks. Because we've been listening to your
8 evidence. And you keep referring back to what you argued in
9 your previous brief, and if you want to make that argument
10 all over again here, I will be glad to listen, I'll be glad
11 to go back and read it again. But what we're talking about
12 now is this hearing and your proposed findings of fact and
13 conclusions of law and briefs filed after the fact.

14 MR. DAMBLY: I was only addressing your just-a-
15 moment-ago comment that we've never addressed that issue or
16 raised it before. We did.

17 JUDGE YOUNG: Okay. What I'm talking about is in
18 this hearing when I raised those issues with you, I did not
19 hear that come from your mouth.

20 MR. DAMBLY: Well, I'm sure I could look back at
21 page cites, but I don't think it's going to get us anywhere.

22
23 JUDGE YOUNG: You may have -- you may have said,
24 "We addressed that before," but I did not hear the argument
25 here. And that -- that goes to my request to not

1 continually refer back to other things. But if you want to
2 make an argument, make an argument.

3 MR. DAMBLY: We will.

4 JUDGE YOUNG: Because I don't have an infinite
5 memory -- I don't think any of us have an infinite memory as
6 to every argument you've ever made. And, quite frankly, I
7 don't think you've addressed the precise legal issue that I
8 have presented to you and asked you to address.

9 CHAIRMAN BECHHOEFER: Well, I would believe that
10 these matters would all be addressed in your proposed
11 findings of fact, conclusions of law which would be
12 submitted after -- after the hearing is finished. But the
13 question I raised with the staff concerning the report to OI
14 or to a member of OI would, in my mind, tend to indicate
15 that the activities in which Mr. Fiser was engaged -- or he
16 regarded, at least, as safety related and, hence, protected
17 activities. And that's why I thought that it might be
18 useful to have a copy of his letter, communication with OI
19 entered into the record.

20 MR. DAMBLY: The reason we didn't do that and
21 haven't addressed that, again, we have to be able to tie the
22 protected activity to Wilson McArthur and/or Thomas McGrath
23 in this case. Just because he engaged in protected
24 activity, and I -- sending something to Mr. Vorce would
25 definitely be protected activity. But I'm unaware of any

1 evidence that it had any effect on McArthur or McGrath. So,
2 you know, and absent being able to demonstrate they knew
3 about it and got upset about it. So we've never alleged
4 that. I mean, we're not dealing with every instance of
5 protected activity he might have engaged in. We're only
6 trying to deal with the ones...

7 CHAIRMAN BECHHOEFER: But isn't it...

8 MR. DAMBLY: ...that have an impact on McArthur
9 and McGrath, because they're the ones that made the
10 decisions in '96.

11 CHAIRMAN BECHHOEFER: Well, isn't this -- wouldn't
12 that have had an impact on...

13 MR. DAMBLY: I don't know.

14 CHAIRMAN BECHHOEFER: ...Mr. McGrath or Mr.
15 McArthur?

16 MR. DAMBLY: I mean, they've never been asked.

17 CHAIRMAN BECHHOEFER: Given -- given the timing.

18 MR. MARQUAND: Only if they knew about it.

19 MR. DAMBLY: If they knew about it. And I -- all
20 I'm telling you is I can't prove they knew about it. He
21 doesn't even know who got it, other than Vorce. So if I
22 can't demonstrate a connection, it's not worth our time to
23 bring it up and prove its protected, if there's -- if I
24 can't give you a connection to get to the answer that we
25 want you to reach.

1 CHAIRMAN BECHHOEFER: Well, wouldn't the
2 connection have been the failure to address certain issues
3 that would have impacted upon the safety, at least at
4 Sequoyah, and for which he seems to be -- there seems to be
5 an attempt, to me, to penalize him for his activities at...

6 MR. MARQUAND: No, he has...

7 MR. DAMBLY: The Sequoyah CUP program was neither
8 McArthur's direct responsibility nor McGrath's. I mean,
9 there was management -- the only reason that's been
10 addressed at all has been, you know, this allegation more or
11 less that keeps coming through that he wasn't aggressive
12 enough in getting the funds approved. But we're not -- I
13 mean, we just put that on to counter the -- the inference
14 that he's not aggressive enough. And we even dealt with it
15 in the Lydon thing that was put in which says Kingsley just
16 cut every -- to the bone every year, and other people tried
17 and didn't get it, either.

18 But the Vorce memo or note or fax or whatever it
19 was, I have no proof. And so it's not worth your time or
20 our time to discuss it and talk about what it is and what it
21 does, if I can't tie it to the two people we're alleging
22 were the ones that were involved, or to Mr. Boyles or Mr.
23 Reynolds.

24 CHAIRMAN BECHHOEFER: But, see, the -- the defense
25 allegation or claim is that Mr. Fiser lost his job for

1 legitimate business reasons. And I think anything that
2 might go against that, to the extent he was trying to bring
3 in -- into focus safety issues surrounding the chemistry
4 program, and was trying to do his best to get -- get those
5 issues addressed within the company to me at least would
6 have some inference that the activities might, in part, have
7 been based on the -- the discharge eventually might have
8 been based on protected activities. Now, maybe I'm...

9 MR. DAMBLY: Let me -- let me...

10 CHAIRMAN BECHHOEFER: ...maybe I'm seeing a
11 connection that isn't there, but...

12 JUDGE YOUNG: I think one of the difficulties that
13 -- that we're all having with this case is that you're
14 talking about a lot of circumstantial evidence. There's
15 very little, if any -- and basically, given what Mr. Grover
16 testified, there's virtually no direct evidence of
17 discrimination based on protected activity. Instead, we
18 have a lot of other circumstances, including, for example,
19 people finding out that he made tape recordings. Now,
20 somehow I expect you to argue that if they did it because
21 they were mad at him for making the tape recordings, that
22 automatically ties into the protected activity of filing the
23 Department of Labor complaint that was connected to the tape
24 -- making the tape recordings, I'm not so sure that -- that
25 your view -- either view of what facts we should find is so

1 neat and clean as you seem to view it. Facts don't fit into
2 neat little packages all the time. We have to find the
3 facts as we see them based on a lot of circumstantial and
4 not always totally clear evidence. And we have to make them
5 as we think the preponderance of the evidence suggests.

6 MR. DAMBLY: All right.

7 JUDGE YOUNG: And, based on this evidence and the
8 facts as we find them, if they do not turn out to be neat,
9 then that's what you need to address in your legal
10 arguments, and a lot of those -- a lot of this more subtle
11 legal arguments, legal issues that have arisen as a result
12 of the messy state of the facts---for no one's fault, I
13 mean, that's just the way facts are often---is how we treat
14 those subtleties. And I'm not sure it's so cut-and-dried or
15 clear as -- as clear as either of you are arguing. And I
16 think that you need to address those.

17 MR. DAMBLY: Well, in response to Judge
18 Bechhoefer's question, again, the staff is not alleging that
19 the Vorce communication is protected activity that we relied
20 on in proposing the violation. And, as such, it's not
21 relevant. Just like -- and much as I hate to agree with Mr.
22 Marquand, but, you know, he's saying we're not free to -- to
23 raise new issues and make up new facts at this point. And
24 as I'm saying, they're not free to make up new reasons they
25 took an action at this point. I think those are parallel.

1 We're not alleging that. Whether it's protected
2 activity---and yes, it is; filing something with the NRC is
3 protected activity---but I have no basis to say that that
4 had anything to do with what we're alleging. As long as we
5 can't say it has anything to do with what we're alleging,
6 and tie it to McArthur and McGrath, then it's not worth
7 spending the time on because it's not going to be presented
8 in our brief.

9 JUDGE YOUNG: But, in either case,...

10 CHAIRMAN BECHHOEFER: Well, what I was...

11 JUDGE YOUNG: ...if facts are presented in either
12 case that -- that were not pled, I mean, either party could
13 theoretically move to conform the pleadings -- or to amend
14 the pleadings to conform with the proof. I mean, that's
15 fairly standard, you know. And if evidence comes out like
16 this, brought out by Mr. Fiser, you know, I mean, you don't
17 have to address it if you don't want to. I don't know
18 whether there's any proof that they knew.

19 MR. DAMBLY: I'm not saying...

20 JUDGE YOUNG: But a lot of the evidence here
21 requires that we draw inferences.

22 CHAIRMAN BECHHOEFER: Well, the reason I raised it
23 is not to create a new protected activity on the
24 communication with OI. I raised it because there have been
25 claims that none of the safety activities which Mr. Fiser

1 reported on to DOL in 1993, I believe -- there have been
2 claims that none of those are really safety activities.
3 They were being taken into account adequately, and that they
4 were...

5 JUDGE YOUNG: And that he did not report them.

6 CHAIRMAN BECHHOEFER: ...they were included in the
7 -- whatever the system is for recording safety complaints at
8 TVA or Sequoyah, as the case may be. And the claim was, in
9 my mind, that these weren't really protected activities or
10 safety related activities, because we already knew about
11 them and were doing something about them.

12 MR. MARQUAND: That's not quite...

13 CHAIRMAN BECHHOEFER: And I think the complaint to
14 OI goes to those same activities back in the past. Now,
15 maybe I'm wrong. But the way I understood it, he -- Mr.
16 Fiser had been working for a long time to get the CUP
17 program, the upgrade program put into effect at the plants
18 where -- Sequoyah, particularly. And to me that would be
19 evidence of whether or not the early claims in fact were
20 protected activities. The earlier engagement in safety.
21 That's how I tie it up. I may be wrong.

22 MR. MARQUAND: Let me...

23 CHAIRMAN BECHHOEFER: But that's how I view the
24 package. And whether or not their complaint to OI or the
25 filing with OI, in itself constitutes a protected activity,

1 it may or may not. But I was tying it into the earlier,
2 whether the earlier protected activities really were safety
3 related activities. With respect to which a DOL complaint
4 was filed.

5 MR. MARQUAND: Let me put my two cents in.

6 CHAIRMAN BECHHOEFER: Okay. And this is just my
7 view.

8 MR. MARQUAND: I'll put it in, and I'll shut up.

9 CHAIRMAN BECHHOEFER: Okay.

10 MR. MARQUAND: The safety issues cited in Mr.
11 Fiser's '93 DOL complaint...

12 CHAIRMAN BECHHOEFER: Yes. Yes.

13 MR. MARQUAND: ...we are not saying that those are
14 not safety related activities. What we have I think shown
15 is that -- and he's agreed is he wasn't present, he was
16 somewhere else. Those were raised by somebody else. Those
17 were identified by somebody else. They were documented by
18 somebody else. And the problems that management had, he
19 cited those. When you read his complaint closely and you
20 look at the conversation he supposedly had with Mr. Beecken
21 is that management was upset that, for example, the
22 technicians didn't have enough knowledge, weren't trained
23 well enough, that they were leaving valves closed when they
24 should have been open, or that things were surfacing and
25 problems were coming up that should have been corrected on

1 his watch, that they shouldn't have festered for so long.
2 That, in effect, some of these problems were discovered
3 after he left and they said, "You should have found these
4 yourself," or, "You should have had a program in place that
5 they were found." He didn't claim to have -- and when you
6 read his complaint, he didn't claim that he found them. He
7 was saying, "I was being punished because these weren't
8 found -- because these were being found, and I was being
9 blamed for them." It goes back to our point was that in '93
10 they didn't want him back at Sequoyah because they thought
11 Sequoyah chemistry program was weak, and they thought he was
12 an ineffective manager of that program.

13 With respect to this CUP assessment and the
14 Overlid report, the only reason I'm asking him about that
15 and about the fact it being overscoped and excessively
16 expensive, or maybe it's the other way around, overly
17 expensive and excessively scoped, whatever, is I think when
18 he was -- had his meeting with Jack Wilson, the site vice
19 president, Jack Wilson told him that he wasn't pushing hard
20 enough, that he wasn't aggressive enough on these issues.
21 Just like Overlid said and just like Charles Kent. When
22 Charles Kent came in and testified, Charles Kent came in and
23 said, "I looked at the CUP and it was too expensive, and I
24 scaled it back, and I was able to sell my management on it."
25 Just like the Overlid report here says that the current

1 scope and schedule for the installation of CUP
2 instrumentation were reviewed and considered adequate. That
3 happened when Charles Kent took over.

4 Now, our point, with respect to the '93 complaint,
5 when we talk about these safety issues and the fact that he
6 wasn't there or he didn't identify them, we're not arguing
7 he didn't engage in protected activity. That's not the
8 point of it. Our point is that management didn't have any
9 motivation to retaliate against him.

10 JUDGE YOUNG: I think what...

11 CHAIRMAN BECHHOEFER: Well, now, that depends.
12 That's your -- that's your point.

13 MR. MARQUAND: That's our point. That's what
14 we're arguing.

15 CHAIRMAN BECHHOEFER: But that's not what the
16 staff...

17 MR. MARQUAND: I know the staff doesn't agree with
18 us. We don't agree with them.

19 CHAIRMAN BECHHOEFER: And I don't know if I agree
20 with either side. And I'm just trying to get as...

21 MR. MARQUAND: I understand.

22 CHAIRMAN BECHHOEFER: ...complete a record as I
23 can on which to base a decision.

24 JUDGE YOUNG: But even before -- without getting
25 into merits of all this, I don't know -- I want to ask -- I

1 don't think the staff would argue that an employee could --
2 if -- I'm not saying Mr. Fiser was a terrible employee. But
3 suppose you had a terrible employee who knows that he's
4 being criticized and decides, well, I'll file a Department
5 of Labor complaint and I'll make up these charges, and then
6 that protects me from ever being -- anything ever happening
7 against me again, because I can always claim that it's in
8 retaliation for filing the complaint. And then, once that
9 happens, if anything in the future happens, I can file
10 another complaint saying I'm being retaliated against for
11 filing the first complaint, and I could just keep a good
12 thing going here for years. I don't think you're arguing
13 that.

14 But the thing -- and I think it's a serious thing,
15 and I don't want you to discount it out of hand, is to the
16 degree there's any truth at all to that. I don't think that
17 we would be doing our job if we bought any kind of theory
18 that said just because you file a Department of Labor
19 complaint, that means you can forever insulate yourself from
20 any action based on any other reason.

21 MR. DAMBLY: No.

22 JUDGE YOUNG: And that is where it starts to get
23 messy. And I think you want -- you seem to want us -- you
24 seem to want the facts to be neat and clean, up or down, one
25 way or the other. And I'm not sure how you even see that

1 that -- that this kind of charge could ever not be sustained
2 when you've got a situation like as here, you've got a
3 series of two Department of Labor complaints, and the -- and
4 the second one says you're taking action against me because
5 of the first one.

6 MR. DAMBLY: No.

7 JUDGE YOUNG: When there may be -- when there may
8 be good evidence that an action is taken against a person
9 that doesn't seem like its fair for some reason.

10 MR. DAMBLY: Again, we have never, nor would we
11 allege that somehow filing a DOL complaint insulates you
12 from legitimate action. And if you can demonstrate that
13 filing that complaint had absolutely nothing to do with the
14 action you took, then you win. Similarly, you can't say,
15 three years later, well, I filed one earlier, and insulate
16 yourself from a legitimate management action.

17 Now, we might have a disagreement, because we've
18 had this with Mr. Marquand before, on if, in fact -- and I'm
19 not making this allegation at this point, but just for sake
20 of -- of legal analysis. If the '96 action is based on they
21 were upset that he filed a '93 complaint, forget whether the
22 complaint was valid or not.

23 JUDGE YOUNG: Sure.

24 MR. DAMBLY: Filing that complaint is protected.

25 JUDGE YOUNG: Exactly. You're right.

1 MR. DAMBLY: And if you do something in '96
2 because you filed it,...

3 JUDGE YOUNG: Right.

4 MR. DAMBLY: ...then you still lose. But filing a
5 complaint does not insulate you from any action, whatsoever,
6 as long as it's a legitimate action and they don't take
7 protected activity into account.

8 JUDGE YOUNG: But what -- the facts we've got
9 here, and this is -- this is the sticking point -- another
10 of the sticking points, and that is that TVA was doing RIF's
11 and reorganizations in which they were doing away with
12 virtually every job in a -- in a particular organization,
13 and only saving one person. So Mr. Fiser was not the only
14 person who lost his job and -- and quite -- as I said when
15 Mr. Boyles was testifying, it -- it does -- it looks a
16 little unusual when all the jobs except one have been done
17 away with and changed.

18 And I don't think it's -- it's all that outside
19 the realm of common knowledge that when -- when companies do
20 reorganizations and they have to cut back, they want to keep
21 their most effective people. I mean, you know, and that
22 doesn't necessarily mean that people aren't harmed and that
23 unfair things don't happen to people. But if that was the
24 reason, then I think you need to address that, and not just
25 say, "Well, no, if -- if they -- if they violated OPM

1 regulations, for whatever reason, we're entitled to the
2 automatic conclusion that it -- that their business reason
3 was a complete pretext, and we flip back to the DOL
4 complaint was the reason."

5 MR. DAMBLY: I mean, and we'll address that as a
6 legal issue.

7 JUDGE YOUNG: I don't think they've had a chance -
8 - were you finished with your questioning?

9 CHAIRMAN BECHHOEFER: Of Mr. Fiser, that is.

10 MS. EUCHNER: Your Honor, before we get started
11 again, could we get an estimate of how much longer we're
12 going to be?

13 JUDGE YOUNG: I think that's reasonable.

14 CHAIRMAN BECHHOEFER: I think that's very
15 reasonable.

16 MS. EUCHNER: I said can we get an estimate of how
17 much longer we're going to be?

18 MR. MARQUAND: As long as we don't open up any
19 more issues...

20 JUDGE YOUNG: Hopefully we've exhausted them, if
21 not ourselves.

22 MR. MARQUAND: Well, I think the latter is
23 certainly true.

24 JUDGE YOUNG: Okay.

25 MR. MARQUAND: If we don't open up any more

1 issues, I just have a few more questions about TVA Exhibit
2 18.

3 JUDGE YOUNG: So 15, well, max?

4 MR. MARQUAND: I don't have 15 minutes of
5 questions left.

6 CHAIRMAN BECHHOEFER: Okay.

7 JUDGE YOUNG: Okay.

8 CHAIRMAN BECHHOEFER: We're about through.

9 JUDGE YOUNG: If we don't interrupt you.

10 JUDGE COLE: You have less than that; right?

11 MR. MARQUAND: That's right, Your Honor. Are you
12 the enforcer, Judge?

13 CHAIRMAN BECHHOEFER: I would like to take a short
14 bathroom break.

15 MR. MARQUAND: I wouldn't disagree with that.

16 CHAIRMAN BECHHOEFER: For five minutes is all I
17 need.

18 MR. MARQUAND: As long as no one promises -- if
19 everyone promises not to think of any more questions or
20 subjects.

21 (A short recess was taken.)

22 CHAIRMAN BECHHOEFER: We're back on the record.
23 Mr. Marquand?

24 MR. MARQUAND: Thank you, Judge.

25 BY MR. MARQUAND:

1 Q Mr. Fiser, you had a -- claim to have had a
2 conversation with Jack Wilson, the Sequoyah site vice
3 president, on November 21 of '92; is that correct?

4 A I think that's correct; yeah.

5 Q And in that conversation, the two of you began
6 discussing funding for the chemistry upgrade program; right?

7 A That's correct.

8 Q And during that conversation, he told you that you
9 hadn't been aggressive enough, that you hadn't pounded the
10 table enough with respect to it; correct?

11 A At one time he did; yes.

12 CHAIRMAN BECHHOEFER: During that particular
13 conversation?

14 THE WITNESS: During that particular conversation,
15 at one time he made reference to that. Seems to have
16 changed his mind a little later in the conversation. But he
17 did make...

18 Q He told you you've got to strike a fine line
19 between being aggressive enough and overly aggressive,
20 didn't he?

21 A Yes, he did.

22 Q All right. And this conversation you had with
23 Jack Wilson on November 21 was after you had learned that
24 you weren't wanted back at Sequoyah, and you were trying to
25 find out why the vice president and why the plant manager

1 didn't want you back?

2 A At that time I did not know the vice president did
3 not.

4 Q When you went to talk to Jack Wilson, you learned
5 that, didn't you?

6 A I got the very distinct impression that he had
7 mixed emotions.

8 Q Well, he told you the consensus was that you were
9 not effective?

10 A Yeah, but I -- as I -- as I mentioned, he seemed
11 to backtrack on that, as well.

12 Q But he -- he did state to you the -- that the
13 consensus was you were not effective?

14 A At one time.

15 Q And that his assessment was that you were not
16 aggressive enough?

17 A At one time.

18 Q Okay. And in that same conversation is where he
19 told you you weren't aggressive enough and you weren't
20 pounding the table enough with respect to the chemistry
21 upgrade program?

22 A That's one thing that he mentioned; yes.

23 Q All right. And that's the same chemistry upgrade
24 program which is in the Overlid report, which is TVA Exhibit
25 18?

1 A Pretty much the same. It had changed names or
2 something. But, anyway...

3 Q All right. Now, isn't it true that at a -- after
4 you left Sequoyah, when Charles Kent took over as rad chem
5 manager and Gordon Rich became the chemistry manager, that
6 they rescoped and rescheduled the CUP program, and it was
7 subsequently determined to be adequate and it was approved.

8 A That I don't know.

9 Q When you look at TVA Exhibit 18, Page 6-22,
10 Paragraph #1, under "Causes," in the second paragraph,
11 doesn't it say, "The current scope and schedule for
12 installation of CUP instrumentation were reviewed and are
13 considered adequate"?

14 JUDGE YOUNG: Which paragraph? Oh, I see. Never
15 mind.

16 Q Do you see that?

17 A No, I don't.

18 Q All right, you see the Paragraph 1-1,
19 "Instrumentation"?

20 A Yes.

21 Q You see the paragraph headed "Causes"?

22 A Yes.

23 Q Do you see the second paragraph under "Causes"?

24 A Yes.

25 Q Look at the last sentence. Doesn't it say, "The

1 current scope and schedule for installation of CUP
2 instrumentation were reviewed and are considered adequate"?

3 A I don't know what the current scope is.

4 Q Do you see those words?

5 A Yeah.

6 Q All right. And when this Overlid report was
7 issued in '94, that's when Charles Kent was the rad chem
8 manager and Gordon Rich was the chemistry manager?

9 A That's correct.

10 Q All right. You had a -- now, in the Overlid
11 report, on number -- Paragraph #2, let's see, the same thing
12 on instrumentation, they were talking about the fact that
13 existing equipment was not being repaired.

14 A Paragraph 2?

15 Q No, I'm sorry, it's the same place we were before.
16 Paragraph #1 on Page 6-22. Talking about in-service
17 availability. Significant percentage of instruments are
18 obsolete.

19 A Yes.

20 Q And it's talking about required maintenance
21 frequency.

22 A Correct.

23 Q Let me direct your attention to the very first
24 page of the review, which is on Page 6-20.

25 A Okay.

1 Q And the first bullet, in the last sentence, do you
2 see where it says, "Existing instrumentation was not
3 repaired due to a failure to develop an adequate
4 implementation strategy, and a failure to apply sufficient
5 resources"?

6 A That's correct.

7 Q And you had a discussion with the Sequoyah plant
8 manager on December 9, 1992; correct?

9 A With Rob Beecken.

10 Q Rob Beecken, the Sequoyah plant manager. And
11 during that conversation with him, there was a discussion
12 about instrumentation repair; is that right?

13 A Seems like that's correct.

14 Q And he was critical of you about not being
15 aggressive enough or effective in getting the instruments
16 repaired?

17 A I don't recall that specifically.

18 Q You don't recall that being an issue?

19 A No.

20 Q What do you recall about the issue of the repair
21 of out-of-service instrumentation that Mr. Beecken told you?

22 A As -- as I recall, he just admitted that that was
23 an issue that was beyond my control.

24 Q He didn't -- throughout that conversation he
25 didn't make it clear to you that he didn't think you were

1 fully effective, that you weren't aggressive, and that he
2 was holding you responsible?

3 A With regard to the repair of the instrumentation,
4 no.

5 JUDGE YOUNG: Which date are you referring to?

6 MR. MARQUAND: December 9, 1992.

7 Q Let me direct your attention to Page 54 of Joint
8 Exhibit 27.

9 CHAIRMAN BECHHOEFER: What page?

10 MR. MARQUAND: Page 54 of Joint Exhibit 27.

11 Q That's part of the conversation with Mr. Beecken
12 in December of '92; correct?

13 A That's correct.

14 Q And to make it clear, there's a lot of omissions
15 in this conversation that you didn't pick up in your
16 transcript; right?

17 A That's correct.

18 Q In the middle of the page, Mr. Beecken says, "I'll
19 tell you, the program has been less than fully effective for
20 a long time before you were there. And something I'm
21 looking at is not the big dollar thing, not the laser light
22 shows and all the other stuff to put in, data collection,
23 reverse heat exchangers." You see that?

24 A It's right in the middle?

25 Q Right in the middle of the page, the third entry

1 for Mr. Beecken on Page 54. The third entry begins, "You
2 don't forget that."

3 A Yes. Yes.

4 Q Okay. And when he's talking about the big dollar
5 thing or laser light shows and all the -- that other stuff
6 to put in, data collection, reverse heat exchangers, he's
7 talking about CUP, isn't he?

8 A Yes, I think he was.

9 Q And he's saying he doesn't think that that's
10 necessarily the problem, it's that you've got fundamental
11 problems that aren't being addressed, that aren't happening
12 in the Sequoyah chemistry program; correct?

13 A And the fundamental question he was just referring
14 to was, I think, a training issue. Because I make the
15 statement, just as I had told you earlier, just above that,
16 "They should have known that. But they don't. They don't
17 even know if boric acid should go up or down. And that's
18 why I say you don't turn the steering wheel to the right and
19 expect it to go left." If you'll remember that. So...

20 JUDGE YOUNG: I didn't hear what you -- the last -
21 - you don't turn the steering wheel to the right and what?

22 THE WITNESS: Yes. This was my testimony.

23 JUDGE YOUNG: Just the words. I didn't...

24 THE WITNESS: Yes. You don't turn -- when a truck
25 driver turns his steering wheel to the right, he does not

1 expect his vehicle to go to the left.

2 JUDGE YOUNG: Thank you.

3 THE WITNESS: That's the same's true with an RLA
4 running a boric acid analysis every day throughout a 14, 18-
5 month cycle in a nuclear plant. They know it goes down
6 every day, for some reason. They claim they did not know
7 that. So that's what he was referring to.

8 BY MR. MARQUAND:

9 Q So you're denying that he was referring to all the
10 problems in Sequoyah chemistry at that point?

11 A I'm saying he was not referring to CUP.

12 Q He is referring to CUP, when he said he was
13 referring to -- he wasn't talking about laser light shows...

14 A That's -- I said it was not talking about it.

15 Q Okay. He's saying, "I'm not," he's saying, "I'm
16 not talking about CUP, I'm talking about all these other
17 problems that you -- that weren't fixed when you were
18 there"?

19 A Well, in this specific incident I think he was
20 talking about the training issue that came up while I was
21 gone.

22 Q Let me direct your attention to Page 56. Do you
23 see the third entry on Page 56, where Mr. Beecken begins,
24 "Well, let me -- I've got to sit down and talk to Wilson
25 about this." Do you see that entry?

1 A Yes.

2 Q And then he says, "He's got the perception that
3 chemistry is broken. That Jocher didn't come in and break
4 it, it was already broken, weak, and struggling, and he
5 wants it fixed."

6 A Yes, I see that.

7 Q You see that? He's referring to all the problems
8 in chemistry, not just training, and not just failure to get
9 the money for CUP. He's talking also about instrumentation
10 being out of -- out of -- also the instrumentation being out
11 of service, isn't he?

12 A Well, that's -- that's CUP.

13 Q All right. That's what he's referring to? All of
14 the problems?

15 A CUP. Yes. Yeah. I -- I guess. I mean, I can't
16 read his mind. He was pretty upset and a little
17 inconsistent, as you can imagine, in this conversation, but
18 -- but what he's doing is, he says, after talking to me, he
19 was having second thoughts. And he says, "Well, let me --
20 I've got to sit down and talk to Wilson about -- about
21 this."

22 Q No further questions.

23 A Say again.

24 Q No further questions.

25 A Okay.

1 CHAIRMAN BECHHOEFER: Ms. Euchner?

2 REDIRECT EXAMINATION

3 BY MS. EUCHNER:

4 Q Mr. Fiser, the first things I need you to do is
5 authenticate a couple of documents I've put in front of you.
6 Staff Exhibit 174, Pages 6-30 and 6-31.

7 A Yes.

8 Q Do you recognize the document that's on Page 6-30?

9

10 MR. MARQUAND: Your Honors, those are already in
11 the record. I don't know that they need authentication.
12 Your Honors admitted those this morning.

13 MS. EUCHNER: I was under the impression that they
14 admitted them subject to Mr. Fiser authenticating them. But
15 if we don't need to, I'd be more than happy to skip it.

16 JUDGE YOUNG: I think we admitted them, but Judge
17 Bechhoefer thought that if you wanted to add the extra...

18 CHAIRMAN BECHHOEFER: Yeah, right. Right.

19 MS. EUCHNER: I was merely going to just have him
20 identify them. So...

21 CHAIRMAN BECHHOEFER: The board has decided that,
22 since the documents are already admitted, you don't need
23 further authentication.

24 MS. EUCHNER: Okay. Fine by me.

25 BY MS. EUCHNER:

1 Q All right, Mr. Fiser, I'd like to clarify a few
2 issues that Judge Young was asking you about earlier. She
3 asked you about a perception that perhaps you weren't
4 resolving problems, that instead you were sort of stating
5 reasons why you couldn't resolve problems. When you
6 returned to your position at Sequoyah as chemistry
7 superintendent from outage management, did you identify that
8 there was a problem with the trending that had previously
9 been done?

10 A Absolutely.

11 Q And did you do anything to resolve that problem?

12 A Yes, I got the computer fixed right away.

13 Q And when Mr. McGrath, Mr. Peterson, and Dr.
14 McArthur, at the NSRB meeting, raised trending as a problem,
15 did you explain what you had done to resolve it to them?

16 A Oh, yes, I did. And -- and I told them -- showed
17 them evidence that the trends were up and going, and had
18 been going for some time. I don't recall how long.

19 Q I'm going to Staff Exhibit 177. And I'd like you
20 to open to page -- unfortunately there are no page numbers
21 on here. It's going to be Exhibit 2, Page 13 of 14, and
22 that designation will be on the bottom right-hand corner of
23 the pages.

24 JUDGE COLE: Page 13 of 14?

25 MS. EUCHNER: Yes. It's Exhibit C to Mr. Fiser's

1 1993 Department of Labor complaint.

2 BY MS. EUCHNER:

3 Q Mr. Fiser, what is this document?

4 A It's a letter that Bill Jocher and I composed and
5 sent to either someone in the NSRB or in response to an NSRB
6 issue.

7 Q Did it have to do with PASS?

8 A Yes, it did.

9 Q Does this document demonstrate that you and Mr.
10 Jocher were working together to resolve the PASS problems
11 that had been raised?

12 A Without question.

13 MS. EUCHNER: Your Honors, I have two tapes now.
14 These are Mr. Fiser's originals which were just returned to
15 me from the individual who had been enhancing them, just
16 prior to us returning down here. So I have not had the
17 opportunity to make copies of them yet. I will provide them
18 before we get together the next time to complete the
19 hearing. The first one -- let me see which one I wanted
20 first. The first one we will go ahead and label Staff
21 Exhibit 178. And it's an April 9th, 1993, conversation
22 between Mr. Fiser and Dr. McArthur.

23 MR. MARQUAND: Did I understand counsel to say
24 these were enhanced?

25 MS. EUCHNER: No, these are the originals.

1 MR. MARQUAND: Okay.

2 BY MS. EUCHNER:

3 Q Mr. Fiser, do you recognize that tape?

4 A Yes.

5 Q Is it one of the original tapes?

6 A Yes.

7 MS. EUCHNER: And just so that Your Honors can
8 follow along, in Joint Exhibit 27, this conversation
9 appears.

10 JUDGE YOUNG: Page 71?

11 MS. EUCHNER: Joint 27.

12 JUDGE YOUNG: It's Page 71?

13 MS. EUCHNER: Yes.

14 BY MS. EUCHNER:

15 Q And, Mr. Fiser, I'm going to play this briefly at
16 first, and I'd like you to identify who the voices are on
17 the tape.

18 A Okay.

19 (A tape recording was played to the witness.)

20 Q Let me try something. I may have it on the wrong
21 speed.

22 A Sounds okay.

23 (The tape record was again played to the witness.)

24

25 Q Yeah, it's the wrong place.

1 MR. MARQUAND: Don't record over the top of it.

2 MS. EUCHNER: Well, I think the safety tabs have
3 now been removed, so we don't have to worry about that.

4 MR. MARQUAND: Some unnamed attorney from the
5 staff did that once upon a time.

6 MS. EUCHNER: Yes, so there's a random female
7 voice in the middle of one of the tapes. All right. I
8 might need a minute to find the right spot.

9 MR. MARQUAND: We improved on it, you mean.

10 MS. EUCHNER: Yeah, you can hear me much clearer
11 now.

12 MR. MARQUAND: That was the very end of it.

13 THE WITNESS: I think it was.

14 MR. MARQUAND: The very last entry to Mr.
15 McArthur?

16 THE WITNESS: Should be good luck.

17 MR. MARQUAND: I don't know.

18 MS. EUCHNER: Your Honor, why don't I take a
19 minute and find the right spot...

20 JUDGE YOUNG: Okay.

21 MS. EUCHNER: ...so that way we're not playing
22 around with this.

23 (A brief recess was taken.)

24 CHAIRMAN BECHHOEFER: Okay, back on the record.

25 (The tape recording was again played to the

1 witness.)

2 MS. EUCHNER: The rest of this is about possibly
3 finding a position somewhere else for Mr. Fiser.

4 MR. MARQUAND: I think you need to play a little
5 bit more of it.

6 MS. EUCHNER: If you'd like to. I just didn't
7 think it was relevant.

8 (The tape recording was again played to the
9 witness.)

10 BY MS. EUCHNER:

11 Q Mr. Fiser, can you identify who the two voices on
12 that tape were?

13 A It was Wilson McArthur and myself.

14 Q And, to the best of your recollection, did this
15 recording accurately reflect the conversation you had with
16 Dr. McArthur on April 9th, 1993?

17 A Yes, it did.

18 MS. EUCHNER: Your Honors, I would move Staff
19 Exhibit 178 into evidence.

20 MR. MARQUAND: No objection.

21 CHAIRMAN BECHHOEFER: Without objection, Staff 178
22 will be admitted.

23 (The tape recording, heretofore
24 marked as Staff Exhibit #178, was
25 received in evidence.)

1 MS. EUCHNER: And the next tape is going to be
2 Staff 179. And this is the same tape that we played for Mr.
3 Kent last week, the July 9th, 1993, conversation.

4 MR. MARQUAND: Well, if we've already listened to
5 it, why are we going to listen to it again?

6 MS. EUCHNER: I have no problem with not listening
7 to it again. I was just going to have Mr. Fiser
8 authenticate it. If you'll stipulate to authentication of
9 the original tape, we don't have to play it again.

10 MR. MARQUAND: That's fine with me.

11 MS. EUCHNER: Then the staff would offer Staff
12 Exhibit 179 into evidence.

13 MR. MARQUAND: What was the date of...

14 CHAIRMAN BECHHOEFER: I assume without objection.

15 MS. EUCHNER: July 9th, 1993, conversation with
16 Mr. Kent. I believe it appears on Page 76 of the sequence
17 of events.

18 MR. MARQUAND: Right. These are the original
19 tapes?

20 MS. EUCHNER: These are the originals, and I will
21 be providing copies of them before the next time we get
22 together.

23 MR. MARQUAND: Great. No objection, Your Honor.

24 CHAIRMAN BECHHOEFER: Okay, without objection,
25 Staff 179 will be admitted.

1 (The tape recording, heretofore
2 marked as Staff Exhibit #179, was
3 received in evidence.)

4 CHAIRMAN BECHHOEFER: A query. Was that Page 76
5 that you referred to? I just wanted to make sure I got the
6 right number down.

7 MR. MARQUAND: Yes.

8 CHAIRMAN BECHHOEFER: Okay.

9 MS. EUCHNER: The staff has nothing further.

10 CHAIRMAN BECHHOEFER: Mr. Marquand?

11 MR. MARQUAND: I don't have anything -- wait, I
12 did have one question.

13 MS. EUCHNER: Spoke too soon.

14 MR. MARQUAND: You didn't move fast enough.

15 JUDGE COLE: Should have come down with the gavel.

16 RE-CROSS-EXAMINATION

17 BY MR. MARQUAND:

18 Q Mr. Fiser, with respect to Staff Exhibit 177, the
19 page you were shown with respect to the memorandum from you
20 and Mr. Jocher regarding PASS, post-accident sampling
21 system.

22 A Yes.

23 Q Counsel asked you, and she says, "Does that show
24 that you and Bill Jocher were working together to raise PASS
25 to -- working together to resolve problems on PASS that had

1 been raised?" And you said yes.

2 And my question is: Those problems were raised
3 and brought to your attention by the NSRB, weren't they?

4 A I don't know if that's true or not, or if it's
5 something we raised to them. I don't know how -- I don't
6 know which came first, the chicken or the egg. Because PASS
7 issues had been raised all along, probably still are.

8 Q The issue that you were addressing with respect to
9 PASS was whether or not the technicians could conduct
10 sampling within the prescribed time guidelines; isn't that
11 correct?

12 A No, that all personnel.

13 Q Okay. And that was an issue raised by the NSRB,
14 wasn't it?

15 A I don't recall that, at all.

16 Q You don't recall one way or the other?

17 A I don't recall if we raised it to NSRB or
18 mentioned it to them, or if it was a result of this change
19 to the INPO good practice that you see here in the first
20 paragraph.

21 Q No further questions.

22 A I can't -- I can't recall.

23 MS. EUCHNER: I have nothing further.

24 CHAIRMAN BECHHOEFER: Mr. Fiser, I still have one
25 question about the matter I raised a few minutes ago about

1 your letter or complaint to a member of NRC office of
2 investigations. OI.

3 THE WITNESS: Yes, Your Honor.

4 CHAIRMAN BECHHOEFER: Did that letter refer to the
5 same technical matters or a failure to address the same
6 technical matters which you have included -- which you
7 included in your original DOL filing or complaint? Or were
8 you complaining about something different?

9 JUDGE YOUNG: I think it happened after.

10 CHAIRMAN BECHHOEFER: Well, it happened after, but
11 were those the problems that you were mentioning to -- to a
12 representative of the office of investigations?

13 THE WITNESS: I know in part it was in -- in
14 response to the letter that Bill Jocher and Dr. Matthews and
15 I sent to Senator Sasser, you know, where -- where we were
16 addressing the issue of funding for fixing the chemistry
17 equipment problems. And -- and the issue that we raised, as
18 I recall---I'd have to go back and look at the letter---is
19 the fact that they never would release the funds to
20 implement the program. No matter if we had a Phase 1, 2, 3,
21 or -- or, as we were instructed to do at times, capture it
22 all into one big plan or what, they would not release the
23 funds to fix the program.

24 And I know that that's part of it. I can't
25 remember -- it's been too long ago. I can't remember

1 specifically right now if that was a part of my first DOL
2 complaint or not. I'd just have to...

3 CHAIRMAN BECHHOEFER: But it was related to the
4 matters discussed in the Sasser letter?

5 THE WITNESS: Yes, sir, it was.

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

7 JUDGE YOUNG: Short recess.

8 CHAIRMAN BECHHOEFER: Just very short. We're
9 considering whether to ask the staff to produce a copy of
10 that letter.

11 MR. DAMBLY: If we have one.

12 CHAIRMAN BECHHOEFER: Pardon?

13 MR. DAMBLY: I'm not even sure we have it, but...

14 (A brief recess was taken.)

15 CHAIRMAN BECHHOEFER: Back on the record.

16 I personally would think that the letter to the OI
17 representative would be relevant, and I would be prepared to
18 admit it. But, subject to comments from other parties, we,
19 at this point, are not directing or even inviting other
20 parties to propose it. But, if proposed, and subject to
21 arguments to the contrary, I would be prepared to admit it
22 as being relevant to the current proceeding. But I'm just -
23 - I'm not demanding or asking that parties present it. Just
24 my personal comment.

25 I guess with that, we will -- we're prepared to

1 excuse Mr. Fiser. And thank you for your testimony.

2 THE WITNESS: You're welcome, Your Honor.

3 JUDGE YOUNG: Thank you.

4 CHAIRMAN BECHHOEFER: And I guess -- I guess we're
5 now adjourned for the day, but let's talk a little bit
6 about...

7 MR. DAMBLY: Even before we adjourn, as I
8 indicated to Mr. Marquand a minute ago, the -- the staff
9 would next call Ms. Thomas, but -- Beth Thomas, the OI -- or
10 OIG investigator. But strictly for one question, which is
11 the date on which the investigation of Mr. Grover was
12 initiated, which is not really in dispute, because there's a
13 document---I don't happen to have it with me---but if -- if
14 they're willing to stipulate to the date on which that was
15 initiated, then we can forego Ms. Thomas' testimony. I
16 think it was in July of '98.

17 JUDGE YOUNG: Will you stipulate?

18 MR. MARQUAND: Oh, I don't know...

19 JUDGE YOUNG: Can you do that?

20 MR. MARQUAND: ...I don't know what the purpose of
21 that is. I mean, the board refused to allow the
22 investigation with -- of Mr. Grover to be entered into
23 evidence. If the staff is making some assertion with
24 respect to the *bona fides* of it, then I think we -- then
25 they're going to open the door with respect to it.

1 MR. DAMBLY: Well, we're not making any
2 assertions...

3 MR. MARQUAND: And so, I mean, if they're making
4 some argument based on the date of the investigation,
5 they're going to get into -- they're going to open that
6 door.

7 MR. DAMBLY: No, the -- they've already put in the
8 date---and we didn't object---on which Mr. Grover got a copy
9 of the draft to indicate when he was aware and why he filed
10 a complaint. We're putting in the date to show that the
11 investigation started after Mr. Grover gave his TVA OIG
12 interview in the Fiser case; the DOL handwritten statement
13 in the Fiser case; the deposition that was taken with Mr.
14 Marquand representing him in the Fiser case. All occurred
15 before there was any investigation. So to demonstrate that
16 his statements -- his prior consistent statements had
17 nothing to do with the IG investigation.

18 JUDGE YOUNG: I seem to recall that you did ask
19 questions about the timing of that.

20 MR. MARQUAND: And that had to do with the DOL
21 complaint...

22 JUDGE YOUNG: Right. Right.

23 MR. MARQUAND: ...being, as Your Honor said,
24 somebody trying to file a DOL complaint...

25 JUDGE YOUNG: Right.

1 MR. MARQUAND: ...to manipulate the system.

2 JUDGE YOUNG: Right.

3 MR. MARQUAND: It has nothing to do with the --
4 his assertion that the -- that the date of the complaint was
5 after these statements, implying that the investigation...

6 JUDGE YOUNG: Mr. Marquand, all I'm going to say -
7 - all I wanted to say to you was if, upon looking, you find
8 out that that's not true, and that, in fact, he filed his
9 complaint earlier...

10 MR. MARQUAND: No, that's not what his point was.
11 His point was that the statements Mr. Fiser -- Mr. Grover
12 made in this case were before the investigation of the IG
13 began, implying that the IG investigation was somehow in
14 retaliation for Mr. Grover's participation...

15 JUDGE YOUNG: Right. Right.

16 MR. MARQUAND: ...then -- then I think he's
17 opening the door as to the *bona fides* of the IG's
18 investigation once again.

19 MR. DAMBLY: Again, I didn't make that assertion
20 in this case. I only said we're showing that Mr. Grover
21 gave, well, I think four statements before it was initiated
22 to -- and I want the date it was initiated to show that he
23 had no reason to know, it has nothing to do with this
24 investigation as to why he would tell the story in favor of
25 Mr. Fiser that he did. Again, goes to what's been dealt

1 with before, his prior consistent statements, and their
2 allegation of bias. Has nothing to do with...

3 JUDGE YOUNG: I understood -- I understood that
4 the testimony that you elicited to be that the IG
5 investigation started before Mr. Grover filed his complaint.

6
7 MR. MARQUAND: His Department of Labor complaint.

8 JUDGE YOUNG: Right.

9 MR. MARQUAND: That is not what he is talking
10 about.

11 MR. DAMBLY: I'm talking about it started after he
12 gave the statements on Fiser's behalf in Fiser's complaint
13 to the IG, to the DOL, the handwritten one. There's a --
14 and there's a deposition that -- that was taken by Mr.
15 Fiser's attorney, with Mr. Marquand representing Mr. Grover
16 in the DOL complaint. To show those were all done before
17 there was any initiation. So his statements there couldn't
18 possibly have been biased because he was being investigated.
19 That's the only purpose for that date. We're not going to
20 argue in this case that they did that.

21 JUDGE YOUNG: Seems similar in nature, at least.
22 If you can stipulate on a date...

23 MR. MARQUAND: I can't stipulate because I don't
24 know.

25 MR. DAMBLY: Well, my only point is, if they're

1 willing, once we produce the document, then we can avoid
2 calling one of their people from Knoxville down here for one
3 point.

4 MR. MARQUAND: Well, if I could see the
5 document...

6 JUDGE YOUNG: Do you have any idea when it was
7 initiated?

8 MR. DAMBLY: It was July of 1998. There is a
9 document that we have gotten before from TVA. I just don't
10 have it. I thought it would be in that big pile we had
11 today on the TVA OIG, the actual report. But it doesn't
12 indicate on that report, as Mr. Hickman said, when it
13 started.

14 JUDGE YOUNG: I thought there was a 1996 date that
15 I saw there.

16 MR. DAMBLY: No.

17 JUDGE YOUNG: No?

18 MR. MARQUAND: I believe there was a hotline,
19 anonymous tip from the hotline to the IG. And there was
20 also someone in travel audit raised the issue, came to the
21 IG twice. That's my understanding. I don't know the dates
22 of either of those events.

23 MR. DAMBLY: The document that we've seen is the
24 one from the travel group.

25 MR. MARQUAND: Well, and there was an earlier...

1 MR. DAMBLY: And that was July of 1998.

2 MR. MARQUAND: And there was an earlier anonymous
3 tip to the IG hotline.

4 MR. DAMBLY: Well, I mean, if they can give us the
5 date...

6 MR. MARQUAND: I think we produced it.

7 MR. DAMBLY: When we come up with the document --
8 my only point is if we don't need to call Ms. Thomas, if
9 they're willing to stipulate whatever documents they gave us
10 are going to accurately give us the date, because that's all
11 I want out of her, is the dates.

12 MR. MARQUAND: I will stipulate to the dates when
13 counsel shows me the document. That's fine.

14 MR. DAMBLY: And with that, the only other witness
15 that we would have would be Mr. Rogers. And Mr. Rogers is
16 clearly not in the neighborhood.

17 MR. MARQUAND: And we'll bring -- we'll bring him
18 to whatever place and time we need to.

19 MR. DAMBLY: So, at that point, then, they need to
20 call witnesses tomorrow.

21 JUDGE YOUNG: And, so, Mr. Sewell, Mr. Fogleman,
22 Mr. Peters, Mr. Harding, and Mr. Black, are they your
23 witnesses?

24 MR. MARQUAND: Black and Fogleman I don't think
25 are available tomorrow. Here's who we are going to try to

1 get a-hold of tonight. Sewell, Harding, Ritchie, Peters,
2 Goetcheus, and...

3 JUDGE YOUNG: Peters? Oh, Terry Peters?

4 MR. MARQUAND: Terry Peters. And a rebuttal...

5 JUDGE YOUNG: Goetcheus?

6 MR. MARQUAND: ...a rebuttal witness by the name
7 of Mark Burzynski.

8 MR. DAMBLY: Well, could we get a...

9 JUDGE YOUNG: Sewell, Peters, Harding, Goetcheus,
10 Ritchie, and Burzynski?

11 MR. MARQUAND: Yes.

12 MR. DAMBLY: Could we get an order in which these
13 people are going to be called? Because they're not going to
14 get anywhere close to these, and I don't think it's
15 appropriate to have us running around looking for documents
16 on people that are not going to be here.

17 MR. MARQUAND: There are three people I know for
18 certain we've got waiting in the wings: Sewell, Harding,
19 and Burzynski. We've got to get a-hold of the other three
20 and get them up here. Assuming we can get a-hold of them
21 this late.

22 JUDGE YOUNG: And then...

23 JUDGE COLE: They're all short witnesses?

24 MR. MARQUAND: I would have thought so.

25 JUDGE YOUNG: ...and then in Rockville that would

1 leave -- are Fogleman and Black going to be called?

2 MR. MARQUAND: Let's see. Beecken -- Beecken,
3 Fogleman, Rogers, Westbrook.

4 JUDGE YOUNG: Harvey?

5 MR. MARQUAND: Harvey.

6 JUDGE YOUNG: Chandra?

7 MR. MARQUAND: We may or may not call Chandra, and
8 we may or may not call Mr. Black. Is that it? Who'd I
9 miss? Oh, Ritchie. Ritchie we're going to try to get a-
10 hold of tonight.

11 JUDGE YOUNG: Right.

12 MR. MARQUAND: He may not be available.

13 JUDGE YOUNG: So for -- for Rockville there's
14 Rogers, Westbrook, Harvey, Fogleman, and Beecken?

15 MR. MARQUAND: Well, all of those at a later date.
16 And we had said we'd try to bring them to Rockville, and we
17 -- that's what we were discussing or debating this morning,
18 was Beecken. And, I don't know do we still need to be on
19 the record?

20 JUDGE YOUNG: Oh, no. I didn't think we were.

21 CHAIRMAN BECHHOEFER: I thought we were off the
22 record.

23 (Whereupon, the hearing was adjourned at 7:34
24 p.m., the hearing to resume at 9:00 a.m.,
25 Thursday, June 20, 2002.)

CERTIFICATE

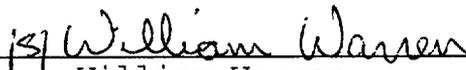
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

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

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

Location: Chattanooga, Tennessee

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



William Warren
Official Reporter
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