

REDIRECT EXAMINATION

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BY MR. MARQUAND:

Q Dr. Peters, let me -- since the Judges have asked you questions about --

JUDGE YOUNG: We're not quite through --

MR. MARQUAND: I wanted to posit the hypothetical you had and I think I know a way to word it -- the one you started on.

JUDGE YOUNG: Right.

BY MR. MARQUAND:

Q We had talked about Mr. Corey being familiar with candidate B and Mr. Kent being familiar with candidate A and Judge Bechhoefer had said well what if we had Mr. Cox there. Let me ask you to assume instead of Mr. Rogers' scores, you had Mr. Cox and Mr. Cox was familiar with Fiser and had given Mr. Fiser perfect scores as Mr. Dambly supposed, given him a 90. And let's suppose also that Mr. Cox, in looking at candidates B and A, had evaluated them the same way that Kent and Corey had evaluated Fiser; that is, that he'd given them, let's say a 65.

So for Rogers you would have Cox and for his evaluation of B, you'd have a 65 and for candidate A, a 65, and for Fiser a 90. In that situation, wouldn't candidate A and B still have scored higher than Mr. Fiser?

A So candidate B, you changed that to a 65? Can I

1 summarize? You changed B to a 65, A to a 65 --

2 JUDGE YOUNG: I think that was Mr. Dambly's point.

3 MR. MARQUAND: And Dr. Peters' point was if you
4 take any candidate out of here, Mr. Fiser scored lower with
5 respect to every rater.

6 JUDGE YOUNG: Okay, now stop for a second. Now
7 Dr. Peters, I want to ask you to add in some other scores.
8 And this is to get a better understanding of what Mr. Dambly
9 offered. Have Rogers give Fiser a 90 and Kent and Corey
10 give him a 58 each.

11 MR. MARQUAND: A 58?

12 THE WITNESS: Okay.

13 JUDGE YOUNG: Then what would happen?

14 THE WITNESS: You want me to add those up and kind
15 of --

16 JUDGE YOUNG: Right. My figures turn out --

17 THE WITNESS: I'll trust --

18 JUDGE YOUNG: Well, you go ahead.

19 THE WITNESS: Well, I don't even have a
20 calculator. I could do that or you could tell me what that
21 is and I can give you --

22 JUDGE YOUNG: Okay. And Mr. Dambly, you check my
23 math.

24 MR. MARQUAND: I come up with 206.

25 JUDGE YOUNG: If I add 90 -- if I add for Fiser

1 65.8 and 64 and 90, unless my addition is wrong, I get
2 219.8.

3 MR. MARQUAND: That's what Mr. Dambly said.

4 MR. DAMBLY: You get 219.8 for Mr. Fiser.

5 JUDGE YOUNG: Right. Now if I add up 78.2 and
6 80.5 and 58, I get 216.7. If I add up for candidate B, 84.5
7 and 76 and 58 for Rogers, I get 218.5, which would allow
8 Rogers to influence the overall score such that Fiser would
9 have the highest score. Am I adding wrong?

10 THE WITNESS: I didn't go through all the
11 addition, I could easily do that. I don't know if that's
12 what you want me to do here or not, but undoubtedly what
13 you're doing is raising Rogers' ratings of Fiser and
14 lowering them of the other candidates --

15 JUDGE YOUNG: What I'm really trying to do is
16 clarify --

17 THE WITNESS: -- and it plays into that.

18 JUDGE YOUNG: What I'm really trying to do is
19 clarify Mr. Dambly's question because at this point, based
20 on what I just did, I don't accept the premise of your
21 question and I want to make sure that I'm not wrong and
22 clarify that the answer you got before; namely, your premise
23 was that there's no way that Rogers could have affected it.

24 MR. DAMBLY: I believe I said you could always
25 rate the other two zero and give them -- I mean you could

1 turn the numbers around, but for any practical purpose,
2 without being grossly disparate between the people, you
3 can't get there.

4 JUDGE YOUNG: What I gave as scores for the first
5 two -- and I don't want to turn this into an argument --
6 what I'm trying to do is take the example you gave and look
7 at it from a neutral standpoint.

8 So what I did was I looked at what score would be
9 required, how low would the scores for A and B have to be in
10 order for Rogers to affect them and the figure I came up
11 with was 58 point something, which is higher than what Mr.
12 Rogers gave Mr. Fiser.

13 So if you want to revisit that question, feel
14 free, but I want you to be aware that I'm going to actually
15 do the math of it and see how it turns out.

16 BY MR. MARQUAND:

17 Q Let me follow up with the question I had, Dr.
18 Peters, and that is when you did your analysis, you came up
19 and found an interaction between Rogers' scores -- the way
20 Rogers scored Fiser and the other candidates and the way
21 Kent and Corey scored the other candidates versus Fiser,
22 right?

23 A Right.

24 Q And that was statistically significant.

25 A Right.

1 Q And it was not that Kent and Corey scored Fiser
2 lower, but that Rogers scored Fiser significantly lower,
3 correct?

4 A Right.

5 Q And what did you conclude with respect to whether
6 or not knowledge of protected activity biased Kent and Corey
7 with respect to their evaluation of Fiser.

8 A Well, since they were actually higher than Rogers,
9 it's kind of hard to say that it biased it downward unless
10 you would have said that they were going to give him a
11 little bit higher ratings anyway. But those that knew of
12 the protected status gave quite a bit higher ratings than
13 the one that didn't know.

14 Q All right, what if I hypothesized to you that
15 prior to this selection review board meeting, Kent and Corey
16 -- there was a discussion in which Kent and Corey were
17 involved, in which Rogers was not, in which Kent raised the
18 issue of Fiser's protected activity and suggested to someone
19 that they should be careful and cautious in the way that
20 they conducted the SRB because of the propriety or
21 appearance of propriety with respect to protected activity.

22 A Sounds like that could be a reasonable hypothesis
23 as to what happened.

24 Q As to why Kent and Corey scored him higher than
25 Rogers?

1 A Yes. And if you take it one step further, if
2 you'd all look at plot 3, I think that's a nice summary of
3 what we're talking about, that 7.21 there in the rating
4 where others intersects with the bottom line, which is
5 Fiser; if you're going to make the argument that knowledge
6 of involvement in protected activity biased these ratings,
7 then I'd expect that line to be the exact opposite slope.

8 Q If it biased it negatively towards Fiser?

9 A Yes. If it's against Fiser, the fact that you
10 know their involvement in protected activity, that line that
11 angles downward, I guess you call that a back slash, would
12 actually be a forward slash. But what would happen is that
13 5.67 would stay where it is and that 7.21 would swing down,
14 just make that a little hinge in your mind and swing it down
15 to about the same angle going the other way, would put it
16 down there somewhere around a 4, if you are going to say
17 that knowledge of involvement in protected activity biased
18 raters to give low ratings. But it's the exact opposite.

19 Q It's the exact opposite effect. Before lunch,
20 Judge Young posited to you rather than protected activity,
21 what if Fiser had been a different race than all of the
22 other candidates and then all of the other raters. What
23 would you conclude from the same numbers you have here and
24 the same -- by all the candidates and all the raters, what
25 would you conclude if Fiser had been a different race and

1 this had been a face-to-face evaluation in which that
2 protected class was obviously then apparent to all three of
3 the raters?

4 A You might start to question whether or not Rogers
5 was biased against that person.

6 Q Negatively.

7 A Negatively; yes, thank you.

8 Q So Rogers -- the discrepancy between the way
9 Rogers rated Fiser versus the others indicates that he more
10 negatively rated Fiser, for whatever reason.

11 A Exactly.

12 JUDGE YOUNG: But you don't think that the
13 differences between -- or maybe you already testified to
14 this, but that the 64 and 65.8 scores in comparison to the
15 70s and 80s that A and B got is not significant enough to
16 show that racial bias could have had a -- could have played
17 a role in Kent and Corey's evaluations of Fiser?

18 THE WITNESS: I have to keep toggling back because
19 the way that I was given the data is much different than the
20 way I took it and analyzed it. Nothing wrong with this, but
21 I had to take this and put it into different rows and
22 columns to make sense for my analysis, so give me just a
23 minute to sort of translate.

24 When you referred to this sheet, I quite frankly
25 hadn't looked at this in about two years because I took the

1 numbers off there and transported them into the way I want
2 to use them.

3 And so the question was is there -- would this
4 question of race also be enough to explain the difference
5 between Fiser and A and Fiser and A for Corey and Kent; is
6 that right?

7 JUDGE YOUNG: Between Fiser and A and Fiser and B
8 and Corey and Kent scoring, right.

9 THE WITNESS: Okay. Even if you looked only at
10 Corey and Kent, the only difference is between A and Fiser
11 and B and Fiser. There's no difference between A and B when
12 you're looking only at Corey and Kent. Does that answer your
13 question?

14 JUDGE YOUNG: So I think I understand you to be
15 saying that there would be a significant difference between
16 how Fiser stacked up against A and how Fiser stacked up
17 against B.

18 THE WITNESS: Yes, even if we're only looking at
19 the two that knew of involvement in a protected activity.

20 JUDGE YOUNG: Okay.

21 And could the kind of unspoken group values that I
22 mentioned as sort of a question B part of that, have the
23 same effect?

24 THE WITNESS: Undoubtedly these unwritten rules,
25 this institutional knowledge, tribal knowledge it's called

1 sometimes, that goes on in organizations does affect how
2 people behave. What we don't -- I guess I would just add, I
3 don't know how that affected this. One possibility is that
4 it affected Rogers to provide a lower evaluation, as you
5 talked about. It could be the situation we talked about a
6 little bit ago where Corey and Kent may have spoken to each
7 other and this kind of offline kind of discussion may have
8 actually caused their ratings of Fiser to rise. So there's
9 lots of conjecture that we could do and some of it -- the
10 only way we'll ever know how it happened I guess is either
11 to ask those people and have them tell us what they remember
12 or to make -- you know, to prioritize them in kind of a rank
13 order of potential scenarios and say well, that one is kind
14 of far fetched, probably not likely; the most likely
15 scenario is this one and it -- I'll give it an 80 percent
16 probability. But all that's kind of this realm of
17 subjectivity of what happens if Cox would have rated or what
18 would have happened if these people had an offline
19 discussion. And I'm more than happy to give my estimates of
20 that, and that's probably all I'm providing is kind of an
21 educated estimate of how those would impact the outcomes.

22 JUDGE YOUNG: Well, let me see if I can clarify
23 for myself something, and see what you have to say. If we
24 were to assume that there was a kind of unspoken tribal
25 value that served to devalue or discriminate against Mr.

1 Fiser for whatever reason -- he didn't wear the right
2 clothes, anything from he was a whistleblower to he had
3 freckles.

4 THE WITNESS: Okay. Something non-performance
5 related is what you're talking about. Because there is some
6 reason why he got the lowest ratings.

7 JUDGE YOUNG: Well, I'm not --

8 THE WITNESS: You're talking about things that are
9 peripheral the his job performance, right, like his clothes,
10 his involvement in protected activity, his gender, race,
11 what-have-you.

12 JUDGE YOUNG: Right.

13 THE WITNESS: Okay.

14 JUDGE YOUNG: And what I'd like to try to get at
15 is I think from your answer to the question about the race,
16 if all the other people -- the other two candidates and the
17 three interviewers, all of whom were incumbent, long time or
18 several year employees at TVA, they all could conceivably in
19 the same way be affected by this sort of unspoken set of
20 values.

21 THE WITNESS: Uh-huh.

22 JUDGE YOUNG: So that it could operate in the same
23 way that if all of them were the same race and Fiser was a
24 different race, that could explain the differences between
25 Fiser and candidate and Fiser and candidate B, for each of

1 Corey, Kent and Rogers.

2 THE WITNESS: It could, uh-huh.

3 JUDGE YOUNG: Okay, now assume that these
4 unwritten values could have that effect, how would you go
5 about analyzing the likelihood of that kind of effect
6 operating and work performance or -- not work performance,
7 strike that -- and answers to the questions being the
8 determinant there -- how would you go about analyzing that
9 and if you could not analyze it from the information you
10 know now, if there's some other way that you could go out
11 and seek further information to try to determine whether
12 there was anything like that at work. And you know, just
13 answer it to the best of your ability.

14 THE WITNESS: Sure. So in addition to our
15 knowledge of whether or not this candidate was involved in a
16 protected activity, we had other pieces of information that
17 I could analyze -- are there other pieces of information
18 that could be analyzed.

19 JUDGE YOUNG: And how could you set up any kind of
20 experiment or what to find that out.

21 THE WITNESS: Okay. Sure, if I had other pieces
22 of information, I could add those to the analyses. Let's
23 take race and I do not even know the race of any of the six
24 people involved.

25 JUDGE YOUNG: Well, that was totally hypothetical

1 because they in fact are all the same.

2 THE WITNESS: But let's say Fiser was a minority
3 and we coded that in there, off the top of my head, then
4 earlier you remember when I said we'd have a three-way
5 interaction? It is my belief, sort of in real time now that
6 that's a three-way ANOVA, which are difficult to run -- the
7 computer can do it -- they're difficult to interpret,
8 exponentially more difficult than our two-way interaction.
9 Two way means there were two independent variables that we
10 looked at in relation to each other and how they affected
11 the dependent variable which was the rating.

12 Now we have three of them, if we just add one of
13 your situations, say it's race --

14 JUDGE YOUNG: You'd almost have to have a 3-D
15 chart, right?

16 THE WITNESS: Yes, maybe 4-D but there isn't such
17 a thing, but we kind of -- you know, we get into -- they are
18 very challenging to work with and I believe that it would be
19 a three-way interaction and we don't have enough data to do
20 that, because every time you add another variable, you slice
21 your existing ones into that many more boxes. So if we took
22 race, just minority/non-minority, and in my mind we have
23 little cells; in fact, on this sheet here, plot 1, there's
24 nine little cells, each with nine data points, we have to
25 cut each of those in half now and any way, that's probably

1 more detail than you want to get. It gets too challenging.
2 So could we do that, from a theoretical standpoint --

3 JUDGE YOUNG: Let me clarify my question. More
4 what I'm trying to ask you is if we assume that some kind of
5 inappropriate prejudice could explain this and the actual
6 answers to the questions could explain it and you were
7 trying to determine which had more effect, what kind of
8 experiment would you design to find out which had a stronger
9 effect?

10 THE WITNESS: Okay, and that will go back to the
11 causational question earlier, because isn't that what we
12 were trying to do here -- did knowledge of protected
13 activity cause those ratings. It is kind of a causal
14 question.

15 In that -- so if your question is how would you
16 design something like that, I would randomly select people.
17 Okay, if you want kind of a theoretical answer -- and this
18 would show causation -- and then I guess you can kind of
19 bounce that against what occurs 1000 times a day in the real
20 world. I would randomly select a group of people and
21 randomly divide them in half and tell -- and call them A and
22 B and tell half of them that this person did something bad -
23 - whatever it is that they might think is bad -- this person
24 in this instance, what we're assuming they think is bad is
25 that this person was involved in a protected activity, but

1 if this is a lab experiment, that might not have meaning to
2 people on the street that are randomly selected, it might be
3 something else, this person cheated on something or
4 whatever. And don't tell that to the other people. And
5 then have these two groups of people interview those three
6 candidates, two of which are just regular and the one is
7 what you've told your two randomly selected groups of people
8 did something bad, stole. And then compare those two,
9 because whenever you randomize, then you truly have
10 controlled for all the unmeasured variables we're talking
11 about. But in this --

12 JUDGE YOUNG: Yeah, taking these three
13 interviewers and these data; is there any way you could go
14 back and talk to the interviewers, ask them -- I mean --

15 THE WITNESS: Okay, with our given data set here?

16 JUDGE YOUNG: With the data here.

17 THE WITNESS: I would be hesitant to add in other
18 variables, but you might clarify the categorizations that
19 you did. So, for example, when we categorize Rogers as not
20 knowing of protected status, that's either a yes or no
21 answer when you analyze that. You might have to clarify
22 your understanding of that. That would be a value add to
23 this particular study. That's probably about all that I
24 would suggest, to go in and add other pieces of information,
25 I think because we only have -- this is a data set of 91

1 data points, there's only so much you can do, even though we
2 found a lot of significance. It would be challenging to add
3 other variables and further clarify what's going on here.

4 I hope I'm getting at your answer.

5 JUDGE YOUNG: So it'd be hard to tell.

6 THE WITNESS: Yeah.

7 BY MR. MARQUAND:

8 Q Dr. Peters, in response to Judge Young's question
9 about whether or not protected activity played a part versus
10 whether or not it was the answers to the questions, you said
11 well, we would have a random group that we compared to the
12 other group. Isn't that essentially what you have here with
13 Corey and Kent having knowledge and Rogers on the other hand
14 not having knowledge? And making a comparison and seeing is
15 there a statistical difference in the way Rogers evaluated
16 him versus the way Corey and Kent evaluated all of the
17 candidates?

18 A You have a quasi-random group, yes.

19 Q I mean you're comparing one lack of knowledge and
20 the other people do have knowledge.

21 A That's right.

22 Q And you found a difference, didn't you?

23 A Exactly, and we separated them on the variable of
24 meaning for us, which was -- and they were -- these three
25 people were randomly put into different categories and we

1 separated them on what was meaningful to us and that was did
2 they know or did they not know.

3 JUDGE YOUNG: So when it comes -- well, what we've
4 got is theorizing that it's possible that there could be
5 sort of an unspoken thing going on that people were able to
6 pick up on a subtext kind of level. And it would be
7 extremely difficult to determine which had greater effect
8 just from the bare numbers, either the unwritten values,
9 tribal values, or the actual answers to the questions. What
10 we're sort of left with is what the interviewers tell us
11 about how they analyzed the responses, what the responses
12 were, how rational and -- I'm sorry -- how rational their
13 explanations are, how clearly they appear to have analyzed
14 the answers, et cetera.

15 THE WITNESS: Sure, the quality of their ratings
16 would be important and a clarification again of the
17 categories I put them into -- did you really not know, did
18 you really know.

19 I think on the candidates, it's pretty clear --
20 were you involved in a protected activity or weren't you. I
21 don't think -- it doesn't sound like there's a lot of need
22 to clarify that. But the categories into which I put the
23 raters based on the information I was given is an
24 opportunity for clarification, as well as the actual data.
25 Were you really sure that's a 9.5 or what, and you feel

1 comfortable with your ratings. And of course, they'll be
2 remembering something that happened many years ago, but I
3 would guess they would stand by their ratings.

4 So we are left with this information that tells us
5 what's going on in the data and you -- I guess what I would
6 do again is what I mentioned a little while ago in that plot
7 3, hypothesize that if in fact the variable that we did
8 measure, knowledge of involvement in a protected activity
9 unduly biased ratings on Fiser negatively, then that 7.21 on
10 plot 3 would swing down to a 5 or a 6 or a 4. I don't know
11 where, but it would swing down and that line would be angled
12 the other direction. It seems like -- you know, as I talked
13 about earlier the plausible explanations, as you rank order,
14 because we have all kinds of plausibilities that we can come
15 up with. That would be toward the top of the list as to
16 plausible explanations.

17 JUDGE YOUNG: While you're here, I want to ask one
18 more clarifying question. If you were to -- rather than
19 look just as this data, but extend the universe to all the
20 people who had to compete for jobs in a given organization,
21 if there were a significant enough number or a high enough
22 number of people who had filed Department of Labor
23 complaints, you could compare those numbers to people who
24 were non-selected or selected and see if there was any
25 effect going across the organization that could have played

1 in.

2 THE WITNESS: Extrapolate this one situation to
3 all of the hiring scenarios in a company.

4 JUDGE YOUNG: Well, not extrapolate exactly but
5 actually do the actual research on the whole universe of
6 people who lost jobs in that reorg.

7 THE WITNESS: Okay, and just to clarify, so let's
8 say you have 100 people and some of them were involved in a
9 protected activity and some of them weren't -- are you
10 talking about within one organization or --

11 JUDGE YOUNG: Right, within one organization, who
12 would be affected by knowledge -- where knowledge might
13 cross over.

14 THE WITNESS: Because if your question is what
15 effect -- is this being involved in a protected activity a
16 pervasive impact on hiring procedures in a company, and if
17 you had more than one scenario, you'd have a lot better look
18 I think at what's going on.

19 JUDGE YOUNG: Yeah.

20 THE WITNESS: Yeah, I just want to make sure I
21 understand what you're saying, so if we had -- this is the
22 Fiser case. Then we have the Jones case and the Smith case
23 and the Robert case --

24 JUDGE YOUNG: Right.

25 THE WITNESS: -- and each one of those involved

1 interviews or some selection procedure --

2 JUDGE YOUNG: Right.

3 THE WITNESS: -- with at least one of the
4 candidates being involved in a protected activity.

5 JUDGE YOUNG: Right.

6 THE WITNESS: Some of them were hired and some
7 weren't.

8 JUDGE YOUNG: And then you compared it to all the
9 people who were not involved.

10 THE WITNESS: Yes.

11 JUDGE YOUNG: And then maybe the results here
12 would --

13 THE WITNESS: It would tell you about the company
14 as a whole, would that give you information as to what
15 happened in this particular case? It probably would be a
16 piece of information but it doesn't necessarily tell you how
17 to decide on this particular case, but it would go back to
18 what you talked about, the general climate in an
19 organization and if you found powerful results that on and
20 on and on this is going on, then you might say well, that's
21 probably what happened here as well. If you found scattered
22 results, sometimes they got hired if they were involved in a
23 protected activity and sometimes they didn't, --

24 JUDGE YOUNG: They weren't statistically
25 significant.

1 THE WITNESS: -- then you might say it's not
2 meaningful here.

3 JUDGE YOUNG: Okay, well, I just wanted to clarify
4 sort of the general approach.

5 THE WITNESS: But that would be an excellent way
6 to look at a company as a whole. We do that in other
7 categories in TVA when we do pay awards and overall who we
8 hire, we do all kinds of analyses like that, sure.

9 JUDGE YOUNG: Thank you.

10 JUDGE COLE: Just a couple of questions, Dr.
11 Peters. First of all, I find no flaw in your statistics.

12 THE WITNESS: Thank you.

13 JUDGE COLE: But is it possible that a scenario to
14 explain the different grades would be that A and B, Harvey
15 and Chandra, did very well on the exam and Fiser didn't and
16 Mr. Rogers was just a tough grader, particularly tough on
17 Fiser?

18 THE WITNESS: Yes. Obviously, yeah, Rogers was the
19 hardest rater of them and he got extra hard when Fiser got
20 involved.

21 JUDGE COLE: Now could we change a variable like,
22 for example, rather than knowledge of protected activity or
23 knowledge of filing grievances, could we change it to having
24 green hair. So Fiser has green hair and Corey and Kent can
25 see that he has green hair and Rogers is color blind.

1 THE WITNESS: Okay.

2 JUDGE COLE: We just do the same tests and we'd
3 get the same results that we got with the knowledge that say
4 green hair is an asset, right? You get higher grades for
5 having green hair.

6 THE WITNESS: Uh-huh.

7 JUDGE COLE: Now aren't there many, many other
8 things that we can put in there that separate the three
9 judges into a pack of two and one that involve Fiser, that
10 would explain the grades -- lots of things could fit that
11 category.

12 THE WITNESS: Yes. I would agree with the first
13 part and be tentative on your second part. In other words,
14 there are lots of things that we could use to separate this
15 into a group of two and a person of one. Whether or not
16 those caused the ratings, we don't know that for sure, but
17 there certainly would be a wide variety of ways. We could
18 create any grouping of two. There are three groupings of two
19 that you could create out of this -- you could have Corey
20 and Kent, Kent and Roger and Corey and Rogers. And all of us
21 would be quite adept at grouping them in different ways --
22 two of them are tall and one is short; two are men and one
23 is women (sic) and two went to this college and one didn't
24 and on and on. However, it's just challenging to say
25 exactly that it caused that. But that's where you're kind of

1 apriorii thinking comes in and says is that a meaningful
2 issue. Green hair might be; involvement in protected
3 activity very well could be; where they went to college,
4 probably not.

5 JUDGE COLE: All right, sir, thank you.

6 CHAIRMAN BECHHOEFER: But then just adding again
7 the question I raised, degree of familiarity, would that not
8 be a crucial factor, indeed crucial enough to rule out the
9 validity of any other analysis that eliminated that or
10 didn't take that into account?

11 THE WITNESS: I certainly think familiarity is an
12 important issue, unlike we would hope that maybe exactly
13 where he went to college is not -- assuming you went to a
14 good college and graduated -- not quite as meaningful in a
15 practical sense as to how that affected this.

16 But when we make decisions, I suspect in our
17 minds, we take in all kinds of information and that would be
18 one piece of information that could drive the ratings that
19 someone gave someone else. So I would fully agree with you
20 that that very likely has an impact. But how much of an
21 impact or in what direction is kind of a qualitative issue
22 that I would not want to say would negate any other issue.
23 I think we have complex minds that allow us to make
24 decisions based on a multitude of factors. Okay? And
25 familiarity would be one of them.

1 I hope that kind of addresses what you --

2 CHAIRMAN BECHHOEFER: Is that factor -- could it
3 be considered so crucial that any analysis -- such as
4 engagement in protected activities -- any analysis would be
5 invalid without a consideration of a vital factor,
6 familiarity -- past familiarity of particular judges with
7 particular candidates.

8 THE WITNESS: I don't think it would invalidate
9 it, no, but I think it's important.

10 CHAIRMAN BECHHOEFER: All right.

11 JUDGE YOUNG: Is what you're saying it could
12 invalidate it if you knew for a fact that Corey was a
13 champion and an advocate for candidate B and you knew for a
14 fact that Kent was a champion and advocate for candidate A,
15 but unless you know exactly what's inside Corey's and Kent's
16 minds about A and B, you couldn't make that --

17 THE WITNESS: Sure, it's very logical to assume
18 that would affect their ratings. How much it affected them,
19 did it change it from a 9 to a 10 or did it go from a 5 to a
20 10 -- did they really think this person did pretty bad, but
21 gosh, it's my friend, I'll give him a 10? I just don't know
22 how we could ever really say how much that person --

23 JUDGE YOUNG: So you're saying even if you know
24 they're a champion and a friend --

25 THE WITNESS: A champion and a friend are a little

1 bit too different things also. I might be friends with
2 somebody but not necessarily champion them -- when you say
3 champion, just to split hairs with you a minute -- means I'm
4 truly going out of my way to get you this job.

5 JUDGE YOUNG: Right.

6 THE WITNESS: I'm championing you. But if you're
7 my friend, I probably upwardly bias my rating as well, but
8 maybe not in the same way as the word champion suggests.

9 JUDGE YOUNG: So when I said a minute ago, unless
10 you knew for a fact that Corey and Kent were champions
11 respectively for B and A, you couldn't make a conclusion on
12 the effect of familiarity.

13 THE WITNESS: Not here. If I coded that in a
14 database, I could look at that kind of piece of information
15 and that's the kind of thing you could even put a
16 qualitative stamp on. In other words, you could champion
17 someone to a varying degree. So far, we're dealing with
18 dichotomous variables.

19 JUDGE YOUNG: Right.

20 THE WITNESS: I knew or I didn't know. I was
21 involved, I wasn't involved. But championing or friendship
22 is a continuous variable and you could code that in here and
23 look at it. Now to what extent that is relevant to whether
24 or not someone is involved in a protected activity, I still
25 don't know, because even if you said yes, Corey was a

1 champion for A -- B, I'm sorry, and Kent for A, how does
2 that relate to whether or not someone is punishing someone
3 for being involved in a protected activity? Almost a
4 separate question.

5 Does that make sense on that last part?

6 BY MR. MARQUAND:

7 Q Dr. Peters, if the fact that Mr. Corey was very
8 familiar with B and Kent very familiar with A and was either
9 a champion or a friend, biasing them towards them, and
10 Rogers was neutral, would you have found that Rogers was
11 statistically lower with respect to Fiser or higher with
12 respect to Fiser?

13 A You'd still find the same thing, if I understand
14 your question.

15 Q No, would you find -- you found that Rogers, who's
16 -- assuming he's neutral with respect to all three -- where
17 would you expect him to come out with respect to Fiser
18 compared to Kent and Corey, when you lump Kent and Corey
19 together as you did?

20 A And the only variable I know is familiarity?

21 Q Right.

22 A Assuming it's a championing type of familiarity or
23 a friendship, then you would again expect Rogers to be
24 lower.

25 Q You would expect Rogers to be lower with respect

1 to Fiser?

2 CHAIRMAN BECHHOEFER: Higher.

3 BY MR. MARQUAND:

4 Q Higher, correct?

5 CHAIRMAN BECHHOEFER: I would think.

6 A With just respect to Fiser.

7 Q Compared to all of the candidates, yes. The same
8 thing you did here.

9 JUDGE YOUNG: Ask your question over.

10 MR. MARQUAND: Looking at plot 3 and instead of
11 talking about knowledge of protected activity, you're
12 talking about the championing effect.

13 JUDGE YOUNG: So in other words, if you took out
14 knowledge of protected activity and instead you looked at
15 Kent and Corey as knowing candidate A and candidate B and
16 Rogers as not knowing any of the candidates and Fiser as not
17 having anyone who knew him especially, would you come out
18 with the same results in terms of Rogers was so different in
19 how he rated Fiser as opposed to the others that the
20 knowledge -- the familiarity of Kent and Corey with A and B
21 is not statistically significant -- is that?

22 THE WITNESS: Let me make sure I summarize, we
23 have so many data points to talk about in these different
24 scenarios --

25 BY MR. MARQUAND:

1 Q Let me back up -- let me start over. When we
2 talked about plot 3 before, it was based -- and this deals
3 with whether Corey and Kent knew of protected activity. And
4 you said if protected activity had played a role negatively
5 towards Fiser in their mind, you would have expected the red
6 line to be sloped the other way --

7 A Exactly.

8 Q -- that is, for Rogers to have rated Fiser higher
9 statistically than he did the other two candidates in
10 relation to Corey and Kent.

11 A Yes.

12 Q Is that the same sort of result you would expect
13 if this championing effect was what was going on instead of
14 protected activity?

15 A I think I have to make sure I understand all the
16 championing relations because we've not talked about how
17 Corey and Kent feel about Fiser in this championing.

18 Q Suppose that they're neutral --

19 JUDGE YOUNG: Yeah, they're neutral.

20 Q Kent's in favor of A but neutral towards Fiser and
21 B; Corey is in favor of B but neutral towards A and Fiser.

22 JUDGE YOUNG: And Rogers is neutral towards --

23 Q And Rogers is neutral as well. Then wouldn't you
24 expect --

25 A Rogers is neutral on everybody.

1 Q Right. Wouldn't you expect the same effect? That
2 is that Rogers would have rated statistically higher with
3 respect to Fiser than Corey and Kent did as compared to the
4 other two, than Corey and Kent did between A and B and
5 Fiser.

6 A If the only -- in that little chart there, you
7 have a -- you've created a little grid, the only familiarity
8 scenario going on is in the upper left, that 8.87, which is
9 a result of the others rating others, and everything else is
10 more or less a neutral relationship, then you know, what
11 you'd expect is that their ratings are going to be driven by
12 their performance in the interview and no other superfluous
13 factors are coming into play. So you might assume that the
14 highest rating as it is, is going to be that 8.87 if
15 familiarity breeds a higher rating. The rest of them would
16 fall wherever these people see that person scoring on the
17 interview.

18 Q Right. So the slope of the blue line would be
19 steeper than the slope of the red line in that situation, in
20 essence. The 8.87 is driven higher.

21 A You can move these up or down in relation to other
22 lines. I -- the only assumption you can make in that
23 scenario is that if familiarity breeds a higher rating, then
24 that 8.87 is the highest rating of the four on that page,
25 but you might have a situation I suppose where that red line

1 is level, which is still an interaction because it still
2 intersects with the blue line. Even if it were level, it
3 just takes a little longer for that to occur.

4 MR. MARQUAND: I'm sufficiently confused. I have
5 no further questions.

6 MR. DAMBLY: I certainly do.

7 JUDGE YOUNG: Pardon?

8 MR. DAMBLY: I certainly do.

9 RECROSS EXAMINATION

10 BY MR. DAMBLY:

11 Q First of all, just to clear up something because
12 maybe I misunderstood, but the race example I wanted to talk
13 about. Let's assume Mr. Fiser is Asian and everybody else
14 in the room is white. That would be a totally different
15 scenario because then the interviewers would know that they
16 were interviewing an Asian, so you don't have that two
17 people know and one don't issue. So that's not going to
18 correlate with this at all.

19 If you had that situation and you looking at our
20 little bar chart that said the Asian got a 6.5 and everybody
21 else got 8, that's as far as you'd have to go, since
22 everybody knew.

23 A If we're looking at plot 3 --

24 Q I'm looking at bar charts. Where's your nice big
25 bar chart with -- page 13, candidate A, candidate B and the

1 minority and everybody knows he's a minority. You don't
2 have to do a whole lot of plotting and charting after that,
3 do you? There's no other variable that you're plotting,
4 like the other people that didn't know.

5 MR. MARQUAND: Except the answers to the
6 questions.

7 A Yeah. Page 13 is that graph 2? I'm looking off
8 my own sheet.

9 Q It's graph 2.

10 JUDGE YOUNG: I think my question was could that
11 kind of thing, the sort of unspoken values thing, compared
12 to the race explain these statistics just as easily as the
13 knowledge of unprotected activity and I think you said yes
14 and I said how would you tell the difference.

15 BY MR. DAMBLY:

16 Q The other thing I talked to you about -- well,
17 one, you made the statement that you would expect if the
18 people -- if Kent and Corey got together ahead of time and
19 said let's be careful because Fiser is engaging in protected
20 activity, that somehow that should turn the line going
21 different directions and all. And you based that on what?

22 A Clarify what you think I said?

23 Q You said -- well, you would expect, if that's what
24 the statement was made -- he asked you if that statement,
25 you would have expected to see them actually rate Fiser

1 higher rather than lower because they were being careful and
2 it would have changed the slope of your line from one
3 direction, the way it is now, to the other direction.

4 A That could be an explanation for why it is higher
5 than Rogers' ratings, that they were being careful.

6 Q Yes, and being careful in that context, since
7 you're in personnel, all you've got to do to bias the
8 outcome is if everybody gave Mr. Fiser a tenth of a point
9 lower on each question, he'd come out however points, still
10 10, 20, 30 whatever it is, below the rest of them and it'd.
11 look real close. And if you wanted to be careful, that's
12 how you'd be careful, isn't it?

13 A You don't really know what the other people are
14 rating typically in an interview, so you might shave half a
15 point off yours, but you don't know that the other person --

16 Q Well, if the other person also knows that you're
17 being careful --

18 A If you collaborated that closely and had that much
19 planning that lets all shave just a half a point, so it
20 looks kind of sneaky, if they were that sophisticated, that
21 could happen but that still doesn't explain why Rogers was
22 over a point lower when he wasn't in on the conversation.

23 Q Well, let's start with, please explain to me
24 statistically how you can prove that Mr. Corey, who rated
25 Mr. Fiser third, did not rank him third because he knew he

1 had engaged in protected activity.

2 A How did Corey rank Fiser --

3 Q Came in third, bottom of his list -- how can you
4 say -- can you say with any statistics that you want to
5 throw in here that that had nothing to do with his knowledge
6 of Mr. Fiser engaging in protected activity?

7 A No more than I can say it did have an impact.

8 Q Good. And Mr. Kent, he rated him the lowest. You
9 can't say that that wasn't because that Mr. Fiser had
10 engaged in protected activity.

11 A You can't definitively say that.

12 Q That's good. So the answer is you can't
13 statistically say that's not what happened with Mr. Kent and
14 Mr. Corey.

15 A You have a couple of double negatives there. The
16 lower ratings could be to a multitude of factors. If you're
17 going to say just because someone scores lower than someone
18 else, it's because of one factor that I know, then I think
19 you've got a simplistic view of situation. There are a
20 multitude of factors that can contribute to one person
21 getting a lower score than another person. Some of them are
22 reasonable and some are not reasonable.

23 Q And you've said knowledge of protected activity
24 could be one of those. You consider that a big one.

25 A That's a big one and that could be one along with

1 quite a number of others. I would caution us to make
2 conclusions as to whether or not something occurred based on
3 one variable or the fact that one person scored differently
4 than one other person, because we happen to know about one
5 variable that differentiate those two people.

6 Q As a matter of fact, that's what we've spent the
7 whole last three hours hearing you tell us, that we're
8 drawing conclusions based on variable.

9 A Well, you've gone to the bar charts, which are two
10 dimensional and we've been talking in terms of three
11 dimensions which is in the interaction.

12 Q We don't get to the interactions until they've
13 done their individual scoring, is that correct?

14 A I'm not following that question. The interaction
15 is a statistical test, the individual scoring was done in
16 the interview.

17 Q And let me ask you this, since you're in
18 personnel, the way they do things at TVA is the people who
19 get interviewed are not just ones who have minimum quals,
20 but the ones that the selecting official thinks meet
21 everything they're looking for.

22 A I don't know that.

23 Q And you wouldn't expect there to be -- when the
24 people who are picked by the selecting official for
25 interviews to be a great deal of difference in their

1 experience, background and whatever if they're being
2 interviewed for the job. You'd eliminate the big
3 differences before you did the interviews.

4 A You'd eliminate those without the minimum
5 qualifications. You can still have individual differences.

6 Q But then you don't know what the rules are that
7 you don't have to interview everybody with minimum
8 qualifications?

9 A I don't know what that rule is. I can tell you
10 this. Just because 10 people meet minimum qualifications
11 doesn't mean that there can't be wide variation in those
12 people.

13 Q Oh, I'd agree with that on minimum quals, but if
14 there were wide variations --

15 A I'm talking about after minimum quals are met,
16 college degree, five years experience, you may still find
17 wide variation among people.

18 Q And if you had three people who all had degrees
19 and had worked at TVA in chemistry program manager positions
20 for 8 or 9 or 10 or 11 years with similar backgrounds, you
21 wouldn't expect a wide variation in those scores, would you?

22 A Those are your words, I wouldn't agree with that.

23 Q Oh, you wouldn't?

24 A No.

25 Q All right, you can't say that Corey and Kent did

1 not rate Mr. Fiser the lowest because he had engaged in
2 protected activity.

3 A That's -- like I've said, there's a variety of
4 explanations. That can be one of them.

5 Q Well you don't know of any others. The only
6 variable you were given was protected activity. And if we
7 plug that one in, protected activity, since we're really in
8 an ordinal situation here, protected activity resulted in
9 those two rating him at the bottom of the pile.

10 A Okay.

11 Q It's the only variable you know about.

12 A They rated him lower. The fact that they knew he
13 was in a protected activity may have been a reason, may not
14 have been a reason.

15 Q And you can't say whether it was or it wasn't.

16 A No, but if you want to keep looking at bar charts,
17 it's hard to say. When you compare Rogers to that, which
18 brings in the interaction, and you look at the fact that
19 Rogers when he didn't know, had much lower scores than him,
20 then it brings a richer sense of understanding to what's
21 going on.

22 Q How does knowing what Rogers did tell you whether
23 or not Kent and Corey, the two people who knew the only
24 variable you know about, put him at the bottom?

25 A It tells me -- because the one person who didn't

1 know gave him even lower scores.

2 Q But you don't know why that is. You're just
3 assuming that had something to do with protected activity.

4 A In the same sense that you're assuming that's why
5 Corey and Kent rated him lower.

6 Q Well, did you know that Mr. Rogers based all his
7 ratings on demeanor?

8 A I don't know anything about nature of his ratings.

9 Q Do you know that Mr. Rogers has by far the least
10 technical experience in chemistry, if any at all, of any of
11 the people whether raters or candidates?

12 A No.

13 Q Both of those could have come into his ratings.

14 A Could have come into his ratings for Corey Kent --
15 or for A, B and Fiser, yes.

16 Q And once Corey and Kent had done their ratings,
17 Mr. Fiser had a 30 point hole to fill from Mr. Rogers, if
18 you want to take a look at it.

19 A Do you want my response? Is that a question?

20 Q Well, it's 29 point something --

21 A Well, it's a 30 point gap. You mean the 51 he
22 gave Fiser?

23 Q No, if you look at Kent and Corey's ratings and
24 you combine their ratings for Harvey and then you add their
25 ratings for --

1 A Who is Harvey -- Harvey is -- remind me.

2 Q If you add A's two ratings from those two people
3 and you add B's two ratings and then you add Mr. Fiser's two
4 ratings, I think Fiser comes out a 129.8 and the other two,
5 one of them is a 158.7 and one is 160.5. So between those
6 two raters, the ones that knew of his protected activity,
7 going into the third score, he's approximately 30 points
8 down.

9 A Okay.

10 Q And you want to look at a chart and see if anybody
11 rated any candidates 30 points lower than the other, any one
12 of the other candidates.

13 JUDGE YOUNG: Say that over again, Mr. Dambly.

14 MR. DAMBLY: Look at the chart --

15 JUDGE YOUNG: Taking -- you said taking just the
16 first two scores?

17 MR. DAMBLY: Yeah, the first two scores -- well,
18 the scores for Kent and Corey.

19 JUDGE YOUNG: Right.

20 MR. DAMBLY: If you add up the scores that they
21 gave for Mr. Fiser, the total is 129.8. The score that they
22 gave for Harvey, between the two of them got 158.7 and
23 Chandra got 160.5.

24 JUDGE YOUNG: So just considering Corey and Kent,
25 Mr. Fiser was 30 points lower.

1 MR. DAMBLY: Was 30 points down going into the
2 other rating. And if you look at the scores again and you
3 look across them, even Mr. Rogers didn't rate Mr. Fiser 30
4 points lower than he did Harvey and Chandra. Is that right?

5 THE WITNESS: I wish I had all your numbers added
6 up because I'm -- if we want to take a break, I'll be happy
7 to add them all up on this sheet.

8 MR. DAMBLY: Go ahead.

9 THE WITNESS: I prefer to look at my plot here
10 which is essentially the same information, but provides it
11 in what I think is a more parsimonious manner where averages
12 are computed.

13 If you look at plot 3 --

14 MR. DAMBLY: That may be what you find more
15 interesting but --

16 THE WITNESS: -- that I describe, that same thing
17 that you're saying with four numbers involved and I think
18 it's more manageable.

19 MR. DAMBLY: If you want to take a break and add
20 them up, you can add them up.

21 THE WITNESS: If you want me to speak your
22 language, I'll need just a little bit of time to become
23 familiar with the data. I looked at this as a data sheet
24 given to me, I took this information, reconfigured it in the
25 sense that made sense for my statistical package and

1 produced what I think are meaningful results over here.

2 JUDGE YOUNG: You're getting back to your first
3 question about --

4 MR. DAMBLY: Well, only partly.

5 JUDGE YOUNG: Let me ask you, given what Corey and
6 Kent -- the scores that they had already given all three
7 candidates, by the time you add in Rogers, he could not
8 really have any effect on the outcome.

9 MR. DAMBLY: Absent some gross disparity on his
10 part.

11 JUDGE YOUNG: Right, and that's where we got into
12 the addition and I asked if you substituted 90 for Fiser and
13 58 for the other two.

14 MR. DAMBLY: Yeah, and my point was and still is,
15 you can't go in at that point and decide, at least for
16 purposes of what my proposition is, is that he's going to
17 change his scores for Harvey and Chandra. He scored them.
18 My point was after scoring Harvey and Chandra, as he saw
19 fit, there was nothing he could have done after the first
20 two got done to have affected the outcome. Yeah, he could
21 have cooked the numbers and decided I want to make Fiser
22 win, as any of them could, but then you'd have such a gross
23 disparity, it would cause questions in and of itself. I
24 mean yeah, he could give everybody a zero and him all 10s,
25 you can certainly affect the outcome, but without marking

1 them down intentionally, just assuming he rated Harvey and
2 Chandra as he saw fit, he gave them 77 and 75. At that
3 point, there's nothing he can do for Fiser.

4 JUDGE YOUNG: So what you're asking is what is the
5 significance, if any, that Rogers had on the outcome.

6 MR. DAMBLY: Yeah. My question is why analyze for
7 a variable based on Mr. Rogers' scores when Mr. Rogers'
8 scores were irrelevant to the outcome.

9 THE WITNESS: You think -- are you saying he just
10 punted then and gave low ratings?

11 MR. DAMBLY: I'm not saying he did -- he didn't
12 know what anybody else did, but in terms of your analysis,
13 assuming he rated, however he rated the people, he rated
14 them -- even if he gave Fiser the benefit of the doubt and
15 gave him all 10s, the outcome was predetermined by the two
16 who knew that Mr. Fiser had engaged in protected activity.
17 He can't make up that difference at that point.

18 THE WITNESS: So in other words, let's carve out
19 part of the database, since it's, in your opinion,
20 irrelevant anyway, and only use part of it. I think we are
21 given --

22 BY MR. DAMBLY:

23 Q Before you start doing the analysis, do you look
24 and see does Mr. Fiser -- Mr. Rogers rating have any impact
25 on the outcome of the selection that you're analyzing.

1 A As they say, that's why you play the game. That's
2 why we did the analysis. You would have a hard time saying
3 that statistically by looking at that spreadsheet on page
4 16. It's pretty clear there's big differences, but that's
5 why I guess I was called in, was to look at that from a
6 statistical standpoint, and without including Rogers in the
7 statistics, it would be difficult to say whether or not
8 Rogers had an impact. I would be uncomfortable just saying
9 oh, a bunch of 5s, although I see some 7s, from Rogers
10 rating of Fiser -- I'd hate to be sitting here today saying
11 well, I didn't think the right three columns were really
12 very relevant, so what I did is I just looked at Corey and
13 Kent for y'all today. And explain to you and everybody else
14 why I threw out some of the numbers. I had to consider all
15 of them and I did.

16 Q But if you only looked at the first two, you
17 wouldn't be sitting here today, that much is pretty sure,
18 but before you did your analysis, did you check to see
19 whether, based on the numbers given you, and any changes Mr.
20 Rogers could have made to Mr. Fiser, whether he had a say in
21 the outcome?

22 A I guess that's why I did the analysis, it's kind
23 of like saying before you played the game, did you check to
24 see if you'd win the game or lose the game. The game is the
25 analysis, I conducted the analysis. I did not spend a lot

1 of time pondering over this spreadsheet, my task was to do
2 analysis and that's what I was asked to do and that's what I
3 did.

4 Q And when I asked you, I guess it was this
5 afternoon now, before, if in point of fact the two people
6 who knew that he had engaged in protected activity
7 determined the outcome and the one who didn't really didn't
8 play a role in the ultimate ratings or rankings, and we're
9 dealing in a ranking situation here, then you would draw the
10 conclusion or you could draw the conclusion that protected
11 activity was the determining factor and you said yeah, under
12 that circumstance, that's what you would say.

13 A If I said that, I say it could have been a factor,
14 I would hate to say that knowledge of involvement in
15 protected activity was the only factor. That goes back --
16 the only way you can do that is if you have a randomized
17 experiment.

18 Q But if it could have been, how can you say it
19 wasn't?

20 A When you -- and I can't definitively say it wasn't
21 a factor. However, when Rogers becomes a part of the story,
22 it helps me draw a stronger conclusion that it probably was
23 that -- when I consider Rogers also, it makes it more likely
24 that knowledge of involvement in protected activity did not
25 drive those ratings.

1 Q And that's because Rogers rated people lower and
2 you figured that if you were going to discriminate against
3 somebody, the other two would have been dumb enough to give
4 him real low ratings and make it a big gap instead of a
5 little gap.

6 A They would have at least been on par with him.

7 Q They didn't know what he did.

8 A They didn't know what who did?

9 Q They didn't know what Mr. Rogers' ratings were,
10 they were all independent, they did them on their own, they
11 did the best they could. They cooked the numbers enough for
12 a 30 point difference and trusted in the system. Can you
13 say that didn't happen?

14 A I can't say it did or it didn't.

15 MR. DAMBLY: We have nothing further.

16 JUDGE YOUNG: I want to make sure I understand
17 what it is that you were doing. You were given the numbers
18 that the three scorers gave the three candidates.

19 THE WITNESS: Right.

20 JUDGE YOUNG: You were asked to look at the
21 likelihood that Fiser's receiving lower scores was because
22 of Corey's and Kent's knowledge of protected activity.

23 THE WITNESS: Correct.

24 JUDGE YOUNG: You were asked to determine what
25 that likelihood was --

1 THE WITNESS: Sure.

2 JUDGE YOUNG: -- and you used the information
3 about Mr. Rogers, who you were told did not have knowledge
4 of protected activity, as a comparison point and then you
5 performed statistical analysis applying the -- the numbers
6 that are generally considered to be -- or the percentages
7 that are generally considered to be statistically
8 significant to reach a conclusion on the likelihood that
9 knowledge of protected activity had an effect on the
10 scoring?

11 THE WITNESS: Yes. Good summary.

12 BY MR. DAMBLY:

13 Q Just so -- to follow up on something else you said
14 this -- I keep on saying this morning, but it hasn't been
15 that long ago. It's true that in a situation where you have
16 three scorers, any two of them make up 67 percent of the
17 total. So if you take any one out, the other two can
18 determine the outcome basically?

19 A They can, yes.

20 Q And in all likelihood, unless there's gross
21 disparities in the way they score people, two out of the
22 three would determine the outcome?

23 A It would all depend on the ratings they gave that
24 person. Yes, if all three were very close, then you might
25 need all three to make a decision. It just depends on the

1 numbers.

2 Q And so did -- in part of your analysis did you
3 determine whether any two of these were the two that had --
4 knew he had engaged in protected activity could have by
5 themselves determined the outcome from the data you had been
6 given?

7 A I didn't see that as relevant.

8 Q Well I guess we have a major difference because
9 that seems to be the question here.

10 A I think I gave it a sophisticated look on a
11 generally accepted procedure. I think plot three, that
12 interaction, shows us a lot and I'll go back to that because
13 that's what I did and what I'm familiar with. The very
14 lowest rating comes from that bottom right cell where Rogers
15 rated Fiser.

16 Q And you have no idea why he did it?

17 A The ratings go up when you look at another piece
18 of information, and that is did people know. Did raters
19 know about Fiser's involvement. And when you throw that in,
20 then you see that the ratings go up by a point and a half
21 approximately.

22 Q But still lower than everybody else?

23 A They may have -- yes. They may have been in
24 collaboration to shave points off their score, but you also
25 should compare that to Rogers who's not involved in this

1 discussion, if in fact it even occur, because his ratings
2 were much lower. Apparently -- one thing I've learned today
3 is that Rogers was the least technically sophisticated, and
4 yet he gave the lowest ratings of all of them, which is kind
5 of interesting. So he clearly was the most severe rater and
6 knew the least about the subject matter if what I've learned
7 today is relevant to that discussion, and yet still has the
8 lowest rating. So certainly others rating Fiser is lower
9 than others rating others but they're a whole lot higher
10 than Rogers.

11 MR. MARQUAND: Your Honors, I want to point out
12 that we don't necessarily agree with the assumption that
13 counsel has foisted upon the witness. Mr. Rogers will
14 testify, and I think you'll find that far from being the
15 least technically sophisticated, he is very technically
16 sophisticated.

17 MR. DAMBLY: As I said, I didn't say the least
18 technically sophisticated. I said he had the least
19 knowledge and/or experience in the chemistry arena of
20 anybody.

21 MR. MARQUAND: I don't know that the other two
22 ever worked in the chemistry arena.

23 MR. DAMBLY: They were just managing the function.

24 MR. MARQUAND: They may have managed the function
25 but they were health physicists.

1 MR. DAMBLY: Then the shouldn't be there either.

2 BY MR. DAMBLY:

3 Q You also heard me tell you that, at least from the
4 deposition we took, Mr. Rogers based all of his ratings on
5 how a candidate sat in the chair and how they responded,
6 their demeanor.

7 A I heard you say that, yes.

8 Q And if that was in fact true, how would that
9 figure into your -- I mean that would make his ratings
10 totally non-performance based or anything else. If the
11 other two did it on a more technical basis, how would you
12 calculate that?

13 A I wasn't involved in that, but he said it's just
14 based on what went on in the interview room, just the
15 demeanor.

16 Q They kept asking -- the response to every -- well,
17 you know, he was slouching in his chair and he spoke soft.
18 That was kind of the answer to most everything.

19 MR. MARQUAND: Your Honor, I think that's a
20 characterization by counsel. You know, if he wants to make
21 that assumption to the witness, that's fine, but I think the
22 record will reflect what the record shows.

23 MR. DAMBLY: Well I'm sure the record is going to
24 reflect it when Mr. Rogers gets done.

25 BY MR. DAMBLY:

1 Q If Rogers' rating was totally not on any technical
2 basis, just the way you looked, the way you sat, the way you
3 shook the hand, if you slouched in the chair, that was his
4 rating for all of the -- all three of the candidates, if you
5 want to go that way, how does that play into a determination
6 as to whether or not knowledge of protected activity had a
7 role in the rating?

8 A Well it doesn't affect whether or not he knew
9 about knowledge involving the protected activity. So the
10 fact that he rated on -- according to your summary, some
11 non-job relevant factors, and I don't know what the job is.
12 Some job, sitting up straight in the chair would be a small
13 part of doing a good job. However, it sounds like some of
14 that is nonperformance related. I'm not sure that that
15 confound affects whether or not he knew he was involved in a
16 protected category or not.

17 Q I'm not saying he knew he was involved in a
18 protected activity. But if all of his ratings on three
19 candidates are based on whether they slouched or not -- just
20 take that as a hypothetical --

21 A Okay, then that's a constant --

22 Q -- how can you draw --

23 A -- it's a confound that's a constant throughout.
24 It doesn't affect the slope of the line. It doesn't change
25 any of those factors. The fact still is, even though we

1 throw on this additional piece of information, as we've done
2 a lot today, on conjecture about different hypothetical
3 situations, it does not change the results of these
4 analysis. He still gave his ratings, he still did not know
5 this person was involved in a protected activity and the
6 others did. He simply used different criteria than the
7 others for providing his ratings. But it's not an effect on
8 the interaction.

9 Q So in other words --

10 A We might question his interviewing techniques or
11 his criteria in the interview. I find it difficult to see
12 exactly how relevant that is to the question of whether or
13 not knowledge in a protected activity biased that one way or
14 another.

15 Q Obviously we've already said it's not going to
16 bias Mr. Rogers, as he didn't know, as far as we know. I
17 don't know if he knew. I assume he didn't. That's all
18 we've heard. But the first two that did were two-thirds
19 determination of the outcome, and point of fact, if you want
20 to add up the numbers on break, there was approximately a
21 30-point deficit before you got to Rogers. So how can you
22 say that the two people who put Mr. Fiser 30 points in the
23 hole and who knew about his protected activity didn't
24 determine the outcome based on protected activity?

25 A Is that a different question than we've just been

1 talking about, the quality of Rogers' rating?

2 Q Right.

3 A Are we shifting back to the question?

4 Q Right. We're back to it because you said it
5 didn't matter what he rated him on.

6 A So you're -- I was still tracking on that other
7 one. What's your question?

8 Q My question is, how can you say that the two
9 people who knew that Mr. Fiser had engaged in protected
10 activity statistically that you -- how can you statistically
11 say that two people who knew he had engaged in protected
12 activity and ranked him at the bottom of the heap on their
13 two ratings and put him in a 30-point hole before they got
14 to the third guy didn't determine the outcome of that SRB
15 panel because of protected activity?

16 A I think we've talked about this already. Again,
17 it just depends on what your frame of reference is. Your
18 frame of reference is how they rated the other people.

19 Q Well it's an ordinal situation, isn't it, when
20 you've only got three people --

21 MR. MARQUAND: Can the witness --

22 MR. DAMBLY: -- and three candidates --

23 MR. MARQUAND: Can the witness finish his answer,
24 Your Honor, before counsel --

25 THE WITNESS: You know, we have different frames

1 of reference. Are we going to link our view of how others
2 rated the others to how the others rated Fiser? Are we
3 going to link how others -- are we -- let me start over
4 again. Are we going to tie -- if you look at plot three, I
5 guess -- when I look at that one, are we going to just link
6 how others -- the 7.21 to the 8.87, which is what you're
7 frequently referring to, and that they gave him lower
8 ratings, and you call that the 30-point hole, I believe, or
9 whatever you're referring to that as. I find this -- again,
10 for me and my familiarity with the data, this is what I
11 refer to --

12 BY MR. DAMBLY:

13 Q On yours, it would be the 1.60 right?

14 A Well I'm looking at plot 3 --

15 Q Yeah. And the 8.87 was the average rating for the
16 other folks?

17 A Yes. And you're continually looking at that 8.87
18 difference to the 7.21 --

19 Q Right.

20 A -- and that's one way to look at it. I'm saying -
21 - and what you're doing there is, you're crossing over from
22 -- to different categories of the rates. If you want to
23 look at the same ratee, which is that line that connects the
24 7.21 to the 5.67, that's another way to look at that, and
25 that gap is quite large as well. To me, that anchoring to

1 that 5.67, which is our rater, who has no knowledge of this
2 stuff. The unbiased one, if you will. They've inflated
3 quite a bit from his. What would that -- just off the top
4 of my head, it looks like it's 1.8 or something in that
5 ballpark. It's pretty substantial points wise. You would
6 have to translate that to your sheet. To me that's a
7 meaningful -- and that is the interaction and that's what's
8 meaningful.

9 Q So you think it's meaningful even if looking at
10 your charts, by the time the first two got done -- I mean
11 the question that's being posed is, did protected activity
12 affect the outcome. And we've looked at it and said the two
13 people who knew put Mr. Fiser in a 30-point hole. We've
14 looked at Mr. Rogers, and what -- Mr. Rogers at that point
15 was unable to get Mr. Fiser out of the hole, even if he
16 wanted to get him out of the hole by giving him 10s on every
17 answer. Now how can you say that the outcome of the
18 selection review board was not impacted by the knowledge of
19 the two people who put him in that hole?

20 JUDGE YOUNG: Mr. Dambly, are you assuming from
21 the start that if Kent and Corey gave A and B -- Harvey and
22 Chandra higher scores than Fiser, that the reason for that
23 was their knowledge of protected activity?

24 MR. DAMBLY: I'm not assuming that because the
25 statistical purposes of the question asked here. The

1 question was did protected -- or could protected activity,
2 just by knowing who knew about it and who engaged in it,
3 have affected the outcome? And the two people who knew
4 about it rated Mr. Fiser lower, and as a result of that, Mr.
5 Fiser was in a hole, that the one person who didn't know
6 about it couldn't have got him out and affected the outcome
7 of the SRB. I'm just asking, of the two people who knew
8 about it had Mr. Fiser in such a hole that he couldn't climb
9 out in any reasonable manner with Mr. Rogers, how can you
10 say that that wasn't -- now that may not have been why they
11 rated him lowest because statistical --

12 THE WITNESS: In fact, I was going to just say, it
13 looks to me like Fiser dug himself a hole in this interview,
14 because every time you look at his lines, they are way below
15 everybody else's lines. So Fiser very well could have dug
16 himself a hole for reasons other than being in a protected
17 activity. And to follow through --

18 BY MR. DAMBLY:

19 Q I'm not arguing --

20 A -- on your logic that their knowledge of his
21 involvement in protected activity haven't driven their
22 scores down, would it not be logical that if others knowing
23 that Fiser's involved in a protected activity lowers their
24 ratings, would it not be very logical to assume that it's at
25 least somewhere down where Rogers rated him, which is a

1 5.67. A point and, you know, eight-tenths lower. And
2 you're arguing well, the reason he dug this 30-point hole is
3 because they knew he's in a protected activity, while in
4 front of us we see a plot that shows they're still rating
5 him way higher than Rogers who had no idea of this.

6 Q And we've already had this discussion, if you're
7 smart and not stupid and somebody says let's be careful
8 going into here, because Fiser's engaged in protected
9 activity, you're not going to give everybody else nines and
10 him a four. I mean that seems to be what you're saying that
11 they would do, and that would be stupid, wouldn't it?

12 MR. MARQUAND: Your Honors, I'm going to object to
13 this continued line of questioning because the NOV and the
14 theory that counsel is proceeding against TVA is that
15 McGrath and McArthur were responsible for the nonselection--

16 MR. DAMBLY: So why do we have this witness here
17 at all?

18 MR. MARQUAND: -- not Corey and Kent, and not that
19 there's this some over-arching conspiracy involving Corey
20 and Kent and McArthur and McGrath. If that's the case,
21 counsel's been watching too much TV.

22 MR. DAMBLY: Then I would move to strike this
23 witness' testimony and the admission of his documents
24 because counsel has just said it has nothing to do with any
25 issue in the case, which I don't disagree with as a matter

1 of fact.

2 MR. MARQUAND: If counsel will stipulate that the
3 selection process was fair. If counsel will stipulate that
4 the ratings by the SRB was fair.

5 MR. DAMBLY: No. This has nothing to do with
6 whether they're fair or not. He's trying to prove something
7 about Kent and Corey.

8 MR. MARQUAND: And that is our point, Your Honors,
9 because as we've said from the beginning, this case can only
10 -- their theory can only proceed on the basis of a
11 conspiracy involving McArthur, McGrath, Corey, Kent and the
12 people in HR, and there's not proof of that in this case.
13 That's not what the NOV is about. And when HR says they
14 made the determination to post, when HR says they made that
15 determination, when Corey and Kent say here's how we
16 evaluated this, when the statistics show that Corey and Kent
17 were more than fair with respect to Rogers --

18 MR. DAMBLY: I object. Are we going to closing
19 arguments now?

20 JUDGE YOUNG: Let me just break in here. Mr.
21 Dambly, it does seem like to a degree you're sort of going
22 in circles. In addition to --

23 MR. DAMBLY: Because I get a different answer each
24 time.

25 JUDGE YOUNG: Pardon?

1 MR. DAMBLY: I get a different answer each time,
2 so we're continuing to visit the question. I said I'm done.

3 JUDGE YOUNG: Okay.

4 JUDGE COLE: Dr. Peters, we had some discussion
5 about the champion affect and I would like to discuss that a
6 little more. Mr. Corey rated Harvey -- gave him the highest
7 score on each of the nine questions asked.

8 THE WITNESS: Okay.

9 MR. MARQUAND: That's Chandra.

10 JUDGE COLE: Okay. So he gave Chandra the highest
11 score on each of the questions.

12 CHAIRMAN BECHHOEFER: No, Kent gave --

13 JUDGE COLE: Kent gave --

14 CHAIRMAN BECHHOEFER: Harvey.

15 JUDGE COLE: -- Harvey. Well, no, Kent gave
16 Harvey the highest score on seven out of nine and a half
17 point lower on one than the next closest and even on
18 another. A is Harvey and B is Chandra?

19 MR. MARQUAND: Yes.

20 JUDGE COLE: Okay, so Kent gave Harvey the highest
21 score on seven out of nine, even on one and half a point
22 lower than Chandra on one question. And Corey gave Chandra
23 the highest score on nine out of nine questions. Now if we
24 just assume that the champion is a champion for his man and
25 he gives him the highest grade, a C, champion, and he's

1 neutral on the others, so he gets an A, and both Corey and
2 kent do that for their people. So they would then wind up
3 with mostly Cs and then two Ns. Both Corey and Kent would
4 wind up with a C and two Ns. That would be equivalent of a
5 score. They would be about equal. They might be a little
6 different, but essentially the same. Rogers is neutral on
7 all of them. So he winds up with three Ns. In every case
8 the ones with a C are going to prevail over the three Ns.
9 That seems to me to be a pretty good demonstration of the
10 affect of the champion action in a trial of three. Did we
11 look at that? Did you look at that statistically to see
12 whether that was significant?

13 THE WITNESS: So what you have is, you have -- did
14 you say two Cs and four Ns?

15 JUDGE COLE: No, one C, because he was neutral on
16 -- he was neutral with everybody except his man who he was
17 championing.

18 THE WITNESS: Yeah, okay. So Corey had one C and
19 --

20 JUDGE COLE: Two Ns.

21 THE WITNESS: -- two Ns. Kent had one C and two
22 NS.

23 JUDGE COLE: Right.

24 THE WITNESS: And Rogers had three Ns.

25 JUDGE COLE: Three Ns.

1 THE WITNESS: That's what I mean. Okay, in the
2 whole big picture we had two Cs and if we add the rest of
3 that, we have seven Ns.

4 JUDGE COLE: So that would be -- if the champion
5 effect were to prevail -- and the numbers seem to indicate
6 that that's a possibility, particularly when one was rated
7 highest on nine out of nine questions. Of course, it could
8 be also that he just answered them better.

9 THE WITNESS: Okay. You -- this issue has been
10 brought up a number of times of the rank ordinal information
11 and that's not necessarily a bad thing to do. Some people
12 can do an ordinal look at that. From a statistical
13 standpoint variables are classified into four categories,
14 nominal, ordinal, interval and ratio.

15 JUDGE YOUNG: What was the third one, interval?

16 THE WITNESS: Nominal, ordinal, interval and
17 ratio.

18 JUDGE YOUNG: Interval?

19 THE WITNESS: Interval, i-n-t-e-r-v-a-l. Like in
20 interval. There's a five-minute interval.

21 JUDGE YOUNG: Interval?

22 THE WITNESS: Yeah, interval.

23 JUDGE YOUNG: Okay, thank you.

24 THE WITNESS: And so there's a hierarchy. A
25 nominal variable is something that's qualitative, men and

1 women. Ordinal is a rank ordering. Football rankings are
2 ordinal. What that means is, the team that's ranked number
3 one is a little better than the team ranked number two and
4 number two is a little better than number three. But the
5 distance between those is unknown and in statistics that's
6 the next highest level of measurement. But in football, the
7 team that's number one is not necessarily one point better
8 than the second ranked team and that team is not necessarily
9 better -- the number two ranked team isn't necessarily one
10 point better than three. It's meaningful football rankings
11 because we just want to know about number one. But that's
12 ordinal.

13 Interval is the next, and that's when you use
14 ratings, as in interview. That's a very common procedure
15 and that's the next highest level of rating and is
16 universally considered a better type of a rating to deal
17 with. So often people confuse ratings and rankings. Here
18 all of my analysis were based on ratings, because that's the
19 highest level that we have. A ratio scale has a true zero
20 in it, and that would be distance. For example, something
21 can be zero or height. Something can be not there at all
22 and have no height or it could be six feet tall. So that's
23 a ratio scale usually used more in the physical sciences.

24 So I used what was the most relevant and highest
25 quality type of data. I gave you a little explanation on

1 that as to why I did not look a lot at the rank ordering,
2 because the fact that Corey gives someone a little bit
3 higher ranking than someone else is taking what we have,
4 which is ratings data and dropping it one tier down, and are
5 four levels of data analysis or categorization of data, and
6 probably taking a piece of information and making it a
7 little bit less precise than what it can be used. So, I
8 guess, from a statistical standpoint, whenever people have
9 ratings they play in the world of ratings and rarely do a
10 lot with rankings. So I did not spend a lot of time looking
11 at the rank ordering of those. A little background on that.

12 Your other issue around the champion effect can be
13 true. I go back to something I said earlier, we have to see
14 to what effect that plays into the involvement in a
15 protected activity category, which is why I think we're here
16 today, to look at that. And to the extent that championing
17 plays into involvement in a protected activity, then it
18 would be a relevant thing to consider. If it's just
19 championing, I don't know if there's any laws against
20 championing someone. It would be how does that affect
21 involvement in protected activity. I probably gave you more
22 than you were looking for on that.

23 CHAIRMAN BECHHOEFER: Well just to follow up on
24 some of my earlier questions, which were similar to Dr.
25 Cole's. Wouldn't the -- if the third person, instead of Mr.

1 Rogers, had been somebody who was championing Mr. Fiser,
2 would not the effect of engagement in protected activities
3 possibly be a plus for that rater?

4 THE WITNESS: Yeah. Let's -- can we do this? Can
5 we look at plot 1 and let me see if this answers your
6 question, because this is the one that plays into this
7 championing question. On plot 1, under Corey, we see that
8 the blue line is the highest. So we're postulating Corey
9 championed A, Chandra. That's a summary of what we've said
10 so far. And Kent champions the red line, which is an 8.94,
11 which is Harvey, which is A. It's pretty clear. Now let's
12 just say that Rogers championed Fiser, because that's what's
13 left.

14 CHAIRMAN BECHHOEFER: Or a substitute would have
15 championed --

16 THE WITNESS: Someone. Let's say Smith is in
17 here. And Smith championed Fiser. So let's take Fiser's
18 5.67 and put that just a little bit above that 8.56, put it
19 at the top of that ranking, if we want to talk about
20 rankings. Are y'all with me so far?

21 CHAIRMAN BECHHOEFER: Yes.

22 THE WITNESS: So let's call it a -- call it a
23 nine. Give it half a point distance from that 8.56. So now
24 Smith has championed Fiser. In our rankings game it's a
25 tie, isn't it? Everybody got a C.

1 CHAIRMAN BECHHOEFER: Yes.

2 THE WITNESS: But who -- do you think Fiser would
3 have been selected when we look at what the two people who
4 knew of his involvement in a protected activity? If we look
5 at that, you can clearly see that Fiser still has the lowest
6 ratings when we move from a rankings situation where each
7 column would have a C on it now. Corey for Chandra, Kent
8 for Harvey and Smith for Fiser. We took that downward
9 angled green line and we swung it up to look like it would
10 be almost sharper than a 45 degree angle and gave it a nine.
11 That one gets a C. Each column now gets a C. And if you
12 look at rankings, we have a tie. Kind of a quandary. It's
13 a tie, all three. But if we look at ratings, we see that
14 the two people -- if we include them in the mix, the two
15 people, Corey and Kent, who paid attention and rated people,
16 are still down there at a 7.31 and a 7.1. They're
17 languishing behind, and if we averaged those scores, I don't
18 know whether A or B would win, but I'm pretty sure Fiser
19 wouldn't in that little horse race, as we determined that in
20 playing through on this scenario with everybody getting a
21 champion.

22 CHAIRMAN BECHHOEFER: Well on the same line,
23 though, if you turn to FB16, the list of scores, would it
24 not be likely that if Mr. Rogers were not there and a
25 champion of Mr. Fiser was there, would it not be likely that

1 everyone of those numbers under Mr. Fiser would have been
2 higher? We don't know how much.

3 THE WITNESS: The one -- let's say -- so you're
4 saying Rogers is replaced with a champion --

5 CHAIRMAN BECHHOEFER: Yes.

6 THE WITNESS: -- for Fiser and Fiser's ratings now
7 all become the highest for that category? Is that what
8 you're saying?

9 CHAIRMAN BECHHOEFER: No. I'm saying that maybe
10 you should add collectively at least -- they seem to be
11 higher for Mr. Kent's -- candidate A seems to be higher and
12 for Mr. Corey, candidate B seems to be higher. Would not
13 there have been at least a proportionate increase in each of
14 the scores for Mr. Fiser based on knowledge or friendship of
15 a third SRB member?

16 THE WITNESS: Yeah, I think --

17 CHAIRMAN BECHHOEFER: A different and third --
18 perhaps one who championed --

19 THE WITNESS: For Fiser.

20 CHAIRMAN BECHHOEFER: -- for Fiser?

21 THE WITNESS: And I think what you said is what I
22 just tried to say on that plot 1. In other words, let's say
23 that we took all of Fiser's -- it's the far right column
24 that --

25 CHAIRMAN BECHHOEFER: Far right, yes.

1 THE WITNESS: -- that you're talking about on page
2 16, which is --

3 CHAIRMAN BECHHOEFER: Well --

4 THE WITNESS: -- Fiser's ratings, and let's give
5 Fiser a champion. Is that what you're saying, Smith?

6 CHAIRMAN BECHHOEFER: Right.

7 THE WITNESS: Okay. And now those numbers in
8 Fiser's column become the highest. Let's say eight or nine
9 times for each of those rows. So in other words, candidate
10 B and A, it looks like they're all about eights and nines.
11 Let's give Fiser -- let's just give him straight nines down
12 that column. Is that what you're saying?

13 CHAIRMAN BECHHOEFER: Yes.

14 THE WITNESS: And we have Smith. So Smith
15 champions -- give him 9.5 to make sure that he's a clear
16 champion.

17 CHAIRMAN BECHHOEFER: Right.

18 THE WITNESS: But a nine would be consistent with
19 what I -- this is the exact same thing that I showed you on
20 plot 1. So if you take plot 1, that bottom cell or that
21 bottom dot, 5.67, I guess would be 51 divided by 9. And so
22 when I said swing that line upward -- maybe I can just show
23 -- I'm taking this line on plot 1 and I'm swinging it up to
24 here, so that this 5.67 became a 9. And in order to do
25 that, that meant that all of those numbers in that Fiser

1 column became a 9, which I think is exactly what you're
2 saying.

3 CHAIRMAN BECHHOEFER: I'm hypothesizing at least.

4 THE WITNESS: Yeah. Yeah, that's what we're
5 doing. We're in this hypothesis. So now Smith championed
6 Fiser and we see in the average ratings, if we give that a
7 9, that would be a champion because the rank ordering for
8 the Rogers' column in plot 1 would be such that Fiser came
9 out on top there. So we could go through and label each of
10 these three columns with a C, because each time -- there is
11 a champion each time. One time. And it's a tie if we just
12 look at a nominal variable like champion or no champion.
13 Again, Corey for Chandra, Kent for Harvey and now under this
14 new scenario, Smith for Fiser. That would give us all 9s in
15 the far right column on page 16. If we did that -- now I
16 wish we had a PowerPoint where we could move this line and
17 let you see it. This line comes up. It no longer exists
18 down here, it's here.

19 CHAIRMAN BECHHOEFER: Right.

20 THE WITNESS: So everybody has a champion. And if
21 you look across, it looks to me like it's a pretty close
22 horse race between A and B up here now. But Fiser is only
23 in that race on one point, that's over here with Smith,
24 which is on the right side. Still far lagging behind over
25 here under Corey and Kent, who are very consistent with each

1 other, a 7.31 and a 7.11. Yet they didn't -- they knew
2 involvement in protected activity.

3 JUDGE YOUNG: Let me see if I can clarify
4 something. That would in effect prove what Mr. Dambly said,
5 that is even if Rogers gave him the highest score, if you
6 left all of the other scores the same, Fiser would still
7 come out below.

8 THE WITNESS: He would.

9 JUDGE YOUNG: Now let me ask you -- correct?

10 THE WITNESS: (Nodding head affirmatively.)

11 JUDGE YOUNG: Okay, let me ask you another
12 question. I thought earlier a question had been asked to
13 the effect of if instead of knowledge of protected activity,
14 taking the raw data, actual raw data, you knew that Corey
15 championed candidate B and Kent championed candidate A, and
16 you were asked to determine how likely it was that the
17 championing effect of Corey for B and Kent for A was
18 statistically significant, you would have said that -- as I
19 recall -- that it would not have been statistically
20 significant because the difference between them that Rogers
21 -- the sort of control person, because Rogers was not a
22 champion and Fiser did not have a champion -- would be
23 pretty much the same as your analysis for the effect of
24 knowledge of protected activity with regard to Fiser. In
25 other words, your answer would have been that the likelihood

1 that the championing effect played a significant --
2 statistically significant role in the outcome here was low,
3 correct?

4 THE WITNESS: (No response.)

5 JUDGE YOUNG: That it was not -- it was not
6 statistically significant that the championing effect with
7 these scores, ratings, played a significant role in the
8 outcome. I don't know if I worded that most precisely.

9 THE WITNESS: Your question is, did this
10 possibility of a championing effect play a role in the
11 outcome?

12 JUDGE YOUNG: Right. Significant -- statistically
13 significant role in the outcome. I thought that you had
14 said before that given these -- given these numbers it would
15 not have, because, in effect, you still have -- the two
16 candidates that would have the advantage are the same two
17 candidates that would have the advantage in the knowledge of
18 protected activity versus non-knowledge of protected
19 activity because they weren't the ones who engaged in
20 protected activity. Fiser would be the odd man out on that
21 one, the low man, and Kent and Corey would be the ones who,
22 by analogy, who having knowledge of protected activity
23 against Fiser would now be champions for the other two
24 respectively, that that would not be statistically
25 significant. That that would not be the likely reason for

1 Fiser coming out the low person because of the -- because of
2 the relationship between the numbers between Corey and Kent
3 not being that great, but that Rogers played sort of a
4 critical role because he -- his scores for Fiser were so
5 much lower. In other words, he -- his differences were so
6 much more significant than Corey's and Kent's.

7 Then I want to ask you another question once we --
8 and my next question is, if you add -- just to give you the
9 overall picture. If you add together the knowledge of
10 protected activity effect and assume this championing effect
11 -- I'm sorry, if you add together the knowledge of protected
12 activity factor -- not assuming any effect -- and you assume
13 that there is a championing factor at work, would adding
14 those two factors, variables, together create any difference
15 statistical results than analyzing them separately? Does
16 that make sense?

17 THE WITNESS: Uh --

18 MR. MARQUAND: I've sat here so long I can't
19 concentrate any more.

20 MR. DAMBLY: Can I ask, if we're going to check
21 the one -- because I'm not sure about the one -- the one --
22 the first question. I'd like an answer to it. If you
23 eliminated the fact that protected activity was known or not
24 known and you just deal with A had a champion and B had a
25 champion and Fiser didn't have a champion.

1 JUDGE YOUNG: And Corey applied a champion effect
2 to B and Kent applied a champion effect to A.

3 MR. DAMBLY: And protected activity was not an
4 issue, would you draw that it was statistically significant,
5 the championing effect? Forget that there was any protected
6 activity. Nobody did it, nobody knew about it.

7 THE WITNESS: What do you want me to compare to
8 say is there a statistically significant difference?

9 JUDGE YOUNG: Does the -- did -- just as in the
10 analysis you did, both candidate A and candidate B had an
11 advantage when you're analyzing it in terms of knowledge of
12 protected activity and Fiser was at a disadvantage, would
13 this championing effect, which would have benefitted
14 candidate A and benefitted candidate B, but not benefitted
15 Fiser, would it be --

16 THE WITNESS: I guess --

17 JUDGE YOUNG: -- would these numbers show a
18 likelihood that the championing effect determined the
19 outcome?

20 THE WITNESS: You know what's interesting -- when
21 you look at this, the championing effect -- let's look at
22 Rogers. His ratings are fairly similar on A and B, and yet
23 he wasn't the champion, apparently, for either one of those.
24 So how much of a championing effect there was is a little
25 bit nebulous because the one guy that wasn't championing

1 anybody gave ratings more or less in that ballpark. They
2 were slightly lower because Rogers was a bit more of a
3 severe rater, but not that much. So, you know, it kind of
4 begs the question how much of a championing effect there
5 was, because the ratings were pretty consistent, even when
6 those people didn't have a champion rating them.

7 CHAIRMAN BECHHOEFER: Could you add four to six
8 points to the candidate's scores of the judges who were
9 championing that candidate? I say four to six because of
10 the --

11 JUDGE YOUNG: No, you leave the scores as they
12 are.

13 CHAIRMAN BECHHOEFER: No, I don't think you do.

14 JUDGE YOUNG: These are the facts.

15 CHAIRMAN BECHHOEFER: I don't -- I don't think you
16 do. That's the point. Because the scores for the person
17 with a champion on each -- well on most questions are
18 higher. Collectively they are four to six points higher.

19 JUDGE YOUNG: What you -- what you want to know
20 is, given these scores, which are the scores that were
21 given, how likely is it that any championing effect produced
22 the winner. The question is, is it more likely than not
23 that Fiser was so much lower because of a lack of a
24 champion. Based on what you're saying, I think I hear you
25 saying that with these scores, given that Fiser was so much

1 lower with Rogers who was not a champion of anybody, and the
2 scores of A and B were so similar to each other with Rogers,
3 just as they were with Corey and Kent, that it's more likely
4 than not that there's no statistical significance to the
5 championing effect with these actual numbers.

6 THE WITNESS: It doesn't seem to be that they're -
7 - they could be championing them, because again, we're kind
8 of in this realm of hypothetical. But they weren't doing it
9 a whole lot compared -- again, how do we know if someone is
10 championing? Well, let's compare it to someone that
11 supposedly isn't championing, and those ratings are all kind
12 of close together --

13 CHAIRMAN BECHHOEFER: Well there's a four to six
14 point difference.

15 THE WITNESS: Yeah, when you look at page 16. So
16 that's a small difference. When you say is that
17 statistically significant, I would have to know every
18 statistical test that compares, you know, one or two groups
19 to each other. So I would want to know if you say are you
20 comparing candidate A to candidate B, or are you comparing
21 Corey to Kent or Kent to Rogers, which of those A something
22 versus something else is significant to give you a more
23 precise answer on whether or not I think it would be
24 significant. But I do know in general when we look at A and
25 B compared to each other they're not -- there's not a lot of

1 significance going on because it was close to a dead heat
2 between those two.

3 JUDGE YOUNG: How likely is it that having a
4 champion or not having a champion played a significant
5 difference in the outcome?

6 THE WITNESS: That I can give my opinion on. I
7 would say because of what I said about Rogers, Rogers'
8 rating is fairly similar, that I don't know that being a
9 champion made that big of an impact when you look at
10 ratings. Now if you look at rank orderings, someone might
11 have given someone an 8 and someone else an 8.5 to try and,
12 you know, throw -- tilt the game one way or another. But
13 when you look at ratings, which is a little bit higher level
14 of measurement, it's pretty close. You might have a few
15 differences here and there. I don't think they're
16 statistically significant.

17 JUDGE YOUNG: And then my second question was:
18 When you add two variables into the mix, that both are
19 negative against Fiser, in other words, the knowledge of
20 protected activity factor and the championing factor, and
21 you get these numbers, does the fact that you have two
22 variables that are negative on Fiser increase the
23 statistical likelihood or decrease the statistical
24 likelihood of significance? Does that...

25 THE WITNESS: I would give this answer. The

1 likelihood of statistical significance is derived just from
2 what those numbers in the ratings are. Now, what caused
3 those numbers to be that, what we're doing is adding another
4 reason why.

5 JUDGE YOUNG: Right.

6 THE WITNESS: It -- but the straightforward impact
7 on significance, it doesn't make any difference, because
8 that only looks at the numbers, themselves. And you're
9 getting a...

10 JUDGE YOUNG: So the number...

11 THE WITNESS: The numbers would be exactly the
12 same, whether we said it's due to the month of the year the
13 interviews were conducted. The numbers would still be the
14 same, but we're adding some of our hypotheses to that as
15 to...

16 JUDGE YOUNG: Right.

17 THE WITNESS: ...why those numbers are different
18 from rater to rater. Is it because of the championing
19 effect, or is it because of knowledge of protected
20 activity...

21 JUDGE YOUNG: Or both?

22 THE WITNESS: ...or both? Or is it the same
23 thing?

24 JUDGE YOUNG: And my question is, just trying to
25 understand from a statistician's viewpoint, never having

1 taken any course in statistics other than the one I
2 mentioned, when you -- if you add more than one possible
3 reason, does that change the -- the statistical analysis, or
4 does it just remain the same as long as the numbers are the
5 same? Does it...

6 THE WITNESS: Okay, so we -- we have more than one
7 independent variable causing the ratings?

8 JUDGE YOUNG: Right. Right.

9 THE WITNESS: Which is essentially what we're
10 saying. It depends how you use those independent variables.
11 But it can make it a little bit more difficult to find a
12 statistically significant outcome. It just depends whether
13 you did an interaction or you did mean effects or what have
14 you. But I hope that's a good enough answer on that.
15 You're talking about more than one independent variable;
16 things like knowledge or championing or what have you, and
17 their effect on the dependent variable, which is the
18 ratings.

19 JUDGE YOUNG: Right. If -- if Mr. Marquand had
20 come to you and said, "Okay, here are the numbers. And I
21 want you to assume that John Corey was actively championing
22 Candidate B, and Charles Kent was actively championing
23 Candidate A, and Corey and Kent -- well, no. Assume that
24 Corey could have been actively championing Candidate B; Kent
25 could have been actively championing Candidate A; Rogers was

1 not championing anybody; Fiser had no champion, no possible
2 champion; and Corey and Kent knew that Fiser had engaged in
3 protected activity. How likely is it that either knowledge
4 of protected activity or this any possible championing
5 effect of Corey's familiarity with Candidate B and Kent's
6 familiarity with Candidate A caused Fiser to lose out, and
7 that that was a statistically significant cause.

8 I know I'm probably not using the exact right
9 language, but my point is, would that combination of
10 independent variables have caused your conclusion on Page 9
11 to be any different if you added a phrase: Because Corey
12 and Kent knew he was involved in a protected activity,
13 and/or because Corey was familiar with and possibly
14 championed Mr. B, and Kent knew and possibly championed
15 Candidate A.

16 THE WITNESS: I guess I'll say this. The
17 differences are pretty dramatic here, so if you added one
18 more variable, like you're talking about, I don't think it
19 would have a big impact on the results in this particular
20 study; okay?

21 JUDGE YOUNG: Thank you.

22 BY MR. DAMBLY:

23 Q I guess I -- I have a question. Were you told
24 that Kent and Corey knew, going into the interviews, that a
25 complaint had been filed by Fiser on the selection that they

1 were going to be involved in?

2 A Was I told that they were told that before the
3 interviews?

4 Q That they knew that there was a complaint on the
5 very selection that they were doing interviews for.

6 MR. MARQUAND: Well, I'll object. That's a
7 mischaracterization. Mr. Corey testified he was not aware
8 of that.

9 MR. DAMBLY: Well, that's your...

10 MR. MARQUAND: And if we're going to ask the
11 witness assumptions which are not consistent with the
12 record, I don't know what value that is.

13 JUDGE YOUNG: Well, he can ask alternatively. I
14 guess if you want to follow up on...

15 BY MR. DAMBLY:

16 Q Maybe I'll just ask the question this way. If the
17 rating members knew -- if some knew that there was a
18 complaint on the exact action they were taking, would it
19 change your opinion of how they might score somebody that
20 they wanted to not select because of protected activity, but
21 knowing that those numbers in that case were the subject of
22 a dispute that was going to be looked at by third parties?

23 A So you want my opinion on how that might affect
24 their ratings, if they had this heightened level of
25 knowledge?

1 Q Right. I mean, you're comment before that you
2 would have expected them to rate him down where Rogers did,
3 for example. If they knew, in fact, that their scores were
4 going to be looked at in this case because -- on that very
5 subject, do you think they would have rated him higher or
6 lower than they might otherwise have rated him?

7 MR. MARQUAND: Are we asking this as his personal
8 opinion, or based on his statistical analysis?

9 JUDGE YOUNG: Is the question you're asking that
10 if -- if the question asked Mr. -- Dr. Peters in the
11 beginning was: Assume that knowledge of protected activity
12 means knowledge that Fiser was challenging the very activity
13 that they were engaging in, interpret knowledge of protected
14 activity that way, would it change your -- your conclusion?

15 MR. DAMBLY: Well,...

16 JUDGE YOUNG: Is that your question?

17 MR. DAMBLY: ...that wasn't exact -- he had said
18 at one point, if you look at that one chart, and in point of
19 fact, because Kent and Corey rated Fiser up here, and down
20 at the bottom was Rogers, that that would indicate that they
21 weren't taking it into account. Because if they were taking
22 protected activity into account, you would expected their
23 scores to be even lower than -- than Rogers.

24 BY MR. DAMBLY:

25 Q And my point or my question was if they knew -- I

1 mean, that was your assumption, that they would have rated
2 him lower than Rogers, because he didn't know about it. But
3 if they knew that those ratings were going to be reviewed in
4 that very case on the very selection they were making or
5 involved in, do you still think that they would have rated
6 him low -- much lower than -- than where they thought he
7 should be, for example, because of the protected activity,
8 knowing they're going to have to testify, be interviewed,
9 and all that kind of exciting stuff?

10 A Well, some of these scenarios about how
11 sophisticated their plans were to manipulate this system,
12 it's hard to say how -- how they would have come out on
13 that. You could -- you could give a variety of situations.
14 Sure, maybe you're saying, well, they would have been a lot
15 lower than Rogers, but they tempered that because they were
16 a bit worried about the situation. So they boosted their
17 ratings, which were biased, in a low manner. And they
18 didn't bias them as badly. So that's why they ended up
19 somewhere where they did.

20 You know, to what extent these two people got
21 together and formulated a plan, I just don't know. Their
22 heightened concern over, you know, oversight on the
23 interview process and potential litigation or whatever,
24 later, if they knew that---I don't know if they knew that or
25 not---could have done all kinds of different things. You

1 could argue a wide variety. They still could have been low
2 or they could have -- you could also say why weren't they
3 then closer than they were. If they're trying to, you know,
4 play the game but be sophisticated about it, then maybe they
5 should have been a little closer than they are. There's a
6 variety of scenarios on that one; okay?

7 I don't have any knowledge of how much these two
8 conversed with each other or developed schemes to throw the
9 ratings. I don't know a lot about those kinds of
10 situations. I know what the ratings I was given (sic) and
11 the analyses that I did.

12 JUDGE YOUNG: Does -- let me just understand.
13 Does the -- in performing this analysis, does the definition
14 of what -- of the variable, how potentially harmful the
15 variable is, does that change how you approach the analysis
16 of the numbers and the statistical significance that you end
17 up with?

18 THE WITNESS: Tell me exactly what you mean by
19 "how harmful the variable is."

20 JUDGE YOUNG: Well, you -- you performed this
21 analysis with the question put to you that Corey and Kent
22 knew about Fiser's protected activity.

23 THE WITNESS: Right.

24 JUDGE YOUNG: If you changed it to what Mr. Dambly
25 was saying, that not only did they know about his protected

1 activity, but they knew that the protected activity was
2 against them, so that it potentially had a much greater, you
3 know...

4 THE WITNESS: Okay. It's more personally salient
5 at that point in time, because...

6 JUDGE YOUNG: Right. It had a...

7 THE WITNESS: ...someone's looking at me
8 personally and how I rate this.

9 JUDGE YOUNG: Right.

10 THE WITNESS: That wouldn't have any bearing on
11 this, because what I did is just created a dichotomy. And,
12 you know, if you want to know the nuts and bolts, Corey and
13 Kent are a zero and Rogers is a one. That's called dummie
14 coding in the computer. And so the degree to which they
15 have personal buy-in into this doesn't affect how I code
16 that in the computer, and all these numbers and analyses
17 would be exactly the same.

18 It'd be the same if we were looking at a cure for
19 cancer and did an analysis versus whether or not this
20 teaching style was better for first graders than another
21 teaching style, or whether we're looking at an interview
22 process. We make determinations about how to code the
23 information and analyze it from there. So...

24 JUDGE YOUNG: So if -- so if you'd done all the
25 same tests, am I understanding you correctly to say that --

1 that because the numbers are what they are, and because
2 Rogers' numbers are what they are, that the statistical
3 likelihood was not great that knowledge of protected
4 activity, even if they knew it was against them, that would
5 remain the same? I'm just trying to get an idea of...

6 THE WITNESS: Yeah. What you're -- if I
7 understand you right, we're going from the fact that they
8 knew Fiser was involved in a protected activity, to the fact
9 that they knew someone's going to watch this interview
10 really carefully because Fiser was involved in a protected
11 activity. I don't see that as really having a big bearing
12 on what I would have done or what I did do.

13 JUDGE YOUNG: The tests you would have performed?

14 THE WITNESS: Yeah. And it's the same, when we
15 were talking earlier, what if this was a racial question or
16 something like that. I think I would have done pretty much
17 the same stuff. Yeah.

18 JUDGE YOUNG: Thank you.

19 BY MR. DAMBLY:

20 Q I guess I have two questions. One, I appreciate
21 you wouldn't have done anything different. But in your
22 experience in the personnel world and in psychology, you
23 would agree that, in point of fact, people, knowing that
24 they're going to be -- their actions are really what's being
25 looked at, might act differently than if they didn't know

1 that?

2 MR. MARQUAND: Objection. That's beyond the scope
3 of examination and the reasons he was called as a witness.
4 I mean, now we're just asking him to speculate about things
5 that have nothing to do with the analysis.

6 MR. DAMBLY: It does. It's just -- I mean, if --
7 if you're going to tell me that you did an analysis, but you
8 know in the real world that factors you didn't -- didn't
9 take into account -- you said you -- it didn't matter how
10 they acted. You're taking these numbers. But in the real
11 world, if you knew that you were being looked at, and I
12 think as an industrial psychologist, you would, I think,
13 agree that if I tell you you're going to do a rating here,
14 and then we're going to bring in a bunch of people to look
15 how you did it, you're likely to do it differently than if
16 you think you're on your own and nobody's ever going to look
17 at it.

18 CHAIRMAN BECHHOEFER: Is that a question?

19 MR. DAMBLY: Yeah.

20 BY MR. DAMBLY:

21 Q Is that true?

22 A I would hope that an employee in a work
23 environment would put forth their most accurate rating, no
24 matter what. That would give forth their best effort,
25 whether someone is watching them or not. Now, would they

1 have taken notes that were a little more detailed and those
2 kinds of things? Perhaps so. Would the fact that someone's
3 going to come along later and review this affect their
4 ratings? Observation by others can affect a lot of things
5 we do. But I find it difficult to say that -- you know, to
6 give you an affirmative yes, it definitely biased their
7 ratings; and, in fact, it biased them in a positive manner.
8 They would have been worse yet. Or that it biased them in a
9 negative manner. That's probably a conjecture beyond what
10 I'd feel comfortable with.

11 Q Okay. And the only other question I had is you
12 keep seeming to indicate that you don't know whether Kent
13 and Corey got together, and what kind of scheme. And I
14 haven't asked any questions based on the two of them
15 scheming together. Independently, they both rated people
16 and they both knew about protected activity. It doesn't
17 require a scheme for them both to rate the person that they
18 knew engaged in protected activity lower, does it?

19 MR. MARQUAND: Objection. There's been every kind
20 of hypothetical posed this afternoon.

21 MR. DAMBLY: Not by me. I've never said they got
22 together and did this. And I want to know if independently
23 they could have rated him based on his -- in fact, I think
24 the question I asked you, can you say that when Corey rated
25 him third, it wasn't because of protected activity? That

1 doesn't require a knowledge on Kent's part; right?

2 JUDGE YOUNG: Let me -- let me interject here
3 again, because I'm really -- what I'm hearing is apples and
4 oranges. And I'd really like to -- to see if there's any
5 way to get the two of you on the same page so that I can
6 make sense out of your interaction.

7 Now, what I understand Dr. Peters to be doing is,
8 here are actual numbers. A potential factor in the outcome
9 that resulted from these numbers, namely that Fiser got the
10 lowest score and was the odd man out, is knowledge of
11 protected activity. It could have been just knowledge of
12 some random protected activity out there, or it could have
13 been knowledge of protected activity of complaining against
14 me as a selector; "me" being Corey or Kent. And you're
15 asked to determine, from the numbers that -- that were the
16 actual outcome, how likely it is that that knowledge of
17 protected activity, even if directed against Corey or Kent
18 personally, played a statistically significant role in those
19 numbers.

20 What I hear Mr. Dambly asking is: Isn't it more
21 likely that a person who -- who is -- who is being told that
22 a complaint has been filed against -- against the process
23 that they're right then engaged in would be -- have a
24 greater effect on someone than knowledge of some random
25 other protected activity? Which to me doesn't sound like

1 the same question of: What is your statistical analysis of
2 these numbers, looking at this variable? So it seems like
3 you're talking two different languages there.

4 And I'm trying to give you the benefit of the
5 doubt, Mr. Dambly, of -- of getting an answer that makes
6 sense in your scenario. And I'm also trying to get you to
7 look at these are the numbers. How likely is it that, given
8 these numbers, that knowledge of protected activity directed
9 theoretically against Kent and Corey played a statistically
10 significant role in Fiser having the lowest number.

11 MR. DAMBLY: That's a question I only asked
12 because -- and he's already answered it, more or less.
13 Because it was raised in response to some hypothetical that
14 was posed by somebody other than me, I think; that if, in
15 fact, Kent and Corey knew about the protected activity, that
16 you would expecting the slope of that line, instead of going
17 from left lower down to right, you would expect it to go the
18 other direction. That you would expect the ratings of Kent
19 and Corey to be lower than the ratings of Rogers for Fiser.
20 And I asked a question: Is that true, if you knew you were
21 being looked at, and all you had to do, basically, is rate
22 him lower than the other two people and still affect the
23 outcome?

24 BY MR. DAMBLY:

25 Q But the question I was asking now is: You've

1 drawn a conclusion that is a lot stronger conclusion than
2 potentially affect the outcome. And I was asking, because
3 you keep talking about collusion, is there any way
4 statistically that you can say and demonstrate any
5 correlation that says Mr. Corey did not rank Mr. Fiser at
6 the lowest of the three, and give him a lower score, because
7 he knew he'd engaged in protected activity. Do you have any
8 data from which you can draw a statistical conclusion on Mr.
9 Corey, alone, that says he didn't take that into account in
10 the ratings?

11 A You can't say that.

12 Q And the same with Mr. Kent?

13 A Same.

14 Q Okay. Have nothing further.

15 JUDGE YOUNG: My understanding of what you do is,
16 you can't exclude any possibility. What you talk in is
17 probabilities and likelihoods; correct? Is that my -- is my
18 understanding correct?

19 THE WITNESS: In -- yeah, I think I've been doing
20 two things today. One is answering lots of hypothetical
21 situations. And that's one realm of -- what if this or what
22 if that or these kinds of things. And I'm giving some
23 thoughts to those. Those are, you know, my opinions.

24 In the true statistical sense, which I think's
25 kind of a core mission that I'm called to in this project,

1 you also have some realm of probabilities there when we've
2 talked about the .05. So if I say something is
3 statistically significant, that means 95 times out of 100,
4 when there really is a difference between something, we
5 found it. Okay? There's a five percent chance that I found
6 a significant difference and there really wasn't one.
7 That's what .05 means.

8 And so, even that, as is the case with all
9 statistics, there's a slight probability. I will say that
10 there were a variety of analyses conducted here. All of
11 them exceeded .05, some of them by a long, long ways. So
12 that means the probability that we found a difference,
13 statistically, by random luck of the draw is way less than
14 one out of 20. Maybe one of out a thousand or something.
15 And that was true in -- in analysis over analysis after
16 analysis.

17 So if the question is: Did we ever find any --
18 some statistical analysis by random luck? I seriously,
19 seriously doubt that here. But that is also a little bit in
20 the realm of probabilities. As is my other aspect of what
21 I've been doing this afternoon, in large part, is kind of
22 the probability of, you know, this rater getting exchanged
23 for that rater, or they also knew about this feature of the
24 person or something. That's not really statistics, that's
25 just kind of my opinion in some of those areas.

1 JUDGE YOUNG: So, in response to Mr. Dambly's
2 question, you said you could not exclude that as a
3 possibility. Is -- did I hear you right or...

4 THE WITNESS: Yeah. What I'm trying to answer to
5 him, I guess, would be that: Can I definitively say, from a
6 statistical standpoint, that knowledge in a protected
7 activity was not one of the reasons that those ratings are
8 low? I can't say that.

9 JUDGE YOUNG: All you can say is what the greater
10 likelihood or probability is?

11 THE WITNESS: Yeah. When we put Rogers into the
12 mix, and we can't forget about a third of our information
13 here, then it becomes much more likely that knowledge of
14 being in a protected activity did not bias their ratings.
15 However, his question was: Are you absolutely sure that,
16 when Corey and Kent know about this, that that had no effect
17 on them? And I can't say that absolutely for sure. I
18 couldn't say anything absolutely for sure. If he had asked
19 me about the clothes they wear, does that -- are you
20 absolutely sure, Dr. Peters, that the clothes they wore had
21 no impact on this. I probably would have to say I'm not
22 sure about that, either.

23 JUDGE YOUNG: Okay.

24 THE WITNESS: Okay? But I've made the point, and
25 I guess my theme is over and over, when we consider Rogers

1 and his dramatically lower scores, then that enriches my
2 statements. He asked about Corey and Kent. When we include
3 in a more complex manner all three of them together and
4 think about it all at once and say, wow, when Rogers is
5 considered, and he didn't know about this situation, he had
6 really low ratings for Fiser. Then I find it -- that I am
7 more -- I can put a much higher likelihood on the -- on the
8 possibility that the knowledge that Corey and Kent had
9 didn't unduly affect their ratings in a negative manner. So
10 it's -- it's a question that -- I don't mean to make it more
11 complex, but I want to consider all the data, and not throw
12 certain pieces of it away when I give my answer. So I have
13 to look at Corey, Kent, and Rogers to give a good answer.

14 JUDGE YOUNG: Thank you. That's helpful.

15 CHAIRMAN BECHHOEFER: Mr. Marquand, do you have
16 further questions?

17 MR. MARQUAND: I don't have any questions.

18 CHAIRMAN BECHHOEFER: And, Mr. Dambly, you don't
19 have any further?

20 MR. DAMBLY: Oh, no.

21 MR. MARQUAND: Just one. If we -- if he's done,
22 can we take a break?

23 CHAIRMAN BECHHOEFER: Yeah. Well, that's what I
24 was -- I was going to inquire whether you had further
25 questions, to see whether we are done.

1 MR. DAMBLY: But I would say, not as a question,
2 but just so Judge Young is aware, and I'm...

3 JUDGE YOUNG: I'm sorry. Judge Young and what?

4 MR. DAMBLY: Is aware of a legal issue.

5 JUDGE YOUNG: Is aware.

6 MR. DAMBLY: Because I think we -- my recollection
7 is, and I haven't looked at this recently, but I believe
8 there's both DOL and EEO case law that says statistics can't
9 be used to demonstrate motivation in an individual case.
10 They're only used in class actions, and so...

11 JUDGE YOUNG: I'll take all your legal arguments
12 under advisement and consider them.

13 MR. DAMBLY: Well, I just wanted to make sure they
14 knew about it, too. I don't want -- you know...

15 CHAIRMAN BECHHOEFER: Just remember you'll have
16 some proposed findings and conclusions to file.

17 JUDGE YOUNG: Right. All we're trying to do at
18 this point is make sure that all the evidence relevant to
19 any pertinent legal issues, that both parties have full
20 opportunity to get those out; that we understand them as
21 well as possible; and we'll consider all your legal
22 arguments.

23 MR. MARQUAND: Can we dismiss Dr. Peters before
24 anybody thinks of any other questions.

25 CHAIRMAN BECHHOEFER: Yes. Dr. Peters, we thank

1 you for appearing. And you're released.

2 THE WITNESS: Thank you for your good questions.

3 JUDGE YOUNG: Thank you very much.

4 CHAIRMAN BECHHOEFER: You're excused.

5 MR. DAMBLY: Well, I only asked -- I thought you
6 were done when I asked the first three.

7 CHAIRMAN BECHHOEFER: Well, anyway, we'll take a
8 break. Or are we...

9 MR. DAMBLY: Well, let me ask this, because, quite
10 frankly, I'm hot and tired. We went to 8:00 the last two
11 nights, just about. And I don't see a reason to start
12 somebody in another 15 or 20 minutes, and stay here till
13 7:30 or 8:00 or whenever that might go tonight.

14 JUDGE YOUNG: Well, now, earlier somebody proposed
15 doing that in lieu of going tomorrow morning.

16 MR. DAMBLY: Yeah, that was in lieu of going to --
17 we would go tonight till 7:00 in lieu of coming in for two
18 hour tomorrow.

19 JUDGE YOUNG: Right.

20 MR. DAMBLY: That wasn't including the fact that
21 we were going to go to 7:30 or 8:00 on Tuesday, Wednesday.
22 And on Monday we went late, as well.

23 JUDGE YOUNG: Well, we can go off the record and
24 talk about it.

25 MR. DAMBLY: We are, I thought. I'm sorry.

1 CHAIRMAN BECHHOEFER: Yeah, off -- we are, I hope,
2 off the record.

3 (A short recess was taken.)

4 CHAIRMAN BECHHOEFER: Let's go back on the record.
5 Mr. Marquand?

6 MR. MARQUAND: Yes. TVA calls Robert E. Ritchie.
7 Whereupon,

8 ROBERT E. RITCHIE, JR.
9 appeared as a witness herein, and having been first duly
10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MARQUAND:

13 Q State your name, please.

14 A My name is Robert E. Ritchie, Jr.

15 Q How are you employed?

16 A I'm employed at TVA at Sequoyah as the chemistry
17 superintendent.

18 Q And you work for Charles Kent; correct?

19 A Yes, I work for Charles Kent.

20 Q How long have you been employed -- how long have
21 you been employed by TVA?

22 A Been employed by TVA 21 years this past April.

23 Q All right. Where were you employed in TVA in
24 1990?

25 CHAIRMAN BECHHOEFER: I didn't get the years.

1 Q In 1990 through 1992.

2 A Between 1990 and 1992, I was employed with the
3 chemistry department at Sequoyah.

4 Q All right. In -- a was your position in the
5 November, December time frame in 1992?

6 A November, December time frame? Was that the time
7 Bill Jocher was there, or was this before?

8 Q Yes, it was.

9 A Okay. During the time Bill Jocher was there, I
10 was a chemistry program manager.

11 Q And what's a chemistry program manager?

12 A I pretty much was a manager that didn't have any
13 direct supervisory responsibilities. I was troubleshooting
14 for problems when they'd come up. I would go to meetings
15 and represent chemistry at various technical meetings and
16 administrative meetings.

17 Q Had you been a supervisor prior to Mr. Jocher
18 coming to the plant?

19 A Yes, sir, I had.

20 Q All right. Now, and to refresh your recollection,
21 there's testimony in the record that Mr. Jocher came out to
22 Sequoyah in the spring of '92, at which point Mr. Fiser, who
23 had been the chemistry superintendent, was on rotational
24 downtown.

25 A That is correct. He went downtown with the

1 corporate chemistry group.

2 Q And when he had been the chemistry superintendent
3 out at Sequoyah, you had worked under him; is that right?

4 A Yes, sir. I was -- don't remember the exact
5 title, because we changed titles quite often. But it was a
6 -- the chemistry operations are pretty much the laboratory
7 manager, and I also worked with operations.

8 Q And you reported directly to him at that time; is
9 that right?

10 A To Gary Fiser.

11 Q Yes.

12 A Yes, sir.

13 Q I'm going to show you a document which we've
14 marked previously as TVA Exhibit 129. It's entitled,
15 "Incident Investigation Event Report." There's a number of
16 dates on it. Looks like the latest date on it is 12/17/92,
17 signed by an individual by the name of Paul Shepard.

18 Mr. Ritchie, what is an incident investigation
19 event report?

20 A Okay, the problem title reads, "Inadequate set
21 point calculations for the radiation monitors."

22 Q All right. But I'm not talking about this
23 specific one. What is -- what kind of document is an
24 incident investigation report?

25 A Oh, okay. This is an incident investigation.

1 This was one of our -- part of our original corrective
2 action program. Whenever we had a -- a problem, we would do
3 an incident investigation. And, depending on the severity
4 of the problem or the criticalness and it's relation to tech
5 specs, it would receive a higher degree of scrutiny than
6 some of the others. So an incident investigation was
7 generally something that we would do on a higher level
8 activities (sic).

9 Q So a lower level problem might be identified in
10 something like a problem evaluation report or a...

11 A Right, we...

12 Q ...correction action?

13 A ...we call them problem evaluation reports now.
14 They're pretty much known across the industry as corrective
15 action reports.

16 Q All right. CARs?

17 A Yes, sir. And we call them PERs.

18 Q And we've called them both. TVA's called them by
19 all sorts of acronyms over the years, haven't they?

20 A Yeah. This -- at one time they were called
21 significant corrective action reports, and then there's been
22 various other names and acronyms for the similar type
23 problem.

24 Q All right. And so a more significant one, at
25 least, as you said, one that appears to violate tech specs

1 would be an incident investigation event report?

2 A Right. And part of the incident investigation
3 report would be that you would be working to determine the
4 root cause of the problem, not just fix whatever problem
5 popped up today, and go ahead and go on. But actually go
6 back and look at the underlying causes and try to prevent
7 recurrence of the problem.

8 JUDGE YOUNG: You might pull the microphone a
9 little bit closer.

10 THE WITNESS: Okay.

11 JUDGE YOUNG: Thank you.

12 Q Now, I've handed you this specific incident
13 investigation report, and it's got a number II-S-92-80. Do
14 you see that in the upper right-hand corner?

15 A Yes, sir.

16 Q All right. What is this specific incident
17 investigation report concerning?

18 A Okay, this was a -- preliminary when this came up,
19 we were focused on the lower containment radiation monitors,
20 which is used as an indicator of primary leakage into
21 containment from the reactor coolant system.

22 Q Right.

23 A And it also was used at that time -- it had
24 technical specifications, set points, and we had to maintain
25 the activities within those set points in order not to have

1 a containment vent isolation.

2 Q Now, we've heard...

3 JUDGE YOUNG: In order not to have a containment
4 what?

5 THE WITNESS: Vent isolation. Whenever too
6 much...

7 JUDGE YOUNG: That's fine. I just...

8 THE WITNESS: Okay.

9 JUDGE YOUNG: ...wanted to make sure I heard that
10 right. Thanks.

11 THE WITNESS: Yes, ma'am.

12 BY MR. MARQUAND:

13 Q All right. And, so that I understand, does this
14 particular incident investigation report have to do with
15 inadequate set points because of failure to take into
16 account some gas pressure?

17 A Right. Some of the radiation monitors are
18 designed where the radiation detection bowl is downstream of
19 the pumps. And some of them are designed where they're
20 downstream of the pumps. If they're downstream of the
21 pumps, there is a vacuum on the radiation bowl, and you have
22 to use different pressure calculations to take in account
23 that pressure difference.

24 Q Can you tell, by looking at this particular
25 document, who initiated this problem, the report of this

1 problem?

2 A The initiator's name...

3 Q Tell us what page you're looking at.

4 A Okay.

5 Q And if you'll look, there's a number stamped on
6 each page beginning with FI. The first page is a document
7 stamped FI108.

8 A There should be, but I don't -- I can't read it on
9 these, this one. Five pages back.

10 Q FI112.

11 A And the initiator's name was T. A. Pannell. That
12 was Tom Pannell.

13 Q He's in the upper left-hand corner of the
14 document?

15 A Yes, sir.

16 Q Okay. And does it indicate the time and the date
17 -- or the date that he discovered the problem?

18 A 11/6/92.

19 Q All right. And where did Mr. Pannell work?

20 A He was a work control manager, we called them at
21 that -- at that time. And they pretty much kept up with the
22 -- with the PERs or the incident investigation form.

23 Q All right. Was he assigned individual worked at
24 Sequoyah (sic)?

25 A Yes, sir, he was.

1 Q So this was discovered November 6, '92, and that's
2 the time Mr. Fiser was assigned to work downtown?

3 A I believe that's correct; yes. I don't -- Fiser -
4 - Gary was not at Sequoyah when this issue arose.

5 Q All right.

6 JUDGE COLE: I didn't hear you, sir. You said...

7 THE WITNESS: Mr. Fiser was not at Sequoyah when
8 this issue arose, best of my recollection. Bill Jocher was
9 at Sequoyah at that time.

10 Q Now, if you'll turn to Page FI115.

11 A My copy doesn't have the page numbers.

12 Q It does not?

13 A Oh, okay. Yeah, I see it now. Okay. Excuse me.

14 Q What is that particular page?

15 A What is this page?

16 Q Yes.

17 A This page is an executive summary. When we do an
18 incident investigation, when we present it to management
19 team, besides having all the other complementary
20 documentation and the research documentation, we'll prepare
21 an executive summary to tell a little bit about what
22 happened, and then to also outline the root cause, and also
23 sometimes the corrective actions.

24 Q All right. If you will -- the next page begins at
25 -- which is Page FI116, begins a description of the event.

1 And when you turn to Page FI117, there's a -- in the third
2 paragraph down there's discussion about some events in 1982.
3 Can you tell us what the -- that discussion is about.

4 A Okay, there would be various reasons to revise the
5 set points to the radiation monitors during that time. And
6 all that I can tell from this was that it was raised -- the
7 actual set point that would give you a containment vent
8 isolation was changed to 40 percent of the tech spec limit.

9 Q All right. And as you go through this, was that a
10 problem? Was that part of the problem?

11 A I think what this is doing is establishing a
12 history from 1979 to 1992, and discussing the changes to the
13 radiation monitor.

14 Q Is there somewhere in this document that there is
15 a discussion of the cause of the problem?

16 A Okay, the part there with -- on Page 116, with the
17 initial conditions at the top in the first paragraph, and it
18 starts on the second sentence. It says, "The subject
19 radiation monitor set points do not account for the system
20 design which has the gas sample chamber upstream of the
21 sample pump, thus creating a vacuum. The original gaseous
22 calibration by the manufacturer was performed in atmospheric
23 conditions. The operating pressure difference requires a
24 correction factor to be applied in order to calculate the
25 correct set point for the radiation monitors." And then...

1 JUDGE COLE: Mr. Ritchie,...

2 THE WITNESS: Yes, sir.

3 JUDGE COLE: ...I believe when you initially
4 mentioned that earlier in your testimony, you mentioned
5 downstream of the pump. You meant upstream of the pump;
6 right?

7 THE WITNESS: Some of the radiation monitors, the
8 bowl is downstream of the pump, and some of them is -- are
9 upstream of the pump.

10 JUDGE COLE: All right.

11 THE WITNESS: This radiation monitor was upstream.

12 JUDGE COLE: All right, sir. Thank you.

13 THE WITNESS: The bowl was upstream of the pump.

14 BY THE WITNESS:

15 A Okay, and then it -- it goes through and talks
16 about various changes that have been made to the set points
17 across the years in '79 and '82 for different reasons. And
18 it looks like my impression, from looking through here, is
19 we were trying to establish that we had opportunities in
20 order to catch the set point changes or catch the problem
21 with the radiation monitor, and did not.

22 Q All right. How long had this problem existed?

23 A If it was not accounted for, then it would have
24 been a problem since we originally started the unit up in
25 1980, or ever since the 1979...

1 Q When you said there had been opportunities to
2 catch the problem that had been missed, what types of
3 opportunities had there been?

4 A Anytime we revise TI-18, we would have -- the
5 opportunity would have been there for someone to look
6 through the -- the radiation monitor, methodology by which
7 it worked,...

8 JUDGE YOUNG: The -- anytime you revise...

9 A ...and to establish that.

10 JUDGE YOUNG: I'm sorry.

11 THE WITNESS: Yes, ma'am.

12 JUDGE YOUNG: Anytime you revise the "T"?

13 THE WITNESS: All the procedure. The technical
14 instruction 18.

15 JUDGE YOUNG: I'm sorry? A...

16 THE WITNESS: TI is the technical instruction.
17 That's the procedure that we use to do this. And 18 was the
18 actual number of that procedure.

19 JUDGE YOUNG: Number. Okay. Thank you.

20 BY THE WITNESS:

21 A Okay, and then it -- it goes and talks about in
22 '86 and '87 we did verification and validations on the -- on
23 the various instructions, and Watts Bar personnel were a
24 part of that. And it also points out that there were
25 changes made to the set points at that time, but no one

1 caught the -- the difference in the set points based on the
2 problem before, the vacuum problem.

3 Q On Page FI117, on the fourth paragraph down,
4 there's a reference to the NRC issuing a notice regarding
5 correction for conditions for air and gas monitoring. Do
6 you see that?

7 A Yes, sir.

8 Q Was that one of the opportunities to catch the
9 problem that was missed?

10 A Okay. That -- that could have been one
11 opportunity; yes.

12 Q And the very last two sentences of that paragraph
13 state, "No one addressed the effects of pressure on the RM,"
14 I guess that's rad monitor.

15 A Yes, sir

16 Q "...noble gas detectors. No corrective action was
17 identified."

18 A Right. As a part of the NRC letter. I can't tell
19 what type of letter that was.

20 Q All right. At the bottom of Page 3 it talks about
21 an instruction change to ICF 90-217.

22 A Yes.

23 JUDGE YOUNG: On Page 117?

24 MR. MARQUAND: FI117.

25 JUDGE YOUNG: Mine's sort of...

1 THE WITNESS: Yeah, it's hard to read.

2 JUDGE YOUNG: Okay.

3 A Yes, it looks like here we changed the set points
4 up -- increased them up to 70 percent of the tech spec
5 limit, and removed the set points to the -- what it calls RM
6 90-1-30 and 1-31, which is our purge radiation monitors.

7 Q All right. And then...

8 JUDGE YOUNG: Which is your purge...

9 THE WITNESS: Purge radiation monitors. Part of -
10 - do I need to explain what a purge is or...

11 JUDGE YOUNG: That's okay.

12 THE WITNESS: Okay.

13 BY MR. MARQUAND:

14 Q And then, on the first full paragraph on Page
15 FI118, it discusses a problem evaluation report issued by
16 chemistry in April of '79. Was that another opportunity to
17 catch the problem that was missed?

18 JUDGE YOUNG: You said issued in April '79. You
19 mean...

20 MR. MARQUAND: I'm sorry. Yes.

21 A June 12th? I mean...

22 Q June 12th, '90, a problem evaluation report was
23 issued.

24 A That...

25 Q Identifying April '79 report had not been

1 implemented in plant procedures. Correct?

2 A Right. And then an opp realty evaluation was
3 done. And it looks like we talk about there about the
4 radiation monitors being at 95 percent of their tech spec
5 limit.

6 Q All right.

7 A And it doesn't really say what we did or -- or did
8 not do.

9 Q But apparently, when that problem evaluation
10 report was issued by chemistry, it still didn't go back and
11 address the problem that we had here with the...

12 A Right.

13 Q ...set points to the rad monitors. And then...

14 A Yeah, see, because it says it was based on a
15 current isotopic mix, and it looks like -- well, we were --
16 our CVI set points were at 70 percent of the limit at that
17 time.

18 Q All right. And the next paragraph refers to a
19 revision to the SI and the TI. Were those additional
20 opportunities to catch the problem that -- which missed the
21 inadequate set point calculations?

22 A Okay, that -- that paragraph contains some
23 discussion about what we did then, and then some discussion
24 in -- in retrospect to that condition. So, I can't tell
25 enough from here. Though it -- it would have been an

1 opportunity to at least go back and -- and look at the basis
2 for the set points. Whether or not someone would have gone
3 back to this previous letter, as discussed from the 1990
4 problem evaluation report, I can't tell from reading this.

5 Q All right.

6 MR. MARQUAND: Your Honors, I tender TVA Exhibit
7 129.

8 CHAIRMAN BECHHOEFER: Any objection?

9 MS. EUCHNER: Well, the only objection I would
10 have is, like the previous one that they provided, I believe
11 TVA 130, this one looks like it might have been from a
12 microfilm. And there are spots that are whited out that are
13 hard to read. If you go later in the document, there are
14 lines missing at the bottom and I'm not sure what's on those
15 lines, whether it's a signature or a date. And I would
16 merely ask that they see if they can find a completed copy,
17 the way they did with TVA 130, so that we can be sure that
18 we have a complete copy of this, as opposed to sections of
19 it that aren't clear. Otherwise, I have no objection.

20 MR. MARQUAND: This is the document...

21 JUDGE YOUNG: Sounds reasonable.

22 MR. MARQUAND: ...this is the document that I
23 understand was produced from the microfilm, and I'm
24 tendering it. I'll make an effort to see if a better copy
25 can be -- we'll provide the best available copy. But this

1 may be it. This is the QA -- copy of the QA record.

2 JUDGE YOUNG: Accept it, and if you need -- if
3 they get something better, we can substitute the better
4 copy.

5 CHAIRMAN BECHHOEFER: Well, the board will admit
6 the exhibit, but we would like clearer copies, if possible,
7 and more -- and particularly if bottom lines are left off,
8 corrected copies of that sort. I think it would be
9 important to provide the best copy you can get.

10 MR. MARQUAND: We'll make an effort to do so, Your
11 Honor.

12 CHAIRMAN BECHHOEFER: And I guess it doesn't have
13 -- wouldn't have to be provided to us.

14 MR. MARQUAND: I understand. We'll be back
15 together again.

16 CHAIRMAN BECHHOEFER: Either then, or you can mail
17 it to us.

18 MR. MARQUAND: Certainly.

19 (The documents, heretofore marked
20 as TVA Exhibit #129, were received
21 in evidence.)

22 BY MR. MARQUAND:

23 Q Now, directing your attention to -- you know what
24 the Nuclear Safety Review Board is?

25 A Yes, sir.

1 Q And have you sat in on subcommittee meetings with
2 the Nuclear Safety Review Board?

3 A Yes, sir, I have.

4 Q Do you recall sitting in on a meeting with the
5 Nuclear Safety Review Board in which there was a discussion
6 of post-accident samplings and trend plots?

7 A Yes, sir, that was right after Gary Fiser came
8 back from outage management.

9 Q All right. And, so that we have the time frame,
10 Mr. Fiser's testified he came back from outage management
11 sometime around the end of December of '91 or January of
12 '92.

13 A That -- that sounds approximately correct.

14 Q All right. Who do you recall was in the meeting
15 with the NSRB?

16 A Okay. I remember Tom Peterson, myself, Bill
17 Jocher, Tom McGrath, and Wilson McArthur, and Gary Fiser.

18 Q All right. At that time, Gary was still the
19 chemistry superintendent at Sequoyah?

20 A Yes, sir, he was.

21 Q And what was Bill Jocher's position at the time?

22 A Bill Jocher was the corporate chemistry manager,
23 superintendent, whatever we called them at that time.

24 Q Did someone raise some questions about PASS, post-
25 accident sampling and trend plots?

1 A Our -- there were various things that we talked
2 about, but I do remember some discussions about PASS during
3 the NSRB meeting with both Jocher and Fiser present. I'm
4 not absolutely sure it was at that particular meeting.

5 Q Who raised questions about post-accident sampling
6 and trend plots?

7 A I don't remember who asked the first question, but
8 part of the -- and during the discussion Mr. Jocher probably
9 did most of the talking.

10 Q All right. And who was he directing his questions
11 to?

12 A The questions would be directed either directly at
13 Gary Fiser or directly at the group in -- in relation to
14 what we had done or -- and also at myself.

15 Q All right. Did anyone become upset?

16 A Yes.

17 CHAIRMAN BECHHOEFER: At what? About the
18 question?

19 Q During the conversation, did anyone become upset?

20 CHAIRMAN BECHHOEFER: About this problem? Or
21 about...

22 JUDGE YOUNG: You said yes. Can you tell us what
23 it was about?

24 THE WITNESS: I can -- from what I remember, and
25 there were lots of questions, and when you go to these type

1 of meetings there are -- like there was four of them. And
2 generally Peterson and Mr. Jocher did most of the -- of the
3 talking. And they were directing rapid-fire questions at
4 Mr. Fiser.

5 JUDGE YOUNG: When you say "four of them," you
6 mean four people from off site?

7 THE WITNESS: Yes.

8 JUDGE YOUNG: And looking at what you'd done on
9 site?

10 THE WITNESS: Yes.

11 JUDGE YOUNG: Okay, thank you.

12 BY MR. MARQUAND:

13 Q Who's the fourth? You said McGrath -- oh,
14 McGrath...

15 A McGrath, Wilson McArthur,...

16 Q Peterson?

17 A ...Bill Jocher, and Tom Peterson.

18 Q Jocher. Okay. And, so, Peterson and Jocher,
19 rapid-fire questions at Fiser?

20 A Yeah. Just asked Gary a lot of questions about
21 what was being done here, what was being done there, why'd
22 you do this, why'd you do that. On and on. That -- that
23 type -- that line of questioning is what I remember.

24 Q And who -- who became upset?

25 A I'm -- Gary Fiser became upset with -- with the

1 question, from what I remember. Jocher was sort of
2 irritated, and as was Mr. Peterson. But from them I would
3 have to say more of what I remember thinking about their
4 body language at the time, rather than loud voices or
5 yelling or something of that nature.

6 Q And as Gary became upset, what kind of reaction
7 was there from Mr. Jocher?

8 A I would say there were even more -- more questions
9 and more directed questions at Mr. Fiser.

10 Q All right. Was Mr. Jocher part of the NSRB?

11 A I did not see him as part of the NSRB. He was
12 there as the corporate chemistry manager. Originally, I
13 thought when he came to the NSRB meetings, that it was us,
14 the site, and corporate chemistry sitting down and
15 discussing with the NSRB things that had been done in
16 chemistry, either changes or problems or improvements that
17 had been done in the program since the last NSRB meeting.
18 In this meeting, I would say that Mr. Jocher was more of an
19 antagonist to the chemistry department than he was a -- an
20 ally or a partner.

21 Q All right. Was Mr. Jocher negative or positive
22 about the type of -- the nature of the job that Mr. Fiser
23 was doing?

24 A I would have to say negative.

25 Q Shortly after that, that is when the rotation

1 between Jocher and Fiser occurred; correct?

2 A Yes, sir.

3 Q And during that meeting, did you have an opinion
4 as to whether or not Jocher was attempting to make himself
5 look good at the expense of Mr. Fiser?

6 A At that time in the meeting, I -- I did -- would
7 not say that. But I know later on, after I got to know Bill
8 Jocher, that he -- he did tend to do that sometimes. In
9 thinking back, I'd tie that to that event, but I -- I can't
10 say on that particular day I thought he was out to make
11 himself look good. I did -- I do, however, remember
12 thinking that he was out to make Mr. Fiser look bad.

13 Q Did Mr. Jocher have a tendency to take things out
14 of context and make them -- inflate the problems, whether
15 they were big or small, in order to impress management?

16 A He would make everything a big problem. Or I
17 shouldn't say everything. Most things Bill Jocher brought
18 up, he would work to make a big problem.

19 Q To impress management?

20 A In the eyes of management or in the eyes of
21 whoever.

22 Q Do you recall if Tom McGrath or Wilson McArthur
23 were upset or appeared to be upset with Gary Fiser at that
24 meeting?

25 A I don't remember Tom McGrath or Mr. McArthur

1 saying much of -- much of anything. And my attention at the
2 time, from what I remember, was mainly directed at listening
3 to what Mr. Peterson and Mr. Jocher had to say.

4 Q And did they appear to be upset at Mr. Fiser at
5 all?

6 A Sir?

7 Q Did they appear to be upset at Mr. Fiser at all?

8 A I couldn't tell for -- for sure with those two;
9 no.

10 Q They didn't seem to be, to the extent you recall?

11 A Not that I -- not that I remember. Either way, I
12 couldn't say that they were and I couldn't say that they
13 weren't, after this long.

14 Q Thank you, Mr. Ritchie.

15 MR. MARQUAND: Is that fast enough, Judge Cole?

16 MS. EUCHNER: I have no questions of this witness.

17 JUDGE YOUNG: I'd like to ask a couple of
18 questions to clarify a couple of things, both in your
19 testimony and what came up earlier. You said Mr. Jocher and
20 Mr. Peterson seemed upset, but they manifested it more
21 through their body language? In other words, you were
22 saying that they didn't raise their voices, but they somehow
23 showed in their body language that they were upset. Could
24 you clarify what you meant there?

25 THE WITNESS: From what I remember, I remember it

1 more as a -- just more probing and more questions. The more
2 Gary -- the more upset they got, the more questions they
3 came up with to -- to direct at Mr. Fiser.

4 JUDGE YOUNG: The more upset they got or the more
5 upset...

6 THE WITNESS: No. The more upset Mr. Fiser got,
7 the more questions, the more line of questioning, the more
8 bantering back and forth.

9 JUDGE YOUNG: And you said Mr. Fiser was upset.
10 How did he manifest his upsetness?

11 THE WITNESS: Gary, whenever he got upset, and
12 after working with him quite a bit over the years that I
13 did, he -- he would start finger pointing. I mean, just --
14 that finger would be going like -- like that. I guess we've
15 all seen some people that way. And he -- he was more
16 visible about how he manifested his -- his anger.

17 JUDGE YOUNG: Did he say anything particular, or
18 were there any particular patterns or characteristics of how
19 he spoke?

20 THE WITNESS: I would just say that he -- he got
21 louder and he got more argumentative with Mr. Jocher and Mr.
22 Peterson.

23 JUDGE YOUNG: At any point did anyone get up and
24 leave the room, did you say?

25 THE WITNESS: Not that I recall; no.

1 JUDGE YOUNG: Okay.

2 THE WITNESS: No, I don't -- I don't -- it never
3 got to that type of -- or that I -- I don't remember
4 anything where someone would get mad enough to slam things
5 down and get up and leave.

6 JUDGE YOUNG: Do you recall how Mr. McGrath and
7 Mr. Peterson ultimately did leave the room, whenever they
8 did? Were you there? Do you know? If you don't know, just
9 say you don't know.

10 THE WITNESS: I -- I don't recall.

11 JUDGE YOUNG: Okay. The other question I wanted
12 to ask you, and it's fairly short but it involves looking at
13 TVA Exhibit 73, which was mentioned on June 11th, at Page
14 27-18. And this was when Mr. Fiser was being cross-examined
15 by Mr. Marquand. And I don't know whether this exhibit was
16 ever introduced, but it was referred to by Mr. Marquand and
17 looked at, I think, by Mr. Fiser. TVA Exhibit 73. It's in?
18 Okay.

19 If you could look at that exhibit. It looks like
20 the first two pages refer you over to the third page, which
21 describes a problem or a -- says, "6A requirement violated,"
22 Item #1. Item #2, and then 8A, description of condition,
23 had to do with the PASS sampling and analysis of PASS
24 samples. And your name is on there under -- or in the space
25 for "Supervisor's Approval." It looked like it was

1 initiated by Gregory Taylor. Says, "Coordinated with Bill
2 Jocher."

3 THE WITNESS: Okay. Yes, ma'am.

4 JUDGE YOUNG: My question is: Do you recall
5 whether Mr. Fiser had anything to do with the initiation of
6 this SCAR, it's called; right? S-C-A-R?

7 THE WITNESS: Yes, ma'am.

8 JUDGE YOUNG: Had anything to do with the
9 initiation of this SCAR either at the time or as a result of
10 earlier activities that he had been engaging in that -- that
11 in any way resulted in the issuance or the whatever you call
12 it, issuance or filing of the SCAR?

13 THE WITNESS: Okay, this particular SCAR was
14 initiated in May, and I'm pretty sure Gary Fiser had gone
15 back downtown in -- in May.

16 JUDGE YOUNG: But had -- while he was there, had
17 he done anything that would have contributed to the
18 discovery of the problem and the initiation of the SCAR, but
19 since he was gone somebody else signed it, but really, it
20 was a result of his looking -- finding the problem,
21 identifying the problem, analyzing the problem, trying to
22 solve the problem, anything -- anything in that realm?

23 THE WITNESS: Not that I know of.

24 JUDGE YOUNG: Okay.

25 THE WITNESS: There were lots of things about PASS

1 that would come up over the years, because we train on post-
2 accident sampling on -- on an annual basis. But, as far as
3 this specific problem evaluation report, I don't -- I don't
4 know of any; no.

5 JUDGE YOUNG: Do you recall whether there were any
6 other SCARs or -- or program problem evaluation reports
7 filed while Mr. Fiser was there about the PASS sampling
8 issues?

9 THE WITNESS: I don't remember one being filed
10 directly by -- by Mr. Fiser.

11 JUDGE YOUNG: What about indirectly, through...

12 THE WITNESS: Yeah, either asking someone to do
13 it. I -- it seems to me that there was an issue with PASS,
14 post-accident sampling, coming out of one of the -- either
15 an NSRB meeting, or a meeting that we had had with Bill
16 Jocher and some other -- other people.

17 JUDGE YOUNG: Other than the one you just
18 described earlier?

19 THE WITNESS: I'm not sure if it was that one.
20 That's what I was saying. At the beginning there was some
21 conversations about post-accident sampling, but I couldn't
22 remember if it was that particular meeting or another
23 meeting.

24 JUDGE YOUNG: Do you remember enough about that
25 one meeting, or one or more meetings, and the discussions

1 about PASS sampling, enough to recall whether the problem
2 had -- the identification of the problem was at the
3 initiation or -- or some -- in any way, direct or indirect,
4 of Mr. Fiser? In other words, that it was -- it was his
5 attention to it that brought it out and caused it to be
6 reported and...

7 THE WITNESS: No, ma'am.

8 JUDGE YOUNG: You just don't remember?

9 THE WITNESS: I do not.

10 JUDGE YOUNG: Okay. Thank you.

11 THE WITNESS: I -- I can't think of any -- any
12 incidents that I remember him directly or indirectly telling
13 someone, hey, this is a problem. We need to -- to write
14 this up or...

15 JUDGE YOUNG: Okay. And then, just to...

16 THE WITNESS: ...we need to go to get more
17 information about it.

18 JUDGE YOUNG: I'm sorry. Go ahead.

19 THE WITNESS: It would either be to -- you know,
20 as a supervisor, chemistry manager, to tell someone, hey,
21 this is a problem. Go write this up. Or else, hey, I
22 believe this is a problem. Go gather some more information
23 and let's -- let's look at this. And I don't -- I do not
24 remember that -- that happening in that way.

25 JUDGE YOUNG: And just to clarify, so -- so I

1 understand what happened at the NSRB meeting that you
2 described, I believe you answered that the person who
3 brought that up was Mr. Jocher?

4 THE WITNESS: About post-accident sampling?

5 JUDGE YOUNG: Right.

6 THE WITNESS: Yes, ma'am.

7 JUDGE YOUNG: Do you recall whether any of the
8 things that Mr. Fiser said were to the effect that, "I was
9 the one who discovered this and brought it out and..."

10 THE WITNESS: No.

11 JUDGE YOUNG: No?

12 THE WITNESS: No, I don't.

13 JUDGE YOUNG: You don't recall?

14 THE WITNESS: I don't recall; no.

15 JUDGE YOUNG: Okay. Thank you.

16 BY MR. MARQUAND:

17 Q Mr. Ritchie, you said that there'd been some
18 questions going on at this meeting and -- back and forth
19 with Jocher and Fiser. Were the -- and that Fiser got
20 upset. Were the questions about PASS and the ability --
21 Jocher's questioning whether or not the technicians were
22 adequately trained to meet the three-hour...

23 A The main thing I remember at that meeting were the
24 discussions on the -- on the so-called trend plots. And,
25 like I said before, I remember some discussions about PASS,

1 but I do not remember if it was that exact meeting. Because
2 when the NSRB comes out, we discuss several things. And I
3 believe it was that meeting, but I'm not absolutely sure.

4 Q Okay.

5 JUDGE YOUNG: And you don't have any recollection
6 of who raised the PASS issue?

7 THE WITNESS: Not at -- not at that time; no,
8 ma'am. Because PASS was always something that we were
9 training on. We trained on it on an annual basis. There
10 had been some occurrences in '89 and '90 where we had some
11 people that were not physically capable of doing post-
12 accident sampling, and there were some other problems that
13 were handled back in that -- in that time frame with the way
14 we reallocated personnel. But I don't remember any specific
15 instance where it was brought out, like, hey, this is a --
16 this is a problem, that these people that you have now
17 cannot do this.

18 JUDGE YOUNG: Okay. Just one other question. In
19 these NSRB meetings, when the NSRB people and the corporate
20 people would come out, the "them" that you referred to
21 before, tell me if I -- my impression is correct. My
22 impression is that it was the "them," the people from NSRB
23 and corporate office, who were raising problems, and the
24 people at the site who were responding to them; is that
25 right? Or would there ever be...

1 THE WITNESS: Not generally. It's that way --
2 generally, when the NSRB comes out, they -- and they've
3 changed somewhat. But at this time period, they would --
4 they would gather up problems that had already been
5 identified.

6 JUDGE YOUNG: "They" being the...

7 THE WITNESS: The NSRB. Okay, I'll clarify that.
8 The NSRB would already have an agenda of -- of things to
9 discuss. An generally they would be from previous SCARs, as
10 we call them, or QA also did a lot of auditing and reporting
11 then. They may be the QA reports. They would gather those
12 up. Plus they would come out and talk to the chemistry
13 manager about, well, what type of problems have you had or
14 do you have other problems. And just -- and then they would
15 take a tour of the plant, take a tour of the lab. So it was
16 partially their impressions from what they saw, partially a
17 history, and partially a gathering of the way people
18 answered the questions, is how I took it at the time. And
19 the NSRB was more -- from what I remember, more
20 confrontational then than they have been in the last ten
21 years. Now it's -- it's more of a real discussion about
22 what are you doing about your problems, what problems have
23 been identified. And yes, they will bring things up. But I
24 have never seen anything since then that was as -- and I'll
25 say antagonistic, for lack of a better word, as -- as I

1 remember during that time period.

2 JUDGE YOUNG: That raises two...

3 THE WITNESS: And -- and I remember Mr. Jocher
4 being the lead on those questions.

5 JUDGE YOUNG: Real pushy?

6 THE WITNESS: Yes, ma'am.

7 JUDGE YOUNG: Okay. Two more questions that
8 raises. First of all, did -- in those meetings would there
9 ever be an occasion during a meeting for one of the site
10 people to say, "Well, look, here's a problem we've got." In
11 other words, to initiate a discussion about a problem?

12 THE WITNESS: I would be surprised if it would be
13 a brand new problem, because we -- we had the SCAR process
14 and the corrective action process. And anything that we had
15 should have been brought out in -- in that arena. Now, if
16 they -- if we got to discussing certain issues and something
17 was brought out that maybe had been looked at on a lower
18 level, because back at that time we didn't write as low
19 level corrective action programs, documents as we do now.
20 So if there was a discussion where the -- the importance of
21 something or the priority of something became more apparent
22 at the NSRB, I could -- I could see the importance level
23 being kicked up. But I would be surprised if just all of a
24 sudden a brand new problem would be put out or put forth to
25 the NSRB.

1 JUDGE YOUNG: Okay. And then the other thing, you
2 indicated that the NSRB meetings were more antagonistic.

3 THE WITNESS: At that time.

4 JUDGE YOUNG: Did you mean to suggest by that,
5 that you thought that they had been unfair to Mr. Fiser in
6 any way?

7 THE WITNESS: The way I remember, I remember Mr.
8 Peterson---and this was my impression---Mr. Peterson was
9 always out to spin someone up, to make someone look bad.
10 And in other previous NSRB meetings I remember we would say
11 one thing to Mr. Peterson, and by the time it got back and
12 got in the official report, it looked completely different
13 than the conversations that I had remember.

14 JUDGE YOUNG: So that could have made Mr. Fiser
15 look bad?

16 THE WITNESS: Oh, I think Mr. Fiser was -- was
17 nervous about Peterson being there, and I believe he was
18 nervous about Mr. Jocher being there. Because there had
19 been memos and things that Jocher had put out before that
20 chemistry's not doing this, chemistry's not doing that,
21 chemistry's not doing this. Without ever coming out and
22 looking, he'd just fire off memos. And he would CC
23 practically everybody in the entire organization every time
24 he wrote one of these memos. So, yes, I think Mr. Fiser was
25 already -- I feel comfortable saying that, that he was

1 already nervous about being in a meeting with Mr. Jocher and
2 Mr. Peterson.

3 JUDGE YOUNG: Do you know whether -- and if you
4 don't know, say you don't know. But do you know whether --
5 do you have any reason to believe that the way they were
6 antagonistic towards Mr. Fiser was a result of his having
7 raised any safety concerns?

8 THE WITNESS: I would not think so; no. That --
9 that's...

10 JUDGE YOUNG: And why?

11 THE WITNESS: The NSRB, I -- I would see just the
12 -- just the opposite. That they would be antagonistic or
13 questioning or more directed in their questions because of -
14 - of concerns that had not been raised, or because of
15 concerns that maybe had not been raised to the proper level.

16 JUDGE YOUNG: And what was the last word?

17 THE WITNESS: That -- or else concerned -- pushing
18 to have concerns raised to a higher level. That is the
19 purpose of the Nuclear Safety Review Board, is to make sure
20 that we're putting the proper level of importance, level of
21 sensitivity on plant issues.

22 JUDGE YOUNG: So you were saying that -- that it
23 would have been that the NSRB was raising concerns that
24 weren't treated with enough attention?

25 THE WITNESS: Yes, ma'am.

1 JUDGE YOUNG: Okay. Thank you.

2 JUDGE COLE: This was an NRC subcommittee meeting
3 in Fiser's office, right?

4 MR. MARQUAND: No.

5 THE WITNESS: NSRB subcommittee meeting.

6 JUDGE COLE: You indicated...

7 CHAIRMAN BECHHOEFER: Do you remember the date,
8 approximate date?

9 THE WITNESS: No, sir, I do not.

10 JUDGE COLE: You indicated that a lot of the --
11 the discussion between Peterson and Jocher and Fiser
12 concerned trending.

13 THE WITNESS: Yes, sir.

14 JUDGE COLE: Were you familiar with the -- with
15 the trending program at Sequoyah at that time?

16 THE WITNESS: Yes, sir.

17 JUDGE COLE: You familiar with the problems
18 associated with it?

19 THE WITNESS: We had been doing quite a bit of --
20 of trending. And by trending, we put out different
21 histogram plots for different contaminants, different
22 chemical control analysis that we do on various plant
23 systems. And we had made up a daily trend plot or group of
24 plots that we put out to the operations department and other
25 plant groups.

1 Well, that got to be such a large burden on the
2 staff, that we cut back to putting those plots out once a
3 week instead of once a day. And our supervisors were going
4 to the operations turnover and they were discussing any
5 chemistry problems at the operations at that time. But we
6 had backed down on how often we produced trend plots.

7 Now, for some reason I remember Mr. Jocher thought
8 we weren't doing any plots at all at that time. But that
9 was not the case. We were still doing trend plots, we just
10 weren't putting them out on the same frequency as we had
11 been.

12 JUDGE COLE: All right, sir. So Peterson and
13 Jocher, I guess, were of the view that -- that you should do
14 more trending plots than -- than you were doing or what they
15 thought you were doing?

16 THE WITNESS: That's what I remember; yes.

17 JUDGE COLE: And Mr. Fiser was engaged in
18 conversation with them, explained -- did he explain what the
19 problem was to them?

20 THE WITNESS: Uh-huh.

21 JUDGE COLE: And did they -- and did they hear it?

22 THE WITNESS: They -- they heard it. I don't know
23 that they listened to it. But they had ample opportunity to
24 hear it.

25 JUDGE COLE: They -- they didn't seem to buy Mr.

1 Fiser's argument about the reasons why the program was where
2 -- where it is and why...

3 THE WITNESS: That's my...

4 JUDGE COLE: ...why he could not do what they
5 wanted him to do?

6 THE WITNESS: That's my understanding; yes.

7 JUDGE COLE: Do you think just that they had their
8 mind made up and didn't want to hear anything then except
9 get -- get the work done?

10 THE WITNESS: I would say that they didn't want to
11 hear it. I don't know why they -- they may have thought it.
12 But, I mean, Mr. Jocher liked things done his way.

13 JUDGE COLE: All right.

14 THE WITNESS: There was Bill's way or there was --
15 there was -- was no way.

16 JUDGE COLE: Now,...

17 THE WITNESS: Lots of times.

18 JUDGE COLE: ...Dr. McArthur and Mr. McGuire -- or
19 Mr. McGrath were in this room listening to this
20 conversation, also?

21 THE WITNESS: Yes, sir.

22 JUDGE COLE: And were they participating in any
23 way in that discussion?

24 THE WITNESS: I do not -- I do not remember any,
25 or if there was, very little discussion from either of the

1 two of them once we got that far into the -- into the
2 meeting.

3 JUDGE COLE: How long did this meeting take place?

4 THE WITNESS: They generally last about an hour to
5 an hour-and-a-half.

6 JUDGE COLE: Most of that time was spent on the
7 trending issue?

8 THE WITNESS: That's -- that's the part that I
9 remember, because that's when things started getting heated.

10 JUDGE COLE: All right, sir. Thank you.

11 JUDGE YOUNG: Do you -- do you know anything
12 about...

13 CHAIRMAN BECHHOEFER: I'm trying to get my
14 question in.

15 JUDGE YOUNG: Oh, I'm sorry.

16 MR. MARQUAND: Let's take a number.

17 JUDGE YOUNG: Do you know anything about the data
18 trending that Mr. Kent later...

19 MR. MARQUAND: Instituted.

20 JUDGE YOUNG: ...had done in a -- in a different
21 manner than it had...

22 THE WITNESS: We have always done various types of
23 reporting and data trending to provide information to
24 operations and the rest -- the rest of management. We --
25 we've done big sets of trend plots and we've done a daily

1 report where we went in and put these parameters in a
2 spreadsheet type format, and we've done various things
3 across the years.

4 When Charles -- when we went from operations to
5 rad con, we did revise the report that we were doing, and we
6 did a daily POD report that was based on the report that the
7 shift supervisors used to take to operations for their
8 turnover. Now, a POD is a higher level management meeting,
9 a plan of the day meeting. And we were taking the reports
10 to them and going over key chemistry parameters or key
11 chemistry problems related to those parameters.

12 JUDGE YOUNG: Did that provide just good
13 information or sufficient information, as compared to the
14 bigger ones that you did, maybe, less frequently before?

15 THE WITNESS: The bigger ones we did before was
16 more information than most people wanted. Because we had --
17 when Gary was out, from what I remember, I was the one that
18 actually took the plots from daily to -- to weekly. Now,
19 you know, I'm sure I talked to Gary about them, because we
20 talked all the time, even when he was in outage management.

21 And we did that because most people said they
22 didn't look at that much information. We were providing
23 them with too much information. So we scaled back on the
24 frequency that we did them, and we also later on came up
25 with a report that's probably more closer (sic) to what we

1 have today, which is just a spreadsheet of key chemistry
2 parameters, and that goes to operations, and it also goes to
3 -- to management in the POD.

4 JUDGE YOUNG: Is the -- is the way you do it -- is
5 the procedure that you use to do it today, the daily ones
6 with less stacks of charts...

7 THE WITNESS: Yeah, because the...

8 JUDGE YOUNG: ...is that -- is that something that
9 -- that could have been -- did the idea of doing it that way
10 take some time to develop, or could that idea have developed
11 sooner?

12 THE WITNESS: We -- we had done it back and forth
13 that way for -- for several years.

14 JUDGE YOUNG: Do you think it would have been
15 possible, when they were raising the trending problems,
16 perceived problems at that meeting, do you think it would
17 have been possible to say, "Well, what if we just go back to
18 doing the smaller reports daily?" Do you think that would
19 have gotten a positive response?

20 THE WITNESS: I don't know. I can't say.

21 JUDGE YOUNG: Okay. Thank you, Judge Bechhoefer.

22 CHAIRMAN BECHHOEFER: Okay. Mr. Ritchie, I want
23 to turn to some of the dates and events that you mentioned.
24 And I'll start with page -- the FI117, and there's also a
25 Page 3 on the same page.

1 THE WITNESS: This is on the incident
2 investigation report?

3 CHAIRMAN BECHHOEFER: Yes. Yes. My first
4 question is: When the NRC issued -- I guess it's an
5 information notice. I can't read it too well.

6 THE WITNESS: That's what it -- that's what it
7 looks like.

8 CHAIRMAN BECHHOEFER: 82-49.

9 THE WITNESS: Uh-huh.

10 CHAIRMAN BECHHOEFER: How -- how would Mr. Fiser
11 have had access to that? Would it be like a bunch of
12 information notices circulated to everybody and...

13 THE WITNESS: Mr. -- Mr. Fiser was not at Sequoyah
14 in 1982. This would have been issued -- and I was a lab
15 technician during this time period. But from the way this
16 is worked, the way I remember it working since the late
17 '80s, was that the NRC will issue a bulletin. That bulletin
18 will go to our licensing department. The licensing
19 department will take a first look at it and say, yes, this
20 looks like something that applies to Sequoyah and it applies
21 to this department or this process, and then forward it on
22 to that department in order to further evaluate that notice.

23 Then I know in the late '80s that we would have to
24 write up a response and send it back to licensing. And I
25 would pretty much think it would work the same way in the

1 early '80s.

2 CHAIRMAN BECHHOEFER: I see. Well, you were using
3 the word "bulletin," and it's my impression that information
4 bulletins do direct that licensees take some action, and
5 that information notices do not.

6 THE WITNESS: Yeah, there's a...

7 CHAIRMAN BECHHOEFER: Now, maybe -- maybe my
8 understanding is not correct.

9 THE WITNESS: There is a different level between a
10 notice and a -- and a bulletin. Excuse me, but I may have
11 been using the words interchangeably. This one, in this
12 case, looks...

13 CHAIRMAN BECHHOEFER: Well, it looks like it says
14 notice.

15 THE WITNESS: And I can't tell from reading this.
16 It looks like it...

17 CHAIRMAN BECHHOEFER: It looks like it -- it says
18 notice.

19 THE WITNESS: And I -- I believe you're correct.
20 Because it looks more like notice than bulletin, because it
21 ends in an "E."

22 CHAIRMAN BECHHOEFER: So this could have been one
23 of many notices that the...

24 THE WITNESS: Yeah.

25 CHAIRMAN BECHHOEFER: ...NRC issues which are

1 passed around almost for information?

2 THE WITNESS: Right.

3 CHAIRMAN BECHHOEFER: Without directing particular
4 corrective action.

5 THE WITNESS: Right. And I don't remember now if
6 it's the notice or if it's the bulletin that -- that
7 requires action. But one of them did require action and a
8 response back to the NRC.

9 CHAIRMAN BECHHOEFER: Right. Right. I think it's
10 the bulletin, but...

11 Well, then, going on to this surveillance
12 instruction verification, says 1986 and 1987. Would Mr.
13 Fiser have become aware of that? And if so, how?

14 THE WITNESS: Okay, the way to become aware of the
15 first one, to answer your first question...

16 CHAIRMAN BECHHOEFER: Right.

17 THE WITNESS: ...is that these things are -- are
18 maintained over in licensing. So a person could, if they
19 had a list of bulletins or notices that they were interested
20 in, go back over to our license department, see what our
21 response, if any response, had been taken, official
22 response. In 19...

23 CHAIRMAN BECHHOEFER: And is that at corporate
24 headquarters or was that at Sequoyah?

25 THE WITNESS: I -- I know there was copies of it

1 at Sequoyah. I do not know if at that time there were
2 duplicate copies that would have been at the corporate
3 office. There very well may have been.

4 CHAIRMAN BECHHOEFER: Okay.

5 THE WITNESS: The way we copy so many things, I'd
6 -- I'd be surprised if there wasn't several copies in
7 several different places.

8 1986 and 1987 surveillance instruction
9 verification program, and just a little history here, in
10 1985 we had our major shutdown of both units due to the
11 problems that we were having with equipment verification and
12 all sorts of other things at that time. We were -- in '86
13 and '87 we were in a preparation for restart mode. And as
14 part of that preparation for restart, we were going to go
15 back and verify all of our procedures and validate all of
16 our procedures and make sure and recheck them against the
17 references for technical applicability, and also for use in
18 the field.

19 CHAIRMAN BECHHOEFER: Now, would Mr. Fiser have
20 been involved in that?

21 THE WITNESS: Mr. Fiser did come -- I believe he
22 came to TVA in that '87, '88 time frame.

23 CHAIRMAN BECHHOEFER: So that this program really
24 preceded his coming to TVA?

25 THE WITNESS: Well, I -- I think he might have

1 come in right in the middle of when we were doing all this.

2 CHAIRMAN BECHHOEFER: I see. Okay.

3 THE WITNESS: Because we had -- we had Watts Bar
4 people doing this, and it seems like in the middle of this
5 or a little bit later that we had a change-out in corporate
6 chemistry. We had a Jim Bates from INPO came as a corporate
7 chemistry manager. And then he came out to Sequoyah, and we
8 -- we did several of these procedure verification and
9 validation items. The one it talks about here was a little
10 bit earlier, when we had the Watts Bar personnel. We did
11 have several Watts Bar personnel start on this in the
12 beginning, and laid the groundwork, and then we pulled some
13 technicians and other people up to also do part of this.
14 That was my involvement at that time.

15 CHAIRMAN BECHHOEFER: But would Mr. Fiser have had
16 access to the documents referenced here so that he -- so
17 that it would have been an opportunity for him to step in
18 and make sure the set points were correctly set? I may be
19 not using the term correctly but...

20 THE WITNESS: Yeah. I can see how he would have
21 access to these things. And also I think Gary, when he came
22 from Arkansas Nuclear, he -- he also had had some experience
23 in working with their counting room and radiation monitors
24 there. So what experience or what knowledge he brought with
25 him from that arena, I'm not sure if it would connect

1 directly back with this or not.

2 CHAIRMAN BECHHOEFER: Okay. Now, I guess the next
3 date that's referenced here is April 16th, 1990. I have
4 trouble reading this because of the -- the printing problems
5 or the reproduction problems. But would -- as of that date,
6 could Mr. Fiser have taken action to correct, again, the
7 underlying condition, the miss-set set points?

8 THE WITNESS: During this time period, then, we
9 had several fuel leaks at -- at Sequoyah during the late
10 '80s and early '90 time period. And these fuel leaks would
11 increase the radioactivity in the RCS. And any leakage you
12 may have in containment from the RCS would also leak over in
13 the containment and drive the radiation monitors higher and
14 higher. And I do remember a couple of instances through
15 this time period where we had had the set points set at,
16 say, 30 percent of the tech spec limit. Then, when the
17 activity would get up to 30 percent of the tech spec limit,
18 the set points would be revised somewhat higher, and then
19 follow up the -- the fuel movement from there. Because the
20 reason for the radiation monitor was twofold. One of them
21 was to give the operations -- operators indications of
22 increases in -- in leakage, low-level leakage, and also we
23 had the set point on the containment vent isolation. So
24 during this time period, those radiation monitors -- the set
25 point changes would have been brought about from those plant

1 conditions. There was a particular person that was assigned
2 to radiation monitors and effluents, and he also took care
3 of this part of it, and that was Don Amos. Don Amos would
4 have had another supervisor that he reported to, and then
5 that supervisor would have reported to Gary Fiser. So, in
6 the approval process, the questioning process, the -- you
7 know, looking at what's going on with these changes, Mr.
8 Fiser would have been a part of that; yes.

9 CHAIRMAN BECHHOEFER: I see.

10 JUDGE YOUNG: And you're talking about raising
11 them successively to higher levels?

12 THE WITNESS: Yes, ma'am.

13 JUDGE YOUNG: And that would have represented a
14 problem or...

15 THE WITNESS: No, it's just a...

16 JUDGE YOUNG: ...a means of addressing...

17 THE WITNESS: ...it's just a change. At that
18 time, it was a means -- the plant conditions were such that
19 you were getting close to this containment vent isolation,
20 but you were still well below your tech spec levels. So
21 thinking that everything we were doing was to try to be
22 conservative at that time, then as long as we were...

23 JUDGE YOUNG: Set it way too low at the beginning?

24 THE WITNESS: ...still conservative, we could
25 raise it up somewhat higher. And it would still tell us

1 that we would -- if we had a sudden increase in activity to
2 a very high level, we would get a containment vent isolation
3 and stop any airflow in and out of containment.

4 CHAIRMAN BECHHOEFER: Well, when authorization was
5 given essentially to raise the set points, would one have
6 gone -- would anybody in a position in Sequoyah chemistry
7 have gone to check whether the set points, which
8 theoretically were set lower than they could be and now were
9 being raised, would that have been an occasion for anybody
10 to go check what they were set at?

11 THE WITNESS: There probably, as part of the
12 review process -- it depends -- it depended on the size of
13 the change. The larger the procedure change, the more
14 farther back you went and looked at things. But in this
15 case, with one person being involved in just about all these
16 changes, I can see that he would have had a history of what
17 he had done and -- and probably would not have gone back and
18 researched everything along the way. Because, remember, we
19 had just had the verification process that we had done in
20 '87, '88. And now again here we are in '90 raising that set
21 point. He would not go back and completely research all the
22 inputs and the references into radiation monitor set points.

23 CHAIRMAN BECHHOEFER: Well, would it -- could you
24 attribute that to Mr. Fiser? Would it be fair, in those
25 circumstances, to attribute the failure to correct it to Mr.

1 Fiser?

2 THE WITNESS: As the chemistry superintendent, he
3 has the ultimate responsibility for the changes that are
4 made in the department, just like I do today. Did -- I'm
5 sorry, did I answer your question or did I misunderstand
6 you?

7 CHAIRMAN BECHHOEFER: Well, yes. Yes. I just
8 wanted to get the context in which perhaps the failure to
9 correct could be blamed on Mr. Fiser or...

10 THE WITNESS: Well, it -- it wouldn't -- it
11 couldn't be directly contributed to an error in his part.
12 But as far as being responsible for the error that was made
13 and the people that made it, yes, the chemistry
14 superintendent's responsible.

15 CHAIRMAN BECHHOEFER: See if I can read these to
16 go on to the next one, next -- well, again, the April 26,
17 '92.

18 THE WITNESS: Which page are you...

19 CHAIRMAN BECHHOEFER: Referenced on Page FI118 or
20 Page 4. There's a 4 at the bottom of the page.

21 THE WITNESS: Okay. Oh, okay, the very top
22 paragraph?

23 JUDGE YOUNG: Did that mean '92 or '90?

24 THE WITNESS: Well, I don't know. Generally, when
25 we do a sequence of events, we don't -- that's what threw

1 me. We don't put a 1992 in-between a 1990 and another 1990.
2 Because it goes back on the previous paragraph, on Page 3 or
3 117, to talk about on April the 16th, 1990, we changed the
4 noble gas containment vent isolation set point to 70 percent
5 of the tech spec and completely removed the set points for
6 the radiation monitor 91-30 and 1-31. Then there was
7 another ICF -- I can't read that whole thing well enough to
8 say exactly what it says. It looks like it's just a repeat
9 of the previous.

10 And then on April the 26th -- oh, okay. If it's
11 jumping to April the 26th, 1992, then it has to do with that
12 next paragraph, that when the set points are corrected for
13 the non-conservative TECTRA sensitivities and chamber
14 pressure, the alarm could have occurred at 143. So it looks
15 like to me that it's saying that when we made these changes
16 in 1990, and changed the set points up to 70 percent, in
17 actuality, based on the errors that we found later, that we
18 were actually at 143 percent of the tech spec limit, and not
19 70 percent. That's -- that's how I read this. Yeah, I
20 don't -- I don't really understand what April 26th, 1992,
21 has to do with this sequence.

22 CHAIRMAN BECHHOEFER: Well, it's just in the
23 report.

24 THE WITNESS: The way it's written.

25 CHAIRMAN BECHHOEFER: It's just in the report, and

1 I'm trying to figure out the various times when we've been
2 pointed out that Mr. Fiser had opportunities to...

3 THE WITNESS: Right.

4 CHAIRMAN BECHHOEFER: ...to correct.

5 THE WITNESS: Yes. What -- what I meant was by
6 the fact that this says 1992, it almost does look like it --
7 it should be 1990. But then it may be just a part of a...

8 JUDGE YOUNG: Looking back?

9 THE WITNESS: ...of a commentary on the previous
10 several sentences.

11 CHAIRMAN BECHHOEFER: Well, go down to June 12,
12 1990, which is when a...

13 THE WITNESS: Okay.

14 CHAIRMAN BECHHOEFER: ...problem evaluation report
15 was issued by the chemistry section. Was that under Mr.
16 Fiser at that time, or had he left already to go to
17 corporate chemistry?

18 THE WITNESS: In June 12th of 1990, I think --
19 let's see, 1990.

20 JUDGE YOUNG: He didn't leave until '92, did he?

21 THE WITNESS: Yeah, he didn't leave until '92.

22 And now we -- we had -- David Goetcheus was the chemistry
23 manager before -- we had a lot of changes in people during
24 this time period.

25 JUDGE YOUNG: If he was -- if he was the manager

1 on June 12th, 1990, would he have been responsible, in
2 effect, for the issuance of that PER?

3 THE WITNESS: He would have been responsible for -
4 - yes, ma'am.

5 JUDGE YOUNG: And would -- would that have -- in
6 your experience or to your knowledge, would that have
7 prompted any negative consequences for him issuing that PER?

8 THE WITNESS: Excuse me, would you repeat the
9 question, please.

10 JUDGE YOUNG: In your -- to your knowledge or in
11 your experience, would -- drag race city here. In your
12 experience or to your knowledge, would the issuance of a
13 problem evaluation report like that have resulted in
14 negative consequences for Mr. Fiser? In other words, would
15 people -- would NSRB or management or whoever have -- have
16 been displeased at the issuance of that kind of report?

17 THE WITNESS: I can say that since I have been at
18 Sequoyah that, you know, there's lots of times that people
19 may not like the problem when it's brought up. But I have
20 never seen where someone did not want you bringing the
21 problem forward, when it was all said and done. Yeah,
22 people don't like to be surprised. But I've never felt any
23 type of harassment or any type of antagonism or any type of
24 finger pointing at me, personally, for bringing up a
25 problem. Especially...

1 JUDGE YOUNG: And you've brought -- and you have
2 brought problems up?

3 THE WITNESS: Oh, yes, ma'am. Especially during
4 this period. I mean, this was -- we had come out of the --
5 of the 1980 period where there were a lot of problems
6 brought forth at Watts Bar. We had completely revamped our
7 corrective action programs. The -- we were getting a lot of
8 scrutiny from the NRC, from INPO, from other people about
9 bringing problems forward. And, you know, lots of times
10 people would want -- our managers would want some kind of
11 answer when you brought the problem forward. And, like I
12 say, people did not like being surprised. But I never
13 really felt like we were being threatened for bringing up
14 the problem.

15 JUDGE YOUNG: Thank you.

16 JUDGE COLE: Sir, you indicated that the date
17 April 26th, 1992, which is on FI00118 looks like it might be
18 April 26th, 1990?

19 THE WITNESS: Yeah, because it doesn't seem to
20 fit.

21 JUDGE COLE: If you turn over two pages and look
22 at the top of the -- look at five lines down on FI00120.

23 THE WITNESS: Okay.

24 JUDGE COLE: Seems to be talking about the same
25 thing, only the date there is 1990.

1 THE WITNESS: Oh, okay. Yes, you're correct.

2 JUDGE YOUNG: Yeah. So that should be...

3 THE WITNESS: Okay.

4 CHAIRMAN BECHHOEFER: Yeah, that should be '90. I
5 guess the -- the last one of this sequence of dates was
6 December 27, 1990, when certain further revisions were --
7 were issued. Could Mr. Fiser have taken steps to resolve
8 the problem at that time, given his position?

9 THE WITNESS: Let me read the paragraph, please.

10 CHAIRMAN BECHHOEFER: December 27, 1990, I think
11 it is.

12 THE WITNESS: Okay.

13 (The witness reviews certain material.)

14 THE WITNESS: I can't quite read all of that last
15 sentence. However, when the noble gas set point were
16 further corrected -- okay, what it looks like here is the
17 opportunity would have been there to look deeper at the
18 problem. I'm not -- I'm not exactly sure what this GA
19 calibration report said. But the opportunity would have
20 been there to look -- look more closely or look further,
21 deeper into this problem. I can't tell from here if this GA
22 report really spelled out the chamber pressure or vacuum
23 problem, as we talked about before.

24 CHAIRMAN BECHHOEFER: I see. Do any of the
25 parties have any follow-up questions, both to mine and Judge

1 Young's? And Dr. Cole's, too. He asked a few.

2 MS. EUCHNER: Staff doesn't, Your Honor.

3 MR. MARQUAND: No, Your Honor.

4 CHAIRMAN BECHHOEFER: Oh, well.

5 JUDGE COLE: Excuse the witness.

6 CHAIRMAN BECHHOEFER: Yes. We thank you very
7 much. And you're excused.

8 THE WITNESS: Thank you.

9 JUDGE YOUNG: Thanks for waiting.

10 MR. MARQUAND: Thank you for waiting, Mr. Ritchie.
11 Appreciate your coming today.

12 JUDGE YOUNG: Want to go off the record?

13 CHAIRMAN BECHHOEFER: Off the record for a moment.

14 (Whereupon, the hearing was adjourned at 6:20
15 p.m., to resume at a date to be later set.)
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CERTIFICATE

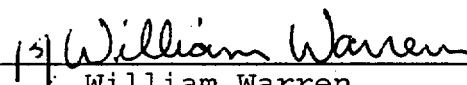
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

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
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