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NUCLEAR REGULATORY COMMISSION

Title: Tennessee Valley Authority

Docket Number: 50-390-CivP et al.

Location: Chattanooga, Tennessee

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

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

Chickamauga Room
Read House Hotel
827 Broad Street
Chattanooga, Tennessee

Monday, June 17, 2002

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

BEFORE:

CHARLES BECHHOEFER, Chairman
ANN MARSHALL YOUNG, Administrative Judge
RICHARD F. COLE, Administrative Judge
Assisted by Raju Goyal, Law Clerk

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APPEARANCES OF COUNSEL:

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Ronald Grover	--	--	3587 3724	3665
James Edwin Boyles	3735	--	--	--

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

49	Premarked	3650
50-A and 50-B	Premarked	3654
51	Premarked	3658
52, 53, 54	Premarked	3663
65	Premarked	3645
110, 111, 112	Premarked	3587
124	Premarked	3821
126	Premarked	3814

TVA:

111	Premarked	3803
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P R O C E E D I N G S

1
2 CHAIRMAN BECHHOEFER: Good morning, ladies and
3 gentlemen, I hope you all had a pleasant weekend.

4 Before we start, we're assisted here today by a
5 law clerk, Mr. Raju Goyal back here.

6 Are there any preliminary matters that the parties
7 wish to raise before we start?

8 MR. DAMBLY: Yes, Your Honor, please.

9 For the staff, I guess in my haste to finish on
10 Friday, I forgot to put in Mr. Reynolds' three statements,
11 Staff Exhibits 110, 111 and 112 and Mr. Reynolds is an
12 officer of TVA. I'd like to move those in.

13 JUDGE YOUNG: Any objection?

14 CHAIRMAN BECHHOEFER: Any objection?

15 MR. MARQUAND: The Board has repeatedly requested
16 counsel to bring matters to the witness' attention, and I
17 find it rather amazing that at this point in time he
18 continues to disregard that request, particularly after the
19 witness is off the stand, and so I continue to object.

20 MR. DAMBLY: I'm not even sure I have a remote
21 idea of what Mr. Marquand just said, but we spent a long
22 time Friday going over those statements and the various
23 inconsistencies or whatever with him and again, under even
24 the federal rules, as an officer, they're prior statements
25 that would be admissions and can be entered into evidence.

1 (The Judges confer.)

2 CHAIRMAN BECHHOEFER: The Board will admit the
3 exhibits. We will take the objections under advisement in
4 considering the weight to be accorded the documents and
5 they're Staff Exhibits 110, 111 and 112.

6 (The documents, heretofore marked
7 as Staff Exhibits 110, 111 and 112,
8 were received in evidence.)

9 JUDGE YOUNG: At this point, are we continuing
10 with Mr. Grover's testimony?

11 MS. EUCHNER: Yes, Your Honor.

12 JUDGE YOUNG: Go ahead.

13 CHAIRMAN BECHHOEFER: You're still under oath.

14 MR. GROVER: Okay.

15 Whereupon,

16 RONALD O. GROVER

17 RESUMED his status as a witness herein and having been
18 reminded of his oath, was examined and testified further as
19 follows:

20 REDIRECT EXAMINATION

21 BY MS. EUCHNER:

22 Q Mr. Grover, when Mr. Marquand cross examined you
23 over a month ago now, he asked you a number of questions
24 about the 1994 reorganization that resulted in there being
25 chemistry and environmental program manager positions; do

1 you recall that?

2 A Yes.

3 Q Did Mr. Fiser compete for one of those chemistry
4 and environmental program manager positions?

5 A Yes.

6 Q And Mr. Marquand asked you if Mr. Fiser filed a
7 Department of Labor complaint, based on his having to
8 compete and you said that no, he did not; is that correct?

9 A That's correct.

10 Q Who was the selecting manager for that position?

11 A I was.

12 Q Was Tom McGrath involved in any way in the
13 decisions for who would be selected?

14 A No.

15 Q Was Joe Bynum involved in that selection?

16 A No.

17 Q Rob Beecken?

18 A No.

19 Q Wilson McArthur?

20 A No.

21 Q Mr. Marquand also asked you a number of questions
22 about interview questions for technical positions and you
23 testified that interview questions should cover all of the
24 key areas of technical knowledge for the position, is that
25 correct?

1 A That's correct.

2 Q And I'd like you to turn to TVA Exhibit 24, it
3 should be in the black notebook to your right.

4 (Brief pause.)

5 Q And if you could turn to page 009 of that exhibit,
6 it should be at the bottom right hand corner, the page
7 number.

8 A Okay.

9 Q Are these the questions that were asked during the
10 interviews for the chemistry and environmental program
11 manager positions?

12 A Yes.

13 Q Are there any technical questions?

14 A There aren't any specific direct technical
15 questions.

16 Q Now when you were interviewing for these
17 positions, were you interviewing both chemists and
18 environmentalists?

19 A Yes, we were.

20 Q If you had asked an environmentalist a chemistry
21 question, would they have been able to answer it properly?

22 A Based on which individual we asked the question,
23 they could have provided some information, but I would
24 suspect -- I had thought at the time that they wouldn't have
25 been able to on specific issues because they weren't

1 involved with chemistry issues at the time.

2 Q And in order to be consistent across the
3 interviews, would you have had to ask all of the candidates
4 the chemistry questions, if there were technical chemistry
5 questions?

6 A Yes.

7 Q And would that have been unfair to the
8 environmentalists who were applying?

9 A Well, we felt that it would be at the time because
10 they weren't involved with any of the programs or issues we
11 were working on in the chemistry area.

12 Q And would the same be true asking the chemists
13 environmental questions?

14 A That's correct.

15 Q Now is that a different situation from 1996 where
16 all of the people interviewing for the PWR and BWR chemistry
17 position were chemists?

18 A Yes.

19 Q And if you were asking technical questions for a
20 chemistry manager position, would you ask questions in all
21 of the key chemistry areas?

22 A Yes.

23 Q Would you exclude one key area and ask all the
24 technical questions in a different key area?

25 A No.

1 CHAIRMAN BECHHOEFER: Mr. Grover, would -- on this
2 latest exhibit, which is TVA 24, page -- a number of zeroes
3 -- 9, which happens to be the interview schedule for Sam
4 Harvey, would question 8, would the response to question 8
5 be considered technical? It would seem to ask for at least
6 technically based responses and would have accepted either
7 chemistry or environmental. So how would you evaluate, or
8 how do you think question 8 would be evaluated, the
9 responses to question 8?

10 THE WITNESS: Right, the point I was trying to
11 make earlier was that there could be some questions here
12 that were technical on an indirect basis, but we weren't
13 asking for necessarily a specific technical expertise to be
14 expressed related to the question. But to ask it in this
15 manner, you're basically giving the interviewee an
16 opportunity to discuss and expand on some of the specific
17 issues in his own area of technical expertise that he's been
18 working on. So the idea was to give each candidate an
19 opportunity, an equal opportunity, to express in his own
20 technical area what he's been working on and, you know, how
21 his contributions have been able to -- he's been able to do
22 his contributions, help resolve that concern or that issue.
23 So it was kind of an indirect question, but again, it
24 allowed each candidate to expand on what his contribution is
25 in his own particular area of expertise.

1 I don't know whether that answers your question.

2 CHAIRMAN BECHHOEFER: Yes, it does.

3 THE WITNESS: But, you know, out of that could
4 come -- you know, you can get a sense of how well he was
5 technically capable of doing his job by his response and his
6 manner of involvement in correcting that concern or
7 addressing that issue.

8 CHAIRMAN BECHHOEFER: Thank you.

9 BY MS. EUCHNER:

10 Q When you started at TVA, you stated in your
11 earlier testimony that you reviewed NSRB minutes to see what
12 the chemistry issues were, is that correct?

13 A That's correct.

14 Q And Mr. Marquand asked you a number of questions
15 about that, including whether you recalled noting that there
16 were long standing chemistry issues at Sequoyah. Were there
17 such issues?

18 A That's correct.

19 Q Were there such issues at Watts Bar and Browns
20 Ferry as well?

21 A There were comparable issues at Watts Bar. We had
22 some issues at Browns Ferry but Sequoyah and Watts Bar were
23 the primary plants where we had significant concerns.

24 Q So the chemistry problems weren't limited to
25 Sequoyah, they were at both plants?

1 A That's correct.

2 Q You made a request to go on rotation to INPO to
3 Mr. McGrath, is that correct?

4 A That's correct.

5 Q Why did you submit that request to Mr. McGrath?

6 A Well, I felt this was an opportunity to expand my
7 experience base, some of the feedback I had received during
8 the performance evaluations and appraisals for myself, one
9 of the areas in which I was asked to focus on as far as
10 professional enhancement was to get more well-rounded -- get
11 more experience in other areas other than just chemistry and
12 environmental. So I saw that as an opportunity, it was
13 something that was not promised or guaranteed and the member
14 utilities all had slots, based on their size and number of
15 plants, at INPO, which they needed to fill on an ongoing
16 basis. And it was a push at that time -- brought to my
17 attention that there was a push at that time, they were
18 looking for possible candidates to send down there.

19 Q Now you said something about it not being promise
20 or guaranteed. Does that mean because you submitted the
21 request, it wasn't an automatic thing, that --

22 A No, no, they -- as I understood it, they would
23 entertain all of the requests and there was some selection
24 process that was followed to determine who would go and I
25 imagine timing and what the individual did and so forth --

1 other things would go into it.

2 Q In addition to that request, were you also
3 planning to apply for the rad chem manager position in the
4 new organization?

5 A Yes.

6 Q Did you ever discuss that position with Mr.
7 McGrath?

8 A Yes, I had a specific meeting with Mr. McGrath and
9 made my desire specifically known that I wanted to interview
10 for that position.

11 Q Did you tell him this before or after he announced
12 that Dr. McArthur was going to be the rad chem manager?

13 A Before.

14 JUDGE YOUNG: Before we get too much further into
15 that, because I know that's going to be a fairly big subject
16 -- or at least I expect it will be -- I had one question
17 about the '94 reorganization and the decision to combine the
18 chemistry and environmental functions. Do you know how that
19 decision was arrived at and who was involved in it?

20 THE WITNESS: Yes, ma'am. I don't know all the
21 parties that were involved in that decision, but our
22 direction specifically directed to me was -- came from John
23 Maciejewski and he basically said the decision was made to --
24 -- well, it started out -- you know, typically in these
25 reorganizations, it starts from a global standpoint, you

1 look at the entire department or division that you're in and
2 you look at well, where are ways we can become more
3 efficient, combine resources, not only in head counts,
4 individuals, but dollars. Are there groups there that are
5 doing similar tasks or similar functions but they're in
6 different departments, can we bring those together, those
7 types of things. so I know those types of --

8 JUDGE YOUNG: Just more specifically though, you
9 were basically told this by Mr. Maciejewski?

10 THE WITNESS: Mr. Maciejewski, John Maciejewski,
11 yes.

12 JUDGE YOUNG: What was his role at the time, what
13 was his job title?

14 THE WITNESS: He was head of our nuclear support
15 division, I'm not sure whether it was a division or
16 department, but he was the manager of our nuclear support
17 organization.

18 JUDGE YOUNG: I see. Thank you.

19 THE WITNESS: Yes, ma'am.

20 JUDGE YOUNG: Excuse me for interrupting. Go
21 ahead.

22 BY MS. EUCHNER:

23 Q When did you find out that Dr. McArthur was
24 selected for the rad chem manager position?

25 A It was just shortly before the staff meeting that

1 Mr. McGrath had called to announce the conclusions and
2 results of the reorganization. He called me just before he
3 had the staff meeting into his office and he informed me at
4 that time that he had selected Mr. McGrath -- I mean Mr.
5 McArthur for the position.

6 Q At that time, did he give you a reason why Dr.
7 McArthur was selected?

8 A No.

9 Q Did you later ask either Mr. McGrath or anybody
10 else why Dr. McArthur was put in that position without
11 giving you the opportunity to compete?

12 A I didn't discuss it with Tom McGrath, but I
13 brought it up on several follow up discussions with Human
14 Resources, Phil Reynolds and Ed Boyles.

15 Q And what reason did they give you for why Dr.
16 McArthur was placed in the position?

17 MR. MARQUAND: Objection, that's cumulative,
18 that's exactly the same questions and answers we went
19 through on the previous session. Why are we revisiting
20 everything we've already done?

21 MS. EUCHNER: Because I am clarifying points that
22 Mr. Marquand attempted to get him to backtrack on during his
23 cross examination. I am entitled to clarify certain points.

24 MR. MARQUAND: Your Honors, clarification doesn't
25 include asking the same question. If she wants to direct

1 his attention to a subject and ask him a new question, that
2 would be appropriate.

3 JUDGE YOUNG: Well, that sounds like a reasonable
4 opener to me, provided it doesn't go too far afield.

5 MS. EUCHNER: None of these questions are going
6 far afield because again, I'm clarifying points that Mr.
7 Marquand attempted to throw into question.

8 CHAIRMAN BECHHOEFER: You may continue.

9 MS. EUCHNER: I'll repeat the question for you.

10 BY MS. EUCHNER:

11 Q What reason did Mr. Boyles or Reynolds or Easley,
12 whoever it was in HR, give you for why Dr. McArthur was
13 placed in that position?

14 A Well, there were several reasons, we went through
15 an iteration process I guess, if you to call it that --
16 that's not the appropriate way to coin it, but you know, I
17 was informed -- well, it started out that I was informed
18 that nothing was done wrong and then we had discussions and
19 I challenged that answer and then we went to well, Ed Boyles
20 stated that well, I made the decision because we felt that
21 you were going to file a complaint either way, so we just
22 made the decision.

23 And so we discussed that and then he said well, we
24 felt that since -- the parties involved felt that since Mr.
25 McArthur had done that function in that capacity prior to

1 the reorganizations -- I'm saying in plural because we went
2 through -- that was the second one since I had been there --
3 he had filled that role before, we felt that it was no more
4 than right to put him in that position.

5 And we went through that process and then well,
6 there was finally an acknowledgement that it wasn't done
7 right and can't we throw it out and can't we do it again and
8 so it was several reasons why that were given to me.

9 Q And just before Dr. McArthur was named the rad
10 chem manager, from 1994 to 1996, had he been performing the
11 duties of the rad chem manager? You mentioned that because
12 he had had those functions prior to this -- was it
13 immediately prior to it?

14 A No, it was from 1994 up through the
15 reorganizations, later that year in '94. So when I hired in
16 he had that function please other groups reporting to him,
17 so it wasn't -- his title wasn't rad chem manager, I believe
18 it was technical support manager, I can't remember exactly
19 what it was, but he had all the three -- chem, radcon and
20 environmental -- under his organization. And that was
21 changed with the '94 reorganization.

22 JUDGE YOUNG: I want to back up one more time. In
23 your previous answer, you said that it was acknowledged that
24 it was done wrong, that the selection of Mr. McArthur was
25 done wrong -- I believe you said that?

1 THE WITNESS: Yes, ma'am.

2 JUDGE YOUNG: Now who acknowledged that?

3 THE WITNESS: Phil Reynolds and Ed Boyles, they
4 were the HR --

5 JUDGE YOUNG: And they told you that they agreed,
6 they acknowledged that the way that Mr. McArthur was
7 selected for the rad chem manager was wrong?

8 THE WITNESS: Yes, ma'am, and they offered to I
9 guess disallow it or, you know, to discard it and start the
10 process again and go through a selection process -- post it
11 and go through a selection process. This was what was
12 offered to me and I expressed well, to me, it can't work
13 because it's already -- preselection has already taken
14 place.

15 JUDGE YOUNG: So what -- Mr. Reynolds and Mr.
16 Boyles, tell me what each of them said and what the
17 circumstances were for their saying that? I'd like to have
18 a better understanding of that.

19 THE WITNESS: Well, I challenged their responses
20 because based on HR policy and based on documents that we
21 were discussion that were related to HR policy, this was not
22 the right policy to follow. Based on what was documented
23 and what should have been done, the position should have
24 been -- a job description should have been rewritten or
25 revised, if they had one prior to, it should have been

1 posted, the position should have been posted and
2 individuals, not only myself but other individuals who met
3 minimum qualifications should have been allowed to interview
4 for that position. And that was not done.

5 JUDGE COLE: But weren't they willing to do that?

6 THE WITNESS: Well, --

7 JUDGE YOUNG: What I wanted to know was what was
8 said to you by Mr. Reynolds and Mr. Boyles that led you to
9 believe that they were acknowledging that it had been done
10 incorrectly.

11 THE WITNESS: Well, they finally admitted that it
12 wasn't done right. That's what they told me.

13 JUDGE YOUNG: What did they say

14 THE WITNESS: Well, Ron, we -- okay, we looked at
15 it and it was not done right, that's basically what they
16 told me . Okay, it was not done right, it was not handled
17 right, in the correct manner.

18 JUDGE YOUNG: And then after that was when they
19 offered to do it again?

20 THE WITNESS: Yes, they said well, we'll throw it
21 out and -- I said well, since it wasn't done right, what do
22 we do now. And they said well, what about if we just throw
23 it out and start over again.

24 JUDGE YOUNG: And was this in one conversation
25 with both of them together?

1 THE WITNESS: Yes.

2 JUDGE YOUNG: Okay.

3 CHAIRMAN BECHHOEFER: Did you feel that the --
4 that if they threw it out and they conducted the usual type
5 of interview that the results would have been preselected or
6 did you think there was a possibility that, as we've heard,
7 the interview process is always people judge each candidate
8 on how he or she answers particular questions and how did
9 you feel that that would not work for some reason, if the
10 job were reoffered?

11 THE WITNESS: Right. I just felt that you
12 basically preselected an individual. Now we want to go back
13 and try to make it right, but you've already preselected,
14 you've already biased the process by selecting an individual
15 without going through the process. So now you're going to --
16 you know, you're going to -- okay, disallow and go through
17 and have a selection process and post it and have the people
18 interviewed, but it's already biased. That's what I felt, it
19 was already biased because -- biased against anyone who
20 wanted to apply for that position, because you've already
21 preselected, so -- the hiring manager already preselected.
22 so it wasn't like it was going to be an independent body
23 involved. I mean the same people involved with the process
24 is going to be the same people doing the selection. That
25 was my position.

1 CHAIRMAN BECHHOEFER: I see. Could the selection
2 manager, however, have avoided what would have turned out
3 to be the results of the interview? You have independent
4 sheets setting forth votes on particular questions and of
5 course, you'd add it up then and if you got somebody other
6 than Dr. McArthur as the winner, could that have been
7 avoided by the selecting official easily or --

8 THE WITNESS: Well, my position was, or my
9 thinking was at the time here you have a selection manager,
10 okay, that didn't follow the process, okay, and so now he's
11 still the selection manager, so the selection manager, he
12 has the final, I mean it's his final call who he wants to
13 select. I mean, there's been selection process where the
14 selection manager has gotten a recommendation from the board
15 and decided that's not the individual he wanted to put in
16 that position and he has the final say, so he doesn't
17 absolutely have to go along -- I'm not saying that's a
18 common practice, but he has the right to say well, I want
19 this particular individual regardless of what the final
20 results are.

21 That's just an example, but I just felt --
22 irregardless of that, I just felt the process was biased.
23 Okay? That's what I felt, because he had a selection
24 manager who now has already indicated who he wants in that
25 position. I think that any other prospective candidate was

1 at a disadvantage. That's how I looked at the situation. So
2 I felt that that wasn't a fair way to handle the situation.

3 CHAIRMAN BECHHOEFER: I see. Well, but wouldn't
4 there have been at least a paper trail if the selection
5 manager had continued to select Dr. McArthur,
6 notwithstanding that he might not have gotten the highest
7 score on the interviews -- wouldn't there at least be a
8 paper trail which would record reasons why the differing
9 selection was made?

10 THE WITNESS: Yes, but again, the selection
11 manager, you know, that individual has got influence over
12 the whole process and so when you've got a selection manager
13 and you've got HR, they basically have concurred on this and
14 agreed to do this, I just felt that the whole situation was
15 not, you know, fairly done. I mean that's just how I felt
16 about it. I mean, you know, that's the reason why we have
17 policy and procedures to follow and this isn't something --
18 these individuals doing the selection in HR, these people
19 have years of experience, so it wasn't something that was
20 just an oversight. They knew the policy, they knew how
21 things should have been done, but a decision was made not to
22 follow the policy. So to me, there was direct intent and
23 reasons behind not following -- not utilizing what the
24 policy is, because the policy was set there to be fair to
25 everyone and to give everyone an opportunity that met the

1 qualifications.

2 So I can only express my opinion. So I just --
3 they asked me and I just told them that I didn't think it
4 was fair.

5 JUDGE COLE: Mr. Grover, you indicated that both
6 Boyles and Reynolds had indicated that they had made an
7 error --

8 THE WITNESS: Yes.

9 JUDGE COLE: -- that they did it wrong.

10 THE WITNESS: Yes.

11 JUDGE COLE: Did they tell you specifically what
12 aspect of policies and procedures they did wrong?

13 THE WITNESS: Well, it wasn't posted, it wasn't --
14 individuals weren't allowed to interview for it. Yeah, we
15 were talking about -- I had a document there, we were
16 talking about the specifics of the -- it was written policy.

17 JUDGE COLE: They had stated initially the reason
18 why they had selected Dr. McArthur was that they said based
19 upon his previous job description, previous PD, that he had
20 rights to that job. Was that incorrect in their view now and
21 yours?

22 THE WITNESS: Yes, you know, you can't -- that's
23 the reason why you have a selection process, is you know --
24 otherwise why have a process at all if you're just going to
25 -- if an individual can just say well, I just want that

1 individual and doesn't give everybody a fair opportunity.

2 JUDGE COLE: But I thought their initial basis was
3 they said that Dr. McArthur had rights to that job.

4 THE WITNESS: Well, that was one of the reasons.
5 I mean, like I said, we went through several excuses why the
6 interview process wasn't held, wasn't carried out. That was
7 one of the reasons I was given, which I didn't agree with.

8 JUDGE COLE: Do you know some of the other
9 reasons?

10 THE WITNESS: Well, like I said before, we started
11 out with denial, nothing was done wrong. Then HR says well,
12 we selected it, we made the decision and not Mr. McGrath,
13 which I didn't agree with because he's the selection
14 manager. Okay, and then well, we got into well, we felt he
15 was the best candidate because he had rights, like you said,
16 before. Okay, that reason was given. And I didn't agree
17 with that. So, you know, to me all the reasons I was given
18 didn't hold water because here were the requirements, here
19 was the policy, this was written policy. And nothing that
20 was stated to me as a reason why wasn't consistent -- was
21 inconsistent with that policy.

22 JUDGE COLE: Would you agree that his previous --
23 his job description prior to this time subsumed all of the
24 duties associated with the radcon manager?

25 THE WITNESS: His job description in '94 possibly,

1 I never looked at it, but I assume that it did because he
2 had those functions, you know, reporting to him within his
3 organization at that time. But during -- when the
4 reorganization occurred in '94, when I was there, his job
5 description, that job description he was working under, went
6 away and he interviewed and was selected for the rad chem
7 manager -- I'm sorry, the radcon manager position, which did
8 not include -- that job description did not include
9 chemistry and environmental, just radiological control.

10 JUDGE COLE: But the one upon which they based
11 their initial decision that he had rights to that job did
12 subsume all of the activities associated with the radcon
13 manager, didn't it?

14 THE WITNESS: Yes, two yrs ago; yes, from two
15 years back, two years prior.

16 JUDGE COLE: Wouldn't that be a sufficient basis
17 to say he had rights?

18 THE WITNESS: I --

19 JUDGE COLE: Since he had all those jobs under him
20 before and he'd done them before?

21 THE WITNESS: Well, yes, but I mean you could make
22 the same argument for other individuals in the organization.
23 In the Navy, I did radcon, chemistry and environmental,
24 okay? Some other individuals may have done that that worked
25 in a different department at the plants. So, you know, --

1 JUDGE YOUNG: well, because he did that before, he
2 worked in that capacity before gave him the rights. No,
3 that's not how it works. Each individual should have an
4 opportunity to interview because other people have
5 equivalent or maybe have -- you may have individuals in the
6 organization with more experience than Mr. McArthur in doing
7 that job.

8 JUDGE COLE: So did they then agree with you that
9 that was incorrect?

10 THE WITNESS: Yes, they did.

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

12 THE WITNESS: Yes.

13 BY MS. EUCHNER:

14 Q You mentioned before influencing the whole
15 process. Does that influence include writing the interview
16 questions?

17 A Yes.

18 Q Does that influence also include selecting the
19 individuals who will sit as the selection review board?

20 A Yes.

21 Q And who was the selecting manager for the rad chem
22 manager position?

23 A Oh, for the '96 reorganization?

24 Q Yes.

25 A Tom McGrath.

1 JUDGE YOUNG: Did you have any particular reason
2 to believe that Mr. McGrath would be unfair to you?

3 THE WITNESS: Leading up to that point, I -- there
4 was no specific -- well, I'm trying to figure out how -- the
5 best way to answer that. I mean, I worked for Tom McGrath,
6 you know. I attempted to do my job to the best of my
7 ability, and try to do an excellent job. Now, when you get
8 into relationships or how he viewed that, I mean, there may
9 have been -- we may -- we differed on certain technical
10 things, aspects or whatever. But he was the -- basically
11 the man that was in charge, and what the final decision was
12 that he made on the situation, we followed through with it.
13 I did not have -- did I know beforehand that he was going to
14 take his course of action or -- no, I didn't. I felt that
15 he would follow the process, as was charged with all
16 managers in that situation who had to go through
17 reorganization, they had to go through a selection process
18 or reduce staff. I mean, I felt that he would follow the --
19 what the policy was. Not...

20 JUDGE YOUNG: Just to clarify.

21 THE WITNESS: ...I don't know what -- I'm sorry, I
22 may not have...

23 JUDGE YOUNG: Just to clarify, what kind of
24 technical disagreements?

25 THE WITNESS: We had just -- and maybe...

1 JUDGE YOUNG: If you recall.

2 THE WITNESS: ...they were -- well, it was -- it
3 was -- maybe "disagreement" is the wrong phrase. In -- we
4 had different approaches on solving, say, a certain problem.
5 We had, you know, a couple of environmental issues. And --
6 and I felt, with -- consistent with the plant, that we
7 should have done...

8 JUDGE YOUNG: If you can't remember examples,
9 that's okay.

10 THE WITNESS: Okay. Okay.

11 JUDGE YOUNG: If you do remember the examples,
12 give me the examples.

13 THE WITNESS: Okay.

14 JUDGE YOUNG: Of which technical problems you
15 disagreed on. If you don't remember, just -- we'll move on.

16

17 THE WITNESS: Well, let me just say this. It
18 wasn't an issue from a -- we disagreed from a pure technical
19 standpoint of -- of...

20 JUDGE YOUNG: Okay. That's all right.

21 THE WITNESS: Yeah.

22 JUDGE YOUNG: That's fine.

23 THE WITNESS: It was just approaches. In other
24 words, we may -- I felt we could solve the problem going,
25 you know, A, B, C, you know, 1, 2, and 3. Let's follow it

1 this way or let's approach the problem and here's our
2 corrective action. And he may have felt, well, no, I think
3 we should approach it this way to solve the problem.

4 JUDGE YOUNG: Okay.

5 THE WITNESS: So those types of -- you know,
6 that's what I'm talking about. How -- how we solve a
7 problem or how we approach solving a problem, we -- we had a
8 couple of disagreements on. But it wasn't -- it wasn't
9 something where it was -- got heated or was unprofessionally
10 handled or something like that.

11 JUDGE YOUNG: Thank you.

12 THE WITNESS: Uh-huh.

13 BY MS. EUCHNER:

14 Q Did you ever discuss the performance of your
15 chemistry managers with Mr. McGrath?

16 A Yes.

17 Q Did you disagree with Mr. McGrath about Fiser's
18 performance?

19 A Yes. Well, and it was -- discussions about how
20 the chemistry managers performed were really in the course
21 of we were addressing certain issues. So it wasn't -- it
22 wasn't a discrete situation where I went in and he wanted to
23 know how they were performing. Because we have -- we have a
24 standard process we file with performance appraisals. And
25 it usually -- well, if it came up in a discussion, which

1 this particular example -- you know, situation did, I mean,
2 we were discussing some chemistry issues surrounding Watts
3 Bar, and Mr. McGrath, you know, made a comment about Mr.
4 Fiser that I felt didn't reflect what his performance has
5 been since I've been with TVA. And -- and now he is out,
6 what contributions he's made toward getting the -- toward --
7 in the chemistry area, toward getting Watts Bar ready for
8 startup and operations. So, in that sense, I -- and with
9 the...

10 JUDGE YOUNG: What was it that Mr. McGrath said
11 that you disagreed with?

12 THE WITNESS: As I said before, he basically, in
13 so many words -- he basically said that he didn't think too
14 highly of -- of Mr. Fiser. Didn't think too highly of --
15 didn't think too much of him -- of his performance, and it
16 was based on something that occurred with his interactions
17 with Mr. Fiser at -- something that occurred at -- at
18 Sequoyah. He -- prior to taking that position, he was the
19 head of the NSRB.

20 JUDGE YOUNG: Was -- was -- you said there was
21 something at Watts Bar.

22 THE WITNESS: No, I'm sorry, Sequoyah. Did I say
23 Watts Bar? I meant Sequoyah.

24 JUDGE YOUNG: Okay.

25 THE WITNESS: Mr. -- when Mr. Fiser was at

1 Sequoyah, he was the chemistry manager at -- the one that
2 served a period of time at Sequoyah, prior to me coming to
3 TVA. So this -- this occurred -- this incident or this
4 interface occurred prior to me coming to TVA. And I just
5 responded by saying, as I said before -- I mean, he -- I
6 just told Tom that, you know, I can only go on what he's
7 done since we've worked together when -- you know, upon me
8 coming to TVA. And since he's been in my organization, I
9 can only base his performance on what he's done -- his
10 contribution and his effort while he's been in my
11 organization, and not with...

12 JUDGE YOUNG: What Mr. McGrath...

13 THE WITNESS: Yes.

14 JUDGE YOUNG: What Mr. McGrath told you about what
15 had happened when Mr. Fiser was at Sequoyah, do you recall
16 anything specific that he said about Mr. Fiser in regards to
17 that incident?

18 THE WITNESS: Well, it was a general statement.
19 He said that, based on my interactions and dealings with
20 him, you know, at Sequoyah when he was involved with the SRB
21 and -- and Mr. Fiser was chemistry manager. We didn't get -
22 - he didn't go into specifics of a specific incident, that
23 sort of thing. It was kind of a general, "This is what I
24 feel," and -- and it was an open-ended type statement such
25 that, okay, now, you need to respond, or what do you think,

1 do you concur or what. So it was -- it was posed that way,
2 and I just responded. And I tried to be truthful and
3 straightforward with -- for all the individuals in the
4 organization, what they -- what they did do and -- and if we
5 had shortcomings and things we were going to work on, and I
6 -- I tried to openly express that.

7 CHAIRMAN BECHHOEFER: Where did this conversation
8 take place?

9 THE WITNESS: In his office.

10 CHAIRMAN BECHHOEFER: In his -- his office?

11 THE WITNESS: Yes.

12 CHAIRMAN BECHHOEFER: And do you know when or just
13 ballpark?

14 THE WITNESS: If I would give a ballpark, it was -
15 - I don't -- December, January time frame. We -- we were
16 very much involved with the startup preparations, you know,
17 pre-licensing and startup preparations at Watts Bar. And
18 chemistry was a big piece of that.

19 JUDGE YOUNG: December of '95? December '95,
20 January '96?

21 THE WITNESS: Yes, ma'am.

22 JUDGE YOUNG: Thanks.

23 THE WITNESS: Yeah, somewhere. I -- you know, I
24 don't recall specifically, but it was probably somewhere in
25 that time frame.

1 BY MS. EUCHNER:

2 Q Mr. Grover, the last time you testified, both Mr.
3 Marquand and I questioned you about a conversation that Sam
4 Harvey had with Dave Voeller. Do you recall that testimony?

5 A Yes.

6 Q And Mr. Marquand asked you whether you knew for a
7 fact that Mr. Harvey had been preselected for the PWR
8 position; do you recall that?

9 A Yes.

10 Q Were you aware that Charles Kent had sought to
11 have Harvey transferred to Sequoyah?

12 A Yes.

13 Q Were you aware that Tom McGrath blocked that
14 transfer?

15 A Yes.

16 Q Did Mr. McGrath tell you that the reason he
17 blocked the transfer was because he wanted Harvey's
18 expertise in corporate?

19 MR. MARQUAND: Objection. Leading. Leading.

20 MS. EUCHNER: This is redirect, not direct.

21 MR. MARQUAND: It's also leading.

22 MS. EUCHNER: I can clarify things on a leading
23 question on redirect.

24 MR. MARQUAND: This is the same leading question
25 she asked previously.

1 JUDGE YOUNG: Why don't you rephrase.

2 MS. EUCHNER: If it'll make counsel feel better,
3 I'll rephrase. I'm going to get the same answer anyway.

4 MR. MARQUAND: Well, now I guess she's told him
5 what the answer is.

6 BY MS. EUCHNER:

7 Q What reason did Mr. McGrath give you for blocking
8 the transfer of Mr. Harvey?

9 A He stated that he wanted Mr. Harvey available for
10 one of the positions that we were going to be left with from
11 the reorganization in the -- in the corporate chemistry --
12 rad con chemistry organization.

13 Q And did Mr. Harvey call Dave Voeller and tell him
14 he'd be working more closely with him at Watts Bar?

15 A That was my understanding, based on my
16 conversations with Mr. Voeller.

17 Q And what inference did you draw from those facts?

18 A Well, he -- he certainly was confident that he had
19 a -- had one -- was going to be in the position to get one
20 of the positions. I mean, that's only what I could
21 conclude. If -- if someone's going around and stating that
22 -- that, you know, giving everyone assurance, or the people
23 he's interacting with, or whoever it may be, that -- that
24 he's going to be in that position, I mean, that's the only
25 conclusion that you could come to. Maybe he knows something

1 that no one else knows, or we don't know, that I didn't
2 know.

3 JUDGE YOUNG: How did -- just to clarify, how did
4 the discussion with Mr. McGrath come about in which he said
5 he wanted Harvey available for one of the corporate
6 chemistry program manager positions? And was it in that
7 same discussion that you learned that Mr. McGrath, you say,
8 had blocked -- had blocked that -- had blocked Mr. Harvey
9 from going to Sequoyah?

10 THE WITNESS: Your Honor, I think it was --
11 they're -- they're both the same issue. Or I guess they
12 both -- both those -- your question and that question is
13 referring to the same incident.

14 JUDGE YOUNG: I'm asking you to clarify for me...

15 THE WITNESS: Right.

16 JUDGE YOUNG: ...what happened in that
17 conversation.

18 THE WITNESS: Okay.

19 JUDGE YOUNG: And how did it come about?

20 THE WITNESS: Okay. Charles Kent and Gordon Rich
21 had approached me. I was out at Sequoyah, and Sam was out
22 there at the same time. I was out at Sequoyah for a
23 meeting. We were doing some work. And they had approached
24 me about requesting to see if we could get Sam transferred
25 down to Sequoyah. They had a -- they had a position and...

1 JUDGE YOUNG: "They" was Kent and Rich?

2 THE WITNESS: Charles Kent and Gordon Rich. And
3 they -- they approached me with that request and desire.
4 And I told them at the time I didn't have any problem with
5 it. I wanted to talk with Sam first, because this was --
6 this was something that I just -- you know, this is new to
7 me. And, you know, I told them all the time, I told
8 everyone that during this reorganization period I'm for
9 keeping everyone in a position, whether we can stay in the
10 current organization or, you know -- basically, want
11 everybody -- we're trying to find jobs and keep -- keep
12 everybody employed. So that was -- that was my whole
13 philosophy and my whole thought.

14 And I felt that it wasn't a loss to the
15 organization, because he's still -- he's still in the same -
16 - he's still with the -- within the same organization. By
17 that, he's still within nuclear, he's still -- whether he's
18 at the plant or corporate, he still will provide a benefit
19 to us. So, to make a long story short, I went and talked
20 with HR, Ben Easley, to find the process, to understand the
21 process and how we can make this happen. He mentioned there
22 were a couple of alternatives with, you know, the -- he
23 could be transferred over and the site has the -- the
24 dollars and the head count in their budget, he could go
25 there. Or we could transfer our head count and the dollars

1 over. And, you know, there's a couple of options. And he
2 said, "But basically it's got to start with Tom McGrath."

3 And so the site continued to prod me because at
4 first, you know, HR says, well, typically what happens is
5 the requesting organization needs to write a letter and send
6 it down to corporate, and they would act on it. Well, that
7 didn't happen, and they were pressuring me. So I went to
8 Ben again and said, well -- he said, well, basically, it's --
9 -- the ultimate decision is with Tom McGrath, whether it's --
10 it's in -- it's a respond (sic) to a written request or it's
11 done verbally, with a verbal request or whatever. It's got
12 to be initiated -- presented to Tom McGrath. Now, once you
13 get his feedback on it, if he's -- if he's support --
14 supportive of making it happen, then we'll -- we'll get
15 together on how we're going to proceed, whether we then need
16 to go ahead and -- and send a letter up -- ask the site to
17 send a letter up, et cetera, et cetera.

18 So I initiated the meeting with -- with Tom
19 McGrath to discuss it; okay? And that's when it came up.
20 Because I expressed to him that the sites had requested that
21 Mr. Harvey come out to the site. They're understanding
22 we're going through a reduction and we're going down to two
23 people and we've got three right now. And they don't want
24 to -- they want to keep his expertise in-house within our
25 organization. And I was supportive of it. And I, you know,

1 went to him to ask his -- for his concurrence on proceeding
2 ahead with that. Because it was -- I felt we wouldn't lose
3 anything, we would -- we would keep our same strength from a
4 technical standpoint, keeping all our individuals in the
5 organization. Because every -- you know, everyone was
6 making a contribution. So, again,...

7 JUDGE YOUNG: So what did he say?

8 THE WITNESS: Well, then he said, you know,
9 "Absolutely not. I don't agree with that. And I want to
10 keep Sam Harvey available for one of the positions down here
11 in corporate when we -- after -- when we reorganize."

12 JUDGE YOUNG: And did you have any further
13 discussion, or was that the end of it?

14 THE WITNESS: That was the end of it. I mean, I -
15 - to me, there was nothing else to discuss. I wasn't going
16 to get into a heated discussion or debate. He was the --
17 the manager that -- was his call to me, and he made it. And
18 I went back and informed HR, and they went back and informed
19 the sites.

20 JUDGE YOUNG: You told Mr. Easley in HR?

21 THE WITNESS: Yes.

22 JUDGE YOUNG: Okay. Thank you.

23 THE WITNESS: Informed Gordon Rich and Charles
24 Kent and Sam Harvey that it was not approved.

25 JUDGE COLE: Mr. Grover, when you had a

1 conversation with Kent and Gordon Rich concerning Harvey,
2 they used -- you said a minute ago that -- that Kent stated
3 they had a position at -- at Sequoyah for Sam Harvey. What
4 did that mean to you?

5 THE WITNESS: Well, they had a vacant position.
6 They had a technical support -- they had a -- they had a
7 technical support position in Gordon Rich's organization,
8 and the individual that had filled that position had left,
9 and I think it had been vacant for almost a year. So that
10 position was still in their organization. They -- that .
11 position was not deleted; the head count was not deleted.

12 So what they were saying is they had a slot
13 already -- it wasn't creating a new position, it was a slot
14 already in position. It was a slot already in their
15 organization.

16 JUDGE COLE: Yeah. Did that mean to you that they
17 had the financial resources to accept that -- accept Harvey
18 at Sequoyah, or did it mean just that they had a need for
19 him, and they might want corporate to just transfer Harvey
20 with the necessary funds to support him when he was at
21 Sequoyah?

22 THE WITNESS: Well, no, it -- it was open-ended.
23 If you have the head count, the way the organization
24 structure set up, typically, if you have the head count and
25 you're carrying it, you've got dollars -- see, you have to

1 have dollars to support that head count in your budget. You
2 can't carry a head count without the dollars to go with it.
3 I mean, you can't carry the dollars for an additional person
4 with no position in the organizational -- you know, in the
5 organizational chart or the -- or your -- or organization.
6 So you had to have both.

7 We did not get to that point, whether they would
8 pay for it or it would come out of their budget, or we would
9 request the dollars, plus the head count would come from --
10 would be moved from corporate to -- to the site. We really
11 didn't get to that point, because you -- if it was a
12 general, you know, concurrence to do it, then you get into
13 those details, well, how we going to do it. Are you going
14 to pay for it or am I going to pay for it, which positions
15 going to go, we going to keep our position, we going to use
16 your position.

17 JUDGE COLE: So it wasn't clear to you that, when
18 they said they had a position, that they necessarily had the
19 funds for it?

20 THE WITNESS: Well, it was clear to me that, when
21 they had a position, that my understand -- you know, they
22 had the dollars in order -- now, whether we going to use
23 their dollars (sic) or use our dollars, and they're using
24 their dollars for something else, then we -- you know, but I
25 knew from the -- you know, just from the way we operated,

1 the way the organization is set up, they had to have dollars
2 to support that -- carrying that head count.

3 JUDGE COLE: All right.

4 THE WITNESS: Just like we had vacant positions.
5 I mean, I had a vacant position in my -- you had to have the
6 dollars to support justifying that vacant position.
7 Otherwise, you would -- that vacant position wouldn't be
8 approved to continue to carry, if you don't have the dollars
9 to support it.

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

11 BY MS. EUCHNER:

12 Q Mr. Grover, if Mr. Harvey had been transferred out
13 to Sequoyah, would he still have been allowed to compete for
14 the BWR and PWR chemistry positions when they were posted?

15 A Yes.

16 Q So transferring him out there wouldn't have
17 precluded him from being selected for one of those
18 positions?

19 A No. Because it was posted. We had -- there were
20 a number of individuals, not just the ones that were
21 incumbents, but there were other individuals that
22 interviewed for -- my understanding, was individuals that
23 interviewed for those positions.

24 Q Now, I'm going to show you TVA Exhibit 120. I
25 don't believe there's a copy of it up there, so I'm going to

1 share my copy with you. Mr. Marquand showed you these on
2 cross-examination. And why don't you take a minute just to
3 reread Note #2.

4 COURT REPORTER: I'm sorry, I couldn't hear you.

5 Q Reread Note #2.

6 JUDGE COLE: This is Fiser's log?

7 MS. EUCHNER: Yes.

8 (The witness reviews certain material.)

9 A Okay.

10 Q And I believe Mr. Marquand asked you, when he
11 showed you these notes, if you did tell Mr. Fiser that
12 McGrath would use the blocked transfer of Harvey to keep Sam
13 in corporate; is that correct? Do you recall that
14 conversation with Mr. Fiser?

15 A I -- well, we had several conversations. I don't
16 recall this specific conversation. But, you know, I shared
17 with the organization, the group of people there, that as we
18 went through this process, various things -- if things
19 changed or that sort of thing in regards to positions and
20 job descriptions and that sort of thing. And, you know,
21 again, this is Mr. Fiser's kind of, you know, writing up of
22 that. But we -- I recall it probably -- we discussed it. I
23 don't know whether that answer -- maybe I'm missing your
24 question.

25 Q Well, do you recall whether you told Mr. Fiser

1 that it was McGrath who blocked the transfer?

2 A Oh, I -- yeah. I mean, I -- I shared that with
3 the whole group, that -- because they were aware of it. The
4 whole group was aware of it. And this was something that --
5 you know, you understand this -- this is a daily -- you
6 know, this is -- this process or this going through this
7 reorganization, this unfolds on a daily basis. So, you
8 know, anything that comes up that could affect this process,
9 good or bad news, I mean, they -- you know, we -- it was
10 well known. And it was known that Sequoyah had made this
11 request. And, you know, Sam discussed it with everyone. So
12 it wasn't -- wasn't something that wasn't known. And when
13 it wasn't -- wasn't approved, then I shared that with the --
14 with the group. We were all trying to work together to find
15 jobs for everybody. So...

16 JUDGE YOUNG: Could you clarify something for me.

17 THE WITNESS: Yes, ma'am.

18 JUDGE YOUNG: There's a reference in there to you
19 telling Mr. Fiser that what you were trying to do was
20 probably illegal. Does -- did that ring a bell for you? Do
21 you know what you would have...

22 THE WITNESS: No. I mean, well, he said what they
23 were probably trying to do was illegal. I didn't express
24 that terminology. Now, maybe that's how he...

25 JUDGE YOUNG: Is -- can you recall...

1 THE WITNESS: And he's -- he's aware of the
2 process, too. Yes.

3 JUDGE YOUNG: ...can you recall anything you might
4 have said to him that would have led him to conclude that
5 that was illegal?4

6 THE WITNESS: Probably because I said -- I
7 expressed to him I don't know how they're going to
8 specifically do it, but this is what the request is. Now,
9 when you say that, I guess maybe someone could possibly...

10 JUDGE YOUNG: Okay.

11 THE WITNESS: You know, and I expressed with
12 everyone, I'm -- I don't know how we're going to -- as I
13 said before, I don't know specifically how it's going to be
14 done, but this is what the request is.

15 JUDGE YOUNG: Okay.

16 THE WITNESS: That's why I went to HR, to see how
17 we could -- what's the right way to go about it.

18 JUDGE YOUNG: One further clarification. Well,
19 just right on what you said. That's why you went to HR.
20 Did HR say anything to you that -- that would have led you
21 to tell Mr. Fiser that -- that it was illegal or that you
22 couldn't do that under personnel policies?

23 THE WITNESS: No. They just said here are a
24 couple of approaches that it -- how it's been done in the
25 past. I just shared, well, I don't know how it's going to

1 be done. Maybe that was taken as well, maybe they -- you
2 know, because you look at the standard -- the standard of --
3 the standard policy is they have to post -- advertise the
4 position, post it, and ask people for interviews. Now we're
5 coming back to say, well, you know, now they're hearing --
6 and I'm saying "they," the people in the organization, well,
7 they want an individual out there in this specific position.
8 And, well, I guess people could interpret that as being,
9 well, how are they going to do that. I mean, isn't that the
10 -- the policy is to post it. You've got a vacant position,
11 let's post it and advertise it.

12 JUDGE YOUNG: Okay. Just to clarify one -- one
13 further thing. In response to earlier questions, you said
14 that there was sort of a continuing day-to-day kind of
15 thing. Does reference to this exhibit cause you to recall
16 anything further about your communication or communications
17 with Mr. McGrath? From what you told me before, I had the
18 impression that you only had one meeting with him where you
19 discussed it, and he, right at that very meeting, said, "No,
20 it's not going to happen." But the exhibit that Ms. Euchner
21 just made reference to, and your response to her question,
22 led me to wonder whether there were maybe more than one --
23 one discussion between you and Mr. McGrath. So could you
24 clarify that?

25 THE WITNESS: Yes. No. Yes, ma'am. There was

1 only one discussion between myself and Mr. McGrath on this
2 issue; okay? When he made his decision, that was -- that
3 was typically -- I mean, that was it. I mean, my
4 interactions with Mr. McGrath, when he decided, okay, that's
5 -- this is what we're going to do and that's it, then it was
6 -- it was over. There wasn't anything to -- wasn't, "Well,
7 let me think about it," or, "We'll table that and we'll talk
8 about it next week." No, it was -- that was it.

9 And I shared that with -- I tried to be very
10 responsive to our people and to the sites and -- you know,
11 because it's -- it's sensitive -- you're dealing with
12 people's lives and that sort of thing. So, so that
13 everybody would be kept up to date and informed on -- on
14 what -- because I didn't want anyone to -- you know, Mr.
15 Harvey to think, 'Well, this is going to happen,' and he's
16 putting his hopes on this is going to take place, and -- and
17 he's -- and there's other opportunities here that he could -
18 - he could vie for, that he would say, "Well, I'm not going
19 to worry about that because I'm going -- I've got this."
20 And so I -- I tried not to give that impression to any of
21 our people, you know. This -- so that they would know
22 exactly -- explore all the options and try to pursue all
23 options that -- any available options or opportunities,
24 rather. So that's -- that was, you know, kind of my thing
25 involved in all this, was that going to, you know, look at

1 every opportunity, every possible opportunity they could
2 look after because, you know -- to seek after, to -- to
3 basically stay employed.

4 JUDGE YOUNG: Do you know what Mr. Fiser would
5 have meant by the -- by -- let's see. He's referring to you
6 in this note, and he said, "He said job was up in the air,"
7 but -- but then later on in the entry he said -- he -- and
8 he's referring to you, "He said McGrath had a very low
9 opinion of you," and he makes a few other references to Mr.
10 McGrath.

11 And I guess what I'm trying to get clear in my
12 mind is your description of your discussion with Mr. McGrath
13 was -- was to the -- to the effect that you talked to him
14 once, you asked him if it could be done and he said no, and
15 that was the end of the story. But Mr. Fiser's description
16 seems to be indicating that it was a more day-to-day, up in
17 the air kind of thing where you weren't sure for a while
18 whether it would happen.

19 THE WITNESS: Whether what would happen? The...

20 JUDGE YOUNG: Whether Mr. Harvey's transfer to
21 Sequoyah would happen.

22 THE WITNESS: Oh, no, I didn't -- I didn't know
23 whether it would happen. I mean, that's why we were -- I'd
24 basically tried to -- to proceed on with it. I mean, it was
25 -- it was discussed -- it was asked, and, you know,

1 somebody's got to initiate it. The sites didn't initiate...

2 JUDGE YOUNG: Are you talking about prior to
3 talking with Mr. McGrath?

4 THE WITNESS: Right. Is that what you're -- I
5 mean, if that -- you're talking about this comment, "He said
6 Sam's job was up in the air"?

7 JUDGE YOUNG: Right. And -- and then the
8 references in there to Mr. McGrath, it sounds as though
9 you'd already had some conversations with Mr. McGrath before
10 the final decision was made on the job. But a little while
11 ago you -- you led -- I had -- I concluded, from your
12 answer, that you were saying that you'd only had one
13 discussion with Mr. McGrath, and at that discussion he said
14 no, and that was the end of the story.

15 THE WITNESS: That's correct. That's right.

16 JUDGE YOUNG: So I'm -- what I'm trying to get
17 clarified is -- is fitting that in the context of sort of an
18 ongoing discussion where it was up in the air, and Mr.
19 McGrath was saying negative things about Mr. Fiser.

20 THE WITNESS: Well, I don't know exactly when this
21 was -- you know, he -- I guess you would kind of have to ask
22 Mr. Fiser, as far as -- this could have been a culmination
23 of things. This could have some of his thoughts. But the
24 way it happened was, the sites made a request, and I say the
25 sites...

1 JUDGE YOUNG: Well, I don't want to go back over
2 it.

3 THE WITNESS: No, I know.

4 JUDGE YOUNG: I don't need to hear all that.

5 THE WITNESS: But -- but it was...

6 JUDGE YOUNG: I'm mainly getting to what -- what
7 went on between you and Mr. McGrath.

8 THE WITNESS: Right.

9 JUDGE YOUNG: And trying to get a clearer
10 understanding of that.

11 THE WITNESS: That's the way it occurred. Okay?

12 JUDGE YOUNG: Okay.

13 THE WITNESS: The question was made to me, had
14 discussions about it with them in HR. Then finally went to
15 Mr. McGrath to bring it to closure. Let's -- let's make a
16 decision one way or the other; okay? It's -- it's floating.
17 It's up -- is it going to happen or what's going to -- you
18 know, no one took -- took the lead to -- okay, let's get it
19 -- let's get a decision made so we can get the ball rolling.

20 So they asked me, and I took the ball, tried to
21 get the ball rolling. Took the ball, ran with it, and tried
22 to get closure or a decision one way or the other, so we can
23 proceed on with whatever way that it needed to take place,
24 if it was going to take place. Again, it has to go through
25 several approvals. It would have still had to been approved

1 above Mr. McGrath, my understand -- you know, probably
2 either site VP or -- or our corporate VP would have had to
3 ultimately approve it. Mr. McGrath wouldn't have had the
4 final approval on that, okay, in this type of, you know,
5 transfer.

6 JUDGE YOUNG: Thank you.

7 THE WITNESS: Yes. Yes, ma'am.

8 Yes, sir?

9 CHAIRMAN BECHHOEFER: Is -- does the term
10 "directed transfer" mean anything to you? In the context
11 that we've just been talking about.

12 THE WITNESS: I generally remember the term
13 probably being used. Yeah. I mean, I -- it doesn't take me
14 to a certain definition, if that's what you mean.

15 CHAIRMAN BECHHOEFER: Well, I was wondering if
16 that were a method by which Mr. Harvey could have been
17 transferred to Sequoyah at that time?

18 THE WITNESS: It could have been, but I would need
19 HR or somebody to tell me what that -- what that -- you
20 know, what the -- what the term meant. I mean, when you say
21 "directed transfer," you -- you know, I don't know -- I
22 don't recall what -- what that specifically means.

23 CHAIRMAN BECHHOEFER: I see.

24 THE WITNESS: Yes.

25 CHAIRMAN BECHHOEFER: Okay. It's a term I picked

1 up from a HR witness.

2 THE WITNESS: Oh, okay. It may have been -- I
3 mean, again, at the time I discussed it with HR, maybe that
4 was one of the -- the approaches. Maybe that's what it was
5 called, a directed transfer, is basically one of the
6 approaches that could have been used.

7 CHAIRMAN BECHHOEFER: Okay. Thank you.

8 THE WITNESS: Yes, sir.

9 BY MS. EUCHNER:

10 Q The notes on this exhibit states that Mr. McGrath
11 would use the block transfer of Sam Harvey to keep Sam in
12 corporate. Was Sam Harvey eventually kept in corporate as a
13 result of the 1996 reorganization?

14 A Yes.

15 Q At some point, did Mr. Harvey complain about the
16 PWR chemistry manager position description?

17 A Yes.

18 Q And what was his complaint?

19 A Basically that he felt he didn't have an
20 opportunity, wasn't given an opportunity to provide input on
21 the revised position description or the reorganization.

22 Q Had he been provided the opportunity to give
23 input?

24 A Yes. And he -- he just didn't get his -- he had
25 gotten some feed -- he had gotten some -- some of his input

1 back and we -- you know, we've had several -- we had several
2 discussions on it, and he provided some input verbally, that
3 sort of thing.

4 Now, because he made that complaint, I -- you
5 know, I talked with him, sat down with him and said, look --
6 and I believe I wrote a memorandum to him, to document that
7 -- that we did get his comments, so no one would have --
8 come back and say, "Well, I didn't get a chance to do that,"
9 after it's been closed out and -- and completed. So I
10 wanted everybody -- to make sure everybody had a fair
11 opportunity, and it was done equitably, as far as their
12 input into the position description.

13 Q After he complained, did he get an additional
14 opportunity to look at it?

15 A Yes.

16 Q If you can recall, did Mr. Harvey's complaint
17 about the position description happen before or after the
18 conversation he had with Mr. Voeller?

19 A I don't recall the sequence of dates, unless
20 you...

21 Q If you could open to Staff 54. It should be in
22 Volume 3.

23 JUDGE COLE: 54?

24 MS. EUCHNER: Yes. And also Joint 36.

25 BY MS. EUCHNER:

1 Q In Joint 54, if you could go to Pages 38 and 39.

2 A Okay.

3 MS. EUCHNER: And, for the record, this is Mr.
4 Grover's deposition that was taken by Mr. Marquand last
5 December.

6 JUDGE YOUNG: Now, which one are you looking at
7 now?

8 MS. EUCHNER: We're going to start with Staff 54,
9 Pages 38 and 39. And I'm using this to refresh the
10 witness's recollection.

11 BY MS. EUCHNER:

12 Q Mr. Grover, if you could read line -- starting on
13 Page 38, Line 18 through the top of 39. And, actually, why
14 don't you go ahead and read to the top of 40.

15 (The witness reviews certain material.)

16 A Okay.

17 Q Does this refresh your recollection that Mr.
18 Harvey's complaints about the position description was right
19 around June 17th of 1996?

20 A Yes.

21 Q Now I'd like you to turn to Joint Exhibit 36,
22 which is in the other book I opened. And these are the day
23 planner notes taken by Dave Voeller on his conversation with
24 Sam Harvey.

25 A Okay.

1 Q Approximately when, according to that, did Mr.
2 Voeller's conversation with Sam Harvey take place?

3 A June 7th, 1996.

4 Q So does that refresh your recollection as to
5 whether the conversation Mr. Harvey had with Mr. Voeller
6 happened before his complaint about the position
7 description?

8 A Yes.

9 Q And if Mr. Harvey felt that the position
10 description was slanted in favor of Mr. Fiser, why would he
11 tell Mr. Voeller that he would be selected for that
12 position?

13 A I don't know.

14 Q I'd like you to now get Joint Exhibit 22. It's
15 this black book right in the corner.

16 JUDGE YOUNG: 22?

17 MS. EUCHNER: Joint 22.

18 Q And I'm going to represent to you that this is the
19 selection review board notebook used by Ben Easley and
20 Milissa Westbrook for the selection review board conducted
21 in 1996. And I would like you to flip through Pages 414
22 through 462 and tell me if the position description for the
23 PWR chemistry manager appears anywhere in that document.

24 (The witness reviews certain material.)

25 JUDGE YOUNG: Do you need a little time to do

1 that, or is that something you can do...

2 MR. MARQUAND: We'll stipulate it's not there.

3 MS. EUCHNER: Okay.

4 MR. MARQUAND: I mean, I don't know why we're
5 asking this witness. He wasn't on the SRB. What's -- how
6 is that possibly redirect?

7 MS. EUCHNER: It goes to the effect that the
8 position description being slanted in favor of Mr. Fiser
9 would have had on the selection, which is none, because it
10 wasn't anywhere in this book. And if he's willing to
11 stipulate to that, then I don't need to ask these questions.

12

13 MR. MARQUAND: But on my question is: How are we
14 -- what are we doing with this witness?

15 JUDGE YOUNG: Well, if you're willing to
16 stipulate, let's just move on from that.

17 MS. EUCHNER: Okay.

18 BY MS. EUCHNER:

19 Q Now, I'd like to turn to the issue of Mr. Harvey's
20 harassment of Patricia Landers. And I believe you testified
21 previously that you issued a disciplinary memo to Mr. Harvey
22 about that; is that correct?

23 A That's correct.

24 Q If you would go to Staff Exhibit 67, which is that
25 memo, let me see if you have it here.

1 A 67?

2 CHAIRMAN BECHHOEFER: 67?

3 JUDGE COLE: Yeah.

4 Q Did you discuss this memo with Charles Kent, John
5 Corey, or Rick Rogers?

6 A No.

7 Q Did you discuss the incidents involved in this
8 with either of those three men?

9 A No, I did not.

10 Q And in this document, and to your recollection;
11 did Mr. Harvey acknowledge that at least some of the
12 behavior that Ms. Landers complained about did happen?

13 A Yes.

14 Q Like to turn now to a discussion of peer team
15 meetings between the rad chem managers. Prior to Dr.
16 McArthur being named the rad chem manager from corporate in
17 1996, was there a rad chem manager in the corporate
18 organization?

19 A Prior to 1996?

20 Q Prior to Dr. McArthur being named rad chem
21 manager; yes.

22 A There wasn't a permanent position; no.

23 Q When there was no rad chem manager, who was attend
24 the rad chem manager peer team meetings?

25 A Both Mr. McArthur and myself.

1 Q To your recollection, were you ever excluded from
2 a meeting?

3 A No.

4 Q Like you to go back now to the black book that you
5 have to your right, and go to TVA Exhibit 27. That's the...

6 A Oh, this one?

7 Q Yes. TVA 27. And I believe Mr. Marquand showed
8 you this document during cross-examination. Prior to that
9 date, had you ever seen this document before?

10 A No.

11 Q What is the date of this document?

12 A November 27th, 1997.

13 Q Were you working at TVA on November 27th, 1997?

14 A I wasn't physically at TVA. I was at INPO out of
15 Atlanta, Georgia, on temporary assignment.

16 Q Were you either working with or supervising Mr.
17 Harvey at that time?

18 A No.

19 Q Upon your return to TVA from your INPO rotation,
20 what was your position going to be?

21 A Well, it was senior manager level, developmental
22 position. It's basically the position I went to INPO with.
23 Well, that's the -- that's the -- I guess the classification
24 I went with; yes.

25 Q And in that developmental position, would you have

1 been going back to the same organization you were in when
2 you left, or would you be going to different organizations?

3 A It was to be a different organization. I was
4 given direction by Ike Zeringue that I would be basically
5 rotating out and not coming back to chemistry rad con.

6 Q So when you returned from INPO, would you have
7 been either working with or supervising Mr. Harvey?

8 A No.

9 Q Like you to look on Page 1, the third paragraph of
10 that. And in that, Mr. Grover -- or, I'm sorry, Mr. Harvey
11 is talking about your involvement in a Calgon contract. And
12 if you need a minute to review what he said, go ahead and
13 read that paragraph.

14 A Okay.

15 (The witness reviews certain material.)

16 A Okay.

17 Q Do you have a recollection of the issue that Mr.
18 Harvey is discussing here take place?

19 A Well, it was shortly after I had been hired in at
20 TVA.

21 Q So approximately 1994?

22 A Yes.

23 Q To your knowledge, had he complained about this
24 issue anytime prior to writing this memo?

25 A No.

1 Q If you could turn to the second page of that
2 document. In the middle of the first full paragraph, Mr.
3 Harvey makes a statement about his performance reviews being
4 less than what he had been receiving prior to that. And I'd
5 like you to open Staff Volume 4, to Staff Exhibit 65, if you
6 could.

7 A Could I clarify something, prior to moving over
8 here on this memo here?

9 Q Sure.

10 A Okay. Just so that everyone understand (sic), 'I
11 mean, what he's saying in this paragraph is not correct. I
12 just...

13 Q You mean the paragraph about the Calgon contract?

14 A That's correct. Yes. And this can be verified,
15 if they want to go back and pull the documents. Tom Larange
16 (phonetic) was not removed from the contract. Tom Larange
17 was still involved and still under contract as part of that
18 program. Finetec (phonetic) was awarded some specific work,
19 as requested by the -- the raw water organization, not just
20 the sites. But we had a team of people that -- it was a
21 cross-section team, not only from the nuclear plants, but
22 the non-nuclear plants. Involved the non-nuclear plants, as
23 well. So they had specific issues that Finetec was
24 contracted to address, not just the nuclear issues. So that
25 statement he made that we got rid of Tom McGrath and -- and

1 Larange and brought in Finetec is -- is not correct. And
2 that can be verified by going back to the records.

3 JUDGE COLE: You just need to mention -- you just
4 wanted to mention Tom Larange there. You didn't want to
5 mention McGrath there, did you?

6 THE WITNESS: I'm sorry, I didn't mean McGrath,
7 but Tom Larange. Yeah, that's what I meant. Tom Larange,
8 who he referenced in here, was a consultant. So I just
9 wanted to -- I didn't want people to think that I was
10 agreeing with what he stated here, but it's not correct.

11 JUDGE YOUNG: So you're saying you did not tell
12 him to remove Tom Larange?

13 THE WITNESS: No. No. And, understand, we --
14 this was a -- we had kind of a matrix team set up to run the
15 raw water program, because this program was being
16 administered -- it was a -- it was a bulk contract being --
17 that TVA awarded to Calgon to provide treatment -- various
18 means of treatment, various specific treatment programs for
19 the nuclear plants as well as our non-nuclear plants. So we
20 had non-nuclear -- we had a -- we had a team of probably 20-
21 plus individuals. And...

22 JUDGE YOUNG: Was Sam Harvey on that team?

23 THE WITNESS: Yes. And he...

24 JUDGE YOUNG: Did you take him off, as he alleges?

25 THE WITNESS: No, he was not taken off the team.

1 All the chemistry program managers were still part of the
2 team. I coordinated it. The only change we made was, he --
3 he was involved with the contract letting process. Once I
4 got aboard, because we -- no one was in my position, it was
5 my responsibility to coordinate that effort. I coordinated
6 the effort, we sent out minutes, we called team meetings, we
7 coordinated a lot of functions. And the chemistry -- the
8 chemistry managers in my organization were specifically the
9 lead managers in this program for their respective plants.
10 So it was not -- no one was taken out, he was still involved
11 in the contract administration. But that was my
12 responsibility, to -- to head up this matrix team and
13 coordinate the effort. So it wasn't a matter of him being
14 taken out of that -- that capacity. He was still very much
15 involved, as well as all the chemistry people in our
16 organization.

17 JUDGE YOUNG: Just to clarify further, you said
18 that he -- what he said is not true. Is his statement that
19 you excluded him from major multi-site projects and
20 reassigned all major contracts that he had developed and had
21 previously been managing, was that correct or...

22 THE WITNESS: No, that was not correct. If you go
23 back, we had other contracts. In fact, he -- he continued
24 to coordinate the Econochem contract, and there were other
25 bulk contracts that -- that he was involved with and -- and

1 coordinated. So if we go back and pull the records up, it's
2 clearly on -- it's clearly documentation (sic) that supports
3 that fact. So no, we -- one of the issues is -- one of the
4 things we had, we had several -- we had site -- specific
5 site responsibilities, then we had bulk -- this was an area
6 where we -- TVA was getting into -- in an effort to be more
7 efficient and cost efficient, yet -- and getting more out of
8 their resources, they went to establishing bulk contracts
9 for certain services that we needed for -- across the board
10 for all our plants. And that -- and in the chemistry area,
11 we had several bulk contracts that we were -- that were --
12 basically our organization was a focal point in -- in
13 getting those contracts put together, selecting a supplier,
14 and providing that service.

15 So certain one individual could not administer all
16 those -- all those specific contracts and be the -- be the
17 facilitator, if you will, and -- and do his job at the site,
18 so we split those up. Now, he -- he did not have all the
19 bulk contracts, but he -- he continued to manage, you know -
20 - write them and to manage certain bulk contracts. But raw
21 water was a shared responsibility with all the chemistry
22 managers in nuclear, and also chemistry managers outside of
23 nuclear.

24 BY MS. EUCHNER:

25 Q Okay. Now, I'd like to move to Staff Exhibit 65.

1 Do you recognize this document? If you need a minute to go
2 ahead and look it over, go ahead.

3 (The witness reviews certain material.)

4 A Okay.

5 Q What is this document?

6 A That's his performance appraisal for Mr. Harvey.

7 Q And what's the date on that appraisal?

8 A The date's from 10/1/94 through 9/30/95.

9 Q And if you'd turn to the last page. Is that your
10 signature on the last page?

11 A Yes.

12 Q Did Mr. Harvey have the opportunity to comment on
13 this appraisal?

14 A Yes.

15 Q Could you please read what his comments are.

16 A "I agree with the appraisal and with continuing to
17 strive to improve my performance. I would like to get more
18 training in management and people skills, to further
19 improve, and will request this as part of my 1996 IDP."

20 Q Does it indicate anywhere in there that he was
21 unhappy with his performance review?

22 A No.

23 MS. EUCHNER: Your Honors, I would move Staff
24 Exhibit 65 into evidence.

25 THE WITNESS: Also I'd like to make another

1 statement, if I could.

2 MR. MARQUAND: I'm going to object to extraneous
3 comments. Let's stick to the questions, Your Honors.

4 CHAIRMAN BECHHOEFER: Well, I think the witness
5 wants to supplement. I think -- do you want to supplement
6 something you were just talking about?

7 THE WITNESS: Yeah. I just wanted to point out,
8 we were talking about the raw water -- his involvement in
9 raw waters. If you look at #8 in his -- in his -- on the
10 previous page there, it does reference his involvement in
11 the raw water treatment program. So that does indicate that
12 he was still involved with the raw water treatment program
13 specifically for Sequoyah. Since we were talking about that
14 just prior to.

15 MR. MARQUAND: I have no objection to the
16 admission of Staff Exhibit 65.

17 CHAIRMAN BECHHOEFER: Staff Exhibit 65 will be
18 admitted.

19 (The documents, heretofore marked
20 as Staff Exhibit #65, were received
21 in evidence.)

22 BY MS. EUCHNER:

23 Q Now, prior to the November 27th, 1997 memorandum
24 written by Mr. Harvey, were you aware of any complaints that
25 he had made about his performance appraisals that you had

1 given him?

2 A No. He hasn't -- he voiced -- we've had
3 discussions, and he voiced that, you know, he -- he wasn't
4 happy if he's less than 4-0. But, you know, that's --
5 that's -- of -- you know, and we talked about it in
6 general. But it wasn't something that he felt he had a
7 basis for pursuing with HR or whatever, and it went up
8 through the chain and was -- was approved.

9 Q How long had you been gone from TVA on your INPO
10 rotation at the time this memo was written?

11 A A little over a year.

12 Q Mr. Marquand asked you on cross a number of
13 questions about the TVA OIG investigation into your alleged
14 misconduct. Did you dispute the conclusions reached by TVA
15 OIG in that investigation?

16 A Yes, I did.

17 Q Did you file any complaints based on that
18 investigation?

19 A Yes.

20 Q What complaints did you...

21 A Well, prior to the investigation I had filed a
22 complaint, but...

23 Q Were you aware of the investigation when you filed
24 your complaints?

25 A Yes.

1 CHAIRMAN BECHHOEFER: What kind of complaints are
2 you referring to?

3 MS. EUCHNER: That -- that was my next question.

4 CHAIRMAN BECHHOEFER: Oh, I'm sorry.

5 Q What complaints did you file?

6 A That -- that I was -- had been unfairly dealt with
7 or treated since the 1996 selection, and it was -- that did
8 not -- well, since the incident then occurred in the
9 reorganization of 1996 and it was -- it was continuing, and
10 it included two plans for development that wasn't carried
11 out on TVA's part, and it was a continuing effort to
12 basically not work with me, as an individual, as far as
13 permanent rotational assignments, permanent assignments, et
14 cetera. So it was -- it was a lengthy complaint.

15 Q Did you have the opportunity to litigate that
16 complaint before the Department of Labor?

17 A Yes. I mean, I -- maybe I don't -- I don't quite
18 understand your question.

19 Q Did you file a complaint before the Department of
20 Labor?

21 A Yes. Yes.

22 Q Was there a hearing before the Department of
23 Labor?

24 A No.

25 Q Such as what we're doing now?

1 A No.

2 Q What happened with your case?

3 A We settled the matter.

4 Q Now, if you could turn to Volume 3 of the staff's
5 exhibits. It should be Volume 3 of 8 on the front.

6 A Oh, Book 3 of 8?

7 Q Yeah, Book 3 of 8.

8 CHAIRMAN BECHHOEFER: What exhibit?

9 MS. EUCHNER: We are going to start with Staff
10 Exhibit 49.

11 Q And if you could look at Staff Exhibit 49. Were
12 you interviewed by Agent Vanbockern of the TVA OIG in Mr.
13 Fiser's DOL complaint?

14 A Mister...

15 Q Vanbockern. His name is down at the bottom. He
16 was the agent. If you look at the...

17 A Oh, maybe I'm looking at the wrong...

18 Q Are you in the wrong book?

19 A Oh, yeah. I'm sorry. Okay.

20 Q Were you interviewed by Agent Vanbockern of the
21 TVA OIG in Mr. Fiser's DOL complaint?

22 A Yes.

23 Q What is the date of that interview?

24 A July 11th, 1996.

25 Q If you'd turn to Page 2 of that document and go to

1 the sixth paragraph down. In that paragraph, do you state
2 that the functions being performed by the chemistry managers
3 will not change with the reorganization?

4 MR. MARQUAND: Objection. The document speaks for
5 itself. I mean, is he being asked to refresh his
6 recollection on this? It doesn't appear that he's even been
7 asked any preliminary questions about it.

8 MS. EUCHNER: Your Honors, Mr. Marquand attempted
9 to attack Mr. Grover's credibility on the basis of bias, and
10 prior consistent statements are relevant. I plan on going
11 through each of his prior statements to demonstrate that on
12 the key points of his earlier testimony he is consistent.
13 If Mr. Marquand is willing to stipulate that they're
14 consistent, then I won't -- it won't be necessary to do
15 this. But in order to demonstrate they are consistent, I do
16 have to point him out to where I am looking.

17 MR. MARQUAND: Why don't we just submit the
18 document into the record, and the document speaks for
19 itself.

20 MS. EUCHNER: That would be fine. I plan on
21 offering all of these exhibits in, and we can certainly save
22 the time going through them if Mr. Marquand won't object to
23 their admission.

24 JUDGE YOUNG: Which are the -- which are the ones?

25

1 MS. EUCHNER: We are going to be looking at...

2 MR. MARQUAND: Let's submit -- I have no objection
3 to this document.

4 MS. EUCHNER: Okay.

5 MR. MARQUAND: Staff Exhibit ..

6 MS. EUCHNER: 49. Staff Exhibit 50...

7 CHAIRMAN BECHHOEFER: Are you offering 49 at this
8 time?

9 MS. EUCHNER: Yes, I am, Your Honor.

10 CHAIRMAN BECHHOEFER: Okay, without objection, 49
11 will be admitted.

12 (The documents, heretofore marked
13 as Staff Exhibit #49, were received
14 in evidence.)

15 MS. EUCHNER: Then Staff Exhibit 50, which is the
16 transcript of the taped interview that Mr. Vanbockern
17 conducted with Mr. Grover on July 11th, 1996.

18 MR. MARQUAND: We'll have to have somebody to
19 authenticate the document. The IG didn't produce this
20 document. I don't know if it's authentic or not. We've
21 never listened...

22 MS. EUCHNER: Well, the IG produced the tape.

23 MR. MARQUAND: ...we've never listened to the
24 tape.

25 MS. EUCHNER: Well, the tape has been within the

1 control of TVA.

2 MR. MARQUAND: The IG didn't -- the IG didn't
3 prepare this transcript, nor did the IG -- as far as I know,
4 I don't know what the IG did with the tape. As far as I
5 know there was a tape. It's in their file. I don't know
6 if this document is an accurate transcription of that tape
7 or not. So we -- we would have to object to the accuracy
8 and the authenticity on the same basis the NRC has objected
9 to numerous TVA documents.

10 MS. EUCHNER: Well, if you'd like, I will make
11 copies of the tape and provide them as an exhibit, being
12 that you can't argue that the tapes aren't authentic. You
13 provided them to us. I mean, it doesn't make any difference
14 to us whether it's the tape or the transcript. It's just
15 that the transcript is a little less unwieldy than the tape.

16 JUDGE YOUNG: We're sort of getting back in the
17 same conundrum we were in before about authentication.
18 And...

19 MS. EUCHNER: Yeah, I'm sorry. This is -- this is
20 not an OI interview. These were transcribed by the court
21 reporter for the licensing board.

22 MR. MARQUAND: Well, I don't know that the -- that
23 Neal Gross was acting on behalf of the licensing board.

24 MS. EUCHNER: I meant the contractor.

25 MR. MARQUAND: He transcribed this. He's simply a

1 contractor. He wasn't present when the interview was
2 conducted. We don't know about the accuracy of this, and
3 we'll have to object to the authenticity on the same basis
4 that the staff has objected throughout.

5 MS. EUCHNER: If you'd like, we can have Mr.
6 Grover read through the entire transcript and note that it's
7 accurate with what he recalls from his interview.

8 CHAIRMAN BECHHOEFER: Well, are you going to offer
9 the tape?

10 MS. EUCHNER: I can offer the tape. I'm going to
11 have to make copies of it and give it to you later, because
12 I don't have copies of it prepared. But as far as I can
13 tell from listening to the tape and reading it, it's -- it's
14 very accurate. The tape was not like Mr. Fiser's original
15 tape.

16 MR. MARQUAND: Is the counsel assuming the stand
17 now?

18 CHAIRMAN BECHHOEFER: Well, counsel was responding
19 to...

20 MR. MARQUAND: I understand. But she's making
21 representations about the accuracy. I would like to clarify
22 whether she's doing so as an advocate or as a witness.

23 MS. EUCHNER: It's common sense, Counsel.

24 JUDGE YOUNG: I think my vote would be...

25 CHAIRMAN BECHHOEFER: Well, is this...

1 MS. EUCHNER: I can offer both the tape and the
2 transcript if, you know, it would appease Mr. Marquand's
3 objection.

4 JUDGE YOUNG: I think that would be the
5 appropriate thing to do. And then we'll -- we'll consider
6 the transcript as guidance and the tape as the actual
7 exhibit.

8 MS. EUCHNER: That's fine, Your Honor.

9 JUDGE YOUNG: Substitute the tape as Staff Exhibit
10 50.

11 MS. EUCHNER: We will -- well, why don't we
12 renumber the tape when I get it to you, because it will
13 likely not be this week. Because we're going to have to --
14 it's a micro cassette.

15 JUDGE YOUNG: Okay.

16 JUDGE COLE: So you said 50A and B, maybe?

17 MS. EUCHNER: That would be fine.

18 CHAIRMAN BECHHOEFER: Now, you're not going to
19 debate which one is which?

20 MS. EUCHNER: Why don't we make the tape 50A, and
21 we'll make the transcript 50B.

22 CHAIRMAN BECHHOEFER: That will be fine.

23 JUDGE YOUNG: And the transcript we would consider
24 only as guidance. The tape would be the actual best
25 evidence.

1 CHAIRMAN BECHHOEFER: Well, but I don't know that
2 we have to define it at this stage. I think we should just
3 take both.

4 (The Judges confer.)

5 CHAIRMAN BECHHOEFER: The Board will admit both
6 50-A and 50-B as long as they're both offered and we will
7 consider the transcript the same way we view any other
8 transcript. It certainly will help us interpret the tapes
9 but discrepancies, if there are mistakes in the transcript,
10 we will take that into account as well.

11 So we will admit both, subject eventually to our
12 receiving the tapes.

13 (The items, heretofore marked as
14 Staff's Exhibits 50-A and 50-B,
15 were received in evidence.)

16 JUDGE YOUNG: Just provide the tapes as soon as
17 possible, with a copy to everyone and I've already made my
18 statement in terms of how we would consider the transcript,
19 with the tapes being the best evidence.

20 MS. EUCHNER: TVA already has a copy because they
21 provided it to us and then we'll get copies to the court
22 reporter and Your Honors as soon as we can get them made.

23 JUDGE YOUNG: Thank you.

24 MS. EUCHNER: And just so that we can confirm for
25 our records, 50-A and 50-B, 50-A is the tape, 50-B is the

1 transcript, is that correct?

2 JUDGE YOUNG: I believe that's correct.

3 Were there any other exhibits?

4 MS. EUCHNER: Yes, I'm going to continue with
5 Staff Exhibit 51, which is Mr. Grover's personal interview
6 statement before the Department of Labor.

7 (The Judges confer.)

8 JUDGE YOUNG: Was this written by Mr. Grover,
9 handwritten by Mr. Grover?

10 MS. EUCHNER: I don't believe so, Your Honor, I
11 believe that Mr. Stripling, the DOL investigator, wrote out
12 all of these and then presented them to the witnesses for
13 their perusal and to make any corrections that they deemed
14 necessary.

15 JUDGE YOUNG: The reason I asked is because I
16 didn't see a signature of Mr. Grover.

17 MS. EUCHNER: No. Although it does appear that in
18 a couple of spots, that Mr. Grover made some corrections and
19 initialed them.

20 CHAIRMAN BECHHOEFER: Well, why don't we ask him.

21 BY MS. EUCHNER:

22 Q Okay, Mr. Grover, if you could turn to page 2 of
23 Staff Exhibit 51.

24 A Okay.

25 Q In the second full paragraph, the one that starts

1 "On two or three occasions", on the third line of that
2 paragraph, towards the end, did you make a correction and
3 initial it, those are your initials?

4 A I'm trying to see -- that doesn't look like mine,
5 I believe Mr. Stripling must have went through and --

6 JUDGE COLE: It's more like a grammatical
7 correction.

8 THE WITNESS: Yes, that's what it is. But I
9 didn't write this.

10 MS. EUCHNER: Right, Mr. Stripling wrote it.

11 CHAIRMAN BECHHOEFER: Have you reviewed this
12 document previously?

13 THE WITNESS: Yes. I mean he -- after the
14 interview, he sends it out for -- to review for accuracy and
15 that sort of thing, so yes, I've seen it several times, yes.

16 BY MS. EUCHNER:

17 Q And to your knowledge is the information contained
18 in this statement accurate?

19 A Yes.

20 MS. EUCHNER: Staff would offer Staff Exhibit 51
21 into evidence.

22 JUDGE YOUNG: Any objection?

23 CHAIRMAN BECHHOEFER: Any objection?

24 MR. MARQUAND: I don't understand that this goes
25 to any testimony that Mr. Grover has previously offered.

1 It's certainly cumulative and this is way beyond the scope
2 of any cross or the original direct.

3 JUDGE YOUNG: You said you wanted to introduce
4 these things to show prior consistent statements, maybe you
5 want to direct us to the specific parts and what they're
6 responding to.

7 MS. EUCHNER: Well, in general, I am using these
8 statements -- all of them -- to establish that Mr. Grover
9 has been consistent in all relevant aspects since 1996. And
10 what I was going to highlight are certain key points. So I
11 can give you the key points.

12 JUDGE YOUNG: Right.

13 MS. EUCHNER: First, on page 2, the same paragraph
14 we were just looking at, second full paragraph, his
15 statement that Mr. McGrath made negative comments about Mr.
16 Fiser in the past.

17 And then on page 3, the first full paragraph, Mr.
18 Grover's statement that McArthur told him about Fiser taping
19 conversations in the past.

20 And later on that page, that McArthur told him
21 that Fiser was asked to leave a peer team meeting, not
22 because of the subject matter, but because of him
23 personally.

24 And then on the fifth page, in the first full
25 paragraph, the statement that McGrath was not in agreement

1 with Harvey being transferred to Sequoyah because he wanted
2 Harvey in the PWR position at corporate.

3 And then at the top of page 6, the statement that
4 the BWR and PWR descriptions were a little different from
5 the old ones but the basic function the manager performed did
6 not change a great deal.

7 Those were the key points that I was planning on
8 making in terms of consistency from this particular
9 document. There may be other areas of consistency, but
10 those were the points I wanted to highlight.

11 JUDGE YOUNG: Thank you.

12 (The Judges confer.)

13 CHAIRMAN BECHHOEFER: Mr. Marquand, did the latest
14 testimony satisfy your questions about relevancy?

15 MR. MARQUAND: I personally think it's irrelevant.

16 MS. EUCHNER: Prior consistent statements are
17 always relevant when you've been attacking the witness on
18 the grounds of bias.

19 CHAIRMAN BECHHOEFER: Well, I believe the Board
20 will admit the statement, Exhibit.

21 (The document, heretofore marked as
22 Staff Exhibit Number 51, was
23 received in evidence.)

24 JUDGE YOUNG: Any others?

25 CHAIRMAN BECHHOEFER: Are there any others or are

1 we at a point where --

2 MS. EUCHNER: I have three more. These are all
3 under oath though, so I don't know whether Mr. Marquand
4 would have any objections to these. They are the DOL
5 deposition, the FBI OI interview and the deposition that Mr.
6 Marquand took back in December. And those are 52, 53 and 54
7 of the Staff's Exhibits.

8 (The Judges confer.)

9 CHAIRMAN BECHHOEFER: Are you offering all three
10 at once? Are you offering 52, 53 and 54 all at once?

11 MS. EUCHNER: All at once and all for the same
12 reason, they are prior consistent statements.

13 CHAIRMAN BECHHOEFER: Any objection?

14 MR. MARQUAND: I continue to think it's
15 inappropriate to drag in statements that these individuals
16 made under other times and other circumstances. If she
17 wants to elicit their testimony, the appropriate thing is to
18 elicit their testimony.

19 MS. EUCHNER: I did elicit his testimony and
20 again, I will point out for the record, not only are they
21 relevant, but they are not even hearsay. Under the hearsay
22 rules, prior consistent statements used to rebut a charge of
23 bias are relevant to demonstrate lack of bias because he's
24 been telling the same story since day one.

25 JUDGE YOUNG: Do you have any response to that

1 specific argument?

2 MR. MARQUAND: I don't think that they do show
3 that he's told the same story. For example, in NRC Exhibit
4 51, which Your Honors just admitted, that document shows
5 that, for example, -- on page 1 pointed to part of the
6 statement -- but the rest of the statement is inconsistent
7 with his testimony here today. At the bottom of page 2 where
8 it says "McGrath had made general negative comments at
9 Fiser." Yes, he said that happened.

10 But then he also testified in this hearing that he
11 thought it had to do with Mr. McGrath's interactions with
12 him as an NSRB member, and in his statement he speculates,
13 he says "In my opinion, I perceived that McGrath had
14 negative perceptions of Fiser following the complaint."
15 That's inconsistent with what his testimony was.

16 At page 3, he testifies McArthur didn't like Fiser
17 as a person. He goes on to say he recalls a meeting where
18 Fiser was asked to leave and it had to do with discussing
19 reorganization/reconstruction issues -- I think that's what
20 it says.

21 And he says he asked McArthur why did they ask him
22 to leave and the testimony in the hearing was that McArthur
23 said it was because he tape recorded and here he says they
24 didn't want to discuss information with Fiser present
25 because of Fiser personally, not because of the subject

1 matter. Has nothing to do with tape recording. These
2 statements aren't consistent, they're not prior consistent
3 statements. All they show is that the man can't keep his
4 story straight from one time to another.

5 MS. EUCHNER: Your Honor --

6 JUDGE YOUNG: If they do that, then they would
7 assist you.

8 MR. MARQUAND: That's correct.

9 JUDGE YOUNG: So --

10 MS. EUCHNER: But Your Honors, I would point out
11 that what he just pointed out is totally consistent because
12 he said today that Mr. McGrath had a negative opinion due to
13 his prior interactions with Mr. Fiser on NSRB, which is the
14 subject matter in part of his earlier DOL complaint. So
15 those two statements are completely consistent with one
16 another. And what he just said here, Mr. Marquand is taking
17 it out of context in terms of Mr. McArthur saying that it
18 was because of Fiser personally. We heard plenty of
19 statements earlier from other witnesses who said it had
20 nothing to do with Fiser, it was because of the subject
21 matter. Mr. Grover has testified that no, it was because of
22 Fiser personally because he had tape recorded in the past.
23 And this statement comes right after Mr. Grover's statement
24 about the tape recording. So taken in context, it is
25 completely consistent with his prior testimony both today

1 and on May 6.

2 MR. MARQUAND: That's all argument by counsel. I
3 read verbatim the statement. Furthermore, this isn't Mr.
4 Grover's way that he organized this, this is simply Mr.
5 Stripling's organization and Mr. Stripling's writing of it
6 and Mr. Grover saying well, I don't disagree with this, but
7 these are certainly in different paragraphs and a different
8 treatment. There's no connection between anything in here
9 about the fact that McArthur knew that he taped and the next
10 paragraph or two paragraphs later where it says that he was
11 asked to leave the meeting when they began discussing
12 reorganization and then McArthur saying it had to do with
13 Fiser.

14 MS. EUCHNER: Your Honor, his interpretation of it
15 aside, (a) this document has already been admitted, so while
16 he's still arguing about it, I don't know; and (b) he's more
17 than welcome to argue in his brief that they are
18 inconsistent, but they are consistent in all material areas.

19 MR. MARQUAND: I've stated my objection. I
20 understand this Board has previously allowed these documents
21 in -- I understand that.

22 CHAIRMAN BECHHOEFER: We allowed 51 in, we're
23 still considering 52, '3 and '4.

24 MR. MARQUAND: Well, I understand the Board has
25 previously admitted other statements by other individuals

1 over my objection and I understand the Board's ruling.

2 CHAIRMAN BECHHOEFER: Well, are you objecting to
3 52, 53 and 54?

4 MR. MARQUAND: For the record, I'm making that
5 objection.

6 CHAIRMAN BECHHOEFER: Thank you.

7 JUDGE YOUNG: We'll take your objection under
8 advisement as to weight.

9 MR. MARQUAND: Yes, Your Honor.

10 JUDGE YOUNG: And also as to the merits of whether
11 statements are consistent or inconsistent and we encourage
12 you to address those in your proposed findings of fact and
13 conclusions of law.

14 MR. MARQUAND: Thank you, Your Honor.

15 CHAIRMAN BECHHOEFER: The Board will admit 52, 53
16 and 54.

17 MS. EUCHNER: Thank you, Your Honor.

18 (The documents, heretofore marked
19 as Staff Exhibits 52, 53 and 54,
20 were received in evidence.)

21 CHAIRMAN BECHHOEFER: Now are you through with the
22 documents at this point?

23 MS. EUCHNER: I am through with the documents and I
24 am also through with Mr. Grover.

25 CHAIRMAN BECHHOEFER: Mr. Grover, I think you'll

1 have a few more questions, but let's take a 15 minute break
2 anyway.

3 MR. MARQUAND: Yes, Your Honor.

4 CHAIRMAN BECHHOEFER: I assume you'll have a few
5 further questions.

6 MR. MARQUAND: Correct, I'll have some further
7 questions.

8 CHAIRMAN BECHHOEFER: Well, let's come back --

9 JUDGE COLE: Fifteen minutes.

10 CHAIRMAN BECHHOEFER: -- in 15 minutes.

11 MR. MARQUAND: Thank you, Judge.

12 (A short recess was taken.)

13 CHAIRMAN BECHHOEFER: Ms. Euchner, you said you
14 were finished?

15 MS. EUCHNER: I am done for now, Your Honor.

16 CHAIRMAN BECHHOEFER: Mr. Marquand.

17 MR. MARQUAND: Counsel made the comments now she's
18 done for now, is her redirect concluded?

19 MS. EUCHNER: My redirect is concluded provided
20 that Mr. Marquand doesn't ask anything additional that needs
21 clarification.

22 JUDGE COLE: I thought that was redirect. Your
23 redirect is concluded.

24 MS. EUCHNER: I have no more questions further on
25 what Mr. Marquand's original cross examination was.

1 However, if he's going to further cross examine him, I would
2 reserve the right to clarify anything that he asked him.

3 CHAIRMAN BECHHOEFER: You may proceed.

4 MR. MARQUAND: Thank you, Your Honor.

5 RE CROSS EXAMINATION

6 BY MR. MARQUAND:

7 Q Mr. Grover, good morning.

8 A Morning.

9 Q I want to make sure that I understand a few
10 things. As I understand it, you and Tom McGrath never
11 talked about Mr. Fiser's 1993 Department of Labor complaint;
12 is that correct?

13 A That's correct.

14 Q And he never indicated to you whether he was aware
15 of it, is that correct?

16 A That's correct, we never talked about it.

17 Q Okay. Now you did talk about it -- let me ask you
18 this -- did you talk about Mr. Fiser's Department of Labor
19 complaint with Mr. Fiser, his 1993 complaint?

20 A Did we talk about it?

21 Q Yes.

22 A No, not in -- I was aware of the complaint, but we
23 didn't talk about it.

24 JUDGE YOUNG: Was the question did he talk about
25 it with whom?

1 MR. MARQUAND: Did Mr. Grover discuss -- have
2 discussions with Mr. Fiser about his 1993 Department of
3 Labor complaint.

4 JUDGE YOUNG: With Mr. Fiser.

5 MR. MARQUAND: Right.

6 THE WITNESS: No, we didn't talk about it
7 specifically. In general, I was aware he filed a complaint
8 and that was basically the content, you know, some of the
9 issues involved Sequoyah and that was it.

10 BY MR. MARQUAND:

11 Q How did you become aware of his complaint?

12 A Well, it was mentioned to me even prior to Mr.
13 Fiser returning to TVA by Mr. -- Mr. McArthur probably was
14 the first one that had mentioned it, and it was discussed
15 with me by John Maciejewski because he was coming back into
16 the organization and so they kind of gave me a general
17 background of what -- the circumstances surrounding him
18 coming -- returning, but we didn't get into any specifics.

19 Q So they let you know why you were going to get
20 this individual into your organization?

21 A Yes.

22 Q Okay. Let me ask you to turn to -- so you're
23 telling me you never had a discussion with Mr. Fiser then
24 about his 1993 Department of Labor complaint?

25 A I said we never talked in detail about his

1 complaint. It was mentioned, it was generally discussed, a
2 complaint was filed, the issues involved when he was
3 involved at Sequoyah, whatever those issues were.

4 Q So you did have some sort of discussion with Mr.
5 Fiser that he had a Department of Labor complaint and it
6 surrounded issues while he was at Sequoyah?

7 A No.

8 Q Clarify, did you discuss with Mr. Fiser his --

9 A It was generally mentioned that -- he mentioned to
10 me that it was a complaint filed and that was -- I knew of
11 that, the same information he mentioned to me, I knew that
12 before he was hired back.

13 Q Right.

14 A But I want to let you now that we didn't get into
15 an in-depth discussion, I didn't review any depositions or
16 anything like that. That was just a general statement, it
17 was generally stated that he had filed a complaint.

18 Q I understand that you knew before Mr. Fiser came
19 back that he'd had a complaint. My question earlier was did
20 you ever have a discussion with Mr. Fiser about the fact
21 he'd had a complaint.

22 A If you call that a discussion, yes, we had a
23 discussion. It was generally mentioned what it was, what it
24 involved, where it originated, yes.

25 Q So you did have a discussion with him about the

1 nature of the complaint and the fact that he had a complaint
2 and the fact that it had been settled, is that right?

3 MS. EUCHNER: Your Honors, I'm going to object to
4 this whole like of questioning as being outside the scope of
5 my redirect. He could have covered this on his original
6 cross examination. I asked no questions on my redirect
7 about his discussions with Mr. Fiser.

8 JUDGE YOUNG: What does this go to?

9 MR. MARQUAND: We're going to link this up to the
10 comments allegedly made by Mr. McGrath, which counsel did
11 inquire about.

12 JUDGE YOUNG: At which point?

13 MR. MARQUAND: The only comment that Mr. Grover
14 testified to having -- and the other point I would make is
15 this particular examination is out of sequence. We've had a
16 lot of other witnesses come and go since then that counsel
17 has asked about. And I need to ask about some of those
18 comments purportedly coming through Mr. Grover as well.

19 JUDGE YOUNG: I think some leeway is in order,
20 given that situation.

21 (The Judges confer.)

22 JUDGE YOUNG: You may proceed.

23 BY MR. MARQUAND:

24 Q If you would turn, Mr. Grover, to Staff Exhibit
25 53, I think it is -- Staff Exhibit 53 -- no, I'm sorry,

1 that's not it, it's Staff Exhibit 52. It's a deposition you
2 gave on January 29, 1998.

3 Do you have it? If you'll turn to page 81.

4 (The witness complies.)

5 Q Do you see, beginning on line 10, the question:

6 "Were you aware that Mr. Fiser had filed a
7 complaint in 1993 with the Department of Labor
8 which is, of course, prior to your employment with
9 TVA. But I'm asking, were you aware he had this
10 prior complaint."

11 Answer: "Yes."

12 Question: "Did you and he ever discuss
13 that?"

14 Answer: "No."

15 Do you recall those questions being asked and
16 those answers being given at your deposition January of
17 1998?

18 A Well, no, I don't recall. If it was there, then
19 we must have discussed it.

20 Q My question is do you recall these questions being
21 asked and those answers being given during your deposition
22 in 1998.

23 A You're talking page 81.

24 Q Yes, beginning at line 10.

25 A Yes, generally discussed that.

1 Q Are you telling me today that you did talk with
2 Mr. Fiser about his 1993 Department of Labor complaint?

3 A Could you repeat your question?

4 Q But your testimony today is that in fact you did
5 talk with Mr. Fiser about his 1993 Department of Labor
6 complaint?

7 A Well, like I said before, I qualified that, it was
8 generally mentioned that he filed a complaint, it happened
9 because -- it was probably some issues involved at Sequoyah,
10 but we didn't get into detail about it and that's why I
11 answered no in this deposition. I didn't know the details of
12 it, I don't know what the settlement was or anything. I was
13 told part of the resolution was him coming back to work.

14 Q All right.

15 A So that's why I answered the question no, that's
16 why I keep -- you know, I continue to say I have to qualify
17 that. If we classify him mentioning that had a complaint,
18 filed a complaint and this was what it was about, the
19 subject matter, fine; yes, we had a discussion. But to get
20 into depth about it, that's how I interpreted the question
21 that was asked here. Did we discuss in detail, did I know
22 all the ins and outs about it, no.

23 Q The next question, if you'll look on page 81,
24 says: "How did you become aware of it."

25 And then you went on and talked about the fact

1 that other people told you, you had no mention here that Mr.
2 Fiser told you about it; isn't that correct? Page 81,
3 beginning at line 18 through page 82.

4 A Yes, I just said that, that the person that I was
5 aware of it from -- Wilson McArthur, which I stated there.

6 I was aware of this before, like I said before,
7 before Mr. Fiser came back to the organization.

8 Q My question wasn't how were you aware, the
9 question was did you discuss it with Mr. Fiser, and during
10 your deposition in January of '98, do you see on page 81
11 where you said no, you never discussed it with Mr. Fiser.

12 A No, I --

13 Q Do you see that?

14 A Yes, I see that.

15 Q Thank you.

16 A And that's my understanding -- that's my
17 interpretation, if you're going to discuss something with
18 someone, you discuss it in depth. Just casually mentioning
19 it or saying that you filed a complaint to me doesn't -- I
20 don't define that as discussing the issue.

21 Q All right. Now if that's how you want to
22 interpret it, that's fine; then I discussed it then.

23 A Mr. Grover, isn't it true in 1994, that you had a
24 discussion with Mr. Fiser in which you warned him about
25 talking to the newspaper about his Department of Labor

1 complaint and that if he continued to talk to the newspaper,
2 he might not be selected for a new job in the 1994
3 reorganization.

4 MS. EUCHNER: Objection, I think that's a
5 mischaracterization if that conversation and we do have the
6 notes from it.

7 JUDGE YOUNG: What exhibit is that?

8 MR. MARQUAND: I've asked him a question about --
9 I haven't asked him about the exhibit, I asked him about
10 whether or not he made such a statement and I intend to get
11 his answer and then ask him about the exhibit, Your Honor.

12 JUDGE YOUNG: Well, I was just wanting to see that
13 in terms of ruling on the objection.

14 MR. MARQUAND: I haven't characterized --

15 MS. EUCHNER: And I object to his characterization
16 of the exhibit.

17 MR. MARQUAND: I haven't characterized the exhibit
18 or the prior testimony. I've asked him the statement
19 whether or not he warned Mr. Fiser not to have further
20 conversations with the newspaper about his Department of
21 Labor complaint, or risk being non-selected in the new
22 reorganization.

23 JUDGE YOUNG: And did you have that discussion.

24 THE WITNESS: No, I don't know what he's talking
25 about -- I don't know what we're talking about. No, I

1 didn't.

2 BY MR. MARQUAND:

3 Q You did not -- did you have a discussion with Mr.
4 Fiser about talking with the newspaper?

5 A No, why would I have a discussion with him about
6 talking to the newspaper? What is he going to talk to the
7 newspaper about?

8 Q Do you recall in 1994, Mr. Fiser having
9 discussions with newspapers and being reported in the
10 newspaper about his previous Department of Labor complaint?

11 A I do not know -- I did not have any involvement
12 with his prior DOL, his discussion with the newspaper or
13 anybody.

14 Q And you deny that you talked to Mr. Fiser about
15 talking to the newspaper?

16 MS. EUCHNER: Objection, Your Honor, he asked him
17 this already on cross examination. This is definitely
18 getting into cumulative evidence if he's going to show him
19 the same exhibits that he showed him on cross, and again,
20 this is well beyond the scope, we are not getting to Mr.
21 McGrath any time soon that I can see.

22 JUDGE YOUNG: He's given you a denial, he said he
23 did not.

24 BY MR. MARQUAND:

25 Q Mr. Grover, would you look at TVA Exhibit 117?

1 JUDGE COLE: I don't think you go that high, Mr.
2 Marquand.

3 MS. EUCHNER: The copies of the day planner
4 sheets.

5 JUDGE YOUNG: Right.

6 MR. MARQUAND: I'll show you.

7 JUDGE COLE: What's the number?

8 JUDGE YOUNG: 117.

9 By the way, do we have the three extra copies of
10 these late -- not late-filed, but the ones you introduced
11 here?

12 MR. MARQUAND: We tendered those at the time we
13 introduced to document, Your Honor.

14 JUDGE YOUNG: To the court reporter?

15 MR. MARQUAND: To the court reporter.

16 JUDGE YOUNG: Okay.

17 BY MR. MARQUAND:

18 Q Mr. Grover, I'm showing you TVA Exhibit 117, which
19 is a June 16, '94 page from Mr. Fiser's planner and I'm
20 going to direct your attention to paragraph 2. It says:

21 Ron Grover: "Reductions are coming. Going
22 to lose one guy now."

23 Further one down, it says:

24 "Ron expressed concerns that if I participate in
25 the interviews, that someone may tell him not to keep

1 me in the reorg. He said nothing has come down like
2 that yet, but it could happen. He asked my objective
3 in the article, but he said it was" --

4 JUDGE YOUNG: Purely?

5 MS. EUCHNER: I think it's "but I said".

6 MR. MARQUAND: "But I said it was purely" --

7 JUDGE YOUNG: "To ensure."

8 MR. MARQUAND: -- "to ensure that the article was
9 accurate. He advised me to stay out of it."

10 BY MR. MARQUAND:

11 Q Do you see that?

12 A Yeah, I see that.

13 Q Does that refresh your recollection you had a
14 discussion with Mr. Fiser in June of 1994 about talking with
15 the press?

16 A No, you'll have to ask him to explain that, I
17 don't know why he would have any involvement with the press
18 or whatever. That's between him and whatever he feels he
19 needed to do. I can't give anybody any advice on talking to
20 the press or not talking to the press.

21 Q Let me show you a June 12, 1994 article and in the
22 second column it mentions Mr. Fiser as having filed a
23 Department of Labor complaint.

24 JUDGE YOUNG: You're referring to which document?

25 CHAIRMAN BECHHOEFER: Which document?

1 MR. MARQUAND: It's NRC Exhibit 108, it's a June
2 12, '94 article from the Dayton Herald News. In the middle
3 column, it mentions that Mr. Fiser filed a Department of
4 Labor complaint.

5 BY MR. MARQUAND:

6 Q Does that refresh your recollection that that note
7 we just looked at that Mr. Fiser took about a discussion
8 with you had to do with this article?

9 A No.

10 JUDGE YOUNG: You said 108?

11 MR. MARQUAND: It's NRC Exhibit 108, Your Honor.

12 BY MR. MARQUAND:

13 Q Mr. Grover, you were asked about -- let me direct
14 your attention to the subject of Mr. Kent's discussions with
15 you about whether or not Mr. Harvey could be transferred to
16 Sequoyah. And you discussed this morning the fact that you
17 were aware that there was a vacant position out there.

18 A Yes.

19 Q In fact, let's see, you came to TVA in February of
20 '94, correct?

21 A Yes.

22 Q And so by the time that this discussion about Mr.
23 Harvey came up, you'd been there slightly more than two yrs,
24 correct?

25 A Yes.

1 Q At that -- and you were the chemistry manager.

2 A Yes.

3 Q You don't purport to be and you didn't purport to
4 be at that time an expert on TVA's human resource processes,
5 do you?

6 A No, as I said before.

7 Q Okay. You're not an expert on the requirements
8 for posting, is that right?

9 A Right.

10 Q You're not an expert on the processes by which an
11 individual can be transferred between sites?

12 A That's correct, that's why I went to HR.

13 Q Okay. So -- but in 1996 when you had this
14 discussion with Mr. Fiser about whether or not it was legal
15 or they were trying to do something illegal in transferring
16 Harvey, you knew in fact that there was two ways that the
17 site -- two processes that the site could go through to get
18 somebody they wanted -- fill a position -- is that correct?

19 A There was more than two ways -- there was probably
20 at least three ways discussed that they could go about doing
21 it.

22 Q One way was if they had a vacant position, they
23 could post that job and advertise it for competition,
24 correct?

25 A That's correct.

1 Q And another way is if they wanted to transfer a
2 corporate function to the site, they would transfer the
3 corporate function with everybody's approval that this was
4 appropriate for the site to be performing that function. Is
5 that also correct?

6 A Yes.

7 Q And if they had a transfer of a corporate function
8 to the site, it really didn't make a difference whether or
9 not there was a vacancy or not. In other words, they could
10 transfer that function out there and if they needed more
11 people or needed more head count, then they'd have to
12 increase the head count and have more budget to do it.

13 A Well, typically you take the head count and budget
14 from the organization the transfer is being made from.

15 Q From the sending or transferring organization.

16 A Right.

17 Q So it didn't make any difference if there was a
18 vacancy for purposes of transferring function. It didn't
19 make a difference if there was a vacancy at Sequoyah,
20 whether or not they were -- if you were considering a
21 transfer of function.

22 A If that was what senior management approved.

23 Q Right. And the situation that would be relevant
24 for a vacancy would be whether or not you were going to post
25 a position, is that correct?

1 A Not necessarily. You just mentioned that they
2 could transfer, vacancy or no vacancy.

3 Q Right. You didn't need a vacancy for a transfer
4 situation, correct?

5 A Well, like I said, it depended on what -- which
6 way they wanted to go on it. You know, the senior VP could
7 say no, I want a position -- I want a vacant position out
8 there in order to do the transfer, otherwise we're not doing
9 it. So it all depended upon what was agreed -- first of
10 all, if they agreed to do it; secondly, how are they going
11 to do it.

12 Q But you were aware there were two different
13 processes, one is transfer of function, another is posting a
14 vacant position and going through the selection process.

15 A Well, we talked about three, not two.

16 Q What was the third one?

17 A You said if there was a position there for the
18 transfer and if there wasn't a position there for the
19 transfer and then posting the typical -- the standard way
20 would have been posting for a vacant position and interview.

21 Q You couldn't transfer somebody into a vacant
22 position, or could you?

23 A You're asking me -- you just asked me was I an
24 expert in HR and I told you I wasn't.

25 Q Okay.

1 A So I would have to go the HR to find that out. I
2 can't say you can do this, you can do that. It's based on
3 what HR agreed to with senior management.

4 Q Now in --

5 A How they wanted to handle it.

6 Q You said you had one discussion with Tom McGrath
7 about it in which he said he didn't think that was
8 appropriate.

9 A That's correct.

10 Q In that conversation, Mr. McGrath did not tell you
11 "Ron, sometimes you just have to make things come out the
12 way you want." He didn't say that, did he?

13 A No. You asked me that in the previous deposition
14 and I said no.

15 Q I don't believe I asked you that.

16 A Yes, you did.

17 Q Somebody did. And he didn't say anything similar
18 to that, did he?

19 A No, he did not.

20 Q Okay. In the 1996 selection process, Wilson
21 McArthur asked you for input on the questions to be posed by
22 the selection review board, didn't he?

23 A I don't specifically recall. He may have, I don't
24 specifically recall.

25 Q If you'll turn to NRC Exhibit 52, that's your

1 January '98 deposition.

2 A Okay.

3 Q Turn to page 76.

4 JUDGE COLE: Did you say 72?

5 MR. MARQUAND: It's NRC Exhibit 52, page 76.

6 BY MR. MARQUAND:

7 Q Now these questions were being asked by Mr.
8 Fiser's attorney, and let me direct your attention to line
9 7:

10 Question: "Did you help put the questions
11 together that would be asked of all the candidates
12 in the selection process?"

13 Answer: "I'm trying to think whether I was.
14 I didn't physically put the questions together, if
15 I -- you know, I'm going on recollection here. I
16 think I was asked to review or Wilson had asked me
17 for some questions that would be good questions to
18 ask, if I recall correctly. Okay? But I never did
19 review the entire list or give a sign of approval,
20 that sort of thing. If I recall correctly, Wilson
21 did ask for my input on what would be some
22 questions to ask."

23 Does that refresh your recollection that you were
24 asked for input with respect to the questions to be posed by
25 the SRB?

1 A Yes, I just said that I don't recall specifically,
2 I may have provided some input, and that's consistent with
3 what this says.

4 Q Now in 1996, Mr. Fiser told you about his -- the
5 fact that he filed a Department of Labor complaint, didn't
6 he?

7 A In 1996?

8 Q Yes. He told you about his 1996 Department of
9 Labor complaint.

10 A I don't understand your question, I thought we
11 were talking about the '90, '94.

12 Q Earlier we talked about the '93 complaint that
13 occurred before you got to TVA. In '96, Mr. Fiser filed a
14 second Department of Labor complaint regarding the posting
15 of the new chemistry program manager positions.

16 When did you become aware of that complaint?

17 A I don't remember, it was sometime during this
18 process.

19 Q It was around the time frame --

20 CHAIRMAN BECHHOEFER: Did you become aware of that
21 complaint prior to this proceeding here?

22 THE WITNESS: Prior to this proceeding?

23 CHAIRMAN BECHHOEFER: Yes.

24 THE WITNESS: Oh, yes. I mean it was acknowledged
25 and the acknowledgement -- when you file a complaint, the

1 acknowledgement comes down through the organization, so I
2 was aware at some point, I don't remember the time frame
3 that he did file a complaint but prior to this proceeding,
4 yes.

5 BY MR. MARQUAND:

6 Q And you had discussion about it with Mr. Fiser,
7 correct?

8 A What do you mean I had discussions?

9 Q Did you talk with -- did Mr. Fiser tell you that
10 he'd filed a complaint?

11 A He told me he'd filed a complaint. Okay?

12 Q And you didn't hear about it through the
13 grapevine, you heard about it from Mr. Fiser himself.

14 A I heard it through the organization and I heard it
15 through him as well. It wasn't something that was
16 confidential. I mean people talked about it.

17 Q So it was widely known Mr. Fiser had filed this
18 new complaint?

19 A Well, within the organization, it was known.

20 Q And --

21 A I don't know whether anybody put it out on the
22 internet or anything.

23 Q Mr. Fiser wasn't keeping a secret about it, he
24 came to you and talked about it, right?

25 A He mentioned that he was filing a complaint, but I

1 had heard that as well also.

2 CHAIRMAN BECHHOEFER: Was this information
3 available prior to the time of the '96 SRB interview?

4 THE WITNESS: I -- sir, I don't know the dates of
5 certain things. All I can say is I responded to Mr. Fiser
6 as well as all the individuals in the organization, let the
7 process take its course. They're going to interview for the
8 position, they're going to post the position, follow the
9 process. I did not try to control anyone's own feeling that
10 they needed to initiate anything on their own. I'm just
11 trying to follow the process and let's continue to look for
12 jobs and try to get jobs. That's basically what my focus
13 was.

14 CHAIRMAN BECHHOEFER: But you do not recall
15 whether you found out about it at least prior to the time of
16 the 1996 SRB interview.

17 THE WITNESS: No, I was aware of it before I left
18 in September 30 to go to INPO. I can't remember when -- you
19 know, the timing of it, whatever. I don't even know the
20 date when he filed it, but I was aware of it, it was one
21 filed prior to me leaving for INPO, which was in this time
22 frame, from June to September, somewhere in that time frame,
23 I can't tell you the exact date or anything like that.

24 BY MR. MARQUAND:

25 Q To further clarify, Mr. Grover, in fact, you

1 learned about it from Gary Fiser, not anyone else; isn't
2 that right?

3 A No, that's not --

4 Q Let me direct your attention again to NRC Exhibit
5 52, page 84.

6 JUDGE YOUNG: Page what?

7 MR. MARQUAND: 84.

8 Q Beginning at line 12:

9 Question: "Do you remember how you became
10 aware of it?"

11 Answer: "Well, we -- it must have been in
12 one of our discussions, I mean we discussed it."

13 Question: "From Gary himself?"

14 Answer: "Yeah, from Gary hisself. You know,
15 he had voiced a lot of concerns and, you know, he
16 had stated that he's proceeding on with filing a
17 complaint, you know, and so that's each
18 individual's right and prerogative."

19 Does that refresh your recollection that Mr. Fiser
20 informed you of his filing of his '96 Department of Labor
21 complaint?

22 A Yes, that's what I said, I said I heard it from
23 him and I heard it from several other sources. I mean I was
24 called to provide a deposition when he filed the complaint
25 from DOL. I mean I don't know the sequence of all this, but

1 it just didn't come from discussions with Mr. Fiser, him
2 informing me that he was going to file the complaint.

3 Q Mr. Grover, in fact you didn't discuss his '96
4 Department of Labor complaint in '96 with anyone else, did
5 you?

6 A Did I --

7 Q You had no discussions about Mr. Fiser's complaint
8 with anyone but Mr. Fiser, isn't that right?

9 A Basically yes.

10 Q No one else told you about it?

11 A What do you mean no one else --

12 Q No one else told you about Mr. Fiser's complaint.

13 A It came down through the organization. When he
14 files a complaint, TVA executives are notified, it comes
15 down through the organization that he filed a complaint.

16 JUDGE YOUNG: How does that happen? Just to
17 clarify, how exactly -- you say it comes down through the
18 organization, what do you mean?

19 THE WITNESS: I mean you hear it through managers,
20 it'll come -- if he's in your organization, it may come down
21 through your organization, well, Mr. Fiser has filed -- HR
22 can tell you -- I mean it's --

23 JUDGE YOUNG: But you're saying that it did come
24 down through some regular process or how did --

25 THE WITNESS: It's an informal -- it's no written

1 notification, there's no formal process.

2 JUDGE YOUNG: So how did it come to your
3 attention?

4 THE WITNESS: HR may have mentioned it, someone
5 from HR may have mentioned it.

6 JUDGE YOUNG: Do you remember?

7 THE WITNESS: I don't remember exactly, but it's
8 discussed. I mean HR probably mentioned it to me.

9 JUDGE YOUNG: Do you remember who all you would
10 have discussed that with besides Mr. Fiser?

11 THE WITNESS: It may have been Ben Easley because
12 he gets -- that information comes down to him. He was out
13 HR contact.

14 JUDGE YOUNG: Well, you say it may have been, do
15 you --

16 THE WITNESS: Wilson McArthur, I mean --

17 JUDGE YOUNG: What I'm asking you is what you
18 actually remember about --

19 THE WITNESS: I don't remember specifically when
20 and where and who, but I know it was discussed. It came
21 down through Wilson, it would come down, like I said,
22 through HR.

23 JUDGE YOUNG: When you same it came down through
24 Wilson, what do you mean by that?

25 THE WITNESS: He mentioned it to me, Gary Fiser --

1 he could have discussed and said Gary Fiser filed a
2 complaint, DOL complaint. HR, did you know Gary Fiser filed
3 a DOL complaint. You know, it wasn't a formal thing, but it
4 comes -- it filters down -- my point is any time anyone
5 files a DOL complaint, it filters down through the
6 organization and basically everyone in the organization
7 becomes aware of it through word of mouth. That's what I'm
8 trying to say. Okay?

9 BY MR. MARQUAND:

10 Q Mr. Grover, let me direct your attention again to
11 NRC Exhibit 52, at page 85, beginning at line 25:

12 Question: "Did anyone else discuss it with
13 you?"

14 Answer: "That he had filed a complaint?"

15 Question: "Yes."

16 Answer: "No."

17 Does that refresh your recollection that in 1998,
18 four yrs ago, you didn't recall discussing that Department
19 of Labor complaint with anyone but Mr. Fiser?

20 A Yes. Like I said, you get comments all the time,
21 that doesn't mean you discussed it with them. So okay, he
22 filed a complaint. John Doe filed a complaint, okay. I
23 don't consider that getting into a detailed discussion about
24 it.

25 JUDGE YOUNG: Just to clarify, I'd like to get a

1 better sense of this. Were there Department of Labor
2 complaints filed by other people that you were aware of that
3 happened on a -- would you say frequent -- basis?

4 THE WITNESS: There was always -- and it generally
5 depended upon -- and you generally heard about the ones that
6 were in your -- that were filed within Nuclear.

7 JUDGE YOUNG: And were there a significant number
8 of those, did you hear about --

9 THE WITNESS: I don't know what significant means.

10 JUDGE YOUNG: How many would you say in a ball
11 park figure in a --

12 THE WITNESS: Probably I've heard of three to four
13 maybe per year, eight months to a year, something like that.

14 JUDGE YOUNG: And so you're saying you have actual
15 memory of hearing about Mr. Fiser's complaint from people
16 other than himself prior to the selection review board
17 interviews.

18 THE WITNESS: Well, I don't know when the timing
19 of it was, all I can say was it was sometime between June
20 and September when I heard it. Because statements or casual
21 statements are made, so and so filed a complaint, DOL
22 complaint. So, you know, I can't nail it down timing wise
23 when I heard this thing because it was -- I knew about it,
24 so -- he filed a complaint, okay, he filed a complaint.

25 CHAIRMAN BECHHOEFER: Did you know about it before

1 Fiser told you about it?

2 THE WITNESS: I don't specifically recall. I
3 don't know. I mean all of it is going back and forth, back
4 and forth, I know Gary mentioned -- he discussed
5 specifically that he did -- he came in and told me
6 specifically that he did, you know, file a complaint. I
7 didn't go around discussing any specifics or anything like
8 that with anyone. He filed a complaint.

9 CHAIRMAN BECHHOEFER: But had you heard about that
10 before he came in and told you?

11 THE WITNESS: I can't recall. I may have heard
12 it, a comment in passing, I may not have, I just don't
13 recall. It probably happened at the same time, typically,
14 you know, the individual could have waited before he said
15 anything. I just don't remember.

16 BY MR. MARQUAND:

17 Q Mr. Grover, I want to make sure that I also
18 understand the conversation you had with Phil Reynolds and
19 Ed Boyles about their decision -- about the decision to
20 place Wilson McArthur in the position of rad chem manager.
21 That happened in 1996, correct?

22 A Yes.

23 Q You had a discussion with Reynolds and Boyles
24 about that.

25 A We had several discussions.

1 Q Over a period of time, they told you, first of
2 all, that they didn't think they had done anything wrong.

3 A Yes.

4 Q They told you that Ed Boyles in Human Resources
5 had made the decision to put Mr. -- Dr. McArthur in that
6 position.

7 A Ed said he made the decision himself, he acted
8 alone, yes.

9 JUDGE YOUNG: Ed is Mr. Boyles?

10 THE WITNESS: Ed Boyles, yes.

11 BY MR. MARQUAND:

12 Q And they also told you that they put Dr. McArthur
13 in that position because he had had that position or a
14 similar position previously.

15 A Yes, something to that -- basically to that
16 effect, yes.

17 Q And you disagreed with what they told you.

18 A Yes.

19 Q And you continued to disagree that those were
20 valid reasons not to post the job.

21 A Yes.

22 Q And your position was regardless of whether or not
23 he'd held a similar position to that in the past, that it
24 should have been posted for competition.

25 A Yes.

1 Q If you'll turn to NRC Exhibit 51. If you'll turn
2 to page 2, towards the bottom paragraph where it refers to
3 Mr. McGrath making general negative comments about Fiser.
4 Do you see in the middle of that paragraph, it says, "In my
5 opinion, I perceived that McGrath" -- can't read that.

6 MS. EUCHNER: Underlying.

7 MR. MARQUAND: -- "underlying negative perception
8 of Fiser was due to Fiser filing of his complaint, which
9 involved him."

10 BY MR. MARQUAND:

11 Q Do you see that?

12 A Yes.

13 Q Did -- first of all, Mr. McGrath didn't tell you,
14 other than the fact that you thought it had to do with
15 something that happened at Sequoyah, he didn't say anything
16 about it relating to Fiser filing a Department of Labor
17 complaint, did he?

18 A If I recall correctly, no, he didn't specifically
19 use those words, but --

20 Q Now if you'll look --

21 A -- let me clarify something, okay? I said it was
22 due to some issues out at --

23 Q At Sequoyah.

24 A -- at Sequoyah. Now you asked --

25 Q I'm not asking about -- I don't want to know what

1 your perceptions were, I want to know what was said. He
2 didn't say it had anything to do with Fiser's Department of
3 Labor complaint.

4 A Right, but I didn't write this.

5 Q I understand that and I understand that you may
6 not agree with every word that's in here and that's why I'm
7 going to ask you about it.

8 Further on in that sentence, it says, "was due to
9 Fiser filing his complaint" and then it says "which involved
10 him."

11 Did you know whether or not Fiser's previous
12 Department of Labor complaint involved Tom McGrath?

13 A Did I know --

14 Q Did anybody ever tell you that Fiser's '93
15 Department of Labor complaint involved Tom McGrath?

16 A Did anyone tell me that?

17 Q Yes.

18 A No, but you deduce that because he was involved
19 with -- he was the one that raised the issues when he was
20 with NSRB while Mr. Fiser was chemistry manager at Sequoyah.

21 Q What I'm trying to understand is if you agreed
22 with this language here that says "which involved him."

23 A I agree that it involved him, I didn't
24 specifically say DOL, I may have said that it was due to
25 concerns he had raised out at Sequoyah.

1 Q Had you ever --

2 A Now, I mean we can go around and play semantics,
3 this, that and the other, but everyone knew that he had
4 filed a DOL and that was the subject -- that was the subject
5 of the DOL.

6 Q What did you understand to be the subject of the
7 1993 Department of Labor complaint?

8 A It was some issues related to him while he was at
9 Sequoyah.

10 Q And so you thought it involved Tom McGrath?

11 A What do you mean did I think it --

12 Q Did you think the '93 complaint --

13 A I said Tom McGrath must have been involved,
14 because that's what he stated, he said that he was involved
15 with some issues he raised -- he had some issues with Gary
16 Fiser when he was with NSRB, when Gary Fiser was chemistry
17 manager. Now I don't know what involvement it was, I don't
18 know the specifics of it. He basically must have been
19 involved. So why are we going around and around -- I don't
20 understand.

21 Q Had you ever seen Mr. Fiser's '93 Department of
22 Labor complaint?

23 A No, I have not.

24 Q Would you be surprised to know that it doesn't
25 mention Tom McGrath either by name or position?

1 MS. EUCHNER: Objection, Your Honor. Unless he is
2 limiting his question to the actual complaint itself and not
3 any of the supporting documents, that is a
4 misrepresentation.

5 MR. MARQUAND: I'm going to object to counsel
6 coaching the witness. I asked specifically about the
7 complaint.

8 MS. EUCHNER: And I am not --

9 MR. MARQUAND: Counsel is -- that's an
10 inappropriate objection for counsel to try to put
11 information in front of this witness.

12 MS. EUCHNER: I'm not trying to put any
13 information in front of the witness, I am merely clarifying
14 your question that it is limited to the complaint itself.

15 MR. MARQUAND: I made a very clear question, did
16 he know what was in the complaint, had he seen the
17 complaint, and I asked specifically about the complaint.
18 It's inappropriate.

19 CHAIRMAN BECHHOEFER: Well, when you used the word
20 "complaint," did it include the attachments? Just for
21 clarification, so the witness knows what you're referring
22 to.

23 BY MR. MARQUAND:

24 Q Mr. Grover, have you ever seen Mr. Fiser's '93
25 complaint including all of the attachments to that

1 complaint?

2 A No, I have not.

3 Q All right. Would it surprise you to know that the
4 complaint and all of the attachments to that complaint do
5 not mention Mr. McGrath or Mr. McGrath by position?

6 MS. EUCHNER: Objection, that mischaracterizes the
7 complaint.

8 MR. MARQUAND: Can we have a sidebar without the
9 witness present?

10 JUDGE YOUNG: Could you step outside the room for
11 just a couple of minutes?

12 CHAIRMAN BECHHOEFER: Is this on the record?

13 MR. MARQUAND: No, I want it on the record.

14 CHAIRMAN BECHHOEFER: Okay, go ahead.

15 JUDGE YOUNG: Right.

16 MR. MARQUAND: I want it on the record.

17 MS. EUCHNER: As do I because you're
18 mischaracterizing -- it's a sequence of events --

19 JUDGE YOUNG: Hold on.

20 MS. EUCHNER: I'm sorry, the witness isn't gone
21 yet.

22 JUDGE YOUNG: Would you just close the door and
23 walk down the hall so you can't hear us? Thank you.

24 THE WITNESS: I'll need somebody to come get me.

25 JUDGE YOUNG: We will, thank you.

1 (Witness temporarily excused.)

2 MR. MARQUAND: I would like to have counsel, since
3 she's made that representation --

4 JUDGE YOUNG: Before we go any further, what's the
5 exhibit number?

6 MS. EUCHNER: Are we talking about --

7 JUDGE YOUNG: The '93 complaint.

8 MR. MARQUAND: I want the '93 complaint which has
9 the exhibits to it, I want counsel to specifically show us,
10 if she's going to accuse me of mischaracterizing it, and I
11 want it on the record.

12 MS. EUCHNER: Let me ask the clarifying question,
13 which is what I was trying to get you to clarify before you
14 pitched a fit. What I'm trying to clarify is what
15 specifically are we talking about? If we're talking about
16 the sequence of events, that does mention McGrath. If we
17 are merely talking about the document of the complaint and -
18 - I'm trying to remember, what exhibit number --

19 MR. MARQUAND: I would suggest counsel learn her
20 own exhibits. I said the complaint and all the attachments
21 to the complaint. The sequence of events is not an
22 attachment.

23 MS. EUCHNER: Excuse me, Mr. Marquand, but --

24 JUDGE YOUNG: Let's tone down the rhetoric and
25 first let's get to the exhibit.

1 MS. EUCHNER: I want to make sure that he is
2 asking the appropriate question. It may be a perfectly
3 appropriate question, but --

4 JUDGE YOUNG: Okay, but before we go any further -
5 -

6 MS. EUCHNER: -- he needs to --

7 JUDGE YOUNG: Before we go any further, let's
8 agree on which exhibit we're talking about.

9 MR. MARQUAND: I am talking -- if counsel has been
10 to law school, I assume, I assume she understands the term
11 of art --

12 MS. EUCHNER: Strike that from the record, Your
13 Honor, that's inappropriate.

14 JUDGE YOUNG: We're not going to strike --

15 MS. EUCHNER: I demand that he treat me with
16 respect.

17 JUDGE YOUNG: All right, both of you -- listen,
18 we're not going to strike anything from the record, but I'm
19 going to ask both of you to stop the back and forth attacks
20 on each other and let's first just look to the exhibit. And
21 then we will determine whether --

22 CHAIRMAN BECHHOEFER: Well, wait a minute, I think
23 the comment about law school should be stricken.

24 MR. MARQUAND: Your Honor, I apologize.

25 CHAIRMAN BECHHOEFER: I think that should be

1 stricken.

2 MS. EUCHNER: You should apologize to me, not to
3 Your Honors.

4 Now I am looking at Staff Exhibit 177 and the only
5 area which I see that could be addressed to Mr. McGrath --
6 this is Staff Exhibit 177 -- Staff Exhibit 177 -- it should
7 be in its own notebook, it's the 1993 NRC OI report with
8 exhibits. The only thing that I would note that refers to
9 the NSRB is -- let's see, I guess it's Exhibit C to Mr.
10 Fiser's complaint and this is addressed to the NSRB.

11 JUDGE YOUNG: All right, hold on, hold on. I'm
12 looking at Exhibit 177. Listen -- which is the report of
13 investigation. What I'm trying to figure out is what
14 exhibit or what pages are the complaint.

15 MR. MARQUAND: The complaint is Exhibit 2 to the
16 OI's investigative report.

17 JUDGE YOUNG: And where would we find that?

18 MR. MARQUAND: It's not paginated. Immediately
19 following --

20 MS. EUCHNER: Look down at the bottom right hand
21 corner and it'll have exhibit numbers and, you know, page 1
22 of 2.

23 MR. MARQUAND: The report is 10 pages long, then
24 there is a page that's black, that says Exhibits to Case
25 Number, and there's a cover sheet. Exhibit 1, which is an

1 investigation status record and Exhibit 2 is a September 27,
2 '93 complaint. And then that continues, it says it's 1 of
3 14 pages, the complaint itself is 14 pages long.

4 MS. EUCHNER: And what I was referring to is
5 Exhibit C, a chemistry response to NSRB. Now it does not
6 identify Mr. McGrath or Dr. --

7 JUDGE YOUNG: Exhibit C?

8 MS. EUCHNER: Exhibit C is page 13 of 14. This
9 does go to the NSRB, it doesn't say Chairman of the NSRB,
10 but it says the NSRB. So clearly, it indicates that the
11 NSRB was, in some way, shape or form, related to Mr. Fiser's
12 1993 complaint, or else Mr. Fiser wouldn't have included
13 such a document as an exhibit to his -- or an attachment to
14 his complaint.

15 All I want to do is make sure that Mr. Marquand is
16 asking the appropriate question. If he wants to say was Mr.
17 McGrath named, fine; Mr. McGrath was not named. But the
18 NSRB is clearly implicated in the complaint.

19 JUDGE YOUNG: Okay, so what purpose -- this
20 Exhibit C, where is it referenced?

21 MR. MARQUAND: It's referenced on page 5 of 14,
22 which is page 3 of Mr. Fiser's complaint, in which Mr. Fiser
23 states "Bill Jocher and I determined Sequoyah chemistry
24 personnel could not meet NRC's three hour requirement for
25 conducting post-accident sampling analysis (Exhibit C)"

1 Nowhere in the complaint does it suggest -- does
2 it mention Tom McGrath --

3 MS. EUCHNER: And I'm not stating that it does
4 mention Tom McGrath.

5 MR. MARQUAND: -- or Tom McGrath by title, which
6 is what my question to the witness was.

7 MS. EUCHNER: And I'm just making sure that Mr.
8 Marquand is asking appropriate question because in the past,
9 we have had this same argument where he and TVA have
10 attempted to demonstrate that Mr. McGrath was not involved,
11 specifically by stating that he's not named here. And
12 that's an inaccurate representation of the overall
13 complaint.

14 JUDGE YOUNG: Is there any reference in the
15 complaint itself to Mr. McGrath or to the NSRB being --
16 acting in any discriminatory or retaliatory manner against
17 Mr. Riser?

18 MS. EUCHNER: No, and that is why I wanted to know
19 if his question was limited to that. Specifically what my
20 objection was going to -- I didn't want to have this lengthy
21 a discussion --

22 JUDGE YOUNG: And what I'm trying to figure out is
23 how Mr. McGrath comes into it at all, if at all.

24 MS. EUCHNER: Mr. McGrath comes into it because in
25 the investigation of that complaint, Mr. Fiser provided his

1 sequence of events, which clearly implicates Mr. McGrath.
2 As well as TVA OIG conducted an investigation of that
3 complaint in which Mr. Keuter implicated Mr. McGrath. So
4 that's why I was attempting to clarify Mr. Marquand's
5 question. I want to make sure that we are limiting
6 ourselves to this and not including all the future
7 documents, because the future documents do implicate Mr.
8 McGrath. That's the sole basis for my objection, I just want
9 to clarify what we're talking about for the record.

10 MR. MARQUAND: I think my question --

11 MS. EUCHNER: And I'd also like to note that when
12 DOL heard this issue, they found that it was undisputed that
13 Mr. McGrath -- that the 1993 complaint involves Mr. McGrath.

14 MR. MARQUAND: That's inappropriate, I believe.

15 CHAIRMAN BECHHOEFER: Well, did DOL ever reach a
16 finding?

17 MR. MARQUAND: No, they did not reach a finding,
18 there's no final decision.

19 MS. EUCHNER: They denied summary judgment and --

20 MR. MARQUAND: That's irrelevant. Whether we
21 settle is irrelevant and whether there was a decision on
22 summary judgment is irrelevant to anything.

23 JUDGE YOUNG: I think that we are taking an awful
24 lot of time on something that is, if not straight-forward,
25 not that significant. I think we should allow the question

1 and if you want to follow up afterwards, you can.

2 MS. EUCHNER: And again, Your Honors, I'd just
3 like to note for the record, it wasn't the question that I
4 had a problem with. I was trying to clarify what he meant.

5 JUDGE YOUNG: Well, you did object.

6 MS. EUCHNER: Yeah, I objected because that's what
7 I'm supposed to do, is object. But I was objecting for the
8 sole purpose of making sure that he was asking an
9 appropriate question because this has been a dispute between
10 TVA and the staff in the past as to what we're talking about
11 when we refer to the complaint. When we refer to it, we have
12 referred to it in the past as all of the relevant documents
13 and TVA has limited themselves to the complaint and its
14 attachments. That's what I was seeking to make sure we are
15 avoiding.

16 CHAIRMAN BECHHOEFER: Well, I think the witness
17 could be asked the question as long as you make clear what
18 you mean by the complaint.

19 MR. MARQUAND: I don't think there's any question
20 what a complaint is and what was filed with the Department
21 of Labor.

22 CHAIRMAN BECHHOEFER: The complaint including the
23 attachments.

24 MR. MARQUAND: That was in fact my question to the
25 witness. I don't think the complaint includes documents

1 which OI found and generated or asked the witness to
2 generate for them.

3 JUDGE YOUNG: The sequence of events was not
4 included with the complaint, it came up later as a result of
5 further investigation and interaction between DOL and Mr.
6 Fiser.

7 MS. EUCHNER: Well, I believe it was between TVA
8 OIG and Mr. Fiser, because he provided that to the agent
9 from TVA OIG.

10 JUDGE YOUNG: Okay.

11 MR. MARQUAND: But it was not, quote, part of the
12 complaint or the attachment to the complaint.

13 CHAIRMAN BECHHOEFER: Let the witness respond, but
14 make sure he understands what you mean by complaint.

15 MR. MARQUAND: Yes, Your Honor.

16 CHAIRMAN BECHHOEFER: That's all I was trying to
17 figure out.

18 MR. MARQUAND: I understand.

19 CHAIRMAN BECHHOEFER: Because if the complaint
20 were just a basic document, it might be a different answer
21 from the basic document and the referenced attachments, et
22 cetera.

23 MR. MARQUAND: I agree.

24 CHAIRMAN BECHHOEFER: I just want the witness to
25 understand what you're asking and then he can answer.

1 MR. MARQUAND: Thank you. That's why I asked him
2 specifically the complaint and the attachments. But I do
3 believe -- and my point is, I do believe it's inappropriate
4 for counsel to make speaking objections in front of the
5 witness to let him know that there may be other documents
6 out there.

7 MS. EUCHNER: I think he's aware already that
8 there are other documents out there, because he stated that
9 he never reviewed any statements or depositions. I don't --
10 I mean, Mr. Grover has been involved in this from the start.
11 I don't think that my stating that there's other documents
12 is really going to tip him off to anything. And it
13 certainly doesn't tell him what his answer is going to be.

14 JUDGE YOUNG: Okay, are we going to have any more
15 problems like this as we proceed?

16 MS. EUCHNER: I hope not, Your Honor. I don't
17 foresee any.

18 JUDGE YOUNG: I think we can go ahead --

19 CHAIRMAN BECHHOEFER: Bring the witness back.

20 JUDGE YOUNG: -- with the question.

21 MR. MARQUAND: I'm nearly done.

22 MS. EUCHNER: And from what I can see, I only have
23 I think two questions, so we can probably get Mr. Grover
24 done before lunch.

25 JUDGE YOUNG: Okay, good. You saw me look at my

1 watch.

2 (The Judges confer.)

3 (The witness returns to the hearing room.)

4 CHAIRMAN BECHHOEFER: You may continue.

5 MR. MARQUAND: Thank you.

6 BY MR. MARQUAND:

7 Q Mr. Grover, we were discussing Staff Exhibit 51,
8 page 2.

9 A Yes.

10 Q Your reference to the fact that your perception
11 was that Mr. McGrath had negative perceptions of Fiser was
12 due to Fiser filing his complaint (DOL) which involved him,
13 meaning McGrath. And my question to you is would it
14 surprise you to learn that Mr. Fiser's 1993 Department of
15 Labor complaint does not accuse Mr. McGrath either by name
16 or by title of being the person who discriminated against
17 him?

18 A So what was your question now?

19 Q Would it surprise you to learn that Mr. Fiser's
20 '93 Department of Labor complaint does not accuse Mr.
21 McGrath either by name or by title of being the individual
22 who discriminated against him?

23 A I can't comment either way. I mean I haven't
24 reviewed the documents or anything. I haven't reviewed his
25 '93 DOL complaint or the documentation.

1 Q But your statement in this here is that the
2 Department of Labor complaint involved him, McGrath.

3 A Well, that's the way he wrote it up.

4 Q Who wrote it up?

5 A That's the way the DOL --

6 Q Investigator?

7 A Yeah.

8 Q So did you agree with this where it said -- where
9 it purports that you say that Fiser's Department of Labor
10 complaint involved McGrath -- this is purportedly your
11 statement.

12 A Yes, this was how he characterized the statement.
13 As I stated all along, it was issues involving when he was
14 at Sequoyah and they had some differences, run-ins, however
15 you want to characterize it when he was at NSRB.

16 Q So it was your opinion that the 1993 Department of
17 Labor complaint involved Mr. McGrath, is that right?

18 A If that's the way he characterized it, then yes.

19 JUDGE YOUNG: Did you -- your perception -- well,
20 first let me ask you -- did you -- you have made reference
21 to differences between Mr. McGrath and Mr. Fiser when Mr.
22 Fiser was at Sequoyah and Mr. McGrath was on the NSRB.

23 THE WITNESS: That's correct.

24 JUDGE YOUNG: And I understood you to say that
25 what Mr. McGrath had said to you was -- he made reference to

1 --

2 THE WITNESS: He made reference to that statement.

3 JUDGE YOUNG: -- either generally or to just --
4 not in any detail to differences of opinion that he -- that
5 Mr. McGrath had had with Mr. Fiser, which led Mr. McGrath to
6 conclude that Mr. Fiser was not -- I can't recall your word
7 --

8 THE WITNESS: He didn't have a --

9 JUDGE YOUNG: He was not a good chemistry manager.

10 THE WITNESS: Well, he didn't have a good opinion
11 of his performance generally. And it was due to his
12 interactions with Mr. Fiser when he was on NSRB and Mr.
13 Fiser was at Sequoyah. Now I --

14 JUDGE YOUNG: Okay.

15 THE WITNESS: Yes, ma'am.

16 JUDGE YOUNG: Which led -- and those disagreements
17 led Mr. McGrath to conclude that -- to have questions about
18 Mr. Fiser's performance, correct?

19 THE WITNESS: Yes, he said he didn't think too
20 highly of him, you know, in his performance.

21 JUDGE YOUNG: Did Mr. McGrath ever say anything to
22 you that led you to believe that Mr. McGrath was referring
23 to Mr. Fiser's Department of Labor complaint?

24 THE WITNESS: No, no.

25 JUDGE YOUNG: So any perception that you had about

1 Mr. McGrath and the dol complaint, were inferences that you
2 drew from general statements or from what Mr. Fiser told you
3 or --

4 THE WITNESS: I understand.

5 JUDGE YOUNG: -- or did you have those
6 perceptions? Let me ask -- did you have a perception that
7 Mr. McGrath had some negative view of Mr. Fiser because of
8 the 1993 Department of Labor complaint?

9 THE WITNESS: No.

10 JUDGE YOUNG: You did not have that perception?

11 THE WITNESS: No, it was only because of what he
12 said, his interaction with Mr. Fiser while he was the head
13 of the NSRB and Mr. Fiser was chemistry manager at Sequoyah.

14 JUDGE YOUNG: Okay, so --

15 THE WITNESS: Now if --

16 JUDGE YOUNG: Just understand -- you're saying
17 that what Mr. McGrath actually told you led you to believe
18 that his concerns had to do with Mr. Fiser's performance and
19 nothing that anyone else told you led you to believe that
20 Mr. McGrath had any questions about Mr. Fiser based on the
21 Department of Labor complaint. Did I understand that
22 correctly?

23 THE WITNESS: Yes, ma'am.

24 JUDGE YOUNG: So this reference in this document
25 to the Department of Labor complaint about your perception,

1 was that a correct or incorrect statement -- was that a
2 correct or incorrect recounting of what your actual
3 perception was? And if you'll look at the sentence that
4 says "In my opinion" -- the last one, two, three, four,
5 five, six, seven eight -- eighth line from the bottom, hear
6 the end of the line -- "In my opinion, I perceived that
7 McGrath underlying negative perception of Fiser was due to
8 Fiser filing his complaint (DOL) which involved him."

9 Is that a correct recounting of your actual
10 perception?

11 THE WITNESS: My perception was -- and I think --

12 JUDGE YOUNG: Well, first answer yes or no. Is
13 that a correct recounting of your actual perception?

14 THE WITNESS: Well, if I said that exactly -- I
15 don't recall saying that specifically because I didn't have
16 any information that Mr. McGrath specifically was a part of
17 -- was involved directly -- you know, I hadn't reviewed
18 anything that he was involved with anything with the DOL>

19 JUDGE YOUNG: So what I'm hearing you say is that
20 this sentence that Mr. Stripling wrote does not correctly
21 recount what your actual perception was, correct?

22 THE WITNESS: Well, I'm --

23 JUDGE YOUNG: Because you told me just a minute
24 ago that you did not perceive that Mr. McGrath had any
25 negative view of Mr. Fiser based on the 1993 Department of

1 Labor complaint.

2 THE WITNESS: Well, when I recall the conversation
3 I had with Mr. McGrath, okay, about it, he referred that he
4 didn't have a high opinion of Mr. Fiser because of some
5 issues that came up while he was the head of NSRB and Mr. --
6 okay? Everyone -- I mean it was common knowledge that his
7 complaint stemmed around while he was at Sequoyah as
8 chemistry manager. Okay? Now understand, I mean complaint
9 is used kind of loosely, you know, that okay Mr. Fiser filed
10 a complaint -- that's how it's characterized. He had a
11 difference of opinion and he had filed a complaint. I did
12 not have the specifics on it, okay? I knew that whatever
13 the issues were, they involved him during his --

14 JUDGE YOUNG: Him is who?

15 THE WITNESS: Mr. Fiser, while he was chemistry
16 manager at Sequoyah. And his complaint was linked to that
17 whole area, okay? Or sequence of events, however you want
18 to call it. Okay?

19 Now he didn't specifically state to me --

20 JUDGE YOUNG: He, Mr. McGrath?

21 THE WITNESS: Mr. McGrath didn't specifically
22 state to me DOL, okay? I know Mr. Fiser filed a complaint.
23 They were aware that Mr. Fiser had filed a DOL and it was
24 settled and all that. Okay? Now my perception was that
25 whole mix, okay, he didn't feel -- he didn't think that

1 highly of Mr. Fiser. And that's my opinion. My opinion is
2 anybody -- my opinion is anybody that files a DOL complaint
3 and you talk of it and they come back in the organization,
4 they're treated differently, okay? They're treated
5 differently, and it's just an undercurrent about how they're
6 treated, they're not welcomed back into the organization.
7 That's just my own opinion.

8 JUDGE YOUNG: Okay. But what I'm trying to get at
9 is -- what I'm trying to clarify in my own mind is I
10 understood you to say a few minutes ago that nothing Mr.
11 McGrath ever said to you led you to believe that he had any
12 negative perceptions of Mr. Fiser based on the Department of
13 Labor complaint, but that rather, his negative perceptions
14 of Mr. Fiser were based on negative assessment of Mr.
15 Fiser's performance.

16 THE WITNESS: That's correct. That's the way I
17 recall he explained it to me.

18 JUDGE YOUNG: Now was there anything else he did
19 or said or that anyone did or said that led you to believe
20 that Mr. Fiser's actual reason for being negative towards
21 Mr. Fiser was because of his Department of Labor complaint -
22 - was because of Fiser's 1993 Department of Labor complaint?

23 THE WITNESS: That anyone said or anyone did?

24 JUDGE YOUNG: Right.

25 THE WITNESS: Well, no one directly said, you

1 know, I don't like him or I think -- I don't think highly of
2 him because he filed a complaint.

3 JUDGE YOUNG: So am I understanding you correctly,
4 you just assumed that since Mr. Fiser had filed the 1993
5 complaint, that it must have played into Mr. McGrath's
6 perception.

7 THE WITNESS: That was my perception, okay? The
8 fact that he filed a complaint, and I'm using the term
9 complaint because it involved that whole -- all those
10 things.

11 JUDGE YOUNG: Right, let's just say complaint
12 means everything involved in the Department of Labor.

13 THE WITNESS: That's right.

14 JUDGE YOUNG: You just assumed that it must have
15 played a role in Mr. McGrath's perception of Mr. Fiser.

16 THE WITNESS: But it was related, that's what I'm
17 saying.

18 JUDGE YOUNG: Related to what?

19 THE WITNESS: It was probably related to his
20 complaint, okay?

21 JUDGE YOUNG: Probably? Based on what?

22 THE WITNESS: Because what Mr. McGrath expressed
23 to me went on and was involved in the same time frame of
24 when he was out there and that's what his complaint was
25 based on. Okay? So I'm saying that that was probably all

1 related, okay?

2 JUDGE YOUNG: Just because that's how people
3 operate? Because I understood you earlier to say that
4 nothing Mr. McGrath said led you to believe that he was
5 basing his negative perception of Fiser on anything related
6 to the Department of Labor complaint.

7 THE WITNESS: Yes, Your Honor, but I never
8 reviewed his '93 complaint, I don't know the specifics of
9 it. All I coining -- what I'm saying is I was coining the
10 fact that whatever the issues were was involved in -- was
11 centered around his complaint or his problem while he was at
12 Sequoyah. Maybe I used the wrong term, I'm sorry. Maybe
13 complaint wasn't the right word.

14 But as I said before, Mr. McGrath never said to
15 me, as I recall, it was specifically tied to a DOL issue.
16 I'm using the term complaint from the standpoint it involved
17 his whole issue, is myriad problems, whatever it was, while
18 he was at Sequoyah.

19 JUDGE YOUNG: So would it be correct to say that
20 you assumed it must have played a role, but nothing that Mr.
21 McGrath did or said led you to believe that.

22 THE WITNESS: That's right, he did not
23 specifically say DOL. I may have used the wrong term,
24 complaint, it may have not been --

25 JUDGE YOUNG: It's okay.

1 THE WITNESS: Okay.

2 BY MR. MARQUAND:

3 Q Mr. Grover, referring again to Staff Exhibit 51,
4 page 3. At the beginning of the page, you discuss the fact
5 that Dr. McArthur did not like Fiser as a person but
6 distrusted him because of things that happened in the past
7 and then you went on to say, "McArthur told you Fiser might
8 be tape recording his conversations with people." Do you
9 see that?

10 A Yes.

11 Q And then further down the page, the next
12 paragraph, you say you recall the meeting with rad chem
13 managers in which Fiser was asked to leave when they started
14 talking about reorganization, restructuring, do you see
15 that?

16 A Yes.

17 Q And then in the next paragraph, do you see where
18 it says you later asked McArthur why they asked him to leave
19 and he said he didn't want to discuss information with Fiser
20 present and it was because of Fiser personally and not
21 because of the subject matter; do you see that?

22 A Yes.

23 Q You do not state in your statement that in fact
24 McArthur told you they asked him to leave because Fiser had
25 tape recorded in the past; isn't that correct?