

RAS 4844

Official Transcript of Proceedings

NUCLEAR REGULATORY COMMISSION

Title: Tennessee Valley Authority

DOCKETED
USNRC

September 12, 2002 (10.41AM)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Docket Number: 50-390-CivP et al.

Location: Rockville, Maryland

Date: Tuesday, September 10, 2002

Work Order No.: NRC-521

Pages 4964-5156

NEAL R. GROSS AND CO., INC.
Court Reporters and Transcribers
1323 Rhode Island Avenue, N.W.
Washington, D.C. 20005
(202) 234-4433

Template = SECY-032

SECY-02

1 UNITED STATES OF AMERICA
 2 NUCLEAR REGULATORY COMMISSION
 3 ATOMIC SAFETY AND LICENSING BOARD
 4

5) Docket Nos. 50-390-CivP
 6 TENNESSEE VALLEY AUTHORITY) 50-327-CivP 50-328-CivP
 7) 50-259-CivP 50-260-Civ.P
 8 (Watts Bar Nuclear Plant,) 50-296-Civ.P
 9 Unit 1, Sequoyah Nuclear)
 10 Plant, Units 1&2, Browns) ASLBP No. 01-791-01-CivP
 11 Ferry Nuclear Plant, Units) EA 99-234
 12 1, 2, & 3)
 13)

14 Nuclear Regulatory Commission
 15 Two White Flint North
 16 11545 Rockville Pike
 17 Rockville, Maryland

18
 19 Tuesday, September 10, 2002

20 The above-entitled matter came on for hearing,
 21 pursuant to notice, at 9:00 a.m.

22 BEFORE:

23 CHARLES BECHHOEFER, Chairman

24 ANN MARSHALL YOUNG, Administrative Judge

25 RICHARD F. COLE, Administrative Judge

NEAL R. GROSS
 COURT REPORTERS AND TRANSCRIBERS
 1323 RHODE ISLAND AVE., N.W.
 WASHINGTON, D.C. 20005-3701

1 APPEARANCES OF COUNSEL:
23 On Behalf of the Nuclear Regulatory Commission:

4 DENNIS C. DAMBLY, Attorney

5 JENNIFER M. EUCHNER, Attorney

6 Office of the General Counsel

7 U.S. Nuclear Regulatory Commission

8 Washington, D.C. 20558

9 -and-

10 NICHOLAS HILTON, Enforcement Specialist

11 Office of Enforcement

12 U.S. Nuclear Regulatory Commission

13 Washington, D.C. 20555

14
15 On Behalf of the Tennessee Valley Authority:

16 BRENT R. MARQUAND, Attorney

17 JOHN E. SLATER, Attorney

18 Tennessee Valley Authority

19 400 West Summit Hill Drive

20 Knoxville, Tennessee 37902-1499
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C-O-N-T-E-N-T-S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Sam Harvey	4968	5035	5070	
Voir Dire on page 4992				
David Goetcheus	5072	5110		

EXHIBITS

<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>MARK</u>	<u>RECD</u>
<u>Joint</u>			
39	OIG Interview	4998	4999
<u>TVA</u>			
5	Harvey Declaration	4973	4994
14	Harvey Notes	4995	4992
26	Harvey Declaration	4981	4994
27	Harvey Complaint	5032	5034
105	Notes: Goetcheus to Zirengue	5083	5092
140	Goetcheus TVA Work History	5074	5075
141	Harvey Resume	4970	4974
152	Harvey Notes	5008	5021
<u>Staff</u>			
60	DOL Report	5031	5031
63	Harvey Deposition	5069	5069
160	1996 TVA OGC Interview	5102	5107

P-R-O-C-E-E-D-I-N-G-S

(9:07:16 A.M.)

CHAIRMAN BECHHOEFER: Okay. Back on the record. Good morning, ladies and gentlemen.

MS. EUCHNER: Good morning, Your Honor.

MR. MARQUAND: Good morning.

CHAIRMAN BECHHOEFER: As a preliminary matter, I would inquire whether this would apply only to the Staff, but whether this being election day, whether the Staff will need more time. Say, if we should run to 6:00, whether that would accommodate members of the Staff who need to break a little earlier?

MS. EUCHNER: We shouldn't, Your Honor. The polls are open until 8 p.m., so as long as we're done by 6, I'll have plenty of time to go vote.

MR. MARQUAND: Yeah. I don't think there'll be a problem. I don't see any way of going to 6, but hey.

CHAIRMAN BECHHOEFER: Well, I'm just leaving that as a possibility, and we could break early if we had to. Tennessee doesn't count because they don't vote around here, I hope.

JUDGE COLE: Tennessee still counts.

CHAIRMAN BECHHOEFER: But you have to vote

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 back there, so I don't even know if today is an
2 election day in Tennessee.

3 JUDGE COLE: They all got their ballots.

4 CHAIRMAN BECHHOEFER: Okay. Are there any
5 preliminary matters which the parties wish to raise?

6 MR. MARQUAND: No.

7 CHAIRMAN BECHHOEFER: So I assume we'll
8 begin with the testimony of Mr. Harvey.

9 MR. MARQUAND: That is correct, Your
10 Honor.

11 CHAIRMAN BECHHOEFER: Okay.

12 MR. MARQUAND: And we'd call Sam Harvey.

13 JUDGE YOUNG: And do we need to put
14 anything of the other people in the audience in the
15 witness lobby? Okay.

16 WHEREUPON,

17 SAM L. HARVEY

18 WAS CALLED AS A WITNESS AND, HAVING BEEN FIRST DULY
19 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

20 CHAIRMAN BECHHOEFER: Okay.

21 MR. SLATER: Ready, Your Honor?

22 DIRECT EXAMINATION

23 BY MR. SLATER:

24 Q Mr. Harvey, where do you work?

25 A I work for PSE&G Nuclear.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q And how long have you worked for that
2 entity?

3 A Approximately three and a half years.

4 Q And before then, where did you work?

5 A At Tennessee Valley Authority.

6 Q And could you just briefly, without
7 telling us the details of the deeds and the functions,
8 what was your job at TVA?

9 A At TVA, I was the Corporate Chemistry
10 Program Manager.

11 Q And could you tell us how long you held
12 that position?

13 A Approximately eight years, from May of '91
14 to May of '99.

15 Q And if you can recall, could you tell us,
16 without detailing the duties and functions, of the
17 employers for which you worked prior to coming to TVA.

18 A Well, prior to TVA I worked for Houston
19 Lighting and Power, the South Texas Project, for
20 approximately three and a half years. Prior to that
21 I was a contractor, worked in both radiological
22 controls and chemistry for various utilities for
23 approximately six years. And prior to that, when I
24 graduated from college, I started to work for Georgia
25 Power Company, Plant Hatch.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q And prior to coming here today to testify,
2 were you requested to put together a resume?

3 A Yes, I was.

4 Q And did you do that?

5 A Yes, I did.

6 MR. SLATER: I'd like to get marked as --
7 it's already marked as TVA Exhibit 141.

8 (Whereupon, TVA Exhibit 141 was
9 marked for identification.)

10 BY MR. SLATER:

11 Q Mr. Harvey, I just placed in front of you
12 what's been marked TVA Exhibit 141. Do you recognize
13 that document?

14 A Yes, I do.

15 Q And is that document, TVA X-141, your
16 resume that you put together?

17 A Yes, it is.

18 Q And does this resume reflect the duties
19 and functions that you performed in the jobs that you
20 just identified for us?

21 A Yes, it does.

22 Q And in addition to that, does this resume
23 also reflect your education?

24 A Yes, it does.

25 Q And could you tell us what that education

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is?

2 A I have a Bachelor of Science Degree in
3 Biology from Valdosta State University.

4 Q You also have on this resume, it says,
5 "Publications Available Upon Request." Correct?

6 A Yes, I do.

7 Q Could you tell the Board what publications
8 you've authored?

9 A There are numerous. I don't know if I
10 could remember them all. Several articles in the
11 Journal of Ion Chromatography, in relationship to low
12 level analysis, presentations on steam generator,
13 chemical cleanings at TVA. Several articles on
14 secondary chemistry presented to industry forums, such
15 as EPRI. Varied along those lines, along with what
16 I've done in my career.

17 Q You also have affiliations. Do you see
18 that?

19 A Yes.

20 Q American Nuclear Society, American
21 Chemical Society, National Association of Corrosion
22 Engineers.

23 A Correct.

24 Q Could you tell us the purpose of having
25 these affiliations?

1 A Each of these pertain to my duties in my
2 job. Throughout my career, American Nuclear Society
3 obviously is, because I'm a nuclear professional.
4 American Chemical Society because I'm a chemist, and
5 predominantly do chemistry work. And the National
6 Association of Corrosion Engineers or NACE, because of
7 the corrosion issues associated with various aspects
8 of nuclear components, such as service water systems,
9 secondary systems, primary systems, et cetera.

10 Q Now with respect to your Program Manager
11 position that you held at TVA, I believe your resume
12 reflects that you held that position from 1991 through
13 1999. Is that correct?

14 A That is correct.

15 Q Did you have to bid for Program Manager
16 position at any time during that period of time, from
17 1991 through 1999?

18 A In approximately 1996, one time I did.

19 Q What led to you having to bid for the
20 Program Manager position in 1996?

21 A There was a reorganization in the
22 Corporate Office, realigning functions and combining
23 several groups together, and eliminating some
24 positions.

25 Q When did you first become aware that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reorganization was going to reduce the number of
2 Program Manager positions?

3 A Originally when I had hired on back in
4 1999, my supervisor at the time told me he eventually
5 felt that that would always happen to Program
6 Managers.

7 Q In 1991.

8 A In 1991, that's correct.

9 Q Who was that supervisor?

10 A Bill Jocher.

11 MR. SLATER: I'd like to have this marked
12 as TVA Exhibit 5.

13 (Whereupon, TVA Exhibit 5 was
14 marked for identification.)

15 BY MR. SLATER:

16 Q Mr. Harvey, could you please take a look
17 at TVA Exhibit 5. Would you tell us what that is?

18 A I believe this is a declaration I made on
19 behalf of Wilson McArthur at the pre-enforcement
20 conference.

21 Q And it has a fax date on it of October 31,
22 1996. Now before we get into Exhibit 5, in addition
23 to the affiliations that you have listed on your
24 resume, are you involved with any other industry
25 groups or organizations?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Yes. I'm involved with the Electric Power
2 Research Institute as a member of the Guidelines
3 Committee for writing the standards for primary and
4 secondary chemistry, and primary and secondary leakage
5 for pressurized water reactors.

6 Q Any others?

7 A Not that I can think of at this time.

8 Q And how long have you been involved with
9 those organizations?

10 A Since the late 80s from the South Texas
11 Project.

12 MR. SLATER: Now, Your Honor, I'd move in
13 TVA Exhibit 141.

14 MS. EUCHNER: No objection, Your Honors.

15 CHAIRMAN BECHHOEFER: TVA Exhibit 141 is
16 admitted.

17 (Whereupon, TVA Exhibit 141 was
18 received.)

19 BY MR. SLATER:

20 Q Would you take a look at page 2 of TVA
21 Exhibit 5, paragraph 2. Do you see that?

22 A Yes, I do.

23 Q Could you take a look at the second to the
24 last sentence, "Since I was first employed by TVA in
25 1991, I have been informed that the Corporate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chemistry Organization would be eventually reduced to
2 two staff chemistry positions."

3 A Yes, sir.

4 Q That's what you just testified to a little
5 earlier.

6 A Yes, sir.

7 Q Now that was 1991. Then in 1996, there
8 was a reorganization.

9 A That is correct.

10 Q And in the first sentence or two in TVA
11 Exhibit 5, you talk about a staff meeting that you had
12 with Ron Grover.

13 A Yes, I do.

14 Q Is that the date on which -- this March,
15 1996. Was that the time you were told that your staff
16 positions were going to be reduced from three to two?

17 A I believe so.

18 Q And it was pursuant to a reorganization
19 and downsizing?

20 A That's correct.

21 Q And it says that you thought you would
22 have to bid for one of those two positions.

23 A That's correct.

24 Q Was it your understanding at any time that
25 the PWR position, I believe was one of the two.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Excuse me. I don't understand.

2 Q The two staff positions, could you tell us
3 what they were?

4 A A PWR, Pressurized Water Reactor Chemist,
5 and a BWR, Boiling Water Reactor Chemist.

6 Q Before we get into that particular
7 selection, prior to you bidding on that particular
8 position, did anyone attempt to pursue a transfer for
9 you?

10 A In which -- what time frame are you
11 talking about?

12 Q After March, 1996.

13 A Yes.

14 Q Tell us about that.

15 A After this staff meeting, Ron Grover
16 approached me and told me that Sequoyah had requested
17 that I come out there.

18 Q Who from Sequoyah?

19 A Gordon Rich at the time of the Sequoyah
20 Chemistry Meeting.

21 Q Did you talk to Mr. Rich about transfer,
22 a possible transfer?

23 A Yes, I did.

24 Q What did you and Mr. Rich talk about?

25 A That I would much prefer to come out there

1 in some capacity, because I preferred to be in an
2 operating plant, operating facility versus the
3 corporate office.

4 Q And did that transfer ever take place?

5 A No, it did not.

6 Q Do you know why that transfer never took
7 place?

8 A I don't know anything other than I was
9 told that it was not allowed.

10 Q So no one told you that Tom McGrath put
11 the stops to it.

12 A No one ever told me that.

13 Q No one ever told you that Dr. McArthur put
14 the stop to it.

15 A No, they did not.

16 Q Could you tell us who was attempting to
17 make the transfer happen?

18 A Mr. Grover at the time expressed interest
19 that it would be to everyone's benefit if I would take
20 a position out at Sequoyah.

21 Q And why would it be to everybody's
22 interest if you took a position at Sequoyah?

23 A The way he explained it to me is it would
24 work out for everybody, because we were going from
25 three positions to two in the corporate office. There

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were three people in the corporate office, and this
2 way no one would have to lose a job.

3 Q And who was Mr. Grover?

4 A At the time, he was my immediate
5 supervisor.

6 Q Now after learning that the transfer was
7 not going to take place, did you have a conversation
8 with Dave Voeller?

9 A I had several conversations with Dave
10 Voeller.

11 Q Well, there's been some testimony that in
12 a phone conversation with Mr. Voeller, you indicated
13 that he might be working closer. Could you tell us
14 about that conversation?

15 A When the postings, when we were told that
16 the postings were going up and they were going to be
17 a PWR and a BWR chemist, and I was working with Dave
18 on an issue and I told him that, you know, I would
19 either be working with him closer, which I would look
20 forward to, or possibly not at all.

21 Q And what did you mean by "possibly not at
22 all"?

23 A If I wasn't selected for the position,
24 then I wouldn't be working with him at all.

25 Q And did you have a subsequent conversation

1 with Mr. Voeller, after that first conversation, which
2 you talked about possibly working closer with him, or
3 not at all?

4 A Yes, I did.

5 Q And why did you have a second conversation
6 with Mr. Voeller?

7 A Because it had come back to me that a
8 portion of the conversation about not working with him
9 at all did not come out, and I had told him that I
10 would be working closer with him. That I looked
11 forward to it. That piece of the conversation was not
12 discussed in the first conversation, so I made it
13 abundantly clear in the second conversation.

14 Q When you say it was not discussed, what --

15 A Well, it came to me through my immediate
16 supervisor that I had told Dave that I would be
17 working with him much closer period.

18 Q That wasn't the whole story.

19 A That was not the whole story.

20 Q Do you know whether or not Mr. Voeller
21 told Mr. Grover the whole story?

22 A I have no knowledge. I can only go by what
23 Mr. Grover told me.

24 Q Now after your conversation with Mr.
25 Voeller, as reflected in TVA Exhibit 5, was there an

1 all-hands meeting with Mr. McGrath?

2 A Yes, I believe there was.

3 Q And what transpired at that meeting?

4 A That Mr. McGrath rolled out the
5 reorganization of the corporate office, for Chemistry,
6 Environmental and Radiation Protection were all rolled
7 into one group, as well as changes in Maintenance, and
8 various other organizations in the corporate office
9 for which he was responsible.

10 Q Shortly after that, was the two positions
11 advertised?

12 A Define shortly.

13 Q When was it, if you remember?

14 A I think it was approximately the July time
15 frame.

16 JUDGE YOUNG: Could you repeat what you
17 said just a moment ago about how the reorganization
18 was going to occur, as you understood it? I want to
19 make sure I understood what you said.

20 THE WITNESS: Make sure I understand your
21 question, how it was going to occur? What was done at
22 that all-hands meeting was the organization charts for
23 the new organization were put up with key managers
24 already identified, other positions would be posted as
25 necessary.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE YOUNG: And what did you say about
2 the Chemistry and Environmental?

3 THE WITNESS: It was being combined --
4 Chemistry, Environmental and Radiation Protection
5 were being combined into one group. They were
6 previously two separate groups.

7 MR. SLATER: Your Honors, I'm going to ask
8 that this be marked as TVA Exhibit 26.

9 (Whereupon, TVA Exhibit 26 was
10 marked for identification.)

11 BY MR. SLATER:

12 Q Now, Mr. Harvey, you testified earlier
13 that you had two conversations with Mr. Voeller about
14 possibly working closer with him in the future, or not
15 at all. The document that I just placed in front of
16 you dated the 26th. Could you tell us what that is?

17 A This document --
18 (Mic problem.)

19 BY MR. SLATER:

20 Q Now you said this is a second declaration?

21 A This is the actual declaration I made
22 prior to the pre-enforcement conference on behalf of
23 Wilson McArthur.

24 Q And what's the date of TVA Exhibit 26?

25 A The date I signed this was the 19th of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 November, 1999.

2 Q And turning to paragraph 7 on page 2, do
3 you see that?

4 A Yes, I do.

5 Q Do you in that particular paragraph talk
6 about the conversation that you had with Mr. Voeller?

7 A I do.

8 Q And in the second sentence there you said,
9 "My statement was, I will be seeing more of you or not
10 at all, and I believe it will be more." Do you see
11 that?

12 A Yes, I do.

13 Q Did you make that statement?

14 A Yes, I did.

15 Q And tell us why did you make that
16 statement.

17 A I felt that if the selection process was
18 equal, all things being equal that based on my
19 technical abilities and what I had delivered over time
20 would come to the forefront in the selection process.

21 Q Now you have in here, "Arrogance on my
22 part, maybe."

23 A Yes. Because I was very confident in my
24 technical ability, and the position posted was a
25 technical position.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C 20005-3701

1 Q And in your opinion, you believed that
2 your technical abilities were superior to those of
3 other possible candidates?

4 A Yes, I did.

5 Q And you said, "If the selection process
6 was fair." What did you mean by that?

7 A If the process looked for the best
8 candidate for this technical position, I felt that it
9 was -- that I would be given the opportunity. I was
10 also concerned about the DOL complaint Mr. Fiser had
11 made prior to the selection process.

12 Q Could you explain that?

13 A I was afraid at the time that the DOL
14 Complaint was filed prior to the posting of the
15 positions in order to influence the selection process.

16 Q And what's the basis for your perception
17 about Mr. Fiser's filing of his complaint?

18 A I don't quite understand what the --

19 Q Well, why did you feel that way?

20 A Because at the time of the announcement of
21 the reorganization, Mr. Fiser made it very clear he
22 knew how the system worked, and that he would get his
23 three shots in.

24 JUDGE YOUNG: You said three shots?

25 THE WITNESS: Yes, ma'am.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE YOUNG: Could you explain? Could
2 you clarify what --

3 THE WITNESS: Well, the conversation I had
4 with Mr. Fiser made it very clear that he knew how the
5 system worked, and as he put it, as I recall was, he
6 would get his three licks in.

7 JUDGE YOUNG: Do you know what he was
8 talking about when he said three?

9 THE WITNESS: No, ma'am.

10 JUDGE YOUNG: Okay. Thank you.

11 BY MR. SLATER:

12 Q How did you become aware of Mr. Fiser's
13 Department of Labor complaint?

14 A He told me.

15 Q Was that during the same conversation,
16 that he knew how the system worked?

17 A I don't recall. It was somewhere between
18 that and the actual postings going up on the board.

19 CHAIRMAN BECHHOEFER: Mr. Harvey.

20 THE WITNESS: Yes, sir.

21 CHAIRMAN BECHHOEFER: Was the DOL
22 complaint that Mr. Fiser told you about, his first or
23 his second, because it's my understanding he filed two
24 separate complaints, one in '93 and one in, I guess,
25 '96. Was it the second one that you're referring to?

1 THE WITNESS: Yes, sir. It was the
2 second.

3 CHAIRMAN BECHHOEFER: Okay. Thank you.

4 BY MR. SLATER:

5 Q Now at some point in time, did Mr. Fiser
6 and you have a conversation in which he indicated that
7 he thought that you had been pre-selected for the PWR
8 position?

9 A Yes.

10 Q Tell us about that conversation, please.

11 A It was approximately right after the Tom
12 McGrath all-hands meeting where he rolled out the
13 reorganization. I had been on temporary assignment at
14 Sequoyah, doing a special project, chemical cleaning
15 of the steam generators, and I had just come back a
16 few days before that. And I went to ask Gary what he
17 knew about it, since we were peers at the time, and he
18 got extremely emotional and vehement about this, which
19 took me back a bit. I was concerned with the
20 vehemence of the accusation, because I had basically
21 been on assignment at Sequoyah all this time.

22 Q Had anybody told you that you were going
23 to be selected for one of those positions?

24 A No, they had not.

25 Q Did you have any conversations with Mr.

1 McGrath, that might have indicated that you would have
2 been?

3 A I very rarely saw Mr. McGrath, so no, not
4 at all.

5 Q Any conversations with Dr. McArthur that
6 would give anybody the --

7 A Not at all.

8 Q No conversations with him.

9 A No conversations.

10 Q No promises by anybody. Take a look at
11 paragraph 5. It says that, "Gary Fiser then proceeded
12 to tell me and others around him that he did not want
13 to work at TVA, that he was going to take a year's
14 salary and leave."

15 A Yes.

16 Q Now what was the context of that
17 statement?

18 A It was between the conversation where
19 right after Mr. McGrath's all-hands meeting and the
20 discussion Mr. Fiser and I had, and the time the
21 postings went up on the board.

22 Q Did this play a part in your belief that
23 you were going to be, or you were confident that you
24 were going to be selected?

25 A It -- I felt that if Gary was not truly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to stay at TVA, then yes, it would enhance my
2 possibilities of obtaining the position.

3 Q Well, Mr. Harvey, when Mr. Fiser told you
4 this, he thought that you had been pre-selected for
5 that particular job, what did you say back to him?

6 A I disagreed with him, that initially Mr.
7 Grover had told Mr. Fiser and Mr. Chandrasekaran to
8 write the job descriptions for themselves for that
9 position. And Gary's comment, Mr. Fiser's comment to
10 me was that I was not supposed to come back from
11 Sequoyah.

12 Q In essence, you're saying that they
13 thought that you were going to get the transfer to
14 Sequoyah?

15 A I would have to assume so. I don't have
16 any knowledge.

17 Q Now up in paragraph 4, that last sentence
18 is, "I believe that this statement", referring to the
19 one before, "that I was not supposed to come back from
20 Sequoyah makes it clear that there were maneuverings
21 going on here." Please explain that.

22 A It felt like a conspiracy, basically.

23 Q Among whom?

24 A Between Ron Grover and Gary Fiser.

25 Q And why would there be a conspiracy to

1 keep you at Sequoyah, or not have you selected for one
2 of the Program Chemistry Manager positions?

3 A I came back from the corporate, from the
4 Sequoyah assignment approximately the first of June.
5 There were a lot of discussions prior to the all-hands
6 meeting behind closed doors with Gary and Ron. The
7 indications of the job description being written to
8 Mr. Fiser all the way down to certain positions he
9 held in the emergency facility, which were not
10 generic. They were very specific to him and him
11 alone.

12 Q Now this job description that you've
13 referred to a couple of times, did you get an
14 opportunity to review it and to give your input?

15 A I reviewed it, gave input, did not agree
16 with it. The only thing that was changed in that
17 position description, or job description was the
18 emergency response position in it. The duties that I
19 had previously been covering had been split up between
20 the two positions.

21 Q You're saying that the position
22 description was tailored to Mr. Fiser.

23 A Yes, it was.

24 JUDGE COLE: I'm sorry. I didn't hear
25 that. What did you say, Mr. Slater?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. SLATER: That it was tailored.

2 JUDGE COLE: Okay.

3 BY MR. SLATER:

4 Q Now if you turn to paragraph 6 of TVA 26,
5 we had a discussion a second ago about Mr. Fiser's DOL
6 complaint. You have here, "I believe that Gary Fiser
7 had to post on the job, and then not get job in order
8 to support his DOL complaint." What was the basis for
9 that?

10 A Between the time that we had the
11 discussion, Mr. Fiser and I, about the position, and
12 the accusations, and up to the posting, he had started
13 to say that he did not want to work at TVA, had no
14 interest in working at TVA, that he was going to take
15 the salary and leave. And then when the posting went
16 up, he posted on this position, after he had made it
17 very clear that he did not want to work at TVA.

18 JUDGE YOUNG: When you say he made it
19 clear that he did not want to work at TVA, or was not
20 going to work at TVA, are you using his words, or are
21 you paraphrasing?

22 THE WITNESS: His words to me was that he
23 had no interest in remaining employed at TVA.

24 JUDGE YOUNG: You're saying those were his
25 exact words as you recall them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 THE WITNESS: That is correct.

2 JUDGE YOUNG: Thank you.

3 CHAIRMAN BECHHOEFER: Do you remember when
4 TVA announced that an option was to either leave or
5 retire with one year's salary guaranteed? Because I
6 understood earlier that that wasn't the standard RIF
7 procedure at TVA.

8 THE WITNESS: There were several options
9 along those years. Some of it was in a program
10 looking for other employment and retraining. You had
11 a year to find another position in TVA, or retrain and
12 they would help you start businesses, things like
13 that. There were several options during the '93 to
14 '96 time frame, as far as reductions in force.

15 CHAIRMAN BECHHOEFER: And do you remember
16 when the year's salary option was?

17 THE WITNESS: Approximately '95/96.

18 CHAIRMAN BECHHOEFER: I see. But before
19 the RIF or the -- what do they call the hearing?

20 (Panel confers.)

21 CHAIRMAN BECHHOEFER: Was it announced
22 before the selection board meeting, the one where you
23 competed against Mr. Fiser and Mr. Chandrasekaran?

24 THE WITNESS: The best I recall, yes, sir.

25 CHAIRMAN BECHHOEFER: Yes. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BY MR. SLATER:

2 Q Mr. Harvey, do you know or recall whether
3 Mr. Fiser had an outside business at this time?

4 A Mr. Fiser --

5 JUDGE YOUNG: Repeat your question. I
6 didn't understand the last words of it.

7 MR. SLATER: I asked did Mr. Fiser have an
8 outside business?

9 THE WITNESS: During several years at TVA,
10 had two that I'm aware of.

11 BY MR. SLATER:

12 Q Well, do you know whether or not he had an
13 outside business when he had this conversation with
14 you, that he didn't have an interest in continuing his
15 TVA employment?

16 A To the best of my recollection, he was
17 running a sign company business at this time.

18 CHAIRMAN BECHHOEFER: Sign?

19 THE WITNESS: Yes, sir.

20 CHAIRMAN BECHHOEFER: Sign.

21 BY MR. SLATER:

22 Q Now the second sentence in paragraph 5
23 says, "I believe that Gary Fiser took the action of
24 filing a DOL complaint prior to the jobs being posted
25 in order to obtain financial gain, and to manipulate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the system for this end, as he had originally stated."
2 Is that what Mr. -- what gave you the -- why do you
3 believe that?

4 A I believe that based on the conversation
5 Mr. Fiser and I had after the all-hands meeting, where
6 he made it very clear that he knew how the system
7 worked, and he was going to get his licks in.

8 Q Now did you take any notes of the
9 discussion that you had with Mr. Fiser, when he said
10 he was going to get his licks in?

11 A Yes, I did.

12 MR. SLATER: Your Honors, I move that TVA
13 Exhibits 5 and 26 be admitted.

14 CHAIRMAN BECHHOEFER: Any objection?

15 MS. EUCHNER: Your Honors, could I just
16 have a quick minute of voir dire on TVA Exhibit 5,
17 just to clarify something?

18 CHAIRMAN BECHHOEFER: Yes.

19 VOIR DIRE

20 BY MS. EUCHNER:

21 Q If you could flip back to TVA Exhibit 5,
22 Mr. Harvey. Did you write this declaration yourself?

23 A Could I have a minute to read through
24 this?

25 Q Of course.

1 A Thank you. I believe these are my
2 statements, yes.

3 Q And by that you mean you wrote this, or
4 you merely reviewed something someone else wrote, and
5 then signed it?

6 A I can't recall.

7 Q Do you recall when it was that you signed
8 this document?

9 A Approximately after the selection process,
10 as I recall.

11 Q Do you recall for what purpose you signed
12 this document?

13 A No, ma'am, I don't.

14 Q I believe earlier when this document was
15 used, it was stated that it was a declaration for the
16 pre-decisional enforcement conference. Is that
17 correct?

18 A That is not correct, when I looked at
19 this.

20 Q Okay.

21 A That's what I -- it's very similar to the
22 pre-enforcement conference. And when it was pointed
23 out to me the date, then I realized my mistake that
24 this was not the one that I had done for the pre-
25 enforcement conference.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q And what was this one done for?

2 A I don't recall.

3 MS. EUCHNER: The Staff has no objections
4 to either TVA 5 or TVA 26.

5 JUDGE YOUNG: Before you mark those, I
6 just want to clarify one thing. In the first
7 paragraph of Exhibit 26, you refer to a DOL statement,
8 and difficulty getting it right. Is Exhibit 5 the DOL
9 statement to which you were referring?

10 THE WITNESS: No, ma'am.

11 JUDGE YOUNG: No? Okay.

12 CHAIRMAN BECHHOEFER: Okay. TVA Exhibits
13 5 and 26 will be admitted.

14 (Whereupon, TVA Exhibits 5 and
15 26 received.)

16 DIRECT EXAMINATION

17 BY MR. SLATER:

18 Q Just to follow-up on Judge Young's
19 question, the statement that you were referring to, is
20 that the -- could you tell us what statement that is,
21 if you recall?

22 A Which?

23 Q The DOL statement that you referred to in
24 the first paragraph in 26.

25 A Approximately some time in '96, after Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Fiser filed his DOL complaint, a DOL investigator came
2 around and interviewed. It was a pretty biased
3 interview process.

4 JUDGE YOUNG: Pretty what?

5 THE WITNESS: Biased towards Mr. Fiser's
6 position.

7 JUDGE COLE: Biased for Mr. Fiser's
8 position.

9 THE WITNESS: Yes, sir.

10 MR. SLATER: Your Honors, I'm going to ask
11 the witness to look at TVA Exhibit 14.

12 (Whereupon, TVA Exhibit 14 was
13 marked for identification.)

14 BY MR. SLATER:

15 Q Mr. Harvey, could you tell us what TVA
16 Exhibit 14 is?

17 A These are notes from my Franklin Planner
18 after the discussion Mr. Fiser and I had after the
19 all-hands meeting.

20 Q And what's the date?

21 A Monday, June 17th.

22 Q And this is an entry from your Franklin
23 Planner?

24 A Yes, it is.

25 JUDGE COLE: 1996. Right?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 THE WITNESS: Yes, sir.

2 BY MR. SLATER:

3 Q On the left-hand side, could you please
4 read into the record what your notes say?

5 A "Gary stated that the first three licks to
6 McGrath were his, and he now knew how to make the
7 system work."

8 Q And what did you take that to mean?

9 A That Mr. Fiser knew how to manipulate the
10 system to his advantage.

11 JUDGE YOUNG: Again, did you have any
12 understanding of what the "three licks" referred to?

13 THE WITNESS: No, ma'am.

14 JUDGE YOUNG: Did you normally write down
15 discussions in your planner like this?

16 THE WITNESS: Not typically, unless I felt
17 they were significant.

18 JUDGE YOUNG: When did you first provide
19 this to anyone?

20 THE WITNESS: I'm trying to recall, but
21 it's been a few years, Your Honor, so I can't remember
22 exactly if it was to the DOL or the Inspector
23 General's Office for TVA, but it was some time shortly
24 after the complaint was filed.

25 JUDGE YOUNG: Thank you.

1 BY MR. SLATER:

2 Q Mr. Harvey, did anyone ever suggest that
3 your religion played a part in the selection, or the
4 thought that you might be pre-selected?

5 A Yes.

6 Q Tell us about that.

7 A Mr. Fiser accused me of being a Member of
8 the Church of Jesus Christ of the Latter-Day Saints or
9 a Mormon, and that Wilson McArthur was at the time,
10 that that would pre-determine the selection process.

11 Q Did it?

12 A No, it did not.

13 Q And what was your response to Mr. Fiser
14 when he stated that?

15 A I was very offended. I thought that was a
16 bit of a new low to start dragging religion and
17 beliefs of individuals into the process, to try to
18 skew the outcome.

19 MR. SLATER: We move TVA Exhibit 14 into
20 evidence.

21 MS. EUCHNER: No objection, Your Honors.

22 CHAIRMAN BECHHOEFER: Without objection.

23 TVA 14 will be admitted.

24 (Whereupon, TVA Exhibit 14 was
25 received.)

1 MR. SLATER: Your Honors, I'm going to
2 show Mr. Harvey Joint Exhibit 39.

3 (Whereupon, Joint Exhibit 39
4 was marked for identification.)

5 MR. SLATER: Your Honors, could we have an
6 escort. We've got a witness who has just come into
7 the room, take him around to the lobby area.

8 JUDGE YOUNG: Yes. I'm just looking to
9 see if there's anyone here, or we'll get someone. Are
10 we still getting the originals marked with the color-
11 coding on the tabs?

12 COURT REPORTER: Right.

13 JUDGE YOUNG: Thanks.

14 BY MR. SLATER:

15 Q Would you please tell us what Joint
16 Exhibit 39 is?

17 A It appears to be a record of an interview
18 with the Office of the Inspector General.

19 Q Take a few minutes to review it please.

20 A Okay.

21 Q This is a summary of the statement that
22 you gave to the TVA Inspector General.

23 A Yes it is.

24 Q We've talked about a number of things this
25 morning. The telephone call to Mr. Voeller, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 selection issue, conversations that you had with Mr.
2 Fiser. Does this summary of interview in JX 39 touch
3 on those issues that we've already talked about this
4 morning?

5 A Yes it does.

6 Q To the best of your recollection, are the
7 statements that are reflected in here accurate and
8 correct?

9 A Yes they are.

10 MR. SLATER: We move that JX 39 be
11 admitted.

12 MS. EUCHNER: No objection, Your Honors.

13 CHAIRMAN BECHHOEFER: Without objection,
14 Joint Exhibit 39 will be admitted.

15 (The document referred to
16 having previously been marked
17 for identification as Joint
18 Exhibit 39, was received into
19 evidence.)

20 MR. SLATER: Okay.

21 CHAIRMAN BECHHOEFER: Mr. Harvey, let me
22 ask you one question. The interviewer at least states
23 that you spent most of your time at Sequoyah..

24 THE WITNESS: That is correct.

25 CHAIRMAN BECHHOEFER: And is that true

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 irrespective of the timeframe or just at that limited
2 time period?

3 THE WITNESS: Predominantly I spent most
4 of my time from my employment beginning in '91 through
5 '99 at Sequoyah. At this time, I happen to be on a
6 special assignment for a couple of major projects and
7 cleaning the steam generators.

8 CHAIRMAN BECHHOEFER: I see. So that is
9 an accurate statement.

10 THE WITNESS: Yes, sir.

11 CHAIRMAN BECHHOEFER: Thank you.

12 BY MR. SLATER:

13 Q Just for the record, could you tell us
14 what the date of this statement is?

15 A July 12, 1996.

16 Q Do you know Tresha Landers?

17 A Briefly, yes.

18 Q Could you tell us how you know her?

19 A She was a co-op in the corporate office at
20 one time.

21 Q Did she raise some issues of harassment
22 against you?

23 A I don't understand what you're asking.

24 Q Did you have a meeting with Ron Grover and
25 others concerning an issue of harassment?

1 A Yes.

2 Q Do you know whether or not those issues
3 were raised by Ms. Landers?

4 A I was told they were.

5 Q Why don't you tell us about that meeting
6 that you had with Mr. Grover, Mr. Easley and others?

7 A It was shortly after the reorganization
8 was announced. I don't remember the approximate date.
9 I was called into Mr. McArthur's office with Mr.
10 Grover and Mr. Easley from HR and was told that there
11 was an accusation of harassment. It was clarified
12 later to be sexual harassment by Ms. Landers against
13 me. At which time, I asked for specifics. None were
14 given other than the fact that we had been moving,
15 relocating offices. A bin had been taken out of her
16 office.

17 JUDGE YOUNG: A what had been taken?

18 THE WITNESS: A binder bin, file bin had
19 been taken out of her office. That was the only
20 specific. I acknowledged that I did that. I did not
21 realize that she had moved into this office. I
22 returned it and apologized in front of her and two
23 others in our work group that I didn't recognize that.
24 That was the only specific allegation that I was told
25 about.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BY MR. SLATER:

2 Q When was the first time that you learned
3 of other specific allegations that Ms. Landers had
4 alleged?

5 A At the deposition in December of last year
6 by the NRC.

7 Q That's when Ms. Euchner took your
8 deposition.

9 A Yes.

10 MR. SLATER: I'd like to show the witness
11 TVA Exhibit 28. Apparently this exhibit is already in .
12 as NRC Exhibit 67, so I'll refer to that.

13 BY MR. SLATER:

14 Q Do you recognize this document, Mr.
15 Harvey?

16 A Yes I do.

17 Q When was the first time you received a
18 copy of this?

19 A I don't remember the exact date. It was
20 shortly somewhere around this timeframe.

21 Q Could you tell us what it is?

22 A This is a letter that Ron Grover wrote to
23 James Boyles at the HR Department concerning this
24 discussion we just previously referred to.

25 Q This is the discussion that you had with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mr. Grover and Mr. Easley and others concerning
2 allegations of employee harassment.

3 A Not exactly.

4 JUDGE YOUNG: Pardon me?

5 THE WITNESS: Not exactly.

6 BY MR. SLATER:

7 Q What do you mean by that?

8 A The conversation did not revolve around
9 this. The conversation as I requested at the time was
10 for specifics and was only given one. In this letter,
11 the only sentence that I acknowledged was the incident
12 involving the storage racks and that there were no
13 other incidents at which I stated so at the time of
14 the meeting.

15 Q Okay. Let's take one step at a time. So
16 at this meeting, you inquired of Mr. Grover to give
17 you specifics.

18 A Yes I did.

19 Q Your testimony is that he didn't.

20 A He did not.

21 Q Other than the binder bin or storage rack
22 issue.

23 A That's correct.

24 CHAIRMAN BECHHOEFER: Are they the same
25 thing?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 THE WITNESS: Yes, sir.

2 CHAIRMAN BECHHOEFER: Thank you.

3 JUDGE YOUNG: Did you get this letter? It
4 indicates that you were one of the people who received
5 a copy.

6 THE WITNESS: Yes, ma'am.

7 JUDGE YOUNG: You did receive it.

8 THE WITNESS: Yes, ma'am.

9 JUDGE YOUNG: Did you raise any questions
10 about its accuracy at that point?

11 THE WITNESS: Yes I did.

12 BY MR. SLATER:

13 Q What did you do? How did you raise your
14 objections?

15 A At that time it had been announced that
16 Mr. McArthur was the new Radiological
17 Protection/Chemistry Corporate Manager. I went to him
18 and told him that I did not agree with this. He told
19 me that I should write a rebuttal to this. Whereupon,
20 I made some statements on the bottom of this letter
21 and gave it to him and also requested a full
22 investigation. At which time, Mr. Ben Easley of the
23 HR Department told me it was better just to let this
24 go. That those investigations serve no purpose for
25 anybody and they were detrimental to anybody.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q Was there any investigation?

2 A No. There was not.

3 Q Was there any finding that you had engaged
4 in the alleged acts?

5 A No. There was not.

6 Q You said that you didn't agree with the
7 memorandum drafted by Mr. Grover.

8 A That is correct. I did not agree with it.

9 Q Was it your understanding that this memo
10 would make it into your official TVA records?

11 A I asked specifically if that was the case.
12 I was told that it would not be entered into my
13 records because they were just allegations with no
14 conclusion or evidence.

15 Q Who did you ask?

16 A I asked Ben Easley. I also asked Wilson
17 McArthur.

18 Q What about Mr. Grover?

19 A I asked Mr. Grover at the time too.

20 Q What were you told?

21 A I was told specifically it would not be.

22 Q Was it made a part of your official
23 record?

24 A I asked several months later to see to
25 verify. At which time, this was in my record which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was not per our discussion. I talked to the HR
2 Department about it to remove it as per those previous
3 discussions.

4 Q Take a look at the bottom. There's a cc:
5 to Tresha Landers. Do you see that?

6 A Yes I do.

7 Q Did you give Mr. Grover permission to send
8 a copy of this memorandum to Ms. Landers?

9 A No I did not.

10 Q Do you know whether or not Mr. Fiser
11 became aware of the contents of this memorandum?

12 A I believe he did.

13 Q What's the basis of your belief?

14 A Based on the fact that a copy of this
15 letter showed up with the DOL investigator when he was
16 investigating Mr. Fiser's complaint.

17 Q You indicated that you went to Wilson
18 McArthur and protested.

19 A Yes I did.

20 Q He told you to write a rebuttal.

21 A Yes, sir.

22 Q You stated that you did write a rebuttal.

23 A Yes I did.

24 Q That you wrote some notes on the bottom of
25 the copy that you received.

1 A That's right.

2 Q What did you do with the notes?

3 A I forwarded that back to Wilson McArthur
4 so that it would be in the file.

5 JUDGE YOUNG: Which file?

6 THE WITNESS: Wilson's personal files.

7 JUDGE YOUNG: Personal what?

8 THE WITNESS: His personal files for
9 personnel.

10 CHAIRMAN BECHHOEFER: Personnel files.

11 THE WITNESS: Yes. That is correct.

12 MR. MARQUAND: No, Judge. It wasn't
13 personnel files. He said Wilson McArthur's personal
14 files that he kept as a supervisor.

15 CHAIRMAN BECHHOEFER: I see. Okay.

16 THE WITNESS: Correct.

17 BY MR. SLATER:

18 Q And did you keep a copy of your rebuttal?

19 A Actually, Wilson made a copy of it and
20 sent it back to me.

21 Q What did you do with the copy that Dr.
22 McArthur sent back to you?

23 A I put it in my file.

24 MR. SLATER: Your Honors, I would like to
25 mark TVA Exhibit 152. It's Mr. Harvey's notes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (Whereupon, the above-referred
2 to document was marked as TVA
3 Exhibit No. 152 for
4 identification.)

5 MS. EUCHNER: Your Honors, I am going to
6 object to the use of this document. This was never
7 provided to us in discovery despite the fact that we
8 asked for all documents related to a sexual harassment
9 claim filed by Ms. Landers against Mr. Harvey. This
10 is clearly relevant to that response. They never
11 provided it. There's no date stamp on it so they
12 can't even argue that they previously provided it.

13 MR. SLATER: Well, Your Honor, we would
14 have provided it had we had a copy of it. We received
15 a copy of these notes yesterday from Mr. Harvey.

16 JUDGE YOUNG: Yesterday?

17 MR. SLATER: Yesterday.

18 MS. EUCHNER: Well, then at the minimum
19 they should have been provided to us yesterday, so
20 that I had the opportunity to review them.

21 MR. SLATER: Last night at ten o'clock.

22 MR. MARQUAND: Your Honor, he was not our
23 employee as you know. We can't be responsible and
24 weren't responsible for producing documents in his
25 personal possession. I don't know that Counsel ever

1 attempted to subpoena anything Mr. Harvey might have
2 had. But TVA never had possession of this document
3 until ten o'clock last night.

4 JUDGE YOUNG: What about Mr. McArthur's
5 copy?

6 MR. MARQUAND: We asked Dr. McArthur for
7 his files. As you know Dr. McArthur is no longer
8 employed. He searched his files pursuant to the
9 subpoena Counsel gave him for his deposition and for
10 trial and this never turned up.

11 JUDGE YOUNG: So you're saying that --

12 MR. MARQUAND: When Dr. McArthur left, he
13 obviously had no reason to retain matters like this
14 and file them in his garage out in Salt Lake City.

15 JUDGE YOUNG: So, as I was saying, you're
16 saying that TVA never knew anything about such a
17 document or that Mr. Harvey ever complained that any
18 part of this statement was untrue and that Mr.
19 McArthur never told you anything about this ever.

20 MR. MARQUAND: That's several questions.
21 The first answer is we never knew about this document.
22 We did know that Mr. Harvey complained to Grover at
23 the time and to McArthur, but we never knew that it
24 was done in writing.

25 JUDGE YOUNG: Did you discuss it with Mr.

1 McArthur?

2 MR. MARQUAND: We discussed it just like
3 we did at the trial. We discussed all these matters
4 with Dr. McArthur. There's a lot of matters. We
5 never were informed that there was a written document.
6 As you know, Dr. McArthur had been in ill health.
7 He's been in terrible health. He's very sick
8 throughout all this. His memory is not very good.
9 For him to remember these details, he just doesn't
10 have a good command of all of the facts.

11 JUDGE YOUNG: Were you aware --

12 MR. MARQUAND: Not until last night.

13 JUDGE YOUNG: Let me finish my question.
14 Were you aware that Mr. Harvey had objected to the
15 contents of this letter?

16 MR. MARQUAND: Yes.

17 JUDGE YOUNG: And you were aware of that
18 how.

19 MR. MARQUAND: He's told us. It's in his
20 statements. He said it in his deposition. It's in
21 his O-2. He's objected to it. Everybody has known
22 that since day one.

23 JUDGE YOUNG: Are there any exhibits that
24 we have seen that indicated that he had objected to
25 it?

1 MR. MARQUAND: We thought it was all oral.
2 We have not seen anything. I don't know. There may
3 be some allusions to that in his statement. I don't
4 know.

5 JUDGE YOUNG: Was that brought out in Dr.
6 McArthur's testimony?

7 MR. MARQUAND: I don't remember.

8 MS. EUCHNER: And Your Honors --

9 MR. MARQUAND: I do believe it came out in
10 Tresha Lander's or Ed Boyles' or Ben Easley's. I
11 believe somebody mentioned it, but I don't remember
12 who.

13 MS. EUCHNER: Your Honors, during Mr.
14 Harvey's deposition he mentioned that he requested to
15 write a rebuttal. But "I was told that since it
16 wasn't in my record to just forget about it by Mr.
17 Easley." He never went on to state I did actually
18 file the written rebuttal. So this is the first we're
19 all hearing about it. He certainly had his
20 opportunity to provide this to us.

21 MR. MARQUAND: He certainly can refresh
22 his recollection when he goes back and searches his
23 records and finds the fact that he did write a
24 rebuttal.

25 MS. EUCHNER: And it's very convenient

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that he did so the night before his testimony rather
2 than the night before his deposition when I would have
3 had six months to review.

4 JUDGE YOUNG: Hold on one second. Mr.
5 Harvey, in your deposition -- Well, do we have a copy
6 of Mr. Harvey's deposition?

7 MS. EUCHNER: Yes, Your Honors. It is
8 Staff Exhibit 63.

9 MR. MARQUAND: Your Honors, I think this
10 argument and objection by Counsel is premature. We
11 hadn't sought to have the document admitted yet. Let
12 alone, he hasn't even spoken to it and attempted to
13 identify it.

14 MS. EUCHNER: I object to them even asking
15 him any questions about a document that should have
16 been provided to discovery.

17 JUDGE YOUNG: Slow down. Point us to the
18 place in the deposition where this is discussed, where
19 any objections were discussed.

20 MS. EUCHNER: Well, on page 55, I believe
21 it's me questioning him. No, I'm sorry. It's Mr.
22 Marquand questioning him. "Were you told that that
23 would become a part of your official personnel file?"
24 That's on line seven page 55. Answer "I was told
25 specifically that it would not."

1 JUDGE YOUNG: Excuse me. On my copy, the
2 page numbers are cut off.

3 MS. EUCHNER: I'm sorry.

4 JUDGE YOUNG: Wait a minute.

5 MS. EUCHNER: Page 55, the top line says
6 "Question. Were you provided a copy of the memorandum
7 which is Harvey Exhibit 2?"

8 JUDGE YOUNG: I see. The number is half
9 there. Okay.

10 MS. EUCHNER: Mr. Harvey's response that
11 I'm referring to is lines nine through 12.

12 MR. MARQUAND: It certainly doesn't say
13 that he didn't write a rebuttal, and nobody asked him
14 any further questions about it as far as I can tell.

15 JUDGE YOUNG: Mr. Harvey, why did you not
16 mention that you had written a rebuttal in your
17 deposition?

18 THE WITNESS: I had given a statement to
19 Wilson McArthur, not to the HR Department. I did not
20 write a formal letter to the HR Department in
21 rebuttal. I had voiced my objections to my new
22 supervisor as he requested. I still have stuff packed
23 away. I went through and started looking through just
24 last week at all the documents that had been provided
25 to me and any documents that I may have that were

1 relevant. I came across this last week.

2 CHAIRMAN BECHHOEFER: Mr. Harvey, just to
3 go specifically, did you send copies of this document
4 with your notes on it to Mr. Grover?

5 THE WITNESS: No. I did not.

6 CHAIRMAN BECHHOEFER: To Mr. Boyles?

7 THE WITNESS: No. I did not.

8 CHAIRMAN BECHHOEFER: Mr. Easley?

9 THE WITNESS: No. I did not.

10 CHAIRMAN BECHHOEFER: Ms. Landers?

11 THE WITNESS: No. I did not.

12 CHAIRMAN BECHHOEFER: Mr. McArthur?

13 THE WITNESS: Yes I did.

14 CHAIRMAN BECHHOEFER: And Mr. McGrath?

15 THE WITNESS: No. I did not.

16 CHAIRMAN BECHHOEFER: Okay. Thank you.

17 MS. EUCHNER: Your Honors, I just noticed
18 something. I'm going to double check it, but I don't
19 believe this is the same memorandum that is Staff
20 Exhibit 67. Staff Exhibit 67 is a June 24, 1996
21 memorandum. The note on this one is a July 1, 1996
22 memorandum which we have also never seen before from
23 TVA. So even if it didn't have the notes attached to
24 it, the typewritten part which TVA should have had a
25 copy of because Mr. Boyles and Mr. McGrath still are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 TVA employees, we have not seen that either. It looks
2 fairly similar, but it's a different date. It is not
3 the exact same document.

4 JUDGE COLE: Some of the text is a little
5 different.

6 JUDGE YOUNG: Mr. Harvey, let me ask you
7 a couple more questions about this. Did you agree to
8 take sensitivity training?

9 THE WITNESS: I said if it was proposed
10 that I needed it that I would attend.

11 JUDGE YOUNG: Did you attend?

12 THE WITNESS: No. I did not.

13 JUDGE YOUNG: Why not?

14 THE WITNESS: I was never asked to.

15 JUDGE YOUNG: In this written statement
16 that's being proffered by TVA, you say "other
17 allegations proposed I did not agree with" and stated
18 that "some were not true at all and others concerning
19 'I was too busy,' were taken out of context and
20 stretched to the point of using as part of the
21 allegation." What were you talking about there?

22 THE WITNESS: There was a discussion
23 during that meeting as I recall that talked about when
24 I was in the chemical cleaning project at Sequoyah.
25 Ms. Landers had called in the morning to get some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 data. We were in the middle of an event. I requested
2 that I'm in the middle of an event and I would like to
3 get back with you later as soon as I get this taken
4 care of. The comment was made that I brushed that off
5 and as you read in there that I did not have time was
6 not a true statement.

7 JUDGE YOUNG: What about "other
8 allegations?"

9 THE WITNESS: The other allegations were
10 very nonspecific. I said I don't agree to anything.
11 There was nothing specific.

12 JUDGE YOUNG: But what were you referring
13 to you by the words "other allegations" that are
14 written here?

15 THE WITNESS: That I agreed with this
16 which I did not. The other statement is the only
17 statement I acknowledged in there. It was the storage
18 rack.

19 JUDGE YOUNG: Was the what?

20 THE WITNESS: The storage rack issue.

21 JUDGE YOUNG: The reason I'm asking you
22 this is because earlier you said that there was only
23 one thing mentioned and that was the storage bin.

24 THE WITNESS: That's correct.

25 JUDGE YOUNG: And yet in your handwritten

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 note down here, you refer to "other allegations" and
2 to something happening concerning "I was too busy."
3 I'm interested in your clarifying the distinction
4 between saying that there was only one specific
5 allegation told to you and then this note indicating
6 that there were more than one.

7 THE WITNESS: During the discussion that
8 ensued with Mr. McArthur, Mr. Easley, and Mr. Grover,
9 there were some nonspecific issues addressed as well
10 as I recall a first draft of this letter.

11 JUDGE YOUNG: So you're saying during the
12 meeting a first draft of this letter was presented to
13 you.

14 THE WITNESS: That's correct.

15 JUDGE YOUNG: When you say "nonspecific
16 allegations" what do you mean?

17 THE WITNESS: Such as during the
18 discussion there was a conversation that came up that
19 I didn't have time to deal with her during the
20 chemical cleaning project when she requested some
21 information. There were examples that were provided
22 verbally that were not provided in that letter.

23 JUDGE YOUNG: What other examples?

24 THE WITNESS: The issue that I recall was
25 the chemical cleaning issue.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE YOUNG: But you said other --

2 THE WITNESS: And the other allegation
3 that I agreed to all of this which I did not.

4 JUDGE YOUNG: What were the nonspecific
5 allegations that you are referring to now?

6 THE WITNESS: I'm talking about the
7 chemical cleaning issue at Sequoyah that my statement
8 says where I didn't have time for her.

9 JUDGE YOUNG: The other ones.

10 THE WITNESS: That's the only one I
11 recall.

12 JUDGE YOUNG: But you said "nonspecific
13 allegations."

14 THE WITNESS: Right.

15 JUDGE YOUNG: That's plural.

16 THE WITNESS: That's nonspecific.

17 JUDGE YOUNG: That's plural though.

18 THE WITNESS: Like I said, I don't recall
19 specifically because it's been six years. All I did
20 was find that document in my file. I denied that I
21 agreed to any of this other than the storage rack
22 issue. I also denied that the other issue that I can
23 recall that I addressed specifically being brought up
24 was about the steam generator chemical cleaning at
25 Sequoyah.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN BECHHOEFER: Would the storage
2 rack issue have been any reason to have you take
3 employee sensitivity training or whatever it's called?

4 THE WITNESS: I don't believe it was. I
5 don't believe that's why I was ever asked to.

6 JUDGE YOUNG: Mr. Marquand and Mr. Slater,
7 you say you got this at ten o'clock last night.

8 MR. MARQUAND: Yes, ma'am.

9 JUDGE YOUNG: Did you provide it to Staff
10 Counsel at any time before ten minutes ago?

11 MR. MARQUAND: No.

12 JUDGE YOUNG: Why not?

13 MR. MARQUAND: I just made copies of it.

14 JUDGE YOUNG: Would not that have been a
15 good idea to give it to them at least first thing this
16 morning before the hearing started?

17 MR. MARQUAND: I guess. They still --

18 JUDGE YOUNG: Pardon me?

19 MR. MARQUAND: I think they would still be
20 arguing.

21 JUDGE YOUNG: Mr. Marquand, I'm asking you
22 a direct question, and I would like for you to listen
23 to me before you start answering. Don't you think it
24 would have been a good idea to give this to Staff
25 Counsel prior to the starting of the hearing session

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this morning given that it was a new document that no
2 one had seen before?

3 MR. MARQUAND: Yes, Your Honor.

4 JUDGE YOUNG: Why didn't you?

5 MR. MARQUAND: It didn't occur to me. In
6 all honesty, we didn't get through security until it
7 was time to start the hearing this morning.

8 (Judges confer.)

9 MR. DAMBLY: Maybe we can help, Your
10 Honor, at this point, we'll withdraw the objection.
11 The substance of this note has been read into the
12 record already. To have the document not there is
13 going to create one of these things in the record
14 where everybody is wondering what this document is.
15 So since in essence the note has already been read in,
16 we'll withdraw the objection.

17 JUDGE YOUNG: Mr. Dambly, you have a
18 tendency to do these kinds of things sometimes and
19 then say you felt forced into it.

20 MR. DAMBLY: No.

21 JUDGE YOUNG: I will state for the record
22 that all Counsel should be aware that if you become
23 aware of something that has not been provided to the
24 other side, we will not look favorably on your
25 offering it unless there has been absolutely no

1 prejudice and there is a good reason. In this case,
2 there would have been prejudice because Dr. McArthur
3 could have been questioned about this. But since the
4 objection has been withdrawn, I think we can move on.
5 I guess we probably should clarify whether there
6 should be any inclusion of this in the record as
7 rejected, provided, whatever. Does Counsel want to
8 speak to that?

9 MR. DAMBLY: I don't think it's actually
10 been offered yet. It has a number on it. I guess if
11 they offer it, we said we're not going to object.

12 MR. SLATER: We offer TVA Exhibit 152.

13 JUDGE YOUNG: So you're withdrawing your
14 objection to that.

15 CHAIRMAN BECHHOEFER: Without objection,
16 and I note that, the document will be admitted, TVA
17 Exhibit 152.

18 (The document referred to
19 having previously been marked
20 for identification as TVA
21 Exhibit 152, was received into
22 evidence.)

23 BY MR. SLATER:

24 Q Mr. Harvey, we had a discussion a few
25 minutes ago about a rebuttal that you wrote to the

1 memo that Mr. Grover issued. Do you recall that?

2 A Yes.

3 Q Is TVAX 152 that rebuttal?

4 A Yes it is.

5 Q In that rebuttal, you do not agree with
6 the conclusions reached by Mr. Grover.

7 A No. I did not.

8 Q You did not give your permission to
9 publish this particular document or the contents of
10 your meeting to Ms. Landers or anyone else.

11 A I did not.

12 Q You did not authorize or it's your
13 understanding that this document did not beech your
14 personal history record. Is that correct?

15 A Yes it is.

16 Q Just for the record, could you tell us
17 what the second page is?

18 A The second page is a copy of the envelope
19 that this was in as it returned from Dr. McArthur to
20 me.

21 Q Just to make it clear that this TVAX 152
22 is the document that you sent to Dr. McArthur.

23 A Yes it is.

24 Q Which was returned in the envelope as a
25 copy which is attached as page two.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Yes. A copy of it was returned.

2 Q In your deposition, I believe that you
3 were told some of the other allegations. Is that
4 correct?

5 A Correct.

6 Q I believe that one of the allegations was
7 that you would pass gas in the vicinity of Ms.
8 Landers. Do you recall that?

9 A Yes I do.

10 JUDGE YOUNG: Excuse me. Mr. Harvey, why
11 didn't you indicate that before?

12 THE WITNESS: Because this was made known
13 to me at the deposition in December.

14 JUDGE YOUNG: Oh, okay.

15 BY MR. SLATER:

16 Q I'm going to refer you to page 40 of the
17 deposition.

18 JUDGE YOUNG: Tell us again the exhibit
19 number.

20 JUDGE COLE: Is that Exhibit 63?

21 MS. EUCHNER: Yes, Your Honors. It's
22 Staff 63.

23 JUDGE COLE: Mr. Slater, did you just say
24 page 44?

25 MR. SLATER: Page 40.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE COLE: 40.

2 JUDGE YOUNG: It starts "By Ms. Euchner."

3 MR. SLATER: Yes, ma'am.

4 BY MR. SLATER:

5 Q Beginning at line 11, Ms. Euchner said
6 "And I would like to start with the first bullet on
7 the first page which says for the record, Harvey would
8 come to her cubicle expel gas and belch." Do you
9 recall that?

10 A I recall that statement.

11 Q I believe your answer to that was no.

12 A Absolutely not.

13 Q Are you saying that those expelling of gas
14 or the alleged expelling of gas and belching never
15 occurred?

16 A It did not occur.

17 Q You deny it.

18 A Yes I do.

19 Q On to page 41, the question is "Okay. The
20 next bullet reads Harvey told Landers she was just a
21 co-op. She did not have a chance of getting hired at
22 TVA, and she should do what he tells her to do." Do
23 you recall that?

24 A I recall that statement.

25 Q Is that statement true?

1 A No. It is not.

2 Q You deny it.

3 A Yes I do.

4 Q It goes on. On line 15 page 41, "The
5 first bullet on the top of the second page, Harvey
6 told Landers that she made less money than he did, his
7 job was more significant, that he instructed her to
8 make copies of reference material for him." Do you
9 recall that?

10 A Yes I do.

11 Q Is that true?

12 A No. It is not.

13 Q You deny it.

14 A Yes I do.

15 Q On page 42 beginning at line 5, "The next
16 bullet Ronald O. Grover, Landers immediate supervisor,
17 instructed Landers to ask Harvey about the evaluations
18 of some chemicals at Sequoyah. Landers contacted
19 Harvey at Sequoyah. He told her I don't have time to
20 fool with you. This had better be important." Do you
21 recall that at your deposition?

22 A Yes I do.

23 Q Is that a true statement?

24 A No. It is not.

25 Q You deny it.

1 A Yes I do.

2 Q Over on page 43 line 3, "The third bullet,
3 Harvey asked Dana L. Eckard, a former co-op student to
4 feed his pets during the summer of 1993. Landers
5 could not provide any specific information about the
6 circumstances surrounding this situation other than
7 she believed that Eckard thought that feeding Harvey's
8 pets was part of her job." Do you remember that?

9 A Yes I do.

10 Q Is that an accurate statement?

11 A Yes. I did ask her to feed my pets.

12 Q Why did you do that?

13 A When I traveled I always asked somebody I
14 worked with to help me out with my pets. I did offer
15 to pay.

16 Q You testified as to that in your
17 deposition. Is that correct?

18 A Yes I did.

19 Q Mr. Harvey, do you have any idea why Ms.
20 Landers would have made these allegations against you?

21 A I believe that Ms. Landers and Mr. Fiser
22 were very good acquaintances. I believe this was done
23 to influence the outcome of the selection board.

24 Q When were these allegations asserted
25 against you?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A After the reorganization was announced and
2 the combining of the Radiological Protection Chemistry
3 and Environmental Organization had announced the new
4 manager.

5 Q Had the jobs been posted?

6 A I don't recall specifically if they had or
7 not.

8 Q But in the neighborhood.

9 A Yes, sir.

10 Q At this hearing, Ms. Landers also
11 testified that you would grope your privates in her
12 presence. Is that true, sir?

13 A No. It is not.

14 Q You deny that.

15 A Yes I do.

16 Q Thank you. Has anyone else ever made any
17 such allegations against you?

18 A No.

19 Q Will you take a look at your resume which
20 is TVAX 141? Your present job is Chemistry Manager.

21 A That is correct.

22 Q You manage a staff of 96.

23 A That is correct.

24 Q Since assuming that position, has anyone
25 made any allegations of harrassment against you?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D C. 20005-3701

1 A No. They have not.

2 Q Prior to Ms. Landers allegations in the
3 late spring or early summer 1996, had anyone brought
4 any allegations of harrassment prior to that?

5 A No. They had not.

6 MR. SLATER: No further questions.

7 CHAIRMAN BECHHOEFER: I think we'll take
8 a morning break about now. I guess I'll hold further
9 questions until later. Let's take a 15 minute break.
10 Off the record.

11 (Whereupon, the foregoing matter went off
12 the record at 10:57 a.m. and went back on
13 the record at 11:16 a.m.)

14 CHAIRMAN BECHHOEFER: Back on the record.

15 I just have one preliminary question I
16 would like to ask Mr. Harvey, the same one I was about
17 to ask before we broke. But do you know why, or can
18 you explain the difference in dates on the two memos,
19 one of which was Staff Exhibit 67 and the other was
20 TVA Exhibit 152? Now they're not precisely the same
21 memos, and they go to different people, but do you
22 have any idea why the difference in dates, why one was
23 written sometime after the fact?

24 MR. HARVEY: No, sir, I don't.

25 CHAIRMAN BECHHOEFER: I'm referring to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 June 24 and July 1st dates.

2 MR. HARVEY: The only one I know of, was
3 aware of until I saw this, was the July 1st signed
4 copy that was given to me.

5 CHAIRMAN BECHHOEFER: I see. Okay.

6 JUDGE COLE: You did not receive a copy of
7 the June 24th, 1996 memorandum?

8 MR. HARVEY: I think that was the one when
9 we had the discussion. I did not receive it. It was
10 not signed. This was --

11 CHAIRMAN BECHHOEFER: You're on the cc
12 list or on the mailing list.

13 MR. HARVEY: Correct, but it was not
14 signed. As I recall, that may have been the letter we
15 discussed and I disagree with it.

16 CHAIRMAN BECHHOEFER: I see. Okay.

17 JUDGE COLE: Just one question before the
18 staff starts. Do you recall TVA Exhibit 26, the
19 Declaration of Sam Harvey? I don't know whether you
20 need a copy of it, probably not. I'll read to you the
21 part that I'm interested in.

22 In Item No. 1, page 1, of Exhibit 26, you
23 state that -- it's with reference to the DOL
24 Investigator Report: "I finally marked up the last
25 draft copy of my statement in red and signed it since

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N W
WASHINGTON, D.C. 20005-3701

1 it was patently obvious that he was going to state it
2 the way I gave it -- he was not going to state it the
3 way I gave it to him." Do you recall that, sir?

4 MR. HARVEY: Yes, sir.

5 JUDGE COLE: Now you said you had marked
6 it in red and then signed it. Was the document that
7 you signed with the markings in red that you made on
8 it an accurate statement?

9 MR. HARVEY: I believe so at the time. I
10 don't have a copy of it with me.

11 JUDGE COLE: All right, sir. Did you see
12 a copy of the final report of the DOL investigator?

13 MR. HARVEY: I see what was provided here,
14 yes.

15 JUDGE COLE: Was that reasonably accurate
16 in the way it was finished by him?

17 MR. HARVEY: I need to review that
18 document to be sure. I don't have it. I need to --
19 I would have to --

20 JUDGE COLE: Yes, I don't know what
21 exhibit number that is.

22 JUDGE YOUNG: Is that the one we were
23 talking about earlier that he had signed or --

24 MS. EUCHNER: It's Staff Exhibit 60, Your
25 Honor.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D C 20005-3701

1 JUDGE COLE: Staff Exhibit 60?

2 JUDGE YOUNG: Oh, okay, it's a different
3 one.

4 JUDGE COLE: Have you looked at Staff
5 Exhibit 60, Mr. Harvey?

6 MR. HARVEY: Yes, sir.

7 JUDGE COLE: Is that pretty much the way
8 you finished it?

9 MR. HARVEY: Yes, sir.

10 JUDGE COLE: All right, thank you.

11 JUDGE YOUNG: Is that document in
12 evidence?

13 MR. SLATER: No, it's not. I don't
14 believe so.

15 MS. EUCHNER: No.

16 MR. SLATER: Should I -- since Mr. Harvey
17 has looked at it and reviewed it, then I would tender
18 Staff 60.

19 MS. EUCHNER: Staff has no objection.

20 CHAIRMAN BECHHOEFER: Staff Exhibit 60
21 will be admitted.

22 [Whereupon, the above-referred-
23 to document marked as Staff
24 Exhibit 60 for identification
25 was received in evidence.]

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE, N.W.
WASHINGTON, D.C. 20005-3701

1 JUDGE YOUNG: Are we ready for cross
2 examination? Go ahead.

3 MR. SLATER: Before -- I've talked to
4 counsel and I have a couple more questions that I
5 omitted to ask.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. SLATER:

8 Q Mr. Harvey, now after you received that
9 memo from Mr. Grover, were you sent to sensitivity
10 training?

11 A No, I was not.

12 Q And that memo was subsequently withdrawn
13 from your personnel file?

14 A Yes, it was.

15 Q Now at some point in time after all this,
16 did you file a complaint of your own?

17 A Yes, I did.

18 Q I'm going to show the witness TVA Exhibit
19 27.

20 [Whereupon, the above-referred-
21 to document was marked as TVA
22 Exhibit 27 for identification.]

23 (Pause.)

24 Q Mr. Harvey, this document was previously
25 identified by Mr. Grover during his testimony. Could

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D C. 20005-3701

1 you tell us what this document is?

2 A This document is a response based on a
3 staff meeting that I attended about harassment and
4 discrimination, at which point I raised up several
5 issues that I felt where I had been harassed and
6 intimidated.

7 Q And why did you believe that you had been
8 harassed and intimidated?

9 A No. 1, I had not received a raise in
10 several years. Two, I had put in for several
11 positions that I was not even granted interviews for,
12 but which I met all the qualifications of the posting,
13 and some issues regarding when Mr. Grover first came
14 to work at TVA on a significant contract I had been
15 working on where he had ordered me to change it after
16 it had been presented to the Chief Nuclear Officer.

17 Q Now do you also talk about some of the
18 issues that we have been talking about this morning,
19 about being accused of being pre-selected for the job
20 because of your religion and that kind of thing?

21 A Correct.

22 Q What happened to this complaint?

23 A Nothing, as far as I'm aware of, but I
24 believe -- I just can't recall at this time.

25 Q Do you remember being interviewed by the

1 TVA Office of Inspector General?

2 A Possibly.

3 MR. SLATER: At this time we move that TVA
4 Exhibit 27 be admitted.

5 MS. EUCHNER: No objection.

6 CHAIRMAN BECHHOEFER: TVA 27 will be
7 admitted.

8 [Whereupon, the above-referred-
9 to document marked as TVA
10 Exhibit 27 for identification
11 was received in evidence.]

12 BY MR. SLATER:

13 Q I'm going to show you what's already been
14 marked and entered into evidence as TVA Exhibit 151.

15 (Pause.)

16 I've placed in front of you TVA Exhibit
17 151, which was admitted into evidence yesterday.
18 Could you tell us what the first page is?

19 A A fax cover page from Mike Harding to Ron
20 Taylor.

21 Q Do you know who Ron Taylor is?

22 A No, I do not.

23 Q Do you know, other than the cover page,
24 does the attachment, do you recognize the attachment
25 to the cover page?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A Twenty-seven that I just looked at.

2 Q Thank you.

3 Turn back to the cover page, please.

4 Underneath Ron Taylor's name, could you tell us what
5 appears there?

6 A TVA-OIG.

7 Q And is there an Office of Inspector
8 General stamp on the bottom right corner?

9 A Yes, sir.

10 Q And is there a date on that?

11 A November 7th, 1997. Or November 4th,
12 excuse me, 1997.

13 Q Thank you.

14 MR. SLATER: No further questions.

15 CHAIRMAN BECHHOEFER: Is staff ready to
16 proceed?

17 MS. EUCHNER: Yes, Your Honor.

18 CROSS EXAMINATION

19 BY MS. EUCHNER:

20 Q Mr. Harvey, if you have TVA Exhibit 141 in
21 front of you -- I believe it's your resume that you
22 provided?

23 A Yes, Ma'am.

24 Q On page 2 of that resume you have an entry
25 for May 1991 to May 1999 that says, "Program Manager,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Tennessee Valley Authority Corporate Office."

2 A That's correct.

3 Q Now during those eight years did you have
4 the same Program Manager position or were there
5 different Program Manager positions that you held
6 within that time?

7 A The Program Manager was a generic position
8 until approximately 1996, when it was very specific to
9 PWR and BWR.

10 Q Prior to becoming the PWR Program Manager
11 in 1996, what had your duties been?

12 A Predominantly spending my time at Sequoyah
13 Nuclear Plant as the Sequoyah Program Manager. In
14 addition, had other duties in raw water that crossed
15 the sites, both Watts Bar and Browns Ferry.

16 Q And that was chemistry work, is that
17 correct?

18 A That is correct.

19 Q What percentage of your duties during that
20 time was chemistry work?

21 A I'd say 95 percent or greater.

22 Q Mr. Slater asked you a little bit earlier
23 about a potential transfer to Sequoyah just prior to
24 the 1996 reorganization, and I believe you testified
25 that you would have been amenable to that, is that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 correct?

2 A Correct.

3 Q So you would have preferred to go to
4 Sequoyah than stay at corporate?

5 A That's correct.

6 Q I would like to ask you a little bit about
7 the telephone conversations that you had with Mr.
8 David Voeller. Mr. Voeller testified that you called
9 him on June 3rd and that you stated you would be
10 working more closely with him as the PWR Chemistry
11 Manager, that interviews would be done for that
12 position to keep it legal, and that you felt sorry for
13 Mr. Fiser as the odd man out. Is that accurate?

14 A No, it is not.

15 Q What did you say when you had that
16 conversation with Mr. Voeller, if not that?

17 A Exactly as I previously stated, that I
18 would be working closely with him or not at all, and
19 I believed it to be closer.

20 Q If you would turn to TVA Exhibit 26, it is
21 your Declaration before the United States Nuclear
22 Regulatory Commission.

23 (Pause.)

24 I would like you to look down at paragraph
25 7 on page 2 of that, and Mr. Slater asked you a number

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of questions about that. In the middle of that
2 paragraph you state, "Arrogance on my part maybe."
3 You felt extremely self-confident that you would get
4 the PWR position, is that correct?

5 A Yes, I did.

6 Q And you state in this Declaration that one
7 of the reasons you felt so self-confident was because
8 Mr. Fiser was going around telling people that he
9 would leave TVA, he didn't wish to stay there, is that
10 correct?

11 A That's correct.

12 Q Now I would ask you to look up at
13 paragraph 4 of your Declaration. Now am I correct
14 that this is a recitation of your conversation with
15 Mr. Fiser after the all-hands meeting that Mr. McGrath
16 held on June 17th?

17 A Yes, that's correct.

18 Q And can you please read what paragraph 5
19 then says?

20 A "Gary Fiser then proceeded to tell me and
21 others around him that he did not want to work for TVA
22 and he was going to take the year's salary and leave.
23 I believe that Gary Fiser took the action of filing a
24 DOL complaint prior to the jobs being posted in order
25 to obtain financial gain to manipulate the system for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this end, as he had originally stated."

2 Q If Mr. Fiser didn't state to you and
3 others that he intended to take the early-out and
4 leave TVA until after the all-hands meeting on June
5 17th, how could you have used that for your rationale
6 to your call to Mr. Voeller for being self-confident
7 on June 3rd?

8 A This was after that conversation, before
9 the posting went up.

10 Q But that's what your Declaration says.
11 Your Declaration in paragraph 7 says that one of the
12 reasons, when you called Mr. Voeller, that you were so
13 self-confident, and you confirmed this with me just
14 now, was that Mr. Fiser was going around telling
15 people that he was going to leave the agency, but
16 earlier in this Declaration you state he didn't even
17 tell you that until June 17th. How could that be part
18 of the reason for your call to Mr. Voeller if it
19 didn't happen until two weeks later?

20 A I don't believe that was part of my call
21 to Mr. Voeller. I believe this was after the fact.

22 Q So when you called Mr. Voeller and were
23 self-confident, the fact that Mr. Fiser was telling
24 people he would leave, that didn't factor into your
25 self-confidence at that time?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A I don't recall exactly the date Mr. Fiser
2 had started stating that.

3 JUDGE YOUNG: Is there a reference in this
4 to the June 3rd date or is that based on some other
5 part of the record?

6 MS. EUCHNER: That's based on Mr.
7 Voeller's testimony and his Day Planner notes.

8 BY MS. EUCHNER:

9 Q I'd like now to turn to the allegations of
10 the harassment by Ms. Landers. You admitted on your
11 direct testimony and during the deposition that I took
12 of you that you did ask one of the co-op students, Ms.
13 Eckard, to feed your pets, is that correct?

14 A Correct.

15 Q As a result of that particular allegation,
16 did you receive any counseling?

17 A Yes.

18 Q What counseling did your receive?

19 A I got a call from the Ethics Officer
20 identifying himself as such and told that I could not
21 ask co-ops to do that, at which point I requested,
22 "Even if I offered to pay?" His comment was that was
23 a different story.

24 Q That if you had offered to pay, it was a
25 different story?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE, N.W.
WASHINGTON, D.C. 20005-3701

1 A That's correct.

2 Q Did he --

3 A And he asked me, to avoid future
4 appearance of impropriety, not to do that, to which I
5 agreed.

6 Q Did he instruct you that you should avoid
7 asking any subordinate to do favors for you?

8 A I don't recall that.

9 Q I would like now to turn to TVA 152, which
10 is the administratively confidential memo dated July
11 1st, 1996 with your handwritten notes on it.

12 The first question would be, you stated
13 that you later requested to see your personnel file to
14 determine if this memo appeared in your personnel
15 file, is that correct?

16 A That's correct.

17 Q Who did you make that request to?

18 A To HR.

19 Q Anybody in particular in HR that you can
20 recall?

21 A I believe it was Ben Easley.

22 Q What did he show you specifically?

23 A He showed me a copy of this letter?

24 Q Did he show you your entire record or just
25 the letter?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A He showed, I believe, as he recalled, he
2 showed me my entire file, and this was the only issue
3 in it that I recall.

4 Q Was what he showed you commonly referred
5 to as "TVA, your personal history record"? Is that
6 the file he showed you?

7 A I don't recall the name of it.

8 Q When he showed it to you, was this on
9 paper or was it on microfiche?

10 A It was on paper.

11 Q Now let's turn to your handwritten notes
12 on the bottom of this page. Now you state here that
13 you agreed with the storage bin issue and that you
14 apologized, once you discovered it, is that correct?

15 A That's correct.

16 Q And in the next sentence you state, "Other
17 allegations proposed I did not agree with and stated
18 that some were not true at all and others concerning
19 'I was too busy' were taken out of context and
20 stretched to the point of using as part of the
21 allegation." Is that accurate, what I just --

22 A Yes, Ma'am.

23 Q You testified earlier that during the
24 meeting with Mr. Grover and Mr. McArthur, and I
25 believe Mr. Easley was also present, that they didn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D C 20005-3701

1 tell you any specific allegations, is that correct?

2 A That's correct.

3 Q So when you asked, all they told you about
4 was the shelving issue?

5 A That's all I recall.

6 Q How is it possible that you know then that
7 her allegations were untrue or that you didn't agree
8 with them, if they didn't tell you what they were?

9 A Like I said, this was in July of '96.
10 This is the notes I have. I don't recall specifically
11 those events other than the specific example provided
12 on the phone call at Sequoyah on chemical cleaning,
13 stated that I was too busy. I said that was not a
14 true statement; it was taken out of context.

15 Q So it's possible that during that meeting
16 that they did detail specific incidents and that you
17 disagreed with them, and you just don't remember now?

18 A That could possibly be true.

19 Q That's not what you testified to earlier.

20 A I testified earlier that I couldn't recall
21 any specifics.

22 Q So when you state here that you didn't
23 agree or that the other allegations weren't true,
24 you're talking about specific allegations that they
25 raised at that meeting?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A I'm talking about generic allegations they
2 made at that meeting. They were very non-specific, as
3 I testified to earlier, that they did not get into the
4 details, that they were kind of global, that it was --
5 that, you know, I had treated her differently because
6 she was a co-op. It was never very specific.

7 Q Well, then I'll repeat my question.

8 A Okay.

9 Q How do you know that the allegations were
10 not true if they didn't tell you what they were? They
11 could have very well been true.

12 A I don't agree with that. I don't recall
13 any specific allegations being made.

14 Q Actually, just for the record, I was
15 wondering if on the original of this document there is
16 a word missing, because on the bottom of this the word
17 "conversation" is partially cut off. I want to make
18 sure that we're not missing a word before
19 "conversation." Is that the original? It's not a
20 copy of the original?

21 CHAIRMAN BECHHOEFER: The court reporter
22 has the original.

23 MS. EUCHNER: That answers my question,
24 just for the record.

25 BY MS. EUCHNER:

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Q You stated that the reason you felt Ms.
2 Landers might be raising these issues against you is
3 that she was friends with Mr. Fiser and that they were
4 raising this because they wanted to influence the
5 outcome of the selection process, is that correct?

6 A I believe that to be true.

7 Q So, essentially, what you're alleging is
8 that Ms. Landers and Mr. Fiser had a little conspiracy
9 going to prevent you from being selected for one of
10 the positions in the new organization, is that
11 correct?

12 A I believe that.

13 Q And I believe you also testified earlier
14 that there was a conspiracy between Mr. Fiser and Mr.
15 Grover to keep you out at Sequoyah rather than have
16 you be brought back, is that correct?

17 A I believe that to be true.

18 Q Do you have any evidence of these
19 conspiracies that you allege that Mr. Fiser, Mr.
20 Grover, and Ms. Landers were involved in?

21 A By the conversation with Mr. Grover where
22 he said, suggested it would be better for everyone if
23 I stayed at Sequoyah.

24 Q Didn't you agree with that statement? You
25 testified earlier you would have preferred to stay at

1 Sequoyah.

2 A Very true, I would have.

3 Q So how is that a conspiracy if you were in
4 agreement with it?

5 A From the fact that it was not allowed came
6 to light and Mr. Fiser's comment to the effect that it
7 had been predetermined that I was selected, based on
8 the fact that I was not allowed to go to Sequoyah.

9 Q Well, that sounds like Mr. Fiser alleging
10 there was a conspiracy that you were pre-selected, not
11 that he was involved in any conspiracy.

12 (Pause.)

13 Towards the end of your testimony --

14 MR. MARQUAND: Was that a question or is
15 that a comment? If it's a comment, could it be
16 stricken --

17 MS. EUCHNER: Excuse me, Your Honor, Mr.
18 Marquand is not handling this witness; Mr. Slater is.

19 MR. MARQUAND: That wasn't a question of
20 the witness. It's inappropriate.

21 CHAIRMAN BECHHOEFER: Did you ask a
22 question?

23 MS. EUCHNER: I asked my question. If he
24 doesn't want to answer it, that's fine, I'll withdraw
25 it, but my point was made.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE, N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRMAN BECHHOEFER: Could you restate
2 it?

3 MS. EUCHNER: I don't know that I could
4 restate it exactly as I said it before.

5 Again, I'd like to note for the record Mr.
6 Slater is handling this witness, and if he has any
7 objections, he should make them, not Mr. Marquand.
8 I'll withdraw the question because, quite frankly, I
9 don't think I could repeat it right now.

10 BY MS. EUCHNER:

11 Q Towards the end of your testimony, Mr.
12 Slater asked you if anyone else had ever raised any
13 complaints about harassment about you, is that
14 correct?

15 A Correct.

16 Q To your knowledge, did anyone else ever
17 raise any issues about your interpersonal skills to
18 you?

19 A I believe that to be true, yes, one or two
20 incidences.

21 Q What were those incidences?

22 A I believe at Watts Bar there was an
23 incident when I asked someone about -- they were
24 getting married, two people in a group, and I
25 questioned that, and Mr. Voeller told me he had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 already handled it. I apologized for that, saying
2 that, okay, I understand, but at the time I believed
3 there was a policy that two people getting married
4 couldn't work for the same supervisor.

5 Q And you raised that issue to them
6 personally?

7 A I asked the question, yes.

8 Q Did Mr. Grover ever counsel you as to your
9 interpersonal skills as they related to dealing with
10 female employees?

11 A Not to my knowledge.

12 Q So if Mr. Grover testified that he did,
13 you disagree with his testimony?

14 A Yes, I do.

15 Q I would like now for you to turn back to
16 TVA Exhibit 27, which is your November 27th, 1997 memo
17 to Dr. McArthur. I would like to start with the first
18 paragraph. You indicate in this that you wrote this
19 in response to a staff meeting with Mr. Bailey and Dr.
20 McArthur. What were the circumstances of that staff
21 meeting?

22 JUDGE YOUNG: And, also, before you start,
23 could you refresh my memory on who Mr. Bailey is or
24 was?

25 MR. HARVEY: Jack Bailey at the time was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Vice President of Support, I guess was the title.

2 JUDGE YOUNG: Support?

3 MR. HARVEY: He was Mr. McArthur's -- yes,
4 corporate support -- he was Mr. McArthur's supervisor.

5 I believe that the discussion centered
6 around a workplace free of harassment and
7 discrimination, that one of the discussions that came
8 out is Mr. Bailey was coming on board about that time,
9 as best I can recall.

10 BY MS. EUCHNER:

11 Q And the entire staff was present for this
12 meeting, is that correct?

13 A Correct.

14 Q Did you write this memo on the day of the
15 staff meeting, to the best of your recollection?

16 A I don't believe it was on the day of the
17 staff meeting. I believe it was in light of the staff
18 meeting that I wrote afterwards.

19 Q But fairly soon afterwards?

20 A Correct.

21 Q You stated in your earlier testimony that
22 one of the reasons you wrote this was because some of
23 these issues impacted your ability to receive a raise
24 in the last four years. Who had been your supervisor
25 for the last year prior to you writing this memo?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701