

1 A As I recall, it was Mr. Grover.

2 Q From 1996 to 1997, Mr. Grover was your
3 supervisor?

4 A I don't recall the exact timeframe. You
5 would have to remind me of the employment base.

6 Q In 1996 there was a reorganization --

7 A Right.

8 Q -- of corporate chemistry. At that time
9 did Dr. McArthur become your immediate supervisor?

10 A Yes, he did, in I believe it was August or
11 September of '96.

12 Q So from August or September of '96 to
13 November of 1997, Dr. McArthur was your first-line
14 supervisor?

15 A Correct.

16 Q Did you raise any allegations of
17 harassment and discrimination against him for not
18 giving you a raise during that time?

19 A No, I did not.

20 Q The third paragraph on page 1, you bring
21 up Mr. Grover and something related to the Calgon
22 partnering contract. Prior to the time that this
23 happened, which I believe you noted in 1994, had you
24 ever worked with Mr. Grover before?

25 A No, I have not.

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1 Q Why did you consider Mr. Grover's actions
2 to be harassment or discrimination?

3 A Because I had been working on this
4 contract for almost a year, had presented it to the
5 Chief Nuclear Officer, had gotten the site buy-in as
6 to who would be the independent review board, and Mr.
7 Grover was adamant that we replace the industry-
8 recognized expert with somebody that was not qualified
9 in the area.

10 Q Can you explain how that qualifies as
11 harassment or discrimination as opposed to a brand-new
12 supervisor coming in and disagreeing with your
13 assessment of the situation?

14 A Shortly thereafter, I was removed from the
15 project.

16 Q Is it possible that you were removed from
17 the project because he disagreed with how you were
18 handling it and felt that, as your new supervisor, it
19 was his job to handle that matter?

20 A That possibly could have been his thought.

21 Q If you'd turn to the next page, about --
22 let me see -- midway through that top paragraph, you
23 state, "My performance reviews during this period were
24 less than what I had been receiving to this point in
25 time at TVA." Is that correct?

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1 A Correct.

2 Q And those were your performance appraisals
3 by Mr. Grover, correct?

4 A That's correct.

5 MS. EUCHNER: This is Staff Exhibit 65.
6 I'm going to go ahead and give it to the court
7 reporter now to mark.

8 JUDGE YOUNG: You could -- I was just
9 going to say, as long as we're real careful to always
10 put them back in the books, it's fine to take them
11 out. Our staff has spent a lot of time trying to
12 straighten out the exhibits. So I don't want to lose
13 any.

14 Was it admitted? Then we don't need to
15 redo it at this point. Let's look on our list and
16 see.

17 MS. EUCHNER: I believe we entered it
18 through Mr. Grover.

19 JUDGE YOUNG: Staff Exhibit 65 was
20 admitted.

21 BY MS. EUCHNER:

22 Q Mr. Harvey, if you could just take a
23 moment to look at that document?

24 MR. SLATER: Your Honor, while Mr. Harvey
25 is looking at those documents, we would like to

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1 interpose an objection that these matters are
2 collateral in that, as to whether or not he was right
3 or wrong concerning his allegations are just
4 irrelevant to this case.

5 MS. EUCHNER: Your Honors, I have a
6 further point about this that I will get to once I go
7 through all of these allegations. My point is not
8 that he's right or wrong.

9 JUDGE YOUNG: We're on the Landers
10 allegations now?

11 MS. EUCHNER: No, we're about to go into
12 his allegation that his performance reviews were lower
13 than he would have expected.

14 JUDGE YOUNG: Well, I think you've brought
15 it up earlier by bringing out this exhibit. Go ahead.

16 CHAIRMAN BECHHOEFER: Go ahead.

17 BY MS. EUCHNER:

18 Q Have you had the opportunity to review it,
19 Mr. Harvey?

20 A Yes.

21 Q Do you recognize this document?

22 A Yes.

23 Q This is your 1995 performance appraisal?
24 Is that correct?

25 A Correct.

1 Q Who was the supervisor who gave you this
2 appraisal?

3 A Ron Grover.

4 Q And did you sign this appraisal?

5 A Yes, I did.

6 Q I would like you to turn to the last page.
7 There's a section of the appraisal that says,
8 "Employee Acknowledgment." Could you please read what
9 you wrote under "Employee Acknowledgment"?

10 A "I agree with the appraisal and will
11 continue to strive to improve my performance. I would
12 like to get more training in management and people
13 skills to further improve and will request this as
14 part of my 1996 IDP."

15 Q Can you explain how those comments
16 indicate that your performance review was lower than
17 you had expected and that you disagreed with it?

18 A Previously, I had received more "exceeds"
19 than just "meets," and, as I recall, after this that
20 I did as well.

21 Q And did you state that on this appraisal
22 anywhere?

23 A Not on this appraisal.

24 Q Is there some reason why you waited until
25 two years after the appraisal was done to raise this

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1 complaint?

2 A I felt for fear of retaliation.

3 Q For fear of retaliation for commenting
4 that your appraisal was lower than --

5 A In general at TVA.

6 CHAIRMAN BECHHOEFER: By the way, what
7 does "IDP" mean?

8 MR. HARVEY: Individual Development Plan,
9 as I recall.

10 BY MS. EUCHNER:

11 Q If you'd now turn to the third page of TVA
12 Exhibit 27, in that top, lengthy paragraph you raised
13 the Landers complaint of harassment. Why were you
14 raising this issue in your letter when it happened
15 over a year ago and had been resolved?

16 A As far as I know, it had not been
17 resolved.

18 Q Were you ever, other than the letter, were
19 you ever disciplined?

20 A No.

21 Q Were you ever required to go to any kind
22 of training for it?

23 A No.

24 Q Then why wasn't it resolved?

25 A Because it had been brought up before by

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1 others after this event.

2 Q Who had it been brought up by?

3 A It had been brought up by Mr. Bailey, as
4 I recall.

5 Q Mr. Bailey specifically brought up that
6 issue?

7 A Yes, he did.

8 Q Was it at the staff meeting that he
9 brought up that issue?

10 A No, it was not.

11 Q Privately?

12 A Yes.

13 Q Under what circumstances did he discuss
14 that with you?

15 A We were talking about advancement
16 opportunities, and he had said, since I was guilty of
17 this allegation, that it would impact me, at which
18 time I protested that it was an allegation that I
19 disagreed with and requested --

20 JUDGE YOUNG: I'm sorry, who said this to
21 you?

22 MR. HARVEY: Jack Bailey, at which time I
23 also requested then that it should be investigated.

24 BY MS. EUCHNER:

25 Q When did that discussion with Mr. Bailey

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1 take place?

2 A Approximately after that -- I can't
3 remember if it was '96, '97 timeframe. I don't
4 recall.

5 Q In this memo you state that one of the
6 reasons you're upset about the Landers issue is that
7 it was brought up in Mr. Fiser's DOL complaint, in the
8 investigation, is that correct?

9 A Correct.

10 Q When were you interviewed by the
11 Department of Labor in Mr. Fiser's complaint? I
12 believe that was Staff Exhibit 60.

13 A I would have to refer to that.

14 Q Is Staff Exhibit 60 up there?

15 A I think so. The date on it is March 27th,
16 1997.

17 Q So eight months before you wrote this
18 memo, is that correct?

19 A Correct.

20 Q Why did you wait eight months before
21 complaining that Mr. Fiser had raised this issue in
22 his DOL complaint?

23 A As I stated previously, because I believe
24 with the new management and looking to create a
25 workplace free of harassment and intimidation, it was

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1 okay to bring these issues up, whereas previously I
2 did not feel comfortable.

3 Q But Mr. McArthur had been your supervisor
4 since August or September of 1996. You didn't feel
5 comfortable bringing these issues up with him?

6 A I didn't feel comfortable bringing them up
7 with anybody prior to this.

8 Q And that's because you feared retaliation?

9 A Correct.

10 JUDGE YOUNG: Clarify for me, please, what
11 was it that was said about freely bringing up issues
12 of harassment and discrimination? What do you recall
13 was actually said at that meeting?

14 MR. HARVEY: As I recall, Mr. Bailey made
15 it very clear that he wanted anybody that had any
16 issues to bring them up, so that they could get
17 addressed, cleared up, and we could move forward,
18 instead of always having these issues come back, like
19 DOL complaints, that you should follow the process,
20 freely be able to bring them up and address them.

21 JUDGE YOUNG: So it was not specific to
22 you; it was a general statement?

23 MR. HARVEY: Correct.

24 JUDGE YOUNG: Do you recall what was the
25 occasion for his saying that?

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1 MR. HARVEY: I really don't, Your Honor.

2 JUDGE YOUNG: Thank you.

3 CHAIRMAN BECHHOEFER: Do you recall
4 whether they had in mind nuclear safety issues as
5 distinguished from other types of perhaps personnel
6 issues?

7 MR. HARVEY: I don't recall, sir.

8 CHAIRMAN BECHHOEFER: So you don't know
9 whether the advice to raise issues freely was
10 motivated by nuclear safety issues?

11 MR. HARVEY: No, sir, I don't recall the
12 specifics of that meeting.

13 CHAIRMAN BECHHOEFER: All right, thank
14 you.

15 BY MS. EUCHNER:

16 Q To keep with TVA Exhibit 27, on the third
17 page, second paragraph, in the middle of that
18 paragraph you accuse Mr. Fiser of taking a TVA laptop
19 computer upon his departure from TVA. Approximately
20 when did Mr. Fiser leave TVA?

21 A I don't recall.

22 Q It was after the 1996 reorganization, when
23 he didn't get a position, is that correct?

24 A Correct.

25 Q What evidence did you have that Mr. Fiser

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1 took this laptop?

2 A I had no evidence other than that it was
3 missing and he is the last person that had it signed
4 out.

5 Q And is there some reason you found it
6 necessary to raise this allegation over a year after
7 Mr. Fiser left?

8 A I don't recall raising it a year after he
9 left. I recall raising it right afterwards and
10 documenting in this a year later.

11 Q Do you have any documentation that you
12 raised this earlier?

13 A Other than my discussion with my
14 supervisor.

15 Q And why did you feel it was necessary to
16 raise it again in November of 1997?

17 A To get all the issues out in the open.

18 Q Was it because you were angry that in his
19 DOL complaint that the Landers harassment issue was
20 raised?

21 A I don't recall if that was it. I was
22 trying to make sure I had documentation as to all the
23 events that had occurred.

24 Q And how is that harassment or
25 discrimination of you, that Mr. Fiser may have or may

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1 not have removed a laptop computer?

2 A It had nothing to do with harassment of
3 me. It had --

4 Q Then why is it in this letter?

5 A Because a laptop was missing from the
6 Department.

7 JUDGE YOUNG: When you say you told your
8 supervisor, who were you talking about?

9 MR. HARVEY: I can't recall in timeframe
10 if it was Ron Grover or Wilson McArthur at that time,
11 but it was shortly after he left that it was missing.

12 BY MS. EUCHNER:

13 Q You later dropped your complaint that Mr.
14 Fiser took the laptop, didn't you?

15 A Yes, I did.

16 Q Why?

17 A Because it showed back up about three
18 weeks later.

19 Q Three weeks after your letter?

20 A Three weeks after saying that it was
21 missing.

22 Q And where was it?

23 A Don't know. It just showed up.

24 JUDGE YOUNG: Three weeks after you told
25 your supervisor or three weeks after you wrote this

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1 letter?

2 MR. HARVEY: Three weeks after I told my
3 supervisor it was missing.

4 BY MS. EUCHNER:

5 Q All right, you lost me for a minute there.
6 You told your supervisor that it was missing sometime
7 during 1996, soon after Mr. Fiser left?

8 A Correct.

9 Q And then three weeks later it was found?

10 A Correct.

11 Q So why are you raising it in 1997 --

12 A As I've told --

13 Q -- if it had already been found?

14 A Because I was raising all the issues up.
15 I think this had to do with Mr. Fiser and the issue,
16 and the fact that he had had this and it showed back
17 up. This was part of why all of this was being put
18 together, as his case of saying what he was saying and
19 bringing this into his DOL case.

20 Q So you had no evidence that it ever left
21 TVA, and it showed up at TVA three weeks later, but
22 you felt it necessary in November 1997 to accuse Mr.
23 Fiser of stealing a computer?

24 A I said, as I said then, that Mr. Fiser was
25 the last one that had it checked out; it didn't show

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1 up, and it showed back up three weeks later, after we
2 asked where it was.

3 JUDGE YOUNG: Asked whom?

4 MR. HARVEY: Asked the supervisor, my
5 supervisor at the time that the laptop was missing.

6 JUDGE YOUNG: And who was your supervisor?

7 MR. HARVEY: It was either Grover or Mr.
8 McArthur. I don't remember which.

9 JUDGE COLE: So Mr. Fiser was no longer in
10 the employ of TVA?

11 MR. HARVEY: Correct.

12 JUDGE COLE: Would he have trouble having
13 access to the building?

14 MR. HARVEY: I do not know. It depends on
15 whether he retired or not. Retirees have access to
16 the building through the Live Well Center.

17 JUDGE YOUNG: Through what?

18 MR. HARVEY: The fitness center.

19 CHAIRMAN BECHHOEFER: Where did the laptop
20 show up?

21 MR. HARVEY: It showed up back in the
22 cabinet it was not in three weeks before.

23 CHAIRMAN BECHHOEFER: So it ended up where
24 it was supposed to?

25 MR. HARVEY: Yes, sir.

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1 BY MS. EUCHNER:

2 Q You testified that you told your
3 supervisor about it. How do you know it wasn't your
4 supervisor who took it, and once he realized that it
5 was missing, put it back?

6 A I don't.

7 Q So, in other words, you just felt like
8 accusing Mr. Fiser of something?

9 A Not necessarily. He was the last one that
10 had it checked out.

11 Q Throughout this November 27th, 1997 memo
12 you raise a number of complaints about Mr. Grover,
13 including the Calgon contract, your performance
14 appraisal, and you also raise some issues about his
15 allegedly using a cell phone and a TVA vehicle for
16 personal use.

17 At the time you wrote this in November
18 1997 was Mr. Grover at TVA?

19 A I don't recall.

20 Q Wasn't he doing a rotation at INPO in
21 Atlanta during that time?

22 A Very possibly.

23 Q He was no longer your supervisor at that
24 time, is that correct?

25 A Correct.

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1 Q So, again, why did you feel it necessary
2 to raise issues a year after Mr. Grover had ceased
3 being your supervisor?

4 A Because the cell phone bills were sent to
5 me for approval, at which point I questioned whether
6 or not all the calls to St. Louis were necessary.

7 Q Is this the first time you raised that
8 issue?

9 A As far as what?

10 Q Well, you said you reviewed the cell
11 phones and you saw phone calls. Was this the first
12 time, this memo, that you ever complained about that
13 to anybody?

14 A No.

15 Q When was the first time?

16 A When I got the cell phone bills and I
17 raised them to Mr. McArthur.

18 JUDGE YOUNG: When was that?

19 MR. HARVEY: Approximately this same
20 timeframe, when he was on this reverse -- right after
21 he went on this reverse assignment, and --

22 JUDGE YOUNG: The assignment to INPO?

23 MR. HARVEY: Correct.

24 JUDGE YOUNG: And how was that resolved at
25 the time? Or do you know?

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1 MR. HARVEY: Mr. McArthur told me to go
2 ahead and approve those for payment and let it go; he
3 was on reverse assignment and assigned to somebody
4 else.

5 JUDGE YOUNG: And what?

6 MR. HARVEY: And Mr. Grover was assigned
7 to somebody else for a supervisor.

8 JUDGE YOUNG: So let me see if I
9 understand what you're saying. You're saying that you
10 told Dr. McArthur -- he told you that, because Mr.
11 Grover was now somewhere else, under someone else's
12 supervision, to forget about it?

13 MR. HARVEY: Correct.

14 BY MS. EUCHNER:

15 Q Other than Dr. McArthur, did you ever
16 raise the cell phone issue to anybody else?

17 A Not that I recall.

18 Q Did you make an anonymous phone call to
19 the TVA Office of Inspector General on May 1st, 1997
20 raising the issues of the cell phone used by Mr.
21 Grover and the Calgon contract?

22 A I don't recall.

23 Q You may have? You just don't remember?

24 A I don't recall if I did or not. I don't
25 recall ever calling the Inspector General's office.

1 Q Did you call -- is there a hotline number
2 available at TVA?

3 A I don't remember.

4 Q So it's possible you did; you just have no
5 recollection of it?

6 A I have no recollection of calling.

7 Q You stated that you wrote this document
8 soon after the staff meeting, correct?

9 A Correct.

10 Q So sometime -- the staff meeting was
11 sometime late November of 1997?

12 A I would assume so based on this.

13 Q After providing a copy of this document to
14 Dr. McArthur, did you provide a copy to anyone else?

15 A I don't recall.

16 Q Well, Mr. Slater showed you TVA Exhibit
17 151, which had a fax cover on it, a fax from Michael
18 Harding to Ron Taylor. Did you provide a copy of this
19 document to Michael Harding?

20 A No, I did not.

21 Q Do you know how he got a copy of this?

22 A I would assume from Dr. McArthur.

23 Q And just for the record, if you'll look at
24 TVA 151, if you have it up there?

25 (Pause.)

1 JUDGE YOUNG: Who was Michael Harding?

2 MR. HARVEY: At the time I think he was
3 the Manager of Employee Concerns.

4 MS. EUCHNER: And, actually, that was
5 going to be what my question is.

6 BY MS. EUCHNER:

7 Q Underneath his name it says, "Organization
8 TVA-CRS." Do you know what that abbreviation means?

9 A I don't recall.

10 Q If you wrote your memo on November 27th,
11 1997, could you please explain how the date on the fax
12 is October 31st, 1997 and how Mr. Harding could have
13 had it at that date?

14 A I can't explain it.

15 Q Well, the Office of Inspector General date
16 stamp on that page is November 4th, 1997. Again, if
17 you didn't write it until November 27th, can you
18 please explain how the IG had a copy of it on November
19 4th, 1997?

20 A No, I cannot.

21 MS. EUCHNER: The only thing I have left
22 is I would like to admit Staff Exhibit 63, which is
23 Mr. Harvey's deposition, which Mr. Slater questioned
24 Mr. Harvey about during his direct exam but did not
25 admit into evidence.

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1 CHAIRMAN BECHHOEFER: Any objection?

2 MR. SLATER: No objection.

3 CHAIRMAN BECHHOEFER: Which number? Staff

4 63 will be admitted.

5 [Whereupon, the above-referred-
6 to document marked as Staff
7 Exhibit 63 for identification
8 was received in evidence.]

9 CHAIRMAN BECHHOEFER: I have one, just
10 another clarification question concerning TVA Exhibit
11 27, your memo to Dr. McArthur. On the second line it
12 does say, "today's staff meeting." Would that not
13 indicate the staff meeting was November 27, 1997?

14 MR. HARVEY: Very possibly, yes, sir.

15 CHAIRMAN BECHHOEFER: I mean, isn't that
16 rather logical, that you wrote it after, sometime that
17 same day, after the meeting?

18 MR. HARVEY: Yes, sir.

19 CHAIRMAN BECHHOEFER: Yes. Thank you.

20 Have you concluded? Have you concluded or
21 do you have other subjects --

22 MS. EUCHNER: Give me one minute to
23 confer.

24 CHAIRMAN BECHHOEFER: Okay.

25 (Pause.)

1 MS. EUCHNER: Staff has nothing further,
2 Your Honors.

3 MR. SLATER: Your Honor, I just have a
4 couple of clarifying questions, if I may.

5 CHAIRMAN BECHHOEFER: Go ahead.

6 REDIRECT EXAMINATION

7 BY MR. SLATER:

8 Q If you would turn to TVA Exhibit 151 -- do
9 you have it in front of you?

10 A Yes, I do.

11 Q Would you turn to the first page of the
12 memorandum? The date on the top is November 27th,
13 1997, is that correct?

14 A Correct.

15 Q And if you look to the bottom, there is a
16 fax date of October 31, 1997, is that correct?

17 A That's correct.

18 Q Would you agree that one of those dates is
19 in error?

20 A I would.

21 Q And is it possible that your date on
22 November 27, 1997 is in error?

23 A It could possibly be.

24 Q Thank you.

25 JUDGE YOUNG: Anything further from other

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1 counsel?

2 MR. SLATER: Not here, Your Honor.

3 MS. EUCHNER: Nothing for the staff, Your
4 Honor.

5 CHAIRMAN BECHHOEFER: Just one further
6 sort of a typographical-type question. In TVA Exhibit
7 27, which was your memorandum to Dr. McArthur, on the
8 second paragraph on the second page, is there a typo
9 on the third line, and was that in the original or
10 is --

11 MR. HARVEY: Yes, that's a typo --

12 CHAIRMAN BECHHOEFER: Yes.

13 MR. HARVEY: -- their original.

14 CHAIRMAN BECHHOEFER: So it should be
15 "where"?

16 MR. HARVEY: Yes, sir.

17 CHAIRMAN BECHHOEFER: So this is the same
18 as the original?

19 MR. HARVEY: Yes, sir.

20 CHAIRMAN BECHHOEFER: Thank you.

21 JUDGE YOUNG: Is there any reason not to
22 excuse this witness?

23 MR. SLATER: I don't believe so, Your
24 Honor.

25 MS. EUCHNER: No, Your Honor, we're done.

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1 CHAIRMAN BECHHOEFER: Okay. Mr. Harvey,
2 thank you, and you're excused.

3 (Witness excused.)

4 JUDGE COLE: Is an hour sufficient?

5 CHAIRMAN BECHHOEFER: Off the record now.

6 (Whereupon, the foregoing matter went off
7 the record for lunch at 12:18 p.m. and went back on
8 the record at 1:43 p.m.)

1 CHAIRMAN BECHHOEFER: Back on the record.
2 TVA, Mr. Slater.

3 MR. SLATER: TVA calls David Goetcheus.

4 JUDGE YOUNG: You might want to spell your
5 name for the court reporter also.

6 THE WITNESS: G-O-E-T-C-H-E-U-S.

7 JUDGE YOUNG: Oh, I missed the U.

8 CHAIRMAN BECHHOEFER: So did I.

9 MR. SLATER: Ready, Your Honor?

10 WHEREUPON,

11 DAVID GOETCHEUS

12 was called as a witness by Counsel for TVA, having
13 first been duly sworn, assumed the witness stand, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SLATER:

17 Q Mr. Goetcheus, are you currently employed?

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1 A Yes. I'm employed with the Tennessee
2 Valley Authority.

3 Q And how long have you been employed at the
4 Tennessee Valley Authority?

5 A Twenty-four and a half years.

6 Q And what is your current position?

7 A I'm the Senior Manager of Steam Generator
8 and Reactor Pressure Vessel Technology.

9 Q And prior to --

10 JUDGE YOUNG: Steam generator and what,
11 vessel technology?

12 THE WITNESS: Reactor Pressure Vessel
13 Technology.

14 JUDGE YOUNG: Reactor Pressure, thank you.

15 BY MR. SLATER:

16 Q And what is your education, sir?

17 A I have a BS degree in metallurgical
18 engineering with an associate's degree in mechanical
19 engineering technology.

20 JUDGE YOUNG: Did you say metallurgical?

21 THE WITNESS: Yes.

22 JUDGE YOUNG: You might want to pull one
23 of the microphones a little bit -- or maybe both of
24 them closer to you, because I'm losing the ends of
25 some of your words.

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1 THE WITNESS: Okay.

2 JUDGE YOUNG: Thank you.

3 BY MR. SLATER:

4 Q Prior to coming here today, were you asked
5 to put together a resume?

6 A Yes. I put together a brief biography.

7 MR. SLATER: Your Honor, I'd like to get
8 marked as TVA Exhibit 140.

9 (Whereupon, the above-referred
10 to document was marked as
11 TVA Exhibit No. 140 for
12 identification.)

13 BY MR. SLATER:

14 Q Mr. Goetcheus, TVA 140, the document that
15 I just laid before you, could you tell us what that
16 is?

17 A This is a biography of my working career
18 at TVA.

19 Q And does it give the positions that you
20 held at TVA?

21 A Not all of them but 90 percent of them.

22 Q Okay. And does it also reflect your
23 education?

24 A Yes.

25 Q And you also have papers that you've

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1 authored and presented; is that correct?

2 A That' correct. I'm the industry
3 recognized expert on steam generator corrosion and
4 steam generator repair activities.

5 Q While employed at TVA, could you tell us
6 what your area of expertise -- what's your area of
7 expertise?

8 A Corrosion of materials is my basic
9 talents, and then other areas of expertise are in
10 development and testing repair methodologies for
11 metallurgical problems, such as cracking, stress
12 corrosion cracking and repairs.

13 Q Does this biography accurately reflect
14 most of the jobs that you've held at TVA?

15 A Yes.

16 Q Your educational background, papers that
17 you've written and presented as some career
18 highlights?

19 A Yes.

20 MR. SLATER: We move that TVA Exhibit 140
21 be admitted.

22 MS. EUCHNER: No objection.

23 CHAIRMAN BECHHOEFER: Without objection,
24 TVA Exhibit 140 is admitted.

25 (Whereupon, the above-referred

1 to document, previously marked
2 as TVA Exhibit 140, was admitted
3 into evidence.)

4 BY MR. SLATER:

5 Q I want to turn your attention to the
6 spring and summer of 1996. Could you tell us what the
7 most significant chemistry problem there was at the
8 Sequoyah and Watts Bar?

9 A At that time, we were in the process of
10 starting up Watts Bar, and we were having significant
11 chemistry problems in the secondary system of the
12 Plant, and it was imperative to diagnose the problem,
13 resolve it to minimize potential corrosion to the
14 steam generators.

15 Q And how did you go about trying to
16 diagnose and minimize those problems?

17 A I was asked by Ike Zeringue, who at the
18 time was the Vice President of Operations, to go up to
19 Watts Bar and work with them, with Management and with
20 the Chemistry personnel up there, to resolve the
21 issue. And at that time, I went up and evaluated the
22 situation and concluded that the problems were similar
23 to problems that we had experienced in the past at
24 Sequoyah, and I recommended that we put together a
25 team of people with the most expertise in TVA in

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1 resolving secondary system corrosion problems and
2 chemistry problems. And I identified two people. One
3 was Robert Richey from Sequoyah, and he was a
4 Chemistry Manager there, and Sam Harvey, who is a
5 Corporate Chemistry -- I'm not certain what his
6 current -- I'm not certain what his title was at that
7 time, probably Program Manager.

8 Q What was Mr. Fiser's position at that
9 time?

10 A Mr. Fiser was in Corporate at that time,
11 and he was in a Corporate Chemistry Program Manager
12 position, I think. At that time, which I didn't
13 really realize it until I got up there and had been
14 looking into the Chemistry issues, that Mr. Fiser had
15 been assigned up to Watts Bar by Wilson McArthur to
16 help them during the start-up with Chemistry issues.

17 Q And could you tell us why didn't you
18 enlist the assistance of Mr. Fiser who was assigned to
19 give technical support to Watts Bar at that particular
20 point in time?

21 A Well, I was very familiar with Mr. Fiser.
22 He came out to Sequoyah during the restart of Sequoyah
23 as support for me when I was Chemistry Manager at
24 Sequoyah, and his particular skillset isn't -- his
25 strengths aren't secondary system chemistry issues,

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1 and he didn't have the background and the industry
2 experience and the industry expertise that Mr. Harvey
3 and Mr. Richey had. They both had quite a bit of
4 - experience with industry organizations and involvement
5 with the industry where Gary didn't have that
6 particular knowledge nor expertise.

7 Q So in a nutshell, Mr. Harvey and Mr.
8 Richey were more technically qualified than Mr. Fiser?

9 A Yes.

10 JUDGE YOUNG: Was that question -- well,
11 actually, let me ask you, was that answer directed to
12 more technically qualified generally or with regard to
13 secondary chemistry?

14 THE WITNESS: In regard specifically to
15 secondary chemistry, for PWR secondary system
16 chemistry, which is extremely important.

17 JUDGE YOUNG: Thanks.

18 BY MR. SLATER:

19 Q And you said extremely important. Could
20 you elaborate on that?

21 A The steam generators comprise about 70
22 percent of the primary pressure boundary. Each steam
23 generator has got 51,000 square feet of tubing in it,
24 and it's the highest probability for a problem with
25 PWR. It's kind of the Achilles heel of PWRs, and

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1 there's kind of a long sorted history of problems with
2 steam generators. And the significant causal factor
3 there is corrosion due to lack of control of secondary
4 system chemistry. So it's extremely important in
5 PWRs. And in terms of complexity, primary coolant
6 chemistry is very, very simple compared to secondary
7 system chemistry.

8 Q And is there an increased emphasis on
9 steam generator integrity in the industry these days?

10 A Steam generator tube integrity is -- a
11 tube rupture event is probably the highest probability
12 of a tube rupture or a leakage event in the PWR, and
13 there's a tremendous sensitivity to that within our
14 company as well as in the industry. We've spent
15 millions of dollars in improving the steam generators,
16 improving the secondary system of the Plant, retubing
17 condensers. Steam generator tube integrity involves
18 the health and safety of the public.

19 Q For a dollar amount, how much would it
20 cost to have to replace steam generators?

21 A One hundred and eighty millions dollars
22 for Sequoyah and around \$200 million, Watts Bar.

23 Q Now, you said back in the -- in '96, did
24 you know you were going to have any problems with
25 steam generator integrity?

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1 A Oh, yes. The steam generator integrity in
2 that time frame was -- and there's been unfortunately
3 a series of events in the industry that have occurred
4 that have resulted in tube ruptures or significant
5 leakage resulting in the shutdown of plants. And
6 those steam generators, the particular model we have
7 at Watts Bar, are extremely susceptible to corrosion.

8 JUDGE YOUNG: Did I understand you
9 correctly before, you didn't say that you had
10 replaced.

11 THE WITNESS: No.

12 JUDGE YOUNG: You said that it would cost
13 a certain amount to replace them.

14 THE WITNESS: That's correct.

15 JUDGE YOUNG: Okay. I wanted to make sure
16 I understood that right.

17 THE WITNESS: It's a very important asset
18 management issue.

19 BY MR. SLATER:

20 Q Now, you said that you were asked by Ike
21 Zeringue to look into the problem at Watts Bar.

22 A That's correct.

23 Q Who was the Chemistry Manager at Watts Bar
24 during that time?

25 A Dave Voeller.

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1 Q Did you have any discussions with him
2 about trying to manage the steam generator integrity
3 problems down there?

4 A Yes. We had several discussions about it,
5 and that's where I came up with the recommendation to
6 have Sam Harvey, Rob Richey come up and help them
7 during the start-up, which that was done and they very
8 successfully identified the problem areas and
9 corrected the chemistry issues.

10 Q Now, but before you brought Mr. Harvey and
11 Mr. Richey on, did you talk to Mr. Voeller and did you
12 talk to Mr. Fiser about trying to get a handle on the
13 steam generator integrity problem?

14 A I talked specifically to Mr. Voeller and
15 I'm trying to recall now, I think Mr. Fiser was
16 present when we had those discussions.

17 Q And in your opinion, those two folks could
18 not tackle the steam generator integrity problem that
19 was present at Watts Bar at that time?

20 A We had operated for a length of time that
21 we were becoming very concerned that we could damage
22 the steam generator tubing if we continued to operate
23 in that manner, so we had to aggressively pursue a
24 resolution to the problem.

25 Q And that aggressive pursuit was to bring

1 in Mr. Harvey and Mr. Richey and then come up with a
2 plan.

3 A That's correct.

4 Q I'm going to show the Witness TVA Exhibit
5 105.

6 JUDGE YOUNG: Before you hand that to the
7 court reporter, let me ask one question. When did
8 Watts Bar start up, what was the date?

9 THE WITNESS: It was '96. I don't know
10 when we went critical. I know that we were going
11 through power ascension in like April/May time frame.

12 JUDGE YOUNG: Okay. And so when you
13 brought Harvey and Richey into help, that was in the
14 spring?

15 THE WITNESS: June.

16 JUDGE YOUNG: Oh, June.

17 THE WITNESS: June/July.

18 JUDGE YOUNG: Of '96.

19 THE WITNESS: Yes. In other words, we had
20 gone quite awhile at lower power levels where the
21 chemistry wasn't nearly as important. And once you
22 got up in power and the heat flex went up in the steam
23 generators, your chemistry had to be sub-2 ppb levels,
24 and we were running ten to 12 ppb sulfate and five to
25 six ppb sodium, and that was just -- the expectation

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1 was less than two -- less than one was our goals
2 internally.

3 JUDGE YOUNG: I was just trying to get the
4 time frame correct, but thank you very much.

5 CHAIRMAN BECHHOEFER: During that period
6 of time, was there any sort of steam generator tube
7 leakage monitoring system at either of the plants,
8 either or both?

9 THE WITNESS: Yes. We have SIs that we
10 run routinely on primary and secondary detection of
11 radionuclide in the secondary system as well as the
12 rad monitors, as well as the condenser off-gas rad
13 monitor that's calibrated to the GPD of leakage.

14 CHAIRMAN BECHHOEFER: Thank you.

15 JUDGE YOUNG: We need to give you a break
16 now, I think.

17 (Whereupon, the above-referred
18 to document was marked as
19 TVA Exhibit No. 105 for
20 identification.)

21 BY MR. SLATER:

22 Q Could you tell us what TVA Exhibit 105 is?

23 A One hundred five is a handwritten note
24 from myself to Ike Zirengue, who's the Senior Vice
25 President of Operations, TVA Nuclear, and it was a

1 note regarding the details of my assessment of the
2 sodium and sulfate problem we were having with
3 secondary system chemistry at Watts Bar in July of '96
4 during the power ascension.

5 Q And attached to the handwritten portion is
6 a typewritten portion. Can you tell us what that is?

7 A That's the short-term corrective action
8 plan that I had worked with Sam Harvey and Rob Richey
9 to develop the resolution of the problem that we had.

10 Q And attached to that are some graphs.
11 What are those?

12 A Those are plots of the actual operating
13 chemistry during this time frame, records that we had
14 of plots of the actual operating chemistry.

15 Q So now who came up with the action plan?

16 A The near-term action plan was Mr. Richey
17 and Mr. Harvey. There's a note on the bottom that has
18 their names on the second page. And the long-term
19 actions were my own recommendations.

20 Q If you would turn to Page 3 of the
21 handwritten portion, on Item Number 9, do you see
22 that?

23 A Molar ratio control?

24 Q Could you tell us what that is?

25 A Molar ratio control is when you're trying

1 to control the ratio between sodium and chloride to
2 try and make certain that it's neutral, that you don't
3 have a caustic environment. You have sodium, you have
4 excess sodium and it's not tied up stoichiometrically
5 with the chloride, it will -- you'll have caustic
6 cracking in your steam generators. And so we try to
7 control molar ratio with deliberate addition to the
8 ammonia chloride to adjust that ratio.

9 Q Now, we've had testimony in this hearing
10 about molar ratio and also denting. Tell us what
11 denting is.

12 A Denting is when you form an acid chloride
13 environment in the crevices of the steam generator,
14 and it produces non-protective magnetite that expands
15 in literally dents or constricts the tube at the
16 support plate intersections. It's an extremely
17 insidious corrosion problem.

18 Q And your action plan that's set forth in
19 TVA Exhibit 105 reduced the problem of -- or at least
20 helped to further the steam generator integrity back
21 in 1996?

22 A Yes. We had low levels of sodium, so you
23 would put in the correct molar ratio, added
24 deliberately with, like I said earlier, with ammonia
25 chloride. You inject it deliberately and improve that

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1 ratio, and you keep the chloride below ten ppb so you
2 don't generate another corrosion problem denting.

3 Q Did Mr. Richey and Mr. Harvey do a good
4 job in coming up with a correction plan?

5 A Yes. And also, I might add, stayed on to
6 see to completion of the problem to resolve it.

7 MR. SLATER: At this time, we move that
8 TVA Exhibit 105 be admitted.

9 MS. EUCHNER: Staff objects to this
10 document on grounds of relevance, as well as to most
11 of Mr. Goetcheus' testimony at this point. TVA has
12 repeatedly stated that they are not arguing that Mr.
13 Fiser was not selected for performance reasons, and
14 that's essentially what Mr. Goetcheus' testimony is
15 going to, is that Sam Harvey was the steam generator
16 guy and therefore he should have been selected for
17 that position. His opinion on that is totally
18 irrelevant. According to TVA, the decision was made
19 solely by the Selection Review Board. Therefore, what
20 anybody else thought about what was going on at the
21 sites and whether Fiser did or didn't have secondary
22 chemistry experience is not relevant.

23 JUDGE YOUNG: Let me make sure I
24 understand you. You're saying that -- I'm not sure I
25 followed everything you said. You're saying that TVA

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1 is not arguing that job qualifications played any role
2 in Fiser's non-selection?

3 MS. EUCHNER: My understanding of their
4 position in this has been that they are not arguing
5 that Fiser's performance led to his non-selection,
6 that the sole basis for Mr. Harvey's selection was the
7 interviews and the results of the Selection Review
8 Board. If that is true, this is not relevant.

9 JUDGE YOUNG: But weren't the
10 qualifications of the three candidates relevant, or of
11 the two in the case of comparing Mr. Harvey and Mr.
12 Fiser, and weren't these types of issues discussed in
13 the interviews? I believe that there were questions
14 about molar ratios and denting in the interviews and
15 in the testimony of Mr. Fiser and everybody else who
16 talked about those interviews.

17 MS. EUCHNER: The questions about denting
18 and molar ratio were asked, but as for their
19 qualifications, I believe the members of the Review
20 Board that have already testified have said that they
21 didn't take into consideration their personal
22 knowledge of the qualifications or the job
23 performance, that they went based solely on what they
24 heard during those interviews. If we are to accept
25 their testimony as truthful, then any performance

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1 stuff that came in outside those interview is not
2 relevant to Mr. Fiser's non-selection.

3 JUDGE YOUNG: But you're challenging
4 whether that's true. You're challenging whether it's
5 true that Mr. Harvey was selected based on the
6 interview process, and you're challenging the fairness
7 of that process, as I understand it. And so it would
8 seem to me that it's hard to separate out the
9 qualifications of the different candidates with regard
10 to these secondary chemistry issues which have been
11 discussed all along.

12 MS. EUCHNER: Well, Your Honor, and we've
13 made this point repeatedly throughout, TVA has to
14 stick with the position that they gave, which is that
15 they are of the belief that the selection of Harvey
16 and the non-selection of Mr. Fiser was based solely
17 upon a fair selection review process, which did not
18 include any of this consideration of Mr. Harvey's
19 performance as a secondary chemist.

20 JUDGE YOUNG: But you've raised questions
21 about the fairness of the process, and so --

22 MS. EUCHNER: Of the process. We have
23 never raised questions about Mr. Harvey's or Mr.
24 Fiser's relative comparative qualifications.

25 JUDGE YOUNG: I'm afraid I don't see how

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1 those two things don't go together in this instance.

2 MS. EUCHNER: Our arguments have largely
3 been procedural, not substantive as to qualifications.
4 And, again, whether Mr. Ggetcheus has an opinion about
5 who is more qualified and who is less qualified is not
6 relevant, because he wasn't a decisionmaker. If Mr.
7 Kent came in or Mr. Corey and said the same thing,
8 they're a relevant decisionmaker, that becomes
9 relevant. What he said, unless he's about to testify
10 that he imparted his wisdom to the members of the
11 Selection Review Board, is not relevant to the non-
12 selection.

13 JUDGE YOUNG: Let me ask you, are you
14 contending that if the evidence were to show that Mr.
15 Harvey were more qualified, that we could still find
16 that Mr. Fiser should have been selected?

17 MS. EUCHNER: Absolutely. That's the way
18 TVA's process works, as their own witnesses have
19 testified, that it makes no difference who's more
20 qualified, all that matters is who performs better in
21 a 20-minute interview. That's what they have said all
22 along.

23 JUDGE YOUNG: I think you're drawing a
24 pretty fine line, but --

25 MR. MARQUAND: Your Honor, if I might

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1 address --

2 CHAIRMAN BECHHOEFER: I have a further
3 question. Ms. Euchner, isn't there evidence in the
4 record thus far previously to the effect that the
5 questions asked were not fair to Mr. Fiser because
6 they focused on secondary chemistry problems rather
7 than primary areas where Mr. Fiser presumably is more
8 expert?

9 MS. EUCHNER: And to the extent that Mr.
10 Goetcheus' testimony goes to the fact that molar ratio
11 or denting were important considerations and that
12 those were acceptable questions to ask, we have no
13 objection to that. We have objection to all this
14 extraneous information about corrective actions and
15 work Fiser was or wasn't doing. That has never been
16 put into evidence before, and it's not relevant to the
17 selection process.

18 MR. MARQUAND: If I might address the
19 relevance of this, Your Honors.

20 CHAIRMAN BECHHOEFER: Yes.

21 MR. MARQUAND: First of all, Counsel's
22 right, the Selection Review Board didn't consult with
23 Mr. Goetcheus about his opinion of who was or wasn't
24 doing a good job, but that's not why we are offering
25 it. So it's not relevant -- Counsel's argument's not

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1 relevant. Mr. Goetcheus' testimony does go to show
2 that the relative expertise of Mr. Harvey and Mr.
3 Fiser on these matters which were considered by the
4 Selection Review Board, but more importantly, Mr.
5 Goetcheus' testimony also goes to rebut some of the
6 matters that were introduced by Counsel when there was
7 discussions about whether or not Mr. Harvey was
8 preselected and whether or not Mr. Goetcheus was,
9 quote, "campaigning" for Mr. Harvey to be selected for
10 the job.

11 This document and Mr. Goetcheus' further
12 testimony will go to show that he was not campaigning
13 for Harvey to be selected but that he was simply
14 performing his job to ensure steam generator
15 integrity. When he found that the people working at
16 Watts Bar couldn't handle it, he recommended to the
17 Senior Vice President the people to bring in at Watts
18 Bar who could handle it, and Mr. Voeller's perception
19 and Mr. Grover's perception that Mr. Goetcheus was
20 campaigning for Harvey for a job is simply wrong.
21 What Mr. Goetcheus was doing was, as I said, pursuing
22 his job to ensure steam generator integrity, to get
23 the problem fixed at Watts Bar when the people up
24 there couldn't get it fixed.

25 It's in rebuttal and we've already seen

1 Mr. Fiser's little notes that he put in his little
2 planner that said, "Dave Voeller told me Dave
3 Goetcheus was up here campaigning for his favorite
4 employee, Sam Harvey, for the job." That's not what
5 was happening. Of course Mr. Voeller and Mr. Fiser
6 were bent out of shape that somebody else was being
7 brought in to fix problems they couldn't fix.

8 (Judges confer.)

9 CHAIRMAN BECHHOEFER: The Board will
10 overrule the objection.

11 MR. SLATER: Your Honor, we retender TVA
12 Exhibit 105 -- Staff 105.

13 JUDGE YOUNG: TVA 105.

14 MR. SLATER: I'm sorry, TVA 105, I'm
15 sorry.

16 CHAIRMAN BECHHOEFER: TVA 105. The Staff
17 having heard their objections, have overruled them and
18 will admit TVA 105.

19 (Whereupon, the above-referred
20 to document, previously marked
21 as TVA Exhibit 105, was admitted
22 into evidence.)

23 JUDGE YOUNG: I'd like to clarify
24 something just for my own understanding. As I
25 understood your testimony, the trick seems to be to

1 have a balance of sodium and chloride so that you have
2 neither too much sodium nor too much chloride,
3 correct? Is that oversimplifying it too much?

4 THE WITNESS: . That's oversimplifying it.
5 You want to minimize the sodium.

6 JUDGE YOUNG: Right.

7 THE WITNESS: In other words, no amount of
8 sodium is acceptable.

9 JUDGE YOUNG: That's not bound up with the
10 chlorine.

11 THE WITNESS: That's not bound up
12 stoichiometrically complex and molar ratio with
13 chloride.

14 JUDGE YOUNG: But didn't you also say that
15 if there's too much chloride, then that would cause
16 denting?

17 THE WITNESS: Correct. And then what we
18 have is an upper limit of ten ppb, which through
19 experience and testing in the industry we've
20 identified that operating below ten ppb will not
21 produce denting.

22 JUDGE YOUNG: So you need to keep the
23 proper balance.

24 THE WITNESS: Correct.

25 JUDGE YOUNG: And you do that by adding in

1 the right amount of ammonium chloride.

2 THE WITNESS: Correct.

3 JUDGE YOUNG: And I guess what I'm trying
4 to clarify for myself is where would the difficulty
5 come in in being able to achieve that correct balance,
6 and how was it that Mr. Harvey and Mr. Richey were
7 able to do a better job of achieving that?

8 THE WITNESS: They had worked together in
9 implementing this -- well, first of all, it was the
10 recognition that it was necessary. Second of all, the
11 goal to reduce the sodium involved sampling with ion
12 chromatography at various locations to identify where
13 the source of the sodium was coming from. So you're
14 trying to minimize the sodium, and that took expertise
15 to know whether it was in a condenser, whether it was
16 from the condensate polish or regenerative chemicals,
17 ionic slip from the polishers. You had several.

18 JUDGE YOUNG: So it was not -- there were
19 no general standards on you test it here, here and
20 here.

21 THE WITNESS: Correct. It was extremely
22 diagnostic and analytical.

23 JUDGE YOUNG: It took expertise to know
24 where --

25 THE WITNESS: It took expertise to do it

1 and know it.

2 JUDGE YOUNG: -- to test and --

3 THE WITNESS: Yes.

4 JUDGE YOUNG: Okay.

5 JUDGE COLE: And, basically, you're trying
6 to get the chemicals down to as low as possible, but
7 practically you can't do that, so what you have left
8 you try to balance it so it doesn't create problems.

9 THE WITNESS: Correct.

10 CHAIRMAN BECHHOEFER: I see. Just as a --
11 do you remember whether, and I don't have it in front
12 of me, but I sort of recollect that the staff put out
13 some either bulletins or information notices or
14 something of that sort around the '96 time frame to
15 guide licensees in handling or recognizing these
16 problems. Are you aware of any such document?

17 THE WITNESS: In that time frame, there
18 were some documents that came out -- there were some
19 bulletins that came out on circumferential cracking.
20 There were some bulletins that came out on monitoring
21 the primary and secondary leakage because of a tube
22 rupture event that wasn't diagnosed adequately at Palo
23 Verde. So there was a lot of emphasis on steam
24 generator tube integrity at that time.

25 CHAIRMAN BECHHOEFER: Wasn't it something

1 that arose from, I think the plant was Ginna?

2 THE WITNESS: That was --

3 CHAIRMAN BECHHOEFER: Or is that a little
4 bit different?

5 THE WITNESS: -- in the '79 time frame.

6 CHAIRMAN BECHHOEFER: I see.

7 THE WITNESS: And there was a review and
8 a -- it was a reg guide that was put out, and I can't
9 remember the number on it, that emphasized primary and
10 secondary system chemistry. It's also in the standard
11 tech specs. Secondary system chemistry essentially
12 became tech spec compliance. You had to have ABT
13 chemistry and you had to minimize corrosion problems.

14 CHAIRMAN BECHHOEFER: Okay. When your
15 team of Mr. Richey and Mr. Harvey investigated the
16 problem, did they find any lack of compliance with
17 staff recommendations or guidelines?

18 THE WITNESS: Not with NRC recommendations
19 or guidelines, no.

20 CHAIRMAN BECHHOEFER: I see. Thank you.

21 BY MR. SLATER:

22 Q We want to put in front of the Witness --

23 JUDGE YOUNG: Before you go on, just to
24 sort of finish up on this line, you were aware that
25 there were some problems at Watts Bar. In some

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1 manner, you became aware that there were some
2 problems, but it had not been -- the source of those
3 problems and the best way to manage them had not yet
4 been identified.

5 THE WITNESS: Correct.

6 JUDGE YOUNG: How did you first -- how did
7 the problems first manifest themselves and how did you
8 become aware of them? And this is just to give me
9 enough of a context for understanding generally what
10 happened?

11 THE WITNESS: Since I am in TVA Nuclear
12 considered the person that's ultimately responsible
13 for steam generator integrity, I'm deeply involved
14 with chemistry issues, primary/secondary leakage
15 monitoring, response to steam generator tube leaks,
16 operations, I cut across the bounds of all of
17 chemistry operations maintenance.

18 JUDGE YOUNG: I'm not challenging that.
19 All I'm asking is how did anyone become aware that
20 there was a problem at Watts Bar? Was that done by
21 regular monitoring or how was it --

22 THE WITNESS: I receive daily reports from
23 the site chemistry.

24 JUDGE YOUNG: Of the chemistry levels.

25 THE WITNESS: Yes.

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1 JUDGE YOUNG: And so you identified the
2 problem through those daily reports.

3 THE WITNESS: I became aware of those
4 problems through the daily reports and identified that
5 we had to do something about it.

6 JUDGE YOUNG: Had the people at Watts Bar
7 -- am I understanding this right, the people at Watts
8 Bar had not read those -- that data to indicate that
9 there were problems?

10 THE WITNESS: They read the data and they
11 were trying to identify the source of the problem, but
12 it wasn't simple and they were struggling.

13 JUDGE YOUNG: Okay. So they knew there
14 was a problem, but they weren't clear on what the
15 origin of it was and how to treat it.

16 THE WITNESS: Right, correct.

17 JUDGE YOUNG: Okay.

18 BY MR. SLATER:

19 Q Mr. Goetcheus, you mentioned a few minutes
20 ago that the cost of replacing steam generators at
21 Sequoyah and Watts Bar as being very high; is that
22 correct?

23 A That's correct.

24 Q Is the question of replacing the steam
25 generators at those plants a hypothetical issue or a

1 real issue today?

2 A It's real issue. We have ordered
3 replacement generators, and they will be installed
4 this spring for Sequoyah. The generators lasted an
5 extremely long time given that they were dented in the
6 first 160 days of operations. They have been managed
7 well.

8 Q And in your opinion, does proper steam
9 generator chemistry extend the useful life of --

10 A Yes.

11 CHAIRMAN BECHHOEFER: Mr. Goetcheus, is it
12 feasible to replace the -- rather than replacing an
13 entire generator just to replace the tubing? Is that
14 feasible?

15 THE WITNESS: No, that's not feasible.
16 Each tube is expanded into a 23-inch thick tube sheet
17 with hard-rolled expansions and you get -- it's an
18 impossible task. It's not like a feed water heater
19 that's a couple thousand square feet of tubing, this
20 is 51,000 square feet of tubing, and you would destroy
21 the internals, and you would destroy the tube sheet
22 trying to get the tubes out. And, radiologically, it
23 would be impossible.

24 JUDGE COLE: So you plug them until you
25 can't plug them anymore.

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1 THE WITNESS: You plug or sleeve or other
2 alternate repair criteria.

3 BY MR. SLATER:

4 Q You just testified that the useful life of
5 a steam generator is a long time. Steam generators at
6 Watts Bar and Sequoyah, are they going to last the
7 full length of their useful life, their original
8 projected useful life?

9 A No.

10 Q Why won't they?

11 A At Sequoyah -- you're talking Sequoyah and
12 Watts Bar?

13 Q Yes.

14 A At Sequoyah, it's a matter of the inherent
15 design problems with the support plate structures in
16 the heat flux and the tubing material selection, and
17 they will be replaced at Sequoyah Unit 1 this next
18 March of 2003, which they, again, have lasted longer
19 than North Anna, Surry, McGuire, Catawba, plants that
20 started up after Sequoyah. They all have replaced
21 their generators years before Sequoyah. Watts Bar's
22 generators are problematic in the industry, we know
23 it, we know we have to treat them with kid gloves, and
24 we've been trying to do that. And right now we have
25 gone out for bids for replacement steam generators for

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1 Watts Bar because we have identified corrosion
2 problems in the steam generators.

3 JUDGE COLE: So what has been the useful
4 life in years?

5 THE WITNESS: The average life for Watts
6 Bar type steam generators in the industry has been ten
7 years, and it becomes a situation of the cost, the O&M
8 cost to maintain them and their regulatory risk, and
9 the risk associated with operating them becomes too
10 much.

11 JUDGE YOUNG: So you gave the comparison
12 for Sequoyah. What's the comparison for the Watts Bar
13 life?

14 THE WITNESS: Watts Bar started up in '96,
15 and we're trying to buy replacement steam generators
16 that would be in cycle seven, which is 2006, I think.
17 So it has a shorter useful life than what we've gotten
18 out of Sequoyah.

19 JUDGE YOUNG: But you're saying that it
20 fits with the average?

21 THE WITNESS: It's within the average in
22 the industry, but we were much better at Sequoyah.
23 Watts Bar was more difficult for problems with those
24 generators.

25 JUDGE YOUNG: Were the problems that you

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1 had prior to this July 25, '96 memo more serious than
2 any subsequent problems or were there subsequent
3 problems that were just as serious, just to give me
4 some kind of basis.

5 THE WITNESS: Okay. I don't think there
6 are any subsequent problems that were more serious
7 than this.

8 JUDGE YOUNG: I'm just trying to clarify
9 for myself the level of significance of these.

10 THE WITNESS: Very significant.

11 JUDGE YOUNG: Very significant or
12 insignificant?

13 THE WITNESS: Very significant.

14 JUDGE YOUNG: That's what I thought you
15 said.

16 BY MR. SLATER:

17 Q I'm going to show you Staff Exhibit 160.

18 JUDGE YOUNG: Did you say Staff?

19 (Whereupon, the above-referred
20 to document was marked as
21 Staff Exhibit No. 160 for
22 identification.)

23 (Pause.)

24 JUDGE YOUNG: Did you get them all?

25 COURT REPORTER: Yes.

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1 JUDGE YOUNG: Before we move on, Mr.
2 Goetcheus, just to clarify one last thing, I think I
3 understood you to say, and I want to make sure I'm
4 understanding this right, that the measures that you,
5 with the assistance of Mr. Harvey and Mr. Richey, took
6 successfully resolved the problem that had presented
7 itself in 1996, mid-1996?

8 THE WITNESS: That's correct.

9 JUDGE YOUNG: Okay.

10 BY MR. SLATER:

11 Q Could you take a quick look at Staff
12 Exhibit 160, please? Tell us what that is.

13 A This was an interview that was done at the
14 time we were having the chemistry problem -- just
15 coincidentally at the time we were having the
16 chemistry problem at Watts Bar by I think it was our
17 Inspector OGC, Office of General Counsel, the
18 Inspector General.

19 Q Inspector General, TVA's --

20 A TVA Inspector General.

21 Q Would you take a look at the first page at
22 the top?

23 A Yes.

24 Q That's a record of your interview?

25 A Yes.

1 Q What's the date?

2 A It's dated July 23, 1996.

3 Q And if you turn to the second page, does
4 this -- if you take -- if you turn back to the first
5 page, could you tell us what this interview is -- or
6 why did you -- in what connection did you give this
7 interview?

8 A Well, I was interviewed by the Inspector
9 General's Office for the purpose stated in here, that
10 there was -- Mr. Fiser believed that TVA was posting
11 a position with malice and smoke screen and that I had
12 somehow supplied information to Mr. Voeller
13 campaigning for Mr. Fiser.

14 Q Okay. So this is --

15 A I was not aware of that at the time until
16 I was told --

17 JUDGE COLE: Or campaigning for Mr. Harvey
18 did you mean to say?

19 THE WITNESS: Excuse me, for Mr. Harvey.
20 I was unaware of this until I was interviewed.

21 BY MR. SLATER:

22 Q You were unaware of Mr. Fiser's DOL
23 complaint?

24 A I was unaware of that, and I was unaware
25 that he was -- he thought that I was campaigning for

1 Mr. Harvey.

2 Q Was his, his being Mr. Fiser's, allegation
3 that you were campaigning on behalf of Mr. Harvey, is
4 that allegation true?

5 A No, I was not campaigning for Mr. Harvey.

6 Q What were you doing in this time frame?

7 A In this time frame, I was focused on
8 resolving the chemistry issue that could produce steam
9 generator tube degradation, which would be extremely
10 costly to TVA and potentially result in a tube
11 rupture.

12 Q If you would take a look at that second
13 paragraph on Page 2, and I think it's the third
14 sentence from the bottom. It says, "Goetcheus
15 recommended that Harvey and Rob Richey, another
16 chemist at Sequoyah, be selected to assist with the
17 problems involving the steam generator process." Do
18 you see that?

19 A Yes.

20 Q It says, "Both Harvey and Richey had
21 extensive experience dealing with the steam
22 generators. Fiser also has specific specialties in
23 certain areas; however, his experience level in
24 dealing with corrosion of steam generators at Watts
25 Bar is not as good as Harvey's."

1 A That's correct.

2 Q Is that a correct -- are those correct
3 statements?

4 A Yes.

5 Q And do you have -- did you have at this --
6 do you have -- well, let's take a look at the last
7 paragraph. It says, "Goetcheus had no knowledge of
8 TVA Management doing any preselection for the position
9 being advertised to handle Watts Bar and Sequoyah."
10 Is that a true statement?

11 A That's a true statement.

12 Q And the next sentence says, "He was not
13 aware of any safety issues raised by Fiser or of
14 Management taking any corrective action against Fiser
15 if he did raise a safety concern." Is that a correct
16 statement, sir?

17 A Correct statement.

18 Q Then it says, "As far as the selection
19 process, Goetcheus thought it was fair because the
20 position description was rewritten; therefore, they
21 had to advertise and everyone had to compete." Is
22 that a correct statement?

23 A That's correct.

24 Q And during this time, did you also have to
25 compete for your position?

1 A Yes, I did.

2 MR. SLATER: At this time, TVA moves that
3 Staff Exhibit 160 be admitted.

4 MR. DAMBLY: No objection.

5 CHAIRMAN BECHHOEFER: Without objection,
6 Staff Exhibit 160 will be admitted into evidence.

7 (Whereupon, the above-referred
8 to document, previously marked
9 as Staff Exhibit 160, was
10 admitted into evidence.)

11 BY MR. SLATER:

12 Q I'm going to show the Witness Joint
13 Exhibit 22 that's been previously introduced.

14 (Pause.)

15 Q If you would please turn to Page 422. Are
16 you there?

17 A Yes.

18 Q I would represent to you that this is a
19 list of questions that was -- these questions were
20 asked during the interviews for the PWR Program
21 Manager position, the circled questions. And I would
22 like to ask your opinion about a couple of these
23 questions. Take a look at Question Number 12 that's
24 circled.

25 A Yes.

1 Q Says, "Define the term denting and where
2 and how does it occur?" Do you see that?

3 A Yes, I do.

4 Q In your opinion, for a position, a PWR
5 Program Manager, is that a fair question?

6 A Yes.

7 Q Why?

8 A Because denting is extremely -- the
9 denting and corrosion mechanism is extremely degrading
10 to the steam generators and can produce excessive
11 plugging, lost generation, in worst case tube rupture
12 and replacement of the steam generators.

13 Q And in the July 1996 time frame, was this
14 a concern at TVA?

15 A Yes. It was for Watts Bar and also at
16 Sequoyah.

17 Q Both of those are PWR.

18 A Both of those are PWRs.

19 Q If you would turn over to Page 423 and
20 there's a question added, Number 17, that's circled.
21 Do you see that?

22 A Yes.

23 Q It says, "Define molar ratio." Do you see
24 that?

25 A Yes.

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1 Q In your opinion, was this a fair question
2 to ask during the interview for the PWR Chemistry
3 Program Manager position?

4 A Yes.

5 Q And why so?

6 A Because of the importance of molar ratio
7 control in minimizing cost at cracking the Alloy 600
8 tubes in the steam generator.

9 Q Would you just take a look at the entire
10 list of circled questions on Pages 422 and 423 and
11 just tell me when you've had a chance to look at them.

12 A Yes.

13 Q After reviewing this list of questions, in
14 your opinion, is this a fair list of questions to ask
15 interviewees for the Program Manager Chemistry
16 position at -- PWR Program Manager position?

17 A Yes.

18 Q And why so?

19 A Because there is an overall emphasis on
20 plant and programmatic capabilities of the individuals
21 as well as the specific knowledge for secondary system
22 chemistry that is indicated by Question 12 and
23 Question 17 and also it would be in 15, that would be
24 extremely important for the long-term operation of the
25 Sequoyah or Watts Bar steam generator. It would be

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1 knowledge that they should have fundamentally. It's
2 fundamental knowledge that should be --

3 MR. SLATER: If I could have a moment,
4 Your Honors.

5 (Pause.)

6 MR. SLATER: I have no further questions.

7 MR. DAMBLY: Could we take a --

8 CHAIRMAN BECHHOEFER: I was about to
9 suggest that we take a short break before the Staff
10 begins its cross anyway.

11 MR. DAMBLY: Thank you.

12 CHAIRMAN BECHHOEFER: Ten minutes?

13 JUDGE COLE: How much time do you need,
14 Mr. Dambly?

15 MR. DAMBLY: How about ten minutes?

16 CHAIRMAN BECHHOEFER: Okay, a ten-minute
17 break.

18 MR. DAMBLY: Thank you.

19 (Whereupon, the foregoing matter went off
20 the record at 2:47 p.m. and went back on
21 the record at 3:08 p.m.)

22 CHAIRMAN BECHHOEFER: Back on the record.
23 Mr. Dambly for you.

24 MR. DAMBLY: Yes sir.

25 CROSS EXAMINATION

1 BY MR. DAMBLY:

2 Q Mr. Goetcheus, what were the dates that
3 you were the manager of Sequoyah chemistry for
4 restart?

5 A I'm having to think about the exact dates.
6 I was there until April 1988 and the year before that.

7 Q Who replaced you as the manager?

8 A Gary Fiser.

9 Q So you had the job before Mr. Fiser.

10 A I was there in a temporary position for
11 the purpose of getting the chemistry organization in
12 shape for restart.

13 Q Then prior to that, you were in charge of
14 steam generators for restart at Sequoyah.

15 A I was in the steam generator program for
16 Sequoyah.

17 Q During the time you were the chemistry
18 manager I guess at Sequoyah for restart, do you recall
19 there being a program that TVA did, the surveillance
20 instruction review from the bottom to the top all the
21 way up on all the surveillance instructions prior to
22 start-up at Sequoyah?

23 A Vaguely, yes.

24 Q Was that why you were there?

25 A Yes.

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1 Q Were you aware after you left that there
2 was a significant event resulting from the failure
3 during the surveillance instruction program review to
4 find a problem with the diesel fuel oil tanks?

5 A Not until today.

6 Q Nobody ever talked to you about that,
7 going back to look at it when there was a note to find
8 out why this wasn't found during the SI program
9 review? Nobody ever discussed that with you or you
10 never heard about it?

11 A No.

12 Q When did you hear about it today just when
13 I mentioned it?

14 A No, I heard it earlier from the lawyers.

15 Q Did you indicate during your testimony
16 that within the first 160 days of operations at
17 Sequoyah there was significant denting?

18 A Yes, on unit one.

19 Q On unit one. You were in charge of the
20 chemistry program up to start-up and before that the
21 steam generator program for Sequoyah.

22 A Not during that timeframe. That was in
23 the start-up in 1988.

24 Q That's when it started.

25 A Yes.

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1 MR. MARQUAND: Wait, we're getting things
2 -- 1988 is the restart.

3 THE WITNESS: Excuse me, 1978.

4 MR. DAMBLY: The denting occurred in 1978.

5 THE WITNESS: Yes, it occurred when the
6 plant was first started up which was -- Excuse me, I'm
7 wrong on my dates. 1980. That's when the plant
8 started up. So we managed the dented steam generators
9 for a long time successfully.

10 BY MR. DAMBLY:

11 Q And basically subsequent to the start-up
12 of Sequoyah, your main function at TVA has been with
13 respect to steam generator issues.

14 A I've been responsible since the start-up
15 of Sequoyah for the steam generator integrity program,
16 yes.

17 MR. MARQUAND: Excuse me, Your Honor. I'm
18 getting confused whether they are talking about the
19 restart of Sequoyah or the initial start-up of
20 Sequoyah. I'm not sure the Counsel and the Witness
21 are on the same page and I'm certainly not
22 understanding what dates we're talking about.

23 MR. DAMBLY: Well, what dates have you
24 been responsible for the steam generator integrity
25 issues?

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1 THE WITNESS: Since 1978.

2 BY MR. DAMBLY:

3 Q So for 24 years, that's been your primary
4 function.

5 A Yes.

6 Q That would be at both Watts Bar and
7 Sequoyah, the two PWRs.

8 A Correct.

9 Q And any problems at those plants in the
10 steam generator area fall within your purview.

11 A Yes. Can I clarify that?

12 Q Please.

13 A Once the denting occurred in 160 days of
14 operation at Sequoyah unit one is when we established
15 the steam generator program. From that date forward,
16 I've been responsible.

17 CHAIRMAN BECHHOEFER: Because of that
18 denting, they started the program.

19 THE WITNESS: Yes, they started the
20 program and became very aggressive at TVA managing
21 their steam generator programs.

22 JUDGE YOUNG: And what did you do before
23 that?

24 THE WITNESS: I was a metallurgical
25 engineer and I was responsible for corrosion program

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1 issues and metallurgical failure analysis.

2 CHAIRMAN BECHHOEFER: Now at the time, am
3 I correct, Mr. Fiser was not on board with TVA at all?

4 THE WITNESS: No, he didn't come until
5 about 1986, I'd say.

6 CHAIRMAN BECHHOEFER: I'm just trying to
7 put these dates into perspective.

8 MR. DAMBLY: As the person responsible for
9 steam generator integrity at TVA, would it be fair to
10 say that you placed very significant emphasis on steam
11 generators? That's your function.

12 THE WITNESS: Yes.

13 BY MR. DAMBLY:

14 Q And someone who worked in a different area
15 might think their job was important or more important
16 than yours.

17 A That's a relative statement. If you are
18 dealing in relative importance, if you dealing with
19 something that affects 75 percent of the primary
20 pressure boundary versus something that affects a very
21 important part of the plant it's extremely important
22 both from the safety and asset management.

23 Q Now you indicated earlier that you weren't
24 campaigning for Mr. Harvey for the PWR chemistry
25 position. Can you comment?

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1 A I was not and I in fact was not aware at
2 that specific time until I was interviewed by the IG's
3 office that they were actually competing for the jobs
4 at that moment.

5 Q You weren't aware of the reorganization
6 that was taking place.

7 A I was aware of the reorganization but
8 everything was going on at different times and it was
9 a sequence or waterfall of vacancy announcements going
10 out. I was unaware the day I was interviewed that it
11 was actually taking place at that time.

12 Q When did you become aware that there was
13 going to be a PWR chemistry position in Corporate?

14 A I don't know that I was ever consulted,
15 asked that there was going to be one. I was never
16 advised that there was going to be one.

17 Q Did you have significant interactions with
18 Mr. Harvey? Mr. Richey?

19 A Yes.

20 Q Mr. Harvey never mentioned to you the
21 Corporate reorg and the number of positions.

22 A He never mentioned that to me.

23 Q Now Harvey and Richey were working at
24 Sequoyah. Is that correct?

25 A Harvey worked, yes to answer you directly,

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1 in Corporate but he had responsibilities for Sequoyah
2 as well as Watts Bar in the extent that he was needed.

3 Q At that time in 1996 timeframe and 1995
4 and 1994 timeframes, Sequoyah was operating and had
5 steam generator issues basically continuously.

6 JUDGE YOUNG: Basically what?

7 MR. DAMBLY: Continuously there were
8 issues with the steam generators and the chemistry and
9 controlling it.

10 THE WITNESS: Now you mean steam generator
11 tube integrity issues.

12 BY MR. DAMBLY:

13 Q Tube integrity issues, yes.

14 A No, we did not have steam generator tube
15 integrity. We did testing to preclude having
16 problems. We did testing and had corrosion
17 minimization programs so that we did have it. Denting
18 was not active and I'm speaking specifically of 1996
19 now. At that point, I don't think that we had any
20 ODSCC, outside diameter stress corrosion cracking of
21 tubes. Now we didn't have any major problems with our
22 steam generators at that time.

23 Q Now from 1994 to 1995 to 1996 with an
24 operating PWR, there were on-going continuous efforts
25 of steam generator tube integrity protection.

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1 A Yes, in changes and technology as far as
2 secondary system chemistry.

3 Q And 1994 and 1995 timeframe, you weren't
4 dealing with the same issues at Watts Bar. It was not
5 operating.

6 A It was not operating. We did make several
7 changes. We put condensate polishes on it and we
8 spent million of dollars on steam generator
9 preservation and providing the equipment that they
10 would need to have to operate the plant and monitor
11 chemistry.

12 Q Basically, who had the primary
13 responsibility for chemistry at Watts Bar during
14 start-up?

15 A The chemistry manager.

16 Q Mr. Voeller?

17 A Mr. Voeller.

18 Q Did you seek to have him replaced?

19 A No.

20 Q Why not?

21 A Why not? Because we had a decent working
22 relationship. He was willing to try and I had no
23 basis to seek for his replacement. He was receptive
24 to the first real challenge that we had which was the
25 problems we had in chemistry when we were coming up

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1 that we are talking about today. He did work with me
2 through that. We brought the other resources in and
3 resolved the problem. So I didn't have a basis to say
4 that he was struggling technically through a problem.

5 Q But you thought he was fine as a chemistry
6 manager at Watts Bar.

7 A Yes.

8 Q Even though you said he and Mr. Fiser
9 couldn't solve the steam generator issue.

10 A They were not able to resolve the
11 chemistry issue.

12 Q Did you write something to Mr. Zeringue
13 suggesting maybe you should bring in somebody for the
14 Watts Bar chemistry manager position that handles the
15 steam generator issues?

16 A No.

17 Q By the way, the job that they posted, have
18 you ever seen the posting for the job that you looked
19 at these questions for?

20 A No.

21 Q Do you think that they posted a job
22 entitled "Steam Generator Chemist"?

23 A No, PWR Chemist which is on a large part
24 secondary system chemistry which is steam generator
25 related chemistry.

1 Q There are no primary chemistry issues in
2 a PWR.

3 A We have primary water stress corrosion
4 cracking mechanism but that's not related to having
5 out-of-specification or it's called choriocracking and
6 it occurs in pure water.

7 Q But you are speaking just of corrosion.
8 Are there no other primary issues?

9 A Yes, there are other issues.

10 Q And does primary chemistry affect and/or
11 has affect on control of reactor power levels?

12 A Absolutely and also radiological corrosion
13 product transport. All of those issues, yes.

14 Q And there is corrosion on the primary side
15 of the steam generators.

16 A Yes, but it's not controlled. In the last
17 few years, we've come up with a chemical addition to
18 the primary system which I was instrumental in pushing
19 for for both sites which was zinc injection. It tends
20 to reduce doses as well as crack incidents and crack
21 growth rates in primary water.

22 Q Does proper management of primary
23 chemistry minimize fuel leaks?

24 A Yes.

25 Q Now you looked at a list of questions a

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1 while ago and your response was well they covered the
2 general kind of attributes you are looking for and
3 they have technical questions on steam generator
4 issues, denting and molar ratio. So you thought that
5 that was a good set of questions.

6 A Yes.

7 Q And there's not a single question on any
8 of the primary parts for a job that was responsible
9 for primary and secondary because you interested --

10 A Boric acid. I don't know how to say this.
11 I'm not discounting the importance of controlling
12 reactivity with borated water. Obviously I'm well
13 aware of that. I think the type of individual that
14 can manage the primary system chemistry which is
15 defined by tech specs. Tech specs tell you what
16 parameters you have to be in. You maintain those.

17 Q Didn't you tell us a while ago that
18 secondary is now primarily tech spec driven?

19 A No, I said that it is mentioned that you
20 should have a program in the standard tech specs. I
21 said you should have a program that doesn't give
22 parameters. The parameters are when you X ppm of
23 boron you have to maintain and X ppm of oxygen during
24 start-up and it's very defined by tech specs where
25 secondary site chemistry isn't nearly as defined in

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1 tech specs.

2 Q Again the position advertised was for a
3 PWR chemist.

4 A Yes.

5 Q Not a steam generator chemist.

6 A Yes.

7 Q That covers more than steam generators,
8 doesn't it?

9 A Yes.

10 Q Also you didn't know that there was a
11 vacancy and you didn't know that there was posting or
12 any issues at all about there was only going to be two
13 people left.

14 A Not that I recall.

15 Q Did you hear anything about Kent seeking
16 to have Mr. Harvey transferred to Sequoyah?

17 A No. I certainly wouldn't have been in
18 favor of that.

19 JUDGE YOUNG: Why?

20 THE WITNESS: Because his knowledge should
21 have been spread between both sites.

22 BY MR. DAMBLY:

23 Q Let me ask you. If you were in charge of
24 steam generator integrity and Mr. Harvey had expertise
25 you were looking for, why didn't you have a position

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1 on the steam generator integrity staff?

2 A Because that's a chemistry line function
3 and it's an integrated program that has chemistry.
4 That's like saying I should have operations on my
5 staff and I don't. We have the procedures and we have
6 an integrated approach to it or we have operations's
7 role, chemistry's role, maintenance's role. Everyone
8 has their role and we're the originator of the program
9 and hold it together.

10 Q And the primary responsibility for
11 chemistry at any one of the plants is under the plant
12 chemistry manager.

13 A That's correct.

14 Q Do you have any social, personal
15 relationship with Mr. Harvey?

16 A He has been at industry meetings that I've
17 been at. I've never socialized with him. I've never
18 had a personal relationship outside of work. He has
19 just been at meetings that I've been at, industry
20 meetings.

21 MR. DAMBLY: We have no further questions.

22 MR. SLATER: No further questions.

23 (Judges confer.)

24 CHAIRMAN BECHHOEFER: I guess we'll excuse
25 the witness. Thank you for your presence.

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1 (Witness excused.)

2 JUDGE YOUNG: Thank you and do we have the
3 next witness here yet?

4 MR. MARQUAND: No, we don't. Two of them
5 are in transit but they won't be here until the first
6 thing in the morning or around noon.

7 JUDGE COLE: Did I hear you correctly?
8 When is the next witness?

9 MR. MARQUAND: We'll be ready the first
10 thing in the morning.

11 JUDGE COLE: I thought you said noon and
12 then afternoon.

13 (Chatter.)

14 JUDGE YOUNG: So we are starting tomorrow
15 morning with Mr. Rogers and then Mr. McGrath and then
16 if we need to start with Mr. Fogleman, he will be
17 here. Right?

18 MR. DAMBLY: I guess there was discussion
19 yesterday on Ms. Westbrook's deposition --

20 JUDGE YOUNG: Right, thank you for
21 reminding us.

22 MR. DAMBLY: -- which I looked at again
23 last night and I think the first 55 pages of the 73
24 are basic general stuff. But the last few are her
25 view of what went on during the thing but I'm not

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1 going to object.

2 JUDGE YOUNG: So that had been offered?

3 CHAIRMAN BECHHOEFER: Not yet.

4 MR. DAMBLY: Actually I think they said
5 they planned to offer it in lieu of her testimony but
6 just the Staff won't object it if they want to offer
7 it.

8 JUDGE YOUNG: You still have us on the
9 record, right?

10 MR. DAMBLY: I'm not sure what the number
11 is anymore.

12 JUDGE YOUNG: It was Staff Exhibit --

13 MR. DAMBLY: It had to be at the end.
14 122.

15 CHAIRMAN BECHHOEFER: I have it here.

16 JUDGE YOUNG: So you did tender that
17 yesterday?

18 MR. SLATER: We tendered it yesterday and
19 we will retender today.

20 JUDGE YOUNG: And there was an objection
21 which is now being withdrawn so it will be admitted.

22 CHAIRMAN BECHHOEFER: Yes, of course.

23 (The document referred to having
24 previously been marked for identification
25 as Staff's Exhibit No. 122, was received

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1 into evidence.)

2 JUDGE YOUNG: So I guess we need to get
3 that one marked. Is there anything else we need to do
4 before we adjourn for today?

5 MR. MARQUAND: Since we have some time do
6 we want to talk about how we want to deal with the
7 documents and exhibits at the conclusion of this. If
8 there is any sort of resolution yet about the best way
9 as to whether we want to segregate them or just make
10 separate lists or whatever.

11 JUDGE YOUNG: We can talk about that. We
12 could also talk about whether you made any progress on
13 resolving the issue of Mr. McArthur's travel. Have
14 you talked to each other?

15 MR. MARQUAND: No, we haven't had an
16 opportunity to talk.

17 MS. EUCHNER: I've been doing some
18 research. At least so far I have not found anything
19 either in the federal rules decisions, regular federal
20 courts or administrative agencies that changes the
21 Staff's position but I plan on continuing to look to
22 see if there's anything.

23 JUDGE YOUNG: With regard to?

24 MS. EUCHNER: With regard to whether --

25 JUDGE YOUNG: Frequent flyer miles?

1 MS. EUCHNER: Yes, and the problem is
2 there aren't very many cases in general where frequent
3 flyer miles were used to purchase a ticket so I'm not
4 sure we're going to find anything exactly on point
5 there. What I've been looking at right now is first
6 of all, Mr. Marquand had argued yesterday that the
7 cases we cited were in apposite because they apply to
8 government employees. So I was looking at cases where
9 the courts or administrative agencies applied the same
10 rules to witnesses as they apply to the government
11 employees.

12 I've also been looking at the cases that
13 interpret 28 USC 1821 which is the statute that
14 applies to paying witnesses to see what they determine
15 "actual expenses incurred" means because the travel
16 management branch's position here is that the only
17 actual expenses incurred by Dr. McArthur was the \$5.00
18 that it cost him to reimburse his frequent flyer
19 miles. I've been trying to find any cases that are
20 even remotely in the same league. I haven't found any
21 yet.

22 JUDGE YOUNG: But you said before you
23 started talking about the frequent flyer miles that
24 you were researching cases where I think you said
25 administrative agencies had treated expenses of

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1 witnesses the same as government employees.

2 MS. EUCHNER: Basically applied the same
3 rules, yes.

4 JUDGE YOUNG: I'm not clear on what you're
5 saying. Are you saying that you did research on how
6 witnesses generally were handled and all you found
7 were that they were treated the same way as government
8 employees. I know in state courts there are rules for
9 how much witnesses are allowed and so forth. Were you
10 limiting your research to only cases in which
11 witnesses were treated like government employees?

12 MS. EUCHNER: No.

13 JUDGE YOUNG: Or were you looking at how
14 witnesses were paid for their expenses generally?

15 MS. EUCHNER: I was running a search on
16 how witnesses travel costs were reimbursed generally
17 when they have been subpoenaed and therefore Section
18 1821 applies. I found a couple of cases where they
19 were treated very similarly to government employees
20 and essentially they followed the same rules as for
21 government employees.

22 JUDGE YOUNG: By Federal District Courts
23 or administrative agencies or both?

24 MS. EUCHNER: I couldn't tell you right
25 now. I mean I have a pile of cases that I printed

1 out. I have essentially since we talked yesterday
2 been trying to run Lexis searches to find anything on
3 point. So far I haven't found anything.

4 CHAIRMAN BECHHOEFER: Did you search the
5 opinions of the Controller General?

6 MS. EUCHNER: Well, that's actually where
7 I got the cases that I cited in my brief which were
8 CompGen and BCA cases.

9 CHAIRMAN BECHHOEFER: I see.

10 MS. EUCHNER: But I believe most of those
11 had to do with government employees as opposed to
12 witnesses subpoenaed.

13 JUDGE YOUNG: Since we are just talking
14 about \$700 here, I mean I know you said the other day
15 that you were definitely not interested in settling
16 this but it does seem like since both of you used the
17 witness and intended to use the witness that this
18 would be an appropriate thing to work out by
19 agreement. As far as the frequent flyer miles go,
20 obviously they are worth something to people
21 generally. I'm just wondering how much you want to
22 spend in terms of your time on something, and I'm
23 talking to both of you, that's not nothing certainly
24 but it seems like it would be appropriate to work out
25 something between the two of you.

1 MR. DAMBLY: The problem that fails to
2 address is the Staff doesn't just have money. We
3 don't have a slush fund somewhere to go well here is
4 \$350. I'm not going to write the check. Somebody has
5 to have authority to pay this. We don't know what
6 fund this comes out of other than the travel fund.
7 Travel people say they can't pay it.

8 JUDGE YOUNG: Okay.

9 MR. DAMBLY: The Board has \$350 that they
10 would like to contribute from fund they have. But I
11 don't know who's going to pay it. I'm not giving him
12 my money.

13 MR. MARQUAND: I suppose if we reach some
14 sort of accommodation between that we could enter into
15 a stipulation and the Board could enter it in as an
16 order and then it wouldn't be a problem.

17 MR. DAMBLY: The Board doesn't have the
18 authority to order money. As far as I know, that's
19 the Controller's job. You can't order the Controller
20 to pay anything.

21 JUDGE YOUNG: That's why we suggested
22 yesterday that you look up cases where administrative
23 agencies do order witness fees paid. Unless there is
24 case law that says that administrative judges sitting
25 on behalf of administrative agencies don't have that

1 authority, I would assume that we would. But you can
2 tell me if you found something that says that we
3 don't.

4 MR. DAMBLY: We certainly have the
5 authority to pay witness fees. The problem is they
6 are paid under the Federal rules. Under the Federal
7 rules, it's no different. He used his frequent flyer
8 miles than if when you were down in Tennessee you
9 stayed with a relative and tried to charge the Federal
10 Government for what the cost of a room would have been
11 instead of when you didn't incur the expense. You
12 don't get paid for it.

13 MR. MARQUAND: Here's where we part
14 company. I've researched this. The Federal rules do
15 not address frequent flyer miles. I think that their
16 lawyers certainly can advise his comptroller that this
17 is under the Federal rules and there is certainly
18 sufficient latitude under the Federal rules to require
19 reimbursement of this individual for expenditure of
20 his own personal assets that have value.

21 JUDGE YOUNG: I think we're talking about
22 a couple of different things here. Ms. Euchner, you
23 said that you found some cases where witnesses were
24 treated essentially the same as Federal employees.

25 MS. EUCHNER: Yes, in terms of their

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1 sustenance and their hotel and that sort of thing,
2 yes.

3 JUDGE YOUNG: Mr. Dambly, you're saying
4 that the rules governing Federal employees control
5 witness fees. I haven't done the research. I don't
6 know but I didn't understand Ms. Euchner to be saying
7 the same thing that you are saying.

8 MR. DAMBLY: What I'm saying is the
9 payment of travel fees coming out of this agency is
10 done by the travel branch and also the controller.
11 They are following and they've been advised not by us
12 but by the attorneys that advise them and they've
13 looked at it and we don't pay for expenses that
14 weren't actually incurred. That's what the rules are.
15 We're aware of nothing to the contrary.

16 As far as the Staff is concerned, the
17 Board can't order it. If you want to issue an order
18 to the NRC controller to pay something see what he
19 thinks about it when you issue that. I'm not sure you
20 have the authority to do that.

21 JUDGE YOUNG: Ms. Euchner, in the cases
22 that you found where administrative agencies ordered
23 witness fees to be paid, was there any discussion of
24 the authority, lack of authority, limitation on
25 authority to do that?

1 MS. EUCHNER: I think what the dispute
2 really is here is nobody is challenging the Board's
3 authority to say that a particular witness's fees have
4 to be paid. I think what we are saying here is that
5 we're challenging what authority you would have to
6 order something beyond what the statute provides for.

7 The statute that governs here is 28 USC
8 1821 which says "actual expenses incurred." If Dr.
9 McArthur didn't incur those actual expenses, then
10 under the statute he can't be given any more. I think
11 what we are arguing is that this Board doesn't have
12 the authority to go beyond that and say even though he
13 didn't incur these expenses because he used those
14 frequent flyer miles. Frequent flyer miles as you
15 said have some value to him so we're going to require
16 the agency to pay more.

17 JUDGE YOUNG: I think what we're getting
18 down to here is a matter of interpretation. Now where
19 parties have a dispute over what fees should be paid
20 and how to interpret "actual expenses incurred" those
21 are the types of things that I would presume one would
22 look at in determining how to resolve this issue. I
23 frankly never had a dispute like this come up before
24 me before in almost 20 years of being in the
25 administrative judiciary. However I do know that from

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1 time to time issues like this arise.

2 Mr. Dambly, you seem to be saying that
3 there's no question that the interpretation made by
4 the travel office is final and that when there's a
5 dispute the Board does not have any authority to
6 resolve the dispute. I think what we are faced with
7 is we have two parties and one party is arguing one
8 thing and the other party is arguing something
9 different. I don't think that we have any great
10 desire to insert ourselves in this if the parties can
11 work it out between you. If they cannot, then
12 obviously we have to resolve it.

13 I think that it would be very helpful to
14 us to have case law on how these kinds of disputes
15 over the amount of fees and over the interpretation of
16 the relevant statutes and regulations if any are
17 resolved by administrative agencies or administrative
18 judges or administrative law judges sitting on behalf
19 of agencies when there are disputes. That's the kind
20 of thing that would be helpful. That would seem to be
21 the precedent that we would need to follow.

22 MR. DAMBLY: And again we have been doing
23 the research as Ms. Euchner said and we cited many
24 cases in our response to the motion. So far, TVA has
25 cited nothing other than we think they ought to be

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1 able to do this.

2 CHAIRMAN BECHHOEFER: Has the Staff
3 calculated what -- I know an alternative reimbursement
4 scheme in mileage. Has the Staff calculated what the
5 mileage times two and what that would relieve?

6 MR. DAMBLY: I'm sure that would be a lot
7 more than an airline ticket.

8 MS. EUCHNER: It would be and, Your Honor
9 --

10 CHAIRMAN BECHHOEFER: Why can't you pay
11 that?

12 MR. DAMBLY: Because he didn't drive.

13 MS. EUCHNER: Under the statute, you can
14 only reimburse for mileage if he drove either a
15 personal vehicle or some kind of rental vehicle. We
16 can't just decide that we want to reimburse for
17 mileage if he hasn't used a personal vehicle.

18 MR. DAMBLY: I can't fly to Atlanta and
19 then collect the whatever it would be \$800 or \$900
20 that I would get if I drove or \$400 or \$500 and buy
21 \$150 ticket. It doesn't work that way.

22 JUDGE YOUNG: If a person uses frequent
23 flyer miles, they are giving up something of value
24 that they could otherwise use at another time. Would
25 you agree?

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1 MR. DAMBLY: I don't disagree with that
2 but the first place and it's in the record we were
3 told that he was driving so the issue never came up or
4 we could have given him an airline ticket if he would
5 have asked for one. Secondly, he certainly could have
6 gone out and bought an airline ticket. I didn't tell
7 him to use his frequent flyer miles. And we're not
8 here to redeem frequent flyer miles. I didn't know
9 that that was one of our functions.

10 JUDGE YOUNG: Let's try to get this on a
11 little bit more neutral tone. There's really no need
12 to be this adversarial about something that should be
13 a really relatively simple matter to resolve.

14 MR. MARQUAND: Let me suggest another way
15 to look at frequent flyer miles. Yesterday, Your
16 Honor, suggested one way to look at them as to how
17 much they cost to buy additional ones.

18 CHAIRMAN BECHHOEFER: Right, I suggested
19 that. I have no idea about United Airlines.

20 MR. MARQUAND: But let me suggest another
21 thing. Frequent flyer miles aren't free whether you
22 buy them on the back end or whether you get them as
23 essentially as a rebate which you get when you fly
24 somewhere on your own. You have to buy a ticket.
25 There are rebates on that ticket. The airlines don't

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1 given them away. They are something you get when you
2 buy a round-trip ticket.

3 To get that number of miles, you have had
4 to purchase certain number of tickets and obviously
5 some of them are never redeemed. The airlines count
6 on that. But the airlines know that some of them are
7 redeemed. They don't give them away. They are a part
8 of the cost of the tickets that you buy. So, yes, he
9 had to buy them. Maybe he didn't buy them that day
10 for that particular flight. Over a period of time as
11 he accumulated his frequent flyer miles, he bought
12 those tickets.

13 JUDGE YOUNG: How much has TVA paid him to
14 this point? Reimburse him?

15 MR. MARQUAND: We haven't paid him
16 anything. Actually we paid for his entire cost to
17 travel to and from his deposition that the Staff
18 wanted him to take. I don't remember what that was
19 but we paid that. We also received an invoice from
20 him in which he wanted to be paid for his time. We
21 haven't paid that. We have to figure out how to
22 address that. We haven't asked the Staff to pay for
23 his time. I don't know that they paid his daily per
24 diem, the witness daily, \$40 a day that's in the
25 statute either.

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1 But as I said, there are certainly two
2 ways as Judge Bechhoefer yesterday suggested you can
3 value the frequent flyer miles by how much you have to
4 pay for supplemental miles to around that ticket or
5 you can figure out the cost of the miles as a part of
6 the tickets that you bought in the past when you
7 accumulated your miles.

8 MS. EUCHNER: What Mr. Marquand said is
9 exactly what the problem was that the BCA cases that
10 I cited and the CompGen case that I cited. It's that
11 there are probably 20 different ways that you could
12 try and figure out how much these frequent flyer miles
13 are worth.

14 That is why the Federal Government will
15 not reimburse for you because it would be a guessing
16 game as to how much the value of the ticket is. That
17 is one of the key rationales for the cases that I
18 cited. It's that it's too subjective to figure it
19 out. There is no cash value to frequent flyer miles.

20 MR. MARQUAND: There may not be a single
21 cash value but there's a market for them. People
22 donate them. People have to buy them. You use them
23 all the time and they are an asset.

24 JUDGE YOUNG: Again I may be just wasting
25 my breath here but I'm going to suggest that you all

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1 sit down together and see what you can figure out. If
2 you haven't paid for all his time that he's asking for
3 before or the Staff hasn't contributed to part of his
4 flight for the deposition and the Staff could
5 reimburse TVA for part of that such that the figures
6 would come out in the end to work for Mr. McArthur.

7 I'm not suggesting that you do anything
8 inappropriate here. But that you just sit down
9 together as reasonable people who have a number of
10 expenses that Mr. McArthur has incurred over at least
11 two occasions and try to come up with an equitable way
12 to divide the cost between TVA and the NRC.

13 MR. MARQUAND: I'm not asking the Staff to
14 pay for his time. I don't think that's their
15 obligation.

16 JUDGE YOUNG: What I suggested was that
17 since you paid his entire airfare for his deposition
18 if you can come up with some manner of having the
19 Staff reimburse you for half of that and then you pay
20 for the whole thing for the travel. It seems like
21 reasonable people could work this out. Now maybe I'm
22 wrong.

23 MR. MARQUAND: I have a suggestion. I
24 don't know that he used the frequent flyer ticket for
25 his deposition. Maybe the Staff would like to pay for

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1 his deposition expenses and we could pay for the
2 ticket alternatively that he used to come to the
3 hearing.

4 MS. EUCHNER: The Staff proposed to Dr.
5 McArthur's deposition in Utah where he lived. He
6 indicated through Mr. Marquand that he would be
7 passing through Chattanooga on personal business and
8 could we do it on the date that he would be in
9 Chattanooga. We agreed. We had every intention of
10 going to Salt Lake City or Provo to do his deposition.

11 MR. MARQUAND: During the Olympics, I'm
12 certain. I wouldn't have minded it either.

13 MR. DAMBLY: Actually it was in December.

14 MR. MARQUAND: Was it in December prior to
15 the Olympics?

16 MR. DAMBLY: Yes.

17 MS. EUCHNER: And, Your Honor, just so you
18 know. I have a call in to the travel office to get
19 more details from them other than the case law that
20 I've already cited.

21 JUDGE YOUNG: Okay, I think that --

22 CHAIRMAN BECHHOEFER: Would there be any
23 use for submitting a request for a Controller General
24 opinion on these facts? One can always do that if you
25 need.

1 MR. DAMBLY: I don't have a problem with
2 that but if we are worried about Dr. McArthur getting
3 any money is not likely to see that in the near
4 future.

5 MR. MARQUAND: I think that the Controller
6 General would probably ask us to go back and consider
7 whether we could handle it between ourselves first
8 too.

9 JUDGE YOUNG: I think so. And as I was
10 saying just before we get to that point, again I think
11 reasonable people can sit down and work out something
12 as simple as this. In the big scheme of things, it's
13 not huge.

14 Second of all, there is a standing issue.
15 We haven't even discussed that. I'm not raising that
16 so that we'll have argument on it unless you want to
17 make argument on that. I suggest at least you try to
18 work this out before asking us to resolve it.

19 MR. MARQUAND: Dr. McArthur sent me
20 something by e-mail which I'll print out and file with
21 the Board. In essence, he ratified the motion on his
22 own behalf. So to remove any standing issue, he
23 signed it and said he's filing it basically on his own
24 behalf. I'll file that with the Board. So the
25 question of standing would be moved.

1 JUDGE YOUNG: Since you have to call in
2 maybe that will work it out. If not, we can talk. I
3 don't know how soon you're going to get a response on
4 that.

5 MS. EUCHNER: I called this morning and
6 also sent over an e-mail explaining that specifically
7 what I was looking for is they cited the cases that
8 related to Federal employees. Because Mr. Marquand
9 had raised the issue of whether those apply to
10 witnesses who are not Federal employees that's the
11 question that I addressed to the travel office. I
12 asked if there was some law or regulation or guide
13 that we use that says you apply the same thing to non
14 Federal employees but whose travel we are paying for
15 such as people coming in for recruitment, visits,
16 witnesses.

17 CHAIRMAN BECHHOEFER: Is that invitational
18 travel?

19 MS. EUCHNER: Exactly. I'm checking to
20 see if there are any regulations that apply to that or
21 whether they just automatically use the same
22 regulations for everybody.

23 MR. MARQUAND: The TDY regulations
24 specifically apply to job applicants and people that
25 you invite in. They do not apply on their face to

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1 witnesses.

2 JUDGE YOUNG: Well again I don't know.
3 TDY is?

4 MR. MARQUAND: The TDY is 41 CFR
5 regulations that were cited in their brief.

6 MS. EUCHNER: Temporary duty.

7 MR. MARQUAND: Government travel.

8 JUDGE YOUNG: Regular government travel
9 for regular Federal employees.

10 MR. MARQUAND: Federal travel regulations
11 41 CFR.

12 JUDGE YOUNG: So if there are disputes in
13 administrative agency adjudications over paying
14 witness fees, do the administrative agency
15 adjudicators apply the same rules that Federal courts
16 would apply or do they automatically go into these TDY
17 regulations? And if they apply the same rules as
18 Federal courts, then how do Federal courts resolve
19 these issues?

20 MR. MARQUAND: I don't know that, Your
21 Honor. As everybody knows, this whole case is a case
22 of first impression. This may be one of those issues.

23 JUDGE YOUNG: Well, I can't imagine that
24 there's no administrative agency who has ever had to
25 resolve a witness fee issue.

1 MS. EUCHNER: There are tons of cases.
2 The problem is so far of the ones that I've searched
3 none of them deal with a situation where because of
4 frequent flyer miles or say because of a hotel rewards
5 program somebody gets a free night at a hotel. So far
6 none of the cases that I've found have dealt with what
7 do you do in a situation where someone uses some kind
8 of coupon or voucher and doesn't incur actual
9 expenses.

10 JUDGE YOUNG: But do they address the
11 issue of whether you automatically apply the
12 government employee travel standards or whether you
13 would do it like a Federal court would do it for any
14 witness?

15 MS. EUCHNER: They generally apply their
16 own internal regulations for paying witnesses which is
17 exactly what we have. We have a regulation that
18 applies and refers to the Federal statute.

19 JUDGE YOUNG: It applies -- Hold on.
20 Their own internal regulations for paying witnesses
21 that set fees. Do we have a regulation that sets
22 actual fees? I don't think so.

23 MS. EUCHNER: We have a regulation that
24 says you will pay subpoenaed witnesses at the same
25 basis as you would pay in Federal District Court.

1 That's the Federal statute that I've been citing is 28
2 USC 1821.

3 CHAIRMAN BECHHOEFER: Would that not allow
4 us to look into what district courts actually do?

5 MR. MARQUAND: Yes.

6 MS. EUCHNER: Absolutely and that's
7 partially what I've been searching. It's all Federal
8 law. I still haven't found anything. I searched all
9 Federal Courts and maybe there's a case out there but
10 I haven't found it yet.

11 JUDGE YOUNG: But our Federal courts when
12 they order witness fees and there's a dispute.

13 MR. MARQUAND: They have a basis.

14 JUDGE YOUNG: I understand Mr. Dambly to
15 be arguing that the government employee travel
16 regulations apply and that there's no way around
17 those. But I cannot imagine that that would be the
18 case when a Federal court is faced with an issue of a
19 dispute over how much reimbursement a witness should
20 receive for appearing at a trial for example. What
21 does govern there if there are regulations for the
22 Federal courts to follow then it would seem that those
23 might apply.

24 MR. MARQUAND: I have looked at the law
25 under Section 1821 and I have found no Federal court

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1 decisions that say look at 41 CFR. I haven't found
2 any that say look at federal travel regulations for
3 employees.

4 JUDGE YOUNG: What do they say?

5 MR. MARQUAND: They basically follow this.
6 They follow their own precedent.

7 JUDGE YOUNG: What is this?

8 MR. MARQUAND: They follow the 1821. They
9 look at 1821.

10 JUDGE YOUNG: Which doesn't give figures.

11 MR. MARQUAND: No, it does specify certain .
12 figures promulgated by I guess it's GSA on yearly
13 basis. It says \$40 a day for witness fee and so much
14 a day for meals and expenses.

15 JUDGE YOUNG: What does it say about
16 travel?

17 MR. MARQUAND: It's verbiage. There's no
18 dollar amount. It doesn't say how to do it.

19 JUDGE YOUNG: What does it say?

20 MS. EUCHNER: I believe it says "actual
21 expenses incurred" or some language. It uses the word
22 "actual" though.

23 MR. MARQUAND: It says a receipt or other
24 evidence.

25 JUDGE YOUNG: What rule are you looking

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1 at?

2 MR. MARQUAND: 28 USC 1821 (c) (1). That's
3 the part that talks about travel by common carrier.
4 The language is "a witness who travels by common
5 carrier shall be paid for the actual expenses of
6 travel on the basis of the means of transportation
7 reasonably utilized and this is necessarily to and
8 from such witness's residence by the shortest
9 practical route and going to and from" etc. "Such a
10 witness shall utilize a common carrier at the most
11 economical rate reasonably available. A receipt or
12 other evidence of actual cost shall be furnished."
13 Then alternatively 2) is "a travel allowance equal to
14 mileage allowance which the administrator of GSA has
15 prescribed pursuant to 5 USC 5704 for official travel
16 of employees of the Federal Government." So that's an
17 alternative way of calculating it.

18 (Judges confer.)

19 MR. DAMBLY: The alternative is the
20 alternative to if you use a common carrier, you get
21 the common carrier or in the alternative if you drive,
22 we pay mileage at the Federal rate. It's not you can
23 fly for \$100 and we'll pay you \$600 because that's
24 what the mileage would be.

25 CHAIRMAN BECHHOEFER: Could you cut off

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1 the mileage when it reaches the level of what the
2 reasonable ticket would be.

3 MR. DAMBLY: I don't think. We can do
4 some more research but I don't think you're going to
5 find a case where somebody didn't drive and got
6 mileage.

7 MS. EUCHNER: Also in part to answer the
8 issue you were raising, Judge Young, I think in terms
9 of searching Federal courts making decisions on 1821,
10 we need to focus on what they can order Federal
11 agencies to pay witnesses. Because what they can
12 order a private party to pay a witness is very
13 different from what they can order us to pay because
14 we have a budget.

15 We have to follow our own internal rules
16 and the rules set forth by Congress that don't apply.
17 So I think in terms of searching 1821 case law we're
18 going to need to look at have they ever ordered a
19 Federal agency to pay something that they couldn't pay
20 Federal employees or do they look to the Federal
21 employees rules for that.

22 JUDGE YOUNG: Also I would assume you
23 would also look to see the degree to which a
24 distinction is made by the Federal courts. Again I
25 suggest that you try to work it out.

1 MR. MARQUAND: Okay.

2 JUDGE YOUNG: Let us know. Anything else?
3 You wanted to talk about the documents.

4 MR. MARQUAND: I don't really want to but
5 I guess we ought to.

6 CHAIRMAN BECHHOEFER: Have you found any
7 of the documents that you intended, either party, to
8 offer into evidence but just neglected to formally
9 offer? Those I would think you would offer before we
10 conclude.

11 MR. MARQUAND: What we need to do is we
12 made a list ourselves of what we thought was
13 identified and admitted. We need to go through that
14 this evening and make sure that our list coincides
15 with your list as well as we need to go through and
16 see if you have some things that are not admitted that
17 we thought were admitted or that we need to get
18 admitted. We'll let you know about that in the
19 morning. I think that's the best way.

20 JUDGE YOUNG: I think that the list that
21 we gave you reflects what our people here have
22 ascertained about which exhibits were admitted into
23 evidence or were proffered and rejected. I don't know
24 if there were any that fell into that category.

25 CHAIRMAN BECHHOEFER: I think there's only

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1 one or two.

2 JUDGE YOUNG: There may be one, Judge
3 Bechhoefer says. So you can check against that for
4 what happened prior to this week and then this week we
5 can come up with a list and check against that. But
6 the question remaining was whether I think that Staff
7 was suggesting that those tentative exhibits that were
8 part of the library that was provided to us back in
9 April should remain in the record as proposed exhibits
10 that were provided to the Board but were not entered
11 into evidence.

12 The Staff's position I think at one point
13 was that they should not be part of the record. I
14 don't recall what TVA's position on that was. They
15 were provided to us. I don't have any particular
16 inclination one way or the other except to indicate
17 what was provided to us for whatever value that was.

18 MR. MARQUAND: I think it's purely
19 academic whether you should keep them or not. You can
20 keep them. It's an academic issue because everybody
21 knows you can't look at them nor can anyone on appeal
22 look at them.

23 JUDGE COLE: It would be large nuisance
24 removing them and separating them.

25 MR. MARQUAND: That's why I think it's an

1 academic issue.

2 MR. DAMBLY: I don't necessarily disagree
3 that the point that I made the other day because there
4 was some comment about well you something was referred
5 to but never offered and wasn't put in the record.
6 Well OCAA or somebody on appeal may want to look at
7 that. I don't think that's appropriate at all. I
8 don't want some situation where somebody outside this
9 courtroom decides they are going off on their own case
10 and looking at documents that weren't entered into the
11 record to make a decision or to influence a decision.

12 MR. MARQUAND: I can't imagine --

13 MR. DAMBLY: You don't know. Ask me on
14 the next one.

15 JUDGE YOUNG: I agree with both of you
16 that those documents obviously should not be
17 considered if they're not entered into evidence.

18 CHAIRMAN BECHHOEFER: I don't necessarily
19 agree with that. I think that when OCAA reviews the
20 record they want to know what the testimony means.

21 MR. DAMBLY: That's curiosity on their
22 part that they are not entitled to have. They
23 entitled to know what it means is what they said it
24 means.

25 CHAIRMAN BECHHOEFER: Well, the reference

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1 is in the record to the documents and you can't
2 understand what they're talking about many times
3 unless you have the document as backup. I think it
4 should be separated out and kept separately.

5 MR. DAMBLY: But then that's the same as
6 entering it into evidence. I don't think that's
7 appropriate.

8 CHAIRMAN BECHHOEFER: No, it isn't. You
9 can't rely on it.

10 MR. DAMBLY: If you consider as part of
11 the record to figure out what the testimony means --
12 Anything we refer to if it wasn't put in the record
13 then the portions that somehow were relevant that we
14 thought were relevant or we used to refresh were read
15 into the record. It would be no more appropriate than
16 you hand somebody a document and say here, see if this
17 refreshes your recollection. Then you take it away
18 and they testify to yes or no it did and here's what
19 they remember or no they don't remember anything and
20 somebody going and looking at that to decide some
21 evidentiary issue or some issue in the case. It
22 doesn't matter. It wasn't in the record. They are
23 not entitled to it. Curiosity is not an issue for
24 what you get to see.

25 CHAIRMAN BECHHOEFER: You don't rely on

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1 the document but I think it's important for reviewing
2 bodies to have available traveling with the record but
3 not necessarily admitted. Certainly documents that we
4 deny --

5 MR. DAMBLY: Those go as part of the
6 record because we might on appeal raise an issue as to
7 whether those should have been admitted or not.

8 CHAIRMAN BECHHOEFER: Right.

9 MR. DAMBLY: But that's different than
10 ones that have never been offered. We can't raise on
11 appeal an issue that you should have taken in and we
12 didn't offer.

13 CHAIRMAN BECHHOEFER: No, these are ones
14 that were perhaps offered but neglected to be entered
15 one way or the other.

16 MR. DAMBLY: Then they don't go in.

17 CHAIRMAN BECHHOEFER: That's why I'm
18 asking the parties before the conclusion of the
19 hearings this week to check and if there are such
20 documents either to offer them or to perhaps indicate
21 that they are withdrawn completely. But if you offer
22 them, then we'll consider them.

23 MS. EUCHNER: And, Your Honors, I mean
24 either way we're going to have to pull out documents
25 from those books because you can't assume that

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1 somebody a year from now or longer who's flipping
2 through them is going to be paying enough attention to
3 know that the document 26 was admitted but document 27
4 not only wasn't admitted but it wasn't even offered.
5 You can't expect someone to flip to the back page on
6 every document to insure that it's evidence. So they
7 are going to have to come out.

8 JUDGE YOUNG: You're right. They are have
9 to come out. The only question is whether to include
10 those that are taken out as a separate category of
11 items that were provided to the Board and not entered
12 into evidence or whether those should be completely
13 left out of the record.

14 I think the only reason for any question
15 here arises by the fact that instead of the exhibits
16 being presented to us as they were tendered instead as
17 I said we got a whole library that you selected from
18 during the hearing. I think I understand the Staff's
19 position. I'm not sure what TVA's position is on what
20 to do with those documents. But we wanted to give you
21 the opportunity to state your position and we'll
22 proceed. But I agree with Ms. Euchner. They
23 definitely will be taken out of those volumes.

24 CHAIRMAN BECHHOEFER: I agree with that.
25 I don't disagree with that.

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1 JUDGE COLE: That's not what you said
2 before.

3 CHAIRMAN BECHHOEFER: I said they should
4 be separated out into a separate category and sent to
5 SECY that way if only under the ex parte rules which
6 would have us put into the record they are not a --

7 JUDGE YOUNG: I think I used that analogy
8 but they really aren't ex parte because everybody knew
9 about it.

10 MR. MARQUAND: Everybody got them
11 simultaneously so they are not ex parte.

12 CHAIRMAN BECHHOEFER: That's not an
13 accusation.

14 MR. DAMBLY: I just really have a big
15 problem even if you separate them out sending up a
16 group of books to somebody and say please don't look
17 at these. Curiosity being what it is people are going
18 to look at the pile that you sent up to them figuring
19 maybe here's some good stuff that we should have look
20 at and didn't. I don't know.

21 JUDGE COLE: My guess is they have enough
22 to look at with what's submitted.

23 MR. DAMBLY: And they also have clerks and
24 various things that have nothing to do but ply through
25 all this stuff.

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1 JUDGE YOUNG: What's TVA's position on
2 this?

3 MR. MARQUAND: I don't want to have to
4 mess with any of the documents. But if we are going
5 to separate them, I agree that if they haven't been
6 identified and they haven't been admitted I would
7 trash them.

8 JUDGE YOUNG: All right. If we do
9 anything different, we will let you know.

10 MR. MARQUAND: Thank you.

11 JUDGE YOUNG: Did someone just walk in?
12 Who was it? A witness.

13 MS. EUCHNER: Yes, Mr. Luehman was a
14 witness the first day of our hearing.

15 JUDGE YOUNG: Okay, but nobody that we
16 could start on.

17 MR. DAMBLY: We could I guess.

18 JUDGE YOUNG: Excuse me for not
19 recognizing you. Can we adjourn?

20 MR. DAMBLY: Until nine?

21 CHAIRMAN BECHHOEFER: I guess we'll
22 adjourn until 9:00 a.m. Off the record.

23 (Whereupon, at 4:11 p.m., the above-
24 entitled matter recessed to reconvene the following
25 day, September 11, 2002 at 9:00 a.m.)

CERTIFICATE

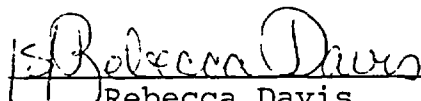
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

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

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

Location: Rockville, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.


Rebecca Davis
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