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NUCLEAR REGULATORY COMMISSION

Title: Interview of James Fisicaro

Docket Number: (not assigned)

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EXHIBIT 54
Page 1 of 81 pages

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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OFFICE OF INVESTIGATIONS

INTERVIEW

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IN THE MATTER OF: :

INTERVIEW OF : Docket No.

JAMES FISICARO : (not assigned)

-----X

Thursday, July 27, 1995

Riverbend Station

Conference Room

5485 U.S. Highway 61

St. Francisville, Louisiana

The above-entitled interview was conducted at 7:30
a.m., when where present:

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1 ON BEHALF OF THE NUCLEAR REGULATORY COMMISSION:

2 JONATHAN ARMENTA, JR., Investigator

3 DENNIS BOAL, Investigator

4 U.S. Nuclear Regulatory Commission

5 Office of Investigations

6 611 Ryan Plaza Drive, Suite 400

7 Arlington, Texas 76011

8

9 ON BEHALF OF THE ENTERGY OPERATIONS, INC.:

10 DOUGLAS E. LEVANWAY, ESQ.

11 Wise Carter Child & Caraway

12 600 Heritage Building

13 Jackson, Mississippi 39205

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P R O C E E D I N G S

3
(7:39 a.m.)

MR. BOAL: For the record, this is an interview of Mr. Jim Fisicaro.

Mr. Fisicaro, could you give us your full name, please.

MR. FISICARO: James Joseph Fisicaro.

MR. BOAL: And would you spell your last name for us, please.

MR. FISICARO: F-I-S-I-C-A-R-O.

MR. BOAL: And could you provide us your job title, please.

MR. FISICARO: The job title is the director of nuclear safety, Riverbend Station.

MR. BOAL: Could you provide us your date of birth, please.

MR. FISICARO: [REDACTED]

MR. BOAL: Today's date is July 27, 1995. The time is approximately 7:40 a.m. Additionally present at this interview is Mr. Jonathan Armenta, Jr., investigator, NRC, Office of Investigations; Mr. Dennis Boal, investigator, NRC, Office of Investigations, Region IV; and Mr. Douglas E. Levanway, attorney, Wise Carter Child & Caraway, who is an attorney for Entergy Operations, Incorporated, and as attorney for that company, he also

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1 represents you as being a management person and is present
2 at this interview with your permission.

3 Is that correct, sir?

4 MR. FISICARO: That is correct.

5 MR. BOAL: This interview is being tape
6 recorded by court reporter Ms. Gayle Falgoust, and is a
7 voluntary interview pertaining to alleged violations of 10
8 CFR 50.7, generally known as the whistleblower provisions
9 of the NRC regulations.

10 Mr. Fisicaro, at this time, may I ask you to
11 please stand and raise your right hand, so we can
12 administer an oath to you.

13 Whereupon,

14 JAMES JOSEPH FISICARO

15 having been first duly sworn, was called as a witness
16 herein, and was examined and testified as follows:

17 EXAMINATION

18 BY MR. BOAL:

19 Q Mr. Fisicaro, could you provide us with your
20 educational background, please.

21 A You mean management schools and -- I have a
22 bachelor of arts degree in psychology from Arkansas Tech
23 University. In the early '70s, I attended the University
24 of Nebraska at Omaha, so I have some education there.
25 Those are more engineering type courses. And then as I

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1 moved on to Arkansas, I finished my degree at Arkansas
2 Tech.

3 Q Is that an advanced degree at Arkansas Tech?

4 A No. ~~A.B.A.~~ B.A. IN Psychology *JP*

5 Q And what year is that degree, sir?

6 A It is a four-year degree.

7 Q And what year did you receive it?

8 A Last year. 1974.

9 Q Last year was '94.

10 A I am sorry. You are right. 1994. That is
11 correct.

12 Q And how long have you been at Riverbend
13 Station, sir?

14 A Since September 1993.

15 Q Were you employed by Entergy Operations,
16 Incorporated prior to coming to Riverbend Station?

17 A Correct. I was at the Arkansas Nuclear
18 Station since August of 1989, and the company merged into
19 what is called Entergy in June of '90.

20 Q What was your position at ANO?

21 A I was called the director of licensing.

22 Q In general terms, how long have you been in
23 the nuclear business?

24 A About 25 years or 26 years.

25 Q The specific allegation that Jonathan and I

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1 are investigating pertain to the ranking process employed
2 at Riverbend Station. Could you tell us how you first
3 heard about this ranking process.

4 A The ranking process was rolled out to the
5 management personnel in -- I want to say in the second
6 part of last year, '94. It was something that Mr.
7 ~~Lewberger~~ ^{Lubenger} [phonetic] established a committee to figure out
8 what is the best way to become more competitive, and one
9 thing that he came up with was -- or that group came up
10 with was that they would -- that this ranking process
11 would help improve the overall competitiveness of -- for
12 us by improving people's performance.

13 Q During the -- during our investigation, we
14 have heard that this process was a similar -- was
15 researched by corporate and apparently is similar to a
16 process used by other corporations across the United
17 States. Is that your understanding also?

18 A That is correct.

19 Q When the process was introduced to you, was
20 there an emphasis on releasing poor performers or
21 rewarding exceptional performers, or was that discussed?

22 A No. The real focus was we were doing this
23 because of -- we were trying to improve our competitive
24 edge. It was not focused on reduction of personnel.

25 Q Did you receive training in this process?

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1 A Yes, I did.

2 Q Do you recall when and who provided that
3 training?

4 A Training was provided by human resources, and
5 I don't know exactly the time, but it was prior to us
6 doing all the ranking. Must have been sometime in the
7 fall of '94. It was done with a series of managers, all
8 at the same time.

9 Q Was the same amount of information provided to
10 the employees as was provided to supervisory staff about
11 the ranking process?

12 A I don't know if it was the -- if all the
13 information was provided. We tried to be as open as we
14 could with everything. I would assume that people knew as
15 much as we did from a standpoint of what was the focus,
16 what was the intent, how we were going to do it.

17 Q Specifically, in your division -- is that what
18 nuclear safety is called, a division?

19 A Department.

20 Q In your department, did you rank any
21 employees?

22 A Yes, I did.

23 Q Could you -- do you recall the names of the
24 employees you ranked?

25 A All the people that reported directly to me,

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1 people such as Bill Smith, Otto Bulich, Joe Leavines,
2 Craig Maxson, Roger Backen. And I think even though Ken
3 didn't, Ken Giadrosich did not report to me, I did work
4 with the maintenance manager on just discussing his
5 ranking as well.

6 I am trying to think if there was anybody
7 else.

8 Q Of the people that you ranked, were any of
9 those people ranked a category 9?

10 A Yes, there was.

11 Q And who were they?

12 A The person that I ranked as a category 9 was
13 [REDACTED]

14 Q Could you explain to us what criteria you used
15 to rate [REDACTED].

16 A [REDACTED] is a supervisor, and what I did
17 when I first came here is got all the supervisors together
18 and provided to those supervisors and managers what I
19 believed the -- my expectations of what a supervisor
20 needed to do, what a manager needed to do, and so what I
21 felt -- and that was back in September of '93. Everybody
22 understood or knew where not only I would be headed, but
23 where Entergy would be headed.

24 So based on those expectations and, I guess,
25 what I thought a supervisor should do, I ranked him based

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1 on those expectations, his performance, on his overall
2 performance on his -- on how he does his job. And I think
3 that is pretty much it.

4 Q As we have been -- excuse me. As the ranking
5 process has been explained to us during the course of the
6 investigation, there were two categories used in the
7 ranking process: performance and potential. We have had
8 different discussions by people who have ranked as to the
9 meaning of performance.

10 Some people seem to indicate it is current
11 performance, whereas others seem to indicate it is
12 historical performance. In Mr. [REDACTED]'s particular case,
13 since you had limited historical knowledge of Mr. [REDACTED]'s
14 job performance, would we say or could we say that your
15 performance appraisal of Mr. [REDACTED] was of his current
16 capabilities?

17 A Current being that year, yes.

18 Q That year? How would his performance have
19 related to the PPR or the personnel evaluation system in
20 place at that time? Would you have used that in
21 determining his ranking, or would it have been kind of a
22 guide, or --

23 A I just think it would be and the way I looked
24 at it is overall I knew what the expectations of the
25 people and what their PPRs said as to what their goals

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1 were, and so I pretty much knew what the performance was
2 on those expectations so, or as I didn't physically go
3 back and consult the P&R, I had it in my mind what they
4 needed to do and how they were performing on those goals,
5 so that is pretty much how I did it.

6 Q Did you know that Mr. [REDACTED] had a label or a
7 history associated with being a whistleblower?

8 A I knew that he had -- there was some
9 discussion about that he had filed some claim before.
10 What, I really didn't know what it was. In fact, when
11 Entergy first came here, one thing that I tried real hard
12 to do was only look at the stuff that we had going on at
13 that time, and try not to go back and look at history,
14 because the history really at that point in time wasn't
15 important.

16 We were trying to do a lot of other things
17 than worry about what the history was for safety concerns,
18 so we did not really go back there. So that is about all
19 I knew on that.

20 Q In your experience in the nuclear field, have
21 you had experience with whistleblowers?

22 A Yes.

23 Q And how would you characterize that experience
24 with whistleblowers?

25 A Can you -- what do you mean by that?

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1 Q Would you say that your experience with
 2 whistleblowers has been favorable? Unfavorable? A
 3 necessary part of business? Something that you have to
 4 treat differently or --

5 A I think I look at this like I do any other
 6 regulation. It was put in for a reason, and I think a
 7 legitimate reason. And to me, I would treat this just
 8 like I do any other regulation. It needs to be
 9 implemented. And if you are asking, do I -- I am a person
 10 that encourages problem identification. I am a person
 11 that --

12 In fact, when Entergy came in the door here,
 13 that is one of the primary things that we tried to do. We
 14 started the first week we were here with all-employee
 15 meetings, and that was one of our focuses, and so to me, I
 16 believe people have rights and they should exercise
 17 whatever they need to exercise to do that. In this case,
 18 the whistleblower provision is a right of an individual,
 19 but I don't have any adverse or negative feelings towards
 20 people or the process at all.

21 Q Behind you on the board is a -- what we
 22 believe is a summary of the steps taken in the nuclear
 23 safety department to rank individuals, and it starts with
 24 the first-line supervisor, and then they do a roll-up, and
 25 then the supervisors do another roll-up, and I believe it

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1 is presented to different managers. Then the managers
2 would have met with you for a combining and roll-up of the
3 individuals in your department.

4 Is that similar to your memory?

5 A Uh-huh. That is correct.

6 Q What we would like to ask you is: During this
7 ranking process of the nuclear safety department, did you
8 participate in meetings with your supervisors or managers?

9 A Yes, I did.

10 Q Can you recall how many meetings you
11 participated in?

12 A We had one roll-up meeting, where I met with
13 all the supervisors and all the managers -- it was in this
14 room -- with Newton Spitzfaden as the human resources
15 manager, who was trying to sit in on all the sessions for
16 continuity purposes.

17 We also had other -- another meeting that I
18 can remember to -- it was really the first time, I think,
19 that some of the people would see each other's rankings,
20 and each other meaning the supervisors and the managers of
21 the entire department. They brought them to a meeting,
22 and it was kind of a prep meeting for the one that was
23 held here in this room.

24 So those, I would call probably the only two
25 meetings. There was probably some individual discussions

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1 we had. I think I talked to probably every manager about
2 their rankings. I wouldn't necessarily call that a
3 meeting, but we did have discussions one on one with
4 people that work directly for me.

5 Q Okay. But you did sit in the roll-up meeting.

6 A Yes, sir. Yes, I did.

7 Q The supervisory roll-up meeting that would
8 have been one -- the one we are looking at would have had
9 Mr. Biggs in it and Mr. Whitley.

10 MR. BOAL: Is that correct, Jonathan?

11 MR. ARMENTA: Yes.

12 BY MR. BOAL:

13 Q Did you sit in on that meeting, sir?

14 A I don't know if they were there or not. I
15 just don't remember that.

16 Q Another meeting, the meeting with your
17 managers, QA, licensing, assessment, and emergency
18 preparedness, did you sit in on that meeting?

19 A Yes.

20 Q Do you recall when that meeting was?

21 A I just know it was in the fall time frame. I
22 don't know the exact date. We were trying to finalize our
23 rankings.

24 Q Do you recall who attended that meeting?

25 A All my direct reports, with the exception of

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1 Craig Maxson. Roger Backen would also have been at that
2 meeting, and also Newton Spitzfaden, and Ken Giadrosich
3 was there as well.

4 Q Why was Mr. Giadrosich present at that
5 meeting?

6 A We had just made a change in the manager of QA
7 position. I just moved an individual by the name of
8 George Zinke to that ^{POSITION (QA MANAGER) JJJ} ~~wall~~. Ken was asked to go down and
9 do a -- be in charge of the planning organization, and so
10 it was right about that same time.

11 And since we were dealing with the performance
12 of the individual for that year, Ken did know the people
13 better, and he was there as -- just to see if there was
14 any disconnects that we had really with the QA/QC
15 personnel. I just didn't feel we could do a fair job with
16 all employees if we didn't have him present, just because
17 he knew the people better than George did.

18 Q As we understand it, at that meeting initially
19 the nonsupervisory employees were ranked, and then the
20 meeting moved on to rank the supervisory employees, and I
21 believe Mr. Backen at that time left the meeting.

22 A That is correct.

23 Q Our first question is: When the meeting
24 started, were there names on the board, or were there
25 names already in place?

1 A Yes. Yes, there were.

2 Q And who did that?

3 A The supervisors initially did it and then they
4 were rolled up by their manager for their particular
5 department.

6 Q But we are trying to understand or get a feel
7 for the actual mechanics of when someone -- when they
8 walked into this room, was on the board the names already
9 in the different blocks?

10 A I don't believe so. I believe the
11 individuals brought the names with them and put them up on
12 the board. I don't remember if it was up there before.
13 The way I remember it was that the individual managers had
14 their rankings, and we put them up on the board.

15 Q And your function at the meeting, what was
16 your function at the meeting?

17 A Well, I would say a couple of things. One is
18 my responsibility for the overall department is I had to
19 ensure that we had continuity, that I was able to bring it
20 to the next level. My job was from then just to take it
21 to a meeting where all of John's direct reports, John
22 McGaha's direct reports met, and so my function was to be
23 briefed on that.

24 At the same time, I believe that I had, over
25 the period of time that I was here, had formed an idea on

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1 many of the people's performance, and I think I was there
2 also to question, to make sure that there was continuity
3 and that everybody, was applying the same standard, so
4 generally that was my purpose.

5 Q At the beginning -- when that meeting was
6 conducted, were the instructions provided to management
7 staff, such that everyone understood someone who was block
8 9 ranked would be offered a severance package?

9 A I think that is true. I just don't remember
10 if that word came out before or after. I think it did.

11 Q Okay. We have conflicting discussions as to
12 whether it came before or after, so we are asking your
13 understanding. The reason -- one of the reasons we are
14 asking that is to get an understanding if each individual
15 present at this meeting understood that the consequences
16 of someone being placed in block 9 would mean that their
17 career here at Riverbend Station could be short.

18 MR. LEVANWAY: Dennis, I guess the only thing
19 I want to comment on that was you said, were you aware
20 that they would be offered a severance package, as if they
21 would be terminated, and you know the testimony has been
22 they would be given the option of a severance package or
23 allowed to stay, and I think it is a little different than
24 what you just posed to him as a question.

25 MR. BOAL: Okay.

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1 BY MR. BOAL:

2 Q Mr. Levanway's explanation, were you aware of
3 Mr. Levanway's characterization of that?

4 A Well, I -- the way this whole program was
5 rolled out is that people knew that if you were in a block
6 9 and weren't able to perform and improve your performance
7 and were ranked again in the second year, then there was a
8 potential the individual would be fired.

9 So the answer to the question is, yes, I think
10 people knew that ranking somebody in a block 9 could have
11 an impact on their career. I believe that.

12 As far as whether or not the severance package
13 came out before or after, I don't remember. But I don't
14 know that that would have made any difference to the
15 people, because I think their focus was on trying to make
16 sure that they ranked their people, make sure that it was
17 accurate and fair, and I think that is about it.

18 Q During that meeting, we understand that in the
19 department, the nuclear safety department, there is
20 approximately 50 employees, give or take some. Is that
21 your estimate?

22 A Actually there is 103 employees within the
23 department.

24 Q But the ones --

25 A At that time, there was -- when I first got

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1 here in August of '93, there was 103 people. At the time
2 we ranked, it was in the nineties somewhere.

3 Q So there were 90 individuals ranked?

4 A The only ones we did not rank were the
5 clerical individuals and there is about eight, ten
6 clerical, so there would have been probably somewhere in
7 the eighty -- 80 people ranked.

8 Q To your memory, was each individual discussed
9 in that ranking, each individual who was in a block by
10 name, discussed in that meeting?

11 A I know that we went through every block and
12 through every name, and as we went through it, we tried to
13 ask, Is this the right fit; do all these people fit
14 together. So there was that kind of discussion. Yes.

15 Q During that meeting was there a lot of --
16 would you say there was a lot of movement from one box to
17 another, or did the individuals generally stay in the
18 boxes they were placed in?

19 A I would say they generally stayed. There was
20 some movement, but mostly stayed in the blocks they were.

21 Q Would it be a fair statement to say that the
22 first-line supervisors basically had the highest input or
23 the highest amount of input as to what box someone was
24 placed in?

25 A Absolutely

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1 Q Do you recall during that meeting -- and for
2 clarity's sake, we will say that when they ranked all
3 employees, we will call that the first meeting. Do you
4 recall at that first meeting, individuals moving into
5 block 9?

6 A No.

7 Q Do you recall individuals moving out of block
8 9?

9 A Let me make sure I am right here. You are
10 talking about the meeting that we held here in this room?

11 Q Yes, sir.

12 A Okay. I am sorry. Let me go -- can you ask
13 the first question again.

14 Q Okay. Do you recall individuals being moved
15 into block 9?

16 A Yes.

17 Q Do you recall their names?

18 A The only one that I remember that was moved
19 into block 9 was Mike Malik.

20 Q Do you recall what block he was in prior to
21 being moved to block 9?

22 A No, I don't. It was either a 7 or an 8. I
23 don't know which one.

24 Q Do you recall the discussion about Mike
25 Malik?

1 A The only thing I remember was as we went down
2 the list, I think I mentioned that we were trying to make
3 sure that the people in the blocks fit with the -- for
4 instance, those people in the 7s, did they all match up;
5 were they at the right performing level for that 7; were
6 they the right potential level.

7 And as we went down there, what struck me was
8 Mike Malik did not fit with the people that were in this
9 block whatever one it was, 7 or 8, and so I questioned. I
10 said, What was -- is this the right position for Mike. And
11 I think that is all I asked, and I thought my job at that
12 m meeting was more to spur discussion and let the managers
13 discuss it and make sure they feel comfortable with what
14 they were doing.

15 I did not at that meeting ask anybody to move
16 anybody. I did not ask -- I just questioned what they had
17 provided. And the managers were the ones that decided
18 what the final ranking would be for them, for their
19 individual. And my rationale for that was they are the
20 ones that are going to have to take it back to the
21 supervisors and their workers, so they had to agree. For
22 me to arbitrarily move somebody would not have been -- it
23 just wouldn't have been appropriate.

24 BY MR. ARMENTA:

25 Q Mr. Fisicaro, it is our understanding that

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1 you asked one of your managers if he didn't think that it
2 was appropriate to move Mike Malik to a 9; in fact,
3 something to the effect of, Don't you think we need to
4 move Mike Malik to a 9.

5 Since he was not ranked 9 by his first-line
6 supervisor, the outcome of that meeting was that it was
7 moved to a 9 as a result of further discussion on Mr.
8 Malik with your input to that effect. Do you recall
9 making such a statement?

10 A I don't remember that. I remember it more to
11 question whether or not the individuals and then I was
12 hoping that I would get discussion amongst the
13 supervisors -- or the managers in the room. But I wanted
14 to be real careful in that meeting not to ask anybody --
15 for me to ask them to move anybody, and so I was real
16 careful, and I don't remember ever saying that about
17 anybody. Move them from this block to that block, I did
18 not do that.

19 Q Just so we make sure: You understand it
20 clearly that your gesture was as a question: Don't you
21 think we should move Mike Malik to a 9? That was a
22 gesture; not that you ordered or instructed your manager
23 to move him to a 9, but gesture was in the form of a
24 question, leaving the final decision to the manager.

25 If the manager did not move him to a 9, would

1 there have been anybody else in that room besides you that
2 would have influenced your manager to move him to a 9?

3 A I would think his peers, because his peers
4 deal with him, with Mike, on a day-to-day basis, people
5 like Otto Bulich, and Otto sits in the same kind of
6 meetings that I do with Mike, and I would have expected
7 him.

8 I think Ken Giadrosich -- I would have
9 expected him to say something if didn't think the
10 performance fit. But those are probably the two main
11 guys.

12 Q Other than that if we would not have any input
13 from those two people, would there be anybody else besides
14 you and Mr. -- and your manager, Mr. Mike Malik's
15 supervisor?

16 A No.

17 BY MR. BOAL:

18 Q Mr. Fisicaro, that would bring us to another
19 topic, and this appears to be an appropriate place to
20 bring it up. We have heard discussions that you came in
21 with EOI when there was a transition from Riverbend
22 Station -- I mean, from Gulf States into EOI, and that
23 some of the employees in place may have had difficulties
24 adjusting to your personality or demeanor.

25 Our question would be: When this meeting

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1 occurred, using a rough estimate of time line, you had
2 been on site here at least a year. Is that --

3 A That is correct.

4 Q Is that a correct estimate of time? Would you
5 say that during that time, that the managers would have
6 been familiar and experienced enough in their interaction
7 with you that they would have made decisions or taken
8 actions based upon what you had said or what you had --
9 what they expected you were saying?

10 A Well, the individual that was the person that
11 moved Mike Malik was Joe Leavines, and Joe Leavines, I
12 think, has a real good read on the way -- I am a real
13 questioning person, and every time I look at anything or
14 do anything, I look at, How can I improve the product or
15 how can I make it better, and so I ask a lot of questions
16 and Joe knows I ask a lot of questions, and I think all
17 the other managers do.

18 I looked at what was going on in this meeting
19 as just another question. I did not -- and it was
20 something that Joe was -- and my idea was that he would
21 take that question. If it fit, fine; if it didn't, then
22 make the decision as the manager responsible.

23 So I think it was just a prompting kind of
24 thing, not, Is he doing it because I said so. No, that
25 wouldn't have been the case, not with Joe. If it was the

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1 wrong to do, I think Joe and other managers in that room
2 would have questioned me, if it was the wrong thing to do.

3 The group that I have is a pretty outspoken
4 group, and we have a lot of discussion about how things
5 are done. But I make it absolutely clear they are the
6 ones running the department and not me. It is not -- I am
7 responsible for their actions, but Joe Leavines has to run
8 his particular department, and he has to be satisfied with
9 it.

10 That doesn't mean that I don't question things
11 that he does and why he does them, but it is his final
12 decision, and that is what I think was going on at this
13 meeting. So that is kind of not directly answering your
14 question, but it is the way I look at it and the way that
15 I think the interaction with my managers are.

16 Q I appreciate it. That was the answer I was
17 trying to get to. The question may not have addressed it
18 properly.

19 Mr. Giadrosich --

20 MR. ARMENTA: Dennis, can I ask a few
21 questions before you go on --

22 MR. BOAL: Sure.

23 MR. ARMENTA: -- on that subject with Mr.
24 Malik?

25 BY MR. ARMENTA:

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1 Q And that is, Mr. Fisicaro, that -- did you --
2 were you privileged to some of the information about Mr.
3 Malik's involvement with the agreement with the Department
4 of Labor, the most recent?

5 A There -- yes, I am.

6 Q To your knowledge, were all the -- everything
7 that was agreed on by the settlement of the last DOL
8 agreement, to your knowledge, were they all met?

9 A Yes. And I want to qualify that a little bit.
10 Just recently we found out that there was one thing, a --
11 I believe a 1993 appraisal that was not signed as stated
12 in that agreement, but I thought that that was already
13 done; I thought that that had culminated, so I thought
14 everything was done, but just here recently, I think
15 within a week, two weeks, something like that, I found out
16 that that is not the case, and so that is in process right
17 now to be done.

18 Q Your becoming aware of this, is it as a result
19 of this investigation?

20 A I don't know the cause. All I know is that
21 that came to my attention. It could have been as a result
22 of this; that could be.

23 Q Are you aware that Mr. Malik may have
24 approached his supervisor to see his appraisal, his
25 changed appraisal form, to see if it had been done, and

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1 was denied access? Are you aware of that?

2 A No, not at all.

3 Q Are you aware -- did any of your subordinates
4 or direct reports come to you and question about allowing
5 Mr. Malik to see his revised or amended appraisal form?

6 A I don't remember that. What I am thinking,
7 that in trying to get the true picture of Mr. Malik's
8 allegation -- and as you know, you and I have talked
9 before off record, and you know that Mr. Malik is one of
10 the people that has made one of these allegations -- is
11 how would an employee like Mr. Malik obtain an answer to
12 his question, indicating that he has not seen or yet to
13 his knowledge been apprised that his appraisal form has
14 been changed, and to date, as of 30 days ago, it was still
15 not changed.

16 Q What would an employee have to do to get
17 perhaps your attention to see that what was settled back
18 in a Department of Labor hearing was --

19 *A.P.* Just tell me, and I would go look at it. If I
20 had known this thing 40 days ago, I would have gone and
21 implemented it. If I had known it 50 days ago, I would
22 have gone and done something.

23 I think this was -- this settlement was
24 handled with human resources and also some lawyers, and it
25 may have just gotten messed up, and everything just didn't

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1 get done. In this case, we found out that there was an
2 appraisal not done.

3 There was -- you know, there really isn't an
4 excuse; we did do it. But all Mike would have done -- and
5 I think I had a close enough relationship with Mike; he
6 has brought other stuff to me, and I would not have
7 thought he would have had a problem just saying, Hey, I
8 haven't see this; let me see it. And I would have gone
9 and checked.

10 Q The fact that he is a protected employee, did
11 you issue out any instructions to that effect, to either
12 human resources or to any of your subordinates, to
13 prohibit him from looking at his appraisal form?

14 A Absolutely not.

15 Q Did you, as a result of Mr. Malik's
16 involvement with the DOL, did that influence your thinking
17 about Mr. Malik's position as far as performance or
18 potential?

19 A No.

20 Q Have you -- are you familiar with the
21 C-A-R-B meetings, the CARB meetings that they talk about?

22 A Yes, I am.

23 Q Which is, I think, the acronym stands for
24 correction --

25 A Corrective action review board.

1 Q During those meetings, have you brought it up
2 to Mr. Malik's attention that he needs to either polish up
3 or do a better job at those meetings than he has?

4 A Not at those meetings. Yes. I have -- both I
5 and Joe Leavines have counseled Mike on what goes on in
6 those meetings and what his role and responsibility is,
7 and if I could, I will give you an example of what I am
8 talking about so it is clear.

9 Tuesday, I believe it was, we had a CARB
10 meeting that lasted for a couple or three hours; I think
11 it was two hours or something like that. It started at
12 about 9:00 o'clock, and it was -- there was four issues
13 discussed. The -- now, my expectation is we are the
14 oversight group; we are the ones that are supposed to
15 maintain control, make sure the meeting is moving on,
16 making sure that we are getting all the questions answered
17 and make sure that there is documentation, so if there is
18 any open items, we know what those open items are and so
19 that we can work on getting those closed.

20 And what I would expect is the owner of the
21 condition report, that he would also take those notes.
22 Well, at the end of the meeting, when we get all done, I
23 asked for a summary, because we had talked a lot of
24 things, laid a lot of things on the table, and I was
25 worried that we would drop everything. In fact, I asked

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1 Joe, who had taken a break, Joe Leavines: At the end of
2 the meeting, go and ask the question about closure, make
3 sure that we have a list of things.

4 Well, he asked Mike, Mike Malik, and Mike
5 Malik had no list at all. He had not listed those things,
6 had not kept track, and they were things that were going
7 to relate to future CARBs, and fortunately, the -- one of
8 the engineering guys sitting at that same meeting had --
9 he kept notes, so we went down his summary.

10 And that to me would be an expectation I would
11 have of Mike, that he would be responsible for any actions
12 coming out of there, to make sure they are followed upon.
13 Those are the kinds of things that I would have talked to
14 Mike about and/or Joe, and typically I would go to Joe and
15 ask him, and sometimes if Joe wasn't there, I went
16 directly to Mike.

17 But it was all related to how I thought our
18 performance was, and these CARB meetings take a lot of
19 time, and I think they are necessary, but I think there
20 are things that we can do to make them quicker and better,
21 and that is the part that we are expecting Mike to do.

22 Q Is the purpose of those CARB meetings to find
23 root cause of those problems within engineering or other
24 departments? Is that correct?

25 A Yes. It is to review the root cause and

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1 corrective actions that the people, the engineers, whoever
2 has the assigned action. Yes. And it is to review it by
3 senior management people.

4 Q So in other words, the essence of these
5 meetings is actually to serve your customers, shall we
6 say; customers: engineering, maintenance, operations, in
7 issuing some resolutions to the root cause of their
8 problems. Maybe my terminology is a little bit weak, but
9 am I on the right track?

10 A Yes. I think that is right. At the same
11 time, when you say we are dealing with our customers, that
12 is true. However, my department is -- and I think this is
13 pretty clear, that our role in this is to be the
14 conscience and to be making sure that people are following
15 the right line in doing, quote, the right thing.

16 So even though we are dealing with our
17 customers, sometimes we have got to hold our customers
18 accountable for what they do, so I would add that piece to
19 it.

20 Q Now, and along that subject with Mr. Malik,
21 you mentioned that he may not have performed to your
22 expectation in trying to compile a list of the things that
23 were talked about in those CARB meetings, and the reason I
24 ask you about the purpose of those meetings, to just kind
25 of find out what -- in essence, what is the bottom line

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1 for those meetings; is it to compile a list, or is it to
2 actually resolve those root causes?

3 I have got with me an issue on June 20 of this
4 year, 1995, in which NRC corrective action program
5 indicates that it is working well. Have you seen this
6 before?

7 A Yes, sir.

8 Q Is this indicative of the corrective action
9 program, that it is in good standing, and it is performing
10 well?

11 A Yes, it is.

12 Q Is Mr. Malik associated with this corrective
13 program?

14 A Yes, he is.

15 Q In fact, is Mr. Malik as a first-line
16 supervisor responsible for this program?

17 A Yes, he is.

18 Q I don't know if you have the privilege to have
19 seen this before, but this is from one of your supervisors
20 in nuclear licensing, indicating an inspection summary
21 from NRC is focusing on the problem of identification on
22 the root cause of termination, and it speaks very highly
23 of the review observation, and this comes from one of your
24 licensing contacts, Mr. David Lorfing, who praises that
25 corrective action.

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1 A Uh-huh.

2 Q I am also here looking at an audit that was
3 conducted -- or Q* audit; that is, it speaks very highly
4 of the corrective action program. These are audits that
5 your company has conducted here, and that one is dated
6 February 24, 1995. I have another one here dated March
7 18, 1994, which also indicates the corrective action
8 program and its summary of very well -- a program that is
9 headed in the right direction.

10 And the reason why I am bringing this, Mr.
11 Fisicaro, is that you mentioned earlier that the ranking
12 was based on performance, hopefully since the time EOI
13 management started. In other words, let's not find out
14 how this employee performed five years ago, but rather
15 let's take a fresh new start and see how he is performing.
16 Is that correct? Is that the essence of the --

17 A That is correct.

18 Q -- philosophy of management of EOI? So in
19 doing so, I have information from your office -- from your
20 company that indicates that corrective action program is
21 doing fine, and I think you stated earlier that that is
22 what you base the ranking on, the performance.

23 And if we are not going to take into
24 consideration the performance appraisals for the previous
25 years, do we look at -- what else do we have to look at to

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1 indicate his performance or his potential? Can you help
2 me with this?

3 A Yes. Let me try to give you the rationale on
4 this, on what you are just saying right there. First of
5 all, Mike became in charge of the corrective action
6 program, I think about mid-part of last year. I don't
7 know the exact date; I don't remember. Prior to that, Joe
8 Leavines, he and I implemented this corrective action
9 program. It was not -- it was done in, I would call it,
10 pretty much as you indicated right there, in March '94, it
11 was going in the right direction and solidly in place.

12 What I guess I look at, at Mike's role now, is
13 he has got to continue to improve it, to streamline it and
14 make it better. And when we rank people, we rank them
15 based on their performance. There is absolutely no way in
16 this world, regardless of where Joe Leavines is ranked or
17 where Mike Malik is ranked or where his people are ranked.
18 This corrective action program is going to be successful,
19 because I am also responsible for it.

20 And that is part of what I see the problem
21 with, and I think Joe Leavines sees the problem with Mr.
22 Malik, and that is, it is what you bring to the table as a
23 supervisor; it is what you -- what changes you make.

24 I think Mike, from my perspective and I think
25 what Joe's perspective is, is that he -- all the change,

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1 the major change comes from Joe or I. The questioning
2 comes from Joe or I. When we sit in these CARB meetings,
3 the questioning about -- and I am talking about, Is this
4 the right root cause or isn't it, that questioning comes
5 from myself and other managers; it does not come from
6 Mike.

7 And so it is what you bring to the table as a
8 supervisor; what -- in his role, what changes is he
9 making. How is he trying to improve it; is he respondent
10 to the customer inquiries and concerns about the program.
11 And I don't see that happening, so this is indicative of
12 the program, which I agree: the program is working very
13 well.

14 But just because he is attached with the
15 program doesn't necessarily mean his performance is
16 stellar. To me, it is kind of like you can just pick any
17 area. You could say operations is good, and if the
18 employees in the department are good and you can have a
19 weak link and still have a good program.

20 And in this case, I would expect Mike to --
21 Entergy's expectations for a supervisor is to be out in
22 the lead, to be pushing the managers, and not the managers
23 and the directors pushing them. So the way I look at it
24 is, yes, Mike did become in charge of the program the
25 middle part of last year; it was already, I think, solidly

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1 in place; and as this March 16 one would indicate, I think
2 the program is working even better today.

3 But the question I have in my own mind and I
4 think Joe has, and that is why -- and the whole focus of
5 what Mike's improvement plan is, is to -- what does he
6 bring to the table; what -- that kind of thing.

7 Q Well, you have to understand why I am bringing
8 these issues up, because of his allegation that he feels
9 he has been discriminated, because of his prior DOL
10 involvement; that he has been ranked 9 as a result of
11 that, meaning that if I am doing a good job, if I am
12 performing well, I have not been told I have been
13 performing bad, then why am I getting a rank 9.

14 So I am trying to find reasons why Entergy
15 would actually say he is ranked 9 and performing not to
16 EOI expectations when I have this in front of me. Is it
17 true that if there would have been a negative connotation
18 to these programs, that probably it would flow down to Mr.
19 Malik?

20 A It would have probably started with me.

21 Q It would have started with you, but would it
22 have ended -- would it not end up with Mr. Malik?

23 A It -- I don't know that I can answer that
24 general question. If he is responsible for the
25 department, yes, he would be partially responsible; I

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1 would be partially responsible; and so would Joe. So we
2 would all have some responsibility there.

3 You made a statement, and I wanted to make
4 sure I understood it.

5 Q Okay.

6 A You said Mike has said that he has never been
7 told that he is not a good performer. Is that true? Is
8 that what I just heard?

9 Q He has indicated there is no information by
10 Entergy of his poor performance. In other words, you rank
11 me 9, Jonathan Armenta, and I just started eight months.
12 I should hear the wave of water coming, to know that it is
13 going to hit me in the face.

14 A Yes. I guess there is a difference between, I
15 guess, being told and listening, and in this case, I can
16 tell you present status with Mike is he believes he is a
17 high performer. And Joe and I are miffed at, how can
18 there be a disconnect of that --

19 Now, I can understand a disconnect between low
20 and medium; I can understand it between medium and high.
21 But a disconnect from the standpoint of block 9 to block 1
22 don't make sense to me. And so I think there has been
23 things told. It is the question whether or not have they
24 been heard.

25 Q And, please, whatever I do, I want to make

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1 sure that you understand that I am not trying to question
2 Mr. Leavines' or your decisions as to how you rate your
3 employee.

4 A I understand.

5 Q He is your employee. The only thing that --
6 and maybe it would be a good time right now to bring this
7 up in that our future -- our past meetings -- in fact, I
8 interviewed you; I don't know if you -- it was in the
9 conference room where you explained the ranking process,
10 and in that meeting that I had with you, it was on May 16,
11 1995, and in that meeting that Mr. Spitzfaden and Mr.
12 Maxson were present -- they were present.

13 And I think that in that meeting, I asked you
14 about the -- were the employees ranked for a full 12
15 months, and you responded that the new system had not
16 allowed an employee to be evaluated for a full one year
17 from the time an employee was notified of the ranking
18 system, and that perhaps the system was hindered by the
19 untimely initiation of that performance appraisal and the
20 ranking implementation. Is that correct?

21 A Well, let me just go back here in time.
22 During 1994, early in that year, we tried to implement the
23 PPR process. Some departments implemented it better than
24 others, and really the company set out an absolute
25 standard that it would happen in '95. But the individuals

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1 were still on, were still being evaluated by a performance
2 appraisal. Whether it is on the Entergy PPR or whether or
3 not it is on the old GSU one, that was done.

4 So we knew what people's performance was. The
5 ranking came late last year, and it had to come out at
6 some time prior to finalizing the overall PPR for the
7 person. So is it a wrong timing? I don't think so. I
8 mean, it could have come out earlier; it could have come
9 out later. But people -- I would expect your supervisor
10 to know what your performance is today, tomorrow, and the
11 next day, regardless of whether or not a new issue comes
12 on the table of being ranked.

13 I know what Joe Leavines's performance is
14 today, tomorrow; I know what it was yesterday. So that
15 ranking, I don't think it had that -- did it have to be
16 rolled out at the same time the original PPR? No. I
17 don't think so, just in my opinion. I don't think it
18 really had that impact.

19 If a person really knows what their
20 performance is, they should know what block they are in.
21 They really don't need a ranking process to tell them
22 that. I know what block I am in, and I haven't even been
23 told what block I am, but I know which one I am in.

24 Q I am going to refer to page 4, I think, of
25 this PPR, I think, of 1994, July. Is that right? '94?

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1 A Yes. That is right.

2 Q And on page 4, Mr. Leavines indicates that at
3 the time of this review, Mr. Malik had just been
4 transferred to the NSNA.

5 "We discussed changes to the OSA section of
6 this PP&R which has been made, and the composition of his
7 group, which is satisfactory for the task assigned. We
8 achieved full agreement on the objective of the IHEA and
9 the necessity for Mike to take this lead on the CR process
10 and the CARB process from me.

11 "There is every evidence that with these clear
12 understandings, that Mike will achieve the high level of
13 performance expected."

14 Now, what I want to bring out with this
15 information is that if this was done in '94, if I read
16 that, my indication is going to be that unless I have
17 other directives, that either within the next six months I
18 am going to go through at least -- well, maybe whatever
19 interval EOI chooses. There is going to be a semi-annual
20 review, and then at the end of those -- 12 months from
21 there, there will be a ranking process.

22 So what I am saying is that: Do you feel that
23 Mr. Malik had enough opportunity from July '94 to January
24 '95, which is about six months, to be ranked for his
25 performance?

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1 A Yes. I would think so. I don't -- to me it
2 is not a -- there isn't any scientific calculation you do.
3 I think you -- you know, performance is somewhat
4 judgmental, but I would think that that would be enough
5 time.

6 Q In your interview, May 16, you told me that
7 the system had not allowed an employee to be evaluated for
8 a full one-year time and that perhaps the system was
9 hindered by this untimely initiation. That is what you
10 told me.

11 What exactly did you mean by that? In other
12 words, you felt that it was not given a full one year.
13 All right. And perhaps it may have hindered the ranking,
14 supported by your answer that you said, Well, I think six
15 months is enough. Can you expand that for the record?

16 A Yes. To me it would have been nice to have
17 the PPR process come out at the beginning of the year and
18 have the ranking come out at the same time, and say, Hey,
19 we are going to rank you at the end of the year. Yes,
20 that might have been better. And I think that is what we
21 were talking about: What kind of improvements can we make
22 to this system?

23 And, in fact, we do have a committee made up
24 of some employees, trying to figure out what -- since we
25 are going to rank again this year, what do we need to do

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1 to better implement and improve upon the process.

2 But as far as can you figure out somebody's
3 performance in a six-month period, absolutely. I don't
4 see any problem with that at all.

5 MR. ARMENTA: Okay. Dennis?

6 BY MR. BOAL:

7 Q You said there was a committee formed to look
8 at the ranking process. Have you received any feedback
9 from that committee?

10 A Not personally, no. We are expecting the
11 group to report back to us, but I don't have any formal
12 things for them.

13 Q I would like to return back to the ranking
14 meetings that we were discussing, and discuss with you or
15 ask you to discuss with us Mr. [REDACTED] Could you
16 explain what criteria you used to place [REDACTED] in
17 block 9.

18 MR. LEVANWAY: Dennis, you did already ask
19 that.

20 MR. BOAL: I did already ask it?

21 MR. LEVANWAY: I don't have any problem with
22 him saying it again. I just --

23 THE WITNESS: This is specially to [REDACTED]?

24 MR. BOAL: Yes.

25 THE WITNESS: [REDACTED] -- I met with [REDACTED], I

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1 want to say, back about the mid-part of last year. I want
 2 to say June or July, and at that time we made a decision
 3 to move [redacted] to report directly to me. And so I had,
 4 what I would say, fairly close interaction with him. He
 5 had just a couple major tasks going on, what I would call
 6 major tasks.

7 One was that he was charged with the
 8 responsibility of doing a review of the commercial grade
 9 lab and trying to focus on should it be a corporate thing
 10 or should it be -- I guess the way I looked at it he was
 11 basically looking at his -- and figuring out his own
 12 destiny.

13 I am not an expert in commercial grade lab,
 14 but yet through that whole period of time, from the time
 15 that [redacted] first started reporting to me, I would ask him
 16 to develop plans on how to do this; I would ask him to
 17 work with the corporate group in its -- it was a very
 18 frustrating experience for me, because it was almost --
 19 Roger couldn't take a step by himself.

20 And my expectation of a supervisor is that you
 21 are responsible for the area; you are the expert. It is
 22 not your boss; it is not your boss's boss, but it is you.
 23 And I felt that I was adding more to the table than Roger
 24 was. So with that interaction on those items -- and that
 25 is -- there is other things like due dates not being met;

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1 there are the quality of documents, not very good.

2 So based on that and my interaction with
3 Roger, I felt he was, as far as you compare him to the
4 other supervisors that I see in my department, there is no
5 question in my mind that he was a low performer.

6 BY MR. BOAL:

7 Q During the meeting where the people in the
8 different blocks were discussed, was there any discussion
9 about Mr. [REDACTED] being in block 9?

10 A The only discussion I remember is I asked the
11 question, and this was as we were going through all the
12 blocks. Is -- does this look right to everybody? Does
13 this performance level and potential match up with the way
14 you guys look at it. So it was a data check for myself on
15 [REDACTED]. But I was the one that ranked him. That was the
16 only conversation that I remember.

17 Q Was that a long conversation or short
18 conversation?

19 A No. Just real short, and it was at this
20 ranking meeting.

21 Q I would like stay with Mr. [REDACTED] since we are
22 discussing him, and just kind of fast-forward here. As I
23 understand, after your ranking, it was rolled up, and
24 there was roll-up essentially in corporate headquarters,
25 and then after that ranking, it was sent back down to the

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1 sites with direction to inform people that were ranked in
2 block 9. Is that the general --

3 A That is correct.

4 Q As we also understand it, you were present in
5 the meeting where Mr. [REDACTED] was informed that he was a
6 block 9.

7 A That is correct.

8 Q Do you recall when that meeting occurred?

9 A I don't know exactly. It would have been the
10 first quarter of this year. Newton Spitzfaden was there.
11 I asked him to be there. For all the people that were
12 ranked block 9, I tried to attend all the sessions. I was
13 not able to do that for all of them. But in this case,
14 [REDACTED] worked directly for me, so I was the actual one that
15 provided the information to [REDACTED]

16 Q Could you summarize that meeting for us.

17 A It was just like every other meeting that we
18 had with the block 9 individuals. We gave them what we
19 believed their options to be, and there was two options
20 and they had the choice. They could either choose to take
21 the severance package, or they could choose to be placed
22 on a work improvement plan, and that at that time, what we
23 were going to do was if a person -- if we ranked again the
24 next year which we anticipated we would, that he had to
25 move out of that block 9, or he would be terminated.

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1 What happened from then, ██████ said that he
 2 wanted no part of the severance package and that he
 3 would -- he wanted to be placed on an improvement plan.
 4 And the only thing -- the only other thing that I remember
 5 from the meeting, as Roger left my office, he turned
 6 around to me and said -- he looked right at me and says,
 7 Boy, you guys have just made me a rich man, which was a
 8 little -- it kind of caught me off guard; I did not expect
 9 that kind of response. But that is what was said to me.

10 Q What did that mean to you, that statement?

11 A It sounded to me like we were going to be in
 12 some kind of lawsuit. That is what he was going to do.

13 Q Did you take any action as a result of that
 14 statement?

15 A Not at all. No. Let me say it differently.
 16 I did -- I do have people that I deal with such as Doug
 17 and Bob Magee and Joe Blount, and I did communicate that
 18 to those guys.

19 Q What was their response?

20 MR. LEVANWAY: I can't allow him to answer
 21 that question. He is consulting legal counsel.

22 BY MR. BOAL:

23 Q Other than Mr. Blount, what was their response
 24 to that question?

25 MR. LEVANWAY: Well, he has only identified

1 three people, and one is me and the other is my law
2 partner and the other is Joe Blount, who is in-house
3 counsel.

4 MR. ARMENTA: My question is: Were you acting
5 as EOI attorney or his personal attorney?

6 MR. LEVANWAY: Well, it wouldn't make any
7 difference, though. Acting as an attorney is clearly an
8 attorney-client communication.

9 MR. ARMENTA: Well, are you then advising Mr.
10 Fisicaro not to answer that? We are asking Mr. Fisicaro
11 if he has any problem with that, then he needs to consult
12 with you, and you need to give us a decision, whether you
13 are going to allow him to answer or not, but we need to
14 hear it from Mr. Fisicaro since Dennis has asked the
15 question. Now Mr. Fisicaro has an option to answer or not
16 to answer, and we will accept whatever answer it is.

17 But if you want to take it under advisement,
18 that is fine.

19 MR. LEVANWAY: I will be happy to talk with
20 him at a break, if you want. But we don't need to take a
21 long break. I can tell you what the answer is. I mean, I
22 am going to advise him not to answer the question.

23 MR. ARMENTA: Mr. Fisicaro, do you want to
24 answer --

25 THE WITNESS: How about if I need to take a

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1 break? I need to go to the restroom anyhow.

2 MR. BOAL: It is 9:00 o'clock. We will take a
3 short break here.

4 (Whereupon, a short recess was taken.)

5 MR. LEVANWAY: I think Mr. Fisicaro just wants
6 to make one comment on the questions you were asking him
7 there, and then we will go on from there.

8 MR. BOAL: All right.

9 THE WITNESS: On the advice of counsel, I am
10 not going to answer the question that you asked. However,
11 I would like to make one comment.

12 To me when somebody makes a comment like that,
13 I think that is an important piece of information, and
14 what I did in this case was I told our legal
15 representatives, as well as I told the site vice president
16 that this comment came up. Period.

17 BY MR. BOAL:

18 Q When we were discussing that Mr. [REDACTED] had --
19 that was the -- your summary of the meeting with him, that
20 he was being informed he was block 9, as we understand the
21 direction that the Entergy HR, human resources, people
22 provided about informing people that they were in block 9,
23 that no direction was to be enunciated or told to these
24 individuals about whether they should take the severance
25 or not take the severance.

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1 In your conversations with Mr. [REDACTED], do you
2 recall discussions about the severance and his ability to
3 meet the performance improvement plan?

4 A I believe at that meeting, we did go through
5 what the severance option would be, and we also talked
6 about that it was certainly his choice on whatever item
7 that he would take.

8 The thing that I told him, as we told all of
9 the block 9 people, was that this is a forced ranking
10 process, and in order for the individual to move out, not
11 only does his performance has to be -- I called it a step
12 change; he would have to have -- make major improvement to
13 move out of the block 9 category, because we would go
14 through a similar process the next year, similar process
15 being that 10 percent of the people as a minimum would be
16 in the block 9 category.

17 But it was entirely his decision on what he
18 wanted to do.

19 Q Realizing there were three people at that
20 meeting, there would be three interpretations of what was
21 said at that meeting. Were there words said to Mr.
22 [REDACTED] either by yourself or Mr. Spitzfaden, that said in
23 general that he could work night and day, and he would
24 never improve?

25 A That never would have been said.

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1 Q Was the term "fired" used in that conversation
2 that you can recall?

3 A No.

4 Q Backing up to start --

5 A Excuse me. Yes. That was mentioned, I think
6 in the context -- and I think I mentioned it before --
7 that if somebody -- and this was going through the
8 philosophy of the ranking, that should an individual fall
9 into block 9 two years in a row, then, yes, they would be
10 fired.

11 Q Was it used in any other instance?

12 A No.

13 Q Backing up to we were discussing Mr. [REDACTED]
14 You were discussing your initial involvement with Mr.
15 [REDACTED], saying that in about the summer of '94, a decision
16 was made for Mr. [REDACTED] to report directly to you. Why
17 was that decision made?

18 A I want to say in the June time frame or
19 something like that, that I was out just wandering around
20 and talking to employees, and I had stopped to talk to Ken
21 for a little bit, and I stopped and chatted with [REDACTED]
22 and I don't remember the exact words, but [REDACTED] explained
23 to me that he had problems working with Ken.

24 And I can't remember if the word
25 "intimidation" or that type came up, but I felt so strong

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1 about it that I thought to myself, I have got to make a
2 change; something has got to be different. I couldn't
3 take the chance that there was a problem between him and
4 Ken.

5 At the same time, we knew that we were going
6 to do this review of the commercial grade lab, a corporate
7 site review, and so to me I thought it was an acceptable
8 thing to just move [REDACTED] over to report directly to me.

9 When I sat down and went through that option
10 with [REDACTED], he was really enthusiastic about it and
11 thought that that would be great for him, that that would
12 be a great opportunity for him to do that. So -- and then
13 we just did it.

14 Q Did he express any negativism about that
15 decision, such as he was being singled out?

16 A Absolutely not. In fact, I did write up a --
17 I guess the way I looked at the meeting and my notes, I
18 wrote it up and documented it and stuck it in the file,
19 that we made this change for this reason, and what [REDACTED]'s
20 reaction to that meeting was. It was all positive.

21 Q Stuck it in the file, his personnel file? Is
22 that what you are referring to?

23 A Yes.

24 Q That may be the document we are referring to,
25 August 24, 1994?

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1 A (Perusing document.) Yes. This is it.

2 Q Thank you. Was there a discussion that the
3 commercial lab may be -- duties transferred over to the
4 headquarters in Jackson?

5 A Yes. I think at that time I had no clue what
6 the study would come out to be. And I think as an option,
7 it could have gone to corporate; it could report here on
8 site. I really didn't know for sure what the bottom line
9 would be, but to report to corporate certainly was a
10 potential.

11 Q Backing up a little bit to where you said you
12 were wandering around the plant, and you found out through
13 discussion with [REDACTED] about his feeling intimidated with
14 Mr. Giadrosich, did you discuss that conversation with Mr.
15 Giadrosich?

16 A Yes, I did.

17 Q Can you recall his response?

18 A No. I don't really. I don't know that I
19 really allowed a response. I think the way I remember the
20 conversation going is, Here is what was said to me; I am
21 doing this. In other words, I am moving Roger over to
22 report directly to me. So it wasn't a thing I was
23 soliciting opinion or thought. So I can't remember him
24 saying anything.

25 Q Did you make any other effort to determine the

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1 basis for Mr. [REDACTED]'s allegation, or did you just accept
2 it on face value and make your decisions off of that?

3 A I just accepted it, and I accepted it
4 because -- well, for a couple of reasons. I didn't have
5 any reason to believe that [REDACTED] was not telling me the
6 truth, and so -- that plus I knew that bottom line I would
7 have to be the one making the decision on the commercial
8 grade lab, and that it was probably something that would
9 help the process, if I was more involved and more informed
10 in a new status.

11 So I guess at that time, I didn't see that I
12 needed to do anything else.

13 Q In general, did your department have more or
14 less block 9s than the expected?

15 A Than expected?

16 Q For expected, I would like to make reference
17 to the training program we had -- the copy of the training
18 program that was presented to you indicates that
19 approximately 10 percent would be expected to be in that
20 block.

21 A Yes. I guess the way we looked at 10 percent
22 at Riverbend is that was the minimum. What we did -- and
23 this was a conversation at some of our meetings, is that
24 our performance at Riverbend, overall performance of the
25 utility, was not stellar, and being that it is not

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1 stellar, we thought we would see more than 10 percent, so
2 it was not unexpected that I would end up with more than
3 10 percent, not unexpected at all.

4 Q What do you believe is your employees'
5 reaction to the ranking system?

6 A Well, I would say a couple of things. One is
7 I think there is probably nervousness from the individuals
8 that I think that are high performers, probably don't have
9 a problem at all, and they are high performers. I think
10 at the same time this ranking is going on, we are working
11 to some specific goals that will require us to downsize.
12 We can't do it with the staff we have got, not related to
13 ranking at all, but that thought is in people's mind.

14 And the question really, I think, to the
15 people and where I would see the nervousness would be:
16 Where is Entergy going to draw the line? Is it going to
17 be block 9? Is it going to be block 7? Is it going to be
18 block 5? Block 4? Where are they going to draw the line?
19 Or how are they going to do it, whether that is the
20 methodology.

21 So I would think that there is probably some
22 concern because of that other related issue of downsizing.
23 And at the same time, we think performance level here at
24 Riverbend, employee performance, we did not feel was the
25 best, in that we thought, management thought that this

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1 would be a good opportunity to make people absolutely
2 clear where they stood and if there was any doubt.

3 So I would suppose there is some fear out
4 there. There is probably some uncertainty, some unknown.
5 It has certainly been a topic of discussion at our -- what
6 we call our 2-Cs meetings, where senior management --
7 executive senior management, that meaning the president of
8 the company, meets with employees. They have said that
9 there are concerns. They are concerned about it.

10 But most of the concerns that I hear and what
11 I have heard from employees, it is not -- it is more of
12 the implementation of it. Could we have done this and
13 could we have done that. It is not necessarily the
14 concept, and that is the feedback I have got.

15 BY MR. ARMENTA:

16 Q Mr. Fisicaro, you mentioned something about 2-
17 Cs meeting where there is feedback from staff to
18 management.

19 A Exactly.

20 Q It is our understanding that at a particular
21 2-Cs meeting while Mr. Maxson was present, he was told
22 about your management style, that intimidated employees.
23 And I think that -- I don't believe that you were present
24 at that meeting, unless you might have heard it from them
25 directly. You need to let me know, because my

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1 recollection is that you were told about this at a
2 subsequent meeting, and that Mr. Maxson informed you that
3 personnel from your group, nuclear assessment -- well, it
4 was NSAG.

5 A Correct. What -- let me step back a couple of
6 steps here before I answer the question directly. First,
7 I started meeting, when I first got here, meeting with all
8 of the employees in my group. At that time it was around
9 100, and we do it on a quarterly basis, and really to
10 focus on goals and our performance and how we are doing
11 and where we are trying to go as a company, and then I
12 offer time for anybody to ask me any question.

13 And I have challenged the people in those
14 meetings, and I have told them several times that I didn't
15 get any hard questions, I didn't feel hard questions to
16 answer. They were the routine stuff; they were the easy
17 things to answer.

18 So I said, Well, I tell you what. How about
19 if we do like a 2-Cs meeting, like we do for the
20 management review meeting, and -- let me step back one --
21 I forgot one.

22 One guy thought as a suggestion to get answers
23 to questions and get people to -- if they do have any
24 concerns, you know, whether it be for anything, that they
25 could ask without any concern. So we developed -- I think

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1 a guy by the name of Don Durbin [phonetic] developed a --
2 he called it Direct to the Director, and so you could --
3 like an anonymous issue, you could throw it in a box and
4 somebody pick it up and we would answer it.

5 That didn't go over. I never got any, so --
6 and it was people -- people didn't want that. They didn't
7 think that that was the right thing, so based on people's
8 input, we got rid of that. So at the same time, I am
9 looking for input. Then I mentioned these 2-Cs meeting.
10 Why don't we do that.

11 We can have somebody facilitate these, and if
12 I remember right, Craig was one of the facilitators. He
13 facilitated one group, and the way you do that is you get
14 all the members of the department in the room and say,
15 Okay, let's put the issues on the board.

16 And at that time, it is -- the intent is
17 people all throw what they think out on the table, and
18 then you are trying to boil it down into is it the
19 department issue, or is it just my personal issue. And
20 then they are supposed to roll it up to some -- the 2 Cs
21 stand for compliments and concerns.

22 And then I met with the individuals. I
23 responded to all of the issues, and when the -- this
24 happened to be Joe Leavines's group, the one that you are
25 mentioning. The word "intimidation" never came up from

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1 what I was told. What did come up was I think something
2 to the effect of, Well, you don't listen; or, You don't
3 listen well enough.

4 Another example was, Sometimes you walk by
5 people and don't say hi to them. So I was asked for more
6 information. I says, Tell me; is this a one-time thing, or
7 is it a -- and in most of the occurrences came up, like
8 the walking by, people said it was -- well, they could
9 think of one time when it happened.

10 And then I said, Well, I tell you what; let me
11 show you this -- I had passed out a -- John McGaha had
12 done a team-building kind of session with all his direct
13 reports and what we did is did a -- you have probably
14 heard of the Myers-Briggs type personality profile. This
15 is like that, not the -- it isn't Myers-Briggs, but it is
16 the same kind of thing.

17 And what it does is you do a -- kind of take a
18 little exam, if you would, and fill the blanks out, and it
19 does an analysis of you. I, as soon as I got that, when I
20 came back from that meeting, which was like a month or two
21 before that, I sent it to not only all the people that
22 work for me, but I sent it to all my peers, too, and I
23 said, This would be -- if anybody has a hard time dealing
24 with me, this would be -- it is a pretty good
25 representation of the way I think and the way I do things.

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1 And so at that meeting, this 2-Cs meeting, I
2 asked; I said, Have you seen that profile, because I asked
3 my guys, the people that worked for me, to share it with
4 their people, and the answer was, no. And I said, Well,
5 here it is, and I gave copies to everybody.

6 I said, This would be -- if you look at this,
7 this would probably help you better communicate with me.
8 And it talked -- to give you an example. I am the kind of
9 person, I ask a lot of questions. And when somebody comes
10 to me that -- in fact, it says right in this management
11 thing, that if they are shallow ideas, that -- this thing
12 says that I am able to see through those with just
13 questioning people.

14 Now, some people could take that questioning
15 as, I suppose, intimidation. They could take it that way.
16 But to me it is more of just data; it is more of, I am
17 trying to march down the line; we need to make a decision,
18 and let's get on with it. And so I spent time going
19 through that.

20 I asked, in fact, Claudia, my secretary, to
21 read a couple of key parts that I thought were
22 appropriate. The word "intimidation" never came up in any
23 of the discussions I had for that 2-Cs meeting. That is
24 probably about it.

25 MR. ARMENTA: Dennis, do you have more

1 questions? Or can I --

2 MR. BOAL: If you are proceeding on the topic,
3 go right ahead.

4 BY MR. ARMENTA:

5 Q Reference another meeting on December 2, 1994;
6 it was an LSR meeting, leadership skills review meeting.
7 Do you recall being present at that meeting?

8 A I do have a presentation I do for all the LSR
9 classes.

10 Q That is an EOT management training session
11 class.

12 A Yes. I am sure that is what it was. I would
13 assume that is what you are talking about.

14 Q Part of the people that were there, there were
15 probably 12 or -- I don't know. But let me just read
16 some names and just kind of bring you -- Don Wells, Tom
17 Davie, Bob Ludholm, John Walker, Doug Hepner, Bill
18 Smith --

19 A Uh-huh.

20 Q At that meeting, do you recall that Mr. Joe
21 Blount was present and may have addressed the meeting?

22 A Yes. He does have a presentation he does.
23 Correct.

24 Q I think that the subject was on discrimination
25 at the workplace. Does that -- are you --

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1 A Correct.

2 Q Is that correct to assess that?

3 A Correct.

4 Q One of the questions that was asked, to my
5 understanding is that the ranking process was questioned
6 as, is it detrimental to teamwork. And part of that
7 answer by Mr. Blount may have been that they, meaning
8 Entergy, were going to have a lot of lawsuits from the
9 ranking system, because it was not well thought of
10 initially from EOI management. Do you recall an answer to
11 that effect? In other words, EOI did not initially
12 support this ranking system.

13 A EOI management didn't support it?

14 Q Yes.

15 A EOI management is the one that rolled it out.

16 Q Were there members on your team that did not
17 support the ranking system? And when I mean your team,
18 talking about your supervisor, people you answer to.

19 A I think people probably all had maybe their
20 thoughts on ways they would have liked to see it improved,
21 but I do not know of anybody that said ranking was a bad
22 idea.

23 In fact, not even attached to this ranking,
24 Riverbend management, John and his direct reports, were in
25 the process of developing their own scheme. They would

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1 not -- it wasn't exactly like this, but we were just on
2 the verge of rolling one out. We were going to rank our
3 own people. We were going to do it a little differently,
4 but the concept was the same.

5 We thought performance had to improve. And so
6 this was just a -- I mean, it was the right thing to do.
7 We needed to do this. So I don't know of anybody that
8 doesn't support -- in the management ranks that doesn't
9 support the concept, that it is important to do that
10 process. I think people would say, yes, there's probably
11 some improvements we could make to better do it next time,
12 to improve it, streamline it, or whatever the case may be.

13 Q Did you also hear by any chance -- well, to
14 the best of your recollection, did you hear in answer to
15 the question, How will EOI defend the system, the ranking
16 system, answer to the effect, In its present stage, EOI
17 could not defend the ranking system in a court of law; it
18 would be very difficult. Do you recall such a --
19 statements to that effect?

20 A No. Not -- I just don't remember that.

21 Q Were --

22 A That doesn't sound like the way Joe Blount
23 would answer the question. It does not sound like Joe
24 Blount. Now, somebody might have interpreted something
25 like that; I don't know, but --

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1 Q Were you present continuously during the
2 meetings?

3 A Yes. I think this -- if I am not mistaken,
4 that is the meeting that I was the LSR executive sponsor
5 for, so I think I was there for that whole time, but I
6 don't remember it.

7 Q The reason I ask, because sometimes you might
8 be asked out of the room for some phone call or --

9 A Well, and that could have been. I don't
10 remember this conversation. It is just -- I don't want to
11 get Joe Blount's character here, but to me, it is not
12 characteristic of how he would respond to a question.

13 Q All right. You mentioned a few minutes ago
14 that the initial implementation of the program, perhaps we
15 could do some things different. Along those lines, I
16 understand there is going to be a next ranking soon.

17 A Yes. We will be doing that this fall.

18 Q Do you have some things changed or done
19 differently that were not done in the first ranking?

20 A No. That is what I was mentioning to Dennis.
21 This committee that we are doing is trying to figure out.
22 What has happened is executive management has said that we
23 will rethink some of the things, the statements that we
24 made. Example: If you are ranked a block 9 two years in
25 a row, the criteria now doesn't necessarily say you are

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1 automatically fired. There is input into that.

2 We have chosen here at Riverbend -- and I
3 believe the other sites have done the same -- is that we
4 are not going to roll out that information yet to
5 employees, until we have this committee meet, we get it
6 all worked out, and we figure out the way we need to do
7 it. And so that will all be done ahead of time.

8 So we really haven't told employees much more
9 than, We will rank this fall. That is about the only
10 thing we have told them.

11 MR. ARMENTA: I don't have any more questions,
12 dennis.

13 BY MR. BOAL:

14 Q Mr. Fisicaro, since the ranking has been
15 implemented at Riverbend Station, has the QA section of
16 your department, has it declined in numbers?

17 A Since that time, I think I would answer that
18 yes. And let me answer a little -- give you a little bit
19 of explanation. It is not because of the ranking that is
20 going down. That might be an outfall; that may be
21 contributing to it. But I made it perfectly clear to the
22 people that work for me that we will downsize this
23 organization.

24 In fact, before this ranking and everything
25 came out, I told my staff that we would eliminate ten

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1 positions in '95, and we would eliminate ten positions in
2 '96, and I said, I don't know exactly where they are all
3 coming from; I had some ideas. One idea was the ISEG
4 group, that we really didn't need to have five dedicated
5 people. We could do it differently like some other sites
6 do.

7 At the same time, or right around that time,
8 we had also -- Entergy had done a comparison between
9 Riverbend and Grand Gulf. The departments that work for
10 me, as far as dollars, manpower, and all that were matched
11 up with is done at Grand Gulf. And bottom line is I cost
12 too much money. I cost more money than Grand Gulf costs,
13 yet they make more power than we do.

14 And so for us to be competitive and compete
15 with Grand Gulf, we had to reduce overall costs. So with
16 that in mind, I told everybody, Just get ready; we will --
17 in the next few years, we will be reducing to a point that
18 we will have to fall equal to or lower than Grand Gulf in
19 order to be competitive.

20 So it really wasn't tied to ranking. It was
21 not. It was really for a different reason. Now, what has
22 happened as a result of ranking is there has been certain
23 positions or certain people have chose to take the
24 severance package, and what we all had was a decision, are
25 we going to fill those positions.

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1 And I chose not to, because I knew I had to
2 come down in numbers. It wouldn't make any sense to add
3 more numbers, so I chose not to. In fact, in the last
4 year, I don't believe I have filled any position. Every
5 person that has left, quit, taken another job, or
6 whatever, I have not filled the position.

7 I think a year is about the right time frame.
8 We did bring some people in early last year. The focus
9 was, it wasn't because of ranking; it just kind of
10 happened, but it started before then.

11 Q Has there been a chance in the amount of
12 findings or concerns brought forward by the people in your
13 department?

14 A The QA department?

15 Q Yes, sir.

16 A I would say yes, but I wouldn't -- it is hard
17 to say that it is because of ranking. I wouldn't make
18 that conclusion. What I would say is in 1993 when we
19 first came in, we felt that there were problems in the QA
20 organization me particularly. With that in mind -- in
21 fact, the NRC had some concerns about the QA department
22 from a standpoint of not necessarily laying issues on the
23 table, but from a standpoint that QA wasn't successful in
24 getting things fixed, bottom line getting them wiped off
25 the books.

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1 So we developed this long-term, near-term plan
2 to get better, and it is -- at that point in time, there
3 was quite a list of things that needed to be changed to
4 improve the performance of the group. And with that, I
5 see in the last -- I don't know -- six, eight months, nine
6 months, that we are what I would call finding better
7 things, not compliance-based kind of things, moving on to,
8 I guess, what I would call bigger picture.

9 But partly that is because we have also merged
10 the QA audits or at least some of them with the corporate
11 assessment people in trying to merge all the groups that
12 look at departments together, to get the benefit from all
13 those groups, so we can learn. So the collective effort
14 has made things better.

15 But I do see QA's performance is better than
16 it was. I do see that. But I would not say -- I don't
17 know that I can make the conclusion that it was because of
18 ranking that we are seeing more things identified. I
19 don't know that I can say that.

20 Q Would you say or could you say you have seen
21 any change due to ranking?

22 A Yes. I can say that overall department
23 performance, not just with the QA group but for all the
24 departments, people performance is better. And the
25 comment that some senior managers has made is for their

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1 departments as well, they have seen performance improve as
2 a result of ranking.

3 And I think just to go back to one of the
4 original concepts of ranking was we try to improve
5 performance. That is what the original theory was, so I
6 do think that is a change that we saw.

7 Q It would be difficult to formulate this
8 question specifically, so it will have to be a generality
9 question. I dislike getting into philosophical questions,
10 but unfortunately, we may have to get into it.

11 Could you see where an employee in QA could
12 see the ranking system as encouraging that employee not to
13 bring up concerns that management may see as not what they
14 want to see, not what management --

15 A Absolutely not. I can't -- this management
16 team that is in here has since day one asked people to --
17 we have given people rewards for finding problems, and our
18 belief is that we need to find our problems ourselves; we
19 need to solve the problems ourselves; we don't need NRC or
20 INPO or somebody else to tell us a problem.

21 And so we would like to be on, I call it, the
22 proactive side of things, as opposed to being on the
23 reactive and somebody else is helping you find your own
24 problems. So we have consistently through -- I am almost
25 every meeting that I can think of with employees

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1 encouraged that.

2 In fact, we look at -- since the corrective
3 action group reports to me, things that I have asked them
4 to do is, Let's look at what departments are reporting
5 stuff, because we have had a report early on when we first
6 got here, and in the OSTI found the same thing, is
7 maintenance people wouldn't identify problems through the
8 CR process.

9 Well, now we watch that to see, and we also do
10 surveys periodically and go out and question people and
11 find out if there are any problems with it, so my answer
12 to this would be, This management team wants to know what
13 the problems are; we have got to put them on the table, so
14 we can go fix them. It doesn't really matter what the
15 issue is.

16 BY MR. ARMENTA:

17 Q Along with that question, Mr. Fisicaro, what
18 would be the advantage for Mr. Zinke as an acting manager
19 of QA? What are the advantages of having someone like
20 Mr. Zinke over see that program, when he himself is not
21 familiar with the QA organization; he is not an auditor,
22 never conducted an audit?

23 A Well, the way I looked at it is George has a
24 background in my mind that is I didn't want a professional
25 QA person, because I think that is partly what our problem

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1 was in the beginning, that people were so stuck on doing
2 compliance-based audit, that we would miss the big
3 picture. And so George is very safety-conscious. In
4 fact, if you just go watch any meeting that he is at, his
5 focus is on safety, and the questioning that he asks
6 people.

7 And I think he brings to the table maybe a
8 different picture than what I would call a professional QA
9 person would do. Plus I think that he embraced the
10 concept of performance-based audit, and I do as well, and
11 also that, Hey, we can improve upon what QA brings to the
12 table from the standpoint of not just compliance-based
13 stuff but really, is the area really effective; are they
14 really doing what they need to do, bottom line.

15 And so I think he brings that, plus he is a
16 real self-critical kind of guy, questioning-attitude kind
17 of guy, and to me he is the right role model for what I
18 would think QA should be.

19 At the same time, I mean, George is the kind
20 of guy that he believes if something is a problem, I mean,
21 he will break down doors to go get it fixed. And I
22 believe I see that instilled in the QA department. I
23 don't think the ranking would have any impact on any
24 finding they have. From my experience in dealing with
25 them, you know, on audit exits and one-on-one discussions.

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1 I would not. That is the way I look at it.

2 Q Am I correct that in assessing what you just
3 said is that you wanted some fresh meat and someone that
4 would not be biased by past QA history but view in that --

5 A That is a good summary.

6 MR. ARMENTA: Dennis?

7 (Pause.)

8 MR. ARMENTA: Mr. Fisicaro, we don't have any
9 more questions. We would like to go ahead and offer you
10 an opportunity at this time to convey anything that you
11 would like to convey to us, based on the investigation,
12 the questions that we have asked, or maybe even a question
13 to us. We may not be able to answer it, but you are
14 certainly welcome to speak your piece.

15 THE WITNESS: No. I think I have spoke my
16 piece with you guys before, and you understand what my
17 philosophy is. Bottom line, if we don't know what the
18 problems are, we can't fix them. To me, I think what you
19 are doing is something that is important to do. It is not
20 a -- so I don't really have anything else to say.

21 MR. ARMENTA: I am looking at my notes here,
22 one last item.

23 BY MR. ARMENTA:

24 Q Did you keep any documentation from your
25 managers as a result of these meetings?

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1 A The only thing I kept was the final ranking.

2 Q The final matrix that was produced by HR?

3 A Yes. That is all I kept.

4 MR. ARMENT.: Dennis, do you have any
5 questions?

6 MR. BOAL: No.

7 Mr. Fisicaro, have I or Jonathan or any other
8 NRC representative threatened you in any manner or offered
9 you a reward in return for this statement?

10 THE WITNESS: Absolutely not.

11 MR. BOAL: Have you provided this statement
12 freely and voluntarily?

13 THE WITNESS: I have.

14 MR. BOAL: Mr. Levanway, would you care to add
15 to this statement.

16 MR. LEVANWAY: Yes. Just a second.

17 Jonathan, could I see those QA audit on the
18 corrective action program, I guess those three documents
19 that you were showing Mr. Fisicaro.

20 MR. ARMENTA: (Handing documents.)

21 EXAMINATION

22 BY MR. LEVANWAY:

23 Q Mr. Armenta was questioning you about Mike
24 Malik and your perception of his performance and showed
25 you several things that indicated that the corrective

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1 action program had been singled out as a program that was
2 doing well, and it was put forward as if -- for your
3 comment on, Doesn't this indicate that Mr. Malik,
4 therefore, must be a good performer.

5 I think you referred to this, but I want to
6 make sure the record is clear. One of the things that you
7 were shown was a QA audit of the corrective action
8 program. Do you remember that in particular?

9 A Yes.

10 Q And what is the date on that audit?

11 A March 18, 1994.

12 Q Which indicates, of course, the audit would
13 have been done sometime prior to March 18, 1994.

14 A Correct.

15 Q Completed on March 18. Was Mr. Malik in
16 charge of this corrective action program by March 18,
17 1994?

18 A No. He didn't become in charge of it until, I
19 think, the June time frame of last year, maybe the July
20 time frame.

21 Q Would this audit reflect the efforts you had
22 referred to earlier, that you and Mr. Leavines had done to
23 turn the program around?

24 A Correct. That is what I think I was trying to
25 say. Maybe I didn't say it clearly enough that we thought

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1 the program was pretty much implemented. There was some
2 tweaks that we think we needed to make to the program that
3 this would be representative of a program that was already
4 changed, already doing well or performing well.

5 Q Can you expound any further too on Mr. Malik's
6 position, I suppose, that things of this nature, an audit
7 that even preceded his involvement in the program, are
8 indicative of his performance as opposed to a group's
9 performance?

10 A Well, one of the things that we have had some,
11 I guess I would call it, difficulty in working with Mike
12 is that Mike seems to want to take credit for ISEG group's
13 performance, and sometimes does not want to accept or even
14 hear that group performance is important, but really what
15 we are focusing on in this PPR process is his individual
16 performance and what he is adding to the table or what he
17 is personally doing.

18 So the way I see it has been here in the
19 recent past is that Mike seems to be quick to take credit,
20 but not too quick when it comes to issues that he needs to
21 work on. And this to me -- see, the way I -- if I was one
22 providing you the information and if this was my
23 situation, I would have told you what the strengths and
24 the weaknesses are of my program.

25 And all I see here is what the strengths are

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1 and all good stuff. And yet I think there are things that
2 we have got to do to the corrective action program to
3 improve it, and that would be indicative of what I had
4 seen Mike would do. He would more tell the positive side,
5 and what we expect out of a supervisor is, yes, we do want
6 positive, but you have got to work on all the improvement
7 stuff to make it better. So that is the way I would look
8 at it.

9 MR. LEVANWAY: That is all I have.

10 MR. ARMENTA: And I just would like to add for
11 the record that --

12 BY MR. ARMENTA:

13 Q Mr. Fisicaro, to the best of your
14 recollection, who was the supervisor of the corrective
15 action review group between November 1993 and June 1994?
16 Do you know?

17 A It would have been Joe Leavines.

18 Q Was that -- it wasn't Mr. Mike Malik when he
19 had the corrective action group in QA?

20 A You are saying the corrective action review
21 board; absolutely not.

22 Q Not the review board; the group, corrective
23 action group.

24 A Let me add a couple of things here. When I
25 first got here, it took not very much time, maybe one day

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1 to figure out that our corrective action system was broke,
2 and I went to Mr. Malik and said -- because the idea was
3 he would be in charge of the corrective action program.

4 And I said, You go take ANO's procedure and go
5 work up the appropriate documentation so we can implement
6 that process, and I want it done in a week. Well, real
7 difficulty in getting something from Mike, and at one
8 point, I sat down with Ken and Joe Leavines and said, I am
9 tired of it; I am not getting product; I am not getting
10 this program implemented the way I think it needs to be,
11 and I think it is critical.

12 And so I said, Joe, I would like you to take
13 over the responsibility for this procedure, implementing
14 what ANO has got, and I said, From this day before, you
15 are responsible for the corrective action program. And
16 that is the case; that is what happened. Joe is the one
17 who was the bottom line responsible individual.

18 Now, that is not to say that Mr. Malik's title
19 wasn't related to corrective action, but he was, I would
20 say, on the back end of the corrective action program,
21 looking at effectiveness of corrective action. So he was
22 not in charge of it.

23 Q I just want for the record to know that during
24 the period of October 28, 1993, I believe, that you were
25 on board already, through November 30, 1993, an OSTI

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1 performed a review, operational safety team inspection,
2 and they addressed items of the corrective action group at
3 that time, and the NRC inspectors disclosed that some of
4 the licensee's activities corroborated with the concerns
5 that were found to -- with concerns that were found to
6 deviate from the approved procedures.

7 In other words, my point in making this
8 statement is that Mr. Malik himself had made concern
9 issues, had brought up concern issues to the NRC about the
10 corrective action group even before then, that he
11 identified that there was something wrong with the
12 corrective action group. The OSTI team came in, and based
13 on that inspection report by the NRC, they corroborated
14 concerns that Mr. Malik was alleging.

15 My point is -- and you said that Mr. Leavines
16 took over the corrective action group, and in an area
17 where you have the NRC OSTI come in, identify problems
18 with the corrective action group because a supervisor of
19 this corrective action group raised issues, identified
20 some concerns, and it was removed from Mr. Malik to Mr.
21 Leavines. After it had been with Mr. Leavines for a
22 period of time frame, maybe 12 months -- I don't know --
23 it switches back over to Mr. Malik.

24 My question is: If a program is taken away
25 from a supervisor to perhaps amend it or revise it and

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1 then it is given back to the same supervisor, it seems to
2 me that if that previous had not been competent enough to
3 follow what this other supervisor had already added to it
4 or revised it in any form. why would EOI give it back to
5 Mr. Malik?

6 A Let me -- I think there's three parts to this.

7 Q Okay.

8 A First of all, I don't know exactly what
9 concerns Mike is talking about here and what the OSTI
10 really validated. I don't really know what those are.
11 But when I first got here, I was told Mike was in charge
12 of corrective action program.

13 And what I did is I gave him an opportunity to
14 fix the corrective action program, when I gave him the
15 responsibility to say, Look, I want the ANO's kind of
16 process in place; do whatever we have got to do; do the
17 right thing, but we need to solve the problem.

18 And so at that time, it was kind of like I
19 just signed the check and he could write it for whatever
20 amount he wanted. So I looked at that as first golden
21 opportunity, that he could have fixed it however he wanted
22 to fix it, and I didn't even know he had any concerns
23 about it at that time.

24 The second piece I wanted to talk about:
25 Anybody -- Joe Cowen [~~ALBY~~ *CAWEN* 808] during the *SALP* 808 exit -- and

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1 have to ask Doug for help on this. I am not sure I can
2 really talk about the settlement that was made with Mr.
3 Malik on a Department of Labor case.

4 But what the settlement concluded was that he
5 would be placed in charge of the corrective action
6 program. At that time, we called it the in-house events
7 analysis group. That is how that happened. And I think
8 with good supervisor communication or supervisor to
9 manager, there shouldn't be any problem with taking it
10 over.

11 In fact, those statements right there that you
12 are reading from was exactly the PPR form that Joe was
13 filling out at the time that this all took place for Mike
14 to be in charge of the program. He needed new goals, new
15 expectations, and that is what that was all about, so --

16 MR. ARMENTA: All right. I don't have any
17 more questions.

18 MR. BOAL: That is it. It is approximately 10
19 minutes after 10:00 a.m., and this interview is concluded.

20 (Whereupon, at 10:10 a.m., the interview in
21 the above-entitled matter was concluded.)
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23
24
25

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REPORTER'S CERTIFICATE

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

Name of Proceeding: JAMES JOSEPH FISICARO

Docket Number(s): --

Place of Proceeding: St. Francisville, LA

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.

Gayle Falgoust

Official Reporter

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