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EXHIBIT 80
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MR. ARMENTA: For the record, this is a re-interview of Mr. Fisicaro. Mr. Fisicaro, I believe that you have been interviewed by Mr. Dennis Boal and myself. My name is Jonathan Armenta from NRC-OI. I think we interviewed you on July 27. Is that correct, of this year '95?

MR. FISICARO: That is correct.

MR. ARMENTA: I also understand, Mr. Fisicaro, that your job title on July 27, 1995, was -- that you were the director of nuclear safety here at the River Bend Station. Is that correct?

MR. FISICARO: That is correct.

MR. ARMENTA: Is that still your title?

MR. FISICARO: Yes, it is.

MR. ARMENTA: Today's date is October 26, 1995, approximately 10:00 a.m. And additionally present at this interview is Mr. Doug Levanway who is the attorney that accompanied you on July 27. Also we have our court reporter, Sandy McCray. And as I stated earlier, Mr. Dennis Boal and myself, Jonathan Armenta.

At this point, Mr. Fisicaro, I would like to ask you to please raise your -- stand and raise your right hand, and I will swear you in.

Whereupon,

JIM FISICARO

1
2 having been first duly sworn, was called as a witness
3 herein and was examined and testified as follows:

4 MR. ARMENTA: You may be seated. Thank you.

5 Prior to this interview, we had a
6 conversation, Mr. Fisicaro regarding as to the purpose of
7 this interview. Is there a question in your mind or would
8 you like for us to cover -- I would like to basically say
9 the purpose of this interview, but is there any questions
10 that you might have?

11 THE WITNESS: Not at this time.

12 MR. ARMENTA: For the record, the purpose of
13 this interview is to clarify or amplify areas in which NRC
14 staff has raised and I have approximately eight questions
15 that I would like to ask you, Mr. Fisicaro. I believe
16 that the information regarding your education, your
17 employment background has already been given to the NRC,
18 and there will be no need to go into that at this time.

19 EXAMINATION

20 BY MR. ARMENTA:

21 Q Mr. Fisicaro, as you know, both of the
22 employees under you who were ranked as a 9 in the new
23 ranking process, Mr. [REDACTED] and Mr. Mike Malik, were
24 whistleblowers. You previously acknowledged that you
25 ranked Mr. [REDACTED] as a number 9 and that you had input

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1 into Mr. Malik's ranking.

2 For example, you acknowledged that Mr.
3 Leavines had changed Mr. Malik's ranking from a 7 to a 9,
4 after a prompt -- and I say "prompt" as a quotation from
5 your transcript from you. And it is our understanding
6 that such a low ranking can lead to dismissal if no
7 improvement is made during that rating period.

8 The reasonable inference is that the number 9
9 ranking was a result of Mr. Malik's previous protected
10 activity, particularly in light of his past favorable
11 appraisals. However, on your interview of July 27, 1995,
12 you denied that Mr. Malik's previous protected activity
13 was the cause for the discriminatory action against Mr.
14 Malik.

15 In fact, you stated that in spite of previous
16 favorable appraisals, Mr. Malik was ranked on expectations
17 and overall general performance. And apparently we could
18 not see that there was an objective criteria that was
19 followed. At least you could not identify that criteria,
20 and Mr. Malik's ranking appeared to be entirely
21 subjective.

22 We believe that your explanation was not as
23 specific as -- that we would have liked for it to be to
24 get a clear understanding -- not that it wasn't, but we
25 perhaps did not get a clear understanding of your

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1 explanation, and that Mr. -- other than mentioning that
 2 Mr. Malik did not take notes at -- I think you specified
 3 at one time that Mr. Malik did not take notes at a CARB
 4 meeting, corrective action review board meeting.

5 You specified in your testimony last time that
 6 as an example, you gave that explanation, which in
 7 NRC's -- our understanding, it didn't give any specificity
 8 to that, other than it didn't -- he didn't take notes at
 9 that meeting.

10 And it only added to an appearance that there
 11 were general reasons pertaining to expectation and
 12 performing, were nothing than a -- perhaps an avenue or --
 13 I don't want to pin myself on any certain word, but
 14 perhaps as a pretext, as an appearance to rank Mr. Malik
 15 as a 9.

16 At this time, do you have any other
 17 information that the same unfavorable action, personnel
 18 action, would have been taken against Mr. Malik, even if
 19 he had not been engaged in protected activity or been
 20 classified as a -- or any whistleblowing activity in the
 21 past?

22 MR. LEVANWAY: Let me say something before he
 23 answers. By allowing him to continue to answer that, we
 24 obviously do not accept your characterization of any of
 25 this previous testimony. And I understand that that is

1 just your introductory remarks.

2 But just so it is clear that we don't agree
3 on -- I don't think anything that you just said in terms
4 of characterization. But one other question: Is Mr.
5 Fisicaro -- has he become a subject of your investigation
6 or a target of your investigation individually?

7 MR. ARMENTA: At this time, Mr. Levanway and
8 Mr. Fisicaro, I honestly can say that we cannot say yes or
9 nay on that, only that we are gathering information, too.
10 I think that it is apparent and obvious that we have not
11 singled anyone as a target. However, EOI management or
12 EOI entity would, at this point, be the one responsible
13 if, in fact, it turns out that there is a violation of
14 50.7. And that is as much as I can say on that.

15 THE WITNESS: Yes. I would agree with what
16 Doug said. You made some statements that I would not
17 agree to and things -- and I will just use -- I wrote down
18 just a few of them.

19 One, you characterized at a ranking meeting
20 where I prompted Joe Leavines to do something. I wouldn't
21 have called that a prompt. To me, what that was is we
22 were sitting in a meeting, what we call a ranking meeting,
23 where we were trying to come to closure and put everybody
24 on the table and see where everybody fell.

25 The question I asked was, if my memory is

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1 right that, looking at the people that are here, that have
 2 been put up on the board, is it appropriate for Mike and
 3 others to be in this block or this block or this block.
 4 Now, we were talking abc block 9. That is where we were
 5 at.

6 And so the question I was trying to get to
 7 was: There was people in the 7 and there was people in
 8 the 8, and my question to them was: Looking at everybody
 9 together, should they be in the block 9, as opposed to 7
 10 or 8. So it wasn't -- we went down each person, so it
 11 wasn't a prompting of Mr. Malik. It was, yes, his name
 12 did come up, as did others.

13 So the idea was: Let's look at the picture,
 14 because all these guys have been doing it on their own.
 15 Now they come together. And let's match it up. So was I
 16 singling Mike out? No, because I asked the question on
 17 every group, when we got to supervisors, when we got to --
 18 and I did the managers myself -- when we got to exempts,
 19 was: 7s and 8s are very close to 9. So what does that
 20 mean? Should they be in 9, or should they be 7 and 8?

21 So a prompt to me would be -- the way I would
 22 look at it is being his superior, that he would expect to
 23 take some action, that I want him to go do that. And I
 24 didn't ask him to go do that, move a guy from one block to
 25 another. I asked the group: Is it appropriate? Should

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1 he be °. or should these others be 9? So that is -- I
2 wanted to clarify what, I guess, I thought I meant by --
3 and what you called a prompt.

4 The other thing that you said about Mike
5 Malik's performance, if I remember it right, you used the
6 word that we do not have objective criteria or we do not
7 have objective evidence; everything that we gave you was
8 subjective. And I would say that I don't agree with that.
9 I believe -- and I personally did not do his performance
10 appraisal, so I would have to go dig that performance
11 appraisal out and review that with you and show you what
12 the objective evidence is.

13 I think when we were talking in the last
14 meeting, it was relative to what my experience was with
15 Mike Malik. So I was giving examples. You used one
16 example. Let me talk about that example.

17 The expectation that we have for this -- for
18 Mike Malik when he is in meetings is he is the management
19 rep that is supposed to catalog everything, keep track of
20 what is going on, report back to management, and he is
21 almost -- he is the one responsible for the day-to-day
22 corrective action program and making sure everybody is on
23 the same page.

24 So when we get done, if there is any
25 additional assignments, he is to assure that there are

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1 assignments to those people and that the proper paperwork
2 is then handled. For instance, when we went to this CARB
3 meeting, there were additional actions that needed to be
4 assigned. Some people haven't finished everything that
5 they needed to finish or the -- and I don't remember any
6 specific corrective action, but they would have been
7 required to initiate another action item, with a due date,
8 et cetera.

9 Mike's job is to make sure that happens, so,
10 yes, it was. It shocked me that when we got done with the
11 meeting, here is the person that is supposed to assure
12 this is to happen. He, in fact, did not do that. He had
13 no idea what action items needed to be issued, to make
14 sure that they would -- because he is going to be the
15 tracker for the management team. He is going to make sure
16 that Joe Blow did this action item; Joe Blow did this one.
17 He didn't do that.

18 So to me that is objective evidence. A guy
19 did not do what he is supposed to do. He should have had
20 a detailed write-up as to exactly what the expectations
21 were for every one of those people. So I call that
22 objective evidence, not subjective. That to me would
23 be -- I mean, it would be exact case.

24 The -- I think for me to really talk about
25 Mike's performance, I think I would probably need to go

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1 get the performance appraisal and start going through that
2 with you. I am just telling you from what my interactions
3 have been, and I gave you examples based on my
4 understanding. And I personally did not do the
5 performance evaluation of Mike Malik.

6 In fact -- and we have had this conversation
7 before, that we -- when this issue -- this Department of
8 Labor issue came up in the past, we did assign Mike to a
9 different function. We assigned Mike to a different
10 manager who is a fair, independent, impartial person, as
11 Mike Malik would attest. And that person is Joe Leavines.

12 To try to separate any previous knowledge or
13 whatever, and Joe is the one that was responsible for his
14 PPR, performance planning and review document, and really
15 I don't provide -- I mean, there is only just a few things
16 that I provide in that PPR. I have to sign off on it, and
17 I also got to give him any comments that I have regarding
18 anybody's performance, if it is a direct report of his.

19 So I think what I am saying is: As far as the
20 objective or subjective, I can tell you what I know, what
21 I have been involved with, but to go down his performance
22 appraisal, I probably need Joe Leavines to come in here
23 and do that same thing, because I believe there is
24 objective evidence. And it is absolutely clear to me that
25 there is objective evidence.

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1 You made a relationship regarding protected
2 activities and that there could be a potential that it
3 impacted our decisions based on Mike Malik. I don't
4 believe that to be the case. That is why I really
5 selected Joe, because I thought he is a very fair and
6 Christian person that would follow the directions and be
7 impartial, to make sure that we would not have that exact
8 issue that you just said.

9 And I do know that Joe Leavines knows what the
10 standards are for what a supervisor and/or manager and
11 others are required to do, and what we attempted to -- and
12 I say "we," because Joe also provided copies for me to
13 review -- is I asked him to make sure, absolutely sure,
14 that there was objective evidence for everything,
15 objective expectations, things that would be very hard and
16 fast, so there wouldn't be any misinterpretation, wouldn't
17 be any subjectiveness.

18 So -- and if you look at his -- this would be
19 the -- it would be the 94 PPR -- I believe that is the
20 case. That is the way I looked at it.

21 I think the real difference that I think Mike
22 Malik has with both Joe and I is there is a belief on his
23 part that just because the corrective action program is
24 successful, that therefore he is a high performer. And I
25 can tell you that is not exactly the way Entergy looks at

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1 it.

2 That is like saying, in my mind, that we are
3 on a 300-day-plus run right now. Therefore, the manager
4 of operations, since he has had 300-plus-day runs is
5 absolutely a high performer and he has done everything
6 right. And I would say, That is not the case. We have to
7 rate the individual based on what the expectation is for
8 that job.

9 There is a lot of reasons why we are on a 300-
10 day run. A lot of people did things. Same thing with
11 corrective action program. Corrective action program is
12 oversight. First I am in charge; Joe Leavines is in
13 charge. But what we are looking for is: What is that
14 supervisor's performance? What is he doing? What is he
15 tracking? What is he bringing to the management team?

16 And that is the issue in question to me. It
17 isn't whether the corrective action program is good, bad,
18 or indifferent. It is: What is his performance relative
19 to what his job duties are? And that is the disconnect I
20 think we have with Mike.

21 And to me, the way I look at this whole issue
22 or your question is: I believe we have objective evidence
23 that would show that he does not perform in the
24 supervisory role that we would expect. And so I think --
25 and I just picked up on a few things that you were saying

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1 regarding to the meeting minutes, regarding to objective
2 versus subjective evidence.

3 I guess I would like to re-echo what Doug said
4 is: It is not apparant and obvious to me that this would
5 be a violation of 50.7. We tried to do everything that we
6 possibly could to make sure that with the issue that
7 happened with Mike back in, I want to say, June -- I think
8 that was the time frame -- of '94, that he would get a
9 fair shot.

10 So we attempted to do that. We attempted to
11 set the measures and/or expectations exactly that way,
12 so --

13 MR. LEVANWAY: I want to make one comment,
14 too, for the record, for whoever will be reviewing this
15 transcript, that one thing Mr. Fisicaro didn't have --
16 doesn't have the advantage of is to have been in the
17 interview with Mr. Leavines that I was in on.

18 And anyone who fairly reads the transcript,
19 Joe Leavines' transcript, cannot conclude that there was
20 not objective bases for his conclusion that there was
21 significant performance problems with Mike Malik.

22 He went on and on in response to your
23 questions about specific problems he had with Mr. Malik's
24 performance, and in particular, he said something similar
25 to what Mr. Fisicaro said, that -- for example, you showed

1 him some Entergy publication where his particular program
2 had done well. And Joe Leavines responded that this is
3 precisely Mike Malik's problem.

4 He thinks that because this program is being
5 singled out, that that means he is a good performer. This
6 program did well, because Joe Leavines, his supervisor,
7 made sure it got done, despite Mr. Malik's lack of effort
8 and lack of ability in this area.

9 This is typical of what he has done. He has
10 done it over and over again. His performance evaluation
11 that he gave him reflects that, and if you will -- I think
12 a fair reading of his performance evaluations, certainly
13 from the time that a new management concept has come into
14 play, shows that his performance has not been great, has
15 not been rated well.

16 So Mr. Fisicaro is not his direct supervisor.
17 He unfortunately doesn't have the benefit of having
18 listened to Joe Leavines list all these objective and
19 specific reasons. In addition to that, Mr. Leavines says
20 that he concurred and that the ranking of Mr. Malik was
21 where he believed Malik should end up, once he saw
22 everyone else on the board, and they were ranked in terms
23 of relative performance.

24 So, again, I think it is -- because Mr.
25 Fisicaro wasn't there for that interview, he didn't have

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1 the benefit of that either, that Mr. Leavines did not
2 indicate that he was forced or asked to put him in a block
3 that he disagreed with by Mr. Fisicaro.

4 So to the extent this transcript will be read
5 separately from Mr. Leavines', I want the reader to be
6 sure and refer themselves back to Mr. Leavines'
7 transcript.

8 THE WITNESS: Yes. I think that is a good
9 point. In fact, I think if you would look at what really
10 happened in that meeting -- there were more questions about
11 other people, too, and decisions of certain managers were,
12 No, he should be right there; that is the right spot.

13 So we are talking about one that did get moved
14 and not focusing on the whole picture, and the whole
15 picture being is -- we tried to go down through every
16 single name, figure out if they were in the right spot or
17 whatever. And so some people, including myself, asked
18 questions about a variety of people. Some moved; some did
19 not.

20 So a clearer picture would be -- we are
21 talking about Mr. Malik, but there were others that were
22 moved; there were others that were moved as well, so --

23 BY MR. ARMENTA:

24 Q Okay. That brings me to two questions then,
25 relative to what Mr. Levanway has said about Mr. Leavines'

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1 testimony. I will not attempt to disclose that
2 information. However, what is known is that Mr. Malik
3 went in as an R-7, as a 7, because his first-line
4 supervisor, Mr. Leavines, ranked him a 7, based on his
5 performance and potential.

6 So if his first-line supervisor ranks him a 7,
7 my question is now: Who said what at that meeting to
8 influence, to convince, to cause to reconsider that Mr.
9 Malik should be actually ranked a 9, contrary to what his
10 first-line supervisor ranked him? Can you tell me? And I
11 mean names, if you can be specific.

12 A I don't know that I can give that. I don't --
13 names -- I don't remember everybody who asked every
14 question. I think I remember myself asking one question
15 about Mr. Malik. Is that the right block for Mike; in
16 comparison to other people that were in block 9, is that
17 the right block?

18 So I remember myself. I don't know anybody
19 else, and I just don't know. I don't remember.

20 Q Do you think that your comment caused Mr.
21 Leavines to reconsider his position with Mr. Malik?

22 A I only think that it caused him to think and
23 whether or not he did the right thing or he did, in
24 fairness to everything else that was up on the board. I
25 do not believe that he changed it because I told him to --

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1 I said to change it, because I never said, Do this. I
2 asked it as a -- more as a question, more as, Hmm, this
3 looks different; why -- first time seeing them all on the
4 board.

5 And the reason why I think Joe -- if he didn't
6 feel comfortable in doing that was recently we have had --
7 we are doing some other organizational changes right now.
8 I suggested a couple of things to him to do, and -- in the
9 same kind of way, and he said, No, absolutely not; it
10 don't work because of th.

11 So the way I work with my managers and the
12 guys that work for me is: Mine is data; it is input. And
13 if, in fact, I am telling you that you think is the wrong
14 thing, stop; don't do it. And in this case that we are
15 using, I would have believed if Joe thought 7 was the
16 right spot, he would have left him there, and I would not
17 have asked any other question.

18 That would have been his decision. It was his
19 decision to put somebody in the block 7. In fact, I tried
20 very carefully not to influence anybody. It was more, did
21 you consider this, did you consider that, kind of thing.
22 So to me it was what you would expect a manager or
23 director to do, to make sure that there is fairness across
24 the board, and that is what I was trying to do.

25 So if Joe thought it was -- I just don't --

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1 and working with Joe, he would not have done that just
2 because he thinks I told him to do it. He would not have
3 done that.

4 Q Do you believe Mr. Malik was, in this
5 meeting -- I will reiterate something that I -- in that
6 Mr. Malik goes in as a 7 by his supervisor, ranked 7 by
7 his immediate supervisor, and comes out a rank 9. What
8 can you add to describe how Malik was compared to his
9 peers? You have nine supervisors, and as the Nuclear
10 Safety Department, if I am not mistaken or if that number
11 has not changed, you have approximately nine supervisors.
12 Was Mr. Malik compared among his peers?

13 A Yes. In fact, I think we have had
14 conversations regarding this was a forced ranking. This
15 was a ranking done by each supervisor of his employees,
16 and then at the end of the process, that we would roll the
17 thing together, so all the people that work for me would
18 take and evaluate their people or rate them, and then we
19 would take all those, put them on one composite listing,
20 and then we would compare against each other to make sure
21 of fairness.

22 So being that this meeting that we are talking
23 about was that exact meeting where all the people were put
24 up in front of the managers, and it was -- I think it was
25 the first opportunity where everybody in that meeting saw

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1 all the names together, and so what our process required
 2 was for us to do a review, to make sure that we all agree
 3 that those were the right spots, so they would be compared
 4 with each other; they would be compared -- all the
 5 supervisors would be compared to each other; all the
 6 managers would be compared to each other.

7 So that is really the way the process was to
 8 go, so --

9 Q Are you saying that that was the first meeting
 10 or one of several meetings where all the management
 11 personnel got together to discuss and compare their
 12 supervisors?

13 A I am not 100 percent sure that they -- the
 14 managers are surely free to do whatever they want to do
 15 regarding talking to other managers, so they might have
 16 seen what another manager had rated their people. So I
 17 don't know if that -- it is the first time that I sat with
 18 all those managers --

19 Q Collectively.

20 A -- that collectively we looked at it together.
 21 I do not remember another one for that level.

22 Q Again, going to this rank meeting, information
 23 was provided that all the names -- that of all the names
 24 that were on the board -- and I quote -- "we were going to
 25 get two at least," referring to block 9, and that, "it was

1 suggested first by Jim Fisicaro that in his estimation of
2 those names up there, Mike probably would be the most
3 appropriate one to move to block 9."

4 Do you remember having said that?

5 A No, I don't.

6 Q If there was a minimum of 10 percent forced
7 ranking, Mr. Fisicaro, the only two supervisors in your
8 group that were rated 9 were Mr. [REDACTED] and Mr. Malik.
9 That increased the percentage to approximately 16 percent
10 coming in to that meeting, because the staff,

11 nonmanagement, had already been ranked. Going in to that
12 meeting and the addition of these two supervisors, that
13 gave you approximately 16 percent, passing the minimum.

14 Can you explain why [REDACTED] and Malik were the
15 only two whistleblowers that were ranked 9?

16 MR. LEVANWAY: Jonathan, just so I understand
17 what you are asking him, you are saying that if you take
18 all the people who are ranked below supervisor who had
19 been put into 9s, and then you added these supervisors,
20 you came up with a total of 16 percent?

21 MR. ARMENTA: Within the NSD group, the
22 Nuclear Safety Department.

23 MR. LEVANWAY: Within the Nuclear Safety
24 Department.

25 MR. ARMENTA: And then taking figures that you

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1 have on approximately 73 to 85 personnel. It make be
2 lower; it may be higher, but approximately, with the
3 figure of 85 personnel.

4 MR. LEVANWAY: What was the figure before the
5 two supervisors were added? What was the percentage?

6 MR. ARMENTA: It would probably make it to
7 about 13 to 12 percent. I don't have that figure in front
8 of me, but mathematically it can --

9 MR. LEVANWAY: So I guess my question is: If
10 we are assuming that none of those people below the
11 supervisor's levels are whistleblowers -- there is no
12 allegation they are -- we have approximately, going into
13 the meeting, 13 percent of the general population being
14 ranked as a 9. And your question is: Well, then, if two
15 more are added to a total population of -- I don't know
16 how many people we are talking about here, 40, 50 people,
17 and those two happened to be whistleblowers. What is the
18 explanation?

19 MR. ARMENTA: Well, the explanation, one, that
20 Mr. Fisicaro rated [REDACTED] a rank 9; two, Mr. Malik goes
21 into that meeting rated 7, comes out as a 9. Both Mr.
22 Malik and Mr. [REDACTED] are known whistleblowers. Can you
23 explain that? That is my question.

24 MR. LEVANWAY: Okay. I just -- the statistics
25 didn't -- the inference you were drawing from the

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1 statistics didn't make any sense to me. If anything, you
2 have a great lower number of people ranked 9 who haven't
3 been identified as whistleblowers than those that are, and
4 to throw that figure out that you then got up to 16
5 percent.

6 So if your question is just: How come [REDACTED]
7 and Malik --

8 BY MR. ARMENTA:

9 Q Well, the -- my question in bringing out the
10 percentage is that there was a minimum of 10 percent
11 forced ranking. I never heard that there was a cap to
12 this --

13 A Exactly.

14 Q -- forced ranking.

15 A Exactly.

16 Q But you had all reached your minimum.

17 A Yes. Just a couple of things to make sure we
18 are clear. I am not sure I agree exactly with what the
19 number you said was. You said 85 people, and if I
20 remember right, I think the employees that I had in my
21 department was in the nineties at that point in time,
22 because the figures that come to my mind when I first got
23 here in '93, there was 103 people. We went up to 106. In
24 '94, we reduced our number of people -- I want to say the
25 mid-nineties. I thought it was 99.

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1 I mean -- and I would have to check to make
2 sure.

3 Q These figures were obtained through --

4 MR. ARMENTA: Dennis, through Mr. Maxson's
5 office?

6 MR. BCAL: Actually where they were obtained
7 from was the flip charts that were sent to us with the
8 final rankings. We counted those numbers.

9 THE WITNESS: Okay.

10 BY MR. ARMENTA:

11 Q In other words, those employees, the charts
12 that Mr. Levanway submitted to us, we counted your
13 employees and came up with 85 employees that were ranked.

14 A Okay. The -- anyway, that is my memory. Now
15 we are closer to 85 right now. I think it is 82 right
16 now. That was issue one.

17 If you remember, I think I talked about this
18 before, that we set 10 percent -- we, the company, set 10
19 percent as a minimum. It certainly was not -- we were not
20 to go below the 10 percent.

21 But I do know that River Bend management
22 believed that just overall, our performance at River Bend
23 Station had not been at the superior level in the past,
24 and that there was a belief from the River Bend management
25 team that maybe we should have more people than just in

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1 block 9 as opposed to the other plants.

2 I mean, basically you could almost look at
3 every program that we got when Entergy came in was broke,
4 so we did not set a -- put it this way, a maximum. The
5 minimum was already set for us, but overall site-wide, we
6 came in at more than 10 percent, and we did that -- we
7 thought it was the right thing to do, based on the
8 performance of people and the performance of the station.

9 In terms of my specific department, the same
10 thing. It was: What is the performance of this group,
11 looking at River Bend Station? Should it be higher?
12 Should it be higher than the 10 percent? And to me, the
13 way I looked at it is: If we do this forced ranking and
14 we compare people, and it looked like it was right, when
15 we do that comparison, then it was okay to be above 10
16 percent. In fact, if it would have come out to 20
17 percent, then that is what the number would have been.

18 To me it was -- this final meeting that we are
19 talking about here really is the comparison between peers,
20 and I had no idea how it would come out. I just didn't
21 know. I would like to go back to the previous question
22 you asked, and I answered -- I believe I answered -- the
23 question related to some quote --

24 Q I asked you whether you had -- "It was
25 suggested first by Jim Fisicaro that in his estimation, it

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1 those names up there, Mike probably would be the most
2 appropriate one to move to block 9."

3 A Yes. The answer I gave you was right. I just
4 wanted to add something to it. That doesn't sound like
5 something that I would say, because, I mean, my question
6 really would be is: If we were doing -- if I was going to
7 do that, then why have the meeting at all? I mean, if I
8 knew what the answer was, why even go through the motions?

9 I don't think I would have even had the
10 meeting, should that been what I was thinking, so I just
11 wanted to add that.

12 Q Okay. Did you receive or were you ever given
13 any directives, instructions, and/or guidelines from your
14 superiors to rank 9 employees that were -- had been
15 involved in protected activity, whistleblowers, including
16 Mr. Malik?

17 A Was I directed to do that? No, I was not.

18 Q Did you receive any instructions from your
19 superiors --

20 A To rank --

21 Q To rank 9 any employee that may have been
22 labeled as a whistleblower or involved in protected
23 activity?

24 A No. I would say emphatically no. There
25 wouldn't have been any -- that is just not Entergy's style

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1 to do that, and I just can't imagine anybody asking me
2 that question or giving me that directive.

3 Q Okay.

4 A I would like to go back to the question
5 earlier. I forgot to mention something. You were talking
6 about the two of nine supervisors, both involved in
7 protected activities and that both of these ended up in
8 block 9.

9 First of all, I wanted to mention that I don't
10 know what the past was regarding who is protected, who
11 isn't protected. I don't have a list; I don't really know
12 what concerns people have turned in, and I have tried real
13 hard in this -- being in charge of the safety concerns
14 program to not know that.

15 So if you told me -- made some statement that
16 [REDACTED] filed some concern, you would be the first
17 one to tell me that, because I don't know that. I do know
18 that Mike Malik did file an issue last year, because I was
19 involved with it, so I do know that. What has transpired
20 before that, I don't have any knowledge. I don't go out
21 to seek that out.

22 If I found out about any issues somebody
23 brought up, it was a result of some additional
24 investigation that was being done, and I can give you an
25 example of one. We -- when Entergy showed up here, we had

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1 a problem with -- the NRC told us that there was a problem
2 regarding willful violation of security items.

3 Up until that time, Entergy management didn't
4 know much about that, did not know the case, and it was
5 only through the investigation and our interactions did we
6 really find out the details, who did what, when, and why,
7 so it is only because of those kinds of things.

8 So you are making some relationship that we
9 were fudging these two of nine and putting them into block
10 s because of protected activities, and I would not -- to
11 me, I would not couple those together, because I just
12 don't -- in fact, right now, just thinking about Mr.

13 [REDACTED] I don't know what he has filed. I don't have any
14 idea. He may have. We may have even looked at the issue.

15 In our program, what I try to do is [REDACTED]
16 [REDACTED] as you well know, is the guy. I don't know names
17 usually. And the people don't come and talk to me
18 directly, so I just can't think of anything right now that
19 I know of regarding Mr. [REDACTED]

20 Now, if you said an issue that he brought up,
21 you tell me the issue, I may know the issue, because I
22 have been briefed on a number of issues. But at this
23 time, I do not really know what he has filed and what he
24 has not filed, so I would not make the couple of protected
25 activities that you made regarding the two of nine people.

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1 Is that clear?

2 Q Next question: If RBS management indicated
3 that Malik's expectations were not met, where is it
4 documented that Malik failed to meet his performance
5 criteria? What is the basis of Malik's expectation?

6 A I would -- I think they are all in his PPR.
7 That is where they would be. We are required --

8 Q Are you referring to the 1994 PPR?

9 A Correct. And if I am not mistaken, when he
10 was assigned his new task in June time frame, we developed
11 a new one, a new expectation, because obviously the
12 position would be different. But that is where you would
13 find that information

14 Q Is it, this PPR 1994 -- his rank 9 is a result
15 of his evaluation of that PPR '94. Is that correct?

16 A That one, yes.

17 MR. LEVANWAY: When you say PPR '94, when in
18 '94 are you talking about? I mean, before or after the
19 change to Joe Leavines?

20 BY MR. ARMENTA:

21 Q It was after the July 7 -- July 9, '94.

22 A Yes. That is what I thought you meant. That
23 is what I was referring to.

24 Q As part of the DOL agreement, Mr. Fisicaro,
25 EOI agreed to give Malik backpay. As you stated right

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1 now, you were involved in that negotiations. Since Malik
2 had not received any pay increase or merit bonus since
3 1992, records have indicated that he -- his last pay
4 increase or bonus pay was 1992, but did not receive for
5 '93 and '94.

6 However, after the DOL agreement, Mr. Malik's
7 records indicate now that he did receive backpay for those
8 years. Do you have any explanation as to why he was
9 singled out to not receive these increases?

10 A Memory of '93 - when I got here in September,
11 GSU at that time was in the process of doing their
12 reviews, and I believe that Mr. Malik's performance -- I
13 believe it was unsatisfactory. I believe that is what the
14 document stated.

15 Q For the record, it was satisfactory on those
16 counts.

17 Q Okay. That is what the '93 said?

18 A The '93. Although I never did look at it, but
19 this is based on the Department of Labor --

20 Q You could be right, because I don't remember.

21 A -- Department of Labor agreement. But what I
22 do remember is that he did not get a raise at that time.
23 I do remember that. And to me, at that time, his
24 supervisor or manager was Ken Giadrosich. It was a
25 judgment based on meeting expectations and performance.

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1 Now, what happened in -- let's see if I
2 remember right. We come around to January 1; we become
3 Entergy. GSU becomes Entergy. Entergy's system requires
4 annual performance appraisals; it requires all those to be
5 done and all documented around the 15th of February,
6 getting ready for an annual increase, and the annual
7 increase is usually effective April 1.

8 If I remember right, at that point in time,
9 Mike Malik did not get a raise. Then the next step, next
10 part in the process, I guess I would say, is the DOL
11 complaint. As far as the DOL complaint, I was only
12 involved in the DOL complaint from the standpoint of
13 the -- I did not do the investigation. It was done
14 independent of me. It was --

15 MR. ARMENTA: Do you want to take a break at
16 this point?

17 THE WITNESS: Yes. Sounds like we have got
18 several more questions.

19 MR. ARMENTA: We have just got one last
20 question. It is up to you if you want to take a break.

21 THE WITNESS: What -- that is probably my
22 secretary. She is -- I am supposed to be giving a
23 presentation, that they keep moving other presentations
24 up, so I am supposed to be back about eleven o'clock to
25 give that, so I am sure that is what she is out there for

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1 It might -- if it is okay, I would like to
2 take maybe a break, after I get done with this question,
3 and then go do that and then come back here, if that is
4 okay. It shouldn't take much more than 20 minutes.

5 MR. ARMENTA: And for your information, we
6 only have one last question after this.

7 THE WITNESS: Okay. And one reason I want to
8 take a break is I want to think about some of the things
9 that you -- you asked me a question earlier or made a
10 statement if I would have had anything else, and I would
11 like a little bit of time just to think about that.

12 MR. ARMENTA: Okay.

13 THE WITNESS: Now let me see if I can get back
14 on track here. In regard to the DOL issue, it was
15 investigated by people other than myself. I was involved
16 in the setting up of Mike's new department. And as far
17 as -- and we gave him backpay at that time for that time
18 frame.

19 And that is probably about all I should say
20 about that.

21 MR. ARMENTA: It is approximately eleven
22 o'clock, and we are going to take a break, and we will
23 resume at the time we come back.

24 (Whereupon, a short recess was taken.)

25 MR. ARMENTA: It is approximately 12 noon, and

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1 we will go ahead and get started. We took a break so that
2 Mr. 1 could attend to some of his meetings and agenda that
3 he had, and in addition, Mr. Boal interviewed one of the
4 employees here at RBS.

5 BY MR. ARMENTA:

6 Q Mr. Fisicaro, I am going to go ahead and pick
7 up where we left off, and this was -- you had finished
8 your response to the last questions about the -- why Malik
9 had not received the pay increases, as to an explanation
10 for me.

11 Our last question that we have is that we have
12 information that during a staff meeting on January 25,
13 1995, you discouraged the staff by saying that EOI was
14 "going to get people" and if anybody was ranked 9, "they
15 better start looking for a job," because they were not
16 going to be at RBS.

17 In addition, it was provided that if -- you
18 stated that if they said anything to anybody else
19 regarding that, that you would call them a liar. This was
20 on January 25, and I believe that there may have been some
21 employees that may not have received their ranking as of
22 then. I am not positive on that. I do know that several
23 employees had received their notification of the rank 9 by
24 that time.

25 Do you recall -- first of all, do you recall

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1 speaking or participating at a meeting, a staff meeting on
2 January 25, 1995?

3 A Yes. I believe you are talking about the all-
4 employee meeting I had for the nuclear safety department.
5 That is correct. Yes.

6 Q It would have included nuclear safety
7 department staff.

8 A Yes.

9 Q What explanation or what response do you have
10 according to those comments that I have just read to you?

11 MR. LEVANWAY: Jonathan, could I ask you, for
12 my benefit and maybe for Jim's also: Would you repeat the
13 exact quotes to him again that he supposedly made, because
14 I lost you toward the end there.

15 BY MR. ARMENTA:

16 Q First of all, "going to get people." "Better
17 start looking for a job."

18 MR. LEVANWAY: Well, let me ask you. When you
19 first said that, you said, If you are ranked a 9, you
20 better start looking for a job.

21 MR. ARMENTA: That --

22 MR. LEVANWAY: Was that all part of the same
23 quote, or was --

24 MR. ARMENTA: No, no, no. What I am quoting
25 you is just the quote, but that was in reference to --

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1 what I was saying as quote is exactly the words that we --

2 MR. LEVANWAY: Okay. Better look for a job.

3 And what was the other one or the other two?

4 MR. ARMENTA: I think that was the only two
5 quotes that we had. The other information -- let me read
6 the whole information that I have.

7 BY MR. ARMENTA:

8 Q On January 25, 1995, you discouraged the staff
9 by saying that EOI was "going to get people" and if
10 anybody was ranked 9, they better "start looking for a
11 job," because they were not going to be at RBS. In
12 addition, they said if you said anything to anybody, you
13 would call them a liar.

14 MR. LEVANWAY: And that last statement wasn't
15 in -- you are not quoting that.

16 MR. ARMENTA: I am not quoting that, but --

17 MR. LEVANWAY: If they said anything, you
18 would call them a liar.

19 MR. ARMENTA: Saying to that effect.

20 MR. LEVANWAY: Okay.

21 THE WITNESS: I do have some overheads that I
22 used at this meeting, and you are certainly welcome to
23 look at what those overheads are, and I can go through
24 with you what my mission was for that meeting to put it in
25 context.

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1 What you are -- these statements that are said
2 here that are quotes, I guess, I don't ever remember
3 saying anything like that. I don't think that is what I
4 would say. It doesn't sound like me.

5 What I have been trying to do as well as other
6 managers have been trying to do is keep people
7 knowledgeable of what is going on with the company in
8 terms of cost competitiveness, in terms of performance, et
9 cetera. I have openly told people that --

10 And I think I have probably one of the few
11 departments to do it, actually put out exactly what the
12 goals are going to be relating to staffing numbers,
13 relating what dollar figures we need to be at, not as a
14 scare tactic, not at all, only as an informational thing,
15 only as a -- so people can decide what their destiny needs
16 to be. I can't decide for them.

17 So this meeting was one in which I went down
18 through that same stuff. An example was I went down
19 through what the goals on staffing were, where I thought I
20 had to be in order to meet our long-term targets. I don't
21 remember exactly the words, but it has been said a number
22 of times and I have said it as well that the company knows
23 that each side is going to have to reduce their number of
24 employees to some certain number.

25 Nobody knows exactly what that number is. We

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1 have different projections. We have never concluded with
2 what is exactly the number. Sometimes people have thrown
3 out, Well, 200 people less; some have said 300 people
4 less; and so different numbers have come out.

5 What I have always tried to do is not -- let
6 me say another thing. The company does not like to lay
7 people off, does not, and I am talking about the nuclear
8 side. That has not been a thing that the company does.
9 So what we have always tried to do is tell people where we
10 are going, and so if it if they need to make a decision
11 or if they think they are going to be impacted, then they
12 certainly have the right to do that.

13 What I was trying to do at this meeting is
14 tell them specifically in terms of people, what did that
15 mean to our department. And if I am not mistaken, the
16 number that I told the department was, we needed to be
17 down to about 84 people by the end of the year. And I say
18 84. I think the number at that time was 89; it later
19 moved to 84, sometime later in the year.

20 I have downsized my group by 20 people in the
21 two years I have been here. I have not fired anybody. I
22 have not asked anybody to leave. What has happened is I
23 have not filled any positions. So if somebody goes to a
24 different department, posts for a job, I haven't filled
25 the position.

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1 What I did is moved people out within my
2 organization to -- for instance, I have moved some QA
3 people to the licensing department, because there was
4 openings there, and moved back and forth, so I have not
5 ever downsized my group in terms of firing a bunch of
6 people or that kind of thing.

7 But what I have been advocate of -- and at
8 every single meeting, I have told the department was: The
9 company focuses on performance, and those people that are
10 in the high performance area probably don't have to worry.
11 Now, that is no guarantee. I couldn't make that
12 guarantee, because I don't know what tomorrow will bring.
13 But those people that are in the low performance category,
14 I said, were the ones that should worry.

15 And I said, If you are not in the right
16 position, I said, I will help you get to whatever position
17 that is. If, in fact, as an example, you are a mechanic
18 and you should be an electrician, I will help you get over
19 there. Now, that is not an example of what -- a group
20 that works for me, but I would try to help people move
21 from spot to spot and so they could be successful.

22 If the company in the past, prior to Entergy
23 time, had put them in the wrong spot or they chose to be
24 in a wrong spot, I would help them move. And I only had a
25 few takers. Only a few people came to me and said, Hey, I

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1 think I would like to move. And everybody that has talked
2 to me, we have moved them.

3 So bottom line, what I was trying to do at
4 this meeting is tell people where we were going, told them
5 what I thought our contribution or our part of the picture
6 would be, and a reaffirmation that high performance would
7 probably be the type of individuals that we would be
8 looking for down the road.

9 These kind of statements, I guess, kind of
10 imply that -- I don't know -- Entergy or EOI going to get
11 people, I mean, it kind of looks like there is an
12 adversarial kind of relationship. That is not the way
13 Entergy would deal with things. And I say Entergy,
14 because I am part of that.

15 That is not the way we would do business. We
16 believe we have to have a collective team agreement with
17 all employees, and they all have to be on board. It
18 wouldn't be smart for a manager to do something like this.
19 So I just -- I can't remember saying anything like that.
20 I don't think I would say anything like that. There
21 really would be no benefit for me to throw a shock into
22 people.

23 My information was really to say: Hey, where
24 are we going? And I could point out to you: I did the
25 same thing here not more than maybe a month ago, did the

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1 same thing; told people, Okay, now we are six months down
2 the road from where -- from the beginning of the year;
3 here is what has happened; here is where we are going.

4 In fact, interestingly enough, nobody knew
5 that we had met our goal on people, and nobody knew it
6 because they didn't know that we were still downsizing,
7 because they didn't feel it, was the point. In other
8 words, didn't fire, didn't go to somebody and say, Well,
9 you no longer have a job. That wasn't the way we did it.

10 So we did it through attrition, and that is
11 the way -- I have told people that is the way we are going
12 to do, so --

13 MR. ARMENTA: At this time, I do not have any
14 more questions regarding our purpose in reference to Mr.
15 Malik. I understand Mr. Boal has some question or
16 questions, not relative specifically to the Malik
17 investigation.

18 But for the purpose of this transcript and the
19 record, we will close this portion of the interview
20 regarding Mr. Malik. And before we do, on record, I would
21 like to give you the opportunity to disclose or say
22 anything else that you would like to add to this
23 interview.

24 THE WITNESS: Yes. I would like to go back to
25 probably the opening discussions related to Mr. Malik and

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1 subjective versus objective evidence and just kind of go
2 through. I made some quick notes as to some things that I
3 thought of and tell you how I got data and what I did with
4 it.

5 But first I wanted to start with -- I think
6 both of you understand the ranking process, and the
7 ranking process, if you look at a tic-tac-toe chart -- I
8 want to make sure it is absolutely clear here. I just
9 quickly did this.

10 This, going this way is performance, low to
11 high performance, and then going this way is from low
12 potential to high potential. The issue when --

13 MR. ARMENTA: For benefit of the record, Mr.
14 Fisicaro has drawn on a piece of paper a block with the
15 nine different cells in that block that was used in the
16 ranking process, and on one side indicating the
17 performance, the high performance, the low performance and
18 the potential on the other top of the block is from left
19 to right, from high to low potential. Go ahead.

20 THE WITNESS: Thank you. So the only point in
21 question here from moving a person from a block 7 to a 9,
22 the person is a low performer, period. Period. There is
23 no ifs, ands, or buts. low performance. The only thing in
24 question when you do this is their potential, and
25 potential is really locked at in terms of, Can this pers :

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1 move to another level of the organization, move up in the
2 company. That is the issue on potential.

3 So if you look at the case where Mr. Malik
4 went from a 7 to a 9, it only relates to his potential.
5 That is the only thing. His performance was -- by his
6 supervisor, was 7, which is low; by the final ranking,
7 which is 9, still low performance. So bottom line, he is
8 a low performer.

9 If you remember, we talked about the ranking
10 process in general terms. The ranking process was -- when
11 we did this final meeting, the purpose of that meeting was
12 all the departments that work for me, which would be the
13 manager level people were to come together and look at all
14 of the people collectively, and when they do that and you
15 know it is a forced ranking, it was to look at people and
16 how they matched up, and the job was at that time to make
17 sure that there was alignment between all people.

18 So in other words, we had to start and get 10
19 percent to be in the block 9, but we were also required to
20 put 33 percent in the different tiers, and so that was
21 also part of the effort. Some people have referred to
22 that kind of thing like a bell-shaped curve regarding
23 performance. You have some low performers, some high
24 performers and some medium performers. We set targets as
25 to -- we, the company, set targets. That is how many

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1 people had to be in that general area.

2 So we were coming together to look at all
3 that, and when we looked at all that, the questions on the
4 table were to match peers up. And that is what we did in
5 this case. We matched them up with -- in this case, it
6 was Mike Malik with peers, and the question was: Did he
7 better fit in this area or did he better fit in this area?

8 and I talked a little bit about Joe Leavines
9 and whether -- and I think you used the word "prompted."
10 I put it in terms of what I guess I thought was a
11 question, data, his choice, his decision, and whatever
12 that decision was, I would have supported it. If it was,
13 Oh, no, it is not a 7; it is a 9. Or, No, it is not a 7;
14 looking at everybody else, it is a 5, then I would have
15 went with that.

16 But not only did he have to convince himself;
17 he had to convince me, and he had to convince his peers,
18 so it was a collective effort, everybody coming together
19 to look at all the -- at this point, was all the
20 supervisors and see how they lined up, and did they -- in
21 his case, is he a 7, is he a 9, or where does he fit. So
22 that is the bottom line, as to what that meeting was.

23 I wanted to talk for a second about this
24 subjective versus objective. I believe there is objective
25 evidence, and I believe that from terms of looking at the

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1 performance appraisal, talking to Joe.

2 I have my own data points that I get, and I
3 get from two sources. One is Joe Leavines just provides
4 data to me as well as other people that work for me on
5 performance of people.

6 And Joe would tell me things like his concern
7 with Mike was that he, from an administrative point of
8 view, probably did okay in terms of getting time sheets
9 turned in, getting this turned in.

10 But as it related to the program, the
11 corrective action program, what was he bringing to the
12 table that would require improvements, that things such
13 as, Should we do this or should we do that to improve the
14 program, very little change came from Mike. And most all
15 the change was directed from the top.

16 The other issue that Joe would tell me would
17 be -- he would frequently -- when we have meetings, these
18 CRG meetings and also what we called our CARB meetings, he
19 is required to report on backlog, on different things, to
20 make sure that he could keep -- and I call it management
21 focused on what are the problems happening.

22 And I will give you a specific example. This
23 is a data point I had and a data point that Joe Leavines
24 has as well. I had asked Joe several times: We need to
25 get into a routine on reporting of condition reports on

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1 what is outstanding, what is in the backlog, what is the
2 significance of it being in the backlog, what do we need
3 to do to work it off, and that kind of thing.

4 That information never -- you would expect a
5 supervisor that has an area they are responsible for would
6 be to keep management informed of what is going on in
7 their area. It wasn't until those questions were asked,
8 in fact, repeatedly asked: When are we going to talk
9 about this?

10 And I will give you one specific example. We
11 have what is called CARBs, significant CRs, we do in terms
12 of we have a senior management team that sits down and
13 reviews root cause and corrective actions. What
14 happened -- at a variety of meetings, I would ask: What
15 is the status of our backlog? What is the status of our
16 backlog? And we finally -- the management team finally
17 got a picture. And it is what I thought happened.

18 We had gone from -- I don't remember exactly
19 what the number was, but up to a number that was like
20 65 -- 60 to 65, somewhere in that number, significant
21 conditions that had not been reviewed by that management
22 team. And when we saw that, everybody was alarmed,
23 alarmed because it wasn't something being generated
24 through the normal course of business, reporting on your
25 status, reporting on this. It was kind of like everything

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1 was okay.

2 Well, then we almost had to direct Mike to
3 take action to go cause a schedule to be made that shows
4 how we would work these off. Now, at a periodic basis, we
5 do get those in a management meeting, in a CRG or a CARB,
6 as to what the outstanding items are. In fact, now we are
7 reporting on the other pieces, the backlogs are rising or
8 they are falling or what is happening, repeat occurrences,
9 analysis of data. We are starting to get that now, but it
10 is not because Mike said I want to do this to do this.
11 It is because either Joe or myself has specifically told
12 him: Here is what has to be done.

13 And my expectation of a supervisor is: You
14 have a program, and your program, you are responsible to
15 make sure it is working, it has got the right visibility.
16 You -- everything that you have got in the program is
17 being worked off in accordance with some schedule or plan,
18 and that you periodically brief management. This did not
19 happen.

20 So I would get data points as I would go to
21 these meetings, and I would -- where is it? Where is it?
22 Why aren't we doing that? And so to me, that is a
23 specific example of an expectation. A supervisor should
24 have his program under control and enough visibility where
25 backlogs wouldn't grow without people knowing about it and

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1 having some corrective action to fix it. So that is a
2 specific example.

3 I think you can look in the record, and I
4 would attend these CARF meetings myself, and this is the
5 second data point. I would attend these CARB meetings
6 myself, and if you remember our process, our process --
7 Mike has eight people in his organization; that is to
8 review their corrective actions and root cause, to make
9 sure they are appropriate.

10 He has got some very talented and qualified
11 people with sufficient operational background and licenses
12 to review those and say, Yes, that is the right root
13 cause, and, yes, that is the right corrective actions to
14 solve the problem.

15 And we have asked Mike to monitor that. Don't
16 waste management's time to bring an issue up to the -- at
17 the CARB if, in fact, it is not the right root cause and
18 the right corrective action, so there is a responsibility
19 he has to -- his department has to review them. He has to
20 make sure that they are right, make sure that if he has
21 got to pull the plug -- pull the plug meaning, I am not
22 going to schedule that for the meeting, because it is not
23 good enough -- then he is to do that.

24 There is a variety of occurrences where we
25 would go to these meetings, and that would not be the

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1 case. We either had to table the issue. The management
2 team said, That isn't the right root cause or this is not
3 the right corrective action; it won't fix it.

4 So as a responsible supervisor, the
5 expectation was, Don't let it happen that way; train your
6 people; do what you need to do to get them to a level. In
7 fact, what has happened is our corrective action people
8 are independently doing the root cause and corrective
9 action, along with the others, so it is a collective
10 effort.

11 But it is almost like an independent check,
12 and when we come and get all these managers together to
13 review it, it is a waste of time, when we say, That is not
14 the right thing.

15 So those -- I make a general comment, but if
16 I -- I would have to go back and look at the specific CRs
17 that we pulled, but I can remember doing that repeatedly.
18 Now, after we have had some experience here, in time
19 things are better now. We don't pull the plug on so many.

20 But the question -- and this is where the
21 subjective-objective stuff comes in. To me, the objective
22 evidence here is that Mike was to bring that to the table,
23 did not bring it to the table, and now a reaffirmation and
24 continued efforts with him, it is better now. So that is
25 another specific example.

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1 All the examples that I have, I feed back
2 through Joe Leavines, and I tell him in most cases -- some
3 of it is, Hey, this is my impression that went on; this is
4 data that I got. Some I don't know if it is right, wrong,
5 or indifferent. It is just observations I made, and I
6 feed that back to him.

7 In these cases, these are, I guess, in my
8 case, pretty clear examples where he would -- did not do
9 something that I would expect him as a supervisor to do.
10 When I confronted Joe on these specific examples, he also
11 agreed, and he also had the same data points.

12 So -- and I could probably talk longer about
13 other examples, but to me, I get my data two different
14 ways: one, feedback from Joe Leavines on performance of
15 Mike and also through my own observation or data points,
16 and that is through meetings and discussions.

17 Let me just think here a second.

18 (Pause.)

19 THE WITNESS. I think that is it.

20 MR. ARMENTA: Okay. This will conclude the
21 interview. I don't have any further questions. I think
22 that we have given Mr. Fisicaro the opportunity to not
23 only answer, but to come back and as an overview, overall
24 perspective, as to the opening discussion of this
25 interview.

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1 It is approximately 12:30 p.m., and this will
2 conclude this portion of this interview.

3 Dennis, do you have anything else?

4 Mr. Levanway?

5 MR. LEVANWAY: Yes. I do want to ask follow-
6 up two questions if I could.

7 BY MR. LEVANWAY:

8 Q Mr. Fisicaro, just so that, I guess, the
9 record is clear as to what you were explaining with
10 that -- when you drew the grid up, the initial questions
11 to you by Mr. Armenta sort of took as a premise that Mr.
12 Malik's direct supervisor, Joe Leavines, initially ranked
13 him a 7 when he came into this meeting, and that as a
14 result of the ranking meeting, he then ended up a 9, and
15 the question was put to you: What can you tell us or add
16 to what we have already discussed about his performance
17 that made him go -- that would signify a difference
18 between a feeling that he is a 7 versus a 9?

19 A Correct.

20 Q And what you have shown us with this grid is
21 that everyone is ranked into a top, middle, or bottom
22 third on both performance and potential. And both Mr.
23 Malik's direct supervisor, Joe Leavines, when by ranking
24 him a 7, he is ranking him in the bottom third as a
25 performer, is he not?

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1 A That is correct.

2 Q All right. And so when someone is ranked a 9,
3 they are still in the bottom third as a performer.

4 A That is correct.

5 Q All right. And the only difference between a
6 7 and a 9 being whether they are in the middle third in
7 terms of potential or the bottom third in terms of
8 potential.

9 A That is correct.

10 Q And are the kinds of things that you have
11 talked about today in terms of Mr. Malik's inability to
12 shepherd these CARB meetings as you would expect him to or
13 a supervisor to, are those the kinds of things that would
14 influence your determination as to whether he is in the
15 middle or the bottom third on potential?

16 A Correct.

17 MR. LEVANWAY: That is all I have.

18 MR. ARMENTA: This will now conclude this
19 portion of this interview.

20 (Whereupon, at 12:30 p.m., the interview in
21 the above-entitled matter was concluded.)
22
23
24
25

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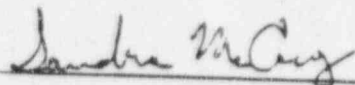
This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name of Proceeding: JIM 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 or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.



Sandra McCray

Official Reporter

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