

TRANSCRIPT OF PROCEEDINGS

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

SYLVESTER MCCLAIN, ET AL,  
PLAINTIFFS

CIVIL DOCKET NO.  
9:97-CV-63

VS

BEAUMONT, TEXAS

LUFKIN INDUSTRIES, INC.,  
DEFENDANT

DECEMBER 4, 2003  
9:00 A.M.

FILED - CLERK  
U.S. DISTRICT COURT  
2003 DEC 15 AM 11:45  
EASTERN-BEAUMONT

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TRANSCRIPT OF BENCH TRIAL  
DAY 1  
BEFORE THE HONORABLE HOWELL COBB  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

FOR THE PLAINTIFFS:

TIMOTHY GARRIGAN  
STUCKEY, GARRIGAN & CASTETTER  
P.O. BOX 631902  
NACOGDOCHES, TX 75963-1902

TERESA DEMCHAK  
DARCI BURRELL  
JOSHUA KONECKY  
MORRIS BALLER  
SAPERSTEIN GOLDSTEIN DEMCHAK &  
BALLER  
300 LAKESIDE DRIVE, SUITE 1000  
OAKLAND, CA 94612

FOR THE DEFENDANT:

DOUGLAS HAMEL  
CHRISTOPHER BACON  
MICHELLE MAHONY  
VINSON & ELKINS  
1001 FANNIN STREET, SUITE 2300  
HOUSTON, TX 77002-6760

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03:05 PM 1 PARTS, I DON'T WORK WITH THEM.

03:05 PM 2 MR. GARRIGAN: THEY GET NOISIER, TOO, WHEN THEY  
03:05 PM 3 GET MORE MOVING PARTS.

03:05 PM 4 THE COURT: WELL, I CAN USE A HAMMER, AND A  
03:05 PM 5 HAMMER MAKES A LOT OF NOISE, ESPECIALLY WHEN YOU HIT YOUR  
03:05 PM 6 THUMB.

03:05 PM 7 MR. GARRIGAN: I'VE MADE NOISE.

03:05 PM 8 BY MR. GARRIGAN:

03:05 PM 9 Q. TELL ME, MR. DEASON, HOW DOES THE CHIPPING GUN  
03:05 PM 10 COMPARE TO A CHAINSAW?

03:05 PM 11 A. IT'S LOUD. IF YOU GET CLOSED UP IN A HOUSING USING  
03:06 PM 12 A CHIPPING GUN, IT'S LOUDER THAN A CHAINSAW.

03:06 PM 13 Q. WHICH ONE VIBRATES AND SHAKES MORE, A CHIPPING GUN  
03:06 PM 14 OR A CHAINSAW?

03:06 PM 15 A. A CHIPPING GUN.

03:06 PM 16 Q. OKAY. NOW, IN MY LIMITED EXPERIENCE WITH  
03:06 PM 17 CHAINSAWS -- YOU NOTICE I STILL HAVE ALL MY APPENDAGES.  
03:06 PM 18 THEY GO THROUGH A LOT OF TROUBLE TO PUT RUBBER GRIPS ON  
03:06 PM 19 THEM AND ISOLATE THE ENGINE FROM THE HAND GRIPS.

03:06 PM 20 A. UH-HUH.

03:06 PM 21 Q. DO THEY HAVE RUBBER HAND GRIPS ON THE CHIPPING GUN?

03:06 PM 22 A. NO, IT'S SOLID IRON. I MEAN, IT'S MADE OUT OF --  
03:06 PM 23 THE TRIGGER IS IRON, EVERYTHING ON THE CHIPPING GUN IS  
03:06 PM 24 IRON.

03:06 PM 25 Q. IS THERE ANYTHING TO CUSHION THE ACTION OF THE

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03:06 PM 1 CHIPPING GUN FROM YOUR HANDS? IS IT JUST A SOLID --

03:06 PM 2 A. NO, I HAVEN'T SEEN ONE YET. I WISH THEY WOULD COME  
03:06 PM 3 UP WITH ONE.

03:06 PM 4 Q. WHICH ONE WEIGHS MORE, THE CHIPPING GUN OR A  
03:06 PM 5 CHAINSAW?

03:06 PM 6 THE COURT: WELL, IS A A FIFTEEN-INCH CHAINSAW,  
03:06 PM 7 AN ELECTRIC OR A GAS? IS IT A TWENTY-ONE-INCH?

03:06 PM 8 BY MR. GARRIGAN:

03:07 PM 9 Q. HOW ABOUT AN EIGHTEEN-INCH GASOLINE CHAINSAW FROM  
03:07 PM 10 SEARS?

03:07 PM 11 A. THE CHIIPING GUN PROBABLY OUTWEIGHS IT.

03:07 PM 12 Q. OKAY. WHEN YOU USE THE CHIPPING GUN, HOW LONG ARE  
03:07 PM 13 YOU USING IT?

03:07 PM 14 A. IT ALL DEPENDS ON WHAT IS WRONG WITH THE CASTING.  
03:07 PM 15 IF IT'S GOT BAD "BURN-IN" ON IT, YOU'LL PROBABLY BE USING  
03:07 PM 16 IT ALL DAY.

03:07 PM 17 Q. THE OTHER TOOLS YOU SAID YOU USED WERE GRINDERS?

03:07 PM 18 A. UH-HUH.

03:07 PM 19 Q. HOW DOES THAT COMPARE TO A CHAINSAW?

03:07 PM 20 A. WITH YOUR TWO-INCH, IT'S LOUD ON THE CLOSED-IN AREA,  
03:07 PM 21 BUT IN AN OPEN AREA, YOU KNOW, IT'S JUST SEMI. BUT ALL OF  
03:07 PM 22 THEM CLOSED IN, THEY MAKE A LOUD NOISE.

03:07 PM 23 Q. DO YOU THINK LOUDER THAN A CHAINSAW?

03:08 PM 24 A. YEAH.

03:08 PM 25 Q. WHICH ONE IS BIGGER, THE GRINDERS OR THE CHAINSAW?



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03:08 PM 1 A. THE CHAINSAW PROBABLY WOULD BE.

03:08 PM 2 Q. WHEN YOU USE THE GRINDER, DO YOU HAVE TO USE THE  
03:08 PM 3 WEIGHT AND FORCE OF YOUR BODY TO WORK IT?

03:08 PM 4 A. YES.

03:08 PM 5 Q. OR WILL ITS OWN WEIGHT --

03:08 PM 6 A. YOU HAVE TO USE THE WEIGHT OF YOUR BODY.

03:08 PM 7 Q. AND HOW LONG DURING A TYPICAL SHIFT DO YOU WORK WITH  
03:08 PM 8 THE GRINDER?

03:08 PM 9 A. WELL, YOU PRETTY MUCH HAVE TO HAVE YOUR GRINDER ON  
03:08 PM 10 EVERYTHING. SO IF YOU'RE WORKING TEN HOURS, YOU'RE GOING  
03:08 PM 11 TO PRETTY MUCH USE YOUR GRINDER TEN HOURS.

03:08 PM 12 Q. IS THERE A LOT OF TURNOVER IN THE WORK FORCE IN THE  
03:08 PM 13 CLEANING ROOM? DO A LOT OF PEOPLE QUIT?

03:08 PM 14 A. OH, YES. YES, A LOT OF PEOPLE QUIT.

03:08 PM 15 Q. ARE THERE NEW GUYS COMING THROUGH?

03:09 PM 16 A. YES.

03:09 PM 17 Q. WHEN NEW GUYS COME IN, HOW OFTEN DO THEY JUST QUIT?

03:09 PM 18 A. WE'VE HAD SOME GO TO LUNCH AND NOT COME BACK. I  
03:09 PM 19 MEAN, YOU KNOW, IT ALL DEPENDS ON HOW BAD THEY WANT TO  
03:09 PM 20 WORK I GUESS. WE HAVE SOME MAYBE TWO DAYS, MAYBE A WEEK.

03:09 PM 21 Q. HOW LONG DOES IT TAKE ONE OF THE NEW GUYS TO GET  
03:09 PM 22 USED TO WORKING IN THE CLEANING ROOM?

03:09 PM 23 A. I DON'T THINK YOU EVER GET USED TO IT.

03:09 PM 24 Q. WELL, ARE THERE ANY PROBLEMS THAT ARE ASSOCIATED  
03:09 PM 25 WITH STARTING TO WORK IN THE CLEANING ROOM?

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03:09 PM 1 A. REPEAT YOUR QUESTION.

03:09 PM 2 THE COURT: ARE THERE PROBLEMS IN STARTING TO  
03:09 PM 3 WORK IN THE CLEANING ROOM, LEARNING THE JOB?

03:09 PM 4 THE WITNESS: IS IT PROBLEMS TO LEARN?

03:09 PM 5 THE COURT: YEAH.

03:09 PM 6 BY MR. GARRIGAN:

03:09 PM 7 Q. YES.

03:09 PM 8 A. PRETTY MUCH. THEY HAVE GUYS THAT IS SUPPOSED TO BE  
03:10 PM 9 SHOWING NEW GUYS HOW TO DO IT, BUT THEY HAVEN'T BEEN DOING  
03:10 PM 10 IT, YOU KNOW, THEY HAVEN'T BEEN CHIPPING AND GRINDING. SO  
03:10 PM 11 THEY PICK "D" GUYS TO TEACH THEM, YOU KNOW, AND I THINK  
03:10 PM 12 THAT'S A PROBLEM.

03:10 PM 13 Q. WHY IS THAT A PROBLEM?

03:10 PM 14 A. I MEAN, BECAUSE YOU COULD GET HURT NOT KNOWING WHAT  
03:10 PM 15 TO USE OR WHAT TO DO IN CLEANING THEM CASTINGS.

03:10 PM 16 Q. IS IT -- YOU SAID IT WAS NOISY IN THERE?

03:10 PM 17 A. YES.

03:10 PM 18 Q. CAN THE PEOPLE TALK TO EACH OTHER WHILE THEY'RE  
03:10 PM 19 WORKING?

03:10 PM 20 A. NO, YOU HAVE TO PRETTY MUCH GET RIGHT UP IN HIS EAR  
03:10 PM 21 TO TELL HIM WHAT YOU'VE GOT TO SAY.

03:10 PM 22 Q. AND SO WHEN YOU LEARN, HOW DO YOU -- IS IT JUST BY  
03:10 PM 23 WATCHING?

03:10 PM 24 A. PRETTY MUCH. PRETTY MUCH. YOU HAVE A GUY TRAINING  
03:10 PM 25 YOU AND YOU'RE LOOKING AND SEEING WHAT HE'S DOING, AND

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03:10 PM 1 THEN HE'S STOPPING AND TELLING YOU IN YOUR EAR, YOU KNOW,  
03:10 PM 2 PRETTY MUCH WHAT HE'S DOING TO THAT CASTING.

03:11 PM 3 Q. OKAY. AND AGAIN, THE NEW GUYS, WHEN THEY'RE JUST  
03:11 PM 4 LEARNING HOW TO DO IT, IS THERE ANY PHYSICAL PROBLEMS THEY  
03:11 PM 5 TYPICALLY HAVE?

03:11 PM 6 A. WITH THEIR HANDS. YOUR HANDS IS PROBABLY YOUR MOST  
03:11 PM 7 PHYSICAL PROBLEM FROM BEING BALLED UP ALL DAY.

03:11 PM 8 Q. WHAT HAPPENS TO THE HANDS?

03:11 PM 9 A. SOME OF THE THEM START COMPLAINING ABOUT "MAN, I  
03:11 PM 10 WOKE UP THIS MORNING AND I COULDN'T OPEN MY HAND."

03:11 PM 11 I JUST TELL THEM "WELCOME TO THE CLEANING ROOM."

03:11 PM 12 Q. YOU SAID IT WAS LOUD. HAS IT AFFECTED YOUR HEARING?

03:11 PM 13 A. MY WIFE SAY IT HAS. SHE SAY I HAVE TO HAVE THE T.V.  
03:11 PM 14 UP LOUDER THAN NORMAL. OR SHE COULD BE CALLING ME AND SHE  
03:11 PM 15 WOULD BE LIKE "YOU DIDN'T HEAR ME," YOU KNOW. SHE SAYS I  
03:11 PM 16 TALK LOUDER. SO I DON'T KNOW.

03:11 PM 17 Q. WHEN YOU WORK, DO YOU WEAR HEARING PROTECTION?

03:11 PM 18 A. YES.

03:12 PM 19 Q. WHAT SORT OF HEARING PROTECTION?

03:12 PM 20 A. WE'VE GOT EARPLUGS.

03:12 PM 21 Q. DID YOU HAVE PROBLEMS WITH YOUR HEARING BEFORE YOU  
03:12 PM 22 STARTED WORKING THERE?

03:12 PM 23 A. NO.

03:12 PM 24 Q. DID THE OTHER GUYS HAVE PROBLEMS WITH THEIR HEARING?

03:12 PM 25 A. SOME OF THEM. SOME OF THEM DO.

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03:12 PM 1 Q. DO THE GUYS WHO WORK THERE TEND TO TALK LOUD EVEN  
03:12 PM 2 WHEN THEY'RE AWAY FROM WORK?

03:12 PM 3 A. YES.

03:12 PM 4 Q. OKAY. AND THIS DIRT AND DUST THAT YOU TALKED  
03:12 PM 5 ABOUT --

03:12 PM 6 A. UH-HUH.

03:12 PM 7 Q. IS THAT SOMETHING THAT FOLLOWS YOU HOME?

03:12 PM 8 A. OH, YEAH, IT DEFINITELY FOLLOWS YOU HOME. I MEAN, I  
03:12 PM 9 LEAVE WORK AND MY WIFE WON'T ALLOW ME TO SIT ON ANYTHING  
03:12 PM 10 UNTIL I TAKE A SHOWER, BECAUSE IT'S STILL IN YOUR CLOTHES.

03:12 PM 11 Q. DO YOU HAVE TO WASH YOUR CLOTHES EVERY DAY AFTER YOU  
03:13 PM 12 WORK THEN?

03:13 PM 13 A. MAYBE TWO DAYS AFTER, YOU KNOW, SO THAT IT WILL GET  
03:13 PM 14 IT WHERE IT WON'T GET ON THE FLOORS OR WHATEVER.

03:13 PM 15 Q. DO YOU WASH YOUR OWN CLOTHES WITH ALL THE OTHER  
03:13 PM 16 FAMILY CLOTHES?

03:13 PM 17 A. OH, NO. NO.

03:13 PM 18 Q. TELL ME, ARE YOU HAVING ANY BREATHING PROBLEMS?

03:13 PM 19 A. SOMETIMES. SOMETIMES MY WIFE BE TELLING ME "SOUNDS  
03:13 PM 20 LIKE YOU STOPPED BREATHING" WHEN I BE SLEEPING AT NIGHT.  
03:13 PM 21 SO I DON'T -- YOU KNOW. AND THEN SOMETIMES IT BE A LITTLE  
03:13 PM 22 DIFFICULT TO BREATHE.

03:13 PM 23 Q. YOU SAID BEFORE THAT YOUR HAND WAS SORE?

03:13 PM 24 A. UH-HUH.

03:13 PM 25 Q. YOUR LEFT WRIST?

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03:13 PM 1 A. UH-HUH.

03:13 PM 2 Q. DOES THAT AFFECT THE THINGS YOU LIKE TO DO WHEN  
03:13 PM 3 YOU'RE NOT WORKING?

03:13 PM 4 A. OH, YEAH.

03:13 PM 5 Q. WHAT SORTS OF THINGS CAN YOU NO LONGER DO?

03:13 PM 6 A. LIKE PLAYING BASKETBALL, FOOTBALL, BASEBALL,  
03:13 PM 7 SWIMMING, THAT SORT OF STUFF.

03:14 PM 8 I PRETTY MUCH CAN'T REALLY TOSS MY DAUGHTERS UP  
03:14 PM 9 ANY MORE BECAUSE MY HAND IS SO SORE. SO I TRY NOT TO DO  
03:14 PM 10 THAT BECAUSE I DON'T WANT TO DROP THEM.

03:14 PM 11 THE COURT: TEN, TEN MINUTES, AND UNLESS I'M  
03:14 PM 12 WAYLAID BY PHONE CALLS, IT WILL BE TEN MINUTES.

03:14 PM 13 THE CSO: ALL RISE.

03:14 PM 14 (RECESS)

03:34 PM 15 THE COURT: YOU MAY CONTINUE, MR. GARRIGAN.

03:34 PM 16 MR. GARRIGAN: THANK YOU.

03:34 PM 17 BY MR. GARRIGAN:

03:34 PM 18 Q. MR. DEASON, TELL THE COURT, WOULD YOU, WHAT BOTHERS  
03:34 PM 19 YOU MOST ABOUT WORKING IN THE CLEANING ROOM?

03:34 PM 20 A. WHAT BOTHERS ME MOST IS, A FORTY-YEAR-OLD, AND MY  
03:34 PM 21 HEALTH IS WHAT IS MY MOST CONCERN AS FAR AS LIVING, LIVING  
03:34 PM 22 FIFTY YEARS OR SIXTY YEARS. I MEAN, THAT BOTHERS ME THE  
03:34 PM 23 MOST.

03:34 PM 24 THE PHYSICAL DEMANDING WORK AS IT IS, I MEAN,  
03:34 PM 25 THE USE OF MY HANDS, BREATHING, WELL, YOU KNOW, THAT

03:35 PM 1 BOTHERS ME THE MOST, MY PHYSICAL HEALTH.

03:35 PM 2 Q. I TAKE IT THAT OVER THE NINE YEARS YOU'VE WORKED  
03:35 PM 3 THERE YOU SAID THAT IT AFFECTS YOUR ABILITY TO EVEN PLAY  
03:35 PM 4 WITH YOUR KIDS?

03:35 PM 5 A. EXACTLY. MY HANDS ARE SO SORE, I CAN'T -- YOU KNOW,  
03:35 PM 6 MY DAUGHTER IS FOUR. SHE WOULD LIKE FOR ME TO TOSS HER  
03:35 PM 7 UP, BUT I CAN'T DO THAT BECAUSE I'M NOT GOING TO BE ABLE  
03:35 PM 8 TO CATCH HER BECAUSE OF MY HANDS.

03:35 PM 9 Q. DO YOU THINK YOUR PHYSICAL CONDITION IS GOING TO  
03:35 PM 10 IMPROVE OR GET WORSE IF YOU STAY IN THE FOUNDRY?

03:35 PM 11 A. OH, IT WILL PROBABLY GET WORSE.

03:35 PM 12 Q. OKAY. TELL ME, WHAT IS -- IN YOUR NINE YEARS  
03:35 PM 13 WORKING IN THE CLEANING ROOM, WHAT IS THE RACIAL  
03:35 PM 14 COMPOSITION OF THE WORK FORCE THERE?

03:36 PM 15 A. YOU'VE GOT MAYBE SIX PERCENT MEXICAN GUYS, MAYBE  
03:36 PM 16 THIRTY PERCENT BLACKS, AND THE REST WHITE.

03:36 PM 17 Q. HOW MANY WHITE GUYS WERE WORKING IN THE CLEANING  
03:36 PM 18 ROOM WHEN YOU STARTED?

03:36 PM 19 A. I WANT TO SAY ONE.

03:36 PM 20 Q. OKAY. IS THERE -- ARE THERE ANY WHITE GUYS THAT  
03:36 PM 21 HAVE BEEN WORKING THERE DURING THE WHOLE TIME YOU HAVE?

03:36 PM 22 A. ONE.

03:36 PM 23 Q. JUST ONE?

03:36 PM 24 A. YES.

03:36 PM 25 Q. JUZT ONE, ONE OUT OF THESE FIFTY-FIVE THAT ARE IN

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03:36 PM 1 THERE?

03:36 PM 2 A. CLIFF WISNETTE. CLIFF WISNETTE HIRED IN A DAY AFTER  
03:36 PM 3 I DID, AND HE'S STILL THERE.

03:36 PM 4 YOU HAVE KEITH KIDWELL, I MEAN, HE DRIVES A  
03:37 PM 5 FORKLIFT, HE WAS THERE BEFORE I GOT THERE, YOU KNOW.

03:37 PM 6 Q. BUT HE'S NOT A CHIPPER/GRINDER?

03:37 PM 7 A. NO, JUST CLIFF WISNETTE.

03:37 PM 8 Q. OKAY. AND SO CLIFF WISNETTE IS THE ONLY WHITE GUY  
03:37 PM 9 WHO HAS WORKED AS A CHIPPER/GRINDER IN THE CLEANING ROOM  
03:37 PM 10 PRETTY MUCH THE WHOLE TIME YOU HAVE?

03:37 PM 11 A. EXACTLY.

03:37 PM 12 Q. IS HE TREATED THE SAME AS YOU?

03:37 PM 13 A. NO.

03:37 PM 14 Q. DOES HE GET BETTER TREATMENT OR WORSE TREATMENT THAN  
03:37 PM 15 YOU?

03:37 PM 16 A. I WOULD SAY HE GET BETTER.

03:37 PM 17 Q. WHAT ARE SOME EXAMPLES?

03:37 PM 18 A. HE GET OPPORTUNITIES TO DRIVE THE FORKLIFT, SAY IF  
03:37 PM 19 KEITH KIDWELL DON'T COME IN, HE GET AN OPPORTUNITY TO  
03:37 PM 20 DRIVE THE FORKLIFT. HE GET AN OPPORTUNITY TO DO  
03:37 PM 21 INSPECTION WORK.

03:37 PM 22 Q. YOU'RE NEVER OFFERED THOSE OPPORTUNITIES?

03:37 PM 23 A. NO.

03:37 PM 24 Q. TELL ME, DURING MOST OF YOUR NINE YEARS HAVE THERE  
03:38 PM 25 BEEN A LOT OF OTHER WHITE GUYS THAT HAVE WORKED THERE AND

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03:38 PM 1 COME AND GONE?

03:38 PM 2 A. YES.

03:38 PM 3 Q. ANY OF THEM STAY LONG?

03:38 PM 4 A. I CAN'T RECALL THEIR NAMES, BUT IT WAS TWO BROTHERS  
03:38 PM 5 THAT STAYED MAYBE TWO YEARS. I CAN'T THINK OF THEIR NAMES  
03:38 PM 6 RIGHT OFF.

03:38 PM 7 Q. ALL RIGHT. WHAT'S THE MOST NUMBER OF WHITES THAT  
03:38 PM 8 HAVE BEEN WORKING IN THE CLEANING ROOM AT ANY TIME?

03:38 PM 9 A. AS FAR AS CHIPPING AND GRINDING OR JUST --

03:38 PM 10 Q. YEAH.

03:38 PM 11 A. TWO.

03:38 PM 12 Q. THAT WOULD BE THE TWO BROTHERS?

03:38 PM 13 A. YEAH. WELL, THREE WITH CLIFF.

03:38 PM 14 Q. OKAY. HAS THERE BEEN ANY CHANGE IN THE NUMBER OF  
03:38 PM 15 WHITES WORKING IN THE CLEANING ROOM?

03:38 PM 16 A. CHIPPING AND GRINDING?

03:38 PM 17 Q. YEAH.

03:38 PM 18 A. YOU'VE GOT TWO RIGHT NOW, CLIFF AND ANOTHER GUY THAT  
03:38 PM 19 THEY JUST HIRED.

03:38 PM 20 Q. OKAY. MORE RECENTLY HAVE THEY HIRED MORE WHITES  
03:39 PM 21 INTO THE CLEANING ROOM?

03:39 PM 22 A. YES.

03:39 PM 23 Q. AND HAS THAT JUST HAPPENED IN THE LAST FEW MONTHS  
03:39 PM 24 LEADING UP TO THE TRIAL?

03:39 PM 25 A. YES.

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03:39 PM 1 Q. TELL ME, HOW DO THE CONDITIONS IN THE CLEANING ROOM  
03:39 PM 2 AND THE FOUNDRY COMPARE TO OTHER DIVISIONS AT LUFKIN  
03:39 PM 3 INDUSTRIES?

03:39 PM 4 A. IT AIN'T NO COMPARISON. THE GEAR SHOP, THERE AIN'T  
03:39 PM 5 NO COMPARISON.

03:39 PM 6 Q. OKAY. HAVE YOU BEEN TO THE GEAR STOP?

03:39 PM 7 A. I WENT IN THERE WHEN I WORKED FOR MR. THOMPSON ONE  
03:39 PM 8 TIME, AND IT WAS CLEAN THEN, AND I'VE BEEN IN THERE SINCE  
03:39 PM 9 I'VE BEEN AT LUFKIN INDUSTRIES NOW, AND IT'S EVEN CLEANER.

03:39 PM 10 Q. AND BY GEAR SHOP, IS THAT POWER TRANSMISSION?

03:39 PM 11 A. I GUESS THAT'S WHAT THEY CALL IT, WHERE THEY MAKE  
03:39 PM 12 GEARS AT, PREPARE THEM, WHATEVER.

03:39 PM 13 Q. IT'S CLEAN?

03:39 PM 14 A. IT'S CLEAN.

03:39 PM 15 Q. HOW CLEAN IS IT?

03:40 PM 16 A. IT'S CLEAN. I MEAN, IT'S CLEAN, YOU KNOW.

03:40 PM 17 Q. COULD YOU PULL UP A CHAIR AND SIT DOWN AND EAT YOUR  
03:40 PM 18 LUNCH IN THERE?

03:40 PM 19 A. YEAH.

03:40 PM 20 Q. COULD YOU DO THAT IN THE CLEANING ROOM?

03:40 PM 21 A. NO.

03:40 PM 22 Q. DID YOU SAY IT WAS AIR-CONDITIONED?

03:40 PM 23 A. YES. I MEAN, THEY -- THEY TEMP-CONTROL THOSE GEARS,  
03:40 PM 24 YOU KNOW. I MEAN, THEY TREAT THEM BETTER THAN THEY TREAT  
03:40 PM 25 US.

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03:40 PM 1 Q. HAVE YOU SEEN ANY OF THE OTHER DIVISIONS?

03:40 PM 2 A. NO.

03:40 PM 3 Q. HAVE YOU BEEN INTO TRAILER OR OILFIELD?

03:40 PM 4 A. I'VE NEVER BEEN TO THEM.

03:40 PM 5 Q. WOULD YOU RATHER WORK IN THE FOUNDRY OR POWER  
03:40 PM 6 TRANSMISSION?

03:40 PM 7 A. POWER TRANSMISSION.

03:41 PM 8 Q. TELL ME, HAVE YOU DONE ANYTHING -- IN YOUR NINE  
03:41 PM 9 YEARS HAVE YOU DONE ANYTHING TO TRY TO GET OUT OF THE  
03:41 PM 10 CLEANING ROOM?

03:41 PM 11 A. YES.

03:41 PM 12 Q. WHAT HAVE YOU DONE?

03:41 PM 13 A. I'VE BIDDED ON JOBS THAT THEY'VE PUT UP. I MEAN,  
03:41 PM 14 YOU BID ON JOBS AND YOU CONSTANTLY BID ON JOBS, AND YOU  
03:41 PM 15 NEVER HEAR NOTHING OF WHY YOU DIDN'T GET IT OR, YOU KNOW,  
03:41 PM 16 WHO GOT IT, AND THEN THAT'S -- THAT'S DISCOURAGING.

03:41 PM 17 I'VE BIDDED ON TOOL ROOM JOBS, I'VE BIDDED ON  
03:41 PM 18 CRANE OPERATOR JOBS, I'VE BID ON NUMEROUS OF JOBS, BUT NO  
03:41 PM 19 EXPLANATION OF WHY I DIDN'T GET IT.

03:41 PM 20 Q. HAVE YOU EVER HEARD ANYBODY IN MANAGEMENT SAY THAT  
03:42 PM 21 THEY DIDN'T WANT TO LET PEOPLE OUT OF THE CLEANING ROOM?

03:42 PM 22 A. OH, YES. I FILED A GRIEVANCE ONE TIME ABOUT THE  
03:42 PM 23 TOOL ROOM JOB, AND WE WAS HAVING A MEETING, AND THEY WAS  
03:42 PM 24 LIKE "WELL, WE DON'T WANT TO REALLY LOSE EXPERIENCED  
03:42 PM 25 CHIPPERS AND GRINDERS." I MEAN, YOU KNOW, THAT'S JUST

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03:42 PM 1 SAYING "WELL, YOU'RE STUCK."

03:42 PM 2 Q. WHO SAID THAT?

03:42 PM 3 A. STEVE REYNOLDS, GERALD COUTEE.

03:42 PM 4 Q. WHO IS STEVE REYNOLDS?

03:42 PM 5 A. I THINK STEVE REYNOLDS IS THE PRODUCTION MANAGER OR  
03:42 PM 6 SOMETHING OVER THERE.

03:42 PM 7 Q. AND WAS HE EXPLAINING WHY THEY PASSED SOMEBODY OVER  
03:42 PM 8 FOR A PROMOTION?

03:42 PM 9 A. YEAH, WE -- ON THAT TOOL ROOM JOB THEY HAD A BID  
03:42 PM 10 LIST UP, AND WHAT IT WAS, IT WAS A -- ABOUT ELEVEN OF US  
03:42 PM 11 OR SO SIGNED IT, AND YOU HAD TWO MEXICAN GUYS WITH MORE  
03:42 PM 12 SENIORITY THAN ME, AND ONE MEXICAN GUY WAS TOLD THAT THEY  
03:43 PM 13 WASN'T GOING TO LET HIM HAVE IT BECAUSE THEY DIDN'T WANT  
03:43 PM 14 TO LOSE EXPERIENCED CHIPPERS AND GRINDERS.

03:43 PM 15 ANOTHER ONE WAS TOLD THAT HE DIDN'T SPEAK  
03:43 PM 16 ENGLISH GOOD.

03:43 PM 17 Q. OKAY. THESE GUYS HAVE THE SENIORITY?

03:43 PM 18 A. YEAH.

03:43 PM 19 Q. AND THEY SIGNED UP FOR THE BID SHEET?

03:43 PM 20 A. OH, YES.

03:43 PM 21 Q. NOW, HOW MANY PEOPLE SIGNED THE BID SHEET?

03:43 PM 22 THE COURT: ELEVEN.

03:43 PM 23 THE WITNESS: ABOUT ELEVEN OR SO.

03:43 PM 24 BY MR. GARRIGAN:

03:43 PM 25 Q. OKAY. DID THEY AWARD IT TO SOMEBODY ON THE BID

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03:43 PM 1 SHEET?

03:43 PM 2 A. NO.

03:43 PM 3 Q. WHO DID THEY AWARD IT TO?

03:43 PM 4 A. THEY AWARDED IT TO A GUY THAT HAD BEEN THERE TWO  
03:43 PM 5 WEEKS.

03:43 PM 6 Q. WHAT WAS HIS RACE?

03:43 PM 7 A. WHITE.

03:43 PM 8 Q. HE HAD ONLY BEEN WORKING TWO WEEKS?

03:43 PM 9 A. TWO WEEKS.

03:43 PM 10 Q. SO HE WOULD STILL BE PROBATIONARY?

03:44 PM 11 A. EXACTLY.

03:44 PM 12 Q. HE'S NOT EVEN ALLOWED TO SIGN A BID SHEET, IS HE?

03:44 PM 13 A. EXACTLY.

03:44 PM 14 Q. DID HE SIGN THE BID SHEET?

03:44 PM 15 A. NO.

03:44 PM 16 Q. IS THAT THE MEETING WHERE THEY GAVE YOU THESE THREE  
03:44 PM 17 REASONS FOR PASSING PEOPLE OVER?

03:44 PM 18 A. RIGHT.

03:44 PM 19 Q. DID THEY EVER EXPLAIN WHY THEY PASSED OVER ALL  
03:44 PM 20 ELEVEN OF THOSE PEOPLE?

03:44 PM 21 A. NO, THEY JUST GAVE US THREE THE REASON WHY WE DIDN'T  
03:44 PM 22 GET IT.

03:44 PM 23 Q. AND ONE OF THE REASONS, THEY JUST SAID "WE DON'T  
03:44 PM 24 WANT TO LET EXPERIENCED PEOPLE OUT OF THE CLEANING ROOM"?

03:44 PM 25 A. RIGHT.

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03:44 PM 1 Q. HAVE YOU EVER BID ON A FORKLIFT JOB?

03:44 PM 2 A. YES.

03:44 PM 3 Q. DID YOU EVER GET IT?

03:44 PM 4 A. NO.

03:44 PM 5 Q. DOES IT ALWAYS GO TO THE MOST EXPERIENCED PERSON?

03:44 PM 6 A. WELL, THAT'S WHAT THEY SAY, SO I WOULDN'T HAVE NO  
03:44 PM 7 IDEA WHO IT WAS.

03:44 PM 8 Q. DID YOU EVER SEE IT GET --

03:44 PM 9 DID YOU EVER SEE THEM HIRE SOMEBODY FROM OUTSIDE  
03:44 PM 10 TO DRIVE THE FORKLIFT INSTEAD OF --

03:45 PM 11 A. YES. I MEAN, JUST RECENTLY THEY HIRED A GUY AND PUT  
03:45 PM 12 HIM ON A FORKLIFT, WHERE GUYS THAT HAD BEEN CHIPPING AND  
03:45 PM 13 GRINDING SIGNED THE BID BUT DIDN'T GET IT.

03:45 PM 14 Q. SO THEY POSTED THE BID FOR THE FORKLIFT JOB?

03:45 PM 15 A. RIGHT.

03:45 PM 16 Q. CHIPPERS AND GRINDERS SIGNED UP FOR IT?

03:45 PM 17 A. RIGHT.

03:45 PM 18 Q. DID THAT INCLUDE BLACK GUYS, HISPANIC GUYS?

03:45 PM 19 A. PROBABLY SOME BLACK, HISPANIC. I REALLY --

03:45 PM 20 Q. AND THEY WENT AND HIRED A NEW GUY OFF THE STREET TO  
03:45 PM 21 DO IT?

03:45 PM 22 A. RIGHT.

03:45 PM 23 Q. NOW, YOU DID -- AS A RESULT OF YOUR GRIEVANCE --

03:45 PM 24 A. UH-HUH.

03:45 PM 25 Q. -- DID YOU GET THE STOREKEEPER/TOOL ROOM JOB?

## TRANSCRIPT OF PROCEEDINGS

218

03:45 PM 1 A. YEAH. IT WAS TWO YEARS LATER THEY CAME TO ME AND  
03:45 PM 2 THEY OFFERED ME THE JOB, AND THIS IS WHAT WAS SAID TO ME,  
03:46 PM 3 THAT THEY WOULD DROP ME DOWN TO TWELVE-0-3, AT THE TOP OF  
03:46 PM 4 STOREKEEPER PAY, SINCE I HAD REACHED THE TOP OF CHIPPING  
03:46 PM 5 AND GRINDER AND FINISHER PAY. AND THAT'S WHAT I ASSUMED  
03:46 PM 6 THAT WAS GOING TO TAKE PLACE, YOU KNOW. I AGREED TO IT,  
03:46 PM 7 AND --

03:46 PM 8 Q. WHO TOLD YOU THAT?

03:46 PM 9 A. GERALD COUTEE.

03:46 PM 10 Q. AND WHAT IS HIS POSITION?

03:46 PM 11 A. HE'S THE MANAGER OF THE CLEANING ROOM.

03:46 PM 12 Q. ALL RIGHT.

03:46 PM 13 MR. HAMEL: OBJECTION, HEARSAY, YOUR HONOR. MR.  
03:46 PM 14 COUTEE IS A CLASS MEMBER AS FAR AS I KNOW.

03:46 PM 15 MR. GARRIGAN: IS THAT PART OF THE OBJECTION?

03:46 PM 16 MR. HAMEL: YES, IT'S HEARSAY AS TO MR. COUTEE.

03:46 PM 17 THE COURT: IT'S SUSTAINED.

03:46 PM 18 BY MR. GARRIGAN:

03:46 PM 19 Q. DID YOU GET THE STOREKEEPER POSITION?

03:46 PM 20 A. YES.

03:46 PM 21 THE COURT: DO YOU STILL HAVE IT?

03:46 PM 22 THE WITNESS: NO. NO, SIR.

03:46 PM 23 THE COURT: HOW LONG DID YOU KEEP IT?

03:46 PM 24 THE WITNESS: FOUR MONTHS. JUDGE, I DID IT FOR  
03:47 PM 25 FOUR MONTHS, AND ONE MONDAY I COME IN TO WORK, AND THEY

## TRANSCRIPT OF PROCEEDINGS

219

03:47 PM 1 THEY WAS TELLING ME THAT THEY HAD DROPPED MY PAY TO TEN  
03:47 PM 2 THIRTY, FROM TWELVE FIFTY-TWO TO TEN THIRTY.

03:47 PM 3 AND I'M ASKING WHAT HAPPENED, AND THEY'RE  
03:47 PM 4 TELLING ME THAT THE UNION MET WITH STEVE REYNOLDS AND THEY  
03:47 PM 5 DECIDED TO DROP MY PAY TO TEN THIRTY.

03:47 PM 6 AND I ASKED WHY, AND THEY SAID BECAUSE I DIDN'T  
03:47 PM 7 HAVE EXPERIENCE IN DOING STOREKEEPER, BUT I HAD BEEN DOING  
03:47 PM 8 STOREKEEPER. I HAD BEEN DOING IT WHEN THE GUY GO ON  
03:47 PM 9 VACATION, I WOULD FILL IN FOR HIM. AND FOR SOME REASON  
03:47 PM 10 THEY DROP MY PAY TO TEN THIRTY, AND I'M LIKE, YOU KNOW,  
03:47 PM 11 THAT'S TOO BIG OF A PAY CUT FOR ME TO TAKE.

03:47 PM 12 SO I TELL -- YOU KNOW --

03:47 PM 13 BY MR. GARRIGAN:

03:47 PM 14 Q. THAT WASN'T PART OF THE ORIGINAL DEAL, WAS IT?

03:47 PM 15 A. NO.

03:47 PM 16 Q. OKAY.

03:47 PM 17 MR. GARRIGAN: YOUR HONOR, WHEN GERALD COUTEE  
03:47 PM 18 TOLD HIM HE WOULD GET PAID THE TOP OF STOREKEEPER PAY, I  
03:48 PM 19 CLEARLY WAS NOT SUBMITTING THAT FOR THE TRUTH OF THE  
03:48 PM 20 MATTER STATED. IT DIDN'T HAPPEN. IT WAS JUST TO SHOW YOU  
03:48 PM 21 WHAT THE AGREEMENT HAD BEEN.

03:48 PM 22 MR. HAMEL: WELL, YOUR HONOR, THAT'S CLEARLY FOR  
03:48 PM 23 THE TRUTH OF THE PROPOSITION. HE SAYS HE WANTS TO  
03:48 PM 24 TESTIFY.

03:48 PM 25 THE COURT: IT CERTAINLY IS. IT CERTAINLY IS.

## TRANSCRIPT OF PROCEEDINGS

220

03:48 PM 1 I DON'T KNOW WHETHER MR. COUTEE IS -- HE'S  
03:48 PM 2 LISTED AS A WITNESS. I DON'T KNOW WHETHER HE'S GOING TO  
03:48 PM 3 TESTIFY OR NOT.

03:48 PM 4 MR. GARRIGAN: I DON'T EITHER. BUT HE IS ALSO  
03:48 PM 5 IN MANAGEMENT, SO IT'S AN ADMISSION AS WELL.

03:48 PM 6 MR. HAMEL: IT CAN'T BE AN ADMISSION AGAINST A  
03:48 PM 7 PARTY OPPONENT WHEN HE'S A PLAINTIFF, WHETHER HE'S IN  
03:48 PM 8 MANAGEMENT OR NOT. I MEAN, THEY'VE TOLD US REPEATEDLY WE  
03:48 PM 9 CAN'T TALK TO ANY OF OUR MANAGERS BECAUSE THEY'RE CLASS  
03:48 PM 10 MEMBERS, AND IF THEY'RE PLAINTIFFS, THEY'RE PLAINTIFFS.

03:48 PM 11 THE COURT: I JUST A MADE A COMMENT. I DON'T  
03:48 PM 12 KNOW WHETHER HE'S GOING TO TESTIFY OR NOT.

03:48 PM 13 MR. GARRIGAN: I DON'T EITHER.

03:48 PM 14 THE COURT: ALL RIGHT.

03:49 PM 15 MR. GARRIGAN: THANK YOU, MR. DEASON.

03:49 PM 16 I'LL PASS THE WITNESS, YOUR HONOR.

03:49 PM 17 THE COURT: ALL RIGHT. THANK YOU.

03:49 PM 18 CROSS-EXAMINATION

03:49 PM 19 BY MR. HAMEL:

03:49 PM 20 Q. GOOD AFTERNOON, MR. DEASON. I'M DOUG HAMEL.

03:49 PM 21 A. HOW YOU DOING?

03:49 PM 22 Q. LET ME TAKE YOU BACK, MR. DEASON, TO THE EARLIER  
03:49 PM 23 PART OF YOUR TESTIMONY. IT'S MY UNDERSTANDING THAT YOU  
03:49 PM 24 WENT INTO THE TEXAS WORKFORCE COMMISSION AND SAID THAT YOU  
03:50 PM 25 WERE LOOKING FOR WORK, AM I CORRECT IN THAT?

03:50 PM 1 A. THAT'S CORRECT.

03:50 PM 2 Q. OKAY. AND YOU FILLED OUT THEIR FORMS ABOUT WHAT  
03:50 PM 3 SORT OF WORK YOU HAD DONE BEFORE AND WHAT YOU WERE LOOKING  
03:50 PM 4 FOR, RIGHT?

03:50 PM 5 A. RIGHT.

03:50 PM 6 Q. AND THEN AT SOME POINT IN TIME THEY CALLED YOU UP  
03:50 PM 7 AND THEY SAID THAT THERE WAS AN OPENING AT LUFKIN  
03:50 PM 8 INDUSTRIES, RIGHT?

03:50 PM 9 A. WELL, THEY DIDN'T SAY AN OPENING AT LUFKIN  
03:50 PM 10 INDUSTRIES, THEY SAID I HAD AN INTERVIEW WITH LUFKIN  
03:50 PM 11 INDUSTRIES.

03:50 PM 12 Q. DID THEY ASK YOU IF YOU WANTED AN INTERVIEW?

03:50 PM 13 A. DID THEY ASK ME?

03:50 PM 14 Q. YEAH.

03:50 PM 15 A. YES. I MEAN, THAT'S PART OF FILLING OUT THE  
03:50 PM 16 PAPERWORK.

03:50 PM 17 Q. AND THEY TOLD YOU THAT THE INTERVIEW WAS FOR THE  
03:50 PM 18 FOUNDRY, ISN'T THAT RIGHT?

03:50 PM 19 A. YES.

03:50 PM 20 Q. OKAY. AND YOU CAME INTO THE TEXAS WORKFORCE  
03:50 PM 21 COMMISSION, RIGHT?

03:50 PM 22 A. RIGHT.

03:50 PM 23 Q. AND THE RECEPTIONIST GAVE YOU A LUFKIN JOB  
03:50 PM 24 APPLICATION, RIGHT?

03:50 PM 25 A. UH-HUH.



TRANSCRIPT OF PROCEEDINGS

222

03:50 PM 1 Q. AND YOU FILLED IT OUT, RIGHT?

03:50 PM 2 A. WELL, I GOT THE APPLICATION WHEN I WENT FOR THE  
03:50 PM 3 INTERVIEW WITH BARBAY.

03:50 PM 4 Q. OKAY. SO YOU GO OVER TO THE COMPANY IN 1994, RIGHT,  
03:51 PM 5 AND YOU GET AN APPLICATION ACCORDING TO YOUR TESTIMONY?

03:51 PM 6 A. UH-HUH.

03:51 PM 7 Q. HE GAVE YOU ONE AND YOU FILLED IT OUT, RIGHT?

03:51 PM 8 A. RIGHT.

03:51 PM 9 Q. OKAY. AND YOU HAVEN'T TALKED TO MR. BARBAY YET I  
03:51 PM 10 TAKE IT?

03:51 PM 11 A. EXCUSE ME?

03:51 PM 12 Q. YOU HADN'T TALKED TO HIM YET, THEY JUST GAVE YOU AN  
03:51 PM 13 APPLICATION?

03:51 PM 14 A. I FILLED OUT THE APPLICATION AT THE WORKFORCE  
03:51 PM 15 COMMISSION, AND THEY CALLED ME AND SAID I HAD AN INTERVIEW  
03:51 PM 16 WITH MR. BARBAY. SO I FILLED OUT THE APPLICATION THERE  
03:51 PM 17 AND HE SENT ME OVER TO TALK TO LOUIS KILLINGSWORTH.

03:51 PM 18 Q. OKAY. DID YOU FILL OUT THE LUFKIN INDUSTRIES'  
03:51 PM 19 APPLICATION?

03:51 PM 20 A. WHEN I WAS THERE WITH MR. BARBAY.

03:51 PM 21 Q. WHEN YOU WENT TO MR. BARBAY?

03:51 PM 22 A. RIGHT.

03:51 PM 23 Q. SO YOU WENT IN AND YOU SAT DOWN DOWN AND HE GAVE YOU  
03:51 PM 24 AN APPLICATION AND YOU FILLED IT OUT?

03:51 PM 25 A. RIGHT.

## TRANSCRIPT OF PROCEEDINGS

223

03:51 PM 1 Q. OKAY. AND YOU GAVE IT BACK TO HIM, AND THEN HE HAD  
03:51 PM 2 AN INTERVIEW WITH YOU?

03:51 PM 3 A. RIGHT. I HAD AN INTERVIEW WITH HIM. HE CALLED ME  
03:51 PM 4 FOR AN INTERVIEW.

03:51 PM 5 Q. ALL RIGHT. IT WAS AFTER YOU DID YOUR APPLICATION  
03:51 PM 6 THOUGH, RIGHT?

03:51 PM 7 A. RIGHT.

03:51 PM 8 Q. OKAY. NOW, LET ME SHOW YOU SOMETHING ON THE SCREEN.

03:51 PM 9 WOULD YOU PUT UP DEASON 0014, PLEASE?

03:52 PM 10 AND ZOOM ON THAT.

03:52 PM 11 THIS IS YOUR APPLICATION FOR EMPLOYMENT AT

03:52 PM 12 LUFKIN. THAT'S YOUR HANDWRITING, ISN'T IT?

03:52 PM 13 A. RIGHT.

03:52 PM 14 Q. AND JUST BELOW THAT LEGEND THAT SAYS THAT PEOPLE ARE

03:52 PM 15 CONSIDERED WITHOUT REGARD TO RACE, YOU WROTE IN WHAT JOB

03:52 PM 16 YOU WERE APPLYING FOR, ISN'T THAT RIGHT?

03:52 PM 17 A. RIGHT.

03:52 PM 18 Q. AND THE JOB YOU WERE APPLYING FOR WAS WHAT?

03:52 PM 19 A. CHIPPER/GRINDER.

03:52 PM 20 Q. OKAY. GO TO DEASON 0016.

03:52 PM 21 ZOOM IN ON THE FIRST BOX. NO, I'M SORRY, THE

03:52 PM 22 THIRD BOX.

03:52 PM 23 THE APPLICATION YOU HAD AT LUFKIN ASKED YOU TO

03:52 PM 24 GIVE THEM WHAT EXPERIENCE YOU HAD HAD WORKING BEFORE,

03:52 PM 25 ISN'T THAT RIGHT?

TRANSCRIPT OF PROCEEDINGS

224

03:52 PM 1 A. RIGHT.

03:52 PM 2 Q. AND THE JOB THAT YOU HAD HAD THIRD BACK I GUESS WAS  
03:52 PM 3 WITH -- WAS IN A FOUNDRY, WASN'T IT?

03:52 PM 4 A. RIGHTS.

03:52 PM 5 Q. AND THE JOB YOU DID THERE WAS CHIPPING AND GRINDING  
03:52 PM 6 IN THE FOUNDRY?

03:52 PM 7 A. RIGHT.

03:52 PM 8 Q. OKAY. AND THEN GO UP TO THE FIRST BOX, PLEASE. I'M  
03:53 PM 9 SORRY. GO BACK TO THE THIRD BOX.

03:53 PM 10 THE JOB YOU HAD IN THE --

03:53 PM 11 IS THAT TEXAS FOUNDRY?

03:53 PM 12 A. UH-HUH.

03:53 PM 13 Q. OKAY. AND THEY HAD TO LET YOU GO FOR LACK OF WORK,  
03:53 PM 14 IS THAT RIGHT?

03:53 PM 15 A. RIGHT.

03:53 PM 16 Q. OKAY. AND THEN THE MOST RECENT JOB YOU HAD -- GO UP  
03:53 PM 17 TO ONE -- THE MOST RECENT JOB YOU HAD WAS WITH ANOTHER  
03:53 PM 18 FOUNDRY OPERATION, ISN'T THAT RIGHT?

03:53 PM 19 A. RIGHT.

03:53 PM 20 Q. GENCO?

03:53 PM 21 A. UH-HUH.

03:53 PM 22 Q. NOW, GENCO IS IN LUFKIN, TEXAS, TOO, ISN'T IT?

03:53 PM 23 A. IT WAS. I THINK THEY CLOSED DOWN.

03:53 PM 24 Q. THEY WENT OUT OF BUSINESS?

03:53 PM 25 A. RIGHT.

03:53 PM 1 Q. OKAY. AND THE JOB THAT YOU HAD AT GENCO WAS  
03:53 PM 2 BASICALLY CLEANING AND GRINDING AND SANDBLASTING, RIGHT?

03:53 PM 3 A. RIGHT.

03:53 PM 4 Q. SO WHEN YOU WENT TO LUFKIN --

03:53 PM 5 WELL, I GUESS WHEN YOU WENT TO THE TWC, YOU TOLD  
03:53 PM 6 THEM WHAT YOUR PRIOR EXPERIENCE WAS, RIGHT?

03:53 PM 7 A. RIGHT.

03:53 PM 8 Q. AND WHEN YOU WENT TO LUFKIN, YOU WENT INTO THE SAME  
03:53 PM 9 LINE OF WORK THAT YOU HAD HAD AT YOUR PREVIOUS EMPLOYMENT?

03:53 PM 10 A. RIGHT.

03:53 PM 11 Q. OKAY. NOW, WHEN YOU WENT IN TO LUFKIN, I'M CORRECT,  
03:54 PM 12 AM I NOT, THAT YOU STARTED AS A GENERAL FOUNDRYMAN?

03:54 PM 13 A. RIGHT.

03:54 PM 14 Q. AND ANYBODY WHO IS A GENERAL FOUNDRYMAN AFTER THEY  
03:54 PM 15 FINISH THEIR PROBATIONARY PERIOD, IF THEY WANT TO GO INTO  
03:54 PM 16 THE CLEANING AND GRINDING ROOM, THEY CAN GO THERE, CAN'T  
03:54 PM 17 THEY?

03:54 PM 18 A. IT ALL DEPENDS ON WHAT DEPARTMENT YOU'RE IN.

03:54 PM 19 Q. WELL, ISN'T IT CALLED A PERPETUAL PROMOTION? IF YOU  
03:54 PM 20 WANT TO GO DO THAT WORK, BECAUSE THEY NEED PEOPLE TO DO  
03:54 PM 21 IT, YOU CAN GET IN THERE AND GO DO IT, ISN'T THAT RIGHT?

03:54 PM 22 A. WELL, I HAVEN'T SEEN ANYBODY VOLUNTEERING TO COME  
03:54 PM 23 DO IT.

03:54 PM 24 Q. WELL, MAYBE NOT A LOT OF PEOPLE WANT TO DO IT, BUT  
03:54 PM 25 IF THEY WANT TO, THEY CAN?

03:54 PM 1 A. I SUPPOSE.

03:54 PM 2 Q. OKAY. NOW, MR. DEASON, DO YOU KNOW HOW MUCH YOU'VE  
03:54 PM 3 MADE THIS YEAR SO FAR?

03:54 PM 4 A. NOT RIGHT OFFHAND.

03:54 PM 5 Q. WOULD ABOUT -- WOULD THIRTY-FIVE THOUSAND NINE  
03:54 PM 6 HUNDRED AND NINETY-EIGHT DOLLARS BE ABOUT RIGHT?

03:54 PM 7 THE COURT: HOW MUCH?

03:54 PM 8 MR. HAMEL: THIRTY-FIVE THOUSAND NINE HUNDRED  
03:55 PM 9 AND NINETY-EIGHT DOLLARS.

03:55 PM 10 THE WITNESS: I DON'T THINK THAT'S RIGHT.

03:55 PM 11 BY MR. HAMEL:

03:55 PM 12 Q. YOU DON'T THINK IT'S RIGHT? YOU DON'T THINK THAT  
03:55 PM 13 THIS YEAR YOU'RE GOING TO CLEAR ABOUT FORTY THOUSAND  
03:55 PM 14 DOLLARS?

03:55 PM 15 A. NO.

03:55 PM 16 Q. OKAY. MR. DEASON --

03:55 PM 17 THE COURT: DO YOU WORK A LOT OF OVERTIME?

03:55 PM 18 THE WITNESS: PRETTY MUCH.

03:55 PM 19 THE COURT: AND YOUR RATE OF PAY IS WHAT?

03:55 PM 20 THE WITNESS: TWELVE EIGHTY-THREE.

03:55 PM 21 THE COURT: TWELVE WHAT?

03:55 PM 22 THE WITNESS: TWELVE EIGHTY-THREE. WE JUST GOT  
03:55 PM 23 A RAISE.

03:55 PM 24 THE COURT: A FORTY-HOUR WEEK?

03:55 PM 25 THE WITNESS: RIGHT.



TRANSCRIPT OF PROCEEDINGS

227

03:55 PM 1 THE COURT: DO YOU GET A TWO-WEEK VACATION?

03:55 PM 2 THE WITNESS: RIGHT.

03:55 PM 3 THE COURT: TIMES FIFTY WEEKS. ALL RIGHT.

03:55 PM 4 MR. HAMEL: WELL --

03:55 PM 5 THE COURT: I'VE MULTIPLIED IT OUT.

03:55 PM 6 MR. HAMEL: I UNDERSTAND, YOUR HONOR.

03:55 PM 7 BY MR. HAMEL:

03:55 PM 8 Q. YOUR STANDARD WORKWEEK IS A FORTY-HOUR WEEK, RIGHT?

03:55 PM 9 A. RIGHT.

03:55 PM 10 Q. BUT YOU GET A LOT OF OVERTIME, DON'T YOU?

03:55 PM 11 A. RIGHT.

03:55 PM 12 Q. AND THAT OVERTIME ADDS UP, DOESN'T IT?

03:55 PM 13 A. I SUPPOSE.

03:55 PM 14 Q. SO YOUR BASE RATE MAY BE ABOUT, I DON'T KNOW,

03:55 PM 15 TWENTY-FIVE, TWENTY-SIX, TWENTY-SEVEN THOUSAND DOLLARS,

03:55 PM 16 BUT YOU'VE DONE A LOT OF OVERTIME WORK THIS YEAR, HAVEN'T

03:55 PM 17 YOU?

03:55 PM 18 THE COURT: TWENTY-FIVE SIX SIXTY.

03:56 PM 19 MR. GARRIGAN: I THINK THAT'S RIGHT, YOUR HONOR.

03:56 PM 20 BY MR. HAMEL:

03:56 PM 21 Q. YOU'VE DONE A LOT OF OVERTIME WORK THIS YEAR,

03:56 PM 22 HAVEN'T YOU?

03:56 PM 23 A. YEAH.

03:56 PM 24 Q. OKAY. AND WHEN YOU DO OVERTIME WORK, YOU GET PAID

03:56 PM 25 ABOUT NINETTEN DOLLARS AN HOUR, DON'T YOU?

TRANSCRIPT OF PROCEEDINGS

228

03:56 PM 1 A. I SUPPOSE.

03:56 PM 2 Q. OKAY.

03:56 PM 3 THE COURT: YOU GET PAID TIME AND A HALF, DON'T  
03:56 PM 4 YOU?

03:56 PM 5 THE WITNESS: RIGHT. YES, SIR.

03:56 PM 6 BY MR. HAMEL:

03:56 PM 7 Q. NOW, MR. DEASON, YOU HAVE TESTIFIED THAT YOU WERE --  
03:56 PM 8 YOU ONCE BID FOR A STOREKEEPER POSITION, ISN'T THAT RIGHT?

03:56 PM 9 A. RIGHT.

03:56 PM 10 Q. OKAY. AND AT THE TIME THAT YOU BID FOR THE  
03:56 PM 11 STOREKEEPER POSITION, YOU WERE TOLD THAT YOU COULDN'T --  
03:56 PM 12 YOU WOULDN'T BE CONSIDERED FOR THAT POSITION BECAUSE IT  
03:56 PM 13 WOULD BE A DEMOTION, ISN'T THAT RIGHT?

03:56 PM 14 A. RIGHT.

03:56 PM 15 Q. OKAY. AND YOU WEREN'T IN FACT EVEN THE SENIOR  
03:56 PM 16 BIDDER FOR THAT STOREKEEPER POSITION, WERE YOU?

03:56 PM 17 A. RIGHT.

03:56 PM 18 Q. LET ME ASK YOU TO PUT UP DEASON 5, PLEASE.

03:57 PM 19 OKAY. ZOOM ON THE TEXT, JUST THE TYPED TEXT.

03:57 PM 20 SORRY.

03:57 PM 21 NOW, IS THAT A LIST OF THE PEOPLE WHO BID FOR  
03:57 PM 22 THAT STOREKEEPER POSITION AS FAR AS YOU CAN TELL?

03:57 PM 23 A. THAT'S THE LIST.

03:57 PM 24 Q. OKAY. AND I THINK YOU TOLD ME THAT MR. RODRIQUEZ  
03:57 PM 25 AND MR. MUNEZ WERE BOTH TOLD THAT THEY COULDN'T LEAVE THE

## TRANSCRIPT OF PROCEEDINGS

229

03:57 PM 1 CHIPPER/GRINDER, FINISHER CLASSIFICATION, JUST AS YOU  
03:57 PM 2 COULDN'T, BECAUSE IT WAS A DEMOTION, ISN'T THAT RIGHT?  
03:57 PM 3 A. RIGHT.  
03:57 PM 4 Q. AND MR. DELEON, THE FORKLIFT/TOWMOTOR OPERATOR --  
03:57 PM 5 I'M SORRY. MR. SHAW, WHO WAS THE MELTER "A," COULDN'T GET  
03:57 PM 6 THE BID BECAUSE THAT'S A DEMOTION FOR HIM, TOO, ISN'T IT?  
03:58 PM 7 A. I DON'T EVEN KNOW MR. SHAW, SO I REALLY DON'T KNOW.  
03:58 PM 8 Q. YOU DON'T KNOW THAT MR. SHAW IS WHITE?  
03:58 PM 9 A. I HAVEN'T NEVER SEEN MR. SHAW, SO I DON'T REALLY  
03:58 PM 10 KNOW.  
03:58 PM 11 Q. OKAY. AND YOU WERE FIFTH ON THE SENIORITY LIST,  
03:58 PM 12 ISN'T THAT RIGHT?  
03:58 PM 13 A. NO, NOT ON THE LIST THEY SHOWED ME. I WAS THIRD.  
03:58 PM 14 Q. THIRD ON THE LIST THEY SHOWED YOU?  
03:58 PM 15 A. EXACTLY.  
03:58 PM 16 Q. OKAY. NOW, DID THE UNION EVER SHOW YOU THE  
03:58 PM 17 EXPLANATION OF THE COMPANY WITH RESPECT TO THIS SITUATION?  
03:58 PM 18 A. I WAS THE ONE WHO FILED THE GRIEVANCE.  
03:58 PM 19 Q. OKAY. WOULD YOU PUT UP DEASON 0006, PLEASE?  
03:58 PM 20 OKAY. DO YOU RECALL GETTING AN EXPLANATION THAT  
03:58 PM 21 FOR RODRIGUEZ, DIAZ, DEASON AND SHAW, THAT IT WOULD HAVE  
03:59 PM 22 BEEN A DEMOTION, AND THAT MR. GONZALES AND TOWNSEND AND  
03:59 PM 23 MURPHY WERE INTERVIEWED AND DIDN'T MEET THE QUALIFICATIONS  
03:59 PM 24 NECESSARY FOR A STOREKEEPER, RIGHT?  
03:59 PM 25 A. I DON'T REMEMBER THAT.

## TRANSCRIPT OF PROCEEDINGS

230

03:59 PM 1 Q. OKAY. DO YOU REMEMBER BEING TOLD THAT THE OTHER  
03:59 PM 2 GUYS WHO WERE ON THE LIST HADN'T BOTHERED TO COME FOR AN  
03:59 PM 3 INTERVIEW?  
03:59 PM 4 A. NO, I DON'T REMEMBER BEING TOLD THAT.  
03:59 PM 5 Q. OKAY. NOW, IS IT IN FACT THE CASE THAT TO DO A  
03:59 PM 6 STOREKEEPER JOB YOU HAVE TO SOME BASIC KNOWLEDGE OF  
03:59 PM 7 STOREKEEPING, ISN'T THAT RIGHT?  
03:59 PM 8 A. THAT'S RIGHT.  
03:59 PM 9 Q. OKAY. AND YOU GET -- THERE'S AN ASSESSMENT DONE AS  
03:59 PM 10 TO WHETHER OR NOT YOU CAN BE A STOREKEEPER, ISN'T THERE?  
03:59 PM 11 A. MEANING WHAT?  
03:59 PM 12 Q. MEANING THEY ASK YOU IF YOU HAVE ANY TYPING SKILLS,  
03:59 PM 13 THEY ASK YOU IF YOU HAVE ANY COMPUTER SKILLS, IF YOU HAVE  
03:59 PM 14 KNOWLEDGE OF RECEIVING OR SHIPPING OR THAT SORT OF STUFF.  
03:59 PM 15 A. WHO ASKS THAT?  
03:59 PM 16 Q. SUPERVISORS OR THE STOREKEEPERS.  
04:00 PM 17 A. NO.  
04:00 PM 18 Q. YOU DON'T RECALL THAT?  
04:00 PM 19 A. NO, NOBODY DID.  
04:00 PM 20 Q. OKAY. DO YOU RECALL THAT THE UNION TOLD YOU THAT  
04:00 PM 21 THEY HAD GOTTEN -- THAT THEY HAD FILED A GRIEVANCE ON YOUR  
04:00 PM 22 BEHALF?  
04:00 PM 23 A. RIGHT.  
04:00 PM 24 Q. OKAY. AND LET ME --  
04:00 PM 25 PUT UP DEASON 001. THAT'S A LITTLE HARD TO

TRANSCRIPT OF PROCEEDINGS

231

04:00 PM 1 READ.

04:00 PM 2 THIS IS THE GRIEVANCE LET ME TELL YOU THAT WAS  
04:00 PM 3 FILED ON YOUR BEHALF.

04:00 PM 4 GO DOWN TO THE SIGNATURE BLOCK, PLEASE.

04:00 PM 5 DO YOU KNOW A LARRY THIGPEN?

04:00 PM 6 A. YEAH.

04:00 PM 7 Q. HE'S THE PRESIDENT OF THE UNION, ISN'T HE?

04:00 PM 8 A. RIGHT.

04:00 PM 9 Q. HE'S A WHITE GUY?

04:00 PM 10 A. RIGHT.

04:00 PM 11 Q. AND HE FILED THIS GRIEVANCE ON YOUR BEHALF, SAYING  
04:00 PM 12 THAT THERE OUGHT TO BE A RIGHT TO ALLOW SOMEBODY TO TAKE A  
04:00 PM 13 DEMOTION EVEN THOUGH THE CONTRACT DOESN'T PROVIDE FOR IT?

04:00 PM 14 MR. GARRIGAN: YOUR HONOR, I NEED TO OBJECT.

04:00 PM 15 HE'S JUST TELLING THE MAN WHAT SOMEBODY ELSE SAID.

04:00 PM 16 THE COURT: I'LL TAKE IT INTO CONSIDERATION. HE  
04:00 PM 17 CAN IDENTIFY THE GRIEVANCE AND IDENTIFY THIGPEN, AND HE  
04:00 PM 18 CAN INQUIRE WHETHER OR NOT HE MADE THAT COMMENT TO ANYONE,  
04:01 PM 19 THAT YOU COULD TAKE A DEMOTION IF YOU WANTED TO, WHETHER  
04:01 PM 20 IT'S IN THE AGREEMENT OR NOT.

04:01 PM 21 DO YOU FEEL THAT WAY, MR. DEASON?

04:01 PM 22 THE WITNESS: THAT'S WHAT THE GRIEVANCE -- THE  
04:01 PM 23 UNION REPRESENTATIVE SAID. I DON'T REMEMBER MR. THIGPEN  
04:01 PM 24 SAYING IT, BUT I REMEMBER -- I CAN'T THINK OF HIS NAME.  
04:01 PM 25 THE OTHER GUY SAID IT THAT CAME DOWN THAT FILED THE

## TRANSCRIPT OF PROCEEDINGS

232

04:01 PM 1 GRIEVANCE. HE WAS TELLING THEM THAT A MAN OUGHT TO HAVE A  
04:01 PM 2 CHOICE ON IF HE WANTED TO TAKE A DEMOTION OR NOT. IT  
04:01 PM 3 WASN'T ABOUT THE MONEY, IT WAS ABOUT BETTER HEALTH OR A  
04:01 PM 4 BETTER JOB, AND THAT'S WHAT HE WAS SAYING.

04:01 PM 5 BY MR. HAMEL:

04:01 PM 6 Q. OKAY. AND THE COMPANY --

04:01 PM 7 THE COURT: WAS THAT THE UNION REPRESENTATIVE  
04:01 PM 8 TALKING TO YOU?

04:01 PM 9 THE WITNESS: WELL, HE WAS TELLING -- HE WAS  
04:01 PM 10 TELLING STEVE REYNOLDS THIS.

04:01 PM 11 THE COURT: IN YOUR PRESENCE?

04:01 PM 12 THE WITNESS: WELL, WE WAS THERE AT THE MEETING.

04:01 PM 13 THE COURT: OKAY.

04:01 PM 14 THE WITNESS: YEAH.

04:02 PM 15 THE COURT: THE OBJECTION IS OVERRULED.

04:02 PM 16 BY MR. HAMEL:

04:02 PM 17 Q. OKAY. AND AM I CORRECT, MR. DEASON, THAT THE UNION  
04:02 PM 18 ON YOUR BEHALF AND ON ONE OF THE OTHER EMPLOYEE'S BEHALF  
04:02 PM 19 NEGOTIATED AN AGREEMENT ON THIS GRIEVANCE WITH THE  
04:02 PM 20 COMPANY, AND THE AGREEMENT WAS THAT THEY WOULD FIRST OFFER  
04:02 PM 21 THE NEXT STOREKEEPER POSITION THAT CAME OPEN TO MR. MUNEZ,  
04:02 PM 22 AND IF HE DECLINED IT, THEY WOULD OFFER IT TO YOU?

04:02 PM 23 A. NO, THEY SAID THEY WOULD GIVE IT TO ME. THEY HAD  
04:02 PM 24 ALREADY TOLD MR. MUNEZ THAT HE WASN'T GOING TO GET IT  
04:02 PM 25 BECAUSE THEY DIDN'T WANT TO LOSE AN EXPERIENCED CHIPPER

TRANSCRIPT OF PROCEEDINGS

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04:02 PM 1 AND GRINDER.

04:02 PM 2 Q. PUT UP DEASON 0013, PLEASE.

04:02 PM 3 NOW, MR. DEASON, THIS IS A LETTER --

04:02 PM 4 GO TO WHO IT GOES TO.

04:03 PM 5 IT'S A LETTER THAT GOES TO THE BUSINESS AGENT OF  
04:03 PM 6 THE MOLDERS UNION, BILLY WEBB?

04:03 PM 7 A. BILLY WEBB.

04:03 PM 8 Q. OKAY. ISN'T THAT BILLY WEBB?

04:03 PM 9 A. BILLY WEBB.

04:03 PM 10 Q. OKAY. AND IT IS WITH RESPECT TO YOUR GRIEVANCE,  
04:03 PM 11 ISN'T IT?

04:03 PM 12 SHOW THE GRIEVANCE LINE.

04:03 PM 13 DO YOU REMEMBER THAT TO BE YOUR GRIEVANCE?

04:03 PM 14 A. NO, I DON'T KNOW IT BY NO NUMBERS.

04:03 PM 15 Q. NOW, GO DOWN TO THE THIRD PARAGRAPH, PLEASE.

04:03 PM 16 IS IT YOUR TESTIMONY THAT YOU WERE NEVER TOLD BY  
04:03 PM 17 THE UNION THAT THE DEAL THAT WAS STRUCK WAS, IN EXCHANGE  
04:03 PM 18 FOR THE WITHDRAWAL OF THE GRIEVANCE, THAT THE COMPANY  
04:03 PM 19 AGREED TO OFFER THE STOREKEEPER POSITION TO MR. MUNEZ, AND  
04:03 PM 20 THAT IF HE REFUSES, THEN IT WOULD GO TO YOU?

04:03 PM 21 A. NO, I WAS NEVER TOLD THAT.

04:03 PM 22 Q. MR. MUNEZ THOUGH WAS SENIOR TO YOU, WAS HE NOT?

04:03 PM 23 A. RIGHT.

04:03 PM 24 Q. OKAY. SO HE -- IN ANY EVENT, HE SHOULD HAVE GOTTEN  
04:03 PM 25 THE JOB IF HE WANTED IT, BECAUSE HE WAS ALSO A

TRANSCRIPT OF PROCEEDINGS

234

04:03 PM 1 CLEANER/GRINDER, WASN'T HE?

04:03 PM 2 A. EXACTLY.

04:03 PM 3 Q. OKAY. AND ISN'T IT IN FACT THE CASE THAT JOBS IN  
04:04 PM 4 THE FOUNDRY ARE AWARDED ON THE BASIS OF A PERSON'S  
04:04 PM 5 DEPARTMENTAL SENIORITY?

04:04 PM 6 MR. GARRIGAN: OBJECTION, NO FOUNDATION.

04:04 PM 7 THE WITNESS: I HAVE NO IDEA OF THAT.

04:04 PM 8 BY MR. HAMEL:

04:04 PM 9 Q. YOU DON'T KNOW ONE WAY OR THE OTHER?

04:04 PM 10 A. NO.

04:04 PM 11 Q. OKAY. YOU CERTAINLY CAN'T TELL ME OF ANY JOB THAT  
04:04 PM 12 YOU BID FOR THAT DIDN'T GO TO A PERSON THAT WAS MORE  
04:04 PM 13 SENIOR TO YOU, CAN YOU?

04:04 PM 14 A. YEAH, THE CLEANING ROOM JOB. THEY GAVE IT TO A GUY  
04:04 PM 15 THAT WASN'T SENIOR TO ME.

04:04 PM 16 Q. WHAT CLEANING ROOM JOB WAS THAT?

04:04 PM 17 A. THE TOOL ROOM JOB.

04:04 PM 18 Q. OH, THE TOOL ROOM? THEY GAVE IT TO MR. BRISTER, WHO  
04:04 PM 19 WAS A GENERAL FOUNDRYMAN?

04:04 PM 20 A. RIGHT.

04:04 PM 21 Q. WHO HAD BID ON THAT JOB, RIGHT? IT WASN'T A  
04:04 PM 22 DEMOTION FOR HIM, WAS IT?

04:04 PM 23 A. WELL, THEY SAY YOU CAN'T BID ON A JOB IF YOU'RE NOT  
04:04 PM 24 OFF OF PROBATION.

04:04 PM 25 Q. WELL, OKAY. YOU DO UNDERSTAND THAT IF THERE ARE NO

## TRANSCRIPT OF PROCEEDINGS

235

04:04 PM 1 PEOPLE WHO ARE QUALIFIED ON A BID LIST, THE COMPANY CAN

04:04 PM 2 FILL THE JOB FROM SOMEWHERE ELSE?

04:04 PM 3 A. WELL, I GUESS SO.

04:04 PM 4 Q. OKAY. NOW, AT THE TIME YOU WERE OFFERED THE

04:04 PM 5 STOREKEEPER JOB --

04:04 PM 6 A. RIGHT.

04:04 PM 7 Q. -- YOU WEREN'T MAKING TWELVE EIGHTY-THREE AN HOUR,

04:04 PM 8 WERE YOU?

04:05 PM 9 A. NO.

04:05 PM 10 Q. HOW MUCH WERE YOU MAKING?

04:05 PM 11 A. I WAS MAKING TWELVE FIFTY-TWO.

04:05 PM 12 Q. TWELVE FIFTY-TWO? IN WHAT YEAR WAS THAT?

04:05 PM 13 THE COURT: '96, WASN'T IT?

04:05 PM 14 THE WITNESS: NO, IT WASN'T '96. IT WAS I WANT

04:05 PM 15 TO SAY '98, SOMEWHERE IN THERE, '99 OR SO.

04:05 PM 16 BY MR. HAMEL:

04:05 PM 17 Q. WELL, LET'S SEE.

04:05 PM 18 MR. HAMEL: JUST A MOMENT, YOUR HONOR.

04:05 PM 19 THE WITNESS: I'M NOT QUITE SURE.

04:05 PM 20 BY MR. HAMEL:

04:06 PM 21 Q. PUT UP PAGE 11 -- 10868, AND FOCUS ON THIS.

04:06 PM 22 THESE ARE THE RATES OF PAY IN THE FOUNDRY

04:06 PM 23 DEPARTMENT, AND AS OF 2000 THE HIGHEST RATE OF PAY OF

04:06 PM 24 CHIPPER/GRINDER/FINISHER WAS ELEVEN EIGHTY-EIGHT, AND

04:06 PM 25 PRIOR TO THAT IT WAS ELEVEN FIFTY-THREE. THAT'S WHAT YOU

## TRANSCRIPT OF PROCEEDINGS

236

04:06 PM 1 THINK YOU WERE MAKING?

04:06 PM 2 A. IN WHAT YEAR WAS THIS?

04:06 PM 3 Q. WELL, IT WOULD HAVE BEEN IN -- AFTER OCTOBER OF '99,  
04:06 PM 4 AND THEN AFTER OCTOBER OF 2000.

04:06 PM 5 A. I SUPPOSE.

04:06 PM 6 Q. OKAY. WELL, IN ANY EVENT, YOU WERE --

04:07 PM 7 WELL, HOLD ON JUST A MINUTE. WHY DON'T YOU GIVE  
04:07 PM 8 ME L10869, AND FOCUS ON THIS CLASSIFICATION, STOREKEEPER.

04:07 PM 9 OKAY. IN ANY EVENT, YOU HAD THE OPPORTUNITY TO  
04:07 PM 10 GO TO A STOREKEEPER POSITION, AND IN THE STOREKEEPER  
04:07 PM 11 POSITION YOU SAW THAT THE WAGES WOULD GO UP TO AT THE END  
04:07 PM 12 OF THAT CONTRACT YEAR ELEVEN SEVENTY-SEVEN PER HOUR. SO  
04:07 PM 13 IF YOU HAD TAKEN THAT JOB AND STAYED IN IT A WHILE, YOU  
04:07 PM 14 WOULD HAVE REACHED ELEVEN SEVENTY-SEVEN PER HOUR AS OF THE  
04:07 PM 15 END OF LAST YEAR, AND IT'S GONE UP AGAIN IN THE NEW  
04:08 PM 16 CONTRACT, TOO, HASN'T IT?

04:08 PM 17 A. I SUPPOSE.

04:08 PM 18 Q. OKAY. BUT YOU DECIDED THAT IT WAS TOO MUCH OF A CUT  
04:08 PM 19 OF PAY, SO YOU WENT BACK TO THE CLEANING AND GRINDING ROOM  
04:08 PM 20 RATHER THAN TAKE A STOREKEEPER JOB, EVEN THOUGH IT WOULD  
04:08 PM 21 MAKE UP TO ELEVEN SEVENTY-SEVEN IN THE OLD CONTRACT?

04:08 PM 22 A. WELL, LIKE I SAID, AT FIRST THEY DROPPED MY PAY TO  
04:08 PM 23 TEN THIRTY, NOT ELEVEN TEN, NOT ELEVEN FORTY-THREE OR  
04:08 PM 24 ELEVEN SEVENTY-SEVEN.

04:08 PM 25 Q. WELL, DIDN'T THEY TELL YOU THAT THEY THOUGHT IT WAS

TRANSCRIPT OF PROCEEDINGS

237

04:08 PM 1 NOT FAIR FOR YOU TO COME IN AS A NEW STOREKEEPER AND BE  
04:08 PM 2 PAID MORE THAN THE PEOPLE WHO HAD ALREADY BEEN IN THE  
04:08 PM 3 STOREKEEPER CLASSIFICATION?

04:08 PM 4 A. WELL, THAT'S NOT WHAT WAS TOLD TO ME.

04:08 PM 5 THE COURT: WHAT WAS TOLD TO YOU, AND BY WHOM?

04:08 PM 6 THE WITNESS: MR. COUTEE CAME TO ME WHEN THE  
04:08 PM 7 POSITION CAME AVAILABLE AGAIN AND ASKED ME DID I WANT THE  
04:08 PM 8 JOB. HE SAID HE WOULD GO UP FRONT AND TALK TO THEM, AND  
04:08 PM 9 HE WOULD DROP MY PAY TO TWELVE-0-THREE.

04:08 PM 10 THE COURT: OKAY.

04:09 PM 11 BY MR. HAMEL:

04:09 PM 12 Q. ARE YOU AWARE THAT THE CONTRACT THAT THE COMPANY HAS  
04:09 PM 13 SAYS THAT IF YOU HAVE A PERMANENT TRANSFER TO A  
04:09 PM 14 LOWER-RATED CLASSIFICATION, YOU HAVE TO GET THE LOWER RATE  
04:09 PM 15 OF PAY?

04:09 PM 16 A. NO.

04:09 PM 17 Q. PUT UP PAGE L10582, PLEASE, AND FOCUS ON SECTION 3,  
04:09 PM 18 WHICH WOULD BE AT THE BOTTOM RIGHT.

04:10 PM 19 DO YOU SEE THERE THAT IT SAYS "BUT ANY EMPLOYEE  
04:10 PM 20 WHO IS PERMANENTLY TRANSFERRED BY THE COMPANY FROM A  
04:10 PM 21 HIGHER-RATED JOB TO A LOWER-RATED JOB SHALL RECEIVE THE  
04:10 PM 22 LOWER RATE OF PAY"?

04:10 PM 23 A. UH-HUH.

04:10 PM 24 Q. OKAY. DO YOU KNOW THAT TO BE IN THE CONTRACT THAT  
04:10 PM 25 THE COMPANY HAS WITH THE UNIONS?

TRANSCRIPT OF PROCEEDINGS

238

04:10 PM 1 A. WHAT CONTRACT? I HAVEN'T RECEIVED A CONTRACT BOOK  
04:10 PM 2 IN I DON'T KNOW WHEN. I HAVEN'T SEEN THE CONTRACT, SO I  
04:10 PM 3 WOULDN'T KNOW.

04:10 PM 4 Q. OKAY. PUT UP L10824, PLEASE.

04:10 PM 5 YOUR UNION DOESN'T GIVE YOU ONE OF THESE BOOKS,  
04:10 PM 6 MR. DEASON?

04:10 PM 7 A. WE HAVEN'T SEEN A UNION BOOK IN, I KNOW IN AT LEAST  
04:10 PM 8 FOUR YEARS.

04:10 PM 9 Q. OKAY. THAT'S -- NOBODY IN THE FOUNDRY HAS SEEN ONE  
04:10 PM 10 I TAKE IT? THEY JUST DON'T GIVE THEM OUT?

04:10 PM 11 A. I HAVEN'T SEEN ONE. WE USED TO GET THEM, BUT I  
04:10 PM 12 HAVEN'T SEEN ONE HERE LATELY. NOBODY HAS.

04:10 PM 13 Q. OKAY. NOBODY HAS? WHITE, BLACK, HISPANIC, NOBODY  
04:10 PM 14 HAS SEEN THEM?

04:10 PM 15 A. I CAN'T SPEAK ON EVERYBODY, BUT I KNOW I HAVEN'T.

04:11 PM 16 Q. OKAY. YOU DO KNOW THAT THERE ARE OTHER STOREKEEPERS  
04:11 PM 17 IN THE COMPANY, DON'T YOU?

04:11 PM 18 A. YES.

04:11 PM 19 Q. OKAY. AND SEVERAL OF THOSE STOREKEEPERS ARE BLACK,  
04:11 PM 20 AREN'T THEY?

04:11 PM 21 A. YES.

04:11 PM 22 Q. FOR EXAMPLE, EDDIE ANTHONY, HE'S A STOREKEEPER,  
04:11 PM 23 ISN'T HE?

04:11 PM 24 A. RIGHT.

04:11 PM 25 Q. HE'S BLACK?

04:11 PM 1 A. HE'S BLACK.

04:11 PM 2 Q. MATTIE WILSON, SHE'S A STOREKEEPER?

04:11 PM 3 A. SHE RETIRED.

04:11 PM 4 Q. OKAY. WAS SHE BLACK?

04:11 PM 5 A. YEAH.

04:11 PM 6 Q. OKAY. HOW ABOUT TIMOTHY RISBY?

04:11 PM 7 A. I DON'T KNOW HIM.

04:11 PM 8 Q. OKAY. HOW ABOUT LITTLE BURRELL, GOES BY THE NAME OF

04:11 PM 9 "JUDGE"?

04:11 PM 10 A. YES, HE'S BLACK.

04:11 PM 11 Q. OKAY. AND THERE ARE ONLY FIVE OR SIX STOREKEEPERS,

04:11 PM 12 AREN'T THERE?

04:11 PM 13 A. I SUPPOSE.

04:11 PM 14 Q. AND AT ANY GIVEN TIME THREE OR FOUR OF THEM HAVE

04:11 PM 15 BEEN BLACK?

04:11 PM 16 A. I SUPPOSE.

04:11 PM 17 Q. OKAY.

04:11 PM 18 MR. HAMEL: THANK YOU, YOUR HONOR. THAT'S ALL

04:11 PM 19 THE QUESTIONS I HAVE.

04:11 PM 20 MR. GARRIGAN: IT WILL BE REAL QUICK.

04:11 PM 21 THE COURT: ALL RIGHT, SIR.

04:11 PM 22 REDIRECT EXAMINATION

04:12 PM 23 BY MR. GARRIGAN:

04:12 PM 24 Q. MR. DEASON, WHEN YOU WERE INTERVIEWED BY VIRON

04:12 PM 25 BARBAY, DID YOU TELL HIM THAT YOU WERE A HIGH SCHOOL

TRANSCRIPT OF PROCEEDINGS

240

04:12 PM 1 GRADUATE?

04:12 PM 2 A. YES, I WROTE IT ON MY APPLICATION.

04:12 PM 3 Q. OKAY. DID YOU TELL HIM -- WHEN YOU SPOKE TO HIM,  
04:12 PM 4 DID YOU TELL HIM THAT YOU HAD SOME COLLEGE AT SAM HOUSTON  
04:12 PM 5 STATE UNIVERSITY?

04:12 PM 6 MR. HAMEL: OBJECTION, LEADING, YOUR HONOR.

04:12 PM 7 THE COURT: OVERRULED.

04:12 PM 8 BY MR. GARRIGAN:

04:12 PM 9 Q. DID YOU TELL HIM THAT?

04:12 PM 10 A. NO.

04:12 PM 11 Q. DID HE ASK?

04:12 PM 12 A. NO.

04:12 PM 13 Q. HE DIDN'T ASK IF YOU HAD COLLEGE?

04:12 PM 14 A. NO.

04:12 PM 15 Q. NOW, HAVE YOU HAD SOME ELECTRICIAN TRAINING, TOO?

04:12 PM 16 A. RIGHT.

04:12 PM 17 Q. DID THAT COME UP? DID MR. BARBAY ASK YOU ABOUT ANY  
04:12 PM 18 ELECTRICIAN TRAINING YOU MIGHT HAVE?

04:12 PM 19 A. NO, AND I WROTE IT ON MY APPLICATION.

04:12 PM 20 Q. NOW, YOU HAD BEEN IN THE ARMY BEFORE THAT ALSO,  
04:13 PM 21 HADN'T YOU?

04:13 PM 22 A. RIGHT.

04:13 PM 23 Q. WHAT DID YOU DO IN THE ARMY?

04:13 PM 24 A. I DROVE TRUCKS.

04:13 PM 25 Q. DID YOU TELL MR. BARBAY THAT YOU HAD EXPERIENCE AS A

TRANSCRIPT OF PROCEEDINGS

241

04:13 PM 1 TRUCK DRIVER?

04:13 PM 2 A. YES.

04:13 PM 3 Q. DID HE OFFER YOU A JOB DRIVING A TRUCK?

04:13 PM 4 A. NO.

04:13 PM 5 Q. YOU'VE HAD PRIOR WORK WORKING AT SHERRICK ELECTRIC  
04:13 PM 6 COMPANY, IS THAT RIGHT?

04:13 PM 7 A. RIGHT.

04:13 PM 8 Q. ABOUT TWO YEARS?

04:13 PM 9 A. RIGHT.

04:13 PM 10 Q. DOING ELECTRICAL WORK ON --

04:13 PM 11 WELL, WHAT KIND OF WORK DID YOU DO?

04:13 PM 12 A. FIXING STREET LIGHTS, PUTTING UP TRANSFORMERS.

04:13 PM 13 Q. DID MR. BARBAY ASK YOU ABOUT ALL THESE OTHER SKILLS  
04:13 PM 14 THAT YOU HAD?

04:13 PM 15 A. NO.

04:13 PM 16 Q. NOW, DOES LUFKIN INDUSTRIES HAVE TRUCK DRIVERS?

04:13 PM 17 A. YES.

04:13 PM 18 Q. DO THEY HAVE ELECTRICIANS?

04:13 PM 19 A. YES.

04:13 PM 20 Q. DID THEY EVER SUGGEST IN ANY WAY THAT YOU MIGHT BE  
04:14 PM 21 ABLE TO DO THAT KIND OF WORK FOR THEM?

04:14 PM 22 A. NO.

04:14 PM 23 Q. OKAY. AND YOU HAD DONE -- YOU SAY YOU HAD WORKED AT  
04:14 PM 24 TEXAS FOUNDRY?

04:14 PM 25 A. RIGHT.

TRANSCRIPT OF PROCEEDINGS

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04:14 PM 1 Q. AND SOME OTHER FOUNDRY, IS THAT RIGHT?

04:14 PM 2 A. GENCO.

04:14 PM 3 Q. HOW LONG DID YOU WORK AT GENCO?

04:14 PM 4 A. OH, IT WAS FOR ABOUT EIGHT MONTHS. THEY CLOSED  
04:14 PM 5 DOWN.

04:14 PM 6 Q. HOW BIG WERE THE CASTINGS AT GENCO?

04:14 PM 7 A. WE WAS FIXING LIKE BOARDS FOR SHIPS, LIKE THE  
04:14 PM 8 FLOORBOARDS ON SHIPS, AND ACTUALLY IT WAS JUST GRINDING  
04:14 PM 9 DOWN A LITTLE TACK WELD THAT MR. MCCLAIN WAS TALKING  
04:14 PM 10 ABOUT. IT REALLY WASN'T NO BIG THING, IT WAS JUST  
04:14 PM 11 GRINDING OFF LITTLE KNOTS WHERE THEY HAD WELDED ON THE  
04:14 PM 12 BOARD.

04:14 PM 13 Q. OKAY. WORKEDING ON BIG FLAT PIECES?

04:14 PM 14 A. YEAH.

04:14 PM 15 Q. AND THEN HOW BIG WAS THE TOOL THAT YOU USED?

04:14 PM 16 A. IT WAS THE SAME SIZE GRINDER THAT WE HAVE AT LUFKIN  
04:15 PM 17 INDUSTRIES.

04:15 PM 18 Q. OKAY. WAS IT EASIER TO USE IT GRINDING DOWN A TACK  
04:15 PM 19 WELD?

04:15 PM 20 A. OH, DEFINITELY.

04:15 PM 21 Q. AND THE WORK YOU DID AT TEXAS FOUNDRY --

04:15 PM 22 A. UH-HUH.

04:15 PM 23 Q. HOW DID THAT COMPARE TO WHAT THEY'VE GOT YOU DOING  
04:15 PM 24 AT LUFKIN INDUSTRIES?

04:15 PM 25 A. OH, IT WAS MUCH EASIER.

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04:15 PM 1 Q. WAS IT CLEANER AT TEXAS FOUNDRY?

04:15 PM 2 A. IT'S CLEANER.

04:15 PM 3 Q. IS THE WORK AS HARD?

04:15 PM 4 A. NOT REALLY.

04:15 PM 5 Q. ARE THE PIECES THAT YOU HAVE TO WORK WITH AS LARGE?

04:15 PM 6 A. NO, THEY WAS SMALLER.

04:15 PM 7 Q. OKAY. WHEN I TALKED TO YOU ABOUT THE GRINDERS YOU

04:15 PM 8 HAD TO USE AT LUFKIN INDUSTRIES --

04:15 PM 9 A. RIGHT.

04:15 PM 10 Q. -- I ASKED YOU TO COMPARE THEM TO CHAINSAWS.

04:15 PM 11 A. RIGHT.

04:15 PM 12 Q. HOW DOES THE GRINDER YOU HAD TO USE AT TEXAS FOUNDRY

04:15 PM 13 COMPARE TO CHAINSAWS?

04:15 PM 14 A. OH, IT'S NOT NEARLY AS LOUD AS THE ONES WE USE AT

04:15 PM 15 LUFKIN INDUSTRIES.

04:15 PM 16 Q. HOW BIG IS IT?

04:15 PM 17 A. THEY HAD A LITTLE CHIPPING GUN ABOUT SO THAT WE

04:15 PM 18 USED. YOU COULD USE IT WITH ONE HAND REALLY.

04:15 PM 19 Q. OKAY.

04:15 PM 20 A. IT WASN'T REALLY BIG.

04:16 PM 21 Q. OKAY. WAS ANYTHING THAT YOU HAD DONE IN THE PRIOR

04:16 PM 22 EXPERIENCE, DID IT PREPARE YOU FOR THE WORK THEY'VE GOT

04:16 PM 23 YOU DOING IN THE CLEANING ROOM?

04:16 PM 24 A. NO.

04:16 PM 25 Q. NOW, THIS JEREMY BRISTER, HE WAS THE GUY THAT GOT

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244

04:16 PM 1 THE STOREROOM JOB?

04:16 PM 2 A. YEAH. THE STOREKEEPER JOB, YES.

04:16 PM 3 Q. WHAT WAS HIS RACE?

04:16 PM 4 A. WHITE.

04:16 PM 5 Q. AND ISN'T HE THE SON OF ONE OF GERALD COUTEE'S  
04:16 PM 6 FRIENDS?

04:16 PM 7 A. YES.

04:16 PM 8 Q. DID THAT HAVE ANYTHING TO DO WITH HIM GETTING THAT  
04:16 PM 9 JOB?

04:16 PM 10 A. YES.

04:16 PM 11 MR. HAMEL: OBJECTION, YOUR HONOR.

04:16 PM 12 THE COURT: SUSTAINED.

04:16 PM 13 BY MR. GARRIGAN:

04:16 PM 14 Q. NOW, MR. HAMEL ASKED ABOUT THE GRIEVANCE YOU FILED.

04:16 PM 15 A. UH-HUH.

04:17 PM 16 Q. WHEN THAT GRIEVANCE WAS BEING PRESENTED, WAS IT  
04:17 PM 17 BASED IN PART ON RACE DISCRIMINATION?

04:17 PM 18 A. YES.

04:17 PM 19 Q. HAVE YOU EVER KNOWN THE UNIONS OR ANYONE TO BASE A  
04:17 PM 20 GRIEVANCE ON RACE DISCRIMINATION BEFORE OR SINCE?

04:17 PM 21 A. NOT THAT I COULD RECALL.

04:17 PM 22 Q. AND AFTER DISCRIMINATION WAS BROUGHT UP, IS THAT  
04:17 PM 23 WHEN THE COMPANY SETTLED THE GRIEVANCE?

04:17 PM 24 A. YES.

04:17 PM 25 Q. OKAY. THANK YOU.

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04:17 PM 1 MR. GARRIGAN: I'LL PASS THE WITNESS.

04:17 PM 2 MR. HAMEL: JUST BRIEFLY, YOUR HONOR.

04:17 PM 3 APPROACH THE WITNESS.

04:17 PM 4 RECROSS EXAMINATION

04:17 PM 5 BY MR. HAMEL:

04:17 PM 6 Q. MR. DEASON, LET ME HAND YOU WHAT IS MARKED FOR  
04:17 PM 7 IDENTIFICATION AS DEASON 14, 15, 16 AND 17. CAN YOU  
04:17 PM 8 IDENTIFY THAT FOR ME?

04:18 PM 9 MR. GARRIGAN: EXCUSE ME. I DON'T THINK I  
04:18 PM 10 UNDERSTOOD THAT REFERENCE. WHAT --

04:18 PM 11 MR. HAMEL: THAT'S HOW I'VE GOT IT  
04:18 PM 12 BATES-STAMPED.

04:18 PM 13 IT'S ACTUALLY FROM MR. DEASON'S PERSONNEL FILE,  
04:18 PM 14 YOUR HONOR. IT'S HIS APPLICATION.

04:18 PM 15 MR. GARRIGAN: IS IT A TRIAL EXHIBIT?

04:18 PM 16 MR. HAMEL: WELL, SINCE WE WERE ONLY RECENTLY  
04:18 PM 17 INFORMED THAT MR. DEASON WOULD TESTIFY, WE DO HAVE AS AN  
04:18 PM 18 EXHIBIT ANY -- THE PERSONNEL FILE OF ANY PERSON WHO  
04:18 PM 19 TESTIFIES. AND SO --

04:18 PM 20 AND YOU HAVE BEEN PROVIDED THE PERSONNEL FILES.  
04:18 PM 21 WE'LL PUT IT IN.

04:18 PM 22 MR. GARRIGAN: I'M JUST WONDERING, DO WE HAVE IT  
04:18 PM 23 MARKED AS AN EXHIBIT?

04:18 PM 24 MR. HAMEL: WE DO NOT AT THIS TIME.

04:18 PM 25 THE COURT: I DON'T KNOW. I SINCERELY HOPE SO.

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04:18 PM 1 MR. GARRIGAN: DOES IT HAVE A LUFKIN'S BATES  
04:18 PM 2 NUMBER?

04:18 PM 3 MR. HAMEL: I DON'T THINK SO.

04:19 PM 4 MR. GARRIGAN: HAS IT BEEN PRODUCED?

04:19 PM 5 MR. HAMEL: WELL, YOU'VE HAD THE OPPORTUNITY TO  
04:19 PM 6 INSPECT ANY PERSONNEL FILES YOU WANT. SO I GUESS IT HAS  
04:19 PM 7 BEEN PRODUCED.

04:19 PM 8 I DON'T KNOW IF YOU INSPECTED IT.

04:19 PM 9 MR. GARRIGAN, YOU TOLD US WITHIN THREE OR FOUR  
04:19 PM 10 DAYS THAT YOU WERE GOING TO CALL MR. DEASON. YOU KNOW,  
04:19 PM 11 WE'LL BE GLAD TO GIVE YOU HIS PERSONNEL FILE. I MEAN, I  
04:19 PM 12 DON'T HAVE A PROBLEM WITH THAT.

04:19 PM 13 THE COURT: WELL, HE WANTS TO KNOW WHETHER --  
04:19 PM 14 AND HE ASKED A SIMPLE QUESTION, MR. HAMEL. HAS IT BEEN  
04:19 PM 15 PRODUCED?

04:19 PM 16 MR. HAMEL: YOUR HONOR, I DON'T KNOW THE ANSWER  
04:19 PM 17 TO THAT. WHAT I DO KNOW IS --

04:19 PM 18 THE COURT: ALL RIGHT. THEN IF YOU DON'T KNOW  
04:19 PM 19 THE ANSWER, SAY "I DON'T KNOW."

04:19 PM 20 MR. HAMEL: WHAT I DO KNOW, YOUR HONOR, IS,  
04:19 PM 21 WE'VE MADE AVAILABLE ANY PERSONNEL FILE THEY WANT, AND ANY  
04:19 PM 22 TIME THEY ASK US TO COPY ONE, WE DO SO.

04:19 PM 23 THE COURT: I UNDERSTAND THAT, AND I'VE HAD SOME  
04:19 PM 24 OF THE MOST SCURRILOUS LETTERS WRITTEN I'VE EVER SEEN FROM  
04:19 PM 25 BOTH SIDES IN THIS CASE ABOUT THAT, IMPUTING BAD FAITH TO

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2

1 COURT REPORTER: WENDELL R. PARKS CSR/CP/CM  
2 FEDERAL COURT REPORTER  
3 ROOM 103 FEDERAL COURTHOUSE  
4 300 WILLOW  
5 BEAUMONT, TX 77701

6 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY;  
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1 DECEMBER 4, 2003

9:05 A.M.

09:05 AM 2 THE COURT: GOOD MORNING.

09:05 AM 3 I HAVE SOME BAD NEWS. I JUST WALKED IN AND WAS

09:06 AM 4 HANDED AN E-MAIL, AND CHIEF JUDGE JOHN HANNAH DIED THIS

09:06 AM 5 MORNING WHILE ATTENDING A MEETING IN FLORIDA. SO THE

09:06 AM 6 CHIEF JUDGE OF THE DISTRICT IS DECEASED.

09:06 AM 7 I'M GOING TO START THIS MATTER. IF SOMEONE

09:06 AM 8 WANTS TO ADDRESS THE --

09:06 AM 9 IS MR. GARRIGAN HERE?

09:06 AM 10 MR. BALLER: YOUR HONOR, MR. GARRIGAN AND MS.

09:06 AM 11 DEMCHAK ARE JUST BRINGING IN THE LAST DOCUMENTS.

09:06 AM 12 I'M MORRIS BALLER BY THE WAY. I'M CO-COUNSEL

09:06 AM 13 WITH THEM.

09:06 AM 14 THE COURT: WELCOME, MR. GARRIGAN.

09:06 AM 15 MR. GARRIGAN: GOOD MORNING.

09:06 AM 16 THE COURT: I ANNOUNCED TO THE OTHERS HERE THAT

09:06 AM 17 I WAS GREETED WITH BAD NEWS AS I ARRIVED AT THE OFFICE.

09:07 AM 18 JUDGE JOHN HANNAH WAS ATTENDING A JUDGE'S MEETING IN

09:07 AM 19 FLORIDA, HAD A MASSIVE HEART ATTACK AND DIED THIS MORNING.

09:07 AM 20 SO I DON'T KNOW HOW THAT'S GOING TO AFFECT THE

09:07 AM 21 PRESENTATION IN THIS CASE, BUT WE'LL PROCEED.

09:07 AM 22 YOU SAID YOU WANTED TO MAKE AN OPENING STATEMENT

09:07 AM 23 OR SOMEBODY WANTED TO MAKE AN OPENING STATEMENT.

09:07 AM 24 MR. GARRIGAN: I'VE GOT ONE PREPARED, YOUR

09:07 AM 25 HONOR.

TRANSCRIPT OF PROCEEDINGS

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09:08 AM 1 THE COURT: ALL RIGHT. PROCEED.

09:08 AM 2 MR. GARRIGAN: OKAY. YOUR HONOR, FIRST, YOU'VE  
09:08 AM 3 MET TERESA DELCHAK.

09:08 AM 4 WE ALSO HAVE WITH US MIKE BALLER THAT I DON'T  
09:08 AM 5 BELIEVE YOU'VE MET.

09:08 AM 6 THE COURT: I'VE SEEN HIS NAME ON THE PLEADINGS.

09:08 AM 7 MR. BALLER: GOOD MORNING, YOUR HONOR.

09:08 AM 8 THE COURT: GOOD MORNING.

09:08 AM 9 MR. GARRIGAN: I THINK YOU'VE MET DARCI BURRELL.

09:08 AM 10 THE COURT: GOOD MORNING.

09:08 AM 11 MR. GARRIGAN: AND JOSH KONECKY ALSO, YOUR  
09:08 AM 12 HONOR.

09:08 AM 13 THE COURT: GOOD MORNING.

09:08 AM 14 MR. KONECKY: GOOD MORNING, YOUR HONOR.

09:08 AM 15 MR. GARRIGAN: IN PART THIS IS FOR THE RECORD,  
09:08 AM 16 BUT I'M NOT TRYING TO STATE THE OBVIOUS. THIS IS A  
09:08 AM 17 RACE-DISCRIMINATION-IN-EMPLOYMENT CASE.

09:08 AM 18 THE PLAINTIFFS ARE A CLASS OF ABOUT SEVEN  
09:08 AM 19 HUNDRED AND EIGHTY AFRICAN-AMERICANS THAT HAVE BEEN  
09:09 AM 20 EMPLOYED BY LUFKIN INDUSTRIES AT SOMETIME SINCE MARCH 6,  
09:09 AM 21 1994, IN THEIR ANGELINA COUNTY FACILITIES.

09:09 AM 22 THE DEFENDANT IS LUFKIN INDUSTRIES. IT'S THE  
09:09 AM 23 LARGEST EMPLOYER IN ANGELINA COUNTY DURING THE CLASS  
09:09 AM 24 PERIOD, THAT IS, SINCE MARCH 6, 1994.

09:09 AM 25 THEIR WORK FORCE HAS FLUCTUATED BETWEEN ABOUT

09:09 AM 1 FIFTEEN HUNDRED AND FIFTY AND TWENTY-TWO HUNDRED AND  
09:09 AM 2 FIFTY.

09:09 AM 3 ABOUT FIFTEEN PERCENT OF THEIR WORK FORCE IS  
09:09 AM 4 AFRICAN-AMERICAN.

09:09 AM 5 THEY SHIP PRODUCTS WORLDWIDE.

09:09 AM 6 THEY'RE PUBLICLY-TRADED ON THE NASDAQ STOCK  
09:09 AM 7 EXCHANGE.

09:09 AM 8 THEY'RE BECOMING INCREASINGLY INTERNATIONAL,  
09:09 AM 9 THAT I KNOW FROM READING ABOUT THEM THAT RECENTLY THEY  
09:09 AM 10 PURCHASED I BELIEVE PRODUCTION FACILITIES IN FRANCE AND  
09:09 AM 11 ARGENTINA.

09:09 AM 12 LUFKIN INDUSTRIES CONSISTS OF FOUR PRODUCTION  
09:09 AM 13 DIVISIONS. THIS WILL BE IMPORTANT IN THE CASE.

09:10 AM 14 THE FOUNDRY DIVISION HAS ABOUT THREE HUNDRED AND  
09:10 AM 15 FORTY OR SO EMPLOYEES IN THE FOUNDRY. THEY MAKE HEAVY,  
09:10 AM 16 WHAT I CONSIDER AT LEAST TO BE HEAVY CASTINGS.

09:10 AM 17 THE FOUNDRY DIVISION REPRESENTS THE WORST  
09:10 AM 18 WORKING CONDITIONS AT LUFKIN INDUSTRIES, ESPECIALLY WHAT  
09:10 AM 19 THEY REFER TO AS THE CLEANING ROOM. THAT'S WHERE CASTINGS  
09:10 AM 20 ARE CLEANED UP WITH GRINDERS AND PNEUMATIC CHIPPER GUNS.  
09:10 AM 21 IT'S DUSTY, IT'S DIRTY, IT'S HOT, IT'S LOUD, AND THE WORK  
09:10 AM 22 THERE IS PHYSICALLY DEMANDING.

09:10 AM 23 THE OFCCP DID AN AUDIT OF LUFKIN INDUSTRIES.  
09:10 AM 24 THEY DESCRIBED THE FOUNDRY CONDITIONS AS LESS DESIRABLE  
09:10 AM 25 WHEN COMPARED TO THE REST OF THE LUFKIN INDUSTRIES --

TRANSCRIPT OF PROCEEDINGS

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09:10 AM 1 MR. HAMEL: YOUR HONOR, WE HAVE AN OBJECTION TO  
09:10 AM 2 THE INTRODUCTION OF THIS EVIDENCE, AND WE WOULD OBJECT TO  
09:10 AM 3 THE REFERENCE IN OPENING STATEMENT.

09:10 AM 4 THE COURT: I'M GOING TO TAKE THOSE UP WHEN THE  
09:10 AM 5 EVIDENCE COMES IN, MR. HAMEL.

09:11 AM 6 MR. HAMEL: THANK YOU, YOUR HONOR.

09:11 AM 7 THE COURT: I'M GOING TO ALLOW HIM TO MAKE HIS  
09:11 AM 8 OPENING STATEMENT.

09:11 AM 9 MR. GARRIGAN: OKAY. YOUR HONOR, I STARTED WITH  
09:11 AM 10 THE FOUNDRY DIVISION, REPRESENTING THE WORST WORKING  
09:11 AM 11 CONDITIONS.

09:11 AM 12 THE NEXT LEVEL OF THE SLIGHTLY-IMPROVED WORKING  
09:11 AM 13 CONDITIONS ARE AT LUFKIN INDUSTRIES' TRAILER DIVISION,  
09:11 AM 14 WHERE THEY MANUFACTURE TRUCK TRAILERS. IT'S CONSIDERABLY  
09:11 AM 15 BETTER. IT'S STILL DIRTY, IT'S STILL LOUD, IT'S STILL  
09:11 AM 16 PHYSICALLY DEMANDING WORK, BUT IT DOESN'T COMPARE IN TERMS  
09:11 AM 17 OF SEVERITY.

09:11 AM 18 THERE ARE ABOUT TWO HUNDRED, I THINK A LITTLE  
09:11 AM 19 LESS THAN TWO HUNDRED EMPLOYEES AT THE TRAILER DIVISION  
09:11 AM 20 TYPICALLY.

09:11 AM 21 BETTER WORKING CONDITIONS EXIST IN LUFKIN'S  
09:11 AM 22 OILFIELD DIVISION. THAT'S WHERE ABOUT THREE HUNDRED AND  
09:11 AM 23 FIFTEEN EMPLOYEES WORK. IT'S CLEANER, IT'S MORE  
09:12 AM 24 AUTOMATED.

09:12 AM 25 THE BEST WORKING CONDITIONS IN THEIR PRODUCTION

TRANSCRIPT OF PROCEEDINGS

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09:12 AM 1 FACILITIES ARE AT THE POWER TRANSMISSION DIVISION. AGAIN  
09:12 AM 2 THAT'S AROUND TWO HUNDRED EMPLOYEES.

09:12 AM 3 THE POWER TRANSMISSION DIVISION IS CLEAN,  
09:12 AM 4 LARGELY TEMPERATURE-CONTROLLED, LARGELY AUTOMATED.

09:12 AM 5 NOT SURPRISINGLY, YOUR HONOR, AS THE EVIDENCE IS  
09:12 AM 6 GOING TO SHOW IN THIS CASE, IF YOU COMPARED THE RATIO OF  
09:12 AM 7 BLACK WORKERS TO WHITE WORKERS, IT'S INVERSELY  
09:12 AM 8 PROPORTIONAL TO THE FAVORABILITY OF WORK CONDITIONS.

09:12 AM 9 IF YOU LOOK AT THE FOUNDRY, THAT RATIO IS ABOUT  
09:12 AM 10 SEVENTY PERCENT OF BLACK WORKERS TO WHITE WORKERS. THOSE  
09:12 AM 11 ARE THE WORST WORKING CONDITIONS.

09:12 AM 12 IF YOU LOOK AT THE TRAILER DIVISION, THAT RATIO  
09:12 AM 13 IS A LITTLE ABOVE THIRTY PERCENT. WORKING CONDITIONS  
09:13 AM 14 THERE ARE A LITTLE BETTER.

09:13 AM 15 SIMILARLY, IN THE OILFIELD DIVISION THE RATIO OF  
09:13 AM 16 BLACK WORKERS TO WHITE WORKERS IS ABOUT THIRTY PERCENT.

09:13 AM 17 WHEN YOU GET TO THE POWER TRANSMISSION DIVISION,  
09:13 AM 18 WHERE THE CONDITIONS ARE MOST FAVORABLE, THAT RATIO IS  
09:13 AM 19 ONLY EIGHT PERCENT.

09:13 AM 20 THE EVIDENCE WILL SHOW THAT LUFKIN INDUSTRIES  
09:13 AM 21 PUTS GREAT EFFORT INTO ITS WORLD MARKETING POSITION, ITS  
09:13 AM 22 PRODUCT DEVELOPMENT, ITS PRODUCTION EFFICIENCIES, ITS  
09:13 AM 23 ENGINEERING AND ITS UPPER MANAGEMENT COMPENSATION, BUT IT  
09:13 AM 24 LEAVES EQUAL EMPLOYMENT OPPORTUNITY TO CHANCE. IT IGNORES  
09:13 AM 25 ITS PROBLEMS OR IT SWEEPS THEM UNDER THE RUG WHENEVER IT'S

TRANSCRIPT OF PROCEEDINGS

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09:13 AM 1 BROUGHT TO THEIR ATTENTION.

09:13 AM 2 THERE ARE NO TRAINED HUMAN RESOURCES

09:13 AM 3 PROFESSIONALS AT LUFKIN INDUSTRIES. THE HUMAN RESOURCES

09:13 AM 4 DEPARTMENT IS RUN BY THEIR GENERAL COUNSEL, PAUL PEREZ,

09:14 AM 5 WHO IS BY BACKGROUND AND TRAINING A MANAGEMENT-SIDE LABOR

09:14 AM 6 LAWYER.

09:14 AM 7 NEXT IN CHARGE OF THEIR HR OFFICE IS JOHN

09:14 AM 8 HAVARD. BY HISTORY HE'S A SECURITY GUARD.

09:14 AM 9 THE THIRD ONE IN CHARGE OF THE HR OFFICE, VIRON

09:14 AM 10 BARBAY, WHO BY TRAINING AND EDUCATION AND BACKGROUND IS A

09:14 AM 11 PHOTOGRAPHER.

09:14 AM 12 THERE ARE NO HR PROFESSIONALS. THERE'S NO

09:14 AM 13 OVERSIGHT BY UPPER MANAGEMENT.

09:14 AM 14 THE CEO IN THIS CASE HAS TESTIFIED, AFTER SEVEN

09:14 AM 15 YEARS OF LITIGATION, HE HAS NO PERSONAL KNOWLEDGE OF HOW

09:14 AM 16 PERSONNEL POLICIES ARE IMPLEMENTED AND THEIR EFFECT ON

09:14 AM 17 LUFKIN'S EMPLOYEES.

09:14 AM 18 LUFKIN CLAIMS TO BE AN EQUAL OPPORTUNITY

09:14 AM 19 EMPLOYER THAT DOES NOTHING TO MONITOR, CHECK ON OR DELIVER

09:14 AM 20 ON THAT REPRESENTATION.

09:14 AM 21 THERE HAVE NEVER BEEN AFRICAN-AMERICANS ON THEIR

09:14 AM 22 BOARD OF DIRECTORS, IN THEIR STOCK OPTION PROGRAMS, IN

09:14 AM 23 THEIR PROFIT-SHARING PROGRAMS.

09:14 AM 24 THE AVERAGE PAY DISPARITIES AT LUFKIN

09:15 AM 25 INDUSTRIES, IF YOU EXCLUDE THE HIGHLY-PAID POSITIONS --

TRANSCRIPT OF PROCEEDINGS

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09:15 AM 1 WHICH ARE ALL WHITE ANYWAY. EXCLUDING THOSE POSITIONS,  
09:15 AM 2 THE AVERAGE PAY DISPARITY HAS RISEN DURING THE COURSE OF  
09:15 AM 3 THIS LITIGATION FROM ABOUT TWO DOLLARS AN HOUR TO NOW OVER  
09:15 AM 4 FOUR DOLLARS PURE HOUR ON AVERAGE.

09:15 AM 5 NOW, IN COMPLIANCE WITH THIS COURT'S RULINGS AND  
09:15 AM 6 VARIOUS 5TH CIRCUIT RULINGS, THE EVIDENCE AT THIS TRIAL  
09:15 AM 7 WILL ADDRESS LUFKIN INDUSTRIES' LIABILITY TO THE CLASS FOR  
09:15 AM 8 DISPARATE IMPACT DISCRIMINATION, TO BE PROVED LARGELY BY  
09:15 AM 9 STATISTICS.

09:15 AM 10 THERE WILL ALSO BE EVIDENCE THAT LUFKIN  
09:15 AM 11 INDUSTRIES' PRACTICES HAVE A DISCRIMINATORY EFFECT THAT IS  
09:15 AM 12 ADVERSE TO THE CLASS.

09:15 AM 13 NOW, WHILE EVIDENCE OF INTENT IS NOT REQUIRED IN  
09:15 AM 14 A DISPARATE IMPACT CASE, LUFKIN INDUSTRIES' INTENTIONS  
09:16 AM 15 WILL BE EVIDENT.

09:16 AM 16 THE PLAINTIFFS CONTEND THAT LUFKIN INDUSTRIES'  
09:16 AM 17 PRACTICE OF PERMITTING MOSTLY WHITE SUPERVISORS, MANAGERS  
09:16 AM 18 AND OTHER DECISION-MAKERS TO EXERCISE UNFETTERED  
09:16 AM 19 SUBJECTIVE DISCRETION OVER, IN PARTICULAR, INITIAL  
09:16 AM 20 ASSIGNMENT DECISIONS, TRAINING DECISIONS AND OTHER  
09:16 AM 21 TEMPORARY ASSIGNMENTS THAT AFFECT PROMOTIONS, THE  
09:16 AM 22 PROMOTION DECISIONS, AS WELL AS OTHER PERSONNEL DECISIONS,  
09:16 AM 23 AS A RESULT OF THIS UNFETTERED SUBJECTIVE DISCRETION THE  
09:16 AM 24 PLAINTIFF CLASS SUFFERS AN ADVERSE IMPACT. IT HAS A BAD  
09:16 AM 25 EFFECT ON THEIR CAREERS AND THEIR COMPENSATION.

09:16 AM 1 WE'RE GOING TO PRESENT THREE CATEGORIES OF  
09:16 AM 2 EVIDENCE TO THE COURT, BACKGROUND EVIDENCE TO PROVIDE  
09:16 AM 3 CONTEXT AND EVIDENCE OF THE CORPORATE CULTURE, EVIDENCE OF  
09:16 AM 4 SUBJECTIVE DECISION-MAKING, AS WELL AS EXPERT TESTIMONY TO  
09:16 AM 5 PROVIDE STATISTICAL EVIDENCE AND THE LINK BETWEEN  
09:17 AM 6 UNCHECKED STEREOTYPES DISCRETIONARY DECISION-MAKING AND  
09:17 AM 7 THE ADVERSE IMPACTS ON THE PLAINTIFF CLASS.

09:17 AM 8 THE BACKGROUND INFORMATION IS GOING TO INCLUDE  
09:17 AM 9 CLASS MEMBERS AND MANAGERS TESTIFYING. IT WILL SHOW THAT  
09:17 AM 10 LUFKIN INDUSTRIES IS INDIFFERENT TO, AND TOLERATES, EVEN  
09:17 AM 11 PROTECTS AND FOSTERS RACIAL STEREOTYPES HELD BY ITS  
09:17 AM 12 SUPERVISORS, MANAGERS AND DECISION-MAKERS.

09:17 AM 13 CLASS MEMBERS AND OTHER EMPLOYEES HAVE  
09:17 AM 14 CONFRONTED AND OPPOSED DISCRIMINATION FROM THE BOTTOM UP  
09:17 AM 15 AT LUFKIN INDUSTRIES, OFTEN AT THEIR OWN PERIL, AND WERE  
09:17 AM 16 GENERALLY LEFT TO THE MERCY OF THE WHITE SUPERVISORS,  
09:17 AM 17 WHOSE DECISIONS THEY WERE PROTESTING.

09:17 AM 18 PART OF THE BACKGROUND THAT'S RELEVANT TO THIS  
09:17 AM 19 CASE IS THE FACT THAT THIS ISN'T NEW TO LUFKIN INDUSTRIES.  
09:17 AM 20 IN THE 1980S THEY WERE SUED BY A CLASS OF WOMEN FOR GENDER  
09:18 AM 21 DISCRIMINATION. THAT CASE RESULTED IN A CONSENT DECREE OF  
09:18 AM 22 A THREE-YEAR DURATION.

09:18 AM 23 LUFKIN INDUSTRIES LEARNED NOTHING FROM THAT  
09:18 AM 24 EXPERIENCE. THEY DISCARDED ALL OF THE REMEDIES THEY HAD  
09:18 AM 25 ADOPTED AS SOON AS THE CONSENT DECREE EXPIRED.

09:18 AM 1 IN THE MID-1990S, RIGHT BEFORE, AND ABOUT THE  
09:18 AM 2 TIME THAT THESE ISSUES WERE BEING BROUGHT TO THE EEOC,  
09:18 AM 3 UNDER ITS CURRENT MANAGEMENT, LUFKIN INDUSTRIES WAS CITED  
09:18 AM 4 BY THE OFCCP FOR DISCRIMINATORY PRACTICES, BOTH RACE AND  
09:18 AM 5 GENDER, SOME OF THE PRACTICES THAT WE'RE GOING TO DESCRIBE  
09:18 AM 6 IN THIS CASE. THAT OCCURRED IN 1995 AND 1996, RESULTING  
09:18 AM 7 IN CONSENT AGREEMENTS IN 1996 AND 1997.

09:18 AM 8 MANAGEMENT OF THE AFFECTED DIVISIONS WERE KEPT  
09:18 AM 9 IN THE DARK ABOUT THE OFCCP FINDINGS AND THE REMEDIES.  
09:19 AM 10 THE AGREEMENTS THAT THEY ENTERED INTO WERE NOT HONORED.  
09:19 AM 11 THE REMEDIES THAT THEY AGREED TO WERE QUICKLY DISCARDED,  
09:19 AM 12 AND THE PROBLEMS, THE ROOT CAUSES WERE NEVER ADDRESSED.

09:19 AM 13 THE HUMAN RESOURCES MANAGER HAS TESTIFIED IN  
09:19 AM 14 THIS CASE THAT HE IS NOT AWARE OF ANY CHANGES IN HUMAN  
09:19 AM 15 RESOURCES SINCE THE OFCCP FINDINGS.

09:19 AM 16 NOW, THIS LAWSUIT HAS BEEN PENDING SINCE 1997.  
09:19 AM 17 AS I MENTIONED, THIS YEAR THE CEO TESTIFIED HE HAS LITTLE,  
09:19 AM 18 IF ANY, PERSONAL KNOWLEDGE OF THE ALLEGATIONS.

09:19 AM 19 LUFKIN INDUSTRIES HAS SPORADICALLY SENT MANAGERS  
09:19 AM 20 TO EMPLOYMENT SEMINARS, WHERE HR PROFESSIONALS HAVE  
09:19 AM 21 ADVOCATED MANAGEMENT PRACTICES TO MONITOR AND ENSURE  
09:19 AM 22 WORKPLACE DIVERSITY AND FAIRNESS, BUT LUFKIN INDUSTRIES  
09:20 AM 23 HAS STUBBORNLY RESISTED EVEN THESE BASIC CHANGES.

09:20 AM 24 YOUR HONOR, WE'LL PRESENT EVIDENCE OF THE  
09:20 AM 25 SUBJECTIVE MANAGEMENT DECISIONS, THAT IS, MOSTLY WHITE

09:20 AM 1 SUPERVISORS, MANAGERS, OTHER DECISION-MAKERS, EXERCISING  
09:20 AM 2 THEIR UNCHECKED SUBJECTIVE DISCRETION IN MAKING PERSONNEL  
09:20 AM 3 DECISIONS. THEY DON'T USE JOB-RELATED, VALIDATED OR  
09:20 AM 4 OBJECTIVE CRITERIA WHEN THEY MAKE THESE DECISIONS. THERE  
09:20 AM 5 ARE NO MEANINGFUL WRITTEN GUIDELINES. THERE'S NO  
09:20 AM 6 ACCOUNTABILITY OR OVERSIGHT, AND THERE'S NO REAL TRAINING  
09:20 AM 7 IN WORKPLACE DIVERSITY.

09:20 AM 8 THE DECISIONS THAT WE'LL BE DISCUSSING WILL BE  
09:20 AM 9 THE INITIAL ASSIGNMENTS, TEMPORARY ASSIGNMENTS AND  
09:20 AM 10 TRAINING OPPORTUNITIES, HOW PROMOTIONS -- THE PROMOTIONS  
09:20 AM 11 THAT ARE MADE ARE AS A RESULT OF MANAGEMENT ENCOURAGEMENT.  
09:21 AM 12 THE PROMOTIONS THAT ARE DENIED TO THE PLAINTIFF CLASS ARE  
09:21 AM 13 OFTEN THE RESULT OF DISCOURAGEMENT FROM MANAGEMENT. ALL  
09:21 AM 14 OF THESE DECISIONS HAVE A CRITICAL IMPACT, CRITICAL AND AN  
09:21 AM 15 ADVERSE IMPACT ON THE CAREERS AND COMPENSATION OF THE  
09:21 AM 16 CLASS MEMBERS.

09:21 AM 17 NOW, ONE OF THE AREAS WE'RE GOING TO FOCUS ON,  
09:21 AM 18 YOUR HONOR, IS THE INITIAL ASSIGNMENT PRACTICE AT LUFKIN  
09:21 AM 19 INDUSTRIES.

09:21 AM 20 YOU WILL HEAR THEY DO THEIR HIRING THROUGH THE  
09:21 AM 21 TEXAS WORKFORCE COMMISSION.

09:21 AM 22 NOW, LUFKIN INDUSTRIES HAS ARGUED THAT THE TWC  
09:21 AM 23 ACTUALLY MAKES THE REFERRALS TO DIFFERENT DIVISIONS, AND  
09:21 AM 24 BEARS SOME RESPONSIBILITY FOR THE DISPARATE INITIAL  
09:21 AM 25 ASSIGNMENTS.



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09:21 AM 1 NOW, FIRST, THAT'S A RED HERRING ARGUMENT. IT  
09:21 AM 2 DOESN'T MATTER. IF THE TEXAS WORKFORCE COMMISSION IS  
09:21 AM 3 RESPONSIBLE OR BEARS SOME RESPONSIBILITY, LUFKIN  
09:22 AM 4 INDUSTRIES IS STILL LIABLE UNDER THE DISPARATE IMPACT  
09:22 AM 5 THEORY. IF THEY HAVE PRACTICES THAT RESULT IN A DISPARATE  
09:22 AM 6 IMPACT, THEY'RE STILL LIABLE.

09:22 AM 7 THE FACT IS, THEIR EXPLANATION IS NOT TRUE.  
09:22 AM 8 TEXAS WORKFORCE COMMISSION RECORDS SHOW THAT BETWEEN A  
09:22 AM 9 HUNDRED, A HUNDRED AND FIFTY, MORE THAN THAT, EMPLOYEES  
09:22 AM 10 HIRED DURING THE CLASS PERIOD THROUGH THE TEXAS WORKFORCE  
09:22 AM 11 COMMISSION WERE ACTUALLY ASSIGNED BY LUFKIN INTO POSITIONS  
09:22 AM 12 AND DIVISIONS OTHER THAN THOSE THAT THE TWC REFERRED THEM  
09:22 AM 13 FOR.

09:22 AM 14 THE COURT: WHAT PERCENTAGE?

09:22 AM 15 MR. GARRIGAN: I'M NOT SURE OF THE PERCENTAGE,  
09:22 AM 16 YOUR HONOR. I BELIEVE IT WORKS OUT TO AT LEAST FIFTEEN,  
09:22 AM 17 TWENTY PERCENT.

09:22 AM 18 BUT IT DEMONSTRATES THAT LUFKIN INDUSTRIES STILL  
09:22 AM 19 EXERCISES CONSIDERABLE SUBJECTIVE DISCRETION ABOUT THE  
09:22 AM 20 INITIAL ASSIGNMENTS. THE RESPONSIBILITY DOES NOT LIE WITH  
09:22 AM 21 THE TEXAS WORKFORCE COMMISSION.

09:23 AM 22 NOW, OTHER ASSIGNMENTS AND TRAINING  
09:23 AM 23 OPPORTUNITIES ARE CRITICAL TO THE CAREERS OF ENTRY-LEVEL  
09:23 AM 24 WORKERS. YOU KNOW, WHETHER THEY ENTER THE WORK FORCE AS A  
09:23 AM 25 HELPER IN ONE OF THE OTHER DIVISIONS OR AS A GENERAL

## TRANSCRIPT OF PROCEEDINGS

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09:23 AM 1 FOUNDRYMAN IN THE FOUNDRY, WHETHER THEY'RE SWEEPING,  
09:23 AM 2 CLEANING, WHETHER THEY HELP A MACHINIST, WHETHER THEY'RE  
09:23 AM 3 HELPING AN ASSEMBLER, WHETHER THEY'RE WORKING IN  
09:23 AM 4 MAINTENANCE, EVEN THOSE INITIAL ASSIGNMENTS HAVE A  
09:23 AM 5 DRAMATIC EFFECT ON SOMEONE'S CAREER, AND WHETHER AFTER A  
09:23 AM 6 FEW YEARS THEY END UP AS A HIGHLY-PAID ELECTRICIAN OR  
09:23 AM 7 MAINTENANCE MAN OR WHETHER THEY'RE STILL WORKING IN THE  
09:23 AM 8 CLEANING ROOM AT THE FOUNDRY. THOSE DECISIONS ARE MADE  
09:23 AM 9 PURELY AT THE DISCRETION OF A MOSTLY-WHITE MANAGEMENT WORK  
09:23 AM 10 FORCE.

09:24 AM 11 NOW, YOU'LL HEAR INFORMATION ABOUT THEIR  
09:24 AM 12 SENIORITY SYSTEM. I THINK YOU'LL HEAR THAT THE SENIORITY  
09:24 AM 13 SYSTEM IS ERODING AS A RESULT OF THE ABILITY CLAUSE AND  
09:24 AM 14 NEGOTIATED CHANGES FOR DISCRETIONARY CAREER-PATH  
09:24 AM 15 PROFESSIONS, WHERE SENIORITY HAS NO ROLE IN PROMOTION  
09:24 AM 16 DECISIONS.

09:24 AM 17 NOW, THE SALARIED -- IN SALARIED PROMOTIONS,  
09:24 AM 18 LUFKIN HAS ARGUED TO US "GEE, YOU KNOW, AFRICAN-AMERICANS  
09:24 AM 19 JUST AREN'T QUALIFIED. THERE ARE NO QUALIFIED  
09:24 AM 20 AFRICAN-AMERICANS FOR UPPER MANAGEMENT POSITIONS."

09:24 AM 21 THE EVIDENCE WILL SHOW THAT THAT IS NOT TRUE.  
09:24 AM 22 THERE HAVE BEEN WELL-EDUCATED, WELL-QUALIFIED  
09:24 AM 23 AFRICAN-AMERICANS THAT ARE ROUTINELY PASSED OVER.

09:24 AM 24 NOW, I THINK SOME OF THE MOST INTERESTING  
09:24 AM 25 EVIDENCE WE'RE GOING TO PRESENT WILL BE THE EXPERT

## TRANSCRIPT OF PROCEEDINGS

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09:24 AM 1 TESTIMONY.

09:24 AM 2 DR. DROGIN WILL PRESENT OUR STATISTICAL  
09:25 AM 3 INFORMATION. IT'S BASED ON DATA PROVIDED BY THE COMPANY.

09:25 AM 4 THE ANALYSIS SHOWS AN ADVERSE IMPACT IN  
09:25 AM 5 ASSIGNMENTS, PROMOTIONS, COMPENSATION.

09:25 AM 6 IN EACH OF THOSE AREAS THE EVIDENCE WILL SHOW  
09:25 AM 7 THAT THE DISPARITIES ARE CONSISTENT WITH  
09:25 AM 8 LEGALLY-RECOGNIZED STANDARDS OF STATISTICAL SIGNIFICANCE.

09:25 AM 9 FOR INSTANCE, THE INITIAL ASSIGNMENTS, MORE THAN  
09:25 AM 10 HALF OF THE AFRICAN-AMERICANS WHO ARE HIRED AT LUFKIN  
09:25 AM 11 INDUSTRIES DURING THE CLASS PERIOD GET ASSIGNED TO THE  
09:25 AM 12 FOUNDRY.

09:25 AM 13 LESS THAN A QUARTER OF THE WHITE APPLICANTS WHO  
09:25 AM 14 ARE HIRED AT LUFKIN INDUSTRIES GET ASSIGNED TO THE  
09:25 AM 15 FOUNDRY.

09:25 AM 16 THAT MEANS MEMBERS OF THE CLASS ARE MORE THAN  
09:25 AM 17 TWICE AS LIKELY TO BE ASSIGNED TO THE FOUNDRY.

09:25 AM 18 I'M NOT GOING TO CLAIM TO UNDERSTAND THIS  
09:26 AM 19 COMPLETELY. THE STATISTICAL SIGNIFICANCE OF THAT IS  
09:26 AM 20 MEASURED, MORE THAN EIGHT STANDARD DEVIATIONS.

09:26 AM 21 THE CHANCES OF THAT OCCURRING IN THE ABSENCE OF  
09:26 AM 22 DISCRIMINATION AS A RESULT OF RANDOM FLUCTUATIONS ARE LESS  
09:26 AM 23 THAN ONE IN ONE HUNDRED TRILLION.

09:26 AM 24 THE HOURLY PROMOTIONS IN EEO CATEGORY SIX  
09:26 AM 25 THROUGH EIGHT, THAT'S I THINK UNSKILLED THROUGH SKILLED

## TRANSCRIPT OF PROCEEDINGS

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09:26 AM 1 LABOR, SHOWED DISPARITIES AT MORE THAN SEVEN STANDARD  
09:26 AM 2 DEVIATIONS.

09:26 AM 3 THE SHORTFALLS ARE CONSISTENT THROUGHOUT THOSE  
09:26 AM 4 DIVISIONS, THROUGHOUT THE DEPARTMENTS.

09:26 AM 5 SALARIED PROMOTIONS, THERE'S MORE THAN A TWENTY  
09:26 AM 6 PERCENT SHORTFALL. IT'S STATISTICALLY SIGNIFICANT AT MORE  
09:26 AM 7 THAN TWO STANDARD DEVIATIONS.

09:26 AM 8 AS I MENTIONED BEFORE, THE COMPENSATION  
09:27 AM 9 DISPARITIES ARE ACTUALLY INCREASING.

09:27 AM 10 YOUR HONOR, WE'RE ALSO --

09:27 AM 11 FINALLY, LET ME MENTION, WE'RE GOING TO BRING IN  
09:27 AM 12 A DR. MARTELL, AN INDUSTRIAL OCCUPATIONAL PSYCHOLOGIST,  
09:27 AM 13 WHO WILL DESCRIBE HOW THIS IS A TEXTBOOK CASE OF AN  
09:27 AM 14 EMPLOYER THAT PERMITS RACIAL STEREOTYPES TO PERSIST,  
09:27 AM 15 UNCHECKED, AND TO TAKE EFFECT THROUGH SUBJECTIVE  
09:27 AM 16 DECISION-MAKING, RESULTING IN THE DISPARITIES AND ADVERSE  
09:27 AM 17 IMPACTS MEASURED BY DR. DROGIN.

09:27 AM 18 DR. MARTELL WILL ALSO EXPLAIN THAT THE  
09:27 AM 19 THOUGHTFUL USE OF CURRENTLY WIDELY-ACCEPTED HUMAN  
09:27 AM 20 RESOURCES MANAGEMENT PRACTICES CAN SIGNIFICANTLY REMEDY  
09:27 AM 21 THAT SITUATION.

09:27 AM 22 DR. MARTELL'S TESTIMONY PROVIDES THE LINK  
09:27 AM 23 BETWEEN PERVASIVE RACIAL STEREOTYPES, UNCHECKED SUBJECTIVE  
09:28 AM 24 DECISION-MAKING AND AN ADVERSE IMPACT IN EMPLOYMENT  
09:28 AM 25 DECISIONS, AND THE FACT THAT IF THE COMPANY WOULD SIMPLY

## TRANSCRIPT OF PROCEEDINGS

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09:28 AM 1 USE OBJECTIVE JOB-RELATED SELECTION CRITERIA FOR HIRING  
09:28 AM 2 AND PROMOTION, IF THEY WOULD MEASURE WHETHER OPPORTUNITIES  
09:28 AM 3 ARE EQUALLY AVAILABLE, IF THEY WOULD PROVIDE EDUCATION AND  
09:28 AM 4 TRAINING FOR THEIR HR PERSONNEL, IF THEY WOULD TAKE  
09:28 AM 5 SEVERAL MEASURES TO DISCOURAGE RACIAL STEREOTYPES AND  
09:28 AM 6 ENCOURAGE DIVERSITY, AND IF THEY WOULD DEMONSTRATE A TRUE  
09:28 AM 7 COMMITMENT TO PROVIDING EQUAL EMPLOYMENT OPPORTUNITIES,  
09:28 AM 8 THAT THESE PROBLEMS COULD BE SOLVED.

09:28 AM 9 THAT'S WHAT I EXPECT THE EVIDENCE TO SHOW, YOUR  
09:28 AM 10 HONOR.

09:28 AM 11 THANK YOU.

09:28 AM 12 THE COURT: DO YOU WISH TO RESPOND?

09:29 AM 13 MR. HAMEL: YES, YOUR HONOR. THANK YOU.

09:29 AM 14 YOUR HONOR, DO I UNDERSTAND THAT OPENING  
09:29 AM 15 STATEMENT TIME IS CHARGED AGAINST THE TIME ALLOCATED BY  
09:29 AM 16 THE COURT?

09:29 AM 17 THE COURT: I'M KEEPING -- I'M KEEPING TRACK OF  
09:29 AM 18 IT.

09:29 AM 19 MR. HAMEL: THANK YOU, YOUR HONOR.

09:30 AM 20 YOUR HONOR, WHAT YOU WILL HEAR IN THE EVIDENCE  
09:30 AM 21 IS THAT LUFKIN INDUSTRIES IS A RELATIVELY SMALL COMPANY,  
09:30 AM 22 ALTHOUGH IT IS A MAJOR EMPLOYER IN LUFKIN, TEXAS.  
09:30 AM 23 UNFORTUNATELY, THE EVIDENCE IS GOING TO BE A BIT  
09:30 AM 24 COMPLICATED BY THE FACT THAT LUFKIN INDUSTRIES ACTUALLY  
09:30 AM 25 RUNS FOUR BUSINESSES IN LUFKIN, TEXAS. IT RUNS A FOUNDRY,

09:34 AM 1 UNSKILLED LABOR.

09:34 AM 2 BUT IF YOU LOOK AT VERY SKILLED LABOR, LUFKIN  
09:34 AM 3 EMPLOYS BLACK EMPLOYEES IN SKILLED POSITIONS AT -- GREATLY  
09:34 AM 4 EXCEEDING THE AMOUNT THAT YOU WOULD EXPECT IN THE LABOR  
09:34 AM 5 FORCE.

09:34 AM 6 YOU WILL SEE THAT THE STANDARD DEVIATIONS THAT  
09:34 AM 7 THE EXPERT CALCULATES AGAINST THE CENSUS DATA WILL SHOW  
09:34 AM 8 THAT IT IS CLEAR THAT LUFKIN DOES MORE THAN ITS SHARE IN  
09:34 AM 9 TERMS OF TRYING TO IMPROVE THE EMPLOYMENT OPPORTUNITIES OF  
09:34 AM 10 BLACK EMPLOYEES IN SKILLED LABOR OCCUPATIONS.

09:34 AM 11 THE PLAINTIFF HAS MADE A MISSTATEMENT OF THE  
09:34 AM 12 EVIDENCE THAT I WANT TO BE SURE THE COURT UNDERSTANDS AS  
09:34 AM 13 AN INITIAL CORRECTION.

09:34 AM 14 AND MR. SPARKS, WOULD YOU PUT UP 0397, PLEASE?  
09:35 AM 15 IF YOU WOULD GO TO THE TOP BOX, PLEASE. I'M SORRY, THE  
09:35 AM 16 FIRST COLUMN OF NUMBERS. THAT'S IT.

09:35 AM 17 THANK YOU.

09:35 AM 18 ALL RIGHT. YOUR HONOR, THIS IS AN EXCERPT FROM  
09:35 AM 19 THE PLAINTIFFS' STATISTICAL EXPERT'S REPORT, AND WHAT YOU  
09:35 AM 20 SEE IS, AND WE'LL SHOW YOU IN THE EVIDENCE EACH YEAR, BUT  
09:35 AM 21 WHAT YOU SEE IS THAT IN 1994 IN THE LUFKIN FOUNDRY  
09:35 AM 22 DIVISION, WHICH IS "LUFF," WHITES OUTNUMBERED BLACK  
09:35 AM 23 EMPLOYEES IN THE FOUNDRY, AND BLACKS CONSTITUTED 27.6  
09:35 AM 24 PERCENT OF THE FOUNDRY EMPLOYEES, NOT AS MR. GARRIGAN  
09:35 AM 25 STATED, SEVENTY PERCENT, BUT 27.6 PERCENT.

## TRANSCRIPT OF PROCEEDINGS

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09:35 AM 1 AND YOU WILL SEE IN THE EVIDENCE THAT IN EACH  
09:35 AM 2 YEAR IN THE FOUNDRY BLACK EMPLOYEES HAVE IN FACT --

09:36 AM 3 MR. GARRIGAN: YOUR HONOR --

09:36 AM 4 MR. HAMEL: -- CONSTITUTED FEWER FOUNDRY WORKERS  
09:36 AM 5 THAN WHITE EMPLOYEES.

09:36 AM 6 MR. GARRIGAN: YOUR HONOR, HE'S MISSTATED WHAT I  
09:36 AM 7 SAID. I COMPARED THE RATIO OF BLACK TO WHITES.

09:36 AM 8 AND THE FACT IS, IN THE FOUNDRY THE PRESENCE OF  
09:36 AM 9 A LARGE NUMBER OF HISPANIC WORKERS HAS THE POTENTIAL TO  
09:36 AM 10 DILUTE AND CONFUSE THE STATISTICS.

09:36 AM 11 I JUST BRING THAT TO THE COURT'S ATTENTION.

09:36 AM 12 MY STATEMENT BEFORE WAS ACCURATE.

09:36 AM 13 THE COURT: I'LL TAKE IT UNDER CONSIDERATION.

09:36 AM 14 MR. HAMEL: YOUR HONOR, I THINK WHAT YOU WILL  
09:36 AM 15 FIND IS --

09:36 AM 16 THE COURT: ARE YOU CLASSIFYING HISPANICS AS  
09:36 AM 17 WHITES?

09:36 AM 18 MR. HAMEL: EXCUSE ME?

09:36 AM 19 THE COURT: IS THAT CLASSIFYING HISPANICS AS  
09:36 AM 20 WHITES?

09:36 AM 21 MR. HAMEL: NO, YOUR HONOR. THAT IS WHITE  
09:36 AM 22 EMPLOYEES, NOT INCLUDING HISPANICS.

09:36 AM 23 AS YOU CAN SEE, THE TOTAL NUMBER OF EMPLOYEES  
09:36 AM 24 WAS THREE HUNDRED AND EIGHTY-SEVEN. THERE WERE A HUNDRED  
09:36 AM 25 AND FIFTY-FIVE WHITES AND A HUNDRED AND SEVEN BLACKS. SO

## TRANSCRIPT OF PROCEEDINGS

24

09:36 AM 1 IN THAT YEAR HISPANICS LOOKED TO ME TO BE PROBABLY ANOTHER  
09:36 AM 2 HUNDRED AND FIVE.

09:36 AM 3 AND I THINK WHAT YOU'LL SEE IN THE WORK FORCE,  
09:36 AM 4 THAT IN MOST YEARS THE FOUNDRY WORK FORCE IS ABOUT A THIRD  
09:37 AM 5 WHITE, A THIRD BLACK AND A THIRD HISPANIC, WITH HISPANICS  
09:37 AM 6 LATELY BECOMING A LITTLE BIT MORE OF A PROPORTION, AND  
09:37 AM 7 WHAT YOU'LL HEAR IN THE EVIDENCE IS THAT THAT HAS TO DO  
09:37 AM 8 WITH THE FACT THAT THE FOUNDRY DOES NOT REQUIRE A FACILITY  
09:37 AM 9 IN ENGLISH, EITHER WITH RESPECT TO SPEAKING OR READING  
09:37 AM 10 ENGLISH.

09:37 AM 11 AT THE END OF THE DAY, YOUR HONOR, THOUGH, THIS  
09:37 AM 12 CASE BECOMES MORE SIMPLE, AND IT IS SIMPLE BECAUSE THE  
09:37 AM 13 PLAINTIFFS SIMPLY HAVE NO PROOF THAT THERE IS IN FACT, AS  
09:37 AM 14 THEY HAVE SAID FOR SEVEN YEARS, AND SAID CONSISTENTLY TO  
09:37 AM 15 THIS COURT, THAT LUFKIN ENGAGES IN UNFETTERED SUBJECTIVE  
09:37 AM 16 DECISION-MAKING. LUFKIN DOES NOT DO SO EITHER WITH  
09:37 AM 17 RESPECT TO THE HIRING AND INITIAL ASSIGNMENT OF EMPLOYEES  
09:37 AM 18 OR WITH RESPECT TO THEIR PROMOTION OR WITH RESPECT TO  
09:37 AM 19 THEIR COMPENSATION.

09:37 AM 20 WHAT THE COURT WILL HEAR IS THAT LUFKIN HAS  
09:37 AM 21 CONSISTENTLY USED THE TEXAS WORKFORCE COMMISSION TO  
09:37 AM 22 PROVIDE ITS WORK FORCE. IT REQUISITIONS PEOPLE FOR  
09:38 AM 23 SPECIFIC JOBS FROM THE TEXAS WORKFORCE COMMISSION, AND FOR  
09:38 AM 24 THOSE SPECIFICS JOBS THE TEXAS WORKFORCE COMMISSION PUTS  
09:38 AM 25 THE REQUISITION IN A COMPUTER, THEY GENERATE A LIST OF

09:38 AM 1 PEOPLE TO BE INTERVIEWED, THEY ASK PEOPLE IF THEY WANT TO  
09:38 AM 2 INTERVIEW, AND THEY ASK THEM SPECIFICALLY "DO YOU WANT TO  
09:38 AM 3 INTERVIEW FOR A JOB IN THE FOUNDRY," OR WHEN THERE'S A JOB  
09:38 AM 4 IN TRAILER, "DO YOU WANT TO INTERVIEW FOR A JOB IN  
09:38 AM 5 TRAILER?" AND THEY BRING IN A GROUP OF APPLICANTS WHO  
09:38 AM 6 KNOW WHAT JOB IT IS THAT'S AVAILABLE AT LUFKIN, AND  
09:38 AM 7 THEY'LL INTERVIEW FOR THAT JOB.

09:38 AM 8 AND WHAT THE COURT WILL HEAR IS THAT IF YOU LOOK  
09:38 AM 9 AT THE ACTUAL APPLICANT NUMBERS AS OPPOSED TO THE NUMBERS  
09:38 AM 10 THAT ARE USED BY THE PLAINTIFFS' EXPERT, YOU ACTUALLY LOOK  
09:38 AM 11 AT THE APPLICANT FLOW THAT HAS BEEN TRACKED BY LUFKIN  
09:38 AM 12 THROUGH TIME, THE COURT WILL SEE THAT ABOUT THIRTY-FIVE  
09:38 AM 13 PERCENT OF THE APPLICANTS FOR POSITIONS IN THE FOUNDRY ARE  
09:38 AM 14 BLACK AND ABOUT THIRTY-FIVE PERCENT OF THE PEOPLE WHO GET  
09:38 AM 15 HIRED IN THE FOUNDRY ARE BLACK. SO IT IS ENTIRELY  
09:38 AM 16 CONSISTENT WITH THE ACTUAL APPLICANT FLOW THAT LUFKIN SEES  
09:38 AM 17 THAT THEY HIRE PEOPLE IN THE FOUNDRY WHO ARE ABOUT  
09:39 AM 18 THIRTY-FIVE PERCENT BLACK.

09:39 AM 19 WHAT YOU'LL ALSO HEAR, AS OPPOSED TO WHAT MR.  
09:39 AM 20 GARRIGAN SAID ABOUT HIS EXPERT'S TESTIMONY, HIS EXPERT,  
09:39 AM 21 WHEN HE QUOTED THE STATISTICS OF SOMETHING LIKE THAT ONE  
09:39 AM 22 IN TEN TRILLION PROBABILITY OF CHANCE, I THINK THAT HIS  
09:39 AM 23 EXPERT HAS AGGREGATED ALL THE DATA TOGETHER AND COME TO  
09:39 AM 24 SOME CONCLUSION, AND YOU'LL SEE IN THE EVIDENCE WHY THAT'S  
09:39 AM 25 AN IMPROPER STATISTICAL TECHNIQUE.

## TRANSCRIPT OF PROCEEDINGS

26

09:39 AM 1 BUT THE COURT ASKED THE QUESTION ABOUT THE  
09:39 AM 2 PERCENTAGES THAT WE'RE TALKING ABOUT. THE PLAINTIFFS'  
09:39 AM 3 EXPERT ALSO DID A STUDY IN WHICH HE LOOKED AT THE ISSUE OF  
09:39 AM 4 WHERE DO PEOPLE GET ASSIGNED IF THEY'RE HIRED ON THE SAME  
09:39 AM 5 DAY OR THEY'RE HIRED IN THE SAME WEEK, AND WHAT YOU WILL  
09:39 AM 6 SEE IN THAT STUDY, EVEN AS BEST HE CAN DO, NOTWITHSTANDING  
09:39 AM 7 THE FACT THAT HE'S BEEN A PLAINTIFFS' EXPERT FOR MANY  
09:39 AM 8 YEARS, AND WORKED FOR MS. DEMCHAK'S FIRM ON MANY  
09:39 AM 9 OCCASIONS, IS THAT HE COMES OUT WITH A STATISTIC THAT SAYS  
09:39 AM 10 THE DIFFERENCE OVER NINE YEARS FROM WHAT HE WOULD HAVE  
09:39 AM 11 EXPECTED IS, COMPARING BLACKS TO NONBLACKS, IS ABOUT  
09:40 AM 12 SIXTEEN OR SEVENTEEN ASSIGNMENTS IN TOTAL OVER A NINE-YEAR  
09:40 AM 13 PERIOD, WHICH IS LESS THAN TWO PER YEAR, AND WHICH IS  
09:40 AM 14 ABOUT ONE PERCENT OF THE TOTAL HIRING.

09:40 AM 15 SO WHEN YOU LOOK AT THIS IDEA THAT THERE IS SOME  
09:40 AM 16 EXTRAORDINARY PROBABILITY OF CHANCE, IN REALITY, WHEN YOU  
09:40 AM 17 LOOK INTO HIS STUDY, WHAT YOU'LL SEE IS, HE WILL SAY THAT  
09:40 AM 18 IF YOU LOOK AT PEOPLE WHO ARE HIRED ABOUT THE SAME TIME,  
09:40 AM 19 THE DIFFERENCE WHEN YOU COMPARE WHETHER BLACKS VERSUS  
09:40 AM 20 NONBLACKS GO TO THE FOUNDRY REDUCES DOWN TO A SITUATION  
09:40 AM 21 WHERE WE'RE TALKING ABOUT POTENTIALLY SIXTEEN TO EIGHTEEN  
09:40 AM 22 EMPLOYMENT DECISIONS OVER A NINE-YEAR PERIOD, OR LESS THAN  
09:40 AM 23 TWO EMPLOYMENT DECISIONS PER YEAR, WHEN THEY AVERAGE ABOUT  
09:40 AM 24 A HUNDRED AND FIFTY-FIVE TO TWO HUNDRED EMPLOYMENT  
09:40 AM 25 DECISIONS A YEAR.

## TRANSCRIPT OF PROCEEDINGS

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09:40 AM 1 SO WHAT THE COURT WILL SEE IS THAT IN FACT THERE  
09:40 AM 2 IS NO COMMON-SENSE BASIS TO COME TO A CONCLUSION THAT  
09:40 AM 3 THERE'S A DIFFERENCE IN ASSIGNMENT OF BLACKS TO THE  
09:41 AM 4 FOUNDRY DIVISION AT LUFKIN INDUSTRIES.

09:41 AM 5 MORE CRITICAL IS THE EVIDENCE WITH RESPECT TO  
09:41 AM 6 THE ALLEGED UNFETTERED SUBJECTIVE DECISION-MAKING USED BY  
09:41 AM 7 LUFKIN IN ITS PROMOTIONS.

09:41 AM 8 PROMOTIONS AT LUFKIN ARE BY AND LARGE IN THE  
09:41 AM 9 HOURLY WORK FORCE, WHICH IS REPRESENTED BY THE AFL-CIO,  
09:41 AM 10 WHICH HAS DELEGATED ITS RESPONSIBILITY TO THREE UNIONS,  
09:41 AM 11 THE MOLDERS, THE MACHINISTS AND THE BOILERMAKERS.

09:41 AM 12 THE CONTRACT WITH THOSE UNIONS PROVIDES THAT  
09:41 AM 13 SENIORITY SHALL GOVERN IN THE PROMOTION OF EMPLOYEES, AND  
09:41 AM 14 WHAT THE COURT WILL HEAR IS THAT IN MOST CASES THAT IS A  
09:41 AM 15 VERY SIMPLE PROCESS. THEY POST A BID, PEOPLE SIGN UP FOR  
09:41 AM 16 THE BID. AS LONG AS THEY'RE ASKING FOR A PROMOTION AND  
09:41 AM 17 NOT A DEMOTION, THE BID IS AWARDED STRICTLY BY THE  
09:41 AM 18 PERSON'S DEPARTMENTAL SENIORITY.

09:41 AM 19 THE COURT WILL HEAR THAT IN FACT THE ACTUAL USE  
09:41 AM 20 OF THE ABILITY CLAUSE IS ALMOST EXCLUSIVELY CONFINED TO  
09:41 AM 21 THE USE OF PAPER-AND-PENCIL TESTS, WHICH ARE USED TO  
09:42 AM 22 QUALIFY PEOPLE FOR CERTAIN OF THE JOB POSITIONS THAT  
09:42 AM 23 LUFKIN HAS, AND ARE TESTS WHICH ARE NEGOTIATED WITH THE  
09:42 AM 24 UNIONS IN THE COLLECTIVE BARGAINING.

09:42 AM 25 THOSE PAPER-AND-PENCIL TESTS ARE NOT SUBJECTIVE.

09:42 AM 1 ANYBODY CAN GO IN, INCLUDING THE UNION, LOOK AT THE TEST,  
09:42 AM 2 AND THEY CAN SAY "DID THIS PERSON GET A SEVENTY OR NOT?"

09:42 AM 3 AND BY THE WAY, YOUR HONOR, WHAT THE EVIDENCE IS  
09:42 AM 4 GOING TO SHOW IS THAT THIS IS NOT A TEST, THIS IS NOT AN  
09:42 AM 5 ABILITY TEST, WHERE YOU SAY WE'RE GOING TO PICK OUT THE  
09:42 AM 6 PERSON WHO GOT A NINETY-EIGHT INSTEAD OF A PERSON WHO GOT  
09:42 AM 7 AN EIGHTY, IT IS A PASS-FAIL SITUATION.

09:42 AM 8 AS THE COURT WILL READILY UNDERSTAND, THERE ARE  
09:42 AM 9 SITUATIONS --

09:42 AM 10 FOR EXAMPLE, IF YOU WANT TO PROMOTE SOMEBODY TO  
09:42 AM 11 BE AN ELECTRICIAN, YOU WANT TO BE SURE THEY KNOW SOMETHING  
09:42 AM 12 ABOUT BEING AN ELECTRICIAN OR YOU'RE GOING TO HAVE A  
09:42 AM 13 SERIOUS SAFETY PROBLEM.

09:42 AM 14 ON THE OTHER END OF THE SPECTRUM YOU HAVE THE  
09:42 AM 15 JOB WHICH HAS THE MOST PROMOTIONS TO IT, AND IT'S THE  
09:42 AM 16 TRAILER BUILDER "A." THERE IS A TEST IN EFFECT FOR  
09:42 AM 17 TRAILER BUILDER "A." IT'S TWO SHEETS OF PAPER. ONE IS, A  
09:43 AM 18 PERSON IS SHOWN A RULER AND THEY'RE ASKED TO TELL WHAT THE  
09:43 AM 19 MEASUREMENTS ON THE RULER ARE, SAY THAT THIS IS A  
09:43 AM 20 MEASUREMENT OF ONE AND THREE-QUARTERS, THIS IS A  
09:43 AM 21 MEASUREMENT OF SIX AND SEVEN-EIGHTS, AND IF THEY GET SEVEN  
09:43 AM 22 OF TEN RIGHT, THEY PASS THAT PART OF THE TEST.

09:43 AM 23 THE OTHER PART OF THE TEST IS A TEST WHICH IS  
09:43 AM 24 ESSENTIALLY LOOKING AT A WORKING DRAWING OF A BLUEPRINT  
09:43 AM 25 AND TELLING WHAT'S ON THE BLUEPRINT, BOTH SKILLS THAT ARE

## TRANSCRIPT OF PROCEEDINGS

29

09:43 AM 1 ABSOLUTELY REQUIRED TO BE A TRAILER BUILDER "A."

09:43 AM 2 AND IF YOU PASS THAT TEST, THEN TRAILER BUILDER  
09:43 AM 3 "A," JUST AS THE OTHER JOBS, IS AWARDED STRICTLY ON THE  
09:43 AM 4 BASIS OF DEPARTMENTAL SENIORITY.

09:43 AM 5 IF YOU LOOK AT THE ACTUAL BID SHEETS, WHICH  
09:43 AM 6 LUFKIN HAS SPENT A GOOD DEAL OF TIME AND EFFORT TO ENSURE  
09:43 AM 7 THAT THEY WOULD TAKE THE PAPER RECORDS THAT EXIST AND  
09:43 AM 8 TRANSLATE THEM INTO A DATA BASE, YOU WILL SEE THAT THERE  
09:43 AM 9 IS NO DISPARATE IMPACT AGAINST BLACK EMPLOYEES WITH  
09:43 AM 10 RESPECT TO THE BIDDING PROCESS.

09:43 AM 11 YOU WILL ALSO SEE THAT THERE'S NO DISCOURAGING  
09:43 AM 12 OF BLACK EMPLOYEES IN THE BIDDING PROCESS.

09:43 AM 13 FOR EXAMPLE, AND I'LL GET THE EXACT NUMBERS FOR  
09:44 AM 14 THE COURT FROM THE EVIDENCE, BUT I THINK THERE ARE ABOUT  
09:44 AM 15 ELEVEN THOUSAND BIDDERS, OF WHOM TWENTY-SIX OR  
09:44 AM 16 TWENTY-SEVEN HUNDRED WERE BLACK. SO YOU CAN SEE THAT  
09:44 AM 17 BLACKS CERTAINLY UNDERSTAND THE BIDDING PROCESS AND USE  
09:44 AM 18 THE BIDDING PROCESS.

09:44 AM 19 FINALLY, YOU'RE GOING TO SEE THAT THERE IS NO  
09:44 AM 20 SUBJECTIVE DECISION-MAKING AS A PRACTICAL MATTER IN THE  
09:44 AM 21 PROMOTION OF PEOPLE TO THE SALARIED RANGE.

09:44 AM 22 MR. GARRIGAN KIND OF GLOSSED OVER HIS EXPERT'S  
09:44 AM 23 REPORT, SAID HE FOUND SIGNIFICANCE AT TWO STANDARD  
09:44 AM 24 DEVIATIONS. THE ACTUAL NUMBER IS 2.02 STANDARD  
09:44 AM 25 DEVIATIONS. AND AS THIS COURT RECOGNIZED IN ITS CLASS

## TRANSCRIPT OF PROCEEDINGS

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09:44 AM 1 CERTIFICATION OPINION, ANY NUMBER LESS THAN THREE STANDARD  
09:44 AM 2 DEVIATIONS IS NOT STATISTICALLY SIGNIFICANT.

09:44 AM 3 BUT WE WILL SHOW YOU THAT EVEN SALARIED JOBS ARE  
09:44 AM 4 POSTED, AND WHEN YOU LOOK AT THOSE POSTINGS, YOU WILL SEE  
09:44 AM 5 THAT BLACKS GET THEIR FAIR SHARE OF SALARIED JOBS, JUST AS  
09:44 AM 6 YOU WOULD EXPECT FROM THE POSTING PROCESS.

09:44 AM 7 YOU WILL ALSO SEE THAT IT IS NOT UNFETTERED  
09:45 AM 8 SELECTIVE DECISION-MAKING WITH RESPECT TO THE SELECTION OF  
09:45 AM 9 PEOPLE FOR SALARIED JOBS. THEY USE A JOB DESCRIPTION,  
09:45 AM 10 WHICH IS PART OF THE POSTINGS, THEY TELL PEOPLE "THIS IS  
09:45 AM 11 WHAT YOU'RE GOING TO BE EXPECTED TO DO IF YOU GET THIS  
09:45 AM 12 JOB," AND THEY ASK PEOPLE "CAN YOU DO THESE THINGS?"

09:45 AM 13 FINALLY, WE HAVE THE COMPENSATION CLAIM. THE  
09:45 AM 14 COMPENSATION CLAIM IS ONE THAT IS LARGELY MANUFACTURED BY  
09:45 AM 15 THE PLAINTIFFS' EXPERT.

09:45 AM 16 WHAT THE COURT WILL SEE IS THAT FOR NINETY  
09:45 AM 17 PERCENT OF THE EMPLOYEES WHO ARE COVERED BY THE COLLECTIVE  
09:45 AM 18 BARGAINING AGREEMENT, THE COMPANY NEGOTIATES RATES FOR  
09:45 AM 19 EACH JOB WITH RESPECT TO THOSE EMPLOYEES, AND THE CONTRACT  
09:45 AM 20 PROVIDES THAT UNTIL YOU GET TO THE MAXIMUM RATE OF PAY,  
09:45 AM 21 YOU MUST GET AT LEAST A TWENTY-FIVE-CENTS-PER-HOUR RAISE  
09:45 AM 22 EVERY SIX MONTHS, AND YOU ONLY DON'T GET THAT RAISE IF  
09:45 AM 23 YOU'RE IN THE ATTENDANCE PROGRAM, WHICH IS ALSO A  
09:45 AM 24 NEGOTIATED PROGRAM.

09:45 AM 25 BUT WHAT YOU'RE GOING TO HEAR IS THAT VIRTUALLY

## TRANSCRIPT OF PROCEEDINGS

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09:45 AM 1 EVERYBODY GETS THE RAISE, AND WITHIN A PERIOD OF A FEW  
09:45 AM 2 YEARS, TWO OR THREE OR FOUR YEARS, THEY'VE REACHED THE  
09:45 AM 3 MAXIMUM RATE OF PAY, AND, IN FACT, AT LUFKIN INDUSTRIES  
09:45 AM 4 TODAY MOST OF THE HOURLY WORK FORCE ARE AT THE MAXIMUM  
09:46 AM 5 RATE OF PAY.

09:46 AM 6 WITH RESPECT TO THE SALARIED WORK FORCE, THEY  
09:46 AM 7 HAVE A MORE SOPHISTICATED SALARY ADMINISTRATION SYSTEM,  
09:46 AM 8 BUT THE BASIS ON WHICH THE PLAINTIFFS' EXPERT HAS  
09:46 AM 9 DETERMINED THAT THERE'S SOME DISPARITY IN PAY IS BY  
09:46 AM 10 OMITTING FROM HIS REGRESSION ANALYSIS THE ONE FACTOR THAT  
09:46 AM 11 IS MOST CRITICAL IN ANY BUSINESS IN ANY EMPLOYER'S  
09:46 AM 12 DETERMINATION OF COMPENSATION, AND THAT'S WHAT THE  
09:46 AM 13 PERSON'S EXPERIENCE/JOB CLASSIFICATION IS. AND WHAT YOU  
09:46 AM 14 WILL HEAR FROM THE DEFENSE EXPERT, AND I THINK PERHAPS THE  
09:46 AM 15 PLAINTIFFS' EXPERT WILL ALSO AGREE, IF YOU PUT A PERSON'S  
09:46 AM 16 JOB CLASSIFICATION INTO HIS REGRESSION ANALYSIS, THERE IS  
09:46 AM 17 NO SIGNIFICANCE AND NO DIFFERENCE OF A  
09:46 AM 18 STATISTICALLY-SIGNIFICANT NATURE BETWEEN THE COMPENSATION  
09:46 AM 19 OF BLACKS IN THE HOURLY RANKS OR BLACKS IN THE SALARIED  
09:46 AM 20 RANKS AND WHITES IN THE HOURLY RANKS OR WHITES IN THE  
09:46 AM 21 SALARIED RANKS.

09:46 AM 22 THE WAY THAT THE PLAINTIFFS' EXPERT GETS  
09:47 AM 23 SIGNIFICANCE IS TO IGNORE JOB CLASSIFICATION, WHICH SIMPLY  
09:47 AM 24 UNDER 5TH CIRCUIT LAW IS INAPPROPRIATE.

09:47 AM 25 AT THE END OF THE DAY, YOUR HONOR, WHAT YOU'RE

## TRANSCRIPT OF PROCEEDINGS

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09:47 AM 1 GOING TO SEE IS, AFTER ALL THE WORK THAT HAS GONE INTO  
09:47 AM 2 THIS CASE, THE PLAINTIFFS HAVE NO EVIDENCE OF SIGNIFICANCE  
09:47 AM 3 THAT THERE IS UNFETTERED SUBJECTIVE DECISION-MAKING IN THE  
09:47 AM 4 EMPLOYMENT PROCESSES OF LUFKIN INDUSTRIES, AND WHAT WILL  
09:47 AM 5 OCCUR IS --

09:47 AM 6 THE COURT: LET ME SEE IF I UNDERSTAND YOU.  
09:47 AM 7 THERE IS NO UNFETTERED DECISION-MAKING PROCESS ON  
09:47 AM 8 PROMOTIONS?

09:47 AM 9 MR. HAMEL: YOUR HONOR, THERE IS NO EVIDENCE OF  
09:47 AM 10 ANY STATISTICALLY-SIGNIFICANT USE OF UNFETTERED SUBJECTIVE  
09:47 AM 11 DECISION-MAKING.

09:47 AM 12 AND I WOULD TELL YOU THERE'S VIRTUALLY NO  
09:47 AM 13 UNFETTERED SUBJECTIVE DECISION-MAKING IN ANYTHING.

09:47 AM 14 I MEAN, I THINK YOU COULD PROBABLY UNDERSTAND  
09:47 AM 15 THAT IF, FOR EXAMPLE, LUFKIN INDUSTRIES WAS HIRING A VICE  
09:47 AM 16 PRESIDENT FOR SALES, AND THEY HAD SOME GUY WHO HAD  
09:47 AM 17 INTERNATIONAL EXPERIENCE AND THEY HAD SOME GUY WITH  
09:47 AM 18 NATIONAL EXPERIENCE, THERE WOULD BE SOME SUBJECTIVITY TO  
09:48 AM 19 DECIDE WHAT'S MOST IMPORTANT FOR OUR BUSINESS,  
09:48 AM 20 INTERNATIONAL EXPERIENCE OR DOMESTIC EXPERIENCE.

09:48 AM 21 BUT WE'RE TALKING ABOUT A HANDFUL OF PROMOTIONS,  
09:48 AM 22 AND THAT IN FACT NINETY-NINE PERCENT OF THE PROMOTIONS ARE  
09:48 AM 23 DONE ON THE BASIS OF EITHER SENIORITY OR WELL-RECOGNIZED  
09:48 AM 24 CRITERIA WHICH ARE APPLIED WITH RESPECT TO THOSE  
09:48 AM 25 PROMOTIONS.

## TRANSCRIPT OF PROCEEDINGS

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09:48 AM 1           THERE ARE SOME SUBJECTIVE SITUATIONS IN WHICH --  
09:48 AM 2           FOR EXAMPLE, THERE HAS BEEN AN EXCEPTION  
09:48 AM 3       NEGOTIATED BY THE UNION, FOR EXAMPLE, SOMEBODY WANTS TO  
09:48 AM 4       CHANGE SHIFTS BECAUSE THEIR DAUGHTER HAS GOT A -- HAS  
09:48 AM 5       CONTRACTED A CRITICAL ILLNESS AND THEY NEED TO HAVE A  
09:48 AM 6       SHIFT SO THAT THE WIFE CAN BE AT HOME AND THEY CAN BE AT  
09:48 AM 7       HOME AT DIFFERENT TIMES. THE UNION AND THE COMPANY GET  
09:48 AM 8       TOGETHER AND THEY NEGOTIATE A COMPROMISE WITH RESPECT TO  
09:48 AM 9       THAT INSIDE THE COLLECTIVE BARGAINING AGREEMENT, AND THAT  
09:48 AM 10      MAYBE HAPPENED A HANDFUL OF TIMES, TEN OR TWELVE OVER THE  
09:48 AM 11      LAST NINE YEARS.

09:48 AM 12           SO, YES, YOUR HONOR, WHAT I'M TELLING YOU IS  
09:48 AM 13      THAT WHAT YOU'RE GOING TO SEE IS THAT THE VAST PROPORTIONS  
09:49 AM 14      OF PROMOTIONS AT LUFKIN INDUSTRIES DO NOT INVOLVE  
09:49 AM 15      SUBJECTIVE DECISION-MAKING. THEY INVOLVE OBJECTIVE  
09:49 AM 16      FACTORS THAT ARE APPLIED. SOME OF THE OBJECTIVE FACTORS  
09:49 AM 17      ARE SIMPLE, SUCH AS SIMPLY LOOKING TO SEE WHETHER OR NOT  
09:49 AM 18      THERE IS A PROMOTION FOR A PERSON AND WHAT THAT PERSON'S  
09:49 AM 19      DEPARTMENTAL SENIORITY IS, AND IT'S A MECHANICAL  
09:49 AM 20      APPLICATION OF THOSE CRITERIA.

09:49 AM 21           THANK YOU, YOUR HONOR.

09:48 AM 22           THE COURT: YOU MAY START YOUR CASE.

09:48 AM 23           MR. GARRIGAN: ONE MINUTE, PLEASE.

09:49 AM 24           YOUR HONOR, BEFORE I CALL MY FIRST WITNESS, I'VE  
09:49 AM 25      GOT A FEW PRELIMINARY MATTERS I WOULD LIKE TO BRING UP,

## TRANSCRIPT OF PROCEEDINGS

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09:49 AM 1 REALLY IN NO PARTICULAR ORDER.

09:49 AM 2 ON THE 21ST OF NOVEMBER THE COMPANY HAD AN  
09:49 AM 3 ARBITRATION WITH THE UNIONS, OR WITH ONE OF THE UNIONS,  
09:49 AM 4 THAT INCLUDED TESTIMONY FROM TWO OF THE CLASS MEMBERS.  
09:49 AM 5 THE ARBITRATION INVOLVED A RACE DISCRIMINATION SITUATION.  
09:49 AM 6 IT WAS HIGHLY UNUSUAL IN THAT THE COMPANY HAD A COURT  
09:49 AM 7 REPORTER THERE TO RECORD THE ARBITRATION PROCEEDING.

09:49 AM 8 THE COURT: WELL, THEY'RE ENTITLED TO DO THAT,  
09:49 AM 9 ARE THEY NOT?

09:49 AM 10 MR. GARRIGAN: WELL, THEY CERTAINLY ARE.

09:49 AM 11 THE COURT: ALL RIGHT. THEN IT ISN'T HIGHLY  
09:49 AM 12 UNUSUAL.

09:49 AM 13 MR. GARRIGAN: NO. IT WAS HIGHLY UNUSUAL IN  
09:49 AM 14 THAT RARELY ARE ARBITRATIONS RECORDED THAT WAY.

09:50 AM 15 AND THE POINT I WANTED TO BRING UP IS THAT WE  
09:50 AM 16 REQUESTED A COPY OF THAT TRANSCRIPT FROM THE DEFENDANTS.  
09:50 AM 17 WE'RE NOT ALLOWED TO REQUEST IT FROM THE COURT REPORTER,  
09:50 AM 18 SINCE WE WERE NOT A PARTY TO THE ARBITRATION.

09:50 AM 19 THEY WON'T GIVE IT TO US.

09:50 AM 20 ALSO --

09:50 AM 21 THE COURT: WELL, IF ANY PART OF IT IS  
09:50 AM 22 INTRODUCED, DIRECTLY OR INDIRECTLY, YOU'LL BE REQUIRED --  
09:50 AM 23 THERE WILL BE A REQUIREMENT BY THE COURT THAT IT ALL BE  
09:50 AM 24 PRODUCED FOR YOU.

09:50 AM 25 MR. GARRIGAN: YOUR HONOR, I SUSPECT THE REASON

## TRANSCRIPT OF PROCEEDINGS

35

09:50 AM 1 THEY'RE WITHHOLDING IT IS BECAUSE IT WOULD HELP US.

09:50 AM 2 THE COURT: WELL --

09:50 AM 3 MR. GARRIGAN: I HAVE -- I CERTAINLY HAVE NO  
09:50 AM 4 EVIDENCE OF THAT. I HAVEN'T SEEN IT.

09:50 AM 5 THE COURT: ALL RIGHT, SIR. THEN I DON'T HAVE  
09:50 AM 6 ANY EITHER. BUT IF THEY'RE GOING TO USE IT, THEY'RE GOING  
09:50 AM 7 TO FURNISH A COPY TO YOU, IF THEY'RE GOING TO USE IT  
09:50 AM 8 DIRECTLY OR INDIRECTLY.

09:51 AM 9 MR. HAMEL: YOUR HONOR, MAY I BE HEARD ON THAT  
09:51 AM 10 POINT?

09:51 AM 11 WE'VE NOT REFUSED TO GIVE IT TO THE PLAINTIFFS.  
09:51 AM 12 IN FACT, THE TRANSCRIPT IS SIMPLY NOT READY.

09:51 AM 13 AS MR. GARRIGAN SAID, THE ARBITRATION WAS  
09:51 AM 14 NOVEMBER 21ST.

09:51 AM 15 MR. GARRIGAN CALLED US AND SAID THAT HE  
09:51 AM 16 UNDERSTOOD THE TRANSCRIPT WAS READY. WE CALLED THE COURT  
09:51 AM 17 REPORTER AND WE FOUND OUT IT'S NOT READY.

09:51 AM 18 FRANKLY, WHEN IT'S READY, THEY CAN HAVE IT  
09:51 AM 19 POSSIBLY. WE HAVE NO PROBLEM WITH THAT WHATSOEVER.

09:51 AM 20 THE COURT: WHO IS THE COURT REPORTER?

09:51 AM 21 MR. HAMEL: I BELIEVE IT'S EXCEL COURT REPORTING  
09:51 AM 22 IN LUFKIN, TEXAS.

09:51 AM 23 THE COURT: HAVE THEY ESTIMATED WHEN IT WILL BE  
09:51 AM 24 READY?

09:51 AM 25 MR. HAMEL: MY UNDERSTANDING IS SOMETIME THE END

## TRANSCRIPT OF PROCEEDINGS

36

09:51 AM 1 OF THIS WEEK. MS. MAHONY EVIDENTLY TALKED TO THEM  
09:51 AM 2 YESTERDAY, AND IT WAS NOT READY YESTERDAY.

09:51 AM 3 MR. GARRIGAN: YOUR HONOR, I'VE TALKED TO THE  
09:51 AM 4 COURT REPORTER. THE REASON IT'S NOT READY IS BECAUSE THEY  
09:51 AM 5 HAVEN'T ASKED THEM TO PREPARE IT.

09:51 AM 6 DANA SMELLY HAS WON AWARDS FOR DOING REALTIME  
09:51 AM 7 COURT REPORTING. SHE COULD PRODUCE IT AS SOON AS THEY  
09:52 AM 8 REQUESTED IT, AND THEY KNOW THAT.

09:52 AM 9 MR. HAMEL: IT'S MY UNDERSTANDING THAT --

09:52 AM 10 THE COURT: I'M NOT GOING TO ENGAGE IN THIS  
09:52 AM 11 MINOR BICKERING BETWEEN COUNSEL. IT'S GOING TO HURT BOTH  
09:52 AM 12 SIDES ON THAT, SIR.

09:52 AM 13 YOU'VE GOT TO REALIZE THAT I'M GOING TO RULE ON  
09:52 AM 14 MATTERS OF EVIDENCE THAT ARE IN EXISTENCE.

09:52 AM 15 MR. GARRIGAN: OKAY.

09:52 AM 16 THE COURT: AND AS TO THE MOTIVATION OF A COURT  
09:52 AM 17 REPORTER WHO IS NOT EMPLOYED BY THIS COURT, I'M JUST NOT  
09:52 AM 18 GOING TO GO INTO IT.

09:52 AM 19 MR. GARRIGAN: YOUR HONOR, THE POINT IS, IT'S IN  
09:52 AM 20 THEIR CONSTRUCTIVE CONTROL AND THEY HAVE WITHHELD IT.

09:52 AM 21 IT'S MY UNDERSTANDING DURING THAT ARBITRATION  
09:52 AM 22 THAT DAVID JENKINS, ONE OF THE MANAGERS I EXPECT YOU'LL  
09:52 AM 23 HEAR FROM TODAY, SAID THAT IF THE EMPLOYEES WON THAT  
09:52 AM 24 ARBITRATION, AGAIN, REGARDING RACE DISCRIMINATION MATTERS,  
09:52 AM 25 THAT DURING THEIR TEN-DAY TRIAL PERIOD THEY WOULD BE

## TRANSCRIPT OF PROCEEDINGS

37

09:53 AM 1 BUSTED BACK.

09:53 AM 2 I THINK THAT WOULD HELP US IF WE COULD PRESENT  
09:53 AM 3 THAT TO THE COURT.

09:53 AM 4 THE COURT: WELL, I'M NOT GOING TO RULE ON IT.  
09:53 AM 5 THEY SAID THEY WOULD GIVE IT TO YOU WHEN THEY GET IT.

09:53 AM 6 THEY'RE NOT GOING TO USE IT UNTIL IT EXISTS.  
09:53 AM 7 IT CAN BE SUBMITTED POST-TRIAL.

09:53 AM 8 MR. GARRIGAN: OKAY. THANK YOU, YOUR HONOR.

09:53 AM 9 ALSO, THE COURT HAS ORDERED THEM ON TWO  
09:53 AM 10 OCCASIONS TO PRODUCE APPLICATIONS FROM THEIR FOUNDRY HIRE  
09:53 AM 11 ANALYSIS. I BELIEVE YOU FIRST ORDERED IT ON OCTOBER 29TH,  
09:53 AM 12 AND AGAIN ON NOVEMBER 13TH.

09:53 AM 13 NOW, IN ORDER FOR THE COURT TO BE ABLE TO  
09:53 AM 14 DETERMINE WHETHER OR NOT THE DATA THAT THEY BASE THEIR  
09:53 AM 15 CASE ON IS RELIABLE, THAT UNDERLYING INFORMATION HAS TO BE  
09:53 AM 16 AVAILABLE TO US, AND AVAILABILITY HAS TO MEAN SOMETHING.

09:53 AM 17 THE FACT IS, THEY PRODUCED FIVE BOXES OF THOSE  
09:54 AM 18 APPLICATIONS YESTERDAY, AND IT MAY BE NECESSARY, YOUR  
09:54 AM 19 HONOR, FOR US TO ASK FOR A POST-TRIAL SUBMISSION REGARDING  
09:54 AM 20 THAT INFORMATION ALSO.

09:54 AM 21 THE COURT: WELL, THE TIMELINESS OF THE REQUEST,  
09:54 AM 22 THE RELUCTANCE OF IT TO BE PRODUCED, THE EVENTUAL  
09:54 AM 23 PRODUCTION OF IT, IF I DEEM IT'S IMPORTANT, THEN I'M GOING  
09:54 AM 24 TO WITHHOLD A RULING UNTIL I GET IT.

09:54 AM 25 MR. GARRIGAN: ALL RIGHT. THANK YOU.

## TRANSCRIPT OF PROCEEDINGS

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09:54 AM 1 WE DO HAVE --

09:54 AM 2 WE HAVE HAD A CHANCE TO LOOK AT SOME OF IT.

09:54 AM 3 WE'LL PRESENT WHAT WE CAN DURING THE TRIAL.

09:54 AM 4 MR. HAMEL: YOUR HONOR, IF I MAY BE HEARD.

09:54 AM 5 I DON'T WANT TO SEEM TO BE BICKERING, BUT I WANT  
09:54 AM 6 TO BE SURE THE RECORD IS CLEAR.

09:54 AM 7 THE COURT ORDERED US TO PRODUCE ALL THE  
09:54 AM 8 APPLICATIONS THAT LUFKIN HAD.

09:54 AM 9 THE DAY AFTER THAT COURT ORDER WAS ENTERED, WE  
09:55 AM 10 CONTACTED THE COURT REPORTING SERVICE, AS WE HAD AGREED IN  
09:55 AM 11 THE COURT HEARING, TO BEGIN COPYING THOSE APPLICATIONS,  
09:55 AM 12 AND WE TOLD THE COURT REPORTING SERVICE TO SEND THEM TO  
09:55 AM 13 THE PLAINTIFFS AS THEY WERE COPIED, AND THAT IS MY  
09:55 AM 14 UNDERSTANDING OF WHAT WAS DONE, UNTIL MR. GARRIGAN TOLD  
09:55 AM 15 THE COURT REPORTING SERVICE NOT TO BOTHER TO SEND HIM  
09:55 AM 16 SOME, BECAUSE IT WAS GOING TO BE THE THANKSGIVING  
09:55 AM 17 HOLIDAYS, AND THEN TO SEND THEM HERE TO BEAUMONT. SO --

09:55 AM 18 THE COURT: I'M NOT GOING TO ENGAGE IN THIS.  
09:55 AM 19 NOW, I THINK YA'LL KNOW THIS. I WASN'T GOING TO ENGAGE IN  
09:55 AM 20 THIS DELAY TACTIC OF UNION INTERVENTION.

09:55 AM 21 AND APPARENTLY THE UNION HAS APPEALED, AND THE  
09:55 AM 22 THREE JUDGES OF THE COURT AFFIRMED THE DECISION, DENIED  
09:55 AM 23 THE DELAY, THE STAY, WHICH LUFKIN JOINED IN, NOT JOINED  
09:55 AM 24 IN, BUT MADE A SEPARATE ONE.

09:55 AM 25 USUALLY THE INDUSTRY AND THE UNIONS ARE

## TRANSCRIPT OF PROCEEDINGS

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09:55 AM 1 ADVERSARIAL, BUT IN THIS THEY WERE NOT ADVERSARIAL, THEY  
09:55 AM 2 WERE ALLIES.

09:56 AM 3 ANYHOW, THE STAY WAS DENIED BY ME. IT WAS  
09:56 AM 4 AFFIRMED, THAT DECISION WAS AFFIRMED, THE PRELIMINARY  
09:56 AM 5 APPEAL TO --

09:56 AM 6 THERE WAS AN EMERGENCY APPEAL FILED, AND JUDGE  
09:56 AM 7 GARZA WAS ON THE PANEL, AND THEY -- THAT'S EMILIO, NOT  
09:56 AM 8 REYNALDO. THEY DENIED IT.

09:56 AM 9 I EXPECTED SOME OTHER ATTEMPT TO DELAY.

09:56 AM 10 BUT THIS KIND OF BICKERING IS NOTHING BUT DELAY,  
09:56 AM 11 MR. HAMEL, MR. GARRIGAN.

09:56 AM 12 MR. GARRIGAN: YOUR HONOR, I'M NOT TRYING TO  
09:56 AM 13 DELAY, I'M TRYING TO GET THE INFORMATION THAT WE NEED IN  
09:56 AM 14 TIME TO PRESENT IT TO THE COURT.

09:56 AM 15 THE LAST MATTER I WANT TO BRING UP IS THAT WE  
09:56 AM 16 REQUESTED AND ARE ENTITLED TO THEIR COMMUNICATIONS AND ANY  
09:56 AM 17 WRITTEN INFORMATION THEY'VE PROVIDED TO THEIR EXPERT  
09:56 AM 18 WITNESSES. WE HAVE REQUESTED THAT.

09:57 AM 19 THEY RECENTLY SUPPLIED US ONLY WITH REDACTED  
09:57 AM 20 COPIES OF THOSE COMMUNICATIONS.

09:57 AM 21 WE ASKED FOR AN EXPLANATION. THERE'S NO  
09:57 AM 22 PRIVILEGE LOG THAT EXPLAINS THE REDACTIONS.

09:57 AM 23 WE THINK WE'RE ENTITLED TO ALL OF IT. THAT IS  
09:57 AM 24 ALSO BEING WITHHELD.

09:57 AM 25 THE COURT: DO YOU WANT ME TO RULE ON IT?

## TRANSCRIPT OF PROCEEDINGS

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09:57 AM 1 IT WILL BE PRODUCED.

09:57 AM 2 MR. HAMEL: YOUR HONOR, WE HAVE NOT WITHHELD  
09:57 AM 3 ANYTHING FROM THEM THAT WENT TO OUR EXPERT WITNESS.

09:57 AM 4 THE COURT: WHAT DID YOU REDACT?

09:57 AM 5 MR. HAMEL: E-MAIL COMMUNICATIONS TO THE PERSON  
09:57 AM 6 WHO WAS ASSISTING US IN A CONSULTING CAPACITY, BUT ALSO  
09:57 AM 7 ASSISTS DR. BAKER.

09:57 AM 8 ANYTHING THAT DR. BAKER HAS SEEN WE HAVE GIVEN  
09:57 AM 9 TO THE PLAINTIFFS.

09:57 AM 10 WE'LL PRODUCE THE E-MAILS. THEY'RE NOT OF ANY  
09:57 AM 11 CONSEQUENCE. BUT THEY WERE NOT RESPONSIVE TO THE REQUEST  
09:57 AM 12 THAT WAS MADE.

09:57 AM 13 THE COURT: FURNISH ME THE REDACTED PART, NOT  
09:57 AM 14 CROSSED OUT, AND I'LL MAKE THAT DETERMINATION.

09:58 AM 15 MR. HAMEL: MAY I APPROACH, YOUR HONOR?

09:58 AM 16 THE COURT: YES. I'M NOT GOING TO GO THROUGH  
09:58 AM 17 THEM RIGHT NOW, BUT I'LL REVIEW THIS TODAY AND TONIGHT.

09:58 AM 18 DO YOU HAVE ANOTHER COPY OF IT? DO YOU HAVE  
09:58 AM 19 ANOTHER COPY OF THIS? OR IF YOU DON'T, THAT'S FINE.

09:58 AM 20 MR. HAMEL: WE DO NOT, YOUR HONOR.

09:58 AM 21 THE COURT: ALL RIGHT. ANYTHING ELSE?

09:58 AM 22 MR. GARRIGAN: NO. WE'RE PREPARED TO PROCEED.

09:58 AM 23 THE COURT: PROCEED.

09:58 AM 24 MR. GARRIGAN: WE CALL OUR FIRST WITNESS,  
09:58 AM 25 SYLVESTER MCCLAIN.

TRANSCRIPT OF PROCEEDINGS

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09:58 AM 1 THE COURT: MR. MCCLAIN, PLEASE COME AROUND AND  
09:58 AM 2 BE SWORN

09:58 AM 3  
09:58 AM 4 SYLVESTER MCCLAIN, PLAINTIFF WITNESS, SWORN

09:59 AM 5  
09:59 AM 6 THE COURT: PROCEED, SIR.

09:59 AM 7 MR. GARRIGAN: THANK YOU.

09:59 AM 8 DIRECT EXAMINATION

09:59 AM 9 BY MR. GARRIGAN:

09:59 AM 10 Q. WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

09:59 AM 11 A. SYLVESTER MCCLAIN.

09:59 AM 12 Q. OKAY. MR. MCCLAIN, AGAIN, FOR THE RECORD, YOU ARE  
09:59 AM 13 THE FIRST NAMED PLAINTIFF IN THIS CAUSE OF ACTION, IS THAT  
09:59 AM 14 CORRECT?

09:59 AM 15 A. YES.

10:00 AM 16 Q. YOU'RE ALSO ONE OF THE CLASS REPRESENTATIVES, AND IT  
10:00 AM 17 WAS YOU THAT INITIATED THIS LITIGATION?

10:00 AM 18 A. YES.

10:00 AM 19 Q. HOW OLD A MAN ARE YOU?

10:00 AM 20 A. FIFTY-SIX.

10:00 AM 21 THE COURT: HOW OLD, SIR?

10:00 AM 22 THE WITNESS: FIFTY-SIX.

10:00 AM 23 BY MR. GARRIGAN:

10:00 AM 24 Q. WHERE WERE YOU BORN, MR. MCCLAIN?

10:00 AM 25 A. COLMESNEIL TEXAS.

## TRANSCRIPT OF PROCEEDINGS

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10:00 AM 1 Q. WHERE DID YOU ATTEND HIGH SCHOOL?

10:00 AM 2 A. IN LUFKIN, TEXAS.

10:00 AM 3 Q. WHAT WAS THE HIGH SCHOOL?

10:00 AM 4 A. DUNBAR HIGH SCHOOL.

10:00 AM 5 Q. DOES DUNBAR HIGH SCHOOL STILL EXIST?

10:00 AM 6 A. NO.

10:00 AM 7 Q. HOW WOULD YOU DESCRIBE DUNBAR HIGH SCHOOL?

10:00 AM 8 A. DUNBAR HIGH SCHOOL WAS A PREDOMINANTLY BLACK SCHOOL.

10:00 AM 9 Q. BACK BEFORE THE SCHOOLS WERE INTEGRATED?

10:00 AM 10 A. YES. IT WAS COMPLETELY SEGREGATED, YES.

10:00 AM 11 Q. WHAT YEAR DID YOU GRADUATE HIGH SCHOOL?

10:00 AM 12 A. 1965.

10:00 AM 13 Q. AND WHAT DID YOU DO AFTER FINISHING HIGH SCHOOL?

10:01 AM 14 A. I JOINED THE NAVY, VOLUNTEERED, ENLISTED IN THE

10:01 AM 15 UNITED STATES NAVY.

10:01 AM 16 Q. WHAT KIND OF WORK DID YOU DO IN THE NAVY?

10:01 AM 17 A. I WAS A MEDICAL CORPSMAN, HOSPITAL MEDICAL CORPSMAN.

10:01 AM 18 Q. SO DID YOU WORK IN HOSPITALS?

10:01 AM 19 A. YES, I WAS TRAINED, AND I WORKED IN BALBOA HOSPITAL

10:01 AM 20 IN SAN DIEGO, CALIFORNIA, PRIOR TO GETTING FURTHER

10:01 AM 21 TRAINING AS A COMBAT MEDIC. AND I SERVED WITH THE UNITED

10:01 AM 22 STATES MARINES IN SOUTH VIETNAM.

10:01 AM 23 Q. ALL RIGHT. AND TELL THE COURT VERY BRIEFLY WHAT YOU

10:01 AM 24 DID IN VIETNAM.

10:01 AM 25 A. MY RESPONSIBILITY WAS TO TAKE CARE OF THE WOUNDED.

## TRANSCRIPT OF PROCEEDINGS

43

10:01 AM 1 I MADE LIFE AND DEATH SITUATIONS. I BANDAGED WOUNDS, FROM  
10:01 AM 2 A SIMPLE CUT TO LIMBS BEING SEVERED TO PEOPLE CHOKING IN  
10:01 AM 3 THEIR VOMIT TO A CHEST BLOWN OPEN. I PERFORMED -- I HAD  
10:01 AM 4 IN MY -- I WAS RESPONSIBLE FOR THAT PERSON LIVING AND  
10:02 AM 5 DYING IN THOSE SITUATIONS.

10:02 AM 6 Q. OKAY. NOW, WHERE IN RELATION TO THE BATTLE WERE YOU  
10:02 AM 7 STATIONED? WERE YOU BACK AT THE HOSPITAL?

10:02 AM 8 A. NO, SIR, I WAS IN THE BATTLE.

10:02 AM 9 Q. DID YOU CARRY A WEAPON?

10:02 AM 10 A. YES, SIR.

10:02 AM 11 Q. WERE YOU EVER WOUNDED?

10:02 AM 12 A. YES, SIR.

10:02 AM 13 Q. WERE YOU DECORATED?

10:02 AM 14 A. I RECEIVED THE PURPLE HEART.

10:02 AM 15 Q. WHAT KIND OF WOUNDS DID YOU HAVE?

10:02 AM 16 A. I HAD SHRAPNEL WOUNDS FROM SIXTY MILLIMETER AND  
10:02 AM 17 EIGHTY-TWO MILLIMETER MORTARS.

10:02 AM 18 Q. OKAY. SOME MORE BACKGROUND INFORMATION, MR.

10:02 AM 19 MCCLAIN. I NOTE YOU'RE A PREACHER.

10:02 AM 20 A. YES, SIR.

10:02 AM 21 Q. IS THAT CORRECT? HAVE YOU ALWAYS BEEN SORT OF A  
10:02 AM 22 LEADER IN YOUR CHURCH?

10:02 AM 23 A. YES, SIR, SINCE THE AGE OF THIRTY.

10:03 AM 24 Q. ALL RIGHT. AND YOU'VE ALSO BEEN SOMEWHAT OF A  
10:03 AM 25 COMMUNITY LEADER?

TRANSCRIPT OF PROCEEDINGS

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10:03 AM 1 A. YES, SIR. I CARE ABOUT PEOPLE.

10:03 AM 2 Q. HAVE YOU BEEN INVOLVED IN ANY CIVIL RIGHTS GROUPS?

10:03 AM 3 A. YES, SIR. I WAS PRESIDENT OF THE NAACP IN WELLS,  
10:03 AM 4 TEXAS, FOR APPROXIMATELY SIX MONTHS. I WAS PRESIDENT OF  
10:03 AM 5 THE LUFKIN BRANCH FROM 1983 UP UNTIL 1990.

10:03 AM 6 Q. ALL RIGHT. AND ANY ANOTHER SIMILAR GROUPS YOU'VE  
10:03 AM 7 BEEN INVOLVED WITH?

10:03 AM 8 A. YES, THERE WERE OTHER SUPPORTING GROUPS THAT WERE  
10:03 AM 9 IMPORTANT IN THESE AREAS, THE VOTERS LEAGUE, THE CHAMBER  
10:03 AM 10 OF COMMERCE. THESE WERE PREDOMINANTLY BLACK. AND OTHER  
10:03 AM 11 ADVOCACY GROUPS THAT CERTAINLY WORKED TO PROTECT THE  
10:03 AM 12 RIGHTS OF PEOPLE.

10:03 AM 13 Q. ALL RIGHT. ARE YOU MARRIED, MR. MCCLAIN?

10:04 AM 14 A. YES.

10:04 AM 15 Q. DO YOU HAVE KIDS?

10:04 AM 16 A. YES, I DO.

10:04 AM 17 Q. HOW OLD ARE YOUR KIDS?

10:04 AM 18 A. MY OLDEST SON IS THIRTY-ONE, MY BIOLOGICAL SON. MY  
10:04 AM 19 OTHER SON IS THIRTY. I HAVE A SON THAT'S FOURTEEN. MY  
10:04 AM 20 DAUGHTER IS TWENTY-FIVE. AND I HAVE THREE STEPCHILDREN,  
10:04 AM 21 IN FACT, THREE STEPDAUGHTERS.

10:04 AM 22 Q. AND YOU STILL LIVE IN LUFKIN, WHERE YOU FINISHED  
10:04 AM 23 HIGH SCHOOL?

10:04 AM 24 A. YES.

10:04 AM 25 Q. MR. MCCLAIN, WHEN DID YOU FIRST BECOME ASSOCIATED

## TRANSCRIPT OF PROCEEDINGS

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10:04 AM 1 WITH LUFKIN INDUSTRIES?

10:04 AM 2 A. I HIRED IN FEBRUARY OF 1972. WHEN I FIRST BECAME  
10:04 AM 3 ASSOCIATED WITH THEM WAS AFTER I GOT OUT OF THE MILITARY,  
10:04 AM 4 WHICH WAS IN JUNE OF '69, AND SOMETIME AFTER THAT I HIRED  
10:04 AM 5 AT THE HEAVY WELDMENT FACILITY AT LUFKIN INDUSTRIES.

10:05 AM 6 Q. ALL RIGHT. SO AFTER YOU WERE AT THE WAR IN VIETNAM,  
10:05 AM 7 YOU CAME BACK, AND WAS YOUR FIRST JOB AT LUFKIN  
10:05 AM 8 INDUSTRIES?

10:05 AM 9 A. YES.

10:05 AM 10 Q. WHAT KIND OF WORK DID YOU DO THEN?

10:05 AM 11 A. I WAS INITIALLY HIRED AS A HELPER. I DID CLEANING  
10:05 AM 12 AND CHIPPING AND GRINDING.

10:05 AM 13 Q. ALL RIGHT. AND WHAT WAS YOUR JOB TITLE, HELPER?

10:05 AM 14 A. YES.

10:05 AM 15 Q. AND THE ASSIGNMENT, THE CHIPPING AND GRINDING AND  
10:05 AM 16 CLEANING THAT YOU DID, WERE THERE OTHER PEOPLE DOING THAT  
10:05 AM 17 KIND OF WORK?

10:05 AM 18 A. YES, THERE WERE, SIR.

10:05 AM 19 Q. WERE THEY WHITE OR BLACK?

10:05 AM 20 A. BLACK, PREDOMINANTLY BLACK, ALL BLACK AS FAR AS I  
10:05 AM 21 REMEMBER. THERE MAY HAVE BEEN A FEW WHITES, BUT MOSTLY  
10:05 AM 22 BLACK.

10:05 AM 23 Q. OKAY. AND WHAT WAS -- HOW LONG DID YOU WORK AS A  
10:06 AM 24 HELPER?

10:06 AM 25 A. I DON'T RECALL EXACTLY HOW LONG, BUT SEVERAL MONTHS

10:06 AM 1 AT LEAST.

10:06 AM 2 Q. ALL RIGHT. WHILE YOU WERE DOING THIS CHIPPING AND  
10:06 AM 3 GRINDING AND CLEANING, WERE THERE WHITE EMPLOYEES AROUND?

10:06 AM 4 A. YES.

10:06 AM 5 Q. WHAT KIND OF WORK WERE THE WHITE EMPLOYEES DOING?

10:06 AM 6 A. THEY WERE WELDERS AND ASSEMBLYMEN.

10:06 AM 7 Q. WERE THOSE HIGHER-PAYING POSITIONS?

10:06 AM 8 A. YES, THEY WERE.

10:06 AM 9 Q. OKAY. WHAT WAS YOUR NEXT ASSIGNMENT AFTER BEING A  
10:06 AM 10 HELPER?

10:06 AM 11 A. A WHITE SUPERVISOR CAME TO ME AND TOLD ME THAT THEY  
10:06 AM 12 NEEDED A CLASS "C" TACKER, AND I WAS ASSIGNED DOING THAT.

10:06 AM 13 THE COURT: A CLASS "C" --

10:06 AM 14 THE WITNESS: IT'S A CLASS "C" WELDER, BUT YOU  
10:06 AM 15 ACTUALLY TACK WELD, YOUR HONOR. YOU HAVEN'T BEEN TRAINED.

10:06 AM 16 THE COURT: TACK WELD?

10:06 AM 17 THE WITNESS: YES, SIR.

10:06 AM 18 BY MR. GARRIGAN:

10:06 AM 19 Q. NOW, DID YOU BID ON THAT JOB?

10:06 AM 20 A. NO, SIR.

10:06 AM 21 Q. DID YOU EXPRESS AN INTEREST IN IT?

10:06 AM 22 A. NO, SIR.

10:07 AM 23 Q. HOW DID YOU BECOME THE CLASS "C" WELDER?

10:07 AM 24 A. I WAS TOLD TO DO IT.

10:07 AM 25 Q. DID YOU CONSIDER THAT A PROMOTION?

## TRANSCRIPT OF PROCEEDINGS

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10:07 AM 1 A. NO, SIR.

10:07 AM 2 Q. DID YOU GET PAID MORE?

10:07 AM 3 A. I THINK SO.

10:07 AM 4 Q. BUT COULD YOU HAVE DECLINED THE JOB?

10:07 AM 5 A. I DON'T THINK SO, BECAUSE I WAS ASSIGNED TO DO THE  
10:07 AM 6 JOB, THEY NEEDED CLASS "C" TACKERS, AND WE WERE CLEANING  
10:07 AM 7 AND GRINDING, AND I WAS TOLD TO DO IT.

10:07 AM 8 Q. AND AFTER HIRING ON IN 1969, HOW LONG DID YOU  
10:07 AM 9 CONTINUE WORKING AT LUFKIN INDUSTRIES?

10:07 AM 10 A. THAT I DON'T REMEMBER.

10:07 AM 11 Q. WHAT'S YOUR BEST ESTIMATE?

10:07 AM 12 A. SIX MONTHS MAYBE.

10:07 AM 13 Q. WHAT WERE THE CIRCUMSTANCES THAT CAUSED YOU TO LEAVE  
10:07 AM 14 LUFKIN INDUSTRIES?

10:07 AM 15 A. ONE NIGHT MYSELF AND A CLASS "B" WELDER WAS WELDING  
10:07 AM 16 ON WHAT YOU CALL A BOAT-SHAPED OBJECT, AND WE HAD A  
10:07 AM 17 PATTERN WHERE WHEN YOU GET TO THE TOP, YOU FLIP YOUR HOOD  
10:08 AM 18 AND YOU DON'T STRIKE YOUR ARC UNTIL THE OTHER MAN HAS HIS  
10:08 AM 19 EYE SHIELD OUT OF THE WAY. WHEN I FLIPPED MY HOOD, HE WAS  
10:08 AM 20 WELDING, AND THE ARC BURNT MY EYES.

10:08 AM 21 I COULDN'T HARDLY SEE, SO I REPORTED TO MY  
10:08 AM 22 SUPERVISOR THAT I NEEDED MEDICAL ATTENTION, AND I ASKED  
10:08 AM 23 FOR A RIDE HOME. I WAS SIMPLY TOLD "YOU CAN'T DO THE  
10:08 AM 24 WORK, YOU NEED TO GO HOME."

10:08 AM 25 Q. DID THEY GIVE YOU A RIDE HOME?

10:08 AM 1 A. NO, SIR, THEY DID NOT.

10:08 AM 2 Q. WHAT TIME OF DAY DID THIS OCCUR?

10:08 AM 3 A. THIS WAS AT NIGHT. IT WAS ON SECOND SHIFT.

10:08 AM 4 Q. HOW DID YOU GET HOME?

10:08 AM 5 A. I HAD TO WALK HOME, AND I LIVED ABOUT FIVE MILES  
10:08 AM 6 FROM WHERE I WAS WORKING.

10:08 AM 7 Q. AND YOU HAD BEEN BLINDED?

10:08 AM 8 A. VIRTUALLY SO, YES, SIR. I COULD BARELY SEE THROUGH  
10:08 AM 9 MY EYES. I COULD BARELY SEE.

10:08 AM 10 I MANAGED TO MAKE IT HOME, AND AFTER I GOT HOME,  
10:08 AM 11 I WENT TO BED. I WOKE UP ABOUT 2:00 OR 3:00 IN THE  
10:09 AM 12 MORNING AND IT'S LIKE KNIVES WERE PROTRUDING MY EYES, AND  
10:09 AM 13 MY PARENTS TOOK ME TO THE EMERGENCY ROOM.

10:09 AM 14 Q. HAD YOU EVER SEEN SUPERVISORS REFUSE MEDICAL CARE TO  
10:09 AM 15 A WHITE EMPLOYEE?

10:09 AM 16 A. NO, SIR.

10:09 AM 17 Q. HOW LONG WAS IT UNTIL YOU WERE ABLE TO GO BACK TO  
10:09 AM 18 WORK?

10:09 AM 19 A. I DIDN'T GO BACK.

10:09 AM 20 Q. WHY DIDN'T YOU GO BACK?

10:09 AM 21 A. WELL, ONE, IT'S BECAUSE OF THE WAY I WAS TREATED. I  
10:09 AM 22 MEAN, I JUST -- THE TREATMENT OF BLACK WORKERS THERE, THE  
10:09 AM 23 CONDITIONS THEY WAS WORKING UNDER, AND HOW I WAS TREATED  
10:09 AM 24 WHEN I WAS DOING THE JOB AND GOT INJURED, I JUST FELT IT  
10:09 AM 25 WAS LESS THAN DESIRED I FELT. I HAD NO CONFIDENCE IN



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10:09 AM 1 GOING BACK THERE.

10:09 AM 2 Q. ALL RIGHT. BUT YOU DID IN FACT GO BACK, DIDN'T YOU?

10:09 AM 3 A. YES, I WENT BACK. I DON'T REMEMBER THE

10:10 AM 4 CIRCUMSTANCES AROUND MY GOING BACK, BUT I JUST KNOW THAT

10:10 AM 5 THAT WAS -- MY EMPLOYMENT WAS ENDED DURING THAT TIME.

10:10 AM 6 Q. OKAY. WELL, WHEN DID YOU GO BACK TO WORK AT LUFKIN  
10:10 AM 7 INDUSTRIES?

10:10 AM 8 A. OH, YOU MEAN WHEN I WENT BACK? OH, I THOUGHT YOU  
10:10 AM 9 MEANT BACK TO THAT FACILITY.

10:10 AM 10 OKAY. I REHIRED AT LUFKIN INDUSTRIES IN  
10:10 AM 11 FEBRUARY OF 1972.

10:10 AM 12 Q. AFTER YOUR FIRST EXPERIENCE IN 1969, WHY DID YOU GO  
10:10 AM 13 BACK TO LUFKIN INDUSTRIES IN 1972?

10:10 AM 14 A. BECAUSE I WAS STAYING IN BEAUMONT AND HAD MOVED BACK  
10:10 AM 15 TO LUFKIN. I HAD MARRIED, AND I NEEDED A JOB TO TAKE CARE  
10:10 AM 16 OF MY FAMILY.

10:10 AM 17 Q. OKAY. WHAT KIND OF JOB DID YOU GET? WHAT WAS YOUR  
10:10 AM 18 FIRST ASSIGNMENT WHEN YOU WENT BACK TO WORK THERE IN 1972?

10:10 AM 19 A. I WAS ASSIGNED AS A HELPER AT THE TRAILER DIVISION.

10:11 AM 20 Q. OKAY. ON EITHER OF THESE OCCASIONS WHEN YOU WERE  
10:11 AM 21 HIRED AT LUFKIN IN 1969 AND IN 1972, WERE YOU STEERED TO  
10:11 AM 22 THOSE POSITIONS AS OPPOSED TO A MORE DESIRABLE POSITION,  
10:11 AM 23 SAY, IN POWER TRANSMISSION?

10:11 AM 24 MR. HAMEL: OBJECTION, LEADING.

10:11 AM 25 THE COURT: OH, IT'S BEFORE THE COURT.

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10:11 AM 1 WERE YOU ASSIGNED TO THEM OR DID YOU REQUEST  
10:11 AM 2 THEM?

10:11 AM 3 THE WITNESS: I WAS ASSIGNED, YES, SIR.

10:11 AM 4 THE COURT: ASSIGNED?

10:11 AM 5 THE WITNESS: YES, SIR. OKAY.

10:11 AM 6 THE COURT: STEERED OR NOT, I AGREE THAT THAT IS  
10:11 AM 7 SORT OF, NOT ONLY LEADING, BUT IT HAS A CONNOTATION THAT  
10:11 AM 8 IS NOT APPROPRIATE, AND IT --

10:11 AM 9 IF HE WAS ASSIGNED, IT WAS ASSIGNED TO HIM.  
10:11 AM 10 BY MR. GARRIGAN:

10:12 AM 11 Q. WELL, MY POINT IS, YOU HAD NO SAY ABOUT WHERE YOU  
10:12 AM 12 WERE ASSIGNED, IS THAT CORRECT?

10:12 AM 13 A. NO, SIR.

10:12 AM 14 Q. DID YOU KNOW WHETHER THERE WERE MORE DESIRABLE  
10:12 AM 15 POSITIONS OPEN AT THE SAME TIME?

10:12 AM 16 A. NO, SIR.

10:12 AM 17 Q. WERE YOU OFFERED ANY OTHER POSITIONS OTHER THAN THE  
10:12 AM 18 ONES THAT YOU ACTUALLY TOOK AND THEY ASSIGNED YOU TO?

10:12 AM 19 A. NO, I WAS NOT.

10:12 AM 20 Q. DID ANYBODY EXPLAIN TO YOU ABOUT THE OTHER KIND OF  
10:12 AM 21 WORK DONE AT LUFKIN INDUSTRIES IN THE OTHER DIVISIONS?

10:12 AM 22 A. NO, THEY DID NOT.

10:12 AM 23 Q. NOW, MR. MCCLAIN, HAVE YOU CONTINUED WORKING AT  
10:12 AM 24 LUFKIN INDUSTRIES FROM 1972 THROUGH TODAY?

10:12 AM 25 A. YES, I HAVE.

## TRANSCRIPT OF PROCEEDINGS

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10:13 AM 1 Q. IN YOUR EXPERIENCE AT LUFKIN INDUSTRIES, HAVE YOU  
10:13 AM 2 EVER OBSERVED RACE DISCRIMINATION?

10:13 AM 3 A. YES, I HAVE.

10:13 AM 4 Q. TELL US ABOUT THOSE OBSERVATIONS.

10:13 AM 5 A. IN THE BEGINNING, WHEN I HIRED AT LUFKIN INDUSTRIES,  
10:13 AM 6 IF YOU WERE A BLACK WORKER AND YOU HAD COMPLETED YOUR JOB  
10:13 AM 7 AND YOU WERE STANDING TALKING, TWO OR THREE, WELL, THEY  
10:13 AM 8 WOULD COME AND THEY WOULD ACTUALLY GET YOU -- SEPARATE YOU  
10:13 AM 9 AND FIND SOMETHING FOR YOU TO DO, AS OPPOSED TO IF THERE  
10:13 AM 10 WERE WHITE WORKERS, SIX, SEVEN, EIGHT, AND IF THEY HAD  
10:13 AM 11 COMPLETED THEIR JOB TASKS AND WAS WAITING ON THE TRAILER  
10:13 AM 12 TO COME DOWN THE LINE, BASICALLY THEY WAS LEFT ALONE.

10:13 AM 13 THAT WAS THE FIRST OBSERVATION OF DIFFERENT  
10:13 AM 14 TREATMENT, THE WAY WE WERE TREATED AND THE WAY THEY WERE  
10:13 AM 15 TREATED.

10:13 AM 16 MY NEXT DISCRIMINATION WAS, DAVID DIXON HAD FOUR  
10:13 AM 17 YEARS SENIORITY AT THE MACHINE SHOP AND HAD ONE YEAR  
10:14 AM 18 FROZEN SENIORITY IN THE TRAILER DIVISION. HE WAS LAID  
10:14 AM 19 OFF.

10:14 AM 20 HE CAME TO ME BECAUSE HE COULDN'T GET ANYONE TO  
10:14 AM 21 HELP HIM, AND SO I FILED A GRIEVANCE BASED ON  
10:14 AM 22 DISCRIMINATION, BECAUSE THEY HAD LAID HIM OFF.

10:14 AM 23 HE HAD FILED A COMPLAINT TO THE EEOC. THEY KNEW  
10:14 AM 24 HE HAD SENIORITY. I LOOKED AT THE SENIORITY LIST.  
10:14 AM 25 THERE'S NO REASON HE SHOULDN'T HAVE BEEN TRANSFERRED TO

## TRANSCRIPT OF PROCEEDINGS

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10:14 AM 1 THE TRAILER DIVISION, AND THEY LAID HIM OFF, AND IT WAS  
10:14 AM 2 JUST WRONG.

10:14 AM 3 Q. WHAT WAS MR. DIXON'S RACE?

10:14 AM 4 A. BLACK.

10:14 AM 5 Q. OKAY. AND YOU PURSUED A GRIEVANCE ON HIS BEHALF?

10:14 AM 6 A. YES, I WROTE HIS GRIEVANCE, AND, OF COURSE, HE  
10:14 AM 7 PRESENTED IT.

10:14 AM 8 Q. DID YOU DO THAT AS A UNION STEWARD?

10:14 AM 9 A. NO, I'VE NEVER BEEN A UNION STEWARD.

10:14 AM 10 Q. AND IN WHAT CAPACITY WERE YOU ADVOCATING FOR HIM IN  
10:14 AM 11 THAT GRIEVANCE?

10:14 AM 12 A. WELL, I'M A UNION MEMBER, AND IT SAYS THAT A  
10:14 AM 13 UNION -- THE AGGRIEVED PARTY CAN FILE THE INITIAL  
10:14 AM 14 GRIEVANCE, AND THAT'S WHAT I DID. IN MY CASE, I ASSISTED  
10:15 AM 15 HIM BY BEING A UNION MEMBER AND BEING CONCERNED ABOUT WHAT  
10:15 AM 16 HAD HAPPENED TO HIM.

10:15 AM 17 Q. ALL RIGHT. BEFORE I ASK YOU MORE ABOUT OTHER  
10:15 AM 18 DISCRIMINATION THERE, DURING YOUR TENURE HAVE YOU HAD  
10:15 AM 19 OPPORTUNITIES TO SEE THE WORKING CONDITIONS, CERTAINLY IN  
10:15 AM 20 THE TRAILER PLANT?

10:15 AM 21 A. YES, SIR.

10:15 AM 22 Q. THE TRAILER PLANT IS WHERE YOU HAVE WORKED SINCE  
10:15 AM 23 1972?

10:15 AM 24 A. YES, SIR.

10:15 AM 25 THE COURT: EXCUSE ME JUST A MOMENT.

## TRANSCRIPT OF PROCEEDINGS

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10:15 AM 1 MR. HAMEL, IF YOU'RE NOT GOING TO USE THAT  
10:15 AM 2 SCREEN, CAN YOU TURN THE LIGHT OFF?

10:15 AM 3 MR. HAMEL: CERTAINLY, YOUR HONOR.

10:15 AM 4 THE COURT: I DON'T KNOW WHERE IT'S COMING FROM.  
10:15 AM 5 THANK YOU.

10:15 AM 6 IT'S SOMEWHAT OVERPOWERING, BLACK AND WHITE.

10:15 AM 7 MR. HAMEL: I UNDERSTAND, YOUR HONOR. WE  
10:15 AM 8 APOLOGIZE.

10:15 AM 9 THE COURT: NO APOLOGY. YOU COMPLIED WITH MY  
10:15 AM 10 REQUEST. THERE'S NO APOLOGY NEEDED.  
10:15 AM 11 BY MR. GARRIGAN:

10:15 AM 12 Q. HAVE YOU HAD A CHANCE TO OBSERVE CONDITIONS IN THE  
10:16 AM 13 FOUNDRY?

10:16 AM 14 A. YES, SIR.

10:16 AM 15 Q. OILFIELD?

10:16 AM 16 A. YES, SIR.

10:16 AM 17 Q. POWER TRANSMISSION?

10:16 AM 18 A. YES, SIR.

10:16 AM 19 Q. OKAY. AND WHAT WERE THE CIRCUMSTANCES THAT YOU HAD  
10:16 AM 20 THE OPPORTUNITY TO OBSERVE THE WORKING CONDITIONS IN THESE  
10:16 AM 21 DIFFERENT AREAS?

10:16 AM 22 A. I WAS TRAINED BY LUFKIN TO BE AN AUDITOR. I WAS  
10:16 AM 23 EITHER THE LEAD AUDITOR OR THE SECONDARY AUDITOR WHEN WE  
10:16 AM 24 CONDUCTED INTERNAL AUDITS OF THOSE DIVISIONS.

10:16 AM 25 THE COURT: WHAT DO YOU MEAN BY "INTERNAL

10:16 AM 1 AUDITOR"?

10:16 AM 2 THE WITNESS: WELL, THAT'S WHEN, YOUR HONOR, WE  
10:16 AM 3 GO IN AND WE AUDIT THE DIFFERENT PROCESSES TO SEE IF  
10:16 AM 4 THEY'RE FOLLOWING THE PROCEDURES --

10:16 AM 5 THE COURT: OH, ALL RIGHT.

10:16 AM 6 THE WITNESS: -- SET FORTH BY THE --

10:16 AM 7 THE COURT: YOU DON'T MEAN GOING OVER THE BOOKS?

10:16 AM 8 THE WITNESS: OH, NO, SIR.

10:16 AM 9 THE COURT: ALL RIGHT.

10:16 AM 10 BY MR. GARRIGAN:

10:16 AM 11 Q. THESE WERE PRODUCTION AUDITS?

10:16 AM 12 A. YES.

10:16 AM 13 Q. OKAY. HOW DID THE CONDITIONS IN THE FOUNDRY COMPARE  
10:17 AM 14 TO THE WORKING CONDITIONS IN THE TRAILER DIVISION?

10:17 AM 15 A. THEY WERE DEPLORABLE, HOT, DIRTY. THEY WERE MUCH  
10:17 AM 16 WORSE.

10:17 AM 17 Q. WHAT PROPORTION -- WHAT WAS THE WORST PART OF THE  
10:17 AM 18 FOUNDRY THAT YOU SAW?

10:17 AM 19 A. IN THE CLEANING ROOM. I MEAN, IT'S HOT, IT'S DUSTY.  
10:17 AM 20 YOU CAN'T HARDLY SEE, YOU CAN'T HARDLY BREATHE. IT'S  
10:17 AM 21 JUST -- IT'S JUST TERRIBLE.

10:17 AM 22 Q. WHEN YOU WERE THERE WATCHING THE PRODUCTION  
10:17 AM 23 PROCESSES, WHAT PORTION OF THE WORKERS THERE WERE WHITE?

10:17 AM 24 A. I WAS TOLD THAT THERE WERE A FEW WHITES. I DIDN'T  
10:17 AM 25 SEE THEM.

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10:17 AM 1 MR. HAMEL: OBJECTION, YOUR HONOR, HEARSAY.

10:17 AM 2 THE COURT: TELL ME WHAT YOU SAW.

10:17 AM 3 THE WITNESS: I SAW BLACK EMPLOYEES.

10:17 AM 4 BY MR. GARRIGAN:

10:18 AM 5 Q. OKAY. TELL US, IN WHAT WAYS ARE THE WORKING

10:18 AM 6 CONDITIONS BETTER IN THE TRAILER DIVISION?

10:18 AM 7 A. THEY'RE CLEANER. THE ENVIRONMENT IS NOT DUSTY, IT'S

10:18 AM 8 NOT EXTREMELY HOT FROM THE MELTED STEEL OR IRON THAT'S

10:18 AM 9 POURED. IT'S JUST -- IT'S MUCH BETTER.

10:18 AM 10 Q. IS IT CLEAN IN THE TRAILER DIVISION?

10:18 AM 11 A. YES.

10:18 AM 12 Q. AND HOW DOES THE TRAILER DIVISION COMPARE TO, SAY,

10:18 AM 13 OILFIELD?

10:18 AM 14 A. THAT'S LIKE -- WELL, THE OILFIELD?

10:18 AM 15 Q. YES.

10:18 AM 16 A. OILFIELD IS BETTER. IT HAS SLIGHTLY -- IT'S

10:18 AM 17 SLIGHTLY BETTER, SOMEWHAT BETTER.

10:18 AM 18 Q. ALL RIGHT. WHICH WORK AREA IS CLEANER?

10:18 AM 19 A. OILFIELD.

10:18 AM 20 Q. ARE THERE ANY OTHER WAYS THAT OILFIELD IS BETTER

10:18 AM 21 THAN TRAILER?

10:18 AM 22 A. YOU MEAN AS FAR AS WORK CONDITIONS?

10:18 AM 23 Q. YES.

10:18 AM 24 A. WELL, LIKE I SAID, IT'S CLEANER, IT'S NOT HOT, AND

10:19 AM 25 THERE ARE CERTAINLY -- WHEN THERE ARE MACHINE OPERATIONS,

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10:19 AM 1 IT'S CERTAINLY CLEANER, AND THERE'S MORE OPPORTUNITY.

10:19 AM 2 Q. OKAY. AND HOW DO THE CONDITIONS IN POWER

10:19 AM 3 TRANSMISSION COMPARE TO THE OTHER DIVISIONS?

10:19 AM 4 A. IT'S LIKE COMPARING APPLES TO ORANGES. THERE'S NO

10:19 AM 5 COMPARISON. POWER TRANSMISSION IS CLEAN, IT'S

10:19 AM 6 AIR-CONDITIONED. IT'S JUST -- IT'S DIFFERENT AS NIGHT AND

10:19 AM 7 DAY.

10:19 AM 8 Q. IS THE WORK AS PHYSICAL THERE?

10:19 AM 9 A. NO.

10:19 AM 10 Q. WHAT WAS THE PROPORTION OF WHITE WORKERS THAT YOU

10:19 AM 11 WERE ABLE TO OBSERVE AT POWER TRANSMISSION?

10:19 AM 12 A. THE MAJORITY, ALMOST ALL WHITE.

10:20 AM 13 Q. I GUESS I WOULD LIKE TO ASK A LITTLE BIT ABOUT YOUR

10:20 AM 14 EXPERIENCE AT LUFKIN.

10:20 AM 15 A. YES.

10:20 AM 16 Q. AND THE PROGRESSION OF YOUR CAREER.

10:20 AM 17 A. OKAY.

10:20 AM 18 Q. YOU SAID YOU STARTED IN 1972 AS A HELPER?

10:20 AM 19 A. YES.

10:20 AM 20 Q. AND WHAT IS YOUR POSITION TODAY?

10:20 AM 21 A. I'M AN INSPECTOR.

10:20 AM 22 THE COURT: YOU'RE WHAT?

10:20 AM 23 THE WITNESS: I'M AN INSPECTOR.

10:20 AM 24 BY MR. GARRIGAN:

10:20 AM 25 Q. WHEN DID YOU FIRST BECOME AN INSPECTOR?

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10:20 AM 1 A. IT WAS IN THE 80S. I DON'T REMEMBER THE EXACT YEAR.

10:20 AM 2 THE COURT: THESE ARE HOURLY-RATED?

10:20 AM 3 THE WITNESS: YES, SIR.

10:20 AM 4 THE COURT: NOT A SALARIED POSITION?

10:20 AM 5 THE WITNESS: NO, SIR.

10:20 AM 6 THE COURT: WHAT IS YOUR RATE OF PAY?

10:20 AM 7 THE WITNESS: RIGHT NOW I MAKE FOURTEEN-O-EIGHT,

10:20 AM 8 FOURTEEN DOLLARS AND EIGHT CENTS AN HOUR.

10:20 AM 9 THE COURT: WHAT WAS IT --

10:21 AM 10 WHEN IS THE MOST RECENT RAISE YOU GOT?

10:21 AM 11 THE WITNESS: WITH THE CONTRACT THAT WE

10:21 AM 12 NEGOTIATED, THAT WAS THE MOST RECENT RAISE I GOT, IN

10:21 AM 13 OCTOBER. I THINK IT WAS TWO AND A QUARTER PERCENT.

10:21 AM 14 THE COURT: THANK YOU. PROCEED.

10:21 AM 15 BY MR. GARRIGAN:

10:21 AM 16 Q. ALL RIGHT. WHAT'S THE HIGHEST POSITION THAT YOU

10:21 AM 17 CONSIDER YOU'VE HAD AT LUFKIN INDUSTRIES?

10:21 AM 18 A. QUALITY MANAGER.

10:21 AM 19 Q. AND WHEN DID YOU HAVE THAT POSITION?

10:21 AM 20 A. ACTUALLY, ESPECIALLY FROM 1990 UNTIL 1996, BECAUSE I

10:21 AM 21 WAS CHIEF INSPECTOR FROM '87 UNTIL 1990.

10:21 AM 22 Q. ALL RIGHT. SO YOU WERE AN INSPECTOR INITIALLY

10:21 AM 23 SOMETIME BEFORE THE MID-80S THEN OR DURING THE MID-80S?

10:21 AM 24 A. YEAH. THE LOWER OR MID-80S, YES.

10:21 AM 25 Q. AND YOU WENT FROM THERE TO BEING CHIEF INSPECTOR?

10:21 AM 1 A. YES.

10:22 AM 2 Q. THEN QUALITY MANAGER IN 1990?

10:22 AM 3 A. YES.

10:22 AM 4 Q. AND THAT LASTED UNTIL '96?

10:22 AM 5 A. YES.

10:22 AM 6 Q. NOW, WERE ANY OF THOSE POSITIONS SALARIED AS OPPOSED  
10:22 AM 7 TO HOURLY?

10:22 AM 8 A. THE CHIEF INSPECTOR AND THE MANAGER WERE SALARIED.

10:22 AM 9 Q. OKAY. BUT AS YOU SIT HERE TODAY, YOU'RE STILL  
10:22 AM 10 DOING -- YOU'VE GOT THE ASSIGNMENT THAT YOU HAD BACK IN  
10:22 AM 11 THE MID-80S?

10:22 AM 12 A. YES. YES, SIR.

10:22 AM 13 Q. OKAY. HAVE THERE BEEN TIMES DURING YOUR CAREER WHEN  
10:22 AM 14 YOU FELT YOUR ADVANCEMENT WAS STALLED?

10:22 AM 15 A. YES, SIR, AT LEAST SEVERAL TIMES.

10:22 AM 16 Q. OKAY. WHAT WAS THE FIRST ONE YOU CAN THINK OF?

10:22 AM 17 A. WELL, WHEN I WAS HIRED IN THE TRAILER DIVISION, I  
10:22 AM 18 WAS INITIALLY HIRED IN CLEANING AND SWEEPING THE FLOOR,  
10:23 AM 19 AND THEY ASSIGNED ME TO THE PAINT HOUSE. I WAS ASSIGNED  
10:23 AM 20 AS A CLASS "B" PAINTER. THAT WAS -- IT WAS DIRTY, IT WAS  
10:23 AM 21 HOT, THE SMELLING OF THE PAINT WAS UNDESIRABLE, AND I HAD  
10:23 AM 22 A LOT OF TROUBLE GETTING OUT OF THERE.

10:23 AM 23 I DID --

10:23 AM 24 Q. WELL, BEFORE YOU GET THERE, LET ME ASK YOU, HOW DID  
10:23 AM 25 YOU GET INTO THE PAINT HOUSE? WAS THAT A POSITION THAT

10:23 AM 1 YOU BID ON?

10:23 AM 2 A. NO, SIR.

10:23 AM 3 Q. HOW DID YOU GET THAT JOB?

10:23 AM 4 A. I WAS ASSIGNED THERE.

10:23 AM 5 Q. DID YOU CONSIDER THAT A PROMOTION?

10:23 AM 6 A. NO, SIR.

10:23 AM 7 Q. OKAY. I THINK YOU MADE --

10:23 AM 8 YOU DID NOT DESIRE THAT POSITION?

10:23 AM 9 A. NO, SIR.

10:23 AM 10 THE COURT: DID YOU MAKE ANY MORE MONEY?

10:23 AM 11 THE WITNESS: YES, SIR. I'M NOT SURE HOW MUCH,  
10:23 AM 12 BUT I MADE A LITTLE MORE.

10:23 AM 13 THE COURT: IT WAS --

10:23 AM 14 WHATEVER IT WAS, IT WAS A SLIGHT RAISE?

10:23 AM 15 THE WITNESS: YES, SIR.

10:23 AM 16 THE COURT: ALL RIGHT.

10:23 AM 17 BY MR. GARRIGAN:

10:23 AM 18 Q. ALL RIGHT. OKAY. IN ADDITION TO THE PAINT HOUSE,  
10:24 AM 19 WHEN ELSE HAVE YOU FELT THAT YOUR ADVANCEMENT AT LUFKIN  
10:24 AM 20 INDUSTRIES HAS BEEN STALLED?

10:24 AM 21 A. WELL --

10:24 AM 22 MR. HAMEL: OBJECTION, YOUR HONOR, LEADING.

10:24 AM 23 THE COURT: I'M GOING TO OVERRULE IT.

10:24 AM 24 THE WITNESS: AFTER -- I HAD SIGNED -- I HAD  
10:24 AM 25 SIGNED NUMEROUS JOB POSTINGS, TRYING TO GET OUT OF THE

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10:24 AM 1 PAINT HOUSE, AND I HAD SENIORITY IN A LOT OF THOSE  
10:24 AM 2 INSTANCES. SO FINALLY I WAS TRANSFERRED TO THE MAIN  
10:24 AM 3 BUILDING AS A CLASS "B" TRAILER BODY BUILDER.

10:24 AM 4 BY MR. GARRIGAN:

10:24 AM 5 Q. ALL RIGHT. AND DID YOUR -- ARE YOU TELLING US THAT  
10:24 AM 6 YOUR CAREER STALLED THERE?

10:24 AM 7 A. YES.

10:24 AM 8 Q. AS CLASS "B" --

10:24 AM 9 A. TRAILER BODY BUILDER.

10:24 AM 10 Q. OKAY.

10:24 AM 11 A. AGAIN, I WAS ASSIGNED THAT, AND I CONTINUED TO -- I  
10:24 AM 12 SIGNED ALMOST EVERYTHING THAT WAS POSTED, AND IN MANY  
10:25 AM 13 CASES I HAD THE SENIORITY AND I HAD THE EXPERIENCE, BUT I  
10:25 AM 14 WAS PASSED OVER, AND THEY CHOSE WHITE WORKERS WITH LESS  
10:25 AM 15 SENIORITY.

10:25 AM 16 Q. ALL RIGHT. AND WAS THERE ANY OTHER TIME DURING YOUR  
10:25 AM 17 CAREER WHERE YOU FELT THAT YOU COULDN'T FAIRLY BE  
10:25 AM 18 CONSIDERED FOR PROMOTIONS?

10:25 AM 19 A. WELL, AFTER I BIDDED -- AFTER THEY FINALLY SELECTED  
10:25 AM 20 ME AS A CLASS "A" TRAILER BODY BUILDER, I BIDDED TO BECOME  
10:25 AM 21 AN INSPECTOR, AND I SIGNED -- I WAS PROMOTED TO INSPECTOR  
10:25 AM 22 ON THREE OCCASIONS.

10:25 AM 23 THE FIRST TIME I MADE INSPECTOR, THEY DECIDED  
10:25 AM 24 AFTER THREE WEEKS TO A MONTH THAT THEY DIDN'T NEED AN  
10:25 AM 25 INSPECTOR. IT WAS APPARENT, THEY WERE PRODUCING THE SAME

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10:25 AM 1 PRODUCTS, THAT THEY DIDN'T WANT ME TO BE AN INSPECTOR. SO  
10:25 AM 2 AFTER CONTINUALLY COMPLAINING THAT THIS WAS RACE  
10:25 AM 3 DISCRIMINATION, THAT THEY WERE NOT TREATING ME THE SAME AS  
10:25 AM 4 OTHER WHITE WORKERS, I HAD SENIORITY, I SIGNED IT,  
10:26 AM 5 CONTINUED TO SIGN JOB POSTINGS, SO I WAS PROMOTED A SECOND  
10:26 AM 6 TIME.

10:26 AM 7 AND I BELIEVE ON THE THIRD TIME IS WHEN I BECAME  
10:26 AM 8 A PERMANENT INSPECTOR.

10:26 AM 9 Q. SO TRYING TO GET INTO THE INSPECTOR JOB --

10:26 AM 10 A. YES.

10:26 AM 11 Q. IT TOOK THREE DIFFERENT TRIES?

10:26 AM 12 A. YES.

10:26 AM 13 Q. WERE THERE EVER CRITICISMS OF YOUR WORK PERFORMANCE?

10:26 AM 14 A. NO.

10:26 AM 15 Q. WERE YOU DEMOTED?

10:26 AM 16 A. NO.

10:26 AM 17 Q. THEY JUST TOOK IT BACK AWAY FROM YOU?

10:26 AM 18 A. RIGHT, SAID, "WE DON'T NEED YOU."

10:26 AM 19 THE COURT: WHO SAID THAT?

10:26 AM 20 THE WITNESS: MY SUPERVISOR.

10:26 AM 21 THE COURT: DO YOU REMEMBER HIS NAME?

10:26 AM 22 THE WITNESS: WHEN I WAS APPLYING FOR THE

10:26 AM 23 INSPECTOR, BILLY DURHAM WAS THE SUPERVISOR. HE WAS THE  
10:26 AM 24 CHIEF INSPECTOR.

10:26 AM 25 BY MR. GARRIGAN:

10:26 AM 1 Q. OKAY. NOW, HOW ABOUT --

10:26 AM 2 HAVE THERE BEEN ANY OTHER TIMES THROUGH TODAY  
10:26 AM 3 WHEN YOU HAVE FELT THAT YOU COULDN'T BE FAIRLY CONSIDERED  
10:26 AM 4 FOR A PROMOTION?

10:27 AM 5 A. YES. I CONTINUALLY SIGNED JOB POSTINGS FOR SALARIED  
10:27 AM 6 JOBS. THERE WERE NO BLACKS IN MANAGEMENT, AND -- OTHER  
10:27 AM 7 THAN ONE BLACK SUPERVISOR, AND I CONTINUOUSLY SIGNED AND I  
10:27 AM 8 WAS UNSUCCESSFUL. SO I FELT LIKE, YOU KNOW, I MEAN, I'M  
10:27 AM 9 STUCK. I'VE GONE AS FAR AS I CAN GO. SO I WAS STUCK AS  
10:27 AM 10 AN INSPECTOR. SO WHEN I DID --

10:27 AM 11 THE OPPORTUNITY FOR CHIEF INSPECTOR CAME. BILLY  
10:27 AM 12 DURHAM MADE A LATERAL TRANSFER AND I SPOKE -- I SPOKE TO  
10:27 AM 13 MANAGEMENT AND I TOLD THEM "NOT ONLY AM I QUALIFIED, BUT  
10:27 AM 14 I'M INTERESTED."

10:27 AM 15 SO I BECAME CHIEF INSPECTOR, AND, OF COURSE,  
10:27 AM 16 LATER IN 1990 BECAME QUALITY MANAGER.

10:27 AM 17 WHEN I WAS DEMOTED, MY SUPERVISOR, DOUG  
10:27 AM 18 WILLIAMS, TOLD ME "YOU WILL NEVER BE ABLE TO MOVE UP IN  
10:27 AM 19 MANAGEMENT AGAIN. THIS IS THE ONLY JOB WE HAVE FOR YOU.  
10:28 AM 20 SO DON'T EVEN TRY."

10:28 AM 21 Q. YOUR SUPERVISOR TOLD YOU THAT?

10:28 AM 22 A. YES, SIR.

10:28 AM 23 Q. WAS THAT A MEMBER OF MANAGEMENT?

10:28 AM 24 A. YES, SIR.

10:28 AM 25 Q. WHAT WAS HIS POSITION?

10:28 AM 1 A. HIS POSITION AT THAT TIME WAS -- HE WAS WARRANTY  
10:28 AM 2 MANAGER, AND HE LATER -- THEY LATER INCORPORATED -- HE WAS  
10:28 AM 3 ALSO MANAGER OVER QUALITY. BUT WHEN HE DEMOTED ME HE WAS  
10:28 AM 4 WARRANTY MANAGER.

10:28 AM 5 THE COURT: WHAT WAS HIS NAME?

10:28 AM 6 THE WITNESS: DOUG WILLIAMS.

10:28 AM 7 THE COURT: DOUG WILLIAMS?

10:28 AM 8 BY MR. GARRIGAN:

10:28 AM 9 Q. WHEN DID HE TELL YOU THAT?

10:28 AM 10 A. IN 1996, WHEN HE DEMOTED ME.

10:28 AM 11 Q. WHO IS YOUR SUPERVISOR NOW?

10:28 AM 12 A. STEVE CRAWFORD.

10:28 AM 13 Q. OKAY. IS DOUG WILLIAMS OVER YOU IN ANY WAY?

10:28 AM 14 A. NO.

10:28 AM 15 Q. OKAY. WELL, YOU'VE TOLD US ABOUT YOUR -- THAT YOU  
10:28 AM 16 DIDN'T FEEL YOU COULD BE FAIRLY CONSIDERED FOR PROMOTION  
10:28 AM 17 IN THE PAINT HOUSE WHEN YOU WERE A CLASS "A" BODY BUILDER,  
10:28 AM 18 OR WHEN YOU WERE A CLASS "B" BODY BUILDER, TRYING TO  
10:29 AM 19 BECOME CLASS "A"?

10:29 AM 20 A. YES, SIR.

10:29 AM 21 Q. WHEN YOU WERE GOING FROM CLASS "A" TO INSPECTOR?

10:29 AM 22 A. YES, SIR.

10:29 AM 23 Q. AND I GUESS SINCE 1996, WHEN YOU WERE TOLD YOU  
10:29 AM 24 WOULDN'T BE CONSIDERED FOR MANAGEMENT?

10:29 AM 25 A. YES, SIR.

10:29 AM 1 THE COURT: HAVE YOU MADE ANY APPLICATIONS?

10:29 AM 2 THE WITNESS: NO, SIR. AFTER I WAS TOLD THAT  
10:29 AM 3 THERE WAS NO USE, THIS IS THE ONLY JOB THEY HAD FOR ME,  
10:29 AM 4 THAT "WE WERE DOING YOU A FAVOR" --

10:29 AM 5 ACTUALLY, THE CONTRACT PROVIDED THAT THEY PUT ME  
10:29 AM 6 BACK AT THE NEXT HIGHEST LEVEL, WHICH WAS INSPECTOR, BUT  
10:29 AM 7 HE TOLD ME THAT "THERE'S NO NEED OF YOU SIGNING ANYTHING,  
10:29 AM 8 THIS IS ALL WE HAVE FOR YOU."

10:29 AM 9 Q. WELL, BACK WHEN YOU WERE IN THE HOURLY POSITIONS,  
10:29 AM 10 PAINT HOUSE, TRYING TO BECOME CLASS "A" BODY BUILDER,  
10:29 AM 11 TRYING TO BECOME AN INSPECTOR, YOU'VE ALREADY DESCRIBED  
10:30 AM 12 THAT YOU KEPT BIDDING ON THOSE PROMOTIONS?

10:30 AM 13 A. YES, SIR.

10:30 AM 14 Q. HOW MANY TIMES DID YOU BID ON THEM?

10:30 AM 15 A. POSSIBLY HUNDREDS, MAYBE EVEN MORE. WHEN THE BID  
10:30 AM 16 SHEET WENT UP, I SIGNED IT, BECAUSE I WANTED TO GET OUT OF  
10:30 AM 17 THOSE DEAD-END POSITIONS.

10:30 AM 18 Q. HAVE YOU KEPT TRACK OF THE NUMBER OF TIMES THAT  
10:30 AM 19 YOU'VE BID ON THOSE?

10:30 AM 20 A. NO, SIR. COUNTLESS OCCASIONS.

10:30 AM 21 Q. ALL RIGHT. AND WERE YOU PASSED OVER BY LESS SENIOR  
10:30 AM 22 WHITE EMPLOYEES?

10:30 AM 23 A. YES, SIR.

10:30 AM 24 Q. DID YOU COMPLAIN ABOUT THAT?

10:30 AM 25 A. YES, SIR.

10:30 AM 1 Q. HOW OFTEN DID YOU COMPLAIN ABOUT THAT?

10:30 AM 2 A. I COMPLAINED A LOT.

10:30 AM 3 Q. DID THE BID SYSTEM WORK?

10:30 AM 4 A. NO, SIR, IT DID NOT.

10:30 AM 5 Q. WHEN YOU FINALLY GOT THESE PROMOTIONS THAT YOU  
10:30 AM 6 SOUGHT FOR SO LONG, WHAT CHANGED? WHY DID YOU SUDDENLY  
10:30 AM 7 GET THEM?

10:30 AM 8 A. I HAVE NO IDEA. I DON'T -- IT COULD HAVE BEEN TO  
10:31 AM 9 QUIET ME, TO HUSH ME UP. I DON'T KNOW. BUT I SHOULD HAVE  
10:31 AM 10 GOTTEN THEM LONG BEFORE.

10:31 AM 11 Q. WHEN YOU COMPLAINED TO YOUR SUPERVISORS ABOUT THIS,  
10:31 AM 12 HOW DID THEY RESPOND?

10:31 AM 13 A. I WAS ENCOURAGED TO SHUT UP, TO DO MY JOB, IF I  
10:31 AM 14 WANTED MY JOB, AND TO QUIT MAKING WAVES.

10:31 AM 15 Q. ALL RIGHT. WHO TOLD YOU THESE THINGS?

10:31 AM 16 A. EARL DOVER, BILLY DURHAM. EARL DOVER WAS THE SHOP  
10:31 AM 17 FOREMAN FOR VANS AT THAT TIME.

10:31 AM 18 Q. WHAT WAS HIS RACE?

10:31 AM 19 A. HE WAS WHITE.

10:31 AM 20 Q. OKAY. AND YOU SAID BILLY DURHAM. YOU'VE ALREADY  
10:31 AM 21 MENTIONED HIM?

10:31 AM 22 A. YES.

10:31 AM 23 Q. WAS HE WHITE ALSO?

10:31 AM 24 A. YES. UNTIL THE MID-80S ALL THE SUPERVISORS WERE  
10:31 AM 25 WHITE. THERE WAS ONE BLACK SUPERVISOR, FIRST-LINE

## TRANSCRIPT OF PROCEEDINGS

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10:31 AM 1 SUPERVISOR.

10:32 AM 2 Q. OKAY. NOW, VERY BRIEFLY, WOULD YOU DESCRIBE TO THE  
10:32 AM 3 COURT WHAT IT TOOK TO GET YOUR PROMOTION TO CHIEF  
10:32 AM 4 INSPECTOR AND THEN TO QUALITY ASSURANCE MANAGER?

10:32 AM 5 A. WELL, I HAD COMPLAINED REPEATEDLY THAT THERE WAS  
10:32 AM 6 BLATANT AND WIDESPREAD DISCRIMINATION IN THE SHOP AGAINST  
10:32 AM 7 BLACKS, THAT WE WERE NOT AFFORDED AN EQUAL OPPORTUNITY,  
10:32 AM 8 AND I -- YOU KNOW, BASICALLY I HAD COMPLAINED, AND WHEN I  
10:32 AM 9 WOULD GO TO EACH LEVEL OF THE SUPERVISION, I WOULD GET THE  
10:32 AM 10 SAME ANSWER, AND I CONCLUDED I WAS GETTING THE SAME ANSWER  
10:32 AM 11 BECAUSE THEY WOULD UNDERSTAND, BECAUSE THEY WASN'T  
10:32 AM 12 COMMITTED TO EQUAL OPPORTUNITY.

10:32 AM 13 SO I WENT --

10:32 AM 14 WE HAVE -- THE COMPANY HAD AN OPEN-DOOR POLICY,  
10:32 AM 15 SO I COMPLAINED TO FRANK STEVENSON, WHO WAS THE PRESIDENT  
10:32 AM 16 AT THE TIME.

10:32 AM 17 Q. DID HE LISTEN TO YOU?

10:33 AM 18 A. INITIALLY -- INITIALLY HE DIDN'T, BUT AFTER I  
10:33 AM 19 PREVAILED AND EXPLAINED TO HIM THE CONDITIONS THAT WERE  
10:33 AM 20 GOING ON, THEN HE DID.

10:33 AM 21 Q. OKAY. AND DID THAT HAVE SOMETHING TO DO WITH YOU  
10:33 AM 22 GETTING THE CHIEF INSPECTOR AND QUALITY ASSURANCE MANAGER  
10:33 AM 23 POSITION?

10:33 AM 24 A. YES, SIR. HE ASKED A QUESTION, IF I WAS THE FINAL  
10:33 AM 25 INSPECTOR. I HAD VAST INSPECTOR EXPERIENCE. THE VAST

## TRANSCRIPT OF PROCEEDINGS

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10:33 AM 1 MAJORITY OF DOCUMENTATION INFORMATION THAT BILLY DURHAM,  
10:33 AM 2 THE CHIEF INSPECTOR, WOULD USE CAME FROM ME. I SAID THAT  
10:33 AM 3 I WAS WILLING, I WAS QUALIFIED, AND I WANTED TO MOVE UP,  
10:33 AM 4 SO HE ASKED WHY WOULDN'T I BE GIVEN THE JOB.

10:33 AM 5 SO THEY GAVE ME THE JOB TEMPORARILY, AND, OF  
10:33 AM 6 COURSE, WHEN I HAD THE JOB TEMPORARILY, I HAD A SUPERVISOR  
10:33 AM 7 BY THE NAME OF ART JENKINS WHO REPEATEDLY DETERRED ME,  
10:33 AM 8 TOLD ME NOT TO GET MY HOPES UP.

10:34 AM 9 AND SO FINALLY, WHEN IT WAS APPARENT THAT, EVEN  
10:34 AM 10 THOUGH I HAD DONE THE JOB FOR ABOUT SIX MONTHS,  
10:34 AM 11 TEMPORARILY ASSIGNED THERE, THAT I WASN'T GOING TO GET AN  
10:34 AM 12 OPPORTUNITY TO BID ON IT, I CALLED MR. STEVENSON, AND  
10:34 AM 13 THAT'S HOW I GOT THE JOB OF CHIEF INSPECTOR.

10:34 AM 14 Q. OKAY. IN ADDITION TO YOUR COMPLAINING AND REPORTING  
10:34 AM 15 TO MANAGEMENT ABOUT THE DISCRIMINATION YOU'VE SUFFERED,  
10:34 AM 16 WERE THERE EVER -- DID YOU EVER COMPLAIN ABOUT OTHER  
10:34 AM 17 DISCRIMINATION?

10:34 AM 18 A. YES. AS A MATTER OF FACT, I COMPLAINED ABOUT  
10:34 AM 19 DISCRIMINATION THAT WAS PRACTICED AGAINST BLACKS AT LARGE.  
10:34 AM 20 IT WAS WIDESPREAD, IT WAS TOLERATED BY MANAGEMENT, THE  
10:34 AM 21 SLANDEROUS NAME CALLING, DENYING OF EQUAL OPPORTUNITY. IT  
10:34 AM 22 WAS OBVIOUS WHEN SENIOR BLACKS WERE PASSED OVER FOR  
10:34 AM 23 PROMOTION AND THERE WASN'T A VALID REASON GIVEN.

10:34 AM 24 AND WHEN I FILED A GRIEVANCE IN THE EARLY 80S, I  
10:34 AM 25 STATED THAT THE DISCRIMINATION WAS BLATANT AND WIDESPREAD

TRANSCRIPT OF PROCEEDINGS

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10:35 AM 1 AND TOLERATED BY MANAGEMENT.

10:35 AM 2 Q. ALL RIGHT. I WOULD LIKE TO SHOW YOU SOME OF OUR  
10:35 AM 3 EXHIBITS, IF WE CAN FIND THEM HERE.

10:35 AM 4 THE COURT: WELL, TAKE TEN MINUTES TO FIND THEM,  
10:35 AM 5 TEN MINUTES BY THAT CLOCK.

10:35 AM 6 THE CSO: ALL RISE.

10:35 AM 7 (RECESS)

10:58 AM 8 THE COURT: ALL RIGHT. MR. GARRIGAN, I'VE  
10:59 AM 9 CONFERRED WITH MR. BACON AND MR. HAMEL. THEY HAVE NO  
10:59 AM 10 OBJECTION AND WILL PREPARE A COPY OF THE VARIOUS E-MAILS,  
10:59 AM 11 PROVIDED THAT YOU'RE NOT GOING TO CALL MR. BACON OR THE  
10:59 AM 12 CONSULTING EXPERT AS WITNESSES.

10:59 AM 13 MR. GARRIGAN: WELL, I CERTAINLY DON'T EXPECT  
10:59 AM 14 TO. IF I DO, I'LL BRING IT --

10:59 AM 15 THE COURT: NO. THAT'S MY RULING. THEY'LL GIVE  
10:59 AM 16 IT TO YOU, BUT YOU'RE NOT GOING TO CALL THEM.

10:59 AM 17 MR. GARRIGAN: OKAY.

10:59 AM 18 THE COURT: PLEASE BE SEATED.

10:59 AM 19 OH, MY. I HAD TWO CALLS CONCERNING JUDGE  
10:59 AM 20 HANNAH'S ARRANGEMENTS.

10:59 AM 21 YOU MAY PROCEED, SIR.

10:59 AM 22 BY MR. GARRIGAN:

10:59 AM 23 Q. ALL RIGHT. MR. MCCLAIN, YOU HAD MENTIONED ASSISTING  
11:00 AM 24 DAVID DIXON WITH A GRIEVANCE INVOLVING RACE IN THE  
11:00 AM 25 MID-80S, IS THAT CORRECT?

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11:00 AM 1 A. YES. YES, SIR.

11:00 AM 2 Q. NOW, WHAT WAS DAVID DIXON'S RACE?

11:00 AM 3 A. HE WAS BLACK.

11:00 AM 4 Q. DO YOU SEE A BINDER IN FRONT OF YOU?

11:00 AM 5 A. YES, SIR.

11:00 AM 6 Q. I WOULD LIKE FOR YOU TO LOOK AT EXHIBITS 53 THROUGH  
11:00 AM 7 58.

11:00 AM 8 A. OKAY.

11:00 AM 9 MR. GARRIGAN: YOUR HONOR, I HAVE COPIES FOR  
11:00 AM 10 EVERYBODY.

11:00 AM 11 THE COURT: THANK YOU.

11:00 AM 12 BY MR. GARRIGAN:

11:00 AM 13 Q. EXHIBIT 53, WOULD YOU LOOK AT THAT DOCUMENT?

11:01 AM 14 A. YES, SIR, I HAVE IT. I HAVE IT NOW.

11:01 AM 15 Q. OKAY. WOULD YOU TELL THE COURT WHAT THAT DOCUMENT  
11:01 AM 16 IS?

11:01 AM 17 A. THIS IS THE GRIEVANCE THAT I FILED IN BEHALF OF  
11:01 AM 18 MYSELF AND ALL THE BLACKS IN THE COMPANY.

11:01 AM 19 Q. ALL RIGHT. AND WHEN DID YOU FILE THAT?

11:01 AM 20 A. THE DATE SAYS APRIL 27, 1984.

11:01 AM 21 Q. OKAY. AND DO YOU HAVE ANY REASON TO THINK THAT DATE  
11:01 AM 22 IS NOT CORRECT?

11:01 AM 23 A. NO, SIR.

11:01 AM 24 Q. ALL RIGHT. AND WHO DID YOU SUBMIT THAT DOCUMENT TO?

11:01 AM 25 A. I BELIEVE THE FIRST STEP GOES TO THE PLANT

## TRANSCRIPT OF PROCEEDINGS

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11:01 AM 1 SUPERINTENDENT, AND I BELIEVE AT THAT TIME IT WAS JIM  
11:02 AM 2 RIGGS.

11:02 AM 3 Q. ALL RIGHT.

11:02 AM 4 MR. GARRIGAN: I WOULD ASK THAT PLAINTIFFS'  
11:02 AM 5 EXHIBIT 53 BE ADMITTED.

11:02 AM 6 MR. HAMEL: OBJECTION, YOUR HONOR, RELEVANCE.

11:02 AM 7 THE COURT: TELL ME WHAT IT IS.

11:02 AM 8 MR. HAMEL: RELEVANCE, IT'S A DOCUMENT FROM  
11:02 AM 9 1984, YOUR HONOR, AND HEARSAY.

11:02 AM 10 THE COURT: WELL, I AGREE, IT HAS NOTHING TO DO  
11:02 AM 11 WITH THIS CASE, BUT FOR THE PURPOSE OF BACKGROUND, I THINK  
11:02 AM 12 THAT'S THE REASON. THAT'S THE ONLY REASON I WOULD  
11:02 AM 13 CONSIDER IT, IS BACKGROUND. IT IS NOT RELEVANT TO  
11:02 AM 14 ANYTHING FROM '96 TO 2003.

11:02 AM 15 MR. GARRIGAN: THAT'S CORRECT. YOUR HONOR, IT  
11:02 AM 16 DOES, IT PRECEDES THE CLASS PERIOD BY TEN YEARS. THE --  
11:02 AM 17 AND OUR PURPOSE FOR SUBMITTING IT IS TO DEMONSTRATE  
11:02 AM 18 BACKGROUND.

11:02 AM 19 WE ALSO THINK IT'S RELEVANT TO THE CORPORATE  
11:02 AM 20 CULTURE.

11:02 AM 21 THE COURT: I DON'T KNOW WHETHER IT'S RELEVANT  
11:03 AM 22 TO THAT. IF IT IS, I'LL GIVE IT SUCH WEIGHT AS I THINK  
11:03 AM 23 IT'S ENTITLED TO RECEIVE, IF ANY AT ALL.

11:03 AM 24 BUT IT IS TEN YEARS OUTSIDE, WELL OUTSIDE THE  
11:03 AM 25 TIME ELEMENT.

TRANSCRIPT OF PROCEEDINGS

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11:03 AM 1 BY MR. GARRIGAN:

11:03 AM 2 Q. NOW, MR. MCCLAIN --

11:03 AM 3 A. YES, SIR.

11:03 AM 4 Q. WOULD YOU NOW LOOK AT PLAINTIFFS' EXHIBIT 54?

11:03 AM 5 A. YES.

11:03 AM 6 Q. WAS THAT --

11:03 AM 7 WOULD YOU TELL THE COURT WHAT THE DOCUMENT IS?

11:03 AM 8 A. PLAINTIFFS' EXHIBITS?

11:03 AM 9 Q. PLAINTIFFS' EXHIBIT NUMBER 54.

11:03 AM 10 A. YES.

11:03 AM 11 Q. WHAT IS THAT?

11:03 AM 12 A. IT IS AN ANSWER FROM JIM RIGGS TO THE GRIEVANCE THAT  
11:03 AM 13 I FILED.

11:04 AM 14 THE COURT: WHO IS JIM RIGGS?

11:04 AM 15 THE WITNESS: HE'S THE WHITE PLANT

11:04 AM 16 SUPERINTENDENT, I MEAN, PRODUCTION SUPERINTENDENT AT THAT  
11:04 AM 17 TIME.

11:04 AM 18 THE COURT: ALL RIGHT.

11:04 AM 19 MR. GARRIGAN: ALL RIGHT. I WOULD ASK THAT THAT  
11:04 AM 20 BE ADMITTED INTO EVIDENCE AT THIS TIME ALSO.

11:04 AM 21 MR. HAMEL: SAME OBJECTIONS, YOUR HONOR.

11:04 AM 22 THE COURT: IT'S NOT REALLY RELEVANT. IT'S  
11:04 AM 23 INTERESTING THAT IT --

11:04 AM 24 MR. RIGGS REPLIES IT'S SIMPLY TAUTOLOGY, WHICH  
11:04 AM 25 COMES FROM TWO WORDS IN GREEK, "TAUTO" AND "LOGOS,"

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11:04 AM 1 MEANING SAME AND THE SAME THING.

11:04 AM 2 MR. GARRIGAN: YOUR HONOR, EXHIBITS 54  
11:04 AM 3 THROUGH -- EXCUSE ME -- YEAH, 54 THROUGH 58 WILL CONCERN  
11:04 AM 4 THE COMPANY'S RESPONSE TO THE GRIEVANCE THAT HAS BEEN  
11:05 AM 5 ADMITTED AS 53.

11:05 AM 6 THE COURT: WELL, IT'S BEEN ADMITTED FOR  
11:05 AM 7 BACKGROUND ONLY.

11:05 AM 8 MR. GARRIGAN: AND FOR THE SAME REASON -- I  
11:05 AM 9 ANTICIPATE THE SAME OBJECTIONS WILL COME UP.

11:05 AM 10 THE COURT: WELL, THEY'RE VALID, AND THEY REACH  
11:05 AM 11 NOTHING THAT'S IN ISSUE IN THIS CASE, SIR, IN POINT OF  
11:05 AM 12 TIME.

11:05 AM 13 MR. GARRIGAN: IT'S OUR CONTENTION THAT THEY ARE  
11:05 AM 14 RELEVANT TO BACKGROUND AND TO THE CORPORATE CULTURE, IN  
11:05 AM 15 THAT IT SHOWS NOT ONLY MR. MCCLAIN PRESENTING COMPLAINTS  
11:05 AM 16 IN GOOD FAITH ABOUT RACE DISCRIMINATION, BUT THE COMPANY  
11:05 AM 17 SORT OF CAVALIERLY DISREGARDING THEM.

11:05 AM 18 THE COURT: I'M GOING TO CONSIDER IT FOR WHAT  
11:05 AM 19 IT'S WORTH, SINCE IT'S TEN YEARS PRIOR TO THE EFFECTIVE  
11:06 AM 20 DATE.

11:06 AM 21 MR. GARRIGAN: OKAY. WELL, I WOULD --  
11:06 AM 22 DOES THAT RULING GOVERN --

11:06 AM 23 THE COURT: YES, THAT'S THE RULING ON ALL OF  
11:06 AM 24 THESE THAT GO TO THE COMPANY TEN YEARS BEFORE THE  
11:06 AM 25 EFFECTIVE DATE OF THIS CASE. IT'S JUST BACKGROUND ONLY.

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11:06 AM 1 MR. GARRIGAN: OKAY. FOR THE RECORD, THAT WOULD  
11:06 AM 2 BE PLAINTIFFS' EXHIBITS 53 THROUGH 58, YOUR HONOR.

11:06 AM 3 THE COURT: ALL RIGHT.

11:06 AM 4 MR. HAMEL: YOUR HONOR, WE HAVE AN ADDITIONAL  
11:06 AM 5 OBJECTION TO 55 AT LEAST, BECAUSE IT'S INCOMPLETE. IT  
11:06 AM 6 REFERENCES AN ATTACHMENT THAT IS NOT INCLUDED. AND  
11:06 AM 7 RELEVANCE AND HEARSAY.

11:06 AM 8 THE COURT: I DON'T THINK IT'S ADMISSIBLE, BUT  
11:06 AM 9 I'M NOT GOING TO TURN IT DOWN. IT'S JUST FOR THE PURPOSE  
11:07 AM 10 OF BACKGROUND, IF ANY AT ALL, IF IT HAS ANY PURPOSE OF  
11:07 AM 11 THAT.

11:07 AM 12 MR. GARRIGAN: THANK YOU, YOUR HONOR.

11:07 AM 13 MR. HAMEL: YOUR HONOR, THE COURT UNDERSTANDS  
11:07 AM 14 OUR OBJECTION IS TO ALL THE PROFFER BY THE PLAINTIFF, THE  
11:07 AM 15 WHOLE SERIES OF EXHIBITS?

11:07 AM 16 THE COURT: YES, SIR. I HAVE TO READ THEM  
11:07 AM 17 BEFORE YOU OBJECT TO THEM.

11:07 AM 18 MR. HAMEL: ALL RIGHT.

11:07 AM 19 THE COURT: AND I'LL GIVE THEM SUCH WEIGHT AND  
11:07 AM 20 CONSIDERATION AS I THINK THEY'RE ENTITLED TO RECEIVE.  
11:07 AM 21 HOWEVER, THEY BADLY ARE OUT OF TIME.

11:07 AM 22 MR. GARRIGAN: YOUR HONOR, IT'S OUR CONTENTION  
11:07 AM 23 THAT THE CORPORATE CULTURE, THE POLICIES --

11:07 AM 24 THE COURT: I UNDERSTAND YOUR CONTENTION.  
11:07 AM 25 YOU'VE STATED IT SEVERAL TIMES, SIR.

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11:07 AM 1 MR. GARRIGAN: ALL RIGHT.

11:07 AM 2 THE COURT: BUT THIS IS TEN YEARS BEFORE THAT  
11:07 AM 3 DATE.

11:07 AM 4 MR. GARRIGAN: YES.

11:07 AM 5 THE COURT: AND -- PROCEED.

11:07 AM 6 BY MR. GARRIGAN:

11:08 AM 7 Q. MR. MCCLAIN, WOULD YOU LOOK AT PLAINTIFFS' EXHIBIT  
11:08 AM 8 NUMBER 59?

11:08 AM 9 A. YES.

11:08 AM 10 Q. WOULD YOU TELL THE COURT WHAT THAT DOCUMENT IS?

11:08 AM 11 A. THIS CONCERNS THE GRIEVANCE THAT WAS FILED -- LET'S  
11:08 AM 12 SEE.

11:08 AM 13 THE COURT: THAT'S OUT OF DATE, TOO. THAT'S  
11:08 AM 14 BEFORE '96. IT'S DATED IN 1995.

11:08 AM 15 MR. GARRIGAN: YOUR HONOR, THIS DOCUMENT IS IN  
11:08 AM 16 FACT THE DOCUMENT THAT CONSTITUTES THE EEOC CHARGE THAT  
11:09 AM 17 INITIATES THIS CASE.

11:09 AM 18 THE COURT: I'LL CONSIDER IT FOR THAT PURPOSE  
11:09 AM 19 ONLY.

11:09 AM 20 THE WITNESS: OKAY. I WAS LOOKING AT THE WRONG  
11:09 AM 21 ONE. I'M SORRY.

11:09 AM 22 THE COURT: EXCUSE ME.

11:09 AM 23 THE WITNESS: I WAS LOOKING AT THE WRONG ONE.  
11:09 AM 24 I'M SORRY.

11:09 AM 25 BY MR. GARRIGAN:

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11:09 AM 1 Q. ALL RIGHT. ARE YOU LOOKING NOW AT EXHIBIT 59?

11:09 AM 2 A. YES, SIR.

11:09 AM 3 Q. AND WHAT IS THE DATE OF PLAINTIFFS' EXHIBIT 59?

11:09 AM 4 A. MY DATE WAS JANUARY 29, 1995, AND THE STAMP DATE IS  
11:09 AM 5 FEBRUARY 9, 1995.

11:09 AM 6 Q. ALL RIGHT. AND THE -- YOU CREATED THIS DOCUMENT?

11:09 AM 7 A. YES, SIR, I DID.

11:09 AM 8 Q. WHO DID YOU SEND IT TO?

11:09 AM 9 A. I SENT IT TO PAUL PEREZ, HUMAN RESOURCES, DOUG  
11:09 AM 10 SMITH, THE PRESIDENT, TO THE EEOC, JUSTICE DEPARTMENT,  
11:09 AM 11 OFFICE OF CIVIL RIGHTS, AND THE DEPARTMENT OF HUMAN  
11:10 AM 12 RESOURCES.

11:10 AM 13 Q. AND WHEN DID YOU MAIL IT TO THOSE DIFFERENT  
11:10 AM 14 RECIPIENTS?

11:10 AM 15 A. JANUARY OF '95, SIR.

11:10 AM 16 Q. NOW -- AND WOULD YOU BRIEFLY SUMMARIZE TO THE COURT  
11:10 AM 17 WHAT THE CONTENT OF THAT WRITING IS?

11:10 AM 18 A. WELL --

11:10 AM 19 MR. HAMEL: OBJECTION, YOUR HONOR. THE WRITING  
11:10 AM 20 SPEAKS FOR ITSELF.

11:10 AM 21 THE COURT: SUSTAINED.

11:10 AM 22 BY MR. GARRIGAN:

11:10 AM 23 Q. MR. MCCLAIN, AT THE END OF THAT DOCUMENT -- LET'S  
11:10 AM 24 SEE -- YOU DESCRIBE A CULTURAL PROBLEM?

11:10 AM 25 A. YES, SIR.

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11:10 AM 1 Q. DO YOU SEE THAT?

11:10 AM 2 A. I'M LOOKING.

11:11 AM 3 Q. ABOUT EIGHT LINES FROM THE END.

11:11 AM 4 A. ON THE THIRD PAGE OR SECOND PAGE?

11:11 AM 5 Q. THE LAST PAGE, ABOVE YOUR SIGNATURE.

11:11 AM 6 MR. GARRIGAN: MAY I APPROACH THE WITNESS?

11:11 AM 7 THE COURT: YOU MAY.

11:11 AM 8 THE WITNESS: YES. YES, SIR.

11:11 AM 9 BY MR. GARRIGAN:

11:11 AM 10 Q. OKAY. ALL RIGHT. WHAT WAS THE CULTURAL PROBLEM YOU  
11:11 AM 11 WERE REFERRING TO?

11:11 AM 12 A. WELL, THE DISCRIMINATION PRACTICES, THE  
11:11 AM 13 DISCRIMINATORY INSINUATIONS AND INSULTS BEING SUFFERED BY  
11:12 AM 14 BLACKS, NOT ONLY WAS IT WIDESPREAD AND BLATANT, BUT IT WAS  
11:12 AM 15 TOLERATED BY MANAGEMENT, BY WHITE MANAGEMENT.

11:12 AM 16 Q. OKAY. WHAT WAS THE SCOPE OF THIS CULTURAL PROBLEM?

11:12 AM 17 A. WELL, I MEAN, BLACKS WERE BEING DENIED AN EQUAL  
11:12 AM 18 OPPORTUNITY. BLACKS WERE BEING SUBJECT TO A DOUBLE  
11:12 AM 19 STANDARD WHEN THEY KNOW THAT THEY HAD THE SENIORITY, WAS  
11:12 AM 20 NOT BEING PROMOTED. BLACKS WERE TREATED INDIFFERENTLY.  
11:12 AM 21 THERE WERE RACIAL COMMENTS MADE THAT MANAGEMENT TOOK NO  
11:12 AM 22 CORRECTIVE ACTION. IT WAS JUST BAD FOR BLACKS IN THIS  
11:12 AM 23 ENVIRONMENT. THERE WAS RACISM, AND IT WAS CONDONED AND  
11:12 AM 24 TOLERATED BY MANAGEMENT. THAT'S FROM FIRST-LINE  
11:12 AM 25 SUPERVISORS UP.

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11:12 AM 1 Q. I MEAN, WAS THERE ANY PART OF THE COMPANY THAT WAS  
11:13 AM 2 NOT AFFECTED BY THIS CULTURAL PROBLEM?

11:13 AM 3 A. NO.

11:13 AM 4 MR. HAMEL: OBJECTION, FOUNDATION, YOUR HONOR.

11:13 AM 5 THE COURT: I'LL CONSIDER IT FOR WHAT IT'S  
11:13 AM 6 WORTH.

11:13 AM 7 BY MR. GARRIGAN:

11:13 AM 8 Q. WHAT WAS --

11:13 AM 9 AS YOU REPORTED AND COMPLAINED TO MANAGEMENT  
11:13 AM 10 ABOUT THE DIFFERENT RACE DISCRIMINATION PROBLEMS YOU  
11:13 AM 11 ENCOUNTERED AT LUFKIN INDUSTRIES, ON YOUR OWN BEHALF AND  
11:13 AM 12 ON BEHALF OF OTHERS --

11:13 AM 13 A. YES.

11:13 AM 14 Q. IN PARTICULAR WITH REGARD TO WHEN YOU ADVOCATED ON  
11:13 AM 15 BEHALF OF THE OTHER WORKERS, WHAT WAS THE COMPANY'S  
11:13 AM 16 RESPONSE?

11:13 AM 17 A. DENIAL, NONACTION.

11:13 AM 18 Q. HOW DID THEY TREAT YOU?

11:13 AM 19 A. WITH HOSTILITY AND INDIFFERENCE, AND I WAS  
11:13 AM 20 REPEATEDLY, YOU KNOW, TOLD TO KEEP MY MOUTH CLOSED.

11:14 AM 21 I WAS EVEN ENCOURAGED BY BLACKS THAT, "HEY, I  
11:14 AM 22 MEAN, THEY'RE OUT TO GET YOU. YOU KNOW, WHY DON'T YOU  
11:14 AM 23 JUST GO ALONG AND, YOU KNOW, MAYBE EVERYTHING WILL BE  
11:14 AM 24 OKAY?" BUT EVERYTHING WASN'T OKAY.

11:14 AM 25 MR. HAMEL: OBJECTION TO THE HEARSAY, YOUR

11:14 AM 1 HONOR.

11:14 AM 2 THE COURT: SUSTAINED.

11:14 AM 3 BY MR. GARRIGAN:

11:14 AM 4 Q. NOW, DID YOU EVER REPORT SPECIFIC INSTANCES OF RACE  
11:14 AM 5 DISCRIMINATION TO SUPERVISORS?

11:14 AM 6 A. YES.

11:14 AM 7 Q. OKAY. DID YOU EVER REPORT SUCH INCIDENTS TO EARL  
11:14 AM 8 DOVER?

11:14 AM 9 A. YES, SIR.

11:14 AM 10 Q. WAS HE EVER PRESENT DURING AN INCIDENT OF RACE  
11:14 AM 11 DISCRIMINATION?

11:14 AM 12 A. YES, SIR, HE WAS.

11:14 AM 13 Q. WOULD YOU TELL THE COURT ABOUT THAT?

11:14 AM 14 A. WHEN WE WORKED ONE HUNDRED DAYS WITHOUT HAVING AN  
11:14 AM 15 ACCIDENT, A LOST-TIME ACCIDENT, WE'RE GIVEN A SAFETY  
11:14 AM 16 DINNER, AND AS I WAS GOING THROUGH THE LINE TO HAVE MY  
11:15 AM 17 PLATE FIXED, AS I APPROACHED THE TABLE WHERE EARL DOVER, A  
11:15 AM 18 WHITE SUPERVISOR, AND CARTER OLDS, A WHITE SUPERVISOR,  
11:15 AM 19 WERE SITTING, CARTER OLDS, A WHITE SUPERVISOR, MADE A  
11:15 AM 20 STATEMENT TO HIM THAT "HERE COMES THAT NIGGER GOING TO SIT  
11:15 AM 21 DOWN BESIDE US."

11:15 AM 22 Q. WHO DID HE MAKE THAT STATEMENT TO?

11:15 AM 23 A. TO EARL DOVER.

11:15 AM 24 Q. THESE WERE BOTH SUPERVISORS?

11:15 AM 25 A. YES, SIR.

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11:15 AM 1 Q. WERE THEY YOUR SUPERVISORS?

11:15 AM 2 A. EARL DOVER WAS. CARTER OLDS WAS NOT. HE WAS A  
11:15 AM 3 SUPERVISOR AT THE PAINT HOUSE WHERE I INSPECTED, BUT HE  
11:15 AM 4 WAS NOT MY SUPERVISOR.

11:15 AM 5 Q. DID YOU EVER REPORT OTHER INSTANCES OF  
11:15 AM 6 DISCRIMINATORY BEHAVIOR BY CARTER OLDS TO EARL DOVER?

11:15 AM 7 A. YES. CARTER OLDS, I MEAN, THE MAN MADE SLANDEROUS  
11:16 AM 8 REMARKS ABOUT BLACKS, ABOUT WOMEN, ABOUT OLD PEOPLE. I  
11:16 AM 9 MEAN, IT WAS THE WORST CASE OF AN INDIVIDUAL ATTITUDE  
11:16 AM 10 TOWARD PEOPLE BEING EXPRESSED, AND I EXPRESSED THAT, AND  
11:16 AM 11 THERE WAS NOTHING DONE.

11:16 AM 12 Q. DID YOU EVER REPORT OTHER INSTANCES OF  
11:16 AM 13 DISCRIMINATION TO EARL DOVER?

11:16 AM 14 A. YES. EARL DOVER WAS WALKING THROUGH THE SHOP WHEN A  
11:16 AM 15 MAN BY THE NAME OF CHARLES HOME, WHO IS A BLACK MAN, AND A  
11:16 AM 16 MAN BY THE NAME OF -- I CAN'T THINK OF HIS NAME NOW. HE  
11:16 AM 17 WAS A UNION STEWARD. BUT ANYWAY, THE WHITE GUY MADE A  
11:16 AM 18 STATEMENT "THERE GOES EARL AND THAT NIGGER WALKING THROUGH  
11:16 AM 19 THE SHOP."

11:16 AM 20 AND I REPORTED THAT TO JIM RIGGS, THE PLANT  
11:16 AM 21 SUPERINTENDENT.

11:16 AM 22 Q. DID HE TAKE ANY ACTION?

11:16 AM 23 A. NO, HE DID NOT, OTHER THAN TALKING TO HIM. AND I  
11:17 AM 24 WASN'T PRESENT WHEN HE TALKED TO HIM.

11:17 AM 25 Q. OKAY. DID YOU EVER OBSERVE OR BECOME AWARE OF ANY

## TRANSCRIPT OF PROCEEDINGS

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11:17 AM 1 DISCRIMINATORY BEHAVIOR BY BOB ADAMS?

11:17 AM 2 A. THAT'S THE GUY THAT MADE THE STATEMENT THAT "THERE  
11:17 AM 3 GOES EARL DOVER AND THE NIGGER WALKING THROUGH THE SHOP  
11:17 AM 4 TOGETHER."

11:17 AM 5 Q. WAS THERE ANY OTHER DISCRIMINATORY CONDUCT ON THE  
11:17 AM 6 PART OF BOB ADAMS?

11:17 AM 7 A. YES, SEXUAL HARASSMENT. THAT WAS REPORTED. THERE  
11:17 AM 8 WAS NOTHING DONE. SEXUAL HARASSMENT ON SEVERAL WOMEN,  
11:17 AM 9 BECAUSE THEY CAME TO ME AND COMPLAINED.

11:17 AM 10 MR. HAMEL: OBJECTION, YOUR HONOR, RELEVANCE.

11:17 AM 11 THE COURT: IT'S NOT RELEVANT TO THIS CASE.

11:17 AM 12 BY MR. GARRIGAN:

11:17 AM 13 Q. WERE THE WOMEN HE HARASSED WHITE OR BLACK?

11:17 AM 14 A. BLACK.

11:17 AM 15 Q. DID YOU REPORT THAT TO THE SUPERVISORS?

11:17 AM 16 A. YES, I DID.

11:17 AM 17 Q. WAS ANY CORRECTIVE ACTION TAKEN?

11:17 AM 18 A. NONE THAT I KNOW OF.

11:17 AM 19 Q. HAVE YOU EVER SEEN THE COMPANY ADDRESS SEXUAL  
11:17 AM 20 HARASSMENT OF WHITE WOMEN?

11:17 AM 21 MR. HAMEL: OBJECTION, FOUNDATION AND RELEVANCE.

11:18 AM 22 THE COURT: SUSTAINED. THIS IS NOT A GENDER  
11:18 AM 23 DISCRIMINATION SUIT, SIR.

11:18 AM 24 MR. GARRIGAN: NO. MY -- THE POINT I WAS TRYING  
11:18 AM 25 TO MAKE, YOUR HONOR, IS THAT WHEN THESE -- WHEN THERE WERE

## TRANSCRIPT OF PROCEEDINGS

81

11:18 AM 1 INSTANCES OF SEXUAL HARASSMENT FROM A WHITE MALE  
11:18 AM 2 VICTIMIZING BLACK WOMEN, THE COMPANY WAS INDIFFERENT.  
11:18 AM 3 WHEN THE VICTIM WAS WHITE, THE COMPANY INDEED TOOK ACTION.

11:18 AM 4 THE COURT: WELL, I'LL GIVE IT SUCH WEIGHT AND  
11:18 AM 5 CONSIDERATION AS I CONSIDER IT'S ENTITLED TO RECEIVE, IF  
11:18 AM 6 ANY.

11:18 AM 7 BY MR. GARRIGAN:

11:18 AM 8 Q. MR. MCCLAIN, HAVE YOU OBSERVED THAT COURSE OF  
11:18 AM 9 ACTION?

11:18 AM 10 A. YES.

11:18 AM 11 Q. MR. MCCLAIN, I WOULD LIKE TO ASK YOU NOW ABOUT THE  
11:19 AM 12 TRAINING PRACTICES AT LUFKIN INDUSTRIES.

11:19 AM 13 A. ALL RIGHT, SIR.

11:19 AM 14 Q. DID YOU EVER EXPRESS AN INTEREST IN TRAINING?

11:19 AM 15 A. YES, SIR, ALL THE TIME.

11:19 AM 16 Q. HOW WOULD YOU DESCRIBE YOUR INTEREST IN TRAINING?

11:19 AM 17 A. WELL, MY INTEREST IN TRAINING WAS TO BETTER MYSELF  
11:19 AM 18 AND TO BE ABLE TO MOVE UP.

11:19 AM 19 Q. DID YOU EVER PASS UP AN OPPORTUNITY FOR TRAINING?

11:19 AM 20 A. NO, SIR. EVERY INTERNAL CLASS THAT LUFKIN OFFERED I  
11:19 AM 21 TOOK.

11:19 AM 22 Q. OKAY. WERE THERE TIMES WHEN YOU COULDN'T GET  
11:19 AM 23 TRAINING?

11:19 AM 24 A. YES.

11:19 AM 25 Q. WERE THERE TIMES WHEN LUFKIN WOULD REFUSE TO PROVIDE

## TRANSCRIPT OF PROCEEDINGS

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11:19 AM 1 YOU WITH TRAINING?

11:19 AM 2 A. YES.

11:19 AM 3 Q. WOULD YOU DESCRIBE THOSE TO US?

11:19 AM 4 A. WELL, ON ONE INSTANCE THAT I ACTUALLY GOT THE  
11:19 AM 5 TRAINING, BUT IT TOOK THE INTERVENTION OF FRANK STEVENSON,  
11:19 AM 6 THE PRESIDENT, IN ORDER FOR ME TO GET THE TRAINING. IT  
11:19 AM 7 WAS QUALITY ASSURANCE TRAINING. IT WAS DONE BY CROSBY  
11:20 AM 8 QUALITY SCHOOL IN DALLAS, OR THE FORT WORTH AREA. ALL OF  
11:20 AM 9 THE MANAGERS, SUPERVISORS AND TECHNICIANS WHO WERE NOT  
11:20 AM 10 SUPERVISORS THAT WAS INVOLVED IN PRODUCTION AND QUALITY  
11:20 AM 11 WERE GOING, PURCHASING AND OTHER AREAS OF THE COMPANY,  
11:20 AM 12 WERE GOING TO THIS TRAINING.

11:20 AM 13 WHEN I FOUND OUT ABOUT IT, I ASKED A QUESTION,  
11:20 AM 14 WHY WASN'T I GOING. AND BASICALLY I WAS TOLD BY HERB  
11:20 AM 15 GREEN, AT THAT TIME THE PRESIDENT, SENT WORD TO LEVANN  
11:20 AM 16 BLOCK, THE VICE PRESIDENT IN THE TRAILER PLANT, THROUGH MY  
11:20 AM 17 SUPERVISOR, BOB WESTBROOK, THAT I NEEDED TO QUIT  
11:20 AM 18 COMPLAINING ABOUT GOING TO THE CLASS. WHEN THE COMPANY  
11:20 AM 19 THOUGHT I NEEDED TO GO TO SCHOOL, THEY WOULD LET ME KNOW.

11:20 AM 20 AND I THOUGHT THAT WAS HIGHLY INAPPROPRIATE,  
11:20 AM 21 SINCE I WAS QUALITY MANAGER.

11:20 AM 22 Q. ALL RIGHT. NOW, AS QUALITY MANAGER, DID YOU  
11:20 AM 23 SUPERVISE OTHERS?

11:20 AM 24 A. YES, I DID.

11:20 AM 25 Q. HOW MUCH TRAINING DID THEY GIVE YOU IN HOW TO

11:20 AM 1 SUPERVISE OTHERS?

11:20 AM 2 A. VIRTUALLY NONE, ONE FOUR-HOUR CLASS, WHERE WE WENT  
11:21 AM 3 OVER WRITTEN MATERIAL, HANDLED THE MANUAL AND DO THE JOB.

11:21 AM 4 Q. LET ME BACK UP A LITTLE BIT. THIS Q.A., QUALITY  
11:21 AM 5 ASSURANCE TRAINING THAT YOU WANTED AT THE CROSBY SCHOOL,  
11:21 AM 6 WHO WAS IT THAT DIDN'T WANT YOU TO TAKE IT?

11:21 AM 7 A. THE PRESIDENT OF THE COMPANY, THE VICE PRESIDENT OF  
11:21 AM 8 THE TRAILER PLANT, THE PRODUCTION SUPERINTENDENT, WHO WAS  
11:21 AM 9 MY SUPERVISOR AT THE TIME, THEY ALL TOLD ME POINT-BLANK IF  
11:21 AM 10 THE COMPANY THOUGHT I NEEDED TO GO TO SCHOOL, THEY WOULD  
11:21 AM 11 TELL ME.

11:21 AM 12 I SAW THE NEED. THE COMPANY DIDN'T SEE THE  
11:21 AM 13 NEED.

11:21 AM 14 Q. ALL RIGHT. AND ALL OF THESE WERE WHITE MEN?

11:21 AM 15 A. YES. THERE WAS ALSO TRAINING FOR PROBLEM SOLVING,  
11:21 AM 16 STATISTICAL DATA ANALYSIS, PROCESS CONTROL, ALL WHICH WAS  
11:21 AM 17 CRUCIAL FOR THE QUALITY MANAGER TO BE ABLE TO DO HIS JOB  
11:22 AM 18 EFFECTIVELY. I WAS DENIED AND I WAS NEVER GIVEN THE  
11:22 AM 19 OPPORTUNITY TO RECEIVE THAT TRAINING OR ATTEND THOSE  
11:22 AM 20 SCHOOLS.

11:22 AM 21 Q. DID THE WHITE MANAGERS GET TO ATTEND SCHOOLS THAT  
11:22 AM 22 YOU DID NOT?

11:22 AM 23 MR. HAMEL: OBJECTION, FOUNDATION.

11:22 AM 24 THE WITNESS: YES.

11:22 AM 25 THE COURT: WHAT FOUNDATION IS NEEDED FOR THAT?

## TRANSCRIPT OF PROCEEDINGS

84

11:22 AM 1 MR. HAMEL: YOUR HONOR, HE'S NOT TESTIFIED THAT  
11:22 AM 2 HE HAS ANY KNOWLEDGE WHAT OTHER WHITE MANAGERS HAVE GONE  
11:22 AM 3 TO SCHOOLS OR WHAT SCHOOLS THEY'VE GONE TO.

11:22 AM 4 THE COURT: WELL, I SUSTAIN THAT.

11:22 AM 5 BY MR. GARRIGAN:

11:22 AM 6 Q. MR. MCCLAIN, CAN YOU IDENTIFY ANY WHITE MANAGERS WHO  
11:22 AM 7 GOT MORE TRAINING THAN YOU DID?

11:22 AM 8 A. YES, SIR.

11:22 AM 9 Q. WHO?

11:22 AM 10 A. ONE, WAYNE ASHLEY WAS SENT TO TEXAS A&M, FULL PAY,  
11:22 AM 11 FREE LODGING AND MEALS FOR THIRTY DAYS, TO RECEIVE  
11:23 AM 12 MANAGEMENT TRAINING.

11:23 AM 13 DOUG WILLIAMS, MY PREVIOUS SUPERVISOR, WAS SENT  
11:23 AM 14 TO SAN DIEGO FOR THIRTY DAYS, FULL PAY, FREE LODGING, FREE  
11:23 AM 15 MEALS, FOR MANAGEMENT TRAINING.

11:23 AM 16 THE OTHER QUALITY MANAGERS RECEIVED TRAINING IN  
11:23 AM 17 ALL THOSE SCHOOLS THAT I MENTIONED, STATISTICAL PROCESS  
11:23 AM 18 CONTROL, STATISTICAL DATA CONTROL, PROBLEM SOLVING,  
11:23 AM 19 WHATEVER.

11:23 AM 20 Q. OKAY. AND WERE ALL OF THOSE QUALITY ASSURANCE  
11:23 AM 21 MANAGERS WHITE?

11:23 AM 22 A. YES, THEY WERE WHITE, AND THEY WERE SENT TO THOSE  
11:23 AM 23 SCHOOLS. AND THE REASON I KNOW, BECAUSE THEY TOLD ME.

11:23 AM 24 Q. ALL RIGHT. AMONG THE HOURLY WORK FORCE, WOULD YOU  
11:23 AM 25 TELL THE COURT WHAT THE PROCESS IS FOR TRAINING WORKERS?

## TRANSCRIPT OF PROCEEDINGS

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11:23 AM 1 A. IF MANAGEMENT, WHITE MANAGERS AND SUPERVISORS, IF  
11:23 AM 2 THEY SEE A MAN THAT THEY WANT TO PUT ON A PARTICULAR JOB,  
11:24 AM 3 THEY'LL TAP HIM ON THE SHOULDER, THEY'LL PULL HIM OFF TO  
11:24 AM 4 THE SIDE. THEY'LL USUALLY TRAIN HIM AT THE END OF THE  
11:24 AM 5 SHIFT OR THEY'LL SEND HIM TO AN EXTERNAL SCHOOL.

11:24 AM 6 WHEN THE JOB POSTING IS PUT UP, HE SIGNS IT,  
11:24 AM 7 HE'S SET, HE'S QUALIFIED, HE GETS THE JOB.

11:24 AM 8 Q. IS THIS TRAINING EVER PROVIDED BY TEMPORARY  
11:24 AM 9 ASSIGNMENTS?

11:24 AM 10 A. YES.

11:24 AM 11 Q. WILL YOU EXPLAIN HOW THAT WORKS, PLEASE?

11:24 AM 12 A. WELL, IF SOMEONE GOES ON VACATION OR IF THEY'RE  
11:24 AM 13 ABSENT FOR AN INJURY OR SOMETHING LIKE THAT, THEN A WHITE  
11:24 AM 14 WORKER IS CHOSEN, HE'S TRAINED TO DO THAT JOB, AND HE'S  
11:24 AM 15 TEMPORARILY ASSIGNED TO THAT JOB. AND, OF COURSE, WHEN  
11:24 AM 16 THE WORKER THAT'S THE MACHINE OPERATOR, WHEN HE RETIRES,  
11:24 AM 17 OR IF HE CAN'T COME BACK TO WORK, THEN THAT PERSON GETS  
11:24 AM 18 THAT JOB, THAT WHITE WORKER GETS THAT JOB.

11:24 AM 19 Q. WHO MAKES THE DECISION ABOUT WHO GETS THE  
11:24 AM 20 ASSIGNMENTS?

11:24 AM 21 A. A WHITE SUPERVISOR AND WHITE MANAGEMENT.

11:24 AM 22 Q. OKAY. NOW, YOU'VE BEEN IN A SUPERVISORY POSITION?

11:25 AM 23 A. YES, SIR. I WAS QUALITY MANAGER.

11:25 AM 24 Q. DID YOU GET ANY TRAINING IN HOW TO FAIRLY MAKE THOSE  
11:25 AM 25 DECISIONS?

11:25 AM 1 A. NO, SIR. OTHER THAN THE FOUR HOURS, NO, SIR.

11:25 AM 2 Q. AND DURING THOSE FOUR HOURS DID THEY TRAIN YOU HOW  
11:25 AM 3 TO FAIRLY MAKE THOSE DECISIONS?

11:25 AM 4 A. NO, SIR, JUST GAVE US GENERAL INFORMATION AND BROAD  
11:25 AM 5 SPECIFICS AS TO WHAT CRITERIA YOU WOULD USE.

11:25 AM 6 Q. HAVE YOU EVER OBSERVED ONE OF YOUR WHITE COLLEAGUES  
11:25 AM 7 IN THE TRAILER DIVISION TO BE GETTING GROOMED FOR  
11:25 AM 8 PROMOTIONS?

11:25 AM 9 A. MOST RECENTLY --

11:25 AM 10 MR. HAMEL: OBJECTION, LEADING.

11:25 AM 11 THE COURT: IT IS LEADING, BUT I'M GOING TO  
11:25 AM 12 PERMIT IT.

11:25 AM 13 MR. GARRIGAN: THANK YOU. I'M JUST TRYING TO  
11:25 AM 14 MAKE IT QUICKER.

11:25 AM 15 THE WITNESS: RICKY GILLEY WAS A WELDER. HE WAS  
11:25 AM 16 TRAINED FOR ALMOST A YEAR BY BOB WESTBROOK TO BECOME HIS  
11:25 AM 17 REPLACEMENT. HE IS NOW THE PRODUCTION SUPERINTENDENT.  
11:25 AM 18 BY MR. GARRIGAN:

11:25 AM 19 Q. OKAY. IS RICKY GILLEY WHITE OR BLACK?

11:26 AM 20 A. HE'S WHITE, A WHITE SUPERVISOR.

11:26 AM 21 Q. ALL RIGHT. AND HE WAS IN THE WORK FORCE AS A WELDER  
11:26 AM 22 YOU SAID?

11:26 AM 23 A. HE WAS A WELDER, YES.

11:26 AM 24 Q. AND WHO IS BOB WESTBROOK THAT YOU'RE REFERRING TO?

11:26 AM 25 A. HE WAS PRODUCTION SUPERINTENDENT.

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11:26 AM 1 Q. OVER THE WHOLE TRAILER DIVISION?

11:26 AM 2 A. YES.

11:26 AM 3 Q. AND IS HE ALSO WHITE?

11:26 AM 4 A. YES.

11:26 AM 5 Q. AND WERE YOU OFFERED THE SAME OPPORTUNITIES THAT MR.  
11:26 AM 6 GILLEY WAS OFFERED?

11:26 AM 7 A. NO, SIR.

11:26 AM 8 Q. OKAY. WHO HAD BETTER EXPERIENCE TO OBSERVE AND BE  
11:26 AM 9 ABLE TO CRITICALLY ANALYZE THE PRODUCTION OF TRAILERS?

11:26 AM 10 A. I DID, SIR.

11:26 AM 11 Q. AND WHY DO YOU SAY THAT?

11:26 AM 12 A. BECAUSE I'VE HAD VAST EXPERIENCE IN PRODUCTION AND  
11:26 AM 13 INSPECTION AND QUALITY MANAGEMENT. I'VE HAD THE OVERSIGHT  
11:26 AM 14 OF THE TRAILER BEING BUILT FROM SCRATCH UNTIL IT'S  
11:27 AM 15 COMPLETED.

11:27 AM 16 Q. OKAY. WERE YOU OFFERED ANY OF THOSE OPPORTUNITIES  
11:27 AM 17 THAT MR. GILLEY WAS?

11:27 AM 18 A. NO, SIR.

11:27 AM 19 Q. WAS IT A --

11:27 AM 20 LET ME ASK YOU A FEW OTHER QUESTIONS ABOUT YOUR  
11:27 AM 21 TENURE AS QUALITY ASSURANCE MANAGER. NOW, THAT WAS THE  
11:27 AM 22 JOB WHERE THE CEO HAD TO INTERVENE BEFORE YOUR  
11:27 AM 23 DEPARTMENT'S MANAGEMENT WOULD LET YOU --

11:27 AM 24 MR. HAMEL: OBJECTION, LEADING, IT'S THE LAWYER  
11:27 AM 25 TESTIFYING.

TRANSCRIPT OF PROCEEDINGS

88

11:27 AM 1 MR. GARRIGAN: IT'S SOMETHING HE'S ALREADY  
11:27 AM 2 COVERED, YOUR HONOR.

11:27 AM 3 IS THAT RIGHT?

11:27 AM 4 THE COURT: I'M GOING TO OVERRULE THE OBJECTION,  
11:27 AM 5 BUT QUIT LEADING, PLEASE, SIR.

11:27 AM 6 MR. GARRIGAN: ALL RIGHT.

11:27 AM 7 BY MR. GARRIGAN:

11:27 AM 8 Q. OKAY. AS QUALITY ASSURANCE MANAGER --

11:27 AM 9 WELL, FIRST, TELL US, HOW MANY OTHER  
11:27 AM 10 AFRICAN-AMERICANS WERE AT THAT LEVEL IN THE COMPANY?

11:28 AM 11 A. ZERO.

11:28 AM 12 Q. HOW MANY AFRICAN-AMERICANS WERE ABOVE THAT LEVEL IN  
11:28 AM 13 THE COMPANY?

11:28 AM 14 A. NONE.

11:28 AM 15 Q. HOW MANY AFRICANS HAD BEEN IN MANAGEMENT POSITIONS  
11:28 AM 16 BEFORE THAT TIME?

11:28 AM 17 A. IN OVER A HUNDRED YEARS AS A COMPANY, NONE.

11:28 AM 18 Q. SO YOU WERE THE FIRST ONE?

11:28 AM 19 A. YES, AND ONLY ONE.

11:28 AM 20 Q. OKAY. WAS TRAILER DIVISION MANAGEMENT SUPPORTIVE OF  
11:28 AM 21 YOU IN THAT POSITION?

11:28 AM 22 A. NO, SIR, THEY WERE NOT.

11:28 AM 23 Q. DID THEY PROVIDE YOU WITH THE RESOURCES YOU NEEDED  
11:28 AM 24 TO DO THAT JOB?

11:28 AM 25 A. NO, SIR, THEY DID NOT PROVIDE ME WITH THE TRAINING,

11:28 AM 1 THE RESOURCES, THE AUTHORITY OR THE STAFF OR EQUIPMENT TO  
11:28 AM 2 DO AN EFFECTIVE JOB.

11:28 AM 3 THE COURT: WHAT EQUIPMENT WOULD BE NECESSARY?

11:28 AM 4 THE WITNESS: AN UP-TO-DATE COMPUTER, SIR.

11:28 AM 5 THE COURT: SIR?

11:28 AM 6 THE WITNESS: AN UP-TO-DATE COMPUTER.

11:28 AM 7 THE COURT: OH.

11:28 AM 8 THE WITNESS: COMPUTER PRINTER.

11:28 AM 9 BY MR. GARRIGAN:

11:29 AM 10 Q. AND HOW DID THAT LACK OF SUPPORT AFFECT YOU?

11:29 AM 11 A. IT CAUSED ME TO HAVE TO WORK LONG HOURS SATURDAY AND  
11:29 AM 12 SUNDAY, BECAUSE I HAD TO DO ALL THE WORK ON THE  
11:29 AM 13 STATISTICAL DATA MANUALLY.

11:29 AM 14 AND TOWARDS THE END THEY GOT ME AN OUT-OF-DATE  
11:29 AM 15 MACINTOSH, AND THE ONLY THING I WAS ABLE TO DO THERE WAS  
11:29 AM 16 TO PLOT SOME GRAPHS.

11:29 AM 17 Q. ABOUT HOW MANY HOURS DID YOU HAVE TO WORK A WEEK  
11:29 AM 18 BECAUSE YOU DIDN'T HAVE THE RESOURCES?

11:29 AM 19 A. EIGHTY. THAT'S GUESSING. SEVENTY TO EIGHTY.

11:29 AM 20 Q. DID YOU PUT IN THAT MUCH TIME?

11:29 AM 21 A. YES, SIR.

11:29 AM 22 Q. DID YOU DO A GOOD JOB?

11:29 AM 23 A. YES, SIR.

11:29 AM 24 Q. WERE THERE COMPLAINTS ABOUT YOUR PERFORMANCE?

11:29 AM 25 A. NO, SIR.

TRANSCRIPT OF PROCEEDINGS

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11:29 AM 1 MR. HAMEL: YOUR HONOR, THE COURT HAS PREVIOUSLY  
11:29 AM 2 RULED THAT MR. MCCLAIN'S INDIVIDUAL CASE IS GOING TO BE  
11:29 AM 3 SEVERED AND TRIED, AND WE'RE HERE TO --

11:29 AM 4 THE COURT: YES. YOU'RE GOING INTO MOSTLY  
11:29 AM 5 DISPARATE TREATMENT. I CAN UNDERSTAND WHY YOU WOULD WANT  
11:30 AM 6 TO SHOW THAT GENERALLY AS TO THE CORPORATE CULTURE, BUT I  
11:30 AM 7 THINK YOU'RE TRYING A DISPARATE TREATMENT CASE INSTEAD OF  
11:30 AM 8 A DISPARATE IMPACT CASE.

11:30 AM 9 MR. GARRIGAN: YOUR HONOR, YOU'RE CORRECT.  
11:30 AM 10 WE'RE SUBMITTING THIS TESTIMONY ONLY TO SHOW CORPORATE  
11:30 AM 11 CULTURE AND BACKGROUND, AND I'LL TRY TO MAKE IT BRIEF.

11:30 AM 12 THE COURT: ALL RIGHT.

11:30 AM 13 MR. HAMEL: YOUR HONOR, WE'RE DEALING WITH VERY  
11:30 AM 14 SPECIFIC ISSUES RELATED TO ONE SINGLE PERSON.

11:30 AM 15 THE COURT: I UNDERSTAND THAT.

11:30 AM 16 MR. HAMEL: THAT'S HARDLY A CULTURAL ISSUE.

11:30 AM 17 THE COURT: I UNDERSTAND THAT. BUT THE CASE  
11:30 AM 18 ISN'T OVER YET.

11:30 AM 19 MR. HAMEL: THANK YOU, YOUR HONOR.

11:30 AM 20 THE COURT: ALL RIGHT. AND ONE WITNESS IS NOT  
11:30 AM 21 GOING TO SHOW A DISPARATE IMPACT, BUT A NUMBER OF THEM  
11:30 AM 22 COULD.

11:30 AM 23 BY MR. GARRIGAN:

11:30 AM 24 Q. OKAY. MR. MCCLAIN, WHEN YOU WERE A QUALITY  
11:30 AM 25 ASSURANCE MANAGER --

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11:30 AM 1 A. YES, SIR.

11:30 AM 2 Q. DID YOU HAVE RESPONSIBILITY FOR PROMOTING HOURLY  
11:31 AM 3 EMPLOYEES?

11:31 AM 4 A. YES, SIR.

11:31 AM 5 Q. AND WHAT SORTS OF PROMOTIONS WERE YOU CONCERNED  
11:31 AM 6 WITH?

11:31 AM 7 A. THE INSPECTOR, THE POSITION OF INSPECTOR.

11:31 AM 8 Q. ALL RIGHT. AND YOU HELD THOSE RESPONSIBILITIES INTO  
11:31 AM 9 THE CLASS PERIOD HERE, UNTIL YOUR DEMOTION IN '96?

11:31 AM 10 A. YES, SIR.

11:31 AM 11 Q. WHAT KIND OF TRAINING DID YOU GET IN HOW TO MAKE  
11:31 AM 12 PROMOTION DECISIONS?

11:31 AM 13 A. OTHER THAN THE FOUR-HOUR CLASS, NONE.

11:31 AM 14 Q. WHAT KIND OF CRITERIA WERE YOU TRAINED TO USE TO  
11:31 AM 15 MAKE THESE DECISIONS?

11:31 AM 16 A. NONE.

11:31 AM 17 Q. WHAT WERE YOU SUPPOSED TO CONSIDER WHEN YOU MADE  
11:31 AM 18 PROMOTION DECISIONS?

11:32 AM 19 A. IN THE FOUR-HOUR SEMINAR, I GUESS YOU WOULD CALL IT,  
11:32 AM 20 THEY PROVIDED US WITH -- YOU WERE TOLD TO USE ATTENDANCE,  
11:32 AM 21 ATTITUDE, ABILITY, FACTORS LIKE THAT.

11:32 AM 22 Q. DID THEY TRAIN YOU TO MAKE THESE PROMOTIONS BASED ON  
11:32 AM 23 SENIORITY?

11:32 AM 24 A. NO, SIR.

11:32 AM 25 Q. WERE THERE OTHER SUPERVISORS AT THE SAME TRAINING

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11:32 AM 1 YOU WENT TO?

11:32 AM 2 A. YES, SIR.

11:32 AM 3 Q. DID THEY TRAIN YOU HOW TO MEASURE ATTITUDE?

11:32 AM 4 A. NO, SIR.

11:32 AM 5 Q. DID THEY TELL YOU HOW TO MEASURE ATTENDANCE?

11:32 AM 6 A. NO, SIR.

11:32 AM 7 Q. WHEN YOU MADE THESE DECISIONS --

11:32 AM 8 HOW MANY SUCH DECISIONS DID YOU MAKE?

11:32 AM 9 A. PROBABLY FIFTEEN TO TWENTY.

11:33 AM 10 Q. AND WHAT WAS YOUR GOAL WHEN YOU MADE THESE  
11:33 AM 11 DECISIONS?

11:33 AM 12 A. WELL, MY GOAL WAS TO BE FAIR, BUT I WAS TOLD TO USE  
11:33 AM 13 THESE FACTORS SUCH AS ATTITUDE AND ATTENDANCE IN MAKING A  
11:33 AM 14 DECISION TO CHOOSE THE BEST QUALIFIED MAN, AND, YOU KNOW,  
11:33 AM 15 FROM MY OWN SELF PERSONALLY, I WANTED TO BE AS FAIR AS  
11:33 AM 16 POSSIBLE, BUT I JUST DID THE BEST I COULD WITH WHAT I WAS  
11:33 AM 17 GIVEN TO WORK WITH.

11:33 AM 18 MR. GARRIGAN: MAY I APPROACH THE WITNESS?

11:33 AM 19 THE COURT: YOU MAY.

11:33 AM 20 BY MR. GARRIGAN:

11:33 AM 21 Q. MR. MCCLAIN, I'M GIVING YOU ANOTHER BINDER OF  
11:33 AM 22 EXHIBITS, AND I WOULD LIKE TO ASK YOU TO LOOK AT EXHIBIT  
11:33 AM 23 110.

11:33 AM 24 A. OKAY.

11:34 AM 25 MR. GARRIGAN: AND ONE FOR THE COURT.

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11:34 AM 1 THE COURT: THANK YOU.

11:34 AM 2 MR. GARRIGAN: IT'S AT TAB 110.

11:34 AM 3 BY MR. GARRIGAN:

11:34 AM 4 Q. MR. MCCLAIN, DO YOU RECOGNIZE THE DOCUMENTS  
11:34 AM 5 CONTAINED IN EXHIBIT 110?

11:34 AM 6 A. YES, SIR, I DO.

11:34 AM 7 Q. WOULD YOU TELL THE COURT WHAT THOSE ARE?

11:34 AM 8 A. WELL, THESE ARE DOCUMENTS THAT I WOULD USE IN THE  
11:34 AM 9 INTERVIEWS IN CONSIDERING WHAT PERSON TO PROMOTE TO THE  
11:34 AM 10 PERSON OF INSPECTOR.

11:34 AM 11 Q. ALL RIGHT. AND, IN FACT, THOSE DOCUMENTS CONCERNED  
11:34 AM 12 A PROMOTION ULTIMATELY MADE IN AUGUST OF '95, AND IT WENT  
11:34 AM 13 TO A MAN NAMED HOLT?

11:34 AM 14 A. YES, SIR.

11:35 AM 15 Q. NOW, WOULD YOU LOOK AT DOCUMENT 343 -- EXCUSE ME --  
11:35 AM 16 BATES-NUMBERED DOCUMENT 343 IN EXHIBIT 110?

11:35 AM 17 A. OKAY.

11:35 AM 18 Q. ALL RIGHT. THAT'S A LIST OF JOB REQUIREMENTS?

11:35 AM 19 A. YES.

11:35 AM 20 Q. OKAY. AND IS THAT SOMETHING YOU --

11:35 AM 21 WHO CREATED THAT?

11:35 AM 22 A. THIS WAS BASED ON WHAT I GOT IN THE FOUR HOURS. I  
11:35 AM 23 HAD NO TRAINING, BUT I JUST -- I TOOK IT FROM THE RED  
11:35 AM 24 BOOK, THIS PARTICULAR INFORMATION, AND APPLIED IT TO  
11:35 AM 25 MAKING THE DECISION I DID ON THE PERSON I CHOSE INSPECTOR.

11:36 AM 1 Q. OKAY. SO YOU CREATED THIS DOCUMENT?

11:36 AM 2 A. YES.

11:36 AM 3 Q. ALL RIGHT. WERE YOU QUALIFIED IN ANY WAY TO BE  
11:36 AM 4 MAKING JOB DESCRIPTIONS?

11:36 AM 5 A. NO.

11:36 AM 6 Q. NOW, THESE DOCUMENTS IN 110, WERE THOSE PART OF YOUR  
11:36 AM 7 BUSINESS RECORDS AS QUALITY MANAGER?

11:36 AM 8 A. YES.

11:36 AM 9 Q. AND WHAT DID YOU DO WITH THOSE RECORDS?

11:36 AM 10 A. I TURNED ALL OF THE RECORDS OVER TO DOUG WILLIAMS  
11:36 AM 11 ONCE I WAS DEMOTED.

11:36 AM 12 Q. ALL RIGHT.

11:36 AM 13 MR. GARRIGAN: YOUR HONOR, WE OFFER EXHIBIT 110.

11:36 AM 14 MR. HAMEL: NO OBJECTION, YOUR HONOR.

11:36 AM 15 THE COURT: BEG YOUR PARDON?

11:36 AM 16 MR. HAMEL: NO OBJECTION, YOUR HONOR.

11:36 AM 17 THE COURT: IT'S RECEIVED AS MARKED.

11:36 AM 18 BY MR. GARRIGAN:

11:37 AM 19 Q. MR. MCCLAIN, WOULD YOU LOOK AT DOCUMENT  
11:37 AM 20 BATES-NUMBERED 345?

11:37 AM 21 A. IN 110?

11:37 AM 22 Q. IN 110.

11:37 AM 23 A. OKAY. YES, SIR.

11:37 AM 24 Q. WOULD YOU TELL US WHAT THAT IS?

11:37 AM 25 A. WELL, AGAIN, THIS IS WHERE I RATED THE APPLICANTS

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11:37 AM 1 BASED ON THE FACTORS THAT I WAS GIVEN BY LUFKIN  
11:37 AM 2 INDUSTRIES, ATTENDANCE, ATTITUDE, PRODUCT KNOWLEDGE,  
11:37 AM 3 CUSTOMER ORDERS, BLUEPRINTS AND MERGER-INTOS.

11:37 AM 4 Q. DID YOU GET ANY GUIDELINES OR TRAINING IN HOW TO  
11:37 AM 5 MEASURE ATTENDANCE?

11:37 AM 6 A. NO, SIR.

11:37 AM 7 Q. WHO DECIDED WHAT ATTENDANCE WAS GOOD AND WHAT  
11:37 AM 8 ATTENDANCE WAS BAD?

11:37 AM 9 A. I DID.

11:37 AM 10 Q. DID ANYBODY TRAIN YOU IN HOW TO DO THAT?

11:37 AM 11 A. NO, SIR.

11:37 AM 12 Q. HOW ABOUT ATTITUDE?

11:37 AM 13 A. I DID.

11:37 AM 14 Q. YOU MADE THAT DECISION?

11:37 AM 15 A. YES, SIR.

11:37 AM 16 Q. DID THEY TRAIN YOU IN HOW TO MEASURE AN ATTITUDE?

11:37 AM 17 A. NO, SIR.

11:37 AM 18 Q. YOU JUST GOT TO USE YOUR OWN DISCRETION?

11:37 AM 19 A. THAT IS CORRECT.

11:38 AM 20 Q. HOW ABOUT PRODUCT KNOWLEDGE?

11:38 AM 21 A. NO, SIR.

11:38 AM 22 Q. DID YOU GET ANY TRAINING IN HOW TO MEASURE PRODUCT  
11:38 AM 23 KNOWLEDGE?

11:38 AM 24 A. NO, SIR.

11:38 AM 25 Q. HOW ABOUT CUSTOMER ORDERS?

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11:38 AM 1 A. NO, SIR.

11:38 AM 2 Q. DID YOU HAVE ANY TRAINING -- WERE THERE ANY  
11:38 AM 3 GUIDELINES IN HOW TO MEASURE AN APPLICANT'S KNOWLEDGE OF  
11:38 AM 4 CUSTOMER ORDERS?

11:38 AM 5 A. NONE.

11:38 AM 6 Q. OKAY. THE SAME THING WITH REGARD TO THE NEXT  
11:38 AM 7 FACTOR, BLUEPRINTS?

11:38 AM 8 A. NO, SIR. I JUST USED MY OWN SUBJECTIVE  
11:38 AM 9 DECISION-MAKING, AS DID OTHER SUPERVISORS, TO MAKE  
11:38 AM 10 DECISIONS AS TO WHO I WAS GOING TO PROMOTE.

11:38 AM 11 MR. HAMEL: OBJECTION AS TO THE FOUNDATION WITH  
11:38 AM 12 RESPECT TO OTHER SUPERVISORS.

11:38 AM 13 BY MR. GARRIGAN:

11:38 AM 14 Q. IS THAT WHAT YOU WERE TRAINED TO DO?

11:38 AM 15 THE COURT: HE'S TOLD ME SEVERAL TIMES THE  
11:38 AM 16 TRAINING HE HAD. IT'S REPETITIOUS, AND THE OBJECTION IS  
11:39 AM 17 SUSTAINED.

11:39 AM 18 BY MR. GARRIGAN:

11:39 AM 19 Q. OTHER THAN THE FOUR HOURS OF TRAINING THAT YOU HAD  
11:39 AM 20 WITH OTHER SUPERVISORS, DID YOU HAVE ANY TRAINING ON HOW  
11:39 AM 21 TO MAKE THESE SELECTION DECISIONS?

11:39 AM 22 A. NO, SIR.

11:39 AM 23 Q. OR OTHER PERSONNEL DECISIONS?

11:39 AM 24 A. NO, SIR.

11:39 AM 25 Q. IF YOU WANTED TO, COULD YOU HAVE MADE THESE

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11:39 AM 1 DECISIONS BASED ON RACE?

11:39 AM 2 A. YES, SIR.

11:39 AM 3 Q. COULD YOU HAVE JUST PICKED YOUR FAVORITE PERSON FOR  
11:39 AM 4 THEM?

11:39 AM 5 A. YES, SIR, I COULD HAVE.

11:39 AM 6 Q. ALL RIGHT.

11:39 AM 7 THE COURT: IF YOU DID THAT, JUST PICKED YOUR  
11:40 AM 8 FAVORITE PERSON, AND HE DIDN'T PERFORM WELL, YOU WOULDN'T  
11:40 AM 9 HAVE THAT JOB VERY LONG, WOULD YOU?

11:40 AM 10 THE WITNESS: WELL, YOU KNOW, AS A SUPERVISOR OR  
11:40 AM 11 MANAGER, YOU COULD COVER UP FOR AN INDIVIDUAL THAT WAS  
11:40 AM 12 MAKING MISTAKES. THE ONLY REASON I DIDN'T DO THAT,  
11:40 AM 13 BECAUSE I BELIEVED IN FAIRNESS, YOUR HONOR.

11:40 AM 14 THE COURT: THANK YOU.

11:40 AM 15 THE WITNESS: I JUST WOULDN'T -- I WOULDN'T DO  
11:40 AM 16 THAT, BUT I COULD HAVE.

11:40 AM 17 BY MR. GARRIGAN:

11:40 AM 18 Q. OKAY.

11:40 AM 19 A. NO ONE EVER QUESTIONED ANY DECISION I MADE AS A  
11:40 AM 20 MANAGER. I WAS NEVER QUESTIONED. I MADE FIFTEEN TO  
11:40 AM 21 TWENTY.

11:40 AM 22 Q. OKAY. WERE YOU EVER AWARE OF ANY SCRUTINIZING OF  
11:40 AM 23 YOUR PROMOTION DECISIONS?

11:40 AM 24 A. NO.

11:40 AM 25 Q. WERE YOU GIVEN ANY TRAINING IN HOW TO MAKE

## TRANSCRIPT OF PROCEEDINGS

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11:40 AM 1 PERFORMANCE APPRAISALS?

11:40 AM 2 A. NO, SIR. OTHER THAN THE FOUR HOURS, NO, SIR. WE  
11:40 AM 3 JUST GLOSSED OVER IT.

11:40 AM 4 Q. NOW, ALSO, WHILE YOU WERE QUALITY ASSURANCE MANAGER  
11:41 AM 5 DID YOU HAVE ACCESS TO THE CORPORATE OFFICE?

11:41 AM 6 A. THAT BRINGS A VERY PAINFUL EXPERIENCE. I WAS THE  
11:41 AM 7 ONLY PERSON, I WAS THE ONLY SUPERVISOR, MANAGER THAT  
11:41 AM 8 DIDN'T HAVE A KEY TO THE CORPORATE OFFICE, BUT ALL THE  
11:41 AM 9 WHITE SUPERVISORS, ALL THE MANAGERS, ALL THE WHITE  
11:41 AM 10 MANAGERS, EVEN THE SECRETARIES HAD ACCESS. SO WHEN I HAD  
11:41 AM 11 TO GO TO WORK ON THE WEEKENDS TO TRY TO GET MY JOB DONE, I  
11:41 AM 12 HAD TO GET THE KEY FROM THE GATE GUARD.

11:41 AM 13 MR. HAMEL: OBJECTION, YOUR HONOR, FOUNDATION.  
11:41 AM 14 THIS WITNESS HAS NO FOUNDATION THAT HE KNOWS WHAT ALL  
11:41 AM 15 MANAGERS AND SECRETARIES HAD OR HAD NOT.

11:41 AM 16 THE WITNESS: SIR, THEY GO THROUGH THE FRONT  
11:41 AM 17 DOOR.

11:41 AM 18 THE COURT: I'LL GIVE IT SUCH WEIGHT AND  
11:41 AM 19 CONSIDERATION, IF ANY, I THINK IT DESERVES.

11:41 AM 20 BY MR. GARRIGAN:

11:42 AM 21 Q. WERE YOU IN A POSITION TO OBSERVE WHETHER THE WHITE  
11:42 AM 22 COLLEAGUES HAD ACCESS TO THE CORPORATE OFFICE?

11:42 AM 23 A. YES, SIR. I SAW THEM TAKE THEIR KEY AND COME IN.

11:42 AM 24 Q. ALL RIGHT. WERE YOU EVER RESTRICTED FROM GETTING  
11:42 AM 25 THE KEY FROM THE GATE GUARD?

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11:42 AM 1 A. YES, SIR. I WENT TO WORK ONE SATURDAY TO DO SOME  
11:42 AM 2 WORK IN THE OFFICE. THE GATE GUARD INFORMED ME THAT HE  
11:42 AM 3 WAS TOLD TO NO LONGER GIVE ME THE KEY TO GO INTO THE  
11:42 AM 4 CORPORATE OFFICE.

11:42 AM 5 Q. DID YOU ASK FOR AN EXPLANATION?

11:42 AM 6 A. YES, SIR.

11:42 AM 7 MR. HAMEL: OBJECTION, YOUR HONOR, HEARSAY. WE  
11:42 AM 8 DON'T EVEN KNOW WHO THIS GATE GUARD IS, BUT HE'S CERTAINLY  
11:42 AM 9 NOT HERE TO TESTIFY ABOUT WHAT MR. MCCLAIN SAYS HE WAS  
11:42 AM 10 TOLD.

11:42 AM 11 MR. GARRIGAN: SO FAR I ONLY ASKED IF HE ASKED  
11:42 AM 12 FOR AN EXPLANATION.

11:42 AM 13 MR. HAMEL: WELL, YOUR HONOR, CLEARLY THE  
11:42 AM 14 PURPOSE OF THE TESTIMONY IS FOR THE FACT THAT MR. MCCLAIN  
11:42 AM 15 DIDN'T GET A KEY.

11:42 AM 16 THE COURT: I UNDERSTAND THAT. SUSTAINED.  
11:42 AM 17 BY MR. GARRIGAN:

11:43 AM 18 Q. WHO DID YOU ASK FOR AN EXPLANATION?

11:43 AM 19 A. I ASKED THE GATE GUARD. AND I COMPLAINED IN WRITING  
11:43 AM 20 THAT I DIDN'T GET A KEY TO BOTH MR. PEREZ AND TO MR.  
11:43 AM 21 SMITH.

11:43 AM 22 Q. DID YOU EVER GET AN EXPLANATION?

11:43 AM 23 A. NO, I DID NOT. WELL, I GOT ONE INDIRECT  
11:43 AM 24 EXPLANATION. MY SUPERVISOR, ART JENKINS, TOLD ME THAT  
11:43 AM 25 THERE HAD HAD BEEN SOME THEFT IN THE OFFICE SEVERAL YEARS

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11:43 AM 1 AGO, I DON'T KNOW WHEN, AND THAT FOR THAT REASON THEY  
11:43 AM 2 WANTED TO LIMIT ACCESS TO THE OFFICE.

11:43 AM 3 MY QUESTION WAS, "WHY AM I, THE BLACK MANAGER,  
11:43 AM 4 THE ONLY ONE WHO'S BEING RESTRICTED? ARE YOU SUSPECTING  
11:43 AM 5 ME?"

11:43 AM 6 AND THEN EARL DOVER MADE A STATEMENT THAT  
11:43 AM 7 MANAGEMENT HAD TO DECIDE, WHICH I FELT LIKE WAS AN ATTACK  
11:43 AM 8 ON MY INTEGRITY, IF I AS A BLACK MANAGER WAS TRUSTWORTHY  
11:44 AM 9 ENOUGH TO GO INTO THE OFFICE WHERE I HAD BUSINESS TO DO.

11:44 AM 10 Q. NOW, THE MEN THAT YOU GOT THESE EXPLANATIONS FROM  
11:44 AM 11 WERE WHITE SUPERVISORS, IS THAT CORRECT?

11:44 AM 12 A. YES.

11:44 AM 13 Q. NOW, MR. HAMEL MADE MENTION OF TESTING IN HIS  
11:44 AM 14 OPENING STATEMENT. DO THEY USE ANY TESTING IN THE TRAILER  
11:44 AM 15 DIVISION?

11:44 AM 16 A. THEY HAVE USED SOME.

11:44 AM 17 Q. ALL RIGHT. HAVE THEY USED TESTING FOR A POSITION  
11:44 AM 18 KNOWN AS TRAILER BODY BUILDER "A"?

11:44 AM 19 A. ONLY RECENTLY, AND I MEAN ONLY IN THE LAST SEVERAL  
11:44 AM 20 YEARS. TESTS WERE NOT ORIGINALLY USED, BUT THEY HAVE USED  
11:44 AM 21 SOME TESTING. IN FACT, THERE WAS A GRIEVANCE FILED  
11:44 AM 22 BECAUSE SOME PEOPLE TOOK THE TEST AND DIDN'T PASS IT AND  
11:44 AM 23 WERE DENIED POSITIONS THAT THEY HAD PREVIOUSLY HELD.

11:45 AM 24 Q. SO PEOPLE WHO HAD BEEN ALREADY PERFORMING  
11:45 AM 25 TRAILER BODY BUILDER "A" WORK WOULD HAVE TO TAKE THE TEST?

11:45 AM 1 A. YES.

11:45 AM 2 Q. AND SOME OF THEM DIDN'T PASS IT?

11:45 AM 3 A. YES.

11:45 AM 4 Q. HAD THESE PEOPLE BEEN PERFORMING TRAILER BODY  
11:45 AM 5 BUILDER "A" WORK SUCCESSFULLY?

11:45 AM 6 A. YES, THEY HAD.

11:45 AM 7 Q. DID THEY GET GOOD EVALUATIONS?

11:45 AM 8 A. YES, SIR.

11:45 AM 9 Q. AND THEN THEY COULDN'T PASS THIS TEST?

11:45 AM 10 A. YES, SIR, AND THEY COMPLAINED TO ME ABOUT THAT.

11:45 AM 11 Q. WAS THAT TEST IN ANY WAY RELATED TO THE JOB OF BEING  
11:45 AM 12 A TRAILER BODY BUILDER "A"?

11:45 AM 13 A. NO, SIR, BECAUSE --

11:45 AM 14 MR. HAMEL: OBJECTION, YOUR HONOR, NO FOUNDATION  
11:45 AM 15 THAT HE'S EVEN DONE THE TEST.

11:45 AM 16 THE COURT: DID YOU READ THE TEST?

11:45 AM 17 THE WITNESS: NO, SIR.

11:45 AM 18 THE COURT: DID YOU HAVE ANY IN INPUT AS TO WHAT  
11:46 AM 19 THE TEST WAS?

11:46 AM 20 THE WITNESS: NO, SIR, I WAS JUST TOLD BY  
11:46 AM 21 WORKERS WHO HAD TO TAKE THE TEST AS TO WHAT THE TEST  
11:46 AM 22 CONSISTED OF.

11:46 AM 23 THE COURT: YOU'VE NEVER SEEN THE TEST?

11:46 AM 24 THE WITNESS: NO, SIR.

11:46 AM 25 THE COURT: I'LL SUSTAIN IT.



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11:46 AM 1 MR. GARRIGAN: YOUR HONOR, I PASS THE WITNESS.

11:46 AM 2 MR. HAMEL: MAY I PROCEED, YOUR HONOR?

11:46 AM 3 THE COURT: YES, SIR.

11:46 AM 4 CROSS-EXAMINATION

11:46 AM 5 BY MR. HAMEL:

11:46 AM 6 Q. MR. MCCLAIN --

11:46 AM 7 A. YES, SIR.

11:46 AM 8 Q. LET ME LET YOU GET YOUR WATER, SIR. I DON'T WANT TO  
11:46 AM 9 INTERRUPT.

11:46 AM 10 A. OKAY.

11:46 AM 11 Q. IT'S MY UNDERSTANDING THAT, ACCORDING TO YOUR  
11:46 AM 12 TESTIMONY, YOU'VE WORKED IN THE TRAILER DIVISION  
11:47 AM 13 CONTINUOUSLY SINCE 1972, IS THAT RIGHT?

11:47 AM 14 A. THAT'S CORRECT, SIR.

11:47 AM 15 Q. OKAY. AND YOU HAVE NOT IN FACT WORKED AT ANY  
11:47 AM 16 DIVISION OTHER THAN TRAILER SINCE 1972, HAVE YOU?

11:47 AM 17 A. NO, SIR.

11:47 AM 18 Q. YOU HAVE BEEN INVOLVED IN SOME INTERNAL AUDITS AT  
11:47 AM 19 OTHER DIVISIONS, RIGHT?

11:47 AM 20 A. YES, SIR.

11:47 AM 21 Q. AND THE WORK AS AN INTERNAL AUDITOR IS THE EXTENT OF  
11:47 AM 22 YOUR FAMILIARITY WITH THOSE DIVISIONS, ISN'T THAT CORRECT?

11:47 AM 23 A. NO, SIR, OTHER THAN I ALSO HAD TO MAKE VISITS FOR  
11:47 AM 24 GETTING TOOLS CALIBRATED.

11:47 AM 25 Q. OKAY. AND WHAT VISITS WOULD YOU --

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11:47 AM 1 WHERE WOULD YOU GO TO GET THE TOOLS CALIBRATED?

11:47 AM 2 A. I BELIEVE THIS WAS -- IT'S PART OF OILFIELD, BUT IT  
11:47 AM 3 WAS THE MACHINE PART OF THE OILFIELD DIVISION.

11:47 AM 4 Q. AND YOU WOULD HAVE A TOOL THAT YOU NEEDED TO HAVE  
11:47 AM 5 CALIBRATED AND YOU WOULD TAKE IT TO HAVE IT CALIBRATED AND  
11:47 AM 6 THEN YOU WOULD BRING IT BACK?

11:47 AM 7 A. YES.

11:47 AM 8 Q. ALL RIGHT. WITH RESPECT TO YOUR TIME AS AN INTERNAL  
11:47 AM 9 AUDITOR, AM I CORRECT THAT THE BEST ESTIMATE YOU HAD WAS  
11:47 AM 10 THAT THE LAST AUDIT YOU DID WAS IN THE EARLY 1990S?

11:48 AM 11 A. I MAY HAVE SAID THAT. I DON'T EXACTLY REMEMBER.  
11:48 AM 12 BUT THAT PROBABLY IS ACCURATE.

11:48 AM 13 Q. AND AM I CORRECT THAT YOU CONDUCTED AUDITS ON FIVE  
11:48 AM 14 OR SIX OCCASIONS ON THE -- DURING THE ALMOST TWENTY OR  
11:48 AM 15 THIRTY YEARS THAT YOU HAVE BEEN EMPLOYED AT LUFKIN  
11:48 AM 16 INDUSTRIES?

11:48 AM 17 A. I THINK IT WOULD HAVE BEEN MORE THAN THAT, BUT  
11:48 AM 18 PROBABLY EIGHT TO TEN.

11:48 AM 19 Q. OKAY. AND THAT THE AUDIT PROCESS THAT WE'RE TALKING  
11:48 AM 20 ABOUT TAKES FROM HALF A DAY TO ALL DAY, ISN'T THAT RIGHT?

11:48 AM 21 A. NORMALLY IT TAKES ANYWHERE FROM A DAY TO A DAY AND A  
11:48 AM 22 HALF.

11:48 AM 23 Q. OJKAY. SO LET'S ASSUME IT'S TEN AUDITS, AND LET'S  
11:48 AM 24 ASSUME IT'S A DAY AND HALF. THAT'S FIFTEEN DAYS OF AUDIT  
11:48 AM 25 EXPERIENCE IN THIRTY YEARS AT LUFKIN, CORRECT?

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11:48 AM 1 A. INCLUDING FOLLOW-UPS. THERE WOULD BE AN ORIGINAL  
11:48 AM 2 AUDIT, THERE WOULD BE A FOLLOW-UP. THERE WOULD BE A  
11:49 AM 3 REPORT SUBMITTED AS TO THE PROBLEMS WE FOUND. THERE WOULD  
11:49 AM 4 BE A REPORT SUBMITTED AS TO THE SOLUTIONS TO THE PROBLEMS  
11:49 AM 5 WE FOUND. WE WOULD DO A FOLLOW-UP AUDIT.

11:49 AM 6 Q. ALL RIGHT. THAT, PLUS YOUR TAKING EQUIPMENT TO BE  
11:49 AM 7 CALIBRATED --

11:49 AM 8 A. YES.

11:49 AM 9 Q. -- IS YOUR EXPERIENCE WITH THE OTHER DIVISIONS AT  
11:49 AM 10 LUFKIN INDUSTRIES, POWER TRANSMISSION, OILFIELD AND  
11:49 AM 11 FOUNDRY, CORRECT?

11:49 AM 12 A. NO, SIR. NO, SIR. I ALSO VISITED WITH QUALITY  
11:49 AM 13 PERSONNEL, SPECIFICALLY QUALITY MANAGERS. WE  
11:49 AM 14 STRATEGICALLY DISCUSSED WAYS TO TRACK AND TO FIND  
11:49 AM 15 SOLUTIONS AND TO IMPLEMENT SOLUTIONS.

11:49 AM 16 WE WERE ON THIS COMMITTEE OF AUDITORS, AND WE  
11:49 AM 17 WOULD GO OVER THE DOCUMENTATION AND WE WOULD TRY TO FIGURE  
11:49 AM 18 OUT WHAT WAS THE BEST SOLUTION TO PARTICULAR PROBLEMS THAT  
11:49 AM 19 WERE, SAY, IN COMMON WITH THE VARIOUS DIVISIONS.

11:49 AM 20 Q. AND SO AS A BLACK MANAGER, AS YOU HAVE PUT IT IN  
11:49 AM 21 YOUR OTHER TESTIMONY, YOU HAD OCCASIONS WHEN YOU AND ALL  
11:49 AM 22 THE OTHER QUALITY ASSURANCE MANAGERS WOULD GET TOGETHER  
11:50 AM 23 AND YOU WOULD WORK THROUGH COMMON PROBLEMS WITH RESPECT TO  
11:50 AM 24 QUALITY ASSURANCE, CORRECT?

11:50 AM 25 A. WE WOULD WORK THROUGH THE PROBLEMS THAT WE FOUND AND

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11:50 AM 1 THE SOLUTIONS IN THAT DIVISION THAT THEY APPLIED TO THOSE  
11:50 AM 2 PROBLEMS, AND WE WOULD TRY TO SEE IF THAT WAS THE BEST  
11:50 AM 3 SOLUTION, YES, SIR.

11:50 AM 4 Q. AND THOSE QUALITY MANAGERS WHO WERE WHITE BROUGHT  
11:50 AM 5 YOU INTO THAT GROUP AND WORKED PRODUCTIVELY WITH YOU, IS  
11:50 AM 6 THAT CORRECT?

11:50 AM 7 A. NO, SIR. WHEN YOU SAY BROUGHT ME IN, THAT WAS MY  
11:50 AM 8 RESPONSIBILITY AS A QUALITY MANAGER AND AN AUDITOR TO DO  
11:50 AM 9 THIS.

11:50 AM 10 Q. OKAY. WITH RESPECT TO YOUR DOING WORK AS A QUALITY  
11:50 AM 11 MANAGER, YOU WORKED WITH THESE OTHER QUALITY MANAGERS IN  
11:50 AM 12 PERFORMING THAT FUNCTION AND LEARNING WHAT NEEDED TO BE  
11:50 AM 13 LEARNED IN TERMS OF THE COMPANY'S PROCESSES AND WHETHER  
11:50 AM 14 THEY WERE PROPERLY QUALITY ORIENTED, ISN'T THAT RIGHT?

11:50 AM 15 A. WE DIDN'T LOOK AT ALL THE PROCESSES, WE LOOKED AT  
11:50 AM 16 SPECIFIC PROCESSES.

11:50 AM 17 AND, YES, WE DID WORK TOGETHER TO DO THE AUDITS  
11:50 AM 18 AND TO EXAMINE THE SOLUTIONS AND TO SEE IF THE SOLUTIONS  
11:51 AM 19 WERE WORKING.

11:51 AM 20 Q. OKAY. AND YOUR DISCHARGE OF THESE RESPONSIBILITIES  
11:51 AM 21 WAS AUTHORIZED BY THE TRAILER PLANT MANAGEMENT, WASN'T IT?

11:51 AM 22 A. I'M ASSUMING THAT IT WAS APPROVED BY THE TRAILER  
11:51 AM 23 PLANT MANAGEMENT.

11:51 AM 24 Q. NOBODY SAID THAT THEY DIDN'T WANT YOU TO BE DOING  
11:51 AM 25 THAT, DID THEY?

11:51 AM 1 A. NO. I WAS TRAINED TO DO IT.

11:51 AM 2 Q. OKAY. AND YOU WERE TRAINED BY LUFKIN INDUSTRIES TO  
11:51 AM 3 DO IT, WEREN'T YOU?

11:51 AM 4 A. YES, SIR, I WAS.

11:51 AM 5 Q. EVEN THOUGH -- YOU KNOW, WITH RESPECT TO SOME  
11:51 AM 6 TRAINING, YOU WERE TRAINED TO DO THIS INTERNAL AUDIT  
11:51 AM 7 FUNCTION BY LUFKIN INDUSTRIES, RIGHT?

11:51 AM 8 A. YES, SIR.

11:51 AM 9 Q. ALL RIGHT. LET ME TAKE YOU BACK, MR. MCCLAIN, AND  
11:51 AM 10 I'M ONLY GOING TO DO IT BRIEFLY, BUT I WANT TO TAKE YOU  
11:51 AM 11 BACK TO 1969, WHICH WAS SOME OF YOUR TESTIMONY WITH MR.  
11:51 AM 12 GARRIGAN. THAT'S THE FIRST TIME YOU WENT TO WORK FOR  
11:51 AM 13 LUFKIN INDUSTRIES, ISN'T THAT RIGHT?

11:51 AM 14 A. YES, SIR.

11:51 AM 15 Q. AND YOU TESTIFIED HERE TODAY THAT LUFKIN INDUSTRIES  
11:51 AM 16 WAS THE FIRST JOB THAT YOU HAD OUT OF THE NAVY, CORRECT?

11:51 AM 17 A. WELL, IT WAS ONE OF THE FIRST.

11:51 AM 18 Q. IN FACT, WASN'T IT THE CASE THAT THE FIRST JOB YOU  
11:52 AM 19 HAD WHEN YOU CAME BACK FROM THE NAVY IS THAT YOU WORKED  
11:52 AM 20 FOR THE TEXAS FOUNDRY IN LUFKIN?

11:52 AM 21 A. WELL, I KNOW WHEN I GOT OUT OUT I WORKED FOR LUFKIN  
11:52 AM 22 INDUSTRIES AND I WORKED FOR TEXAS FOUNDRY. WHICH ONE WAS  
11:52 AM 23 FIRST I REALLY DON'T -- I CAN'T SPECIFICALLY SAY. BUT I  
11:52 AM 24 DID WORK FOR BOTH OF THEM.

11:52 AM 25 MR. HAMEL: MAY I APPROACH THE WITNESS, JUDGE?

11:52 AM 1 THE COURT: YES.

11:52 AM 2 BY MR. HAMEL:

11:52 AM 3 Q. MR. MCCLAIN, I'M HANDING YOU DEFENDANT'S EXHIBIT  
11:52 AM 4 120, WHICH WAS THE DEPOSITION THAT YOU GAVE IN THIS CASE  
11:52 AM 5 IN JULY OF 19 -- OR 2003.

11:52 AM 6 A. OKAY.

11:52 AM 7 Q. DO YOU RECALL THAT DEPOSITION, SIR?

11:52 AM 8 A. YES, SIR, I DO.

11:52 AM 9 Q. OKAY. DO YOU RECALL TESTIFYING IN THAT DEPOSITION  
11:52 AM 10 THAT THE FIRST JOB YOU HAD WAS WITH THE TEXAS FOUNDRY?

11:53 AM 11 A. WELL, I MAY HAVE, BUT I KNOW THAT I WORKED FOR BOTH.

11:53 AM 12 Q. SO IT IS -- AT LEAST YOUR RECOLLECTION IN JULY WAS  
11:53 AM 13 THAT YOU HAD -- WHEN YOU APPLIED TO LUFKIN INDUSTRIES, YOU  
11:53 AM 14 HAD FOUNDRY EXPERIENCE, ISN'T THAT RIGHT?

11:53 AM 15 A. IF IT WAS JULY OF '69, NO, SIR, I DID NOT, BECAUSE  
11:53 AM 16 THAT WAS THE FIRST JOB. JULY OF '69, WHETHER IT WAS AT  
11:53 AM 17 LUFKIN INDUSTRIES OR TEXAS FOUNDRY, IS THE FIRST JOB I HAD  
11:53 AM 18 WHEN I CAME OUT OF THE NAVY.

11:53 AM 19 Q. ALL RIGHT, SIR. IF YOU WOULD LOOK AT PAGE 11 OF  
11:53 AM 20 YOUR DEPOSITION. DO YOU SEE PAGE 11, SIR?

11:53 AM 21 A. NOT YET. HANG ON JUST A MINUTE. OKAY. YES, I DO.

11:53 AM 22 Q. YOU DO?

11:53 AM 23 A. YES, SIR.

11:53 AM 24 Q. WAS IT YOUR TESTIMONY AT THAT TIME IN RESPONSE TO --  
11:53 AM 25 WAS YOUR TESTIMONY AS FOLLOWS: QUESTION:

11:53 AM 1 "AFTER YOUR SERVICE IN THE NAVY, YOU RETURNED TO ANGELINA  
11:53 AM 2 COUNTY?"

11:54 AM 3 ANSWER: "YES."

11:54 AM 4 QUESTION: "DID YOU GO IMMEDIATELY TO WORK FOR  
11:54 AM 5 LUFKIN?"

11:54 AM 6 ANSWER: "NO. THE FIRST JOB WAS WITH TEXAS  
11:54 AM 7 FOUNDRY, AND I BELIEVE I HIRED IN APPROXIMATELY JULY,  
11:54 AM 8 BECAUSE I HADN'T BEEN OUT THAT LONG."

11:54 AM 9 WAS THAT YOUR TESTIMONY AT THAT TIME?

11:54 AM 10 A. IS THAT ON PAGE 11?

11:54 AM 11 Q. YES, SIR.

11:54 AM 12 A. I REMEMBER THE TESTIMONY, BUT I DON'T SEE IT ON  
11:54 AM 13 HERE.

11:54 AM 14 MR. HAMEL: MAY I APPROACH, YOUR HONOR?

11:54 AM 15 THE WITNESS: THAT'S PAGE 11?

11:54 AM 16 BY MR. HAMEL:

11:54 AM 17 Q. I'M SORRY. I SEE THE CONFUSION. THE PAGES OF THE  
11:54 AM 18 DEPOSITION --

11:54 AM 19 A. OKAY.

11:54 AM 20 Q. DO YOU SEE THE TESTIMONY?

11:54 AM 21 A. YES, I DO.

11:54 AM 22 Q. SO, MR. MCCLAIN, AT LEAST AS TO YOUR RECOLLECTION IN  
11:54 AM 23 JULY OF 2003 WHEN YOU GAVE YOUR DEPOSITION, YOU HAD  
11:54 AM 24 FOUNDRY EXPERIENCE AT THE TIME YOU APPLIED TO LUFKIN  
11:54 AM 25 INDUSTRIES?

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11:54 AM 1 A. YES, SIR.

11:54 AM 2 Q. AND NOTWITHSTANDING THE FACT THAT YOU HAD FOUNDRY  
11:54 AM 3 EXPERIENCE, YOU APPLIED AS A HELPER AND YOU WERE HIRED AS  
11:54 AM 4 A HELPER, WEREN'T YOU?

11:55 AM 5 A. NO, SIR, I DID NOT APPLY AS A HELPER. I APPLIED FOR  
11:55 AM 6 WORK. THEY HIRED ME AS A HELPER.

11:55 AM 7 Q. MR. MCCLAIN, HAVE YOU EVER PREVIOUSLY TESTIFIED TO  
11:55 AM 8 THE QUESTION "YOU APPLIED FOR A HELPER AND YOU WERE HIRED  
11:55 AM 9 AS A HELPER?"

11:55 AM 10 ANSWER: "RIGHT. THAT IS THE -- AND THAT IS THE  
11:55 AM 11 ONLY POSITION. AT THE TIME THEY WILL HIRE YOU IN AS A  
11:55 AM 12 HELPER. THAT WAS THE ENTRY-LEVEL POSITION. THAT'S WHAT  
11:55 AM 13 THE AD SAID, 'WE NEED HELPERS,' SO THAT'S WHAT I APPLIED  
11:55 AM 14 FOR. I APPLIED, AND THEN LUFKIN ASSIGNED ME TO THE HEAVY  
11:55 AM 15 WELDMENT."

11:55 AM 16 A. I APPLIED FOR WORK, SIR. IF THEY WERE HIRING  
11:55 AM 17 HELPERS, THAT'S WHAT THEY WERE HIRING, BUT I APPLIED FOR  
11:55 AM 18 WORK. I DIDN'T APPLY AS A WELDER, I DIDN'T APPLY AS A  
11:55 AM 19 TRAILER BODY BUILDER, I APPLIED FOR WORK.

11:55 AM 20 Q. AM I CORRECT THAT YOUR PRIOR TESTIMONY WAS THAT YOU  
11:55 AM 21 ANSWERED AN AD AND APPLIED FOR A HELPER?

11:55 AM 22 A. I MAY HAVE SAID I SAW AN AD. THEY WERE HIRING, THEY  
11:55 AM 23 WERE NEEDING HELPERS, AND I APPLIED FOR WORK AND I GOT  
11:55 AM 24 HIRED.

11:55 AM 25 Q. ALL RIGHT. THAT'S AT PAGE 13, LINE 15 THROUGH LINE

11:56 AM 1 21, IS IT NOT?

11:56 AM 2 A. PAGE WHAT NOW?

11:56 AM 3 Q. 13 OF YOUR DEPOSITION, LINE 15 THROUGH LINE 21.

11:56 AM 4 A. YES.

11:56 AM 5 Q. NOW, NOTWITHSTANDING THE FACT THAT YOU HAD PRIOR

11:56 AM 6 FOUNDRY EXPERIENCE, WHEN YOU WENT TO GET A JOB IN 1969

11:56 AM 7 WITH LUFKIN INDUSTRIES, THEY DIDN'T PUT YOU IN THE

11:56 AM 8 FOUNDRY, THEY PUT YOU IN AS A HELPER IN THE HEAVY WELDMENT

11:56 AM 9 DIVISION, ISN'T THAT RIGHT?

11:56 AM 10 A. YES.

11:56 AM 11 Q. AND AM I CORRECT ALSO THAT YOUR FAMILY HAS FOUNDRY

11:56 AM 12 EXPERIENCE?

11:56 AM 13 A. WHAT DO YOU MEAN, SIR?

11:56 AM 14 Q. WELL, ISN'T IT IN FACT THE CASE THAT YOUR OLDER

11:56 AM 15 BROTHER WORKED FOR TEXAS FOUNDRY?

11:56 AM 16 A. YES, SIR, PART-TIME AS A COLLEGE STUDENT.

11:56 AM 17 Q. ALL RIGHT. IS IT ALSO THE CASE THAT YOUR FATHER

11:56 AM 18 WORKED FOR TEXAS FOUNDRY?

11:56 AM 19 A. YES, SIR.

11:56 AM 20 Q. NOW, YOU CAME BACK TO LUFKIN AFTER A -- YOU LEFT

11:56 AM 21 LUFKIN, AM I CORRECT IN THAT?

11:56 AM 22 A. YES.

11:56 AM 23 Q. OKAY.

11:56 AM 24 A. I BELIEVE THAT'S CORRECT.

11:56 AM 25 Q. AND THEN YOU CAME BACK TO LUFKIN ABOUT FIFTEEN

11:56 AM 1 MONTHS LATER, AND YOU WENT TO WORK FOR A HOSPITAL, DIDN'T  
11:56 AM 2 YOU?  
11:57 AM 3 A. NO, I WORKED FOR A HOSPITAL BEFORE -- WHENEVER I  
11:57 AM 4 CAME BACK TO LUFKIN.  
11:57 AM 5 Q. YES, SIR.  
11:57 AM 6 A. YES.  
11:57 AM 7 Q. YOU LEFT LUFKIN AND YOU WENT TO WORK FOR A HOSPITAL,  
11:57 AM 8 RIGHT?  
11:57 AM 9 A. YES. YES, SIR.  
11:57 AM 10 Q. OKAY. NOW, WHEN YOU WENT TO WORK FOR A HOSPITAL,  
11:57 AM 11 THAT WAS CONSISTENT WITH YOUR MEDICAL CORPSMAN TRAINING,  
11:57 AM 12 WASN'T IT?  
11:57 AM 13 A. YES, SIR, IT WAS.  
11:57 AM 14 Q. ALL RIGHT. SO YOU LEFT BEING A HELPER, WHICH I  
11:57 AM 15 BELIEVE YOU TESTIFIED TO MR. GARRIGAN CONSISTED OF  
11:57 AM 16 SWEEPING UP AND DOING THOSE SORT OF MENIAL TASKS, RIGHT?  
11:57 AM 17 A. YES.  
11:57 AM 18 Q. AND YOU WENT TO WORK AT A HOSPITAL THAT WAS  
11:57 AM 19 APPROPRIATE TO YOUR TRAINING IN THE NAVY?  
11:57 AM 20 A. YES, SIR.  
11:57 AM 21 Q. ALL RIGHT. YOU DIDN'T STAY AT THAT JOB THOUGH, DID  
11:57 AM 22 YOU?  
11:57 AM 23 A. NO, SIR, I DID NOT.  
11:57 AM 24 Q. YOU CAME BACK TO ANGELINA COUNTY, RIGHT?  
11:57 AM 25 A. YES, SIR.

11:57 AM 1 Q. AND THE PLACE YOU APPLIED IN ANGELINA COUNTY WAS  
11:57 AM 2 LUFKIN INDUSTRIES, IS THAT RIGHT?

11:57 AM 3 A. YES, SIR.

11:57 AM 4 Q. NOW, WHEN YOU CAME BACK TO LUFKIN IN 1972, YOU WERE  
11:57 AM 5 HIRED AS A HELPER AGAIN, WERE YOU NOT?

11:57 AM 6 A. YES, SIR.

11:57 AM 7 Q. AND THEN YOU WERE PROMOTED TO A CLASS "C" WELDER,  
11:57 AM 8 WEREN'T YOU?

11:58 AM 9 A. YOU'RE TALKING ABOUT 1972?

11:58 AM 10 Q. YES, SIR.

11:58 AM 11 A. NO, SIR, THAT WAS IN HEAVY WELDMENT. THAT WAS IN  
11:58 AM 12 '69. YOU HAVE YOUR DATES CONFUSED, SIR.

11:58 AM 13 Q. I'M SORRY. THAT'S RIGHT. YOU WERE PROMOTED TO A  
11:58 AM 14 CLASS "C" WELDER IN 1969?

11:58 AM 15 A. NO, SIR, I WAS ASSIGNED, I WASN'T PROMOTED. IT  
11:58 AM 16 WASN'T A PROMOTION. I WAS TOLD THEY NEEDED CLASS "C"  
11:58 AM 17 TACKERS AND I WAS ASSIGNED TO DO IT.

11:58 AM 18 Q. WELL, SIR, IF YOU WILL LOOK AT PAGE 40 OF YOUR  
11:58 AM 19 DEPOSITION, LINE 12. MR. MCCLAIN, HAVE YOU PREVIOUSLY  
11:58 AM 20 TESTIFIED TO THE QUESTION: "SO YOU HIRED IN AS A HELPER  
11:58 AM 21 AND YOU WERE PROMOTED TO CLASS "C" WELDER?"

11:59 AM 22 ANSWER: "YES. CLASS "C" IS A TRAINEE, THAT'S  
11:59 AM 23 WHAT IT WAS, WELDER TRAINEE. I HADN'T HAD ANY WELDING  
11:59 AM 24 EXPERIENCE PRIOR TO THIS. THEY WERE TRAINING ME TO BE A  
11:59 AM 25 WELDER."

11:59 AM 1 WAS THAT YOUR TESTIMONY, SIR?

11:59 AM 2 A. YES.

11:59 AM 3 Q. SO IN 1969, WHEN YOU HAD FOUNDRY EXPERIENCE, YOU  
11:59 AM 4 CAME IN, THEY HIRED YOU AS A HELPER, AND THEN THEY  
11:59 AM 5 PROMOTED YOU TO CLASS "C" WELDER TO GIVE YOU WELDING  
11:59 AM 6 EXPERIENCE, ISN'T THAT RIGHT?

11:59 AM 7 A. AGAIN, SIR, THEY ASSIGNED ME. I DID NOT BID ON THAT  
11:59 AM 8 JOB, I DID NOT ASK FOR THAT JOB.

11:59 AM 9 Q. ALL RIGHT.

11:59 AM 10 A. I WAS TOLD THAT "WE NEED A CLASS "C" TACKER, AND  
11:59 AM 11 THAT'S WHAT WE NEED YOU TO DO."

11:59 AM 12 Q. ALL RIGHT. AND IT IS CORRECT, IS IT NOT, THAT YOU  
11:59 AM 13 WERE OFFERED TRAINING AS A WELDER IN THAT POSITION?

11:59 AM 14 A. NO, SIR. BASICALLY THEY GIVE YOU A STICK AND THEY  
11:59 AM 15 SHOW YOU HOW TO TACK, AND THAT'S BASICALLY WHAT YOU'RE  
11:59 AM 16 DOING, YOU'RE TACK WELDING. NO FORMAL TRAINING. THEY  
11:59 AM 17 SHOW YOU HOW TO TAKE A STICK AND DO A TACK WELD. I REALLY  
11:59 AM 18 DON'T CONSIDER THAT TRAINING. BUT IF THAT'S TRAINING,  
11:59 AM 19 THAT'S TRAINING.

11:59 AM 20 Q. WELL, MR. MCCLAIN, DIDN'T YOU PREVIOUSLY TESTIFY AT  
12:00 PM 21 PAGE 40, LINE 17, "THEY WERE TRAINING ME AS A WELDER"?

12:00 PM 22 A. I SAID I WAS A CLASS "C" TRAINEE. A TRAINEE IS --  
12:00 PM 23 WHEN A CLASS "C" WELDER MOVES UP, THAT MEANS HE WORKS  
12:00 PM 24 WITH A CLASS "B" WELDER OR A CLASS "A" WELDER AND HE  
12:00 PM 25 LEARNS HOW TO WELD, NOT TACK WELD. THERE'S A DIFFERENCE

TRANSCRIPT OF PROCEEDINGS

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12:00 PM 1 BETWEEN TACK WELDING AND WELDING.

12:00 PM 2 Q. MR. MCCLAIN, LET ME SIMPLY ASK YOU TO LOOK AT YOUR  
12:00 PM 3 DEPOSITION TESTIMONY AND TELL ME IF I'M CORRECTLY READING  
12:00 PM 4 YOUR PRIOR TESTIMONY UNDER OATH.

12:00 PM 5 A. OKAY.

12:00 PM 6 Q. REFERRING TO YOUR DEPOSITION AT PAGE 40, LINE 12.

12:00 PM 7 A. OKAY.

12:00 PM 8 Q. MY QUESTION TO YOU: "SO YOU HIRED IN AS A HELPER  
12:00 PM 9 AND YOU WERE PROMOTED TO WELDER, CLASS "C"?"

12:00 PM 10 ANSWER: "YEAH. CLASS "C" IS A TRAINEE. THAT'S  
12:00 PM 11 WHAT IT WAS, WELDER TRAINEE. I HADN'T HAD ANY WELDING  
12:00 PM 12 EXPERIENCE PRIOR TO THIS. THEY WERE TRAINING ME AS A  
12:00 PM 13 WELDER."

12:00 PM 14 THAT WAS YOUR TESTIMONY, WAS IT NOT?

12:00 PM 15 A. YES, SIR.

12:00 PM 16 Q. THANK YOU. AND AFTER --

12:01 PM 17 THEY TAUGHT YOU HOW TO STICK AND TACK WELD,  
12:01 PM 18 DIDN'T THEY?

12:01 PM 19 A. THEY TAUGHT ME HOW TO TACK WELD WITH A STICK, SIR.

12:01 PM 20 Q. THEY TAUGHT YOU HOW TO TACK WELD WITH A STICK? SO  
12:01 PM 21 IT'S JUST ONE PROCESS?

12:01 PM 22 A. YES, SIR. YOU PUT A STICK IN THE ELECTRODE AND YOU  
12:01 PM 23 STRIKE AN ARC AND YOU PUT A SMALL TACK WELD.

12:01 PM 24 Q. ALL RIGHT, SIR. NOW, AFTER LEARNING HOW TO WELD,  
12:01 PM 25 YOU HAD THE POSSIBILITY OF MOVING UP TO CLASS "B" WELDER,

TRANSCRIPT OF PROCEEDINGS

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12:01 PM 1 DID YOU NOT?

12:01 PM 2 A. NO, SIR. YOU MEAN WAS THERE A REMOTE POSSIBILITY?

12:01 PM 3 I GUESS SO. I COULDN'T SAY THERE WASN'T.

12:01 PM 4 Q. WELL, SIR, DO YOU RECALL THIS TESTIMONY AT PAGE 41,

12:01 PM 5 BEGINNING AT LINE 15: QUESTION: "BUT DO YOU RECALL GOING

12:01 PM 6 INTO THE WELDING TRAINEE CLASSIFICATION?"

12:02 PM 7 ANSWER: "YES. AND IF I REMEMBER, THEY JUST --

12:02 PM 8 I THINK THEY WOULD GO OUT AND RANDOMLY ASK YOU AS FAR AS I

12:02 PM 9 REMEMBER IF YOU WANTED TO BE A CLASS "C," WHICH ALL THEY

12:02 PM 10 DID, THEY TAUGHT YOU HOW TO STICK TACK WELD. AND THEN, OF

12:02 PM 11 COURSE, AFTER YOU WORK FOR A WHILE, YOU LEARN HOW TO WELD,

12:02 PM 12 AND YOU MIGHT HAVE THE POSSIBILITY TO MOVE UP TO CLASS

12:02 PM 13 "B." BUT AS FAR AS I REMEMBER, THAT'S WHAT IT WAS, A

12:02 PM 14 CLASS "C."

12:02 PM 15 A. I SAID THERE WAS A POSSIBILITY.

12:02 PM 16 Q. OKAY.

12:02 PM 17 A. I DIDN'T DISPUTE THAT.

12:02 PM 18 Q. NOW, THAT WAS TRAINING THAT YOU GOT IN YOUR FIRST

12:02 PM 19 STINT WITH LUFKIN INDUSTRIES IN 1969, BEFORE YOU LEFT TO

12:02 PM 20 GO TO WORK FOR THE HOSPITAL, RIGHT?

12:02 PM 21 A. YES, SIR.

12:02 PM 22 Q. AND WHEN YOU CAME BACK TO LUFKIN INDUSTRIES IN 1972,

12:02 PM 23 YOU CAME BACK INTO THE TRAILER DIVISION AS A HELPER, DID

12:02 PM 24 YOU NOT?

12:02 PM 25 A. YES, SIR.

12:02 PM 1 Q. ALL RIGHT. AND IN THE HELPER DIVISION YOU HAVE  
12:02 PM 2 RECEIVED OTHER TRAINING, HAVE YOU NOT?

12:02 PM 3 A. YOU MEAN THE TRAILER DIVISION?

12:02 PM 4 Q. I'M SORRY. IN THE TRAILER DIVISION, YES.

12:03 PM 5 A. OH, EXCUSE ME. IF YOU'RE TALKING ABOUT BEING  
12:03 PM 6 ASSIGNED TO THE PAINT HOUSE AND TO PAINT, I DON'T CONSIDER  
12:03 PM 7 THAT TRAINING. THEY SHOWED ME HOW TO DO WHAT YOU CALL  
12:03 PM 8 TACK PAINTING. THAT'S WHERE YOU PUT ON A FIRST COAT. I'M  
12:03 PM 9 NOT SAYING THAT'S ALL, BUT THAT'S WHAT I WAS SHOWED.

12:03 PM 10 I DIDN'T WANT TO BE THERE, I DIDN'T LIKE IT  
12:03 PM 11 THERE, AND I TRIED TO GET OUT OF THERE BY REPEATEDLY  
12:03 PM 12 SIGNING THE BID SHEETS.

12:03 PM 13 Q. WELL, MR. MCCLAIN, ISN'T IT IN FACT THE CASE THAT  
12:03 PM 14 THE REASON THAT THEY ASKED YOU TO GO TO THE PAINT HOUSE  
12:03 PM 15 WAS TO KEEP YOU FROM HAVING TO GO ON SECOND SHIFT OR --

12:03 PM 16 A. NO, SIR, NOT --

12:03 PM 17 MR. GARRIGAN: I OBJECT TO THE FORM AND  
12:03 PM 18 FOUNDATION. THERE'S NO WAY MR. MCCLAIN CAN KNOW WHY  
12:04 PM 19 SOMEBODY SENT HIM TO THE PAINT HOUSE.

12:04 PM 20 THE COURT: IT'S CROSS-EXAMINATION. I'M GOING  
12:04 PM 21 TO PERMIT IT.

12:04 PM 22 BY MR. HAMEL:

12:04 PM 23 Q. MR. MCCLAIN --

12:04 PM 24 A. WOULD YOU REPEAT YOUR QUESTION, PLEASE?

12:04 PM 25 Q. YES. ISN'T IT IN FACT THE CASE, MR. MCCLAIN, THAT

12:04 PM 1 THEY ASSIGNED YOU TO THE PAINT HOUSE TO KEEP YOU FROM  
12:04 PM 2 HAVING TO GO ON SECOND SHIFT OR BE CUT BACK?

12:04 PM 3 A. NOT AT THAT TIME, SIR. YOU'VE GOT YOUR DATES  
12:04 PM 4 CONFUSED. THAT WAS -- I WAS HIRED IN AS A HELPER. I WAS  
12:04 PM 5 ASSIGNED FROM THE MAIN BUILDING AND TOLD TO GO TO THE  
12:04 PM 6 PAINT HOUSE. THAT IS NOT -- THE EPISODE YOU'RE TALKING  
12:04 PM 7 ABOUT IS NOT IN THAT TIME FRAME.

12:04 PM 8 Q. WELL, THERE IS AT ONE TIME THAT YOU WENT TO THE  
12:04 PM 9 PAINT HOUSE AND WERE TAUGHT HOW TO PAINT WHEN THEY PUT YOU  
12:04 PM 10 THERE TO AVOID YOU HAVING TO GO ON SECOND SHIFT, WHICH YOU  
12:04 PM 11 DIDN'T WANT TO DO, OR TO BE LAID OFF?

12:04 PM 12 A. NO, SIR. I WAS A CLASS "A" TRAILER BODY BUILDER AND  
12:04 PM 13 I WAS IN THE MAIN BUILDING, AND I PAINTED IN THE -- I  
12:04 PM 14 EITHER HAD TO PAINT OR GO ON THE NIGHT SHIFT, OR POSSIBLY  
12:05 PM 15 BE CUT BACK. THOSE WERE NOT THE SAME TIMES.

12:05 PM 16 Q. OKAY. WELL, SIR, AT THIS TIME, WHEN YOU WENT THERE,  
12:05 PM 17 YOU DIDN'T KNOW HOW TO PAINT, DID YOU?

12:05 PM 18 A. NO, SIR, I DID NOT.

12:05 PM 19 Q. AND THEY TAUGHT YOU HOW TO PAINT, DIDN'T THEY?

12:05 PM 20 A. NOT REALLY, SIR. A CLASS "C" PAINTER BASICALLY  
12:05 PM 21 THROWS IT ON.

12:05 PM 22 Q. WELL, SIR, IF YOU'LL LOOK AT YOUR DEPOSITION AT PAGE  
12:05 PM 23 43, LINE 24, PLEASE. DID YOU PREVIOUSLY TESTIFY,  
12:05 PM 24 QUESTION: "AND FROM THAT EXPERIENCE YOU WERE ASKED IF YOU  
12:05 PM 25 WANTED TO BE CLASSIFIED AS PAINTER "A" AND YOU TOLD THEM

12:05 PM 1 NO?"

12:05 PM 2 ANSWER: "WELL, HE CAME OUT AND TOLD ME I MISSED  
12:05 PM 3 MY CALLING AND I SHOULD BE A PAINTER, AND I TOLD HIM, NO,  
12:05 PM 4 I WASN'T INTERESTED. BUT I DID KNOW HOW TO PAINT, AND I  
12:05 PM 5 LEARNED THAT FROM WORKING WITH THEM WHEN I WAS ASSIGNED TO  
12:05 PM 6 THE PAINT HOUSE. I DIDN'T ASK FOR THAT, BUT I WAS  
12:05 PM 7 ASSIGNED TO THE PAINT HOUSE. THEY TAUGHT ME HOW TO  
12:05 PM 8 PAINT."

12:05 PM 9 A. OKAY.

12:05 PM 10 Q. WAS THAT YOUR TESTIMONY?

12:05 PM 11 A. THOSE ARE TWO DIFFERENT INSTANCES.

12:05 PM 12 YES, I LEARNED HOW TO PAINT BY WORKING WITH  
12:06 PM 13 OTHER PAINTERS, BUT IT WAS NOT BECAUSE OF ANY SPECIFIC  
12:06 PM 14 TRAINING THAT LUFKIN PROVIDED ME WITH.

12:06 PM 15 WHEN YOU'RE WORKING WITH A PAINTER, BASICALLY  
12:06 PM 16 ALL YOU HAVE TO LEARN HOW TO DO IS HOW TO ADJUST THE AIR  
12:06 PM 17 OR ADJUST THE FLOW OF THE PAINT AND THE STROKES. THAT'S  
12:06 PM 18 THE ESSENCE OF PAINTING. IT WAS NOT BECAUSE OF WHAT  
12:06 PM 19 LUFKIN TAUGHT ME, IT WAS BECAUSE A PAINTER WORKING WITH A  
12:06 PM 20 PAINTER, I LEARNED.

12:06 PM 21 Q. MR. MCCLAIN, THEY WANTED YOU TO BE A PAINTER "A,"  
12:06 PM 22 ISN'T THAT RIGHT?

12:06 PM 23 A. YES.

12:06 PM 24 Q. YOU DID NOT WANT TO BE A PAINTER "A," DID YOU?

12:06 PM 25 A. NO, SIR, I DID NOT.



TRANSCRIPT OF PROCEEDINGS

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12:06 PM 1 Q. AND THEY DID NOT FORCE YOU TO BECOME A PAINTER "A,"  
12:06 PM 2 DID THEY?

12:06 PM 3 A. THEY TRIED, SIR.

12:06 PM 4 Q. THEY DID NOT FORCE YOU TO BECOME A PAINTER "A," DID  
12:06 PM 5 THEY?

12:06 PM 6 A. NO, SIR, THEY DID NOT.

12:06 PM 7 Q. ALL RIGHT. THE REASON YOU DIDN'T WANT TO GO TO THE  
12:06 PM 8 PAINTER CLASSIFICATION IS, YOU THOUGHT THAT THAT WOULD BE  
12:06 PM 9 A DEAD-END JOB, ISN'T THAT RIGHT?

12:06 PM 10 A. ONE, I DIDN'T LIKE PAINTING.

12:06 PM 11 Q. OKAY.

12:06 PM 12 A. I DIDN'T ASK FOR IT, I DIDN'T LIKE IT, AND I DIDN'T  
12:06 PM 13 WANT TO STAY THERE, SIR.

12:06 PM 14 Q. OKAY. AND DIDN'T YOU ALSO THINK THAT IT WOULD BE A  
12:06 PM 15 DEAD-END JOB?

12:06 PM 16 A. AT THE PAINT HOUSE AT THAT TIME?

12:06 PM 17 Q. YES, SIR.

12:07 PM 18 A. I FELT LIKE I WAS AT A DEAD-END JOB AS A PAINTER. I  
12:07 PM 19 FELT LIKE IT WAS VERY DIFFICULT TO GET OUT OF THERE.

12:07 PM 20 Q. MR. MCCLAIN, AREN'T THERE CERTAIN CHOICES THAT  
12:07 PM 21 EMPLOYEES MAKE IN THE TRAILER PLANT? IF THEY BID TO GET A  
12:07 PM 22 JOB, SUCH AS PAINTER "A," THEN THEY CAN'T BID FOR OTHER  
12:07 PM 23 JOBS BECAUSE PAINTER "A" IS A HIGHER-PAYING  
12:07 PM 24 CLASSIFICATION, ISN'T THAT RIGHT?

12:07 PM 25 A. THAT IS A PRACTICE THAT HAS NOT BEEN PRACTICED

TRANSCRIPT OF PROCEEDINGS

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12:07 PM 1 FAIRLY, BECAUSE THERE HAVE BEEN SOME WHITE EMPLOYEES THAT  
12:07 PM 2 HAVE BEEN ABLE TO MAKE SUCH A MOVE BUT THE BLACK EMPLOYEES  
12:07 PM 3 HAVE NOT, AND THAT WAS APPLIED TO THE PAINTING.

12:07 PM 4 USUALLY IF YOU BECAME A CLASS "A" PAINTER, YOU  
12:07 PM 5 WERE LOCKED IN.

12:07 PM 6 Q. COULD YOU NAME FOR ME THE WHITE AND BLACK EMPLOYEES  
12:07 PM 7 WHO WERE TREATED DIFFERENTLY?

12:07 PM 8 A. ALBERT DUFFIELD. THERE WERE NUMEROUS OTHER  
12:07 PM 9 PAINTERS. I DON'T REMEMBER THEIR NAMES. BUT ALBERT  
12:07 PM 10 DUFFIELD IS A PAINTER WHO WOULD HAVE LIKED TO HAVE COME  
12:08 PM 11 OUT OF BEING A PAINTER, AND THERE HAVE BEEN OTHERS.

12:08 PM 12 Q. NOW, MR. MCCLAIN, AFTER GOING BACK TO LUFKIN IN  
12:08 PM 13 1972, YOU ALSO RECEIVED TRAINING ON BLUEPRINTS, DIDN'T  
12:08 PM 14 YOU?

12:08 PM 15 A. I TOOK AN INTERNAL --

12:08 PM 16 I DON'T THINK IT WAS IN '72, BUT -- I'M NOT SURE  
12:08 PM 17 OF THE DATE, BUT I DID TAKE BLUEPRINT READING.

12:08 PM 18 Q. ALL RIGHT. A COURSE OFFERED BY LUFKIN, AND YOU WERE  
12:08 PM 19 ABLE TO TAKE IT, ISN'T THAT RIGHT?

12:08 PM 20 A. YES, SIR.

12:08 PM 21 Q. YOU RECEIVED BASIC EXCEL COMPUTER TRAINING?

12:08 PM 22 A. YES, SIR.

12:08 PM 23 Q. YOU RECEIVED MICROSOFT WORD TRAINING, DIDN'T YOU?

12:08 PM 24 A. YES, SIR.

12:08 PM 25 Q. AND IN FACT --

TRANSCRIPT OF PROCEEDINGS

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12:08 PM 1 YOU'RE RIGHT, MY QUESTION MAY HAVE BEEN A LITTLE  
12:08 PM 2 CONFUSING. IT WAS AFTER YOU CAME BACK IN 1972. THESE  
12:08 PM 3 COURSES WERE ACTUALLY COMPLETED BY YOU WHILE YOU WERE A  
12:08 PM 4 CHIEF INSPECTOR OR QUALITY MANAGER, ISN'T THAT RIGHT?

12:08 PM 5 A. I DON'T REMEMBER EXACTLY WHEN I COMPLETED THEM  
12:08 PM 6 COURSES.

12:08 PM 7 THE COURT: DO YOU ANTICIPATE BEING MUCH LONGER?

12:09 PM 8 MR. HAMEL: YOUR HONOR, YES, PROBABLY ANOTHER  
12:09 PM 9 HOUR.

12:09 PM 10 THE COURT: WE'LL RESUME AT 1:30.

01:28 PM 11 THE CSO: ALL RISE.

01:28 PM 12 (RECESS FOR LUNCH)

01:29 PM 13 THE COURT: PLEASE CONTINUE, SIR.

01:29 PM 14 MR. HAMEL: THANK YOU, YOUR HONOR.

01:29 PM 15 BY MR. HAMEL:

01:29 PM 16 Q. MR. MCCLAIN --

01:29 PM 17 A. YES, SIR.

01:29 PM 18 Q. I BELIEVE WHEN WE BROKE WE HAD JUST FINISHED TALKING  
01:30 PM 19 ABOUT THE TRAINING YOU RECEIVED AS A PAINTER AND YOUR NOT  
01:30 PM 20 WANTING TO BE IN A PAINTER CLASSIFICATION. I AM CORRECT,  
01:30 PM 21 AM I NOT, THAT ONE OF THE REASONS THAT YOU DID NOT WANT TO  
01:30 PM 22 BID FOR A PAINTER "A" POSITION WAS THAT YOU DIDN'T WANT TO  
01:30 PM 23 GET LOCKED IN AS A PAINTER BECAUSE YOU WOULDN'T BE ABLE TO  
01:30 PM 24 MAKE A LATERAL MOVE?

01:30 PM 25 A. WELL, I JUST -- SIR, I JUST WANTED OUT OF THE PAINT

TRANSCRIPT OF PROCEEDINGS

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01:30 PM 1 HOUSE. I FELT LIKE I WAS IN A DEAD-END. AND YES. AND SO  
01:30 PM 2 THE ANSWER WOULD BE, YES, I DID NOT WANT TO BE A CLASS "A"  
01:30 PM 3 PAINTER. I DID NOT WANT TO WORK IN THE PAINT HOUSE.

01:30 PM 4 Q. WAS IT ALSO A RECOGNITION BY YOU AS AN EMPLOYEE OF  
01:30 PM 5 LUFKIN INDUSTRIES THAT BY TAKING CERTAIN BIDS, YOU LIMIT  
01:30 PM 6 YOUR OPPORTUNITIES OTHER PLACES?

01:30 PM 7 A. COULD YOU REPEAT THAT?

01:30 PM 8 Q. YES, SIR. DIDN'T YOU ALSO RECOGNIZE AS AN EMPLOYEE  
01:30 PM 9 OF LUFKIN INDUSTRIES THAT IF YOU TOOK CERTAIN BIDS, THAT  
01:30 PM 10 YOU COULD BE LIMITED IN YOUR OPPORTUNITIES IN OTHER  
01:30 PM 11 PLACES? IF YOU WENT FOR A PAINTER "A" POSITION, YOU MIGHT  
01:30 PM 12 NOT BE ABLE TO BID TO OTHERS BECAUSE IT WOULD BE A LATERAL  
01:31 PM 13 MOVE, ISN'T THAT CORRECT?

01:31 PM 14 A. NO, I DID NOT HAVE THE KNOWLEDGE THAT IT WAS --  
01:31 PM 15 ABOUT YOU COULDN'T MAKE A LATERAL MOVE. I JUST KNEW THAT,  
01:31 PM 16 THE LIMITED TIME I HAD BEEN THERE, WHEN YOU -- THOSE THAT  
01:31 PM 17 BECAME A PAINTER, THEY PRETTY MUCH WERE LOCKED IN. THAT'S  
01:31 PM 18 THE ONLY KNOWLEDGE I HAD.

01:31 PM 19 Q. WELL, SIR, IF YOU WOULD LOOK AT YOUR DEPOSITION AT  
01:31 PM 20 PAGE 43 THAT'S IN FRONT OF YOU.

01:31 PM 21 A. PAGE WHAT NOW?

01:31 PM 22 Q. 43, SIR.

01:31 PM 23 A. OKAY.

01:31 PM 24 THE COURT: HE'S BASICALLY ASKING YOU, SIR, YOU  
01:31 PM 25 CAN'T HAVE MULTIPLE BIDS? IF YOU BID ONE, YOU CAN'T BID

TRANSCRIPT OF PROCEEDINGS

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01:31 PM 1 TWO OR THREE OTHERS AND WAIT FOR THE BEST ONE TO COME IN?

01:31 PM 2 THE WITNESS: YES.

01:31 PM 3 BY MR. HAMEL:

01:31 PM 4 Q. YOU UNDERSTAND THAT? YOU UNDERSTAND THAT TO BE THE  
01:31 PM 5 CASE, DO YOU, MR. MCCLAIN?

01:31 PM 6 A. WELL, I UNDERSTOOD THAT IF YOU BID IT -- IF I HAD  
01:31 PM 7 BECOME A CLASS "A" PAINTER, WHICH I DIDN'T WANT TO, THAT'S  
01:31 PM 8 THE REASON I DIDN'T BID ON IT.

01:31 PM 9 Q. YOU DO UNDERSTAND IF YOU BECOME A CLASS "A" PAINTER,  
01:32 PM 10 THEN YOU CANNOT BID ON JOBS WHICH WOULD BE A LATERAL MOVE  
01:32 PM 11 OR A DEMOTION, ISN'T THAT RIGHT?

01:32 PM 12 A. AT THAT TIME I JUST -- THE ONLY CLASSIFICATION THAT  
01:32 PM 13 I KNEW THAT SEEMED LIKE YOU WERE LOCKED IN WAS PAINTER  
01:32 PM 14 "A." I DID NOT KNOW ANYTHING ABOUT LUFKIN'S POLICY OF NOT  
01:32 PM 15 BEING ABLE TO MAKE A LATERAL MOVE. THAT'S WHAT I'M  
01:32 PM 16 SAYING. I DIDN'T HAVE THAT BROAD UNDERSTANDING.

01:32 PM 17 Q. YOU KNEW AT LEAST THAT THAT WAS THE CASE WITH  
01:32 PM 18 RESPECT TO --

01:32 PM 19 A. THAT'S WHAT I EXPECTED WAS THE CASE, YES.

01:32 PM 20 Q. OKAY. NOW, SIR, WE WERE TALKING JUST AT THE BREAK  
01:32 PM 21 ABOUT SOME TRAINING YOU RECEIVED AND WHEN YOU RECEIVED IT.  
01:32 PM 22 IF YOU WOULD LOOK IN YOUR DEPOSITION, PLEASE, SIR, TO THE  
01:32 PM 23 EXHIBITS THAT ARE ATTACHED, AND I BELIEVE IT'S THE SECOND  
01:32 PM 24 OR THIRD PAGE. IF YOU WOULD FIRST LOOK AT THE PAGE THAT'S  
01:32 PM 25 BATES-STAMPED NUMBER L17972.

TRANSCRIPT OF PROCEEDINGS

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01:32 PM 1 A. IS THIS THE LOOSE -- IS THIS THE LOOSE PART IN THE  
01:32 PM 2 BEGINNING OF THE BOOK?

01:32 PM 3 Q. LET ME SEE.

01:32 PM 4 MR. HAMEL: MAY I APPROACH, YOUR HONOR?

01:33 PM 5 THE COURT: YES.

01:33 PM 6 THE WITNESS: MAYBE YOU CAN SHOW ME WHAT YOU'RE  
01:33 PM 7 TALKING ABOUT. OH, TOWARDS THE END OF THE BOOK. OKAY.

01:33 PM 8 BY MR. HAMEL:

01:33 PM 9 Q. START RIGHT THERE.

01:33 PM 10 A. OKAY.

01:33 PM 11 Q. LOOKING FROM YOUR PERSONNEL FILE, MR. MCCLAIN, AT  
01:33 PM 12 BATES-STAMPED DOCUMENTS L17972, L17973 AND L17975, AM I  
01:33 PM 13 CORRECT THAT IT SHOWS THAT YOU RECEIVED CERTIFICATES OF  
01:33 PM 14 COMPLETION FOR TRAINING COURSES FOR BLUEPRINT READING IN  
01:33 PM 15 MAY OF 1991, FOR BASIC EXCEL IN MAY OF 1990, AND FOR BASIC  
01:33 PM 16 MICROSOFT WORD TRAINING IN NOVEMBER OF 1989?

01:33 PM 17 A. YES, SIR, AND THESE WERE JUST CLASSES THAT WOULD  
01:34 PM 18 HELP YOUR SKILLS WITHIN A PARTICULAR CLASSIFICATION YOU  
01:34 PM 19 WERE IN. IT WAS NOT TRAINING THAT WOULD ENHANCE YOUR  
01:34 PM 20 CAREER, SIR.

01:34 PM 21 Q. ALL RIGHT. THOSE WERE COURSES THAT YOU RECEIVED  
01:34 PM 22 WHILE YOU WERE A CHIEF INSPECTOR OR QUALITY MANAGER, WERE  
01:34 PM 23 THEY NOT?

01:34 PM 24 A. WHAT WERE THE YEARS?

01:34 PM 25 Q. 1989 THROUGH 1991, SIR.

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01:34 PM 1 A. YES, SIR.

01:34 PM 2 Q. NOW, IN ADDITION TO TRAINING THAT YOU ACTUALLY  
01:34 PM 3 RECEIVED AT LUFKIN, YOU'VE TAKEN GOOD ADVANTAGE OF  
01:34 PM 4 LUFKIN'S TUITION REIMBURSEMENT PROGRAM, HAVEN'T YOU?

01:34 PM 5 A. YES, SIR, I HAVE.

01:34 PM 6 Q. IN FACT, YOU STARTED IN THE MIDDLE TO LATE 90S AT  
01:34 PM 7 LUFKIN TO PURSUE A CAREER IN WELDING, DIDN'T YOU?

01:34 PM 8 A. I STARTED TO SCHOOL AT A.C. IN THE LATTER 70S, WHEN  
01:34 PM 9 I FIRST STARTED.

01:34 PM 10 Q. AND WASN'T THAT TO PURSUE A CAREER IN WELDING?

01:34 PM 11 A. YES. THAT WAS MY FIRST -- MY MAJOR WAS MACHINE  
01:34 PM 12 SHOP, AND I COMPLETED A -- A CERTIFICATE OF WELDING, YES.

01:34 PM 13 Q. AND YOU WERE ENCOURAGED TO DO THIS BY THE CHIEF  
01:34 PM 14 EXECUTIVE OFFICER OF LUFKIN, MR. STEVENSON, WEREN'T YOU?

01:34 PM 15 A. NO, SIR, I WAS NOT, NOT AT THAT TIME. I DID THAT ON  
01:35 PM 16 MY OWN. I WAS ENCOURAGED TO BETTER MYSELF, BUT WHEN I  
01:35 PM 17 WENT TO SCHOOL IN THE 70S, I MADE THAT DECISION.

01:35 PM 18 Q. DID MR. STEVENSON IN FACT ENCOURAGE YOU TO TAKE  
01:35 PM 19 ADVANTAGE OF LUFKIN'S TUITION REIMBURSEMENT PROGRAM AT  
01:35 PM 20 SOME TIME?

01:35 PM 21 A. WELL, ALL EMPLOYEES ARE ENCOURAGED THAT, SIR.

01:35 PM 22 Q. ALL EMPLOYEES, BLACK, WHITE, HISPANIC?

01:35 PM 23 A. RIGHT, YES, SIR.

01:35 PM 24 Q. ALL RIGHT. AND AS A RESULT OF THAT, YOU WERE WITHIN  
01:35 PM 25 TWENTY HOURS OF RECEIVING YOUR ASSOCIATES DEGREE IN

TRANSCRIPT OF PROCEEDINGS

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01:35 PM 1 BUSINESS MANAGEMENT, CORRECT?

01:35 PM 2 A. YES, SIR.

01:35 PM 3 Q. ALL RIGHT. AND YOU'VE BEEN TAKING THAT FOR QUITE  
01:35 PM 4 SOME TIME, HAVEN'T YOU?

01:35 PM 5 A. YES, I HAVE, AND THE REASON IT'S TAKEN ME SO LONG  
01:35 PM 6 IS, DEALING WITH THE DIFFERENT THINGS I'VE BEEN DEALING  
01:35 PM 7 WITH, I HAVEN'T BEEN ABLE TO GO AS CONTINUOUS AS I WOULD  
01:35 PM 8 HAVE LIKED.

01:35 PM 9 Q. ALL RIGHT. NOW, LUFKIN HAS PAID FOR THOSE COURSES,  
01:35 PM 10 HAVEN'T THEY?

01:35 PM 11 A. YES, SIR, ONCE I PASSED IT WITH A PASSING GRADE. I  
01:35 PM 12 PAID INITIALLY, AND ONCE I PASSED IT, THEY REIMBURSED ME,  
01:35 PM 13 YES, SIR.

01:35 PM 14 Q. IN ADDITION TO THAT, LUFKIN MAKES AVAILABLE A  
01:35 PM 15 SCHOLARSHIP PROGRAM, DO THEY NOT?

01:35 PM 16 A. YES, SIR.

01:35 PM 17 Q. AND YOUR CHILDREN HAVE TAKEN ADVANTAGE OF THAT  
01:36 PM 18 SCHOLARSHIP PROGRAM, HAVEN'T THEY?

01:36 PM 19 A. YES, SIR, THEY HAVE.

01:36 PM 20 Q. SO LUFKIN IS TRYING TO ENCOURAGE CHILDREN OF  
01:36 PM 21 EMPLOYEES TO GET A COLLEGE EDUCATION, ISN'T THAT RIGHT?

01:36 PM 22 A. I SUPPOSE.

01:36 PM 23 Q. AND YOUR CHILDREN, WHO ARE BLACK, HAVE TAKEN  
01:36 PM 24 ADVANTAGE OF IT, RIGHT?

01:36 PM 25 A. YES.

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01:36 PM 1 Q. AND THERE ARE MANY OTHER BLACK EMPLOYEES WHOSE  
01:36 PM 2 CHILDREN HAVE TAKEN ADVANTAGE OF THAT PROGRAM, ISN'T THAT  
01:36 PM 3 CORRECT?

01:36 PM 4 A. AND WHITE, YES, SIR.

01:36 PM 5 Q. ABSOLUTELY, BLACK AND WHITE.

01:36 PM 6 NOW, YOU HAVE ALSO RECEIVED TRAINING AS A  
01:36 PM 7 FACILITATOR, HAVEN'T YOU?

01:36 PM 8 A. YES, SIR.

01:36 PM 9 Q. AND YOU HAVE, ALTHOUGH YOU TESTIFIED TO WHAT YOU  
01:36 PM 10 PERCEIVED AS DIFFICULTIES, YOU DID IN FACT GO TO THE  
01:36 PM 11 CROSBY QUALITY SCHOOL, DID YOU NOT?

01:36 PM 12 A. YES, SIR.

01:36 PM 13 Q. THAT WAS A COURSE THAT LASTED SEVERAL DAYS, WASN'T  
01:36 PM 14 IT?

01:36 PM 15 A. I BELIEVE SO.

01:36 PM 16 Q. ALL RIGHT. NOW, WHILE YOU'VE BEEN EMPLOYED AT  
01:36 PM 17 LUFKIN, NOTWITHSTANDING THAT YOU'RE AN AFRICAN-AMERICAN,  
01:36 PM 18 YOU'VE TAKEN ADVANTAGE OF ALL OF THESE TRAINING COURSES,  
01:36 PM 19 THE INTERNAL TRAINING, TUITION REIMBURSEMENT, TO GET  
01:36 PM 20 TRAINING, NOTWITHSTANDING THE FACT THAT YOU'RE A BLACK  
01:36 PM 21 MAN, ISN'T THAT RIGHT?

01:36 PM 22 A. YES, SIR.

01:37 PM 23 Q. AND AS FAR AS YOU KNOW, AFRICAN-AMERICANS HAVE HAD  
01:37 PM 24 THE SAME OPPORTUNITY TO SIGN UP FOR COURSES OFFERED AT  
01:37 PM 25 LUFKIN AS ANY OTHER EMPLOYEE, ISN'T THAT RIGHT?

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01:37 PM 1 A. YES, SIR, BUT NONE OF THIS TRAINING DOES ANYTHING TO  
01:37 PM 2 ENHANCE YOUR CAREER AT LUFKIN INDUSTRIES.

01:37 PM 3 Q. OKAY. BUT WITH RESPECT TO THE TRAINING LUFKIN GIVES  
01:37 PM 4 TO ANYONE, AS FAR AS YOU KNOW, AFRICAN-AMERICANS HAVE HAD  
01:37 PM 5 THE SAME OPPORTUNITY TO SIGN UP AS ANYONE ELSE, ISN'T THAT  
01:37 PM 6 RIGHT?

01:37 PM 7 A. NO, THEY HAVE NOT BEEN AFFORDED THE SAME TRAINING  
01:37 PM 8 THAT HAVE BEEN AFFORDED WHITES THAT ENHANCE THEIR CAREER.  
01:37 PM 9 THEY HAVE BEEN ABLE TO GO TO THE SAME SCHOOLS, BLUEPRINT  
01:37 PM 10 READING, SHOP MATH, STUFF THAT WILL HELP YOU WITH YOUR  
01:37 PM 11 BASIC JOB SKILLS, BUT IT'S NOTHING THAT WILL ENHANCE,  
01:37 PM 12 ENABLE YOU TO MOVE UP AT LUFKIN INDUSTRIES, NO, SIR.

01:37 PM 13 Q. MR. MCCLAIN, AT PAGE 51 OF YOUR DEPOSITION, LINE 17,  
01:37 PM 14 DID YOU TESTIFY, QUESTION: "DID AFRICAN-AMERICAN EMPLOYEES  
01:38 PM 15 OR AFRICAN-AMERICANS HAVE THE SAME OPPORTUNITY TO SIGN UP  
01:38 PM 16 FOR THESE AS ANY OTHER EMPLOYEE?"

01:38 PM 17 ANSWER: "YES."

01:38 PM 18 A. YES, I ANSWERED THAT. YES, SIR. YES, SIR.

01:38 PM 19 MR. GARRIGAN: YOUR HONOR, I NEED TO OBJECT.  
01:38 PM 20 IT'S JUST IMPROPER IMPEACHMENT. IT WASN'T THE SAME  
01:38 PM 21 QUESTION HE HAD ASKED MR. MCCLAIN BEFORE HE CONFRONTED HIM  
01:38 PM 22 WITH HIS DEPOSITION. EVEN NOW WE DON'T KNOW WHAT "THESE"  
01:38 PM 23 REFERS TO. AND THIS QUESTION ONLY CONCERNED WHETHER  
01:38 PM 24 PEOPLE COULD SIGN UP FOR THE TRAINING, NOT WHETHER THEY  
01:38 PM 25 COULD GET THE TRAINING.

01:38 PM 1 THE COURT: THE OBJECTION IS OVERRULED.

01:38 PM 2 BY MR. HAMEL:

01:38 PM 3 Q. WELL, LET'S GO ON A LITTLE FURTHER THEN.

01:38 PM 4 THE COURT: I'LL GIVE IT SUCH CONSIDERATION AS I  
01:38 PM 5 DEEM IT'S ENTITLED TO RECEIVE.

01:38 PM 6 THE WITNESS: OKAY.

01:38 PM 7 BY MR. HAMEL:

01:38 PM 8 Q. AT LEAST AS OF JULY OF 2003, JUST A FEW MONTHS AGO,  
01:38 PM 9 YOU COULD NOT REMEMBER EVER SIGNING UP FOR A TRAINING  
01:38 PM 10 COURSE THAT YOU WERE NOT ALLOWED TO TAKE, ISN'T THAT  
01:38 PM 11 CORRECT?

01:38 PM 12 A. COULD YOU REPEAT THE QUESTION, PLEASE?

01:38 PM 13 Q. YES, SIR. AT LEAST AS OF JULY, 2003, YOU COULD NOT  
01:38 PM 14 REMEMBER A SINGLE OCCASION WHEN YOU HAD SIGNED UP FOR A  
01:38 PM 15 TRAINING COURSE AT LUFKIN AND YOU WERE NOT ALLOWED TO TAKE  
01:38 PM 16 THAT COURSE?

01:38 PM 17 A. I SAID I WAS DENIED THE OPPORTUNITY TO TAKE TRAINING  
01:39 PM 18 COURSES THAT WHITE MANAGERS WERE SENT TO. THEY WERE  
01:39 PM 19 PICKED OUT, THEY WERE CHOSEN AND THEY WERE TRAINED, AND IT  
01:39 PM 20 WAS PAID FOR.

01:39 PM 21 Q. I UNDERSTAND THAT'S YOUR TESTIMONY.

01:39 PM 22 THE COURT: WHEN YOU WERE SIGNED UP FOR ONE, YOU  
01:39 PM 23 WEREN'T EVER TURNED DOWN FOR IT, IS WHAT HE'S ASKING YOU?

01:39 PM 24 THE WITNESS: NO. NO, SIR.

01:39 PM 25 BY MR. HAMEL:

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01:39 PM 1 Q. I'M CORRECT THAT YOU HAVE NEVER SIGNED UP FOR A  
01:39 PM 2 COURSE THAT YOU WERE TURNED DOWN FOR, IS THAT CORRECT?

01:39 PM 3 A. THAT I HAD AN OPPORTUNITY TO TAKE, NO, SIR. A  
01:39 PM 4 TRAINING THAT I HAD AN OPPORTUNITY TO SIGN UP FOR, NO,  
01:39 PM 5 SIR, I'VE NOT BEEN TURNED DOWN.

01:39 PM 6 Q. ALL RIGHT. AND AS FAR AS YOU KNOW, EVERYBODY --  
01:39 PM 7 WELL, THERE ARE SOMETIMES COURSES THAT NOT EVERYBODY CAN  
01:39 PM 8 TAKE THE CLASS EVEN THOUGH THEY SIGN UP, ISN'T THAT RIGHT?

01:39 PM 9 A. YEAH. IT WOULD DEPEND ON THE LOGISTICS OF SPACE.  
01:39 PM 10 BUT MOST OF THE TIME THEY WOULD OFFER THE CLASS AGAIN IN A  
01:39 PM 11 SHORT PERIOD OF TIME SO THAT THE REST OF THOSE WHO WANTED  
01:39 PM 12 TO TAKE IT COULD TAKE IT.

01:39 PM 13 Q. OKAY. AND YOU CAN'T REMEMBER THAT AFRICAN EMPLOYEES  
01:40 PM 14 WERE NOT ABLE TO TAKE CLASSES OFFERED BY LUFKIN IN ANY  
01:40 PM 15 GREATER PROPORTION THAN OTHER EMPLOYEES, CAN YOU?

01:40 PM 16 A. WELL, IN THE WELDING TRAINING, THERE WERE -- THERE  
01:40 PM 17 WERE -- THERE WERE TIMES THAT IN THAT PARTICULAR TRAINING  
01:40 PM 18 THAT BLACKS WERE NOT, THEY WERE NOT ALLOWED TO -- GIVEN  
01:40 PM 19 THAT TRAINING.

01:40 PM 20 Q. MR. MCCLAIN, IF YOU WOULD TURN TO YOUR DEPOSITION,  
01:40 PM 21 PLEASE.

01:40 PM 22 THE COURT: WELL, JUST A MOMENT. WHAT WAS THAT  
01:40 PM 23 PERIOD OF TIME, MR. MCCLAIN?

01:40 PM 24 THE WITNESS: THIS WAS -- IT WAS IN THE 90S, AND  
01:40 PM 25 LUFKIN HAD STATED THAT THEY HAD A NEED FOR WELDERS, AND A

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01:40 PM 1 LOT OF PEOPLE SIGNED IT, AND EVERYBODY THAT WAS CHOSEN TO  
01:40 PM 2 GO TO THAT SCHOOL WAS WHITE. THERE WEREN'T ANY BLACKS AT  
01:40 PM 3 THAT PARTICULAR TIME. THAT'S WHY I SAY, THERE WERE TIMES  
01:40 PM 4 THAT BLACKS COULD GET THE TRAINING, BUT THERE HAVE BEEN  
01:40 PM 5 TIMES WHEN BLACKS HAVE SIGNED UP THAT THEY HAVE NOT GOT  
01:40 PM 6 THE TRAINING.

01:40 PM 7 BY MR. HAMEL:

01:40 PM 8 Q. AND WHEN WAS THIS, MR. MCCLAIN?

01:40 PM 9 A. IT WAS IN THE 90S. I DON'T REMEMBER EXACTLY WHEN IT  
01:40 PM 10 WAS.

01:40 PM 11 Q. DO YOU KNOW --

01:41 PM 12 A. IT WAS SOMETIME DURING THE CLASS PERIOD. IT'S BEEN  
01:41 PM 13 BETWEEN '94 AND 2003, BUT I DON'T REMEMBER THE EXACT TIME.

01:41 PM 14 Q. AND WHO IS THE PERSON WHO ARRANGES AND TEACHES THAT  
01:41 PM 15 COURSE AND CHOOSES THE PEOPLE WHO GO TO IT?

01:41 PM 16 A. WELL, AS FAR AS RIGHT NOW, AND I'M NOT SURE HE'S  
01:41 PM 17 BEEN THE ONLY ONE, LOUIS ROSS, HE DOES THE TRAINING.

01:41 PM 18 Q. AND WHAT RACE IS MR. ROSS?

01:41 PM 19 A. HE'S BLACK. BUT NOW, HE DOES NOT MAKE THE CHOICE  
01:41 PM 20 FROM THE LIST, HE JUST DOES THE TRAINING.

01:41 PM 21 Q. HOW DO YOU KNOW THAT?

01:41 PM 22 A. I WAS TOLD THAT. THE PRODUCTION SUPERINTENDENT  
01:41 PM 23 MAKES THAT DECISION.

01:41 PM 24 Q. YOU WERE TOLD THAT?

01:41 PM 25 A. I WAS TOLD THAT THE PRODUCTION -- THE PRODUCTION

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01:41 PM 1 SECRETARY POSTS IT, AND SHE PICKS IT UP, SHE TURNS IT IN  
01:41 PM 2 TO HIM, AND HE MAKES THAT DECISION.

01:41 PM 3 Q. WHO TOLD YOU THAT?

01:41 PM 4 A. I DON'T REMEMBER.

01:41 PM 5 Q. IF YOU'LL TURN, PLEASE, TO PAGE 52 OF YOUR  
01:41 PM 6 DEPOSITION.

01:41 PM 7 A. OKAY.

01:41 PM 8 Q. AM I CORRECT THAT YOU HAVE PREVIOUSLY TESTIFIED IN  
01:41 PM 9 RESPONSE TO THE QUESTION "DO YOU HAVE ANY UNDERSTANDING  
01:41 PM 10 THAT AFRICAN-AMERICAN EMPLOYEES WERE NOT ABLE TO TAKE THE  
01:41 PM 11 CLASS IN A GREATER PROPORTION THAN ANY OTHER EMPLOYEES,"  
01:41 PM 12 YOUR ANSWER WAS "NO, I DON'T, I MEAN, I DON'T REMEMBER IF  
01:42 PM 13 THEY WERE"?

01:42 PM 14 A. WELL -- AND I JUST REMEMBERED --

01:42 PM 15 Q. WAS THAT YOUR ANSWER, SIR?

01:42 PM 16 A. THAT WAS MY ANSWER, SIR. BUT THAT'S BEEN A LONG  
01:42 PM 17 TIME, AND I JUST REMEMBERED ABOUT THE WELDING CLASS.  
01:42 PM 18 AGAIN, THAT'S JUST ONE CLASS. I'M NOT SAYING THEY WERE  
01:42 PM 19 DENIED EVERY CLASS. THAT'S JUST ONE INSTANCE WHERE I  
01:42 PM 20 REMEMBER THAT NO BLACKS WERE CHOSEN.

01:42 PM 21 Q. WELL, IT'S IN FACT THE CASE THAT YOU DON'T HAVE  
01:42 PM 22 INFORMATION ONE WAY OR ANOTHER AS TO WHETHER BLACKS WERE  
01:42 PM 23 NOT ABLE TO TAKE CLASSES IN A GREATER PROPORTION THAN  
01:42 PM 24 OTHER EMPLOYEES, ISN'T THAT RIGHT?

01:42 PM 25 A. WHAT TYPE OF CLASS ARE YOU TALKING ABOUT, SIR?

01:42 PM 1 Q. ANY CLASSES. THE CLASSES THAT YOU HAVE TO SIGN UP  
01:42 PM 2 FOR.  
01:42 PM 3 A. ARE YOU SPEAKING OF TRAINING?  
01:42 PM 4 Q. TRAINING CLASSES THAT YOU SIGN UP FOR, THAT'S  
01:42 PM 5 CORRECT.  
01:42 PM 6 A. SIR, BUT THERE ARE TRAINING CLASSES THAT THEY DON'T  
01:42 PM 7 POST THAT BLACKS HAVE NEVER BEEN OFFERED.  
01:42 PM 8 Q. LET'S DEAL WITH THE ONES THAT THEY DO POST THAT  
01:42 PM 9 PEOPLE SIGN UP FOR.  
01:42 PM 10 A. OKAY.  
01:42 PM 11 Q. OKAY. AM I CORRECT THAT YOU HAVE NO INFORMATION ONE  
01:42 PM 12 WAY OR OTHER AS TO WHETHER BLACKS ARE NOT ALLOWED TO TAKE  
01:42 PM 13 THOSE COURSES IN ANY GREATER PROPORTION THAN WHITE  
01:43 PM 14 EMPLOYEES?  
01:43 PM 15 A. OTHER THAN THAT ONE INSTANCE, NO, SIR, I DO NOT.  
01:43 PM 16 Q. ALL RIGHT. NOW, LET'S -- I WANT TO RUN THROUGH THIS  
01:43 PM 17 JUST SO WE ARE SURE ON TIME FRAMES.  
01:43 PM 18 YOU FIRST WERE EMPLOYED AS A HELPER, AND YOU  
01:43 PM 19 REPORTED TO WELDER "C," AND THAT WAS IN 1969, RIGHT?  
01:43 PM 20 A. NO, SIR, I DID NOT REPORT AS A WELDER, I REPORTED AS  
01:43 PM 21 A HELPER, AND THEY ASSIGNED ME AS A CLASS "C" WELDER.  
01:43 PM 22 THAT WAS IN '69.  
01:43 PM 23 Q. YOU WERE PROMOTED FROM CLASS -- FROM HELPER IN 1972  
01:43 PM 24 TO CLASS "B" BODY BUILDER "B," ISN'T THAT RIGHT?  
01:43 PM 25 A. I WAS ASSIGNED, YES, SIR.

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01:43 PM 1 Q. YOU WERE ASSIGNED?

01:43 PM 2 A. YES, SIR, AS FAR AS I KNOW.

01:43 PM 3 Q. WELL, ISN'T IT A FACT THAT YOU BID FOR THAT JOB?

01:43 PM 4 A. I DON'T REMEMBER. I MEAN, I COULD HAVE. THAT WAS  
01:43 PM 5 ONE OF THE QUESTIONS THAT YOU ASKED ME ON A DEPOSITION,  
01:43 PM 6 AND I DON'T KNOW IF I SAID I WAS PROMOTED, I DON'T  
01:43 PM 7 REMEMBER IF I SAID I BID ON IT, BUT I JUST REMEMBER THAT I  
01:43 PM 8 WAS COMPLAINING ABOUT GETTING OUT OF THE PAINT HOUSE, AND  
01:43 PM 9 I MADE CLASS "B."

01:43 PM 10 I DON'T PARTICULARLY REMEMBER BIDDING ON THAT  
01:44 PM 11 JOB. I MAY HAVE, BUT I JUST DON'T REMEMBER.

01:44 PM 12 Q. WELL, ISN'T IT A FACT THAT YOU PREVIOUSLY TESTIFIED  
01:44 PM 13 THAT YOU ASSUMED THAT YOU BID ON THAT JOB?

01:44 PM 14 A. YEAH, I SAID I ASSUMED, BUT I DIDN'T KNOW.

01:44 PM 15 Q. OKAY. AND DIDN'T YOU ALSO ASSUME THAT YOU BID ON  
01:44 PM 16 THE TRAILER BODY BUILDER "A" JOB?

01:44 PM 17 A. I DIDN'T ASSUME. I KNOW I BID ON IT.

01:44 PM 18 Q. YOU KNOW YOU BID ON IT?

01:44 PM 19 A. YES, SIR.

01:44 PM 20 Q. AND YOU WERE AWARDED THAT JOB, WERE YOU NOT?

01:44 PM 21 A. AND THE REASON I KNOW I BID IT, BECAUSE I SIGNED IT  
01:44 PM 22 MANY, MANY TIMES, TRYING TO GET OUT OF THE PAINT HOUSE AND  
01:44 PM 23 THEN TRYING TO MOVE UP IN THE MAIN BUILDING.

01:44 PM 24 Q. OKAY. AND YOU ALSO BID ON AN INSPECTOR JOB FROM  
01:44 PM 25 TRAILER BODY BUILDER "A," ISN'T THAT RIGHT?

01:44 PM 1 A. YES, SIR, THAT'S CORRECT.

01:44 PM 2 Q. OKAY. NOW, AS TO THE CHIEF INSPECTOR JOB, YOU MADE  
01:44 PM 3 KNOWN YOUR INTEREST IN THAT JOB, AND WHEN THE CHIEF  
01:44 PM 4 INSPECTOR WHO WAS IN THE JOB RETIRED, YOU WERE ASSIGNED  
01:44 PM 5 THAT POSITION, ISN'T THAT RIGHT?

01:44 PM 6 A. NO, SIR, HE DID NOT RETIRE, HE MADE A LATERAL  
01:44 PM 7 TRANSFER, AND I ONLY GOT THE OPPORTUNITY TO GET THAT JOB  
01:44 PM 8 AFTER REPEATEDLY COMPLAINING, MAKING KNOWN MY INTEREST,  
01:44 PM 9 AND THAT I AS A BLACK WAS QUALIFIED. AND THEN I HAD TO  
01:44 PM 10 APPEAL TO THE PRESIDENT AFTER NO ONE ELSE WOULD HEAR ME.

01:45 PM 11 AND THEN MR. STEVENSON INTERVENED, AND THAT'S  
01:45 PM 12 HOW I GOT THE JOB.

01:45 PM 13 Q. THAT'S HOW YOU GOT THE JOB AS CHIEF INSPECTOR?

01:45 PM 14 A. YES, SIR.

01:45 PM 15 Q. IS THAT ALSO HOW YOU GOT THE JOB AS QUALITY MANAGER?

01:45 PM 16 A. YES, SIR.

01:45 PM 17 Q. ALL RIGHT. NOW, WHEN IS IT THAT YOU WENT -- FIRST  
01:45 PM 18 BECAME AN INSPECTOR?

01:45 PM 19 A. IT WAS IN THE, I THINK THE MIDDLE 80S. I DON'T  
01:45 PM 20 REMEMBER THE DATE. BUT IT WAS FROM THE EARLY TO MIDDLE  
01:45 PM 21 80S.

01:45 PM 22 Q. ALL RIGHT. SO ALL OF THE DISCUSSION ABOUT  
01:45 PM 23 PROMOTIONS THAT YOU BID FOR PRIOR TO INSPECTOR WERE  
01:45 PM 24 DISCUSSIONS THAT INVOLVED EVENTS THAT WERE OCCURRING IN  
01:45 PM 25 THE 70S AND EARLY 80S, AM I CORRECT?



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01:45 PM 1 A. REPEAT YOUR QUESTION.

01:45 PM 2 Q. WELL, YOU'VE NOT -- YOU DIDN'T --

01:45 PM 3 ONCE YOU BECAME INSPECTOR, THE NEXT JOB YOU BID  
01:45 PM 4 ON OR THE NEXT JOB YOU WANTED WAS CHIEF INSPECTOR, ISN'T  
01:45 PM 5 THAT RIGHT?

01:45 PM 6 A. WELL, IT WASN'T REALLY THE NEXT JOB I WANTED,  
01:45 PM 7 BECAUSE I DIDN'T KNOW THE JOB WAS COMING OPEN. WHAT I WAS  
01:45 PM 8 COMPLAINING ABOUT, A LACK OF OPPORTUNITY FOR BLACKS TO  
01:45 PM 9 MOVE UP. THERE WERE NO BLACKS IN MANAGEMENT.

01:45 PM 10 Q. MR. MCCLAIN --

01:45 PM 11 A. YES, SIR.

01:45 PM 12 Q. WHEN YOU WERE INSPECTOR, YOU LIKED THAT JOB, AND YOU  
01:46 PM 13 WEREN'T BIDDING ON OTHER JOBS, ISN'T THAT RIGHT?

01:46 PM 14 A. REPEAT YOUR QUESTION, PLEASE.

01:46 PM 15 Q. WHEN YOU WERE INSPECTOR, YOU LIKED THAT JOB, AND YOU  
01:46 PM 16 WERE NOT BIDDING ON OTHER JOBS, CORRECT?

01:46 PM 17 A. YES, SIR, I WAS BIDDING ON SALARIED JOBS. YES, SIR,  
01:46 PM 18 I WAS.

01:46 PM 19 Q. OKAY. OTHER THAN SALARIED JOBS, NO OTHER JOBS?

01:46 PM 20 A. WELL, BECAUSE THAT WAS REALLY ABOUT THE HIGHEST I  
01:46 PM 21 COULD GO AS FAR AS HOURLY.

01:46 PM 22 Q. SO WITH RESPECT TO YOUR TESTIMONY THAT YOU SIGNED  
01:46 PM 23 HUNDREDS OF BIDS, THOSE ARE EVENTS THAT WERE PRIOR TO THE  
01:46 PM 24 MID-1980S, ISN'T THAT RIGHT?

01:46 PM 25 A. SOME OF THEM, AS FAR AS IF YOU MEAN -- YOU'RE

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01:46 PM 1 TALKING ABOUT HOURLY JOBS?

01:46 PM 2 Q. WELL --

01:46 PM 3 A. OR SALARIED?

01:46 PM 4 Q. I'M TALKING ABOUT HOURLY JOBS.

01:46 PM 5 A. YES, SIR.

01:46 PM 6 Q. THOSE WERE ALL BEFORE THE MID-1980S, ISN'T THAT  
01:46 PM 7 RIGHT?

01:46 PM 8 A. WELL, NO, SIR, BECAUSE I MADE INSPECTOR THREE -- IT  
01:46 PM 9 TOOK ME THREE SHOTS TO MAKE IT PERMANENT THE FIRST TIME.

01:46 PM 10 Q. WHEN DID YOU FINALLY BECOME A PERMANENT INSPECTOR?

01:46 PM 11 A. SOMETIME IN THE MID-80S.

01:46 PM 12 Q. ALL RIGHT. AND ONCE YOU BECAME A PERMANENT  
01:47 PM 13 INSPECTOR, YOU DIDN'T BID ON ANY OTHER --

01:47 PM 14 A. YES, SIR, I DID.

01:47 PM 15 Q. ISN'T THAT RIGHT?

01:47 PM 16 A. NO, SIR, IT'S NOT. I BID ON --

01:47 PM 17 Q. MR. MCCLAIN --

01:47 PM 18 THE COURT REPORTER: ONE AT A TIME, PLEASE.

01:47 PM 19 BY MR. HAMEL:

01:47 PM 20 Q. ALL RIGHT. MY APOLOGIES. PLEASE CONTINUE, MR.  
01:47 PM 21 MCCLAIN.

01:47 PM 22 A. GO AHEAD WITH YOUR QUESTION.

01:47 PM 23 Q. WHAT HOURLY JOBS DID YOU BID ON AFTER YOU BECAME A  
01:47 PM 24 PERMANENT INSPECTOR?

01:47 PM 25 A. WELL, THERE WERE JOBS LIKE TECHNICIANS, AND THEY'RE

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01:47 PM 1 HOURLY, THEY'RE NOT SALARY. WE HAVE TECHNICIANS IN  
01:47 PM 2 MAINTENANCE, WE HAVE TECHNICIANS -- WE HAVE MACHINE  
01:47 PM 3 TECHNICIANS. SO I DID BID ON THOSE JOBS. AND NOT JUST IN  
01:47 PM 4 THE TRAILER PLANT BUT IN SOME OF THE OTHER DIVISIONS.

01:47 PM 5 Q. HOW MANY SUCH BIDS DID YOU MAKE?

01:47 PM 6 A. I HAVE NO IDEA, SIR.

01:47 PM 7 Q. CAN YOU GIVE ME ANY ESTIMATE?

01:47 PM 8 A. NO, SIR.

01:47 PM 9 Q. NOW, AFTER YOU BECAME CHIEF INSPECTOR, YOU WERE  
01:47 PM 10 PROMOTED TO QUALITY MANAGER, CORRECT?

01:47 PM 11 A. YES, SIR, AFTER MUCH EFFORT IN 1990.

01:47 PM 12 Q. AND IN 1996 YOU WERE BUMPED BACK FROM QUALITY  
01:48 PM 13 MANAGER TO AN INSPECTOR, ISN'T THAT RIGHT?

01:48 PM 14 A. YES, SIR, I WAS DEMOTED.

01:48 PM 15 Q. NOW, AT THE TIME YOU WERE CHIEF INSPECTOR, THERE  
01:48 PM 16 WERE FOURTEEN INSPECTORS UNDER YOU, ISN'T THAT RIGHT?

01:48 PM 17 A. AT ONE TIME THERE WERE FOURTEEN. I DON'T REMEMBER  
01:48 PM 18 IF IT WAS WHEN I WAS CHIEF INSPECTOR. PROBABLY SO,  
01:48 PM 19 BECAUSE WE PROBABLY HAD TWO SHIFTS THEN.

01:48 PM 20 Q. OKAY. AND THERE WERE ALSO FOURTEEN INSPECTORS WHEN  
01:48 PM 21 YOU WERE A QUALITY MANAGER, ISN'T THAT --

01:48 PM 22 A. PROBABLY IN THE BEGINNING. AND THAT NUMBER HAS  
01:48 PM 23 FLUCTUATED, BECAUSE WHEN THEY WOULD CUT -- WHEN THEY WOULD  
01:48 PM 24 DELETE THE SECOND SHIFT, THEN, OF COURSE, WE DIDN'T HAVE  
01:48 PM 25 ANY NEED FOR INSPECTORS ON THE SECOND SHIFT.

## TRANSCRIPT OF PROCEEDINGS

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01:48 PM 1 Q. AND WHILE YOU WERE QUALITY MANAGER YOU REPORTED TO  
01:48 PM 2 THE QUALITY WARRANTY MANAGER, ISN'T THAT RIGHT?

01:48 PM 3 A. NO, SIR, HE WAS NOT THE QUALITY, HE WAS -- HIS TITLE  
01:48 PM 4 WAS WARRANTY MANAGER. EVERY DIVISION, THE DIVISION'S  
01:48 PM 5 QUALITY MANAGER REPORTED TO THE VICE PRESIDENT OVER THE  
01:48 PM 6 DIVISION.

01:48 PM 7 DURING MY TENURE I HAD -- I REPORTED TO SEVEN OR  
01:48 PM 8 EIGHT DIFFERENT ONES.

01:48 PM 9 Q. MR. MCCLAIN, LET ME ASK YOU, PLEASE, SIR --

01:48 PM 10 AS YOU MAY UNDERSTAND IN THIS CASE, THE COURT  
01:48 PM 11 HAS LIMITED OUR TIME FOR EXAMINATION, AND I WOULD LIKE TO  
01:49 PM 12 ASK YOU IF YOU WOULD TRY TO JUST ADDRESS MY QUESTION, AND  
01:49 PM 13 I'M SURE IF YOUR COUNSEL HAS SOMETHING THAT THEY WANT TO  
01:49 PM 14 TALK TO YOU ABOUT, THEY WILL. BUT IF YOU'LL JUST TRY TO  
01:49 PM 15 STICK TO MY QUESTIONS.

01:49 PM 16 A. YES, SIR.

01:49 PM 17 Q. WHEN YOU WERE QUALITY MANAGER YOU REPORTED TO THE  
01:49 PM 18 WARRANTY MANAGER, ISN'T THAT RIGHT?

01:49 PM 19 A. YES, IN THE BEGINNING.

01:49 PM 20 Q. AND AT SOME POINT IN TIME THE TRAILER DEPARTMENT  
01:49 PM 21 BEGAN -- OR THE TRAILER DIVISION WENT ON HARD TIMES, ISN'T  
01:49 PM 22 THAT RIGHT?

01:49 PM 23 A. YES, ON NUMEROUS OCCASIONS.

01:49 PM 24 Q. AND THERE WERE LAYOFFS IN WHICH SEVENTY-FIVE TO A  
01:49 PM 25 HUNDRED PEOPLE LOST THEIR JOB, ISN'T THAT CORRECT?

TRANSCRIPT OF PROCEEDINGS

140

01:49 PM 1 A. I HAVE NO IDEA HOW MANY LOST THEIR JOB.

01:49 PM 2 Q. A LOT OF PEOPLE?

01:49 PM 3 A. WELL, THERE WAS A REDUCTION IN FORCE, THAT'S

01:49 PM 4 CORRECT.

01:49 PM 5 Q. OKAY. AND THE QUALITY MANAGER -- AND THE WARRANTY

01:49 PM 6 MANAGER CAME AND SAID THAT YOU WERE GOING TO BE BUMPED

01:49 PM 7 BACK TO AN INSPECTOR, AND HE WAS GOING TO TAKE OVER AND BE

01:49 PM 8 BOTH QUALITY AND WARRANTY MANAGER, ISN'T THAT RIGHT?

01:49 PM 9 A. WHAT YEAR ARE YOU TALKING ABOUT, SIR?

01:49 PM 10 Q. 1996, SIR.

01:49 PM 11 A. YES, HE DID. HE DID TELL ME THAT CONDITIONS WERE

01:49 PM 12 WORSE, AND THAT THERE WAS A DOWNTURN IN BUSINESS, AND THAT

01:50 PM 13 THEY DID NOT WANT -- OUR JOBS WAS DUPLICATING

01:50 PM 14 RESPONSIBILITIES, WHICH I DIFFERED WITH HIM ON THAT.

01:50 PM 15 Q. I UNDERSTAND THAT YOU DIFFERED WITH HIM. IT IS THE

01:50 PM 16 CASE THAT BY THAT TIME THE NUMBER OF INSPECTORS HAD BEEN

01:50 PM 17 REDUCED FROM A HIGH OF FOURTEEN TO ONLY FOUR INSPECTORS,

01:50 PM 18 ISN'T THAT RIGHT?

01:50 PM 19 A. NO, SIR, WE'VE NEVER HAD JUST FOUR INSPECTORS. I

01:50 PM 20 BELIEVE WE'VE HAD -- WE WENT FROM FOURTEEN TO NINE AND

01:50 PM 21 FROM NINE TO SIX. I DON'T KNOW HOW MANY WE HAVE NOW, BUT

01:50 PM 22 I DON'T REMEMBER US BEING AS LOW AS FOUR.

01:50 PM 23 Q. DO YOU RECALL TESTIFYING THAT THERE WERE FOUR?

01:50 PM 24 A. WELL, I COULD HAVE, BUT I DON'T REMEMBER EXACTLY HOW

01:50 PM 25 MANY.

## TRANSCRIPT OF PROCEEDINGS

141

01:50 PM 1 Q. OKAY. WELL, THERE ARE NO MORE THAN FIVE RIGHT NOW,  
01:50 PM 2 ARE THERE?

01:50 PM 3 A. YES.

01:50 PM 4 Q. CERTAINLY FAR FEWER THAN THERE USED TO BE WHEN YOU  
01:50 PM 5 WERE QUALITY MANAGER, ISN'T THAT RIGHT?

01:50 PM 6 A. AGAIN, WE REDUCED FROM NINE -- DURING MY TENURE WE  
01:50 PM 7 DID REDUCE TO SIX INSPECTORS.

01:50 PM 8 Q. OKAY. AND THE REDUCTION CONTINUED, DID IT NOT?

01:51 PM 9 A. WELL, THAT WAS THE LAST REDUCTION WE HAD. WE WENT  
01:51 PM 10 FROM FOURTEEN TO NINE, BECAUSE WE HAD ONE SHIFT, AND WE  
01:51 PM 11 WENT FROM NINE TO SIX, AS FAR AS I REMEMBER.

01:51 PM 12 Q. SO AT THE TIME YOU WERE PROMOTED TO QUALITY MANAGER,  
01:51 PM 13 THE QUALITY MANAGER SUPERVISED THE ACTIVITIES OF FOURTEEN  
01:51 PM 14 INSPECTORS, RIGHT?

01:51 PM 15 A. YES, SIR.

01:51 PM 16 Q. AT THE TIME THE JOB WAS CONSOLIDATED WITH THE  
01:51 PM 17 WARRANTY MANAGER JOB, THE NUMBER OF INSPECTORS WAS DOWN TO  
01:51 PM 18 SIX, CORRECT?

01:51 PM 19 A. IT WAS SIX. IT WAS ACTUALLY SIX BEFORE THE  
01:51 PM 20 DOWNTURN.

01:51 PM 21 Q. ALL RIGHT.

01:51 PM 22 A. BEFORE MY DEMOTION.

01:51 PM 23 Q. ALL RIGHT. AND SINCE THAT TIME THE NUMBER OF  
01:51 PM 24 INSPECTORS HAS CONTINUED TO DECLINE?

01:51 PM 25 A. NOT NECESSARILY. I THINK THERE'S FIVE. I THINK IT

## TRANSCRIPT OF PROCEEDINGS

142

01:51 PM 1 HAS DECLINED BY ONE.

01:51 PM 2 Q. ALL RIGHT. NOW, I BELIEVE YOUR TESTIMONY ON DIRECT  
01:51 PM 3 EXAMINATION, MR. MCCLAIN, WAS THAT THE REASON -- THAT YOU  
01:51 PM 4 HAVE NEVER BID FOR ANY JOB SINCE THE TIME OF YOUR  
01:51 PM 5 DEMOTION, RIGHT?

01:51 PM 6 A. WOULD YOU RESTATE THE QUESTION, PLEASE?

01:51 PM 7 Q. DID YOU NOT TESTIFY ON YOUR DIRECT EXAMINATION THAT  
01:52 PM 8 FROM THE TIME OF YOUR DEMOTION IN 1996, YOU HAVE NOT SINCE  
01:52 PM 9 BID ON ANY JOB?

01:52 PM 10 A. OH, THAT IS CORRECT, SIR.

01:52 PM 11 Q. ALL RIGHT. AND YOU TESTIFIED THAT THE REASON YOU  
01:52 PM 12 DIDN'T DO SO WAS BECAUSE DOUG WILLIAMS, YOUR MANAGER, TOLD  
01:52 PM 13 YOU THAT YOU SHOULD NOT, AND YOU WOULD NEVER GET ANOTHER  
01:52 PM 14 JOB AT LUFKIN, ISN'T THAT RIGHT?

01:52 PM 15 A. HE -- EXACTLY WHAT -- WHAT I TESTIFIED IS THAT HE  
01:52 PM 16 TOLD ME I WAS GOING TO BE AN INSPECTOR, THERE WAS NO NEED  
01:52 PM 17 IN ME SIGNING ANY MORE JOBS, THAT I WOULD NOT GET ANOTHER  
01:52 PM 18 JOB IN MANAGEMENT. YES, SIR, THAT'S WHAT I TESTIFIED.

01:52 PM 19 Q. DO YOU RECALL BEING ASKED ABOUT THIS SITUATION IN  
01:52 PM 20 YOUR DEPOSITION, SIR?

01:52 PM 21 A. NOT SPECIFICALLY.

01:52 PM 22 Q. OKAY. AND HAVE YOU PREVIOUSLY TESTIFIED THAT THE  
01:52 PM 23 REASON THAT YOU HAVEN'T SIGNED ANY OTHER BIDS WAS "I HAVE  
01:52 PM 24 NOT SIGNED A BID BECAUSE I FELT I SHOULD NOT HAVE BEEN  
01:52 PM 25 DEMOTED, AND I CERTAINLY FELT THAT I SHOULD NOT -- I WAS

## TRANSCRIPT OF PROCEEDINGS

143

01:52 PM 1 GOING -- I WASN'T GOING BACKWARDS"? DID YOU TESTIFY TO  
01:52 PM 2 THAT?

01:52 PM 3 A. I MAY HAVE TESTIFIED TO THAT, SIR. BUT THE TRUTH OF  
01:52 PM 4 THE MATTER IS THAT HE TOLD ME THAT THERE WAS NO NEED FOR  
01:53 PM 5 ME TO SIGN, BECAUSE I WAS LOCKED IN AS AN INSPECTOR AND  
01:53 PM 6 THAT WAS IT.

01:53 PM 7 Q. AM I CORRECT, SIR, THAT IN YOUR DEPOSITION IN JULY  
01:53 PM 8 OF 2003 YOU NEVER SAID ANYTHING ABOUT MR. WILLIAMS SAYING  
01:53 PM 9 THAT TO YOU? IS THAT RIGHT?

01:53 PM 10 A. WELL, YES, SIR, THAT IS CORRECT. THAT'S BEEN A LONG  
01:53 PM 11 TIME. BUT I HAVE NOW REMEMBERED THAT HE DID TELL ME THAT.

01:53 PM 12 Q. ALL RIGHT. WELL, SIR, DON'T YOU ALSO RECALL  
01:53 PM 13 TESTIFYING ABOUT YOUR DEMOTION IN THE CLASS HEARING BEFORE  
01:53 PM 14 JUDGE HEARTFIELD?

01:53 PM 15 A. I DON'T REMEMBER. YOU WOULD HAVE TO REMIND ME WHAT  
01:53 PM 16 I SAID.

01:53 PM 17 MR. HAMEL: CAN I APPROACH THE WITNESS, YOUR  
01:53 PM 18 HONOR?

01:53 PM 19 THE COURT: YES.

01:53 PM 20 BY MR. HAMEL:

01:53 PM 21 Q. MR. MCCLAIN, I'M GOING TO READ FROM THE TRANSCRIPT  
01:53 PM 22 OF THE -- THE TRANSCRIPT OF HEARING ON CLASS CERTIFICATION  
01:53 PM 23 BEFORE THE HONORABLE THAD HEARTFIELD, UNITED STATES  
01:53 PM 24 DISTRICT JUDGE, 10:00 A.M., FEBRUARY 18, 1998.

01:53 PM 25 AND THE SUBJECT AT PAGE 226 WAS THAT YOU HAD NOT

TRANSCRIPT OF PROCEEDINGS

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01:53 PM 1 BID ON ANY JOBS, AND YOUR ANSWER, SIR, "WHY SHOULD I BID  
01:54 PM 2 FOR A LOWER-LEVEL JOB THAT I'M GOING TO BE DEMOTED, WHEN  
01:54 PM 3 THERE'S NO OTHER -- WHEN THERE'S ANOTHER DOWNTURN IN  
01:54 PM 4 BUSINESS, WHEN I WAS UNFAIRLY DEMOTED FROM MY JOB THAT I  
01:54 PM 5 HAVE TENURE IN, THAT I WOULD NOT BE DEMOTED BECAUSE OF THE  
01:54 PM 6 DOWNTURN? WHY WOULD I DO THAT, SIR?"

01:54 PM 7 THAT WAS YOUR ANSWER, WAS IT NOT?

01:54 PM 8 A. I'M NOT DENYING THAT I GAVE THAT, SIR.

01:54 PM 9 Q. AND IN THE TESTIMONY BEFORE JUDGE HEARTFIELD YOU DID  
01:54 PM 10 NOT SAY ANYTHING ABOUT MR. WILLIAMS TELLING YOU THAT YOU  
01:54 PM 11 WOULD NEVER BE CONSIDERED FOR ANOTHER JOB, DID YOU?

01:54 PM 12 A. NO, SIR, I DID NOT, BUT THAT'S BEEN A LONG TIME AND  
01:54 PM 13 I'VE BEEN THROUGH A LOT SINCE THEN.

01:54 PM 14 Q. WELL, YOUR TESTIMONY BEFORE JUDGE HEARTFIELD WAS IN  
01:54 PM 15 1998, JUST TWO YEARS AFTER THE EVENTS, AND NOW YOU'RE  
01:54 PM 16 TELLING THE COURT TODAY THAT SIX YEARS LATER YOU REMEMBER  
01:54 PM 17 ABOUT MR. WILLIAMS?

01:54 PM 18 MR. GARRIGAN: WELL, YOUR HONOR --

01:54 PM 19 THE COURT: IT'S CROSS-EXAMINATION. HE'S GOT A  
01:54 PM 20 CERTAIN AMOUNT OF TIME.

01:54 PM 21 MR. GARRIGAN: ALL RIGHT.

01:54 PM 22 THE WITNESS: WHAT I'M TELLING YOU, SIR, IS THAT  
01:54 PM 23 I WAS ASKED A LOT OF QUESTIONS. I'VE BEEN THROUGH A LOT.  
01:54 PM 24 IT IS POSSIBLE THAT THE ANSWER I GAVE TO JUDGE HEARTFIELD  
01:55 PM 25 OR IN A DEPOSITION WASN'T ALL OF THE ANSWER, BECAUSE AS I

## TRANSCRIPT OF PROCEEDINGS

145

01:55 PM 1 HAVE THOUGHT ABOUT THIS AND AS I HAVE REVISITED WHAT HAS  
01:55 PM 2 HAPPENED TO ME AT DIFFERENT TIMES, THINGS HAVE CAME TO ME  
01:55 PM 3 THAT HAPPENED TO ME.

01:55 PM 4 I'M NOT SAYING I DIDN'T GIVE THAT ANSWER, BUT  
01:55 PM 5 I'M SAYING THAT MR. WILLIAMS DID TELL ME THAT.

01:55 PM 6 BY MR. HAMEL:

01:55 PM 7 Q. LET ME TURN TO YOUR EXPERIENCE WITH PROMOTING  
01:55 PM 8 EMPLOYEES, MR. MCCLAIN.

01:55 PM 9 A. YES, SIR.

01:55 PM 10 Q. YOU'VE NOT BEEN PERSONALLY INVOLVED IN ANY PROMOTION  
01:55 PM 11 OTHER THAN THE PROMOTION TO THE JOB CLASSIFICATION OF  
01:55 PM 12 INSPECTOR, ISN'T THAT RIGHT?

01:55 PM 13 A. THOSE WERE THE WORKERS I SUPERVISED, YES, SIR.

01:55 PM 14 Q. ALL RIGHT. AND BASED ON YOUR EXPERIENCE, WHEN YOU  
01:55 PM 15 WOULD GO TO PROMOTE SOMEBODY IN THE INSPECTOR  
01:55 PM 16 CLASSIFICATION, ONE OF THE ADMINISTRATIVE PEOPLE AT THE  
01:55 PM 17 PLANT WOULD GIVE YOU A LIST WITH, SAY, THE TWELVE TO  
01:55 PM 18 FIFTEEN MOST SENIOR PEOPLE ON THE BID LIST, ISN'T THAT  
01:55 PM 19 RIGHT?

01:55 PM 20 A. THE SECRETARY WOULD DO THAT.

01:55 PM 21 Q. OKAY. BUT YOU WOULD GET A LIST OF THE MOST SENIOR  
01:55 PM 22 PEOPLE TO CONSIDER, IS THAT RIGHT?

01:55 PM 23 A. AND THAT IS WHAT I REQUESTED FROM HER. THAT IS WHAT  
01:55 PM 24 SHE PROVIDED ME WITH, YES.

01:56 PM 25 Q. FROM THE BID LIST YOU WOULD DETERMINE WHO IS THE

TRANSCRIPT OF PROCEEDINGS

146

01:56 PM 1 MOST QUALIFIED PERSON USING -- WOULD YOU NOT?

01:56 PM 2 A. SAY IT AGAIN, PLEASE.

01:56 PM 3 Q. YOU WOULD TRY TO DETERMINE WHO WAS THE MOST SENIOR  
01:56 PM 4 QUALIFIED PERSON, WOULD YOU NOT?

01:56 PM 5 A. NO, SIR, WHO WAS THE -- I WAS TOLD TO DECIDE WHO WAS  
01:56 PM 6 THE MOST QUALIFIED PERSON. SENIORITY WAS IMPORTANT TO ME  
01:56 PM 7 BECAUSE, SIR, I HAD BEEN A UNION MEMBER, AND SENIORITY IS  
01:56 PM 8 A PART OF THE CONTRACT.

01:56 PM 9 MR. HAMEL: WILL YOU TURN ON THE SCREEN FOR ME,  
01:56 PM 10 PLEASE?

01:56 PM 11 GOOD. THANK YOU.

01:56 PM 12 BY MR. HAMEL:

01:56 PM 13 Q. WELL, YOU DO RECALL, SIR, DO YOU NOT, THAT YOU ASKED  
01:56 PM 14 PEOPLE WHO YOU WERE EVALUATING CERTAIN QUESTIONS ABOUT  
01:56 PM 15 WHAT THEY COULD DO, ISN'T THAT RIGHT?

01:56 PM 16 A. YES, SIR.

01:56 PM 17 Q. YOU ASKED THEM SPECIFIC QUESTIONS ABOUT BUILDING A  
01:56 PM 18 VAN, DIDN'T YOU?

01:57 PM 19 A. THE QUESTIONS I ASKED THEM HAD TO DO WITH JOB  
01:57 PM 20 SKILLS, CUSTOMER AND PRODUCT KNOWLEDGE, AS I RECOLLECT,  
01:57 PM 21 THEIR ABILITY TO READ A TAPE MEASURE, WHICH IS A  
01:57 PM 22 TRI-SQUARE.

01:57 PM 23 I MADE A DECISION AS TO IF THEY HAD A GOOD  
01:57 PM 24 ATTITUDE.

01:57 PM 25 I MADE A SUBJECTIVE DECISION AS TO WHETHER OR

TRANSCRIPT OF PROCEEDINGS

147

01:57 PM 1 NOT THEIR ATTENDANCE WAS ACCEPTABLE. I DECIDED THAT.

01:57 PM 2 AND THAT'S WHAT I WAS TOLD TO USE IN MAKING

01:57 PM 3 THOSE PROMOTIONS.

01:57 PM 4 BUT ON MY OWN, BECAUSE I WANTED TO BE FAIR, I

01:57 PM 5 USED SENIORITY AS THE MOST DETERMINING FACTOR. IF THE

01:57 PM 6 SENIOR QUALIFIED MAN WAS THE PERSON THAT I INTERVIEWED,

01:57 PM 7 THEN HE WAS THE PERSON THAT GOT THE JOB. BUT THAT

01:57 PM 8 SENIORITY WAS NOT A FACTOR THAT LUFKIN INDUSTRIES TOLD ME

01:58 PM 9 TO USE OR TRAINED ME.

01:58 PM 10 Q. MR. MCCLAIN, AS I UNDERSTAND IT, YOU SAY THAT IN

01:58 PM 11 YOUR SUPERVISOR TRAINING YOU GOT INFORMATION AS TO WHO

01:58 PM 12 WOULD BE QUALIFIED OR ON WHAT CRITERIA PEOPLE WOULD BE

01:58 PM 13 QUALIFIED?

01:58 PM 14 A. I SAID IN THE -- YOU'RE TALKING ABOUT THE FOUR-HOUR

01:58 PM 15 TRAINING COURSE?

01:58 PM 16 Q. YES, SIR.

01:58 PM 17 A. SIR, I SAID IN THE FOUR HOURS WE SIMPLY GOT

01:58 PM 18 INFORMATION OF DIFFERENT FACTORS TO USE. THEY DIDN'T TELL

01:58 PM 19 US HOW TO USE IT.

01:58 PM 20 Q. ARE YOU TELLING ME THAT THEY DIDN'T SAY ANYTHING

01:58 PM 21 ABOUT THE UNION CONTRACT REQUIREMENT THAT YOU MUST TAKE

01:58 PM 22 THE SENIOR PERSON?

01:58 PM 23 A. NO, SIR. NO, SIR, NOT IN MEETING.

01:58 PM 24 Q. OKAY.

01:58 PM 25 A. NOT ABOUT SENIORITY.

## TRANSCRIPT OF PROCEEDINGS

148

01:58 PM 1 Q. LET'S TALK ABOUT SOME OF THESE FACTORS. WHAT YOU'RE  
01:58 PM 2 SAYING IS THAT YOU HAD NO GUIDANCE ON HOW TO GET  
01:58 PM 3 ATTENDANCE CRITERIA?

01:58 PM 4 A. I'M SAYING I DIDN'T HAVE -- I WASN'T SHOWN HOW TO  
01:58 PM 5 MEASURE IF IT'S A GOOD ATTENDANCE, BECAUSE IN OUR  
01:58 PM 6 ATTENDANCE YOU CAN MANIPULATE THE SYSTEM.

01:58 PM 7 Q. OKAY. WOULD YOU PUT UP L22023, PLEASE?

01:58 PM 8 A. NOW, IF THEY HAD A PLUS, SAY A PLUS TWO, OR IF THEY  
01:59 PM 9 HAD A MINUS TWO, THEY COULD HAVE BEEN ABSENT MANY TIMES,  
01:59 PM 10 AND SOME COULD HAVE BEEN LEGIT AND SOME WERE NOT. SO,  
01:59 PM 11 AGAIN, I WASN'T TRAINED AS TO EXTENUATING CIRCUMSTANCES TO  
01:59 PM 12 MEASURE HOW A PERSON HAS A GOOD ATTENDANCE RECORD.

01:59 PM 13 Q. WELL, MS. MCCLAIN, LET ME SHOW YOU A DOCUMENT FROM  
01:59 PM 14 THE DAVID ACKERMAN GRIEVANCE FILE. THIS IS A DOCUMENT  
01:59 PM 15 THAT WAS PREPARED BY YOU, WAS IT NOT?

01:59 PM 16 A. IT'S HARD TO SEE THAT, BUT --

01:59 PM 17 Q. THERE'S MR. ACKERMAN'S NAME, RIGHT?

01:59 PM 18 A. CAN I COME CLOSER? BECAUSE I CAN'T SEE IT.

01:59 PM 19 Q. CERTAINLY. CAN YOU BLOW IT UP A LITTLE BIT MORE FOR  
01:59 PM 20 US, PLEASE?

01:59 PM 21 CAN YOU SEE THAT ANY BETTER, MR. MCCLAIN?

01:59 PM 22 A. YEAH, A LITTLE BIT BETTER.

01:59 PM 23 Q. ALL RIGHT. AND WHAT IS -- THIS IS THE SENIORITY  
02:00 PM 24 LIST THAT WAS GIVEN TO YOU, ISN'T IT? CORRECT?

02:00 PM 25 A. YES, I BELIEVE SO.

TRANSCRIPT OF PROCEEDINGS

149

02:00 PM 1 Q. AND THIS IS THE ATTENDANCE CREDITS --

02:00 PM 2 A. NO. NO, I CREATED THAT.

02:00 PM 3 Q. OKAY.

02:00 PM 4 A. THAT'S NOT WHAT SHE GAVE ME.

02:00 PM 5 Q. OKAY.

02:00 PM 6 A. SHE GAVE ME ANOTHER LIST SHOWING THE SENIOR MAN. I  
02:00 PM 7 CREATED THAT.

02:00 PM 8 Q. BUT YOU WENT TO SOME RECORDS AND YOU WERE ABLE TO  
02:00 PM 9 COMPUTE IN NUMERICAL FASHION WHAT THE PERSON'S ATTENDANCE  
02:00 PM 10 WAS AS TO ABSENTEEISM AND EARLY OUT AND TARDY, WERE YOU  
02:00 PM 11 NOT?

02:00 PM 12 A. WELL, THE COMPUTER PRINTOUT SHOWS EVERYTHING THAT I  
02:00 PM 13 PUT UP THERE.

02:00 PM 14 Q. THAT'S BECAUSE THE COMPUTER IS TIED INTO THE  
02:00 PM 15 ATTENDANCE CONTROL PROGRAM WHICH IS AT LUFKIN INDUSTRIES,  
02:00 PM 16 ISN'T THAT RIGHT?

02:00 PM 17 A. RIGHT. RIGHT.

02:00 PM 18 Q. AND YOU GET A PRINTOUT THAT SPECIFICALLY TELLS YOU  
02:00 PM 19 HOW A PERSON STANDS IN THE ATTENDANCE CONTROL PROGRAM WITH  
02:00 PM 20 RESPECT TO ABSENTEEISM AND EARLY OUT AND TARDINESS, ISN'T  
02:00 PM 21 THAT RIGHT?

02:00 PM 22 A. WELL, SIR, IF I WANTED TO, I COULD MANIPULATE THAT  
02:00 PM 23 SYSTEM AND BE ABSENT MANY DAYS THAT WAS UNJUSTIFIED, AND  
02:00 PM 24 EVERY HOURLY EMPLOYEE WILL TELL YOU THE SAME THING.

02:00 PM 25 Q. OKAY. NOW, WITH RESPECT TO THE SAMPLE JOB ORDER

## TRANSCRIPT OF PROCEEDINGS

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02:01 PM 1 THAT YOU ASKED PEOPLE TO BE EVALUATED ON OR YOU EVALUATED  
02:01 PM 2 PEOPLE ON --

02:01 PM 3 A. YES.

02:01 PM 4 Q. YOU WOULD ACTUALLY GIVE THEM A SAMPLE ORDER AND ASK  
02:01 PM 5 THEM QUESTIONS ABOUT IT, WOULDN'T YOU?

02:01 PM 6 A. YES, I WOULD ASK THEM QUESTIONS AS TO TRY TO FIND  
02:01 PM 7 OUT WHAT GENERAL KNOWLEDGE THEY HAD --

02:01 PM 8 Q. OKAY.

02:01 PM 9 A. -- AS FAR AS SPECIFICATION GOES.

02:01 PM 10 Q. YOU WOULD GIVE THEM A BLUEPRINT AND ASK THEM TO READ  
02:01 PM 11 THE BLUEPRINT TO YOU, WOULDN'T YOU?

02:01 PM 12 A. I WOULD GIVE -- YES, A SIMPLE BLUPRINT, RIGHT.

02:01 PM 13 Q. OKAY. YOU WOULD ASK THEM SPECIFIC QUESTIONS BASED  
02:01 PM 14 ON THE BLUEPRINT, SUCH AS "HOW WOULD YOU INSTALL THIS  
02:01 PM 15 WINDOW?"

02:01 PM 16 A. I'M NOT REALLY SURE WHAT QUESTIONS I ASKED THEM, BUT  
02:01 PM 17 I KNOW THAT IT WAS NOTHING COMPLICATED, BECAUSE, YOU KNOW,  
02:01 PM 18 I DIDN'T KNOW WHO KNEW HOW TO READ A BLUEPRINT, SO I WOULD  
02:01 PM 19 CHOOSE SOMETHING THAT WAS FAIRLY SIMPLE. AND I THINK IT  
02:01 PM 20 WOULD BE SOMETHING LIKE IF YOU WERE INSTALLING A PLACARD  
02:01 PM 21 ON THE SIDE OF A TRAILER, AND FOR THEM TO LOOK AT THE  
02:01 PM 22 PRINT AND TELL ME WHAT DIMENSIONS WENT WHERE, SOMETHING  
02:01 PM 23 LIKE THAT.

02:01 PM 24 Q. NOW, SIR, WHILE YOU SAY THAT THE PROCESS CAN BE  
02:02 PM 25 SUBVERTED, YOU AGREE --

## TRANSCRIPT OF PROCEEDINGS

151

02:02 PM 1 YOU CAN'T REMEMBER ANY SUPERVISOR WHO HAD A MIND  
02:02 PM 2 TO SUBVERT THE PROCESS WITH RESPECT TO THE ABILITY  
02:02 PM 3 DETERMINATION, CAN YOU?

02:02 PM 4 MR. GARRIGAN: OBJECTION, CALLS FOR HIM TO  
02:02 PM 5 SPECULATE ON OTHER PEOPLE'S MOTIVATIONS. THAT'S  
02:02 PM 6 IMPOSSIBLE.

02:02 PM 7 THE COURT: I THINK THAT'S A VALID OBJECTION.  
02:02 PM 8 IF YOU KNOW OF ANYBODY, TELL ME, AND IF YOU  
02:02 PM 9 DON'T, TELL ME THAT, TOO.

02:02 PM 10 THE WITNESS: YOU MEAN THAT --

02:02 PM 11 THE COURT: WELL, THAT ACTUALLY YOU SAY  
02:02 PM 12 SUBVERTED --

02:02 PM 13 THE WITNESS: WELL, WHAT I WAS TALKING ABOUT WAS  
02:02 PM 14 THE ATTENDANCE PROGRAM.

02:02 PM 15 THE COURT: THAT'S THE ATTENDANCE PROGRAM?

02:02 PM 16 THE WITNESS: YEAH. YOU'RE TALKING ABOUT  
02:02 PM 17 SOMETHING ELSE. I'M SAYING THE ATTENDANCE PROGRAM --

02:02 PM 18 BECAUSE I HAVE A PLUS FOUR IS NO INDICATION OF  
02:02 PM 19 WHAT TYPE OF ATTENDANCE RECORD I HAVE, BECAUSE THERE MAY  
02:02 PM 20 HAVE BEEN REASONS THAT I WAS ABSENT THAT WERE VALID AND  
02:02 PM 21 SOME WERE NOT.

02:02 PM 22 BY MR. HAMEL:

02:02 PM 23 Q. NOW, MR. MCCLAIN, YOU HAVE TESTIFIED THAT YOU COULD  
02:03 PM 24 CHOOSE A PERSON BASED ON RACE AND NOBODY WOULD CHALLENGE  
02:03 PM 25 THAT DETERMINATION?

02:03 PM 1 A. I'M JUST SAYING I COULD.

02:03 PM 2 Q. YOU COULD?

02:03 PM 3 A. BUT I WOULDN'T HAVE.

02:03 PM 4 Q. WELL, ISN'T IT IN FACT THE CASE, SIR, THAT THE UNION  
02:03 PM 5 WOULD STEP FORWARD AND CHALLENGE SITUATIONS IN WHICH A  
02:03 PM 6 PROMOTION WAS MADE OUTSIDE OF THE ORDER OF SENIORITY?

02:03 PM 7 A. ABILITY -- WHEN ABILITY WAS USED, VERY RARELY  
02:03 PM 8 CHALLENGED, I MEAN, VERY.

02:03 PM 9 Q. WOULD YOU PUT UP L22026, PLEASE?

02:03 PM 10 MR. MCCLAIN, DO YOU RECALL THIS LETTER FROM THE  
02:03 PM 11 BOILERMAKER LOCAL WITH RESPECT TO THE ACKERMAN SITUATION  
02:03 PM 12 IN WHICH THEY CHALLENGED THAT YOU HAD PASSED OVER DAVID  
02:03 PM 13 BURRIS AND KENNETH SANCHEZ AS INSPECTORS IN FAVOR OF  
02:03 PM 14 ANOTHER EMPLOYEE? OR, I'M SORRY, YOU HAD PROMOTED BURRIS  
02:04 PM 15 AND SANCHEZ, WHO WERE JUNIOR TO MR. ACKERMAN?

02:04 PM 16 A. OKAY. I CAN'T SEE IT, AND I CAN'T REMEMBER. IF YOU  
02:04 PM 17 COULD SHOW ME THE PAPERWORK. I DON'T WANT TO TALK FROM  
02:04 PM 18 SOMETHING THAT I'M READING WHAT I DID, BECAUSE THESE  
02:04 PM 19 DECISIONS WERE MADE A LONG TIME AGO.

02:04 PM 20 MR. HAMEL: MAY I APPROACH, YOUR HONOR?

02:04 PM 21 THE WITNESS: NOW, DO YOU HAVE THE PAGE WHERE I  
02:04 PM 22 GAVE MY EXPLANATION?

02:04 PM 23 BY MR. HAMEL:

02:04 PM 24 Q. YES, SIR, I DO. WE'RE ABOUT TO DO THAT.

02:04 PM 25 AM I CORRECT THAT THIS WAS A SITUATION IN WHICH



## TRANSCRIPT OF PROCEEDINGS

153

02:04 PM 1 YOU -- THE UNION CHALLENGED THE DECISION THAT HAD BEEN  
02:04 PM 2 MADE?

02:05 PM 3 A. YES.

02:05 PM 4 Q. AND YOU HAD TO JUSTIFY THE DECISION THAT YOU MADE IN  
02:05 PM 5 ORDER TO RESPOND TO THE GRIEVANCE, DID YOU NOT?

02:05 PM 6 A. YES, BUT THAT'S AS FAR AS IT WENT.

02:05 PM 7 Q. WOULD YOU PUT UP L22028, PLEASE? AND BLOW UP THE  
02:05 PM 8 FIRST FEW LINES.

02:05 PM 9 THIS IS YOUR RESPONSE TO MR. WILLIAMS, IN WHICH  
02:05 PM 10 YOU -- YOU TELL MR. WILLIAMS WHAT THE INTERVIEW PROCESS --

02:05 PM 11 A. RIGHT.

02:05 PM 12 Q. -- YOU WENT THROUGH WAS?

02:05 PM 13 A. RIGHT.

02:05 PM 14 Q. AND IF YOU COULD MOVE DOWN A FEW LINES.

02:06 PM 15 OKAY. "THE INTERVIEWING PROCESS FOR THE  
02:06 PM 16 INSPECTOR OPENINGS POSTED WAS A VERY IN-DEPTH EVALUATION  
02:06 PM 17 OF EACH APPLICANT'S EXPERIENCE, PRODUCT KNOWLEDGE, SKILLS,  
02:06 PM 18 DEPENDABILITY AND TEMPERAMENT TO DETERMINE THE BEST  
02:06 PM 19 QUALIFIED PERSONS ABLE TO GET THE JOB DONE RIGHT AND TO BE  
02:06 PM 20 A COMPETENT INSPECTOR."

02:06 PM 21 "IN ORDER TO BE COMPLETELY FAIR, THE  
02:06 PM 22 INTERVIEWING PROCESS FOR ALL APPLICANTS CONSISTED OF THE  
02:06 PM 23 SAME GUIDELINES, AND AFFORDED EACH APPLICANT THE SAME  
02:06 PM 24 OPPORTUNITY, AND WITH SUFFICIENT TIME ALLOCATED FOR EACH  
02:06 PM 25 INTERVIEW, OF WHICH LASTED FOR AT LEAST AN HOUR FOR THE

## TRANSCRIPT OF PROCEEDINGS

154

02:06 PM 1 INITIAL AND FINALIST INTERVIEWS IN ORDER TO DETERMINE THE  
02:06 PM 2 SENIOR QUALIFIED PERSONS FOR THE INSPECTOR OPENINGS."

02:06 PM 3 A. RIGHT. YES, SIR. I DID -- I CONSIDERED SENIORITY.

02:06 PM 4 Q. THAT'S WHAT YOU --

02:06 PM 5 A. I'VE ALREADY SAID THAT.

02:06 PM 6 Q. I UNDERSTAND. BUT THIS IS WHAT YOU WROTE IN  
02:06 PM 7 JUSTIFICATION TO YOUR BOSS?

02:06 PM 8 A. RIGHT.

02:06 PM 9 Q. SO THEY COULD DEFEND THE UNION GRIEVANCE, ISN'T THAT  
02:06 PM 10 RIGHT?

02:06 PM 11 A. YES.

02:06 PM 12 Q. "DAVID BURRIS, CLOCK NUMBER 1965, AT A STARTING RATE  
02:06 PM 13 OF PAY OF TEN TWENTY-FIVE PER HOUR EFFECTIVE FEBRUARY  
02:06 PM 14 27TH, AND KENNETH SANCHEZ, CLOCK NUMBER 00729, AT A  
02:07 PM 15 STARTING RATE OF PAY OF ELEVEN DOLLARS AND FOUR PER HOUR  
02:07 PM 16 EFFECTIVE FEBRUARY 28TH, WERE THE SENIOR QUALIFIED PERSONS  
02:07 PM 17 SELECTED TO FILL THE INSPECTOR POSITIONS ON THE SECOND  
02:07 PM 18 SHIFT."

02:07 PM 19 "DAVID BURRIS, A WELDER, WITH EXPERIENCE OF  
02:07 PM 20 WORKING ON VANS, FLOATS AND DUMPS, AND KENNETH SANCHEZ, A  
02:07 PM 21 WELDER SPECIALIST, WITH EXPERIENCE OF WORKING ON VANS,  
02:07 PM 22 BOTH DURING THE INTERVIEWING PROCESS EXHIBITED POSITIVE  
02:07 PM 23 ATTITUDES, GOOD PRODUCT KNOWLEDGE, JOB SKILLS, TEMPERAMENT  
02:07 PM 24 AND DEPENDABILITY REQUIRED AND NECESSARY TO INSPECT THE  
02:07 PM 25 TRAILERS RIGHT ACCORDING TO THE CORRECT SPECIFICATIONS."

## TRANSCRIPT OF PROCEEDINGS

155

02:07 PM 1 YOU WROTE THAT AS WELL, DID YOU NOT?

02:07 PM 2 A. YES.

02:07 PM 3 Q. AND THEN YOU WENT ON, "LINDLEY HAMM, CLOCK NUMBER  
02:07 PM 4 1932, DECLINED FROM BEING CONSIDERED BECAUSE OF CHURCH  
02:07 PM 5 COMMITMENTS."

02:07 PM 6 "DAVID ACKERMAN, CLOCK NUMBER 1952, WAS FOUND TO  
02:07 PM 7 BE LACKING THE EXPERIENCE, PRODUCT KNOWLEDGE, JOB SKILLS,  
02:07 PM 8 TEMPERAMENT AND DEPENDABILITY NECESSARY TO COMPETENTLY  
02:07 PM 9 PERFORM THE RESPONSIBILITIES REQUIRED OF AN INSPECTOR."

02:07 PM 10 "JAMES DAVIS, CLOCK NUMBER 1974, WARREN GILES,  
02:08 PM 11 CLOCK NUMBER 0148, AND BUDDY MCKINNEY, CLOCK NUMBER 3180,  
02:08 PM 12 DECLINED BECAUSE OF THE SECOND SHIFT."

02:08 PM 13 A. AND THAT DECISION -- I USED MY SUBJECTIVE  
02:08 PM 14 DECISION-MAKING TO MAKE A DECISION BASED ON THE CRITERIA  
02:08 PM 15 THAT WAS GIVEN ME BY LUFKIN INDUSTRIES.

02:08 PM 16 Q. WELL, MR. MCCLAIN, ACCORDING TO YOU, YOU DID A VERY  
02:08 PM 17 CAREFUL AND THOROUGH JOB OF EVALUATING THESE PEOPLE,  
02:08 PM 18 DIDN'T YOU?

02:08 PM 19 A. WHEN I WROTE THAT, THAT'S WHAT I THOUGHT.

02:08 PM 20 Q. ALL RIGHT, SIR. AND YOU DON'T THINK THAT ANY MORE,  
02:08 PM 21 AFTER YOU'VE TALKED TO THE PLAINTIFFS' EXPERTS I TAKE IT?

02:08 PM 22 A. I DON'T THINK SO, BECAUSE I REALIZED THAT I DID NOT  
02:08 PM 23 RECEIVE THE TRAINING. EVEN AT THAT TIME, WHEN I  
02:08 PM 24 CONTINUALLY ASKED FOR TRAINING, I DIDN'T GET IT.

02:08 PM 25 Q. OKAY. IT IS THE CASE, IS IT NOT, THAT YOU DIDN'T

TRANSCRIPT OF PROCEEDINGS

156

02:08 PM 1 HAVE TO MAKE A DECISION AT ALL WITH RESPECT TO MR. LINDLEY  
02:08 PM 2 HAMM? HE SAID HE DIDN'T WANT TO BE CONSIDERED BECAUSE HE  
02:08 PM 3 HAD CHURCH COMMITMENTS?

02:08 PM 4 A. YES, SIR.

02:08 PM 5 Q. AND THREE OTHER PEOPLE WHO HAD SIGNED THE BID TOOK  
02:08 PM 6 THEMSELVES OUT OF THE RUNNING BECAUSE THEY DIDN'T WANT TO  
02:08 PM 7 GO ON THE SECOND SHIFT, ISN'T THAT RIGHT?

02:08 PM 8 A. YES, SIR, AND THAT HAPPENED QUITE A BIT.

02:08 PM 9 Q. AND ISN'T IT IN FACT THE CASE THAT WHAT YOU NEEDED  
02:08 PM 10 WAS AN INSPECTOR TO INSPECT WELDING, RIGHT?

02:08 PM 11 A. YES.

02:08 PM 12 Q. AND THAT MR. ACKERMAN DIDN'T HAVE ANY WELDING  
02:09 PM 13 EXPERIENCE, RIGHT?

02:09 PM 14 A. I SUPPOSE.

02:09 PM 15 Q. AND WHAT RACE IS MR. ACKERMAN?

02:09 PM 16 A. HE'S WHITE.

02:09 PM 17 Q. IT'S TRUE THAT YOU ALWAYS TRIED TO SELECT THE SENIOR  
02:09 PM 18 MAN EXCEPT IF THEY DECLINED THE JOB, IS IT NOT?

02:09 PM 19 A. I TRIED TO SELECT THE SENIOR QUALIFIED PERSON. THAT  
02:09 PM 20 WAS MY UTMOST CRITERIA. I WAS THE ONE THAT SENIORITY WAS  
02:09 PM 21 IMPORTANT TO. THAT FACTOR WAS INTERJECTED BY ME,  
02:09 PM 22 QUALIFIED BY THE COMPANY.

02:09 PM 23 Q. OKAY. AND OTHER THAN THE SITUATION THAT WAS  
02:09 PM 24 ADDRESSED BY MR. GARRIGAN AND THIS SITUATION WITH MR.  
02:09 PM 25 ACKERMAN, YOU CAN'T RECALL A SINGLE SITUATION IN WHICH YOU

TRANSCRIPT OF PROCEEDINGS

247

04:19 PM 1 ALL -- EVERYBODY THAT WORKS FOR YOUR FIRM AND EVERYBODY  
04:19 PM 2 THAT WORKS FOR YOUR TWO FIRMS.

04:19 PM 3 MR. HAMEL: YOUR HONOR --

04:20 PM 4 THE COURT: AND I'M NOT IMPRESSED BY THE VERY  
04:20 PM 5 UNLAWYERLIKE ATTITUDES.

04:20 PM 6 I GOT LETTERS YESTERDAY ON IT. YESTERDAY WAS  
04:20 PM 7 SUNDAY. NO, I GUESS IT WAS SATURDAY I GOT THEM.

04:20 PM 8 MR. GARRIGAN: NO, WEDNESDAY. WE'RE STARTING ON  
04:20 PM 9 THURSDAY.

04:20 PM 10 THE COURT: WEDNESDAY. ALL RIGHT. OH, THAT'S  
04:20 PM 11 RIGHT. I WAS OUT MOST OF YESTERDAY. IT WAS MONDAY I GOT  
04:20 PM 12 THEM.

04:20 PM 13 MR. GARRIGAN: THE ONLY POINT I'M TRYING TO  
04:20 PM 14 RAISE IS, I WOULD LIKE TO BE ABLE TO SEE WHAT DOCUMENTS  
04:20 PM 15 THIS WITNESS IS BEING QUESTIONED ABOUT.

04:20 PM 16 THE COURT: WELL, YOU CAN.

04:20 PM 17 MR. GARRIGAN: THANK YOU.

04:20 PM 18 MR. HAMEL: YOUR HONOR, THIS IS FROM EXHIBIT 89,  
04:20 PM 19 THE PERSONNEL FILE OF CALVIN DWAYNE DEASON, BATES NUMBERS  
04:20 PM 20 L36123 TO L36153 AND L39290 TO L39291, EXHIBIT 89.

04:21 PM 21 THE COURT: DO YA'LL HAVE IT? DOES YOUR SIDE  
04:21 PM 22 HAVE IT?

04:21 PM 23 MR. GARRIGAN: WE DON'T HAVE IT HERE, SIR, NO.  
04:21 PM 24 THAT EXHIBIT I BELIEVE REFERS TO ALL PERSONNEL FILES.

04:21 PM 25 MR. HAMEL: NO, THAT'S MR. DEASON'S PARTICULAR

TRANSCRIPT OF PROCEEDINGS

248

04:21 PM 1 PERSONNEL FILE.

04:21 PM 2 MR. GARRIGAN: DO YOU HAVE A COPY I CAN LOOK AT?

04:21 PM 3 MR. HAMEL: YES.

04:21 PM 4 MR. GARRIGAN: THANK YOU.

04:21 PM 5 MR. HAMEL: THERE YOU GO.

04:21 PM 6 YOUR HONOR, WE WOULD MOVE FOR THE ADMISSION OF  
04:21 PM 7 EXHIBIT 89, THE PERSONNEL FILE OF MR. DEASON.

04:21 PM 8 THE COURT: WELL, TO THE EXTENT THAT IT WAS MADE  
04:21 PM 9 BY HIM, YES. I DON'T KNOW WHETHER THERE'S OTHER THINGS IN  
04:21 PM 10 THE PERSONNEL FILE MADE BY OTHER PEOPLE, AND I'M NOT  
04:21 PM 11 PRIVILEGED TO HAVE A COPY OF IT.

04:21 PM 12 MR. HAMEL: YOUR HONOR --

04:21 PM 13 BY MR. HAMEL:

04:21 PM 14 Q. MR. DEASON, IS THAT YOUR APPLICATION?

04:21 PM 15 A. YES.

04:21 PM 16 Q. OKAY.

04:21 PM 17 MR. HAMEL: I'LL MARK THAT AS 89-A, OUR HONOR,  
04:21 PM 18 SO WE CAN ADMIT THAT.

04:21 PM 19 THE COURT: ALL RIGHT, SIR.

04:22 PM 20 BY MR. HAMEL:

04:22 PM 21 Q. NOW, MR. DEASON, IN YOUR APPLICATION, IS THERE  
04:22 PM 22 ANYPLACE THERE THAT YOU HAVE INDICATED THAT YOU HAVE ANY  
04:22 PM 23 COLLEGE?

04:22 PM 24 A. NO. I TOLD MR. GARRIGAN I DIDN'T TELL HIM.

04:22 PM 25 Q. OKAY. AND IS THERE ANYPLACE THAT YOU INDICATE THAT

TRANSCRIPT OF PROCEEDINGS

249

04:22 PM 1 YOU HAVE SPECIALIZED TRAINING IN THE MILITARY?

04:22 PM 2 A. NO.

04:22 PM 3 Q. OKAY. THERE IS A PLACE TO PUT COLLEGE, ISN'T THERE?

04:22 PM 4 A. YES.

04:22 PM 5 Q. AND THERE IS A PLACE TO PUT SPECIALIZED TRAINING  
04:22 PM 6 THAT YOU GET, ISN'T THERE? LET ME SHOW YOU.

04:22 PM 7 THE COURT: WHEN WERE YOU IN THE MILITARY?

04:22 PM 8 THE WITNESS: '85, 1985, YOUR HONOR, TO '88.

04:22 PM 9 THE COURT: I DON'T REMEMBER ANY WAR IN '85.

04:22 PM 10 THE WITNESS: NO, IT WASN'T A WAR.

04:22 PM 11 THE COURT: WHAT BRANCH WERE YOU IN?

04:22 PM 12 THE WITNESS: THE ARMY.

04:22 PM 13 BY MR. HAMEL:

04:23 PM 14 Q. MR. DEASON, DO YOU SEE AT THE THIRD PAGE OF YOUR

04:23 PM 15 EMPLOYMENT APPLICATION THERE'S A SPACE THAT SAYS

04:23 PM 16 "SUMMARIZE SPECIAL SKILLS AND QUALIFICATIONS ACQUIRED FROM

04:23 PM 17 EMPLOYMENT OR OTHER EXPERIENCE," AND IT GIVES YOU TWO

04:23 PM 18 LINES, AND YOU LEFT THAT BLANK?

04:23 PM 19 A. I PUT IT ON MY WORKFORCE APPLICATION.

04:23 PM 20 Q. BUT IT WASN'T THE APPLICATION YOU GAVE TO LUFKIN?

04:23 PM 21 A. RIGHT.

04:23 PM 22 Q. OKAY. SO MR. BARBAY -- YOU DIDN'T TELL HIM ABOUT

04:23 PM 23 IT, AND IT WASN'T ON YOUR APPLICATION, SO HE WOULDN'T KNOW

04:23 PM 24 ABOUT THAT, WOULD HE?

04:23 PM 25 A. I SUPPOSE.

TRANSCRIPT OF PROCEEDINGS

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04:23 PM 1 Q. OKAY. THANK YOU, SIR.

04:23 PM 2 A. UH-HUH.

04:23 PM 3 MR. HAMEL: THAT'S ALL THE QUESTIONS I HAVE,  
04:23 PM 4 YOUR HONOR.

04:23 PM 5 MR. GARRIGAN: WE HAVE NO MORE QUESTIONS.

04:23 PM 6 WE WOULD CALL VIVIAN CRAIN.

04:24 PM 7 THE COURT: THANK YOU, MR. DEASON.

04:24 PM 8 THE WITNESS: YES, SIR.

04:24 PM 9

04:24 PM 10 VIVIAN CRAIN, PLAINTIFF WITNESS, SWORN

04:24 PM 11

04:24 PM 12 THE COURT: PROCEED.

04:24 PM 13 DIRECT EXAMINATION

04:24 PM 14 BY MR. GARRIGAN:

04:24 PM 15 Q. WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

04:24 PM 16 A. VIVIAN CRAIN.

04:24 PM 17 THE COURT: VIVIAN?

04:24 PM 18 THE WITNESS: CRAIN, C-R-A-I-N.

04:24 PM 19 THE COURT: OH, OKAY.

04:24 PM 20 BY MR. GARRIGAN:

04:24 PM 21 Q. AND WHAT IS YOUR RACE?

04:24 PM 22 A. I'M SORRY?

04:24 PM 23 Q. WHAT IS YOUR RACE?

04:24 PM 24 A. AFRICAN-AMERICAN.

04:24 PM 25 Q. OKAY. AND I'M ASKING THAT BECAUSE THIS WILL BE

TRANSCRIPT OF PROCEEDINGS

251

04:24 PM 1 REDUCED TO A WRITTEN RECORD THAT SOMEONE MIGHT BE READING  
04:24 PM 2 IN THE FUTURE.

04:25 PM 3 WHERE DO YOU WORK, MS. CRAIN?

04:25 PM 4 A. LUFKIN INDUSTRIES.

04:25 PM 5 Q. HOW LONG HAVE YOU WORKED THERE?

04:25 PM 6 A. TWENTY-THREE YEARS.

04:25 PM 7 Q. AND WHAT IS YOUR JOB?

04:25 PM 8 THE COURT: WHEN DID YOU START? WHEN YOU WERE  
04:25 PM 9 TEN?

04:25 PM 10 (LAUGHTER)

04:25 PM 11 THE COURT: GO AHEAD.

04:25 PM 12 BY MR. GARRIGAN:

04:25 PM 13 Q. WELL, WHAT IS YOUR CURRENT POSITION?

04:25 PM 14 A. ACCOUNTING VOUCHER CLERK I THINK.

04:25 PM 15 Q. AND WHAT OTHER JOBS HAVE YOU HELD THERE?

04:25 PM 16 A. HR ASSISTANT, SENIOR INSURANCE CLERK AND BENEFITS  
04:25 PM 17 SUPERVISOR.

04:25 PM 18 Q. OKAY. AND HAVE THOSE -- HAVE SOME OF THOSE JOBS  
04:25 PM 19 INVOLVED WORKING IN THE CORPORATE OFFICE?

04:25 PM 20 A. THE ONLY TIME WE WORKED IN THE CORPORATE OFFICE IS  
04:25 PM 21 WHEN WE MOVED OVER THERE.

04:26 PM 22 Q. WHEN DID THAT HAPPEN, ROUGHLY?

04:26 PM 23 A. I GUESS MAYBE FIVE YEARS AGO. I'M NOT SURE. MAYBE  
04:26 PM 24 FIVE YEARS AGO, MAYBE.

04:26 PM 25 Q. ALL RIGHT. HOW DID YOU BECOME INVOLVED IN THIS

TRANSCRIPT OF PROCEEDINGS

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04:26 PM 1 LAWSUIT?

04:26 PM 2 A. I GOT A PHONE CALL ONE DAY, AND IT WAS YOU, AND YOU  
04:26 PM 3 ASKED ME, STARTED ASKING ME QUESTIONS. I MEAN, YOU ASKED  
04:26 PM 4 ME ABOUT IT, AND I DIDN'T -- I HAD NO IDEA WHAT WAS GOING  
04:26 PM 5 ON.

04:26 PM 6 Q. BUT I CALLED YOU?

04:26 PM 7 A. YES.

04:26 PM 8 Q. YOU DIDN'T CALL ME, RIGHT?

04:26 PM 9 A. NO. HUH-UH.

04:26 PM 10 Q. YOU HAD NOTHING TO DO WITH FILING THIS LAWSUIT, DID  
04:26 PM 11 YOU?

04:26 PM 12 A. NO. THE FIRST TIME -- WELL, THE FIRST I HEARD ABOUT  
04:26 PM 13 IT WAS, I THINK IT WAS RIGHT BEFORE FATHER'S DAY.

04:26 PM 14 Q. WHAT ARE YOUR THOUGHTS ABOUT BEING INVOLVED IN THIS  
04:26 PM 15 CASE EVEN AS A WITNESS?

04:26 PM 16 A. IT'S NOT MY CHOICE.

04:26 PM 17 Q. I HAD TO SERVE YOU?

04:26 PM 18 A. I MEAN, I'M NOT HERE BY CHOICE.

04:26 PM 19 Q. OKAY. YOU'RE UNDER SUBPOENA, CORRECT?

04:27 PM 20 A. YES.

04:27 PM 21 Q. TELL ME --

04:27 PM 22 THE COURT: DID YOU SEE THE OPT-OUT NOTICE?

04:27 PM 23 THE WITNESS: I'M SORRY?

04:27 PM 24 THE COURT: DID YOU SEE THE OPT-OUT NOTICE?

04:27 PM 25 THE WITNESS: NO.

TRANSCRIPT OF PROCEEDINGS

253

04:27 PM 1 THE COURT: DID YOU GET A COPY OF ONE IN THE  
04:27 PM 2 MAIL?

04:27 PM 3 THE WITNESS: DID I?

04:27 PM 4 BY MR. GARRIGAN:

04:27 PM 5 Q. DID YOU RECEIVE A NOTICE IN THE MAIL?

04:27 PM 6 A. YES.

04:27 PM 7 Q. ABOUT THIS CASE?

04:27 PM 8 A. UH-HUH. I JUST READ THE DEMAND. THAT'S AS FAR AS I  
04:27 PM 9 GOT.

04:27 PM 10 Q. OKAY.

04:27 PM 11 THE COURT: ALL RIGHT. YOU JUST READ THE  
04:27 PM 12 DEMAND?

04:27 PM 13 THE WITNESS: UH-HUH.

04:27 PM 14 THE COURT: ALL RIGHT. PROCEED.

04:27 PM 15 BY MR. GARRIGAN:

04:27 PM 16 Q. AND WHEN YOU SAY FATHER'S DAY, THAT WAS JUST EARLIER  
04:27 PM 17 THIS YEAR, WASN'T IT?

04:27 PM 18 A. YES, THE LAST -- YES.

04:27 PM 19 Q. IT'S JUST BEEN REALLY THE LAST FEW MONTHS THAT WE'VE  
04:27 PM 20 TALKED?

04:27 PM 21 A. YES.

04:27 PM 22 Q. NOW, I CONTACTED YOU, SEVERAL PEOPLE HAVE CONTACTED  
04:27 PM 23 YOU AND ASKED YOU TO COME AND TESTIFY TODAY, IS THAT  
04:27 PM 24 RIGHT?

04:27 PM 25 A. NO, ONLY YOU TO MY KNOWLEDGE.

TRANSCRIPT OF PROCEEDINGS

254

04:28 PM 1 Q. NONE OF THE OTHER CLASS REPRESENTATIVES HAVE  
04:28 PM 2 CONTACTED YOU?

04:28 PM 3 A. NO.

04:28 PM 4 Q. OKAY. YOU DIDN'T WANT TO BE HERE THOUGH, DID YOU?

04:28 PM 5 A. NO.

04:28 PM 6 Q. WOULD YOU TELL THE COURT WHY YOU DIDN'T WANT TO BE  
04:28 PM 7 HERE?

04:28 PM 8 A. PERSONALLY, I THINK IT'S A WASTE OF TIME, BECAUSE I  
04:28 PM 9 THINK -- THAT'S MY PERSONAL THOUGHT, IT'S A WASTE OF TIME,  
04:28 PM 10 BECAUSE I THINK THEY'RE JUST -- WHATEVER THE RULING IS,  
04:28 PM 11 THEY'RE GOING TO DO WHAT THEY WANT TO DO.

04:28 PM 12 Q. TELL ME WHETHER OR NOT YOU'RE AFRAID TO TESTIFY.

04:28 PM 13 A. NOT REALLY AFRAID, I JUST --

04:28 PM 14 THE COURT: CONCERNED, WORRIED, ANYTHING?

04:28 PM 15 THE WITNESS: EXACTLY.

04:28 PM 16 BY MR. GARRIGAN:

04:28 PM 17 Q. DO YOU THINK IT MIGHT HAVE SOME EFFECT ON YOUR JOB?

04:28 PM 18 A. POSSIBLY.

04:28 PM 19 Q. "AFRAID" MIGHT BE TOO STRONG A WORD. I'M SORRY.

04:28 PM 20 A. YES.

04:28 PM 21 Q. NOW, DURING YOUR TENURE AT LUFKIN HAVE YOU WORKED IN  
04:29 PM 22 HUMAN RESOURCES?

04:29 PM 23 A. YES, THAT'S WHERE I STARTED OUT, UNTIL ABOUT THREE  
04:29 PM 24 YEARS AGO.

04:29 PM 25 Q. ALL RIGHT. AND WHAT WAS YOUR JOB AS OF THREE YEARS

04:29 PM 1 AGO?

04:29 PM 2 A. I WAS SENT TO THE ACCOUNTING DEPARTMENT.

04:29 PM 3 Q. ALL RIGHT. AND BEFORE THAT WHAT DID YOU DO?

04:29 PM 4 A. BEFORE ACCOUNTING I DID -- I WAS H.R. ASSISTANT I  
04:29 PM 5 THINK.

04:29 PM 6 Q. IN THE HUMAN RESOURCES OFFICE?

04:29 PM 7 A. YES.

04:29 PM 8 Q. OKAY. DO YOU KNOW A MAN NAMED VIRON BARBAY?

04:29 PM 9 A. YES.

04:29 PM 10 Q. HOW DO YOU KNOW HIM?

04:29 PM 11 A. WE WORKED IN THE SAME OFFICE.

04:29 PM 12 Q. DID YOU KNOW HIM BEFORE THAT?

04:29 PM 13 A. YEAH, WE ALL CAME FROM THE SAME -- WE WERE ALL OVER  
04:29 PM 14 IN THE OLD BUILDING TOGETHER, YES.

04:29 PM 15 Q. OKAY. DID YOU KNOW ANYTHING ABOUT MR. BARBAY BEFORE  
04:29 PM 16 YOU MOVED TO THE NEW BUILDING?

04:30 PM 17 A. YEAH. WE ALL WORKED TOGETHER EVERY DAY, YEAH.

04:30 PM 18 Q. WHAT WAS MR. BARBAY'S JOB WHEN YOU FIRST MET HIM?

04:30 PM 19 A. I THINK HE WAS A PHOTOGRAPHER.

04:30 PM 20 Q. MS. CRAIN, DO YOU LIKE MR. BARBAY?

04:30 PM 21 A. NO.

04:30 PM 22 Q. WHY NOT?

04:30 PM 23 A. MY -- PERSONALLY, JUST MY PERSONAL, I THINK HE'S A  
04:30 PM 24 RACIST, AND I THINK HE THINKS OTHER PEOPLE ARE BELOW HIM.

04:30 PM 25 Q. WHY DO YOU THINK THAT?



TRANSCRIPT OF PROCEEDINGS

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04:30 PM 1 MS. MAHONY: OBJECTION, YOUR HONOR, TO THAT  
04:30 PM 2 RESPONSE AS SPECULATION.

04:30 PM 3 THE WITNESS: I JUST SAID IT WAS MY PERSONAL.

04:30 PM 4 MS. MAHONY: WELL, OBJECTION TO THE PART THAT --

04:30 PM 5 THE COURT: WHAT'S THAT BASED ON?

04:30 PM 6 THE WITNESS: THE WAY HE ACTS, THE THINGS I'VE  
04:30 PM 7 HEARD HIM SAY.

04:30 PM 8 THE COURT: I'M GOING TO ALLOW HER TO MAKE --  
04:30 PM 9 THAT'S HER PERSONAL OPINION AND OPINION ONLY. OUTSIDE OF  
04:30 PM 10 THAT --

04:30 PM 11 MS. MAHONY: WELL, THAT'S FINE. I WOULD OBJECT  
04:30 PM 12 TO IT THOUGH AS TO OTHER PEOPLE.

04:30 PM 13 THE COURT: WELL, ALL RIGHT. THAT PART OF IT IS  
04:31 PM 14 OVERRULED, SINCE SHE'S HAD CONTACT WITH HIM DAILY.

04:31 PM 15 IN THAT DAILY CONTACT, YOU'VE HAD OCCASION TO  
04:31 PM 16 OBSERVE WHAT HE SAYS, DOES AND THE WAY HE ACTS?

04:31 PM 17 THE WITNESS: EXACTLY.

04:31 PM 18 THE COURT: AND --

04:31 PM 19 MR. GARRIGAN: DID --

04:31 PM 20 THE COURT: EXCUSE ME. I WANTED TO FINISH THAT  
04:31 PM 21 NOTE.

04:31 PM 22 ARE YOU FROM LUFKIN?

04:31 PM 23 THE WITNESS: YES.

04:31 PM 24 THE COURT: DO YOU THINK YOU WOULD KNOW SOMEONE  
04:31 PM 25 WHO HAD RACIST TENDENCIES IF YOU WORKED WITH THEM?

TRANSCRIPT OF PROCEEDINGS

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04:31 PM 1 THE WITNESS: I THINK SO, YES.

04:31 PM 2 THE COURT: IT'S NOT LIMITED TO EAST TEXAS?

04:31 PM 3 THE WITNESS: NO, IT'S NOT, DEFINITELY NOT. NO.

04:31 PM 4 THE COURT: I MEAN, IT'S THROUGHOUT THE UNITED

04:31 PM 5 STATES?

04:31 PM 6 THE WITNESS: YES.

04:31 PM 7 THE COURT: ALL RIGHT. THE OBJECTION IS

04:31 PM 8 OVERRULED. I'M GOING TO CONSIDER IT FOR WHAT IT --

04:31 PM 9 BY MR. GARRIGAN:

04:32 PM 10 Q. CAN YOU --

04:32 PM 11 WELL, HAVE YOU EVER HEARD MR. BARBAY SAY

04:32 PM 12 ANYTHING THAT WAS SPECIFICALLY RACIST?

04:32 PM 13 A. I DID ONCE, COMING FROM LUNCH, I DID ONCE. HE WAS

04:32 PM 14 TELLING BLACK JOKES.

04:32 PM 15 Q. OKAY.

04:32 PM 16 A. AND I DIDN'T THINK IT WAS FUNNY AT ALL. THEY DID

04:32 PM 17 NOT KNOW I HEARD THEM.

04:32 PM 18 MS. MAHONY: OBJECTION, CALLS FOR SPECULATION.

04:32 PM 19 THE COURT: DID YOU HEAR THEM?

04:32 PM 20 THE WITNESS: YES.

04:32 PM 21 THE COURT: DID YOU HEAR HIM?

04:32 PM 22 THE WITNESS: YES.

04:32 PM 23 THE COURT: YOU SAY IT CALLS FOR SPECULATION?

04:32 PM 24 MS. MAHONY: I WITHDRAW THE OBJECTION, YOUR

04:32 PM 25 HONOR. I DIDN'T HEAR HER ENTIRE ANSWER. I APOLOGIZE.

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04:32 PM 1 THE COURT: THANK YOU, MA'AM.

04:32 PM 2 PROCEED.

04:32 PM 3 BY MR. GARRIGAN:

04:32 PM 4 Q. DO YOU REMEMBER ANY PARTICULAR WORDS HE USED?

04:32 PM 5 A. HE WAS TALKING ABOUT "THOSE NIGGERS." I MEAN, I  
04:32 PM 6 CAME IN ON THE LAST PART, AND I JUST KIND OF STOOD THERE,  
04:33 PM 7 AND JUST WALKED AWAY.

04:33 PM 8 Q. NOW, WHEN WAS THIS THAT YOU HEARD THIS CONVERSATION?

04:33 PM 9 A. THIS WAS WHEN WE WERE IN THE OLD BUILDING, AND WHEN  
04:33 PM 10 WE WOULD COME BACK FROM LUNCH, WE WOULD HAVE TO GO AROUND  
04:33 PM 11 TO A SIDE DOOR TO COME IN, AND THERE WAS AN OFFICE RIGHT  
04:33 PM 12 THERE AS YOU OPEN THE SIDE DOOR, AND THEY WOULD ALWAYS  
04:33 PM 13 HAVE LUNCH IN THAT OFFICE. SOME OF THE GUYS WOULD STAY.  
04:33 PM 14 AND I JUST HAPPENED TO, YOU KNOW, COME BACK FROM LUNCH,  
04:33 PM 15 AND THERE WAS A WATER FOUNTAIN RIGHT THERE IN THE HALLWAY,  
04:33 PM 16 AND --

04:33 PM 17 Q. WHO WAS HE TELLING THIS TO?

04:33 PM 18 A. WHOEVER WAS IN THERE WITH HIM.

04:33 PM 19 Q. DO YOU KNOW WHO THAT WAS?

04:33 PM 20 A. IT WAS JARED SATTERWHITE'S OFFICE, SO I'M ASSUMING  
04:33 PM 21 HE WAS IN THERE WITH HIM. BUT ANYONE ELSE I DON'T KNOW.

04:33 PM 22 Q. CAN YOU DESCRIBE FOR US ANY OTHER CONDUCT IN YOUR  
04:33 PM 23 EXPERIENCE WITH MR. BARBAY THAT INDICATES THAT HE'S A  
04:34 PM 24 RACIST?

04:34 PM 25 A. I WOULD HEAR HIM WHEN HE WOULD COME BACK FROM

TRANSCRIPT OF PROCEEDINGS

259

04:34 PM 1 INTERVIEWING PEOPLE TALK ABOUT -- HE WOULD CALL THEM

04:34 PM 2 IDIOTS OR STUPID OR SOMETHING OF THAT NATURE.

04:34 PM 3 Q. OKAY. WHEN YOU SAY HE WOULD COME BACK FROM

04:34 PM 4 INTERVIEWING PEOPLE --

04:34 PM 5 A. HE WOULD GO TO TEC.

04:34 PM 6 Q. THAT'S FOR THE HIRING PROCESS?

04:34 PM 7 A. YES.

04:34 PM 8 Q. AND HE WOULD COME BACK AND REFER TO THE APPLICANTS

04:34 PM 9 THAT WAY?

04:34 PM 10 A. YES. I MEAN, HE WAS NOT TALKING TO ME, I JUST WOULD

04:34 PM 11 HEAR HIM TALKING.

04:34 PM 12 Q. OKAY.

04:34 PM 13 THE COURT: WHO WOULD HE BE TALKING TO?

04:34 PM 14 THE WITNESS: JUST WHOEVER WAS IN THE OFFICE, OR

04:34 PM 15 WHOEVER WAS BACK THERE TALKING TO HIM, OR ANYONE THAT CAME

04:34 PM 16 UP, YOU KNOW, TO TALK TO HIM, OR MAYBE EVEN JOHN.

04:34 PM 17 THE COURT: PROCEED.

04:34 PM 18 BY MR. GARRIGAN:

04:34 PM 19 Q. WHEN HE WOULD USE THESE NEGATIVE TERMS TO REFER TO

04:34 PM 20 PEOPLE --

04:35 PM 21 A. UH-HUH.

04:35 PM 22 Q. DO YOU KNOW WHETHER HE WAS REFERRING TO WHITE

04:35 PM 23 PEOPLE?

04:35 PM 24 A. I DOUBT IT.

04:35 PM 25 Q. WHY NOT?

## TRANSCRIPT OF PROCEEDINGS

260

04:35 PM 1 A. BECAUSE MOST OF THE TIME AFTER, YOU KNOW, I WOULD  
04:35 PM 2 HEAR HIM SAY THINGS LIKE THAT, THEN THE APPLICANTS WOULD  
04:35 PM 3 USUALLY COME IN, AND THEY WEREN'T WHITE. THEY WERE MOSTLY  
04:35 PM 4 BLACKS AND MOSTLY MEXICAN.

04:35 PM 5 Q. OKAY. NOW, IS -- WHEN WERE YOU IN A POSITION TO  
04:35 PM 6 OBSERVE OR OVERHEAR THESE CONVERSATIONS?

04:35 PM 7 A. WHEN WE MOVED TO THE NEW OFFICE, IN THE CORPORATE  
04:35 PM 8 THAT WE'RE IN NOW, THE CORPORATE OFFICE.

04:35 PM 9 Q. AND THAT WOULD HAVE BEEN SOMETIME SINCE 1994?

04:35 PM 10 A. I'M NOT SURE WHAT YEAR WE MOVED OVER THERE. I'M NOT  
04:35 PM 11 SURE. I THINK WE'VE BEEN THERE FIVE YEARS. I THINK  
04:35 PM 12 PERSONNEL HAS BEEN OVER THERE FIVE -- I'M NOT SURE.

04:36 PM 13 Q. SO YOU THINK THAT PART WAS IN THE LAST FIVE YEARS?

04:36 PM 14 A. YES.

04:36 PM 15 Q. THE INITIAL RACIAL JOKES THAT YOU OVERHEARD, THAT  
04:36 PM 16 HAD BEEN MUCH EARLIER?

04:36 PM 17 A. THAT'S WHEN WE WERE IN THE OLD BUILDING, BEFORE THEY  
04:36 PM 18 TORE IT DOWN.

04:36 PM 19 Q. OKAY. NOW, DID YOU EVER COMPLAIN TO ANYBODY ABOUT  
04:36 PM 20 MR. BARBAY USING THE "N" WORD WHEN HE WAS TELLING JOKES?

04:36 PM 21 A. NO, I NEVER DID.

04:36 PM 22 Q. DID YOU EVER COMPLAIN OR REPORT TO ANYONE THAT YOU  
04:36 PM 23 THOUGHT MR. BARBAY WAS RACIALLY PREJUDICED?

04:36 PM 24 A. YES, I DID.

04:36 PM 25 Q. WHO DID YOU REPORT THAT TO?

## TRANSCRIPT OF PROCEEDINGS

261

04:36 PM 1 A. I HAD SAID IT ONCE TO MY SUPERVISOR, WHICH IS JENNY  
04:36 PM 2 RUSSELL AT THE TIME. SHE HAD ASKED ME WHY I DIDN'T LIKE  
04:37 PM 3 VIRON OR WHY I NEVER TALKED TO HIM, AND I JUST TOLD HER I  
04:37 PM 4 THOUGHT HE WAS A RACIST.

04:37 PM 5 AND THEN I HAD AN OPPORTUNITY ONCE TO TALK TO  
04:37 PM 6 MR. PEREZ BECAUSE HE WANTED ME TO WORK WITH HIM FOR  
04:37 PM 7 SOMETHING. I TOLD HIM THAT I HAD A PROBLEM WITH IT  
04:37 PM 8 BECAUSE OF THAT.

04:37 PM 9 THE COURT: DID MR. PEREZ TRANSFER YOU ANYHOW?

04:37 PM 10 THE WITNESS: I'M SORRY?

04:37 PM 11 THE COURT: DID MR. PEREZ TRANSFER YOU ANYHOW?

04:37 PM 12 THE WITNESS: HE WANTED ME TO DO SOME WORK WITH  
04:37 PM 13 HIM, WORK WITH HIM DOING SOMETHING. I DON'T KNOW. BUT,  
04:37 PM 14 NO, I DID IT.

04:37 PM 15 THE COURT: DID YOU HAVE TO --

04:37 PM 16 THE WITNESS: I HAD TO WORK WITH HIM.

04:37 PM 17 THE COURT: YOU HAD TO WORK WITH HIM?

04:37 PM 18 THE WITNESS: UH-HUH.

04:37 PM 19 THE COURT: OKAY.

04:37 PM 20 BY MR. GARRIGAN:

04:37 PM 21 Q. BUT YOU TOLD MR. PEREZ YOU DIDN'T WANT TO WORK WITH  
04:37 PM 22 HIM?

04:37 PM 23 A. YES. I DIDN'T TELL HIM I DIDN'T WANT TO, I TOLD HIM  
04:37 PM 24 I HAD A PROBLEM WITH IT.

04:37 PM 25 Q. ALL RIGHT. AND DID HE ASK YOU WHAT THE PROBLEM WAS?

TRANSCRIPT OF PROCEEDINGS

262

04:37 PM 1 A. I'M NOT SURE IF HE DID, BUT I DID TELL HIM WHY I  
04:38 PM 2 DIDN'T.

04:38 PM 3 THE COURT: WHAT DID YOU TELL HIM?

04:38 PM 4 THE WITNESS: I TOLD HIM THAT I THOUGHT HE WAS A  
04:38 PM 5 RACIST, AND WHAT I HAD HEARD HIM SAY, AND THAT'S IT.

04:38 PM 6 THE COURT: THANK YOU.

04:38 PM 7 BY MR. GARRIGAN:

04:38 PM 8 Q. DID MR. PEREZ ASK YOU TO DOCUMENT THAT IN ANY WAY?

04:38 PM 9 A. NO.

04:38 PM 10 Q. DID HE ASK YOU ANY FOLLOW-UP QUESTIONS ABOUT IT?

04:38 PM 11 A. NO.

04:38 PM 12 Q. DID HE TAKE ANY ACTION TO YOUR KNOWLEDGE IN RESPONSE  
04:38 PM 13 TO YOUR REPORT?

04:38 PM 14 A. I DON'T KNOW.

04:38 PM 15 Q. WHAT WERE -- WHEN WAS IT THAT YOU WOULD HAVE HAD  
04:38 PM 16 THAT CONVERSATION WITH MR. PEREZ?

04:38 PM 17 A. WHEN?

04:38 PM 18 Q. YEAH, YOUR BEST ESTIMATE.

04:38 PM 19 A. MAYBE -- IT WAS BEFORE I WENT TO ACCOUNTING. I  
04:38 PM 20 THINK I'VE BEEN IN ACCOUNTING ALMOST THREE YEARS OR THREE  
04:38 PM 21 YEARS. SO IT HAD TO BE THREE YEARS AGO.

04:38 PM 22 Q. ABOUT THREE?

04:38 PM 23 A. APPROXIMATELY.

04:38 PM 24 Q. ABOUT THREE YEARS AGO?

04:39 PM 25 A. MAYBE, YES.

TRANSCRIPT OF PROCEEDINGS

263

04:39 PM 1 Q. AND AT THAT TIME WAS MR. BARBAY INVOLVED IN THE  
04:39 PM 2 HIRING PROCESS AT LUFKIN INDUSTRIES?

04:39 PM 3 A. UH-HUH.

04:39 PM 4 Q. WAS THERE ANY CHANGE IN HIS DUTIES IN THAT REGARD TO  
04:39 PM 5 YOUR KNOWLEDGE?

04:39 PM 6 A. NOT TO MY KNOWLEDGE.

04:39 PM 7 Q. OKAY. THANK YOU VERY MUCH.

04:39 PM 8 MR. GARRIGAN: I'LL PASS THE WITNESS.

04:39 PM 9 CROSS-EXAMINATION

04:39 PM 10 BY MS. MAHONY:

04:39 PM 11 Q. GOOD AFTERNOON, MS. CRAIN.

04:39 PM 12 WE MET A COUPLE OF MONTHS AGO, I'M MICHELLE  
04:39 PM 13 MAHONY, AT YOUR DEPOSITION.

04:39 PM 14 A. UH-HUH.

04:40 PM 15 Q. MS. CRAIN, I THINK YOU'VE TESTIFIED YOU'VE WORKED AT  
04:40 PM 16 LUFKIN FOR TWENTY-THREE YEARS, IS THAT CORRECT?

04:40 PM 17 A. YES.

04:40 PM 18 Q. YOU'VE ALSO HAD NUMEROUS RELATIVES THAT HAVE WORKED  
04:40 PM 19 AT LUFKIN?

04:40 PM 20 A. YES.

04:40 PM 21 Q. IS THAT CORRECT?

04:40 PM 22 A. YES.

04:40 PM 23 Q. YOU'VE HAD A FIRST COUSIN, FRETA THOMAS RAMSEY, WHO  
04:40 PM 24 WORKED AT LUFKIN?

04:40 PM 25 A. YES.

## TRANSCRIPT OF PROCEEDINGS

264

04:40 PM 1 Q. AND SHE WORKED IN THE CORPORATE DIVISION IN THE  
04:40 PM 2 INSURANCE DEPARTMENT WITH YOU FOR A LITTLE WHILE, CORRECT?

04:40 PM 3 A. YES.

04:40 PM 4 Q. AND YOU HAD ANOTHER FIRST COUSIN, LAURA CALLAWAY?

04:40 PM 5 A. YES.

04:40 PM 6 Q. AND MS. CALLAWAY ALSO WORKED IN THE CORPORATE  
04:40 PM 7 DIVISION IN INSURANCE AND INFORMATION SYSTEMS, IS THAT  
04:40 PM 8 CORRECT?

04:40 PM 9 A. UH-HUH.

04:40 PM 10 Q. AND YOU HAVE A HALFSISTER, BARBARA SUMLIN?

04:40 PM 11 A. SHE'S MY SISTER.

04:40 PM 12 Q. YOUR SISTER? WHO'S WORKED AT LUFKIN INDUSTRIES IN  
04:40 PM 13 THE POWER TRANSMISSION DIVISION, IS THAT CORRECT?

04:40 PM 14 A. IT WAS CALLED MACHINE SHOP THEN, YEAH.

04:40 PM 15 Q. MACHINE SHOP? OKAY. AND HENRY SUMLIN, IS THAT  
04:40 PM 16 YOUR --

04:40 PM 17 A. MY FATHER.

04:40 PM 18 Q. YOUR FATHER? AND HE ALSO WORKED IN THE POWER  
04:40 PM 19 TRANSMISSION DIVISION IN SHIPPING AND RECEIVING, IS THAT  
04:40 PM 20 CORRECT?

04:41 PM 21 A. UH-HUH.

04:41 PM 22 Q. AND YOUR UNCLE IS BUFORD THOMAS?

04:41 PM 23 A. HE'S MY COUSIN.

04:41 PM 24 Q. HE'S YOUR COUSIN? I'M SORRY. HE'S ONE OF THE  
04:41 PM 25 PLAINTIFFS IN THIS LAWSUIT, CORRECT?

## TRANSCRIPT OF PROCEEDINGS

265

04:41 PM 1 A. YES.

04:41 PM 2 Q. AND BUFORD THOMAS WORKED IN POWER TRANSMISSION IN A  
04:41 PM 3 SUPERVISOR JOB, CORRECT?

04:41 PM 4 A. I THINK -- I'M NOT -- I THINK IT WAS MACHINE SHOP.  
04:41 PM 5 I'M NOT SURE.

04:41 PM 6 Q. OKAY. AND YOU HAVE AN UNCLE OR MAYBE -- EARL  
04:41 PM 7 THOMAS?

04:41 PM 8 A. HE'S DECEASED.

04:41 PM 9 Q. HE'S DECEASED? HE ALSO WORKED AT LUFKIN INDUSTRIES,  
04:41 PM 10 IS THAT CORRECT?

04:41 PM 11 A. YES.

04:41 PM 12 Q. AND HE ALSO WORKED IN THE MACHINE SHOP?

04:41 PM 13 A. HE WORKED AT BUCK CREEK.

04:41 PM 14 Q. AT BUCK CREEK IN THE OILFIELD DIVISION?

04:41 PM 15 A. UH-HUH.

04:41 PM 16 Q. OKAY. AND YOU HAD ANOTHER UNCLE, JAMES THOMAS?

04:41 PM 17 A. YES.

04:41 PM 18 Q. AND HE WORKED IN THE MACHINERY DIVISION?

04:41 PM 19 A. I THINK SO, OR WELDING, ONE OF THEM. I'M NOT SURE.

04:41 PM 20 Q. IN FINAL ASSEMBLY AND SHIPPING?

04:41 PM 21 A. UH-HUH.

04:41 PM 22 Q. AND YOU HAVE AN AUNT, SHIRLEY THOMAS, CORRECT?

04:41 PM 23 A. YES.

04:41 PM 24 Q. AND SHIRLEY THOMAS WORKS IN THE CORPORATE DIVISION  
04:41 PM 25 AS AN HR CLERK, IS THAT CORRECT?

## TRANSCRIPT OF PROCEEDINGS

266

04:41 PM 1 A. UH-HUH.

04:41 PM 2 Q. AND FINALLY, YOU HAVE AN UNCLE, CURTIS THOMAS?

04:42 PM 3 A. UH-HUH.

04:42 PM 4 Q. CORRECT?

04:42 PM 5 A. CORRECT.

04:42 PM 6 Q. HE ALSO WORKS AT LUFKIN INDUSTRIES?

04:42 PM 7 A. YES.

04:42 PM 8 Q. AND HE IS A SUPERVISOR IN FINAL ASSEMBLY AND

04:42 PM 9 SHIPPING IN THE OILFIELD DIVISION?

04:42 PM 10 A. UH-HUH.

04:42 PM 11 Q. CORRECT?

04:42 PM 12 A. YES.

04:42 PM 13 Q. SO I THINK I'VE JUST GONE THROUGH ONE, TWO, THREE,

04:42 PM 14 FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, INCLUDING YOURSELF,

04:42 PM 15 TEN OF YOUR RELATIVES, AND NONE OF THEM HAVE EVER WORKED

04:42 PM 16 IN THE FOUNDRY DIVISION OF LUFKIN INDUSTRIES, CORRECT?

04:42 PM 17 A. TO MY KNOWLEDGE, NO.

04:42 PM 18 Q. SINCE YOU'VE WORKED AT LUFKIN, YOU'VE ALWAYS BEEN A

04:42 PM 19 SALARIED EMPLOYEE, IS THAT CORRECT?

04:42 PM 20 A. NO. I STARTED OUT HOURLY.

04:42 PM 21 Q. STARTED OUT HOURLY WHEN YOU STARTED OUT IN THE FILE

04:42 PM 22 ROOM, IS THAT RIGHT?

04:42 PM 23 A. UH-HUH.

04:42 PM 24 Q. OKAY. AND YOU DID, YOU STARTED OUT IN THE FILE ROOM

04:42 PM 25 TWENTY-THREE YEARS AGO, CORRECT?

TRANSCRIPT OF PROCEEDINGS

267

04:42 PM 1 A. YES.

04:42 PM 2 Q. AND BASICALLY -- AND YOU WORKED YOUR WAY UP?

04:42 PM 3 A. YES.

04:42 PM 4 Q. AFTER YOU LEFT THE FILE ROOM, YOU WENT TO THE

04:42 PM 5 INSURANCE DEPARTMENT, CORRECT?

04:42 PM 6 A. UH-HUH.

04:42 PM 7 Q. YOU WERE AN INSURANCE CLERK, CORRECT?

04:42 PM 8 A. YES.

04:42 PM 9 Q. AND YOU WERE PROMOTED TO SENIOR INSURANCE CLERK?

04:43 PM 10 A. UH-HUH.

04:43 PM 11 Q. AND AFTER THAT YOU WERE PROMOTED TO EMPLOYEE

04:43 PM 12 BENEFITS SUPERVISOR?

04:43 PM 13 A. UH-HUH.

04:43 PM 14 Q. AND YOU ACTUALLY GOT THAT JOB OVER YOUR COUSIN,

04:43 PM 15 FRETA THOMAS, AND A WHITE EMPLOYEE NAMED ANNA KING?

04:43 PM 16 A. RIGHT.

04:43 PM 17 Q. IS THAT CORRECT?

04:43 PM 18 A. UH-HUH.

04:43 PM 19 Q. AND YOU WERE SELECTED BY JENNY RUSSELL?

04:43 PM 20 A. YES.

04:43 PM 21 Q. WHO IS YOUR SUPERVISOR FOR --

04:43 PM 22 A. EVER SINCE I'VE BEEN THERE.

04:43 PM 23 Q. EVER SINCE YOU'VE BEEN THERE?

04:43 PM 24 A. YES.

04:43 PM 25 Q. OKAY. AND YOU GOT THAT SUPERVISORY JOB THROUGH

## TRANSCRIPT OF PROCEEDINGS

268

04:43 PM 1 TRAINING AND A JOB POSTING, ISN'T THAT CORRECT?

04:43 PM 2 A. UH-HUH.

04:43 PM 3 Q. I THINK YOU TESTIFIED -- WAS IT WHILE YOU WERE IN  
04:43 PM 4 INSURANCE THAT YOU ALL MOVED OVER TO THE CORPORATE  
04:43 PM 5 BUILDING?

04:43 PM 6 A. YES.

04:43 PM 7 Q. SO YOU WERE STILL IN INSURANCE FOR A LITTLE WHILE?

04:43 PM 8 A. UH-HUH.

04:43 PM 9 Q. AND YOU THINK THAT'S FOUR OR FIVE YEARS AGO?

04:44 PM 10 A. I'M THINKING FIVE. IT MAY BE MORE, BUT I'M THINKING  
04:44 PM 11 FIVE.

04:44 PM 12 Q. ABOUT '98, '99, SOMEWHERE AROUND THERE?

04:44 PM 13 A. UH-HUH.

04:44 PM 14 Q. OKAY. AND DID YOU ALWAYS OFFICE IN THE HR SUITES  
04:44 PM 15 WHEN YOU MOVED OVER?

04:44 PM 16 A. I'M SORRY?

04:44 PM 17 Q. DID YOU ALWAYS OFFICE IN THE HUMAN RESOURCES SUITE  
04:44 PM 18 EVEN WHEN YOU WERE STILL IN THE INSURANCE DEPARTMENT?

04:44 PM 19 A. YES.

04:44 PM 20 Q. NOW, AT SOME POINT IN TIME YOUR JOB IN INSURANCE  
04:44 PM 21 BASICALLY BECAME OBSOLETE, CORRECT?

04:44 PM 22 A. UH-HUH.

04:44 PM 23 Q. BECAUSE LUFKIN INDUSTRIES BEGAN OUTSOURCING THEIR  
04:44 PM 24 INSURANCE?

04:44 PM 25 A. RIGHT.

## TRANSCRIPT OF PROCEEDINGS

269

04:44 PM 1 Q. IS THAT CORRECT?

04:44 PM 2 A. UH-HUH.

04:44 PM 3 Q. AND AT THAT POINT YOUR JOB AS AN INSURANCE CLERK OR

04:44 PM 4 BENEFITS SUPERVISOR, WHERE YOU WERE PROCESSING CLAIMS,

04:44 PM 5 AMONG OTHER THINGS, BASICALLY DIDN'T EXIST ANY MORE?

04:44 PM 6 A. RIGHT.

04:44 PM 7 Q. AND YOU WEREN'T LAID OFF --

04:44 PM 8 A. NO.

04:44 PM 9 Q. -- AT THE TIME?

04:44 PM 10 A. NO.

04:44 PM 11 Q. IN FACT, YOU -- LUFKIN FOUND YOU ANOTHER JOB?

04:44 PM 12 A. UH-HUH.

04:44 PM 13 Q. AND AT THAT POINT, THAT'S WHEN YOU MOVED TO THE

04:44 PM 14 HUMAN RESOURCES DEPARTMENT, CORRECT, AS AN HR CLERK?

04:44 PM 15 A. WELL, WE WERE ALREADY THERE, I JUST -- THE TITLE

04:44 PM 16 JUST CHANGED.

04:44 PM 17 Q. AND YOUR JOB DUTIES CHANGED?

04:44 PM 18 A. YES.

04:44 PM 19 Q. CORRECT?

04:45 PM 20 A. YES.

04:45 PM 21 Q. AS YOU WERE IN A SUPPORT ROLE IN HUMAN RESOURCES,

04:45 PM 22 CORRECT?

04:45 PM 23 A. UH-HUH.

04:45 PM 24 Q. FILING, ANSWERING PHONES, AND YOU WERE STILL DOING

04:45 PM 25 SOME INSURANCE WORK, PROCESSING COBRA, IS THAT CORRECT?

## TRANSCRIPT OF PROCEEDINGS

270

04:45 PM 1 A. UH-HUH.

04:45 PM 2 Q. AND YOU WERE AN HR ASSISTANT FOR TWO, THREE YEARS  
04:45 PM 3 MAYBE?

04:45 PM 4 A. I DON'T THINK IT WAS THREE. IT MAY HAVE BEEN TWO  
04:45 PM 5 MAYBE. I'M NOT SURE.

04:45 PM 6 Q. AND AT SOME POINT IN TIME YOU TALKED TO YOUR  
04:45 PM 7 SUPERVISOR, JENNY RUSSELL, ABOUT FINDING YOU ANOTHER JOB  
04:45 PM 8 IN THE COMPANY, IS THAT CORRECT?

04:45 PM 9 A. YES.

04:45 PM 10 Q. AND IT WAS AFTER THAT THAT YOU MOVED TO ACCOUNTS  
04:45 PM 11 PAYABLE, WHERE YOU ARE NOW, CORRECT?

04:45 PM 12 A. YES.

04:45 PM 13 Q. AND YOU'RE HAPPY IN ACCOUNTS PAYABLE, CORRECT?

04:45 PM 14 A. I AM.

04:46 PM 15 Q. YOU DON'T BELIEVE THAT YOU WERE MOVED TO ACCOUNTS  
04:46 PM 16 PAYABLE BECAUSE OF YOUR RACE, CORRECT?

04:46 PM 17 A. I WAS TOLD THAT I WAS GOING. THEY DIDN'T GIVE ME A  
04:46 PM 18 CHOICE. I WAS TOLD THAT -- I HAD WENT TO HER AND ASKED  
04:46 PM 19 HER, TOLD HER THAT I WANTED TO GO TO ANOTHER DEPARTMENT OR  
04:46 PM 20 ANOTHER JOB, AND SHE TOLD ME THAT WHEN SOMETHING CAME  
04:46 PM 21 AVAILABLE, SHE WOULD LET ME KNOW. THE NEXT THING I KNEW,  
04:46 PM 22 THEY WERE TELLING ME I WAS GOING TO ACCOUNTING, TO A JOB  
04:46 PM 23 THAT SHE HAD ALREADY TOLD ME THAT I DIDN'T WANT TO TAKE  
04:46 PM 24 BECAUSE IT WAS LESS PAY.

04:46 PM 25 Q. BUT YOU DON'T HAVE ANY REASON TO BELIEVE --

TRANSCRIPT OF PROCEEDINGS

271

04:46 PM 1 THE COURT: WAS WHAT?

04:46 PM 2 THE WITNESS: LESS PAY.

04:46 PM 3 THE COURT: OKAY.

04:46 PM 4 BY MS. MAHONY:

04:46 PM 5 Q. I'M SORRY. SO YOU DON'T HAVE ANY REASON TO BELIEVE  
04:46 PM 6 THAT YOU WERE MOVED TO ACCOUNTS PAYABLE BECAUSE OF YOUR  
04:46 PM 7 RACE?

04:46 PM 8 A. NO.

04:46 PM 9 Q. OKAY. MS. CRAIN, YOU'VE ATTENDED NUMEROUS TRAINING  
04:46 PM 10 COURSES WHILE EMPLOYED AT LUFKIN, CORRECT?

04:46 PM 11 A. YES.

04:46 PM 12 Q. AT ONE POINT I THINK YOU AND MS. RUSSELL ACTUALLY  
04:47 PM 13 WENT OUT TO EITHER NORTH OR SOUTH CAROLINA FOR A WEEK-LONG  
04:47 PM 14 TRAINING SEMINAR, CORRECT?

04:47 PM 15 A. YES.

04:47 PM 16 Q. YOU'VE ATTENDED A LOT OF COMPUTER TRAINING?

04:47 PM 17 A. UH-HUH.

04:47 PM 18 Q. IN FACT, YOU HAD VERY LITTLE COMPUTER TRAINING  
04:47 PM 19 BEFORE YOU CAME TO LUFKIN?

04:47 PM 20 A. EXACTLY.

04:47 PM 21 Q. AND YOU FEEL LIKE YOU'VE RECEIVED SUFFICIENT  
04:47 PM 22 TRAINING WHILE AT LUFKIN TO DO YOUR JOB AT LUFKIN  
04:47 PM 23 INDUSTRIES?

04:47 PM 24 A. YES.

04:47 PM 25 Q. IN FACT, WHILE YOU'VE BEEN EMPLOYED AT LUFKIN

04:47 PM 1 THERE'S NOT ANY TRAINING OPPORTUNITY OR SEMINAR OR COURSE  
04:47 PM 2 THAT YOU'VE ASKED TO TAKE OR TO ATTEND WHERE THE COMPANY  
04:47 PM 3 SAID NO, ISN'T THAT CORRECT?

04:47 PM 4 A. THAT'S CORRECT.

04:47 PM 5 Q. SO EVER SINGLE TRAINING OPPORTUNITY THAT YOU'VE  
04:47 PM 6 ASKED FOR, YOU'VE GOTTEN THE TRAINING? YOU'VE ATTENDED A  
04:47 PM 7 LOT OF TRAINING COURSES AND YOU'VE DEVELOPED, YOU KNOW,  
04:47 PM 8 COMPUTER SKILLS, AMONG OTHER THINGS?

04:47 PM 9 A. UH-HUH.

04:47 PM 10 Q. AND LUFKIN INDUSTRIES IS THE ONE THAT AFFORDED YOU  
04:47 PM 11 THOSE TRAINING OPPORTUNITIES?

04:47 PM 12 A. I'M SORRY?

04:47 PM 13 Q. LUFKIN INDUSTRIES WAS THE ONE WHO MADE THOSE  
04:48 PM 14 TRAINING OPPORTUNITIES AVAILABLE?

04:48 PM 15 A. UH-HUH.

04:48 PM 16 Q. NOW, MS. CRAIN, YOU TESTIFIED THAT YOU HEARD MR.  
04:48 PM 17 BARBAY MAKE A SINGLE RACIAL JOKE --

04:48 PM 18 A. YES.

04:48 PM 19 Q. -- WHILE YOU WERE IN THE OLD BUILDING?

04:48 PM 20 A. UH-HUH.

04:48 PM 21 Q. AND WHILE YOU WERE IN HUMAN RESOURCES, HE WOULD SAY  
04:48 PM 22 THAT, YOU KNOW, APPLICANTS WERE LAZY OR IDIOTS, I THINK  
04:48 PM 23 WAS THE WORDS THAT YOU USED?

04:48 PM 24 A. UH-HUH.

04:48 PM 25 Q. OTHER THAN THOSE TWO COMMENTS, ONE WHICH YOU SAID



## TRANSCRIPT OF PROCEEDINGS

273

04:48 PM 1 HAD A RACIAL REMARK IN IT, AND THE OTHER, WHICH I THINK

04:48 PM 2 YOU'LL AGREE THERE WAS NO MENTION OF RACE --

04:48 PM 3 A. YES.

04:49 PM 4 Q. -- IN WHAT YOU HEARD --

04:49 PM 5 A. UH-HUH.

04:49 PM 6 Q. CORRECT?

04:49 PM 7 A. CORRECT.

04:49 PM 8 Q. YOU CAN'T RECALL -- THERE HAVE BEEN NO OTHER RACIAL

04:49 PM 9 REMARKS THAT HAVE BEEN MADE IN YOUR PRESENCE, IS THAT

04:49 PM 10 CORRECT?

04:49 PM 11 A. NOT IN MY PRESENCE, NO.

04:49 PM 12 Q. AND YOU'VE WORKED IN A NUMBER OF, WITH A NUMBER OF

04:49 PM 13 PEOPLE IN THE HUMAN RESOURCES SUITE BESIDES MR. BARBAY,

04:49 PM 14 ISN'T THAT CORRECT?

04:49 PM 15 A. YES.

04:49 PM 16 Q. YOU'VE WORKED WITH MR. PEREZ?

04:49 PM 17 A. YES.

04:49 PM 18 Q. CORRECT?

04:49 PM 19 A. CORRECT.

04:49 PM 20 Q. AND HE WAS THE VICE PRESIDENT OVER HUMAN RESOURCES

04:49 PM 21 FOR MUCH OF THE TIME THAT YOU WERE IN HUMAN RESOURCES,

04:49 PM 22 CORRECT?

04:49 PM 23 A. UH-HUH.

04:49 PM 24 Q. AND YOU'VE NEVER HEARD MR. PEREZ MAKE A RACIAL

04:49 PM 25 REMARK OR COMMENT, HAVE YOU?

TRANSCRIPT OF PROCEEDINGS

274

04:49 PM 1 A. NO.

04:49 PM 2 Q. AND YOU'VE WORKED WITH JOHN HAVARD?

04:49 PM 3 A. UH-HUH.

04:49 PM 4 Q. WHO IS THE HUMAN RESOURCES MANAGER?

04:49 PM 5 A. UH-HUH.

04:49 PM 6 Q. AND YOU'VE NEVER HEARD JOHN HAVARD MAKE A RACIAL  
04:49 PM 7 REMARK OR COMMENT, HAVE YOU?

04:49 PM 8 A. NO.

04:49 PM 9 Q. AND YOU'VE WORKED WITH JENNY RUSSELL, WHO IS THE  
04:49 PM 10 BENEFITS MANAGER, AND MS. RUSSELL, SHE'S WHITE, CORRECT?

04:49 PM 11 A. UH-HUH.

04:49 PM 12 Q. AND I THINK YOU SAID MS. RUSSELL -- SHE'S BEEN YOUR  
04:49 PM 13 SUPERVISOR FOR --

04:49 PM 14 A. SINCE I'VE BEEN THERE.

04:50 PM 15 Q. SINCE YOU'VE BEEN THERE? AND YOU'VE NEVER HEARD  
04:50 PM 16 JENNY RUSSELL MAKE A RACIAL REMARK OR COMMENT?

04:50 PM 17 A. NO.

04:50 PM 18 Q. YOU'VE ALSO WORKED WITH DWAYNE COLLINS IN HUMAN  
04:50 PM 19 RESOURCES AS WELL, CORRECT?

04:50 PM 20 A. UH-HUH.

04:50 PM 21 Q. AND YOU'VE NEVER HEARD DWAYNE COLLINS MAKE A RACIAL  
04:50 PM 22 REMARK OR COMMENT, CORRECT?

04:50 PM 23 A. NO.

04:50 PM 24 Q. FINALLY, YOU'VE WORKED WITH SUSAN CAMPBELL?

04:50 PM 25 A. UH-HUH.

## TRANSCRIPT OF PROCEEDINGS

275

04:50 PM 1 Q. WHO IS A SECRETARY IN HUMAN RESOURCES, IS THAT  
04:50 PM 2 CORRECT?

04:50 PM 3 A. CORRECT.

04:50 PM 4 Q. AND YOU'VE NEVER HEARD SUSAN CAMPBELL MAKE A RACIAL  
04:50 PM 5 REMARK OR COMMENT?

04:50 PM 6 A. NO.

04:50 PM 7 Q. SO BASICALLY, IN THE LAST TEN-PLUS YEARS YOU'VE  
04:50 PM 8 HEARD ONE RACIAL JOKE, A SINGLE RACIAL JOKE, AND A  
04:50 PM 9 STATEMENT MADE BY MR. BARBAY THAT DIDN'T REFER TO ANYONE'S  
04:50 PM 10 RACE?

04:50 PM 11 A. WELL, IT'S NOT LIKE THEY'RE GOING TO SAY IT WITH ME  
04:50 PM 12 RIGHT THERE. I'M SURE THEY DO, BUT THEY'RE NOT GOING TO  
04:50 PM 13 DO IT WITH ME THERE.

04:50 PM 14 Q. YOU HAVEN'T HEARD ANYONE SAY THAT?

04:51 PM 15 A. NO, I HAVEN'T.

04:51 PM 16 Q. AND NO ONE HAS REPORTED TO YOU THAT THEY'VE HEARD  
04:51 PM 17 THOSE COMMENTS?

04:51 PM 18 A. I MEAN, THEY WOULDN'T.

04:51 PM 19 Q. I THINK YOU TESTIFIED IN THE OLD BUILDING THAT YOU  
04:51 PM 20 WORKED GENERALLY WITH MR. BARBAY?

04:51 PM 21 A. NO, IN THE NEW BUILDING.

04:51 PM 22 Q. IN THE NEW BUILDING?

04:51 PM 23 A. YES.

04:51 PM 24 Q. OKAY. BUT HE ALSO OFFICED IN THE OLD BUILDING, SO  
04:51 PM 25 YOU HAD AN OFFICE TOGETHER?

## TRANSCRIPT OF PROCEEDINGS

276

04:51 PM 1 A. OH, YEAH. YES.

04:51 PM 2 Q. AND IN THE NEW BUILDING YOU WORKED WITH HIM?

04:51 PM 3 A. NO, I DIDN'T WORK WITH HIM, I JUST -- SOMETIMES, NOT

04:51 PM 4 ACTUALLY JUST EVERY DAY TO DAY, NO, JUST SOMETIMES.

04:51 PM 5 Q. OKAY. SO WHEN YOU TESTIFIED THAT, YOU KNOW, YOU

04:51 PM 6 WERE REQUIRED TO WORK WITH HIM, WHAT THAT REALLY WAS, YOU

04:51 PM 7 WOULD ANSWER HIS PHONES IF HE WAS ON THE OTHER LINE,

04:51 PM 8 CORRECT?

04:51 PM 9 A. YES.

04:51 PM 10 Q. AND YOU WOULD DO SOME FILING FOR HIM, JOB

04:51 PM 11 DESCRIPTIONS BASICALLY, IS THAT CORRECT?

04:51 PM 12 A. UH-HUH.

04:51 PM 13 Q. AND YOU MIGHT FAX SOMETHING, AN ADVERTISEMENT TO,

04:51 PM 14 YOU KNOW, A NEWSPAPER OR --

04:52 PM 15 A. WELL, I DID ALL THE -- SUSAN WOULD DO THEM UP AND I

04:52 PM 16 WOULD ACTUALLY SEND THEM TO THE NEWSPAPER.

04:52 PM 17 Q. BUT THAT'S REALLY ABOUT ALL THE WORK YOU DID WITH

04:52 PM 18 MR. BARBAY, CORRECT, IN HUMAN RESOURCES?

04:52 PM 19 A. YES.

04:52 PM 20 Q. SO IT DIDN'T REQUIRE YOU ALL WORKING TOGETHER?

04:52 PM 21 A. NO. HUH-UH.

04:52 PM 22 Q. OKAY. YOU WERE IN A SUPPORT ROLE?

04:52 PM 23 A. UH-HUH.

04:52 PM 24 Q. IS THAT A FAIR COMMENT?

04:52 PM 25 A. UH-HUH.

## TRANSCRIPT OF PROCEEDINGS

277

04:52 PM 1 Q. BUT YOU DID WORK IN ONE BIG OFFICE SUITE?

04:52 PM 2 A. YES.

04:52 PM 3 Q. AND DURING THAT ENTIRE TIME HE NEVER MADE ANY RACIAL

04:52 PM 4 REMARKS OR COMMENTS TO YOU?

04:52 PM 5 A. NO.

04:52 PM 6 Q. CORRECT?

04:52 PM 7 A. NO.

04:52 PM 8 Q. HE NEVER YELLED AT YOU?

04:52 PM 9 A. WE NEVER TALKED. WE NEVER SPOKE.

04:52 PM 10 Q. AND YOU NEVER HEARD HIM CALL YOU DUMB OR LAZY?

04:52 PM 11 A. NOT TO MY FACE.

04:52 PM 12 Q. WELL, YOU'VE REFERRED TO MR. BARBAY AS LAZY BEFORE,

04:52 PM 13 CORRECT?

04:52 PM 14 A. OH, YEAH. EVERYBODY IN THE OFFICE HAVE.

04:52 PM 15 Q. AND YOU'VE ALSO CALLED HIM OTHER NAMES?

04:52 PM 16 A. YES, JUST LIKE EVERYBODY ELSE IN THE OFFICE HAVE. I

04:53 PM 17 TAKE -- ALL THE WOMEN.

04:53 PM 18 Q. OKAY. MS. CRAIN, YOU'VE TESTIFIED -- AGAIN, LET'S

04:53 PM 19 TALK ABOUT THE JOKE THAT YOU SAY YOU OVERHEARD MR. BARBAY

04:53 PM 20 SAY IN THE OLD BUILDING.

04:53 PM 21 A. YES.

04:53 PM 22 Q. THIS WAS THE FIRST TIME YOU HAD EVER HEARD MR.

04:53 PM 23 BARBAY MAKE ANY KIND OF JOKE WITH A RACIAL COMMENT IN IT,

04:53 PM 24 CORRECT?

04:53 PM 25 A. THEY WOULD TELL -- THEY TOLD BLACK JOKES ALL THE

## TRANSCRIPT OF PROCEEDINGS

278

04:53 PM 1 TIME, BUT THAT'S THE FIRST TIME I EVER ACTUALLY HEARD THEM  
04:53 PM 2 SAY NIGGERS.

04:54 PM 3 MS. MAHONY: YOUR HONOR, MAY I APPROACH THE  
04:54 PM 4 WITNESS?

04:54 PM 5 THE COURT: MA'AM?

04:54 PM 6 BY MS. MAHONY:

04:54 PM 7 Q. MS. CRAIN, I'M HANDING YOU WHAT IS YOUR DEPOSITION  
04:54 PM 8 THAT YOU GAVE IN THIS CASE, AND IF YOU'LL TURN TO PAGE 65  
04:55 PM 9 IN THAT DEPOSITION AND START READING AT LINE 1.

04:55 PM 10 "YOU'VE JUST SAID THAT WHILE YOU WERE IN THE OLD  
04:55 PM 11 BUILDING YOU HEARD MR. BARBAY USE THE "N" WORD IN A  
04:55 PM 12 CONVERSATION WITH MR. SATTERWHITE. IS THIS THE FIRST TIME  
04:55 PM 13 YOU HEARD MR. BARBAY USE A RACIAL SLUR OR COMMENT?"

04:55 PM 14 ANSWER: "IN THE OLD BUILDING, YES."

04:55 PM 15 THE COURT: IS THAT SUPPOSED TO BE IN  
04:55 PM 16 CONTRADICTION TO SOMETHING SHE SAID BEFORE?

04:55 PM 17 MS. MAHONY: WELL, I THINK THAT SHE HAD  
04:55 PM 18 TESTIFIED THAT SHE HEARD HIM TELL BLACK JOKES.

04:55 PM 19 THE COURT: BLACK STORIES, YES.

04:55 PM 20 THE WITNESS: I MEAN, THEY ALL -- THEY ALWAYS  
04:55 PM 21 TOLD BLACK JOKES ALL THE TIME, BUT THAT'S THE FIRST TIME  
04:55 PM 22 I'VE HEARD HIM ACTUALLY SAY "NIGGERS."

04:55 PM 23 I MEAN, I DIDN'T HAVE A PROBLEM WITH THE BLACK  
04:55 PM 24 JOKES, I DEALT WITH IT, BUT THAT, NO.

04:55 PM 25 THE COURT: IF YOU'RE GOING TO USE IT TO

## TRANSCRIPT OF PROCEEDINGS

279

04:56 PM 1 IMPEACH, USE IT TO IMPEACH, BUT NOT JUST TO READ HER

04:56 PM 2 TESTIMONY.

04:56 PM 3 BY MS. MAHONY:

04:56 PM 4 Q. MS. CRAIN, YOU'VE TOLD JOKES IN THE OFFICE BEFORE,

04:56 PM 5 HAVEN'T YOU?

04:56 PM 6 A. YES.

04:56 PM 7 Q. AND YOU MIGHT HAVE REFERRED TO SOMEONE'S RACE IN

04:56 PM 8 THOSE JOKES AS WELL?

04:56 PM 9 A. I'M NOT SURE.

04:56 PM 10 Q. NOW, WHEN YOU HEARD MR. BARBAY MAKE, USE THE "N"

04:56 PM 11 WORD IN THIS JOKE, HE WASN'T IN HUMAN RESOURCES AT THE

04:56 PM 12 TIME, CORRECT?

04:56 PM 13 A. NO. I DON'T KNOW IF HE WAS CONSIDERED -- I'M NOT

04:56 PM 14 SURE WHAT HE WAS CONSIDERED.

04:56 PM 15 Q. BUT HE WASN'T IN HUMAN RESOURCES, HE WAS A

04:56 PM 16 PHOTOGRAPHER, CORRECT?

04:56 PM 17 A. YES.

04:56 PM 18 Q. OKAY. I'LL REPRESENT TO YOU THAT MR. BARBAY MOVED

04:56 PM 19 FROM PHOTOGRAPHER TO HUMAN RESOURCES IN EARLY 1994. SO

04:56 PM 20 THIS ONE -- THIS JOKE YOU OVERHEARD HAD TO HAVE HAPPENED

04:56 PM 21 BEFORE 1994, CORRECT?

04:56 PM 22 A. ALL I KNOW IS, WE WERE IN THE OLD BUILDING. I DON'T

04:56 PM 23 KNOW THE YEAR, THE DATE OR ANYTHING. I DON'T KNOW.

04:56 PM 24 Q. BUT YOU KNOW HE WAS A PHOTOGRAPHER?

04:57 PM 25 A. I THINK HE WAS A PHOTOGRAPHER.

## TRANSCRIPT OF PROCEEDINGS

280

04:57 PM 1 Q. OKAY. NOW, YOU SAID YOU OVERHEARD THIS COMMENT.

04:57 PM 2 YOU DIDN'T STOP TO LISTEN --

04:57 PM 3 A. NO.

04:57 PM 4 Q. -- AT THE OFFICE DOOR, DID YOU?

04:57 PM 5 A. NO.

04:57 PM 6 Q. AND ACTUALLY, YOU HEARD MR. BARBAY USE THE "N" WORD

04:57 PM 7 IN THE COUPLE OF SECONDS IT TOOK YOU TO WALK PAST HIS

04:57 PM 8 OFFICE DOOR?

04:57 PM 9 A. UH-HUH.

04:57 PM 10 Q. I BELIEVE YOUR TESTIMONY IN THIS CASE HAS BEEN THAT

04:57 PM 11 YOU NEVER HEARD MR. BARBAY USE THE "N" WORD AGAIN AFTER

04:57 PM 12 THAT?

04:57 PM 13 A. NO.

04:57 PM 14 Q. NOW, YOU DON'T BELIEVE THAT THEY SAW YOU WHEN YOU

04:57 PM 15 WALKED BY THE DOOR?

04:57 PM 16 A. OH, NO. YOU CAN'T SEE PEOPLE WHEN THEY WERE COMING

04:57 PM 17 UNLESS THEY PASSED BY THE DOOR.

04:57 PM 18 Q. AND YOU CAN'T RECALL THAT ANYONE ELSE WAS AROUND?

04:57 PM 19 A. NO, I WAS COMING FROM LUNCH BY MYSELF.

04:57 PM 20 Q. AND YOU DIDN'T WRITE ANYTHING DOWN ABOUT WHAT YOU

04:57 PM 21 OVERHEARD?

04:57 PM 22 A. NO.

04:57 PM 23 Q. AND YOU UNDERSTAND LUFKIN INDUSTRIES HAS A POLICY

04:58 PM 24 FOR REPORTING SOMETHING THAT, YOU KNOW, YOU THINK IS

04:58 PM 25 DISCRIMINATORY OR --

TRANSCRIPT OF PROCEEDINGS

281

04:58 PM 1 A. UH-HUH.

04:58 PM 2 Q. AND YOU DIDN'T REPORT THIS INCIDENT TO ANYONE AT THE  
04:58 PM 3 TIME, DID YOU?

04:58 PM 4 A. BECAUSE NOTHING WOULD HAVE BEEN DONE. IT WOULD HAVE  
04:58 PM 5 BEEN A WASTE OF TIME. SO I KEPT IT TO MYSELF.

04:58 PM 6 Q. BOTTOM LINE, MS. CRAIN, YOU DIDN'T REPORT THE  
04:58 PM 7 INCIDENT TO ANYONE?

04:58 PM 8 A. NO, I DIDN'T.

04:58 PM 9 Q. IN FACT, YOU NEVER EVEN BROUGHT IT UP AGAIN UNTIL  
04:58 PM 10 MANY YEARS --

04:58 PM 11 A. EXACTLY.

04:58 PM 12 Q. -- LATER, IS THAT CORRECT?

04:58 PM 13 A. THAT'S CORRECT.

04:58 PM 14 Q. AND EVEN THEN YOU DIDN'T GO TO MR. PEREZ --

04:58 PM 15 A. NO.

04:58 PM 16 Q. -- AND COMPLAIN, DID YOU?

04:58 PM 17 A. NO.

04:58 PM 18 Q. ACTUALLY, MR. PEREZ HAD COME TO YOU AND TOLD YOU  
04:58 PM 19 THAT YOUR JOB DUTIES WERE GOING TO BE CHANGING, IS THAT  
04:58 PM 20 CORRECT?

04:58 PM 21 A. UH-HUH.

04:58 PM 22 Q. NOW, THE NEXT TIME YOU HEARD MR. BARBAY MAKE ANY  
04:58 PM 23 SORT OF A COMMENT, YOU SAID CALLING PEOPLE HE INTERVIEWED  
04:58 PM 24 DUMB OR LAZY I THINK, WAS IN THE CORPORATION BUILDING?

04:58 PM 25 A. YES.

04:58 PM 1 THE COURT: THIS IS REPETITIVE, COUNSEL.

04:59 PM 2 MS. MAHONY: OKAY. WELL, I JUST --

04:59 PM 3 THE COURT: I'M GLAD IT'S OKAY, BUT IT'S  
04:59 PM 4 REPETITIVE. YOU CAN ASK IT ONE MORE TIME AND THEN QUIT.  
04:59 PM 5 BY MS. MAHONY:

04:59 PM 6 Q. NOW, THESE COMMENTS THAT MR. BARBAY MADE IN THE NEW  
04:59 PM 7 BUILDING WHEN HE WOULD REFER TO PEOPLE HE INTERVIEWED,  
04:59 PM 8 AGAIN, HE DIDN'T REFER TO ANYONE'S RACE, IS THAT CORRECT?

04:59 PM 9 A. CORRECT.

04:59 PM 10 Q. AND YOU DON'T KNOW THE RACE OF PEOPLE HE  
04:59 PM 11 INTERVIEWED?

04:59 PM 12 A. MOST OF THE TIME I DID BECAUSE OF THE ADS I WOULD  
04:59 PM 13 SEND. SO MOST OF THE TIME I DID KNOW WHAT RACE THEY WOULD  
04:59 PM 14 BE BECAUSE OF THE ADS.

04:59 PM 15 Q. BUT YOU DIDN'T GO TO TWC WITH HIM, DID YOU?

04:59 PM 16 A. NO.

04:59 PM 17 Q. YOU DIDN'T MAKE OUT THE INTERVIEW LIST, DID YOU?

04:59 PM 18 A. NO.

04:59 PM 19 Q. YOU DIDN'T TYPE UP THE JOB REQUISITION FORM, DID  
04:59 PM 20 YOU?

04:59 PM 21 A. NO, THOSE CAME FROM THE DEPARTMENT HEADS I GUESS. I  
04:59 PM 22 DON'T KNOW.

04:59 PM 23 Q. SO THIS IS JUST SOMETHING YOU JUST BELIEVE?

04:59 PM 24 A. NO. WHEN THE APPLICANTS WOULD COME IN, SOMETIMES I  
05:00 PM 25 WOULD HELP SUSAN PROCESS THEM, GET THEM READY FOR

## TRANSCRIPT OF PROCEEDINGS

283

05:00 PM 1 ORIENTATION, TELL THEM ABOUT THEIR BENEFITS. SO, YES, YOU

05:00 PM 2 KNOW, IF THEY CAME IN, I KNEW, YOU KNOW.

05:00 PM 3 Q. AND YOU KNEW THAT THIS APPLICANT WAS THE ONE THAT

05:00 PM 4 MR. BARBAY WAS REFERRING TO, EVEN THOUGH --

05:00 PM 5 A. OR THIS GROUP. NOT JUST PARTICULARLY ONE PERSON,

05:00 PM 6 THIS GROUP.

05:00 PM 7 Q. AND WERE SOME OF THESE APPLICANTS WHITE?

05:00 PM 8 A. VERY SELDOM. IF THEY WERE, THEY WERE LIKE I GUESS

05:00 PM 9 YOU WOULD CONSIDER LOW.

05:00 PM 10 Q. AND MS. CRAIN, YOU'VE NEVER MADE ANY COMPLAINTS TO

05:00 PM 11 ANYONE, ABOUT THESE COMMENTS, TO ANYONE AT LUFKIN

05:00 PM 12 INDUSTRIES, CORRECT?

05:00 PM 13 A. HUH-UH.

05:00 PM 14 Q. IS THAT CORRECT?

05:00 PM 15 A. THAT'S CORRECT.

05:00 PM 16 Q. AND YOU NEVER EVEN BROUGHT THESE ALLEGED COMMENTS TO

05:00 PM 17 THE ATTENTION OF MR. PEREZ WHEN YOU COMPLAINED TO HIM, DID

05:00 PM 18 YOU?

05:00 PM 19 A. NO.

05:01 PM 20 Q. MS. CRAIN, YOU KEPT A JOURNAL AT WORK, DIDN'T YOU?

05:01 PM 21 A. YES.

05:01 PM 22 Q. AND YOU RECORDED IN YOUR JOURNAL THINGS THAT YOU DID

05:01 PM 23 NOT THINK WERE RIGHT, IS THAT CORRECT?

05:01 PM 24 A. I JUST WROTE THINGS THAT I FELT AT THE TIME.

05:01 PM 25 Q. FOR EXAMPLE, YOU WROTE IN YOUR JOURNAL THAT ONE DAY

## TRANSCRIPT OF PROCEEDINGS

284

05:01 PM 1 YOU WERE UPSET YOU DIDN'T GET FLOWERS FOR SECRETARIES  
05:01 PM 2 WEEK?

05:01 PM 3 A. YEAH.

05:01 PM 4 Q. BUT YOU NEVER WROTE IN YOUR JOURNAL ANYTHING ABOUT  
05:01 PM 5 MR. BARBAY USING THE "N" WORD, DID YOU?

05:01 PM 6 A. NO. I DIDN'T WRITE EVERY DAY IN IT.

05:01 PM 7 Q. AND YOU DIDN'T WRITE --

05:01 PM 8 A. IT REALLY WAS NOT A JOURNAL, IT WAS JUST WHEN I HAD  
05:01 PM 9 TIME I WOULD JOT THINGS DOWN, MY THOUGHTS OR SOMETHING IF  
05:01 PM 10 SOMETHING HAD HAPPENED. IT REALLY WAS NOT A JOURNAL.

05:01 PM 11 Q. AND YOU NEVER WROTE IN THERE ABOUT MR. BARBAY MAKING  
05:01 PM 12 A COMMENT THAT --

05:01 PM 13 A. NO.

05:01 PM 14 Q. -- APPLICANTS WERE DUMB OR LAZY?

05:01 PM 15 A. NO.

05:01 PM 16 Q. YOU NEVER WROTE IN YOUR JOURNAL THAT YOU THOUGHT MR.  
05:01 PM 17 BARBAY WAS A RACIST?

05:01 PM 18 A. NO.

05:02 PM 19 THE COURT: SHE SAYS THAT SHE DIDN'T KEEP IT AS  
05:02 PM 20 A JOURNAL, MA'AM. YOU KEEP REFERRING TO IT. I GUESS IT  
05:02 PM 21 WILL BECOME ONE NOW.

05:02 PM 22 THE WITNESS: I MEAN, IT WAS NOT A JOURNAL.

05:02 PM 23 THE COURT: BECAUSE YOU CALL IT A JOURNAL, YOU  
05:02 PM 24 CALL IT A JOURNAL, IT IS A JOURNAL IN YOUR MIND AND WILL  
05:02 PM 25 BE IN THIS RECORD.

TRANSCRIPT OF PROCEEDINGS

285

05:02 PM 1 MS. MAHONY: OKAY.

05:02 PM 2 BY MS. MAHONY:

05:02 PM 3 Q. WELL, IT'S A NOTEBOOK YOU KEPT?

05:02 PM 4 A. YES.

05:02 PM 5 Q. AND YOU MADE DAILY ENTRIES, OR NOT DAILY, BUT DATE  
05:02 PM 6 ENTRIES IN IT, CORRECT?

05:02 PM 7 A. SOMETIMES, YES.

05:02 PM 8 Q. OKAY. ONE MOMENT MS. CRAIN.

05:03 PM 9 THE COURT: IF YOU HAVE NOTHING FURTHER, WE'RE  
05:03 PM 10 GOING TO ADJOURN UNTIL 9:00 O'CLOCK IN THE MORNING.

05:03 PM 11 MS. MAHONY: OKAY, YOUR HONOR. I DO HAVE  
05:03 PM 12 NOTHING FURTHER.

05:03 PM 13 THE COURT: OH, I ASSUMED YOU WERE THROUGH. YOU  
05:03 PM 14 WERE JUST --

05:03 PM 15 MS. MAHONY: I WAS JUST LOOKING THROUGH MY  
05:03 PM 16 NOTES, YOUR HONOR.

05:03 PM 17 THE COURT: WELL, I WILL WAIT FOR YOU.

05:03 PM 18 MS. MAHONY: I'LL PASS THE WITNESS.

05:03 PM 19 THE COURT: THANK YOU. THEN WE'LL ADJOURN.

05:03 PM 20 THE MARSHAL: ALL RISE.

05:03 PM 21 THE COURT: DO YOU WANT TO ASK ANY MORE  
05:03 PM 22 QUESTIONS OF THIS WITNESS?

05:03 PM 23 MR. GARRIGAN: IF I COULD HAVE FIVE MINUTES, WE  
05:03 PM 24 CAN LET HER GO HOME TO LUFKIN.

05:03 PM 25 THE COURT: WELL, IT WILL JUST PING-PONG BACK

TRANSCRIPT OF PROCEEDINGS

286

05:03 PM 1 AND FORTH.

05:03 PM 2 BUT SEE IF YOU CAN LIVE UP TO YOUR PROMISE OF  
05:03 PM 3 FIVE MINUTES.

05:03 PM 4 MR. GARRIGAN: ALL RIGHT.

05:03 PM 5 REDIRECT EXAMINATION

05:03 PM 6 BY MR. GARRIGAN:

05:03 PM 7 Q. NOW, WERE YOU TREATED FAIRLY ALL THE TIME?

05:04 PM 8 A. I DON'T THINK I WAS MISTREATED, BUT I DON'T THINK I  
05:04 PM 9 WAS GIVEN THE OPPORTUNITIES THAT I COULD HAVE BEEN GIVEN.

05:04 PM 10 Q. WERE YOU LEFT OUT OF OFFICE ACTIVITIES?

05:04 PM 11 A. I DON'T THINK SO. I'M NOT SURE, BUT I DON'T THINK  
05:04 PM 12 SO.

05:04 PM 13 Q. WELL, WEREN'T THERE OFFICE LUNCHEONS AND STUFF?

05:04 PM 14 MS. MAHONY: OBJECTION, LEADING.

05:04 PM 15 THE COURT: YES, MA'AM, YOU'RE CORRECT. I  
05:04 PM 16 OVERRULE YOUR OBJECTION.

05:04 PM 17 THE WITNESS: THERE WAS ONCE. THAT I ACTUALLY  
05:04 PM 18 KNEW OF, THERE WAS ONCE.

05:04 PM 19 BY MR. GARRIGAN:

05:04 PM 20 Q. WERE THERE OTHER TIMES WHEN YOU FELT SORT OF LEFT  
05:04 PM 21 OUT?

05:04 PM 22 A. YEAH.

05:04 PM 23 Q. DID YOU THINK IT HAD TO DO WITH YOUR RACE?

05:04 PM 24 A. I WONDERED.

05:04 PM 25 Q. WAS THERE A TIME WHEN YOU DIDN'T GET FLOWERS AND ALL

TRANSCRIPT OF PROCEEDINGS

287

05:04 PM 1 THE OTHER WOMEN IN THE OFFICE DID?

05:04 PM 2 A. UH-HUH.

05:04 PM 3 Q. WAS THERE EVER ANY EXPLANATION FOR WHY YOU WERE LEFT  
05:05 PM 4 OUT OF THAT?

05:05 PM 5 A. NOBODY SAID A WORD.

05:05 PM 6 Q. WERE THE WOMEN WHO DID GET FLOWERS, WERE THEY ALL  
05:05 PM 7 WHITE?

05:05 PM 8 A. YES.

05:05 PM 9 Q. NOW, THIS -- WHEN YOU REPORTED TO MR. PEREZ THE  
05:05 PM 10 PROBLEMS YOU HAD WITH MR. BARBAY, THAT WAS BECAUSE MR.  
05:05 PM 11 PEREZ HAD COME TO YOU TO TELL YOU YOUR DUTIES WERE GOING  
05:05 PM 12 TO CHANGE?

05:05 PM 13 THE COURT: THIS IS REPETITIOUS. YOU ALREADY  
05:05 PM 14 PROVED THIS ON YOUR OPENING EXAMINATION.

05:05 PM 15 MR. GARRIGAN: ALL RIGHT. I DID NOT KNOW IT WAS  
05:05 PM 16 CLEAR.

05:05 PM 17 THE COURT: IT WAS CLEAR.

05:05 PM 18 MR. GARRIGAN: ALL RIGHT.

05:05 PM 19 THE COURT: SHE WENT TO HIM TO DO A JOB WITH  
05:05 PM 20 BARBAY, AND SHE SAID, "I'M GOING TO HAVE A PROBLEM WITH  
05:05 PM 21 THAT." "WHAT'S THE PROBLEM?" SHE TOLD HIM THE PROBLEM  
05:05 PM 22 AND SHE HAD TO DO THE WORK ANYHOW.

05:05 PM 23 NOW, IF YOU WANT TO MAKE IT LONGER, YOU CAN DO  
05:05 PM 24 SO.

05:05 PM 25 MR. GARRIGAN: I'M NOT TRYING TO. YOUR MEMORY

TRANSCRIPT OF PROCEEDINGS

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05:06 PM 1 IS BETTER THAN MINE. I'LL SKIP TO SOMETHING ELSE.

05:06 PM 2 BY MR. GARRIGAN:

05:06 PM 3 Q. THE TRAINING THAT YOU RECEIVED --

05:06 PM 4 A. UH-HUH.

05:06 PM 5 Q. WAS THAT TRAINING SO THAT YOU COULD PERFORM THE JOB

05:06 PM 6 YOU WERE ALREADY DOING, OR WAS IT TRAINING SO THAT YOU

05:06 PM 7 COULD ADVANCE YOUR CAREER?

05:06 PM 8 A. I WOULD THINK IT WOULD BE TO ADVANCE.

05:06 PM 9 Q. OKAY. WHEN YOU HAD THAT CONVERSATION WITH MR. PEREZ

05:06 PM 10 ABOUT MR. BARBAY, WHAT WAS MR. PEREZ'S RESPONSE?

05:06 PM 11 A. HE EITHER SAID "I UNDERSTAND" OR -- I THINK THAT'S

05:06 PM 12 WHAT HE SAID, "I UNDERSTAND." THAT'S ALL HE SAID, JUST "I

05:06 PM 13 UNDERSTAND."

05:06 PM 14 Q. OKAY. NOW, YOU WERE NOT INVOLVED IN THE HIRING AND

05:06 PM 15 THE INITIAL ASSIGNMENTS, IS THAT CORRECT?

05:06 PM 16 A. NO.

05:06 PM 17 Q. EXCEPT YOU DID HAVE SOME ACTIVITY WITH THE

05:06 PM 18 ORIENTATION?

05:06 PM 19 A. YES.

05:06 PM 20 Q. WERE YOU ABLE TO OBSERVE ANY PATTERNS IN THE WAY

05:06 PM 21 PEOPLE WERE HIRED INTO THE DIFFERENT DIVISIONS AT LUFKIN?

05:06 PM 22 MS. MAHONY: OBJECTION, LEADING.

05:07 PM 23 THE COURT: SUSTAINED.

05:07 PM 24 THE WITNESS: WHAT DO YOU MEAN, PATTERNS?

05:07 PM 25 BY MR. GARRIGAN:

05:07 PM 1 Q. WOULD YOU TELL US WHETHER YOU OBSERVED ANY RACIAL  
05:07 PM 2 PATTERNS?

05:07 PM 3 MS. MAHONY: OBJECTION, YOUR HONOR.

05:07 PM 4 THE COURT: NOW, THAT'S THE LEADING PART.

05:07 PM 5 BUT ANYHOW, GO AHEAD AND ANSWER IT.

05:07 PM 6 THE WITNESS: USUALLY WHEN I WENT TO

05:07 PM 7 ORIENTATION, I COULD -- I COULD TELL IF --

05:07 PM 8 YOU KNOW, THIS WAS -- THIS WOULD BE BEFORE I

05:07 PM 9 WAS --

05:07 PM 10 IF I DIDN'T PROCESS THEM, I WOULD KNOW BASICALLY  
05:07 PM 11 WHERE THEY WERE GOING, WHAT DEPARTMENT THEY WERE GOING TO.

05:07 PM 12 BY MR. GARRIGAN:

05:07 PM 13 Q. HOW?

05:07 PM 14 A. JUST WHO WAS THERE. THE PEOPLE THAT WERE THERE.

05:07 PM 15 Q. DID RACE HAVE ANYTHING TO DO WITH IT?

05:07 PM 16 A. I THINK SO.

05:07 PM 17 Q. AND WHAT WERE YOU ABLE TO OBSERVE ABOUT THAT? DID  
05:07 PM 18 RACE HAVE ANYTHING TO DO WITH THE INITIAL ASSIGNMENTS?

05:07 PM 19 MS. MAHONY: OBJECTION.

05:07 PM 20 THE WITNESS: I THINK SO.

05:07 PM 21 MS. MAHONY: SPECULATION.

05:07 PM 22 THE COURT: YOU'RE RIGHT. THE OBJECTION IS  
05:07 PM 23 SUSTAINED.

05:08 PM 24 YOU'VE USED YOUR TIME, AND YOU HAVE --

05:08 PM 25 MR. GARRIGAN: THANK YOU.

TRANSCRIPT OF PROCEEDINGS

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05:08 PM 1 THE COURT: -- REPEATED YOURSELF.  
05:08 PM 2 I HAVE --  
05:08 PM 3 THIS COURT'S IN RECESS UNTIL 9:00 O'CLOCK IN THE  
05:08 PM 4 MORNING.  
05:08 PM 5 THE CSO: ALL RISE.  
05:08 PM 6 THE COURT: WAIT JUST A MOMENT. I'M GOING TO  
05:08 PM 7 WRITE DOWN THE TIME.

8

9

10

11

CERTIFICATE

12

I CERTIFY THAT THE FOREGOING IS A CORRECT

13

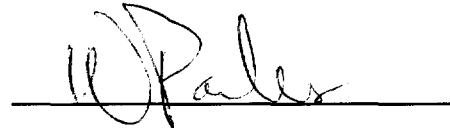
TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

14

ABOVE-ENTITLED MATTER.

15

16



12-15-03

17

WENDELL R. PARKS, CP CM

DATE

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## TRANSCRIPT OF PROCEEDINGS

157

02:09 PM 1 DID NOT CHOOSE THE SENIOR QUALIFIED PERSON, ISN'T THAT  
02:09 PM 2 RIGHT?

02:09 PM 3 A. NO, SIR, BECAUSE I TRIED TO BE FAIR.

02:10 PM 4 Q. OKAY.

02:10 PM 5 A. BY THE WAY, THE TWO GENTLEMEN I CHOSE, ONE WAS  
02:10 PM 6 HISPANIC AND ONE WAS WHITE.

02:10 PM 7 Q. IN WHAT -- ONE WAS HISPANIC AND ONE WAS WHITE?

02:10 PM 8 A. THE TWO INSPECTORS I MADE, ONE WAS HISPANIC AND ONE  
02:10 PM 9 WAS WHITE.

02:10 PM 10 Q. AND THE ONLY PERSON WHO WANTED THE JOB --

02:10 PM 11 A. HE WAS WHITE.

02:10 PM 12 Q. -- WHO WAS DISQUALIFIED --

02:10 PM 13 A. HE WAS WHITE.

02:10 PM 14 Q. OKAY. NOW, MR. MCCLAIN, AM I CORRECT THAT YOU, AS  
02:10 PM 15 PART OF YOUR COMMUNITY SERVICE, YOU SERVED AS THE NAACP  
02:10 PM 16 PRESIDENT?

02:10 PM 17 A. YES, SIR.

02:10 PM 18 Q. AND THAT WAS FROM 1983 TO 1990 IN LUFKIN, TEXAS?

02:10 PM 19 A. YES, BUT I SERVED IN WELLS, TEXAS, FROM 1981 TO  
02:10 PM 20 1983.

02:10 PM 21 Q. ALL RIGHT. SO YOU HAVE SIGNIFICANT EXPERIENCE IN  
02:10 PM 22 LEADERSHIP POSITIONS WITH THE NAACP?

02:10 PM 23 A. YES.

02:10 PM 24 Q. ALL RIGHT.

02:10 PM 25 A. NOW, AGAIN, I LEARNED FROM EXPERIENCE. OTHER THAN

## TRANSCRIPT OF PROCEEDINGS

158

02:11 PM 1 BEING A MINISTER, I'VE NEVER BEEN TRAINED TO BE A LEADER,  
02:11 PM 2 SO I LEARNED -- AS I OFTEN SAY, I WENT TO HARD-KNOCK  
02:11 PM 3 SCHOOL. I LEARNED IT THE HARD WAY. WHATEVER I WOULD GO  
02:11 PM 4 THROUGH AND EXPERIENCE, ASK QUESTIONS, READ, THAT'S HOW I  
02:11 PM 5 GAINED WHATEVER KNOWLEDGE I ACQUIRED.

02:11 PM 6 Q. NOW, MR. MCCLAIN, THE KNOWLEDGE THAT YOU GAINED AS  
02:11 PM 7 NAACP PRESIDENT FOR A PERIOD OF A DECADE IN THE 80S, IS IT  
02:11 PM 8 FAIR TO SAY THAT THAT HAS MADE YOU PARTICULARLY SENSITIVE  
02:11 PM 9 TO RACIAL COMMENTS OR RACIAL EPITHETS?

02:11 PM 10 A. NO, SIR, BECAUSE AS THE NAACP PRESIDENT, I DEFENDED  
02:11 PM 11 WHITES, BLACKS AND HISPANICS.

02:11 PM 12 Q. WELL, AREN'T YOU PARTICULARLY SENSITIVE TO THE IDEA  
02:11 PM 13 OF PEOPLE MAKING A RACIAL SLUR?

02:11 PM 14 A. WELL, I DON'T WANT ANYONE CALLING ME A NIGGER,  
02:11 PM 15 BECAUSE A NIGGER IS TRASH AND I'M NOT TRASH, SIR.

02:11 PM 16 Q. ABSOLUTELY, SIR, AND I COULDN'T AGREE WITH YOU MORE.  
02:11 PM 17 THAT IS A COMMENT THAT SHOULD NEVER BE MADE. I'M JUST  
02:11 PM 18 ASKING IF YOU IN PARTICULAR, BECAUSE YOU HAVE BEEN A  
02:11 PM 19 LEADER IN THE NAACP, ARE SENSITIVE TO IT AND KNOW WHAT TO  
02:11 PM 20 DO ABOUT IT?

02:12 PM 21 A. YES, I'M SENSITIVE, BUT NO MORE THAN ANY OTHER BLACK  
02:12 PM 22 PERSON WOULD BE.

02:12 PM 23 Q. FAIR ENOUGH, MR. MCCLAIN.

02:12 PM 24 AND AM I CORRECT THAT YOU CANNOT RECALL WHEN YOU  
02:12 PM 25 LAST HEARD ANY RACIAL COMMENT AT LUFKIN INDUSTRIES?

## TRANSCRIPT OF PROCEEDINGS

159

02:12 PM 1 A. YES, SIR, I CAN.

02:12 PM 2 Q. AND WHEN WAS THAT, SIR?

02:12 PM 3 A. I CAN'T TELL YOU THE DATE, BUT JUST THIS YEAR A  
02:12 PM 4 WHITE WORKER THAT WORKS WHERE I WORK IN THE PAINT HOUSE  
02:12 PM 5 MADE A COMMENT TO ANOTHER MAN, A BLACK MAN, THAT BLACK  
02:12 PM 6 FOLK COULDN'T GO TO HEAVEN. ONLY WHITE FOLK CAN GO TO  
02:12 PM 7 HEAVEN.

02:12 PM 8 AND I ASKED HIM WHY, AND WHAT HE SAID WAS,  
02:12 PM 9 BECAUSE WE WERE SUBHUMAN, WE'RE INFERIOR.

02:12 PM 10 Q. AND WHEN WAS THAT?

02:12 PM 11 A. THAT WAS THIS YEAR, SIR.

02:12 PM 12 Q. WHEN WAS THAT STATEMENT MADE?

02:12 PM 13 A. THAT WAS THIS YEAR.

02:12 PM 14 Q. WHEN?

02:12 PM 15 A. I DON'T KNOW THE EXACT DATE.

02:12 PM 16 Q. WELL, I ASSUME IT WAS AFTER JULY 8, 2003, ISN'T THAT  
02:12 PM 17 RIGHT, SIR?

02:12 PM 18 A. I DON'T REMEMBER. I DON'T REMEMBER EXACTLY WHEN IT  
02:12 PM 19 WAS MADE.

02:12 PM 20 Q. WELL, DO YOU RECALL AS OF YOUR DEPOSITION, I ASKED  
02:13 PM 21 YOU WHEN YOU -- WHEN WAS THE LAST TIME THAT YOU HEARD ANY  
02:13 PM 22 RACIAL COMMENTS MADE AT LUFKIN INDUSTRIES, AND YOU TOLD ME  
02:13 PM 23 THAT YOU COULDN'T REMEMBER, ISN'T THAT CORRECT?

02:13 PM 24 A. WELL, SIR, AS I SAID, IT'S BEEN A LONG TIME. IT'S  
02:13 PM 25 POSSIBLE THAT I REMEMBERED IT SINCE THEN. I'M NOT GOING

## TRANSCRIPT OF PROCEEDINGS

160

02:13 PM 1 TO TELL YOU ANY PARTICULAR TIME THAT I CAN REMEMBER

02:13 PM 2 EVERYTHING THAT HAPPENED OVER YEARS, FIFTEEN YEARS.

02:13 PM 3 Q. OKAY. AM I ALSO CORRECT THAT, OTHER THAN THE

02:13 PM 4 TESTIMONY THAT YOU GAVE ABOUT MR. ADAMS AND MR. OLDS, YOU

02:13 PM 5 DON'T KNOW PERSONALLY A SINGLE PERSON WHO HAS USED RACIAL

02:13 PM 6 SLURS OR COMMENTS ABOUT BLACK EMPLOYEES AT LUFKIN

02:13 PM 7 INDUSTRIES?

02:13 PM 8 A. WHAT NAMES DID YOU GIVE?

02:13 PM 9 Q. MR. ADAMS AND MR. OLDS.

02:13 PM 10 A. YOU MUST BE FORGETTING MR. DOVER. I MEAN, HE DIDN'T

02:13 PM 11 MAKE THE COMMENT, BUT HE LISTENED.

02:13 PM 12 Q. OKAY. LET'S INCLUDE MR. DOVER, WHO DIDN'T MAKE A

02:13 PM 13 COMMENT.

02:13 PM 14 A. RIGHT.

02:13 PM 15 Q. BUT OTHER THAN --

02:13 PM 16 A. BUT HE CONDONED IT.

02:13 PM 17 Q. I APOLOGIZE. AT LEAST AS OF JULY, 2003, OTHER THAN

02:13 PM 18 MR. ADAMS AND MR. OLDS, WHO MADE COMMENTS, AND MR. DOVER,

02:14 PM 19 WHO YOU SAY HEARD A COMMENT, YOU DON'T KNOW PERSONALLY A

02:14 PM 20 SINGLE PERSON WHO HAS USED RACIAL SLURS OR COMMENTS ABOUT

02:14 PM 21 BLACK EMPLOYEES, DO YOU?

02:14 PM 22 A. SIR, I HEAR SLANG OR INFERENCES TO RACE. THEY DON'T

02:14 PM 23 USE THE WORD "NIGGER," BUT THERE ARE DEGRADING REMARKS

02:14 PM 24 THROUGHOUT THE SHOP THAT'S BEEN MADE ON PARTICULAR

02:14 PM 25 OCCASIONS. EVEN SINCE THE LAST TIME I GAVE MY DEPOSITION

TRANSCRIPT OF PROCEEDINGS

161

02:14 PM 1 I'VE HEARD DEGRADING REMARKS MADE ABOUT BLACKS.

02:14 PM 2 Q. MR. MCCLAIN, IF YOU WOULD LOOK AT YOUR DEPOSITION AT  
02:14 PM 3 PAGE 183, PLEASE.

02:14 PM 4 A. OKAY.

02:14 PM 5 MR. GARRIGAN: WHICH DEPOSITION?

02:14 PM 6 MR. HAMEL: THE JULY 8, 2003, DEPOSITION.

02:14 PM 7 THE WITNESS: 83. OKAY.

02:14 PM 8 THE COURT: I THINK IT'S 183.

02:14 PM 9 MR. HAMEL: 183, SIR.

02:14 PM 10 THE WITNESS: OKAY.

02:14 PM 11 BY MR. HAMEL:

02:14 PM 12 Q. IN THAT DEPOSITION, YOU TESTIFIED PREVIOUSLY TO THE  
02:14 PM 13 QUESTION "AND OTHER THAN MR. ADAMS AND MR. OLDS, CAN YOU  
02:14 PM 14 NAME A SINGLE PERSON WHO YOU BELIEVE USED RACIAL SLURS OR  
02:15 PM 15 COMMENTS ABOUT BLACK EMPLOYEES?"

02:15 PM 16 ANSWER: "I HEARD ABOUT IT, BUT I DON'T KNOW OF  
02:15 PM 17 IT PERSONALLY."

02:15 PM 18 A. AND I'M SPEAKING OF THE WORD "NIGGER" OR SOMETHING  
02:15 PM 19 THAT THEY PERSONALLY CALLED A NAME. I WASN'T SPEAKING OF  
02:15 PM 20 SLANGS THAT ARE DEGRADING TO THE BLACK RACE. THAT WAS  
02:15 PM 21 JUST -- I WAS JUST TALKING ABOUT INDIVIDUALS.

02:15 PM 22 Q. THAT WAS YOUR TESTIMONY AT THAT TIME, WAS IT NOT?

02:15 PM 23 A. YES, SIR, AND -- THAT'S WHAT I TESTIFIED, YES, SIR.

02:15 PM 24 MR. GARRIGAN: YOUR HONOR, I WOULD LIKE TO ASK  
02:15 PM 25 FOR -- MAKE AN OBJECTION BASED ON OPTIONAL COMPLETENESS

TRANSCRIPT OF PROCEEDINGS

162

02:15 PM 1 AND ASK THAT THE WITNESS BE ABLE TO READ HIS ANSWER  
02:15 PM 2 THROUGH LINE 16.

02:15 PM 3 THE COURT: YOU CAN COME BACK TO IT ON YOUR  
02:15 PM 4 TIME.

02:15 PM 5 MR. GARRIGAN: THANK YOU.

02:15 PM 6 BY MR. HAMEL:

02:15 PM 7 Q. NOW, MR. MCCLAIN, NOTWITHSTANDING THE CONDITIONS  
02:15 PM 8 THAT YOU'VE TESTIFIED ABOUT, AND YOUR EXPERIENCE AS THE  
02:15 PM 9 NAACP PRESIDENT, YOU DID NOT FILE ANY CHARGE OF  
02:15 PM 10 DISCRIMINATION WITH THE EEOC AGAINST LUFKIN UNTIL,  
02:15 PM 11 ACCORDING TO YOUR TESTIMONY, JANUARY OF 1995?

02:16 PM 12 A. YES, SIR, ACCORDING TO MY TESTIMONY AND ACCORDING TO  
02:16 PM 13 THE DOCUMENTATION.

02:16 PM 14 Q. OKAY. YOU DIDN'T FILE ONE IN THE 70S, DIDN'T FILE  
02:16 PM 15 ONE IN THE 80S, DIDN'T FILE ONE IN THE EARLY 90S?

02:16 PM 16 A. I FILED A DISCRIMINATORY GRIEVANCE, SIR.

02:16 PM 17 Q. WITH THE COMPANY, NOT WITH THE EEOC?

02:16 PM 18 A. YES, SIR.

02:16 PM 19 Q. AND THAT GRIEVANCE THAT YOU FILED WAS PRIMARILY  
02:16 PM 20 ABOUT MR. DIXON, WASN'T IT?

02:16 PM 21 A. NO, SIR, IT WAS ABOUT THE DISCRIMINATION THAT WAS  
02:16 PM 22 WIDESPREAD OVER THE SHOP, AND TOLERATED BY MANAGEMENT,  
02:16 PM 23 THAT CONTINUED INTO THE 90S, WHICH HAS BECOME A PART OF  
02:16 PM 24 THE LUFKIN CULTURE.

02:16 PM 25 MR. HAMEL: MAY I APPROACH THE WITNESS, YOUR

TRANSCRIPT OF PROCEEDINGS

163

02:16 PM 1 HONOR?

02:16 PM 2 THE COURT: YOU MAY.

02:16 PM 3 MR. HAMEL: YOUR HONOR, WE WOULD MOVE FOR  
02:16 PM 4 ADMISSION OF DEFENDANT'S EXHIBIT 45, WHICH IS A CERTIFIED  
02:16 PM 5 COPY OF MR. MCCLAIN'S EEOC FILE FROM THE UNITED STATES  
02:16 PM 6 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

02:16 PM 7 THE WITNESS: OKAY.

02:16 PM 8 MR. HAMEL: I DON'T KNOW THAT YOU'VE NECESSARILY  
02:16 PM 9 SEEN IT, EXCEPT IN DISCOVERY, MR. MCCLAIN. BUT IT IS  
02:17 PM 10 AUTHENTICATED BY CERTIFICATION, YOUR HONOR.

02:17 PM 11 THE COURT: ANY OBJECTION?

02:17 PM 12 MR. GARRIGAN: NO OBJECTION, YOUR HONOR.

02:17 PM 13 THE COURT: IT'S ADMITTED AS MARKED WITHOUT  
02:17 PM 14 OBJECTION.

02:17 PM 15 BY MR. HAMEL:

02:17 PM 16 Q. ALL RIGHT. MR. MCCLAIN, LET ME HAND YOU WHAT IS  
02:17 PM 17 MARKED AS EXHIBIT 46. CAN YOU IDENTIFY THIS DOCUMENT AS  
02:17 PM 18 YOUR INTAKE QUESTIONNAIRE AND INFORMATION SHEET?

02:17 PM 19 A. WHAT IS THE DATE ON THIS SHEET?

02:17 PM 20 Q. IT APPEARS THAT --

02:17 PM 21 A. 1-8-96?

02:17 PM 22 Q. 1-8-96.

02:17 PM 23 A. OKAY.

02:17 PM 24 MR. GARRIGAN: YOUR HONOR, EXCUSE ME. BEFORE  
02:17 PM 25 THEY GO ON WITH THAT, I WOULD LIKE TO LIMIT --

TRANSCRIPT OF PROCEEDINGS

164

02:17 PM 1 WE HAVE MADE A MOTION IN LIMINE, INDICATING THAT  
02:17 PM 2 EVIDENCE REGARDING THE TIMELINESS AND SCOPE OF THE  
02:18 PM 3 EXHAUSTION OF EEOC ADMINISTRATIVE REMEDIES HAS ALREADY  
02:18 PM 4 BEEN DECIDED BY THE COURT. WE DON'T BELIEVE THIS EVIDENCE  
02:18 PM 5 IS RELEVANT TO THAT ISSUE ANY MORE. IT'S ALREADY BEEN  
02:18 PM 6 DECIDED.

02:18 PM 7 MR. HAMEL: WELL, YOUR HONOR, I THOUGHT WE WERE  
02:18 PM 8 IN TRIAL HERE TODAY TO --

02:18 PM 9 THE COURT: WE ARE, AND I'M GOING TO OVERRULE  
02:18 PM 10 IT, BECAUSE I'M GOING TO LET HIM DEFEND HIS CASE.

02:18 PM 11 MR. HAMEL: YOUR HONOR, RATHER THAN -- BECAUSE I  
02:18 PM 12 REALLY HAVE NO QUESTIONS ABOUT THIS. WE'LL MOVE TO ADMIT  
02:18 PM 13 EXHIBITS 45, 46, 47, 48 AND 49. IF THERE'S NO OBJECTION,  
02:18 PM 14 THEY CAN BE ADMITTED. OTHERWISE, I CAN HAVE MR. MCCLAIN  
02:18 PM 15 IDENTIFY THEM, SINCE THEY ARE ALL HIS --

02:18 PM 16 MR. GARRIGAN: SUBJECT TO OUR MOTIONS IN LIMINE,  
02:18 PM 17 WE HAVE NO OTHER OBJECTIONS.

02:18 PM 18 THE COURT: ALL RIGHT.

02:18 PM 19 MR. HAMEL: THANK YOU, YOUR HONOR.

02:18 PM 20 THE COURT: SUBJECT TO YOUR OBJECTION --

02:18 PM 21 IF I OVERRULED THE MOTION IN LIMINE, OR IF I  
02:18 PM 22 GRANTED ONE, YOU WOULD STILL HAVE TO OBJECT IN TRIAL. THE  
02:18 PM 23 LIMINE ISN'T APPEALABLE, IT'S ONLY WHETHER IT COMES IN  
02:19 PM 24 EVIDENCE OR NOT.

02:19 PM 25 MR. GARRIGAN: THAT'S CORRECT, YOUR HONOR. AND

TRANSCRIPT OF PROCEEDINGS

165

02:19 PM 1 WE WOULD OBJECT ON THE GROUNDS OF RELEVANCE. THIS  
02:19 PM 2 ISSUE -- THE ISSUE OF EXHAUSTION OF ADMINISTRATIVE  
02:19 PM 3 REQUIREMENTS HAS ALREADY BEEN DETERMINED BY THE COURT.  
02:19 PM 4 BY MR. HAMEL:

02:19 PM 5 Q. MR. MCCLAIN --

02:19 PM 6 THE COURT: I'LL TAKE IT ALONG WITH THE CASE,  
02:19 PM 7 AND IF IT'S VALID, I'LL SUSTAIN IT, IF IT'S INVALID, I'LL  
02:19 PM 8 OVERRULE IT.

02:19 PM 9 MR. GARRIGAN: THANK YOU.

02:19 PM 10 BY MR. HAMEL:

02:19 PM 11 Q. I'M CORRECT, AM I NOT, MR. MCCLAIN, THAT YOU DON'T  
02:19 PM 12 THINK THAT YOU HAVE EVER FILED A COMPLAINT WITH THE OFCCP?  
02:19 PM 13 ISN'T THAT RIGHT?

02:19 PM 14 A. I DON'T THINK SO.

02:19 PM 15 Q. ALL RIGHT. NOW, SIR, AM I CORRECT THAT YOU HAVE --  
02:19 PM 16 YOU HAVE NOT HAD ANY FIRSTHAND ACKNOWLEDGE OF THE HIRING  
02:19 PM 17 PROCESS SINCE 1990?

02:19 PM 18 A. SAY AGAIN NOW.

02:19 PM 19 Q. YOU HAVE NOT HAD ANY FIRSTHAND EXPERIENCE WITH THE  
02:19 PM 20 HIRING PROCESS SINCE 1990?

02:19 PM 21 A. NOT EXCEPT WHAT I'VE BEEN TOLD, NO.

02:19 PM 22 Q. ALL RIGHT. AND YOU HAVE NO INFORMATION CONTRARY TO  
02:19 PM 23 THE TESTIMONY THAT LUFKIN PROVIDES TO THE TEXAS WORKFORCE  
02:20 PM 24 COMMISSION A SPECIFIC JOB THAT THEY NEED TO HAVE FILLED,  
02:20 PM 25 ISN'T THAT RIGHT?

TRANSCRIPT OF PROCEEDINGS

166

02:20 PM 1 A. EVERYONE I'VE TALKED TO HAS TOLD ME THAT LUFKIN  
02:20 PM 2 MAKES THAT DECISION.

02:20 PM 3 Q. DO YOU HAVE ANY -- YOU HAVE NO INFORMATION FROM  
02:20 PM 4 PERSONAL KNOWLEDGE CONTRARY TO THAT, DO YOU, SIR?

02:20 PM 5 A. NO, SIR.

02:20 PM 6 Q. ALL RIGHT. AND YOU HAVE NO PERSONAL KNOWLEDGE WITH  
02:20 PM 7 RESPECT TO WHAT LUFKIN ASKS OF THE TEXAS WORKFORCE  
02:20 PM 8 COMMISSION, ISN'T THAT RIGHT?

02:20 PM 9 A. THAT'S CORRECT.

02:20 PM 10 Q. AND YOU DON'T HAVE ANY IDEA OF HOW MANY  
02:20 PM 11 AFRICAN-AMERICANS HAVE APPLIED TO WORK AT THE FOUNDRY, DO  
02:20 PM 12 YOU?

02:20 PM 13 A. NO, SIR.

02:20 PM 14 Q. NOR DO YOU HAVE ANY INFORMATION TO SUGGEST THAT  
02:20 PM 15 LUFKIN'S FOUNDRY IS SOMEHOW DIFFERENT IN THE WAY THAT IT  
02:20 PM 16 IS HOTTER OR DIRTIER OR MORE DIFFICULT THAN ANY OTHER  
02:20 PM 17 FOUNDRY OPERATION, DO YOU?

02:20 PM 18 A. STATE THAT AGAIN NOW.

02:20 PM 19 Q. YOU DON'T HAVE ANY INFORMATION TO SUGGEST THAT  
02:20 PM 20 LUFKIN'S FOUNDRY IS SOMEHOW DIFFERENT IN THE WAY THAT IT  
02:20 PM 21 IS HOT OR DIRTY OR MORE DIFFICULT THAN WOULD BE FOUND IN  
02:20 PM 22 ANY OTHER FOUNDRY, DO YOU?

02:20 PM 23 A. WELL, WHEN I WORKED IN TEXAS FOUNDRY, THE CONDITIONS  
02:20 PM 24 THAT I ENCOUNTERED AND I SAW AT LUFKIN INDUSTRIES WERE --  
02:21 PM 25 THOSE WERE NOT PRESENT WHEN I WORKED AT TEXAS FOUNDRY. I

TRANSCRIPT OF PROCEEDINGS

167

02:21 PM 1 WAS A CORE MAKER.

02:21 PM 2 Q. MR. MCCLAIN, DID YOU PREVIOUSLY TESTIFY IN YOUR  
02:21 PM 3 DEPOSITION AT PAGE 37 TO THE QUESTION "DO YOU HAVE ANY  
02:21 PM 4 REASON TO THINK THAT THE LUFKIN FOUNDRY OPERATION IS  
02:21 PM 5 DIFFERENT IN ANY SIGNIFICANT RESPECT FROM THE FOUNDRY  
02:21 PM 6 OPERATIONS OF OTHER COMPANIES?"

02:21 PM 7 AND YOUR ANSWER "I HAVE NO IDEA."

02:21 PM 8 QUESTION: "IS IT REASONABLE TO ASSUME, MR.  
02:21 PM 9 MCCLAIN, THAT ALL FOUNDRIES ARE HOT, DIRTY, DIFFICULT  
02:21 PM 10 ENVIRONMENTS?"

02:21 PM 11 AND YOUR ANSWER --

02:21 PM 12 WELL, WAIT. THEN THERE WAS AN OBJECTION, THEN  
02:21 PM 13 THE NEXT QUESTION: "DO YOU HAVE ANY INFORMATION TO  
02:21 PM 14 SUGGEST THAT LUFKIN'S FOUNDRY IS SOMEHOW DIFFERENT IN THE  
02:21 PM 15 WAY THAT IT IS HOTTER OR DIRTIER OR MORE DIFFICULT THAN  
02:21 PM 16 WOULD BE FOUND IN ANY OTHER FOUNDRY OPERATION?"

02:21 PM 17 ANSWER: "WELL, BEING THAT -- BEING THAT -- NO,"  
02:21 PM 18 WAS YOUR ANSWER, WAS IT NOT?

02:21 PM 19 A. SIR, YOU ASKED ME MANY EVASIVE AND MULTIPLE  
02:21 PM 20 QUESTIONS, AND I MAY HAVE AGREED WITH YOU. BUT I --  
02:22 PM 21 AGAIN, WHEN I WORKED AT TEXAS FOUNDRY, THE CONDITIONS  
02:22 PM 22 THAT -- WHEN I WENT TO LUFKIN INDUSTRIES' FOUNDRY, I DID  
02:22 PM 23 NOT SEE THE SAME CONDITIONS.

02:22 PM 24 THE COURT: TELL ME THE DIFFERENCE.

02:22 PM 25 THE WITNESS: WELL, I WAS A CORE MAKER, YOUR

## TRANSCRIPT OF PROCEEDINGS

168

02:22 PM 1 HONOR, AND WE FED THE SAND INTO A HOPPER, A MACHINE, AND  
02:22 PM 2 IT HAD A PATTERN FOR SIXTY MILLIMTEER MORTAR AND  
02:22 PM 3 EIGHTY-TWO, LIKED WE USED IN VIETNAM, AND YOU WOULD  
02:22 PM 4 MAKE -- IT WOULD COOK THE SAND, AND THE ONLY THING I HAD  
02:22 PM 5 TO DEAL WITH WAS THE HEAT ON MY HANDS, AND I WORE ABOUT  
02:22 PM 6 FOUR PAIR OF GLOVES. BUT THE ATMOSPHERE WAS NOT DUSTY.

02:22 PM 7 THE COURT: DID THEY HAVE ANY FURNACES IN IT?

02:22 PM 8 THE WITNESS: WELL, THEY HAD HEAT, BUT IT WASN'T  
02:22 PM 9 POURING LIKE HOT STEAL, AND IT WASN'T --

02:22 PM 10 THE COURT: MOLTEN STEAL?

02:22 PM 11 THE WITNESS: YES. YES, SIR.

02:22 PM 12 THE COURT: THEY DIDN'T POUR THAT?

02:22 PM 13 THE WITNESS: NO, SIR. THE BOX -- MOST OF THE  
02:22 PM 14 HEAT WAS IN THE BOX, AND WHERE YOU FELT MOST OF THE HEAT  
02:22 PM 15 WAS WHEN YOU OPENED THE BOX AND TOOK THE COAL OUT, AND THE  
02:22 PM 16 ONLY THING I HAD TO DEAL WITH WAS HEAT ON MY HANDS.

02:22 PM 17 THE COURT: AND IT WASN'T -- IT WASN'T MOLTEN  
02:23 PM 18 STEAL POURED INTO FORMS?

02:23 PM 19 THE WITNESS: NO, SIR. NO, SIR, THIS WAS SAND  
02:23 PM 20 THAT WAS COOKED.

02:23 PM 21 THE COURT: ALL RIGHT. THANK YOU.

02:23 PM 22 THE WITNESS: YES, SIR.

02:23 PM 23 BY MR. HAMEL:

02:23 PM 24 Q. MR. MCCLAIN, IT'S TRUE THAT YOU HAVE NEVER YOURSELF  
02:23 PM 25 WORKED IN THE LUFKIN FOUNDRY, RIGHT?

TRANSCRIPT OF PROCEEDINGS

169

02:23 PM 1 A. THAT'S TRUE.

02:23 PM 2 Q. OKAY. YOU HAVE PREVIOUSLY TESTIFIED UNDER OATH  
02:23 PM 3 THOUGH THAT YOU HAVE OBSERVED PEOPLE LEAVING THE LUFKIN  
02:23 PM 4 FOUNDRY AND THAT THEY WERE ALL BLACKS, ISN'T THAT RIGHT?

02:23 PM 5 A. I'VE OBSERVED THEM LEAVING, AND I'VE OBSERVED THEM  
02:23 PM 6 ACTUALLY WORKING IN THE FOUNDRY WHEN I WAS THERE AS AN  
02:23 PM 7 AUDITOR.

02:23 PM 8 Q. OKAY. AND ACCORDING TO YOUR TESTIMONY, THEY ARE ALL  
02:23 PM 9 BLACK, ISN'T THAT RIGHT?

02:23 PM 10 A. THE ONES I SAW WERE BLACKS. I WAS TOLD THERE WERE  
02:23 PM 11 SEVERAL WHITES THERE. I DON'T REMEMBER -- WHAT I REMEMBER  
02:23 PM 12 WAS THE BLACKS IN THE FOUNDRY AND I REMEMBER WHITES IN THE  
02:23 PM 13 OFFICES.

02:23 PM 14 Q. OKAY. PUT UP 354.

02:23 PM 15 A. AND THAT'S WHAT I REMEMBER. NOW, WHETHER I SEEN ANY  
02:23 PM 16 WHITES, WHETHER I TESTIFIED I SEEN WHITES, MAYBE I DID. I  
02:23 PM 17 DON'T REMEMBER. BUT I KNOW IT WAS MOSTLY BLACK.

02:23 PM 18 Q. ALL RIGHT, SIR. THIS IS A TABLE FROM THE EXPERT  
02:24 PM 19 REPORT FOR THE PLAINTIFFS' STATISTICIAN. WOULD YOU ZOOM  
02:24 PM 20 ON THAT TABLE, PLEASE?

02:24 PM 21 AND YOU SEE IN YOUR EXPERT'S REPORT IN THE WORK  
02:24 PM 22 FORCE DISTRIBUTION BY DEPARTMENT THAT THE LUFKIN FOUNDRY  
02:24 PM 23 HAD A HUNDRED AND TWENTY-FIVE WHITE EMPLOYEES AND  
02:24 PM 24 EIGHTY-EIGHT BLACK EMPLOYEES, ISN'T THAT RIGHT?

02:24 PM 25 A. THAT'S WHAT IT SAYS.

TRANSCRIPT OF PROCEEDINGS

170

02:24 PM 1 Q. OKAY. AND THAT'S MR. -- THAT'S DR. DROGIN'S REPORT,  
02:24 PM 2 ISN'T THAT RIGHT?

02:24 PM 3 A. I SUPPOSE. I DON'T KNOW WHOSE REPORT IT IS.

02:24 PM 4 Q. NOW, PUT UP LUF0397, PLEASE.

02:24 PM 5 NOW I'M SHOWING YOU WHAT IS -- IF YOU'LL ZOOM ON  
02:24 PM 6 THAT.

02:24 PM 7 THIS IS APPENDIX 5-A OF DR. DROGIN'S REPORT, AND  
02:24 PM 8 THIS APPENDIX LISTS THE WORK FORCE AS OF THE END OF 1994  
02:24 PM 9 IN THE CATEGORIES, EEOC CATEGORIES SIX THROUGH EIGHT,  
02:24 PM 10 WHICH I'LL REPRESENT TO YOU ARE THE PRODUCTION CATEGORIES.

02:24 PM 11 A. OKAY.

02:24 PM 12 Q. EEO CATEGORY EIGHT IS UNSKILLED, EEO CATEGORY SEVEN  
02:24 PM 13 IS SEMISKILLED, AND EEO CATEGORY SIX IS CRAFT.

02:24 PM 14 IN THIS REPORT, AT THE END OF 1994, THERE WERE  
02:25 PM 15 MORE WHITE EMPLOYEES THAN THERE ARE BLACK EMPLOYEES, ISN'T  
02:25 PM 16 THAT RIGHT?

02:25 PM 17 A. I CAN'T SEE THAT. THAT'S WHAT YOU SAY IT SAYS.

02:25 PM 18 Q. A HUNDRED AND THIRTEEN TO A HUNDRED AND ONE.

02:25 PM 19 PUT UP LUF0399.

02:25 PM 20 OKAY. ZOOM ON THE DATE THERE, PLEASE.

02:25 PM 21 THIS IS APPENDIX 5-A FOR 1995.

02:25 PM 22 GO TO THE TITLE OF THIS APPENDIX, WOULD YOU,  
02:25 PM 23 PLEASE?

02:25 PM 24 THIS IS DR. DROGIN'S REPORT, SUMMARY OF WORK  
02:25 PM 25 FORCE AND AVERAGE PAY RATES.

TRANSCRIPT OF PROCEEDINGS

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02:25 PM 1 DO YOU SEE THAT, SIR?

02:25 PM 2 NOW IF YOU WOULD GO TO THE ONE THAT HAS SIX  
02:25 PM 3 THROUGH EIGHT.

02:25 PM 4 A. I CAN'T SEE IT, SO YOU'LL JUST HAVE TO READ IT. I  
02:25 PM 5 CAN'T SEE IT.

02:25 PM 6 Q. ALL RIGHT, SIR. IN 1995 --

02:25 PM 7 MR. GARRIGAN: YOUR HONOR, I NEED TO OBJECT TO  
02:25 PM 8 THIS WHOLE LINE OF QUESTIONING. THIS WITNESS HAS NO  
02:26 PM 9 KNOWLEDGE ABOUT THESE DOCUMENTS. DEFENSE COUNSEL IS  
02:26 PM 10 SIMPLY READING FROM THEM.

02:26 PM 11 THE WITNESS: THAT'S RIGHT, SIR. I HAVE -- THE  
02:26 PM 12 ONLY KNOWLEDGE I HAVE OF THE FOUNDRY IS WHEN I WENT UP  
02:26 PM 13 THERE AND WHAT I SAW, BUT THAT'S ALL.

02:26 PM 14 THE COURT: BUT YOU HAVE NO KNOWLEDGE ABOUT  
02:26 PM 15 THESE TABLES?

02:26 PM 16 THE WITNESS: NO. NO, SIR.

02:26 PM 17 THE COURT: THEN YOU'RE ASKING HIM TO COMMENT ON  
02:26 PM 18 THE TESTIMONY OF ANOTHER WITNESS, AND THE TABLES ATTACHED  
02:26 PM 19 TO THAT TESTIMONY, AND I THINK IT'S INAPPROPRIATE.

02:26 PM 20 MR. HAMEL: YOUR HONOR, LET ME MOVE TO THE  
02:26 PM 21 QUESTION THAT I WANT TO ASK, MR. MCCLAIN  
02:26 PM 22 BY MR. HAMEL:

02:26 PM 23 Q. WHICH IS, LET'S ASSUME, MR. MCCLAIN, THAT THE  
02:26 PM 24 PLAINTIFFS' EXPERT IS CORRECT, AND I'LL REPRESENT FOR YOU,  
02:26 PM 25 ALTHOUGH WE'LL PUT IT ON IN EVIDENCE, THAT IN EACH YEAR IN

02:26 PM 1 HIS REPORT, THAT EVEN IN THE PRODUCTION JOBS, CATEGORIES  
02:26 PM 2 SIX THROUGH EIGHT, THERE ARE MORE WHITES WORKING IN THE  
02:26 PM 3 FOUNDRY THAN BLACKS. CAN YOU EXPLAIN TO ME HOW IT IS  
02:26 PM 4 THAT, WHEN YOU WENT AND LOOKED IN THE FOUNDRY, YOU DIDN'T  
02:26 PM 5 SEE ANYTHING BUT BLACK PEOPLE?

02:26 PM 6 A. IT MAY HAVE BEEN THE AREA THAT I WENT IN, SIR. THE  
02:26 PM 7 AREA THAT I WENT IN, THE CLEANING ROOM, WHERE THEY WAS  
02:27 PM 8 POURING, WHERE IT WAS HOT, DIRTY AND DUSTY, I SEEN ALL  
02:27 PM 9 BLACKS. AND IN THE OFFICE, WHERE IT WAS AIR-CONDITIONED  
02:27 PM 10 AND CLEAN, I SEEN ALL WHITES. THAT'S ALL I CAN TELL YOU.

02:27 PM 11 Q. IS IT POSSIBLE, MR. MCCLAIN, THAT YOU COULD HAVE  
02:27 PM 12 BEEN MISTAKEN?

02:27 PM 13 A. COULD HAVE BEEN MISTAKEN?

02:27 PM 14 Q. YES, SIR.

02:27 PM 15 A. IS IT POSSIBLE I DIDN'T SEE SOME WHITES? I SAID  
02:27 PM 16 THAT.

02:27 PM 17 Q. OKAY. AND POSSIBLE YOU DIDN'T SEE SOME HISPANICS?

02:27 PM 18 A. IT'S POSSIBLE.

02:27 PM 19 Q. ALL RIGHT. NOW, WITH RESPECT TO YOUR INVOLVEMENT IN  
02:27 PM 20 THE PROMOTION SITUATION, MR. MCCLAIN, I'M CORRECT, AM I  
02:27 PM 21 NOT, THAT YOU'VE NEVER BEEN INVOLVED IN PROMOTIONS IN THE  
02:27 PM 22 OILFIELD DIVISION, HAVE YOU?

02:27 PM 23 A. NO, SIR.

02:27 PM 24 Q. NEVER BEEN INVOLVED IN PROMOTIONS IN POWER  
02:27 PM 25 TRANSMISSION?

TRANSCRIPT OF PROCEEDINGS

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02:27 PM 1 A. NO, SIR.

02:27 PM 2 Q. NEVER BEEN INVOLVED IN PROMOTIONS IN THE FOUNDRY?

02:27 PM 3 A. NO, SIR.

02:27 PM 4 Q. YOU DON'T KNOW WHAT INSTRUCTIONS THE SUPERVISORS AND  
02:27 PM 5 MANAGERS IN THOSE DIVISIONS GET WITH RESPECT TO  
02:27 PM 6 PROMOTIONS, DO YOU?

02:27 PM 7 A. ALL I KNOW IS WHAT WE WERE TOLD IN THE FOUR-HOUR  
02:27 PM 8 CLASS THAT WE ALL ATTENDED, AND WE ALL GOT THE SAME MANUAL  
02:27 PM 9 THAT SAID THE SAME THING.

02:27 PM 10 Q. AND AM I CORRECT, SIR, THAT YOU HAVE NO PERSONAL  
02:27 PM 11 KNOWLEDGE OF ANYBODY WHO WAS NOT TOLD TO SIGN A BID, WHO  
02:28 PM 12 WAS TOLD NOT TO SIGN A BID I MEAN?

02:28 PM 13 A. I HAVE -- YES, ONE OF THE CLASS MEMBERS, AND I DON'T  
02:28 PM 14 KNOW HIS NAME. I KNOW OF CLASS MEMBERS THAT WERE -- THAT  
02:28 PM 15 TOLD ME, AND I BELIEVE HAVE TESTIFIED, THAT THEY WERE  
02:28 PM 16 DISCOURAGED FROM SIGNING A BID.

02:28 PM 17 Q. MR. MCCLAIN, DO YOU HAVE ANY PERSONAL KNOWLEDGE OF  
02:28 PM 18 THAT HAPPENING?

02:28 PM 19 A. YOU MEAN DID I HEAR ANYONE TELL SOMEONE?

02:28 PM 20 Q. NO, SIR. YOU ACTUALLY OBSERVED IT HAPPENING, NOT  
02:28 PM 21 WHAT SOMEBODY HAS TOLD YOU.

02:28 PM 22 THE COURT: WELL, WHAT EXPERIENCE -- WHAT  
02:28 PM 23 EXPERIENCE DID YOU HAVE IN THAT, THAT YOU WERE, QUOTE,  
02:28 PM 24 DISCOURAGED OR TOLD NOT TO --

02:28 PM 25 THE WITNESS: WELL, THE ONLY THING, THE ONLY

TRANSCRIPT OF PROCEEDINGS

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02:28 PM 1 PERSONAL EXPERIENCE I HAVE IS THE WAY BLACKS WERE TREATED,  
02:28 PM 2 AND WHAT I WAS --

02:28 PM 3 IN THE TRAILER PLANT, WHAT WE WAS PERSONALLY  
02:28 PM 4 TOLD, WE WERE TOLD -- WE WERE DISCOURAGED FROM SIGNING  
02:28 PM 5 THEM, AND WE --

02:28 PM 6 CERTAINLY THE MAJORITY OF BLACKS WAS NOT GOING  
02:28 PM 7 TO SIGN THE BID LIST BECAUSE THEY SAW THAT SENIORITY WAS  
02:28 PM 8 BYPASSED WITH LESS SENIOR WHITES ON NUMEROUS OCCASIONS.  
02:29 PM 9 IT DIDN'T ALWAYS HAPPEN, BUT IT HAPPENED, AND IT SHOULD  
02:29 PM 10 HAVE NEVER HAPPENED.

02:29 PM 11 THEY DIDN'T USE ABILITY, THEY JUST PROMOTED --  
02:29 PM 12 THEY PUT IN THE JOB WHO WAS -- WHO THEY WANTED IN THE JOB,  
02:29 PM 13 AND THEY GAVE TWO EXPLANATIONS. HE GOT THE JOB OR HE WAS  
02:29 PM 14 MOST QUALIFIED.

02:29 PM 15 AND WE HAD A UNION CONTRACT, AND THEY TOTALLY  
02:29 PM 16 DISREGARDED IT.

02:29 PM 17 THE COURT: WHO'S "THEY"?

02:29 PM 18 THE WITNESS: WHITE MANAGERS.

02:29 PM 19 THE COURT: PROCEED, SIR.

02:29 PM 20 BY MR. HAMEL:

02:29 PM 21 Q. MR. MCCLAIN, I AM CORRECT, AM I NOT, THAT YOU HAVE  
02:29 PM 22 NO PERSONAL KNOWLEDGE OF ANYBODY WHO WAS TOLD NOT TO SIGN  
02:29 PM 23 A BID?

02:29 PM 24 A. LET ME THINK. LET ME THINK ABOUT THAT. I CAN'T  
02:29 PM 25 THINK OF ANYBODY. IT DOESN'T MEAN I DON'T KNOW OF ANY,

TRANSCRIPT OF PROCEEDINGS

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02:30 PM 1 BUT I CAN'T REMEMBER RIGHT NOW.

02:30 PM 2 Q. OKAY. AND YOU CANNOT GIVE AN ESTIMATE, AT LEAST YOU  
02:30 PM 3 COULD NOT AS OF JULY, OF HOW MANY JOBS SINCE 1994 HAVE  
02:30 PM 4 BEEN FILLED IN A SITUATION IN WHICH THE PERSON HAS BEEN  
02:30 PM 5 TRAINED FOR THE JOB AND THEY RECEIVED THE JOB OVER A  
02:30 PM 6 SENIOR PERSON?

02:30 PM 7 A. NO, BECAUSE THERE'S NO DATA KEPT ON THAT. THERE'S  
02:30 PM 8 NO DATA KEPT ON THAT.

02:30 PM 9 Q. WELL, YOU CAN'T GIVE ME AN ESTIMATE, CAN YOU?

02:30 PM 10 A. NO, SIR, I CAN'T GIVE YOU AN ESTIMATE, BUT I CAN  
02:30 PM 11 TELL YOU IT'S HAPPENED. IT HAPPENED MOST RECENTLY WHEN A  
02:30 PM 12 WELDER WAS PROMOTED TO PLANT SUPERINTENDENT AND WAS  
02:30 PM 13 TRAINED FOR A WHOLE YEAR.

02:30 PM 14 Q. AM I CORRECT, MR. MCCLAIN, THAT AT LEAST AS OF JULY  
02:30 PM 15 OF THIS YEAR YOU DON'T REMEMBER ANY PERSON BEING GROOMED  
02:30 PM 16 FOR A POSITION OR BEING GIVEN -- OR NOT BEING GIVEN  
02:30 PM 17 TRAINING -- OR BEING GIVEN TRAINING SINCE 1994?

02:30 PM 18 A. SINCE 1994?

02:30 PM 19 Q. YES, SIR.

02:30 PM 20 A. YES, SIR, I DO HAVE, IF I'M UNDERSTANDING YOUR  
02:30 PM 21 QUESTION.

02:30 PM 22 Q. WELL, WHAT I'M ASKING IS, DO YOU KNOW OF ANYBODY  
02:31 PM 23 BEING GROOMED FOR A BETTER -- BEING GROOMED BY GIVING  
02:31 PM 24 TRAINING FOR A BETTER POSITION?

02:31 PM 25 A. SIR, SINCE 1994, YES. I CAN'T TELL YOU WHO, BUT,

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02:31 PM 1 YES, THIS PRACTICE HAS CONTINUED.

02:31 PM 2 Q. OKAY. DIDN'T YOU PREVIOUSLY TESTIFY IN YOUR  
02:31 PM 3 DEPOSITION THAT YOU COULDN'T REMEMBER OR YOU COULDN'T  
02:31 PM 4 RECOLLECT THAT?

02:31 PM 5 A. WELL, I MAY HAVE, BUT I RECOLLECT IT NOW.

02:31 PM 6 Q. ALL RIGHT, SIR. NOW, IT WOULD BE POSSIBLE, WOULD IT  
02:31 PM 7 NOT, TO LOOK AT THE BID SHEETS IN THE TRAILER DIVISION AND  
02:31 PM 8 SEPARATE OUT THOSE JOBS WHERE BIDS ARE ROUTINELY AWARDED  
02:31 PM 9 ON SENIORITY?

02:31 PM 10 A. BASED ON EXPERIENCE I'VE HAD WITH THE BID SHEETS, I  
02:31 PM 11 DON'T HAVE ANY CONFIDENCE IN LOOKING AT THE BID SHEETS,  
02:31 PM 12 AND THE REASON I DON'T, BECAUSE -- YOU MAY HAVE FOUND  
02:31 PM 13 THEM, BUT THE ORIGINAL BID SHEETS THAT YOU PROVIDED WERE  
02:31 PM 14 ABSENT SEVERAL PROMOTIONS THAT I MADE TO INSPECTOR.

02:32 PM 15 Q. MR. MCCLAIN, DO YOU RECALL YOUR TESTIMONY AT PAGE  
02:32 PM 16 201 OF YOUR DEPOSITION?

02:32 PM 17 A. LET ME LOOK AND SEE.

02:32 PM 18 Q. LINE 3, QUESTION: "AM I CORRECT IN  
02:32 PM 19 UNDERSTANDING" --

02:32 PM 20 A. LET ME GO TO IT, SIR, PLEASE.

02:32 PM 21 Q. CERTAINLY.

02:32 PM 22 A. YOU'RE ASKING ME MULTIPLE QUESTIONS AND YOU'RE  
02:32 PM 23 JUMPING TIME PERIODS, SO I'M GOING TO HAVE TO TAKE MY TIME  
02:32 PM 24 TO LISTEN TO YOUR QUESTION AND ANSWER VERY CAREFULLY.

02:32 PM 25 Q. DO YOU HAVE THE PAGE, SIR?

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02:32 PM 1 A. YES, SIR, 201.

02:32 PM 2 Q. AM I CORRECT YOUR TESTIMONY AT THAT TIME WAS WITH  
02:32 PM 3 RESPECT TO THE QUESTION: "AM I CORRECT IN UNDERSTANDING,  
02:32 PM 4 FOR EXAMPLE, AT THE TRAILER DIVISION, IF YOU LOOKED AT ALL  
02:32 PM 5 THE BID SHEETS, YOU WOULD BE ABLE TO SEPARATE ALL THOSE  
02:32 PM 6 JOBS WHERE THE BIDS ARE ROUTINELY AWARDED ON THE BASIS OF  
02:32 PM 7 SENIORITY VERSUS THOSE BIDS IN WHICH THERE IS SOME  
02:32 PM 8 DETERMINATION OF A BID THAT WAS MADE?"

02:32 PM 9 ANSWER: "IT'S POSSIBLE."

02:32 PM 10 THAT WAS YOUR ANSWER, WAS IT NOT?

02:33 PM 11 A. WELL -- (READING TO HIMSELF) -- SEE, YOU KNOW, I  
02:33 PM 12 DIDN'T --

02:33 PM 13 THERE WERE A LOT OF QUESTIONS THAT I WAS ASKED  
02:33 PM 14 DURING THE DEPOSITION. SOME OF THEM, YOU KNOW, I AGREED  
02:33 PM 15 WITH YOU OR GAVE YOU THE ANSWER. BUT LOOKING AT THAT  
02:33 PM 16 QUESTION THERE, I DON'T EVEN UNDERSTAND THE QUESTION, NOT  
02:33 PM 17 ESPECIALLY BASED ON THE LAST, THE FINAL SENTENCE.

02:33 PM 18 Q. ALL RIGHT, SIR. AM I CORRECT THAT IF YOU LOOKED AT  
02:33 PM 19 THE BID SHEETS, YOU WOULD CERTAINLY BE ABLE TO -- IT WOULD  
02:33 PM 20 ALLOW YOU TO SEE WHO SIGNED UP FOR A PARTICULAR JOB?

02:33 PM 21 A. YEAH, IF YOU HAD ALL THE BID SHEETS AVAILABLE. THE  
02:33 PM 22 POINT IS THAT WHEN WE WERE -- IN THIS CASE THERE WAS A  
02:33 PM 23 TIME WHEN WE DIDN'T HAVE --

02:33 PM 24 I LOOKED THROUGH ALL THE BID SHEETS AND I MADE  
02:33 PM 25 FIFTEEN TO TWENTY PROMOTIONS I BELIEVE, AND A SIGNIFICANT

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02:33 PM 1 AMOUNT OF THOSE PROMOTIONS, THOSE BIDS SHEETS WERE NOT  
02:34 PM 2 PRESENT WHERE I MADE THOSE PROMOTIONS. AND I RAISED THAT  
02:34 PM 3 QUESTION AT THAT TIME.

02:34 PM 4 Q. AM I CORRECT, SIR, THAT YOU CANNOT RECALL, OR AT  
02:34 PM 5 LEAST YOU COULD NOT RECALL AS OF JULY, 2003, ANY BLACK  
02:34 PM 6 EMPLOYEE OTHER THAN YOURSELF WHO HAS BEEN DISCOURAGED FROM  
02:34 PM 7 TAKING A JOB THAT IS BID OR THAT A JOB WAS OPENING UP,  
02:34 PM 8 THAT WAS OPENING UP?

02:34 PM 9 A. WELL, I THINK BLACKS ARE DISCOURAGED ALL THE TIME  
02:34 PM 10 BECAUSE OF THE ENVIRONMENT OR THE CULTURE. THEY DON'T  
02:34 PM 11 THINK THEY'RE GOING TO GET THE JOB.

02:34 PM 12 Q. MR. MCCLAIN, IF YOU WOULD LOOK AT PAGE 162 OF YOUR  
02:34 PM 13 DEPOSITION, LINE 24, PLEASE.

02:34 PM 14 A. OKAY. WHAT'S THE PAGE?

02:34 PM 15 Q. 162, SIR.

02:34 PM 16 A. OKAY. ALL RIGHT.

02:34 PM 17 Q. BEGINNING AT LINE 24. YOUR PRIOR TESTIMONY WAS TO  
02:34 PM 18 THE QUESTION: "DO YOU KNOW OF ANY BLACK EMPLOYEES AT  
02:35 PM 19 LUFKIN INDUSTRIES SINCE JANUARY 1, 1994, TO PRESENT, WHO  
02:35 PM 20 HAVE, OTHER THAN YOURSELF, WHO HAVE BEEN DISCOURAGED FROM  
02:35 PM 21 TAKING A JOB THAT HAS BEEN BID OR A JOB THAT WAS OPENING  
02:35 PM 22 UP?"

02:35 PM 23 YOUR ANSWER WAS "AT THIS TIME "I CAN'T RECALL"?

02:35 PM 24 A. AND I COULDN'T RECALL.

02:35 PM 25 Q. ALL RIGHT. AT LEAST AS OF JULY, 2003, YOU COULDN'T

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02:35 PM 1 RECALL ON WHAT BASIS YOU HAD -- ANY BASIS YOU HAD TO  
02:35 PM 2 BELIEVE THAT BLACK EMPLOYEES HAD BEEN DISCRIMINATED  
02:35 PM 3 AGAINST IN CAREER ADVANCEMENT BECAUSE OF THEIR RACE, ISN'T  
02:35 PM 4 THAT RIGHT?

02:35 PM 5 MR. GARRIGAN: YOUR HONOR, I NEED TO OBJECT.  
02:35 PM 6 THE WHOLE WAY HE'S ASKING THE QUESTIONS, HE'S ESSENTIALLY  
02:35 PM 7 QUESTIONING MR. MCCLAIN ON HOW WELL HE CAN RECALL HIS  
02:35 PM 8 DEPOSITION.

02:35 PM 9 THE COURT: I UNDERSTAND THAT, AND HE'S ENTITLED  
02:35 PM 10 TO DO SO ON CROSS-EXAMINATION.

02:35 PM 11 MR. GARRIGAN: OKAY. IT SEEMS TO ME TO BE  
02:35 PM 12 IMPROPER IMPEACHMENT.

02:35 PM 13 THE COURT: WELL, IN CROSS-EXAMINATION  
02:35 PM 14 CREDIBILITY IS ALWAYS A KEY, AND THE DIFFERENCE OF AN  
02:36 PM 15 ANSWER OR THE UNKNOWING STATE OF MIND OF AN ANSWER, AND  
02:36 PM 16 SINCE SOME FIVE MONTHS LATER HE CAN'T RECALL ALL OF THAT  
02:36 PM 17 IS OF SOME CONSEQUENCE, OR HE SEEMS TO THINK SO, AND HE'S  
02:36 PM 18 ENTITLED TO USE THAT AS IMPEACHMENT.

02:36 PM 19 MR. GARRIGAN: ALL RIGHT.

02:36 PM 20 THE COURT: MR. MCCLAIN MAY OR MAY NOT HAVE A  
02:36 PM 21 GOOD MEMORY. IT MAY BE AFFECTED BY VARIOUS THINGS. I  
02:36 PM 22 DON'T KNOW. HE'S ENTITLED TO FIND OUT.

02:36 PM 23 MR. HAMEL: MAY I PROCEED, YOUR HONOR?

02:36 PM 24 THE COURT: YES, SIR, PLEASE DO.

02:36 PM 25 BY MR. HAMEL:

TRANSCRIPT OF PROCEEDINGS

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02:36 PM 1 Q. MR. MCCLAIN, AM I CORRECT THAT AT LEAST AS OF JULY,  
02:36 PM 2 2003, YOU COULDN'T THINK OF ANY SITUATION SINCE JANUARY 1,  
02:36 PM 3 1994, IN WHICH AN EMPLOYEE DIDN'T GET THEIR CONTRACT  
02:36 PM 4 RAISED TWENTY-FIVE CENTS PER HOUR?

02:37 PM 5 A. THAT'S CORRECT.

02:37 PM 6 Q. AND YOU HAVE NO FACTUAL INFORMATION THAT BLACK  
02:37 PM 7 EMPLOYEES MORE FREQUENTLY THAN WHITES DID NOT GET A  
02:37 PM 8 CONTRACTUAL INCREASE, DO YOU?

02:37 PM 9 A. I BELIEVE THAT'S CORRECT.

02:37 PM 10 Q. YOU CAN'T RECALL ANY INSTANCE OF DISCRIMINATION  
02:37 PM 11 AGAINST BLACK EMPLOYEES, OTHER THAN YOURSELF AND PERHAPS  
02:37 PM 12 CLIFFORD DURDEN, WITH RESPECT TO COMPENSATION SINCE  
02:37 PM 13 JANUARY 1, 1994, EITHER, CAN YOU?

02:37 PM 14 A. WELL, COMPENSATION, WHAT DO YOU MEAN?

02:37 PM 15 THE COURT: DOLLARS.

02:37 PM 16 BY MR. HAMEL:

02:37 PM 17 Q. MONEY, PAY.

02:37 PM 18 A. WELL, I MEAN, ARE YOU TALKING ABOUT A PAY RAISE?

02:37 PM 19 THE COURT: YEAH. COMPENSATION IS MONEY,  
02:37 PM 20 VACATION.

02:37 PM 21 THE WITNESS: I GUESS NOT.

02:37 PM 22 THE COURT: PAID VACATION.

02:37 PM 23 THE WITNESS: I GUESS NOT.

02:37 PM 24 BY MR. HAMEL:

02:37 PM 25 Q. AND YOU COULDN'T RECALL THE NAME OF ANY PERSON, ANY

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02:37 PM 1 BLACK PERSON, WHO WAS EMPLOYED BY LUFKIN WHO YOU THINK DID  
02:37 PM 2 NOT GET THE TWENTY-FIVE-CENTS-PER-HOUR INCREASE AS  
02:37 PM 3 REQUIRED BY THE COLLECTIVE BARGAINING AGREEMENT?

02:37 PM 4 A. NO, I DON'T THINK SO.

02:37 PM 5 Q. MR. MCCLAIN, IT IS ALSO THE CASE, IS IT NOT, THAT  
02:38 PM 6 OTHER THAN THE -- OTHER THAN THE DIXON SITUATION, YOU  
02:38 PM 7 CAN'T THINK OF ANY OTHER SITUATION IN WHICH THE TRAILER  
02:38 PM 8 BODY BUILDER "B" OR "A" JOBS WERE NOT AWARDED ON THE BASIS  
02:38 PM 9 OF SENIORITY?

02:38 PM 10 A. YES, SIR, IN MY CASE.

02:38 PM 11 Q. OTHER THAN THOSE TWO CASES, CAN YOU RECALL ANY?

02:38 PM 12 A. YES, SIR. ON MANY OCCASIONS BLACKS ARE PASSED OVER,  
02:38 PM 13 AND THERE'S NOTHING WRONG WITH MY MEMORY.

02:38 PM 14 Q. WELL --

02:38 PM 15 A. ON MANY OCCASIONS.

02:38 PM 16 Q. MR. MCCLAIN, IF YOU'LL LOOK AT PAGE 102 --

02:38 PM 17 A. WHAT PERIOD ARE YOU TALKING ABOUT? WHAT ARE YOU  
02:38 PM 18 TALKING ABOUT?

02:38 PM 19 Q. IF YOU'LL LOOK AT PAGE 102 OF YOUR DEPOSITION, SIR.

02:38 PM 20 A. 100 WHAT NOW?

02:38 PM 21 Q. 102.

02:38 PM 22 THE COURT: 102.

02:38 PM 23 THE WITNESS: OKAY. ALL RIGHT.

02:38 PM 24 BY MR. HAMEL:

02:38 PM 25 Q. AND DO YOU SEE THAT'S THE PART OF YOUR DEPOSITION IN

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02:38 PM 1 WHICH YOU WERE RELATING TO ME THE GRIEVANCE THAT YOU FILED  
02:38 PM 2 ABOUT MR. DIXON?

02:38 PM 3 A. YES, SIR.

02:38 PM 4 Q. AM I CORRECT THAT YOUR TESTIMONY BEGINNING AT --

02:38 PM 5 WITH RESPECT TO THE QUESTION AT LINE 20 WAS -- THE

02:39 PM 6 QUESTION WAS: "MR. MCCLAIN, OTHER THAN THIS SITUATION,

02:39 PM 7 REFERRING TO MR. DIXON, CAN YOU THINK OF ANY OTHER

02:39 PM 8 SITUATION IN WHICH THE TRAILER BODY BUILDER "B" OR "A"

02:39 PM 9 JOBS WERE NOT AWARDED ON THE BASIS OF SENIORITY?"

02:39 PM 10 ANSWER: "I'M -- I DON'T REMEMBER AT THIS TIME.

02:39 PM 11 WITHOUT LOOKING AT THE DOCUMENTATION I CANNOT SAY FOR

02:39 PM 12 SURE."

02:39 PM 13 A. THE ANSWER SPEAKS FOR ITSELF.

02:39 PM 14 Q. ALL RIGHT.

02:39 PM 15 MR. GARRIGAN: I THINK IN FAIRNESS MR. HAMEL

02:39 PM 16 OUGHT TO COMPLETE THE ANSWER.

02:39 PM 17 THE COURT: SIR, YOU WILL HAVE AN OPPORTUNITY TO

02:39 PM 18 HAVE HIM ON REDIRECT. IN VIEW OF THE FACT OF A TIME

02:39 PM 19 LIMITATION, I'M NOT GOING TO USE UP HIS TIME FOR YOUR

02:39 PM 20 QUESTIONS OR YOUR ANSWERS.

02:39 PM 21 MR. GARRIGAN: YOUR HONOR, I WASN'T SUGGESTING

02:39 PM 22 HE GO ON TO ANOTHER QUESTION, I WAS JUST SUGGESTING THAT

02:39 PM 23 THE NEXT SENTENCE BE READ. IT WAS PART OF THE ANSWER.

02:39 PM 24 THE COURT: WELL, YOU HAVE A RIGHT TO DO THAT

02:39 PM 25 UNDER THE OPTIONAL COMPLETENESS RULE.

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02:39 PM 1 BY MR. HAMEL:

02:40 PM 2 Q. MR. MCCLAIN, JUST A COUPLE MORE QUESTIONS.

02:40 PM 3 THE COURT: OH, IF THAT WASN'T THE COMPLETE

02:40 PM 4 ANSWER, MR. HAMEL --

02:40 PM 5 THE WITNESS: IT WASN'T, SIR.

02:40 PM 6 MR. HAMEL: WELL, LET ME READ THE COMPLETE

02:40 PM 7 ANSWER, YOUR HONOR. I DIDN'T MEAN TO BE IN ANY WAY --

02:40 PM 8 THE COMPLETE ANSWER IS: "I'M -- I DON'T

02:40 PM 9 REMEMBER AT THIS TIME. WITHOUT LOOKING AT THE

02:40 PM 10 DOCUMENTATION, I CANNOT SAY FOR SURE. AND IF WE'RE HERE

02:40 PM 11 ALL DAY, IF I THINK OF SOMETHING, IS IT OKAY IF I BRING IT

02:40 PM 12 UP?"

02:40 PM 13 THE COURT: ALL RIGHT.

02:40 PM 14 BY MR. HAMEL:

02:40 PM 15 Q. MR. MCCLAIN, IT IS THE FACT THAT YOU COULD HAVE

02:40 PM 16 RECOMMENDED LUFKIN TO OTHER PEOPLE AS A PLACE TO WORK,

02:40 PM 17 ISN'T THAT RIGHT?

02:40 PM 18 A. IT'S POSSIBLE.

02:40 PM 19 Q. OKAY. AND YOU DON'T THINK THAT YOU'VE EVER ADVISED

02:40 PM 20 ANYONE AGAINST GOING TO WORK OR CONTINUING TO WORK FOR

02:40 PM 21 LUFKIN, DO YOU?

02:40 PM 22 A. I DON'T REMEMBER, JUST TO BE HONEST WITH YOU. AT

02:40 PM 23 THIS TIME I JUST DON'T REMEMBER.

02:40 PM 24 Q. THAT'S BLACK INDIVIDUALS OR BLACK EMPLOYEES AS WELL?

02:40 PM 25 A. ALL I KNOW IS THAT WHAT WE FACED AS BLACK EMPLOYEES,

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02:41 PM 1 IT WAS WRONG, IT WAS BLATANT, AND WHETHER OR NOT I  
02:41 PM 2 RECOMMENDED SOMEBODY NOT APPLY FOR A JOB, I DON'T  
02:41 PM 3 REMEMBER.

02:41 PM 4 MR. HAMEL: THANK YOU, YOUR HONOR. THAT  
02:41 PM 5 CONCLUDES MY EXAMINATION.

02:41 PM 6 REDIRECT EXAMINATION

02:41 PM 7 BY MR. GARRIGAN:

02:41 PM 8 Q. I WOULD JUST LIKE TO CLARIFY A COUPLE OF THINGS.

02:41 PM 9 IN FACT, WHEN YOU WERE QUALITY ASSURANCE  
02:41 PM 10 MANAGER, WERE THERE TIMES THAT YOU SOUGHT TRAINING THAT  
02:41 PM 11 YOU DID NOT GET?

02:41 PM 12 A. YES. YES, SIR.

02:41 PM 13 Q. OKAY. WAS THERE SOMEPLACE WHERE YOU COULD JUST GO  
02:41 PM 14 SIGN UP FOR THAT TRAINING?

02:41 PM 15 A. NO, SIR, AND IT WAS NOT AVAILABLE AT THE COLLEGE.

02:41 PM 16 Q. OKAY. IT WAS -- ALL RIGHT. WAS IT TRAINING THAT  
02:42 PM 17 OTHER MANAGERS RECEIVED?

02:42 PM 18 A. YES, SIR.

02:42 PM 19 Q. IS THAT WHERE YOU LEARNED ABOUT IT?

02:42 PM 20 A. YES, SIR.

02:42 PM 21 THE COURT: WHAT KIND OF TRAINING WAS IT?

02:42 PM 22 THE WITNESS: TRAINING LIKE STATISTICAL PROCESS  
02:42 PM 23 CONTROL, STATISTICAL DATA CONTROL, PROBLEM SOLVING, SBC,  
02:42 PM 24 ALL THE TRAINING IN TOOLS THAT HELP A MANAGER TO BE ABLE  
02:42 PM 25 TO DO HIS JOB EFFECTIVELY AND MAKE GOOD DECISIONS.

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02:42 PM 1 THE COURT: AND I SUPPOSE THAT ENHANCES HIS  
02:42 PM 2 ABILITY TO ADVANCE IN THE COMPANY?

02:42 PM 3 THE WITNESS: YES, SIR, VERSUS THE OTHER ONES,  
02:42 PM 4 THEY DON'T.

02:42 PM 5 BY MR. GARRIGAN:

02:42 PM 6 Q. ALSO, MR. MCCLAIN, YOU TESTIFIED ABOUT CONDITIONS IN  
02:42 PM 7 THE FOUNDRY AND OTHER DIVISIONS, EVEN WHERE YOU DID NOT  
02:42 PM 8 WORK?

02:42 PM 9 A. YES, SIR.

02:42 PM 10 Q. AND I BELIEVE YOU SAID THAT YOU VISITED THOSE PARTS  
02:42 PM 11 OF THE COMPANY AS A -- DOING AN AUDIT?

02:43 PM 12 A. YES, SIR.

02:43 PM 13 Q. OR SEVERAL AUDITS?

02:43 PM 14 A. YES, SIR.

02:43 PM 15 Q. WEREN'T YOU ALSO PRESENT OR WERE YOU ALSO PRESENT  
02:43 PM 16 WHEN THE COURT TOURED LUFKIN INDUSTRIES?

02:43 PM 17 A. YES, SIR.

02:43 PM 18 Q. OKAY. THAT WAS AFTER THE CLASS CERTIFICATION  
02:43 PM 19 HEARING?

02:43 PM 20 A. YES, SIR.

02:43 PM 21 Q. ALL RIGHT. WERE YOUR OBSERVATIONS DURING THAT TOUR  
02:43 PM 22 CONSISTENT WITH WHAT YOU'VE TESTIFIED TO TODAY?

02:43 PM 23 A. YES, SIR.

02:43 PM 24 Q. ARE YOU AWARE OF ANY SITUATIONS WHERE THE UNIONS,  
02:43 PM 25 WHERE YOUR UNION HAS FILED GRIEVANCES TO CHALLENGE

## TRANSCRIPT OF PROCEEDINGS

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02:44 PM 1 DECISIONS BY WHITE MANAGERS FAVORING WHITE EMPLOYEES BASED  
02:44 PM 2 ON THE ABILITY CLAUSE?

02:44 PM 3 A. STATE THAT AGAIN.

02:44 PM 4 Q. OKAY. ARE YOU AWARE OF THE UNIONS, OR THE UNION IN  
02:44 PM 5 THE TRAILER DIVISION, THAT WOULD BE THE BOILERMAKERS,  
02:44 PM 6 PURSUING A GRIEVANCE CHALLENGING A WHITE MANAGER'S  
02:44 PM 7 DECISION BASED ON THE ABILITY CLAUSE THAT FAVORED --  
02:44 PM 8 EXCUSE ME -- THAT FAVORED A BLACK -- EXCUSE ME -- THAT  
02:44 PM 9 FAVORED A WHITE EMPLOYEE OVER A MORE SENIOR BLACK  
02:44 PM 10 EMPLOYEE?

02:44 PM 11 A. I JUST -- I DON'T RECALL AT THIS TIME.

02:44 PM 12 Q. OKAY. AND MAYBE I JUST GOT THE WRONG IMPRESSION,  
02:45 PM 13 BUT I THOUGHT YOU SAID YOU COULDN'T THINK OF ANY WHITE  
02:45 PM 14 EMPLOYEES BEING GROOMED FOR PROMOTIONS DURING THE CLASS  
02:45 PM 15 PERIOD, AND I WANTED TO ASK YOU, YOU DID DISCUSS BEFORE  
02:45 PM 16 MR. GILLEY BEING GROOMED TO RUN THE TRAILER PLANT?

02:45 PM 17 A. YES.

02:45 PM 18 Q. DID THAT HAPPEN DURING THE CLASS PERIOD?

02:45 PM 19 A. YES, SIR.

02:45 PM 20 Q. ALL RIGHT. THANK YOU.

02:45 PM 21 MR. GARRIGAN: THAT'S ALL.

02:45 PM 22 THE COURT: ANYTHING FURTHER, MR. HAMEL?

02:45 PM 23 MR. HAMEL: NO, YOUR HONOR.

02:45 PM 24 THE COURT: THANK YOU VERY MUCH. YOU'RE  
02:45 PM 25 EXCUSED.

02:45 PM 1 THE WITNESS: ALL RIGHT. THANK YOU.

02:45 PM 2 THE COURT: WHO DO YOU HAVE NEXT?

02:45 PM 3 MR. GARRIGAN: CALVIN DEASON.

4

5

CALVIN DEASON, PLAINTIFF WITNESS, SWORN

6

7

DIRECT EXAMINATION

8

BY MR. GARRIGAN:

02:46 PM 9 Q. WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD?

02:46 PM 10 A. CALVIN DEASON.

02:46 PM 11 Q. AND MR. DEASON, FOR THE RECORD, YOU'RE AN

02:46 PM 12 AFRICAN-AMERICAN?

02:46 PM 13 A. YES.

02:46 PM 14 Q. YOU'RE NOT ACTIVELY INVOLVED IN THIS LITIGATION IN

02:46 PM 15 ANY WAY, ARE YOU?

02:46 PM 16 A. YES.

02:46 PM 17 Q. YOU ARE?

02:47 PM 18 A. YES.

02:47 PM 19 Q. WELL, I GUESS YOU ARE. YOU'RE A WITNESS?

02:47 PM 20 A. YES.

02:47 PM 21 Q. ARE YOU A CLASS REPRESENTATIVE?

02:47 PM 22 A. YES.

02:47 PM 23 Q. I DON'T BELIEVE YOU ARE A CLASS REPRESENTATIVE.

02:47 PM 24 A. WELL --

02:47 PM 25 Q. YOU ARE A MEMBER OF THE CLASS?



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02:47 PM 1 A. A MEMBER OF THE CLASS.

02:47 PM 2 Q. YOU DIDN'T HAVE ANYTHING TO DO WITH INITIATING THIS  
02:47 PM 3 LAWSUIT, DID YOU?

02:47 PM 4 A. NO.

02:47 PM 5 Q. YOU HAVEN'T HAD TO SIGN ANY PAPERS TO PURSUE THIS  
02:47 PM 6 LITIGATION, HAVE YOU?

02:47 PM 7 A. NO.

02:47 PM 8 Q. WHERE DO YOU WORK, MR. DEASON?

02:47 PM 9 A. AT LUFKIN INDUSTRIES, IN THE CLEANING ROOM IN THE  
02:47 PM 10 FOUNDRY DEPARTMENT.

02:47 PM 11 Q. ALL RIGHT. WHERE DO YOU LIVE?

02:47 PM 12 A. IN LUFKIN, TEXAS.

02:47 PM 13 Q. WHO DO YOU LIVE WITH?

02:47 PM 14 A. MY WIFE AND MY TWO KIDS.

02:47 PM 15 Q. HOW OLD A MAN ARE YOU?

02:47 PM 16 A. FORTY YEARS OLD.

02:47 PM 17 THE COURT: WAS IT A BIG SHOCK TO YOU WHEN YOU  
02:47 PM 18 TURNED THE BIG 4-0?

02:47 PM 19 THE WITNESS: YEAH.

02:47 PM 20 THE COURT: WELL, IT'S GOING TO BE EVERY TEN  
02:47 PM 21 YEARS THAT THAT HAPPENS TO YOU.

02:47 PM 22 (LAUGHTER)

02:48 PM 23 THE WITNESS: ALL RIGHT.

02:48 PM 24 BY MR. GARRIGAN:

02:48 PM 25 Q. WELL, MR. DEASON, WHEN IS THE FIRST TIME THAT YOU

TRANSCRIPT OF PROCEEDINGS

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02:48 PM 1 BEGAN WORKING FOR LUFKIN INDUSTRIES?

02:48 PM 2 A. SEPTEMBER OF '94.

02:48 PM 3 Q. OKAY. DID YOU WORK THERE BEFORE THEN?

02:48 PM 4 A. NO.

02:48 PM 5 Q. OKAY. DID YOU EVER WORK THERE AS A HIGH SCHOOL  
02:48 PM 6 STUDENT?

02:48 PM 7 A. YES, BACK IN -- BACK IN -- I MIGHT HAVE BEEN  
02:48 PM 8 SIXTEEN. IT WAS A WHILE AGO WHEN I FIRST WORKED THERE.

02:48 PM 9 Q. ALL RIGHT. AND THEN WHERE DID YOU WORK?

02:48 PM 10 A. I WORKED FOR MR. THOMAS OVER ACROSS THE STREET, BY  
02:48 PM 11 THE GEAR SHOP, RIGHT ACROSS THE STREET.

02:48 PM 12 Q. ALL RIGHT. AND YOU SAY YOU WERE ABOUT SIXTEEN THEN?

02:48 PM 13 A. YES, I WAS IN HIGH SCHOOL.

02:48 PM 14 Q. WHEN YOU WENT BACK, YOUR CURRENT TENURE AT LUFKIN  
02:49 PM 15 INDUSTRIES BEGAN WHEN?

02:49 PM 16 A. OF '94.

02:49 PM 17 Q. ALL RIGHT. HOW DID YOU COME TO BE WORKING AT LUFKIN  
02:49 PM 18 INDUSTRIES STARTING IN 1994?

02:49 PM 19 A. A FRIEND OF MINE ASKED ME TO RIDE WITH HIM TO THE  
02:49 PM 20 WORKFORCE TO FILL OUT AN APPLICATION, AND WE WENT IN AND  
02:49 PM 21 FILLED OUT ONE AND I GOT AN INTERVIEW.

02:49 PM 22 Q. DID THEY CALL?

02:49 PM 23 THE COURT: WHO WITH? DO YOU REMEMBER HIS NAME  
02:49 PM 24 OR HER NAME?

02:49 PM 25 THE WITNESS: THE GUY'S NAME WAS BARBAY.

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02:49 PM 1 THE COURT: BARBAY?

02:49 PM 2 THE WITNESS: YES, SIR.

02:49 PM 3 BY MR. GARRIGAN:

02:49 PM 4 Q. BARBAY GAVE YOU THE INTERVIEW?

02:49 PM 5 A. YES, SIR.

02:49 PM 6 Q. ALL RIGHT. WHO SET UP THE INTERVIEW WITH MR.

02:49 PM 7 BARBAY?

02:49 PM 8 A. I GUESS THE WORKFORCE. I MEAN, I WENT IN AND FILLED

02:50 PM 9 OUT THE APPLICATION WITH THEM, AND THEN THEY CALLED AND

02:50 PM 10 SAID I HAD AN INTERVIEW WITH MR. BARBAY.

02:50 PM 11 Q. ALL RIGHT. AND DID YOU GO TO KEEP THAT APPOINTMENT?

02:50 PM 12 A. YES.

02:50 PM 13 Q. DID MR. BARBAY TELL YOU WHERE, WHERE THEY WERE

02:50 PM 14 HIRING?

02:50 PM 15 MR. HAMEL: OBJECTION, YOUR HONOR, LEADING.

02:50 PM 16 THE COURT: OVERRULED.

02:50 PM 17 THE WITNESS: HE SAID AT THE FOUNDRY.

02:50 PM 18 BY MR. GARRIGAN:

02:50 PM 19 Q. DID HE SAY ANYPLACE IN PARTICULAR AT THE FOUNDRY?

02:50 PM 20 A. NO.

02:50 PM 21 Q. DID HE MENTION THE CLEANING ROOM?

02:50 PM 22 A. NO.

02:50 PM 23 Q. OKAY. DID HE OFFER YOU A JOB THERE?

02:50 PM 24 A. IN THE CLEANING ROOM?

02:50 PM 25 Q. OR IN THE FOUNDRY, YES.

TRANSCRIPT OF PROCEEDINGS

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02:50 PM 1 A. HE JUST TOLD ME TO GO OVER TO GATE THIRTEEN, THE  
02:50 PM 2 PERSONNEL BUILDING, AND WHEN I GOT THERE, LOUIS  
02:50 PM 3 KILLINGSWORTH WAS WAITING ON ME, THE MANAGER OVER THE  
02:50 PM 4 CLEANING ROOM.

02:51 PM 5 Q. OKAY. NOW, MR. BARBAY, WHAT IS HIS RACE?

02:51 PM 6 A. WHITE.

02:51 PM 7 Q. ALL RIGHT. AND HOW ABOUT MR. KILLINGSWORTH?

02:51 PM 8 A. A WHITE MAN.

02:51 PM 9 Q. ALL RIGHT. AND WHO DID YOU --

02:51 PM 10 WHAT WAS MR. KILLINGSWORTH'S JOB?

02:51 PM 11 A. HE WAS THE MANAGER OVER THE CLEANING ROOM AT THAT  
02:51 PM 12 TIME.

02:51 PM 13 Q. OF THE CLEANING ROOM?

02:51 PM 14 A. YES, SIR.

02:51 PM 15 Q. AND HE'S THE ONE THAT MR. BARBAY SENT YOU TO?

02:51 PM 16 A. YES.

02:51 PM 17 Q. ALL RIGHT. AND DID -- WHO OFFERED YOU A JOB?

02:51 PM 18 A. LEWIS DID, MR. KILLINGSWORTH.

02:51 PM 19 Q. AND DID YOU TAKE IT?

02:51 PM 20 A. YES.

02:51 PM 21 Q. DID THEY OFFER --

02:51 PM 22 AND WHERE WAS THAT JOB?

02:51 PM 23 A. IN THE CLEANING ROOM.

02:51 PM 24 Q. DID THEY OFFER YOU ANY OTHER JOBS?

02:51 PM 25 A. NO.

TRANSCRIPT OF PROCEEDINGS

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02:51 PM 1 Q. DID THEY TELL YOU ABOUT OTHER EMPLOYMENT

02:51 PM 2 OPPORTUNITIES AT LUFKIN?

02:51 PM 3 A. NO.

02:51 PM 4 Q. DID THEY DESCRIBE TO YOU THE DIFFERENCE IN WORK

02:51 PM 5 CONDITIONS BETWEEN THE FOUNDRY, POWER TRANSMISSION,

02:51 PM 6 TRAILER AND THE OILFIELD DIVISION?

02:51 PM 7 A. NO.

02:51 PM 8 Q. WHY DID YOU TAKE THAT JOB?

02:52 PM 9 A. I NEEDED A JOB TO SUPPORT MY FAMILY.

02:52 PM 10 Q. DID ANYBODY STEER YOU INTO THE FOUNDRY OR CHANNEL

02:52 PM 11 YOU INTO THE FOUNDRY?

02:52 PM 12 MR. HAMEL: OBJECTION, YOUR HONOR.

02:52 PM 13 THE COURT: SUSTAINED.

02:52 PM 14 YOU WERE OFFERED A JOB, YOU WERE TOLD IT WAS IN

02:52 PM 15 THE CLEANING ROOM IN THE FOUNDRY, AND YOU WERE ASSIGNED

02:52 PM 16 THERE?

02:52 PM 17 IS THAT CORRECT?

02:52 PM 18 THE WITNESS: YES, SIR. YES, SIR.

02:52 PM 19 THE COURT: SO NO ONE STEERED YOU THERE, YOU HAD

02:52 PM 20 THE OPPORTUNITY TO ACCEPT IT OR REJECT IT, IS THAT TRUE?

02:52 PM 21 THE WITNESS: YES.

02:52 PM 22 THE COURT: THANK YOU.

02:52 PM 23 BY MR. GARRIGAN:

02:52 PM 24 Q. WELL, WERE YOU OFFERED ANY OTHER JOB OPTIONS THERE?

02:52 PM 25 A. NO.

TRANSCRIPT OF PROCEEDINGS

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02:52 PM 1 THE COURT: HAVE YOU EVER SINCE YOU'VE BEEN  
02:52 PM 2 THERE?

02:52 PM 3 THE WITNESS: I'VE BIDDED ON JOBS, BUT I WAS --  
02:52 PM 4 DIDN'T GET THEM.

02:52 PM 5 THE COURT: OKAY.  
02:52 PM 6 BY MR. GARRIGAN:

02:52 PM 7 Q. AND HAVE YOU BEEN WORKING IN THE FOUNDRY EVER SINCE?

02:52 PM 8 A. YES.

02:52 PM 9 Q. TELL ME, WOULD YOU RECOMMEND TO ANYBODY TO WORK IN  
02:53 PM 10 THE FOUNDRY?

02:53 PM 11 A. NO. NO.

02:53 PM 12 THE COURT: WHAT'S YOUR RATE OF PAY?

02:53 PM 13 THE WITNESS: TWELVE EIGHTY-THREE.

02:53 PM 14 THE COURT: IS THAT A MONTH, A YEAR, AN HOUR OR  
02:53 PM 15 WHAT?

02:53 PM 16 THE WITNESS: AN HOUR.

02:53 PM 17 THE COURT: ALL RIGHT.

02:53 PM 18 BY MR. GARRIGAN:

02:53 PM 19 Q. TELL US ABOUT THE CLEANING ROOM, WILL YOU, MR.  
02:53 PM 20 DEASON? WHAT'S IT LIKE?

02:53 PM 21 A. IT'S DIRTY, IT'S HARD, HOT, COLD IN THE WINTER.  
02:53 PM 22 IT'S JUST A PHYSICAL "GRUISING" JOB.

02:53 PM 23 Q. ALL RIGHT. WELL, PHYSICALLY, HOW BIG IS THE  
02:53 PM 24 CLEANING ROOM?

02:53 PM 25 A. IT'S NOT REALLY THAT BIG. I MEAN, IT'S -- IT'S NOT

TRANSCRIPT OF PROCEEDINGS

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02:53 PM 1 BIG AT ALL.

02:53 PM 2 Q. IS IT BIGGER THAN THIS ROOM?

02:53 PM 3 A. JUST A LITTLE BIT BIGGER.

02:53 PM 4 Q. HOW MANY PEOPLE WORK THERE ON A TYPICAL SHIFT?

02:53 PM 5 A. ON MY SHIFT IT'S FIFTY-FIVE.

02:53 PM 6 Q. AND WHAT DO YOU DO THERE? WHAT IS THE PROCESS GOING  
02:54 PM 7 ON IN THE CLEANING ROOM?

02:54 PM 8 A. WE CHIP AND GRIND. WHAT IT IS, WE FIX CASTINGS THAT  
02:54 PM 9 HAVE GOT "BURN-IN" ON THEM, KNOTS, SORT OF GRIND IT DOWN,  
02:54 PM 10 MAKE IT SMOOTH, MAKE IT PRETTY.

02:54 PM 11 Q. OKAY. THESE ARE IRON CASTINGS?

02:54 PM 12 A. VERY HEAVY IRON CASTINGS.

02:54 PM 13 Q. AND BY CHIPPING AND GRINDING, YOU CHIP AND YOU GRIND  
02:54 PM 14 TO REMOVE IMPERFECTIONS?

02:54 PM 15 A. RIGHT.

02:54 PM 16 Q. AND THIS IS RIGHT AFTER THE METAL COMES OUT OF THE  
02:54 PM 17 MOLD?

02:54 PM 18 A. YEAH. THEY ALLOW A TWENTY-FOUR-HOUR COOLING PERIOD  
02:54 PM 19 AND THEN WE WORK ON IT.

02:54 PM 20 THE COURT: WHAT PIECES WERE IN THE MOLD, I  
02:54 PM 21 MEAN --

02:54 PM 22 THE WITNESS: YOU'VE GOT COUNTERWEIGHTS, YOU'VE  
02:54 PM 23 GOT HOUSES, COVERS, YOU'VE GOT CRANKS, YOU'VE GOT SADDLES,  
02:54 PM 24 YOU'VE GOT --

02:54 PM 25 THE COURT: WELL, I MEAN WHAT DIVISION DO THEY

TRANSCRIPT OF PROCEEDINGS

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02:54 PM 1 GO TO? IS THIS OILFIELD?

02:55 PM 2 THE WITNESS: MOST -- WELL, CRANKS AND SADDLES  
02:55 PM 3 AND HOUSES I SUPPOSE GO TO THE OILFIELD, YOU KNOW.

02:55 PM 4 BY MR. GARRIGAN:

02:55 PM 5 Q. HOW BIG ARE THESE PIECES OF METAL, THESE CASTINGS?

02:55 PM 6 A. OH, THE CRANKS ARE LARGE. YOU HAVE LARGE ONES, YOU  
02:55 PM 7 HAVE MEDIUM ONES, YOU HAVE SMALL ONES, BUT THEY'RE VERY  
02:55 PM 8 HEAVY.

02:55 PM 9 Q. THEY'RE SOLID CHUNKS OF METAL?

02:55 PM 10 A. YES.

02:55 PM 11 Q. DO THEY WEIGH AS MUCH AS A CAR?

02:55 PM 12 A. PROBABLY MORE.

02:55 PM 13 THE COURT: HOW ARE THEY TRANSPORTED?

02:55 PM 14 THE WITNESS: WE USE A CRANE.

02:55 PM 15 THE COURT: THEY'RE TRANSPORTED BY AN OVERHEAD  
02:55 PM 16 CRANE?

02:55 PM 17 THE WITNESS: YEAH. WE USE A FORKLIFT TO BRING  
02:55 PM 18 THEM IN, AND THEN WE PICK THEM UP BY A CRANE AND MOVE THEM  
02:55 PM 19 AROUND WITH A CRANE, AN OVERHEAD CRANE.

02:55 PM 20 THE COURT: ALL RIGHT, SIR.

02:55 PM 21 BY MR. GARRIGAN:

02:55 PM 22 Q. OKAY. AND WHAT DO THESE CASTINGS LOOK LIKE BEFORE  
02:55 PM 23 YOU CLEAN THEM?

02:55 PM 24 A. OH, THEY'RE IN BAD SHAPE BEFORE THEY GET TO US. I  
02:56 PM 25 MEAN, YOU'VE GOT "BURN-IN" ON THEM, I MEAN, YOU'VE GOT

TRANSCRIPT OF PROCEEDINGS

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02:56 PM 1 KNOTS.

02:56 PM 2 Q. WELL, WHAT IS "BURN-INS"?

02:56 PM 3 A. WHERE SAND JUST DONE BURNED INTO THE CASTING AND

02:56 PM 4 IT'S JUST STUCK, AND YOU HAVE TO GET IT OFF.

02:56 PM 5 Q. HOW DO YOU GET IT OFF?

02:56 PM 6 A. WITH A CHIPPING GUN.

02:56 PM 7 Q. AND THE CHIPPING GUN -- EXPLAIN HOW A CHIPPING GUN

02:56 PM 8 WORKS.

02:56 PM 9 A. IT'S SORT OF LIKE A JACKHAMMER IN A SENSE, BUT IT'S

02:56 PM 10 JUST SMALLER, AND WHAT IT DOES IS, IT CHIPS, IT CHIPS OFF

02:56 PM 11 THE "BURN-IN" THAT'S BURNED IN ON THE CASTING. YOU COULD

02:56 PM 12 USE IT TO REMOVE IT WHEREVER YOU ARE CHIPPING AND IT WILL

02:56 PM 13 REMOVE IT OFF.

02:56 PM 14 Q. SO IT'S GOT LIKE A JACKHAMMER WITH A CHISEL ON IT?

02:56 PM 15 A. EXACTLY.

02:56 PM 16 Q. BUT IT'S SOMETHING THAT YOU HOLD IN YOUR HANDS?

02:56 PM 17 A. YES.

02:56 PM 18 Q. IT'S NOT LIKE A JACKHAMMER THAT YOU CAN JUST REST ON

02:56 PM 19 THE --

02:57 PM 20 A. NO, IT'S NOT LIKE THAT.

02:57 PM 21 Q. WHAT OTHER TOOLS DO YOU USE?

02:57 PM 22 A. WE HAVE A LONG SQUEEZER, WE HAVE A TWO-INCH. WE

02:57 PM 23 HAVE A CONE GRINDER AND A GRINDER. THAT'S PRETTY MUCH

02:57 PM 24 WHAT WE USE.

02:57 PM 25 THE COURT: ARE THEY PNEUMATIC OR ELECTRIC?

02:57 PM 1 THE WITNESS: AIR, THEY'RE RUN BY AIR.

02:57 PM 2 THE COURT: AIR?

02:57 PM 3 THE WITNESS: YES.

02:57 PM 4 BY MR. GARRIGAN:

02:57 PM 5 Q. YOU TALK ABOUT A SQUEEZER?

02:57 PM 6 A. UH-HUH.

02:57 PM 7 Q. IS THAT A KIND OF GRINDING MACHINE?

02:57 PM 8 A. YES, IT'S JUST A LONG, A LONG GRINDER THAT'S GOT AN  
02:57 PM 9 EXTENSION ON IT. WE JUST CALL IT A LONG SQUEEZER GRINDER.

02:57 PM 10 Q. OKAY. HOW -- YOU SAID IT WAS DIRTY IN THERE. TELL  
02:57 PM 11 US HOW DIRTY IT IS IN THE CLEANING ROOM.

02:57 PM 12 A. IT'S SO DIRTY YOU CAN'T SEE THE FLOOR. I MEAN, YOU  
02:57 PM 13 LOOK UP OVERHEAD, YOU'VE GOT DIRT LAYING ON BEAMS, YOU'VE  
02:57 PM 14 GOT DIRT LAYING ON THE HEATER BLOWERS. IT'S THICK, YOU  
02:57 PM 15 KNOW.

02:58 PM 16 Q. HOW THICK?

02:58 PM 17 A. IF THIS IS THE BEAM, YOU'VE GOT DIRT STANDING UP  
02:58 PM 18 THIS HIGH, YOU KNOW. I MEAN --

02:58 PM 19 Q. FIVE, SIX, EIGHT INCHES?

02:58 PM 20 A. AT LEAST.

02:58 PM 21 Q. HOW ABOUT THE FLOOR? IS IT COVERED WITH --

02:58 PM 22 A. IT'S COVERED.

02:58 PM 23 Q. HOW DEEP IS IT ON THE FLOOR?

02:58 PM 24 A. ABOUT THREE, FOUR OR SO. IT'S DEEP ENOUGH FOR YOU  
02:58 PM 25 TO MAKE A PRINT AND IT COME UP ON YOUR BOOT A LITTLE BIT.

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02:58 PM 1 Q. IT COMES UP OVER THE TOP OF YOUR BOOT?

02:58 PM 2 A. OVER THE SOLE OF IT, THE HEEL AND STUFF. IT'S  
02:58 PM 3 PRETTY DEEP.

02:58 PM 4 Q. AND THIS DIRT THAT WE'RE TALKING ABOUT, IS IT HEAVY,  
02:58 PM 5 PACKED DIRT? IS IT -- WHAT IS ITS CONSISTENCY?

02:58 PM 6 A. OH, IT'S SORT OF LIKE POWDER. YOU GRIND, SO IT  
02:58 PM 7 TURNS INTO LIKE A FINE LITTLE POWDER LIKE DIRT.

02:58 PM 8 Q. IS IT JUST LYING ON THE GROUND OR --

02:58 PM 9 A. IT'S JUST LYING THERE.

02:58 PM 10 Q. DO YOU SEE IT ANYWHERE ELSE?

02:58 PM 11 A. EVERYWHERE YOU LOOK IN THE CLEANING ROOM IT'S DIRTY.  
02:59 PM 12 I MEAN, THE MAIN BAY, THE FLOOR IS COVERED. I MEAN,  
02:59 PM 13 EVERYWHERE YOU LOOK IT'S DIRTY.

02:59 PM 14 Q. IS IT IN THE AIR?

02:59 PM 15 A. DEFINITELY.

02:59 PM 16 THE COURT: DO YOU WEAR MASKS?

02:59 PM 17 THE WITNESS: YES, SIR.

02:59 PM 18 BY MR. GARRIGAN:

02:59 PM 19 Q. WHAT KIND OF MASKS DO YOU WEAR?

02:59 PM 20 A. WE WEAR THE -- I THINK THEY ARE 3M MASKS THAT ARE  
02:59 PM 21 SUPPOSED TO FIT YOUR NOSE AND COVER THIS PART OF YOUR  
02:59 PM 22 CHIN.

02:59 PM 23 WE WEAR A RESPIRATOR, A HELMET, BUT -- IT'S  
02:59 PM 24 SUPPOSED TO SEAL, BUT IT DON'T.

02:59 PM 25 Q. OKAY. SO YOU WEAR THE SORT OF PAPER-LIKE DUST

TRANSCRIPT OF PROCEEDINGS

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02:59 PM 1 MASKS?

02:59 PM 2 A. RIGHT.

02:59 PM 3 Q. THAT COVERS YOUR NOSE DOWN TO BELOW YOUR CHIN?

02:59 PM 4 A. RIGHT.

02:59 PM 5 Q. AND IT'S GOT A PIECE OF ELASTIC TO GO BEHIND YOUR

02:59 PM 6 HEAD?

02:59 PM 7 A. EXACTLY. IT'S GOT TWO PIECES OF ELASTIC, ONE THAT

02:59 PM 8 FITS HERE AND ONE THAT FITS ON THE TOP.

02:59 PM 9 Q. AND ON THE TOP OF ALL THAT YOU WEAR A RESPIRATOR?

03:00 PM 10 A. RIGHT.

03:00 PM 11 Q. DOES THAT PROTECT YOU FROM THE DUST?

03:00 PM 12 A. NO.

03:00 PM 13 Q. IS THE FRONT OF YOUR CHIN COVERED BY BOTH THE

03:00 PM 14 RESPIRATOR AND THE DUST MASK?

03:00 PM 15 A. YES. THE RESPIRATOR HAS GOT ANOTHER LITTLE FITTING

03:00 PM 16 THAT FITS OVER THE RESPIRATOR, AND WHAT IT IS, IT'S

03:00 PM 17 DESIGNED TO JUST SEAL OFF. AND OUR POLICY IS TO BE

03:00 PM 18 CLEAN-SHAVEN FOR IT TO FIT FLUSH, BUT AT THE END OF THE

03:00 PM 19 DAY YOU'VE STILL GOT DUST IN YOUR NOSE, I MEAN --

03:00 PM 20 Q. TELL ME, AFTER YOU'RE DONE WORKING, IF YOU TOOK OFF

03:00 PM 21 THE RESPIRATOR, IF YOU TOOK OFF THE DUST MASK AND YOU

03:00 PM 22 WIPED OFF THE FRONT OF YOUR CHIN WITH A TISSUE --

03:00 PM 23 A. IT WOULD BE BLACK.

03:00 PM 24 Q. AND THAT'S THE MOST PROTECTED PART OF YOUR FACE?

03:00 PM 25 A. SUPPOSED TO BE.

TRANSCRIPT OF PROCEEDINGS

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03:01 PM 1 Q. WHEN YOU BLOW YOUR NOSE, WHAT COLOR IS YOUR TISSUE?

03:01 PM 2 A. WELL, IT'S GOT -- THE DUST THAT YOU DONE INHALED  
03:01 PM 3 WOULD COME UP IF YOU BLOW YOUR NOSE.

03:01 PM 4 IF I WAS TO WIPE MY NOSE RIGHT NOW, IT WOULD BE  
03:01 PM 5 BLACK. YOU COULD SEE DUST PARTICLES COMING OUT OF THE  
03:01 PM 6 DUST THAT I HAVE BREATHED IN.

03:01 PM 7 Q. OKAY. HAS THAT BEEN TRUE SINCE YOU STARTED WORKING  
03:01 PM 8 THERE IN '94?

03:01 PM 9 A. YES.

03:01 PM 10 Q. WHAT'S THE LONGEST VACATION YOU CAN TAKE?

03:01 PM 11 A. HERE RECENTLY THEY'VE BEEN PUTTING UP A SIGN SAYING  
03:01 PM 12 THAT YOU CAN ONLY GO ON VACATION WHEN THE WORKLOAD SLOWS  
03:01 PM 13 DOWN. WHEN WORK IS -- WHEN WE'VE GOT A LOT OF WORK, THEY  
03:01 PM 14 PUT UP A SIGN "NO VACATION."

03:01 PM 15 Q. BUT WHEN YOU DO TAKE A VACATION, HOW LONG ARE YOUR  
03:01 PM 16 VACATIONS?

03:01 PM 17 A. MAYBE FOUR DAYS OR SO.

03:02 PM 18 Q. SO AT THE END OF FOUR DAYS, WHEN YOU HAVEN'T BEEN  
03:02 PM 19 WORKING FOR FOUR DAYS, AND YOU GO BACK TO WORK, IF YOU  
03:02 PM 20 BLOW YOUR NOSE, WHAT COLOR IS THE TISSUE?

03:02 PM 21 A. BLACK DUST WOULD COME OUT.

03:02 PM 22 Q. PLEASE TELL THE COURT, WOULD YOU, HOW PHYSICALLY  
03:02 PM 23 DEMANDING THE WORK IS TO BE A CHIPPER/GRINDER?

03:02 PM 24 A. IT'S VERY DEMANDING. IT'S -- IT BREAKS -- IT BREAKS  
03:02 PM 25 DOWN YOUR LEGS, YOUR KNEES, YOUR HANDS, YOUR SHOULDERS,

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03:02 PM 1 YOUR ARMS, EVERYTHING. IT'S PHYSICAL.

03:02 PM 2 Q. DO YOU HAVE ANY INJURIES?

03:02 PM 3 A. YES.

03:02 PM 4 Q. WHAT?

03:02 PM 5 A. MY WRIST IS SO SORE RIGHT NOW UNTIL I CAN'T STAND  
03:02 PM 6 ANYTHING TO TOUCH IT.

03:03 PM 7 Q. WHAT'S THE TEMPERATURE LIKE IN THERE, IN THE  
03:03 PM 8 CLEANING ROOM?

03:03 PM 9 A. WELL, IT ALL DEPENDS ON WHAT IT IS OUTSIDE. IF  
03:03 PM 10 IT'S -- SAY IT'S NINETY OUTSIDE, IT'S WELL OVER A HUNDRED  
03:03 PM 11 IN THERE BECAUSE OF THE IRON HOLDING THE HEAT.

03:03 PM 12 AND IF IT'S COLD, I MEAN, IT'S COLD, YOU KNOW,  
03:03 PM 13 BECAUSE YOU'VE GOT SO MUCH METAL IN THE BUILDING, IT JUST  
03:03 PM 14 HOLDS THE COLD, AND IT HOLDS THE HEAT.

03:03 PM 15 Q. IT'S NOT INSULATED IN THERE?

03:03 PM 16 A. I HAVEN'T SEEN ANY.

03:03 PM 17 Q. THE CHIPPER GUN THAT YOU TALKED ABOUT, IT'S GOT A  
03:03 PM 18 CHISEL ON THE FRONT OF IT?

03:03 PM 19 A. RIGHT.

03:03 PM 20 Q. THAT POUNDS BACK AND FORTH?

03:03 PM 21 A. EXACTLY.

03:03 PM 22 Q. HOW MUCH DOES THE CHIPPER GUN WEIGH?

03:03 PM 23 A. I WOULD SAY TWENTY POUNDS.

03:03 PM 24 Q. AND IS IT LIKE A JACKHAMMER, WHERE IT BASICALLY  
03:03 PM 25 WORKS AGAINST ITS OWN WEIGHT?

03:03 PM 1 A. NO, IT WORKS AGAINST YOUR HANDS AND YOUR WRISTS.  
03:04 PM 2 WHAT IT IS, YOU'RE HOLDING IT, AND IT'S PUSHING FORWARD,  
03:04 PM 3 BUT THE IMPACT OF IT IS COMING BACK.

03:04 PM 4 Q. IS IT POSSIBLE TO USE IT WHERE YOU CAN JUST HOLD IT  
03:04 PM 5 VERTICALLY SO THAT ITS WEIGHT IS WHAT HOLDS IT DOWN?

03:04 PM 6 A. IF IT IS A WAY, I HAVEN'T FOUND IT YET. I HAVEN'T  
03:04 PM 7 SEEN THAT DONE YET.

03:04 PM 8 Q. DO YOU HAVE TO USE IT AT DIFFERENT ANGLES?

03:04 PM 9 A. SOMETIMES.

03:04 PM 10 Q. NOW, I'VE NEVER USED ONE OF THOSE, AND I DON'T KNOW  
03:04 PM 11 IF THE COURT HAS, BUT LET ME --

03:04 PM 12 THE COURT: I CAN ASSURE YOU I HAVEN'T.

03:04 PM 13 BY MR. GARRIGAN:

03:04 PM 14 Q. ONE OF THE MORE OBNOXIOUS TOOLS THAT I HAVE COME  
03:04 PM 15 ACROSS, AND A LOT OF PEOPLE HAVE, IS A CHAINSAW.

03:04 PM 16 A. UH-HUH.

03:04 PM 17 Q. HOW DOES A CHAINSAW --

03:04 PM 18 THE COURT: I'M SCARED OF THOSE, TOO. I'VE  
03:04 PM 19 GRADUATED TO A WHEELBARROW.

03:05 PM 20 MR. GARRIGAN: WELL, THE ONLY THING I CAN THINK  
03:05 PM 21 TO COMPARE THIS TO IS A CHAINSAW. BUT --

03:05 PM 22 THE COURT: WELL, IT'S GOT A LOT OF MOVING  
03:05 PM 23 PARTS. A WHEELBARROW HAS ONE MOVING PART. A RAKE HAS  
03:05 PM 24 NONE. SO I CAN OPERATE A RAKE OR A SHOVEL OR A  
03:05 PM 25 WHEELBARROW IF NECESSARY, BUT IF YOU GET A LOT MORE MOVING

## TRANSCRIPT OF PROCEEDINGS

19

09:30 AM 1 IT RUNS A TRAILER OPERATION, IT RUNS AN OILFIELD  
09:30 AM 2 MANUFACTURING PLANT, IT RUNS A POWER TRANSMISSION PLANT,  
09:30 AM 3 AND IT'S THAT FOUR BUSINESSES PLUS THEIR CORPORATE ENTITY  
09:30 AM 4 THAT REQUIRE US TO PUT ON A SUBSTANTIAL AMOUNT OF EVIDENCE  
09:30 AM 5 WITH RESPECT TO THE EMPLOYMENT PRACTICES IN EACH OF THOSE  
09:30 AM 6 DIVISIONS SO THE COURT CAN FULLY UNDERSTAND HOW THEY  
09:30 AM 7 INTERRELATE AND HOW THEY RELATE WITH RESPECT TO THE  
09:30 AM 8 ALLEGATIONS MADE BY THE PLAINTIFFS THAT BLACKS ARE  
09:30 AM 9 DISCRIMINATED AGAINST AND THAT LUFKIN'S EMPLOYMENT  
09:30 AM 10 PRACTICES CREATE A DISPARATE IMPACT.

09:30 AM 11 LET ME BEGIN BY SAYING THOUGH THAT --  
09:30 AM 12 YOUR HONOR MAY RECALL THAT THE CLASS  
09:31 AM 13 CERTIFICATION IN THIS CASE INDICATED THAT THE PLAINTIFFS  
09:31 AM 14 WERE GOING TO PROVE A CASE OF DISPARATE IMPACT IN  
09:31 AM 15 EVALUATIONS, DEMOTIONS, TERMINATIONS, LAYOFFS, RECALLS AND  
09:31 AM 16 REHIRES, AND AS THE EVIDENCE HAS DEVELOPED, AND AS THE  
09:31 AM 17 PLAINTIFF I THINK CONCEDES ON OPENING STATEMENT, THEY  
09:31 AM 18 DON'T INTEND TO INTRODUCE ANY OF THAT EVIDENCE. THEY  
09:31 AM 19 DON'T HAVE A CASE TO SHOW THAT THERE IS A DISPARATE IMPACT  
09:31 AM 20 WITH RESPECT TO THOSE EMPLOYMENT PRACTICES. THEIR  
09:31 AM 21 LIMITATION OF THEIR CASE IS TO INITIAL ASSIGNMENTS, TO  
09:31 AM 22 TEMPORARY TRAINING OPPORTUNITIES AND TO PROMOTIONAL  
09:31 AM 23 OPPORTUNITIES.

09:31 AM 24 IT IS IMPORTANT FOR THE COURT TO KNOW THAT  
09:31 AM 25 LUFKIN'S BUSINESSES ARE QUITE SIGNIFICANTLY DIFFERENT, AND