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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In The Matter of	:	DOCKET NO. 891345-EI
	:	
Application of GULF POWER	:	<u>HEARING</u>
COMPANY for an increase in rates	:	<u>FIRST DAY</u>
and charges.	:	<u>AFTERNOON SESSION</u>

VOLUME - II

Pages 110 through 282

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 Florida Public Service Commission

FPSC Hearing Room 106
 Fletcher Building
 101 E. Gaines Street
 Tallahassee, Florida 32399

Monday, June 11, 1990

Met pursuant to Adjournment at 12:55 p.m.

BEFORE: COMMISSIONER MICHAEL McK. WILSON, CHAIRMAN
 COMMISSIONER GERALD L. GUNTER
 COMMISSIONER THOMAS M. BEARD
 COMMISSIONER BETTY EASLEY

APPEARANCES:

(As heretofore noted.)

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COMMISSIONER GUNTER: You're it.

CHAIRMAN WILSON: Are you going to wait for Steve a few minutes?

MR. SHREVE: We'll wait.

CHAIRMAN WILSON: Okay, we'll wait.

COMMISSIONER GUNTER: So we won't have to wait, I've got just a couple of questions.

Mr. McCrary, my inquiry would be in the area of inventory. Now, if you're not the right person to address my question, if you would just direct me to whoever the person would be. But as I understand in reading -- and, Mr. Holland, you might want to listen up.

MR. HOLLAND: Yes, sir.

COMMISSIONER GUNTER: And Mr. Shreve and all the parties -- is that I have read an extensive amount of material in preparation for the last filing and this one, including some of the depositions. And that's to better prepare myself for cross examination and understand the issues. I could give you all a list of those depositions that I have read. I can't recall them all now, but I could go through them and tell you the ones that I have read. It sort of lays the predicate for the questions that I have. And I think

1 that's called truth in questioning.

2 In the process of how a work order goes
3 through, if a job comes in and they list the bill of
4 materials they'd require for the job, and get those
5 from supply, and go out and do the job, isn't that
6 right?

7 WITNESS McCRARY: Right.

8 COMMISSIONER GUNTER: In the case, as I
9 understand with Line Power, they, in effect, had
10 utilized some Gulf Power equipment, transformers, wire,
11 that kind of stuff in accomplishment of their job. But
12 when you take an inventory, really, unless you went and
13 looked at every work order to find out if, in fact, the
14 materials that were drawn for that individual job were
15 installed, it would be a real lengthy process to really
16 make sure what your real inventory would be, wouldn't
17 it? Do you understand what I'm asking? You would
18 almost have to go to the work order, make sure that
19 those items that were drawn were installed, and then
20 balance that against your inventory.

21 WITNESS McCRARY: That's correct. What the
22 audit does is to compare what is on your books, what
23 the records say should be in your inventory with the
24 physical count of the material that's there.

25 COMMISSIONER GUNTER: Right. So you don't

1 really know, in fact, that all the items on an
2 individual work order, which would affect -- there are
3 two sides of this; one, the items that were drawn out
4 of inventory and the work orders, they can match, and
5 the inventory can match. But, in effect, if any of
6 those items were diverted from the time they were drawn
7 until they were installed, until you went down every
8 individual work order you wouldn't be able to know
9 that, would you?

10 WITNESS McCRARY: That's correct. If the
11 paper work has been falsified, altered to some extent.

12 COMMISSIONER GUNTER: I understand. If
13 somebody is trying to defraud you, there is not any way
14 that you can find that out.

15 WITNESS McCRARY: No way.

16 COMMISSIONER GUNTER: All right. That sort
17 of leads me to a conclusion that if, in fact, unless
18 there was complete restitution to the Company, complete
19 restitution to the Company, where there has been a
20 diversion of materials for whatever purpose outside
21 utility service, outside your Gulf Power utility
22 service, that there are two questions. One of them is
23 that either the inventory -- and I would doubt that you
24 would have a way to know that -- either the inventory
25 would be wrong or your plant in service would be wrong.

1 Because if they diverted materials that they had drawn
2 on a work order to nonutility service, had pilfered it,
3 and used it somewhere else, that would say, through the
4 process of adding to your investment for outside plant,
5 that would say that that account would by necessity
6 have to be wrong, wouldn't it?

7 WITNESS McCRARY: Yes, sir, that's correct.

8 COMMISSIONER GUNTER: Okay.

9 WITNESS McCRARY: The only material that we
10 know and can prove that has been diverted amounts to
11 nine transformers that are located on military bases at
12 jobs that were done by Line Power.

13 COMMISSIONER GUNTER: I understand. I'm just
14 trying to understand the process.

15 Then, if, in fact, Line Power had -- let's go
16 to the PCB allegation -- if they had brought their PCB
17 contaminated transformers in and had slipped them in to
18 you, again that would be an expense that Gulf Power
19 would have had to have borne. In your disposal of
20 those PCB contaminated transformers, that would be an
21 expense that you really wouldn't know if someone were
22 purposely trying to defraud you, would you?

23 WITNESS McCRARY: That's correct.

24 COMMISSIONER GUNTER: And therein is another
25 place that you could have an expense that would not be

1 either a working capital or a plant in service account,
2 there would be some problems there?

3 WITNESS McCRARY: Yes, sir, it could be. But
4 we have investigated this thing extensively, and so has
5 the federal government, and to our knowledge those
6 things did not happen except in these areas where we
7 have so reported.

8 COMMISSIONER GUNTER: Yes. Well, the expense
9 items would have been out of period. The only one
10 place that I've got some thrust and some thought
11 process of what could have happened in the '82 time
12 period that would be outside of that other docket that
13 we've got an investigation going on. For instance, you
14 know, there may have been, just for discussion, there
15 may have been some conservation advertising that
16 Appleyard did or one of the other folks that was
17 recovered in a previous period. There's a number of
18 things to look at there.

19 But the items that could have some effect
20 would be plant in service, or rate base items because
21 of diversion of materials into -- that would have been
22 by accountant. You know, an accountant gets the work
23 order back and he's got the number of manhours and the
24 materials and all that goes -- you capitalize that
25 labor and it goes into rate base, into plant in

1 service. But if folks had pilfered that and took it
2 away, some transformers, poles, or whatever in the
3 devil they did, that would have had an effect on the
4 rate base.

5 WITNESS McCRARY: Yes, sir.

6 COMMISSIONER GUNTER: It's just a matter of
7 degree. I'm not --

8 WITNESS McCRARY: Right. It could have. I
9 would think if it had been to any large degree it would
10 be reflected in our costs, that are not excessive, or
11 --

12 COMMISSIONER GUNTER: Mine, it doesn't matter
13 about the extensiveness of it. I'm just trying to
14 understand the system.

15 WITNESS McCRARY: I understand. That's correct.

16 COMMISSIONER GUNTER: And I think, as I read
17 Croft's deposition, he spoke in his deposition of items
18 like gloves that were in inventory that were -- there
19 were a number of items which he spoke of of getting out
20 of inventory.

21 And is there going to be somebody that can
22 discuss how those expendable items are treated in
23 inventory? For instance, I would take gloves. I would
24 assume that gloves, and I think it was characterized --
25 you all remember the deposition better than I do -- but

1 it characterized gloves as being the ones that they had
2 were much higher voltage gloves and they were hard to
3 handle and what have you. And nobody drew them, so he
4 told them, "Well, don't throw them in the Dempsey
5 Dumpster, put them on my truck." And there were a
6 number of those.

7 And I would be interested, if you're not the
8 right person, with discussing how those items are
9 handled in inventory. Those items that are considered
10 expendable items, like nuts and bolts and gloves and
11 aprons and blankets and those kind of things, how they
12 are treated for accounting purposes.

13 WITNESS McCRARY: I wouldn't be able to
14 answer that, but I think --

15 COMMISSIONER GUNTER: Would Arlan be able to?

16 WITNESS McCRARY: -- probably Arlan would be
17 the guy to answer that.

18 COMMISSIONER GUNTER: Okay, all right.

19 WITNESS McCRARY: We did, by the way, we did
20 recover those gloves.

21 COMMISSIONER GUNTER: Okay, I just -- well,
22 now, mine was just trying to understand, and reading
23 that, as to what transpired in that time period and
24 trying to think through the process of what could
25 affect this case, other than the line of reasoning that

1 Mr. Burgess is going through, what could affect this
2 case or what might could have affected the last case.
3 Okay.

4 WITNESS McCRARY: I can tell you one thing
5 for sure. The way that inventory is accounted for and
6 handled today is much different from the way it was
7 handled and accounted for in 1982.

8 COMMISSIONER GUNTER: Is there somebody going
9 to be able to address -- and I think this was in the
10 Baker-Childers report, the statement by the young lady
11 you mentioned previously, I don't recall her name.
12 What was her name?

13 WITNESS McCRARY: Carolyn Sirmon?

14 COMMISSIONER GUNTER: Yeah. The allegation
15 that showed up in that report, and I believe that was
16 the handwritten 35-page or so report. I didn't read
17 here deposition. I don't even know if she was deposed.
18 But with the \$2 million allegation of bringing in
19 unused materials, I mean salvage materials and counting
20 those for inventory, is there someone going to address
21 that on point?

22 MR. HOLLAND: Mr. Fell.

23 COMMISSIONER GUNTER: Who?

24 MR. HOLLAND: Mr. Fell.

25 COMMISSIONER GUNTER: Okay. That's George

1 Fell?

2 MR. HOLLAND: Yes, sir.

3 COMMISSIONER GUNTER: Okay. I'll wait for
4 those questions.

5 COMMISSIONER BEARD: Do you all have
6 engineers that go behind contractors to inspect the job
7 for compliance?

8 WITNESS McCRARY: Yes, sir. Jobs are --

9 COMMISSIONER BEARD: If you had a work order
10 with a contractor, or your own employees for that
11 matter, and the materials weren't used to build that
12 construction, that engineer would have to know that.

13 WITNESS McCRARY: For the most part, they would.
14 If they were any excessive differences between --

15 COMMISSIONER BEARD: Well, if extensive --

16 WITNESS McCRARY: -- what was required for
17 the job and what was actually charged out, the engineer
18 would know that. Subtle differences, he might not.

19 COMMISSIONER BEARD: Nuts and bolts, maybe
20 not; but the poles, transformers, approximate miles of
21 line, conductor, he would know those things, would he
22 not?

23 WITNESS McCRARY: That's right, he would.

24 COMMISSIONER BEARD: Would recognize that the
25 inventory issue sheet showed an excessive amount of

1 inventory being issued as opposed to the job order?

2 WITNESS McCRARY: If there was a substantial
3 difference, he would know that, would see that, catch
4 it. Subtle differences, he may not catch.

5 COMMISSIONER EASLEY: Would he see it because
6 he recognized it from the paper work or would he
7 physically look at the jobs?

8 WITNESS McCRARY: He just knows how much --
9 how many transformers it takes to do a job.

10 COMMISSIONER BEARD: An engineer would look
11 at the job and physically ride the line out to see if
12 it was in compliance with code.

13 COMMISSIONER EASLEY: Well, that was what I
14 thought to begin with, okay.

15 COMMISSIONER BEARD: And would have, I assume
16 would have the sheet, the engineering design sheet, and
17 typically that should show the amount of inventory
18 utilized in the job.

19 WITNESS McCRARY: It would.

20 COMMISSIONER EASLEY: Would you or Mr. Fell
21 be the one to ask about the other side of the
22 accounting of those items that were missing from
23 inventory? Would that be Mr. Fell or --

24 WITNESS McCRARY: That would be Mr. Fell or
25 Mr. Scarbrough.

1 COMMISSIONER EASLEY: Thank you.

2 MR. SHREVE: Mr. McCrary, to follow up a
3 litte bit --

4 MR. HOLLAND: Just a minute, Jack.

5 Commissioners, normally I would object, and I don't
6 think it's the Commission's practice to let a witness
7 be double-teamed. With Steve not here, I don't guess I
8 will object to Mr. Shreve continuing this line of
9 questions, but I do think that it is something we
10 shouldn't make a practice of during the course of --

11 CHAIRMAN WILSON: I think the practice the
12 Commission has generally followed is when you have
13 lawyers inquiring about basically different subjects
14 that it's acceptable to have two lawyers from the same
15 side who have prepared different pieces of the case to
16 do cross examination. But no, it would be improper to
17 double team on the same material and the same line of
18 inquiry.

19 MR. HOLLAND: I guess my inquiry would be,
20 then, are we going to a different area or are we
21 simply, Mr. Shreve, picking up where Steve left off
22 because Steve is not here?

23 CHAIRMAN WILSON: Let's find out where, is
24 Mr. Burgess going to come back this afternoon?

25 MR. SHREVE: He'll be back later. I'm not

1 exactly sure what time. If you want him here, we'll
2 get him here right now. If Mr. Holland wants to object
3 to me asking the questions, that will be fine.

4 CHAIRMAN WILSON: Do you intend to complete
5 the cross examination of Mr. McCrary, Mr. Shreve?

6 MR. SHREVE: I thought I would. We didn't
7 have too much more, but I --

8 MR. HOLLAND: That's fine.

9 MR. SHREVE: But if Mr. Holland wants to
10 object --

11 MR. HOLLAND: That's fine.

12 CHAIRMAN WILSON: Go ahead.

13 CROSS EXAMINATION

14 BY MR. SHREVE:

15 Q Following up on Commissioner Gunter's
16 questions, Mr. McCrary, as far as the investigations of
17 the items that were missing, I guess primarily
18 revolving around Mr. Croft one way or the other, I
19 think that also went back into the warehouse
20 investigation, did it not?

21 A Well, Mr. Croft worked in that area and so,
22 yes, the investigation had to do with things that he
23 had taken from the warehouse and the repair shop.

24 Q There were two investigations, there was a
25 warehouse investigation and there was the so-called

1 Croft investigation, but there was overlap there, was
2 there not?

3 A No.

4 Q Same thing?

5 A Same thing.

6 Q Okay.

7 MR. HOLLAND: Wait. Wait just a minute. I
8 think for clarification purposes, are you referring to
9 the audits that were conducted?

10 MR. SHREVE: I'm referring to what Mr.
11 McCrary had said earlier. I had thought at that time
12 there was some delineation of two different -- I'm
13 really trying to clarify something. There was talk
14 about two investigations; and even at that time there
15 was talk about an overlap. I think, in general, the
16 Croft investigation included the warehouse
17 investigation, not the initial audit of the
18 investigation.

19 MR. HOLLAND: He can clarify that.

20 Q (By Mr. Shreve) All right, sir. If you
21 would, could you just give us the scenario from the
22 very first document or report that called the warehouse
23 problem to your attention?

24 A There was the early audits that we referred
25 to this morning. The 1982 audit showed the outage and

1 the later 1983 audit, after everything was corrected
2 and properly counted. When that audit was done, then
3 there was no more concern about the audit of the
4 warehouse. So that was not the thing that initiated
5 the Croft Investigation. It was the allegations in
6 anonymous letters and the statement by Lamar Brazwell
7 that initiated the Croft Investigation.

8 Q Now, Mr. Brazwell then came to you, I believe
9 you said, and complained or mentioned there were some
10 things going on that you should know about?

11 A Yes, sir.

12 Q That helped to initiate the investigation.
13 Was Mr. Brazwell convicted of a crime?

14 A He was.

15 Q Did, when did that first come to light?

16 A He was, he was tried in the, what we call the
17 Leeper trial in, I think it was, 1987. And when I
18 first learned of the scheme that had gone on between
19 Leeper and Brazwell was when I picked up the paper and
20 saw that written up in the paper after the trial.

21 Q Was there an investigation done by you or Gulf
22 Power to determine the extent of Mr. Brazwell's, I
23 guess it was a check scam, but the theft of the Company
24 -- from the Company?

25 A We did some investigating early on with the

1 -- some allegations were made in the initial
2 investigation against Lamar Brazwell.

3 Q Was that before the trial?

4 A Yes. It was.

5 Q So, then, you had knowledge of it before the
6 trial?

7 A Not the Leeper episode, no, sir.

8 Q What about Brazwell?

9 A Well, Brazwell's relationship with Leeper was
10 totally unknown to the Company until after the trial.

11 Q All right. After you became knowledgeable of
12 the relationship with Brazwell and Leeper, and the fact
13 that they had had this check scam going, did you make
14 an investigation to find out the extent of it?

15 A No, we didn't. Because when I found out
16 about it, Leeper had been -- or Brazwell had been
17 convicted and Leeper was later convicted. It was
18 totally in the hands of the Internal Revenue Service
19 and the U.S. Attorney.

20 Q What about the effect it had on Gulf Power
21 and its adjustments that it might need to make because
22 of the theft?

23 A I don't think we had any rate case going at
24 the time that that occurred. That occurred back in
25 1982, as I remember.

1 Q Okay. But they, in fact, were giving false
2 invoices to the Company and receiving checks for those
3 invoices, is that correct, to cover those invoices?

4 A That's correct.

5 Q And you did no investigation to find out
6 whether there was any effect on the Company or not?

7 A Well, I said, when I learned about it, that
8 was in 1987, some five years or so after that occurred.
9 But, you know, I say to you again, that if the
10 ratepayers have been impacted by those actions, then
11 you know, we're willing to make restitution with
12 interest. But I don't think there has been a problem
13 in --

14 Q In --

15 A -- that situation.

16 Q When reports of improprieties have come to
17 you, such as Brazwell's report of improprieties on the
18 part of Croft, and other improprieties that might have
19 come to you, do you investigate those improprieties?

20 A Yes, sir.

21 Q Do you feel you do a thorough investigation
22 of those improprieties?

23 A I think so. Yes, sir.

24 Q And you take remedial action of those
25 improprieties of the people involved?

1 A Yes, sir.

2 Q You mentioned a couple that had been let go;
3 the window washing scam, the person that what, stole a
4 gallon of gas or something like that?

5 A Yes, sir.

6 Q Tell me about the amnesty program.

7 A The amnesty program was put into effect in, I
8 believe it was, August of 1984. The reason that we did
9 that was because in the initial investigation. There
10 had been numerous allegations by different people who
11 were interviewed against a number of people in the
12 Company. Many of these things were just allegations
13 and we could not prove them, one way or the other.

14 We decided that it was in the best interests
15 of the Company to put all those things behind us that
16 had occurred back in the '80-'83 time period, and to
17 say to employees, "If you have any reason to believe
18 that you have done something that is improper, then you
19 come forward and make restitution to the Company and
20 we'll wipe the slate clean and start down the road with
21 a fresh start."

22 And that was the reason that we implemented
23 the amnesty program.

24 Q All right, so you implemented the amnesty
25 program?

1 A Yes, sir.

2 Q These reports that came to you from the
3 employees, what did your investigation show?

4 A They showed, in many cases, that they were
5 just allegations and you would start to try to back
6 those things up with facts and you'd get differences of
7 opinions, some say, "Yes, I, this is the way I was told
8 that it happened." You just don't have any facts that
9 you can act on.

10 When we had hard proof of impropriety, we did
11 something about it.

12 Q And what were those instances, sir?

13 A Kyle Croft, Lamar Brazwell Carolyn Sirmon,
14 John Matthews --

15 Q But these were not people involved in the
16 amnesty program?

17 A Sir?

18 Q These were not people involved in the amnesty
19 program, were they?

20 A I don't know whether they were involved in
21 the amnesty program or not.

22 Q Did you do any investigation into any of your
23 executives based on complaints received?

24 A We did.

25 Q And what did those investigations show?

1 A Well, they show whatever is in our
2 investigative report. You'll have to tell me
3 specifically what you want to talk about.

4 Q Well, do you know how many people were
5 involved in the amnesty program?

6 A No, sir, I don't.

7 Q And you don't know any names of people
8 involved in it?

9 A No, sir, except, except people who have told
10 me --

11 Q Fine.

12 A -- that they went down. But I did not get a
13 list of names. I don't know who it was, and we
14 designed the amnesty program that way.

15 Q And your investigation into the allegations
16 made to you, or to the Company, revealed nothing that
17 you should act on, other than Croft, Brazwell, Leeper
18 -- which you didn't take any action on Brazwell and
19 Leeper, did you?

20 A I didn't know about Brazwell or Leeper.

21 Q So they didn't result in anything. And
22 Carolyn Sirmon you mentioned. Croft, you let him go?

23 A That's right.

24 Q Did Gulf Power make arrangements to have his
25 insurance paid by one of your vendors after he was

1 gone?

2 A No, sir, Gulf Power did not. One of our
3 executives did make arrangements specifically against
4 my instructions.

5 Q And what action did you take then?

6 A When I found out about it, I took that to our
7 Board and the recommendation was made later that this
8 executive be terminated.

9 Q The allegations that were made, you have
10 mentioned an individual who took quite a few actions
11 over the years. After you came to Gulf Power, is it
12 your position that you did not know of any of those
13 activities?

14 A Which activities now?

15 Q Well, you have mentioned Mr. Horton and the
16 different things that he supposedly did. And that was
17 your primary reason for entering into the plea
18 agreement was primarily, you said, Mr. Horton. All of
19 those activities carried on by Mr. Horton, you had no
20 knowledge of?

21 A I had knowledge of the specific facts later
22 on. But when I first came to Gulf Power, is that what
23 you're saying?

24 Q The allegations that were made against Mr.
25 Horton, and also the allegations that you alluded to as

1 reasons that you entered into the plea of guilty with
2 the Federal Government, you did have knowledge of those
3 activities of Mr. Horton at times when they were
4 ongoing, did you not?

5 A No.

6 Q Never?

7 A As I said this morning, I saw the Appleyard
8 ledger for the first time in the fall of 1988. And
9 that's when I discovered that political contributions
10 had been made through that mechanism. I discovered
11 that Kyle Croft's insurance had been paid through that
12 mechanism, specifically against my instructions, in the
13 fall of 1988.

14 Q Did not know of any other activities being
15 carried on, that you alluded to this morning as being
16 improper?

17 A I can't recall. Now, if you ask me about
18 some specific thing, you know, I'd --

19 Q All right, sir. Did you have any knowledge,
20 or did you obtain any knowledge after-the-fact of any
21 work done by any of the employees, on any of the
22 executives' property, of Gulf Power?

23 A Yes, sir.

24 Q Who would that be?

25 A Mr. Addison had some yard maintenance done

1 when he was here at Gulf. When I learned of that, I
2 went to Mr. Addison and told him about it and he said,
3 "Just find out how much that is, and I will make
4 restitution to the Company."

5 Q So that was an investigation you did and
6 found out how much it was?

7 A Yes, sir.

8 Q So you did investigate that complaint?

9 A I did.

10 Q And so you told Mr. Addison and then what?

11 A He --

12 Q He paid the Company back?

13 A That's right.

14 Q Was that in the amnesty program?

15 A I think that was in the amnesty program. I'm
16 not sure about that. But I know I got a bill for the
17 amount of work that had been done and I gave that to
18 Mr. Addison. And I think he made restitution through
19 the amnesty program, but I'm not sure.

20 Q Any other actions taken against Mr. Addison,
21 who at that time, I guess, was the President of The
22 Southern Company?

23 A That's correct. The only other allegations
24 that --

25 Q No, any action taken against Mr. Addison?

1 A For that, for the lawn work?

2 Q Well, was there more to it than lawn work?

3 Was there some construction work?

4 A I don't know of any construction work.

5 Q Would your investigations report show that?

6 A They would show that there were allegations
7 of construction work. In all the allegations that were
8 made, I sat down with Mr. Addison and went through
9 these things, and in all cases he says that it either
10 didn't happen, or he made restitution to the Company,
11 or it was an incidental thing.

12 Q And Mr. Addison is the only one that comes to
13 mind? Any other officers of The Southern Company?

14 A There were allegations made against Mr.
15 Vogtle, who was the ex-President of Southern Company.

16 Q And what did your investigation show?

17 A What it showed was that Mr. Vogtle and Kyle
18 Croft were good friends. And Kyle Croft used to go up
19 and spend the weekend with Alvin Vogtle. And while he
20 was there, he would do work for him at his house.

21 Q And it didn't involve Gulf Power at all?

22 A I don't know of anything specific that we
23 could prove that involved Gulf Power.

24 Q Yes, but what did your investigation show?
25 Didn't it show that it involved Gulf Power materials,

1 at least doing work, constuction work on a racetrack,
2 for one thing?

3 A There were allegations made to that effect.

4 Q You didn't find any evidence of that?

5 A No, sir, I didn't --

6 Q Has anyone testified to that effect?

7 A I really didn't pursue those things to that
8 extent.

9 Q You did not investigate that complaint
10 thoroughly?

11 Q You did not investigate that complaint
12 thoroughly?

13 A I talked to Mr. Vogtle about it.

14 Q Mr. Vogtle?

15 A Yes.

16 Q Did he pay back anything to Gulf Power?

17 A No.

18 Q Beg your pardon?

19 A No, he didn't. As far as I know he didn't.

20 Q Was any further action taken against Mr.
21 Vogtle?

22 A No.

23 Q In the so-called amnesty program now. This
24 was an amnesty program set up by Gulf Power, not by the
25 State of Florida or the Federal Government, is that

1 correct?

2 A That's correct.

3 Q So it was really just an in-house thing?

4 A That's correct.

5 Q Didn't keep anyone from being prosecuted?

6 A That's correct.

7 Q You have no way of knowing how much was
8 stolen, taken, misappropriated, or whatever, from Gulf
9 Power where it concerned any of the participants in the
10 amnesty program, do you, because you didn't investigate
11 that?

12 A Well, I know the total amount of money that we
13 got back through the amnesty program was about \$13,000.

14 Q And how was that figure determined?

15 A That figure was determined by the individual,
16 whoever it was, sitting down with an attorney, talking
17 about what they had done or what they had taken, and
18 between the two of them, they arrived at a fair value
19 and that money was then returned to the Company.

20 Q And you have some way of showing, or you know
21 in your own mind or your investigations, that that was
22 the proper amount
23 and that they did reveal everything they took or
24 misappropriated?

25 A No, sir, I don't.

1 Q So there's really no way, the only way you
2 have of knowing is that the people that participated
3 said, "This is all I owe," or "This is what I owe"?

4 A Those people and the attorney who was --

5 Q The attorney was taking their word, wasn't he?
6 Was he involved in it?

7 A He was taking their word for what they had
8 taken, sure.

9 Q All right. So he took their word. They told
10 him what they had taken and then they established the
11 value of that, and that was it?

12 A That's right.

13 Q So you have no way to know what effect it had
14 on Gulf Power from a use of materials or use of time or
15 labor, or what else, other than what the people that
16 actually took it said, do you?

17 A No, I don't.

18 Q And these are the investigations that you did?

19 A That was just -- that was part of the amnesty
20 program and --

21 Q Did any of them come to more than a gallon of
22 gas?

23 A You know, I really can't say how much any of
24 these individuals contributed. All we got was the
25 total amount.

1 Q You did hear the figure \$10,000 from one
2 person, didn't you?

3 A I have heard that, yes.

4 Q And you know who that came from?

5 A Yes.

6 Q Who was that?

7 A Ed Addison.

8 CHAIRMAN WILSON: Let me ask a question. What
9 were the terms of the amnesty program? Did you send
10 out a notice to all your employees?

11 WITNESS McCRARY: Yes, we did. What we did
12 first was to notify the individuals who had been
13 mentioned in the initial investigation, those
14 individuals who had worked in the warehouse area or
15 against whom allegations had been made, no matter how
16 minor they were. We notified those individuals
17 personally, and then we sent out a notice to all
18 employees that said anybody that --

19 CHAIRMAN WILSON: What did it say?

20 WITNESS McCRARY: It just says, "If you have
21 any reason to believe that you've been involved in
22 anything that's improper, then we are declaring this
23 amnesty program so that you can come forward and make
24 restitution to the Company and you won't be
25 prosecuted."

1 CHAIRMAN WILSON: So the other half of it was
2 that if you come forward during this -- I assume there
3 was a limited period of time during which they could
4 come forward?

5 WITNESS McCRARY: Yes; yes. I don't remember
6 the --

7 CHAIRMAN WILSON: "That you come forward and
8 acknowledge whatever you've done, or else we're going
9 to investigate all of these, and if we find out that,
10 in fact, you haven't come forward with all of that,
11 you'll be terminated," or would some other action be
12 taken, or prosecuted?

13 WITNESS McCRARY: What we said is, "If you
14 come forward now and let the attorneys know that you've
15 been involved in something that you shouldn't have
16 been, if our investigation later on confirms that you,
17 in reality, have been involved in something, and you
18 have already been down to the attorney and declared
19 that and paid the Company for it, then we'll take no
20 action against you."

21 CHAIRMAN WILSON: Now, I think what Mr. Shreve
22 was asking about is those subsequent investigations
23 that would have determined whether the amounts paid
24 back under the amnesty program were, in fact, correct
25 amounts, or whether there were any further -- either

1 any other people or anything beyond what was received
2 by the Company in the amnesty program. Were there
3 further investigations?

4 WITNESS McCRARY: Well, any additional
5 investigations that we did, as far as I know, didn't
6 turn up anybody who had been down and made restitution
7 under the amnesty program. There were three other
8 individuals in the warehouse who were involved in the
9 Leeper scheme, and to my knowledge none of those three
10 had been down and confessed to that under the amnesty
11 program. All three of those people are no longer with
12 the Company.

13 COMMISSIONER EASLEY: So let me understand.
14 You did not specifically investigate the admission or
15 involvement of an individual who came down under the
16 amnesty program, specifically that individual?

17 WITNESS McCRARY: No, ma'am, we did not.

18 COMMISSIONER EASLEY: What you said was if it
19 comes out in a subsequent --

20 WITNESS McCRARY: Subsequent investigation.

21 COMMISSIONER EASLEY: Yeah, okay. I got it.

22 Thank you.

23 Q (By Mr. Shreve) But even though you had
24 reports of improper activity on the part of some people
25 that may or may not have participated in the amnesty

1 program, if you did an investigation, you took no other
2 action other than to discuss it with that person, is
3 that correct?

4 A Well, I can't recall anyone else who was
5 involved in the initial investigation against who we
6 took some action.

7 Q Have you prosecuted anyone, or made a
8 complaint to prosecute anyone?

9 A No.

10 Q So in a sense what you did was give more or
11 less immunity to anybody that was involved, as far as
12 Gulf Power is concerned?

13 A No.

14 MR. HOLLAND: Mr. Chairman, let me state an
15 objection on the record. We have continually -- or Mr.
16 Shreve and Mr. Burgess have continued to use the word
17 "you didn't prosecute anybody."
18 Mr. Shreve, I believe, is a former --

19 CHAIRMAN WILSON: I think that's the first
20 time I've heard that. I've heard "file criminal
21 complaint."

22 MR. HOLLAND: File criminal complaint. As I
23 understand the process -- and I'm not a criminal
24 lawyer, I don't do that on a regular basis -- you go
25 down and you inform the authorities of information that

1 you have relative to a criminal act and it is within
2 their prosecutorial discretion as to whether they go
3 forward with that or not. It's not up to the Company
4 whether they prosecute or not. And I think that's a
5 fair statement of the process.

6 MR. SHREVE: I think that's exact correct. I
7 don't think the Company can forgive because it's a
8 crime against the State.

9 Q (By Mr. Shreve) I think with Mr. Holland's
10 help, I'll ask you, please detail or tell me the times
11 that you went down and made some type of a complaint or
12 filed information, either with the State Attorney's
13 Office, the Sheriff's Department or the Police
14 Department in this -- well, you took over in '83 and
15 you've become aware of quite a few different incidents
16 or improprieties. Would you please tell me when you
17 went down and gave the information so that the State
18 could prosecute the people that had either defrauded or
19 committed some type of theft from Gulf Power?

20 A Well, I didn't go down and give that
21 information to the State. In 1986, I believe it was
22 early 1986, the IRS and the FBI got extensively
23 involved in the investigations that had been going on
24 at Gulf. When they got involved we pulled out of the
25 investigations, left that up to them. We cooperated,

1 gave them our records, everything that we had, and
2 continued to give them our records and cooperate with
3 them.

4 Q And you initiated that with the IRS?

5 A No, we did not.

6 Q Did you initiate any criminal action anywhere?

7 A No.

8 Q Or give any information to anyone?

9 A No.

10 Q This is in 1986? And at that time you backed
11 off of your investigations?

12 A That's right, because we were -- we had some
13 discussions with the IRS about conflicting interests
14 and us talking to people after they had talked to them,
15 so we just decided it would be best for us to back out,
16 let them do the investigation, because
17 they had subpoena power and resources that we didn't
18 have.

19 Q What had you done up to that point?

20 A Pardon?

21 Q What had you done you done up to that point?

22 A Well, we had terminated Kyle Croft; Lamar
23 Braswell had resigned; we had moved some people in the
24 warehouse; we had instituted a number of corrective
25 measures. But as far as prosecuting any of the

1 individuals, we didn't think that would be in the best
2 interest of the Company to do that.

3 Q Concerning the amnesty program and whatever
4 improprieties had taken place prior to that, evidently
5 it was money or property or time or labor was taken
6 from Gulf Power by certain individuals. In your IRS
7 filings did that represent either some type of an
8 expense when it was labor involved that you claimed as
9 a legitimate expense?

10 A It might have in some cases.

11 Q Any corrections made?

12 A You know, I really don't know but I -- you
13 know, as I said before, if they were anything that
14 affected the ratepayers, then we're going to make those
15 corrections, make those restitutions.

16 Q Were those improprieties for which the people
17 were involved in the amnesty program brought to the
18 attention of the Public Service Commission during the
19 last rate case?

20 A I'm not sure that the amnesty program was
21 discussed in the last rate case.

22 Q Not the amnesty program, but the improprieties
23 which had been reported and you were having, I guess,
24 ongoing investigations at the time.

25 A I'm not sure that we specifically told the

1 Public Counsel about --

2 Q Or the Public Service Commission?

3 A Or the Public Service Commission about those
4 things in the rate case. However, I know that the
5 investigation was a matter of public record. It had
6 been in the newspaper, on television. The Commission
7 had received copies of the anonymous letters that we
8 had gotten. I had talked to various people about the
9 investigation, so it was --

10 Q During the last rate case?

11 A As I said, I don't think that was an issue in
12 the last rate case.

13 Q Well, I'm sure it wasn't an issue. I'm sure
14 Gulf Power didn't raise it as an issue, and if no one
15 else knew about it, they couldn't. So this really was
16 not brought to anyone's attention, was it?

17 A It was known before the last rate case. I
18 know that it was known by the Commission.

19 Q Concerning the filing of this rate case and
20 the affiliated transactions, which would be Schedule
21 F-7, Page 1 of 1, you have yourself filed as being a
22 Director of the Citizens and Builders Federal Savings
23 Bank, is that correct?

24 A That is correct.

25 Q Now, you didn't file as an owner but that is

1 the case. I believe you stated this morning you own
2 stock in it.

3 A I just have stock in the bank, yes.

4 Q So you are a part owner of that bank?

5 A Yes, I own common stock in the bank.

6 Q And the second one down is Mr. Addison, CSX
7 Corporation, and he's a director of that corporation.
8 And the amount of the contract or transaction is
9 \$3,606,465.05. That's rail transportation for coal
10 stock. Do you know of any other affiliated transaction
11 with Mr. Addison or any connections with him?

12 A I don't know. I know of none.

13 Q Mr. Hull, Sun Commercial Bank, who is
14 president of that bank, and that's banking services.
15 And you're both with Citizens and Builders, and Sun
16 Commercial Bank and Vanguard Bank and Trust Company and
17 Stock Equipment Company, AmSouth Bank of Florida, which
18 also have Mr. Hull, Sun Commercial; Ruckel, Vanguard,
19 Tannehill. I'm sorry, Tannehill is stock Equipment
20 Company -- that's not the bank -- V. J. Whibbs, Sr.,
21 AmSouth Bank. You have that you maintained a demand
22 deposit account with them. Is that the connections you
23 have with them or business transactions?

24 A As far as I know. I'm not familiar with that
25 exhibit.

1 Q Okay. What's down here, it says "one," and
2 then it's "maintained demand and deposit account" in
3 those banks by, I guess, Gulf Power. Don't you also
4 have loan programs in the conservation area with them?

5 A With all those banks?

6 Q Yes, sir.

7 A I really don't know. You could ask Mr.
8 Scarbrough about that.

9 Q And Mr. Tannehill is director and -- of Stock
10 Equipment Company -- and he's an electrical equipment
11 supplier and he is on the Board of Directors, is that
12 correct?

13 A That's correct.

14 Q And you have \$344,791.84 dealings with him.
15 I guess that's purchase of electrical equipment?

16 A I assume that's what it is. It's for coal
17 handling equipment of some type.

18 Q Is there a bidding process on that?

19 A Yes, sir, I'm sure that there is.

20 Q Mr. Whibbs, the only dealings with him is
21 with the AmSouth Bank of Florida?

22 A Is he the only director?

23 Q Mr. Whibbs is listed as a director of Gulf
24 and a director of the bank, which is an affiliated
25 entity under this definition. Is the demand, a deposit

1 account, the only transactions you have with Mr.
2 Whibbs?

3 A Well, I'd have to defer that question to
4 Arlan Scarbrough.

5 Q Okay. What is his business?

6 A Mr. Whibbs? He's in the automobile business,
7 primarily.

8 Q Do you purchase cars or automobiles from him?

9 A I don't. If we do, I'm sure it's under a
10 competitive bid process but --

11 Q Somebody else is going to have to tell us
12 then if you have more business with him than just the
13 demand deposit account?

14 A Yes.

15 Q In your 1988 filing, and it was F-8, there
16 are no affiliated transactions listed.

17 A In talking to the -- yes, you're right.
18 You're correct.

19 Q Is that correct?

20 A Well, in talking to the counsel at noon, they
21 tell me that that was a misinterpretation of what was
22 asked for in that filing, and that has since been
23 corrected in this later filing.

24 Q All right, sir. Under the laws of the state
25 of Florida, I think theft and misappropriation or

1 possibly fraud from a company would be hopefully a
2 deterrent. Does Gulf Power have a policy of
3 prosecuting criminal activity that takes place?

4 A We don't have a policy that states one way or
5 the other whether or not we do that. We evaluate each
6 situation as it comes up.

7 Q Have you ever filed any type of complaint of
8 a criminal nature against anyone?

9 A Of a criminal nature?

10 Q Yes, sir.

11 A No, sir, not to my knowledge, not since I
12 have been there.

13 Q What is your salary, Mr. McCrary?

14 A I don't know exactly. It's about 289 or
15 something like that.

16 Q And do you know what you received as a cash
17 bonus in 1989?

18 A No, sir, I don't. I'd have --

19 Q Did you receive any other type of bonus in
20 1989? Stock options or anything of that sort?

21 A I believe there are some stock options, yes.

22 Q Do you know what you're total was in stock
23 options?

24 A No, I don't.

25 Q Does the Board of Directors approve bonuses

1 for the executives?

2 A Yes, sir.

3 Q Do they approve a bonus program for the
4 Company?

5 A Yes, sir.

6 Q Shortly after your interim rate increase
7 there was a bonus program initiated by Gulf Power. Was
8 that approved by the Board of Directors?

9 A Yes, sir. All our compensation programs are
10 approved --

11 Q Was there a change in the policy for bonuses
12 at that point?

13 A I think there was a change in our pay for
14 performance policy sometime during the year.

15 Q Was that for '89 or for '90?

16 A It was for -- I guess it was 1989. But it
17 had nothing to do with the interim rate increase, I can
18 assure you that.

19 Q It was this year, though, wasn't it?

20 A I believe so. I'd have to look back at the
21 dates to be certain when that occurred.

22 Q You're on a projected test year for this rate
23 case. Do you have any knowledge of the projections for
24 bonus for salaries, cash bonuses and any stock options
25 or any other type of bonuses made --

1 A No, sir. I wouldn't be the proper guy to
2 answer that question.

3 Q And you would not recall what the Board of
4 Directors approved for you and the other executives
5 during the last three or four years, would you?

6 A I'd have to go back and look at the records.

7 Q Could you have someone furnish that to me for
8 the salary, cash bonuses and description of any other
9 type of bonuses for yourself and the executives that
10 you would normally list, about the top five or --

11 MR. HOLLAND: Mr. Chairman, he said several
12 times that he's not the appropriate witness. I have
13 informed Mr. Shreve on several occasions that the
14 appropriate witness to ask that question of is Mr.
15 Scarbrough. He's the one who has that information, and
16 can respond to the questions that Mr. Shreve is asking.

17 CHAIRMAN WILSON: Will he have that
18 information when he goes up on the stand?

19 MR. HOLLAND: Yes. He will have the
20 information. I'm not stating that we will not object
21 to providing some of that information but he will have
22 that information when he goes on the stand.

23 MR. SHREVE: Mr. Commissioner, Mr. McCrary is
24 President and Chief Executive Officer of the
25 corporation. The Board of Directors approves all

1 bonuses. We're in a projected test year, and in order
2 to test projections, I think we need to see what the
3 salaries and bonuses and stock options, or any other
4 part of the bonus that might come out of that, to test
5 it and see where we're going with the projection. And
6 I think -- I understand that Mr. McCrary doesn't have
7 the information at the tip of his fingertips, but he is
8 Chairman of the Board and they made the approvals. And
9 if Mr. McCrary is willing to let Mr. Scarbrough, or
10 whoever else, prepare that and give it to us, we'd be
11 glad to get it. Now, we run into this all the time
12 where that person doesn't have the information.

13 We took Mr. Lee's deposition, and when we
14 took that we thought we were going to get that
15 information at that time. We did not. He said Mr.
16 Scarbrough would have it. Then we did not get the
17 information from Mr. Scarbrough. We were going to
18 reset him for deposition. Did not at an early date,
19 and we discussed that at that time and then made an
20 offer just to get it from Mr. Scarbrough. We don't
21 have it, so this is something that I think falls within
22 the Board of Directors --

23 CHAIRMAN WILSON: Someone made the offer to
24 get the information from Mr. Scarbrough?

25 MR. SHREVE: Well, Mr. Holland and I

1 discussed taking a deposition and this was about a week
2 and a half ago, I think on a Friday before last week.
3 I had already mentioned to Mr. Scarbrough when he came
4 into my office, there didn't appear to be any problem.
5 We did not reset the deposition. Mr. Holland -- as I
6 understand, everybody was busy getting ready for the
7 rate case. We said, "Look, okay, we won't need the
8 deposition. We'll just get the information from Mr.
9 Scarbrough."

10 Evidently there's some concern about us
11 getting the information, now. I'm not blaming anyone.
12 It just happened up to this point we didn't get it from
13 Mr. Lee. I think he could have gone and gotten that
14 information in a deposition or furnished it later.

15 It very clearly, as a part, has to do with
16 their projections. And we want to see the information
17 for the last, I think '86, '87, '88, '89, and see where
18 these projections are going and see what the influences
19 have been in those years. It's an expense that's being
20 paid for by the ratepayers of the Company.

21 Now, Mr. McCrary is Chairman of the Board.
22 The Board approves all of the bonuses. This very
23 clearly is within his domain, and I see no reason that
24 they couldn't furnish it to us.

25 MR. HOLLAND: Mr. Chairman, we have no

1 objection whatsoever, and will furnish the data for '89
2 and '90 that has been requested, and that will be
3 available. Mr. Scarbrough is prepared to produce that.

4 We had a number of discussions relative to
5 this information. There were a number of changes in
6 terms of what was asked for in and what detail it would
7 be asked for. We have provided a great deal of that
8 information already in interrogatory response. Again,
9 we will give it and have Mr. Scarbrough ready to
10 provide it for '89 and '90. I don't think it's
11 relevant, the same data, for '86, '87 and '88.

12 CHAIRMAN WILSON: In any event, Mr. Scarbrough
13 would be the one who --

14 MR. HOLLAND: He's the man to ask the
15 question of it, yes, sir.

16 CHAIRMAN WILSON: I appreciate your position
17 that Mr. McCrary is the Chairman of the Board and is
18 ultimately responsible when the Chairman -- when the
19 Board considers these, but Mr. Scarbrough is the one
20 who has the information. I think we'll wait until Mr.
21 Scarbrough gets on the stand and we'll get the
22 information from him.

23 MR. SHREVE: All right, sir. Then, after we
24 get the information, we might want to bring it back up
25 at a later time when we have had a chance to review it.

1 And I think it very clearly is and does affect a
2 projected test year. And I think we can go back into
3 any part of that time and use that to test the
4 projection.

5 COMMISSIONER GUNTER: You do have, talking
6 about '88 -- I mean '89 and '90 -- the 10Ks just
7 doesn't have it broken out quite like that. But you've
8 got the total compensation on '88, and then if they break
9 it all out in '89 and '90. We won't get the years --

10 MR. SHREVE: And the question was answered
11 and an interrogatory asked. The Company rephrased the
12 question for us and gave us just the cash as an answer.
13 We didn't contest that, perhaps we should have. But
14 when they're on the stand, anything.

15 COMMISSIONER GUNTER: I understand.

16 CHAIRMAN WILSON: Mr. McCrary is scheduled to
17 return as a rebuttal witness, is he not?

18 MR. HOLLAND: Yes, sir.

19 CHAIRMAN WILSON: So there will be opportunity
20 to do that.

21 MR. SHREVE: All right, sir. Mr. Chairman, I
22 (Pause) that's all we have.

23 CHAIRMAN WILSON: All right.

24 Any questions?

25 MAJOR ENDER: Just one, Mr. Chairman.

1 CROSS EXAMINATION

2 BY MAJOR ENDERS:

3 Q Mr. McCrary, repeatedly in your prefiled
4 testimony and on the stand here today, you've used the
5 terms "just allegations" and "hard evidence." I would
6 like to know what your definition of hard evidence is
7 before corrective management action is taken.

8 A Well, when we can, when we can prove
9 something by other than just a one-man allegation that
10 these things have occurred. When we have some physical
11 evidence, either by recovering the property or some paper
12 trail, something that would hold up and be firm evidence
13 that this has occurred, then we'd take some action.

14 MAJOR ENDERS: That's all I have, sir.

15 MR. VANDIVER: Good afternoon, Mr. McCrary.

16 MR. HOLLAND: Before we get started, he's been
17 on the stand about an hour. Could we take about a
18 five-minute break?

19 CHAIRMAN WILSON: Sure, let's take about a
20 five-minute break.

21 (Brief recess.)

22 - - - - -

23 CROSS EXAMINATION

24 BY MR. VANDIVER:

25 Q Hello, Mr. McCrary. Mr. McCrary, you

1 indicated in your testimony somewhere that you've been
2 managing people for about 30 years, is that correct?

3 A Yes, sir, that's correct.

4 Q How would you describe your management style?

5 A Well, I think my management style depends on
6 the individual situation that I'm confronted with.

7 Q I'd like to direct your attention to Exhibit
8 NO. 390.

9 CHAIRMAN WILSON: That is in the packet?

10 MR. VANDIVER: This is one of the disputed
11 exhibits that's in both packets, Commissioner.

12 Q (By Mr. Vandiver) What I'd like for you to
13 do, Mr. McCrary, absent objection from your counsel, is
14 to ask you to classify yourself under one of those
15 three classic styles of leadership.

16 MR. HOLLAND: Commissioners, before he answers
17 that question, let me voice an objection to the
18 exhibit. The exhibit is a page, as I understand it,
19 out of textbook and I guess it's a management textbook.
20 I don't think that there is a provision, one, in the
21 Evidence Code for admission of this page, without
22 authentication. Secondly, I don't think that this is
23 relevant. In order to be relevant, it's got to lead to
24 some material fact. And I don't know what material
25 fact it could possibly lead to, to be perfectly honest

1 with you. So my objection is two-fold: One, it has
2 not been authenticated, and I don't think can be
3 authenticated without -- without a witness; and two,
4 that it's not relevant.

5 MR. VANDIVER: I'd like to respond if I could.
6 The Florida Evidence Code in Section 90.706 indicates
7 that you need not have a witness if it's authoratative
8 text. Quite frankly, mama we went up the Management
9 Studies Bureau of the Commission and I said, "Can you
10 give me a textbook on managment?" This -- these three
11 classic styles of leadership appeared on two of them.
12 I reprinted the page. And the management of Gulf Power
13 is at issue in this case. I think this provides
14 context and a point of reference for some of the
15 decisions that Mr. McCrary has made over the years, and
16 I think it's very relevant to this case.

17 CHAIRMAN WILSON: The provisions of the
18 Evidence Code, though, require, I believe, that the
19 witness acknowledge the text as being authoritative, do
20 they not?

21 MR. VANDIVER: I think that's correct. That's
22 correct. Commissioners, I do have the whole book. I
23 can hand it to Mr. McCrary. He can look at the
24 credentials of the author, et cetera. This isn't that
25 big a deal. I want it for context.

1 CHAIRMAN WILSON: Well, in order to use this
2 as such, there has to be some acceptance of it being
3 authentic -- as authoritative, I think is a predicate
4 that has to be first laid.

5 MR. VANDIVER: May I approach the witness?

6 CHAIRMAN WILSON: Yes. (Pause)

7 Q (By Mr. Vandiver) Mr. McCrary, in the process
8 of managing people for 30 years, have you had occasion
9 to attend any kind of courses in managing people?

10 A Yes, I have.

11 Q What did those courses generally consist of?

12 A You know, I can't recall the agenda on all the
13 management courses that I've attended in the last 30
14 years.

15 Q Would it be fair to say that they're generally
16 academics telling people in the trenches how to do
17 things?

18 A In some cases that may be true.

19 Q Now, I've got a book that I placed in front of
20 you. It's entitled "Management." It's by a man named
21 Krei ner. Does this appear to be a textbook on
22 management? What is the title of the book, please,
23 sir?

24 A The title is "Management," "Kreitner
25 Management Fourth Edition."

1 Q Could you turn to the table of contents of
2 that book, please, sir?

3 A Okay.

4 Q Could you read just the main chapter headings
5 for the first several chapters of that book?

6 A "Opening Case," "Through the Looking Glass," A
7 "Manager in Action," "Management Defined," "A world of
8 Management," "Sacrificing Effectiveness in the Name of
9 Efficiency in China," "What do Managers Do?" Is that
10 far enough?

11 Q That's far enough. Does that appear to you to
12 be just a college level management 101 type textbook,
13 sir?

14 A I really don't know. I am not familiar with
15 Mr. Kreitner, or his credentials or how much experience
16 he has in managing people.

17 Q Perhaps there's a reference to Mr. Kreitner in
18 his credentials in the book. Could you look for that,
19 please, sir? (Pause)

20 A Maybe you could tell me where it is in the
21 book.

22 Q I don't have any earthly idea. I just assumed
23 it was in there, telling about how many Ph.D.'s he's
24 got. Mr. McCrary, look in the forward of the
25 introduction perhaps.

1 MR. HOLLAND: I don't think that this is what
2 is meant in the Evidence Code in this section.

3 CHAIRMAN WILSON: The witness needs to, first
4 of all, have some familiarity with the text and then
5 acknowledge that it's authentic -- that it's
6 authoritative in the subject matter area, if I
7 understand the use of textbooks by an expert -- in
8 cross examination of an expert witness. Am I correct,
9 Mr. Pruitt? I hope you'll correct me if I'm wrong.

10 MR. PRUITT: Up to what you said was correct,
11 but I think you ought to get a citation of the complete
12 provisions of Section 90.706. As far as what has been
13 quoted was correct, but I'll read part of it back.
14 "Statements of fact or opinion on a subject of science,
15 art or specialized knowledge contained in a published
16 treatise, periodical, book, dissertation, pamphlet or
17 other writing, may be used in cross examination of an
18 expert witness if the expert witness recognizes the
19 author or treatise, periodical, book, dissertation,
20 pamphlet or other writing to be authoritative, or,
21 notwithstanding nonrecognition by the expert witness,
22 if," in this case the Commission -- "finds that the
23 author or the treatise, periodical, dissertation,
24 pamphlet or other writing to be authoritative and
25 relevant to the subject matter." So if the witness

1 doesn't recognize it, the Commission may, and it would
2 be admissible.

3 CHAIRMAN WILSON: All right.

4 MR. VANDIVER: I would like to make an offer
5 of proof in the event.

6 CHAIRMAN WILSON: Why don't we go ahead and
7 ask the witness the question whether he recognizes the
8 text as authoritative?

9 Q (By Mr. Vandiver) Do you recognize the text
10 as being authoritative?

11 A I've never seen it before.

12 Q Very well.

13 CHAIRMAN WILSON: That settles that.

14 MR. VANDIVER: Commissioners, I have here the
15 Educational Products Catalogue of the Institute of
16 Internal Auditors, and lo and behold, on Page 23,
17 there's an advertisement for this book and it's
18 represented as being a management textbook, and I'll be
19 happy to show that to you and all the parties.

20 CHAIRMAN WILSON: Mr. Pruitt, can you give me
21 some guidance here on what sort of showing would have
22 to be made here for my benefit to demonstrate that a
23 textbook on management was authoritative in the area?

24 MR. PRUITT: I think you could rely on the
25 representation of Staff. They work for you.

1 MR. VANDIVER: I really didn't want that to be
2 that big of a deal. I could get somebody from
3 Management Studies here.

4 CHAIRMAN WILSON: I think, Mr. Vandiver,
5 actually, you can probably get where you want to go by
6 actually inquiring about the substance of information
7 that's contained on that page without necessarily
8 referring to that textbook.

9 MR. VANDIVER: Why don't I try that.

10 COMMISSIONER BEARD: Can I ask a question? I
11 don't want to muddy the water or anything else, but in
12 your studies, okay -- and we all get sent back to these
13 -- I call them refresher courses, or I don't know what
14 you sometimes -- have you ever come across the three
15 classic styles of leadership, this little paragraph
16 type thing here, seen that in any college work or
17 management courses that the Company has put you to?

18 WITNESS McCRARY: I don't know that I have
19 seen it defined exactly like this, but I happen to
20 believe that you can't describe something as complex as
21 a management style in three simple categories with
22 three simple words, because it may vary depending on
23 the issue.

24 Q (By Mr. Vandiver) Mr. McCrary, are you what
25 we call a hands-on manager as that term has been used?

1 Are you more of a delegator?

2 A Well, in some cases I am a hands-on manager,
3 and in some cases I am a delegator.

4 Q Are you a stickler for the rules, or is
5 getting the job done more important to you as a
6 manager?

7 A I guess what is more important to me as a
8 manager is getting the job done.

9 Q I would like to now go to Exhibit 391, if we
10 could, and I believe this is the document that's been
11 identified as a Baker Childers Report. It's a very
12 large document.

13 A That's correct.

14 Q Why was this investigation conducted? Was
15 this in relation to Mr. Croft, as you stated earlier?

16 A Yes, sir.

17 Q Now, Baker and Childers were not employees of
18 Gulf Power at this time, is that correct?

19 A That's correct.

20 Q Why did you go outside Gulf Power?

21 A I went outside Gulf Power because the Manager
22 of Security at the time reported into the same
23 organization and worked side-by-side with Kyle Croft,
24 and I just didn't feel that that would be proper to
25 have someone in the same organization doing an

1 investigation of one of his peers.

2 Q So the Manager of Security was a peer of Mr.
3 Croft and you were worried that perhaps there would be
4 some contact between the two of them somehow?

5 A I wanted a fair and independent investigation,
6 and I had worked with Mr. Childres previously at
7 Alabama Power Company, and I knew he would do a good
8 job.

9 Q Are you familiar with the 17 interviews
10 contained in that report?

11 A Yes, I have read them.

12 Q Would it be fair to say that the employees
13 questioned the appropriateness of special services they
14 were performing for Gulf executives and managers?

15 A It would, yes.

16 Q Why do you think these employees were
17 reluctant to express their concerns to Gulf Power
18 management?

19 A I really can't answer that unless they feared
20 some retribution of some kind, or some action against
21 them.

22 Q When did you receive the Baker-Childers
23 Report?

24 A I received that in -- about the end of
25 January, 1984.

1 Q So that was the basis you fired Kyle Croft on
2 because you fired him on Sunday, January 29, 1984,
3 didn't you?

4 A That's correct.

5 Q I would like to turn to your prefiled
6 testimony for just a minute, if we could.

7 CHAIRMAN WILSON: Can I ask you a question.

8 Is this is whole document what is known as
9 "The Baker-Childers Report"?

10 MR. VANDIVER: Yes, sir.

11 CHAIRMAN WILSON: This is all of it?

12 MR. VANDIVER: 50-some-odd pages of text and
13 then various attachments, yes, sir

14 Q (By Mr. Vandiver) Page 10, Mr. McCrary.
15 Down there about Line 14 and 15, you talk about how you
16 would not ordinarily suspect a man such as Jake Horton
17 of illegal or unethical conduct, is that correct?

18 A Yes. Specifically it says, "One does not
19 ordinarily suspect such a man of illegal or unethical
20 conduct."

21 Q And what I want to do is I want to look back
22 at this Baker-Childers Report in 1984 and see if that
23 raised any suspicions in your mind. Specifically, I'd
24 like to go first to Page 10 of that document, if we
25 could.

1 A Well, I can tell you --

2 Q I'd rather go to specific pages if we could,
3 please, sir.

4 A All right. Which page?

5 Q Page 10 of 182. And about halfway down that
6 page there starts a sentence "For example."

7 A Okay.

8 Q Could you read that and the next two
9 sentences, please, a total of three sentences for the
10 Commission into the record?

11 A "For example, we did a little wiring,
12 plumbing, air conditioning for Jake Horton, Ben
13 Kickliter, Kyle Croft and Bob Ellis, (very little for
14 Ellis). As time went on, we received instructions to
15 do more and more of these odd jobs outside our work
16 schedule."

17 Q And one more sentence.

18 A "In the past five years, these instructions
19 to do these odd jobs and favors for different people
20 have started to balloon into major repairs and
21 projects."

22 Q Now, if we can go to Page 22 of that same
23 document, please.

24 A All right.

25 Q And basically again we have Gulf Power doing

1 personal favors on Company time for Mr. Horton, is that
2 correct? Would that be a fair statement of --

3 A That is correct.

4 Q Okay. And I guess my question to you, Mr.
5 McCrary, is that in light of the statement in your
6 prefiled testimony about how you wouldn't suspect Mr.
7 Horton and so forth, yet you had this report in January
8 1984; and, I mean, you could have gone out to his house
9 and looked and seen if the sprinkler system was there.
10 It wasn't one of those allegations you discussed with
11 Major Enders. Can you explain that for me, please?

12 A I think I need to clear up something.

13 Going back to my testimony, I talk about Jake
14 Horton and the fact that he was a well respected
15 influential man in the Pensacola community. He was
16 able to accomplish a great deal of good for the
17 citizens of northwest Florida. And then I say, "One
18 would not ordinarily suspect such a man." I did not
19 say that I had no suspicions of Jake Horton doing
20 anything wrong.

21 Q Okay. When did you first become suspicious
22 that Jake Horton was doing things wrong?

23 A Well, I suppose when I got the Baker-Childers
24 Report.

25 Q Okay. At that time were your suspicions just

1 confined to these little special favors that the people
2 in the warehouse did for various executives or did they
3 go further?

4 A Essentially, they consisted of the type of
5 things that are in the Baker-Childers Report.

6 Q What action did you take relative to these?
7 Did you confront Mr. Horton?

8 A Yes, I did.

9 Q What did Mr. Horton reply?

10 A His -- as far as them installing a sprinkler,
11 he denies that. He says he paid for his sprinkler
12 system. He says he might have had a sprinkler head
13 replaced or some small thing like that from time to
14 time.

15 Q Did that satisfy you, or did you make further
16 independent investigation after he told you that?

17 A That's all I did.

18 Q Okay. And that was January of 1984?

19 A That's right.

20 Q So because of the representations concerning
21 Mr. Kickliter and Mr. Horton -- and both of those men
22 reported to you, didn't they?

23 A They did.

24 Q There was no way that we could reasonably say
25 that the Baker-Childers Report was just limited to the

1 warehouse operation, could we? I mean it implicated
2 management at much higher levels, didn't it?

3 A Well, to the extent that saying that the
4 statements that were taken from the people primarily in
5 the warehouse made those allegations, that's correct.

6 Q But on Mr. Kickliter's truck that the bid was
7 rigged for, all the documentation was provided to the
8 report, wasn't it?

9 MR. HOLLAND: Excuse me. The reference to
10 "bid rigging," I don't think there is any evidence to
11 the fact that the bid was rigged.

12 CHAIRMAN WILSON: What incident are we
13 referring to here? What truck?

14 MR. VANDIVER: There were allegations in the
15 Baker-Childers Report that Mr. Kickliter had purchased
16 a F100 pickup truck, I believe, and that pickup truck
17 was extensively refurbished by Gulf Power employees on
18 Gulf time, and then the truck was sold. And strangely
19 enough, Mr. Kickliter was the low bidder, and I believe
20 that there are allegations in here that that process
21 was fixed. And that Mr. Kickliter got a sweetheart
22 deal on the truck.

23 MR. HOLLAND: If you phrase it in that there
24 were allegations, that there were --

25 MR. VANDIVER: Let's leave them at that for

1 now.

2 Q (By Mr. Vandiver) Now, at that time how many
3 executives reported to you in management at Gulf Power?

4 A I had four executives.

5 Q And out of the four executives that reported
6 to you, two were listed in this report as receiving
7 special favors from Gulf Power employees on Gulf Power
8 time, isn't that correct?

9 A That's correct.

10 Q And that's January of 1984.

11 A That's correct.

12 Q Okay.

13 MR. VANDIVER: I'm sorry if I appear
14 disorganized. I probably am. Public Counsel covered a
15 great deal of what I had to ask.

16 Q (By Mr. Vandiver) Who is Fred Levin?

17 A Fred Levin is a trial attorney in Pensacola.

18 Q Is he presently employed by Gulf Power
19 Company?

20 A No, he isn't.

21 Q Has he previously been employed by Gulf
22 Power?

23 A Yes, he has.

24 Q Do you recall a 1987 case involving the Levin
25 firm where Mr. Levin agreed to represent Gulf Power in

1 the appellate defense of tort suit?

2 A That's the Kay case?

3 Q Yes, sir, Gulf Power versus Kay.

4 A Yes.

5 Q What was involved in that case?

6 A This was a case that involved some people who
7 were out late one night drinking, ran off the road, hit
8 a pole, and sustained severe injuries.

9 The case was heard and an award was made of
10 \$11.2 million against the Company. 5 million of that
11 was punitive damages, so we stood to lose a
12 considerable amount of money unless this case was
13 overturned.

14 Q Would you accept, subject to check, that the
15 appellate opinion in that case indicates that Gulf was
16 liable for 4.2 in punitive damages; 4.2 in compensatory
17 damages, for 8.4 million of total liability?

18 A I'll accept that. I just -- roughly.

19 Q Now, how much total compensation you did you
20 all pay to Mr. Levin for his defense of this tort suit
21 at the appellate level?

22 A Well, I think I need to go back to the time
23 that we hired Mr. Levin to represent us in this case.

24 As you know, trial lawyers, or plaintiffs'
25 lawyers, normally work on a percentage of the award.

1 It's customary for them to do that.

2 When we discussed with Mr. Levin the
3 possibility of him representing us in this case, we
4 talked about how he would be compensated.

5 The only way that I knew to compensate him at
6 the time was on an hourly rate, which is the way we
7 compensate most of the attorneys that we use. We had
8 discussions with Eason Balch, who heads a law firm in
9 Birmingham. We had probably two or three meetings
10 between me, Eason Balch and Fred Levin to talk about
11 some way to compensate Fred Levin for his work if he
12 represented us in this case.

13 When Fred agreed to represent us, we had an
14 agreement that we would pay him by the hour, and that
15 we would revisit this decision later on to see that
16 everybody was satisfied.

17 After Fred Levin got this lawsuit overturned
18 in the Supreme Court, and in doing so made some very
19 good law that will benefit the Company and the
20 ratepayers in the future. I talked to Eason Balch
21 about how we should compensate him for his work. Mr.
22 Balch told me that he thought it would be in order to
23 give Fred Levin a bonus of something between 100,000
24 and \$500,000. That this would not be, and was not,
25 unusual to do this sort of thing. And I made the

1 decision to give Fred the \$100,000 bonus for his work.

2 Q Mr. Eason Balch?

3 A Balch.

4 Q Balch?

5 A B-A-L-C-H .

6 Q What exactly did he do up there in

7 Birmingham. What kind of lawyer is he?

8 A He heads the Balch, Bingham law firm that
9 represents a number of people, including Alabama Power
10 Company. I had known Eason Balch for 30 years or so.

11 Q Okay. And who was it that represented to you
12 that this First District Court of Appeal decision made
13 such great law? Was that Mr. Levin or was that
14 independent counsel?

15 A No that was Eason Balch.

16 Q Now, you just testified you had no obligation
17 to pay Mr. Levin anything other and above the hourly
18 rate, is that correct?

19 A I didn't have an obligation in this case. I
20 did have an obligation to revisit the method in which
21 he was compensated. I believe we said we would try
22 that for a year and then revisit it.

23 Q I'd like for you to take a look at Exhibits
24 393 and 394, please, sir.

25 MR. HOLLAND: Commissioners, I was going to

1 object to the admissibility of these exhibits. If we
2 have agreement, and I believe we will, that payment on
3 this was, in fact, made in June of 1987, and that the
4 expenses associated with the payment do not impact the
5 test year, and they are not presented for the purpose
6 of disallowing an expense in this case, then I would
7 stipulate to their admissibility.

8 MR. VANDIVER: I'll stipulate they are not in
9 this test year. I believe this is just another
10 management decision over the past six years that we
11 want to look at in terms of Issue 33.

12 Q (By Mr. Vandiver) In terms of Exhibit 393,
13 I've just got one kind of curious question first.

14 It indicates that this thing was received on
15 June 4th and paid and approved on June 3rd.

16 Q How can that be?

17 A I can't explain that.

18 Q Just one of those things, hum? And whose
19 signature is that down there at the bottom that says,
20 "approved by"?

21 A Pardon? Would you ask your question again?

22 Q Certainly. Whose signature, whose signature
23 appears down there where it says, "Approved by"?

24 A Oh, that's, I guess that's Earl Lee.

25 Q Okay. And he approved, and the amount of

1 this expenditure and voucher is \$107,399.23?

2 A That's correct.

3 Q Okay. I would like to go to the next exhibit,
4 if we could, please, sir.

5 A Okay.

6 Q I'm assuming that this is the underlying bill
7 for that voucher.

8 A That's correct.

9 Q Okay. I'm kind of curious on this one,
10 because you say it was a \$100,000 bonus that you had
11 decided on. And this is such an odd amount,
12 107,399.23, it just don't look like a bonus.

13 A I think the \$7,399.23 was hourly expenses
14 that had not been billed at that time. That's the way
15 I recall.

16 Q Okay. And then -- and that was in addition
17 to the \$146,000-odd you had already paid?

18 A That's correct.

19 Q The language down at the bottom of this page,
20 right below the total amount, appears to indicate that
21 you all had already cut a deal on this \$100,000.

22 A Well, we had. We had had discussions on it
23 prior to the time that he wrote this letter.

24 Q And so in those discussions, you said, "Fine,
25 I'll pay you a \$100,000 bonus, send me a bill for that

1 amount"? Was that how you left it?

2 A That's right.

3 Q Okay. Why doesn't Mr. Levin work for you all
4 anymore?

5 A He chose to terminate the relationship when
6 Jake Horton was killed in the plane crash.

7 Q Do you know why he chose to terminate that
8 relationship?

9 A I assume it was because we had told Jake
10 Horton that he was being dismissed from the Company, or
11 the recommendation was made that he would be dismissed
12 from the Company.

13 Q During the course of deciding on this bonus
14 for Mr. Levin, was it ever mentioned, suggested, that
15 contingency fees are generally paid to Plaintiff rather
16 than to defense attorneys?

17 A Well, usually these contingency fees are paid
18 to Plaintiffs' attorneys. But it is not that unusual
19 for a defense attorney to be compensated in the same
20 manner.

21 Q I would like for you to direct your attention
22 now to Exhibit 396, please, sir, Page 66 of 84.

23 CHAIRMAN WILSON: What is 396?

24 MR. VANDIVER: 396 is a report prepared by
25 the audit committee of Gulf Power.

1 COMMISSIONER EASLEY: What page?

2 MR. VANDIVER: Page 66.

3 Q (By Mr. Vandiver) Now this concerns one of
4 your employees being involved in three automobile
5 accidents while driving a company vehicle on January
6 1st, 1988. Is that correct?

7 A That's correct.

8 Q And at the scene of the third accident, the
9 Gulf Power employee was arrested for DUI and multiple
10 traffic violations, is that correct?

11 A That's correct.

12 Q This report to the Audit Committee indicates
13 that you made a conscious decision not to have the
14 accident reported as required by Company procedures, is
15 that a correct statement?

16 A That is correct.

17 Q What was the rationale for ignoring Company
18 procedures?

19 A Well, in the first place, this occurred on
20 the weekend. It was, as I recall, it was New Year's
21 Eve, New Year's Day, Saturday. Mr. Lambert was not on
22 duty, was not on Company business, although he was in a
23 Company automobile. However, in his capacity, he had
24 the use of a Company automobile for limited personal
25 business.

1 When the -- after the accident happened, Mr.
2 Lambert agreed to reimburse all the people for the
3 damages that he had caused. He agreed to repair the
4 Company automobile. He was arrested for DUI. He did
5 his required amount of community work, paid the fines
6 that were levied against him. In other words, all
7 costs to the Company were reimbursed by Mr. Lambert.

8 I saw no benefit to the Company at that time
9 of having this broadcast and on the front pages of the
10 newspaper, in light of all the other negative publicity
11 that we had received. So I made the decision that it
12 was in the best interest of the Company and the
13 employees to have Mr. Lambert reimburse the Company and
14 to not fill out the accident report as we normally do.

15 Q Would you agree that ignoring procedures
16 creates the impression that you don't take those
17 procedures very seriously?

18 A No. I wouldn't agree that that is the case.
19 I think this was a judgment call that I have to make.
20 And I don't run that Company by blindly following a set
21 of guidelines with no judgment involved at all. And I
22 think I made the correct decision in this case.

23 Q So you don't think your waiver of the rule in
24 this particular case created any kind of expectation
25 among other executives that you were going to waive for

1 them next week or in the future?

2 A I don't think so. I might, under similar
3 circumstances where they were not on Company business,
4 they were involved in personal business or --

5 Q Is driving a Company car under the influence
6 of alcohol or drugs a violation of Gulf Power Company
7 code of ethics?

8 A It is.

9 Q What discipline did you impose under the code
10 of ethics?

11 A Mr. Lambert was severely reprimanded for his
12 actions.

13 Q Was that a written reprimand?

14 A I don't believe so. I'm not sure about that.

15 Q Do you recall if Mr. Lambert got a bonus for
16 the year 1988?

17 A A bonus?

18 Q Yeah.

19 A I don't think he got a bonus. Now, he might
20 have gotten some compensation in the form of the
21 productivity improvement program or whatever we have
22 there, but it was not a bonus.

23 Q I guess the bottom line is there were no
24 Company penalties imposed upon him for any of this. I
25 mean, would that be a fair statement?

1 A Well, I don't think that's totally correct.
2 Mr. Lambert suffered considerably as a result of this
3 incident.

4 Q You hollered at him, didn't you?

5 A Did I holler at him?

6 Q He was reprimanded, you said, and it wasn't a
7 reprimand -- a written reprimand. I assume somebody
8 hollered at him.

9 A Yes, he was reprimanded.

10 Q Okay.

11 A And this is probably one thing that lead to
12 Mr. Lambert's later resignation.

13 Q Okay. I'd like to turn now to Page --

14 COMMISSIONER BEARD: Before you leave there,
15 let me ask a question. Mr. Lambert was arrested DUI in
16 a Company vehicle on personal business and he was
17 reprimanded? The Company -- what the Company, the
18 action the Company took, I mean, he had to reimburse
19 for the damage he created; but, I mean, as far as
20 punishment, he was reprimanded?

21 WITNESS McCRARY: That's correct.

22 COMMISSIONER BEARD: And you fired an
23 employee for stealing a gallon of gasoline. Doesn't
24 that appear to be a little inconsistency there
25 somewhere?

1 WITNESS McCRARY: Well, the gallon of
2 gasoline was not the only thing that was involved in
3 the other employee.

4 COMMISSIONER BEARD: Okay.

5 Q (By Mr. Vandiver) Are automobile accidents by
6 an employee normally handled by the President of Gulf
7 Power Company?

8 A No, they're not.

9 Q How did this come to your attention?

10 A Mr. Lambert, as our Public Relations, he had
11 reported directly to me and so that's the reason I got
12 involved in it.

13 Q Okay. Could you turn to Page 31 of Exhibit
14 396, please, sir?

15 CHAIRMAN WILSON: Are you leaving that
16 subject?

17 MR. VANDIVER: Yes, sir, I am.

18 CHAIRMAN WILSON: How long after this
19 automobile accident and his reprimand did Mr. Lambert
20 leave the Company?

21 WITNESS McCRARY: Let's see, it was about a
22 year, I would guess. I would have to go back and look
23 at the, I'd have to go back and look at the record, but
24 I think it was about a year.

25 CHAIRMAN WILSON: And you said that he did

1 not receive a bonus in the year in which this occurred,
2 but he may have participated in a productivity program?

3 WITNESS McCRARY: Well, we have certain
4 performance measures that are specific; and part of the
5 compensation is based on those -- the performance
6 against those specific measures. And I really don't
7 know offhand, without reviewing the record, what part
8 he got under those specific measures.

9 CHAIRMAN WILSON: Did Mr. Lambert have to pay
10 for this accident out of his own pocket, or did his
11 insurance company cover it?

12 WITNESS McCRARY: No. He paid it out of his
13 own pocket, I am told. He paid for it - at any rate,
14 he paid for it. He paid for the damages that he caused
15 to the other vehicle and also to the Company vehicle.

16 Q On Page 31 of 84 on Exhibit 396, this is the
17 deal about the appliances in Mr. Addison's home, and
18 you all forgot to bill him for \$10,000 worth of
19 appliances, is that correct?

20 A I don't believe that we forgot to bill him.
21 I think the intent by Mr. Yarborough was to give him
22 those appliances.

23 Q So Mr. Yarborough had a kind of criminal
24 intent here to give this stuff to Mr. Addison when he
25 wasn't supposed to?

1 A No, sir. I wouldn't say that it was a
2 criminal intent.

3 Q Who was going to pay for the appliances if
4 Mr. Addison wasn't, in his home?

5 A Well, that would come from the merchandise
6 sales.

7 Q My point is, sir, a man gets 8,000, 10,000,
8 \$12,000 worth of appliances delivered to his home and
9 then he never gets a bill for them. Somebody has to
10 pay for them. Who paid for them in this case?

11 A Well, that would be Gulf Power stockholders.

12 Q Stockholders. Okay, and, again, on Page 32
13 we've got management procedure was violated in that a
14 merchandise sales order was not prepared, is that
15 correct?

16 A That's correct.

17 Q Now, what kind of investigation did you lodge
18 at the time that you became aware of this deal, this
19 little scheme?

20 A Well, I talked to Mr. Addison about it and he
21 asked that
22 we send him a bill for the appliances and he promptly
23 paid it.

24 Q Well, I think his check appears a little bit
25 further on, doesn't it, for \$8,000-some-odd, paying for

1 the -- yeah, there it is on Page 37. So you basically
2 called Mr. Addison, said, "We tried to give you these
3 appliances, but we don't think we should now"? How did
4 that work?

5 A Well, I didn't say it exactly that way.

6 Q I don't want to put words in your mouth, sir.
7 I want you to tell me exactly how it worked, please.
8 I'm sorry. I apologize. Just tell me the sequence of
9 events, you know.

10 Is Mr. Addison a friend of yours, sir?

11 A Well, yes.

12 Q What did you --

13 A I mean, he's my -- he's head of the Southern
14 Company. I hope he's a friend of mine.

15 Q He's mind of your mentor, isn't he?

16 A I wouldn't say that.

17 Q Okay.

18 A I think the way this happened, after we
19 started looking into a number of things that had been
20 going on in the Company, as I recall, Mr. Yarborough
21 came to Arlan Scarbrough and told him that he had not
22 billed Mr. Addison for these employee's -- I mean, for
23 these --

24 Q Is that who Mr. Yarborough worked for? Did
25 he report to Mr. Scarbrough at that time?

1 A No. Mr. Scarbrough was the Chief Financial
2 Officer at the time.

3 Q Isn't that kind of odd that he wouldn't go up
4 through the chain of command? And who was up there at
5 the chain of command at the head of Mr. Yarborough,
6 sir?

7 A Jake Horton was head of that group.

8 Q Did that raise any suspicion in your mind at
9 that time?

10 A It did.

11 Q It did, again, because you have already told
12 me that you were real suspicious in January, and then
13 here we are in June of 1984 and there's another
14 suspicious incident involving Mr. Horton, isn't there?

15 A Correct.

16 Q Please, forgive me for interrupting. Go
17 right ahead.

18 A I think the way this happened, as I recall
19 it, Mr. Yarborough came to Mr. Scarbrough and told him
20 that he had not billed Mr. Addison for these
21 appliances. And I can't remember whether I talked to
22 Ed Addison or whether Arlan did, or just who. But I
23 know somebody talked to him and sent him a bill and he
24 paid for the appliances.

25 Q And that was the end of it?

1 A That's it.

2 Q Now, having done that, what did you do in
3 terms of Mr. Yarborough? Did you feel like you needed
4 to undertake an investigation of the whole appliance
5 deal, or you just felt it was an isolated thing because
6 he was the President?

7 A No. We didn't take -- we didn't investigate
8 the appliance deal. I think we did make some changes
9 at that time, as far as discounts to employees. At one
10 time the executives got a bigger discount than all
11 other employees, and we changed that so that everybody
12 got the same consideration when they bought appliances
13 from the Company.

14 Q Who is Scott Addison, Mr. McCrary?

15 A He is Ed Addison's son.

16 Q What's he do for a living?

17 A He is a stock broker, as I understand it.

18 Q Has your Company, or its subsidiaries, ever
19 done any business with Scott Addison?

20 A I believe so. I believe there were some
21 temporary investment of some Company funds at one time
22 through Scott Addison.

23 Q Now, was that Gulf Power money or was that
24 Southern Company money?

25 A That was Gulf Power money.

1 Q Where is Mr. Addison located, Scott Addison?

2 A He's in Atlanta.

3 Q And you all -- is it typical for you all to
4 invest money with stock brokers in Atlanta, as opposed
5 to Pensacola or Jacksonville or somewhere? How did you
6 happen to be doing business with him?

7 A I really can't answer that. That only came
8 to my attention in the last few months. Mr. Scarbrough
9 can answer that.

10 Q Do you think business dealings with Scott
11 Addison by Gulf Power would necessarily constitute a
12 conflict of interest?

13 A Not necessarily.

14 Q I'd like to turn to your security operation
15 now, if I could. And I guess probably I'll just ask
16 you a few introductory questions.

17 Question: What role does the security
18 personnel play at Gulf Power Company?

19 A Well, they investigate current diversion
20 accidents that occur, look after the contracts for
21 physical security, and also handle such things as our
22 keys and badges, things of that nature.

23 Q How many folks do you all employ in the
24 security area?

25 A There's probably about eight, I would guess.

1 I don't know the exact number right now.

2 Q Do you know who heads it?

3 A Mr. Bell.

4 Q Oh. Your internal auditor is going to appear
5 here later in rebuttal?

6 A That's right.

7 Q Great. I can ask him about this, too.

8 Which vice-president is that currently under?

9 A It comes under Mr. Scarbrough.

10 Q Now, in Mr. Baker's report to the Board of
11 Directors -- incidentally, that's Exhibit 395, bottom
12 of Page 2, top of Page 3. I'll just read you what he
13 says and see if you, in fact, made those statements.
14 In Mr. Baker's report to the Board of Directors in late
15 1988, he indicated that you stated the existing
16 security organization was not effective because of its
17 decentralized reporting relationship, and it was even
18 possible that the security function had been
19 compromised. Did you, in fact, say that, sir?

20 A I don't know if I said those exact words,
21 but, as I told you earlier, Kyle Croft reported through
22 the same organization that the manager of security
23 reported, and I just didn't feel that that was a --
24 that I'd get an objective investigation by having that
25 take place.

1 Q Can you explain to me the difference between
2 a decentralized reporting relationship and a
3 centralized one?

4 A In a centralized reporting relationship, as I
5 define it, we have one person in the general office to
6 which all other people in that organization report,
7 whether they're located in Panama City, Fort Walton,
8 Pensacola or where. That's what I call a centralized
9 organization.

10 A decentralized organization has those
11 elements of the organization reporting to the division
12 manager in each of the respective divisions.

13 Q And the division manager is more of a
14 line-type person in terms of delivering the power?

15 A That's correct.

16 Q Now, what kind of function -- how is your
17 thing organized now? Is it centralized or
18 decentralized today?

19 A It's decentralized, as is most all of our
20 organization.

21 Q How does the Gulf Power organizational
22 structure relative to security compare to Mississippi
23 Power and Georgia Power?

24 A I understand that they have a centralized
25 organization, but other than that, I can't tell you how

1 it compares.

2 Q So you're all part of the Southern System,
3 but they just do it different?

4 A That's correct. We do a lot of things
5 different from other companies. We don't necessarily
6 do everything alike.

7 Q I thought the study that convinced you to go
8 to a decentralized security system was prepared by
9 people from Mississippi Power. Am I wrong on that?

10 A You're wrong. They're prepared by
11 organizational design people from Alabama.

12 Q And not necessarily from Alabama Power?

13 A Alabama Power. Not Mississippi Power.

14 Q Oh, it was Alabama Power, okay. I wasn't
15 that wrong.

16 I'd like to turn to Mr. Croft at this time.
17 Mr. Shreve has covered a good deal of this, but there
18 are a couple of points I'm kind of confused about, I
19 want to ask you about. How much money did Kyle Croft
20 steal from Gulf Power?

21 A I don't know that we know for sure. We can
22 document pretty well around \$85,000 that we know he
23 stole, some of which we recovered.

24 Q Does Mr. Fell's testimony indicate a higher
25 amount?

1 A Pardon?

2 Q I'll discuss that with Mr. Fell. But,
3 basically, Mr. Croft's schemes were very elaborate. He
4 had you dispose of his waste, didn't he?

5 A Three transformers, yes.

6 Q And he furnished his entire company's suite
7 of offices with your furniture, didn't he?

8 A Now, I can't say that. I know that he
9 admitted to some used furniture that he says was going
10 to be discarded, but I don't know whether he furnished
11 his whole office with furniture or not.

12 Q Now, you learned of Kyle Croft's theft
13 through the anonymous letters that you got, is that
14 correct? And that's basically Page 61 of 182 of
15 Exhibit 391?

16 A What was the page number?

17 Q 61, sir, of Exhibit 391.

18 A This is one of the anonymous letters that I
19 received.

20 Q Were the other anonymous letters before this
21 time or after this time?

22 A I don't recall whether this was the first one
23 or the second one. I believe this is the second one.
24 I received another one perhaps some two weeks earlier.

25 Q But they were right around the same time?

1 A Right.

2 Q Now, you fired Mr. Croft on Sunday morning,
3 January 29th, 1984, is that correct?

4 A That's correct.

5 Q And you brought all the vice presidents in
6 for this event, didn't you?

7 A That's correct.

8 Q Why did you do that?

9 A I did that because we operate that Company on
10 a -- in a manner such that all very important decisions
11 that we make, we try to do that as a group, so that all
12 vice presidents are satisfied that they have had their
13 input and that they agree with the decision.

14 Q So that's kind of a democratic style of
15 leadership, isn't it, Mr. McCrary?

16 A In that case, that is correct.

17 Q Okay. Now --

18 COMMISSIONER BEARD: I'm confused. Wait, I'm
19 confused.

20 Commissioner Gunter was asking you earlier,
21 you had called here on Friday afternoon, apparently to
22 let them know that he was going to be fired.

23 WITNESS McCRARY: That's correct.

24 COMMISSIONER BEARD: So the decision had been
25 made then?

1 WITNESS McCRARY: That's correct. It had
2 been made as far as I'm concerned. I didn't have any
3 alternative but to fire the man.

4 COMMISSIONER BEARD: I understand that. And
5 maybe it's a nit, but what I just heard you say was
6 that you called all the vice presidents in on Sunday to
7 make the democratic decision that you had informed this
8 Commission on Friday you had already made.

9 WITNESS McCRARY: I called them in so that
10 they would be aware of what was going on, give them a
11 chance to have their input, if they had had something
12 that was contrary to all the evidence that I had, I
13 might have changed my mind. I didn't think so, but at
14 least that's -- I just think it's -- that they need to
15 know these things because it does affect their area of
16 operation.

17 Q Now, you and Mr. Croft went into your office
18 and all the vice presidents scurried into their
19 offices, is that correct?

20 A Mr. Croft and I went into my office, that's
21 correct.

22 Q Did you set your telephone so that all the
23 other vice presidents could listen to your conversation
24 with Mr. Croft?

25 A Absolutely not.

1 Q That's a false statement that appears in his
2 deposition?

3 A Absolutely.

4 Q Okay. Now, you fired him, didn't you?

5 A I did.

6 Q You fired him. You told Mr. Kickliter to go
7 help him clear out his desk, is that correct, or is
8 that a false statement as well? He went and cleared
9 out his desk because you fired him?

10 A That's correct. But -- maybe I should
11 explain.

12 Q I'm fixing to ask you about --

13 A Yes, I fired him.

14 Q You fired him on Sunday, and by Monday -- by
15 the middle of the next week he was resigning from the
16 company.

17 A That's correct.

18 Q What's the deal?

19 A Jake Horton came to me and asked me if he
20 could talk to Kyle Croft and get him to resign. I had
21 offered Kyle Croft earlier the chance to resign from
22 the Company.

23 Q That part of his deposition is true then?

24 A Yes, that's true. I told him that if he
25 would make restitution to the Company, sign a note for

1 the things that we knew he had stolen, that we had not
2 recovered, then I would let him resign and that would
3 be the end of it. He didn't choose to do that, so I
4 fired him.

5 Q And then Jake came back to you?

6 A That's correct.

7 Q And Mr. Horton then entered into negotiations
8 apparently with Mr. Croft and his attorney. And were
9 those negotiations entered into with your knowledge and
10 consent?

11 A I knew they were talking about Kyle
12 resigning. It made sense to me to have Kyle resign to
13 possibly avoid a lawsuit in the future.

14 Q Did you pay his attorneys fees relative to
15 his termination? Did Gulf Power -- and I apologize for
16 using "you."

17 A Gulf Power did not pay the attorneys fees.
18 The attorneys fees were paid by Jake Horton through the
19 Appleyard agency.

20 Q Wasn't that billed to an above-the-line
21 account of Gulf Power?

22 A No, I think that was in the appliance sales
23 end of the business.

24 Q So it was billed to a nonregulated account in
25 Gulf Power?

1 A That's right. That's my understanding.

2 Q That's fine. I'm just trying to figure out
3 what happened.

4 A At any rate, those lawyers fees were paid
5 without my knowledge.

6 Q Now, you said earlier, too, that Gulf Power
7 had paid his insurance premium and you didn't know
8 about that either.

9 A Absolutely not. Mr. Horton came to me when
10 they were talking to Kyle Croft about resigning, and he
11 told me that one of the things that Kyle wanted him to
12 do was to pay his insurance for a year. I told him
13 specifically, definitely, in no uncertain terms that we
14 would not pay his insurance.

15 Q But at sometime later you found out that Mr.
16 Horton had, in fact, arranged for both the attorneys
17 fees and the health insurance premiums to be picked up
18 by some Gulf Power account, didn't you?

19 A In the fall of 1988 when I first saw the
20 Appleyard ledger.

21 Q And you didn't know until that time?

22 A No, sir.

23 COMMISSIONER GUNTER: Let me ask a question
24 on my recollection. It seems as though when I read --
25 have you read Kyle Croft's deposition?

1 WITNESS McCRARY: I've read some of them.
2 He's given so many, in so many cases.

3 COMMISSIONER GUNTER: I thought -- I'm
4 sitting here listening to this, I thought that in his
5 deposition that he had stated that Francis Horton had
6 paid his --

7 MR. HOLLAND: Attorneys fees.

8 COMMISSIONER GUNTER: Okay. She had paid. I
9 think in his deposition she had paid something.

10 MR. VANDIVER: It was the proceeds of one of
11 her policies I think, Commissioners.

12 MR. HOLLAND: It may have been insurance, now
13 that I --

14 COMMISSIONER GUNTER: Yes, that was my
15 understanding, and here we're finding out there is
16 something different out of his deposition to what
17 actually occurred. Is that what you're getting at?

18 MR. VANDIVER: Yes, sir.

19 COMMISSIONER GUNTER: Okay. I apologize.

20 MR. HOLLAND: What well could have happened
21 was that the check could have been paid to Francis and
22 she -- but I don't know that.

23 COMMISSIONER GUNTER: But I thought I
24 recalled that portion in his deposition.

25 Q (By Mr. Vandiver) Now, at this time that the

1 firing/resignation was going on over the period of the
2 week --

3 A Two or three days, I'm not sure.

4 Q Sure. And you didn't know that Gulf Power
5 and Mr. Horton were negotiating to pay the attorneys
6 fees and the insurance premiums, did you know that Mr.
7 Horton had executed a promissory note back to Mr. Croft
8 for the amount he was supposed to owe Gulf Power?

9 A No, sir.

10 Q When did you find out about that?

11 A I believe in 1986, when Kyle Croft filed suit
12 against the Company.

13 Q Boy, that must have really sent off the bells
14 ringing then about your suspicions about Mr. Horton.

15 A It did.

16 Q Okay. And that was 1986. Is Mr. Croft
17 presently collecting a pension from Gulf Power?

18 A He is. I think we're required by law to pay
19 that pension.

20 Q Have you all attempted to enforce the
21 promissory note signed by Mr. Croft payable to Gulf
22 Power?

23 A We have a countersuit filed against Kyle
24 Croft and Line Power, and I'm not sure exactly where
25 that stands now. It's in the courts somewhere.

1 Q You all reneged on the promise by Jake Horton
2 never to enforce that note, didn't you?

3 A Well, as far as I'm concerned that was a
4 promise that was made by Jake Horton personally. It
5 was certainly not made by the Gulf Power Company and
6 with the knowledge of Gulf Power Company.

7 Q No, he was able to convince the employee that
8 he could change your mind about firing him, didn't he?
9 And he did.

10 A He did that.

11 Q Okay. I've just got one question about the
12 amnesty program I wasn't clear on. I understand it
13 went through the 11 law firms so that you weren't to
14 know the identities.

15 A That's correct.

16 Q Did you ever hear informally who participated
17 in that program, living in Pensacola, talk around the
18 Company, the executive suite, do you know anybody?

19 A I have had some employees come to me and tell
20 me that they participated in that program.

21 Q Who are they?

22 A Well, one was Ben Kickliter.

23 Q What did that involve?

24 A It involved the pickup truck.

25 Q The one I was talking about earlier?

1 A That's correct.

2 Ben was fussing because he said he had to pay
3 an additional \$500 for that pickup truck and he didn't
4 think it was worth it. That he didn't -- he didn't
5 think it was worth more than he paid for it.

6 Q But nonetheless he anteed up some in the
7 amnesty program, huh?

8 A He did.

9 Q Okay.

10 COMMISSIONER BEARD: The amnesty program --
11 he's going to give an undisclosed amount to an attorney
12 with an attorney-client privilege. How would he arrive
13 at the figure of \$500 as money to be paid for the
14 amensty program? How would he do that?

15 WITNESS McCRARY: I don't know how they
16 arrived at the \$500.

17 COMMISSIONER BEARD: Let me, well are you
18 finished with the amnesty program?

19 MR. VANDIVER: Excuse me, Commissioner?

20 COMMISSIONER BEARD: Are you finished with
21 the amnesty program?

22 MR. VANDIVER: Yes.

23 COMMISSIONER BEARD: Let me -- I'm trying to
24 understand that.

25 Somebody misappropriates, lets say, and try

1 not to use too prejudicial a term, something from the
2 Company of value that they probably shouldn't have,
3 okay, and for whatever reason this amnesty program
4 comes along and they get a guilty conscience, or
5 whatever, and so they go to Fred Levin and they pay him
6 X amount of dollars of value, to be determined by, I
7 guess that individual. I don't know who would do it.
8 They certainly wouldn't go to Mr. Scarbrough and say,
9 "How much is that thing worth that I stole from the
10 Company?" I don't think. And you all have no idea who
11 they are; you have no idea, specifically, what they pay
12 and for what it was for, I assume. It's an amnesty
13 program, right?

14 WITNESS McCRARY: That's right.

15 COMMISSIONER BEARD: For example, you all
16 sent a bill to Mr. Addison for the lawn care issue.
17 You have no idea whether or not he paid that at all?

18 WITNESS McCRARY: No, except he told me he
19 paid it.

20 COMMISSIONER BEARD: Yeah, I understand that.
21 But I'm saying just from a practical standpoint. So if
22 you had an investigation, ongoing, I'm not sure what
23 you all promised in return in this amnesty program, if
24 you have an investigation going on and you uncover the
25 theft of something and you go to prosecute that

1 employee for that, and they say, "Whoa, whoa, whoa, I
2 participated in the amnesty program," how would you
3 know they were telling the truth or not?

4 WITNESS McCRARY: We'd go to the attorney and
5 ask him about it if we got to that stage.

6 COMMISSIONER BEARD: And if, in fact, they
7 had participated in that, then the prosecution would
8 stop at that point?

9 WITNESS McCRARY: That's right.

10 COMMISSIONER BEARD: Okay. Now, what if it
11 was something that they gave \$500 for but, in fact, it
12 was probably worth \$2,000 more?

13 WITNESS McCRARY: Well, that's a hypothetical
14 thing, but I would try to evaluate that, to see whether
15 they were -- whether they honestly thought it was \$500
16 when it was 2,000, or whether they were trying to
17 defraud the Company.

18 COMMISSIONER BEARD: Again?

19 WITNESS McCRARY: Yeah. Then I'd act on that
20 basis. But as a matter of fact, we didn't, as far as I
21 know, we haven't had anything come up where we had to
22 go to the attorneys and say, "How much did he pay under
23 the amnesty program?"

24 Q (By Mr. Vandiver) What led to the adoption
25 of the Gulf Power Code of Ethics in August of 1984?

1 A It was the myriad of things that had been
2 going on in the early '80s.

3 Q Why didn't you have one prior to that time?

4 A I can't answer that.

5 Q Would you agree with me that every large,
6 well run Utility ought to have one?

7 A I would, yes.

8 Q Were all employees required to sign the
9 compliance statement in August of 1984?

10 A Yes, they were. That's a condition of
11 pre-employment and all employees were required to sign
12 the Code of Ethics.

13 Q And did all employees execute the compliance
14 statement?

15 A No, I think there were probably two that did
16 not, that were about to retire the next month or some
17 reason like that. But other than that --

18 Q Those weren't any of the individuals we've
19 discussed so far here today, are they?

20 A No.

21 Q Okay. What else did you do in 1984 to
22 implement the Code of Ethics?

23 A We started making extensive revisions to the
24 way the warehouse was operated, and I have --

25 Q Excuse me, sir. I'm not talking about an

1 improved buying system for the warehouse or anything,
2 I'm talking about how you implemented that Code of
3 Ethics.

4 A I don't understand exactly what you mean.
5 What else did we do to implement the Code of Ethics?

6 Q I mean did you have all 1600 employees get
7 together in one room, and you said, "Here's the new
8 Code of Ethics, and here's what constitutes a conflict
9 of interest and here's an educational package for you,
10 so you can abide by this."

11 A No. We had a series of meetings with
12 employees from all around the system in which the Code
13 of Ethics was explained and the reason for it.

14 Q What did you do in 1985 to implement the Code
15 of Ethics?

16 A 1985?

17 Q '86?

18 A I don't recall specifically anything that we
19 did in '86.

20 Q '87?

21 A '87, as far as other actions that we took on
22 the Code of Ethics in those years, I --

23 Q '88?

24 A UH --

25 Q You may have suspected I'm leading up to

1 something, Mr. McCrary.

2 A I suspect that.

3 Q Yeah. What I want to ask you is why did the
4 Audit Committee of the Board of Directors find it
5 necessary to adopt a resolution on January 5th, 1989,
6 to reiterate the Code of Ethics and to order you to
7 take certain actions relative to the Code of Ethics?

8 A Well, I think the actions that -- or the
9 resolution that was adopted by the Audit Committee at
10 that meeting was done at my request and at my
11 suggestion that we reemphasize the Code of Ethics in
12 light of what we had uncovered in the fall of 1988 with
13 the Ray Howell situation --

14 Q Sure.

15 A -- and other things. We thought it was in --
16 that what we should do is to reemphasize the Code of
17 Ethics; to have an educational program; to have a
18 program of ethics awareness, and to generally have
19 employees focus on the Code of Ethics being a real and
20 living document.

21 Q Well, don't you think that activity -- and
22 all that is very, very good and noble and everything --
23 but don't you think that activity kind of adversely
24 effects on your enforcement of the Code from 1984 to
25 1988?

1 A Well, I don't think so. Because we didn't --
2 except for the one isolated department, we didn't have
3 any major problems like we had had in the early '80s.

4 Q I would like to direct your attention to
5 Exhibit 408, please. Specifically, Mr. McCrary, I'm
6 looking at Page 3 of 12, under the heading, "Conflicts
7 of Interest."

8 COMMISSIONER BEARD: Which exhibit?

9 MR. VANDIVER: Exhibit No. 408, Commissioner,
10 Page 3.

11 MR. HOLLAND: Ron, if we get to a convenient
12 breaking place, could we take about five minutes?

13 MR. VANDIVER: I think I can get done in
14 about five minutes.

15 MR. HOLLAND: Okay, whatever. Okay.

16 Q (By Mr. Vandiver) Under this thing, it says
17 you surveyed 327 employees and 15 indicated possible
18 conflicts of interest. Do you know what the rationale
19 behind the survey of 327 was?

20 A Well, that's something that we do every year.
21 And generally, those questionnaires are sent out to
22 employees that are at a certain level in management, or
23 employees who are involved in purchasing or contracting
24 or some other place that offers a high degree of
25 probability of having some conflict of interest.

1 Q So you target the folks in this survey?

2 A That's correct.

3 Q I'm just kind of curious about transactions
4 covered by competitive bidding procedures.

5 You said you looked at these 13 cases and you
6 didn't find any conflicts. Can you give me some idea
7 of what those 13 cases consisted of? Just in a general
8 way. I don't need to know names or anything.

9 A I would really have to look back at those
10 questionnaires to --

11 MR. VANDIVER: Could I get a late-filed
12 exhibit?

13 COMMISSIONER GUNTER: Can we back up just for
14 a second? Have you got Exhibit 408?

15 WITNESS McCRARY: 408? Yes.

16 COMMISSIONER GUNTER: Is that exhibit
17 complete? Is that a complete report?

18 WITNESS McCRARY: Yes, it is. I believe it
19 is.

20 COMMISSIONER GUNTER: Would you turn to Page
21 7 of 12, please?

22 WITNESS McCRARY: Turn to what page?

23 COMMISSIONER GUNTER: Page 7 of 12. In the
24 last two sentences in the first paragraph, the one
25 "Mr. Bell --"

1 WITNESS McCRARY: All right, sir.

2 COMMISSIONER GUNTER: "-- presented to the
3 committee a written report." This is the one I was
4 going to ask a question of somebody. "A written report
5 of Arthur Anderson's findings of
6 such-and-such-and-such." It says, "A copy of this
7 report is attached."

8 WITNESS McCRARY: You're right, this is not
9 complete.

10 COMMISSIONER GUNTER: So this is not
11 complete. So if we're trying to read this document and
12 read all the decisions that are made, we would have to
13 have that report.

14 MR. HOLLAND: I have got it right here. I
15 don't understand why it's not attached.

16 COMMISSIONER GUNTER: Well, I read it and I
17 don't have it, and I started looking for that attached
18 report.

19 MR. HOLLAND: Let me make copies of it and
20 you can have it.

21 COMMISSIONER GUNTER: Fine. Why don't we
22 take that break?

23 CHAIRMAN WILSON: Yeah, let's go ahead.
24 We'll take five minutes and get a copy of that and
25 we'll have a complete exhibit.

1 (Brief recess.)

2

- - - - -

3

MR. VANDIVER: I have an update on the
4 exhibits. This is Exhibit No. 410, but it's missing
5 the first two pages, Commissioner Gunter, and we're now
6 preparing to hand out the complete document.

7

COMMISSIONER EASLEY: You mean 410 is what we
8 should be looking at instead of 408?

9

MR. VANDIVER: No. The report that
10 Commissioner Gunter referenced.

11

COMMISSIONER EASLEY: Oh. Is this 410?

12

MR. VANDIVER: Yes.

13

COMMISSIONER EASLEY: Thank you.

14

CHAIRMAN WILSON: What?

15

COMMISSIONER EASLEY: The report that is
16 referenced in 408 is Exhibit 410.

17

CHAIRMAN WILSON: Okay.

18

MR. VANDIVER: And it was in the record. It
19 was missing the first two pages.

20

COMMISSIONER EASLEY: And what you've just
21 handed out is a combination of 408 and 410?

22

MR. VANDIVER: 410 with two pages stuck on
23 the front.

24

CHAIRMAN WILSON: So I take it the old 410,
25 get rid of it and write 410 on this one and I'll be

1 correct?

2 MR. VANDIVER: Bingo, unless anybody has an
3 objection.

4 CHAIRMAN WILSON: Without objection.

5 COMMISSIONER GUNTER: Let me ask you a
6 question before we go further. My question's related
7 to 408. The question I had related to 408. When I had
8 read this -- and I had read this previously -- when I
9 read this, it indicates on Page 7 of 12 of 408, that
10 there was an attached copy of the investigation
11 performed by Internal Auditor Mr. Fell. It said a copy
12 of this report is attached, of the minutes of the Board
13 of Directors Audit Committee meeting. I have not seen
14 a copy of Mr. Fell's audit report.

15 MR. HOLLAND: Commissioner. just a minute. I
16 think I can -- are you looking at the top of Page 7?

17 CHAIRMAN WILSON: Yes.

18 COMMISSIONER GUNTER: I'm on 7, the first
19 paragraph.

20 MR. HOLLAND: Mr. Bell presented to the
21 committee a written report of Arthur Anderson's
22 findings resulting from their review of the books and
23 records of the company under the several special
24 investigations performed by the Internal Auditor, Mr.
25 Fell. A copy of this report is attached. The report

1 --

2 COMMISSIONER GUNTER: Is this 410?

3 MR. HOLLAND: That's 410. That's right. And
4 the two audits that Mr. Bell reviewed are in the
5 record, and I'm not sure which number they are, but
6 that's the --

7 COMMISSIONER GUNTER: No, I was trying to
8 make a complete one here. I didn't -- and as I was
9 reading it, I couldn't find it, it standing by itself.
10 I expected to see it put together. I got you.

11 Q (By Mr. Vandiver) Mr. McCrary, when we last
12 -- did you have some questions on that one? Excuse me,
13 Commissioner Gunter.

14 COMMISSIONER GUNTER: No.

15 Q (By Mr. Vandiver) I think when we left the
16 last time, we were talking about the conflicts of
17 interest earlier in Exhibit 408, those 13 cases down
18 there at the bottom of the page, and I had asked you if
19 you could give me a better idea as to what was
20 encompassed within transactions covered by competitive
21 bidding procedures. Had you responded to that
22 question, sir?

23 A I did. I think I did, and I told you that I
24 couldn't without looking at those questionnaires.

25 Q Could you give me a late filed exhibit on

1 that, just generally as to what the 13 cases
2 constituted and why you didn't think they were a
3 conflict of interest?

4 A Yes.

5 Q And also I have a question in that regard.
6 Do you recall if you consulted legal counsel as to
7 whether or not those incidences constituted a conflict
8 of interest?

9 A It would depend on the magnitude of the
10 conflict. I don't recall any that required me to talk
11 to counsel about it. They were for the most part
12 insignificant.

13 Q Fine. And --

14 CHAIRMAN WILSON: Would that number be 546?

15 MR. VANDIVER: That's correct.

16 CHAIRMAN WILSON: All right.

17 (Late-filed Exhibit No. 546 marked for
18 identification.)

19 MR. VANDIVER: And you need not put the names
20 of the individuals on there, Mr. McCrary, just give me
21 an idea of the kinds of transactions we are talking
22 about.

23 Q (By Mr. Vandiver) Now, the original purpose,
24 as I understand it, for the adoption of the Code of
25 Ethics was -- were the warehouse problems and the theft

1 by Kyle Croft and others acting under him, is that
2 correct?

3 A It was the -- that was part of it, yes.

4 Q What was the other part of it?

5 A Well, in 1984 we discovered that the
6 Appleyard ledger -- not the ledger, but an arrangement
7 had been made with Appleyard to pay for certain
8 expenses and bill them back to the Company as a special
9 production fee. And, of course, as soon as we found
10 out about that, we stopped that procedure.

11 Q And you found out about the Appleyard account
12 in the fall of 1988?

13 A No. I found out about the Appleyard account,
14 that that was being done in 1984, and that's when it
15 was stopped.

16 Q Okay.

17 A I didn't see the ledger for that account
18 until the fall of 1988.

19 Q Okay. But the original purpose of the Code
20 of Ethics was to prevent embezzlement of Gulf property,
21 and five years later you had evidence of different
22 kinds of ethical violations. Is that a fair statement?
23 The political contributions?

24 A That's correct. Fair statement.

25 Q Does this indicate to you that some employees

1 chose to ignore the Code of Ethics or failed to take it
2 seriously?

3 A Yes, it does.

4 Q Who did Mr. Horton report to?

5 A He reported to me.

6 Q I've got Mr. Horton's position description,
7 and I believe that's located in Exhibit 414, if you
8 could turn there, please, sir.

9 If you could take a few seconds and look at
10 that, please, sir.

11 A All right.

12 Q Is this position description accurate? An
13 accurate portrayal of Mr. Horton's actual functions at
14 the Company?

15 A Yes, it is.

16 Q What was Mr. Horton's base salary at the time
17 of his death?

18 CHAIRMAN WILSON: At the time of what?

19 MR. VANDIVER: At the time of his death.

20 A It was -- I don't recall the figure offhand,
21 but 140,000, I guess.

22 Q Is that within 20,000 or so?

23 A Yeah, I would think so. I'd have to go back
24 and look at the numbers though.

25 Q Who set that salary?

1 A That is set by the employee relations people
2 in evaluating the various jobs that we have in the
3 Company and trying to place the proper weight and value
4 on that job. That sets the salary range and, of
5 course, the actual salary is determined by me, with
6 recommendation to the Compensation Committee of the
7 Board.

8 Q So the Board of Directors, then, has a little
9 Group Compensation Committee just like they had in --

10 A That's right.

11 Q Was Mr. Horton eligible for yearly bonuses
12 for his job performance?

13 A Well, I take exception to the word "bonus,"
14 because he was eligible for that part of our pay plan
15 which is tied to performance.

16 Q What would you have for a better word to
17 characterize it?

18 A Well, it's a productivity improvement
19 program, I believe, is what we call it.

20 Q Productivity improvement what? Excuse me.

21 A Program.

22 Q So let's all call its the "PIP program."

23 So in addition to the base salary of
24 approximately \$150,000, he was eligible for these PIP
25 payments every year?

1 A That's right.

2 Q How was that amount calculated?

3 A That's calculated by -- at the beginning of
4 the year we set up certain performance criteria,
5 certain goals that the individual is to meet. And
6 depending on how he performs against those goals, that
7 would determine what type of pay that he got for that
8 part of his performance.

9 Q Did you sit down with each of your direct
10 subordinates at the start of each year and mutually
11 discuss those goals?

12 A Yes, we do.

13 Q So you were participating in a democratic
14 kind of style of management there, too, weren't you?

15 A I suppose you'd call it that, yes.

16 Q Now, so if Mr. Hortor in this case were to
17 meet those goals that you and he had mutually agreed on
18 at the first of year, he would then get one of these
19 PIP payments at the end of the year. Is that how it
20 worked?

21 A That's correct.

22 Q Okay. Who had to approve those decisions?

23 A The total amount paid out under that program
24 is approved by the Southern Company board. It's also
25 approved by the operating company board, or the Gulf

1 board, and the amount would be approved by the
2 Compensation Committee, the specific amount.

3 Q You mean the fact of a bonus had to be
4 approved by two boards of directors, and the amount of
5 the bonus then had to be signed off on by the
6 Compensation Committee of the Gulf Power Board of
7 Directors, is that correct?

8 A That's correct.

9 Q Okay. Did Mr. Horton receive a PIP payment
10 for calendar year 1983?

11 A 1983?

12 Q Yes.

13 A I can't -- I just don't remember.

14 Q I need a spread sheet as a late-filed exhibit
15 please, sir. And I would like to see any bonuses,
16 additional compensation, PIP payments, whatever we can
17 possibly call them, in addition to Mr. Horton's base
18 salary, for the years 1980 until the time of his death
19 -- or 1983, since you took over the company, I think.

20 MR. VANDIVER: I think that would be exhibit --

21 CHAIRMAN WILSON: 547.

22 MR. VANDIVER: Thank you.

23 (Late-Filed Exhibit No. 547 identified.)

24 Q (By Mr. Vandiver) Was there any year that
25 you remember that Mr. Horton did not receive a bonus?

1 That you remember?

2 A I don't remember. I'd have to go back and
3 look at the records.

4 Q Sure. You sit on the Compensation Committee
5 of the Board of Directors?

6 A No, but I usually attend the meetings.

7 Q Now, at the time of Mr. Horton's death, how
8 many executives reported directly to you?

9 A There were four executives that report to me
10 directly, plus Charles Lambert.

11 Q Okay. Did you meet with these executives on
12 a regular basis?

13 A Oh, yes. We have Monday morning staff
14 meetings usually.

15 Q Excuse me. Monday morning Staff meetings?

16 A Usually.

17 Q And that's all of your four direct reports,
18 plus Mr. Lambert?

19 A Right.

20 Q Now, did you also have regularly scheduled
21 one-on-one meetings with each of your vice presidents?

22 A Every day almost.

23 Q Constant inter-reaction?

24 A That's fair.

25 Q Okay. And you shared a suite of offices with

1 the vice presidents, is that correct?

2 A That's correct.

3 Q So you had a number of unscheduled contacts
4 as well as any kind of business things you'd have in a
5 day?

6 A Correct.

7 Q Were you and Mr. Horton personal friends?

8 A Specify the time period and I can be more
9 specific.

10 Q How about May 1st, 1983 through May 1st,
11 1984?

12 A Let me -- when I first came to Gulf, Jake
13 Horton was probably more help to me than any of the
14 other vice presidents in getting me out to meet the
15 people in the community and helping me get established
16 in Pensacola.

17 So I guess in that period you could say that
18 Jake Horton and I were friends.

19 Q Did you see each other socially during that
20 time?

21 A Occasionally we would have dinner together,
22 or something to that effect.

23 Q Was it your suspicion of Mr. Horton's various
24 activities that led to the demise of your social
25 friendship?

1 A Yes.

2 Q So subsequent to sometime in 1984 when you
3 and Mr. Horton met to converse, it was generally on
4 matters of business as opposed to personal matters or
5 social calendars and the like.

6 A I'm sorry, I didn't -- I don't understand the
7 question.

8 Q You've testified that you were social friends
9 with this man at first but not so much later.

10 A That's correct.

11 Q And so what I'm asking you is, would all of
12 your meetings with him after 1984 have been primarily
13 related to business?

14 A Not necessarily, no.

15 Q Okay. If you had to put a label on your
16 supervision and management of Mr. Horton, what would it
17 be? Hands-on?

18 A Let me be sure I understand your question.

19 If I had to put a label on how I managed Jake
20 Horton?

21 Q Yes, sir. That's it exactly.

22 A I would say with difficulty. And I don't
23 know how to say it any better than that.

24 Q Mr. Horton had a mind of his own?

25 A He did.

1 Q Mr. Horton didn't have any children, did he?

2 A No.

3 Q He lived for Gulf Power Company, didn't he?

4 A Jake Horton was a hard worker. He was there
5 early in the morning and weekends. He worked a lot on
6 the weekends. He was a very hard worker.

7 Q Model employee in that respect?

8 A In that respect, the fact that he worked long
9 hours, he was.

10 Q Okay. I want to go back now to Exhibit 396,
11 if we could, please, Mr. McCrary, specifically Page 20
12 of 84.

13 Who is Bill Graves?

14 A Bill Graves is a local architect in
15 Pensacola.

16 Q What was his role in the construction of your
17 new office building?

18 A He was the local architect.

19 Q So you had contracted with Mr. Graves on
20 contractual services before, is that correct?

21 A That's correct.

22 Q This is a very -- okay. This is a very
23 confusing situation, so we'll have to go through it
24 rather slowly.

25 Now, in July of 1984 Mr. Horton instructed a

1 Gulf employee, Mr. Conner, I believe, to have Mr.
2 Graves make a \$1,000 political contribution, is that
3 correct?

4 A That's correct.

5 Q When did you learn of Mr. Horton's pressure
6 on Mr. Graves to get him to make the contribution?

7 A That was -- I learned of it shortly after
8 that occurred, a couple of days after that.

9 Q July of '84?

10 A Yes.

11 Q Now, we had the Baker-Childers Report in
12 January; we had the Kyle Croft firing at the end of
13 January. And now you have knowledge that Mr. Horton is
14 putting the arm on Gulf Power vendors to make political
15 contributions.

16 Did you start an investigation of Mr. Horton?

17 A Well, I talked to Mr. Horton about this
18 particular incident. It was Mr. Horton's story that he
19 did not ask this vendor to bill this back to the
20 Company. He merely requested a political contribution.
21 or asked Ernie Conner, or one of the people in that
22 organization, to get a political contribution for one
23 of the local politicians. And so you have a little bit
24 of a conflicting story there about what really
25 happened.

1 When I found out about it, I talked to Jake.
2 I reemphasized that we would not have or stand for
3 pressure being put on vendors to make political
4 contributions. Jake said it was a misunderstanding and
5 he would refund the money. And I thought that's the
6 way it was until a couple of years later.

7 Q I'm really curious about something you said
8 there. You said you "reemphasized." When did you tell
9 him the first time?

10 A Well, I don't recall when I told him the
11 first time. But I know since I have been at Gulf
12 Power, I have emphasized the fact that we would not put
13 pressure on vendors to make political contributions.

14 Q You don't recall ever discussing political
15 contributions by vendors with Mr. Horton prior to July
16 of 1984?

17 A I don't recall specifically.

18 Q Did Mr. Horton receive a written reprimand as
19 a result of this activity?

20 A No.

21 Q And you don't remember if he got a bonus for
22 that year?

23 A No.

24 Q Can we go to Page 29 of that document,
25 please, sir, of Exhibit 396? And this is another

1 curious question, sir. The last sentence of that says,
2 "Details of this transaction are included in a memo to
3 the files in the Executive Department." And
4 originally, I thought that was Mr. Scarbrough's earlier
5 memo here, but Mr. Scarbrough's memo is dated a
6 month-and-a-half later so it can't be that memo.

7 Could I get a copy of the memo referred to in
8 the October 3rd memo as a late-filed exhibit?

9 A If it's available, you can get a copy.

10 Q Excuse me?

11 A I said if it's available, you can get a copy.

12 MR. VANDIVER: Okay. That would be?

13 CHAIRMAN WILSON: 548.

14 MR. VANDIVER: 548, "Graves' Contribution
15 Memo," would be a good short title.

16 CHAIRMAN WILSON: Okay.

17 (Late-Filed Exhibit No. 548 identified.)

18 Q (By Mr. Vandiver) Now, six months before you
19 had Kyle Croft, Baker-Childers, and in both cases
20 ethical conduct was involved, and in both cases Mr.
21 Horton was right in the middle of it. You were
22 suspicious very much by this time, were you not?

23 A Correct.

24 Q By the way, did you seek Mr. Horton's counsel
25 in the employee DUI situation we discussed earlier?

1 A I did not seek his counsel. He was involved
2 in it. As a matter of fact, he's the one that came to
3 my house and told me about the accident.

4 Q Okay. You mean Mr. Horton?

5 A Mr. Horton came and told me about the
6 accident on the weekend.

7 Q I see. So it wasn't the actual person
8 involved who contacted you. It was Mr. Horton again
9 involved in it?

10 A At that time, Mr. Lambert was in the County
11 jail, I think.

12 Q Now --

13 COMMISSIONER BEARD: Let me -- you said
14 something earlier. I apologize for interrupting you.

15 MR. VANDIVER: Sure.

16 COMMISSIONER BEARD: Just a kind of a side
17 note. The reason that you all chose not to file
18 Company reports, this, that and the other, was just to
19 handle it quietly, I think. Is that a fair assessment,
20 not have a lot of publicity out in public?

21 WITNESS McCRARY: That's correct.

22 COMMISSIONER BEARD: Okay. That struck me, I
23 guess, as unusual. I know in little old Bradford
24 County where I am, they publish those names in the
25 newspaper every week just like clockwork. And I'm

1 trying to figure out -- I think they do in most places.
2 I'm trying to figure out how you keep that not being
3 public when it's a matter of record in the newspaper.

4 WITNESS McCRARY: Well, we didn't try to keep
5 it from being published. As a matter of fact, the
6 arrest records are there and they're available to the
7 newspaper, and they usually pick those things up; send
8 somebody by every day and look at them. But apparently
9 they missed that day. Now, whether it was because it
10 was New Year's Eve or what, I don't know. But they did
11 not pick that up.

12 COMMISSIONER BEARD: I guess it would strike
13 me -- I understand the thought process in one sense.
14 But on the other side of that, if it is picked up and
15 the employees see here he is DUI, perhaps they see it's
16 in the Company car and, well, the Company didn't do
17 anything. That would be a pretty bad signal. An old
18 Safety Department man like me would have a tough time
19 being out there on the line truck with a guy talking to
20 him about it and explain to him how that works.

21 WITNESS McCRARY: Yes.

22 COMMISSIONER BEARD: I couldn't.

23 WITNESS McCRARY: Well, it was a calculated
24 risk, and it was not a popular decision with some
25 employees. But it is something that we felt would be

1 in the best interest of the Company, given all the
2 adverse publicity that we had had. You know, if we
3 could keep from spreading that around, then we thought
4 it would be in our best interests. And it did not make
5 the headlines.

6 C (By Mr. Vandiver) I asked you earlier about
7 your relationship with Mr. Horton. What was Mr.
8 Addison's relationship to Mr. Horton? Ed Addison.

9 A Well, they had worked together for a long
10 time in the Company.

11 Q They good friends?

12 A I suppose they were. They did communicate
13 with each other quite frequently.

14 Q How can you indicate that Mr. Horton acted
15 alone without any knowledge or approval of Gulf Power
16 when the President of Gulf Power at that time, Mr.
17 Addison, had in fact accepted the appliances from Mr.
18 Yarbrough, who worked for Mr. Horton?

19 A Wait a minute. I'm not sure that I
20 understand your question. If you would go back through
21 that again.

22 Q Okay. How can you say that Jake Horton acted
23 alone without any knowledge or approval of Gulf Power
24 when the President of Gulf Power had accepted goods and
25 services without paying for them in ways involving Jake

1 Horton?

2 MR. HOLLAND: Let me clarify something.

3 The reference that you're making in the
4 testimony, I believe, is a reference to the acts to
5 which the Company pleaded. And the appliance sales and
6 the appliances that Mr. Addison received had nothing to
7 do with the Appleyard account or any of the other
8 accounts that I'm --

9 MR. VANDIVER: I don't believe they did,
10 either. But he testified earlier that what happened
11 was that Mr. Addison had gotten some quantity of
12 appliances and that he had not been billed for those
13 appliances. And that what happened is Mr. McCrary here
14 called up Mr. Addison and said, "There's been a
15 mistake, we forgot to bill you," and then Mr. Addison
16 sent him a check.

17 MR. HOLLAND: What does that have to do with
18 Mr. Horton?

19 MR. VANDIVER: Well, the premise here, as I
20 understand Gulf Power's theory of the case, is that Mr.
21 Horton acted completely alone and without the knowledge
22 of anyone else in Gulf Power.

23 MR. HOLLAND: I'm not trying to argue with
24 you, but the reference on Page 10 of Mr. McCrary's
25 testimony.

1 MR. VANDIVER: Uh-huh.

2 MR. HOLLAND: Is with reference to the
3 improper activities described in the plea agreement and
4 the Government Statement of Facts. I don't think
5 either one of the documents has any reference to the
6 appliances.

7 MR. VANDIVER: I'm just referring to what he
8 said on the stand earlier.

9 MR. HOLLAND: I may have misunderstood what
10 he said, but I don't recall him saying anything or
11 making any connection about Mr. Addison and the
12 appliance sales, or the appliances and Mr. Horton.

13 MR. VANDIVER: We can go back to that exhibit
14 and we can walk through it. Mr. Yarbrough worked for
15 Mr. Horton. I thought we established that.

16 MR. HOLLAND: I don't think we established
17 that Mr. Horton was aware of what had happened.

18 MR. VANDIVER: Fair enough.

19 Q (By Mr. Vandiver) Was Mr. Horton aware of
20 the appliance deal with Mr. Addison?

21 A I don't know.

22 Q You never discussed it with him?

23 A I don't recall discussing it with him, no,
24 sir.

25 Q You mean that one of Mr. Horton's employees

1 engaged in a questionable ethical act, to say the
2 least, from your earlier testimony --

3 A Let me change that. I don't remember
4 discussing it with him before we found out about it.
5 Put it that way.

6 Q Did you ever get any sort of informal
7 information regarding Mr. Horton's illegal or unethical
8 behavior?

9 A Anonymous letters have alluded to that.

10 Q That was the only informal knowledge you ever
11 got?

12 A No. I have had other communications that
13 indicated that something was not exactly right.

14 Q What kind of communications and whom were
15 they with?

16 A Well just with various people that didn't
17 agree with the way he approached things.

18 Q Can you name one individual of this group
19 that you had informally talked to?

20 A (Pause) I can't offhand. I know I have, just
21 in general conversations with a number of people, I
22 have been told that his method of operation was
23 questionable.

24 Q And those suspicions began in early 1984 with
25 the Kyle Croft situation, the Baker-Childers thing

1 about the work on his home. They were exacerbated by
2 the Bill Graves situation?

3 A Correct.

4 Q By the appliance deal, the appliance sales
5 irregularities, and these other informal contacts you
6 had had. Is that correct?

7 A That's correct.

8 Q I would like now to direct your attention, if
9 I could, to Exhibit No. 382. I don't believe you have
10 a copy of that. Let me bring it over to you.

11 COMMISSIONER BEARD: Where do we find 382?

12 MR. VANDIVER: Under 382, and I will be on
13 Page 16A.

14 COMMISSIONER BEARD: Well, my stack starts at
15 about 388.

16 MR. PALECKI: That's prefiled testimony of
17 Robert Freeman. It's attached to his prefiled
18 testimony.

19 COMMISSIONER BEARD: Who?

20 MR. PALECKI: Robert Freeman. Bob Freeman,
21 Staff witness.

22 COMMISSIONER BEARD: I knew it wasn't in this
23 stack. Okay. (Witness supplied exhibit)

24 COMMISSIONER BEARD: We're going to be on
25 what page?

1 MR. VANDIVER: 16A.

2 COMMISSIONER EASLEY: Say it again.

3 MR. VANDIVER: 16A.

4 COMMISSIONER BEARD: Got it.

5 Q (By Mr. Vandiver) What I'm interested in is
6 the very last sentence on that page, Mr. McCrary.

7 MR. VANDIVER: I'm sorry, Commissioners, do
8 you not have it yet? I apologize. (Pause).

9 COMMISSIONER EASLEY: 16A?

10 CHAIRMAN WILSON: 16A at the bottom.

11 Is this an exhibit or just Page 16A of his
12 testimony?

13 COMMISSIONER BEARD: No, in the exhibits.

14 MR. HOLLAND: Would be the 1988 Audit.

15 COMMISSIONER EASLEY: Is there any other page
16 number on there?

17 MR. VANDIVER: This is the letter from Mr.
18 Fell, or the memorandum from Mr. Fell.

19 COMMISSIONER EASLEY: I'll look over your
20 shoulder.

21 Q (By Mr. Vandiver) The last sentence on that
22 page indicates that Gulf Power did no investigation of
23 Mr. Horton's activities as of the date of that letter?
24 Is that correct?

25 A That's correct. That's what it says.

1 Q When did Mr. Kickliter retire?

2 A I think it was about April of '89.

3 Q Did he ever receive a written reprimand for
4 the truck deal or anything like that?

5 A No. He didn't.

6 Q Okay. And Mr. Horton was still on the
7 payroll and still had never been investigated at the
8 time of his death?

9 A Well, there had been an investigation by the
10 Audit Committee.

11 Q We've walked through part of that today,
12 haven't we, Mr. McCrary?

13 A Pardon?

14 Q We have been through part of that today,
15 haven't we, sir?

16 A Yes.

17 Q But there was never an investigation of Jake
18 Horton personally up through 1989?

19 A No. Up until the Audit Committee began its
20 investigation in the fall of 1988.

21 Q What is a Gulf Power --

22 MR. HOLLAND: Ron, let me stop you just a
23 minute and clarify something.

24 You asked the question, were the
25 investigations -- was there an investigation of Gulf

1 Power Company? And it may be a matter of semantics,
2 but was there a "Jake Horton," quote, "investigation."
3 The answer is no.

4 I think the question might be more properly
5 phrased, "Was there an investigation or investigations
6 of Jack Horton's activities?"

7 MR. VANDIVER: And perhaps you can ask that
8 on redirect. I'm just going on what the Company letter
9 says, it says there's no investigation of Jake Horton.

10 MR. HOLLAND: Okay.

11 CHAIRMAN WILSON: Go ahead.

12 Q (By Mr. Vandiver) What's the Gulf Power
13 Employee's Committee for Responsible Government?

14 A That's the PAC.

15 Q Is that the organization known in the media
16 as PAC I?

17 A PAC 1.

18 Q How does this PAC work, through payroll
19 deductions?

20 A It can be payroll deducted. It's the
21 standard legal PAC that a lot of organizations have.

22 Q Who decides where the PAC money goes?

23 A It's decided by a committee of employees that

24 --

25 Q What's your role in the spending decisions?

1 A None.

2 Q What was Mr. Horton's role in the spending
3 decisions?

4 A You know, I don't really know. I'm assuming
5 that the PAC Committee got input from Jake Horton
6 because he was very much involved in politics, so I'm
7 assuming that they got some input from him.

8 Q Let's go back to Exhibit 414, if we could,
9 please, Mr. McCrary.

10 A Tell me what --

11 Q That's Jake Horton's job description. I am
12 on Page 16 of 18. No, it's not. That was Mr.
13 Fisher's. I apologize. That's Page 5 of 18.

14 A All right, sir.

15 Q It looks like Mr. Horton's job description
16 was -- part of it was politics, wasn't it?

17 A He was in charge of governmental affairs,
18 yes.

19 Q Incidentally, I notice on Page 3 of 18 that
20 the third paragraph down, the incumbent is responsible
21 for all these wonderful things.

22 Wait one second. Who are Hayes Associates?

23 A They are a consulting group that we did use
24 to help us set job levels and things of that nature.
25 And they're the only private organization that's

1 mentioned in Mr. Horton's job description. That's on
2 Page 4 of 18, second paragraph from the bottom where it
3 talks about Mr. Horton's outside contacts, and it's got
4 all those governmental agencies, plus Hayes Associates?

5 A Right.

6 Q And they are a personnel type outfit?

7 A Right.

8 COMMISSIONER BEARD: They designed a pay plan
9 so complex that only they can administer it.

10 Q (By Mr. Vandiver) Did you and Mr. Horton
11 ever review PAC I contributions on a regular basis to
12 see what was coming out of the PAC, where it was going?

13 A On a regular basis, no.

14 Q On an irregular basis?

15 A At times we would talk about who the PAC
16 contributed to.

17 Q And that was in your one-on-one or in your
18 staff meetings?

19 A Yeah, or an incidental thing.

20 Q do You know what the litmus test was for Gulf
21 Power support?

22 A I'm sorry, the witness test?

23 Q Litmus test.

24 A Litmus test? No, I don't.

25 Q What is the organization identified in the

1 media as PAC II

2 A PAC II, so-called PAC II, was as loose
3 organization of employees that would make -- would pool
4 their money to make political contributions to
5 political candidates.

6 Q Why was PAC II started?

7 A It was started prior to the time that I came
8 to Gulf, and it's my understanding that it was started
9 because certain individuals were closest to the general
10 office were being asked to make political contributions
11 more often than people in outlying areas. So this was
12 a way that everybody could share in the making of these
13 political contributions who elected to do so.

14 Q Could you look at Exhibit No. 413 at Page 42?
15 This is the plea agreement with the United
16 States Government.

17 CHAIRMAN WILSON: 413?

18 Q (By Mr. Vandiver) 413, Page 42. And I
19 apologize, Mr. McCrary, unfortunately the language I
20 want you to look at is bracketed. I thought these were
21 clean copies. But, could you read that sentence for
22 us, please?

23 A "Testimony and evidence would show that PAC
24 II was begun by Gulf Power in response to complaints by
25 Gulf Power Company vendors and employees that they had

1 been pressured into making political contributions on
2 behalf of Gulf Power Company."

3 Q And that was before your time at Gulf Power?

4 A That's correct.

5 Q Now, am I correct that this is an informal
6 organization made up of your 100 top managers?

7 A Generally that's about correct, but it's not
8 a requirement or was not a requirement that anyone had
9 to participate in the so-called PAC II.

10 Q And it's entirely voluntary then?

11 A Right.

12 Q Is it true that 95% of those eligible
13 participate?

14 A That was probably correct.

15 Q To what do you attribute this astounding
16 percentage?

17 A Well, we just support good government.

18 Q You mean you're asking people to take money
19 out of their pockets, and 95% say yes?

20 A I'm -- you know, I have to assume that.

21 Q Would you agree that some of the 95%
22 contribute because they believe it's expected of them?

23 A That's probably correct.

24 Q Now, in the PAC I case, Gulf decided which
25 campaign to contribute to, or your -- the Committee

1 did, is that correct?

2 A That's correct.

3 Q And as I understand PAC II, candidates
4 approach Gulf Power for support, is that correct?

5 A That's correct.

6 Q Who did they approach? Mr. Horton?

7 A Well, that request could come from anyone at
8 Gulf Power.

9 Q Anyone?

10 A That's right.

11 Q Has anyone ever approached you to solicit
12 Gulf Power support for a political campaign?

13 A All the time I get the requests for campaign
14 contributions.

15 Q Who made the decision as to who to support on
16 PAC II? You may want to take a look at Page 43 of
17 Exhibit 413 in that respect, speaks to that.

18 A What was the page number?

19 Q 43, sir. It's that middle paragraph where
20 they're talking about the Executive Committee for PAC II.

21 A All right, sir.

22 Q And basically we have a litmus test here of
23 if they are good for Gulf Power, they got the support?

24 A That's what this says.

25 Q That's the Government talking though, isn't

1 it?

2 A That's correct, but I know there have been
3 times when one group in the company would contribute to
4 one candidate, another group would contribute to his or
5 her opponent.

6 Q Well, I understand that happens all the time
7 in our political world, doesn't it?

8 A It does.

9 Q Who decided on the level of compensation
10 under PAC II? Mr. Kickliter? Mr. Horton?

11 A The level of contributions that were made by
12 the individuals or the level of contribution that was
13 made to the candidates?

14 Q Well, you explained earlier that PAC II was
15 this big pool of money and that Gulf Power employees
16 contribute into that big pool, and now we have the
17 money going out to various political candidates. And I
18 want to know who decided which candidate, and after
19 they decided which candidate, how much was that person
20 going to get?

21 A Well, that's not -- the characterization is
22 not quite right because there was no pool, no PAC II
23 pool, as such, where employees contributed to the pool.
24 As requests came in for political contributions,
25 someone would ask people if they supported Candidate A

1 and would they like to make a contribution to Candidate
2 A. And they would either make the contribution or not
3 make the contribution. They would write the check, not
4 to a pool, but to that candidate.

5 Q So it was a personal decision on the part of
6 your executives then in PAC II?

7 A That's right.

8 Q How much total money are we talking about on
9 a yearly basis for PAC I?

10 A I don't remember those figures exactly, but
11 it -- I think it was in the neighborhood of \$20,000 in
12 PAC I.

13 Q How about PAC II?

14 A PAC II was probably a total of \$5,000, and I
15 think I'm in that neighborhood.

16 Q \$25,000 of political contributions going
17 through your legally constituted PACs? Is that a fair
18 statement?

19 A \$20,000 through the legally constituted PAC.

20 Q And there was considerably more money going
21 through the other ways of getting money to political
22 candidates, weren't there?

23 A Approximately \$5,000 through individual
24 contributions.

25 Q Well, that takes us to the plea agreement,

1 Mr. McCrary, and we are winding down, so -- in plea
2 bargains both sides usually get something. What did
3 Gulf Power receive as part of that give-and-take
4 process?

5 A Well, we had removed from us the threat of
6 indictments, numerous indictments against the Company.
7 It's my understanding in the discussions with the U.S.
8 Attorney that they could have taken each one of the
9 allegations on the Appleyard ledger and made a separate
10 count of that. We had the expense of a long legal
11 trial, which would have occurred had we -- had we been
12 indicted, and the possibility of a sizable penalty if
13 the number of counts were as large as the U.S. Attorney
14 indicated they might be. So in the plea agreement we
15 had that removed from us and we had the publicity that
16 would have been associated with that long trial removed
17 from us, and our desire was to put this thing behind
18 us, to put it to bed, pay the fine and move on down the
19 road.

20 Q When did your settlement discussions with the
21 U. S. attorney begin? You refer to the settlement
22 discussions in your direct, Page 11, Lines 12 through
23 14.

24 A They began shortly after the plane crash in
25 which Mr. Horton was killed.

1 Q That was April of 1989?

2 A That's April the 10th is when the plane crash
3 occurred, and it was sometime after that, maybe a month
4 or so, that the discussion started.

5 Q You saw the Appleyard ledgers in the fall of
6 1988?

7 A That's correct.

8 Q Were you advised at that time but by your
9 counsel that those could possibly constitute a
10 violation of law?

11 A Yes, I knew that.

12 Q And you didn't start talking to the U. S.
13 attorney until after Mr. Horton's death, to negotiate a
14 plea bargain?

15 A Well, I'm not sure that there had not been
16 some earlier discussion. I'd have to ask my counsel
17 about that. I didn't participate in those settlement
18 agreements, discussions. But I doubt that the Company
19 started these discussions prior to the death of Mr.
20 Horton because I think except for that, the Company
21 would not have been indicted.

22 Q Except for the activities of Mr. Horton?

23 A I don't think the Company would have been
24 indicted on the activities of Mr. Horton. I think that
25 would have probably been a personal indictment.

1 Q I'd like to now turn your attention back to
2 the plea agreement, that's Exhibit 413, at Pages 9 and
3 10. (Pause) Item 31 indicates a contribution made by
4 Mr. Yates and charged to Gulf Power on July 15th, 1985,
5 is that correct?

6 A That's correct.

7 Q Why was Gulf Power Company interested in the
8 re-election of a Colorado Senator?

9 A I certainly was not interested in any.

10 Q Okay. On the next page we see \$2,000 again
11 on the Hammer & Yates account to Senator Hart's
12 presidential campaign on July 16th, is that correct?

13 A That's correct.

14 Q The next item concerns a \$1,000 contribution
15 to Gary Hart, this time laundered through the Dick
16 Leonard Group, on July 18th, 1985.

17 A That's correct.

18 Q Now, let's go to Page 34 of that document.
19 (Pause) I misspoke, it's 37, Page 37. And there we
20 see a check on July 10th, 1985, to the Dick Leonard
21 Group to the Pensacola Sports Authority, is that
22 correct?

23 A That's correct.

24 Q So basically we have three separate illegal
25 political contributions for a total of \$3,500, and an

1 illegal \$1,500 payment to the Pensacola Sports
2 Association in the same month, is that correct?

3 A That's correct.

4 Q Wouldn't these illegal activities have
5 consumed an awful lot of Mr. Horton's time?

6 A Well, it would appear that way.

7 Q I mean just about every day he was cutting a
8 check or something, wasn't he? I mean, he had to let
9 the agencies know who to contribute to and how much,
10 right?

11 A That's correct.

12 Q He then had to be certain the false vouchers
13 were paid, right?

14 A Right.

15 Q He would then also have to check and see if
16 the vendors actually made the contributions, wouldn't
17 he?

18 A I suppose that's right.

19 Q And it's your testimony that he never
20 discussed any of these matters with you?

21 A Absolutely not. Not that they had occurred.
22 We had numerous discussions on the fact that they
23 should not occur and I inquired about it on a number of
24 occasions, but we didn't learn about the Dick Leonard
25 involvement until about the time that we -- I know we

1 were having discussions with the U. S. Attorney about a
2 settlement when we learned of the Dick Leonard
3 involvement.

4 Q All of these political contributions were
5 fraudulently billed to above-the-line accounts, weren't
6 they?

7 A I don't think they were all billed to above-
8 the-line accounts. Possibly some of them were and some
9 of them were not.

10 Q But these, you would agree with me that these
11 July 1985 transactions are only the tip of the iceberg,
12 aren't they, Mr. McCrary?

13 A The July '85 --

14 Q The plea agreement details 120 separate
15 illicit transactions on a more or less continuous basis
16 from 1981 until late 1988. Would you agree with that?

17 A Yes.

18 Q Mr. Horton must have lived in constant fear,
19 worried that you were going to find out, musn't he?

20 A I'm sorry, I didn't hear you.

21 Q Wouldn't Mr. Horton have been terrified
22 constantly that somehow you were going to find out
23 about all this illegal activity and dismiss him from
24 his position.

25 A I think he was concerned about it.

1 Q I have no further questions. Thank you, Mr.
2 McCrary.

3 CHAIRMAN WILSON: Questions, Commissioners?

4 MR. VANDIVER: I've been informed we have a
5 problem with an exhibit. If we could have just a
6 minute.

7 COMMISSIONER EASLEY: While you're doing
8 that, let me just follow up on that.

9 In response to a question a minute ago by Mr.
10 Vandiver, in discussing these activities with Mr.
11 Horton you said that he didn't discuss them with you
12 from the standpoint of telling you that they were going
13 on but that you had discussions that they shouldn't go
14 on. Would you explain that to me, please?

15 WITNESS MCCRARY: Yes. I continuously
16 emphasized that we would not pressure vendors to make
17 political contributions, vendors or employees, and
18 certainly that we would not have these things billed
19 back to the Company.

20 COMMISSIONER EASLEY: What was the reason for
21 that discussion? Did you have some reason to believe
22 that that's what he was doing?

23 WITNESS MCCRARY: There have been allegations
24 of those types of things.

25 COMMISSIONER EASLEY: The pressure I remember

1 hearing the discussion of, but this was at a point in
2 examination that you were talking about the illegal
3 contributions that were made. Did you have reason to
4 believe that he was participating in the illegal
5 contributions as well?

6 WITNESS McCRARY: Not until -- not until
7 after the plea agreement or not until -- no, not until
8 we saw the Appleyard ledger in the fall of '88. That
9 had some political contributions on the ledger.

10 COMMISSIONER EASLEY: Okay. So the
11 discussions that you had to tell him not to do these
12 things were really referring back to the pressure and
13 the illegal charge-backs rather than the contributions
14 themselves?

15 WITNESS McCRARY: Yes, ma'am. We had had
16 allegations that vendors had been pressured to make
17 political contributions and had been asked to bill them
18 back to the Company.

19 COMMISSIONER EASLEY: Thank you.

20 COMMISSIONER BEARD: The Baker-Childers
21 Report, after that came out, I'm trying to understand
22 because I think I either misheard you or misread. At
23 that point in time you centralized security?

24 WITNESS McCRARY: That's correct. It was
25 about April of 1984.

1 COMMISSIONER BEARD: And then at some point
2 in time, and perhaps it's about the time that Baker
3 published another report you chose to decentralize the
4 security?

5 WITNESS McCRARY: We decentralized in
6 probably 1987. There was an organizational study made
7 that indicated that we could save some money by
8 decentralizing security. And we did that.

9 The majority of the security operations has
10 to do with current theft, accident investigation,
11 physical security in the areas in which they are
12 located. That is, you have investigators in Panama
13 City who investigate the accidents in Panama City who
14 work with the accounting people there on current theft,
15 and things of that nature.

16 COMMISSIONER BEARD: Who did they answer to
17 in Pensacola?

18 WITNESS McCRARY: I'm sorry, I didn't hear.

19 COMMISSIONER BEARD: Who did they answer to
20 in Pensacola?

21 WITNESS McCRARY: They answered to Mr. Fell.

22 COMMISSIONER BEARD: They did answer to
23 somebody in Pensacola?

24 WITNESS McCRARY: They did answer to Tom Baker.

25 COMMISSIONER BEARD: Not to like a district

1 manager or something like that?

2 WITNESS McCRARY: No.

3 COMMISSIONER BEARD: I thought Baker had
4 gotten moved.

5 WITNESS McCRARY: Baker got moved to the
6 central division as a resident investigator --

7 COMMISSIONER BEARD: You took all of your
8 security out of Pensacola?

9 WITNESS McCRARY: No. We have two security
10 people there that look after the building and
11 coordinate drug tests in Pensacola and the other
12 physical security activities in the Pensacola area.

13 COMMISSIONER BEARD: They answer directly to
14 Mr. Fell.

15 WITNESS McCRARY: Yes.

16 Let me clear that up, Commissioner. Except
17 for those investigators that report to the western
18 division in Pensacola. I was thinking of the two
19 people that we have left in the general office of
20 Pensacola, they report to Mr. Fell.

21 COMMISSIONER BEARD: Okay. In a number of
22 these documents, I've seen figures ranging from -- you
23 testified to \$85,000 to 113,000 that Croft admitted to,
24 plus the 4,000 that Brazwell admitted to, ranging
25 somewhere in the \$85 to 110, 115,000 range of things

1 that were gone, stolen. And it appears that
2 approximately the same time, you have an audit, the
3 real official final audit, not the first one that never
4 got completed, that says you're only missing 8,000.
5 There is a pretty big discrepancy there.

6 WITNESS McCRARY: Well, that was a warehouse
7 audit of the inventory in the warehouse. Some of the
8 things that Kyle Croft was involved in were in the
9 nature of purchasing materials for use on his own home
10 that he was building.

11 COMMISSIONER BEARD: Well, I'm going to --

12 WITNESS McCRARY: That wouldn't show up in
13 the warehouse audit.

14 COMMISSIONER BEARD: -- I'm going to the
15 investigative report, Baker-Childers, which is Exhibit
16 391, Page 36 of 182, the statement by -- I guess this
17 is Croft, I believe, no, excuse me, John L. Matthews. I
18 -- in the middle of the page, "I estimate that I have
19 personally delivered approximately \$60,000 worth of
20 materials, parts and one appliance from Gulf Power to
21 Line Power. Both Kyle Croft and Lamar Brazwell had
22 instructed me to make those deliveries."

23 That sounds like, with the exception of one
24 appliance, \$60,000 worth that came out of inventory in
25 the warehouse. It sounds that way. And it says down

1 further on, "I estimate that over and above the
2 materials which I have delivered to Line Power, I have
3 reserved and been involved in delivering over \$50,000
4 worth of materials from the warehouse to the repair
5 shop. So we're talking in the neighborhood of
6 \$100,000, that if you believe this, have come out of
7 the warehouse, from one guy, and I'm assuming overlap
8 in these Croft numbers, and the Matthews numbers that
9 maybe they're even the same thing. Even following that
10 assumption that they're talking about the same stuff,
11 there is a pretty good difference between 8,000 and
12 100,000.

13 WITNESS McCRARY: That's correct. He doesn't
14 say over what period of time he's talking about.

15 COMMISSIONER BEARD: Would it matter? I mean
16 you have an inventory that's a running sheet against
17 each other. Do you do an annual inventory every year?

18 WITNESS McCRARY: I think it's -- well, in
19 those days, I think we were doing an inventory about
20 every two years. I think I'm right on that. It's done
21 much different from that today. We make cycle accounts
22 on --

23 COMMISSIONER BEARD: At each one of those
24 audits, when you have -- let's say an audit that was
25 done in 1980, you've got \$20,000 worth of material

1 missing. You write that off? I mean, you've got to
2 account for it some way.

3 WITNESS McCRARY: Yeah, you'd have to ask Mr.
4 Scarbrough about those writeoffs. I really don't know.

5 COMMISSIONER BEARD: Okay. I mean,
6 otherwise, I have to assume that the '83 audit, there
7 was only \$8,000 missing and the other 92,000 was stolen
8 before that time. That's the only way I can make that
9 assumption.

10 WITNESS McCRARY: Yeah. Of course, you get
11 back to the estimate of Mr. Matthews, that's an
12 off-the-cuff figure that he gives. When you start
13 trying to pin some of those things down, it's very
14 difficult to do to say, "Specifically on this date I
15 loaded this much wire and took to some other place."

16 COMMISSIONER BEARD: On Page 39 of 182, down
17 at the bottom, it talks about the old aluminum on the
18 old wooden reels and scrap, and then the accounted for
19 is new aluminum. You've got a swing there of about
20 \$19,000, if you believe that testimony or that
21 statement.

22 Is it your opinion that that was a lie?

23 WITNESS McCRARY: No. But I will say that
24 just because the reel of aluminum is old and has weeds
25 growing out of the spool and those kinds of things

1 doesn't necessarily mean that it was not carried in
2 inventory. It may be old material that at that time
3 was not useable, but it might have still been on the
4 books of the warehouse. So it has to be counted or
5 either written off. It has to be disposed of some way
6 because it is part of the inventory balance that you
7 have to make.

8 COMMISSIONER BEARD: Most of the warehouse
9 people THAT I'm familiar with deal with these kinds of
10 things and deal with the scrap -- it's a common
11 everyday deal, you have a scrap pile out there -- can
12 pretty well tell the difference between scrap that has
13 come back in and a reel of aluminum that's got plants
14 in it.

15 WITNESS McCRARY: That's right.

16 COMMISSIONER BEARD: Okay. And so, you know,
17 either this guy is -- I'm just trying to determine
18 whether or not this has the possibility of being an
19 accurate statement. Because if it does, if it's an
20 accurate statement, then you have an explanation of
21 what happened, one piece of what happened on getting
22 from the initial inventory that was started and then
23 redone and that figure down to \$8,000, if you have a
24 sequence of events. And maybe the people that were in
25 the warehouse, all of a sudden seeing a problem,

1 playing CYA. I was just trying to understand what you
2 all's thoughts were about what went on.

3 WITNESS McCRARY: Yes. Well, I don't want to
4 lead you to believe that I'm trying to paint a pretty
5 picture of the warehouse in the 1981-82 time frame,
6 because it was not. And I would point out that this
7 employee was, we later found out, involved in the
8 Leeper/Brazwell scheme of kickbacks, and he's no longer
9 with the Company. So I have to question his motives.

10 COMMISSIONER BEARD: Let me change a little
11 bit. But '82, '83, '84 time frames, were the appliance
12 sales considered a profitable operation?

13 WITNESS McCRARY: I don't think so.

14 COMMISSIONER BEARD: Why, if it's not a
15 profitable operation, why would you continue to -- I
16 mean, I can understand why it wouldn't be profitable.
17 I ran some math real quick and there were about \$32,000
18 that went to the contribution, political contribution
19 side, and you've got \$7,000 worth of material going to
20 Georgia. In competitive business, it's hard to carry
21 that kind of load. But why do you continue that
22 operation if it's not profitable?

23 WITNESS McCRARY: Well, as a matter of fact,
24 we have a study going now that we started probably a
25 year ago to look at the appliance sales to make a

1 determination if it can be a profitable operation or
2 not. And if not, then we plan to do something with it.

3 COMMISSIONER BEARD: What's 1% return on
4 equity right now for you all, roughly in dollars, do
5 you know?

6 WITNESS McCRARY: \$3 million?

7 COMMISSIONER BEARD: Okay, I don't -- I just
8 was curious.

9 WITNESS McCRARY: I'll have to ask my
10 financial man. I'm told it's \$5 million.

11 COMMISSIONER BEARD: Five fingers, right?

12 WITNESS McCRARY: That's right.

13 COMMISSIONER BEARD: One last question.

14 Do you all have some kind of a hot-line
15 message, something that people can call in and get a
16 message?

17 WITNESS McCRARY: We have what we call "Gulf
18 Today," which is a telephone recorded message that we
19 update every day that gives the things of interest that
20 are happening to Gulf Power. For example, I expect
21 this morning they'd have something on it about the rate
22 hearing starting today in Tallahassee, things of that
23 nature.

24 COMMISSIONER EASLEY: Is that for the general
25 public or is that for --

1 WITNESS McCRARY: No, it's for employees.

2 COMMISSIONER BEARD: Who -- I mean, could the
3 general public dial it up?

4 WITNESS McCRARY: If they knew the extension
5 number, they could dial it, yes.

6 COMMISSIONER BEARD: Do political messages
7 get on there?

8 WITNESS McCRARY: No, sir.

9 COMMISSIONER BEARD: Okay.

10 MR. VANDIVER: This may be an appropriate
11 time to have one of those good news/bad news kinds of
12 things.

13 I'm informed that the original 410 did, in
14 fact, contain the missing pages but they were out of
15 order. The new 410 didn't contain two pages in the
16 original 410, so we've got to go back to the original
17 410, for whatever that's worth.

18 CHAIRMAN WILSON: Fortunately (indicating).
19 So the original 410 --

20 MR. VANDIVER: Is okey-dokey.

21 CHAIRMAN WILSON: Is okey-dokey; just
22 disorganized. All right.

23 COMMISSIONER EASLEY: We throw away the
24 second 410?

25 MR. VANDIVER: The new 410.

1 COMMISSIONER EASLEY: The alleged 410.

2 CHAIRMAN WILSON: That's 410-A and 410-B.

3 MR. VANDIVER: And we thought we were going
4 to clear up the confusion.

5 CHAIRMAN WILSON: Are you sure?

6 MR. VANDIVER: I've got it from the court
7 reporters, and that's --

8 CHAIRMAN WILSON: That's good enough for me.

9 COMMISSIONER BEARD: Oh, yeah, I do have some
10 others. I'm unorganized here, almost as unorganized as
11 you.

12 Let's go to 412, if we can. Page 79 of 112.

13 (Pause)

14 Are you there with me?

15 WITNESS McCRARY: Yes.

16 COMMISSIONER BEARD: Okay, that's -- there's
17 five pages there that look like a computer printout,
18 and I think these relate to Counts One, Count Two. I
19 guess that's it; there's only two counts they relate to
20 --

21 WITNESS McCRARY: Right.

22 COMMISSIONER BEARD: -- I'm assuming what you
23 all pled guilty to in relationship with the grand jury
24 and paid the \$500,000 fine for, is that correct?

25 WITNESS McCRARY: Yes, sir.

1 COMMISSIONER BEARD: A couple of things I'm
2 trying to understand. On that very first page you have
3 four items listed up there with no dollar sign beside
4 them in the amounts. Okay? Now over in the comments
5 section, the first one, for example, you said, "To the
6 knowledge of Gulf, DLG was paid \$5,280.13 for this
7 service."

8 What's that based on? I mean, you have an
9 account number. Do you know for a fact you did that or
10 not?

11 WITNESS McCRARY: It's my understanding that
12 there was a tape made for Jim Smith. Now, --

13 COMMISSIONER BEARD: Did you pay for it?

14 WITNESS McCRARY: Well, it was done -- I
15 think it was done in-house or a part of it was done --

16 COMMISSIONER BEARD: This says the Dick
17 Leonard Group did it and you paid for it. You have an
18 account --

19 WITNESS McCRARY: We might have, and I really
20 can't explain why there's no money shown on there.

21 COMMISSIONER BEARD: Well, in all four of
22 these cases, it looks as though you're pleading guilty
23 to something that you don't know whether you're guilty
24 of it or not. I just am curious. And either you've
25 got invoices where you paid for it, or you don't.

1 WITNESS McCRARY: Commissioner, I didn't put
2 this together and I really don't know --

3 COMMISSIONER BEARD: Who is the approved
4 witness?

5 CHAIRMAN WILSON: Who did put this together?

6 WITNESS McCRARY: I'm assuming that was
7 George Fell.

8 COMMISSIONER BEARD: I'll wait?

9 WITNESS McCRARY: But, you know, I don't know
10 why there's no money shown there for that.

11 COMMISSIONER BEARD: Now, let me -- go over
12 to Page 82 and Page 83. There's -- I just picked one
13 out because it struck me as odd. "10-20-83, Hemmer &
14 Yates Condominium Rental." And on the next page,
15 "8-2-84, Hemmer & Yates Condominium Rental."

16 They're paying for a condominium rental. Do
17 you know what for?

18 WITNESS McCRARY: I have no idea.

19 COMMISSIONER BEARD: Who would know?

20 WITNESS McCRARY: Well, I'm assuming that
21 this was --

22 COMMISSIONER BEARD: You pled guilty to it,
23 okay? Now if you plead guilty to something, that means
24 that Gulf Power, whomever it was at Gulf Power -- okay,
25 and I'm not into that right now -- needed a condominium

1 for something, okay? Didn't want it to show up on the
2 books and routed it through.

3 Now, I was just curious who might be able to
4 tell me what the condominium that was rented for and
5 pled guilty to was for?

6 WITNESS McCRARY: I can't -- I can't answer
7 that.

8 COMMISSIONER BEARD: Can someone in the
9 Company?

10 WITNESS McCRARY: No, sir, I doubt anybody in
11 the Company --

12 COMMISSIONER BEARD: Why would you plead
13 guilty to something you can't -- you don't have any
14 idea you're guilty of.

15 MR. HOLLAND: Commissioner Beard --

16 WITNESS McCRARY: Well, this was only
17 Appleyard's ledger.

18 COMMISSIONER BEARD: Well, if Appleyard, you
19 know, does other illegal things, maybe they might lie?

20 WITNESS McCRARY: They could have. But I
21 think all these things, all these individual items
22 listed on here, made up one count. And if you had left
23 that line off, we still would have had that one count.

24 COMMISSIONER BEARD: I understand that, okay?
25 But I just -- one of two things. I have trouble

1 understanding pleading guilty for something that you
2 didn't do or trying to check out and find out. Or as
3 an alternative, if you're renting condominiums for
4 whatever, maybe officials of Gulf Power or Southern
5 Company or something like that, how you wouldn't know
6 about it. One of two ways to cut this thing, to be
7 honest with you.

8 MR. HOLLAND: Commissioner Beard, let me try
9 to help you.

10 COMMISSIONER BEARD: Good.

11 MR. HOLLAND: Because I was involved in the
12 plea negotiations.

13 COMMISSIONER BEARD: Okay.

14 MR. HOLLAND: To the extent that we were able
15 to, and to a large extent we were able to, confirm that
16 these acts did, in fact, occur. There were people --
17 in fact, the condominium, the questions were asked.
18 People couldn't remember who it was for, but they
19 remembered that the act took place. We were able to
20 confirm that it took place. Now --

21 COMMISSIONER BEARD: How can you confirm that
22 it took place?

23 MR. HOLLAND: We can confirm the fact that a
24 condominium was rented for Gulf Power's purposes, for
25 an individual of Gulf Power Company. It was not

1 confirmed who actually used the condominium, but it was
2 acknowledged that the condominium was, in fact, rented.

3 The question here is not who was there? The
4 question is: Was Gulf Power Company billed for
5 something other than what they actually received?

6 COMMISSIONER BEARD: The question may or may
7 not be who was there. I'm not interested in that. Let
8 me suggest to you that if someone rents a condo, it
9 probably wasn't for one of your meter readers or for
10 your lineman.

11 MR. HOLLAND: That's probably true.

12 COMMISSIONER BEARD: And if it was rented for
13 someone at a reasonably high level, reasonably high
14 level executives probably knew about it.

15 MR. HOLLAND: It was not rented for an
16 executive. It was rented by an executive for someone
17 else. The executive acknowledged that it was, in fact,
18 rented and that executive was Jake Horton because he
19 was responsible for every one of these accounts that
20 are in this plea agreement.

21 And you asked the question are there things --

22 COMMISSIONER BEARD: Nobody else but Jake knew
23 that?

24 MR. HOLLAND: That's right. And you asked the
25 question did we plead to some things that we were not

1 certain of, and the answer is absolutely, we did.
2 There are very few of them in here that fit within that
3 category, but there are some.

4 CHAIRMAN WILSON: Can somebody tell me which
5 ones of those are, or do you know?

6 MR. HOLLAND: I could go down the list and
7 probably pick a few of them out. The point I'm trying
8 to make was that in the process of plea negotiations,
9 we tried to get the things out of there, the few things
10 that we had some substantial doubt about, or didn't
11 have substantial evidence that they did, in fact,
12 occur. The Government said, "We've got the facts to
13 back this up. We know it occurred. We can prove it
14 occurred, and there's no deal unless it stays in
15 there." And we made a calculated, conscious decision
16 to go ahead with the plea agreement without absolute
17 proof that these things occurred.

18 Now, what does that mean? It means there's
19 still two counts. If they took them out, there would
20 still be two counts. We were looking at two counts
21 versus over a hundred counts. And in the process of
22 negotiations, we decided that it was in the best
23 interest of the Company to take the two counts with the
24 overt acts, as they were described in the plea
25 agreement, plead to those two counts, and get out. And

1 that's exactly what we did.

2 CHAIRMAN WILSON: So if I read on Page 79 of
3 112 here where it says, "West Florida Landscaping
4 political contributions, summary item," gave no
5 specific date other than sometime in 1982, or amount --
6 to the best knowledge of the Company, the amount of
7 contribution was \$8,000?

8 MR. HOLLAND: That's correct.

9 CHAIRMAN WILSON: What am I supposed to assume
10 from that? Was that the Government said, "We're
11 telling you it's a thousand dollars, you can believe it
12 or not, but you're going to plead guilty to it anyway"?

13 MR. HOLLAND: No. We talked to Dave Cook, who
14 was the head of West Florida, or is the head of West
15 Florida Landscaping. He said, "I made a contribution.
16 I billed it back to the Company. I think it was a
17 thousand dollars. I don't have the check. I can't
18 prove it, but I think it was a thousand dollars. I did
19 make the contribution. I did bill it back."

20 We knew that act occurred. We just didn't
21 know the exact amount, and the Government didn't say
22 what amount it was.

23 COMMISSIONER BEARD: Or who it was to?

24 MR. HOLLAND: Or who it was to. And I know
25 who he said he thought it was to, but there was no

1 absolute proof.

2 COMMISSIONER BEARD: The Government says, and
3 I understand it's only one piece here, the Government
4 says, "We're telling you there's a thousand dollars
5 paid, okay, but we really don't know who it was to and
6 we can't verify -- we can't find proof of it."

7 MR. HOLLAND: The man who did the act,
8 Commissioner, admitted to us that it did, in fact,
9 occur. We had what we felt like was sufficient proof,
10 or that the Government could prove that the act did
11 occur.

12 CHAIRMAN WILSON: Is the same thing true of
13 the Design Associates item above that?

14 MR. HOLLAND: Item 17?

15 CHAIRMAN WILSON: Yes.

16 MR. HOLLAND: Let me speak to that one because
17 it's been the source of a great deal of controversy.
18 Paragraph 17 came as close to anything in this plea
19 agreement to killing the whole deal because Gulf Power
20 Company, Mr. McCrary, me, everybody involved, were
21 insistent that that paragraph come out. We did
22 everything that we knew how to do to get that paragraph
23 out of the plea agreement. We had some evidence -- not
24 a great deal, and certainly not to our minds sufficient
25 to convict the Company on that overt act. The

1 Government insisted, repeatedly, that that item stay
2 in. They said, "We've got the proof. We can prove
3 it."

4 COMMISSIONER BEARD: Why didn't you say, "Show
5 me the proof"?

6 MR. HOLLAND: I did say. They don't have to
7 show it to you. In fact, they won't show it to you.

8 COMMISSIONER BEARD: How did you get the rest
9 of this stuff down here?

10 MR. HOLLAND: Most of the rest of it, the Dick
11 Leonard stuff, we sent -- we sent one of our auditors
12 to Tampa. Dick Leonard told us what they had, in fact,
13 billed back. We confirmed what had been billed back to
14 us.

15 COMMISSIONER BEARD: Did you send one to
16 Design Associates?

17 MR. HOLLAND: Ray Howell was missing.

18 COMMISSIONER BEARD: That's true. You're
19 right.

20 MR. HOLLAND: And Ray Howell is back, and at
21 some point we will know what, in fact, did occur and
22 whether this statement is, in fact, true.

23 COMMISSIONER BEARD: Did Ray Howell's records
24 go with him?

25 MR. HOLLAND: Yes, they did. Those that he

1 did not destroy.

2 COMMISSIONER BEARD: Did they come back with
3 him?

4 MR. HOLLAND: Ray Howell's records were found
5 shortly after he disappeared in a ditch in plastic
6 bags. But they were found, and to our knowledge they
7 are in the possession of the Government.

8 And do we know what's in them? No. And have
9 we asked? Yes. And will the Government tell us? No.
10 And they're not going to tell us until they complete
11 their investigation, and we won't know until sometime
12 down the road.

13 COMMISSIONER EASLEY: As long as you're
14 testifying, Counselor --

15 MR. HOLLAND: I'm not testifying. I just want
16 to clarify.

17 COMMISSIONER EASLEY: I know, but do I ask you
18 or do I ask Mr. McCrary? The interrogatory asks for
19 the FERC accounts in which the transactions were
20 recorded. Is that the account that's shown on these
21 pages?

22 MR. HOLLAND: Yes. To the extent that we are
23 aware of where the payment was made, those are the FERC
24 accounts.

25 COMMISSIONER EASLEY: Of whom can I inquire

1 how much of this is included in those things the
2 Company has agreed to subtract? How much of this is
3 above and below, and how much of it do I need to worry
4 about?

5 MR. HOLLAND: Commissioner, we filed -- I
6 think we filed, in the investigative docket, an
7 accounting, and indicated that as soon as we had a
8 complete filing we would make it. To our knowledge,
9 none of what is here impacts this rate case. We've
10 done everything we know to take it out, any impact.

11 COMMISSIONER EASLEY: For instance, on Page 82
12 of 112, there are many items here that are shown --
13 instead of account, it says "See Comments." And under
14 "Comments" it says, "Disguised as miscellaneous
15 expense." Was that done that way because you couldn't
16 identify the FERC account?

17 MR. HOLLAND: That's right. We were not able
18 to identify the invoice, I guess, which included that
19 charge. I think Mr. Fell, in terms of the details --

20 COMMISSIONER EASLEY: Well, 8-10-13, (sic)
21 Hemmer & Yates, Florida House, Charitable, for
22 instance, for a thousand dollars on that same page.

23 MR. HOLLAND: Yes.

24 COMMISSIONER EASLEY: That's the Florida House
25 in Washington?

1 MR. HOLLAND: Yes, that's right.

2 COMMISSIONER EASLEY: Would that show up as a
3 true, charitable deduction or --

4 MR. HOLLAND: No, it would not have.

5 COMMISSIONER GUNTER: What does "SPF" mean in
6 brackets?

7 MR. HOLLAND: I'm not sure.

8 CHAIRMAN WILSON: Subscriber plant factor.

9 COMMISSIONER GUNTER: That's what I thought it
10 was.

11 MR. VANDIVER: For purposes of the record,
12 Commissioners, I would prefer this come from someone
13 that's been --

14 COMMISSIONER EASLEY: I don't know why.

15 MR. VANDIVER: Either Mr. Fell or Mr. McCrary
16 on rebuttal.

17 CHAIRMAN WILSON: Is there someone who will be
18 able to answer those kind of questions?

19 MR. VANDIVER: I think Mr. Fell can answer
20 those kind of questions.

21 MR. HOLLAND: I think the SPF is a special
22 production fund, the Appleyard account that was set up
23 '81 to '84.

24 COMMISSIONER BEARD: Let me finish --

25 MR. HOLLAND: Mr. Fell can answer that.

1 COMMISSIONER BEARD: -- with Mr. McCrary on
2 some things and then it can go to Mr. Fell after that.

3 Let's go back to Page 83 of 112; example, the
4 Hemmer & Yates condominium rental. If I understand
5 correctly, that was arranged for and handled, as far as
6 you know, solely and completely by Jake Horton?

7 WITNESS McCRARY: As far as I know, yes.

8 COMMISSIONER BEARD: Now, I'm trying to
9 understand this. You've got somebody coming to town
10 that's important, okay, whatever; they're some kind of
11 a big wig. So I'm Jake Horton; I go out here and I
12 make arrangements for the rental of a condominium and
13 for somebody else to pay it so it doesn't show up, and
14 probably the next thing I've got to do is stock the bar
15 and get the food and do all these things. And I do all
16 this by myself, and nobody else knows about it, and
17 none of my other executive vice-presidents or President
18 of the Company has any early idea this is going on.
19 This big wig is in town. None of you all went to that
20 condominium and socialized, or went to any of those
21 events at all? You have no idea who that would have
22 been?

23 WITNESS McCRARY: I absolutely do not. If we
24 had someone coming in town that we wanted to entertain
25 for a legitimate purpose, we'd rent the condo and pay

1 for it and put it on the books in the proper place.

2 CHAIRMAN WILSON: Any other questions,
3 Commissioner?

4 Questions, Commissioners?

5 COMMISSIONER GUNTER: I asked mine earlier,
6 Mr. Chairman.

7 CHAIRMAN WILSON: Questions? Redirect?

8 MR. HOLLAND: Can we take about fives minutes,
9 please?

10 CHAIRMAN WILSON: Yeah, let's take about a
11 five-minute break and come back.

12 (Brief recess.)

13 - - - - -

14 MR. HOLLAND: May I proceed?

15 CHAIRMAN WILSON: Please do.

16 BY MR. HOLLAND:

17 Q Mr. McCrary, there have been a number of
18 questions asked about the warehouse and the state of
19 the warehouse in '82 and '83. Were there, in fact,
20 actions taken by you upon your coming to Gulf Power
21 Company, I believe, in May of 1983 to improve the
22 situation at the warehouse?

23 A You're talking about the physical operation
24 of the warehouse?

25 Q Yes. The inventory control system?

1 A There have been a number of things done at
2 the warehouse to improve the situation there. The
3 warehouse has been cleaned up. The items in inventory
4 have been marked and placed in the proper bins.
5 There's been a computer system installed that keeps up
6 with the inventory and the issues so that we know what
7 we have, we know how fast inventory turns over.
8 Physical security has been increased. The appliances
9 have been separated from the rest of the items in the
10 general warehouse, and there is just a long list of
11 things that we have done to --

12 Q Are you satisfied that the steps have been
13 taken to appropriately account for and enable the
14 Company to inventory items in the warehouse?

15 A Yes, I am. I'm very proud of the warehouse
16 operation that we have now.

17 Q There were some questions asked earlier about
18 the Company's terminating its relationship with
19 vendors. Were the vendors involved in the various
20 criminal investigations being conducted by the
21 government to your knowledge cooperating with the
22 government in their investigations?

23 A Yes, they were.

24 Q Were we, in fact, trying to investigate at
25 the same time and seeking information from those

1 vendors?

2 A We were, up until about 1986 when we kind of
3 pulled back and -- when it was in the hands of the IRS
4 and the FBI, we kind of pulled back our investigations.
5 From that time on we cooperated with the government.

6 Q Is there any evidence, to your knowledge,
7 that the vendors involved in the plea agreement,
8 Appleyard, Design Associates -- strike Design
9 Associates -- Appleyard, Dick Leonard, or Cooper Yates
10 profited from the transactions in which they were
11 involved?

12 A We have no evidence to that effect.

13 Q Do they have any evidence to the effect that
14 the employees involved profited from the transactions
15 involved?

16 A No.

17 Q With respect to your relationships at C&B
18 Bank, does the Company make disclosures to the
19 Securities and Exchange Commission with respect to your
20 relationship to the bank?

21 A Yes, it does.

22 Q Does the bank make disclosures regarding
23 their relationship to Gulf Power to federal
24 authorities?

25 A I think that's a banking requirement that

1 they would have to make.

2 Q There were a number of questions asked you
3 relative to the Company's prosecution of those
4 individuals who were involved in theft or the
5 falsification of invoices. Did you, in fact, have
6 discussions with management and with counsel as to the
7 wisdom of going forward with prosecution?

8 A We have discussed that from time to time,
9 that's correct.

10 Q Have you been advised from time to time that
11 it would not be in the Company's best interest, because
12 of the legal risk associated with attempting to
13 prosecute, for them to go forward with that type of
14 action?

15 A There is a legal risk associated with it.
16 For example, if we prosecute or we recommend
17 prosecution and we're unsuccessful then the employee
18 may come back to us, demand his job back, back pay and
19 other restitution. So we think the risk of that
20 outweighs the good we would get from following that,
21 especially since these investigations were in the hands
22 of the government and this investigation has been the
23 subject of two grand juries in Pensacola and one in
24 Atlanta, and I'm assuming that they prosecute when
25 there is evidence to do so.

1 Q Was the government, in fact, aware of certain
2 of the allegations and certain of the facts related to
3 the plea agreement and the other instances that we've
4 discussed today simultaneously with or prior to the
5 Company's obtaining knowledge of that?

6 A Yes, they were.

7 Q Mr. McCrary, with respect to the amnesty
8 program, to your knowledge do the state of Florida and
9 the federal government, in fact, have similar programs?

10 A There have been programs by various state
11 agencies, federal agencies from time to time.

12 Q Had you, in fact, had experience prior to
13 coming to Gulf Power Company with amnesty programs
14 similar to that in which you instituted at Gulf Power
15 Company?

16 A We had an amnesty program when I was in
17 construction at Alabama Power Company, and we were
18 building the Farley nuclear plant, we had a large-scale
19 theft of tools and we did have a amnesty program there;
20 recovered a considerable amount of tools that had been
21 stolen from the job.

22 Q Mr. McCrary, you were asked a great deal of
23 questions about the Baker-Childers Report, and I
24 believe you testified that it was -- started around
25 Christmas time of '83 and ran through January of '84.

1 When did you come to Gulf Power Company?

2 A In May of 1983.

3 Q Did you, upon receipt of the anonymous
4 letters to which you've referred, commence the
5 investigation that was ultimately titled "The
6 Baker-Childers Investigative Report"?

7 A Yes, I did.

8 Q In your opinion would the various allegations
9 and, in fact, criminal charges that have been brought
10 against certain of the individuals involved have
11 resulted had this investigation not been commenced by
12 you?

13 A Well, I can't say for sure what might have
14 happened, but I know this investigation precipitated
15 the actions we took against some of the individuals,
16 and that, I am told, is what got the IRS and the FBI
17 interested in it.

18 Q When did the IRS and FBI commence their
19 investigation?

20 A I believe that was in April of 1986.

21 Q Okay. And how long did it take before the
22 government was prepared to go forward to prosecute on
23 their investigation?

24 A Well, from 1986 until we settled the matter
25 in the fall of '88.

1 Q '89.

2 A '89, yeah. So that was about four years.

3 Q You were asked a number of questions relative
4 to your knowledge of Jake Horton and his actions. Were
5 you, in fact, told by individuals that Jake Horton was
6 someone to whom you should keep close watch and keep
7 careful eye on his actions?

8 A Yes.

9 Q Were you told by others that Jake Horton was
10 a very capable individual who was task-oriented and he
11 in fact could get and would get the job done?

12 A I have been told that and I know that from
13 working with Jake Horton. He did work hard and he was
14 able to accomplish quite a deal, quite a great deal for
15 the community and the Company.

16 Q To your knowledge, were the actions of Jake
17 Horton that are contained in the plea agreement known
18 to anyone other than the individuals who are named in
19 the plea agreement?

20 A As far as I know, those actions were not
21 known by anyone else.

22 Q When did you, in fact, have, as Major Enders
23 define it, "hard evidence" that Jake Horton was in fact
24 involved in some type of unethical or a violation of
25 the Company's procedures?

1 A It was in September of 1988 when I first saw
2 the Appleyard ledger.

3 Q Did you at that time commence an
4 investigation of the advertising agencies with whom the
5 Company was doing business?

6 A We did.

7 Q And was that investigation taken to the Audit
8 Committee of the Board of Directors?

9 A It was.

10 Q Mr. McCrary, who has the ultimate power and
11 authority in Gulf Power Company to hire and fire
12 officers?

13 A That's up to the Board of Directors.

14 Q Did the Board of Directors, specifically the
15 Audit Committee -- and the minutes, I think, are
16 contained in the record -- commence an investigation of
17 the various advertising agencies, Design Associates and
18 the Appleyards?

19 A Well, that investigation was done by Mr.
20 Fell, our internal auditor, at the request of me and
21 the Audit Committee.

22 Q Was the initial request by you?

23 A I initiated a request to George Fell
24 personally to look at all our advertising accounts.
25 When I called George to my office to talk to him about

1 it, he had already started an investigation of the Ray
2 Howell account.

3 Q And did those various investigations and
4 other investigations which were conducted by Mr. Fell
5 under your direction and under the direction of the
6 Audit Committee ultimately result in the Audit
7 Committee's recommendation to the Board that Mr. Horton
8 be separated from the Company?

9 A That's correct.

10 MR. HOLLAND: That's all I have.

11 MR. VANDIVER: I'd like to move for the
12 admission of exhibits number I think it's 393 and 394
13 and I will pocket 390.

14 CHAIRMAN WILSON: All right, 393 and 394,
15 based on the understanding of the uses to which they're
16 going to be put, without objection are admitted into
17 evidence. And the other exhibits have been stipulated.

18 (Exhibits Nos. 393 and 394 received in
19 evidence.)

20 CHAIRMAN WILSON: Any further questions at
21 this point?

22 MR. VANDIVER: No.

23 CHAIRMAN WILSON: No? Thank you, Mr.
24 McCrary.

25 We'll adjourn now. We're going to resume

1 tomorrow morning at 9:00 o'clock. It's my intent this
2 week to run from 9:00 in the morning until 6:00 o'clock
3 at night. Thank you all very much, see you in the
4 morning.

5 (Hearing adjourned at 5:52 p.m., to reconvene
6 at 9:00 a.m., Tuesday, June 12, 1990, at the same
7 location.))

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