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UNITED STATES
NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON MEDICAL
USES OF ISOTOPES (ACMUI) MEETING

[OPEN SESSION]

Holiday Inn
8120 Wisconsin Avenue
Bethesda, Maryland

Friday, May 20, 1994

P R O C E E D I N G S

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(8:30 a.m.)

CHAIRMAN SIEGEL: I would like to reconvene the meeting this morning. Before we begin with our formal agenda, Dr. Almond has a comment he wishes to make.

DR. ALMOND: This is Almond. This is just to follow up on my statement and information of patients who die with this disease. I've just checked with my office. The notice from my Kentucky State Health Department Radiation Control clearly states that such patients who die must not be cremated because this is a U.S. Nuclear Regulatory Commission policy. I have not gone beyond that but that is stated, and they would not come up with that without some input.

This needs to be resolved because it is being suggested that this is a U.S. Nuclear Regulatory Commission's policy.

CHAIRMAN SIEGEL: So noted.

DR. QUILLEN: I'd like to comment. I checked with my office, and my office said that they could not ever remember seeing such a policy. I happened to speak with another state last night which also could not remember having seen this as an NRC policy.

DR. GLENN: I checked with our Office of State

1 Programs this morning, and there has not been a communication
2 from our Office of State Programs to the States. There is a
3 letter going out stating what we know about the situation, but
4 there has been no directive that I can identify any source that
5 has said cremation should not be permitted.

6 DR. MARCUS: What do you mean, what you know about
7 the situation? Just denying that you put out a policy?

8 DR. GLENN: I personally did not. I checked the
9 Office of the Nuclear Regulatory Commission that has the
10 responsibility. They have not.

11 DR. MARCUS: Okay. Region V -- Jack Horner was
12 telling people that it's a bad idea to cremate things, and I
13 think that may be the origin of this whole thing. It may not
14 be official, but he stopped somebody in Nevada from doing it.

15 CHAIRMAN SIEGEL: Well, the information is out there
16 now for people to act on as appropriate. It's not something
17 this advisory committee needs to deal with.

18 Our first item on agenda today is to review the
19 bylaws -- the draft bylaws -- that have been prepared for this
20 committee. You all will be aware that a staff requirements
21 memorandum published about a year ago suggested to NMSS staff
22 that it might be prudent for this advisory committee to add
bylaws similar to the bylaws that are used by ACRS and ACNW.

1 The staff has subsequently developed draft bylaws for
2 us. I've provided each of you with copies that I marked up
3 last night that reflect comments that I received from Dennis
4 Swanson, Peter Almond; substantial comments from Bob Quillen
5 and generic comments from Dr. Marcus that I tried to address in
6 a generic sort of way.

7 I also, as you will see, have tried to make the
8 document gender neutral. We can argue about whether a chairman
9 should be a chair or chairperson, a chairwoman, or any term you
10 prefer; whether "man" should be spelled with an "a" and a woman
11 with a "y" and all of these other things, but I've made them
12 gender neutral, and we can leave them that way.

13 Now one important element of preparation of the
14 bylaws relates to the fact as to what extent each of us loses
15 our constitutional rights as citizens when we become special
16 government employees and when we act as members of this
17 committee. That might be a way of reframing the argument as
18 I've heard it expressed.

19 Consequently, Ms. Susan Fonner from the Office of
20 General Counsel has agreed to come here this morning to present
21 us with an overview of the Federal Advisory Committee Act, and
22 we're going to do that first. However, I've been told that
she's not been prepared to answer questions, that she'll take

1 on written questions that would be funneled through me and
2 would then be prepared to have answers come back to us at a
3 later time from the Office of General Counsel. I personally
4 find that a little difficult to understand, but that's life in
5 the big city.

6 Because of that, Susan, I'm going to ask you to
7 please do the following. Rather than give a long spiel about
8 FACA and what it does and doesn't do, because of the fact we've
9 all seen the act and understand its predominant features, what
10 I would ask you to please focus your comments on is to what
11 extent special government employees become bound by the rules
12 of the agency for which they work and to what extent documents
13 provided to this committee are under the control of the NRC
14 rather than in the public domain.

15 If you can try to restrict, you're certainly welcome
16 to give us some general information, but in the interest of
17 time I'd rather have you try to focus on those things.

18 MS. FONNER: I'm sorry, Dr. Siegel, but I've come
19 prepared to give remarks, and these are the remarks I'm
20 prepared to give. I will touch lightly on the subjects that
21 you have raised, but I'm really not prepared to go into them to
22 any depth.

The understanding, and I had conveyed this to the

1 staff that provides support to the committee, was that I was
2 going to give an overview of the Federal Advisory Committee Act
3 at this meeting, and that's all that I am prepared to do.

4 We would be glad to entertain questions you have in
5 the Office of General Counsel if they are channeled through you
6 and provided to us, but I am not prepared to discuss any
7 particular subject in depth at this time.

8 Hopefully, you can bear with me. If you feel that
9 this is superfluous, then I will certainly understand, and you
10 can go on with your next subject.

11 CHAIRMAN SIEGEL: Okay. Why don't you proceed, and
12 if it seems as though this is information that is not helping
13 us, then we may just stop the discussion. I don't mean to be
14 adversarial, but we're trying to resolve some issues that we
15 need to deal with, and an overview may not help us.

16 There are some specific problems, and I'm reasonably
17 certain that those specific problems were transmitted by Mr.
18 Camper when he met with OGC staff on Tuesday.

19 MS. FONNER: I'm the OGC staff he met with, and also
20 another attorney from OGC, and he did convey to me that there
21 were concerns, but I conveyed to him the sentiments of the
22 general counsel's office about what we are prepared to speak
about at an open public meeting.

1 With that, stop me, if you like.

2 CHAIRMAN SIEGEL: Continue.

3 MS. FONNER: This is truly going to be an overview,
4 but I'll try to make it as informative as I can.

5 The Federal Advisory Committee Act, which is often
6 referred to as FACA, was passed in 1972, after about 20 years
7 of efforts on the part of the Congress to develop such
8 legislation.

9 It dictates procedure and not substance. In other
10 words, it tells how an advisory committee is to be established,
11 when an advisory committee must be established, procedurally,
12 and what the procedures are that need to be followed. It never
13 tell us what the nature of your substantive advice is required
14 to be.

15 The reasons for enactments of the act, which I think
16 are important in interpreting it, was that there was a feeling
17 in the Congress that, number one, there were too many advisory
18 committees being used by the Executive Branch; and, number two,
19 that the membership and advice was not readily available to the
20 public and sometimes to other branches of the government.

21 That concern, of course, related, in part, to
22 possible conflict of interest; namely, individuals who were
giving advice as members of advisory committees, might have

1 some kind of a financial interest in the very matter they were
2 advising about.

3 Since its enactment in 1972, there have been some
4 changes in the act, but not very many. If you are as familiar
5 as Dr. Siegel says you are with the act, you'll probably notice
6 it's not a marvelously well-drafted act. There are many gaps.
7 Some of these are filled in my GSA regulations.

8 GSA is the lead government agency. That's the
9 Government Services Administration. They have a special
10 office, the Committee Management Secretariat, which coordinates
11 all of the agencies on the subject, and they've developed
12 regulations which try to fill in at least a part of what was
13 left out of the statute itself.

14 NRC has regulations which were adopted a few years
15 ago. For the most part, they mirror the GSA regulations.

16 Other administration of the act is through the agency
17 committee management officer, and I don't know whether any of
18 you know him or whether he's ever spoken to you. That was John
19 Hoyle, in the NRC, for a long time. It's now Andy Bates.

20 The role of the advisory committee management officer
21 is to coordinate all of the advisory committees in the Agency
22 and to help them when they need to prepare reports and matters
of that nature.

1 There's also a designated federal officer. I think
2 that's you, John, for this Committee. Right?

3 DR. GLENN: Correct.

4 MS. FONNER: The designated federal officer has some
5 very important responsibilities. There has to be one for every
6 advisory committee. He has to be present at each advisory
7 committee meeting. He also has to approve the agenda of the
8 advisory committee meeting.

9 He is really there, in large part, to ensure that
10 procedurally things go according to the statute and
11 regulations. Of course, the Office of General Counsel has a
12 general advisory function. We provide advice on many legal
13 issues that arise under the FACA and its interpretation.

14 As we said at the outset, please feel free to provide
15 any questions you have about the act, the regulations, or their
16 interpretation to your chairman, and he will, through the
17 staff, provide them to my office, and we will respond.

18 The salient features of the act are the definition of
19 advisory committee, which is a group that is not made up of
20 full time federal employees -- that's important, because a
21 group made up only of full time federal employees does not fall
22 under the act. It has to be established by statute or by an
Executive Branch agency. It can be established by the

1 President, of course.

2 It's established for the purpose of giving
3 recommendations or advice to the agency which establishes it.

4 An advisory committee automatically terminates after
5 two years, unless it's renewed. So every two years an advisory
6 committee has to be renewed or it terminates unless there is a
7 statute that provides to the contrary.

8 When an advisory committee is established, the Agency
9 has to send a charter to the GSA for their review and, with
10 that, goes a letter explaining how the advisory committee is
11 fairly balanced. Balance has always been an issue. A cross
12 section of those affected, who are interested and qualified are
13 supposed to be represented on any such committee.

14 Since the early days of the Clinton Administration,
15 the Office of Management and Budget has developed a significant
16 role in the establishment of advisory committees. Not only do
17 advisory committees now have to be approved through the GSA
18 process, but also by OMB.

19 That was because, at least in the early days of the
20 Administration, there was concern that there were too many
21 advisory committees in the government and they were costing the
22 government too much money.

As the Administration has become more knowledgeable

1 about the role of advisory committees, how important they are,
2 and that they actually often save the government money, I think
3 this attitude has somewhat softened. Nonetheless, we still
4 have to go through OMB for new Committees. Of course, that
5 doesn't affect this Committee, since you are not a new advisory
6 committee.

7 The salient features of the act, besides definition,
8 which is very important, by the way, because, for example, the
9 definition of advisory committees under the regulations has a
10 series of exceptions. A meeting to exchange information, or an
11 open meeting where you are simply getting individual views of
12 outside parties, doesn't fall under the act.

13 Advisory committee members are usually government
14 employees. That's the overall U.S. Government policy, and it's
15 also the NRC policy.

16 The consequence of that is that you are subject, as a
17 government employee, even if it is a government employee who
18 serves only a limited number of days per day to conflict of
19 interest laws, and I think you get a talk periodically from a
20 member of the general counsel's office on that subject.

21 CHAIRMAN SIEGEL: And quite an interesting talk, I
22 might point out.

 MS. FONNER: Well, I'm glad to hear that. I will

1 tell the attorney who gives it. I'm sure he'll be flattered.

2 There are some other consequences besides being
3 subject to the conflict of interest statutes and regulations.
4 It also means that whether you are a government employee or a
5 special government employee, you are subject to, in a broad
6 sense, to the supervision of the agency.

7 Once an advisory committee is established, there are
8 procedures that must be followed in running the advisory
9 committee. I mentioned already that the designated federal
10 officer must also be present but, in addition to that, there
11 are such niceties as: All meetings must be noticed. Of course,
12 this meeting has been noticed, and I'm sure you are all aware
13 of this.

14 The notices usually have to be put into the Federal
15 Register at least 15 days before the meeting. That's the
16 general rule. In emergencies, you can have an exception.

17 The meetings must be open to public attendance, as a
18 general rule. It's necessary to provide enough space so
19 members of the public can conveniently attend and to meet at a
20 reasonable time, that members of the public are likely to be
21 able to attend.

22 There is some exception to this.

 By the way, before I forget. Members of the public

1 must be permitted to file a written statement on matters
2 discussed at the meeting. This doesn't mean that the chairman
3 is required to let them stand up and make an oral statement,
4 but they must be permitted to provide a written statement on
5 matters discussed at a meeting.

6 There is a provision for closing meetings under the
7 FACA, and the closure is permitted only under the same rules
8 that a Sunshine Act meeting is permitted to be closed. I don't
9 know whether you are familiar with the Government in the
10 Sunshine Act.

11 It applies, for example, to --

12 CHAIRMAN SIEGEL: Yes.

13 MS. FONNER: -- the Commissioners of the NRC.

14 Whenever they meet, they are subject to the Government in the
15 Sunshine Act. It was really intended to govern bodies that are
16 collegial, that run a government agency, such as the
17 Commissioners of the NRC.

18 There are a number of exceptions to being required to
19 hold open meetings that are listed in the Sunshine Act. For
20 example, the most obvious, to protect classified information.
21 If you are going to discuss classified information, you close
22 the meeting.

 Also, to protect people's privacy; an unwarranted

1 invasion of personal privacy may be protected.

2 Trade secrets may be protected.

3 Under those circumstances, if you know that something
4 like that is going to be, or is likely to be discussed, your
5 designated federal official should proceed to try to get the
6 meeting closed, and your notice of the meeting will then state
7 that that portion is closed for this reason.

8 Documents prepared for or by committees must be
9 retained and made available to the public. So if a document is
10 prepared for a Federal Advisory Committee, the statute says
11 that all such documents for the life of the committee must be
12 retained in a single place, where it will be made available to
13 the public if the public asks.

14 We have been called upon several times to interpret
15 this provision, particularly with respect to what's a single
16 place. Because we have some advisory committees, particularly
17 the ACRS, that has been in business such a long time, that the
18 volume of their documents has, by this time, far exceeded what
19 they can hold in what are going to be their new offices
20 shortly.

21 After consulting with GSA, we have determined that
22 all of the NRC is a single location. Very often, these
documents go into the public document room as well.

1 There are some provisions for withholding documents.
2 Not all documents, obviously, could be made public because it
3 wouldn't make any sense. Classified documents, obviously,
4 aren't going to be released to the public.

5 The rules under which documents may be withheld are
6 contained in what we call the FOIA -- the Freedom of
7 Information Act. You can, of course, as individuals, always
8 try to use the FOIA to get a document, but the FOIA sometimes
9 permits the Agency to withhold.

10 CHAIRMAN SIEGEL: Susan, would that be Section 552 of
11 Title 5? Is that where FOIA is contained?

12 MS. FONNER: That's right.

13 ChairMAN SIEGEL: Okay.

14 MS. FONNER: The FOIA has many exceptions. The
15 Agency generally doesn't have to use a FOIA exception. It is
16 within the discretion of the Agency, in most instances, as to
17 whether it will release a document or not. However, there are
18 all kind of tests that have evolved through court cases as to
19 whether a document may be withheld or not.

20 The exceptions in the FOIA are very similar to the
21 exceptions in the Sunshine Act. Nevertheless, whenever there
22 is a question about the closing of a meeting or withholding of
 a document, we have to always keep in mind when we make a

1 determination both of these statutes.

2 There is one very important way in which the two
3 differ. As you may be aware, a deliberative document is
4 generally withholdable under the FOIA, but there is no
5 deliberation closure under the Sunshine Act. That's one area
6 that differs.

7 There are also a couple of others, but that's
8 probably the most important. The reason there isn't a
9 deliberative exception under the Sunshine Act is pretty
10 obvious. That's because the Sunshine Act was passed in order
11 to open meetings.

12 Some of the exceptions that you could have under the
13 FOIA, I've already mentioned: classified information, protect
14 privacy information, protect trade secrets -- those are the
15 same under both statutes. Under the FOIA, you can withhold
16 deliberative documents. Attorney-client documents may be
17 withheld.

18 Once the Agency makes the decision to withhold, of
19 course, all of the employees of the Agency are bound by that
20 ruling.

21 Another requirement of the FACA is that detailed
22 Minutes, or a transcript, has to be maintained of every meeting
that falls under the Act. I see that you have a transcript

1 made. I don't know whether you also do Minutes or not.

2 CHAIRMAN SIEGEL: Yes.

3 MS. FONNER: These are certified by the chairman.

4 The usual procedure, in most advisory committees is to
5 circulate them also to members.

6 Those are really the highlights of the Federal
7 Advisory Committee Act. I've told you about the functions of
8 the designated federal officer. You know about the Minutes.

9 Subcommittee meetings sometimes can fall under the
10 FACA, sometimes not. If there is a meeting of two or more
11 advisory committee members, only for the purpose of gathering
12 information or conducting research for the parent advisory
13 committee, the subcommittee meeting does not have to follow all
14 of the procedures. Those two or more members don't have to
15 follow all of the procedures. They can even analyze relevant
16 issues and facts.

17 However, if they develop a position -- if this group
18 develops a position -- you have to remember that it has to be
19 fully deliberated upon by the full committee or, in retrospect,
20 that subcommittee or subgroup meeting, will become subject to
21 the FACA, will require all of the procedural elements.

22 At a meeting --

MR. CAMPER: Susan, a question? The documents that

1 may be withheld, deliberative documents, classified, trade
2 secrets, attorney-client, et cetera, is there any specify
3 language that must be put in those documents when it's provided
4 to members of the committee?

5 I mean, obviously, for example, attorney-client
6 privilege would be identified as attorney-client. Certain
7 things would be identified as not being subject to release
8 until the Commissioner approves it.

9 MS. FONNER: The statute itself does not state what
10 specific language must be used to identify them, but obviously
11 you've got to identify them to the people who they are
12 circulated to.

13 For example, in the NRC when a document contains
14 proprietary information, at least all of those I've seen,
15 there's usually, when I receive them, a yellow sheet on top,
16 saying proprietary information. Your employee is supposed to
17 understand what that means.

18 MR. CAMPER: No, that's clear. I'm looking for
19 something that links it to the fact that it is a document that
20 is subject to being withheld under FOIA consideration. There
21 is no specific language, other than the obvious identification.

22

MS. FONNER: Right.

1 MR. CAMPER: Right.

2 MS. FONNER: But in your notice to the public about
3 the meeting, if you're going to close a portion of the meeting,
4 there is supposed to be an identification of why you're
5 closing.

6 MR. CAMPER: Correct. Sure.

7 MS. FONNER: So what we require, at least I have
8 required it, is that there be a citation to the provision that
9 allows for the closing under the Sunshine Act. I think it's a
10 good idea to do the same thing with documents, so that you
11 clearly identify where the provision is under which you are
12 withholding. I think a few words, then, like attorney-client
13 are in order.

14 When there is a document that there's a question
15 about whether it's permissible to withhold it under the FOIA,
16 we have FOIA experts. I am not a FOIA expert. I know the FOIA
17 from years of working in the government, but we have people who
18 spend most of their time looking at documents and deciding
19 whether they're withholdable or not. So when you have a
20 document, if there's any issue about whether it may be withheld
21 from the public, it should be forwarded to my office, and we
22 will have a FOIA expert look at it and make a determination as
to whether it's withholdable.

1 Once the FOIA expert determines that a document is
2 withholdable, then the Agency working through the responsible
3 official, determines whether they want to withhold it. If that
4 decision is that it should be withheld, then every one, A, is
5 subject to that decision; B, the document should only go then
6 to people who have a need to know.

7 That's what I've come prepared to tell you about. My
8 time is up. I thank you very much, and I would appreciate it
9 if you would provide any of your questions to Dr. Siegel, or if
10 you want to call me, my name is Susan Fonner -- F-o-n-n-e-r.
11 My number is 504-1634. I'm in One White Flint.

12 Thank you.

13 CHAIRMAN SIEGEL: Don't run away yet. We're not
14 going to drill you, but you actually did a very good job of
15 addressing the issues that were of concern to us, so despite my
16 adversarial introduction, you've addressed a lot of our
17 questions. You have provided, I think, at least me and I think
18 John and Larry, with a useful tool, which are documents that
19 really, in fact, are non-releasable under FOIA can simply be
20 identified as such with an appropriate FOIA regulation citation
21 to show why that particular document is non-releasable.

22 Carol. She may not be willing to take your question,
but why don't you just tell me --

1 MS. FONNER: Let me repeat to you --

2 DR. MARCUS: I'm not giving her a question. I'm
3 going to be talking to you, and you will funnel it to the
4 Office of General Counsel throughout whatever maze the federal
5 ability you can find.

6 CHAIRMAN SIEGEL: Go ahead.

7 DR. MARCUS: First of all, I want to thank you. I
8 think you've clarified a lot of the legal construct that I
9 think needed to come out.

10 I have a couple of questions, Barry, that I would
11 like you to ask or the Committee to consider asking Dr. Siegel
12 to ask -- whatever.

13 One has to do with attorney-client privilege. It is
14 my understanding that attorney-client information may be
15 withheld to protect the client. However, it should not apply
16 to the protection of federal lawyers who have responded to
17 federal employees about public matters.

18 That is, almost everything the Office of General
19 Counsel at the NRC does is requested of it by members of the
20 Nuclear Regulatory Commission, and I don't think that the
21 intent of the law is to protect them from public disclosure of
22 their thinking.

So I think we need some clarification of when

1 attorney-client privilege holds.

2 CHAIRMAN SIEGEL: Susan, attorney-client privilege is
3 determined by the client; isn't that correct, rather than by
4 the lawyer?

5 MS. FONNER: Well, the lawyer tells the client if the
6 attorney-client privilege can be used.

7 CHAIRMAN SIEGEL: Right.

8 MS. FONNER: If the lawyer says the attorney-client
9 may be used, then the client determines whether it's going to
10 be used, like all of the other exceptions to openness under the
11 FOIA.

12 CHAIRMAN SIEGEL: An exception, a problem, Carol, is
13 that in a federal agency the attorneys work for the agency and
14 their actions in deciding that a document is privileged can be
15 viewed as a Witness/Counsel confer of the agency, and it is, I
16 think, an open question. I've also discussed this with some
17 lawyers, as to whether or not staff can independently, staff in
18 another branch of the agency, can independently decide, that a
19 document can be released if the Office of General Counsel has
20 said it's a privileged document.

21 Ultimately, the decision rests with the Commissioners
22 as to whether the privilege is to be exercised or not, is the
way I understand it.

1 I agree with you that trying to work with this
2 advisory committee in an open fashion is very important and one
3 shouldn't hide behind attorney-client privilege, but it's not
4 our decision to make, it's the Commission's decision to make.

5 MS. FONNER: Let me just interject here.

6 CHAIRMAN SIEGEL: Please.

7 MS. FONNER: As I said earlier, I'm not a FOIA
8 expert. I think it's a very good question, and I think if you
9 want to pursue this further, if your chairman decides that he,
10 working with the staff, is going to submit this to us, I will
11 look into it and have a FOIA expert write something on it.

12 I can tell you that, in general, a government
13 attorney's client is the whole agency. I think that, while
14 issues have arisen about whether actions of individuals within
15 the agency are considered actions of the agency, generally
16 speaking, an agency is a client. That would encompass actions
17 by all people who work for the agency but, beyond that, I'm
18 really not prepared to give you an analysis of that.

19 CHAIRMAN SIEGEL: That's, actually, a good answer,
20 though.

21 DR. MARCUS: Okay. I have one other question.

22 CHAIRMAN SIEGEL: Please.

 DR. MARCUS: It's basically, what precise material,

1 supplied to the ACMUI members, is not available to the public?
2 Other than names of patients of preliminary documents related
3 to a patient case, particular physicians' names when reviewing
4 training and experience, matters of personal privacy and
5 private sector proprietary information, I know of no material
6 that would not be publicly available.

7 Matters of national security have not been brought to
8 the attention of the ACMUI during my tenure. Such material
9 would also be unavailable to the public if it should, in the
10 future, be made available.

11 I would like to read from FACA, describing that
12 material that is public information. Going to paragraph 10,
13 3(b) of FACA:

14 Subject to Section 552 of Title 5, U.S. Code, the
15 records --

16 CHAIRMAN SIEGEL: Carol, I'm going to stop you. You
17 just read the key phrase: Subject to Section 552 of Title 5,
18 U.S. Code, and those are the things that need not be in the
19 public domain under FOIA, and --

20 DR. MARCUS: What things have gone to us --

21 CHAIRMAN SIEGEL: She gave us the list.

22 DR. MARCUS: Yes.

CHAIRMAN SIEGEL: She gave us the list.

1 MS. FONNER: I didn't give you an exhaustive list.
2 There were other things in the list, too. I have a copy of the
3 FOIA with me, and if you really want me to, I'll get the
4 statute out and I'll read it to you, but I don't think we have
5 time for that.

6 CHAIRMAN SIEGEL: Right. The key item on the list,
7 Carol, and the two key items that there has been concern about,
8 are attorney-client work product, and we've just heard at least
9 a partial answer about that.

10 The second item relates to deliberative documents as
11 opposed to deliberative procedures or proceedings. We can
12 choose to get further definition of that if we wish, but she's
13 just told us that deliberative documents are, in fact -- the
14 agency can make a decision to withhold those under FOIA. If
15 FOIA allows that, then we're bound by it if that's the Agency's
16 decision.

17 MS. FONNER: That's an Agency deliberative document.

18 CHAIRMAN SIEGEL: Correct. I understand that.

19 MS. FONNER: Then you have the tension between that
20 and the Sunshine Act, and we don't want to go into that now.

21 CHAIRMAN SIEGEL: Right.

22 MS. FONNER: Basically, what you said is correct.

(Pause.)

1 MS. FONNER: All right. Thank you very much.

2 CHAIRMAN SIEGEL: Thank you, Susan. I appreciate it.

3 Did you understand, Carol?

4 DR. MARCUS: I need a definition for what a

5 deliberative --

6 CHAIRMAN SIEGEL: I think we'll ask the question.

7 DR. MARCUS: Yes.

8 CHAIRMAN SIEGEL: Let's consider it asked.

9 DR. MARCUS: Because all pre-decisional information
10 could be thought upon as being deliberative, and therefore
11 nobody can know anything until the final rule comes out, and
12 it's obviously silly.

13 CHAIRMAN SIEGEL: No. The law doesn't allow that. I
14 think where we're walking a fine line here, we're walking a
15 line between wanting to have a lot of information so we can
16 make intelligent decisions and we can be well informed, and we
17 can provide good advice and wanting to be able to release that
18 information widely to our colleagues and cohorts so that we can
19 get their advice and use their advice in making our input as
20 broadly based as possible.

21 We are told that there are some restrictions on our
22 abilities to release some documents.

Now, the Agency has a simple way of dealing with this

1 if we choose to push this too hard, which is just to give us
2 nothing, in which case our ability to function as an advisory
3 committee will be impaired. If those documents can be withheld
4 under FOIA and, therefore, restrictive to people who need to
5 know, they can make the decision that we don't need to know, in
6 which case we won't see the documents, and we will seek a
7 result in terms of our ability to do the job.

8 Push it as hard as you want, but you run the risk of
9 pushing it even to our disadvantage.

10 DR. MARCUS: Here's a question for you.

11 CHAIRMAN SIEGEL: Sure.

12 DR. MARCUS: If, as part of a public meeting,
13 documents that we have reviewed are discussed in that public
14 meeting; are those documents that we have used in our
15 deliberation for the public meeting still not available to the
16 public?

17 CHAIRMAN SIEGEL: I don't know the answer to that.

18 DR. MARCUS: I would appreciate it if you would ask
19 that the NRC. I can understand whether perhaps some
20 preliminary documents that we use might be considered
21 restricted and deliberative, but at the point where there is a
22 public meeting, it may change its status.

CHAIRMAN SIEGEL: We can pose that as a specific

1 question. Okay. Bob?

2 DR. QUILLEN: Working under a state open records act,
3 which is the same sort of thing as the FOIA, I've had some
4 experience in this. The only question I have is there is some
5 point in the federal process where a document does not become
6 deliberative anymore, where it goes into an open records
7 situation.

8 CHAIRMAN SIEGEL: My personal sense is that the
9 problems we're dealing with here are relatively few and that
10 the process is, in fact, reasonably open. I don't see this as
11 a giant problem.

12 You obviously have been troubled by it, Carol, but
13 I'm not sure how troubled I am by it. I think we've been
14 getting the information we need to provide reasonable advice
15 most of the time.

16 What do the rest of you think? Or have you all been
17 troubled by receiving documents that you were told were "Eyes
18 Only"? Joan?

19 MS. McKEOWN: No. I really don't have any trouble at
20 all, because I think it's very important that we get what
21 they're really thinking when we're trying to make a decision.
22 If we say, well, everything we say is going to be only going to
be FOIA upon request, by tomorrow afternoon, because that's

1 when the meetings are, I think we're going to lose the
2 credibility of the information that we get from people, because
3 they're not going to be able to trust that what they say is
4 going to stay in this group.

5 CHAIRMAN SIEGEL: Yes. I think the Agency has a
6 responsibility not to abuse its FOIA privileges, but we have a
7 responsibility to live by the agency's decisions.

8 There may well be appeal mechanisms under FOIA that
9 would allow a government employee to work through some
10 mechanism. I haven't got a clue if there is, but to work
11 through some mechanism to claim that a document should not be
12 excluded from release or not be made available to the public,
13 just about every other law, as an appeal mechanism, why not
14 this one.

15 Bob.

16 DR. QUILLEN: My only concern is that such documents
17 be appropriately flagged, so I know what is privileged and what
18 is not privileged.

19 CHAIRMAN SIEGEL: Correct. I agree. I think that is
20 a key thing now; and ideally flagged with the specific section
21 of the regulations that relate to FOIA so that we can, chapter
22 and verse, know why a document is being held back, and that's
fine.

1 Okay.

2 MR. CAMPER: Just a comment before we leave the
3 subject.

4 CHAIRMAN SIEGEL: Sure.

5 MR. CAMPER: I think what's interesting about this
6 discussion is that over the last four to five years, this
7 Committee has undergone a substantial evolution in terms of the
8 level and degree of advice that are advised to our agency.

9 If I go back in history and look back 6, 7, 8 years
10 ago, this committee primarily focused upon technical issues.
11 It certainly wasn't a body, at that time, that dealt with as
12 many policy issues as early in the process as you do today.

13 This Committee has asked the staff to bring it issues
14 sooner in the process. We've been doing that.

15 I think what's happened now is we're at a point where
16 there are certain key questions that need to be answered, so
17 that on one hand, as Dr. Siegel has said, the staff can provide
18 to this committee certain documents that are sensitive, if you
19 will, for lack of a better term, so that it will facilitate the
20 advice you can give to the staff, and, at the same time, be
21 certain that we're doing this in concert with FOIA restrictions
22 and other applicable laws.

 I really think the discussion, while there are some

1 concerns, particularly with Dr. Marcus, I do think that these
2 discussions and these questions that will go forward now to OGC
3 is another step in that evolution process. Frankly, I think
4 it's positive, and we will seek some answers to some of these
5 questions that you have raised.

6 CHAIRMAN SIEGEL: Okay. Let's move forward.

7 We need to essentially do a mark up of the bylaws.
8 I've provided you with a copy that has your comments, plus my
9 own, incorporated in it. I have here a copy of a mark up made
10 by Susan Fonner that, unfortunately, I just got. I wish I
11 would have had it last night, because if I would have had it
12 last night, then these comments, most of which are terrific,
13 would have been in here.

14 In fact, she is recommending deletion of even more
15 things than I did, that I think we may find troublesome. We
16 may be able to just zoom right through this.

17 I think we've got to do this on a paragraph by
18 paragraph basis. We'll look at the paragraph that's there.
19 I'll tell you what Susan Fonner recommends in that paragraph,
20 as distinct from what I recommend, then we can decide whether
21 to move forward.

22 My sense is -- and, John and Larry, tell me if you
agree -- that the way we're putting these bylaws together, they

1 won't really be finalized until the next meeting, at which
2 point we can say that these are finalized, but then we can't
3 really adopt them until one meeting after that because we're
4 not going to get a final version today.

5 DR. GLENN: That's certainly consistent with the way
6 they've been drafted, and they will have to be reviewed and
7 approved by the NRC management.

8 CHAIRMAN SIEGEL: Right. I understand. Good.

9 Paragraph 1 of the Preamble, I have no comment, and
10 Susan Fonner had no comment. Anybody?

11 (No response.)

12 CHAIRMAN SIEGEL: This is going to be boring, but
13 let's just zoom through it.

14 Paragraph 2, as edited, I can just tell you that
15 Susan Fonner says that she suggested the following wording in
16 terms of it providing objective and independent advice to the
17 Commission.

18 Instead of saying: as requested by the Director of
19 IMNS, of the NMSS, says: To the Commission through the Office
20 of Nuclear Material Safety and Safeguards. It more accurately
21 describes the working relationship.

22 Does anybody object to my making that change?

(No response.)

1 CHAIRMAN SIEGEL: That's now just going to say --

2 DR. MARCUS: Could you just read it?

3 CHAIRMAN SIEGEL: Yes. I'll read you the first
4 sentence. It now says: These Bylaws have as their purpose
5 fulfillment of the Committee's responsibility to provide
6 objective and independent advice to the Commission, through the
7 Office of Nuclear Material Safety and Safeguards.

8 That's exactly the way we operate. All right. The
9 only other thing that Susan had was that she suggested that the
10 last sentence about internal conflicts regarding the
11 interpretation of the Bylaws actually should be within the
12 Bylaws rather than the Preamble.

13 I also am not certain we need the sentence, to be
14 quite honest with you.

15 Is anybody paying enough attention to see what I'm
16 talking about here?

17 MR. CAMPER: Yes, there should be a line item in the
18 Bylaws.

19 CHAIRMAN SIEGEL: There should be a line item
20 somewhere in the Bylaws.

21 MR. CAMPER: Line item.

22 CHAIRMAN SIEGEL: For right now, go to the last
sentence of the Preamble; delete the word "internal," and just

1 say: any conflicts regarding interpretation of these Bylaws
2 shall be decided by a majority vote of the current membership
3 of the Committee.

4 Just make note that that sentence is going to get
5 moved somewhere into the operational portion of the bylaws. I
6 don't know where yet. Okay.

7 Scheduling and Conduct of Meetings; the opening
8 paragraph, no comments.

9 Paragraph 1.1.1. She's added a sentence that I think
10 is required by FACA that said: Meetings must be approved or
11 called by the designated federal official. I have no problem
12 with adding that. We can't call a meeting ourselves.

13 DR. MARCUS: Does that start the section?

14 CHAIRMAN SIEGEL: That starts the section. She then
15 suggested -- she added the words "at least two regular
16 meetings." I'm not clear in terms of what the Commission's
17 directive is.

18 DR. GLENN: I think that's consistent.

19 CHAIRMAN SIEGEL: Okay. Yes. So add "at least" at
20 the beginning of that next full sentence.

21 For clarity, she did the same thing I did. She moved
22 that last sentence down to the end. She said "in addition,"
rather than "Additionally". It's a choice of whether you like

1 adverbs or adverbial phrases. You can choose.

2 1.1.2; no change.

3 1.1.3; she wrote: will be open to the public. We
4 had: are open to the public.

5 You can decide whether it makes a difference. It
6 doesn't matter to me. Does anybody care?

7 DR. MARCUS: No.

8 CHAIRMAN SIEGEL: Okay. 1.1.4. The only thing she
9 had: Electronic recording of the procedures by members of the
10 public will be permitted.

11 DR. QUILLEN: Proceedings?

12 CHAIRMAN SIEGEL: It should be proceedings. I agree
13 with that. That's correct.

14 But I wonder if she had that, "by members of the
15 public."

16 MS. BROWN: I think that clarifies.

17 CHAIRMAN SIEGEL: No. Does that mean we could not
18 record?

19 MS. BROWN: Oh, no.

20 DR. GLENN: I think it's meant to be permissive that
21 a member of the audience may also make an electronic recording.

22

CHAIRMAN SIEGEL: We can add it. I've got no

1 problem.

2 Television recording of the meeting will be permitted
3 if the Chairman of the Committee determines. That's what her
4 word was. I don't know. She put that with a question mark. I
5 think we can live with it right now. We've not been fortunate
6 enough to have any TV cameras at any of our meetings. There's
7 very few Wall Street things rise and fall on the basis of our
8 deliberations. I think we can leave this one the way it is.

9 1.2. This is really entertaining.

10 She's suggesting a major change in the first one,
11 which is that the -- and maybe she's implying that FACA
12 requires this, I don't know.

13 She's saying that the agenda for regularly scheduled
14 meetings will be prepared by the Chairman of the Committee in
15 consultation with NMSS staff rather than vice versa.

16 I don't remember whether FACA requires it one way or
17 the other. The truth of the matter is is that the staff is
18 suggesting an agenda that I am then commenting on and
19 modifying, and along the way any of us are able to suggest
20 agenda items.

21 My answer to her suggested change is, I'm just going
22 to put a note that says: See Fonner's suggestion; is that, if
FACA requires it, we can live with her language, but otherwise

1 let's have it be what we're really doing. Okay?

2 MR. CAMPER: Got it.

3 CHAIRMAN SIEGEL: Then she's added a sentence: The
4 ACMUI Chairman will query committee members for agenda items
5 prior to agenda preparation.

6 She's added a sentence that says: The DFO must
7 approve the agenda.

8 I can agree with that, because that's probably a FACA
9 requirement. Yes. She says by regulation.

10 Bob Quillen suggested a sentence about the timing of
11 the agenda, and the question is whether John and Carl and Larry
12 can live with that language or if it's too restrictive.

13 We're asking for a draft agenda 30 days before the
14 meeting and a final agenda a week before the meeting, or if
15 that's too tight for you guys.

16 DR. GLENN: Well, for the final agenda, that's no
17 problem. The 30 days might push us a little bit. We can
18 certainly come up with a tentative agenda within 30 days, but
19 there always is some flux going on.

20 DR. QUILLEN: I understand. I said a draft agenda.

21 CHAIRMAN SIEGEL: Yes. It's a standard of care we're
22 aspiring to. We'd like to have a feel about what's going to be
going on at the meeting at least a month before the meeting.

1 Let's leave it in as suggested language, and we'll
2 see if we can make it go.

3 DR. MARCUS: It's not just us, Barry, it's members of
4 the public who have to decide whether to work out in their busy
5 schedule the time to come to the meeting.

6 DR. GLENN: Well, again, I will remind you that FACA
7 itself requires that we have the notice in at least 15 days
8 ahead, and if it's the recommendation of the Committee we try
9 to make that 30, we can try.

10 CHAIRMAN SIEGEL: Okay.

11 DR. GLENN: Maybe we just have to amend the notice,
12 as we did this last time.

13 CHAIRMAN SIEGEL: But, actually, this only says that
14 a draft agenda will be provided to the Committee. That does
15 not influence what you have to do under announcements -- under
16 Sunshine Act announcements.

17 You still can hold the -- you can provide us with one
18 draft agenda in 30 days and an updated agenda in 15 days. At
19 least we'll have a feel for what's going on in 30Carl.

20 MR. PAPERIELLO: I'm Carl Paperiello. What would the
21 Committee like, 30 days?

22 MR. CAMPER: (Nods affirmatively.)

 MR. PAPERIELLO: I believe that timeliness is next to

1 Godliness. John, I think we should give them a draft agenda in
2 30 days.

3 DR. GLENN: Okay.

4 CHAIRMAN SIEGEL: In the next paragraph, about the
5 conflict of interest, Susan simply suggested before the meeting
6 that the Chairman and the DFO have to do that.

7 Then she made the following suggestion in the last:
8 Members found to have conflicts will be recused from discussion
9 of those agenda items with respect to which they have a
10 conflict.

11 That's fine. That's lawyer talk, but that's okay.
12 It's actually more precise. With respect to which they have a
13 conflict.

14 DR. WAGNER: Do you want chair instead of chairman?

15 CHAIRMAN SIEGEL: It should be "chair." I'm sorry.
16 That's one place I missed the gender neutral language.

17 By the way, which word do you all want, chair or
18 chairperson?

19 (Chorus of "chair".)

20 CHAIRMAN SIEGEL: Chairperson is a god-awful word.
21 Thank you.

22 1.3.1; she had no change. We had no change. That's
pretty straightforward.

1 1.3.2; everywhere we had chair or chairmen, she added
2 "of the committee." I suppose that is potentially to avoid
3 confusion with the Chairman of the Commission. If you insist
4 on having it in, be my guest. I'm not going to write it all
5 the time now.

6 "The chair of the Committee will reside over the
7 meeting. The designated federal official will preside if the
8 chairman is absent or if directed to do so by the Commission."

9 We can accept her substitute language, so I'm just
10 going to say: See Fonner.

11 Okay?

12 DR. BERMAN: For purposes of this document at the
13 beginning, just say: "the chair" will refer to the chair of
14 this Committee and may not be repeated each time.

15 CHAIRMAN SIEGEL: We'll let the lawyers fine-tune it.
16 I'm sure they'll have something to say. I don't feel strongly
17 about it.

18 1.3.3. She wrote: "A majority of the current members
19 of the Committee must be present at a Committee meeting for the
20 conduct of business."

21 I wrote: "to constitute a quorum." I think they are
22 the same thing. The quorum is the minimum number of people you
need to run a meeting, so I don't think we need to change it.

1 1.3.4: "and by then is interrupted by."

2 MR. SWANSON: Excuse me, Barry.

3 CHAIRMAN SIEGEL: Yes.

4 MR. SWANSON: I thought you said that the DFO had to
5 be here in order to conduct a meeting and whether this Bylaws
6 should cover this?

7 CHAIRMAN SIEGEL: I think 1.3.1 covers this. "All
8 meetings will be held in full compliance with FACA."

9 MR. SWANSON: Okay.

10 CHAIRMAN SIEGEL: I think we're okay.

11 She did not like the second part of the paragraph on
12 1.3.4 about the Chair being able to throw people out of the
13 room. She said this is troublesome, and recommended deletion.

14 DR. STITT: Barry, I think in the first part it said
15 we operate under Robert's Rules of Orders. Does Robert throw
16 people out? Is that addressed in Robert's Rules of Orders so
17 we can eliminate that?

18 CHAIRMAN SIEGEL: I don't have my copy with me.

19 DR. STITT: I don't either.

20 CHAIRMAN SIEGEL: The problem is we don't have a
21 Sergeant in Arms. We could appoint one.

22 DR. STITT: It probably addresses something like that
there. Does she want us to eliminate that section?

1 CHAIRMAN SIEGEL: No, not the section.

2 DR. STITT: That last half of it, I mean.

3 CHAIRMAN SIEGEL: She says this bit about objecting.
4 Here's the problem. The problem is, as I think I understand
5 it, is this is a public meeting, and I'm not certain that I
6 have the authority to do anything other than -- I or John have
7 the authority to do anything other than close the meeting. I'm
8 not sure we have the authority to eject someone from the
9 meeting.

10 DR. ALMOND: Is the word "ejection" too strong? Can
11 we just request that these people remain silent? I mean
12 "ejection" is out of the door.

13 DR. MARCUS: I think you ought to just cut the whole
14 sentence.

15 CHAIRMAN SIEGEL: I actually don't think we need it.
16 I think if we found ourselves in a position where we could not
17 conduct our business, we probably would recess the meeting.

18 MS. BROWN: Yes. I think the first sentence stands
19 by itself.

20 CHAIRMAN SIEGEL: I do too, so I agree that we should
21 delete that. I like simple Bylaws, anyway.

22 Actually, she does add a sentence. Her sentence is:
The DFO will adjourn a meeting when adjournment is in the

1 public interest.

2 That's probably consistent with FACA language, and --

3 MS. BROWN: What's that mean? And under what
4 circumstances would that arise?

5 DR. GLENN: If such disorder arose that nothing could
6 be conducted, I would just bring the meeting to a close.

7 CHAIRMAN SIEGEL: I actually think that's okay.

8 MS. BROWN: Okay.

9 DR. MARCUS: If national security items were suddenly
10 being discussed.

11 MS. BROWN: All right.

12 CHAIRMAN SIEGEL: So I'm going to say on my copy here
13 that we should add Fonner's sentence about adjournment. Larry
14 has a question.

15 (Mr. Camper and Dr. Siegel confer off the record.)

16 CHAIRMAN SIEGEL: All right. So we'll add Susan's
17 sentence about adjournment.

18 1.3.5; she wants to strike, and I actually agree with
19 her. This whole bit about everything but the first sentence
20 about the Chair biasing or limiting the discussion, she just
21 says it's very troublesome. DFO can't ensure any of this; has
22 no authority to do so. Can only say something doesn't mean
much or can adjourn meeting in the public interest. There's no

1 way to put this in language.

2 She is recommending that we leave in the sentence
3 that says: the Chair makes a discussion of any subject before
4 the Committee and may vote, and should delete the entire rest
5 of that paragraph. It's okay with me.

6 DR. MARCUS: Fine.

7 CHAIRMAN SIEGEL: Any problem with that? I mean, it
8 means that I can bias the discussion.

9 DR. MARCUS: That's what you always do, Barry.

10 CHAIRMAN SIEGEL: Okay. That paragraph just got
11 killed, per lawyer's suggestion. It's the first time I ever
12 agreed with anything OGC did.

13 1.3.6. Instead of "clarified their dissent for the
14 record," she recommends: to state their dissenting views for
15 the record. I can live with that minor change. The rest of
16 that she left unscathed.

17 I added the sentence about: if anyone on this
18 committee is troubled enough to want to really know exactly how
19 the individual members in the committee feel about something,
20 they have a right to make a motion and request that an item be
21 put to a vote.

22 We can certainly do that. We've done it a few times,
and when we felt the need to do it, we've gone through a voice

1 vote, so that we did a roll call vote.

2 Yes, Dan.

3 DR. BERMAN: On the previous paragraph, 1.3.5, that
4 wasn't -- it seemed that the middle part was redundant --

5 CHAIRMAN SIEGEL: Right.

6 DR. BERMAN: -- but the bottom part, which says: Any
7 dispute over the Chair's level of advocacy shall be resolved;
8 it seems like that does leave in the mechanism for bringing
9 into question whether the chair is being too strong. I would
10 think that that part is redundant.

11 MS. BROWN: We might need a remainder.

12 CHAIRMAN SIEGEL: That's okay. Well, then, the way
13 to fix that, Dan, is really to just leave in the second
14 sentence, because what it does is it directs the chair not to
15 be an advocate.

16 Doesn't that operationally -- and if I am an
17 advocate, or if the chair is an advocate, then someone using
18 Robert's Rule of Order can make a point of order and say the
19 chair is acting as an advocate on this issue, and Section 1.3.5
20 of the Bylaws preclude the chair from so acting, at which point
21 a motion can be made to throw out the Chair.

22 (Laughter)

MS. BROWN: I like that part.

1 CHAIRMAN SIEGEL: Which part?

2 MS. BROWN: The "any dispute over the Chairman's
3 level of advocacy."

4 CHAIRMAN SIEGEL: Well, then, do we need the rest,
5 though?

6 MS. BROWN: I think the first sentence and the last
7 sentence can capture the --

8 DR. MARCUS: I think it's the first, the second, and
9 --

10 CHAIRMAN SIEGEL: You need the second. Without the
11 second --

12 MS. BROWN: All right.

13 CHAIRMAN SIEGEL: I need a magic marker here to show
14 what we're leaving in.

15 DR. MARCUS: Well, the federal official can decide
16 that he doesn't like your behavior and take care of that. I
17 don't know. Do we really need it written out?

18 DR. GLENN: I believe that Susan Fonner's comment was
19 that, in fact, the DFO does not have the ability to do that.
20 All I can do is close the meeting and adjourn it.

21 CHAIRMAN SIEGEL: Okay. Here's what we'll leave in.
22 This is going to get hard.

 The paragraph will now read: The Chair may take part

1 in the discussion of any subject before the Committee, and may
2 vote. The chair should not use the power of the chair to bias
3 or otherwise limit the discussion. Any dispute over the
4 chair's level of advocacy shall be resolved by a majority vote
5 of those members present and voting, with a tie permitting
6 continued participation of the chair in the discussion.

7 That's fine. It seems like it's not going to happen,
8 but it's fine anyway.

9 MS. BROWN: Who's going to come after you?

10 CHAIRMAN SIEGEL: Someone with the wisdom of Solomon.
11 You can only hope.

12 (Laughter)

13 CHAIRMAN SIEGEL: 1.3.6. We did that one already.

14 2.1. You've seen my fix.

15 Susan Fonner wanted the word "detailed" because I
16 think FACA requires detailed, but I think we're already fixed
17 because it requires detailed or a transcript, and we have both,
18 so we can just leave Minutes.

19 I added the thing about the meetings with the
20 Commission because we don't prepare Minutes of those, and they
21 were mentioned previously as if they were a meeting.

22 I've made it also clear that the Minutes are based on
the transcripts, and that's an important procedural point,

1 because, in the past, when the Minutes have been circulated,
2 some of you have tried to change the slant of something as it
3 was said in the Minutes in a way that you thought might have
4 sounded better.

5 Then I went to the transcript and said, no, you
6 didn't actually say that at the meeting, and so we can't have
7 that in the Minutes. We can't editorialize post hoc, at least
8 I think that's true.

9 She didn't really have anything substantive on 2.2,
10 and my changes are there. I think it describes what we do.
11 Any questions on that paragraph?

12 Dennis raised a point, and I just don't know what the
13 FACA requirements are, which is did we want to adopt a
14 procedure whereby, even though the Minutes have already been
15 certified by the Chairman, we would approve the Minutes as a
16 Committee at the next meeting.

17 The advantage of that is that it provides an
18 opportunity for Minutes to be corrected. The only disadvantage
19 of that is it certifies the Chairman as certifiable, because it
20 means that the Minutes were not correct, and I don't like that.

21

22 Sally?

MS. MERCHANT: The Commission has requested that we

1 get --

2 CHAIRMAN SIEGEL: Please use a mike, Sally.

3 MS. MERCHANT: Sally Merchant. The Commission in an
4 SRM has requested that the Committee get the Minutes to them
5 within four weeks, whenever possible, and we do try to meet
6 that date.

7 CHAIRMAN SIEGEL: No, I understand that. But we
8 could still have a procedure whereby the Minutes are delphied,
9 as they currently are; certified by the Chair, as they
10 currently are, but nonetheless, reapproved at the next meeting.

11 I personally think it's redundant, because I think
12 that anyone who was troubled enough by something in the Minutes
13 to want it brought up again at the next meeting, always has the
14 opportunity to do so as a matter of new business, or as a
15 matter of old business, under discussion.

16 I don't think we need the procedure. Dennis
17 suggested it. It's not required by FACA, is my understanding.

18 DR. QUILLEN: Okay. Fine. I'm not stating that out
19 of a concern, just more procedurally.

20 CHAIRMAN SIEGEL: Procedurally. I think the federal
21 approach is that the Minutes get circulated and certified
22 rather than approved in a subsequent meeting, and we are under
the gun to get the Minutes out quickly.

1 This mechanism -- the alternative to this mechanism -
2 - is one that you won't like, which is that we meet on Thursday
3 and Friday, and then we stay on Saturday morning to finish the
4 Minutes and write a letter to the Commission before we walk out
5 the door, with every word agreed on. I don't approve of that
6 mechanism. It's not acceptable, so let's do it this way.

7 Am I trying to limit the discussion or bias the
8 discussion?

9 (Laughter)

10 DR. QUILLEN: Let's take a vote.

11 CHAIRMAN SIEGEL: Why don't you eject me?

12 MS. BROWN: Then we can go home early.

13 CHAIRMAN SIEGEL: Then we can all go home early.

14 Okay. 2.3. No changes.

15 3.1. Let's see if she recommended any changes.

16 We don't need the "thereby" in the first sentence.
17 It's not useful.

18 The NRC will solicit nominations by notice in the
19 Federal Register; and then she adds here: And by such other
20 means as are approved by the Commission.

21 That's fine. I'm just going to make a note: Fonner,
22 addition okay. Anybody have a problem with that?

(No response.)

1 CHAIRMAN SIEGEL: Then she wants to make this next
2 thing a new sentence, which I think will read better:
3 Evaluation of candidates shall be by such procedures as are
4 approved by the Commission. That's fine, and that's a period.

5 Then it says: The Commission has the final authority
6 for selection, and that's true. Okay. We're switching to
7 language here.

8 MS. BROWN: What, on 3.2?

9 CHAIRMAN SIEGEL: No, 3.1.

10 MS. BROWN: Okay.

11 CHAIRMAN SIEGEL: 3.1 now reads as follows: The
12 members of the Committee are appointed by the Committee, which
13 determines the size of the Committee. The NRC will solicit
14 nominations by notice in the Federal Register and by such other
15 means as are approved by the Commission. Evaluation of
16 candidates shall be by such procedures as are approved by the
17 Commission. The Commission has the final authority for
18 selection.

19 In a way, it's not clear to me that this is really
20 part of the Committee's bylaws. This sounds like this is NRC
21 policy, but leave it. It doesn't hurt anything.

22 Okay. 3.2. She has a big question mark on 3.2, on
the whole paragraph, and says: Why is this in the Bylaws?

1 Don't need.

2 Because, in fact, this doesn't have anything to do
3 with the Committee does for a living.

4 MR. CAMPER: Right.

5 MR. SWANSON: Why not take out this whole section,
6 because this questions whether 3.1 should be in there.

7 CHAIRMAN SIEGEL: Well, no. I actually think that
8 3.1 and 3.3, which will not become 3.2 are, in fact, needed,
9 because it makes it clear; Roberts Rules of Order would say
10 that the chair is elected by the body, and here we've got a
11 distinct reason for doing otherwise. So why don't we kill 3.2.

12

13 MS. BROWN: Mel brings up a good point.

14 CHAIRMAN SIEGEL: What's that?

15 DR. GRIEM: With NIH, they want a geographic balance
16 and a whole bunch of things.

17 CHAIRMAN SIEGEL: They may want it, but it's not
18 right.

19 MS. BROWN: Yes, that's true, but even --

20 CHAIRMAN SIEGEL: This sentence is correct.

21 MS. BROWN: Yes.

22 CHAIRMAN SIEGEL: This sentence is that you can't
select, either for or against, based on these issues. You have

1 to select based on best qualified individuals to serve on the
2 Committee.

3 You're not under any specific -- correct me if I'm
4 wrong -- you're not under a specific requirement to have a
5 certain number of women, a certain number of minorities, a
6 certain number of people from the West Coast, and you're not
7 supposed to use those factors in deciding who is on the
8 Committee.

9 MS. BROWN: But this is distinguishing the way they
10 say that. They say extraneous factors will not be considered.

11 CHAIRMAN SIEGEL: Guess what? That's why we deleted
12 it.

13 DR. STITT: Yes. It's a Commission issue and not our
14 issue.

15 CHAIRMAN SIEGEL: It's a Commission issue.

16 So 3.3 has been changed to 3.2 Susan recommends
17 deleting the phrase: considering recommendations of the staff.

18 MR. CAMPER: It's an internal procedural matter.

19 CHAIRMAN SIEGEL: It can be deleted.

20 MR. CAMPER: It really doesn't contribute to the
21 Bylaws.

22 CHAIRMAN SIEGEL: Yes. It doesn't add anything to
the Bylaws here. Okay.

1 Conduct of members, 4.1. Here's her suggestion: If
2 a member feels that he or she -- I'm gender-neutralizing as we
3 go -- that he or she may have a conflict of interest with
4 regard to a subject to be addressed by the Committee -- that's
5 fine -- he or she should divulge it to the chairman of the
6 Committee and the DFO -- that's fine, also -- as soon as
7 possible but, in any case, before the Committee discusses it as
8 an agenda item.

9 Committee members with a conflict of interest --
10 deleting the word "divulged" -- if you keep it a secret, it
11 doesn't make it less of a conflict -- must recuse themselves --
12 and that's fine -- from discussion of any subject with respect
13 to which they have a conflict. Okay.

14 From discussion of any subject with respect to which
15 they have a conflict of interest.

16 Okay. We're getting there.

17 4.2. Instead of "when," she has: upon completing
18 their tenure on the Committee.

19 I like Bob Quillen's suggestions, which I
20 incorporated last night: will return any privileged documents
21 and accountable equipment. Because you don't want to fill a
22 box with all of the pieces of paper you've sent me. I'd be
happy to do it.

1 DR. GLENN: Anything that's been publicly released,
2 you should be able to keep.

3 CHAIRMAN SIEGEL: Right. Okay.

4 MR. SWANSON: Is it important to put a clause in
5 there: Any privileged documents and accountable equipment as so
6 designated by the NRC?

7 CHAIRMAN SIEGEL: We can certainly do that, but I
8 would assume the privilege would be identified, clearly. We've
9 just decided that that's what's going to happen in the future.

10 MR. SWANSON: I just don't want somebody coming back
11 and asking me for documents that haven't been so designated,
12 because you're probably not going to get them, unless you want
13 to come and help me search in my office.

14 CHAIRMAN SIEGEL: Let's do it. All right. I'm
15 adding as a parenthetical statement here: Upon completing their
16 tenure on the Committee, members will return any privileged
17 documents and accountable equipment (as so designated by the
18 NRC), provided for their use in connection in ACMUI activities,
19 unless directed to dispose of these documents or equipment in
20 accordance with established federal procedures.

21 MS. BROWN: This doesn't seem very real-world.
22 Somebody's going to ask me in two years about something four
years ago?

1 CHAIRMAN SIEGEL: I can you, for example, FDA ships a
2 safe to your office, and then they come and look at your safe,
3 and then you keep the documents in the safe, and the documents
4 have to be returned either when you're off the Committee or
5 when they want them back, and then they come and pick the safe
6 up, if they gave you a safe.

7 MS. BROWN: So we just haven't had any such
8 documents.

9 CHAIRMAN SIEGEL: Well, we've had some.

10 MS. BROWN: They would have been flagged.

11 CHAIRMAN SIEGEL: They haven't been identified
12 previously, or they haven't always been identified.

13 MS. BROWN: Yes, true.

14 MR. CAMPER: Also, too, I think -- Judith, just so
15 you would be aware -- we've talked about this. In trying to
16 accommodate this thing, we've been talking about it. That is,
17 clearly, we're going to get some questions answered; we're
18 going to have documents identified clearly, and then we also
19 need to establish some procedure for how we manage those
20 documents.

21 For example, it may be that we would ask to return at
22 the conclusion of a particular meeting or at the conclusion of
a quarter, or something, I don't know; but we need to develop

1 some procedure that's orderly so that all Committee members
2 will understand just how we're going to process these
3 documents.

4 MS. BROWN: Like, what about this kind of stuff --
5 you know, the qualifications?

6 CHAIRMAN SIEGEL: That's a privileged document. You
7 can either return it or you can -- I think, in general, we've
8 just been shredding them.

9 MS. BROWN: So I should be disposing these all along?

10 MR. CAMPER: For now, do as you have done. What we
11 will do is provide some information to the Committee about how
12 we're going to procedurally handle these documents. Again, it
13 may be just the simplest thing to collect them at the end of
14 the meeting. We want you to know how we're going to do it.

15 CHAIRMAN SIEGEL: Correct.

16 Okay. 4.3 is straightforward.

17 4.4; she's got a big question mark, and says: What
18 does this mean? Either with the original wording, and I'm sure
19 it would have applied to the subsequent wording.

20 4.4 is lifted, essentially, directly out of the SRM
21 and, frankly, I don't know why we --

22 MR. CAMPER: I think we'll have to go back and
revisit this one. It does come from an SRM. There's no

1 question about that.

2 CHAIRMAN SIEGEL: I know it does. I know it does.
3 But the SRM was to you.

4 DR. GLENN: My question is maybe Section 1 really
5 covers everything there.

6 CHAIRMAN SIEGEL: Which one?

7 DR. STITT: 4.1, where it says if you have a
8 conflict.

9 DR. GLENN: 1.3.5 and 1.3.6, when a consensus appears
10 to have developed. We've already discussed that a consensus
11 should be reached, and that's really all that 4.4 is saying.

12 CHAIRMAN SIEGEL: 4.4 deals with two things. It
13 deals with, one, that we're collegial -- ha-ha -- and, two,
14 that none of us should be acting individually, officially, for
15 the Committee; and then the next paragraph really goes on to do
16 the same thing.

17 MR. CAMPER: Well, it also provides a conduit where
18 if the member were to feel so troubled about something of
19 medical significance, that they would have an avenue to the
20 Commission.

21 CHAIRMAN SIEGEL: Let me tell you what I would like
22 to do. In 4.4, I'd actually like to delete the collegial
sentence, but leave in my suggested altered language, which I

1 think will address the Commission's concerns and doesn't really
2 change anything procedurally one way or the other.

3 I mean, we all need to understand that when we're not
4 at a Committee meeting, unless we've been specifically
5 empowered to do something by the NRC for a particular purpose,
6 we are no longer speaking or acting as advisory committee
7 members.

8 You can't go and give a speech at the Society of
9 Nuclear Medicine meeting and say, I'm here today to tell you
10 what the ACMUI thinks about this subject. You can only do that
11 if you were specifically requested to do that by Dr. Paperiello
12 or Dr. Glenn as a representative of the ACMUI and had official
13 federal orders to go do it. Correct?

14 MR. CAMPER: Yes.

15 DR. MARCUS: Barry? I'm sorry.

16 CHAIRMAN SIEGEL: Judy, go ahead.

17 MS. BROWN: Can we take this all out, except the
18 sentence: Members of the Committee should correspond with the
19 Commission, and just stick that sentence in 1.3.6?

20 CHAIRMAN SIEGEL: Well, I think it probably does
21 belong in this paragraph under conduct of members.

22 MS. BROWN: Although that's where you say you clarify
your sentence. Well, okay. I see what you mean.

1 CHAIRMAN SIEGEL: Try this, in 4.4: delete the first
2 sentence about the collegial body. We've already addressed
3 that earlier. Try killing that. Leave in this thing about
4 what you do outside of Committee meetings in terms of
5 interpreting committee reports or actions, and leave in the
6 thing about corresponding with the Commission. That will
7 capture, I think, the sense of the Commission's concerns well,
8 and it also gets rid of a lot of this other excess verbiage,
9 which is inappropriate.

10 Any of us can write to any of the Commissioners, to
11 the President, to anybody we want to; we just can't do it
12 saying, I'm writing to you in my official capacity as a member
13 of the ACMUI, unless we're doing it as an ACMUI activity.

14 DR. GLENN: There is one other aspect in reading
15 further one, and maybe the Committee should consider it, and
16 that is, that the Commission seems to be asking for disclosure
17 if you do write as a member of the public, that this was
18 discussed by the advisory Committee, and that you have had an
19 opportunity.

20 CHAIRMAN SIEGEL: I don't think that we can live with
21 that. I think that I can't require that any of the people
22 sitting at this table have to, first, come to this advisory
committee to find out if it's okay to write a letter as a

1 member of the public.

2 That's kind of the intent of this. This is a gag
3 rule, and I don't think we can sit still for a gag rule.

4 DR. GLENN: The aspect that I was trying to address
5 is that if we've had the discussion, a consensus has been
6 reached, if dissenting views have been solicited, then a letter
7 comes in on the same subject, should there be disclosure to the
8 recipient of the letter, that in fact this process has already
9 been discussed under those rules of the Committee?

10 CHAIRMAN SIEGEL: Again, my answer is, I don't
11 believe we can -- we provide at our meetings an opportunity for
12 dissent to be made part of our official record. I don't think
13 that we can therefore compel individuals outside of the
14 meetings, when acting as private citizens, to disclose what
15 went on at the meetings that prompted them one way or the other
16 to act as a private citizen.

17 I think what you do when you're not at this meeting
18 and what you choose to do because you feel that it's important
19 to do it, isn't tied to what goes on at the meeting. If you're
20 acting as a private citizen, you're acting as a private
21 citizen, and it's not an official Committee activity.

22 I know the Commissioners don't want to get a lot of
letters from individual members of the ACMUI.

1 MS. BROWN: But they can't stop that.

2 CHAIRMAN SIEGEL: But they can't stop that.

3 MS. BROWN: Nobody can preclude me from saying I was
4 bothered by something at the last ACMUI meeting and I wanted to
5 tell you about it. As a member I was disturbed, blah-blah-
6 blah.

7 CHAIRMAN SIEGEL: Yes, it would. Yes, it would,
8 because you're attempting now to write in an official capacity.

9 MS. BROWN: Well, then, I don't like it.

10 CHAIRMAN SIEGEL: Well, Judy, the answer is you've
11 got to do it by way of Committee procedure, which is to
12 strongly and clearly voice your dissent at the meeting and have
13 it incorporated into the record, or --

14 MS. BROWN: And hope they read it? And hope they
15 read that little section on page 72 of the Minutes where you
16 strongly object to something?

17 CHAIRMAN SIEGEL: No. We don't individually have
18 access to the Commissioners as Committee members. We have
19 access as a Committee, through Dr. Paperiello, to the EDO, to
20 the Commission, and that's the way we communicate.

21 If you feel the need that you want to expand your
22 position, it can become part of the official record of the
meeting, and we can agree in advance, that even though we don't

1 have it, we've acknowledged that we're going to get a letter
2 from you sometime in the next week, and that it's going to be
3 made for the record.

4 But you don't, as a member of the Committee, in my
5 view and I think my view is legally correct, have the right to
6 say, I'm writing outside of the Committee procedure, and this
7 is dissent that I want directed to Dr. Sellen, and you need to
8 know about this terrible thing that went on. You've got to do
9 it as part of the Committee procedure.

10 If you choose to write as a member of the public,
11 then be my guest.

12 DR. PAPERIELLO: I would offer an opinion.

13 CHAIRMAN SIEGEL: Yes.

14 DR. PAPERIELLO: I will say, only offer an opinion.

15 4.3 says: Members of the ACMUI are expected to conform to all
16 applicable NRC rules and regulations.

17 There is an NRC rule -- internal rule, a management
18 directive -- on both open door and differing professional
19 opinions. It would seem to me that, as a special government
20 employee of the NRC, you are covered by that, and that offer is
21 to any NRC employee open door access to any manager, including
22 the Commissioners, as well as the ability to file a differing
professional opinion.

1 It seems to me that is always an option that anybody
2 who is an employee of the NRC has. I know the policy well,
3 because I helped write it several years ago, so I'm just
4 offering you an opinion. I'm not giving you a legal opinion,
5 but it seems to be my observation that that particular
6 procedure would hold.

7 CHAIRMAN SIEGEL: So if I read you correctly, you're
8 suggesting we should delete Section 4.4 and let Section 4.3
9 govern what we do, in which case, what I just said was wrong,
10 and if you want to write a letter, Judy, you can write a
11 letter.

12 MS. BROWN: Thank you. But I think we still need the
13 first paragraph that you've changed: Individual members,
14 because we don't want individual members representing
15 themselves to Congress or something like that.

16 CHAIRMAN SIEGEL: But that's probably covered by 4.3.
17 I don't think Dr. Glenn can go up to the Hill and claim that
18 he's representing the NRC unless he's actually representing the
19 NRC, so 4.3 probably does it.

20 Actually, thanks, Carl. That actually helps a lot.

21 MS. BROWN: You'll be getting something in the mail
22 from me shortly.

(Laughter)

1 CHAIRMAN SIEGEL: What's the feeling here, folks? Do
2 we need the two parts of 4.4, except for that first sentence in
3 the first two paragraphs for clarification, or do we simply
4 want to strike 4.4 in its entirety and let 4.3 govern?

5 Lou?

6 DR. WAGNER: Barry, I am not familiar with all
7 applicable NRC rules and regulations.

8 CHAIRMAN SIEGEL: They will be provided --

9 DR. WAGNER: That must be a daunting problem.

10 CHAIRMAN SIEGEL: They could be provided for you if
11 you would like them.

12 DR. WAGNER: No, I don't think so, but I'd like 4.4
13 kept in for clarification purposes.

14 MR. CAMPER: I think the operative word there is
15 "applicable". Maybe what we should do is provide to the
16 Committee members those applicable NRC employee regulations
17 that clarify these things that we can and cannot do. It's
18 really not that extensive, actually.

19 CHAIRMAN SIEGEL: We actually do get a fair number of
20 those as sort of an annual briefing package that relate to
21 things like what we're allowed to do under the Hatch Act, as
22 SGEs, and actually we're allowed to do more than would be full-
time employees, and those kind of things.

1 I don't feel strongly about this. I actually think
2 the language in 4.4, the two parts that we're talking about
3 leaving in, is reasonably straightforward, but it might not be
4 acceptable.

5 I mean, Susan Fonner actually suggested just a
6 deleting all of this. I wonder if she saw the SRM when she
7 recommended deleting it.

8 MS. BROWN: I'm reacting as someone who has no
9 standing with the Commission whatsoever. As a member of the
10 public, I don't have any credentials. I would just be
11 dismissed unless I were able to add, as a member of the ACMUI,
12 or when I was at the last meeting, or you know.

13 CHAIRMAN SIEGEL: Wait a minute. That's why I think
14 4.3 alone is better, because of what Carl just told us, is that
15 --

16 MS. BROWN: Yes.

17 CHAIRMAN SIEGEL: -- despite what's in the SRM, the
18 implication of that is that the SRM is a gag rule that really
19 should not apply.

20 MS. BROWN: Yes. I want 4.4 out, too.

21 MR. CAMPER: Well, you have the same point that Carl
22 was making about a DPO. For example, if I were to take
exception to something that our management decided they wanted

1 to proceed with, I have a mechanism whereby -- or any other
2 employee does, for that matter -- a mechanism whereby you can
3 file a differing special opinion.

4 MS. BROWN: Can you mention your position within the
5 organization.

6 MR. CAMPER: Oh, yes. Sure. Then you express your
7 professional opinion as to the process, but there is a process
8 for doing that.

9 CHAIRMAN SIEGEL: Lou.

10 DR. WAGNER: Barry, I would agree to striking 4.4 if
11 we could create a summary document and attach it as appendix.
12 I would like to have available to me some kind of a summary
13 document to know how I'm supposed to behave instead of just
14 generally referring to applicable rules -- NRC rules and
15 regulations.

16 If there were some way to attach some summary
17 document for applicable rules -- you say they're not very long
18 -- I think it would be appropriate to have it in there.

19 DR. MARCUS: It's in Title 10, right? Isn't it?

20 MR. CAMPER: Some of it is. Some of it's internal
21 regulations as well.

22 DR. WAGNER: OPM. We can get appropriate copies of
regulations and policies that apply to us as NRC employees into

1 our hands.

2 MR. CAMPER: Yes. That doesn't seem to be a problem.

3 DR. WOODBURY: Would that be incorporated into the
4 Bylaws?

5 CHAIRMAN SIEGEL: No. I don't think so. It'll
6 simply be made -- we'll just make it as a matter of procedure
7 that that's something that's made available to advisory
8 committee members. We don't want it to be part of the Bylaws
9 because then every time there's a change in those policies, we
10 have to amend the Bylaws. We don't want to do that.

11 MS. BROWN: How about a sentence saying: The members
12 will be provided with applicable rules?

13 CHAIRMAN SIEGEL: I think that's probably already
14 supposed to be happening anyway because we're federal
15 employees.

16 MS. BROWN: Okay.

17 CHAIRMAN SIEGEL: Does anyone object to deletion of
18 Section 4.4? Anyone here present, because there are probably
19 some people who are here, present, who may object to it.

20 (No response.)

21 CHAIRMAN SIEGEL: Okay. That's fine. 4.4 is out in
22 its entirety. Good.

4.5. I would submit that 4.3 address 4.5 too.

1 DR. MARCUS: So let's get rid of that.

2 CHAIRMAN SIEGEL: We're going to get rid of 4.5.

3 I think if you get a document that says: This
4 document is restricted to use by you, under Section Blank,
5 Blank, Blank, Blank, of the Freedom of Information Act, that'll
6 be clear; that if you release it to the Washington Post, that
7 you may have committed a felony.

8 Okay.

9 MS. BROWN: Felony?

10 CHAIRMAN SIEGEL: Conceivably. Misdemeanor, felony,
11 who knows.

12 MS. BROWN: Not if they don't reveal their source.

13 (Laughter)

14 DR. MARCUS: And, you know, the decisions made by the
15 Agency as to what they consider secret under FOIA are always
16 able to be questioned in court if you feel that it's
17 inappropriate.

18 CHAIRMAN SIEGEL: This thing in the Preamble about
19 any conflicts regarding interpretation of Bylaws shall be
20 decided by majority vote of the current membership of the
21 Committee; where does that belong?

22 DR. WAGNER: At the end under Amendment.

CHAIRMAN SIEGEL: End under Amendments.

1 DR. WAGNER: Yes.

2 CHAIRMAN SIEGEL: Okay.

3 Under "Adoption and Amendments" --

4 DR. QUILLEN: Can I just ask a question under 4.5.

5 CHAIRMAN SIEGEL: Please.

6 DR. QUILLEN: What's an unofficial document?

7 CHAIRMAN SIEGEL: I don't know. We deleted it, so
8 it's irrelevant.

9 DR. QUILLEN: I just wanted to do, for general
10 information. It would have been nice.

11 MR. CAMPER: I don't think we have an answer for you.
12 I might propose they might be deliberative documents.

13 CHAIRMAN SIEGEL: Susan recommended that Section 5.4
14 actually become 5.1, and you can't amend the Bylaws until
15 you've adopted the Bylaws. I think that's pretty sensible.

16 DR. WAGNER: Logical.

17 CHAIRMAN SIEGEL: So we can do that. Then things
18 will re-number accordingly.

19 She suggested: Adoption of these Bylaws shall
20 require a vote of two-thirds of the current ACMUI membership
21 and concurrence of the Director of the Office of NMSS --
22 instead of "with."

Bob, in his comments, said that if Dr. Paperiello

1 does not concur, he has to tell us why he does not concur, and
2 we should make that a particular of the Bylaws. Of course,
3 this gets a little bit circular, because we will never get them
4 adopted as we exchange --

5 MS. BROWN: Will you explain this? 5.3 means that we
6 have to concur and --

7 CHAIRMAN SIEGEL: We're actually on 5.4, which is now
8 5.1. Let's work back. But they're the same.

9 MS. BROWN: Oh.

10 CHAIRMAN SIEGEL: It means that we can adopt bylaws
11 until we're blue in the face, but unless Dr. Paperiello says "I
12 agree," they're not bylaws. Okay?

13 MS. BROWN: Okay. All right.

14 CHAIRMAN SIEGEL: Bob's comment was if he doesn't
15 agree he needs to tell us why he doesn't agree.

16 My collegial approach to that is, I can't imagine he
17 won't tell us why he doesn't agree. Therefore, I would suggest
18 we don't need to add it to the bylaws. Bob, defend your
19 position if you feel otherwise.

20 We have another comment but, Bob, go ahead first.

21 DR. QUILLEN: I just was asking that we have some
22 rationale. The way it's written now he can just say no, and
we're sort of left hanging.

1 CHAIRMAN SIEGEL: That would be a good thing.

2 DR. PAPERIELLO: No, that's not the way. Talk to my
3 boss.

4 DR. GLENN: The way it's written, Bob Bernero is the
5 office director.

6 CHAIRMAN SIEGEL: Okay.

7 DR. QUILLEN: So we could just go "no vote", and we
8 wouldn't know what we were supposed to do from there, so I
9 thought there should be some sort of rationale so we would know
10 what to address, what to change.

11 MR. CAMPER: Can your bylaws --

12 CHAIRMAN SIEGEL: I don't think we can compel. I
13 think that this is a known issue. I really believe that if
14 there's something in the bylaws that are troubling and they
15 need to be changed, that we will get an explanation why they
16 need to be changed.

17 The answer is simple. If we're told that something
18 has to be changed and we don't like, we don't have to adopt it,
19 so this could become a --

20 DR. WAGNER: I was going to say something but I won't
21 because you get a minority group --

22 CHAIRMAN SIEGEL: It'll be a standoff. So we don't
need the Quillen comment.

1 5.2 is about amendment. Susan did not have any
2 suggested changes. We're almost done.

3 5.3. Final proposed amendment may be voted on not
4 earlier than the first regular meeting after it has been
5 discussed at a committee meeting pursuant to 5.2.

6 Okay. So "discussed at a committee meeting." Well,
7 actually, that conceivably means that we could approve these at
8 the next meeting.

9 Okay. 5.3. She's recommending here -- let me just
10 tell you, 5.3, which is now 5.4 -- a vote of two-
11 thirds of the current ACMUI membership and the concurrence of
12 the Director of the Office of Nuclear Materials Safety and
13 Safeguards shall be required to approve an amendment.

14 That's fine. See Fonner change.

15 That's it. We're done. Anybody have problems with
16 these?

17 DR. MARCUS: I'd like to commend the Chair for doing
18 an excellent job.

19 CHAIRMAN SIEGEL: Torre, when we get these redone,
20 the copy with my handwritten notes and a copy of Susan's
21 version back in front should come back to me to look at the
22 Bylaws as edited, so that I can make sure that everything got
picked up.

1 Then we will circulate the edited bylaws to everyone
2 as soon as we've got them so that ideally we'll be able to
3 adopt them at the next meeting as soon as Mr. Bernero agrees
4 that we can adopt them.

5 It's time for -- did the E-mail address document get
6 all the way around the table?

7 DR. ALMOND: It came here and then went back again.

8 CHAIRMAN SIEGEL: Okay. I actually was going to take
9 it.

10 DR. STITT: Are you going to circulate that to all of
11 us?

12 CHAIRMAN SIEGEL: Yes. You'll get it by E-mail.

13 DR. STITT: Isn't that clever how that works?

14 CHAIRMAN SIEGEL: You'll get an E-mail message that,
15 if you're clever, you'll be able to convert to our automatic
16 reply that will capture all of the Committee members.

17 DR. STITT: Terrific.

18 CHAIRMAN SIEGEL: Dennis, you don't have E-mail?

19 DR. SCRIBNER: I have E-mail. I have been resisting
20 using my E-mail.

21 CHAIRMAN SIEGEL: Bob, the State of Colorado doesn't
22 let you have E-mail or you're not allowed to give it out?

 DR. QUILLEN: We just have internal E-mail at the

1 present time. We don't have external E-mail.

2 CHAIRMAN SIEGEL: Okay. Dr. Wagner didn't know.

3 I'll have to call to get a few people's E-mail addresses.

4 That's fine. All right. I'll figure this out.

5 Good. Why don't we -- Dr. Griem and Dr. Almond need
6 to leave in a couple minutes; is that correct? Before we take
7 a break, we have another order of business that we need to deal
8 with. Is that correct? In which case, Dr. Paperiello, I would
9 like to recognize you at this time.

10 DR. PAPERIELLO: We are approaching that time of the
11 year that there is going to be a change in membership of the
12 Committee. We have some people leaving the Committee, and we
13 do have Certificates of Appreciation for those people who have
14 served on the Committee.

15 I recognize this is, in a sense, a burden on the
16 people we ask. I know we compensate people, to a certain
17 extent. I'm sure we don't compensate people for all they have
18 contributed. The people on the Committee really make a
19 valuable contribution to the Agency. I recognize we have
20 controversial subjects. People don't always agree, but I think
21 it's helpful to bring out all the different ways an issue can
22 be looked at which this Committee does.

I had to go to a Congressional aid about a month ago,

1 in a sense, defend the existence of this Committee and its
2 makeup. The fact that the people that we have on the Committee
3 are either licensees of the NRC or licensees of an agreement
4 state. I had to explain, I don't know where I can get people
5 with the skills and the knowledge we need who don't possess a
6 license from us. They won't know anything that will be
7 helpful.

8 I do appreciate what people have brought to the
9 Agency.

10 Dr. Griem.

11 I would like to thank you for all you've done for us
12 and continue to do for us. We appreciate it.

13 DR. GRIEM: I just want to thank the U.S. NRC. It's
14 been an enjoyable experience and interesting and sometimes
15 controversial. Thank you.

16 (Applause.)

17 DR. PAPERIELLO: Dr. Almond. I would like to thank
18 you very much.

19 DR. ALMOND: Thank you all. We shall see you.

20 (Applause.)

21 DR. PAPERIELLO: Dr. Marcus. Thank you. I'm sure
22 I'll still enjoy hearing from you.

DR. MARCUS: Thank you for this interesting

1 consultation.

2 (Applause.)

3 DR. PAPERIELLO: Joan McKeown.

4 MS. McKEOWN: I was going to go get my case.

5 DR. PAPERIELLO: Thank you very much.

6 MS. McKEOWN: Thank you.

7 (Applause.)

8 CHAIRMAN SIEGEL: Carl, thank you very much.

9 Before we break, let me just bring up one item that,
10 in fact, relates to membership. I think the Commission has
11 recommended that we be set at a Committee of 12. Is that
12 correct -- maximum?

13 DR. GLENN: Sally keeps tracks of these numbers
14 better than I do.

15 MS. MERCHANT: Because of the request by the
16 President that advisory committees eliminate overlap, the
17 Commission has requested that those positions that are
18 duplicated not be replaced, that those members be rotated in
19 those positions, not be filled. That should leave us at about
20 12 members as of July 1.

21 CHAIRMAN SIEGEL: Right. Let me see if I have this
22 count right. Here's what we have as of July 1.

We have nuclear medicine -- myself and also Dan

1 Berman covering cardiology. Radiation oncology we have Dr.
2 Stitt and Dr. Flynn. Radiopharmacy we have Dr. Swanson.
3 Physics we are down to Dr. Wagner. State representative
4 Quillen. Consumer representative Judy. FDA, we have really
5 three people functioning as one. Research we have Dr. Nelp,
6 who also is nuclear medicine.

7 So we have three nuclear medicine people; two
8 radiation oncologists.

9 We have word out on the street for nominations for
10 two people, an administrator and a radiation oncology --

11 MR. CAMPER: No. Radiation therapy technologist or
12 medical dosimetrist.

13 CHAIRMAN SIEGEL: Correct. The reason that the
14 technologist shift is radiation oncology from nuclear medicine
15 is because, as you will notice, many of the things that we are
16 going to be focusing on in the near term clearly relate to
17 things like brachytherapy and some of the real problem areas
18 that need our advice.

19 DR. STITT: Barry, how many physics people do we
20 have?

21 CHAIRMAN SIEGEL: We have only one, and that's the
22 key point I want to make. The NRC has received a request, and
I've received copies of the request, from which physics

1 organization?

2 MR. CAMPER: AAPM.

3 CHAIRMAN SIEGEL: AAPM, indicating that having only
4 one physicist on the Committee is asking an awful lot of that
5 one physicist. Dr. Wagner has done therapy physics during his
6 lifetime but focuses more now on diagnostic radiology physics
7 and nuclear medicine physics and has considerable expertise in
8 radiobiology and epidemiology, thereby filling the shoes that
9 were vacated when Dr. Webster left us.

10 I think that the loss to this Committee, as someone
11 with Dr. Almond's practical expertise in therapy physics and
12 particularly brachytherapy physics, as well, is something that
13 we should not let go unspoken, so I would entertain a motion
14 from a member of the Committee that we recommend to the
15 Commission that we need a therapy physicist on this committee.

16 DR. STITT: I would like to recommend that because I
17 feel very strongly, particularly with the issues of
18 brachytherapy that we're going to be seeing more and more
19 of.

20 CHAIRMAN SIEGEL: Could I take that as so moved?

21 DR. STITT: Yes. So moved.

22 CHAIRMAN SIEGEL: Seconded?

DR. GRIEM: Second.

1 CHAIRMAN SIEGEL: Any further discussion of the
2 motion?

3 Judy first, then Lou.

4 MS. BROWN: Just that I understand that the hospital
5 administrator position is not going to have any special
6 knowledge in this area.

7 CHAIRMAN SIEGEL: That's always true. That's a
8 given. You fed me the straight line, and I couldn't resist.

9 (Laughter)

10 CHAIRMAN SIEGEL: I didn't mean in this area. I'm
11 sorry. I apologize. I couldn't resist.

12 DR. GRIEM: I don't know a therapy physicist that
13 runs a hospital.

14 CHAIRMAN SIEGEL: No. She didn't mean in the area of
15 physics. Right. No. The hospital administrator, actually,
16 brings an -- I mean, ideally, it would be a hospital
17 administrator who has special experience in this area, and
18 there have been some names suggested of people who really do
19 have such experience.

20 But, nonetheless, as health care reform looms, a
21 hospital administrator brings to this table important
22 information about the impact of the regulations in a shrinking
health care reimbursement budget that, although we can talk

1 about it, we don't necessarily carry the same authority as
2 someone who has to live these budgets and make these budgets.
3 That's really the key point.

4 MS. BROWN: By point, for the record, though, is
5 we're down to 12, you're eliminating two positions, the
6 hospital administrator and myself, who bring nothing to the
7 table about your area of expertise.

8 CHAIRMAN SIEGEL: We have an option for dealing with
9 that, and that is, we do have an option of having consultants
10 come to meetings to address issues that are of specific concern
11 where we think we need broader input.

12 My guess is the people leaving the Committee are
13 going to not be NRC consultants any longer. They'll stay on as
14 consultants, and we can bring them in as we need them.

15 Lou.

16 DR. WAGNER: Lou Wagner. I am not yet an official
17 voting member of this Committee, but I would like to
18 resoundingly support the concept of another physicist appointed
19 to this Committee.

20 Just because a person is called a physicist,
21
22 doesn't mean that that name should mean that he has expertise
in all physics. Physics is a very broad field, and therapy and

1 diagnostic are separable, and they should be considered two
2 separate positions to be represented, not just a single one,
3 simply because they use the same word physicist.

4 CHAIRMAN SIEGEL: Further discussion?

5 DR. MARCUS: Yes, just one.

6 CHAIRMAN SIEGEL: Yes, Carol.

7 DR. MARCUS: If there's something magic about the
8 number of people on the Committee, is it possible to have an ad
9 hoc member from the FDA or something? I'm sure we could
10 continue to have all the input from the FDA, but as a sister-
11 federal agency, does it have to count in the 12, or whatever
12 the magic number is?

13 MS. BROWN: We certainly don't pay travel expenses.

14 DR. MARCUS: That's right. You could still have all
15 of the input and expertise.

16 DR. GLENN: I don't believe that the Commission has
17 actually settled on a magic number, but they have asked us to
18 keep it as small as is compatible with our getting the right
19 input from the Committee. So they want us to eliminate
20 duplication. You are making the argument this is not actually
21 a case of duplication.

22 DR. MARCUS: You could also do what the FDA did.
They have panels, so they're not advisory committees. They're

1 advisory panels, and then they don't feel so compelled.

2 CHAIRMAN SIEGEL: I think we can conduct our business
3 the way we're configured, but I really do think the physicist
4 is a key element, not wanting to seem an advocate for this
5 particular motion.

6 All in favor of the motion?

7 (Show of hands.)

8 CHAIRMAN SIEGEL: Any opposed?

9 (No response.)

10 CHAIRMAN SIEGEL: Let the record show that the vote
11 was unanimous, and that we strongly recommend a therapy
12 physicist needs to be appointed to this Committee.

13 Okay. Let's take just a five-minute break. Those
14 who have to leave, ciao.

15 (Recess)

16 CHAIRMAN SIEGEL: Can we resume so we can finish, and
17 people who want to get earlier airplanes can get earlier
18 airplanes.

19 Our final, official order of business is to talk
20 about our topics for the Commission briefing. We had two hours
21 budgeted for this. We don't need two hours for this and we're
22 not going to spend it, at least I don't think we're needing to.

1 We have one other item of housekeeping that we need
2 to deal with. Is Torre in or out of the room? She's out. We
3 need to get a calendar for the October/November dates
4 circulated so that people can state their potential
5 availability or non-availability very soon, so that we can lock
6 in the November dates, and ideally lock in next May's date as
7 well. It's certainly better to try to get at least tentative
8 dates on the calendar.

9 We need to get a firm date on the calendar for
10 November, and we need to try to get a tentative date on the
11 calendar for May.

12 Torre, sometime in the next week, calendars out to
13 the members of the Committee with something like X through the
14 days that you're not going to be available, that you know right
15 now, so that we can plan the November meeting. Not everybody
16 has their calendars with them so we can't just do it here, but
17 we do need to plan that meeting. My understanding is is
18 that if all goes well, the next meeting should be at White
19 Flint and not in a hotel, and that will be good, because it
20 means we have more access to all of the people at the NRC who
21 might want to contribute to the meeting and/or listen to what
22 we have to say.

MS. BROWN: It's only good if there's coffee and

1 modesty shield. Those are two requests.

2 CHAIRMAN SIEGEL: Coffee, there probably won't be. I
3 don't know about modesty shields. Wear slacks, Judy. I'm
4 sorry.

5 The Commission briefing scheduled for June 22nd, I am
6 now told is unequivocally not scheduled for June 22nd. We now
7 have options of the week of July 11th, the week of 18 July, but
8 excluding 19 July, and I don't have a clue at the moment which
9 of those dates work for me, so I think probably what we need to
10 do, as part of this calendar that needs to go out very quickly,
11 we need to also address how many of us are available on what
12 days during the week of July 11 and what days during July 18.

13 DR. STITT: Any way to know if that's going to more
14 sacred than the date I've been scheduling around for six
15 months?

16 CHAIRMAN SIEGEL: The problem, as you -- the reason
17 we didn't have a February meeting was we just decided there
18 wasn't enough to warrant doing it and it didn't seem like it
19 was appropriate in February to waste federal dollars to just
20 have 12 of us show up and talk to commissioners because there
21 just wasn't much on the agenda.

22 The reason the June meeting got re-scheduled is some
ICRP, or some international meeting, has come up where most of

1 the Commissioners are going to be attending, and it came up
2 relatively late. This date was sort of on again/off again, and
3 we'll just pick a date.

4 What do you all think we want to present to the
5 Commissioners at a July briefing? Let me just preface the
6 question by telling you that, although I think it's great that
7 we have direct access to the Commissioners, it is a non-trivial
8 responsibility for the chairman, the chairperson, the chair,
9 and you all get to just fly to Washington and sit at the table
10 and smile and make your comments as you wish.

11 I spend 2-1/2 weeks getting ready for it and lose a
12 lot of sleep because I want it to go well. So that if we don't
13 have something important to say, I'd just as soon not do it, to
14 be quite honest with you.

15 I've now requested that three or four times that the
16 Commissioners provide us with any specific requests that they
17 might have, either formally or informally, by any mechanism
18 known to man, to let us know if there where things that they
19 really would like us to address because there are things that
20 are troubling them. We have no requests. I'm not saying that
21 pejoratively, one way or the other.

22 If there are things that aren't really troubling
them, and there have to be important things troubling us,

1 before we should go forward with this. Just to have a meeting
2 for the sake of having a meeting seems like a big expense which
3 will then be passed on to all licensees.

4 Dr. Marcus.

5 DR. MARCUS: I think there's only one important thing
6 to discuss with the Commission and that's a whole paradigm
7 shift in the medical program. I don't think that any of these
8 trivial details that we discuss from time to time, such as
9 patient notification, are really worth the effort of a
10 commission hearing.

11 I think the entire placement of the NRC into medical
12 judgment and the entire medical program at this point in time
13 is something that needs to be discussed with the Commission.

14 These are areas that are going to be covered, I
15 assume, at least in part, by the Institute of Medicine study,
16 but that will not come out for some time. I think that the
17 Commission needs to hear from the advisory committee as to the
18 enormous problems being caused to medical specialties and
19 pharmacy specialty by a construct that, at least in my opinion,
20 no longer has value in its present form.

21 I will not be at this meeting but, in my opinion,
22 that is the only thing worth discussing with them. If they
don't want to hear things like that, then maybe it's not worth

1 having a meeting. But when you go to the Commission, it
2 shouldn't be with trivial issues. It should be with major
3 ones.

4 CHAIRMAN SIEGEL: What's the paradigm shift, Carol?
5 What are you recommending?

6 DR. MARCUS: I recommend stopping dual regulatory
7 behavior. I recommend stopping the intrusion into medical
8 practice. I recommend stopping a lot of the paperwork insanity
9 of documenting and documenting and documenting that has no
10 value in the carrying out of medical care. It's enormously
11 expensive and is, I think, detrimental to this country at this
12 point in time.

13 I've estimated, starting with Norman McElroy's old
14 numbers for the 1987 redo of Part 35, that it is now costing
15 approximately a billion dollars a year to comply with NRC
16 regulations in nuclear medicine, which comes to about a hundred
17 bucks a scan.

18 I think that this too much money, and I don't think
19 it buys us anything. I think you have to look at low dose
20 radiation and understand that people aren't dying of it and
21 that there's no demonstrable horror doing on with low dose
22 radiation.

I think there's an important lack of understanding of

1 medical uses of isotopes by the Commission, none of whom have
2 any expertise in the area, and I think that rather than wait
3 until the Institute of Medicine comes out with whatever they'll
4 come out with, that we basically presented them the very real
5 possibility that between health care reform and the increasing
6 regulations and expectations and requirements of the NRC, that
7 they may well be on the way to regulating nuclear medicine and
8 brachytherapy out of existence, more or less, in this country,
9 because it simply will not be able to function under the
10 construct that the NRC is perpetrating at this point in time.

11 Ideas like the descriptions of how other agencies
12 cover other areas of medicine and how other agencies, like FDA,
13 actually have the regulatory authority to do much in byproduct
14 medicine, need to be discussed.

15 Our problems with NRC's inability to make some peace
16 with EPA are problems. Our problems, I believe, with low-level
17 waste sites are problems we face in medicine and in medical
18 research that the Commission has absolutely refused to really
19 address.

20 These are the kind of things I think this Committee
21 ought to be talking to the Commission about.

22 The fact that they have not asked you for discussion,
I think, indicates their unfamiliarity with medical practice

1 and medical economics, and that this is really an opportunity
2 for us to tell them what we think is of critical importance,
3 but I don't think that we should not take the opportunity to
4 try to tell them.

5 CHAIRMAN SIEGEL: What do the rest of you think about
6 that -- about that generic, broad issue?

7 MS. BROWN: In general, I don't agree. If you want
8 concurrence, I would have to descend on a whole lot of things,
9 but you know that.

10 DR. MARCUS: I also would throw in the whole
11 situation with the agreement states right now. I know you
12 chose not to discuss the medical program in agreement states at
13 this meeting, but I think it's a problem that really deserves
14 Commission attention.

15 The entire problem of the fiscal stability of NRC's
16 materials program and what the agency is doing about it and how
17 that affects us, I think is very important, and I think the
18 Commission ought to know about it.

19 CHAIRMAN SIEGEL: My concern with everything you've
20 said, Carol, is I'm not sure that I feel prepared for us to
21 present those issues before the Commission since we haven't
22 really discussed those kind of major issues at recent meetings.
We've been dealing with smaller things.

1 I am more than a little put off by the Institute of
2 Medicine study, ongoing, and wanting to see what that entails.
3 I think it would be naive for us to think that what we tell the
4 Commission will have much impact while they're waiting for an
5 Institute of Medicine, a very independent Institute of Medicine
6 study, that's addressing many of the same issues, to be put
7 together.

8 I would rather put my efforts into making sure that
9 we got our input into the Institute of Medicine folks and made
10 sure they heard from us by whatever mechanism possible to hear
11 those concerns, so that it got into their report.

12 We could certainly do it, and we could have an
13 interesting discussion. I'm just afraid that (A) Preparing for
14 it would be non-trivial; and, (B) That since we haven't
15 discussed those broad issues recently, it would be hard to make
16 sure we had a consensus about what the view is.

17 MS. BROWN: And also the major supporter of those
18 views is not going to be at the meetings, so I don't think your
19 message would be carried adequately without you being at the
20 table.

21 MR. CAMPER: Just a thought or two on it.

22 Certainly, the Committee could do this if you decide
to do so, it's up to you. But just a couple of observations.

1 You're at a period in time where the Commission has
2 directed the staff to have an independent audit of the medical
3 program. You're also at a time when the Commission, in
4 approving the medical management plan, said, amongst other
5 things, make a major revision to Part 35.

6 Dr. Paperiello has indicated to you and to others in
7 various discussions that, as part of that process, we intend to
8 do an advance notice of proposed rulemaking.

9 ANPR is an exploratory approach to defining the
10 parameters and the considerations that will ultimately be
11 addressed in a rulemaking. It's a very broad process. We are
12 interested and have committed to conducting public meetings and
13 workshops as part of that process.

14 Issue of compatibility, agreements states; the
15 Commission has deliberated and reviewed items associated with
16 that topic at great length of recent.

17 I think if you want to do this, I do think there is
18 an issue that Barry has raised appropriately, and that is, you
19 are taking -- Carol, you're expressing a global concern that
20 you would need to come to grips with and define your positions
21 and so forth.

22 In many ways, I think, if one looks at all that is
 going on, at this point in time, that really is germane to your

1 concerns, you would probably be better served by being more
2 specific in defining concerns that don't seem to be under
3 construction at this point in time, if you will, but it's
4 entirely up to you.

5 MS. BROWN: Is someone outside the field, and they
6 are certainly outside the field, only thing that I think we
7 would say to them is all that -- at least I'm hearing of the
8 concerns about brachytherapy and where that's going and what
9 the charge of this Committee is going to be in the near term --
10 just to let them know that's happening, but I can't imagine
11 that the staff hasn't already let them know that's happening.

12 I don't know that we need to assemble to tell them
13 that. I don't have any agenda items, other than that.

14 CHAIRMAN SIEGEL: Dennis?

15 MR. SWANSON: Being new on the Committee, I don't
16 know what I would discuss with the Commissioners at this point.
17 I am somewhat dismayed at this meeting, to be very frank with
18 you, with the lack of response of the Office of General Counsel
19 to some of our requests.

20 I guess that brings to mind a question as to what is
21 the appropriate interaction between the NRC and this Committee,
22 and what should we expect as an appropriate response to these
requests.

1 I think it was stated this morning that one of the
2 functions of the Office of General Counsel is to respond to
3 questions raised by this Committee, and they have not responded
4 at this meeting, and I can't speak for the past. But it
5 certainly strikes me as being unusual.

6 MS. BROWN: I was wondering about that myself. I
7 wonder if their hesitancy to respond -- I attributed it to just
8 they all run and put their heads together and come up with the
9 right answer because anyone saying something off the cuff at
10 this meeting would have the weight of the office but not
11 everyone's deliberations.

12 I interpreted it a little differently, that nobody's
13 really qualified until they all thought very seriously about
14 our series of questions.

15 CHAIRMAN SIEGEL: And that's okay, except we're
16 expected to deliberate in a Committee environment and make some
17 quick determinations of a consensus based on our experience --

18 MS. BROWN: But we get to talk among each other,
19 ourselves, and they don't. You're just sending one person down
20 from the office.

21 CHAIRMAN SIEGEL: Well, they could certainly have had
22 more than one in the audience. There was no requirement that
only one person come.

1 MS. BROWN: Well.

2 CHAIRMAN SIEGEL: Be that as it may, I don't know
3 that we want to necessarily present that, but the Minutes will
4 reflect the fact that that was a concern.

5 If we talked about specific issues, the issues that
6 came up at this meeting, that strike me as potentially worthy
7 of things to be brought to the Commissioner's attention,
8 include the concerns we raised about the apparent double-speak
9 associated with patient notification; the fact that the rules
10 seem to suggest that you might not have to notify patients if
11 you thought it would harm them but, in fact, you have to notify
12 patient's families, which would end up harming the patient most
13 of the time or could end up harming the patient much of the
14 time. That's one thing.

15 The very early -- well, it's probably too early
16 because we haven't seen the language about this breast-feeding
17 thing that we talked about yesterday, which I am personally, as
18 I understand what's being discussed, very troubled by the fact
19 that the NRC seems to be making an absolute, that under no
20 circumstances could a physician commit an act that would result
21 in the exposure of a breast-feeding infant to more than 500
22 millirems, as a result of the administration of radiation to
the mother.

1 I'm not sure that that is necessarily something that
2 should be an absolute. In order to frame the question, I think
3 I'd probably need to see the proposed Part 20 language to frame
4 the question.

5 MS. BROWN: I assumed it would be modified just as a
6 result of the discussion here.

7 CHAIRMAN SIEGEL: I don't think so.

8 MS. BROWN: You would have to bring it to the
9 Commission.

10 CHAIRMAN SIEGEL: I'm not sure that it would be
11 modified. This would be an area -- this would be an intrusion
12 into medical practice, albeit infrequent, that we could point
13 out.

14 I'm not disagreeing with you. I'm just telling you
15 items that I thought could be raised to the level of
16 consciousness.

17 DR. MARCUS: You might also, in that same vein,
18 inquire as to why something that important was not brought to
19 the attention of the ACMUI first.

20 You have a Commission and staff and management with
21 no medical expertise whatsoever, making rules about the
22 practice of medicine without coming to their ACMUI, or at least
calling the chair and saying, do you see any real objection to

1 this? I think that that typifies the problems medicine is
2 having with the NRC.

3 CHAIRMAN SIEGEL: Okay.

4 Go ahead, Larry.

5 MS. BROWN: I have a question --

6 MR. CAMPER: I need to correct that, somewhat. We
7 have discussed the patient -- this nursing infant/fetus issue
8 with the Committee before. We will be discussing the language
9 of the rule with the Committee. We are not doing it in the
10 vacuum you indicate.

11 DR. MARCUS: All right. We had talked about
12 inadvertent administration. It was never, ever suggested by
13 NRC that purposeful administration of radioactive material to
14 pregnant or breast-feeding women, when there was some medically
15 overriding reason, would ever be made illegal by the NRC.

16 MR. CAMPER: And I wouldn't jump to the conclusion
17 that that will happen. I think what you have, you have a
18 status report that has raised an issue that is of concern to
19 you and to other members of the Committee, I suspect. It is of
20 some concern to members of management present here. We will be
21 working with the Office of Research, and obviously we will be
22 communicating and discussing this rule with this Committee.

I wouldn't jump to that conclusion. This is a rule

1 that's under construction, if you will.

2 MS. BROWN: I wanna address something, Carol, that
3 you've said frequently, that has, I think, misled me, not being
4 so familiar with NRC. You say a lot that NRC has absolutely no
5 medical experience, outside of Myron Pollcove, and I don't know
6 whether that's true or not.

7 But --

8 DR. MARCUS: It's true.

9 MS. BROWN: -- but what I've found in talking to the
10 staff and getting to know them more, they all have a lot of
11 clinical experience somewhere --

12 DR. MARCUS: Only technologists, and that is not
13 medicine.

14 MS. BROWN: Well, still, that's something --

15 DR. MARCUS: That's technologists.

16 MS. BROWN: -- that's something. I'm just saying
17 there --

18 DR. MARCUS: That's not enough to make medical
19 decisions.

20 MS. BROWN: Right. Okay. I know what you're saying.
21 But the way you have phrased it and it has always gone
22 unchallenged, has been misleading to me, and I just wanted to
say that I found a lot more depth of experience that reassures

1 me that NRC has been in hospitals and worked in the medical --

2 DR. MARCUS: That's irrelevant --

3 MS. BROWN: -- environment, more than what you said.

4 DR. MARCUS: -- when it comes to making medical
5 judgments about patient management. Technologists are not
6 capable of doing so, and there is no state in the United States
7 that lets technologists practice medicine.

8 MS. BROWN: Yeah, that's fine. What I am saying is,
9 the way you oppose these things over the years that I have
10 heard them, has been misleading to me. What you are saying
11 there clarifies it, and I would agree with it.

12 DR. MARCUS: Technologists' judgment, fine. But
13 technologists are trained to do certain activities, and
14 physicians are educated to do other activities, and when we're
15 talking about medical judgment --

16 MS. BROWN: Okay. I'm not disputing --

17 DR. MARCUS: -- it's different.

18 MS. BROWN: -- what you're saying, Carol. I'm just
19 saying perhaps in all these years of listening to you say it, I
20 have been led to believe one thing and now I am just saying
21 that I've come to believe another, none of --

22 DR. MARCUS: You're welcome to believe whatever you
like, but I still maintain there is no medical expertise in

1 this agency.

2 MR. CAMPER: I believe I can comment just to try and
3 help bring this to a settlement.

4 Dr. Marcus is certainly correct that there are no
5 physicians on the medical and academic sections of the staff.
6 There are individuals who have been technologists in their
7 careers, medical physicists, health physicists, radiation
8 safety officers, radiation biologists and so forth. We do have
9 Dr. Myron Pollcove as the only clinician. I think that
10 the basis, in my observation, is really as Carol's perception
11 or opinion or belief as to where the practice of medicine
12 begins and ends. What is the definition thereof.

13 Clearly, she viewed that in a very broad context
14 that's entirely her right to, and there are obviously other
15 considerations that have to be borne out as well -- public
16 concerns, congressional concerns, Commission concerns, and so
17 forth.

18 What we try to do is to use the staff that we have
19 that does have substantial professional technical experience
20 and somewhat of a clinical nature, and use the expertise of
21 this Committee, hopefully, to develop some reasonable
22 regulations and guidelines, but I suspect we'll never come to a
point where Carol would be completely satisfied with that.

1 That's okay. That's okay. At least I offer that as
2 clarification.

3 MS. BROWN: Sure.

4 MR. CAMPER: But, anyway, where are we?

5 CHAIRMAN SIEGEL: Another potential issue that could
6 be discussed is the whole issue of the need for new
7 brachytherapy standards and regulations. I'm not sure we're
8 far enough in our thinking to know what needs to be included,
9 other than the highlight, this is a problem.

10 We did that at the last Commission briefing as well,
11 so whether we need to do it again remains to be seen.

12 For those of you who were there, you will remember
13 that at the first Commission briefing -- the pre-Cleveland
14 Plain Dealer briefing -- we had planned to address the item of
15 training and experience and elected to basically not do so
16 other than to just say this is a complicated problem that needs
17 to be dealt with some day.

18 We can certainly do that, but I don't think we'll
19 have any unanimity in talking about the need for a paradigm
20 shift.

21 My sense is is that we'll get up there and we'll say
22 these are some things we see as a problem. Here are a few of
them that we think have some very specific things that you need

1 to address because there's specific problems. Then
2 there's some big issues that we think you need to be aware of
3 and really need to be moved to a very high priority in terms of
4 Commission activities and things the staff ought to be looking
5 at.

6 The staff is working on them already. I guess I'm
7 having trouble getting very excited about doing this. I don't
8 know if that's the right answer.

9 MS. BROWN: Tell me again why we need to?

10 CHAIRMAN SIEGEL: What?

11 MS. BROWN: Tell me again why we need to?

12 CHAIRMAN SIEGEL: Why we need to what?

13 MS. BROWN: Meet with them this summer.

14 CHAIRMAN SIEGEL: Because the Commission has
15 requested that we have an annual meeting with it, with the
16 Commissioners. We've taken that as a good opportunity to have
17 a direct access to the Commission.

18 One argument against having the meeting is that the
19 transition that has occurred in this Committee over the course
20 of the last four years. I think when I became chairman of this
21 Committee, when all of the new members of this Committee came
22 on, when the Committee went from being a staff-run Committee to
a more independent Committee, We have, over the last four

1 years, evolved into a Committee that I don't think feels
2 bashful about getting our input per the NRC.

3 The need for direct access to the Commissioners,
4 except when there's some very important philosophical issues to
5 discuss with them, or when they want to pick our brains, seems
6 to me less compelling than it was when the notion of meeting
7 with the Commissioners first came on the table.

8 I don't want to lose the opportunity to meeting with
9 them if we feel the need to do so and they feel the need to
10 talk with us. But I also don't want to spend \$25,000 in travel
11 money and hotel bills and all of our own personal time if we
12 don't have a great need --

13 MS. BROWN: Just to save our slot.

14 CHAIRMAN SIEGEL: -- to save our slot. That may not
15 be an acceptable answer and, Carol, probably not to you, but
16 you don't have to prepare for it, and I don't want to just make
17 work if we don't have to make work.

18 DR. MARCUS: One thing you might really consider
19 presenting to them -- and I don't know how much work it would
20 be for, you, Barry -- is to explain the economics of American
21 medicine right now to them and their effect on our ability to
22 provide care to patients. You know those medical economic
issues pretty well.

1 CHAIRMAN SIEGEL: I know some of them, and I don't
2 think we know them well enough. I don't mean that I don't know
3 them well enough. I know what they are today. I don't know
4 what they're going to be 18 months from now. They're going to
5 be worse, they're not going to be better. I think that's a
6 given.

7 In a way, I really -- maybe I'm just being wimpy
8 here, because --

9 MS. BROWN: Since you do all the work, I think you
10 have the right to be wimpy.

11 CHAIRMAN SIEGEL: To be wimpy. I really feel that I
12 would love to be sitting talking to the Commissioners with the
13 Institute of Medicine report in hand and saying --

14 MS. BROWN: It's something to react to.

15 CHAIRMAN SIEGEL: -- these are items that have a lot
16 of meaning, and we strongly endorse this, but we think that
17 this thing is totally bogus, and here's why.

18 On the other hand --

19 MS. BROWN: And possibly spend that money meeting
20 with the IOM people.

21 DR. STITT: Right. What is our status with them? I
22 know we discussed it briefly yesterday.

 CHAIRMAN SIEGEL: Let me tell you what I know about

1 our status. Their meeting on July 11th and 12th, is their next
2 regular meeting. I have been asked to go to that meeting and
3 tell them what the ACMUI has been doing -- which I have to ask
4 you all an interesting question about that -- tell them what
5 the ACMUI has been doing, and then what issues that I think the
6 ACMUI has been addressing that are important, and then they're
7 going to pick my brains.

8 The question is, can I go there; am I representing
9 the ACMUI or am I going there as a private citizen?

10 MS. McKEOWN: Who's paying the bill?

11 CHAIRMAN SIEGEL: Well, the NRC is probably paying
12 the bill either way.

13 MS. McKEOWN: Then you're representing us.

14 DR. GLENN: We need to consult and get back with you
15 on that.

16 CHAIRMAN SIEGEL: I think I need to have some
17 clearance about whether I'm going there as a private citizen
18 with special expertise or I'm going there as an NRC employee.

19 MS. BROWN: Also, I'm disturbed that we're learning
20 this as a result of a question from --

21 CHAIRMAN SIEGEL: No.

22 MS. BROWN: Were you going to tell us?

CHAIRMAN SIEGEL: I was going to tell you.

1 MS. BROWN: Oh.

2 CHAIRMAN SIEGEL: I'm sorry.

3 MS. BROWN: It's okay. I'm thinking we're adjourning
4 here.

5 CHAIRMAN SIEGEL: No. I actually knew that
6 yesterday. Dr. James didn't know I knew it. I talked to Kate
7 Gadfrey two months ago.

8 MS. BROWN: Oh.

9 CHAIRMAN SIEGEL: I don't know if there's going to be
10 any way for us to insert ourselves beyond that, into their
11 process. They're defining the process.

12 MS. BROWN: I think you would represent us very well.
13 I don't know. I think that's a great solution.

14 MR. CAMPER: I believe, also, when the representative
15 was here, this came up. I think, in essence, what they were
16 saying is they would consider inviting a representative of the
17 Committee, but the idea of meeting with the entire Committee is
18 not something they might want to --

19 CHAIRMAN SIEGEL: However --

20 MS. BROWN: No. When I heard the Committee's meeting
21 face to face, I saw --

22 CHAIRMAN SIEGEL: We talked about that.

MR. CAMPER: No.

1 CHAIRMAN SIEGEL: -- a basis -- We talked about that
2 and thought that was impractical. They're a big Committee,
3 even bigger than we are. There's no reason why we cannot go to
4 their public meeting. We might even be able to do it as an
5 official NRC act in some way, and we might want to have a
6 special meeting somehow in relationship to their public
7 meeting, so that we have an agenda --

8 MS. BROWN: Yeah, especially if you thought they were
9 going astray and reported back to us in some way.

10 CHAIRMAN SIEGEL: I doubt that they will be.

11 That's my big concern, is that it seems like to try
12 to second guess the Institute of Medicine, with the paradigm
13 shift issue, Carol -- I mean, I agree with you about the
14 paradigm shift. I'm on the record as saying there needs to be
15 something other than a patchwork quilt of regulation of
16 radiation and medicine.

17 I'm also on record as saying nothing, not even the
18 rain, has such small hands, if I can quote E.E. Cummings, but 2
19 percent of ionizing radiation used in medicine at the NRC is
20 responsible for, and it's the tail wagging the dog, and there
21 needs to be regulation that's across the board and uniform and
22 that makes sense and is consistent with the economics of
health. If you get me on a soapbox, I'm prepared to talk about

1 that.

2 It seems like I would love to hear the Institute of
3 Medicine say it about the same time we're saying it.

4 MR. SWANSON: I think the reality is this Committee
5 has been saying this to the NRC for the last several years
6 anyway, and I can't really see we're going and saying it to it
7 again without the support of a document from the Institute of
8 Medicine, for example.

9 It seems to me that if we have that document, then
10 we'd really have something concrete to talk about.

11 On the other side of the coin, getting back to
12 meeting with the Commissioners, I do think it would be to the
13 benefit of the new members of this Committee to have the
14 opportunity to meet the Commissioners, if nothing more than so
15 they know who we are, we know who they are. If that could be
16 done in perhaps a more informal process, even at our next
17 annual meeting, might be an approach to that.

18 DR. GLENN: I'll just comment. We can raise the
19 possibility. One thing that Susan Fonner told you about this
20 morning was the Sunshine Act, and so bringing the Commissioners
21 together, more than two at any one time, does constitute a
22 meeting of the Commission, so there are some aspects there that
would have to be looked at.

1 CHAIRMAN SIEGEL: I guess they can't even all go to
2 the same cocktail party? Is that correct?

3 DR. GLENN: No, that's beyond my knowledge.

4 MR. CAMPER: Well, the fashion in which they
5 communicate with each other is very --

6 CHAIRMAN SIEGEL: It's pretty amazing, yes.

7 MR. CAMPER: Right.

8 CHAIRMAN SIEGEL: It's the holdover from the days
9 when people were worried about atomic bombs a lot, and that
10 kind of stuff.

11 I'm just looking through the last few sets of Minutes
12 to see if there are other issues that we've had on our previous
13 agendas that are worth elevating to a Commission point.

14 My sense of listening to most of you -- Carol
15 excepted -- is that we don't feel compelled to have a July
16 meeting with the Commission.

17 MS. BROWN: Also, the people that would be at such a
18 meeting, the ones that haven't rotated off yet, are pretty much
19 new members, so I appreciate Dennis' interest in meeting the
20 Commission, but there doesn't seem to be any festering things
21 left over from the old, except for Carol's concern, and
22 wouldn't be there, from the old members.

 CHAIRMAN SIEGEL: Could I propose, therefore, that

1 Dr. Glenn, Dr. Paperiello, and Mr. Camper suggests that we're
2 not certain we want to waste your money, but if compelled to do
3 so we'll come up with an agenda.

4 DR. PAPERIELLO: Okay.

5 CHAIRMAN SIEGEL: We'll do the calendar bit, we'll
6 try to find a date, but just as we did in February, it may be,
7 why waste \$25,000 or \$20,000, or whatever it costs, of there
8 really is no compelling reason to do so.

9 I mean, I think people generally are so eager to get
10 access to administrators of federal agencies that they would be
11 falling over themselves for the opportunity. Here is a group
12 of your special government employees, saying, we'd just as soon
13 sit tight and watch the way things develop. If they want us to
14 spend the money, we'll do it.

15 DR. PAPERIELLO: I understand. I'll relay the
16 message.

17 CHAIRMAN SIEGEL: Is that right, or are the rest of
18 you not in agreement with that? I'm willing to be very
19 flexible on this.

20 (No response.)

21 CHAIRMAN SIEGEL: We've heard from you, Carol, and
22 understand. Her lips are sealed.

Okay. Failing that, I think I have no other

1 additional items of business. Are there other matters that
2 other members wish to bring before the Committee?

3 Professor?

4 DR. GLENN: I will just ask that Carol and Joan stay
5 behind after we adjourn. We do have photographers here and
6 we'd like to take a picture.

7 MS. McKEOWN: I'm not getting my picture taken with
8 her.

9 (Laughter)

10 DR. GLENN: I think Dr. Griem and Dr. Almond have
11 gone. But with that announcement, I declare that this meeting
12 of the advisory committee is adjourned.

13 (Whereupon, at 11:40 p.m., the meeting was
14 adjourned.)

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