

NUCLEAR REGULATORY COMMISSION

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Differing Professional Opinions/
Differing Professional Views Program

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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PUBLIC MEETING

2002-0564

"SPECIAL REVIEW GROUP RESPONSE TO THE DIFFERING
PROFESSIONAL OPINION/DIFFERING PROFESSIONAL VIEW
REVIEW DPO/DPV"

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TUESDAY

AUGUST 13, 2002

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ROCKVILLE, MARYLAND

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The Commission met in the Commissioners' Conference Room,
Nuclear Regulatory Commission, 11555 Rockville Pike, Maryland, at 9:30 a.m.,
Richard Meserve, Chairman, presiding.

COMMISSION MEMBERS PRESENT:

RICHARD A. MESERVE, Chairman of the Commission

NILS J. DIAZ, Member of the Commission

GRETA J. DICUS, Member of the Commission

EDWARD McGAFFIGAN, JR., Member of the Commission

JEFFREY S. MERRIFIELD, Member of the Commission

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ALSO PRESENT:

BRUCE BOGER, NRR/DIPM

JOHN CRAIG, OEDO

JAMES FITZGERALD, CHAIRPERSON, OI

ELLIOTT GREHER, NTEU

BRUCE MALLETT, RII

WILLIAM TRAVERS, EDO

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I-N-D-E-X

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Adjourn 65

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P-R-O-C-E-E-D-I-N-G-S

9:30 A.M.

1
2
3 CHAIRMAN MESERVE: Good morning. The Commission
4 meets this morning to hear from the staff about the results of its Special Review
5 Panel that evaluated the Differing Professional Views and Opinions Program.

6 As I think everyone in the audience is aware, the central
7 ingredient to the success of this Agency is the quality of the intellectual
8 products that staff and the Commission produces and we can only achieve the
9 level of performance that we seek if the staff is prepared to examine fully and
10 thoroughly the issues that are presented to us. And it is essential that for that
11 purpose to occur is that they be full and open illumination of the issues.

12 This program that we're going to discuss this morning is one
13 of the vehicles for ensuring that issues are openly, candidly and thoroughly
14 assessed, so it's a very important program in the Agency's accomplishment of
15 its mission. So we're very pleased to have this discussion this morning.

16 Dr. Travers, you may proceed.

17 DR. TRAVERS: Thank you, Chairman. Good morning to you
18 and the Commission. We are glad to be here to discuss with you the findings
19 and recommendations of the Special Review Panel. I think you laid out the
20 importance of the DPV and DPO processes as important ones and we certainly
21 agree with that.

22 We've actually in this Agency since about 1980 have had a
23 process for DPO consideration in one form or another. Over the years since
24 then we've revisited these processes on the order of four times, I believe. I've
25 recently or at least last year chartered this group to carry out a self-assessment

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1 of the informal DPV and the formal DPO processes described in Management
2 Directive 10.159. Their evaluation included examining the effectiveness of the
3 process, how well the process is understood by employees and the
4 organizational climate for having these views or opinions aired and properly
5 decided.

6 Jim Fitzgerald chaired the group and he'll introduce the
7 members of the team in a moment.

8 I'd like to tell you that I have carefully reviewed this Special
9 Review Panel's report and their recommendations and I am generally
10 supportive of moving forward in the direction that they've suggested and will be
11 happy to answer questions that you may have of me following the presentation
12 by the Special Review Panel.

13 And with that, let me turn it over to Jim Fitzgerald from the
14 Office of Investigations.

15 MR. FITZGERALD: Good morning, Mr. Chairman,
16 Commissioners. I'd like to introduce the members of the Panel: on my right,
17 Bruce Boger from NRR and on my left John Craig, EDO's office and Bruce
18 Mallett from Region 2. Bill Brach from NMSS is not with us today and Elliott
19 Greher who recently retired from the NRC was the NTEU representative on the
20 Panel and he may be joining us.

21 As Mr. Travers indicated, we were directed in the charter that
22 we received last spring to assess the DPO and DPV process from the prospect
23 of its effectiveness, how well it's understood and the organizational climate
24 within which it operates and our general finding which we'll discuss later,
25 addresses these points.

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1 We were also asked to review all of the DPO and DPV files
2 of the filings since 1994 which was the last time that one of these Panels had
3 been convened with a view towards determining whether individuals who had
4 filed DPOs or DPVs had been adequately recognized for their efforts.

5 And finally, the EDO asked us to take a look at the process
6 and come forward with any recommendations for improvement that we deemed
7 appropriate.

8 To accomplish this, the Panel reviewed the previous Special
9 Review Panel Reports, one in 1987, one in 1990 and one in 1994. And we also
10 reviewed the case files that I previously mentioned not just to determine
11 whether an individual should be recognized, but also to see how they were
12 handled, what detail, the quality of the product.

13 We reviewed an OIG audit report of the process that was
14 issued in the Year 2000 which addressed many of the issues regarding the
15 effectiveness of organizational climate and the like and we spoke with the OIG
16 auditors. We interviewed program participants, a random sample of panel
17 chairmen, panel members and DPO and DPV filers. And we reviewed the
18 processes at some of the other federal agencies.

19 Our general finding regarding the effectiveness,
20 organizational climate and understanding of the process, we were -- had the
21 benefit of the IG's audit report. They had gone over shortly before we did a lot
22 of this ground and we found that their efforts were very helpful to our -- they
23 jump started our effort.

24 COMMISSIONER MERRIFIELD: What is the date of that
25 report?

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1 MR. FITZGERALD: The audit report, I believe was
2 September of the Year 2000.

3 COMMISSIONER MERRIFIELD: Thank you.

4 MR. FITZGERALD: And ultimately, our findings are
5 consistent with that audit report.

6 With regard to effectiveness, among those interviewed by the
7 IG and those persons interviewed by us, we identified a wide divergence of
8 views as to effectiveness.

9 The panel chairman and staff members, members of the
10 panel considered it a good means of evaluating differing views. Filers, on the
11 other hand, exhibited a wide divergence of opinion. Many found or felt that it
12 was a valuable experience, that it did adequately treat their concerns. Others,
13 however, were very critical of the process. They were frustrated by the
14 timeliness or lack thereof, the quality of the ad hoc panel, in their opinion, and
15 lack of feedback that they experienced.

16 The bottom line is, I believe, that the process is effective, but
17 there's a lot of room for improvement.

18 With regard to the organizational climate, the senior
19 managers felt that it was important to the Agency and they valued it and they
20 respected it. There is, however, a perception that among the filers that using
21 the process is dangerous to your NRC career, that you might be subject to
22 retaliation for indulging in it.

23 This is a persistent impression. This is an impression that
24 was found as far back as the 1987 audit. And obviously, the perception, even
25 if not founded in reality or actuality, taints the process. It certainly reflects

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1 poorly on the organizational climate.

2 With regard to understanding the process, we found that the
3 Management Directive 10.159 is resorted to by the filers that the managers use
4 it as a helping hand in guiding them through the process and we found the
5 process is generally well understood.

6 The Panel developed five findings with attendant
7 recommendations. And the findings which we'll discuss serially, subsequently,
8 are the current process lacks Agency level oversight. It is duplicative and could
9 be made more effective. The time frames set forth in the Management
10 Directive are not being met. No points for information exchange are identified
11 in the process and open discussion of views is very important to NRC safety
12 culture.

13 These findings in the attendant recommendations are broad.
14 We would expect that a revised Management Directive would treat these
15 matters in greater detail.

16 The first specific finding is that the current process lacks
17 Agency level oversight. It distributes responsibility across organizational lines.
18 There is no readily identifiable individual, or Agency authority responsible for
19 providing program leadership and overseeing the process implementation.
20 Currently, DPVs are the responsibility of Office Directors and Regional
21 Administrators for handling them, deciding them and implementing the findings.
22 DPOs on the other hand, are the responsibility of the EDO and the
23 Commission. And HR, Human Resources has some limited authority whereas
24 they don't for the DPVs.

25 Transfers between Offices or between the Region and the

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1 Headquarters Office are not proceduralized. There's no single NRC official
2 who exercises ownership of the process and oversees its implementation.

3 We recommend that the Agency establish an Agency level
4 DPO Program Manager who would have oversight, coordination and promotion
5 responsibilities. We envision it analogous to the Allegations Program Manager
6 which in our view is working well.

7 Among the functions that this DPO Program Manager would
8 accomplish is he would serve as the Agency champion, expert and
9 spokesperson for the process. He would monitor the process for consistency
10 and audit the performance and records of the various Offices and Regions and
11 report to the EDO and the Commission annually. He would conduct
12 acceptance screenings of the DPOs early in the process and facilitate transfer
13 of DPOs from Office to Office, also establishing training requirements. These
14 wouldn't be exclusive, but this is the type of thing we'd expect this Program
15 Coordinator to do and we consider this a pivotal recommendation.

16 The second finding is that the current process is duplicative
17 and its effectiveness could be enhanced. Back in 1987 the DPV, Differing
18 Professional View process was instituted and built upon the DPO process. It
19 was intended to be an informal process, but over the years it appears to have
20 metamorphosed into another formal process. The DPV process now includes
21 a written filing, an ad hoc panel selection, ad hoc panel decision and a review
22 and a decision by the Office Director or Regional Administrator.

23 The DPO process has these same attributes. We see this
24 as the formal process done twice. Concerns about this process that were
25 raised in the interviews are that the level of documentation that's required, that

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1 it's cumbersome, that it involves time delays and that there is a disconnect
2 between the safety significance and complexity and the short schedule that's
3 allowed to reach a decision in this regard. The DPV steps were intended to be
4 informal, but we see the real informal process or step, stage, to be before a
5 written DPO is ever filed. This is the stage where the Agency's decision is
6 being -- evolving, peer discussion, discussion with first level supervisors.

7 And we believe that this should be encouraged and one of
8 our subsequent recommendations will involve basically requiring and trying to
9 have this occur before any filing of a formal DPO.

10 We recommend that the current process be revised to
11 eliminate the DPV step. But we would allow and recommend allowing a written
12 appeal to the EDO or to the Commission from an Office Director's decision in
13 the formal process. We would not have this written appeal be a detailed
14 second stage formal review, but we felt that it was reasonable to allow the DPO
15 filer one more bite at the apple. We would expect that it would be in writing,
16 that the Commission or the EDO would be able to handle it in any way, case
17 by case, any way they saw fit. If the matter was handled extensively and well,
18 in your view, by the Office Director, it would rely on that record and that
19 decision below. If you felt that it needed an expert to take a look at it, you
20 could seek the advice of an expert.

21 We would also recommend eliminating a Special Review
22 Panel, this panel that is reporting to you today which is the current
23 Management Directive requires that such a panel be convened periodically to
24 assess the process. We would see that the DPO Program Manager who would
25 have continuous and on-going oversight of the process would eliminate the

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1 need for this type of an endeavor. This is an efficiency. This is basically
2 inherent in our recommendations.

3 Our third specific finding is that the time frames in the
4 Management Directive are inflexible and frequently are not being met. The
5 Review Panel believes that this causes differing expectations regarding the
6 completion of reviews and that these differing expectations are a source of
7 frustration associated with the process.

8 DPVs currently are supposed to be completed in 49 days,
9 from the date of filing to the date of decision.

10 DPOs have fewer milestones, but there is a 30-day calendar
11 period to complete the review after the receipt of all submitted views to the
12 EDO or Commission decision.

13 The contributors to delay, among the contributors are the
14 delay surrounding the transfer between Offices: the subject matter complexity,
15 low priority attached to ad hoc panel, by the ad hoc panel or the Office Director
16 and no consequences for exceeding the time frames.

17 From the interviews that we conducted, it really did appear
18 that the 49-day period was almost impossible time to establish a panel, run the
19 panel, reach a panel decision and then get a review and decision by the Office
20 Director, particularly if it was a complex issue. We believe that time frames
21 should be set, goals should be set in each case, that the 60-day time frame for
22 normal cases should be imposed, but up to 120 days should be allowed for
23 complex cases.

24 Over 120 days, that rare case, the responsible Office Director
25 would have to apply to the EDO or to the Commission for an exception and

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1 would expect that to happen seldom, if ever.

2 We believe -- we recommend that procedures be set forth for
3 the transfer of cases and that the tracking that is now being done of DPVs and
4 DPOs be continued and the tracking in the office, that tracking be required in
5 Office Operating Plans.

6 With regard to -- we believe that the DPO process should be
7 restricted to only those DPOs that are filed. In the past, some managers have
8 used the DPO process as a convenient way of handling an issue. Now we
9 would see that there's no problem with borrowing good points from a DPO
10 process and utilizing them, but not logging them in and putting it into the
11 process itself.

12 And similarly, some of the ad hoc panels have -- and
13 individual filers -- have expanded a DPO that's been filed and so it becomes a
14 moving target. We believe that that should not be permitted and that also
15 panel chairmen have gotten intrigued by interesting issues that are ancillary to
16 the DPO filing.

17 Again, we do not see that -- we're not saying that these things
18 should not be looked at, but they should be looked at outside the DPO process.

19 Our next specific finding is that the current process does not
20 have clearly defined points at which the parties are required to exchange
21 information. Differing expectations contribute to inadequate and inconsistent
22 communication between the cognizant office and the filer throughout the
23 process. Communication problems have also been a persistent problem over
24 the past Special Review Panels.

25 Filers complain about the lack of feedback during the review.

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1 They're kept in the dark as to the progress of the reviews and this lack of
2 participation leads to a lack of appreciation as to just how much resources and
3 effort goes into resolving and disposing of these matters.

4 Panel members themselves say that they could profit from
5 discussions to clarify issues with the filer earlier on. Panel members also have
6 occasionally complained about not being apprised of the Office Director's
7 decision.

8 We recommend that the ad hoc panels meet with filers early
9 on to clarify the scope of the issues and this early meeting could also be the
10 occasion for addressing with the filer a review schedule. We also believe that
11 the Management Directive should clearly define the roles and information
12 exchange of the various participants in the process. Responsibilities for
13 feedback should be addressed in the Management Directive and the set points
14 for this feedback and interaction should also be articulated.

15 Our last specific finding is that the candid and open
16 discussion of issues is an important element in NRC safety culture. It's the
17 basis of the DPO program and it recognizes that the free and open discussion
18 of differing professional viewpoints is essential to the development of sound,
19 regulatory policy and decisions. And that statement is basically taken from the
20 Management Directive and it also is something that is taken from the 1987
21 Review Panel.

22 Managers and staff recognize its importance and value it. As
23 I mentioned earlier, the true and formal stage for airing and addressing differing
24 views is in the discussions with peers and supervisors as the Agency's position
25 is being developed. This is something to be encouraged. We think that the

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1 Management Directive should encourage that.

2 Also, we have to confront the persistent perception that the
3 filing of a DPO would have a negative impact on one's NRC career. This
4 perception can chill an open and candid discussion that is so important to the
5 NRC safety culture. We recommend that the informal discussions with regard
6 to these differing views precede the filing of the DPO, that there be no time
7 limit, no documentation for these informal discussions. It will be the normal
8 course of business and that this would be monitored and overseen by the DPO
9 program manager who as far as acceptance review would inquire into this
10 matter.

11 And to diminish the perception that the filing of a DPO may
12 be harmful to your NRC career, we recommend that the Management Directive
13 really make clear that retaliation will not be tolerated, that retaliators will be
14 subject to disciplinary action, that there is a role for the IG in looking into that.

15 We also believe that the training and education of staff and
16 managers should include this matter and we are aware that at least two of the
17 NRC in-house training programs have been altered to include information on
18 this.

19 Moreover, we would recommend that recognition be directly
20 linked to the filing of a DPO and if there is a valuable contribution in a DPO,
21 recognition with there being an award or a letter of recognition, should occur
22 shortly in a prompt time frame and it also should be directly linked, not just
23 buried in an annual performance appraisal.

24 That concludes our five specific recommendations and
25 findings. We'd be happy to answer any questions that you may have.

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1 DR. TRAVERS: Maybe I'll just reemphasize, before asking --
2 turning it back to you, Chairman, I'll make note of again the fact that I've looked
3 very carefully at what I think has been an outstanding effort by this Special
4 Review Panel. A lot of the details, obviously, still need to be worked out
5 relative to these recommendations, but as I indicated at the outset, I'm
6 supportive. I see a first step here being the identification of the appropriate
7 program manager position. This is something that the group and I have
8 conferred on and they see it as likely a part-time effort. It may be a position
9 that's combinable with the allegations, Agency Allegations Coordination
10 position, but in any case, it's a position that I think offers a lot of advantages for
11 real time, real time monitoring and championing of a very important process
12 that we have in the Agency.

13 So I see going forward that is the first step. Finding the
14 appropriate place to establish a position of this sort and then moving out to
15 revise the Management Directive with the particulars of this sort of thoughtful
16 review that's been done.

17 Thank you very much.

18 CHAIRMAN MESERVE: Thank you. I'd like to compliment
19 the Special Review Panel for their work and for a thoughtful presentation.

20 As you have noticed and the audience has also noticed that
21 there are now five people on this side of the table. I should have noted at the
22 outset that Commissioner Merrifield has rejoined us and we're very pleased to
23 be up to our full complement and very much appreciate that he is back in the
24 saddle working with us.

25 COMMISSIONER MERRIFIELD: Mr. Chairman, thank you

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1 for the kind comments and I also wish to note that the warm expressions,
2 private expressions of support from my fellow Members of the Commission, all
3 of whom have expressed to me their kind words and also I would also want to
4 note the large number of NRC employees who have taken me aside and who
5 have made some very kind comments as well, all of which are very much
6 appreciated and I'm humbled by them.

7 Thank you.

8 CHAIRMAN MESERVE: Well, welcome back and to
9 demonstrate that we're putting you to work, we'll let you go first this morning.

10 (Laughter.)

11 COMMISSIONER MERRIFIELD: As the Chairman and the
12 staff are well aware, last week when I was sworn back in I hit the ground
13 running on budget issues and I will take no exception on this effort as well.

14 On Slide 4, you note that you reviewed other federal agencies
15 DPO programs, that's on the fourth bullet. With whom did we benchmark?

16 MR. FITZGERALD: We looked at the State Department,
17 DOE, National Transportation Safety Board and EPA. We also required of
18 many others that do not have processes. The DOE process is modeled after
19 ours and it's similar to ours.

20 Our process is by far appears to be the most detailed and we
21 found that I believe it was the FAA, for example, or EPA that affirmatively
22 stated that they felt that none was needed, that the differing views were
23 handled within their normal give and take in the process.

24 COMMISSIONER MERRIFIELD: So you would characterize
25 the NRC as having benchmarked that, as having the most aggressive DPO

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1 program that you were able to find in the federal government. Is that a fair
2 estimate?

3 DR. TRAVERS: Yes. I think that what I was told was most
4 federal agencies don't have a process and the few that do, don't have
5 processes that compare in sort of specifics of our process.

6 I thought that was a good point.

7 MR. GREHER: I don't think we really did as well a job on this
8 area as we might have been able to do. One of the big problems we had was
9 finding the right person in each Agency to tell us whether they did or did not
10 have a process. And some agencies we were lucky and found it very rapidly.
11 In other agencies, we were not lucky and that doesn't mean it doesn't exist.

12 COMMISSIONER MERRIFIELD: Or it might be a sign of how
13 successful it is.

14 MR. GREHER: It depends on how you describe it. They
15 might have a different term for it.

16 As far as -- there's no question that DOE modeled its process
17 on ours. There's no question about it. They had some things that seemed a
18 little better, but they modeled it. On the other hand, I have to say that the State
19 Department was extremely strong about retaliation, extremely. They made a
20 statement, whether they actually practice it or not, I don't know.

21 But the general feeling was that very few agencies seem to
22 have this and that we are among the leaders and in fact, in adopting a process
23 and in using it as best -- in a good way.

24 COMMISSIONER MERRIFIELD: Well, that's the right place
25 to be.

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1 On Slide 5, you mentioned that and I asked during the
2 questioning, there was an OIG audit report in September of 2000. And I guess
3 my question is this, and I hate to ask a question about good results for this
4 finding, but if your conclusions are consistent with an OIG report of two years
5 ago, why didn't we address these problems in response to that report?

6 DR. TRAVERS: Oh, guess that's my hat. It's a good
7 question. We last revisited in a self-assessment sense four years ago, but we
8 kicked this effort off, actually, if I'm correct in March of 2001, so it was a fair
9 time ago. September 11 and other things have frustrated our efforts to do this
10 in a more timely way, but part of what I see as one of the strong
11 recommendations that have been made here is an approach that would give
12 us an advantage in the direction I think Commissioner, that you're suggesting,
13 and that is a more timely real time on-going audit, self-assessment, refactoring
14 of lessons learned into the process which I think is a good idea and we ought
15 to seek to achieve that.

16 I don't have a good answer for you, except for the press of
17 other business that would have us. The other thing I would mention is if you
18 look at the numbers of DPO/DPVs that are filed, I believe I'm correct in
19 suggesting that over the last few years it's on the order of 6 to 8 per year. So
20 it's not a large number. You might ask the question well, if it's not running very
21 well, maybe it would be higher if it were running better, but I think we did have
22 expressions to this Special Review Group that suggests that some think it is
23 working well.

24 COMMISSIONER MERRIFIELD: Well, that sort of leads me
25 in my next question. On Slide 18, there's the issue of the need to have a

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1 system that can be used without fear of retaliation. And that begs for me a
2 couple of questions. The first one is did you find, I mean is there a fear of
3 retaliation out there and is it widespread. And layering on top of that if we're
4 successful in improving this program, a good program, we'll make it better, if
5 we're going to be successful in improving that program, how do you track its
6 success? And I frame it in this way. If you have a program which people can
7 bring issues and you talk about them and they don't necessarily engender
8 themselves into a DPO, you resolve it early on, you don't have an output of
9 more DPOs coming on board because you resolve them.

10 At the same time, if there's a continued fear about retaliation,
11 that's going to get itself into the DPO process because those people aren't
12 going to want to bring it forward because they're afraid it's going to hurt their
13 careers.

14 So how do we -- so my two-part question is did you find much
15 retaliation? Did you find much of a concern about retaliation out there and
16 number two, how are we going to track improvements in this program, given
17 the way we jiggered it and continue fear of retaliation?

18 MR. FITZGERALD: Well, with regard to the first part, we did
19 find some concern about retaliation. Now that was also found and evidenced
20 in the OIG audit report, but in our interviews, among some individuals that they
21 expressed a concern about it. It is a persistent concern.

22 We did not find any evidence of retaliation, but as a
23 perception, it's out there.

24 Our approach was -- you probably and I think we stated in our
25 report, you're probably not going to be able to eliminate it, but what you can do

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1 if work on it and try to through education, training, use of the awards, beefing
2 up the treatment of it in the Management Directive, assault and try to diminish
3 that perception so that you don't have a chilled flow of information.

4 How you measure it, I don't know. I'll share that with the
5 Panel.

6 MR. MALLETT: I would add that there are ways of doing this
7 and one of the ways I personally learned from being on this panel that when
8 you have DPVs that are filed you not only up front have to tell the managers to
9 not be afraid and to not have a perception and not deal with the person that it
10 is retaliation, it's a good thing. So you have to announce it up front. You have
11 to present it as being a positive thing. You have to talk to the submitter up
12 front.

13 And what I believe you have to do is -- and I got this from the
14 Panel is to follow that after the DPV has been filed, after the resolution is made,
15 after the person has been thanked for filing a DPV, go back to the submitter
16 and say what was your conclusion? That's the way you measure it. It's not
17 something you can do four years later. I believe it's something you have to do
18 at the time each one is filed. And we didn't come up with that recommendation
19 as a Panel, but we did talk about that you have to announce it, have a positive
20 spin on it and follow through with it.

21 COMMISSIONER MERRIFIELD: All right, let me comment
22 on the last question and then I'll pass. One of the axioms around here is that
23 unless you have some links, you're not going to get the outcomes and by that
24 you made some recommendations about timeliness and rejiggering that and
25 having expressed goals and all of that, all of which I think is all well and good

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1 and I agree with, but did you assess or consider any recommendations that
2 would tie timeliness to the performance evaluations of managers such that
3 people would be held accountable in their performance evaluations for dealing
4 with this and not letting it float to the bottom of their in box?

5 MR. CRAIG: In fact, we did. And that is the basis for
6 including them in operating plants. They get reviewed quarterly, up to the
7 Office Director. So that would provide, use as an existing mechanism to track
8 and see where things were. One of the things that we saw --

9 COMMISSIONER MERRIFIELD: I mean individual
10 performance evaluations so that managers, when they're having their yearly
11 review and we work with HR to make sure that those are scrubbed
12 appropriately, is there a portion of that that would track back to their timeliness
13 in dealing with this?

14 MR. CRAIG: We didn't consider, I don't think, revising the,
15 if you will, boilerplate, SES contracts or elements and standards that are there.
16 Rather, we thought that when you put it in the operating plan it would be tied
17 to a particular division and branch. There's accountability through the operating
18 plant and how well you execute that and meet milestones is typically input into
19 performance appraisals for the staff.

20 I'd like to go back to an earlier question that you asked about,
21 what the staff did as a result of the IG audit. There are four recommendations
22 in the OIG's audit. When we implemented the tracking system, the monthly
23 system that the Commission sees --

24 COMMISSIONER McGAFFIGAN: I was going to mention
25 that.

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1 MR. CRAIG: That addresses by a quick review three of the
2 four, in part or in whole, of the recommendations. The very fact that the Offices
3 and Regions have to report it to OEDO monthly and it goes to the Commission
4 means everybody in the chain is paying much more attention to it now than
5 they were before we started the monthly reporting and you've seen that as the
6 monthly reports have -- initially they weren't as comprehensive and now they're
7 better in quality and completeness.

8 COMMISSIONER MERRIFIELD: Well, John, as a good
9 manager, you recognize the importance of pointing out the wise decisions of
10 the Commission. So I can --

11 (Laughter.)

12 MR. CRAIG: The other thought about how do you know it's
13 effective, we conduct culture surveys from time to time and that's an area that
14 will show up in those, both the earlier one, the one that's recently been
15 completely and I would expect it to show up in future surveys also.

16 MR. MALLETT: And I would add to that, that was the reason
17 why we had the recommendation of the Agency level Program Manager. If you
18 look at the allegation process, there were some similarities in the past and
19 that's now an annual review of each office and that gets attention to see how
20 well the process is going and we thought that was a better way to go from the
21 Panel's view.

22 MR. GREHER: In answer to your question about retaliation,
23 let me first mention what I felt was my role on this Task Force. First of all, I'm
24 the only non-manager on the Task Force, the other four are all managers and
25 I'm the NTEU representative.

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1 Secondly, I'm the only person on the Task Force who has
2 never served as a member of an ad hoc panel review, let alone a management
3 decider. And thirdly, I'm the only person on the Task Force who has actually
4 filed successfully filed, and been happy with the -- mostly happy with the result,
5 a DPV, which I did about four years ago.

6 So I entered this arena with a very -- I felt was a very different
7 view. But in the course of our discussions, I must say that I cannot more highly
8 recommend the people I worked with. That includes the other four members
9 of the committee, our several consultant assistants and every single person
10 from staff through the EDO that we talked with, interviewed, during this process
11 and the process we used to go through this thoroughly, it was a joy to me to be
12 involved in this Task Force.

13 But I did have two issues that I came with and I leave with
14 and those are the issues of recognition and retribution. What I discovered
15 during the Task Force's work is that everybody was suitably sensitive to those
16 issues, just like I was. And that there was no easy answers. But these are two
17 issues that combine, they combine very carefully. They're almost integrated.
18 If you properly recognize people who submit themselves to this process, with
19 all the fears they may have and they're justified fears, I think we all have them
20 if were walking along a precipice, we'd worry about falling, even if there are 50
21 people who walked along that precipice in front of us. And those fears are
22 justified.

23 But if you counter it with a proper recognition system, proper
24 thank yous, recognition up to and including awards, but more importantly public
25 recognition, thanking people in public for the contribution they made to the

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1 Agency, I think that's the best way of handling the process. There's no other
2 way.

3 We did not come across a situation where there was obvious
4 retaliation. The problem is is that there are two problems with retaliation. One,
5 the eye of the beholder, the DPV/DPO submitter, he or she is fearful for their
6 career and always disappointed that the career didn't advance because they
7 made such -- what they considered a significant input.

8 And secondly, some times there is a subtle form of retaliation,
9 not at the manager's level, not at the Office Director's level, but possibly at the
10 immediate supervisor's level or one level above. And it's very hard to find, to
11 prove these as retaliatory actions. They're more like attitudes.

12 And sometimes retaliation comes from the peer members to
13 the DPV/DPO submitter and that's extremely difficult to identify. You're
14 suddenly persona non grata. In fact, during the process you're often persona
15 non grata and after the process is over, well, you're like the swinger at mere
16 windmills, whether you were successful or not. You're a Don Quixote figure.

17 I personally believe and I think the rest of the Panel fully
18 endorses the idea, that if we combine the proper kind of recognition, and that
19 doesn't always include a monetary award, with a very concerted look and as
20 Jim Fitzgerald mentioned or is it Bruce, I don't remember, that senior
21 management has to inform the people in the process at the very beginning and
22 at the very end of each of those DPO/DPVs. That retaliation is not acceptable
23 whether it's subtle or obvious. Then you will have as good a process as you
24 can possibly get. There's no way to scrub it clean, but there's a way of making
25 sure that everybody understands what the ground rules are and this is an

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1 Agency that believes ultimately in those fairness ground rules.

2 And we will have, we will continue to have a worry about it,
3 but we will have done as much as we possibly can to have non-Draconian
4 measures of avoiding retaliation and improving recognition.

5 CHAIRMAN MESERVE: That's a helpful comment. It does
6 seem to me to tie into part of the task this Committee that I wanted to ask
7 about. And that when you described the review that was supposed to be
8 undertaken by the Special Review Panel, one aspect of it was to look back and
9 see whether there had been appropriate recognition or to make
10 recommendations as to whether recognition that had not been provided that
11 now should be added. Have you done that and what was the outcome of that
12 effort?

13 MR. FITZGERALD: We have done that and we identified
14 seven filers that have made significant contributions that had not been, or we
15 could not determine had been adequately recognized. And so we
16 recommended that that be remedied by separate communication with the EDO.

17
18 CHAIRMAN MESERVE: So there's something outside your
19 report that has been communicated to the EDO on that specific issue?

20 MR. FITZGERALD: We're recommending two, we
21 recommended two special act monetary awards and five letters of recognition.

22 DR. TRAVERS: I would just say, Chairman, that I was frankly
23 surprised even though I'm supposedly guardian of the process that the
24 Management Directive as it's currently written requires this sort of retrospective
25 and in many as four years later retrospective on people who have used the

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1 system.

2 One of the strongest recommendations, and Elliott touched
3 on this as a fundamental element I think, it is a real time assessment in
4 recognition, public recognition of use of the system.

5 MR GREHR: It was mentioned to begin with.

6 DR. TRAVERS: And so that's what we intend to do.

7 CHAIRMAN MESERVE: Well, I wonder, you know, one of
8 your recommendations is to eliminate yourselves in the future, and yet you
9 have a series of recommendations that have come up that despite the fact that
10 your group has assembled many times before that has seen that there are
11 problems that need to be fixed, you have had an important function as you just
12 indicated in going back and finding people who needed to be recognized.

13 I wonder whether you're diminishing the value of what you
14 preformed by that. I mean, there may be some functions that you're performing
15 that someone who's intimately involved in the process in the nature of your
16 manager could not do.

17 MR. FITZGERALD: We were anticipating that the program
18 manager would undertake this type of function.

19 DR. TRAVERS: But having said that, I guess, from my seat
20 I see an advantage in at least considering the possibility of some periodic self
21 assessment that perhaps transcends even this program manager position.

22 CHAIRMAN MESERVE: That's what I'm asking.

23 DR. TRAVERS: Hopefully, that will be effective but it may be
24 worthy of reconstituting something independent of that position that does this
25 from time to time.

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1 MR. CRAIG: I'd add that the way the current Management
2 Directive is written, the Special Review Panel is conducted to look at the case
3 files and a number of the senior managers we've interviewed stated that when
4 somebody files a DPV or a DPO, by the existing Management Directive that's
5 outside of the current recognition appraisal process. So they think they've
6 been instructed not to touch it even if they've agreed somebody added
7 significant value, it may not show up in their current performance appraisal.

8 CHAIRMAN MESERVE: Well, that clearly should be fixed.

9 MR. CRAIG: And that's exactly what the panel concluded,
10 that you ought to look at it now as part of the current process in programs for
11 assessing performance and contributions to the Agency, not wait once every
12 four years.

13 MR. MALLETT: I want to underscore that the panel all felt
14 strongly that we did not want to eliminate the review process that was
15 performed by the panel, but transfer that function to this program manager.
16 And our vision was it would probably be done more often than once every four
17 to seven years.

18 CHAIRMAN MESERVE: One of your recommendations was
19 along the lines that both the DPV and the DPO process had become
20 formalized, therefore you eliminate one, eliminate the DPV process, I gather.
21 But then you go on to say that we should have a DPO process and an appeal.
22 So effectively, it sounds like you relabeled the DPV, DPO process, the two step
23 process and we created it again with different names.

24 Am I misunderstanding?

25 MR. BOGER: I think one of the attributes of the process

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1 was to make sure people had a chance to be heard. And we thought that
2 having the review panel do their work, that that would constitute the Agency
3 decision, but it would still allow someone the chance or the opportunity to raise
4 their issue to a still higher level to be heard. We didn't envision that that level
5 having to redo the efforts of the ad hoc panel, but at least let somebody feel
6 that they had to reach the highest level of the Agency with their issue.

7 CHAIRMAN MESERVE: So you see the appeal process
8 under the new system as being simplified as compared to the current DPO?

9 MR. BOGER: Yes.

10 CHAIRMAN MESERVE: Compared to the current DPO?

11 MR. BOGER: Yes sir.

12 MR. GREHER: There is no problem, we feel, in the appeal
13 process repeating the kinds of steps that are done at the DPRO process, at
14 that first and only formal process of selecting a panel and going through that.
15 We feel that should be done in very rare cases, when there is an appeal only
16 in rare cases of those appeals should it be done.

17 We feel that most of the issues can be resolved either by the
18 Commission in discussing the appeal or appointing an expert to review it
19 independently, but we didn't want to tie the EDO or the Commission up into
20 another formal process.

21 Some of these issues are of such a nature that panel has
22 taken all the appropriate expertise in the Agency to review this. I mean, they
23 have to be not in conflict. There has a problem -- there are so few people in a
24 certain issue area and they can't be the managers of the person submitting the
25 thing, because there's a conflict because they're already involved in the

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1 decision that occurred earlier or the informal process that it occurred earlier.

2 To have it done twice begs some real questions about that
3 kind of issue let alone any other kinds of issues. We felt that in most cases this
4 could be handled in a different way and a simpler way at the appeal level,
5 rather than going through a formal review. And we're hoping that the mistake
6 is not repeated. The current process says the DPV is "informal" and the DPO
7 is formal. That's the appeal level, the EDO.

8 And what happened is that -- one of things that happened to
9 insure that the informal process was properly considering all of the information
10 and doing a proper job, they took that formal process that was at the next level
11 up and imposed it upon themselves. We're hoping that the Commission and
12 the EDO don't feel that they have to do that in reverse, that they'll understand
13 they have a lot of flexibility. There will be rare instances where yes, they'll want
14 a panel and they'll have to handle that. But we think they should be very rare,
15 if perhaps even nonexistent.

16 COMMISSIONER DIAZ: I'm not clear on one issue. You are
17 not finding any significant value in keeping the present DPV process separate,
18 and you're advocating combining them and calling them only DPOs?

19 MR. FITZGERALD: Calling them just DPO but keeping the
20 process at the Office Director or Regional Administrator level, so it's really at
21 the old -- it's now called a DPO or would be called a DPO, but it is at the DPV
22 stage. And we did contemplate and talked about just leaving it at that and not
23 having any kind of an appeal, but we thought upon further consideration that
24 allowing one last kind of simple approach to a higher level was reasonable.

25 MR. CRAIG: I'd add if I could when we looked at the current

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1 process, where some managers were taking a discussion with an employee
2 and turning that into a formal DPV and because it is resource and time
3 intensive and you've heard that the filer doesn't have much interaction among
4 other things, we wanted to stress that where we needed to focus was on the
5 exchange of ideas and views associated with issues and really focus on the
6 intent to make sure that the staff feels free and recognizes that they're
7 encouraged to bring these issues up within a normal course of doing business
8 to really put these things on the table, as opposed to frequently the decision,
9 can I really put this on the table or do I want to go down this defined sort of
10 almost legal process that they would enter into, this legal administrative
11 process. And to shift the focus from where it is to in this discussion of views,
12 and in the cases of where that didn't get views addressed in the way that the
13 individual might desire, then it's a conscious decision to enter this formal
14 document process. And we didn't see that going through it twice added a great
15 deal of value.

16 In fact, my view was that it further reinforced a sense of
17 frustration and a lack of interaction because once you enter into each step of
18 the current process, the staff and managers associated with the issue won't talk
19 to the filer, you know you have to interact with the panel, the panel has to meet,
20 they have to prepare their report and schedule. And so it prevents people from
21 actually talking and exchanging the ideas.

22 I think you look at where we're going, one formal process well
23 defined with clear expectations for schedules rather than doing it twice is much
24 more efficient and effective and will improve the staff's perception of the
25 seriousness of the process.

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1 CHAIRMAN MESERVE: Commissioner Dicus.

2 COMMISSIONER DICUS: I share the concern that has been
3 raised about the independence of the Program Manager. I think probably it's
4 a process, it's worthwhile to do this, but I think it should be monitored closely
5 and be sure we don't create another problem down the road. So I would want
6 to express my concern about that.

7 Also, I appreciate your explanation on it's not so much that
8 a step is being taken out is that you've taken good points in both processes and
9 more or less put them together. It seems like it might work.

10 The only final that I want to say, bring up, I want to go back
11 to this retaliation perception.

12 I appreciate the explanation that was that made. I feel a little bit better than I
13 was feeling before it was made because if I'm interpreting the IG's report
14 finding correctly, I view it as the IG did find that a statement here at over 50
15 percent of people interviewed stated that some form of retaliation occurs after
16 filing a DPV or a DPO.

17 So their finding was that it occurred. I felt that you were
18 saying there's a feeling that it occurs, but not that you'd necessarily find
19 retaliation. Although retaliation can be, as you mentioned, difficult to really
20 evaluate, but I think that it's recognized, that we're dealing with the issue, we
21 have some ways perhaps to go forward to be sure that this is not the case and
22 that because of the value that we have with individuals filing and having their
23 views known has added value to some of our decision. So I just want to
24 reiterate my concern on this and something else to be followed. Thank you.

25 CHAIRMAN MESERVE: Commissioner Diaz.

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1 COMMISSIONER DIAZ: Thank you, Mr. Chairman. There
2 are a couple of comments. I think the importance of this program is centered
3 on the fact that we demand a lot of things from our licensees and we should
4 only demand virtues that were practiced. And in this case it's one virtue we
5 should practice.

6 I understand the need for an effective process, because
7 everything we do in here have checks and balances and proper use of an
8 effective process is indispensable to this position, these issues in a proper
9 manner.

10 Of course, I totally agree that retaliation is not an
11 unacceptable part of this process.

12 I see in the number now going to some of the specifics, this
13 number is about seven per year, something like 6.8, 6.9, per year the last few
14 years. Again, that is not a large number. The fact that we're paying so much
15 attention to them means that they're complicated, that they require a significant
16 amount of resources, that they get entangled because seven issues and the
17 number of issues that we disposition in any year is not a large number of
18 issues.

19 So apparently, I think this is something I've gathered from
20 many of the ones I have seen is that each one of these things gets to be
21 complicated. I mean, seven issues, it's not much, but they are significantly
22 complex.

23 Therefore, I think what I'm hearing from the panel is that
24 simplicity is very desirable, that we need to simplify this process to be able to
25 make it effective. And I agree completely on that.

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1 Having this issue of, you know, about an average of seven
2 and your recommending an Agency level DPO manager, is that -- you make
3 any narrowing down of what level? Is this part-time, full-time? What kind of --
4 knowing the complexity and how much time, I have no idea how much we can
5 see them. Either we can see them as a full-time person dedicated to --

6 MR. FITZGERALD: We see it as part-time.

7 MR. CRAIG: I think also it's important to note that the
8 program manager wouldn't necessarily be dealing with, although they would be
9 involved enough to understand all of the issues, you would still have the panel
10 created and they'd have to deal with the technical intricacies of a lot of the
11 issues. But the program manager would be an ombudsman for the staff, for
12 the process, and make sure it's working, keep track on --

13 MR. BOGER: He would, in fact, be a resource, so that if an
14 individual is considering filing to interact with the DPO Program Manager rather
15 than his supervisor, he felt that he reached the end of that, and maybe get
16 information on past filings, other information on how to file, just to be there for
17 him.

18 MR. GREHER: The other thing is the number you
19 mentioned, seven. Whether that's going to continue or not, if we had a really
20 open process and retaliation concerns were reduced, maybe we'd have more
21 is one proposition. A double, well no, even tripled. You're right, it's still a small
22 number. But it does take a lot of resources, because you have formal people
23 involved in panels and then you would have a formal letter from the
24 management, from management you'd have a formal recognition step which
25 you do not have now, and things like that.

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1 It's not an easy process, but the more important thing to
2 recognize that even today and more so we hope in the future, that the number
3 of actual or possible DPOs is an order of magnitude, perhaps even as much as
4 a hundred. Retaliation takes care of another faction of these. Seven is the
5 stuff that floats to the top. And of those seven, maybe two end up at the
6 appeals stage.

7 Well, the DPO project manager is concerned about the
8 informal process, too. The question that he or she must ask of the DPO filer,
9 or the potential DPO filers, have you exhausted the possibilities for informal
10 discussion? And he asked that not only of the filer but of the filer's
11 management. The objective here is to try to solve these things in a manner
12 that does not involve entering this formal process.

13 COMMISSIONER DIAZ: Absolutely.

14 MR. GREHER: And if we get the atmosphere a little better,
15 we may actually have more of these informal issues than we currently have.
16 It's all dependent upon who sees the problem, you know. What is the problem
17 and who sees it? How willing are they to talk about it and how willing are the
18 hearers willing to listen about it?

19 COMMISSIONER DIAZ: No doubt that we can resolve the
20 majority of them before they get the written phase that we well serve.

21 COMMISSIONER MERRIFIELD: Yes, this interchange in
22 some ways answered a question I asked earlier and that is how do you
23 evaluate the success? I think you get into little bit of a dangerous territory if
24 you evaluate the number of DPOs that you've filed. Really the success of the
25 system seems to me is the number of these that are dealt with in an informal

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1 sense. If you have, in fact, more people coming out and feeling more
2 comfortable about it, if those views can be incorporated into the underlying
3 decision made without having to file through a formal DPO, that's where our
4 success is.

5 COMMISSIONER DIAZ: Yes, because the fact is once you
6 get to the formal filing is when it really gets complicated. You know, before that
7 you have this communication I think is more open and it's probably more
8 flexible and allows you to do things better, so that's --

9 MR. GREHER: I mean, there's an argument that could be
10 made that the managers are doing an inadequate job if it ever gets to a formal
11 filing, that the managers didn't listen. Not that the filer was wrong or right,
12 although that could be a case if the filer is wrong to begin with, but the
13 managers didn't listen, didn't respond.

14 And if you argue that way, well, what do you get out of that?
15 You say you that you get these seven a year the first thing you do is slap the
16 manager whose employee brought it forward because you didn't listen to this
17 guy or gal.

18 None of these scenarios work well. The best thing to have
19 is to have a system where people know this is available for them to use, to
20 focus on doing it informally as opposed to formally, to make sure that at the
21 end of the process there is no retaliation.

22 MR. MALLETT: I didn't want to comment on that one, but I
23 wanted to make a comment about measuring success. One thing we forgot to
24 mention was one of the previous panel's recommendations was to have ad hoc
25 review panels instead of standing review panels. And I think in most cases we

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1 found that that was working. The perception of the people on the panel, the
2 submitters, that that was the right thing to do. So that's one measure of
3 success.

4 COMMISSIONER DIAZ: On Slide 17, there's a
5 recommendation to require the DPO filer to discuss the difference with his or
6 her manager before submitting a DPO.

7 Do you see a disadvantage in establishing this as a
8 precondition to filing on the same vein as trying to resolve it? Should this be
9 considered? It could be that some people might see that not being fair
10 because my management can change the decision.

11 Is this an issue you have considered or established as a
12 precondition? What are the pros or cons of that?

13 MR. BOGER: Well, I can start. I have a view on that.
14 Some of the interviews reveal that some of the individuals felt like they were
15 part of a team decision and part of a meeting that was held, and then the
16 results of that meeting turned out different than the individual may have
17 thought.

18 We wanted to make sure that the individual would go back
19 to the decision maker of that meeting and make sure that there was an
20 understanding as how the decision was reached and how that individual's
21 recommendations might have been considered. As so that was part of this was
22 to make sure that people closed the loop back with supervisor or decision
23 maker just to make sure they understood.

24 MR. CRAIG: I'll note that we envisioned that the DPO
25 Program Manager would have a discussion with the filer to make sure that the

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1 issues were focused. And as you've heard earlier some people filed different
2 professional views or opinions and they're not clear enough to know exactly
3 what some of the technical issues are. And you all know of cases were some
4 of them lasted for years, and that was one of the key contributors.

5 The other part is to ensure that we continue to reinforce the
6 expectation, this open, candid discussion of issues as part of the normal way
7 of doing business.

8 One of the other agencies that we've talked too, and it could
9 have been FAA, but I'm not sure, we asked them if they thought they ought to
10 have a program. We described ours and they said no, we don't need one. We
11 expect our staff and managers to have an open, candid discussion of views
12 and they know that. And for us to establish a program might be a signal that
13 we expect it a little bit less or that they could get away with a little bit less, and
14 we don't want to go there. And it was kind of an interesting perspective on
15 where they thought they were.

16 MR. BOGER: I might follow on mine. The second point that
17 I wanted to make was that if you captured it early, an individual might have
18 other avenues of relief such as appending an opinion to a Commission paper
19 or paper to the EDO so that the views get sent forward rather than entering into
20 a formal process.

21 DR. TRAVERS: I guess I read this. You guys can clarify for
22 me. I read this as an obligation. All of the parties in this process have an
23 obligation. I saw this, in part at least, as an obligation on the part of a person
24 who has an issue to before entering the formal process to ensure that there is
25 this sort of informal discussion, at least attempted if it's not viewed as realizing

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1 the outcome that they want, they still have the backstop of the formal process.

2

3 I saw this, in part, as a forcing function for not simply giving
4 people the expectation they can throw issues over the fence without entering
5 this sort of informal dialogue that we hope would be the start and end of
6 resolution.

7 COMMISSIONER DIAZ: Right. But it could be said formally
8 as a precondition just in case somebody doesn't want to do that. And that's the
9 question whether we set an advantage or a disadvantage to establish it
10 formally as a precondition.

11 MR. FITZGERALD: We wanted the program manager to go
12 over, you know, this would be one of the points that he would go over with the
13 filer, but we also recognize there are aspects of the current process that we're
14 not addressing. And because we're not addressing, we would assume that
15 they would continue on.

16 One feature that came in from a prior special review panel
17 was the ability to file confidentially. There is a procedure, a process for
18 enlisting a supervisor as your front person for a DPO. And we would expect
19 that that would continue to be a feature. I didn't see it used, but it's there and
20 in an appropriate case it could be utilized. There would be an example where
21 you probably would not have or you'd have to do a little modification with regard
22 to having this informal discussion prior to the formal process.

23 MR. GREHER: You also have to note the word discussion
24 and informal discussion means at least two people talking to each other. You
25 can, and this talks about what the father is doing. He or she is only one person

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1 of those presumably minimum of two. You've got to have the other side willing
2 to discuss also and sometimes that doesn't happen.

3 Although it says require up on top, there may be rare
4 instances where such an informal discussion is fruitless or is useless. It should
5 be attempted.

6 The objection here is not to enter this process unless it's
7 apparent that you can't resolve the issue any other way to the satisfaction of
8 the person who is raising the issue. We don't want the managers to stuff the
9 process down the initiator's throat and we've seen too many of those instances
10 where a person came forward with an issue and the first thing that he or she
11 knows is it's labeled a DPV.

12 We even saw a situation where a non-NRC employee came
13 forward with an issue and it was labeled a DPV and that never should have
14 occurred. But you know before you know it, it's become a DPV and you the
15 "filer" is on the line and you never even touched pen to paper. You know, you
16 never signed anything that said this is an issue. Your manager did it. Well,
17 that's not a discussion either.

18 MR. CRAIG: If I could add, one of the benefits of having a
19 DPO program manager, would that part of their duties would be to have a
20 specific discussion with a filer and/or management to make sure this has taken
21 place.

22 COMMISSIONER DIAZ: And finally I've noticed that you are
23 going to increase probably the education and training on this issue, I think is
24 important. On that end, and being that this is such an integral part of how our
25 staff works in the Agency are the recommendations of the panel somehow

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1 going to be subject to comment by the staff before they are finally implemented
2 as any way of communicating or can see whether an additional comment staff
3 is needed, or you guys have done enough that it's not needed?

4 MR. CRAIG: I think that -- let me start, as we would prepare
5 the draft management directive if it would flesh out the details that would go out
6 for review and comment across the agency and by having Elliott and NTEU
7 involved, there's a little flavor of that, but I think the panel members thought
8 that going through the Management Directive process there would be
9 opportunity for an exchange of comments of where we're going.

10 But to be real specific, we didn't envision issuing this report
11 to get comments on these specific recommendations.

12 COMMISSIONER DIAZ: Okay, thank you. Mr. Chairman.

13 CHAIRMAN MESERVE: Commissioner McGaffigan.

14 COMMISSIONER MCGAFFIGAN: Thank you, Mr. Chairman.
15 I'm going to start with just saying how much I value the process. I've tried to
16 do that a couple times at all hands meetings. Going back, I know I did it in
17 1999. I'm pretty sure I did it in 2000. I wasn't able to be at this year's meeting
18 because of a doctor's appointment that I had to keep, but I really think these
19 things that the DPVs and DPOs have made a substantial contribution to the
20 Commission's work over the six years that I've been here and I could rattle off
21 a whole bunch of them.

22 I've disagreed with some. Recently, we had an vote in the
23 Commission on 11(e)(2) byproduct material, but there was DPV attached to
24 that. It was sincerely felt. We all, I think, felt that the person had done a very
25 good job. One of us agreed and three of us didn't. And that's the way the

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1 process works. There are other cases where they had, I think, there was an
2 unanimous vote of the Commission early on, and I'm not even sure whether
3 this was a DPV. It was a refusal to sign an inspection report in Region IV with
4 regard to an Envirocare matter that led to us finally resolving something and
5 that person I think later worked for one of the Commissioners as a TA to show
6 that the Commission valued that person.

7 So I just want to take this opportunity to say I really do think
8 this is a very, very valuable process.

9 With regard to the question of Commissioner Merrifield asked
10 and John Craig answered earlier, I really do think that the institution of the
11 monthly report has brought focus to the DPV and DPO process. We have
12 looked at in detail some of the filings in the panel reports. I think there's some
13 very high quality work that's being done and you know I commend -- Chris
14 Grimes led a panel report on large transient testing that I thought the DPV or
15 the panel did an excellent job and simultaneously ACRS was having this
16 debate.

17 There's a current DPV and DPO with regard to the
18 significance of the determination process underway and you know I
19 independently had some of the same concerns not knowing until later that the
20 concern had been raised. I think there's been very high quality in the --
21 increasing quality in my perspective of how some of these things have been
22 resolved.

23 Increasing management attention, I sort of regarded Carl
24 Papparello, I don't know whether he's responsible for the monthly report or
25 maybe John is now, but as a sort of focal point the last couple of years, he and

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1 I've had several discussions about DPVs and DPOs in our periodics. So I just
2 want to put that on the record.

3 I have a couple of questions. I mean, did you all -- I think, I
4 know with this last awards ceremony this year a person from research who filed
5 a DPV a couple years ago that resulted in the Commission overturning a staff
6 proposal from NRR with regard to ASME codes, he was getting a meritorious
7 lifetime service award.

8 So I know that there's that sort of recognition that occurs, but
9 have we looked at the two new classes of SESers that we've had? The one
10 that everybody just about been placed in the class that's just been chosen to
11 be candidates for the SES. Is there anybody in that group or any current
12 manager who has filed a DPV or a DPO during their career? That would be
13 sort of a testimony that we don't hold it against people if -- and I don't want
14 names obviously, because there's some privacy in this, but do we know
15 DPVers and DPOers who have risen to Senior Management?

16 MR. GREHER: I have heard that one of the -- there's one
17 person in one of those classes who was a DPVer. I've heard it. I personally
18 did not review that file. You know, we looked at the files for over seven years
19 of cases. I didn't review that file. His name is not recognizable to me. But
20 there is one.

21 There is a filer who I did interview who took, who says he
22 used to be a manager and as time went on he chose to go back into the staff
23 as a senior person and who loves to file DPVs because he finds, I mean he
24 enjoys it. It gives him pleasure in his work because he finds that it's so fulfilling.
25 He only does that, of course, if he doesn't get a formal grievant about it, but

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1 he's done it twice and he was thinking of doing it a third time. And he was so
2 happy to do it. He was not fearful of retaliation.

3 COMMISSIONER McGAFFIGAN: I may know the person,
4 but I won't go into -- I actually like that person.

5 MR. GREHER: I can't tell you his name because I don't
6 remember it.

7 COMMISSIONER McGAFFIGAN: Let me ask a couple -- I
8 think you might want to just for the record tell us whether there's SESers who
9 have filed DPVs and DPOs just either recently or historically. Because I think
10 that's a potential metric.

11 One of the things that I'm concerned about in this informal
12 process and it's a potential task for this program manager, is to keep us
13 informed of these informal debates. I'll go back and say something that I've
14 said years ago when we did the integrated review of the assessment process
15 that came to us.

16 There had been a roaring debate in the staff. This was the
17 precursor to the current revised oversight process. And then the Commission
18 had a roaring debate and basically rejected the IRAP as proposed and sent it
19 back to the drawing board and we ended up inventing the revised oversight
20 process.

21 But I had various, as the Commission debated, and I think
22 this is probably Joe Callon was still with us. It was 1998 or early 1999 or
23 something. The IRAP report, I had various program managers accusing other
24 program managers of lobbying the Commission on their behalf as the
25 Commission sort of independently reinvented the debate that had occurred at

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1 the staff level.

2 And one of my great frustrations is to know what the debate
3 was because oftentimes we get these single point solutions. So if we're going
4 to try to push things into informal space, there's a question about how the
5 Commission is kept informed about these informal debates, to know that there
6 really was a pretty good debate and maybe the right answer hasn't come to us
7 from the staff.

8 MR. GREHER: The suggestion to attach a contrary opinion
9 to a paper coming up to the Commission --

10 COMMISSIONER McGAFFIGAN: That takes some bravery,
11 too.

12 MR. GREHER: Is part of the informal discussion stage. If
13 informally you can agree to that that resolves DPV or DPO before it ever
14 becomes a formal issue. And we feel that --

15 COMMISSIONER McGAFFIGAN: I'm all for that.

16 MR. GREHER: That has happened particularly in recent
17 years.

18 COMMISSIONER McGAFFIGAN: I'm all for that, but in some
19 sense that's a braver step on a staffer's part to insist on his view being
20 expressed to the Commission than it is to file a DPV where they can stay
21 relatively anonymous and outside of the eyes.

22 If staff feel free to demand that their opposing views be
23 placed on memos coming to the Commission, if they don't agree with the
24 proposal, then that would solve my problem.

25 MR. GREHER: My impression was that the management in

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1 the Agency is pushing that, not the staffer. The management of this Agency --
2 that's my impression. The managers are, when it's appropriate, when it's an
3 issue that's coming before the Commission anyway, that if there is a differing
4 opinion it's put into the paper that comes before the Commission. That was my
5 impression. I looked to the other members of the panel. If I'm wrong, let them
6 correct me.

7 MR. BOGER: I think we had a sensitivity of the timing. If the
8 Commission was going to be asked to render a decision on something and we
9 knew there was an issue that the staff had, we'd want that to be before the
10 Commission as well. So it's really a timing issue.

11 DR. TRAVERS: That's right. And last I checked, you all have
12 open door policies.

13 COMMISSIONER McGAFFIGAN: We do have open door
14 policies. I'm glad you --

15 DR. TRAVERS: So we encourage that policy to be utilized
16 to the extent --

17 COMMISSIONER McGAFFIGAN: One way to perhaps make
18 sure we stay abreast of this informal process, if it becomes a dominant
19 process, would be for the program manager theoretically to work for the
20 Commission as opposed to the EDO, and that way, and the program manager
21 could write us monthly reports that wouldn't be public as to what issues had
22 been resolved informally or whatever.

23 COMMISSIONER MERRIFIELD: Well, I want to get in on
24 that score. The only issue there is do we put the managers in a process of
25 trying to, you know, tracking and checking more boxes. I mean the FAA takes

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1 an approach where they say we have an expectation of our staff they're going
2 to have these discussions. And I would argue that in the end what we may
3 need to really validate that this is working properly may be to look
4 retrospectively three or four years down the road and do an overall, in part of
5 our overall surveys, whether it it's the IG or our own, how the staff feels.

6 This may be something we have to ask because you really
7 want to have staff in a position where they're going to start tracking this stuff,
8 and having a chart about people bringing up their opinions. We really want
9 people to bring their opinions up and afford it to be seamless. The best part of
10 this, in the end, it seems to me, is if we have an atmosphere which individuals
11 can bring their views forward without getting hashed out and incorporated in the
12 papers that come up to us, and we don't have a single DPO issued, seems to
13 me that's a successful metric of --

14 COMMISSIONER McGAFFIGAN: That might be a successful
15 metric. I don't think it's the real world, given the history of this Agency. I do
16 think, I mean I've talked to some of the DPVers. I think there is sometimes, it
17 isn't retaliation, there's just a really strong pushback at times from that gosh,
18 you're wrong. And you're fighting often times the whole darn bureaucracy that
19 has a very strong view to the contrary. Now that puts it up the ad hoc panel.

20 Ad hoc panel sometimes can disappoint management too,
21 and say, by God, as best we can tell this DPVer is saying exactly the right
22 thing. There is a lot of pushback.

23 MR. GREHER: But Commissioner, we've noticed that a
24 majority of DPVs and DPOs are decided in favor of the submitter. If you want
25 rise a metric, if you can come down and say if you can judge that, if you can

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1 judge it -- sometimes you can't, but the majority appear to be decided in favor
2 of the submitter as opposed to being in favor of -- whatever the other side is.

3

4 That proves also that the DPO process is an effective
5 process, that there are sometimes problems that cannot be resolved informally
6 but can be resolved by this formal ad hoc review panel management decision
7 process or by an appeal to the next level up whether it's a formal process there
8 or an informal process there.

9 If that's the case, then you say well, gee this is a good way
10 of handling it. The vast majority are handled informally, and the few that
11 cannot be handled properly informally seem to be handled in favor of the
12 submitter.

13 COMMISSIONER McGAFFIGAN: I agree that a fair number
14 are handled in favor of the submitter and I think the Commission a couple of
15 times has gone and trumped the process and gone in favor of the submitter as
16 well even after it hadn't necessarily turned out that way. I see that. I value the
17 process as it is today and I value the people who exercise it because they
18 oftentimes have made a very large change in Commission policy and I want to,
19 as I say, my issue -- I've said this publicly too before -- at times you almost feel
20 like you have to extract information that you should be getting.

21 I think that goes up and down and the management hates me
22 when I say that, but you know, I've often joked that the CIA training school
23 down in Williamsburg is a place where you have to think about sending your
24 TAs to make sure that they have the latest information gathering technique.

25 That isn't always the case. It goes in waves but there are

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1 times where you do feel you are extracting information on a variety of issues.
2 I'll leave it at that.

3 CHAIRMAN MESERVE: Thank you very much.

4 MR. FITZGERALD: Mr. Chairman, before you close, I'd like
5 to recognize publicly to you two individuals that helped the panel tremendously
6 in the course of the year that we've been working with this.

7 CHAIRMAN MESERVE: Please do that.

8 MR. FITZGERALD: And that's Pam Eason of the HR Human
9 Resources and Will Hutchinson of OI.

10 CHAIRMAN MESERVE: Very good. Again, I would like to
11 thank the special review group for their effort. This is a very important process
12 and we've had a very interesting discussion this morning. So thank you very
13 much. With that we are adjourned.

14 (Whereupon, at 10:59 a.m., the meeting was concluded.)

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