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UNITED STATES NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

LSSARP MEETING

Department of Energy
101 Convention Center Dr.
Las Vegas, Nevada

Thursday, April 14, 1994

The above-entitled meeting convened, pursuant to
notice, at 9:10 a.m.

BEFORE:

JOHN HOYLE,
NRC PANEL CHAIRMAN

1 APPEARANCES:

2 KIRK BALCOM, Nevada
3 MALACHY MURPHY, Nye County
4 BRAD METTAM, Inyo County
5 PETE CUMMINGS, City of Las Vegas
6 ROBERT HOLDEN, NCAI
7 DENNIS BECHTEL, Clark County
8 JAY SILBERG, Nuclear Energy Institute
9 CORINNE MACALUSO, DOE
10 DAN GRASER, DOE
11 JOHN HOYLE, NRC
12 ARNOLD MOE LEVIN, NRC
13 CHIP CAMERON, NRC
14 TERRY QUIGLEY, NCAI
15 HARRY SWAINSTON, Nevada
16 MARYANN JONES, DOE
17 DAVID DRAPKIN, NRC
18 TONY NEVILLE, Labat-Anderson
19 MIKE BAUGHMAN
20 VIRGIL ROCHESTER

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1 PROCEEDINGS

2 [9:10 a.m.]

3 MR. HOYLE: Members of the panel, members of the
4 public, I believe there's going to be a sign-in sheet that
5 will be circulated very soon, so please sign up.

6 I welcome the opportunity to meet again with the
7 LSS Advisory Review Panel. Our meeting is being conducted
8 in accord with Federal Advisory Committee Act rules, since
9 it is a federal advisory committee chartered to provide
10 advice and recommendations to the Nuclear Regulatory
11 Commission and the Department of Energy on matters
12 concerning the licensing support system.

13 At this time I think I would like to go around the
14 table and have the members of the panel introduce
15 themselves. As I said, my name is John Hoyle. I'm from the
16 Nuclear Regulatory Commission, and if I could start over
17 here on my left with Kirk:

18 MR. BALCOM: Kirk Balcom, I represent the state of
19 Nevada.

20 MR. MURPHY: Mal Murphy from Nye County.

21 MR. METTAM: Brad Mettam, Inyo County.

22 MR. CUMMINGS: Pete Cummings for the city of Las
23 Vegas.

24 MR. QUIGLEY: Terry Quigley. I'm with the Oneida
25 Tribe of Indians in Wisconsin.

1 MR. HOLDEN: And he's also with NCAI, National
2 Congress American Indians.

3 I'm Robert Holden, the Nuclear Waste Program
4 Director with NCAI.

5 MR. BECHTEL: Dennis Bechtel, Clark County,
6 Nevada.

7 MR. SILBERG: Jay Silberg from Shaw, Pittman,
8 Potts & Trowbridge representing the Nuclear Energy
9 Institute, which is the successor to the Edison Electric
10 Institute, EEIUA's program as well as Newmark & Anech. And
11 U.S. Council on Energy Awareness as well.

12 MS. MACALUSO: Corinne Macaluso, U.S. Department
13 of Energy.

14 MR. GRASER: Dan Graser, U.S. Department of
15 Energy.

16 MR. LEVIN: Arnold Levin. I go by the nickname
17 Moe. I'm with NRC, and I'm the LSSA.

18 MR. CAMERON: Chip Cameron. I'm with the office
19 of general counsel at the regulatory commission.

20 MR. HOYLE: Thank you very much. I do want to
21 remind everyone, particularly those that have microphones in
22 front of them, that that mike leads the feed into the tape
23 recorder for the court reporter today. The only mike that's
24 going into the P.A. system is this one up here. So we'll
25 try to have presentations made from up here, but when you do

1 comment and we have discussion later from the floor, if you
2 would speak up so that those in the back can hear, I'd
3 appreciate it.

4 Today's meeting is actually a follow-up of the
5 panel's last meeting, which was held in October here in Las
6 Vegas. At that meeting we had quite a bit on our plate,
7 since we hadn't met for over a year at that time, but we did
8 have an opportunity to obtain initial reactions and
9 expressions of concern on an approach that NRC had put forth
10 which would make DOE responsible for developing and also
11 operating the LSS using Infostream's designs and technology.
12 That preliminary discussion resulted in a February 18, 1994,
13 letter to the NRC chairmen and commissioners from the panel.
14 I had the able drafting assistance of Mr. Murphy on that
15 letter. I greatly appreciate that now.

16 That letter expressed the panel's reactions and
17 concerns and concluded that an additional meeting was going
18 to be necessary, one at which the panel would attempt to
19 reach a fuller understanding of the NRC role in maintaining
20 supervision and control of the LSS under this proposed
21 rearrangement.

22 To prepare for this meeting, the NRC team went
23 back and reviewed the October discussions which were very,
24 very useful. We then put together an information report to
25 the commission. In this report we tried to clarify and

1 expand on the mechanisms to be used by the NRC to maintain
2 control. The panel members received a copy of this from me.
3 It was designated SECY-94-081. I have a few extra copies of
4 that up here for those that would need it.

5 The LSS administrator and his team will brief us
6 on these mechanisms this morning. I have left the afternoon
7 open for panel discussion. I'm hopeful that the NRC
8 participants will be able to address fully the concerns of
9 the panel members and try to satisfy them to the extent
10 possible, knowing that some may have continuing concerns as
11 the LSS development moves forward. I welcome and encourage
12 discussion of any new creative options today.

13 By the end of the day, however, I would like to
14 see us, as a panel, come to closure on a recommendation to
15 the commission on this topic. If it is a consensus
16 recommendation, that's fine, if it isn't, that's fine too.
17 In any event, I would like enough guidance to put together a
18 letter to the commission so the commission will have the
19 panel's views as it deliberates its final decision.

20 Before I ask Mr. Levin to begin, do any members
21 wish to make any opening comments at this time?

22 Let me review the agenda also, Moe, before I get
23 started. We got a late start, so it's already coming up on
24 9:20. Moe will have a few introductory remarks, and then I
25 think introduce his briefing team, really. So we've allowed

1 enough time for that this morning and some preliminary
2 discussion. I don't know whether that will take us all the
3 way to noon or not, we'll see, and we'll take a break maybe
4 in about a half hour. . . .
5 This afternoon, as I said, I've just left open for
6 panel discussion. We can move as fast or as slow as we feel
7 we need to. Tomorrow we'll have some more open discussion
8 in case we've thought of anything overnight that needs to be
9 brought out, and then Moe will make a presentation tomorrow
10 morning. Kirk Balcom will give us a report from the header
11 sub-group, which has done some work since our last meeting.
12 And Mal Murphy had sent us a letter regarding the use of the
13 LSS on a pilot project basis, and we'll give Mal some time
14 to talk about that and the panel enough time to talk about
15 it, as well. And we'll end up tomorrow morning talking about
16 next steps for ourselves. . . .

17 With that as background, then, let me introduce
18 Moe, as he likes to be called, Levin. Moe is the new LSS
19 administrator for NRC. I didn't bring along any curriculum
20 vitae, Moe. Maybe you'll tell us when you're up here where
21 you came from and how well you like the NRC. So why don't
22 we get started now. . . .

23 MR. LEVIN: Morning. Hello. Where I came from.
24 My background is basically in data processing information
25 systems. I graduated with a degree basically in . . .

1 information -- in business data processing, and then I
2 worked for the -- before coming into the NRC I worked for
3 about 23 years in the systems programming at the Bureau of
4 the Census. I came to NRC on October 18th of 1993. So
5 that's as much background as I care to go into. And my name
6 is Moe Levin. My middle name is not "as he likes to be
7 called." So I look forward to working with the panel in the
8 shaping of the technology that will be the LSS.

9 I think input from the panel as stakeholders in
10 the system or as representatives of the stakeholders in the
11 system is absolutely vital to the implementation of the
12 effect of LSS. As I said before, I became LSSA about one
13 week after the last panel meeting in October. Since then,
14 I've been working with our staff to consider your contents
15 on Alternative 3 as it was presented then and to strengthen
16 our position on exercise in NRC control over DOE's operation
17 of the LSS.

18 As John said, one of the main purposes of this
19 meeting is to continue the discussion on Alternative 3 and
20 report on what I believe is a program that will ensure that
21 the LSSA can certify the integrity and responsiveness of the
22 LSS as operated by DOE. I intend to approach my
23 relationship with DOE as operators of the LSS in the same
24 way I would with any organization that I contract for
25 services with. I view the DOE as a contractor to me, just

1 to operate the LSS. And to that end we've mapped out a
2 strategy that I think will currently define DOE's
3 responsibilities as operator of the LSS, provide the
4 procedures and tools that will allow the LSSA to monitor
5 DOE's performance in order to identify any operational
6 deficiencies and provide mechanisms that will allow
7 interested parties to be made aware of the status of LSS
8 operations in a timely manner and will identify problems as
9 they are uncovered, and we'll make sure that everyone knows
10 what steps are being taken to resolve them.

11 This strategy is outlined in the paper SECY-94-81,
12 and unless there are any questions, I'd like to get right
13 into a presentation by David Drapkin on the LSSA auto
14 program, which is the mechanism that will allow the LSSA to
15 monitor DOE's operation of the LSS. And if there are no
16 questions, David.

17 MR. DRAPKIN: Hi, everybody. I'm Dave Drapkin.
18 As a little extra, as a little side note, the last time that
19 we got together Gerald Cranford promised that he would not
20 be here at the next meeting. I want to point out that he
21 has kept his promise and he's not here. So it says
22 something about NRC credibility, we're rebuilding NRC
23 credibility.
24 Today -- I also should introduce Tony Neville
25 sitting down there, Labat-Anderson, Incorporated, he works

1 for and has worked with me in developing this presentation.
2 Feel free to interrupt at any time and ask questions,
3 comments, whatever.

4 Okay. Go on to the next slide. Okay. This
5 basically outlines what we're going to talk about this
6 morning. Talk about why I'm giving this presentation, how
7 the audit program fits into this compliance assessment
8 program which we talked about last time. What are the
9 goals; what are we trying to achieve with the audit program.
10 We'll give you kind of an overview of what we see the audit
11 program to be, show you the documents or discuss the
12 documents that are relevant to the audit program, many of
13 which you'll get a chance to comment on later as they get
14 closer to being completed.

15 Then we'll get into some more details about
16 auditing, what we plan to do including our methodology, some
17 activities, and finally some very, very rough ideas of what
18 the audit program is going to cost.

19 Okay. Any questions so far, what we're trying to
20 do? Okay.

21 Well, talking about the purpose of the
22 presentation, the main reason that we're here is to let you
23 know that we've really given a lot of thought to how we
24 would oversee and control and make sure that the LSS
25 operates properly in accordance with the rule, and that we

1 can make everyone feel comfortable that the LSSA is doing
2 his job.

3 Okay. Want to talk about the oversight and
4 control roles of the LSSA with respect to the DOE, design,
5 development, operation and maintenance of the LSS. Now one
6 thing I should point out is that most of this program has
7 nothing to do specifically with Alternative 3. Okay. There
8 are just a few places where we've added things. Most of the
9 program would have been in place under the old rule exactly
10 as it stood, so there's nothing -- and I'll just point out
11 where the additions have been made:

12 Okay. One addition that we've talked about is
13 including the advisory review panel, or at least some
14 members, in the audit process, and I'll show you as we go
15 along how that will occur, how we envision it to occur.

16 I'd also like to point out this is a proposal.

17 It's a plan that we've thought out. We've done tons of
18 paperwork and all kinds of good government stuff on it, but
19 it is not cast in stone or concrete or anything, especially
20 hard. We're looking for your thoughts on the matter as an
21 advisory review panel, known as the LSSA, is asking for your
22 advice. And he's told me to get up here and give you this
23 information so that you can give your advice.

24 Okay. The compliance assessment program, if you
25 will recall, is the overall program of the LSSA for ensuring

1 that not only DOE but also the participants comply with the
2 rule and whatever additional agreements we arrive at
3 associated with the rule.

4 Okay. The audit program is just a piece of that.

5 Okay. There's something that's going to exist
6 we're calling the LSS QA facility, which we envision at the
7 moment to be a computerized center with computerized hooks
8 into DOE's computers, run by the LSSA with LSSA contractors
9 independent of DOE, using our own software, taking chunks of
10 the database down for analysis, making sure that nothing is
11 changed, doing all those sorts of things. That ties in with
12 the audit program as well, but that's how we plan to look at
13 things, not through DOE-provided glasses, but we'll grind
14 our own lenses.

15 Okay. I don't see any more about that. So what
16 do we want -- why do we have an audit program? We want to
17 make sure that -- well, you can read this. Database
18 integrity is one issue. We want to make certain that the
19 database is not corrupted either by -- either for a
20 technical reason or for some nefarious reason or an accident
21 or anything, I want to make sure everything is correct.

22 I want to make sure that everyone is in compliance
23 with the LSS rule, and I want to talk about what we audit
24 against for a minute. Whenever there's an audit program,
25 you have to check or we have to check against some criteria.

1 Okay. Those criteria, or what we call the LSS participant
2 commitments, those commitments are a set of standards
3 against which we compare actions and implementation. So for
4 an example of a standard would be the quality of the
5 material scanned, that it's of a certain level. We'll talk
6 more about commitments. Also there's a handout which you'll
7 get after the presentation where you can see some examples
8 of commitments. Okay.

9 We want to provide LSSA oversight of DOE's
10 operation and maintenance. Okay. This is something new and
11 is associated with Alternative 3, in fact it eliminates a
12 problem for us. Prior to Alternative 3 the LSSA did the
13 operation and maintenance of the LSS, then who would audit
14 the LSSA? Creates a small problem, which we've now
15 eliminated since we have a good, solid independent auditing
16 group. And one of the jobs of the LSSA is to certify that
17 the participants are in compliance. Part of the input into
18 that certification process will be the audit reports.

19 And let's go on to page eight. Okay. Give you a
20 quick overview of the audit program. We're going to do
21 periodic audits of the LSS development. Now how often
22 that's going to occur, we haven't decided yet, but we'll
23 establish some periodicity to it and follow it up, write
24 audit reports, do all the usual stuff. Okay. Once we're
25 into the period of LSS operation, we'll be doing at least

1 semi-annual audits of DOE operation and maintenance. That
2 means that we'll have a major planned audit of DOE operation
3 and maintenance twice a year, and follow-up audits may occur
4 in-between and special audits may occur at any time. Okay.

5 We will also do audits of participant document
6 processing operations. I know no one wants to be audited,
7 but we want to make certain that the quality of the
8 information going into the LSS database is high, and to do
9 that, we have to audit everybody.

10 In addition, where there are problem areas, we
11 will focus on those areas and audit them whether they are
12 DOE problem areas or participant areas, and that includes
13 NRC as a participant.

14 MR. SILBERG: Okay. Could I interrupt you?

15 MR. DRAPKIN: Sure.

16 MR. SILBERG: The basis for these semi-annual
17 audits of each participant, how is that developed and is
18 that a hard-and-fast rule regardless of the number of
19 documents that a participant may have, some may have a lot,
20 some may have very little.

21 MR. DRAPKIN: Okay. They -- it certainly is not a
22 hard-and-fast rule. Clearly if there are -- an audit can be
23 a big thing or a little thing, okay. For someone with a lot
24 of documents and a lot of information going in, it's going
25 to be a big thing. For someone with relatively few

1 documents, an organization with relatively few documents
2 that are being submitted, it could be -- it could possibly
3 be a phone call, as little as that. Simply want to -- we'll
4 make the audit fit the situation, okay, but we have to give
5 Moe the ability to feel confident that the data going in --
6 to tell you that the data going in is correct and complete
7 as it can be.

8 Jay, did that answer your question? Okay.

9 MR. BECHTEL: Excuse me.

10 MR. DRAPKIN: Yes.

11 MR. BECHTEL: This computerized access that you
12 described before, is that considered to be part of the audit
13 process or is that something that's kind of a randomly
14 occurring or --

15 MR. DRAPKIN: No, that's part --

16 MR. BECHTEL: How does that work?

17 MR. DRAPKIN: Okay. Let me answer it in two
18 parts. Part one is the quality assurance facility or
19 quality, that is part of the LSSA's compliance assessment
20 program in general. It is not specific to audit.

21 MR. BECHTEL: Uh-huh.

22 MR. DRAPKIN: But it also is used for auditing
23 purposes, so there will be certain -- we don't want to rely
24 on someone else's computing facility to check things out.
25 Okay. So yes, it's part of the audit process, but it's also

1 part of other things. Did that answer your question?

2 MR. BECHTEL: Well --

3 MR. DRAPKIN: Go ahead. Ask it --

4 MR. BECHTEL: No, I'm just trying to -- maybe
5 later on if you get into a little more detail --

6 MR. DRAPKIN: Yeah. Just picture a room full
7 of --

8 MR. BECHTEL: Interested to see how it works
9 and --

10 MR. DRAPKIN: -- full of folks with PC's --

11 MR. BECHTEL: Yeah.

12 MR. DRAPKIN: -- and one of the things that they
13 do is, hey, let's take a sample of documents submitted on --
14 in January and let's see how the quality shapes up. Let's
15 just run it through a series of tests. I don't know what
16 the tests are going to be at this point. We're not to that
17 level of detail.

18 MR. BECHTEL: So it's sort of randomly, just --

19 MR. DRAPKIN: Yes. Well, in the sampling sort of
20 way. Not truly randomly but yes. Yeah. And that will be
21 an ongoing thing. It's not -- that is -- let me answer it
22 again in two parts. There will be continuous sampling and
23 testing. That's part of the LSSA quality assurance part of
24 the compliance assessment program. If we find a deficiency
25 or that there's a problem, it will be something that's done

1 as part of a follow-up audit or follow-up activities. It
2 can also be built into an audit, and I'll talk about how an
3 audit is created and what goes into planning that, and
4 you'll see how that -- it could be decided that we want to
5 include some automated access and analysis.

6 MR. LEVIN: Yeah. And I don't want to cut off any
7 discussion of this during this meeting. I just want to say
8 that everybody will have a chance to review, in as much
9 detail as you'd like, the full auditing program, so you'll
10 be able to comment on it in detail and give us your ideas
11 and everything. Okay.

12 MR. DRAPKIN: Okay. Let's go on to page 10 here.
13 Most of the bullets that I'm skipping over are reasonably
14 self-explanatory, and all that I would be able to do is read
15 them to you, and you could read them to yourselves. Okay.
16 The --

17 MR. MURPHY: Let me ask one question on page
18 nine --

19 MR. DRAPKIN: Sure.

20 MR. MURPHY: -- before you get to that.

21 MR. DRAPKIN: Sure.

22 MR. MURPHY: Then LSSARP participation through
23 observation of LSSA audits --

24 MR. DRAPKIN: I want to talk about that --

25 MR. MURPHY: Okay.

1 MR. DRAPKIN: -- in more detail later. Okay.

2 This is an overview, and I'm going to talk about it in the
3 detail, we'll get to the detail part.

4 Okay. There's some documents that you should be
5 aware of, some documents, one of which is the LSS rule,
6 which I'm sure you know about. Second is the LSS
7 participant commitments. This is the key central document
8 to the compliance assessment program and to the audit
9 program. When the time comes, which hopefully will not be
10 too far into the future, when you're asked to review this
11 document, please, please, please pay special attention to
12 it, because it is this that establishes the criteria that
13 says -- that Moe can say, yes, we're in compliance or no we
14 are not. So -- and you'll see some examples of those, as I
15 said, in the handout I'll give at the end. Okay.

16 One of the things you'll be asked -- this is kind
17 of a rehash of what we talked about last time, as to
18 develop -- is compliance program plan for each participant,
19 and the LSSA will certify that and that will also be used as
20 a basis for the audit. The material submission plan, that
21 helps everyone plan how and in what order and when materials
22 will be added and entered into the LSS. Obviously we cannot
23 submit all the materials on one day. It's a multi-year
24 process, and it's one that we'll watch very closely to make
25 sure that documents are flowing in in the time frames that

1 we expect them to so that we're -- when we say the LSS is
2 completely loaded, it will be completely loaded.

3 MR. SILBERG: When you refer to, on page nine,
4 required participant reports, are these the kinds of things
5 you had in mind, program plan, the material submissions?

6 MR. DRAPKIN: Yes. Yes. Yes. Yes. Exactly. It
7 will be participant certifications. Tony, I draw a blank on
8 what those are. The only thing I can think about is you
9 certify, you specify designated LSS official --

10 MR. NEVILLE: Right.

11 MR. DRAPKIN: Okay.

12 MR. NEVILLE: Please --

13 MR. DRAPKIN: Yeah? And --

14 MR. NEVILLE: Other contact with general
15 administrative informations to facilitate the audit.

16 MR. DRAPKIN: Okay? Nothing exciting there.

17 Okay. There'll be some processing standards and guidance
18 documents, and you've all seen the topical guidelines

19 document already. Again we dive into more detail, or as I
20 like to say, we're pouring into the details here and

21 probably boring you as well. Hopefully not. But talk about
22 the commitments paper again.

23 Okay. Really said all there is to say about this.

24 And in the commitments on page 12 there are four different
25 kinds, or as we like to call them, groups of commitments.

1 Group one involves proper identification of the document
2 universe, proper relevancy screening and timely submission
3 of materials. This is a set of rules, set of agreements,
4 okay, that let us determine whether the documents you are
5 submitting are the correct ones, and you're not submitting
6 things that aren't relevant to the action at hand and that
7 things are being submitted on time. And this in essence
8 amounts to -- a commitment is in essence a contract between
9 you as a participant and the LSSA. Okay. You agree that
10 this is what you're going to do.

11 Okay. Yes. Oh, I'm sorry, Kenneth.

12 MR. KALMAN: You need me to speak in a microphone?
13 Ken Kalman, NRC. Jay. You skipped over slide 11, but on
14 this slide, "Define method of measuring participant
15 performance" --

16 MR. DRAPKIN: Correct.

17 MR. KALMAN: I was just wondering, at this point,
18 do you have any sort of basis that you're going to use what
19 is going to be NQA guidelines or anything?

20 MR. DRAPKIN: Let me address that a little bit
21 later.

22 MR. KALMAN: Okay. Thank you. That's important
23 to my group.

24 MR. DRAPKIN: Okay. What you'll see in the
25 handout later are some sample commitments which will answer

1 that question.

2 MR. HOYLE: Dave.

3 MR. DRAPKIN: Yes.

4 MR. HOYLE: Why don't you go through every slide
5 though, even if you just pause for a while to see if there
6 are any particular questions on each point.

7 MR. DRAPKIN: Sure. I'll be glad to do that.

8 MR. HOYLE: Don't pass over them entirely.

9 MR. DRAPKIN: Okay. What we did is prepared a
10 pretty comprehensive presentation to see how it was going,
11 but I'll be glad to stop and look at the slides you have to
12 read.

13 Okay. And so we were talking about the four areas
14 of LSS commitments.

15 MR. SILBERG: Before you take that off --

16 MR. DRAPKIN: Okay.

17 MR. SILBERG: -- is this document going to be
18 published for general comment or just circulated to the
19 LSSARP? Procedurally there may be folks who are going to
20 get involved in the LSS who are not around this table. They
21 may be groups that don't exist now, they may be groups that
22 decided not to participate.

23 MR. DRAPKIN: You're talking about the commitments
24 document.

25 MR. SILBERG: Yeah. You say the document will be

1 released for LSSARP review on the bottom of the preceding
2 slide.

3 MR. DRAPKIN: Well, it is our plan with all of our
4 documents, all of them to -- before we put the final staples
5 in them to give the LSSARP the opportunity to review that
6 document.

7 MR. SILBERG: Yeah. The question is, though, is
8 it going to get broader review.

9 MR. DRAPKIN: No, once that is completed, it
10 depends on the document. In this case I'm not sure whether
11 it should or not. The decision hasn't been made. Let me
12 ask Chip if he has a comment.

13 MR. CAMERON: Yeah. I think that David's
14 reference to ARP review is ARP review before we are
15 satisfied with the draft document that would then be
16 released for general public comment for exactly the reasons
17 that you identified, Jay.

18 MR. SILBERG: And this would be in the nature of a
19 new reg or a reg guide or something else?

20 MR. DRAPKIN: I'm not sure what format it would
21 take.

22 MR. CAMERON: I'm not exactly sure what form it
23 would take either. I suppose it could be in the form of a
24 reg guide or something else. If the panel has any
25 recommendations on that later on as to the most appropriate

1 vehicle, that would be helpful.

2 MR. SILBERG: I guess one of the questions is,
3 depending on how prescriptive the commitments are to make
4 them regulatory impositions in a sense as a precondition to
5 using the LSS, it may well be that those ought to be in
6 regulations. I don't know. It depends on how you frame the
7 commitments. If they're broad and they're capable of being
8 tailored to the individual case, then maybe that's not
9 necessary.

10 MR. DRAPKIN: Since this topic has come up, let me
11 just turn to the other handout. And we'll take a look at
12 the commitments.

13 MR. CAMERON: Now this would be -- while you're
14 doing that, David, this commitments document, as I
15 understand it, would not be the specific commitments that an
16 individual party would have made, but the generic document
17 that would guide the -- those commitments.

18 MR. DRAPKIN: Okay. If you take a look on page 12
19 of this new handout, again, this is a lot to read at the
20 moment. Just take a few minutes and look through page 12,
21 13 and 14, or 15 too, which gives you an example, an
22 illustrative example of each type of commitment that we're
23 talking about. And maybe that will help in understanding,
24 let's take a couple of minutes here and give you a chance to
25 read them and ask any questions you might have. These are

1 not necessarily real commitments, but they're examples of
2 what could be commitments.

3 MR. MURPHY: What is a DLO, David?

4 MR. DRAPKIN: DLO --

5 MR. MURPHY: Just remind me.

6 MR. DRAPKIN: -- is a designated LSS official. It
7 is the person in your organization to whom the LSSA
8 communicates. And if there's a problem, that's the person.

9 MR. CAMERON: And that's set forth at 2.1009.

10 MR. MURPHY: What?

11 MR. CAMERON: It's in 2.1009 of the rule.

12 MR. MURPHY: I knew that.

13 MR. SILBERG: Mal, you wrote that section.

14 MR. MURPHY: And the last time I read it too.

15 MR. DRAPKIN: We have a whole book of these things
16 that we've developed over the years, and we're currently
17 adding commitments related to operating -- DOE operating and
18 the operation and maintenance of the LSS. Other than that,
19 this document would've been in your hands already. We've
20 got this Alternative 3 business to deal with.

21 MR. MURPHY: I assume that, you know, for most of
22 us it's not going to be a problem to draft and submit an
23 acceptable LSS participant compliance plan because we're
24 doing that kind of stuff all the time, but for some of the
25 smaller latecomers like that Jay mentioned, public interest

1 groups or citizens activist groups or whatever, I assume
2 that the LSSA office will provide some assistance to those
3 folks and --

4 MR. DRAPKIN: You assume correctly.

5 MR. MURPHY: You know, up to, I suppose -- up to
6 and including even, you know, writing their plan for them.

7 Some of them are going to need that kind of help. They
8 won't --

9 MR. DRAPKIN: Yeah. Well, in some instances the
10 plan will be two sheets of paper.

11 MR. MURPHY: Right.

12 MR. DRAPKIN: We're not talking about major
13 documents. We don't want to introduce paperwork --

14 MR. MURPHY: Some of them aren't going to have any
15 documents at all, they're just going to come to the hearing
16 and complain.

17 MR. DRAPKIN: Right. In that case it's tell us
18 who your contact is and then you're done.

19 MR. MURPHY: Yeah.

20 MR. DRAPKIN: Does anyone need more time to look
21 over these commitments and talk about them? Okay. They
22 were designed to be read off line, but hopefully this
23 answers, Jay, the kind of questions that --

24 MR. SILBERG: I think this commitment may well be
25 the subject of a separate meeting at some point.

1 MR. DRAPKIN: Count on it. Yes. Yeah. That's
2 the heart of the entire program really.

3 Okay. Can we move along here? We can go back to
4 that if you want.

5 On page 12 we talked about the different kind of
6 commitments of which you have examples now. The new group
7 is group four, or at least partially I know are those DOE
8 commitments associated with the operation and maintenance of
9 LSS. And the document is organized by groups, so it's
10 fairly easy to see how -- you know, what types of
11 commitments, you know, your organization might need to -- or
12 would affect your organization. Now have the handout.

13 All right. Here we talk about the LSSA -- I'm
14 sorry, the LSSARP role in the audit process. The first step
15 in the audit process. I need to go a little bit away from
16 the slides here, is the creation of the audit management
17 team. And the audit management team consists of three
18 components. Three components or two? Anyway, three I
19 guess. The LSSA, the LSSA staff and the LSSARP. I guess
20 four, add another one, and the management of the LSSA audit
21 contractor. And this group will meet to determine what is
22 going to happen during this particular audit, whether it's
23 an audit of a participant or this is an audit of a DOE
24 function, whether it's the audit of an NRC function.

25 The goals of that audit will be set out and set

1 forth during this management team review and planning
2 session.
3 Now what will happen, practically, is I or Moe
4 will ask what members of the ARP are willing to commit their
5 time to the audit process. We'd like to have you involved,
6 probably on every one, but if everyone wants to, that's
7 fine, from the beginning of the audit through the end of the
8 audit. And the beginning is when we first start talking
9 about it. It's going to take some time. It's not the sort
10 of thing you're going to be able to sit back and review and
11 make some comments and be done. If you want to participate
12 in the audit, you are welcome to, we encourage you. We want
13 you to. The more brains, more viewpoints the better.

14 Once the management team is complete and set up,
15 turn the information over to the LSSA audit contractor who
16 then develops an audit plan, comes back to the management
17 team with the audit plan. The management team discusses it,
18 decides whether it's appropriate or not, and then sends the
19 LSSA audit contractor off to do the audit.

20 Now LSSA members and LSSARP members and LSSA staff
21 will accompany the audit team if they so desire, if it's
22 appropriate, as observers, because of -- well, for a number
23 of reasons, but most significant is procurement regulations
24 prohibit the contract -- the project officer, which would
25 probably be Moe or myself, from working directly with the

1 contractor. So we have to take an arm's-length view. So
2 once we've given them their instructions, we let them go do
3 their thing and then come back and report periodically,
4 that's when we have our input into the process. And that's
5 just the way it has to work. But we could be there and
6 observe, we can ask questions. We just can't give
7 direction.

8 MR. SILBERG: Why is it being done through a
9 contractor?

10 MR. DRAPKIN: We asked -- talked about this
11 question the last time. But I'll give you the standard
12 answer, we just don't have the staff to do it any other way.

13 MR. MURPHY: It's Clinton's 200,000 FTEs, or
14 250,000, whatever it is.

15 MR. SILBERG: Better we should hire a contractor.
16 We pay more than --

17 MR. MURPHY: What's that? What?

18 MR. SILBERG: Better we should hire contractors
19 and pay them more --

20 MR. MURPHY: Put more money into the American
21 economy that way.

22 MR. SILBERG: Right.

23 MR. DRAPKIN: Well, you can't both reduce
24 government and increase function at the same time.

25 MR. MURPHY: Put more of your client's money into

1 the American economy that way, I should say.

2 MR. SILBERG: And our clients' customers, i.e.
3 your money.

4 MR. DRAPKIN: And as you will see it at the very
5 end, the cost of this is practically free, so --

6 MR. MURPHY: Practically free?

7 MR. DRAPKIN: No. Not at all. Okay.

8 Anyway, the audit occurs and an audit report is
9 developed. The audit report is first reviewed with the
10 audit management team. Comments are made, any follow-up
11 that needs to be done at that point occurs before a
12 semi-final audit report is issued. Then there's a meeting
13 with the audited party to discuss the results and corrective
14 actions that can be taken and will be taken if there are
15 any. This information is added to the audit report. The
16 LSSA has the opportunity to write a comment on the audit, or
17 staff. The LSSARP members who have participated in the
18 audit will have an opportunity to write their opinions.
19 They can be dissenting opinions, whatever you want to say.

20 A little section in the format of the audit report that says
21 LSSARP comments, participant comments, meaning people who
22 participate in the management team effort. Yes.

23 MR. METTAM: Not right now, but could you flow
24 a chart or diagram that process? This chart doesn't make it
25 clear --

1 MR. DRAPKIN: Yeah, I think we could do that.

2 MR. METTAM: -- that there would be involvement in
3 the planning of the audit, you know.

4 MR. DRAPKIN: I think we'll see one -- a slide
5 later on that does that.

6 MR. METTAM: Okay.

7 MR. DRAPKIN: I'll use those just to see if I've
8 skipped anything.

9 Once the final report is issued, and I guess that
10 report would be issued to the commission, if I'm not
11 mistaken. That's where the audit report goes. It goes from
12 the LSS administrator to the commission. The LSSA will have
13 opportunity to comment, but it will comment after the fact,
14 unless you have participated in the management process.
15 Otherwise we would never finish an audit. It would take too
16 long. And you can point out things that might go into the
17 planning for the next audit.

18 Okay. So there's a lot of room for interaction
19 there, and as much as you want. Okay. And if there are
20 follow-up audits that need to be made, they'll be made,
21 they'll be scheduled. And that information will also be in
22 the audit report, what follow-up activities are planned.

23 Now it may also be that we work in the surprise
24 audit mode for particular problem areas and we don't say
25 we're going to come in and audit, we just come in and do it.

1 Okay. Let's move on and see if there's anything
2 that I've missed.

3 Okay. Three basic types of audits: adequacy
4 audits, process audit, result audit. We'll talk about them
5 in just a second.

6 Okay. Take a moment and talk about statistical
7 sampling. In fact, in this particular case you can read
8 this, but Moe knows more about statistical sampling than I
9 ever will know, and maybe he'd like to say a couple of words
10 on it.

11 MR. LEVIN: Well, I'm just-- that's the Census
12 Bureau part of me. I had to deal with that all the time, so
13 I'm aware of the parameters and characteristics and the
14 functionality of statistical sampling. I'm not a real
15 statistician, but I know how to program it.

16 MR. DRAPKIN: We obviously can't check every
17 document. We can check a statistically valid sample. And
18 come up with reasonable and hopefully correct conclusions.
19 And that is part of the methodology that we'll be using, and
20 this slide discusses statistical sampling of that.

21 Okay. Three types of audits. We'll zip through
22 these real fast. The adequacy audit basically is-- and
23 from its title, is make sure that plans are adequate and
24 procedures are adequate to meet commitments and rule and all
25 the other documents that are involved. Process checks to

1 make sure that the plan implementations are being done
2 according to the plans.

3 Okay. Results, take a look to see that the end
4 product, as implemented through the plan, in fact turns out
5 to be what we hoped it would be. In some cases it might be
6 something like, we planned to submit 4,000 documents per
7 month of such and such quality. If we're only getting 2,000
8 through, even though the plan looked good, and the
9 implementation looked good, something was wrong, and needed
10 to be fixed.

11 Okay. Now this business that we're talking about
12 here is what I discussed before. The audit methodology and
13 planning, conducting the audit, reporting the results and
14 follow-up activities. We have a flow chart, as you
15 requested, that pretty much goes along with what I
16 discussed, with a few minor changes, which you can make in
17 your head. The thing that's interesting here is this is
18 what I would call a major audit. And the time frames here
19 are in weeks. This is something taking four weeks,
20 something taking five weeks, something taking six weeks.
21 That is for a major audit. A very, very minor audit might
22 take five days. Okay. We're looking at this, in this case
23 I think Tony, you did the estimating. This was a DOE audit.
24 Correct? An estimate.

25 MR. NEVILLE: I don't think we said three

1 particular participants, but it was of a large size.

2 MR. DRAPKIN: Okay. A large size which is most
3 likely DOE. I don't --

4 MR. MURPHY: Well, it has to be, because you've
5 got one week at each DOE site.

6 MR. DRAPKIN: Right.

7 MR. MURPHY: Clearly a DOE audit.

8 MR. DRAPKIN: Yeah. I believe that's where that
9 came from.

10 MR. SILBERG: How does this compare with the
11 resources that NRC devotes to vendor audits when they go out
12 and audit General Electric or Westinghouse or, you know, one
13 of the big non-licensees --

14 MR. DRAPKIN: I can't answer that. I don't know.

15 MR. SILBERG: I have the sense, and I, you know,
16 don't represent a lot of vendors, that this is a much, much
17 greater amount of resources devoted to this than would be
18 devoted to a typical vendor audit, even of a very large
19 vendor.

20 MR. DRAPKIN: I don't know. I'll be glad to get
21 back to you with an answer on this.

22 MR. SILBERG: It just seems to me that there may
23 be a disproportionate amount of effort that's being assumed
24 to go into this audit than is typical of other NRC
25 inspections, causes --

1 MR. DRAPKIN: Well, the reality here is that this
2 is a plan, just like any other plan. It has not been
3 implemented. It may turn out that we don't need to put
4 these kind of resources into play. And if that's true,
5 we'll reduce them. We're not going to overkill the
6 situation. Just not going to do that. But we want to make
7 sure that you understand that we're not going to let things
8 slip.

9 Okay. We're prepared to do the job all the way
10 down to the last T being crossed and the last I being
11 dotted. We're prepared to commit the resources to do that
12 and commit the energy to do that. You know, if it's not
13 necessary to go that far, then we won't, but that's
14 something that I think we would discuss with the ARP members
15 before we changed anything. Other questions on this
16 particular topic?

17 Let's see if there's anything else in the flow
18 chart. Yeah. That's actually the audit process itself,
19 doesn't involve the formation of the management team, that
20 flow chart doesn't. Did that deal with your question or
21 not?

22 MR. METTAM: This chart doesn't really show some
23 of the loops that you were describing. For example you
24 talked about the contractor developed the audit plan then
25 that audit plan would be reviewed by the LSSA and the

1 LSSARP, you know, so there are some iterations going on
2 here --

3 MR. DRAPKIN: Yes, well we --

4 MR. METTAM: -- that don't show.

5 MR. DRAPKIN: You're correct. We couldn't put
6 everything on one slide, otherwise we just -- it's crowded
7 enough as it is. Yes. That's why I talked about it rather
8 than going to this.

9 MR. METTAM: Okay.

10 MR. DRAPKIN: But yeah, that's the way it --

11 MR. METTAM: Yeah. This flow chart basically
12 shows two points of contact with the LSSARP, one for the
13 audit observation, one's a review of the report.

14 MR. DRAPKIN: Right. This basically picks up at --
15 the point where we have a completed -- in contracting terms
16 what we would be doing is developing a task order, statement
17 of work for the contractor. That's what the management team
18 is doing. And when that is issued that's when this chart
19 takes off.

20 MR. SILBERG: Is there a reason that the audit
21 report goes to the commission? And by "commission," do you
22 mean the commissioners or Bob Bernero or --

23 MR. DRAPKIN: I mean the commissioners.

24 MR. SILBERG: What's the reason why it would go to
25 the commissioners, since I don't think that's done anywhere

1 else in the NRC inspection and audit process.

2 MR. LEVIN: It's a proposal just to show that it's
3 at the highest levels and to make sure that it's visible at
4 the highest level possible.

5 MR. CAMERON: And it may be that then the LSS
6 administrator would submit a twice-a-year report summarizing
7 a number of audits and attach those audits for the
8 commission's information.

9 MR. DRAPKIN: Yeah. In fact the LSSA does, at the
10 moment, submit a semi-annual report to the commission, has
11 for some time.

12 MR. BALCOM: Do I read this right, that this is
13 four weeks to plan the audit, one week to perform the audit
14 and then reports come after that?

15 MR. DRAPKIN: Let me see.

16 MR. SILBERG: Well, there are five one-week audits
17 assumed in this chart. One at each of assumed five DOE
18 facilities.

19 MR. BALCOM: It says four weeks to the left of the
20 second box and then it says, audit contractor conducts
21 audit.

22 MR. DRAPKIN: Joe, can you address that?

23 MR. BALCOM: Or is it more like one week of
24 planning and --

25 MR. SPEICHER: Let me explain something there,

1 that's --

2 MR. DRAPKIN: Yeah, Joe Speicher.

3 MR. SPEICHER: Joe Speicher with Labat-Anderson.

4 The time frames up there talk about an overall time frame.

5 That four weeks is not a full-time effort for this

6 particular group of four people, and it's envisioned to be

7 like 50 percent effort over four weeks planning the audit,

8 which would be obviously acted into two weeks to plan the

9 five audits full-time. But the idea is that these audit

10 personnel will be doing other things than just specifically

11 DOE audits. They'll be looking at audits of other

12 participants.

13 So the thought is that it's a 50 percent effort

14 for the first four weeks of planning, a 50 percent effort

15 the six weeks to prepare the report, review the material.

16 The actual one week per site is actual full-time audit

17 activity.

18 MR. DRAPKIN: Did that answer your question?

19 MR. BALCOM: Yeah.

20 MR. DRAPKIN: Okay. Okay. Audit planning, those

21 are the steps. I'm not going to read them to you. The

22 audit has a beginning, a middle and an end. It's like --

23 MR. BECHTEL: How do you determine which audit

24 you're going to proceed with?

25 MR. DRAPKIN: I'm sorry?

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1 MR. BECHTEL: How do you determine which audit
2 you're going to proceed with when taking the audit?

3 MR. DRAPKIN: It's a good question. It's not one
4 that we've really addressed in detail yet, but we have to
5 prepare internally within the LSSA shop activity plans for
6 the year, and that's how we will decide what are the planned
7 audits for the year. We'll sit down and we can certainly
8 discuss it with the ARP, if you'd like, and decide what are
9 our planned audits for this coming year, or maybe for the
10 next two years. That may be stretching it, or six-month
11 period. I'm not sure what the right interval is.

12 But there will also be audits that are unplanned,
13 things that -- we get calls saying, "Hey, my materials are
14 not getting into the LSS in a timely fashion." That's going
15 to trigger an audit or an investigation if you'd like. And
16 so those will be ad hoc sorts of things that will happen all
17 the time, trouble-shooting, fire-fighting activities.
18 There's a question in the back? No. Ken.

19 MR. KALMAN: Yeah. So when you do the audits at
20 this point, you envision what I would call vertical slice,
21 for example, you know, did State of Nevada submit this
22 particular document in accordance with procedures, did the
23 administrative cooperate into the system, is that the way it
24 would go?

25 MR. DRAPKIN: Right. Right.

1 MR. SILBERG: Is the reason that this audit
2 process is being planned unique to the LSS as opposed to
3 using the experience that NRC has developed over, you know,
4 decades in inspecting and auditing licensees because this is
5 a unique situation --

6 MR. DRAPKIN: It is --

7 MR. SILBERG: -- or are there lessons to be
8 learned from the kinds of audits that regularly get carried
9 out by NRC?

10 MR. DRAPKIN: Let me answer that a couple of ways,
11 then I'll still add something. One, the LSS is being viewed
12 as a unique activity, almost an experiment in licensing.

13 MR. SILBERG: I think I said that a couple of
14 years ago.

15 MR. DRAPKIN: Yes, yes. But in terms of the NRC
16 itself, we have an internal steering committee that meets to
17 discuss these things, which includes members of material
18 group and reactor group to throw in their experiences and
19 lessons learned from their quality assurance and audit
20 activities. So past experience is not being ignored, and
21 it's certainly being worked in, but it is being treated as
22 kind of a unique thing as well.

23 Within the NRC organization, the LSSA is semi
24 autonomous. The NRC is itself a participant and will be
25 audited, so we have to keep a little bit of arm's length

1 from NRC as well.

2 Moe, do you have anything to add to that? Did
3 that answer your question? Okay.

4 When we report -- the reporting of results will
5 track the entire audit process in detail. Give a general
6 description of the audit scope and objectives, discuss the
7 process, what we found out, what conclusions have been
8 drawn, and we'll have the opportunity for the LSSARP
9 representative or representatives to add their input,
10 specifically and separately or through the group into the
11 report, but there will be the ability to write a separate
12 opinion, or multiple separate opinions of the audit.

13 Follow-up activities, if there's a deficiency,
14 there has to be corrective action planned. It will also --
15 follow-up will also -- or problems found will also determine
16 to some extent the focus of the next audit as to that person
17 or for that participant.

18 And the last bullet, if there isn't corrective
19 action taken, and we sort of assume everybody's working in
20 good faith with respect to this, then some kind of
21 enforcement action will have to occur. I'm not going to
22 talk about enforcement action, Chip is going to talk about
23 enforcement action or somebody else will. But I'm not going
24 to.

25 Specific auditing activities --

1 MR. HOYLE: David, excuse me.

2 MR. DRAPKIN: Yes.

3 MR. HOYLE: Is this a good spot to stop and take a
4 break?

5 MR. DRAPKIN: We're almost finished.

6 MR. HOYLE: Okay.

7 MR. DRAPKIN: We've got half a dozen more slides.

8 The specific auditing activities, there's a little
9 chart here that shows who will audit and what we'll audit
10 about them. And you can take a look at that and ask if you
11 have any questions. I think this one is self-explanatory.

12 On slide number 27 we talked about some specific
13 auditing activities. I probably touched on most of these
14 already. Review and approval of system requirements before
15 implementation. That one involves the LSS design, make sure
16 that requirements of the LSS include the requirements of the
17 LSSA for auditing, for hooks, for our computer sneak-a-peak
18 system, whatever you'd like to call it, includes early LSSA
19 participation during the systems planning.

20 Okay. And LSS -- yes.

21 MR. BALCOM: In figure three and four --

22 MR. DRAPKIN: Okay. Got mine.

23 MR. BALCOM: -- minor point.

24 MR. DRAPKIN: Sure.

25 MR. BALCOM: That LSSA will audit -- down where it

1 says "DOE Documentary Material Processing Operations." How
2 about non-documentary materials, technical data, reports.

3 MR. DRAPKIN: I don't have an answer to that right
4 at the moment. Can I get back to you on that one?

5 MR. CAMERON: I think to the extent that the whole
6 technical data issue is wrapped up in the integrity of the
7 LSS, that we would have to audit.

8 MR. DRAPKIN: Yeah. But exactly how we're going
9 to do it --

10 MR. BALCOM: Or we could add in here documentary
11 and non-documentary material.

12 MR. DRAPKIN: Sure.

13 MR. GRASER: Well, the definition of documentary
14 material in the rules, it's the --

15 MR. CAMERON: Includes everything.

16 MR. GRASER: -- you know, things. Yes.

17 MR. BALCOM: That's what I was looking for.

18 MR. DRAPKIN: Okay. So the statement stands. So
19 it was correct to ask that. Kirk, are you okay on that?

20 MR. SILBERG: Has there -- any thought been given
21 to adopting a resident inspector-type oversight as opposed
22 to this audit oversight?

23 MR. DRAPKIN: Yes. We spent quite a bit of time
24 discussing having resident auditors, or however you'd like
25 to call it, resident inspectors, and the problem with that,

1 and I've run into it through my career, I've worked as
2 contractor, and whenever I find myself -- whenever I tell
3 myself, before I came to work for NRC, for any extended
4 period of time at a contract site, I began to identify a lot
5 more with where I was working than for whom I was working,
6 and with respect to auditors, I don't want that to happen.
7 And that's pretty consistent through, you know, in my
8 experience and in the experience of many of the people I've
9 worked with.

10 MR. SILBERG: And that's a problem that the
11 commission has. Be careful about that.

12 MR. CAMERON: Yeah, I wouldn't want that to carry
13 over too much into the fact that we have NRC on-site
14 residents in terms of repository technical program and the
15 state and the local governments also do, and it may be
16 more -- I don't know, Jay, if you were referring to the use
17 of an on-site resident inspector in terms of the DOE design
18 or the document compliance aspect --

19 MR. SILBERG: Well, both.

20 MR. CAMERON: -- of it, but I think David's point
21 is obviously one that has to be taken into account. But I
22 think that the NRC is still open, obviously is open to
23 suggestions from the panel about the use of that particular
24 technique, either to increase the verification or perhaps to
25 save some resources also.

1 MR. DRAPKIN: Well, let me also add that this
2 situation occurs when contractors are put into place rather
3 than employees. So an NRC employee performing the same job,
4 I feel a lot more comfortable with than an NRC contractor
5 who doesn't have any loyalty to the NRC at all.

6 MR. CAMERON: And I think you were suggesting an
7 NRC employee.

8 MR. SILBERG: Yeah. I mean, it might be that
9 instead of having, you know, a bit contractor team that
10 swoops down on a site for a week at a time, maybe have, you
11 know, one person who is, you know, dedicated to auditing the
12 entire DOE program. And he may be headquartered in Nevada
13 and then takes a week trip down to headquarters to do, you
14 know, an inspection there.

15 MR. DRAPKIN: That's a valid suggestion, and it is
16 not -- it occurs to me that it is not necessarily in
17 conflict with the audit team approach either, where we can
18 have an on-site person who handles the day-to-day activities
19 and the big detailed audit, which one person just isn't
20 going to be able to handle.

21 MR. SILBERG: I guess I wouldn't want to have --
22 well, what I'm suggesting is you have the ongoing day-to-day
23 inspection, and maybe you don't need the cosmic, you know,
24 SWAT team descending on you.

25 MR. DRAPKIN: We'll take a look at it and see what

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1 we think. We'll let you know.

2 MR. SILBERG: That just might be a lot more
3 economic.

4 MR. LEVIN: And something else we were thinking
5 about is also a -- maybe doing a lot of the auditing by
6 remote monitoring, which has some advantages also, having
7 hooks into the system so that we can almost, in a real-time
8 fashion, monitor what's going on, the document loading
9 matching against schedules and things like that, and if we
10 get into things -- that type of an operation might even
11 lessen our need for the cosmic-type swooping down auditing.

12 MR. SILBERG: My concern when I saw the last
13 version of the compliance assessment program was it looked
14 like a tremendous amount of overkill to me. I think we
15 still -- I get a sense, not being a QA person but, you know,
16 we're using elephants here to inspect mice, and maybe we
17 just don't need that much. You can do it at a much lower
18 level and still have the kind of efficiency and oversight
19 you need, if someone is there, you know, essentially every
20 day.

21 MR. LEVIN: Like David said before, we are
22 committed to doing whatever is necessary, as far as
23 auditing, as little or as much, to make sure that everybody
24 has confidence in the LSS. So that's going to be the key,
25 how much do we have to do to ensure the integrity to

1 everybody's satisfaction as much as we can. So we've
2 started off being very aggressive. We started off looking
3 at it to see what we -- the best we could possibly do, and
4 if it turns out not to have a big pay off or not to be
5 practical, we can always back off from that.

6 MR. SILBERG: The problem I have is once you set
7 that kind of, you know, ceiling it becomes the floor and NRC
8 rarely, you know, is able to extract itself from those
9 initial kind of commitments so --

10 MR. LEVIN: Okay. What --

11 MR. SILBERG: -- I would urge you not to
12 overcommit by saying, well, it can't be more than this, so
13 we'll gradually cut back, because usually it turns out to be
14 that and then add-ons.

15 MR. LEVIN: Remember, that's why we want -- or I
16 want all of your input before this whole thing is finalized.
17 Those are the -- exactly the type of comments and type of
18 discussion I hope this will generate.

19 MR. DRAPKIN: The people that need to be satisfied
20 that the LSS is a trustworthy vehicle, you are the people.
21 If you are satisfied with a less expensive audit program,
22 that will be fine. We can talk about that as time goes on.

23 MR. HOYLE: Question, David. What remedies would
24 a participant have, say he disagreed with an audit in some
25 substantial respect, is there a remedy, judicial review at

1 some point or is there an additional remedy built into the
2 system?

3 MR. DRAPKIN: You mean enforcing?

4 MR. HOYLE: Yeah, for instance DOE is putting in
5 documents that we think are fugitive or have no place, or
6 they are not putting in documents that we think are very
7 relevant and -- but then we can't get anybody to agree with
8 it in terms of the LSS administrator.

9 MR. DRAPKIN: Okay. The commitments we'll discuss
10 in detail what is and what is not relevant. If an audit
11 turns up the fact that irrelevant documents are being
12 submitted or relevant documents are not being submitted,
13 then that will constitute a deficiency. Be written up
14 formally, signed off by the LSS administrator, discussed
15 with the participant to determine what remedial action
16 they're going to take and if they're not going to take
17 appropriate remedial action to fix that problem, then the
18 enforcement mechanism will take place.

19 MR. SILBERG: I think Harry's question though is
20 supposing the participant thinks for example the DOE isn't
21 doing its job and the audit hasn't picked it up or it
22 hasn't -- or it's between audits, what rights or remedies
23 does say the state of Nevada have?

24 MR. CAMERON: I think that the rule provides, in
25 terms of document compliance requirements, the -- what used

1 to be known as the free license application licensing board
2 which may just be a presiding officer. Disputes like that
3 can be brought before the prelicense application licensing
4 board, and of course if it was after the license application
5 was filed before the hearing was called, the hearing
6 licensing board.

7 MR. DRAPKIN: Before this mechanism, go jumping
8 in, I would hope to just pick up the telephone and call Moe
9 and say, "Hey, I think there's a problem," and Moe will say,
10 "Okay, we'll look into it and get back to you," and then
11 that's an example of how an ad hoc audit might come into
12 play.

13 MR. SWAINSTON: Let me give you a concrete
14 example --

15 MR. DRAPKIN: Okay.

16 MR. SWAINSTON: -- of what we're dealing with
17 here.

18 Last year we filed a suit against the NRC, a PA
19 and POE to take the depositions of 27 scientists that had
20 review authority over the Szymanski theory. And there was a
21 real reason for us to do that. Obviously if we've got a
22 licensing proceeding that isn't going to occur until 2000,
23 and you know, whatever, these people are not going to be
24 available. Their recollection of whatever they did in terms
25 of these reviews simply won't have any credibility at all at

1 that point in time. In fact, they probably won't be able to
2 recall at all. We wanted to do those depositions now in
3 order to provide those depositions to the LSS system so that
4 they would be available as the best evidence of their
5 participation at some point in time.

6 The Department of Energy -- well, I should say the
7 Department of Justice on behalf of the NRC and the DOE, went
8 into court and said a number of things. One is, you can't
9 do deposition for a future administrative proceeding and the
10 court agreed with it. The justice department said you can't
11 even do depositions at the time of the proceeding. So all
12 of this basically is of no merit. The judge agreed with all
13 this, incidentally not having even read the documentation
14 that was submitted.

15 The point is, can we go forward with say the
16 depositions of our own people and expect to have them
17 submitted into the LSS system? DOE will take the position
18 that, no, those -- you can't submit those. When we sue DOE
19 we'll have the same set of attorneys representing both DOE
20 and the NRC because it will be the justice department, and
21 our documents are going to be basically excluded and what --
22 the whole point of all this is that we're here in a kind of
23 a trust relationship, not only to ourselves, but to the
24 American people to see that this job is done right. And if
25 there are no remedies to assure that the proper facts, best

1 evidence is put into this record, why have the rule at all?

2 MR. CAMERON: Harry, if I could just respond to
3 that. The LSS rule would not come into play in determining
4 the initial question of whether a deposition should be taken
5 or not taken; in other words, referring to what the
6 Department of Justice argument was. But if there is a
7 deposition taken that's relevant to the licensing
8 proceeding, I don't think that that would be excluded from
9 entry into the LSS. So --

10 MR. SILBERG: If you have a document that fits the
11 relevancy standards, whether it's a, you know, statement
12 taken under oath or a report or a letter, it would go in
13 like any other relevant document that you have. So I don't
14 see a problem with it in terms of documents that you're
15 creating. I think your problem in the lawsuit was you
16 couldn't force DOE or other witnesses to sit down and be
17 deposed. And I think the Court was correct and, you know,
18 the NRC rules are clear, you don't start discovery until the
19 proceeding starts in terms of taking depositions and that
20 kind of stuff. That's really a different question. Your
21 problem in terms of creating your own documents is really
22 within your control.

23 MR. SWAINSTON: Okay. Let's say I despite Gerry
24 Szymanski and he laid on the record and also the other
25 officials or the other people he works with on this problem,

1 and we provide say half a dozen depositions, DOE says,
2 "We're not going to submit those to the system because they
3 have no credibility; these witnesses were not subject to
4 cross-examination; we did not participate in the deposition,
5 and as a consequence we simply are not going to submit that
6 into the system."

7 MR. CAMERON: Harry --

8 MR. SWAINSTON: What is our remedy?

9 MR. CAMERON: Well, your remedy in that case is to
10 go first to the free license application licensing board who
11 clearly has the authority to rule on -- exactly on matters
12 like that. Arguments as to credibility is going to take
13 place in the licensing proceeding in terms of the
14 credibility of the evidence. But in terms of whether the
15 document is relevant and therefore should be entered into
16 the licensing report system any related issues of privilege,
17 et cetera, that's -- hopefully it's going to be fairly
18 straightforward, and there is a remedy in the rule for
19 parties to bring those types of disputes to the attention of
20 the prelicense application licensing board --

21 MR. MURPHY: But --

22 MR. SILBERG: You also have --

23 MR. MURPHY: Harry highlights the fundamental

24 nature of the problem we have with Alternative 3 that we

25 discussed at great length in October, and we're going to

1 continue to discuss here today and tomorrow I guess, and
2 that is who has control and direction of the LSS. And
3 forget about the Szymanski problem and credibility and all
4 that, whether it's a deposition or any other document. If
5 DOE -- if the state of Nevada submits a document to the LSS,
6 and DOE for some reason or other -- or Nye County submits
7 one, if Brad submits one or the tribe submits one and DOE,
8 for whatever reason says, "This is not documentary material
9 or this is not relevant," or whatever, we need to have a
10 system -- and Nye County cannot agree to a system which will
11 not allow Moe as the LSS administrator to pick up the phone
12 and say, "Put that document in the system and do it now,
13 today. Not wait until the next six-month audit is presented
14 to the commission" -- we need a system, we need a rule which
15 will allow Moe to pick up the phone and say, "Dan, put the
16 document in now. I'm going to have my sneak-and-peak people
17 check on you in 10 minutes, and I want to see that
18 document."

19 MR. CAMERON: Yeah, and that's raising --

20 MR. MURPHY: And if the system won't allow Moe to
21 do that --

22 MR. CAMERON: I agree with you.

23 MR. MURPHY: -- we can't agree to it.

24 MR. CAMERON: Now, I totally agree with you.

25 Okay. And that's what this whole audit program in terms of

1 DOE's design development --
2 MR. MURPHY: But that's not in these documents
3 yet. You've got operation.
4 You're going to need to express that clearly
5 somehow, because it's not in this presentation that the LSS
6 administrator is going to have -- not audit authority, but
7 directional authority to pick up the phone or write a memo
8 and say, do it and do it now.

9 MR. DRAPKIN: I'll explain to you where that is
10 going to.

11 MR. MURPHY: Okay.

12 MR. DRAPKIN: And that will be -- it could
13 conceivably be in the rule.

14 MR. MURPHY: I think it is in the rule. That's
15 why I don't like --

16 MR. DRAPKIN: And I -- but, but --

17 MR. MURPHY: -- Alternative 3.

18 MR. CAMERON: But I would also say in regard to
19 that, I know that this is one of what we want to prevent,
20 but I would hope that DOE in terms of capturing documents
21 and loading the system is not going to be -- DOE's not going
22 to be sitting there saying, "This document isn't relevant
23 and so we're not going to put it into the system."

24 MR. SILBERG: The only issues I can think where
25 there would really be a disagreement that would have to go

1 to a pre-licensing licensing board would be a privilege
2 question. Everything else, I mean who cares if another
3 document goes in. You've already got --

4 MR. MURPHY: Well, but that's not the point, Jay.

5 MR. SILBERG: 18 trillion pages.

6 MR. MURPHY: The point is that the NRC is asking
7 us to depart from the bargain we -- that we've got in the
8 LSS rule, they're asking us to give up part of our bargain.
9 And I don't think Dan's going to throw a Szymanski
10 deposition back in Harry's face and say, "I'm not going to
11 put that in." I don't have that fear. But the hypothetical
12 exists, you know, and Harry's point brings up the very
13 concern we have, who is going to run this system.

14 MR. DRAPKIN: Mal, I think that you've pointed out
15 a hole that needs to be plugged, and we have several
16 vehicles to plug that hole, and it will be plugged.

17 MR. LEVIN: Number one, I agree, DOE should not
18 make any decisions whatsoever --

19 MR. GRASER: Or be placed in the role.

20 MR. LEVIN: Or be placed in the role --

21 MR. MURPHY: Yeah, I mean Dan doesn't want to be
22 in that role any more than I want him there.

23 MR. LEVIN: Right. Remember I said that I view,
24 in this relationship with DOE, they are a contractor to me.
25 They don't make decisions, they carry out orders. I should

1 be in control. If there's any problems with that, if
2 anybody discovers a problem, I can be called. The LSSA can
3 be called, and I'll directly look into it. It's like if I
4 get an indication that any contractor is not performing
5 according to the contract, I will take action. We will try
6 to be a little more explicit in that, especially in the
7 commitments document, we will be detailing on your
8 commitments, or the commitments of the participants, what
9 are the documents and the types of documents that are
10 supposed to be submitted. And that's where that will be
11 detailed. DOE should make no judgment calls whatsoever,
12 period.

13 MR. CAMERON: And let's try to keep things -- a
14 couple of things separate too. Okay. DOE has its
15 obligations as a -- as the license applicant as a potential
16 party to put documents into the system, just like every
17 potential party has that obligation. And what we're talking
18 about here is DOE's obligation and responsibilities as being
19 the operator and maintainer of the system. And it
20 doesn't -- I'm not saying that there's any implications
21 about what DOE should do or should not do there, but I think
22 it just helps to try to keep these individual
23 responsibilities separate in terms of how this should be
24 addressed.

25 MR. SWAINSTON: I'm going to just make one more

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1 statement then I'm going to let this go. All of this is
2 fine and good, you know, NRC can say, "We're going to
3 control DOE with a tight fist." But when it comes to
4 litigation, NRC gets rolled on DOE's behalf, and that's what
5 happened in this litigation. NRC, in my estimation,
6 should've gone into that case and agreed the depositions
7 were very appropriate of these scientists, but their
8 position became that of the DOE, and it also now is the
9 position of the court. Sometime down in the future we're
10 going to have the same situation. I anticipate it. And if
11 the justice department argues on behalf of the NRC a
12 position which is DOE's position, then what is the meaning
13 of all this? I mean, we can make a lot of grandiose
14 statements of how we're going to force DOE to do this or
15 that or the other, but unless there's some teeth in any of
16 this, it means nothing.

17 MR. CAMERON: Well, Harry, I guess again in that
18 context of the decision about subjecting an NRC staff person
19 to a deposition, although that may be -- is an important
20 issue, obviously, I don't see how it's relevant to the LSS
21 rule at this point in time.

22 MR. SWAINSTON: I'm not talking about NRC staff
23 people being subject to depositions, what I'm talking about
24 is to what extent is the NRC going to manage and operate
25 this system in a way that the rule contemplates.

1 MR. DRAPKIN: Let me make a few comments on this
2 that follow up on the SECY paper that was -- that you
3 mentioned, received earlier. There were three aspects to
4 that paper. The last point was the development of a
5 memorandum of understanding between the Department of Energy
6 and NRC, specifically the LSSA and these issues that now
7 brings up and you bring up need to be clearly stated. And I
8 don't think -- it doesn't sound as though it's going to be a
9 hard issue to resolve.

10 MR. CAMERON: Yeah. I guess I would just say,
11 Harry, please don't make a connection between what the
12 Department of Justice argued on behalf of the government in
13 terms of these depositions with how the NRC is trying to
14 implement the LSS rule and ensure that everything is done
15 correctly.

16 MR. SWAINSTON: Chip, the bottom line is that we
17 have to face the reality of the situation. We wanted to do
18 27 depositions of scientists that had -- they were
19 percipient witnesses, of what they did. They knew the kind
20 of data that the consultant -- they knew the kind of other
21 people that they talked to, they knew just exactly what
22 participation they had in this process of review. We cannot
23 do that. We cannot get those depositions presently into the
24 LSS system.

25 MR. CAMERON: Because they don't exist basically.

1 MR. SWAINSTON: We cannot get a court order which
2 would authorize us to do that. We can't just call up a
3 particular scientist and say, "We're going to schedule your
4 deposition for two weeks from now." We cannot do that
5 without a court order. DOE's participation in that lawsuit
6 is part of what prevented us from achieving that. Now that
7 is totally inconsistent with a system that is going to be
8 filled with all of the relevant evidence that is going to be
9 necessary for a licensing.

10 MR. CAMERON: But the LSS is not designed to
11 develop what should be relevant evidence. In other words,
12 the LSS doesn't have anything to do with whether DOE should
13 go out and do more testing on the site, for example. And I
14 guess I don't -- I see what general problem you're raising,
15 but -- in terms of the Department of Justice arguing against
16 the depositions, but I guess I don't make the connection.

17 MR. SWAINSTON: If the bottom line is both bad for
18 the state of Nevada and bad for the licensing proceeding,
19 and it's bad because DOE has asserted undue influence on the
20 NRC, even through the justice department or directly, then
21 everybody loses, I think.

22 MR. CAMERON: Well that -- I don't know about that
23 point, but I think that your point is more directed at the
24 technical side of the NRC and DOE programs than it is in
25 terms of information management side. I don't know if

1 anybody else has any other things they want to add on that.
2 MR. BECHTEL: When we originally set this whole
3 thing up, I think the, trying to recall back, the intent was
4 to try to have some kind of an impartial agency manage a
5 system that's turned out to be a very controversial project.
6 And the intent was to have the NRC as an oversight body do
7 that, and I think what I'm sort of wrestling with is the
8 fact that we're kind of guessing what might happen and, you
9 know, we've got some possible assurances that audits could
10 take care of potential problems that may affect all of us,
11 but we're all -- we're kind of guessing. And I don't think
12 we really know what would happen. Not that Dan would do
13 anything necessarily maliciously, but I mean perhaps
14 inadvertently it would hurt the case of affected counties or
15 the state of Nevada. And I think the biggest point in my
16 mind is that this is kind of a perceptual issue, that DOE is
17 in the process of characterizing a site, and it's also
18 managing the information that will be used to determine
19 whether the site is suitable or not.
20 And I -- my fundamental concern is that, one,
21 we're deviating from the original rule that said that NRC
22 was going to manage the system, and two, we're just kind of
23 after the fact trying to determine whether in fact the
24 information being entered is done properly, and I don't know
25 how we can all do that. It's such a complex system, there's

1 so much information involved that it's beyond all of us I
2 think to audit. I mean I just -- I think that from the
3 perspective of Clark County, that we agreed on NRC managing
4 the system, and I think anything that deviates from that
5 kind of is counter to, you know, how we see the system
6 operating properly. So I -- that's my concern.

7 MR. CAMERON: Well, I think that the whole intent
8 of the audit program here is to demonstrate that in real
9 time problems are going to be prevented, and if there are
10 problems that they're going to be corrected, and the stance
11 between the NRC and the DOE here as Moe has aptly
12 characterized it, is between -- is looking at DOE as a
13 contractor to us in this situation so that we would have
14 complete control over what happens in that context. And I
15 guess that we would just ask you to think about some of the
16 proposals that are being presented here and see if that
17 makes you feel better about whether mistakes are going to be
18 prevented or skulduggery or whatever you're concerned about.

19 MR. DRAPKIN: We believe that we can audit DOE to
20 the point where you are comfortable with the result. If
21 there is some specific area that we're not looking at and
22 have missed, please, please, please, comment on it, let us
23 know, and we will address it. And any area that anybody
24 comes up with, we will add it to the program until it is as
25 solid as it can be.

1 MR. LEVIN: And the audit program would exist
2 whether DOE was running the system or whether I contracted
3 with somebody in the private sector. I have to have the
4 same audit program to ensure the integrity, certify the
5 integrity of the system --

6 MR. DRAPKIN: And operations and --

7 MR. LEVIN: So that -- actually the audit program
8 would exist no matter which way we go, from a systems
9 perspective.

10 MR. DRAPKIN: Just to add a little more difficulty
11 under the old way, because we would be auditing ourselves
12 kind of indirectly. I don't think that's a good idea.

13 MR. MURPHY: Well, but there's always us,
14 remember. That's one of the things the LSSARP was designed
15 to do when we wrote the original rule, was to keep you on it
16 and --

17 MR. DRAPKIN: That's true.

18 MR. CAMERON: And would still apply to this new
19 configuration.

20 MR. DRAPKIN: Absolutely. Absolutely. We're
21 almost done with this. I want to get done and then we can
22 have our break. We were talking about -- let's review. We
23 were talking about the specific auditing activities that
24 we'd be doing and gave some examples. I'll try and pick out
25 ones from the list that are interesting. It doesn't turn

1 out that any of these are interesting but -- maybe it's
2 true, but it's still funny, and besides, we've already
3 talked about them.

4 On page 28 we talk about those specific activities
5 that involve the design, development and operation and
6 maintenance of the LSS. And they include periodic audits of
7 LSS development. That we would do anyway, has nothing to do
8 with Alternative 3, because DOE was always going to develop
9 the LSS. Semi-annual audits of DOE operation and
10 maintenance once the LSS is in place. If you just take out
11 the word -- the three letters "D-O-E" we would've done that
12 anyway.

13 Okay. Something -- this is ongoing monitoring,
14 LSS availability and functionality by the LSSA QA facility.
15 That's a computerized facility not within -- let us say
16 within LSSA space, and it's on -- and we will certainly use
17 the audit results. If the results are not good, then Moe
18 will not certify that DOE is in compliance with the
19 requirements of the rule. Okay.

20 Now we have another -- on page 29 we have a
21 wonderful, wonderful chart. I sound like Lawrence Welk.
22 That talks about the participant LSS-related program
23 management, the things that the participant will be involved
24 in or will be involved in now with respect to audits,
25 identification of potential sources of documentary material,

1 if there is anything of wonder. I want to talk a little bit about staffing,
2 Okay. I want to talk a little bit about staffing,
3 because this is an issue that's a little touchy. I believe
4 in the rule, I believe in all of the documents we've
5 developed so far, we have discussed the fact that the LSSA,
6 as part of your compliance plan, you have to discuss what
7 staff you're going to commit and what training they're going
8 to have. All that we're really after here is to make sure
9 that you are willing to commit the resources necessary to
10 meet your commitments, whether you're DOE, NRC or anybody
11 else. We're not going to look at the resumes of people and
12 say, "No, send this person off for a course in document
13 management or things on that detailed level." We're not
14 going to tell you how to run your organizations or even try.
15 That's one thing I did want to bring up here.
16 The next page, just read down the list here and
17 take a few minutes. Okay. There's nothing here that we
18 haven't discussed already.
19 Okay. On the next page, as we did discuss
20 earlier, audits of non-DOE participants would be smaller in
21 scope generally than DOE audits. They would be in scope
22 appropriate to that participant and what their level of
23 document submission and use of the LSS. Somebody could be a
24 very low submitter of documentation but could be a very
25 heavy user of the LSS. So we have to make sure everything

1 is just right. See if there's anything else here. As we
2 said before, prior to the final stamp of approval on an
3 audit report, a remedial action plan would be included, and
4 we'd want to make sure that the LSSA through its
5 representative of the audit management team, have the
6 opportunity to review that before it became final.

7 And frequency of audits could be increased or
8 decreased, depending on what we find, and the same thing
9 with size of audits. We'll write the audit contract in such
10 a way that these things are not -- that we have the freedom
11 to make things small or large in accordance to the need that
12 we find.

13 MR. MURPHY: Where does the six non-DOE
14 participant entities come from? It's more than that.

15 MR. DRAPKIN: It's more than that. This is
16 probably taken from an old number. There will be more than
17 that. However many non-DOE participant entities there are.

18 All right. Last real slide talks about cost.
19 These are based on some pretty general and not particularly
20 current assumptions. We haven't really worked with -- it's
21 the best we can do at the moment, but it is an estimate.
22 Joe probably knows more about the cost issues than I do, so
23 if you have questions about those, and I'm sure you will,
24 fire away. We'll let Joe or Tony answer those.

25 MR. SILBERG: What's your estimate of the cost of

1 the QA facility? Think that was -- sorry, that was
2 presented at the last meeting we had in October, and the
3 estimate, as I recall it, was somewhere in the neighborhood
4 of about 1.2 or 1.3 million per year.

5 MR. SPEICHER: Operating cost?

6 MR. SILBERG: Yeah. I don't know if we have those
7 documents with us this time, so I think that's -- as I
8 recall was about 1.2, 1.3 million per year for the QA
9 facility.

10 MR. DRAPKIN: And any other questions? Last
11 slide. Usually when Johnny Carson said last envelope
12 everybody applauded and stuff. Last slide.

13 [Applause.]

14 MR. DRAPKIN: Thank you, thank you. Anyway, if
15 you have any comments, I'd appreciate them. You can call me
16 or submit them in writing. If there's anyone who did not
17 receive copies of the handouts and needs them, please see
18 me. I'll make sure that they get sent to you. Are there
19 any other questions? How long a break did you want to do,
20 John, or did you want to talk before?

21 Okay. If there are no other questions, I'm going
22 to thank you very much.

23 MR. SILBERG: David, is there a more formal
24 write-up on the program?

25 MR. DRAPKIN: Yes.

1 MR. SILBERG: Is that going to be distributed or
2 do we not want to see it?

3 MR. DRAPKIN: No, no, no. You do want to see it,
4 and what we're trying to do is get this business of
5 Alternative 3 settled one way or the other so that we know
6 what to write.

7 MR. SILBERG: Okay. Because it's hard. I mean
8 you want comments in a month, but the program isn't ready,
9 you know, distributed.

10 MR. DRAPKIN: Well, comments on the presentation,
11 ideas, holes that you see.

12 MR. SILBERG: Oh, okay.

13 MR. DRAPKIN: Obviously you'll get a chance to
14 comment in detail on the program. You have a -- there's
15 always a document this thick. It describes it. I can't --
16 thank you very much for your attention.

17 MR. HOYLE: All right. David, thank you very
18 much. It's 10 minutes to 11:00. Why don't we take a
19 15-minute break at this point, and then let's talk as soon
20 as we come back about how we would like to proceed.

21 [Recess from 10:50 a.m. to 11:20 a.m.]

22 MR. HOYLE: Let's see if we can't just start it
23 again. I think there are a few more people back in the
24 outer room there. But we've already gone over our break
25 time. It's now 11:20. Let me ask the NRC administrator,

1 have you finished your presentation that you had planned to
2 give?

3 MR. DRAPKIN: Yes.

4 MR. HOYLE: Okay. Nothing further. Chip, do you
5 have anything further to add at this point before we kind of
6 open up for discussion?

7 MR. CAMERON: No.

8 MR. HOYLE: Okay. We heard this morning, I think,
9 but we know where the challenge is that we need to address
10 in our discussion, and that is, what does the words "NRC
11 control" really mean? Have you heard elements of a program
12 that is going to produce -- that are going to produce a
13 situation where there will be a willingness to let DOE
14 operate the database and let NRC control it through the
15 tentacles that it establishes into that database and into
16 the program?

17 We're here in 1994 looking at a rule that was
18 agreed to after a long, long deliberation period by many of
19 you here at the table, and some that aren't to establish an
20 agreed-upon LSS development operation program which had NRC
21 as the ultimate operator. DOE was to design, develop, test
22 the system and then turn it over to NRC. This was 1987,
23 '88, '89 time frame.

24 Things have happened since then. The DOE program
25 has had delays in it. The InfoSTREAM's development has come

1 to be. The fast track that we thought we were on in 1989
2 became a very -- a slow track. And we're now trying to see
3 where we are on that track and what really does make sense
4 at this point in time, 1994, with the backdrop of the
5 agreements that you all had made before. And that you don't
6 want to back away from, that they were hard-fought
7 agreements.

8 So we really have to talk about what we heard
9 today in terms of an audit program; audit programs can be
10 very superficial. We've probably all seen that type, but
11 what we heard here today is that there is -- that these are
12 not going to be superficial audits. They're going to be
13 very serious, very in-depth audits. They're going to be
14 reported up the line as far as the commission. The
15 commission is very interested in making sure that they --
16 the NRC is in control of this database, even though it's
17 being operated by DOE. And we want to figure out a way to
18 get that message out clear and firm so that people who are
19 not in this room who are concerned about DOE/NRC joint
20 operations can think about it and decide whether they should
21 continue to be concerned or whether their concerns have been
22 lessened. So I guess I got Chip waving at me. Go ahead
23 Chip.

24 MR. CAMERON: I just wanted to say hello, that's
25 why I'm -- no. I --

1 MR. MURPHY: He really wants to say that he's got
2 to get out of here by noon because he's got a pony to bet
3 on.

4 MR. CAMERON: Okay. I don't need to note that Mal
5 Murphy said that. I just wanted to point out that in
6 addition to the substantive aspects of the audit program
7 that were talked about, in the latest commission paper, the
8 94-081 we also proposed a memorandum of understanding
9 between NRC and DOE to try to make these commitments, NRC
10 control, et cetera, et cetera, more visible and stronger so
11 that I would just note that for people who haven't focused
12 on that yet.

13 MR. HOYLE: Okay. Thanks, Chip. Maybe we
14 maybe someone would want to talk about that later on. Let
15 me do two things of an administrative nature before we start
16 talking that I should've done earlier. One is to recognize
17 that Harry Swainston has joined us. Harry is the deputy
18 attorney general of the state of Nevada, and we welcome
19 Harry to the meeting today, and thank you for contributing
20 already.

21 We have circulated an attendance list. I'm not
22 sure where it ended up but -- okay. If anyone has not
23 signed it, please do so. It's on the table near the door.
24 And we'll have that taken care of.

25 Well, I'm open for panel discussion at this time

1 as to whether we want to proceed a little bit this morning
2 further. Now 11:30 almost and then we have the afternoon
3 devoted to this topic. Everyone's in agreement I guess
4 already.

5 MR. MURPHY: I want to hear -- I don't know. I
6 mean it doesn't have to be now, if what you're suggesting is
7 that we break early for lunch, because we will have all
8 afternoon, but I'm curious to see how Moe's statement this
9 morning that DOE will be merely his contractor and that he
10 will in fact run the LSS system squares with what we heard
11 in the presentation on the audit and what Alternative 3
12 actually says, and as far as I know that hasn't changed yet
13 internally within the NRC.

14 In particular -- and I see contrasting language
15 just even in the report or the material that we were shown
16 this morning. In one place it talks about LSSA's control
17 and in another place it talks about LSSA's oversight, and
18 the two are entirely different animals, in my judgment at
19 least. But more fundamentally, I want to hear how what the
20 NRC is proposing squares with the language that we
21 negotiated and the commission adopted in 2.1011, and that is
22 that the LSS shall be administered by the LSS administrator
23 and that -- this was just as important or perhaps almost as
24 important as the rest of it, that the 2.1011(C)(1) where it
25 says, "LSS shall not be a part of any computer system that

1 is controlled by any party, interested governmental
2 participant or potential party, including DOE and its
3 contractor, or that is physically located on the premises of
4 any party." That's -- if you're going to -- unless we can
5 somehow satisfy those requirements, you're going to probably
6 have to go ahead without the concurrence of some people at
7 the table and some of the local governments, and I think the
8 State, because it seems to me what you're proposing
9 absolutely requires an amendment to the LSS rule, and it's
10 an amendment that we are not prepared to agree with at this
11 time.

12 MR. HOYLE: Well, yes, it does, would require
13 amendment of the rule. I guess what you're saying is the
14 rule is not open to amendment at this time.

15 MR. MURPHY: Well, any rule is open to amendment,
16 I suppose, consistent with, you know, the administrative
17 procedures act and all that kind of stuff.

18 MR. HOYLE: Right. I mean as far as you're
19 concerned.

20 MR. MURPHY: Yeah. I mean as far as I'm
21 concerned the NRC has already violated its own rule today by
22 not pushing toward the implementation of the requirements
23 that the system be administered by the LSS administrator and
24 that it not be located within DOE's physical buildings.

25 MR. HOYLE: Well, I think that's why we're here

1 today. The commission has proposed an alternate approach
2 and wants to hear again, after more thorough discussion of
3 the subject, what this committee believes that it should do.
4 It's looking for your advice and your recommendation. It is
5 a serious proposal the commission has put forth in light of
6 circumstances of today.

7 MR. MURPHY: What circumstances have changed which
8 precludes the implementation of the rule as written? I
9 don't understand that.

10 MR. HOYLE: I'm not sure that there's any
11 circumstances that's changed that would preclude the rule
12 from being carried out as written.

13 MR. MURPHY: Which makes the rule from being --
14 which makes the implementation of the rule as written less
15 wise today than it was in 1988 or '89 when it was originally
16 adopted. And again, just like I said, in October, John, I
17 realize that I'm putting you in kind of a difficult position
18 because I understand that this is not the staff's preferred
19 approach, that this is something that, to be quite frank,
20 has been shoved on the NRC staffs and -- throat by the
21 commission. That's my understanding, at least, and the
22 staff would've preferred to implement the approach that we
23 negotiated in 1988 and '89.

24 MR. HOYLE: Well, I don't agree with that
25 statement, Mal. I think that the relook at whether there

1 could be some cost avoidance was something that needed to be
2 done whether the staff would prefer to do -- to not save
3 money to go ahead with it the way it was. I guess that's
4 another issue, but the point is, a hard look was made to see
5 whether there could be some cost savings in light of
6 InfoSTREAM's having been developed, and in light of the
7 need, in this atmosphere, tight money atmosphere, to see if
8 something seriously could be done. If only a few dollars
9 would be saved, we wouldn't be here today.

10 MR. MURPHY: Well, but where are we going to save
11 money just because InfoSTREAM -- I mean DOE could continue
12 to develop and implement InfoSTREAMS and at the appropriate
13 time, as called for by the rule, turn the system over to the
14 NRC, turn it over to the LSSA. I don't see where we're
15 going to save any money by doing it the way Alternative 3
16 proposes than otherwise. Now the NRC may save any money,
17 but that's not what I think we should be talking about. The
18 nuclear waste fund isn't going to spend a dime less this way
19 than it would otherwise, I don't think. I don't see it,
20 anyway.

21 MR. HOYLE: Well, I think as contemplated by the
22 rule, NRC -- well, when the rule was developed, I didn't
23 think there was contemplated a combined computer system that
24 would just build on something that DOE already had.

25 MR. MURPHY: No, I disagree with you entirely,

1 John. Again, 2.1011 specifically says, "Nothing in the
2 subparts shall preclude DOE, NRC or any other party,
3 potential party or interested governmental participant from
4 using the licensing support system computer facility for a
5 records management system for documentary material
6 independent of the licensing support system."

7 We did contemplate that and we discussed it at
8 some length during the LSS negotiations, specifically the
9 notion that DOE -- that it would be wasteful for DOE to
10 develop two totally independent stand-alone systems, one to
11 manage its own internal documents and one for the LSS. It
12 was -- there was precisely contemplated that they would use
13 the same system for both, but the LSS part of it would be
14 turned over to the LSSA to manage and control.

15 MR. HOYLE: Well, you may be right. I guess in
16 those days I was thinking that the fast track was the LSS
17 and that it would be developed and then perhaps it would be
18 able to be used by DOE as its own document --

19 MR. MURPHY: Well, that's true. I --

20 MR. HOYLE: -- management system. I think we've
21 gotten turned around in the last five years.

22 MR. MURPHY: Yeah. It being turned around is
23 irrelevant to the ultimate issue, as far as I'm concerned,
24 whether or not you develop InfoSTREAMs first and turn it
25 into the LSS or develop the LSS first and then let DOE use

1 it for its own internal records management is, you know, one
2 or -- you know, that's the same, as far as I'm concerned.

3 The issue is who gets to run the thing and where is it going
4 to be located.

5 MR. HOYLE: Well, clearly we're talking about some
6 rule changes. If it's going to be operated, located in DOE,
7 but I guess we ought to be talking about your first point,
8 you know, expand on what does it mean to Moe, what does it
9 mean to NRC to have DOE operating as contractor. And how
10 does that square with the concepts that were in the LSS
11 rule. And yes, there is specific wording in the LSS rule,
12 some of which was I guess very carefully crafted, and maybe
13 some of the crafters are in the room, but there are also
14 concepts there, and I think we're talking about concepts
15 here today. So I guess I need to ask Moe whether you want
16 to take that on now, or Chip, or what's -- how do you think
17 we ought to proceed?

18 MR. CAMERON: Why, I think that we do need to
19 address the first two points that Mal brought up, is this
20 consistent, is Moe's statement about treating DOE as a
21 contractor, and this is something not only for MOE to
22 address but also for Dan to talk about in terms of how the
23 statements square. But is it consistent with the audit
24 program and is it consistent with Alternative 3. I think
25 that we can address those.

1 Alternative 3 is a proposal, and even though the
2 statement that Moe made, our current thinking on this may
3 not be entirely consistent with Alternative 3, the whole
4 purpose of talking to the advisory review panel is to see
5 what changes might need to be made to Alternative 3 to have
6 it be an acceptable vehicle.

7 In terms of how it squares with the language in
8 2.1101, I think the commission paper that went up, and as
9 John stated, it isn't consistent in terms of DOE having
10 nothing to do with the day-to-day operation of the system,
11 because obviously they are going to be in charge of the
12 day-to-day operation of the system, albeit under our
13 control, and I guess that in trying to answer the first two
14 points that you raised, Mal, is what we're trying to find
15 out is if there's some way that we can get to an agreement,
16 even though it's not the most ideal situation, that would
17 allow us to go forward with implementing the LSS.

18 And I guess that's what my concern is, is that
19 Alternative 3, to me, is the vehicle for moving forward at
20 this point as opposed to being mired down in what we've been
21 mired down in for the last four or five years making no
22 progress on the LSS. And I would like to see us move
23 forward with it.

24 Does anybody else on the -- do you want to respond
25 to Mel's points now, or do you want to think about it and

1 talk about it after lunch or --

2 MR. LEVIN: I'd like to talk about it after lunch.
3 I'd also like to hear if there are any -- what the rest of
4 the panel has to say, because I think there are some valid
5 points there and they should be discussed, no doubt about
6 it.

7 MR. DRAPKIN: It may be useful to review how we
8 came to Alternative 3. I realize we did that at the last
9 meeting, but what were the motivating forces behind that so
10 that everybody understands that somebody just didn't sit
11 down in an office one day and for no reason decide to do
12 Alternative 3 or to Alternative 3.

13 MR. SILBERG: I think DOE also ought to address
14 Mel's question about why doesn't DOE develop InfoSTREAMS and
15 then turn it over.

16 MR. SWAINSTON: That's a good point. You know, I
17 think what we're talking about here is we're talking about
18 hardware and we're talking about software. Besides that,
19 this hardware every two or three years, as I understand it,
20 with innovation and so forth, the previous three years'
21 equipment becomes obsolete. So I can't imagine how much
22 savings that the NRC is going to save, or DOE on the nuclear
23 waste fund, because the cost of the equipment is going to be
24 the same, regardless. The cost of developing the software
25 is probably for the most part already absorbed. I can't

1 believe that, you know, the software is that difficult. Why
2 the design just simply can't be turned over with the money
3 to acquire the equipment to the NRC, I can't understand why
4 that's really a problem. Is there anybody that can respond
5 to that?

6 MR. LEVIN: Let's hold on. I'd like to hear what
7 the panel has to say and then break for lunch so we can
8 actually discuss this --

9 MR. SILBERG: Chip, maybe you ought to --

10 MR. LEVIN: -- intelligently.

11 MR. SILBERG: -- make a list on the board of some
12 of these points, and let's just get all --

13 MR. LEVIN: Exactly.

14 MR. SILBERG: -- the points out on the table.
15 Then after lunch we can just go back and discuss them one by
16 one.

17 MR. LEVIN: I agree.

18 MR. SWAINSTON: I have another point, as long as
19 I've got the floor here. We went through -- you know, I
20 think it's been characterized, a very unique activity. And
21 experiment in licensing I think was also a terminology that
22 was thrown out there. And after a couple of years, we came
23 up with this rule, and I think it's a good rule. I think
24 Chip probably deserves as much credit as anybody for
25 actually finalizing this rule, but we all agreed to it. It

1 was done through a negotiation process.

2 MR. SILBERG: All but one.

3 MR. SWAINSTON: Well, all except for -- but I
4 think it's very critical to recall that and to remember
5 that. Right after the rule was promulgated we lost
6 either -- at least one environmentalist, because the NRC
7 modified the rule with respect to the way participants have
8 to submit their positions and intervene. I don't recall
9 just exactly the nature or the wording of the rule is, but
10 the environmentalists are not here at this table today.
11 They felt that we broke faith with them and they're
12 basically -- have nothing to do with this committee. We --
13 or if the NRC modifies the rule again, I think probably, at
14 least speaking for the state of Nevada, the state will
15 challenge, in court, the entire rule in an attempt to have
16 it set aside.

17 Now that may sound, you know, like a saber
18 rattling and so forth, but I've been authorized to make that
19 statement, and I think probably it's one that the state will
20 stick to. And keeping with that, I think we'll probably
21 bring along with us as many of the other participants as we
22 possibly can.
23 And it's more than just this particular rule that
24 may be in jeopardy. It may be the experiment in this unique
25 activity that's in jeopardy as well. Negotiated rule making

1 may never work again if this is the way participants are
2 jeopardized after the rule is once promulgated.

3 MR. MURPHY: Well, I think that's already
4 happening, Harry, and I think Chip is probably more aware of
5 that than anybody else in the room, that old BRC thing
6 didn't come apart, Chip, because the environmentalists were
7 unwilling to participate and negotiate in rule making.

8 MR. CAMERON: Well, that was one factor in that.

9 MR. MURPHY: Because of the experience they had
10 from the NRC after this rule was adopted?

11 MR. CAMERON: That was one factor in people not
12 coming to the table. But it's a lot more complicated than
13 that, but --

14 MR. MURPHY: Right.

15 MR. CAMERON: -- that was at least offered by
16 several people as the reason. This is great. They write on
17 the board. I can't ignore all this.

18 MR. SILBERG: It's true that the rule may change.
19 The purpose of this meeting, though, is to see if there's --
20 if there can be an agreement as to what it would take to
21 satisfy everyone that that change is worthwhile and
22 acceptable and is balanced by whatever audit mechanisms,
23 compliance mechanisms, control mechanisms DOE and NRC think
24 that they can put together, but that's enough to satisfy
25 you. I think that's the issue.

1 MR. SWAINSTON: Well, we've heard that before, 8
2 Jay. In the other vernacular it's, "Trust us, we won't go
3 if it isn't safe." And right now I think probably most
4 people in this room realize that the Senator Johnston on
5 behalf of the DOE will move to try to create an MRS to Yucca
6 Mountain. I mean, it's just -- we probably will never use
7 the LSS system for the purpose that it was originally
8 intended. It might be used in licensing an MRS if he's
9 successful, but you know, a lot of this is just the realm of
10 a prototype activity that might have some value to future
11 participants, but this rule may not ever be used for its
12 purpose.

13 MR. SILBERG: All of that is true, but I don't
14 think that takes away from the usefulness of seeing whether
15 there is a common ground on, you know, a change which allows
16 a more sensible, from an economic standpoint, data
17 processing system, but giving you the protections that you
18 think are necessary that the system will work in an
19 even-handed manner.

20 MR SWAINSTON: Yeah, but how can you even talk to
21 us about protections when we had the 1987 screw Nevada one,
22 about 1992 we had another one. In '94 we'll have a third
23 one. What -- you know, what is the meaning of protections?
24 Why can you --

25 MR. SILBERG: That's a different arena, and we

1 can't play that question here because, you know, you don't
2 have Bennett Johnson in the middle to throw darts at or
3 whoever. We're really talking about something else. If we
4 want to expand the discussion to get into those kinds of
5 questions, you know, then we can have a nice discussion, but
6 it's not going to get us anywhere. And I'm happy to have
7 that discussion, but I think that's really beyond the scope
8 of what we've been trying to do here. It may be that
9 it's -- you know, that there isn't a common ground. You
10 know, the last time we had the negotiator rule making we
11 didn't have a common ground either, and the NRC went ahead
12 and published the proposed rule.

13 But it's worth the effort. We made the effort the
14 last time, you made the effort the last time. I think it's
15 worth making the effort now. If we can reach closure on it,
16 fine, if we can't, you know, we'll move ahead, and if NRC
17 wants to amend the rule, they'll amend the rule. If Nevada
18 wants to challenge the rule, you know, Nevada will challenge
19 the rule.

20 MR. SWAINSTON: Well, you know, I've always felt
21 that Nevada has participated in this whole process in good
22 faith. Kirk has represented us in a very capable manner in
23 trying to help develop --

24 MR. SILBERG: Yeah, and there's no dispute about
25 that. There's no question about that.

1 MR. SWAINSTON: But, you know, the bottom line is
2 that the major negotiating point that we finally decided on
3 was the control and management of the system. If that's
4 taken away from us, then certainly -- I mean, you know, I've
5 already said it, we're not going to agree to it. Then NRC
6 takes it away from us anyway, we will do whatever we can to
7 bring the old rule in. I mean it's just flat -- you know,
8 that's the way it is because that isn't what we negotiated
9 to begin with.

10 MR. BALCOM: I'd like to explore too, as an
11 assumption, if there isn't a possibility of an Alternative 4
12 and, you know, if your original concern was cost avoidance,
13 to see if some of the cost avoidance issues haven't changed
14 since the working group met in terms of looking at the
15 transfer of InfoSTREAM's technology to NRC at some point, is
16 it yet another cost figure, and to see if that's feasible or
17 if indeed there is a policy issues to put there that I
18 certainly, you know, wouldn't know about with NRC.

19 MR. HOYLE: Brad.

20 MR. METTAM: One of the things that Mal said,
21 talked about the difference in oversight and control, and
22 I'd like to hear a little more about that, especially as it
23 relates to SECY-94-081, section B that talks about NRC
24 management authority seems to be written to make it very
25 clear that there are really no enforceable sanctions that

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1 the NRC has against the Department of Energy, which tends to
2 go against the contractor concept. In section two and again
3 in section three it talks about there are, you know, no
4 immediately enforceable sanctions against the Department of
5 Energy should they be found not to be doing the system the
6 way it's supposed to be done. That's not the way you would
7 write a contract with a contractor certainly. I'd like to
8 hear a discussion of that.

9 MR. SILBERG: As you recall, the ultimate sanction
10 for the LSS system in the worst case, which is there
11 wouldn't be an LSS system, was we would go back to the other
12 licensing system, the subpart G as opposed to the subpart J
13 rules, and that -- you know, that is your ultimate sanction.
14 Presumably the NRC, if it were dissatisfied with DOE's
15 performance as a contractor, could hold another one of these
16 meetings three years from now and say, it's not working, you
17 know, we're going to pull the plug on this, we're going to
18 change the rule again. I mean, there is that kind of
19 sanction, and the ultimate sanction which is still in the
20 rule is you don't use subpart J.

21 MR. METTAM: Well, I agree, you know, the ultimate
22 threat is, you know, which has become somewhat shopworn, is
23 that, you know, we don't have any control over you, but if
24 you don't do what we ask, we won't give you a license
25 somewhere down the road. But, you know, it's been used to

1 the point where I don't really know how much weight it has
2 anymore, you know.

3 MR. SILBERG: Well, we're waiting to see that
4 license application.

5 MR. MURPHY: And to see what it's for.

6 MR. SILBERG: Right.

7 MR. MURPHY: You know, just to put Brad's point

8 another way, if in fact -- and I don't see these in the
9 documents, and Brad pointed out the SECY 94-081 language,

10 but if in fact we can agree on something which still allows

11 Moe to pick up the phone and say, "Do it and do it now,"

12 that's different than what's written in the documents, and

13 it's different than calling -- you know, I want him to be

14 the LSS administrator, not the LSS auditor. That's what the

15 A should stand for in LSSA. And what we've heard so far is

16 that he's going to turn into the LSS auditor.

17 MR. CAMERON: You know, that's an important point

18 you bring up that I think people should focus on here, is

19 that those types of changes to what's been presently

20 proposed can be incorporated and brought back to the

21 commission, and particularly through the MOU process,

22 specifying details of those types of arrangements, because

23 we talk about enforcement sanctions. I think you have to

24 read that, broadly, too, in terms of what does it take to

25 make sure that someone is going to respond to deficiencies.

1 that are identified? It doesn't always have to be that
2 you're going to be able to fine them, for example. There
3 may be other ways to put an "enforceable" scheme together,
4 and including the fact of not what you do with the license
5 application -- well, including what you do when the license
6 application is filed, there may be certain things that the
7 panel think should be included in this Alternative 3 related
8 to that that would give them some assurance in this regard.
9 And I think all of these suggestions, I mean ultimately it
10 may be that the panel takes the position that we don't want
11 the rule to be changed at all, and we're going to stand by
12 that or it may be that we come up with some suggestions, a
13 number of suggestions like that that may make it more
14 feasible.

15 MR. HOYLE: Any other suggestions for discussion
16 this afternoon? Looks like a plateful.

17 MR. SILBERG: I think we ought -- I would also
18 pose a question to Harry. I think Mal has kind of
19 identified what his position is. I haven't heard anything,
20 Harry, from you that would indicate there is any middle
21 ground. Your position basically is if you change the rule,
22 you know, we'll go to court. Is there any description of
23 NRC control oversight, compliance, assessment, whatever you
24 want to call it, that might, you know, make the state of
25 Nevada happy or at least not unhappy?

1 MR. SWAINSTON: Well, not as to this particular
2 Alternative 3. If it had to do with some other rule change,
3 I'm sure that there would be middle grounds that we could
4 work out, but this goes really to the heart of the matter.
5 We do not trust DOE. That's, you know, the sum and
6 substance of it. I've identified earlier this morning kind of
7 influence that DOE is capable of asserting against NRC
8 either directly or indirectly, and I can anticipate that
9 that will happen in the future, and we will be frustrated
10 then as we are now in attempting to do anything about it.
11 And why should we agree to that? Why should we capitulate
12 on everything that's important to us? Why should there be a
13 middle ground, I would ask you the question back, why should
14 we identify it?

16 MR. SILBERG: Because if you can accomplish the
17 financial savings that have been outlined

18 MR. SWAINSTON: But the financial savings aren't
19 of any interest to us. It might be an interest to you, but
20 you didn't even sign on to this rule. And this is
21 something -- this is a rule that you didn't even agree with
22 because of the financial considerations.

23 MR. SILBERG: Well, you want to know our position.
24 My position is that there are two sides to the story.
25 There's a benefit to making the change to Alternative 3,

1 which is basically that we can do things probably quicker
2 and probably save a fair amount of money. The cost from
3 your standpoint is it involves -- it may involve changes
4 from the way the rule is structured.

5 The question is are there things that can be done
6 that would make the changes to the wording of the rule
7 acceptable, maybe by other changes to the rule like, you
8 know, some kind of oversight process or something else. If
9 there are no other changes that can be made, you know, is
10 there an Alternative 4 or 5, or is Nevada's position, you
11 know, "Hell no, and we'll see you in court." Which is fine.
12 I mean, I can understand that. Just may be something you
13 can answer after lunch.

14 MR. SWAINSTON: Well, I --

15 MR. SILBERG: Maybe you can answer it now.

16 MR. SWAINSTON: I'll defer it till after lunch,
17 but you know, I think our position is stated, and I think
18 it's pretty much unwavering on this point.

19 MR. SILBERG: Okay.

20 MR. CAMERON: I know, Harry, you've sat through --
21 as a lot of us did, through the negotiated rule-making
22 sessions and a lot of people had strong positions on various
23 aspects of it, and we all sat and listened, and I would just
24 hope that, at least in light of this afternoon's discussion
25 about what are the potential benefits would change, what can

1 we add to this to increase the control that -- just listen
2 with an open mind.

3 MR. SWAINSTON: Chip, no one has presented any
4 kind of cost figures, at least that I have seen.

5 MR. CAMERON: Well, I -- right, I think that we
6 talked about that at the last meeting, and they are in the
7 paper, but rather than having people try to dig through and
8 see what those are, after lunch the NRC will make a
9 presentation about what the cost savings are, what the
10 efficiencies are, what other benefits would result from
11 adoption of Alternative 3. And I think that has to be a
12 starting point, because you have to weigh that against the
13 change in the rule and then look at these proposals to
14 exercise control in light of that.

15 MR. SWAINSTON: Is there anybody who -- have I
16 captured what has changed since the rule was promulgated
17 that necessitates this change, this revision to the
18 framework? How does the audit program, how does Alternative
19 3 square with the NRC treating DOE as a contractor for
20 implementing the OSS? Why can't DOE develop InfoSTREAMs and
21 then turn it over to the NRC for operation? What are the
22 cost savings, if any, related to Alternative 3? What other
23 benefits are there from Alternative 3? What, at a minimum,
24 should be added to Alternative 3, the audit program that we
25 discussed to demonstrate NRC control, for example? And if

1 we do have this in the rule, I want to use this language of
2 Moe picking up the phone and calling Dan.

3 MR. LEVIN: What do I call him?

4 MR. CAMERON: Well, I like Moe picks up the phone
5 and directs Dan to whatever he says to you, do it. How
6 about Alternative 4, the one that Kirk talked about,
7 transfer of InfoSTREAM's technology to NRC, and obviously
8 that's related to 3. A lot of these are interrelated.
9 Doesn't the contractor analogy fall apart in that there are
10 no enforceable sanctions against DOE? Why should there even
11 be a middle ground here, which goes back to some of these
12 other points. Is there anything other than that?

13 MR. BECHTEL: John.

14 MR. HOYLE: Yes.

15 MR. BECHTEL: At the last meeting we had
16 discussion about just the topical guidelines itself, you
17 know, the content. Were you intending on discussing that
18 today? We sent a letter and we never really received a
19 reply on our concerns. I think Mal sent one as well.

20 MR. HOYLE: Right. Now I've been told by the NRC
21 staff that they have your comments and others and that
22 matter's still under review. They have not finalized that
23 new reg on topical guidelines. I don't think they were
24 prepared to make a presentation on it today. I can schedule
25 something like that for a future meeting.

1 MR. BECHTEL: Well, these have been discussed at
2 some point. That also was part of what we had, you know,
3 negotiated. So --

4 MR. SILBERG: I don't think the NRC has any real
5 problems with the suggested changes.

6 MR. HOYLE: Yeah, I don't either. There's nothing
7 that makes me think they do.

8 MR. BECHTEL: Well, we didn't receive a response,
9 so we don't know. So --

10 MR. HOYLE: All right. I'll take back the word
11 that you haven't received a response and see if you can get
12 one either as an interim or whatever. I think the staff
13 that was working on that has been working on something else.
14 I think they just haven't got --

15 MR. CAMERON: But they have analyzed the comments.
16 Okay. And I think that most of the comments were
17 incorporated into a new revision.

18 MR. BECHTEL: Okay. I guess the second item is
19 that we had some concerns about the system itself
20 InfoSTREAMS, and I understand there's going to be a
21 presentation tomorrow, and we'll have a chance to discuss
22 that?

23 MR. HOYLE: Yes.

24 MR. BECHTEL: Okay.

25 MR. HOYLE: Yes. You want to talk about status of

1 InfoSTREAMS tomorrow?

2 MR. GRASER: Yes.

3 MR. HOYLE: How much time does NRC need? How long
4 should the lunch break be, an hour? An hour, hour and a
5 half? Okay. Let's go back at 1:30. 1:30 please.

6 [Whereupon, at 12:02 p.m., the meeting was
7 recessed for lunch, to reconvene at 1:30 p.m., this same
8 day.]

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1 AFTERNOON SESSION

2 [1:40 p.m.]

3 MR. HOYLE: "During the lunch break, the NRC folks
4 talked with one another and to DOE. I think we're ready to
5 start the afternoon session by going through the points that
6 were put on the board. Since Chip had the honor of writing
7 them up there, he gets the honor to at least lead off.

8 MR. CAMERON: "Okay. What I thought might be
9 useful for our discussion would be to go through a little
10 bit of the context of what's been going on over the past
11 years and get to this first point about what's changed since
12 we negotiated the rule. And then to have some of the NRC
13 folks address the cost savings and other potential benefits
14 that might result from Alternative 3.

15 Then to address the third issue, what could be
16 added to Alternative 3 to fortify it. And I think that
17 brings in a second question about the audit program that Mal
18 proposed. It also brings in Brad's question number eight about
19 the contractor analogy.

20 And then lastly discuss what other alternatives
21 are there, and this gets perhaps at some of the points that
22 Harry Swainston was making.

23 We would like to concentrate on what it would take
24 to fortify Alternative 3 to make it clear that the NRC is in
25 control, but we also want to explore other options, and

1 obviously we want to focus on Alternative 3, because that's
2 the alternative that the commission wanted us to put before
3 the ARP as a proposal for further action.

4 As you all know, when we -- all the smoke, dust,
5 whatever, cleared from the negotiated rule making, the
6 proposed rule, the final rule, we came out with a rule that
7 had the Department of Energy designing and developing the
8 system, and that system would then be turned over to the LSS
9 administrator for operation and maintenance. Now in the
10 same time frame that we were conducting the rule making, the
11 commission had specified that the NRC would be the LSS
12 administrator, operate and maintain the system if the
13 department would fund operation and maintenance. And it
14 directed the NRC staff to negotiate a memorandum of
15 understanding, an MOU with the department to that effect.

16 We go to the next stage, then, where the
17 department schedule for the repository changed. At this
18 point I think DOE plans in terms of not only the OSS but the
19 technical program were sort of up in the air. There was
20 some budgetary problems at DOE. We weren't able to finalize
21 memorandum of understanding with the department on paying
22 for NRC's operation and maintenance costs for the LSS. Part
23 of that history involves the office of management and
24 budget. The office of management and budget said that they
25 would not approve any arrangement where one agency, that is

1 DOE, would pay for responsibilities that were within another
2 agency. In other words, the operation and maintenance of
3 the LSS. So now we were faced with the OMB roadblock at
4 that time to negotiating any MOU with DOE on the budget.
5 And later, this was in the last administration, the office
6 of management and budget, I believe, took the position that
7 not only shouldn't the operation and maintenance funds be in
8 DOE's budget, but that the NRC should be responsible for
9 design and development of the system also, which was
10 directly contrary to the provision of the rule.
11 The commission became concerned about having
12 adequate budgetary resources to properly implement the LSS.
13 Commission was concerned about whether we would have a
14 system there that would function effectively. As opposed to
15 looking to DOE for funds for operation and maintenance
16 because of DOE's greater funding capability. Now this
17 concern over budgetary resources for operation and
18 maintenance lead to an evaluation by the commission of the
19 overall cost effectiveness of the LSS. How could it be made
20 more cost effective? How could it be made more efficient?
21 What implications would any proposals for improving the cost
22 effectiveness have on the LSS functionality, including the
23 division of responsibility between DOE and NRC for the
24 system?
25 Moe is going to talk in a little bit more detail

1 about this in a little while, but basically I think that it
2 was realized that there would be millions of dollars saved
3 in not duplicating the technology for the capture of
4 documents. There would also be a greater efficiency in
5 terms of not having any transition between DOE contractors
6 on the design and development of the system and NRC
7 contractors who would take over operation and maintenance of
8 the system. Now I can't under emphasize that point, because
9 that can be a real nightmare, in terms of trying to do that
10 type of handle.

11 At the same time that all this was going on, the
12 whole InfoSTREAMs concept took off, bloomed and became more
13 of a reality. This history lead the commission to say,
14 let's look at an option, Alternative 3, that would not only
15 be cost effective, but it would really give us a realistic
16 chance of getting the LSS up and running. But at the same
17 time, let's make sure that the potential users of the system
18 are satisfied. Let's see what we can do to ensure that
19 they're comfortable with NRC control over DOE's operation
20 and maintenance of the system.

21 So this is where we are at this point. This is
22 what has changed since the LSS was negotiated. And we put a
23 lot of detail into the rule. But I mean, obviously, it was
24 difficult to foresee some of the implementation problems
25 that would be happening down the line.

1 At this point I think I'll ask Moe to talk about
2 some of the cost aspects of Alternative 3.
3 MR. LEVIN: Okay. Like you said, the whole --
4 looking at the costs was kind of before the idea of
5 combining it with InfoSTREAMS. And what that analysis
6 showed was that by not having to duplicate effort and
7 things, that there would be -- by moving it over to
8 InfoSTREAMS, we could realize a \$63 million cost avoidance
9 in the LSS budget of NRC. There is -- and then just the
10 natural logical savings of not having to have a duplicate
11 system and support duplicate systems, and as you said, the
12 handle. And so that's what lead -- that's without getting
13 into a lot of the details, you know, down to the actual sell
14 level of the spreadsheet, that's what's lead to the \$63
15 million number for cost avoidance. That's --
16 MR. CAMERON: Okay. I know that Moe and his staff
17 have been -- in working, talking during lunch and talking
18 with Corrie and Dan about improvements to fortify option
19 three, but before we get into some further proposals along
20 those lines, I'd open it up for panel discussion about the
21 history of this thing and some of the cost savings aspects
22 of it. Anybody have any comments? Harry.
23 MR. SWAINSTON: The history, of course, goes back
24 quite some time. But isn't the more recent history more
25 relevant to what we're considering than what went on several

1 years ago? For instance this \$63 million, that could change
2 drastically just in terms of going from a mainframe to a
3 different kind of system. I mean, if you're just going to
4 use a bunch of PC's, or whatever you're going to use, then
5 that's entirely different than a main -- supporting a
6 duplicate mainframe system.

7 MR. CAMERON: Well, I think that Dan or Moe, you
8 may want to talk about this. I'm not sure if the entire
9 \$63 million was related to the capture function.

10 MR. LEVIN: Okay. I think, if I remember
11 correctly, and if anybody knows more, fill in, that
12 \$63 million was just for illustrative purposes. It was
13 based on a guess of where the technology was then and what
14 the costs would be, but that wasn't a hard-and-fast number
15 that we expected to take to the bank, it was just to show
16 that there could be cost savings with the understanding
17 that, yeah, as technology changed, it could affect that.
18 And I think that's the way that those numbers were
19 portrayed, not as absolute values.

20 MR. DRAPKIN: The question was, was there enough
21 cost savings in an alternative approach to be worth
22 pursuing, and it turned out that it was. There were a bunch
23 of alternatives looked at, dozens probably that didn't
24 result in any significant cost savings.

25 MR. LEVIN: Dan.

1 MR. GRASER: Yeah. I'd also like to comment on
2 that, that yes indeed, a lot of the cost savings that were
3 identified in that drill were representative of what
4 technology was going to help us do in terms of document
5 capture. The document capture from all the estimates from
6 all the way back in 1988 have always been that the
7 predominant amount of money that was going to be spent on
8 this system was for the process of doing document intake,
9 conversion, full text and the whole nine yards. And a large
10 amount of that saving can be attributed to technology.
11 A lot of the cost savings that we identified from
12 the original design in 1990 for example, when we look at it
13 again, there were products available by 1992 and 1993 that
14 were now available as off-shelf products that in the
15 original SAIC design we anticipated having to develop that
16 software because it didn't exist at that time. As we move
17 forward, technology's going to continue to do this to us,
18 and in fact technology, the cost of storage, the cost of
19 disseminating the information, the telecommunications costs,
20 all of these costs are constantly driving down. I venture
21 to say if we looked at it a year from now, that we would say
22 technology has done this to us as well, it's driven down the
23 cost of whatever, you know, other piece of the system
24 happens to be.
25 That is an ongoing reality, and I think your

1 comment this morning was probably very conservative. The
2 state of hardware technology is changing a lot faster than
3 once every three years. It's -- software's going at a clip
4 of about six months right now. PC work stations are going
5 at a clip of every two or three months. It's -- in terms of
6 mainframes, yes, you can say that there is more
7 instructional power available on a smaller box for lower
8 cost than there was five years ago, and that's just the
9 effect of technology. And I think it's fair to say that,
10 you know, we can anticipate other impacts like that.

11 MR. CAMERON: Dan, isn't it true also that no
12 matter what technology you're using, that part of the
13 savings from Alternative 3 are going to result from NRC not
14 having to replicate the hardware and software for capture to
15 run a relatively small, a comparatively small amount of
16 documents through. So that even if the technology changes,
17 you're always going to have a cost savings by not having to
18 duplicate whatever that technology is.

19 MR. GRASER: Right. Because that has not been
20 fully utilized, there would not have been enough volume to
21 really go out and establish a separate capability for
22 relatively small volumes.

23 MR. BALCOM: It seems to me that that would argue
24 that there's less than a \$63 million cost avoidance, and
25 every year it might become increasingly less, and that as we

1 go -- as DOE especially goes to electronic capture
2 dissemination of documents that the dissemination to a
3 second system wouldn't be that big a deal or that expensive,
4 and that if the justification for keeping this within DOE is
5 based on cost avoidance, that every year seems to be less
6 and less reason for that to happen. And that maybe there
7 are other issues that NRC has about, you know, not wanting
8 to run a system. I wasn't at those working group meetings,
9 but, you know, I'm wondering if we're not playing with
10 different figures now instead of \$63 million and quite a bit
11 different figures.

12 MR. CAMERON: Well, I would I guess -- one of the
13 things is that -- I mean there's eventually the capture
14 process is going to be over, okay, and eventually there are
15 going to be a lot of documents that have just created
16 electronically that eliminate -- that ease the capture
17 problem. And I guess I don't know what part of the
18 63 million was attributable to loading, capturing the back
19 log, the hard copy that either never was created
20 electronically or it's been created electronically, and
21 because we have it, that it's just gone. Okay.

22 But there's also the idea of the problem in terms
23 of the transaction between contractors that was of concern
24 and could result in additional costs and/or a system that
25 doesn't really function effectively. Now I guess I would

1 ask the NRC whether outside of capture, the transition
2 problem, in terms of operation and maintenance of the
3 system, can you speak to the -- either the cost savings or
4 the efficiencies connected with Alternative 3 in that regard
5 versus the way it would be done under the way -- the rule
6 now?

7 MR. MURPHY: And while you're doing that, Moe, you
8 might keep in mind that for those of us in the state, local
9 governments, and I think the tribes, if you're talking about
10 saving money by not having the transition from one
11 contractor to another, after the horrendous hemorrhaging of
12 dollars out of the nuclear waste fund that we've all seen
13 DOE spend unnecessarily, in many people's judgments, in
14 transitioning into the M&O operation, were not going to be
15 overly impressed. That is not -- I can guarantee you right
16 now, is not going to be a sufficient reason for this local
17 government to agree to give up its bargain that we agreed to
18 in 1988. I think that is a completely phony issue.

19 MR. LEVIN: I guess from my understanding of this
20 whole cost avoidance issue and everything, what that really
21 lead to the idea of not building two systems and using the
22 InfoSTREAMs. I'm not sure, and I will admit right now that
23 things changed like we've said, I'm not sure that the cost
24 avoidance is still the driving force behind it. It may not
25 be. It's something we may have to look at, but I think from

1 a good -- just from a logical, rational systems viewpoint,
2 we should just have one system. But then that does it,
3 okay.
4 MR. MURPHY: That's true, and I don't think
5 anybody who was involved in the original negotiations, in my
6 memory at least, certainly anticipated on insisting that
7 there be two different separate stand-alone systems built,
8 one for DOE's internal use and one for the LSS with the
9 duplication of costs involved. Certainly I always
10 anticipated that DOE would build a system, that they could
11 also, at the same time, I remember sitting down over lunches
12 and dinners with Barbara Cerny on several occasions and
13 talking about this, that they would also be able to use for
14 their own internal purposes, and when the thing is up and
15 ready to go, and it's now an LSS, take it, turn it over to
16 Moe Levin and say, "Here it is, but this part of it we're
17 saving back here for our own internal purposes." Every -- I
18 think we all anticipated that.

19 MR. LEVIN: But then I would like to ask DOE
20 what -- if -- Dan, what problems he would foresee doing
21 that, of taking InfoSTREAMS and giving it to LSS for the
22 operating -- to the NRC for LSSA for operation and
23 maintenance.

24 MR. GRASER: Well, I'd just like to clarify, you
25 know, one of the aspects of the licensing support system

1 that I think is probably the aspect that Mal's referring to,
2 was the concept of having an LSS capture station, you know,
3 physically there, and when a document comes in, you process
4 that document one time, and when you process the document,
5 it meets the federal records requirement for us and we put
6 it on our machine, but it also meets an LSS requirement, and
7 you take it and you put it off to the LSS machine, which was
8 under the LSS administrator's management and control. So
9 the fact that you were not handling the documents twice or
10 covering them twice, I mean that was always anticipated, and
11 you are correct on that point.

12 Then when you start asking questions about, you
13 know, the reusability of InfoSTREAMs, again, you have to be
14 fairly precise about what you're talking about in the option
15 three scenario, that represented using DOE's existing intake
16 capabilities to process all of the collections of material
17 so that you would not have separately operating capture
18 stations simply because, as I said before, you wouldn't have
19 enough volume to support those activities, and we would want
20 to maximize throughput and just -- you have a mechanism that
21 does it, you just feed it all in.

22 The other aspect of option three then focused on
23 the reusability of InfoSTREAMs technologies, presuming there
24 were pieces of software that we had developed for
25 InfoSTREAMs that would not be applicable to meeting any LSS

1 requirement. And there were other pieces of code that were
2 going to develop that may have been 95 percent or 100
3 percent reusable. We went through the drill of identifying
4 which pieces of software, commercial products, developed
5 code, would have placed in meeting the LSS requirement. We
6 allocated those.
7 In terms of the hardware, I think the expectation
8 was that if we had a federal machine at the Department of
9 Energy that we were using very specifically to meet our
10 records management requirements, we would in some way want
11 to build a Chinese wall around that machine, and then
12 perhaps build additional machinery around it using the same
13 software or pieces of that same software. So you know, that
14 is the scenario behind option three.
15 What sorts of additional problems would that cause
16 us? I would think that the structure of building a
17 licensing support system around the existing InfoSTREAMS
18 really raised only one issue in my mind, and I don't see it
19 as an insurmountable issue. The issue it has raised is that
20 if both of those systems are sharing pieces of software
21 code, then your configuration management becomes an issue
22 such that if I needed to make a change for software to meet
23 my federal records requirement, does that ripple over into
24 the pieces of code that are being used to meet the LSS
25 requirement, and do I need to keep them in synchronization.

1 That was about the only issue, and configuration management
2 can be done in that environment, and that was really the
3 only issue that I saw at that point.

4 I just wanted to make sure that there was no
5 confusion after the last meeting about the possibility of
6 using one machine to do it all. I think when we start
7 getting into that area, I start running into a situation
8 where I may have to serve two different masters at the same
9 time, and that becomes a little bit more problematic. I
10 think in terms of the sizing and the scalability, we have
11 the architecture and the software design that will
12 accommodate adding resources on a scalable level, and
13 reusing as much of that code, and that was the spirit of
14 alternative option number three.

15 All of the code that we could reuse was a cost
16 savings against code that would've been similarly developed
17 under the two different system approaches. There were cost
18 savings there. The ability to add horsepower rather than
19 replicate horsepower, we were going to be able to use the
20 existing DOE hardware and just add Chinese wall additional
21 processing capabilities around it, that is a cost avoidance
22 in that we are not replicating hardware resources that are
23 already available meeting part of their requirement.

24 So but how do you put a dollar figure on it?
25 Well, that's when we get into this really very difficult to

1 project the exact dollar cost until you go through the drill
2 of figuring out how much of a piece of code was going to be
3 reusable, and what would the price of the hardware be two
4 years downstream for a mainframe. But we gave it our best
5 shot, and I think the findings in option three were
6 indicative that there are in fact realistic cost savings.
7 And as you say, cost may not be the ultimate driver, but in
8 terms of reusability, those are certainly feasible.

9 MR. LEVIN: Now that -- okay, that could lead to
10 another option that we discussed. Given that you have a
11 contract employee, one contract to put together a system,
12 and that system could be logically, in some cases maybe even
13 physically compartmentalized so that you can -- we can have
14 the LSS portion and the DOE internal InfoSTREAMs portion, we
15 came up with the possibility of having the LSSA being the
16 COTR, the contracting officer's technical representative
17 over all LSS activities under the Department of Energy
18 contract, which would in effect make us directly responsible
19 for the contractor for LSS activities. They would report
20 directly to the LSSA. But it would still be the Department
21 of Energy contract and the Department of Energy -- I mean it
22 would be the one contract that was handling this whole
23 InfoSTREAMs system that also would be doing LSS. And this
24 was an option we had just discussed at lunch.

25 MR. CAMERON: So I think that's -- we're going

1 to -- that's one idea that we're going to discuss in terms
2 of fortifying option three. I guess one thing I wrote on
3 the board was based on what Dan and Moe said, is that there
4 are realistic cost savings associated with Alternative 3.
5 The question is are the downsides associated with
6 Alternative 3 worth it, and we eliminate some of the down
7 sides.

8 Now you're not allowed to write on the board.
9 Stop it.

10 Okay. Well, that's the question obviously, are
11 the cost savings worth doing things differently.

12 MR. METTAM: What price tag do we put on the
13 United States government keeping their promises? That's
14 what we're talking about. They made a promise. They
15 embodied it in a rule. What does it cost to maintain that
16 promise? That's what we're really here talking about.
17 \$2.7 billion might get our attention, 63 million, ho-hum.

18 MR. SILBERG: Well, we're first on line because
19 they made a promise to take our fuel in '98. We paid
20 \$8 billion.

21 MR. CAMERON: Yeah, I think there's also the
22 aspect of getting a system up and running here to.

23 And I think Alternative 3 gives us some hope for
24 doing that. Okay. And I know what you're saying about the
25 bargain, Mal, but I think that we all have an interest in

1 seeing the system as a reality.

2 MR. LEVIN: Dan just got through telling us that
3 assuming he can meet our other concerns about InfoSTREAMS
4 which you're going to tell us about tomorrow, and my
5 suspicion is that we're pretty close to -- you know, to a
6 solution there. But I think Dan has just said that he can
7 do that through InfoSTREAMS, meet all these requirements for
8 the LSS and turn it over to you guys and satisfy the control
9 problem, that we don't have to build two separate systems,
10 with a few little exceptions.

11 MR. GRASER: I think it's even fairer to say that
12 the cost savings are realizable whether you make a change to
13 the rule or not.

14 MR. CAMERON: Right. Exactly.

15 MR. GRASER: And whether you have any sort of a
16 change in terms of the roles people play in terms of
17 oversight. It's kind of something that any technology --

18 MR. CAMERON: Uh-huh.

19 MR. GRASER: -- is going to do it to you anyhow.

20 MR. CAMERON: You're going to do anyway.

21 MR. GRASER: You may as well sit back and enjoy
22 it.

23 MR. SILBERG: Yeah, but these are changes in
24 addition to technological. These are cost savings in
25 addition to the ones you would get from technological

1 improvement.

2 MR. GRASER: I think the point that Mal is making
3 is that we haven't got to the heart of the issue, we're kind
4 of skirting around the cost avoidance and we probably need
5 to get back in terms of saying, you know, if cost isn't the
6 driver, then what is it in that rule and in the sequence of
7 events in the last couple of years.

8 MR. SILBERG: Well, why -- I don't understand why
9 cost isn't the driver. All costs are changes.

10 MR. MURPHY: Because it's your money, Jay, not
11 ours.

12 MR. SILBERG: All costs that change in technology
13 presumably will save costs, even on the system as it was
14 originally contemplated, but that doesn't mean that there
15 aren't additional cost savings by going to Alternative 3. I
16 thought --

17 MR. MURPHY: I haven't heard any identified.

18 MR. CAMERON: I think that in terms of cost
19 savings identified in terms of Alternative 3. I mean, you
20 can still ask for questions, so what. I think that's a
21 valid question.

22 MR. METTAM: Well no, but Dan's over there saying
23 you can still decide on whether, you know, you use
24 Alternative 3 or not, and I think one of the things that
25 keeps getting sort of skipped over is that no one's really

1 saying that you have to have two systems, you know. There's
2 no requirement that there be a separate developmental
3 process that goes on. You know, there's no requirement that
4 the data that the Department of Energy puts into their
5 system needs to be reentered or recaptured in any way.
6 We're talking about other participants' information, which
7 my guess is -- well, I shouldn't say that, but yeah, I would
8 assume the Department of Energy is probably not going
9 through some sort of scanning process to enter their own
10 documents, because you would hope that they're getting them
11 digitally from their own subcontractors, so that if what
12 you're looking at is a hardware question of how you get hard
13 copy documents into it, they're probably not really ready
14 for a whole bunch of non-DOE hard copy documents anyway, and
15 they'll have to buy whatever might be done.

16 I think if you start balancing the costs out, the
17 only real issue is, you know, who handles it ultimately, and
18 there are probably some costs in making that transfer, but
19 it's not as if he's going to, you know, rub a magnet against
20 his hard drive and say, "Well, here are all the documents,
21 go ahead and put them back into our system," he's going to
22 hand you a system that's got, as someone said, you know, the
23 bulk of the information is coming from DOE or DOE-
24 subcontractor. I won't use their participant terminology,
25 it will confuse us. Already, that information will be in

1 there.

2 And then the question is, well who controls, who
3 handles the entry of information from parties in the process
4 other than the Department of Energy? And it should be
5 obvious from a public perception point of view that, you
6 know, what you're asking is for the public to say, you know,
7 trust the Department of Energy to handle that material
8 appropriately. I'm not saying they're not going to, but
9 from the outside looking in, you've got -- in theory you've
10 got a couple of parties involved underneath the regulator.
11 The NRC is going to rule on license ability of the site, and
12 the applicant is the Department of Energy, and you're
13 saying, "Well yeah, but they're also going to handle all the
14 important documents for everybody else." Difficult to buy
15 from the outside.

16 MR. SILBERG: Well, I thought, getting back to why
17 can't you just transfer the system to NRC and why do you
18 have to have a duplicate system, as I remember the
19 description of the system, InfoSTREAMs is a part of an
20 overall system that is agency-wide within DOE.

21 MR. GRASER: No, that's not the case.

22 MR. SILBERG: It's not? I thought there was also
23 a tie-in to the overall department system.

24 MR. GRASER: From E-mail connectivity for example,
25 but that's not an essential feature of LSS. That's more

1 along the lines of one of our office automation functions.

2 MR. MURPHY: You're assuming more efficiency in
3 the Department of Energy than they're entitled to.

4 MR. GRASER: Even if I wanted to --

5 MR. SILBERG: Well, I came to the conclusion that
6 President Reagan was right, and we should've abolished DOE a
7 long time ago and put it into smaller pieces where it would
8 be more manageable.

9 MR. SWAINSTON: Want to bring that to a vote? Can
10 I ask a regular -- might be an inane question, but what is
11 this impetus to get this LSS system up and running? Is
12 there -- you know, we're like at least 10 years away from
13 any kind of licensing proceeding. What is the real drive to
14 get it operating right now?

15 MR. CAMERON: I guess -- I don't know about 10
16 years away from a licensing proceeding. I mean, that may be
17 true, but I think -- I don't know what DOE's schedule is,
18 but it takes a long time to get a system. It takes some
19 time to get a system up and running and the bugs out, but
20 going back to the original LSS rule, one of the
21 objectives -- the only objective was not just to use it
22 after the license application came in, but to provide some
23 benefits to the potential parties to the licensing
24 proceeding to be able to use it before the license
25 application came in, not just to get ready for the

1 proceeding in terms of being able to formulate well
2 thought-out contentions, et cetera, et cetera, but to use it
3 in their prelicensing work.

4 And that's still an important objective as stated
5 in the supplementary information to the rule. Why spend all
6 the money to get this system up and running and only get the
7 benefits of using it after the license application comes in?
8 So I think that that sort of rears on getting the thing
9 ready as soon as we can get it ready, because it's not just
10 a question -- I mean Dan is not going to be just around -- I
11 mean, you know, it's not just around the corner the whole
12 thing.

13 MR. SWAINSTON: Well, let me play the devil's
14 advocate just a little bit on that, Chip. If that were the
15 case, then the participants should be urging you to get it
16 up and running. To my knowledge none of the participants --

17 MR. MURPHY: We are. We are.

18 MR. SWAINSTON: Okay. Well, we aren't, but I'm
19 not so sure that -- of what value you see now, but if that's
20 the case, then --

21 MR. MURPHY: We want to be able to use it to track
22 and manipulate in a benign sense, in other words, not in the
23 DOE sense, characterization data and documents that are
24 being generated.

25 MR. METTAM: Dan, I'm assuming InfoSTREAMs is

1 designed as a document management system sort of first and
2 foremost.

3 MR. GRASER: No.

4 MR. METTAM: What is -- what is -- okay. I know
5 we're jumping the gun into tomorrow's presentation but --

6 MR. GRASER: InfoSTREAMS, number one, is hardware
7 and software and wide area and local area network,
8 architecture that has been put in place. It is the sum
9 total of computer resources necessary for our program to
10 meet all of its ADP-type requirements. So number one, it is
11 the architectural foundation. We happen to have built that
12 architectural foundation with enough latitude to make it
13 scalable to either meet what our records requirement is
14 which is a small box, or to meet at least the reusability of
15 that software to meet bigger requirements in case we had to
16 reuse that software for licensing support system.

17 Second thing that InfoSTREAMS is, is a document
18 intake capability to get record material off the desktops
19 and out of the back doors of people's PCs and automatically
20 into the records environment so that we could meet some very
21 specific requirements of the rule. And the requirements
22 that we're talking about, you know, deal specifically with
23 the ability to capture circulated but non-concurred or
24 non-finalized circulated draft material and have that
25 material at least be subjected to a process that gives us a

1 good level of assurance that we're going to capture that
2 material to meet that aspect of the requirement of 10 CFR 2.

3 Third thing that InfoSTREAMs does is integrate
4 that capability to capture desktop automation, get it into
5 the records management environment, is that once it gets
6 into the records management environment for us to identify
7 which ones are going to go where, which ones do we need for
8 licensing versus which ones are only federal record
9 material, because the licensing support system processing is
10 an expensive drill, and you don't want to go through that
11 drill unless you know you need the document for licensing.
12 If I only need it for a federal record, I'll take a snapshot
13 of it, I'll put 10 fields of information, I'll throw it in a
14 corner, and I'll deliver it to the national archives.
15 That's what my requirement is.

16 But in terms of if we can identify which ones are
17 bound for licensing support system, we're then going to
18 handle those documents at that point in time, give them the
19 full treatment and put them right into a load format that's
20 specified by the header working group and so forth.

21 So the InfoSTREAMs is basically a philosophical
22 approach to meeting a whole bunch of requirements. We think
23 we've met it architecturally, hardware and software with
24 software that's able to be reused for this LSS requirement
25 if we need to. We've met our own programs internal

1 requirements to try to get standardized on office automation
2 tools because, you know, four or five years ago we had four
3 different versions of word processing packages across the
4 program and we couldn't even get that standardized. Well,
5 now we do. We have standard suite of office automation.
6 So that's kind of what information -- you can call
7 it a records management system and some of it is. You can
8 call it an office automation and some of it is.

9 MR. METTAM: But the part that we're looking at
10 that will sort of match with the LSS is basically the
11 records management portion. We don't care that E-mail works
12 over here back and forth between offices, or that
13 everybody's using Word Perfect 5.1.

14 MR. GRASER: Well, some of the records management,
15 from the Department of Energy's perspective, normally just
16 includes identifying the stuff as federal record material
17 and then dispositioning it. The LSS requirement, okay, that
18 is really unique and is added over on top of our normal
19 records stuff, is to be able to provide the retrievability
20 to a group of users that are non-DOE people, don't know what
21 our records look like, may not be ADP experts, but want to
22 sit down and have access to, you know, a general compilation
23 of information and not have to get 16,000 hits for each
24 query.
25 Okay. So the thing that is more LSS than records

1 management happens to be using it for more than just an
2 archive, an archival-type approach. It means pulling that
3 stuff out and pulling it down and looking through it and
4 wading through it and doing some cutting and pasting from it
5 and pulling that extracted information out and using that.
6 In our environment, we're doing a whole lot of that type of
7 activity because we're using those products to iterate,
8 create additional products and the next version of products,
9 but that's more office automation oriented.

10 MR. METTAM: Perhaps I could sort of add my two
11 cents to the question of why are we worried about the LSS
12 now. At least half of the counties, probably more, but at
13 least half of the counties that I know of firsthand are
14 using some sort of a document tracking system just to try to
15 keep on top of what in the world is going on what -- you
16 know, what's passing past the desk. Some of those are being
17 done cooperatively, and certainly we're working on sharing
18 information, developing bulletin boards and all that type of
19 thing. There seems to be a fit here for LSS work, and my
20 own contention would be that no matter how soon you start
21 it, it's not going to be ready when you want it anyway. And
22 so, you know, you're better off doing it sooner than later.

23 MR. LEVIN: That's a good point. From a systems
24 perspective, you can never have too much time to start
25 developing a system. The more time you spend up front and

1 the more time you had to do it right and implement it right,
2 the better the system is, plus the fact we can start getting
3 a jump on the large backlog of documents that already exists
4 that we have to load in the system. You don't want to wait
5 and design the -- a system by default because you ran out of
6 time, because all of a sudden the schedule gets accelerated
7 and you don't have as much time as you thought. Now that we
8 have the time, we would like to make use of it. It only
9 makes sense.

10 MR. MURPHY: You know, that's a very good point
11 too, for those of us around here who are tracking the
12 technical program as well, we've now got scenario A looming
13 over our heads. I don't know whether you're even aware of
14 that. But the administration full funding proposal where
15 if -- you know, if Dreyfus gets all the money he wants for
16 Congress, they go to a preliminary -- go to a site
17 suitability determination in 1998, file a license
18 application in 2001. We may very well be less than 10 years
19 in licensing.

20 MR. LEVIN: So you don't -- while we've got the
21 time --

22 MR. MURPHY: I wouldn't bet an awful lot of money
23 on that pony, Chip, but it's something that we have to be --

24 MR. GRASER: And for example --

25 MR. MURPHY: Yeah. You wouldn't want to wake up --

1 one morning and say, oh my God, here it is and we've done
2 nothing to get ready for it.

3 MR. GRASER: You know, the scenarios that you
4 outlined right now are all just very much in a very active
5 discussion phase, and it's really very difficult to
6 speculate what impact, if any, they would have. Certainly
7 you could sit there and speculate and say, well, if people
8 are doing suitability activities and we have
9 suitability-type documents coming out, and people are going
10 to be expected to see that, what is the mechanism you're
11 going to use to make that information available to the
12 potentially affected parties. And bingo, right then and
13 there you have to answer, do you intend to use subpart J or
14 are you going to use subpart G? Well, this is all being
15 studied right now, and it may be premature to ask that
16 question, but it is certainly somewhere over the
17 not-too-distant horizon. As the program firms up, you know,
18 the issues in terms of full funding and scenario A and
19 whatnot will have a better opportunity to examine those
20 issues.

21 But going back to Moe's point, with the federal
22 procurement cycle and the federal long-range planning and
23 earmarking money for a major system, I basically -- I'm
24 developing my fiscal year '96 budget right now. So if we're
25 talking about having money for licensing support system work

1 that's going to be specifically earmarked for it, I'm doing
2 my '96 budget now, and that's the way the federal government
3 works. So you know, we may build it in six weeks, but it
4 will take me three years worth of budgeting and forecasting
5 to get it on the books, and that's the reality.

6 MR. SILBERG: Can I ask a question about -- at
7 least I don't have a problem with the timing. I think the
8 earlier you get this thing working, the better. You know,
9 the backlog is going to be a very nasty problem to solve.
10 It's going to be bigger than people think. It's going to
11 take a long time. It's going to involve documents that
12 aren't going to go into the system easily because they're
13 old and in miserable condition and all sorts of problems.
14 But let's get back to the issue about InfoSTREAMS as the
15 LSS, turning that over. Is it feasible -- I take it you
16 wouldn't turn over the entire InfoSTREAMS to NRC because a
17 lot of it is your own -- your records management, your
18 office automation. So you would be turning over, at most, a
19 subpart of that system on this theory that we talked about
20 before.

21 MR. GRASER: I think it's safer to characterize it
22 as saying that the federal records component is a smaller
23 component of the larger InfoSTREAMS, or the larger LSS
24 capability.

25 MR. SILBERG: Well, whichever is larger or

1 smaller, is it possible to break apart InfoSTREAMs, because
2 I take it you're probably not allowed to turn over the
3 records management system to NRC. Can you break the system
4 apart and turn over a part of it but not the rest of it, or
5 am I wrong on my assumption?

6 MR. GRASER: Well, sure you can, but the impact in
7 doing that in terms of how much cost it will take to glue
8 pieces back together again, we haven't gone thoroughly
9 through that analysis.

10 MR. BALCOM: You know, also if I'm not mistaken,
11 Dan, you can correct me if I'm wrong, the document
12 management and the search and query part of this is not --
13 does not exist today and has to be purchased, modified,
14 written, built, whatever.

15 MR. GRASER: Which piece of the document
16 management?

17 MR. BALCOM: Well, this --

18 MR. LEVIN: On the InfoSTREAM side?

19 MR. BALCOM: The LSS, whatever is required to meet
20 LSS requirements, part of which I guess DOE would use
21 internally anyway, is still not part of InfoSTREAM.

22 MR. GRASER: Yeah. We're going to be briefing
23 that tomorrow. We've put into play some mechanism to have,
24 you know, an operational proof of all of those technologies
25 hopefully by the end of this fiscal year. So between now

1 and September for all the remaining pieces.

2 MR. BALCOM: The search engine and the whole --

3 MR. GRASER: Search engine, CD storage, the whole
4 nine yards by September of --

5 MR. BALCOM: We'll go into that tomorrow.

6 MR. GRASER: Yeah. '94.

7 MR. BALCOM: Yeah.

8 MR. CAMERON: Could we -- I guess I'd like to get
9 us to the point where we could go over -- regardless of what
10 the panel eventually recommends or agrees to here, I would
11 like to get to the point where we could explore in a little
12 bit more detail, if you assume that we were going to use
13 option three, what types of things would give people more
14 confidence in terms of NRC controlling the system, but I
15 think that part of whether we ever get to an agreement on
16 option three obviously includes, are there cost savings.
17 And the feasibility of turning over the system.

18 I mean obviously another alternative here is the
19 status quo, which is turning over -- I shouldn't
20 characterize that as the status quo, but turning over the
21 system. And Dan talked about breaking it apart, trying to
22 glue it back together again. Could we get some discussion
23 about what the realistic aspects are of using InfoSTREAMs as
24 the foundation for developing the LSS and then saying to the
25 NRC, okay, the NRC is going to operate and maintain that

1 system. What does that mean?

2 MR. GRASER: Do you want to engage in a realistic
3 discussion of that right now?

4 MR. CAMERON: Well, I think it's --

5 MR. GRASER: Or are you suggesting that we sit
6 down and think through the issue and come back and report on
7 it?

8 MR. CAMERON: Well, that may be. I think we might
9 need to do that anyway --

10 MR. GRASER: Because we could shoot from the hip
11 and leave a lot of misimpressions around again.

12 MR. CAMERON: The important point of that right
13 now is that we talked about some of the cost savings and now
14 sort of summarized it by saying, so what, that doesn't
15 outweigh what was negotiated or what was in the rule. Now
16 if there is other things besides the cost savings, just in
17 terms of the practicality of doing this turnover, that that
18 means that we're going to have to do something like
19 Alternative 3 to have a system that works, and that sure as
20 hell would be important information.

21 MR. MURPHY: Chip, we have always envisioned a
22 turnover. The rule -- today's language provides for a
23 turnover.

24 MR. CAMERON: Now Mal, I know that the rule
25 language provides for it. What I'm saying is, okay, we've

1 gone down the road a number of years now, okay. What does
2 it mean in realistic terms at this point of turning over
3 InfoSTREAMs being used as the foundation for the LSS?
4 Because if you don't even use InfoSTREAMs, then you have a
5 huge amount of additional cost I think.

6 MR. MURPHY: No, I don't -- well --

7 MR. CAMERON: If it's not feasible, I mean, you
8 know -- I don't think anybody put in the rule that, you
9 know --

10 MR. MURPHY: I think we've gone beyond considering
11 building a brand-new LSS.

12 MR. CAMERON: Well, what I think it would be -- I
13 think it would be valuable for people to hear, what are the
14 realistic aspects of turning it over.

15 MR. MURPHY: And there's two sort of sub-issues
16 there. I suppose maybe we're losing track of them. One of
17 them, and by far the most important one, in my mind at
18 least, is control. We'll get to the "pick up the phone and
19 say do it and do it now!"

20 MR. CAMERON: No, and I don't want to lose track
21 of that. Right.

22 MR. MURPHY: The second -- right. And the second
23 issue in turning it over is this physical location, part of
24 the rule -- current language in the rule says it can't be
25 physically located in DOE facilities. Let's separate those

1 two. I mean --

2 MR. CAMERON: Well, that's --

3 MR. MURPHY: As far as I'm concerned, I'm willing
4 to deal separately with those two.

5 MR. CAMERON: Yeah, I think that --

6 MR. MURPHY: Maybe we can satisfy the second one
7 by renting a room over in the Lafont Plaza and saying it's
8 no longer in the building or something. I -- you know,
9 so --

10 MR. CAMERON: So the thing is is that you're
11 right, you could -- we could exercise control that would be
12 effective --

13 MR. MURPHY: Yeah, put a sign on the door
14 saying --

15 MR. CAMERON: -- as possible --

16 MR. MURPHY: -- this room belongs to NRC and
17 everybody else keep out.

18 MR. CAMERON: -- but it still might be -- you
19 still might run afoul of the physical location --

20 MR. MURPHY: Yeah.

21 MR. CAMERON: -- problem. Which may be a never no
22 mind if you solve the -- I mean the physical location thing
23 is there because of the concern over control, and that's
24 basically how it was expressed. So if we can assure people
25 on control, then we may not need to worry about that.

1 MR. BALCOM: You know, I'm also going to guess
2 that whoever submits the RFP to do this work, the same
3 contractors are going to bid on it regardless of whether
4 it's DOE or NRC and, you know, so I wonder how big a deal it
5 is that it get moved. And another thought I have is that if
6 the cost avoidance is nominal or virtually nothing, let's
7 say we price Alternative 4, and it doesn't look so bad
8 anymore, what then remains that NRC has objection to that
9 they wouldn't want to run it or manage it?

10 MR. CAMERON: Well, just to answer that last
11 question, before we go back to maybe some admittedly gross
12 generalizations, top-of-the-head on realistic aspects of
13 turning it over. But as I mentioned before, the commission
14 has a real concern about ensuring continued budgetary
15 resources to operate and maintain the system. And that is a
16 real concern to the commission. Okay.

17 Now everybody's going to have their own view about
18 whether the cost savings, the feasibility problems, et
19 cetera, et cetera, about how important they are. And I
20 think to the commission the cost savings were an important
21 element here, definitely an important element. But we
22 always run into the budgetary resource problem, and I think
23 that that's always -- that's going to be with us, and the
24 commission is still going to be concerned about that no
25 matter how we come out of this session. So that has to be

1 fixed.

2 MR. SILBERG: Why are the commission's budgetary
3 concerns worse than DOE's budgetary concerns? Everybody's
4 got to go up to Congress. In a sense, NRC ought to have
5 somewhat less, because none of their money comes out of
6 taxes. Congress doesn't care as much anymore about what the
7 NRC's budget is, while DOE I think tends to get more
8 scrutiny.

9 MR. HOLDEN: Let me ask this question. It's
10 rarely that a federal agency, when they're speculating or
11 developing budgets, that there's -- in these projections, if
12 there's a savings, they've already tagged that for some
13 other program. Is there something that the NRC would be
14 looking at to do that or M&O or, you know, if it was waste
15 fund money and there's a \$63 million savings, if that would
16 go to granting effective status to several tribes in Nevada
17 who should be here with us. I've crossed the line, but
18 beyond that, I'm just curious.

19 MR. CAMERON: Now what is that -- what is the
20 specific question, Robert?

21 MR. HOLDEN: The question is this 63 million, you
22 know, if there's some projections with the budget, is that
23 63 million -- has it been talked about that that portion
24 would go to M&O, would it go to something else, what would
25 it --

1 MR. CAMERON: On Ohno, in terms of -- it's mainly
2 talked about in terms of cost avoidance, I guess, generally,
3 rather than there being an actual \$63 million sitting
4 somewhere that if we save it we could use it somewhere else.

5 MR. HOLDEN: Just curious.

6 MR. METTAM: We mentioned earlier the scenario
7 that Dr. Dreyfus is working on, including the full funding
8 scenario. Well, there's also a scenario that's a level
9 funding scenario within the Department of Energy which says
10 basically all they're going to do is the geophysical
11 technical sites they'll be working, and they're not going to
12 do any licensing work, and they're not going to do any
13 EIS-type work. And you know, my question really is, you
14 know, how much safer do you think the OSS is on the
15 Department of Energy side of the house? It might well be
16 more easily funded by going to congress and saying, you
17 know, "The NRCs got to do this, LSS," as opposed to seeing
18 if you can fit it through the cracks on the department side.

19 MR. CAMERON: Well, I think that that question,
20 Brad, and Jay's question are fair questions. And when the
21 commission went through this equation, at least the first
22 time, its concern was is that we didn't think that we were
23 going to have the continued capability, budgetary capability
24 to implement the system after what we had gone through with
25 OMB in terms of trying to work out the MOU where we would

1 get DOE to pay for operation and maintenance of the system.
2 Now obviously one of the things that we'll take back to the
3 commission from this meeting are these caveats on the
4 commission's, you know, budgetary concerns. And I don't
5 know if John or Moe wants to say anything in addition on the
6 budget aspect.

7 MR. HOYLE: Well, I was going to not talk
8 specifically about the budget, but Mal brought up a point
9 this morning that he thought perhaps the staff was not
10 really behind this approach, that they really favored
11 another approach. And going back into the history of it,
12 you're right.

13 When delay occurred in the program, the high-level
14 waste program, work stopped on LSS. OMB was not getting DOE
15 money. And Lloyd became very concerned, thought it really
16 ought to get going, so he proposed to the commission at that
17 time that the commission do it all. And it was at that
18 juncture that the commission said, "Well, before we look at
19 that real hard or take that one ourselves, because our
20 budget is relatively small, you put the LSS in it and it's
21 got this big bulge in it then for LSS," they said, "Let's
22 look at this other, you know, other process."

23 So we went through all the alternatives, came out
24 with Alternative 3, commissions terms to try that out.
25 Commission is well aware of what's in the rule, well aware

1 of the work that went into establishing it. I think what
2 they're asking you is to take another look at it and look at
3 the agreements that you made earlier, decide are those the
4 ones that you really have to stick with and tell the
5 commission that that's what you have to stick with, or is
6 there some other way to accomplish exactly what was agreed
7 upon there in other implementation terms. So I don't think
8 I need to say any more about the budget.

9 MR. LEVIN: No, just -- the only thing I say about
10 the budget is that situations change, people change, things
11 change, things can always be readdressed based on new
12 information.

13 MR. MURPHY: Yeah, we can't make any decisions
14 here today based on what we anticipate --

15 MR. LEVIN: But you can make recommendations.

16 MR. MURPHY: -- the graciousness of congress is
17 going to be in five years. I mean, we all know they're
18 going to do something stupid, the question is who.

19 MR. CAMERON: Well, let's take a look at some of
20 the control mechanisms, and we talked this morning, we
21 talked about the audit system, we talked a little bit about
22 the MOU that would capture some of the basic issues, basic
23 points of control that we might agree on, and I would like
24 Moe to just talk about what this new one was that you worked
25 on. I mean you mentioned it before, but can you explain

1 what the implications are and how that ties into Mal being
2 able to -- say Mal will call Dan, Mal's going to call
3 someone, you know. Mal will call Moe and Moe will call Dan.

4 MR. MURPHY: I'll test it. I'll send him some
5 piece of junk that Dan will reject.

6 MR. LEVIN: Okay. First before I get to that, let
7 me talk about one of the questions up here about how can my
8 relationship with DOE be that as a contractor. When I said
9 that, I wasn't meaning in the legal sense. I said I would
10 be -- I would treat our relationship as that of a contractor
11 and contractee in the way I dealt with them. Legally
12 obviously DOE cannot be a contractor to me. But one of the
13 things we could -- that's where the memorandum of
14 understanding came into play.

15 When you have a contract you have certain
16 statements of work, you have -- there are certain elements
17 there that explicitly define the relationship of the
18 contractor and the contractee. Okay. The -- and these are
19 the -- when the contractor isn't performing according to
20 these agreements, then you have certain legal things you can
21 do. That makes a legal contract.

22 Well, the memorandum of understanding between NRC
23 and DOE would be our contract. There we would explicitly
24 state what is expected of DOE, as I call it, a contractor to
25 the LSSA. As far as enforcement, legally we don't have the

1 same legal recourse under this arrangement with DOE as we
2 would under a normal contract. That's true. But what we
3 did consider or presented it as building in for this
4 enforcement was making public all activities, anything that
5 we found deficient or any problems, making it known,
6 elevating it to the highest levels and then take -- let the
7 system that we have in place that rules the way government
8 works take effect. We have the media. We have public
9 scrutiny, we have all these forces that will be our legal
10 forum, will replace the legal forum of enforcement. I mean
11 that's the way things work between government agencies.
12 So that's just to clarify how I saw working when I
13 said the relationship to me would be like that of a
14 contractor. I didn't really mean it was a contract. We
15 would kind of simulate a contract.
16 Then this new option came up, and I think this new
17 option, although we didn't really -- haven't had a chance to
18 really flesh it out and discuss all the ramifications and
19 everything, and there may be some problems with it, but it's
20 something to pursue. Actually gets to the point where I'm
21 not -- I would actually be -- the LSSA would actually be
22 directly in control of the contractor in the legal sense.
23 If the LSSA were the -- was the COTR, the contracting
24 officer's technical representative, over those tasks within
25 the DOE contract that were LSSA specific, then there is a

1 legal relationship there. I really am dealing with the
2 contractor. Mal calls me and I've got a problem, I call the
3 contractor directly. "I am the COTR.

4 MR. DRAPKIN: Furthermore, if work is done that is
5 not approved by the COTR, the invoice does not get paid.

6 MR. LEVIN: This is exactly. This is real true.
7 So this is something else we could pursue and kind of -- I
8 don't know exactly, but it gets very close back to the
9 original rule, I think, where NRC is operating, in a sense,
10 the LSS.

11 MR. BALCOM: Also sounds like it may get
12 perilously close to what OMB's original objection was about
13 the relationship. I don't know, maybe that's not the case.

14 MR. LEVIN: There's a lot of things we'll have to
15 explore with this, but I think it's an excellent suggestion,
16 and I think it bears a lot of looking into and a lot of
17 discussion.

18 MR. CAMERON: Would we even say -- would we even
19 characterize this as DOE operating and maintaining the
20 system?

21 MR. MURPHY: Oh, you wouldn't under those
22 circumstances. You --

23 MR. LEVIN: No, they really wouldn't. It would --
24 well --

25 MR. MURPHY: You could honestly --

1 MR. LEVIN: It would be a DOE contract. There's a
2 fine point --

3 MR. GRASER: It gets down to the issue of control
4 and oversight. Who are they reporting to? They are giving
5 performance and status reporting back to Moe who has control
6 over giving technical direction. Thou shalt do this, you
7 know, respond to that guy, get those documents loaded. They
8 report back to Moe. So you know, in essence what you're
9 doing is you're bringing the mountain over to Muhammad in
10 this case.

11 MR. SILBERG: Moe.

12 MR. GRASER: Moe.

13 MR. LEVIN: Let the record show --

14 MR. GRASER: It's the other way around. I mean,
15 what we've been trying to do is look at a situation, you
16 know, with this control issue that is seeming not to have a
17 very comfortable fit. But we just kind of took a different
18 whack at that from a different direction, and it has some
19 attractiveness to it.

20 MR. SILBERG: Is that permissible under government
21 contracting?

22 MR. GRASER: Well, that was my first question.

23 MR. LEVIN: I believe it is. I believe it can be
24 written in a contract, but that's something we'd have to
25 explore. Like I said, this is kind of a spur-of-the-moment,

1 came about as a result of spontaneous generation or
2 something.

3 MR. MURPHY: I think there are even -- and I'm
4 pretty fuzzy on this, and I certainly am subject to being
5 corrected, but I think there are maybe even some recent
6 examples of something very close to that in the weapons
7 complex cleanup area. I can think of -- and I'm not
8 precisely sure how it works, but the Corps of Engineers is
9 managing some contracts, DOE contracts for cleanup on the
10 Hanford Reservation that DOE has left. DOE contracts, DOE
11 is funding them, the Corps of Engineers is managing them on
12 a day-to-day basis, and maybe that's the way they're doing
13 it.

14 MR. GRASER: If there is a commitment on the part
15 of leadership to attempt to solve the problem and move
16 things forward, we can figure out a way to make it happen.
17 And if this is perceived as a mechanism that will move
18 things forward, then it has that in its -- you know, in its
19 behalf when the argument goes forward, that people perceive
20 this as something that's going to move the issue forward,
21 then we can get some support for it.

22 MR. LEVIN: And if we get a sense from the panel
23 that this would really help to break the log jam and get
24 things moving, I'll spend every resource I have to pursue it
25 immediately.

1 MR. CAMERON: Brad, did you have some misgivings
2 or --

3 MR. METTAM: Well, it wasn't misgivings. It
4 sounds like there's something there to look at. The one
5 concern I had is that, you know, one of the key benefits to
6 having these two systems sort of run concurrently by the
7 same people is that you wouldn't have as many, quote
8 unquote, LSS specific activities, you know. An activity
9 would be done to put it into the system, and that data would
10 be partly used for this system and partly -- you know, I'm
11 not saying, you know, I object to it, but I think you need
12 to very carefully craft, you know, the fact that if it
13 contributes to LSS data, it becomes a part of LSS -- there's
14 a lot of language that's going to have to be written.

15 MR. GRASER: That's right. As a matter of fact,
16 that was one of the other issues that Moe and I discussed,
17 and I just postulated off the top of my head that the minute
18 we put a flag on the document that we've -- it's past a
19 relevancy check that, yes, it is, it's on its way to the
20 licensing support system. Then the flow through the rest of
21 the process comes under his -- it would have to come under
22 his guidance. So the minute you make that determination at
23 that point -- from that point forward he has to be able to
24 say it's under his control. Because that's just like a
25 capture system.

1 MR. METTAM: And I think it would be important to
2 say that any document submitted by other participants would
3 automatically wind up in that area.

4 MR. GRASER: Yes.

5 MR. BALCOM: How about bundling your -- this
6 discussion that you have along with the physical location.

7 MR. DRAPKIN: I'm beginning to have trouble
8 identifying where one system starts and where another ends
9 these days because systems being tied together. So it's not
10 clear to me, just from a purely technical viewpoint, if I
11 have a PC or work station cluster in my office connected to
12 something, is it part of that something or is it part of
13 something else? It's just physical locations. It's not
14 such a clearly defined topic as it was five years ago.

15 MR. CAMERON: Yeah. Kirk, maybe the issue really
16 is -- I still think that the physical location, or whatever
17 the exact words were in the rule was, sort of a way, a
18 manifestation of the control issue. And if the COTR
19 suggestion solves the control issue, then maybe we don't
20 have to worry about physical location issue. I'm not saying
21 that we don't need to look at that in more detail, but it
22 might solve it that way.

23 But two questions. One is, if this suggestion was
24 implemented, does the panel agree that this would not --
25 this would not do any injustice to the rule as currently

1 promulgated?

2 MR. SILBERG: You're talking about the concept as
3 opposed to maybe some wording problems.

4 MR. CAMERON: Yeah.

5 MR. BALCOM: I would ask one more question: Who
6 does the COTR report to and under whose influence would the
7 COTR be? I could --

8 MR. LEVIN: The COTR would be the LSS --

9 MR. BALCOM: -- see him being under the influence
10 of both people, of both agencies.

11 MR. LEVIN: Be the LSSA.

12 MR. GRASER: He's asking the contracting officer
13 exactly is it a DOE contract.

14 MR. LEVIN: Oh, the contracting officer. Now in
15 this case, like I say, we'd have to look at the
16 ramifications. I mean it is a DOE contract, it will have
17 been let by a DOE contracting officer. We have to explore
18 that.

19 MR. GRASER: And for example, what role would he
20 play during budget formulation. He's fighting for dollars
21 against other DOE guys. I mean this is not a simple issue,
22 but, you know, all of those aspects need to be explored.
23 Going back to the contracting officer --

24 MR. CAMERON: I don't know. Can you have dual
25 contracting officers, one from each agency?

1 MR. LEVIN: That's -- I don't know. Like I said,
2 there are --

3 MR. GRASER: We have some homework to do on this.

4 MR. LEVIN: We don't have any procurement experts
5 here.

6 MR. CAMERON: You know the --

7 MR. LEVIN: If there are such a thing in
8 government.

9 MR. CAMERON: -- the new director of the office of
10 federal procurement planning, in that office generally is
11 looking at -- under the reinventing government rubric is
12 looking at innovative ways for government procurement,
13 particularly in systems area to be improved. And this may
14 tie right in to that.

15 MR. GRASER: We've gotten our own internal opinion
16 that we can have two contracting officer -- administrative
17 contracting officers on the same contract within the energy
18 department. Now whether or not we can have an
19 administrative contracting officer in each agency is a
20 slightly different matter, but it needs to be explored.

21 MR. LEVIN: Sure.

22 MR. MURPHY: Is it --

23 MR. LEVIN: One contracting officer is a little
24 bit --

25 MR. MURPHY: -- I think that -- I think that

1 suggestion is certainly potentially meritorious, and it
2 should really be explored, but is it not possible under
3 federal law to just have someone function under the control
4 and direction of another agency?

5 MR. LEVIN: You mean like a DOE employee?

6 MR. MURPHY: Or contract.

7 MR. LEVIN: Or a contract? Contract it has to be
8 written in the contract. It is not--

9 MR. MURPHY: I'll write it in the contract then.

10 I'm just saying--

11 MR. CAMERON: Is there anything to prevent it from
12 being written in the contract.

13 MR. MURPHY: You know, maybe there are some people
14 in the room who know, and if they do, they probably couldn't
15 tell us anyway, but isn't it-- in the weapons program it
16 would seem to me that there are circumstances under which
17 the Department of Defense would've been able in the old days
18 to tell DOE do this or don't do this, and DOE would've said,
19 yes, sir.

20 MR. SILBERG: I'd be surprised. I don't think so.
21 Been a long time since I was around that, but there were
22 pretty strict rules as to how the division of responsibility
23 between DOE and DOD took place, and there was a lot of
24 jealousy that one didn't step on another's toes.

25 MR. MURPHY: Oh, you're always going to have

1 jealousy. We don't care about that.

2 MS. JONES: There are existing contracts, or I
3 should say MOU's, which are the same thing as a contract
4 with the legal language that's in it that are in existence
5 today with DOE and other agencies, like USGS, the weather
6 service, DNA, that they spell out the statement of work and
7 they are treated just like a contract. Those agencies do
8 work for the Department of Energy. They've worked like that
9 for many, many years.

10 MR. MURPHY: So why can't it work in reverse and
11 have the Department of Energy LSS people work for the NRC?

12 MS. JONES: I personally don't see why it
13 couldn't, but like Dan said, we do not have a contracting
14 specialist down here today. Obviously we could get one to
15 provide us that advice and counsel, but I would -- I
16 personally don't see any prohibition to it.

17 MR. CAMERON: Does anybody on the panel have
18 any -- want to register any objection to pursuing this
19 particular line of inquiry, that is seeing if Moe could
20 serve as the COTR on the DOE contract? Let me get that from
21 Harry.

22 MR. SWAINSTON: Just lifted my head. I think
23 it's -- right now it's certainly worth looking into. It
24 avoids some of the problems of the Alternative 3 that are
25 objectionable to us. But we can't really give our stamp of

1 approval without those details.

2 MR. CAMERON: No, I wasn't worried about that. I
3 just wanted to see if we were all on the same wavelength.
4 Brad.

5 MR. METTAM: The only thing I can think of right
6 now that it doesn't do is it doesn't solve potential
7 perception problem that you might have with -- you know.
8 Even if you make them all wear, you know, bright orange
9 jackets that say, NRC on them, they're still going to be
10 perceived as being DOE's holding all the data. But I think
11 it's worthwhile looking at it as an alternative, certainly.

12 MR. CAMERON: Yeah, I guess he gets it -- at some
13 point you get to where the perception is never -- there's
14 not going to be anything you can do to try to -- you can do
15 as much as you can to minimize the perception problem, but
16 you really can't, really can't solve it.

17 MR. MURPHY: Well, that's true, but Rod's got a
18 good point. We need to be saying we're turning documents
19 over to the control of the LSS administrator.

20 MR. CAMERON: Right.

21 MR. MURPHY: We're turning our documents over to
22 the Department of Energy.

23 MR. CAMERON: I know that I would like to ask
24 other people out there to comment on any of this stuff at
25 some point, but maybe we need to take a break.

1 MR. MURPHY: I've got some phone calls to make.

2 MR. CAMERON: What's that now?

3 MR. MURPHY: I have other work to do. I'd like to
4 make some phone calls.

5 MR. CAMERON: Okay. Well, let's take a break and
6 come back at -- how about 20 after 3:00.

7 MR. MURPHY: That's great. Perfect.

8 [Recess from 3:00 p.m. to 3:30 p.m.]

9 MR. HOYLE: Why don't we get back together again,
10 please. I believe that as a result of this prior discussion
11 we've reached an agreement that the COTR proposal, if
12 workable, would be an appropriate way to implement the
13 provision of the licensing support rule 2.1011, which
14 provides that the LSS administrator will be responsible for
15 management and administration of the LSS.

16 MR. SILBERG: When you say "we," this is --

17 MR. HOYLE: We.

18 MR. SILBERG: NRC or -- you're summarizing all of
19 us?

20 MR. HOYLE: Well, we can talk about that, but I
21 believe what I heard was that the -- those at the table had
22 reached this agreement, that if it's workable, that it would
23 take care of the control issue for NRC, it would take care
24 of the budget issue, and I think it would -- it's not
25 Alternative 3. It's back to basic. It's a method of

1 implementing what is in the rule. And I would --

2 MR. GRASER: Could be any option.

3 MR. HOYLE: Pardon me?

4 MR. GRASER: I said, it could be any option.

5 There should not be a linkage to option three or anything
6 else.

7 MR. HOYLE: That's right. And that on this basis
8 I'm prepared to take that message back to the commission. I
9 will certainly keep all of you informed on that subject as
10 DOE and NRC both develop information on it. But I think
11 both agencies -- I speak for my own first, will pull out the
12 stops to see that that is done, can be done and is done.

13 MR. BECHTEL: Do you anticipate having another
14 meeting once you find out or --

15 MR. HOYLE: I don't intend to just call a
16 meeting --

17 MR. BECHTEL: Yeah.

18 MR. HOYLE: -- on that basis, but I do want to
19 talk about another meeting?

20 MR. BECHTEL: Uh-huh.

21 MR. HOYLE: And that could be a subject that we
22 could report on. I was going to bring that up at the end of
23 the day tomorrow, whenever there's enough additional subject
24 material to talk about, maybe in the July time frame,
25 something like that. But I think right now what I would do

1 is -- it's 3:30. Instead of trying to bring forward one of
2 tomorrow's subjects, I could be overruled, I would just say
3 that we'll start with DOE's presentation tomorrow morning
4 then at 8:30, and have Kirk and Mal follow as time permits.
5 I know some people getting back to the east have planes that
6 leave in the noon time frame, so I will try to end up by
7 10:00, 10:30 tomorrow morning. Any further discussion
8 today?

9 All right. Let's reassemble here at 8:30 tomorrow
10 morning. 8:30.

11 [Whereupon, at 3:35 p.m., the meeting was
12 recessed, to reconvene at 8:30 a.m., Friday, April 15,
13 1994.]

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REPORTER'S CERTIFICATE

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

NAME OF PROCEEDING: LSSARP Meeting

DOCKET NUMBER:

PLACE OF PROCEEDING: Las Vegas, NV

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

Roxanne Y. Brown

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