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OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Public Meeting on Whistleblowers

Docket No.

LOCATION: Rockville, Maryland

DATE: Thursday, August 26, 1993

PAGES: 125 - 214

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Add: OE Original*

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

3
4 PUBLIC MEETING ON WHISTLEBLOWERS

5
6 Nuclear Regulatory Commission
7 One White Flint North
8 Conference Room 1G16
9 Rockville, Maryland
10 Thursday, August 26, 1993

11 The meeting convened, pursuant to notice, at 9:02
12 a.m., James Lieberman, Director, Office of Enforcement,
13 presiding.

1 NRC ATTENDEES PRESENT:

2 James Lieberman, Director, Office of Enforcement

3 Ben Hayes, Director, Office of Investigations

4 Brian Grimes, Director, Division of Operating

5 Reactor Support, NRR

6 John Greeves, Director for Division of Low

7 Level Waste, NMSS

8 Jon Johnson, Deputy Director, Division of Reactor

9 Projects, Region II

10 Jack Goldberg, Deputy Assistant General Counsel

11 for Enforcement, OGC

12 ATTORNEYS PRESENT:

13 David Lewis

14 Shaw, Pittman, Potts & Trowbridge

15 Thomas Dignan

16 Ropes & Grey

17 Nicholas Reynolds

18 Winston & Strawn

19 Robert Bishop

20 NUMARC

21 George Edgar

22 Newman & Holtzinger

23 Joseph Gallo, Esquire

24 Gallo & Ross

25

P R O C E E D I N G S

[9:02 a.m.]

1
2
3 MR. LIEBERMAN: Good morning. I am Jim Lieberman,
4 the Director of the NRC Office of Enforcement and the
5 Chairman of the Review Team for Reassessment of the NRC
6 program for protecting allegers against retaliation.

7 With me today from the Review Team, beginning on
8 my left is Jack Goldberg, then Ben Hayes, John Greeves and
9 Jon Johnson. Brian Grimes will join us shortly.

10 The Review Team w. s formed at the direction of the
11 Commission to consider whether NRC has taken sufficient
12 steps to establish working environments within licensees'
13 organizations when employees feel free to raise safety
14 issues without fear of retaliation. We have published a
15 Federal Register Notice seeking public comments on this
16 issue.

17 This is the second public meeting of the Review
18 Team. Today we are meeting with attorneys who represent
19 licensees. Yesterday we met with attorneys who represent
20 employees who have sought remedies pursuant to Section 211
21 of the Energy Reorganization Act. We are also planning a
22 series of public meetings in September and October in New
23 London, Connecticut, Phoenix, Arizona, Bay City, Texas, and
24 the Chattanooga, Tennessee area. These meetings are
25 intended for the purpose of employees, and licensees, and

1 other concerned individuals to bring forth issues and ideas
2 for our consideration. Our purpose is not to resolve
3 specific cases, but rather to gain ideas on how to improve
4 the current regulatory system.

5 Let us begin by each of you introducing yourselves
6 for the record.

7 Nick?

8 MR. REYNOLDS: I am Nicholas Reynolds with the
9 Washington, D.C. law firm of Winston & Strawn.

10 MR. DIGNAN: My name is Tom Dignan. I am a
11 partner with the firm of Ropes & Grey in Boston.

12 MR. BISHOP: Robert Bishop, Vice President and
13 General Counsel, Nuclear Management and Resources Council.

14 MR. LEWIS: I am David Lewis. I am a partner with
15 the law firm of Shaw, Pittman, Potts & Trowbridge.

16 MR. EDGAR: I am George Edgar. I am with Newman &
17 Holtzinger.

18 MR. GALLO: Joe Gallo of Gallo & Ross, Washington,
19 D.C.

20 MR. LIEBERMAN: Thank you.

21 We welcome each of you here today and appreciate
22 you taking the time to be with us.

23 The issue before us is an important one. NRC,
24 even with its many inspectors, can only observe a fraction
25 of license activities. We will never have the knowledge

1 possessed by the thousands of employees in the nuclear
2 industry. Employees in the nuclear industry have clearly
3 made contributions to the public health and safety by coming
4 forward with safety concerns. Employees must feel free to
5 raise potential safety issues to the NRC. However, in the
6 Commission's view, it is not enough for employees to feel
7 free to come directly to the NRC. Licensees have the first
8 responsibility for safety. Thus, employees must also feel
9 free to raise safety issues to their management. There are
10 many who are dissatisfied with the current system.

11 There are clearly licensees where employees are
12 not always comfortable in raising safety issues. In many
13 cases, it takes a long time to resolve these issues.
14 Employees who challenge the system often do so at great
15 personal expense. It is unfortunate that at this stage of
16 the maturity of the nuclear industry there are cases where
17 discrimination has occurred for employees who have engaged
18 in protected activities. Therefore, we are looking forward
19 to your views on how this matter can be addressed and what
20 actions NRC should consider to cause licensees to foster an
21 atmosphere where individuals who have potential safety
22 concerns are encouraged to come forward with those concerns.

23
24 With that background, let us begin our discussion,
25 with each of you providing your presentations. We would

1 appreciate if you would keep your presentations to about 15
2 minutes in length. We will try to hold our questions to the
3 end and only ask questions during the presentations for
4 clarification of issues, then we will proceed to raise
5 questions after all of the presentations are over.

6 Bob, if you would like to begin?

7 MR. BISHOP: Thank you.

8 On behalf of my colleagues and the nuclear
9 industry, we appreciate the opportunity to provide you with
10 our thoughts and perspectives on whistle-blower issues, in
11 my case in particular, to supplement the letter that NUMARC
12 sent to the Commission dated June 15th, 1993, which I would
13 encourage you to review as part of your deliberations.

14 Simply stated, you are going to hear a far
15 different story today than you heard yesterday. As we will
16 explain, there is no evidence that there is a pervasive
17 problem in the industry or any kind of an effort to suppress
18 safety concerns and punish those who raise them. In fact,
19 the more than 100,000 employees in the industry who discuss
20 with their management, on a daily basis, numerous issues,
21 including safety issues, those issues are thoroughly
22 reviewed and resolved as the ongoing course of those
23 informal exchanges. It is sometimes regrettable that many
24 of the people that we consider to be contributors to the
25 process are termed "whistle-blowers," which implies that

1 they raise safety concerns for doing something unusual or
2 perhaps even placing their personal well-being or their
3 careers at risk, when, in fact, in the great, great majority
4 of circumstances, their contribution is welcomed, encouraged
5 and, in fact, expected.

6 It is important to note that, of the vast number
7 of safety concerns raised and addressed, a relatively small
8 number result in complaints filed under Section 211 of
9 discrimination. And a very small percentage of these few
10 cases involve instances of abuse at frankly either end of
11 the spectrum, that is, either isolated examples of real
12 retribution taken, or, on the other extreme, employees who
13 have tried to gain the system to their own advantage.

14 Our attention should be focused not on the ends,
15 not on the extreme, but rather on whether NRC regulations
16 and licensee practices are appropriate. We must be
17 concerned, if even one employee with a significant safety
18 issue fails to raise a concern for fear of retribution.
19 But, in the context of broad remedial action, we must put
20 that issue in perspective.

21 We must also remember that there are a wide number
22 of means by which safety issues are raised and addressed --
23 through utility programs, maintenance, surveillance, ongoing
24 conduct of their operations, through employee concern
25 programs. And you heard them yesterday widely abused. We

1 think that they serve a valuable purpose and have, in fact,
2 proven to be effective in achieving that purpose. NRC
3 inspections and audits, NRC allegation management system,
4 and the 2206 process -- those are all ways by which safety
5 issues are raised.

6 Our concern, as it should be for a person raising
7 a safety issue, is that the underlying issue is resolved
8 correctly and as promptly as possible. It needs to be
9 emphasized, when we talk about whistle-blower issues, as we
10 will probably use those terms today, they are really two
11 separate pieces, in my judgment. One is the identification
12 and resolution of the safety issue, which must be the
13 predominant focus, and two is ensuring that the person
14 raising issue is not discriminated against because of how
15 that could affect number one, which is resolving the safety
16 issue.

17 I would like to begin with just a few comments on
18 what I think are the general principles that are associated
19 with this matter. Any changes that may be considered by the
20 Commission should be consistent with these principles.
21 First, as to licensees. Licensees are responsible under
22 their license for protecting public health and safety. That
23 is their primary responsibility. That is not the
24 responsibility of the NRC. That is the licensee's
25 responsibility. They must also, of course, comply with all

1 applicable Federal and state laws and regulations, including
2 those of the NRC, DOL, OSHA, and a wide variety of other
3 agencies that have responsibilities in that area.

4 But, equally and importantly, it has to be
5 recognized that it simply makes good sense for licensees to
6 ensure that their plants are safely operated. That provides
7 a powerful incentive to ensure that all safety concerns are
8 promptly aired and, where necessary, changes promptly made.
9 Enlightened self-interest is a very strong motivator, and is
10 completely consistent with the goals of Section 211 and the
11 NRC's responsibilities.

12 It is also in the licensee's enlightened self-
13 interest to ensure that retaliation does not occur. In the
14 real world, a mere notice of violation, even without any
15 civil penalty, is taken very seriously by a licensee. As a
16 result, licensees have endeavored to encourage their
17 employees to identify safety concerns. And we believe those
18 programs are, in the broad main, very appropriately done,
19 and that the handling of safety allegations, for the great
20 majority of cases, is thorough and reasonable.

21 I should mention, as a general observation, that
22 we also believe that licensees can be much more effective in
23 dealing with these issues and taking preventative actions
24 than the NRC can be in achieving the same result through a
25 punitive action that may follow from some investigation.

1 In the normal course of business, many licensees,
2 most licensees impress upon their employees their obligation
3 to bring safety concerns, to raise them and, frankly, to
4 raise them to the licensee's attention. Because the
5 licensee has the responsibility to protect public health and
6 safety. The licensee can most effectively, and, in a most
7 timely manner, respond to those safety concerns. And only
8 then, if the licensee knows of the safety concern, can it
9 pursue its primary responsibility for public health and
10 safety.

11 Second, of course, the NRC is responsible for
12 ensuring that licensees properly carry out their
13 responsibilities under the Atomic Energy Act and NRC
14 regulations. The NRC has the authority under the Act to
15 ensure that any alleged safety issues, whether arising from
16 a 211 complaint, whether arising from a person who filed one
17 in the past, whether arising from somebody who has filed a
18 2206 petition, or any other source, whatever the source, the
19 NRC has to ensure that those issues are promptly evaluated
20 and appropriate action taken.

21 The NRC also has broad authority to act in cases
22 of discrimination where licensees or individuals have
23 engaged in protected activities, and that is because of its
24 potential effect on public health and safety.

25 We believe the NRC must use and be allowed to use

1 its informed discretion to determine what allegations to
2 investigate, what priority to expend their resources on. We
3 think that it is incumbent upon the NRC to immediately
4 notify a licensee of a safety issue raised. We believe that
5 that can be done, if necessary, in preserving the
6 confidentiality of the person raising the issue. But, it is
7 critical to the NRC's responsibilities to enable the
8 licensee to carry out its responsibilities for those issues
9 to be promptly brought to the licensee's attention. It
10 would be unconscionable to delay, for any reason, a
11 communication from the Agency to the licensee about a
12 potential safety issue.

13 We think that issues should be evaluated on their
14 technical merit. We think that the NRC should not accord a
15 higher priority than the technical merit justifies because
16 of the source of a safety issue, a safety concern. It
17 should not react to any potential safety issue differently
18 than if the concern were brought forth in any one of the
19 numerous other ways I mentioned.

20 The NRC also, in our view, shouldn't overreact --
21 that things should be done on the basis of what is most
22 important, as the NRC, in its discretion, determines that,
23 not because of the source of the inquiry.

24 Let me speak, for just a moment, about DOL. DOL
25 is responsible for ensuring that all organizations under its

1 jurisdiction, which certainly includes nuclear power plant
2 licensees, comply with applicable Federal Labor Laws and DOL
3 regulations, areas where DOL has statutory authority and
4 where in fact it has regulatory expertise. Under Section
5 211, Congress has assigned DOL with the responsibility to be
6 the Federal agency for determining if discrimination has
7 taken place and what personal remedies are appropriate. It
8 would not be a wise use of resources for either Federal
9 Agency, either DOL or the NRC, to attempt to do the job or
10 develop the expertise of the other.

11 The NRC should investigate and resolve any alleged
12 safety issue, including whether the licensee's conduct
13 places public health and safety in jeopardy. And DOL should
14 determine whether Section 211 has been violated. If there
15 are perceived problems with the DOL process, or the exercise
16 by DOL of its responsibilities under Section 211, those
17 problems should be brought to DOL for resolution. It is
18 neither a wise use of resources, nor within the NRC's
19 authority for it to assume any other responsibilities that
20 Congress assigned to DOL under Section 211.

21 MR. LIEBERMAN: Just to make sure I understand.

22 MR. BISHOP: Sure.

23 MR. LIEBERMAN: Just to make sure that I
24 understand what you just said, Bob. For NRC not to assume
25 any of the responsibilities given to DOL, does that refer to

1 findings of discrimination or providing a personal remedy to
2 the individual?

3 MR. BISHOP: It's the latter.

4 MR. LIEBERMAN: Okay.

5 MR. BISHOP: The NRC, under Section 50.7, has
6 established a regime under which it will ensure that
7 licensees are appropriately responding to their
8 responsibilities, and ensuring that discrimination, because
9 of its potential impact on public health and safety, is
10 rooted out and eliminated. But, that doesn't go to
11 providing personal remedies to an individual that may have
12 been discriminated against.

13 MR. LIEBERMAN: Thank you.

14 MR. BISHOP: Let me close with two final
15 observations.

16 We are sensitive to the criticisms of the current
17 situation that have been raised, those articulated in the
18 Commission Memorandum of June 15th, for example. As a
19 result, the industry intends to begin a focused activity to
20 evaluate issues associated with this matter -- how licensees
21 are satisfying their responsibilities under the law and NRC
22 regulations and what, if any, additional action should be
23 taken.

24 We intend to address the generic issues and
25 certainly not to police individual utility actions, but

1 rather, to address the generic aspects. We will, of course,
2 be discussing our efforts with the NRC as we progress. If
3 any changes are appropriate, we believe that the industry is
4 in a position to far more effectively and on a more timely
5 basis, institute any such changes. We believe, at least at
6 this juncture, with the information known, that prescriptive
7 NRC regulation or additional implied regulation, by policy
8 statement or generic communication, is inappropriate.

9 Second, in support of this effort, we would hope
10 the NRC would share the results of the inspections it is
11 currently conducting under temporary inspection 2500.028,
12 which was issued on July 29th, 1993. Only if we can also
13 have the most complete information available can we ensure
14 that a proper evaluation of this important matter can be
15 undertaken and issues resolved.

16 That concludes my comments.

17 MR. LIEBERMAN: Thank you, Bob.

18 Nick, do you want to begin?

19 MR. REYNOLDS: Sure, I will begin.

20 My perspective and my comments today relate only
21 to power reactor licensees. I do not have in-depth
22 knowledge as to the issues before this team, as they may
23 apply to materials licensees, so I am going to focus today
24 on power reactor licensees only.

25 Your team will evaluate a great deal of

1 information over the next few months. You have asked
2 several questions in the Federal Register Notice, and I know
3 that a number of licensees are intending to respond to those
4 questions. You have this session and the session yesterday,
5 where you will receive information. You have these
6 forthcoming public meetings where you will receive
7 additional materials. And, as well, you have the staff in
8 the process of gathering data, which you also will have at
9 your disposal in making decisions.

10 A question that is absent from the Federal
11 Register Notice, which I think is really pertinent here, and
12 almost over-arching, is how did we arrive, as an industry
13 and as a regulator, at this point, at this point in time in
14 the evolution of nuclear regulation? Ten years ago,
15 allegations were really a very new phenomenon. There were a
16 few construction sites which were hot beds, but, to my
17 knowledge, there were no operating reactors which were hot
18 beds of allegations. So, how did we get to where we are
19 today? What factors are at play in these developments?
20 These are questions that I think the team should focus on.
21 I don't pretend to have all of those answers, but I hope
22 that today, we will be able to flesh-out some of those
23 questions.

24 Another central question might be is there
25 reasonable assurance that public health and safety is

1 protected by the environment at operating plants today? Is
2 a perfect environment universally maintained in the
3 industry? Of course not. Is the NRC's process for dealing
4 with allegations perfect? No. I don't think it is. Can
5 improvements in both be made? Of course, they can. But, is
6 reasonable assurance, which is the test of law, provided
7 today? I think that the answer is that such assurance is
8 provided quite clearly. The presumption should be, for the
9 industry as a whole, that the work environment is healthy.
10 Certainly the safety record and other performance
11 indicators, which the NRC tracks, over the last 10 years,
12 and most importantly, the trend during that period, compel
13 the conclusion that the NRC and the industry have performed
14 admirably during that period.

15 This record could not have been accomplished if
16 the general environment in the industry were hostile toward
17 the reporting and resolution of safety issues. And the
18 anecdotes we have heard about, the experiences and
19 perceptions of some nuclear workers, do not -- cannot rebut
20 that presumption.

21 There are 108 or so operating reactors in this
22 country today and, as Bob mentioned, over 100,000 workers in
23 this country. Their daily fare is the identification and
24 resolution of nuclear safety issues. Literally, millions of
25 opportunities are presented annually for managers and

1 supervisors to succeed or fail in dealing with their direct
2 reports and the people who work for them.

3 The record of the industry is exemplary in the way
4 these opportunities are handled. They are tremendous
5 success stories. Are there a few problems and failures? Of
6 course there are. Nothing is perfect. But, overall, is the
7 record good? It is better than good. It is tremendous.

8 The simple, unrefutable fact is that the vast,
9 vast majority of these workers, both rank and file and line
10 management, conduct themselves professionally and
11 responsibly in the discharge of their safety functions. If
12 this weren't so, how could the trend of performance
13 improvement be so clear?

14 Why then do we find ourselves here today? As I
15 mentioned, I don't pretend to have the definitive answer,
16 but let me suggest some items for your consideration.
17 First, allegations management is a relatively new challenge
18 and it is certainly a new challenge for every licensee which
19 has never dealt with it before. It requires skills that
20 many nuclear managers and supervisors traditionally do not
21 have, strong people skills, knowledge of, or at least a
22 familiarity with labor law, an extra dose of patience, in a
23 lot of cases, and so forth. And, even if every manager were
24 blessed with those traits, it would still not be fail-safe,
25 because even perfection will not prevent claims from being

1 asserted.

2 The good news, in my view, is that licensees are
3 coming up the curve. My firm is currently working with
4 several licensees, some of whom have never had serious
5 allegations problems, to either establish or enhance nuclear
6 concerns programs. The message has been delivered to the
7 industry, in my view. The wake-up call has been heard. The
8 NRC has everyone's attention on these issues.

9 Second, there has been a major initiative in the
10 nuclear industry to reduce workforces to leaner dimensions
11 in recent years, and this could lead to more activity of the
12 type we are discussing.

13 Third, there is, without question, a heightened
14 awareness among nuclear workers of their options, if they
15 are dissatisfied with something in the workplace. This has
16 caused an unquestionable shift in leverage between some
17 workers and their management and has resulted, in my view,
18 in confrontation where, in the past, confrontation may not
19 have occurred.

20 My view is that, when all factors are considered,
21 the only fair conclusion is that the work environment
22 overall in the industry is healthy and that the laws and
23 processes in place to protect workers and foster positive
24 work environments function well.

25 Does this mean that we should not consider doing

1 more or making improvements? I believe that licensees
2 cannot take the chance that they might fall short of the
3 positive work environment each should have. NRC enforcement
4 action is not the real threat to licensees if they fall
5 short, although it is a powerful force and it has an effect
6 that cannot be ignored.

7 The real threat, to echo Bob's theme, is that,
8 however remote, licensees cannot take the chance that an
9 employee -- a single employee who, alone, is aware of a
10 serious issue that might impact nuclear safety, does not
11 disclose the issue either to his employer or to the NRC.
12 That is an unacceptable risk, in my view, for licensees to
13 accept. Therefore, more should be done by licensees to
14 enhance their work environments.

15 I would say, parenthetically, that there are no
16 doubt some licensees where the culture and work environment
17 is just inherently positive. And, as to those licensees,
18 they may need do no more than they do now. That is a strong
19 argument against any kind of mandate from the NRC imposing
20 in the industry standards or requirements with respect to
21 such a program. This echoes Dr. Selin's comments to the
22 Senate Subcommittee, where he made basically that same
23 point.

24 It is important to bear in mind that the test of
25 law here, as with design and hardware issues, is whether

1 reasonable assurance is provided that public health and
2 safety will be protected. There must be balance in the
3 regulatory analysis -- balance between competing priorities
4 for the NRC, and licensee resources; balance in how much
5 should be done to assure that the system is user-friendly to
6 the last worker.

7 The worst result of your effort, in my view, would
8 be for the NRC to divert resources away from important
9 nuclear safety issues and tasks, in order to intensify the
10 focus on the issues we are discussing, which even Dr. Selin,
11 himself, noted before the Senate Subcommittee, are not among
12 the Agency's major safety issues.

13 The NRC's mechanism is in place to discharge its
14 obligations to protect the public health and safety in this
15 area. 50.7, the enforcement policy in the Enforcement
16 Manual, the process for screening allegations to pursue, the
17 Memorandum of Understanding with the Department of Labor, in
18 my view, are state-of-the-art. The NRC is far ahead of
19 other agencies which administer similar laws.

20 Whenever target practice is declared open on
21 anything in Washington, there will be those who aim for the
22 heart. You saw some of that fire yesterday, and you will
23 see more as you take your -- your team to Arizona, and
24 Texas, and Tennessee, and Connecticut.

25 Be not misled. By and large, the NRC does a good

1 job, indeed, an exemplary job in this area. Should you look
2 for ways to improve? Of course, you should.

3 Here are a few ideas you might consider in that
4 regard. Get information to licensees that will assist them
5 in determining whether they have problems in their work
6 environments and programs which are designed to foster
7 positive work environments. Tell licensees how many
8 allegations the NRC has received during a certain period
9 and, for context, give historical data. This will allow
10 licensees to trend the matter and focus on it as warranted.

11 Why play these cards close to the vest? No
12 confidentiality promise would be breached if we are dealing
13 with raw numbers. The NRC's role would not be made more
14 difficult. On the other hand, it would materially aid
15 licensees to have these data in their efforts to foster the
16 proper work environment.

17 MR. LIEBERMAN: Nick, when you are talking about
18 this data, is this the data on allegations that NRC has
19 received?

20 MR. REYNOLDS: Yes.

21 MR. LIEBERMAN: Is that what you are referring to?

22 MR. REYNOLDS: Yes. Allegations before the NRC
23 regardless of how they have been received. Obviously, if it
24 is a Section 211 complaint, the licensee knows about it. I
25 am talking more about the allegations that come directly to

1 the NRC without the licensee's knowledge.

2 MR. LIEBERMAN: All right. Okay.

3 MR. REYNOLDS: Second. Consider offering an
4 analog to the new procedure under Section 211 of the Energy
5 Reorganization Act, which permits the licensee the
6 opportunity -- opportunity, not mandate, in a written
7 filing, to convince the DOL investigator up front that no
8 investigation is warranted. Congress, in its wisdom,
9 decided to put that into new Section 211, and we have used
10 it on occasion to convince the Department of Labor that
11 indeed no investigation is warranted. Case over.

12 In those cases before the NRC, where the screening
13 process indicates that an OI investigation is warranted, why
14 not allow the licensee at that point, and if it wishes, to
15 file a position paper or brief, setting forth good and
16 sufficient reason why no investigation is warranted. Some
17 investigations may be obviated by such a step, while others
18 may be truncated as the important issues to be investigated
19 are crystallized, resulting in savings in time and resources
20 for both the NRC and the licensee and a more prompt
21 resolution of the matter as well.

22 Finally, allow me to comment on the Davis versus
23 Goliath misnomer which has been promoted by the other side
24 to describe the fairness of the present system. It is, of
25 course, true that when any individual sues a large

1 corporation, the resources available to the contestants are
2 not equal. But, consider the mischief that one employee who
3 has perhaps perceived even incorrectly an act of retaliation
4 against him, convinces upon a company. Bear in mind that
5 there is no sanction for the filing of frivolous claims.
6 For a 29 cent stamp, an employee may file a complaint with
7 the Department of Labor, setting in motion at the Department
8 of Labor, the power and authority of DOL as it weighs in
9 conducting an investigation of the complaint, leading
10 possibly to trial and appellate proceedings as well. And,
11 for no additional charge, still 29 cents at the NRC
12 meanwhile, the licensee faces the prospect of responding to
13 a chilling effects letter dealing with an OI investigation,
14 being subjected to escalated enforcement action, including a
15 civil penalty, a demand for information, a possible death
16 sentence to an involved manager and even possible criminal
17 prosecution.

18 Finally, there are also collateral implications in
19 state court, where the licensee could face charges of
20 wrongful discharge, intentional infliction of emotional
21 distress, defamation, and other charges, and be subject to
22 a jury trial and a possible award of punitive damages.

23 Be not misled about whether complainants have
24 access to legal help. There is a sizable and able core of
25 complainants' counsel around the country, some of whom you

1 meet with yesterday

2 What does this all say? It says to me that there
3 is reasonable balance in the present system -- that there
4 are substantial protections afforded to complainants, and
5 substantial weapons at their disposal, and that NRC
6 licensees face deterrents of nearly draconian measure for
7 what might be an inadvertent transgression of one first-
8 line supervisor. In this light, licensees have all of the
9 incentive they need to assure that all employees feel free
10 to raise safety concerns and issues and to assure that
11 anyone doing so is treated professionally, with dignity and
12 with respect.

13 Thank you.

14 MR. LIEBERMAN: Thank you, Nick.

15 David?

16 MR. LEWIS: Thank you for the opportunity to
17 participate here today. We represent about 20 utilities
18 operating nuclear plants, as well as materials licensees,
19 fuel cycle licensees and vendors. In responding to your
20 questions, I hope I can share insight gained from this
21 representation, but I am not here today as the
22 representative of any particular client. My comments are
23 focused mainly on reactor licensees.

24 You have asked whether the NRC has taken
25 sufficient steps to create an environment in which licensee

1 employees may raise concerns without fear of retaliation. I
2 believe that this main question raises two separate issues,
3 which I would urge you to keep distinct. One issue is
4 whether more should be required of licensees, and the second
5 is whether the NRC should require more of itself. I urge
6 you to keep these issues distinct, because I don't think
7 that licensees should be either penalized or further
8 burdened, to compensate for a problem that might be
9 perceived in the regulatory process and vice versa. But, if
10 there is a problem in the regulatory process, it should be
11 addressed directly.

12 With respect to whether more should be required of
13 licensees, I think the answer is generally and, on an
14 industry-wide basis, quite clearly no. Overall, the
15 industry has done an excellent job creating an environment
16 in which employees are free to raise concerns. Every
17 licensee has procedures -- multiple procedures, and I will
18 describe a few in a minute -- that encourage their employees
19 to raise concerns. Every licensee stresses the importance
20 of raising concerns. This is basic in the indoctrination of
21 nuclear plant personnel. Utilities do not want concerns to
22 go unidentified. The last thing a utility wants is to find
23 out that there is some safety concern that hasn't been
24 identified. When concerns get brought up at the last
25 minute, or brought up, you know, just -- unfortunately,

1 concerns often, if they are not paid attention to, often get
2 brought up at the worst possible moment, you know, when a
3 plant is trying to come back up for an outage. And that is
4 very bad for utility business. The utility wants the
5 concerns promptly raised so they can be addressed and
6 resolved. They want their plants to be safe. They have a
7 very strong, both regulatory and economic interest in making
8 sure that the concerns get addressed, and they do. At
9 nuclear plants, issues, comments, concerns get raised every
10 day. I don't know if it is hundreds or thousands, but it is
11 an every day fact of life at a nuclear plant.

12 I think NRC inspectors are in a good position.
13 You don't need to take the word of lawyers on one side or
14 the lawyers on the other. I think the NRC inspectors are in
15 the best position to wander around the plants and talk to
16 employees, talk to not just the supervisors, but the
17 foremen, the pipe welders. And you will get a very good
18 idea of what the attitude is of employees.

19 I am not trying to say the situation is perfect,
20 because people are fallible and mistakes are going to be
21 made. As long as you have the human factor involved, there
22 will always be the potential for a complaint of
23 discrimination. There is always going to be the potential
24 for a bad judgment and a close question. But, I think those
25 are the exception. I think, overall, discrimination is not

1 tolerated in the nuclear industry. For the vast majority of
2 licensees, a valid complaint of discrimination is really a
3 rarity.

4 With respect to whether the NRC should require
5 more of itself, I think that there is some room for
6 improvements in procedures; but, overall, the NRC is doing a
7 good job. I think that there has been frustration created
8 with employees who have filed complaints with the amount of
9 time that it has taken the Secretary of Labor to review the
10 appellate decisions of its Administrative Law Judges. I
11 think that that bottleneck has not only frustrated employees
12 who have concerns, but I think it has also caused a delay in
13 NRC actions. I hope that the Department of Labor's
14 Inspector General's report will prompt the Secretary of
15 Labor to correct that situation. I think, if that is
16 corrected, if that delay is eliminated, that that change
17 will probably do more than anything else to protect employee
18 and licensee rights, because a delay in the process isn't
19 good for a licensee either, and vindicate the process.

20 Let me turn briefly to licensee programs. My
21 point here is simply that licensees already have an
22 abundance of procedures. They don't just rely on formal
23 quality concern programs of the type that you have asked
24 about in your Federal Register Notice. As part of the
25 quality assurance program of every plant, they have a

1 quality deficiency reporting procedure. It is required by
2 Appendix B of the measures to assure conditions averse to
3 quality are identified. And any employee, typically, can
4 submit a report to the QA organization that identifies such
5 a condition. And a condition averse to quality isn't just a
6 design deficiency. It can include an alleged violation of
7 regulations or procedures. And the QA organization then has
8 to follow up on this and has enough independence to ensure
9 that the concern is resolved.

10 In addition to this QA program type procedure,
11 every licensee of which I am aware has some form of dispute
12 resolution or procedure for resolving differing professional
13 opinions. Sometimes these are called open-door policies.
14 But, they typically allow any employee to escalate or take a
15 concern up the chain of command, up to the very highest
16 levels.

17 Finally, there is this third type of program that
18 you have asked about, which is the quality concerns program.
19 Sometimes they are called the safety program or the quality-
20 first program. They are an independent team or an ombudsman
21 that are charged with perceiving concerns and recommending
22 resolutions. These programs are effective, they are good.
23 They allow concerns to be made anonymously. A lot of times
24 there are hotlines. An employee can just call them in
25 without even identify himself. The teams try to protect the

1 confidentiality of the concerns they receive. They meet to
2 resolve -- to develop a recommended resolution. They
3 provide the recommended resolution to a fairly high-level of
4 management. That differs from plant to plant. But, in some
5 cases, it is the highest onsite representative, and
6 sometimes it is a corporate VP. But, these programs do
7 work.

8 In addition to these programs though, and probably
9 more importantly, the ability of employees to raise concerns
10 is really a part of the basic indoctrination of nuclear
11 plant personnel. When a new employee comes on board, he
12 receives initial training, he is advised of the procedures,
13 they are stressed. The procedures are typically posted
14 around the plant -- not just the NRC Form Three, but I
15 visited a plant, and there is the NRC Form Three up on the
16 board, and right next to it is an open-door policy. On the
17 other side is a memorandum describing the quality concerns
18 program. They really are stressed and emphasized.
19 Employees know about their abilities to raise concerns. It
20 isn't just encouraging raising concerns or informing
21 employees that they have the right to do so. In many cases,
22 employees are instructed that, if they have a legitimate
23 concern, it is really their responsibility to bring it to
24 management attention. These concerns should not go
25 unidentified. This process works. Many many concerns get

1 raised every day.

2 You have asked whether the NRC should adopt a
3 further policy statement or a further regulation to perhaps
4 codify some of these practices. I think that is unnecessary
5 for several reasons. First, simply because those procedures
6 -- some procedures exist that may not be the sort of quality
7 concern program that I have described -- the quality concern
8 program of the third kind. But, they have -- every plant
9 has some sort of procedures to make sure that concerns get
10 raised, and they work. And the NRC's process overlays that.

11 The NRC allows any employee to raise concerns.
12 They can call the region toll-free. They can walk into the
13 resident inspector's office. And the testimony that I heard
14 recently before Congress that there have been over 3,900
15 issues raised over the last five years I think is really
16 testament to the fact that employees are perfectly willing
17 and able to raise their concerns and they do.

18 I think, if you try to further regiment and
19 regulate the programs, you are going to be adding extra
20 costs that is unjustified. You are going to be eliminating
21 organizational flexibility. I think the existing programs
22 are certainly adequate to reasonably protect the public
23 health and safety. I don't think added cost is warranted.

24 Finally, though, and probably most importantly, I
25 don't think that more regimented and regulated programs are

1 likely to have a significant effect on the willingness of
2 employees to step forward. I don't think that the
3 willingness of employees to raise concerns is determined by
4 the number of bells and whistles that exist in a program. I
5 think that it really depends on the ethic, the culture, the
6 environment, what management tells its employees, and how
7 sincere it is.

8 I think the testimony that recently was given to
9 Congress gives an illustration. The NRC identified five
10 utilities that appear to account for about half of the
11 allegations of discrimination over the last five years. And
12 it is my understanding that all five of those utilities have
13 full-blown quality concern programs. On the other hand, I
14 am aware of licensees who do not have programs beyond the
15 normal QA-type dispute resolution procedure and perhaps
16 open-door procedure and haven't had an allegation of
17 discrimination in years.

18 So, I don't think that it's program attributes
19 that make a difference. I think it is people and ethic, and
20 that is where the focus should be. If there is a problem
21 with ethic or management or people, I think the NRC has
22 plenty of regulatory tools at its disposal right now to
23 effectuate a change. It uses them already. It has got the
24 SALP process, it has got the problem plant list, it has got
25 the ability to take escalated enforcement action, to issue

1 confirmatory orders. If you see a problem in the number of
2 valid complaints, the NRC can perceive that problem and they
3 can address it, and they can get a utility's attention
4 plenty fast.

5 I think, if you start thinking that this is a
6 problem that will get fixed simply by issuing a policy
7 statement that says put more bells and whistles in place,
8 you are putting the focus in the wrong place.

9 Let me turn to NRC programs. I think again, as I
10 said, with a couple of improvements, your process works
11 well. I have already discussed the situation at the
12 Department of Labor, and I think eliminating the delay at
13 the appellate stage of that process is needed.

14 There is one NRC practice that I think deserves
15 your consideration and attention. The NRC in the past has,
16 on a number of occasions, based enforcement actions on DOL
17 compliance officers' reports when a DOL matter has
18 subsequently been settled between the licensee and the
19 employee. I think that that practice -- I don't know how
20 routine it is, but I have seen it on a number of occasions -
21 - really harms both the licensee and the employee. I think
22 it creates a strong disincentive to a settlement if a
23 utility receives an adverse compliance officer's report and
24 disagrees, he may be forced to seek a DOL hearing because,
25 if he doesn't, he is going to be automatically -- or he may

1 feel that he is going to be automatically subjected to an
2 NRC enforcement proceeding.

3 If he then had to demand a hearing, the licensee is going to
4 be subjected to not only extra cost, but the disruption that
5 is inherent in these Department of Labor proceedings. There
6 really is a very great human cost. I mean, these
7 proceedings are long. The allegations are career-
8 threatening; they hang over the head of the managers
9 effected, and they really take their toll.

10 In addition, the employee is harmed. The employee
11 was looking for a remedy and might have got a settlement and
12 now is forced to pursue this lengthy adjudication. I think
13 that that could be avoided in more cases.

14 I am not advocating that the NRC forego
15 enforcement action, if there is a compliance officer's report
16 that is negative and there is then a settlement; but, what I
17 am saying is that, if the NRC decides that there should be
18 enforcement action, it should make that determination based
19 on an independent investigation that doesn't place any
20 reliance on the compliance officer's report. Because I
21 think, as long as you are making your decision based on the
22 compliance officer's report, you are creating this adverse
23 situation.

24 I might also add, from our perspective, the
25 compliance officer's report is really focused on

1 reconciliation. It is a quick process. It doesn't really
2 bring out all of the facts. I don't think it is complete
3 enough to be a basis for enforcement.

4 I also think that -- I am trying to figure out how
5 to put this -- these compliance officers' reports I think
6 are simply too cursory to really develop the facts. A lot
7 of times complaints of discrimination raise complicated
8 mixed motive issues, and they are very difficult to unravel
9 quickly. They draw a lot of fine lines. I think that more
10 is needed before an enforcement action should proceed.

11 With just one exception, I think that the NRC
12 process works well. I think -- you asked about chilling
13 letters in your notice -- and I think that NRC follow up on
14 chilling letters is appropriate. I don't think that follow-
15 up needs to be routine, but I think that, if there is a
16 perceived problem, if there is a perceived trend, or if
17 there are questions or concerns about the content of a
18 chilling letter, a further dialogue with management, or a
19 further inspection is perfectly appropriate. I think that
20 should be an NRC inspection, and not an investigation. I
21 think, at this stage, when you are looking at the chilling
22 effect letter, you are looking at basically a programmatic
23 issue and not the specific allegation.

24 I think that trying to accelerate NRC
25 investigations and enforcement actions would not accomplish

1 more. In this respect, I think that the Department of Labor
2 process, particularly the hearing, if it progresses to that
3 point, is better-suited to unravel an allegation of
4 discrimination, particularly when it involves mixed motives.
5 I think that those difficult issues are much better handled
6 by an adjudication, where there is a chance for cross
7 examination, than an investigation. And, if that proceeding
8 is progressing fairly expeditiously, and my experience is
9 that DOL hearings do progress fairly expeditiously to the
10 recommended decision stage, I think that you probably
11 develop a record that is superior to the one that you would
12 develop by trying to accelerate an investigation. I think
13 it will be a fuller record and a better record in the end to
14 decide whether or not to proceed with enforcement.

15 If the Department of Labor process settles before
16 it gets to the hearing stage, I think there will have been a
17 minimal delay, and you can make a determination, on a case-
18 by-case basis, whether you want to, at that point, implement
19 an investigation. I think that process would be perfectly
20 appropriate, from your regulatory perspective.

21 I guess, in conclusion, I would just like to sum
22 up what I have said. I think that licensee programs across
23 the board work extremely well. I think that the
24 responsibility of employees to raise concerns is really
25 emphasized in the industry and it is taken seriously. I

1 think, in general, the industry and the NRC together have
2 already created an atmosphere where concerns do get raised.
3 There will be an occasional problem. There will always be
4 an occasional problem here and there. There will be
5 occasional problems on both sides. Sometimes there may be a
6 valid complaint of discrimination. There are also invalid
7 complaints, and those can always be handled. But, I think,
8 overall, the process works. Licensee's programs are in
9 place and they are not broke and they don't need fixing. I
10 think the NRC's procedures are also generally sound.

11 I think that concludes my presentation. Thank
12 you.

13 MR. LIEBERMAN: Thank you, David.
14 George.

15 MR. EDGAR: It almost goes without saying that we
16 all -- the Commission, the public, licensees, share a vital
17 interest in assuring the free flow of safety information.
18 That is what we are talking about, and that is what the
19 purpose of the underlying statute and regulations are here.

20 It is our view that current licensee efforts to
21 assure the free flow of safety information, while not
22 perfect, are effective as a whole, and we see no need for
23 any new regulatory requirements. Moreover, we do not
24 believe that the NRC should duplicate or inject itself in
25 greater degree into efforts that are currently undertaken by

1 the Department of Labor for the protection of employees.

2 While we do believe that the DOL appeals process
3 needs fixing, it is our judgment that, on the whole, the NRC
4 process is not broken. At most, there are some tuning fixes
5 that might be put in place, but, beyond that, nothing is
6 needed.

7 I would like to go on -- and I have truncated many
8 of my remarks, and I am just going to focus on certain
9 specific comments on areas that were either not covered by
10 others or simply touched on.

11 The first area is the Employee Concerns Program.
12 I would simply like to point out what I am sure you
13 recognize, and that is that the employee concerns program is
14 not a panacea. The things that really ensure the free flow
15 of safety information are the things that relate to
16 effective management organizations within a nuclear
17 organization. The employee concerns programs have been
18 generally effective; but we should all recognize their limit
19 role -- that they are an outlet mechanism, and they are a
20 mechanism that can come into play and serve a valid function
21 when the chain of command is not sufficient, when the line
22 organization itself does not identify and resolve the
23 problem.

24 We think that, no matter how you slice and dice
25 the statistics -- and you are out gathering statistics now -

1 - you are going to see that, in this lion's share of cases,
2 the line organization functions effectively and, in the
3 lion's share of cases, the concerns programs function
4 effectively as an outlet mechanism. The concerns program
5 should be viewed as part of defense in-depth. It is one
6 mechanism that may be put in place, in an appropriate case,
7 to give the outlet where the line organization is
8 sufficient.

9 In our view, it is a fundamental industry ethic.
10 It is a fundamental characteristic of nuclear organizations
11 that problems are identified, they are resolved routinely,
12 and there is no ethic in place that suppresses the free flow
13 of safety information. We have not seen it. You have had
14 isolated instances, clearly; but, in general, the industry
15 and its management systems function to identify and resolve
16 problems.

17 We would be extremely cautious and urge caution on
18 your part about mandating any extensive or formal employee
19 concerns program for all sites. In many sites, there is
20 going to be limited value or no value. One should not look
21 to that employee concerns program as a regulatory mandate,
22 or as a panacea.

23 We see a finite safety treasury out there. Your
24 budget, the industry's budget for dealing with safety issues
25 is finite. We live in a finite world that is increasingly

1 so. The things that really pay off to cause the free flow
2 of safety information are things like management policies,
3 management attitudes, supervisory training, supervisory
4 attitudes, effective corrective action programs and the
5 like. Just exercise caution that resources are not diverted
6 from those fundamental things that make the line
7 organization work into the employee concerns program in a
8 way that distorts the safety agenda and takes control of
9 that safety agenda from the people within the NRC and within
10 the licensee organizations that are responsible to maintain
11 that balance.

12 We think that, no matter what one uses for
13 objective performance measures, the quality of performance
14 and safety within the industry has increased monotonically
15 and steadily in each of the last 10 years. The trend is
16 clear. And it is simply irrefutable that safety performance
17 has been improved. It would seem to us that before one made
18 any radical adjustments and upset the allocation of safety
19 resources, that a very severe cost-benefit test should be
20 applied, and particularly in the area of employee concerns
21 programs.

22 As we proceed to the next question, which is
23 protection of complainants, here we think the system has
24 worked reasonably well in most respects. If one steps back
25 from the DOL process, the DOL area director's decisions, the

1 DOL ALJ decision is rendered with reasonable expedition.
2 All of us who have been involved in adjudicatory proceedings
3 would have to agree that the DOL process is not broken, at
4 least through the trial level. Clearly, it is broken at the
5 appellate level.

6 If there is one thing you could do to relieve a
7 legitimate source of frustration, and you can't do it; but,
8 if it is one thing the Federal Government could do, it is to
9 fix the DOL appellate process. The DOL complainant is not
10 playing on a level playing field. As Nick Reynolds pointed
11 out, he is playing on a playing field that is tilted very
12 very strongly in his favor. There are presumptions that are
13 set up in favor of the complainant's case, in effect, the
14 employer has a very significant burden to disprove the case.
15 Given that circumstance, if that process were reasonably
16 objective or reasonably expeditious from beginning to end,
17 the argument of exhaustion of resources and frustration with
18 the process, while it would never disappear, at least it
19 would be ameliorated.

20 Having said that about the DOL process, we don't
21 see that the NRC process is fundamentally broken. The
22 statistics are clear in your gathering of them, you will
23 see. But, just, on a very gross macro level, you have got
24 more than a hundred thousand employees in the industry. A
25 very small percentage of those raise concerns; a very

1 smaller percentage still of those concerns are
2 substantiated; a very smaller percentage still of those are
3 safety-significant; and a very smaller percentage still go
4 to 211 claims. That is not to diminish the importance of
5 the issue. There is always a chance that a real issue could
6 be hidden.

7 As a matter of defense-in-depth, as I said before,
8 the Commission needs to look at these issues and the
9 licensees need to continue their efforts in earnest to make
10 certain that there is an atmosphere and an environment in
11 which safety information flows freely. But, we do not
12 believe that there is any real evidence of a widespread
13 situation where information is not flowing freely.

14 That leads to the question of whether NRC should
15 get into the process earlier. Should NRC inject itself in
16 the DOL process, or should NRC allow DOE -- DOL to take the
17 lead, as they have in the past? As I said before, first and
18 foremost, DOL should fix its appeals process. That process
19 needs to have much more finite time limits. Generally, NRC
20 has stayed its hand, and we think it should continue to do
21 so.

22 NRC has and will get involved earlier in special
23 cases. That is a matter of discretion that the NRC should
24 have, and they have exercised it. We don't believe though
25 that NRC should get in early as a general proposition. It

1 defeats the function of DOL mediation. Obviously, it is
2 going to cause duplicative and possibly inconsistent rulings
3 with DOL. Again, as I said before, we all live in a finite
4 world. You do not have the sources to investigate each item
5 early. And, as much as Mr. Hayes might like to have more of
6 those resources, he lives in a finite world as well.

7 In short, I think what I am urging is let's not
8 re-write the law. Let's keep the balance that now exists.
9 DOL should handle the remedy of employee protection. They
10 can do it better. NRC should handle the safety
11 implications. NRC must and NRC should continue to have
12 discretion to fashion its response to suit the circumstances
13 and its level of resources.

14 I would suppose the one item that I would urge in
15 closing is, again, if one were to ask whether or not the
16 factors that influence the free flow of safety information
17 are such that the system is out of balance, the system is
18 out of kilter, I would suppose that the best answer to that
19 is that it is not far off center. There are a few areas
20 that you might look for fine-tuning. Examples would be to
21 have inspectors follow up on chilling effect letters, to the
22 extent that that is not done already. I cannot believe that
23 your resident inspection staff when it reviews a chilling
24 effect letter doesn't already know everything that is in
25 that letter. These people live on the site. They know what

1 those programs are. They know what that chilling effect
2 response has been. They can tell you better than anybody.

3 If there is a need for formal follow-up, that is a
4 matter that NRC regional management deals with routinely,
5 that resident inspectors deal with routinely, and that is
6 not a significant problem.

7 The one other issue that I would urge this group
8 to think about -- it is a difficult issue, but it is one
9 that is lying beneath the surface here -- and perhaps you
10 ought to give some thought to whether or not there should be
11 a mandatory requirement that all employees in the industry
12 would be obligated to report safety concerns to their
13 employer or, in an appropriate case, to the employer's
14 outlet mechanism, so that we can be sure that safety
15 information flows freely.

16 If you are going to impose, and you have, and you
17 should, and the Congress has imposed on licensees the
18 obligation to operate these plants safely, they need the
19 information about safety concerns in their hands, so that
20 they can fix any problems that arise. Frequently, the NRC
21 will make referrals of allegations. We think that is
22 proper. We know there are circumstances when NRC feel
23 compelled not to do that. But, there must be some safety
24 screen, and there ought to be a presumption in favor of
25 disclosure of the safety concern to the licensee, in order

1 that he can fix that. So, I guess I would suggest to you
2 that, from the NRC perspective and from the licensee
3 perspective, we ought to look at mechanisms which would
4 mandate the disclosure of safety information to licensees,
5 so that effective corrective action can be assured.

6 With that, I would be happy to answer any
7 questions you may have.

8 MR. LIEBERMAN: Thank you, George.

9 Joe.

10 MR. GALLO: I am pleased to be here this morning,
11 I guess it is still morning -- yes.

12 I share the views of many of my colleagues here at
13 the table, and I don't want to be repetitive and repeat
14 those. In particular, I share George Edgar's view on the
15 chilling letters. I think that there probably is follow-up
16 by the regional inspection group, as well as the site
17 inspector, but I share his view on that.

18 I hesitate to endorse the compliments that came
19 from my colleagues with respect to how the NRC is doing its
20 job, because others interpret those compliments from the
21 industry as solid evidence that there must be something
22 wrong with the system. The NRC is not doing it right. But,
23 I think that the compliments that have been offered here
24 today are undoubtedly the sincere beliefs of the speakers,
25 and I would add mine to that as well.

1 In order to avoid repetition, I just want to focus
2 on a few specifics to emphasize. I think that the NUMARC
3 recommendation and suggestion, as indicated by Bob Bishop,
4 that they would conduct a review and evaluation of
5 licensees, from a generic standpoint, is something that this
6 review team and the Commission itself should take very
7 seriously, and should stay its hand or collective hands
8 until that information is made available. I think that it
9 is necessary to have that information in order to provide a
10 balanced perspective.

11 The NRC IG inspection report was necessarily
12 biased because they talked to 16 alleged. They interviewed
13 NRC staffers who largely had a perspective of dealing with
14 the same population of complainants. So, the NRC does
15 really not have the benefit of hearing the other side of the
16 story. I think the NUMARC effort will be able to present
17 that balanced view.

18 I might add parenthetically that I see this same
19 sort of creeping bias -- and I don't mean that in a
20 pejorative sense -- creeping into your scheduled meetings.
21 I don't think those locations were identified on a random
22 basis. It might behoove you all to consider adding to the
23 meeting list perhaps a couple of other random locations. I
24 would urge you to coordinate with NUMARC and take into
25 account the information that they are going to gather.

1 I share George's view that the DOL situation needs
2 to be fixed. I agree with George that the Federal
3 Government needs to do something, but, that doesn't mean to
4 me that the NRC can't help in this respect. Upon my
5 perception of reading the papers that are relevant, in
6 preparation for today, the message seemed to be conveyed
7 that the NRC needed to take some sort of remedial action
8 without regard to the existence of the DOL problem and any
9 possible remedy.

10 The NRC can do two things, in my judgment. The
11 Chairman could meet with the Secretary of Labor and identify
12 specifically this problem and work out a quick action for
13 resolving the logjam that exists at the Secretary's level.
14 I think, if that is done, that probably more movement would
15 be seen more quickly than if some other initiative was taken
16 either on the Hill or in some legal forum.

17 Secondly, I don't know why ALJ cases have to take
18 18 months to complete. The NRC has a record of handling and
19 litigating licensing cases in much less time than that in
20 connection with the issuance of construction permits and
21 operating licenses. There were lessons learned in that
22 process that could be conveyed to the Department of Labor
23 for their guidance and possible use in shortening up the ALJ
24 decision-making process.

25 Parallel investigations. I don't think they are a

1 good idea for the reasons that have already been indicated,
2 but for two reasons in particular. The reasons why the NRC
3 stays its hand when the Justice Department is conducting a
4 criminal investigation, in my judgment, also exists with
5 respect to parallel NRC investigations and DOL ALJ
6 proceedings. Still, the issues are different, but the facts
7 are not. And, I think that one has to stay while the other
8 does its job.

9 Secondly, if parallel investigations are launched
10 by the NRC and the Department of Labor, the system is going
11 to be made worse because the NRC is going to encounter the
12 kind of problem that the DOL encounters. When it comes to
13 the identification and resolution of safety issues, it is
14 much more easy to resolve a safety issue based on a
15 violation of a regulation, a tech spec or some other thing.
16 When it comes to retaliation complaints, those are much more
17 subjective. The ability to sort out who is right and who is
18 wrong is difficult. It takes time. I have done that
19 myself. Sure, in a case where a supervisor has said in
20 front of three witnesses to an employee that, you SOB, you
21 snitched to the NRC and you are fired, that is pretty easy
22 to handle, but there aren't any cases like that. So, it is
23 going to take time for the NRC to conduct its parallel
24 investigation. And it is not going to make the process
25 better, because that time is still going to cause the

1 complainants to carp about the situation of delay.

2 More importantly, as the NRC enters the arena
3 early on, when the fires on both sides, the complainant and
4 the licensee, are hot with disagreement and discord, the NRC
5 is just going to fuel that. The lawyers for the licensee,
6 the lawyers for the complainant are going to try to protect
7 their interest in both forums. All we are going to do -- to
8 use a term from yesterday -- is create a cottage industry
9 for lawyers. I don't think that is a good idea. So, I
10 think one at a time has to be the way it ought to go. The
11 DOL process properly should go first, and I think it ought
12 to improve the speed by which it does things.

13 On that note, I will conclude my remarks. Thank
14 you very much.

15 MR. LIEBERMAN: Thank you, Joe.

16 Tom, do you want to complete the panel?

17 MR. DIGNAN: Thank you, Jim.

18 Thank you very much. I always feel honored, as
19 the country lawyer from New England, to be invited inside
20 the Beltway and sit with the distinguished members of the
21 D.C. Bar.

22 Before going into anything, I would like to start
23 by saying that my remarks are my own and nobody else's.
24 They have not been reviewed, commented on, or adopted by any
25 client of my law firm or any company with which I am

1 otherwise affiliated.

2 At the risk of being characterized as the
3 ungrateful guest, I should like to begin by asking
4 rhetorically why we are here at all? And the "we" I refer
5 to are the members of the legal profession. This meeting is
6 I suggest one more example of the prevailing ethos in
7 Washington that (A) all problems, ills and wrongs of society
8 can be solved by passing or amending a regulation, and (b)
9 and the legal profession is the one to be listened to in
10 determining the policy to be implemented.

11 With all due deference to my fellow members of the
12 bar here at the table, and the staff of the Commission, or
13 in the general audience, I can think of no group less
14 qualified to solve the so-called "whistle-blower" problem or
15 any facet thereof in the legal profession. Indeed, I
16 suggest what we are engaged in today is another example of
17 what President Clinton recently characterized as making the
18 process more important than the product.

19 The whistle-blower phenomenon is not a matter
20 which legal talent is useful in addressing or solving. If a
21 company has a real and persistent whistle-blower problem,
22 then it has a management problem. Let me elucidate. For
23 purposes of this discussion, let us define whistle-blower as
24 an employee of a nuclear utility which goes to the NRC or
25 some other outside agency with an alleged safety problem

1 which, in that individual's view, has not been properly
2 addressed by his employer.

3 One of two results will follow from this action.
4 One is that the whistle-blower indeed reveals a real safety
5 problem which must be addressed to assure the public health
6 and safety. I suggest that if a power plant is running with
7 a real, unaddressed safety problem, then there is, by
8 definition, a management problem somewhere. The other
9 possible result will be that a determination is made that
10 the allegations are groundless. This also reveals a
11 management problem, either because management was unable to
12 communicate to the employee to remove his or her concern, or
13 because, if it be the case that the employee truly was
14 alleging falsely to get the company, management has allowed
15 a bad, antagonistic, we-they culture to build-up to some
16 extent. But, whatever the outcome of the investigation,
17 what is being revealed as a root cause is some kind of
18 management problem.

19 Thus, I suggest, if NRC is to do more in this
20 area, the answer is not to be found in more regulations, but
21 in seeing to it that management understands that its own,
22 enlightened self-interest should favor the encouragement of
23 a free, employee communication as to safety concerns, with
24 an assurance that no discriminatory action for engaging in
25 such activity will follow at any level in the organization.

1 Now, how do you do this? I suggest two matters
2 for NRC's consideration. First, I think a policy statement
3 should be issued which would make three points. First, a
4 reiteration of the importance the Agency attaches to the
5 fair and equitable treatment of allegeders by their employers;
6 second, an assurance to the utility that, if an employee
7 brings forth a safety problem and the NRC is satisfied that
8 one, the safety problem was in fact addressed adequately and
9 promptly, and, two, that the employee was not, in any way,
10 discriminated against, then any civil penalty or other
11 enforcement action which would be necessary in light of the
12 safety problem will be mitigated under the prompt correction
13 doctrine. In other words, the NRC should provide by its
14 enforcement policy a carrot for the management to listen to
15 and address employee alleged concerns.

16 Third, the policy statement should announce that
17 NRC will utilize, in cases of real harassment or
18 discrimination its extant wrongdoer rule to penalize
19 severely the actual perpetrator of the particular
20 discrimination involved. This is the stick for management.

21 Second, if there is a case when a given utility
22 has a number of instances where a real safety problem has
23 been ignored, despite employee allegeders efforts, the result,
24 frankly, should be a license suspension for some period of
25 time, 30 days. I advocate that for the chronic violator,

1 simply because a plant shutdown with concurrent loss of
2 revenue and regulatory rate disallowances, will get the
3 attention of the board of directors. And it is the board of
4 directors that you are going to have to reach as a
5 regulator, if you are dealing with and attempting to solve a
6 management problem, as opposed to a legal problem.

7 That is all I have to say.

8 MR. LIEBERMAN: Thank you, Tom.

9 Let me begin, if I could, with Bob. You know that
10 NUMARC was planning an initiative to look into this area.
11 Could you describe that a bit more to us and the schedule,
12 if you have one, as to when you might have some results?

13 MR. BISHOP: The short answer is I can't describe
14 it because it is just beginning. As we were preparing for
15 this -- as we were giving concern to Congressional
16 inquiries, to the Chairman and other Commissioners'
17 comments, and our own internal discussions, we have
18 concluded that it makes sense for us to take that initiative
19 on. But, that has only been developed in the last weeks.

20 I will be able to tell you what the results are
21 when we achieve it. We intend to pursue it vigorously, but
22 I can't promise you that we are going to know what the
23 answers are, if there are answers that are knowable, within
24 the next day, week. It depends on what we find.

25 MR. LIEBERMAN: Do you have an idea when you are

1 going to at least have the concept structured with a
2 schedule to attacking the issue?

3 MR. BISHOP: It is our practice not to establish
4 schedules we can't meet. And, since I don't know what we
5 are going to find, I don't know how long it is going to take
6 to bring that to a conclusion. But, yes, we will be
7 developing further thoughts on it. We will certainly keep
8 you apprised, as I commented, as we proceed.

9 In terms of bread box versus boxcar kind of
10 analogies, I think we are certainly talking about months
11 rather than days or weeks, simply because this is a
12 difficult problem. As Tom suggested, at heart, it is
13 management. We know that there are utilities that have very
14 good programs that don't have formal programs. We know that
15 there are utilities that have formal programs that -- the
16 data suggests the results are not nearly as good. So, I
17 don't think there is a quick answer out there, or we
18 wouldn't be probably having this discussion. I don't know
19 where it is going to go.

20 MR. LIEBERMAN: I only ask the question because
21 Joe Gallo has suggested that we defer our action until we
22 hear from NUMARC. It would be interesting to find out how
23 long that would take. I understand what you are saying.

24 MR. BISHOP: Joe has put me in an interesting
25 position. As you can tell from all of our comments, we

1 haven't tried to coordinate them. What we wanted to do was
2 to bring you our individual perspectives. I will certainly
3 be able to apprise you in the next week or two or three as
4 to what our general thoughts are, where we think it is going
5 to go. My understanding is your timeframe is, in round
6 numbers, near the end of the year. We will continue to talk
7 with you as we go. Whether we will have a formal
8 conclusion, whether we have concluded that something needs
9 to be done or something doesn't need to be done, I can't
10 promise you by that time.

11 MR. GRIMES: If I could follow-up on that. I
12 think the Review Group would be interested, when you do get
13 back to us, on the extent to which this will be a utility
14 management group, versus a legal group, and the extent to
15 which you will be looking at say management -- the culture
16 of organizations versus say the process, employee concern
17 programs and that kind of thing.

18 MR. BISHOP: Absolutely. And those are the first
19 steps we are going to have to take to get our thoughts
20 together on what is the right way to proceed. And so we
21 will have that information for you fairly shortly.

22 MR. LIEBERMAN: One of the issues that we
23 discussed was -- or the presenters discussed was the issue
24 of probable investigations. I think that the majority of
25 the view was that NRC should hold their hand, in most cases,

1 until DOL does their initial investigation. With the
2 changed Section 211, it now provides a person up to 180 days
3 before they have to go to DOL with the complaint. So, we
4 are faced with a situation where someone comes to NRC today
5 and they can delay another 179 days before they go to DOL.
6 What is the view on NRC initiating investigations in that
7 early time period -- the first six months? Because, one
8 could say to wait the six months for someone to go to DOL
9 and then DOL takes another 80-90 days to do their initial
10 investigation, and that process just gets more and more
11 dragged out before NRC might focus on a DOL finding.
12 Shouldn't NRC be getting involved in that time period before
13 the person goes to DOL? And, if we should be exercising
14 discretionary judgments, as George suggested, what might be
15 the criteria for cases that we investigate?

16 Whoever wants to respond.

17 MR. REYNOLDS: I would suggest that your policy
18 should be one of deciding what to do on a case-by-case
19 basis. I can foresee situations where because the
20 allegation of retaliation is not known by the workforce, it
21 is just in the mind of the individual, there is no policy
22 reason that the NRC should go forward, absent some
23 preliminary finding by the NRC that there may be a pervasive
24 problem at the site which, of course, my understanding is,
25 you would check anyway, anytime these matters come to you.

1 So, in the absence of a pervasive indication, and
2 in the absence of knowledge by the workforce that this
3 individual has come to this come to the NRC, I see no policy
4 served by the NRC going forward, because you would only be
5 seeking to vindicate the interests of the individual. It is
6 up to that individual to take those interests to be
7 protected by DOL.

8 On the other hand, if you find that this is a
9 notorious situation, the fact of the individual coming to
10 the NRC is well-known, that may be a circumstance where a
11 different result would be indicated. If I were the NRC, I
12 would be interested in trying to avoid interrupting the
13 logical flow of things by preempting DOL's investigation
14 with your own. But, I could foresee egregious circumstances
15 where that would be warranted.

16 MR. LIEBERMAN: Anyone else?

17 MR. EDGAR: Yes. I would just draw a distinction
18 first. If you have a situation where an allegor had a
19 concern, let's make sure that the safety issue gets
20 addressed. I think everyone understands the immediate
21 safety issue must get addressed. I mean, NRC either has to
22 know about it or the employer has to know about it; but, the
23 corrective action has to be taken.

24 Generally, I think that hasn't been a problem.
25 But, we have seen instances where, if the investigative

1 process is not quick enough and the information doesn't get
2 in the hands of the line organization, you could have an
3 issue hanging fire and not getting addressed. There needs
4 to be some screening process on the front-end of the NRC,
5 which I think there is at this point, and within the
6 licensee organizations to make sure that you don't have an
7 immediate hardware or a technical issue that needs
8 addressing and isn't getting addressed.

9 In terms of what one does with a potential
10 harassment issue or a potential chilling effect, again, I
11 would not write prescriptive criteria. I think the Agency
12 has discretion to decide when they ought to initiate an
13 early investigation and when they shouldn't. The question
14 is what is wrong with how you are doing it now? Why tie
15 your hands? If you think there is some widespread problem
16 at a site, then go after it, go look at it. But, I don't
17 think you need to write criteria for when you make that
18 decision. That is basically an NRC management decision that
19 you are equipped to make and have made effectively.

20 MR. LIEBERMAN: Anyone else?

21 [No response.]

22 MR. LIEBERMAN: Okay. Another question. This is
23 from a point Nick raised suggesting that the licensee should
24 be permitted to provide a document to us, giving their views
25 on the discrimination. My question is, since the purpose of

1 this document is to influence the agency in how it responds
2 to the issue of discrimination after we have received a
3 complaint from an individual, should that document be
4 provided to the person making the charge of discrimination
5 or put on the public record, subject to removal of any
6 identifying details of individuals that the company might
7 have interviewed? And if not, why not?

8 MR. REYNOLDS: I would suggest that 2.790 should
9 govern that decision.

10 MR. LIEBERMAN: Any other comments on that?

11 MR. HAYES: Does everyone agree with Nick on that?

12 MR. BISHOP: Yes, I do. And I don't think you
13 need to write new rules, you have got them. That 2.790
14 takes care of that.

15 MR. LIEBERMAN: We talked about -- Tom certainly
16 made the point and many, I think, of us will agree that
17 management is at the root of these type of issues. There
18 are certainly companies, as you have pointed out, that don't
19 have employee concern-type programs, that have a good
20 atmosphere and culture where people are free and encouraged
21 to raise issues. And there are other plants who have formal
22 programs and it may not be a perfect situation. Should we
23 consider the number of complaints -- the number of valid
24 complaints as part of the SALP process, as a way to
25 encourage licensees to do a better job in this area?

1 MR. DIGNAN: I have no problem with that, as long
2 as we could agree on what is a valid complaint. I mean, I
3 don't think this is the time to try to do that. As long as
4 you put the word "valid" in there, yes, I think it is a part
5 of the SALP process.

6 MR. LIEBERMAN: How about the --

7 MR. DIGNAN: But, not just the raw number of
8 complaints by any means.

9 MR. LIEBERMAN: Okay. When I said complaints, I
10 am really referring to H&I-type of complaints.

11 How about the number of allegations that a company
12 -- that employees provide the agency or the change in rate
13 of the number of allegations given by employees to the NRC,
14 from the idea that, in a well-run organization where there
15 is the appropriate atmosphere at the plant, we should have a
16 minimum of allegations being given to the NRC and, if there
17 is a sharp change in that rate, that may suggest a concern?

18 MR. LEWIS: May I? I think you have got to be
19 very careful at just looking at pure numbers of allegations
20 without substantiation. I mean, there are lots of things
21 that can skew those numbers. You can have just a few
22 individuals who raise tons of allegations, and that may
23 create the wrong impression. There are also situations that
24 occur that breed allegations. I mean, the best example in
25 the past was the phase down of construction programs, where

1 lots of workers started to be laid off. You saw that -- a
2 lot of allegations started to come forward when people were
3 worried about losing their jobs, and were feeling slighted
4 because they were being laid off for whatever reason.

5 I think that you see the potential for this now
6 again in reorganizations and downsizings. I think anytime
7 there is a reorganization or a reduction in force, and as
8 people try to save money and streamline their organizations,
9 you are going to see these issues creep up, and you are
10 going to see the number of allegations creep up. It doesn't
11 mean that there is necessarily a worse situation or poor
12 management. It means that a lot of times there is -- I was
13 going to say growing pains, but I think it is shrinking
14 pains, and the dissatisfaction that happens when employees
15 are let go. So, I think you have got to be very careful in
16 trying to draw conclusions just on how many allegations have
17 been made this year versus last year.

18 MR. LIEBERMAN: Tom, you were going to say
19 something?

20 MR. DIGNAN: I couldn't agree more.

21 I think that -- remember what I said when I said
22 in my remarks about such things as, you know, taking
23 individuals out of licensed activities or closing down
24 plants, I am always talking assuming a valid thing. Now, if
25 -- I also said, I agree, that management has got a problem

1 if they have got a lot of allegations. I mean, the
2 management is breaking down somewhere. They have got
3 somebody mad at them unnecessarily. But, I don't think that
4 is your concern. That is the board of directors and the
5 president's concern. If they have got a management problem
6 that is costing them money and lawyers and everything
7 dealing with allegations that turn out to be fruitless, that
8 is not your problem. So, I don't think you can make a mark
9 of a utility's safety record before your agency, just a raw
10 number of allegations. But, I have no problem with you
11 making it part of the process, if you are going to get
12 validity to them on some basis we could agree as to what is
13 valid and what is not.

14 MR. LIEBERMAN: It is our problem to some degree,
15 from the point of view that we now have all of these
16 allegations and we have to spend our resources to follow up
17 and resolve, taking time from doing other things.

18 MR. DIGNAN: That is true; but that is just your
19 job, you know. I mean, I am sorry you have to do it, but
20 that is your job, just like management's job is to pay for
21 all of the problems it has created by a false allegation for
22 them. But, I don't think it is fair to say to a utility,
23 under any circumstances, just because you have got some
24 characters out there who are willing to make false
25 allegations, we are going to mark you down for it. The

1 management obviously has to solve that somehow, one way or
2 another; but that is their concern, I don't think yours.

3 MR. LEWIS: From the NRC's perspective, you have
4 got to be very careful. You want employees to come forth
5 and bring allegations, and you want the management to allow
6 that and encourage that and facilitate that. If you start
7 saying that is too many allegations in a month, what message
8 are you sending? Are you then telling management you have
9 got to make sure people don't raise allegations? That is a
10 very two-edged sword.

11 MR. GALLO: Yes. I think to include this element
12 in the SALP reports is inappropriate. And I think so for
13 two reasons. First, management competence, generally, is
14 not evaluated under SALP, and to just take this one small
15 element and highlight it in a SALP report is just
16 unbalanced. And, secondly, these SALP reports -- and this
17 is a personal opinion -- are turning into beauty contests.
18 And I think this issue should not be injected as a part of
19 that context.

20 MR. DIGNAN: I don't like to disagree with Joe,
21 but I do want to disassociate myself, one that the SALP
22 report is not a report card on management. Anytime you sit
23 in a board of director's meeting, believe me, that SALP
24 report is a report on management and you are making a report
25 on management. Now, you don't call it that, and the

1 Government doesn't call it that, and maybe the press doesn't
2 call it that, but that is what it is. Either the management
3 is doing their job, and the SALP report is good, or the
4 management isn't doing their job and the SALP report is bad.

5 MR. REYNOLDS: What we don't need out of this
6 effort is a process whereby employees are encouraged to come
7 to the NRC rather than to go to their own line management.
8 That would be a failure on our part and your part.

9 MR. LIEBERMAN: And we are very sensitive to that
10 too, Nick.

11 MR. REYNOLDS: Have you considered ways to deal
12 with situations where the staff is being flooded with
13 allegations which are either baseless or frivolous from an
14 individual or two or three individuals? I am talking about
15 hundreds of allegations, some people who are obviously not
16 sincere in what they are doing. Now, I recognize the staff
17 has to be careful that it doesn't close the door; but, on
18 the other hand, have you considered ways to deal with those
19 situations so that you are not burning tremendous resources
20 chasing frivolous issues?

21 MR. LIEBERMAN: Well, we know that is an issue,
22 Nick. Do you have any thoughts as to how we should deal
23 with that?

24 MR. REYNOLDS: No, I asked if you have thought
25 about it. I really haven't given it consideration. Ben,

1 have you?

2 MR. HAYES: Well, certainly I am aware of the
3 situation and have given it some thought; but the purpose of
4 today's meeting is not to get into a dialogue on specific
5 issues such as that. We are here to elicit your views. I
6 am much more comfortable doing that than engaging in some -
7 -

8 MR. REYNOLDS: My view is the staff should
9 seriously consider ways to address that issue because it is
10 one that will arise occasionally, and it is debilitating.

11 MR. LIEBERMAN: Well, it is clearly a concern. In
12 this area, perception, to some degree, is everything. Well,
13 we may -- if we took action on a case because someone gave
14 us false information, even purposefully, the message may
15 well get out there that someone gave us information and the
16 NRC acted against that person, and then we don't get that
17 information. So, it is something we have to be very careful
18 with. But, in the comments to the Federal Register Notice,
19 we would certainly appreciate ideas on how to deal with
20 that.

21 MR. EDGAR: Could I?

22 MR. LIEBERMAN: Yes, George.

23 MR. EDGAR: Three points to make that you might
24 want to think about in this regard. First, as I indicated
25 before, consider mandating a requirement that employees are

1 obligated to report safety information to their employer,
2 that it gets fixed. The second thing is -- and it is
3 current practice -- it is exactly what you do, but you might
4 resort in greater degree to it, and that is to refer your
5 allegations to the licensee. The third thing that I haven't
6 heard much discussion on, is what if an allegor give you
7 false information, bum information, and sets you off on
8 tangents? What do you do about that?

9 Now, you have got to have a conservative posture.
10 You have to assume that incoming information has some color
11 of worth. But, how do you deal with that allegor? What are
12 your policies and what are your thoughts about dealing with
13 that?

14 MR. LIEBERMAN: That is an issue we will have to
15 give some thought to.

16 MR. LEWIS: May I add a thought? A fruitless
17 allegation, and they happen, hurts everybody. It hurts the
18 licensees. It is damaging, it is disruptive. As I
19 mentioned before, allegations of discrimination are
20 potentially career-threatening. As they drag out, some poor
21 manager is -- I mean, it is like the Sword of Damocles, it
22 is hanging over their head, and it goes on for a long time
23 and it causes a lot of stress and disruption and bad feeling
24 for the licensee. It also creates a problem both for the
25 NRC and for other employees. Other employees looking from a

1 far are not sufficiently aware of the facts to be able to
2 tell if an allegation was frivolous or not, and they may see
3 a process drag on for a long time with no resolution, and
4 draw the conclusion that the NRC didn't protect my buddy who
5 raised the concern.

6 The same thing happens before the NRC. I noticed
7 during the Congressional testimony that there was a lot of
8 counting of allegations and there was -- well, here's a lot
9 of allegations, but there is only a few they have acted on,
10 ergo, the NRC is not protecting people. And when that sort
11 of perception starts to get bandied about because of some
12 number of allegations that are frivolous, I think it is
13 hurting the process overall.

14 So, it is an issue that the NRC should be
15 concerned about. We have tipped the scale dramatically in
16 favor of people who have raised concerns, because that is
17 important to the process. So, we haven't penalize them.
18 They have lots of advantages. They have got an advantageous
19 burden of persuasion.

20 In a DOL proceeding, if they win, they get
21 attorneys' fees, if the utilities win, they don't. So,
22 there are a lot of things that really protect them. But, at
23 some point, the line has to be drawn. I mean, one
24 possibility is a sort of Rule 11 procedure. I mean,
25 perhaps, if you don't want to penalize the allegor, you

1 should penalize an attorney representing the alleged, if he
2 submits a complaint or an allegation that is submitted
3 without a good faith basis. So, that is a possibility.

4 MR. GRIMES: Could I just follow that? Mr. Edgar
5 mentioned false information from alleged. I guess -- do
6 you believe that is a significant problem? I have seen
7 cases of allegations with very little safety significance,
8 but I guess I haven't seen too many that were actually
9 factually false.

10 MR. EDGAR: I haven't seen a lot of them either.
11 I have seen some. I think the more significant problem is
12 not the false allegation, but the trivial allegation, the
13 large number, the flood, and what you do about it. It is a
14 very sticky problem.

15 There are at least two things I think you ought to
16 do to begin to deal with that. One is increase your
17 referrals, and secondly, consider mandating disclosure of
18 safety concerns.

19 MR. HAYES: George, when you say mandating safety
20 concerns, that goes back to a requirement that the employees
21 notify their -- the licensee or their management. Would you
22 also encompass in that, if such a rule in fact was written,
23 notify your employee and/or the NRC?

24 MR. EDGAR: Well, I am not sure notifying the NRC
25 does it in all cases. That is part of -- you know,

1 generally, in practical terms, if the NRC sees something
2 that is really safety-significant, they get it in the
3 licensee's hands for immediate action. I am concerned about
4 the situation where there is a real safety condition. But,
5 the licensee has an absolute responsibility for safety of
6 the plant. He knows the plant best. He has got his hands
7 on it. He should have the information direct. He should
8 attenuate it.

9 MR. GOLDBERG: George, excuse me. I understand
10 the purpose of your proposal. As it was mentioned, we are
11 not here to debate these things now, but just to get ideas.
12 I would point out, however, that it raises a very difficult
13 dilemma, and that is that such a requirement, if we had one,
14 would in fact conflict with Section 211 and the absolute
15 right of the employee, for whatever reason, whether real or
16 perceived, to come directly to the NRC with a concern.

17 MR. EDGAR: I wouldn't change that. The NRC --
18 the employee remains with an absolute right to come to the
19 NRC.

20 MR. GOLDBERG: But, he could not do it, if we had
21 such a regulation, without violating that regulation?

22 MR. EDGAR: No, no. He can come to the NRC. He
23 must also go to his employer. That doesn't violate 211, and
24 that doesn't violate the NRC regulation. He is free to go
25 to the NRC.

1 MR. GOLDBERG: We don't have to debate it.

2 MR. EDGAR: Yes.

3 MR. GOLDBERG: But, it is our position that he is
4 free to come directly to us without going to his employer.

5 MR. EDGAR: That is what I think you ought to
6 rethink.

7 MR. LIEBERMAN: Or, alternatively, one could say
8 the employee has to go either way. If the person has a
9 safety issue, it must either go to the employee or --
10 employer or go to the NRC. The question, do we have the
11 authority to issue such a regulation that would go directly
12 to an employee, versus issuing a regulation to a licensee to
13 require that they have procedures that call for this?

14 MR. EDGAR: That establish conditions of
15 employment.

16 MR. LIEBERMAN: Couldn't a licensee do that now as
17 a condition of employment that says if the employee finds a
18 safety issue, they must either report it to themselves or
19 report it to the NRC?

20 MR. EDGAR: Yes, under your prescription. Now,
21 you will get an argument from Jack under my prescription.

22 MR. LIEBERMAN: Are you aware of any licensees who
23 have ever done that?

24 MR. EDGAR: I don't know of any that have that
25 written in stone.

1 MR. LEWIS: My recollection, and I am sorry it is
2 fuzzy, but, I have a recollection that in part 19 there is
3 already a regulation that requires employees to bring
4 certain violations, if they work in restricted areas, to
5 their attention.

6 MR. LIEBERMAN: I think Part 19.12 says that
7 employers should train employees on their responsibility,
8 for those who work in radiation safety areas, to bring
9 issues forward.

10 MR. LEWIS: Yes.

11 MR. HAYES: I would like to change the topic, if
12 we are through with that.

13 I noticed that the majority of you gentlemen this
14 morning basically took the position that a Section 211
15 discrimination problem is a management problem. But, what,
16 in your view, should the NRC use as a criteria to hopefully
17 trend that particular issue? That is to say, is management
18 effective or not effective?

19 Secondly, if we find that, at least in our view,
20 that there is a weakness within the organization, the
21 managerial organization of a licensee, do you support Tom's
22 notion that the NRC should surgically remove that individual
23 from license activities? Bob?

24 MR. BISHOP: I think, in concept, yes; in
25 practice, I have great reservations. I think the licensees

1 need to have the ability, they certainly have the legal
2 responsibility to manage their affairs. I think it would be
3 inappropriate for the NRC, and there have been circumstances
4 in the past where I believe the NRC has delved too deeply
5 into an area where they have neither the knowledge or the
6 authority and, worse, no responsibility for the action, by
7 directing that this individual is no longer allowed to work
8 in licensed activities, for instance. I think that is a
9 very dangerous thing for the NRC to get involved in. There
10 may be circumstances where that is appropriate, but I think
11 that those would be extremely unusual circumstances, just as
12 I think it would be an extremely unusual situation to
13 envision that a licensed facility should be shut down for
14 some period of time as a punitive measure.

15 I think we can all hypothesize that you might get
16 to that case, but I think it is extremely unlikely that, in
17 the real world, if the management problems were so severe,
18 that that was the appropriate regulatory action by the NRC
19 to take. There are so many things that obviously have been
20 out of control for much too long that you would get in that
21 situation. It is just impossible -- well, it is very
22 difficult for me to conceive that that would be an
23 appropriate fix.

24 MR. LIEBERMAN: Could you see situations that
25 would justify significant civil penalties?

1 MR. BISHOP: Oh, sure. And they are there now.

2 MR. LIEBERMAN: Okay. Now, in view of that,
3 yesterday we heard that our civil penalties were perceived
4 as not very high, and basically as a joke. The
5 recommendation was made they should be at least a million
6 dollars for a clear case of discrimination.

7 MR. GALLO: A million dollars a day.

8 MR. LIEBERMAN: A million dollars. Now, having
9 said that, and picking up on Tom's point that, in a severe
10 case with a history, that a one-day, that shutdown of some
11 form may be appropriate, what would you think of NRC having
12 a million dollar civil penalty for a truly significant case
13 of discrimination?

14 MR. BISHOP: We are chasing the wrong bogey. I
15 think it is fallacious to presume that the NRC's issuance of
16 a notice of violation, as I commented in my prepared
17 comments, is of no import -- that civil penalties are the
18 only thing that motivates licensees and, therefore, if you
19 follow along with that presumption, there has to be a huge
20 civil penalty if you are going to affect the operations or
21 get the attention of a large organization. I think that is
22 just wrong reasoning. I think that does not understand --
23 that suggests a lack of understanding of reality.

24 There isn't a single licensee out there that says
25 we just got a notice of violation, but it is no civil

1 penalty, so we don't have to worry very much about that.
2 The culture that has been developed in the industry is
3 dramatically opposed to that. Certainly, the
4 acknowledgement by the NRC that that would be an appropriate
5 managerial response would not be likely favorable. That is
6 not a real-world situation. I think that management's
7 attention has been and can be gotten in a lot more effective
8 ways than that.

9 MR. LIEBERMAN: Let me switch the subject, because
10 it may be a bit for us to ask attorneys who represent
11 licensees to support larger penalties.

12 The DOL process does take a long time. We have
13 talked about that already. Litigation across the country
14 takes a long time and is costly. In other forms, other
15 areas, they maybe use alternative dispute resolutions as
16 techniques to try to make resolution of issues speedier and
17 less resourceful. Do any of you see ways to use alternative
18 dispute resolutions to the contents of discrimination-type
19 issues?

20 MR. BISHOP: I think it is there now. The DOL
21 process envisions a significant step towards seeking to
22 conciliate, to mediate out the dispute. That is an
23 alternate dispute resolution mechanism. It doesn't have to
24 be called that to be that. I think there are circumstances
25 where it clearly works, and there are many where it doesn't.

1 One of the reasons for long, delayed processes is because
2 that is the way the system is set up to try to find out what
3 is the right answer. It is not necessarily a failure of the
4 system. That may be evidence of the system working
5 correctly.

6 MR. LIEBERMAN: Anyone else?

7 MR. REYNOLDS: Whether or not a licensee chooses
8 to use mediation or some other alternative dispute
9 resolution vehicle should be left to the licensee's
10 discretion. I trust, from the thrust of your question, you
11 are not asking whether it should be mandated by the NRC?

12 MR. LIEBERMAN: Certainly not.

13 MR. REYNOLDS: Right. Well, I think it is in use
14 now. I agree with Bob. We have done it ourselves.

15 MR. LIEBERMAN: Anyone else? Do any of the other
16 panel members have any questions?

17 MR. GREEVES: Yes. Tom, some of your remarks -- I
18 caught the one about the policy statement. You are one of
19 the people who have recommended that we have such a policy
20 statement. You made some remarks about mitigating the
21 enforcement process, if certain things were done. Could you
22 go over that a little bit? Where were you coming from?

23 MR. DIGNAN: Without trying to do it in detail, my
24 thought is this -- that one way for this agency to try to
25 address this problem, which I assume is not first on your

1 list, is an antagonistic way. I mean, one way to do it is
2 to up the civil penalties for everything, and bang on people
3 and that. But, I assume though that what the Agency wants
4 to do is encourage management to understand that their self-
5 interest dictates that they have a free exchange with their
6 employees. My thought was, if you made it clear in the
7 policy statement, and let's suppose a safety problem comes
8 up which would be a violation, in other words, the existence
9 of the safety problem we have got to solve would mandate
10 this -- if the Agency would give serious consideration, if
11 their investigation of the problem indicated, one, when an
12 employee found it the management reacted properly, that the
13 employee, you know, if anything was complimented for finding
14 it and so forth, that this would be part of your
15 consideration in perhaps mitigating the penalty under what
16 you have now in the policy statement to prompt a correction
17 concept. So, the Agency is providing a carrot, if you will,
18 to management, to be darn sure that they address an employee
19 allegation and treat it well and, if it is real, get right
20 on it, because there is going to be a return on that in its
21 relationships with the agency. That was my point. Maybe I
22 haven't made it clear, but that was it.

23 MR. GREEVES: I was trying to see how that would
24 sit with a harassment and intimidation case.

25 MR. DIGNAN: It is not a question of harassment.

1 When I was speaking, and perhaps I, as I usually do when I
2 am invited to these things, I got away from the exact topic.
3 My point is that the way to get rid of -- harassment and
4 intimidation cases, in my judgment, whether it be in the
5 nuclear industry or in some other industries, which I have
6 counseled, when I am practicing what I call real law, as
7 opposed to nuclear law, come from one thing generally, to be
8 perfectly blunt, middle management. And it comes because
9 some employee comes to the middle management and says we
10 have got this problem and we have got to do something. The
11 middle management looks at it, and he has got some goal in
12 his compensation plan that, boy, if this comes up he is a
13 dead duck on his goal, and he clamps down on the employee.
14 I think that, as a practical matter, the only thing an
15 agency can do to try to get over that problem is to
16 encourage the top management to see that there is a real
17 return to them to be sure that these kind of people are
18 weeded out, counseled, or whatever has to be done to stop
19 that.

20 The fact of the matter is I would be amazed if you
21 ever had a case where you found a CEO of a utility engaging
22 in "get out there and fire that person." I don't care how
23 many people come in and testify and say they think that
24 happened, you don't get to that level with that kind of
25 attitude. But, I am sure you have had cases where you have

1 had suspicions, if not proof, at a lower level in the
2 company where somebody did that. And you will usually find
3 this is driven either by a misguided sense of loyalty to the
4 company or, frankly, it could be driven by a compensation
5 system or something else that encourages somebody to be sure
6 no problems rise up to the level of say vice president in
7 their shop.

8 And it was my thought that a carrot should be out
9 there to management that says if you people do run an
10 organization where employees bring you a problem and you do
11 something about it right away, we are going to count that as
12 we deal with enforcement against you. I think that would be
13 a plus.

14 MR. GRIMES: Are there any analogs in other
15 industries?

16 MR. DIGNAN: Not really, simply because I don't
17 think any other industry gets regulated the way that this
18 one does. In the safety area, I can't think of any, no.

19 MR. BISHOP: If I could interject? I think Tom
20 has raised some interesting questions about a policy
21 statement. I guess my thought is that, at this juncture, it
22 is premature to say exactly what that should say because I
23 am not sure that you, we, however you want to cut it,
24 understand what the problem is and understand what is the
25 right way to solve whatever the problem is that that might

1 be. So, I think we look forward to your future endeavors -
2 - look forward to your sharing with us the information that
3 you gather so we can separately consider what is the
4 problem, and, therefore, what is the resolution. Maybe a
5 policy statement is a productive way to go.

6 MR. DIGNAN: I think that is right. And I also,
7 since I disagree with Joe on one thing, I would like to
8 state my agreement with Joe on something else. I think you
9 guys ought to select a few of the sites to go to. I mean, I
10 don't think they were chosen at random. Maybe what we ought
11 to try to do is make an effort to bring in before you some
12 of the utilities who you think have a good record in this
13 area and ask them how they got there. It might be
14 enlightening to you to hear them tell you how they think
15 they got there. It might be helpful to you in drafting your
16 own response to this issue. You know, it is always fun to
17 go down there and let the press raise blazes down around
18 some utility who you are unhappy with. Why don't you go to
19 a few sites and invite in a few of the utilities that you
20 people, in your own mind, and tell them that is why you are
21 there -- that you are interested in the fact that they seem
22 to have a program that works and you would like to know why
23 they think it works and what can be done better.

24 MR. HAYES: It is something that certainly we have
25 discussed. That is not off of our agenda, quite frankly.

1 Because we are out to try to get a balance, as you can
2 appreciate. I think that is part of the process. So, that
3 topic is not foreign to us.

4 MR. DIGNAN: When you do it, get the managers in,
5 not the lawyers.

6 MR. BISHOP: When you do it, also get the
7 employees in. Encourage employees to come and tell you why
8 they think this works, as well as just managers describing
9 to you the programs that they have set up, because that is
10 the audience you really need to think about and to be
11 concerned with.

12 MR. GRIMES: I think the point is valid, with
13 respect to getting some employee views. We hadn't meant to
14 restrict the utility session of these trips to just the
15 local utility. So, I think --

16 MR. REYNOLDS: The point is you are conducting the
17 meetings in what will be most predictably a hostile
18 environment.

19 MR. LIEBERMAN: Jon, you had some questions?

20 MR. JOHNSON: Yes. I had a couple of questions
21 about contractors. It relates to the management
22 responsibilities to oversee the contractors. I know we have
23 talked about -- you have talked about downsizing, in a lot
24 of cases, construction projects that involve contractors, as
25 well as during refueling outages.

1 Mr. Reynolds, you mentioned that in certain 211
2 cases it is obvious that the licensees are aware of the
3 issues. You mentioned this in context of asking for the NRC
4 to provide information to utilities. You said, of course,
5 in 211 cases, licensee managers are aware of those issues.
6 My question is, are you sure that licensee management is
7 aware of potential cases of discrimination with contractors?
8 I say this because, in my view, there may be a case reported
9 where the contractor directly, dealing with Department of
10 Labor, I am not so sure that the utility management knows
11 about all of those cases immediately.

12 Also, with respect to our actions and our
13 enforcement and so forth, we certainly feel that the
14 utilities or our licensees, from a materials standpoint, are
15 responsible for the actions of their contractors. But, I
16 think that, in certain of these instances, there have been a
17 number of contractors involved. So, I am concerned about
18 the awareness that the licensees' management have over the
19 skills of the contractor supervision, as well as their own
20 permanent employees.

21 MR. REYNOLDS: Well, as you are aware, the
22 regulations require licensees to assure that contractors
23 comply with Section 211, and with the NRC's views on what
24 settlement agreements should contain. So, licensees are
25 already on the hook for what their contractors may include

1 in settlement agreements in 211 cases. In my experience, I
2 don't know of any client of ours that doesn't have a
3 procedure in place that controls this issue with respect to
4 contractors. In most contracts, there is a clause that says
5 when 211 claims are filed against you, you will notify us
6 immediately. That is the way it is typically handled in my
7 experience. But, again, there is a requirement that
8 licensees are sure that settlement agreements, by
9 contractors, don't run a foul of what the NRC thinks should
10 be in such settlement agreements.

11 MR. LEWIS: I agree. I am unaware of any instance
12 or occasion where a complaint has been brought against a
13 contractor without the licensee being informed and knowing
14 and becoming involved. I mean, it is the licensee's
15 responsibility, and they exercise that responsibility as
16 their prime responsibility.

17 MR. JOHNSON: Okay. Another question I had was
18 for Mr. Lewis, regarding resident inspectors. I feel
19 strongly about the qualification of our resident inspectors.
20 You mentioned that they should be -- that you would be
21 surprised if they couldn't tell the pulse of the employees,
22 talking to pipefitters and so forth. I agree, that we can
23 find a lot out by walking throughout the plant and talking
24 to employees. That is one of the prime ways of conducting
25 inspections.

1 But, my question is really are you sure that is a
2 good measure of whether employees are free to raise issues
3 to the inspectors? If there is a concern or, if an employee
4 is afraid of talking to an NRC, why would an NRC employee
5 walking through the plant with his hard hat on, why would
6 you feel that employee would feel free to discuss something
7 in public with that inspector?

8 MR. LEWIS: I think it is a measure. My real
9 point, I think, is -- I sat here in the session yesterday
10 listening to attorneys for the employees who have raised
11 complaints, and you are hearing today from attorneys. My
12 real point, I think, is that that would be a lot better
13 measure than hearing from us, than hearing from the
14 attorneys you heard from yesterday. That would be a far
15 better and more direct test.

16 I think you have got to do more than that though.
17 I mean, that is one measure. And the other measure is how
18 many valid complaints are there? You know, there are lots
19 of indicators that you look at. I think that is one
20 measure, and one that should not be overlooked. It is true.
21 Some workers may not want to talk to the NRC, or may -- I
22 don't know -- I can't -- I can't say.

23 MR. JOHNSON: Why do you think that would be?

24 MR. GALLO: Let me answer it.

25 MR. LEWIS: It is intimidating. A lot of

1 craftsmen are not terribly educated, and they have never
2 talked to the NRC before and never had an issue. If a
3 person from the NRC comes up and asks them, they may feel
4 uncomfortable with that. They may know their responsibility
5 and it may not prevent them from raising a concern if they
6 have one; but I can't tell you how individual pipe welders
7 are going to react. I think that asking them give you a
8 better measure and a better indication than talking to us
9 today and talking to the attorneys for the whistle-blowers
10 yesterday.

11 MR. GALLO: I think it is a measure, I agree. I
12 think it is an effective measure for this reason. The
13 resident inspectors are known by the employees in the plant
14 -- personal relationships have been developed over time.
15 So, those relationships, that knowledge of the plant, gives
16 the resident inspector a feeling of the pulse of the plant
17 that no stranger from one of the regions can pick up with
18 the same ability. So, I think it is an effective measure.
19 It is not the most effective measure perhaps, it is not the
20 only that should be employed, but it is an effective measure
21 for that reason.

22 I have had experience in interviewing people at
23 the plant for harassment and intimidation matters, and the
24 gulf between me and the person I was interviewing was
25 tremendous. I never did cross the gulf in any one

1 interview. I think that same gulf doesn't exist for
2 residents.

3 MR. JOHNSON: Thank you.

4 MR. LIEBERMAN: That may be true for some people
5 with residents, but there are lots of employees, Joe, at a
6 plant, especially with contractors and outages that may not
7 be that familiar with the resident.

8 We talked about having some other public meetings
9 with other licensees, and that is something we will need to
10 consider. But, at the public meetings that we do have
11 planned or are in the process of planning, we are planning
12 to have two aspects of those meetings, first, an evening
13 meeting, where workers may find a better opportunity to go
14 to the meeting. We expect to have -- we would hope to have
15 workers there who have seen how systems work from different
16 perspectives, and get a variety of views.

17 The next morning, when we have the public meeting,
18 we are asking the licensees in the vicinity to describe their
19 programs and that we are hoping that other licensees might
20 come and talk about their programs or their views. We
21 obviously can't go to every site in the country. But, we
22 will give some consideration to other sites.

23 Having no more questions -- Jack, do you have one?

24 MR. GOLDBERG: Just one comment, in connection
25 with the NUMARC study that you are going to be doing. We

1 are certainly going to be interested in the results. I
2 think the point has probably already been made with the
3 questions that were asked about the scope of your work and
4 the schedule. I just urge you to appreciate the problem you
5 may present the team if, at the 11th hour you present the
6 results of that work to us, we have a fixed schedule to
7 complete our tasks. It would be nice if we had the results
8 of your work sufficiently in advance so we could thoroughly
9 consider what you find and conclude and recommend to factor
10 that into our report and recommendations. So, I just urge
11 you to consider that.

12 MR. BISHOP: I appreciate that, Jack. What is
13 your schedule?

14 MR. GOLDBERG: Well, our report is due to the
15 Commission now on January 14th. In order to meet that date,
16 there has to be a significant internal review before. So,
17 when you or somebody mentioned the end of the year, that
18 certainly is when we are going to have to basically complete
19 our work. We would need, in order to thoroughly consider
20 your study, we would need it substantially in advance of the
21 end of the year, so that we could consider it and factor it
22 in.

23 MR. BISHOP: I understand. When do you think the
24 information that you are going to receive, pursuant to the
25 temporary inspection, will be available to us?

1 MR. GRIMES: Well, we have asked the inspectors to
2 put those in the next resident monthly report. So, that
3 would be the latest date that that would be available.

4 MR. BISHOP: I don't know when those come out.

5 MR. GRIMES: They come out every month.

6 MR. BISHOP: The first of the month? The end of
7 the month?

8 MR. GRIMES: It will vary.

9 MR. BISHOP: Are we talking about the first of
10 October?

11 MR. GRIMES: We are probably talking -- I have
12 forgotten -- probably mid-October I would guess.

13 MR. LIEBERMAN: Well, we'll have to look into
14 that. I seem to recall we wanted that inspection to be done
15 by the end of August.

16 MR. GRIMES: Right. But, the following report
17 won't come out for a month.

18 MR. LIEBERMAN: There may be a way to get that
19 information.

20 MR. GRIMES: We will be getting some preliminary
21 information directly from the inspectors; but, then the
22 material that goes into the report has to be reviewed by the
23 regional directors.

24 MR. BISHOP: Obviously, what we don't want to do -
25 - you are already gathering a lot of data. We don't want to

1 duplicate that, because that is not just a good use of
2 licensee resources. I think one of the challenges to both
3 of us, frankly, is to try to evaluate what is the root cause
4 of the problem. There seems to be a historical correlation
5 between the number of allegations at a site as construction
6 was completed. Is that because they now find out things
7 that they didn't know otherwise because construction is now
8 complete, and now is the only time they knew about this
9 facet or that? Or does it have something to do with the
10 sociological phenomena of downsizing -- of people losing
11 their job? Is it because they no longer fear for their
12 jobs, so they can feel free to raise questions? Or is that
13 because they think this is a way that they can preserve
14 their employment or realize some other advantage from it?

15 I think that is a terribly important issue for you
16 and for us to try to get a hold on, because I think that is
17 going to help us better understand what is the real
18 environment, and, therefore, what is the real problem. What
19 is behind the phenomena that, at this plant, there is one
20 allegation, then there are two, then there are five, then
21 there are 20, like a Fibinachi Series? What is the reason
22 for that?

23 I think that is something that you, in particular,
24 ought to be trying to evaluate. What is the root cause for
25 that phenomena? Does it say that once a utility starts down

1 a program of discrimination, then they just carry it through
2 to the extreme, or does it suggest that maybe there are some
3 other factors at play here? I don't know the answer, and it
4 may vary from place to place. But, it seems to me, those
5 are two phenomena that are terribly important for us to
6 figure out what the problem is before we can come to what is
7 the solution. I can appreciate what real deadlines are. I
8 don't lack for bosses. But, by the same token, I would hate
9 to force this to a conclusion, where we are not comfortable
10 that we even understand what the problem is, just because of
11 a deadline that has been imposed. I think it is too
12 important for that.

13 MR. LIEBERMAN: I appreciate that. We have
14 already extended our deadline once. Our goal is to get our
15 information so we can start analyzing it and considering it
16 in mid-October.

17 Okay.

18 MR. BISHOP: And we will do the best we can.

19 MR. HAYES: There is one other thing, Bob. Our
20 Inspector General has initiated an audit, looking at this
21 area, as we are ongoing. See, we are attempting to
22 coordinate our effort with Mr. Williams' effort, and provide
23 data to Mr. Williams' staff.

24 MR. BISHOP: So, what is the focus of his audit?

25 MR. HAYES: Well --

1 MR. BISHOP: How allegations are managed by the
2 Commission?

3 MR. HAYES: We met with him, but I am not totally
4 clear. Maybe Jim has got a clear picture. But, the point I
5 am trying to make is that there are other parties involved.
6 And trying to coordinate and provide data would facilitate I
7 am sure their audit, as well as our deliberations. And
8 since you are now getting into it, I just raised it because
9 it is a factor that we have got to contend and deal with
10 here internally.

11 MR. BISHOP: Certainly, Mr. Williams' conclusions
12 may be pertinent to each of our investigations of what more
13 could or should be done.

14 MR. LIEBERMAN: That's right. But, at some point,
15 we need to put together some ideas and start thinking about
16 ways to proceed. For example, even if we would conclude
17 that a regulation was appropriate, and I am not saying, in
18 any way, that would be our conclusion, I doubt we would have
19 the regulation ready to go by the time this report was done.
20 So, this is not necessarily the end or whatever.

21 I want to close this meeting by thanking each of
22 you for taking the time to come down to see us. You gave us
23 some good ideas and thoughts to think about and consider.
24 We look forward to any written comments that you or your
25 clients might provide in response to the Federal Register

1 Notice. With that, the meeting is closed.

2 [Whereupon, at 11:15 a.m., the above-entitled
3 meeting was concluded.]

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REPORTER'S CERTIFICATE

This is to certify that the attached proceedings
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NAME OF PROCEEDING: Meeting on Whistleblowers

DOCKET NUMBER:

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