

ORIGINAL

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: Nuclear Regulatory Commission

Title: Advisory Committee on Medical
Uses of Isotopes (ACMUI) Meeting

Docket No.

LOCATION: Bethesda, Maryland

DATE: Friday, May 20, 1994

PAGES: 304 - 410

ANN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300

Washington, D.C. 20006

(202) 293-3950

9406160116 940610
PDR ADVCM NACMUI
PDR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES
NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON MEDICAL
USES OF ISOTOPES (ACMUI) MEETING
~~[CLOSED SESSION]~~ *OPEN*

Holdiay Inn
8120 Wisconsin Avenue
Bethesda, Maryland

Friday, May 20, 1994

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(8:30 a.m.)

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

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

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

CHAIRMAN SIEGEL: So noted.

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

DR. GLENN: I checked with our Office of State Programs this morning, and there has not been a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 The understanding, and I had conveyed this to the
24 staff that provides support to the committee, was that I was
25 going to give an overview of the Federal Advisory Committee

1 Act at this meeting, and that's all that I am prepared to
2 do.

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

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

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

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

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

25 With that, stop me, if you like.

1 CHAIRMAN SIEGEL: Continue.

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

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

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

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

21 That concern, of course, related, in part, to
22 possible conflict of interest; namely, individuals who were
23 giving advice as members of advisory committees, might have
24 some kind of a financial interest in the very matter they
25 were advising about.

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

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

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

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

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

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

1 DR. GLENN: Correct.

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

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

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

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

24 It's established for the purpose of giving
25 recommendations or advice to the agency which establishes

1 it.

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

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

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

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

23 As the Administration has become more
24 knowledgeable about the role of advisory committees, how
25 important they are, and that they actually often save the

1 government money, I think this attitude has somewhat
2 softened. Nonetheless, we still have to go through OMB for
3 new Committees. Of course, that doesn't affect this
4 Committee, since you are not a new advisory committee.

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

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

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

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

23 MS. FONNER: Well, I'm glad to hear that. I will
24 tell the attorney who gives it. I'm sure he'll be
25 flattered.

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

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

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

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

23 There is some exception to this.

24 By the way, before I forget. Members of the
25 public must be permitted to file a written statement on

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

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

10 It applies, for example, to --

11 CHAIRMAN SIEGEL: Yes.

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

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

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

22 Also, to protect people's privacy; an unwarranted
23 invasion of personal privacy may be protected.

24 Trade secrets may be protected.

25 Under those circumstances, if you know that

1 something like that is going to be, or is likely to be
2 discussed, your designated federal official should proceed
3 to try to get the meeting closed, and your notice of the
4 meeting will then state that that portion is closed for this
5 reason.

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

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

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

22 There are some provisions for withholding
23 documents. Not all documents, obviously, could be made
24 public because it wouldn't make any sense. Classified
25 documents, obviously, aren't going to be released to the

1 public.

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

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

9 MS. FONNER: That's right.

10 CHAIRMAN SIEGEL: Okay.

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

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

22 There is one very important way in which the two
23 differ. As you may be aware, a deliberative document is
24 generally withholdable under the FOIA, but there is no
25 deliberation closure under the Sunshine Act. That's one

1 area that differs.

2 There are also a couple of others, but that's
3 probably the most important. The reason there isn't a
4 deliberative exception under the Sunshine Act is pretty
5 obvious. That's because the Sunshine Act was passed in
6 order to open meetings.

7 Some of the exceptions that you could have under
8 the FOIA, I've already mentioned classified information --
9 protect privacy information, protect trade secrets; those
10 the same under both statutes. Under the FOIA, you can
11 withhold deliberative documents. Attorney-client documents
12 may be withheld.

13 Once the Agency makes the decision to withhold, of
14 course, all of the employees of the Agency are bound by that
15 ruling.

16 Another requirement of the FACA is that detailed
17 Minutes, or a transcript, has to be maintained of every
18 meeting that falls under the Act. I see that you have a
19 transcript made. I don't know whether you also do Minutes
20 or not.

21 CHAIRMAN SIEGEL: Yes.

22 MS. FONNER: These are certified by the chairman.
23 The usual procedure, in most advisory committees is to
24 circulate them also to members.

25 Those are really the highlights of the Federal

1 Advisory Committee Acts. I've told you about the functions
2 of the designated federal officer. You know about the
3 Minutes.

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

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

18 At a meeting --

19 MR. CAMPER: Susan, a question? The documents
20 that may be withheld, deliberative documents, classified,
21 trade secrets, attorney-client, et cetera, is there any
22 specify language that must be put in those documents when
23 it's provided to members of the committee?

24 I mean, obviously, for example, attorney-client
25 privilege would be identified as attorney-client. Certain

1 things would be identified as not being subject to release
2 until the Commissioner approves it.

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

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

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

17 MS. FONNER: Right.

18 MR. CAMPER: Right.

19 MS. FONNER: But in your notice to the public
20 about the meeting, if you're going to close a portion of the
21 meeting, there is supposed to be an identification of why
22 you're closing.

23 MR. CAMPER: Correct. Sure.

24 MS. FONNER: So what we require, at least I have
25 required it, is that there be a citation to the provision

1 that allows for the closing under the Sunshine Act. I think
2 it's a good idea to do the same thing with documents, so
3 that you clearly identify where the provision is under which
4 you are withholding. I think a few words, then, like
5 attorney-client are in order.

6 When there is a document that there's a question
7 about whether it's permissible to withhold it under the
8 FOIA, we have FOIA experts. I am not a FOIA expert. I know
9 the FOIA from years of working in the government, but we
10 have people who spend most of their time looking at
11 documents and deciding whether they're withholdable or not.

12 So when you have a document, if there's any issue
13 about whether it may be withheld from the public, it should
14 be forwarded to my office, and we will have a FOIA expert
15 look at it and make a determination as to whether it's
16 withholdable.

17 Once the FOIA expert determines that a document is
18 withholdable, then the Agency working through the
19 responsible official, determines whether they want to
20 withhold it. If that decision is that it should be
21 withheld, then every one, A, is subject to that decision;
22 two: the document should only go then to people who have a
23 need to know.

24 That's what I've come prepared to tell you about.
25 My time is up. I thank you very much, and I would

1 appreciate it if you would provide any of your questions to
2 Dr. Siegel, or if you want to call me, my name is Susan
3 Fonner -- F-o-n-n-e-r. My number is 504-1634. I'm in One
4 White Flint.

5 Thank you.

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

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

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

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

23 CHAIRMAN SIEGEL: Go ahead.

24 DR. MARCUS: First of all, I want to thank you. I
25 think you've clarified a lot of the legal construct that I

1 think needed to come out.

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

5 One has to do with attorney-client privilege. It
6 is my understanding that attorney-client information may be
7 withheld to protect the client. However, it should not
8 apply to the protection of federal lawyers who have
9 responded to federal employees about public matters.

10 That is, almost everything the Office of General
11 Counsel at the NRC does is requested of it by members of the
12 Nuclear Regulatory Commission, and I don't think that the
13 intent of the law is to protect them from public disclosure
14 of their thinking.

15 So I think we need some clarification of when
16 attorney-client privilege holds.

17 CHAIRMAN SIEGEL: Susan, attorney-client privilege
18 is determined by the client; isn't that correct, rather than
19 by the lawyer?

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

22 CHAIRMAN SIEGEL: Right.

23 MS. FONNER: If the lawyer says the attorney-
24 client may be used, then the client determines whether it's
25 going to be used, like all of the other exceptions to

1 openness under the FOIA.

2 CHAIRMAN SIEGEL: An exception, a problem, Carol,
3 is that in a federal agency the attorneys work for the
4 agency and their actions in deciding that a document is
5 privileged can be viewed as an (Witness/Counsel confer.)
6 of the agency, and it is, I think, an open question. I've
7 also discussed this with some lawyers, as to whether or not
8 staff can independently, staff in another branch of the
9 agency, can independently decide, that a document can be
10 released if the Office of General Counsel has said it's a
11 privileged document.

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

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

20 MS. FONNER: Let me just interject here.

21 CHAIRMAN SIEGEL: Please.

22 MS. FONNER: As I said earlier, I'm not a FOIA
23 expert. I think it's a very good question, and I think if
24 you want to pursue this further, if your chairman decides
25 that he, working with the staff, is going to submit this to

1 us, I will look into it and have a FOIA expert write
2 something on it.

3 I can tell you that, in general, a government
4 attorney's client is the whole agency. I think that, while
5 issues have arisen about whether actions of individuals
6 within the agency are considered actions of the agency,
7 generally speaking, an agency is a client. That, office,
8 would encompass actions by all people who work for the
9 agency but, beyond that, I'm really not prepared to give you
10 an analysis of that.

11 CHAIRMAN SIEGEL: That's, actually, a good answer,
12 though.

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

14 CHAIRMAN SIEGEL: Please.

15 DR. MARCUS: It's basically, what precise
16 material, supplied to the ACMUI members, is not available to
17 the public? Other than names of patients of preliminary
18 documents related to a patient case, particular physicians'
19 names when reviewing training and experience, matters of
20 personal privacy and private sector proprietary information,
21 I know of no material that would not be publicly available.

22 Matters of national security have not been brought
23 to the attention of the ACMUI during my tenure. Such
24 material would also be unavailable to the public if it
25 should, in the future, be made available.

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

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

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

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

11 CHAIRMAN SIEGEL: She gave us the list.

12 DR. MARCUS: Yes.

13 CHAIRMAN SIEGEL: She gave us the list.

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

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

23 The second item relates to deliberative documents
24 as opposed to deliberative procedures or proceedings. We
25 can choose to get further definition of that if we wish, but

1 she's just told us that deliberative documents are, in fact
2 -- the agency can make a decision to withhold those under
3 FOIA. If FOIA allows that, then we're bound by it if that's
4 the Agency's decision.

5 MS. FONNER: That's an Agency deliberative
6 document.

7 CHAIRMAN SIEGEL: Correct. I understand that.

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

11 CHAIRMAN SIEGEL: Right.

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

13 (Pause.)

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

15 CHAIRMAN SIEGEL: Thank you, Susan. I appreciate
16 it.

17 Did you understand, Carol?

18 DR. MARCUS: I need a definition for what a
19 deliberative --

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

21 DR. MARCUS: Yes.

22 CHAIRMAN SIEGEL: Let's consider it asked.

23 DR. MARCUS: Because all pre-decisional
24 information could be thought upon as being deliberative, and
25 therefore nobody can know anything until the final rule

1 comes out, and it's obviously silly.

2 CHAIRMAN SIEGEL: No. The law doesn't allow that.
3 I think where we're walking a fine line here, we're walking
4 a line between wanting to have a lot of information so we
5 can make intelligent decisions and we can be well informed,
6 and we can provide good advice and wanting to be able to
7 release that information widely to our colleagues and
8 cohorts so that we can get their advice and use their advice
9 in making our input as broadly based as possible.

10 We are told that there are some restrictions on
11 our abilities to release some documents.

12 Now, the Agency has a simple way of dealing with
13 this if we choose to push this too hard, which is just to
14 give us nothing, in which case our ability to function as an
15 advisory committee will be impaired. If those documents can
16 be withheld under FOIA and, therefore, restrictive to people
17 who need to know, they can make the decision that we don't
18 need to know, in which case we won't see the documents, and
19 we will seek a result in terms of our ability to do the job.

20 Push it as hard as you ant, but you run the risk
21 of pushing it even to our disadvantage.

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

23 CHAIRMAN SIEGEL: Sure.

24 DR. MARCUS: If, as part of a public meeting,
25 documents that we have reviewed are discussed in that public

1 meeting; are those documents that we have used in our
2 deliberation for the public meeting still not available to
3 the public?

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

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

10 CHAIRMAN SIEGEL: We can pose that as a specific
11 question. Okay. Bob?

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

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

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

1 What do the rest of you think? Or have you all
2 been troubled by receiving documents that you were told were
3 "Eyes Only"? Joan?

4 MS. McKEOWN: No. I really don't have any trouble
5 at all, because I think it's very important that we get what
6 they're really thinking when we're trying to make a
7 decision. If we say, well, everything we say is going to be
8 only going to be FOIA upon request, by tomorrow afternoon,
9 because that's when the meetings are, I think we're going to
10 lose the credibility of the information that we get from
11 people, because they're not going to be able to trust that
12 what they say is going to stay in this group.

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

16 There may well be appeal mechanisms under FOIA
17 that would allow a government employee to work through some
18 mechanism. I haven't got a clue if there is, but to work
19 through some mechanism to claim that a document should not
20 be excluded from release or not be made available to the
21 public, just about every other law, as an appeal mechanism,
22 why not this one.

23 Bob.

24 DR. QUILLEN: My only concern is that such
25 documents be appropriately flagged, so I know what is

1 privileged and what is not privileged.

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

7 Okay.

8 MR. CAMPER: Just a comment before we leave the
9 subject.

10 CHAIRMAN SIEGEL: Sure.

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

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

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

23 I think what's happened now is we're at a point
24 where there are certain key questions that need to be
25 answered, so that on one hand, as Dr. Siegel has said, the

1 staff can provide to this committee certain documents that
2 are sensitive, if you will, for lack of a better term, so
3 that it will facilitate the advice you can give to the
4 staff, and, at the same time, be certain that we're doing
5 this in concert with FOIA restrictions and other applicable
6 laws.

7 I really think the discussion, while there are
8 some concerns, particularly with Dr. Marcus, I do think that
9 these discussions and these questions that will go forward
10 now to OGC is another step in that evolution process.
11 Frankly, I think it's positive, and we will seek some
12 answers to some of these questions that you have raised.

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

14 We need to essentially do a mark up of the bylaws.
15 I've provided you with a copy that has your comments, plus
16 my own, incorporated in it. I have here a copy of a mark up
17 made by Susan Fonner that, unfortunately, I just got. I
18 wish I would have had it last night, because if I would have
19 had it last night, then these comments, most of which are
20 terrific, would have been in here.

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

24 I think we've got to do this on a paragraph by
25 paragraph basis. We'll look at the paragraph that's there.

1 I'll tell you what Susan Fonner recommends in that
2 paragraph, as distinct from I recommend that we can decide
3 whether to move forward.

4 My sense is -- and, John and Larry, tell me if you
5 agree -- that the way we're putting these bylaws together,
6 they won't really be finalized until the next meeting, at
7 which point we can say that these are finalized, but then we
8 can't really adopt them until one meeting after that because
9 we're not going to get a final version today.

10 DR. GLENN: That's certainly consistent with the
11 say they've been drafted, and they will have to be reviewed
12 and approved by the NRC management.

13 CHAIRMAN SIEGEL: Right. I understand. Good.

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

16 (No response.)

17 CHAIRMAN SIEGEL: This is going to be boring, but
18 let's just zoon through it.

19 Paragraph 2, as edited, I can just tell you that
20 Susan Fonner says that she suggested the following wording
21 in terms of it providing objective and independent advice to
22 the Commission.

23 Instead of saying: as requested by the Director of
24 IMNS, of the NMSS, says: To the Commission through the
25 Office of Nuclear Material Safety and Safeguards. It more

1 accurately describes the working relationship.

2 Does anybody object to my making that change?

3 (No response.)

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

5 DR. MARCUS: Could you just read it?

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

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

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

18 Is anybody paying enough attention to see what I'm
19 talking about here?

20 MR. CAMPER: Yes, there should be a line item in
21 the Bylaws.

22 CHAIRMAN SIEGEL: There should be a line item
23 somewhere in the Bylaws.

24 MR. CAMPER: Line item.

25 CHAIRMAN SIEGEL: For right now, go to the last

1 sentence of the Preamble; delete the word "internal," and
2 just say: any conflicts regarding interpretation of these
3 Bylaws shall be decided by a majority vote of the current
4 membership of the Committee.

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

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

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

15 DR. MARCUS: Does that start the section?

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

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

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

23 For clarity, she did the same thing I did. She
24 moved that last sentence down to the end. She said "in
25 addition," rather than "Additionally". It's a choice of

1 whether you like adverbs or adverbial phrases. You can
2 choose.

3 1.1.2; no change.

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

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

8 DR. MARCUS: No.

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

12 DR. QUILLEN: Proceedings?

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

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

17 MS. BROWN: I think that clarifies.

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

20 MS. BROWN: Oh, no.

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

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

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

9 1.2. This is really entertaining.

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

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

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

22 My answer to her suggested change is, I'm just
23 going to put a note that says: See Fonner's suggestion; is
24 that, if FACA requires it, we can live with her language,
25 but otherwise let's have it be what we're really doing.

1 Okay?

2 MR. CAMPER: Got it.

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

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

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

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

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

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

21 DR. QUILLEN: I understand. I said a draft
22 agenda.

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

1 the meeting.

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

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

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

11 CHAIRMAN SIEGEL: Okay.

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

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

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

21 Carl.

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

24 MR. CAMPER: (Nods affirmatively.)

25 MR. PAPERIELLO: I believe that timeliness is next

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

3 DR. GLENN: Okay.

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

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

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

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

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

19 By the way, which word do you all want, chair or
20 chairperson?

21 (Chorus of "chair".)

22 CHAIRMAN SIEGEL: Chairperson is a god-awful word.
23 Thank you.

24 1.3.1; she had no change. We had no change.
25 That's pretty straightforward.

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

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

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

12 Okay?

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

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

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

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

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

2 MR. SWANSON: Excuse me, Barry.

3 CHAIRMAN SIEGEL: Yes.

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

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

9 MR. SWANSON: Okay.

10 CHAIRMAN SIEGEL: I think we're okay.

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

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

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

20 DR. STITT: I don't either.

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

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

25 CHAIRMAN SIEGEL: No, not the section.

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

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

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

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

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

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

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

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

25 That's probably consistent with FACA language, and

1 --

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

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

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

8 MS. BROWN: Okay.

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

11 MS. BROWN: All right.

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

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

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

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

25 She is recommending that we leave in the sentence

1 that says: the chair makes a discussion of any subject
2 before the Committee and may vote, and should delete the
3 entire rest of that paragraph. It's okay with me.

4 DR. MARCUS: Fine.

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

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

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

11 1.3.6. Instead of "clarified their dissent for
12 the record," she recommends: to state their dissenting views
13 for the record. I can live with that minor change. The
14 rest of that she left unscathed.

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

20 We can certainly do that. We've done it a few
21 times, and when we felt the need to do it, we've gone
22 through a voice vote, so that we did a roll call vote.

23 Yes, Dan.

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

1 --

2 CHAIRMAN SIEGEL: Right.

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

8 MS. BROWN: We might need a remainder.

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

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

19 (Laughter)

20 MS. BROWN: I like that part.

21 CHAIRMAN SIEGEL: Which part?

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

24 CHAIRMAN SIEGEL: Well, then, do we need the rest,
25 though?

1 MS. BROWN: I think the first sentence and the
2 last sentence can capture the --

3 DR. MARCUS: I think it's the first, the second,
4 and --

5 CHAIRMAN SIEGEL: You need the second. Without
6 the second --

7 MS. BROWN: All right.

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

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

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

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

18 The paragraph will now read: The chair may take
19 part in the discussion of any subject before the Committee,
20 and may vote. The chair should not use the power of the
21 chair to bias or otherwise limit the discussion. Any
22 dispute over the chair's level of advocacy shall be resolved
23 by a majority vote of those members present and voting, with
24 a tie permitting continued participation of the chair in the
25 discussion.

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

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

4 CHAIRMAN SIEGEL: Someone with the wisdom of
5 Solomon. You can only hope.

6 (Laughter)

7 CHAIRMAN SIEGEL: 1.3.6. We did that one already.
8 2.1. You've seen my fix.

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

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

16 I've made it also clear that the Minutes are based
17 on the transcripts, and that's an important procedural
18 point, because, in the past, when the Minutes have been
19 circulated, some of you have tried to change the slant of
20 something as it was said in the Minutes in a way that you
21 thought might have sounded better.

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

1 She didn't really have anything substantive on
2 2.2, and my changes are there. I think it describes what we
3 do. Any questions on that paragraph?

4 Dennis raised a point, and I just don't know what
5 the FACA requirements are, which is did we want to adopt a
6 procedure whereby, even though the Minutes have already been
7 certified by the chairman, we would approve the Minutes as a
8 Committee at the next meeting.

9 The advantage of that is that it provides an
10 opportunity for Minutes to be corrected. The only
11 disadvantage of that is it certifies the chairman as
12 certifiable, because it means that the Minutes were not
13 correct, and I don't like that.

14 Sally?

15 MS. MERCHANT: The Commission has requested that
16 we get --

17 CHAIRMAN SIEGEL: Please use a mike, Sally.

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

22 CHAIRMAN SIEGEL: No, I understand that. But we
23 could still have a procedure whereby the Minutes are
24 delphied, as they currently are; certified by the chair, as
25 they currently are, but nonetheless, reapproved at the next

1 meeting.

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

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

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

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

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

23 Am I trying to limit the discussion or bias the
24 discussion?

25 (Laughter)

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

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

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

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

5 Okay. 2.3. No changes.

6 3.1. Let's see if she recommended any changes.

7 We don't need the "thereby" in the first sentence.

8 It's not useful.

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

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

14 (No response.)

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

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

23 MS. BROWN: What, on 3.2?

24 CHAIRMAN SIEGEL: No, 3.1.

25 MS. BROWN: Okay.

1 CHAIRMAN SIEGEL: 3.1 now reads as follows: The
2 members of the Committee are appointed by the Committee,
3 which determines the size of the Committee. The NRC will
4 solicit nominations by notice in the Federal Register and by
5 such other means as are approved by the Commission.
6 Evaluation of candidates shall be by such procedures as are
7 approved by the Commission. The Commission has the final
8 authority for selection.

9 In a way, it's not clear to me that this is really
10 part of the Committee's bylaws. This sounds like this is
11 NRC policy, but leave it. It distance hurt anything.

12 Okay. 3.2. She has a big question mark on 3.2,
13 on the whole paragraph, and says: Why is this in the Bylaws?
14 Don't need.

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

17 MR. CAMPER: Right.

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

20 CHAIRMAN SIEGEL: Well, no. I actually think that
21 3.1 and 3.3, which will not become 3.2 are, in fact, needed,
22 because it makes it clear; Roberts Rules of Order would say
23 that the chair is elected by the body, and here we've got a
24 distinct reason for doing otherwise. So why don't we kill
25 3.2.

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

2 CHAIRMAN SIEGEL: What's that?

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

5 CHAIRMAN SIEGEL: They may want it, but it's not
6 right.

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

8 CHAIRMAN SIEGEL: This sentence is correct.

9 MS. BROWN: Yes.

10 CHAIRMAN SIEGEL: This sentence is that you can't
11 select, either for or against, based on these issues. You
12 have to select based on best qualified individuals to serve
13 on the Committee.

14 You're not under any specific -- correct me if I'm
15 wrong -- you're not under a specific requirement to have a
16 certain number of women, a certain number of minorities, a
17 certain number of people from the West Coast, and you're not
18 supposed to use those factors in deciding who is on the
19 Committee.

20 MS. BROWN: But this is disingenuous the way they
21 say that. They say extraneous factors will not be
22 considered.

23 CHAIRMAN SIEGEL: Guess what? That's why we
24 deleted it.

25 DR. STITT: Yes. It's a Commission issue and not

1 our issue.

2 CHAIRMAN SIEGEL: It's a Commission issue.

3 So 3.3 has been changed to 3.2 Susan recommends
4 deleting the phrase: considering recommendations of the
5 staff.

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

7 CHAIRMAN SIEGEL: It can be deleted.

8 MR. CAMPER: It really doesn't contribute to the
9 Bylaws.

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

12 Conduct of members, 4.1. Here's her suggestion:
13 If a member feels that he or she -- I'm gender-neutralizing
14 as we go -- that he or she may have a conflict of interest
15 with regard to a subject to be addressed by the Committee -
16 - that's fine -- he or she should divulge it to the chairman
17 of the Committee and the DFO -- that's fine, also -- as soon
18 as possible but, in any case, before the Committee discusses
19 it as an agenda item.

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

25 From discussion of any subject with respect to

1 which they have a conflict of interest.

2 Okay. We're getting there.

3 4.2. Instead of "when," she has: upon completing
4 their tenure on the Committee.

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

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

12 CHAIRMAN SIEGEL: Right. Okay.

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

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

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

24 CHAIRMAN SIEGEL: Let's do it. All right. I'm
25 adding as a parenthetical statement here: Upon completing

1 their tenure on the Committee, members will return any
2 privileged documents and accountable equipment (as so
3 designated by the NRC), provided for their use in connection
4 in ACMUI activities, unless directed to dispose of these
5 documents or equipment in accordance with established
6 federal procedures.

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

10 CHAIRMAN SIEGEL: I can you, for example, FDA, for
11 example, ships a safe to your office, and then they come and
12 look at your safe, and then you keep the documents in the
13 safe, and the documents have to be returned either when
14 you're off the Committee or when they want them back, and
15 then they come and pick the safe up, if they gave you a
16 safe.

17 MS. BROWN: So we just haven't had any such
18 documents.

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

20 MS. BROWN: They would have been flagged.

21 CHAIRMAN SIEGEL: They haven't been identified
22 previously, or they haven't always been identified.

23 MS. BROWN: Yes, true.

24 MR. CAMPER: Also, too, I think -- Judith, just so
25 you would be aware -- we've talked about this. In trying to

1 accommodate this thing, we've been talking about it. That
2 is, clearly, we're going to get some questions answered;
3 we're going to have documents identified clearly, and then
4 we also need to establish some procedure for how we manage
5 those documents.

6 For example, it may be that we would ask to return
7 at the conclusion of a particular meeting or at the
8 conclusion of a quarter, or something, I don't know; but we
9 need to develop some procedure that's orderly so that all
10 Committee members will understand just how we're going to
11 process these documents.

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

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

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

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

25 CHAIRMAN SIEGEL: Correct.

1 Okay. 4.3 is straightforward.

2 4.4; she's got a big question mark, and says: What
3 does this mean? Either with the original wording, and I'm
4 sure it would have applied to the subsequent wording.

5 4.4 is lifted, essentially, directly out of the
6 SRM and, frankly, I don't know why we --

7 MR. CAMPER: I think we'll have to go back and
8 revisit this one. It does come from an SRM. There's no
9 question about that.

10 CHAIRMAN SIEGEL: I know it does. I know it does.
11 But the SRM was to you.

12 DR. GLENN: My question is maybe Section 1 really
13 covers everything there.

14 CHAIRMAN SIEGEL: Which one?

15 DR. STITT: 4.1, where it says if you have a
16 conflict.

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

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

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

5 CHAIRMAN SIEGEL: Let me tell you what I would
6 like to do. In 4.4, I'd actually like to delete the
7 collegial sentence, but leave in my suggested altered
8 language, which I think will address the Commission's
9 concerns and doesn't really change anything procedurally one
10 way or the other.

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

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

22 MR. CAMPER: Yes.

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

24 CHAIRMAN SIEGEL: Judy, go ahead.

25 MS. BROWN: Can we take this all out, except the

1 sentence: Members of the Committee should correspond with
2 the Commission, and just stick that sentence in 1.3.6?

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

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

7 CHAIRMAN SIEGEL: Try this, in 4.4: delete the
8 first sentence about the collegial body. We've already
9 addressed that earlier. Trying killing that. Leave in this
10 thing about what you do outside of Committee meetings in
11 terms of interpreting committee reports or actions, and
12 leave in the thing about corresponding with the Commission.

13 That will capture, I think, the sense of the
14 Commission's concerns well, and it also gets rid of a lot of
15 this other excess verbiage, which is inappropriate.

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

21 DR. GLENN: There is one other aspect in reading
22 further one, and maybe the Committee should consider it, and
23 that is, that the Commission seems to be asking for
24 disclosure if you do write as a member of the public, that
25 this was discussed by the advisory Committee, and that you

1 have had an opportunity.

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

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

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

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

23 I think what you do when you're not at this
24 meeting and what you choose to do because you feel that it's
25 important to do it, isn't tied to what goes on at the

1 meeting. If you're acting as a private citizen, you're
2 acting as a private citizen, and it's not an official
3 Committee activity.

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

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

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

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

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

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

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

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

23 CHAIRMAN SIEGEL: No. We don't individually have
24 access to the Commissioners as Committee members. We have
25 access as a Committee, through Dr. Paperiello, to the EDO,

1 to the Commission, and that's the way we communicate.

2 If you feel the need that you want to expand your
3 position, it can become part of the official record of the
4 meeting, and we can agree in advance, that even though we
5 don't have it, we've acknowledged that we're going to get a
6 letter from you sometime in the next week, and that it's
7 going to be made for the record.

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

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

16 DR. PAPERIELLO: I would offer an opinion.

17 CHAIRMAN SIEGEL: Yes.

18 DR. PAPERIELLO: I will say, only offer an
19 opinion. 4.3 says: Members of the ACMUI are expected to
20 conform to all applicable NRC rules and regulations.

21 There is an NRC rule -- internal rule, a
22 management directive -- on both open door and differing
23 professional opinions. It would seem to me that, as a
24 special government employee of the NRC, you are covered by
25 that, and that offer is to any NRC employee open door access

1 to any manager, including the Commissioners, as well as the
2 ability to file a differing professional opinion.

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

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

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

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

22 Actually, thanks, Carl. That actually helps a
23 lot.

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

1 (Laughter)

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

7 Lou?

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

10 CHAIRMAN SIEGEL: They will be provided --

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

12 CHAIRMAN SIEGEL: The could be provided for you if
13 you would like them.

14 DR. WAGNER: No, I don't think so, but I'd like
15 4.4 kept in for clarification purposes.

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

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

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

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

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

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

16 MS. BROWN: Yes.

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

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

21 MR. CAMPER: Well, you have the same point that
22 Carl was making about a DPO. For example, if I were to take
23 exception to something that our management decided they
24 wanted to proceed with, I have a mechanism whereby -- or any
25 other employee does, for that matter -- a mechanism whereby

1 you can file a differing special opinion.

2 MS. BROWN: Can you mention your position within
3 the organization.

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

7 CHAIRMAN SIEGEL: Lou.

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

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

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

18 MR. CAMPER: Some of it is. Some of it's internal
19 regulations as well.

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

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

25 DR. WOODBURY: Would that be incorporated into the

1 Bylaws?

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

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

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

14 MS. BROWN: Okay.

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

19 (No response.)

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

22 4.5. I would submit that 4.3 address 4.5 too.

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

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

25 I think if you get a document that says: This

1 document is restricted to use by you, under Section Blank,
2 Blank, Blank, Blank, of the Freedom of Information Act,
3 that'll be clear; that if you release it to the Washington
4 Post, that you may have committed a felony.

5 Okay.

6 MS. BROWN: Felony?

7 CHAIRMAN SIEGEL: Conceivably. Misdemeanor,
8 felony, who knows.

9 MS. BROWN: Not if they don't reveal their source.
10 (Laughter)

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

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

19 DR. WAGNER: At the end under Amendment.

20 CHAIRMAN SIEGEL: 10 under Amendments.

21 DR. WAGNER: Yes.

22 CHAIRMAN SIEGEL: Okay.

23 Under "Adoption and Amendments" --

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

25 CHAIRMAN SIEGEL: Please.

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

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

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

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

8 CHAIRMAN SIEGEL: Susan recommended that Section
9 5.4 actually become 5.1, and you can't amend the Bylaws
10 until you've adopted the Bylaws. I think that's pretty
11 sensible.

12 DR. WAGNER: Logical.

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

15 She suggested: Adoption of these Bylaws shall
16 require a vote of two-thirds of the current ACMUI membership
17 and concurrence of the Director of the Office of NMSS --
18 instead of "with."

19 Bob, in his comments, said that if Dr. Paperiello
20 does not concur, he has to tell us why he does not concur,
21 and we should make that a particular of the Bylaws. Of
22 course, this gets a little bit circular, because we will
23 never get them adopted as we exchange --

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

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

3 MS. BROWN: Oh.

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

7 MS. BROWN: Okay. All right.

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

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

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

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

18 CHAIRMAN SIEGEL: That would be a good thing.

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

21 DR. GLENN: The way it's written, Bob Banero is
22 the office director.

23 CHAIRMAN SIEGEL: Okay.

24 DR. QUILLEN: So we could just go "no vote", and
25 we wouldn't know what we were supposed to do from there, so

1 I thought there should be some sort of rationale so we would
2 know what to address, what to change.

3 MR. CAMPER: Can your bylaws --

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

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

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

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

16 5.2 is about amendment. Susan did not have any
17 suggested changes. We're almost done.

18 5.3. Final proposed amendment may be voted on not
19 earlier than the first regular meeting after it has been
20 discussed at a committee meeting pursuant to 5.2.

21 Okay. So "discussed at a committee meeting."
22 Well, actually, that conceivably means that we could approve
23 these at the next meeting.

24 Okay. 5.3. She's recommending here -- let me
25 just tell you, 5.3, which is now 5.4 -- a vote of two-

1 thirds of the current ACMUI membership and the concurrence
2 of the Director of the Office of Nuclear Materials Safety
3 and Safeguards shall be required to approve an amendment.

4 That's fine. See Fonner change.

5 That's it. We're done. Anybody have problems
6 with these?

7 DR. MARCUS: I'd like to command the chair for
8 doing an excellent job.

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

14 Then we will circulate the edited bylaws to
15 everyone as soon as we've got them so that ideally we'll be
16 able to adopt them at the next meeting as soon as Mr. Banero
17 agrees that we can adopt them.

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

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

22 CHAIRMAN SIEGEL: Okay. I actually was going to
23 take it.

24 DR. STITT: Are you going to circulate that to all
25 of us?

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

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

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

7 DR. STITT: Terrific.

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

9 DR. SCRIBNER: I have E-mail. I have been
10 resisting using my E-mail.

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

14 DR. QUILLEN: We just have internal E-mail at the
15 present time. We don't have external E-mail.

16 CHAIRMAN SIEGEL: Okay. Dr. Wegner didn't know.
17 I'll have to call to get a few people's E-mail addresses.
18 That's fine. All right. I'll figure this out.

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

24 DR. PAPERIELLO: We are approaching that time of
25 the year that there is going to be a change in membership of

1 the Committee. We have some people leaving the Committee,
2 and we do have Certificates of Appreciation for those people
3 who have served on the Committee.

4 I recognize this is, in a sense, a burden on the
5 people we ask. I know we compensate people, to a certain
6 extent. I'm sure we don't compensate people for all they
7 have contributed. The people on the Committee really make a
8 valuable contribution to the Agency. I recognize we have
9 controversial subjects. People don't always agree, but I
10 think it's helpful to bring out all the different ways an
11 issue can be looked at which this Committee does.

12 I had to go to a Congressional aid about a month
13 ago, in a sense, defend the existence of this Committee and
14 its makeup. The fact that the people that we have on the
15 Committee are either licensees of the NRC or licensees of an
16 agreement state. I had to explain, I don't know where I can
17 get people with the skills and the knowledge we need who
18 don't possess a license from us. They won't know anything
19 that will be helpful.

20 I do appreciate what people have brought to the
21 Agency.

22 Dr. Griem.

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

25 DR. GRIEM: I just want to thank the U.S. NRC.

1 It's been an enjoyable experience and interesting and
2 sometimes controversial. Thank you.

3 (Applause.)

4 DR. PAPERIELLO: Dr. Almond. I would like to
5 thank you very much.

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

7 (Applause.)

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

10 DR. MARCUS: Thank you for this interesting
11 consultation.

12 (Applause.)

13 DR. PAPERIELLO: Joan McKeown.

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

15 DR. PAPERIELLO: Thank you very much.

16 MS. McKEOWN: Thank you.

17 (Applause.)

18 CHAIRMAN SIEGEL: Carl, thank you very much.

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

23 DR. GLENN: Sally keeps tracks of these numbers
24 better than I do.

25 MS. MERCHANT: Because of the request by the

1 President that advisory committees eliminate overlap, the
2 Commission has requested that those positions that are
3 duplicated not be replaced, that those members be rotated in
4 those positions, not be filled. That should leave us at
5 about 12 members as of July 1.

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

8 We have nuclear medicine -- myself and also Dan
9 Berman covering cardiology. Radiation oncology we have Dr.
10 Stitt and Dr. Flynn. Radio pharmacy we have Dr. Swanson.
11 Physics we are down to Dr. Wagner. State representative
12 Quillen. Consumer representative Judy. FDA, we have really
13 three people functioning as one. Research we have Dr. Nelp,
14 who also is nuclear medicine.

15 So we have three nuclear medicine people; two
16 radiation oncologists.

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

19 MR. CAMPER: No. Radiation therapy technologist
20 or medical dosimetrist.

21 CHAIRMAN SIEGEL: Correct. The reason that the
22 technologist shift is from radiation oncology to nuclear
23 medicine is because, as you will notice, many of the things
24 that we are going to be focusing on in the near term clearly
25 relate to things like brachytherapy and some of the real

1 problem areas that need our advice.

2 DR. STITT: Barry, how many physics people do we
3 have?

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

8 MR. CAMPER: AAPN.

9 CHAIRMAN SIEGEL: AAPN, indicating that having
10 only one physicist on the Committee is asking an awful lot
11 of that one physicist. Dr. Wagner has done therapy physics
12 during his lifetime but focuses more now on diagnostic
13 radiology physics and nuclear medicine physics and has
14 considerable expertise in radio biology and epidemiology,
15 thereby filling the shoes that were vacated when Dr. Webster
16 left us.

17 I think that the loss to this Committee, as
18 someone with Dr. Almond's practical expertise in therapy
19 physics and particularly brachytherapy physics, as well, is
20 something that we should not let go unspoken, so I would
21 entertain a motion from a member of the Committee that we
22 recommend to the Commission that we need a therapy physicist
23 on this committee.

24 DR. STITT: I would like to recommend that because
25 I feel very strongly, particularly with the issues of

1 brachytherapy that we're going to be seeing more and more
2 of.

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

4 DR. STITT: Yes. So moved.

5 CHAIRMAN SIEGEL: Seconded?

6 DR. GRIEM: Second.

7 CHAIRMAN SIEGEL: Any further discussion of the
8 motion?

9 Judy first, then Lou.

10 MS. BROWN: Just that I understand that the
11 hospital administrator position is not going to have any
12 special knowledge in this area.

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

15 (Laughter)

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

18 DR. GRIEM: I don't know a therapy physicist that
19 runs a hospital.

20 CHAIRMAN SIEGEL: No. She didn't mean in the area
21 of physics. Right. No. The hospital administrator,
22 actually, brings an -- I mean, ideally, it would be a
23 hospital administrator who has special experience in this
24 area, and there have been some names suggested of people who
25 really do have such experience.

1 But, nonetheless, as health care reform looms, a
2 hospital administrator brings to this table important
3 information about the impact of the regulations in a
4 shrinking health care reimbursement budget that, although we
5 can talk about it, we don't necessarily carry the same
6 authority as someone who has to live these budgets and make
7 these budgets. That's really the key point.

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

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

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

20 Lou.

21 DR. WAGNER: Lou Wagner. I am not yet an official
22 voting member of this Committee, but I would like to
23 resoundingly support the concept of another physicist
24 appointed to this Committee.

25 Just because a person is called a physicist,

1 doesn't mean that that name should mean that he has
2 expertise in all physics. Physics is a very broad field,
3 and therapy and diagnostic are separable, and they should be
4 considered two separate positions to be represented, not
5 just a single one, simply because they use the same word
6 physicist.

7 CHAIRMAN SIEGEL: Further discussion?

8 DR. MARCUS: Yes, just one.

9 CHAIRMAN SIEGEL: Yes, Carol.

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

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

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

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

1 DR. MARCUS: You could also do what the FDA did.
2 They have panels, so they're not advisory committees.
3 They're advisory panels, and then they don't feel so
4 compelled.

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

9 All in favor of the motion?

10 (Show of hands.)

11 CHAIRMAN SIEGEL: Any opposed?

12 (No response.)

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

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

18 (Recess)

19 CHAIRMAN SIEGEL: Can we resume so we can finish,
20 and people who want to get earlier airplanes can get earlier
21 airplanes.

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

1 we're needing to.

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

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

13 Torrie, sometime in the next week, calendars out
14 to the members of the Committee with something like X
15 through the days that you're not going to be available, that
16 you know right now, so that we can plan the November
17 meeting. Not everybody has their calendars with them so we
18 can't just do it here, but we do need to plan that meeting.

19 My understanding is is that if all goes well, the
20 next meeting should be at White Flint and not in a hotel,
21 and that will be good, because it means we have more access
22 to all of the people at the NRC who might want to contribute
23 to the meeting and/or listen to what we have to say.

24 MS. BROWN: It's only good if there's coffee and
25 modesty shield. Those are two requests.

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

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

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

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

22 The reason the June meeting got scheduled is some
23 ICRP, or some international meeting, has come up where most
24 of the Commissioners are going to be attending, and it came
25 up relatively late. This date was sort of on again/off

1 again, and we'll just pick a date.

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

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

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

21 If there are things that aren't really troubling
22 them, and there have to be important things troubling us,
23 before we should go forward with this. Just to have a
24 meeting for the sake of having a meeting seems like a big
25 expense which will then be passed on to all licensees.

1 Dr. Marcus.

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

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

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

20 I will not be at this meeting but, in my opinion,
21 that is the only thing worth discussing with them. If they
22 don't want to hear things like that, then maybe it's not
23 worth having a meeting. But when you go to the Commission,
24 it shouldn't be with trivial issues. It should be with
25 major ones.

1 CHAIRMAN SIEGEL: What's the paradigm shift,
2 Carol? What are you recommending?

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

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

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

20 I think there's an important lack of understanding
21 of medical uses of isotopes by the Commission, none of whom
22 have any expertise in the area, and I think that rather than
23 wait until the Institute of Medicine comes out with whatever
24 they'll come out with, that we basically presented them the
25 very real possibility that between health care reform and

1 the increasing regulations and expectations and requirements
2 of the NRC, that they may well be on the way to regulating
3 nuclear medicine and brachytherapy out of existence, more or
4 less, in this country, because it simply will not be able to
5 function under the construct that the NRC is perpetrating at
6 this point in time.

7 Ideas like the descriptions of how other agencies
8 cover other areas of medicine and how other agencies, like
9 FDA, actually have the regulatory authority to do much in
10 byproduct medicine, need to be discussed.

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

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

18 The fact that they have not asked you for
19 discussion, I think, indicates their unfamiliarity with
20 medical practice and medical economics, and that this is
21 really an opportunity for us to tell them what we think is
22 of critical importance, but I don't think that we should not
23 take the opportunity to try to tell them.

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

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

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

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

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

18 I am more than a little put off by the Institute
19 of Medicine study, ongoing, and wanting to see what that
20 entails. I think it would be naive for us to think that
21 what we tell the Commission will have much impact while
22 they're waiting for an Institute of Medicine, a very
23 independent Institute of Medicine study, that's addressing
24 many of the same issues, to be put together.

25 I would rather put my efforts into making sure

1 that we got our input into the Institute of Medicine folks
2 and made sure they heard from us by whatever mechanism
3 possible to hear those concerns, so that it got into their
4 report.

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

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

14 MR. CAMPER: Just a thought or two on it.
15 Certainly, the Committee could do this if you
16 decide to do so, it's up to you. But just a couple of
17 observations.

18 You're at a period in time where the Commission
19 has directed the staff to have an independent audit of the
20 medical program. You're also at a time when the Commission,
21 in approving the medical management plan, said, amongst
22 other things, make a major revision to Part 35.

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

1 ANPR is an exploratory approach to defining the
2 parameters and the considerations that will ultimately be
3 addressed in a rulemaking. It's a very broad process. We
4 are interested and have committed to conducting public
5 meetings and workshops as part of that process.

6 Issue of compatibility, agreements states; the
7 Commission has deliberated and reviewed items associated
8 with that topic at great length of recent.

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

14 In many ways, I think, if one looks at all that is
15 going on, at this point in time, that really is germane to
16 your concerns, you would probably be better served by being
17 more specific in defining concerns that don't seem to be
18 under construction at this point in time, if you will, but
19 it's entirely up to you.

20 MS. BROWN: Is someone outside the field, and they
21 are certainly outside the field, only thing that I think we
22 would say to them is all that -- at least I'm hearing of the
23 concerns about brachytherapy and where that's going and what
24 the charge of this Committee is going to be in the near term
25 -- just to let them know that's happening, but I can't

1 imagine that the staff hasn't already know let them know
2 that's happening.

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

5 CHAIRMAN SIEGEL: Dennis?

6 MR. SWANSON: Being new ons the Committee, I don't
7 know what I would discuss with the Commissioners at this
8 point. I am somewhat dismayed at this meeting, to be very
9 frank with you, with the lack of response of the Office of
10 General Counsel to some of four requests.

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

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

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

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

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

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

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

14 MS. BROWN: Well.

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

18 If we talked about specific issues, the issues
19 that came up at this meeting, that strike me as potentially
20 worthy of things to be brought to the Commissioner's
21 attention, include the concerns we raised about the apparent
22 double-speak associated with patient notification; the fact
23 that the rules seem to suggest that you might not have to
24 notify patients if you thought it would harm them but, in
25 fact, you have to notify patient's families, which would end

1 up harming the patient most of the time or could end up
2 harming the patient much of the time. That's one thing.

3 The very early -- well, it's probably too early
4 because we haven't seen the language about this breast-
5 feeding thing that we talked about yesterday, which I am
6 personally, as I understand what's being discussed, very
7 troubled by the fact that the NRC seems to be making an
8 absolute, that under no circumstances could a physician
9 commit an act that would result in the exposure of a breast-
10 feeding infant to more than 500 millirems, as a result of
11 the administration of radiation to the mother.

12 I'm not sure that that is necessarily something
13 that should be an absolute. In order to frame the question,
14 I think I'd probably need to see the proposed Part 20
15 language to frame the question.

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

18 CHAIRMAN SIEGEL: I don't think so.

19 MS. BROWN: You would have to bring it to the
20 Commission.

21 CHAIRMAN SIEGEL: I'm not sure that it would be
22 modified. This would be an area -- this would be an
23 intrusion into medical practice, albeit infrequent, that we
24 could point out.

25 I'm not disagreeing with you. I'm just telling

1 you items that I thought could be raised to the level of
2 consciousness.

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

6 You have a Commission and staff and management
7 with no medical expertise whatsoever, making rules about the
8 practice of medicine without coming to their ACMUI, or at
9 least calling the chair and saying, do you see any real
10 objection to this? I think that that typifies the problems
11 medicine is having with the NRC.

12 CHAIRMAN SIEGEL: Okay.

13 Go ahead, Larry.

14 MS. BROWN: I have a question --

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

20 DR. MARCUS: All right. We had talked about
21 inadvertent administration. It was never, ever suggested by
22 NRC that purposeful administration of radioactive material
23 to pregnant or breast-feeding women, when there was some
24 medically overriding reason, would ever be made illegal by
25 the NRC.

1 MR. CAMPER: And I wouldn't jump to the conclusion
2 that that will happen. I think what you have, you have a
3 status report that has raised an issue that is of concern to
4 you and to other members of the Committee, I suspect. It is
5 of some concern to members of management present here. We
6 will be working with the Office of Research, and obviously
7 we will be communicating and discussing this rule with this
8 Committee.

9 I wouldn't jump to that conclusion. This is a
10 rule that's under construction, if you will.

11 MS. BROWN: I wanna address something, Carol, that
12 you've said frequently, that has, I think, misled me, not
13 being so familiar with NRC. You say a lot that NRC has
14 absolutely no medical experience, outside of Myron Pollock,
15 and I don't know whether that's true or not.

16 But --

17 DR. MARCUS: It's true.

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

21 DR. MARCUS: Only technologists, and that is not
22 medicine.

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

24 DR. MARCUS: That's technologists.

25 MS. BROWN: -- that's something. I'm just saying

1 there --

2 DR. MARCUS: That's not enough to make medical
3 decisions.

4 MS. BROWN: Right. Okay. I know what you're
5 saying. But the way you have phrased it and it has always
6 gone unchallenged, has been misleading to me, and I just
7 wanted to say that I found a lot more depth of experience
8 that reassures me that NRC has been in hospitals and worked
9 in the medical --

10 DR. MARCUS: That's irrelevant --

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

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

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

21 DR. MARCUS: Technologists' judgment, fine. But
22 technologists are trained to do certain activities, and
23 physicians are educated to do other activities, and when
24 we're talking about medical judgment --

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

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

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

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

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

11 Dr. Marcus is certainly correct that there are no
12 physicians on the medical and academic sections of the
13 staff. There are individuals who have been technologists in
14 their careers, medical physicists, health physicists,
15 radiation safety officers, radiation biologists and so
16 forth. We do have Dr. Myron Pollock as the only clinician.

17 I think that the basis, in my observation, is
18 really as Carol's perception or opinion or belief as to
19 where the practice of medicine begins and ends. What is the
20 definition thereof.

21 Clearly, she viewed that in a very broad context
22 that's entirely her right to, and there are obviously other
23 considerations that have to be borne out as well -- public
24 concerns, congressional concerns, Commission concerns, and
25 so forth.

1 What we try to do is to use the staff that we have
2 that does have substantial professional technical experience
3 and somewhat of a clinical nature, and use the expertise of
4 this Committee, hopefully, to develop some reasonable
5 regulations and guidelines, but I suspect we'll never come
6 to a point where Carol would be completely satisfied with
7 that. That's okay. That's okay. At least I offer that as
8 clarification.

9 MS. BROWN: Sure.

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

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

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

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

24 We can certainly do that, but I don't think we'll
25 have any unanimity in talking about the need for a paradigm

1 shift.

2 My sense is is that we'll get up there and we'll
3 say these are some things we see as a problem. Here are a
4 few of them that we think have some very specific things
5 that you need to address because there's specific problems.

6 Then there's some big issues that we think you
7 need to be aware of and really need to be moved to a very
8 high priority in terms of Commission activities and things
9 the staff ought to be looking at.

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

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

14 CHAIRMAN SIEGEL: What?

15 MS. BROW Tell me again why we need to?

16 CHAIRMAN SIEGEL: Why we need to what?

17 MS. BROWN: Meet with them this summer.

18 CHAIRMAN SIEGEL: Because the Commission has
19 requested that we have an annual meeting with it, with the
20 Commissioners. We've take that as a good opportunity to
21 have a direct access to the Commission.

22 One argument against having the meeting is that
23 the transition that has occurred in this Committee over the
24 course of the last four years. I think when I became
25 chairman of this Committee, when all of the new members of

1 this Committee came on, when the Committee went from being a
2 staff-run Committee to a more independent Committee, We
3 have, over the last four years, evolved into a Committee
4 that I don't think feels bashful about getting our input per
5 the NRC.

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

11 I don't want to lose the opportunity to meeting
12 with them if we feel the need to do so and they feel the
13 need to talk with us. But I also don't want to spend
14 \$25,000 in travel money and hotel bills and all of our own
15 personal time if we don't have a great need --

16 MS. BROWN: Just to save our slot.

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

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

1 economic issues pretty well.

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

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

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

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

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

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

19 On the other hand --

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

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

24 CHAIRMAN SIEGEL: Let me tell you what I know
25 about our status. Their meeting on July 11th and 12th, is

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

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

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

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

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

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

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

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

21 CHAIRMAN SIEGEL: No.

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

23 CHAIRMAN SIEGEL: I was going to tell you.

24 MS. BROWN: Oh.

25 CHAIRMAN SIEGEL: I'm sorry.

1 MS. BROWN: It's okay. I'm thinking we're
2 adjourning here.

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

6 MS. BROWN: Oh.

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

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

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

18 CHAIRMAN SIEGEL: However --

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

21 CHAIRMAN SIEGEL: We talked about that.

22 MR. CAMPER: No.

23 CHAIRMAN SIEGEL: -- a basis -- We talked about
24 that and thought that was impractical. They're a big
25 Committee, even bigger than we are. There's no reason why

1 we cannot go to their public meeting. We might even be able
2 to do it as an official NRC act in some way, and we might
3 want to have a special meeting somehow in relationship to
4 their public meeting, so that we have an agenda --

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

7 CHAIRMAN SIEGEL: I doubt that they will be.

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

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

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

24 MR. SWANSON: I think the reality is this
25 Committee has been saying this t the NRC for the last

1 several years anyway, and I can't really see we're going and
2 saying it to it again without the support of a document from
3 the Institute of Medicine, for example.

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

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

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

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

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

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

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

25 MR. CAMPER: Right.

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

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

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

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

17 CHAIRMAN SIEGEL: Could I propose, therefore, that
18 Dr. Glenn, Dr. Paperiello, and Mr. Camper suggests that
19 we're not certain we want to waste your money, but if
20 compelled to do so we'll come up with an agenda.

21 DR. PAPERIELLO: Okay.

22 CHAIRMAN SIEGEL: We'll do the calendar bit, we'll
23 try to find a date, but just as we did in February, it may
24 be, why waste \$25,000 or \$20,000, or whatever it costs, of
25 there really is not compelling reason to do so.

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

7 DR. PAPERIELLO: I understand. I'll relay the
8 message.

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

12 (No response.)

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

15 Okay. Failing that, I think I have no other
16 additional items of business. Are there other matters that
17 other members wish to bring before the Committee?

18 Professor?

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

22 MS. McKEOWN: I'm not getting my picture taken
23 with her.

24 (Laughter)

25 DR. GLENN: I think Dr. Griem and Dr. Almond have

1 gone. But with that announcement, I declare that this
2 meeting of the advisory committee is adjourned.

3 (Whereupon, at 11:40 p.m., the meeting was
4 adjourned.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

REPORTER'S CERTIFICATE

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

NAME OF PROCEEDING: ACMUI Meeting (CLOSED)

DOCKET NUMBER:

PLACE OF PROCEEDING: Bethesda, MD

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

Mark Mahoney

Official Reporter
Ann Riley & Associates, Ltd.