

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON THE STATUS OF THE  
EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

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TUESDAY, DECEMBER 9, 2003

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ROCKVILLE, MARYLAND

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The Commission met in open session at 1:30 p.m. at the Nuclear Regulatory Commission, One White Flint North, Rockville, Maryland, the Honorable NILS J. DIAZ, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

NILS J. DIAZ Chairman of the Commission

EDWARD McGAFFIGAN Member of the Commission

JEFFREY S. MERRIFIELD Member of the Commission

ALSO PRESENT:

Boby Adu-Eid Joint Labor Management Equal  
Employment Opportunity  
Advisory Committee

Ujagar Bhachu Asian Pacific American  
Advisory Committee

Paul Bird Human Resources

Karen D. Cyr, Esq. Office of General Counsel

Jessie Delgado Hispanic Employment Program  
Advisory Committee

Melissa Jenkins Federal Women's Program  
Advisory Committee

Corenthis Kelley SBCR

Patricia Norry DEDM

Annette L. Vietti-Cook Secretary

Lawrence Vick Committee on Age  
Discrimination

Patrice Williams-Johnson Advisory Committee for  
African Americans

Dale Yeilding National Treasury Employees  
Union

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

(1:29 p.m.)

CHAIRMAN DIAZ: Well, good afternoon. I see there is an empty space on your left, a victim of the flu, I think, or something like --

MS. NORRY: Not the flu but something, something bad.

CHAIRMAN DIAZ: Well, the Commission meets this afternoon to discuss the status of the agency equal employment opportunity program.

Staff briefed the Commission semiannually on this subject. Our last meeting was held on May 29 of this year. Today's briefing, like all of those that preceded over many years, provides an opportunity for the Commission and the staff to evaluate our progress in achieving a workplace environment that fosters equal employment opportunity for all NRC employees and to review initiatives in progress and future initiatives planned while we continue facing the important challenges in these areas.

We need to achieve the EEO objectives. And I understand that we keep looking at issues that need to be addressed. We keep fixing it. I think the Commission is definitely very much in favor of hearing that progress has been achieved and that progress will continue to be achieved.

And unless my fellow commissioners have a statement, Ms. Norry?

MS. NORRY: Thank you. Thank you, Chairman Diaz, Commissioner McGaffigan, Commissioner Merrifield. Good afternoon.

I would like to stress that the first remarks I read are those that Bill Travers had prepared. And then I will read my section.

We are pleased to be here today to provide the Commission with information on the status and progress of the agency's EEO program and diversity program.

As you know, the Commission is briefed twice a year on EEO matters. And we have decided in the interest of effectiveness and efficiency to present a full-scale briefing once a year and a briefing in the interim, an interim briefing, that will provide briefer status reports

and will not have as many presentations. So this is the briefer one, and six months from now you will get the full-scale briefing.

Before we proceed, I would like to introduce those at the table. Joining me on my right is Ren Kelley, Director of Small Business and Civil Rights; Paul Bird, Director of the Office of Human Resources.

And on my left is Larry Vick, member of the Committee on Age Discrimination, who will provide an EEO committee perspective. In this case, it will be representative of all the EEO committees.

Sitting in the first row behind me are, from left to right -- I hope this is left to right. Is that left to right? Okay. Bobby Adu-Eid, Joint Labor Management Equal Employment Opportunity Advisory Committee; Jessie Delgado, Hispanic Employment Program Advisory Committee; Patrice Williams-Johnson, Advisory Committee for African Americans; Melissa Jenkins, Federal Women's Program Advisory Committee; Ujagar Bhachu, Asian Pacific American Advisory Committee; and, of course, Dale Yeilding, President of the National Treasury Employees Union.

I want to begin my report by stating that NRC management remains committed to an effective EEO and diversity program and to enhancing management accountability in this area.

During our October 2003 senior management meeting, we discussed the important link between achieving EEO diversity management goals and achieving our overall mission goals. Successfully achieving these goals in a changing environment requires the commitment, skills, and talent of a highly qualified and diverse workforce.

Alignment of the agency's strategic and operational objectives must incorporate EEO and diversity management goals to ensure that employees are provided an equal opportunity to maximize their potential and use their diverse talents.

The agency is right now in the process of revising, as you know, several key organizational and operational plans, including the strategic plan, the SES performance

management system, and the affirmative employment plan. These plans are designed to work together to achieve common objectives in carrying out our mission.

First, several key strategies in the strategic plan are consistent with EEO and diversity management, such as use of innovative recruitment, development and retention strategies, development of current and future leaders, and fostering a work environment that is free of discrimination.

Second, there are specific leadership attributes of the revised SES performance management system, which support EEO and diversity management objectives, such as accept and value cultural differences, foster a discrimination-free workplace, create an open environment to voice new ideas.

Third, the four guiding principles of the affirmative employment plan, as listed in the Commission paper, incorporate the objectives of EEO and diversity management. These principles provide guidance for all managers and staff to help create a positive work environment that supports a maximum contribution of all employees.

Each office and region have a role to play in helping the agency to achieve its EEO and diversity management goals. To cite a recent example, on November 24 of this year, Region I received the Partners in Equality, or PIE Award, sponsored by the Philadelphia area Federal Executive Board. This award was given to acknowledge leadership accomplishments in EEO and diversity programs.

Now I would just proceed. That was Bill Travers' remarks. Now I'm on my section. During the last EEO Commission briefing in May, we discussed strategies to identify, recruit, develop, and retain highly qualified staff, especially minorities and women, at the mid supervisory, and SES levels. Right now we're focusing on establishing a diverse pool for the SES and strengthening the pipeline for future SES positions.

Recruitment efforts that could be expected to increase minority hires at the mid and SES levels, of course, include use of diverse recruitment teams, which we are doing; targeted recruitment; in other words, going to those sources which have good minority

representation and from which we have had success in recruiting in the past; enhanced liaison with professors and students and representatives of professional organizations; and, very important, support from key management. We are very fortunate to have a number of managers throughout the agency who actively support the recruitment program and who join in recruitment trips and this is a big part of our successful recruitment program.

Now, what did we do in fiscal 2003? We hired at the mid-level a total of 251 people. In the mid-level, this is hiring from the outside grades 12 through 15. Of the 251 people we hired, 154 were experienced at the grades 12 through 15.

COMMISSIONER MERRIFIELD: I'm sorry? Two hundred, fifty-one hires?

MS. NORRY: Right.

COMMISSIONER MERRIFIELD: And 154 of them?

MS. NORRY: Were experienced; in other words, grades 12 through 15. And of those, 22 percent were minorities, 12 percent were white women, and 66 percent were white men. So I think it's fair to say that we had some success in our mid-level hiring in making progress toward diversity.

As far as a pipeline, we, of course, as you know, announced a new leadership potential program and made selections which reflect a great amount of diversity.

We had 44 percent of the class were minorities, 6 African Americans, 2 Hispanics, 3 Asians, 5 white women, and 9 white men. This is a smaller leadership class than we had the first time, 25, but we wanted to concentrate on making sure we made good selections in those people who could be expected to advance.

This gives us a really good pipeline for the next SES candidate program. And, by the way, with respect to the next SES candidate program, we are thinking that we will start that in early 2004 because we don't want to find ourselves behind the curve in terms of having SES positions to fill. Since we have made a commitment to fill most of our SES positions from this program, we want to start one early enough so that we can do that.

Another aspect of this is in the SES performance evaluation process, which we're developing a new program which is performance-based, contains diversity as one of the leadership attributes, and several other attributes which are focused on diversity.

There is another part of accountability that is found in our requirements, new requirements, for training. If you remember, at the last Commission briefing, we talked about training. And even though we had had requirements for EEO and diversity training, we weren't always sure whether that was being met. And so the Commission said, "Well, find out."

So we found out. And we found out there were a number of people who had never been to or had been maybe ten years ago to a course on EEO or a course on diversity management. So all of those people will now be required to attend a one-day refresher course.

All of the new managers will still be required, as they are now, to attend a two-day full training on EEO and diversity management. And the one-day course, we will schedule all of the people who haven't had it. We'll schedule them by the end of 2005. We'll be able to schedule that many courses.

And then from then on, we're going to require that people stay up-to-date every three years because there are new policies and procedures that are constantly under development.

The new supervisors will continue to be required to take the two-day course. We have advised agency managers of this. And they will all be held accountable to make sure their subordinate managers attend this training.

The objectives that I just described are also supported by the proposed goals and measures recently developed by an EEO and diversity task force. As we discussed at the last meeting, measures are extremely important in order to allow us some means of tracking how we're doing.

Perhaps we haven't really attacked this before because everyone thought it was too hard. It certainly is difficult to fashion measures that are fair, that are equitable across the board, but Ren Kelley started out with this effort on the assumption that it could be done. And

she got a diverse team of people from agency offices, including executives, technical people, administrative people, legal people, and clerical staff, to come together.

And I think that she needs to be thanked for her efforts because this was a hard task. They're not done yet. But just the fact of getting that kind of agency-wide consensus represents a real achievement.

What they did was they proposed three EEO and diversity goals, all of which are pretty important: one, increase the pipeline of highly skilled and diverse individuals for senior positions; two, recruit diverse employees at all levels; and, three, develop and retain diverse employees by promoting an environment that values differences.

Now, these goals and measures will give us some tangible means. And hopefully once we get them in place, when we come to report at the semiannual meetings, we will be able to tell you what it shows and how we're doing.

These goals and measures are currently under senior management review. And when we have them fully developed, we will keep the Commission informed. And, of course, we will broadcast them widely to agency management.

So now I would like to ask Ren to discuss other aspects of the agency's EEO program.

MS. KELLEY: Thank you, Pat.

Before I give my remarks, I would like to invite Larry Vick of the Committee on Age Discrimination to provide a statement on behalf of the joint EEO advisory committees.

MR. VICK: Thank you very much. Mr. Commissioners, Mr. Chairman, management, we thank you for the opportunity to be here today. I would like to present the joint Equal Employment Opportunity Advisory Committee statement.

As you know, the committee is charged with five different committees. And they are: The Advisory Committee for African Americans, known as the ACAA; the Asian Pacific American Advisory Committee, known as APAAC; the Committee on Age Discrimination, known

as CAD; the Federal Women's Program Advisory Committee, known as FWPAC; and the Hispanic Employment Program Advisory Committee, known as HEPAC.

The EEO advisory committees have joined efforts to provide advice and recommendations to the Director, Office of Small Business and Civil Rights regarding factors that may impact policies, procedures, and practices related to selection, promotion, placement, training, upgrading, and career development of NRC employees or selection of applicants for employment.

The EEO advisory committees continue to enjoy a good working relationship with SBCR as well as other offices. With primary assistance from SBCR, the EEO advisory committees have been instrumental in focusing management efforts toward achieving greater representation of some of the minority groups, including an increase in the number of Asians in the management and supervisory positions, a slight increase in the number of Native Americans. And representations of Hispanics, more than doubled over a five-year period since 1999.

We recognize the commitment of NRC management to increase Hispanic representation, especially at the entry level. We also appreciate the Office of Small Business and Civil Rights and the Office of Human Resources for providing essential EEO data, including the EEO workforce profile data presented in these briefings. Workforce profile data demonstrates, in part, many of the concerns expressed by the EEO advisory committees going back several years.

Agency initiatives, such as the career-planning sessions and family-friendly work arrangements, including the flexiplace, foster EEO goals by ensuring that career planning and training are imbedded with outcomes that ultimately affect EEO demographics in a positive way. Additionally, the celebration of Diversity Day helps to foster good working relationships, is inclusive, and benefits all of the agency.

There remains a persistent challenge with regard to under-representation of some minority groups as it relates to hiring, rotational assignments, and appointments to supervisory and management tasks.

The EEO advisory committees would like to emphasize to the Commission several important EEO issues that warrant greater resolve and attention. Issue one regards limited number of women and minorities in SES positions.

The committees with a recommendation would like to enhance minority representation of these programs, such as the leadership potential programs and the SES candidate development program. These programs need to be more inclusive of all EEO constituent groups, develop new initiatives, and strategic approaches to achieve greater minority representation at the SES level.

As the agency refines its initiatives to increase diverse representation, we encourage management to consider additional ways to promote the participation of minority employees in career development programs to ensure an adequate pool of diverse candidates.

Overall, the Hispanics remain significantly under-represented throughout the agency. And, most notably, there has been no change in the senior-level ranks in the past 15 years.

The recommendation, we would like to see enhanced Hispanic representation by encouraging managers to consider Hispanics for selection and appointment at the SES level.

Issue two, a gap still exists in the developmental opportunities for minorities, such as African Americans, Asian Pacific Americans, and Hispanic Americans, in the NRC administrative ranks.

While much emphasis has been placed on the technical workforce, less attention has been given to the administrative and support staff sector. For FY 2002, the data shows that over the past three years, approximately 31 percent of the workforce is made up of administrative, clerical, blue-collar, and others, with African American employees making up 20 percent of that group, Asian Pacific Americans making up 3 percent, Hispanic Americans

making up 2 percent, and Native Americans making up 1 percent, and women making up 65 percent of the total group.

The recommendation, increase the focus on career development, career counseling, planning, and advancement of administrative and support staff.

The challenge is apparent and in some instances understandable in a technical agency. Where appropriate, greater emphasis is needed to realize a positive change in the advancement of minorities within the administrative ranks.

Issue three, a recent independent analysis of performance appraisal data conducted by an NRC statistician at the request of SBCR confirmed a CAD concern. This analysis showed: one, older non-supervisory engineers and scientists on the average received lower appraisals than younger employees; and, two, as some employees got older, their performance ratings decreased.

Using data supplied by SBCR on performance appraisal ratings for FY-1988 through FY-2000, a period of roughly 13 years, for all grade 13, 14, and 15 non-supervisory engineers and scientists, CAD performed a longitudinal study to examine the extent to which changes in performance appraisal ratings of individuals over time are correlated with age.

Approximately 24 percent of the staff had a downward shift, and approximately 13 percent had an upward shift in their ratings at some point in their careers. While there was no correlation with age for the upward shifts, the odds of a downward shift for the staff 50 years old and older were about twice the odds for staff under 50.

The data analyzed by CAD suggest that for performance appraisal, older engineers and scientists were more likely to decline than that of younger scientists and engineers. The agency's older engineers and scientists are very experienced, competent, and have the potential to contribute more to the mission when given the opportunity.

The recommendation, conduct an independent study to understand the reasons for lower performance appraisal ratings of non-supervisory engineers and scientists 50 years of age and older.

Issue four, management accountability to manage EEO and diversity. We believe this EEO initiative may prove to be one of the best approaches to strengthen management's commitment to EEO and to help make the NRC a role model for other federal agencies.

The recommendation, provide information regarding implementation of the EEO and diversity management performance of SES managers, non-SES managers, and supervisors to be included in the next EEO briefing SECY Paper.

A status report would provide information regarding the effectiveness of the integrated and uniform approach to implementing the agency's EEO responsibilities. We, the advisory committees, stand ready to assist in implementing any recommendations that may result from such a report.

In conclusion, the EEO advisory committees are committed to continue working to assist in the accomplishment of NRC's equal employment opportunity and diversity objectives. When we have questions or concerns in the EEO arena, we will continue to engage SBCR and others in a constructive manner.

Thank you for considering our concerns.

MS. KELLEY: Chairman Diaz, Commissioner McGaffigan, Commissioner Merrifield, first I would like to echo some remarks that Pat made on behalf of the EDO regarding management's commitment to remain committed to an effective EEO and diversity management program and to enhancing management accountability in this area.

I periodically meet with office directors and regional administrators individually to share with them information regarding the agency's current EEO and diversity management objectives.

As stated earlier, a senior management meeting was held in October of 2003. During this meeting, I provided information to senior managers regarding EEO and diversity initiatives and new guidance for affirmative programs and EEO enacted by law and issued by the EEOC, the Equal Employment Opportunity Commission. Specifically, the new EEO

guidance and management directive by EEOC was the document that was issued by that agency.

The notification and Federal Employee Anti-discrimination and Retaliation, "No Fear", as it's referred to, Act, was passed in May of 2002 and became effective on October 1 of 2003. It is intended to enhance management accountability by placing greater public disclosure of EEO and diversity statistics.

This process will begin for NRC and other federal agencies by placing six years of EEO and diversity data on the agency's internal and external Web sites. This information will also be issued to a number of organizations, including Congress, on an annual basis.

The No Fear Act also requires agencies to notify employees and applicants for employment about their rights and responsibilities under the discrimination and whistle-blower protection laws and provide training in managing diversity dispute resolution and communication.

Earlier this year, the Office of the General Counsel distributed information to all office directors and regional administrators regarding the requirements under this Act.

As a new requirement also under Title VI, Executive Order 13166 for improving access for persons with limited English proficiency requires agencies to take reasonable steps to ensure that these individuals are provided meaningful access to programs conducted by federal agencies and entities receiving federal financial assistance from the government. Draft guidance on NRC's proposed implementation has been published in the Federal Register for comment.

New equal employment opportunity regulation management directive 715, which I mentioned, requires demonstrated senior management commitment, integration of EEO and diversity management into the agency's strategic plan, and enhanced management accountability.

Management is committed to the integration of EEO and diversity management-related objectives and the revised agency's strategic plan. The SES performance

management system, the agency's affirmative employment plan and its operating plans, and the implementation of these initiatives will further enhance our ability to achieve success in this area.

The new EEO guidance will impact how we document and disclose EEO complaint activity for access on internal and external Web sites.

The agency has had continued success in closing informal and formal complaints, EEO complaints. During FY-2003, a total of 40 cases were brought to closure due to the cooperative efforts of the complainants, managers, EEO counselors, contract mediators, SBCR staff, the members of the Office of Human Resources and of the Office of the General Counsel. And we anticipate maintaining an effective and efficient process to resolve potential allegations of discrimination.

Each month SBCR meets with the EEO Advisory Committee chairpersons to discuss EEO and diversity management-related concerns that may impact protected groups of employees that they represent. In particular, the Committee on Age Discrimination, or CAD, again raised the issue of regarding their perception of the impact of age performance and the appraisals that these individuals receive.

In an effort to address this issue, we conducted more extensive analysis than we had previously. We requested Dan Lurie, an agency statistician, to conduct a study and to determine if there is correlation between employee performance ratings and their age.

The time period from 1988 to 2000 was chosen. This was the period that was chosen because it was consistent with the initial time frame used by CAD for similar analysis.

The study indicated that employees who received ratings of fully successful or better whose average age was 47 were on the average 12 years younger than employees who received a minimally successful rating. And employees who received outstanding ratings were on the average three years younger than all other employees appraised.

As some employees got older, their performance ratings decreased. Due to the small number of MS ratings that were issued as compared to the total universe of data that was

reviewed, employees in the given years, a total of 13 years, there was a statistically significant delta only in two years. And that was year 1989 and 1993. Because of the number of MS in other years, the size of the units reviewed was too low to have a statistical difference indicated.

It is important to note that these findings do not show a causal relationship in terms of this correlation. So it is difficult to judge. There is nothing that indicates that discrimination is the cause of the differences. However, this information is very important to us. We take this very seriously.

We want everyone to know that we wanted to perform this analysis and to provide the information, and that we do intend that agency management will take action to inform all office directors and regional administrators and rating officials of the need to only consider relevant information in producing the ratings for all employees.

I believe we have made significant progress by developing critical and appropriate strategies to enhance management accountability in EEO and diversity management; to create a positive work environment based on trust and acceptance and differences; to build diversity at all levels, especially at the senior levels; and foster a discrimination-free workforce.

There is still much to achieve. And progress in some areas will be achieved more quickly than it will be in others. We recognize the success of our intern program and recent recruitment of mid-level hires and the progress made in using senior-level developmental programs, such as the LPP and the SES candidate development program, to diversify our GG-13 through 15 pipeline. However, we must continue to strive to make NRC's EEO and diversity goals a reality. And it will take the entire organization to do that.

Thank you very much.

CHAIRMAN DIAZ: Thank you.

Does that complete your presentation?

MS. KELLEY: Yes, that completes our -- I'm sorry?

CHAIRMAN DIAZ: Do you have some --

MS. NORRY: Oh. Well, we can call on Dale.

CHAIRMAN DIAZ: Yes.

MS. NORRY: Dale Yeilding.

MR. YEILDING: Thank you very much, Chairman and Commissioners. I can't see everybody there. My name is Dale Yeilding. I am the president of our local chapter 208 of the National Treasury Employees Union. Thanks for the opportunity to make a few comments.

I always like to make my comments in direct relation to EEO, even though I could probably take a full day of comments on employee issues and bargaining issues that I deal with on a day-to-day basis with HR, but I would like to talk about two subjects.

The first one I want to talk about is pre-selection, tying that topic to Article 22 of the collective bargaining agreement because that is the contract article that is used to make selections for bargaining unit employees here at the NRC.

Pre-selection I didn't hear at today's meeting, but it seems like it's always a concept that is brought up and is brought up in a negative context.

I am going to probably try to define two types of pre-selection. There's illegal pre-selection, and there's legal pre-selection. I get a lot of employees coming in to the union office having disgruntlements with the selection process. They're claiming pre-selection. And I have to give the short paragraph explanation. And they usually walk out of the office with a semi-smile on their faces.

Illegal pre-selection. A quote, 5 USC 2602(b)(6), "The agency shall not grant or any preference or advantage to any employee or applicant for employment for the purposes of improving or injuring the prospects of a particular person for employment."

So pre-selection when the process is changed is wrong. Pre-selection when a qualified candidate makes it through the process is properly analyzed for minimum qualifications, is properly rated, and is properly selected, pre-selection in that context is not wrong.

I make the analogy of going to a horse race trying to decide where to place your bet. And you look up at the board and you bet on the favorite. The race ends. The favorite horse wins. The crowds don't stand up saying pre-selection is something that was wrong because a proper race was run and a proper candidate that went through the process was selected.

So, in summary, I am just trying to ensure that folks don't always claim pre-selection just because their bet on the candidate was achieved by the selecting official. Pre-selection should be of concern only when a process is adulterated that changed that gives unfair advantage to somebody and they were pre-selected in that aspect.

Another topic and the last topic I wanted to talk about here was the No Fear Act. I know there are several provisions of it and it has been explained, but one of the provisions of the No Fear Act that went into effect October 1st is that a manager is supposed to be disciplined if the discrimination process proves as such.

I know by no means I am the representative of managers. I am the exclusive representative of bargaining unit employees. But I looked into this a little bit further, trying to identify what the real purpose of this discipline was.

Where the ledge is, where a manager could possibly get into trouble to be disciplined. Obviously these twice a year meetings are in support of affirmative action. And we're trying to take actions to ensure our goals are met. Where does affirmative action end and discrimination start? Where is that ledge that we hope all managers are trained?

Again, I apologize for some of my silly analogies, but sometimes they tell the story a little bit more clearly. For instance, let's say we had an ice skating competition, international, and we were having couples compete from all over the world.

What would affirmative action be? Affirmative action would be ensuring all of the couples had equal practice time on the ice before the Saturday night competition judging.

What would affirmative action be? Affirmative action would be ensuring if you are going to supply ice skate-sharpening services, you apply that equally to all of the candidates.

What would discrimination be? The Saturday night judging giving an advantage and higher score to one of the couples based on what country they're from or the fact that they hadn't won a Gold Medal in a while.

My point here is tying that analogy to the merit selection process. We have affirmative action initiatives and goals and recruitment that happened before the selection process. And me being the custodian along with HR to ensure the Article 22 collective bargaining agreement selection process is proper, I'm saying there is no room for affirmative action in the actual selection process.

The union, of course, supports up-front actions for affirmative action, but when a manager is actually looking at a best-qualified list and making a selection, I'll quote you another law, 5 USC 2602(b)(1), "Any employee who has the authority to recommend or approve any personnel action shall not discriminate for or against any employee for the employment on the basis of their protected class."

So I think this discrimination I am saying that affirmative action might lead into is, in slang, commonly referred to as reverse discrimination. I wouldn't be up here just alleging it unless I had an example or some situations to explain. I have actually since the No Fear Act went into effect had three discussions with senior managers, of which were not real satisfying conclusions.

One senior manager, talking about the selection process and how it integrates with affirmative action, said that "If I had two equal candidates and they truly are equal, I put them on the scale, and I now need something to break the tie. I can use the goals and affirmative action to break that tie."

I said, "Of course, you can't. That would be discrimination. You can't use anything related to the protected class."

Another senior manager outside the NUREG cafeteria discussion said that it's management's practice to desire larger best-qualified lists for diversity purposes.

I looked at him. I said, "No. That's illegal discrimination. You cannot bring decisions related to a person's protected class into the selection process."

So, in closing, I would say there are possibly two solutions. The first one, of course, is inappropriate. But talking to some of the agency attorneys, they, of course, will instruct managers to make sure they make a decision based on a knowledge, skills, and abilities decision. And I hope that's not just a cover-up for their underlying decision on their protected class.

I think a true solution would be to change the culture at the NRC to ensure managers are made aware of the distinction between affirmative action and reverse discrimination and truly base their selection on the characteristics of the candidates and they're not encouraged to use a protected class in any part of the selection decision.

I think I have heard quite a bit of management training in the up-front planning from SBCR. And I would love to be invited to one of the two-day management sessions to actually see if this training of keeping discrimination out of Article 22 in the selection process is implemented here at the agency.

Thank you very much.

CHAIRMAN DIAZ: Thank you very much, Dale. We appreciate your comments and your advocacy of the Chapter 208. I'm sure that we will keep working with you. We take all of these issues very, very seriously.

Ms. Norry, is there anything else?

MS. NORRY: That concludes the staff presentations, Mr. Chairman.

CHAIRMAN DIAZ: Thank you very much.

Let's see what my notes tell me. I was thinking as we were going through this the very disciplined and systematic approach that needs to be taken to all of these issues. It seems to me that is very hard to achieve significant successes at any one time, that really what

we have is a process that is trying to ensure that we never go back and that we always go forward. That is an important thing.

However, I think sometimes we are always looking for that thing that happened that is something that we can all say and feel good about it.

But we do appreciate the fact that this is a difficult issue. We understand that there are many difficulties. Ren, we appreciate your not being deterred by the difficulties, that you continue plugging along and realizing that not all the time, these things are so clear.

I think that when you look at all these things, there is an issue in here that continues to come up in my mind. And it's the fact that everybody needs to be aware in the agency of what are the issues we are dealing with, what is discrimination, what is equal employment opportunity, what it is. But I think we also need to make everybody aware that we all will be better off when these issues are better off.

And I think this is something that we need to not only train but it's almost like cultural issues, almost a need that I think this agency hopefully is a little bit ahead of other places. We need to be conscious that we will be better off when these issues are improved.

Every time you come in and there is some improvement, I think we should feel a little better. However, as you noticed, some of these things are not resolved overnight. We keep looking forward to the improvement.

Now, you talk about accountability. Let me turn that word into this side of the table right now and ask you. These three very good strategies to increase diversity in the pipeline, develop and retain employees, and attract women and minority candidates for meeting senior-level positions, would you please tell me as a matter of accountability how you intend to ensure that these high expectations are going to be maintained and that you're going to be able to discharge these expectations?

MS. NORRY: Well, let me just say a word. And then Ren can pipe in. I think we will need to make sure that whatever goals are worked out and accepted and tied to these measures are put in agency operating plans is the key. And operating plans have a room for

this kind of objective as well as the performance objectives as well put into individual performance plans related to performance appraisals. Starting with SES, we go down the system. Those two documents together ought to provide accountability.

Ren?

MS. KELLEY: Yes. Just to add to that, the linkage of several of the key processes for the agency, starting with the Strategic Plan, right now the Strategic Plan does have a managing EEO and diversity initiatives in it.

There is certainly a link from there to the operating plan, as Pat mentioned, to the performance plans and to the affirmative employment plan. And, in addition to that, what we want to do is take the goals, and eventually when we have the measures and these have been approved and everyone is aware of what they are, we want to make sure that all of these align and that these measures, the goals are integrated in those key systems. And we want to have a sustainable process, one that is documented and that is a way of documenting that process for all and making everyone aware of it and continuing to do the things that help us to keep those requirements before our eyes.

And when you link it to the agency's mission, I think that is a very key way to accomplish that.

CHAIRMAN DIAZ: I think that is a very good answer. I think it should be part of all of the things that we do, not something that is separate, but the accountability needs to be built into all of the things that work. Operating plants are certainly important.

I think that it is very clear that at this point, the issue of accountability for these issues at all levels of management is vital. And I would look forward to the next meeting receiving a direct response to this issue.

I would like to thank Mr. Vick for his presentation. And I would like to say that although statistically this causal relationship and the appraisal is not clear, the fact that we have focused on it and we have found that potentially there could be a relationship and that we're going to work on the solution is very important.

I think it should be something that for all of us, it's key to these meetings and these processes because sometimes we don't deal with these things all the time. These briefings must serve as a point to launch whatever initiatives, whatever the issues are, although you always have an open door if an issue is arising.

I like to think of this as something that we're aware of. And from that, success can be established. There is no place in the NRC for discrimination based on age or for appraisals based on age. I think this should be a base to do that.

And I thank you. And I thank you for bringing it up to our attention.

Commissioner McGaffigan?

COMMISSIONER McGAFFIGAN: Thank you, Mr. Chairman. I am only going to be brief. I am a little under the weather here, although I don't look it.

First, I want to thank Karen. Part of the package was the legislative provision that was put together after the last briefing that would have helped us build partnerships with Hispanic-serving institutions, historically black colleges, and colleges with large Indian populations. Unfortunately, that is one part.

The chairman sent a letter to the Congress in late August. And since it was in neither bill, it was probably a long shot to try to get it into the conference report. We didn't succeed. But I think we can someday get that provision enacted. And in any case, the Commission is committed to it unanimously.

The second item, Mr. Vick, I am speaking as somebody who now is more than halfway between, from 50 to 60, as of yesterday.

CHAIRMAN DIAZ: The oldest sitting on the Commission.

(Laughter.)

COMMISSIONER McGAFFIGAN: Yes, I know. You take those pills. I don't know what they are. Chairman Diaz is unique in that Ponce de Leon looked for the Fountain of Youth in Florida. The Chairman found it.

It strikes me that I think it was Disraeli who talked about lies, damn lies, and statistics. I don't find it unexpected and nor did the author of this paper that you might find outstanding performance appraisals a little more common for the younger than for the older because presumably the best younger employees are now sitting in the SES and are outside the non-supervisory technical numbers. And if you look at the SES, there are a lot of gray hairs there. So in some sense, the best part of that age cohort probably got promoted.

The notion that minimally successful, that there is a 13-year difference, on average 59 years for those who get minimally successful compared to the 47-year average for everybody else, for only 28 minimally successful appraisals in a 13-year period, which may say something about our performance appraisal system, and zero unacceptable during a 13-year period, I don't find it totally surprising there either.

I have been in government for 28 years now. I think when I was fairly early to government, I heard the term "retirement in place" for the first time. And I have witnessed during my career employees retired in place at various institutions, not this one because I am not down there in the ranks, but I can imagine that it's a possible phenomenon here. I certainly witnessed it at other institutions.

There is an explanation that is possible that correlates with this data, which is that maybe at the margin, there are a few more older employees who aren't doing quite as well as younger employees in terms of their job performance, younger employee being motivated to try to move up in the ranks and all of that and the older employee sort of having seen his others in his age cohort get promoted into the SES, sort of lose a little bit of hope or just say, "To heck with it, I'll do as well as I can."

So there is a possible explanation here. I don't rule out that explanation. I don't see necessarily age discrimination in the statistical study. I'll just state that for the record.

The last thing I'll mention is I guess at the last meeting, there was this discussion about how many women we had in the technical ranks in the various offices. I do think that, among the large offices, NMSS deserves some praise for having fully 25 percent of its technical

staff female. I think that opens up the opportunity for lots of future leaders in NMSS who are female.

I think the other offices have a ways to go in terms of technical employees who are female. It may be that the technical skills that NMSS recruits in have larger numbers of young women who go into those fields in college and graduate level and NRR has fewer. And that largely accounts for it. And Research, as most of us have discussed at Research meetings, does most of its work for NRR.

The two 14 percents there compared to the 25 percent NMSS I find there is a possible explanation there based on the technical skills in the two offices.

I would at some point hope that through things like partnership programs or whatever, we can do better in terms of in the reactor-oriented offices in recruiting in women.

Why don't I leave it with that, Mr. Chairman.

CHAIRMAN DIAZ: If I may, let me just make one comment. I think we all agree that there might not be a statistical basis to the term and that there was something wrong, but I think the good thing of it is that the issue is out in the open and that we're doing something about it. That is the whole key. And fundamentally I think that we're there.

Commissioner Merrifield?

COMMISSIONER MERRIFIELD: Thank you, Mr. Chairman. I have got some comments and some questions as well.

First I want to lend a compliment to Ren Kelley and to Pat Norry and Paul Bird and their staffs. Obviously there's I think a unified commitment of the Commission and the managers within the Commission to enhance what we do in the course of diversity.

I am going to make some comments about some areas where I think we perhaps can do more, but I would want to lead off with the fact that I think we are making a strong commitment. And I want to make sure that it's recognized that that is appreciated.

On some small matters, I would want to say I was looking at the paper, SECY-03-0203. I know it's a pet project of mine that we enhance our use of alternative dispute

resolution. I recognize that there has been a significant increase in the utilization of that during the course of the last fiscal year, although the results of that, you were batting 500, which in baseball terms is excellent. Certainly I think a mere statistic should not discourage us from continued utilization of what I think is a positive program and hopefully your results will be further enhanced.

In terms of reacting to some comments, Mr. Vick's comments, I guess one of my reactions is slightly different than some you've heard already. I think the issue of the concern about whether we discriminate on the basis of age, for me focusing on the statistics isn't as important.

For me, as a Commission, it would seem we have a cohort of individuals who have committed a significant portion of their lives, their working lives, to this agency. And whether that person is 50 or 60 or in some cases 70, I think the commitment that we need to think about as an agency -- and I certainly would like to have obviously the group of committees as a whole but certainly your group go back and think about it. And that is, how do we maximize the contribution that each and every one of our employees can make to this agency. At the bottom line, that is, in fact, the most important issue.

How do we create an atmosphere as an agency of ensuring that every day someone comes to work here, they want to maximize and do their level-headed best? It seems to me if we can find a way to focus on that and allow each person to contribute their maximum, that the issues of whether we're going to have people compensated at the right level are going to sort themselves out.

That's a dialogue hopefully I would like to have you all think about, one I would certainly like to engage in directly, one that I would like our staff to engage in.

We have great people in this agency. How do we get the most out of them? How do we make it so that everyone who comes here every day is happy to be here and can contribute the most that they can? That is one of my reactions to you. I don't know. You're welcome to jump in on that one.

The other reaction I had of the joint statement was on the matter of our administrative and non-technical staff. That would be issue number two.

There has been a tendency -- and I have to admit I have violated this one as well. There has been a tendency when we have these discussions to talk about the recruitment and advances of individuals in the technical areas. I compliment the joint committee statement for recognizing administrative and non-technical staff.

I think we as a Commission should be challenged to make certain that that group as well not only has the same types of diversity that we desire within the rest of the agency but, in fact, has the very same type of developmental opportunities to advance.

I don't have to go further than across this table to Pat Norry to talk about people who are the leaders in this agency who have risen from a variety of different locations. And that is certainly I think something we should continue. So I appreciate raising that comment in that regard.

In terms of questions, I guess I have got two I want to focus on. I had an opportunity to go through some of the recent testimony in front of the House of Representatives Committee on Government Performance, Subcommittee on Civil Service. They had a hearing on October 15th of this year regarding diversity in the Senior Executive Service. In that hearing they had testimony not only from the General Accounting Office but from the Office of Personnel Management and others.

One of the noteworthy issues that was outlined -- and it's on the very highlight of the GAO report in this matter, which actually dates back to January of 2003 -- is that while from the years 2000 through 2007, 55 percent of the SES employees government-wide will retire or leave office, leave from the federal government, while female SES percentages will increase if current selection trends continue, -- and this is government-wide; this is not just within this particular agency -- the minority percentage will change little or in some cases, it will decrease. Based on the projections that GAO made for our agency, there will be a good increase in the number of -- presumably I guess they meant to say "white women" here, but it would be about a

four percent increase based on these statistics but about a three percent decrease in the number in terms of the minority representation.

In the five years I've been on the Commission, it seems like it has been a mission under the Sisyphus to keep pushing that ball up the hill, but at the end of the day, we seem not to be able to get over it.

And so given the comments made by GAO and OMB and I know the staff is making a commitment for entry-level employment and I know we are making a commitment for bringing in lateral people and I know we are making a commitment to have another SES candidate pool in early 2004, which I think is critical, do we have what we consider a real comprehensive plan to get us to the point where we can avoid this kind of circumstance? Are we going to be able to meet our desire to meet the diversity goals not only that we have for ourselves but that Congress wants for us to have with what we have got right now?

MS. NORRY: I would say that a comprehensive plan is still in the making. We have elements, but we haven't put something together that is called the comprehensive plan. But I think there are a number of efforts going on.

In recognition of the GAO findings, OPM has established a government-wide program for SES development. And they haven't yet. We keep waiting for the announcement of it. We still don't have the exact announcement. But it's keyed to achieving greater diversity. That's the whole point of it.

So naturally they want agencies to agree to participate and so forth. And we're in discussions with them. That is one effort that is going on that should benefit the government. They are very much aware of not wanting to say this is only for minorities because it's not, but they're targeting their recruitment in areas where they could expect to get good minority candidates.

Within this agency, everyone who participates in the encouragement and the development of people to apply for these programs is aware of the need to have as diverse and as broad a group of candidates as possible.

I thought it was extremely encouraging that in the last round of leadership program so many people applied, which given that you sometimes hear in the hallways that nobody wants to be a manager because it's too much of a headache, I thought that was very encouraging.

People do, in fact, want to move into management. And we had a very diverse group of selections of those 25 people. Most of them as far as I can tell; in fact, maybe all of them, will be good candidates for the SES program.

And we encouraged them. We said, "Just because the SES program is coming along, does that mean you should wait?" No, no. Go ahead. Get in this program. And get that kind of training and so forth.

So I think that combined with external hiring, where we have opportunities at the mid level and at the higher levels, makes sense. And we put it all together, and we can develop a comprehensive plan. I know that the offices are very committed to this and, as well, Ren and her staff.

So yes, that GAO report was really a knockout in terms of what could or will happen if nothing else is done by 2007, when some of us who have been hanging around a long time will, in fact, actually leave. And then where are you? So that's very important.

COMMISSIONER MERRIFIELD: Well, I appreciate that. Mr. Chairman, I do think -- and, again, I don't want to take away from what I think has been a lot of hard work on the part of the staff and a recognition that where we put our focus -- and I think the efforts with recruitment with Hispanics at the University of Puerto Rico and elsewhere is a good example. When we really open the gates a bit and really put our focus, we do an exceedingly good job.

But I do think we need to think about this in a more strategic way and really get our hands around it. I think the extent to which we can interact with the staff and provide them guidance and resources would be enhanced if we were able to really see the details of that kind of a strategic plan so we know we're going in the right direction.

MS. NORRY: I would just like to make one more comment about that, if I could. And that is that the fact that not very many people at the SES level have left is I believe good news because we have continued to benefit from their expertise. The bad news part of it is it doesn't give you as many opportunities to bring people in. Just so that's recognized, that's a two-headed --

COMMISSIONER MERRIFIELD: That's a fair point, although given the demographics, one could easily state that at some point we may get a bow wave.

MS. NORRY: Yes, yes.

COMMISSIONER MERRIFIELD: And it's better to get that pipeline working now,

--

MS. NORRY: Absolutely.

COMMISSIONER MERRIFIELD: -- get those people there so that it's a less burdensome effort when it finally happens.

MS. NORRY: Right.

COMMISSIONER MERRIFIELD: I know you have been among those who led the effort on SES candidates. I certainly wouldn't criticize you because I know you have been helping us and leading us.

On the issue, and the last two issues Mr. Chairman, on the issue of training, last May I asked a question about diversity training of our staff, which resulted in finding out -- the statistics I was given was that 105, or 21 percent, of the NRC managers or supervisors had not had any EEO and diversity training. You mentioned that in your opening statement. Despite having raised that in May, I am somewhat concerned, maybe more than somewhat concerned, that it's going to take us until 2005 to ameliorate that problem.

To be perfectly frank, can't we do better?

MS. KELLEY: Okay. What we developed was a one-day course. Let me just, first of all, the 105 had not had any EEO or diversity training since 1999. There was an

additional number that brought the total who need this training to 287. That 287 if a manager had not had EEO training at the time --

COMMISSIONER MERRIFIELD: That's almost half of our SES managers.

MS. KELLEY: Well, that includes team leaders.

COMMISSIONER MERRIFIELD: Team leaders, right.

MS. KELLEY: That does include team leaders. So that would take the number up some.

COMMISSIONER MERRIFIELD: Okay.

MS. KELLEY: There were well over 200 who had taken the 2-day course and are not included in that that need the training immediately. So in order to take 287 through a day course, we have a strategy or a plan to do 7 sessions per year. So that would take us 14 sessions roughly over a 2-year period in order to provide that training for those individuals.

MS. NORRY: I think it's important to note also that even though we will have contractor assistance in providing this training, Ren is going to want someone from her staff there to help conduct the training. She has a very tiny staff. So it's resource-intensive.

COMMISSIONER MERRIFIELD: Well, it's important. And the Commission is very able to switch resources, if need be, to make this happen.

MS. NORRY: We will reexamine this and see if we can accelerate it.

COMMISSIONER MERRIFIELD: That sounds like a great idea.

(Laughter.)

COMMISSIONER MERRIFIELD: Recognizing that Commissioners should also take a position in recruitment, I was up at M.I.T. about three weeks or a month ago where I spoke to a group of students up there. I would note -- and I have already mentioned this to Paul Bird -- something which certainly for those interns who might be in the room or others who could help us out, I was approached by three different M.I.T. students, who had considered the NRC intern program.

The reaction that I got to that was unfavorable. The unfavorable reaction that I got was because -- I don't mean to be cute about this, but this is their statement, not mine -- an unfavorable characterization between interns and a certain ex-employee of the Clinton administration.

One of the students had told me that "When I told my dad I was being considered for the NRC intern program, my father's reaction was, 'I paid \$120,000 for you to go to M.I.T. and become an intern?'"

I just think it's a little thing, but I think it's something we may wish to take another look at in terms of what we call that program, how we market that program, how we bring those individuals to the agency.

Those interns who I have met here are of an outstanding quality. I have one former intern who works for me, outstanding quality. It's an excellent program for this agency. And it's bringing us very qualified, terrific people. But if there's a way we may wish to look at that a little bit differently to see if we can further enhance that --

CHAIRMAN DIAZ: May I suggest that we learn from the health-related professions and leave promoting to residents?

(Laughter.)

COMMISSIONER MERRIFIELD: As long as you don't have to work 24/7 for weeks at a time.

COMMISSIONER McGAFFIGAN: We can also call them the Czar and Czarinas to be, or something.

COMMISSIONER MERRIFIELD: I'm sure there's something else we can come up with, but it's one I think is worthy to take a look at.

I apologize. The final question, on the issue of small business, just so I understand, the focus of the SBA mission that you have within your staff is a focus on contracts with the NRC, right? You do not have a mission of focusing on impacts to small business from our regulatory or rulemaking activities. Is that correct?

MS. KELLEY: That is correct. We focus on the amount of procurement activity that NRC places into the small business community.

COMMISSIONER MERRIFIELD: Do you know who it is within the agency that actually focuses on impacts to small business from our regulations?

MS. KELLEY: I believe the Office of Administration has --

MS. NORRY: The rulemaking function within the Office of Administration deals with that issue.

COMMISSIONER MERRIFIELD: Mr. Chairman, we've had a few issues lately that have impacted small business, particularly in the materials area. That may be one we need to look at a little bit more and make sure we have got them appropriately supplied with resources and expertise. So I leave that one on the table.

Thank you, Mr. Chairman.

CHAIRMAN DIAZ: Thank you so very much, Commissioner Merrifield. I was thinking when Commissioner Merrifield was speaking that in many ways, the agency has learned through the last few years to become more outcome-oriented, to become a little more directed towards measures of performance, reactor oversight programs, a program that shows how you can go from some things that are a little soft to some things that have more performance measures to it. I think that's something that we talked about the last time.

I think it's an important issue that we keep trying to get at. We need to eventually achieve some performance measures in some of these areas that allow us to focus on those things that are not as good as they should be. And maybe for when we meet in May, that would be an area that we would certainly look forward to have an additional bit of information, how we are progressing toward this goal.

Unless my fellow commissioners have another statement, we thank you very much, you and everybody in here, for participating and helping us achieve a better agency. Thank you.

(Whereupon, at 2:44 p.m., the foregoing matter was adjourned.)