

THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
CENTERS FOR DISEASE CONTROL AND PREVENTION
NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

convenes the

TWENTY-EIGHTH MEETING

ADVISORY BOARD ON
RADIATION AND WORKER HEALTH

DAYS TWO and THREE

EXCERPT CONCERNING MALLINCKRODT SEC PETITION

The verbatim transcript of the Meeting of the
Advisory Board on Radiation and Worker Health held
at the Adam's Mark, St. Louis, Missouri, on February
8 and 9, 2005.

C O N T E N T S

February 8,9, 2005

SEC PETITION EVALUATION REPORT - MALLINCKRODT:

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TRANSCRIPT LEGEND

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-- "*" denotes a spelling based on phonetics, without reference available.

-- (inaudible)/ (unintelligible) signifies speaker failure, usually failure to use a microphone.

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P R O C E E D I N G S

February 8, 2005(1:05 p.m.)

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2
3
DR. ZIEMER: I'm going to call the session back to order again. This afternoon the Advisory Board begins review of the SEC petition evaluation for Mallinckrodt.

4 Before the NIOSH presentation of their report on the petition, I'm going to call on our Designated Federal Official -- oh, I do want to introduce several people, and then I'll call on our Designated Federal Official.

5
6 We do have some visitors I want to recognize, especially this afternoon. First of all, from Senator Talent's staff, Debbie Dornfeld*.

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Debbie, please let us recognize you.

From Senator Bond's staff, Tom Horgan. Tom?

From Representative Todd Atkins' staff, Jim Mitus*. Jim?

Thank you. Are there any others from the various delegates -- delegations here? Thank you for being present here this afternoon in our meeting.

Dr. Lew Wade, our Designated Federal Official

1 for this meeting, is going to take a few
2 minutes just to remind the Board and those
3 present of the process that is involved here
4 with the SEC petition reviews.

5 **DR. WADE:** Thank you, Mr. Chairman. Again, in
6 my role as DFO I thought I would take a few
7 minutes to just remind you of the process, and
8 I've put in front of each of the Board members
9 synopses from the SEC rule that sort of
10 outlines the various phases and steps, and just
11 to remind you that it's a continuous process
12 from the filing of a petition through the
13 qualification of a petition. And then the
14 NIOSH program, the OCAS office, presents its
15 findings to the Board. That's just going to
16 happen in several minutes. And then the Board
17 will deliberate and take a number of actions
18 that are listed here, from making a
19 recommendation to the Secretary to requesting
20 additional information. I won't read all of
21 those for you, but they're in front of you.
22 I did want to spend just a minute talking about
23 how the Secretary will decide outcomes of the
24 petition, to get that clear in your mind, and
25 that's Section 83.16. And to the question of

1 how the Secretary will decide outcomes of the
2 petition, (a) The Director of NIOSH will
3 propose and transmit to all affected
4 petitioners a decision to add or deny adding
5 classes of employees to the cohort, including
6 an iteration of the relevant criteria as
7 specified under 83.13(c), and a summary of the
8 information and findings on which the proposed
9 decision is based. This proposed decision will
10 take into consideration the evaluations of
11 NIOSH and the report and recommendation of the
12 Board, and may take into account consideration
13 information presented or submitted to the Board
14 and the deliberations of the Board.

15 I really wanted to underscore again that it's
16 the deliberations of the Board that are also
17 important in establishing a record that the
18 NIOSH director will consider when framing a
19 decision document for the Secretary. So I
20 think it's important not only that we move
21 towards recommendation, but we also have on the
22 record a full discussion so that the complete
23 deliberations of the Board can be part of that
24 record.

25 Thank you, Mr. Chairman.

1 **DR. ZIEMER:** Thank you, Dr. Wade, for those
2 reminders.

3 We'll begin then with the NIOSH presentation by
4 Larry Elliott. Larry?

5 **NIOSH PRESENTATION OF REPORTS**

6 **MR. ELLIOTT:** Thank you, Dr. Ziemer, ladies and
7 gentlemen of the Board. I hope you had a good
8 lunch, and I'm going to try to not put you to
9 sleep here with some dry material. I think we
10 have an audience here that's very much
11 interested in this evaluation report on the
12 Mallinckrodt petition that we had received, and
13 I'm sure that they want to hear all of this, as
14 well as the Board. So with that, let me begin.
15 I'm going to walk you through several factors
16 here in this petitioning process. First we're
17 going to talk about the petition process itself
18 and where we're particularly at right now at
19 this stage with this petition. I'm going to
20 talk briefly about the role of the Advisory
21 Board and what you are expected to do in that
22 role and those set of responsibilities that you
23 have. I'm also going to speak about the
24 evaluation process, how we went about
25 evaluating this petition. And then I will go

1 into the summary of findings from our
2 evaluation report, and I'll end up with
3 proposed class definitions and the findings
4 that support those.

5 If you have not availed yourself of a copy of
6 the Mallinckrodt SEC evaluation reports --
7 perhaps this is more for the audience than they
8 Board -- they are located on the back table and
9 you might want to grab a copy of those to read
10 through as I go through the presentation.

11 Essentially the start of this process is that a
12 petition is submitted to NIOSH on behalf of a
13 class of employees. And the particular
14 petition that we have before us for
15 Mallinckrodt was submitted on July 15, 2004.
16 The initial class definition that was arrived
17 at, in agreement with that -- those
18 petitioners, was -- as you see here on the
19 slide -- "All employees that worked at the
20 uranium division at Mallinckrodt Destrehan
21 Street in St. Louis, Missouri from the years
22 1942 to 1957."

23 Originally the petition was submitted and
24 included both Destrehan and Weldon Springs
25 facilities.

1 Now the petitioning process is governed by this
2 statute, the Energy Employees Occupational
3 Illness Compensation Program Act, in that it
4 has two tests that must be met, and I'll speak
5 about those in a moment. It is also governed
6 and regulated by the rule that HHS published on
7 processing petitions, and I'll speak to that,
8 as well.

9 In that rule it was determined that we could
10 only accept a petition that dealt with a
11 facility, and so that's why -- the original
12 petition talked to Destrehan Street and Weldon
13 Springs, and working with the petitioner it was
14 determined that we would settle on Destrehan
15 Street first. I'm sure there's some confusion
16 out there about this, and so I just wanted to
17 make that comment and hopefully that'll clear
18 it up. In order for us to move forward on the
19 Weldon Spring site we will need a petition
20 submitted.

21 The next step in the SEC petition process, as
22 you see here on this slide, is that the
23 petition itself must meet the criteria that's
24 outline in our regulation. And you can find
25 that criteria in Section 83.7 through 83.9.

1 Mallinckrodt qualified on November 24th, 2004,
2 and so you can see that there was a period of
3 time where we worked with the petitioner to
4 make sure that the petitioner was satisfied and
5 we were satisfied with not only the contents of
6 the petition, but all the supporting
7 information that was necessary to qualify it.
8 The next step that we achieved then was to
9 notify all the petitioners and the public --
10 the petitioners were notified by a letter and
11 the public is notified by a *Federal Register*
12 notice. This is a requirement in our rule.
13 Mallinckrodt qualification notice was published
14 in the *Federal Register* on December 20th, 2004.
15 Next in our process, NIOSH -- once a petition
16 is qualified, NIOSH must evaluate that petition
17 using the guidelines and -- that are spelled
18 out in our rule at Section 83.13, and then we
19 submit a summary of findings on that particular
20 petition in an evaluation report, which you
21 have before you. The summary of the evaluation
22 report is also published in the *Federal*
23 *Register* notice, and you can see the subsequent
24 dates of action in this regard for this step.
25 Now let me move into -- and if the Board wants

1 to talk a little more later about process and
2 where we go next, we can get back to that after
3 -- after I get through here, but I'd like to
4 jump now into a little bit of where Lew took
5 you a moment ago on roles and responsibilities
6 of the Advisory Board.

7 Here again, the Advisory Board's authority is
8 based in the statute, Energy Employees
9 Occupational Illness Compensation Program Act,
10 and it's also codified in our regulation 42 CFR
11 part 83. And your main role in this SEC
12 petition process is to provide a deliberation
13 and a review, if you will, of our evaluation
14 report and summary findings, and provide a
15 report of your own to the Secretary of Health
16 and Human Services.

17 Within those responsibilities in providing that
18 report to the Secretary there are some specific
19 things that you must address, and you have some
20 options available to you as a Board. You can
21 consider the evaluation report that we've done
22 and decide that you need additional
23 information, and you can seek that out before
24 you make a report to the Secretary.

25 The Board may also request us at NIOSH to

1 follow up on information or issues that you
2 identify that may not have been fully explored
3 or clearly defined and understood in our
4 evaluation report.

5 Then you're to develop your own report and send
6 it to the Secretary of HHS with your
7 recommendations. And I will remind you here on
8 what your report is to contain, and again this
9 is located in our rule and you can find it
10 under the section that Dr. Wade read to you.
11 Essentially you're to provide an identification
12 and inclusion of the relevant petitions. If we
13 have more than one petition, that's what you
14 would be speaking to here, how many petitions
15 were actually involved. That needs to go along
16 with your report.

17 A recommendation that also defines the class as
18 you see it. Maybe it'll be in concert with the
19 definition that we provided, maybe it will be
20 slightly different based upon your deliberation
21 today.

22 Next you should also provide a recommendation
23 to the Secretary as to whether or not a class
24 should be added. And you are to, in your
25 report, provide a summary of your own findings

1 with regard to the relevant criteria that's
2 outlined under Section 83.13 in our rule.
3 And essentially what that is is that is the
4 same set of criteria that we at NIOSH have to
5 use to provide you an evaluation report, and
6 I'll just briefly touch on that: Determine
7 whether or not it is feasible to reconstruct
8 doses with sufficient accuracy -- that's one
9 aspect that you must address; secondly, to
10 provide a class definition, as noted earlier;
11 and thirdly, if you determine that it's not
12 feasible to reconstruct doses with sufficient
13 accuracy, you're to address whether or not
14 health has been endangered for the particular
15 class.

16 You can also include in your report information
17 provided by the petitioners, information that
18 you hear from the general public at large from
19 this meeting, and any other deliberations that
20 you might have as a Board.

21 I think this is the last slide on your
22 responsibilities, and it's just a reminder that
23 we all must protect the privacy of individuals,
24 even in this petitioning process. It's one
25 thing for the petitioners to divulge their

1 identity, but until they do so we're required
2 to protect that identity under the Privacy Act.
3 Let me speak a little bit now about the
4 evaluation process and what we did in the
5 Office of Compensation Analysis and Support at
6 NIOSH. I mentioned earlier that this whole
7 process is governed by the statute and by our
8 rule, and the statute presents us with a two-
9 pronged test, if you will.

10 And under this statute and under our regulation
11 NIOSH must establish whether or not it has
12 access to sufficient information to estimate
13 either the maximum radiation dose that could
14 have been incurred by workers in the class
15 under plausible circumstances, or by any -- or
16 we must be able to estimate the radiation dose
17 of members of the class with more -- more
18 precisely than using a maximum estimate.

19 Secondly, we have to address -- if we find that
20 we cannot do dose reconstructions with
21 sufficient accuracy, we must also address this
22 health endangerment criteria, which is the
23 second prong of the two-pronged test. And in
24 that we must address whether or not an incident
25 happened or could have occurred at the site

1 where -- in our mind we're talking about a
2 criticality type incident, a very high, acute
3 exposure that may not have been captured or
4 characterized in the monitoring data
5 adequately. If we don't have that, then we use
6 a default determination of 250 days. This is
7 one work year, and that is used for chronic
8 exposure.

9 We can also -- I must note here that you can
10 also aggregate days across classes that have
11 been added to the Special Exposure Cohort. And
12 by example there, if we -- if we've placed a
13 class for Mallinckrodt into the Special
14 Exposure Cohort, and an individual who worked
15 at Mallinckrodt let's say only had 100 days.
16 But they also worked let's say at Paducah,
17 which I think sometimes that happened, and they
18 spent 150 days at Paducah during the time frame
19 that Paducah's class exists, then they can
20 aggregate those days for the two sites and be a
21 member of the Special Exposure Cohort.

22 To continue how we evaluated the particular
23 petition at hand, we examined all available
24 data and information that was obtained through
25 our site profile development. We looked at

1 related facilities. We looked at the dose
2 reconstructions that have been completed. We
3 examined the interviews that have been
4 conducted. We examined the petition
5 information and materials that were supplied to
6 us by the petitioners.
7 We're also required by our rule to determine
8 the completeness of our data search and
9 examination, how exhaustive did we look for
10 this kind of information and data, and so we
11 have to address that.
12 We are required also to evaluate the
13 sufficiency of the data by looking at the
14 hierarchical data that is spelled out in our
15 rule on dose reconstructions. This is the
16 health physics data. And that rule is 42 CFR
17 part 83, and you can find that -- that listing
18 of hierarchical data under Section 83.14, and
19 then in Section 83.15 you'll find an
20 explanation of how we go about evaluating the
21 sufficiency of data for dose reconstruction
22 purposes.
23 We must also evaluate the issues of data
24 reliability as brought forward in this
25 particular petition. How reliable is the data

1 that we have before us, and so we have to
2 examine that.

3 And then of course, as I mentioned many times
4 before, we have to evaluate whether health was
5 endangered or not for the particular class
6 where we've determined that we cannot do dose
7 reconstructions with sufficient accuracy.

8 Okay. Let me -- that's the evaluation section
9 of the presentation, and now I'm going to move
10 into a summary of our evaluation for the
11 Mallinckrodt petition.

12 We present to you two reports today that
13 address three classes of employees at
14 Mallinckrodt, and the three classes are defined
15 by these time frames as you see on the screen:
16 1942 to 1945, 1946 to 1948, and 1949 to 1957.
17 And we find distinguishing characteristics
18 about these three particular time frames and
19 representative classes, and I'll speak about
20 those now.

21 For 1942 to 1945 -- if you were here this
22 morning and you heard Sanford Cohen's
23 presentation of their review of the
24 Mallinckrodt site profile, you will -- you will
25 recognize some of the limitations that I'm

1 about to speak to here. Radiation measurements
2 and evaluations of workplace dust exposure were
3 not well-characterized, and they were only
4 performed on an area-wide and a very episodic
5 basis during this particular time frame. That
6 certainly is a limitation.

7 It's also a limitation for this time frame that
8 we don't have good gamma measurement data. We
9 have no urinalysis data, and there are no film
10 badge data prior to December of 1945.

11 With regard to the time period and the class
12 for 1946 to 1957, we have individual dosimetry
13 data and it's mainly provided and originated by
14 characterizing workers who were in the highest
15 potentially exposed jobs. And that also
16 occurred for the same type of individuals, the
17 same type of monitoring practice for later
18 years.

19 We have external dosimetry that began in late
20 1945, urinalysis that begin in 1947, breath
21 radon data that began in 1945, area radon
22 sampling that began in 1946 and went through
23 1957, and we have limited dust monitoring data
24 beginning in 1943 and it gets better as we go
25 through time.

1 Let me speak now to the feasibility of dose
2 reconstructions for these time periods. For
3 1942 to 1945 in Plants 1, 2 and 4 we questioned
4 the feasibility of doing dose reconstructions
5 for that time frame. We don't think that it is
6 feasible with sufficient accuracy. That is
7 because we lack sufficient information to
8 estimate the internal dose. There is no
9 urinalysis data, as I mentioned. There was a
10 lot of manual handling and transfer of very
11 dusty materials in this process, in this
12 operation, without ventilation, without
13 workplace monitoring practices or controls to
14 minimize and limit exposure. Whole body and
15 lung counts were rare, if ever conducted.
16 There was no dust sampling program of any note
17 that we can identify. And of course no film
18 badge data prior to December, 1945.

19 For the feasibility of dose reconstructions for
20 the time period of 1942 to 1945 in Plants 1, 2
21 and 4 -- this is a continuation -- because we
22 lack enough information about source term, we
23 believe it's very difficult, if not impossible,
24 to reconstruct doses for this time frame.
25 Again, radon exposure presents another problem

1 for us in that source term information is not
2 available. We don't know the quantity of
3 material that moved through the process in
4 those years. And we cannot distinguish between
5 job categories or functions of jobs between
6 workers who would have and would not have been
7 exposed to the radioactive dust, as well as the
8 radon.

9 Let me talk specifically now about 1946 to
10 1948. For 19-- for those earlier years we've
11 identified that we cannot do dose
12 reconstructions with sufficient accuracy, and
13 now for these two-year time frame we're
14 concerned, as well. We have limited workplace
15 monitoring information again. There's no
16 recognized formal health physics program or
17 monitoring program at this time frame. The
18 diversity of processes involving the source
19 terms at Mallinckrodt limit our ability to use
20 the information independently of the monitoring
21 data and to estimate maximum doses for
22 employees.

23 Some worker monitoring data is unreliable, and
24 this is especially focused on the internal
25 exposure to radioactive dust. And documents

1 exist that have been provided by the petitioner
2 and we were aware of that raise questions and
3 concerns regarding the integrity of the
4 handling and the reporting of the monitoring
5 information.

6 Feasibility for the time frame of 1949 to 1957.
7 Beginning in 1949 Mallinckrodt established an
8 operational program for monitoring of
9 employees, as well as work areas -- a formal
10 program. The monitoring was conducted under
11 the oversight of the Atomic Energy's --
12 Commission's Health and Safety Laboratory out
13 of New York. And there is sufficient
14 information from the various monitoring
15 activities, together with the information on
16 the source term and the processes that were
17 used at the time, that we can validate and
18 cross-compare the different datasets that we
19 have. And in your report you can read through
20 the report and see the variety of dose
21 information and different kinds of monitoring
22 data that we have to use in that regard.
23 Continuing on with the feasibility for '49 to
24 '57, the petitioners have provided us with
25 documentation that raises concerns about the

1 monitoring practices in the early years, and
2 NIOSH questions whether the data integrity
3 issue outweighs the scientific and the
4 technical information that we have at hand.
5 NIOSH has not resolved how to weigh the
6 scientific and the technical evidence which
7 supports the feasibility to do dose
8 reconstruction against those concerns that are
9 raised about the integrity of the monitoring
10 data. So NIOSH is seeking the advice of this
11 Advisory Board on how to assess weight of the
12 evidence in this regard.

13 Now the report summary findings, and
14 essentially for health endangerment for all
15 three classes we have identified that health
16 was endangered because of the type of process
17 and the type of radioactive material that was
18 employed in that process. We have not
19 identified nor did the petitioner provide any
20 documentation that incidents occurred,
21 incidents of a criticality nature occurred, so
22 our health endangerment is centered on chronic
23 exposures that occurred over the course of
24 time. And so we would say that it would take
25 250 days to qualify to be a member of the

1 class.

2 Proposed class definitions. Our proposed class
3 definitions are the following: All DOE, DOE
4 contractors or subcontractors or Atomic Weapons
5 employees who worked at the Uranium Division of
6 Mallinckrodt Destrehan Street facility during
7 the period of 1942 to 1945, one class; all DOE
8 and DOE contractors or subcontractors or AWE
9 employees who worked at the Uranium Division at
10 the Mallinckrodt Destrehan Street during the
11 period of 1946 to 1948; and all DOE or DOE
12 contractors or subcontractors and AWE employees
13 who worked at the Uranium Division of
14 Mallinckrodt during 1949 through 1957.

15 And for this latter class we're seeking the
16 advice of the Board concerning data -- matters
17 of data reliability.

18 To sum up, we do not find it feasible to do
19 dose reconstructions for the class from 1942 to
20 1945. We find that their health was
21 endangered.

22 We find that the period from 1946 to 1948 we do
23 not have the ability to provide sufficient dose
24 reconstructions, and their health was
25 endangered for that particular class.

1 For the period 1949 to 1957 we're seeking the
2 Board's advice before a determination is made
3 about feasibility on dose reconstruction, and
4 we also find that for that class health was
5 endangered.

6 Thank you. I'll take any questions if I can.
7 I would like to -- before I take questions, I
8 would like to note that LaVon Rutherford, who
9 is the lead technical evaluator for this
10 particular -- for Mallinckrodt and Dan
11 Stempfley from our contractor are here in the
12 audience, and they may help me out if I get
13 into a technical question I can't field.

14 **DR. ZIEMER:** Larry, in order to allow us to
15 proceed with particularly the public comment
16 period, I think it'll be important for us to
17 save our questions till the Board discussion
18 period. We have been asked by the Department
19 of Labor for the opportunity to make a few
20 comments following your presentation since
21 Department of Labor is a major player in this
22 whole process. And for that purpose the Chair
23 will recognize Shelby Hallmark from the
24 Department of Labor to make a few remarks, and
25 then we will move to the public comment

1 session.

2 Jim?

3 **DR. MELIUS:** Could I ask just one quick
4 question of Larry?

5 **DR. ZIEMER:** Sure.

6 **DR. MELIUS:** Yeah, just -- it has to do with
7 some of the documents that we've got -- at
8 least some that I want to make sure I
9 understand. For your evaluation report
10 regarding the feasibility and the -- the '49 to
11 '57 period, that is based on this -- some of
12 the work contained in the draft revision of the
13 site profile -- Mallinckrodt site profile?

14 **MR. ELLIOTT:** Yes, it is.

15 **DR. MELIUS:** Okay, so --

16 **MR. ELLIOTT:** And in this document, the report
17 that we give you, we cited the information that
18 we were using from the site profile. In other
19 words, we quoted it from the site profile. I
20 know that Mr. Griffon asked for a copy of the
21 draft site profile. We provided that to the
22 Board, as well, but you really didn't need it.
23 I mean it elaborates more, but the information
24 that we were using in this evaluation report
25 from that draft site profile is fully phrased

1 in the -- in the report itself.

2 **DR. MELIUS:** Okay, thanks. That's --

3 **DR. ZIEMER:** Thank you.

4 **MR. HALLMARK:** Dr. Ziemer --

5 **DR. ZIEMER:** Shelby Hallmark.

6 **MR. HALLMARK:** Yeah, Shelby Hallmark. I'd like
7 to, if I may, defer my comments until after the
8 petitioners have made their comments. I think
9 it'd be --

10 **DR. ZIEMER:** Fine.

11 **MR. HALLMARK:** -- more appropriate.

12 **PETITIONERS PRESENTATION OF COMMENTS ON REPORT**
13 **AND PUBLIC COMMENT**

14 **DR. ZIEMER:** Sure. Now we have the opportunity
15 to hear from the petitioners, as well as
16 members of the public. I think we'll begin
17 with Denise Brock, who represents the
18 petitioners, and then others can follow.
19 We ask -- and I have a list of individuals who
20 have signed up to address the group. And for
21 this particular session we would ask that those
22 who speak confine themselves to the
23 Mallinckrodt situation. I can't always tell
24 from the sign-up list, for example, if people
25 are here from other sites or have -- or wish to

1 speak on other issues, but we do want to
2 reserve this particular session to those folks
3 specifically from Mallinckrodt and who have
4 comments relative to the petition itself.
5 So Denise, pleased to have you here today, and
6 please proceed.

7 **MS. BROCK:** Well, I'd first like to start and
8 say that I have bronchitis and I'm having
9 difficulty breathing, and I'm coughing a lot so
10 I hope you will all bear with me because I'm
11 sure when I cough it's going to be rather loud.
12 First of all, I would like to thank the
13 Advisory Board for meeting in St. Louis and
14 affording us time on your busy agenda. We
15 would also like to thank Dr. John Howard, Dr.
16 Lew Wade and the OCAS staff, as well as Senator
17 Kit Bond -- thank you very much, Senator Kit
18 Bond and the members of the Missouri
19 Congressional Delegation who have been so
20 helpful in this SEC process. Welcome to the
21 many claimants and members of the public who
22 are here today.

23 For those of you who are not familiar with me
24 or the reason that I'm involved in this, I'd
25 like to go over a little bit of background. My

1 father was a Mallinckrodt employee. This was
2 before I was born. He worked from 1945 until
3 1958. And from the point that I knew my father
4 or my beginning years, my father was terminally
5 ill. That affected many things in our life.
6 Not just my father himself, but our entire
7 family.

8 His illness, which began as a lung cancer in
9 1978 and then had spread to his liver, brain
10 and eventually leukemia, which I hadn't even
11 found out until years later, was absolutely
12 catastrophic. Not just emotionally, but
13 physically, financially -- anything imaginable.
14 We lost our home. We lost vehicles.
15 Everything you can imagine happened. But he
16 never complained.

17 My mother worked her entire life, and you just
18 don't think much about that because it's just
19 something that happened. They never
20 complained. They never poor-mouthed. And I
21 guess if that's all you know, that's all you
22 know.

23 I had some personal things happen to me as a
24 child because of his illness or associated
25 maybe with that illness. For example, we in

1 the beginning had went to a private school or a
2 Catholic school -- and maybe some of you are
3 familiar with that, maybe not. But I knew he
4 was terminally ill and I knew that the
5 household was somewhat chaotic. We spent many
6 nights, many holidays, many days in hospital
7 rooms. Of course my mother had to bounce back
8 and forth between a terminally ill husband, a
9 job or two and two small children.
10 About the age of seven -- this is pretty
11 personal -- I started to urinate blood. I
12 never wanted to say anything for several
13 reasons. One, I was just a goofy little kid,
14 and I think in the back of my mind I thought he
15 was dying, maybe I caught something, maybe I
16 would die, too. I also didn't want to upset
17 the household any further. And then of course
18 the Catholic part kicked in and I thought maybe
19 I did something wrong to cause this bleeding.
20 So I used to pray a lot, and life went on.
21 And eventually my father passed away in my
22 brother's arms while we were still in high
23 school. My mother continued to work her whole
24 life.
25 I also have an aunt -- my favorite aunt,

1 actually, which is my mother's sister -- who is
2 here today. Her name is Helen Lynch. Her
3 children are my closest cousins, and my cousins
4 are -- a couple of my cousins are here today.
5 My uncle also worked at that facility and was
6 involved in a terrible incident. He was burned
7 terribly. They are here today.

8 Just ironically enough, I think God works in
9 mysterious ways, in the year 2000 I happened to
10 hear about this law and I thought wow, sounded
11 pretty simple. My mom was 78 at the time,
12 working full time to make ends meet. She was
13 getting tired. Her health was failing. And I
14 thought wow, \$150,000, that would sure be
15 helpful to her if a refrigerator broke down, or
16 maybe she could actually pay a pharmaceutical
17 bill and her house payment. I thought it would
18 be quite helpful, so we filed a claim. And
19 without going into all the dramatics of that,
20 we have been quite successful. Her claim had
21 been adjudicated positively, so in other words,
22 my mother has been compensated and I'm thrilled
23 with that, believe me.

24 I have a co-petitioner. Her name's Patricia
25 Almon* -- where is she? There she is -- don't

1 leave me. She is also a survivor and she has
2 also received benefits under this program, and
3 she will speak later in reference to her
4 experiences as a survivor and to her
5 experiences in this program.
6 You know, we -- we continue this fight, even
7 after being compensated, and a lot of people
8 don't understand that. But we do this because
9 of our experiences and our passion for these
10 claimants, and actually love for these
11 claimants. I have stood by many bedsides
12 watching these people die while waiting for
13 their compensation, and I mean many. And we're
14 not here beseeching you for compensation for
15 ourselves. We are here on behalf of those
16 workers and survivors who need an advocate and
17 cannot fathom the complexity of this program.
18 However, we are simple working class people.
19 We do not have degrees. We cannot be called
20 "Doctor" when addressed by others in this
21 formal forum. We do not have science advisors,
22 consultants or technical qualifications. But
23 we do know how to read documents and file FOIA
24 requests, or Freedom of Information Act
25 requests. We do know how to interview workers.

1 Our case today would be immeasurably
2 strengthened if we had resources for technical
3 advisors. We would urge NIOSH to consider
4 small technical assistance grants to
5 universities or non-profits which could help
6 petitioners level the playing field.
7 And what I mean by that is I am just an
8 everyday person. I didn't go to school for
9 this. I just have a love for these claimants.
10 And I just threw myself into this with the help
11 of my family and Board members. And when I
12 filed this petition -- I remember when I
13 originally found this -- this provision, this
14 SEC provision, I thought what the heck, why
15 don't I try that, and I did it. But believe
16 me, it is a -- it is a very hard job. I had to
17 put all of this together. I wrote the petition
18 myself, and I'm sure that it was nowhere near
19 as eloquent as a university might do. I did
20 the best I could. But in doing so, I left
21 myself in the line of fire to kind of be picked
22 apart. But that's okay because I was ready for
23 that. I just did the best I could.
24 So I'll say no more about that other than I
25 just think it would be helpful for future SEC

1 petitioners to maybe have some help because
2 most of us are not doctors or have degrees in
3 this area.

4 I would like to give you a little bit of
5 background, for those of you that don't know
6 the Mallinckrodt downtown facility. It was not
7 designed for manufacturing and processing
8 uranium. One of the uranium facilities was a
9 sash and door plant. The other was a chemical
10 processing plant or pharmaceutical. None of
11 these were expected to operate for more than a
12 few months. Mallinckrodt ran from 1942 until
13 1957 downtown.

14 This was a highly secretive operation.
15 According to a memo by a Mallinckrodt health
16 and safety director, he wrote -- and I quote --
17 In 1949 the Mallinckrodt operations were still
18 highly classified. Before 1947 only a few
19 technical and management employees knew
20 officially the identity of the materials being
21 processed -- end quote.

22 The uranium division processed Belgian Congo
23 pitchblende. During this time the United
24 States government was willing to purchase any
25 ore that was one-tenth of one percent pure

1 uranium. This Belgian Congo pitchblende was so
2 hot, radioactively hot, it was 60 to 65 percent
3 pure.

4 Now with this came high levels of radium. U-
5 235, which is very rare in nature, it's about
6 0.7 percent, I believe. A U-238 decay chain
7 progeny includium (sic) thorium 230, ionium,
8 actinium 227 and protactinium 231. And this
9 plant, as our wonderful Jim Neton had spoke of
10 earlier and others have described, was a
11 sloppy, dirty operation.

12 There was also a 1950 memo by Merril Eisenbud,
13 who was the director of the AEC's Health and
14 Safety Laboratory, regarding Mallinckrodt
15 employees during the period of July, 1942 to
16 October, 1949. He stated -- and I quote --
17 Early in 1947 the New York Operation Office
18 evaluated the potential hazards in these plants
19 and, after finding them to be considerable,
20 recommend the necessary corrective actions --
21 end quote. Eisenbud continued -- quote -- It
22 was recognized that, pending the elimination of
23 excessive exposures, here was a unique
24 opportunity to conduct clinical studies on a
25 fairly large-sized population whose radiation

1 exposure for several years had been
2 considerably in excess of any group for which
3 data are available.

4 The AEC allowed this operation to continue with
5 unacceptably high levels, and it seems as
6 though the Atomic Energy Commission saw these
7 high levels of work force exposure as an
8 opportunity for human experiment rather than a
9 moral outrage. The AEC and Mallinckrodt
10 managed -- management both saw this as a
11 liability of concern.

12 A memo of January 31st, 1951 from Merrill
13 Eisenbud to W. E. Kelley* states -- and I quote
14 -- Eisenbud's memo reveals that 17 workers had
15 dose rates of 1,000 rem to the lung. Eisenbud
16 reported that the body parts from Mallinckrodt
17 workers were exploited as a resource for study,
18 including two cadavers and a worker's knee.
19 Bone and cartilage were analyzed for uranium
20 uptakes.

21 Mallinckrodt's safety manager, Mont Mason,
22 revealed some of the liability concerns and
23 confronted his management in a 10/3/73 memo to
24 Dr. Thomas Mancuso. A dust evaluation was done
25 in 1949 by Mallinckrodt which resulted in the

1 removal of 34 employees from further exposure.
2 Mason noticed that this was -- quote -- a
3 potentially explosive issue. In light of
4 growing employee awareness of the presence of
5 radioactive materials, he wrote -- and I quote
6 -- Carefully drafted explanations and responses
7 were prepared in advance of announcing the
8 transfer of people. Managers, supervisors,
9 medical staff and health department staff were
10 all coached and -- and coordinated -- end
11 quote.

12 Mont Mason reported that there was a
13 significant liability concern which affected
14 how Mallinckrodt recorded its data on dust
15 studies. Mason's memo states -- and I quote --
16 As part of the caution and on upon advice --
17 I'm sorry, let me repeat that. I quote -- As
18 part of the caution and upon advice of
19 attorney, a formal report was never prepared on
20 this study. Thus there was no document to
21 subpoena, only lists of names with numbers and
22 work sheets. There was no lengthy description
23 for the basis of calculations to be pulled
24 apart by the scientific community, with the
25 possibility that such controversy would

1 undermine employee confidence in the company
2 safety measure -- end quote.

3 In this liability-averse environment, the
4 company's own health and safety director cast
5 serious doubts on the reliability of
6 Mallinckrodt's dust study. This undermines the
7 very basis for the use of Mallinckrodt records
8 in dose reconstruction.

9 Now to the petition analysis we're responding
10 to NIOSH's slicing and dicing of our SEC
11 petition into three parts. As you noted, it is
12 being divided, one class for 1942 to 1945, one
13 class for '46 to '48, and a third class from
14 1949 to '57. This division is questionable,
15 and the politics are unworkable. This SEC
16 package looks like a compromise between those
17 who believe there is no dose that cannot be
18 reconstructed and those who recognize the
19 limited amount and questionable validity of the
20 data, the inexcusable circumstances under which
21 these workers labored, and have read carefully
22 Congressional intent.

23 By breaking up this petition into sub-classes
24 as proposed by NIOSH there are inequities
25 created. For example, workers first employed

1 during the SEC or an SEC with fewer than 250
2 days, and then their employment rolls over into
3 the period when NIOSH says it can reconstruct
4 dose. I have to question, how do you estimate
5 the dose rates for a claimant in the SEC
6 period? We already know the maximum plausible
7 dose cannot be reconstructed, so how does NIOSH
8 make this calculation? Splitting workers
9 between cohorts and non-cohorts as proposed
10 here is unworkable.

11 As you can see -- I'm sorry, there are -- there
12 are equity questions, as well. For a worker
13 first employed in mid-1948, for example, for
14 180 days and then keeps working for another
15 five years would not be in the SEC. But
16 someone employed 250 days and another five
17 years, with the same work history and job
18 exposure, will meet that SEC criteria. As you
19 can see, breaking up this petition into sub-
20 classes creates brand new problems.

21 So I welcome NIOSH back to St. Louis to explain
22 to a room full of claimants, dying workers, who
23 would be in or out of this SEC once the sub-
24 parts get Congressional review. I hope that
25 they can explain how they will reconstruct dose

1 for time periods when workers were still
2 employed in the SEC time frames.
3 What follows is our best effort to work with
4 the SEC rule and its implementing procedures.
5 With respect to Petition Number 00012-1
6 covering 1942 to 1945, NIOSH recommends
7 approval of SEC. We agree with the NIOSH
8 report that it isn't feasible to estimate dose
9 from 1942 to 1945.
10 NIOSH states on page 15 of its report -- and I
11 quote -- Workers were not individually
12 monitored for external dose prior to December
13 of 1945, except for a limited pilot program
14 starting in June of 1945. NIOSH has not
15 obtained any monitoring results from the pilot
16 program. We are puzzled how NIOSH will be able
17 to reconstruct external dose without person
18 dosimetry badges in this period from 1942 to
19 1945, although NIOSH's SEC report suggests that
20 it can somehow come up with a maximum dose.
21 We don't know if the term I quote, maximum
22 dose, in this SEC report is the same term as
23 maximal -- I'm sorry, maximum plausible dose in
24 the dose reconstruction rule since the NIOSH
25 SEC report does not use precisely the same

1 language that is applied in the dose
2 reconstruction rule for maximizing dose.
3 Moreover, it is unclear if the maximum dose
4 that NIOSH asserts can be estimated will in
5 fact ever be used for actually compensating
6 non-SEC cases such as skin cancer. If NIOSH is
7 unprepared to use the maximum dose for
8 compensating workers in the absence of adequate
9 dose information, what is the value in being
10 able to say that you can estimate a maximum
11 dose? I have been to several meetings of this
12 Board where we get different answers to this
13 question, and we hope that the Board will probe
14 this issue to get clarity.

15 Now with respect to the health endangerment
16 section, first let us recall a few facts about
17 this site. Workers were exposed to alpha dust
18 concentrations between 1943 to '47 at 50 to 100
19 times maximum allowable concentration, also
20 called MAC, and some short-term concentration
21 of 1,000 times MAC. This morning we heard from
22 SC&A, Tom Bell, that these numbers could be
23 even higher.

24 This class definition is based on the finding
25 of health endangerment tied to a recommended

1 250 days of employment. Given that, number
2 one, some workers inhaled dust level of 1,000
3 MAC or higher during events such as common
4 explosions during the magnesium reduction
5 process; number two, Merril Eisenbud documented
6 lung doses of 1,000 rem; and number three, we
7 know large numbers of workers received
8 radiation dose in excess of the maximum
9 permissible body burden, it is reasonable for
10 NIOSH to look at a shorter time frame than 250
11 days because workers were exposed during
12 discrete, exceptionally high exposure events
13 where there was a complete loss of containment
14 or controls.
15 NIOSH regulations permit shorter durations than
16 250 days if there are discrete events with
17 these exceptionally high levels of exposure.
18 We would recommend 60 to 125 days, and ask the
19 Board to consider this. As a minor technical
20 matter, NIOSH does not allow for days worked in
21 another SEC to be aggregated as part of this
22 class to meet the minimum employment duration.
23 This is at odds with NIOSH/OCAS procedure PR-
24 004, section 4.12.4.1.1 which requires that
25 time worked can be aggregated into multiple

1 special cohorts. We do note that NIOSH did
2 comply with this requirement in the SEC
3 petition 12-2 for the 1946 to 1948 time period.
4 And for that time period 1946 to '48, we do
5 agree with NIOSH that the internal radiation
6 dose cannot estimate -- cannot be estimated
7 with sufficient accuracy for that period, 1946
8 to '48. We note that there's no breath rate on
9 monitoring from 1946 to '47, and scant data in
10 1948. There is no internal dose data for 1946
11 and 1947, and internal monitoring did not
12 commence -- or did commence in 1948. Only half
13 of the claimants report internal dose
14 measurements, and SC&A's reviews raises
15 questions about the viability of back
16 extrapolation in this case.
17 There is no isotope-specific monitoring for key
18 radionuclides which were present in the
19 raffinates and pack a big punch. This is
20 including actinium 227, protactinium 231,
21 thorium 230. Absent this monitoring data,
22 we're dubious that a credible dose can be
23 reconstructed.
24 We attended a workshop held by SC&A in 2004
25 with site experts. This revealed many workers

1 had received severe acid burns from HF and
2 nitric acid. Some severe chemical burns
3 required hospital treatment. Many sought
4 assistance from dispensary, and in one case an
5 HF release resulted in damage to the employees'
6 cars. A massive repainting campaign was
7 undertaken, and there was even damage to Mr.
8 Mallinckrodt's personal car.

9 We arranged for this workshop with SC&A to be
10 taped, over the objections, we are told, by
11 NIOSH. And I would be pleased to make this
12 tape available to the Board or to NIOSH,
13 because you will see from this session that
14 open wounds were prevalent enough at the
15 downtown plant to be investigated as a common
16 pathway for radiation uptakes. And I have
17 reviewed -- or interviewed numerous workers
18 with these same stories. They described
19 excruciatingly painful acid burns from HF, and
20 this is not an isolated problem. It's not an
21 anomaly. The failure to address this should be
22 addressed in the SEC report and I do hope that
23 the Board will consider this factor.

24 On the issue of extrapolation, the 1950
25 Eisenbud study of cumulative exposures from

1 1942 to 1949 indicated that exposures prior to
2 when dust data first became available -- and I
3 quote -- may have been moderately more severe,
4 unquote, than in the later periods. We are
5 unclear how one can credibly quantify the term
6 "moderately more severe" in a back
7 extrapolation. It defies common sense.
8 We are also concerned that back extrapolation
9 will not yield reliable internal dose estimates
10 for the 1946 to 1947 time periods because of
11 spotty data on job changes, according to a memo
12 reviewing the Mallinckrodt records issued by Al
13 Becker*, and knowing job changes after initial
14 employment's so important to using surrogate
15 data.
16 Finally, as NIOSH notes and Mont Mason's memo
17 indicates, there is substantial reason to
18 question the validity of the Mallinckrodt 1948
19 dust study and data -- I'm sorry -- dust study
20 data due to the company's deep concerns about
21 liability.
22 On Monday Senator Bond underscored this point
23 very effectively, and I will not restate his
24 arguments. This is such an important
25 consideration and one which takes this SEC

1 decision well over the top. However, in our
2 view, a conclusion on the restructability (sic)
3 -- reconstructability of dose can be made even
4 without making a finding on the dubious
5 credibility of the Mallinckrodt data.
6 For these reasons we concur with the NIOSH
7 finding that it is not feasible to estimate
8 dose with sufficient accuracy. And with
9 respect to the definition of class, the SEC for
10 '42 to '45 time period and the SEC for '46 to
11 '48 time period at a minimum should be combined
12 into a single cohort. If the Board concurs --
13 if the Board concurs with NIOSH's evaluation
14 reports this will simplify the process of
15 determining covered time periods and simplify
16 claimant understanding.
17 Due to the discrete high exposure events, and
18 for the same reasons as stated above, we
19 believe the time period should be less than
20 this 250 days. Again, instead, 60 to 125 days
21 would be appropriate.
22 For the 1949 and '57 we respectfully disagree
23 with the NIOSH conclusion that it is feasible
24 to estimate dose with sufficient accuracy in
25 the 1949-1957 time period. First, the

1 credibility of the data needs to be assessed
2 for the post-1948 time period. NIOSH's
3 position is that HASL did its own monitoring,
4 and this means that there was verification of
5 the Mallinckrodt data that was not in place
6 prior to 1949.

7 We are unpersuaded that the 1948 data is
8 necessarily more credible than Mallinckrodt
9 view. SCA's audit report notes that there were
10 dramatically different results from monitoring
11 by MCW and HASL of the same exposures. The
12 HASL data is higher than Mallinckrodt's in 15
13 cases and lower than Mallinckrodt's in 12
14 cases, according to a chart in the SCA audit
15 report, so we cannot answer the questions of
16 who has reliable data or whether it's possible
17 that neither Mallinckrodt nor HASL are reliable
18 to reconstruct dose. This does not change the
19 fact that there is evidence to doubt the
20 credibility of Mallinckrodt data due to their
21 liability concerns.

22 Second, there is no isotope-specific monitoring
23 for raffinates. There was frequent exposure in
24 Plant 6 to raffinates whose pathways for
25 uptakes are not well-understood. The

1 raffinates were de-watered in a Sperry press
2 and contained actinium 227, protactinium 231,
3 thorium 230, plus radium. Raffinates
4 apparently were acidic and were neutralized
5 with lime and a cake was created. This mixture
6 likely created an exothermic reaction. The
7 temperature of the raffinates is not known.
8 However, possible inhalation pathways could
9 include aerosolized vapors, mist, liquids
10 oozing from the filter press and dust from
11 loading caked materials off the filter press
12 into the drums.

13 Skin dose is also likely. Durations of
14 raffinate exposure are not well-quantified,
15 although NIOSH seems to think these were of
16 relatively short duration. There is no
17 isotope-specific urinalysis to quantify any
18 raffinate uptakes, and the burden of proof on
19 NIOSH is very high to establish internal dose,
20 and it is circumstances like this that are why
21 Congress created the Special Exposure Cohort.
22 Congress re-emphasized this point in the FY
23 2005 Omnibus Appropriations Report when it
24 urged NIOSH to grant SECs when individual
25 monitoring was not performed. Dose

1 consequences from exposure raffinates are
2 significant. Routine inhalation of even
3 milligram quantities of Sperry cake, one
4 milligram per month over a few years, has the
5 potential for significant internal radiation
6 doses, notably to the bone surfaces and lungs.
7 Thorium 227, the main decay product of actinium
8 227, is a potential concern for the lung dose,
9 as well.

10 Dose from the radionuclides has not been
11 evaluated in any documents we have seen, and
12 NIOSH has nothing in its Rev. 0 TBD to help
13 answers this -- to help answer this question
14 according to the section 5.2.6 of the SCA site
15 profile review. As noted above, the TBD nor
16 the SEC evaluation report address internal and
17 external radiation dose from open wound and
18 burns, which workers have testified --
19 testified were prevalent. Thus this is not a
20 trivial or nit-picking issue.

21 NIOSH concludes that there is sufficient
22 information from various monitoring activities,
23 coupled with information on radiological
24 sources and processes, to estimate dose. They
25 support this conclusion in the SEC report, page

1 32, by stating -- and I quote -- Since the
2 release of Rev. 0 of the site TBD, new
3 information and data have been retrieved that
4 provides additional site information to support
5 dose reconstruction. The TBD is under revision
6 to include this information. The evaluation
7 report is the result -- I'm sorry -- is the
8 result of the formal review of the Mallinckrodt
9 Destrehan site Street -- Street site, sorry --
10 unquote. This revised TBD is not available to
11 the petitioners, nor has it been issued, so how
12 can NIOSH issue its SEC report without having a
13 revised TBD? We understand that it's still
14 under review at NIOSH.
15 We learned just today that this revised TBD has
16 not been presented to the Board or reviewed in
17 its audit -- its audit contractor. We also
18 learned today that the revised TBD when
19 presented won't even address all of those
20 issues, and I think we heard that from Dr.
21 Neton.
22 Is there a rush to judgment to deny the 1949 to
23 1957 period in this SEC petition, or does NIOSH
24 think that it can sell this decision when the
25 factual basis for its conclusions remain

1 undisclosed? This program was created to
2 overcome the secrecy and mistrust created by
3 this government's conduct during the Cold War
4 era. We cannot respond to something we haven't
5 seen. And I hope you won't be offended, but
6 this feels a little bit like I gotcha.

7 In conclusion, we urge the Board to consider
8 the following actions: Number one, we ask that
9 you approve the cohort for 1942 to 1957, based
10 on the illability (sic) -- inability of NIOSH
11 to reconstruct dose with sufficient accuracy.
12 We concur with the views of Senator Bond.

13 If you cannot do that, we would urge the Board
14 to approve 1942 to 1948 as a single cohort with
15 a -- I'm sorry -- with a 60-day to 125-day time
16 frame for determining health endangerment
17 today, and evaluate the merits of an SEC in the
18 1949 to 1957 time frame, including the apparent
19 justifications contained in the revised TBD.

20 If this is the path you choose, we would
21 respectfully ask that the Board and its audit
22 contractor undertake a review to determine
23 whether this SEC report for the '49-'57 time
24 period is technically sound. After this has
25 been concluded, the Board can then deliberate

1 on the weight of evidence issues that NIOSH
2 wants the Board to evaluate.

3 And I'd like to also say that we have great
4 confidence in the work of SCA and would like
5 the Board to bring their technical skills to
6 bear on this 1949-'57 time period. And again,
7 I would just urge you to -- to give us that
8 full cohort. It seems the only way to remedy
9 this and finally give the -- the justice to
10 these workers that they truly deserve.

11 We talk about feasibility. I believe that when
12 Congress wrote this, the intent was, again, for
13 this to be expeditious. There are all sorts of
14 problems with this. You have all sorts of
15 situations that you will hear about from
16 further Mallinckrodt workers today, and I can
17 just thank you again for listening and again
18 ask you to please grant that full cohort.

19 At this time, though, I would like to ask
20 Debbie Dornfeld from Senator Talent's office to
21 come up and please read a statement from
22 Senator Talent.

23 **DR. ZIEMER:** Thank you. Debbie, would you
24 approach the mike, please?

25 And Denise, thank you very much for --

1 **MS. BROCK:** You're welcome.

2 **DR. ZIEMER:** -- the very eloquent presentation.

3 **MS. DORNFELD:** I'm Debbie Dornfeld from Senator
4 Jim Talent's staff. He regrets that he was
5 unable to attend the meetings. He's currently
6 in Washington 'cause Congress is in session
7 this week, but he did send a statement that I'd
8 like to read to everyone today.

9 (Reading) To the United Nuclear Weapons
10 Workers, thank you for all your efforts to get
11 Special Exposure Cohort status for Missouri
12 workers. Over the past two years I've heard
13 from many of these workers and their relatives
14 about their struggles to get the compensation
15 they deserve. I share their frustration. This
16 process has been too slow, and that has
17 discouraged a lot of people from even applying
18 for compensation under EEOICPA. As you all
19 know, Denise Brock has been a tremendous
20 advocate for this cause, and worked tirelessly
21 to help pass Senator Bond's amendment last
22 year. Thank you, Denise, for everything you
23 have done and for your continuing efforts.
24 Just like you, I am frustrated by NIOSH's delay
25 in recognizing that dose reconstruction is not

1 possible on every case and that workers from
2 Mallinckrodt's downtown facility and in Weldon
3 Spring should be included in the cohort. I was
4 pleased by NIOSH's announcement last week
5 regarding workers at the downtown facility
6 between 1942 and 1945, but so many workers
7 remain in limbo. I will continue working with
8 Senator Bond, Denise and other families of
9 Mallinckrodt workers. As the program continues
10 its transition to the Labor Department,
11 hopefully these cases can be dealt with fairly
12 and promptly so that people get the payments
13 they deserve in a timely manner. Sincerely,
14 Jim Talent, United States Senator.

15 Thank you.

16 **DR. ZIEMER:** Thank you. And Denise, do you
17 have others from the petitioning group who wish
18 to address --

19 **MS. BROCK:** I do --

20 **DR. ZIEMER:** Yes.

21 **MS. BROCK:** -- Dr. Ziemer. I actually have
22 Patricia Almon who would like to speak --

23 **DR. ZIEMER:** Thank you.

24 **MS. BROCK:** -- and we've got a couple of other
25 speakers we would like to have up.

1 **DR. ZIEMER:** Please proceed.

2 **MS. BROCK:** Thank you.

3 **MS. ALMON:** My name is Patricia Almon, as you
4 have heard, and my dad was Everett Powers, and
5 he worked for Mallinckrodt for 24 years. My
6 mother filed the original claim in 2001, but
7 started writing letters in the early '80's to
8 the President of the United States, to Edward
9 Mallinckrodt, to Dr. DuPree* and to ORA (sic)
10 about my father's illness. And believe me,
11 they knew where it came from.
12 Dad had multiple myeloma and skin cancer. The
13 myeloma caused stress fractures of the
14 vertebrae. His cancer was chemo-resistant, so
15 he suffered a lot of pain. While he was
16 fighting the multiple myeloma, he also had skin
17 cancers. He was bald and his entire scalp had
18 to be chemically peeled at least twice. This
19 is beyond painful. One of his nostrils was
20 completely gone from skin cancer, and half of
21 his upper and his lower lip.
22 He fell because of the weakness from the
23 fractures. Then he had to have brain surgery
24 to remove the clot that formed. This is like
25 recovering from a stroke. He had to relearn

1 the use of his arm, his hand, his legs and his
2 speech.

3 When my mother filed the claim she was 88 years
4 old and becoming confused. She put 1983 as the
5 diagnosis date, but I thought and my brother
6 thought that it was about 1980 that he had
7 become ill. Mom died in 2002, never having any
8 compensation from Mallinckrodt. She died as a
9 Medicaid patient. This money could have been a
10 lifesaver for her.

11 The DOL redid our claim, and it had to go back
12 through redose, and I will -- can talk more
13 about this in my public comment, because it's
14 quite lengthy. One of the Department of Labor
15 employees told me that all claims -- most
16 claims are sent back for dose reconstruction
17 for review, and this claim had an
18 underestimated greater than 50 percent
19 causation. This process stinks. It needs to
20 be revised and the SEC for all Mallinckrodt
21 years included so others don't have to fight
22 this untimely process. Thank you.

23 Could I call Dr. McKeel up to the microphone,
24 please?

25 **DR. ZIEMER:** Thank you. Dr. McKeel?

1 **DR. MCKEEL:** Good afternoon to the Board, and
2 thank you for allowing me to speak. The
3 comments I want to make today address a
4 perception on my part of a very serious problem
5 with the reliability of the Department of
6 Energy data about Mallinckrodt uranium division
7 workers.

8 The records in question are under the
9 stewardship of Oak Ridge Associated
10 Universities, or ORAU. As we all know, ORAU is
11 the major supplier of radiation exposure data
12 for dose reconstructions. Whether this can be
13 done accurately or at all for the MCW cohort as
14 a class is a topic of discussion at this
15 Advisory Board meeting. The topic is important
16 and highly relevant to Denise Brocks's (sic)
17 Special Exposure Cohort petition Number 12
18 being considered.

19 My observations support the very -- the very
20 serious allegations made yesterday by our
21 senior U.S. Senator from Missouri that
22 Mallinckrodt data has been destroyed, is
23 missing, and has been fraudulently stated as
24 zero instead of testing not done in government
25 reports. These strong statements have been

1 amply supported and corroborated by the
2 testimony of numerous former MCW workers. In
3 addition, your contractor, SC&A, must ask the
4 Board now for advice about the validity of the
5 data they have for Mallinckrodt workers for
6 1946-'57, a truly remarkable situation.
7 USDOE maintains an on-line comprehensive
8 epidemiologic data resource, acronym CEDR
9 database, that purports by personal
10 communication with ORAU senior investigators to
11 contain the, quote, entire set of existing
12 internal and external exposure data on 2,514
13 white male MCW uranium division workers in the
14 two publications I alluded to in my previous
15 comments at this meeting. When I reviewed the
16 CEDR MCW datasets, MCD 94 A01 and MFD 94 A01,
17 as a registered user of the CEDR database, I
18 was struck by some highly improbably ICD-8
19 coded causes of death for these Mallinckrodt
20 workers. I give you but three examples. There
21 were seven cases where death was due to a
22 fractured humerus, or a broken arm. There were
23 seven cases where death was due to a broken
24 carpal bone, a broken finger. There were 15
25 cases of injuries of nerves to the forearm or

1 the thigh, and more could be cited. Were these
2 data screened for accuracy? Certainly not by a
3 pathologist.

4 Please note again that the two articles were
5 published in 1995 and 2000, before EEOICPA was
6 enacted, and that's -- they're two important
7 dates.

8 The crux of your task in considering the two
9 SC&A evaluations of the MCW cohort SEC Number
10 12 is whether you can trust the validity of the
11 ORAU data. I say you cannot, and therefore
12 should decide for the SEC petition and include
13 all members from 1942 to 1957 as a class.

14 Please consider this conundrum. Dr. Dupree-
15 Ellis* claimed she had sufficiently complete
16 data to publish peer-reviewed mortality data in
17 1995 based on MCW dust study data, and
18 mortality studies on all 2,514 white male MCA
19 workers -- MCW workers in the year 2000. These
20 workers were employed from 1942 to '57,
21 inclusive, and by the numbers must have
22 included workers at all three MCW sites,
23 including Weldon Spring and Hematite. And this
24 was in the year 2000 when the EEOICPA Act was
25 passed into law by Congress.

1 If this was indeed true, then why has there
2 been so much difficulty for NIOSH, the
3 Department of Labor, workers and their families
4 getting their dose and DOE medical records
5 subsequently from ORAU? Note again that the
6 American Journal of Epidemiology July 2000
7 paper did not mention any missing or suspect
8 data, as the author should have done if this
9 was a known problem.

10 You can decide the issue I am discussing one of
11 two ways. Either the author's being employed
12 by ORAU misrepresented the completeness of
13 Department of Energy data in print and
14 submitted the same to CEDR as electronic
15 datasets; or complete MCW internal and external
16 radiation dosage exposure data was in fact
17 available in 1995 and 2000. During the interim
18 period from 2000 until now and the SC&A
19 evaluation of MCW's SEC petition 12, the once-
20 available, supposedly complete data somehow
21 became missing, corrupted or was lost and
22 somehow disappeared. Or at best, dose data
23 once available at ORAU to write research papers
24 became mysteriously difficult to transmit to
25 legitimate EEOICPA claimants and their

1 survivors.

2 The January 18th, 2005 NIOSH MCW site profile
3 update meeting in Cincinnati has a transcript.
4 And in that it reports six additional boxes of
5 data relevant to the Mallinckrodt site as only
6 being discovered recently. This news was
7 accepted matter-of-factly by the attendees.
8 This morning you heard that nobody seemed to
9 know what was in those six boxes. No sense of
10 surprise or outrage was conveyed in the
11 transcript or at this meeting. I, as a reader,
12 got the impression that this sort of delayed
13 disclosure of perhaps vitally important DOE
14 data had become really an accepted and
15 unquestioned practice, yet we have heard from
16 many here that the pace of NIOSH dose
17 reconstructions is far too slow. It is
18 abundantly clear that bureaucratic miscues are
19 far too many for ordinary people to understand.
20 Senator Bond reported yesterday that 30
21 additional Mallinckrodt workers had died
22 between his first and second letters to HHS
23 Secretary Tommy Thompson in 2004 and '05. That
24 story will continue to unfold. The time to act
25 is now. I don't think any further delays will

1 be acceptable to EEOICPA beneficiaries or to
2 me.

3 The Advisory Board has reached a critical
4 decision point. I urge you to do the right
5 thing and vote now for the MCW SEC petition
6 Number 12 to include all MCW Destrehan Street
7 worker from 1942 to 1957 as the class of
8 covered workers.

9 I further urge NIOSH to sharply accelerate
10 preparation of the Weldon Spring and Hematite
11 site profiles and related TBDs using the wealth
12 of available site experts, many here in the
13 room. NIOSH and SC&A should consider the
14 separate Weldon Spring and Hematite Special
15 Exposure Cohort petition that was submitted
16 with the MCW Destrehan Street petition as soon
17 as possible. And as you heard from Larry
18 Elliott, that was broken out and now must be
19 resubmitted. All truck drivers and
20 construction workers from 1942 to the present
21 time at both -- at all three sites should be
22 included in this second Mallinckrodt uranium
23 division Special Exposure Cohort.

24 The Board is further urged to recommend and
25 vote for all positive actions to fulfill the

1 original Congressional intent under EEOICPA,
2 which as Senator Bond stated clearly yesterday
3 has been thwarted in many significant and
4 deplorable ways.

5 Vote with your sense of compassion, as well as
6 with your scientific minds and knowledge. Give
7 these brave and trusting people the relief they
8 deserve right away. Thank you for allowing me
9 time to speak to the Board. I wish you well in
10 your very difficult deliberations.

11 **DR. ZIEMER:** Thank you, Dr. McKeel. Additional
12 individuals --

13 **MS. ALMON:** Yes, I have --

14 **DR. ZIEMER:** Yes.

15 **MS. ALMON:** -- one more person, please.

16 **DR. ZIEMER:** Uh-huh.

17 **MS. ALMON:** I would like to call to the podium
18 Mary Barafor (sic), who will tell of her
19 experiences with her husband's bladder cancer.
20 Thank you.

21 **DR. ZIEMER:** Could we restate your last name,
22 Mary, for our recorder?

23 **MS. BAFARO:** Yes, my name is Marilyn --

24 **DR. ZIEMER:** Marilyn.

25 **MS. BAFARO:** -- Bafaro, B-a-f-a-r-o. It's

1 Bafaro.

2 **DR. ZIEMER:** Bafaro, thank you.

3 **MS. BAFARO:** I wanted to tell you about my
4 husband, Ernest Bafaro, worked at the
5 Mallinckrodt Destrehan Plant in the Uranium
6 Division for about nine years, until June 16th
7 of 1958. He worked at the same plant, but at
8 another division until he was forced to take
9 early retirement in the early 1980s.

10 My husband was a workaholic. Whenever he was
11 offered the opportunity to earn overtime, he
12 took it. With a wife and three young children
13 to support, my husband felt it necessary to do
14 whatever was within his power to earn as much
15 as he could to support them. Often that meant
16 working 12 hours a day, seven days a week, and
17 often it meant he would be short-shifting --
18 coming off a 4:00 p.m. to 12:00 midnight shift
19 on a Sunday and return to the job for another
20 long shift on Monday morning.

21 My husband was forced to take early retirement
22 in the early 1980s on a doctor's recommendation
23 because he needed left hip replacement surgery.
24 He subsequently needed hip replacement surgery
25 on his right hip about two years later. On

1 August the 24th of 1993 at the age of 67, my
2 husband was diagnosed with bladder cancer.
3 About eight months later my husband underwent
4 bladder cancer surgery performed by a Dr. Raul
5 Para* at St. Louis University Hospital. During
6 this surgery Dr. Para removed my husband's
7 bladder and used a piece of his colon to make a
8 new bladder. The operation was only partially
9 successful because he suffered from
10 incontinence for the rest of his life.
11 My husband's cancer treatment had another
12 effect. The drugs administered to him during
13 this treatment caused an infection that led to
14 the gradual degeneration of his right
15 artificial hip. When that hip had to be
16 removed he was in a nursing home for three
17 months without a hip. They had to pack that
18 hip with antibiotics before they could put a
19 new hip in. His right hip was then replaced in
20 February 1994, and less than five years later
21 his left hip had to be replaced. The infection
22 had affected his left hip.
23 Six weeks after this left hip operation, he
24 collapsed at home and was taken by ambulance to
25 St. Johns Mercy Hospital where it was

1 determined he had been bleeding internally
2 severely. The operation to try to save his
3 life required 28 pints of blood. My husband
4 never regained consciousness and two and a half
5 weeks later he died in the intensive care unit
6 at St. Johns Hospital. But his quality of life
7 went downhill fast after he was diagnosed with
8 bladder cancer. Thank you.

9 **DR. ZIEMER:** Thank you very much.

10 **MS. BROCK:** I believe we have one more person
11 that we would like to speak. As you'll notice,
12 there's a poster board in front of you. I
13 don't know that everybody can see that. Those
14 are some pictures that are blown up of a
15 surgery from one of the Mallinckrodt workers, a
16 female that had worked both at the Destrehan
17 Street site and Weldon Spring. Her name is
18 Marilyn Snyder. She is a very brave, brave
19 woman, and we'd like for everybody to take a
20 look at that and hear her -- her story.
21 Marilyn?

22 **DR. ZIEMER:** Thank you. Marilyn will approach
23 the mike. We'll leave that up if we can during
24 the break so folks can get a closer look at it.

25 **MS. BROCK:** That would be great. Thank you.

1 **MS. SNYDER:** My name is Marilyn Snyder and I
2 worked at the Mallinckrodt in Destrehan and in
3 Weldon Spring plant sites in '57 and '58 while
4 they were refining radionuclides from the Cold
5 War, and was unknowingly exposed to radioactive
6 material. I was a mouth breather -- according
7 to what some of the guys were talking about
8 this morning, whether you're a mouth breather
9 or a nose breather -- because I had a deviated
10 septum. I was not monitored for exposure. I
11 had no idea what was being produced. I was
12 young. I had an opportunity for a job and I
13 took it.

14 A year and a half was apparently long enough to
15 be there because first cancer in 1975, I had
16 colon cancer 17 years after exposure. They
17 removed eight inches of colon. The second
18 surgery on the colon resected the bowel. I was
19 given a 30 percent chance of surviving one year
20 because the cancer had metastasized to eight
21 nodes. Despite severe nausea, vomiting, mouth
22 sores and hair loss from two years of high-dose
23 chemo in the veins, followed by two years of
24 oral chemo, I did survive.

25 Second cancer, I was diagnosed with breast

1 cancer in 2000 and treated with a lumpectomy,
2 sentinel node biopsy and radiation, 42 years
3 after exposure.

4 Cancer number three, in 2001 I was diagnosed
5 with a very rare cancer of the smooth muscle
6 cells called leiomyosarcoma, and I'm going to
7 call it LMS for short. This is a soft tissue
8 sarcoma of wildly growing cells from the soft
9 tissue part of the body and include fat, blood
10 vessels, nerves, muscles, skin and cartilage --
11 apparently everything but bone. Lab results
12 didn't show a clear margin after the first two
13 surgeries. There was a time lapse of one month
14 between each surgery awaiting lab results and
15 rescheduling. Third surgery threatened loss of
16 my leg if unable to get beyond the cancer.
17 Twice -- well, then -- I got it out of order
18 here. Well, twice a -- twice a day for one
19 week after the surgery I received internal
20 radiation through plastic tubes inserted
21 through the surgical site, which is what the
22 picture shows, then external radiation for
23 another 35 days.
24 The third surgery on my leg removed five inches
25 of fibula. These are two bones between the

1 knee and the ankle. The smaller bone is called
2 the fibula and it controls foot movement. Two
3 months after surgery I had excruciating pain in
4 the surgical area and wanted to die. Even
5 morphine was not effective. Every test
6 possible was run at Barnes Jewish Siteman
7 Cancer Center and there was no diagnosis other
8 than probable nerve damage.
9 Upon research I found that LMS is a very rare
10 cancer in the United States, but a major cancer
11 in Japan because of exposure to radiation from
12 the atomic bomb. Life expectancy is five
13 years. I've made three. LMS is very
14 unpredictable. It can be quiet for a long
15 time, and then erupt after 20 years. It's a
16 resistant cancer, not responsive to chemo or
17 radiation. This disease progresses from stage
18 one to stage four. I had stage three. I will
19 be monitored by specialists every three months
20 for the rest of my life.
21 Now I've discovered lumps on my left forearm
22 and will see the oncologist after this seminar.
23 In 2004 I developed a fist-sized benign tumor
24 on my uterus. My doctor was going to biopsy
25 until he was told about the LMS. He

1 immediately reacted and said it would require
2 removal of the uterus, fallopian tubes and
3 ovaries. I fully expected another cancer.
4 The three cancers I've had are totally
5 unrelated. I had genetic counseling, stated
6 none of my cancers were family-related. At
7 this time I'm waiting dose reconstruction for
8 Weldon Springs, even though I've already had
9 two of the 22 listed cancers that NIOSH says
10 are exposed -- caused from radiation to
11 exposure -- exposure to radiation, excuse me.
12 My medical bills and emotional trauma have been
13 astronomical. Fear of recurrence of another
14 tumor is impossible to escape.
15 How can you put a monetary value on the quality
16 of my life and the physical and emotional
17 stress of battling disease caused by exposure
18 to radioactive material? Will I be compensated
19 for this injustice while alive or are you
20 waiting for me to die?

21 **DR. ZIEMER:** Thank you, Marilyn, for sharing
22 your story with us.

23 Denise, are there others from your petitioning
24 group that --

25 **MS. BROCK:** No, I don't think so.

1 All right, please, address the mike.

2 **MS. ADAMS:** My name is Nancy Gates Adams. I'm
3 the oldest child of Bert Gates, who worked at
4 Mallinckrodt Chemical Works from 1943 to 1968.
5 He actually retired from Mallinckrodt. I have
6 a short statement to make.

7 We're now in the fifth year of waiting for
8 dad's claim to be paid. He was a 25-year
9 employee of Mallinckrodt Chemical Works who
10 suffered for the last 15 years of his life with
11 lung and urinary tract disorders. He had seven
12 children, all still alive, but his wife -- our
13 mother -- died in 2002, never seeing any of the
14 promised compensation of the EEOICPA in 2000.
15 My surviving family members are discouraged and
16 pessimistic about ever getting any compensation
17 from this Congressional act, even though Dad
18 died of bladder cancer and complications of
19 severe emphysema, both of which can be directly
20 linked to his exposure to radiation, thorium,
21 beryllium and other dangerous substances at the
22 Mallinckrodt Destrehan plant.

23 The promised and undelivered \$150,000
24 reparation is a miserly amount if it is
25 supposed to compensate us for the loss of our

1 father. We still miss him terribly. We miss
2 his keen sense of humor and his charming Irish
3 personality which his many grandchildren never
4 got to experience. We missed him at our
5 graduations and weddings, our children's
6 weddings, and countless family events over the
7 years. As my sister Mary Beth told me, I would
8 rather have Dad.

9 However, a promise is a promise. It needs to
10 be kept. How much longer do we have to wait?

11 **DR. ZIEMER:** Thank you, Nancy. Individuals
12 yesterday who agreed to postpone their comments
13 till today, I'd like to give them the
14 opportunity now, provided -- and I'll ask each
15 of them if they are addressing Mallinckrodt-
16 related issues.

17 First, I believe it's Tim Manser, if I'm
18 reading it correctly. It may be Terri.

19 **UNIDENTIFIED:** (Off microphone) Terri Mauser*,
20 possibly?

21 **DR. ZIEMER:** Mauser, okay, yes.

22 **UNIDENTIFIED:** (Off microphone) She isn't here.

23 **DR. ZIEMER:** Okay. Donna -- and we'll give
24 another opportunity this evening if there --
25 Donna Land? Clarence Schneider -- Schneider?

1 **UNIDENTIFIED:** (Unintelligible)

2 **DR. ZIEMER:** Okay. James Boyd? Yes, James.

3 **MR. BOYD:** Thank you. My name is James Boyd,
4 Jr. I am here on behalf of my father because
5 my father is not able to be here due to his
6 death approximately six or seven years ago. He
7 was a Mallinckrodt employee for ten years. He
8 worked at both plants that we talked about as
9 well as Weldon Springs. He did have a
10 qualifying illness. It was skin cancer, basal
11 skin cancer.

12 My father also suffered from other ailments
13 that are not covered. He had -- at the age of
14 40 he had glauco-- cataracts of both eyes,
15 which we believe were induced by exposure to
16 radiation, although during the procedure there
17 is no way or any ability for us to prove that.
18 During the same period of time that my father
19 worked for Mallinckrodt, my mother had seven
20 pregnancies. I am the only survivor of those
21 seven pregnancies. She had two stillborns, as
22 well as four miscarriages.

23 I guess my biggest thing is I just want to be
24 here to represent him. But one of the things
25 that I do want to say to all the survivors is

1 that as a child I, like Denise Brock, promise
2 you one thing, that if you are not here, we
3 will continue. We will make sure that these
4 people who are responsible for what they did to
5 you pay, one way or the other. I don't
6 understand why these people aren't brought up
7 on criminal charges. In today's world if
8 people were exposed to this and knowingly
9 exposed to it, I can't imagine that there's not
10 a criminal court case filed against these
11 people. It doesn't take a brilliant person to
12 realize that these people have been suffering
13 for years. Everybody who's here tells you of
14 four or five, six different cancers. These
15 people were exposed to something by a
16 government that they fought for. My father was
17 a veteran of World War II. Most of these
18 people I know were there because they felt they
19 were doing something for the U.S. government
20 and they were helping their country, the
21 country that my father would be ashamed of
22 today because of the fact that this is going
23 on. I can't believe -- he was -- he's been
24 diminished to -- instead of being James Boyd,
25 Sr., he's as tracking number, 18086. We get to

1 hear about dose reconstruction. We get to hear
2 about whether or not he's going to qualify,
3 when it's proven that these people are dying
4 from cancer. We wait as people die. All we
5 hear about is the number of meetings. I was
6 astonished yesterday when I heard the number of
7 meetings that have taken place and the amount
8 of money that's been spent, and these people
9 are asking for \$150,000 -- \$150,000 is
10 somewhere in the second -- I would think a
11 nanosecond in the U.S. government. There's
12 billions of money spent on whether fruit flies
13 can reproduce in 30 degrees of temperature, and
14 here we have people dying from cancer that
15 served their country. It's atrocious. These
16 people walked up to the microphone and said
17 thank you for allowing to speak at a meeting
18 from people who -- they -- you could have taken
19 these people out behind the Mallinckrodt plant
20 and shot them in the head, it would have been
21 more of a justifying murder. These people
22 deserve to be treated as individuals and with
23 respect, and not tracking numbers. They need
24 to be paid compensation now instead of years
25 down the road.

1 I'm related to Mrs. Snyder through marriage.
2 Half of these people used to dance in my mom
3 and dad's basement because of square dance
4 (unintelligible). The community that they had
5 at Mallinckrodt, they all loved working there.
6 Half the people who walked up here yesterday
7 told you about how they really enjoyed working
8 at the plant. It wasn't because of the way
9 they were treated; it was because of the people
10 that worked there. This is a close-knit group
11 of people who were raised to respect their
12 elders. That's why they walked up here and
13 told you thank you for the time. Well, Denise
14 Brock and myself and some of the others, my
15 sister, Mary Snyder and Jamie Crock, some of
16 these others, we were raised to respect our
17 elders, but we were also not raised to be
18 idiots. We're not going to stand by and let
19 our government let these people down. And I
20 promise you this. I'll be here every meeting
21 there'll be until you get paid.

22 **DR. ZIEMER:** Thank you, James. Next I have Pat
23 Almon. Is that correct?

24 **MS. ALMON:** That's me.

25 **DR. ZIEMER:** Oh, that's Pat. Are you back?

1 Okay.

2 **MS. ALMON:** As you know by now, my name is Pat
3 Almon. My dad, Edward Powers, worked for
4 Mallinckrodt from 1943 through 1967. I first
5 came before this Board in Las Vegas to tell of
6 a problem of Dad's can-- work dates. One
7 employee at the Department of Labor had told me
8 that he had only worked at Weldon Springs.
9 Another employee at the same Department of
10 Labor told me he had only worked at the
11 Destrehan Street site. With the help of some
12 of the Board members and Denise Brock, we
13 finally straightened this out. Of course, with
14 those dates, he had worked at both sites.
15 After many, many -- and I'm talking -- if
16 anything can go wrong with a claim, it went
17 wrong with ours. The first problem came up
18 three years after the claim -- I filed the
19 claim. My mother filed in 2001. They lost
20 Dad's death certificate. Now how do you lose a
21 death certificate out of a complete file?
22 We finally made it to dose reconstruction. It
23 made it through with an underestimated greater
24 than 50 percent causation and we celebrated. I
25 thought justice was finally being done in some

1 small part to Dad's long death.

2 Excuse me, I lost my page.

3 A short time later I called NIOSH for a claim
4 status update, and was told the file had been
5 forwarded to the Seattle office. I called
6 them, and they said no, the file was sent to
7 the Cleveland office.

8 I called the Cleveland office and talked to a
9 claims examiner named Anessa Hamilton Woods.
10 She told me the file was on her desk and would
11 go out the next day. I waited another week,
12 and I called her back and said I still hadn't
13 received any paperwork. She said oh, the file
14 wasn't on her desk; it must be on someone
15 else's. And I said excuse me? I said this is
16 my dad's complete -- completed file; could you
17 please get back to me on where this file
18 happens to be? She said she would.

19 Then I asked her why the claim was in the
20 Cleveland office instead of where it
21 originated, in the Seattle office. She told me
22 that the Seattle office was a revolving door
23 and those employees couldn't handle the claims.
24 When I asked how long the process was from
25 being -- from making it through dose to being

1 paid, she told me it might take a long time
2 because she personally had only sent one claim
3 forward. She said they made so many mistakes
4 in dose reconstruction on claims, most had to
5 be sent back for redose.
6 By this time I hung up because I was getting
7 extremely angry. Needless to say, my call --
8 or next call was to Denise Brock. She couldn't
9 believe what I told her this lady had said.
10 She had not recorded this conversation, which I
11 understand is standard, but did later state
12 that this is exactly what she told me.
13 But now I had a larger problem than a claims
14 examiner whose mouth was as large as her ego.
15 The Cleveland office said Dad's cancer
16 diagnosis date was wrong. I told them I had
17 tried to correct this problem in 2002 with the
18 Seattle office. They told me it wouldn't make
19 any difference. It did. We had no exact date
20 when my mother filed the original claim in
21 2001. She put 2000 -- or 1983 as this date.
22 All my brother and I had were memories, since
23 the paperwork was long lost.
24 I asked for a copy of the complete claim file,
25 and found notices to this effect from my

1 brother and myself to the Seattle office, and
2 we had said the date was 1980. They used the
3 date of 1987 since this was the date of his
4 death. Ms. Hamilton Woods words were very
5 prophetic, it had to go back through redose.
6 We finally got compensated, but something that
7 really upset me is that if this is happening to
8 me, how many others are having the same
9 problems? Many claimants are going through
10 cancer, surgeries, taking many drugs, are
11 elderly and want to give up the fight -- and
12 fight it is. Many have said they have been
13 sitting in dose reconstruction for a very long
14 time. This process is not working and is
15 entirely too long. We need this SEC.
16 The claimants pay taxes, and taxes pay the
17 government salaries. Our government is very,
18 very good at helping out in times of natural
19 and man-made disasters. This is all well and
20 good, but these claimants have been waiting
21 since the 1940's for their fair compensation.
22 Thank you.

23 **DR. ZIEMER:** Thank you, Patricia. Next, Joan
24 Beast?

25 **UNIDENTIFIED:** (Unintelligible)

1 **DR. ZIEMER:** Yes, thank you.

2 **UNIDENTIFIED:** Good afternoon. I'm speaking to
3 you today on behalf of my husband, who worked
4 for Mallinckrodt for 13 years in the processing
5 of uranium and died of cancer at the age of 48.
6 In all of these exchanges today, I think one of
7 the most important things to remember is that
8 we are asking people to reconstruct activities
9 that transpired 40, 50, 60 years ago, and as a
10 survivor I can assure you it's been a very
11 painful experience.

12 It seems like a real injustice to all the men
13 and women who worked for Mallinckrodt that,
14 after so much time has elapsed, you would even
15 try to piece together what really happened
16 individually all those years ago and expect an
17 accurate outcome. Unfortunately, records were
18 lost, purposely destroyed, and even changed to
19 protect the employer who thought they might be
20 held fiscally responsible.

21 In July 2001 Hal Glassman* and his staff from
22 the Labor Department held a meeting here in St.
23 Louis and assured all in attendance that the
24 compensation program the government was
25 offering would be administered in an efficient

1 and fair manner. That was four years ago. And
2 these patriots, as the Mallinckrodt workers are
3 referred to quite often, and their families are
4 still searching, probing and waiting --
5 waiting. Damaging documentation regarding
6 conditions and exposures at Mallinckrodt plants
7 have been uncovered, but it seems impossible to
8 create a fair, individual dose reconstruction.
9 Scientifically developed computer programs,
10 comparable analysis, no site profile for Weldon
11 Springs, sketchy individual records just are
12 not acceptable, and we need to keep in mind
13 this was 40, 50, 60 years ago. It's almost
14 impossible to think it could be done fairly.
15 In closing, since our government determined the
16 need to offer this compensation program, I'm
17 asking NIOSH to please recommend SEC status to
18 Mallinckrodt workers, as has been done for four
19 other sites, so that the intent of the program
20 can be realized and the families compensated
21 for their suffering and loss. Thank you.

22 **DR. ZIEMER:** Thank you, Joan. Next I have
23 JoAnn Curtis -- is it Curtis, JoAnn Curtis?

24 **UNIDENTIFIED:** (Off microphone)

25 (Unintelligible)

1 **DR. ZIEMER:** Perhaps I should skip ahead for
2 the moment. Or -- okay. Okay.

3 **UNIDENTIFIED:** Good afternoon. I'm speaking on
4 behalf of my sister, (unintelligible) Curtis.
5 Her father was Daniel Cratchley*. He was a
6 Mallinckrodt worker for quite a few years. He
7 worked at the downtown location and the Weldon
8 Spring location respectively. Growing up my
9 dad would usually work the day shift, but
10 sometimes he occasionally worked the night. I
11 remember stories that Dad would tell of his
12 work life at Mallinckrodt. They pretty much
13 did a multitude of jobs, doing maintenance,
14 cutting grass, cleaning and rebricking the
15 furnaces where they made the nuclear weapons.
16 During this time my dad worked at both
17 locations doing whatever was his job for the
18 day, all the while not thinking that any type
19 of harm was befalling him from his work he did.
20 Needless to say, my dad ended up having surgery
21 for a tumorous mass in his esophagus that was
22 cancerous. That was the first time he was
23 hospitalized and for his first major surgery.
24 At that time he no longer worked for
25 Mallinckrodt, but that does not diminish the

1 fact that the cancer he had was from the
2 uranium that he had -- had exposed. And I
3 would like to say here that I have records from
4 the hospital that said he told the doctor that
5 he had exposure to uranium for 14 years.
6 As time progressed he had a few other minor
7 things go wrong with him. Then he started
8 having breathing problems and was on oxygen for
9 the last 15 to 20 years of his life. And then
10 the colon cancer hit him that took his life
11 after a brief struggle, because by that time he
12 no longer had any fight.

13 My question to you as part of our government is
14 this: How can you justify not paying for the
15 damages bestowed on the workers of Mallinckrodt
16 who unknowingly were working unprotected in
17 environments that today no one would be allowed
18 to go near in regular street clothes, let alone
19 be exposed to in everyday workplace. If you
20 can afford to dole out monies to the families
21 of the 9/11 catastrophe, then why is it so hard
22 to do the same for the workers that helped win
23 the nuclear war, that made our country what it
24 is today. I thank you for your time.

25 **DR. ZIEMER:** Thank you very much. Next -- I

1 believe it's Dorothy Heist -- Heitz -- Heitz,
2 Dorothy Heitz, H-e-i-t-z?

3 **UNIDENTIFIED:** (Off microphone) She must --
4 she'll be here (unintelligible).

5 **DR. ZIEMER:** This evening? Okay. I have --
6 there are several other names here. I wanted
7 to find out if perhaps they would prefer to
8 wait till evening --

9 **UNIDENTIFIED:** (Off microphone) Dr. Ziemer --

10 **DR. ZIEMER:** Yes?

11 **UNIDENTIFIED:** (Off microphone) -- my
12 (unintelligible) would like (unintelligible).

13 **DR. ZIEMER:** Sure. Sure.

14 **UNIDENTIFIED:** Good afternoon, and thank you
15 for affording us the opportunity to be present
16 here today and --

17 **DR. ZIEMER:** Could you repeat -- repeat your
18 name for our recorder?

19 **MS. LYNCH:** Cynthia Lynch, L-y-n-c-h -- to be
20 present here today and the privilege to address
21 you. We would also like to thank Denise Brock
22 for her endless work, devotion and
23 unconditional support to each of us. On behalf
24 of our family, we hope that each of you will
25 consider our mom's best interests when

1 reviewing the information provided to you.

2 My name is Cindy Lynch, daughter of the late
3 Irvin James Lynch, Sr. and Helen Lynch. I'm
4 making this statement on behalf of my mom,
5 who's seated in the audience.

6 (Reading) My name is Helen Lynch and I'm 80
7 years old. My husband worked at Mallinckrodt.
8 During his employment he was severely burned by
9 chemicals. We have all the paperwork, so I
10 won't go into all the details. I will tell
11 you, however, that this occupational illness
12 not only scarred his body, but was the
13 beginning of the cancer that killed him.
14 My deceased husband would have been 82 this
15 year, and we would have been married 60 years.
16 Unfortunately, my husband died 12 years ago
17 after a two-and-a-half-year battle with colon
18 cancer, which eventually took over his entire
19 body. He died at the early age of 69.
20 We were only able to enjoy a couple of years of
21 retirement together before he came ill. My
22 husband missed the opportunity to meet all his
23 grandchildren because they were born after he
24 died. My husband was not here most recently to
25 help me bury our 46-year-old daughter who also

1 died of ovarian cancer.

2 As already stated, I'm 80 years old and now
3 also have infirmaries (sic). I, too, suffer
4 from cancer and struggle to breathe from my one
5 lung. I am blessed to have three daughters who
6 help me both physically and financially, but
7 they, too, have full-time jobs and families to
8 take care of. I live a very modest life and
9 struggle to pay for my medications and the
10 basic quality of life necessities.

11 My plea to you today is to please help me and
12 all the others who are requesting compensation.
13 I am too old and am losing steam. It takes too
14 much out of me to continue jumping through
15 hoops and playing mental gymnastics.

16 She wrote that because she works crossword
17 puzzles.

18 (Reading) There has been more financial
19 assistance spent on fighting this cause than
20 what has been paid out to assist us, who are
21 deserving of the benefits. Some of us who are
22 left and are requesting compensation are not
23 spring chickens anymore. Many of us are very,
24 very ill. We have all suffered tremendously
25 throughout these years. Please facilitate the

1 process to expedite the compensation to us
2 without any further red tape. We need this
3 assistance to be able to have what little life
4 we have left to be of quality.

5 My dad always taught us two words when we were
6 growing up, and that was "please" and "thank
7 you", so we please ask you and we thank you.

8 **DR. ZIEMER:** Thank you. Now let me check with
9 others to see whether they will be available
10 this evening. We do want to hear from folks
11 who are not going to be able to be here, if
12 that's the case.

13 Janet Maserma*?

14 **UNIDENTIFIED:** (Off microphone)

15 (Unintelligible)

16 **DR. ZIEMER:** Is this evening -- will you be
17 here this evening?

18 **UNIDENTIFIED:** (Off microphone) Can I do now or
19 (unintelligible)?

20 **DR. ZIEMER:** We can do it now. I would -- I
21 would prefer, if there are some who cannot be
22 here this evening, to allow them -- since we're
23 running out of time here. If you are going to
24 be here this evening, we --

25 **UNIDENTIFIED:** (Off microphone) I'm not sure.

1 **DR. ZIEMER:** You're not sure?

2 **UNIDENTIFIED:** (Off microphone)

3 (Unintelligible)

4 **DR. ZIEMER:** Okay. Well -- yeah, that's a
5 problem, I'm sure. Yeah, well, please proceed
6 then.

7 **UNIDENTIFIED:** Once again I'd like to thank
8 Denise for -- and everybody that works with her
9 for all the wonderful things that she is doing
10 for the fighters.

11 My dad, Walter Reager*, was a Mallinckrodt
12 employee from September 15th, 1941 to July
13 28th, 1978. He retired at the age of 63 due to
14 poor health. He would have retired earlier,
15 but could not afford to leave until Social
16 Security started. He gave 37 years of his life
17 to Mallinckrodt.

18 He was one of the first groups of workers to go
19 into Building 51, the nuclear program, in 1942
20 where he was exposed to the uranium. His lead
21 operator's name was McGraw, and his safety
22 foreman's name was Frank Veetz*. The only
23 protection these workers had and were given
24 were little small nose coverings.

25 He came home from work one day in 1942 and told

1 my mom not to ask him what he was doing at
2 work. All the workers were asked to sign a
3 secrecy pledge. This then was supposed to be -
4 - the list of signatures was supposed to be
5 kept somewhere in the records. They've not
6 been found. I think it was used as a medical
7 study for some doctor who was hired by the
8 government to see what was happening to these
9 workers. Dad's name was found in a doctor's
10 records under a code number and a file number,
11 but there was no other information in this
12 file. We were told that we could not get this
13 file, get any of this information because these
14 belonged to this doctor and he -- he's the one
15 that did the study and he wasn't going to give
16 them up.

17 The workers were sometimes given urine tests.
18 Dad's tested hot on one occasion, but the 1942
19 records -- health records do not show what
20 happened. My mom remembers my dad being taken
21 to the hospital -- to (unintelligible)
22 Hospital. She couldn't remember when. She's
23 85 and we've been rehashing all of this since
24 1997. We got our first notice to go to a
25 meeting.

1 There was not any information in the records,
2 but there was information on 1979 paper that
3 told -- telling us that Dad was in
4 (unintelligible) Hospital from October 10th
5 through the 13th of 1942. There was not any
6 information as to why. What happened to those
7 papers?

8 When Mom went to visit my dad in the hospital
9 she was told she would probably be a young
10 widow. She was 22 years old with two small
11 children. You do not forget something like
12 this.

13 I remember watching my dad as a child trying to
14 cross the room or climb a flight of steps, he
15 had such difficulty with his breathing. After
16 he retired he went to many doctors trying to
17 get help for his breathing. All these doctors
18 have been retired or passed away. You cannot
19 find records anywhere. Even health insurance
20 companies that he went to are not around or
21 have merged.

22 We did not get some -- we did get some papers
23 from a lung specialist, a Dr. Tom Schneider in
24 Jefferson City. He was treating my dad in
25 1993. Dad was suffering from chronic

1 obstructive pulmonary disease. His lung
2 capacity was at 37 percent. We called this
3 doctor again not too long ago to see if he
4 could be of more help, and he wrote us back and
5 said that all of Dad's papers have been gotten
6 rid of. He has -- didn't have them anymore.
7 I often wonder, when doctors get rid of papers,
8 what happens to people like me that need to do
9 a hereditary study down the line as to -- gee,
10 I feel sick; something's wrong. How do I find
11 this? I always thought people kept this stuff
12 on microfiche 'cause you can keep a whole lot
13 on a little tiny piece of -- whatever that is
14 that they make that out of.
15 But anyway, he was -- he wrote back and said he
16 was sorry that he couldn't be any more help,
17 but Dad's papers were gone.
18 Dad was treated in 1993 and was given different
19 types of breathing aids, like oxygen,
20 Albuterin*.
21 Dad lived to be 81 -- or I should say he
22 existed to be 81. Mom always wanted to get
23 hold of Mallinckrodt to try to get some
24 compensation for his medical bills and such,
25 but Dad wouldn't hear of that. That was his

1 job. He was dedicated.

2 Then in 1997, after Dad died in 1996, Mom got a
3 letter to go to a Mallinckrodt meeting, to a
4 special meeting for the workers from the
5 nuclear program who were exposed to uranium.
6 Since then we have been going to meetings,
7 hoping something will come for people who do
8 not have medical papers proving that they were
9 in the middle of all this poison and who
10 suffered for so long.

11 I had a beautiful sister who died at the age of
12 50 from lung cancer. Did my dad bring that
13 home to her? They say that uranium dust is
14 very, very powdery and can travel a long way.
15 Another thing that I'm concerned about, and I
16 hate to -- I always hate to be negative, but
17 I've always heard that a lot of money has been
18 spent to hire people to do the dose
19 reconstructions and the meetings and the
20 hirings of the different people. A lot of
21 people could have been compensated up front if
22 this money would have been put in that
23 direction, and there probably would have been
24 money saved. There've been a lot of people
25 that have suffered with breathing problems and

1 many, many illnesses.

2 My dad gave 37 years to Mallinckrodt.

3 Mallinckrodt gave about 35 years of bad health
4 to my dad. Doesn't sound like a fair trade to
5 me.

6 My mom's spent a lot of years doing things a
7 man does, like shoveling snow, cutting grass,
8 et cetera. She spent a lot of years caring for
9 my dad. He was a good employee.

10 Yes, Dad lived to be 81. He lived long, and he
11 suffered long. He died in 1996, in December,
12 of COPD. And I think this was Dad's problems
13 for many, many years, along with others that he
14 had. He got to where he could not even go to a
15 doctor anymore. And I thank you.

16 **DR. ZIEMER:** Thank you for sharing that. Now
17 let me ask some of the others -- and again, if
18 you will be here tonight, we would like to have
19 you speak then in order to give those who are
20 not able to a chance to speak now.

21 Judy Steinkamp*? Judy not here -- oh, are you
22 able to speak this evening or -- thank you. Go
23 ahead.

24 **MS. STEINKAMP:** My name is Judy Steinkamp and
25 I'm speaking on behalf of my mom, Dorothy

1 Henneys*, who has filed a claim as a surviving
2 wife of Lee Henneys. My dad worked at multiple
3 Mallinckrodt facilities, both Weldon Springs
4 and Destrehan, for 23 years, being medically
5 disabled at the age of 56.

6 A couple of years prior to that time he began
7 experiencing symptoms of extreme fatigue,
8 weakness, shortness of breath and weight loss,
9 requiring multiple hospitalizations for periods
10 as long as 59 days. After each hospital stay
11 he would recuperate for a number of weeks at
12 home before returning to work. Within a couple
13 of weeks back at work, the cycle would begin
14 again. The last time he returned to work he
15 was unable to make it through a day without
16 lying down to rest. At this point his
17 physician said he was no longer able to
18 continue working. He was determined by Social
19 Security to be medically disabled.

20 This illness had a devastating effect on the
21 quality of his life and that of his family.
22 When he asked his doctor "How sick am I?", he
23 was told if I didn't -- if he didn't have a
24 will, he should find a lawyer on the way home
25 in order to draw one up. From this point on he

1 had oxygen in the house at all times.
2 Something in that environment was contributing
3 to his illness. Each morning they had to clear
4 his desk of the residue from the plant before
5 he could begin working. He saw a number of his
6 close friends, as well as his secretary, die of
7 cancer. But unfortunately, cancer is not the
8 only disease these workers have contracted.
9 Many have suffered from chronic beryllium
10 disease, a disease that 30 years ago was
11 difficult to diagnose, especially if the
12 workers were unaware of their exposure to the
13 substance.
14 The government has made it extremely difficult
15 for these aging workers and their survivors to
16 claim compensation for their diseases. My dad
17 first filed a claim a number of years ago.
18 Following my father's death, my mother had to
19 start all over filing as his survivor. The
20 paperwork is lengthy and complex. In trying to
21 obtain the necessary medical documentation we,
22 as many others, have encountered numerous
23 roadblocks. Hospital records have been
24 destroyed. Even Mallinckrodt records have been
25 supposedly destroyed or are unavailable. My

1 dad's physician, who was also a physician at
2 the Mallinckrodt plant, died some years ago of
3 cancer. How can they be expected to construct
4 a case meeting the criteria that you have set?
5 Have they not suffered enough?

6 Thank you for your time and understanding.

7 **DR. ZIEMER:** Thank you. And next, Virgil Rempe
8 -- Rempe?

9 **MR. REMPE:** (Off microphone) That's me.

10 **DR. ZIEMER:** Thank you, Virgil.

11 **MR. REMPE:** (Off microphone) (Unintelligible)

12 **DR. ZIEMER:** Thank you.

13 **MR. REMPE:** (Off microphone) I'll only be a
14 couple of minutes.

15 **DR. ZIEMER:** Thank you.

16 **MR. REMPE:** (Off microphone) This is not my
17 (unintelligible) -- (At microphone) what I'm
18 going to read to you. My name is Virgil Rempe,
19 R-e-m-p-e, live here in St. Louis, Missouri.
20 And this is the paperwork that has been trying
21 to get my dad's compensation. My younger
22 sister is here, Lorraine Gilardi*, and my other
23 sister lives down in Fredericktown, and we have
24 been these years trying to get this going. And
25 just recently we got a denial because we did

1 not have any medical records. I've spent hours
2 and hours and hours with -- writing letters to
3 Mayor Slay* and visiting the Department of
4 Health in St. Louis, and could not find any
5 records. Went to City Hospital, which is long
6 gone. They do not have any records because the
7 place is empty. Went to the other hospitals
8 where Dad was -- he was in four hospitals. He
9 died -- he got sick in 1964 and he died in
10 1969.

11 He started working at Mallinckrodt before 1942
12 and he worked there until 1964. Dad was a 160-
13 pound strongman. They used to call him Atlas
14 in the plant because he could roll them 55-
15 gallon drums around like peanuts. And he was -
16 - when he got sick it took five years for him
17 to debiliate (sic) into 80 pounds. I carried
18 him to the hospital, and he died several days
19 later. And I attribute that to his work at
20 Mallinckrodt, even though we can't prove it.
21 But I expect and I would like all you Board
22 people to -- and I want to say thank you for
23 letting me be here, and I want to thank all my
24 fellow petitioners for being here because we
25 have to get this job done. And I don't know

1 what else I can say except that somebody's got
2 to do something.

3 The denial that we have, after all this
4 paperwork, is just terrible. Here's his death
5 certificate. It says cause of death:
6 infarction of the right lower lobe of the lung,
7 multiple pulmonary embolisms (sic) and that was
8 the cause of his death. But it says source
9 unknown. They do not -- and this was back in
10 the '60's. They didn't know what people were
11 being killed for in radiation. We think our
12 dad is the same as a soldier or sailor or
13 marine in World War II that was exposed to the
14 enemy shooting at them with bullets and killing
15 them, the same as our dad was killed by
16 radiation shooting at him.

17 And he used to come home from work. His wallet
18 would be white. His wallet would be white, and
19 that was apparently some kind of dust from
20 where he was working. And like I say, it took
21 five years for him to die and he's been dead
22 since '69 and we really miss him. So I ask you
23 to please try to get this job on the road.

24 Thank you very much.

25 **DR. ZIEMER:** Thank you very much, Virgil. Jane

1 Fagas -- Fagas?

2 **MS. FAGAS:** Good afternoon, and thank you for
3 letting me come up here. I would like to ask a
4 question. How many people in this audience
5 know what radiation does -- would you raise
6 your hand? How many of you know what radiation
7 can do? How many don't know what radiation can
8 do, raise your hand? Okay.

9 I just had -- I just had to ask that question.
10 My husband worked at the Destrehan plant and
11 also Weldon Springs. He began working there in
12 1949 -- in 1949, and he worked at the Destrehan
13 plant until 1958. From there he moved to
14 Weldon Springs. His jobs were porter, clean-up
15 man, painter, oiler -- this was down --
16 downtown. After he started work, two weeks
17 after he started, he had tightness in his chest
18 and he complained about it to his supervisors
19 and they said there wasn't anything wrong.
20 Well, he said I never had it before.
21 My husband and I were married in 1974 and so I
22 didn't know anything about his condition at
23 Mallinckrodt until I went through the records.
24 This has been very enlightening.
25 After he had his chest pains, he began

1 experiencing all these throat conditions, sinus
2 conditions and some other maladies, and he was
3 repeatably (sic) told that he was okay.
4 Now it's interesting because this went on for
5 like five years when he was reported -- has had
6 headaches, his throat hurt. There must have
7 been maybe 50, 100 X-rays done and they kept
8 saying there wasn't anything wrong.
9 I understand there's conditions that don't show
10 up for 20, 30 years. Well, his conditions
11 showed up in 1983, and he was having trouble
12 with his back and went to a neurologist and
13 bone doctors, and they found out that he had
14 degenerated disk and he had joint disease, and
15 these are -- if you know anything about
16 radioactivities, these are one of the
17 conditions that will eventually hit your bones.
18 He was confined to a wheelchair because of his
19 bone degeneration from 1992 until 1997.
20 Throughout our married life he was repeatedly
21 suffering from respiratory problems and upper
22 lung problems. And I have all his medical
23 records. I don't know how I was lucky enough
24 to get ahold of them, but they did mail them to
25 me. I'm very thankful for Denise Brock.

1 I don't know what to say to all of you except
2 that I wonder if this condition with the
3 radioactivity today is still going on. Are the
4 people working at Mallinckrodt or Tyco still
5 under the same threat of radioactivity or are
6 they monitoring that today? Are they being
7 examined? Are -- the office help, are they
8 being monitored, or just the people in the
9 plant?

10 This is a good question. I would suggest that
11 you might ask these questions. The --
12 Mallinckrodt has a responsibility to keep
13 people advised. They have a responsibility as
14 citizens of St. Louis, and you have a
15 responsibility to ask those questions. You
16 worked there, your families worked there, ask
17 the questions, get the answers. And thank you
18 very much.

19 **DR. ZIEMER:** Yes, thank -- and thank you. Let
20 me see here, Janet -- I'm have a hard --
21 trouble reading the last name. It may start
22 with a W.

23 **UNIDENTIFIED:** (Off microphone)
24 (Unintelligible) Janet Woods?

25 **DR. ZIEMER:** Could be Woods.

1 me, the thought of it. Like I said, my father
2 died of kidney failure. The kidneys act as a
3 filter for toxins, and from the cover of this
4 magazine in 1962, the workers are still not
5 being protected. You must understand that this
6 photo has haunted me my whole life, like I said
7 before, to the extent that I was afraid to
8 start a family in fear that my children would
9 be -- would be compromised.

10 You can see that I was conceived and born while
11 my father worked at Weldon Springs, and as of
12 now I have found out that I probably could have
13 never had children and I have survived cancer
14 twice. And I believe my health issues are
15 related to my father's exposure and he -- his
16 claim has been denied, denied, denied. And
17 like I said, as a child, I can see -- as a
18 young woman I did my own dose reconstruction.
19 I -- I see that my father was exposed and it's
20 just tragic that -- that this is just -- I just
21 can't understand this -- earlier today you're
22 up here talking about do you breathe through
23 your nose or your mouth. It's trivial. That's
24 just -- it's just wrong. As a -- like I said,
25 as a young woman I could see my father was

1 exposed. I mean the photo here haunted me,
2 continues to haunt me. It is not right. Thank
3 you.

4 **DR. ZIEMER:** Thank you, Janet. Bill -- is it
5 Frischman -- Frisman? F-r-i-s-c-h-m-a-n.
6 Bill? Perhaps we'll catch Bill later.
7 Don Strassner? Yes. Strassner, yes.

8 **MR. STRAUSNER*:** Thank you. My name is Don
9 Strausner. My father's name was Everett
10 Strausner. He worked at the Destrehan plant in
11 south -- on -- by South Broadway. He started
12 there sometime after February of 1939. He died
13 July the 7th, 1978. We looked for medical
14 records, hospital records, doctor's records,
15 records from Mallinckrodt. At first they told
16 us -- Mallinckrodt told us he wasn't even
17 employed there. I went looking for his
18 records. I was denied hospital records. They
19 were no longer available, they told me.
20 Well, I got a sister similar to Denise Brock.
21 She won't give up. She got all the records.
22 Well, to go back a little bit, we filed a
23 petition with Kentucky. It was denied because
24 of no medical records. All these records now
25 are in the Department of Energy and were

1 supposed to be waiting 30 days for an answer.
2 I expect it to be denied. My sisters don't.
3 I don't know how many of these people received
4 a certificate from the War Department. I have
5 one here I can read. It says (Reading) United
6 States of America, War Department, Armed
7 Service Forces Corps of Engineers, Manhattan
8 District. This is to certify that Everett
9 Strausner and Mallinckrodt Chemical Works has
10 participated in work essential to the
11 production of the atomic bomb, thereby
12 contributing to the successful conclusion of
13 World War II. This certificate is awarded in
14 appreciation of effective service. August the
15 6th, 1945 from Washington, D.C., Secretary of
16 War.
17 Now I'm most sure there's a lot of people other
18 than my dad that received this. And it's a
19 shame that these people's claims are being
20 denied.
21 I've been to a few of these meetings and I've
22 heard things I couldn't believe. Ten years ago
23 I lost a kidney to cancer. My mother died of
24 cancer. My dad died of -- well, at first they
25 said his death record was congestive heart

1 failure. He died in my car on the way to the
2 hospital to get his breathing back to normal so
3 he could have a hernia operation. For 15 years
4 it's this chronic obstructive pulmonary
5 disease, which is lung problems.

6 Now I'm most sure that most of these workers
7 that went and got hired at Mallinckrodt had to
8 take a physical. And I'm most sure any one of
9 them that got hired was in good health.

10 There's a lot on your shoulders right now to
11 decide for these people here. You can't bring
12 their loved ones back, but you sure can help
13 the ones that are left. Thank you.

14 **DR. ZIEMER:** Thank you very much. There's a
15 certain irony, isn't there, that those awards
16 were given to these very folks that are of
17 concern.

18 Let's see, Mary Ginari*. We heard from Mary
19 yesterday, but is Mary here?

20 **UNIDENTIFIED:** (Off microphone) She had to go
21 (unintelligible).

22 **DR. ZIEMER:** We have heard from Mary yesterday
23 and perhaps we'll have the opportunity tonight.

24 **UNIDENTIFIED:** (Off microphone)
25 (Unintelligible)

1 **DR. ZIEMER:** I have Anthony Windish on the
2 list. We heard from Anthony yesterday, too.
3 And Anthony, can you postpone till tonight,
4 also?

5 **MR. WINDISH:** (Off microphone) (Unintelligible)

6 **UNIDENTIFIED:** (Off microphone)
7 (Unintelligible)

8 **DR. ZIEMER:** Sir?

9 **UNIDENTIFIED:** (Off microphone)
10 (Unintelligible) and I have something that I
11 believe is pertinent to the Board.

12 **DR. ZIEMER:** Okay, please proceed.

13 **MR. WINDISH:** My name is Tony Windish. I could
14 not serve in the military during World War II,
15 so instead I worked on the Manhattan Project at
16 Mallinckrodt in St. Louis helping to create the
17 atomic bomb that annihilated Hiroshima and
18 Nagasaki. Now I see my fellow workers,
19 coworkers, dying with multiple cancers and
20 their survivors struggling to get compensation.
21 We've heard from quite a number of them this
22 evening. I feel betrayed by a government that
23 did not adequately protect us from radiation
24 exposure. And to find out at this late date
25 not only did they destroy workplace documents,

1 but treated it as -- us as guinea pigs. That's
2 what really angers me.

3 I will now read one paragraph from the review
4 of the NOSHIA (sic) site profile for
5 Mallinckrodt Chemical Company, St. Louis
6 downtown site. I know it's a big report, but I
7 hope the Board does read Attachment 3, which is
8 just a few pages, and I will read one paragraph
9 from that chapter, that attachment, that will
10 give the Board and everyone assembled here an
11 overview of the worksite conditions. This
12 paragraph is easily found because it's
13 italicized. Bear with me a minute, I have the
14 pages folded over -- here we are. This is on
15 page 88 of 102 pages, italicized.

16 (Reading) There was also a fear that physical
17 problems could be caused by sabotage, such as
18 the sabotage and damage to an iron-cast gear
19 for the ore mill grinder. Along with these
20 fears of physical danger, there was constant
21 fear of the FBI, who had a clandestine presence
22 and was suspicious of anyone who asked too many
23 questions about the secret Manhattan Project.
24 Under these secretive conditions nobody dared
25 question or refused to do a job based on

1 unknown radiation exposure criteria.

2 Again, Board, please consider this Attachment 3
3 in making your decision. And I pray that the
4 Board give favorable consideration to the
5 Senator Bond petition as was summarized by our
6 great leader, Denise Brock, and the dear
7 doctor. Thank you, Board, for your attention.

8 **DR. ZIEMER:** Thank you. I'm going to call for
9 a brief break of 15 minutes here. I've now
10 been given a supplementary list of names of
11 individuals who wish to speak. After the break
12 I will see whether some of these individuals
13 would be willing to delay till the open session
14 this evening. If they're not able to, we will
15 try to accommodate them. But in fairness to
16 everyone here, we do need to have a chance to
17 break.

18 I think some of the Congressional staff wanted
19 to make some remarks, too. Do you wish to do
20 that before the break? We can certainly
21 accommodate that.

22 **MR. HORGAN:** Certainly everybody -- I'm Tom
23 Horgan with Senator Bond's office -- should
24 have a chance to speak. I think it's
25 important, though, that -- you know, there's

1 public comment period tonight and today. We've
2 just sat through about two hours of public
3 comment period. I do think it's important that
4 the Board has a chance to have a discussion on
5 the NIOSH presentation, the recommendations and
6 the petition offered by Ms. Brock, and I guess
7 I was -- on behalf of the Mallinckrodt
8 claimants. And since -- I presume y'all have
9 NIOSH's presentation with you. Is there any
10 way to make copies to get the -- so that when
11 you do discuss this, you have a copy of the
12 petition so you can, you know, refer side-by-
13 side? It might make it easier for you to go
14 over the points without having to try to
15 remember every point made in the -- in the
16 petition.

17 **DR. ZIEMER:** We have all the materials.

18 **MR. HORGAN:** Do you -- do you have -- do you
19 have copies of Denise's petition up there?

20 **DR. ZIEMER:** We have copies of the petition,
21 yes, we do. Yes.

22 **MR. HORGAN:** Okay, just making sure, that's
23 all.

24 **DR. ZIEMER:** Thank you. Then let us take a 15-
25 minute recess and then we'll continue.

1 (Whereupon, a recess was taken from 3:35 p.m.
2 to 4:00 p.m.)

3 **DR. ZIEMER:** We'll begin deliberations shortly
4 on the issue of the SEC petition. However, we
5 do want to accommodate some members of the
6 public in certain cases who have driven long
7 distances to address the assembly and we have
8 some concerns about possibly a storm moving in.
9 So I'm going to -- going to try to accommodate
10 several more members of the public who wish to
11 speak.

12 First of all, Clarissa Eaton, and Clarissa, if
13 you'll approach the mike. I know you've driven
14 quite a ways to be here today and the Board
15 would like to hear from you at this time.

16 **MS. EATON:** Good afternoon, and welcome back to
17 Missouri. I was here the last time you guys
18 come to St. Louis, and I just want to welcome
19 you back.

20 I'm here once again in a plea for justice to
21 the people who sacrificed their lives to give
22 us the freedom we have today. I'm fortunate
23 enough not to have lost a family member, as I
24 said last year, but I do feel there needs to be
25 more voices for the people that cannot speak,

1 who have died or can no longer have the air to
2 speak.

3 As I said last year, you have the power to
4 override this cumbersome inactivity that has
5 prevented these poor souls who trusted our
6 government and readily assembled not only to
7 provide our militia with the materials needed,
8 but also to support their families, as any
9 hardworking man would aspire to. Why now has
10 the government went AWOL on them is my
11 question.

12 If I offend anyone for what I'm also about to
13 say, I apologize. I'm also here on behalf of
14 someone else. You may call me a religious
15 radical or whatever word you choose, it's your
16 First Amendment right. But whether you know it
17 or not, your hands are stained with these
18 workers' blood and will always be until there
19 is justice for them for what has happened to
20 them and their families. Man was not created
21 to be destroyed by another. When you hide your
22 eyes or remain laxed (sic) about this murderous
23 activity that has taken place, you will be
24 liable in God's eyes. I hope and pray that my
25 comment will remain on your mind and the faces

1 of these claimants will settle deep in your
2 heart. Remember this: There is no softer
3 pillow than a clean conscience. Please do all
4 you can as fast as you can. Thank you.

5 **DR. ZIEMER:** Thank you, Clarissa, for those
6 pointed remarks.

7 Let me check now with a few others to -- again,
8 I would like those who are able to address us
9 during the public session tonight to agree to
10 do so. If you're not able to, we'll try to
11 accommodate you. Mary Johnson?

12 **MS. JOHNSON:** (Off microphone) (Unintelligible)
13 tonight.

14 **DR. ZIEMER:** Tonight? Thank you, Mary. Mark -
15 -

16 **UNIDENTIFIED WOMAN:** (Off microphone)
17 (Unintelligible)

18 **UNIDENTIFIED MAN:** (Off microphone) Bruning?

19 **DR. ZIEMER:** Yes.

20 **UNIDENTIFIED WOMAN:** (Off microphone) Tonight.

21 **DR. ZIEMER:** Tonight? Thank you. Shirley
22 Hardin?

23 **MS. HARDIN:** Tonight.

24 **DR. ZIEMER:** And Nancy Adams?

25 **UNIDENTIFIED:** (Off microphone) She already

1 spoke.

2 **DR. ZIEMER:** Okay. Paula Graham -- is it
3 Graham, or -- it may -- I may not have that
4 correct.

5 **UNIDENTIFIED:** (Off microphone)
6 (Unintelligible)

7 **DR. ZIEMER:** Oh, yeah, she's from Iowa, so
8 we'll -- yes, we'll catch you tomorrow. Thank
9 you, Paula.

10 Now I'm having trouble reading writing. I
11 should have been a pharmacist so I could
12 decipher these.

13 **UNIDENTIFIED:** (Off microphone)
14 (Unintelligible)

15 **DR. ZIEMER:** Thank you very much. Yes?

16 **UNIDENTIFIED:** (Off microphone)
17 (Unintelligible)

18 **DR. ZIEMER:** Oh, that would be fine. You have
19 copies for the Board members of your statement
20 and that's fine. Please go ahead and
21 distribute them.

22 **MS. BROCK:** (Off microphone) (Unintelligible)
23 Board discussion?

24 **DR. ZIEMER:** Yes, we're going to do that next,
25 so go ahead and distribute those, and then --

1 let's see, who else do I have here. Yes, sir?

2 **MR. BRUNING:** Yeah, you called my name, Mark
3 Bruning. I said okay, so I thought somebody
4 said I'd be here tonight. I won't be.

5 **DR. ZIEMER:** Oh, okay. Go ahead, Mark, please.

6 **MR. BRUNING:** Anyway, I had 18 years with
7 Mallinckrodt. I was employed in 1945 at the
8 St. Louis plant and in -- let's see, '56 I was
9 transferred to the uranium division, and in '57
10 we moved -- February of '57 we moved out to
11 Weldon Springs. And anyway, in the meantime,
12 it was in 1960 my wife was -- got pregnant and
13 after about three months she couldn't feel
14 life. Anyway, we wound up losing the baby.
15 She carried it the full time dead and the
16 doctors wouldn't do anything about it. They
17 said they were going to let nature take its
18 course.

19 So anyway, it happened about a year or two
20 years before that, my brother -- which is older
21 than I am and he just passed away two years ago
22 -- his wife lost a baby and my brother worked
23 at the Destrehan plant and also at Weldon
24 Springs.

25 And anyway, then I guess I was kind of

1 fortunate. They let me go in '62. I guess
2 maybe that's why I'm still living, that cancer
3 hasn't killed me yet. But I did have a tumor
4 removed off the colon and that was in December
5 of 2001. And I was laid up for -- let's see,
6 January, February, March -- better than --
7 right close to four months. I had an open sore
8 on the back and the doctor claimed that it had
9 to be healed from the inside out. My wife had
10 to bandage it and take care of it twice a day.
11 And I joined this program in 2002 -- no, 2001,
12 and when it -- she had the meeting out at St.
13 Charles at the Festivals of the Little Hills,
14 so anyway, my brother, he had -- he filed a
15 claim as soon as this came out in 2000 -- it
16 was either latter part of 2000 or 2001. So
17 anyway, after I went to the meeting that Denise
18 had, well, I got in touch with my brother and I
19 was talking to him and I was telling him about
20 this. He said hell, you ain't going to get
21 nothing, and he explained to me how long he'd
22 already been in it. He said I never got an
23 answer from them. So I said well -- so I
24 talked to him six months later, he said oh, he
25 said by the way, you ain't going to get

1 nothing, either. I said why is that? Well, he
2 said, you worked in the office. I said what
3 has that got to do with it? Well, he said, the
4 book states that those that -- people worked in
5 the office ain't going to -- they're not
6 entitled to anything. So I just asked my
7 brother, I says hey, I said with all these
8 chemicals floating around in the air, they come
9 along and say hey, we ain't going to pick on
10 him 'cause he worked in the office but you guys
11 out in the plant, we're going to get all you
12 guys. But we had to walk out -- I -- not only
13 me, but a couple of my coworkers, we had to go
14 out in the plant in the receiving department
15 where our paper products was stored and we had
16 to walk through the guard office, down the road
17 just a little bit. We didn't get no badge. We
18 didn't get nothing. We walked through that
19 building to the back of the building. We
20 carried our paper products back up to the
21 accounting department. That's where I worked.
22 And so okay, that was -- yeah, '62 when they --
23 when they let me go. But anyway, like I said,
24 my wife carried that baby. It was dead. And I
25 had that tumor removed in December of 2001 and

1 I had my prostrate (sic) worked on in February
2 of 2002 and I'm still suffering from the
3 prostrate, so I'm just -- I'm like all the
4 other employees -- ex-employees. I'm just kind
5 of waiting and wondering what -- what's going
6 on, you know. How come, you know.
7 And my sister -- after my brother passed away,
8 my sister-in-law refiled her claim, and she got
9 a call one day from one of the offices, I can't
10 remember which one it was. If she was here she
11 could tell you. This person asked her how come
12 you had three last names. My sister-in-law
13 said well, what do you mean? Well, she said,
14 you got three different names on here. Well,
15 she said, my maiden name was my -- what my mom
16 and dad. She said I was married once; he died.
17 Then she said, and I married Tom. I said --
18 she said, does that explain the three names?
19 Oh, this person said, I didn't give that a
20 thought.
21 So anyway, I'm just hoping that things would
22 get settled and get this over with. And I know
23 that we got it coming. There's no reason that
24 we shouldn't be getting it. Thank you.
25 **DR. ZIEMER:** Thank you very much. I'd like to

1 ask if there's any others here who did wish to
2 speak who are unable to participate in the open
3 session either this evening or tomorrow.

4 Please approach the mike.

5 **MS. ROYCE:** Good afternoon. My name is Ann
6 Royce and my father was Robert McNutt*. All of
7 his coworkers called him Mac and he worked in
8 the Destrehan plant for -- and he worked at
9 Mallinckrodt for 38 years. During World War II
10 he became a much-decorated war hero, wounded
11 twice and honorably discharged after the end of
12 the war.

13 Soon after, he began working at Mallinckrodt,
14 along with his brother Richard. Being the
15 patriot that he was, he was proud that, as a
16 civilian, he could still work for our country
17 to make it the superpower it is today. He
18 worked in the hot room in the furnaces.

19 I still have distinct memories of Dad coming
20 home from work in a cab -- a cab because he had
21 spent the day at the hospital. A quick look at
22 his face brought tears to my mother's eyes when
23 she discovered that his eyelashes and eyebrows
24 had been burned off and bandages covered his
25 neck and cheeks. And then his words -- well,

1 that was a close one today; or I'm okay, it was
2 just another spill.

3 This happened many times, not just once, and
4 enough that it became a normal occurrence in
5 our household.

6 I also remember his heartrenching sadness when
7 my uncle died at the age of 36 of leukemia,
8 leaving behind five boys; the oldest was 14.
9 He had worked at the Destrehan plant and then
10 moved into Weldon Springs.

11 But my clearest memories concern the last few
12 years of his life. Bladder cancer is a
13 particularly painful way to die. When it was
14 finally diagnosed it was terminal, and the
15 doctor said the tumor had penetrated the three
16 walls of his bladder, spread out and grown like
17 a tree throughout his body, and it soon went
18 into bone cancer. We nursed him for a year
19 until he died in 1993.

20 During his various treatments the doctor who
21 was administering his radiation asked him if
22 he'd ever been overexposed to radiation. It
23 was as if a light went off in Dad's head, and
24 he told her of his radiation history at
25 Mallinckrodt. She was appalled that they had

1 not been given protective clothing or gear to
2 wear. She said well, we just discovered the
3 source of your cancer. That of course was --
4 was long before any of the compensation rulings
5 came about.

6 I helped my mom apply for this compensation on
7 the first allowable day in 2001. She felt that
8 it was like an apology from the government for
9 the hand they dealt my father and his
10 coworkers. She passed away on August 16th of
11 2004 without receiving her apology.

12 **DR. ZIEMER:** We had a request from Department
13 of Labor from Shelby Hallmark to address the
14 assembly, too, and Shelby, we'll give you the
15 floor now.

16 **MR. HALLMARK:** Good evening. Shelby Hallmark,
17 Department of Labor. I just want to start by
18 saying it's been fascinating and sometimes
19 difficult to hear the stories of all the folks
20 who have had such a hardship here at
21 Mallinckrodt and -- and also their travails in
22 dealing with the government in trying to
23 negotiate our programs and that of NIOSH and
24 the Department of Energy. I think it might be
25 helpful, before I make any other comments, to

1 say that I think that the Board, the Department
2 of Energy, the Department of Labor and the
3 NIOSH folks are all working as hard as they can
4 to try to make this program work. It's not an
5 easy task, as -- if you've been listening all
6 day to the work the Board is trying to do.
7 That said, I'd like to say, first of all, that
8 the Department of Labor does not take a posture
9 with regard to the petitions at Mallinckrodt
10 one way or the other. And the reason why I
11 deferred my comment earlier was that I wanted
12 to speak more to the general issues that the
13 Board might want to grapple with as it
14 considers petitions, this one and all the
15 others that will come behind, so those will be
16 the burden of my comments here.
17 First, we believe that the Board needs to
18 clearly describe its rationale and the
19 parameters of any recommendations that it makes
20 with regard to petitions. I think Dr. Wade
21 mentioned this earlier in the early discussion
22 about this, and I think that a full record with
23 respect to any recommendation is very important
24 as a road map for future petitions so that they
25 can be handled consistently and fairly.

1 Second, to do this we think that the Board
2 probably needs to articulate criteria that it
3 will use to address specific issues that are
4 engaged in in these petitions, and in this
5 particular case that we've been discussing
6 today, particularly the issue of data
7 credibility and how that should be weighed and
8 under what circumstances it should be deemed to
9 make dose reconstruction not feasible.

10 I -- we can't really articulate ourselves from
11 the Department of Labor's perspective what
12 those criteria might be. We have some
13 suggestions or some thoughts, or maybe just
14 some questions, so I'll throw some of those
15 out.

16 First might be should the Board or NIOSH find -
17 - need to find that the alleged data
18 credibility problems are such that they block
19 or invalidate alternative methods for
20 estimating around data gaps. Or alternatively,
21 are there types of data credibility issues
22 which are so pervasive or so intense that, in
23 and of themselves, they require that a -- that
24 a petition be approved. And if so, what would
25 be the threshold. In other words, if you have

1 egregious issues like that, what kinds of
2 thresholds would you look for to make that sort
3 of determination.

4 In that light I would -- the one point I would
5 make is that obviously Congress, in
6 establishing the dose reconstruction process in
7 the first place, had in mind that there were
8 data gaps and that there was a process for
9 trying to work in that difficult world. So a
10 standard of perfection seems to be not possible
11 within the framework of the statute. The
12 question is what are the standards that you
13 will apply -- a difficult task, obviously.
14 Another question might be whether there's a --
15 when there's a distinction to be drawn between
16 documented data tampering or erroneous data, as
17 opposed to possible or potential data problems.
18 Another question is if NIOSH has alternative
19 estimation techniques that it believes can
20 overcome specific data credibility issues, is
21 the complexity or comprehensibility, if you
22 will, of those techniques a valid criterion for
23 judging whether a petition ought to be granted
24 or not. And similarly, is the likelihood that
25 there will be substantial distrust of those

1 techniques a criterion that ought to be
2 considered.

3 In sum, the -- the question rises to us, are
4 there degrees of data credibility. And if so,
5 how can they be objectively defined or
6 categorized.

7 And in evaluating those criteria and in
8 weighing them, we believe that the Board needs
9 to look at the whole universe of how the claims
10 in question will be affected. And specifically
11 if the Board does find that -- even though
12 there are data that exist that could be used
13 for estimation, that because of credibility
14 they should not be, then all the claims, in our
15 view, which are non-SEC cancer claims would be
16 extinguished. And in weighing the puts and
17 takes in how to address a petition, we think
18 that the Board ought to take into consideration
19 that negative impact on what has been running
20 about 40 percent of the cancer claims that we
21 are receiving in the program.

22 So those are -- those are our comments and
23 thoughts about the difficult task that the
24 Board has before it, and I appreciate the
25 opportunity to provide those. Thank you.

1 **DR. ZIEMER:** Thank you. Shelby, you've raised
2 some very difficult questions actually that the
3 Board indeed will have to grapple with. We
4 thank you for those comments.

5 **BOARD DISCUSSION**

6 Now I want to first of all open the floor for
7 the Board to raise questions from the -- of the
8 NIOSH staff, either Larry or his staff, on the
9 materials that were presented initially.

10 Basically we have -- let me get my documents
11 out here and correct reference numbers. We
12 have petition evaluation report SEC00012-1 that
13 we must react to, and SEC00012-2, so have those
14 items before you.

15 You have also now copies of the presentation by
16 Denise, as well as the original petitions. So
17 let me ask first, Board members, do you have
18 specific questions now to ask for Larry or the
19 NIOSH staff?

20 Okay, we have a number of questions here. I
21 don't know who was first. Roy DeHart?

22 **DR. DEHART:** I would like to address the issue
23 on 00012 dealing with the uranium exposure at
24 Mallinckrodt '42 -- 1942 through '57, but
25 specifically focusing on the '49 through '57

1 period.

2 **DR. ZIEMER:** This would be 00012-2 then.

3 Right?

4 **DR. DEHART:** I don't show it as dash-2 on this
5 -- it's draft two, yes.

6 **DR. ZIEMER:** Draft two, and --

7 **UNIDENTIFIED:** (Off microphone) It's dash-2.

8 **DR. ZIEMER:** -- dash-2, as well.

9 **DR. DEHART:** Okay.

10 **DR. ZIEMER:** Okay.

11 **DR. DEHART:** The question is, in the datasets
12 that we have, on page 17 -- and there was -- we
13 were left with a question as to whether or not
14 we felt that this dataset was sufficient to
15 move forward with the -- the third category
16 that we had up on the wall, '49 through '57.
17 My question really is, is there any confidence
18 within NIOSH that this data is accurate; and if
19 so, is it sufficient to move forward with
20 trying to do dose reconstruction?

21 **MR. ELLIOTT:** Yes, Dr. DeHart and members of
22 the Board, if you recall my presentation, I
23 spoke to the many things we had to do in
24 evaluating a petition, and one of those things
25 is to examine the data itself for -- for its

1 reliability and how robust it is, how much
2 comparison can we make in validating the data
3 across datasets. I would say that yes, we
4 believe that the data beyond 1949 -- that data
5 from '49 to '57 -- is robust enough and gives
6 us confidence that we can sufficiently and
7 accurately reconstruct doses.

8 However, we're raising the question for the
9 Board to deliberate on, is the integrity of the
10 monitoring program and those questions raised
11 with it, were -- how do we weigh that evidence
12 against the scientific ability to do dose
13 reconstruction.

14 I don't know if LaVon Rutherford or Dan
15 Stempfley would have any further comments about
16 the specific data itself. They've had their
17 eyes on it. They can speak to the -- there's
18 large numbers of data that we have. This is
19 just a simple summary of the data that we can -
20 - we can report to you in this report, so I
21 don't know if -- is there any further comments
22 from --

23 **DR. ZIEMER:** While they're coming up, if I
24 might follow up on that for a moment, we have -
25 - we're aware of some allegations about the

1 desire, as it were, of an individual within the
2 organization to not have the information known
3 publicly, as it were, about the conditions at
4 Mallinckrodt. I'm talking specifically about
5 the -- the allegations about statements made --
6 I forget the individual --

7 **DR. DEHART:** Dust exposure I think was the
8 issue, they were not accurate.

9 **DR. ZIEMER:** Well, I'm -- this has -- this has
10 to do with whether they would be considered by
11 the Mancuso folks and so on. I'm really asking
12 is there any evidence that actual data
13 themselves were tampered with versus the fact
14 that the individual simply did not want the
15 information to get out in -- in the public
16 arena.

17 **MR. RUTHERFORD:** This is LaVon Rutherford, I
18 can answer that. We do have a letter from
19 actually Mont Mason in 1975 where he actually
20 verifies that we -- that that data was
21 recovered, the data that was supposedly
22 missing. There's a '75 letter that says that
23 data was recovered and Oak Ridge does have
24 that. And if you look at the professional
25 judgment letter, it actually talks to that and

1 says that -- that we have covered those gaps,
2 so we do feel we have sufficient data.

3 **DR. ZIEMER:** Yes, and I -- as I read the
4 professional judgment letter, I thought --
5 sometimes folks couch their -- these things a
6 little bit cautiously. I thought that's what
7 was being said, that there wasn't -- or to put
8 it another way, if there had been some
9 manipulation of the data, one would have
10 expected it to look a lot better than it
11 actually did, perhaps.

12 **MR. RUTHERFORD:** Exactly, and I think that's a
13 very good point. I think that -- the point is,
14 there was definitely overexposures, but we have
15 the data that's -- that we can do dose
16 reconstructions from those. We do have process
17 data. We have urinalysis data. We have 13,000
18 urinalysis just on this page alone. We have --
19 in comparison to that data, we can compare the
20 area dust data along with the urinalysis data.
21 We can also compare the process, actually the
22 concentrations. So I feel like we've got all
23 those areas covered '49 to '57.

24 **DR. WADE:** Was this 1975 letter, is it included
25 in the package or it's not in the package?

1 **MR. RUTHERFORD:** Actually it was found later
2 on. I do have that with me, and I would -- I
3 will provide that to the Board. It actually --
4 what you'll look at the letter -- if you look
5 at the -- part of the basis provided by the
6 petitioner, it was a letter in 1972 that --
7 that Mont Mason had identified the potential --
8 the worry of data being lost, actually data
9 being lost, and there was a transfer of
10 communications between Mancuso to the records
11 center and back, and the concern of losing that
12 data and that was a very important concern
13 because that considered -- that had dust data
14 from pre-'49 -- from the '49 dust study that
15 was done.

16 Now recognize -- that -- that letter was -- was
17 communicating concerns for data pre-'49. Okay?
18 That data has been -- or we feel we have that
19 data, Oak Ridge has that data. There's been no
20 question as to any of the data after '49, even
21 if you did -- even if you had a concern with
22 that statement, there has been no question with
23 the data after '49.

24 **DR. ZIEMER:** Roy, did -- has that answered your
25 question?

1 **DR. DEHART:** Yes, it does.

2 **MR. RUTHERFORD:** I'd also like to -- there is -
3 - you know, there was a good point that was
4 brought up, the issue of the triple zeroes that
5 were -- you know, that -- they're individuals
6 that were supposedly indicated having zeroes
7 and those individuals, you know, were not
8 monitored. That -- I want -- I want people to
9 recognize, that does not prevent us from doing
10 dose reconstructions. Apparently that was a
11 past practice at a number of facilities and --
12 but that doesn't prevent you from doing dose
13 reconstructions. We at NIOSH can take that
14 into consideration that the individuals -- we
15 won't -- basically wouldn't accept those zeroes
16 and we would use a different -- a different
17 value, so that doesn't prevent us from doing
18 dose reconstructions.

19 **DR. ZIEMER:** I think Leon was next.

20 **MR. OWENS:** So you're saying then that it is
21 feasible to estimate with sufficient accuracy
22 the doses for the Mallinckrodt workers from
23 1949 to 1957?

24 **MR. RUTHERFORD:** I'm saying as a health
25 physicist I feel that it is feasible to do dose

1 reconstruction from 1949 --

2 **MR. OWENS:** Okay, so on the summary sheet that
3 Mr. Elliott provided to the Board, under the
4 feasibility block it was blank, and I take into
5 account Mr. Elliott's comments, but since you
6 worked on this, you're saying that that should
7 possibly be a "yes" in that feasibility block?

8 **MR. RUTHERFORD:** I'm -- I'm -- there's a number
9 of individuals that are involved in this
10 process, and -- and you know, as a health
11 physicist my responsibility was to evaluate the
12 information and determine whether I felt we
13 could do dose reconstructions -- technically
14 based on the data. And technically based on
15 the data, as a health physicist, yes, I do.
16 Now I'll let Larry speak to the other issues of
17 that.

18 **MR. ELLIOTT:** We left that block open because
19 we want to hear the Board's deliberation and
20 discussion on how to weigh the -- how to come
21 to weighing the evidence of -- of accusations
22 and allegations about reliability of data
23 against what we say are, to us, clearly
24 scientific and technical ability to reconstruct
25 doses. So that's why we left that blank, but I

1 think our report and our summary findings
2 indicate that we feel we can do dose
3 reconstructions for the years '49 to '57 with
4 sufficient accuracy.

5 **DR. ZIEMER:** Okay. Leon, does that -- you want
6 to follow up on that?

7 **MR. OWENS:** I will in a little bit. I'm --

8 **DR. ZIEMER:** Okay. Mike, are you next, and
9 then Mark.

10 **MR. GIBSON:** My question's for NIOSH, also.

11 After a history of not monitoring employees and
12 putting employees in harm's way, what gives you
13 -- what level of comfort do you have that
14 overnight they would just all of a sudden start
15 a monitoring program and accurately monitor the
16 workers, and that this data is in fact correct?

17 **MR. ELLIOTT:** Well, I think LaVon Rutherford
18 could speak to this, as well, and he may want
19 to add to my comments here. But my folks in
20 this -- and the ORAU contractor who performed
21 the evaluation, as prescribed by our rule, have
22 looked very closely at the documentation. As
23 you can tell, we were -- even last week we were
24 struggling to find documentation that would
25 either support the Mont Mason communication

1 about losing data or re-- or rebut it, and they
2 found this letter that rebuts it.

3 In that review of -- of -- in that extensive
4 review of all of the information and the
5 documentation, it becomes apparent to us that
6 there was a critical consideration and due
7 process given in the monitoring program that
8 was run by HASL across the weapons complex at
9 that time trying to address concerns and issues
10 of potential exposure, high exposures, and
11 provide -- once they had the monitoring
12 information, provide recommendations on how to
13 change work practices, how to -- how to provide
14 better protection and how to improve the
15 process control parameters. That's why you see
16 in Destrehan they -- they went to ventilation,
17 they did other things like -- in the monitoring
18 program besides just badging people.

19 I don't know if LaVon has anything further to
20 add, but we feel very confident that in the
21 years -- from the documentation that we have
22 that there was a sound monitoring program.

23 **DR. ZIEMER:** Mike, do you have a follow-up?

24 **DR. NETON:** This is not LaVon, this is Jim
25 Neton, but I'd just like to add a little

1 follow-on to what Larry said.
2 It really wasn't overnight. What you have here
3 is an evolving program. As Larry said, in 1948
4 there was established -- a health physics
5 program was put into place. But you have
6 essentially what was a three-legged stool
7 emerging. You have process knowledge, the
8 amount of material that was put through the
9 system, in combination with workplace
10 monitoring data, the air sampling program was
11 emerging. And now you have urinalysis data to
12 evaluate, as well. So you have a three-pronged
13 approach here, and any one of those are -- you
14 can balance each of those against each other to
15 get a good picture as to what the exposures may
16 have been, and in fact the maximum exposures.
17 So those data, taken in concert -- and starting
18 in '49 I think is the time period when you
19 start to have, as you'll see in your little
20 summary chart, all three sets of data being
21 present and increasing over time.

22 **DR. ZIEMER:** Mark?

23 **MR. GIBSON:** Mike --

24 **DR. ZIEMER:** Oh, Mike in follow-up, yes.

25 **MR. GIBSON:** I guess my point is -- about the

1 quality of the data is, you know, there were
2 dozens of DOE sites and hundreds of AWE sites
3 around the nation, and that's exactly why we're
4 setting here today because even that the
5 records that were taken weren't often accurate,
6 even though there -- some were and there were
7 overexposures, but there were also inaccurate
8 records and that's -- that's the reason that
9 the government made the admission in the year
10 2000 and this law was put into effect.

11 **DR. ZIEMER:** Okay. Thank you. Mark?

12 **MR. GRIFFON:** I -- I just wanted to follow up
13 on the -- the question with the data validity
14 that -- I'm looking at 12-1, petition 12-1,
15 page 5, second bullet under section three. In
16 the middle of the paragraph this says Mont
17 Mason asserts the dose values of zero were
18 recorded in the official monitoring records
19 when samples were not taken. This assertion is
20 credible to NIOSH.

21 Now is this consistent with that later '75 memo
22 that -- that you're referencing now? Or are we
23 talking about two different sets of -- of data?

24 **MR. RUTHERFORD:** (Off microphone)

25 (Unintelligible)

1 **MR. GRIFFON:** Yeah, just clarify.

2 **MR. RUTHERFORD:** This is LaVon Rutherford. We
3 do feel that's a credible statement by Mont
4 Mason, and we don't disagree that -- that that
5 occurred. That could have occurred, and we
6 would definitely take that into consideration.
7 What I was discussing was actually -- if you
8 look at the Mont Mason letter in the basis --
9 of the petition basis, the -- the -- he
10 identified records that he felt were some of
11 the most critical -- actually Dr. Mancuso did,
12 as well -- some of the most critical records
13 for recreating or -- recreating dose to
14 workers, these early uranium workers, and that
15 is referring to the 1949 dust study and the
16 work that went into that dust study.
17 Now after that, in 1975 there was an interview
18 with Mont Mason and he discusses those records
19 being actually retrieved -- retrieved and sent
20 to the University of Pittsburgh and -- and then
21 subsequently those went to Oak Ridge. And we
22 actually have that data from the Oak Ridge
23 people, and in that you will see the -- what
24 he's talking -- what he discussed or what --
25 what shows in that dust studies, time motion

1 studies and a number of other things that were
2 done for that '49 dust study report.

3 **MR. GRIFFON:** I just wanted to cla-- I thought
4 that was the case. I just wanted to clarify
5 that.

6 I also wanted a follow-up question. During any
7 of this time period do you have any monitoring
8 records related to some of the impurities in
9 the ore -- the actinium, thorium, protactinium
10 -- during any of the time period in discussion
11 here?

12 **MR. RUTHERFORD:** We do not have a lot of -- of
13 -- I mean as -- as presented by Ms. Brock and
14 presented earlier, the -- you know, it was the
15 -- it was -- they only analyzed U data
16 basically they were looking at alpha activity.
17 We do not have actually spread out, you know,
18 each isotope that was analyzed. However, we do
19 know the proce-- we do know the process. We do
20 know the actual content in the ore, and we can
21 make favorable dis-- and I say favorable,
22 claimant favorable distributions and -- in
23 doing the dose reconstructions for the workers
24 -- based on those samples, based on the air
25 activity and based on, as Jim mentioned, the

1 process data.

2 **MR. GRIFFON:** So -- so you're -- the only data
3 you have -- just to be clear, the only data you
4 have on those -- on the isotopic content is of
5 the ore itself. You wouldn't have radiological
6 survey data, smear data, air sampling data, no
7 worker urinalysis data. Right?

8 **MR. RUTHERFORD:** We actually have a -- another
9 report that was -- that actually did a
10 comparison of U and radium content -- ratio
11 based on the ore, and we have -- you know, but
12 we do not have specific urinalysis data or
13 bioassay data of any sort for other isotopes
14 other than the uranium -- except for -- yeah,
15 other than the uranium.

16 **MR. GRIFFON:** And -- and this -- I think -- I
17 think we discussed this in Cincinnati, but is
18 this later data the -- the sort of percentages
19 by radionuclides, is that in this Revision 1
20 that we haven't seen yet?

21 **MR. RUTHERFORD:** Yes, it is.

22 **MR. GRIFFON:** Okay. And is it -- do you ha--
23 is it based on the ore or -- or do you have
24 information also on where different isotopes
25 might concentrate out in -- and how the

1 percentages might vary?

2 **MR. RUTHERFORD:** I'll be honest with you, I
3 haven't seen the latest because there was
4 changes being made to that up till just a week
5 ago, so I can't comment on that until -- you
6 know, with any accuracy.

7 **MR. GRIFFON:** I think this is an important one
8 in terms of -- of sufficient accuracy. I mean
9 I think we're talking about some very high dose
10 consequence isotopes, so if we don't have a
11 good handle -- and maybe you do, but if you
12 don't have a good handle on -- on how
13 concentrations vary or your range of -- of
14 concentrations of -- of especially things like
15 actinium and protactinium, I wonder if you --
16 we can -- you know, sufficient -- with
17 sufficient accuracy, bound these -- these
18 exposures or these doses and --

19 **MR. RUTHERFORD:** Well, as I said before, we can
20 take -- you know, we can take each isotope that
21 is identified and we can take claimant
22 favorable -- if we had to, we could take
23 claimant favorable distributions, known
24 distributions that would have to -- I mean if
25 we had -- if we had to, we could assume it was

1 all one isotope, if that was going -- you know,
2 to do a maximum dose as required under the
3 rule. So I mean I think that -- you understand
4 what I'm saying?

5 **MR. GRIFFON:** Yeah, I think this gets back to
6 our general problems with the SEC.

7 **DR. NETON:** Mark, I'd just like to
8 (unintelligible) these are standard --

9 **MR. GRIFFON:** (Unintelligible) relation, yeah.

10 **DR. NETON:** -- these are standard chemical
11 processes, so it's not -- it's not a stretch of
12 the imagination to be able to reconstruct what
13 the alpha concentration would be for the
14 highest isotope in the raffinate, given the
15 chemical partitioning in that waste stream, and
16 then to use an assumption that all subsequent
17 nuclides were in 100 percent equilibrium with
18 the parent in that waste stream. I think in
19 that way you would come up with a maximized
20 upper estimate of the dose, which is what's
21 required for feasibility of a dose
22 reconstruction. You can't -- you can certainly
23 establish what the upper limit would be for the
24 concentration in the raffinate, knowing the
25 chemical process.

1 **DR. ZIEMER:** Jim -- oh.

2 **DR. MELIUS:** Actually you may not want to sit
3 down, Jim. Save you a walk. But I guess I'm -
4 - I'm still trying to understand this -- the
5 table on page 17 in the draft two issue and
6 just some sense of one -- my first question has
7 to do with the stability of the process over
8 time. It seems that the -- I'm sort of
9 interested in why you chose the cutoff of '49
10 in terms of the petition. I'm not sure who can
11 answer this, but was it from that point on you
12 felt that the process was stable -- 'cause you
13 really didn't start to have a full monitoring
14 program till -- it was being implemented over
15 that time and -- and --

16 **DR. NETON:** Could you help us out here? I'm
17 having trouble on -- on page 17 I have -- table
18 --

19 **DR. MELIUS:** It's called summary of available
20 monitor data for Mallinckrodt. It's --

21 **DR. NETON:** Which version?

22 **DR. MELIUS:** It's --

23 **UNIDENTIFIED:** Two.

24 **DR. MELIUS:** -- two.

25 **DR. NETON:** Two? Okay, I have --

1 **DR. MELIUS:** I'm sorry, yeah.

2 **DR. NETON:** Well, yeah, okay. Now I see where
3 you're at. Thank you. Right, what happens
4 here is there -- there are no urinalysis data
5 prior -- or any -- any urinalysis data really
6 prior to 1948, and the '48 data we believe were
7 -- you know, there are a smaller number of
8 samples and there was some question about the
9 process of monitoring those data in that year.
10 I think in that time period when Mont Mason
11 came on board, they did some analyses and
12 determined that -- I'm trying to recall here
13 now, but I think the analytical laboratory that
14 did those analyses had some problems with their
15 standards and what-not. And so subsequent to
16 that time period, though, now you have some
17 urinalysis data being collected on a pretty
18 continuous basis, side by side with some
19 substantial increase in uranium dust data.
20 There were 12,6 -- 1,268 samples collected in
21 1949, which represents -- looks to be about an
22 eight-fold increase over '49, so now you have
23 urine, a tremendous increase in dust samples,
24 and then you also have external monitoring
25 going on in that time period.

1 **DR. MELIUS:** And so the nature of the
2 individual dose reconstructions sort of
3 hypothetically -- would the key be the
4 urinalysis data, or are you going to be basing
5 on individual exposure records, are you going
6 to be using coworker data going to be the key
7 piece of information or is it going to be --

8 **DR. NETON:** All three, actually. It depends on
9 the specific case, but we would prefer to use
10 the individual monitoring data where it exists,
11 of course, followed by coworker data and then
12 followed by area monitoring data. But
13 ultimately one could conceivably -- and this is
14 provided for in our regulation -- reconstruct
15 doses based on process information alone. We
16 don't believe in this time period that one
17 needs to go to that extent, but certainly the
18 process knowledge, the amount of material that
19 was put through the process in that time frame,
20 gives us another level of comfort that -- that
21 the other three sets of -- or the other two
22 sets of data we have are reasonable.

23 **DR. MELIUS:** I guess I'm also just trying to
24 get at this -- back to this credibility issue
25 is -- I think it also depends on the -- the --

1 sort of the density of the data that you have
2 to work with. If a significant amount of the
3 data you're basing it on is -- may not be
4 credible, then that would raise a larger --
5 this is sort of the issue Shelby raised --
6 raised earlier, what is the criteria for
7 determining the effect of credibility on the
8 program and -- and so forth.

9 **DR. NETON:** Correct.

10 **DR. MELIUS:** The other -- I guess it's more of
11 a statement than a question, but at least I'm
12 having trouble and I think the other Board
13 members are, since the revised site profile or
14 the draft of it that we just saw recently and -
15 - and the -- our review that was done by SCA of
16 the earlier draft of the site profile really
17 doesn't break out these same time periods
18 necessarily so it's a little hard to get a
19 handle on what -- when an issue was raised, but
20 certainly SCA raised a number of significant
21 issues regarding this overall time period and
22 the quality of the data, and I think we need to
23 come to grips with that in making this -- our
24 evaluation, also.

25 **DR. ZIEMER:** Okay. Wanda Munn?

1 **MS. MUNN:** There are so many issues in the
2 details that it's very difficult to get a
3 mindset that's large enough to encompass the
4 larger questions. There are three that seem to
5 be obvious in this particular instance. Shelby
6 brought most of them to our attention, because
7 certainly the issue of the reliability of data
8 is a massive one.

9 It shouldn't come as any surprise that data
10 gets better as protection programs get older.
11 Being able to extrapolate data to a population
12 that was unmonitored at all is almost
13 impossible to do. So from the information that
14 we have now, it would seem that the first
15 earlier years at this particular site,
16 especially until Mont Mason came on site,
17 literally have no value in trying to establish
18 any dose reconstruction.

19 If that's the case, then that is not
20 particularly a difficult decision for a body
21 like this to make, I would think. If my
22 understanding of that is incorrect, I would
23 like for someone to clarify it for me. It's
24 easy to see that once a qualified individual
25 who had personnel concerns came on site and was

1 working with both a government and an employer
2 -- who clearly would have no reason to harm
3 their own employees who are doing valuable work
4 for them -- that these programs would become
5 better as time went on, and the data would
6 become increasingly better as protective
7 programs were put into effect.

8 It seems clear that we'll have to draw some
9 sort of line. Whether that's the line that
10 NIOSH has established now is difficult to
11 ascertain, but it's -- it -- especially in
12 light of something else that continues to
13 develop, and that's available information.
14 We were unaware, for example, that we had new
15 boxes of data which haven't even yet been
16 identified in terms of time and what actually
17 is contained in those boxes. It seems unlikely
18 that anything in those boxes would affect those
19 first two or three year programs where --
20 again, if -- if my understanding is correct,
21 there essentially was no documentation as far -
22 - or -- or monitoring of real exposure, so
23 what's in those boxes probably won't affect the
24 first couple of years.

25 But they could very easily be extremely

1 informative in the later years that we're
2 looking at in the exposures from '49 through
3 '57. Given that we don't know what's in that
4 and given that we have a new site profile that
5 we don't -- have had -- we haven't had an
6 opportunity to look through, it seems very
7 difficult for us to assume that we can -- right
8 now, today -- make the judgment on the later
9 years.

10 One of the things that we probably need to face
11 is that as long as this program goes on, as
12 long as people continue to look for
13 documentation, we likely will be turning up new
14 documentation. Anyone who has worked in one of
15 these government programs and who has tried to
16 follow the record-keeping process knows how
17 many times something like what was just
18 described to us occurs, where the records which
19 were carefully guarded went from Mason to
20 Mancuso to the University of Pittsburgh and
21 eventually to ORAU. And for some -- probably
22 to that storage place in New Jersey where the
23 ark is currently in a box.

24 There's -- it's difficult, from this
25 perspective, to be able to say exactly when

1 enough information is enough. My personal
2 feeling is I, as an individual Board member,
3 have enough information relative to the first
4 cohort. I think NIOSH has told us they can't
5 get there from here. As far as the '49 through
6 '57 cohort is concerned, my comfort level,
7 personally, would be a great deal higher if I
8 had an opportunity to review the revised site
9 profile and to have at least sketchy
10 information about the contents of the recently-
11 received data from ORAU.

12 **DR. ZIEMER:** And thank you. Other comments?

13 **DR. MELIUS:** I have a --

14 **DR. ZIEMER:** Yes, Jim.

15 **DR. MELIUS:** -- separate set of -- other
16 question. I think this one is for Larry.
17 Denise Brock brought up the issue of the -- I
18 guess it's under the health endangerment
19 criteria, the 250-day recommendation. Had
20 NIOSH given consideration to something less
21 than 250 days? I believe in your presentation
22 you referred to sort of the other extreme, the
23 criticality -- criticality -- excuse me, late
24 in the day --

25 **MR. ELLIOTT:** An acute incident.

1 **DR. MELIUS:** -- criticality issue and
2 incidents, but it seems to me there is -- there
3 is -- can be a case made, at least
4 hypothetically, for something in between where
5 there are undocumented high exposures that
6 could have occurred and there's at least some
7 evidence of that during these early years, so
8 could you address that issue?

9 **MR. ELLIOTT:** Sure. The answer is we did not
10 consider a shorter time frame than 250 days.
11 We are living under the governance of the rule,
12 and that is either a -- we must see and show
13 documentation for an incident or set of
14 incidents like criticality events which would
15 lead to acute exposure, or are required to use
16 a chronic exposure scenario, which would yield
17 250 days. To go to a shorter time frame than
18 250 days will require a rulemaking change, and
19 we are involved in rulemaking on this rule with
20 -- because of the recent Defense Authorization
21 amendment language, and so that may be
22 something we want to consider in a -- in a
23 rulemaking effort.
24 Let me also -- not to play point/counterpoint
25 with Denise -- and you did an excellent job, by

1 the way, Denise; very articulate presentation -
2 - but I think on -- you made -- for
3 clarification, the -- you made a statement that
4 I think was inaccurate, and that was on page 19
5 of our report you'll find that you can
6 aggregate days between the two classes.
7 There's no -- no exception to just one class
8 versus another class. All classes, whether
9 they're the two that we have here where we say
10 we can't do dose reconstruction and we've
11 established health endangerment, you can add
12 days across those two. I think -- maybe I
13 misunderstood or mis-- mis-heard you, but I
14 just want to make that point of clarification.
15 We would see the 1942 to '48 essentially in the
16 end probably as one class. We just broke it
17 out that way because we had -- there's
18 distinguishing characteristics, as I remarked
19 in my presentation, that set those classes
20 aside. '42 to '46 we see no concerted effort
21 to really monitor anyone or collect samples of
22 any sort, to any great extent. '47/'48 we
23 start seeing a self-initiated program by
24 Mallinckrodt, poorly administered. And then
25 '49 we see the advent and the -- I guess I

1 would say thoughtful and deliberate process of
2 putting a monitoring program in place that was
3 satisfactory.

4 **MS. BROCK:** (Off microphone) (Unintelligible)

5 **DR. ZIEMER:** Question, Denise?

6 **MS. BROCK:** (Off microphone) (Unintelligible)
7 state that in --

8 **DR. ZIEMER:** Denise, you may need to use the
9 mike so we can capture this in the recording.

10 **MS. BROCK:** I think what I meant by that was if
11 we have a worker in 1948 that perhaps worked 50
12 days and he would fall into the Special
13 Exposure Cohort time period, but he just only
14 worked 50 days. And then that employment
15 rolled over into 1949 and it is not an SEC, how
16 could you even estimate that dose if that type
17 of cancer is considered unreconstructable? And
18 maybe I'm not understanding that correctly,
19 but...

20 **MR. ELLIOTT:** No, if that's your point, it's --
21 it's a point well made and a question that --
22 that this Board and we will have to grapple
23 with. We've discussed this numerous times in
24 the Board room and at NIOSH on how to best
25 address this kind of a situation where a person

1 has one foot in a class but not enough days,
2 and it's something that we're going to have to
3 look at together. We don't have an answer
4 today.

5 **DR. ZIEMER:** Yes, Leon has a comment, then Jim.

6 **DR. MELIUS:** I have another question.

7 **MR. OWENS:** Dr. Ziemer, I think that at this
8 juncture the Board needs to seriously consider
9 movement in regard to the SEC petition. I
10 think, though, as we meet the remainder of this
11 year and next year and travel to the different
12 sites, there are -- there's a lot of attention
13 and a lot of focus on how the Board deals with
14 this SEC petition, particularly from a
15 legislative standpoint and also for the
16 workers.

17 I think that it's imperative that we recognize
18 frustration, but I also feel that it's
19 imperative that we do not allow the external
20 forces to in any way influence our decision-
21 making process, and I think that could very
22 easily happen.

23 Based on what Wanda has said, I think that from
24 1942 through 1948 there doesn't seem to be any
25 thought that the ability to perform an adequate

1 dose reconstruction could have happened --
2 could happen for any of the Mallinckrodt
3 workers. And it's also no doubt that their
4 health was endangered. I would like to see the
5 Board include that time period and make that
6 recommendation as one class.

7 **DR. ZIEMER:** Thank you. I'm not sure whether
8 you're making a formal motion at this point,
9 but the -- at the moment, the way this came to
10 us, we have two different pieces -- and we
11 could certainly act on them in pieces and then
12 recommend that they be joined, would be a
13 possibility. Or we can simply -- we can -- we
14 can join them in one fell swoop.
15 We have -- we have the two issues. One is can
16 you reconstruct the dose, and the -- from
17 NIOSH. I'm talking about NIOSH's
18 recommendation, and the answer to that in -- in
19 -- for those two periods that you named, was
20 no. And the other part of it, was there health
21 endangerment, and the recommendation from NIOSH
22 was yes for both pieces.
23 And our -- our charge includes not only whether
24 or not we agree with those recommendations, but
25 also if we believe there is enough information

1 for us to make the decision. In other words,
2 one of the steps calls for us to identify if we
3 think there's other information that we need to
4 make that determination, we also need to
5 identify what that is.

6 Before we continue then, was there a comment
7 from Dr. Melius, and then --

8 **DR. MELIUS:** Yeah. Actually it addresses
9 Leon's suggestion and also what Wanda said. I
10 guess I would just say before we start offering
11 motions, I think we also need to formulate some
12 words that justify whatever recommendation
13 we're making. So I think we sort of need to
14 take that into account in terms of how we're
15 managing the time and what we have to do to get
16 -- move these motions forward.

17 Secondly, I guess the question I have -- and I
18 think it's been partially answered, but I'd
19 like to get a more complete answer from NIOSH -
20 - is that if we hypothetically, as Wanda has
21 commented on, ask for additional information,
22 completion of the site profile or the updated
23 site profile on Mallinckrodt to -- to know what
24 the time frame for -- for that would be as --
25 and also the time frame for evaluating these --

1 this new information that's come in, both the
2 box-- new boxes of information that have been
3 found, as well as some of the further
4 information that references the credibility of
5 -- of the -- some of the data. So I believe we
6 had -- we're told that it would be fairly rapid
7 -- fairly quick that the site profile update
8 would be ready for us, but could we get that --

9 **MR. ELLIOTT:** I'm going to let Judson Kenoyer
10 speak to that question because he's the man
11 with the answer. He runs the site profile team
12 for us for -- at ORAU, and we're putting him on
13 the spot here. And I would -- while he's
14 deliberating with Jim, I'll just say to you
15 that we're very much interested in seeing as
16 expedient a process as we can get here and --
17 and the -- and an answer for this particular
18 petition. So we're going to -- we're going to
19 do everything we can to get you what you're
20 asking for. Judson?

21 **MR. KENOYER:** Sure.

22 **MR. ELLIOTT:** There's some pressure for you.

23 **MR. KENOYER:** Just a little bit. This is
24 Judson Kenoyer. I will try my best to get you
25 Rev. 1 within one month, and that includes all

1 the changes that -- that the authors have gone
2 over with SC&A. And there will be some other
3 changes later, but you'll see the changes that
4 they've agreed upon with -- within one month,
5 if it's within my power.

6 **MR. ELLIOTT:** I'm going to put him on the spot
7 here again. Will that factor into the data
8 that we've recently found in the six boxes? I
9 think that's your next question.

10 **MR. KENOYER:** It probably will not. That data
11 has just been captured. The data that I
12 understand that we're talking about was data
13 that had been in the ORAU vault, some of -- in
14 -- in Oak Ridge, and it took close to a year to
15 retrieve that information. And it wasn't that
16 it was classified or anything like that, but it
17 was mixed in with classified material. We had
18 to send teams of people in there and -- and
19 pick that data out, and then have each page
20 checked over by an ADC, and we just -- we just
21 retrieved it. We just retrieved it, so --

22 **MR. ELLIOTT:** How soon do you think you can --

23 **DR. MELIUS:** Thank you, Larry.

24 **MR. ELLIOTT:** -- have -- have some type of
25 summary, not only for the Board, but for NIOSH?

1 **MR. KENOYER:** I can -- because I have other
2 people looking at that data, I can also try to
3 have some sort of summary within a month.
4 Okay? This is two different processes, one to
5 get the revised site profile through our
6 document system. The other one was to have a
7 couple of HPs go through that data that we've
8 retrieved.

9 **DR. MELIUS:** Could I --

10 **DR. ZIEMER:** Yes, continue.

11 **DR. MELIUS:** -- also be -- indulge and put SC&A
12 on the spot, if someone -- is John or anybody
13 here?

14 **UNIDENTIFIED:** (Off microphone) John's here.

15 **DR. MELIUS:** Yeah. It's just a question that
16 should -- should we want it, so how long would
17 it take -- presume, let's say a new site
18 profile's -- an updated site profile, revised
19 site profile's ready in 30 days, how long would
20 it take SC&A to review that, given the known
21 changes that you're expecting to take place and
22 -- in that and...

23 **DR. MAURO:** I like the one-month idea.

24 **DR. MELIUS:** Okay. Thank you.

25 **DR. ZIEMER:** Additional comments or questions,

1 or formal actions? Wanda Munn.

2 **MS. MUNN:** I have one last question, and that
3 has to do with our segregating the two
4 classifications in 00012-2 as broken out by
5 year in NIOSH's presentation. Do we have any
6 problem with this Board's doing that? Can we
7 again segregate those two sets once we have
8 additional information?

9 **DR. ZIEMER:** Let me answer that, partially in
10 terms of process. I believe our recommendation
11 goes to the Secretary as a separate
12 recommendation from NIOSH, so it would not
13 necessarily have to be the same, or they --
14 they might alter theirs based on what this
15 Board does. But for example, I believe that it
16 would be our prerogative to -- for example, to
17 say that those first two groups that we talked
18 about we believe should be acted upon now as a
19 SEC. We may say that we wish to have
20 additional information before we make a final
21 determination on the other, one way or the
22 other, in terms of evaluating further the
23 quality of that data and whether we believe it
24 can be used appropriately for dose
25 reconstruction. Those are some options, but I

1 believe we're free to -- to recommend as we
2 please, and Larry, you want to add --

3 **MR. ELLIOTT:** No, you're absolutely correct.
4 It is the Board's prerogative to approach the
5 Secretary with whatever findings you have on
6 any piece or all of this, part and parcel. You
7 could go forward, as I said earlier, and say
8 that '42 to '48 is a class, and I think we
9 would agree with you on that. We just broke
10 them out because we felt we needed to identify
11 them with their distinguishing characteristics.
12 But it's certainly within your prerogative.

13 **MS. MUNN:** Then is it within our purview for me
14 to move at this time for us to accept the
15 Mallinckrodt employees from 1942 through 1948
16 as being a class that is amenable to being an
17 SEC; that employees from '49 on be withheld
18 from decision until the site profile and
19 currently-known records have been reviewed?

20 **DR. ZIEMER:** That's certainly in order. I
21 would ask, though, that that be handled as two
22 separate motions, the first dealing with the
23 early time period and then we can discuss that.
24 Is that a motion that you are making?

25 **MS. MUNN:** I would be willing to make that

1 motion if it's appropriate now.

2 **DR. ZIEMER:** It's appropriate --

3 **MR. PRESLEY:** Second.

4 **DR. ZIEMER:** -- and seconded that -- that the
5 Board then would recommend to the Secretary
6 that the period -- or that the Mallinckrodt
7 workers for that period -- and it also
8 identifies it by facility, so we understand
9 which group we're talking about -- that those
10 be included in the Special Exposure Cohort.

11 **MS. MUNN:** I so move.

12 **DR. ZIEMER:** Is that your motion?

13 **MS. MUNN:** Yes, that is the motion.

14 **DR. ZIEMER:** It was seconded. Now it's on the
15 floor for discussion. And if the motion is
16 approved, our recommendation to the Secretary
17 would have to include the justification for
18 that, along the lines that -- perhaps that you
19 suggested, Dr. Melius.

20 **DR. MELIUS:** So I just want to understand
21 procedurally that then we would -- could vote
22 on this motion and then separately vote on a
23 justifi-- of justification?

24 **DR. ZIEMER:** Well, we could -- we could
25 identify what we wanted to include in the

1 justification in terms of what -- we could do
2 that separately or if you -- if you prefer to
3 include it in one motion, we can certainly do
4 that.

5 **DR. MELIUS:** Well, I --

6 **DR. ZIEMER:** And then I'm suggesting that we
7 handle the other period separately.

8 **DR. MELIUS:** Yeah, I understand and I agree
9 with that, but I'm just -- I just want to make
10 sure that we don't get caught in this bind
11 where we've made a recommendation, a mo-- you
12 know, for a Special Exposure Cohort
13 recommendation to the Secretary where we
14 haven't -- where we then leave without having
15 produced a justification that we've all -- can
16 agree on and so forth, that --

17 **DR. ZIEMER:** No, as a matter of fact, there
18 has to be transmitted to the Secretary from the
19 Chair the recommendation, and based on past
20 procedures, that formal recommendation to the
21 Secretary must be approved by this group, so it
22 will have to include whatever we believe are
23 the justifications.

24 **DR. MELIUS:** Perhaps a -- take the word out of
25 my mouth, Wanda. Perhaps we could have a

1 workgroup that would work on a -- or some
2 volunteers to work on such a justification and
3 then --

4 **DR. ZIEMER:** It would certainly be in order to
5 have a workgroup even this evening --

6 **DR. MELIUS:** Yes.

7 **DR. ZIEMER:** -- to come to us tomorrow with the
8 appropriate conceptual -- well, the words --

9 **DR. MELIUS:** Yeah.

10 **DR. ZIEMER:** -- that would constitute the
11 justification for going forward. And if this
12 motion passes, the Chair will certainly be
13 quite willing to appoint such a workgroup, or
14 to seek volunteers for such a workgroup.

15 **MR. GRIFFON:** Can you restate the motion,
16 just...

17 **DR. ZIEMER:** Would you like the recorder to
18 restate it? I can give you -- the essence of
19 the motion is to approve a Special -- for
20 Special Cohort status those Mallinckrodt
21 workers identified in the NIOSH documents for
22 the periods from 19--

23 **MS. MUNN:** '42.

24 **DR. ZIEMER:** --42 through '48 -- and
25 parenthetically I'll mention that that

1 basically is the two -- first two groups on the
2 NIOSH recommendation. Is that --

3 **MR. GRIFFON:** Yeah, that's fine.

4 **DR. ZIEMER:** -- is that okay? You understand
5 the nature of the motion.

6 Are there further comments or discussion, pro
7 or con? Wanda, you have an additional comment?

8 **MS. MUNN:** Just the comment that the
9 justification for this position is relatively
10 brief, should not take a great deal of either
11 words or time to commit to paper.

12 **DR. ZIEMER:** I would assume that, in essence,
13 the Board is agreeing with the analysis done by
14 NIOSH and can so state.

15 **DR. MELIUS:** Well, I just think it would be
16 important that we do more than just say we
17 agree with NIOSH. I think we need to affirm
18 some of the findings of NIOSH and --

19 **DR. ZIEMER:** Sure.

20 **DR. MELIUS:** -- so state those findings --

21 **DR. ZIEMER:** Yes.

22 **DR. MELIUS:** -- that we agree with --

23 **DR. ZIEMER:** Of course.

24 **DR. MELIUS:** -- and so it's more than just, you
25 know, see NIOSH.

1 **DR. ZIEMER:** Yes. Thank you. Mark?

2 **MR. GRIFFON:** This is probably just mostly
3 information for myself. I might have -- might
4 have missed this, but one thing I wanted to ask
5 was this is only for uranium division workers,
6 correct? That's how the class is defined.
7 Does that -- and just for my own information,
8 does that exclude a lot of Mallinckrodt
9 claimants, or was everybody within the uranium
10 division? I'm not sure how... There were
11 workers that worked in these buildings of
12 concern that were not --

13 **DR. ZIEMER:** Currently --

14 **MR. GRIFFON:** -- in the uranium division, I
15 guess is my --

16 **DR. ZIEMER:** Currently it reads as all DOE
17 workers, contractors or subcontractors or AWE
18 employees who worked in the uranium division at
19 Mallinckrodt Destrehan Street facility during
20 the period of 1942 through -- and now would be
21 '48. Is that --

22 **MR. ELLIOTT:** The answer to the question, it
23 covers them all. We worked with the Department
24 of Labor on this particular aspect to make sure
25 that we were defining it according to the way

1 they would qualify claims, and it includes --
2 in my understanding, it includes all.

3 **MR. GRIFFON:** For instance, guar-- I know
4 guards were brought up in a separate study.
5 That's all covered?

6 **MR. ELLIOTT:** To my belief. If they worked for
7 the uranium division as a guard, they're
8 included.

9 **DR. ZIEMER:** Richard, you have a comment or
10 question?

11 **MR. ESPINOSA:** Just a little bit of a concern,
12 I guess. On Denise statements on page 3 there
13 are equity questions as well for a worker first
14 employed in the middle of 1948, for example,
15 worked 180 days, then keeps working for another
16 five years; would this person be excluded from
17 this?

18 **DR. ZIEMER:** This is the question I think that
19 Larry and Denise were addressing a moment ago
20 and I -- I think the answer is that we don't
21 have a good answer for that at the moment, but
22 it is an issue that would need to be addressed,
23 particularly if we have cases that in fact do
24 enter that category, is how do you handle them.
25 I suppose the first step is to get the category

1 established that there is a Special Exposure
2 Cohort.

3 **MR. ESPINOSA:** Do we know --

4 **DR. ZIEMER:** I don't -- I mean our rule doesn't
5 really address that, I think is the issue. And
6 Larry, it may be that as the rule is revised --

7 **MR. ELLIOTT:** That's true, the rule doesn't
8 address it. The statute doesn't address it.
9 The way we address it with the Cohort -- the
10 classes that are in the Cohort now, if they
11 don't have 250 days at Paducah or Piketon or K-
12 25, then we get their case for dose
13 reconstruction. The issue here becomes if we
14 say we can't do dose reconstruction for those
15 early years at Mallinckrodt, what do we do
16 about those folks that don't have enough time.
17 That's the question.

18 **DR. ZIEMER:** Right.

19 **MR. ESPINOSA:** Do we know of any such cases?

20 **MR. ELLIOTT:** I don't have that information
21 with me right now. I can probably get it for
22 you by tomorrow, but I don't have it in my
23 hands right now.

24 **MS. MUNN:** Given the small number of employees
25 involved, you're surely not going to have very

1 many such cases. That would be a rarity, I
2 would think.

3 **DR. ZIEMER:** Well, we can't rule out the
4 possibility, and it may be that as we go
5 forward we'll have to think about whether there
6 should be some revision to the rule that might
7 address that. But at the moment, it's
8 basically unresolved.
9 Shelby, do you --

10 **MR. HALLMARK:** I have a comment to make about
11 this, and this goes back to my earlier comments
12 about specific criteria and how the Board
13 frames justifies a petition approval
14 recommendation. If the approval recommendation
15 that I hear coalescing now for '42 through '48
16 is based on -- after you've gone through the
17 process of refining your justification -- is
18 based on the absence of data as specified in
19 particular respects, if then data becomes
20 available for an individual who is a non-SEC
21 cancer sufferer, or perhaps for one of these
22 individuals who is in a part of -- part of --
23 part foot in the Cohort, you -- and data is
24 available for that individual, then in our --
25 at least in our preliminary view, you haven't

1 expunged that person's eligibility. You could
2 do a dose reconstruction. If the cri-- if the
3 criterion you are citing for not being able to
4 do dose reconstructions is lack of faith in the
5 data that exists, then you have lack of faith
6 in the data that exists and you can't address
7 it -- you can't use it for -- for any of these
8 other circumstances. So it does become very
9 important what the criterion you cite would be,
10 from our claims adjudication perspective.

11 **DR. ZIEMER:** Thank you. Let me ask if the
12 Board is -- oh, Mark, you have a comment?

13 **MR. GRIFFON:** Yeah, I -- just to -- back to the
14 time frames. I was wondering -- and I think I
15 know the answer, but are these time frames
16 strictly based on the analysis of the data, or
17 do they in any way coincide with production
18 mission or -- or building changes or anything
19 like that? I don't think they -- they do, but
20 I -- I think it's strictly on a data basis, but
21 I just wanted a cla-- clarification on that.

22 **MR. RUTHERFORD:** Yeah, the dates are strictly
23 based on the data. The data that became
24 available in the late '40's, '48 and start of
25 '49 time period.

1 **MR. GRIFFON:** And do -- do these time frames
2 overlap any critical mission or -- or -- or --

3 **MR. RUTHERFORD:** Actually what happened in '48,
4 there were actually three different -- three to
5 four different dust studies that took place in
6 '48, and there were changes that made -- that
7 took place in '48, administrative control
8 changes and -- and as well as bringing in an
9 engineering design firm to -- to come up with
10 additional engineering control changes to
11 support that were done in '49, so that's why
12 there was a cutoff at that point.

13 **MR. GRIFFON:** I'm wondering if -- one of the
14 buildings I think was knocked down early on and
15 the operations were moved to another building.
16 Is it -- understanding I've read this in the
17 last weekend, mainly, so is that -- that's not
18 true?

19 **UNIDENTIFIED:** In the '50's.

20 **MR. GRIFFON:** Okay, I -- I just -- my fear I
21 guess is -- is -- is sort of one of equity,
22 that if -- if our time frame overlaps to a
23 point where all the workers in building four
24 except for the last year end up being in the
25 SEC and -- and someone says well, oh, I was --

1 I worked in that same building; why -- why
2 aren't I in the -- you know, so I just wanted
3 to see if that in any way overlapped production
4 sort of milestones or missions, but I guess it
5 doesn't, so...

6 **DR. MELIUS:** Well, yeah, but -- can I just also
7 say that I think that in considering '49
8 through '57 we could make a -- at a later point
9 make a recommendation that would treat '49
10 differently than '5-- you know, there's -- we'd
11 have to --

12 **DR. ZIEMER:** There's other options.

13 **DR. MELIUS:** -- we'd have to look at that
14 issue. That's the issue I was trying to get a
15 better understanding of and it's just hard to
16 do it in this -- with the information available
17 to us so far.

18 **DR. ZIEMER:** Again, let me ask if you're ready
19 to vote on the motion? It appears we're ready
20 to vote.

21 All in favor, aye?

22 (Affirmative responses)

23 **DR. ZIEMER:** Any opposed, no?

24 (No responses)

25 **DR. ZIEMER:** Is Henry still on the line?

1 (No response)

2 **DR. ZIEMER:** Okay. Any abstentions on the
3 motion?

4 (No responses)

5 **DR. ZIEMER:** Motion carries and the -- the next
6 steps then will be to ask a workgroup to -- to
7 develop this justification overnight. Who
8 would like to be on the workgroup? We'll start
9 with that.

10 Wanda, who else? Robert. Any others?

11 **DR. ROESSLER:** What about Leon, he had some
12 nice -- he had some very good words.

13 **DR. ZIEMER:** Leon, are you willing to help out?

14 **MR. OWENS:** I've just been volunteered.

15 **DR. ZIEMER:** Thank you. Any others?

16 (No responses)

17 **DR. ZIEMER:** Okay. If the three of you will
18 take a crack at that, we'll appreciate that and
19 we'll hear from you tomorrow.

20 **DR. WADE:** If I just might make one
21 clarification -- in the discussion, the
22 recommendation you make will be received by the
23 NIOSH director, who will then frame it for the
24 Secretary.

25 **DR. ZIEMER:** Yes, understood. It eventually

1 finds its way to the Secretary, but it would
2 actually go to the Director, that's correct.
3 We will have opportunity to discuss further
4 tomorrow -- 'cause we still have the rest of
5 the recommendation to deal with -- that is of
6 the NIOSH analysis. However, we're at the --
7 **UNIDENTIFIED:** We could go more if you need to.

8 **DR. ZIEMER:** Well, I think we're going to need
9 some time I think on this next step. We also
10 need to have a break before the public comment
11 period this evening, so I'm going to suggest
12 that we recess till our evening session this
13 evening. We will have at the work session
14 tomorrow the opportunity to deal with the next
15 part.

16 Jim? Uh-huh.

17 **DR. MELIUS:** I believe NIOSH had a document
18 that addressed the credibility issue that had
19 been -- had been raised. I thought -- does
20 somebody have that with them here?

21 **DR. ZIEMER:** Are you talking about the document
22 from the expert witness or -- it was a -- not
23 an expert witness --

24 **MR. GRIFFON:** '75 Mont Mason --

25 **DR. MELIUS:** Yeah, is that --

1 **DR. ZIEMER:** Oh, that document? Yes, if that's
2 available.

3 **MR. RUTHERFORD:** Yes, you guys will get the
4 document. It was just handed over and they
5 were checking to make --

6 **DR. MELIUS:** Could you get it to us tonight for
7 the --

8 **MR. RUTHERFORD:** Yes.

9 **DR. MELIUS:** -- meeting so we -- I'd like to
10 see it tomorrow before we --

11 **DR. ZIEMER:** Okay, thank you.

12 **DR. MELIUS:** -- do that.

13 **MS. BROCK:** (Off microphone) Could I address
14 that, too?

15 **DR. ZIEMER:** Yes.

16 **MS. BROCK:** I would love to take a look at
17 that. I filed a FOIA request for all of that
18 quite some time ago and I find it interesting
19 like all of a sudden it pops up, so I would
20 just love -- can I have a copy of that, too?

21 **DR. ZIEMER:** You can have -- I'm sure you --

22 **MS. BROCK:** Great.

23 **DR. ZIEMER:** -- can. Right? Is there any
24 reason why -- if it's made available to us, I
25 think the public's going to get it anyway.

1 Thank you.

2 **MS. MUNN:** But may I make a comment about that?

3 **DR. ZIEMER:** Yes.

4 **MS. MUNN:** This is exactly the kind of thing I
5 was talking about when I said the longer we
6 pursue these issues, the more information is
7 going to turn up because it's not all filed in
8 one place, or even two places or three places.
9 As long as we have people continuing to look
10 for it, we'll continue to find miscellaneous
11 pieces that are filed in with other things that
12 come to light, and that can't be anything but
13 helpful.

14 **DR. ZIEMER:** Okay. Thank you. We'll see you
15 all at 7:00, hopefully.

16 **MS. BROCK:** I am so sorry, I just wanted to say
17 one more thing if I could.

18 I -- I understand Wanda's statement, but again,
19 I'm just a lay person and I have to always say,
20 you know, justice delayed is justice denied. I
21 thank you for giving me '42 to '48. I know the
22 workers are extremely grateful, but I can say
23 this thing is a living document, as you all
24 call it. It can go on forever. These workers
25 and claimants cannot. They are dying. So that

1 -- that's my final statement tonight on that.

2 **DR. ZIEMER:** And we haven't finished our
3 deliberations on this yet, either. Tomorrow
4 we're back.

5 (Whereupon, a recess was taken from 5:25 p.m.
6 to 7:00 p.m.)

7 (February 9, 2005)

8 **DR. ZIEMER:** The Chair would like to take
9 advantage of the fact that Henry Anderson is
10 able to be with us for a while this morning,
11 and with the Board's permission, we'll proceed
12 to begin some of our work session in order to
13 allow Henry the chance to participate.
14 We have -- we had a working group appointed
15 last night to do some wording -- proposed
16 wording relating to the action that the Board
17 took on Petition 00012-1 and Petition 00012-2
18 with respect to the time periods from 1942
19 through '48 for the Mallinckrodt workers. We
20 have now this morning a draft that the
21 workgroup prepared last evening. This draft --
22 Henry, I believe what we'll do is we'll read
23 the draft. I think they are trying to FAX it
24 to you, but I'm going to go ahead and read it.

25 **DR. ANDERSON:** (Via telephone) Okay.

1 **DR. ZIEMER:** And this draft deals with two
2 things. It deals with basically the actions --
3 it summarizes the actions taken by the Board,
4 the rationale for that -- or those actions, and
5 also in a sense proposes an additional action
6 relating to the 1949 to '57 time period. So
7 let me read the draft, and this draft
8 represents a motion for adoption by the Board
9 since it comes from our workgroup.

10 And it reads as follows: Regarding Special
11 Exposure Cohort Designation, Petition SEC-00012
12 Mallinckrodt Chemical Works, Uranium Division.
13 The Advisory Board on Radiation and Worker
14 Health, parenthesis, The Board, parenthesis,
15 has evaluated SEC Petitions 00012-1 and 00012-2
16 under the statutory requirements established by
17 EEOICPA and incorporated into 42 CFR Section
18 83.13(c)(1) and 42 CFR Section 83.13(c)(3).
19 The Board respectfully recommends a Special
20 Exposure Cohort designation be accorded all
21 Department of Energy (DOE) contractors, or
22 subcontractors or Atomic Weapons Employer (AWE)
23 employees who worked in the Uranium Division at
24 the Mallinckrodt Destrehan Street facility
25 during the period from 1942 through 1948. The

1 recommendation is based on four specific
2 factors.

3 Bullet point one: All employees identified in
4 these petitions worked in one of the earliest
5 industrial environments where multiple forms of
6 uranium were handled and processed at a time
7 prior to establishment of universal safety
8 controls and standards.

9 Bullet point two: There is no record -- Board
10 members, I've been informed that the word
11 "reliable" is to be excluded here; there is no
12 record, it's not a matter of its reliability.
13 I believe that's correct. The wording would be
14 "There is no record of radiation monitoring or
15 protection programs in this facility from 1942
16 to 1945."

17 Bullet point three: A limited monitoring
18 program initiated by the contractor in 1945
19 provides some record, but with inadequate
20 detail to allow development of accurate
21 exposure data for all affected employees prior
22 to 1948.

23 Bullet point four: Following extensive effort
24 seeking, retrieving and reviewing all available
25 information, NIOSH has concluded it is likely

1 that radiation doses at the Mallinckrodt
2 Chemical Works Destrehan Street Uranium
3 Facility could have endangered the health of
4 members of this class. The Board concurs.
5 The Board reserves judgment with respect to
6 Mallinckrodt workers employed during the 1949
7 to '57 time period until review of newly-
8 located raw data is complete. This material
9 may provide additional pertinent information on
10 monitoring programs and worker exposure for
11 that potential cohort.
12 That completes the proposed statement. This
13 represents a motion before the Board, does not
14 require a second. It is now open for
15 discussion.

16 **DR. ANDERSON:** Paul, who was on the
17 subcommittee who drafted it?

18 **DR. ZIEMER:** This was drafted by Wanda Munn,
19 Leon Owens and Bob Presley.

20 **DR. ANDERSON:** Okay, thanks.

21 **DR. ZIEMER:** The Chair notes that the last
22 paragraph of the document was not fully
23 discussed yesterday and really it's the first
24 part that, in essence, was approved, in a sense
25 conceptually. And certainly the Chair is

1 willing to break this into two motions if the
2 assembly so desires. Otherwise I'll simply
3 regard it as a single motion. Is there -- it
4 only requires one person to divide the motion.
5 Does anyone wish to divide the motion?

6 **DR. MELIUS:** Yes, I do.

7 **DR. ZIEMER:** There's desire to divide the
8 motion and it is so ordered. We will then act
9 on the first part, which is everything but the
10 last paragraph.

11 We will now discuss then the first motion,
12 which is everything through the four bullet
13 points.

14 **MS. BROCK:** Excuse me, Dr. Ziemer.

15 **DR. ZIEMER:** Yes?

16 **MS. BROCK:** It's Denise Brock.

17 **DR. ZIEMER:** A question for --

18 **MS. BROCK:** Yeah, I do have a question. I
19 wanted to know if I could ask a couple of
20 questions through this. I'm just a little
21 confused. I was curious if -- if that
22 recommendation -- does that -- does that
23 recommendation preclude the reconstruction of
24 external dose?

25 **DR. ZIEMER:** Which recommendation are you

1 referring to?

2 **MS. BROCK:** The '42 to '48.

3 **DR. ZIEMER:** The --

4 **MS. BROCK:** The reconstructability of external
5 dose.

6 **DR. ZIEMER:** The '42 through '48 period under
7 this recommendation becomes -- the
8 recommendation is that it become part of the
9 Special Exposure Cohort, if that's what you're
10 asking.

11 **MS. BROCK:** I'm asking about like -- I think
12 what I'm asking is the remaining people, like
13 people that have skin cancer for external dose.
14 Can that still be reconstructed or does that --
15 it can, Dr. Wade?

16 **DR. ZIEMER:** Yes, but -- for this particular
17 period?

18 **MS. BROCK:** Yes. If someone has skin cancer
19 and doesn't fall within that Cohort, obviously
20 that's not one of the 22 cancers --

21 **DR. ZIEMER:** Yes, yes, oh --

22 **MS. BROCK:** -- they can still be dose
23 reconstructed. Correct?

24 **DR. ZIEMER:** Yes.

25 **MS. BROCK:** Okay. Thank you.

1 **DR. ZIEMER:** I believe that's the case and --
2 Jim, can you address that?

3 **DR. NETON:** That's correct. The basis for the
4 -- the petition moving forward is that it was
5 not feasible to reconstruct internal doses
6 solely. It did not address the feasibility of
7 external doses.

8 **DR. ZIEMER:** Further discussion on the --

9 **MR. GRIFFON:** I think we -- we -- we had a
10 little -- when -- when we first looked at this
11 draft this morning we had a similar discussion,
12 and I think the way the motion is worded it's
13 broad enough that it just discusses that the
14 dose cannot be reconstructed, so we didn't --
15 we didn't get into whether external or
16 internal, but rather that dose just could not
17 be reconstructed. I don't know if we have to
18 break that out for -- to -- to be more
19 specific. It does reference --

20 **DR. ZIEMER:** It references --

21 **MR. GRIFFON:** -- (unintelligible) NIOSH.

22 **DR. ZIEMER:** It references the NIOSH --

23 **MR. GRIFFON:** Right.

24 **DR. ZIEMER:** I'm going to ask the opinion of
25 our Federal Official. Do we need to be more --

1 have more specificity here --

2 **DR. WADE:** I think --

3 **DR. ZIEMER:** -- or is referencing the document
4 adequate?

5 **DR. WADE:** Well, I think more specificity is
6 always in order, but also this record will be
7 part of what is passed forward, so if you make
8 it clear in this record, I think that would
9 suffice, although I would never argue against
10 more specificity.

11 **DR. ZIEMER:** But the understanding is that this
12 parallels what was in those two documents.

13 Further discussion? Then let us vote on this
14 first section.

15 All in favor, say aye?

16 (Affirmative responses)

17 **DR. ZIEMER:** And all opposed, no?

18 (No responses)

19 **DR. ZIEMER:** And Henry, did we get your vote?

20 **DR. ANDERSON:** Aye, I'm sorry.

21 **DR. ZIEMER:** Yes, thank you. Any abstentions?

22 (No responses)

23 **DR. ZIEMER:** Then the -- the motion is adopted
24 and it is so ordered.

25 Now the second motion before us is the

1 paragraph that -- as it's stated here,
2 (Reading) The Board reserves judgment with
3 respect to Mallinckrodt workers employed during
4 the 1942 (sic) to 1957 time period until review
5 of newly-located raw data is complete. This
6 material may provide additional pertinent
7 information on monitoring programs and worker
8 exposure for that potential cohort.
9 And this now is open for discussion.

10 **MS. BROCK:** I'm sorry, Denise Brock again.

11 **DR. ZIEMER:** Denise, a question?

12 **MS. BROCK:** Yeah, I -- yesterday I had cited in
13 my statement something from the Omnibus bill,
14 and it's certain legal authorities, and maybe
15 you haven't seen it, I actually have it. I'd
16 like to make some copies and maybe NIOSH has
17 actually overlooked it. It actually is germane
18 and I'd like to go make several copies for you
19 all, if that's okay.

20 **DR. ZIEMER:** Yes, that's -- that's fine --

21 **MS. BROCK:** And have you look at it during
22 deliberation?

23 **DR. ZIEMER:** Thank you.

24 **DR. WADE:** We can get those copies made for
25 you, Denise.

1 **MS. BROCK:** That would be even better.

2 **DR. ZIEMER:** Any comments?

3 **DR. MELIUS:** Yeah, I have a --

4 **DR. ZIEMER:** Jim, yes.

5 **DR. MELIUS:** First a question. Last night some
6 NIOSH staff was referring to a document that I
7 believe referenced some issues related to the -
8 - I guess we call it the credibility of the
9 monitoring program, and we were told we would
10 be receiving copies, and -- still waiting, and
11 I'm trying to get a status report. I think
12 it's very pertinent to the discussions that
13 we're about to have and -- like to know where
14 it is.

15 **DR. ZIEMER:** Do we have any information on --
16 on that document?

17 **UNIDENTIFIED:** (Off microphone) Larry's coming.

18 **DR. ZIEMER:** Larry?

19 **MR. ELLIOTT:** The document is being reviewed
20 for Privacy Act information, and we also need
21 to provide a clear understanding of the context
22 that it comes from, as well as the provenance
23 of the document. So we're working through that
24 to provide it to you.

25 Basically what LaVon Rutherford raised last

1 night was that this particular document speaks
2 to the pre-1949 data -- dust box is mentioned
3 prominently throughout this document -- where a
4 listing of Mallinckrodt employees and their
5 associated dust exposures were collected for an
6 epidemiologic or a health study by Mancuso.
7 And the document supports that the data that
8 was mentioned in a previous Mont Mason letter
9 that was indicated might have been lost or was
10 not -- they weren't sure where it was at, if it
11 was still in a vault in the Federal Records
12 Center or where. This document shows that it
13 was in fact not lost and we have all of that
14 data.

15 So we're working to try to provide that for
16 you. We hope we can get it to you today.

17 **DR. ZIEMER:** Thank you.

18 **DR. WADE:** I'd like to expand on that. I've
19 read the document, as well, and I think it is
20 pertinent to the Board's deliberations as to
21 the '49 to '57 period.

22 **DR. ZIEMER:** Thank you. Jim, you have another
23 comment? Oh, Denise -- excuse me. Denise?

24 **MS. BROCK:** I apologize. Maybe I just mis-
25 heard what Larry said. Did you say pre-1949?

1 This is '49 to -- we're not asking for those
2 years. If I'm correct, we're asking for '49 to
3 '57, and if the document's not available, I --
4 I don't know the legal ramifications here, but
5 I'm just going to ask -- I would hope that that
6 could be disregarded. I haven't seen it. You
7 all haven't seen it. And my petition is up
8 now. And if it's pre-1949, we've already
9 addressed that from '42 to '48. I've gotten
10 the cohort there. So '49 to '57 is the one
11 that's in question now. Correct?

12 **MR. ELLIOTT:** Yes, you're correct. The
13 question before the Board is for the cohort --
14 the class of 1949 to 1957. This document
15 speaks to information and data that was
16 collected for individuals from 1946 to 1949, I
17 believe, the start of an effort to build a
18 monitoring program at Mallinckrodt. I think --
19 I think -- Lew, help me out here, but I think
20 it really goes -- it speaks about the
21 distinguishing characteristic between '48 and
22 '49. And yes, it does go to the question of
23 '49 to '57 and we do need to get it before you,
24 but I just can't -- I can't produce it right at
25 the moment.

1 **DR. WADE:** Right, that's my point. I think it
2 -- it raises questions about the overall
3 program that I think are germane to this
4 Board's consideration.

5 **DR. ZIEMER:** Denise, did you have another
6 question or --

7 **MS. BROCK:** Yeah, I'm just -- I'm really sorry.
8 Things went a little unusual yesterday because
9 I made my testimony and I -- I thought it was
10 wonderful that all those people had -- had
11 talked to this, and I guess I just wanted a few
12 moments to -- to just rebut that. I just -- I
13 am very perplexed -- again, I'm not a doctor
14 and I'm not a scientist, but I have dying
15 workers and this is something that I can't even
16 see that I filed a FOIA request for forever
17 ago, and as Judson said earlier and Wanda had
18 said, it can go on and on and on. This
19 document hasn't even been seen, and it
20 addresses something that's already a cohort.
21 So I don't see how it's relevant to '49 to '57.
22 And if there's the least doubt, shadow of doubt
23 that any of this is tainted, it goes to the
24 transparency that I'm wanting to see with this
25 program. These workers don't have forever.

1 When would we even see that document? And
2 again, I don't -- I don't even know if that's
3 germane. It's -- it's pre-'49.

4 **DR. ZIEMER:** Thank you. Other comments, Board
5 members? Wanda?

6 **MS. MUNN:** One would assume that it is germane
7 because that data has been called into question
8 by quoting the author of this same document as
9 making statements which might be derogatory to
10 the overall program. Since that statement has
11 been made publicly by claimant testimony, it's
12 only logical that we should look forward to
13 receiving this new information which, in the
14 proper context and properly handled so that it
15 protects the privacy of the workers, comes to
16 us in as timely a manner as it can. The
17 process of protecting privacy of workers is of
18 great importance to this Board. One would
19 almost infer from some of the statements that
20 we hear that some of the workers don't care
21 about their privacy, but this Board must, under
22 terms of law, do that. We've been assured that
23 we're going to get the information as soon as
24 the terms of the law have been met. That
25 should be satisfactory for us.

1 **DR. ZIEMER:** Leon?

2 **MR. OWENS:** Dr. Ziemer, I have just a question
3 that may be for Dr. Wade in terms of the
4 Privacy Act relative to a person or an
5 individual who is deceased, and whether or not
6 the Privacy Act protections would apply in the
7 event that that person is deceased.

8 **DR. ZIEMER:** Larry Elliott will address that
9 question.

10 **MR. ELLIOTT:** The Privacy Act does not apply to
11 individuals who are deceased. However, we do
12 not know if this partic-- if people who are
13 mentioned in this document are or are not
14 deceased, so the default then is to redact.

15 **DR. ZIEMER:** Thank you. Okay. Other comments
16 or questions by the Board members?

17 **UNIDENTIFIED:** Mr. -- Mr. Chairman, can I make
18 a -- a suggestion?

19 **DR. ZIEMER:** Yes, sir.

20 **UNIDENTIFIED:** If there's Privacy Act concerns,
21 that's fine. Why don't -- taking care of those
22 -- I have -- I have a little background in
23 that. Taking care of those shouldn't take too
24 long. You know, we're talking about names
25 here. Why don't -- could -- could it -- in

1 order to expedite it, Larry, could we -- could
2 we take care of the Privacy Act concerns in it
3 and then forego this proper context thing while
4 you continue to work on it and let -- in the
5 meantime let the Board view it and then you
6 could come back -- so that they could get a
7 handle on what's in the document, then you
8 could come back and present the context. It's
9 just a suggestion.

10 **DR. ZIEMER:** Thank you for the suggestion.
11 Normally the Board is not able to operate that
12 way, so we will continue our deliberations.
13 Rich?

14 **MR. ESPINOSA:** Just out of -- just out of
15 curiosity, when was this document received by
16 NIOSH?

17 **MS. MUNN:** We've been through that.

18 **DR. ZIEMER:** I think that was addressed
19 yesterday. I don't recall the date.

20 **DR. WADE:** We'll address it again, though, but
21 Jim Neton needs to do that.

22 Jim, there's a question of just when the
23 document came into NIOSH's hands.

24 **DR. NETON:** We're working on that now. We were
25 on the telephone with Oak Ridge earlier this

1 morning. I am awaiting right now any minute a
2 FAX from them detailing when that document was
3 sent to us. We believe it came over in the
4 last several months as part of our evaluation
5 of the report, but I can't pinpoint the date
6 exactly. I'll have that information more --
7 more precisely within the next half-hour.

8 **MR. ESPINOSA:** I guess I can -- I'm a little
9 bit disappointed, because this is real
10 pertinent to the documents that we're looking
11 at today in this SEC, and if it was received
12 that long time a-- that amount ago, you know,
13 months ago, that -- it should have been here
14 and ready for the Board to review.

15 **DR. NETON:** I think what you have is the
16 professional judgment summary that relied on
17 that document to make an assessment that we had
18 adequate information. But you're correct that
19 it was not referenced exactly and included as
20 part of that report, and in retrospect probably
21 should have been. But we're certainly working
22 to get this to you as soon as we can.

23 **DR. ZIEMER:** Thank you. Denise, your document
24 now is being distributed to the Board members.
25 I believe you wanted to call attention to a

1 particular caveat or requirement in this --

2 **MS. BROCK:** I do --

3 **DR. ZIEMER:** -- on the second page?

4 **MS. BROCK:** I do.

5 **DR. ZIEMER:** Please proceed to --

6 **MS. BROCK:** Prior to doing that, though, I --

7 **DR. ZIEMER:** -- tell the Board where it --
8 where to look.

9 **MS. BROCK:** I'm sorry. Prior to doing that I
10 would like to state, too, that -- again, I'm
11 not sure of this processes, but if that was
12 given a few months ago, I as a petitioner would
13 have liked to have seen that. I mean I had 72
14 hours to prepare my case. My petition went in
15 -- NIOSH had six and a half months to tear it
16 apart. I had 72 hours to actually come up with
17 a rebuttal for this. Again, I'm not a doctor,
18 I'm not a scientist. I just put myself out
19 there to try to help workers. So when I filed
20 a FOIA request for this thing years ago and
21 have not seen it, and all of a sudden it pops
22 up a few months ago and now this is the first
23 I'm hearing about it, I just have to say this
24 is disgraceful. Can I borrow your copy,
25 because --

1 (Whereupon, the speaker moved out of range of
2 the microphone and some conversation continued
3 in which the parties were not identified and
4 the conversation itself was unintelligible.)

5 **DR. ZIEMER:** Denise will read the item I think
6 that you wanted to call to the Board's
7 attention here.

8 **MS. BROCK:** Yes, and I -- I think I mentioned
9 it yesterday, but I actually did not get to
10 cite it, and as you will see, it is the Senate
11 Report 108-345, and it's on the second page
12 where it states -- and I will read the whole
13 thing at the bottom -- Radiation Exposure. The
14 Committee strongly encourages NIOSH to expedite
15 decisions on petitions filed under the
16 procedure for designating classes of employee
17 as -- of employees as members of the Special
18 Exposure Cohort, 42 CFR Part 83. It was
19 Congress's intent in passing the Energy
20 Employees Compensation Act of 2000 to provide
21 for timely, uniform and adequate compensation
22 for employees made ill from exposure to
23 radiation, beryllium and silica while employed
24 at Department of Energy nuclear facilities or
25 while employed at beryllium vendors and atomic

1 weapons employer facilities. The Committee
2 encourages the Department to recognize that in
3 situations where records documenting internal
4 or external radiation doses received by workers
5 at the specific facility are of poor quality or
6 do not exist, that workers should promptly be
7 placed into a special exposure cohort.

8 **DR. ZIEMER:** Thank you very much for that.
9 Denise has raised an issue which in a sense has
10 two parts, and the Board may wish to deliberate
11 further on this. The one part is the quality
12 of the information, and the other has to do
13 with the timeliness of the decision that the
14 Board makes. And the tension of course here is
15 how much time does one allow to determine
16 issues of quality -- this is kind of the -- the
17 issue that arose in a number of ways yesterday,
18 when are we done with gathering information, at
19 what point can a decision be made. The Board
20 must weigh this carefully. Do you wish to, for
21 example, as indicated in the suggested motion,
22 to get the additional information, some of
23 which perhaps would relate to the revised
24 profile and our contractor's review of that,
25 together with other information such as the

1 document under discussion. Or do you wish to
2 say that the time delay to do that is
3 unacceptable. In a sense I think that is the -
4 - the nature of what you must balance. Okay?
5 Leon.

6 **MR. OWENS:** Dr. Ziemer, I think that Congress
7 established a model that the Board should
8 strongly follow when it designated certain
9 gaseous diffusion plants and workers at
10 Amchitka Island as a special cohort. There was
11 a reason for that. And I think that reason is
12 similar to what we're faced with when we look
13 at the Mallinckrodt facility. I think that it
14 would behoove the Board members to review the
15 Congressional intent, just as Denise has read,
16 relative to the Special Exposure Cohort
17 designation. And as we sit here today, we will
18 probably set precedent for the other petitions
19 that we receive, and so I think that to ensure
20 uniformity, we would again be wise to follow
21 that Congressional intent as we review these
22 petitions.

23 **DR. ZIEMER:** Thank you. And Gen Roessler?

24 **DR. ROESSLER:** I think I'll just amplify on
25 what Leon has said, but what struck --

1 **DR. ZIEMER:** Speak loudly into the mike so
2 Henry can hear you.

3 **DR. ROESSLER:** Okay, maybe closer here. What
4 struck me as Denise or you were reading this
5 paragraph is the "uniform," and I think that's
6 one of our challenges now with this first
7 petition that we discuss, is we have to look
8 toward the future and we have to make sure that
9 we set the criteria for evaluating these that
10 may not be quite as clear, and make sure that
11 we're going to do it in a uniform manner. This
12 is equity that we have to look at for all
13 future petitions, and so I'm just kind of
14 amplifying what I think Leon was trying to say.
15 That's an important part of the whole
16 evaluation.

17 **DR. ZIEMER:** Thank you. And Jim Melius?

18 **DR. MELIUS:** Yeah, I think there are three
19 issues to deal with in deciding on this -- at
20 least in my mind, the '49 to '57 time period.
21 One has to do with the techniques that NIOSH
22 will be relying on to try to reconstruct doses
23 during that time period, one of -- part of that
24 which is going to be the use of coworker data.
25 And we've been put in a difficult spot there

1 because the -- that really wasn't -- it's only
2 dealt with in a partially-revised draft site
3 profile that some of us got to see, if we
4 happened to be in the office and could print
5 out 500 pages or whatever it was on Friday
6 before we came out here. Not everyone has.
7 But -- an issue -- and certainly I have a lot
8 of questions about and concerns about whether
9 that's adequate to reconstruct dose with
10 sufficient accuracy.

11 A second issue which I think does -- is
12 parallel to the situations in Paducah and the
13 other sites that were originally included in
14 the Special Exposure Cohorts would be concerns
15 about exposures that were not monitored, where
16 there's very little information -- in this
17 case, the so-called raffinates and that --
18 again, we're -- we don't have complete
19 information on that, which makes it difficult
20 but I, and I think others, may have serious
21 questions about whether NIOSH can adequately
22 assess and evaluate those doses in terms of
23 individual dose -- dose reconstruction.

24 And then third, we have the credibility of the
25 -- of the data itself. And us -- been put in

1 an -- sort of an awkward position of -- of
2 having some verbal testimony about some
3 document that -- that we've yet to see, though
4 maybe -- maybe this is it. I guess we just got
5 to see it, so -- but I think those are the
6 three issues to consider and I think we need to
7 do the best we can now to assess those before
8 we go off and say well, let's procrastinate and
9 -- two or three months or however long it may
10 take to -- to address these issues. And so I
11 would much rather have us address the issues,
12 to the extent that we can. And again, it may
13 be that one or more of them may sort of meet
14 the threshold for saying that these people
15 should be part of a special exposure cohort.

16 **DR. ZIEMER:** Okay. Further comments?

17 **DR. WADE:** I need to give you a clarification
18 on the document that's in front of you, but I
19 don't have it. Liz will.

20 **DR. ZIEMER:** I believe that the Board now is
21 receiving the document that was in question
22 that apparently this -- or is somebody going to
23 tell us? I'm gathering that this is not yet
24 available to the public.

25 **DR. WADE:** Liz can put it in perspective for

1 us.

2 **MS. HOMOKI-TITUS:** We wanted to go ahead and
3 give this to the Board. Since you are special
4 government employees, you can have access to
5 Privacy Act information, but it won't be made
6 available until -- to the public until it's
7 completed with the redaction, and then we'll
8 put copies in the back for everyone.

9 **DR. ZIEMER:** You'll -- is that going to occur
10 today, when you say copies are going to be put
11 in -- in the back?

12 **MS. HOMOKI-TITUS:** Is it -- I'm sorry, is it
13 going to what?

14 **DR. ZIEMER:** Is it going to occur today?

15 **MS. HOMOKI-TITUS:** Yes.

16 **DR. ZIEMER:** That will occur today. I --
17 because in fairness, certainly the petitioners
18 need to also have a copy of this at -- at some
19 point. Certainly in a sense, in fairness,
20 before -- before we can really consider it, as
21 well.

22 **DR. MELIUS:** Can we take a short break to read
23 this?

24 **DR. ZIEMER:** We certainly can take a short
25 break to -- to read this.

1 The Chair would like to mention a couple of
2 other items, and again, I do this simply to
3 help you frame -- I always presume I can help
4 people; I guess that's the teacher in me -- to
5 help us frame some of our ideas here.
6 And let me -- let me express it in the
7 following way. I'm doing a little bit of
8 perhaps preaching to the choir, but there is a
9 sense I believe in which this -- this whole
10 program comes to us -- this whole program, the
11 compensation program comes late. It's perhaps
12 decades late, to start with. That -- that's
13 the issue. Everything was behind the eight
14 ball the day this was signed into law. The
15 workers were already -- those entitled to
16 compensation were already overdue, in many
17 cases, by decades. And we find ourselves -- we
18 being the agencies responsible and this Board -
19 - behind at the very start. We are playing
20 catch-up.
21 Unfortunately, the timeliness factor then
22 becomes all the more urgent. With -- with that
23 sort of before us, then we recognize as we're
24 trying to evaluate -- and Congress did things a
25 certain way. And one thing they did is set up

1 both the dose reconstruction part, which
2 inherently does not happen overnight. And they
3 also set up this petitioning process, which has
4 a number of steps and some responsibilities,
5 responsibility to us to do some evaluations.
6 And again, that sort of doesn't happen
7 overnight. We have some information we gained.
8 We are under pressure to make that decision
9 rapidly, and yet in all fairness, we haven't
10 seen all the data. We can't make the judgment.
11 The issue of promptness that Congress talks
12 about I would put right back on them. You guys
13 weren't prompt enough to get the program going,
14 and you're putting that urgency -- which now
15 comes down in some cases to weeks or months to
16 make a decision, or days or hours -- on us.
17 It's difficult in that framework to try to be
18 fair to all sides and meet the responsibility
19 that we have as a Board, as well.
20 I'm struggling with that. I know many of you
21 are. We want to be fair. We want to follow
22 the intent of Congress, which to some extent
23 also ties our hands. We are limited in what we
24 can do and can't do. And so I'm -- I just lay
25 this out, not to -- not in the framework of

1 saying we should go one way or the other. I
2 just hope that everyone appreciates the issue
3 of the pressing of time and the fact that the
4 whole program was late in coming, and we're --
5 these folks that we heard from -- those who
6 deserve to be compensated, that -- that isn't
7 just now. That was in -- we heard cases. That
8 was last year and a decade ago and two decades
9 ago and so on.

10 So let us -- let us recess -- does Henry have -
11 -

12 **MR. MILLER:** Excuse me, Dr. --

13 **DR. ZIEMER:** -- access to this?

14 **MR. PRESLEY:** Henry?

15 **DR. ANDERSON:** Yeah.

16 **DR. ZIEMER:** I don't think Henry's going to
17 have access to this document, is he?

18 **MR. PRESLEY:** Hey, Henry, they didn't FAX you
19 the document, did they?

20 **DR. ANDERSON:** No.

21 **DR. ZIEMER:** This is a rather lengthy document.
22 I think we do want the Board to have a chance
23 to read it, and then we'll have to make a
24 decision as to how we deal with it. We need to
25 make sure the petitioners get a copy of it and

1 -- and Denise, you have a comment before we sit
2 down?

3 **MR. MILLER:** Yeah. Dr. Ziemer, I just wanted
4 to raise two questions on this legislation --

5 **DR. ZIEMER:** This is --

6 **MR. MILLER:** Richard Miller.

7 **DR. ZIEMER:** -- Richard Miller.

8 **MR. MILLER:** From the Government Accountability
9 Project. Two questions on the -- on the report
10 language. This was incorporated in the Omnibus
11 Approps. Bill for FY 2005. The first question
12 has to do with the last sentence in this text,
13 which speaks to the question about records of
14 poor quality or do not exist. And the first
15 question is, how did NIOSH address this report
16 language in the context of its petition
17 evaluation review that was submitted to the
18 Board, specifically with respect to the
19 question that's before you now, which are
20 whether or not it is feasible, for example, to
21 reconstruct the actinium or the protactinium or
22 the raffinate chain -- decay chain products
23 which we've heard pack some punch, and -- so
24 that's question number one, how did NIOSH, as a
25 staff or an organization, address this? And

1 then, you know, somebody can take it up after
2 the recess, but -- and then second question has
3 to do with -- on the same point, for the Board
4 just to think about when Congress guides the
5 decision-making and they're talking about poor
6 record -- poor quality or do not exist records,
7 what they're adding is sort of a body of
8 clarification that surrounds the implementation
9 of the rule and the statute that's before you.
10 And so this sets a context, and that's where,
11 again, coming back to the absence of any
12 records, for example, as Leon Owens mentioned
13 earlier about Paducah, I had the privilege of
14 working for a union at the time when the
15 special cohorts were developed for Paducah and
16 worked on that legislation. And what we
17 learned about Congressional intent, without
18 speaking for Congress here, was there was
19 plutonium and neptunium uptakes that were not
20 monitored in the case of Paducah for 40 years,
21 and they made a conscious decision in that
22 particular case not to monitor for those
23 isotopes, and so consequently Congress said
24 wait a minute, you haven't monitored, you
25 didn't start monitoring until 1992. From 1992

1 forward you're not in the special cohort. But
2 when you weren't monitored for those isotopes,
3 we're going to -- we're going to put you in the
4 special cohort, particularly where there -- and
5 so -- and so that was the first point.

6 And the second is, here you have the analogous
7 circumstance with the actinium 227 and the
8 protactinium issue, which is you've got the
9 same exact fact pattern. They didn't monitor.
10 There's not a single iota of monitoring data
11 available, as Jim Neton --

12 **DR. ZIEMER:** Thank you, Richard, we're aware of
13 that. We're also aware that Congress chose not
14 to put Mallinckrodt in the Special Exposure
15 Cohort and has asked us to use this process, so
16 with that in mind, we're going to --

17 **UNIDENTIFIED:** Mr. Chairman, I'd like to talk
18 Congressional intent. That's something I do
19 know a little bit about. Some of this stuff's
20 over my head, but I do know that. While you
21 are right, Congress -- first of all, I want to
22 address a couple of -- Congress was well aware
23 that dose reconstruction would not happen
24 overnight. But at the same time, they didn't
25 have a mutual understanding that it would take

1 forever. And all I can say is if you ask any
2 member who voted for this Act if they -- if
3 they said in four years a large majority of
4 your people would not only not be compensated,
5 wouldn't have their dose reconstructions done,
6 they would tell you that was not the intent.
7 Number two, Con-- the Mallinckrodt was not put
8 into the cohort because all this information --
9 this damning information, this evidence broke
10 after enactment. I mean we -- we're -- we're --
11 -- you know, we've gotten a lot of this stuff in
12 the last six months. Had that been available,
13 I think you would have seen it in the cohort.
14 And if -- if Congress has tied your hands, sir,
15 I know some acts are harder to implement than
16 others, but I -- please come and talk to me
17 about where we've made things difficult for you
18 and I can -- specifically I can talk to you
19 about that and maybe I can take that back to my
20 colleagues on Capitol Hill.

21 **DR. ZIEMER:** Thank you for those comments. The
22 -- perhaps the analogy of tying our hands is
23 not a good one. The idea is that we have a
24 certain framework that we are obligated to work
25 within, and you're quite right. The

1 information has come recently. It was not
2 known at the time this was enacted. In fact,
3 that is the very point that is being made, that
4 we now have to deal with this. And honestly, I
5 think the agencies involved, this Board, are --
6 we're moving as fast as we can with a -- not
7 just Mallinckrodt data, but this is -- this
8 same thing is multiplied over and over and over
9 again throughout the complex. This is one
10 piece of a total big picture that, you know,
11 we're grappling with. So -- and the intent of
12 Congress obviously was good, and we're all
13 learning the difficulties. I'm simply saying
14 here that we have to balance our obligation to
15 assess the data against this issue of the press
16 of time, and that's not easy to do and that's
17 the struggle we'll have.

18 Let us recess for ten, 15 minutes so we have a
19 chance to read the document.

20 I do want to point out that if in fact we reach
21 a voting point on this and we have to vote and
22 if -- we -- we will certainly keep the record
23 open for Henry, if he wishes to reserve his
24 vote until -- and Tony, as well, until they
25 have a chance to see the document and the full

1 record. So let us recess and have a chance to
2 read this. Thank you.

3 (Whereupon, a recess was taken from 10:20 a.m.
4 to 10:50 a.m.)

5 **DR. ZIEMER:** It appears that we're ready to
6 resume deliberations. The Chair would like to
7 ask for some clarifications now. The Board
8 members have received the document. Could I
9 learn whether or not the document has been made
10 available at this moment yet to petitioners?

11 **UNIDENTIFIED:** (Off microphone)
12 (Unintelligible) do have it.

13 **DR. ZIEMER:** Thank you. Apparently the
14 document has been made available to the
15 petitioners. Is it available to the public?

16 **UNIDENTIFIED:** (Off microphone) It's being
17 copied (unintelligible).

18 **DR. ZIEMER:** It's being copied right now, so --

19 **MR. ELLIOTT:** Copies are being made for the
20 general public and will be on the back table
21 shortly.

22 **DR. ZIEMER:** And could we confirm for the
23 record and for the Board members -- this
24 document appears to be largely a narration by
25 Mr. Mason relative to a visit he made to ERDA,

1 is that correct, or -- can -- can someone fill
2 us in as --

3 **MR. ELLIOTT:** Let me give you a little bit of
4 background about this document. I believe
5 there's -- supposedly -- there should be a
6 cover letter from ORAU that is being produced -
7 - photocopied and being attached. I hope
8 everybody gets a copy of that. It speaks to
9 the fact that this document was identified in
10 November of 2004 as part of a collection of
11 documents that were located in the Oak Ridge
12 vault and was used in the professional judgment
13 of evaluation for the petition. We learned
14 about it -- or I learned about it last -- late
15 last week, and the first time I read it
16 actually was last evening.

17 But essentially this is a trip report, if you
18 will, of the research team for Dr. Mancuso who
19 were encharged or given a mandate by the Atomic
20 Energy Commission at the time and the ERDA,
21 which is the Energy Research Development
22 Administration, I believe is the acronym, to
23 look at the health and well-being of the work
24 force that was involved in the Manhattan
25 Engineering District and subsequent weapons

1 development program.

2 It is a -- as I say, a trip report. It speaks
3 specifically to the experience of Mr. Mason and
4 part of his research team, the crew. Several
5 names are mentioned still in this document. We
6 have redacted a name that we felt was an
7 employee of Mallinckrodt, but the rest of the
8 names that you see in the document represent
9 people who were on the Mancuso research team.
10 The document provides some information about
11 how this team were going about assembling
12 information for this health study of workers at
13 Mallinckrodt covering the years of -- well, you
14 can see it here, I think -- you know, they're
15 specifically focusing on the early years and
16 dust data, radon data, et cetera.

17 We raised this -- LaVon Rutherford raised this
18 last evening as a document that speaks to the
19 earlier Mont Mason letter of 1972 where in that
20 letter there was mention made of dust data
21 records that were not available at the time,
22 and question was raised by Denise through her
23 petition as to the credibility of this and
24 whether or not the records were in fact lost
25 and not available to us. So that points to

1 credibility.

2 This -- this report from August of 1975 on page
3 6, this goes to what LaVon Rutherford was
4 mentioning last night. At the top of page 6
5 you'll find a paragraph that -- that reads:
6 Happily, the file -- the file apparently
7 intact, was among the records we recovered from
8 the Federal Records Center at St. Louis in
9 1972, and he's cross-ref-- since cross-checked
10 the card samples against sample printouts of
11 the CTC master file and know that there are no
12 (sic) disagreements.

13 So we were using this to --

14 **DR. ZIEMER:** Know that there are no -- or are
15 disagreements?

16 **MR. ELLIOTT:** There are disagreements --

17 **DR. ZIEMER:** Are disagreements.

18 **MR. ELLIOTT:** -- but this goes to -- they're
19 building a -- what's called a master data file
20 for a health study. So our folks pursued this
21 to make sure that we did in fact have the data
22 that was mentioned in this document. It is
23 accessible to us. It has been included into
24 our datasets. We know it exists and --
25 I know that Denise had FOIA'd this from the

1 Department of Energy. I don't believe a FOIA
2 came to us, but it was -- your FOIA went to
3 DOE. I don't know that DOE actually ever had
4 this document because it was part of Mancuso's
5 holdings. And part of the people that were on
6 the Mancuso team were aligned with Oak Ridge
7 folks and -- you see names like Hap West, who
8 unfortunately we lost just a year ago, who was
9 a health physicist at Oak Ridge Associated
10 Universities and the Oak Ridge National Lab and
11 Y-12. He's weighing in and providing advice
12 here. So that's what this is all about.

13 We simply thought that -- I think LaVon, out of
14 good intentions, was wanting to make note that
15 the records that were mentioned in the '72
16 letter that might have been lost in fact are
17 not lost. They are in our hands, in our
18 holdings.

19 **DR. ZIEMER:** Thank you. Jim Melius.

20 **DR. MELIUS:** Oh, I'm not -- I -- sorry, for --

21 **DR. ZIEMER:** Okay, just had your card up out of
22 habit there, maybe. But I wonder if Board
23 members do have questions on this document in
24 terms of its pertinence to the issue before us.

25 The previous citation of this was in the

1 context that there were some records mentioned
2 in here and that you had confirmed that you had
3 found those records. Is that correct? This
4 seems to deal mainly with efforts to organize
5 the database for this study and early use of
6 their computer system versus their hand-printed
7 system. It --

8 **MR. ELLIOTT:** Yes, that's correct.

9 **DR. ZIEMER:** -- doesn't seem to deal with the
10 data, per se.

11 **MR. ELLIOTT:** That is correct. And let me
12 point out one -- one more time. In Ms. Brock's
13 petition there's a letter from Mont Mason,
14 1972, that raises concerns about the
15 availability or seemingly lost information on
16 dust records. This document that we're
17 providing you today from August of 1975, on
18 page 6, indicates to us that those records were
19 not lost and in fact, through our efforts at
20 reviewing all of the records we have, the dust
21 box records that are mentioned in this document
22 are in fact in our holdings.

23 **DR. ZIEMER:** Thank you.

24 **MR. ELLIOTT:** And you are correct, this is --

25 **DR. ZIEMER:** This doesn't necessarily speak to

1 the quality of the records, but their
2 existence.

3 **MR. ELLIOTT:** In my opinion, I found this to be
4 fascinating reading because in my background at
5 NIOSH, doing this kind of work in my early
6 days, putting together an epidemiologic study,
7 I can point to trip reports that we would write
8 that speak to the difficulties of cross-
9 matching data, making sure that you have a
10 study population that was truly an
11 epidemiologic cohort to be studied, and they're
12 -- that's what's being described here. Their
13 difficulties in matching up the data, moving
14 from a hand-developed master list to a
15 computer-programmed, keypunched list of exposed
16 individuals and creating -- what I think is
17 just an extraordinary amount of effort and --
18 and benefit to this program -- a dust history
19 for those individuals.

20 **DR. ZIEMER:** Thank you. Wanda Munn, and then
21 Jim Melius.

22 **MS. MUNN:** One very reassuring aspect of what
23 we now have, even though I -- being a slow
24 learner and slow reader -- have not yet really
25 absorbed what's in here, what I have seen

1 confirms our selection of time differential for
2 the two separate Special Exposure Cohorts very
3 clearly, and would support the adequacy of the
4 position that we have that more records exist
5 after the beginning of 1949 than prior.

6 **DR. ZIEMER:** Thank you. Dr. Melius?

7 **DR. MELIUS:** I actually find -- although this
8 document does address the specific issue of the
9 dust records, I find it sort of raises more
10 questions about the availability of data and --
11 as well as the quality of the data. There are
12 several references in there to things not
13 matching up and so forth that -- it's a little
14 difficult to tell whether it's problems with
15 the original records or with the data entry
16 process that the researchers were using. But I
17 guess I -- little -- little disturbed that it
18 was presented to us as sort of a, you know,
19 this is -- this proves that everything is fine.
20 I find it -- on the contrary, that it raises as
21 much issues as it settles about the
22 availability and quality of data, and certainly
23 going beyond the 1949 time period, though, it -
24 - they weren't trying to predict our evalu--
25 what we -- what -- time period we were going to

1 be evaluating, so it's -- the dates aren't
2 always clear, either. But I -- I guess -- it
3 certainly points to the fact that -- in the
4 future and without placing blame, that if we're
5 going to be referencing documents, we need to
6 have them available and have them -- give some
7 ability to review them, preferably ahead of
8 time.

9 **DR. ZIEMER:** Other comments? We have before us
10 actually the motion which is the -- get my
11 document here -- the motion is essentially the
12 last paragraph of the document that you had
13 originally which we had split into two parts,
14 as you recall. So I would ask again, are there
15 Board members which -- who wish to speak for or
16 against the motion, or to share with us your
17 views on -- on the issue as it's presented
18 here?

19 Jim Melius.

20 **DR. MELIUS:** Yeah. Again, it's -- some ways
21 difficult to argue against saying well, we
22 could use more time, but -- but I still think
23 there are a number of compelling reasons to
24 seriously consider a Special Exposure Cohort
25 for the period after 1959 (sic). Again,

1 there's a number of questions raised in this --
2 now another document, and I don't -- how far we
3 can go in evaluating credibility and
4 availability of information is --

5 **DR. ZIEMER:** I think for the record, you're
6 actually talking about '49 to '57.

7 **DR. MELIUS:** Excuse me, did I -- what did I --
8 apologize. And secondly, there's still this
9 outstanding issue of the raffinates and the
10 actinium exposures and so forth from that that
11 I don't think we've -- at least for me is not --
12 -- is far from being satisfied with the approach
13 that NIOSH has proposed for that, though,
14 again, albeit we are still seeing that in graph
15 form or is a promise to be delivered at a later
16 point in time. So I would speak against the
17 motion.

18 **DR. ZIEMER:** Others? Roy.

19 **DR. DEHART:** Yesterday a question was asked of
20 NIOSH if there was confidence in the data, and
21 that was answered affirmative. A second
22 question was asked, based on that, can dose
23 reconstruction be conducted and the answer to
24 that was in the affirmative. So I've heard
25 from NIOSH that they feel they do have

1 sufficient data and that they can proceed. I
2 have not seen anything compelling that would
3 argue that point.

4 **DR. ZIEMER:** Okay. Let's see, I have Leon and
5 then Wanda. Leon?

6 **MR. OWENS:** Dr. Ziemer, as a member of the
7 working group, I know there was some thought on
8 my part relative to this time period. And I'll
9 go back to my earlier comments in regard to the
10 Special Exposure Cohort designation for the
11 three gaseous diffusion plants. I think that
12 the intent of that designation was based on the
13 inability to accurately obtain data that would
14 be needed for dose reconstruction. I also
15 think that it goes to the inability of records,
16 the credibility of the records, the
17 availability of the records and the notion that
18 the Department of Energy put workers in harm's
19 way. And so with that being the case, I speak
20 against the motion.

21 **DR. ZIEMER:** Thank you. Wanda Munn.

22 **MS. MUNN:** The document that we have in our
23 hands is not the only piece of raw data which
24 is still outstanding. We have no idea yet what
25 is contained in the other boxes, and whether

1 those boxes will in fact be able to provide the
2 data that would enable NIOSH to make some of
3 the calculations that are currently impossible.
4 Therefore, I speak in favor of including this
5 statement.

6 **DR. ZIEMER:** Okay, speaking for the motion.
7 Gen Roessler?

8 **DR. ROESSLER:** I speak in favor of it,
9 primarily because I think we have a huge
10 responsibility here with looking at this --
11 this first one. I'm going to repeat myself.
12 We are required to set some criteria now for
13 what we're going to be doing not only on this
14 one but in the future. I think we have a
15 responsibility of being equitable in our
16 decisions. We need to make sure that our
17 decisions are uniform. And so I think we
18 really have to go toward the -- a little more
19 time to properly evaluate it.

20 **DR. ZIEMER:** Thank you. Mark Griffon.

21 **MR. GRIFFON:** I -- I agree with Jim's
22 sentiments that it's hard not to want more time
23 on this. However, I -- I do see, at least from
24 my standpoint, some compelling information that
25 to me would suggest inclusion of this time

1 period, and it focuses on the raffinate issue,
2 the potential exposures to actinium,
3 protactinium, thorium and -- and I'm still
4 wrestling with this in my mind, the fact that a
5 maximum dose -- I think the response I received
6 yesterday at one point from NIOSH that -- was
7 that well, if we have absolutely no information
8 we can just assume it was all actinium and
9 assign a worst case maximum plaus-- maximum
10 dose. But in fact I don't think that that kind
11 of answer -- I think NIOSH is trying to use to
12 resolve an SEC petition, but those numbers
13 wouldn't end up being used in an individual
14 dose reconstruction in -- in some of those
15 claimants that would fall in that period. Am I
16 correct in that --

17 **DR. ZIEMER:** Let's ask Dr. Neton to clarify
18 that.

19 **DR. NETON:** That's not correct, Mark. I mean
20 the way the regulation reads is can we put an
21 upper limit on the dose, period. And if we --
22 I believe there are -- and I have not evaluated
23 this, but I believe we have air dust data
24 throughout the facility, and if we know that
25 there are air dust data in raffinate areas and

1 we assume it's actinium in 100 percent
2 equilibrium with its daughters or progeny, we
3 could use that to put an upper limit on the
4 dose. And in fact if that's all we know and
5 that's all we'll ever know, that's what we
6 would use to reconstruct doses for workers in
7 those areas. So we can in fact, doing that,
8 put an upper limit on the dose per the
9 requirements of 42 CFR 83.

10 **DR. ZIEMER:** Thank you.

11 **DR. MELIUS:** I have a further -- further
12 comment.

13 **DR. ZIEMER:** Yes, Dr. Melius.

14 **DR. MELIUS:** Yeah, just to address Dr. DeHart's
15 comments. Although NIOSH has said that they
16 have confidence in their ability to do dose
17 reconstructions, as Jim has reiterated, we've
18 seen very little evidence of that or adequate
19 evidence that presented to us. It's based on
20 relatively short statements that are included
21 in the evaluation petition. Contrary to what
22 was said by NIOSH, I did not find that
23 information to be convincing in itself. That
24 then refers back to a draft revision of a site
25 profile. Remind that our contractor had

1 already reviewed the original site profile
2 before it was revised. Raised serious question
3 about a number of issues in there that is going
4 to form the basis for NIOSH's statement that
5 they can reconstruct dose with sufficient
6 accuracy. So I don't have the confidence at
7 this point in time that NIOSH can do so. And I
8 also find the -- this question of how long do
9 we prolong this process. Yeah, we may be
10 setting precedents, but is the precedent going
11 to be that this is going to weigh out for
12 another year, two years, three years before we
13 come to closure, are more documents going to be
14 found, more boxes and then we need to
15 continually to revise and revisit this issue,
16 and I think we need to come to closure on it.

17 **DR. ZIEMER:** Wanda Munn?

18 **MS. MUNN:** If the decision we have to make is
19 to make a choice between timely evaluation and
20 junking known science, or assuming that known
21 science cannot be found, then that is an
22 impossible choice. We must be responsible in
23 our reliability on scientific record and
24 scientific capability that is available to us.
25 We have no evidence that any of the site

1 profiles or any of the dose reconstructions
2 that have been done have been done using bad
3 science or no science. So if what we're saying
4 is we must make a timely decision at all costs,
5 I must object to that.

6 **DR. ZIEMER:** Thank you. Other comments? Jim,
7 did you have another comment?

8 **DR. MELIUS:** Yeah, could I -- I want to respond
9 to that.

10 **DR. ZIEMER:** Yes.

11 **DR. MELIUS:** The statement was not to the
12 effect of making timely decisions at all costs,
13 but on the other hand, Congress did not ask us
14 to exhaust all possible scientific inquiry
15 before reaching a decision on either an SEC
16 petition or an individual dose reconstruction.
17 As to do what was feasible to do, which
18 certainly implies doing something within a
19 reasonable time period. There's also other
20 language, some of which we heard from the
21 appropriations bill about doing this in a -- a
22 timely fashion. So I think we are being asked
23 to balance between exhaustive scientific
24 pursuit of -- of, you know, the perfect dose
25 reconstruction and the ability to get these

1 people compensation in a timely fashion. And
2 that may mean we can't do as complete and
3 exhaustive scientific inquiry as -- as one
4 might like. It doesn't mean we throw out
5 science, it just means that we have to keep
6 that in balance and recognize trying to go back
7 50 or 60 years to find all these records and do
8 something that these records were not
9 necessarily collected or intended to do is of -
10 - is a difficult task and there's some
11 limitations to how well we can do that.

12 **DR. ZIEMER:** Thank you. That -- that balance
13 is the issue, of course, that we've been
14 talking about for quite a bit this morning.
15 With your permission -- ordinarily the Chair
16 does not enter into the debate, but since under
17 our rules the Chair also votes on all issues,
18 with your permission I would like to speak to
19 the motion.

20 I'm speaking in favor of the motion, and let me
21 tell you why. Number one, if the motion does
22 pass, that does not preclude us from, at an
23 appropriate point, from proceeding to identify
24 nonetheless this group as a Special Exposure
25 Cohort. What the motion does is allow us to

1 examine what we believe will be some
2 forthcoming pieces of information, hopefully
3 that we will have by the time of our next
4 meeting, if we can believe what we've heard in
5 the past couple of days. That is the -- both
6 the revised site profile, as well as some
7 additional review by our own contractor, so
8 that the -- the time delay in evaluating the
9 science hopefully would be minimal. It's not
10 zero, but it -- we're not talking years, I
11 don't believe, or half-years, but slightly more
12 time.

13 I understand the concerns, but at the same time
14 I believe we have an obligation to make that
15 evaluation of the data. We are charged to do
16 that, as well as to be timely. I believe we
17 can do both if we are able to reach that point
18 by our next meeting. I understand there's no
19 guarantee, and if we don't reach that point,
20 this Board would be free to take whatever
21 action it did.

22 Defeating the motion only closes that issue as
23 far as -- we would still need another motion to
24 do something about that group, so I also remind
25 you of that. All the motion asks for is that

1 we get some pertinent information so we can
2 make the evaluation.

3 Now in fairness, let's have someone speak
4 against the motion. Okay, Jim.

5 **DR. MELIUS:** Well, actually I'm going to go on
6 a different direction. And I guess it is --
7 this is speaking against it. I would point out
8 that the motion also does not at all reflect
9 what you just stated, Dr. Ziemer. It does not
10 put a time frame on when --

11 **DR. ZIEMER:** Yes, I understand.

12 **DR. MELIUS:** -- we would consider it, and I
13 think it would be very important that, should
14 we be in support -- people being in support of
15 this motion, that it carry a time frame with
16 it, a very specific time frame. I think that
17 the next meeting may be an appropriate one, if
18 I remember some of the answers to some of the
19 questions I asked yesterday, but that we -- we
20 do indicate that we do plan to come to closure
21 and we plan to come to closure as best we can,
22 for example, at the next meeting.

23 **DR. ZIEMER:** I certainly agree with that, and I
24 would feel awkward in asking you to make the
25 amendment to the motion, but I completely agree

1 with what you say there. But there might be
2 others who support the motion who might be
3 interested in making such an amendment -- such
4 as Roy DeHart.

5 **DR. DEHART:** I think that's very reasonable and
6 I would hope that we would have any of the
7 other data that's necessary, since there is
8 concern about the veracity with which NIOSH has
9 been able to assure us that they can do a dose
10 reconstruction. Perhaps with the other data
11 and a clarification from our contractor on the
12 site profiles there will be more of a comfort
13 level, and I would move that the topic of this
14 particular -- I'm sorry, it is an amendment,
15 that we amend the current motion to read that a
16 final determination would be made during our
17 next meeting.

18 **MR. PRESLEY:** I'll second.

19 **DR. ZIEMER:** And seconded. Now we have before
20 us then the motion to amend. We're not
21 speaking to the main motion, but the motion to
22 amend, to add the words that this determination
23 -- how would you read -- a final determination
24 on this issue will be made at our next Board
25 meeting.

1 Wanda?

2 **MS. MUNN:** I would suggest a friendly amendment
3 that is -- that would make the statement read
4 "It is the intent of this Board to make a final
5 determination at its next meeting", because
6 intent and absolutes are just a little
7 different.

8 **DR. ZIEMER:** Do you regard that as a friendly
9 amendment --

10 **DR. DEHART:** Yes.

11 **DR. ZIEMER:** -- the seconder?

12 **MR. PRESLEY:** Yes.

13 **DR. ZIEMER:** Yes. The motion then, it is the
14 intent of this Board to make a final --

15 **MS. MUNN:** Determination.

16 **DR. ZIEMER:** -- determination at the next
17 Advisory Board meeting.

18 **MS. MUNN:** On this potential cohort at the next
19 Advisory Board -- at the next full Advisory
20 Board meeting.

21 **DR. ZIEMER:** Discussion?

22 (No responses)

23 **DR. ZIEMER:** You ready to vote on this
24 amendment? It's --

25 **MS. BROCK:** Dr. Ziemer -- I'm sorry.

1 **DR. ZIEMER:** Question -- yes.

2 **MS. BROCK:** Yes, I just --

3 **DR. ZIEMER:** Are you speaking to this motion?

4 **MS. BROCK:** I'm sorry?

5 **DR. ZIEMER:** Go ahead.

6 **MS. BROCK:** I just had a question. I wanted to
7 make sure that through this vote that '42 to
8 '48, it would be my expectation that that
9 cohort is not going to be held up --

10 **DR. ZIEMER:** This does not affect the prior
11 action.

12 **MS. BROCK:** Okay, and I also wanted to speak to
13 this motion, as well. I don't know if that's
14 possible, but I would like to know if SC&A can
15 also take a look at all of this. They are the
16 auditors and --

17 **DR. ZIEMER:** SC&A, we've already agreed, is
18 going to look at this material as well. That's
19 -- that's part of the picture.

20 **MS. BROCK:** Okay. Thank you.

21 **DR. ZIEMER:** Yes, that's already been agreed
22 to.

23 Let me also tell you that in voting -- if you
24 vote for this motion, it does not necessarily
25 mean that you favor the main motion. You

1 understand that, just so you don't feel guilty
2 if you support this and -- don't want any guilt
3 trips here. Vote your conscience.

4 All in favor, aye?

5 (Affirmative responses)

6 **DR. ZIEMER:** Any opposed, no?

7 (Negative responses)

8 **DR. ZIEMER:** I'm going to declare that the ayes
9 have it. Do you want -- maybe we'll take -- do
10 you -- let's -- let's get a hand vote favoring
11 the motion. One, two, three, four, five, six,
12 and opposing the motion, one, two, three -- Jim
13 are you voting? -- for, okay. Three against.
14 Now we have -- the motion carries. We have the
15 main motion, as revised, and before we -- you
16 may not be ready to vote, but if you are, we
17 will hold the vote open, I believe, if it --
18 particularly if it's a close vote we will
19 certainly hold it open for Henry and if we're
20 able to reach Tony, as well, and provide them
21 with the related materials.

22 Are there -- is there discussion now on the
23 motion as revised?

24 (No responses)

25 **DR. ZIEMER:** Are you ready to vote on the

1 motion as revised? Wanda?

2 **MS. MUNN:** Please clarify what is a yes vote
3 and what is a no vote on this motion.

4 **DR. ZIEMER:** A yes vote means that you favor
5 the statement that says the Board reserves
6 judgment with respect to Mallinckrodt workers
7 and so on. It's the last paragraph of your
8 written statement, and the additional
9 statement, "It is the intent of the Board to
10 make a final determination on this cohort at
11 the next Advisory Board meeting." So voting
12 yes means that that is the position of the
13 Board on this issue.

14 Are you ready to vote then?

15 All in favor of this motion please raise your
16 hand and we'll get a count here -- one, two,
17 three, four, five, six. All opposed, one, two,
18 three, four and so at the moment it is six and
19 four, and we will try to obtain Henry's vote
20 and Tony's, as well. So we will hold the vote
21 open until that time.

22 You understand that there's a possibility of a
23 tie vote. A tie vote means that the motion
24 fails. Let me also advise you -- there's a
25 down side to that. If the motion fails, and we

1 won't know right away if it fails, but if it
2 fails it means that no action has been taken
3 either way, which is in a sense sort of an
4 unfortunate default. I simply call that to the
5 Board's attention. Okay? I say an unfortunate
6 default because it inherently then pushes the
7 decision into the next meeting. I say that for
8 the benefit of those who voted against because
9 it in essence is contrary to what the negatives
10 had desired. You understand that. Okay.
11 Now I would ask the Board members if you have
12 any additional issues that you want to put on
13 the table with respect to the Mallinckrodt
14 petition, or comments.

15 **DR. WADE:** Jim has his card --

16 **DR. ZIEMER:** Jim?

17 **DR. MELIUS:** I'm sorry, I --

18 **DR. ZIEMER:** Okay. Now -- Wanda, you have a
19 comment?

20 **MS. MUNN:** If this motion does in fact fail,
21 may we assume that all members of the Board
22 will be notified of that and that the remainder
23 of the letter will go out, simply in the
24 absence of the last --

25 **DR. ZIEMER:** The remainder of the letter would

1 go out regardless, number one.

2 **MS. MUNN:** Thank you.

3 **DR. ZIEMER:** Number two, if the Board so
4 instructs the Chair, and if you would desire to
5 take some specific action prior to the next
6 meeting, then we would make every effort to
7 have a special meeting to deal with the issue.
8 And you can so instruct the Chair to -- to
9 inaugurate or initiate such action.

10 **DR. MELIUS:** I would say yes, we should, as a
11 contingency.

12 **MR. GRIFFON:** I didn't know that was an option.

13 **DR. ZIEMER:** Of course. We -- this Board can
14 call a meeting, and I think the Chair has the
15 prerogative of calling a meeting. And I think
16 in fairness --

17 **MR. GRIFFON:** I mean I -- I should say part --
18 part of my reason for voting for the motion was
19 that -- I was thinking just like you, Paul,
20 that if it was a split vote, we end up not
21 moving the ball anywhere --

22 **DR. ZIEMER:** Right, that --

23 **MR. GRIFFON:** -- until the next meeting --

24 **DR. ZIEMER:** -- that's my point and --

25 **MR. GRIFFON:** -- and that was one of my fears.

1 **DR. ZIEMER:** -- in fairness to those --

2 **MR. GRIFFON:** And I thought with the concession
3 of the fact that we will -- our intent, the
4 intent of the Board is to have a final decision
5 by the next meeting, I thought that was moving
6 the ball.

7 **DR. ZIEMER:** However, if -- I think in
8 fairness, for those who voted against the
9 motion, that if it is their desire that we do
10 something prior to the next meeting, then we
11 should do that. Is that -- is that a motion
12 that we attempt to have a special meeting?
13 This could even -- this -- this would have to
14 be a special meeting at some location on --
15 it's -- it's still going to require a notice.
16 It would be an open meeting. It requires the
17 regular advance notice and so on. I know it
18 puts the staff on the spot because we have to -
19 -

20 **MS. MUNN:** And once the notice is made we can't
21 just --

22 **DR. ZIEMER:** -- go through steps, but we need
23 to make an effort to protect the rights of
24 everyone here.

25 **MS. MUNN:** And once that notice is made -- a

1 *Congressional Record* notice is a notice of a
2 public meeting.

3 **DR. ZIEMER:** Yes.

4 **MS. MUNN:** It's a done deal then.

5 **DR. ZIEMER:** Yes, right. That's correct. Roy?

6 **DR. DEHART:** Do you anticipate we would have
7 the data at that meeting that we're expecting?

8 **DR. ZIEMER:** Not unless -- well, we -- we
9 already know that there's going to be at least
10 a month. Both NIOSH and our contractor have
11 indicated they need a month to evaluate these
12 things, so if you were to tell us we're going
13 to meet in a month, we're going to meet with
14 the same information we have before us today.
15 That's all I'm saying. Yes, Larry?

16 **MR. ELLIOTT:** That's all I was going to remind
17 the Board of, our promise from yesterday to get
18 the revised site profile on the table within a
19 month, and then I think Dr. Mauro promised you
20 as well a month for his team to review that and
21 provide comment, so -- and then your next
22 meeting you've already scheduled for two months
23 away, essentially. So just -- I was going to
24 offer that for your deliberation.

25 **DR. ZIEMER:** The Chair is simply pointing out

1 to the -- to the assembly that if the motion
2 fails due to a tie, it has in effect
3 accomplished the -- the objective of the "for"
4 votes, those for the motion, by delaying the
5 decision. That's all I'm pointing out. So in
6 fairness to the "no" votes, I'm suggesting if
7 in fact you would wish to have a follow-up
8 action, then we -- we would try to do that.
9 But...

10 On the other -- at the same time, a -- a failed
11 motion is a failed motion, so that also --

12 **DR. MELIUS:** Yeah, and I think in some ways
13 it's moot because we --

14 **DR. ZIEMER:** Yeah.

15 **DR. MELIUS:** -- be meeting again and --

16 **DR. ZIEMER:** Right.

17 **DR. MELIUS:** -- the issue is still outstanding,
18 so --

19 **DR. ZIEMER:** That's right. Okay. Mark?

20 **MR. GRIFFON:** I think we have the -- an added
21 concern, even -- even with the last line that
22 we added, the intent of the Board is to make
23 final decision. We heard yesterday that these
24 new six boxes of data will not be in any
25 revised -- Rev. 1 of a site profile, so I don't

1 know that we're going to hear anything about --
2 you know, so that there's still going to be --

3 **DR. ZIEMER:** We still have to --

4 **MR. GRIFFON:** -- an out-- an outstanding --

5 **DR. ZIEMER:** -- we may still have --

6 **MR. GRIFFON:** -- question --

7 **DR. ZIEMER:** -- to make a decision --

8 **MR. GRIFFON:** Right.

9 **DR. ZIEMER:** And it's the same issue, is all --
10 is every piece of information in, or are we at
11 a point where we can make the decision based on
12 the information available. And again --

13 **DR. WADE:** Can I speak to when we would have
14 the report of the six boxes? Jim? Is Jim --
15 or Larry?

16 **MR. ELLIOTT:** Yesterday we also committed to
17 have that within the same time frame as the
18 site profile. We think that's essential to --
19 for a clear understanding of what information
20 we have available to be incorporated into the
21 site profile. So Judson has promised yesterday
22 evening to have that six boxes reviewed and
23 addressed in the site profile itself.

24 **UNIDENTIFIED:** (Off microphone)

25 (Unintelligible)

1 **MR. ELLIOTT:** No? I'm sorry, I mis-spoke?
2 Well, help me out, Jim. Correct me.

3 **DR. NETON:** I think what we agreed to was to
4 have the Rev. 1 of the site profile out, but
5 not to include the contents of the boxes, but
6 we would have some summary information
7 available that would divulge the content that
8 the Board could evaluate.

9 **MS. MUNN:** Yeah.

10 **DR. ZIEMER:** Wanda, you had another comment,
11 and that --

12 **MS. MUNN:** That --

13 **DR. ZIEMER:** -- that answered --

14 **MS. MUNN:** That was my recollection, and it
15 could just as likely be that there is nothing
16 of value --

17 **DR. ZIEMER:** Yes.

18 **MS. MUNN:** -- that could add to this, but as a
19 matter of fact, I suspect that that's more
20 likely than that there will be great --

21 **DR. ZIEMER:** Thank you. Richard has a comment,
22 also.

23 **MR. ESPINOSA:** I do believe that this needs to
24 be moved forward as soon as possible. And you
25 know, just as a reminder, there is a

1 subcommittee set for March. Maybe we can get
2 the whole Board during that time period.

3 **DR. ZIEMER:** If necessary that might be a
4 suitable time to do it. Thank you for that
5 reminder.

6 **DR. MELIUS:** I have --

7 **DR. ZIEMER:** Jim?

8 **DR. MELIUS:** Right. I would also remind -- I
9 guess NIOSH in this case, that the -- there are
10 petitioners, too, and the petitioners have I
11 think some rights in terms of commenting, and I
12 think also should be kept informed about what
13 is -- information's found, what's happening
14 with revisions to the site profile, should
15 there be other documents available that might
16 address the issue of the credibility of the
17 monitoring -- available monitoring information.
18 There should be some attempts to make that
19 available to the petitioners in a timely
20 fashion, given again --

21 **DR. ZIEMER:** Yes, let's make sure that the
22 petitioners get those documents and, Denise,
23 that your group has an opportunity to review
24 them and comment, as well.

25 **MR. ELLIOTT:** Absolutely. We believe that --

1 it's unfortunate this one document came to our
2 attention as late as it did and we didn't get
3 it in front of the petitioner or the Board in a
4 timely manner, but it is our full intent to
5 work with the petitioners and make sure that
6 they're knowledgeable and up to speed on the
7 documentation that we have at our disposal. So
8 we will do everything we can to make sure that
9 happens.

10 **DR. ZIEMER:** Thank you very much. And Judson?

11 **MR. KENOYER:** This is Judson. I just want to
12 make one comment based on the importance of
13 this review. I wanted to let you know that I
14 have people that have started on a summary of
15 that data that's in the boxes. They started
16 this morning.

17 **DR. ZIEMER:** Thank you.

18 **DR. MAURO:** Dr. Ziemer --

19 **DR. ZIEMER:** Yes, John Mauro from our
20 contractor.

21 **DR. MAURO:** With regard to the boxes, the six
22 boxes, it sounds like there's really two lines
23 of inquiry that would be moving forward on
24 behalf of NIOSH. One is the Revision 1 and the
25 other is the review of the six boxes. Of

1 course at some point the two will come
2 together, the implications of the six boxes and
3 their relevance to Revision 1 and many of the
4 decisions that need to be made. Would there be
5 any advantage for SC&A to also receive the set
6 of boxes and, in parallel, be looking at those
7 boxes at the same time that NIOSH is looking at
8 those boxes?

9 **DR. ZIEMER:** Does -- and I think that we don't
10 know the answer to that. Judson, do you --

11 **MR. KENOYER:** As I said, I have people
12 reviewing those boxes. After -- after they do
13 their initial summary, all the information will
14 be uploaded to our terminal server. We'll make
15 it available to SC&A as quickly as possible.

16 **DR. ZIEMER:** And perhaps once we know what's in
17 that box -- those boxes, the Board may have to
18 -- and by the time of our meeting, ask our
19 contractor to review that. I don't know that
20 we can ask you to do that at this point since
21 we don't know what's in it.

22 Lew, that would be a scope issue, too, as far
23 as the contract is concerned.

24 **DR. WADE:** Although if necessary we will modify
25 the scope to allow that to happen. It might

1 not be necessary if it goes to the issue of a
2 site profile review.

3 **DR. ZIEMER:** Denise, did you have another
4 question on that? Yes.

5 **MS. BROCK:** Maybe a comment.

6 **DR. ZIEMER:** Yes.

7 **MS. BROCK:** First of all, I would like to state
8 just for the record that I think it is
9 extremely unfortunate that I was put at such a
10 disadvantage of not getting this until now.

11 I'm not a -- I keep stating I do not have the
12 technical skills that some of you have, and by
13 me just getting this now left me very
14 unprepared to protect my workers. And I've had
15 just a few minutes to scan over this and the
16 little bit I've seen of it, I don't know what
17 you all were looking at. I think some of you
18 obviously saw what I did. It lends to the fact
19 that this -- this has been manipulated. These
20 -- it shows that it's not credible. And as far
21 as my FOIA request, isn't ORAU a DOE -- is that
22 through a DOE -- they're DOE contracted.

23 Correct? No? Is that wrong?

24 **MR. ELLIOTT:** ORAU does have a contract in its
25 past with DOE, but it would depend on how you

1 specified your FOIA request as to how they
2 directed it. And I can't speak to that, so I
3 don't know, you know, how to answer your
4 question other than that. You have the
5 document as soon as we could make it available.
6 And again, I would comment that this document
7 in its context is a trip report for a -- a
8 research team to evaluate information for a
9 health study.

10 **DR. ZIEMER:** Thank you.

11 **DR. WADE:** That -- that said, we do apologize
12 to the petitioners.

13 **MS. BROCK:** Thank you. And just one more
14 thing. This probably means nothing, it's just
15 my take on it. On page 13, number two,
16 exposure to radon in the work space air.
17 (Reading) There are fragmentary measurements of
18 air radon beginning about 1946 and continuing
19 through about 1955. I view them as having
20 little if any use as a measure of the magnitude
21 of an individual exposure. These data can be
22 used to show that certain jobs or job
23 categories did entail possible exposure to
24 radon within a max-mini range. Any
25 interpretation beyond that would be erroneous,

1 in my opinion.

2 I mean this is from a (unintelligible) and
3 maybe I'm misunderstanding what I've read, but
4 there's just a -- a lot of this is questionable
5 to me because I don't have those technical
6 skills.

7 **DR. ZIEMER:** Thank you. We all need to digest
8 this further, I believe.

9 (Whereupon, the Board review and discussion of
10 the Mallinckrodt SEC petition portion of the
11 meeting was concluded.)

C E R T I F I C A T E O F C O U R T R E P O R T E R**STATE OF GEORGIA****COUNTY OF FULTON**

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the days of February 8 and 9, 2005; and it is a true and accurate transcript of the testimony captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 22nd day of February, 2005.


STEVEN RAY GREEN I CCR

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