

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

WORKING GROUP MEETING

ADVISORY BOARD ON
RADIATION AND WORKER HEALTH

ROCKY FLATS

The verbatim transcript of the Working
Group Meeting of the Advisory Board on Radiation and
Worker Health held telephonically on April 3, 2008.

STEVEN RAY GREEN AND ASSOCIATES
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TRANSCRIPT LEGEND

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In the following transcript: a dash (--) indicates an unintentional or purposeful interruption of a sentence. An ellipsis (. . .) indicates halting speech or an unfinished sentence in dialogue or omission(s) of word(s) when reading written material.

-- (sic) denotes an incorrect usage or pronunciation of a word which is transcribed in its original form as reported.

-- (phonetically) indicates a phonetic spelling of the word if no confirmation of the correct spelling is available.

-- "uh-huh" represents an affirmative response, and "uh-uh" represents a negative response.

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

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

-- "^" denotes telephonic interruption.

P A R T I C I P A N T S

(By Group, in Alphabetical Order)

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ELLIOTT, LARRY, NIOSH
EVAH, BEATRICE, SENATOR KEN SALAZAR
FITZGERALD, JOE, SC&A
GNIRK, GALE, CONGRESSMAN JOHN SALAZAR
HOLAN, BILL, CONGRESSMAN ED PERLMUTTER
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HOWELL, EMILY, HHS
KESSLER, ZANE, SENATOR KEN SALAZAR
KOTSCH, JEFF, DOL
MAURO, JOHN, SC&A
NETON, JIM, NIOSH
SHARFI, MUTTY, ORAU
UDALL, MARK, CONGRESSMAN
ULSH, BRANT, NIOSH

1 line?

2 (no response)

3 **DR. BRANCHE:** Are there other Board members
4 on the line?

5 **MR. PRESLEY:** This is Bob Presley. Were you
6 calling the roll?

7 **DR. BRANCHE:** Yes, I was.

8 **MR. PRESLEY:** Instead of hitting the mute
9 button, I turned my phone off, so I'm sorry.
10 I'm here.

11 **DR. BRANCHE:** And do you have a conflict
12 with Rocky Flats?

13 **MR. PRESLEY:** No, ma'am.

14 **DR. BRANCHE:** Are there any other Board
15 members?

16 (no response)

17 **DR. BRANCHE:** We do not have a quorum so we
18 can proceed. Will the NIOSH staff please
19 identify yourselves and please say if you have
20 a conflict with Rocky Flats.

21 **MR. ELLIOTT:** This is Larry Elliott, the
22 Director of OCAS, and I do not have a conflict
23 with Rocky Flats.

24 **DR. NETON:** This is Jim Neton with OCAS, no
25 conflict.

1 **DR. ULSH:** Brant Ulsh with OCAS, no
2 conflict.

3 **DR. BRANCHE:** Will the ORAU staff if you're
4 on the line please indicate your names and
5 please say if you have a conflict with Rocky
6 Flats.

7 **MR. SHARFI:** Mutty Sharfi with the ORAU
8 team, no conflicts.

9 **DR. BRANCHE:** SC&A staff would you please
10 indicate your names and please say if you have
11 a conflict with Rocky Flats.

12 **DR. MAURO:** John Mauro, SC&A, no conflict.

13 **MR. FITZGERALD:** Joe Fitzgerald, SC&A, no
14 conflict.

15 **DR. BRANCHE:** Thank you, gentlemen.

16 Are there other federal agency staff,
17 would you please identify yourselves?

18 **MS. HOWELL:** Emily Howell, HHS, no conflict.

19 **MS. HOMOKI-TITUS:** Liz Homoki-Titus, HHS, no
20 conflict.

21 **MR. KOTSCH:** Jeff Kotsch, Department of
22 Labor.

23 **DR. BRANCHE:** Are there any petitioners or
24 their representatives who are on the line who
25 would like to announce their names?

1 (no response)

2 **DR. BRANCHE:** Are there any workers or their
3 representatives who would like to indicate
4 their names?

5 (no response)

6 **DR. BRANCHE:** Any members of Congress or
7 their representatives please, would you state
8 your names?

9 **MS. BOLLER:** Carolyn Boller, Congressman
10 Udall's office.

11 **MS. ARAMANGST*:** Pat Aramangst, John
12 Salazar's office.

13 **MS. EVAH*:** Beatrice Evah, Senator Salazar's
14 office.

15 **MR. HOLAN*:** Bill Holan, Congressman Ed
16 Perlmutter's office.

17 **MR. KESSLER:** Zane Kessler, Senator Ken
18 Salazar's office.

19 **MS. GNIRK:** Gail Gnirk, Congressman John
20 Salazar's office.

21 **DR. BRANCHE:** Okay, we're just about to turn
22 this over to Mr. Griffon. I know that she
23 wanted to mute herself, but Ms. Laura Franks
24 from the Rocky Mountain News is also on the
25 line.

1 We would ask that everyone observe
2 telephone etiquette, and we need to make
3 certain that our, we can hear each other as
4 well as making certain that our court reporter
5 can hear everyone who's speaking. I would ask
6 then that everyone mute their lines unless
7 they are speaking.

8 If you do not have a mute button, then
9 please dial star six in order to mute your
10 line. And if you'd like to speak, you can
11 then use that same star six to unmute and then
12 speak. It's very important given the number
13 of callers that we have and given the fact
14 that this is always an exciting topic that we
15 observe phone etiquette and that we do mute
16 our lines.

17 Mr. Griffon, I'm handing this over to
18 you as the Chair.

19 **INTRODUCTION BY CHAIR**

20 **MR. GRIFFON:** Thank you, Christine.

21 This is Mark Griffon. I think we
22 should make sure with so many people, again, I
23 think you said this Christine, that we all
24 identify ourselves when we talk today.

25 This work group call is really an

1 update on where we are at in assessing this
2 question around mainly the terminology. And I
3 think my question that I put before the work
4 group was do we need to in any way clarify our
5 language. We had written in our
6 recommendation defining the class as monitored
7 or should have been monitored for neutrons.

8 And since then several news stories
9 have come out, and to get to the main point --
10 we discussed this in the last work group call,
11 so I don't need to go through everything --
12 but to get to the main point, there's a
13 question of whether individuals in other
14 buildings, not in the quote-unquote neutron
15 buildings as identified in the NDRP database
16 had the potential to be exposed to neutrons
17 and could have been assigned to one building,
18 say 334, the Maintenance Building, and
19 actually then occasionally or quite often, who
20 knows, sent into one of the neutron buildings
21 to do work where they could have been exposed
22 to neutrons.

23 And then the question is would they
24 have been always captured in the NDRP system
25 or would they have gone unmonitored

1 potentially. I guess that's sort of the
2 question that we raised in the last call. A
3 couple tasks we had assigned from the last
4 call. One was I was going to try to find past
5 transcripts of or excerpts from past
6 deliberations where we discussed the issues of
7 the completeness of monitoring, and I
8 assembled some of that.

9 The other question was, were there
10 individuals that we could identify that may
11 exemplify this case. In other words
12 individuals that were assigned to other
13 buildings and did work in the neutron areas
14 where they were not monitored for neutron
15 exposures.

16 And I think NIOSH was going to look
17 into that. I think SC&A was also going to
18 look into that. I think that that might be a
19 work in progress because I'm not sure other
20 than a few cases that were identified, one of
21 which was in one of the news reports, I'm not
22 sure we've made much headway on that. But
23 that's sort of background on where we are
24 coming into this call, and I guess that's
25 where we should start it off.

1 **DR. BRANCHE:** I believe we have a member of
2 Congress who wants to make a statement.

3 **MR. GRIFFON:** Okay, that would be great.

4 **MS. BOLLER:** Mark, I don't know that Mark is
5 on the line yet. He was still chairing a
6 committee and was maybe a little bit late. So
7 why don't you just proceed.

8 **MR. GRIFFON:** Okay, we can proceed.
9 Whenever he comes in just let me know, and
10 we'll give him the floor.

11 **SEC CLASS FOR ROCKY FLATS**

12 So I put together a document, a Word
13 document, which was distributed to the work
14 group. I know it was pretty last minute so
15 the Privacy review couldn't have been
16 completed in time, but in that I tried to --
17 hold on one second. In that I tried to look
18 for some excerpts where we had discussed the
19 issue of the completeness of monitoring in the
20 past work groups and technical phone calls.
21 And I think a couple things come out of that.

22 I think one thing that is clear -- and
23 I should also say Brant, just this morning,
24 Brant Ulsh sent another document which we had
25 seen in the past. It's the NDRP Protocol

1 which might help us to shed some light on this
2 as well. It was 134 pages so I think I found
3 the area that Brant's focused on, but in the
4 last 20 minutes I'm not sure I know exactly
5 what he wanted us to focus on.

6 But anyway, in my document there's
7 sort of two issues. If people read the top
8 paragraph the one question is, and the one
9 thing we discussed in the work group
10 deliberations in the past was were the highest
11 exposed individuals monitored for neutrons.

12 And then the question, and we
13 determined as a work group, although I don't
14 know exactly if NIOSH ever really agreed with
15 us on this, but we determined that the highest
16 exposed were not monitored at least in some of
17 those years that we looked at. And, in fact,
18 but they were assigned a notional dose which
19 means that they were assigned a dose.

20 Now here's where Brant may help
21 clarify from the NDRP Protocol. But I was of
22 the understanding that they assigned a dose
23 based on either their gamma result multiplied
24 by a neutron-to-gamma ratio or by a nearby
25 data.

1 And I may have that wrong in my
2 introduction to this question. But that's
3 sort of how they had to, they had gaps in
4 their records. It wasn't all neutron film
5 data. It was sometimes gamma data that they
6 had that was multiplied by a building ratio of
7 neutron-to-gamma or otherwise substituted with
8 nearby data.

9 Is that right or close, Brant?

10 **DR. ULSH:** Well, Mark, that is a topic that
11 I wanted to talk about, but I can do that
12 later.

13 **MR. GRIFFON:** Okay, okay.

14 **DR. ULSH:** The nearby method is something I
15 want to go into a little bit, but --

16 **MR. GRIFFON:** It was a little different,
17 yeah. I think I picked up on that in the
18 document you sent that I may have
19 mischaracterized that a little bit.

20 Anyway, the other part of it is -- and
21 I think this is in one of the transcripts,
22 actually, one of the technical calls on, I
23 believe it's on 4/12, and this really gets to
24 the heart of the question.

25 I think that Roger Falk in his memory

1 basically seemed to remember that in the early
2 years, and he wasn't sure exactly when this
3 changed. But in the early years most of these
4 buildings that I'm defining loosely as the
5 neutron buildings, the ones listed in the
6 NDRP, basically had an in-house crew.

7 In other words all their maintenance,
8 laborers, even janitors, everyone was sort of
9 self contained and assigned to the one
10 building. And then he said that later, and he
11 wasn't sure when in the '60s this might have
12 occurred, but later that maintenance could
13 have come out of Building 334, the more
14 general maintenance building.

15 So then we go back to the primary
16 question. I'm not sure that any of the
17 transcripts that I included, I just wanted to
18 give some background on it. I'm not sure they
19 get us to any definitive answer, but at least
20 it provides a little background. So that's
21 sort of where I'm at with my review of this.

22 And then I would ask Brant if you had
23 any progress in terms of identifying some of
24 these cases, the action that was raised from
25 the last work group.

1 **CONGRESSMAN MARK UDALL**

2 **CONGRESSMAN UDALL:** Mark, this is
3 Congressman Udall. How are you today, sir?

4 **MR. GRIFFON:** I'm great. I'm great.

5 **CONGRESSMAN UDALL:** Could I weigh in for
6 just a couple of minutes?

7 **MR. GRIFFON:** Absolutely, we were notified
8 you might be joining us, so the floor is
9 yours.

10 **CONGRESSMAN UDALL:** Thank you, and I won't
11 take too much time here, but I did just want
12 to weigh in on what you all are considering
13 today and also give a brief historical
14 perspective, just take me a couple minutes.

15 I remember in 1999 or 2000 Secretary
16 Richardson at that time made an announcement
17 that the federal government was no longer
18 going to hide behind sovereign immunity. In
19 other words the concept that the king can do
20 no wrong. It stems to the common law era of
21 the British Isles. And there was elation
22 among many of us, most notably and most
23 appropriately among the workers at the Flats.

24 And out of that, of course, began some
25 progress, but then some twists and turns, and

1 we've traveled down a number of cul-de-sacs.
2 In the meantime the families and the workers
3 haven't received their just due. These
4 workers fought in the cold war. They were no
5 less heroes than those who fought in the hot
6 wars of the last century, World War II most
7 notably.

8 And I've got to tell you, and you all
9 know the delegation has been weighing in, I'm
10 just, I'm appalled that we continue to somehow
11 seem to find ways to stonewall and put up
12 roadblocks to these deserving workers. And
13 I'm asking the DOL to reverse its decision and
14 provide compensation to these veterans.

15 It just seems to me that the DOL which
16 we in the Congress felt could better provide a
17 just outcome, and we moved a lot of this
18 responsibility from the Department of Energy
19 over to the DOL, it just seems that they're
20 attempting to deprive compensation to these
21 workers and their families. And it just seems
22 like every time you clear a hurdle, you move a
23 roadblock out of the way, there's another one
24 put in place.

25 These workers clearly meet the

1 requirements for eligibility. The
2 Administration has to hold up their end of the
3 bargain and grant them the benefits that they
4 deserve. And I'm asking the DOL to reverse
5 its decision, reverse it quickly, and I'm
6 waiting for an answer.

7 Let me make one other comment
8 specifically. This 250-day standard I think
9 you all were discussing as I got on, and that
10 seemed to make sense, been reaffirmed by
11 Secretary Leavitt and others, and then now
12 we're talking about 250 days in a specific
13 building at the Flats. And in the end I so
14 strongly believe -- it makes me angry to not
15 think we're going to move in this.

16 We've got to err on the side of the
17 workers not the side of the federal
18 government. And this will speak volumes of
19 what kind of a society we have and how we
20 value the people who literally put their lives
21 on the line. I live just a few miles from
22 this site. We worked very hard to clean it up
23 to ensure the safety and the future of the
24 people living around Rocky Flats. My gosh, we
25 have to do the same for the workers who were

1 out there.

2 I appreciate you letting me weigh in
3 on. I'll listen a little bit more and learn a
4 little bit more as well, but I appreciate the
5 chance to be heard, and I certainly have a
6 role to play here. And I'm going to do
7 everything I can to push, cajole, urge the
8 Department of Labor to change its point of
9 view on this. Thanks again for letting me
10 weigh in.

11 **MR. GRIFFON:** Thank you very much,
12 Congressman Udall.

13 **SEC CLASS FOR ROCKY FLATS (cont'd)**

14 So I guess at this point I've given
15 the background from my perspective. I think
16 what I really want to come away from this
17 meeting with is at least my only plan for the
18 upcoming Advisory Board is to sort of give an
19 update on where we're at in discussing this
20 issue. And not because I think we still need
21 to look at this question of can we find other
22 cases and have more discussion around that,
23 but at least just to give an update because I
24 know we're getting a lot of questions about
25 this.

1 But I'm not sure we're going to be in
2 a position to make any sort of motion at this
3 upcoming meeting. But having said that I
4 think my, you know, I've looked at these
5 transcripts, and I also see, you know, I think
6 that we just need to examine this issue a
7 little closer. And I'd be interested in
8 hearing from NIOSH at this point.

9 Brant, if you're ready to discuss the
10 NDRP Protocol a little bit and if you had any
11 luck in finding individual cases to review.

12 **MS. MUNN:** Mark, this is Wanda Munn. And I
13 don't want to interrupt your flow of
14 information here, but as long as the
15 congressman may still be on the line, and his
16 staff is still on the line, it seems really
17 important for us to try to make sure that all
18 of the folks who are so deeply interested in
19 what we're doing here have a clear
20 understanding of some of the details of what
21 we're doing. And I think I heard the
22 congressman say it's his understanding that we
23 are now expecting people to show that they
24 have worked for 250 days in one building. And
25 I think it would be wise for us to try to

1 clear that up. Because the law indicates that
2 the individual must have worked for 250 days.
3 I don't believe there has been any effort at
4 all to indicate that they must be 250 days
5 always in an exposed area or always in a given
6 building.

7 **MS. BOLLER:** Wanda, this is Carolyn from
8 Congressman Udall's office. As we're reading
9 this the law said 250 days on the site or at
10 the plant site.

11 **MS. MUNN:** That's correct.

12 **MS. BOLLER:** There is a memo, 8-14, issued
13 by the Department of Labor on January 23rd that
14 says you've got to work 250 days in a building
15 in order to be eligible for the SEC issue.

16 **MS. (UNIDENTIFIED):** Again, this is Erin
17 from Congressman Salazar's office, and as we
18 understand that, that has actually confined
19 one of our constituents from Grand Junction,
20 Colorado from actually receiving compensation
21 because of that additional red tape which is
22 the source of our protest letters that the
23 delegation sent.

24 **MR. GRIFFON:** Well, as you know, that's the
25 crux of the issue, Wanda, that there's this,

1 DOL is now, I mean, maybe DOL can speak to
2 this, too. Jeff Kotsch, I think Jeff's on the
3 line.

4 **DR. BRANCHE:** This is Christine Branche,
5 just a clarification, and I think that it
6 would be important for Ms. Munn to have an
7 opportunity to share her thoughts for everyone
8 concerned. This is the Advisory Board to
9 NIOSH, not the one to the Department of Labor.

10 **MR. GRIFFON:** Yeah, there is none to the
11 Department of Labor. We know that, Christine,
12 but --

13 **DR. BRANCHE:** Well, I want to make sure that
14 the members of Congress understand that.

15 **MR. GRIFFON:** Right, right, they do. But I
16 think Jeff might want to -- and we've had DOL
17 clarify things for us before. I think it's
18 important to at least maybe have him speak to
19 that and clarify.

20 **MR. KOTSCH:** Mark, this is Jeff. The way we
21 read or the way the bulletin was written, 08-
22 14, it was intended, at least the way the
23 current thinking is, is it was intended to be
24 a measurement of who was monitored or should
25 have been monitored for neutrons. And that

1 put those people as having been in those
2 buildings or there's other criteria in there,
3 but it links off issues of being in those
4 buildings.

5 **MS. (UNIDENTIFIED):** This is Erin from
6 Congressman Salazar's office again. We
7 understand that at this point in time one of
8 our constituents has been a recommended denial
9 after signing a waiver which should have been
10 an open and shut case for the SEC
11 recommendations as we understood them last
12 September. So again, the Department of Labor
13 has again inserted rules that have created a
14 recommended denial on a case that after all of
15 our hard work should be a presumptive
16 approval.

17 **MS. BOLLER:** I have also -- this is Carolyn
18 in Congressman Udall's office. And, Jeff, I
19 have the same thing. A gentleman in Thornton
20 was given a letter in November confirming the
21 SEC and that they would be receiving the
22 compensation. In March they're told sorry,
23 you're not going to get it because you can't,
24 you can't prove that you worked in the
25 building for 250 days. So you don't change

1 the damn rules in the middle of the game.

2 **MR. GRIFFON:** This is Mark Griffon again. I
3 think that's one reason that -- and we're not
4 in a position, as Christine pointed out, to
5 advise DOL, but I think one thing that I, one
6 reason that I thought the work group needed to
7 reconvene on these issues is that if we feel
8 that our recommendation needs clarification,
9 then we might need to write another letter to
10 the Secretary or at least clarify it.

11 I think where I'm having trouble is
12 for me monitored or should have been monitored
13 and if even interpreted this way in several
14 meetings that we've been at we said based on
15 current standards which would mean they could
16 achieve 100 millirem external dose, you know,
17 have the potential to be exposed to 100
18 millirem external dose.

19 That doesn't necessarily necessitate
20 being in a building for 250 days. So I think
21 that's where we're mixing two criteria here.
22 And I'm a little concerned about that. I
23 think we may want some clarification. I think
24 Wanda's interpretation is correct. That's I
25 think where we're at here.

1 **MR. PRESLEY:** Mark, this is Bob Presley. I
2 have the same interpretation as Wanda on this
3 thing. I have a problem with some of this
4 stuff.

5 **DR. BRANCHE:** Okay, point of order. You've
6 asked Mr. Kotsch to reply. Please give him an
7 opportunity to do so. This is Christine. Ms.
8 Munn did not have an opportunity to actually
9 finish her thought. So I think for Robert's
10 Rule of Order, let the people who've opened
11 the channels for communication, have an
12 opportunity to reply.

13 **MR. GRIFFON:** Yes, Christine. This is Mark
14 Griffon. I apologize if I didn't. I thought
15 Jeff was finished.

16 But Jeff, if you had any --

17 **MR. KOTSCH:** Oh, no, I was finished.
18 Unfortunately, I was finished with that
19 statement as far as the way the Department of
20 Labor has interpreted the use of buildings for
21 the 250 days.

22 **MS. MUNN:** This is Wanda again, and my
23 concern is simply wanting to clarify for all
24 of the people who are on the line that our
25 efforts in this work group are very focused.

1 They're focused specifically on the law as it
2 applies to us, and we deal specifically with
3 radiation and radiation doses.

4 And so that being the case, when the
5 primary issues seem to be issues that are
6 bringing concerns that are outside our ability
7 or our charter to address, we can't do that in
8 our group. I guess that's what I was trying
9 to say when I was referring to the statements
10 that had been made earlier.

11 **MR. GRIFFON:** This is Mark Griffon again. I
12 guess I made my point. I mean, I am willing
13 to, my point is just that if we need to
14 clarify our recommendation, and I don't think
15 that's outside of our charter --

16 **MS. MUNN:** No.

17 **MR. GRIFFON:** -- and I agree that some
18 things if they're DOL issues, that is outside
19 of our charter. But if, we knew this when we
20 first developed this recommendation, or some
21 of us had concerns anyway that, you know, we
22 left the language broad because we didn't have
23 more information at our fingertips. We didn't
24 want to limit it. We wanted to let those that
25 have the additional information make that,

1 implement it correctly.

2 But if we feel that there's, you know,
3 if our recommendation is being misinterpreted,
4 then I think that would be a point. Now I'm
5 not saying -- I personally feel there might be
6 a problem there. Others in the work group may
7 feel differently, but I guess that's the
8 extent or that's the nature in which I think
9 we would have an opportunity to weigh in.
10 Beyond that, I agree, Wanda. It would be out
11 of our sort of charter.

12 **MS. BOLLER:** It's Carolyn again. Maybe I'm
13 confused, and somebody could help me here. It
14 seems to me that the Board made a decision
15 based on the evidence that was presented to
16 them to say that people who worked during this
17 period of time either should have been or
18 could have, or were monitored.

19 The Board made that decision. And it
20 seems to me that the Board made the decision
21 based on the facts, and we believe that this
22 was the right decision that they made for this
23 particular group of people. And that now
24 there's being a different interpretation or an
25 interpretation on what the Board did being

1 made by Department of Labor.

2 And I think, Wanda, this is where it
3 would be really helpful -- because we agree
4 with you. It's 250 days on the site, not at a
5 building. And I think this is where the Board
6 needs to say, hey, folks, this is what we did.
7 We made this decision based on this
8 information, and you're misinterpreting it.

9 **DR. BRANCHE:** This is Christine Branche.
10 Actually, the Board doesn't have but so many
11 options available to it. It makes its
12 recommendations to the Department of Health
13 and Human Services Secretary who is the person
14 who renders the decision, not the Board.

15 **MR. GRIFFON:** Correct.

16 **DR. BRANCHE:** And it is the Board that makes
17 only a recommendation to the HHS Secretary.
18 And the HHS Secretary, using that and other
19 information, then renders the decision for the
20 Department, which is then forwarded to the
21 Department of Labor.

22 At this juncture this work group has
23 only a few options available to it because the
24 recommendation for the Board has already been
25 made. They can use this as a learning

1 opportunity to help the Board in future
2 decisions, but the idea of reopening this or
3 stressing something specific to the Department
4 of Labor is really not an option --

5 **MR. GRIFFON:** Nobody's --

6 **DR. BRANCHE:** -- I'm trying to make a
7 clarification so that everybody understands
8 what the limits of this Board really are.

9 **MS. BOLLER:** I think that we do, but we've ^
10 the Board that we need to at least -- this is
11 the first step for us. And most of us on this
12 call from the congressional offices have
13 already sent a letter to both Secretary
14 Leavitt and Secretary Chao regarding this
15 subject.

16 The issue is then -- and maybe that's
17 the appropriate piece because the Secretary of
18 Health and Human Services did, in fact,
19 support the issue of 250 days on the site
20 which was the recommendation. It's included
21 in the orders from the Board or the direction
22 from the Board to the Secretary. So the
23 Secretary's already approved it. So maybe
24 that's where we need to really be, and that's
25 where we're at with the letter from the

1 respective members of Congress.

2 **DR. BRANCHE:** I think that your issue really
3 is with the Department of Labor. And if
4 you've written your letter to Secretary Chao
5 as well as a letter to Secretary Leavitt, then
6 you've taken your issue to the right people.

7 **MS. EVAH:** This is Beatrice from Senator
8 Salazar's office. I have just a quick
9 clarifying question. Perhaps you can then --
10 I understand the limitations of the Board, but
11 perhaps you can try to explain what additional
12 information DOL may have received, if not from
13 you then from anybody, to make this sort of
14 new bulletin, to issue this new bulletin.

15 **DR. BRANCHE:** I think Mr. Kotsch should
16 answer that question.

17 **MS. EVAH:** You know, you had to have relied
18 on some new information then, and it would be
19 interesting to hear where that would have come
20 from.

21 **MR. KOTSCH:** This is Jeff Kotsch.
22 Basically, we worked off of the NDPR report.
23 You know, the report in the protocol and
24 listings of the buildings in there.

25 **MR. GRIFFON:** N-D-R-P, right?

1 **MR. KOTSCH:** I'm sorry. Yeah, I always
2 invert the lettering.

3 **MS. EVAH:** NDRP?

4 **MR. GRIFFON:** This is Mark Griffon again.
5 Anything more? Jeff, are you done? I'm
6 sorry.

7 **MR. KOTSCH:** Yeah.

8 **MR. GRIFFON:** So was this DOL internally
9 reviewing that and making their determination?

10 **MR. KOTSCH:** Well, I mean, we received that
11 from NIOSH and discussed it with them as far
12 as, because there was no, you know, that
13 definition was somewhat open-ended or not very
14 explicit as to how to determine who should,
15 you know, who was monitored or should have
16 been monitored for neutrons.

17 **MR. GRIFFON:** Right, and I agree with that.

18 And my point, Christine, is only that
19 the only way -- I have no reason, and I don't
20 think we, anybody, wants to reopen or do we
21 have the power to reopen the SEC. But I think
22 we do have an option of at least clarifying
23 how, when we drafted that language, monitored
24 or should have been monitored, I don't think
25 any of us intended that it include 250 days in

1 a single building, for instance.

2 So to the extent we need to clarify
3 our language in our recommendation, and it's
4 still up to the Secretary whether they change
5 anything or not. But I think we do have an
6 opportunity, and I would say even a
7 responsibility to do that.

8 **DR. BRANCHE:** You have an option to bring an
9 issue to your fellow Board members for the
10 Board uniformly to make a decision about what
11 information, if there's new information that
12 comes to light, that clarification can
13 potentially be sent forward to, as information
14 from the Board. You cannot, you actually
15 mentioned it, but, no, you cannot reopen the
16 SEC. A new petition would have to be put
17 forward.

18 **MR. GRIFFON:** I agree with that, so that's
19 all that I'm saying. And certainly, my notion
20 is to bring at least at this point, at the
21 Board meeting next week, I was just going to
22 present a little timeline of what we've done
23 on discussions in this in an update to the
24 Board. I'm not even prepared, I don't think
25 we have any kind of recommendation to make at

1 this point.

2 But I think we at least need to bring
3 our fellow Board members up to speed on what's
4 being discussed. And maybe the Board will say
5 this is out of our, you know, there's no need
6 to take any further action. I would certainly
7 be willing to discuss that with the full
8 Board. I think we need to at this point.

9 **MR. ELLIOTT:** This is Larry Elliott. If I
10 could I feel compelled to seek a point of
11 clarification on something you just said,
12 Mark, and I've heard others say. In a
13 directive to Jeff Kotsch the phraseology
14 having spent 250 days in one building, I
15 think, is inaccurate.

16 Is that correct, Jeff? It's not in
17 one building. It's in any of the buildings
18 where neutron exposure would exist or would
19 present itself to these workers.

20 **MR. KOTSCH:** Yeah, this is Jeff. Yeah,
21 that's correct, Larry.

22 **MR. GRIFFON:** So any of the neutron
23 buildings. Yeah, you're right, Larry. That's
24 correct.

25 **MR. ELLIOTT:** So I don't want folks on the

1 line to think that it's just, you've got to
2 get 250 days in one building. That's not the
3 case.

4 Also, I'd offer that the Board's class
5 definitions are structured in their language
6 to say all of these types of workers who were
7 monitored or should have been monitored for
8 neutron exposures, that's what the Board felt
9 we had an inability to reconstruct.

10 And so when DOL takes -- and DOL, this
11 definition and its structure and language was
12 vetted with DOL with Pete Turcic at the
13 meeting where the Board crafted this. And he
14 said, yes, we can administer that. And we
15 talked about the NDRP being a useful tool in
16 administering that for those workers who were
17 monitored or should have been monitored. That
18 was the starting point.

19 So I felt I needed to say that because
20 I think there's a lot of misinterpretation
21 about this class definition.

22 **MR. GRIFFON:** But, Larry, this is Mark
23 Griffon again. And that's correct, but also
24 we clearly indicated that the reason we didn't
25 want to list a list of buildings in our

1 recommendation was that we weren't prepared to
2 say it was only the buildings in the NDRP.

3 So that was sort of one of the
4 outstanding issues, and that's one of the
5 reasons we left it open was we didn't know all
6 those ins and outs. We didn't know about this
7 potential for, you know, maintenance workers
8 from 334 also working in that building and
9 whether they would be in the NDRP. And I'm
10 still not clear on that.

11 So I agree with you that the 250 I've
12 been saying in a building, and it's in any of
13 those buildings in the NDRP. But still I
14 would also say from a technical standpoint, I
15 don't think that that agrees with our notion
16 of monitored or should have been monitored.
17 Should have been monitored says basically you
18 have the potential to receive 100 millirem of
19 exposure in any one year. And I don't think
20 you need 250 days accumulated to receive 100
21 millirem necessarily. So that's where I'm
22 stuck.

23 **MR. ELLIOTT:** I understand, and I don't know
24 if Brant has his reaction to that or not.

25 **DR. ULSH:** No, I don't want to get into the

1 250 day issue.

2 **MS. MUNN:** This is Wanda again. Mark, we
3 all remember how carefully we attempted to
4 craft that language so that it would be as
5 broad as possible and without being limitless.
6 We worked hard on it, and it may be that those
7 few simple words which seemed reasonable at
8 the time can use some improvement.

9 But if that's the focus of our call
10 today, then it would be helpful for me if we
11 started down that road very clearly with the
12 understanding that that's the focus of our
13 topic today. Because I'm sorry to say I'm
14 traveling, and I'm time limited today.

15 **MR. GRIFFON:** I apologize, Wanda. We got a
16 little sidetracked, but there's several people
17 on the call with several different
18 perspectives. I mean, yeah, my focus is on
19 that question of should have been monitored.
20 How we phrased it versus how it's being
21 implemented and whether we, as a Board, need
22 to clarify.

23 And I think to that end I tried to
24 pull past transcripts. I know Brant has
25 pulled up the NDRP Protocol. I think we

1 should look further at that and also this
2 question of cases where it, reviewing cases
3 where this may or may not have happened.

4 In other words the example I always
5 use is someone from Building 334, because that
6 seems like a logical one, the Maintenance
7 Building, was assigned to that building.
8 Their work history has that building listed,
9 but they have either put in their CATI
10 interview that they worked in these other
11 buildings, and they're not in the NDRP, or
12 they had coworkers give affidavits that they
13 worked in those other buildings, and they're
14 not in the NDRP.

15 That's the kind of example that if it
16 were true, that would raise concerns about the
17 scope of how it's being implemented. So I
18 guess maybe at this point it's a good time for
19 Brant to give us an update on what NIOSH has
20 looked into.

21 **MS. BOLLER:** Mark, can I ask one question
22 first? It's Carolyn.

23 **MR. GRIFFON:** It's Carolyn? Sure.

24 **MS. BOLLER:** I have a letter in front of me
25 from the Department of Labor addressed to a

1 particular family. And in the letter dated in
2 November it basically says you're going to get
3 benefits. And we're going to send you a
4 check. And these happened to be survivors of
5 a deceased worker who did not work in one of
6 the listed buildings, the so-called neutron
7 buildings, but was granted benefits and told
8 that they would be receiving the dollars under
9 Part B.

10 After the January memo, the Department
11 of Labor came back and said we don't show that
12 you worked in any of these neutron buildings.
13 Now, my question is in November, if, in fact,
14 the Board's decision and the discussion with
15 DOL was that it should have only been in those
16 buildings to begin with, then why was that
17 approved in November, but then you rewrite a
18 memo and send it out and then change the rules
19 after that?

20 Does that make sense? It's kind of a
21 roundabout way, but if, in fact, the original
22 theory was to only limit this to those
23 buildings in which NIOSH had determined there
24 were neutrons, then it should have been done
25 from the very beginning, and it was not. It's

1 true in the case I have from our folks in our
2 district, and it's true in the Grand Junction
3 case that Erin spoke about.

4 So I'm not sure that that argument
5 holds water, but I think that I clearly
6 understand where the Board can and can't go.
7 I guess what I would want is the Board to
8 write a letter supporting this 250 days on the
9 plant site and not in the specific building
10 if, in fact, they feel comfortable to make
11 that determination.

12 We're going back to the Secretary of
13 HHS, and we're going back to DOL. And we will
14 go further if we have to, but that's kind of
15 where we're at as we change the rules here.

16 **MS. (UNIDENTIFIED):** Again, Erin with
17 Congressman Salazar's office. I understand
18 we're at a point of time constraints and also
19 the scope of the Board has been emphasized
20 numerous times today. But from our office we
21 ask that if there's an opportunity for you to
22 take some leadership on this issue that you do
23 so. Because as you all know, we're all quite
24 familiar with each other. We've all been on
25 conference calls now for three years, and I

1 think we can all share that. So you can
2 recognize that those of us on staff as well as
3 all of you who've worked this issue, we know
4 each other. We worked for this SEC. We did
5 not get, the congressional delegation, what we
6 thought the workers deserved, but what we did
7 get, we're going to fight to keep. And if you
8 have an opportunity to assist in what's the
9 best interest of the workers, we would greatly
10 appreciate that.

11 **MR. GRIFFON:** Appreciate the comments. I
12 think I'm not sure we're prepared to recommend
13 any writing of a letter at this point. I
14 understand the issue. I think we need to
15 discuss through it more amongst our work
16 group, but also I think at this point what I
17 hope to at least complete today is maybe to
18 get an update from NIOSH on what you've looked
19 into so far, maybe clarify some of the
20 excerpts in the transcripts. I think Brant
21 did highlight some sections of the NDRP
22 Protocol which I think he wants to focus on as
23 far as who was monitored, that sort of thing.

24 And then what I'd like to do at the
25 upcoming Board meeting, because we only have,

1 you know, we're going to be traveling this
2 weekend, I want to just give an update of what
3 we've done. If you remember back, we had a
4 technical phone call with Margaret Ruttenber
5 from the University of Colorado which in some
6 ways, some of her data was used for a news
7 story that sort of started some of this
8 discussion.

9 So I want to track through what we've
10 talked about and sort of where we're at and
11 bring it to the Board and say here's where we
12 are. Some issues may be completely DOL issues
13 which are out of our charter to cover, but
14 other issues -- I'd just open it up for
15 discussion to our full Board rather than,
16 because I don't think we can make a work group
17 recommendation at this point.

18 But Wanda, Bob or Mike, I don't know
19 if you have any thoughts on that.

20 (no response)

21 **MR. GRIFFON:** Assuming I didn't lose the
22 line, I don't think I heard anybody reply. So
23 maybe at this point, I mean, all this stuff
24 came out recently, too. I have the excerpts
25 that I sent around to the work group. I'm not

1 sure everyone had a lot of time to look
2 through those and consider them. I only sent
3 them out a few days ago. Everybody's been
4 very busy on several different work groups.

5 Also, Brant sent the NDRP Protocol
6 just this morning. Maybe, Brant, at this
7 point if you can just give us an update on
8 what you've done since the last work group
9 call. There's only been a few weeks, but what
10 you've done on looking at cases and explain
11 what, maybe help us clarify what the NDRP
12 Protocol, you know, the who was monitored
13 question.

14 **MR. PRESLEY:** This is Bob Presley. I'm with
15 you.

16 **MR. GRIFFON:** Okay.

17 Brant, are you on the line? Can you -
18 -

19 **DR. ULSH:** I'm still here, Mark.

20 **MR. GRIFFON:** Can you give us maybe an
21 update and then we can, because I think I
22 agree we're probably not going to get much
23 further today. Just to get an update, and
24 then we can probably end the call there and
25 give an update to the full Board of where

1 we're at and maybe get some direction back
2 from the full Board whether they want the work
3 group to pursue anything else, anything
4 further. I want to bring this back to the
5 full Board and get direction from the full
6 Board.

7 **NIOSH UPDATE**

8 **DR. ULSH:** At the last working group call,
9 as you correctly remember, there were a couple
10 of action items. You were going to do the
11 transcripts. And on that call Arjun Makhijani
12 of SC&A thought that he might have an example
13 that would be pertinent to our discussion
14 about someone who may have been monitored or
15 may not have been monitored for neutrons and
16 were they not in the NDRP class.

17 Arjun did send me the information on
18 that case, and I checked and verified with
19 Mutty Sharfi's help that that individual was,
20 in fact, included in the NDRP. So that was my
21 action item, that one particular example. We
22 have not as of yet --

23 **MR. GRIFFON:** Brant, I'm sorry. This is
24 Mark. Not to interrupt but we did bring up
25 the other, I mentioned the other case that was

1 identified by name in the newspaper and asked
2 that you check that out, too, and I don't know
3 if you had a, did do that or not.

4 **DR. ULSH:** I can, but I don't know how I
5 should proceed here in terms of Privacy Act.
6 I can, I know whether or not that person was
7 included in the NDRP. Is that something that
8 I can, I can say that?

9 **DR. BRANCHE:** As long as you don't mention
10 the name or the ^ you're fine.

11 **DR. ULSH:** Okay, that person was not in the
12 NDRP. We did not find any indication that
13 they spent a considerable amount of time in
14 any of the neutron buildings with the
15 exception of there was a mention in the CATI -
16 - and I'm trying to recall this.

17 That's the telephone interview with
18 the survivor where, and this was a spouse, she
19 said that he had gone into those buildings,
20 but there was no specification about where in
21 the buildings he went or how long he spent
22 there to my recollection. I also looked
23 through the associated records that we have,
24 the dosimetry records, bioassay-type records,
25 shop history, and there was nothing that

1 indicated that that individual worked in the
2 neutron buildings.

3 **MR. GRIFFON:** This is Mark Griffon again. I
4 may have this wrong but -- we have a lot of
5 static on the line, too -- I may have this
6 wrong but my recollection of the newspaper
7 account of this case anyway is that they had
8 signed affidavits from their supervisor saying
9 that this individual was in those buildings.

10 **DR. ULSH:** Mark, I think that was --

11 **MR. GRIFFON:** Is that the same case? I may
12 be confusing things.

13 **DR. ULSH:** Well, again, I'm trying to recall
14 what the newspaper article said, but I do know
15 that the basis of the statement in the CATI in
16 the telephone interview was that the spouse
17 had talked to some of the other workers, some
18 of the claimant's coworkers. And they
19 indicated that, yes, they had gone into those
20 buildings, ^ indicate how often or how much
21 time they spent there or anything like, they
22 didn't give any further details.

23 **MR. GRIFFON:** Okay.

24 **MR. ELLIOTT:** If the affidavits were -- this
25 is Larry Elliott. If the affidavits were

1 generated based upon a DOL recommended
2 decision or that part of the process for
3 determining their eligibility for the class,
4 we may not have seen those affidavits.

5 **MR. GRIFFON:** Understood. Thank you, Larry.
6 Yeah, that may be true.

7 **DR. BRANCHE:** Excuse me. If those of you
8 who are not speaking could please mute your
9 lines, it would be very helpful for us. We
10 have a lot of background noise including a
11 heavy breather. Thank you.

12 **MR. GRIFFON:** Thank you, Christine.

13 Go ahead, Brant. I'm sorry to
14 interrupt you.

15 **DR. ULSH:** No problem. So I think that goes
16 to your question about looking into specific
17 examples. And that's really all I have to
18 offer about that. If you'd like, Mark, I can
19 talk to another issue which is related to your
20 messages, your e-mail messages of yesterday
21 and the attached transcripts and the NDRP
22 Protocol that I sent out again this morning.

23 **MR. GRIFFON:** That would be great. A little
24 refresher for people, yeah.

25 **DR. ULSH:** First of all, this discussion is

1 going to focus on who was or should have been
2 monitored. It has absolutely nothing to do
3 with the 250-day question. I'm afraid I don't
4 have any input to offer there.

5 **MR. GRIFFON:** That's fine.

6 **DR. ULSH:** I think that the root of the
7 problem here is that there might be some
8 confusion between neutron monitoring and gamma
9 monitoring. And I'm looking at the excerpt
10 that you sent out, Mark. And I'm looking at
11 the introductory paragraph there that you
12 wrote, five or six lines down where it says,
13 "also the notional dose is not only based on
14 gamma dose multiplied by an NP factor, but" --
15 and here's the part I want to focus in on, "in
16 cases where there was no gamma data, a nearby
17 estimate approach was used."

18 I think there's some confusion here,
19 and I'd like to try to clear that up. And
20 that's why I sent out the neutron dose
21 reconstruction protocol again. And as Mark
22 mentioned, I did highlight some pertinent,
23 well, at least what I judge to be pertinent
24 parts of that document. And I'll just walk
25 through that briefly if I could.

1 And I'm looking at one of the sections
2 that I've highlighted, and this is on page
3 nine. Now, when I'm giving page numbers here,
4 I'm talking about the page numbers that appear
5 in the document. I'm not talking about PDF
6 page nine just to make that easier. And I'm
7 looking at Section 5.0 in there which is
8 titled "Identification of Affected Workers".

9 And it says, the second paragraph
10 says, "A small portion of the total number of
11 neutron worksheets represent the issue of
12 neutron dosimeters to a few personnel whose
13 home building assignment was a non-plutonium
14 production building." And there's a list of
15 those, and included in that paragraph, they're
16 including it in that list, is Building 34
17 which Mark explicitly mentioned earlier, and
18 that was the Maintenance Shop.

19 And it says that these individuals
20 primarily worked in non-neutron buildings but
21 were routinely issued neutron dosimeters
22 because they occasionally performed work
23 activities in plutonium production buildings.
24 And then there's some examples of the job
25 descriptions: guards, radiation monitors,

1 technical researchers and uranium process
2 operators.

3 So I'm not in any way arguing that
4 there weren't people from other buildings who
5 occasionally visited the neutron buildings.
6 That was clearly identified in the NDRP
7 Protocol. That's not an issue, and I'm not
8 trying to deny that. What I'm saying is that
9 this indicates that they were routinely issued
10 neutron dosimeters.

11 The next part that I'm looking at is
12 the next page at the very top. And this goes
13 to who was included in the NDRP. And starting
14 with the second line it says, "The rosters on
15 the beta-gamma worksheets for these buildings
16 were used to identify workers who would be
17 assigned a notional neutron dose if they were
18 not monitored for neutrons." And I'm going to
19 be emphasizing that statement a couple of
20 times about whether we're talking about
21 neutron or gamma monitoring because I think
22 there's some confusion there.

23 **MR. GRIFFON:** And I think, Brant, you may
24 want to read that one line before you
25 highlight it, too, because the beta-gamma

1 sheets seem to be only from Building 21, 22,
2 23, not 34 in this instance.

3 **DR. ULSH:** Okay, hold on just a second.

4 **MR. GRIFFON:** Am I reading that correctly?

5 **DR. ULSH:** Well, let me start with the
6 paragraph that we're talking about just to
7 make sure everyone has the appropriate
8 context. The second source of names, this is
9 names of people to be included in the NDRP,
10 the second source of names was the beta-gamma
11 worksheets for plutonium-related buildings.
12 Only the beta-gamma worksheets from the
13 plutonium-production buildings -- and that is
14 in parentheses any building with a number
15 starting with seven -- and Building 91 and 86.
16 That's the neutron buildings that are in the
17 NDRP.

18 And the combined worksheets for
19 Buildings 21, 22 and 23 were entered into the
20 beta-gamma database. The rosters on the beta-
21 gamma worksheets for these buildings were used
22 to identify workers who would be assigned a
23 notional neutron dose if they were not
24 monitored for neutrons.

25 So, yes, Mark, you're correct in that

1 Building 34 is not explicitly mentioned here.
2 But I would refer you to the previous
3 paragraph where I highlighted it, and it says
4 that when workers from buildings such as 21,
5 22, 23, 34, 44, 81 and 86 visited the
6 plutonium production buildings, they were
7 routinely issued neutron dosimeters because
8 they occasionally performed work activities at
9 plutonium production buildings.

10 **MR. GRIFFON:** Again, I mean, you can
11 interpret it that way. The question goes
12 back, to the essential question goes back to I
13 don't doubt that these people that are on the
14 neutron worksheets from these other buildings
15 were monitored for neutrons. The question is
16 were there some people that didn't get onto
17 that roster. Was it everyone or did they
18 capture some but not all. That's the
19 question.

20 And I mean one thing we talked about
21 at the last phone call, which that's the
22 reason I focused on the second paragraph, was
23 that some people on the call mentioned that,
24 well, everyone, you know, I can't imagine
25 people that wouldn't have been monitored for

1 gamma.

2 But the point is if they weren't in
3 those certain buildings that you listed in
4 that second paragraph, they wouldn't have even
5 been considered to adjust gamma for neutron
6 exposures. So unless they were on that
7 neutron worksheets, they weren't considered,
8 if they were from Building 34, they wouldn't
9 have been considered.

10 **DR. ULSH:** It is certainly possible, Mark,
11 that someone from another building could have
12 visited a plutonium building, and if they were
13 not judged to be a significant risk of neutron
14 exposure, it's possible that they may not have
15 been issued neutron dosimetry. I will grant
16 you that. I have no objection to that. Beta-
17 gamma though is another story, and if I could
18 read you some of the other highlights, I think
19 I can make that a little clearer.

20 **MR. GRIFFON:** Right, I'm not arguing with
21 the beta-gamma. But if they weren't in the
22 certain buildings, the beta-gamma is not even,
23 those worksheets aren't even considered in the
24 NDRP, right?

25 **DR. ULSH:** The beta-gamma worksheets only

1 from the plutonium production buildings were
2 the trigger for inclusion in the NDRP but not
3 from other buildings. You are correct on
4 that.

5 **MR. GRIFFON:** Okay, go ahead. I'm sorry.

6 **DR. ULSH:** No problem. The next part that I
7 want to lead you to is on page 20, and I'll
8 give people a few seconds to find that. It's
9 Section 11.0, "Notional Neutron Doses".

10 I'm looking at, Mark, your summary
11 paragraph on your excerpts here, and you're
12 talking about the nearby technique. And you
13 mentioned that in cases where there was no
14 gamma data, a nearby estimate approach was
15 used. I don't think that that is what is
16 indicated here. Let me read this one to you,
17 page 20, Section 11.0:

18 "Notional neutron doses are neutron
19 doses that are assigned to a worker who was
20 potentially exposed to neutrons in a
21 plutonium-related building for a period of
22 time but was not credited with a neutron dose
23 in his or her record for that period of time.
24 The lack of a neutron dose of record for a
25 period of time may have been the result of the

1 following conditions:" And there's three
2 bullets, the first two of which are the
3 important ones.

4 "The worker was not monitored for
5 neutrons but was potentially exposed." The
6 second bullet is, "The worker was monitored
7 for neutrons, but the neutron dose could not
8 be evaluated." Now, if we look at the very
9 next page it says that only for the first two
10 conditions -- those two bullets I just read to
11 you -- would a notional neutron dose be
12 assigned.

13 And here's the important part. "The
14 index to identify the first two conditions is
15 the presence of a recorded penetrating gamma
16 dose in a plutonium-related building but no
17 recorded neutron dose for that period of
18 time."

19 So, Mark, you're talking about here
20 how they assign notional neutron dose, and you
21 said in cases where there was no gamma data
22 the nearby estimate was used. That is, in
23 fact, not the case. In order for a notional
24 dose to be assigned they had to have gamma
25 monitoring.

1 **MR. GRIFFON:** Yeah, I think I stand
2 corrected on that, Brant. I think I was
3 trying to do that from memory, not going back
4 to the protocol.

5 **DR. ULSH:** I understand. There's a lot of
6 documentation here.

7 **MR. GRIFFON:** But part of what I think that
8 maybe clarified me if I'm wrong on this, but I
9 think they used a neutron-gamma, either a
10 personal which would have been the nearby,
11 their previous year neutron-gamma ratio or a
12 building-wide neutron-gamma ratio and applied
13 whichever was more conservative I think in
14 some cases.

15 **DR. ULSH:** Not quite.

16 **MR. GRIFFON:** Not quite? Go ahead, I'll let
17 you continue then.

18 **DR. ULSH:** Okay, to assign notional neutron
19 dose that covers gaps in neutron monitoring,
20 they used a combination of two methods. The
21 first one is the nearby technique that you
22 mentioned. And that is taking an average of
23 the measured neutron dose rates for that
24 individual for when they have neutron
25 monitoring, and applying it to that gap in

1 neutron monitoring. That doesn't say anything
2 about --

3 **MR. GRIFFON:** Not having gamma.

4 **DR. ULSH:** -- right. In fact, to identify
5 that as a gap, they had to have gamma. That's
6 a prerequisite.

7 And the second method was the NP ratio
8 method that you mentioned. They used a
9 weighted combination of the two.

10 **MR. GRIFFON:** So I had it right except for
11 the fact that it did ^ necessitate lack of
12 gamma data, right?

13 **DR. ULSH:** That is correct, Mark. In order
14 for a period to be identified as a gap, that
15 is predicated on the presence of gamma
16 monitoring. So there are not people who, for
17 instance, came from Building -- I don't know,
18 let's just say the Administrative Building --
19 who went into the neutron areas, the
20 production areas of the neutron buildings.

21 It's possible that, you know, I can't
22 say that they were all issued neutron
23 dosimetry, but in order for them to be issued
24 to be classed with a gap here and assigned
25 notional neutron dose, that is predicated on

1 the presence of gamma dosimetry. So I think
2 when we're talking about gaps, we're talking
3 about gaps in neutron dosimetry. And that's
4 important because the trigger for entry into
5 the NDRP is gamma dosimetry, not neutron
6 dosimetry, but gamma dosimetry.

7 So the point that I'm trying to make
8 here is that I don't think you can read from
9 any of the things that you've excerpted here
10 or certainly from the NDRP Protocol, that
11 there were people from other buildings who
12 came in and were not assigned gamma dosimetry.
13 It's possible that they were assigned neutron,
14 but not gamma.

15 **MR. GRIFFON:** Well, yeah, but I mean thank
16 you for the clarification on that one thing.
17 I still wasn't sure that all the gaps that
18 people had where they had notional dose
19 assigned, they also had to have gamma
20 measuring. So that is a clarification for me.

21 But it still, I don't think it answers
22 that one question. Your first paragraph
23 alludes to the fact that, yes, there were some
24 people came from other buildings such as 34
25 and into the plutonium buildings and were on

1 neutron worksheets. But the question remains
2 whether that was 100 percent effective, I
3 guess. Or they found some worksheets with
4 other buildings on them, neutron worksheets.

5 So, yes, that certainly was evident
6 that people from other buildings were in those
7 buildings working and had some exposure to
8 neutrons. That doesn't necessarily say that
9 the policy was 100 percent effective over all
10 the years that we're looking at. So that
11 question remains in my mind I guess.

12 **DR. ULSH:** I understand, and I think that's
13 a valid question to ask.

14 **MR. GRIFFON:** Thank you for that, and I will
15 -- just to let people know, I will modify my
16 document to reflect Brant's comments because
17 that was a misstatement on my part. I was
18 going by memory, and there is a clarification
19 I need to make in that front paragraph. So I
20 will edit that and get that out to everybody.

21 **DR. ULSH:** And, Mark, you raised an
22 interesting question here, and it's worth
23 discussing I think. The excerpts that you've
24 provided here from our discussions with Roger
25 Falk and also to a more limited extent the

1 NDRP, do bear out what you said there about
2 the criteria, the monitoring criteria for the
3 plutonium production buildings. And
4 basically, it was anyone who was judged to be
5 at an exposure potential that would be ten
6 percent of the exposure limit was issued
7 dosimetry.

8 And it was, we recognize that
9 dosimetry, the dosimetry dose limits have
10 changed over the years, and that's why when
11 the Department of Labor asked for our advice
12 about who was or should have been monitored,
13 NIOSH recommended that first of all include
14 everyone in the NDRP. I mean, that's obvious,
15 everyone who's listed. But also anyone who
16 was in a neutron building as listed in the
17 NDRP, but was not part of the, not explicitly
18 included in the NDRP.

19 Because can I say with 100 percent
20 certainty that someone who worked in an
21 administrative area of the building -- let's
22 say 771 just for example -- never went into
23 the production area? No, I can't say that.
24 Can I say that they didn't have the potential
25 to receive 100 millirem in a year? That's why

1 we recommended to take a more generous list to
2 include in the class based on not just
3 explicitly people who were explicitly included
4 in the NDRP but anyone else who was in those
5 buildings. That was the basis based on that
6 concern.

7 **MR. GRIFFON:** But when you say in those
8 buildings, Brant, I guess that's the other
9 question. How does DOL get to that? If
10 they're not in the NDRP, how do they get to
11 that? They have work history cards that will
12 say where they were assigned, like 334, but it
13 may not, there's no more data available to DOL
14 anyway where they could determine if they were
15 sent over to those neutron buildings, is
16 there? Or am I missing something?

17 **MR. ELLIOTT:** I think Jeff would have to
18 answer how DOL administers --

19 **MR. GRIFFON:** Okay, okay, I guess we don't
20 necessarily need to go down that path right
21 now, but I mean, is there anything else just
22 focusing on NIOSH's records right now, is
23 there anything else in the -- you have the job
24 history cards, right, Brant? In the data
25 we've looked at each person seems to have a

1 work history card with some indication of what
2 buildings they worked in. Is that correct?

3 **DR. ULSH:** Yes, in general that's... Mark,
4 when I approach a case I'm trying to figure
5 out where a person worked. You're right. The
6 first place I look is the job history card.
7 And where we have that it's very informative.
8 There are job history cards present for
9 employees of the main contractor, you know,
10 the main operator of the site, and those are
11 included as part of the NDRP. So that does
12 provide a lot of useful information.

13 Some other things that I look at are
14 the dosimetry records, the urinalysis records,
15 because on those cards it lists what building
16 a person worked in that resulted in them
17 getting that sample. So we look there. I
18 also look at the telephone interviews which,
19 as you very well know, are more informative
20 when we're talking to the actual claimant,
21 less so when we're talking to a survivor. So
22 those are some different sources that we can
23 look at to make that kind of a determination.

24 **MR. GRIFFON:** So we're not in disagreement
25 there. It's just a question of can we get to

1 an answer on when other people were in those
2 buildings. And I did highlight the ten
3 percent rule because -- and you readily stated
4 that the regulations have changed over the
5 years so ten percent of that time certainly
6 would be higher than the 100 millirem that
7 we're judging it on now. Anything else to
8 add, Brant, to the discussion at this point?

9 **DR. ULSH:** Well, Mark, the other highlights
10 really just go to the point that I think I've
11 already made, and that is about when we talk
12 about gaps, we're talking about neutron not
13 gamma. But if I go through the rest of the
14 highlights, it would just be repeating that.

15 **MR. GRIFFON:** No, that's fine. I agree with
16 that. I was going, as I said, by memory so
17 that is fine, but it still doesn't answer that
18 question of those other, I guess that's where
19 we are is the remaining question of whether
20 people could have a work assignment but been
21 sent to these neutron buildings and missed in
22 the policy of the time or in the protocols of
23 the time.

24 **DR. ULSH:** I think we can safely say that
25 there were people from other buildings who

1 apparently has testimony from coworkers, from
2 supervisors that they were in these buildings.
3 And I guess going further than that they're
4 saying in the building more than 250 days.
5 The original decision was to, at least my
6 understanding is the original decision was not
7 to have him in the SEC.

8 This is one individual who happens to
9 have a lot of, the survivor has found several
10 coworkers that are willing to, you know, that
11 have memory of this and are willing to put
12 affidavits out there for him. But the burden
13 seems to be on the claimant I guess is my
14 point.

15 And are all the other claimants going
16 to have those kind of resources or know people
17 that knew the person when they worked there
18 and have a memory of it? So I guess that's
19 the question.

20 **DR. ULSH:** Mark, I can't speak to all of
21 that, but a couple of points of clarification.
22 I haven't seen the affidavits. I wasn't
23 specifically looking for them when I looked
24 through the records, but I haven't seen them.
25 I'm not saying they don't exist.

1 **MR. GRIFFON:** I think Larry's probably
2 correct. It might have gone to DOL as opposed
3 to NIOSH.

4 **DR. ULSH:** Well, and a point of
5 clarification, too, that I'm only going from
6 what I read in the paper just like you. I
7 don't recall the newspaper saying anything at
8 all about the 250-day question. It was silent
9 on that. It didn't provide any detail about
10 how often or how extensive their work in those
11 buildings was.

12 And now I'm thinking back to the CATI,
13 the telephone interview, and again, just going
14 from memory here, she said that she had talked
15 to some of the coworkers, and that they, I
16 believe, said that they had visited those
17 buildings or had been in those buildings. But
18 it didn't provide any detail about how often
19 or where in the buildings they went.

20 **MR. GRIFFON:** Yeah, and I was just trying to
21 pull one of those stories up, but I can't do
22 this real-time. I think we need to look at
23 this, at least look at that one a little
24 closer if we can. But at this point what my
25 feeling is from the work group's standpoint to

1 lay out only the sort of timeline of what
2 we've been discussing without any of our
3 personal feelings as to which way things
4 should go.

5 And I will draft something up on
6 bullet points of what I would present as the
7 work group. I'll circulate that to my work
8 group members before presenting it at the
9 Board meeting. But then I want to just turn
10 it back to the full Board and say what
11 direction do we as a Board want to take or
12 does the Board want the work group to do on
13 this issue. I think that's where I feel we
14 should go with this.

15 I don't know if Wanda or Bob or Mike,
16 you have any feelings on it.

17 **MS. MUNN:** This is Wanda. Can you hear me
18 okay?

19 **MR. GRIFFON:** Yeah.

20 **MS. MUNN:** I'm on a cell phone, and I'm
21 never sure. My personal feeling is that we
22 certainly should revisit the wording that is
23 of concern here. I have knocked it around in
24 my own mind several times and have not come to
25 the conclusion that there are any better words

1 that could provide the flexibility that we
2 must have for observing what transpires in
3 these claims and at the same time setting some
4 limits. I certainly would recommend that
5 everyone on the work group consider whether
6 that wording is inappropriate or not. I'm not
7 convinced that there are better words that
8 will get us any further down the line towards
9 specificity than what we already have. It's
10 worth thinking about and certainly worth
11 talking about.

12 **MR. GRIFFON:** And I'll commit to, like I
13 said, circulating within the next two days
14 some bullet points, and mainly just a timeline
15 of what calls we have had, what we have
16 discussed, and any if you could all just send
17 me comments back in track changes mode, I will
18 take those from the work group because I want
19 to just give an update from the work group. I
20 don't want to, in this update I'm not going to
21 give my opinion.

22 I just want to ask maybe the Board
23 where we should go with this and what is
24 within our charter sort of to delve into as
25 opposed to, and maybe the Board says nothing,

1 says that we shouldn't weigh in on this. It's
2 a DOL issue completely. I just want to bring
3 this back to the full Board I think at this
4 point.

5 **MR. PRESLEY:** Mark, I agree with you. This
6 is Bob Presley.

7 I have one question for Brant. Do we
8 have any information on what type of a job
9 that the gentleman in question had?

10 **DR. ULSH:** When you say the gentleman in
11 question, Bob, were you talking about the one
12 in the newspaper?

13 **MR. PRESLEY:** Yes.

14 **DR. ULSH:** I don't have that at my
15 fingertips, but I think I can pull it out of
16 the records if you'd like.

17 **MR. PRESLEY:** Okay. I mean, that might
18 help, what job or what assignment this person
19 had.

20 **DR. ULSH:** Yeah, I'll take a look in his
21 records again and let you know on that.

22 **MR. PRESLEY:** Thank you, sir.

23 **MR. ELLIOTT:** This is Larry Elliott. I
24 hesitate to say this, but I think the Rocky
25 Mountain News stories have been evolving or

1 revolving around two different sets, two
2 different claims perhaps, the earlier one and
3 the most recent one. So are we looking at
4 both of these?

5 **MR. GRIFFON:** That could be what I'm
6 confusing in my mind, too, Larry. That's why
7 I said I think I don't want to try to do this
8 in real-time trying to pull up the stories and
9 review them while trying to have this
10 discussion. So there were two mentioned, I
11 agree.

12 **MR. ELLIOTT:** I think in order to --

13 **MR. GRIFFON:** And we can't have names on
14 here.

15 **MR. ELLIOTT:** If Brant's taking on an action
16 item here to look at the job title or the
17 activity levels of the different worker that's
18 been reported in the news, we need to make
19 sure we look at all of those that have been
20 reported.

21 **DR. ULSH:** Mark, can you call me offline,
22 off this call and let me know which one?

23 **MR. GRIFFON:** I will, Brant. I will.

24 **DR. BRANCHE:** Mark, before you close, this
25 is Christine. I just want to clarify that,

1 just so it won't be a surprise to you when it
2 comes up next week if indeed you go forward
3 with this in your update before the Board,
4 your options again are, the Board's options
5 are few.

6 They can write a letter that clarifies
7 information for the Secretary. You can talk
8 about if there's any new data that you think
9 that NIOSH should consider. You can do that.
10 And if you can talk about something that helps
11 you in the guise of the Board learn something
12 new for future decisions. But they're very,
13 very narrow parameters that you have available
14 to you here.

15 **MR. GRIFFON:** Yeah, and I think I'm leaning
16 toward if we do anything it would be that
17 letter to clarify. But maybe you're right, a
18 dialogue of just to learn for our future
19 recommendations might be useful. But, yeah, I
20 agree with those parameters, Christine.

21 **DR. BRANCHE:** Whether you agree or not, they
22 are the ones available to you. Thank you,
23 Mark.

24 **MR. GRIFFON:** Is there anything else that we
25 need to discuss today?

1 **MS. BOLLER:** This is Carolyn. Is Jeff still
2 on the line?

3 **MR. KOTSCH:** Yeah, I'm still here.

4 **MS. BOLLER:** Jeff, is there a way that we
5 can get from you a list of, not necessarily by
6 name, but numbers of cases that we are talking
7 about that would be -- I don't know what the
8 term would be, but like I've got this case
9 that I don't think you all have yet, which I
10 would be glad to send over to Mark or to you
11 if you don't have one. But how many cases are
12 we talking about that would be affected by
13 this requirement that they will have worked in
14 the building for some period of time?

15 **MR. KOTSCH:** I'm just trying to think. I
16 don't know how -- I'm just trying to think how
17 we would put a number on that because we would
18 have to look at each case individually to
19 determine that. You know what I'm saying?
20 We'd have to count ^ anyway. The outside
21 population is the population of all Rocky
22 Flats claims that have been denied to date
23 kind of thing.

24 **MS. BOLLER:** Yeah, is there a way you and I
25 can talk offline about this? Can you give me

1 a phone number?

2 **MR. KOTSCH:** It's 2-0-2-6-9-3-0-1-8-8. I
3 can at least pass the information on to people
4 that can give us the answer.

5 **MR. GRIFFON:** Thank you, Jeff.

6 Thank you, Carolyn.

7 I think we're ready to close today
8 unless anyone had anything more for today.

9 (no response)

10 **MR. GRIFFON:** Again, I will give bullet
11 points, a brief presentation for the Board,
12 and I'll circulate those to work group members
13 just for your edits.

14 **MS. MUNN:** That will be very appreciated,
15 Mark, thank you.

16 **MR. GIBSON:** Mark, that'd be good.

17 **MR. GRIFFON:** All right, thank you everyone.
18 I think we're going to adjourn today.

19 (Whereupon, the working group meeting
20 concluded at 12:30 p.m.)

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I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the day of April 3, 2008; 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 28th day of November, 2008.

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