





























































































































































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 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 emboli (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.

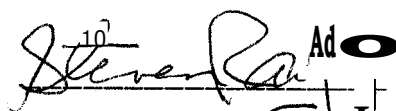
9           (Whereupon, the Board review and discussion of  
10          the Mallinckrodt SEC petition portion of the  
11          meeting was concluded.)

**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

**CERTIFIED MERIT COURT REPORTER'****CERTIFICATE NUMBER: A-2102**