

BEFORE THE  
INTELLECTUAL PROPERTY TASK FORCE OF THE  
INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE  
FOR THE CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE  
ORGANIZED PURSUANT TO THE  
CALIFORNIA STEM CELL RESEARCH AND CURES ACT  
REGULAR MEETING

LOCATION: CIRM HEADQUARTERS  
210 KING STREET  
SAN FRANCISCO, CALIFORNIA

DATE: SEPTEMBER 21, 2006  
1:02 P.M.

REPORTER: BETH C. DRAIN, CSR  
CSR. NO. 7152

BRS FILE NO.: 76505

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I N D E X

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INFORMATIONAL PRESENTATIONS REGARDING OPEN ACCESS:		
JOHN OBER		5
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1 SAN FRANCISCO, CALIFORNIA; THURSDAY, SEPTEMBER 21, 2006

2 01:02 P.M.

3

4 CHAIRMAN PENHOET: GOOD AFTERNOON. WELCOME  
5 TO THE I DON'T KNOW WHICH INCARNATION THIS IS OF THE  
6 INTELLECTUAL PROPERTY TASK FORCE. PROBABLY OUR SEVENTH  
7 MEETING OR SOMETHING LIKE THAT. WE ARE HERE TODAY TO  
8 DO TWO THINGS. ONE IS TO FURTHER INFORM OURSELVES  
9 ABOUT THE ISSUES SURROUNDING OPEN-ACCESS PUBLICATIONS.  
10 AND SO WE HAVE SOME REPRESENTATIVES PRIMARILY FROM THE  
11 UNIVERSITY OF CALIFORNIA TO PRESENT TO US TODAY.

12 WE HAVE NOT INCLUDED ANY FURTHER REFINEMENTS  
13 OF OPEN ACCESS IN OUR ANTICIPATED POLICY. WE WERE  
14 CHARGED BY THE ICOC TO CONTINUE TO STUDY THIS ISSUE.  
15 WE HAVE ALLOCATED ABOUT HALF AN HOUR OR SO TO THIS  
16 DISCUSSION, AND THEN WE WILL MOVE DIRECTLY INTO A  
17 DISCUSSION OF THE FOR-PROFIT POLICY.

18 AS YOU CAN SEE, I'M THE ONLY MEMBER OF THE  
19 TASK FORCE PRESENT HERE IN SAN FRANCISCO, BUT WE DO  
20 HAVE SOME OTHER MEMBERS ON THE PHONE. SO IF MELISSA  
21 WILL READ THE ROLL CALL, WE'LL FIND OUT WHO ELSE IS OUT  
22 THERE.

23 MS. KING: SUE BRYANT.

24 DR. BRYANT: HERE.

25 MS. KING: MICHAEL GOLDBERG. SHERRY LANSING.

1 TED LOVE. ED PENHOET.

2 CHAIRMAN PENHOET: HERE.

3 MS. KING: PHIL PIZZO. FRANCISCO PRIETO.

4 JOHN REED. DUANE ROTH.

5 MR. ROTH: HERE.

6 MS. KING: JEFF SHEEHY. OSWALD STEWARD.

7 JANET WRIGHT.

8 CHAIRMAN PENHOET: WELL, THIS IS EITHER  
9 THEY'RE ALL THRILLED WITH THE PROGRESS WE'VE MADE, OR  
10 THERE'S ANOTHER EXPLANATION FOR THIS, BUT LET'S ASSUME  
11 IT'S THE FIRST ONE. WE OBVIOUSLY DO NOT HAVE A QUORUM.

12 MS. KING: WE DON'T HAVE A QUORUM. WE ARE  
13 EXPECTING A COUPLE MORE PEOPLE, BUT WE WON'T HAVE A  
14 QUORUM.

15 CHAIRMAN PENHOET: WE DON'T EXPECT TO HAVE A  
16 QUORUM TODAY; HOWEVER, THE PURPOSE OF THIS IS TO GAIN  
17 THE BLESSING OF THE MEMBERS WHO ARE ATTENDING TO ALLOW  
18 US TO PRESENT THIS TO THE ICOC FOR THEIR DISCUSSION AND  
19 POSSIBLE ACTION AT THE OCTOBER 11TH ICOC BOARD MEETING.  
20 AND SO THAT'S A DELIVERABLE WE'D LIKE TO ACHIEVE FROM  
21 THIS MEETING AS WE MOVE FORWARD TO THAT.

22 SO I BELIEVE WE HAVE THE PEOPLE HERE WHO WANT  
23 TO TALK ABOUT OPEN-ACCESS PUBLISHING. AND IT'S THE  
24 FIRST THING ON OUR AGENDA, SO WHY DON'T WE JUST MOVE  
25 RIGHT INTO THAT DISCUSSION, PLEASE.

1                   MR. OBER:  THANK YOU.  THANK YOU FOR GIVING  
2                   ME THE OPPORTUNITY TO SPEAK.  MY NAME IS JOHN OBER FROM  
3                   THE UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT.  
4                   I'M WITH A UNIT OF THE UNIVERSITY OF CALIFORNIA CALLED  
5                   THE OFFICE OF SCHOLARLY COMMUNICATION.  AND MY  
6                   COLLEAGUES AND I THANK YOU FOR ALLOWING US A LITTLE BIT  
7                   OF TIME.

8                   AT THE UNIVERSITY OF CALIFORNIA WE ARE  
9                   LOOKING AT VARIOUS ISSUES RELATED TO SCHOLARLY  
10                  PUBLISHING.  WE HAVE BEEN DISCUSSING SCHOLARLY  
11                  PUBLISHING IN OPEN-ACCESS JOURNALS FOR QUITE SOME TIME.  
12                  I HAVE JUST A FEW SLIDES TO GIVE YOU SOME BACKGROUND  
13                  MATERIAL.

14                  I'LL START OUT WITH SOME EVIDENCE OF THE  
15                  IMPACT OF OPEN ACCESS AND ITS USE AROUND THE COUNTRY  
16                  AND AROUND THE WORLD.  AND THEN MY COLLEAGUE, BEN CROW,  
17                  FROM THE SANTA CRUZ CAMPUS, AND LARRY PITTS FROM UC SAN  
18                  FRANCISCO WILL JOIN ME.

19                  THE LOGIC THAT SUGGESTS THAT OPEN ACCESS  
20                  MAKES SENSE IS FAIRLY INTUITIVE.  IF YOU REDUCE THE  
21                  BARRIERS TO THE RESEARCH RESULTS, THE PUBLICATIONS, YOU  
22                  WOULD EXPECT THAT THERE WOULD BE MORE USE OF THEM AND,  
23                  IN FACT, EVIDENCE IS COMING IN NOW THAT OPEN-ACCESS  
24                  POLICIES, OR MINIMAL BARRIER POLICIES MIGHT BE ANOTHER  
25                  WAY TO THINK OF IT, ARE COMING INTO PLAY.  AND HERE'S

1 AN EXAMPLE OF AN OPEN-ACCESS CITATION IMPACT ADVANTAGE.  
2 NOT ONLY THAT IT OCCURS, BUT THAT IT'S BEEN GROWING  
3 OVER TIME AS OPEN ACCESS IS UNDERSTOOD TO BE ANOTHER  
4 WAY TO GET ACCESS TO RESEARCH RESULTS. THIS IS FROM A  
5 RECENT STUDY, A VERY LARGE SET OF ARTICLES. THE  
6 LARGEST OPPONENT --

7 DR. HALL: MAY I ASK A QUESTION? OPEN ACCESS  
8 IN THIS CASE MEANS? IS THAT THE SAME AS OPEN  
9 ARCHIVING, OR DO YOU MAKE THAT DISTINCTION? JUST SAY  
10 WHAT YOU MEAN BY OPEN ACCESS.

11 MR. OBER: I THINK FOR THE PURPOSES OF THIS  
12 DISCUSSION, OPEN ACCESS IS DEFINED AS THE ABILITY TO  
13 MINIMIZE, IF NOT ELIMINATE, THE COST TO A READER TO  
14 READ RESEARCH RESULTS. THAT'S A KEY PART. AND THE  
15 SECOND PART IS THE MINIMIZATION OF BARRIERS IN TERMS OF  
16 PERMISSION FOR READERS. SO OPEN ACCESS IN --

17 DR. HALL: OPEN ARCHIVING IS INCLUDED IN THAT  
18 TERM?

19 MR. OBER: OPEN ARCHIVING FOR AN AUTHOR TO  
20 DEPOSIT IN OPENLY. AVAILABLE WEBSITE RESEARCH  
21 PUBLICATIONS OR INSTITUTIONS DO THAT FOR AN AUTHOR.

22 DR. HALL: IS THERE A TIME DEFINITION IN  
23 THAT?

24 MR. OBER: HANG ON JUST A MINUTE AND YOU WILL  
25 SEE SOME OF THAT.

1 CHAIRMAN PENHOET: BUT SPECIFICALLY IN THIS  
2 CHART HERE, WHAT DOES OPEN ACCESS MEAN IN THIS CASE?

3 MR. OBER: IT MEANS AVAILABILITY OF THE  
4 RESEARCH PUBLICATIONS EITHER IN THE FINAL PUBLISHED  
5 FORM OR IN THE ACCEPTED MANUSCRIPT FORM BEFORE FINAL  
6 EDITING WITHIN SIX MONTHS OF PUBLICATION.

7 THIS SAME STUDY, AND THIS WAS A LARGE STUDY,  
8 AND I MEANT TO SAY THAT THE LARGEST SUBSET IN A  
9 DISCIPLINARY SENSE OF THIS PARTICULAR STUDY OF 1200  
10 ARTICLES DONE RECENTLY, THE LARGEST SUBSET OF ARTICLES  
11 WERE IN THE BIOSCIENCES. THE AUTHOR OF THIS STUDY, AND  
12 THIS STUDY GOT A FAIR AMOUNT OF PLAY IN THE MEDIA AND  
13 THE FOLKS WHO TRACK THESE ISSUES, GOES ON TO SAY, FIRST  
14 OF ALL, THAT THE BENEFIT, THE IMPACT BENEFIT IS  
15 SIGNIFICANT EVEN WHEN YOU CONTROL FOR OTHER VARIABLES  
16 LIKE SELF-CITATION, LIKE WHERE THE ARTICLE CAME FROM,  
17 IN REGRESSION ANALYSIS, AND SAID THAT OPEN-ACCESS  
18 STATUS REMAINED A SIGNIFICANT VARIABLE FOR THE NUMBER  
19 OF CITATIONS FOR THE GREATER USE OF THE ARTICLES.

20 AND HE WENT ON TO SAY FINDINGS SUPPORT  
21 POLICIES OF THOSE GRANTING AGENCIES WHICH HAVE MADE  
22 OPEN-ACCESS PUBLISHING MANDATORY.

23 I THINK YOU ALSO HAVE A DOCUMENT DISTRIBUTED  
24 FROM *PUBMED CENTRAL* THAT COVERS SOME OF THIS  
25 INFORMATION. THIS IS JUST TO SUGGEST THAT MORE AND

1 MORE FUNDERS ARE ADOPTING POLICIES OF ONE FORM OR  
2 ANOTHER SUPPORTING OPEN ACCESS TO SOME EXTENT. FIVE OF  
3 THESE 28 MEDICAL SCIENCE ORIENTED FUNDING AGENCIES  
4 REQUIRE IT, ANOTHER FOUR ARE CONSIDERING MAKING IT A  
5 REQUIREMENT, ANOTHER FIVE STRONGLY ENCOURAGE IT, AND  
6 THIS ENTIRE LIST IS DRAWN FROM THOSE FUNDING AGENCIES  
7 WHO DO AGREE TO PAY PUBLICATION CHARGES AS PART OF THE  
8 GRANTING PROCESS FOR THOSE PUBLICATIONS THAT SAY WE'RE  
9 FINE TO MAKE THIS OPEN ACCESS PROVIDED THERE'S SOME  
10 HELP IN SUBSIDIZING THE COST OF PUBLICATION TO BEGIN  
11 WITH.

12 THAT PARTICULAR APPROACH, WHICH IS NOT A  
13 SINGULAR APPROACH, THERE ARE OTHER APPROACHES, BUT THAT  
14 APPROACH, SOMETIMES THE PRODUCER PAYS OR THE AUTHOR  
15 PAYS FOR THE MODEL OF OPEN ACCESS WHERE A SUBSIDY FOR  
16 THE WIDE OPEN ACCESS TO THE MATERIAL IS PROVIDED TO THE  
17 PUBLISHER IN SOME DIRECT FASHION.

18 A PARTICULARLY INTERESTING FUNDER THAT HAS  
19 VERY RECENTLY ADOPTED A REQUIREMENT FOR OPEN ACCESS IS  
20 THE UK MEDICAL RESEARCH COUNCIL. HERE'S A QUOTE FROM  
21 THEM SAYING THAT OPEN ACCESS IS A GOOD IDEA. THE UK  
22 MEDICAL RESEARCH COUNCIL IS A PARTICULARLY INTERESTING  
23 ONE BECAUSE, AS YOU PROBABLY KNOW BETTER THAN I DO,  
24 THEY HAVE STEM CELL RESEARCH AS A STRATEGIC PRIORITY  
25 AND ARE BUILDING UP A FUNDING BASE FOR STEM CELL



1 RESEARCH.

2           THERE HAS BEEN SOME CONFUSION FROM TIME TO  
3 TIME ABOUT WHETHER OPEN ACCESS IMPLIES A PARTICULAR  
4 BUSINESS MODEL AND HOW MUCH OF A THREAT IT IS TO  
5 PUBLISHERS. HERE'S SOME EVIDENCE THAT SUGGESTS  
6 PUBLISHERS ARE LEARNING TO DEAL WITH, IF NOT ENCOURAGE,  
7 OPEN ACCESS. THIRTEEN OF 18 JOURNALS WE POLLED, SOME  
8 STEM CELL RESEARCHERS AT UC, OF THE MOST LIKELY  
9 JOURNALS YOU WOULD PUBLISH IN, 13 ALLOW SOME SORT OF  
10 OPEN ACCESS SIMULTANEOUSLY WITH THE INITIAL PUBLICATION  
11 OF AN ARTICLE. SEVENTEEN OF THOSE 18 JOURNALS ALLOW  
12 SOME SORT OF OPEN ACCESS WITHIN SIX MONTHS, AND I SAY  
13 SOME SORT BECAUSE THERE'S A DISTINCTION HERE BETWEEN  
14 OPEN ACCESS TO THE FINAL JOURNAL PUBLICATION OR TO THE  
15 ACCEPTED MANUSCRIPT, THE AUTHOR'S VERSION, BEFORE FINAL  
16 COPY EDITING AND SO FORTH. AND FINALLY, ALL OF THE  
17 MOST LIKELY JOURNALS ALLOW SOME SORT OF OPEN ACCESS  
18 WITHIN 12 MONTHS. THERE'S A CONTINGENCY THAT AT LEAST  
19 12 MONTHS IS A LONGER THAN NECESSARY DELAY GIVEN THE  
20 PROBABLE BENEFITS TO EARLY AND OPEN ACCESS.

21           MORE EVIDENCE. THE MAJORITY OF RESEARCHERS  
22 ARE READY FOR OPEN ACCESS. THIS IS A STUDY, A VERY  
23 LARGE STUDY, THAT SHOWS THAT 81 PERCENT OF RESEARCHERS  
24 SURVEYED, THIS WAS A UC STUDY OF ABOUT 1800  
25 RESEARCHERS, WOULD COMPLY WILLINGLY IF THEY WERE

1       REQUIRED.  ANOTHER 13 PERCENT WOULD COMPLY SOMEWHAT  
2       RELUCTANTLY, AND 5 PERCENT WOULD IN ANY SENSE TRY TO  
3       RESIST AN OPEN-ACCESS REQUIREMENT ATTACHED TO THEIR  
4       FUNDING.

5                 THERE' S PUBLIC SUPPORT.

6                 CHAIRMAN PENHOET:  BARRIER THERE IS PRETTY  
7       HIGH.  YOU LOSE YOUR GRANT SUPPORT IF YOU DON' T DO IT.  
8       STRANGE PERSON THAT WOULD SAY I REFUSE TO DO IT.

9                 MR. OBER:  PUBLIC SUPPORT IS MOUNTING.  THIS  
10       IS A HARRIS POLL CONDUCTED IN MAY THAT SUGGESTS 83  
11       PERCENT OF ADULTS IN THE U. S. AGREE THAT IF TAX DOLLARS  
12       PAY FOR RESEARCH, PEOPLE SHOULD HAVE FREE ACCESS TO  
13       RESULTS.  SIXTY-TWO PERCENT OF THOSE ADULTS HAD THOUGHT  
14       ABOUT IT ENOUGH WHEN THIS SURVEY WAS TAKEN TO BELIEVE  
15       THAT THAT' S A WAY TO ACCELERATE RESEARCH.

16                WITH THAT, I' LL TURN IT OVER TO MY COLLEAGUE,  
17       BEN CROW.

18                CHAIRMAN PENHOET:  WE' LL TAKE QUESTIONS AT  
19       THE END.  QUESTIONS AT THE END IS PROBABLY A GOOD IDEA.

20                MS. KING:  LET ME JUST DO A QUICK PHONE  
21       CHECK.  WHO JOINED US ON THE PHONE WITHIN THE LAST  
22       COUPLE OF MINUTES, PLEASE?

23                DR. PRIETO:  FRANCISCO PRIETO.

24                MS. KING:  ANYBODY ELSE?

25                DR. WRIGHT:  JANET WRIGHT.

1 MS. KING: THANK YOU, DR. WRIGHT. WE'RE ON  
2 AGENDA ITEM NO. 3, PRESENTATIONS ON THE OPEN-ACCESS  
3 TOPIC.

4 DR. PRIETO: THANK YOU.

5 MS. KING: ACTUALLY WE'RE IN THAT SLIDE DECK  
6 AS WELL, ONE OF THE ONES SENT TO YOU. HOPING YOU HAVE  
7 THOSE SLIDES.

8 DR. WRIGHT: YES, THANKS.

9 MS. KING: THE ONE THAT HAS BEN CROW ON IT,  
10 THAT'S WHERE WE ARE.

11 DR. CROW: THAT'S ME. SO I WANT TO MAKE JUST  
12 A COUPLE OF POINTS AND THEN SPEAK A LITTLE BIT ABOUT  
13 WHERE THE UNIVERSITY OF CALIFORNIA HAS GOT TO. SO THE  
14 FIRST POINT I WANT TO MAKE IS THAT IT'S DIFFICULT TO  
15 UNDERESTIMATE THE IMPORTANCE OF THE CHANGES THAT ARE  
16 GOING ON IN SCHOLARLY COMMUNICATION. I THINK IT'S  
17 REASONABLE PEOPLE WHO ARE MAKING COMPARISONS. WITH THE  
18 BEGINNING OF PRINTING OR THE INDUSTRIAL REVOLUTION,  
19 THEY MIGHT BE WRONG, BUT I DON'T THINK THEY ARE. I  
20 THINK WE ARE IN THE MIDDLE OF SOMETHING REALLY VERY  
21 PROFOUND FOR SOCIETY AND FOR HUMAN CREATIVITY.

22 IN THAT SITUATION THERE ARE HUGE ADVANTAGES  
23 TO BEING AMONGST THE FIRST ADOPTERS. THIS IS TRUE OF  
24 ANY TECHNOLOGY. AND WHEN IT'S A VERY LARGE, FAR  
25 REACHING SET OF TECHNOLOGIES, I THINK IT'S MOST UNWISE

1 TO BE AMONGST THE TAIL ENDERS. AND I THINK THE PROBLEM  
2 WITH BEING AMONGST THE TAIL ENDERS IS THE SPEED OF  
3 UPTAKE OF RESULTS, THE BREADTH OF UNDERSTANDING OF  
4 ONE'S RESULTS, AND THE GENERAL CREATIVITY THAT ARISES  
5 FROM GETTING LARGE NUMBERS OF PEOPLE THINKING ABOUT THE  
6 SAME PROBLEMS. ALL OF THOSE POSSIBILITIES ARE  
7 RESTRICTED IF YOU ARE A TAIL ENDER.

8 AND I THINK THE 500-WORD SUMMARY THAT'S SO  
9 FAR BEING PROPOSED FIRMLY PUTS THE CIRM IN THE TAIL END  
10 FOR THREE REASONS. IT DOES NOT GAIN THE POTENTIAL  
11 BENEFITS OF SPEED OF REPORTING AND OPEN AVAILABILITY.  
12 EVEN MY STUDENTS ARE BENEFITING. I NOW TEACH FROM  
13 ORIGINAL ARTICLES WHICH ARE FREELY AVAILABLE. IT'S  
14 UNWISE FOR RESEARCHERS WHO ARE TRYING TO BE AT THE  
15 FRONT EDGE OF SCIENCE TO BE GIVING LESSER ACCESS TO  
16 POTENTIAL READERS THAN UNDERGRADUATE STUDENTS GET. SO  
17 THE SPEED OF REPORTING AND OPEN AVAILABILITY OF RESULTS  
18 IS VERY IMPORTANT.

19 AS JOHN HAS ALREADY SAID, CIRM WOULD BE  
20 BEHIND THE CURVE OF MANY INTERNATIONAL RESEARCH  
21 COUNCILS. SO I'M JUST SUMMARIZING JOHN THERE. I THINK  
22 WERE IT TO BE WIDELY KNOWN THAT CIRM WAS SO FAR BEHIND  
23 THE CURVE ON THIS 500-WORD SUMMARY, I THINK THERE COULD  
24 BE SUFFICIENT PUBLIC OBJECTION, AND I THINK THAT WOULD  
25 BE REASONABLY FOUNDED OBJECTION IN THE CURRENT

1 SITUATION.

2 SO UNIVERSITY OF CALIFORNIA HAS BEEN THINKING  
3 ABOUT THIS ISSUE FOR A COUPLE OF YEARS, THREE YEARS,  
4 MAYBE MORE. AND WHAT WE -- WHAT THE UNIVERSITY IS IN  
5 THE PROCESS OF DECIDING TO DO, HAS ALMOST DECIDED, IS  
6 THAT THERE'S AN EXPECTATION THAT FACULTY ROUTINELY  
7 GRANT A LICENSE TO THE UNIVERSITY TO PUT THEIR  
8 PUBLISHED PAPERS AND CONFERENCE PAPERS ON OPEN ACCESS.  
9 WHAT THIS RESTS ON IS THAT COPYRIGHT IS A BUNDLE OF  
10 RIGHTS AND PRACTICES AND CAN BE DIVIDED UP, AND IT  
11 SEEMED AS THOUGH IT IS NOT INFEASIBLE FOR ONE OF THOSE  
12 RIGHTS, THE RIGHT TO PUT MATERIAL IN ITS FINAL FORM ON  
13 OPEN ACCESS, DOES NOT UNDERMINE COMMERCIAL AND OTHER  
14 RIGHTS.

15 SO WHAT THE UNIVERSITY HAS ASKED IS THAT THE  
16 LICENSE FOR OPEN ACCESS SHOULD BE RETAINED BY THE  
17 UNIVERSITY, AND ROUTINELY MATERIALS SHOULD BE POSTED AS  
18 SOON AS IT IS ACCEPTED ON AN ONLINE OPEN-ACCESS  
19 DEPOSITORY. THERE ARE POTENTIAL DIFFICULTIES, SOME OF  
20 WHICH YOU'VE DISCUSSED IN AN EARLIER SESSION.

21 MY COLLEAGUE PROFESSOR PITTS IS GOING TO  
22 ADDRESS THOSE DIFFICULTIES OF THE FEAR THAT THIS WILL  
23 AFFECT JUNIOR FACULTY, THE FEAR THAT THIS WILL  
24 UNDERMINE ACADEMIC FREEDOM. PROFESSOR PITTS WILL  
25 ADDRESS THOSE, BUT THE PRIMARY WAY IN WHICH THOSE

1 WORRIES, CONCERNS, CAN BE ADDRESSED IS THAT THERE IS AN  
2 OPT OUT CLAUSE IF OPEN ACCESS COMPROMISES COMMERCIAL OR  
3 OTHER OPPORTUNITIES.

4           THIS SET OF CHANGES -- THE PROPOSAL TO CHANGE  
5 COPYRIGHT SO THAT OPEN ACCESS CAN BE THE NORM  
6 THROUGHOUT UNIVERSITY OF CALIFORNIA HAS BEEN WIDELY  
7 DISCUSSED OVER THE LAST 12 MONTHS, AND IT'S GOT PRETTY  
8 MUCH COMPLETE SUPPORT. WE ARE GOING INTO A FINAL ROUND  
9 OF DISCUSSIONS, AND THE PRESIDENT OF THE UNIVERSITY HAS  
10 ESTABLISHED A WORKING GROUP, ON WHICH TWO OF US ARE  
11 MEMBERS, WHICH WILL BE ORGANIZED IN THOSE FINAL  
12 DISCUSSIONS, BUT I WOULD BE VERY SURPRISED IF THAT WAS  
13 NOT ADOPTED BY ABOUT SPRING OF NEXT YEAR.

14           SO I THINK THE PROPOSAL IS WELL ON THE WAY TO  
15 BEING ACCEPTED AND WILL HAVE THE CONSEQUENCE THAT THE  
16 ROUTINE AVAILABILITY OF UC FACULTY MATERIAL WILL BE  
17 OPEN ACCESS WITHIN A SHORT PERIOD IN A PUBLICATION.  
18 OKAY.

19           DR. PITTS: THANK YOU, MR. CHAIRMAN. I'M  
20 LARRY PITTS, PROFESSOR OF NEUROSURGERY AT UC SAN  
21 FRANCISCO, AND FOR THE PAST SEVERAL YEARS WORKED WITH  
22 THE UNIVERSITY OF CALIFORNIA ACADEMIC SENATE AND  
23 SCHOLARLY COMMUNICATION SUBCOMMITTEE.

24           I WANT TO ADDRESS FOUR ISSUES THAT HAVE COME  
25 TO MY COGNIZANCE OVER THE DISCUSSION OF THIS TOPIC, AND

1 THEY' RE SORT OF ACADEMIC IN A SENSE THAT THEY ARE  
2 THINGS THAT FACULTY SHOULD CERTAINLY WORRY ABOUT, AND  
3 THEIRS WERE CONSIDERED WHEN THE ACADEMIC SENATE TOOK  
4 THIS OVERALL TOPIC OF SCHOLARLY COMMUNICATION UNDER ITS  
5 REVIEW AND ISSUES THAT WERE DISCUSSED BY THE FACULTY.

6 THE REVIEW PROCESS THAT BEN CROW MENTIONED  
7 THAT LED THE SENATE TO REQUEST THE PRESIDENT TO  
8 ESTABLISH THIS POLICY OF GRANTING A LICENSE FOR FACULTY  
9 PUBLISHED DOCUMENTS, THE REVIEW PROCESS INVOLVED  
10 PROBABLY FIVE TO 700 FACULTY AND LOOKED AT A SERIES OF  
11 WHITE PAPERS WRITTEN AND THE PROPOSED POLICY, THE  
12 POLICY CHANGE IN TODAY' S CURRENT FORM, VERY WISE  
13 CHANGES. SO IT HAD A LOT OF ACADEMIC REVIEW AND WILL  
14 COME BACK TO ALL THE UNIVERSITIES WHEN AND IF A POLICY  
15 IS PROPOSED BY THE OFFICE OF THE PRESIDENT.

16 THE FOUR TOPICS: POTENTIAL LOSS OF ACADEMIC  
17 FREEDOM, THE TERM POTENTIAL HARM TO JUNIOR  
18 INVESTIGATORS BY THIS OPEN-ACCESS REQUIREMENT, A  
19 QUESTION ABOUT CREATING AUTHENTICITY OF THE WORK IF  
20 THERE IS A PUBLISHER' S VERSION AND AN AUTHOR' S VERSION,  
21 AND POTENTIAL HARM TO SCHOLARLY SOCIETIES AND JOURNALS.

22 THIS LOSS OF ACADEMIC FREEDOM, PLEASE DON' T  
23 TELL ME WHERE TO PUBLISH. WHAT WE ARE NOT REQUESTING  
24 OR REQUIRING A FACULTY TO PRODUCE WORK IN A PARTICULAR  
25 LOCATION. IN FACT, ONE OF THE GAMBITS IS THAT WE ARE

1 ENCOURAGING THE FACULTY TO RETAIN SOME OF THE COPYRIGHT  
2 AS OPPOSED TO THE PAST WHERE THEY ASSIGN THE COPYRIGHT  
3 AWAY TO PUBLISHERS. IMPROVEMENT IN ACADEMIC FREEDOM,  
4 ABILITY TO USE MATERIAL IN A WAY THAT IN THE PAST MAY  
5 HAVE BEEN BLOCKED BY PUBLISHERS OR MAY NOT. SO THERE  
6 WOULD NOT BE A REGULATORY STATEMENT ABOUT LIMITING  
7 PUBLICATION SITE.

8 AS JOHN OBER SAID, 17 OUT OF 18 JOURNALS ON  
9 THE LIST OF STEM CELL PUBLISHERS ARE CURRENTLY ALLOWING  
10 OPEN-ACCESS PUBLISHING WITHIN SIX MONTHS OF THE  
11 PUBLICATION OR ARTICLE.

12 THE OPT-OUT CLAUSE ALLOWS THE AUTHOR TO  
13 REQUEST A WAIVER OF THE REQUIREMENT FOR OPEN-ACCESS  
14 ARTICLE PLACEMENT. FOR THIS INCREASINGLY SMALL NUMBER  
15 OF JOURNALS, DIMINISHING WON'T ALLOW SUCH OPEN ACCESS  
16 OPT OUT FOR THE JUNIOR AUTHOR, BUT THEY CAN CERTAINLY  
17 SEEK THAT.

18 AN INCREASED ACADEMIC FREEDOM TO RETAIN  
19 COPYRIGHT IMPROVES ACADEMIC FREEDOM RATHER THAN HARMING  
20 THE JUNIOR INVESTIGATOR. SENIOR STEM CELL GUYS IN THE  
21 U.S. SAY THAT IF THEY SEND AN ARTICLE TO JOURNAL X AND  
22 THEY DON'T WANT IT, I HAVE NO PROBLEM SENDING IT TO  
23 JOURNAL Y AND THEY WILL TAKE IT. QUESTION IS CAN A  
24 JUNIOR INVESTIGATOR COMMAND SIMILAR ACCESS, AND THE  
25 ANSWER MAY BE NOT IN EVERY CASE.



1                   SO THE UC FACULTY REVIEW PROCESS BASICALLY  
2 DEMANDED THAT THERE BE AN OPT OUT, THAT IF A FACULTY  
3 MEMBER SENT A PAPER TO A LOCATION THAT WOULD NOT ALLOW  
4 OPEN ACCESS, THAT FACULTY MEMBER COULD REQUEST FROM THE  
5 APPROPRIATE BODY A WAIVER FOR THAT PARTICULAR  
6 REQUIREMENT. AND THE FACULTY THOUGHT THAT WAS AN  
7 IMPORTANT OUT FOR JUNIOR FACULTY.

8                   AS WE SAID, THE PUBLICATION IN OPEN ACCESS  
9 JOURNALS IMPROVES CITATION NUMBERS AND USE AND THE  
10 EARLINESS OR THE TIMING WITH WHICH A SCHOLAR'S WORK MAY  
11 BE USED BY OTHER SCHOLARS, IMPROVEMENT TO THE JUNIOR  
12 SCHOLAR'S PEERS KNOWING ABOUT HIS OR HER WORK. AND  
13 THEN IT SPEEDS THIS PROCESS TO OTHER INVESTIGATORS FOR  
14 THEIR OWN WORK AND AVAILABILITY TO ALL INVESTIGATORS,  
15 INCLUDING THE JUNIOR INVESTIGATORS WHOM WE'RE TRYING TO  
16 PROTECT.

17                   AUTHENTICITY OF WORK, WHAT IS THE RIGHT  
18 ARTICLE? THE PRINTED PDF FILE IS THE GOLD STANDARD,  
19 WHAT YOU WOULD EXPECT TO TURN TO, AS OPPOSED TO THE  
20 AUTHOR'S DRAFT AND WHICH DRAFT. THERE CAN BE SEVERAL  
21 ON THE WEB. WHICH ONE DO YOU BELIEVE?

22                   DRAFTS CAN BE DATED, FOUND BY ELECTRONIC  
23 SEARCHES. THERE HAVE BEEN *NEW YORK TIMES* ARTICLES  
24 RECENTLY LOOKING AT UNDERGRADUATE PAPERS THAT ARE DONE  
25 BY SOMEBODY IN MINNEAPOLIS AND MAILED OUT TO SOME

1 STUDENT AT UC SANTA CRUZ. THAT SORT OF PLAGERISM IS  
2 EASY TO FIND. NOW, ONE SERVICE RECEIVES 60,000 PAPERS  
3 A WEEK, BUT PROFESSORS CAN SEARCH AND MAKE A SEARCH ON  
4 THE ORIGINAL REAL POSSIBLE TO SEARCH OUT MATERIAL OR  
5 COPIES. AND BY APPROPRIATELY DATING THAT, THAT SORT OF  
6 CONCERN IS PROBABLY NOT A PROBLEM.

7 AT THIS POINT 75 PERCENT OF JOURNALS ALREADY  
8 ALLOW OPEN ACCESS. THE PHYSICS ARXIVE HAS BEEN  
9 EXTREMELY SUCCESSFUL AT PUTTING VERY IMPORTANT PAPERS  
10 IN PREPUBLICATION. THE JOURNALS RECEIVED COMMENTS FROM  
11 A NUMBER OF PHYSICISTS WHOSE FINAL WORK ACTUALLY  
12 INCLUDED ADJUSTING THE PAPER TO RESPOND TO THOSE  
13 COMMENTS, AND THAT HASN'T HURT PHYSICS ARCHIVE ONE  
14 IOTA.

15 ATTACHMENT ON THE ELECTRONIC SITE WILL ALLOW  
16 FOR MUCH EXPANDED PRESENTATION OF MATERIAL, WHICH  
17 ALLOWS FOR A REAL IMPROVED VERSION OF THE PAPER. ONE  
18 CAN HAVE EXTENDED DATA, COLOR PRESENTATIONS, VIDEOS  
19 WITH MOVING PARTS AND SO FORTH. SO AN ELECTRONIC SITE  
20 HAS A POTENTIAL BENEFIT OVER THE PUBLISHED PDF OF THE  
21 PAPER JOURNALS OR JOURNAL.

22 HARM SCHOLARLY JOURNALS AND SOCIETIES. THE  
23 QUESTION ARISES ABOUT LOSS OF INCOME TO PUBLISHERS OR  
24 SCHOLARLY SOCIETIES. I WOULD POINT OUT THAT AS FAR AS  
25 WE'RE AWARE, THERE ARE NO DATA TO SUPPORT THIS CONCERN.

1 I CAN UNDERSTAND IT, BUT, IN FACT, A LARGE NUMBER OF  
2 JOURNALS ALREADY HAVE BUSINESS MODELS THAT ALLOW OPEN  
3 ACCESS IN THE STEM CELL JOURNALS THAT WE TALKED ABOUT,  
4 AND SO THERE IS NO CONCERN ABOUT POOR DOCUMENTATION  
5 THAT WE CAN POINT TO.

6 ONE OF THE THINGS THAT UC IS DOING FOR THE  
7 POLICY OF THE UNIVERSITY IS GATHER SOME DATA IN A  
8 REASONABLE SCHOLARLY WAY TO ADDRESS THAT CONCERN OF  
9 SOCIETIES AND PUBLISHERS.

10 SO WE THINK THAT OPEN ACCESS HAS ADVANTAGES  
11 TO CIRM'S GOALS OF EXTREME HIGH QUALITY RESEARCH BEING  
12 MADE AVAILABLE WORLDWIDE TO RESEARCHERS AND BROUGHT TO  
13 THE PUBLIC'S BENEFIT AS EARLY AS POSSIBLE. THIS WOULD  
14 PUT CIRM IN MORE OF A LEADERSHIP POSITION IN THIS REALM  
15 OF MAKING RESEARCH DATA AVAILABLE TO A VERY BROAD  
16 POPULATION.

17 AND WE WOULD LIKE TO BELIEVE THAT THIS IS  
18 SOMETHING THAT CIRM COULD DISCUSS, AND WE WOULD BE  
19 INORDINATELY GRATEFUL IF CIRM FELT, AS WE DO, THAT  
20 PUBLIC FUNDED RESEARCH SHOULD BE MADE AVAILABLE TO THE  
21 PUBLIC AND RESEARCHERS WORLDWIDE IN AN OPEN-ACCESS  
22 FASHI ON WITHIN SIX MONTHS OF PUBLI CATION. AND I 'LL  
23 STOP THERE.

24 (A RECESS WAS TAKEN.)

25 CHAIRMAN PENHOET: OKAY. LET'S RECONVENE.

1 OUR NEXT SPEAKER IS ROBERT TJIAN, PROFESSOR AT UC  
2 BERKELEY TO SPEAK ON THE OPEN-ACCESS ISSUE.

3 DR. TJIAN: I DON'T HAVE ANY SLIDES, SO I'M  
4 MUCH LESS PREPARED THAN MY COLLEAGUES WHO JUST  
5 PRESENTED THEIR VIEW. YOU CAN ALL HEAR ME PRETTY WELL  
6 ON THE PHONE. IN A STRANGE WAY I'M HERE TO REPRESENT A  
7 GROUP THAT YOU HAVEN'T HEARD FROM, GRADUATE STUDENTS  
8 AND POST DOCS. AND I DO THIS BECAUSE, IF I LOOK AT  
9 WHAT I BELIEVE WILL BE THE MOST IMPORTANT -- ONE OF THE  
10 MOST IMPORTANT FEATURES OF CIRM IS ITS ABILITY TO  
11 ATTRACT THE VERY BEST PEOPLE TO COME AND ACTUALLY DO  
12 THE EXPERIMENTS. AFTER ALL, WE WHO SPEAK HERE ARE NOT  
13 DOING THE EXPERIMENTS.

14 SO TO ME THE BIGGEST BARRIER TO MAJOR RAPID  
15 PROGRESS IN THE RESEARCH, NEVER MIND THE PUBLICATION OF  
16 RESEARCH, IS THE ATTRACTION OF THE BEST GRADUATE  
17 STUDENTS AND POST DOCS.

18 NOW, GRADUATE STUDENTS AND POST DOCS AND  
19 MYSELF ARGUE THAT OPEN ACCESS IS A WONDERFUL IDEA, AND  
20 WE WISH ALL THE JOURNALS WOULD JUST GET ON WITH IT.  
21 WHAT I'M REALLY POINTING TO IS THE SIX-MONTH GAP  
22 BETWEEN WHAT SOME OF THE JOURNALS ARE WILLING TO DO AND  
23 WHAT WE WOULD LIKE THEM TO DO. AND I WANT YOU TO GET  
24 IN PERSPECTIVE WHAT THE POTENTIAL PROBLEMS ARE FOR THE  
25 STUDENTS.

1                   SO I SURVEYED A LOT OF STUDENTS IN BERKELEY,  
2 NOT JUST FROM MY LAB, BUT I HAVE A FAIRLY LARGE LAB  
3 WITH A REASONABLY GOOD SPREAD. I WAS SURPRISED TO FIND  
4 NOT A SINGLE POST-DOC OR GRADUATE STUDENT THOUGHT IT  
5 WAS A GOOD IDEA TO MANDATE A REQUIREMENT TO LIMIT  
6 CIRM-FUNDED WORK TO BE PUBLISHED ONLY IN CERTAIN TYPES  
7 OF JOURNALS.

8                   NOW, I FULLY UNDERSTAND THAT THERE IS A  
9 PROPOSED OPT-OUT CLAUSE, BUT THERE IS CONFUSION OVER  
10 THE APPLICATION. IF EVERYBODY CAN OPT OUT, IF THEY ALL  
11 OPT OUT, WHY BOTHER WITH THE OPT OUT? LEAVE IT OFF.  
12 WHY CREATE MORE LAYERS OF BUREAUCRACY TO DO SOMETHING  
13 THAT SHOULD REALLY BE EASY? SO I GUESS THAT'S REALLY  
14 MY BIGGEST POINT. I WAS SURPRISED AND SOMEWHAT  
15 DISMAYED THAT NOT A SINGLE ONE OF MY STUDENTS AND  
16 POST-DOCS THOUGHT THIS WAS A GOOD IDEA. I HAD A GROUP  
17 MEETING WITHIN AN HOUR AGO. THEY ASKED ME TO PLEASE  
18 MAKE IT CLEAR THAT THIS WILL HAVE A VERY BIG DAMPENING  
19 EFFECT ON THE ENTHUSIASM FOR CERTAIN OF THESE STUDENTS  
20 TO GET INTO THE FIELD OF STEM CELL BIOLOGY. AND I  
21 THINK THAT WOULD BE DEVASTATING FOR CIRM. THAT'S ONE  
22 ISSUE.

23                   I GUESS THE SECOND ISSUE IS REALLY TIMING. I  
24 THINK REALISTICALLY THEY WILL ALL GO IN THAT DIRECTION  
25 ANYWAY. THAT IS TO SAY, I THINK THE JOURNALS NOT IN

1 LINE WITH THE SIX-MONTH HOLDING PERIOD WILL GET THERE  
2 PROBABLY BEFORE CIRM FUNDING IS ACTUALLY IN PLACE, AND  
3 THE RESEARCH THAT WE'RE DOING WILL ACTUALLY BE  
4 AFFECTED. SO I GUESS I'M -- BECAUSE I REALLY BELIEVE  
5 IN THE OPEN ACCESS IDEA, AND I THINK THAT INFORMATION  
6 THAT WE GENERATE IN OUR RESEARCH SHOULD BE FREELY  
7 AVAILABLE. FREELY IS KIND OF A DIFFICULT THING.  
8 OBVIOUSLY SOMEBODY HAS TO PAY FOR IT, BUT THAT'S A  
9 SEPARATE ISSUE. I REALLY WANT TO FOCUS ON THE  
10 IMPORTANCE OF WHAT I THINK IS GOING TO BE A NEGATIVE  
11 FOR CIRM.

12 AND THE FINAL POINT I'D LIKE TO MAKE, ASIDE  
13 FROM THE RECRUITMENT PROBLEM AND THE TIMING ISSUE, I  
14 DON'T THINK I NEED TO EMPHASIZE THE FACT THAT SCIENCE,  
15 WE ALL WOULD LIKE BIOLOGY TO GO AS FAST AS WE CAN GET  
16 INFORMATION OFF THE INTERNET, BUT THE FACT OF THE  
17 MATTER IS A LOT OF INFORMATION IS GOING TO BE WRONG.  
18 WE'VE HAD SOME DRAMATIC EXAMPLES OF THAT IN THE LAST  
19 YEAR OR TWO. I'M NOT SO SURE THAT RAPID ACCESS IS  
20 NECESSARILY GOING TO BE GOOD. I DON'T THINK WE SHOULD  
21 PUT ANY BARRIERS TO IT, BUT I ALSO THINK IT'S PERHAPS  
22 PREMATURE. I GUESS I FEEL A LITTLE LIKE THE TAIL IS  
23 WAGGING THE DOG HERE, AND THAT OUR FOCUS REALLY OUGHT  
24 TO BE HOW DO WE DO THE BEST RESEARCH RATHER THAN  
25 WORRYING ABOUT WHERE WE'RE GOING TO PUBLISH. THAT'S

1 REALLY MY POINT.

2 CHAIRMAN PENHOET: OKAY. THANK YOU.

3 DR. HALL: CAN I ASK A QUESTION?

4 CHAIRMAN PENHOET: UNLESS THERE ARE SOME  
5 OTHER PEOPLE FROM THE UNIVERSITY WHO WANT TO SPEAK PRO  
6 OR CON, WE'RE UP TO QUESTIONS FROM DR. HALL.

7 DR. HALL: I WANTED TO ASK DR. TJIAN, I  
8 HAVEN'T KEPT UP WITH THIS FOR A WHILE, AND I WAS A  
9 LITTLE SURPRISED TO SEE THE *ELSI VIER* JOURNALS ON THE  
10 LIST. WHAT ARE MAJOR HOLD-UPS FOR DESIRABLE PLACES  
11 THAT STUDENTS LIKE TO PUBLISH AND CAN'T?

12 DR. TJIAN: PART OF THE CONFUSION ACTUALLY  
13 STARTED WHEN I QUIZZED THE STUDENTS, SO THERE'S A LOT  
14 OF CONFUSION. BUT I THINK IT'S PRETTY CLEAR THAT THE  
15 TOP THREE OR FOUR BIG JOURNALS, ALL BUT ONE, *SCIENCE*,  
16 *NATURE*, *CELL*, AND A FEW OTHERS, ARE THE ONES. AND I  
17 SHOULD HAVE MADE THIS POINT. WHY DO THESE STUDENTS  
18 FEEL SO STRONGLY ABOUT IT? I SHOULD HAVE MADE THIS  
19 VERY CLEAR. IT'S OBVIOUS TO THOSE WHO ARE FACULTY, BUT  
20 NOT TO OTHERS. THEIR JOBS ARE ABSOLUTELY DEPENDENT ON  
21 THAT *SCIENCE*, *CELL*, *NATURE* PAPER. I HATE TO SAY THAT.  
22 IT'S A HORRIBLE THING TO SAY. YOU SHOULD BELIEVE THAT  
23 THE FACULTY ARE SMART ENOUGH, WELL, WHAT JOURNALS WILL  
24 LOOK AT THE CONTENT OF THE PAPER. BUT THE FACT OF THE  
25 MATTER IS, WHEN THE SEARCH COMMITTEE HAS 500

1 APPLICATIONS, YOU ARE NOT GOING TO READ ALL THE PAPERS.  
2 YOU LOOK AT THE PUBLICATION LIST TO SEE HOW MANY HAVE  
3 *SCIENCE, CELL, NATURE* PAPERS. YOU LOOK AT THE FINAL  
4 LIST, AND THEN YOU ARE GOING READ THEIR PAPERS. SO  
5 THAT'S WHAT CONCERNS THEM THE MOST.

6 DR. PITTS: THE RESPONSE THAT THE STUDENTS  
7 HAD, I THINK MORE OFTEN THAN NOT, COMES FROM LACK OF  
8 UNDERSTANDING. I THINK THERE REALLY IS A LOT OF  
9 CONFUSION IN THE FACULTY WHO IN THE TIME-HONORED PAST  
10 WRITE AN ARTICLE, SIGN OFF ON THE PAPER, GIVE THE PAPER  
11 AWAY, STOP THINKING ABOUT IT. THAT'S EASY AND  
12 HISTORICALLY GOOD.

13 WHEN YOU LOOK AT DATA -- AND THIS IS A  
14 QUESTION I WOULD POSE TO YOUR STUDENTS -- WHEN YOU LOOK  
15 AT THE DATA THAT SHOWS HOW MUCH MORE THE MATERIAL IS  
16 CITED AND USED, EVEN OPEN ACCESS DEFINED AS SIX MONTHS  
17 WITHIN PUBLICATION, WHEN YOU DEFINE IT THAT WAY AND YOU  
18 SHOW THE JUNIOR INVESTIGATOR THAT YOUR STUFF GETS OUT  
19 THERE BETTER THAN IF YOU DON'T HAVE IT IN OPEN ACCESS,  
20 I WOULD BE CURIOUS TO KNOW WHAT THE RESPONSE TO THAT  
21 WOULD BE.

22 DR. TJIAN: WE DISCUSSED -- THE STATISTICS  
23 THAT YOU'VE SHOWN IS VERY ENCOURAGING, THAT OPEN ACCESS  
24 ACTUALLY HAS A TANGIBLE POSITIVE EFFECT, WHICH IS YOU  
25 DO GET MORE EXPOSURE. BUT THE BOTTOM LINE IS THAT, YOU



1 KNOW, I'M NOT GOING TO NAME ANY SPECIFIC JOURNALS, NOT  
2 PUBLISHING IN THE TOP FOUR OR FIVE JOURNALS, NOBODY IS  
3 GOING TO ASK YOU TO LOOK AT WHAT THE CITATION INDEX  
4 SAYS. IT'S VERY CLEAR THAT BOTH IN THE MINDS OF  
5 FACULTY WHO ARE MAKING THE SELECTIONS AND, MORE  
6 IMPORTANTLY, IN THE MINDS OF THE STUDENTS AND  
7 POST-DOCS, THEY KNOW IF THEY DON'T GET THEIR PAPERS  
8 INTO THE TOP SEVERAL JOURNALS, THEY'RE AT A BIG  
9 DISADVANTAGE.

10 NOW, YOU CAN SAY WE REALLY OUGHT TO CHANGE,  
11 THAT THE SELECTION PROCESS IS FLAWED. I AGREE IT IS,  
12 BUT I HAVE YET TO BE ABLE TO GET A FACULTY SEARCH  
13 COMMITTEE TO READ ALL THEIR PAPERS.

14 DR. PITTS: BUT THE LISTING UP THERE PRETTY  
15 MUCH HAS IMMEDIATE OPEN ACCESS FOR ALL OF THE JOURNALS  
16 YOU JUST NAMED --

17 DR. TJIAN: NOT REALLY.

18 DR. PITTS: -- WITHIN SIX MONTHS. THE ONLY  
19 ONE ON THAT LIST THAT DOESN'T ALLOW OPEN ACCESS WITHIN  
20 SIX MONTHS IS *STEM CELLS* THAT ALLOWS IT IN A YEAR. SO  
21 JUST AS -- AND I WORRY THAT THE CONCERN OF THE JUNIOR  
22 INVESTIGATOR WHO IS NOT VERY FAMILIAR WITH THIS IS  
23 REALLY A LACK OF KNOWLEDGE RATHER THAN DISAGREEMENT  
24 WITH THE POLICY.

25 DR. TJIAN: THESE GUYS ARE REALLY FAST AT THE

1 COMPUTER. AS SOON AS I POSE THE QUESTION TO THEM, THEY  
2 ASK ME WHICH ONES CAN WE DO. I DON'T ACTUALLY  
3 REMEMBER, YOU'D HAVE TO GO LOOK ON THEIR SITE. SO THEY  
4 DID. AFTER THEY LOOKED AT IT ON THEIR SITE, THEY CAME  
5 BACK TO ME AND SAID BAD IDEA. I DON'T KNOW WHAT TO  
6 TELL YOU. I DO THINK THERE'S CONFUSION. THERE'S  
7 CONFUSION IN MY OWN MIND.

8 DR. HALL: WHAT ARE THE SPECIFIC JOURNALS?  
9 I'D BE CURIOUS ABOUT THAT.

10 DR. TJIAN: I THINK THAT IT'S THE TOP FEW  
11 JOURNALS PRIMARILY, BUT I ALSO THINK THAT -- AND WE  
12 DIDN'T GET INTO THIS AS MUCH WITH THE GRADUATE STUDENTS  
13 AND POST-DOCS -- THIS ISSUE WHICH WE KIND OF WENT OVER  
14 ABOUT THE FREEDOM TO CHOOSE, I THINK, HAS MORE WEIGHT  
15 THAN YOU MIGHT BELIEVE FOR THEM.

16 CHAIRMAN PENHOET: NONE OF THEM HAVE THE  
17 PUBLISHER'S VERSION.

18 DR. TJIAN: I GUESS THE COUNTER ARGUMENT TO  
19 THE AUTHOR'S VERSION IS I THINK IT'S BEEN COMMON  
20 PRACTICE IN BIOLOGY AT LEAST FOREVER. I CAN REMEMBER  
21 IF ANYBODY ASKED ME FOR A PREPRINT AFTER MY PAPER IS IN  
22 PRESS, I'D SEND IT. DIDN'T MATTER WHAT IT WAS. I  
23 THINK THAT'S IN PRACTICE TRUE IRRESPECTIVE OF WHAT THE  
24 JOURNALS DO OR DON'T. SINCE OUR E-MAIL IS RIGHT UP  
25 FRONT WITH THE PUBLISHED DATA, I DON'T THINK THAT IS A

1 BARRIER. IF ANYBODY IN THIS ROOM WANTED TO ACCESS A  
2 PAPER OF MINE IN PRESS BEFORE IT ACTUALLY CAME OUT,  
3 THEY' D GET IT. SO I DON' T THINK THERE' S A PROBLEM.

4 CHAIRMAN PENHOET: THEY' D HAVE TO KNOW WHO  
5 YOU WERE.

6 DR. TJIAN: THEY DON' T HAVE TO KNOW ME; KNOW  
7 MY E-MAIL.

8 MR. REED: I' M A HUNDRED PERCENT IN FAVOR OF  
9 OPEN ACCESS, BUT I HAVE TWO CONCERNS. NO. 1, WHAT  
10 WOULD BE THE COST TO THE CIRM? OUR MONEY IS JEALOUSLY  
11 GUARDED. ARE WE EXPECTED TO PAY THE FEES FOR ALL OF  
12 THIS? AND THAT' S SOMETHING I WANT TO KNOW.

13 SECONDLY, THE 500-WORD, PEOPLE MENTIONED THE  
14 500-WORD SUMMARY. IT WAS NEVER INTENDED TO BE A  
15 SCIENTIFIC DEVICE. THAT WAS SO THAT THE PUBLIC COULD  
16 HAVE A GENERAL IDEA OF WHAT' S GOING ON. SO IT' S A GOOD  
17 THING. IT WAS NOT INTENDED FOR THAT. BUT THE OPEN  
18 ACCESS WITHIN 12 MONTHS AFTER THE DATE OF THEIR  
19 PUBLICATION, THAT WOULD -- THAT WOULD MAKE THE  
20 INFORMATION AVAILABLE TO EVERYBODY AND STILL ALLOW THEM  
21 TO MAKE THEIR KILL AS AN INTELLECTUAL.

22 DR. TJIAN: I' M NOT EVEN SURE THEY WORRY  
23 ABOUT THE 12 MONTHS. THEY JUST WANT TO HAVE NO BARRIER  
24 TO BEING ABLE TO PUBLISH ANYWHERE WITHOUT FEELING SOME  
25 CONSTRAINTS ABOUT THEIR ABILITY TO PRESENT THEIR DATA

1 IN THE MOST HIGH IMPACT FORUM THAT THEY CAN FIND, AND  
2 THAT FORUM CHANGES OVER TIME. JOURNALS COME AND GO.  
3 BUT THAT'S THE SENSE THAT I GOT.

4 CHAIRMAN PENHOET: I GUESS THE QUESTION I  
5 HAVE FOR THOSE OF YOU WHO ARE ON THE UCOP IS WHEN YOU  
6 SAY THIS IS GOING TO BE UNIVERSITY POLICY, BUT PEOPLE  
7 CAN OPT OUT, WHO POLICES THIS? IS THERE GOING TO BE --  
8 IS THERE ANY SANCTION FOR A PROFESSOR WHO DOES NEITHER  
9 AND CONTINUES TO DO WHATEVER? WHAT ARE THE TEETH?

10 DR. PITTS: THAT'S AN ISSUE TO BE RESOLVED,  
11 AND I'M NOT SURE THAT THERE WILL BE SPECIFIC TEETH TO  
12 THIS IN TERMS OF FACULTY. AS FAR AS MISCONDUCT  
13 HYPOTHETICALLY AND THE KIND OF ROUTE YOU ARE GOING WHEN  
14 YOU TALK ABOUT BREAKING POLICY AND SOME TEETH, I THINK  
15 THAT THE OPT OUT AND THE POLICING AND SO FORTH WOULD BE  
16 MANAGED ON PROBABLY A CAMPUS-BY-CAMPUS BASIS WITH SOME  
17 SUBSTANTIAL HELP FROM THE DIGITAL LIBRARY PART OF THE  
18 UC THAT HANDLES THIS. WE THINK THAT A LOT OF THIS CAN  
19 BE HANDLED LARGELY ELECTRONICALLY. CONGRATULATIONS FOR  
20 GETTING YOUR ARTICLE IN WHATEVER OPEN ACCESS IN SIX  
21 MONTHS KIND OF THING. SO THAT WE TRY TO TAKE -- INTEND  
22 AS MUCH AS POSSIBLE TO TAKE THE ONUS OFF THE INDIVIDUAL  
23 INVESTIGATORS.

24 THE POINT ABOUT SOMEBODY MAY WRITE ME FOR A  
25 PREPRINT, IT'S THE AUTHOR'S VERSION, HOPEFULLY IN THE

1 LAST VERSION THAT WAS EDITED TO GO TO THE JOURNAL.  
2 IT'S AN ADMINISTRATIVE BURDEN ON THE RESEARCHER TO  
3 ANSWER ALL THE E-MAIL. THERE'S A WIDESPREAD  
4 POSSIBILITY IN A PLACE WHERE THAT COULD BE DONE MUCH  
5 MORE BROADLY BY THE RESEARCHERS WHO DON'T KNOW YOUR  
6 E-MAIL ADDRESS, DON'T GET BACK IN TOUCH WITH YOU.

7 THE TEETH ISSUE IS AN INTERESTING ISSUE  
8 BECAUSE WE'RE TRYING TO DO GOOD WITHOUT DOING HARM. MY  
9 GUESS IS THIS IS NOT A MAJOR ISSUE FOR FACULTY, THE  
10 MISCONDUCT TEETH, FOR NOT DOING THIS.

11 CHAIRMAN PENHOET: WHAT TROUBLES ME IS THAT  
12 YOU MAY BE ASKING US TO DO SOMETHING YOU'RE NOT WILLING  
13 TO DO FOR YOURSELF. IN THE UNIVERSITY OF CALIFORNIA IF  
14 YOU WANT TO HAVE A STRONGER POLICY THAN THE UNIVERSITY  
15 IS WILLING --

16 DR. PITTS: POLICY IS THE SAME.

17 CHAIRMAN PENHOET: YOU ARE RECOMMENDING,  
18 THEN, THAT WE HAVE A -- WE HAVE POLICIES WHICH ARE LAW,  
19 OTHER POLICIES WHICH BASICALLY EXHORT PEOPLE TO DO THE  
20 RIGHT THING.

21 DR. PITTS: REGULATIONS AND SORT OF REQUESTS  
22 BASICALLY. THE REQUEST ROUTE, I THINK, IS NOT THE WAY  
23 TO GO. THE SPECIFIC ISSUE THAT I WOULD CITE TO SUPPORT  
24 MY FEELING IS THAT THE NIH WAS GOING TO BE SIX-MONTH  
25 MANDATORY OPEN ACCESS FOR FUNDED RESEARCH, BACKED AT

1 THE BEHEST OF THE PUBLISHERS AND SCHOOL SOCIETIES, TO  
2 12 MONTHS VOLUNTARY. AND RIGHT NOW THE NIH STILL  
3 EXHORTS PEOPLE. FOR OPEN ACCESS, A 6-PERCENT TAKE RATE  
4 ON THE VOLUNTEERISM APPROACH IS NOT A GOOD WAY TO GO IF  
5 YOU ARE SERIOUS ABOUT GETTING THE MATERIAL INTO OPEN  
6 ACCESSIBLE PLACES. SO I THINK THAT A REGULATION AND  
7 CALIFORNIA UC POLICY, CERTAINLY THERE'S NOT A POLICY  
8 AGAINST DOING THAT NOW AT UC, BUT A POLICY THAT MAKES  
9 IT MUCH MORE STANDARD AND ROUTINE, I THINK, WILL  
10 FACILITATE THIS SUBSTANTIALLY, BOTH FOR UC AND, I  
11 THINK, VERY HELPFUL FOR CIRM AS WELL.

12 MR. ROTH: READY FOR COMMENTS?

13 CHAIRMAN PENHOET: YEAH, PLEASE.

14 MR. ROTH: MY RESPONSE WOULD BE THE  
15 FOLLOWING, THAT THE PRESENTATIONS LARGELY OUTLINE THAT  
16 THE MARKETPLACE IS EFFECTIVELY DEALING WITH THIS. 75  
17 PERCENT OF ALL THE JOURNALS, 17 OF 18 OF THE STEM CELL  
18 JOURNALS, ARE ALREADY ADOPTING POLICIES, WHICH MEANS  
19 THAT IT'S GOING TO HAPPEN. AND I'M NOT REALLY SURE WHY  
20 CIRM, FOLLOWING YOUR COMMENT, SHOULD BE MANDATING  
21 SOMETHING THAT EVEN THE NIH FOUND REASONS TO BACK OFF  
22 OF. YOU CAN SAY IT'S BECAUSE OF THE LOBBYING OF  
23 JOURNALS.

24 BUT THE SECOND COMMENT WOULD BE I'M WORRIED  
25 ABOUT THE BUSINESS MODEL THAT THIS TYPE OF POLICY WILL

1       EVENTUALLY LEAD TO. WE KNOW WHAT THE BUSINESS MODEL IS  
2       ON PUBLICATION, AND THAT'S RESULTED IN A VERY HIGH  
3       QUALITY GROUP OF JOURNALS THAT THE SCIENTISTS CAN  
4       DEPEND ON. THEY HAVE BEEN PEER REVIEWED, HANDLED IN A  
5       VERY UNDERSTANDING WAY.

6                SO WE START WITH A POLICY OF 12 MONTHS OR SIX  
7       MONTHS, BUT I THINK THE SLIPPERY SLOPE IS WHY NOT ONE  
8       MONTH OR ONE DAY OR DAY OF. AND THEN WHAT IS THE  
9       BUSINESS MODEL? THE WAY THE NEWSPAPERS AND OTHER  
10      PUBLICATIONS HAVE DEALT WITH THIS IS THROUGH AN  
11      ADVERTISING AND PROMOTION MODEL. SO IF YOU EXPECT THAT  
12      DOWN THE ROAD THE WAY THESE QUALITY REVIEWS WOULD  
13      TAKE PLACE WILL BE ADVERTISED AND PROMOTION, THEN YOU  
14      SHOULD MOVE IN THAT DIRECTION. I'M NOT FULLY READY TO  
15      SAY THAT'S THE RIGHT THING TO DO.

16               SO FINALLY, MY RECOMMENDATION TO THE CIRM  
17      WOULD BE THAT WE TAKE A POSITION OF SUPPORTING OPEN  
18      ACCESS, BUT NOT TAKE A POLICY ON OPEN ACCESS.

19               DR. BRYANT: SO I'M IN THE SAME AREA AS DUANE  
20      ON THIS ONE MOSTLY BECAUSE I THINK IF WE REQUIRE OPEN  
21      ACCESS, THAT MEANS THAT PEOPLE WORKING ON STEM CELLS  
22      WITH CIRM FUNDING CANNOT PUBLISH IN *NATURE* OR *SCIENCE*  
23      OR A COUPLE OF OTHER JOURNALS.

24               DR. HALL: POINT OF FACT HERE.

25               DR. BRYANT: ACCORDING TO THIS TABLE HERE,

1 THE TABLE THAT WAS IN THE HANDOUT FROM THE FIRST TALK,  
2 SHOWS *NEURON* AND ALL THE *NATURE* JOURNALS AND *SCIENCE*,  
3 THERE IS NO TIME WHEN YOU CAN HAVE OPEN ACCESS FROM THE  
4 PUBLISHER'S VERSION, WHICH IS THE ONE THAT PEOPLE WOULD  
5 WANT ANYWAY. THAT'S THE ONE THAT'S THE AUTHENTIC  
6 VERSION. SO I AM ACTUALLY CONCERNED THAT IF THAT IS  
7 THE CASE, THEN I THINK WE NEED TO BACK OFF AND STRONGLY  
8 RECOMMEND WHENEVER POSSIBLE TO PUBLISH IN OPEN ACCESS  
9 JOURNALS AND TO MAKE THE ARTICLES AVAILABLE AS SOON AS  
10 ALLOWED BY THE JOURNAL IN A PUBLIC PLACE. BUT TO  
11 REQUIRE IT COULD ACTUALLY BE A PROBLEM FOR SOME PEOPLE,  
12 AND I AGREE WITH THE SPEAKER FROM SAN FRANCISCO. I  
13 THINK THAT'S WHO IT WAS, BERKELEY. I JUST THINK,  
14 ESPECIALLY SINCE THESE ARE THE LEADING JOURNALS IN OUR  
15 FIELD, AND UNFORTUNATELY THEY DO HAVE THAT CACHE OF  
16 REVIEWERS WHO LOOK DOWN A LIST OF PUBLICATIONS AND SEE  
17 HOW MANY OF THE TOP IMPACT PAPERS THERE ARE. IT'S THE  
18 TOP IMPACT JOURNALS THAT HAVE THIS POLICY OF STINGY  
19 OPEN ACCESS, I'LL CALL IT.

20 MR. OBER: CLARIFICATION. JOHN OBER, AGAIN,  
21 UC. POINT OF CLARIFICATION. TO THE EXTENT THAT THE  
22 NIH ACTIONS ARE A USEFUL COMPARISON POINT, THE NIH  
23 VOLUNTARY POLICY GOT POOR UPTAKE. AND WHEN FACULTY  
24 RESEARCHERS WERE SURVEYED, IT WAS LESS BECAUSE OF ANY  
25 PRINTED OBJECTION AND MORE BECAUSE, WITHOUT A



1 REQUIREMENT, THEY JUST DIDN'T TAKE THE TIME. AND IF  
2 YOU LOOKED AT THAT EVIDENCE THAT SHOWED THAT 81 PERCENT  
3 OF RESEARCHERS WOULD WILLINGLY COMPLY, THAT SUGGESTS  
4 WHAT, IN FACT, IS NOW HAPPENING WITH THE NIH POLICY,  
5 WHICH IS THAT THE BOARD OF TRUSTEES FOR THE NIH  
6 RECOMMENDED THAT THE POLICY BE CHANGED TO A MANDATORY  
7 POLICY.

8 AND CONGRESS IN THE CURRENT PROPOSITION,  
9 BILL, HAS LANGUAGE CONNECTED TO THE PROPOSITION FOR THE  
10 NIH THAT WOULD MAKE THE POLICY A REQUIRED POLICY AS  
11 WELL. IN FACT, THE NIH POLICY GOT STARTED AS A REQUEST  
12 FROM CONGRESS. SO THERE IS SOME EVIDENCE THAT THE NIH,  
13 AT LEAST OTHER AGENCIES LIKE THE UK MEDICAL RESEARCH  
14 COUNCIL, THAT UNDERSTAND THAT MAKING IT A REQUIREMENT,  
15 ESPECIALLY GIVEN THE PUBLISHER'S WILLINGNESS TO GO  
16 ALONG WITH THIS, IS A WAY TO AMALGAMIZE THE CONTENT AND  
17 TO ENCOURAGE DEPOSIT. AND THAT'S THE POINT OF IT.

18 CHAIRMAN PENHOET: JUST A REMINDER. WE ARE  
19 NOT SEEKING TO MAKE A DECISION ABOUT THIS TODAY. IT'S  
20 MORE INPUT. ANYBODY ELSE? JOHN SIMPSON.

21 MR. SIMPSON: VERY QUICKLY. IN ALL OF THIS  
22 DISCUSSION, I THINK YOU'RE FORGETTING ONE THING.  
23 TAKING THE TAXPAYER'S \$6 BILLION GOING INTO THIS, THEY  
24 WANT TO BE ABLE TO READ THE RESULTS QUICKLY AND  
25 PROMPTLY. YOU'VE GOT TO COME UP WITH SOME KIND OF OPEN

1 ACCESS FOR THAT REASON. I DON'T CARE ABOUT THE  
2 INTERNAL ACADEMIC DEBATE. THE TAXPAYERS ARE PAYING FOR  
3 IT, AND THEY OUGHT TO BE ABLE TO SEE IT.

4 DR. HALL: I HAVE A LETTER HERE THAT WAS  
5 RECENTLY CALLED TO MY ATTENTION DATED JUNE 20TH TO DR.  
6 ARLENE CHIU FROM HENRY LESTER AT CALTECH. IT JUST  
7 SAYS -- I'LL SUMMARIZE. THERE IS LITTLE ENTHUSIASM FOR  
8 THE PROPOSAL AMONG THE GENERAL CALTECH FACULTY MOSTLY  
9 ON THE BASIS OF GRANT FUNDING. I'LL PUT THAT IN THE  
10 RECORD SINCE WE DID RECEIVE THAT OPINION.

11 I ALSO HAVE A QUESTION ABOUT WHETHER THE  
12 SPECIAL PROGRAMS GRANTING AGENCY THAT RUNS WITHIN THE  
13 UNIVERSITY OF CALIFORNIA, WHERE DO THEY STAND WITH  
14 REGARD TO THIS, BREAST CANCER, FOR TOBACCO RESEARCH,  
15 FOR AIDS? WHAT DO THEY REQUIRE OF THEIR GRANTEEES? DO  
16 THEY HAVE THE EXPERIENCE WITH IT?

17 DR. PITTS: I DON'T THINK THAT THERE IS A  
18 SPECIFIC POLICY IN THAT GROUP, SO I DON'T THINK THAT  
19 THEY'RE ANY DIFFERENT FROM THE GENERAL UNIVERSITY  
20 PUBLICATION.

21 DR. HALL: WILL THEY THEN FOLLOW THE POLICY?

22 DR. PITTS: IF THE UNIVERSITY OF CALIFORNIA  
23 ADOPTS THE POLICY, THEN THEY WOULD, AT LEAST FOR UC  
24 FACULTY MEMBERS, AND THEN WOULD HAVE TO CONSIDER THE  
25 INTERNAL MATTER WHETHER THEY EXTENDED THAT TO NON-UC,

1 TO FUNDED RESEARCH THAT THEY DID OUTSIDE THE  
2 UNIVERSITY.

3 DR. HALL: UC FUNDING, THE UC-RUN GRANTING  
4 PROGRAM DOES NOT REQUIRE IT AT PRESENT AND MAY NOT; IS  
5 THAT RIGHT?

6 DR. PITTS: THEY MAY NOT. I DON'T THINK IT'S  
7 BEEN DISCUSSED, SO I THINK THERE'S NO ANSWER TO THAT  
8 QUESTION.

9 DR. PRIETO: QUESTION HERE.

10 CHAIRMAN PENHOET: PLEASE GO AHEAD.

11 DR. PRIETO: COMMENT, I SUPPOSE, THAT I THINK  
12 THAT WE NEED TO REMEMBER THAT SHARING OUR BROAD  
13 DISSEMINATION OF RESEARCH RESULTS AND TRANSPARENCY IS  
14 THE BEDROCK OF THE PRINCIPLES OF CIRM THAT THE ICOC HAS  
15 PUT IN PLACE.

16 BUT I STILL HAVE A COUPLE OF QUESTIONS FOR  
17 DR. PITTS OR OTHER SPEAKERS ABOUT THE GRADUATE STUDENTS  
18 REGARDING, I THINK, ED, YOU ASKED THIS QUESTION, BUT I  
19 DIDN'T HEAR AN ANSWER. UNDER THIS MODEL, WHAT BODY  
20 WOULD DECIDE ABOUT THE OPT OUT? IS THAT SOMETHING THAT  
21 THE CIRM WOULD DELEGATE TO THE INSTITUTION OR SOMETHING  
22 THAT WE WOULD HAVE TO HAVE STAFF TO DO?

23 THE OTHER SORT OF COMMENT I HAVE IS THAT IT  
24 SEEMS TO ME OPEN ACCESS IS BECOMING THE STANDARD, AND  
25 PERHAPS WE SHOULD PUSH THAT A LITTLE BIT. IF WE SAY

1 THAT'S OUR EXPECTATION AND OUR REGULATIONS AND JUST BY  
2 THE FACT OF OUR SIZE OR THE AMOUNT OF MONEY THAT WE'RE  
3 PUTTING INTO THE FIELD, THAT I THINK WE WILL TEND TO  
4 MOVE THINGS IN THAT DIRECTION.

5 DR. BRYANT: I THINK IF NIH WERE ALSO -- IF  
6 IT'S TRUE THAT NIH IS ABOUT TO MAKE THIS DECISION, THEN  
7 I WOULD COMPLETELY AGREE WITH YOU BECAUSE THEN WE'D  
8 HAVE THE FUNDING SOURCES PRETTY MUCH COVERED. BUT I  
9 THINK -- I JUST DON'T THINK AT THIS POINT IT WOULD BE  
10 ATTRACTIVE TO JUNIOR GRADUATE STUDENTS AND POST-DOCS,  
11 ESPECIALLY THE ONES WHO HAVE HIGH ASPIRATIONS. THEY  
12 WOULD NOT WANT THIS POLICY AND FEEL, I THINK ALREADY DO  
13 FEEL, THAT WOULD HARM THEM. AND IT COULD BECAUSE OF  
14 THE WAY PEOPLE LOOK AT PUBLICATIONS RIGHT NOW.

15 DR. PRIETO: FOLLOW-UP THEN. HOW FOR THOSE  
16 BODIES, THE NRC IN THE UK AND OTHERS THAT DO HAVE AN  
17 OPT OUT, HOW IS THIS BEING HANDLED NOW? AND HOW OFTEN  
18 DOES IT REALLY COME UP? DO PEOPLE OPT OUT FREQUENTLY  
19 AND IS IT ONEROUS?

20 CHAIRMAN PENHOET: WE'LL DO SOME HOMEWORK AND  
21 FIND OUT. WE WILL CONTINUE THIS DISCUSSION ON SOME OF  
22 THESE ISSUES. THAT'S A QUESTION WE CAN GET ANSWERS  
23 FOR. I DON'T THINK WE HAVE THEM TODAY.

24 DR. HALL: SUSAN, ONE QUESTION ABOUT YOUR  
25 COMMENTS. SUSAN, LET ME UNDERSTAND. I'M LOOKING AT

1 THIS GRAPH 16 OF 18 JOURNALS ALLOW SOME SORT OF OPEN  
2 ACCESS WITHIN SIX MONTHS. ON THAT IT SAYS ALL THE HIGH  
3 PROFILE JOURNALS WILL ALLOW EITHER AN AUTHOR'S VERSION  
4 OR PUBLISHER'S VERSION. *STEM CELL* IS THE ONLY ONE THAT  
5 DOESN'T.

6 CHAIRMAN PENHOET: THE HIGH PROFILE ONES ARE  
7 ALL THE AUTHOR'S VERSION.

8 DR. HALL: HIGH PROFILE ONES FOR *NATURE*, SO  
9 YOUR OBJECTION, THEN, IS REALLY THAT YOU THINK IT'S NOT  
10 THE RIGHT THING FOR AUTHORS TO PUT A VERSION ON BEFORE  
11 PUBLICATION THAT'S NOT THE OFFICIAL VERSION; IS THAT  
12 RIGHT? IS THAT WHAT THE PUBLISHER'S VERSION BOILS DOWN  
13 TO BECAUSE IF YOU COMPLY BY THE RULES, AS I UNDERSTAND  
14 THEM, ALL OF THESE WOULD BE AVAILABLE. THE ONLY  
15 DIFFERENCE WOULD BE THAT SOME OF THEM ARE AUTHOR'S  
16 VERSION UNTIL THE SIX MONTHS AND NOT THE PUBLISHER'S  
17 VERSION. SO IT'S THAT DISTINCTION THAT YOU ARE  
18 OBJECTING TO; ISN'T THAT RIGHT?

19 DR. BRYANT: YES. I DON'T THINK THE AUTHOR'S  
20 VERSION, THOUGH INFORMATIONAL, BUT IT'S NOT  
21 NECESSARILY -- NOBODY IS GOING TO CHECK THAT IT'S THE  
22 SAME VERSION.

23 DR. HALL: SOMEBODY SAY NOT GOING TO PUBLISH  
24 IN *NATURE* THE AUTHOR'S VERSION, PEOPLE WILL REALLY DO  
25 THAT?

1 DR. BRYANT: NO. NO. I WOULDN'T INHIBIT  
2 PEOPLE FROM --

3 DR. HALL: THEN THE RULE WOULD MAKE NO  
4 DIFFERENCE.

5 DR. BRYANT: PEOPLE WOULD BE AFRAID IF THEY  
6 COULDN'T.

7 DR. HALL: THAT'S OKAY. YOU WOULD STILL  
8 NOT -- I COULDN'T IMAGINE A STUDENT SAYING I'M NOT  
9 GOING TO PUBLISH IN *NATURE*. I DON'T WANT MY AUTHOR'S  
10 VERSION -- I DON'T WANT THE PUBLISHER'S VERSION TO GO  
11 ONLINE. THIS IS SIMPLE BY THE RULES WE'RE PROPOSING.

12 DR. BRYANT: THE AUTHOR'S VERSION. I THOUGHT  
13 YOU WERE PROPOSING THAT. I'M SORRY THEN. IF IT'S THE  
14 AUTHOR'S VERSION, IT SHOULD BE ALLOWABLE FOR OPEN  
15 ACCESS.

16 DR. HALL: THAT IS OPEN ACCESS BY THE  
17 DEFINITION WE'VE BEEN TALKING ABOUT HERE. OPEN ACCESS  
18 WOULD INCLUDE 17 OF THE 18 TOP JOURNALS AND NOT INCLUDE  
19 *STEM CELL*. THERE ARE JOURNALS THAT I KNOW ABOUT AND  
20 RECOGNIZE. THE *JOURNAL OF CELL BIOLOGY*, I DON'T KNOW  
21 WHERE THEY STAND. THEY MAY BE OUTLIERS ON THIS, BUT  
22 ACTUALLY I'M, NOT HAVING LOOKED AT THIS FOR A WHILE,  
23 IMPRESSED BY HOW MANY OF THE PUBLISHING HOUSES HAVE  
24 COME AROUND TO THIS. AND I THINK -- I DON'T -- I CAN  
25 UNDERSTAND THIS THING ABOUT I THINK I OUGHT TO BE ABLE

1 TO PUBLISH WHERE I WANT. AS A PRACTICAL MATTER, IF WE  
2 HAD THIS POLICY, IT WOULDN'T STOP SOMEBODY IN YOUR LAB  
3 PUBLISHING IN ANY ONE OF 17 JOURNALS. IT'S A PRETTY  
4 GOOD LIST.

5 DR. BRYANT: YOU'RE RIGHT. I THOUGHT YOU  
6 WERE TALKING ABOUT JOURNALS WHERE THE PUBLISHERS PUT  
7 THEIR VERSION ONLINE.

8 UNIDENTIFIED SPEAKER: IF THERE'S NO TEETH,  
9 WE DON'T NEED A RULE ANYWAY BECAUSE IT'S DOABLE NOW.  
10 WHY PUT A RULE IN SINCE WE --

11 DR. HALL: WE DON'T NEED A RULE. IT IS THE  
12 ISSUE THAT WE HEARD BEFORE, THAT WE HAVE SOME SORT OF  
13 SENSE OF RESPONSIBILITY TO THE PUBLIC OF ENCOURAGING  
14 PEOPLE TO DO THIS. SORT OF BEING ON THE SIDE, I THINK  
15 MOST OF US FEEL THAT ULTIMATELY, AS YOU SAID, IT'S  
16 GOING TO HAPPEN AND IT'S A GOOD THING. QUESTION IS  
17 WHETHER WE WOULD PUSH IT ALONG A LITTLE BIT FASTER IF  
18 CIRM WERE TO TAKE A POSITION. THE PENALTY FOR THAT  
19 WOULD BE THE TEETH. WE CAN WRITE SOMETHING INTO OUR  
20 RULES NOW THAT WE'RE EITHER GOING TO IGNORE LATER,  
21 WHICH DOESN'T SEEM VERY RIGHT, OR JUST WAIT A LITTLE  
22 WHILE AND LET THINGS SETTLE DOWN. WE'RE REALLY ARGUING  
23 ABOUT SIX MONTHS DIFFERENCE OR NO DIFFERENCE RIGHT NOW.  
24 AND JUST I THINK WE HAVE ENOUGH LAYERS OF BUREAUCRACY  
25 HERE, THAT WE SHOULDN'T BE LOOKING FOR NEW WAYS OF

1       ADDING MORE.

2                   CHAIRMAN PENHOET:   OKAY.   UNLESS THERE' S ANY  
3       FINAL URGENT COMMENT.

4                   DR. PITTS:   ONE POINT OF CLARIFICATION.  
5       THERE' S A QUESTION THAT WAS RAISED THAT MADE ME  
6       CONCERNED.   THE ASKER OVER THE PHONE WAS CONCERNED  
7       ABOUT PEER REVIEW AND QUALITY OF PUBLICATIONS GOING TO  
8       A NEWSPAPER MODEL AND SO FORTH.   THIS POLICY TALKS  
9       ABOUT POSTPUBLICATION OPEN-ACCESS PLACEMENT WHEN THE  
10      PUBLICATIONS ARE IN THE HIGH QUALITY PEER REVIEWED  
11      JOURNALS.   THAT PROCESS HAS NOT CHANGED ONE IOTA.  
12      THERE HAS BEEN NO RECOMMENDATION THAT IT BE CHANGED.  
13      IT IS A REQUEST THAT THOSE THEN BE MADE IN OPEN ACCESS  
14      AFTER PUBLICATION.   AND AS THE CHART THAT WE HAVE HERE  
15      THAT SHOWS THE JOURNALS, A LOT OF THOSE ALREADY DO IT  
16      OR WILL DO IT WITHIN SIX MONTHS.   AND SO WE' RE NOT  
17      CHANGING PEER REVIEW; WE' RE NOT CHANGING THE QUALITY IN  
18      ANY WAY.   IT' S NOT INTENDED.   WE ABSOLUTELY DO NOT  
19      DESIRE THAT.   SO IT' S REALLY JUST PUTTING IT IN A PLACE  
20      THAT' S ACCESSIBLE FOR THE PUBLIC AND THE RESEARCH  
21      WORLD.

22                  MR. ROTH:   I UNDERSTAND THAT COMPLETELY.   I  
23      MADE THE POINT THAT EVENTUALLY, IF YOU STICK TO SIX  
24      MONTHS, YOU WILL BE REQUESTED TO SHORTEN THE TIME  
25      PERIOD.   AND WHEN YOU GET TO THE POINT WHERE PEOPLE ARE



1 ASKING FOR SAME DAY ONLINE, AVAILABLE ON THE INTERNET  
2 PUBLICATIONS, THE BUSINESS MODEL WILL CHANGE  
3 REMARKABLY. IT HAS IN THE NEWSPAPER AND OTHER  
4 INDUSTRIES, WHICH WENT TO A MODEL THAT WAS SUPPORTED BY  
5 ADVERTISING AND PROMOTION. THAT'S AN ACCEPTABLE MODEL,  
6 AND THAT BUSINESS -- I'M NOT SURE THAT YOU WANT THAT IN  
7 SCIENTIFIC JOURNALS. THAT WAS THE POINT I WAS GOING TO  
8 MAKE.

9 AND FINALLY, AGAIN, I THINK THIS IS, YOU  
10 KNOW, A PROBLEM THAT WILL BE SOLVED BY PEOPLE THAT HAVE  
11 SPENT FAR MORE TIME THAN WE HAVE AND HAVE FAR GREATER  
12 RESOURCES THAN WE HAVE, INCLUDING NIH AND UNIVERSITY OF  
13 CALIFORNIA. YOU SAID YOU STUDIED IT FOR A YEAR AND  
14 STILL DON'T HAVE A POLICY. NIH HAS BEEN STUDYING IT  
15 FOR A LONG TIME, AND THEY STILL DON'T HAVE A POLICY.  
16 WHEN NIH MAKES THIS THE POLICY, THIS THING IS OVER.  
17 EVERYBODY TAKES NIH MONEY, SO IT GETS SOLVED. I DON'T  
18 THINK WE SHOULD LEAD. WE DON'T HAVE THE TIME TO FLUSH  
19 OUT ALL THE ASPECTS OF IT. I'M PERFECTLY WILLING TO  
20 LEAD THE CHARGE ONCE SOMEBODY COMES OUT WITH A POLICY  
21 LIKE NIH OR EVEN UNIVERSITY OF CALIFORNIA. GET YOUR  
22 POLICY APPROVED AND THEN COME BACK TO US. RIGHT NOW I  
23 THINK WE SHOULD STRONGLY SUPPORT OPEN ACCESS.

24 CHAIRMAN PENHOET: OKAY. WE'VE HEARD A LOT  
25 OF DIFFERENT VIEWS. WE WILL CONTINUE TO STUDY THIS. I

1 GUESS ONE ISSUE IS WHERE THE REPOSITORY WOULD BE FOR  
2 AUTHOR'S MANUSCRIPTS. AND I DON'T KNOW HOW MUCH EFFORT  
3 IS REQUIRED TO TAKE A MANUSCRIPT AND TURN IT INTO  
4 SOMETHING TO BE PROUD OF HAVING ON THE WEB. AS AN  
5 AUTHOR, IS THAT A LOT OF -- I HAVEN'T PUBLISHED A PAPER  
6 FOR A LONG TIME.

7 DR. TJIAN: IT'S WORK.

8 MR. OBER: THERE ARE A NUMBER OF  
9 REPOSITORIES, PUBMED CENTRAL IS ONE THAT NIH WILL USE,  
10 AND UC HAS A REPOSITORY, E-SCHOLARSHIP REPOSITORY, THAT  
11 IS PART OF THE SERVICE OFFERED TO CONVERT AUTHOR'S  
12 MANUSCRIPTS. VARIOUS KINDS OF PUBLISHERS HAVE A  
13 MANUSCRIPT DEFAULT, WHICH IS PDF, WHICH IS A CONSISTENT  
14 FORMAT WITH DESCRIPTIVE KINDS OF METADATA AND TAGS  
15 ALONG WITH IT. THOSE SERVICES ALREADY EXIST AND IT  
16 WOULD NOT BE MUCH OF A BURDEN, IN MY OPINION, FOR THE  
17 PRAGMATIC LOGISTICS FOR SUCH A POLICY.

18 CHAIRMAN PENHOET: OKAY. WITH THAT, I THINK  
19 WE'LL MOVE ON TO THE MAIN BODY OF OUR WORK TODAY.  
20 THANK ALL OF YOU WHO CAME AGAIN TO SHARE YOUR VIEWS ON  
21 THIS SUBJECT WITH US.

22 MOVING RIGHT ALONG, MELISSA, TO THAT SLIDE.  
23 HERE'S WHERE WE ARE. WE'VE HAD A SERIES OF MEETINGS ON  
24 THE FOR-PROFIT POLICY ALREADY. WHAT HAS OCCURRED IN  
25 PREPARATION FOR TODAY'S MEETING IS ESSENTIALLY FLESHING

1 OUT THE CONCEPTS THAT WE DEVELOPED AT THE LAST MEETING  
2 INTO LANGUAGE WHICH IS ESSENTIALLY A PRECURSOR TO WHAT  
3 WILL BE THE FINAL FORM, HOPEFULLY AFTER THE NEXT ICOC  
4 MEETING, AND LEAD US INTO THE APA PROCESS, WHICH,  
5 THROUGH OUR WORK ON THE NONPROFIT PART, WE'RE ALL  
6 FAMILIAR WITH AT THIS POINT IN TIME.

7 SO IF WE CAN GO TO THE NEXT SLIDE. THE NEXT  
8 ONE, HERE'S WHAT WE'VE DONE SO FAR. WE'VE HEARD FROM  
9 MANY EXPERTS AND STAKEHOLDERS, AND WE HAVE DONE A LOT  
10 OF RESEARCH. WHEN I SAY WE, I MEAN MARY. WE DEVELOPED  
11 THE PRINCIPLES. WE'RE IN THE MIDDLE OF DRAFTING, AND I  
12 URGE YOU ALL TO TAKE IT IN THAT SENSE. THIS IS A DRAFT  
13 OF WHAT WE HAVE NOW. IT'S NOT A FINAL DOCUMENT IN ANY  
14 WAY, SHAPE, OR FORM. WE HOPE THAT IT ACCURATELY  
15 REFLECTS THE MEETINGS THAT WE'VE HAD TO DATE AND OUR  
16 ATTEMPT TO PUT IT IN MORE, WHAT SHALL I SAY, SUCCINCT  
17 LANGUAGE THAT CAN BE USED FOR MOVING US FORWARD IN THE  
18 AP PROCESS.

19 WE WILL MAKE A RECOMMENDATION TO THE ICOC ON  
20 THE 11TH. IF WE CAN GET TO THAT POINT TODAY, IT WILL  
21 UNDOUBTEDLY BE REFINED BY THE WHOLE BOARD AND  
22 ULTIMATELY APPROVED AND THEN SUBMITTED TO THE OAL.

23 SO JUST TO REMIND YOU ABOUT THE NEXT SLIDE,  
24 WE'RE ON PAGE 8 FOR THOSE OF YOU WHO HAVE A COMPUTER IN  
25 FRONT OF YOU. A NUMBER OF REPORTING REQUIREMENTS ARE

1 LISTED HERE. THEY ARE ESSENTIALLY THE SAME AS WHAT WE  
2 HAVE IN THE NONPROFIT POLICY, I BELIEVE. THAT THEY' LL  
3 KEEP US INFORMED, THEY' LL SUBMIT ANNUAL REPORTS,  
4 THEY' LL KEEP US INFORMED ABOUT FILING PATENTS, THAT  
5 THEY' LL NOTIFY US REGARDING THE ISSUANCE OF PATENTS;  
6 THAT IF THEY EXECUTE ANY LICENSE AGREEMENTS, THEY WOULD  
7 LET US KNOW THAT; AND IN THE EVENT REVENUE STREAMS ARE  
8 CREATED AS A FUNCTION OR CONSEQUENCE OF OUR FUNDING,  
9 THAT THEY' LL KEEP ACCURATE ACCOUNTS ABOUT HOW MUCH  
10 MONEY --

11 MR. SIMPSON: SECTION III, IF I'M FOLLOWING  
12 THE DOCUMENT, IS THAT WHAT I'M LOOKING AT?

13 CHAIRMAN PENHOET: TERMS AND CONDITIONS, A,  
14 REPORTING REQUIREMENTS. I'M SORRY. ANY QUESTIONS  
15 ABOUT THAT?

16 WE DO HAVE PUBLICATION REQUIREMENTS, SUCH AS  
17 IT IS. OKAY. IT DOES CALL FOR THE 500-WORD ABSTRACT  
18 WITHIN 60 DAYS.

19 MS. KING: IF I CAN JUST CATCH UP EVERYBODY  
20 ON THE PHONE. WE'RE IN ED'S SLIDE DECK, AND WE'RE ON  
21 SLIDE 9. WHAT WE'RE LOOKING AT IS THE POLICY. WE ARE  
22 ON PAGE -- DON'T LOOK AT THE POLICY. LOOK AT THE SLIDE  
23 DECK.

24 CHAIRMAN PENHOET: PUBLICATION REQUIREMENTS.  
25 WE DO HAVE THE REQUIREMENT FOR A 500-WORD ABSTRACT. AS

1 DON REED CORRECTLY POINTED OUT, ITS INTENT IS TO PUT IN  
2 LAY LANGUAGE THE ESSENCE OF THE PAPER AND WHAT IT  
3 MEANS, ETC., AND HAS THE OTHER THINGS. WE TALKED ABOUT  
4 THE BIOGRAPHICAL SKETCH, ETC.

5 A COPY OF EACH PUBLICATION HAS TO BE  
6 SUBMITTED. THEY HAVE TO ACKNOWLEDGE OUR FUNDING AND  
7 ETC. WITH RESPECT TO WHAT THEY PUBLISH. SO THAT'S ALSO  
8 ESSENTIALLY THE SAME AS WHAT WE HAD IN THE NONPROFIT.

9 MR. SIMPSON: ARE YOU GOING TO TAKE QUESTIONS  
10 ON SOME OF THIS?

11 CHAIRMAN PENHOET: WE SHOULD DO IT AS WE GO  
12 THROUGH IT. ANY QUESTIONS ABOUT THE PUBLICATION  
13 REQUIREMENTS OR COMMENTS FROM OUR TASK FORCE MEMBERS?  
14 IF NOT, COMMENTS FROM THE AUDIENCE IN SAN FRANCISCO.

15 MR. JENSON: DAVID JENSON, *CALIFORNIA STEM*  
16 *CELL REPORT*. MARY INDICATED THAT THERE MAY BE A  
17 DIFFERENCE BETWEEN THE SLIDES AND THE DOCUMENT. ARE  
18 THOSE SIGNIFICANT, OR ARE THEY GOING TO BE POINTED OUT?

19 DR. MAXON: SO THE DOCUMENT IS A DRAFT. AND  
20 THANKS TO MR. SIMPSON AND OTHERS WHO SAID, HEY, YOU  
21 FORGOT TO PUT THIS IN SECTION III, THERE ARE A COUPLE  
22 OF MINOR CHANGES, AND WE WILL PUT THESE INTO THE DRAFT  
23 ON THE WEB.

24 MR. JENSON: THEY'RE NOT SIGNIFICANT ONES.

25 CHAIRMAN PENHOET: SIGNIFICANT IS IN THE EYE

1 OF THE BEHOLDER.

2 MR. SIMPSON: DO YOU INTEND AT ALL TO DISCUSS  
3 THE, I GUESS, SECTION I?

4 CHAIRMAN PENHOET: THE PREAMBLE.

5 MR. SIMPSON: AND, FOR INSTANCE, THERE'S A  
6 RATHER LONG DISCUSSION, VERY USEFUL, ABOUT WHAT  
7 HAPPENED WITH THE CRADA'S, WHICH RELATES TO PRICING AND  
8 SOME THINGS LIKE THAT. AND THERE'S SOME POINTS THAT I  
9 MIGHT WANT TO MAKE ABOUT THAT AT THE APPROPRIATE TIME.

10 CHAIRMAN PENHOET: WE CAN RETURN TO THAT IF  
11 WE GET THROUGH THIS PART.

12 THE NEXT ISSUE IS PUBLICATION-RELATED  
13 BIOMEDICAL MATERIALS REQUIREMENTS. THIS ONE IS A  
14 LITTLE DIFFERENT THAN WHAT WE HAVE FOR THE NONPROFIT.  
15 UNLESS A SPECIAL CASE CAN BE MADE THAT DOING SO WOULD  
16 ENDANGER THE COMPETITIVE POSITION OF THE COMPANY, I  
17 WANT TO STOP THERE. THIS IS ONE OF THOSE THINGS THAT A  
18 CASE WILL HAVE TO BE MADE. AS I REMEMBER, SOMEONE WILL  
19 HAVE TO JUDGE THAT IT'S A FUNCTION THAT WE WOULD HAVE  
20 TO FUND CIRM TO HAVE THIS KIND OF OVERSIGHT.

21 HAVING SAID THAT, AN AWARDEE SHALL SHARE  
22 BIOMEDICAL MATERIALS IN PUBLISHED SCIENTIFIC ARTICLES  
23 FOR RESEARCH PURPOSES IN CALIFORNIA WITHIN 60 DAYS,  
24 BLAH, BLAH, BLAH.

25 SO UNDER SPECIAL CIRCUMSTANCES, SAME THING,

1       EXCEPTIONS ARE POSSIBLE WITH APPROVAL BY CIRM.    AND THE  
2       REST OF THIS IS SIMILAR TO WHAT WE HAD IN THE  
3       NONPROFITS.    IF REQUESTS BECOME BURDENSOME, THE PEOPLE  
4       CAN MEET THIS REQUIREMENT BY TEACHING OTHERS HOW TO  
5       CREATE FOR THEMSELVES THE REAGENTS THAT ARE INVOLVED IN  
6       THIS.    I BELIEVE THAT SOME COMPANIES MIGHT SEE THIS AS  
7       AN UNACCEPTABLE BURDEN, BUT WE HAVE NOT -- WE EXPECT TO  
8       HEAR COMMENTS GOING FORWARD.    I THINK MANY, HOWEVER,  
9       ARE QUITE WILLING TO SHARE THESE THINGS IF IT DOESN' T  
10      ENDANGER THEIR COMPETITIVE POSITION.

11                    ANY COMMENTS FROM BOARD MEMBERS ON THIS  
12      SECTION?

13                    MR. ROTH:    I THINK THIS WILL BE AN IMPEDIMENT  
14      TO INDUSTRY TO SEEK CIRM FUNDS.    I THINK IT'S VAGUE,  
15      AND THE REQUIREMENTS ARE THINGS THAT CAN BE INTERPRETED  
16      TO MEAN YOU HAVE TO MAKE THESE AVAILABLE AT NO COST TO  
17      ANYBODY THAT ASKS.    AND I THINK THAT WOULD BE AN  
18      UNUSUAL REQUIREMENT FOR HAVING ACCEPTED GRANT MONEY.    I  
19      THINK JUST AS A POTENTIAL ISSUE, I'D LIKE TO HEAR, IF  
20      THERE ARE INDUSTRY PEOPLE THERE, WHAT THEIR RESPONSE  
21      IS.

22                    CHAIRMAN PENHOET:    WE HAVE ANYBODY FROM  
23      INDUSTRY?    I THINK THAT THE NO COST ISSUE, THAT THERE  
24      HAS TO BE A REASONABLENESS SECTION IN THERE.    IT SAYS  
25      THAT THEY CAN SHOW SOMEONE HOW TO DO IT THEMSELVES.    IT

1 DOESN' T FORCE THEM TO MAKE THE MATERIALS --

2 DR. HALL: WITHOUT OR AT COST. DOESN' T SAY  
3 YOU CAN' T CHARGE WHAT IT COST AS I INTERPRET IT.

4 CHAIRMAN PENHOET: AT COST. THIS IS NOT  
5 SOMETHING WHERE WE WILL WILLINGLY ENGAGE THOUSANDS OF  
6 USERS TO DO THIS AS A PUBLIC SERVICE EVEN AT COST. I  
7 THINK THERE MAY BE SOME MORE DISCUSSION ON THIS ISSUE  
8 AS WE GO FORWARD.

9 ANY OTHER COMMENTS FROM THE AUDIENCE?

10 DR. HALL: CAN I JUST MAKE A GENERAL POINT  
11 HERE? IT SEEMS TO ME THAT THERE' S A POINT OF  
12 CONFUSION, I HATE TO GO BACK TO THIS, ALSO REMAINING IN  
13 OUR DISCUSSION ABOUT NONPROFITS. THE QUESTION OF  
14 SHARING AND SHARING OF KNOWLEDGE IS ONE THING, AND  
15 SHARING OF REAGENTS, I DON' T THINK ANYBODY INTENDS THAT  
16 IF YOU DISCOVER SOMETHING, YOU' VE GOT TO PROVIDE OR  
17 YOU' VE GOT TO BE A SUPPLIER FOR EVERY RESEARCHER IN THE  
18 WORLD WHO WANTS TO USE IT.

19 CHAIRMAN PENHOET: THAT' S A PROBLEM WITH BOTH  
20 POLI CI ES.

21 DR. HALL: WE NEED SOME WAY TO DEFINE THAT SO  
22 THAT YOUR -- I THINK THEY ARE EXPECTED TO PROVIDE SMALL  
23 SAMPLES, IF POSSIBLE, SO THAT PEOPLE CAN REPRODUCE YOUR  
24 WORK AND THINGS CAN MOVE FORWARD, NOT TO TURN INTO A  
25 SUPPLIER. HOW IS THAT -- I DON' T QUITE KNOW. THE



1 OTHER REFERS TO THE TERM "REASONABLE," BUT I THINK  
2 THERE'S ALSO A MISUNDERSTANDING AS WELL THAT SOMEHOW  
3 WE'RE EXPECTING PEOPLE TO, AT LEAST ON THE PART OF  
4 SOME, A MISUNDERSTANDING ABOUT EXPECTING PEOPLE TO BE A  
5 MAJOR SUPPLIER. IF YOU'VE GOT AN ANTIBODY, YOU'VE GOT  
6 TO PROVIDE IT EVEN IF YOU DON'T HAVE ANY LEFT FOR  
7 YOURSELF.

8 CHAIRMAN PENHOET: WHICH IS UNREASONABLE --

9 DR. HALL: THAT'S UNREASONABLE.

10 CHAIRMAN PENHOET: -- FOR A COMPANY OR  
11 ACADEMIA.

12 DR. HALL: MAYBE A LITTLE INTENSIVE THOUGHT  
13 AND WORDSMITHING ON THAT FOR BOTH POLICIES BEFORE THE  
14 ICOC MEETING MIGHT BE USEFUL, I DON'T KNOW, BUT  
15 CERTAINLY TO GO THROUGH IT SO THAT EVERYBODY  
16 UNDERSTANDS THE INTENT AND THE PURPOSE OF THIS AND THEN  
17 TRIES TO MEET THAT THROUGH WHATEVER LANGUAGE WE CAN  
18 CRAFT.

19 MR. ROTH: I ALSO WANT TO REITERATE WHAT YOUR  
20 POSITION WAS, THAT THIS IS GOING TO BE BURDENSOME IF WE  
21 ADOPT SOMETHING LIKE THIS WHERE WE HAVE TO HAVE STAFF  
22 REFEREE AND MAKING DECISIONS. I THINK WE HAVE TO THINK  
23 ABOUT THAT. MAYBE ONE OF OUR BIGGEST CHALLENGES AT  
24 CIRM WILL BE THE BURDEN STAFF INHERITS GIVEN THE  
25 RESTRICTION ON FUNDING.

1 DR. HALL: I'M NOT SURE ON THAT PARTICULAR  
2 ONE. I'M VERY CONCERNED IN BOTH POLICIES. A MAJOR  
3 CONCERN OF MY MINE IS THAT MATERIALS AND IDEAS AND  
4 TECHNOLOGIES FLOW FREELY ON THE RESEARCH SIDE OF THINGS  
5 WITHIN THE RESEARCH COMMUNITY. IT'S A DIFFERENT MATTER  
6 ONCE YOU CROSS THE BARRIER INTO COMMERCIAL DEVELOPMENT.  
7 AT LEAST FOR RESEARCH, THAT THERE NOT BE THINGS THAT  
8 ARE SORT OF LOCKED UP AND PUT OUT OF PLACE. I THINK  
9 IT'S THE IDEA THAT WE EXPECT MATERIALS TO BE SHARED AS  
10 THE DEFAULT CASE UNLESS THERE'S A COMPETITIVE POSITION,  
11 I THINK.

12 CHAIRMAN PENHOET: WE CAN PUT LANGUAGE IN  
13 THAT IF COST BECOMES ONEROUS OR SOMETHING LIKE THAT.

14 DR. HALL: SOMETHING LIKE THAT, YES. BUT MY  
15 SENSE IS THAT THIS IS A VERY, VERY IMPORTANT THING.  
16 WE'RE GOING TO PUT MONEY IN TO DEVELOP REAGENTS OR  
17 THINGS CERTAINLY LOCKED AWAY FOR RESEARCH, NOT FOR  
18 COMMERCIAL DEVELOPMENT, BUT FOR RESEARCH, AND I THINK  
19 WE OUGHT TO DO EVERYTHING WE CAN TO KEEP THOSE LINES OF  
20 SUPPLY OPEN TO MAKE IT AS PERMEABLE AS POSSIBLE AS  
21 AMONG DIFFERENT INSTITUTIONS AND LABORATORIES.

22 CHAIRMAN PENHOET: MAYBE WE CAN DO SOME  
23 HOMEWORK ON THE PRACTICALITIES OF THIS. A NUMBER OF  
24 THE TYPE OF JOURNALS WE'VE BEEN TALKING ABOUT HAVE  
25 REQUIREMENTS TO ACTUALLY SHARE THE STUFF IN SOME WAY,

1        SHAPE, OR FORM.

2                    OKAY.    MOVING ALONG TO D, PAGE 11, NO. 11 IN  
3        THE SLIDE DECK, PATENT APPLICATIONS.    THIS SAYS THAT  
4        THE PEOPLE WHO GET THE MONEY, IF THEY FILE FOR PATENTS,  
5        THEY OWN THEM.    AND THEY HAVE TO REPORT TO US ABOUT  
6        THEIR PATENTED FILINGS.    AND WE AGREED IN THE LAST  
7        SENTENCE TO KEEP THIS CONFIDENTIAL IN ORDER TO HAVE  
8        THESE PATENT FILINGS EXEMPTED FROM THE PUBLIC RECORDS  
9        ACT.    THAT'S A -- I THINK ANYTHING SHORT OF THIS WOULD  
10        PROBABLY BE A TRULY ONEROUS REQUIREMENT ON INDUSTRY.

11                    MR. SIMPSON:    PATENTS DO BECOME PUBLIC WHEN  
12        THEY ISSUE.

13                    CHAIRMAN PENHOET:    OF COURSE, YES.

14                    MR. SIMPSON:    ANOTHER COMMENT ON THIS  
15        SECTION?    I THINK IT'S RELEVANT IN THIS SECTION.    I'M  
16        NOT SURE.    AND THAT IS THAT IF YOU LOOK AT THE  
17        BAYH-DOLE MODEL OR YOU LOOK AT NIH, WHILE IT'S THE CASE  
18        THAT THE GRANTEE OWNS THE IP AND DEVELOPS IT AND  
19        COMMERCIALIZES IT, THE GOVERNMENT MAINTAINS A RIGHT TO  
20        PRACTICE THE INVENTION FOR ITS OWN GOVERNMENTAL  
21        PURPOSES.    AND I WOULD SUGGEST THAT THERE SHOULD BE A  
22        SIMILAR PROVISION HERE, THAT WHILE THE AWARDEE GETS THE  
23        IP, THAT CALIFORNIA RESERVES THE RIGHT TO PRACTICE THE  
24        INVENTION FOR ITS GOVERNMENTAL PURPOSES.    IT'S  
25        COMPLETELY ANALOGOUS TO THE BAYH-DOLE AND THE FEDERAL

1 FUNDING MODEL.

2 CHAIRMAN PENHOET: WELL, I GUESS IN ONE SENSE  
3 IT IS TRUE, BUT THE GOVERNMENT HAS ITS OWN RESEARCH  
4 LABORATORIES. I DON'T THINK THE GOVERNMENT HAS EVER  
5 INTERPRETED THAT THEY COULD GO INTO THE BUSINESS OF  
6 MAKING AND SELLING SOMETHING.

7 MR. SIMPSON: THAT'S NOT WHAT I'M SUGGESTING.  
8 THEY PRESUMABLY HAVE SOME STATE LAB THAT WOULD WANT TO  
9 PRACTICE THE INVENTION FOR RESEARCH PURPOSES.

10 CHAIRMAN PENHOET: BACK INTO THE RESEARCH USE  
11 EXEMPTION DISCUSSION.

12 MR. MACFERRIN: KURTIS MACFERRIN, APPLIED  
13 BIOSYSTEMS. SO JUST SPEAKING TO THAT LAST POINT AND  
14 DR. HALL'S PREVIOUS POINT ABOUT BIOMEDICAL MATERIALS,  
15 FROM OUR POINT OF VIEW, AS A PROVIDER OF RESEARCH  
16 TOOLS, WE DEFINITELY WANT TO ASSURE RESEARCH TOOLS TO  
17 RESEARCHERS. MY CONCERN ABOUT THE LAST PROVISION FOR  
18 BIOMEDICAL MATERIALS AND THE PROPOSAL BY MR. SIMPSON ON  
19 MAKING TOOLS AVAILABLE TO THE GOVERNMENT AND RETAINING  
20 RESEARCH RIGHTS IS YOU DON'T ENSURE SUPPLY OF SOMETHING  
21 BY KEEPING ANYBODY FROM MAKING MONEY OFF OF PROVIDING  
22 IT.

23 SO, FOR EXAMPLE, CAR MANUFACTURERS, YOU DON'T  
24 ENSURE THE SUPPLY OF CARS BY SAYING THAT CAR MAKERS  
25 CAN'T MAKE A PROFIT.

1 THE PROBLEM THAT I SEE POTENTIALLY WITH THE  
2 BIOMEDICAL TOOL SHARING IS NOBODY CAN MAKE MONEY OFF OF  
3 PROVIDING THOSE BIOMEDICAL MATERIALS. FOR EXAMPLE, YOU  
4 COME UP WITH A POLYMERASE ENZYME THAT HAS SOME  
5 PROPERTY, YOU PUBLISH IT, AND YOU COME UP WITH IT USING  
6 FIRM FUNDING. IF YOU CAN'T MAKE MONEY OFF OF PROVIDING  
7 IT TO PEOPLE, NO ONE WILL GO INTO THAT BUSINESS.  
8 THAT'S MY CONCERN.

9 DR. HALL: THESE ARE REAL ISSUES, ED. THESE  
10 REALLY ARE REAL ISSUES, AND I ACTUALLY FIND IT VERY  
11 TROUBLING. AND I THINK THE VARIOUS EXAMPLES OF WHAT  
12 COULD HAPPEN AND WHAT MIGHT HAPPEN, ONE POSSIBILITY IS  
13 THAT A LOT OF THESE THINGS ON THE FOR-PROFIT SIDE FOR  
14 NEGOTIATING OF THE CONTRACT, WE'VE SAID ALL ALONG THAT  
15 IT WOULD BE POSSIBLE TO MAKE SOME BROAD OUTLINES, BUT  
16 WE HAVE TO SIT DOWN. IF THERE'S A CONTRACT OR GRANT OR  
17 LOAN, WHATEVER IT IS, IT SEEMS TO ME WE ALMOST HAVE TO  
18 SIT DOWN AND SAY, WELL, ONE EXPECTED OUTCOME OF THIS IS  
19 SUPPOSE WE WERE TO PUT OUT MONOCLONAL ANTIBODIES AND  
20 ASK SOMEBODY TO DEVELOP THESE. AND IT SEEMS TO ME THAT  
21 WE CERTAINLY WOULD NOT EXPECT A COMPANY TO DEVELOP THE  
22 NEW MONOCLONAL AND PROVIDE IT FREE FOR RESEARCH TO  
23 EVERYBODY.

24 ON THE OTHER HAND, IT SEEMS TO ME WE WOULD  
25 EXPECT THEM TO PROVIDE AT LEAST THE DETAILS OF THE

1 METHODS OF HOW THEY DID IT. SO IF SOMEBODY WANTED TO  
2 GO AND MAKE THE MONOCLONAL ANTIBODIES, THEY COULD  
3 PRESUMABLY MAKE MONEY, NOT BECAUSE YOU HAVE A MONOPOLY,  
4 BUT BECAUSE THEY CAN DO IT MORE CHEAPLY THAN ANYBODY  
5 ELSE. AND IT'S WORKED TIME AND AGAIN IN THE RESEARCH  
6 COMMUNITY. SO THERE ARE A NUMBER OF DIFFERENT  
7 EXAMPLES. I MYSELF FIND IT HARD TO THINK ABOUT ALL THE  
8 DIFFERENT POSSIBILITIES WITHOUT ACTUALLY SITTING DOWN  
9 AND GOING THROUGH THEM AND ALMOST SAYING HERE IS A  
10 SCENARIO. WHAT DO WE WANT TO HAPPEN HERE? WHAT DO WE  
11 NOT WANT TO HAPPEN? AND HOW DO WE MAKE IT WORK?

12 CHAIRMAN PENHOET: SO ON YOUR SIDE OF THE  
13 ARGUMENT, WE'VE HEARD FROM MOST OF THE OTHER FUNDERS OF  
14 COMPANIES THAT EVERY GRANT IS UNIQUE AND THEY NEGOTIATE  
15 EVERY ONE. HAVING SAID THAT, I THINK ONE OF THE THINGS  
16 WE TALKED ABOUT AT THE FIRST MEETING WAS TO TRY TO HAVE  
17 AS DISCRETE GUIDELINES AS WE CAN. OTHERWISE WE DON'T  
18 HAVE ENOUGH STAFF HERE TO MAKE INDIVIDUAL DEALS WITH  
19 MORE THAN A FEW HANDFUL OF COMPANIES. BECAUSE, YOU  
20 KNOW, WE HEARD THAT WELLCOME TRUST HAS 15 PEOPLE, 15 OR  
21 20 PEOPLE THAT MAKE \$25 MILLION IN GRANTS A YEAR, ETC.,  
22 TO MANAGE THIS, AND THAT IT TAKES SIX MONTHS TO A YEAR  
23 TO NEGOTIATE EACH CONTRACT BECAUSE THEY'RE EACH DONE AB  
24 INITIO.

25 AND SO THE OTHER PRINCIPLE WE'RE TRYING TO

1 GET TO IS TO DEFINE ENOUGH OF THE PARAMETERS SO THAT  
2 THEY' RE WELL UNDERSTOOD AND WE DON' T HAVE TO NEGOTIATE  
3 A YEAR WITH EACH COMPANY IN ORDER TO GET SOME FUNDING  
4 TO THEM. BALANCE IS A HARD ISSUE. BUT I THINK WE CAN  
5 AGREE THERE IS NO INTENT HERE TO FORCE COMPANIES TO  
6 PROVIDE THEIR GOODS AND SERVICES FREE TO THE ENTIRE  
7 RESEARCH COMMUNITY.

8 MR. MACFERRIN: TO PROVIDE THEM AT COST, BUT  
9 NO MORE IS ALSO A PROBLEM.

10 CHAIRMAN PENHOET: SURE.

11 MR. TAYMOR: FOLLOWING ON THAT, I GUESS THERE  
12 ARE TWO COMMENTS FOLLOWING ON THAT. FOLLOWING ON WHAT  
13 JOHN SIMPSON HAD SAID, I' M NOT SURE IF IT' S APPROPRIATE  
14 HERE OR ELSEWHERE. THIS QUESTION OF RESEARCH USE  
15 EXEMPTION AND WHETHER OTHER CALIFORNIA INSTITUTIONS OR  
16 OTHER NONPROFITS SHOULD BE ALLOWED TO USE CIRM-FUNDED  
17 RESEARCH, WHETHER THAT RESEARCH IS FUNDED IN THE  
18 FOR-PROFIT COMMUNITY OR THE NONPROFIT COMMUNITY, FOR  
19 RESEARCH PURPOSES. IT SEEMS THAT SIMILAR PROBLEMS  
20 ARISE IN THE RESEARCH EXEMPTION IN THE NONPROFIT WORLD  
21 AS ARISE IN THE FOR-PROFIT WORLD AS WERE EVIDENCED BY  
22 THE DEBATE THAT TOOK PLACE AROUND THE NONPROFIT  
23 RESEARCH EXEMPTION.

24 SO THERE' S NO MENTION OF THAT HERE, AND I  
25 WOULD SECOND THE COMMENTS OF MR. SIMPSON, THAT IT IS

1 CONSIDERED. SPINNING OFF OF THAT AND ALONG THOSE  
2 LINES, WE'RE TALKING HERE ABOUT A CERTAIN TYPE OF  
3 INTELLECTUAL PROPERTY PATENTS, BUT THERE'S A LOT OF  
4 OTHER TYPES OF INTELLECTUAL PROPERTY THAT MAY EMERGE,  
5 PARTICULARLY ONCE YOU MOVE INTO THE WORLD OF FUNDING  
6 FOR-PROFITS, AS WE DESCRIBED AT SOME OF THE MEETINGS  
7 HELD BY CIRM AND SOME OF THE STRATEGIC PLANNING  
8 MEETINGS. SO, FOR EXAMPLE, IF COMPANIES NEEDED SOME  
9 PRE-IND WORK IN ORDER TO DEVELOP, WITH THE FDA OR  
10 OTHERWISE, PROTOCOLS FOR SUBMISSIONS TO FDA CERTAIN  
11 TYPES OF CELL THERAPIES, THERE'S A LOT OF INFORMATION  
12 THAT'S BEEN CREATED BY THAT PROCESS AND IGNORED BY  
13 THESE POLICIES.

14 IT'S NOT TO SAY THE POLICIES -- I UNDERSTAND  
15 THERE'S A LOT IN THESE POLICIES, BUT ONLY TO SAY THAT  
16 PERHAPS WE NEED TO HAVE POLICIES THAT EXTEND BEYOND  
17 THAT. WE COULD VERY WELL BE IN A SITUATION OF PAYING  
18 MULTIPLE TIMES FOR THE SAME KIND OF RESEARCH BEING  
19 DONE. AND ALSO THAT THE PROCESS OF GETTING RESEARCH  
20 INTO THE DEVELOPMENT STAGE, INTO THE IND STAGE, AND  
21 INTO THE CLINIC IS SEVERELY SLOWED DOWN. I'M NOT SURE  
22 IF WE HAVE PLANS TO ADDRESS THOSE OR A RECOMMENDATION  
23 HAS BEEN MADE JUST NOT TO ADDRESS THEM BECAUSE THEY  
24 CAN'T BE OR WHAT. THIS IS A MEMBER OF THE PUBLIC  
25 CURIOUS ON THAT.



1                   LASTLY, ON DR. HALL'S POINT ABOUT MAYBE ONE  
2   SIZE FITS ALL DOESN'T WORK, I UNDERSTOOD FROM THE  
3   STRATEGIC PLAN MEETINGS THAT THERE SEEMS TO BE SHAPE  
4   TAKING PLACE IN TERMS OF HOW -- WHAT FOCUS CIRM IS  
5   GOING TO BE HAVING WITH ITS FUNDING, WHERE THEY'RE  
6   PUTTING THEIR FUNDING EFFORTS. AND WHILE IT MAY BE  
7   DIFFICULT TO COME UP WITH A POLICY FOR EVERY KIND OF  
8   GRANT AND EVERY KIND OF CONTRACT, IT MAY BE QUITE  
9   DOABLE TO HAVE A MATRIX WHERE YOU HAVE POLICIES  
10  TAILORED TO NINE AREAS OF PARTICULAR FOCUS THAT CIRM  
11  WILL BE PURSUING FOR ITS STRATEGIC PLANNING PROCESS.  
12  AND THE STRATEGIC PLANNING GROUP MAY HAVE NARROWED THE  
13  RANGE OF ALTERNATIVES, AND YOU MAY BE ABLE TO COME UP  
14  WITH A FAIRLY DOABLE PROCESS FOR COMING UP WITH  
15  APPROPRIATE TYPES OF GRANTS WHERE THIS SHARING IS  
16  APPROPRIATE AND THOSE GRANTS WHERE THE SHARING IS NOT  
17  APPROPRIATE.

18                   CHAIRMAN PENHOET: BACK UP ONE SLIDE, THE  
19  PUBLICATION-RELATED ONES. I THINK AN UNINTENDED  
20  CONSEQUENCE OF THIS PROPOSAL MIGHT BE TO ACTUALLY  
21  ENCOURAGE COMPANIES NOT TO PUBLISH. BECAUSE IF THEY  
22  HAVE A TRADE SECRET, THEN THEY WOULDN'T HAVE THE  
23  OBLIGATION TO NOTIFY ON THE PUBLICATION-RELATED  
24  MATERIALS. THAT'S CERTAINLY NOT SOMETHING WE WANT TO  
25  ENCOURAGE EITHER NECESSARILY. YOUR POINT IS GETTING

1 THE INFORMATION.

2 MR. TAYMOR: THAT'S MY POINT. TRADE SECRETS,  
3 COPYRIGHT MATERIALS, THERE'S A WHOLE RANGE OF  
4 INTELLECTUAL PROPERTY THAT'S GENERATED BY THE TYPE OF  
5 COMMERCIAL GRANTS THAT CIRM HAS CONTEMPLATED, AND  
6 THEY'RE NOT ADDRESSED IN THIS POLICY. IT'S NOT TO SAY  
7 THE POLICY -- THIS POLICY DOESN'T GO FAR ENOUGH IN  
8 AREAS WHERE I THINK IT'S GOING TO BE VERY, VERY  
9 CRITICAL WHERE INTELLECTUAL PROPERTY IS BEING PRODUCED,  
10 AND IT WOULD BE USEFUL TO SEE WHY IT WAS INTENTIONALLY  
11 OMITTED OR HOW THEY MIGHT BE ADDRESSED.

12 CHAIRMAN PENHOET: WELL, YOU KNOW, NOW JUST  
13 SPEAKING AS AN INDIVIDUAL HERE, I THINK THE PROBLEM  
14 WHEN YOU GET -- YOU CAN SPECIFY COPYRIGHT. WHEN YOU  
15 GET INTO TRADE SECRET, THERE'S NO WAY TO DEFINE IT. SO  
16 YOU ESSENTIALLY ARE ASKING AN ORGANIZATION TO OPEN  
17 THEMSELVES TOTALLY UP TO ALL THE INFORMATION THAT YOU  
18 SEEK TO KNOW ABOUT THEM BECAUSE, YOU KNOW, THERE'S  
19 NO -- NOBODY SAYS PUT IN A -- THESE ARE OUR TRADE  
20 SECRETS IN THIS DRAWER HERE. THAT DOESN'T HAPPEN. SO  
21 TRADE SECRETS ARE SORT OF THE ESSENCE OF MANY  
22 FOR-PROFIT ORGANIZATIONS. SO I DON'T KNOW HOW YOU  
23 WOULD EVER DEFINE THAT IN A WAY THAT YOU CAN GET YOUR  
24 ARMS AROUND.

25 MR. TAYMOR: ONE WAY, FOR EXAMPLE, IF YOU'RE

1 GIVING A GRANT FOR PRE-IND WORK, THAT YOU SPECIFY WHAT  
2 KIND OF RESULTS ARE GOING TO BE SHARED. OR IF YOU'RE  
3 GIVING A GRANT THAT'S GOING TO BE CREATING A DATABASE,  
4 THAT DATABASE MAY BE PUBLISHED, AND A COPYRIGHT OR  
5 DATABASE MAY BE RETAINED AND TRADE SECRET. ALL YOUR  
6 TRADE SECRETS ARE UNDER THIS GRANT, CONTRACT, LOAN, OR  
7 THIS KIND OF INFORMATION WILL BE MADE AVAILABLE IN THIS  
8 WAY. AND SO YOU CERTAINLY CAN IDENTIFY THOSE TRADE  
9 SECRETS BY LICENSING.

10 QUITE COMMONLY A LICENSE IS ACCOMPANIED BY A  
11 KNOW-HOW AGREEMENT. THE KNOW-HOW IS A TRADE SECRET  
12 KEPT CONFIDENTIAL THROUGH A CONFIDENTIALITY AGREEMENT,  
13 BUT IT'S CRITICAL FOR THE LICENSEE TO RECEIVE THE  
14 KNOW-HOW IN ORDER FOR THE LICENSEE TO KNOW THAT WHICH  
15 IS TRADE SECRET IN ORDER TO EXPLOIT THE LICENSED  
16 INFORMATION. SO IT'S VERY COMMONLY DONE IN THE  
17 INDUSTRY AND COULD BE TRANSFERRED AND CARRIED OVER  
18 HERE.

19 CHAIRMAN PENHOET: DON REED.

20 MR. REED: I WONDER IF A LOT OF THIS IS TAKEN  
21 CARE OF AT THE PROPOSAL STAGE WHERE A COMPANY MIGHT --  
22 FOR INSTANCE, OUR MONEY DEPENDS ON OUR NOT BEING ABLE  
23 TO COMPLY WITH THIS PARTICULAR PORTION; AND, THEREFORE,  
24 WHEN THE DECISION IS MADE TO FUND OR NOT TO FUND, WE  
25 MIGHT SAY THIS LOOKS TOO COMPLICATED. LET'S NOT FUND

1 IT. IT'S SELF-INCENTIVE FOR THEM TO WORK OUT SOME  
2 COMPROMISES ON THEIR OWN TIME.

3 CHAIRMAN PENHOET: OWN TIME ENDS UP BEING OUR  
4 TIME TOO.

5 MR. REED: BEFORE THE PROPOSAL. THEY WOULD  
6 DECIDE, WELL, OUR BUSINESS DEPENDS ON OUR BEING ABLE TO  
7 TAKE THIS PARTICULAR PRODUCT AND SELL IT, AND WE CANNOT  
8 POSSIBLY AFFORD TO SHARE IT AT COST OR WHATEVER. AND  
9 THEY KNOW THIS BEFORE AND SAY THIS BEFOREHAND. PEOPLE  
10 MAKING THE DECISION TO FUND OR NOT TO FUND WOULD KNOW  
11 BEFOREHAND.

12 CHAIRMAN PENHOET: UH-HUH. YOU KNOW,  
13 INEVITABLY IT'S CONTRACT UNIQUE WITH A DIFFERENT PARTY  
14 ON THE OTHER SIDE OF THE TABLE. I THINK OUR GOAL HERE  
15 IS TO FIND SOME REASONABLE BALANCE BETWEEN SOME SORT OF  
16 BROAD PRINCIPLES THAT WE'RE TRYING TO ESTABLISH HERE  
17 AND THE IMPLEMENTATION OF THOSE BY CIRM IN A WAY THAT  
18 TAKES INTO ACCOUNT THE, YOU KNOW, INDIOSYNCRACIES OF  
19 THE MARKETPLACE OUT THERE. AND DIFFERENT ORGANIZATIONS  
20 HAVE DIFFERENT POINTS OF VIEW.

21 I THINK ALSO WE HAVE TO KEEP IN MIND WHAT  
22 WE'RE TRYING TO BALANCE IS PUBLIC INTEREST, OUR  
23 INTEREST, BUT AT THE SAME TIME NOT DISCOURAGE COMPANIES  
24 FROM TAKING ADVANTAGE OF THESE MONIES TO FURTHER THEIR  
25 EFFORTS IN THE STEM CELL AREA BECAUSE CALIFORNIA'S

1 FUTURE IS HIGHLY DEPENDENT ON A VIBRANT STEM CELL  
2 INDUSTRY HERE IN THIS FIELD. THE MONEY HAS TO BE SPENT  
3 IN CALIFORNIA. SO IT'S THAT BALANCE.

4 MR. REED: ISN'T IT THE COMPANIES THEMSELVES  
5 THAT KNOW EXACTLY WHAT THIS IS AND WE CANNOT KNOW  
6 BEFOREHAND? SO I DON'T THINK WE CAN PRESCRIBE FOR  
7 INDIVIDUALS WHEN THEY'RE THE ONLY INDIVIDUALS THAT HAVE  
8 THEIR PARTICULAR INFORMATION. I DON'T THINK WE CAN  
9 MAKE A ONE SIZE FITS ALL SITUATION HERE.

10 CHAIRMAN PENHOET: I AGREE WITH YOU. HAVING  
11 SAID THAT, I DO THINK BROAD PRINCIPLES GENERALLY  
12 ACCEPTED IN THE INDUSTRY, KEN IS RIGHT, USUALLY A  
13 LICENSE, A PATENT TO TELL THEM HOW TO PRACTICE THE ART  
14 TO LURE THEM TO ACTUALLY DO SOMETHING USEFUL WITH IT.  
15 HOW WE WOULD BEGIN TO HAVE POLICIES ABOUT WHAT  
16 KNOW-HOW, A BROAD POLICY TO SAY WHAT KNOW-HOW WOULD  
17 FORCE COMPANIES TO DIVULGING TO OTHERS NOT OTHERWISE  
18 PATENTABLE, ETC. IS VERY HARD TO DESCRIBE THAT EXCEPT  
19 ON A CASE-BY-CASE BASIS.

20 MR. ROTH: AGAIN, JUST LISTENING TO THE  
21 DISCUSSION THAT'S GOING ON AND REALIZING HOW  
22 COMPLICATED THIS IS, ONE THING WE CAN CONSIDER IS TO  
23 LAY DOWN A SET OF EXPECTATIONS FOR GRANT RECIPIENTS  
24 REGARDING PUBLICATION AND REGARDING THEIR MATERIALS  
25 AVAILABILITY CLAUSE, WHICH CAN BE A SET OF PRINCIPLES

1 THAT WE WOULD RECOMMEND. AND THAT TO ENFORCE IT, WE  
2 WOULD TAKE THAT INTO CONSIDERATION IN THE BID PACKAGES  
3 OR FOLLOWING THAT POLICY OR THOSE EXPECTATIONS FOR  
4 FUTURE GRANTS.

5 SO SOMEBODY GETS A MILLION DOLLAR-GRANT AND  
6 CIRM RECEIVES A NUMBER OF COMPLAINTS ABOUT X, Y, Z  
7 COMPANY NOT SHARING INFORMATION OR WITHHOLDING  
8 INFORMATION OR BEING UNCOOPERATIVE. THAT WOULD GO INTO  
9 CONSIDERATION FOR ANY FUTURE GRANTS. ANY ONE GRANT  
10 WE'RE GOING TO BE GIVING TO A COMPANY IS NOT GOING TO  
11 BE EXTRAORDINARY, AND WHAT THEY REALLY WANT IS TO COME  
12 BACK AGAIN AND AGAIN AS THEY PROGRESS WITH THE  
13 DEVELOPMENT OF A PRODUCT AND RECEIVE MORE GRANT  
14 FUNDING.

15 ONE THOUGHT IS INSTEAD OF WRITING RULES,  
16 WRITE EXPECTATIONS, AND YOU REALLY PUSH THOSE  
17 EXPECTATIONS. THIS IS WHAT WE EXPECT. IF YOU DON'T  
18 FOLLOW, DON'T COME TO US FOR ANY MORE MONEY.

19 CHAIRMAN PENHOET: WELL, WE HAVE AN  
20 OBLIGATION TO COME UP WITH SOME RULES, BUT NOT  
21 EVERYTHING WE DO HAS TO BE A RULE. WE HAVE A BALANCE.

22 MR. TOCHER: THE ONLY THING I WOULD ADD THERE  
23 IS JUST SOMETIMES THAT THE LINE BETWEEN AN EXPECTATION  
24 AND A RULE CAN BE THIN, AND SOMETIMES IT'S HARD TO  
25 FIND. BUT ANY TIME WE'RE USING A SET OF CRITERIA TO

1 BASE A DECISION ON, SOMEONE'S RIGHTS WHETHER TO RECEIVE  
2 OR NOT RECEIVE A GRANT OR APPLIED CRITERIA IN JUDGING A  
3 GRANT WHETHER TO FUND THAT SORT OF THING, THAT'S  
4 ESSENTIALLY A RULE AT THAT POINT, AND THAT REALLY IS A  
5 REGULATION.

6 MR. TAYMOR: THE STATE OF CALIFORNIA,  
7 ACTUALLY AND THE FEDERAL GOVERNMENT, USES A SIMILAR  
8 PROPOSAL VERY EFFECTIVELY, AND IT'S WHAT YOU MIGHT  
9 CHARACTERIZE AS PUBLIC-PRIVATE PARTNERSHIPS IN THE  
10 ECONOMIC DEVELOPMENT AND HOUSING FIELD. GRANTS ARE  
11 AWARDED COMPETITIVELY BY THIS INSTITUTE AND THERE ARE  
12 PARAMETERS FOR THEIR GRANTS, BUT THE MORE PUBLIC  
13 BENEFIT THAT IS PROVIDED BY THE APPLICANT, THE HIGHER  
14 THEIR GRANT. WE COULD HAVE AN ELEMENT OF THE GRANT  
15 APPLICATION TO SAY TO WHAT EXTENT WILL BE YOU SHARING,  
16 WILL YOU BE PROVIDING DATA AND ADDITIONAL INFORMATION  
17 USED BY OTHER GRANTEES ELSEWHERE BY THE STATE. THOSE  
18 ADDRESS, AS WAS SAID, THE ABILITY TO LET THE INDIVIDUAL  
19 GRANT APPLICANT SAY HERE'S WHAT I CAN LIVE WITH AND  
20 HERE'S WHAT MAKES IT ATTRACTIVE.

21 DR. HALL: ONE OF THE THINGS THAT WE'VE  
22 TALKED ABOUT OR IMAGINE THAT WE WOULD DO WOULD BE NOT  
23 ONLY FOR THINGS LIKE PRECLINICAL DEVELOPMENT, BUT THAT  
24 WE WOULD ALSO FUND OPEN-ENDED SCIENCE IN COMPANIES.  
25 BUT WE HAVEN'T THOUGHT VERY MUCH OR FACED THE QUESTION

1 OF HOW EXACTLY THIS WOULD HAPPEN MECHANICALLY. IF WE  
2 CALL FOR A CERTAIN KIND OF GRANT, WE WANT TO FIND OUT  
3 SOME PROBLEM IN STEM CELL BIOLOGY, WHATEVER IT IS, AND  
4 A COMPANY APPLIES AND SAYS THEY'D LIKE TO APPLY FOR  
5 THIS. THEN WE HAVE A GROUP WHERE A FOR-PROFIT  
6 INSTITUTION AND A GROUP FOR A NONPROFIT INSTITUTION MAY  
7 BE COMPETING FOR SIMILAR GRANTS AND HOW TO HANDLE THAT  
8 AND HOW TO DEVELOP CRITERIA.

9 ONE OF THE QUESTIONS IS DO YOU JUDGE IT ON  
10 THE SCIENCE AND THEN NEGOTIATE IT LATER, OR DO YOU, AS  
11 YOU SUGGEST, SORT OF PUT THAT IN THE CRITERIA? I THINK  
12 YOU HAVE TO SAY IN AN RFA SOME MINIMUM EXPECTATIONS.  
13 IF YOUR RFA IS FOR A MONOCLONAL, YOU HAVE TO SAY WHAT  
14 YOU EXPECT FROM THE START, WHAT YOU EXPECT IN TERMS OF  
15 WHAT WOULD HAPPEN IN THAT INFORMATION OR KNOWLEDGE OR  
16 THOSE REAGENTS, AND THEN THERE MAY STILL BE FURTHER  
17 POINTS THAT HAVE TO BE NEGOTIATED PRIVATELY.

18 BUT IT IS AN ISSUE, AND I THINK TO PUT IT  
19 INTO THE COMPETITION WHERE YOU MIGHT HAVE FOR-PROFIT  
20 AND NONPROFITS COMPETING, PEOPLE FROM THOSE  
21 INSTITUTIONS WITH DIFFERENT POLICIES COMPETING AGAINST  
22 EACH OTHER, I DON'T KNOW. I DON'T KNOW IF THAT'S THE  
23 BEST THING OR NOT, BUT I JUST THINK IT IS A FURTHER  
24 COMPLICATION AT THIS POINT, WHICH WE HAVE MANY AROUND  
25 THIS ISSUE. JOHN SIMPSON.



1 MR. SIMPSON: ISN'T IT THE CASE THAT SOME OF  
2 THIS REALLY SHOULD BE ADDRESSED IN A GRANTS  
3 ADMINISTRATION POLICY AND THAT, IN FACT, WE ALMOST NEED  
4 A SEPARATE GRANTS ADMINISTRATION POLICY?

5 DR. MAXON: THAT IS THE PLAN. ARLENE IS NOT  
6 HERE. SHE'S TOLD ME THIS.

7 MR. SIMPSON: A NUMBER OF THESE THINGS, IT  
8 SEEMS TO ME, ARE ADDRESSED THERE RATHER THAN IP, A  
9 NUMBER OF THEM, NOT NECESSARILY ALL OF THEM.

10 CHAIRMAN PENHOET: WELL, YEAH. MANY COULD  
11 BE. GRANTS ADMINISTRATION POLICY DOESN'T HAVE THE  
12 EFFECT OF LAW, SO IT'S A GUIDELINE.

13 DR. HALL: YES, IT DOES. WHAT HAPPENS IS  
14 ACTUALLY THE GRANTS ADMINISTRATION POLICY EVENTUALLY  
15 INCLUDES THE IP POLICY. FOR NONPROFIT, IT BECOMES PART  
16 OF THE GRANTS ADMINISTRATION POLICY. IT IS PART AND  
17 PARCEL TO THE WHOLE THING. SO IN A SENSE THEY ARE IN  
18 THE SAME CATEGORY, AND WE WORK VERY HARD TO TRY TO MAKE  
19 THOSE TWO CONSISTENT. YOU MUST FOLLOW OUR POLICIES  
20 HERE AS OUTLINED IN THE INSTITUTIONS. AND I PRESUME WE  
21 WOULD HAVE SOMETHING SIMILAR.

22 SO THE DIFFERENCES ARE GENERAL PRINCIPLES  
23 WHICH WOULD BE HANDLED. FOR ALL PRACTICAL PURPOSES,  
24 THOSE WILL BE THE SAME; THAT IS, GRANTS ADMINISTRATION  
25 POLICY WILL NOT PUT IN POLICIES THAT ARE DIFFERENT FROM

1 WHAT'S DECIDED HERE. THEN YOU HAVE THE POSSIBILITY OF  
2 SPECIFYING IN AN RFA OR RFP EXACTLY WHAT THE CONDITIONS  
3 ARE.

4 AND FINALLY, THERE'S THE ALTERNATIVE OF  
5 NEGOTIATING INDIVIDUALLY WITH THIS EVEN AFTER THE WHOLE  
6 THING IS DONE TO SAY HERE'S HOW WE SEE IT WORK, HOW WE  
7 FIND AN ACCEPTABLE SOLUTION IN THE MIDDLE. SO AT LEAST  
8 I SEE THOSE THREE LEVELS OF BEING ABLE TO WORK THE  
9 PROBLEMS OUT. IT DOESN'T MAKE THE PROBLEMS ANY  
10 SIMPLER. I WOULD SAY THAT.

11 CHAIRMAN PENHOET: BUT I THINK YOU ARE RIGHT,  
12 JOHN. OUR WORK HERE, THERE IS AN INDISTINCT BORDER  
13 BETWEEN WHAT WE'RE DOING HERE TODAY AND THE, FOR  
14 EXAMPLE, STRATEGIC PLANNING PROCESS. IS THIS ISSUE OF  
15 LOANS VERSUS GRANTS A PROPER THING FOR OUR COMMITTEE?  
16 WE'VE DECIDED WE'LL DISCUSS IT HERE AND TACKLE IT HERE.  
17 IT COULD BE THAT IT ULTIMATELY BELONGS SOMEWHERE ELSE.  
18 IT IS TO SOME DEGREE A STRATEGIC PLANNING ISSUE. WE  
19 HAVE DISCUSSED THIS WITH VARIOUS PEOPLE, INCLUDING BOB  
20 KLEIN, AND WE'VE DECIDED TO TRY TO AT LEAST GET THE  
21 DISCUSSION OF THESE ISSUES GOING HERE, BUT THEY'RE NOT  
22 STRICTLY INTELLECTUAL PROPERTY POLICY.

23 MR. SIMPSON: HAVE WE LEFT THE QUESTION OF  
24 WHETHER WE SHOULD BE FOLLOWING THE NIH MODEL OR THE  
25 FEDERAL MODEL WITH GOVERNMENT, THE POINT I RAISED?

1 CHAIRMAN PENHOET: RETAIN THE LICENSE FOR ITS  
2 OWN USE?

3 MR. SIMPSON: YEAH.

4 CHAIRMAN PENHOET: WELL, WE'VE WRITTEN IT  
5 DOWN AS SOMETHING TO DISCUSS. PRESUMABLY ALL OF THESE  
6 THINGS, THE POINTS WILL BE BROUGHT UP WITH THE ICOC AS  
7 A WHOLE. WE CAN POLL THE GROUP HERE TODAY ABOUT THAT  
8 ISSUE.

9 THE QUESTION JOHN SIMPSON SEEKS AN ANSWER TO  
10 IS WHETHER OR NOT THE STATE OF CALIFORNIA WOULD RETAIN  
11 THE LICENSE FOR ITSELF TO PRACTICE THE ART OF ANY  
12 INVENTION MADE BY A -- WELL, IT'S NOT IN THE  
13 NOT-FOR-PROFIT POLICY, EITHER POLICY.

14 DR. HALL: FOR RESEARCH PURPOSES.

15 MR. SIMPSON: I'M FOLLOWING THE MODEL --

16 DR. HALL: FOR RESEARCH PURPOSES. THE  
17 FEDERAL POLICY, I THINK, IS DEFINITELY FOR RESEARCH  
18 PURPOSES.

19 MR. SIMPSON: THAT'S WHAT -- I'M ESSENTIALLY  
20 PARALLELING THE FEDERAL MODEL, WHATEVER THAT IS.

21 DR. HALL: I DON'T THINK ANYBODY IS INTENDING  
22 THAT WE OR ANYBODY ELSE SHOULD DO COMMERCIAL  
23 DEVELOPMENT OF THESE ON OUR OWN. IT WOULD BE STRICTLY  
24 SPEAKING FOR --

25 CHAIRMAN PENHOET: FOR ITS OWN USE MEANS YOU

1 COULDN'T LICENSE IT TO A THIRD PARTY. IT MEANS YOU USE  
2 IT YOURSELF. IS THAT --

3 MR. SIMPSON: YEAH, FOR YOUR OWN USE. THAT'S  
4 WHAT THE FEDERAL GOVERNMENT RETAINS, FOR ITS OWN USE.

5 DR. HALL: THESE THINGS ARE DIFFICULT. BE  
6 SURE WE'RE UNDERSTANDING THE SAME THING.

7 CHAIRMAN PENHOET: THE FEDERAL GOVERNMENT  
8 DOES A LOT OF RESEARCH. STATE OF CALIFORNIA DOESN'T DO  
9 MUCH AS FAR AS I KNOW.

10 DR. MAXON: UNLESS YOU COUNT UC.

11 CHAIRMAN PENHOET: UC IS PART OF THE STATE OF  
12 CALIFORNIA.

13 DR. HALL: YES. BUT LET'S --

14 CHAIRMAN PENHOET: I THINK WE HAVE TO DO SOME  
15 MORE HOMEWORK ON THIS ISSUE.

16 MR. SIMPSON: I THINK THAT'S AN INTERESTING  
17 THING TO PURSUE, I HOPE.

18 MS. KHOTANI: THE STATE OF CALIFORNIA WILL  
19 ALWAYS HAVE THE MARCH-IN RIGHTS BECAUSE THAT IS THE  
20 PROVISION IN HERE, RIGHT?

21 CHAIRMAN PENHOET: YES. IF THE INVENTIONS  
22 ARE NOT PURSUED BY WHOEVER INVENTS THEM.

23 MS. KHOTANI: IF THE PUBLIC HEALTH IS AT  
24 STAKE.

25 MR. SIMPSON: YES, THAT'S TRUE.

1 CHAIRMAN PENHOET: OKAY. FLIPPING TWO  
2 FORWARD, REQUIREMENTS OF LICENSING INVENTIONS, PATENTED  
3 INVENTIONS, TO THIRD PARTIES. THAT'S PAGE 12. THE  
4 LANGUAGE IS VERY SIMILAR TO WHAT WE HAVE IN THE  
5 NOT-FOR-PROFIT POLICY. THIS IS IF AWARDEE  
6 ORGANIZATIONS CHOOSE TO LICENSE THEIR INVENTION TO  
7 THIRD PARTIES, NOT IF THEY INTEND TO PURSUE THEM ON  
8 THEIR OWN, WHICH WE DEAL WITH ELSEWHERE IN THIS  
9 DOCUMENT.

10 MS. KING: WE MIGHT HAVE A COMMENT.

11 MR. GILLENWATER: I HAVE A COMMENT ON ITEM  
12 NO. 4, PROBABLY ON THE NEXT SLIDE.

13 CHAIRMAN PENHOET: IT IS ON THE NEXT SLIDE.  
14 WE CAN GO TO THE NEXT SLIDE. FIRST, ANY COMMENTS ON  
15 THIS SECTION FROM MEMBERS OF THE TASK FORCE? WE HAVE A  
16 COMMENT FROM THE AUDIENCE IN SAN FRANCISCO.

17 NO. 4 IS ON PAGE 13. AWARDEE ORGANIZATIONS  
18 SHALL GRANT EXCLUSIVE LICENSES ONLY TO ORGANIZATIONS  
19 WITH PLANS TO PROVIDE ACCESS AT THE TIME OF  
20 COMMERCIALIZATION.

21 MR. GILLENWATER: THIS IS TODD GILLENWATER  
22 WITH THE CALIFORNIA HEALTHCARE INSTITUTE. AND ACTUALLY  
23 I HAVE TWO COMMENTS ON THIS ONE, AND ONE IS A KIND OF A  
24 30,000 FOOT LEVEL QUESTION. THE OTHER ONE IS A LITTLE  
25 BIT MORE DETAILED.

1 THE FIRST REFERS TO SOMETHING I KNOW WE'RE  
2 GOING TO GET TO IN A COUPLE SLIDES DOWN, WHICH IS THE  
3 25-PERCENT TRIGGER OR THRESHOLD. AND KNOWING THAT THIS  
4 ALSO WAS COVERED IN THE IP POLICY, THE REASON I BRING  
5 IT UP IS WE BELIEVE IT'S RELEVANT. AND IT'S MORE OF A  
6 QUESTION, AGAIN, LOOKING FORWARD TO THE THRESHOLD, IS  
7 APPRECIATING THAT THRESHOLD, APPRECIATING THAT TRIGGER,  
8 WHICH BASICALLY STATES THAT CIRM BELIEVES THAT ONLY  
9 WHEN CIRM FUNDING IS A SUBSTANTIAL PART OF THAT FINAL  
10 PRODUCT SHOULD THESE POLICIES BE TRIGGERED.

11 AND THE QUESTION WE HAVE HAD AND WE'VE STATED  
12 IN OUR COMMENTS ON THE NONPROFIT POLICY, AND WE'LL  
13 CERTAINLY STATE IT IN THE FOR-PROFIT, IS WHY THE  
14 TRIGGER OR A THRESHOLD WOULDN'T APPLY TO LICENSED  
15 INVENTIONS AS WELL. IF I COULD JUST GIVE A QUICK  
16 EXAMPLE. IT WOULD BE IF A COMPANY ACCEPTS \$10 MILLION  
17 DIRECTLY FROM CIRM FOR A PRODUCT THAT ULTIMATELY COSTS  
18 \$500 MILLION TO COMMERCIALIZE, 2 PERCENT, THIS  
19 THRESHOLD WOULD NOT BE TRIGGERED IF THE 25 PERCENT IS  
20 THE AMOUNT. HOWEVER, IF THAT SAME COMPANY LICENSED A  
21 TECHNOLOGY FROM THE UNIVERSITY OF CALIFORNIA, THAT  
22 TECHNOLOGY HAVING BEEN THE RECIPIENT OF \$10 MILLION IN  
23 CIRM FUNDING, THE COMPANY THEN GOES ON TO DEVELOP A  
24 PRODUCT THAT STILL COSTS \$500 MILLION, THE CIRM FUNDING  
25 THAT GOES INTO THAT RESULTANT PRODUCT IS STILL 2

1 PERCENT OF THE FINAL COST -- THAT THE FINAL PRODUCT  
2 COSTS.

3 AND, THEREFORE, HAS THE TASK FORCE CONSIDERED  
4 WHY THERE IS A DIFFERENCE IN THIS TRIGGERING EVEN  
5 THOUGH THE COST THAT THE COMPANY TAKES UPON ITSELF OR  
6 THE COST THAT THE CIRM FUNDING AMOUNTS TO AND THE COST  
7 OF THE FINAL PRODUCT IS 2 PERCENT IN EITHER CASE, AT  
8 LEAST IN MY THEORETICAL EXAMPLE.

9 DR. HALL: THAT REALLY GOES BACK TO THE  
10 NONPROFIT POLICY; IS THAT CORRECT?

11 MR. GILLENWATER: THAT WAS WHAT -- I TRIED TO  
12 STATE THAT AS WELL. IT'S SOMETHING THAT WE ADDRESSED  
13 IN OUR COMMENTS ON THE NONPROFIT.

14 CHAIRMAN PENHOET: WELL, THERE ARE A COUPLE  
15 ANSWERS. I GUESS ONE IS THAT IT'S LIKELY THAT -- WELL,  
16 IT'S TRUE THAT COMPANY AWARDEES WILL BE CALIFORNIA  
17 COMPANIES DOING BUSINESS AS COMPANIES. IT'S HIGHLY  
18 PROBABLE THAT MANY OR MOST OF THE LICENSEES WILL BE  
19 OUTSIDE CALIFORNIA. AND, THEREFORE, CALIFORNIA WON'T  
20 GET ANY INDIRECT BENEFIT FROM COMPANY ACTIVITIES, ETC.  
21 THEY HAVE ONLY THE INVESTMENT THEY MADE IN THE  
22 TECHNOLOGIES. AND SO THAT'S ONE ARGUMENT.

23 TO SOME DEGREE, WE ALSO THOUGHT ABOUT THE --  
24 THESE ARE SPECIFIC INVENTIONS. PRESUMABLY IF IT'S A  
25 SINGLE INVENTION WHICH IS LICENSED AND IT'S RESPONSIBLE

1 FOR THE ENTIRE DEVELOPMENT, IT REALLY EMPOWERS THESE  
2 COMPANIES FOR THE ENTIRE PROGRAM, EVEN THOUGH THEY MAY  
3 SPEND MORE MONEY, BUT THESE ARE SCIENTIFIC INVENTIONS  
4 WE'RE TALKING ABOUT, PATENTABLE INVENTIONS. THEY'RE  
5 NOT DEVELOPMENT FUNDS, ETC., THINGS LIKE THAT, THAT GO  
6 BEYOND THAT. SO IN THE INVENTIVE ACT, I'M NOT SURE WE  
7 ARTICULATED HERE, BUT IF OUR FUNDING OF THE INVENTION  
8 WAS LESS THAN A HUNDRED PERCENT, AND THE COMPANY PUT IN  
9 THEN, THERE ARE SOME PROPORTIONAL PARTS, BUT IT STILL  
10 DOESN'T REFLECT WHAT YOUR CONCERN, WHICH IS IS THERE A  
11 THRESHOLD HERE.

12 SO THIS IS A CASE WHERE, YOU KNOW, IT'S NOT A  
13 PERFECT WORLD, FOR SURE, BUT THE COMPANIES WILL KNOW  
14 THIS GOING IN FOR LICENSEES. IF IT TURNS OUT LATER  
15 THIS IS A BARRIER, NONE OF THIS TECHNOLOGY IS GETTING  
16 LICENSED FOR THIS REASON, WE CAN ALWAYS REVISIT THE  
17 ISSUE. BUT WE THOUGHT IT WOULD BE -- YOU COULD GO BACK  
18 AND REOPEN THE DISCUSSION ABOUT THE NOT-FOR-PROFITS.  
19 WE DIDN'T THINK WE SHOULD UNIQUELY PENALIZE THE  
20 NOT-FOR-PROFITS IN THIS REGARD VIS-A-VIS THE FOR-PROFIT  
21 ENTITIES AND HAVE DIFFERENT RULES FOR BOTH ABOUT  
22 LICENSING PATENTED TECHNOLOGY.

23 I THINK THAT WE DO WANT TO ENCOURAGE  
24 COMPANIES IN CALIFORNIA TO INVEST IN THE DEVELOPMENT OF  
25 THEIR OWN TECHNOLOGY, AND THAT'S WHY THE OTHER SECTION



1 DEALS WITH IT DIFFERENTLY THAN OUT-LICENSING IT AND  
2 PRESUMABLY WOULD MAKE A BIGGER CONTRIBUTION TO AN  
3 INVENTION THAN WE MAKE TO A WHOLE DEVELOPMENT PROGRAM.  
4 THE LOGIC IS NOT PERFECT.

5 MR. GILLENWATER: OKAY.

6 CHAIRMAN PENHOET: YOU HAD A SECOND QUESTION?

7 MR. GILLENWATER: IT'S MORE OF A COMMENT THAN  
8 A QUESTION BECAUSE I DON'T HAVE THE ANSWER MYSELF YET.  
9 THE SECTION THAT DISCUSSES THE REQUIREMENT THAT  
10 LICENSEES WILL PROVIDE TO PATIENTS THERAPIES AND  
11 DIAGNOSTICS WILL BE PURCHASED IN CALIFORNIA BY PUBLIC  
12 FUNDS THE THERAPIES AND DIAGNOSTICS AT A COST NOT TO  
13 EXCEED THE FEDERAL MEDICAID PRICE. I KNOW WE'VE HAD  
14 DISCUSSIONS WITH -- AS PART OF OUR NONPROFIT POLICY  
15 COMMENTS AND DISCUSSIONS OUTSIDE OF THAT IN TWO AREAS  
16 OF CONCERN.

17 ONE, THE DEFINITION OF FEDERAL MEDICAID  
18 PRICE; AND, TWO, A LITTLE BIT OF CONCERN AS WE'VE  
19 RECEIVED FROM OUR MEMBERSHIP ON THE DEFINITION OF  
20 PUBLIC FUNDS. AND IT ACTUALLY GOES BACK TO THIS TASK  
21 FORCE MEETINGS IN JULY WHEN THERE WAS A MOTION MADE, I  
22 BELIEVE, BY DR. PRIETO TO EXTEND IT FROM MEDICAID PRICE  
23 TO VA OR SOME OF THE OTHER ELEMENTS.

24 AND THERE WAS A DISCUSSION ON HOW THAT MIGHT  
25 TRIGGER A RECALCULATION OF BEST PRICE THAT WOULD AFFECT

1 49 OTHER STATES. AND THERE WAS A COMMITMENT OR THE  
2 STATEMENT THAT THE TASK FORCE DIDN'T WISH TO GO THERE.  
3 BASED ON SOME OF THE COMMENTS WE'VE GOTTEN BACK FROM A  
4 SUBSTANTIAL NUMBER OF OUR MEMBERS, THERE IS A DESIRE TO  
5 GET A LITTLE BIT MORE CLARITY IN THIS DEFINITION, THAT  
6 THIS REQUIREMENT WOULD NOT APPLY TO SOME SORT OF ENTITY  
7 THAT WOULD THEN TRIGGER A RECALCULATION OF BEST PRICE  
8 THAT WOULD AFFECT PRICING IN THE 49 OTHER STATES.

9 CHAIRMAN PENHOET: SCOTT TOCHER HAS BEEN  
10 DOING A FAIR AMOUNT OF WORK ON THIS. YOU DO BRING UP  
11 AN INTERESTING QUESTION. I GUESS MEDICARE IS BY FAR  
12 THE BIGGEST PAYOR OF ALL THESE THINGS. BY OUR  
13 DEFINITION, SCOTT, WOULD MEDICARE PAYMENTS BE  
14 CONSIDERED PUBLIC FUNDS FOR THIS PURPOSE? I DON'T  
15 THINK THAT'S WHAT WE HAD IN MIND, BUT IT COULD BE --

16 MR. GILLENWATER: THERE IS NO DEFINITION OF  
17 PUBLIC FUNDS. I THINK THAT'S ONE OF THE QUESTIONS  
18 WE'VE HAD.

19 CHAIRMAN PENHOET: SO I THINK THAT'S A GOOD  
20 POINT YOU MAKE, AND I THINK WE SHOULD CLARIFY THAT.

21 MR. SIMPSON: I THINK WE HAD UNDERSTOOD THOSE  
22 TO BE STATE OR COUNTY OR CITY.

23 CHAIRMAN PENHOET: WE DID.

24 MR. SIMPSON: AND I THOUGHT THERE MIGHT HAVE  
25 BEEN DISCUSSION TO THAT POINT SOMEWHERE, AND MAYBE EVEN

1 THE REGS, BUT I DON'T RECALL.

2 MR. GILLENWATER: I REMEMBER THE DISCUSSION.

3 CHAIRMAN PENHOET: I THINK WE ALL UNDERSTOOD  
4 WHAT WE MEANT, BUT I'M NOT SURE THAT THE LANGUAGE  
5 COULDN'T BE INTERPRETED DIFFERENTLY. THANK YOU FOR  
6 POINTING THAT OUT. SO WE WILL GO BACK AND LOOK AT  
7 THAT.

8 ANY FURTHER COMMENTS ON THIS SECTION?

9 DR. PRIETO: JUST WITH REGARD TO THAT COMMENT  
10 I MADE AT THE PREVIOUS MEETING, MY INTENTION WAS JUST  
11 THAT CALIFORNIA, HAVING PARTICIPATED IN THE INVENTION,  
12 SHOULD BE ASSURED THE BEST FEDERAL PRICE OR THE BEST  
13 AVAILABLE PRICE, PERIOD. AND I'M CERTAINLY OPEN TO  
14 SUGGESTION, AND I HOPE THAT OUR COUNSEL CAN HELP ME  
15 WITH THIS ON LANGUAGE THAT WOULD ACHIEVE THAT END  
16 WITHOUT TRIGGERING SOME OF THESE OTHER POTENTIAL  
17 PROBLEMS.

18 CHAIRMAN PENHOET: YES. I THINK WE'RE GOING  
19 TO SOLVE THIS PROBLEM BY DEFINING PUBLIC FUNDS AND  
20 DEFINING WHAT WE MEAN BY FEDERAL MEDICAID PRICE IN SUCH  
21 A WAY THAT THAT WON'T HAPPEN. WE'LL CERTAINLY RUN IT  
22 BY YOU BEFORE WE FINALIZE IT.

23 MR. GILLENWATER: THANK YOU.

24 CHAIRMAN PENHOET: OKAY. MOVING ALONG, F ON  
25 PAGE 14, ACCESS REQUIREMENTS FOR PRODUCTS DEVELOPED BY

1 FOR-PROFIT AWARDEES. THIS SAYS IF OUR FUNDING EXCEEDS  
2 25 PERCENT, THEN THIS WILL TRIP THE REQUIREMENT ON THAT  
3 COMPANY TO AGREE TO THE LOWER PRICES AND TO HAVE THE  
4 PLAN IN PLACE FOR PATIENT ACCESS.

5 WE'VE HAD A FAIR AMOUNT OF DISCUSSION ON  
6 THIS. I BELIEVE I CAN QUOTE JOHN SIMPSON AS SAYING THE  
7 FIRST DOLLAR SHOULD TRIP THIS REQUIREMENT INTO A  
8 COMPANY. THE OTHER END, I THINK THE COMPANIES VIEW  
9 THIS -- SOME COMPANIES VIEW THIS AS AN ONEROUS  
10 REQUIREMENT AT THE 25-PERCENT LEVEL. TO SOME DEGREE  
11 THIS NUMBER IS AN IRRATIONAL NUMBER. IT'S A NEGOTIATED  
12 NUMBER. BUT I THINK IT'S AN AREA OF SUFFICIENT CONCERN  
13 ON BOTH SIDES, THAT WE SHOULD HAVE A LITTLE BIT FURTHER  
14 DISCUSSION.

15 I'D LIKE TO START WITH THE TASK FORCE. YOU  
16 GUYS HAVE HAD A MONTH NOW TO THINK ABOUT 25 PERCENT.  
17 ANY OF YOU WANT TO COMMENT FURTHER ON THAT THRESHOLD?  
18 SAN DIEGO?

19 DR. PRIETO: I THINK I PULLED THIS NUMBER OUT  
20 OF MY HAT AT THE LAST MEETING.

21 CHAIRMAN PENHOET: THANK YOU.

22 DR. PRIETO: IN THINKING ABOUT IT, I THINK I  
23 CAN UNDERSTAND THAT FIRST DOLLAR WOULD BE CONSIDERED  
24 ONEROUS, BUT 25, I THINK, IS -- I CERTAINLY WOULD NOT  
25 WANT THIS ANY HIGHER, AND I WOULD BE WILLING TO

1 CONSIDER LOWER. EVEN A 10-PERCENT INVESTMENT IN A  
2 SIGNIFICANT INVENTION COULD MEAN A LOT TO CALIFORNIA,  
3 COULD MEAN A LOT IN THE FORM OF POTENTIAL THERAPIES FOR  
4 CALIFORNIANS AND FOR EVERYONE. AND THAT, I THINK,  
5 WOULD BE A SUBSTANTIAL CONTRIBUTION TO THE INVENTION.  
6 SO I CERTAINLY WOULD NOT WANT TO GO ABOVE THIS LINE.

7 DR. WRIGHT: FRANCISCO, THIS IS JANET. IT'S  
8 SORT OF FRIGHTENING. I HAD JUST WRITTEN DOWN 10  
9 PERCENT ON MY NOTEPAD HERE AS YOU WERE SPEAKING.  
10 BECAUSE I ALSO FEEL THAT FIRST DOLLAR MIGHT BE A MORE  
11 AGGRESSIVE STANCE THAN WE WANT TO TAKE, BUT THIS IS AN  
12 OBLIGATION TO OUR PATIENTS IN THE STATE AND OUR  
13 CITIZENS WHO HAVE CONTRIBUTED. SO I'D BE IN FAVOR OF A  
14 LITTLE LOWER THRESHOLD.

15 DR. BRYANT: I THINK 25 PERCENT SOUNDS LIKE A  
16 BALANCE TO ME BETWEEN, YOU KNOW, DISCOURAGING INDUSTRY  
17 FROM COMING IN AT ALL AND DISCHARGING OUR OBLIGATION TO  
18 PATIENTS. SO I DON'T KNOW WHY IT SOUNDS LIKE A  
19 REASONABLE NUMBER, BUT IT DOES, TO ME ANYWAY. SO I  
20 WOULD BE HAPPY TO STAY WITH 25 PERCENT.

21 MR. ROTH: I AM ALSO COMFORTABLE WITH 25  
22 PERCENT.

23 CHAIRMAN PENHOET: DO WE HAVE COMMENTS IN SAN  
24 FRANCISCO? JOHN SIMPSON.

25 MR. SIMPSON: I'M NOT GOING TO GO IMMEDIATELY

1 TO THE FIRST DOLLAR ARGUMENT SINCE YOU SO CORRECTLY  
2 QUOTED ME FROM THE LAST MEETING, BUT IT DOES STRIKE ME  
3 THAT PERHAPS A PERCENT APPROACH IS THE WRONG APPROACH  
4 BECAUSE WHAT I THINK WE MIGHT BE LOOKING AT IS A  
5 SITUATION WHERE AT A PARTICULAR POINT IN THE  
6 DEVELOPMENT OF A PRODUCT, CIRM'S \$1 MILLION WOULD BE  
7 KEY BECAUSE IT WOULD THEN TAKE IT TO THE NEXT LEVEL,  
8 WHICH WOULD THEN RESULT IN \$800 MILLION COMING IN FROM  
9 BIG PHARMA THAT NEVER WOULD HAVE HAPPENED IF THE ONE  
10 MILLION HADN'T BEEN PUT IN FROM CIRM.

11 SO IT MAY BE THAT THERE SHOULD BE SOME KIND  
12 OF LANGUAGE INSERTED THAT WOULD SAY FOR PROJECTS WHERE  
13 CIRM FUNDING WAS DECISIVE IN DEVELOPING A PRODUCT OR IT  
14 DOES NOT -- OR EXCEEDS 25 PERCENT, THAT MIGHT BE A WAY  
15 TO GO BECAUSE THERE IS THIS THING OF DOLLARS BEING MORE  
16 VALUABLE AT DIFFERENT TIMES IN THE PROCESS.

17 CHAIRMAN PENHOET: A HARD THING TO NEGOTIATE  
18 IF YOU'VE EVER TRIED TO DO THAT, JOHN, BUT IT'S A POINT  
19 WELL TAKEN.

20 DR. PRIETO: IF I COULD COMMENT AGAIN. I  
21 THINK IT MIGHT BE REASONABLE TO PUT IN A LOWER  
22 PERCENTAGE, BUT WITH A TRIGGERING AMOUNT; THAT IS,  
23 EITHER IN THE FORM OF A TRIGGERING AMOUNT OF CIRM  
24 CONTRIBUTION OR OF, YOU KNOW, IN THE FORM OF X REVENUES  
25 TRIGGER THIS GUARANTEE.

1                   MR. TAYMOR:   WHAT ABOUT A PERCENTAGE BASED ON  
2   THE AMOUNT THAT HAS BEEN SPENT AT THAT TIME, WHICH, IN  
3   EFFECT, IS IMPLICIT IN THE NONPROFIT POLICY.   THE  
4   NONPROFIT POLICY YOU'RE SAYING WE'RE ASSUMING THAT ZERO  
5   OR ONLY A SMALL AMOUNT OF FUNDS HAVE BEEN EXPENDED WITH  
6   RESPECT TO THIS INVENTION AT THIS TIME; THEREFORE,  
7   WE'RE GOING TO MAKE IT SUBJECT TO THIS RULE.   SO IF 10  
8   OR 20 PERCENT OF THE FUNDING FOR PRE-IND STAGE HAS COME  
9   FROM CIRM AND THAT'S ALLOWED THE PROJECT TO GET INTO  
10  THE CLINIC, THEN MAYBE THIS IS APPLICABLE AS OPPOSED TO  
11  LOOKING AT THE CIRM DOLLARS AND MATCHING THEM DOLLAR  
12  FOR DOLLAR AGAINST DOLLARS THAT CAME IN AT PHASE III.

13                  CHAIRMAN PENHOET:   SO YOU WOULD ASK FOR AN  
14  ACCOUNTING OF HOW MUCH MONEY THEY'VE SPENT BEFORE THEY  
15  GOT CIRM FUNDING?

16                  MR. TAYMOR:   NO.   YOU'RE ASKING FOR THIS  
17  ACCOUNTING -- YOU'RE GOING TO ASK FOR THIS ACCOUNTING  
18  AT SOME POINT.   I THINK WE HAVE THE 25-PERCENT  
19  THRESHOLD, AND THE QUESTION RAISED IS DO YOU REALLY  
20  NEED THE REGULATION BECAUSE ARE YOU GOING TO BE PUTTING  
21  IN A HUNDRED, \$125 MILLION INTO THAT MANY PROJECTS,  
22  THAT IT'S REALLY GOING TO BE -- IT'S WORTH A REGULATION  
23  AS OPPOSED TO SAYING WHEN YOU MAKE A GRANT OF THAT  
24  SIZE, YOU'RE MAYBE GOING TO MAKE SOME SPECIAL KIND OF  
25  RULES WITH RESPECT TO IT.

1                   IF YOU'RE TALKING ABOUT RULES THAT ARE  
2                   GENERALLY GOING OVER A BROAD RANGE OF GRANTS, YOU'RE  
3                   NOT GOING TO MAKE -- ONE OF THE POLICIES WAS DISCUSSED  
4                   AT THE STRATEGIC PLANNING GROUP, IT WAS RAISED BY THE  
5                   CEO'S AND THE OTHER BUSINESS REPRESENTATIVES AT THE  
6                   ROUNDTABLE THAT CIRM PUT ON, IS THAT BUSINESS REALLY  
7                   NEEDS PRE-IND MONEY. SO THAT MONEY, WHICH COULD BE  
8                   VERY INFLUENTIAL TO THE SUCCESS OF THE PROJECT, THEY  
9                   QUOTE IT AS BEING IN THE TWO TO \$10 MILLION RANGE; IS  
10                  THAT CORRECT? IT'S OBVIOUSLY GOING TO BE A NEGLIGIBLE  
11                  AMOUNT IN THE OVERALL DEVELOPMENT COST OF ANY  
12                  THERAPEUTIC, YET THESE INDUSTRY CEO'S ARE SAYING THIS  
13                  IS A CRITICAL PIECE OF FUNDING FOR OUR BUSINESS.

14                  DR. HALL: THEY'RE SAYING IT'S AN ENABLING  
15                  AMOUNT OF MONEY.

16                  MR. TAYMOR: RIGHT. SO THAT A WAY OF DOING  
17                  IT IS SAYING IF YOU GET DOWN TO THE END AND YOU GET  
18                  A -- WHEN IT'S GETTING READY FOR COMMERCIALIZATION, YOU  
19                  HAVE TO COME UP WITH THIS PLAN. IF IT TURNED OUT AT  
20                  THAT TIME -- YOU WILL HAVE KEPT SOME RECORDS. YOU'LL  
21                  HAVE ACCOUNTANTS. IT'S NOT GOING TO BE ANY MORE  
22                  DIFFICULT FOR THEM TO FIGURE OUT HOW MUCH MONEY THEY  
23                  HAD SPENT AT THE TIME THEY DID THE IND AND THEY GOT THE  
24                  GRANT -- PRE-IND WORK IF THEY GOT THE GRANT FROM CIRM,  
25                  THEN THEY'RE GOING TO TELL YOU AT THE END OF THEIR



1 PHASE III, OR THE END OF THEIR PHASE II IF YOU WANT TO  
2 SAY THAT'S THE COMMERCIALIZATION POINT.

3 CHAIRMAN PENHOET: THE COMMERCIALIZATION  
4 POINT WOULD BE THE END OF PHASE III.

5 MR. TAYMOR: THAT'S RIGHT, I WOULD THINK.  
6 ANY OF THOSE POINTS, I'M SAYING ANY OF THOSE POINTS,  
7 THEY'RE GOING TO NEED TO COME UP WITH AN ACCOUNTING.  
8 THEY COULD COME UP WITH IT FOR WHETHER IT WAS AT THE  
9 PRE-IND STAGE, BUT THEY ALL SAID THAT THAT SMALL AMOUNT  
10 OF MONEY COULD BE SOME OF THE BEST MONEY THAT CIRM  
11 COULD SPEND FOR COMMERCIAL PRODUCTS. AND IT SEEMS LIKE  
12 A GOOD QUID PRO QUO TO SAY WE'LL SPEND IT, WE'LL  
13 SUPPORT IT, BUT WE WANT YOU TO PROVIDE THIS PUBLIC  
14 BENEFIT IN EXCHANGE FOR US TAKING THAT RISK.

15 DR. HALL: SO WOULD YOU HAVE A PERCENT AT  
16 THAT POINT?

17 MR. TAYMOR: YEAH. EITHER A PERCENT OR YOU  
18 COULD JUST MAKE IT A BLANKET ENABLING IF YOU WANTED TO  
19 DO IT THAT APPROACH.

20 CHAIRMAN PENHOET: THERE AGAIN, THEN YOU  
21 INVOLVE THE CIRM IN A LOT OF NEGOTIATION ABOUT WHAT'S  
22 ENABLING.

23 MR. TAYMOR: THAT'S WHAT I WAS SAYING. THAT  
24 WAY IT BECOMES --

25 DR. HALL: SO WHAT PERCENT WOULD YOU IMAGINE

1 WOULD QUALIFY AS ENABLING?

2 MR. TAYMOR: 10 PERCENT, SAY IT'S 25 PERCENT.

3 I THINK YOU ARE MUCH MORE IN THE GAME IF YOU ARE  
4 TALKING ABOUT 25 PERCENT. YOUR 2 TO 10 MILLION IS  
5 GOING TO BE A TRIGGER -- IS GOING TO BE GIVEN IN A  
6 PRE-IND STAGE. THEN SOME OF THOSE THINGS WILL ACTUALLY  
7 GET CAUGHT BY THIS NET. THEY'RE NOT GOING TO GET  
8 CAUGHT BY THIS NET EXCEPT IN EXTRAORDINARY  
9 CIRCUMSTANCES BECAUSE YOU'RE NOT GOING TO PUT IN A  
10 HUNDRED, \$125 MILLION INTO THERAPEUTIC DEVELOPMENT.

11 CHAIRMAN PENHOET: YOU KNOW, THE DATA WE SAW  
12 ABOUT WHAT IT COST TO DEVELOP THE DRUG ARE BASED ON THE  
13 FAILURES. THIS IS PER PROJECT, ONLY THIS PROJECT. SO  
14 I SUSPECT IT'S A RARE SINGLE PROJECT THAT WILL COST  
15 \$500 MILLION BECAUSE THE EIGHT OR \$900 MILLION FIGURE  
16 WE SEE INCLUDES 90 PERCENT OF THE PROJECTS THAT NEVER  
17 MAKE IT, BUT MIGHT BE \$100 MILLION.

18 MR. ROTH: JUST A REMINDER THAT IT IS VERY  
19 DIFFICULT WHEN YOU PUT THESE KINDS OF CALCULATIONS DOWN  
20 FOR PEOPLE TO IMAGINE WHAT THAT MIGHT BE IN THE LONG  
21 RUN. I THINK THE BIG DANGER HERE IS THAT CORPORATIONS  
22 WILL LOOK AT THIS AND FEAR THAT FOR A MILLION DOLLARS  
23 OR A \$2 MILLION GRANT, THEY'RE TYING THEIR HANDS DOWN  
24 THE ROAD.

25 I RECALL THE TIME WHEN PEOPLE WOULD COME TO

1 SMALL COMPANIES THAT HAVE DEVELOPED INNOVATIONS, AND  
2 THE FIRST QUESTION FROM BIG PHARMA WAS IS THERE ANY NIH  
3 MONEY IN THIS THING? BECAUSE THE FEAR WAS AT THAT  
4 POINT IN TIME, UNTIL NIH STARTED TO CHANGE THEIR  
5 POLICY, WAS IF THERE'S NIH MONEY IN IT, THE THREAT THAT  
6 YOU WERE GOING TO BE CALLED OUT DOWN THE ROAD FOR  
7 HAVING USED PUBLIC FUNDS TO ADVANCE A PRODUCT WERE  
8 GREATER THAN THE RISK THEY WANTED TO TAKE. I REALLY  
9 ENCOURAGE US NOT TO MAKE THIS TOO COMPLICATED BECAUSE I  
10 THINK COMPANIES WILL LOOK AT IT AND SAY WE JUST CAN'T  
11 AFFORD THE RISK HERE.

12 CHAIRMAN PENHOET: WHAT DO YOU THINK ABOUT  
13 PRE-PHASE III AS THE HURDLE? THERE YOU WOULD HAVE A  
14 PROOF OF PRINCIPLE. YOU WOULD HAVE HELPED SOMEBODY  
15 ESTABLISH PROOF OF PRINCIPLE, WHICH USUALLY COMES AFTER  
16 PHASE II, IF THE THING WILL WORK.

17 DR. WRIGHT: ED, WOULD YOU REPEAT THAT?

18 CHAIRMAN PENHOET: WELL, IF IT'S NOT THE  
19 TOTAL AMOUNT OF MONEY THAT AN ORGANIZATION SPENDS, THE  
20 BIG EXPENSE IS IN PHASE III. SO IF YOU SAID -- IF WE  
21 PUT IN MORE THAN 25 PERCENT OF THE MONEY PRIOR TO  
22 INITIATION OF PHASE III CLINICAL TRIALS, THAT'S USUALLY  
23 THE PHASE WHERE THINGS ARE INVENTED, THINGS ARE PROVEN,  
24 ETC. PHASE III IS JUST VERIFICATION THAT YOUR PHASE II  
25 WAS ALSO CORRECT, BUT YOU HAVE TO DO IT WITH A LOT OF

1 PEOPLE. AND THAT IS WHERE WE'RE BEING ASKED TO PUT THE  
2 MONEY.

3 DR. HALL: RIGHT. WE IMAGINE, ACTUALLY, THAT  
4 EVEN FOR SOME OF THE PHASE I, PHASE II TRIALS IN OUR  
5 FINANCIAL MODEL, THAT WE WILL PAY ONLY 50 PERCENT OF  
6 THE COST, THAT WE'LL HAVE PARTNERS IN THAT, WHOEVER  
7 THEY MIGHT BE.

8 MR. SIMPSON: AREN'T YOU ESSENTIALLY ENABLING  
9 WHEN YOU MAKE THAT CONTRIBUTION? WHATEVER IT IS YOU  
10 PUT IN THERE DOES THE DEAL, WHICH SEEMS TO ME GOES TO  
11 THE ARGUMENT OF TRIGGERING. IF THEY ASK YOU FOR A  
12 BUCK, YOU'RE IN.

13 CHAIRMAN PENHOET: WELL, MOST GOOD COMPANIES  
14 HAVE ALTERNATIVE SOURCES OF FUNDS. SO IF WE DON'T FUND  
15 IT, THEY MIGHT BE ABLE TO FIND IT SOMEWHERE ELSE OUT OF  
16 STATE. THEY CAN FIND IT IN NEW YORK OR MASSACHUSETTS.

17 DR. HALL: SOMEBODY SAID WHAT WE DON'T WANT  
18 IS TO GET ONLY THOSE COMPANIES THAT ARE SO DESPERATE.

19 CHAIRMAN PENHOET: THAT WAS BRAD MARGUS'  
20 POINT, AND IT WAS A POINT WORTH REMEMBERING.

21 DR. HALL: YES, IT IS. YES, IT IS. I THINK  
22 WE DON'T WANT TO MAKE IT SO ONEROUS FOR A COMPANY THAT  
23 IT'S THEIR LAST CHOICE. THAT IS, IT'S ONLY THE WAY  
24 THEY CAN MAKE THIS THING HAPPEN. IN THAT SENSE, YOU  
25 COULD SAY THAT'S WHAT YOU MEAN BY ENABLING.

1 DR. PRIETO: BUT WE ALSO WANT TO GET  
2 INNOVATIVE COMPANIES THAT SOME OTHER FUNDING SOURCES  
3 MIGHT NOT BE WILLING TO TAKE A GAMBLE ON.

4 DR. HALL: YES.

5 CHAIRMAN PENHOET: THAT'S TRUE.

6 DR. HALL: I DIDN'T MEAN TO SAY THAT WE'RE  
7 THE ONLY ONE, WE SHOULD BE SUSPICIOUS.

8 CHAIRMAN PENHOET: I'M NOT SURE, THOUGH, THE  
9 WAY OUR GRANTING THINGS ARE SET UP, WE'RE GOING TO BE  
10 LESS RISK AVERSE THAN A VENTURE CAPITALIST. WE'RE  
11 PROBABLY GOING TO BE MORE RISK AVERSE, FRANKLY.

12 MR. ROTH: I THINK THE IMPORTANT ASPECT HERE  
13 IS NOT SO MUCH THE PERCENTAGE OF WHEN IT KICKS IN. I  
14 THINK THAT IS IMPORTANT, BUT IT'S WHAT AM I SIGNING  
15 ONTO? THAT'S WHERE THIS -- THE TRIGGER IS ONE THING,  
16 BUT TRIGGER OF WHAT? WHAT IS IT THAT I WILL HAVE TO DO  
17 THAT I CAN EASILY UNDERSTAND IN TERMS OF THE PRICING?  
18 HOW DOES THAT AFFECT MY NATIONAL PRICING, INTERNATIONAL  
19 PRICING, AND ALL THE RAMIFICATIONS THEREOF?

20 IF THERE WERE A NEGOTIATION ABOUT PRICE AS  
21 THE TRIGGER, THAT MIGHT BE EASIER TO UNDERSTAND. WHEN  
22 YOU START TYING IT TO SOMETHING THAT WE DON'T KNOW WHAT  
23 IT'S GOING TO BE IN THE FUTURE, AND AS TODD POINTED OUT  
24 FROM CHI, THE ONE WE HAVE RIGHT NOW DOESN'T EVEN EXIST.  
25 SO THAT'S VERY COMPLICATED TO FIGURE OUT WHAT I'M

1 TRIGGERING.

2 DR. PRIETO: BUT WE CAN COME UP WITH LANGUAGE  
3 THAT WILL TIE IT TO SOMETHING THAT DOES EXIST AND THAT  
4 IS A BENCHMARK THAT IS RECOGNIZABLE TO ANY PLAYER IN  
5 THE FIELD.

6 DR. WRIGHT: AND PREDICTABLE ON BOTH SIDES,  
7 RIGHT? HOW DIFFICULT IT WILL BE AND WHAT THE  
8 ENTANGLEMENTS WILL BE IN TRYING TO FULFILL THE  
9 OBLIGATION.

10 DR. PRIETO: PARTICULARLY FOR PEOPLE IN  
11 PHARMA, SOMETHING THEY DEAL WITH ALL THE TIME. IT'S  
12 PART OF THEIR ROUTINE BUSINESS CALCULATIONS.

13 MR. ROTH: WELL, I WOULD LOVE TO BELIEVE THAT  
14 IT'S ROUTINE, BUT MY EXPERIENCE SAYS IT'S ANYTHING BUT  
15 ROUTINE, AND IT'S CHANGING CONSTANTLY. PRICING TODAY  
16 IS SO COMPLICATED, GUYS, THAT EVERYBODY HAS TO HAVE A  
17 TEAM OF LAWYERS WORKING ON THIS. WE DON'T HAVE TEAMS  
18 OF LAWYERS AT CIRM.

19 DR. HALL: CAN I ASK WHAT THE CONCERN IS WITH  
20 THE STATEMENT AS WRITTEN BECAUSE AT LEAST SOME PEOPLE  
21 FELT IT WAS OKAY. SO IS THE OBJECTION THAT THIS IS TOO  
22 HIGH A TRIGGER? WHAT --

23 CHAIRMAN PENHOET: WE'VE GOT TWO CONCERNS, I  
24 THINK, ON BOTH ENDS OF THE SPECTRUM. SOME CONCERNS ARE  
25 THAT THIS TRIGGER IS TOO HIGH, AND, THEREFORE, WE'LL

1 NEVER GET THIS IN PLACE. THE OTHER CONCERN IS THE  
2 TRIGGER IS TOO LOW, AND IT WILL ACTUALLY NEVER COME  
3 INTO PLAY BECAUSE THE TOTAL AMOUNT OF EXPENDITURES WILL  
4 BE LARGER THAN WE'LL EVER PAY 25 PERCENT OF. SO SOME  
5 PEOPLE ARE ARGUING THIS IS MOOT BECAUSE WE'LL NEVER PAY  
6 MORE THAN 25 PERCENT ANYWAY AND --

7 DR. HALL: NOBODY WANTS IT MORE THAN THIS,  
8 RIGHT? THIS IS THE --

9 CHAIRMAN PENHOET: I HAVEN'T HEARD THAT  
10 ARGUMENT.

11 DR. HALL: THIS IS THE TOP RANGE.

12 MR. GILLENWATER: WE'VE RESERVED THAT RIGHT  
13 TO OBJECT TO THAT STILL. WE'RE DOING A -- THIS IS,  
14 AGAIN, TODD GILLENWATER FROM CHI. WE'RE DOING A PRETTY  
15 BROAD SURVEY OF OUR MEMBERSHIP AND LOOKING AT NIH  
16 FUNDING AND LOOKING AT OTHER EXAMPLES OF WHERE THIS  
17 NUMBER SHOULD BE BASED ON A SURVEY OF OUR -- OF AN  
18 INFORMAL SURVEY OF OUR MEMBERSHIP. SO WE HAVEN'T  
19 DETERMINED IF IT'S WHERE.

20 CHAIRMAN PENHOET: ONE SOLUTION TO THIS WOULD  
21 BE IF YOU PUT MORE THAN HALF OF THE PRE-IND MONEY, MORE  
22 THAN 25 PERCENT OF THE PRE-PHASE III MONEY, OR MORE  
23 THAN 10 PERCENT OF THE TOTAL, THAT THIS WOULD TRIGGER.  
24 THOSE ARE THE SORT OF MILESTONES IN ANY PRODUCT  
25 DEVELOPMENT. YOU COULD ANTICIPATE THREE DIFFERENT

1 TRIGGERS DEPENDING ON WHICH ONE WAS APPLICABLE IF YOU  
2 DIDN'T MEET ANY OF THOSE. THAT WOULD BE ANOTHER  
3 APPROACH TO THIS PROBLEM.

4 DR. PRIETO: I THINK THAT WOULD BE A PRETTY  
5 REASONABLE APPROACH.

6 DR. WRIGHT: DUANE, HOW DOES THAT SOUND? IS  
7 IT CLEARER?

8 MR. ROTH: CAN YOU RESTATE IT?

9 CHAIRMAN PENHOET: I'M JUST THROWING OUT  
10 NUMBERS HERE, BUT THE THREE SORT OF MILESTONES IN  
11 PRODUCT DEVELOPMENT ARE IND, END OF PHASE II, AND END  
12 OF PHASE III. WE HAVE A BLENDED NUMBER HERE FOR THE  
13 WHOLE THING. SO IF YOU SAID IF WE PUT IN MORE THAN,  
14 YOU KNOW, X AMOUNT, IT WOULD BE A HIGHER AMOUNT,  
15 PRE-IND, JUST FOR SAKE OF ARGUMENT, PICK 25, WE PUT IN  
16 MORE THAN 15 PRE-PHASE III, OR MORE THAN 10 PERCENT OF  
17 THE TOTAL DEVELOPMENT COST, INCLUDING PHASE III, THAT  
18 THIS THING WOULD BE TRIGGERED. I'M NOT MARRIED TO  
19 THOSE NUMBERS. I'M JUST USING WHAT WE STARTED WITH  
20 HERE AS A BASIS.

21 MR. SIMPSON: THAT'S CERTAINLY ONE APPROACH.  
22 BUT IF YOU WANT CLARITY AND SIMPLIFICATION, THE  
23 CLEAREST, SIMPLEST ONE IS IF YOU TAKE ANY MONEY AT ALL,  
24 IT TRIGGERS. THEN YOU DON'T GET INTO ANY KIND OF A  
25 NEGOTIATION.



1 MR. GILLENWATER: NO ONE WILL ACCEPT YOUR  
2 GRANTS. NO ONE WILL WANT YOUR GRANTS.

3 MR. SIMPSON: THE THINGS THAT ARE TRIGGERED  
4 ARE HARDLY ONEROUS. ANY RESPECTABLE COMPANY HAS SOME  
5 SORT OF AN ACCESS PLAN FOR THE PUBLIC.

6 MR. GILLENWATER: THAT MAKES IT MOOT ANYWAY.  
7 THE REGULATION SHOULDN'T EXIST IF IT'S STANDARD  
8 OPERATING PROCEDURE. YOU CAN GET INTO THAT ARGUMENT.

9 CHAIRMAN PENHOET: I THINK WE HAVE AGREED IN  
10 THE NONPROFIT ONE THAT THAT IS SOMETHING WE WANT IN  
11 HERE. THERE'S VERY STRONG SUPPORT FOR THAT, ABOUT THE  
12 ACCESS ONE. IT IS TRUE THE PRICING ONE IS ONLY  
13 CALIFORNIA. WE HAVE HEARD WE HAVE TO BE VERY CAREFUL  
14 THAT IT DOESN'T POLLUTE PRICING ELSEWHERE BECAUSE THAT  
15 WOULD DESTROY THE OPPORTUNITY FOR THE COMPANIES. SO I  
16 THINK THAT'S A SERIOUS ISSUE.

17 ANY OTHER DISCUSSION HERE? I THINK WE'RE  
18 GOING TO HAVE TO LEAVE THE FINAL RESOLUTION TO THIS TO  
19 THE BOARD DISCUSSION.

20 MS. SEARS: DARCI FROM ASSEMBLYMEMBER MULLIN.  
21 HELLO, EVERYBODY.

22 CHAIRMAN PENHOET: HI. THANKS FOR COMING  
23 DOWN.

24 MS. SEARS: I GUESS MY QUESTION IS TO THE  
25 EXTENT THAT 2911, AB 2911, ACTUALLY ALREADY WENT

1 THROUGH, WILL THERE BE ANY -- IS THERE ANY DESIRE TO  
2 TRY TO MAKE THIS CONSISTENT WITH THAT WITH SOME OF  
3 THOSE PROVISIONS, SPECIFICALLY WITH HOW YOU ARE GOING  
4 TO ADDRESS THE UNINSURED? BECAUSE THERE WERE CERTAIN  
5 THRESHOLDS THAT HAD TO BE MET, AND THERE WERE THREE  
6 DIFFERENT BENCHMARKS IN TERMS OF PRICING. WILL YOU BE  
7 LOOKING AT THAT?

8 CHAIRMAN PENHOET: I GUESS WE HAVE TO BE IN  
9 COMPLIANCE WITH CALIFORNIA LAW. WHERE IS THAT? WHAT'S  
10 THE STATUS?

11 MS. SEARS: ON THE GOVERNOR'S DESK.

12 CHAIRMAN PENHOET: IT IS ON THE GOVERNOR'S  
13 DESK.

14 MS. SEARS: 2911 MADE IT OUT, SO IT WAS A  
15 QUESTION OF WHEN THIS IS GOING TO GET SIGNED.

16 DR. PRIETO: WHAT ARE THE STIPULATIONS OF  
17 2911?

18 CHAIRMAN PENHOET: I GUESS WE'LL ALL HAVE TO  
19 GET UP TO SPEED ON 2911.

20 MS. SEARS: I MEAN IT'S SPECIFIC TO HOW THE  
21 COMPANIES ARE GOING TO BE ADDRESSING THE UNINSURED.  
22 THERE ARE THREE DIFFERENT BENCHMARKS, AND I'LL HAVE  
23 TODD SORT OF JUMP IN AS HE CAN BECAUSE I KNOW CHI AND A  
24 NUMBER OF OTHER ENTITIES WERE HEAVILY INVOLVED IN THAT.  
25 YOU DID HAVE BEST PRICE, BEST AVAILABLE COMMERCIAL

1 PRICE, FEDERAL MEDICAID PRICE, AND THERE WAS A THIRD.

2 MR. GILLENWATER: THERE WAS SOMETHING IN  
3 THERE WITH MANUFACTURER'S PRICE.

4 MS. SEARS: MANUFACTURER'S PRICE LESS, LIKE,  
5 10 PERCENT OR SOMETHING LIKE THAT. IF YOU TAKE A LOOK  
6 AT AB 2911 ON-LINE, YOU CAN FIND OUT WHAT THAT WAS.  
7 AND IT WAS AT 300 PERCENT OF POVERTY LEVEL.

8 MR. GILLENWATER: I'LL JUST ADD ONE FURTHER  
9 COMPLICATING FACTOR TO THAT. THIS IS MY UNDERSTANDING  
10 OF THAT LEGISLATION. THAT REFERS TO OUTPATIENT  
11 PRESCRIPTION DRUGS; WHERE, OF COURSE, WE PROBABLY  
12 UNDERSTAND THAT MANY OF THE THERAPIES THAT RESULT FROM  
13 THIS COULD BE BIOLOGICS, INJECTABLES, INPATIENT  
14 THERAPIES, WHICH AREN'T COVERED UNDER THAT LEGISLATION.

15 MS. SEARS: I THINK IT DID.

16 CHAIRMAN PENHOET: WE BETTER HAVE A LOOK AT  
17 IT THEN.

18 OKAY. SO WE HAVE TWO PROPOSALS, A FLAT FEE  
19 IRRESPECTIVE OF WHAT THE AMOUNT IS, FIRST DOLLAR OR  
20 SOME OTHER NUMBER, 25 PERCENT, FOR THE SAKE OF THE  
21 ARGUMENT HERE, OR WHETHER WE SHOULD PARSE THIS INTO  
22 VARIOUS PHASES, AND THE THIRD THING IS WE HAVE TO MAKE  
23 IT CONSISTENT WITH WHAT WILL BECOME CALIFORNIA LAW IF  
24 THE GOVERNOR SIGNS THIS BILL.

25 MS. KING: WERE THERE ANY OTHER COMMENTS ON

1 THE PHONE?

2 MR. ROTH: I WAS GOING TO MAKE JUST ONE  
3 COMMENT, THAT I THINK WE NEED TO BE COGNIZANT THAT  
4 THERE ARE CONSTANTLY GOING TO BE CHANGING LAWS LIKE THE  
5 ONE THAT WAS JUST BEING DISCUSSED. AND THAT WHAT WE  
6 PROBABLY WANT IS SOMETHING THAT WOULD BE COMPLIANT WITH  
7 THE THEN IN EFFECT CALIFORNIA LAW THAT GOVERNS PRICING.  
8 I THINK THE PROBLEM YOU GET INTO WITH ALL THESE  
9 CHANGING CALCULATIONS AND COVERAGES, THAT YOU ARE GOING  
10 TO PUT SOMETHING DOWN THAT PEOPLE WILL FEAR THAT, WHILE  
11 IT MAY BE UNDERSTANDABLE TODAY, IT WON'T BE FIVE OR TEN  
12 YEARS WHEN THESE PRODUCTS FINALLY GET TO THE MARKET,  
13 TEN YEARS MOST LIKELY. I THINK YOU HAVE TO BE CAREFUL  
14 ABOUT WRITING PRICING POLICIES THAT ARE PROBABLY GOING  
15 TO BE MUCH OUTDATED BY THE TIME OUR FIRST PRODUCTS HIT  
16 THE MARKET.

17 CHAIRMAN PENHOET: WELL, THIS WILL HAVE TO BE  
18 A LIVING DOCUMENT. HOW LONG DOES IT TAKE TO CHANGE ONE  
19 OF THESE REGULATIONS, SCOTT?

20 MR. TOCHER: ON AN EMERGENCY BASIS, IT CAN BE  
21 DONE RATHER QUICKLY, IN A MATTER OF DAYS. PERMANENTLY,  
22 HOWEVER, CHANGING THE REGULATIONS IS DONE JUST IN THE  
23 SAME PROCEDURE AS WE'RE ADOPTING THEM, WHICH IS WITH A  
24 SERIES OF PUBLIC NOTICE PERIODS AND REVIEW BY THE  
25 OFFICE OF ADMINISTRATIVE LAW, USUALLY MEASURED IN

1 MONTHS.

2 CHAIRMAN PENHOET: OKAY. MOVING TO SECTION  
3 G, PAGE 15, REVENUE SHARING. WE DISCUSSED THIS LAST  
4 TIME. BASICALLY IT'S VERY SIMILAR TO WHAT WE HAD FOR  
5 UNIVERSITIES EXCEPT THAT WE HAVE A 17-PERCENT NUMBER  
6 HERE INSTEAD OF A 25-PERCENT NUMBER. ON PAGE 16. PAGE  
7 15, I THINK, IS IDENTICAL TO THE NOT-FOR-PROFIT.

8 17, THE LOGIC FOR 17 RATHER THAN 25 IS THAT  
9 THE NET REVENUE DESCRIPTION FOR UNIVERSITIES CARVED OUT  
10 THE PAYMENTS TO INVENTORS. IN THE CASE OF COMPANIES,  
11 THE INVENTORS WORK FOR THE COMPANIES AND GENERALLY  
12 DON'T GET PAID SEPARATELY. SO THIS IS TO REWARD THE  
13 COMPANY FOR THE INVENTOR'S SHARE. THAT'S WHY IT'S 17  
14 AND NOT 25. THAT'S THE LOGIC OF THIS.

15 AND THEN IF FUNDING SOURCES IN ADDITION WERE  
16 USED, INCLUDING INTERNAL FUNDING, THEN THE RESULTANT  
17 REVENUE SHALL BE PROPORTIONATED ON THE BASIS OF THE  
18 INVESTMENT, AND THEY HAVE TO FOLLOW UP.

19 ANY COMMENTS SO FAR?

20 OKAY. ON PAGE 17, REVENUE SHARING  
21 REQUIREMENTS. IN THE EVENT THAT THEY CREATE A REVENUE  
22 STREAM FROM SELF-COMMERCIALIZED PRODUCTS, AND MY OWN  
23 BIAS IS WE SHOULD BE INCENTING COMPANIES TO FORWARD,  
24 INTEGRATE, AND COMMERCIALIZE THEIR OWN PRODUCTS IN  
25 CALIFORNIA. THAT'S WHAT CREATES THE MOST JOBS, THE

1 MOST INCOME TAX, ALL THE OTHER BENEFITS FROM INCREASED  
2 ACTIVITIES. IT SAYS THAT THE AWARDEE ORGANIZATIONS  
3 SHALL SHARE REVENUES WITH THE STATE OF CALIFORNIA IN  
4 THE FORM OF ROYALTIES CAPPED AT THREE TIMES THE TOTAL  
5 AWARDED MONEY.

6 WE HAVE SOME ISSUES AROUND THE RATE AT WHICH  
7 THIS SHOULD HAPPEN; AND THAT IS, WE WOULDN'T WANT TO  
8 KEEP ALL OF THE PROFITS FROM THIS FOR THE FIRST YEAR OR  
9 TWO WHEN THE COMPANY IS JUST FINALLY MAKING IT TO  
10 MARKET. THE QUESTION, WE DON'T HAVE IT ARTICULATED  
11 HERE, OVER WHAT PERIOD OF TIME THAT SHOULD EXIST OR NOT  
12 GREATER THAN A CERTAIN PERCENTAGE OF THE TOTAL PROFITS  
13 OR SOMETHING LIKE THAT. I THINK WE STILL HAVE TO  
14 ADDRESS THAT ISSUE. IT'S NOT LISTED HERE.

15 BUT THERE ARE TWO ISSUES. THE FORM IS A  
16 ROYALTY, AND THE CAP IS THREE TIMES THE AWARDED AMOUNT  
17 OF MONEY. WE DID HEAR CONSISTENTLY FROM INDUSTRY WE'RE  
18 WILLING TO PAY BACK, BUT WE'D LIKE A CAP SO WE KNOW  
19 WHAT THE TOTAL EXPOSURE IS.

20 DR. BRYANT: I JUST WONDERED WHY YOU PICKED  
21 THREE.

22 CHAIRMAN PENHOET: WELL, WE SURVEYED A NUMBER  
23 OF OTHER ORGANIZATIONS WHICH ARE FUNDING COMPANIES, AND  
24 THAT'S A VERY COMMON NUMBER THESE DAYS. I THINK JDRF  
25 IS ASKING FOR A THREEFOLD RETURN. I BELIEVE THAT

1 CYSTIC FIBROSIS IS SOMETHING SIMILAR. WELLCOME TRUST  
2 HAS MANY DIFFERENT WAYS. BUT IF YOU AVERAGE OUT ALL  
3 THEIR WAYS OF PARTICIPATING, IT'S SORT OF IN THAT  
4 RANGE.

5 DR. BRYANT: OKAY.

6 CHAIRMAN PENHOET: IT'S LOWER THAN MOST  
7 VENTURE CAPITALISTS HOPE TO GET, BUT IN A SENSE WE'RE  
8 TAKING MORE RISK THAN VENTURE CAPITALISTS. SO I THINK  
9 IT'S NOT AN OUTRAGEOUS NUMBER, BUT IT'S FAIRLY TYPICAL  
10 OF WHAT'S GOING ON.

11 MS. SEARS: IS THIS GOING STRAIGHT INTO THE  
12 GENERAL FUND OR IS --

13 CHAIRMAN PENHOET: DARCI ASKED WHETHER THIS  
14 MONEY WOULD GO TO THE GENERAL FUND. YES, IT WOULD GO  
15 TO THE GENERAL FUND IN THIS CASE. IF WE MAKE LOANS,  
16 THOUGH, APPARENTLY ACCORDING TO PROP 71, THAT THE  
17 MONIES ARE RETURNED TO CIRM TO BE REINVESTED IN THE  
18 FIELD. SO WE HAVE --

19 MS. SEARS: THERE'S NO ACCOUNT WITHIN THE  
20 GENERAL FUND THAT YOU'RE GOING TO HAVE IT DEPOSITED  
21 INTO? AND IF SO, WOULD THAT FUND BE CONTINUOUSLY  
22 APPROPRIATED AND FOR WHAT PURPOSE?

23 CHAIRMAN PENHOET: WE WERE WARNED OFF OF  
24 THAT. BAYH-DOLE REQUIRES THAT THE MONEY IS USED FOR  
25 RESEARCH AND EDUCATION. WE DECIDED THAT THE STATE

1 CAN -- AND WE WANT TO BE COMPATIBLE WITH BAYH-DOLE, BUT  
2 WE BELIEVE THAT THE TOTAL BUDGET FOR RESEARCH AND  
3 EDUCATION IN CALIFORNIA IS LARGE ENOUGH, THAT WHEN THE  
4 TIME COMES THAT MONEY IS COMING IN, SOMEBODY IN THE  
5 CONTROLLER'S OFFICE CAN FIGURE OUT WHERE TO PUT IT IN  
6 ORDER TO MEET THAT REQUIREMENT. YOU DON'T BELIEVE  
7 THAT'S THE CASE?

8 MS. SEARS: NO. MY RECOMMENDATION WOULD BE  
9 THAT YOU ACTUALLY HAVE THAT ACCOUNT ALREADY SET UP WITH  
10 THE SPECIFIC INTENT TO MEET FEDERAL REQUIREMENTS, THAT  
11 IT GO BACK TO RESEARCH AND EDUCATION, HOWEVER THAT  
12 NEEDS TO BE WORDED, BUT THAT IT ALSO BE CONTINUOUSLY  
13 APPROPRIATED, NOT THAT WE DON'T LOVE THE FACT THAT THE  
14 BUDGET PROCESS HAS BEEN SMOOTHLY LATELY, NOT IN ALL  
15 YEARS HAS IT; THEREFORE, IT COULD DELAY WHATEVER THOSE  
16 FUNDS MAY END UP BEING ALLOCATED FOR.

17 CHAIRMAN PENHOET: MANY OF YOUR COLLEAGUES IN  
18 SACRAMENTO FOUGHT US VERY HARD ON THIS ISSUE.

19 MS. SEARS: I KNOW. THAT'S MY PERSONAL  
20 OPINION.

21 CHAIRMAN PENHOET: DO ANY OF YOU IN THE  
22 AUDIENCE HAVE AN OPINION ABOUT THIS ISSUE OF EARMARKING  
23 THESE FUNDS?

24 MR. SIMPSON: I ACTUALLY THINK IT WOULD NOT  
25 BE BAD IF IT CAME BACK TO CIRM, BUT I DON'T KNOW IF



1 THAT' S ALLOWED.

2 CHAIRMAN PENHOET: I THINK NOT.

3 MS. SEARS: THAT DOESN' T MEET THE STANDARD OF  
4 PUTTING IT BACK TO RESEARCH IF IT GOES STRAIGHT BACK  
5 INTO --

6 CHAIRMAN PENHOET: THE STATE COULD REALLOCATE  
7 IT BACK TO CIRM IF IT WANTED TO DO THAT. WE'VE SPENT  
8 MANY HOURS IN THE HALLS OF SACRAMENTO ON THIS ISSUE.  
9 KIRK, YOU MIGHT WANT TO --

10 MR. KLEINSCHMIDT: IT WOULD ALSO REQUIRE  
11 LEGISLATION TO SET UP THIS KIND OF FUND, SO IT WOULD BE  
12 BEYOND THE SCOPE OF THIS GROUP.

13 MS. KING: DID THE PEOPLE ON THE PHONE HEAR  
14 KIRK' S COMMENT?

15 DR. WRIGHT: NO.

16 CHAIRMAN PENHOET: IT WOULD REQUIRE SPECIAL  
17 LEGISLATION TO SET SOMETHING LIKE THAT UP. IN THIS  
18 CASE WE HAVE LOTS OF TIME TO THINK ABOUT THIS ISSUE.

19 MR. ROTH: HAS THE ROYALTY RATE BEEN SET  
20 UNDER SLIDE 17?

21 CHAIRMAN PENHOET: IT HAS NOT. THE CAP HAS  
22 BEEN SET WITH THE GENERAL PRINCIPLE THAT THE ROYALTY  
23 RATE SHOULDN' T BE SO HIGH AS IT WOULD FORCE THE COMPANY  
24 NOT TO BE PROFITABLE RIGHT UP FRONT TO PAY THE MONEY  
25 BACK IMMEDIATELY. SO THE CAP IS SET. AND I THINK WE

1 HAVE TO FIGURE OUT EXACTLY HOW TO SAY WHAT RATE IT  
2 SHOULD BE TO GET TO THE CAP.

3 MR. ROTH: OKAY. BECAUSE I THINK THAT'S  
4 REALLY KEY.

5 AND THE SECOND WOULD BE IN THE EVENT OF  
6 STACKING ROYALTIES, THERE BE A SEPARATE PROVISION. I  
7 MEAN THERE CAN BE MULTIPLE PATENTS ON A PRODUCT, AS YOU  
8 KNOW. AND ONE PATENT MIGHT BE CIRM FUNDED AND  
9 GENERATED THROUGH CIRM FUNDING, BUT THE COMPANY MAY  
10 HAVE TO LICENSE THREE OR FOUR ADDITIONAL PATENTS. SO  
11 THERE HAS TO BE -- IN ALMOST ALL NEGOTIATIONS NOW,  
12 THERE'S A CLAUSE ABOUT STACKING ROYALTIES.

13 CHAIRMAN PENHOET: YES. AGAIN, WE THINK THE  
14 OPERATIVE THAT EXPOSURE FOR THE COMPANIES IS REALLY THE  
15 CAP.

16 MR. ROTH: THAT'S CORRECT.

17 CHAIRMAN PENHOET: SO --

18 MR. ROTH: IF THEY THINK THAT THEY MIGHT HAVE  
19 TO PAY IT, LET'S SAY THAT WE WERE TO ASK FOR A  
20 2-PERCENT ROYALTY, BUT THEY HAVE TO PAY 6 PERCENT TO --  
21 2 PERCENT TO THREE OTHER PARTIES, WE MAY IN THOSE CASES  
22 WANT TO SET A CAP ON THE TOTAL ROYALTY THAT'S PAID OUT  
23 ON THE PRODUCT. IN THAT CASE THE REPAYMENT WOULD BE  
24 SLOWER.

25 CHAIRMAN PENHOET: THAT'S RIGHT. I THINK WE

1 HAVEN' T -- WE' LL HAVE TO SIT DOWN. THERE WILL BE  
2 DIFFERENT CASE BY CASE, SO I THINK THE RATE AT WHICH  
3 IT' S REPAID IS SOMETHING WE MAY HAVE TO LEAVE TO THE  
4 CIRM NEGOTIATORS.

5 MR. SIMPSON: BUT YOU' RE PROBABLY THINKING OF  
6 SINGLE DIGITS FOR A ROYALTY RATE, 3 TO 8 PERCENT, OR  
7 SOMETHING LIKE THAT, I WOULD IMAGINE, RIGHT?

8 CHAIRMAN PENHOET: YEAH. PROBABLY NOT HIGHER  
9 BECAUSE WE DON' T WANT TO DEPRIVE THESE COMPANIES OF  
10 SOME EARLY RETURN ON THEIR OWN INVESTMENTS IN THIS  
11 AREA.

12 AND THEN THERE' S SOME LANGUAGE HERE ABOUT  
13 THEY HAVE TO LET US KNOW HOW THEY' RE CALCULATING THESE  
14 THINGS.

15 LOANS, WE' RE IN A LITTLE BIT OF UNCHARTERED  
16 TERRITORY HERE. THERE' S BEEN A LOT OF QUESTION WHETHER  
17 THIS WHOLE LOAN PROVISION IS -- WHETHER THE NOTION OF  
18 LOANS VERSUS GRANTS SHOULD BE A DISCUSSION FOR US, OR  
19 IT' S REALLY A STRATEGIC PLANNING ISSUE, ETC. BUT WE' VE  
20 AGREED THAT WE WOULD AT LEAST PUT IT IN HERE AND  
21 DISCUSS IT.

22 WE CAN MAKE LOANS. THE DIFFERENCES ARE THAT  
23 LOANS WOULD HAVE TO BE REPAID WHETHER THE PROJECT WAS  
24 SUCCESSFUL OR NOT. THE NOTION HERE IS THAT LOANS WOULD  
25 BE AT A FAIRLY LOW RATE. SO IT MIGHT BE A FAIR AMOUNT

1 LESS MONEY FOR A COMPANY THAN THE THREE TIMES THING.  
2 AND WE'VE SORT OF THOUGHT THAT THE COMPANIES MAYBE  
3 COULD DECIDE WHETHER THEY WANTED A LOAN OR A GRANT TO  
4 FUND A CERTAIN PROJECT. SO PRIME PLUS TWO IS A NUMBER  
5 THAT WE JUST SORT OF PICKED OUT. COULD BE ANY NUMBER.  
6 COULD BE PRIME RATE. COULD BE ANOTHER NUMBER.

7 AND, YOU KNOW, IN THINKING THROUGH WHETHER  
8 YOU'D WANT A LOAN UNDER THESE TERMS OR WHETHER YOU'D  
9 WANT A GRANT, I GUESS YOU WOULD TAKE A LOAN IF YOU  
10 THOUGHT THE PROGRAM WAS VERY DERISKED AND HAD A HIGH  
11 PROBABILITY OF WORKING. IF YOU THINK IT'S A SUPER  
12 RISKY PROGRAM, THEN YOU'D PROBABLY TAKE THE GRANT.

13 WE HAVE SOME UNCERTAINTY ABOUT WHETHER OUR  
14 RFA SHOULD BE LOANS AND FOR GRANTS, OR SAY WE HAVE AN  
15 RFA FOR PEOPLE WHO WANT TO DO X, Y, OR Z, AN RFP FOR  
16 PEOPLE WHO WANT TO DO THIS. AND IF YOU'RE A COMPANY  
17 THAT WANTS TO DO THIS, YOU CAN ELECT WHETHER YOU WANT  
18 TO GO DOWN THE LOAN PATH OR THE GRANT PATH. THAT WOULD  
19 BE THE TWO WAYS YOU COULD DO THIS.

20 MR. TAYMOR: WELL, I'M GLAD TO HEAR THAT THIS  
21 IS NOT THE DEFINITIVE WORD ON LOANS BECAUSE IT SEEMS TO  
22 ME THAT THERE ARE A LOT OF OTHER PARAMETERS FOR A LOAN  
23 THAT ARE IMPORTANT, AT LEAST TO GIVE THE PUBLIC THE  
24 OPPORTUNITY TO HAVE SOME COMMENT ON IN TERMS OF  
25 REPAYMENT TERMS, SECURITY, A RANGE OF THINGS. AT THE

1 LAST MEETING YOU SAID THE LOANS WOULD BE AT MARKET  
2 RATE, I THOUGHT. AT LEAST I THOUGHT I HAD HEARD THAT  
3 THEY WERE TO BE AT MARKET RATE. AND THESE LOANS IN  
4 MANY CASES WOULD BE WELL BELOW MARKET AT PRIME PLUS  
5 TWO.

6 I'M WONDERING IF YOU HAD EXPLORED THE  
7 POSSIBILITY OF HAVING, SINCE YOU DO HAVE OTHER  
8 PARTICIPATIONS IN A SENSE IN A GRANT, OF HAVING A LOAN  
9 THAT'S A PARTICIPATING LOAN, ONE THAT THE PARTICIPATION  
10 MAY, AGAIN, REFLECT THE SUCCESS RATE. PARTICULARLY  
11 BECAUSE A NUMBER OF THESE LOANS BASICALLY, UNLESS --  
12 EVEN IF THEY WERE SECURE, LOANS TO EARLY STAGE  
13 COMPANIES, THE LIKELIHOOD OF THEIR BEING REPAID IF THE  
14 COMPANY IS UNSUCCESSFUL OR THE PROJECT IS UNSUCCESSFUL  
15 IS FAIRLY LOW, SO THE LOAN ALMOST BECOMES A GRANT. IT  
16 SEEMS THAT, AGAIN, FOR LOANS TO EARLY STAGE COMPANIES  
17 WHERE THERE IS NO COLLATERAL, AN IMPROBABLE LIKELIHOOD  
18 OF REPAYMENT, THAT THERE SHOULD BE SOME PARTICIPATION  
19 AS IN THE GRANTS CIRCUMSTANCES. BUT I WOULD ENCOURAGE  
20 YOU NOT TO REALLY ADDRESS LOANS IN THIS DOCUMENT, TO  
21 ADDRESS IT IN A FORUM IN WHICH THE FULL PARAMETERS OF A  
22 LOAN PROGRAM AND LOAN TERMS COULD BE AT LEAST DISCUSSED  
23 WITH THE PUBLIC.

24 CHAIRMAN PENHOET: YEAH. AS YOU CORRECTLY  
25 POINT OUT, LOANS IS A VERY BROAD CATEGORY. IT CAN

1 COVER ALL KINDS OF DIFFERENT AND THE CONDITIONS  
2 ASSOCIATED WITH A LOAN. JUST FOR YOUR INFORMATION,  
3 THOUGH, TO A START-UP COMPANY, NO, A START-UP COMPANY  
4 CAN'T GET ANY LOANS. BUT A COMPANY THAT'S A LITTLE  
5 WAYS ALONG, TYPICALLY VENTURE DEBT THESE DAYS, IF YOU  
6 ADD IN ALL THE COST, IS ABOUT 20 PERCENT INTEREST RATE,  
7 IF YOU ADD IN COST OF THE WARRANTS AND --

8 MR. TAYMOR: THAT'S MY POINT IS THAT THIS IS  
9 WAY BELOW MARKET. IT WOULD BE LIKE AN EQUIPMENT  
10 FINANCING.

11 CHAIRMAN PENHOET: BUT THE VIEW IS WE'RE HERE  
12 TO HELP COMPANIES, NOT TO GET IN THE VENTURE -- COMPETE  
13 WITH THE VENTURE CAPITAL COMMUNITY OR THE VENTURE DEBT  
14 COMMUNITY. SO YOU ARE RIGHT. THESE ARE UNDER MARKET  
15 FOR AN ORGANIZATION WITH THAT RISK PROFILE. NO DOUBT  
16 ABOUT THAT.

17 MR. TAYMOR: WE CAN BALANCE IT, THOUGH. WE  
18 CAN HELP THEM OUT AND SAY AT SOME POINT, IF YOU HAVE A  
19 SUCCESSFUL -- AS YOU ARE WITH GRANTS, THE GRANTS ARE  
20 DESIGNED TO HELP COMPANIES, BUT YOU STILL HAVE A  
21 PARTICIPATION, YOU STILL TAKE A SUBSTANTIAL ROYALTY, 3  
22 X, MAYBE THE LOAN WOULD BE PAID BACK UP TO 50 PERCENT  
23 HALF X OR 1 X.

24 CHAIRMAN PENHOET: WELL, YOU KNOW, I'VE HAD  
25 MIXED FEELING MYSELF ABOUT WHETHER WE SHOULD BE

1 DISCUSSING LOANS IN THIS CONTEXT ANYWAY. I DON'T KNOW  
2 WHAT THE FEELING OF THE TASK FORCE IS. TO MAKE THIS  
3 SYMMETRICAL TO THE NOT-FOR-PROFIT, WE CAN TAKE THE  
4 LOANS -- WE'RE NOT MAKING ANY LOANS TO NOT-FOR-PROFITS.  
5 THEY DON'T WANT TO BORROW MONEY FROM US. THEY PROBABLY  
6 CAN'T ANYWAY EVEN IF THEY WANTED TO, SO THAT'S NOT A  
7 POSSIBILITY.

8 ONE THING IS WE CAN JUST DEFER THE WHOLE LOAN  
9 DISCUSSION TO ANOTHER GROUP, TO THE STRATEGIC PLANNING  
10 GROUP. IF WE'RE GOING TO MAKE LOANS, SOMEBODY HAS TO  
11 DEFINE THE POLICY UNDER WHICH THE LOANS ARE MADE.

12 MR. ROTH: I'VE THOUGHT AND THOUGHT ABOUT WHY  
13 ANYBODY WOULD TAKE A LOAN VERSUS A GRANT, AND I REALLY  
14 HAVE TROUBLE COMING UP WITH A REAL GOOD REASON FOR THAT  
15 UNLESS THERE'S A DIFFERENT HURDLE FOR GETTING THE  
16 MONEY.

17 AND SECOND, I THINK IT'S EXTREMELY  
18 COMPLICATED FOR THE STAFF AND EVERYBODY TO HAVE TO SET  
19 UP THIS LOAN PROGRAM. AND THEN THE DILIGENCE REQUIRED  
20 TO MAKE SURE THAT THIS DEBT IS SECURED OR UNSECURED OR  
21 WHATEVER IT'S GOING TO BE, IT'S EXTREMELY COMPLICATED.  
22 AND I WONDER IF THERE AREN'T SOME STATE RAMIFICATIONS  
23 OF THAT OUTSTANDING DEBT THAT MIGHT ENTER IN AS WELL.

24 I REALLY WOULD ENCOURAGE US NOT TO TRY TO  
25 DEAL WITH THIS UNLESS THERE IS A DEMAND FOR IT.

1 CHAIRMAN PENHOET: ANY OTHER VIEWS ON THIS?  
2 SUSAN, ARE YOU STILL THERE?

3 DR. BRYANT: I'M HERE. I TEND TO AGREE. I  
4 THINK IF WE DEFER IT, WE'LL HEAR FROM PEOPLE IF THERE'S  
5 A NEED FOR A LOAN PROGRAM. OTHERWISE WE COULD JUST LET  
6 IT LAY UNTIL IT BECOMES AN ISSUE.

7 CHAIRMAN PENHOET: JANET.

8 DR. WRIGHT: I'M OKAY WITH THAT.

9 CHAIRMAN PENHOET: FRANCISCO.

10 DR. PRIETO: I'M OKAY WITH THAT TOO. I'M  
11 SURE THIS WILL COME UP AT LEAST AS A TOPIC IN THE  
12 STRATEGIC PLANNING PROCESS.

13 CHAIRMAN PENHOET: ANY COMMENT FROM THE  
14 AUDIENCE ANYWHERE? I THINK THAT WE SHOULD PROBABLY  
15 TAKE IT -- I AGREE WITH YOU GUYS. I THINK WE SHOULD  
16 JUST IGNORE IT FOR NOW AND COME BACK LATER WITH A LOAN  
17 POLICY. THE LOAN POLICY LATER COULD BE IN LIEU OF  
18 GRANTS, AND THEN YOU JUST SLIP IT INTO THE SAME POLICY.  
19 I THINK IT REQUIRES A LOT FURTHER WORK THAN WE CAN PUT  
20 IN AT THIS POINT IN TIME. SO WE'RE GOING TO DELETE THE  
21 LOAN PROVISIONS.

22 WE DID DISCUSS LAST TIME A BLOCKBUSTER  
23 PAYMENT THAT --

24 DR. MAXON: THIS IS THE PART THAT'S DIFFERENT  
25 FROM WHAT'S IN THE POLICY.



1 CHAIRMAN PENHOET: OKAY. THIS IS DIFFERENT  
2 THAN IN THE DRAFT THAT YOU SUBMITTED BEFORE. AGAIN,  
3 THIS IS JUST A PROPOSAL. IT SAYS FOR -- THIS IS PAGE  
4 19. FOR BOTH GRANTS AND LOANS, WE'LL TAKE OUT THE  
5 LOANS, THAT LEAD TO SUCCESSFUL COMMERCIAL PRODUCTS, A  
6 BLOCKBUSTER PAYMENT EQUAL TO THREE TIMES THE ORIGINAL  
7 AWARD AND PAID BACK OVER FIVE YEARS IS DUE AFTER  
8 REVENUES EXCEED \$250 MILLION PER YEAR. THIS WOULD BE  
9 IN ADDITION TO WHAT OTHER PAYMENTS YOU OWED.

10 SO IF YOU GOT A GRANT AND YOU HAD TO PAY BACK  
11 THREE TIMES ON THE GRANT, YOU HAVE TO PAY THREE TIMES  
12 AGAIN, ACCORDING TO THIS, IF YOU HAVE A BLOCKBUSTER,  
13 WHOSE SALES -- BLOCKBUSTER HERE IS DEFINED AS \$250  
14 MILLION A YEAR. SO IT'S ESSENTIALLY A FEE ASSOCIATED  
15 WITH A BIG SUCCESS.

16 WE ARE GOING TO HAVE LOTS OF PROJECTS THAT  
17 DON'T WORK. MOST OF THEM WON'T WORK. I THINK WE HEARD  
18 THAT THE BLOCKBUSTER CONCEPT, AT LEAST, WAS ACCEPTABLE  
19 TO INDUSTRY. QUESTION IS IS \$250 MILLION THE RIGHT  
20 NUMBER? WE PUT THAT UP FOR DISCUSSION.

21 ANY COMMENT BY THE TASK FORCE MEMBERS?

22 DR. PRIETO: DO WE HAVE ANY DATA ON WHAT THE  
23 NUMBER OR THE PROPORTION OF PRODUCTS OUT THERE NOW ARE  
24 CURRENTLY AT THIS LEVEL?

25 CHAIRMAN PENHOET: YOU KNOW, IT'S HARD TO

1 SAY. IN THE CELL THERAPY BUSINESS, I'M SURE THERE ARE  
2 NONE.

3 UNIDENTIFIED SPEAKER: IS THAT ANNUALLY OR  
4 TOTAL?

5 CHAIRMAN PENHOET: NO, ANNUALLY. BLOCKBUSTER  
6 IS THE SALES REACH \$250 MILLION A YEAR. BECAUSE YOU  
7 COULD HAVE A LOUSY PRODUCT WHICH SELLS \$25 MILLION A  
8 YEAR AND YOU NEVER MAKE ANY MONEY ON IT; BUT AFTER 10  
9 YEARS, IF IT WAS A CUMULATIVE TOTAL, YOU'D GET TO THIS  
10 NUMBER. SO THIS IS AN ANNUAL REVENUES OF \$250 MILLION  
11 OR GREATER. IT WOULD BE A NICE SUCCESS.

12 DR. PRIETO: I WOULD PRESUME THE ONLY MODELS  
13 NOW WOULD BE PHARMACEUTICALS. I JUST WONDER -- I KNOW  
14 THERE ARE SEVERAL. I JUST DON'T KNOW --

15 CHAIRMAN PENHOET: IN EXCESS OF 250, THERE  
16 ARE PROBABLY 500 OF THEM.

17 DR. PRIETO: OKAY.

18 MR. ROTH: THERE WOULD BE A CONSIDERABLE  
19 NUMBER OVER 250 MILLION WORLDWIDE SALES. I DON'T THINK  
20 THIS IS A PARTICULARLY ONEROUS CLAUSE TO PUT IN. I  
21 DON'T THINK ANYBODY IS GOING TO OBJECT IT. IT'S  
22 CAPPED. YOU KNOW WHAT IT IS GOING IN. AT THE POINT IN  
23 TIME YOU'RE TAKING THE MONEY, YOU HOPE THAT YOU CAN PAY  
24 THAT SOMEDAY.

25 CHAIRMAN PENHOET: INDEED. OKAY. THEN WE

1 HAVE --

2 DR. PRIETO: AND INTO THAT UPPER INCOME TAX  
3 BRACKET, RIGHT. HOPE YOU GET THERE.

4 CHAIRMAN PENHOET: INDEED. WE HAVE SOME  
5 PRESS RELEASE REQUIREMENTS, PROBABLY NONCONTROVERSIAL.

6 DR. MAXON: SAME AS THE LAST POLICY.

7 CHAIRMAN PENHOET: SAME AS THE LAST POLICY.

8 MARCH-IN RIGHTS, THE WORDING IS SOMEWHAT  
9 DIFFERENT, BUT THE INTENT IS THE SAME. BASICALLY MOST  
10 OF THIS TALKS ABOUT FAILURE TO COMMERCIALIZE, FAILURE  
11 TO LIVE UP TO ANY OF THE AGREED UPON CRITERIA, AND TO  
12 ALLEVIATE PUBLIC HEALTH AND SAFETY NEEDS. I THINK THIS  
13 IS IDENTICAL LANGUAGE TO WHAT WE HAD BEFORE OR  
14 VIRTUALLY IDENTICAL.

15 DR. MAXON: THERE ARE TWO CHANGES. THE WORD  
16 "AWARDEE" APPEARS WHERE IT USED TO BE GRANTEE. AND IN  
17 NO. 3, THE TERM "AWARDEE" WAS INCLUDED WHERE BEFORE IT  
18 WAS NOT IN THE DRAFT POLICY. SO THAT IT NOW SAYS,  
19 "BECAUSE THE AWARDEE OR LICENSEE HAS FAILED TO ADHERE  
20 TO THE AGREED UPON PLAN FOR ACCESS TO RESULTANT  
21 THERAPIES."

22 CHAIRMAN PENHOET: ANY COMMENTS ON THAT?

23 MR. GILLENWATER: AGAIN, TODD GILLENWATER  
24 FROM THE CALIFORNIA HEALTHCARE INSTITUTE. THIS IS JUST  
25 REITERATING SOME COMMENTS WE MADE IN THE NONPROFIT

1 COMMENTS ON MARCH-IN IS LOOKING AT THE FEDERAL CODE AND  
2 THE FEDERAL REGULATIONS WITH REGARDS TO MARCH-IN, AT  
3 THE NIH ESPECIALLY, COVER A COUPLE OF PAGES WITH  
4 REGARDS TO THE ABILITY FOR THOSE WHO ARE ABOUT TO BE  
5 MARCHED IN ON TO DEFEND THEMSELVES AGAINST THAT. AND  
6 WE'VE ASKED -- WE WILL ASK AGAIN THAT, IN CONSIDERATION  
7 FOR THE FOR-PROFIT, THAT YOU TAKE A LOOK AGAIN AT THE  
8 FEDERAL MARCH-IN PROCESS AND LOOK TO INCORPORATE THOSE  
9 TO ENSURE THAT FOLKS HAVE A CHANCE TO DEFEND THEMSELVES  
10 AGAINST MARCH-IN PROCEEDINGS IN THE VERY FEW INSTANCES  
11 WE HOPE THAT WOULD EVER HAPPEN.

12 CHAIRMAN PENHOET: I BELIEVE WE DISCUSSED  
13 BEFORE A REASONABLE CURE PERIOD WOULD BE SOMETHING WE  
14 SHOULD PUT IN. I THINK WE FORGOT TO PUT THAT IN. I'M  
15 SORRY. WE WILL CATCH THAT THIS TIME.

16 MR. SIMPSON: JOHN SIMPSON FROM THE  
17 FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS. IN THE  
18 MARCH-IN IN NO. 3, TO MEET REQUIREMENTS FOR PUBLIC USE,  
19 I WOULD SUGGEST LANGUAGE THAT CLARIFIES WHAT PUBLIC USE  
20 IS. AND I WOULD SUGGEST THAT THE LANGUAGE THAT YOU  
21 INSERT THERE WOULD BE SO IT WOULD READ, TO MEET THE  
22 REQUIREMENTS FOR PUBLIC USE, MEANING REASONABLY  
23 AVAILABLE AT A FAIR PRICE TO ALL CALIFORNIANS, COMMA.

24 MR. GILLENWATER: OBJECTION.

25 MR. SIMPSON: THAT WOULD BE ONE THING. THE

1 OTHER THING I WOULD SUGGEST, IF WE WERE UNCOMFORTABLE  
2 WITH THE NOTION OF FAIR PRICE, THAT YOU SIMPLY MAKE IT  
3 TO MEET THE REQUIREMENTS -- YOU MAKE IT TO MEET THE  
4 REQUIREMENT OF PUBLIC USE, MEANING REASONABLY AVAILABLE  
5 TO ALL CALIFORNIANS.

6 CHAIRMAN PENHOET: DR. MAXON.

7 DR. MAXON: WE CONSULTED THE FEDERAL  
8 GOVERNMENT FOR THEIR TERM "PUBLIC USE." THAT TERM  
9 COMES FROM THE FEDERAL GOVERNMENT'S MARCH-IN RIGHTS,  
10 AND THEY TOLD ME THAT THAT IS THE DEFINITION. IT IS  
11 NOT FURTHER DEFINED THAN PUBLIC USE.

12 MR. GILLENWATER: THAT IS CORRECT.

13 DR. PRIETO: WHAT IS THE DEFINITION, MARY?

14 DR. MAXON: THAT IS THE DEFINITION. THAT'S  
15 WHAT THEY HAVE.

16 CHAIRMAN PENHOET: BROADLY DEFINED,  
17 AMBIGUOUSLY DEFINED.

18 MR. SIMPSON: I'M TRYING TO IMPROVE UPON  
19 IMPRECISE LANGUAGE AND OFFER CLARITY.

20 DR. PRIETO: PUBLIC USE, MEANING IS DEFINED  
21 AS REASONABLE AVAILABILITY?

22 CHAIRMAN PENHOET: NO. IT'S NOT DEFINED ANY  
23 FURTHER. IT'S WHATEVER YOU THINK IT IS. PUBLIC USE.

24 DR. PRIETO: I CERTAINLY WOULDN'T HAVE ANY  
25 OBJECTION TO ADDING DEFINED AS REASONABLE AVAILABILITY.

1 I DON'T THINK I WANT TO GET ANY MORE SPECIFIC THAN  
2 THAT, AND I DIFFER WITH MY FRIEND JOHN HERE IN NOT  
3 WANTING TO INSERT THE TERM "FAIR PRICING" BECAUSE I  
4 KNOW THAT GIVES EVERYBODY IN BUSINESS THE  
5 HEEBIE-JEEBIES.

6 MR. GILLENWATER: WITH REGARDS TO REASONABLE  
7 ACCESS, REASONABLE PRICING, TO JUST MAKE CLEAR, EVEN  
8 THOUGH IT'S NOT DEFINED IN THE FEDERAL CODE BEYOND  
9 PUBLIC USE, THE NIH HAS NUMEROUS TIMES, WHEN MARCH-INS  
10 HAVE BEEN PETITIONED, THEY HAVE REFUSED TO APPLY THAT  
11 BASED ON ANY TYPE OF PRICING GROUNDS.

12 CHAIRMAN PENHOET: WELL, YOU CAN MAKE IT  
13 EXPLICIT BECAUSE SOMEBODY COULD INTERPRET REASONABLY  
14 AVAILABLE AS PRICE WOULD BE A FACTOR IN DETERMINING  
15 WHAT IS REASONABLY AVAILABLE.

16 MR. TAYMOR: I WOULD JUST SAY THAT IF IT IS  
17 DECISION, AND I THINK THE EVIDENCE THAT'S BEEN PRODUCED  
18 IS THAT FAIR PRICING WOULD BE VERY DAMAGING, THEN I  
19 THINK YOU SHOULD MAKE IT EXPLICIT. AND IF MEMBERS OF  
20 THE PUBLIC HAVE A PROBLEM WITH THAT, THEN THEY SHOULD  
21 BE ALLOWED TO VOICE IT, BUT THERE IS IN THE REPORT AT  
22 THE POLICY'S BEGINNING AND OTHER EVIDENCE THAT FAIR  
23 PRICING IS PROBLEMATIC. AND I THINK YOU CAN BE SURE  
24 THAT SOMEONE WILL TRY TO BRING A FAIR PRICING CASE IF  
25 WE SHOULD BE SO FORTUNATE TO HAVE THERAPIES ON THE

1 MARKET.

2 SO I THINK CIRM SHOULD TAKE A POSITION ON  
3 THAT NOW AND SHOULD ENDORSE IT ONE WAY OR THE OTHER.

4 CHAIRMAN PENHOET: SOME LANGUAGE --

5 MR. TAYMOR: PUBLIC USE DOES NOT MEAN FAIR  
6 PRICING OR THIS IS NOT --

7 CHAIRMAN PENHOET: THERE IS A PROPOSAL.  
8 PUBLIC USE WOULD MEAN REASONABLY ACCESSIBLE FOR REASONS  
9 OTHER THAN PRICE, OR SOMETHING LIKE THAT.

10 MR. GILLENWATER: THAT'S PROBABLY COVERED IN  
11 THE PLANS FOR ACCESS AND THE STILL TO BE DEFINED  
12 MEDICAID PRICE.

13 CHAIRMAN PENHOET: WELL, THAT'S FOR PUBLICLY  
14 FUNDED. OTHER PEOPLE IN CALIFORNIA --

15 MR. GILLENWATER: THAT'S WHY WE'VE ALSO  
16 SUGGESTED THAT, INSTEAD OF ACCESS PLANS FOR UNINSURED,  
17 WE'VE POINTED OUT THAT MOST COMPANIES' ACCESS PLANS  
18 AREN'T FOR THE UNINSURED, THEREFORE, FINANCIALLY NEEDY,  
19 AND HAVE SUGGESTED, INSTEAD OF HAVING THE DEFINITION  
20 FOR ACCESS PLANS BE DEFINED TO THE UNINSURED, THAT THEY  
21 BE CONSISTENT WITH INDUSTRIES' PLANS, WHICH ARE USUALLY  
22 BASED ON FINANCIAL NEED.

23 CHAIRMAN PENHOET: AND I GUESS THAT'S WHAT'S  
24 ALSO IN YOUR BILL; IS THAT RIGHT?

25 MS. SEARS: IT'S IN THE PERADA-NUNEZ-KELLER

1 BILL, YEAH.

2 CHAIRMAN PENHOET: WE'LL GO BACK AND LOOK AT  
3 THAT. THERE IS A LONG LIST OF THINGS TO GO BACK AND  
4 LOOK AT.

5 OKAY. ANY OTHER COMMENTS? I'LL ATTEMPT TO  
6 SUMMARIZE THIS MEETING IF THERE ARE NO OTHER COMMENTS  
7 AT THIS POINT.

8 FOCUSING ON THE THINGS WHERE WE NEED FURTHER  
9 CLARIFICATION --

10 MR. SIMPSON: ONE FINAL COMMENT. THIS GOES  
11 TO IN THE EARLY PART OF THE REPORT WHERE WE'RE TALKING  
12 ABOUT CRADA'S AND THE UNFORTUNATE PROBLEMS THEY HAD  
13 WITH PRICING. AND I WANTED TO MAKE IT CLEAR THAT  
14 CRADA'S ARE NOT EXACTLY ANALOGOUS TO WHAT WE'RE DOING  
15 HERE. CRADA'S ARE ESSENTIALLY ABOUT TECHNOLOGY  
16 TRANSFER FROM FEDERAL LABORATORIES TO COMMERCIAL  
17 ENTITIES. AND UNDER A CRADA NO FEDERAL DOLLARS GO TO  
18 THE CRADA PORTION.

19 IT'S NOT A FUNDING THING. IT'S ESSENTIALLY  
20 AN IDEA THAT YOU CAN USE IP THAT HAS BEEN DEVELOPED IN  
21 A FEDERAL LAB IN A WAY TO BRING THAT INTO  
22 COMMERCIALIZATION.

23 SO TO SUGGEST THAT THE EXPERIENCE WITH  
24 CRADA'S WHERE PEOPLE WERE UNWILLING TO PARTNER IS  
25 SOMETHING THAT'S NOT ANALOGOUS TO TAKING PUBLIC MONEY,



1 WHICH COMES WITH IT AN OBLIGATION TO THE PUBLIC. WE'RE  
2 TALKING HERE ABOUT DIRECT FUNDING OF COMMERCIAL  
3 ENTITIES WITH TAXPAYER DOLLARS. AND A CRADA IS A  
4 DIFFERENT SORT OF THING. THAT'S ASKING TO GO IN AS A  
5 PARTNER. AND WE'RE NOT TALKING ABOUT PARTNERSHIPS.  
6 WE'RE TALKING ABOUT GIVING TAXPAYER DOLLARS TO PRIVATE  
7 ENTERPRISE.

8 SO I THINK IT'S DEFINITELY APPROPRIATE TO DO  
9 SOMETHING. AND I CONTINUE TO SAY THAT THERE OUGHT TO  
10 BE A WAY THAT INDUSTRY WOULD BE WILLING TO WORK WITH  
11 US. IN FACT, THE TOOLS INDUSTRY, I THINK, DID ADDRESS  
12 SOME OF THESE KINDS OF ISSUES AT THE LAST MEETING.  
13 WHAT YOU WANT TO PREVENT IS EGREGIOUS PROFITEERING WITH  
14 THE FRUITS OF TAXPAYER-FUNDED RESEARCH. AND I THINK  
15 THERE IS LANGUAGE THAT CAN DO THAT AND SHOULD BE  
16 INSERTED IN HERE. THANK YOU.

17 CHAIRMAN PENHOET: WELL, YOUR POINT ABOUT  
18 CRADA'S, IF YOU THINK IT'S NOT RELEVANT, ARE YOU ASKING  
19 THAT WE REMOVE IT FROM THIS DIALOGUE, THE INTRODUCTORY  
20 SECTION? I DON'T THINK IT MAKES MUCH DIFFERENCE TO THE  
21 CONTENT ONE WAY OR THE OTHER. WE'RE PERFECTLY HAPPY TO  
22 DO THAT. WHAT DO OTHER PEOPLE THINK?

23 MR. REED: I THINK IT BELONGS IN THERE.

24 CHAIRMAN PENHOET: I MEAN A CRADA, EVEN IF  
25 THEY TRANSFERRED TECHNOLOGY, IT'S STILL TRANSFERRING

1 VALUE TO A COMPANY, FOR SURE.

2 MR. SIMPSON: I THINK THERE'S AN IMPORTANT  
3 POINT TO BE MADE, THAT IT NEEDS TO BE CLEAR THAT  
4 THEY'RE NOT GETTING CASH. AND JUST PHILOSOPHICALLY, IF  
5 WE'RE TALKING ABOUT WHETHER THAT'S AN ISSUE THAT'S  
6 APPROPRIATE TO BE DEALT WITH --

7 CHAIRMAN PENHOET: WE DON'T WANT OUR  
8 DISCUSSION OF IT TO BE MISLEADING TO ANYONE, SO WE  
9 SHOULD BE CLEAR ABOUT WHAT THE GOVERNMENT WAS PUTTING  
10 IN THE CASE OF CRADA.

11 MR. REED: I THINK THE CRADA DOES BELONG  
12 THERE BECAUSE THIS IS AN EXAMPLE OF WHAT HAPPENS IF WE  
13 TRY TO IMPOSE TOO MANY CONDITIONS BEFORE. WE DON'T  
14 WANT TO STRANGLE THE BABY BEFORE IT'S GROWN.

15 CHAIRMAN PENHOET: WELL, WE WILL MAKE IT  
16 CLEAR WHAT A CRADA IS AND WHAT IT ISN'T, SO PEOPLE CAN  
17 PUT THAT IN PERSPECTIVE AND USE THE EXAMPLE AS THEY  
18 WISH, BUT AT LEAST WITH AN ACCURATE DESCRIPTION OF WHAT  
19 A CRADA IS. SO WE'LL BE HAPPY TO DO THAT.

20 OKAY. SO WE'LL CONTINUE TO WORK ON OPEN  
21 ACCESS. WE HEARD DIFFERENT VIEWS TODAY, AGAIN. I  
22 GUESS AS A FORMER UC FACULTY MEMBER, I FIND IT  
23 ASTOUNDING THEY COME HERE AND ASK US TO DO SOMETHING  
24 THEY'RE NOT WILLING TO DO THEMSELVES.

25 DR. BRYANT: WHY WOULD YOU BE ASTOUNDED AT

1 THAT?

2 CHAIRMAN PENHOET: THEY SAY PLEASE FORCE OUR  
3 GUYS TO DO IT, WOULD YOU, BECAUSE WE CAN'T.

4 I THINK WE DID HEAR STRONG SENTIMENT FOR OPEN  
5 ACCESS EVEN FROM THE PEOPLE WHO HAVE CONCERNS ABOUT THE  
6 WAY IT'S DONE, ETC., THAT WE SHOULD TRY TO MAKE  
7 INFORMATION AVAILABLE AS QUICKLY AS POSSIBLE AND TRY TO  
8 WORK THIS FURTHER AND EVENTUALLY COME UP WITH A POLICY  
9 ABOUT THIS ISSUE.

10 WE DID GO THROUGH THE PRINCIPLES. JUST TO  
11 REVIEW, I THINK WE ALL AGREE THAT THE GRANTEES WILL OWN  
12 THE IP, THAT THE PUBLICATION REQUIREMENTS ARE THE SAME  
13 AS IN THE NONPROFIT, THAT WE HAVE SOME ISSUES AROUND  
14 BIOMEDICAL MATERIALS SHARING TO CLARIFY THE SCOPE OF  
15 WHAT SHARING WOULD BE. IS THAT A REASONABLE WAY TO  
16 DESCRIBE WHERE WE ARE WITH THAT ISSUE? OKAY. WHAT'S  
17 THE SCOPE OF THE SHARING?

18 WE'RE GOING TO PUNT ON LOANS. SO THIS ISSUE  
19 OF A COMMERCIAL ENTITY CAN CHOOSE -- I'M ON PAGE 7 NOW.  
20 A COMMERCIAL ENTITY CAN CHOOSE AT THE TIME OF  
21 APPLICATION WHETHER THEY'D LIKE A GRANT OR A LOAN. WE  
22 WILL JUST SIMPLY DELETE THAT FOR NOW, AND SOMEONE WILL  
23 COME BACK TO THAT ISSUE SOMEDAY.

24 MR. ROTH: COULD I JUST SUGGEST THAT WE COULD  
25 LEAVE OPEN ANY APPLICANT THAT WISHES TO PURSUE A LOAN

1 CAN ASK FOR US TO DEVELOP A POLICY?

2 CHAIRMAN PENHOET: OKAY.

3 MR. ROTH: I THINK THAT WILL LEAVE IT OPEN,  
4 SO THEY WON'T TAKE IT OUT. IF I REMEMBER RIGHT, IT WAS  
5 IN THE LEGISLATION.

6 CHAIRMAN PENHOET: WE CAN MAKE LOANS, THOUGH  
7 NOT REQUIRED TO MAKE LOANS IN THE LEGISLATION. SO WE  
8 COULD SAY IF A COMMERCIAL ENTITY WISHES TO PURSUE A  
9 LOAN RATHER THAN A GRANT, THEY CAN APPROACH --

10 MR. ROTH: THEY SHOULD SUGGEST A POLICY OR  
11 THEY SHOULD SUGGEST A METHOD FOR SUCH LOANS, AND WE'LL  
12 CONSIDER IT.

13 DR. MAXON: AND THIS WOULD BE IN RESPONSE TO  
14 AN RFA?

15 CHAIRMAN PENHOET: NO. IT WOULD HAVE TO BE  
16 DONE MUCH BEFORE THAT.

17 MR. ROTH: I THINK WE SHOULD INVITE PEOPLE  
18 THAT THINK THE LOAN IDEA IS A GOOD IDEA TO PROPOSE  
19 SOMETHING AND LET US REACT TO IT BECAUSE I THINK WE'RE  
20 HAVING TROUBLE FIGURING OUT WHY THAT SHOULD BE PART OF  
21 THIS.

22 CHAIRMAN PENHOET: PROBABLY WOULDN'T BE IN  
23 THIS POLICY. WE'LL STATE IT SEPARATELY SOMEWHERE ELSE.

24 WE'VE GOT THE 17 PERCENT RATHER THAN THE 25.  
25 WE ARE STILL GETTING SOME PUSHBACK ON THE

1       WHOLE CONCEPT OF LICENSEES BEING FORCED TO DO SOMETHING  
2       THAT FULLY INTEGRATED COMPANIES ARE NOT FORCED TO DO  
3       WITH RESPECT TO THE NO TRIGGER OTHER THAN TAKING A  
4       LICENSE. WE WENT THROUGH SOME LOGIC FOR THAT. I THINK  
5       THAT, AS ALL THINGS IN LIFE, THERE'S PROBABLY NO  
6       PERFECT ANSWER TO THIS. BUT IF YOU GUYS ARE  
7       COMFORTABLE WITH CONTINUING ON THIS PATH WE'RE ON,  
8       THAT'S WHAT I WOULD PROPOSE WE DO.

9                 THE 3 X MULTIPLE, WE DIDN'T HAVE ANY FURTHER  
10       DISCUSSION OF THAT. IS EVERYBODY COMFORTABLE? GIVEN  
11       THE FACT THAT THIS 3 X MULTIPLE WILL BE COUPLED WITH  
12       SOME REASONABLE RATE OF PAYBACK SO AS NOT TO UNDULY  
13       HARM THE COMPANY'S NEAR-TERM PROSPECTS OR SOMETHING  
14       LIKE THAT. THAT OKAY WITH EVERYBODY?

15                DR. PRIETO: THAT'S REASONABLE.

16                DR. BRYANT: OKAY WITH ME.

17                DR. WRIGHT: YEP.

18                CHAIRMAN PENHOET: THEN WE DELETE THE LOANS  
19       PART. WE AGREED ON THE BLOCKBUSTER PAYMENT. AND WE'RE  
20       GOING TO TAKE SEVERAL DIFFERENT VARIATIONS OF THE  
21       THRESHOLD ISSUE TO THE BOARD FOR A DISCUSSION WITH THE  
22       WHOLE BOARD; IS THAT RIGHT?

23                DR. WRIGHT: THAT'S WHAT I HEARD.

24                CHAIRMAN PENHOET: WE CAN CIRCULATE TO YOU  
25       GUYS BEFORE THE BOARD MEETING WHAT VARIOUS DIFFERENT

1 ALTERNATIVES MIGHT LOOK LIKE.

2 DR. PRIETO: THAT WOULD BE HELPFUL.

3 MR. SIMPSON: WHAT ABOUT RETAINING IP,  
4 LICENSE TO PRACTICE FOR THE STATE?

5 CHAIRMAN PENHOET: A LICENSE TO PRACTICE FOR  
6 THE STATE. THANK YOU. ANOTHER ISSUE, WHAT THAT  
7 ACTUALLY WOULD MEAN FOR THE STATE.

8 I THINK WE DECIDED IT DOESN'T MEAN THE STATE  
9 WOULD BE FREE TO LICENSE SOMEONE ELSE TO GO INTO  
10 BUSINESS AND COMPETE. IT'S FOR THE STATE'S OWN USE.

11 MR. SIMPSON: IT'S FOR THE STATE'S OWN USE.

12 MR. TAYMOR: BASICALLY THE RESEARCH USE  
13 EXEMPTION THAT YOU HAVE IN THE NONPROFITS WOULD SAY  
14 THAT IT WOULD BE IMPORTANT TO THE STATE AS OPPOSED TO  
15 ANY CALIFORNIA NONPROFIT.

16 CHAIRMAN PENHOET: THERE'S A QUESTION ABOUT  
17 WHETHER, FOR THIS PURPOSE, UC IS CONSIDERED TO BE PART  
18 OF THE STATE.

19 AND THEN THE BIOMEDICAL MATERIALS WE'VE  
20 TALKED ABOUT ALREADY. WE NEED A REASONABLENESS  
21 STANDARD THERE.

22 I GUESS THAT'S PRETTY MUCH WHAT I REMEMBER OF  
23 THIS MEETING. ANYBODY ELSE HAVE SOMETHING ELSE?

24 MR. SIMPSON: WHERE DID YOU COME DOWN ON THE  
25 PUBLIC USE, DEFINITION OF PUBLIC USE AND WHETHER THAT

1 NEEDS TO BE DEFINED STILL IN THE MARCH-IN?

2 CHAIRMAN PENHOET: I THINK WE HAD A CONCEPT  
3 OF MAKING SURE IT'S BROADLY AVAILABLE TO CALIFORNIANS  
4 EXCEPT FOR REASONS OF PRICE. I THINK SOMETHING LIKE  
5 THAT.

6 MR. TAYMOR: THE QUESTION OF OTHER FORMS OF  
7 INTELLECTUAL PROPERTY.

8 CHAIRMAN PENHOET: THERE'S A QUESTION. I'LL  
9 EXPRESS MY OWN PERSONAL BIAS. YOU ARE CORRECT. THERE  
10 ARE MANY FORMS OF INTELLECTUAL PROPERTY. MY OWN VIEW  
11 IS THAT TO WADE INTO NONPUBLISHED FORMS, AT LEAST, OF  
12 INTELLECTUAL PROPERTY IS ALMOST IMPOSSIBLE TO DO  
13 BECAUSE THERE'S NO END TO IT. AND SO IT'S -- YOU'RE  
14 ESSENTIALLY, I BELIEVE, ASKING A COMPANY TO OPEN ITS  
15 ENTIRE RECORDS, ETC., TO YOU TO PERUSE.

16 IF YOU HAVE SOME SUGGESTIONS ABOUT -- I MEAN  
17 WE INCLUDE COPYRIGHTS.

18 MR. TAYMOR: I WAS SUGGESTING, FOR EXAMPLE,  
19 SPECIFIC DATABASES THAT ARE GENERATED. I'M FOCUSING  
20 MOSTLY, FOR EXAMPLE, ON THE PRE-IND WORK THAT SEEMS TO  
21 HAVE BEEN THE FOCUS IN THE LAST STRATEGIC PLAN MEETING  
22 AND NOT HAVING A SITUATION WHERE CIRM HAS TO FUND  
23 MULTIPLE COMPANIES IN THEIR PRE-IND APPLICATIONS TO  
24 FIGURE OUT WHAT THE FDA IS GOING TO WANT, WHAT TYPE OF  
25 PROTOCOLS, WHAT TYPE OF ACTIVITY, AS THAT INFORMATION

1 IS BEING GENERATED, THAT IT'S BEING SHARED AND THAT  
2 THERE'S ACCESS TO THAT INFORMATION. AND THEN ALSO  
3 ACCESS TO INFORMATION AND DATABASES AND SIMILAR TYPES  
4 OF INFORMATION THAT MAY BE CREATED ON THE SAME LEVEL AS  
5 THERE'S ACCESS TO OTHER PUBLISHED INFORMATION.

6 CHAIRMAN PENHOET: SCOTT, CAN WE PUT SOME OF  
7 THAT IN ASPIRATIONAL LANGUAGE RATHER THAN IN LEGAL  
8 LANGUAGE?

9 MR. TOCHER: AGAIN, SO LONG AS IT'S  
10 ASPIRATIONAL. AND IN A POLICY, THAT'S FINE. IT  
11 WOULDN'T BELONG IN THE ACTUAL REGULATIONS THAT WOULD BE  
12 ADOPTED.

13 CHAIRMAN PENHOET: I THINK IN ASPIRATIONAL  
14 LANGUAGE, I THINK WE COULD. AREAS LIKE REQUIREMENTS  
15 FOR IND SUBMISSION, ETC. IF WE CAN GET PEOPLE TO SHARE  
16 THOSE, IT WOULD BE A GOOD THING.

17 MR. TOCHER: BUT YOU WANT TO BE CLEAR THAT IT  
18 IS ASPIRATIONAL AND NOT A REQUIREMENT.

19 CHAIRMAN PENHOET: WELL, UNLESS IT'S VERY  
20 WELL DEFINED. SEE, I'M REALLY WORRIED THAT  
21 COMPANIES -- THIS WOULD BE, IF I WAS RUNNING ONE OF  
22 THESE COMPANIES, MORE SCARY TO ME THAN ANYTHING ELSE  
23 WE'RE TALKING ABOUT HERE SO FAR. I CAN TELL YOU WHY  
24 THERE ARE NO BIOTECH COMPANIES IN BERKELEY, FOR  
25 EXAMPLE. BECAUSE BERKELEY HAD A LAW ON ITS BOOKS SAID



1 YOU HAD TO ALLOW THE CITY OF BERKELEY TO GO IN AND  
2 EXAMINE YOUR BOOKS AND STUFF. AS A RESULT, THERE WERE  
3 NEVER ANY BIOTECH COMPANIES IN BERKELEY. THERE ARE NOW  
4 30 YEARS LATER, BUT THEY ALL LEFT.

5 MR. ROTH: I THINK THE IDEA ON MANY OF THESE  
6 THINGS WE TALKED ABOUT TODAY IS TO TRY TO CAPTURE THOSE  
7 IN THE PREAMBLE TO THIS POLICY, WHICH ARE ASPIRATIONAL,  
8 AND AVOID TRYING TO MAKE THESE HARD RULES THAT I THINK  
9 MAY COME BACK TO HAUNT US DOWN THE ROAD, THAT WE DIDN'T  
10 MAKE THAT INTENTION. WE'VE ALREADY UNCOVERED A NUMBER  
11 OF THINGS THAT, WELL, THAT'S NOT REALLY WHAT WE MEANT  
12 BY WHAT WE SAID IN THE POLICY, AND I THINK WE WANT TO  
13 AVOID THAT WHEREVER POSSIBLE. SO THINGS LIKE OPEN  
14 SOURCE OR OPEN ACCESS, THOSE KIND OF THINGS, I THINK,  
15 CAN BEST BE ADDRESSED IN THE PREAMBLE.

16 CHAIRMAN PENHOET: OKAY. SO DO I HAVE YOUR  
17 PERMISSION TO PRESENT THIS TO THE ICOC ON OCTOBER 11TH  
18 ALONG THE LINES WE DESCRIBED, PRESUMABLY HAVING SENT  
19 YOU BEFOREHAND SOME OF THESE CLARIFICATIONS AND OTHER  
20 ALTERNATIVES THAT WE'RE GOING TO PRESENT?

21 MR. ROTH: YES IN SAN DIEGO.

22 DR. BRYANT: YES, DEFINITELY.

23 DR. WRIGHT: SO MOVED.

24 DR. PRIETO: YES. I DON'T THINK WE CAN MOVE  
25 BECAUSE WE DON'T HAVE A QUORUM.

1 CHAIRMAN PENHOET: WE'RE NOT MOVING ANYTHING.  
2 WHAT DO WE GET, THE SENSE OF THE GROUP, A CONSENSUS OF  
3 THE GROUP.

4 DR. PRIETO: YES, ABSOLUTELY.

5 CHAIRMAN PENHOET: THANK YOU. ANY OTHER  
6 ISSUES THAT ANY OF YOU ON THE PHONE WANT TO BRING UP AT  
7 THIS POINT?

8 DR. PRIETO: I WOULD LIKE TO THANK YOU FOR  
9 ALL YOUR WORK, AND THANK MARY FOR ALL HER WORK. I VERY  
10 MUCH APPRECIATED THE HISTORICAL BACKGROUND IN THE  
11 DRAFT.

12 CHAIRMAN PENHOET: INDEED.

13 (APPLAUSE.)

14 CHAIRMAN PENHOET: MARY IS IN THE UNFORTUNATE  
15 POSITION TODAY OF BEING THE WORLD'S AUTHORITY ON  
16 INTELLECTUAL PROPERTY POLICIES FOR -- IT'S TRUE. NO  
17 ONE ELSE IN THE WORLD KNOWS AS MUCH AS MARY DOES AT THE  
18 MOMENT BECAUSE NO ONE ELSE HAS EVER TAKEN A SYSTEMATIC  
19 STUDY OF WHAT EVERYBODY ELSE IS DOING. SO SHE CAN GET  
20 A PUBLICATION OUT OF THIS ANYWAY.

21 DR. WRIGHT: KEEP HER SAFE. DON'T LET  
22 ANYTHING HAPPEN TO HER.

23 CHAIRMAN PENHOET: YOU KNOW, SHE'S ROWDY.  
24 THAT'S A HARD JOB. OKAY. THANKS TO ALL OF YOU TASK  
25 FORCE MEMBERS, AND THANKS FOR THE MEMBERS OF THE PUBLIC

1 FOR VERY IMPORTANT INPUT. WE APPRECIATE IT.

2 SCOTT, MAYBE, AS A FINAL WORD, YOU CAN GIVE  
3 US A STATUS REPORT ON THE NOT-FOR-PROFIT.

4 MR. TOCHER: WE'VE JUST COMPLETED THE LATEST  
5 ROUND OF PUBLIC COMMENT ON THE LATEST REVISIONS, AND  
6 WE'RE LOOKING AT PERHAPS FINE-TUNING ONE REG AND MAYBE  
7 TWO ON JUST MINOR POINTS TO GET EVERYTHING IN PLACE FOR  
8 THE OCTOBER ICOC MEETING FOR ADOPTION.

9 CHAIRMAN PENHOET: OKAY.

10 MR. TOCHER: IF ALL GOES AS PLANNED.

11 MR. GILLENWATER: AND THAT INCLUDES --

12 CHAIRMAN PENHOET: TWO NEW DEFINITIONS.

13 MR. TOCHER: INCLUDING THE FEDERAL MEDICAID  
14 PRICE, VERIFICATION. THANK YOU.

15 CHAIRMAN PENHOET: OKAY.

16 (THE MEETING WAS THEN ADJOURNED AT 04:01 P.M.)

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REPORTER' S CERTIFICATE

I, BETH C. DRAIN, A CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF CALIFORNIA, HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT OF THE PROCEEDINGS BEFORE THE INTELLECTUAL PROPERTY TASK FORCE OF THE INDEPENDENT CITIZEN' S OVERSIGHT COMMITTEE OF THE CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE IN THE MATTER OF ITS REGULAR MEETING HELD AT THE LOCATION INDICATED BELOW

CIRM HEADQUARTERS  
210 KING STREET  
SAN FRANCISCO, CALIFORNIA  
ON  
SEPTEMBER 21, 2006

WAS HELD AS HEREIN APPEARS AND THAT THIS IS THE ORIGINAL TRANSCRIPT THEREOF AND THAT THE STATEMENTS THAT APPEAR IN THIS TRANSCRIPT WERE REPORTED STENOGRAPHICALLY BY ME AND TRANSCRIBED BY ME. I ALSO CERTIFY THAT THIS TRANSCRIPT IS A TRUE AND ACCURATE RECORD OF THE PROCEEDING.

  
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