

BEFORE THE  
INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE  
TO THE  
CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE  
ORGANIZED PURSUANT TO THE  
CALIFORNIA STEM CELL RESEARCH AND CURES ACT  
SPECIAL MEETING

LOCATION: AS INDICATED ON THE AGENDA

DATE: SEPTEMBER 15, 2009  
5 P.M.

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

BRS FILE NO.: 85546

## BARRISTERS' REPORTING SERVICE

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ROLL CALL		6
CONSIDERATION OF ADOPTION OF REMAINING CONSOLIDATED IP REGULATIONS FOR FOR-PROFIT AND NONPROFIT GRANTEES		7
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**BARRISTERS' REPORTING SERVICE**

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MONDAY, SEPTEMBER 15, 2009

5:00 P.M.

CHAIRMAN KLEIN: WE DON'T HAVE A QUORUM YET, SO INSTEAD OF GOING TO ITEM 3, I'M GOING TO JUST GO TO ITEM 4 BECAUSE WE'RE NOT GOING TO DEAL WITH IT AS AN ACTION ITEM, JUST AN INFORMATIONAL ITEM. SO HOPEFULLY WE CAN MOVE THROUGH THAT WHILE WE'RE WAITING FOR THE BALANCE OF OUR QUORUM.

MR. SERRANO-SEWELL: THIS IS DAVID SERRANO-SEWELL.

CHAIRMAN KLEIN: HI, DAVID. GOOD TO HAVE YOU. WE'RE GOING -- WE'RE WAITING FOR QUORUM, DAVID, SO WE'RE GOING TO TAKE AN INFORMATIONAL ITEM WHILE WE'RE WAITING, AND THEN WE'LL GO BACK TO A FORMAL ROLL CALL.

SO IN TERMS OF THE DELEGATED UNDERWRITER, I WOULD SAY THAT IN TERMS OF THIS PARTICULAR RFA, THE EXECUTIVE COMMITTEE HAS COME TO THE CONCLUSION THAT WE EXPECT A SMALL NUMBER OF LOANS. AND RATHER THAN HAVING SOME LONG-TERM, LARGE MASTER AGREEMENT TO BRING TO THE BOARD RIGHT AT THIS MOMENT, IN LEARNING ABOUT THIS, WE HAVE TAKEN THE APPROACH CONCEPTUALLY OF HAVING A PILOT CONTRACT THAT'S VERY LIMITED. AND WE KNOW THE FEE STRUCTURE WAS

**BARRISTERS' REPORTING SERVICE**

1 INTRODUCTION AND BROUGHT THROUGH COMERICA'S  
2 FEE-FOR-SERVICE STRUCTURE.

3 WE'RE LOOKING AT THE SIMPLER RECOMMENDED  
4 APPROACH OF THE FINANCE COMMITTEE, WHICH IS A  
5 FEE-FOR-SERVICE MODEL WITH ORIGINATION AND SERVICING  
6 FEES THAT ARE QUITE LIMITED. BUT BY HAVING A PILOT  
7 CONTRACT, WE CAN LEARN A GREAT DEAL, THE LENDER CAN  
8 LEARN, AND WE CAN BE IN A POSITION IN DECEMBER OR  
9 EARLY NEXT YEAR OF BRINGING BACK SOMETHING THAT HAS  
10 GONE BACK TO THE FINANCE COMMITTEE AGAIN AND HAS  
11 MORE EXPERIENCE IN IT ON THE IMPLEMENTATION SIDE  
12 RATHER THAN GETTING OURSELVES INTO A LARGE MASTER  
13 CONTRACT WITHOUT THAT CASE STUDY VALUE ON A VERY  
14 LIMITED AND CONTROLLED BASIS.

15 JOHN, ARE YOU THERE?

16 DR. ROBSON: I GUESS ONE THING I WOULD ADD  
17 TO THAT IS, I'M NOT SURE, WE MAY WANT TO WAIT A  
18 LITTLE BIT BEYOND DECEMBER OR JANUARY TO BRING THIS  
19 TO YOU BECAUSE WE DON'T -- THE NEXT PROGRAM THAT WE  
20 HAVE IN LINE THAT WOULD BE APPROPRIATE FOR A LOAN  
21 PROGRAM IS EARLY TRANSLATION, AND THAT PROBABLY --  
22 WELL, THE RFA WILL COME OUT SOMETIME THE MIDDLE OF  
23 NEXT YEAR. SO I THINK WHAT WE WOULD LIKE TO DO IS  
24 MAYBE WAIT A LITTLE BIT LONGER THAN JANUARY SO WE  
25 CAN HAVE A LITTLE MORE EXPERIENCE GOING THROUGH THIS

## BARRISTERS' REPORTING SERVICE

1 PROCESS ONCE ACTUALLY ISSUING THE LOANS. AND THEN  
2 WE'LL DEVELOP A MORE COMPLETE, ROBUST CONTRACT WITH  
3 MORE THAN ONE DELEGATED UNDERWRITER AND BRING IT TO  
4 YOU CERTAINLY BEFORE THAT RFA GOES OUT.

5 CHAIRMAN KLEIN: SO, JOHN, IF WE WAIT  
6 FURTHER, THAT'S A FINANCE COMMITTEE DECISION. AND I  
7 TALKED TO MICHAEL GOLDBERG, AND I'M SURE THE FINANCE  
8 COMMITTEE WOULD WANT INTERIM REPORTS AND DISCUSSION.

9 DR. ROBSON: OH, ABSOLUTELY.

10 CHAIRMAN KLEIN: I'VE BEEN ABLE TO REACH  
11 MICHAEL. HE THINKS THAT A PILOT CONTRACT, LIMITING  
12 ITS SCOPE VERY TIGHTLY AND NARROWLY, IS A BENEFIT  
13 FOR US IN LEARNING AND REDUCING OUR EXPOSURE AT A  
14 TIME WHEN WE'RE LEARNING THIS FASTER THAN THE  
15 LENDER. DESPITE OUTSIDE CONSULTANTS, YOU DO LEARN  
16 ON THE FIRST CASE IN ANY NEW PARADIGM.

17 DR. ROBSON: YEAH, EXACTLY. THAT'S WHY  
18 WE'RE HOPING TO DELAY IT A LITTLE BIT. THE LONGER  
19 WE DELAY, THE MORE WE'LL LEARN. BUT WE HAVE  
20 EVERYTHING IN PLACE WHEN WE NEED IT AGAIN.

21 CHAIRMAN KLEIN: ALL RIGHT. SO WE CAN'T  
22 GO THROUGH AND TELL YOU EXACTLY HOW MANY LOANS THERE  
23 WILL BE, BUT I'LL TELL YOU IT'S A SMALL NUMBER  
24 BECAUSE IT'S A SUBSET OF THIS DISEASE TEAM  
25 EXPERIENCE. AND I THINK IT'S A LIMITED NUMBER, BUT

**BARRISTERS' REPORTING SERVICE**

1 IT'S GREAT TO HAVE PRIVATE COMPANIES THAT ARE GOING  
2 TO BE PARTICIPATING IN THE LOAN PROGRAM, AND IT'S  
3 GREAT TO START VERY SMALL AND LEARN.

4 JEFF, WOULD YOU CONCUR THAT IT WILL BE A  
5 RELATIVELY SMALL PROGRAM?

6 MR. SHEEHY: YEAH. I THINK THIS WILL BE  
7 SOMETHING THAT WE CAN MANAGE, AND IT ACTUALLY GIVES  
8 US A GREAT OPPORTUNITY TO PILOT SOMETHING. SO I  
9 THINK THIS WILL ALL WORK OUT FINE.

10 CHAIRMAN KLEIN: OKAY.

11 DR. HAWGOOD: BOB, THIS IS SAM HAWGOOD  
12 JOINING.

13 CHAIRMAN KLEIN: OKAY. ANY OTHER COMMENTS  
14 OR POINTS OF INFORMATION ON THE STATUS OF PROGRESS  
15 ON THE LOAN PROGRAM? HEARING NONE, I'D LIKE TO GET  
16 A FORMAL ROLL CALL AT THIS POINT. I THINK WE MAY  
17 HAVE HAD ENOUGH PEOPLE JOIN TO GET A QUORUM,  
18 HOPEFULLY.

19 MS. KING: HOPEFULLY WE CAN CHECK NOW. IT  
20 DIDN'T SOUND LIKE IT FROM THE NUMBER OF BEEPS, BUT  
21 THEN THERE ARE SOME VOICES THAT I RECOGNIZE THAT  
22 WEREN'T ON BEFORE. SO WE CAN TRY. SHOULD I TRY AND  
23 CALL THE ROLL?

24 CHAIRMAN KLEIN: PLEASE DO THAT.

25 MS. KING: ALL RIGHT.

**BARRISTERS' REPORTING SERVICE**

1 DONALD DAFOE.  
2 DR. DAFOE: HERE.  
3 MS. KING: ROBERT PRICE.  
4 DR. PRICE: HERE.  
5 MS. KING: FLOYD BLOOM.  
6 DR. BLOOM: HERE.  
7 MS. KING: DAVID BRENNER.  
8 DR. BRENNER: HERE.  
9 MS. KING: WILLIAM BRODY.  
10 DR. BRODY: HERE.  
11 MS. KING: SUSAN BRYANT.  
12 DR. BRYANT: HERE.  
13 MS. KING: MARCY FEIT. MICHAEL FRIEDMAN.  
14 DR. FRIEDMAN: HERE.  
15 MS. KING: LEEZA GIBBONS.  
16 MS. GIBBONS: HERE.  
17 MS. KING: MICHAEL GOLDBERG. SAM HAWGOOD.  
18 DR. HAWGOOD: HERE.  
19 MS. KING: BOB KLEIN.  
20 CHAIRMAN KLEIN: HERE.  
21 MS. KING: SHERRY LANSING. GERALD LEVEY.  
22 TED LOVE.  
23 DR. LOVE: HERE.  
24 MS. KING: ED PENHOET. PHIL PIZZO. KEN  
25 BURTIS.

**BARRISTERS' REPORTING SERVICE**

1 DR. BURTIS: HERE.

2 MS. KING: FRANCISCO PRIETO.

3 DR. PRIETO: HERE.

4 MS. KING: CARMEN PULIAFITO OR ELIZABETH  
5 FINI. ROBERT QUINT. JEANNIE FONTANA. DUANE ROTH.  
6 JOAN SAMUELSON. DAVID SERRANO-SEWELL.

7 MR. SERRANO-SEWALL: HERE.

8 MS. KING: JEFF SHEEHY.

9 MR. SHEEHY: HERE.

10 MS. KING: JONATHAN SHESTACK. OSWALD  
11 STEWARD. AND ART TORRES.

12 SOMEONE JUST JOINED?

13 DR. FONTANA: JEANNIE FONTANA.

14 MS. KING: GREAT. THANK YOU, DR. FONTANA.  
15 SO, BOB, WE ARE STILL NOT QUITE AT QUORUM.

16 CHAIRMAN KLEIN: OKAY.

17 MS. KING: I'M NOT SURE HOW YOU WANT TO  
18 PROCEED.

19 CHAIRMAN KLEIN: WHAT I'D LIKE TO DO IS WE  
20 WILL PROCEED WITH DISCUSSION OF THE ITEM, AND THEN  
21 WE'LL COME BACK WHEN ADDITIONAL INDIVIDUALS JOIN TO  
22 ANSWER ANY QUESTIONS THEY HAVE, AND RESTATE ANY --  
23 AND TAKE MOTIONS AT THAT TIME, ASSUMING WE ARE ABLE  
24 TO GET A QUORUM. AND I'M SURE, MELISSA, YOU  
25 HAVE -- YOU CAN DRAFT SOME OF THE STAFF UP THERE IN



**BARRISTERS' REPORTING SERVICE**

1 SAN FRANCISCO OFFICE TO MAKE SOME CALLS TO RELATE TO  
2 INDIVIDUALS WHO ARE COMMITTED TO BE ON THE CALL  
3 THAT, FOR THE IP REGULATIONS, IT'S IMPORTANT THAT WE  
4 MARSHAL OUR QUORUM FOR THIS EVENT.

5 MS. KING: YEP. ALREADY DID IT. THANKS.

6 CHAIRMAN KLEIN: OKAY. SO IN TERMS OF OUR  
7 STATUS OF OUR IP REGULATIONS, IT'S IMPORTANT TO NOTE  
8 THAT AS WE GO FORWARD IN THIS PROCESS, WE'RE  
9 CONSTANTLY LEARNING, AND WE HAVE A LOT OF HISTORY  
10 HERE WHICH WE'RE TRYING TO MAKE SURE, AS WE GO  
11 FORWARD, WE'RE FOLLOWING. AND WITH THE BENEFIT OF  
12 BOARD MEMBERS'S HISTORY AND CONTINUITY AND THE  
13 CONTINUITY OF THE STAFF THAT HAS BEEN HERE FROM  
14 EARLY, WE'VE BEEN ABLE TO, I HOPE, RECONCILE OUR  
15 BASIC IP REGULATIONS.

16 WE HAVE GOTTEN SOME ADDITIONAL COMMENTS IN  
17 THIS PERIOD. BUT, ELONA, IF YOU COULD SET THE STAGE  
18 AND TAKE US UP TO THE POINT WE WERE AT THE LAST  
19 MEETING. AND THEN I BELIEVE YOU'RE GOING -- TO DEAL  
20 WITH ANY UPDATES FROM THE LAST MEETING, YOU WERE  
21 GOING TO REFER THOSE OUT TO SCOTT. BUT IF YOU COULD  
22 SET THE STAGE FOR US AND REMIND US OF WHERE WE CAME  
23 IN TERMS OF THE LAST MEETING OF UPDATING THE IP  
24 REGS.

25 MS. BAUM: SURE. JUST TO SET THE STAGE IN

**BARRISTERS' REPORTING SERVICE**

1 TERMS OF THE OVERALL DECISIONS THAT WE'RE REQUESTING  
2 OF THE BOARD TODAY, THERE'S ACTUALLY FIVE THAT ARE  
3 BEFORE THE BOARD FOR CONSIDERATION. THE FIRST ONE  
4 BEING THE ONE THAT YOU REFERRED TO, AND THAT'S THE  
5 DEFINITION OF EXCLUSIVE LICENSEE. AND AT THE  
6 DIRECTION OF THE ICOC, WE HAVE ELIMINATED SOME OF  
7 THE LANGUAGE THAT WAS OF CONCERN TO THE BOARD AT  
8 THAT TIME. THAT LANGUAGE BEING THE ELIMINATION OF  
9 THIS PHRASE "DIRECTLY FROM A GRANTEE, GRANTEE  
10 PERSONNEL OR COLLABORATOR," SO THAT, IN EFFECT, BY  
11 MAKING THIS CHANGE, THERE WILL BE SORT OF A BROADER  
12 DEFINITION OF EXCLUSIVE LICENSEE.

13 AND SCOTT CAN PROCEED TO DISCUSS THE OTHER  
14 FOUR CHANGES, AND SOME OF THEM HAVE OPTION A AND  
15 OPTION B, WHICH HE WILL EXPLAIN TODAY, BUT ALSO HAVE  
16 BEEN SET OUT IN GREAT DETAIL IN THE AUGUST 18TH  
17 MEMORANDUM.

18 CHAIRMAN KLEIN: OKAY. SO COMING INTO THE  
19 LAST MEETING, WE HAD SOME CHANGES THAT ARE  
20 CONSISTENT WITH PUBLIC COMMENT AT THAT TIME THAT I  
21 THINK WE HAD A CONCURRENCE. WE BROUGHT THE  
22 REGULATIONS BACK TO WHERE WE NEEDED TO HAVE THEM.  
23 AND THEN SUBSEQUENTLY WITH THE ADDITIONAL SUGGESTED  
24 CHANGES, COULD SCOTT PLEASE GO THROUGH THE  
25 ADDITIONAL PUBLIC COMMENTS THAT WE HAD RELATED TO

**BARRISTERS' REPORTING SERVICE**

1 THOSE CHANGES?

2 MR. TOCHER: SURE. AGAIN, THIS IS SET  
3 FORTH IN THE MEMO THAT DESCRIBES EACH OF THE FIVE  
4 DECISIONS IN ORDER THROUGH THE DRAFT REGULATIONS.  
5 THE FIRST DECISION POINT, AS ELONA SAID, REFERENCES  
6 THE ICOC'S DIRECTION AT THE AUGUST MEETING TO REFER  
7 TO A PRE-AUGUST 3D DEFINITION OF ONE OF THE TERMS.

8 IN ADDITION, WE ALSO SAW THIS AS AN  
9 OPPORTUNITY TO PRESENT TO THE BOARD, WITHOUT TYING  
10 ITS HANDS INTO DOING SO, TO PRESENT THE BOARD WITH  
11 SOME OPTIONS FOR SOME ADDITIONAL CLARIFICATIONS THAT  
12 HAVE BEEN SUGGESTED BY MEMBERS OF THE REGULATED  
13 COMMUNITY. AND SO WE NOTICED THEM AS WELL DURING  
14 THIS INTERIM PERIOD BETWEEN TODAY'S MEETING AND THE  
15 AUGUST MEETING SO THAT THEY WOULD BE OPTIONS THAT  
16 WOULD BE AVAILABLE FOR YOUR CONSIDERATION.

17 ONE OF THEM AROSE IN THE CONTEXT OF A UC  
18 COMMENT LETTER, AND THE SAME POINT WAS ALSO RAISED  
19 IN ONE FROM IPERIAN. AND THAT RELATES TO DECISION  
20 POINT THREE ABOUT THE SCOPE OF THEIR REPORTING  
21 OBLIGATIONS TO THE AGENCY IN THE EVENT THAT THERE'S  
22 A BREACH OF A LICENSE.

23 SO I CAN DISCUSS THE SPECIFICS THERE IN  
24 THE CONTEXT OF THAT DECISION. BUT THAT IS THE  
25 COMMENT THAT CAME IN THAT'S RELEVANT TO THE PROPOSED

**BARRISTERS' REPORTING SERVICE**

1 CHANGE THERE.

2 IN ADDITION, THERE WAS A SUPPORTIVE  
3 COMMENT BY A MEMBER OF THE PUBLIC WITH REGARD TO THE  
4 CHANGE THAT THE ICOC ASKED FOR WITH RESPECT TO THE  
5 DEFINITION OF EXCLUSIVE LICENSEE.

6 CHAIRMAN KLEIN: AND IN TERMS OF THE  
7 IPERIAN COMMENT, SCOTT, YOU WANT TO JUST SUMMARIZE  
8 THE E-MAIL THAT THEY SENT AND COMMENTS?

9 MR. TOCHER: SURE. I GUESS, YOU KNOW, WE  
10 CAN TAKE THEM OUT OF ORDER IF YOU LIKE, AND THAT'S  
11 FINE. IT'S DECISION POINT THREE, WHICH IS LOCATED  
12 AT PAGE 10 OF THE DRAFT REGULATIONS. AND BASICALLY  
13 THIS REGULATION ADDRESSES LICENSING ACTIVITIES THAT  
14 OUR GRANTEES MAY ENGAGE AND DESCRIBES THE  
15 RESPONSIBILITIES OF INTERACTIONS, WHAT THE LICENSES  
16 MUST CONTAIN, FOR INSTANCE, AND ALSO WHAT THE  
17 GRANTEE MUST REPORT TO US ABOUT THE LICENSES THAT  
18 THE GRANTEE EXECUTES.

19 SUBDIVISION H OF THAT REGULATION REQUIRES  
20 OUR GRANTEE TO NOTIFY THE AGENCY IN THE EVENT THAT  
21 THERE IS A MATERIAL BREACH OF THE LICENSE. UC AND  
22 IPERIAN HAS RAISED THE QUESTION THAT THIS MIGHT BE  
23 OVERBURDENSOME IN THE EVENT THAT THEY HAVE TO REPORT  
24 ALL BREACHES OF THE LICENSE, AND THAT PERHAPS A MORE  
25 MANAGEABLE SCOPE, CONSISTENT WITH THE AGENCY'S

**BARRISTERS' REPORTING SERVICE**

1 OBLIGATION TO MONITOR COMPLIANCE WITH THE  
2 REGULATION, THAT THE LANGUAGE COULD BE MODIFIED TO  
3 REQUIRE REPORTING TO CIRM IN THE EVENT OF A BREACH  
4 AFFECTING ANY OF THE OBLIGATIONS UNDER THE  
5 REGULATIONS. AND THIS SEEMS LIKE A COMMON SENSE  
6 SUGGESTION THAT HELPS MANAGE THE BURDEN ON OUR  
7 GRANTEES. IT ALSO ENSURES THAT CIRM IS AWARE OF ANY  
8 POTENTIAL BREACHES OF LICENSES WHICH WOULD AFFECT  
9 THE OBLIGATIONS UNDER THIS REGULATION.

10 THIS IS SOMETHING THAT UC HAS BEEN  
11 STRUGGLING WITH, I THINK, TRYING TO WORK WITH US ON  
12 FOR SOME TIME. IT WAS RAISED AGAIN IN THE IPERIAN  
13 COMMENT. AND SO THE DECISION THERE IN OPTION THREE  
14 PROVIDES THAT NARROWING OF SCOPE, AND STAFF  
15 RECOMMENDS THAT THAT CHANGE BE MADE.

16 IF I CAN JUST BACK UP AS A GENERAL GUIDING  
17 POINT, ON THESE FIVE DECISION POINTS, STAFF MAKES  
18 RECOMMENDATIONS THAT ALL OF THE CHANGES BE MADE AND  
19 THAT WHERE THERE IS A CHOICE BETWEEN AN OPTION A AND  
20 AN OPTION B, STAFF RECOMMENDS THE LANGUAGE IN OPTION  
21 A.

22 SO DECISION THREE DOES NOT HAVE OPTIONAL  
23 LANGUAGE, BUT WE WOULD NEVERTHELESS RECOMMEND THE  
24 DECISION SET FORTH THERE FOR THE REASONS I JUST  
25 EXPLAINED.

**BARRISTERS' REPORTING SERVICE**

1           CHAIRMAN KLEIN: ALL RIGHT. AND ARE THERE  
2 ANY OTHER COMMENTS THAT YOU RECEIVED DURING THIS  
3 PERIOD, SCOTT, THAT LED TO ACTUAL CHANGES DURING  
4 THIS PERIOD?

5           MR. TOCHER: NO, BECAUSE -- NO. JUST THE  
6 ONES THAT I HAVE REFERENCED.

7           CHAIRMAN KLEIN: ALL RIGHT. LET ME ASK  
8 MEMBERS OF THE IP TASK FORCE THAT ARE WITH US, DO  
9 THEY HAVE, FIRST, ANY COMMENTS ON THIS BECAUSE THEY  
10 LIVED WITH THESE PROVISIONS FOR A GREAT DEAL OF  
11 TIME, INVESTED A HUGE AMOUNT OF TIME. I THINK IT  
12 WOULD BE INFORMATIVE IF THEY HAVE ANY PARTICULAR  
13 POSITIONS OR INFORMATION THEY'D LIKE TO IMPART.  
14 JEFF, I THINK YOU'RE IN SAN FRANCISCO; IS THAT  
15 RIGHT?

16           MR. SHEEHY: I'M ACTUALLY -- I'M NOT AT  
17 CIRM, BUT I'M HERE IN THE CITY.

18           CHAIRMAN KLEIN: YOU'RE IN SAN FRANCISCO,  
19 JUST NOT AT CIRM. DO YOU HAVE ANY PARTICULAR  
20 COMMENT ON THE ADDITIONAL POINTS THAT SCOTT HAS  
21 BROUGHT TO US IN TERMS OF THESE ADDITIONAL DECISIONS  
22 RELATED TO TECHNICAL CHANGES TO TIGHTEN LANGUAGE?

23           MR. SHEEHY: THIS ALL LOOKS VERY  
24 STRAIGHTFORWARD, SO I DON'T SEE ANY PROBLEMS.

25           CHAIRMAN KLEIN: ALL RIGHT.

**BARRISTERS' REPORTING SERVICE**

1 MR. SHEEHY: THERE DID SEEM LIKE THAT  
2 THERE'S SOME CHOICES ON SOME OF THESE, IF I'M  
3 CORRECT.

4 CHAIRMAN KLEIN: YES, THERE ARE. AND  
5 WE'LL GO THROUGH EACH OF THOSE.

6 MR. SHEEHY: BUT, IN GENERAL, I THINK  
7 THEY'VE DONE A GREAT JOB.

8 CHAIRMAN KLEIN: OKAY. ANY OTHER COMMENTS  
9 FROM MEMBERS OF THE TASK FORCE?

10 DR. BRYANT: YES. OH, SORRY. I'M NOT ON  
11 THE TASK FORCE. NEVER MIND.

12 MS. KING: I THINK THAT'S OKAY, DR.  
13 BRYANT. GO AHEAD.

14 CHAIRMAN KLEIN: DR. BRYANT, GO AHEAD.

15 DR. BRYANT: OKAY. SO I'VE BEEN TALKING  
16 TO THE UC OFFICE ABOUT THIS, AND THERE STILL IS SOME  
17 LANGUAGE IN HERE THAT IS PROBLEMATIC FOR UC, WHICH,  
18 YOU KNOW, REPRESENTS AN OPINION ABOUT, YOU KNOW, HOW  
19 TO SET THESE THINGS UP SO THAT THEY PROTECT  
20 EVERYONE'S INTEREST. AND I CAN GO THROUGH THEM. I  
21 DON'T KNOW IF THEY HAVE BEEN COMMUNICATED TO YOU  
22 SINCE THIS MOST RECENT DRAFT. HAVE YOU RECEIVED  
23 ANYTHING?

24 MR. TOCHER: THIS IS SCOTT IN SACRAMENTO.  
25 OUR 15-DAY COMMENT PERIOD JUST CLOSED. EXCUSE ME.

**BARRISTERS' REPORTING SERVICE**

1 SACRAMENTO. MAYBE THREE YEARS AGO I WAS, BUT NOT  
2 NOW. I HAVE A COLD. LET'S BLAME IT ON THAT.

3 OUR COMMENT PERIOD JUST CLOSED A FEW DAYS  
4 AGO, AND WE DID NOT RECEIVE ANY COMMENTS FROM UC.

5 DR. BRYANT: OKAY. BUT I KNOW THAT THERE  
6 ARE SOME REMAINING CONCERNS. I THINK THEY WERE  
7 EXPRESSED BEFORE, BUT SOME OF THEM ARE STILL IN  
8 THERE. AND I JUST FEEL LIKE I SHOULD BRING THOSE UP  
9 AT SOME POINT. I DON'T KNOW IF THIS IS THE RIGHT  
10 TIME OR NOT.

11 CHAIRMAN KLEIN: LET ME ASK, DR. BRYANT,  
12 IF THERE'S ANY OTHER COMMENT ON THE CHANGES THAT  
13 HAVE BEEN MADE. AND IF THERE AREN'T, THEN I THINK  
14 IT WOULD BE APPROPRIATE FOR YOU TO GO FORWARD AT  
15 THIS TIME TO EXPLAIN THOSE. SO IS THERE ANY OTHER  
16 COMMENTS ON THE CHANGES THAT HAVE BEEN MADE?  
17 HEARING NONE, DR. BRYANT, COULD YOU PROCEED TO  
18 OUTLINE THOSE FOR US?

19 DR. BRYANT: OKAY. SO THERE ARE QUITE A  
20 FEW, SO LET ME -- AND THEY'RE INDEXED BY THE NUMBER  
21 IN THE PROPOSED LANGUAGE. SO THE FIRST ONE APPLIES  
22 TO SECTION 100601(C), DEFINITION OF CIRM-FUNDED  
23 INVENTION. THIS IS A RESIDUAL CONCERN, AND THIS IS  
24 CIRM-FUNDED INVENTION NOW INCLUDES INVENTIONS THAT  
25 ARE NEITHER CONCEIVED NOR REDUCED TO PRACTICE UNDER



## BARRISTERS' REPORTING SERVICE

1 CIRM FUNDING. THIS IS BECAUSE OF THE ADDITION OF  
2 THE PHRASE "ALL WITHIN 12 MONTHS OF THE CLOSE OF THE  
3 GRANT" AT THE END OF CRITERION 2.

4 SO IT MEANS THAT WHETHER OR NOT THE  
5 CONCEPTION HAD OCCURRED DURING THE PERIOD OF THE  
6 CIRM FUNDING. SO THE POINT IS HERE THAT NOT EVEN  
7 THE FEDERAL GOVERNMENT GOES THIS FAR IN CAPTURING  
8 IP.

9 CHAIRMAN KLEIN: DR. BRYANT, THE BASIC  
10 CONCEPT HERE IS THAT CIRM CAPTURES SOMETHING THAT  
11 MAY BE CONCEIVED WITHIN 12 MONTHS AFTER THE CLOSE OF  
12 THE GRANT.

13 DR. BRYANT: RIGHT.

14 CHAIRMAN KLEIN: AND SO, SCOTT, WOULD YOU,  
15 AS WE GO, JUST ANSWER EACH ONE OF THESE SO THAT WE  
16 DON'T HAVE TO WAIT TILL THE END WHEN OUR MEMORY MAY  
17 BE VAGUE OF THE FIRST ONE?

18 DR. BRYANT: RIGHT. SO, YES, LET'S DO IT  
19 THAT WAY. SO THAT WOULD BE THE ANSWER TO THAT ONE.  
20 IT WOULD -- IT SHOULD BE LIMITED TO THE PERIOD OF  
21 THE GRANT.

22 CHAIRMAN KLEIN: OKAY. AND, SCOTT, WHAT  
23 IS OUR RESPONSE TO THE UC SYSTEM?

24 MR. TOCHER: WELL, YOU KNOW, THIS IS  
25 SOMETHING THAT WE WANTED TO MAKE SURE THAT WE WERE

## BARRISTERS' REPORTING SERVICE

1 CAPTURING THE CIRCUMSTANCE WHERE THERE WAS A  
2 CONCEPTION, BUT A DELAY IN THE REDUCTION TO PRACTICE  
3 WHERE THERE WAS CONCEPTION DURING, BUT THEN THE  
4 REDUCTION TO PRACTICE WAS HELD OFF UNTIL SOMETIME  
5 AFTER THE CLOSE OF THE GRANT. AND SO THAT'S WHY  
6 THIS IS ACTUALLY COMPROMISE LANGUAGE IN TERMS OF THE  
7 12-MONTH PERIOD WITH UC. INITIALLY IT WAS PROPOSED  
8 TO BE 24 MONTHS.

9 AND SO WE JUST WANT TO MAKE SURE THAT WE  
10 DO NOT LOSE OUT FROM THE SITUATION WHERE THERE MAY  
11 BE AN ATTEMPT TO GAME THE SYSTEM THAT WE SET UP IN  
12 ORDER TO AVOID THE REGULATIONS.

13 DR. BRYANT: OH, I DON'T THINK THAT'S WHAT  
14 IT'S ABOUT. I THINK IT'S -- ANYBODY WOULD SEE THAT  
15 HAVING IT BE CONCEIVED DURING THE GRANT AND THEN IT  
16 MAY BE REDUCED TO PRACTICE AFTERWARDS, BUT ACCORDING  
17 TO, YOU KNOW, THE READING THAT I'VE RECEIVED ABOUT  
18 IT IS THAT THE WAY IT'S WRITTEN INCLUDES INVENTIONS  
19 THAT ARE NEITHER CONCEIVED, NOR REDUCED TO PRACTICE  
20 UNDER CIRM FUNDING BECAUSE IT SAYS THESE THINGS ARE  
21 LINKED TOGETHER, AND IT WAS ALL WITHIN 12 MONTHS OF  
22 THE CLOSE OF THE GRANT, WHICH -- BUT YOU NEED TO  
23 SEPARATE THE CONCEIVED FROM THE REDUCED TO PRACTICE  
24 IN ORDER TO MAKE IT WORKABLE.

25 MR. TOCHER: IT ARISES FROM THE

**BARRISTERS' REPORTING SERVICE**

1 CIRM-FUNDED RESEARCH, SO WE'RE TALKING ABOUT CIRM  
2 FUNDING GOES INTO THE DISCOVERY, BUT IT'S NOT  
3 REDUCED TO PRACTICE UNTIL WITHIN 12 MONTHS OF THE  
4 CLOSE. SO I THINK THAT IS APPROPRIATE, AND WE  
5 COMMUNICATED THIS WITH THE OFFICE OF TECH TRANSFER.

6 DR. BRODY: THIS IS BILL BRODY SPEAKING.  
7 I THINK -- FIRST OF ALL, I'M NOT SURE I AGREE WITH  
8 YOUR INTERPRETATION OF THE LANGUAGE. SECONDLY, I  
9 THINK IT'S ABSURD. AND THIRD, I DON'T THINK IT'S  
10 ENFORCEABLE.

11 YOU KNOW, I'VE BEEN AWAY FROM CALIFORNIA  
12 FOR A LONG TIME, BUT MY GUESS IS THAT THIS WOULD NOT  
13 BE ENFORCEABLE. AND WE DO READ IT AS MEANING  
14 INVENTIONS THAT ARE NEITHER CONCEIVED, NOR REDUCED  
15 TO PRACTICE WOULD BE COVERED. AND, IN FACT, THERE'S  
16 SOME INTERPRET- -- THERE'S ONE INTERPRETATION THAT  
17 SOMEBODY WHO WAS NEVER EVER FUNDED BY CIRM COULD BE  
18 PUT INTO THIS DUE TO THE PREVIOUS PART.

19 I JUST THINK THIS IS POORLY WORDED, AND  
20 I'M STRONGLY AGAINST THIS AS IT'S WRITTEN.

21 MR. TOCHER: WELL, THE FIRST LINE OF THE  
22 DEFINITION SAYS IT ARISES FROM CIRM-FUNDED RESEARCH.

23 DR. BRYANT: RIGHT.

24 MR. TOCHER: I DON'T KNOW HOW THE CASE  
25 COULD BE MADE THAT THIS ISN'T EVEN RESEARCH THAT

## BARRISTERS' REPORTING SERVICE

1       ARISES FROM A CIRM GRANT.

2               DR. BRODY:  WHAT THIS SHOULD SAY IS IN ANY  
3       INVENTION WHICH IS PATENTABLE WHICH IS EITHER  
4       CONCEIVED OR REDUCED TO PRACTICE DURING THE -- YOU  
5       KNOW, DURING THE FUNDING PERIOD.  SO IF I CONCEIVE  
6       IT WHILE I'M FUNDED, BUT I REDUCE IT TO PRACTICE  
7       LATER, IT'S STILL COVERED.  RIGHT?

8               MR. TOCHER:  BUT THAT'S WHAT THE  
9       CIRM-FUNDED RESEARCH DEFINITION INCLUDES.  ALL  
10      ASPECTS --

11              DR. BRODY:  THAT'S NOT HOW -- THAT'S NOT  
12      HOW SEVERAL COUNSELS INTERPRET IT, INCLUDING  
13      STANFORD AND THE UC SYSTEM.

14              MS. BAUM:  MAY I SUGGEST THAT AT SOME  
15      POINT IT'S THE INTENT TO HAVE FREQUENTLY ASKED  
16      QUESTIONS THAT WE COULD POST AS WELL THAT WOULD GIVE  
17      EXPLANATION AS TO WHAT THE INTENT WAS MEANT BY THE  
18      ACTUAL REGULATORY LANGUAGE?

19              CHAIRMAN KLEIN:  LET'S DO THIS.  THIS IS  
20      BOB KLEIN.  CLEARLY --

21              DR. BRODY:  ONE THING, BOB.  THERE'S  
22      LANGUAGE IN THE BAYH-DOLE AMENDMENT THAT'S BEEN USED  
23      SUCCESSFULLY BY UNIVERSITIES ACROSS THE COUNTRY, AND  
24      I DON'T UNDERSTAND WHY, AS POINTED OUT IN THE  
25      STANFORD LETTER FROM KATHY KU TO SCOTT, WE DON'T

## BARRISTERS' REPORTING SERVICE

1 ADOPT THAT LANGUAGE. I'D LIKE A RESPONSE FROM THE  
2 COUNSELS WHY WE'RE ADOPTING DIFFERENT LANGUAGE IN  
3 THIS PARTICULAR PART.

4 CHAIRMAN KLEIN: LET'S BREAK THIS INTO  
5 INCREMENTS THAT WE HAVE THE ABILITY TO IMPLEMENT AND  
6 THEN INCREMENTS THAT ARE CALLED TO OUR ATTENTION  
7 THAT WE NEED TO FOCUS ON IN TERMS OF FURTHER  
8 REFINEMENTS TO THAT LANGUAGE.

9 IN TERMS OF WHAT WE CAN ACCOMPLISH TODAY,  
10 WE HAVE TO PUT AN IP POLICY IN PLACE THAT APPLIES TO  
11 THE DISEASE TEAM RFA. IN TERMS OF LANGUAGE THAT  
12 APPEARS THAT THERE'S SIGNIFICANT CONTROVERSY OVER,  
13 WE DON'T HAVE THE ABILITY TO CHANGE -- TO ADD NEW  
14 LANGUAGE TODAY AND TAKE ACTION ON NEW LANGUAGE THAT  
15 WOULD IMMEDIATELY BECOME EFFECTIVE. BUT WE WOULD  
16 NEED THE IP TASK FORCE TO TAKE THIS ON TO GIVE US  
17 BACK A RECOMMENDATION, AFTER TALKING TO DR. BRODY,  
18 THE UC SYSTEM, STANFORD, AND THE OTHER INDIVIDUALS  
19 THAT HAVE COMMENTED, IN PARTICULAR UC IRVINE THAT  
20 LOOKS AS IF THEY'VE PUT SOME TIME INTO THIS.

21 SCOTT, COULD YOU GIVE US --

22 DR. BRODY: BUT, BOB, LET ME ASK A  
23 QUESTION. IF WE DON'T HAVE A QUORUM, THEN WE CAN'T  
24 APPROVE SOMETHING; IS THAT CORRECT?

25 CHAIRMAN KLEIN: IF WE DON'T HAVE A

**BARRISTERS' REPORTING SERVICE**

1 QUORUM, WE CAN'T APPROVE SOMETHING. WE WILL NEED A  
2 QUORUM THAT WE'LL NEED TO CALL ANOTHER BOARD MEETING  
3 TO AT LEAST GET OUR CONSOLIDATED IP IN PLACE.

4 DR. BRODY: YOU KNOW, APPROVING A BAD, YOU  
5 KNOW, BAD LAW OR BAD REGULATION IS A PERSON HAVING  
6 TO WAIT.

7 DR. BRYANT: YEAH. I AGREE. I THINK IT'S  
8 VERY IMPORTANT TO GET THIS STRAIGHT BECAUSE I THINK,  
9 YOU KNOW, THESE OFFICES ON OUR CAMPUSES DEAL WITH  
10 THESE ISSUES EVERY DAY. AND INTRODUCING NEW  
11 PROBLEMS IS JUST GOING TO MAKE IT VERY DIFFICULT FOR  
12 EVERYBODY.

13 CHAIRMAN KLEIN: OKAY. LET ME WALK  
14 THROUGH THIS BECAUSE IF IT'S -- DR. BRODY, I TOTALLY  
15 AGREE. IF IT'S AVOIDABLE (INAUDIBLE) THAT IS  
16 ADVISABLE; BUT IF IT'S NOT AVOIDABLE BECAUSE WE HAVE  
17 TO DO THIS IN INCREMENTAL STEPS UNDER STATE LAW,  
18 THEN WE'RE GOING TO BE IN A POSITION WHERE WE HAVE  
19 TO HAVE SOMETHING APPROVED AND THEN CORRECT IT. BUT  
20 LET ME FIND OUT. LET'S EDUCATE ALL OF US HERE.

21 SCOTT, COULD YOU GIVE US THE FRAMEWORK  
22 WE'RE WORKING WITH AND TELL US WHAT UNDER STATE  
23 STATUTE OUR CHOICES ARE. AND PLEASE, ELONA, WOULD  
24 YOU SUPPLEMENT THAT OBVIOUSLY IF YOU WOULD LIKE TO  
25 PUT ANOTHER LAYER OF INFORMATION ON THAT.

**BARRISTERS' REPORTING SERVICE**

1 MS. KING: AND BEFORE COUNSEL DOES THAT,  
2 CAN I JUST CHECK. HAS ANYONE JOINED THE CALL  
3 RECENTLY THAT WAS NOT CALLED DURING THE ROLL CALL?  
4 WE'RE EXPECTING 21 PEOPLE, SO WE'RE MISSING QUITE A  
5 FEW OF YOU WHO WERE SUPPOSED TO BE HERE. WHO'S  
6 JOINED THE CALL RECENTLY THAT WAS NOT PART OF THE  
7 ROLL CALL?

8 DR. QUINT: ROBERT QUINT.

9 MS. KING: THANK YOU, DR. QUINT. ANYBODY  
10 ELSE? OKAY. WE'RE STILL A FEW SHORT OF A QUORUM,  
11 AND I'LL TURN IT OVER TO COUNSEL.

12 MR. TOCHER: LET ME JUST CLARIFY YOUR  
13 QUESTION, BOB. ARE YOU ASKING IN TERMS OF OAL  
14 PROCESS AND THE REGULATORY PROCESS WHAT THE  
15 REQUIREMENTS ARE?

16 CHAIRMAN KLEIN: YEAH. WELL, FIRST OF  
17 ALL, ADVISE US WHAT IS THE STATUS OF 100601(C) RIGHT  
18 NOW? IN OTHER WORDS, IS IT IN PLACE AS AN INTERIM  
19 REGULATION? AND WHAT ARE THE ACTIONS THAT ARE  
20 OPTIONS TO US AT THIS MOMENT?

21 MR. TOCHER: WE DO NOT HAVE IN PLACE  
22 REGULATION 100601. THAT REGULATION WAS NOT ADOPTED  
23 AT THE LAST MEETING EITHER ON AN INTERIM BASIS OR  
24 OTHERWISE. AND SO, THEREFORE, THE SPECIFIC  
25 SUBDIVISION ALSO IS NOT OPERABLE.

**BARRISTERS' REPORTING SERVICE**

1 IF THE AGENCY WISHED TO ADOPT -- EXCUSE  
2 ME. IF THE AGENCY WISHED TO AMEND ANY OF THE  
3 LANGUAGE IN ANY OF THESE SUBDIVISIONS FOR ANY REASON  
4 BEYOND WHICH OR IS A SUBSTANTIVE CHANGE TO ANYTHING  
5 IN THE DRAFT BEFORE YOU, THAT WOULD REQUIRE US TO  
6 POST THOSE CHANGES FOR A 15-DAY COMMENT PERIOD. AND  
7 ONLY AFTER THAT COMMENT PERIOD IS CONCLUDED WOULD  
8 THE AGENCY HAVE THE OPTION OF ADOPTING THOSE CHANGES  
9 OR REJECTING THEM AND THEN SENDING THE REGULATION ON  
10 TO THE OFFICE OF ADMINISTRATIVE LAW FOR ITS REVIEW.

11 CHAIRMAN KLEIN: DO I UNDERSTAND CORRECTLY  
12 THAT YOUR ARGUMENT, SCOTT, IS THAT WHAT DR. BRODY IS  
13 SUGGESTING WAS THE INTENT?

14 MR. TOCHER: WELL, I DO NOT ARGUE THAT HIS  
15 INTERPRETATION -- WELL, LET ME BACK UP. I'M NOT  
16 SURE TO WHICH OF HIS INTERPRETATIONS YOU'RE  
17 REFERRING. LET ME JUST SAY THAT THE CIRM-FUNDED  
18 INVENTION DEFINITION DOES NOT COVER INVENTIONS THAT  
19 WERE NOT CONCEIVED DURING THE GRANT PERIOD. IN  
20 FACT, I'M AWARE OF THE GENERAL CONCERN, FOR  
21 INSTANCE, THAT UC HAS RELAYED IN THEIR PAST  
22 COMMENTS. AND WE HAVE ASKED FOR A SPECIFIC READING  
23 AND EXPLANATION OF A READING OF THE STATUTE -- THE  
24 PROPOSED REGULATION, EXCUSE ME, THAT WOULD RESULT IN  
25 THE CONCERNS THAT WERE PLACED IN THE LETTER, BUT



**BARRISTERS' REPORTING SERVICE**

1 THAT HASN'T BEEN PROVIDED.

2 DR. PRIETO: I JUST WANTED TO COMMENT. I  
3 MEAN I UNDERSTAND WHAT SCOTT IS SAYING AND THAT WE  
4 CAN BASICALLY, ONCE WE HAVE A QUORUM, ONLY ADOPT  
5 LANGUAGE THAT HAS BEEN PROPOSED, AND THAT'S BECAUSE  
6 OF CALIFORNIA LAW AND STATUTE. BUT WITH REGARD TO  
7 THE COMMENT ABOUT BAYH-DOLE, HE WASN'T ON THE BOARD  
8 DURING THE DISCUSSION THAT LED UP TO THESE IP  
9 REGULATIONS. AND I THINK IT'S IMPORTANT TO  
10 REMEMBER, AND JEFF COULD CERTAINLY SHED SOME LIGHT  
11 ON THIS AS WELL, THAT WE CONSCIOUSLY STEPPED AWAY  
12 FROM BAYH-DOLE AND, YOU KNOW, DRAFTED OUR  
13 REGULATIONS DIFFERENTLY. AND PART OF THAT WAS IN  
14 RESPONSE TO THE REPRESENTATIONS AND THE PROMISES  
15 THAT WERE MADE TO CALIFORNIA DURING THE COURSE OF  
16 THE CAMPAIGN FOR THE PROPOSITION.

17 CHAIRMAN KLEIN: I UNDERSTAND THAT, DR.  
18 PRIETO, BUT IT OCCURS TO ME THAT DR. BRYANT AND DR.  
19 BRODY'S INTENT HERE IS CONSISTENT WITH WHAT IS BEING  
20 ARTICULATED, WHICH IS THAT IT BE -- THAT THE  
21 INVENTION WOULD HAVE BEEN CONCEIVED DURING AND AROSE  
22 FROM THE FUNDED GRANT.

23 DR. PRIETO: SURE. AS SCOTT IS SAYING,  
24 AND I THINK THAT THAT'S ABSOLUTELY THE CASE. AND I  
25 DON'T THINK ANYONE COULD EVER SUCCESSFULLY ARGUE,

**BARRISTERS' REPORTING SERVICE**

1 CERTAINLY WE COULD NOT, THAT WE HAD SOME RIGHTS TO  
2 SOMETHING THAT HAPPENED, YOU KNOW, THE 12 MONTHS  
3 AFTER THE PERIOD OF THE GRANT, BUT THAT WAS NOT  
4 CONCEIVED DURING THE COURSE OF THE GRANT. I MEAN I  
5 UNDERSTAND THEIR CONCERN, BUT I THINK THERE'S PLENTY  
6 OF DOCUMENTATION OF THAT NOT BEING OUR INTENT, THAT  
7 THAT JUST WOULD NOT HOLD WATER.

8 DR. BRYANT: YEAH, BUT THAT'S WHAT IT  
9 SAYS. I MEAN I THINK IN A LEGAL CASE IT WOULD GO  
10 BACK TO THE LANGUAGE OF THIS REGULATION. AND, YOU  
11 KNOW, ANYONE COULD ARGUE THE CASE THE OTHER WAY.  
12 WHATEVER OUR INTENT, IT'S CLEAR IN THE LANGUAGE.

13 MR. SHEEHY: IT'S HARD TO SEE WHAT -- I  
14 MEAN I'M LOOKING AT THIS. IT SAYS AN INVENTION --  
15 THE FIRST STIPULATION IS THAT THE INVENTION ARISES  
16 FROM CIRM-FUNDED RESEARCH. SO IF THAT'S THE FIRST  
17 BENCHMARK YOU HAVE TO MEET, I MEAN I'M LOOKING AT  
18 THE LANGUAGE IN FRONT OF ME, IT'S HARD FOR ME -- I  
19 MEAN WE MAY NEED TO TIGHTEN THE LANGUAGE, BUT I'M  
20 NOT SURE THAT I UNDERSTAND WHAT HAS CREATED THIS  
21 LEVEL OF CONCERN BECAUSE THIS SEEMS VERY -- DOES NOT  
22 SEEM -- I'M HAVING TROUBLE SEEING WHAT THE HIGH  
23 CONCERN IS BASED ON THE DIRECT LANGUAGE THAT'S IN  
24 FRONT OF ME THAT SAYS THAT NOTHING STARTS UNTIL WE  
25 HAVE CIRM-FUNDED RESEARCH. SO UNTIL SOMETHING IS

**BARRISTERS' REPORTING SERVICE**

1 FUNDED BY CIRM --

2 CHAIRMAN KLEIN: JEFF, I THINK WE ALL HAVE  
3 TO LIVE WITHIN THE FRAMEWORK THAT LAWYERS PLACE,  
4 WHICH IS THE DEFAULT TO NOT AGREEING WITH LANGUAGE  
5 UNLESS IT'S EXTRAORDINARILY CLEAR. AND DR. BRYANT'S  
6 POSITION IS THAT WHEN YOU GET TO LITIGATION, THE  
7 REGULATORY LANGUAGE PREVAILS ABOVE INTENT WITH  
8 CERTAIN EXCEPTIONS. IS JAMES HARRISON ON?

9 MR. HARRISON: YES, I AM, BOB.

10 CHAIRMAN KLEIN: CAN YOU COMMENT ON THE  
11 HIERARCHY THE COURTS WILL LOOK AT IN DISTINGUISHING  
12 REGULATORY LANGUAGE FROM INTENT?

13 MR. HARRISON: YEAH. WELL, ABSOLUTELY.  
14 YOU KNOW, THE GUIDING PRINCIPLE OF STATUTORY AND  
15 REGULATORY CONSTRUCTION IS TO GIVE INTENT TO THE  
16 LANGUAGE. IN OTHER WORDS, THE GOAL IS TO ENSURE  
17 THAT THE LANGUAGE IS CARRIED OUT IN A MANNER THAT IT  
18 WAS INTENDED TO BE APPLIED. IF THERE IS AMBIGUITY,  
19 THEN YOU WOULD LOOK TO EXTRANEIOUS MATERIALS SUCH AS  
20 THE FAQ'S THAT ELONA REFERRED TO OR OTHER EVIDENCE  
21 OF THE AGENCY'S INTENT.

22 AND HERE I THINK, AS HAS BEEN SAID, THE  
23 INTENT IS CLEAR EVEN IF THERE IS A POTENTIAL  
24 AMBIGUITY IN THE READING OF THE LANGUAGE. AND IT'S  
25 ALSO IMPORTANT TO REMEMBER THAT CIRM, AS THE AGENCY

**BARRISTERS' REPORTING SERVICE**

1 CHARGED WITH ENFORCING THIS REGULATION, IS GRANTED  
2 SOME DEFERENCE BY THE COURTS IN TERMS OF HOW IT  
3 SHOULD BE CONSTRUED.

4 SO CIRM'S READING OF THE LANGUAGE AND ITS  
5 MEANING IS ONE OF THE TOOLS THAT THE COURT WOULD USE  
6 IN INTERPRETING IT.

7 MS. BAUM: OF COURSE, THIS TRANSCRIPT AS  
8 WELL.

9 CHAIRMAN KLEIN: OKAY. LET US --

10 MR. SHEEHY: BUT ANOTHER POINT IS IT WOULD  
11 BE HELPFUL IF LANGUAGE WAS SUPPLIED. I MEAN, YOU  
12 KNOW, TO OFFER AS A DEFAULT TO BAYH-DOLE, WHICH  
13 DOESN'T -- I DON'T THINK IT'S -- YOU KNOW, BAYH-DOLE  
14 DOESN'T REALLY PERMIT ANY CAPTURE OF ANYTHING BY THE  
15 FEDERAL GOVERNMENT FOR THE MOST PART. AND SO TO  
16 JUST THROW DEFAULT TO BAYH-DOLE AT US, IT SEEMS VERY  
17 SIMPLISTIC AND A LITTLE PROVOCATIVE, IN FACT, FROM  
18 THE GRANTEE ORGANIZATIONS WHEN OUR GOAL HERE IS VERY  
19 SIMPLY TO MAKE SURE THAT WE DON'T GET GAMED BY  
20 SOMEONE SITTING ON THE IP UNTIL AFTER THE GRANT IS  
21 OVER AND THEN SUDDENLY, YOU KNOW, REDUCING IT TO  
22 PRACTICE, AND THEN WE HAVE TO GO BEFORE THE VOTERS  
23 AND THE LEGISLATURE AND THE GOVERNOR AND EXPLAIN WHY  
24 WE LET THIS ESCAPE.

25 SO I FIND IT DIFFICULT TO UNDERSTAND WHY,

**BARRISTERS' REPORTING SERVICE**

1 YOU KNOW, OUR REALLY LEGITIMATE INTEREST IN MAKING  
2 SURE THAT WE AREN'T GAMED CAN'T BE RESPONDED TO WITH  
3 SOMETHING A LITTLE MORE SOPHISTICATED THAN JUST PUT  
4 IN BAYH-DOLE AND LEAVE US ALONE.

5 DR. BRODY: THIS IS DR. BRODY. THE  
6 PROBLEM IS --

7 CHAIRMAN KLEIN: DR. BRODY --

8 DR. BRODY: LET ME SPEAK. I'VE READ -- I  
9 DON'T THINK WE'RE ARGUING ABOUT INTENT. I THINK  
10 WE'RE IN AGREEMENT ON INTENT. I THINK THIS IS A  
11 VERY BADLY WRITTEN PARAGRAPH. I READ IT AND REREAD  
12 IT A NUMBER OF TIMES. I CAN'T UNDERSTAND WHAT IT  
13 MEANS BECAUSE OF WHERE THE ANDS AND ORS AND EITHERS  
14 ARE. THAT'S THE PROBLEM. IT'S WRITTEN BY -- YOU  
15 KNOW, IT'S JUST -- IT JUST IS NOT CLEAR. AND I  
16 THINK WE NEED CLEAR LANGUAGE, PERIOD.

17 CHAIRMAN KLEIN: SO JUST A SECOND. SO,  
18 JEFF -- DR. BRODY, YOU SUGGESTED LANGUAGE, AND I  
19 THINK THAT THERE IS NOT AN ISSUE HERE OF INTENT. WE  
20 HAVE A CONSENSUS ON INTENT, GENERALLY SPEAKING. AND  
21 SO WHAT I WOULD LIKE TO DO HERE, IN ORDER TO DECIDE  
22 ON HOW WE ADDRESS THIS SECTION, IS UNDERSTAND IT IN  
23 THE CONTEXT OF THE OTHER COMMENTS THAT DR. BRYANT IS  
24 GOING TO MAKE. BUT WE CERTAINLY UNDERSTAND THAT  
25 THERE'S AN ISSUE HERE, AND THERE IS CERTAINLY A

**BARRISTERS' REPORTING SERVICE**

1 HIGHLY RESPECTED OPINION THAT WE COULD TIGHTEN THE  
2 LANGUAGE TO ACCOMPLISH THE INTENT EVERYONE HOLDS IN  
3 COMMON.

4 SO WHAT I'D LIKE TO DO, HAVING UNDERSTOOD  
5 THAT, IS MOVE TO THE NEXT COMMENT OF DR. BRYANT SO  
6 WE CAN GET A FULL PICTURE OF THE COMMENTS.

7 DR. BRYANT: I THINK I'M MUCH MORE  
8 CONCERNED ABOUT THIS THAN ANY OF THE OTHERS. THE  
9 OTHERS PALE IN SIGNIFICANCE. SO I WOULD -- I THINK  
10 I'D RATHER PUT -- YOU KNOW, PUT THOSE ASIDE IF WE  
11 GET THIS ONE SOLVED.

12 CHAIRMAN KLEIN: OKAY. SO, DR. BRYANT, IF  
13 THIS ITEM WERE NOT ACTED UPON TODAY, BECAUSE I WAS  
14 CONCERNED THERE WAS AN INTERIM REGULATION IN PLACE,  
15 WHICH IS NOT THE CASE, SO WE HAVE MORE OPTIONS THAN  
16 I ORIGINALLY BELIEVED TO BE BEFORE US. SO IF WE  
17 DIDN'T ACT ON THIS TODAY AND WENT FORWARD WITH THE  
18 OTHER POINTS, MY QUESTION TO YOU: ARE THERE OTHER  
19 POINTS THAT YOU WOULD LIKE TO ADDRESS BECAUSE WE  
20 WOULD ADDRESS THE OTHER RECOMMENDATIONS TODAY?

21 DR. LOVE: BOB, I HAVE ONE ISSUE. THIS IS  
22 TED. WE'RE 43 MINUTES INTO A ONE-HOUR CALL AND WE  
23 DON'T HAVE A QUORUM. I'M JUST WONDERING IF WE  
24 SHOULDN'T TAKE AN ASSUMPTION THAT WE'RE NOT GOING TO  
25 GET A QUORUM AND THINK ABOUT TRYING TO GET THESE

**BARRISTERS' REPORTING SERVICE**

1 COMMENTS, YOU KNOW, IN WRITING SO THAT WE CAN ALL  
2 LOOK AT THEM IN ADVANCE AND THINK ABOUT THEM.

3 MS. KING: BOB, THIS IS MELISSA. I JUST  
4 WANT TO SAY ONE THING. I COMPLETELY AGREE WITH WHAT  
5 TED JUST SAID, WHICH IS THAT RIGHT NOW WHAT THE  
6 BOARD IS TRYING TO DO IS REACT TO SOME INFORMATION  
7 THAT THEY DON'T HAVE IN FRONT OF THEM. THAT'S THING  
8 ONE.

9 THING TWO IS THAT I THINK WE ACTUALLY  
10 MIGHT HAVE A QUORUM, AND I WOULD LIKE TO CHECK ON  
11 THAT SO THAT WE CAN USE THE NEXT 16 MINUTES THAT WE  
12 HAVE TO ACT ON WHAT THE BOARD IS ABLE TO ACT ON. IF  
13 WHOEVER JOINED IN THE LAST COUPLE OF MINUTES COULD  
14 PLEASE LET ME KNOW WHO THAT IS.

15 DR. LEVEY: JERRY LEVEY HERE, MELISSA.

16 MS. KING: THANKS SO MUCH, DR. LEVEY.  
17 ANYBODY ELSE?

18 DR. LEVEY: I WAS DOWNTOWN AND DIDN'T GET  
19 BACK TO WORK TILL LATE.

20 MS. KING: THANK YOU SO MUCH FOR MAKING IT  
21 BACK TO JOIN. AND DID ANYBODY ELSE JOIN THE CALL  
22 THAT HASN'T BEEN CALLED IN THE ROLL CALL?

23 DR. QUINT: ROBERT QUINT.

24 MS. KING: OKAY. I HAD YOU, DR. QUINT.  
25 SO I THINK WE MAY STILL BE ONE SHORT. LET ME JUST

**BARRISTERS' REPORTING SERVICE**

1 QUICKLY CHECK MY NUMBERS.

2 MR. HARRISON: THAT'S MY COUNT, MELISSA.

3 DR. FRIEDMAN: MELISSA, THIS IS MIKE  
4 FRIEDMAN AND I'M SORRY. I DON'T MEAN TO COMPLICATE  
5 THINGS, BUT I REALLY DO HAVE TO LEAVE AT 6 O'CLOCK.  
6 AND I APOLOGIZE BECAUSE I DON'T WANT TO CREATE A  
7 PARLIAMENTARY CRISIS AT THAT MOMENT.

8 CHAIRMAN KLEIN: OKAY. DR. FRIEDMAN, I  
9 DON'T THINK MELISSA IS CLEAR ON WHERE I'M GOING  
10 HERE. SO I THINK THAT THE INFORMATION THAT WE NEED  
11 TO DISCUSS IS BEFORE US. AND WHAT I'M TRYING TO DO  
12 HERE IS MAKE SURE THAT IF THERE'S OTHER IMPORTANT  
13 ITEMS THAT WERE WE TO ACT, AND IT CERTAINLY DOESN'T  
14 APPEAR WE'RE GOING TO HAVE THE VOTES TO ACT, I WANT  
15 TO GET -- FIND OUT WHERE THE OTHER SIGNAL COMMENTS  
16 ARE BECAUSE IF WE'RE GOING TO HAVE ANOTHER BOARD  
17 CALL, I WANT TO MAKE SURE THAT THOSE COMMENTS ARE ON  
18 THE TABLE TODAY SO THAT WE CAN FULLY INVESTIGATE  
19 THEM AND BE FULLY PREPARED FOR THE NEXT CALL.

20 NOW, IT MAY BE THAT THERE ARE NOT OTHER  
21 ITEMS THAT APPEAR TO BE HIGHLY SIGNIFICANT. ON THE  
22 OTHER HAND, TO THE EXTENT THERE ARE, I'M TRYING TO  
23 DRAW THEM OUT SO THAT WE CAN MAKE SURE WE HAVE TIME  
24 TO STUDY THEM.

25 DR. BRYANT: I CAN GO THROUGH WHAT I HAVE



**BARRISTERS' REPORTING SERVICE**

1 IF YOU WANT TO DO THAT.

2 CHAIRMAN KLEIN: I WOULD APPRECIATE THAT.  
3 AND I THINK IT'S VERY HELPFUL, DR. BRYANT, YOUR  
4 EVALUATION OF THE RELATIVE SIGNIFICANCE FOR THE  
5 BOARD.

6 DR. BRYANT: RIGHT. SO I THINK THE FIRST  
7 THING IS A VERY DIFFICULT ISSUE. IT SHOULD BE  
8 FIXED.

9 THIS NEXT SET OF ISSUES ARE BURDENSOME AND  
10 MAY BE IMPOSSIBLE, BUT NOT AS SERIOUS IN THE SAME  
11 SENSE, I DON'T THINK. ONE OF THEM IS THAT THESE ARE  
12 ALL THINGS THAT WERE ORIGINALLY SUBMITTED BY UC, BUT  
13 WERE NOT CHANGED. SO ONE OF THEM IS THE  
14 INTRODUCTION OF A CITATION TO A PUBLICATION  
15 CONCERNING ANY CIRM-FUNDED INVENTION NARROWS THE  
16 REQUIREMENT A BIT. SO THERE WAS A REQUEST TO NARROW  
17 THE REQUIREMENTS, BUT DOES NOT SOLVE ALL THE OVERALL  
18 PROBLEMS. I SHOULD GO BACK. I'M SORRY. I'M TRYING  
19 TO MAKE IT ABBREVIATED.

20 MS. BAUM: THIS IS ELONA BAUM. IT WOULD  
21 BE VERY HELPFUL IF YOU CITED THE SECTION THAT YOU'RE  
22 REFERRING TO.

23 DR. BRYANT: I'M SORRY. YES. LET ME  
24 START. I WAS TRYING TO ABBREVIATE IT TOO MUCH.  
25 I'LL JUST GO BACK AND READ MY COMMENTS HERE.

**BARRISTERS' REPORTING SERVICE**

1 CHAIRMAN KLEIN: WE APPRECIATE THE SPIRIT  
2 OF ABBREVIATING, BUT I THINK THE CITATION WOULD BE  
3 GOOD.

4 DR. BRYANT: ALL RIGHT. OKAY. SO IT'S  
5 SECTION 100602(C), AND IT'S THIS SECTION THAT WE  
6 FEEL IS PERHAPS IMPOSSIBLE.

7 MR. TOCHER: I'M SORRY TO INTERRUPT. THIS  
8 IS SCOTT IN SAN FRANCISCO. SECTION 100602 IS NOT  
9 BEFORE THE BOARD BECAUSE SECTION 602 WAS ADOPTED.

10 DR. BRYANT: ALL RIGHT. THERE IS STILL  
11 SOME PROBLEMS WITH IT, BUT I GUESS THAT'S ANOTHER  
12 ISSUE THEN.

13 MS. KING: YEAH. THAT WAS PART OF WHAT  
14 WAS ADOPTED AT THE BOARD MEETING, CORRECT?

15 DR. BRYANT: WHAT ABOUT 606? IS THAT A  
16 SECTION OR NOT?

17 MR. TOCHER: YES.

18 DR. BRYANT: OKAY. THAT'S 606(A) AND (B),  
19 REQUIREMENT TO COMMERCIALIZE CIRM-FUNDED INVENTIONS  
20 AND CIRM TECHNOLOGY. THE TERM "CIRM-FUNDED  
21 INVENTIONS AND CIRM-FUNDED TECHNOLOGY" INCLUDE THE  
22 ORDINARY DAY-TO-DAY DETRITUS OF RESEARCH, INCLUDING  
23 DATA, RESEARCH RESULTS, ETC. IN EVERY ROUND OF  
24 COMMENTS, UC HAS EXPRESSED A CONCERN THAT BEING  
25 REQUIRED TO TRY TO COMMERCIALIZE THIS BROAD RANGE OF

**BARRISTERS' REPORTING SERVICE**

1 RESEARCH RESULTS WOULD OTHERWISE BRING THEM TO  
2 PRACTICAL APPLICATION. ONCE SUCH RESEARCH RESULTS  
3 ARE OF NO COMMERCIAL INTEREST, MUCH OF THE DATA HAS  
4 NO REAL PRACTICAL APPLICATION, AND IT WOULD BE A  
5 POOR USE OF LIMITED RESOURCES TO TRY TO  
6 COMMERCIALIZE THEM ANYWAY. THE PENALTY FOR NOT  
7 DOING SO IS THAT WE MUST EITHER ATTEMPT TO NEGOTIATE  
8 NONEXCLUSIVE LICENSES OR MAKE PROACTIVE ATTEMPTS TO  
9 PUSH EVERYTHING INTO THE PUBLIC DOMAIN.

10 CHAIRMAN KLEIN: OKAY. SO, SCOTT, COULD  
11 YOU PROVIDE A QUICK RESPONSE TO THAT, REALIZING  
12 AGAIN THAT THIS IS SOMETHING WE PROBABLY ARE GOING  
13 TO TAKE UNDER SUBMISSION, BUT PROVIDE A SUMMARY  
14 RESPONSE, PLEASE.

15 MR. TOCHER: WELL, IT WAS A LITTLE BROKEN  
16 UP, BUT --

17 DR. BRYANT: I THINK IT WAS YOU WERE AWARE  
18 OF IT BEFORE, I THINK. UC RECOMMENDED BEFORE THAT  
19 IT BE LIMITED TO -- BE LIMITED IF NOT TO PATENTABLE  
20 CIRM-FUNDED INVENTIONS, THEN AT LEAST TO THOSE  
21 RESEARCH RESULTS THAT ACTUALLY DO LEND THEMSELVES TO  
22 COMMERCIALIZATION.

23 MR. TOCHER: RIGHT. AND THE ISSUE FOR US  
24 IS THAT PART OF OUR MONITORING ACTIVITIES MUST  
25 ENSURE THAT WE'RE AWARE OF CIRM-FUNDED TECHNOLOGIES,

## BARRISTERS' REPORTING SERVICE

1 CIRM-FUNDED INVENTIONS, AND THE RESULTS OF THE  
2 RESEARCH THAT MAY LEAD TO REVENUE GENERATING  
3 OPPORTUNITIES OR PRODUCTS THAT MAY BE  
4 COMMERCIALIZED. AND SO IT'S NECESSARY FOR THE  
5 AGENCY TO MONITOR WHETHER OR NOT THOSE TECHNOLOGIES  
6 ARE BEING EXPLOITED AND WHETHER THEY'RE BEING  
7 CREATED. WAITING UNTIL THERE'S A POINT IN TIME  
8 WHERE THE REVENUE IS BEING GENERATED IN FACT BEFORE  
9 WE'RE AWARE OF WHAT IS OUT THERE MEANS THAT OUR  
10 VISION IS TOO NARROWLY DEFINED BECAUSE WE WON'T BE  
11 AWARE OF TECHNOLOGIES OR INVENTIONS THAT SHOULD BE  
12 EXPLOITED. IT WON'T ALLOW US TO QUERY WHETHER OR  
13 NOT THERE'S SOMETHING THAT CAN BE DONE IN ORDER TO  
14 FURTHER PUSH THIS OUT INTO THE MARKET OR INTO OTHER  
15 RESEARCH UNITS. SO I THINK THAT'S THE FUNDAMENTAL  
16 ISSUE THAT WE HAVE DISCUSSED WITH UC.

17 DR. PRICE: THIS REGULATION, IT SEEMS TO  
18 ME YOU'RE TALKING ABOUT INFORMATION AVAILABLE TO  
19 CIRM. BUT THE REGULATION, AS I READ IT, IS NOT  
20 ABOUT INFORMATION. IT'S A REQUIREMENT THAT THE  
21 INSTITUTION HAS TO MAKE EFFORT TO DEVELOP,  
22 COMMERCIALIZE, OR OTHERWISE BRING INTO APPLICATION  
23 THINGS THAT THEY DON'T BELIEVE HAVE COMMERCIAL  
24 VALUE, WHICH IS MOST OF THE THINGS THAT ARE  
25 DISCLOSED IN UNIVERSITIES.

**BARRISTERS' REPORTING SERVICE**

1 MS. BAUM: I THINK THE OPERATIVE WORD  
2 THERE WAS PRACTICAL. YOU WANT TO EXPAND ON THAT?

3 MR. TOCHER: RIGHT. I MEAN ELECTS NOT TO  
4 DEVELOP, COMMERCIALIZE, OR OTHERWISE BRING TO A  
5 PRACTICAL APPLICATION CIRM-FUNDED INVENTION OR  
6 TECHNOLOGY, THEN MAKE EFFORTS TO NEGOTIATE.

7 CHAIRMAN KLEIN: SO LET'S DO THIS. WE'VE  
8 PUT THAT ISSUE ON THE TABLE. I'D LIKE TO MOVE TO  
9 THE NEXT ISSUE. AND, FURTHERMORE, WE WILL HAVE THE  
10 BENEFIT IN THE NEXT CALL OF HAVING DR. PENHOET, HEAD  
11 OF THE TASK FORCE, AND OTHER TASK FORCE MEMBERS WHO  
12 ARE NOT ON THIS CALL WHO HAVE DISCUSSED SOME OF  
13 THESE ISSUES BRING OUT THE OTHER SIDE OF THIS  
14 DISCUSSION, BUT LET'S GO FORWARD TO THE NEXT POINT  
15 IF WE COULD PLEASE, DR. BRYANT.

16 DR. BRYANT: I DON'T HAVE ANY MORE.

17 CHAIRMAN KLEIN: OKAY. SO BASICALLY IT'S  
18 THOSE TWO POINTS THAT WE NEED TO ADDRESS. SO LET ME  
19 ASK SCOTT. ARE THERE SECTIONS THAT DO NOT INVOLVE  
20 THOSE TWO POINTS THAT IT WOULD BE APPROPRIATE TO  
21 PASS TODAY? WELL, WE DON'T HAVE A QUORUM STILL. IS  
22 THAT MY UNDERSTANDING?

23 MR. HARRISON: WE'RE AT 18, BOB.

24 CHAIRMAN KLEIN: AND WE NEED.

25 MR. HARRISON: NINETEEN.

## BARRISTERS' REPORTING SERVICE

1 CHAIRMAN KLEIN: BECAUSE ALL OF OUR  
2 VACANCIES ARE FILLED?

3 MR. HARRISON: CORRECT.

4 CHAIRMAN KLEIN: OKAY. FINE. BUT LET ME  
5 ASK SCOTT. IN TERMS OF LOOKING FORWARD, THESE TWO  
6 SECTIONS INVOLVE HOW MANY OF THE PROPOSED DECISIONS  
7 THAT ARE BEFORE US?

8 MR. TOCHER: SECTION 601 AND 606 COMPRISE  
9 THREE OF THE DECISIONS.

10 CHAIRMAN KLEIN: OKAY. THREE OF THE FIVE  
11 DECISIONS.

12 MR. TOCHER: THAT'S RIGHT.

13 CHAIRMAN KLEIN: OKAY. SO WE'RE GOING TO  
14 FOCUS ON THOSE ITEMS, RESCHEDULE A CALL, BUT MAKING  
15 CERTAIN WE HAVE TIME TO CONFER WITH THE IP TASK  
16 FORCE. AND I'M GOING TO REQUEST THAT DR. PENHOET,  
17 WHO HEADS THAT TASK FORCE, TALK TO DR. BRODY AND  
18 DR. BRYANT AS REPRESENTATIVES WHO HAVE WITH THEIR  
19 COUNSEL INVESTIGATED THESE SECTIONS WHO WILL HAVE  
20 THE BENEFIT OF DR. PENHOET, DR. BRODY, AND  
21 DR. BRYANT SHARING INFORMATION PRIOR TO THE NEXT  
22 CALL.

23 AND WE'RE CLEARLY WITHIN BAGLEY-KEENE IN  
24 LIMITING THIS DISCUSSION. REMEMBER, WE CANNOT UNDER  
25 BAGLEY-KEENE HAVE A BROAD DISCUSSION, BUT CERTAINLY

**BARRISTERS' REPORTING SERVICE**

1 WE CAN HAVE THOSE MEMBERS INVOLVED FOR INFORMATIONAL  
2 PURPOSES TO PREPARE EVERYONE AND A COUPLE OF OTHER  
3 MEMBERS, BUT ANY ADDITIONAL MEMBERS NEED TO BE  
4 CLEARED THROUGH BOARD COUNSEL AND THE CHAIR'S  
5 OFFICE.

6 SO WITH THAT, I'D LIKE TO ASK IF THERE'S  
7 ANY OTHER BOARD COMMENT ON THE ITEMS BEFORE US.

8 DR. BRODY: BILL BRODY AGAIN. I JUST  
9 COMMENT, AND AGAIN I APOLOGIZE COMING IN NEW TO THE  
10 COMMITTEE, BUT THE WHOLE ISSUE OF ACCESS  
11 REQUIREMENTS. SO, AGAIN, THIS IS SORT OF AN UNKNOWN  
12 ISSUE AS TO WHETHER IT WILL BE A ROADBLOCK OR NOT  
13 FOR GETTING LICENSES.

14 CHAIRMAN KLEIN: SO, DR. BRODY --

15 DR. BRODY: THERE'S A LOT OF DISCUSSION TO  
16 THAT. AND I UNDERSTAND WHY IT'S THERE.

17 CHAIRMAN KLEIN: AND, DR. BRODY, I THINK  
18 IT WOULD BE BENEFICIAL TO PROBE THIS ISSUE WITH DR.  
19 PENHOET BECAUSE UNDER CALIFORNIA LAW AND UNDER  
20 PRACTICE, THERE'S A SUBSTANTIAL AMOUNT OF  
21 INFORMATION THAT'S SUGGESTED THAT THIS ACCESS WOULD  
22 BE ACCEPTED BY THE BIOTECH AND PHARMACEUTICAL  
23 COMMUNITY AS A STANDARD OF PRACTICE THAT'S CURRENTLY  
24 LARGELY IN EFFECT. AT LEAST THAT'S THE POSITION  
25 THEY'VE PRESENTED BEFORE TO THE COMMITTEE, TO THE

**BARRISTERS' REPORTING SERVICE**

1 BOARD.

2 SO DR. PENHOET, HAVING BEEN THE HEAD OF  
3 CHIRON IN A PRIOR LIFE, HAS THAT PERSPECTIVE, AND I  
4 THINK THAT WOULD BE A VALUABLE EXCHANGE.

5 DR. BRODY: GOOD. OKAY.

6 CHAIRMAN KLEIN: OKAY.

7 DR. PRIETO: BOB, I'D LIKE TO ECHO WHAT  
8 YOU'RE SAYING, BOB. I THINK THAT WOULD BE VERY  
9 HELPFUL, AND I THINK THAT, IN FACT, THAT IS EXACTLY  
10 THE CASE.

11 CHAIRMAN KLEIN: OKAY. AND SO --

12 DR. BRYANT: WE COULD HAVE A CONFERENCE  
13 CALL, ACTUALLY.

14 CHAIRMAN KLEIN: YOU NEED TO BE VERY  
15 LIMITED IN THE CONFERENCE CALL, SO ANY CALL WE'LL  
16 CLEAR THROUGH BOARD COUNSEL TO MAKE SURE WE'RE IN  
17 COMPLIANCE WITH BAGLEY-KEENE. BUT THERE IS A VALUE  
18 IN AT LEAST GETTING KEY INFORMATION FROM BOTH SIDES  
19 OF THIS ISSUE REFINED FOR A BETTER SUBSTANTIVE  
20 DISCUSSION IN THE NEXT CALL.

21 MR. TOCHER: BOB, THIS IS SCOTT AGAIN. IF  
22 I COULD ECHO JEFF SHEEHY'S POINT, AND THIS IS WHAT  
23 CIRM STAFF ASKED FOR EARLIER IS WHERE THERE'S  
24 CONCERN, A SPECIFIC READING OF WHAT THE ANALYSIS IS  
25 THAT LEADS TO THE FEAR.



**BARRISTERS' REPORTING SERVICE**

1           CHAIRMAN KLEIN:  OKAY.  WELL, I LEARN  
2           SOMETHING IN EVERY ONE OF THESE CALLS.  GREATLY  
3           APPRECIATE THE TREMENDOUS WORK.

4           MR. SHEEHY:  BOB, COULD I JUST MAKE ONE  
5           MORE COMMENT?

6           CHAIRMAN KLEIN:  ABSOLUTELY.

7           MR. SHEEHY:  I JUST -- I THINK IT'S VERY  
8           IMPORTANT TO REMEMBER THAT THE ACCESS REQUIREMENTS  
9           WERE PASSED BY THE STATE LEGISLATURE VIRTUALLY  
10          UNANIMOUSLY A YEAR AGO.  THE STATE LEGISLATURE CAN  
11          PUT AN AMENDMENT TO PROP 71 ON THE BALLOT WITH A  
12          SIMPLE MAJORITY.  AND IF THE ISSUE IS \$3 BILLION OF  
13          STATE MONEY AND NO ACCESS TO UNINSURED CALIFORNIANS  
14          BECAUSE INDUSTRY CAN'T ACCOMMODATE WHAT IS NOT A  
15          REQUIREMENT TO COVER EVERYONE, BUT JUST SIMPLY A  
16          REQUIREMENT THAT THEY MAKE SOME REASONABLE EFFORT  
17          CONSISTENT WITH THE STANDARD THAT PREVAILS FOR A  
18          BUSINESS ENTITY OF THEIR SIZE, YOU KNOW, AT THE TIME  
19          OF COMMERCIALIZATION TO MAKE SOME EFFORT TO COVER  
20          SOME SUBSET, EVEN ONE UNINSURED CALIFORNIAN, I THINK  
21          THAT THAT BALLOT MEASURE WOULD PASS FAIRLY EASILY  
22          AND WOULD PROBABLY HAVE A MORE STRINGENT REQUIREMENT  
23          IN IT THAN WHAT WE HAVE IN OUR REGULATIONS.  WE DO  
24          HAVE AN OBLIGATION TO THE VOTERS AND TO THE  
25          TAXPAYERS OF CALIFORNIA.

**BARRISTERS' REPORTING SERVICE**

1           CHAIRMAN KLEIN:  SO, JEFF, I THINK THAT WE  
2    EMBRACE, CLEARLY THE BOARD HAS EMBRACED THAT  
3    CONCEPT, AND WE DO KNOW THAT THE LEGISLATURE SET  
4    FORTH ACCESS STANDARDS WHICH WE ARE HOPEFULLY NOT  
5    ONLY COMPLYING WITH, BUT HOPEFULLY WE'LL BE CREATIVE  
6    IN FINDING SOURCES OF SUBSIDY TO HELP PROVIDE  
7    BROADER ACCESS.  BUT I'M TRYING TO ENCOURAGE A  
8    CONVERSATION THAT WILL HOPEFULLY BRING EVERYONE THE  
9    INFORMATION THAT LED US TO REALIZE THAT WE COULD  
10   PRACTICALLY REACH THESE ACCESS TARGETS, AND THAT'S  
11   THE GOAL IN THE CONTEXT OF THIS DISCUSSION.

12           SO I'D LIKE TO FIND OUT IS THERE ANY OTHER  
13   BOARD MEMBER WHO WOULD LIKE TO COMMENT BEFORE I TURN  
14   TO PUBLIC COMMENT?  HEARING NONE, I'D LIKE TO KNOW  
15   IF THERE'S PUBLIC COMMENT AT THIS TIME.

16           UNIDENTIFIED SPEAKER:  BOB, WE HAVE JOHN  
17   SIMPSON IN LOS ANGELES.

18           CHAIRMAN KLEIN:  ALL RIGHT.  MR. SIMPSON,  
19   WOULD YOU LIKE TO MAKE A PUBLIC COMMENT?  PLEASE  
20   KEEP IT TO THE NORMAL THREE MINUTES.

21           UNIDENTIFIED SPEAKER:  CAN YOU HEAR HIM?

22           CHAIRMAN KLEIN:  WE CAN'T HEAR YOU, JOHN.

23           MR. SIMPSON:  HELLO.  ARE YOU ABLE TO HEAR  
24   ME?

25           CHAIRMAN KLEIN:  VERY WELL.

**BARRISTERS' REPORTING SERVICE**

1 MR. SIMPSON: I WAS AFRAID YOU WEREN'T. I  
2 JUST SIMPLY WANTED TO REFER THE BOARD TO MY WRITTEN  
3 COMMENTS. I THINK THOSE SPEAK PRETTY MUCH FOR  
4 THEMSELVES. AND ALSO JUST CONFIRM THAT IF THERE ARE  
5 REGULATION CHANGES OR DRAFTING CHANGES THAT DO COME  
6 OUT OF THIS CONVERSATION THAT YOU'RE PROPOSING,  
7 THOSE, I ASSUME, WOULD HAVE TO BE GIVEN 15-DAY  
8 NOTICE BEFORE THE BOARD COULD ACT ON THEM.

9 CHAIRMAN KLEIN: THAT'S A CORRECT  
10 STATEMENT, JOHN.

11 MR. SIMPSON: THANK YOU.

12 CHAIRMAN KLEIN: AND I WOULD LIKE TO SAY  
13 THAT THE STAFF, IN CARRYING OUT THE BOARD'S INTENT,  
14 TRIES EXTREMELY HARD. IT'S A VERY COMPLICATED AREA.  
15 IT'S A CHALLENGING AREA WITH DIFFERENT VIEWS. THEY  
16 HAVE DEDICATED SIGNIFICANT PARTS OF THEIR LIFE TO  
17 MAKING SURE THAT (INAUDIBLE). IT'S A DIFFICULT PATH  
18 WE'RE FOLLOWING, SO I'D LIKE TO THANK THE STAFF FOR  
19 THEIR WORK ON THIS. AND I'D LIKE TO ADJOURN THE  
20 MEETING AND WE'LL LOOK FORWARD TO THE NEXT CALL. SO  
21 THANK YOU ALL FOR ATTENDING. AND PLEASE ALL ATTEND  
22 THE NEXT MEETING.

23 MS. KING: BOB, BEFORE YOU FINISH, DR.  
24 TROUNSON HERE IN SAN FRANCISCO WOULD LIKE TO SAY A  
25 FEW WORDS.

**BARRISTERS' REPORTING SERVICE**

1 CHAIRMAN KLEIN: ABSOLUTELY. DR.  
2 TROUNSON, YOU HAVE THE FLOOR.

3 DR. TROUNSON: THANK YOU, BOB. I THINK  
4 ONE OF THE COMMENTATORS WROTE TO ALL OF THE BOARD  
5 MEMBERS REALLY AND I THINK RECENTLY QUESTIONED THE  
6 INTEGRITY OF OUR GENERAL COUNSEL, ELONA BAUM. BOTH  
7 YOU AND I, BOB, HAVE BEEN SUBJECT TO THESE KIND OF  
8 PERSONAL ATTACKS, AND I THINK IT CAN BE UNPLEASANT,  
9 BUT WE TOLERATE IT BECAUSE THE WORK OF THE AGENCY IS  
10 SO IMPORTANT.

11 HAVING JOINED US FROM THE PRIVATE SECTOR,  
12 ELONA TOO IS GETTING TO EXPERIENCE THIS KIND OF  
13 UNFORTUNATE ASPECT OF PUBLIC SERVICE. SUFFICE TO  
14 SAY, I CONTINUE TO HAVE FULL CONFIDENCE IN ELONA  
15 BAUM. SHE'S A TERRIFIC ADDITION TO THE TEAM, AND I  
16 CONTINUE TO RELY ON HER EXPERIENCE AND COUNSEL. AND  
17 I JUST WANTED THE BOARD TO UNDERSTAND THAT  
18 PARTICULAR ISSUE SPECIFICALLY. THANK YOU.

19 CHAIRMAN KLEIN: THANK YOU, DR. TROUNSON.  
20 I THINK THE FUNDAMENTAL CONCEPT IS PLEASE RECOGNIZE  
21 THE STAFF HAS AN EXTRAORDINARILY DIFFICULT JOB.  
22 THEY TRY AND FOLLOW THE BOARD'S POLICY, AND THE  
23 BOARD'S POLICY CAN BE CRITICIZED QUITE APPROPRIATELY  
24 AND HOPEFULLY A LOT OF CONTRIBUTION FROM THE PUBLIC,  
25 BUT WE SHOULD PLEASE RECOGNIZE THE SACRIFICE THE

**BARRISTERS' REPORTING SERVICE**

1 STAFF IS MAKING FROM NOT BEING IN THE PRIVATE  
2 SECTOR, BUT COMMITTING THEIR LIFE TO THE PUBLIC  
3 SECTOR BECAUSE THEY BELIEVE IN OUR MISSION AND  
4 HOPEFULLY RESTRICTING THEIR COMMENTS TO SUBSTANCE,  
5 WHICH WE'RE ALL DEDICATED TO GETTING RIGHT. SO  
6 THANK YOU VERY MUCH FOR EVERYONE.

7 DR. BRYANT: HERE. HERE.

8 MS. KING: THANKS, EVERYBODY THAT JOINED.

9 (THE MEETING WAS THEN ADJOURNED AT  
10 6:05 P.M.)  
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**BARRISTERS' REPORTING SERVICE**

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 TELEPHONIC PROCEEDINGS BEFORE THE INDEPENDENT CITIZEN'S OVERSIGHT COMMITTEE OF THE CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE IN THE MATTER OF ITS SPECIAL ON SEPTEMBER 15, 2009, 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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