

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3

4 DISCUSSION OF OIA/OGC INQUIRY IN
5 TESTIMONY OF THE EXECUTIVE DIRECTOR
6 FOR OPERATIONS
7

8 (Closed to Public Attendance)
9

10
11 Chairman's Conference Room
12 1717 H Street, N.W.
13 Washington, D. C.

14 Thursday, July 13, 1978

15 The Commission met, pursuant to notice, at 9:30 a.m.,
16 Joseph Hendrie, Chairman of the Commission, presiding.

17 PRESENT:

18 Chairman Hendrie
19 Commissioner Gilinsky
20 Commissioner Kennedy
21 Commissioner Bradford

22 (Note: This transcript was made from a tape recording.)
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P R O C E E D I N G S

CHAIRMAN HENDRIE: Let me, first of all, ask for a vote to close today's meeting. I have a note that says we have to do that.

COMMISSIONER GILINSKY: Aye.

COMMISSIONER BRADFORD: Aye.

CHAIRMAN HENDRIE: Aye. So ordered.

COMMISSIONER BRADFORD: Is Dick coming?

CHAIRMAN HENDRIE: I hope so. I heard that he would not come.

Now, let's see, the next thing -- well, I showed you the letter we have just got in which, I suppose adds -- the second thing I have to tell you has to do with these tapes. OGC has been to see the reporters, they do have new cleared people and a secure set up and they will do this. One problem that they have identified is that there may be difficulty as it relates to the transcriber, listens to the tape, there may be difficulty in identifying who is speaking. And I still haven't listened to one of these things to see what sort of quality one is getting out of it.

If the quality is tolerable and one transcriber has pretty good control of it, why then I think the voice differences are -- you know -- unless you are just saying one word like "umph" or something like that, why ---

COMMISSIONER GILINSKY: Do you mean, commissioner A or

1 commissioner B?

2 CHAIRMAN HENDRIE: Well, the transcriber won't have
3 any way to identify us, and that would be a problem, except
4 that presumably we would be getting the tape and identifying
5 who was speaking, or maybe I could provide some identification
6 to the transcriber by listening with Kelley there.

7 Here is a -- one of those --- have you seen this
8 thing?

9 COMMISSIONER GILINSKY: What is that?

10 CHAIRMAN HENDRIE: Hearings before the House Armed
11 Services Committee.

12 COMMISSIONER GILINSKY: On what?

13 CHAIRMAN HENDRIE: Let me see, what's the date.

14 COMMISSIONER GILINSKY: For us?

15 CHAIRMAN HENDRIE: No, no. This is a transcript.
16 February 15 -- it's this year. February, March 1st, April 19th.
17 This was in connection with our lack to report to the Committee
18 on ---

19 COMMISSIONER GILINSKY: This is Harvey Lyon saying
20 no evidence.

21 CHAIRMAN HENDRIE: -- facility infiltration, you know.

22 COMMISSIONER BRADFORD: Is it Harvey lying or Harvey
23 Lyon, making no-evidence statements.

24 CHAIRMAN HENDRIE: You know, the whole damn thing is
25 larded with precisely the same language. It does have the
advantage because there is some further discussion of the matters,

1 so I ---

2 COMMISSIONER GILINSKY: However, there is just a world
3 of difference in saying that now and saying it before. When
4 somebody knew anything. I mean, it is one thing to say that
5 here are all the facts, here's the story about NUMEC that may
6 or not have stolen stuff, here's what we know, here are the
7 details of surveillance and here are all the hypotheses
8 and you now know as much as I do, and I know and I am prepared
9 to say there was no evidence.

10 That is a very different situation from being asked
11 when the Congress knows nothing and saying, do you know anything?
12 and you say no. I mean, in the first case you have informed
13 the Congress. Now, if you wanted at the end to say no evidence
14 or characterize it in some way that you have not affected their
15 state of knowledge or what they could do with the information.
16 In the second case you basically deflected them from inquiring
17 into the matter.

18 CHAIRMAN HENDRIE: When you say the Congress hasn't
19 been informed, of your two comments, the first, Rowden and
20 company went up there, I don't know, but you may have gone along --

21 COMMISSIONER GILINSKY: Nope.

22 CHAIRMAN HENDRIE: -- and talked to Udall about this
23 matter before these hearings. It is inconceivable to me that
24 the committee, in fact, sat there in the committee room on
25 July 19th not knowing anything about the possibility ---

 COMMISSIONER GILINSKY: I don't know what they said.

1 CHAIRMAN HENDRIE: Furthermore, the second point,
2 it seems clear to me that it had been investigated, the
3 Apollo/ NUMEC and they knew about as much by the 29th of
4 July as we knew.

5 I wonder just how much of a proposition the hearing
6 on the 29th of this was settled.

7 COMMISSIONER GILINSKY: Well, would you ---

8 CHAIRMAN HENDRIE: Within the NRC, including you,
9 going up there and testifying, had been subsequently charged
10 with not being -- not traveling with them, no matter what you
11 said. I raise the possibility.

12 COMMISSIONER GILINSKY: You know, who knows what would
13 have happened had some -- you know -- had it been followed up.

14 CHAIRMAN HENDRIE: I really can't regard it as a
15 situation in which the Members of Congress and the committee
16 staff sat up there in the committee room, you know, innocent
17 knowledge that this is their first introduction, so they have
18 been tauted off Apollo by a no-evidence statement. It just
19 doesn't ---

20 (Commissioner Kennedy arrived at the meeting.)

21 COMMISSIONER KENNEDY: Let me just say in this
22 regard, I think there is enough evidence now to make it very
23 clear and I think there probably was then had some of us been
24 a little more acute to what was going on, and you are absolutely
25 right, the committee not only knew as much as we knew, it knew
a great deal more than we did, probably does now.

1 COMMISSIONER GILINSKY: No, that's not what was said.

2 COMMISSIONER KENNEDY: Not what who said?

3 COMMISSIONER GILINSKY: The committee.

4 What they said in their letter -- the original letter
5 to Joe, that Lee came and said the following. After that
6 they were briefed by somebody, the CIA, DIA, NSC -- they
7 referred to some briefing, but that's their problem.

8 CHAIRMAN HENDRIE: They were briefed, at least in some
9 degree, by the Chairman of this agency and Gossick at a meeting
10 before that hearing, before he left as Chairman, I believe.

11 COMMISSIONER GILINSKY: Where is the record of that?
12 What do you mean by that?

13 CHAIRMAN HENDRIE: Obviously we don't have a transcript,
14 I mean ---

15 COMMISSIONER GILINSKY: No. Is that covered in
16 Marc's interview? I'm just asking?

17 COMMISSIONER KENNEDY: I believe it is in the interview.

18 CHAIRMAN HENDRIE: I don't know.

19 COMMISSIONER KENNEDY: Since the interview.

20 COMMISSIONER GILINSKY: Well, why don't we look that
21 up and see what that says.

22 COMMISSIONER KENNEDY: What's the subject?

23 CHAIRMAN HENDRIE: I don't know. We have just -- I
24 was noting two things. One of them was that ---

25 COMMISSIONER GILINSKY: You agreed it was a
Congressional conspiracy and I was the one ---

1 COMMISSIONER KENNEDY: I did not agree to a
2 Congressional conspiracy. Let there be no mistake. I did not
3 agree to nor allege any such thing.

4 I simply said that I am confident that certain of those
5 people knew more about what they were asking questions about
6 than Gossick knew. They knew more about the subject matter
7 than he was being questioned on than he knew. That just
8 happens that I believe that to be a reasonable assumption,
9 because they had discussions with other agencies which we had
10 not.

11 COMMISSIONER GILINSKY: Well, they claim otherwise.
12 I thought these discussions took place after that.

13 COMMISSIONER KENNEDY: I know, but they had talked
14 to the DOE people, I'm sure.

15 CHAIRMAN HENDRIE: I don't know. I would have
16 assumed they had talked to somebody.

17 COMMISSIONER GILINSKY: Well, the original letter,
18 as I recall, referred to briefings they got after July 29th
19 which contradicted the July 29th testimony.

20 COMMISSIONER KENNEDY: I don't know, maybe.

21 CHAIRMAN HENDRIE: It's really a problem.

22 COMMISSIONER GILINSKY: I'm just saying that that was
23 in the letter.

24 COMMISSIONER KENNEDY: Well, you are probably correct
25 then, if that's what they said in their letter.

1 CHAIRMAN HENDRIE: I thought I had the letter at
2 hand, but I guess I don't.

3 COMMISSIONER GILINSKY: This is the 15 November letter.

4 CHAIRMAN HENDRIE: Yes.

5 COMMISSIONER GILINSKY: Well, it would be in your
6 book, wouldn't it?

7 COMMISSIONER BRADFORD: 15th of November.

8 CHAIRMAN HENDRIE: I was just referring to Rowden.

9 COMMISSIONER GILINSKY: Oh, I see, it was the
10 summary volume.

11 CHAIRMAN HENDRIE: Would it be in the summary
12 volume?

13 COMMISSIONER BRADFORD: What, the one from Udall?

14 CHAIRMAN HENDRIE: Must have. Wait a minute. I
15 do have -- Committee hearings.

16 COMMISSIONER KENNEDY: Oh, I thought we were talking
17 about Dingell.

18 COMMISSIONER BRADFORD: No, no.

19 COMMISSIONER KENNEDY: Oh, I thought we were talking
20 about Dingell, I thought we were talking about the questions
21 that Ward was asking.

22 COMMISSIONER BRADFORD: Have both of those
23 committees investigated NUMEC? This is the first
24 I have heard that Marc ---

25 COMMISSIONER GILINSKY: I believe the Dingell
Committee ---

1 COMMISSIONER BRADFORD: Had been investigating NUMEC?

2 COMMISSIONER GILINSKY: -- had conversations with
3 other agencies.

4 COMMISSIONER KENNEDY: That's what I thought we
5 were talking about.

6 COMMISSIONER GILINSKY: No, no. We are talking
7 about the Udall committee.

8 COMMISSIONER KENNEDY: Sorry, I misunderstood. I
9 thought we were talking about the Gossick testimony that
10 we had questions about, you know, and Ward was asking some
11 questions where it seemed to me, you know, we said the other
12 day that the answer was wrong.

13 COMMISSIONER GILINSKY: Well, but what was at
14 issue there was the Commission's view and that was something
15 that Ward would not likely have known anything about.

16 In other words, if he had known what other agencies
17 thought, he would not necessarily have known what we had
18 been told or what we concluded from that.

19 COMMISSIONER KENNEDY: That's correct. I think that's
20 correct. But I think they -- that committee was privy to
21 more information, possibly information that we didn't ask
22 about that.

23 COMMISSIONER GILINSKY: That's possible.

24 COMMISSIONER KENNEDY: That was my point, and I -- as
25 to the Udall committee, I just don't know, except that my
impression is that I remember Marc saying something about he and

1 Gossick or he and somebody going up there and talking to them.

2 COMMISSIONER GILINSKY: I think, that the only remark
3 that I remember in the interview was Marc saying something to
4 the effect that -- I mean -- diverting a question of Udall's
5 and saying he really ought to get briefed on it or something
6 like that.

7 CHAIRMAN HENDRIE: Here it says after the 29th day of --
8 Well, any way, that's beside the point.

9 COMMISSIONER BRADFORD: Dick may have it. It would
10 make some difference, I think if Lee knew if the Committee knew
11 about NUMEC, including the release of his statement as to
12 Conran, but I don't know that it would still make everything
13 all right, but I think surely that in talking to the Committee
14 that it would be closer to the Lyon situation. I must say,
15 if I were Lee you know, I would be inclined with Lyon's
16 February 23rd ---

17 COMMISSIONER KENNEDY: "With one exception," this
18 is Rowden speaking, "... he does not recall ever discussing
19 the briefing or its substance in context with the Congress, in
20 speeches or testimony. He never addressed the Apollo/NUMEC
21 or the question of evidence or diversion there. The one
22 occasion when he mentioned the briefing was in the spring of
23 1977 when he and Roger Mattson visited Representative Morris
24 Udall, in a meeting attended also by Dr. Henry Myers. There
25 has been a delay in transmitting the Task Force Report to
Chairman Udall because it was undergoing classification and

1 review. Ultimately, the NSC said it was permissible to have
2 the report with some unclassified and he went to Mr. Udall to
3 deliver it and explain reasons for the delay. He advised
4 Messrs Udall and Myers of the CIA briefing, that there were
5 those who hold views based on the circumstantial evidence,
6 that there was a possibility of diversion and others disagreed.

7 "Mr. Rowden told them that he could not relay the
8 substance of the request by a briefing, such would have to be
9 obtained from the Executive Branch. Other agencies, AEC and
10 ERDA had had a view of the diversion question different from
11 that of the briefing and he was in no position to make a
12 judgment as to the diversion based on that briefing. Another
13 governmental agency was pursuing the matter, and irrespectable of
14 the foregoing, NRC safeguards were undergoing continuing
15 upgrading as a part of the overall long-range program."

16 COMMISSIONER BRADFORD: It is not clear from that
17 whether Lee knew that Rowden had ever spoken to Udall.

18 CHAIRMAN HENDRIE: You mentioned it once --

19 COMMISSIONER BRADFORD: Well, I guess --

20 CHAIRMAN HENDRIE: -- in discussions ---

21 COMMISSIONER KENNEDY: Oh, do you mean Rowden?

22 CHAIRMAN HENDRIE: Gossick mentioned it, I guess. It
23 would have been in one of his discussions with me also. I
24 recall his noting with some bitterness that he knew the
25 Chairman had been down to see Mr. Udall.

1 COMMISSIONER KENNEDY: But he didn't know ---

2 CHAIRMAN HENDRIE: -- and he felt that in many ways,
3 whether by the time the testimony was in in July, whether
4 or not the congressional people had been ultimately briefed
5 by these other agencies, that they probably knew a hell of a
6 lot more about it than he did.

7 COMMISSIONER GILINSKY: Well, from that it doesn't
8 sound like they knew more than he did.

9 COMMISSIONER KENNEDY: Well, Tsongas was saying
10 things, and I called the attention of Mr. Tsongas that he was
11 telling me things that I didn't know, and it was obvious at the
12 time that he was saying that he knew more about it than I did.
13 And that's on the public record. It happens to be true.

14 COMMISSIONER BRADFORD: But you are talking about
15 July 29th?

16 COMMISSIONER KENNEDY: No, that was much later than
17 that, you know, whatever that means. That was late March or
18 whenever it was.

19 COMMISSIONER BRADFORD: But even in July, I think
20 Tsongas asked Lee questions specifically on NUMEC.

21 CHAIRMAN HENDRIE: As further aid to my draft
22 effort, which has not produced anything that we can look at
23 this morning, let's go forward and we've --

24 I've got to pass you Peter, on B-4.
25

1 COMMISSIONER BRADFORD: Yes, well, that's ---

2 COMMISSIONER GILINSKY: I thought we were on to A.

3 COMMISSIONER BRADFORD: -- having passed ---

4 CHAIRMAN HENDRIE: I was just scanning back to see that
5 we, indeed, had gotten enough of a basic so I could make
6 some comment on B.

7 COMMISSIONER BRADFORD: I still owe you that. I
8 haven't thought about it.

9 CHAIRMAN HENDRIE: All right, on to A. By the way,
10 before we get to A, what do I do, in attempting to make a draft
11 that we can work on, that is a real attempt to be a collective --
12 what do I do with the details of the findings where there is
13 a difference, attempt to indicate it?

14 COMMISSIONER GILINSKY: Sure. Why don't you put down
15 your own view and leave it blank.

16 CHAIRMAN HENDRIE: Well, I could draft the letter,
17 which is essentially Hendrie's view, then as a matter of
18 fact, one thing we could do would be to have ---

19 COMMISSIONER KENNEDY: I would say the Commission view
20 is that the Commission considers Finding X -- agrees with
21 Finding X. However, Commissioner A notes that where there is
22 a difference about one piece of it or -- I don't think we found
23 any in which there was disagreement about the entire Finding.
24 We found some in which there was disagreement about a sentence
25 or a piece of it, isn't that correct?

If that isn't correct, you know, then we are saying
that there is a sentence in some of those long things which

1 represents the Finding, and the rest of it is interesting, but
2 not a finding, I think. So it seems to me that would be one
3 way to deal with it. And I thought, in going through the
4 thing the other day, it was fairly clear how we felt about most
5 of that. How does that relate to the newest letter which
6 presents us a different set of findings or a different set of
7 findings and a different set of conclusions? Are we suppose
8 to comment about two?

9 CHAIRMAN HENDRIE: I don't know. I have scanned it,
10 and it appears to me that -- as I was commenting before you
11 came, that if it were an urgent situation, that is, the task to
12 be accomplished in this area appear to be -- you know, every
13 time we lop one off, two more come in. So we appear to ---

14 COMMISSIONER GILINSKY: Actually, I mean, it tracks
15 pretty closely with the Findings. It really comes down to: What
16 do you think of the July 29th testimony; what do you think about
17 the August 8th testimony.

18 CHAIRMAN HENDRIE: Well, what I think we ought to do here,
19 since we are well above ---

20 COMMISSIONER KENNEDY: Is Mr. Udall now asking about
21 the August 8th testimony?

22 COMMISSIONER GILINSKY: Yes.

23 COMMISSIONER KENNEDY: Oh, well, how does that ---

24 COMMISSIONER BRADFORD: How does that give you difficulty

25 COMMISSIONER KENNEDY: Well, I know I'm having some
difficulty of how it relates to his hearings, and you know, ---

1 the findings you are commenting on in the August 8th
2 testimony.

3 CHAIRMAN HENDRIE: Yes, the Inquiry Report, you know,
4 covers both, and he is commenting on the Inquiry Report.

5 COMMISSIONER KENNEDY: Oh, all right.

6 CHAIRMAN HENDRIE: I think that's fair enough.

7 Well, I guess what I'm suggesting is that we go ahead
8 and try to keep going with the report Findings and Conclusions,
9 and then if I could ever get some sort of a draft for you to
10 begin, to worry about, then at the next series of meetings we
11 will begin to turn to those other letters and so on. And indeed,
12 I presume that the draft material and I would hope to get
13 through on the Findings and Conclusions as simply being one of
14 a part of a Commission letters which we would then want to have
15 other parts dealing with other matters that have been raised or
16 that relate or related questions that have been raised,
17 contradictions. But certainly the first thing to do would be
18 to try to struggle on through A and you will have to worry about
19 how to represent us in B-4. It doesn't hold me up, I must say,
20 since the whole thing is so merky and I could go ahead and sort
21 of write it in later. So let me go ahead and see if we can get
22 some of this draft language.

23 Ssssh. It is not a draft I will look forward to trying
24 to prepare. Well, why don't we turn to A, then, for my further
25 guidance and instructions. We have made some progress. We
started at C, right? We started at the Recommendations and
Conclusions and have come charging ahead to this page. Do you

1 realize that we have missed Friday the 13th by only one day?

2 COMMISSIONER GILINSKY: God, that was close.

3 COMMISSIONER KENNEDY: No, it is close. We haven't
4 gotten to Friday yet.

5 COMMISSIONER BRADFORD: You certainly have reason to
6 believe that it won't be the 13th.

7 COMMISSIONER KENNEDY: That's right. Well, you know.

8 CHAIRMAN HENDRIE: Spoken like a true Commissioner.
9 Dealing only with the material on the record, you know, and being
10 very cautious about a standing beyond what is immediately there
11 today.

12 COMMISSIONER GILINSKY: It's like being narrowly hit
13 by a truck.

14 CHAIRMAN HENDRIE: Okay, Finding A.

15 COMMISSIONER KENNEDY: I can hardly disagree with that,
16 that's what I said in my statement to the committee.

17 COMMISSIONER GILINSKY: I think all of that is a bunch
18 of crap.

19 COMMISSIONER KENNEDY: I think all of that is actually
20 true and said so in my report to the committee. There is no
21 question about that.

22 CHAIRMAN HENDRIE: Let me just jot that down.

23 COMMISSIONER KENNEDY: It happens to be absolutely true.
24 As I said, that's what I said to the committee.

25 COMMISSIONER GILINSKY: Well, here you are --

CHAIRMAN HENDRIE: Why don't -- I think we need to

1 start at 1 and work down through, okay?

2 COMMISSIONER KENNEDY: It is a view shared by all of
3 the Commissioners at the time, if I recall, or the statements,
4 at least were there.

5 COMMISSIONER BRADFORD: Well, except as I understand
6 Marc Rowden's position in June, he, himself, was not parpared to
7 make a no-evidence statement.

8 COMMISSIONER KENNEDY: That's not what this says. All
9 of that is true, it says the Commission never communicated that
10 to anybody in any meaningful way and that happens to be a fact.

11 COMMISSIONER BRADFORD: Well, but if the Commission
12 believes that the CIA briefing warranted particular caution or
13 circumspection in public statements, it failed to communicate that
14 message, in a sense that's true in that the message wasn't
15 clearly perceived in any case. But ---

16 COMMISSIONER KENNEDY: The number of message is no good
17 if it isn't received.

18 COMMISSIONER BRADFORD: But if it isn't received, if
19 the tree falls in the forest, but there was a meeting in June,
20 though, that Marc said we have to be effective. I don't know
21 how we ought to be saying this, that this isn't right, referring
22 to the no-evidence statement.

23 COMMISSIONER KENNEDY: That is hardly a way to
24 communicate a Commission policy.

25 COMMISSIONER BRADFORD: No, I agree that that is not a
great action, but as far as saying ---

COMMISSIONER KENNEDY: That is an expression of

1 individual concern which the first sentence says.

2 COMMISSIONER GILINSKY: Well, but does it set a pattern
3 of Commission action if you simply said it was reflecting the
4 no-evidence position. I would say it conflicts with that.

5 COMMISSIONER KENNEDY: Well, I don't know, you know.
6 That depends entirely on how one sees the documents that passed
7 by people. Albeit they may not have read them, nevertheless,
8 they were passed through their office and I think the staff have
9 every right to assume, and I have always felt that way, having
10 been in that position on a variety of occasions over the
11 years myself. I have always felt that if a paper passes
12 through my office and I do not take objection to it, they have
13 every right to assume that I agree with it. If I don't wish
14 to communicate my objections, that's my problem and not theirs.

15 COMMISSIONER GILINSKY: You are talking about 1975?
16 Suppose ---

17 COMMISSIONER KENNEDY: No, I'm talking about 1977.

18 COMMISSIONER GILINSKY: In June 1977, here is Marc
19 Rowden saying that that's not the way to deal with it.

20 I mean, suppose you say something to the staff, I
21 don't know, I ---

22 COMMISSIONER KENNEDY: I communicated to them, I think,
23 in the clearest unmistakable terms and then confirmed it in
24 writing. That's how I deal with the staff, and that's what I
25 think they ought to demand, and nothing less than that, because

1 they get themselves in trouble every time if they don't.

2 COMMISSIONER GILINSKY: Are you saying that
3 question that slipped by in 1975 outweighs the Chairman's
4 statement. So Lee Gossick, in open meetings in 1977 ---

5 COMMISSIONER KENNEDY: Of course I'm not saying
6 anything of that sort. For heavens sakes. That's a non
7 sequitur.

8 CHAIRMAN HENDRIE: But Vic, neither is the array of
9 bits and pieces limited to a 1975 thing that slipped by the
10 Commission, if that's the right word to characterize it, and
11 Marc's comment through the June meeting.

12 COMMISSIONER GILINSKY: But Marc's -- the most
13 recent coment, it is from the chairman, with the
14 man sitting right across the table from him -- you know --
15 nobody pays attention to what the Chairman says around here or
16 to --

17 CHAIRMAN HENDRIE: I don't think you want to continue
18 to express that bad thought, Vic.

19 COMMISSIONER GILINSKY: You know, seriously. I mean,
20 here is a serious problem ---

21 COMMISSIONER KENNEDY: Some of us have and some of
22 us haven't, I would note, to that earlier comment. Not on
23 a regular basis, but go ahead.

24 COMMISSIONER GILINSKY: You know, with the other
25 Commissioners sitting there, at least giving tacit approval and

1 not arguing with that ---

2 COMMISSIONER KENNEDY: Or mumbling, as is so often
3 the case so that nobody understands what it is to hell they
4 are saying, if they are saying anything at all. You know, let's
5 be candid with each other, for Christ sakes.

6 As I said the other day there is enough blame in this
7 goddarn exercise, if that's at issue go around to everybody,
8 and I'm ready to put the blame that belongs on my back and I
9 think the rest of us ought to be doing the same thing intead of
10 shoveling it off to Gossick.

11 COMMISSIONER GILINSKY: All right, let's do that,
12 because ---

13 COMMISSIONER KENNEDY: I already did, before the
14 committee and I intend to continue doing so, and seeing that
15 everybody else gets his share instead of it all being unloaded
16 on Gossick's back.

17 COMMISSIONER GILINSKY: Fine. The fact is, the man
18 acted improperly and either that or terribly stupidly.

19 COMMISSIONER KENNEDY: He may have acted incorrectly.
20 I believe it yet remains to be determined that he acted
21 improperly, and I don't assert that.

22 COMMISSIONER GILINSKY: Well, I think he did.

23 COMMISSIONER KENNEDY: Well, that's fine. You may
24 say that all you wish, don't say he acted improperly, say that
25 you think he did if that's okay.

COMMISSIONER GILINSKY: Well, everything I say is what

1 I think.

2 COMMISSIONER KENNEDY: Continue to preface it that
3 way instead of asserting a fact, please.

4 COMMISSIONER GILINSKY: Well, it makes it a little
5 clumsy.

6 COMMISSIONER KENNEDY: No, it is a great difference
7 between an assumption and a fact, and one which I think we
8 ought to keep remembering.

9 COMMISSIONER GILINSKY: You know, if you want to
10 be frank, I mean, you know that that's what I think. I mean,
11 that is obvious and ---

12 COMMISSIONER KENNEDY: Fine, I want to keep the record
13 absolutely clear that that's what you are saying. That you
14 think that is true, it is not an assertion of fact, it is
15 an assumption on your part.

16 COMMISSIONER GILINSKY: Well, that's right.

17 COMMISSIONER KENNEDY: Okay, that's all I want. You
18 know, I want to be sure of that because I don't agree with that.
19 I agree that he acted incorrectly.

20 CHAIRMAN HENDRIE: It was a meeting on the MUF Report,
21 wasn't it?

22 COMMISSIONER GILINSKY: No, it was on the transpor-
23 tation. It is in there. Are you talking about what Marc said?

24 CHAIRMAN HENDRIE: Yes.

25 COMMISSIONER GILINSKY: It's in there.

1 CHAIRMAN HENDRIE: Where? Volume ---

2 COMMISSIONER GILINSKY: In the Summary Volume.

3 COMMISSIONER BRADFORD: Is it in the Summary Volume?

4 COMMISSIONER GILINSKY: Yes, it is buried somewhere.

5 COMMISSIONER BRADFORD: It can't be too badly

6 buried in the Summary Volume.

7 COMMISSIONER GILINSKY: Well, I'll find it for you.

8 It is not in the natural place.

9 CHAIRMAN HENDRIE: Did I manage not to bring Volume III?

10 COMMISSIONER GILINSKY: Well ---

11 CHAIRMAN HENDRIE: A point, are we going to make a
12 connection with this? You asked, what -- why -- how come ---

13 COMMISSIONER KENNEDY: Mr. Rowden said, and apropos of
14 what this finding said. Mr. Rowden characterizing Mr. Gossick's
15 a very honest and responsible based on his dealings with him.
16 Mr. Gossick may have seen statements that were made that there
17 was no evidence of SNM material diversion and it may have
18 related about the context of a misunderstanding that the
19 Commission had actually come to a conclusion on the Apollo
20 NUMEC matter, whereas, there had been no Commission position
21 one way or the other. And that is a factual statement.

22 COMMISSIONER GILINSKY: Well, then why is ---

23 COMMISSIONER KENNEDY: Repeated by everybody else.

24 COMMISSIONER GILINSKY: Well, then why is Lee talking
25 about Commission positions?

1 COMMISSIONER KENNEDY: Just because, he says,
2 Mr. Gossick may have seen statements that were made.

3 COMMISSIONER GILINSKY: The man's not a GS-12 or
4 something.

5 COMMISSIONER KENNEDY: It goes to the question we
6 just raised a minute ago. The question about whether one
7 assumes he acted improperly, whether he acted incorrectly.
8 My assumption is that he acted incorrectly. I started out
9 with another thing.

10 COMMISSIONER GILINSKY: Well, let me ask you, how
11 do you see the difference between incorrectly and improperly.
12 Maybe we agree.

13 COMMISSIONER KENNEDY: Improperly is something that
14 was done with knowledge. Incorrectly, in my judgment, is
15 something that he didn't intend to do. His statement was
16 incorrect, but it was not intentionally so. It is as simple
17 as that, in my view.

18 Ah, Mr. Rowden. "He does recall one instance involving
19 a transportation EIS in which statements set forth in the
20 draft were too categorical in his view and needed to be
21 revised in light of the reference uncertainties. Now what were
22 those? Furthermore, the results of the safeguards survey were
23 coming in and the Commission concluded that upgrade safeguards
24 were in order as a matter of proven regulations."

25 Now, how does that statement of Mr. Rowden's, it is

1 right here on Page 61 ---

2 COMMISSIONER GILINSKY: That is actually quoted in
3 the Summary Volume.

4 COMMISSIONER BRADFORD: The actual quote is, I think,
5 it, "Mr. Rowden, I think it was the proposed final version of
6 the transportation statement. There were statements in their
7 fairly categoric about material being stolen and I said, you
8 know, that is not -- I don't know what the right articulation
9 is, but that is not it, if I can do it again. And there
10 ought to be something that we can turn to that is very carefully
11 framed, straightforward articulation of the basis for our
12 position in this regard."

13 There may have been a separate meeting on the
14 transportation statement, but this is the meeting on the
15 Mattson ---

16 CHAIRMAN HENDRIE: Task Force?

17 COMMISSIONER BRADFORD: -- Task Force, right.

18 COMMISSIONER GILINSKY: Is this the June 6th statement?

19 COMMISSIONER BRADFORD: June 22nd.

20 COMMISSIONER GILINSKY: June 22nd or something like
21 that, yes. That's the transcript, right?

22 COMMISSIONER BRADFORD: This is the transcript in
23 Conclusion 24 in the OGC/OIA, I think.

24 COMMISSIONER GILINSKY: So it is a month before the
25 man testified?

COMMISSIONER BRADFORD: This is Wednesday, June 22nd.

1 COMMISSIONER GILINSKY: Well, not only that ---

2 COMMISSIONER KENNEDY: Let's go back again and read
3 that, Peter. Tell me what it says, would you?

4 COMMISSIONER BRADFORD: Ah, one of the -- I'll start
5 with it earlier this time.

6 "One of the things I must state is it struck me when
7 I read -- I think it would be the proposed final version of
8 the transportation statement, there were statements in there
9 fairly categoric about material being stolen and I said, you
10 know, that is not -- I don't know what the right articulation
11 is, but that is not it. Go back and do it again. And there
12 ought to be something we can turn to that is very carefully
13 framed, straightforward articulation of the basis for our position
14 in this regard."

15 Now, there must have been a Commission meeting on
16 the transportation statement where Rowden's exact words.

17 COMMISSIONER GILINSKY: Oh, is this from his ---

18 COMMISSIONER BRADFORD: This is --

19 COMMISSIONER GILINSKY: -- from his interview?

20 COMMISSIONER BRADFORD: No, this is from the
21 meeting on the Mattson Task Force.

22 COMMISSIONER GILINSKY: This is the reading from the
23 transcript.

24 COMMISSIONER BRADFORD: -- at the meeting on the
25 Mattson Task force which refers to an earlier meeting on the
transportation statement.

1 COMMISSIONER GILINSKY: I thought there was something
2 June 6th or something like that.

3 COMMISSIONER BRADFORD: There may be. This is his
4 June 22nd memory of what he said earlier.

5 COMMISSIONER GILINSKY: It is also interesting that
6 nothing was done to that transportation statement, even though
7 the Chairman said to take a look at it and fix it up.

8 COMMISSIONER BRADFORD: In fact, it is possible ---

9 COMMISSIONER GILINSKY: In fact, I think we were just
10 having a gap in our management abilities.

11 COMMISSIONER BRADFORD: -- what he is referring to here
12 is something that I don't think I have ever seen, that is, you
13 may have read the transportation statement that the no-evidence
14 statement wasn't there.

15 COMMISSIONER GILINSKY: Do you have the Summary Volume?

16 COMMISSIONER KENNEDY: This one?

17 COMMISSIONER GILINSKY: May I take a look at it?

18 CHAIRMAN HENDRIE: I've got two of them. Take mine.

19 COMMISSIONER BRADFORD: Marc, at least thought there
20 were two separate instances, this one here and ---

21 CHAIRMAN HENDRIE: That's the full one.

22 COMMISSIONER BRADFORD: -- the statement he is
23 remembering that he made.

24 Now, Strauss and Eagle apparently said that no-evidence
25

1 statements were not encouraged as a matter of Commission
2 policy, but that evidently didn't get down to the staff level.

3 CHAIRMAN HENDRIE: It not only didn't get down to
4 the staff level -- let me see if I remember it right.---

5 Here's Bernie Snyder commenting on Document 102.
6 At these interviews, "He, Snyder, was shocked when he saw
7 the statement in Document 102 attributed to Mr. Strauss that
8 the Commission had been..." ---

9 COMMISSIONER BRADFORD: I believe it is Strauss.

10 CHAIRMAN HENDRIE: How do you pronounce it, Stross?

11 COMMISSIONER GILINSKY: Strauss.

12 COMMISSIONER BRADFORD: Peter pronounces it Strauss.

13 CHAIRMAN HENDRIE: I'd better make that distinction.
14 Strauss.

15 COMMISSIONER KENNEDY: There is a difference.

16 CHAIRMAN HENDRIE: "... that the Commission had been
17 avoiding since the 1976 briefings, making statements of quote,
18 "no evidence," unquote, without qualifications. Dr. Snyder
19 had seen enough pieces of paper which came through OPE with
20 that type of statement included, to know that the Document 102
21 statement was inaccurate." It goes on to say, "Dr. Snyder
22 believes that of the Commissioners, primarily Mr. Gilinsky,
23 was cautious about making unqualified Freudian statements."
24 He explained that when Gilinsky personally saw staff documents
25 on qualified statements or they were pointed out to him, he
reacted by supplying comments and proposed changes. Many of
these came back through OPE.

1 COMMISSIONER GILINSKY: But he reacted to Document 102.
2 Whatever came before that, Lee had seen Document 102 before he
3 went up there to testify.

4 COMMISSIONER BRADFORD: Didn't ---

5 COMMISSIONER GILINSKY: I mean, you know, there just
6 so many things.

7 You have to explain, why does a bureaucrat go up, and
8 instead of testifying in the normal way, qualifying everything
9 you say in sort of a veiled language, to go out and to give ---

10 COMMISSIONER KENNEDY: Well now wait. Hold it.

11 Don't assess that to all bureaucrats. You are making
12 a typical bureaucratic error. All bureaucrats are not alike.
13 There are 4 million of them, roughly.

14 COMMISSIONER GILINSKY: Well, let me ---

15 COMMISSIONER KENNEDY: You know, I don't think it is
16 fair to characterize every bureaucrat that goes up to the
17 Congress is testifying in a fudged way. There are a whole
18 lot of them who go up there and testify straightforwardly,
19 on the record clearly, answering questions "yes" or "no" and
20 not mumbling all over the damned place, Vic. A whole lot of
21 them do that and they are very valuable people, indeed. In
22 my judgment the only ones that are worth a damn. The rest of
23 them aren't worth anything. They don't contribute anything
24 to the Congress.

25 COMMISSIONER GILINSKY: Well, he is going up there
making pretty categorical statements when he knows the situation

1 is clouded. Why does he do this?

2 CHAIRMAN HENDRIE: That's -- the latter, I don't agree
3 with.

4 As best I can assess, for whatever you may thing,
5 now it was July and August when he went and testified, and his
6 view was that although he couldn't prove a thing one way or
7 another, but the weight of opinion of the people who we had
8 investigated and whom he had investigated some, were where your
9 own representative set of reliable investigators to the extent
10 they could find evidence and so on, there was a very strong
11 belief among those people that this stuff hadn't been stolen,
12 and that there was no provable basis for saying it had. Then
13 it had, and this no-evidence statement had been dignified over
14 the years by becoming a classic and accepted term of art with
15 which to deal with the NUMEC matter.

16 COMMISSIONER GILINSKY: But a month earlier, the
17 Chairman told him that wasn't the way to say it, two weeks
18 earlier he had seen Document 102 ---

19 COMMISSIONER KENNEDY: May I point out to you, "Mr.
20 Chapman stated before the briefing there was no policy
21 statement on the matter of diversion. Peter Strauss, the former
22 General Counsel, back in 1975, he wasn't aware of any
23 Commission policy regarding the statement of no evidence of
24 diversion."

25 But let me point out with respect to what you just

1 said, Mr. Chairman, only in the very recent past a high
2 official who is responsible for this from the Department of
3 Energy just said the same thing.

4 COMMISSIONER GILINSKY: We went over that earlier.

5 COMMISSIONER KENNEDY: But it happens to be true.
6 That's what he said. That's his interpretation of what he
7 knows.

8 COMMISSIONER GILINSKY: We don't have any authority
9 over them.

10 COMMISSIONER KENNEDY: Remember, we do have a
11 responsibility to understand -- people whose responsibility
12 it is, think ---

13 COMMISSIONER GILINSKY: Well, let me say what I said
14 as a joke, which is that I think it is rather different than
15 saying no evidence now and saying no evidence before.

16 I mean, it is one thing to say ---

17 COMMISSIONER KENNEDY: Could you explain that? I don't
18 understand that.

19 COMMISSIONER GILINSKY: It is one thing to lay it
20 all out and say here are all the briefings, here are the
21 documents, here's what we know, we followed people, here's what
22 we saw. When I put it all together, I conclude that is no
23 evidence.

24 The Congress has got all of this stuff, they can do
25 what they want with it. The fact that he said evidence or no
evidence at this time just doesn't make a good deal of difference.

1 I don't think he should say it now. I think it is wrong
2 for him to say it now, but it doesn't make all that much difference
3 because they have the information, they have a good deal of the
4 information. It is rather different to throw the Congress off
5 the scent.

6 COMMISSIONER KENNEDY: I don't think anybody is
7 throwing the Congress off the scent. Indeed, he kept saying,
8 I think you ought to get briefed. I think you ought to find
9 out. I don't know, I think you ought to find out, he said
10 that.

11 COMMISSIONER GILINSKY: That's no -- Udall characterized
12 it.

13 COMMISSIONER KENNEDY: He said that. How can he be
14 accused of throwing them off the scent when he said, I think
15 you ought to go get briefed.

16 Certainly one doesn't throw one off the scent by saying,
17 here is the scent, why don't you follow it. I don't think that's
18 the way you do it. At least I was never taught to do it that
19 way. There must be other ways to do it better than that, and
20 that isn't one of them.

21 COMMISSIONER GILINSKY: The Congress certainly felt
22 that they were being lulled there.

23 COMMISSIONER BRADFORD: Lee said he felt the Congress
24 should be briefed?

25 COMMISSIONER GILINSKY: In the briefing on July 29th,
his testimony, I believe he did. They asked him how they ought

1 to find out about it and he said, well, why don't you go to the
2 relevant agencies.

3 COMMISSIONER KENNEDY: You ought to go to the
4 relevant agencies, that's right. What else could he say? He
5 should say the same thing today.

6 CHAIRMAN HENDRIE: It was a question which actually --
7 which Tom Cochran said, what you ought to do is to go and ask
8 these people who investigated this. And Gossick was asked to
9 comment or either comment or he was asked a comment, and ne said
10 something along the line, I agree, I think that's what you ought
11 to do, you ought to ask or along that line, or there was an
12 exchange of this kind.

13 COMMISSIONER BRADFORD: Would it be a fair summary, then,
14 of what he had to say is there was no evidence, but if you want
15 to know more these are the people you ought to ask?

16 CHAIRMAN HENDRIE: Well, sort of transposing the -- Let
17 me get the transcript.

18 It isn't the Summary Volume or the displays is it,
19 by chance?

20 COMMISSIONER KENNEDY: I will try and find it.

21 CHAIRMAN HENDRIE: See if there is anything in the
22 Exhibits Volume that might catch it.

23 COMMISSIONER KENNEDY: "Mr. Gossick, how do I go about
24 getting to the bottom of this? I guess that it is with some
25 relief that I note this matter pre-dated the NRC and for that
matter, the whole regulatory part of the agency. I really

1 cannot disagree with the approach that Dr. Cochran has suggested.
2 That seems to be a very thorough way of getting at it." Then
3 Cochran had said, "What you ought to do is go to the agencies
4 involved."

5 It is not to be forgotten that behind this -- or along
6 side of all of this there is the question of all these little
7 things that Mr. Conran is talking about, which everybody knew
8 about and we knew about it. All of these little bits and pieces
9 of stuff that have been stolen or misplaced. A gram or two.
10 Many, many of them -- well, not many, many, but there were
11 several documented cases of something like half a dozen --

12 CHAIRMAN HENDRIE: Half a dozen as I recall.

13 COMMISSIONER KENNEDY: -- but we knew that, and
14 certainly that was figuring in Rowden's comment which is at the
15 best ellipitical, as you read it.

16 COMMISSIONER BRADFORD: One thing I would like to get,
17 I guess, the form in which Marc actually expressed his -- sort
18 of about the transportation statement. Until now, I had always
19 thought that this was an expression of concern about the state-
20 ment. Apparently this is an expression from memory, what he
21 said about the transportation statement, or else it was a meeting
22 at the time.

23 COMMISSIONER GILINSKY: Why don't we get that right this
24 minute. We need the Secretary and he is gone.

25 CHAIRMAN HENDRIE: Let's see what I can find.

COMMISSIONER BRADFORD: Unfortunately, it is not --

1 CHAIRMAN HENDRIE: Have you got your pen in the right
2 place?

3 COMMISSIONER BRADFORD: Yes, but I haven't got a
4 reference to a SECY paper number or even the date. It would be
5 whatever the Commission's concurrence was or the format that
6 was on the transportation EIS.

7 CHAIRMAN HENDRIE: Let me see what -- What I will do
8 is to ask Sam to step down shortly and see what he can find
9 right away in concurrence sheets.

10 COMMISSIONER GILINSKY: All we need is just the number
11 of the ---

12 CHAIRMAN HENDRIE: But I don't know it, and rather than
13 my go poking, why, if I give Sam this thing, why, he can go and
14 struggle with it.

15 Vic, I was going to comment, as I think I have before,
16 about the discussion of the June meeting of this thing, whichever
17 it was. I don't know if it was the June meeting. There is that --
18 there is another occasion, it seems to me, in which Bill Anders
19 sent back an amended statement to go in the staff letter or
20 report or something. There are those things and a couple more
21 which can be cited and properly so, in support of the argument
22 that Gossick either knew or should have known that he ought to be
23 cautious about no-evidence statements, particularly with regard
24 to the testimony to the Congress, who were very, very interested
25 in the NUMEC matter.

There are also various papers that have passed through
or were at least available for Congress cognizance or had

1 nominal Commission cognizance that ran in the other way. What
2 I'm saying is that in trying to assess whether there was any
3 proper intent here to mislead or conceal the Congress, you
4 really can't look at that array of information bits and pick out
5 the ones that support a particular view. You have really got to
6 look at the span.

7 I wouldn't disagree with the proposition that there were
8 those items that should have raised warning signals. What I'm
9 saying is there are also a number of things which tended in the
10 other direction, and I can't understand why, in the sort of
11 press of business that was going on, of which this affair was not
12 a large part of the time, through these last months of the
13 quorum and the few months of or month with a non-quorum.

14 I can very well understand why those things may not
15 have caught him, came through and Lee thought about them
16 seriously and maybe if he had come and seen you or Dick to talk
17 about them further. I'm not making an argument that the testi-
18 mony, particularly in August, but even in July was not testimony
19 which Lee should not have corrected for the record in a formal
20 fashion. In a sense, we have already done that ---

21 COMMISSIONER GILINSKY: Well, you corrected the 29th --
22 the July 29th testimony.

23 CHAIRMAN HENDRIE: In the sense that we have adopted
24 a recommendation of the Inquiry Board of view, we have said,
25 look staff, you know, let's be cautious about this. We treat
no-evidence matters as follows and laid out a pattern.

1 Now, in a sesne, we have corrected that. I think that is just
2 and proper.

3 Now, with regard to assessing whether the testimony
4 given was the deliberate intent to mislead, I simply don't find
5 a basis for that, either in the nature of the man, what I know
6 of him over the years personally, or in the nature of the
7 comments made, again, about his character, and generally the
8 conduct by others, nor in the array of these specific materials.
9 There obviously, as I say, the items that we could have noted
10 and probably should have noted, but there are other items which,
11 you know, gave him a basis for continuing to believe that no
12 evidence was the right way to say it and that was that.

13 You might want to fault his perçeption or perhaps
14 sensitivity to this sort of matter. He tends -- I think Lee
15 tends to be a rather straight ahead sort of guy, and when I want
16 to tell him something, to express a view which I would like to
17 have him get well in mind, as he does things and more particularly
18 if it is going to be an instruction, now, go and tell the staff
19 to do something, why I try to make it rather explicit and to
20 go over it.

21 COMMISSIONER KENNEDY: Well, I submit there is a great
22 deal to be said of that.

23 CHAIRMAN HENDRIE: Yes, I don't ---

24 COMMISSIONER KENNEDY: Obviously leaving things fuzzy
25 and ambiguous is not the way to deal with any staff, but it is
a great way to do business, you know, because it leaves you plenty

1 of room to criticize him later for not doing what you thought
2 you were telling them, even though they could never have
3 divined that.

4 CHAIRMAN HENDRIE: All that was a question of whether
5 he was adequately sensitive, but apparently he clearly didn't
6 pick up the signal.

7 COMMISSIONER GILINSKY: What you are saying is you have
8 got to hit them over the head to get his attention.

9 COMMISSIONER KENNEDY: That's not correct at all.

10 CHAIRMAN HENDRIE: Not exactly.

11 COMMISSIONER KENNEDY: He is only saying, Vic, what
12 any good manager would say, is the way you are trying to deal
13 with the people you are trying to instruct.

14 You don't push gloomy ideas out into the clouds and
15 hope that they will divine them. You tell them, and that means
16 you think them through clearly enough to articulate them
17 precisely and make sure that it is understood, and then forget it.
18 That's the way you manage.

19 CHAIRMAN HENDRIE: God, I wish I was always sure I
20 could articulate precisely on things.

21 COMMISSIONER KENNEDY: You try, that's a good
22 beginning.

23 COMMISSIONER GILINSKY: You know, let's accept the
24 authorization of these positive and negative bits here.
25 That doesn't suggest a pattern of Commission staff actions which

1 reflect the position there is no evidence attached to the
2 diversion, that suggests a mixed pattern.

3 CHAIRMAN HENDRIE: Wait, say that again because I think
4 I missed it.

5 COMMISSIONER GILINSKY: A-1.

6 CHAIRMAN HENDRIE: Okay, but say it again for me.

7 COMMISSIONER BRADFORD: What happened to Sam?

8 CHAIRMAN HENDRIE: They are due to knock on the
9 door probably ---

10 COMMISSIONER GILINSKY: I told you the Chairman's word
11 doesn't count.

12 COMMISSIONER KENNEDY: Well, they probably don't keep
13 them on their desks waiting for us to call.

14 CHAIRMAN HENDRIE: He doesn't know what I want. I want
15 him to come down so I can tell him what I want. It would have
16 taken too long to explain the whole thing to Peggy.

17 COMMISSIONER GILINSKY: Well, the difficult sentence
18 in A-1 is the second one that says ---

19 CHAIRMAN HENDRIE: Except for the concern ---

20 COMMISSIONER GILINSKY: Yes. There was a pattern of
21 Commission and staff actions to December of 1977 which reflect
22 the position that there is no evidence of theft or diversion of
23 SNM.

24 CHAIRMAN HENDRIE: Okay, now you disagree with that?

25 COMMISSIONER GILINSKY: I thought you just disagreed.

CHAIRMAN HENDRIE: Don't let me not answer that. Let
me go see who is at the door.

1 (The Chairman left the room.)

2 COMMISSIONER BRADFORD: Marc actually wrote something
3 like that on a concurrence sheet? Then same would have ---

4 COMMISSIONER KENNEDY: He didn't.

5 COMMISSIONER BRADFORD: He didn't?

6 COMMISSIONER KENNEDY: It was said in a meeting.

7 COMMISSIONER GILINSKY: I don't think there is, because
8 I think I remember somebody had the concurrence sheets and I
9 don't think mine was blank. I don't remember yours.

10 COMMISSIONER BRADFORD: That, I think, was the
11 December concurrence sheets, and the thing came back on up again.

12 COMMISSIONER GILINSKY: Oh, I see. Oh, yes, yes.

13 COMMISSIONER BRADFORD: See, somewhere Sam should have
14 prepared a staff guidance document, I should think, on whether
15 there was a meeting or a set of concurrence sheets. On the
16 other hand, if it were an open meeting, probably there would not
17 be a transcript of it at that time.

18 COMMISSIONER GILINSKY: I don't know, but he does seem
19 to be referring to some previous statements.

20 (The Chairman returned to the room.)

21 CHAIRMAN HENDRIE: Okay, Sam is on the way.

22 COMMISSIONER KENNEDY: He probably doesn't have that if
23 it was an open meeting.

24 COMMISSIONER BRADFORD: Yes, it is not clear if it
25 was an open meeting, then they probably would have nothing but
the Secretary's summary and that might in itself be of some use.

1 CHAIRMAN HENDRIE: Yes. Concurrence sheets if it was
2 proposed. Anyway, I have launched Sam to see what he can find.

3 Vic, to answer the question you had at hand there when
4 I went out the door, I think whether or not one agrees with the
5 statement in A-1 in the context of what I was saying about this
6 array of evidence, depends on whether you view that array as
7 coming down, all those little bits and odd pieces of things that
8 happened or didn't happen in the sense of people not commenting,
9 depends on whether you regard that array as coming down and
10 showing the Commission that the best characterization of the
11 agency position would be the no-evidence statement or whether
12 you believe in that array of bits and pieces, information and
13 things, would tend to come down and say, no, it had to be much
14 more cautious or at least more cautious than then involved no
15 evidence of diversion of quantities here.

16 My own assessment of that array of stuff is if you had
17 to stand back and integrate over the collective agencies and
18 try and determine what the agency posture was as you can view
19 it from these things, would be that you would say, well, they
20 think that that statement is a proper statement to make. But
21 there are also -- you know -- I don't regard that as a conclusion,
22 so blindingly clear from all of the evidence that there is no
23 room for saying, well, I disagree and would at least qualify it
24 in some way or whatever.

25 COMMISSIONER GILINSKY: I understood you to say to me,
you know, that I can't pick out the warning signs and not pick
out the other ones. So I will just turn it around.

1 CHAIRMAN HENDRIE: Of course. That's why I say that
2 although my own conclusion would be that sort of a bottom line
3 shake out of what the agency meant by all of this, would be to
4 tend for the no evidence, but I don't want to suggest that that's
5 a conclusion that I came to with the feeling that even the
6 meanest intellect would agree with that question. It is clearly
7 not that way and we can clearly say ---

8 COMMISSIONER GILINSKY: I don't agree with these
9 sentences, the rest of it.

10 CHAIRMAN HENDRIE: Let's see maybe there is some basis
11 for helping me on that.

12 COMMISSIONER GILINSKY: It is true we didn't establish
13 new policy guidelines.

14 CHAIRMAN HENDRIE: Okay. So the first sentence, at
15 least, is --- The second one?

16 COMMISSIONER GILINSKY: We apparently failed to
17 communicate the message, but it looks to me like we had some
18 help.

19 COMMISSIONER BRADFORD: That's the third sentence?

20 CHAIRMAN HENDRIE: Yes, Vic, let me ask you ---

21 COMMISSIONER KENNEDY: We had some help?

22 COMMISSIONER GILINSKY: Yes. I mean, here was Lee,
23 you know, sitting here in front of the Commissioners. He
24 obviously wasn't passing it down to anybody else.
25

1 COMMISSIONER KENNEDY: Well, there were all kinds of
2 other people there and they didn't hear it either.

3 COMMISSIONER GILINSKY: No.

4 COMMISSIONER BRADFORD: Where is that, August 2nd?

5 COMMISSIONER GILINSKY: We are talking about Marc's
6 statement.

7 COMMISSIONER KENNEDY: But the room was full of people.
8 They didn't hear it either. Those are some of the same people
9 who are quoted in these things.

10 COMMISSIONER GILINSKY: People are all -- they have
11 diodes in their brain.

12 COMMISSIONER KENNEDY: That may be.

13 COMMISSIONER GILINSKY: Rectifiers.

14 COMMISSIONER KENNEDY: It may be, you know. It may be
15 and I suggest -- the general management approach around here, I
16 would suggest, that that's what people look for. That may be
17 wrong, and if it is ---

18 CHAIRMAN HENDRIE: Let's see. I understand the second
19 sentence, the point. Do you have a Comment that you would care
20 to make on this?

21 COMMISSIONER BRADFORD: Well, the sentences 1 and 4
22 are all right. On 2 and 3, I guess I would just as soon hold
23 back until I see what turn out, but if Marc's memory, as is
24 expressed in that, which Dick has said is somewhat elliptical,
25 if the sentence is correct and it seems to me that the Commission
either met or wrote sheets on the transportation statement.

1 Sam himself may have prepared guidance documents, and if Sam
2 prepared guidance documents which say what Marc says there,
3 then I'm not sure that those two sentences really are ---

4 COMMISSIONER KENNEDY: Remember what I suggested,
5 Peter, that he was talking those elliptical terms.

6 COMMISSIONER BRADFORD: But for other reasons.

7 COMMISSIONER KENNEDY: You must have remembered also
8 that there were those other ---

9 COMMISSIONER BRADFORD: That's right. But if Marc said --
10 this is hypothetically. If Marc said no evidence, that is the
11 wrong phrase to use.

12 COMMISSIONER KENNEDY: If he said that, but he didn't.

13 COMMISSIONER BRADFORD: Yes.

14 COMMISSIONER GILINSKY: Why didn't he ever come up and
15 say, look, what is the story, what do I need to know? I mean,
16 that's what a manager should have done. If there is any doubt
17 in his mind, this is important stuff. He should have said, what
18 is the story? Why don't I know ---

19 COMMISSIONER BRADFORD: Why does the FBI come to me and
20 ask questions?

21 COMMISSIONER GILINSKY: -- if you don't tell me, I
22 quit. Why didn't he do any of that? He did, by the way, you
23 know, he was not in on the original list for nuclear weapons
24 information. This is the secret seven, which I sat up. It was
25 done because Giller and Starbird wanted it held very tightly

1 and it turns out they never gave us the stuff they said they
2 gave us. That's a whole separate story. But in any case, Lee ---

3 COMMISSIONER KENNEDY: Someone was trying to protect
4 the American public.

5 COMMISSIONER GILINSKY: Yes, right. Well, they were ---

6 CHAIRMAN HENDRIE: Onward, onward.

7 COMMISSIONER KENNEDY: I'm glad, by the way.

8 COMMISSIONER GILINSKY: Well, they were and they
9 weren't, let me tell you. But that's a whole other thing.
10 At any rate ---

11 COMMISSIONER KENNEDY: It certainly is one which I
12 would like to explore some time.

13 COMMISSIONER GILINSKY: I thought they were very
14 lax about ---

15 COMMISSIONER KENNEDY: Even the President thought --
16 even the President was concerned.

17 CHAIRMAN HENDRIE: But please, not to take kindly on
18 the subject. We have already had great difficulties ---

19 COMMISSIONER GILINSKY: When I was with the AEC, I was
20 trying to keep these guys from declassifying a lot of important
21 stuff from State that didn't need declassifying. I mean, just
22 to establish my credentials here. The fact is, Lee was not ---

23 COMMISSIONER KENNEDY: It is not your credentials that
24 I'm concerned about.

25 COMMISSIONER GILINSKY: All right. Lee was not
included and he complained about it. And as soon as he complained

1 he was included.

2 COMMISSIONER KENNEDY: And when did all of that
3 occur?

4 COMMISSIONER GILINSKY: '75.

5 CHAIRMAN HENDRIE: I think ---

6 COMMISSIONER GILINSKY: Why didn't he come up and
7 ask about this? He knew about the briefing, he talked to
8 somebody. From what the interviewers concluded, he knew as
9 much about the briefing as the interviewers conclude there was
10 to the briefing.

11 COMMISSIONER KENNEDY: Which they universally almost
12 concluded, not much, which certainly would not have lead
13 him to think.

14 COMMISSIONER GILINSKY: Well, I don't know. You know,
15 the CIA briefing on important matters. Why doesn't he go up
16 to the Chairman and say, what's the story? What about things
17 going on in this house, everybody's going around saying no
18 evidence. Is that the right thing to say? It works both
19 ways, you know.

20 COMMISSIONER KENNEDY: Let me just suggest that in
21 my management scheme the responsibility for management rests
22 at the top where the managers are and it goes downward.
23 One can never excuse, ever, management failure by the fact
24 that underlings didn't come forward to senior managers and
25 ask them questions to which they should have been given the
answers without asking. It is just a simple management principle.

1
2 COMMISSIONER GILINSKY: When you say underlings
3 I mean, here is a man at the level of an
4 assistant secretary.

5 COMMISSIONER KENNEDY: That may well be, but he is
6 our subordinate.

7 CHAIRMAN HENDRIE: Well, what I was going to suggest
8 is --

9 COMMISSIONER KENNEDY: What I want to say for the
10 record is, we owe them a responsibility, just as they owe us
11 responsibility, and it can't stop by simply saying he was not
12 responsible because he did not come and ask us.

13 Look, it should have started with we telling him.
14 That's where the fault lies.

15 COMMISSIONER BRADFORD: But that's what I gathered
16 Vic tried to do on August 2nd was to tell him.

17 COMMISSIONER KENNEDY: Let me just say that I was
18 there. A, he wasn't, that is Gossick, for the entire time in
19 my recollection he was in and out. B, I heard the discussion
20 and I came away with a very inconclusive view of the
21 discussion. That was not a clear and unmistakable direction,
22 in my view.

23 COMMISSIONER GILINSKY: Let's just forget about this
24 whole meeting and let's take the bigger meeting.

25 Now, we are switching in the sense of the July 29th
to the August 8th, but --

1 COMMISSIONER BRADFORD: But these particular sections
2 are intended to be in general, anyway, and it wouldn't apply
3 to those.

4 CHAIRMAN HENDRIE: Let me suggest that it might be
5 useful, and I would propose it, that to ask Lee to come around
6 and ask that question.

7 COMMISSIONER GILINSKY: Which question do you mean?

8 CHAIRMAN HENDRIE: The one just phrased.

9 COMMISSIONER GILINSKY: Why didn't he ask?

10 CHAIRMAN HENDRIE: Yes, and you know, the way you
11 phrased it, I think it might be useful to talk to Lee. Obviously,
12 we are long after the fact here and everybody, he included, the
13 present state of mind of the subject is considerably churned up
14 by all the events that have come since a year ago. Nevertheless,
15 we continue to have to struggle with the matters, problems, and
16 come to, I think it seems to me useful, and there may be some
17 other questions or matters that we would like to discuss with
18 him. What do you think?

19 COMMISSIONER KENNEDY: I recommend you ask him that
20 question. I think in bringing him before a board of inquestors
21 is demeaning and unwarranted. I would be pleased to accept any
22 question you provide, but I think to constantly subject the man
23 to the sort of conduct for which he has been exposed over the
24 past six or eight months is indecent.

25 Let me just say this: I have, as I told the Committee
and will tell them again, absolute total faith in his integrity
and honesty. And that is what is at stake here in this

1 whole discussion. And beyond that, I can't say anything more.
2 There is nothing, absolutely nothing that I have seen that shakes
3 my faith in his integrity and his honesty in any way and that
4 is the only thing that's at stake. It is being alleged or
5 little innuendos are being usggested that he had some kind of
6 either total, complete mental lapse or that he was acting in
7 some inexplorable and strange or reasons. None of that do I
8 accept.

9 He said what he thought was right. He was incorrect,
10 but that is no sense, in my view, challenges his integrity, his
11 honesty and his basic decency. The challenge is, I believe, for
12 basic decency of we who continue pillaring him. Now, I'm not
13 just going to be in the game.

14 CHAIRMAN HENDRIE: I don't think this is in the
15 nature of --- He is a senior officer of the Commission, and we,
16 for better or worse, are compelled to deal with the area before
17 us, and I wouldn't regard an inquisitorial sort of a sesssion. It
18 doesn't seem unreasonable for me. I think if I were the EDO ---

19 COMMISSIONER KENNEDY: It doesn't seem unreasonable
20 for me that you should ask him that question at all. I think
21 it is unreasonable for the man to be called in before four
22 Commissioners and asked a question of that kind. He can only
23 assume, as he will, as any reasonable man would, that he is
24 under deep suspicion. Why would he be brought before a board
25 of his seniors. If he is asked before the guy and asked by the

1 guy who, in the law, is the man who deals with such adminis-
2 trative matters. A question of that kind is a perfectly
3 reasonable and natural thing. It is quite a different thing.
4 It is just how the play is played, that's all and the impressions
5 are very important, it seems to me.

6 Let it not be forgotten that the staff, too, is watching
7 how we conduct ourselves. And I'll tell you, in my 35 years
8 I have never seen an organization in which morale is a bad
9 as it is in this organization, never. And I have seen some
10 organizations that had every reason in the world to be pretty
11 bad in their morale on account of they were half dead, but
12 they were never like this one. They are being constantly
13 treated to this sort of thing and they know it. They are
14 wondering if the Commission is ever going to take on its own
15 back some of the burden or whether it is going to continually
16 push it off on them.

17 As I said to the committee, I'm prepared to the
18 burden, part of it on my back, that part that I certainly did
19 play a part in. I was one of the Commissioners, and I, as a
20 member of the Commission saw no evidence that the Commission
21 gave any clear unquestioned instructions to the staff in this
22 regard. And they didn't, as any Commissioner will tell you.

23 COMMISSIONER BRADFORD: That point, I think is not being
24 debated. There is some question of whether ---

25 COMMISSIONER KENNEDY: It is not being debated by all
 of us, just some of us.

1 COMMISSIONER BRADFORD: That one is not being debated
2 by anyone, that is, there are two different statements. One is
3 that the Commission, in effect, affirmed a no-evidence statement,
4 and the other is the Commission gave no clear guidance, but
5 any other statement was in order. And I think this is
6 actually true. The first one is more debatable. I would agree
7 with you that I don't think it makes a lot of sense for 3 or 4
8 of us to call Lee in separately and ask him that question.

9 COMMISSIONER GILINSKY: I think Dick is objecting to
10 a panel.

11 COMMISSIONER KENNEDY: I think the question ought to
12 be asked, if it is a question of the material, it ought to be
13 asked. All I'm saying is I think it ought to be asked by the
14 Chairman.

15 COMMISSIONER GILINSKY: I would agree.

16 CHAIRMAN HENDRIE: Unfortunately, if I ask the question
17 and you are all not there to hear the answer, then the best you
18 can do ---

19 COMMISSIONER KENNEDY: I have told you, when you provide
20 me the answer it is the answer that came from Lee Gossick, as far
21 as I'm concerned. I also have complete faith in your integrity.

22 CHAIRMAN HENDRIE: But then, it inevitably suffers by
23 the translation and what we are groping for here is an assessment
24 of this point of intent to mislead and ---

25 COMMISSIONER KENNEDY: Since there was no question on
that score in mind, I am not troubled by the fact that there
may be some sufference in the translation.

1 COMMISSIONER BRADFORD: You know ---

2 CHAIRMAN HENDRIE: For me to attempt to carry the
3 full flavor of the response and what I would hope there would be
4 some discussion of the point and so on, I just feel unable to
5 bring it to you in any waht that ---

6 COMMISSIONER GILINSKY: Well, I don't think it goes to
7 the question of whether he intended to mislead. I think it goes
8 to whether he agreed and so forth.

9 COMMISSIONER BRADFORD: You were starting to say some-
10 thing a while ago on that about the big meeting and the small one.
11 You said the big one was closed. Is there a transcript of that?

12 COMMISSIONER GILINSKY: No, because there was just the
13 two of us. He did not have a transcript.

14 COMMISSIONER KENNEDY: Are you sure?

15 COMMISSIONER GILINSKY: I believe that is the case, I
16 don't know. I would assume if there was a transcript, this
17 investigation would have unearthed it.

18 COMMISSIONER BRADFORD: What about minutes?

19 COMMISSIONER GILINSKY: I don't know. I had just
20 assumed they would have come up with them. We ought to ask again
21 if there is any doubt about it.

22 COMMISSIONER KENNEDY: I would make the same assumption.

23 COMMISSIONER BRADFORD: But at all of these non-reported
24 meetings up to now, there is usually somebody from SECY there.

25 COMMISSIONER GILINSKY: I think it was just a two-line
set of words.

CHAIRMAN HENDRIE: A two-line minute.

1 Well, I must say, hearing the sort of questions we are
2 posing, Vic, it did seem to me that a discussion about the point,
3 for the man himself here was ---

4 COMMISSIONER KENNEDY: The question is: Why didn't you
5 come up here and ask us to be included, you know, really?

6 COMMISSIONER GILINSKY: Well, no. It is more than that.
7 I mean, given various questions that arose, you know, it just
8 isn't out of the blue. Toward the end, there were some pretty
9 potent signs.

10 CHAIRMAN HENDRIE: Well, the question: Why didn't
11 Gossick, and wasn't it his responsibility to have pressed the
12 point that he receive the briefing or the equivalent in terms
13 of the briefing. That point has been made by others. And I
14 found myself replying to it in some fashion, either in testimony
15 in answer to the question or very likely a letter. I seem to
16 remember trying to phrase what I believe was Gossick's answer
17 in response to some early discussion way back in November after
18 the first Udall/Tsongas letter about, can you remember what were
19 the circumstances on the briefing. Why didn't you go and so on.
20 So I find myself attempting to interpret his feeling. If I ask,
21 it seems to me that it might be useful.

22 COMMISSIONER KENNEDY: The question doesn't need
23 to arise, damn it. The responsibility for communicating
24 material to ones junior is the responsibility of the senior,
25 for Christ sake, in any management.

1 COMMISSIONER GILINSKY: But let's ---

2 COMMISSIONER KENNEDY: The fault was with his
3 management. That's you and me. Not on him.

4 CHAIRMAN HENDRIE: I agree, but I think it's ---

5 COMMISSIONER KENNEDY: Well, why don't we say that on
6 the record. I am.

7 COMMISSIONER GILINSKY: Let me phrase it a little
8 differently. The man gets mixed signals from the Commission.
9 Why does he take a categorical position on one side of the issue?

10 COMMISSIONER BRADFORD: Well, that's the first half of
11 the question or actually, it is a different question, but the
12 other part would be, in testifying, why didn't he at least indicate
13 that Vic held a different position.

14 COMMISSIONER GILINSKY: On the August 8th testimony?

15 COMMISSIONER BRADFORD: On the August 8th testimony.

16 COMMISSIONER GILINSKY: I think that's right.

17 COMMISSIONER KENNEDY: Indeed, that's what he has said.

18 And let me just point out that if you read the
19 testimony, I think most of the people who were there didn't
20 get the opinion as clearly as Vic intended it to be gotten.
21 Now, that doesn't say anything except what I have been saying
22 all of the time this morning. That the responsibility for
23 communicating rests with the guy who is trying to communicate
24 the words. It is not the responsibility of the hearer to try
25

1 to divine what the man is saying.

2 COMMISSIONER GILINSKY: But look, from the larger
3 meeting we had, orders went out to the Secretary, and Joe
4 Fouchard understood it, others understood it.

5 COMMISSIONER KENNEDY: About the statement -- about
6 the MUF Report.

7 COMMISSIONER GILINSKY: That's right.

8 COMMISSIONER KENNEDY: That's right.

9 COMMISSIONER GILINSKY: That's the way this statement
10 from the Commissioners, the sitting Commissioners ---

11 COMMISSIONER KENNEDY: On the MUF Report which was
12 '68 and after.

13 COMMISSIONER GILINSKY: That's right, and I tell you,
14 they were not to make other -- these kinds of categorical
15 statements in other contexts.

16 COMMISSIONER KENNEDY: Did it say that?

17 COMMISSIONER GILINSKY: No, but look ---

18 COMMISSIONER KENNEDY: See, that's the answer to
19 the question. The answer is "no" it didn't.

20 COMMISSIONER GILINSKY: They were told not to make --
21 they were told to restrict that report to '68 and beyond.

22 COMMISSIONER KENNEDY: That's right.

23 COMMISSIONER GILINSKY: Okay.

24 COMMISSIONER KENNEDY: That's right.

25 And they did restrict the report to '68 and beyond.

COMMISSIONER GILINSKY: Why does Gossick get up 6 days

1 later and say something different.

2 COMMISSIONER KENNEDY: Because I really don't think
3 he thought he was doing that, I'm not sure.

4 You know, he testified incorrectly. There is no
5 question about that. But I don't know what it is we are trying
6 to get at. He testified incorrectly. The question is: did
7 he intend to do that? That's what the issue is all about.
8 Was he intending to get up there and say something wrong, and
9 I'm telling you "no."

10 COMMISSIONER GILINSKY: I don't know what was in the
11 man's mind and none of us will ever know.

12 COMMISSIONER KENNEDY: Well, I'm telling you what
13 I believe, about the man that therefore answers the question
14 satisfactorily for me. The man's integrity and honesty are
15 absolutely beyond question.

16 COMMISSIONER GILINSKY: But I think I can answer the
17 question: "Did he act reasonably on the basis of what he knew?"
18 And I would say the answer is "no."

19 COMMISSIONER KENNEDY: That's a view in which you are
20 entitled to hold, which I don't share. He may have acted
21 incorrectly. Beyond that I would not go.

22 CHAIRMAN HENDRIE: Okay. In just a few moments,
23 because I don't want to carry the meeting until noon, let me
24 go back to A-1.

25 The first four sentences are unacceptable.

COMMISSIONER KENNEDY: I consider them all

1 unacceptationable.

2 CHAIRMAN HENDRIE: Well, I'm talking about the
3 standpoint of the -- collectively. I'm collecting votes.

4 Peter, you suggested that the last sentence in our
5 view, because of the inherent ambiguity.

6 COMMISSIONER GILINSKY: I don't know about this inherent
7 ambiguity. I think the answer is he should have made it clear.
8 The no-evidence statement has been laden with ambiguity since
9 then. The phrase itself is fairly ambiguous.

10 COMMISSIONER KENNEDY: No, there are two ways to
11 interpret it as the report itself makes clear.

12 The way in which I used it, "It is to be remembered
13 that at the beginning of this enterprise, back in 1975 and
14 early 1976, surely. There were statements being made around
15 here that there has never been anything stolen.?"

16 Now, that's what Rowden is talking about. There has
17 never been anything stolen. Now, it is a different thing to
18 say there is no evidence, that nothing has ever been stolen.
19 That is a very very circumscribe statement and that's what I was
20 using the no-evidence thing to do. To make certain that we were
21 not making a categorical statement that no diversion ever occurred,
22 but simply that we had no evidence that one did.

23 COMMISSIONER BRADFORD: Right. I think that ---

24 COMMISSIONER KENNEDY: And that is correct because
25 there is hard evidence and I would submit now there isn't much
else.

1 COMMISSIONER BRADFORD: I think I would not have used
2 the phrase "no-evidence" that way, but I have to concede that
3 there is an ambiguity in it because so many people were, is
4 something that I would have in mind to ---

5 COMMISSIONER KENNEDY: The General Counsel himself,
6 I think, makes a remark on this point.

7 CHAIRMAN HENDRIE: Well, there is a clear -- you know --
8 to say, "no material has ever been stolen" ---

9 COMMISSIONER KENNEDY: And that would be correct.

10 COMMISSIONER BRADFORD: That's right.

11 CHAIRMAN HENDRIE: -- and then to step down and say,
12 wait, wait, we are not going to say that. What we can say is --
13 then, no matter whether your evidence is hard or indication,
14 it certainly is then on down.

15 COMMISSIONER BRADFORD: I'm confused. I wouldn't have
16 thought that the phrase was ambiguous until I had been through
17 the number of hours we have spent on this, but I'm perfectly ---

18 COMMISSIONER GILINSKY: It also reads that no evidence
19 above and beyond the material accounting data is another qualifier.

20 CHAIRMAN HENDRIE: Yes.

21 COMMISSIONER KENNEDY: Which is what Harvey Lyons is
22 saying.

23 CHAIRMAN HENDRIE: Well, or the no-evidence statement
24 to be an accurate one. You have to understand it in the sense or
25 hard -- of evidence as proof and it applies.

COMMISSIONER KENNEDY: However, it would be even

1 admissible.

2 CHAIRMAN HENDRIE: Yes, but in any case, we are talking
3 about other materials from the accounting standpoint.

4 COMMISSIONER BRADFORD: Peter Strauss uses the phrase
5 and I guess I ought to note in passing the admissibility could be
6 altered to that. Suppose you had an absolutely illegal fire trap
7 and had it appear in court and had it established clearly ---

8 COMMISSIONER KENNEDY: That's evidence.

9 COMMISSIONER BRADFORD: Yes. I would not ---

10 CHAIRMAN HENDRIE: Well, I think Peter himself would
11 agree.

12 COMMISSIONER KENNEDY: Sure.

13 COMMISSIONER BRADFORD: So that the court is admitting --

14 CHAIRMAN HENDRIE: He is using it more in the sense of
15 stuff that would lead to seek guidance and support, I guess.
16 I don't know. Further qualification of the last sentence, Vic?

17 COMMISSIONER GILINSKY: That's all right. Go on.

18 CHAIRMAN HENDRIE: With regard to the 3rd one: "If the
19 Commission believed that the CIA briefing warranted particular
20 caution or circumspection in public statements, it failed to
21 communicate that message."

22 COMMISSIONER GILINSKY: Well, I mean there are attempts
23 to communicate if you judge by the results, I guess, in the
24 incidents, details.

25 COMMISSIONER BRADFORD: Are there, in fact, Secretarial -

COMMISSIONER GILINSKY: You put in, judging by those

1 notes.

2 COMMISSIONER BRADFORD: Are there guidance documents
3 on this that came out of the August 2nd date meeting?

4 COMMISSIONER GILINSKY: No.

5 COMMISSIONER BRADFORD: No?

6 COMMISSIONER GILINSKY: Well, there was, but the
7 way they wrote it up is they said, (a) that I had requested
8 a minor change in wording.

9 COMMISSIONER BRADFORD: But did they then describe
10 the change?

11 COMMISSIONER GILINSKY: No, I think it went out on
12 an attached sheet or something.

13 COMMISSIONER BRADFORD: But, in fact, there was
14 a Secretarial document that said that you had requested the
15 no-evidence statement came.

16 COMMISSIONER GILINSKY: No, it stated that I had
17 requested a minor change in wording or something like that.

18 COMMISSIONER BRADFORD: But then the sheet that
19 was attached showed what that was?

20 COMMISSIONER GILINSKY: I don't know that it was
21 attached to the Secretarial document. Joe Fouchard had it,
22 the others had it. There was a change in wording in the ---

23 COMMISSIONER KENNEDY: In the MUF statement.

24 COMMISSIONER GILINSKY: -- in the press release.
25 And also, changes in Burnett's statement, those changes were
made.

1 COMMISSIONER BRADFORD: When was Burnett's statement
2 given?

3 COMMISSIONER GILINSKY: He was going to brief the public
4 on about the 5th and so both his statment and the press release
5 were -- addressed it.

6 COMMISSIONER BRADFORD: Well, the message then was
7 communicated in some form after August 2nd?

8 COMMISSIONER GILINSKY: I would say that pretty clearly.

9 COMMISSIONER BRADFORD: Cliff Smith, by then, had
10 gotten the message. He said in here he was concerned about the
11 no-evidence statement. And that still isn't the same as
12 having the Commission communicate it, but at that point there
13 is no Commission to communicate, so there was no action, the
14 Commission couldn't have communicated anything after June 30th.

15 CHAIRMAN HENDRIE: Did some guidance develop out of that?

16 COMMISSIONER BRADFORD: No. I was informing myself.
17 I guess if I were writing that sentence and trying to get that
18 thought across ---

19 COMMISSIONER GILINSKY: Well, the thought is basically
20 expressed as it says in the first sentence, that the Commission
21 took no action to establish new policy or guidelines regarding
22 such statements, period.

23 COMMISSIONER BRADFORD: Yes, I guess if you read the
24 second and third sentences together, then you get your
25 expression of concern in August read into the third sentence
as well. And that, I think, is probably true as long as --

1 I would like to see whatever Sam picks up from his review of
2 the transportation thing. Will he bring that back in?

3 CHAIRMAN HENDRIE: I don't think so. We aren't going
4 to last much longer, really.

5 COMMISSIONER BRADFORD: I guss I have to take out
6 another reservation on those two sentences.

7 CHAIRMAN HENDRIE: Let's see. Any comments on 2 or 3
8 of a general sense or should we come back to the subject ---

9 COMMISSIONER GILINSKY: I think they are complete, both.

10 COMMISSIONER KENNEDY: Very obviously, I do not.

11 COMMISSIONER BRADFORD: Vic is waiting to crap on the
12 first one and ---

13 COMMISSIONER GILINSKY: I mean, all this evolving role
14 business, you know, it sort of has the guy as a clerk in the
15 Public Document Room. You know, the man occupies a high position.

16 COMMISSIONER KENNEDY: Vic, God damn it. Let's not
17 be disingenuous. You know as well as I do the number of hours
18 we sat at this table and argued about his role.

19 COMMISSIONER GILINSKY: Yes.

20 COMMISSIONER KENNEDY: And you know as well as I do
21 that we kept it as ambiguous as we could keep it and still
22 keep the man in a position called executive director.

23 COMMISSIONER GILINSKY: What does that have to do
24 with him testifying?

25 COMMISSIONER BRADFORD: What finally came ---

1 COMMISSIONER KENNEDY: All of a sudden, he not only
2 is executive director, he is the Commission --

3 COMMISSIONER BRADFORD: Yes, but that's different.

4 COMMISSIONER KENNEDY: -- a situation where up to that
5 point, he was being treated half as an office boy and used as
6 a whipping boy.

7 Now, you know, let's just fact it. For Christ sakes,
8 it was the worst managed operation I have ever witnessed, and
9 you and I were part of that management, Vic. And let's not
10 try to shove it off, because I'm not going to let it happen.
11 I'm not going to let people suffer for mistakes of the Commission.
12 I think it is high time the Commissioners stood up to their own
13 roles, to their responsibilities, and they have responsibilities
14 to the organization, God damn it.

15 The organization isn't alone in its responsibilities to
16 them. We owe them responsibility and they don't get anything
17 from us, or damn little except continuous, constant head and
18 shoulders beating or worse, undercutting. Now, that's my view
19 of the way this organization runs and has for a very long time.

20 CHAIRMAN HENDRIE: Vic, the point is very considerable
21 and has to do with questions about whether it is fair to ask,
22 shouldn't we have come back and said, I insist on having the
23 briefing, or whether he shouldn't have come and cornered the
24 Commission and said, I insist that you sit down and clarify for
25 me this matter, and if you attempt to regard his doing that or
not doing that as part of whatever his sins are in this matter,

1 then that posture in which he found himself has an awful lot
2 to do with him. If you are being treated in a certain way,
3 why you are in many ways discouraged from doing -- from taking
4 just the sort of initiatives --

5 COMMISSIONER KENNEDY: Why of course.

6 CHAIRMAN HENDRIE: -- that suggest a guy in his
7 position should have taken.

8 I guess, in some ways -- in some ways it seems to
9 boil down to an opinion that, well, Gossick must be at fault
10 here, because his position, you know, the correct thing for
11 him to have done was to have resigned. The fact that he didn't
12 resign, you know, leads immediately to his culpability. That
13 may be going a bit far.

14 COMMISSIONER KENNEDY: Not very.

15 CHAIRMAN HENDRIE: But it thrusts in that direction.
16 So I think the way in which the Commission -- his status was
17 being handled by the Commission said to him, the way he was
18 being treated with regard to the other office directors, by
19 the Commission has a very considerable amount to do with
20 precisely the thing that is at issue before us.

21 I think the view that he had a responsibility to
22 inform himself, even if there hadn't been a Commission briefing,
23 and to be in a better position to accurately know what the
24 Commissioners individually did and had to say about this subject.
25 I think that argument would be an enormously strong one, if,
in fact, he hadn't been treated like the other directors, in a

1 fashion that he was treated, particularly in the area of those
2 sensitive safeguards matters. He had every reason, in view
3 of the Commission's -- not being brought to the briefing
4 where the Commission dealt directly with Chapman on these
5 things ---

6 COMMISSIONER GILINSKY: Well, but we have no idea why
7 he wasn't at the briefing. Nobody seems to know.

8 CHAIRMAN HENDRIE: Nobody is willing to stand up and
9 say, I said, he shouldn't be at the briefing. The thought has
10 been expressed that they, again, were trying to keep down the
11 number of people and limit the people ---

12 COMMISSIONER KENNEDY: That's correct.

13 CHAIRMAN HENDRIE: -- present to those who were felt
14 to have a direct need-to-know. But the Commission dealt directly
15 with Chapman, in general, on safeguards matters of this kind,
16 particularly the more sensitive ones without Gossick necessarily
17 being informed or in the room or anything else. Under those
18 circumstances I find it very hard to say to him, why didn't
19 you insist on ---

20 COMMISSIONER GILINSKY: I don't know of anything else
21 that he didn't have access to. As I said, on the nuclear weapons
22 stuff, he did have access. As for the attendance at the
23 meeting, I was surprised ---

24 COMMISSIONER KENNEDY: Mr. Gossick was rather often
25 finding things out the Commission or Commissioners had passed
to certain senior staff members, when the senior staff members,
who at some point would come and tell him about them. Now,

1 you know, that is just a fact of life. It happens to be true.
2 He was bypassed as often as he was observed. It just happens to
3 be true.

4 COMMISSIONER GILINSKY: But are there any other areas
5 where he -- classified for which he didn't have access?

6 COMMISSIONER KENNEDY: In due regard to the
7 sensitivities of the particular words, I can't think of any others
8 that are appropriate at the moment. There was a pattern of
9 conduct on the part of the Commission with respect to the
10 executive director and the Commission's relationship with the
11 senior officers of the agency which left him in a very ambiguous
12 position, in my judgment. It was wrong. I thought so then,
13 I think so now.

14 Now, I am not suggesting that that is in any way a full
15 explanation for what occurred. It is, however, it seems to me,
16 as the Chairman so well point out, a mitigating factor which
17 underly in no small measure most laws of nature, the kind of
18 reaction that you would expect of the man in certain kinds of
19 circumstances. He is not going to intrude in something which
20 he thinks, particularly, where it applies to a particular office
21 director, where he thinks it is inappropriate for him to do so or
22 unnecessary for him to do so. And unless somebody conveys to him
23 the necessity, and particularly when he finishes, when the thing
24 is over and people go to him and confide in him that the briefing
25 really didn't do much, I'm confident that he said, they didn't
include me in the first place and it doesn't seem as though there

1 was anything here that was of any great significance, therefore,
2 why should I bother them. I have got other fish to fry and
3 other worries on my hands.

4 So a considerable time, a very long time after that he
5 is in a position where he is going to have to testify. And then
6 he is suppose to -- as he was testifying on, as I recall, a very
7 large and continuous series of items in which he normally would
8 not have been testifying, and he took them all on, and there is
9 one lapse, there is one mistake. All I can say is, there but
10 for the grace of God go you and I, Vic.

11 COMMISSIONER GILINSKY: Well ---

12 COMMISSIONER KENNEDY: It might have been or
13 something else, you see, but on this one -- on this one there was
14 a high degree of interest in some quarters. In others where
15 mistakes might have occurred that might not have generated that
16 sort of interest and therefore, a simple correction of the matter
17 would have taken place as it should have.

18 COMMISSIONER GILINSKY: Why wasn't it corrected?

19 COMMISSIONER KENNEDY: Why isn't it now is the
20 question. We started this, as I recall, back in September,
21 didn't we?

22 COMMISSIONER BRADFORD: When you talk about the involving
23 role of the EDO, first of all, it seems to me the distinction,
24 I think that one has to make between involving role of the EDO and
25 the Congress, the quorum gets thrust into a very unusual situation.

1 But that aside, was there a time at which the Commission made a
2 decision to change the role of the EDO or was there a moment
3 in time in which the charter was in any way agreed upon?

4 COMMISSIONER KENNEDY: Yes.

5 COMMISSIONER GILINSKY: I think something happened in
6 April of '76 or '77. '77.

7 COMMISSIONER KENNEDY: April of '77 because I remember ---

8 COMMISSIONER GILINSKY: You are talking about
9 speaking frankly, you know, let's speak frankly.

10 The reason Gossick got treated the way he did was
11 because that was the way the Commission assessed his abilities.

12 COMMISSIONER KENNEDY: That was not the way I under-
13 stood it at all.

14 COMMISSIONER GILINSKY: Well, you may have dealt with
15 him differently, but that was the way ---

16 COMMISSIONER KENNEDY: That was the way you assessed
17 him. You know, I never heard the Commission assess his
18 abilities that way, and I think I talked to my colleagues as
19 often as you did and as regularly.

20 COMMISSIONER GILINSKY: Well, how do you explain it
21 then?

22 COMMISSIONER KENNEDY: That's the way the Commission
23 wanted the role handled. They didn't want a strong director.
24 Was the matter discussed before the Commission, ever ---

25 COMMISSIONER GILINSKY: Well ---

COMMISSIONER KENNEDY: -- before the Commission ever

1 became actually a Commission?

2 COMMISSIONER GILINSKY: But there is a difference
3 not having a strong director and all of this shabby treatment.

4 COMMISSIONER KENNEDY: Oh, I don't think so.
5 I think they are part and parcel of the same thing. I just
6 think it is a simple syndrome.

7 COMMISSIONER BRADFORD: But in April of '77 the
8 Commission decided -- What did the Commission decide in
9 April of '77 that might have made a difference?

10 CHAIRMAN HENDRIE: It approved a Manual Chapter which
11 clarifies that the office directors in normal sequence report
12 to the EDO. They indeed have the statutory right to come
13 directly to the Commission or Commissioners.

14 COMMISSIONER BRADFORD: But prior to that there was
15 no ---

16 CHAIRMAN HENDRIE: And that's recognized, but along
17 those sequence of staff business is down through the EDO to the
18 organization and from the organization to the EDO.

19 COMMISSIONER KENNEDY: Which is a matter not taken
20 lightly by the senior staff.

21 COMMISSIONER BRADFORD: No, I gathered.

22 CHAIRMAN HENDRIE: And that was, as I understand it,
23 necessarily normal for all information, at least in all areas
24 up until, I don't know, maybe about the April time frame.
25 Inevitably a little before, because there had been a time limit

1 when people -- it was suggested that that ought to be the way
2 the Manual Chapter was ---

3 COMMISSIONER GILINSKY: You know, there is a lot more
4 to this. Gossick was not included to go and tangle with Ben
5 Rusche or Chapman.

6 COMMISSIONER KENNEDY: Well, he had no assurance of
7 any kind that anyone would back him up if he did.

8 CHAIRMAN HENDRIE: You know, one ran very serious
9 risks if you want and badgered Rusche. Why he'd shake his
10 hand on you.

11 COMMISSIONER KENNEDY: Not only that, he would come
12 running up here and one or another Commissioner or probably the
13 whole group and shake their heads and tell them to get Gossick
14 off his back. And that probability is that's what would happen.
15 Gossick knew that.

16 Gossick, it seems to me in the circumstances and
17 one might attribute it to the good common sense and judgment,
18 to keep off the Commission's plate that kind of problem which
19 it certainly didn't need. It had enough to do. And since the
20 Commission had, in a sense, outlined its own view of things,
21 why in hell should he create another problem. It seems to me
22 that was an evidence of sound judgment on his part and certainly
23 loyalty to the Commission he was certain. He wasn't creating
24 more problems for it. He was trying to run it.

25 CHAIRMAN HENDRIE: May I have a vote to withhold
today's tape on the same basis that ---

1 COMMISSIONER GILINSKY: Aye.

2 COMMISSIONER KENNEDY: Aye.

3 COMMISSIONER BRADFORD: Aye.

4 CHAIRMAN HENDRIE: -- of previous meetings.

5 Thank you very much. So ordered.

6 Let me punch the machine.

7 (Whereupon the meeting was concluded at
8 approximately 11:30 a.m.)

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