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NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

PUBLIC MEETING

BRIEFING ON POSSIBLE IMPROPRIETY IN THE  
USE OF NMSS' ANALYSIS OF CALIFORNIA ENERGY  
COMMISSION'S INTERIM REPORT ON REPROCESSING  
AND HIGH LEVEL WASTE DISPOSAL (SECY 78-19)

Place - Washington, D. C.

Date - Monday, 16 January 1978

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Telephone:  
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*Official Reporters*

444 North Capitol Street  
Washington, D.C. 20001

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
PUBLIC MEETING

BRIEFING ON POSSIBLE IMPROPRIETY IN THE  
USE OF NMSS' ANALYSIS OF CALIFORNIA ENERGY  
COMMISSION'S INTERIM REPORT ON REPROCESSING  
AND HIGH LEVEL WASTE DISPOSAL (SECY 78-19)

Room 1130  
1717 H. Street N.W.  
Washington, D.C.

Monday, 16 January 1978

The Commission met, pursuant to notice, at  
11:40 a.m., CHAIRMAN JOSEPH HENDRIE, presiding,

BEFORE:

COMMISSIONER JOSEPH HENDRIE, Chairman.

COMMISSIONER VICTOR GILINSKY

COMMISSIONER RICHARD KENNEDY

COMMISSIONER PETER BRAFORD:

NRC STAFF ATTENDANCE:

Robert Ryan  
Howard Shapar  
Cliff Smith  
Dr. Parry  
Lee Gossick  
Ken Pedersen  
Jim Kelley

P R O C E E D I N G S

(11:40 a.m.)

CHAIRMAN HENDRIE: Let's see. I guess we are all here, so why don't we get started.

The next subject is a briefing on how some informal memoranda got one place or another in the case of comments on the California Energy Commission's Interim Report on Reprocess and High Level Waste Disposal.

The Commission has thorough displays from Staff on this. It seemed to me a pretty complete job of wrapping it up.

I might start the proceedings out by noting that back at the end of September I met here with Richard Maullin, the Chairman of the California Commission, and his deputy, Jim Walker; Herbert Brown, consultant to the Commission, was with them.

We had a good discussion here on the sort of matters that are of mutual interest. And the date was September 30th.

Mr. Maullin had to go to Capitol Hill to give some testimony or a speech or something like -- I am not sure which. He came back later that day and we had a further discussion in the afternoon, about 2:00 p.m., my log says.

I must say I can't remember at this point whether I did or did not, but it is quite conceivable that I



1 presented him and his deputy with copies of that memoranda  
2 on an informal basis with the understanding that it was a  
3 Staff document.

4 And I guess we could probably find out whether I  
5 did or didn't if I would call Mr. Maullin, Mr. Walker and  
6 Herb Brown, but I haven't done that. I note the fact for  
7 the record before we get on into other elements of the  
8 proposition.

9 I will make one other comment. We make a good  
10 deal in this agency that we don't conceal pieces of Staff  
11 view which don't agree with the views of the cognizant branch  
12 chief or assistant director, or director, or executive dir-  
13 ector, or Commissioners.

14 And I wouldn't be surprised but what we will find  
15 that this piece of material may fall in that category. I  
16 wouldn't see any more reason to conceal and be embarrassed  
17 about this piece of information than I would a memorandum  
18 from a responsible professional on the reactor side where I  
19 have had some experience saying: I don't agree with the  
20 Staff position on the safety-related elements of the switch  
21 gear arrangement for plant number x, which we would pre-  
22 sumably, I have said, put in a Safety Evaluation Report in  
23 the public document room and every place else.

24 Vic, this briefing is at your request, and since  
25 I have talked at some length, I think it is fair that you

1 might want to, if you would like---

2 COMMISSIONER GILINSKY: Sure.

3 CHAIRMAN HENDRIE: -- to make some introductory  
4 remarks, please do so.

5 COMMISSIONER GILINSKY: Well, since you have  
6 raised the point, I think it is worth saying that what is not  
7 at issue here is whether the Staff has a right to its views  
8 or to distribute those. I think it clearly does.

9 But the question is the proper labeling of these  
10 memoranda.

11 And I asked for the meeting because a memorandum  
12 prepared for me by one of the Staff offices came to be mis-  
13 used in California political battles between the California  
14 Commission and its critics.

15 It has been passed off as a Commission document.  
16 We have come for a bit of criticism for improperly involving  
17 ourselves in California decision-making.

18 I must say the document as it was sent out, in  
19 fact, lent itself to misinterpretation.

20 Now, the issue doesn't go to the merits of the  
21 controversy, the substance of the memo and so on. It con-  
22 cerns the question of sending out -- really, of how we an-  
23 swer our mail.

24 The question of intent has been brought up, news--  
25 paper articles. I think it needs to be cleared up. But

1     aside from that, I think we have to -- I think the meeting  
2     will have served a useful purpose if we come out of it with  
3     some sort of guidelines for dealing with state offices, as  
4     we have, for example, for dealing with members of Congress,  
5     or similar sort of correspondence.

6             And I see you have a set of notes there, Lee.

7             MR. GOSSICK: Yes.

8             I am prepared to sort of cover this matter.

9             Of course, in your memorandum of January the 6th,  
10     Commissioner Gilinsky, you requested the briefing, discussion,  
11     of the NRC Staff's role, circumstances surrounding this mat-  
12     ter, of the analysis that was prepared by NMSS of this interim  
13     report on reprocessing and high level waste proposal by the  
14     California Energy Resource Conservation Development Commission.

15             In that memorandum, Commissioner Gilinsky ex-  
16     pressed concern that there may have been improper contact  
17     between the NRC Staff offices and California utilities,  
18     utility representatives, legislators and legislative staff  
19     members.

20             You said that there is an appearance of members  
21     of the NRC Staff having allowed themselves to be used by  
22     San Diego Gas and Electric Company to influence public  
23     opinion in California, and having been improperly involved  
24     in California politics and California decisions.

25             You also asked how the Office of State Programs

1 truncated version of the NMSS analysis came to be circulated  
2 as an NRC document, and whether or not any member of the  
3 Office of State Programs staff or any other person outside  
4 of NMSS made any contribution to the analysis which you had  
5 received on September 7th, in response to his request made  
6 directly to Dr. Smith on August 11th.

7 On Thursday, January 12th, I sent the Commis-  
8 sioners a chronology of the events related to this matter,  
9 together with a tab set of all the pertinent documents.

10 On January 13th, in response to a memorandum of  
11 the same date from Commissioner Gilinsky, expanding on his  
12 request of January 6th, I provided the Commission with addi-  
13 tional information having to do with the contacts between  
14 members of the Staff and the commissioners or staff members  
15 of the California Energy Resources Conservation and Develop-  
16 ment Commission.

17 I think in reviewing this matter, I believe it  
18 will be more convenient for you to refer to a consolidated  
19 and somewhat less detailed chronology of events that I have  
20 asked the Secretary to distribute to you.

21 (Distributing documents.)

22 MR. GOSSICK: Before proceeding with this, how-  
23 ever, I would like to reaffirm the conclusions which I in-  
24 cluded in my memorandum to you on January the 12th;

25 First, I am informed that no member of the OSP



1 staff or any person outside of NMSS made any contribution  
2 to the analysis which Dr. Smith provided Commissioner  
3 Gilinsky on September the 7th.

4 And secondly, based on information provided me  
5 with regard to the contacts between members of the Staff and  
6 the California legislators, utilities, and commissioners and  
7 staff of the Energy Commission in California, it is my view  
8 that members of the Staff have not engaged in "improper  
9 contacts, or involvement in California politics or California  
10 decision-making."

11 Now, this chronology of events starts, of course,  
12 in August, August the 11th, when Commissioner Gilinsky asked  
13 Dr. Smith for an analysis of the interim report that had  
14 been submitted by CERDC which I presume had been sent to the  
15 Commission, and I believe was forwarded to Dr. Smith for  
16 his review.

17 COMMISSIONER KENNEDY: Could I ask if the  
18 California Commission had solicited any views on the Com-  
19 mission or Staff's part when they submitted that report to us?

20 MR GOSSICK: It is not evident from the request  
21 that we got.

22 DR. SMITH: I would have to ask my staff. I know  
23 personally I was not.

24 Jack or Bill, were we asked any comments, speci-  
25 fically?

1 MR. PARRY: Not before this time, no.

2 DR. SMITH: Not before this time.

3 COMMISSIONER KENNEDY: Well, I was wondering,

4 MR. GOSSICK: Later on.

5 COMMISSIONER KENNEDY: If at some point the  
6 California Energy Commission had elicited from us any com-  
7 ment of any point --

8 DR. SMITH: Oh, yes. That will come out later  
9 at a later time.

10 MR. GOSSICK: At a later date.

11 On August the 16th, then, a letter from State  
12 Senator Alquist came in to Mr. Ryan, asking for a review of  
13 this same interim report.

14 On August the 23rd, Mr. Ryan sent a memo to various  
15 Staff offices requesting comments on the interim report.

16 And then in late August, there was a telephone call  
17 apparently from Commissioner Pasternak to Mr. Jaske in the  
18 Office of State Programs, informing us that a minority posi-  
19 tion on the interim report was being filed and would be  
20 furnished to NRC.

21 I think, also, at roughly the same time, Homer  
22 Lowenberg had, I guess -- or slightly before that, run into  
23 Commissioner Pasternak, I believe in a meeting in Vienna  
24 and been told that there was a minority report being pre-  
25 pared.

1 COMMISSIONER GILINSKY: Could I ask you:

2 Was the memorandum prepared with both requests in  
3 mind, or was it simply that one memorandum was used also for  
4 another purpose?

5 MR. GOSSICK: I am sorry; which memorandum.

6 DR. SMITH: He is talking about --

7 COMMISSIONER GILINSKY: The memorandum prepared for  
8 me.

9 DR. SMITH: Yes.

10 COMMISSIONER GILINSKY: Was that --

11 DR. SMITH: No.

12 After the request that you made to have the  
13 California interim report reviewed, I asked Dick Cunningham  
14 to delegate or appoint someone in our office, senior tech-  
15 nical man, to review the report.

16 He came back and said Dr. Parry would be the per-  
17 son who would review the report.

18 It was my -- initially the first report that I  
19 got from the Staff was only about one or two pages. It was  
20 rather general. I felt that what you really wanted was some-  
21 thing that was rather detailed and candid.

22 And so I sent it back to the Staff, and that re-  
23 sulted in a report coming back. I looked at it. It was my  
24 viewpoint that since you had asked for the views of the Staff  
25 with respect to that report, and since I considered it an

1 intra-agency memo, if you will, from me to you, on that basis  
2 I forwarded the report to you.

3 It was not a report -- a memorandum that was pre-  
4 pared for anyone other than you, the one that I signed.

5 CHAIRMAN HENDRIE: Well, in particular, Com-  
6 missioner Gilinsky's question is that since these requests,  
7 one from him to you for sort of a private review, and also  
8 the one to Ryan from California for NRC's views were arriv-  
9 ing sort of within a week or two of one another, --

10 DR. SMITH: No.

11 Dr. Parry's memorandum -- Dr. Parry's work in  
12 preparing that memorandum which I subsequently forwarded,  
13 was exclusively to answer or to respond to Commissioner  
14 Gilinsky.

15 DR. PARRY: That is correct.

16 COMMISSIONER KENNEDY: But it says on this chron-  
17 ology that on September 7th, a copy of that memo was sent to  
18 Mr. Ryan in response to his August 23rd request for Staff  
19 comments on the interim report.

20 MR. GOSSICK: I believe there had been a conver-  
21 sation in connection with this subject, Commissioner Kennedy,  
22 asking on the part of Mr. Ryan's office, whether or not they  
23 felt that this thing could be -- this report -- could be  
24 provided to Senator Alquist.

25 There was discussion that with some revision and

1 some deletion of sort of internal names and things like this,  
2 that they thought it was appropriate. And that we will get  
3 into later on, how that came to be sent instead of the other  
4 report.

5 But in the time period September -- from  
6 September 9th to --

7 COMMISSIONER GILINSKY: Could I just stop you for  
8 a minute. There is an August 23rd memo in which Bob asks  
9 for the views of a number of offices.

10 MR. RYAN: Yes.

11 COMMISSIONER GILINSKY: And were these selected  
12 on the basis of their participation in the hearings, or  
13 simply the relevance of their expertise?

14 MR. RYAN: No; they were selected on the basis  
15 of our general practice when we have a matter of this sort,  
16 to circulate to the widest possible group of offices within  
17 the agency, to elicit comments on matters of this sort.

18 The selection was made by Bob Jaske in my ab-  
19 sence. I was on vacation at that time. I think the selec-  
20 tion is correct. That is the logical breakdown as far as  
21 I can see; OELD, Standards, NRR, and NMSS.

22 MR. GOSSICK: And Research.

23 MR. RYAN: Research, RES; right.

24 I agree with the breakdown.

25 MR. GOSSICK: Okay.

1           The week of September 12th, there was a meeting  
2 held in Bethesda at NRC, between Mr. Simon of the Energy  
3 Commission of California and Dr. Bishop and Dr. Parry.

4           And I believe that as a result of this meeting,  
5 where there generally was a discussion of I guess this re-  
6 port as well as other matters, at some later time, there was  
7 a memo sent from Mr. Simon to Dr. Bishop, I believe, pro-  
8 viding a copy of their Staff comments on the minority report,  
9 and also soliciting any comments that the Staff had on that  
10 interim report, as we mentioned earlier.

11           So it was not until some time later in September  
12 that there was this request directly from the commission  
13 staff, asking for comments.

14           In late September, or --

15           COMMISSIONER GILINSKY: Let's see; at some point  
16 Bill gave them a copy of this.

17           MR. GOSSICK: Yes; that was the next point I was  
18 going to cover --

19           COMMISSIONER GILINSKY: Okay

20           MR. GOSSICK: -- Commissioner Gilinsky.

21           We can't pin this date down exactly, but it was  
22 either late September or early October, that Dr. Parry,  
23 following this meeting and following the other discussion  
24 with the California commission staff, did send to, I guess  
25 it was Mr. Simon, was it, Parry?



1 DR. PARRY: Mr. Simon.

2 MR. GOSSICK: Or Mr. Simon, rather; another ver-  
3 sion or an edited version of Dr. Smith's September 7th memo.

4 Now,

5 COMMISSIONER GILINSKY: I noticed there was no  
6 covering letter in this package that you presented us.

7 MR. GOSSICK: It was only, as I understand it,  
8 Dr. Parry, you just put a buck slip or a note?

9 DR. PARRY: It was sent as, "as per your request."

10 COMMISSIONER GILINSKY: So in other words, these  
11 were understood to be the informal views of your outfit?

12 COMMISSIONER KENNEDY: It was sent in accordance  
13 with whose request?

14 DR. PARRY: Mr. Simon had made a request to us  
15 during that meeting. And that had subsequently been edited  
16 and then was sent out under (inaudible).

17 COMMISSIONER GILINSKY: So these were not, "NRC  
18 views," or --

19 MR. GOSSICK: No.

20 COMMISSIONER GILINSKY: -- or "Commission views?"

21 MR. RYAN: That request is reflected in Simon's  
22 letter to Parry dated the 22nd of September, I believe it  
23 was.

24 MR. GOSSICK: In late September and again in the  
25 early October time period, the State Programs and Staff

1 offices were in the process of considering the proposed  
2 response to Senator Alquist.

3 The views expressed by, such as Standards Develop-  
4 ment, NRR and others were considered. The Office of the  
5 Executive Legal Director had proposed a modification --

6 COMMISSIONER GILINSKY: Well, could go into that.

7 For example, in Standards, I notice there is  
8 a statement. Mr. Benaroya says:

9 "I believe we at NRC should confine  
10 our comments to the accuracy of statements and  
11 reports, and so on, not to the conclusion it  
12 draws."

13 There are number of other comments which seem to  
14 have been ignored. And I am wondering how that came about,  
15 including OELD which seemed to have gone over the memorandum  
16 fairly carefully.

17 MR. GOSSICK: Yes.

18 COMMISSIONER GILINSKY: -- and indicated --

19 MR. GOSSICK: Well, if I may --

20 COMMISSIONER GILINSKY: -- indicated portions  
21 which they thought inappropriate.

22 MR. GOSSICK: Yes.

23 MR. RYAN: Mr. Chairman, may I address this one?

24 CHAIRMAN HENDRIE: Shoot.

25 MR. RYAN: OELD filed a paper with our office in

1 September -- I can't find (inaudible) on it. It is F.

2 MR. GOSSICK: It is 9, September.

3 MR. RYAN: It is September 9th.

4 COMMISSIONER KENNEDY: That is an "f?"

5 MR. GOSSICK: That is an "f."

6 MR. RYAN: This -- well, let me read it:

7 "The subject report was prepared pursuant  
8 to certain California statutes pertaining to land  
9 use and certification of nuclear facilities in that  
10 state. The statutes in question are of doubtful  
11 validity, at least insofar as their application  
12 would frustrate the full effectiveness of federal  
13 law.

14 "However, it would seem unnecessary and  
15 perhaps inappropriate to record this assessment in  
16 an NRC response to Senator Alquist, since we were  
17 not specifically asked to address the preemption  
18 issue and since the actual conflict with federal  
19 law may never arise.

20 "We have no other substantive comments  
21 to make."

22 We followed that advice, Commissioner, fully and  
23 completely. We did not comment on the question of pre-  
24 emptation.

25 COMMISSIONER GILINSKY: Well, but let's see; you

1 have got an edited version of your version of the original  
2 memorandum prepared in Cliff Smith's office.

3 MR. RYAN: Yes.

4 COMMISSIONER GILINSKY: Which was edited, I under-  
5 stand, by Tom Engelhardt.

6 MR. RYAN: Yes, that is correct.

7 COMMISSIONER GILINSKY: And it --

8 MR. RYAN: This come at a later date. The ques-  
9 tion was how to --

10 COMMISSIONER KENNEDY: Excuse me. Is that in this  
11 file?

12 MR. RYAN: Yes, it is.

13 I don't recall the --

14 MR. GOSSICK: Attachment --

15 MR. RYAN: Attachment T.

16 CHAIRMAN HENDRIE: Back in that neighborhood.

17 MR. RYAN: Just a second.

18 COMMISSIONER GILINSKY: Also, on the way toward  
19 it, I see a memorandum from Salovine which says:

20 "Considering the broad scope of the  
21 subject matter, the majority report is well con-  
22 structed and downright factual.

23 MR. RYAN: Yes, indeed.

24 COMMISSIONER GILINSKY: Which, without getting  
25 into the merits --

1 MR. RYAN: Well, let's talk about that for a  
2 moment.

3 COMMISSIONER GILINSKY: Basically, the --

4 MR. GOSSICK: Could we have just a moment.

5 COMMISSIONER GILINSKY: Sure.

6 MR. GOSSICK: There is one other point here, that  
7 I think it might as well get introduced now. By the way,  
8 this attachment is attachment L, that Tom Engelhardt had  
9 proposed.

10 COMMISSIONER GILINSKY: Yes.

11 MR. GOSSICK: And my --

12 COMMISSIONER KENNEDY: In that connection, what  
13 he has done is marked a number of suggested changes --

14 MR. GOSSICK: Right; editorial and content.

15 COMMISSIONER KENNEDY: Okay.

16 MR. GOSSICK: And as you will note, at least my  
17 copy and I trust yours, has a date of September the 7th,  
18 19 --

19 COMMISSIONER KENNEDY: October the 7th.

20 MR. GOSSICK: October the 7th. I am sorry. October  
21 the 7th.

22 Now, on October the 5th, of course, there was the  
23 letter from Mr. Pollard to Commissioner Gilinsky indicating  
24 that he had a copy of the original September 7th memo that  
25 had been addressed to Commissioner Gilinsky.

1           And I wanted to bring that out, in that I think  
2 this was a factor, then, in deciding, at least according to  
3 the OSP people, how we finally came up with sending this --

4           MR. RYAN: But more than that, Mr. Gossick, the  
5 Office of Nuclear Material Safety and Safeguards had advised  
6 us in late September that the document in question had been  
7 given to the California Energy Commission in the person of  
8 Gary Simon.

9           COMMISSIONER GILINSKY: But this was yet another  
10 edited version.

11          MR. RYAN: Well, I had no idea of that. I was told  
12 that the document had been given to Mr. Simon. I think it  
13 is edited, but it is substantially the same document as --

14          MR. GOSSICK: I have been through it line-by-line,  
15 comparing it --

16          COMMISSIONER GILINSKY: But the question here is  
17 not whether or not you sent this memo --

18          MR. RYAN: I didn't say that.

19          COMMISSIONER GILINSKY: -- supplied for me to  
20 other people, although I think you should have as a courtesy  
21 asked me about it.

22               There is nothing wrong with that memo being sent  
23 around. It is question of how it is portrayed and whether it  
24 is portrayed as a Commission view.

25               I mean, I have no objection to people seeing this



1 memo and when Mr. Pollard asked me for it, I put it in the  
2 public document and sent it to him.

3 MR. RYAN: Sure; I understand that.

4 I portrayed this memo in my letter to Senator  
5 Alquist as a Staff document. And it is intrinsically reads  
6 a Staff document; NMSS says this and NMSS says that, and  
7 this is the view of the Staff.

8 COMMISSIONER GILINSKY: Well, we will get to that.

9 But the document does --

10 MR. GOSSICK: Which version are we speaking to now;  
11 the truncated or the full version.

12 COMMISSIONER GILINSKY: Well, I am just sort of  
13 following along. I am up to M.

14 MR. GOSSICK: M; okay.

15 COMMISSIONER GILINSKY: Or L, I guess it is, which  
16 is --

17 MR. GOSSICK: L is the Engelhardt --

18 COMMISSIONER GILINSKY: It is the Engelhardt  
19 revision.

20 MR. GOSSICK: Right.

21 COMMISSIONER GILINSKY: And he lines out some  
22 sentences which characterize the tone and talked about  
23 anti-nuclear bias things like that this, rather than dealing  
24 with the merits of the technical matters, and if the  
25 California people (inaudible), we have the expertise; by all

1 means, we should point this out to them.

2 But --

3 MR. RYAN: May I comment on that?

4 COMMISSIONER GILINSKY: Yes.

5 MR. RYAN: As far as I was concerned, Commissioner,  
6 by this time it was a moot issue. The document was out, as  
7 far as I was concerned, to California, and out abroad in the  
8 world.

9 This was confirmed --

10 COMMISSIONER KENNEDY: This was the document --

11 MR. RYAN: The Smith document, yes.

12 COMMISSIONER KENNEDY: This document --

13 MR. GOSSICK: The September 7th memo to Commissioner  
14 Gilinsky.

15 COMMISSIONER KENNEDY: The October

16 MR. RYAN: The original memo.

17 COMMISSIONER KENNEDY: The October 10th paper,  
18 unedited; that is, this document without the line-throughs  
19 and marks on it -- no?

20 MR. RYAN: No. The original memorandum from  
21 Dr. Smith --

22 COMMISSIONER KENNEDY: Okay.

23 MR. RYAN: -- to Commissioner Gilinsky.

24 COMMISSIONER KENNEDY: All right.

25 And that was -- had been transferred to Mr. Simon

1 of --

2 MR. RYAN: That was my understanding.

3 COMMISSIONER KENNEDY: A. B, had been made  
4 available through -- in the public document room and to Mr.  
5 Pollard.

6 MR. RYAN: Right.

7 COMMISSIONER GILINSKY: Well, but -- wait a min-  
8 ute. Mr. Alquist did not ask for Mr. Smith's memorandum to  
9 me. He asked for NRC views; right?

10 MR. RYAN: That's correct.

11 COMMISSIONER GILINSKY: So in sending him this  
12 memorandum, you are passing it off as the NRC --

13 MR. RYAN: No, sir.

14 COMMISSIONER GILINSKY: -- the views of the NRC.

15 MR. RYAN: No, sir.

16 I stated in my letter to Senator Alquist that this  
17 was prepared by the Staff and the document intrinsically  
18 states that it is a Staff document.

19 I suggest that your observation to me on the  
20 telephone a couple of weeks ago is correct; that there is  
21 little understanding in the world abroad of the distinction  
22 between Staff and Commission, and that the NRC is viewed as  
23 a monolith by the world at large.

24 But as far as I was concerned, I was not  
25 representing this to be a Commission document. I was

1 representing it to be a Staff document and so stated in my  
2 letter to Senator Alquist, and reaffirmed it in my subse-  
3 quent letter to Senator Alquist.

4 COMMISSIONER GILINSKY: Well, it would seem to  
5 me, getting -- well, it is at least unclear. I mean, he --  
6 Senator Alquist writes a letter to an office of this Com-  
7 mission, gets a response. I think he can fairly well ac-  
8 cept that a reason to think that is the view of this organ-  
9 ization.

10 And we are a lot more careful in writing to  
11 Congressmen. Senator Alquist, in his way, is certainly an  
12 important leader in energy matters in California. And I  
13 think he has a right, when he asks for it, to know where this  
14 Commission stands.

15 If he gets more limited sort of advice, it ought  
16 to be clearly explained that that is what it is.

17 I notice also that ELD nonconcurred in this memor-  
18 andum.

19 MR. RYAN: Yes, that's true.

20 COMMISSIONER GILINSKY: And it went out despite  
21 that.

22 MR. RYAN: Yes, indeed. That frequently happens  
23 in this Commission.

24 MR. CHILK: Seldom.

25 (Laughter.)

1 MR. RYAN: May I describe the nature of the non-  
2 concurrence.

3 COMMISSIONER GILINSKY: I thought you had every-  
4 thing under control, Howard.

5 MR. RYAN: There was no nonconcurrence as far as  
6 legal matters were concerned. The nonconcurrence had to do  
7 with the perjorative language, at least the language was so  
8 referred to by Mr. Engelhardt, contained in the Smith memor-  
9 andum to you, dated September 7th.

10 That is why we went through this exercise with  
11 Mr. Engelhardt, to see if we could come to an accommodation  
12 on a document which would meet his approval.

13 As I said before, as far as I was concerned, that  
14 became mooted when it was obvious that the original memoran-  
15 dum from Mr. Smith to you was out in the world.

16 COMMISSIONER GILINSKY: Well, but to get back to  
17 that point, it is not that memorandum which is at issue; it  
18 is a question of NRC views. I mean, he didn't ask for that  
19 memorandum.

20 First of all, it is not out in the world. It  
21 was given as an informal view of his office by Bill to  
22 Mr. Simon. There was no reason to think it went beyond the  
23 commission.

24 We inquired of Mr. Pollard, and it turned out that  
25 he had received a copy, although I don't know how you could

1 have known that he had the complete copy. And he sent his  
2 only copy also to Mr. Simon. Mr. Simon was the possessor  
3 of the two copies that were floating around in the world.

4 MR. RYAN: He said he -- I knew it because he  
5 said it in the first part of his letter. I presume he was  
6 speaking the truth. He said:

7 "I have come into possession of a copy  
8 of a document from Mr. Smith,"

9 -- to you.

10 COMMISSIONER GILINSKY: But in any case, there  
11 still remains the question of how we represent the views of  
12 this agency.

13 And here OELD says there was a lot perjorative  
14 language, and your office deals with state relations.

15 And I guess I am a little surprised that you so  
16 casually send out memoranda when asked for the views of this  
17 agency, which contains such perjorative language.

18 MR. GOSSICK: Commissioner Gilinsky, I accept your  
19 comment and the view here. I think that we have learned  
20 through this process that there perhaps should have been a  
21 little greater sensitivity in at least bringing to the  
22 Commission as a whole a matter of how we responded to  
23 Senator Alquist, recognizing sort of the controversy and the  
24 possible delicacy of this matter.

25 I accept that, and I hope that we will not --



1 CHAIRMAN HENDRIE: I think --

2 MR. GOSSICK: -- have this problem.

3 CHAIRMAN HENDRIE: I think -- look; I think that  
4 the fact that the assorted memoranda of one version or ano-  
5 ther got brandished on both sides of the controversy in  
6 California and so on, is unfortunate.

7 But I am afraid that from time-to-time those  
8 things will happen and are almost inevitable. I think that  
9 the problem that State Programs had here is that if the  
10 original version of a Staff document is public and they mod-  
11 ify it to take out pretty candid language along the line of  
12 Tom Engelhardt's suggestions, you really are choosing be-  
13 tween which horn of a dilemma you want to be hung on.

14 If you take the candid stuff out, you are going  
15 to get a holler back from some place that you have emascu-  
16 lated a candid and forthright Staff view, and that that was  
17 improper.

18 If you don't take it out, then you have the pre-  
19 sent problem.

20 So, I can see -- you know, I can see State Programs  
21 in trying to decide what to do with this and whether to go  
22 with lining out the tougher comments about the California  
23 report, really having a problem to go -- Now, I suppose Bob  
24 could have come forward through Lee to the Commission and  
25 said: Now, here is a head scratcher. Which way shall we go

1 here?

2 But there is an enormous volume of business moving  
3 through the Staff and then he thought he ought to settle it  
4 as he thought best.

5 COMMISSIONER GILINSKY: Well, I hope you are not  
6 excusing the action here.

7 MR. RYAN: May I make a statement, Mr. Chairman.

8 CHAIRMAN HENDRIE: I don't think -- let me make  
9 it quite clear, Vic. I don't think there has been on the  
10 Staff's part, any sort of wrongdoing. I think it is unfor-  
11 tunate that these documents have gotten embroiled in state  
12 fight.

13 But I recognize that our material are going to be  
14 used on one side or another on all of these things.

15 And it seemed to me that you ask here for a stan-  
16 dard on the Staff's side, which beggars human ability, to  
17 define whether or not the problem is going to come down to  
18 be one that some of this candid language from Staff pro-  
19 fessionals gets spread and used and represented as the Com-  
20 mission's view, or whether he is going to be charged, if he  
21 takes it out, with having edited and toned down and emascu-  
22 lated a strong Staff professional view.

23 You know, we have a lot of people around here who  
24 think that those things ought not to be done.

25 COMMISSIONER GILINSKY: Well, he could easily have

1 sent both. And said, this is a memorandum, an internal mem-  
2 orandum that was sent to me, and these are the views of the  
3 NRC, if you asked for our considered views.

4 CHAIRMAN HENDRIE: Well, I think that's a great --  
5 you know, we can sit here months after the event and say:  
6 Well, we could have fine tuned, or Bob could have fine tuned  
7 the actions and done this and this and this.

8 I must say it didn't seem all that clear at the  
9 time, and --

10 COMMISSIONER GILINSKY: Well, I mean in --

11 (Simultaneous discussion.)

12 COMMISSIONER KENNEDY: I keep getting confused by  
13 this very complex chronology which seem to have people acting  
14 in several directions at the same time, overlapping, really.  
15 Some people were doing one thing; others were doing another.  
16 I mean, they were doing it all at the same time. And it is  
17 not clear to me that they were all talking to each other,  
18 and that applies to Commissioners as well as to Staff.

19 Now, I am looking at SECY 77-543, which is item  
20 Q in this package. And it is my recollection that this was  
21 brought before the Commission, and I am looking to see what  
22 was decided in the matter.

23 The proposition that was put forward here was that  
24 a letter from Mr. Smith be sent to Dr. Maullin, forwarding  
25 an offer of assistance, and be a copy of this report, the

1 letter from Dr. Smith to Commissioner Gilinsky. And that was  
2 brought before the Commission. And the Commission concluded  
3 that a formal response to the request from Dr. Maullin was  
4 probably inappropriate or unnecessary, at least, and that a  
5 conversation between the Chairman and Dr. Maullin, offering  
6 on an informal basis what ever assistance would be useful to  
7 Dr. Maullin and the commission, would follow.

8 Isn't that correct?

9 MR. RYAN: That is correct.

10 COMMISSIONER KENNEDY: Thank you.

11 MR. GOSSICK: And as you say in that --

12 COMMISSIONER KENNEDY: So I am sure I understand  
13 what happened.

14 MR. GOSSICK: -- in that paper also, although it  
15 was after the fact on October 17th -- or at least that is the  
16 date of the paper; I am not sure of the date the thing was  
17 set down here -- we point out that the -- a report had been  
18 sent to Senator Alquist.

19 COMMISSIONER KENNEDY: Right.

20 MR. GOSSICK: -- and also that we understood that  
21 Mr. Pollard had gotten hold of it by them.

22 COMMISSIONER BRADFORD: Could I come back to --  
23 I just was thinking of something you said a moment ago;  
24 you suggested that State Programs could have sent both; the  
25 memo to you and then an expurgated form as a Commission

1 position.

2 Would -- it would still have taken something more  
3 than that to qualify as the Commission's position.

4 COMMISSIONER GILINSKY: Oh, yes.

5 CHAIRMAN HENDRIE: Sure.

6 MR. GOSSICK: As I said --

7 COMMISSIONER GILINSKY: Well, I guess I am sur-  
8 prised that memoranda of this importance are not brought to  
9 our attention. I mean, a routine inquiry from a Congressman  
10 certain would be.

11 And I think this is just as important. And I  
12 don't think that the Commission would like its Congressional  
13 mail handled in this way.

14 MR. GOSSICK: I have accepted that point, Com-  
15 missioner Gilinsky. I can assure you that if we get another  
16 request for review of their second report or some such like  
17 document from another state, you will know about it.

18 COMMISSIONER GILINSKY: Can I just ask you:

19 Why was the truncated version prepared in the  
20 first place?

21 MR. RYAN: Truncated is a perjorative term.  
22 Commissioner. I don't know that it --

23 COMMISSIONER GILINSKY: Shortened version.

24 MR. RYAN: Shortened.

25 (Laughter.)

1 First of all, we -- it might be well to read into  
2 the record, the changes. And I think they are basically --  
3 one line on the first page. The memorandum from Dr. Smith  
4 to you said:

5 "This report was reviewed."

6 And that was changed along with the heading in the  
7 shortened version to, "these reports were."

8 And then the next, the second sentence after that  
9 deleted.

10 "Subsequent to the receipt of your request, Mr.  
11 Lowenberg brought to the Staff's attention the minority com-  
12 mission report on the interim report that he received  
13 directly from Commissioner Pasternak. A copy of that minority  
14 report is enclosed for your information."

15 When we were thinking of framing a special re-  
16 sponse to Senator Alquist, it didn't seem appropriate to us  
17 to put in there that "subject to your request," presumably  
18 Alquist, Mr. Lowenberg brought the Staff's attention to the  
19 minority commission thing.

20 I don't think there is anything corrupt or sini-  
21 ster about that deletion.

22 If you go through the document, you will come to  
23 -- the next change occurs on page 11, in other words, 10  
24 pages are completely.

25 And that consists of changing Woolrich,

1 W-o-o-l-r-i-c-h, to Willrich.

2 The next change --

3 COMMISSIONER KENNEDY: Presumably, that is a  
4 matter of accuracy?

5 MR. RYAN: That is a matter of accuracy.

6 The next change is --

7 COMMISSIONER KENNEDY: Hopefully.

8 MR. RYAN: Yes. I we were right.

9 The next change is to correct the spelling of  
10 solidification on page 13. It was spelled s-o-l-i-d-i-c-a-  
11 t-i-o-n.

12 CHAIRMAN HENDRIE: How come you know how to spell  
13 solidification and the waste treatment fellows don't?

14 MR. RYAN: I make no defense for my spelling,  
15 Mr. Chairman?

16 (Laughter.)

17 COMMISSIONER BRADFORD: Bob, I take it there are  
18 some substantive changes?

19 MR. RYAN: It is the changes of consequence --  
20 they are on page 13 through the end. And that material was  
21 deleted.

22 It was deleted at the request of NMSS on the  
23 theory that it was internal matter, and basically, I think  
24 that is a fair statement of what it is.

25 COMMISSIONER GILINSKY: Now, what did Mr. Alquist

1 take this to be; do you know?

2 MR. RYAN: I have no idea. I have had no com-  
3 munication from Senator Alquist. I have never met the gentle-  
4 man, nor have I ever spoken to him.

5 It wrote him a letter, the October 17th letter,  
6 and I wrote him another letter at your request in December  
7 saying that I wanted to re-emphasize that we were talking  
8 about Staff views and not Commission views.

9 COMMISSIONER GILINSKY: You mentioned also that  
10 somewhere along the way, a conversation with a San Diego  
11 attorney, bringing the matter to your attention?

12 MR. RYAN: I mentioned that to you in my memoran-  
13 dum of December 22nd.

14 COMMISSIONER GILINSKY: Which I think is not in  
15 the chronology.

16 MR. RYAN: I believe it is.

17 COMMISSIONER GILINSKY: It is?

18 MR. RYAN: Or it was when I left on Wednesday.

19 MR. GOSSICK: Appendix T, attachment T; I believe  
20 that is related.

21 MR. RYAN: Yes. I had a call -- by the way it  
22 was not a call which I initiated -- I had a call from a  
23 Mr. Axlerod who apparently represents San Diego Gas and  
24 Electric. I have never met Mr. Axlerod and I don't know  
25 what he looks like.



1           And he said that he was curious to know what had  
2 been sent to Senator Alquist by way of an attachment to my  
3 letter.

4           And I told him, thinking I was accurate, that  
5 Dr. Smith's memorandum of September 7th had to been sent to  
6 Senator Alquist.

7           And he said: That's curious. I have been to the  
8 public document room and I don't find that; I find a 12-page  
9 or 13-page document.

10           And that was the first time that I knew --

11           COMMISSIONER KENNEDY: Whos is Mr. Axelrod?

12           MR. RYAN: He apparently represents San Diego Gas  
13 and Electric. At least that is how he represented himself  
14 to --

15           MR. GOSSICK: A Washington law firm.

16           MR. RYAN: I went to the document room and dis-  
17 vered that the Smith memorandum had not been sent with my  
18 letter, although I might say that in my file it was appended  
19 to my copy of the Alquist letter, but rather, this abbre-  
20 viated version had been sent.

21           That was not my intention. That was a clerical  
22 error. More particularly, it was a mistake on my part be-  
23 cause I should have specifically checked the enclosures to  
24 this document. I didn't. I was on my way out of the town to

1 cover a meeting on behalf of Chairman Hendrie in Ohio that  
2 week. And as I was leaving the office, I signed a document  
3 which was the letter to Senator Alquist dated October the  
4 17th. It had to be retyped for some reason; some spelling  
5 error or something.

6 And I said to the Staff: Put Smith's memorandum  
7 in this as an enclosure. And they said: Right. And appar-  
8 ently, it was not right. They misinterpreted my instruction  
9 and they put in the abbreviate version.

10 I take full responsibility for that, because as I  
11 say, I should have checked the enclosures. But as far as  
12 I am concerned, there was nothing sinister or corrupt in  
13 such a mistake.

14 COMMISSIONER GILINSKY: What is the current status  
15 of this matter? I noticed we have gotten letters from both  
16 sides of the California Commission.

17 MR. RYAN: I have -- yes; a letter was received  
18 on -- well, some day last week from Commissioner Pasternak.

19 MR. GOSSICK: January the 2nd -- no; I am sorry;  
20 January 9th.

21 COMMISSIONER GILINSKY: January 9th.

22 MR. RYAN: He thinks it is a useful piece of  
23 business.

24 CHAIRMAN HENDRIE: Well, like a lot of our mat-  
25 erial some folks hate it and some folks like it.

1 COMMISSIONER GILINSKY: Are you intending to re-  
2 spond?

3 MR. RYAN: I intend to respond to Commissioner  
4 Veraninni, who has written me a letter. Right now --

5 COMMISSIONER GILINSKY: Does the other letter not  
6 call for a response?

7 MR. RYAN: I don't know. I haven't thought  
8 about it, to tell you the truth. The first time I saw it  
9 was on Sunday when I came into the office.

10 COMMISSIONER KENNEDY: To whom was it addressed?  
11 Was it addressed --

12 MR. RYAN: It was addressed to me.

13 COMMISSIONER KENNEDY: -- to you?

14 MR. RYAN: Yes.

15 MR. RYAN: The staff of NMSS is now looking at the  
16 technical enclosures to Commissioner Veraninni's letter of  
17 December 22nd, I believe, to give us some advice on the  
18 nature of those comments.

19 I intend to reply to Commissioner Veraninni,  
20 and I intend to tell him that it was not my intention in  
21 any way to intrude into California politics, that it was in  
22 fact my understanding that the California Energy Commission  
23 had received this paper in September and sending it to  
24 Senator Alquist was not a "brazing" attempt -- I forget the  
25 words of Commissioner Veraninni, but somehow to intrude

1 into California politics.

2 I do intend to reply to Commissioner Veraninni.

3 COMMISSIONER GILINSKY: Well, I have got a 12:30  
4 appointment, but I would like out of this experience to come  
5 some set of guidelines on how we deal with requests of this  
6 sort.

7 I think we ought to rethink.

8 MR. GOSSICK: Obviously, we have to use judgment,  
9 Commissioner Gilinsky. I don't think you are suggesting that  
10 all mail from all state legislators be --

11 COMMISSIONER GILINSKY: No; no; no; nothing of  
12 the kind.

13 MR. GOSSICK: -- forwarded up here.

14 COMMISSIONER GILINSKY: But this is not just a --

15 MR. GOSSICK: No; I understand. I understand.  
16 And I said I have accepted the fact that we could have used  
17 a little greater sensitivity in recognizing that there was  
18 a delicate, or possibly controversial subject here.

19 COMMISSIONER KENNEDY: Could I ask if one could  
20 hypothesize dealing with Senator Alquist's request in a  
21 different way, and if so, what would it have been?

22 I have asked myself: What would one have said to  
23 Mr. Alquist. One could start out by saying:

24 "Dear Mr. Alquist:

25 "It was nice of you to write, but

1 we are not going to reply."

2 I doubt that that would have been considered among  
3 the more responsible courses that a federal agency charged  
4 with advising people in the world on matters concerning health  
5 and safety of nuclear power. I think Senator Alquist could  
6 expect some general views from us.

7 Now, how could we have responded -- I am asking  
8 this as instructive to me thinking about the guidelines which  
9 Commissioner Gilinsky is speaking of.

10 What could we have said? How could we have done  
11 this somewhat better?

12 MR. RYAN: I have no idea.

13 DR. SMITH: You know, when I look at this, it  
14 seems to me that what really happened is the fact that an  
15 intra or an internal memo that was to serve one purpose; that  
16 is, to inform Commissioner Gilinsky that basically the Staff  
17 felt that they could build upon it or edit it to serve an-  
18 other purpose and therefore, save some time.

19 I was not --

20 COMMISSIONER KENNEDY: But it was a memo that had  
21 been made available in any event --

22 DR. SMITH: Yes. Well, I was --

23 COMMISSIONER KENNEDY: -- in another way to the  
24 public.

25 DR. SMITH: I think that --

1 COMMISSIONER KENNEDY: Right? You know, that is  
2 a fact.

3 DR. SMITH: Yes; that is something that I found  
4 out myself after the fact. In fact, most of the things that  
5 I have found out were after, because I wasn't involved with  
6 the editing or any of that.

7 COMMISSIONER VILINSKY: Did you know of this memo  
8 being used to reply to --

9 DR. SMITH: No, I did not.

10 COMMISSIONER GILINSKY: -- Senator Alquist.

11 DR. SMITH: No.

12 Once I signed off on the memorandum to you, in  
13 effect, Commissioner, I guess you could say I was out of the  
14 picture until you called me and said that you had some con-  
15 cerns.

16 I was just saying that in retrospect, as Mr.  
17 Gossick said, you know, that what we probably should do in  
18 the future, if it came in again, knowing what we do now, is  
19 to look at our response to that senator from the standpoint of  
20 an NRC position in which the report, the language is factual.

21 What was prepared and what I signed off was a  
22 very -- was just simply internal from the Staff to you.

23 COMMISSIONER KENNEDY: But certainly you would not  
24 describe as not factual.

25 DR. SMITH: Oh, it was factual, but we also, you

1 know, some of the language in there was our own view. In  
2 other words, it got beyond the realm of just simply facts  
3 or purely technical.

4 When I looked at it, I felt that at the time  
5 that it was important for the Commissioner to know about it,  
6 to really get the Staff's candid view.

7 COMMISSIONER BRADFORD: I would hate to have you  
8 change your mind on that. I mean, not --

9 DR. SMITH: No, I am not talking about --

10 CHAIRMAN HENDRIE: Peter, it is a useful point,  
11 because if you say -- if we sit here and say that the Staff  
12 should either have never allowed itself to write fairly hard-  
13 hitting and candid commentary as in the best judgment of the  
14 people who did it, saw in their best judgment that they  
15 ought to write it; I can't see any difference between that  
16 and sitting here and saying to this reviewer on some reactor  
17 license: Now, tone it down, fella; don't call it like it is,  
18 as you see it as a competent and responsible professional.

19 And if that were the issue before the house, you  
20 know, I would be pounding the table and saying: Call it  
21 like it is.

22 And I think when these things come out, the other  
23 sort of the mirror image, you have to accept that.

24 COMMISSIONER GILINSKY: I think we have to dis-  
25 tinguish between releasing the documents, which is proper,

1 and the Staff holding to its views, which is proper, and these  
2 views being conveyed in a manner that lends itself to be  
3 thought to be (inaudible) organizations use.

4 CHAIRMAN HENDRIE: Vic, I agree with you, but  
5 Ryan wrote to Senator Alquist and said:

6 "The review conducted by a number of  
7 individuals on the NRC Staff at the request of  
8 Commissioner Gilinsky is now complete. I apolo-  
9 gize for taking so much time."

10 And so on and so on.

11 I think we are all pretty sensitized now out of  
12 this affair so that in subsequent -- any similar subsequent  
13 communication down the line, there will be a very substantial  
14 reiteration that this is a view from several professionals  
15 on the Staff and doesn't represent the agency position or  
16 the Commission position.

17 But I really find it very hard to find that the  
18 language he used in the transmittal was calculated to mis-  
19 lead people into thinking this was an agency position.

20 Now, they --

21 COMMISSIONER GILINSKY: Well, I didn't say cal-  
22 culated to mislead. I send, "lent itself to misinterpre-  
23 tion."

24 CHAIRMAN HENDRIE: I think unfortunately that is  
25 the nature of the world in which we have to work now, and I



1 agree with you.

2 I think, as I say, that we will careful down the  
3 line.

4 MR. RYAN: Your exact phrase, Commissioner, was:

5 "There is the appearance of members of  
6 the NRC Staff offices having allowed themselves  
7 to be used by San Diego Gas and Electric Company  
8 to influence public opinion in California on the  
9 question of whether the proposed Sun Desert Plant  
10 should be exempted from the California moratorium  
11 on nuclear licensing.

12 "It also appears that the NRC Staff members  
13 may have been improperly involved in California  
14 politics and California decision-making. The matter  
15 needs to be cleared up."

16 And it is headed, "The Meeting on Possible Im-  
17 propriety on the use of NMSS' Analysis of California Energy  
18 Commission Interim Report on Reprocessing and High Level  
19 Waste Disposal."

20 COMMISSIONER GILINSKY: That's right, and I was  
21 reacting to newspaper articles on California.

22 MR. RYAN: May I make a brief statement,  
23 Commissioner?

24 (Pause.)

25 CHAIRMAN HENDRIE: I think, since we are a minute

1 off 12:30, Bob; fairly brief.

2 MR. RYAN: Well, I regard it as a serious matter.  
3 I affirm to you, Commissioner and Mr. Chairman, that there has  
4 been no impropriety as far as I am concerned, or my office  
5 has been concerned, in this matter.

6 I have not had improper, nor has anybody at my  
7 office, had improper contacts with the California Legislature,  
8 the California utilities, the California Energy Commission,  
9 or anyone else. I would like that to be stated.

10 COMMISSIONER KENNEDY: I accept it.

11 Let me if I may; I would like to make one note.  
12 I think that you said it well, Mr. Chairman. It is the  
13 world in which we live. I would suspect that all the dis-  
14 claimers in the world notwithstanding, that to the extent that  
15 we provide any Staff advice to anyone, sooner or later it is  
16 going to appear in the newspapers, or in the trade journals,  
17 I would note, as NRC Staff or NRC official views.

18 And I submit that the public is not going to make,  
19 all the disclaimers notwithstanding, that superb distinc-  
20 tion between the official views of the Nuclear Regulatory  
21 Commission and what ever it was the newspaper just called  
22 them.

23 That is a fact of life. It seems to me the choice,  
24 then, is whether we respond to what I believe to be legi-  
25 timate requests for advice and information from technical

1 people, qualified, superbly so, to provide it, at the risk  
2 of a variety of charges from time-to-time; or accepting that  
3 risk and doing what I believe to be among the charges af-  
4 forced us by the Congress.

5 CHAIRMAN HENDRIE: Peter, comment? And then I will  
6 give Vic the last word.

7 COMMISSIONER BRADFORD: One quick footnote to your  
8 opening statement, and I guess what I ought to just note  
9 in the record, is that I was at that same meeting -- part of  
10 it, anyway, that you had and have no recollection of the  
11 documents we discussed. But I wasn't at all of it.

12 Other than that, I guess -- the point has been  
13 said, there is no need for me to reemphasize it, regarding  
14 that you need to touch base and that -- to make clear what  
15 is and isn't a Commission position.

16 Beyond that, just the point that I started to pur-  
17 sue, which is that I would hope that this meeting didn't  
18 have the effect of watering down in any way the assessments  
19 from any of the offices involved, for that matter, offices  
20 that weren't involved in this one, but matters referred to.

21 MR. GOSSICK: I would hope not, Commissioner, but  
22 I must say I in somewhat doubtful that it may not have some-  
23 impact.

24 COMMISSIONER BRADFORD: Let me just ask, then:

25 What do you think is necessary for it not to have

1 without being

2 (Laughter.)

3 COMMISSIONER GILINSKY: I assume you will stick  
4 this in the public document room.

5 MR. RYAN: Yes, indeed.

6 CHAIRMAN HENDRIE: Okay.

7 I think Vic has to go and we will call it to a  
8 close.

9 I want to make clear before, -- please before you  
10 go and the meeting breaks up that for myself, I regard the  
11 outcome of this briefing as not supporting any sort of charge  
12 of improper conduct. You have accepted responsibility, ap-  
13 propriately for getting -- you know, the office got the wrong  
14 thing in the envelope, and so on.

15 I think that is fair, and I think we all recognize  
16 the need to be sensitive to this sort of a situation. But  
17 if there has been left a lingering trace that you or other  
18 members of the Staff have been accused of doing improper  
19 things, let me say on my own -- for myself, that I do not  
20 believe that is the case.

21 MR. RYAN: Thank you, Mr. Chairman.

22 COMMISSIONER KENNEDY: I would accept that, Mr.  
23 Chairman.

24 (Whereupon, at 12:38 p.m., the meeting on the  
25 above-entitled matter was adjourned.

1 that impact? Some clear understanding, presumably of how  
2 the material be used and what the format should be for its  
3 subsequence release.

4 MR. GOSSICK: Well, I think, you know, it ought  
5 to start at the very beginning of the process when we are  
6 asked to perform such an analysis -- involving a lot of  
7 Staff time, by the way, -- or any kind of a safety review  
8 of some controversial matter that we, whether it is from one  
9 of the Commissioners or from some outside source, such as  
10 in this case, that we ought to be very clear as to where we  
11 are going when we start this thing.

12 And whether we do give it something than a full  
13 works in all treatment, that obviously the Staff did in this  
14 case, or whether circumstances warrant some other kind of  
15 treatment such as the Chairman pointed out, you know, the  
16 options that one might have considered: We don't respond  
17 at all or we do or some middle ground.

18 I think it has to be sort of done in the beginning,  
19 before you start responding, rather than trying to fix up  
20 something later on.

21 DR. SMITH: I don't know if there is an answer to  
22 your question, Commissioner Bradford, really, because in the  
23 atmosphere that we are in right now, as already has been dis-  
24 cussed briefly, the Staff is going to find itself contin-  
25 ually involved in having to review situations which are highly

1 political, if I can use that word. And the Staff also oper-  
2 ates knowing that what ever they do can be and probably will  
3 be subject to a Freedom of Information Request.

4 And I suppose that one just has to go ahead and  
5 call it as he sees it and make sure what ever he says is  
6 factual and that he is willing to stand behind it. And that  
7 certainly has been my charge to my staff and will continue to  
8 be.

9 But, you know, subconsciously how they feel is  
10 something else.

11 MR. RYAN: On my part, Commissioner, I think that  
12 this exercise will have a chilling effect upon the Staff and  
13 its ability to deliver candid comments, because of the ac-  
14 cusatory, at least the appearance of accusatory memorandum  
15 and suggestions of impropriety and what to the Staff ap-  
16 pears to the Staff to be a pretty straightforward piece of  
17 business.

18 I don't know how to avoid it, either.

19 COMMISSIONER BRADFORD: I take it, though -- Let  
20 (inaudible) some precision, that that problem doesn't focus  
21 on the original preparation of the memorandum.

22 MR. RYAN: I think it will in future times. I  
23 think of NMSS Staff were asked to make candid comments on a  
24 similar report in the future, they would not be as candid as  
25 the comments which were contained in the report from

1 Dr. Smith to Commissioner Gilinsky of September 7th.

2 DR. SMITH: I hope you are wrong on that, Bob.

3 MR. RYAN: I hope I am wrong, too. I have stated  
4 a belief.

5 DR. SMITH: And I would --

6 MR. RYAN: Obviously --

7 DR. SMITH: And I certainly would say to my Staff  
8 and there are some of them sitting now who were involved,  
9 that I will continue to want their candid views. I don't  
10 want to reopen the issue. I don't think that it is the  
11 candid so much as that -- that it caused the problem, but  
12 something that was written for one purpose somehow or another  
13 we got off on another tack with it, and then that is where  
14 the trouble lies.

15 COMMISSIONER KENNEDY: But you cannot write, am  
16 I correct, you cannot write two different papers on the same  
17 subject for different audiences. That is the point I was  
18 trying to make earlier.

19 MR. RYAN: You can, but one of them will be (in-  
20 audible).

21 COMMISSIONER KENNEDY: Of course.

22 MR. SHAPAR: I think the next time the Commission--

23 COMMISSIONER KENNEDY: Or be seen to be.

24 MR. SHAPAR: I think the next time the Commission  
25 asks for my candid views, I will give them my candid views

