

ORIGINAL

RETURN TO SECRETARIAT RECORDS

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

SECY-78-250:

INTERNATIONAL SAFEGUARDS FUNCTION

PUBLIC MEETING

Place - Washington, D. C.

Date - Thursday, 1 June 1978

Pages 1 - 67

Telephone:
(202) 347-3700

ACE - FEDERAL REPORTERS, INC.

Official Reporters

444 North Capitol Street
Washington, D.C. 20001

NATIONWIDE COVERAGE - DAILY

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on June 1, 1978 in the Commission's offices at 1717 H Street, N. W., Washington, D. C. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected, or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determinations or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of or addressed to any statement or argument contained herein, except as the Commission may authorize.

CR 7746
WHITLOCK

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING

SECY-78-250: INTERNATIONAL SAFEGUARDS
FUNCTION

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

Thursday, 1 June 1978

The Commission met, pursuant to notice, at 3:15 p.m.

BEFORE:

DR. JOSEPH HENDRIE, Chairman

PETER BRADFORD, Commissioner

RICHARD KENNEDY, Commissioner

VICTOR GILINSKY, Commissioner

ALSO PRESENT:

L. GOSSICK

C. SMITH

J. SHEA

B. BURNETT

H. SHAPAR

W. DIRCKS

R. PAGE

K. PEDERSEN

C. STOIBER

J. KELLEY

jwb

P R O C E E D I N G S

1
2 CHAIRMAN HENDRIE: Let us turn to the next of this
3 afternoon's subjects, which is a discussion of the
4 responsibilities in international safeguards matters between
5 the Office of International Programs and NMSS. We have a
6 staff paper, and assorted additional papers.

7 We just got two loose ones passed around. I
8 presume you will tell us where that fits into the scheme of
9 things.

10 Practically everybody is here; please go ahead.
11 Lee, do you want to start?

12 MR. GOSSICK: Mr. Chairman and Commissioners:

13 The topic that we have here today is a result of
14 an effort that has extended over better than two years,
15 actually, in trying to iron out and resolve the manual
16 chapters for both IP and NMSS.

17 The primary issue that is involved is with regard
18 to the international safeguards function. And I would like to
19 say, at the outset, that what is not in issue -- contrary to
20 some reports that have been around town -- is that there is
21 any proposal to strip NMSS of any responsibility that they
22 have for the functions given to them in the delegations that
23 are presently in existence that were put into effect following
24 the Commission's adoption of -- well, the decision with regard
25 to establishing the international office back in 1975.

jwb

1 As Commissioner Gilinsky and Commissioner Kennedy
2 will recall, there was a joint study done by OPE and EDO --
3 the so-called "Hum and Gossick" study. That is part of the
4 paper that is before you, and which sort of gives a background
5 on the reasoning why -- that underlie, I think, the
6 Commission's decision to go ahead and take the newly emphasized
7 export function that we picked up in the Energy Reorganization
8 Act, and to put it into the Office of International Programs
9 and to set up the International Programs as a separate office.

10 On the little handout that I have given to you are
11 the issues that are listed in the beginning of the paper that
12 there is disagreement over as to who should have lead
13 responsibility for.

14 They primarily center here on a problem that the
15 staff has had in distinguishing between technical and policy
16 matters. I think this was primarily the intent -- at least
17 understood to be the intent of the Commission was to centralize
18 in IP the policy-kind of functions related to export-imports,
19 as well as the operational aspect of export-import licensing --
20 but the policy aspects of international safeguards.

21 The matrix that is on the handout sheet that you
22 have there shows that there is really no disagreement with
23 regard to the export-import licensing functions, per se,
24 between NMSS and IP. It is only in the international
25 safeguards under the policy issue that there is disagreement

jwb

1 as to who should have lead responsibility.

2 NMSS feels that --

3 COMMISSIONER KENNEDY: It would help me if I
4 understood more precisely what -- how "international
5 safeguards policy," in the NRC context, is defined. What is
6 it?

7 MR. GOSSICK: Okay. We have tried to distinguish,
8 on the second handout which we gave you -- which is also part
9 of the paper -- by example, the listing of things -- the
10 enclosure, and one Section B -- that is in front of us.

11 The first group of about five items there are
12 indicative of our understanding with regard to the technical
13 kind of functions that we expect NMSS -- I expect, and I think
14 it is my understanding that the Commission expected -- NMSS to
15 be responsible for.

16 COMMISSIONER KENNEDY: Is there any question on
17 those as to whose?

18 MR. GOSSICK: Not in my mind, nor in IP's mind, or
19 in the staff's mind. I think NMSS can speak to that, if they
20 like.

21 As I say, again, there is no intent to remove --

22 COMMISSIONER KENNEDY: But everyone on your side
23 of the table is agreed that those five things are NMSS
24 functions? Is that correct?

25 MR. GOSSICK: Yes.

jwb

1 DR. SMITH: Mr. Commissioner, I had some comments
2 I wanted to make --

3 COMMISSIONER KENNEDY: But I was wanting to --

4 DR. SMITH: -- with respect to those five things.
5 As a minimum, we see it as our responsibility.

6 COMMISSIONER KENNEDY: But there is no question as
7 to those?

8 DR. SMITH: We are not sure as to exactly what all
9 of them mean, because that brings us right back again to
10 technical vis-a-vis policy.

11 COMMISSIONER KENNEDY: Then we will have to come
12 back to them.

13 MR. GOSSICK: The general factors are subjects
14 that there are different positions on. It first of all starts
15 out with the differing interpretations of the delegations of
16 authority. And, as I indicated, the IP was established in
17 June of '76 by the delegation from the Commission to the EDO,
18 and which I redelegated to IP.

19 And generally, it empowered the EDO to fulfill
20 NRC functions for programs of cooperation with foreign
21 countries and international organizations, and responsibility
22 for export and import licensing actions, including
23 international safeguards and nonproliferation matters.

24 It included specific authority to coordinate the
25 international functions of the NRC staff. As you are well

jwb

1 aware, there are international activities of one kind or
2 another in every office, practically, of the staff.

3 Secondly, to represent the NRC within areas of its
4 responsibility in liaison with other U.S. agencies, U.S. firms
5 and organizations, and foreign countries, and groups.

6 And a third, to coordinate representation of other
7 NRC offices within these areas.

8 IP and NMSS interpreted this delegation differently.
9 Given these responsibilities, IP believes that it should be
10 performing as the lead NRC office for international safeguards
11 policy and nontechnical matters. NMSS should provide the key
12 technical expert safeguard support on safeguards -- or for
13 that matter, any other functions under their jurisdiction.

14 NMSS, on the other hand, does not perceive its
15 statutory responsibilities concerning international safeguards
16 activities to be diminished by the June '76 --

17 COMMISSIONER KENNEDY: Are there any statutory
18 responsibilities as to international safeguards?

19 MR. SHAPAR: You are asking whether or not the law
20 dictates one conclusion or another, in terms of the dispute
21 now confronting the Commission?

22 COMMISSIONER KENNEDY: No. I am asking: Is there
23 a statutory assignment of responsibility for international
24 safeguards?

25 DR. SMITH: The law simply refers to "all materials

jwb

1 licensing safeguards." It doesn't distinguish between
2 "domestic" and "international."

3 COMMISSIONER KENNEDY: So there is no specific
4 statutory comment on the subject, one way or the other.

5 MR. SHAPAR: Correct.

6 COMMISSIONER KENNEDY: From which I conclude what?

7 MR. SHAPAR: That it is a policy decision, and
8 policy should dictate the Commission's decision.

9 MR. GOSSICK: On that point, the NMSS views
10 expressed in the paper -- and this has been expressed by
11 Dr. Smith -- believes that it has statutory -- has a
12 statutory mandate to have the lead responsibility for all
13 safeguards functions, both domestic and international.

14 COMMISSIONER KENNEDY: But you just said that isn't
15 correct.

16 MR. GOSSICK: I am merely expressing the different
17 views.

18 COMMISSIONER KENNEDY: I'm trying to be sure I
19 understand this. I read all this. I want to make sure I
20 understand what is being said.

21 Are you saying that that is not correct?

22 MR. SHAPAR: I do not feel that --

23 COMMISSIONER KENNEDY: There is not a statutory
24 mandate.

25 MR. SHAPAR: I am.

jwb

1 COMMISSIONER KENNEDY: Good. That's what I wanted
2 to understand.

3 MR. GOSSICK: And also, that they should have the
4 lead responsibility for centralized policy input, both
5 technical and nontechnical, in the safeguards function.

6 On the next factor -- the scope of NRC's role in
7 international safeguards -- IP considers that NRC has broad
8 policy-oriented roles in international safeguards. IP is the
9 appropriate office where these should be carried on for the
10 Commission.

11 NMSS feels that responsibility for policy in
12 international safeguards is with the Executive Branch, and
13 that the NRC role is to address technical issues; and that
14 NMSS is the office to do this.

15 COMMISSIONER KENNEDY: If we don't have -- if -- I
16 understood what you just said. The argument is that we don't
17 have any policy role, and therefore it is a technical
18 responsibility; and therefore, the role should rest within
19 NMSS.

20 MR. GOSSICK: As viewed by NMSS.

21 COMMISSIONER KENNEDY: If that is a logical set of
22 postulates, I guess that that would be a wholly reasonable
23 syllogism. Since we don't have any policy questions, and
24 since they do have -- it is not argued that they don't have --
25 responsibility for the technical business and our

jwb

1 responsibilities are technical, then they would be responsible.

2 The only question is: Do we, or do we not, have a
3 policy role? And if I understood the argument, they argue we
4 do not?

5 DR. SMITH: Mr. Commissioner, Mr. Gossick is giving
6 his interpretation. I have my views, and I would be glad to
7 address that when he gets through. That is not exactly my
8 view.

9 MR. GOSSICK: That is a quote out of your memo.

10 DR. SMITH: That all depends on how you read that.
11 You have taken it out of context.

12 MR. GOSSICK: I don't think so.

13 COMMISSIONER KENNEDY: All right. So that is the
14 question that we have. I take it that others are as confused
15 about it as I. Okay, I hope we will clear it up.

16 MR. GOSSICK: Let me go into the next point -- the
17 practicality of separating policy and technical aspects.

18 This, as I said earlier, has been sort of a problem
19 ever since the initial decision was made when Mr. Chatman and
20 I were initially trying to work out the agreement on the
21 manual's chapter on responsibilities for the two organizations.

22 The IP's view is that policy and technical aspects
23 of international safeguards are closely interrelated. They
24 are really primarily technical; therefore it is useful to have
25 a policy-oriented office on the technical expertise of others.

jwb

1 Thus, IP would function very much like international offices
2 in DOE, DOT, and so forth.

3 NMSS's view, as I understand it, is that the
4 separation of policy from the technical aspects in
5 international safeguards has made the development of overall
6 safeguards policy difficult to achieve in a timely manner;
7 and, that fractionalizing of safeguards' programs in six
8 offices is inefficient.

9 COMMISSIONER KENNEDY: Could we get some examples
10 of that, later? Specific examples of where this "difficulty"
11 is causing delays in developing policy?

12 DR. SMITH: Yes.

13 MR. GOSSICK: Of course, the general area that is
14 a problem is in the practicality of separating domestic from
15 international aspects.

16 IP has the view that separation is sound because
17 of substantive differences between domestic and international
18 aspects, in that they involve negotiations with sovereign
19 countries, negotiations with international organizations,
20 nonproliferation considerations, and foreign relations policy
21 elements.

22 Since NRC's interest in international safeguards
23 derives from NRC's export licensing responsibilities, IP's
24 lead is logical, sensible, and efficient.

25 NMSS states that domestic and international

jwb

1 safeguards' functions are intimately related. International
2 safeguards' functions rest on assessments of technology and
3 require intimate knowledge of domestic safeguards that NMSS
4 should have the lead in; and otherwise, that there is
5 duplication.

6 Finally, the last point is the matter of office
7 responsibilities with regard to intelligence interfaces. As
8 you will recall, I sent a memo to the Commission on April the
9 6th --

10 COMMISSIONER KENNEDY: Could I ask -- that is a
11 slightly different subject?

12 MR. GOSSICK: Yes, this is a different matter that
13 has come up sort of as a corollary, or as we have tried to
14 work with the rest of the problem. This has only fairly
15 recently been added on to the list of problems.

16 At any rate, in response to some questions that
17 Commissioner Gilinsky had with regard to how we were handling
18 the intelligence functions within the staff -- as I say, I
19 sent you the memo, and it is a part of the paper, as well.

20 The views here are that IP feels that it should be
21 the focal point for intelligence on foreign nuclear programs
22 and activities, and that it has been for some time.

23 NMSS has the view that they should be the focal
24 point for all NRC intelligence matters, and has already
25 established contacts.

jwb

1 The view that I expressed to you in April was that
2 the agreements between NRC and the various international and
3 domestic intelligence agencies, rather than being executed by
4 any of the staff offices -- either of the staff offices --
5 should be executed by the EDO, of course, with the help of
6 both offices, or either offices, as appropriate, in the
7 formulation of such agreements; that with regard to the
8 international intelligence matters, IP would be the principal
9 office for liaison with and for coordinating and levying
10 requests for information from such agencies as the CIA and
11 the DIA dealing with nuclear programs and nonproliferation
12 activities in foreign countries, including information
13 concerning security and safeguards' aspects and foreign
14 terrorist activities.

15 The Information Assessment Team, which is composed
16 of the NMSS, chaired by NMSS, made up by representatives from
17 the NRR and I&E, would be the primary point of contact for
18 requesting information concerning domestic terrorist threats.
19 This would be under -- generally, under the management of the
20 NMSS, as I say. It is chaired by a man from NMSS.

21 Their primary concentration would be, however, on
22 intelligence liaison work with the FBI, local and state law
23 enforcement agencies, with regard to threats against the
24 domestic facilities. As we heard in the hearings in front
25 of Senator Glenn, with the FBI in the event of such an activity

jwb

1 or incident which has the lead responsibility.

2 It seems to us that the primary emphasis should be
3 in interacting with the FBI, and not that there wouldn't be
4 other inputs with regard to threat information and so forth,
5 that we would not utilize it.

6 Nevertheless, that is the general arrangement that
7 I would recommend. This is based on a study that I asked
8 Bill Dircks to do back earlier -- well, actually, last fall.

end #6

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

mte

1 That brings us to the recommendations. As indicated
2 in the paper, my recommendation was to you that you reaffirm
3 the existing delegations that have been given to the EDO and
4 to the NMSS explicitly delegating IP with the lead
5 responsibility for the broad international safeguards
6 responsibility for Commission consideration, development of
7 staff recommendations for export-import licensing, review of
8 criteria regarding physical security and safeguards, and
9 nonproliferation assurances; and thirdly, for monitoring for
10 NRC in recommending NRC positions on upgrading of
11 international safeguards programs and coordinating
12 international safeguards policies on nontechnical matters and
13 interacting with other agencies, the IAEA and other NRC
14 offices and the intelligence office community.

15 This is not to say, I want to say again, that this
16 is taking away from the present and past practice, where the
17 NMSS folks have interacted extensively with the IAEA in
18 providing technical expertise and inputs into the various
19 activities that are going on there with regard to safeguards
20 and so forth.

21 Secondly, the director of NMSS should be given, of
22 course, specific direction with regard to the Commission's
23 view and intention with regard to reaffirming or any
24 modification that you may make of the existing delegations for
25 IP as well as NMSS.

mte

1 And then, thirdly, designate IP as the NRC
2 coordinating office for information dealing with nuclear
3 programs and nonproliferation activities of foreign countries,
4 and the principal liaison office with intelligence agencies
5 such as DIA and CIA.

6 Fourthly, agree that all interagency agreements
7 between NRC and the intelligence agencies be concluded, if not
8 by the Commission, by the EDO; and note that we will take the
9 necessary action to implement these.

10 Again I want to repeat, at the risk of being
11 redundant: There is no intent, and it has not been
12 contemplated by myself or IP, for that matter, to take away
13 any of the safeguards assessment functions, the expert
14 safeguards ability, that is in NMSS with regard to either
15 physical security or safeguards or, for that matter, to
16 curtail their interaction with the international bodies or
17 other bilateral talks with technical efforts of various kinds,
18 such as the IAEA or other activities.

19 Now, as there has been indicated, there is
20 disagreement on this matter. I call on Cliff to say whatever
21 he would like to at this point.

22 DR. SMITH: Thanks, Lee. I just have a few brief
23 comments that I would really like to make in toto if I could,
24 and then respond to questions.

25 As Mr. Gossick has pointed out, the background of

mte 1 the issue, at least since my residence at NRC, really goes
2 back to being asked to sign off on a proposed manual chapter
3 for IP which appeared to be -- not to be in concert with the
4 delegation of responsibility that they had vis a vis our
5 responsibility.

6 I felt that the manual chapter as proposed, and
7 indeed, Mr. Gossick's recommendations, do diminish my office's
8 responsibilities as I perceived them in the area of
9 international safeguards and physical security. I felt that
10 it was important that we have the opportunity to discuss this
11 issue with you and get guidance. Whichever way it goes, we
12 will do our best to implement it.

13 We view international safeguards as an extension of
14 domestic safeguards. We don't believe that you can separate
15 or at least very easily separate technical from policy, and
16 domestic from international, in the area of international
17 safeguards -- in the area of safeguards. My reasons for that
18 are policy formulation. That is, establishing goals and
19 objectives, performing them in terms of a policy, whether
20 domestic or international.

21 To a large extent, they flow from what is feasible.
22 We are not going to establish policy generally that is not
23 feasible. What is feasible in this area rests on an intimate
24 knowledge of the technical aspects of, basically, the domestic
25 safeguards program. That is what can be done. This expertise

mte

1 already exists in NMSS, and we are currently heavily involved
2 in international safeguards and physical security problems.

3 Further, we believe that these are really primarily
4 operational functions, if you will, as distinguished from
5 coordination functions, and they more properly belong in a
6 major program office where all of these other activities where
7 the people reside are. If the responsibility is to be
8 affirmed in Mr. Gossick's staff office of IP, then we believe
9 sincerely that it will invariably lead to two centers of
10 expertise in the area of international safeguards.

11 Along with that is the attendant duplication
12 problem, communications problem, which we feel that we do to
13 some extent already have. It has been my opinion -- and that
14 is why we are here -- that it was our responsibility to be the
15 lead office in the area of international safeguards and
16 physical security. We felt, as I said earlier, that the
17 existing delegation was unclear. We had some difficulty with
18 the proposed manual chapter for IP. Thus we felt it proper to
19 seek guidance from you as to what the Commission deemed was
20 NMSS's role to play.

21 To us, the fundamental question is, or the
22 fundamental questions are: Is NMSS to have a passive role in
23 international safeguards and physical security? Are we to
24 have, if you will, no lead responsibility in this area? Are
25 we to participate, then, only when requested, or comment only

mte 1 when required? We are not sure. Then, to channel these
2 comments through IP and thus to the EDO and ultimately to the
3 Commission?

4 In all candor, this is how we read the
5 recommendations that are embodied in SECY-78-250. One
6 example: It says on page 6: "The development of staff
7 recommendations for export and import licensing review
8 criteria regarding safeguards and physical security is IP's
9 responsibility." We had been operating on the premise that
10 that was what we have been doing, and that it was clearly our
11 responsibility.

12 Frankly, what I don't wish to happen is to be
13 accused, if you will, of not properly conducting the affairs
14 of this office, NMSS, with respect to international safeguards
15 and physical security matters. Consequently, I share Mr.
16 Gossick's view that it is important to explicitly make it
17 clear what we in NMSS are responsible for and what we aren't
18 responsible for, and then we will do our very best to carry
19 out the Commission's directives in the area.

20 COMMISSIONER GILINSKY: Actually, NMSS -- you are
21 not the only ones

22

23 MR. PEDERSON: We represent you on the Ad Hoc
24 Committee on Nonproliferation, which gets into those matters
25 from time to time.

mte

1 MR. SHEA: There are other offices within the staff
2 also involved. The Office of Standards in IE, and so on.
3 Mostly it is NMSS and IP. NRR is also involved.

4 COMMISSIONER GILINSKY: Could you be more specific
5 and indicate some explicit activities over which -- I am still
6 unclear when you talk about policy technical matters. It is
7 too abstract a level, I think.

8 COMMISSIONER KENNEDY: This goes to the question I
9 was raising before. I was trying to see if we could see what
10 of all of these things that are somewhat more specific, and
11 maybe we could dispose of them, and see what the others are.

12 MR. GOSSICK: I guess really, about the way it has
13 been working as far as the kind of things that come to you, as
14 far as export licenses or matters related to it -- as I say,
15 we are not about to take anything away.

16 I guess I would prefer to ask Cliff what he feels is
17 being proposed as a policy kind of thing that we are proposing
18 to reaffirm to IP that he takes objection to.

19 MR. BURNETT: I guess if I could direct some words
20 toward Mr. Gilinsky's question: In the new delegation as Mr.
21 Gossick has prepared it, we again still have difficulty in
22 interpreting the rules.

23 COMMISSIONER KENNEDY: Is it new? Is it different?

24 MR. GOSSICK: No.

25 COMMISSIONER KENNEDY: Has it changed from the

mte

1 existing delegations that are already in effect?

2 MR. BURNETT: We think it is a broadening of it.

3 But in this one, where he hits the technical aspects, Mr.

4 Commissioner, we have some degree of difficulty in

5 understanding what is meant in his item D, which is technical

6 aspects of the implementation. I guess Mr. Shea and I each

7 have drawn lines that we each recognize. Unfortunately, I do

8 not think that they are the same lines.

9 I am still confused as to what that means.

10 COMMISSIONER KENNEDY: Could somebody show me the

11 technical aspects part?

12 MR. BURNETT: Enclosure one, section B.

13 MR. GOSSICK: That is the handout I gave you,

14 Commissioner Kennedy. The fourth one down, I think you are

15 pointing to?

16 MR. BURNETT: Yes, sir. I called it B. It could be

17 the fourth one down.

18 COMMISSIONER KENNEDY: The technical aspect of --

19 MR. BURNETT: Each of the delegations that you see

20 there are purely technically oriented. We have difficulty

21 drawing such a line on many aspects of the international. I

22 can give you examples which we have differed on.

23 Okay. In some exports, NMSS will come back and ask

24 certain questions on which there is some opinion by IP that

25 either the questions are not needed to be asked or outside

mte

1 the purview of NRC. Now, I don't really know which of those
2 is true. I don't think that either one of us can answer that
3 question. That is why we're coming to see you.

4 But in all cases it has resulted in some delay in
5 the process of the export applications.

6 COMMISSIONER KENNEDY: What kinds of questions are
7 these?

8 MR. BURNETT: In our opinion they are questions as
9 to -- added to our --

10 COMMISSIONER KENNEDY: Give us a specific.

11 MR. BURNETT: Looking for information having to do
12 with physical security provided either during transport or
13 location of a particular export.

14 CHAIRMAN HENDRIE: It sounds like technical
15 review -- let me ask you a question. Suppose the Commission
16 found for your interpretation. You now have an export license
17 on hand. You propose to handle the whole thing?

18 MR. BURNETT: No, sir.

19 CHAIRMAN HENDRIE: You propose that there be an IP?

20 MR. BURNETT: Yes, sir.

21 CHAIRMAN HENDRIE: And they handle inputs, outputs,
22 and so on?

23 DR. SMITH: Yes, sir. We are not questioning that.
24 We are not contesting that at all.

25 CHAIRMAN HENDRIE: Now, in the license, where we

mte

1 come down to the place that you feel that further information
2 is needed from the export -- okay, just as you did if it had
3 been IP leading, okay, you now get the list of questions ready
4 to go. You propose to ask IP what they think about it?

5 MR. BURNETT: That is how it is set up now.

6 CHAIRMAN HENDRIE: No, no. I am saying if the
7 Commission finds for your version of the delegation of
8 authority and puts the policy safeguards matters as well as
9 the technical safeguards matters in NMSS. That is, if we give
10 you the whole ball of wax the way that you have defined it.
11 You now, on a given license, have prepared draft questions.
12 IP continues to be the group that compiles the papers, pulls
13 things together, and so on.

14 Question: Are you going to ask IP what they think
15 about these questions?

16 DR. SMITH: It would be my view that I would see no
17 problem with routing those questions through IP. But it would
18 be not their decision to decide that those questions ought not
19 to be asked. If we are being asked --

20 CHAIRMAN HENDRIE: You would propose to route them
21 through IP. Now IP sends you back a memorandum and says, we
22 think that these questions oughtn't to be asked, or question
23 three oughtn't to be asked, or ought to be authored in the
24 following way, because of certain international agreements
25 considerations or foreign policy considerations or so on. Now

mte 1 what are you going to do?

2 MR. BURNETT: That is what we have experienced and
3 which has resulted in delays.

4 CHAIRMAN HENDRIE: No, I am asking what you're going
5 to do if we give you the whole shmear?

6 DR. SMITH: We would say, fine, we have heard you,
7 and perhaps we don't agree with you. We would like to get the
8 information.

9 CHAIRMAN HENDRIE: Without regard to the merits of
10 their --

11 DR. SMITH: No, no. Obviously, we would consider
12 the merits of their comment, just like when we coordinate
13 papers with ELD or any other office, sends it back and says,
14 you are all wet. We look at it and if we still feel that way,
15 we go with it.

16 CHAIRMAN HENDRIE: So now you have prepared the
17 questions. It has gone out for transmittal. You've got a
18 comment that says: Question 3(a), we ought to do something
19 about that because of this consideration.. You have considered
20 that. Now you are going to sit down with IP and either agree
21 with them and change the nature of the question, or you are
22 going to disagree with them and say, here is why we disagree,
23 and now we want to go forward with the questions. Right?

24 DR. SMITH: Yes.

25 CHAIRMAN HENDRIE: Now, presumably, if you -- if it

mte 1 were your full lead on international safeguards, IP presumably
2 would eventually have to transmit the questions.

3 COMMISSIONER KENNEDY: Would they?

4 CHAIRMAN HENDRIE: I don't know whether they would
5 or not.

6 COMMISSIONER KENNEDY: Or would the responsibility
7 then rest with these people?

8 CHAIRMAN HENDRIE: No, I think the opinion down here
9 would be that if we gave that whole responsibility, that
10 indeed, the ultimate decision to transmit or not ought to lie
11 with them.

12 COMMISSIONER KENNEDY: Yes, but the actual
13 transmission wouldn't be within --

14 CHAIRMAN HENDRIE: The actual transmission would be
15 down here.

16 Now, in the present case -- in the present case,
17 what turns out different? What happens when you send a
18 question up to IP and they send back and say, 3(a), gee,
19 because of the following foreign policy considerations, that
20 ought to be changed in some way or other, perhaps. And you
21 now go and discuss it with them. Now, what happens now?

22

23

24

25

46.08.1

pv

1 MR. BURNETT: Generally happening right now is that
2 we do get our questions sent to the proper party for
3 answering. In no case has IP other than delayed the answering
4 of the question. We have successfully got the question.
5 Sometimes, the importance --

6 COMMISSIONER KENNEDY: How much of a delay?

7 MR. BURNETT: It varies. Sometimes, the importance
8 varies.

9 COMMISSIONER BRADFORD: What are the outer limits?

10 CHAIRMAN HENDRIE: That is very interesting,
11 because it kind of comes out where I suspect it came out, that
12 is, it doesn't make a whale of a lot of difference if you have
13 got information that you think you have to have and a good
14 argument for it and you hang to it, you end up getting the
15 questions. And you don't propose, if you were given the lead,
16 that you would ignore these people, that you would either
17 bypass them and send the questions directly, you know, get
18 your own book of stamps, nor do you suggest you would ignore
19 their comments and criticisms and the question; you would
20 still discuss them.

21 I presume, then, that whatever delays now exist in
22 the system because of that discussion back and forth would, in
23 fact, obtain if you were given the full thing. You would go
24 through the same steps. You are going to prepare the
25 questions. You're going to send them up there. You're going

pv 1 to discuss differences. You are not going to do it any faster
2 because you have the lead than because they have the lead.
3 And, indeed, what you tell me is that, under the present
4 system, you end up getting your way in those cases,
5 apparently, where you feel that you want to get it.

6 MR. BURNETT: There is some discontent on both
7 sides.

8 CHAIRMAN HENDRIE: It is not going to be any
9 different if you got the lead, unless there is the implication
10 in your having the lead that, you know, it sounds all nice and
11 even at the table and we will consult and so on, but after we
12 get back to Bethesda we will stomp on these people.

13 (Laughter.)

14 DR. SMITH: I don't see it that way, Mr. Chairman.
15 I think the problem now is that it is gray as to who has the
16 lead. Mr. Shea gets frustrated because he feels that we are
17 asking questions that we don't need to ask. On the other
18 hand, he is under pressure to get that export license. We are
19 frustrated because we are being required to sign off as to the
20 adequacy of physical security, and we can't get the
21 information. It seems to me —

22 CHAIRMAN HENDRIE: Okay, good. Let's stop right
23 there. Let's stop right there. Let's stop right there. The
24 advantage of being chairman is that I get to say, "Let's stop
25 right there."

pv 1 (Laughter.)

2 CHAIRMAN HENDRIE: When we have a disagreement, I
3 win.

4 (Laughter.)

5 CHAIRMAN HENDRIE: With those frustrations which
6 are real, okay, and recognizable, what is going to change no
7 matter which way this decision now before us comes out?

8 DR. SMITH: That is what I was going to say. The
9 implication, to me, would be that if we have the lead, then,
10 clearly -- and, of course, the procedures are set so that it
11 is channeled through IP for coordination purposes and so forth
12 -- is that after a very minimum amount of discussion in which
13 there might be some time set on it, the decision is made to
14 go. We don't get into this constant going back and forth and
15 back and forth. You don't need it. We do need it. You don't
16 need it. And finally, it comes out, and then, you are mad at
17 both of us because we didn't get this export out, this license
18 out in a reasonable amount of time.

19 COMMISSIONER KENNEDY: You wouldn't have to go back
20 and forth. Just get together and sit there and talk about it.

21 DR. SMITH: We have gotten together and sat down
22 and talked about it, and we have different views.

23 MR. GOSSICK: None of these have ever come to me
24 for resolution. They must be able to work them out one way or
25 another.

pv

1 MR. SHEA: I would say it is not as bad as Cliff
2 portrays it. The issues are often ones that involve some new
3 matters, groundbreaking in certain questions. The involved
4 matters that have to be raised with the executive branch and
5 foreign countries, quite often. So, one has to consider those
6 issues very carefully. They have to be phrased. You have to
7 consider the right way to approach those countries, and that
8 takes a little while to work out. In all cases, as Bob has
9 said, we have worked them out. Maybe we could improve the --
10 part of the problem that Bob has stressed is the separation of
11 the offices in the two different buildings. I think we may be
12 able to improve the procedures, other than changing the
13 location of functions by improving the cooperation and the
14 closeness with which we work together.

15 CHAIRMAN HENDRIE: It just seems to me that it is
16 unreasonable to say that you will gather into your shop all of
17 the foreign-policy aspects, foreign-program functions of the
18 Commission. There will continue to have to be an IP. There
19 will continue to be the experts on foreign-policy matters.

20 You know, whether you have the lead or they have
21 the lead, you are going to have to consider -- to give very
22 serious consideration to those things.

23 You know, I just don't see the great advantage that
24 flows from rearranging the authority delegations --

25 MR. BURNETT: We are not asking to rearrange them.

pv 1 It is our contention that SECY 250 is actually going a little
2 bit further.

3 Now, I am aware of Lee's opinion here. When we
4 read his second bullet under recommendations --

5 DR. SMITH: He says it doesn't take anything away
6 from us in the area, and everybody recognizes we have the
7 responsibility for licensing. When I read development of
8 staff recommendations for export and import licensing review
9 criteria regarding safeguards, physical security, it is our
10 responsibility.

11 MR. GOSSICK: I have had similar problems with
12 these words. I think it might be well for the Commission to
13 hear from each party what their interpretation of what this
14 means.

15 COMMISSIONER KENNEDY: That was what I was asking
16 earlier -- a definition of --

17 MR. GOSSICK: What this criteria business is.

18 COMMISSIONER KENNEDY: What are we talking about
19 when we talk about policy?

20 Jim, why don't you give your view of what that
21 really implies, and examples of where we have been in that
22 area and the kind of thing that might come up. Then, Cliff
23 can give his view of it.

24 MR. SHEA: I guess, in my view, the kinds of
25 actions that are involved in international safeguards policy

pv 1 are fairly well covered, at least in general terms, in that
2 handout that you have there, the technical aspects at the top,
3 the policy considerations, and the bottom.

4 Those are very general. They touch on Commission
5 positions with relation to overall view as government policies
6 in the nonproliferation, export, international safeguards
7 areas, interaction with other agencies, mainly the State
8 Department, foreign-countries policy programs, country
9 motivations, and reliability, primarily.

10 But to give a more specific example and one that I
11 think touches on this review criteria for export-import
12 licensing in the safeguards area, as I read this last item on
13 page 6, the first thing that springs to mind is the issue that
14 we have had in recent months as to the adequacy of
15 international safeguards on exports that has occupied a fair
16 amount of the Commission's time over the last few months.

17 In that case, information that appeared in the IAEA
18 report indicated that there were some inadequacy of IAEA
19 safeguards. NMSS found that it could no longer given an
20 unqualified concurrence, if that is the right way to put it,
21 on each export application, because they felt that they did
22 not have information to assess the adequacy of safeguards on
23 each and every export. That came to Cliff's attention, that
24 he was signing off and that he wanted to make it clear that he
25 was not signing off technically on those exports because he

pv 1 just didn't -- the safeguards -- he didn't have the
2 information on a country-specific basis.

3 CHAIRMAN HENDRIE: Country-specific, and let alone
4 facility-specific basis.

5 MR. SHEA: That is the way the licenses go through,
6 of course, case by case.

7 At that point, the question was what to do. And
8 the issue was brought to the Commission's attention. To my
9 mind, it involved both technical and policy considerations.
10 NRC had to consider what its role was in this area, what it
11 should do in this situation. And there were questions of
12 technical adequacy of safeguards. If one had certain levels
13 of information, one could decide on -- that safeguards were at
14 a given level of assurance. Those could be defined. NMSS
15 could define it if they had certain information. One way or
16 another, they could say that the level of assurance was such
17 and such.

18 Beyond that, was the question of just how to pursue
19 the matter. How should NRC obtain information? Should it go
20 off on its own? Should it work through the State Department?
21 What kinds of information?

22 The role of the IAEA was closely involved. It had
23 a number of broad considerations such as that, and this
24 resulted ultimately in the Commission communicating with
25 Congress on this matter.

pv

1 The Nonproliferation Act has had relevance to this,
2 too. There is a provision for IAEA safeguards being
3 applicable to its export.

4 These issues came up. The broad nonproliferation
5 policies of the government were brought in. The Commission
6 had a number of directions from the State Department, some on
7 a classified basis.

8 These issues, to my mind, then, became heavily
9 policy oriented in character, but certainly had some technical
10 considerations, as well.

11 That is the example that comes to mind. I think
12 there the Commission was attempting to -- and still is, really
13 -- attempting to work on the question of what criteria it
14 might have for having certain assurances in the safeguards
15 area in the export context.

16 That is the way I would read the last item on page
17 6. There, I think it was to the Commission's benefit to have
18 the excellent technical expertise of NMSS integrated with the
19 foreign-policy knowledge that IP has, to give a full picture
20 to the Commission so they could see the full range of
21 considerations and make better decisions.

22 That is an example. I think it extends, to my
23 mind, to a number of issues. My view is, as far as working
24 together on these issues and what lead responsibility means
25 as it comes up in this paper, lead responsibility means, to

pv 1 me, that the issues that are of a policy nature on a given
2 topic would be focused on by IP and the technical
3 considerations would be focused on by NMSS. The two groups
4 would work very closely together on the matter right from the
5 ground up, from the initial drafting stage to the preparation
6 of the paper and send that to the Commission as an integrated
7 analysis, rather than, let's say, a separate paper or only one
8 office or the other sending you one consideration of the
9 other.

10 I think if the Commission were to receive only
11 policy-oriented analysis from IP, it would be ill served; if
12 it received only technical from NMSS, ill served, as well. I
13 think it is important to work together and to require that
14 coordination and not to have one or the other offices have the
15 ability to just go directly to the Commission without
16 consulting the other office, or at least letting it know that
17 it is going ahead, so the chance to comment is there.

18 That is an example, and there are others like that.

19 COMMISSIONER BRADFORD: Cliff, I want to learn a
20 little bit more about something you said about 10 minutes
21 back. You said something to the effect that you thought that
22 under the present arrangement NMSS was concurring in exports
23 without adequate assurances. Was that simply the SSR problem,
24 or were you referring to other matters, as well?

25 DR. SMITH: Jim mentioned that. I didn't,

pv 1 specifically.

2 COMMISSIONER BRADFORD: You did, and I can't
3 remember the exact context, but talking about the concerns
4 you had. It wasn't during your prepared presentation, but in
5 the back-and-forth with the Chairman about concerns that you
6 had, you did say something to the effect of being compelled
7 under the pressures of the present system to sign off without
8 adequate assurances.

9 DR. SMITH: What I was talking about was in the
10 context of a question that Chairman Hendrie raised, that we
11 would request information of IP. We would get into, perhaps,
12 some sort of a discussion, if you might call it that, as to
13 whether or not that kind of information was information we
14 needed. There were pressures on both groups, pressures on IP
15 to get the export license out, pressures on us to fulfill it,
16 but we couldn't -- we felt uneasy about approving something
17 without adequate information. That was the only context that
18 I think I mentioned.

19 COMMISSIONER KENNEDY: That was a different
20 question than the adequacy of safeguards.

21 DR. SMITH: Yes. I don't remember mentioning that.

22 COMMISSIONER BRADFORD: But I gather --

23 COMMISSIONER KENNEDY: This was time pressure on
24 you?

25 DR. SMITH: That's right.

pv 1 COMMISSIONER BRADFORD: But what you are saying,
2 then, is that there are some exports that we have signed off
3 on recently in which that has occurred? Your concurrence in
4 them has, in some way, been flawed by the fact that you didn't
5 have the information you felt you needed?

6 DR. SMITH: No, no, no, no, no, no. Not recently.

7 COMMISSIONER BRADFORD: Has it happened at all?

8 DR. SMITH: I don't know, off the top of my head.
9 Do you know?

10 MR. BURNETT: No, sir.

11 DR. SMITH: What we were driving at was that we are
12 all under a time pressure here. We have pressures on us with
13 respect to time, and that, in order to make a decision as to
14 whether or not, in our opinion, the physical security measures
15 were adequate, we needed certain information. In order to get
16 that information, we would have to get into this debate, if
17 you will, in order to get it.

18 But we have not recommended to the Commission any
19 export where we felt that the physical security was not what
20 it should be. That has resulted in a lot of time.

21 COMMISSIONER BRADFORD: I understand that. But
22 have there been cases in which you didn't feel that you had
23 all the information you would have wanted to have to reach
24 that opinion?

25 DR. SMITH: You mean, are there cases where we

pv 1 have, perhaps, said okay but we would have felt better if we
2 had gotten more than what we did get?

3 MR. PAGE: Not on physical questions. That
4 question is open. It is open on material accounting. That is
5 still to be decided. On physical security, we have signed off
6 on all exports.

7 DR. SMITH: I think it is fair to say that there
8 have been cases where Mr. McCorkle would, perhaps, like --
9 feel better if he had further information.

10 MR. GOSSICK: But you have not asked IP to get you
11 something that you were refused, did you?

12 MR. BURNETT: No.

13 DR. SMITH: But certain individuals might have felt
14 better; but as an office, we made a decision that what we had
15 was adequate and there was no need to go back further to get
16 it.

17 CHAIRMAN HENDRIE: I must say, as sort of a
18 parenthetical comment, if the staff, the reviewing staff, is
19 worth a tinker's dam, it would be a rare case that goes in
20 which every man on the staff feels that he knows everything
21 he might, in the best of all possible worlds, wish to know.
22 That is true, whether it is export licenses for reactors or
23 what have you. They are getting to be hard decisions about
24 when you are at an adequate level and you have to give up on
25 all of your druthers, in terms of information.

pv 1 COMMISSIONER KENNEDY: What you would like to know
2 -- and what you need to know.

3 CHAIRMAN HENDRIE: Yes. That is sort of -- that is
4 one of the chronic problems of being a technical regulator.

5 MR. BURNETT: If I could bring out a further thing.
6 On page 7 --

7 CHAIRMAN HENDRIE: Did you ever get a chance, in
8 fact, to give your interpretation of that last sentence?

9 MR. BURNETT: I'm going to hit both of those.
10 Our office is currently pursuing at the
11 international level the development and recommending
12 international safeguards upgrading. I, myself, am the NRC
13 representative to the new physical security convention now
14 going on in the IAEA. If you look at that bullet 1 on page 7,
15 it would appear. In my reading of it, a monitor for NRC and
16 recommending NRC positions on upgrading of international
17 safeguards programs.

18 Again, I believe that is what NMSS and safeguards
19 division was set up to do. Now, it may be just a wording
20 problem that we have here. Mr. Shea and myself try very hard
21 to get over these problems. I am not hitting the policy side
22 at all. And he must still represent that. And we are not
23 talking about proliferation aspects, either. That is still --
24 we are not bringing up that point at all.

25

jwb

1 We are starting -- and indeed have duplication of
2 staff right now that I think is starting -- it is growing, it
3 is starting to affect us.

4 I have a recent case in point where our office
5 generated a report at a request from a -- a congressional
6 request, in which a Commissioner had a question concerning
7 that report. One of the items on that report was directed to
8 the EDO, and I in my files could answer that question almost
9 immediately. It was assigned to IP, which had to go out and
10 do all of the leg work.

11 We are duplicating staff right now, to some extent.

12 COMMISSIONER KENNEDY: Question. I have two.

13 First, my question is: In that case, I wonder why
14 IP didn't pick up the phone and ask you? I guess I will ask
15 them for that.

16 Secondly --

17 MR. BURNETT: I picked up the phone.

18 COMMISSIONER KENNEDY: I am not sure what that top
19 one means, either, if it doesn't mean what you said. Maybe
20 Lee could explain what -- how that affects.--

21 MR. GOSSICK: My interpretation of this is that
22 I think it is the thing -- from what Bob has described,
23 what he is involved in, where he is working with the IAEA
24 convention, or whatever it is called, providing input into
25 whatever this process is that will come to a proposal for an

jwb

1 upgrading of IAEA safeguards within IAEA. I look at that as
2 maybe a mix between "technical" and "policy" kinds of inputs,
3 but that is not the business of coming up or pulling together
4 for the NRC -- an NRC position for the Commission's
5 consideration with regard to whether, you know, we would
6 support, or insist on an upgrading of international, or
7 somebody's safeguards.

8 COMMISSIONER KENNEDY: Maybe we could clarify that
9 a little bit. That seems to me -- I don't know what you think,
10 but that seems to me a reasonable distinction.

11 MR. BURNETT: As I said, Mr. Shea and myself, we
12 are having some difficulty in interpreting the lines of
13 authority.

14 COMMISSIONER KENNEDY: Maybe there is a case in
15 point where the language doesn't seem to quite convey -- I
16 can understand how Bob could see it one way, and I can
17 understand how you can see it the way you described it. That
18 suggests that the language really needs a little sharpening.

19 MR. GOSSICK: I agree.

20 DR. SMITH: I agree. As Mr. Gossick was referring
21 to Mr. Burnett's participation in Vienna, and he said it is a
22 mix of policy and technical, then that makes my point. He is
23 there representing NRC at this IAEA convention, and it is not
24 a cleancut visa policy, but a mix.

25 COMMISSIONER KENNEDY: One of the things that most

jwb

1 supergrade people in this town do for their entire careers is
2 to discuss, on a continuing basis, the difference between
3 "policy" and "operations." Those that don't do that, discuss
4 the difference between "planning operations" and "planning
5 policy."

6 (Laughter.)

7 COMMISSIONER KENNEDY: But that really doesn't help
8 very much, except, you know, sort of "come have a spirited
9 continuing debate."

10 DR. SMITH: It is very difficult to cut a line.

11 COMMISSIONER KENNEDY: But we could get down to
12 some specifics. A couple of word changes might make the
13 distinction a little more clear.

14 Certainly there are policy aspects in what Bob is
15 doing, but that doesn't seem to me to make it a major --

16 MR. BURNETT: On page 2, I think that a similar
17 distinction can be made between the description of the duties
18 there. I believe that it is under the Division of Safeguards'
19 responsibilities to develop staff recommendations for export
20 and import licensing review criteria.

21 I again may be reading too much into it.

22 CHAIRMAN HENDRIE: Regarding safeguards and
23 physical security --

24 MR. BURNETT: And not nonproliferation assurance,
25 however.

jwb

1 CHAIRMAN HENDRIE: But again, there, suppose now
2 that language up through the end of part (a) were assigned to
3 NMSS.

4 MR. BURNETT: That would go a long ways toward our
5 resolution.

6 CHAIRMAN HENDRIE: Suppose it was. You then again
7 scope out these review criteria. You are well aware that you
8 are reviewing export-import applications. You have a crowd of
9 people whose game it is, among other things, to handle those
10 things. It would surprise me if you didn't consult with them.

11 MR. BURNETT: It would be negligent if we didn't.

12 CHAIRMAN HENDRIE: Furthermore, when you consult
13 with them, then you probably get a lot of -- the problem with
14 consulting with people is that they most often want to give
15 you their comments when what you want is a nod and a pat on
16 the back, but they insist on giving you comments.

17 They may make you mad, but I think you end up
18 feeling that you have a responsibility to take it pretty
19 seriously.

20 It isn't clear to me that, wherever the so-called
21 "lead responsibility" lies, that that designates the guy who
22 eventually gets to stomp on the other one and say "that is it;
23 I have heard you enough; I won't listen anymore."

24 I will tell you: My experience in these kinds of
25 conflicts comes from the reactor side, where Bussell(phonetic)NGG and

jwb

1 I had two divisions. I did the "technical work," so called;
2 and he did the "project management work," so called. You
3 know, we had these several-hundred-people groups who sort of,
4 all the way down the line to the lowest-ranked person, were
5 locked in mortal combat with one another.

6 You know, you talk about things escalating up the
7 chain of command, everything just went automatically to the
8 top like some sort of a buoyancy pump. We were perpetually
9 untangling these things.

10 What we came to recognize was that, even though a
11 matter was essentially "technical," you couldn't end up just
12 ignoring and walking away from, after you had listened to it
13 once, the strongly held opinion on the other side and vice
14 versa; that somehow you had to work those out and come to what
15 might be a grudgingly mutual acceptance; but, by God, at least
16 it was a mutual acceptance.

17 It seems to me that, on these things as on so many
18 pieces of interoffice business, that is the posture you are
19 probably going to find yourselves in.

20 DR. SMITH: Well, I am --

21 CHAIRMAN HENDRIE: If the lead responsibility lies
22 over there, he is going to have exactly the same problem:
23 that he can't turn away, even though he would like to,
24 ultimately, from something you want to do without working out
25 a mutually agreeable proposition.

jwb

1 It concerns me a little bit where the indistinction
2 of where a thing called "lead responsibility" lies:
3 It may have, or seem to have been translated into an inability
4 to in fact -- between you, over the last year or so, to in
5 fact achieve those areas of grudging mutual acceptance.

6 Do you see what I am saying? Wherever "lead
7 responsibility" lies, you are going to have to reach that
8 accommodation with one another.

9 DR. SMITH: There is no question in my mind about
10 that. And that --

11 CHAIRMAN HENDRIE: I am concerned that you seem to
12 be having some trouble doing that now. Or do I mistake that?

13 DR. SMITH: There is some problem. My experience
14 outside of this agency and other agencies and in private
15 industry is, too, that the problems that you mentioned are
16 true. However, it has been my experience that where the lead
17 responsibility is given to a particular office, and then in
18 general have to depend for that expertise on another office,
19 that they will have a tendency -- a strong tendency -- to
20 duplicate, particularly where there are differences of opinion
21 and you don't always have to go to them to get the expertise.

22 We have been getting the job done. The reason that
23 we are here is that, basically, as we said earlier, I simply
24 did not interpret my responsibilities at NMSS as per the
25 manual chapter that Mr. Gossick asked me to concur on, and we

jwb 1 sought your guidance on this.

2 If it is your decision that the manual chapter --
3 and indeed this paper -- is the role you want us to play, we
4 will play that role and we will do it well.

5 MR. GOSSICK: I would like to say, Mr. Chairman,
6 that notwithstanding the question and argument over the
7 months or years now, for that matter, there has been a lot of
8 good-faith effort and cooperation in going ahead and getting
9 the job done. There still have been differences on points of
10 view, but very rarely, I think, has it reached the point where
11 I have had to umpire the thing. They have gone ahead and
12 worked it out, and got the license out, or the paper done; but
13 it needs to be clarified. It needs to be put down, one way or
14 the other so that we can get on with the job.

15 I am concerned about the tendency, as Cliff just
16 pointed out, that there is a tendency to duplicate
17 capabilities. If you are trying to do something --

18 CHAIRMAN HENDRIE: Duplication we can hardly stand.
19 It doesn't make any difference whether he is trying to build
20 in the safeguards' technical expertise, or whether it goes the
21 other way; you end up trying to build in foreign-policy
22 capabilities, so you don't have to pay any attention to him
23 over there; you just handle the whole thing yourself.

24 We are going to frown on that as much as him
25 becoming --

jwb

1 DR. SMITH: We have no interest in --

2 COMMISSIONER GILINSKY: I was about to ask: Does
3 IP have the expertise?

4 MR. SHEA: Not the technical expertise. The only
5 people we have -- we have two people right now, and they are
6 people with foreign-policy backgrounds, and some background
7 in physical security -- a fellow from another part of NRC,
8 without NMSS. And that person has a foreign-policy,
9 political-science background. That is the focus of our
10 efforts is to get people who will focus on the policy issues,
11 because I see that as --

12 COMMISSIONER GILINSKY: We have got these SSAR
13 reports. They come around and they say this or that aspect
14 of materials accounting is not being done as well as it should
15 be, and so on. Who do we turn to to make an assessment of
16 those reports?

17 DR. SMITH: It is being done --

18 MR. GOSSICK: Both offices, but primarily NMSS has
19 the expertise as far as the safeguards, or the accounting and
20 control.

21 COMMISSIONER GILINSKY: For something like that,
22 you primarily turn to NMSS?

23 COMMISSIONER GOSSICK: That's what happened in
24 this past go-round.

25 DR. SMITH: That's right.

jwb

1 MR. SHEA: And then the assessments are normally
2 shown to IP to see if we have anything to add to them, and
3 then they're sent down, usually, as a jointly signed paper to
4 the Commission.

5 COMMISSIONER GILINSKY: I think one of the problems
6 is that "policy" is somehow a fancier word than "technical."

7 MR. GOSSICK: I agree.

8 COMMISSIONER KENNEDY: I thought, around here,
9 "technical" was fancier than "policy."

10 CHAIRMAN HENDRIE: I was going to say -- I don't
11 know what you mean by "fancy." Maybe that is the secret.

12 (Laughter.)

13 COMMISSIONER GILINSKY: They are both higher than
14 "legal."

15 (Laughter.)

16 COMMISSIONER KENNEDY: That's why the lawyers are
17 all in the policy business.

18 MR. SHAPAR: We struggle against it.

19 CHAIRMAN HENDRIE: I must say, it is a puzzling
20 matter.

21 Peter, you have something?

22 COMMISSIONER BRADFORD: I have a somewhat different
23 perspective on it than what I have heard. I think that there
24 are real differences in the way one assigns a lead function,
25 or what have you, in a situation like this; that, behind the

jwb

1 institutional likenesses and the exhortations to work things
2 out, there probably are real differences in approach; and that
3 they essentially break down, in terms of international
4 programs, with a greater concern for foreign policy
5 considerations likely to be wary of asking certain kinds of
6 questions that may give offense to recipient countries, and
7 NMSS with a desire to have -- a desire to have its concerns
8 fleshed out, perhaps pushing a little harder to get those
9 questions asked.

10 I think the decision we make, in terms of which
11 side of these individual pieces we come down on, other than
12 the parts that are clear, says something about whether or not
13 we, as a Commission, want those questions asked in the
14 international area.

15 I think that is a fairly important decision. I
16 think it is one that ought to be made on that basis. It is
17 pretty clear, from the record, that there -- and there was, at
18 one point, a request for a specific example, and we never
19 really got too far into them, but they are out there -- that
20 there have been cases in which this has, and does make a real
21 difference in the way things get done.

22 It seems to me --

23 COMMISSIONER KENNEDY: Could we pursue that? I
24 thought he said "no."

25 COMMISSIONER BRADFORD: Will you talk, then, a

jwb

1 little about the question I asked about getting information
2 with regard to the Indian situation?

3 DR. SMITH: Yes. Bob, do you want to go into that?

4 COMMISSIONER KENNEDY: What was this question?

5 COMMISSIONER BRADFORD: The question that I asked
6 a while back was with regard to getting into just some further
7 information with regard to the alleged smuggling of uranium
8 in India.

9 COMMISSIONER KENNEDY: Oh, yes.

10 MR. BURNETT: That one happens to be recent.
11 Commissioner Kennedy said I would have expected IP to get on
12 the phone. IP and I did get on the phone, Mr. Commissioner.
13 I did attempt to make it clear that we did have relevant
14 information that was available, and as far as I know there
15 was no more available within the community. It was in my
16 files, and that I could answer it.

17 Because of the way your question was asked, it was
18 taken to be more in the international arena than in answering
19 a question having to do with that paper.

20 There are other export --

21 COMMISSIONER KENNEDY: I don't know what this
22 means. What happened, then?

23 MR. BURNETT: I dropped out of the picture. I am
24 no longer in it.

25 DR. SMITH: Lee was assigned to IP, and we are no

jwb 1 longer -- he never asked for it; he didn't want it.

2 COMMISSIONER KENNEDY: Did you provide the
3 information?

4 MR. BURNETT: No, we were never asked.

5 MR. SHEA: We want that information. I have a
6 different recollection of that phone call than you do.

7 COMMISSIONER BRADFORD: The net result is we have the CIA
8 wondering what we are going up to, because two offices have
9 gone for the same information in a fairly short period of
10 time.

11 MR. BURNETT: We didn't go back on this.

12 COMMISSIONER BRADFORD: But you had the information
13 already. IP, after not getting the information, not choosing
14 to get the information, went to the CIA to ask for the same
15 information that you already had.

16 MR. BURNETT: As far as I know --

17 MR. SHEA: That is not my understanding of that
18 situation. The answer is not put together yet. And that
19 is your question, Mr. Bradford. That answer is not put
20 together. Before it is sent down, it will involve any input
21 from NMSS. It will be fully coordinated with that group. I
22 believe that was instructed in the EDO control, which assigned
23 it to IP to coordinate fully with NMSS.

24 The only question was -- where I think Bob felt on
25 that question, that there had been an earlier question from

46.09.13

jwb

1 Senator Glenn about this Indian smuggling ring which had come
2 in and asked specifically what was the story on a memo from,
3 I think, a Mr. Casey to Mr. Joe Yardumian of NMSS. It was
4 a very specific question: What was there in the correspondence
5 about that?

6 The action on that, I think quite properly, went
7 to NMSS. The answer was put together and sent to the
8 Commission, and that was subsequently sent to Senator Glenn.

9 Commissioner Bradford's followup question was
10 rather more specific. It said: What information do we have
11 from the intelligence community -- the intelligence community
12 and other agencies -- regarding this?

13 I have seen what was in the answer to Senator
14 Glenn. Would you find out from this intelligence community
15 and other agencies what is known further about this?

16 That was assigned to IP by the EDO. We then checked
17 with the other agencies, and are still checking. We talked to
18 NMSS and we factor only inputs that we can find, and we will
19 send that to the Commission, hopefully, by the time it is due.
20 That was our perception of that question; that it was very
21 different; that it was a proper question to be assigned to IP.

22 I talked it over with Tom Ream, and he pondered it
23 and said, "yes," he thought that was reasonable, in view of
24 the international intelligence focus of the question. We are
25 certainly going to figure in NMSS' positions.

jwb

end #9

1 COMMISSIONER BRADFORD: It is not as if input is
2 left out, but it doesn't seem to me to make a lot of sense to
3 go traveling around to other agencies getting their
4 information before we know what we have already.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMISSIONER KENNEDY: I don't remember what the
2 question was.

3 MR. BURNETT: I can give it to you. Do you want me
4 to read it? Okay. "May 8th response to Senator Glenn
5 provide a general description of an apparent uranium smuggling
6 operation which had been uncovered in India. The response
7 stated that no investigation was conducted since this involved
8 natural uranium. The staff is requested to contact the
9 intelligence community and other agencies as appropriate to
10 determine what additional information concerning the smuggling
11 ring is available. Please provide me the status report on
12 this matter by June 6th."

13 DR. SMITH: We had gotten all the information, as far
14 as we know, that was in the intelligence community on that
15 specific subject. And then, in the report to Senator Glenn,
16 we had just summarized it in a paragraph. It was in that
17 sense when Mr. Burnett saw this, he said, well, gee, all of
18 the information is in my files because that is the basis upon
19 which we answered Senator Glenn.

20 MR. BURNETT: I must admit -- and I did when I talked
21 to Mr. Shea -- I did not see the small difference in this
22 request and the other requests in having -- and having gone
23 through it the second time, I still don't see the difference.

24 MR. SHEA: When it says please contact, go and do it.

25 COMMISSIONER KENNEDY: When it says please contact

1 the agencies, that's what I would have done.

2 MR. BURNETT: But we had already done it. It is your
3 letter, sir. Did you want us to do it again?

4 COMMISSIONER BRADFORD: I don't know how many of the
5 different agencies you had contacted. I would have thought
6 the way something like that would have been handled, the first
7 one would ascertain what information existed within the NRC,
8 and then whatever agency was going to be contacted, make the
9 contact outside, would ask for information other than that
10 which we already had, which would avoid the CIA's problem of
11 trying to provide duplicative information to that which they
12 already provided to the NRC before, for whatever period of
13 time in advance.

14 MR. DIRCKS: I think, Commissioner, that this gets to
15 this last issue that was pending, this intelligence question.
16 I think that this may be the point. The thing that we have
17 tried to stress among the offices is that they keep one
18 another informed, and at least share information from the
19 various files. I am surprised that this information hadn't
20 been shared.

21 We are not quite sure what files exist at the agency.
22 I think that is one of the recommendations that we made in the
23 last part of this paper, that the intelligence thing be
24 somewhat better organized and that this information is shared.

25 COMMISSIONER KENNEDY: I would have thought that that

1 goes without saying.

2 DR. SMITH: I thought we had offered to show it.

3 MR. DIRCKS: I am talking about on a routine basis.

4 DR. SMITH: I think that we do. We do that on the
5 IAT and many other areas. Intelligence wasn't originally part
6 of the issues that we came to talk about.

7 CHAIRMAN HENDRIE: I must say there were drafted
8 manual chapters?

9 MR. GOSSICK: Yes. They have sort of been put on the
10 back burner until we tried to resolve these things. Depending
11 upon how we come out, we -- what we will do is to finalize
12 those --

13 COMMISSIONER KENNEDY: They are, in your view,
14 consistent with existing delegations of authority approved by
15 the Commission in 1975, is that right?

16 MR. GOSSICK: Yes, I would say we have to look at
17 them very hard to see if some further clarification of
18 language and inclusion of things like the intelligence issue
19 that was never really addressed before we came here with this
20 paper, need to be included. But I was going to say, of
21 course, depending on how this comes out, we will continue --
22 we will bring those manual chapters to a head, and then bring
23 them forward to the Commission for their approval.

24 (Pause.)

25 CHAIRMAN HENDRIE: I'm trying to see how to regroup.

1 COMMISSIONER BRADFORD: We might start with the
2 issues on the first page of the SECY paper and see where we
3 think they belong.

4 CHAIRMAN HENDRIE: How well do people feel that on
5 the first page of the SECY paper that the enunciation of those
6 four items characterizes the difference of opinion?

7 MR. GOSSICK: I think the reservation is primarily on
8 the part of NMSS. Jim, do you have any problem with the
9 listing of the issues on the first page of the paper as to
10 stating what the issue is?

11 CHAIRMAN HENDRIE: I guess these are also the
12 recommendation items.

13 MR. SHEA: Well, I suppose the review criteria might
14 be clarified. I am not sure that is fully clear as it stands
15 there. I said, I thought, what it meant to me. I don't know
16 whether NMSS agrees. Perhaps that could stand some
17 clarification. The next one, perhaps, as well. Although they
18 do mean certain things to me, in the case of, for example, the
19 second one, we looked at that. We talked about that earlier
20 in terms of the international physical security convention
21 activity in Vienna. This is all under the overall heading of
22 which of us has the lead responsibility for doing these
23 things.

24 In that case, IP is viewed, I think, as taking the
25 lead and coordinating the representation of participation of

1 the NRC in that activity. It was decided that NMSS would be
2 the appropriate group to attend. I don't read this as
3 meaning that, even if one office has the lead responsibility,
4 that it does all of the monitoring or all of the recommending
5 or all the activities, by any means. In that case, with IP's
6 full approval, Burnett was made the representative.

7 That is the way I see it working in practice. It is
8 reasonably clear to me. But I am not sure that it is
9 completely to others, as I have heard the discussion here
10 today, those two. Even coordinating, in the last item, people
11 may define that different ways. I've had a lot of discussions
12 as to what coordination means over the years. To me, it means
13 working closely with people. Others say it means you can kind
14 of go off on your own without getting their input.

15 I think one may have to get rather more specific in
16 some of the words here to be clear on exactly what the various
17 offices do. Otherwise, there is still room for
18 interpretation.

19 MR. BURNETT: It says international safeguards. Is
20 that interpreted to mean all requirements to work with the
21 IAEA, or is that different?

22 CHAIRMAN HENDRIE: Where are you, Bob?

23 MR. BURNETT: IAEA is not mentioned directly. I am
24 asking, is international safeguards, is that IAEA matters or
25 is that something different; and if it is something different,

1 shouldn't it be included in this list as one more item?

2 MR. GOSSICK: Isn't it under bullet 4, where they
3 have coordination of international safeguards policies and
4 nontechnical matters interacting -- well, that is on the
5 nontechnical, you're right. The kind of thing that you are
6 doing now, working with the IAEA, with a full--

7 DR. SMITH: That is our problem.

8 MR. GOSSICK: Is there a problem in that?

9 DR. SMITH: The problem is, as we read your
10 recommendations, Lee, and the issues, you are saying one thing
11 here as to how you see it working, but it doesn't appear to
12 us that the language reflects that. I think the problem is
13 perhaps just defining the issues a little more specifically.

14 COMMISSIONER KENNEDY: Maybe based upon all of this
15 discussion --

16 CHAIRMAN HENDRIE: I am tempted really --

17 COMMISSIONER KENNEDY: -- we have seen two or three
18 places for a little sharpening of the language, would probably
19 clarify the issue without changing the status quo, but just
20 clarifying it. My sensing is, the things that work in the
21 present circumstances outnumber by a very, very high margin,
22 the things that don't work. The things that don't work, it
23 seems to me from this discussion, depend essentially on very
24 small differences in meaning -- and I understand, as I said
25 earlier -- I understood how you saw that third one as

1 contrasted as to how Jim Shea sees it. That is a matter of
2 semantics that we ought to be able to correct.

3 MR. BURNETT: I think it should be made clear that it
4 is working.

5 COMMISSIONER KENNEDY: I know that. That is
6 precisely why. Don't disturb something that is working.

7 MR. GOSSICK: Mr. Chairman, if there is general
8 agreement along the general argument here, why don't you let
9 us go back and take a crack at the manual chapters with
10 attempts to clarify these points and the words themselves.
11 Unless we get the basic proposition settled, though, then we
12 are going to spend another year fighting over the manual
13 chapter.

14 DR. SMITH: There is one basic --

15 COMMISSIONER BRADFORD: I want to indicate that in
16 indicating that list of items as I understood them, I didn't
17 mean to indicate that I agreed that IP should have the lead
18 responsibility on all of them. I just wanted to use it as a
19 starting point for discussion of issues. I don't think that--
20 I don't happen to think that IP should have the lead
21 responsibility on all of them. So that we may have a real
22 problem as far as -- if by clarification of the present
23 situation, Dick, you meant a clearer spelling out of
24 functions, fine. But if by present situation, you essentially
25 are taking this SECY paper as being -- and its

1 recommendation -- as being a description, then I think we
2 have a difference.

3 COMMISSIONER KENNEDY: I think we discussed today
4 that the SECY paper isn't all that clear in many of its
5 aspects as to precisely what differences in the situation
6 there is. I would not disturb the situation. There is an
7 old saying: If it works, don't fix it. It is already said
8 that it works.

9 I think that what is needed here to make it work
10 better is just a little tightening of a nut or two, not a
11 major overhaul in the shop so that it won't run when it comes
12 out.

13 DR. SMITH: I would like to make one comment. In the
14 memorandum that I sent you of May 22nd, there is one
15 fundamental difference, I think. When I propose to affirm
16 that NMSS has the lead responsibility for implementing
17 domestic and international safeguards and physical security
18 programs, including establishment of the criteria for the
19 conduct of technical reviews of licensing applications and so
20 forth, to me that is one of the reasons we are here, I
21 suppose, is that I saw that as our responsibility and having
22 the lead responsibility.

23 I guess our question is: If we don't -- if that is
24 not resolved, then we get into a problem in trying to work
25 out --

1 MR. GOSSICK: But I have got to bring up a point
2 here, though, that your definition of lead responsibility, I
3 think, is a little different than what we have talked about
4 before.

5 DR. SMITH: Maybe we need to take a look at that.

6 MR. GOSSICK: Yours with optional consultive input.
7 Optional input, and that is not coordination.

8 DR. SMITH: I don't know where we said optional.

9 MR. GOSSICK: It is in the paper that you wrote and
10 gave back.

11 DR. SMITH: But obviously, we coordinate.

12 CHAIRMAN HENDRIE: It would be helpful -- we look at
13 page 1 of the SECY paper, at the four bullets. It appears to
14 me that there is something less than a precision of language
15 here that is helpful to the Commission. I think it would be
16 helpful to recast that language. We will have to return
17 again to the issue, I am afraid, in view of the hour and the
18 complexity of the issue.

19 It may be that, by some consultation on language,
20 that the issues laid down before the Commission could be a
21 little more clearcut. I have a problem with attempting to
22 vote up or down, or vote to left or right, I guess is the way
23 to put it, on this so-called lead responsibility on the basis
24 of just going down this list of issues.

25 I am not confident that the language here fairly

1 reflects where we ought to be. I can vote to left or right on
2 one of these things and just make mush out of what is already
3 mush. That is not helpful. The discussion this afternoon may
4 indicate some ways in which we can get clarification and
5 sharpening.

6 It seems to me that it would be helpful if the two
7 points of view agreed on the wording. I don't require people
8 to be happy, as I noted before. But even if it's grudging,
9 a mutually-acceptable enunciation of the particular
10 responsibility areas for the Commission's future
11 consideration.

12 COMMISSIONER KENNEDY: Let me add that I have the
13 same difficulty with the two propositions at the bottom of
14 page 3 of your memo. I am not clear as to precisely what they
15 mean, as I am with these (Indicating.)

16 DR. SMITH: I think probably if we sharpened the
17 language, and then under each one of these give examples, as
18 you see the office participating, then you know exactly what
19 we are talking about.

20 COMMISSIONER KENNEDY: And if there are seemingly
21 irreconcilable differences in the language, put both of them
22 down and then put a little example, what is the difference,
23 what does it mean if you choose this, as contrasted with that.
24 Then I think that you can get someplace.

25 MR. GOSSICK: Mr. Chairman, I just got to say it:

1 Here are the last three versions of the paper before it
2 finally went to final, and the last short version was 37 pages
3 compared to the seven pages. And we have had their version
4 and their version, and we have gone on ad nauseam on this
5 thing. I don't think you want to be blessed with this pile of
6 stuff.

7 I guess we need some guidance as to -- is there
8 anything that is agreed upon? Or can we at least focus this
9 thing down now as to defining the language in a little more --
10 in a less unsettled way?

11 CHAIRMAN HENDRIE: You have four recommendations in
12 this staff paper before the Commission. We have discussed two
13 of them and found certain --

14 MR. GOSSICK: We agree, they may have lost something
15 in the condensation.

16 CHAIRMAN HENDRIE: What I would like to know, is four
17 the right number? Should there be one or two more or
18 whatever? It doesn't seem to me beyond possibility for Shea
19 and Burnett or all of you at the table, if that is
20 appropriate, to sit down and say, we don't like it, but we
21 have been told to take these four and fix them so that we can
22 reasonably agree among us that they are the questions that we
23 are asking the Commission.

24 At the moment, I have the problem that he doesn't
25 think that those are the right questions, or at least some of

1 them don't correctly phrase the correct question. I know it
2 has been a misery. And keep in mind that we don't want
3 another long paper. But you know, one or two pages, maybe.

4 MR. GOSSICK: That would be a help if you give us the
5 ground rules.

6 CHAIRMAN HENDRIE: SECY papers have to be small.

7 COMMISSIONER KENNEDY: For each one of the pages,
8 that means there's four pages. If anybody wants to tack on
9 more, then no more than a page for each.

10 COMMISSIONER BRADFORD: In your opinion, we are
11 really talking about getting very far away from the first page
12 of those you want, that matrix of contested and uncontested
13 matters?

14

15

16

17

18

19

20

21

22

23

24

25

T-11
barbl

1 MR. GOSSICK: The issue of --

2 COMMISSIONER BRADFORD: No, I am sorry; enclosure
3 one.

4 MR. GOSSICK: I don't really like enclosure one,
5 frankly. I think it is an attempt to -- we put it in there as
6 an attempt to simply something that I don't think can be neatly
7 simplified.

8 It shows literally that the only things that are
9 not contested, according to this, is the technical aspects with
10 regard to international safeguards, and the IAEA U.S. agree-
11 ment. Everything else is contested.

12 But it doesn't really help you very much. It shows
13 who is doing it, and in most cases where it is contested, it
14 says both.

15 But that merely says that: Well, one has got -- gen-
16 erally, IP has the lead on these things, or has been acting
17 as a lead, coordinating with NMSS. I think for the most part,
18 that is the way it has been arranged.

19 But I just didn't find it very helpful in trying to
20 really present the picture to you, as far as what the real
21 issue is.

22 But at any rate, we can take a crack at and see if
23 we can't --

24 CHAIRMAN HENDRIE: I think --

25 MR. GOSSICK: -- boil this down.

1 CHAIRMAN HENDRIE: There is an implication in your
2 disagreements and in these definitions of what you mean by lead
3 responsibility, that it will just assign what is called lead
4 responsibility some place.

5 That guy has now got an extra stripe on his sleeve,
6 and he can ignore what is being said on the other side. And
7 let me reiterate for you my very strong feeling that where you
8 have disagreement and first round getting together to under-
9 stand each other doesn't eliminate them; that is, it doesn't
10 turn out to be a misunderstanding, that it doesn't much matter
11 who has got lead responsibility. You are going to have to grind
12 on each other and come to mutually acceptable courses of action.

13 COMMISSIONER KENNEDY: Or alternatively, put them
14 forward to some place where they can be --

15 CHAIRMAN HENDRIE: Or elevate them in a kindly way
16 first to the EDO and then on up there.

17 That is, I don't regard lead responsibility in these
18 areas where two offices have to work together closely, where
19 the nature of the expertise is somewhat different in each of-
20 fice, and they need to combine and coordinate the NRC action,
21 where the thrusts may, on given points, -- I don't like to re-
22 gard lead responsibility as permission after one round of
23 discussion to ignore the other fellow's point of view.

24 And keep that in mind in terms of the development
25 of these things, and also, your thinking about the thing,

1 because -- I think that makes it clear?

2 Other commentary?

3 (No response.)

4 You have driven Commissioner Gilinsky from the room.

5 (Laughter.)

6 (Whereupon, at 4:50 p.m., the hearing in the above-
7 entitled matter was adjourned.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

