



# **Transcript of Proceedings**

## **NUCLEAR REGULATORY COMMISSION**

DISCUSSION OF SECY-77-611D - DRAFT AMENDMENTS TO THE  
ATOMIC ENERGY ACT ON THE PROTECTION OF SAFEGUARDS  
INFORMATION AND RELATED MATTERS

(Open to Public Attendance)

May 10, 1978

Pages 1 - 94

Prepared by:  
C. H. Brown  
Office of the Secretary

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on May 10, 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.

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
3

4  
5 DISCUSSION OF SECY-77-611D - DRAFT AMENDMENTS TO THE  
6 ATOMIC ENERGY ACT ON THE PROTECTION OF SAFEGUARDS  
7 INFORMATION AND RELATED MATTERS  
8

9 (Open to Public Attendance)

10  
11 Commissioners' Conference Room  
12 Room 1130  
13 1717 H Street, N.W.  
14 Washington, D. C.

15 Wednesday, May 10, 1978

16 The Commission met, pursuant to notice, at 2:05 p.m.,  
17 Joseph Hendrie, Chairman, presiding.

18 PRESENT:

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

23 ALSO PRESENT:

24 S. Chilk  
25 L. Gossick  
H. Shapar  
E. Case  
W. Parler  
G. McCorkle  
S. Ostrach  
W. Reamer  
B. Snyder  
C. Stoiber  
L. Spector, Senator Glenn's office

P R O C E E D I N G S

CHAIRMAN HENDRIE: Okay, let us turn to a discussion of draft amendments to the Atomic Energy Act on the protection of safeguards information and related matters.

There is a paper, 611 and so on, subsequent amendments. I think we are up to ---

MR. SHAPAR: D.

CHAIRMAN HENDRIE: -- D. Which were the results of my concern that the narrowing of the proposition which has gone on had gone further that I could be happy with.

So I asked Howard to prepare D which went back and included some of the earlier provisions, but in a format essentially the same as that of C which I found to be, at least in my reading, a more easily understood format.

COMMISSIONER GILINSKY: Before you get to D, could you -- I'm sorry if I interrupted you.

CHAIRMAN HENDRIE: No, I'm about done.

COMMISSIONER GILINSKY: Could you briefly run over C as to how we get to where we are.

CHAIRMAN HENDRIE: Yes, I think that would be a good idea.

COMMISSIONER KENNEDY: Maybe we should start at the beginning and figure out how we got here.

MR. SHAPAR: Would you like me to start with A and end with D?

1 COMMISSIONER BRADFORD: What about E?

2 MR. SHAPAR: That's future.

3 COMMISSIONER BRADFORD: There is an E now?

4 CHAIRMAN HENDRIE: Smith has filed one, but it is  
5 sort of extra. Go ahead.

6 COMMISSIONER KENNEDY: Smith has filed one? What  
7 is that one? Do I have that one?

8 MR. SHAPAR: "A" was responsive to a Commission  
9 request for legislation that would better implement a program  
10 for the protection of -- give us statutory authority to  
11 implement a more expansive program for the protection of  
12 safeguards information.

13 That was considered by the Commission. The  
14 Commission had certain refinements that they wanted in that  
15 basic approach. Those refinements are incorporated in "B",  
16 the basic approach is still the same and I will summarize  
17 that in a minute.

18 When "B" was considered only Commissioners Bradford  
19 and Commissioner Gilinsky were present.

20 COMMISSIONER GILINSKY: When "B"?

21 MR. SHAPAR: When "B" was considered, yes, sir.

22 And they requested essentially that the scope of  
23 B be narrowed. "C" reflects the narrowed scope. "D" which  
24 you have in front of you is the latest version of the draft  
25 legislation, was an attempt to bridge the differences between

1 "C" and "D". It is essentially the format ---

2 COMMISSIONER GILINSKY: Between "C" and "B"?

3 MR. SHAPAR: I'm sorry, between C and B, yes, sir.

4 It is essentially -- B is essentially the format  
5 of C rather than B with a few changes. The main changes  
6 being three: source material would be included, security  
7 plans or locations of plant equipment would be added to the  
8 "detailed security measures for the protection of facilities,"  
9 and the third one was the deletion of the word "substantially"  
10 in the phrase: "facilitating theft, diversion or sabotage,"  
11 which is the operating criteria for the promulgation of the  
12 limitation for the new authority.

13 Those are the three major changes in C, as now  
14 reflected in D. So D is essentially B with the three  
15 substantive changes that I have just mentioned.

16 COMMISSIONER GILINSKY: Could you just run over  
17 those again, please?

18 MR. SHAPAR: Yes, sir.

19 Source material would be included in the authority  
20 to implement regulations to protect not only byproduct and  
21 special nuclear material in the facility, but source material  
22 as well. That was in B, it was not in C and it is in D.  
23 That is one of the changes from C.

24 The next one is that in describing the security  
25 information it has been expanded to include: "would be

1 protectable." It has been expanded to include: "security  
2 plans or locations of plant equipment." This would be  
3 added to the phrase, "detailed security measures." Okay.

4 COMMISSIONER KENNEDY: And this would apply not  
5 only to fuels, but as well to production or utilization of  
6 sites, is that right?

7 MR. SHAPAR: Only to the latter, but it could if the  
8 Commission is so ---

9 COMMISSIONER GILINSKY: It would apply only to the  
10 former, I would think.

11 COMMISSIONER KENNEDY: Does it apply to fuels ---

12 MR. REAMER: It applies to both, material and the  
13 facilities.

14 COMMISSIONER GILINSKY: Are you talking about the  
15 amendment or are you taling about specific provisions?

16 COMMISSIONER KENNEDY: What does it apply to?  
17 Does it apply to reactors?

18 MR. SHAPAR: Only the reactors as I read the current  
19 version.

20 COMMISSIONER KENNEDY: "Security plans and locations  
21 of plant equipment and fuel cycle facilities it would not be?

22 MR. SHAPAR: Not as drafted, no.

23 CHAIRMAN HENDRIE: That circles a different  
24 substantive ---

25 MR. SHAPAR: And there would be no reason why it

1 could be expanded for the fuel cycle facilities as well.  
2 Perhaps that's a good reason why it should be.

3 MR. McCORKLE: NMSS suggested that it be added.

4 MR. SHAPAR: And we would have no objection to that.

5 COMMISSIONER KENNEDY: Okay.

6 MR. SHAPAR: Now, at this point let me point out  
7 that ---

8 COMMISSIONER KENNEDY: And what was the third one?

9 MR. SHAPAR: The third one was the deletion of the  
10 word "substantially" in the phrase: "facilitating theft,  
11 diversion or sabotage." That was in B, it was not in C, it  
12 is back in D.

13 COMMISSIONER KENNEDY: That deletes it, so it is  
14 back.

15 MR. SHAPAR: It was in B, it was deleted in C to  
16 accommodate the request of Commissioners Bradford and Gilinsky,  
17 just the reverse.

18 COMMISSIONER KENNEDY: It is really a very compli-  
19 cated subject.

20 MR. SHAPAR: Only because I'm making it that way.  
21 It is really very simple.

22 Substantially it was not in B, it was in C, and it  
23 is not in D. Okay?

24 COMMISSIONER KENNEDY: Now, could we go back to  
25 those things, one at a time.



1 CHAIRMAN HENDRIE: Before you go back we should note  
2 one other thing which is more in a sense a mechanical thing.

3 Along with the Section 147 Amendment or the new  
4 Section 147 there were some changes which were necessary to  
5 161(i), 181 and 274. No changes from C, 181 or 274.

6 MR. SHAPAR: Right.

7 CHAIRMAN HENDRIE: In 161 ---

8 MR. SHAPAR: There was a minor change to take care  
9 of DOE.

10 CHAIRMAN HENDRIE: Yes. Because DOE draws its  
11 authority from that same paragraph, the old AEC security  
12 program. There had to be deletion of the phrase "and which  
13 requires a Commission license," ---

14 COMMISSIONER KENNEDY: And we deleted it.

15 MR. SHAPAR: It doesn't affect the substantive  
16 authority that we are asking for, but it does take care of  
17 a technical problem.

18 CHAIRMAN HENDRIE: If it had been left in, it would  
19 have apparently given the DOE side a problem in using -- it  
20 would have affected them seriously.

21 Now, didn't we also put a source material in there  
22 at some point at 161?

23 MR. PARLER: Yes, the source material addition, to  
24 make the "D" version conform to the "B" version it was made  
25 consistently throughout the draft.

1 MR. SHAPAR: There was a question about the draft.

2 CHAIRMAN HENDRIE: Okay, now let us go back to  
3 147.

4 COMMISSIONER KENNEDY: What I would like if I could  
5 take just one minute, I would like to go back, if you would --  
6 okay, now we know what each of these significant changes  
7 play a role in, these changes, the important substantive  
8 changes -- somebody assess the importance of these. What  
9 do they mean? As a practical matter what is the effect  
10 of the differences, okay?

11 MR. SHAPAR: The source material addition can be  
12 described, I think, fairly easily.

13 The legislation as drafted under any version would  
14 cover byproduct material and special nuclear material and  
15 facilities. Obviously the key interest as far as safeguards  
16 is concerned is in SNM and that traditionally has been the  
17 case. But there also has been concern to a much lesser  
18 extent with respect to safeguards in the context of the  
19 protection of source material. For example, source material  
20 is mentioned in the Nonproliferation Act. In fact, source  
21 material is mentioned in connection with the Commission's  
22 safeguards responsibilities in the Energy Reorganization Act,  
23 Sections 203 ---

24 COMMISSIONER GILINSKY: Well, what are we guarding  
25 against here, the theft of source material?

1 MR. SHAPAR: Diversion of source material, I think,  
2 would be the major emphasis, yes.

3 COMMISSIONER GILINSKY: So we are going to keep ---

4 COMMISSIONER KENNEDY: And that would be to include  
5 it would make it consistent, in your view, with the law up  
6 to now, A, B, with your understanding of the Nonproliferation  
7 Act?

8 MR. SHAPAR: That's my understanding, yes.

9 COMMISSIONER KENNEDY: And not to do so would make  
10 it somewhat inconsistent with each?

11 MR. SHAPAR: I think so, in terms of the way our  
12 safeguards and responsibilities have been handled in the past.  
13 The major emphasis has been indeed on SNM, but there has been  
14 a much lesser concern with source material, but it has been  
15 there nonetheless.

16 COMMISSIONER KENNEDY: Consistent with legislative  
17 language in history?

18 MR. SHAPAR: Yes.

19 COMMISSIONER KENNEDY: Okay, that's what I wanted to  
20 know.

21 COMMISSIONER GILINSKY: Do you really think so?  
22 I mean ---

23 COMMISSIONER KENNEDY: I asked him and he gave me  
24 an answer, and I'm accepting his answer because that was my  
25 understanding as well. Since he has not contradicted my

1 understanding, I don't know where to go from here.

2 COMMISSIONER GILINSKY: Well, you put the question  
3 so surly.

4 COMMISSIONER KENNEDY: Well, that's usually the  
5 way you get the right answer to the question.

6 MR. SHAPAR: Do you feel the witness has been led?

7 COMMISSIONER GILINSKY: What we are talking about  
8 here is authority to keep source material shipments secret  
9 and plans for such shipments secret, locations secret and so  
10 on. Isn't that going far beyond what ---

11 CHAIRMAN HENDRIE: To the extent -- I don't know.  
12 Does the plum bat affair give you any pause or not? To  
13 the extent I know ---

14 COMMISSIONER KENNEDY: It gave Paul Leventhaul  
15 a pause I note in an article just the other day.

16 COMMISSIONER BRADFORD: I think the pause is the  
17 opposite why it gave Paul Leventhaul, that's what got things  
18 started.

19 CHAIRMAN HENDRIE: To the extent that you want to  
20 be in a position to say you are minimizing the risk of the  
21 diversion of the yellow cake war materials which then could  
22 be used in a graphite or heavy water reactor, why something  
23 like this is handy.

24 MR. SHAPAR: This material is included in IAEA  
25 Categories I and II.

1           COMMISSIONER GILINSKY: I understand, and I feel  
2 there is a sense of protecting the material, but ---

3           COMMISSIONER KENNEDY: Are you sensitive for the  
4 need for that? generally speaking?

5           COMMISSIONER GILINSKY: Not entirely, but what  
6 are we talking about, extending the safeguards review to  
7 mills, to God knows what?

8           MR. SHAPAR: Oh, this is permissive authority.

9           COMMISSIONER GILINSKY: I understand, it is just  
10 authority and you don't have to use it, but you go up there  
11 for a purpose and you ask for this authority because some  
12 day you might want to use it, presumably you think you might  
13 and there may be a reason to do it because this covers an  
14 area where you think you might want to go.

15           COMMISSIONER KENNEDY: If you don't, and you later  
16 find a particular situation or case in which you do, without  
17 the authority you would have a slight problem.

18           COMMISSIONER GILINSKY: That's right, but of course  
19 you could always go up again. It is very hard for me to  
20 invasion using that authority.

21           COMMISSIONER BRADFORD: You are having the same  
22 difficulty with this as I had with the aspects of the clearance,  
23 which is when the Senators look at you and say we are going  
24 to make a case as to why you should have this authority, what  
25 is it you are worried about. You have to have some answers.

1                   COMMISSIONER GILINSKY: If you ask this question  
2 against uranium, I think I know the answer.

3                   CHAIRMAN HENDRIE: Well, this is clearly a second  
4 order concern compared to weapons useable materials, there is  
5 no question about that and then the question is: would you like  
6 to have the authority if it ever seemed appropriate in view  
7 of circumstances in the world to take those steps, would you  
8 like to have those authorities in the law that you could  
9 implement them.

10                  I must say for myself, I would not foresee any near  
11 term implementation, in fact, of protective regime on  
12 the source material, but ---

13                  COMMISSIONER KENNEDY: I understand the concern, I  
14 don't see the problem either except to say that the  
15 Nonproliferation Act must -- in this design -- must also  
16 have taken these very thoughts that we are expressing into  
17 account and did include in reference source material.

18                  COMMISSIONER GILINSKY: Presumably there is the  
19 material that you have to keep track of and that seems  
20 perfectly reasonable, but is it something you have to keep  
21 secret and for whose handling people need to have clearances  
22 and so on.

23                  COMMISSIONER KENNEDY: And to what extent do safe-  
24 guards extend?

25                  COMMISSIONER GILINSKY: I guess I wouldn't go that far.

1           CHAIRMAN HENDRIE: Well, in particular because  
2 I don't see -- my tendency would be to say if one is going  
3 to talk about this kind of legislation, I would try to look  
4 ahead and get it framed so that there were authorities  
5 presiding there that might conceivably -- the Commission  
6 might want to implement some day. I think your approach  
7 would be to say no, you know, if we see some need for source  
8 material protection in the future along those lines, go back  
9 and change whatever is down on the books that provides it.

10           Since I don't see any -- I haven't foreseen any  
11 moving on any implementation for source material in the near  
12 future, unless circumstances change substantially from the  
13 present, I'm not hung hopelessly and to the bitter end on it.  
14 I'm negotiable though, what do you have to negotiate?

15           COMMISSIONER GILINSKY: Well ---

16           COMMISSIONER KENNEDY: I will deal with them one at  
17 a time.

18           As a practical matter, I don't -- you know, given  
19 the fact that we to a very large extent see the problem  
20 essentially the same way, I can thus recognize the import  
21 of whichever we wish to go. I'm not persuaded we have to do  
22 this. I think it would be a prudent thing to do, I think  
23 it is not an unnecessary thing to do, thus, if ---

24           COMMISSIONER GILINSKY: Let me ask. Do we want to  
25 have material accounting requirements for source material?

1 CHAIRMAN HENDRIE: Do we? I doubt it very much.

2 MR. McCORKLE: I would like to just make one  
3 statement in that regard to the Category II and Category  
4 III rule which refers to source material, and it is envisioned  
5 that some degree of protection, albeit, the minimal amount  
6 what we provide in to it, insofar as the international  
7 community is concerned ---

8 COMMISSIONER KENNEDY: The IAEA statute?

9 MR. McCORKLE: Yes.

10 CHAIRMAN HENDRIE: But in terms of the domestic  
11 fuel supply industry, I don't think we -- if we added up and  
12 substrated, I'm pretty sure we don't publish inventory  
13 differences on it and otherwise account for it.

14 COMMISSIONER GILINSKY: What are we going to keep  
15 saying?

16 CHAIRMAN HENDRIE: At the moment, nothing.

17 MR. SNYDER: The practical matter is there is little  
18 if any information that we would cover at the moment.

19 CHAIRMAN HENDRIE: At the moment, nothing.

20 In three or four years if there gets to be concern  
21 over people heisting natural uranium ores and yellow cake  
22 in shipment, to run it out some place to some other nations ---

23 COMMISSIONER KENNEDY: Some people for over the  
24 years have expressed precisely those concerns. As a matter  
25 of fact in the New York Times on Sunday there was, as I recall,



1 the anniversary of the first expression of concern in this  
2 matter. History suggests to me, albeit contemporary history,  
3 that once one hears those expressions of concern they are  
4 likely to deepen and strengthen, not lessen. Therefore, you  
5 are talking about a period, I should think, in the relatively  
6 near term when it will become a matter of great concern  
7 even though in fact, it is not now.

8 MR. McCORKLE: I'd like to bring one other point  
9 up that Dr. Smith mentioned in a memorandum recently that the  
10 leading source material from Sections 147 and 161(i)(22)  
11 would imply that the need to protect source material is  
12 less than byproducts and he disagrees with that proposition.  
13 He notes that both the IAE staff and the Nonproliferation  
14 Act mention source material and they remain silent on byproducts  
15 material. I note that here it does not question the byproduct  
16 material.

17 COMMISSIONER GILINSKY: Well, I assume when you are  
18 including byproduct material you are talking about radioactive  
19 waste which could be harmful to people.

20 CHAIRMAN HENDRIE: Well, what ever the standard  
21 amounts significant for the public health and safety or the  
22 common defense and security as determined by the Commission.

23 MR. McCORKLE: At the present time, I mean, such  
24 materials are exempt from security requirements. There are  
25 no requirements for any security measurements in the

1 transport, for instance, of Cobalt 60.

2 CHAIRMAN HENDRIE: But there will be on spent fuel.

3 MR. McCORKLE: At the present time there is none  
4 on spent fuel.

5 CHAIRMAN HENDRIE: Well, wait until we get down the  
6 line a little bit.

7 COMMISSIONER GILINSKY: Do you mean there is something  
8 in the works for spent fuel or not? Do we have anything  
9 in the works to provide security for spent fuel?

10 MR. McCORKLE: There is nothing in the works in the  
11 new Part 73.

12 CHAIRMAN HENDRIE: I say, give them a little while  
13 and I think we will.

14 MR. McCORKLE: The FEA does require that adequate  
15 security measure be maintained with respect to export  
16 authorities, which means there would have to be some  
17 security measurement plan developed if we are going to be  
18 consistent with that Act. So do we wish to protect those  
19 plans or don't we and I think that's the issue here.

20 MR. SHAPAR: Well, I think you have got a short-term  
21 issue and a long-term issue here and they both need to be  
22 considered.

23 CHAIRMAN HENDRIE: It seems to me that is ample  
24 discussion on source material and I think we should see where  
25 they kind of settle down. Why don't we move on to other points

1 and get these all mapped out.

2 MR. REAMER: Before you move on, let me point out  
3 one aspect of 161(i) which does include source material, and  
4 that is 161(i) and in there we are expressly recommending  
5 legislation that would include in the Commission's rulemaking  
6 authorities, the authority to impose safeguards requirements  
7 that would cover source material. So to the extent that  
8 Dr. Smith has concerns, by deleting source material from 147  
9 would be suggesting that there is no need to protect that.  
10 I don't think that concern is legitimate. I think 161(i)  
11 shows that you are -- to the extent that safeguards requirements  
12 for source material are required and we are seeking legislative  
13 authority to carry that out.

14 MR. SHAPAR: At one time the Commission sought to  
15 expand 161(i) to specifically include source material for  
16 reasons that were very clear that perhaps it wasn't adequately  
17 covered. I don't consider that a major problem, because we  
18 probably could derive the authority from section 65 of the Act.

19 COMMISSIONER GILINSKY: But does it necessarily follow  
20 just because you have to keep track of the material you have  
21 to keep that accounting secret?

22 MR. SHAPAR: It doesn't necessarily follow, no.

23 CHAIRMAN HENDRIE: Not necessarily because it could  
24 go here and stay there and 161 conceivably ---

25 COMMISSIONER KENNEDY: Which is a different

1 question than the physical security arrangements which are  
2 being spoken of here. It could be international contacts, and  
3 if you are going to have those then the necessity could  
4 protect whatever plans are associated with those statistical  
5 data.

6 MR. REAMER: Well, it is my understanding from the  
7 staff that they do not contemplate that a something called  
8 security plan will likely be adopted for source of material  
9 exports. There may be certain types of security measures,  
10 but there won't be anything that amounts to a security plan  
11 and detailed security measures, at least in their interest.

12 CHAIRMAN HENDRIE: Okay, good point.

13 Could we go on to the second point.

14 MR. SHAPAR: The second, as you recall, and again  
15 now this is illustrating the differences between versions C  
16 and D.

17 The word "security plans or locations of plant  
18 equipment" have been added to "detailed security measures" for  
19 the physical protection of production or utilization facilities.  
20 I think this was a point that was made by either NMSS or NRR  
21 or both.

22 MR. CASE: My concern was that security measures  
23 might be read narrowly not to include security plans nor  
24 possibly not to include plant equipment -- lay out of plant  
25 equipment which I think is important from a physical

1 protection standpoint. So to avoid that, I suggested that  
2 those other words be added.

3 MR. SHAPAR: And I think the point was made earlier  
4 that if it deserves to be in here, then perhaps it also  
5 deserves to be in the fuel cycle as well. At least that was  
6 one argument.

7 COMMISSIONER GILINSKY: What kind of equipment are  
8 we talking about?

9 MR. CASE: I'm talking about location of equipment,  
10 like electrical equipment, instrumentation. Not the details  
11 of the equipment itself, but its location within the facility.  
12 You know, you can go here and screw that one up and you can  
13 go over there and screw that one up. The detailed locations  
14 was the concern to me.

15 COMMISSIONER KENNEDY: This recalls a briefing we  
16 had a considerable time ago, well over a year ago and you  
17 may recall some people from one of the labs who had gone through  
18 a detailed design examination of facilities to try to ascertain  
19 if you really wanted to do some damage, how could you best go  
20 about it. Remember that?

21 MR. SHAPAR: Sandia.

22 COMMISSIONER KENNEDY: They put a few red marks on  
23 the chart, I think, that suggested that here were the places  
24 that under the best of design circumstances you could  
25 conceivably have difficulty if somebody knew how to go about it.

1 MR. SHAPAR: It might be useful to point out that  
2 in the earlier version the language was extremely loose with  
3 which Commissioner Gilinsky and Commissioner Bradford had  
4 trouble. It didn't attempt to define the kinds of safeguards  
5 information we were interested in. The later version has  
6 attempted to address that concern by specifying the safeguards  
7 information we were interested in.

8 The point we have just been discussing is whether or  
9 not it has been cut back too far or not.

10 COMMISSIONER KENNEDY: And that depends on one's  
11 interpretation of the language in the version and Ed's  
12 concern is that it might be so interpreted so as to exclude  
13 these items, which his view, they should be included and I  
14 must say I am sympathetic to his view. Indeed, as I recall,  
15 it was information of precisely that kind which drew some  
16 anguished comments from officials of the Congress recently  
17 unto which I thought we were trying to be responsive since  
18 the Congress' comments were wise.

19 COMMISSIONER GILINSKY: Are you saying location of  
20 plant equipment for the physical protection of production  
21 of these facilities, are you talking about equipment for  
22 the protection of?

23 MR. CASE: Location of equipment.

24 COMMISSIONER GILINSKY: What does that for physical  
25 protection mean?

1                   COMMISSIONER KENNEDY: That sounds like a glitch  
2 in language.

3                   COMMISSIONER GILINSKY: He just stuck it in after  
4 security plans because it was security plans for the physical  
5 protection.

6                   COMMISSIONER KENNEDY: I think he stuck it in the  
7 wrong place from the way you read it, it sounds like that.

8                   MR. SHAPAR: Want me to read the whole phrase:

9                   "Security measures, security plans or locations  
10 of plant equipment for the physical protection of production  
11 or utilization facilities involving nuclear materials."

12                  COMMISSIONER KENNEDY: Yes, but my question is the  
13 same as Commissioner Gilinsky's. Is this equipment that is  
14 designed for the physical protection of the equipment -- I mean  
15 of the facility?

16                  CHAIRMAN HENDRIE: Or is it the location of equipment?

17                  MR. CASE: It has other purposes. It could have that  
18 purpose too.

19                  COMMISSIONER KENNEDY: I know, but it is well beyond  
20 that.

21                  MR. CASE: Yes, it is well beyond that.

22                  MR. SHAPAR: Then this language is ambiguous then.

23                  COMMISSIONER KENNEDY: It is in the wrong place.  
24 It needs to be ---

25                  COMMISSIONER GILINSKY: I think you ought to qualify

1 the plant equipment. I think the idea is there, but you  
2 don't want to ---

3 COMMISSIONER KENNEDY: It is vital to the safety.

4 COMMISSIONER GILINSKY: -- specific equipment that ---

5 MR. CASE: It is already detailed location. It has  
6 got that qualifier on there.

7 MR. SHAPAR: The preparatory language that embraces  
8 all these categories are disclosure of safeguards information  
9 which identifies a licensee, their applicants detailed, and  
10 then it goes 1, 2, 3.

11 COMMISSIONER KENNEDY: Security measures ---

12 COMMISSIONER GILINSKY: Right.

13 MR. CASE: Or security measures or detailed locations  
14 of plant equipment.

15 COMMISSIONER KENNEDY: If I understand the purpose  
16 that you have in mind, Ed, which coincides with my own concern,  
17 it ought to read something like: "security measures and  
18 security plans for the physical protection of production or  
19 utilization facilities involving nuclear materials, and the  
20 location of plant equipment vital to the safe operation of  
21 such facility."

22 COMMISSIONER GILINSKY: Well, somebody better ask  
23 this: does this include the emergency cooling system or  
24 some other piece of equipment. Would that mean the Commission  
25 is going to keep secret the configuration of the safety system?



1           COMMISSIONER KENNEDY: Well, that's a good  
2 question.

3           MR. SHAPAR: Well, it is location isn't it ---

4           COMMISSIONER KENNEDY: Yes.

5           MR. SHAPAR: Configuration, I guess, under this  
6 language would be okay, but the precise location within  
7 the plant, where it is located within the plant. Of course,  
8 there could be some cross-over.

9           COMMISSIONER GILINSKY: It really sounds as if you  
10 could keep the detailed drawings of the plant secret. Now, is  
11 that what we intend? You are basically saying the schimatics  
12 are okay, but the engineering drawings remain secret.

13          MR. CASE: Yes. Sometimes we don't want to disclose  
14 the exact locations in the plant.

15          COMMISSIONER GILINSKY: Well, do you want to  
16 specify the equipment or is there some general category?

17          MR. CASE: I suppose I could try it. I would have  
18 to go back to the previous discussion. I'm afraid I would  
19 leave out something and then -- I guess you have gone over  
20 that once.

21          COMMISSIONER GILINSKY: Well, but what is your answer  
22 if this might include vital pumps for cooling systems ---

23          MR. CASE: Well, my answer today is no, we are not  
24 concerned about those. I don't think so for the future, but  
25 I couldn't conclude that.

1                   COMMISSIONER KENNEDY: What we need to to, I guess:  
2 what Commissioner Gilinsky is suggesting, we have to have  
3 somewhat more precise description than vital to the safe  
4 operation of something in the plant, something more narrow  
5 than that and we ought to get at the kinds of equipment we  
6 are talking about.

7                   CHAIRMAN HENDRIE: I think it is going to be hard to  
8 write in to proposed legislation that sort of level of detail.  
9 I think you are almost going to have to fall back on the sort  
10 of language that was included in the C version of the paper  
11 for just this purpose in fact, which says the Commission must  
12 exercise this authority so as to apply the minimum restrictions  
13 needed to achieve the objectives of protecting health and  
14 safety and so on, and upon a determination that the unauthorized  
15 disclosure of the particular information would have, in the  
16 words of this draft, a significant adverse effect on the  
17 health and safety of the public by facilitating theft,  
18 diversion and sabotage.

19                   I think that sort of general threshold to the things  
20 that you would be allowed to withhold would be about as good  
21 as you could do in a legislative package, and it seems to me ---

22                   COMMISSIONER KENNEDY: So it ultimately comes down  
23 to a case-by-case determination.

24                   CHAIRMAN HENDRIE: Well ---

25                   COMMISSIONER KENNEDY: You have got a generic class

1 which you could pick out fairly quickly, but then you are  
2 going to get down to specifics and say, you know, what's  
3 significant and how significant it is?

4 MR. SHAPAR: Well, you might want to get a little  
5 more detailed in your rulemaking exercise.

6 CHAIRMAN HENDRIE: Yes, the rules to implement will  
7 certainly want to come down to a further level of detail,  
8 and there are clearly conflicting objectives. The floor  
9 plan of the reactor building and the auxillary building,  
10 the site plan itself are in fact aids to a would-be saboteur.

11 On the other hand, due to disclosure of those  
12 it would have a significant effect on health and safety  
13 by facilitating sabotage. Well, I think you would have to  
14 say no against the ---

15 COMMISSIONER KENNEDY: Only if on those floor plans  
16 the location of specific barriers and particular locking  
17 devices was identified.

18 CHAIRMAN HENDRIE: Yes, you might prefer not to show  
19 a particular doorway or what the nature of the barrier was.  
20 The Commission's thrust to run a pretty open and public  
21 safety evaluation clearly runs counter to keeping out of the  
22 hands of potential or wrongdoers any useful information,  
23 and there is a balancing that has to go on. It seems to me that  
24 the sort of language here, minimum restrictions upon a  
25 determination and so on has the right kind of input in terms of

1 explanations provided for it.

2 COMMISSIONER BRADFORD: When you said that was  
3 in 611 C, you are not saying it is out of 611 D?

4 CHAIRMAN HENDRIE: No, no. I was just saying that  
5 that language appeared as part, I believe, as part of the  
6 narrowing of the propositions that went on in C and it seemed  
7 to me a rather decent threshold statement and entirely  
8 appropriate.

9 COMMISSIONER GILINSKY: Let's see, if you are going  
10 to broaden this category then do you want to weaken the stand-  
11 ard by crossing out substantially.

12 MR. SHAPAR: That's the last point.

13 CHAIRMAN HENDRIE: Well, I think ---

14 COMMISSIONER KENNEDY: You have got "significant  
15 adverse effect".

16 CHAIRMAN HENDRIE: Yes, the concern raised that --  
17 the thing that struck me about it and the concern was raised  
18 by the staff, the determination of what substantially  
19 facilitates theft diversion or sabotage may get to be a  
20 problem.

21 I think in this context substantially facilitating  
22 raises a higher standard than you really want raised or it  
23 will turn out that way by the time the staff gets through  
24 interpreting it very carefully and so on. Staff has a tendency,  
25 I'm afraid, to take very seriously those modifiers.---

1                   COMMISSIONER KENNEDY: But here you have two  
2 modifiers.

3                   CHAIRMAN HENDRIE: -- and ---

4                   COMMISSIONER KENNEDY: Significant adverse effect  
5 caused by -- which would be caused by substantially ---

6                   MR. SHAPAR: Dr. Smith, in a memorandum to me  
7 commenting on an earlier draft made the comment that  
8 substantially facilitating theft could be interpreted to mean  
9 disclosure would have to result in a moderate or high probability  
10 that the theft would be successful. I think you can argue to  
11 that, but he makes the point.

12                  COMMISSIONER GILINSKY: Well, let's take your example  
13 of a floor plan of a reactor, okay. How would you apply  
14 this, for example?

15                  CHAIRMAN HENDRIE: I see no way that that could be  
16 withheld under this provision.

17                  COMMISSIONER GILINSKY: Well, but suppose the  
18 unauthorized disclosure of such information could have  
19 and adverse effect. Suppose somebody by using that could  
20 discover all sorts of things and find a way to get in or  
21 whatever, but there is no standard as to what incremental  
22 difference that makes.

23                  COMMISSIONER BRADFORD: In fact, having the floor  
24 plan versus not having the floor plan seems to me would  
25 substantially facilitate it. So that even if you had

1 substantially in there you would still have -- you might still  
2 well get the floor plan for the reactor.

3 COMMISSIONER GILINSKY: Yes, but if it makes a lot  
4 of difference to have it, then, you know, maybe this should  
5 be classified or protected, but if it doesn't, then there  
6 wouldn't be any potential there.

7 MR. McCORKLE: Well, the problem boils down to  
8 one of judgment. It depends on who makes the determination  
9 whether it is significant or of substantial value.

10 COMMISSIONER GILINSKY: Well, that's right and I'm  
11 trying to make it easy to withhold too much material.

12 COMMISSIONER BRADFORD: In fact, though, once you  
13 start withholding material at all on a reactor, it seems to  
14 me that if you are drawing a line at all is very hard. And if  
15 you decide that it is rational to withhold some part of the  
16 information about a reactor that there is going to be a fair  
17 amount of other information that will fall into that class  
18 pretty quickly, isn't there?

19 MR. CASE: We haven't done it so far.

20 COMMISSIONER BRADFORD: No, we haven't withheld  
21 anything so far..

22 MR. CASE: No, we have kept out the details of the  
23 electrical equipment location.

24 CHAIRMAN HENDRIE: See, there is a body of information  
25 that is held now under that what -- 2790?

1 MR. SHAPAR: Yes, that's right.

2 MR. REAMER: But that should be security related  
3 according to our regulations. I don't know what the staff  
4 practice is, but the regulation is clearly security related.

5 MR. McCORKLE: Our practice has been to interpret it  
6 actually the way it is states, security measures. That's  
7 part of the problem.

8 COMMISSIONER BRADFORD: So electrical equipment  
9 would be what, simply the alarms and that sort of thing.

10 MR. SHAPAR: We are protecting, you understand,  
11 under proprietary, an exception to the FOIA.

12 COMMISSIONER BRADFORD: I do understand that, but ---

13 MR. CASE: Howard is saying that that's the only  
14 piece of information, I gather, in a reactor you would feel  
15 nervous about now.

16 COMMISSIONER GILINSKY: Actually, the specific --  
17 the plant specific is reasonably protected under the  
18 proprietary label.

19 MR. SHAPAR: Depends on your definition of reasonably.

20 CHAIRMAN HENDRIE: Well, if they are in our hands,  
21 they are subject to an FOIA request aren't they?

22 MR. SHAPAR: Any information in our hands are subject  
23 to that. Of course, one court has upheld the proprietary  
24 category, but it was a district court. The consensus of the  
25 rule review around this place has been that it may --- I'll  
drop that point.

1           MR. McCORKLE: I might add and it might be pertinent,  
2           our application of 2.790 and a strict interpretation of what  
3           it states and that comes from the ELD people, we have also  
4           been criticized if there is information of value in the Public  
5           Document Room but we can't withhold.

6           MR. SHAPAR: Was your point the ELD point was too  
7           strict?

8           MR. McCORKLE: No, no. You gave us the interpre-  
9           tation and I think it is a proper interpretation. I'm not --  
10          that is just a statement. I think it is a good legal  
11          interpretation. That is exactly what it states. I am not  
12          criticizing that, but there is a certain category of infor-  
13          mation which some people perceive as being of value that is  
14          in Public Documents.

15          CHAIRMAN HENDRIE: I can also see some scale  
16          with which you could withhold, depending on the nature of  
17          how you do it. I wouldn't withhold a reactor floor plan.  
18          If you wanted to discuss the floor plan of the building in  
19          a fuel cycle facility, you know, the main weapons useable  
20          material vault and the approaches to it and so on as to  
21          where they are located, why, I'm prepared to think again  
22          and think maybe that's something that would fall -- you know --  
23          disclosure would be a significant and adverse effect.

24          MR. SHAPAR: Of course, the concept is likely to be  
25          tested in three places. One is you present this to the Congress



1 and number two, we issue a rule which could very well be  
2 tested and reviewed by the courts, and then the individual  
3 application in the rule which itself can be tested.

4 COMMISSIONER GILINSKY: This is to apply both to  
5 reactors and fuel cycle facilities?

6 MR. SHAPAR: Yes. The concept of all of these  
7 versions from A thru D is to cover -- in fact, let me just make  
8 a couple of generalizations here.

9 All of the versions cover both the fuel cycle and  
10 nuclear reactors. That's point one. It protects it on the  
11 basis -- all of the versions are protected on the basis of  
12 both common defense and security and health and safety. And  
13 third, all of the versions would protect it in the three  
14 phases where we felt protection is needed. While the information  
15 is in the hands of the NRC, while the information is in the  
16 hands of the licensee or anybody else outside of the NRC and  
17 third, during the hearing process itself where we attempted  
18 to pick up some equivalency from 181 of the Act where you  
19 can protect classified information, true classified  
20 information but with a minimum interference of the procedural  
21 rights of parties.

22 Those are the three phases, and of course, the final  
23 point is the protection would apply under our versions to both  
24 the information under a new section and the access to the  
25 material itself which is already there under 161, but there

1 would be certain improvements in 161 to get people who are  
2 other than just licensees, like architect/engineers, and I  
3 think you remember that discussion that we had at several  
4 meetings.

5 COMMISSIONER GILINSKY: Very well.

6 MR. SHAPAR: I think also, a lot depends, I guess  
7 just from the standpoint of logical analysis here, is how  
8 the Commission will all come out on the clearance rule on  
9 which you are starting a hearing. I think that's an  
10 important consideration to take into account in your own  
11 assessment of how you ought to go with it.

12 CHAIRMAN HENDRIE: Let's see, we are seesawing  
13 back and forth between "substantially and security measures,  
14 security plans and locations of plant equipment."

15 Ed, the reason you wanted the additional language  
16 was to make sure that some things didn't get left out. Is  
17 there a definition -- is it possible to cure this with a  
18 definition some place, or is that a bad way to go about it or  
19 what? Howard do you want to comment?

20 MR. SHAPAR: I think we can improve on this, yes.  
21 I think one of the points that has already been brought out  
22 on improvement can be made, and that is, it is not clear  
23 from this version whether or not the location is important  
24 because it has a direct effect on health and safety, or  
25 could, or whether the equipment is to protect the security

1 set up. I think that point is not clear as the language  
2 is currently drafted and that could be improved.

3 I think another suggestion that was made during  
4 this discussion that it ought to be made clear that if  
5 you are looking at vital safety information that concept could  
6 perhaps be articulated better.

7 MR. REAMER: Especially if one were to have some  
8 idea of the criteria that the staff might apply in deciding  
9 which equipment would or would not ---

10 MR. SHAPAR: I think that's asking too much in terms  
11 of a statute of this kind.

12 MR. REAMER: Well, at a minimum, someone is going to  
13 ask that question.

14 MR. SHAPAR: Yes, and I think we may want to develop  
15 it perhaps the best we can in the section-by-section analysis  
16 if we have time ---

17 COMMISSIONER KENNEDY: And in rules.

18 MR. SHAPAR: And certainly in rules.

19 COMMISSIONER KENNEDY: Which will then be subject  
20 to public comment and improvement, presumably, thereby.

21 COMMISSIONER GILINSKY: Do we already have the  
22 authority to prescribe regulations to licensees on how they  
23 ought to handle information of various kinds?

24 MR. SHAPAR: I think we do. It is a question of  
25 how we can approach it. For example, I can see the Commission

1 now promulgating a regulation that will say to licensees,  
2 all licensees shall use three-combination lock safes; number  
3 two shall not disclose information to any person who  
4 doesn't have a legitimate interest in the information  
5 associated with the plant or something like that; and perhaps  
6 a requirement, although this may be subject to some argument,  
7 a requirement that licensees only employ people who are  
8 trustworthy. You could get some argument about that latter  
9 point.

10 MR. CASE: But that offers no protection under  
11 FOIA for the information in our hands.

12 MR. SHAPAR: And that's the easiest matter to  
13 handle, the FOIA.

14 MR. REAMER: In addition, you could not require  
15 clearances under existing authority.

16 MR. SHAPAR: The one thing you couldn't do under  
17 existing authority, and that is clear from case law, is to  
18 require an honest-to-goodness, government-run clearance  
19 program. But that's different from whether or not could  
20 require a licensee.

21 COMMISSIONER GILINSKY: You certainly could do it  
22 in the case of a fuel cycle clearance.

23 MR. SHAPAR: Well, we are talking about information  
24 for the moment. If you are talking about access to material  
25 we have statutory authority now in terms of access to material.

1 With respect to access to documents you could do it if you  
2 classify the material.

3 COMMISSIONER GILINSKY: Yes, but access to security  
4 plans can be reasonably construed to be access to material.  
5 It is like having a combination to a safe is access to a safe.

6 MR. SHAPAR: I think one could make the argument,  
7 in fact we have pushed it a little bit on occasion, but I don't  
8 think it is a completely convincing argument.

9 Besides, I think we discovered it when we analyzed  
10 it before that the same people who would have access to the  
11 material would not necessarily dove-tail with the people who  
12 would have access to the information. For example, architect/-  
13 engineer.

14 COMMISSIONER GILINSKY: It all depends on how much  
15 information they withhold.

16 CHAIRMAN HENDRIE: I recommend we deal with Ed's  
17 elaboration by just letting that (iii) at the top read:  
18 "Security measures, including security plans, procedures  
19 and equipment, for the physical protection."

20 MR. SHAPAR: Would you extend that to the fuel  
21 cycle too in the earlier sections?

22 MR. CASE: But you only cover security equipment.

23 COMMISSIONER KENNEDY: Procedures and equipment  
24 for what, for the physical protection?

25 CHAIRMAN HENDRIE: Yes.

1           COMMISSIONER KENNEDY: That is not getting to the  
2 point if I understand it, that Ed was making originally.

3           MR. CASE: Well, I suppose that I could argue  
4 that electrical equipment, which is normally used for safety  
5 shutdowns also provides physical protection of the security  
6 in kind of a broad sense, because it does. It keeps the  
7 radioactivity from coming out.

8           COMMISSIONER KENNEDY: But you did characterize  
9 that as stretching the point some to get there. It seems to  
10 me it is quite a stretch too. We are talking about different  
11 kinds of equipment. It might be the same, but it might not.

12          MR. CASE: It all depends, the primary purpose,  
13 the secondary purpose, the tertiary purpose. If it has  
14 one of those purposes, then it is okay is my argument.

15          MR. REAMER: Well you still have the question, which  
16 someone will ask which is what do you intend to protect under  
17 the statute. The question will come up. Do you intend to  
18 protect plant equipment and safety-related plant equipment  
19 or only security-related plant equipment? In that sense, the  
20 statutory language would follow what you intend to do.

21          CHAIRMAN HENDRIE: At the moment you are protecting  
22 certain safety equipment, right?

23          MR. SHAPAR: Yes.

24          COMMISSIONER GILINSKY: The way I understand, we  
25 want to keep this information from public---

1 MR. CASE: From the public domain.

2 COMMISSIONER GILINSKY: And because you will reveal  
3 special vulnerabilities of the system against which there are  
4 no hard word solution.

5 MR. CASE: (Nods in the affirmative.)

6 COMMISSIONER KENNEDY: Which kinds of vulnerabilities  
7 exist in almost any kind of system, not nuclear systems, but  
8 just generally any kind of a system has inherent vulnerabilities  
9 against which there are always so many clearly limited measures  
10 you can do, inevitably.

11 CHAIRMAN HENDRIE: Well, I think it is a fair  
12 proposition. If you want to cover the waterfront, why, I guess  
13 it needs a little redrafting to include locations of certain  
14 vital equipment which still has to meet the standard that the  
15 Commission has to exercise a minimum instructions, and so on  
16 and so on. That sounds as though it ought to be along the  
17 lines of the thing you embarked on, Dick, a moment ago.

18 If we elaborate it separately, then security measures  
19 for the physical production of, is certain adequate for all of  
20 that material, right? Nobody is going to argue that security  
21 may or may not be a plan or procedure or a piece of equipment.  
22 I think that's okay. But you need to go on beyond that,  
23 security measures for the physical protection of ---

24 MR. CASE: You are not going to say security plans,  
25 your argument is that everybody would understand that security

1 thing.

2 CHAIRMAN HENDRIE: Yes. It is the non-security  
3 vital safety system and stuff that you want to get in to there.

4 COMMISSIONER KENNEDY: Just a little technical  
5 problem. Would you agree that security plans would be naturally  
6 incorporated within the phrase "security measures"?

7 MR. SHAPAR: I think you would get an argument on that  
8 one.

9 COMMISSIONER KENNEDY: You would get an argument?  
10 Do you think it would be better to put the word "security  
11 plans" into it?

12 MR. SHAPAR: It is not a precise term of art by  
13 any means. Some people look upon a measure as something that  
14 carries out a plan. And that's an initial distinction.

15 COMMISSIONER KENNEDY: So then you have got to use  
16 both to avoid that slight difficulty.

17 MR. McCORKLE: Could I ask one question of Howard  
18 in connection with this point that Ed brought up.

19 Number 2 down there states, "studies, reports and  
20 analyses," of this type, et cetera, my interpretation from  
21 the standpoint of fuel cycle facilities, the only time that  
22 we would have information, including critical layouts like  
23 where a vault is, storage arrays, et cetera, would be  
24 attached to a safety analysis. If it is part of a security  
25 plan then we can exclude that. In other words, if the



1 legislation went through and said security plans, we can  
2 exclude it. Then I think if this number 2 went through, it  
3 would include plant layout, at least insofar as those items  
4 are concerned it would be of some assistance to an adversary.

5 ~~MR. SHAPAR:~~ MR. SHAPAR: As I recall the genesis of two and  
6 I could be wrong on this, I thought it was as the result of  
7 NMSS or NRR suggestion that you sometimes generic studies ---

8 CHAIRMAN HENDRIE: And OPE too.

9 MR. McCORKLE: Okay, generic studies and we also  
10 had -- when you say reports and analyses you have got an  
11 SAR, (PSAR) and so on. Those are reports, would they be included?  
12 I don't mean all of the reports, but those things in it.  
13 In other words, blueprints, layouts and things that would be  
14 of assistance to an adversary.

15 MR. GOSSICK: Whose studies are these? Ours or the  
16 licensee's only?

17 MR. SHAPAR: Well, I suppose they could be both.

18 MR. GOSSICK: If they are ours, we could classify them.

19 CHAIRMAN HENDRIE: Anybody's studies of significant  
20 adverse effect, why, and so on and so on.

21 COMMISSIONER GILINSKY: Wait a minute, these are --  
22 whose studies are these?

23 MR. GOSSICK: That's what --- yes, yes. You know,  
24 we are paying for it and if they are ---

25 COMMISSIONER GILINSKY: Well, what if they are

1 somebody else's studies?

2 MR. GOSSICK: Well, that's the point.

3 COMMISSIONER GILINSKY: What if it is a Belgian  
4 study? I raised the question, because you know restricted  
5 data covers the world.

6 CHAIRMAN HENDRIE: Yes.

7 COMMISSIONER GILINSKY: It doesn't matter how it  
8 originates, it falls into certain categories, how, it is  
9 restricted data.

10 MR. CHAIRMAN HENDRIE: If the Belgians publish a  
11 report and say, boy, a good way to sabotage reactors --  
12 Westinghouse reactors is as follows: Step 1, 2, 3 ---

13 But if the Belgians should indeed publish such a  
14 document then the advice to saboteurs was indeed, we  
15 considered it a little too explicit, then that report showed  
16 up in the U.S., why I would sure like to have authority to  
17 have it. Say no, this isn't available to the general public.

18 COMMISSIONER KENNEDY: But if in fact it is available  
19 to the general public in Brussels or somewhere in Europe ---

20 CHAIRMAN HENDRIE: Can't help it, can't police  
21 Brussels.

22 COMMISSIONER KENNEDY: But there would be little --  
23 I would defer to counsel, of course -- I would not wish to  
24 go in to court to justify our withholding something that was  
25 published.

1 CHAIRMAN HENDRIE: I wouldn't hesitate to do it,  
2 I don't care if they are selling it on the newsstands in  
3 Brussels. If it shows up over here, I would use the authority  
4 to clamp down on it.

5 COMMISSIONER KENNEDY: I would not wish to pay my  
6 lawyers to go in to defend that.

7 MR. SHAPAR: Well, there is a legal theory that once  
8 something is out it has been compromised that ---

9 CHAIRMAN HENDRIE: I'm sorry, the Government of the  
10 United States has worked that way for years.

11 COMMISSIONER KENNEDY: The Supreme Court of the  
12 United States had something to say about that too, not all that  
13 long ago.

14 CHAIRMAN HENDRIE: Yes, recently a sister agency  
15 went and classified a report and sent it off to some folks  
16 and then thought better of it, said nope, we put the classi-  
17 fication back on and send your copy in. The guy said, no,  
18 I am not going to send it back. Nevertheless, it was  
19 reclassified. When I went to read it, why it was still a  
20 classified document, by George, and I had to treat it as such.

21 Any way.

22 COMMISSIONER GILINSKY: I would limit it to  
23 requests as I think we are getting into deep water if we  
24 go beyond that. Lets think about it, who could be generating  
25 these reports?

1           CHAIRMAN HENDRIE: I don't know.

2           COMMISSIONER KENNEDY: There are thinktanks around  
3 town that are doing it all the time.

4           MR. SHAPAR: Licensing could be doing it.

5           CHAIRMAN HENDRIE: Well, look, if you think we ought  
6 to tag in here studies, reports and analyses by -- I don't  
7 know how one would put it -- NRC, NRC contractors, licensees  
8 or applicants, why I have got no problem with that.

9           MR. SHAPAR: And they are contractors.

10          CHAIRMAN HENDRIE: That ought to probably well cover  
11 a good piece of the knowledgeable -- of the capable community,  
12 and I assume that DOE and Defense and all those other fellows  
13 who might also write interesting things in this line would  
14 exercise appropriate discretion on their own behalf.

15          So I have got no objection to that.

16          COMMISSIONER GILINSKY: If it were NRC-generated,  
17 I suppose we could classify it.

18          MR. GOSSICK: We can classify it, sure.

19          Back on triple (i) with your suggested change,  
20 I don't see that it adds anything to either one or two. You  
21 don't really need it to make this change.

22          Do you need triple (i) changed if you are going to  
23 modify it, if I understood the discussion goin here, I don't  
24 see what it adds really to one and two -- one (i) and double (i)  
25 that you have already covered. It is redundant.

1           CHAIRMAN HENDRIE: That's why I didn't add the  
2 language in the original.

3           MR. REAMER: Its principal basis is because as to  
4 production and utilization facilities we require a security  
5 plan relative to the facility and not the material. And so ---

6           MR. GOSSICK: Oh, is that the reason.

7           MR. CASE: Well, I assume that would also apply  
8 to reprocessing facilities, I don't know.

9           MR. McCORKLE: It is also our recommendation that  
10 it be inserted in fuel cycling facilities in both one and  
11 two, (i) and double (i).

12          CHAIRMAN HENDRIE: Do you want to get conclusive:  
13 "Security measures, including security plans,  
14 procedures and equipment, for the physical protection," okay?  
15 I move that be standard language in all three paragraphs.

16          COMMISSIONER KENNEDY: All right, fine.

17          CHAIRMAN HENDRIE: It simply says what you mean  
18 by security measures or at least in part what you mean by  
19 security measures and if that will help people, well, good.  
20 Do it all three places.

21          Now, it has got an additional problem because he  
22 wants to protect the locations of certain vital equipment,  
23 notably, certain crucial electrical circuitry in reactor plants.

24          So in triple (i) that needs another phrase after  
25 security measures including security plans, procedures and

1 equipment for the physical protection. You need to get  
2 another clause in there that says, "and locations of vital  
3 plant equipment for".

4 COMMISSIONER BRADFORD: Is it only in electrical  
5 circuitry?

6 MR. CASE: That's the only thing I'm worried about  
7 now.

8 MR. GOSSICK: And only location, not characteristics  
9 or specs or anything else?

10 COMMISSIONER BRADFORD: What would happen if you  
11 said electrical circuitry instead of plant equipment?

12 MR. CASE: Tomorrow it changes and then you have  
13 got to go back to Congress is about my only answer.

14 COMMISSIONER KENNEDY: Yes, you keep redesigning it.

15 MR. CASE: I would really like to have it a little  
16 broader than that.

17 COMMISSIONER BRADFORD: But the minute you get it  
18 a little broader, then you would at least have language that  
19 would at least include a large part of the plant, could  
20 include a large part of the plant.

21 MR. CASE: You could put vital in there or essential  
22 to plant safety, but it is still a large population.

23 COMMISSIONER KENNEDY: But that is governed by the  
24 succeeding paragraph which imposes upon the Commission the  
25 obligation to very sparingly use these definitions.

1 I guess it would be appropriate for the rulemaking  
2 in which public comment would undoubtedly help us improve  
3 and sharpen the application.

4 CHAIRMAN HENDRIE: Can I put vital plant equipment  
5 in, locations of vital plant equipment?

6 COMMISSIONER KENNEDY: Well, I think vital plant  
7 equipment is pretty broad.

8 CHAIRMAN HENDRIE: You could move along with primary  
9 system and the essential safety circuitry with no question under  
10 that definition, except that you do have the other threshold.  
11 And I would suggest the language read -- Howard see if you could  
12 stomach this and if you think of a better way of doing it.

13 I will start at the top: "Security measures,  
14 including security plans, procedures and equipment, for the  
15 physical protection of, and locations" -- I think I ought to  
16 say, "certain vital plant equipment." To say vital plant  
17 equipment, it sounds like everything that is vital is in it  
18 and that adds the wrong smell to it -- "and locations of  
19 certain vital plant equipment in, production and utilization  
20 facilities," et cetera.

21 MR. REAMER: In order to avoid any confusions about  
22 vital it might be better not to have it modifying plant.  
23 Perhaps you could say, "locations of plant equipment vital  
24 to the safety of" -- that would be an option.

25 COMMISSIONER GILINSKY: Well, it is really not vital,

1 it is really vulnerable, isn't it?

2 COMMISSIONER KENNEDY: It is not only the vulnerability,  
3 but the vulnerability if exploited could result in.

4 COMMISSIONER GILINSKY: I don't mean vulnerable  
5 equipment, it is the vulnerabilities of the plant.

6 COMMISSIONER KENNEDY: Yes, that's correct.

7 MR. SHAPAR: What you really mean is attracted to  
8 a saboteur.

9 COMMISSIONER KENNEDY: If he knows what he is doing.

10 MR. SHAPAR: Attraction to enlighten a saboteur.

11 CHAIRMAN HENDRIE: How bad off are we with plant  
12 vital equipment or vital plant equipment?

13 MR. SHAPAR: I think any general words would be  
14 workable, again ---

15 CHAIRMAN HENDRIE: Well, Bill has got this concern  
16 that it sounds like a piece of vital plant equipment as  
17 something you need to make the plant work.

18 MR. REAMER: I was just suggesting it, that vital  
19 modified equipment ---

20 CHAIRMAN HENDRIE: Certain plant and vital equipment?

21 MR. REAMER: Well, plant equipment vital to ---

22 MR. SHAPAR: Well, you don't need plant again because  
23 production and utilization facilities comes later. So you  
24 can come right out and say vital equipment.

25 COMMISSIONER BRADFORD: Bill's point is that it should



1 be vital to safety.

2 CHAIRMAN HENDRIE: Yes, locations of certain  
3 plant equipment vital to safety in or of -- in, okay?

4 More better?

5 COMMISSIONER KENNEDY: That's all right with me.

6 CHAIRMAN HENDRIE: Have you got any language for  
7 the studies to get them to NRC, NRC contractors, licensees,  
8 applicants and their contractors. I don't think we need to  
9 add more specific language for that.

10 COMMISSIONER BRADFORD: You may want to authorize  
11 somebody to pull the shoe laces a little on that.

12 COMMISSIONER KENNEDY: What?

13 COMMISSIONER BRADFORD: Pull the shoe laces a little  
14 tight on this action. There were a lot of comments ---

15 CHAIRMAN HENDRIE: Yes, I totally agree.

16 Okay, you are not constrained from improvement of  
17 triple (i).

18 MR. SHAPAR: Okay.

19 CHAIRMAN HENDRIE: I detect a certain hint that you  
20 are admonished to improve triple (i).

21 MR. SHAPAR: Yes, I detected such.

22 CHAIRMAN HENDRIE: Now, having stuck this elaboration  
23 in to triple (i) and having limited two to the NRC down  
24 below so the regulators in the industry group rather than all  
25 the world in two, can I do without "substantially facilitating"?

1 COMMISSIONER GILINSKY: Well, I would put it in.

2 COMMISSIONER KENNEDY: It is a term of art without  
3 buying a step in the eye of the beholder.

4 CHAIRMAN HENDRIE: I am concerned about staff ending  
5 up interpreting it to mean or somebody interpreting it to mean  
6 that that means you have to prove that a theft would occur or  
7 a diversion would occur, or a sabotage would occur or something  
8 like that.

9 MR. McCORKLE: It is a very difficult word to live  
10 with.

11 COMMISSIONER KENNEDY: It is the kind of word we  
12 don't like using from a regulatory point of view, it is just  
13 not definable.

14 COMMISSIONER GILINSKY: Well, what's facilitate?

15 CHAIRMAN HENDRIE: If you leave it without a  
16 modifier you run sort of the reciprocal argument, which is  
17 to facilitate means anything which gives a perceptible increase  
18 and the likelihood it will happen without regard to how  
19 small that might be.

20 COMMISSIONER GILINSKY: Facilitating means to make  
21 easier and substantially facilitating means to make it much  
22 easier.

23 CHAIRMAN HENDRIE: Too much easier?

24 COMMISSIONER BRADFORD: What you are really after  
25 is some increase and the effect on public health and safety.

1 And that's where significant pick you up. The reason I'm  
2 probably comfortable in doing without substantially is,  
3 first of all, I have no more idea than anyone else what  
4 the difference between facilitate and substantially facilitate  
5 is, but secondly, as long as you have this second yardstick  
6 about a significant adverse effect, it seems to me you are  
7 picking up pretty much the same thing, that is, a trivial  
8 increase in the facilitating, presumably doesn't add up to  
9 a significant adverse effect on the public.

10 COMMISSIONER GILINSKY: You are saying it would be  
11 redundant?

12 CHAIRMAN HENDRIE: Yes, I see ---

13 COMMISSIONER GILINSKY: Is that what you are saying?

14 COMMISSIONER BRADFORD: Well, that you get at the  
15 concern with significant and by putting the word substantially  
16 in you complicate the lives of the people who have to live  
17 with it. It isn't strictly that it is redundant so much that  
18 it is ill defined and if you can live without it, why introduce  
19 one more element of ill definition.

20 COMMISSIONER GILINSKY: Well, I think they are  
21 somewhat different though. A significant adverse effect  
22 would flow from some events which was caused in part by someone  
23 having access to some kind of information, so it is the  
24 significance of the events, I think. I suppose you could  
25 cause a melt down possibly by getting or conceivably by getting

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

1 information you might normally think is all that significant.  
2 It wouldn't make all that much difference compared to what is  
3 already out in the public sector.

4 COMMISSIONER KENNEDY: Would you say that again?

5 COMMISSIONER GILINSKY: Yes, that's not very clear.

6 A significant adverse effect does not seem to me, to  
7 get at the incremental difference between that information  
8 being in the public sector and not being in the public sector,  
9 and I think there ought to be a threshold there that you have  
10 to cross before you withhold information.

11 In other words, the information ought to make some  
12 substantial difference to someone.

13 CHAIRMAN HENDRIE: Yes. Has anybody got ---

14 COMMISSIONER KENNEDY: I'm misunderstanding, because  
15 I thought that is what the significant adverse effect is about.

16 CHAIRMAN HENDRIE: It depends on whether you want  
17 to read the effect independent of the sabotage or not.

18 You and Peter are reading it, and I can see your  
19 reading of it that a significant adverse effect can flow  
20 either from an effect which has high consequence -- or from  
21 an act which has high consequences or from an increasing  
22 likelihood of that or other acts.

23 COMMISSIONER KENNEDY: Yes.

24 CHAIRMAN HENDRIE: Vic's reading it in the sense that  
25 you either facilitate sabotage or you don't and then you have

1 some effect over here, some act of sabotage would have  
2 trivial effects and those aren't of interest here. The ones  
3 that have ---

4 COMMISSIONER KENNEDY: Even if they -- the possibility  
5 of their occurring wasn't in fact aided, it wouldn't make any  
6 difference.

7 CHAIRMAN HENDRIE: Yes. So what Vic's looking for  
8 is: a. you don't want to protect information if the only  
9 effect -- even if the sabotage occurs is trivial.

10 COMMISSIONER GILINSKY: Well, that's significant  
11 adverse effect.

12 CHAIRMAN HENDRIE: Right, but you also want to say,  
13 and furthermore, I don't want to protect information unless  
14 it significantly improves the chance of sabotage ---

15 COMMISSIONER GILINSKY: Which are otherwise available  
16 in a different context or part of the book or whatever.

17 CHAIRMAN HENDRIE: Yes. So I can see reading it  
18 both ways.

19 Can you think of a word that ---

20 COMMISSIONER GILINSKY: You don't necessarily need  
21 it there if you can get that thought in ---

22 COMMISSIONER KENNEDY: But isn't that what is facilitating  
23 sort of the art? I would go back there to Peter's earlier  
24 argument, because to facilitate is to facilitate.

25 MR. REAMER: You could move significant down to

1 substantially -- replace substantially with the concept that  
2 is embodied in significant up in adverse effect or you could  
3 insert something like materially facilitate in there.

4 COMMISSIONER KENNEDY: How does that differ from  
5 substantially?

6 MR. REAMER: Well, I think in terms of material versus  
7 immaterial, it is either material or immaterial. If it is  
8 immaterial it is very small, very tiny.

9 COMMISSIONER KENNEDY: That's the difference between  
10 substantial and insubstantial.

11 MR. REAMER: I think so too, I don't have the problems  
12 that Dr. Smith has, quite frank, I think that one can explain  
13 how one intends to construe this language.

14 COMMISSIONER GILINSKY: In other words, it seems to  
15 me one could read this to say anything which would in any  
16 way assist anyone in necessitating a high consequence event  
17 would be verboten.

18 CHAIRMAN HENDRIE: And we want a higher threshold than  
19 that.

20 COMMISSIONER GILINSKY: That's what I think, yes.

21 CHAIRMAN HENDRIE: I will propose the following  
22 abrupt reversal in a position in hopes of moving this.

23 My concern with the word substantially and the  
24 phrase substantially facilitated is just this concern that was  
25 expressed from NMSS that it sounds to the staff as though that

1 means that you have got to go and prove that will now occur  
2 or something. If we can all understand that substantially  
3 facilitating is in the sense of more than immaterially  
4 facilitating -- that is, substantially facilitating doesn't  
5 mean that you have got to show that theft and sabotage will  
6 occur.

7 COMMISSIONER GILINSKY: Well, do you want to use  
8 the words "much easier"? It is not fancy language.

9 COMMISSIONER KENNEDY: I must say, there is some  
10 virtue in simple ordinary English, indeed it is understandable.

11 COMMISSIONER GILINSKY: Just saying, by making  
12 theft, diversion or sabotage of such material or such  
13 facility much easier.

14 COMMISSIONER KENNEDY: If that's what we mean, it would  
15 be nice to say it, however unusual.

16 CHAIRMAN HENDRIE: But it has got such a splendid  
17 legislative ring to it up to this point it would be out of  
18 character to say make it easier.

19 COMMISSIONER KENNEDY: It would certainly be a welcome  
20 concession to the Presidents oft required improvement in the  
21 use of the language. I like that.

22 CHAIRMAN HENDRIE: Let's see. Materially, appreciably,  
23 substantially ---

24 COMMISSIONER KENNEDY: Why don't you just say, "and  
25 make much easier."



1 MR. SHAPAR: How about "help lots".

2 COMMISSIONER KENNEDY: That's not very good English.  
3 And from you, I can hardly believe it.

4 CHAIRMAN HENDRIE: How does materially strike you?

5 MR. McCORKLE: I guess it gets back to a problem.  
6 There was an addendum attempting to explain, I believe, what  
7 you could and could not withhold in version C, and I was a  
8 little disturbed, or most of us were with where the distinction  
9 should be made between something that would perhaps give a little  
10 bit of advantage to an adversary. Well, if we had to release  
11 each little bit, pretty soon we would have an accumulative  
12 amount that is substantial. And I don't know what the word  
13 materially means any more than substantially from a practical  
14 standpoint, do you?

15 MR. CASE: It seems less than substantial to me.

16 MR. SHAPAR: They are used in a lot of places  
17 interchangeably.

18 COMMISSIONER GILINSKY: I think there would be a  
19 different standard for something like security measures or  
20 security plans as opposed to say location of plant equipment.  
21 So security measures would easily pass that sort of a test.  
22 So I don't see any great problem there, but if they are  
23 talking about plant equipment layouts and so on, I think you  
24 do want to provide material alternatives.

25 CHAIRMAN HENDRIE: All right, let me go away from this

1 one for the moment.

2 I don't know whether there is a way to reword  
3 those three or four lines in there to bring the significant  
4 adverse effect, the facilitating, the substantial or not  
5 together in a way that provides a reasonable threshold without  
6 coming to this particular difference on the specific word,  
7 or can you think of a really fancy, ingenuous ending.

8 COMMISSIONER GILINSKY: Let's see, when you identify  
9 the classification categories, confidential, secret, top secret  
10 they use to have an adjective that disclosure of this information  
11 would effect the national security and there was an adjective,  
12 a little bit, a lot.

13 MR. REAMER: Yes, cause harm ---

14 CHAIRMAN HENDRIE: Good, better, best is the way  
15 Sears Roebuck use to go by.

16 COMMISSIONER GILINSKY: Well, I would think you would  
17 want one of those adjectives.

18 CHAIRMAN HENDRIE: Do you recall any of those?

19 Let me turn from this point for the moment and see  
20 how we stand on the clearance portions of the whole document.

21 Now, there are clearances in here in two places.  
22 One of them is authority to require clearances for access to  
23 security plan information and that is up in the new section 147.  
24 The second piece of clearance authority is for access to facilities  
25 and that's back in additional language in 161. I felt that both

1 elements were of importance to have in this proposed legislation,  
2 but let me -- there has been discussion about it, let's see if  
3 can get some opinions up and down the table on that and then  
4 we can come back to substantially.

5 COMMISSIONER GILINSKY: Where is this now?

6 CHAIRMAN HENDRIE: Okay, bottom of Page 2, section 147  
7 there at B, the Commission is authorized to prescribe regulations  
8 or orders to assure that information which is protected from  
9 unauthorized disclosure is disclosed only to persons whose  
10 character, et cetera, et cetera, shall have been investigated  
11 under standards and specifications -- the standard language.  
12 Part B of 147 does that and that is the clearance program for  
13 access to security plan information.

14 MR. SHAPAR: Which dovetails with existing authority  
15 for access -- clearance for people with access to materials.

16 CHAIRMAN HENDRIE: Yes.

17 COMMISSIONER GILINSKY: Well, I guess I would not at  
18 this point move to the clearance program to do that.

19 CHAIRMAN HENDRIE: Peter, you were thinking about it.

20 COMMISSIONER BRADFORD: Well, I have a similar  
21 difficulty at least with the clearance program that would  
22 go beyond the scope that we contemplated.

23 I am not entirely sure that I could state it accurately  
24 myself. In fact, I would want to seek Howard's advice.

25 MR. SHAPAR: I was looking around for someone too.

1           COMMISSIONER BRADFORD: I think if one started with  
2 vital areas of NMSS you wouldn't be far off.

3           MR. SHAPAR: What is the present scope of the  
4 clearance rule, do you recall?

5           MR. PARLER: It is based wholly on common defense  
6 and security grounds, the present rule, and the present law  
7 does not specifically refer to sabotage.

8           The proposed rule, however, relies not only on the  
9 explicit language in the statute which talks about common  
10 defense and security, but also on public health and safety  
11 grounds, which is reflected in the legislative history of the  
12 1974 amendment to section 161.

13          MR. SHAPAR: That covers SNM and what else?

14          MR. PARLER: Just SNM.

15          COMMISSIONER GILINSKY: Does that proposed rule cover  
16 both reactors and fuel cycle facilities?

17          MR. SHAPAR: It covers both.

18          COMMISSIONER GILINSKY: So you regard the statute as  
19 giving us authority to require clearances for persons working  
20 in reactors?

21          MR. SHAPAR: Yes.

22          MR. CASE: If they have access to the special material.

23          CHAIRMAN HENDRIE: But that authority relates back  
24 to the access to the special nuclear material provision which  
25 has been in the act for a long time and as you recall the

1 discussions over it.

2 MR. SHAPAR: Yes. I should also point out though ---

3 COMMISSIONER GILINSKY: I am not as enthusiastic about  
4 that proposal.

5 MR. SHAPAR: I should point out for completeness that  
6 Peter Strass felt less secure about that conclusion than I did.

7 COMMISSIONER KENNEDY: Considerably less secure.

8 MR. SHAPAR: Substantially rather materially.

9 CHAIRMAN HENDRIE: That's what I was afraid of.

10 MR. SHAPAR: But I think he is willing to go along  
11 with it.

12 COMMISSIONER KENNEDY: He was willing to go along with  
13 it, and indeed he did, despite his material reservations.

14 CHAIRMAN HENDRIE: There are actually two pieces of  
15 additional clearance authority which is sought here.

16 One of them is access to security plans, the other  
17 is access to the facilities.

18 COMMISSIONER GILINSKY: Why do we need more authority  
19 there?

20 CHAIRMAN HENDRIE: Well, I was just going to ask you  
21 to distinguish between them or is it ---

22 MR. SHAPAR: There was some argument about whether or  
23 not the act as presently constructed was really good enough  
24 to cleanly get a sabotage ---

25 COMMISSIONER GILINSKY: I think in this case Peter is

1 right.

2 CHAIRMAN HENDRIE: The 161 provision in case  
3 Peter is right.

4 MR. SHAPAR: Also, it would be expanded on 161 to  
5 get at health and safety as a basis when you consider both  
6 sabotage and diversion are involved and assuming you want to  
7 get at the facilities.

8 CHAIRMAN HENDRIE: Can we make any decision then  
9 between the 161 and the 147 editions on clearance ---

10 COMMISSIONER GILINSKY: I tell you, I think what we  
11 really need is an exemption from FOIA and that would solve  
12 a lot of our problems. I think that's our real problem and  
13 we don't have that covered very well as there are some  
14 problems about our ability to keep public information in our  
15 hands which we obtain from the licensee. And we have the  
16 authority on the books to clear persons who have access this,  
17 and I think that covers people with safeguards information, but  
18 we have discussed that many times and I don't see any need  
19 to go over that ground. But I am reluctant to extend that  
20 authority to reactors at this point.

21 COMMISSIONER KENNEDY: Then how are we going to  
22 handle it in the interim, so long as we do not have the  
23 exemption from the FOIA?

24 COMMISSIONER GILINSKY: Well, we are handling it in  
25 a fashion now and have been for some time. I think it is

1 desirable to have an exemption and then this would give you  
2 one, but I don't think we need to go any further.

3 CHAIRMAN HENDRIE: Dick, how do you come out on  
4 clearances?

5 COMMISSIONER KENNEDY: Well, I am agreeable the  
6 sections to that are in this draft.

7 CHAIRMAN HENDRIE: Okay, Peter?

8 COMMISSIONER BRADFORD: Well, again, to the extent  
9 it involves in the effect of backstopping the clearance rule  
10 proceeding, I think at this point the Commission is committed  
11 to that much, but I don't -- this is the point at which I  
12 come to the problem that I mentioned earlier in a different  
13 context of being unable to explain to the extent that I would  
14 be comfortable with Congress why I felt it was we need to go  
15 further.

16 CHAIRMAN HENDRIE: That is the 147, access to  
17 information clearance ---

18 COMMISSIONER BRADFORD: Yes.

19 CHAIRMAN HENDRIE: -- program is the one that bothers  
20 you.

21 Let me ask a question Howard. If 147 B came out of  
22 there ---

23 MR. SHAPAR: 147 E?

24 CHAIRMAN HENDRIE: B, there is no E unless you have  
25 a new paper. The protection of 147 information would continue

1 to be -- would continue, would it not, on the basis of ---

2 MR. SHAPAR: Let me put it this way, if you removed ---

3 CHAIRMAN HENDRIE: Where do I get civil penalties and  
4 things like that -- Oh, yes. Right above B. Okay.

5 "Any person who violates is subject to civil monetary  
6 penalties under Section 234," right?

7 MR. SHAPAR: Yes.

8 COMMISSIONER KENNEDY: That does bring up something  
9 which I'd like to question. Are there no criminal penalties?

10 MR. SHAPAR: There are none in this statute as it  
11 now reads, and it is questionable whether or not the general  
12 provisions relating to criminal penalties would apply to this  
13 bill. This is one of the questions I flagged for the Commission  
14 in an earlier paper saying that the Commission might want to  
15 consider criminal penalties and that the draft was being  
16 constructed only on the basis of civil monetary penalties.  
17 There was never any indication that you wanted to strike out  
18 any for any unambiguous authority with respect to assessing  
19 criminal penalties here. It would be very easy to do if you  
20 wanted to do it.

21 COMMISSIONER KENNEDY: Against who would the civil  
22 monetary penalties be levied? Individuals? Institutions with  
23 which the individuals are associated? In other words, is it  
24 the licensee who is going to be ---

25 MR. SHAPAR: And anybody else who disclosed the



1 information who acted contrary to the rule. As you recall,  
2 the rule has been broadened to apply not only to the licensees,  
3 but to anybody else who might have that information.

4 COMMISSIONER GILINSKY: So a licensee's employee could  
5 be punished?

6 MR. SHAPAR: Yes.

7 COMMISSIONER KENNEDY: Yes, as an individual, and  
8 am I correct, this is a new departure for the Commission.

9 MR. SHAPAR: Yes. Under existing case law the  
10 conventional wisdom is that the Commission in exercising its  
11 regulatory authority, that authority is restricted to persons  
12 that the Commission licenses, and it doesn't have regulatory  
13 authority generally speaking, over people it does not license.  
14 So one of the reasons for one of the changes here is, again  
15 getting back to the discussion that Commissioner Gilinsky  
16 mentioned earlier about other people, other than licensees having  
17 the information, this statute would make it clear that it  
18 applies just not to the licensee. If it didn't do that, then  
19 the only people that we could fine or take action against  
20 would be the licensee himself.

21 COMMISSIONER KENNEDY: Well, that's a very much  
22 broadened authority to the Commission -- Well, the  
23 authority of the Commission extends much further now with this  
24 concept than they ever have?

25 MR. SHAPAR: In the limited context of the subject matter.

1           COMMISSIONER KENNEDY: Yes.

2           MR. SHAPAR: I would also add that if you took out  
3 B you could still protect the information in two ways. Number  
4 one, you could classify it if you wanted to, and number two,  
5 you could require the licensee to protect it and to use only  
6 trustworthy people which would mean that presents certain  
7 problems too. You are requiring, in effect, the licensee to  
8 run a trustworthiness program.

9           COMMISSIONER KENNEDY: Not only that, if it is  
10 classified information the people handling it need to be  
11 cleared.

12          MR. SHAPAR: Well, I was using that as alternatives.  
13 If you classified it, I think I wouldn't do it.

14          CHAIRMAN HENDRIE: The purpose of this legislation in  
15 part is to avoid classifying information as national security  
16 information. So I certainly wouldn't go that direction.  
17 The Commission could very well write rules and implementation of  
18 this section which would require licensees not to disclose  
19 this information to persons other than regular employees of  
20 good standing and persons whom the licensee has good reason  
21 to believe would not disclose and so on and so on.

22          MR. SHAPAR: Right, and at one point you might get  
23 to a point where people would reasonably argue that since you  
24 don't have authority to run a full government clearance program  
25 in the statute, you can't do indirectly which you can't do

1 directly. Now, it is a tricky area.

2 CHAIRMAN HENDRIE: I would think we could require  
3 licensees, for instance, to implement ANS -- what is it, 18.7 --  
4 and limit access to the information protected here to regular  
5 employees hired and measured against that standard.

6 MR. SHAPAR: I think you could too, and that is  
7 my opinion. I was merely point out there could be a counter  
8 argument.

9 MR. McCORKLE: Well, Howard, from a practical  
10 standpoint, isn't that the trouble with the Privacy Act in  
11 complying with that?

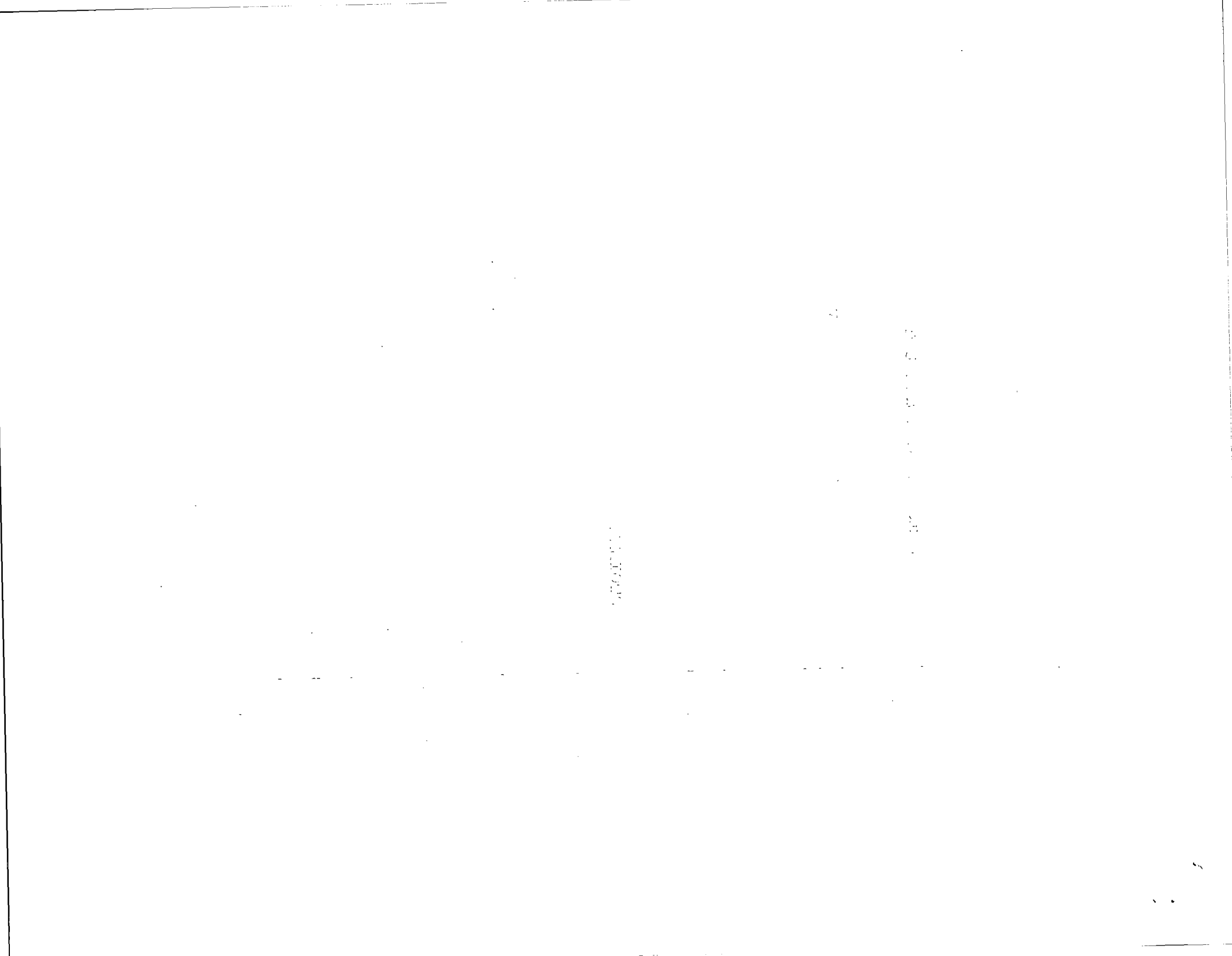
12 MR. SHAPAR: It has been a problem.

13 MR. STOIBER: I hate to muddy the waters here, but  
14 as an old thing to a lawyer, it seems to me that under Section  
15 223 if you have a violation of any of these sections willfully  
16 or through conspiracy you automatically ---

17 MR. SHAPAR: There is a problem with that and we  
18 have looked in to it. Why don't you mention it, Bill?

19 MR. PARLER: The problem with Section 223 language  
20 as drafted now is this: Section 223 specifically refers to  
21 certain sections of the Act which are willfully violated and  
22 it also specifically refers to willful violations of regulations  
23 that are issued under certain sections of the Act, namely,  
24 Sections 65, 161B and 147(i).

25 The section that we are talking about, Section 147



1 would not itself create anything that the violation of the  
2 thing in the section would present the problem, what would  
3 be violated would be a regulation issued under this authority.

4 CHAIRMAN HENDRIE: I know a way to cure that, I think.

5 MR. SHAPAR: Yes, there is a very easy way of  
6 curing it.

7 MR. STOIBER: But you have to read the statute more  
8 carefully because it says, "whoever willfully violates,  
9 attempts to violate or conspires to violate any provision of  
10 this act for which no criminal penalty is specifically  
11 provided or for any regulation in order to prescribe," so that  
12 "or" there makes any violation of the provisions of the act  
13 a criminal violation.

14 CHAIRMAN HENDRIE: Furthermore, I point out that  
15 a recent employee of the Commission found a way to deal with  
16 this, you could have a provision that says, for the purposes  
17 of Section 223 of this Act, any regulations or orders  
18 prescribed or issued by the Commission under this section,  
19 i.e., 147 shall be deemed to be prescribed or issued under  
20 Section 161B of the Act.

21 MR. SHAPAR: Which would be completely remove the  
22 question.

23 CHAIRMAN HENDRIE: Which would completely remove the  
24 question and then make it the criminal sanctions of 223  
25 available for the violation. Now, I must say I would rather

1 have the whole shebang, but if I could put together three  
2 votes in favor of everything here except 147B, why I would like  
3 to try to do that and make it the Commission's position and  
4 move forward on that basis.

5 What would you think of that? I'm not going to  
6 look at you, you are obligated to vote no on it any way.

7 (Indicating to Commissioner Gilinsky.)

8 Would that be acceptable Peter?

9 COMMISSIONER BRADFORD: Yes.

10 COMMISSIONER KENNEDY: What are we going to eliminate?

11 CHAIRMAN HENDRIE: I make the following proposal then  
12 that in the draft paper, 611D, first, that where in (i), (ii)  
13 and (iii) it refers to security measures that there be that  
14 phrase, "including security plans procedures and equipment,"  
15 to follow it. That in (iii) after "physical protection of"  
16 there be, "and locations of certain plant equipment vital  
17 to safety in," and then go on to "production and utilization  
18 facilities." That in Paragraph 2, immediately following (iii)  
19 "the study reports an analyses" language be added to make  
20 clear that these are studies, reports and analyses of NRC  
21 staff, NRC contractors, licensees of the Commission, applicants  
22 for licenses for the Commission or their contractors. Can  
23 anybody think of any other?

24 MR. REAMER: Agencies may be useful.

25 MR. SHAPAR: Or we could use a general phrase like

1 licensees and applicants in NRC and persons acting on their  
2 behalf or something like that.

3 CHAIRMAN HENDRIE: Right. Now, with regard to each  
4 of these additions or corrections that I have made, why  
5 perfect the language if you please, as you have just suggested  
6 in the latter case where I didn't have it that explicit.

7 I'm going to ask that we go without "substantially"  
8 down in the threshold paragraph retaining the language, "could  
9 have a significant adverse effect to the health and safety of  
10 the public and the common defense and security by facilitating  
11 theft, diversion or sabotage," et cetera, et cetera.

12 Next, that we strike B as it stands in Section 147,  
13 bottom of Page 2, top of Page 3 and substitute B language for  
14 which we are indebted to Senator Glenn and his staff, along  
15 the lines, "for purposes of Section 223 of this Act any  
16 regulations or orders prescribed or issued by the Commission  
17 under this section shall be deemed to be prescribed or issued  
18 under Section 161B of this section," it is down ---

19 MR. SHAPAR: I've got it.

20 CHAIRMAN HENDRIE: So now we protect this information  
21 not on the basis of the clearance program, but on the basis  
22 of civil penalties if you breach it and criminal penalties  
23 whether it is willful or whatever.

24 COMMISSIONER KENNEDY: Which does not, of course,  
25 protect them from the FOIA, if I am correct, right?

1 MR. SHAPAR: No, we have got that protected under--  
2 the way it is drafted under A of 147.

3 MR. CASE: How does the hearing situation work?

4 MR. SHAPAR: That's taken care of later under the  
5 amendment of 181.

6 CHAIRMAN HENDRIE: Yes. Now all of the rest of 611D  
7 I would propose that it just stand as it is.

8 COMMISSIONER KENNEDY: You mean this Section 2?

9 CHAIRMAN HENDRIE: Section 2, Section 3, Section 4.

10 Okay, now what that does is to put the access to  
11 facility clearance for health and safety reasons, Peter, in to  
12 161 with the buttressing of the authority, for instance, for  
13 rulemaking.

14 COMMISSIONER GILINSKY: Okay, what are the extra words  
15 there?

16 CHAIRMAN HENDRIE: The extra words ---

17 MR. SHAPAR: The only change at 161 (i) was just  
18 the deletion of the phrase, "and licensed by the Commission".

19 CHAIRMAN HENDRIE: No, no.

20 The additions to 161 are like this, Vic. You put in --  
21 this is a complete text of the same thing, I think, and what has  
22 been put in is to insert ---

23 MR. REAMER: Insert sabotage, extend the materials  
24 covered source ---

25 COMMISSIONER KENNEDY: Where?



1 MR. REAMER: Section 2, 161(i).

2 COMMISSIONER KENNEDY: Yes, and where do you put  
3 that?

4 MR. REAMER: In the first line.

5 COMMISSIONER KENNEDY: "regarding its loss, diversion,  
6 or sabotage,"?

7 MR. SHAPAR: Yes.

8 CHAIRMAN HENDRIE: The present 161(i) doesn't talk  
9 about facilities or sabotage. So where you see things like  
10 sabotage and facilities, that's the kind of thing that is  
11 going in, and it goes in there, "utilization, or production  
12 facility," and the health and safety also goes in because it  
13 is strictly a national security thing.

14 COMMISSIONER KENNEDY: Could I just note that I think  
15 the utilization facilities and production facilities must be  
16 quite a site when they are in transit.

17 MR. SHAPAR: You haven't heard about the AMP program  
18 at Idaho and ---

19 COMMISSIONER KENNEDY: Yes, I have, but I don't think  
20 that was intended here.

21 CHAIRMAN HENDRIE: If offshore ever gets one on a  
22 barge, why, Vic, we will have to go down and watch it floating  
23 out the inlets into ---

24 MR. SHAPAR: We look forward to all contingencies.

25 COMMISSIONER KENNEDY: Meanwhile back in the real

1 world, I think the phrase is in the wrong place in the  
2 sentence.

3 CHAIRMAN HENDRIE: And then -- so typically, sabotage  
4 and health and safety are the additions of 161(i) which cures  
5 the Strass ---

6 MR. REAMER: That would be cured in 2(i). One (i) is  
7 general rulemaking authority to impose safeguards requirements  
8 involving materials against certain threats. Two (i) deals  
9 specifically with the clearance program.

10 CHAIRMAN HENDRIE: Yes, ---

11 COMMISSIONER KENNEDY: The second point -- I'm sorry.

12 MR. REAMER: Two (i) deals specifically with the  
13 clearance program extending it to explicitly cover sabotage,  
14 other materials other than special nuclear material on the  
15 basis of both common defense and security and public health  
16 and safety.

17 CHAIRMAN HENDRIE: Okay. Do we have an understanding?  
18 Or do we understand what's proposed, let me ask that first.

19 (No response)

20 Does the B paper have a comparative text of the  
21 proposed and original 161?

22 MR. SHAPAR: Yes, it does.

23 COMMISSIONER KENNEDY: It is the D paper, appendix B or  
24 attachment B.

25 CHAIRMAN HENDRIE: No, that's comparative text from B

1 to C.

2 MR. SHAPAR: You are asking about 77.611B, right?  
3 The B version of the legislation?

4 CHAIRMAN HENDRIE: Yes. Does that have a narrative  
5 of 161 against --- Here's a better one, Vic.

6 COMMISSIONER GILINSKY: Well, I would not care one  
7 way or the other.

8 CHAIRMAN HENDRIE: Is the proposal to change clear,  
9 Peter?

10 COMMISSIONER BRADFORD: Yes, the only point here that  
11 as to (ii) to the extent that it-- I'm familiar with the  
12 general rule, but to the extent the source material and  
13 byproduct material may not be within the clearance rule, I  
14 would have some difficulty explaining why that authority were  
15 necessary. I'm not saying at this point that I oppose to  
16 having it in here, I am saying that if it were out so that  
17 we would have reason to believe that we need security clearances  
18 for people having access to source material, I would have to  
19 say I don't have much evidence of that.

20 COMMISSIONER GILINSKY: Why don't you drop it?

21 CHAIRMAN HENDRIE: Well, there was discussion of  
22 dropping it in 147, but leaving it in here.

23 MR. REAMER: The current clearance rulemaking is tied  
24 to access to special nuclear material.

25 MR. SHAPAR: Because that's the way the statute now

1 reads.

2 CHAIRMAN HENDRIE: Yes.

3 MR. REAMER: So I couldn't see any circumstances  
4 that it would be construed to source material. It indirectly  
5 applies to byproduct material and the two go together.

6 CHAIRMAN HENDRIE: Did we contemplate the spent fuel  
7 would come under the special nuclear material umbrella?

8 MR. REAMER: I would like the opportunity to check  
9 that, but I believe that we did, spent fuel in transit or  
10 in storage.

11 MR. SHAPAR: Spent fuel is generally regarded for  
12 the purpose of our rules as SNM, although it does contain others  
13 too.

14 CHAIRMAN HENDRIE: How about separated waste and so  
15 on, then it becomes a byproduct.

16 Is it a concern that would ---

17 COMMISSIONER BRADFORD: To me, no. If it is a  
18 situation in which you asked if I thought it ought to be in  
19 there, I'd say no. So I suppose if you are asking me whether  
20 it would tip me to vote against the whole proposition, the  
21 answer to that is no. Whether I personally think it ought  
22 to be in there, I would drop source material in that particular  
23 instance, in (ii).

24 MR. REAMER: But not in (i)?

25 COMMISSIONER BRADFORD: Yes.

1           CHAIRMAN HENDRIE: I see. The other place it  
2 appeared was in 147.

3           COMMISSIONER GILINSKY: What are we talking about there?

4           CHAIRMAN HENDRIE: Do you know whether DOE would have  
5 any problem with that if we dropped source material?

6           MR. SHAPAR: The only place that they are concerned  
7 about is 161(i)1 and that is the one part that we have been  
8 discussing. It provides authority for both DOE and NRC.

9           CHAIRMAN HENDRIE: And that one, you said you would  
10 leave in any case.

11          COMMISSIONER BRADFORD: (Nods in the affirmative.)

12          COMMISSIONER KENNEDY: 161(i)1?

13          MR. SHAPAR: Just (i).

14          COMMISSIONER GILINSKY: Does it now have source  
15 material?

16          MR. SHAPAR: No, it does not.

17          COMMISSIONER KENNEDY: No, it does not. That's  
18 correct.

19          MR. SHAPAR: The only section that I know of that  
20 has given DOE concern was the initial part of 161(i) and the  
21 concern they had was the phrase, "and licensed facilities."  
22 So I can't think of anything that you are doing here that  
23 would concern DOE as long as that phrase is taken out.

24          CHAIRMAN HENDRIE: Yes, and which it is sticken.

25          MR. SHAPAR: And license facilities or licensed by

1 the NRC, something like that.

2 COMMISSIONER GILINSKY: Now, wait a minute. Does  
3 that mean have -- it is clear that we only have authority over  
4 our licensees?

5 COMMISSIONER KENNEDY: It should be.

6 COMMISSIONER BRADFORD: Are you asking what DOE  
7 was concerned about?

8 CHAIRMAN HENDRIE: No, we have control over our  
9 licensees and those other activities assigned to us by the  
10 Energy Reorganization Act and the nature of the changes here  
11 as 161(i) exists now, and it has that same sort of language in  
12 it, and both we and DOE operate on this authority and there  
13 isn't a problem with whatever that means that we regulate  
14 over their things or whatever, and there isn't any more or  
15 less of that problem. I don't think it is a problem.

16 Now, do you have a problem with deleting source  
17 material?

18 COMMISSIONER KENNEDY: Yes.

19 CHAIRMAN HENDRIE: You would like to keep source  
20 material -- if it doesn't tip may we leave it?

21 COMMISSIONER BRADFORD: Yes. As a practical matter  
22 I would say you ought to require clearances for truck drivers  
23 with source material trucks is pretty far away.

24 CHAIRMAN HENDRIE: I don't know, if you talk to  
25 Congressman Worth about that yellow cake incident, why ---

1           COMMISSIONER BRADFORD: Well, he might want to require  
2 a divers license.

3           (Laughter)

4           CHAIRMAN HENDRIE: Yes, what was it?

5           MR. SHAPAR: Boogieing down the road.

6           CHAIRMAN HENDRIE: Okay with source material in and  
7 with the changes I proposed, do we understand the proposition?

8           MR. SHAPAR: Source material in in all places?

9           CHAIRMAN HENDRIE: Yes, including 147.

10          I assume, Vic, that your agreement with this could  
11 only go as far as 147?

12          COMMISSIONER GILINSKY: Section one here, would that  
13 apply to clearances?

1

1 CHAIRMAN HENDRIE: Right. We have now deleted clearances  
2 from the 147 section, so that if I were to ask for separate  
3 votes which might be useful and ask for agreement on the  
4 proposed text of 147, do you suppose I might get an  
5 everybody-on-board vote?

6 (No comment)

7 Good, let me ask it then.

8 COMMISSIONER GILINSKY: You are taking source  
9 material out of that one too?

10 CHAIRMAN HENDRIE: No, sir, I haven't I left it in.

11 COMMISSIONER GILINSKY: Well, I would take it out.  
12 Why don't you just go ahead, I'll write my own.

13 CHAIRMAN HENDRIE: Okay, can I pull you along,  
14 Peter, and get three votes for 147?

15 COMMISSIONER KENNEDY: How do you know you have  
16 got mine.

17 CHAIRMAN HENDRIE: I'm going to ask that in a minute.  
18 I'm saving you for a reserve.

19 COMMISSIONER KENNEDY: You had better count for two.

20 COMMISSIONER BRADFORD: You are at this point  
21 leaving substantially out the facility?

22 CHAIRMAN HENDRIE: Yes.

23 COMMISSIONER BRADFORD: And there may be some way  
24 to make everyone happier with that section, but I can live  
25 with it with the word substantially out.



1                   COMMISSIONER KENNEDY: What is it that you want to  
2 do with the substantially? Do you want to find some other  
3 word?

4                   CHAIRMAN HENDRIE: Well, if there were a way to  
5 rephrase that sentence in the threshold paragraph to gather  
6 the significant and the substantially together in one place  
7 and provide a threshold that didn't seem to give the staff  
8 a problem on what I see as the proof standards, why I would  
9 be glad to consider it.

10                  However, Peter is willing to go without the  
11 substantially if nothing particularly attractive shows up  
12 by the language perfecters, who would be a combination, I  
13 would assume of Howard's office and OGC.

14                  COMMISSIONER BRADFORD: Let me just ask one of the  
15 possibilities that you consider, and that's unless you can  
16 come to it right now, just running from the word "could" down  
17 to the second clause and say something like "could" and I  
18 don't really care whether it is significantly or substantially,  
19 increase the possibility of theft, diversion or sabotage.  
20 Drop everything about the significant adverse effect against  
21 the common defense of security you would only have to make the  
22 measurement once.

23                  MR. SHAPAR: How would that read again?

24                  COMMISSIONER BRADFORD: Significantly or  
25 substantially or some other word, increase the possibility

1 of theft, diversion of sabotage of such material at such  
2 facilities.

3 MR. REAMER: So there would be three changes.  
4 Deletion of have a significant adverse affect on health  
5 and safety of the public in the common defense and security  
6 by -- is that right?

7 COMMISSIONER BRADFORD: Yes, by facilitate.

8 MR. REAMER: Yes, and you replace facilitate with  
9 increase the possibility of and you would use either  
10 significantly or substantially to modify ---

11 COMMISSIONER BRADFORD: Or some other adverb.

12 MR. SHAPAR: I think it has promise, why don't we  
13 see if we can draft something along those lines.

14 COMMISSIONER KENNEDY: And then let's see what  
15 the effect of leaving out reference to the public health and  
16 safety in the common defense of security ---

17 COMMISSIONER BRADFORD: That's in two lines above  
18 was why I was going to drop it.

19 CHAIRMAN HENDRIE: It does appear above and that's  
20 a help in terms of ---

21 COMMISSIONER KENNEDY: Currently there are two  
22 determinations to be made. We are now ordering that only  
23 one determination should be made for this language, and I guess  
24 I want to know what the impact of that is.

25 Without making a health and safety of common:

1 defense and security determination any more with that language.

2 MR. SHAPAR: Of course, it does state in the earlier  
3 sentence of what the objectives ---

4 COMMISSIONER KENNEDY: Yes, I know, but stating  
5 the objective is one thing. Requiring a determination on the  
6 part of the staff or the Commission is quite another thing.

7 MR. SHAPAR: I think it is a reasonable argument,  
8 but the only basis in which we regulate is common defense of  
9 security and health and safety. We stated those as the  
10 objectives. The repetition of it later on was more in the  
11 category of crossing the i's and dotting the t's, although  
12 it made it clearer.

13 CHAIRMAN HENDRIE: Think some about that. I know  
14 what Dick is getting at. There may be a difference in the  
15 thrust of a finding that is made with and without that  
16 reiteration of the health and safety clause, but let us  
17 regard that as a possible language variation to be considered.

18 With that understanding, do you suppose I now --  
19 can I ---

20 COMMISSIONER KENNEDY: Not until I see it.

21 CHAIRMAN HENDRIE: Can't we vote agreement in  
22 principle with the changes?

23 COMMISSIONER KENNEDY: We haven't decided what  
24 the principle is in that regard, and I think that was one of  
25 the main issues of discussion all afternoon. Until we have

1 some idea of what that is, I don't think we have reached  
2 an agreement in principle. At least that's my view. So  
3 therefore, I'm not voting at this point.

4 CHAIRMAN HENDRIE: Well, that washes out the effort.  
5 Sandy, I guess you had better tell them down there there  
6 won't be anything forthcoming from the Commission in the  
7 near future.

8 COMMISSIONER KENNEDY: There is no reason in the  
9 world why we couldn't. How long is it going to take them to  
10 draft?

11 CHAIRMAN HENDRIE: It will be three weeks before  
12 this Commission can gather again on this in the future.

13 COMMISSIONER KENNEDY: The Commission is going to  
14 be meeting tomorrow, I was told.

15 CHAIRMAN HENDRIE: I didn't expect you to join us.

16 COMMISSIONER KENNEDY: I didn't indicate that I  
17 wasn't joining you. I just think this language here ought to  
18 be looked at, we ought to know what the impact of it is, we  
19 have discussed the subject the whole afternoon.

20 CHAIRMAN HENDRIE: We have a meeting for tomorrow  
21 morning scheduled at 9:30, it will run an hour. I don't  
22 know whether you can stand another session to follow that one  
23 on this subject or not.

24 COMMISSIONER BRADFORD: I can. Now, we have  
25 already, of course, run through a licensing session this

1 afternoon. I wonder what you are going to do with that?

2 CHAIRMAN HENDRIE: I had hoped very much to  
3 complete this and was willing to shoot the time in to it,  
4 the licensing session with a considerable testimony session  
5 to follow.

6 COMMISSIONER BRADFORD: I can stand another session  
7 on whichever or both, if you would like, tomorrow. I just  
8 didn't want to raise the second matter also.

9 CHAIRMAN HENDRIE: Your time is pretty well run  
10 out this afternoon, is it?

11 COMMISSIONER BRADFORD: I have somebody waiting  
12 in my office. I could come back but not for too long, to  
13 about 4:30.

14 COMMISSIONER GILINSKY: I'm going to have to leave  
15 also.

16 COMMISSIONER KENNEDY: I have another question I  
17 would like to get answered before I stop, and that is, what  
18 is the effect of this proposition with whatever language on  
19 this other question, what's the total effect of this on the  
20 on-going hearings on the clearance rule?

21 MR. SHAPAR: My view is that this doesn't have a  
22 significant effect on the hearing rule. We can make that  
23 clear in public statements. We are issuing the hearing  
24 rule under the existing statute. That's clear. If we propose  
25 a change in the statute and it is hanging fire, we can publicly

1 articulate the basis for which we forwarded the legislation  
2 to the Congress, and although one could draw other arguments,  
3 maybe contrary arguments, my own personal view is that it should  
4 not have a significant effect.

5 COMMISSIONER KENNEDY: But the fact that we have  
6 transmitted to the Congress ~~views as to certain clearance~~  
7 procedures, haven't we then in a sense foreclosed some  
8 range of option before the Hearing Board ?

9 MR. SHAPAR: I think you would have to look at the  
10 particular segment of the bill that you have in mind, the  
11 basic thrust of the clearance rule is to clear people for  
12 access to SNM as to which we have clear authority now, and  
13 under the existing statute it would only apply to licensees  
14 and it would go no further. So I think you have to look at  
15 individual segments of the bill. My own view is I don't  
16 believe it has a significant impinging effect on the on-going  
17 hearing.

18 COMMISSIONER KENNEDY: Do you have a side view?

19 MR. REAMER: Well, I think it depends very much  
20 on the way in which it is presented to the Congress.

21 If it is presented to firm what we think is existing  
22 authority for what we have on-going, I think the impacts are  
23 substantially less to the extent that the proposal goes beyond  
24 what we are currently doing and we seem to be seeking new  
25 authority and express doubts about existing authority then I  
think it could cause a very important problem.

1 I am looking at it solely from the standpoint of whether  
2 or not what that report is doing right now, is authorized by  
3 law and what this Commission might do in approaching new  
4 authority that might either cast doubt on that authority or  
5 not cast doubt. If one were to propose this authority as  
6 confirmatory, I think it casts less doubt than of what roles  
7 or approach you are going to take in that manner.

8 COMMISSIONER KENNEDY: So you are saying it depends  
9 not upon -- if I understand what you are saying -- you are  
10 saying it doesn't depend so much on what this actually is, but  
11 rather how we portray it, and that I find somewhat ---

12 MR. REAMER: Right.

13 We have to live with the law as it is now. There may  
14 be weaknesses in that law and that's the way the situation  
15 will remain unless the law is changed. If we go forward with  
16 an amendment that expresses doubt about existing authority  
17 in certain areas, expresses a belief that absence of authority  
18 on those areas and fail to get it, then our argument that  
19 existing authority authorizes what that Hearing Board is doing  
20 is less drawn than if we propose legislation as the Commission  
21 states that we believe that we have the authority for what the  
22 Board is now doing; that this legislation is intended to  
23 clarify that authority and not to seek new authority then I  
24 think the doubt is less substantial bearing. But still ---

25 COMMISSIONER KENNEDY: But there remains doubt?

1 MR. REAMER: There remains doubt. If the Congress  
2 does not act and tries to construe that that means, the  
3 general rule is when an agency seeks legislation to confirm  
4 existing authority and doesn't get it, that does not necessarily  
5 mean that the Congress had said you do not have this authority.  
6 It is ambiguous, the Congress in effect may be saying we think  
7 you have it under existing authority.

8 COMMISSIONER KENNEDY: And therefore you don't need  
9 any clarification.

10 MR. REAMER: It is very much the way the Commission  
11 casts its own view of its existing authority.

12 COMMISSIONER KENNEDY: So what is equally important  
13 as to the draft which goes forward is the statement that would  
14 accompany it.

15 MR. REAMER: Yes, sir. In my view it is.

16 COMMISSIONER KENNEDY: And has that been prepared?

17 MR. REAMER: I don't believe that it has.

18 COMMISSIONER KENNEDY: Okay.

19 MR. REAMER: Although one could certainly pose the  
20 question, what is the view of this Commission on its existing  
21 authority and what is the view of the Commission on the  
22 objective of this proposal. And if there is a consensus that  
23 that objective is to confirm, then the writing of that  
24 position is not a substantial problem.

25 COMMISSIONER KENNEDY: Those are questions that ought



1 to be answered too, you are saying, before anything is  
2 submitted.

3 MR. REAMER: It would be good to answer them.

4 CHAIRMAN HENDRIE: Well, it is clear that this  
5 package does several things as part of its terms, but it  
6 also adds authority, the whole section 147 is clear  
7 addition. There is a piece of the 161 change which we  
8 regard as confirming and clarifying existing authority and  
9 there are other parts of 161 regarding extension.

10 MR. SHAPAR: But I think Mr. Kennedy's question  
11 was asked in the context of what effect it would have on the  
12 on-going hearing on the clearance rule. My answer remains  
13 the same, very little as a reasonable practicality.

14 CHAIRMAN HENDRIE: Tomorrow morning what shall we  
15 do. Can you stand a meeting at about 11:00 to 12:00?

16 COMMISSIONER GILINSKY: I think.

17 COMMISSIONER BRADFORD: (Nods in the affirmative)

18 COMMISSIONER KENNEDY: It is going to have to be  
19 a short one. As far as I'm concerned it will be if I have  
20 seen the language.

21 COMMISSIONER GILINSKY: What is the problem here,  
22 is it the changing the adverse effects or ---

23 COMMISSIONER KENNEDY: It is the center part  
24 surrounding the question of substantially. We had an hour  
25 and twenty minute discussion on substantially, materiality and

1 so on ---

2 COMMISSIONER GILINSKY: And Howard is going to  
3 write another draft?

4 MR. SHAPAR: We are going to approach trying to  
5 carry forward an idea that Commissioner Bradford suggested.

6 COMMISSIONER KENNEDY: Which would be deleting a  
7 whole piece of that and I wanted to be sure of two things:

8 One, what it looks like after we do it; and two,  
9 what the effect is of eliminating the reference to the  
10 determination that the public health and safety and common  
11 defense and security are affected.

12 COMMISSIONER BRADFORD: I need to go for a while,  
13 I will need some time, but the other point and perhaps I  
14 explained it, I hadn't intended -- as I indicated before, I  
15 could live with the language as you proposed it. I threw that  
16 other out just because there were still a general dissatisfaction  
17 I thought that might help. If there is some way of agreeing  
18 on the language as it is at a minimum, unless people uncover  
19 a better alternative, I would be certainly be willing to leave  
20 it as is.

21 COMMISSIONER KENNEDY: Whether it says substantially  
22 or not.

23 COMMISSIONER BRADFORD: If I understood what Joe  
24 proposed, it did not, but it does say significant adverse  
25 effect three lines above.

12

1

COMMISSIONER KENNEDY: Yes, the way it was proposed in the draft. Well, if we are not going to reexamine that, then I would go along with it.

2

3

4

CHAIRMAN HENDRIE: Can you live with that?

5

6

COMMISSIONER BRADFORD: I can live with it, I was suggesting that it might be worth the effort to circulate the other ideas.

7

8

COMMISSIONER KENNEDY: I can live with it too, but I don't want to vote for something I don't even know what it is or what its effect is until we look at it.

10

11

COMMISSIONER BRADFORD: Well, let's agree to live with that, or at least I guess the three of us can live with that, but go ahead and circulate whatever better language occurs to you and we can ---

12

13

14

15

COMMISSIONER KENNEDY: Together with an estimate of what the effect is of leaving out the determination, the determination which is rather typical throughout all our statute. What, the determination that we are usually called upon to make is that it is in the public interest, public health and safety will be protected and the common defense and security and we are leaving that determination out now. Whether that has any affect.

17

18

19

20

21

22

23

MR. SHAPAR: Leaving out the specific reference in the determination to health and safety and common defense and security.

24

25

1 COMMISSIONER KENNEDY: Yes.

2 CHAIRMAN HENDRIE: But the proposition would be to  
3 agree that failing agreement on some alternate language  
4 that the present language would stand?

5 COMMISSIONER BRADFORD: Yes, to -- yes.

6 COMMISSIONER KENNEDY: And then how is this going  
7 to be put forward, and what manner of statement will be made  
8 on behalf of the Commission as it is forwarded, and who is  
9 going to write that?

10 CHAIRMAN HENDRIE: There will be a draft letter  
11 which I would ask again, the combined legal talents of the  
12 agency to produce forthwith.

13 COMMISSIONER KENNEDY: Am I correct, Bill, in going  
14 back to what you said there are a couple of questions that  
15 would be useful to the Commission to answer for you before  
16 drafting that, or am I reading something wrong?

17 MR. REAMER: I don't think I have a question, that  
18 it was your intention that it be embodied in 161(i)1(ii)  
19 dealing with security clearances for access to material or  
20 facilities. The intention underlying that and the objective  
21 is to confirm the authority underlying the current clearance  
22 rulemaking.

23 COMMISSIONER KENNEDY: Right. That is what we would  
24 say. Is that correct?

25 MR. SHAPAR: I think so.

1           COMMISSIONER KENNEDY: We are simply asserting  
2 that that is our understanding of our present authorities  
3 and all this is is a clarification, not an extension. Is  
4 that correct?

5           COMMISSIONER BRADFORD: As to that section?

6           COMMISSIONER KENNEDY: Yes.

7           MR. SHAPAR: Well, it doesn't pick up the other  
8 materials, does it not?

9           CHAIRMAN HENDRIE: You have to accept the other  
10 materials, so there is an extension in this.

11          MR. SHAPAR: But that should not create a problem  
12 for the hearing.

13          COMMISSIONER KENNEDY: That does not apply to or  
14 affect the rulemaking.

15          CHAIRMAN HENDRIE: That's correct.

16          The language here as it applies to the rulemaking  
17 is by way of confirmation and clarification of what we believe  
18 the Commission's authority to be in that area, that area being  
19 specifically a rulemaking area. Now, the legislative proposal  
20 goes on and asks for extensions of the Commission's authority  
21 in several areas, back in that same section there is an  
22 extension, now we have got other materials in the language now  
23 and so on.

24          Now, when I started out I thought maybe I was going  
25 to get Commissioner Gilinsky on board for 147, but I wasn't

1 successful there. Let me ask for a vote on 147 with the  
2 changes as proposed. I don't want to reiterate them. There  
3 was the thing I previously ran through and then the subsequent  
4 agreement on the threshold sentence ---

5 COMMISSIONER KENNEDY: And with B deleted.

6 CHAIRMAN HENDRIE: And with B deleted as it was  
7 in the paper and the substitute B which confirms the criminal  
8 sanctions ---

9 COMMISSIONER KENNEDY: Yes.

10 CHAIRMAN HENDRIE: ---for breach of information.

11 MR. SHAPAR: Though it may not go precisely there.

12 CHAIRMAN HENDRIE: All right, let me not be the ---

13 MR. SHAPAR: Okay.

14 CHAIRMAN HENDRIE: Okay? You may do it some other  
15 place.

16 MR. SHAPAR: Right.

17 CHAIRMAN HENDRIE: Okay, all in favor of that?

18 (A chorus of Ayes)

19 CHAIRMAN HENDRIE: By George, a vote of 4-0 on  
20 147. Take back what I said previously.

21 Please go and tell the Senator that the Commission  
22 has mandated this thing.

23 Now, with regard to the balance of the paper,  
24 specifically the sections on 161(i) on 181 and on 274(m) and  
25 whatever you do about this 233 criminal thing, may I ask for

1 a vote on those as proposed here?

2 COMMISSIONER KENNEDY: With the modest revision of  
3 the present strange language on Page 3 that perhaps the  
4 production facilities are not being transit on a regular  
5 basis.

6 MR. SHAPAR: Right.

7 CHAIRMAN HENDRIE: All right. This is the stuff  
8 with the clearance business in it now, so you are going  
9 to vote no, Vic, and Peter, are you going to ---

10 COMMISSIONER BRADFORD: I will give you one finger.

11 CHAIRMAN HENDRIE: A one-finger vote, by George,  
12 if I can get a finger in, why that's it, 3-1 on the balance  
13 of it.

14 COMMISSIONER BRADFORD: You can have all the fingers  
15 when you pick up the source material.

16 CHAIRMAN HENDRIE: You still want to do that.  
17 I'd better not disturb the balance, I've got a vote. So  
18 ordered, okay.

19 Now, do you know what you have got to do?

20 MR. SHAPAR: Yes.

21 COMMISSIONER KENNEDY: Let there be no misunderstanding  
22 in the source material. I agree with you that this is not  
23 a problem we are dealing with today, but neither do I think  
24 any of the problems that we are dealing with today are going  
25 to be gone tomorrow and I don't know what the meeting is

17

1 going to be tomorrow, but I think we ought to be at least  
2 in a position to deal with them rather than have to go up  
3 and explain why we can't. That's my reasoning.

4 CHAIRMAN HENDRIE: Okay, now you know --- Yes, a  
5 question?

6 MR. SHAPAR: One question. Do you still want to  
7 see the alternate language with respect to substantial or  
8 not, I'm not clear on that point.

9 CHAIRMAN HENDRIE: Yes. If it looks good and we  
10 can agree on it, the three of us -- the four of us now --  
11 if we can agree on it we will substitute it. If we can't  
12 agree on it, the as-written will stand.

13 MR. SHAPAR: All right.

14 CHAIRMAN HENDRIE: But I think it would be useful  
15 to see the thing rewritten with the changes as soon as  
16 possible and we need a draft transmission.

17 MR. SHAPAR: Well, the usual transmission, as you  
18 know, is a rather elaborate product. We can give you truncated  
19 version. It means a section-by-section analysis, comparative  
20 text and it is going to take a while to do it. If you want  
21 to take a shortcut we will try that.

22 CHAIRMAN HENDRIE: I need something in a hurry and  
23 the rest of it can follow as soon as possible, right?

24 COMMISSIONER KENNEDY: In a section-by-section  
25 analysis and the rest of it could follow, but I would think



1 that the transmittal would at least state the Commission's  
2 understandings under which you are sending it forward, so  
3 there is no misunderstanding on that end, for example,  
4 vis-a-vis the hearing.

5 MR. SHAPAR: Okay, we will have the draft language  
6 tomorrow.

7 CHAIRMAN HENDRIE: We need to get down there the  
8 language the Commission supports, right?

9 MR. SPECTOR: Yes, I think the particular deadlines  
10 for the mark-up on the bill that you are concerned about  
11 may have passed already, but at least there will be another  
12 round and there will obviously be further opportunities in  
13 the future and perhaps future years.

14 COMMISSIONER KENNEDY: Sometime during this century.

15 MR. SPECTOR: When it comes to the floor, there will  
16 be an opportunity to adjust existing amendments to meet the  
17 Commission's request.

18 CHAIRMAN HENDRIE: But obviously contemplation of  
19 that possibility is considerably improved as we get on down  
20 and let people know what the thrust is.

21 MR. SHAPAR: So we can just give you the language  
22 of the bill agreed upon without the trappings of a formal  
23 package, is that your suggestion?

24 MR. SPECTOR: I was actually suggesting the other  
25 that the additional three or four days it might take might be

1 well spent to get the complete package that would spell  
2 out everything.

3 CHAIRMAN HENDRIE: All right, fair enough.

4 COMMISSIONER KENNEDY: That's what I thought you would  
5 say.

6 MR. SHAPAR: He gave the wrong answer.

7 CHAIRMAN HENDRIE: Okay, what do we have to do  
8 on the agenda?

9 (Whereupon, the Commission moved on to other  
10 business and the above entitled meeting was concluded at  
11 4:25 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

