

TESTIMONY OF

COMMISSIONER FREDERICK M. BERNTHAL  
U.S. NUCLEAR REGULATORY COMMISSION

BEFORE THE

SUBCOMMITTEE ON ENERGY AND THE ENVIRONMENT,  
HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

APRIL 26, 1988

MR. CHAIRMAN, IN A SIMILAR HEARING BEFORE THIS SUBCOMMITTEE ON 22 JULY 1986, I PROVIDED A RATHER DETAILED RECORD STATEMENT ON THIS SUBJECT. MY VIEWS HAVE NOT CHANGED, AND I WILL NOT REPEAT THEM HERE. I REFER THE COMMITTEE TO MY TESTIMONY OF THAT DATE. LET ME SUMMARIZE BRIEFLY, HOWEVER, AND STRESS SOME ADDITIONAL POINTS THAT HAVE BECOME APPARENT SINCE THEN.

I DO NOT BELIEVE THERE ARE FLAWS INHERENT IN THE COMMISSION FORM OF GOVERNANCE, AS ORIGINALLY CONCEIVED, FOR REGULATING A SUBJECT AS CONTROVERSIAL AS NUCLEAR POWER. THE NEED FOR CONTINUITY AND STABILITY IN THE NUCLEAR REGULATORY PROCESS SEEMS TO BEG FOR A COMMISSION. BUT THE PERVERSE SYSTEM WE NOW HAVE GOES FAR BEYOND STABILITY -- IT IS TYING US IN KNOTS. IT LEADS NOT TO CONSENSUS, BUT TO FRAGMENTED AND ULTIMATELY FLAWED DECISIONS.

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THE POINT OF COLLEGIALLY WAS TO PROMOTE BALANCED AND WELL-REASONED DECISIONS, BASED ON THE HOPE THAT FIVE HEADS OF DIVERSE EXPERIENCE AND KNOWLEDGE ARE BETTER THAN ONE. BUT THE SUNSHINE ACT HAS SO UNDERMINED THE CONCEPT OF COLLEGIAL DECISION-MAKING THAT I HAVE LITTLE DOUBT THAT STATUTE WILL EVENTUALLY PRESIDE OVER THE GENERAL DEMISE OF THE COMMISSION FORM OF GOVERNANCE.

AND THE PUBLIC INTEREST IS THE LOSER FROM THAT. IF COLLEGIAL DECISION-MAKING IS DESIRABLE IN PRINCIPLE BUT IMPOSSIBLE IN PRACTICE

BECAUSE OF MISGUIDED IF WELL-INTENDED LAW, THERE SHOULD BE A BETTER SOLUTION THAN TO DISPOSE OF COLLEGIAL DECISION-MAKING.

IRONICALLY, IT IS NOT THE MORE POLITICALLY RESPONSIVE SINGLE-ADMINISTRATOR EXECUTIVE-BRANCH AGENCIES WHICH HAVE BEEN PENALIZED INTO NEAR-TERMINAL FECKLESSNESS; IT IS WE COMMISSIONS -- WE WITH THE CHECKS AND BALANCES INHERENT IN DIVERSE AND PUBLICLY EXPRESSED VIEWS.

IT WILL BE ILLUMINATING TO SEE HOW MUCH SUN SHINES ON THE PRIVATE DELIBERATIONS OF A SINGLE ADMINISTRATOR HEAD OF THE NUCLEAR REGULATORY AGENCY.

I HAVE ALSO LONG BELIEVED THAT CONGRESS' DECISION TO ABOLISH ITS OWN JOINT COMMITTEE ON ATOMIC ENERGY (JCAE), WHICH USED TO OVERSEE ALL ASPECTS OF THE DEVELOPMENT AND USE OF THIS STILL NEW

TECHNOLOGY, WAS A FATEFUL MISTAKE. A DECADE AGO, CONGRESS BEGAN TO SPEAK WITH A MULTITUDE OF VOICES IN CARRYING OUT ITS OVERSIGHT OF THE VITAL NUCLEAR ENTERPRISE.

IT REMAINS A SERIOUS QUESTION WHETHER THE PRESENT FRAGMENTED OVERSIGHT JURISDICTION CAN PROVIDE THE THOUGHTFUL, COHERENT DIRECTION NEEDED ON THESE MATTERS SO ESSENTIAL TO OUR NATIONAL WELL-BEING AND SECURITY. AS YOU KNOW, THE PROBLEM EXTENDS WELL BEYOND THE NARROW CONFINES OF THE NRC REGULATORY MISSION BEING CONSIDERED HERE TODAY ,

BUT REALISM DICTATES THAT WE NOW SEEK PRACTICAL SOLUTIONS, AND INDEED, OUR CUMBERSOME ADMINISTRATIVE PROCEDURES ARE FAR FROM THE ONLY OR EVEN THE BEST ARGUMENTS FOR CHANGE AT THE NRC.

IN MY JUDGMENT, CHECKS AND BALANCES MUST BE RESTORED AND THE PRINCIPLE OF ACCOUNTABILITY MUST BE REINTRODUCED AT THE NRC TO REMEDY THE SITUATION.

CAREFUL THOUGHT MUST BE GIVEN TO THE REMEDY, HOWEVER. FOR JUST AS A COMPETENT, OBJECTIVE, DEDICATED SINGLE ADMINISTRATOR COULD MORE EFFECTIVELY AND PRODUCTIVELY MANAGE THE OPERATIONS-ORIENTED NUCLEAR REGULATION OF THE 1990'S, A LESS CAPABLE OR LESS WELL-MOTIVATED INDIVIDUAL COULD IN SHORT ORDER DO IRREPARABLE DAMAGE TO THE STILL FRAGILE VIABILITY OF THE NUCLEAR OPTION IN THIS NATION.

A SINGLE ADMINISTRATOR OF THE NRC SHOULD THEREFORE SERVE AT THE PLEASURE OF THE PRESIDENT WITHIN THE EXECUTIVE BRANCH, AS DOES THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY. I WILL STRONGLY OPPOSE ANY SINGLE ADMINISTRATOR PROPOSAL THAT DOES LITTLE MORE THAN DISPOSE OF THE DISTRACTION OF THE FOUR ADDITIONAL OPINIONS NOW PRESENT ON THE COMMISSION.

THAT WOULD LEAVE UNRESOLVED WHAT I CONSIDER TO BE THE PRINCIPAL DIFFICULTY OF THE COMMISSION FORM OF GOVERNANCE -- LACK OF ACCOUNTABILITY, AND NO EFFECTIVE BALANCE BETWEEN EXECUTIVE AND LEGISLATIVE OVERSIGHT OF THE NRC.

IN THAT VEIN, I NOTE THE COMMISSION MAJORITY'S VIEW THAT REGULATIONS PROPOSED BY A SINGLE ADMINISTRATOR NRC SHOULD NOT BE SUBJECT TO REVIEW BY THE OFFICE OF MANAGEMENT AND BUDGET. AS A COMMISSIONER, I CAN HARDLY BE UNSYMPATHETIC. BUT WHILE THE PRINCIPLE INTENDED IS LAUDATORY, IN PRACTICE I BELIEVE IT IS IMPOSSIBLE AND UNWISE SO TO ATTEMPT TO CONSTRAIN PRESIDENTIAL AUTHORITY.

THE NEW AGENCY EITHER WILL BE AN EXECUTIVE BRANCH AGENCY, SUBJECT TO PRESIDENTIAL AUTHORITY, WITH AN ADMINISTRATOR SERVING AT THE PLEASURE OF THE PRESIDENT, OR IT WILL NOT BE. I DO NOT BELIEVE IT IS POSSIBLE TO HAVE IT BOTH WAYS. INDEED, THE ENVIRONMENTAL PROTECTION AGENCY, WITH A SIMILAR MISSION NO LESS VITAL TO PUBLIC HEALTH AND SAFETY THAN THAT OF THE NRC, HAS LONG CARRIED OUT ITS

RESPONSIBILITIES WITHIN THE CONFINES OF EXECUTIVE BRANCH AUTHORITY.

AS FOR AN INDEPENDENT SAFETY BOARD, I HAVE ALWAYS SUPPORTED THE ESTABLISHMENT OF SUCH A BOARD ONLY IN THE EVENT THAT THE NRC BECOMES A SINGLE ADMINISTRATOR, EXECUTIVE BRANCH AGENCY. THE ROGOVIN AND KEMENY COMMISSIONS BOTH RECOMMENDED SUCH A SAFETY BOARD WITHIN THAT CONTEXT.

BUT THEN THE BOARD SHOULD STAND SUBSTANTIALLY APART FROM THE NRC. AND IT MUST HAVE AN APPROPRIATE THRESHOLD, SPECIFIED IN STATUTE, FOR INITIATING ITS INVESTIGATIONS. TIME AND THE RECORD CONTINUE TO SHOW THAT WE SHOULD EXPECT NOT MORE THAN ONE OR TWO EVENTS PER YEAR THAT MIGHT REQUIRE SUCH AN INDEPENDENT INVESTIGATION.

SHOULD CONGRESS FAIL TO ESTABLISH A SINGLE ADMINISTRATOR NRC, I WOULD CONTINUE TO OPPOSE THE SAFETY BOARD CONCEPT, BECAUSE WE ALREADY HAVE AN INDEPENDENT NUCLEAR SAFETY BOARD -- IT'S AN INDEPENDENT AGENCY CALLED THE NUCLEAR REGULATORY COMMISSION.

WE NOW HAVE APPROXIMATELY TWO DOZEN NUCLEAR POWERPLANTS IN THE FIRST TWO YEARS OF OPERATION IN OUR COUNTRY. ONLY A HANDFUL OF PLANTS REMAIN TO BE LICENSED, AND THOSE WILL COME BEFORE THE COMMISSION AT LENGTHENING INTERVALS INTO THE MID-1990'S. MORE THAN I COULD HAVE ANTICIPATED EVEN A YEAR AGO, IT IS MANIFESTLY APPARENT THAT THIS EVOLUTION IS ALREADY DRAMATICALLY CHANGING THE MISSION OF THE NRC.

WE ARE TODAY AN AGENCY PREOCCUPIED NOT WITH ENGINEERING AND CONSTRUCTION, BUT WITH THE SAFE OPERATION OF NUCLEAR POWERPLANTS AND THE SAFE USE AND DISPOSAL OF RADIOACTIVE MATERIALS -- A MODE LIKELY TO CONTINUE THROUGH THE REMAINDER OF THIS CENTURY. MORE AND MORE, THE COMMISSION CONCERNS ITSELF NOT WITH POLICY, BUT WITH STANDARDS, REGULATORY COMPLIANCE, ENFORCEMENT, AND MANAGEMENT.

SUCH RESPONSIBILITIES ARE CLEARLY BETTER SUITED TO A SINGLE AGENCY HEAD RESPONSIBLE TO THE PRESIDENT THAN TO A COLLEGIAL GOVERNING BODY. ~~THE~~ THE SIMILARITIES OF SUCH RESPONSIBILITIES TO THOSE OF A SISTER FEDERAL AGENCY SHOULD NOT BE OVERLOOKED. RELIEVED OF ITS SPECIAL RESPONSIBILITY TO OVERSEE A HISTORICALLY GREAT MULTITUDE OF ENGINEERING AND CONSTRUCTION PROJECTS, THE NRC MORE THAN EVER SHARES WITH THE EPA THE COMMON OBJECTIVE TO PROTECT PUBLIC HEALTH AND SAFETY, AND THE ENVIRONMENT.

INDEED, I STILL BELIEVE CONGRESS WILL ONE DAY COME TO CONSIDER THE ADVANTAGES OF COMBINING THE NRC AND THE ENVIRONMENTAL PROTECTION AGENCY UNDER A SINGLE AGENCY HEAD. THE IDEA IS HARDLY NOVEL; SEVERAL EUROPEAN COUNTRIES HAVE A SIMILAR ARRANGEMENT.

THE RISKS ASSOCIATED WITH ACID RAIN, CHEMICAL WASTES, CHLOROFLUOROCARBONS, GLOBAL CLIMATE CHANGE, AND THE PANOPLY OF ENVIRONMENTAL INSULTS GENERATED BY THE ACTIVITIES OF MAN MAY THEN, ALONG WITH THE RISKS OF NUCLEAR POWER GENERATION, FINALLY BE TREATED ON A COMMON FOOTING.