

NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

BRIEFING ON NFS-ERWIN

CLOSED MEETING

Place - Washington, D. C.

Date - Thursday, 20 September 1979

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BRIEFING ON NFS-ERWIN

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

Thursday, 20 September 1979

The Commission met, pursuant to notice, at 1:35,  
p.m.,

BEFORE:

VICTORY GILINSKY, Acting Chairman

PETER BRADFORD, Commissioner

JOHN AHEARNE, Commissioner

ALSO PRESENT:

W. Dircks  
M. Malsch  
J. Partlow  
B. Snyder  
V. Stello  
J. Cummings  
L. Stello  
S. Chilk  
E. May  
C. Brown  
L. McKeown  
Mr. Fouchard  
G. Cunningham

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P R O C E E D I N G S

COMMISSIONER GILINSKY: We are going to cover at least a couple of points.

One is: What will we be doing that we aren't doing now if we get down the road and if it turned out that this discrepancy wasn't resolved, which then raises the question: ought we to be doing that now.

The second is: Should be asking the FBI to take some greater interest in this case.

COMMISSIONER AHEARNE: The two may not be unrelated.

COMMISSIONER GILINSKY: That's right; ask them to involve themselves more than they have up until now.

COMMISSIONER AHEARNE: And what were the relationships.

COMMISSIONER GILINSKY: And we asked Marty in particular to tell us what he could of what we know. I am not sure I know exactly how to phrase the question, but what we ought to know about what happens if the FBI does or doesn't come in.

COMMISSIONER AHEARNE: We have a representative here?

MR. DIRCKS: No, we don't. We have talked to the

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COMMISSIONER GILINSKY: Could you, Bill, bring us up to date, and then I think you will probably have something to say on the first two points, and then we will hear from Marty.

MR. DIRCKS: I will cover the first two points, where we left off today.

The question is: What more would, or could, we be doing, that we aren't doing now if we come up against no change in the number situation and it is related directly -- the only thing we could think of is getting the FBI involved now, rather than later.

And then following that line, is if they do get involved, how would the relationships be, and Marty is doing that.

We were discussing it with the FBI about 25 minutes. We have their view. And then Marty can give the legal view.

In pursuing that, we talked to Lee late this morning, who is sitting in for Satkowski of the Bureau.

COMMISSIONER AHEARNE: To give us a sense of what level in the Bureau, what are they? What level are they?

MR. GOSSICK: The Atomic Energy desk, 14, 15.

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COMMISSIONER AHEARNE: They are not your peers?

MR. DIRCKS: I am not sure where my equivalent comes in, but we have always dealt with the Atomic Energy -- above the Atomic Energy desk, you get into the investigatory arm of the Bureau.

MR. CUMMINGS: The section chief.

MR. SNYDER: Doesn't the memo of understanding imply that we deal through this desk?

MR. DIRCKS: Yes, and there is no reason to vary off that, yet.

COMMISSIONER AHEARNE: I wasn't implying that.

MR. DIRCKS: We discussed these points with Latham this morning, and we asked him to think about it and he said he would think about.

The first thing we asked -- we explained the situation. If we come up with nothing more than we have now, after all of this digging, we still find ourselves with these wide open numbers.

Then, on the other hand, we have no indication that anything has gone out the (inaudible).

Why wait for three or four weeks; why not come in now and expand the scope of the investigation. And if you did that, Mr. FBI, how would the relationships be.

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This morning Latham indicated that he would look into it. He would look into the sort of full scope coming in , which is the full panoply of their activities, or sort of the toe in the water approach, we we talked about today.

And if it is the full scope, he said that you will get the full scope.

And if it is the toe in the water kind of thing, he said he would have to talk it over with the people above him and with the Department of Justice.

COMMISSIONER GILINSKY: Is there nothing in between?

MR. DIRCKS: Anything. Get in with us, and as we move with our investigation, you come in and do whatever you want to do, interview, do everything short, I guess, of picking up a definite indicator that the material is gone. Interview management; interview the employees, and we say, sure, we start with the management and go through all 600 people, and then expand it outward.

MR. STELLO: He left me with the impression that they have really two modes: Go or not go. We were trying to find at least a halfway house --

COMMISSIONER AHEARNE: Get them involve<sup>d</sup> heavily but not in control.

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MR. STELLO: Well, we didn't want to be in the position to say that we sat here for four or five weeks and did nothing and not have pursued at least having them get involved.

MR. DIRCKS: They have been answering press inquiries to the fact that they have been informed and are being kept informed, and that they have not entered the case.

MR. CUMMINGS: They say that they are not actively investigating, and that is what we have been telling the press.

I tell you what he came back with: After talking with Paul Nugent, who is two or three levels above this desk, and the Department of Justice people, they don't have a toe in the water, or a knee in the water, or an arm in the water approach. They don't operate that way.

If they come in, they will give us the full treatment. If they -- now, if we ask them to come in right now today, they will come in, but they will come in if we tell them that we think there has been a diversion.

They come into it.

COMMISSIONER BRADFORD: They won't come in unless we tell them?

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MR. DIRCKS: They say: If you want us to come in in any other capacity; we don't have any indication of that. That is something that they would like us to sit down with them, with the Department of Justice people and talk about it.

They would prefer that we have more information than what we have now, but they would be willing to discuss how they would come in.

COMMISSIONER AHEARNE: You are saying that there might be an intermediate mode; they just don't have it in established practice?

COMMISSIONER BRADFORD: What do they do? Does anybody know what they do in a kidnapping case when somebody has disappeared and they don't know what it is across state lines?

MR. CUMMINGS: They can (inaudible).

It is a question, Commissioner, of who you are talking to and how far you want to go. If Nugent wants to go a little bit further, he has got to go over and talk to his opposite number at Justice.

And there has got to be some (inaudible) back and forth between Justice and the Bureau as to how far they are going to go in and then who is going to give the blessing

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for them to get in that far.

COMMISSIONER BRADFORD: What is the relationship with state authorities in the case I just mentioned? if they do go in?

MR. CUMMINGS: I think there is a presumption --

COMMISSIONER GILINSKY: Could you --

MR. CUMMINGS: I think there is a presumption of 48 hours, because they ran into problems where there was no evidence of interstate transportation, so it turned out that we found a dead body in another state, and they said that this is a bad way of doing it.

COMMISSIONER BRADFORD: They have concurrent jurisdiction?

MR. CUMMINGS: Yes. There is basically some agreement in a case like that of who is going to run it. The Bureau will generally insist on running that case.

COMMISSIONER GILINSKY: Suppose they are running it, wouldn't we still be going through physical inventories and doing everything that we are doing?

MR. DIRCKS: Yes; we do everything we are doing. We asked them the question about where we operate in the open and we keep the public informed and we keep the committees informed and so on. They raised that question with

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their higher ups, and the Justice Department people and they called our attention to a provision in the Memorandum of Understanding that said all of our press releases would be coordinated --

COMMISSIONER AHEARNE: With theirs.

MR. DIRCKS: With theirs.

Joe, you have talked to the press over there at the FBI. What did he have to say?

MR. FOUCHARD: His concern with what anybody says is not to jeopardize the future prosecution, and that is the way they look upon a case.

So I think we would probably have to be a lot more careful what we said and we would have to check with them (inaudible).

COMMISSIONER AHEARNE: What is the problem with you and Vic -- are you and Vic sitting down with Nugent and the Justice Department and working it out?

MR. DIRCKS: No problem, because I told them, I said -- I think we are leaning toward getting you into this thing in sort of this broad-based effort.

COMMISSIONER AHEARNE: I am already (inaudible).

MR. DIRCKS: And, of course, they said, come over with any more information than you have now.

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And they would like to sit down with the Justice and determine the extent of -- not the extent, because if they come in , they come in with -- they don't go in half-way. They come in.

MR. CUMMINGS: It would be similar to a case, for instance, if you were in a bank, and you came up at the end of the day and balanced your books and you were short x numbers of millions of dollars of something, and you couldn't say there was no evidence that it has been stolen, and no evidence that it was a bookkeeping mistake. You have a problem.

Now, they don't have to have absolute proof.

MR. DIRCKS: You are right, but --

The Atomic Energy thing, their remarks were: This is sort of the -- a large MUF, and the attitude is you have had these MUFs before, haven't you? And with a banking system, you have a pretty good idea when you are missing \$10,000 you are missing it.

Their attitude is in this thing the precise nature of the bookkeeping here, you may have lost it, you may not have lost it and the probability is that you have not lost it.

But they said if we want them in, let's sit on

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-- on the basis of: Come on into the water with us, this type of approach. They will come in, but they would like to talk about --

COMMISSIONER AHEARNE: I think you have to do that.

MR. DIRCKS: I indicated that probably we will run out of any interesting leads by tomorrow, which will leave us Monday.

Now, that is the point --

COMMISSIONER AHEARNE: I would prefer you to sit down and talk with them tomorrow.

COMMISSIONER GILINSKY: That would be the next step.

MR. DIRCKS: Unless I am dissatisfied with the Atomic Energy desk, I don't want to --

COMMISSIONER GILINSKY: I thought they were suggesting --

MR. DIRCKS: Yes, the desk, Nugent, Justice Department; they would be in on the meeting.

COMMISSIONER AHEARNE: I think that is what ought to be done.

COMMISSIONER GILINSKY: They are proposing a meeting for you, if you were so interested.

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MR. DIRCKS: If we were so interested.

And, of course, they are saying that they prefer not to get involved in one of these things at this point, but if we want them to and we push them to it, they will sit down and talk to us.

COMMISSIONER GILINKSY: What would you say to them.

MR. DIRCKS: We are saying we would feel more comfortable --

COMMISSIONER AHEARNE: I would hope you would say that the Commission has -- if necessary by vote -- ask him or ask them to meet with Justice and the FBI to bring them in and to work out a method by which that can most effectively be done.

They have to explain what each of their guys are doing, so that it is clear that there isn't -- that they don't stop or interfere. They have to explain to what extent we have any information. And I recognize it is very slim, or nonexistence, other than the fact that there is this large discrepancy.

But I think they have to go from the standpoint that it is our belief that the FBI ought to be brought in.

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MR. GOSSICK: On the basis that we don't think we are likely to find it at all, or some portion of it?

COMMISSIONER AHEARNE: On the basis that it is a very significant amount. The type of material is extremely significant. And that we won't most likely have an answer for a month or more, and that it just seems to us that given -- even there is no probability, the risk associated is sufficiently high that prudence behooves us to have them in now.

MR. GOSSICK: At least explore --

COMMISSIONER GILINSKY: I think as John says, you are protecting against the possibility, which is hard to judge at this point, and maybe less than a likelihood that the question will not be resolved, and that it will look as if material is missing, and given that this poses very serious dangers, we are not to lose a month or however long it would be.

And if it turns out that the effort was unnecessary, it is just a prudent approach.

Nevertheless, I will ask Peter what he thinks.

COMMISSIONER BRADFORD: You guys are doing fine.

(Laughter.)

MR. STELLO: Another point that has been raised here; it has been an unusual operating period down there, and

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it is a very unusual number, compared to previous recent history down there.

COMMISSIONER GILINSKY: Which cuts two ways.

MR. SNYDER: I am not trying to draw conclusions from that, but it is not a normal mode of operation.

Nor, is the number near the number we have seen recently.

MR. DIRCKS: Somebody has been telling them about this. I suppose that they have a good idea where we stand now.

They know all about the strike. They know about the various allegations. So we are not -- I don't think we have to -- as I said, their attitude is they will come in right away if we tell them we want them, if we suspect there are problems. They will come in if we ask them to come in on this broad base cooperative (inaudible) if we sit down with them. And they very definitely want the Justice Department people there.

When they come in, they come in with their -- either one of these things; they come in fully. Once they are in, they don't want to --

COMMISSIONER GILINSKY: You just press the button and that is it.

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(Laughter.)

MR. DIRCKS: It is their rules.

MR. STELLO: I get the clear impression we could work something out, that sounded to me like we could still do our thing and still have a way to keep the public fully informed so we wouldn't literally wind up with an (inaudible).

MR. DIRCKS: That is a question they asked Justice and Nugent.

MR. STELLO: That has

COMMISSIONER GILINSKY: There has -- that has got to be a subsidiary consideration. The first responsibility is to try to resolve this question. And we will try to work out the public affairs aspects of it as well as we can.

MR. STELLO: There is still clear indication we can do our thing without their interfering. I have reasonable assurance that it will go that way.

If it didn't, then I am not so sure I wouldn't want to involve them.

COMMISSIONER AHEARNE: That is one reason to sit down and talk to them.

COMMISSIONER GILINSKY: We are agreed that you

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are going to talk to them, and if you are going to talk to them it seems to me that you should talk to them as soon as you could.

COMMISSIONER AHEARNE: Tomorrow.

COMMISSIONER GILINSKY: So then --

COMMISSIONER AHEARNE: I think Bill and Vic ought to go.

COMMISSIONER GILINSKY: Does that take care of your contribution?

MR. DIRCKS: Yes.

COMMISSIONER GILINSKY: Did you have any thoughts about what you might be doing, other than calling in the FBI if it turns out a month or so later that the question is still unresolved?

MR. STELLO: Let me report two things, since the last time we talked.

Our resident inspector: Did he have any idea that the MUF was going to be this large. Answer: No.

The information that we had was a few kilograms Friday. And based on some calculations other people had done, possibly [ ] and it was a surprise to him.

He wasn't aware that it could be. We asked our people down there: Is there anything more that they

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could theoretically come up with that we could do now that we are not now doing. And the answer is no. As they think of something we could do, they are doing it. They are trying to do everything that they can think of. And I have got the action plan laid out for what they are going to do with the understanding that if there is something that comes up, that looks like we ought to do it, then let's think about it real quick and decide.

COMMISSIONER GILINKSY: Can we have a copy of that; what they are doing? I think we ought to.

(Distributing documents.)

I think the Commissioners ought to have that.

And I think the next step for you guys is to get -- to have a meeting with Justice.

Marty; can you tell us something about what this means for us, if we head down this road?

MR. MALSCH: I looked into the basis for our authority to conduct investigations and so forth, and it is about as broad as you can imagine.

It is 161(c), that says the Commission can make such studies and investigations as it may deem necessary or proper to assist in exercising any authority provided in this act, which is as broad as you can imagine.

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The only limitations I can see are first, the obvious limitations that we can't conduct unreasonable searches and seizures. The Constitution still applies, obviously.

But beyond that, there is a provision in the act, in 221(b) that says that the FBI shall investigate all alleged or suspected criminal violations of this act. And that can be read as a limitation on our authority in the sense that the FBI has the responsibility to investigate criminal violations, but that we still have the responsibility to make whatever investigations are necessary in support of administrative action.

COMMISSIONER GILINSKY: But what happens if the FBI comes and "takes over?" What is our role then? Is it limited basically?

MR. MALSCH: As I read the MOU, there is a lot of leeway reading it. Once the FBI moves in we play a supporting role to the FBI and not the other way around.

MR. CUNNINGHAM: In Quad Cities, we had violations of the act. The FBI moved in and they wanted us to refrain from civil penalties and any other administrative action until they were through.

The Commission didn't concede they had the

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authority, but the Commission did back off and just wait patiently.

COMMISSIONER GILINSKY: I am more concerned about things like continuing the physical inventory.

MR. MALSCH: No problem with that.

MR. STELLO: Where we have a problem is conducting our own investigation and interviews of people.

We haven't started that and obviously wouldn't want to start that until the issue of the FBI is cleared away.

If they are going to do the investigating, then we clearly wouldn't want to, and I would assume that would be an infringement of both the Memorandum of Understanding and --

COMMISSIONER GILINSKY: We can continue our normal regulatory functions.

MR. MALSCH: Yes, and as long as we can justify our activities in support of the normal kind of enforcement efforts we would undertake, then there is no problem in our statutory authority.

There may be problems of working out arrangements, liaison, but no problem with our authority.

COMMISSIONER GILINSKY: At any rate, the FBI

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would want us to continue those activities, since we are more expert at that than they are.

MR. STELLO: In fact, we asked them if they viewed under the act -- don't have the responsibility to make a judgment whether they should come in on their own initiative. And they kind of waffled a little bit, and the answer as I recall it, was: Yes, but we would really rely on you to tell us.

And I can understand why. They know they can come in alone, but if they do and if someone comes over and asked the Commission: Should we have done it, and we said: Hell, no; we knew it was an arithmetic mistake three weeks ago, they look bad.

And that is the kind of problem they are worried about.

COMMISSIONER GILINSKY: You ought to go back and contact them and meet with them again.

MR. STELLO: I want to make sure there is no mistake. Based on what I understand, I have got no reason, from what I have heard, to believe that there is a diversion, and we are not starting this investigation believing that to be the case.

However, it is prudent --

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COMMISSIONER GILINSKY: Wait.

It seems to me that there is the inventory discrepancy itself.

MR. STELLO: We have had discrepancies almost that large before.

COMMISSIONER GILINSKY: Right, but it seems to me a discrepancy is a suggestion that the stuff isn't there. Otherwise, what is that system about?

MR. STELLO: That is what I am trying to say. To be --

COMMISSIONER GILINSKY: It is quite another thing to say that there is no indication other than that.

MR. STELLO: That, <sup>is</sup> what I mean.

COMMISSIONER GILINSKY: If we say it that way --

MR. STELLO: It is not unusually large, or the largest MUF that we have had in the past.

COMMISSIONER GILINSKY: It is larger than recent discrepancies.

MR. STELLO: There were 60, 70, kilograms in the past?

MR. PARTLOW: Twelve.

(Simultaneous discussion.)

COMMISSIONER GILINSKY: If you look at the

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inventory numbers, it is [ ] and presumably it is an improved system.

So, therefore, it ought to be more capable of --

COMMISSIONER AHEARNE: Since I am pushing it, I am not trying to imply that, yes, there was a diversion but I am saying, as a regulator involved in it, I feel obligated to assume the worst.

COMMISSIONER GILINSKY: Let me raise a point that I raised some time in the past.

If one doesn't regard a difference as being an indication that the stuff isn't there, there is no reason to regard a zero difference as indication that the stuff is there.

Either we take this system seriously or we do not.

MR. STELLO: Agreed. But nevertheless, I feel that we are departing from past practice or policy. We have had other MUFs. We haven't done anything.

This time we have a MUF with at least -- the impression I have is that they expect it will come down some.

We believe that it is still prudent -- we are not certain it is going to go away and therefore, want to

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be able to deal with that other question, which is a "what if." We feel it is prudent to do that.

So that, I think, and we might be wise, so that we write this down and we both say it the same way. And I think that I want to do that so that they will know why we are turning them on and have it in writing.

And when we say it, we will have it in writing as to why we have turned them on, because I think this is going to be a major issue.

COMMISSIONER GILINSKY: Maybe we better circulate a paragraph.

MR. STELLO: I propose we do that.

COMMISSIONER AHEARNE: But still set up the meeting for tomorrow.

MR. STELLO: We will set up the meeting for tomorrow, circulate a paragraph, and if possible, to have comments back and the paragraph resolved, we will bring it with us, and if not, we will tell them: Don't say it until we do.

MR. CUMMINGS: I think they would be hard pressed if you sent them a letter today and said that we completed the entire inventory and we can't account for the difference; we don't know, they would be hard

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pressed not to get into that case.

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MR. DIRCKS: At what point does this hold? You have got this [ ] MUF. Now, let's say we find [

] We still have a difference. We drop it down to 5, we still have a difference. Do we press them in if we still have 5 kilograms?

MR. CUMMINGS: I think it is a judgment.

COMMISSIONER AHEARNED: When you get to five, you are getting close to your limit of error, three.

MR. PARTLOW: Some people don't like our way of evaluation, but if we were down to five, it would be within the measurement of uncertainty for the whole period, for what ever that is worth.

COMMISSIONER AHEARNE: But realistically, I was at the stage of having you guys put them on notice that even for five, or three, to shape up.

COMMISSIONER GILINSKY: That is one possibility. And it may go in the other direction.

So we are just trying to do the prudent action.

MR. STELLO: I am pleased that we can write this paragraph and get everyone to agree that this is what we will say, because I think this will be a major problem for them.

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COMMISSIONER GILINSKY: I hope it is going to work out.

MR. PARTLOW: At the point that we had this inventory difference --

COMMISSIONER GILINSKY: Let's not write it at the table. As far as I can see, we have pretty well concluded what we have to do.

COMMISSIONER AHEARNE: Who writes the paragraph?

COMMISSIONER GILINSKY: Why don't Bill and Vic get together?

MR. GOSSICK: There is one part -- one point, one argument, as we try to negotiate this paragraph that you just made, as well as, I think, Vic, is that this [ ] if you assume that starting here from zero you have no more confidence of -- in the accuracy at that starting point, than you did up here, the accumulative MUF, the [ ] is not very [ ] nor the [ ]

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MR. PARTLOW: Those are swings between inventories

MR. STELLO: That is what this is.

MR. PARTLOW: If the next inventory results in a gain of [ ] then that represents a [ ] swing in the differences, but that is not meaningful.

RD

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This [ ] is almost [ ] as any result we have had.

COMMISSIONER BRADFORD: How meaningful is it; after it has been closed down and looked through, to the extent it is going to be in the next -- over a period -- if it is then permitted to start up, how likely is it that you would see a swing back the other way. It is one thing to have those swings go on without a complete close down.

COMMISSIONER AHEARNE: Some of those --

MR. PARTLOW: If something doesn't get fixed, there is a chance for another swing. What I & E is going to do after we get through with this; we will know they have a good starting point. When they come up again with a new measurement start, there is a chance that something isn't fixed to start that again.

MR. GOSSICK: Another point on another matter.

Bill, I think we ought to cover what the people are doing down there, and also an attempted break-in of some sort, that I think you better tell the Commission about.

MR. PARTLOW: I don't know too much about this, but some time last night at the home of the manager of safeguards at the plant, a middle level manager, at the

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plant, there was an apparent attempt to break into his home. I guess the family woke up, turned on the lights, and the intruder ran and left in a car. He sped away in a car. That is the message that we have. That is all I know about that incident.

A possible scenario is that someone is out to embarrass the company by taking material, if they have material and planting it in the backyard of the very guy who is responsible for the material.

They are going to use this NEST equipment, mobile NEST equipment to go and look around his home. And that is about all we know about that right now.

COMMISSIONER GILINSKY: Is there anything else?

MR. DIRCKS: They are flying aircraft. The sensitivity of the equipment requires them to do a lot of flying at an altitude of 150 feet. And it will take about four days. They have got some mobile equipment on the ground that they are using.

That is about the extent of it.

COMMISSIONER GILINSKY: Why don't you go off and arrange for your other meeting and try and get a sentence or two sentences before us, and we will wait to hear a report at a subsequent meeting.

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Thank you.

(Whereupon, at 2:08 p.m., the hearing in the above-entitled matter was adjourned.)

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