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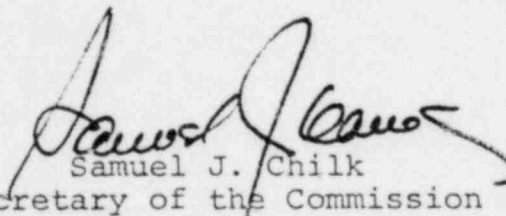
July 2, 1980

COMMISSION DETERMINATION REGARDING PUBLIC DISCLOSURE
UNDER THE GOVERNMENT IN THE SUNSHINE ACT OF:

Transcript of Legislative Testimony
September 8, 1977

Pursuant to the Commission's regulations implementing the Government in the Sunshine Act (10 CFR 9.108(d)), it has been determined after a further review of this transcript that additional portions of the text can be released to the public. Attached are all portions of the subject transcript that have been determined to be releasable. The remaining portions of the transcript remain withheld pursuant to 10 CFR 9.104 as noted below:

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80/20		80/21	10 CFR 9.104(a)(1)


Samuel J. Chilk
Secretary of the Commission

UNITED STATES NUCLEAR REGULATORY COMMISSION

COMMISSION MEETING

LEGISLATIVE TESTIMONY

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

9:30 a.m.
Thursday, September 8, 1977
Pages 1 - 113

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COMMISSIONERS PRESENT:

Joseph M. Hendrie, Chairman
Richard Kennedy, Commissioner
Victor Gilinsky, Commissioner
Peter A. Bradford, Commissioner
Samuel Chilk, Secretary

DISCUSSANTS PRESENT:

Michael Guhin, OIA
Kenneth Pedersen, OPE
Carl Stoiber, OGC
Leonard ~~Chilk~~ ^{SECTOR}

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P R O C E E D I N G S

CHAIRMAN HENDRIE: By george, we're all gathered here. Willy-nilly, we are in session. Subject is testimony to Senator Church a week from yesterday. And there was a single sheet sort of discussion outline that looks to me like a good framework from which to run down the discussion, which I have high hopes will go rapidly.

MR. STOIBER: I have additional copies. I took this to your office this morning. And it didn't filter through.

Briefly, I thought I'd just mention the schedule of action, as the Chairman just indicated. The Energy Committee, Subcommittee on Research and Development will hear testimony next week. As I understand it, we will be on during the second day of hearings and preceding us will be Mr. Nye from the State Department. Other agencies testifying at the sessions will be the Arms Control and Disarmament Agency, ^{and} Mason Willrings ^{ch} (7) from the Rockefeller Project.

The witness for ERDA, I don't believe has been selected yet. I think it probably will be Nelson Seiberling ^{iev} (7).

COMMISSIONER KENNEDY: Not Frye?

MR. STOIBER: Probably not Frye; I think they're in such chaos over there.

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The Senate Foreign Relations Committee will mark up the bill on the 14th in Subcommittee and they expect a full Committee markup on the 20th of this month. So both of those Committees are --

CHAIRMAN HENDRIE: Excuse me, Carl. The Senate markup on the 20th?

MR. STOIBER: Ric .

So they're both moving rather quickly on that. Discussions were held last Friday with the staff of the Foreign Relations Committee by Administration representatives and they have discussed the problems that the State Department, ~~with~~ ERDA, and others have with that bill.

And in the House of Representatives, the legislation is ready for floor consideration. No definite time has been selected.

CHAIRMAN HENDRIE: What does the House bill look like?

MR. STOIBER: The House bill looks more like the legislation submitted by the Administration. However, it still --

CHAIRMAN HENDRIE: Still has a few things in it.

MR. STOIBER: It still has the timely warning issue. It's provisions for congressional review are not quite as obnoxious as the Senate version.

But it retains the timely warning clause.

COMMISSIONER GILINSKY: Well, it's a tightened-up version of the Administration bill. I mean, the structure is pretty much like the Administration bill?

MR. STOIBER: Right.

CHAIRMAN HENDRIE: I like his word. He said, "obnoxious."

COMMISSIONER GILINSKY: No, he said, "Less obnoxious."

COMMISSIONER KENNEDY: "Less obnoxious" still is "obnoxious."

COMMISSIONER GILINSKY: I think they regard that as more obnoxious.

COMMISSIONER KENNEDY: Why is that?

MR. STOIBER: It's really almost a toss-up. Of course, features --

COMMISSIONER KENNEDY: It is obnoxious.

CHAIRMAN HENDRIE: Since we don't have to testify on the House bill at the moment, let's proceed on this one.

MR. STOIBER: The 1-b item on clearance of NRC comments on the Vance letter, I circulated proposed letters that the Administration is going to send to leadership in both the Senate and the House. And in response to some

comments by Commissioner Gilinsky's office, I telephoned OMB and the State Department noting his disagreement with the letters of discussion with the timely warning point.

COMMISSIONER KENNEDY: I presume you gave them my comment on the same point.

MR. STOIBER: Yes. I noted there was a difference between -- within the Commission on that issue. They have not yet gotten Secretary Vance to sign the letter and they are holding the letter and requested that I see if a general Commission position on the issue might be forthcoming from this discussion this morning. If not, they would probably go forward. I'm not sure how they will tailor the letter to reflect the difference in views within the Commission.

So when we reach the timely warning point, you might keep that in mind. I anticipated calling OMB later this morning --

CHAIRMAN HENDRIE: I see. Now, hang on. A letter due from the Administration. This will be a Vance letter?

MR. STOIBER: Right.

CHAIRMAN HENDRIE: And ^{it} they expect to reflect in it our views?

MR. STOIBER: Yes.

COMMISSIONER GILINSKY: Actually, why does it?

CHAIRMAN HENDRIE: It's nice, but I wouldn't think it in the least necessary. Would you?

COMMISSIONER KENNEDY: Not at all.

MR. STOIBER: Well, I can reflect that for you also.

COMMISSIONER KENNEDY: Let me say in this regard, however; the Administration has every right to know and, indeed, it is our obligation to make sure that they do know what the Commissioners feel.

CHAIRMAN HENDRIE: Just so. That's quite correct.

COMMISSIONER KENNEDY: They need that.

CHAIRMAN HENDRIE: Good enough.

MR. STOIBER: Then the l-c items is a rather new one.

Arriving on our desks about yesterday was a drafted GAO report. GAO intends to try to submit this before House action on the nonproliferation bill.

COMMISSIONER KENNEDY: Do we have this?

MR. STOIBER: Just arrived yesterday.

COMMISSIONER KENNEDY: Has it been distributed?

MR. STOIBER: No. Well, it has been distributed to the Staff, and it's being staffed out now.

MR. PEDERSON: It's being worked on at the EDO level right now.

COMMISSIONER KENNEDY: I hesitate to ask the question that I perennially ask: Is there any reason why a Commissioner can't read it even though the EDO is staffing it?

MR. STOIBER: No.

COMMISSIONER KENNEDY: Get me a copy of it, please, this morning. Right away.

MR. STOIBER: I should point out that the GAO wants to meet with the NRC staff on this matter tomorrow afternoon to discuss what they call "preliminary comments."

The way GAO traditionally handles these matters is to discuss these issues with the NRC staff, to take whatever sort of preliminary comments they may have, and then by statute, once the report is prepared by GAO, the agencies which receive the report have a 60-day statutory comment period in which we file our comments.

Of course, in this situation, that would be meaningless because by the time 60 days is run, we will either have legislation or not have legislation.

COMMISSIONER KENNEDY: One would think that since the GAO has issued the report, the Committee will be in full possession of the draft, and the Chairman, if he is testifying, may well be --

CHAIRMAN HENDRIE: Undoubtedly will be.

COMMISSIONER KENNEDY: -- questioned as to notes that may have appeared in the draft.

MR. STOIBER: Right. For that reason I thought it appropriate to mention this morning the fact that there was this item in existence.

COMMISSIONER KENNEDY: Your mention is appreciated.

MR. STOIBER: I'll be trying to circulate that today.

MR. GUHIN: As a practical matter, if I may intercede here a second, Carl, as a practical matter on this, we happen to be the one that was given this burden of drafting the response to the GAO. And I think that following our past practice on another one, that before even Staff comments were put in, they would be put through the Commission in draft ~~form~~ to show what problems we have and what comments would be submitted.

I think the conclusion is that it's important to get something, even if just to qualify that we haven't gotten any details, we've got certain fundamental problems with some of the recommendations in the report itself. Because as Carl says, that's the only thing that's probably going to be circulated prior to action.

COMMISSIONER KENNEDY: That's right.

COMMISSIONER GILINSKY: What is this report?

MR. GUHIN: It really takes on issues. It gets back to things in the legislation of recommending that we have new criteria mandated after a certain time period. It wants to mandate physical security reviews. It takes ~~about~~ the line of earlier Administration -- early bills, but then goes further.

MR. STOIBER: What it basically does is to take prior versions of the legislation submitted by the House and Senate and analyses the features of those bills, largely finding them desirable as a matter of nonproliferation policy, and it talks about fuel assurances. A variety of issues. What is it, about a 60-page report?

MR. GUHIN: Yes.

COMMISSIONER GILINSKY: Who did this? It is Marty Canfield's office?

MR. GUHIN: Right.

MR. STOIBER: All right, on the testimony. As I noted in my little cover memorandum, I attempted to divide the testimony into three basic parts. I'm not sure that the balance I've reached is something the Commission would finally want to sign-off on. But what I did try to do was to raise several of the substantive policy issues, then discuss the

specific portions referred to the Energy Committee, largely fuel assurances and nonnuclear energy assistance. And then I did talk about the provisions directly affecting NRC.

It may be the case that the Commission would prefer to expand the "directly affecting" section and move it up and deal with the substantive policy issues in a different manner. But basically I am here to listen to your comments on those.

COMMISSIONER GILINSKY: "Directly affecting" NRC?

MR. STOIBER: By that I meant those sections of the bill that really affected NRC procedures and its day-to-day operations. Rather than -- of course, we are affected by nonproliferation policy generally, but those matters which specifically address how we do our business. That's in 2-d.

MR. PEDERSON^E: If I can just interject for one second. I thought I was right, but I wanted to double-check.

Each of you were "cc"d on the GAO report. It should be somewhere in your office right now. It's a memorandum ^{to} from Gossick from McTiernan with "cc"s to all of you. It's somewhere in the system.

CHAIRMAN HENDRIE: Somewhere in the system.

MR. PEDERSON^E: Somewhere in your office system I would assume.

Staff comments are supposed to be up tonight, I think.

CHAIRMAN HENDRIE: I'm glad it "cc"d the Commissioners. I kind of agree with the thrust of what I detect over here. I don't regard us as necessarily intellectually unable to accept it ^mparallel lest we go off in some odd direction without strong assistance from the Staff.

MR. STOIBER: I think I have basically had my say.

CHAIRMAN HENDRIE: Good. Let's turn to the testimony itself. First of all, with regard to the -- let me just ask the Commission with regard to the sort of the geometrical structure of the thing, is it all right as it stands? Would you prefer to see the sections inverted, permuted, or whatever?

COMMISSIONER KENNEDY: I wouldn't. I would suggest that I am not sure that it is either desirable or appropriate, I think at least it's worth discussing whether it is, to comment on the congressional override of the President's decision. That's a matter, it seems to me, best left to a discussion between the President and his agents in Congress.

It is not a matter for -- it should be of direct concern to us. Therefore, I would think it desirable not to comment and leave it to them.

COMMISSIONER GILINSKY: I can agree with that.
Not only override over NRC --

COMMISSIONER KENNEDY: No, I wasn't thinking about NRC

~~NBC.~~ I was thinking about the provision which authorizes the Congress to take up a decision by the President.

COMMISSIONER GILINSKY: You mean questions like one-house veto, and such?

COMMISSIONER KENNEDY: That's right.

COMMISSIONER GILINSKY: I don't think anybody looks to us for constitutional advise.

COMMISSIONER KENNEDY: I would hope not.

COMMISSIONER GILINSKY: Sorry, Carl.

COMMISSIONER KENNEDY: Our legal staff is over --

CHAIRMAN HENDRIE: We are just getting started and already you are reducing the scope of the Commission?

(Laughter.)

COMMISSIONER KENNEDY: Our legal staff is already overburdened with its very many important tasks.

MR. STOIBER: As an ex-Justice Department lawyer, I understand that comment.

CHAIRMAN HENDRIE: He couldn't resist.

COMMISSIONER GILINSKY: I think, in general, what the Congress looks to us for, it seems to me, is comments in areas of our presumed expertise; in other words, with regard to safeguards -- (inaudible) -- makes sense. Of course, the procedures activities.

CHAIRMAN HENDRIE: I think that's right and that's primarily the thrust from the bottom of page 7 on. The provisions affecting NRC. Testimony does not recite them in detail; on the other hand, I don't know that's especially helpful. I think what Senator Church would like to know is that in areas that this bill, in areas where it directly affects the NRC, we're supporting it. We can make it work and we support it and so on. I think that's the key message to come through.

I think up in the front end where we are talking about making comments about problems we see in it, I think the one about -- removing the comment about giving our views on the constitutional issue is wise. If they ask, say what is your ~~view~~ view about the one-house veto, why. I think we ought to say we don't regard ourselves -- we note that people have complained about it, but we don't feel our ~~advice~~ ^{advice} is ~~expec~~ ^{es}pecially helpful, that's not our bag, and so on.

But the other two comments with regard -- just pointing out that some of the provisions of the bill lead to ~~c~~ertain inflexibilities which may in turn have a very negative ~~e~~ffect on the U.S. position on proliferation matters in the international arena in the future, I think that's a fair comment, if indeed we think that is the case. Now, if we don't

think that's the case, we oughtn't to make the comment, or ought to see who thinks it is and who thinks it isn't, and see if we have got minority and majority. But I think it's an appropriate area for us to make comments. We do have some

COMMISSIONER KENNEDY: We'll be asked anyway.

CHAIRMAN HENDRIE: So I think those are fair comments, and I would like to see --

MR. STOIBER: I might say also that what I would called the "technical matters," sort of rearrangement and procedural provisions, have largely been, at least for the past six months or so, noncontroversial and likely to be of less interest to the Committee. Giving NRC 120 days to promulgate export regulations and shifting over Commerce Department authority over components; these matters really have sort of now become accepted features of the legislation and are not matters of great debate.

Perhaps we ought to direct our attention to those items that are of major dispute.

MR. GUHIN: If I may interject, there seemed to be two things though, that could, in effect, cut either way; I mean putting the juicy stuff at the end or at the beginning, I guess really. But there is a natural lead-in which I thought might be helpful in the redraft problem.

Tying in our interest in these subsequent arrangements, I mean, we are consulted on subsequent arrangements now, certain ones, and the bill would mandate this. But the bill, in effect, ties us into this whole process. And I think this is a lead-in as to why we are interested and why we are even commenting on these areas.

COMMISSIONER KENNEDY: That's a good point.

MR. GUHIN: ^{It} gives us the basis for doing so.

COMMISSIONER KENNEDY: That's a good point.

MR. GUHIN: I would like to make one other which may not be. But I also questioned ^{rise} ~~in this~~ component cases coming to us, whether we would want to say that it's really appropriate that we do this. I think this was a bureaucratic compromise which was reached on the Hill and pushed by different factors.

I just wonder if, as an agency, ^{we} say, yes, it is appropriate we do it, rather than someone else. I think that might be questionable. It's left unsaid; everybody wants us to do it. It's going to still end up in a bifurcated licensing system between ^{Commerce} ~~Congress~~ and ourselves.

I agree it's appropriate. I just wondered if we wanted to say that we are better to do it, or in any way imply that?

COMMISSIONER KENNEDY: I think it would be --

CHAIRMAN HENDRIE: Why don't we --

COMMISSIONER ~~HENDRIE~~^{Kennedy}: -- be neutral.

CHAIRMAN HENDRIE: Why don't we comment --

COMMISSIONER KENNEDY: We have no objection to it.

CHAIRMAN HENDRIE: Why don't we comment in the

sense that we note that the portion of the authority is being transferred under this bill and that we believe -- that we are willing to accept it. We don't particularly seek it but we're willing to accept it and believe we can carry out our responsibilities in that area in an effective manner.

Willing public service.

COMMISSIONER GILINSKY: There's a place where the bill speaks of "subsequent arrangements." I couldn't find it through hunting through the bill. Where it lists all the agencies and then it says, when they talk about agreements, and it somehow singles out NRC --

MR. GUHIN: At the end of the process.

COMMISSIONER GILINSKY: At the end of the process, right. It says after you have gone through the whole process --

COMMISSIONER KENNEDY: Then consult the NRC.

COMMISSIONER GILINSKY: Right before you sign, check with the NRC, or something. I think that's --

MR. STOIBER: It's on page 15 of the bill, section 303(a). What it talks about is it talks about the procedures for reviewing subsequent arrangements and then it says that: "These arrangements shall be negotiated by the Secretary of State with the technical assistance and concurrence of the Administrator and in consultation with the Director and the Secretary of Defense. And then after consultation with the Commission, any such proposed subsequent arrangements" --

COMMISSIONER GILINSKY: If they are going to consult with the Commission, why don't they throw us in --

MR. STOIBER: I don't think there would be an objection to that. In fact, as I recall our discussions on that, the reason it was done that way, it was merely a syntactical reason, and not because they thought we would somehow be at the end of the process rather than engaging in it.

COMMISSIONER GILINSKY: Well, maybe they are separating us out because we are an independent commission, but somehow it gave me the impression that this was going to be worked out and then check with us.

MR. GUHIN: Definitely the impression that you wouldn't be involved in the initial steps, although as a matter of fact, we are and probably would continue to be, I agree. But the impression is there.

MR. STOIBER: I can expand that paragraph at the top of page eight. I put in a line which I thought dealt with that, which says, here at the bottom of that top paragraph, "We would expect to participate fully in the consideration of these important matters before decisions were taken on appropriate U.S. government action."


CHAIRMAN GILINSKY: I don't think you have to supply the wording in the testimony. You can just supply that separately to indicate you think we might want to bring those together. But I think since they are saying they will consult with us, and other agencies are in the consulting category, -- (inaudible.)

MR. PEDERSON: Since we are making general comments on the bill, let me make one or two. I notice in Church's letter, and I understand the reason for it, but I noted in his letter, he specifically asks us to consider addressing the impact of this legislation on domestic considerations of waste management and so forth.


Now, the GAO report also gets into that in a fair amount of detail, the implications domestically of buying back spent fuel, and so forth, from abroad. Now, I'm not saying we have to address that in the testimony, but I'm saying that Church did specifically point to that in his letter.

And it would give us an opportunity to express any views or any concerns we have in that regard. We certainly ought to be prepared to speak to it if we don't address it in the testimony because it might very well get asked


COMMISSIONER GILINSKY: We have a buy back -- (inaudible).

 MR. PEDERSON^E: No, but I mean clearly it has implications -- this whole question of the control of the fuel and proliferation, and that sort of thing, could lead to that. It could certainly lead to questions on that. And Church's letter, although I know to a certain extent the jurisdiction of his Committee required him to write the letter that way. But nonetheless the letter is written specifically asking us to speak to the domestic aspect of the bill and the impact it might have on waste management and spent fuel storage, enrichment.

CHAIRMAN HENDRIE: Would you trace the connection between the two a little more explicitly for me?

 MR. PEDERSON^E: Well, --

CHAIRMAN HENDRIE: This is a bill which deals with export criteria and what the rules of the game are going to be to ship stuff abroad, okay.

 MR. PEDERSON^E: Yes, but the bill could very well lead

— you into a discussion of proliferation control as a generic item. And certainly they have been very much connected. In fact, the --

CHAIRMAN HENDRIE: You mean at the Committee hearing.

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MR. PEDERSON^E: Yes. For example --

COMMISSIONER GILINSKY: Isn't this very connection a --

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MR. PEDERSON^E: Yes, in fact, a proposed fuel bank, for example, is one way, we talked about it creating reliability and trustworthiness on the part of the U.S. so they won't go off and do these things on their own. And one of the frequently mentioned aspects of proliferation control are ways of assuring that spent fuel doesn't get in the wrong hands is for us to bring it back into the U.S. --

COMMISSIONER KENNEDY: And store it here.

CHAIRMAN HENDRIE: There's nothing in the bill --

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MR. PEDERSON^E: No, but what I am saying is that this could very easily lead you into a discussion of some of these aspects. And since Church -- I would not raise it had not Church raised it in his letter. It specifically asks you to be prepared to discuss the impacts this bill might have, or the implications this bill might have on U.S. policy.

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COMMISSIONER KENNEDY: It might be recalled that, indeed, the Commission in a sense spawned the notion of possible, or at least consideration of bringing back spent fuel.

MR. PEDERSON^E: I might also add that it does speak to expansion of U.S. enrichment.

COMMISSIONER KENNEDY: I recall discussions, vividly, over Tarapur as one example.

MR. PEDERSON^E: I think they are inseparable. I don't think you can separate them.

COMMISSIONER KENNEDY: I think Church will be well aware of that.

CHAIRMAN HENDRIE: Let's see. Okay, if the matter comes up, let me probe a little bit along the lines I presume, your discussion in the bill of fuel assurance provisions, expanded enrichment, and, well, the associated things connected with it. And now Senator Church says, "Should we go beyond that? Say not only will we supply you the fuel, but we will take it back, we will take it off your hands when it's no good to you any more"-- no, that's the wrong language. "When it comes out of the reactor." It may not be the same thing.

Now what has been the Commission attitude on that, and let us proceed from there and see if we have a different attitude, the same attitude now, or whatever.

COMMISSIONER GILINSKY: Well, we really didn't address it except in the context of Tarapur. There we said it was a good idea.

COMMISSIONER KENNEDY: We said it was an idea that ought to be explored.

COMMISSIONER GILINSKY: Well, I think we gave it a little more of a push than that.

We thought that that would, in many ways, improve the situation of Tarapur.

COMMISSIONER KENNEDY: From a proliferation standpoint.

(Simultaneous discussion.)

COMMISSIONER GILINSKY: So we looked at that, in fact, in the hearing. One of us, I think it was me, asked ELDON ~~Wilton~~ Greenburg whether he would then come rushing in to object -- he said he wouldn't.

COMMISSIONER KENNEDY: I supported your question, but did not quite understand the answer.

MR. PEDERSON^E: You may also be aware in this that you, Dr. Hendrie and Commissioner Bradford haven't seen it, but the other two have, there is a Presidential decision on this very subject now in the White House. It's not been acted on with finality. But the option that we understand the

President is either leaning toward or has officially approved and they are getting an implementation plan ready, would involve the U.S. offering to buy back and store U.S. fuel exported abroad after use --

CHAIRMAN HENDRIE: Both buy back and store, or just store.

COMMISSIONER KENNEDY: It should be understood --

MR. PEDERSON^E: To buy back implies that we would reimburse them for energy equivalent. It involves reimbursement for energy equivalent.

COMMISSIONER KENNEDY: Again I want to make sure the record is clear. What you have just said, I believe, remains classified.

MR. PEDERSON^E: es, it does.

COMMISSIONER KENNEDY: And the record should so indicate.

MR. PEDERSON^E: That's what I was going to say. I thought we were in closed session.

COMMISSIONER KENNEDY: It is a closed meeting but that doesn't necessarily mean the record is a classified one. There's a difference.

MR. PEDERSON^E: Point well taken.

CHAIRMAN HENDRIE: Let us just pause here and let

whatever tape or transcript results from the meeting note that the previous short discussion, when OGC reviews the transcript against possible, eventual release, and so on, that segment of the conversation will have to be stricken on a classification basis.

MR. STOIBER: "Since we do not have before us as a subject of the meeting, the documents upon which the comment was made, we should also review the documents to see if they are, in fact, classified.

MR. PEDERSON^E: They are.

CHAIRMAN HENDRIE: Let me go back and develop a little further. It seems to me that, in fact, if the U.S. were willing to offer storage for spent fuel and return to the guy who sent to us the equivalent -- the residual energy value, presumably in the form of fresh fuel -- low enrichment fresh fuel, you have then offered him a compensation for not reprocessing, which at least covers the energy recovery aspects. It may not satisfy him because he would like to have his own reprocessing plant to control it himself, but at least you have provided him -- you have removed his argument that he can't afford to give up the energy values in that spent fuel.

CHAIRMAN GILINSKY: Well, you're going on the

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rational^v_h for it.

CHAIRMAN HENDRIE: I'm getting around to saying I think it's, on balance, a good idea that deserves serious discussion and consideration as part of the general posture of the U.S. in trying to be a responsible supplier and still be very strong on proliferation controls.

COMMISSIONER GILINSKY: I don't know that it's relevant to this particular discussion, but I don't see any particular relationship between energy value that's sent back and the energy value -- it costs money to get that plutonium out. Dollar value. But in any case --

COMMISSIONER KENNEDY: One has to argue whether what you are trying to get are Btu's of energy or some --

(Simultaneous discussion.)

COMMISSIONER GILINSKY: You're perfectly prepared to sell it at reasonable prices, whatever.

MR. GUHIN: Let me interject one thing here.

(Simultaneous discussion.)

COMMISSIONER GILINSKY: But I think in any case these are kind of economic matters.

CHAIRMAN HENDRIE: Just so.

COMMISSIONER GILINSKY: I think more interesting from the Committee's point of view is are there any health

and safety bars to this, or do you see any -- that really is our category.

COMMISSIONER KENNEDY: It would lead into a whole host of questions. Are we in a position from a waste management standpoint at this point in this country to accept and manage this fuel, if this prospect were actually developed in any significant way over the next five years?

COMMISSIONER GILINSKY: Or do we need -- can we handle it right now?

CHAIRMAN HENDRIE: And would the Commission be able to -- what would need to change in our procedures to accommodate such a situation. But let me go back basically -- I haven't heard from Peter.

What do you -- if the subject comes up, what I am trying to do is to discern whether there is a sort of consensus Commission position, sort of generally favorable to a serious consideration of the idea, or negative, or do you have any --

COMMISSIONER BRADFORD: This whole area is different now from what I've been experienced with, that I am very tentative in my approach to it and very reluctant to tie myself in at this point to a firm set of positions.

CHAIRMAN HENDRIE: Sure enough.

COMMISSIONER BRADFORD: -- really on almost any of it except the practical development of operating some of these

things in Sunshine. I don't like abstaining and I'll try --

CHAIRMAN HENDRIE: Why don't --

COMMISSIONER BRADFORD: I'm getting to feel as though -- I haven't been through anything approaching an export proceeding, other than these things that have come in here, so many kilograms. And that is a long ways from feeling fully comfortable in analyzing legislation.

So what I'll do, if it is okay, is to just ask questions -- (inaudible).

CHAIRMAN HENDRIE: That's fair enough. As things -- but in particular if areas come along where it's sounds to you as though -- you can see enough of it to know you don't like it, why holler, because if I think I understand a sort of consensus, general stand of the Commission, then I will certainly try to reflect that in any give and take in the Committee. It won't go in the testimony. But in any give and take.

I hope all of you, or at least anybody that's interested, will come down so that you can present individual views, and in particular on give and take matters, as you see differences that you would like to accent or particular different thrusts for my answers, you'll be able to put them in.

I wouldn't want to represent as an unchallenged consensus position anything which you could perceive already that you were likely to have problems.

COMMISSIONER BRADFORD: With one possible exception, there aren't any of those yet. So much of, I think, one's appraisal of the legislation depends on having some sense of what happens -- (inaudible) -- some feel for the interface between proliferation and domestic reactors programs and foreign countries, developing countries. I don't have it yet. It makes me feel very tentative about signing anything on the dotted line.

CHAIRMAN HENDRIE: It might not be unwise or unreasonable for you to come down and make a comment along those lines.

J
COMMISSIONER ^{Kennedy}GILINSKY: As Mr. Gilinsky so well points out. What was considered in one case -- the matter we were just discussing earlier -- considered being a punishment is now considered to be an incentive. And so perceptions in this whole field change.

COMMISSIONER BRADFORD: Changing perceptions are one thing and that's something we all have to do. But at the moment my problem is ignorance rather than having perceptions change.

MR. STOIBER: On this point of the domestic impact, I wonder if the Commission might not want to reflect the fact that we would not only, as a Commission, have to license the specific import of any of this material, at least under current law, but we would also be responsible for licensing the waste facility to which that waste would be sent under the 1974 Energy Reorganization Act.

COMMISSIONER KENNEDY: Yes.

MR. STOIBER: And therefore we are now in the process of developing our regulatory base for licensing those facilities. And that these are things that we are preparing -- particularly health and safety and environmental questions -- are things that we are preparing to look at very closely. And then differentiate those from the economic and foreign policy aspects, which are matters which are largely in the hands of other agencies.

CHAIRMAN HENDRIE: I believe it is true, is it not, that we could handle fuel buy back and storage, and so on, within the present framework?

MR. STOIBER: Yes.

CHAIRMAN HENDRIE: Let's see, do we have any problem with who owns the fuel? Does a U.S. entity have to own the fuel?

MR. STOIBER: I don't believe so.

MR. PEDERSON^F: No.

CHAIRMAN HENDRIE: It's not like a reactor facility or something --

COMMISSIONER GILINSKY: After all, we do bring back spent fuel regularly.

COMMISSIONER KENNEDY: For reprocessing.

MR. PEDERSON^F: Research fuel --

(Simultaneous discussion.)

CHAIRMAN HENDRIE: Is that licensed by us?

MR. GUHIN: The import is.

COMMISSIONER KENNEDY: We approve the import and we approve the subsequent export of the reprocessed material.

MR. GUHIN: There's a slight difference here, though, isn't there? They may look at -- if they are talking about any significant return, the return of fuel, I think there would be, and it is generally accepted in the Executive Branch, that the storage facilities, as such, would probably come under an NRC license, domestic licensing proceeding, although the fuel itself may be under government hands or in government control.

MR. STOIBER: And then there's the NEPA issue also. I don't know if that's something that you want to raise or not.

but if this became a "major federal action," rather than merely a sort of episodic thing, as has been suggested, then a^N

EPA statement --

CHAIRMAN HENDRIE: I presume that --

COMMISSIONER KENNEDY: A^N EPA statement for each case or a^N EPA for the --

MR. STOIBER: For the program. Generic.

MR. GUHIN: Generic. Return of spent fuel to the U.S.

CHAIRMAN HENDRIE: I think -- I don't know -- we'll have to go with some sort of an impact statement on fuel storage facilities as well as ultimate waste repositories and other steps in the process. I would assume either there or separately, one would have to deal with a regular program of taking back spent fuel from abroad. I don't see either health or safety questions that would arise with it or special environmental effects. It just increases somewhat the volume of spent fuel that one is storing and handling, shipping, and having eventually to either inter directly or reprocess and inter, if one goes back to reprocessing.

And so there is sort of a quantitative increase in environmental effects, but not I would see, any qualitative, significant qualitative differences. It appears to me that

our framework is such that we could very well accommodate it.

COMMISSIONER BRADFORD: Except that, remember the graph that we had up there the other day, curved along about 1980. It seems to dramatically outrun the spaces available. The volume of spent fuel coming back is significant, then I take it that moves it upward. Back by a year or two.

CHAIRMAN HENDRIE: Well, I think it is clear, Peter, that spent fuel coming back from abroad would not be assigned to present or near-term to be licensed U.S. power plant facilities for putting in their storage pools. It would have to come back into a storage, spent fuel element storage facilities specifically built and licensed for the purpose of taking fuel from a number of reactors.

Now those things don't, well, we are doing it at Morris, that is utilizing the pool which was placed there as a head end pool for ^a reprocessing plant that hasn't worked.

COMMISSIONER KENNEDY: Which they are proposing to expand.

CHAIRMAN HENDRIE: And they are going to expand. And there will undoubtedly be several more of these facilities.

COMMISSIONER KENNEDY: Barnwell.

CHAIRMAN HENDRIE: The Barnwell pool, but I don't think the Barnwell people are enthused about having it until

things are clarified about their situation. Exxon wants to build one.

At any rate, you would either need larger facilities or more of such kind. But the graph you saw the other day had to do with the space left in reactor sites, spent fuel pools, and that just will go ahead.

COMMISSIONER KENNEDY: That's a function --

COMMISSIONER GILINSKY: The point that you made -- (inaudible).

COMMISSIONER BRADFORD: That's all I meant. You're talking about new facilities because new spent fuel storage --

COMMISSIONER KENNEDY: Spent fuel storage facilities, independent of reactor storage.

Of course, the point that you are making is relevant because in part, at least, the position on that graph is a function of what storage offsite will become available. To the extent that that does not become available, that curve moves back closer.

COMMISSIONER BRADFORD: And presumably that problem will be taken care of the same way.

CHAIRMAN HENDRIE: Just so.

COMMISSIONER BRADFORD: What you are really talking about are a few more central storage --

MR. PEDERSON^F: They have been talking, too, about Savannah River in licensing questions.

CHAIRMAN HENDRIE: I think if the government retains these facilities, then I think it's very likely that they will be one of the major governmental reprocessing stations; Savannah, Hanford, perhaps Idaho. If they're private facilities, why I don't know but I think since not all foreign reactors would be inclined to ship the fuels, why I doubt that the traffic would get to be much more than 25 or 30 percent of the base U.S. -- (inaudible).

(Simultaneous discussion.)

CHAIRMAN HENDRIE: There isn't any power reactor stuff coming back, or is there? What's coming back is all special plate highly enriched elements, I guess, and research gadgets from research reactors.

COMMISSIONER BRADFORD: An environmental impact analysis then of spent fuel coming back, primarily by ship?

CHAIRMAN HENDRIE: I think ship because it will be very heavily shielded. It will come in 70-ton casks and I think that is clearly a ship proposition.

COMMISSIONER BRADFORD: That would require an environmental impact statement?

CHAIRMAN HENDRIE: Oh, there's no question.

MR. GUHIN: The Executive Branch, in the analysis, I think this is a very well accepted view really of getting into the program --

CHAIRMAN HENDRIE: You'll have to do a generic impact statement on that program. I think that's quite clear. It will have to include the transportation steps in all their variations and the smear.

COMMISSIONER GILINSKY: The British have a ship like this between England and Japan.

CHAIRMAN HENDRIE: Okay. I think I perceive where our general thoughts ~~lie~~ as we get into this area.

Let's get back to the direct testimony.

MR. STOIBER: Do I take it you don't want any specific reference to this in the next draft or do you want me to --

COMMISSIONER KENNEDY: I wouldn't think it was necessary.

CHAIRMAN HENDRIE: I think I would prefer to be prepared to discuss it. What you might do is to patch me together an auxiliary paper to have in my hip pocket which amounts then to a couple-of-page briefing paper on the subject so that I can be reasonably consistent with previously expressed Commission views and so on. And it then ought to

reflect what present discussion was.

Other comments on the testimony?

COMMISSIONER KENNEDY: Do we want to get to some of the substance?

CHAIRMAN HENDRIE: Yes, by all means, immediately.

I didn't have objections to the technical -- what I will do will be to ask each of you to please ^Site places where you would like to see changes and see if we can agree on those and then I will assume that anything not cited is -- well, if you're not enthusiastic about it, at least you are not enormously upset about it.

COMMISSIONER GILINSKY: Are you going through it page by page?

CHAIRMAN HENDRIE: No, I'll just ask for comments up and down the table. Take the first one. I see you've got marks on page three. Page three.

COMMISSIONER GILINSKY: The middle of the page, you're talking about essential efforts pursued by the negotiation corporation and so on, "Unilateral measures which call into question the reliability" -- it's kind of a loaded sentence here.

COMMISSIONER KENNEDY: But it is true.

COMMISSIONER GILINSKY: Well, except this is sort

of -- I guess this is some of the code words for not going back and renegotiating agreements. It is the policy of the United States to go back and fix up basically all the agreements.

COMMISSIONER KENNEDY: But that is -- I did not take it as the code words to that. I took it to be language which says don't, don't put inflexible, rigid time limits, on the one hand, and absolutely, rigid requirements, on the other, because that is not a negotiation. I thought that was what it was trying to say.

CHAIRMAN HENDRIE: It's the unilateral aspect that's the problem, isn't it? That is, there is certainly no objection to going back --

COMMISSIONER GILINSKY: I'll tell you, I don't have -- you know, if you sort of read it, taking it word by word, looking it up in the dictionary -- Well, let me just flag it since -- we are going back and we are saying that we want sort of new conditions in these agreements.

I don't think we ought to be saying things which are going to be thrown back at us, which in effect undermine our negotiating position. Now, I sort of think this falls into that category. It isn't something that is black and white by any means. But the argument is made, we entered ^{into}

all these agreements, why is there any need to change them? And it's a perfectly logical argument. And this is the argument made by the people that we are going to be negotiating with. And here we are coming along and saying we have rethought the problem and it's all more serious than we thought, and we think we just need to have better conditions than we had before.

Now, we haven't laid down fixed rules as to when that's going to happen and what we are going to seek, although in some cases the bill does do that. I mean it does say that beyond a certain date, everybody has got to have comprehensive IAEA safeguards. I'm not sure whether -- can a President --

MR. STOIBER: In the Senate bill, he has a waiver; in the House bill, he does not.

COMMISSIONER GILINSKY: Okay. But even so, even with the waiver, that's a fairly firm requirement. And someone could come around and say, well, wait a minute. This is a unilateral measure that you are imposing on us and we've been doing trade with you on a different basis and what's this all about. It would be a good argument on that. I think there's a case to be made on that side. But that isn't our case.

COMMISSIONER KENNEDY: It is our case if one presumes that the end game, the objective is an improvement

in the posture on proliferation.

COMMISSIONER GILINSKY: Yes.

COMMISSIONER KENNEDY: And if intervening steps don't contribute positively to that end, they are undesirable.

COMMISSIONER GILINSKY: Yes. But that's --

COMMISSIONER KENNEDY: That's what the sentence is talking about.

COMMISSIONER GILINSKY: Then the words you are using are different. Unilateral measures. Even if you can argue -- if you disagree with the extent to which the Senate has gone or the House has gone or the House has gone in imposing unilateral measures, there's still a lot of unilateral imposing in this bill. And I would say even in the Administration bill.

COMMISSIONER KENNEDY: Oh, yes, some of which are being commented on.

COMMISSIONER GILINSKY: But even in the Administration bill.

COMMISSIONER KENNEDY: If my memory serves me correctly, the effort was to first state goals, objectives, and then state principles by which we would pursue those goals and objectives. But in no event make either the time span over which these objectives would be pursued, nor the

objectives themselves, that is, the specific elements of the objectives, rigid. There would be, in other words, room. The distinguishing would be between unilateralism on one hand, that is, unilateral declarations in whatever form and however characterized, on the one hand, and negotiation, which implies a good faith entrance into discussions with a mutually-agreed objective, on the other hand. I think that's what the sentence is all about.

COMMISSIONER GILINSKY: ^{SAY} unilateral requirements on the Spaniards to come up with a note saying that we need our subnuclear weapons, or any kind of nuclear weapons. That feature is in the Administration bill.

CHAIRMAN HENDRIE: That's all right for us.

(Laughter.)

COMMISSIONER KENNEDY: Well, there is some difference of view on that score, as the record will clearly show.

COMMISSIONER GILINSKY: I mean that's a requirement. Now what it does is it pinches less countries than the requirements, than the position of the Senate bill. But I think there is a principle here of, you know, we are making some unilateral demands here and it's really a matter of degree.

COMMISSIONER KENNEDY: But the achievement of those is the subject of negotiation.

COMMISSIONER GILINSKY: Not in all respects. I mean, there are features of the Administration bill, for example, that one, the requirement of an explicit statement on -- (inaudible) -- which as far as I can see is a unilateral requirement.

COMMISSIONER KENNEDY: That, of course --

CHAIRMAN HENDRIE: How about some language along --

COMMISSIONER GILINSKY: I do want to say that you have got to be sensible in the way you approach this.

CHAIRMAN HENDRIE: That's sort of the thrust in the comment.

(Simultaneous discussion.)

COMMISSIONER KENNEDY: I think that's what the sentence is supposed to mean, and if that -- we can phrase it differently, more fortuitously, splendid.

CHAIRMAN HENDRIE: How about instead of just starting out "Unilateral measures," at the beginning of that sentence say something like "Too rigid a position in renegotiation of agreements or unreasonably harsh unilateral measures, either of which could call into question the reliability," et cetera, et cetera --

COMMISSIONER GILINSKY: Let me ask this: Why is that calling into question the reliability -- I mean, let's

say we impose a requirement on South Africa that they have got to promise that they're not going to use any of our stuff for

CHAIRMAN HENDRIE: All right, delete the phrase "Calling into question the reliability."

COMMISSIONER KENNEDY: But that's the whole issue.

CHAIRMAN HENDRIE: Just too rigid a position or --

COMMISSIONER GILINSKY: I don't really -- I guess I don't follow that. Because suppose you saw we have got to have --

CHAIRMAN HENDRIE: No, no, but look, you agree that excessive rigidity in renegotiation or unreasonably harsh unilateral measures would be damaging to the ultimate attainment of our nonproliferation goals?

COMMISSIONER GILINSKY: Of course, everybody is going to have to decide what "reasonable" means.

COMMISSIONER BRADFORD: Once you said that, then you have a hard time applying it to -- nothing that specifically comes after it, without not only having damned that specific measure but I suppose even for purposes of being the subject of U.S. demand. Once you have said too rigid and unreasonable, unilateral position, then you go on a paragraph later and say what it is you have in mind that has got to come out of the bill.

Then some U.S. negotiator sits down and asks for that same thing in future sessions. And they say, here is what was said by the NRC at the time this measure came up for consideration.

COMMISSIONER KENNEDY: On the other hand, if one takes that view, of course, it means that no there could be no comment, ^W whatever the staff of the Committee turned out as a draft, and put on the table for discussion by the Committee, could not be commented on by anyone because then whatever comments were submitted could be used by opponents as proof that it was a bad idea and therefore shouldn't be negotiated.

COMMISSIONER BRADFORD: No, I had forgotten -- I mean there are certain types of measures which are more appropriate to the subject of future consideration.

COMMISSIONER KENNEDY: It's the prefatory statement that bothers you, not the discussion of the measures themselves?

COMMISSIONER BRADFORD: Well, I'm not sure about the timely warning thing. But certainly if you -- whatever you make about these, they are excluded not on the basis that it is better left for negotiation but that it is a measure that is both too rigid and unreasonable. Too rigid

and unreasonable, then you would have a hard time even negotiating.

COMMISSIONER GILINSKY: I would also like to go back to the previous sentence and change one word and say, "would only be successfully pursued by means of," and so on. I guess I would, as a minimum change, I guess "best be successfully pursued" or something like that.

COMMISSIONER KENNEDY: That's all right because that is true.

COMMISSIONER GILINSKY: I don't know whether you need the following sentence. You could say something like, "In this vein we have the following comments," or "Keeping in mind."

MR. GUHIN: Aren't we mixing a little apples and oranges here a little bit? We are not talking here about the licensing criteria and these kinds of things we get into later. I think the Commission's primary concern at that stage is that these not result in a moratorium. And that earlier drafts of the bill, like last year, were in effect a moratorium on exports.

COMMISSIONER GILINSKY: Wait a minute, let's not use that term "moratorium" too loosely.

MR. GUHIN: The essence is there.

COMMISSIONER KENNEDY: That's what it was.

MR. GUHIN: It in fact results in a moratorium.
(Simultaneous discussion.)

COMMISSIONER GILINSKY: Let me ask: Why is it even in the Commission's interest not to have a moratorium?

COMMISSIONER KENNEDY: I wouldn't argue from the position of the Commission's interest because it would have no interest one way or the other on this. It would seem to me it is the national interest which after all the Commission, like all other bodies --

MR. GUHIN: And that question has been answered, though, in legislation, even the pending legislation answers that part of it. They have established criteria for groups of nations, nations, EURATOM, IAEA, et cetera, which does not meet the fundamental concern that the Commission had at the last go-around.

COMMISSIONER GILINSKY: It's only moratorium if the Commission finds it unacceptable.

COMMISSIONER KENNEDY: But that, of course, is the definition of unilateral.

MR. GUHIN: You're still mixing --
(Simultaneous discussion.)

COMMISSIONER KENNEDY: From a practical standpoint.

COMMISSIONER GILINSKY: You have to weight that

— against --

CHAIRMAN HENDRIE: That may be a difference without a difference.

COMMISSIONER BRADFORD: The thought really here is that there is more than one way to skin a cat. It's a mistake to legislate one of the several ways, when your only ultimate goal is to skin the cat.

MR. STOIBER: The basic thought here is really an historical one and that is we have been engaged in the process of writing legislation for about 2-1/2 years. Earlier versions of the legislation were bad precisely because of this unilateral feature. This legislation is better because it avoids those things and does the job in a more multilateral or cooperative framework.

COMMISSIONER BRADFORD: I'll tell you also, I don't like the use of the "reliability." Obviously the United States is viewed -- (inaudible) -- I might add, to those countries that accept it.

COMMISSIONER KENNEDY: We shouldn't be supplying it at all.

COMMISSIONER BRADFORD: Or not suppliers at all.

COMMISSIONER KENNEDY: That doesn't raise the question of reliability.

COMMISSIONER GILINSKY: The reason I don't like the word is there has been a certain amount of self-flagellation over the fact that we are an unreliable supplier. Others go around saying we are unreliable, we go around saying we are unreliable, I think that one ought to say something in a positive way.

COMMISSIONER KENNEDY: Does one think that the Europeans feel otherwise? None that I have talked to over the past year and a half would classify us as among the most reliable suppliers in this field.

COMMISSIONER GILINSKY: You know, a lot of this is just done for effect. They depend on the Middle East for oil and look at the reliability of the Middle East. Are we a less reliable supplier of energy? I don't think so.

CHAIRMAN HENDRIE: Look, we are using too much time --

COMMISSIONER KENNEDY: Precisely, but would we wish to categorize ourselves in the same way as the Middle East and oil suppliers. It is precisely the point.

COMMISSIONER GILINSKY: I guess these are just differently charged words.

CHAIRMAN HENDRIE: Look, we are spending too much time sort of --

COMMISSIONER KENNEDY: It's theology.

CHAIRMAN HENDRIE: Yes, dealing with some preliminary theology.

Go to the middle of page three. There is a thing there: "That essential efforts to restrain proliferation and nuclear explosives can best" -- rather than only -- "be successfully pursued by means of negotiation, cooperation with our nuclear trading partners." So far everybody is on board. From there on, people tend to see, prefer to see different sorts of language.

COMMISSIONER KENNEDY: I guess though we can stop for a moment and ask ourselves, in reading that, now we said we are attributing this to the President. What did the President say? If he said "only," I don't think we can change that very well.

CHAIRMAN HENDRIE: I will defer to Carl to examine what the President said and what the President said, we ought to say, "That's what the President says."

COMMISSIONER KENNEDY: I would think so, yes.

CHAIRMAN HENDRIE: That's a good point.

From that sentence on, Carl, let us just simply say, "We believe the present version of the bill is a substantial improvement over previous versions, however, a few

provisions may remain which we believe should be amended."

COMMISSIONER KENNEDY: In this regard, this version

CHAIRMAN HENDRIE: Yes, put["] in this regard. "In this regard, we believe this bill is substantially correct," et cetera, et cetera. Then, "A few provisions remain which we believe should be amended, and the first of these difficulties" -- okay?

(Nodding of heads affirmatively.)

CHAIRMAN HENDRIE: That is, I don't feel a strong need to include the language as it is, and let us sort of beg the question and get on to more substantive pieces of it. Okay?

Now, do we have difficulty with the thing starting at the bottom of page three, "The first of these difficulties"?

COMMISSIONER KENNEDY: I do, slightly. I think it's a reasonable standard. It's a question of how you interpret this, is really the central rational["] of the whole change in the country's export policies. And I think if this goes, then we are back to where we were a year ago, handling things on a pretty much country-by-country basis.

Well, back to what I would consider an inadequate standard for safeguards. I guess I identify or equate the timely warning with effectiveness when we are talking about safeguards. In my mind, it's a question of whether we want

to apply effective safeguards to any new reprocessing efforts using our fuel. And I don't really see why this prejudices or what it has to do with the international fuel cycle evaluation.

MR. STOIBER: Let me try to outline, as I understand it, the problems that particularly Joe and I and some of the people at ERDA, at least talk about when we talk about the problem.

First of all, they see it in connection with the House bill and the House report, which does in fact, indicate a fairly firm standard on page 19 of the House report.

COMMISSIONER GILINSKY: Let's just stick to the Senate bill, not the House. If we are going to get into that, that opens up a whole lot of other questions.

CS
MR. STOIBER: Well, I guess the reason to get into the language of the House report is that that would be the legislative history which gives content to the definition of timely warning. Because, of course, it would be an ^A Act of Congress once it was enacted. And the provisions in both the House and Senate bill are identical and therefore would be read in pari materia.

CS
COMMISSIONER GILINSKY: Well, we can decide whether we agree or don't agree with the House bill and the language

of the House report. It seems to me the Senate speaks to the matter itself.

MR. STOIBER: But there is no discussion in here --

COMMISSIONER GILINSKY: There's no Senate report and there's not going to be until they markup the bill; right?

MR. STOIBER: Right.

COMMISSIONER GILINSKY: Now, you could say in your report, you ought to indicate -- I don't know that you need more responsibility but, you know, you could indicate something along those lines.

MR. STOIBER: Well, that brings me to the second point which is when you state a standard like this, it does provide a handle for people who want to litigate or challenge your decisions to take you up before the Court of Appeals. And the basic line of reasoning that Joe and I outlined, is that, all right, if we're talking about ^{Purex}~~pure~~ reprocessing, we're talking about about four months delay between any detection and a possible useage in weapons.

MR. GUHIN: Could I qualify that a bit. In hypothetical terms, you could be talking about a year-and-a-half delay or two years, if the country has not done other work related to weapons. You could be talking about a five-year delay if they haven't done other work with weapons.

COMMISSIONER GILINSKY: Isn't that all to the good?

MR. GUHIN: Yes, I agree there. What this argues for, though, I think, is the position that when viewing timely, it's really all these other factors, in other words, that have been mentioned at the end.

COMMISSIONER GILINSKY: It doesn't matter what they talk about when they talk about other factors. What they are talking about is whether or not --

MR. GUHIN: They mention position on nonproliferation; I think that is very important whether or not they have done work in areas that are sensitive.

COMMISSIONER GILINSKY: As a tactical situation, I think they are talking about the country's attitude toward the ^NMPT, the country's security relationship, et cetera.

MR. GUHIN: Or attitude towards nuclear explosives, if the country has done or there were any evidence that --

COMMISSIONER GILINSKY: I guess I've seen these things in a lot of cases on a case by case basis as standards unravel. I guess I think that is what will happen here.

CHAIRMAN HENDRIE: But timely warning is defined where?

MR. STOIBER: Well, it's defined -- the House was going ^{to} put into the definition section of their bill, a

definition which basically would have said it was the kind of warning we now get with the light water fuel cycle with no ~~Purex~~ reprocessing. They withdrew that ^{and} put in the language of the House report instead ^{of} that part, on the assumption that anybody reviewing it or anybody who had to apply the standard would reference that language as it applies.

CHAIRMAN HENDRIE: It's not in the House bill, it's in the House report.

MR. STOIBER: Right.

CHAIRMAN HENDRIE: And the definition is what? The time in an LWR cycle without reprocessing.

MR. STOIBER: The Committee expects the Administrator, be it ERDA or DOE, who has to apply this criterion, to assure that warning times would exist which are at least roughly equivalent to those that can be obtained when spent low-enriched reactor fuel is placed under verified storage in countries not possessing reprocessing capability. And that previously had talked about not having ~~Purex~~.

COMMISSIONER KENNEDY: Wait a minute. Read that again.

MR. STOIBER: Warning times would exist which are at least roughly equivalent to those that can be obtained when spent low-enriched reactor fuel is placed under verified

storage in countries not possessing a reprocessing capability.

CHAIRMAN HENDRIE: And that time is?

MR. STOIBER: Estimates range from four months upwards to five years.

COMMISSIONER KENNEDY: How is it possible to do that in Europe?

MR. STOIBER: It isn't.

COMMISSIONER KENNEDY: That's precisely the point.

(Simultaneous discussion.)

COMMISSIONER KENNEDY: Or indeed in Japan under the agreement which was just negotiated.

CHAIRMAN HENDRIE: You know, if you set up a definition over here which is likely to hold up because the Senate hasn't dealt with one yet and then the House will be saying, well, we have got one, and then you establish a provision which uses the definition and so on, you know, what you are constructing -- let me ask, are we constructing a framework in which the Secretary's decision is preordained in the shape of the legislation itself?

That is, is it conceivable he can make any other finding than a negative one? And if that is the case, then I think if we want to say "no exports," let's come out and recommend that.

COMMISSIONER KENNEDY: That is precisely the point. That is not really what it is intending to say.

What it is intending to say, some believe, and what it seems to me in reading the language of the report which Carl just read us, there is reason for the ~~believe~~^{belief}; what they believe is, it's intending to say, there shall be no reprocessing, but it doesn't say that, quite. Because the only way that you can meet that standard is in a country that doesn't have reprocessing. If reprocessing exists, the standard can't be met.

CHAIRMAN HENDRIE: Does that seem to be the --

COMMISSIONER GILINSKY: First of all, I don't know where the Japanese are, or the Europeans -- (inaudible) -- neither is exempt.

CHAIRMAN HENDRIE: What do you mean the existing facilities? Certainly spent fuel from Europe, present European reactors, is not exempt.

COMMISSIONER GILINSKY: What is the word on that, Carl?

MR. STOIBER: Wording on --

COMMISSIONER GILINSKY: In the Senate bill.

COMMISSIONER KENNEDY: There's something about subsequent arrangements.

(Simultaneous discussion.)

COMMISSIONER GILINSKY: There's something about exempting facilities which have separated fuel before the date of this Act, or something like that.

CHAIRMAN HENDRIE: But that applies to the reprocessing --

MR. STOIBER: In a facility not in commercial operation prior to date of enactment of this Act. Now there has been a suggestion to change that arrangement to read, "Any facility which ^{has} ~~is~~ not processed reactor assembly prior to the date of enactment of this Act.

So it does grandfather existing facilities.

CHAIRMAN HENDRIE: In what sense?

COMMISSIONER KENNEDY: Speaking of unilateralism --

CHAIRMAN HENDRIE: Let me pursue this, Dick.

We're talking about what may be perceived as a difficulty in the present draft, okay. It has to do with reprocessing and retransfer of U.S.-supplied materials, i.e., fuel; right? You can't reprocess a reactor vessel and get anything interesting out of it. So it's U.S. fuel. And it says you can't do that under this law unless the Secretary can certify that such reprocessing or retransfer will take place under provisions that give timely warning.

And we are concerned that there's a timely warning definition. The Secretary now has a, you know, a very narrow aperture to steer through and the concern is that it's just too narrow and that what in effect you are saying is that the Secretary -- you are setting this up so that the Secretary's decision is a priori determined to be negative in all significant cases.

COMMISSIONER GILINSKY: Oh, there's no question.

CHAIRMAN HENDRIE: And if that's the case, let's go back and put this language in but recommend that the law say that no U.S.-supplied fuel shall be reprocessed or retransferred.

COMMISSIONER GILINSKY: Let me just say on the previous point. You said something about no exports. This has nothing to do with exports, this has to do with what they do with the stuff afterwards.

CHAIRMAN HENDRIE: But you can't export unless you can make this finding about selling stuff.

COMMISSIONER GILINSKY: -- low enriched fuel -- (inaudible) -- it's when you get -- when you have to make certain determinations, for example, make a determination because they can turn on their reprocessing plants or move stuff for the purpose of reprocessing. They can make certain

specific determinations that this can come into play. But as far as this being sort of a ban on reprocessing, except for the grandfather cases, there's no question that that is precisely what is intended. In the sense that unless you can come up with a scheme that is going to make this stuff less readily available for weapons, you can't do it.

Now that's been the policy of two presidents.

COMMISSIONER KENNEDY: But isn't it true --

COMMISSIONER GILINSKY: They're coming back now, obviously, and now they have had second thoughts.

COMMISSIONER KENNEDY: Isn't it true that the second of those two presidents -- and you're right about that, that is the basic policy -- the second of those two presidents, however, only recently, while in Europe, got agreement from a large number of states and is now pursuing the prospect, around the world, with great vigor to get states together in a program called "The International Fuel Cycle Evaluation," something that this country has sponsored, is sponsoring vigorously.

Now, can there be any doubt that this language if it survives in this bill will prejudice the result of that evaluation? I can't see how it can be seen otherwise. And, therefore, what possible incentives are there on the part of

all the other nations to whom we are now going to participate in any such evaluation? The answer has already been foreclosed.

COMMISSIONER GILINSKY: I guess I have a very different view of this evaluation. Because the way that this arose was that we decided that we had problems going on the way we have been going on and letting this stuff spread all over the place. So we decided we have got to look at alternatives. And one of the things you compare against is the present system. But I don't think there is any kind of sweepstake -- and we decided -- go back to a previous president, President Ford, and he said, "Security comes before economics." And this is not going to go around and we're going to put this consideration ahead of economics.

And we are now getting again into classified matters, I want the record to show.

But this President has signed decision documents on this report which are very, very firm. And if you go back to matters such as the policy of approvals on ~~7~~B-10's, they're supposed to be granted only in cases -- I don't remember exactly the language -- but, you know, dire need and the most pressing circumstances, and they are supposed to be exceptional. Those are the words of the President's decision document.

COMMISSIONER KENNEDY: But did he not also --

COMMISSIONER GILINSKY: I'm not claiming that there is not a degree of inconsistency, you know, that this has been a consistent policy. There are other decisions you can point to that are inconsistent with this.

COMMISSIONER KENNEDY: Decisions made by the same President.

COMMISSIONER GILINSKY: Or at least statements. Oral remarks.

COMMISSIONER KENNEDY: There is some view that a Presidential statement, however made, is generally in the nature of a decision, at least most nations perceive a Presidential statement to be a decision on his part.

COMMISSIONER GILINSKY: No, I mean remarks in conferences and so forth.

But at any rate I think this is pretty firmly laid down. I must say Joe and I, in an earlier incarnation two months ago, laid this down as a pretty firm requirement. Obviously, they are getting into difficulties. They are worried about Europe, they are worried about Japan, and so on, and the State Department, as usual, would like to have flexibility in these matters because they have got a lot of other things on their mind.

COMMISSIONER KENNEDY: Because one of the aspects

of negotiation, as I think all of our attorney friends would be prepared to support, is a measure of flexibility. You can't negotiate without it. There is not such thing as a negotiation. It is precisely the point we were making earlier about the difference between negotiation and unilateralism.

COMMISSIONER GILINSKY: Okay, but, you know, you were worried about Europe; why don't you just say Europe is exempted from timely warning because they are our allies.

You see, in throwing the whole thing out the window, you are saying Pakistan, if they behave well, is exempted. India, if they come in with comprehensive safeguards, could maybe use their reprocessing plants, and so on.

Now, I don't think that is what we want to do -- that's not what I want to do. I don't think that's even what the State Department wants to do when it comes in and says it wants more flexibility. But I think that will be the result.

CHAIRMAN HENDRIE: Okay, I understand the point. But the Congress' point is that an excessive rigidity in this law, in my view, will lead people who otherwise might have more seriously participated in the fuel cycle evaluation to say, the whole thing is a dumb exercise, the U.S. has made up its mind what it is going to do, and the answer is going

to be they are going to try to stomp out reprocessing. Let's, you know, pay no attention to the evaluation, and proceed with our nuclear plant. And since the U.S. isn't going to cooperate on an international basis, we will just have to go ahead and build our reprocessing plant, where before we might have been willing to go into an international venture with international safeguards.

And what I see is that this kind of rigidity will lead to every blasted country in the world having its own reprocessing plant. And the proliferation -- or your ability to control proliferation will have disappeared and that this is a contributor to destruction of the ability to control proliferation. So, you know, I think we differ on these things.

COMMISSIONER KENNEDY: Could I clarify --

CHAIRMAN HENDRIE: Let us move on with this --

COMMISSIONER KENNEDY: But before we leave it, I want to -- for my own purposes, would like to be clear on one thing.

We had a short discussion of whether, indeed, the point that we were discussing, that is, the subsequent arrangements, had anything to do with exports. My understanding of the bill in terms of the prefatory clause in section

303(b) was that "if in the process of export approval, it had to be understood by the importer, that is, the person to whom we were exporting, that these were the rules of the game for subsequent arrangements or we would not export in the first instance. It says, "With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment, or ~~sense of~~ ^{sensitive} nuclear technology exported by the United States, the Secretary may not enter into subsequent arrangements."

Now, you know, if you are going to have a contract with another nation for the procurement from you of this material, he certainly must know that these are the conditions which you are setting for his use of that material after he buys it, mustn't he? And therefore, it is a condition on the export.

COMMISSIONER GILINSKY: But present day use, in other words --

COMMISSIONER KENNEDY: No, but it is a condition on the export.

CHAIRMAN HENDRIE: But if he won't agree to the provision at the tail end, why -

COMMISSIONER GILINSKY: I mean it's perfectly clear. He can read the bill, can't he?

MR. GUHIN: But then he wouldn't get into the contract. This criteria would not be mentioned in the first initial export process. He would understand that. He would know that.

COMMISSIONER KENNEDY: He would have to be aware that that is a condition and therefore he would have had to either tacitly accept it or reject it. Right?

So it has a direct bearing on the export.

CHAIRMAN HENDRIE: It might be viewed by others as a disabling provision with regard to U.S. sources of supply.

COMMISSIONER GILINSKY: Let me ask you this: Suppose this material -- in most cases, a good many cases, we have essentially no control over re-export of plutonium. We have control over re-export of the fresh fuel. Strict controls over the re-export of the spent fuel. But if they reprocess it, you have essentially no control over the product, and I think this was simply because when all this was done, this sort of doubles the near-term problem and somehow this could be handled in some other way.

What this means is that once you turn on these reprocessing plants, and maybe we can talk countries out of doing this, but the fact is, legally, they can send that

stuff around to any country so long as it has a valid reason for cooperation, includes an awful lot of countries.

In fact, practically all the countries that we are worried about. So I think one ought to keep in mind that it isn't just a matter of letting, you know, France or somebody run their breeder. But it may go a good way beyond that.

CHAIRMAN HENDRIE: That is, if you don't have something like this.

COMMISSIONER GILINSKY: If you don't have something, yes.

MR. STOIBER: See, we are also exempting them from the retransfer provisions at the other end.

CHAIRMAN HENDRIE: But the retransfers beyond --

COMMISSIONER GILINSKY: But the retransfers beyond the community are unaffected, I believe, also.

MR. STOIBER: We have in our agreement of cooperation with EURATOM, we have approval of a retransfer outside the community.

COMMISSIONER GILINSKY: No, we don't.

MR. STOIBER: I believe we do.

COMMISSIONER GILINSKY: I believe we do not.

MR. GUHIN: Excuse me, you means transfers --

COMMISSIONER GILINSKY: Outside the community.

MR. GUHIN: Of U.S.-supplied material?

COMMISSIONER GILINSKY: Yes.

MR. GUHIN: You are saying no, if it is separated and produced; then our determination there is really whether it would be subject to an appropriate agreement for cooperation.

COMMISSIONER GILINSKY: Right.

You have independent control, if it's really fresh fuel.

MR. GUHIN: And we have got some control if it is separated and produced. And I think State has also interpreted that as altering if there is any relationship with EURATOM.

MR. STOIBER: But in the immediately applicable criteria, we would have to have that kind of assurance.

COMMISSIONER GILINSKY: But they are exempted --

MR. GUHIN: No, not under the criteria in the bill as drafted today.

CHAIRMAN HENDRIE: Okay, look, too much time.

What I propose to do with the section then is to say that there are differences of opinion in the Commission and that people can say individually what they think.

The prepared testimony will run then, subject to further consideration, down through "nuclear trading partners."

On page three. Okay.

The next full paragraph will not appear at this point but will appear later on, because I will add it under a title saying it is my personal view, while there are differences of opinion on the Commission and I think you should hear another point of view -- probably from you, Vic -- you ought to come down in any event -- in the discussion, I am going to say it's my opinion, -- and I don't know, anybody who wants to join me --

COMMISSIONER KENNEDY: I join in this point.

CHAIRMAN HENDRIE: -- that there is a difficulty in Section 303(b); that -- let's use the language here, okay.

COMMISSIONER KENNEDY: I might say that it is my opinion as well.

CHAIRMAN HENDRIE: Okay.

Can you put that together?

MR. STOIBER: Sure.

CHAIRMAN HENDRIE: We'll put that over on the back end. And whether that ought to be supplied as the Commission testimony or not, it is not clear to me since it will represent not a Commission position but the thoughts of myself and Commissioner Kennedy. I don't know whether they will -- well, we'll make it a separate piece of paper, okay, and

that way if you have some comments that you would like to make which you would formalize in a piece of paper, that piece of paper can also be attached and then the pieces of paper will have equal stature as attachments to the central thing, okay?

Now, bottom of page four, what do we think about the second problem of the bill, which would establish new guarantees, . . .

MR. STOIBER: This is basically the storage point. And the reason that was of concern was that during discussions with the Iranians on the new agreement for cooperation which is being negotiated now -- I suspect this is a classified portion of the discussion as well. ^{ETEMAD} ~~Edama(?)~~ raised great difficulty with how he was supposed to manage his own fuel cycle if --

CHAIRMAN HENDRIE: We had our hands in an approval --

MR. STOIBER: Every time he wanted to move low enriched fuel from facility to facility, he had to obtain U.S. approval.

COMMISSIONER GILINSKY: What was the thought behind this position?

MR. STOIBER: I think the concern was with weapons grade material and knowing where that went and the suggestion is that the approval might pertain to weapons-grade material.

CHAIRMAN HENDRIE: The language here says that this provision would require our agreement for cooperation to contain provisions granting a right of prior approval to the U.S. for storage facilities to receive U.S.-supplied material.

Now, does that suggest we are going to review them, for what, for safeguards provisions? And supply a document to somebody that says this is good enough for the good, old U.S. on safeguards.

You were just saying about transfer material, and this speaks to approval of a facility.

MR. STOIBER: What the country must do is give us, supply us a guarantee in the agreement for cooperation that it is not going to transfer any material to any sort of facility unless the United States has approved it.

MR. PEDERSON^F: Approved the transfer or approved the facility?

MR. STOIBER: The facility.

MR. GUHIN: And I think it's even worse than approving the transfer. That brings up a whole host of questions.

MR. PEDERSON^F: Would that mean that you would have to assume that any facility that could take weapons-grade material would have to be approved? This could get into some

sticky kinds of questions.

MR. SPECTOR: (Inaudible).

MR. GUHIN: In mutually agreed facilities; that's different than approving facilities, isn't it?

MR. PETERSON: We are talking about approving a facility.

MR. SPECTOR: But don't you say facilities mutually agreed upon . . . for determination.

(Simultaneous discussion.)

MR. STOIBER: See, this applies not only to reprocessing facilities but also light water reactor cores.

MR. GUHIN: Yes, the front end of the whole process. I think the key thing, everybody is obviously trying to get out of here, in all honesty, maybe this is not an intentional thing, but it ends up in the legislation in one way or another, is that they are concerned about the back end here. They are concerned about spent fuel and they are concerned about weapons-grade stuff.

COMMISSIONER GILINSKY: Why don't we just exempt low enriched uranium?

CHAIRMAN HENDRIE: That's what I would be recommending. Just say we join the Executive Branch in recommending that provision be amended to apply on^{ly} to weapons-grade material.

COMMISSIONER GILINSKY: But what about irradiated material?

MR. GUHIN: Well, contained in spent fuel or whatever.

CHAIRMAN HENDRIE: Who cares if it is irradiated if you can't --

(Simultaneous voices.)

MR. GUHIN: I think what the Executive Branch is trying to get at is two things they don't want to get into. They don't want to get into the front end before irradiation; that's up to a country's normal processes.

Two, they don't want to get into site approval of reactor sites ^{with} spent fuels. What they want to get into is what they have in their present agreements, that if it moves from there, even if it is spent fuel, moves from the reactor site, then in that process, there is going to have to be some agreement or agreed facilities between the two countries. We would have to know.

If they are going to move it from a temporary storage reactor to an ultimate site, then that would have to be mutually agreed. That's their idea they are getting into there.

MR. STOIBER: Let me read you the language that

the Executive Branch has suggested here. They want a guarantee in the agreement by the cooperating parties that no plutonium, U_{233} or uranium enriched greater than 20 percent, ~~or~~ ⁱⁿ U_{235} , transferred pursuant to agreement of cooperation or recovered from any source ^{or} of special material used in production facility and a utilization facility will be stored in any facility that has not been approved in advance by the United States.

COMMISSIONER GILINSKY: Does this include spent fuel or does it not?

MR. GUHIN: Did it say recovered, only recovered, or produced? There's a difference.

COMMISSIONER GILINSKY: So the plutonium in the spent fuel is regarded as plutonium for the purpose of that section.

MR. GUHIN: Let me ask another question on this section here.

CHAIRMAN HENDRIE: Let's see, it spoke about transfer?

MR. STOIBER: Will be stored in any facility that has not been approved.

CHAIRMAN HENDRIE: How does that -- if it applies

to spent fuel from low-enriched material -- it sounds to me like we are still approving the storage fuels at the reactor sites. Are we? Do we? Should we?

MR. STOIBER: Or recovered. I guess it would not have included that. Or recovered.

CHAIRMAN HENDRIE: Read it again.

MR. STOIBER: No plutonium, no U₂₃₃, and no uranium enriched greater than 20 percent, or recovered from any source of special nuclear material, or transferred, will be stored in any --

MR. GUHIN: I don't think that applies to spent fuel.

COMMISSIONER KENNEDY: I don't either.

COMMISSIONER GILINSKY: Does that then roll back current agreements?

MR. STOIBER: No, because our current agreements apply not to storage but to transfer for reprocessing.

MR. GUHIN: Or to alteration ⁱⁿ ~~and~~ former ~~content~~. That's what it applies to. Move it all over the place.

COMMISSIONER KENNEDY: The spent fuel itself so long as it is not in any way altered.

MR. GUHIN: And within the agreement, stays within the agreement country or group of countries.

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MR. STOIBER: The reason why this thing arises is because ^{of} the Tarapur case which, of course, is focused on in detail. That agreement is different in the sense that it compels the use of the fuel only at Tarapur. And therefore we also have the right of approval even if they want to transfer it to the proper fuel ^{pool} ~~plant~~.

COMMISSIONER KENNEDY: That's the only agreement of that kind.

MR. STOIBER: Yes.

COMMISSIONER GILINSKY: You are saying in all other agreements they can move spent fuel around freely.

COMMISSIONER KENNEDY: Within the country or to any country with an agreement for cooperation.

MR. STOIBER: That's right.

Within their country they can go from their reactor site to a storage facility without our approval. If they wanted to alter that, they have to get our approval; if they wanted to ⁱⁿ any way change the spent fuel under current agreement, they would have to, but not just to move it to another site within the country.

CHAIRMAN HENDRIE: Where does this leave us with regard to the -- with testimony that says "We join the Executive Branch in recommending the provision be amended to

— apply only to weapons-grade material"? Page five, top paragraph.

COMMISSIONER KENNEDY: Seems eminently sensible to me.

CHAIRMAN HENDRIE: I have got ^{an} aye vote here.

COMMISSIONER GILINSKY: I guess I think that is okay. I just want to check on the agreements to these things.

CHAIRMAN HENDRIE: Do you know?

MR. SPECTOR: I've got an agreement here. It appears that, as Mike just said, that we do have control if the interior was to be removed from the reactor and to be altered in form or content. Where I think we don't have control is if the material is merely to be removed from the reactor without being altered in form or content and shifted around the country. My impression was that ^{what} ~~while~~ I think Congress intended, was they wanted to get control of the stores around the country.

MR. STOIBER: Well, this is originally written by the Administration.

And not very artfully written.

MR. SPECTOR: One option we get is to control the entire fuel cycle, which everybody here appears to be rejecting. The second option is to get control of spent fuel. And

the third option is only get control of weapons-grade material. The debate now is whether you want to retain control over the distribution of spent fuel explicitly or not.

COMMISSIONER GILINSKY: Well, leaving control aside, are we informed of it in any way?

MR. STOIBER: I don't believe so. I think there is a lot of transferring of spent fuel, for example, in Germany.

MR. GUHIN: Could I make one suggestion here, if it's possible -- I leave it up to you really, but it seems to me that in the argumentation leading to this conclusion, it might be possible to focus on two things. We have gotten into some of the State Department's views that it would be difficult to negotiate. And I am wondering if from the Commission's viewpoint, the key thing is just their view as of now. This doesn't really have any nonproliferation significance to try to get this thing and that is an unnecessary requirement in this kind of way with a hindrance to others. But just sort of reversing the argumentation, which leads out to the same conclusion.

COMMISSIONER BRADFORD: Someone moves spent fuel from a reactor to a storage facility, leaves it there for five years, and takes it out, separates out the plutonium from that, does that second decision require approval?

MR. GUHIN: Absolutely.

COMMISSIONER KENNEDY: Yes.

COMMISSIONER BRADFORD: Why?

MR. GUHIN: They are changing -- it is worded in terms of any change in form or alteration of the spent fuel itself, we require approval. Any reprocessing or changing.

COMMISSIONER BRADFORD: I thought they had to move it from a reactor and also altering it.

MR. SPECTOR: I left out the first part of the sentence. The first part of the sentence says, "Any material acquired through processing or any irradiated fuel material received from the United States through this agreement or to be produced from the reactor and are to be altered in form or content. So this process is covered in another part of it.

COMMISSIONER BRADFORD: Reprocessing is defined as --

MR. STOIBER: Alteration in form or content.

MR. PEDERSON^E: Alteration in form or content.

MR. SPECTOR: Okay, I thought that these were two different points.

MR. GUHIN: I think when you look down the road this could well be a problematical provision, one way or the

other when you get down, because high enriched fuel, reactor fuel, with the way you read this, even with the Administration's change, is once they get through with it and they want to send it off to some place to reprocess and then they want to do something with that, one's going to get into a very site-specific subsequent arrangement process, one is going to get into a very site-specific approach, which has been generally contrary to the generic approach that has been taken to certain problems like safeguards and physical security and stuff. I think that's all down the line.

COMMISSIONER BRADFORD: A lot of these things were down the line ten years ago.

CHAIRMAN HENDRIE: Carl, this section shouldn't start out "A second problem." Just "a problem." Okay.

COMMISSIONER KENNEDY: One of many.

COMMISSIONER GILINSKY: Page six.

CHAIRMAN HENDRIE: Yes, I am.

We now turn to the three subjects in S.897 which were referred to the Church committee. Importance of providing assurance that we will be a reliable supplier.

"Commission noted in prior testimony factors essential to . . . We support inclusion of provisions."

There's a certain amount of motherhood there.

And now we get down to sharper contents.

"We believe our position as the proper supplier would be enhanced by insuring that we keep our contracts than by developing complex arrangements" and so on.

COMMISSIONER GILINSKY: What do we have in mind there?

MR. STOIBER: I think that was the question of the NEPA establishing that --

COMMISSIONER GILINSKY: Senator Glenn's idea. So we are attacking Senator Glenn?

MR. STOIBER: We are placing it on an order of priorities.

COMMISSIONER GILINSKY: I mean I think you are probably right. I'm just trying to understand what it is you are doing.

MR. STOIBER: It's sort of a light tap on the --

COMMISSIONER GILINSKY: Are we really prepared to discuss the ins and outs of ^{supplying} ~~dividing~~ fuel?

MR. STOIBER: I was merely trying to reflect the thought it's -- the basic concern is fuel assurance, having adequate enrichment capacity and supplying things under existing fuel contracts and agreements.

COMMISSIONER GILINSKY: Let me get back to that

one.

MR. STOIBER: It's more important than trying to gin up some kind of structure which you hope is --

COMMISSIONER GILINSKY: Well, I think you're right and his structure I really haven't looked at in detail. I'll try to get some ideas from the Administration --

CHAIRMAN HENDRIE: May be a trifle difficult.

COMMISSIONER GILINSKY: Probably unrealistic if not --

At the same time I wonder whether this is really something that --

(Simultaneous discussion)

COMMISSIONER KENNEDY: Whether we should or not, this is the area which he asked us to comment on, isn't it?

MR. STOIBER: Well, yes, first; and then these are portions of the bill over which this Committee has jurisdiction.

COMMISSIONER KENNEDY: And presumably, therefore, on which he is holding the hearings to which he has asked the Chairman to contribute.

COMMISSIONER GILINSKY: Can I comment on the letter?

CHAIRMAN HENDRIE: Yes.

COMMISSIONER GILINSKY: Well, in a sentence here,

it says, "We strongly support including in this legislation a provision designed to enhance U.S. reliability as a fuel supplier."

COMMISSIONER KENNEDY: Those are almost Senator Glenn's words.

COMMISSIONER GILINSKY: I understand that. First of all, I would like to say, again, it's the reliability of those to accept a degree of discipline in this area. But second of all, I think it is a continuation of this self-flagellation. I think a lot of people are running around saying the United States is a reliable supplier. Now, I think those words are just highly charged. I think the idea is okay.

COMMISSIONER KENNEDY: We have not -- in many -- we ceased being, in a sense, a reliable supplier when we had to refuse to accept low enrichment contracts some, what, four years ago or five years ago because we did not have the appropriate capacity.

COMMISSIONER GILINSKY: That's right. That's probably a lot more important than any of these questions related to --

COMMISSIONER KENNEDY: That's what this section is all about, is to improve the capability to produce material.

COMMISSIONER GILINSKY: Okay, if you want to talk about that, fine. But, frankly, I would have used more positive words and just say "will enhance the confidence of our customers that they are going to get their stuff" or something like that. Somehow the U.S. reliability has become just, you know, codes for the fact that here we are changing the rules all the time. Well, maybe we are. What we ought to do -- I think advertising that -- that oughtn't be coming from responsible officials to be then thrown back at us.

COMMISSIONER KENNEDY: In jest, I would note there are many things in this world which don't need much advertising.

COMMISSIONER GILINSKY: Well, I understand. But there's no need to fuel that fire.

I will say further that to say "To insure the obligations -- (inaudible) -- strictly adhered to. You know, well, we are changing the rules in some of those areas and what we are doing is trying to interpret some of the ambiguities in our favor, in some cases imposing unilateral conditions.

that. The Administration is committed to doing that.

COMMISSIONER KENNEDY: I do not think the

Administration is committed -- as I understand it, from all the testimony and from all the statements it's been making -- I do not think it is committed to doing this on a unilateral basis. I think that's the point.

COMMISSIONER GILINSKY: Well, listen. You know, we had an agreement with the Yugoslavs through the IAEA that just says that there weren't going to be any controls on the fuel going there. And we pretty much said that that's not going to work out. We've agreed to send them the reactor, but I think the Administration is doing that and pretty well committed itself to saying that if U.S. fuel goes over there, it's going to be under U.S. control.

And, you know, you can argue this in a lot of ways. But the fact is that we have just gotten uncomfortable with these agreements and have decided some of them have got to get fixed up.

COMMISSIONER KENNEDY: We have also said we would fix them up through the negotiating process.

COMMISSIONER GILINSKY: But we've also taken pretty harsh positions on these matters. I mean, you know, you wonder why is there anything to negotiate. We had an agreement with them. It goes right through the IAEA. And I can argue the other side pretty well. And what happens is

when you say that, you are simply giving arguments to those with whom we are going to have to negotiate and whom we are going to try to convince of the changing of the rules of the game.

COMMISSIONER KENNEDY: As I said earlier, there are many things in this life that do not need much advertising. You're not giving them any argument they have not already used and, indeed, perceived.

COMMISSIONER GILINSKY: In my view you're adding to one side of the scales, which I think is unnecessary and I think it really does not represent U.S. government policy, frankly, to say that. In fact, I believe this paper is going up to the President, on fuel assurances. Having to do with renegotiation of contracts and whether or not all contracts will be strictly adhered to. And there are several views presented in that paper. In fact, these very matters are flagged.

COMMISSIONER KENNEDY: It suggests, therefore, that there is not yet a government policy in this regard.

COMMISSIONER GILINSKY: I think that is probably right.

COMMISSIONER KENNEDY: Then we should be very careful about what is said here until that policy emerges.

COMMISSIONER GILINSKY: I'm not sure where that stands.

MR. PEDERSON^E: The last thing I heard on it, Commissioner, was that it had not yet gone into the President, although all the views had been collated and we were given one last opportunity to comment. And I was told we would be informed when it went ahead. I understand it has not gone into the President yet.

COMMISSIONER GILINSKY: I mean you are talking about supply contracts and agreements being strictly adhered to. In the meantime changing the rules as they were understood sometime ago.

COMMISSIONER KENNEDY No, my impression -- I agree with that. My impression is that if you are -- what it is intended to say, is that we're going to set some rules. We are going to say that if you sign a contract, you can expect that that contract will be fulfilled. That we are not in the future going to be changing the rules.

And I suspect that -- again, I would defer to my attorney colleagues -- that that's a normal process in contractual arrangements.

COMMISSIONER GILINSKY: Yes, but all of these contracts in fact have got clauses that they are subject not

to laws but the policies of the United States. I mean there are outs on all of these, and they can be argued either way.

COMMISSIONER KENNEDY: And one can argue -- I'm sitting on the other side of the fence now -- one might argue that clauses like that are frequently invoked to cast some doubt upon, whatever we wish to characterize it as, reliability or whatever.

COMMISSIONER GILINSKY: Sure, and let's hope this is the one time that they are fair and that we get a good set of rules and we never have to change them.

COMMISSIONER KENNEDY: That's what I thought this was about.

COMMISSIONER GILINSKY: Well, for right now -- Well, I think it has to be very carefully worded. If you are talking about the country having an adequate enrichment capacity, I think that is splendid. Making sure that those who agree to a certain international discipline have adequate fuel supply is tremendous. And we ought to do our part in making sure that all that happens.

CHAIRMAN HENDRIE: All right. Now, let me close. First, starting down about two-thirds the way down the page. "In this regard, Section 102" et cetera, et cetera. From there to the end of the paragraph, is there agreement

with the language?

Okay, from there to the end of the paragraph which runs to the top of page 7?

I get an eye from Vic.

Dick?

COMMISSIONER KENNEDY: I don't know what's wrong with it.

COMMISSIONER GILINSKY: To tell the truth, I'm not familiar with-fuel authority at all.

I suspect that the comments here are correct. I would agree with them, but I don't know whether --

COMMISSIONER KENNEDY: I'm a little hesitant to say "our only hesitancy in giving full endorsement." I think that may be a bit overstated. As a praccical matter, are we prepared to say that we are really warmly endorsing this.

COMMISSIONER GILINSKY: I guess I wouldn't like to get into this at all.

COMMISSIONER KENNEDY: Do we have to comment on whether we endorse it or not, or simply note what concerns might arise that would have to be appropriately dealt with if the International Nuclear Fuel Authority was to be a workable proposition? Wouldn't that be a better way to handle it? Not commenting as to endorsement one way or the other.

CHAIRMAN HENDRIE: Okay, now what do you want to do with Section 104. Tell me again.

COMMISSIONER KENNEDY: I guess I would try to redraft it to comment -- the points that are made on the top of the next page rather than commenting as to our endorsement or hesitancy to do so.

CHAIRMAN HENDRIE: That is, the section ought to read --

COMMISSIONER KENNEDY: "In this regard we would not that" --

CHAIRMAN HENDRIE: "With regard to Section 104, the Commission would just note that the proposal may have prematurely focused on one approach. We believe that further negotiation discussion perhaps in the context" -- and so on -- "would be helpful."

Does that seem something --

COMMISSIONER KENNEDY: Sure. There's another fundamental problem which is not addressed here which we should keep in mind, it seems to me, and that is, that we are really sure of the conditions under which U.S. fuel would be employed through this mechanism. And that's where the real sticky point arises.

In creating the International Fuel Authority,

would we be giving up or would we expect to give up any of the controls that are heretofore in this bill outlined?

CHAIRMAN HENDRIE: Yes, that's the whole key to the Glenn proposal is to take U.S enriched material and to surrender U.S. controls over it by giving it to an international entity whose thrust and purposes we would obviously have strong input on the formation of the charter and so on, but having done that, we would then turn over the fuel, and that's it. They would have taken care of it. We would have no further redress.

You can see what his point is, what he is trying --

COMMISSIONER KENNEDY: It's the reliability question.

CHAIRMAN HENDRIE: -- to deal with there, but whether it is a good idea or not, I don't know.

COMMISSIONER GILINSKY: It's a matter of one country dictating to each -- (inaudible).

COMMISSIONER KENNEDY: It's to eliminate the problems which arise from us being a supplier of major note putting on all kinds of restrictions which others may not agree with.

COMMISSIONER GILINSKY: I wonder whether -- (inaudible) -- you could say what the ramifications of this

proposal are going to be, or something like that.

COMMISSIONER KENNEDY: Maybe instead of "have not been fully explored," "should be fully explored." Again, the sender, I feel, does think there's been a lot of exploration.

COMMISSIONER GILINSKY: "Farreaching."

COMMISSIONER KENNEDY: Exactly; and should be fully explored.

CHAIRMAN HENDRIE: I think that's fine.

MR. GUHIN: Wasn't one of the ideas that was --

CHAIRMAN HENDRIE: All right, Carl, do you see a way to do that?

MR. STOIBER: Sure.

CHAIRMAN HENDRIE: Okay, let me go back. I ^{note} ~~low~~ agreement from "In this regard, Section 102" through to the end of the paragraph as amended by just recent discussion.

The so-called Commission testimony will then start at the top of page six saying, well, I don't know what it will say about a lead-in. Delete the first sentence, because I am going to rearrange the geometry of the bill.

Let us start and say, "I would like to discuss briefly the three subjects in S.897 which were significantly referred to the Subcommittee on Energy Research and Development." Now I need something that says, "The first of these

deals with the problem of providing adequate assurances of nuclear fuel services to our trading partners," or something like that, okay?

MR. STOIBER: Why don't we just use the language from the purposes section, which says: "To act reliably in authorizing the export of nuclear reactor fuel to nations which share our nonproliferation policy"?

CHAIRMAN HENDRIE: Okay, say that.

Then move immediately from there down --

COMMISSIONER KENNEDY: Share our what?

MR. STOIBER: Nonproliferation policies.

CHAIRMAN HENDRIE: It is not for us to say, but I would hope that the Department of State ^{has} the wisdom of questioning that use of language because goals are something; policy is quite another.

CHAIRMAN HENDRIE: Delete "policies" and say "objectives."

COMMISSIONER KENNEDY: We are not in the policy-making business of any country but our own, I hope.

CHAIRMAN HENDRIE: There is, as far as I can determine, no difference in objective and every difference in policy.

So we get the first sentence, which starts out: "I would like to discuss briefly," throws in a sentence that

says: "The first of these three subjects has got to do with fuel assurance," and then, "In this regard, Section 102," et cetera to the end of the paragraph. Okay.

The middle material, in particular the snarl that, the external view of the U.S. as a reliable supplier, if that need is desirable, is probably better obtained by a little more careful observance that we carry out agreements we have made in good faith with people. I would propose to make this part of my personal remarks. Okay.

Because I have considerable concern that if we march merrily forward breaching what others regard as good faith agreements --

COMMISSIONER KENNEDY: It will be very hard to make a new agreement.

CHAIRMAN HENDRIE: That we may not -- That's right. That we may not be able to make new agreements and lose leverage at a very rapid rate. Okay, that's all.

COMMISSIONER GILINSKY: I mean the thought is okay. That's not a thought that -- I mean obviously it's right. The question is you start getting down to details and what does that mean precisely. Does that mean you are going to be ^{implementing} existing agreements precisely on the terms that were envisioned by our trading partners at the time they were entered into, or

— how are you going to interpret ambiguities. There are many ambiguities in these agreements. Are you going to --

CHAIRMAN HENDRIE: Well, I guess I would, if I were determining it, I think sort of my initial thrust, as a matter of information, would be where the agreement is quite specific and there aren't ambiguities to be reinterpreted or subject to new interpretation, I would jawbone -- and I didn't like the provision -- I would jawbone the guy and muscle him as I reasonably thought I could to get him to agree to a renegotiation.

And if I couldn't, I would say it is a valid contract signed in good faith by the United States of America and we have to carry it out whether we like it or not.

On provisions where there is ambiguity or I can make, you know, what I thought was a reasonable case that it isn't clear what it means and we now have to sit down and define in detail what it means, why then you are in a place to muscle that much harder. And perhaps come to a point where you say, you know, you and I differ on this and we apparently are not going to agree, and this may then cancel the agreement because -- where there is ambiguity, and you want to stake out an absolutely rock hard position, I think you could do that.

— COMMISSIONER GILINSKY: I think there is some kind

of ambiguity in essentially every one of these contracts.

CHAIRMAN HENDRIE: Oh, I'm sure there ^{are.} And further
more, I'm sure --

COMMISSIONER KENNEDY: And after every renegotia-
tion, I suspect there will continue to be. There would have
to be.

COMMISSIONER GILINSKY: In other words, if you ^T say
strictly to the letter, that in itself doesn't define --

CHAIRMAN HENDRIE: What you are going to do.

COMMISSIONER GILINSKY: What you are going to do,
because even the enrichment contracts -- the one on India --
says it is subject not only to the laws of the United States
but also the policy of the United States. Of course, it --
what are we going to do when our policy changes? Is it
reasonable to go back and change and impose conditions on that
contract, or not. And you can argue it both ways.

CHAIRMAN HENDRIE: You have to read very carefully
and look at whatever else is put on in the way of context.

COMMISSIONER BRADFORD: That's not really a ques-
tion of ambiguity. It seems to be perfectly clear as to the
terms and the statement at the bottom that says subject to
the laws and policies of the United States, and then if you
have a change of policy, it doesn't matter whether the earlier

agreement is ambiguous or not.

COMMISSIONER GILINSKY: That's what I am --

COMMISSIONER BRADFORD: Yes, that's the disability that you mentioned earlier.

CHAIRMAN HENDRIE: Well, it may very well have been the intent at the time that agreement was signed to take account of the fact that U.S. policy might change and if it did change, the agreement had to change with it. I think that could very well be a position you could take very strongly.

On the other hand, there might also be some background language in the negotiating document that indicated that wasn't what that meant.

COMMISSIONER GILINSKY: In these cases we are not, I think, breaking our word. I think what may be happening is that you are acting differently than was expected at that point.

CHAIRMAN HENDRIE: Oh, I think that's okay. But let me tell you, I find certain perception^s among numbers of our trading partners that we are in fact breaking our word. That it is the clear intention of this Administration to renege on good faith agreements signed by the United States of America is a fact. They take a very dim view of that. And I take a very dim view ^{of} ~~to~~ that.

COMMISSIONER KENNEDY: Which it must be said, has ramifications far beyond the issue we are defending here.

COMMISSIONER GILINSKY: I understand that.

CHAIRMAN HENDRIE: Now what you are saying is, look some of these agreements are pretty foggy and they may say we are reneging and we say, no, we are not reneging, we are interpreting the ambiguities. And I agree there is probably a good deal of gray area to argue that point, and so on.

But the perception that we may either have or are in the process, or getting ready to in fact simply flatly and unilaterally violate good faith contracts; that's the perception that exists out there. And that's why I have no problem with language in these sorts of things in which we all talk about the desirability of the U.S. being and being perceived as a reliable fuel supplier.

COMMISSIONER GILINSKY: Well, I think, you know, we ought to be perceived. But I think these words --

CHAIRMAN HENDRIE: But I like to see them in because I think ^{it} does carry a message for people and that's why I don't object to seeing them there.

Now with regard to the second thing that we are going to comment on, that is, we support the proposal of Section 202 to develop safeguards and physical security *e*

training programs for nations or groups, ^{it} nations developing a nuclear industry, I would think we would all be gungho for that. It sounds hard to go against it.

And the third one -- Carl, please identify these things by -- we've said the first of these, now let's say the second, the third. Title V establishes program on nonnuclear, why I think -- I don't think we need it, but I think it's politic and I agree with it personally, that this Commission, which is the Nuclear Regulatory Commission, be saying, come on, we are not so hung up on this stuff that we think it is a bad idea to do it any other way. I think it's a good idea for these countries to have assistance in looking at other means. Many of these other countries, in fact, tend to be the less developed countries, ^{and} are not in as good shape to do high technology nuclear plants.

MR. GUHIN: Mr. Chairman, may I ask one question?

The bill has always focused on a safeguard and physical security training program for less developed countries. Why has there not been at least some impetus towards the health and safety training program, or is that supposed to be encompassed in this --

CHAIRMAN HENDRIE: It's not nonproliferation.

MR. GUHIN: Totally separate because of the

nonproliferation.

CHAIRMAN HENDRIE: Let's keep it out of nonproliferation. We've got more laws now that run crossways. Unless it serves some ulterior purpose of the agency.

MR. PEDERSON^F: Quite the contrary. According to what our role in health and safety is on exports it is so murky, I wouldn't even want to --

CHAIRMAN HENDRIE: How are we going to ^{day,} review storage depots in Yugoslavia? I guess it's going to be hard to keep the Staff from making comments --

MR. STOIBER: We should require that their applications for review be written in English.--

CHAIRMAN HENDRIE: Now let me go back and point out that we have cut a good deal of material from the front.

COMMISSIONER KENNEDY: Did we go through the entire thing?

CHAIRMAN HENDRIE: Yes.

COMMISSIONER KENNEDY: Well, there was only one minor thing I wanted to suggest on page nine.

CHAIRMAN HENDRIE: Go ahead, because I didn't get into the specific stuff.

Page nine, good. Go.

COMMISSIONER KENNEDY: I would -- I sympathize but

— don't think that this is the Committee before whom we should say, "Depending on how many commodities are determined to fall within this category, the Commission may need to seek additional resources." This is not the Committee to raise that with. I understand the problem, you have made your point, but this -- Senator Church will say that's interesting, what do you want me to do about that? And he can't really --

MR. PEDERSON^F: He can speak to some friends.

COMMISSIONER KENNEDY: I think to me it seems a little out of keeping with all of the other discussion.

MR. PEDERSON^F: Statesman-like tone.

CHAIRMAN HENDRIE: Good try, fellows. I believe that was the opening shot on the fiscal '80 budget.

COMMISSIONER KENNEDY: I sympathize with them entirely.

COMMISSIONER BRADFORD: I have found with the state legislature that the reverse is true. I have found in dealing with the state legislature that you can have less a burden if -- you might come out ahead if you mentioned it at the time of your proposal if you warned that there might be financial consequences. One could be in an awful lot of hot water as to why you didn't point that out at the time the

— law was enacted.

COMMISSIONER KENNEDY: I would agree with that, but as I said, this is not the Committee to raise it with.

MR. STOIBER: Well, in an ancient version of this legislation there was a section in this saying that some millions of dollars would be needed to do additional tasks, but that was cut out because they decided not to make an appropriation.

COMMISSIONER GILINSKY: Well, what about Foreign Relations, don't they oversee --

MR. STOIBER: I think it would still be Government Affairs.

COMMISSIONER KENNEDY: They are going to hear this bill, aren't they?

MR. STOIBER: Government ^Aaffairs? They have reported it, so it's out.

COMMISSIONER KENNEDY: Oh, it's out.

Nobody else is going to hear it then?

MR. STOIBER: Foreign Relations will not have hearings on it.

CHAIRMAN HENDRIE: Maybe we ought to leave it in.

COMMISSIONER KENNEDY: Okay, if this is the only Committee to whom we are going to have the opportunity to

— speak on this point, I guess I would leave it in. If this is the only place we are going to get a chance to speak.

CHAIRMAN HENDRIE: Let's leave it in for the next draft.

Now, I assume that the sections on the -- the comments on the Commission with specific parts, I assume we are all in agreement, I assume that reflects prior --

(Simultaneous discussion.)

Now, Carl, what I want to do is to rearrange -- what we have done is to cut a good deal of material out of the front end of this thing. Let page one stand -- it's all motherhood. I was going to put section three up front. Leave it as it stands, okay.

Whack out a next draft and then, if you wouldn't mind, why start a separate sheet just saying, "Additional remarks of Commissioner Hendrie and Commissioner Kennedy," and throw in that comment on storage. It was the deleted piece -- it's with regard to the deleted material starting on the bottom of page three.

If you will give us a lead paragraph, which is like: "Unilateral measures would be damaging with regard to fuel supply problems. We believe that unilateral measures are damaging," et cetera. "Some of the early versions suffered

greatly from this approach. The present one is better. However, Section 303(b) prohibits such an arrangement, timely warning" -- continue on down saying that we think timely warning ought to be just one of several factors and end there.

Then, secondly, I said I was going to pick up --

COMMISSIONER KENNEDY: On page six.

CHAIRMAN HENDRIE: It's on the same -- it's very much in the same area, again, the reliable supplier syndrome. Pick up the few sentences in the middle of page six that we deleted along the lines -- are you going to join me in this.

COMMISSIONER KENNEDY: Yes.

CHAIRMAN HENDRIE: Along the lines, we'll make that smart remark that keeping our agreements is probably better than developing complex arrangements which may not be in the final analysis workable.

I hope he doesn't ask us what we mean by that.

COMMISSIONER KENNEDY: I'll be glad to explain it.

CHAIRMAN HENDRIE: If he does, I hope Senator Glenn isn't there.

COMMISSIONER GILINSKY: On the top of page three, "given binding nonproliferation assurances and accepted, adequate safeguards." So different than the way it is said elsewhere, except less qualified elsewhere.

COMMISSIONER KENNEDY: All of the others in the context of that statement, of course, which precedes them.

CHAIRMAN HENDRIE: You think the statement should be a little more restrictive.

COMMISSIONER GILINSKY: Yes.

CHAIRMAN HENDRIE: But I think we agree with it, don't we?

COMMISSIONER GILINSKY: Yes.

CHAIRMAN HENDRIE: I do.

COMMISSIONER BRADFORD: Yes.

COMMISSIONER GILINSKY: I'm just saying elsewhere it is less qualified.

CHAIRMAN HENDRIE: I think it's good language and I think we all agree with it. We don't agree line to line with some of the details of the implementation.

COMMISSIONER GILINSKY: No, no, I am not suggesting that you're not qualified here. I am concerned about --

MR. GUHIN: Every time we talk about that, it should be for legitimate purposes.

COMMISSIONER GILINSKY: I think all countries would accept a degree of international discipline.

CHAIRMAN HENDRIE: Okay, I think we are done with it. And it's 11:30 --

MR. STOIBER: Mr. Chairman, can I ask about the four quick items under part three.

First of all, our time scheduling, I would expect to get a redraft around by Friday.

CHAIRMAN HENDRIE: Good.

MR. STOIBER: For you to look at over the weekend.

(Laughter.)

MR. STOIBER: I was wondering if you do want to schedule a third Commission session or whether you think this handles it.

COMMISSIONER KENNEDY: Just circulate it.

CHAIRMAN HENDRIE: Why don't we just circulate it and then if anybody thinks they would like to have a few further words in Commission session about the consensus statement, why give a holler and we will schedule something in.

MR. STOIBER: I'll try to prepare briefing books to be available by Monday and if you have --

CHAIRMAN HENDRIE: Well, I'm not going to look at it by Friday, so don't provide mine in any case by Friday.

MR. STOIBER: If you have any material you would like me to include in yours --

(Simultaneous discussion.)

CHAIRMAN HENDRIE: Next Tuesday, we are having

a licensing film, unless we need a little time on this late in the afternoon on Tuesday, why I will need pumping on some of these things. And I need that verbally; you know, I've got briefing books that I just find a lot of trouble. I need that verbally.

MR. STOIBER: On the separate Commissioner appearances, Senator Church has asked that we provide copies of these statements 24 hours before, so ^{if} there are separate Commissioner statements, I'd like to have those as soon as I can get those so I can send ^d them up.

CHAIRMAN HENDRIE: We ought to give it to Carl so it can come around with the paper; and similarly, the additional remarks that we are making ought to come around with the paper; part of the package but separately bound. And if time runs short, I think you can be fairly straightforward. The language is appropriate as it stands.

You know, if they will allow you to develop these in a question-and-answer form, why you can sort of develop it that way.

MR. STOIBER: I thought I would call the Committee staff today and tell them, indicate who would be appearing. I take it --

CHAIRMAN HENDRIE: Well, I guess I am.

I think you both ought to come, don't you think?

And, Peter?

COMMISSIONER BRADFORD: I'll come, but I don't think I need to stand up and explain my ignorance; I can do that just as well in a letter.

CHAIRMAN HENDRIE: Let's see, we haven't met Senator Church that I know of. So what we ought to do is to crank up a shade early and see him.

(Simultaneous discussion.)

CHAIRMAN HENDRIE: Oh, yes, the Sunshine question.

I had a strong recommendation from Carl that these nonproliferation bill provisions had been a subject of excruciating negotiations and strongly-held feelings of various sectors for quite some time. There's considerable concern about our popping in at this late state and sticking in a provision which is really foul ball in terms of the discussions which have gone before. There's concern that it may create a lot of really unnecessary and inappropriate turmoil in trying to agree on a bill and focusing on the essentials of the bill. It could, for instance, if it were to be taken up seriously by the Committee, mean that the whole bill gets referred over to Senator Chiles' Committee in the Senate, and somebody else in the House because it's

got a one-liner about Sunshine provisions. And so I am convinced that, okay, let us not muddy these waters. Let us proceed, in effect, down the main highway to Senator Chiles. We have a letter on its way back to him which will have the right language in it explaining the difficulties. I think we ought to point out the difficulty in informal discussions that we may have from time to time as opportunity arises with members of our oversight committees on both the Senate and House side explaining the nature of the difficulty and they can help us deal with the Chiles' committee.

I prefer to deal with it that way.

COMMISSIONER BRADFORD: It is a serious difficulty and one that might directly relate to our ability to carry out the intent of this legislation.

COMMISSIONER GILINSKY: Could we mention it without significantly incorporating it.

COMMISSIONER KENNEDY: There's a way and a place, I think, to do that.

One could write a sentence which would indicate our understanding of this.

MR. STOIBER: Well, I wrote a page and a half --

COMMISSIONER KENNEDY: Good gracious, a couple of sentences is all.

MR. STOIBER: Well, I tried in a page and a half, and you can't do it in a page and a half; if anybody wants to look at this. But I do think it would be extremely troublesome at this stage.

COMMISSIONER KENNEDY: But there is a place here where you could make an offhand comment to have just made the point.

On page eight, where it says, "We would expect to participate fully in the consideration of these important matters before decisions are taken on appropriate U.S. government action." Here, obviously, of course, then you could add a sentence or two, which would indicate that it would be extremely important that the ~~Committee~~^{Commission} have the appropriate flexibilities in all respects to deal with classified matters which may well be involved.

MR. STOIBER: I'm afraid that what we would have in that is that you are going to have the obvious question, what do you mean by that? Don't you have those flexibilities now. And then you are really drawn into a complete discussion of the Sunshine. And I agree with Commissioner Bradford that this is a serious matter and ought to be vigorously pursued, but I think it should be pursued in the context of the review which Chiles is now undertaking with respect to the Sunshine

— rather than in a nonproliferation bill. Especially after two and a half years of hammering out these provisions. My main problem with it is that these procedural aspects pertain to our licensing authority. Until now they have been in a rather noncontroversial status. And they would ^{be} likely to be debated hotly if we raise this issue, then I think the chance of opening a Pandora's box is a real one. There are a lot of groups that would like to restructure our licensing process.

COMMISSIONER BRADFORD: That remark about the Pandora's box, it depends on whether you are inside or outside as far as the opening of Pandora's box is concerned.

I'm loathe to tread on your sense of Congress and after two and a half years, but it seems when someone presents a comprehensive piece of legislation, and is asked how it affects your agency, that you have a duty, at least, of laying out, however gently, the problem areas.

Now, it happens to be a problem area that is not caused by this legislation. So that I don't know that we have to ask them to fix it for us. But wouldn't it be just as well to mention it and thereby foreclose anybody ever asking, "Why didn't you tell us about this when we were considering the bill that set up the procedures under which you were going to consider export licenses"?

—

COMMISSIONER KENNEDY: Could one deal with it, as Peter suggests, in passing -- and I have suggested a place where one might in passing add a sentence and then add a further sentence indicating this is a matter we are taking up with Senator Chiles' committee in this regard and so we don't want to bother the Committee with it here.

COMMISSIONER GILINSKY: We can try.

CHAIRMAN HENDRIE: I'll tell you, you have got the right place here.

COMMISSIONER KENNEDY: The thing is it could cause a serious disruption and there I'm, as we all are, aware that these things can quite easily get out of hand and cause all matter of difficulty in the whole legislative process.

MR. STOIBER: If we do that in a way in which we say, we are not offering an amendment to the Act in this regard here because we think it's more appropriate in Senator Chiles' committee, I guess I'd agree. I drafted this to propose some language and I think that that would really be troublesome.

COMMISSIONER KENNEDY: But we could, you know, in deference to Peter's very valid point, we could make some kind of offhand statement that it is a problem and it will become even a greater problem as further responsibilities devolve upon the Commission coming out of this legislation and that

in this connection, we are taking this up with Senator Chiles' or with whatever committee it is, of the Congress to work out the appropriate arrangements to facilitate things.

MR. STOIBER: For what it is worth, and I don't think it is worth much, I would anticipate trying to circulate our comments to OMP, and it could be they would ask us to take such a comment out.

CHAIRMAN HENDRIE: Let me see if you can stand a rather mild sentence that would ^{go} in the place that you tagged. It would just ^{say} "that we expect to participate fully," and then I would propose: "I might note in this connection that the Commission is reviewing its procedures for dealing with the classified information that might ^{be} applicable to export licensing matters to assure that we can be fully informed in coming to decisions on these licenses."

That's pretty cryptic.

It comes from a long history of writing ACRS letters in which the Staff comes around a month later and says what did that mean, and then you explain it, and oh, boy.

MR. STOIBER: Mr. Chairman, the only difficulty I see with that formulation is that during the two years of debate on the bill, one of the features prompting the introduction of the bill initially was the assertion that the NRC

was not receiving the full cooperation and information from the Executive Branch. With a statement that elliptical, I would expect the following question to be, well, isn't the Executive Branch being open and cooperative with you?²

COMMISSIONER KENNEDY: That could be taken care of by --

CHAIRMAN HENDRIE: I'm ready to go ahead, and I think we ought to be ready to go ahead, if asked that, and say, yes, they are being as forthcoming as they possibly can be; however, as the Nuclear Regulatory Commission, we do have to operate under the Sunshine Act. There are very stringent limitations on what we can, on closed meetings and on what we can keep closed. And in some ways those provisions run counter to the feeling of intelligence gathering agencies that certain materials are best protected by not keeping records, and so on.

That's going too far.

COMMISSIONER GILINSKY: We can't individually, the Commission as a body --

CHAIRMAN HENDRIE: No, I'm not going to suggest that the Sunshine Act prohibits but just that there^{is} an area --

COMMISSIONER KENNEDY: Just it's an inhibiting --

CHAIRMAN HENDRIE: It's an inhibiting area and

that we are reviewing the procedures to try to assure that we can know~~ing~~ everything that we have to know and be able to act upon it sensibly and reasonably.

COMMISSIONER KENNEDY: I think a fortuitous --

CHAIRMAN HENDRIE: And if they ever want to know what we are going to do about --

COMMISSIONER KENNEDY: Evidencing the forthright cooperation on the part of the Executive Branch would be useful in that connection. Otherwise you might get into --

MR. PEDERSON^F: Or you can do it another way. You could say, "reviewing our ability under current legislation."

COMMISSIONER BRADFORD: I was going to suggest the same thing. Exactly your phrase.

MR. PEDERSON^F: It just depends on how cryptic you want to be. You can spell out Sunshine, you can say under current legislation.

CHAIRMAN HENDRIE: To assure that we can be fully informed in coming to decisions on these licenses as well as conforming fully to the public's right to know.

COMMISSIONER KENNEDY: Those are code words which should possibly involve debate.

CHAIRMAN HENDRIE: Conforming fully with current legislative requirements, statutory requirements.

COMMISSIONER BRADFORD: I like that better.

CHAIRMAN HENDRIE: Shall we say Sunshine Act?

MR. PEDERSON^E: Or you could say with current legislation such as the Sunshine Act.

(Simultaneous discussion.)

CHAIRMAN HENDRIE: Okay, let's try that, and see how it looks.

Now, I've noticed others have taken breaks from time to time, but I haven't.

Before we break, we have got to --

The disposition of this transcript is what?

MR. MALLORY: Withhold it under Exemption 9(b) until either Congress terminates or until an Act is passed and signed by the President.

COMMISSIONER KENNEDY: Wait, wait, the transcript, it seems to me, must be provisionally classified in its entirety until it is reviewed and the particular portions thereof, which are in fact classified, can be identified.

Those portions should be treated as a classified record. The rest of them, it seems to me, could be treated in the normal course of matters legislative. That is, withheld until such time as the legislation is enacted, or the Congress dissolved.

CHAIRMAN HENDRIE: And is then reviewed by OGC for violation of privacy -- you know, the customary review.

COMMISSIONER GILINSKY: That would include discussions about agreements with specific countries.

COMMISSIONER KENNEDY: All such discussions should be classified.

COMMISSIONER KENNEDY: I should think that the review for classification purposes ought to be conducted jointly by the OGC and Mr. Guhin.

CHAIRMAN HENDRIE: So ordered.

(Whereupon, the meeting was adjourned at 11:45 a.m.)