



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

50-320

November 5, 1979

OFFICE OF THE
COMMISSIONER

Mr. Stanley M. Gorinson
Chief Counsel
President's Commission on the
Accident at Three Mile Island
2100 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Gorinson:

In leafing through the document entitled "Report of the Office of Chief Counsel on the Nuclear Regulatory Commission," I came across one error that seemed to me to be significant enough to call to your attention. The Report on page 37 states that "whether the rules apply to informal rulemaking proceedings, then, is apparently an unsettled question, since a new ex parte rule was recently proposed that would exclude informal rulemaking proceedings from its prohibitions."

This statement is incorrect. The ex parte rule by its own terms does not apply to rulemaking proceedings. The Federal Register notice itself noted that the substance of the proposed rule was largely uncharged from the Commission's current rules and practices. Just last July, the Commission declined to experiment with logging ex parte contacts in rulemakings. (See the attached July 7, 1978 letter to Robert A. Anthony.)

Furthermore, the error is compounded by a second one in Footnote 144, which states that I refused to discuss emergency preparedness during my deposition because of a rulemaking proceeding because of the ex parte rule. The referenced page 93 of my deposition shows that the refusal was based not on the ex parte rule but on my concern that I would be prejudging or appearing to prejudge the outcome of a pending rulemaking. This concern stems from the District Court's holding regarding Chairman Pertschuk in the recent children's television advertising case and has nothing to do with the ex parte rules.

I have not reviewed Commissioner Kennedy's deposition or had the opportunity to discuss the matter with him, but it seems at least possible that his refusal to discuss Class 9 accidents (noted also in Footnote 144) may have been based more on a concern to avoid prejudicial comment than on a concern about ex parte contact, for it would be hard to argue that the Three Mile Island Commission was an "interested party" to either of these proceedings.

Sincerely,

Peter A. Bradford
Commissioner

Attachment:
As stated

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cc: Chairman Hendrie (w/o attachment)
Commissioner Gilinsky "
Commissioner Kennedy "
Commissioner Ahearne "
L. Bickwit, OGC "
S. Chilk, SECY "
Rogovin Inquiry "