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MEMORANDUM FOR: Commissioner Bradford

FROM: Howard K. Shaper
Executive Legal Director

THRU: William J. Dircks, Acting ^{(Signed) William J. Dircks}
Executive Director for Operations

SUBJECT: SOUTH TEXAS BRIEFING

Your memorandum of April 22, 1980, on this subject asks my views on the enforceability of sworn statements taken by I&E investigators. The following response assumes that the question of enforceability refers to whether some sort of sanction is available to punish those making false sworn statements.

In my opinion, where an individual deliberately lies to an I&E investigator about a significant radiological health and safety matter (or any other matter within the NRC's jurisdiction), a violation of 18 U.S.C. 1001 is committed. The statute reads as follows:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

In addition, where the deliberate lie is embodied in a "sworn" statement, i.e., a statement made under oath to a government agent authorized to administer the oath, there also exists a violation of the perjury statute.

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18 U.S.C. 1621. ^{*/}

The fraud-against-the-government statute (18 U.S.C. 1001) has been construed by the courts many times. See United States v. Bramblett, 348 U.S. 503 (1955) for a detailed history of the statute. "Judicial and congressional restiveness about the potential reach of §1001" has been noted. United States v. Bedore, 455 F.2d 1109, 1110 fn. 2 (C.A. 9; 1972). Indeed, the Bedore court has held that false statements must be ones which "might pervert or corrupt the authorized functions of the agencies to whom the statements were made" in order to be embraced by §1001:

"From the statutory history, it is evident that section 1001 was not intended to reach all false statements made to governmental agencies and departments, but only those false statements that might support fraudulent claims against the Government, or that might pervert or corrupt the authorized functions of those agencies to whom the statements were made." United States v. Bedore,... at 1111.

Despite such judicial narrowing of the broad language of 18 U.S.C. 1001 I nevertheless view the sort of lie postulated here as well within the law's proscriptions. Whether in any given case the Department of Justice might seek to prosecute is, of course, another matter.

^{*/} This statute reads in pertinent part as follows:

"§1621. Perjury generally

Whoever -

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true;

. . .

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined not more than \$2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States."

Commissioner Bradford

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Finally, it perhaps should also be noted that if a false statement were of the sort referred to in section 186 of the Atomic Energy Act, the administrative sanctions of license suspension and revocation and civil penalties would also be available.

Your memorandum also asks for a summary of the policy on the use of sworn statements and the mechanisms by which NRC authorizes the taking of sworn statements. As you may recall, on August 14, 1979, the Commission authorized delegation to the Director, I&E of its authority under section 161c. of the Atomic Energy Act to administer oaths and affirmations. In doing so, however, the Commission restricted the redelegation of the authority to the Regional Directors. Any further redelegation of the authority to individual inspectors was "authorized only on a case-by-case basis in consultation with the Office of the Executive Legal Director" (NRC Manual 0127-0311). My office has been consulted a number of times on the redelegation of the authority to individual inspectors and has never interposed any objection to such redelegations. I understand from I&E that it has been that office's policy to seek redelegation of the authority to individual inspectors in instances such as these: where there is some reason to believe that information to be elicited may be disputed; where the inspectors sense a lack of candor on the part of potential interviewees; where the interview is anticipated to be a basis for escalated enforcement action or referral to the Department of Justice; and where a given investigation is known to be "important".

Original signed
by E. K. Sheper 4/25/80

Howard K. Sheper
Executive Legal Director

cc: Chairman Ahearn
Commissioner Billinsky
Commissioner Kennedy
Commissioner Hendrie
Samuel J. Child
Edward Hanrahan
Leonard Bickwit

bcc: V. Stello, I&E
T. Rehn, EDO
E.K. Cornell, EDO

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Index Y or N

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APPROVED BY	JPMurray/ct	HKShaper	WJDfrcks			
DATE	4/25/80	4/25/80	4/25/80			

FROM Commissioner Bradford	ACTION CONTROL	DATES	CONTROL NO.
	COMPL DEADLINE	5/12/80	08818
	ACKNOWLEDGMENT		DATE OF DOCUMENT
	INTERIM REPLY		4/22/80
TO William J. Jircks	FINAL REPLY		PREPARE FOR SIGNATURE OF
	FILE LOCATION		<input type="checkbox"/> CHAIRMAN
			<input type="checkbox"/> EXECUTIVE DIRECTOR
DESCRIPTION <input type="checkbox"/> LETTER <input type="checkbox"/> MEMO <input type="checkbox"/> REPORT <input type="checkbox"/> OTHER		SPECIAL INSTRUCTIONS OR REMARKS	
Ref South Texas briefing - For CLC's view re the enforceability of "sworn" statements taken by IE and a summary of our policy on sworn statements		PRIORITY	
CLASSIFIED DATA			
DOCUMENT ID/NO	CLASSIFICATION		
NUMBER OF PAGES	CATEGORY		
POSTAL REGISTRY NO.	<input type="checkbox"/> NSI <input type="checkbox"/> PD <input type="checkbox"/> PDG		
ASSIGNED TO	DATE	INFORMATION ROUTING	LEGAL REVIEW
WJG	4/23/80	Jircks Cornell Rosen Stalle	ASSIGNED TO DATE
			NO. EQUALS SECTION
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20545

April 22, 1980

MEMO TO: William J. Dircks
Acting Executive Director
for Operations

FROM: Peter A. Bradford

SUBJECT: SOUTH TEXAS BRIEFING

At the briefing on South Texas last Tuesday, there appeared to be a difference of opinion between OIA and ELD about the enforceability of the "sworn" statements taken by I&E. I would like ELD's view on this matter. Additionally, it was stated that one of the big differences between this last investigation and the previous ones is that the investigators in this last one had the authority to take sworn testimony. I would have thought that the authority to take sworn statements would be given and used frequently. Please summarize our policy on sworn statements detailing specifically the mechanism by which NRC authorizes the taking of sworn statements.

A response is requested by Monday, May 12th.

cc: Chairman Ahearne
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Samuel J. Chilk
Ed Hanrahan
Len Bickwit

REC'D
MAY 2 1980
U.S. NUCLEAR REGULATORY COMMISSION