



14.  
**Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

DISCUSSION OF MANAGEMENT/ORGANIZATION  
AND INTERNAL PERSONNEL MATTERS

CLOSED MEETING  
Exemptions Nos 2 and 6

Tuesday, September 13, 1983

Pages 1-78

8809300125 680916  
PDR FOIA  
CUMMINGS84-61 PDR

Prepared by:  
ANN TIPTON  
Office of the Secretary

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

DISCUSSION OF MANAGEMENT/ORGANIZATION AND  
INTERNAL PERSONNEL MATTERS

CLOSED MEETING  
Exemptions Nos. 2 and 6

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

Tuesday, September 13, 1983

Pursuant to Notice, the Commission met in closed session at 2:10 o'clock, p.m.

COMMISSIONERS PRESENT:

NUNZIO PALLADINO, Chairman of the Commission  
VICTOR GILINSKY, Commissioner  
THOMAS ROBERTS, Commissioner  
JAMES ASSELSTINE, Commissioner  
FREDERICK BERNTHAL, Commissioner

1 time. The chief fault I can find on Cummings has to do  
2 with Hoyt and Aloit's allegation that he tried to conceal  
3 the fact that he had discussed this one report with Region  
4 III and, aside from the others, I don't find they are  
5 problems where, I would say, he should be dismissed. I  
6 don't find them. This is the only one that comes close  
7 enough to that and I'm not sure that we have all the facts  
8 or maybe we have as many facts as we're going to get.

9 Cummings points out that, as evidence of the  
10 fact that he didn't try to conceal this matter, is the  
11 fact that there are asterisks showing that changes had  
12 been made in the report as a result of going to the Region  
13 and getting input. However, the evidence that Helen Hoyt  
14 and Sive Aloit have indicates that the asterisks were put  
15 on there after he had signed off on the report. If that's  
16 the case, it does make me a little bit nervous.

17 However, it's the concealment that would give me  
18 the problem. I think on the matter of whether or not he  
19 should go back to people he interviewed to check on the  
20 adequacy of interviews, I'd say that's something we could  
21 speak to and could counsel him on.

22 I come down to where I don't think there is  
23 enough in here to take action against Cummings. Remember,  
24 aside from finding no evidence of bad faith, it says,  
25 "Moreover, we cannot conclude that the conduct of senior

1 NRC officials with respect to the Zimmer investigation  
2 violate any statutory regulatory requirement applicable to  
3 this agency, nor do we find any clear evidence of the  
4 intent on any employees' part to purposefully subvert the  
5 Commission's regulatory or enforcement mission." Those  
6 are pretty strong statements and, when they come to  
7 counseling him, they don't hit very hard. They talk more  
8 about the telephone line, they talk about the hot line --  
9 wait a minute, I'm sorry -- wrong page.

10 It says, "James Cummings, as a senior official  
11 in OIA, failed to exercise the high degree of judgment  
12 which should be required of a senior Commission official.  
13 We recognize that James Cummings has no monitoring func-  
14 tion over an IE investigation but, as a quasi-inspector  
15 general, he was derelict in his duty to keep OIA alert to  
16 the status of a sensitive investigation with known health,  
17 safety, and criminal circumstances."

18 I think the points that are made there are  
19 pretty well refuted by Cummings. I'm surprised they don't  
20 treat ~~is more~~ <sup>more in</sup> detail the one that comes out as the item of  
21 concern, at least when it comes to counseling.

22 I also considered the balance between trying to  
23 counsel Cummings in the areas that are discussed in this  
24 report or getting him better on track or just trying to go  
25 out and get a new person. I think the balance comes out

1 in favor of trying to keep him and counseling him to  
2 better effectiveness.

3 I also think that Bill Dircks' memo has a number  
4 of important, philosophical points that we ought to  
5 consider, but they apply more to Stello and Keppler than  
6 they do to Cummings.

7 Anybody else want to go next?

8 COMMISSIONER ASSELSTINE: I'll go next. You did  
9 pretty good until the end, Joe.

10 COMMISSIONER BERNTHAL: I don't get the oppor-  
11 tunity

12 CHAIRMAN PALLADINO: I would have go last, first  
13 -- whatever way. That's the price of being the Chairman.

14 COMMISSIONER ASSELSTINE: I'll go in the same  
15 order that you did. I agree with the point that Vic made.  
16 I think we have to say whether we agree or disagree with  
17 the principal findings that Helen Hoyt and Aloit made on  
18 the <sup>different</sup> people.

---

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

2 1/2 6

Release 23

24

25

In Cummings, I agree with Joe. I find considerably more troubling than the other two. I'm not terribly concerned about not returning the phone calls and

2 1/2 6

1 taking his vacation and not having somebody follow up on  
2 returning phone calls to Applegate, but I'm very troubled  
3 by the reviewing with the regional people the inves-  
4 tigation report and the interviews and I think it's  
5 important that it wasn't just the interviews that were  
6 reviewed with those people but the summary of the inves-  
7 tigation report ~~which~~ was reviewed with those people, too,  
8 and I find troubling Helen Hoyt's conclusion that he did  
9 attempt to conceal the fact that Schnebeling had clearly  
10 directed that the changes weren't to be indicated in the  
11 report.

12 I think it was bad investigative practice. I  
13 think it was the same kind of investigative practice that  
14 Cummings, himself, had criticized in the regional offices  
15 in the case of Hayward Tyler and also (Narbeck). I think  
16 the supporting interviews show just about everybody else,  
17 even Schnebeling, in Cummings' office was opposed to doing  
18 that -- going out and reviewing the report with the  
19 regional people -- and I think the fact that Cummings  
20 asked Helen Hoyt for an opportunity to review this report  
21 before it went to the Commission is an indication that he  
22 still has a problem with that.

23 CHAIRMAN PALLADINO: Incidentally, I wonder if  
24 that comes from this <sup>audit</sup> ~~other~~ function where the auditor's  
25 reports are sent to the people that have been audited for

1 any comment, suggested change. GAO does it.

2 COMMISSIONER ASSELSTINE: I don't know, but I  
3 feel an investigation is fundamentally different from an  
4 audit. I think it's a bad investigation practice. It's  
5 one thing to show somebody a transcript of an interview  
6 and say, "Is this an accurate representation of what you  
7 said?" And a record review of <sup>whether there is</sup> anything in there that is  
8 just incorrect <sup>or was not properly</sup> transcribed or reported, but  
9 it's quite another to take a summary of the report itself  
10 and say, "Now I'm going to read you the report and you  
11 tell me if there are anythings in there which you disagree  
12 with or that you think are wrong and ought to be changed,  
13 and then I'm going to make those changes and make sure  
14 that they are not reflected in the report."

15 COMMISSIONER GILINSKY: This is the Region IV  
16 problem.

17 COMMISSIONER ASSELSTINE: Yes.

18 COMMISSIONER GILINSKY: Worse.

19 COMMISSIONER ASSELSTINE: Worse because these  
20 are the people who criticized Region IV for doing it and  
21 yet did the same thing.

22 CHAIRMAN PALLADINO: But do you agree, going  
23 back and having them look at what was presumed to have  
24 been the testimony obtained from the interview --

25 COMMISSIONER ASSELSTINE: I don't have a problem



2  
1 with that but, even there, I think good investigating  
2 practice dictates what you do is you make it clear to  
3 everybody that that was done and you make it clear that  
4 any changes that were made were based upon that review,  
5 but I think it's pretty clear, in this case, that Cummings  
6 went beyond that and he made an effort to keep it secret.

Release  
7 I guess my own view on what to do about  
8 Cummings, to a certain extent, goes back to other items  
9 that we've already discussed before. My own view is that  
10 this is a further indication to me that Cummings is not  
11 the right person for this job. I think, when you look at  
12 the Applegate FOIA request business, when you look at his  
13 handling of our dealings with the Justice Department on  
14 the Hartman allegations, the lack of documentation of  
15 those discussions with Justice, and when you look at this  
16 report -- particularly the regional review of the draft  
17 report -- it just reinforces my view that Cummings is not  
18 the right person for that job and we ought to figure out  
19 some way to move him from that job. I just don't think he  
20 ought to continue.

21 CHAIRMAN PALLADINO: You know, we have taken  
22 action on the FOIA report. That doesn't mean we can't add  
23 ~~to~~ a litany of things.

24 COMMISSIONER ASSELSTINE: That's right.

25 CHAIRMAN PALLADINO: We did assess, though, that

1 on the audit --

2 COMMISSIONER GILINSKY: Let's see, that one  
3 isn't over. It's not over.

4 CHAIRMAN PALLADINO: To a certain extent it may  
5 not be, but we did not find great fault, or any fault,  
6 with his <sup>audit</sup> ~~other~~ function which I gather is two-thirds of  
7 his job and I think a number of the reports on the inves-  
8 tigations have been good reports.

9 I took a look at this last one that OIA made  
10 that seemed to me like a good report. I'm not an expert.  
11 So, we've got to be careful that, again, we don't take a  
12 particular instance and say, well, this plus that is  
13 indicative of a person that is not doing his job. I think  
14 he does try to do his job. I am concerned about this  
15 concealment angle, I've got to admit that. That's the one  
16 that troubles me the most and I guess a little bit of that  
17 same worry was associated with the FOIA request.

18 On balance, though, you've come down here, and  
19 I've said all I have to say.

20 COMMISSIONER ASSELSTINE: I think that this  
21 report, particularly when viewed in light of the other two  
22 items that we have been dealing with with Cummings fairly  
23 recently, just reinforces my view, although I'll be quite  
24 candid and say I had that view before, <sup>too</sup>

25 COMMISSIONER ROBERTS: But you might think

9/13/83

45

1 that's fair to cut through everything. Water can't cut  
2 us.

3 COMMISSIONER ASSELSTINE: You can remove him to  
4 a non-sensitive SES position.

5 CHAIRMAN PALLADINO: You say the FOIA is not  
6 finished. I'd like to make sure that you're thinking the  
7 same thing that I'm thinking or vice versa.

8 The only thing that I think might be still open  
9 on the FOIA admonishment is his request. He never settled  
10 whether or not he wants these tapes.

11 COMMISSIONER ROBERTS: I'd like to answer that.

12 CHAIRMAN PALLADINO: Is that what --

13 COMMISSIONER GILINSKY: Well, he's left open how  
14 he's going to react to our action and the fact that he has  
15 left it open this way, I'd find it to reflect badly on  
16 him.

17 COMMISSIONER ASSELSTINE: It wasn't just the --

18 COMMISSIONER GILINSKY: It was quite an unsatis-  
19 factory response on his part, in my view, because he went  
20 to war with the Commission and then he said, "Well, let me  
21 think about it." He didn't say, "I'm sorry. I shouldn't  
22 have done that. It was stupid of me to do this."

23 COMMISSIONER ASSELSTINE: That's right. He just  
24 said, "Hold my request in abeyance until I decide if I  
25 want to do something further.

9/13/83

1 CHAIRMAN PALLADINO: You're thinking the same  
2 thing I'm thinking. Okay. I just wanted to see if there  
3 was anything more.

4 COMMISSIONER ASSELSTINE: I guess that finishes  
5 what I want to say.

6 CHAIRMAN PALLADINO: Who wants to go next?

7 COMMISSIONER GILINSKY: I agree with everything  
8 Jim has said.

9 COMMISSIONER BERNTHAL: It's your turn. I'm the  
10 most junior member.

11 COMMISSIONER ROBERTS:

12  
13  
14  
15  
16  
17  
18  
19 Cummings is a different matter. I think,  
20 regardless of who's right or wrong,  
21 unfortunately, Cummings has destroyed any degree of  
22 confidence in this room.

23 CHAIRMAN PALLADINO: Any degree? No, I don't  
24 agree.

25 COMMISSIONER ROBERTS: I only say for myself.

COMMISSIONER ASSELSTINE: I sure have.

9/13/83

1 COMMISSIONER ROBERTS: There are too many pieces  
2 here. I don't think you can take one particular. <sup>(few) although</sup> I think  
3 you did ~~earlier on~~ <sup>on the audit</sup> and that's ~~fine~~ <sup>right</sup>, but I just think he's  
4 a loose cannon, now, and without getting into the sub-  
5 stance of it, this stuff about -- what's the latest thing  
6 about Malsch and American Express? Forget the merits of  
7 that which is another issue. I think he showed incredibly  
8 bad judgment but I think he's out there -- he's a loose  
9 cannon.

10 CHAIRMAN PALLADINO: He's over-reacting.

11 COMMISSIONER ROBERTS: Of course he is.

12 CHAIRMAN PALLADINO: I was going to call him in  
13 and counsel him on it and then I said, "Well, if I start  
14 to counsel him on these things and the Commission takes a  
15 stronger position, it would appear, in my counseling, that  
16 I'm doing what the Commission wants to do." So I've been  
17 gun-shy, also, which may be an over-reacting <sup>down</sup>. That's why  
18 I'm anxious to get going with whatever decision we're  
19 going to make.

20 I think, on the over-reaction, that's where  
21 counseling could very much help.

22 COMMISSIONER ROBERTS: I'm not sure there is  
23 anything there to be counseled.

24 COMMISSIONER GILINSKY: If he were a division  
25 head somewhere, it's one thing, or if he were in charge of

1 handing out contracts on waste disposal, <sup>or something</sup> that's one thing,  
2 but this is an extremely sensitive position and one in  
3 which a person in whom the Commission has just got to have  
4 confidence. You know, this isn't the kind of thing you  
5 decide -- you know, even if there weren't a majority for  
6 having him go, I just don't think you can keep a person in  
7 a position like that unless he really has the substantial  
8 confidence of the Commission.

9 COMMISSIONER ROBERTS: I have to say I reached  
10 that conclusion but I had to be realistic.

11 CHAIRMAN PALLADINO: So what are you saying?  
12 You think he ought to be removed?

13 COMMISSIONER ROBERTS: Yes, I kind of think  
14 that. Now, how's that for a half-assed answer. I just  
15 think he's destroyed himself. I think we gave him some  
16 opportunity, but still.

17 COMMISSIONER GILINSKY: I don't know. We dealt  
18 fairly mildly with him on the other case.

19 COMMISSIONER ROBERTS: Oh, Victor, we don't  
20 think like a career bureaucrat.

21 COMMISSIONER GILINSKY: Considering the situa-  
22 tion, he could have just come in and said, "Well, okay --"

23 COMMISSIONER ROBERTS: We gave him a real ~~bad~~ <sup>eye</sup> <sub>time</sub> <sup>b'25</sup>  
24 <sup>eye</sup> time, I think. Am I wrong?

25 COMMISSIONER GILINSKY: Not compared to what you



9/13/83

49

1 might have done. I think he could have very easily come  
2 in here and said, "Gentlemen, I accept the criticism. I  
3 wish it hadn't happened." Gone around, shaking hands with  
4 everybody in the room and said, "Look, I want to work with  
5 you."

6 COMMISSIONER ASSELSTINE: That would have solved  
7 the problem.

8 COMMISSIONER ROBERTS: Sure. For me, it would. <sup>would</sup>

9 CHAIRMAN PALLADINO: But when he kept that last  
10 sentence in there --

11 COMMISSIONER GILINSKY: No, that's not what he  
12 did, <sup>Joe</sup>

13 CHAIRMAN PALLADINO: Yes, he did, sure.

14 COMMISSIONER GILINSKY: He then wrote a letter.  
15 He threatened you; he threatened us. He basically  
16 threatened a court case and he's gathering the evidence.  
17 insisted on the tapes.

18 COMMISSIONER ASSELSTINE: It was only after you  
19 called him that he reluctantly said, "Well, I'm still  
20 willing to try <sup>and</sup> to work with you."

21 CHAIRMAN PALLADINO: No. I think in my conver-  
22 sation with him it was a more forthright willingness to  
23 work with us. He does take criticism very hard, as many  
24 of us do.

25 COMMISSIONER GILINSKY: And he's not very smart

9/13/83

50

1 or else he would not have gotten himself into this situa-  
2 tion.

3 COMMISSIONER BERNTHAL: Well, that's the final  
4 indictment.

5 (Laughter.)

6 CHAIRMAN PALLADINO: Let's see. How do I write  
7 this down?

8 COMMISSIONER ROBERTS:

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19 Now, Cummings -- I've given you my  
20 view. That's a whole different thing.

21 CHAIRMAN PALLADINO: I was trying to write down  
22 whether you felt he ought to be --

23 COMMISSIONER ROBERTS: I think I will reluc-  
24 tantly conclude that he should not continue in that  
25 position for a variety of reasons, and I was not of that



1 view prior to this last round.

2 CHAIRMAN PALLADINO: I think we have to be  
3 prepared to explain to him why we've reached this conclu-  
4 sion.

5 COMMISSIONER ROBERTS: I think so.

6 CHAIRMAN PALLADINO: As a matter of fact, I  
7 think he ought to be alerted that this is the way the  
8 Commission is coming out and give him a chance to be  
9 heard. I think we have to do that so we don't give the  
10 appearance that our actions are so summary that we don't  
11 give people a chance to respond.

12 COMMISSIONER GILINSKY: Now, wait a minute.

13 CHAIRMAN PALLADINO: Now, wait a minute, Vic --  
14 because you've got a whole organization and if I, working  
15 somewhere else, got the feeling that a colleague about  
16 whom maybe I don't <sup>know all</sup> the details was summarily treated, I'd  
17 be worried. I'd say, "If that's the way the Commission  
18 handles their personnel problems, well, maybe this isn't a  
19 good place to work." And I do think we have to keep in  
20 mind all the people we do have here and I think to treat  
21 the case equitably you have to hear him out.

22 COMMISSIONER GILINSKY: Joe, this is a very  
23 confidential Commission position and, to have that posi-  
24 tion, you have to retain the confidence of the Commission.  
25 It seems to me that it is <sup>a full and</sup> ~~an~~ adequate answer that you no

2

1 longer have retained the confidence of the Commission.

2 Now, he is in the SES. One of the advantages of  
3 the SES is that the managers in this agency have some  
4 flexibility in where they put people, and I think this is  
5 a case where that ought to be exercised.

6 CHAIRMAN PALLADINO: I'm not saying we have a  
7 public meeting with Cummings, but we ought to have  
8 Cummings heard.

9 COMMISSIONER ROBERTS: I have a procedural  
10 question. Is there any question that we're entitled to do  
11 this?

12 COMMISSIONER GILINSKY: I don't think so.

13 COMMISSIONER ROBERTS: Is there any question?

14 CHAIRMAN PALLADINO: I don't think there's any  
15 question.

16 COMMISSIONER GILINSKY: I thought that's what  
17 you were addressing.

18 CHAIRMAN PALLADINO: No, I'm talking about good,  
19 sound personnel practice to go tell a person what action  
20 we're contemplating or about to take or are taking. Give  
21 him a chance to tell you any other information that he  
22 might feel appropriate for you to consider and then  
23 confirm a decision.

24 COMMISSIONER ROBERTS: I'm not -- if you're  
25 saying we ought to bring   in here and confront him

2  
6

1 with the facts and say, "Now, have you got anything that's  
2 going to change our minds," I think you're just going to  
3 dig a deeper hole.

4 CHAIRMAN PALLADINO: You meant Cummings.

5 COMMISSIONER ROBERTS: Cummings.

6 CHAIRMAN PALLADINO: Just because the tapes on.  
7 That's the least I would do.

8 COMMISSIONER ROBERTS: Well, I don't have any  
9 problem with that. Let me ask you this, I'm the sole  
10 perpetrator. If this action is taken --

11 COMMISSIONER BERNTHAL: What's the action, I'm  
12 sorry?

13 COMMISSIONER ROBERTS: Proposing that we can  
14 Cummings, is that not what we're saying?

15 CHAIRMAN PALLADINO: Well, I don't know what you  
16 mean. We remove him from the job.

17 COMMISSIONER ASSELSTINE: It depends on what we  
18 do with him, I think, dictates also the rights. McDermott  
19 probably knows <sup>a lot</sup> better than I do. If you are going to move  
20 him within the agency and keep him in some other SES  
21 position, it's my understanding you can move him without  
22 any reason at all. Say, "We're just not confident with  
23 you in that position. We want you in some other position,  
24 and that's our decision." We don't have to give any  
25 reasons at all.

2

1 COMMISSIONER ROBERTS: No explanation <sup>is necessary</sup>

2 COMMISSIONER ASSELSTINE: That's right. I  
3 think, if <sup>we are</sup> ~~you are~~ going to dismiss him from the agency and  
4 say, "There's no way we want you to continue in this  
5 agency and you're fired," then I think he does have rights  
6 and I think we have to then come up with a set of specific  
7 --

8 COMMISSIONER ROBERTS: What does he do -- go to  
9 the Merit Protection Board, or something?

10 COMMISSIONER ASSELSTINE: That's right.

11 CHAIRMAN PALLADINO: I think there are several  
12 ways we could proceed. One way we could do ~~it~~ is -- I've  
13 got to leave the caveat that I would like to hear him out,  
14 but then we decide we remove him from being Director of  
15 OIA, we appoint an acting director -- it might be  
16 Messenger, although he's more strongly audit. I guess  
17 maybe solely audit, but at least he seems to have ex-  
18 hibited sound judgment and the audit reports are good and  
19 maybe, in large part, because of him, but we have other  
20 options as to who to put in there, but we might move him  
21 out and move Messenger acting, and then put Cummings  
22 somewhere else.

23 Then you have to start a procedure to replace  
24 Cummings. That could take six months.

25 COMMISSIONER ROBERTS: Could I ask a question?

1 Suppose the Commission decides to remove him from his  
2 present duties, can we turn around and say, "Here, Mr.  
3 Executive Director for Operations, here is an SES em-  
4 ployee. Find a spot for him in the agency." Can you do  
5 that?

6 COMMISSIONER BERNTHAL: Sure.

7 COMMISSIONER ASSELSTINE: Yes. Or we can even  
8 pick the spot.

9 CHAIRMAN PALLADINO: We can pick the spot.

10 COMMISSIONER ROBERTS: I'm sure we could.

11 CHAIRMAN PALLADINO: I've been thinking, what  
12 kind of spot could we put him in? I mentioned this one to  
13 Jim. He has primarily been in investigations. So ~~he's~~ his  
14 talents, presumably, are investigations.

15 COMMISSIONER ROBERTS: Now, wait a minute. Who

16 --

17 COMMISSIONER ASSELSTINE: He's talking about  
18 Cummings.

19 CHAIRMAN PALLADINO: I'm talking about Cummings.

20 COMMISSIONER ROBERTS: I thought his background  
21 was audit.

22 CHAIRMAN PALLADINO: Well, but he's also been  
23 investigations and audit. He's been critical of inves-  
24 tigation reports. Let me finish. I'm trying to be  
25 constructive. I'm not trying to force anything down

1 anybody's throat. I'm open to any other suggestions,  
2 incidentally.

3 To move him out of OIA; to assist in reviewing  
4 the adequacy of the investigations. He would be doing  
5 this for Hayes, in seeing whether or not they should have  
6 interviewed Arnold in addition to somebody else; or do the  
7 criticizing that normally comes afterwards, do it before-  
8 hand. That could be constructive for Sen Hayes.

9 I'm going on the premise we take advantage of  
10 whatever his talents are and put them to use. That's one  
11 way to put them to use. I'm open to any other sugges-  
12 tions.

13 COMMISSIONER GILINSKY: You're determined to get  
14 yourself into trouble.

15 (Laughter.)

16 CHAIRMAN PALLADINO: Tell me where else you'd  
17 put him. Go on the premise that you want to -- you've got  
18 him. You want to put him to use and you want to put him  
19 to use where he has talents. Now, where do you come out?

20 COMMISSIONER GILINSKY: First of all, it seems  
21 to me that Jim is going to want to leave the agency.

22 CHAIRMAN PALLADINO: Well, that's another way of  
23 proceeding.

24 COMMISSIONER GILINSKY: And it will take a  
25 little while and it's just a matter of finding a place for

2

1 him while he negotiates a job in some other part of the  
2 Government, as he presumably will do, and I think that's  
3 perfectly reasonable. I don't think he ought to be on the  
4 street. We'll work something out. I don't see any big  
5 problem. He can be special assistant to Jill Dircks,  
6 that's what he can be.

7 COMMISSIONER ASSELSTINE: Maybe find a spot for  
8 him doing something on the administration side.

9 COMMISSIONER GILINSKY: Yes.

10 COMMISSIONER ASSELSTINE: Office of Adminis-  
11 tration.

12 CHAIRMAN PALLADINO: I have another concern.  
13 Here, he just issued a report on whether or not there was  
14 collusion at TMI-2 and, a short time afterwards, we fire  
15 him.

16 COMMISSIONER GILINSKY: I wouldn't worry.

17 CHAIRMAN PALLADINO: Well, I worry about such  
18 things. It says, "Ah ha, they didn't like that he found  
19 no collusion."

20 COMMISSIONER GILINSKY: Did he find no  
21 collusion?

22 CHAIRMAN PALLADINO: Yes, he found no collusion.

23 COMMISSIONER GILINSKY: We're not firing him  
24 because he didn't find collusion.

25 CHAIRMAN PALLADINO: I appreciate that. I say

2



1 you've got to --

2 COMMISSIONER GILINSKY: No one's ren going to

3 --

4 COMMISSIONER ASSELSTINE: Yes.

5 COMMISSIONER ROBERTS: Oh, I don't know. I  
6 would not think anything, today.

7 COMMISSIONER BERNTHAL: If he had found collu-  
8 sion and we fired him.

9 CHAIRMAN PALLADINO: Well, either way.

10 COMMISSIONER GILINSKY: No.

11 CHAIRMAN PALLADINO: I am.

12 COMMISSIONER ASSELSTINE: I guess my problem <sup>15,</sup>  
13 the more I think <sup>about it on</sup> ~~about~~ the OI business, is, I guess, the  
14 root causes of a lot of my concerns about Cummings are in  
15 the investigations side. I think you're going to create  
16 more problems by putting him in OI.

17 COMMISSIONER GILINSKY: Is it possible to break  
18 up --

19 COMMISSIONER ROBERTS: To do what?

20 COMMISSIONER GILINSKY: Break up OIA.

21 CHAIRMAN PALLADINO: And make it audit and put  
22 all investigations under Ben Hayes. That was another --

23 COMMISSIONER GILINSKY: Well --

24 COMMISSIONER ROBERTS: But you've got to have an  
25 internal oversight.



2

1 COMMISSIONER GILINSKY: I wouldn't do that.

2 CHAIRMAN PALLADINO: Then I wouldn't break up

3 OIA.

4 COMMISSIONER GILINSKY: That doesn't help you,  
5 then.

6 CHAIRMAN PALLADINO: But I could see, if you  
7 divide OI so that it has a section which is externally.  
8 ~~That may work.~~ <sup>would</sup>

9 COMMISSIONER GILINSKY: It seems to me you don't  
10 have to cross every "t" and dot every "i." Basically, the  
11 important thing is if, in fact, the Commission doesn't  
12 have confidence in Cummings, he ought to be told that. I  
13 think, as a result of that, he is not going to want to  
14 stay here. He'll want to look for another job. It  
15 seems to me that, once that has been said to him, he ought  
16 not to continue in his investigating role but ought to be  
17 in some other capacity, perhaps, doing some special job for  
18 however long it takes for him to move. He can be attached  
19 to Bill Dircks' office, he can be attached somewhere else.  
20 I don't think it's a big problem. He'll get his salary.

21 COMMISSIONER ROBERTS: What are your views?

22 COMMISSIONER BERNTHAL: Nobody's asking.

23 COMMISSIONER ROBERTS: Well, asking.

24 (Laughter.)

25 CHAIRMAN PALLADINO: I think we ought to have

1 your views.

2 COMMISSIONER BERNTHAL: I thought I might get  
3 away with it.

4 COMMISSIONER ROBERTS: No, not a chance.

5 COMMISSIONER BERNTHAL: I feel like I've just  
6 walked into a group of people who have reading a Dickens'  
7 novel for three years and followed every character and I  
8 just picked up the book.

9 I certainly don't know the background of all  
10 this as well as the rest of you do. I have a question. I  
11 gather, in the case of Cummings, this is not the straw  
12 that broke the camel's back, or is it? Or is it the two  
13 by four that broke the camel's back?

14 CHAIRMAN PALLADINO: You say you don't --

15 COMMISSIONER ROBERTS: Well, I don't know. It  
16 depends on how you look at it.

17 COMMISSIONER BERNTHAL: <sup>this latest incident</sup> is ~~it~~ the straw that  
18 broke the camel's back or the two by four? Is there a  
19 history of difficulties with him? I gather there is.

20 CHAIRMAN PALLADINO: The only history I know of  
21 is the FOIA request where we took action. Then comes this  
22 one. Then, interlaced with the FOIA request, is his  
23 reaction that gives us some cause for concern. And those  
24 are the three things I would know about.

25 I don't think it's either the straw or the two

1 by four that broke the camel's back.

2 COMMISSIONER BERNTHAL: But something in be-  
3 tween, though. If it were this incident taken alone, then  
4 I probably would, just from reading the materials to the  
5 extent I have, be somewhat more lenient, but it <sup>is</sup> clear to  
6 me that it's not just this incident and, therefore --  
7 look, I'm largely going to accept your management judgment  
8 on that, I think, Joe,  
9

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIRMAN PALLADINO: Let me find out what you  
want to do on Cummings because I'm doing more of what you

Release

1  
2 want to do than what I would want to do.

3 COMMISSIONER GILINSKY: Maybe we better talk to  
4 Cummings.

5 (Laughter.)

6 CHAIRMAN PALLADINO: I think I've always repre-  
7 sented the Commission as honestly as I could, but I would  
8 propose, first, to discuss with Dircks the fact that this  
9 would be an action where we would turn him over to him and  
10 so he can think about it. That was one thing.

11 COMMISSIONER GILINSKY: Now, wait a minute. I  
12 would not discuss this with Dircks. We should --

13 CHAIRMAN PALLADINO: Well, if we're going to  
14 shift --

15 COMMISSIONER GILINSKY: No, no, no. First,  
16 we've got to talk to Cummings. This is not an action in  
17 which Dircks has any say.

18 CHAIRMAN PALLADINO: <sup>That's right</sup> He doesn't have any say  
19 except that we are going to give him the problem.

20 COMMISSIONER GILINSKY: It's not a problem.

21 COMMISSIONER ROBERTS: We need a sequential one.  
22 I think step one is tell Cummings that he no longer enjoys  
23 the confidence of <sup>via majority</sup> the Commission. Is that not an accurate  
24 portrayal?

25 COMMISSIONER GILINSKY: Right.

COMMISSIONER ASSELSTINE: That's right.

1 CHAIRMAN PALLADINO: Does that mean as of that  
2 day or is it the moment I tell him that he's no longer  
3 Director or do I tell him the Commission would be willing  
4 to meet with him to hear any additional remarks he ~~might~~<sup>might</sup>  
5 have to make and, depending on the results of that meeting,  
6 we would confirm this position, if that is what <sup>is</sup> still  
7 maintained ~~and~~ 2.

8 COMMISSIONER BERNTHAL: He seems like a pretty  
9 confrontational guy. *I assume you'd have a confrontation*

10 COMMISSIONER GILINSKY: He may or may not. I  
11 don't know.

12 CHAIRMAN PALLADINO: But what do you want me to  
13 tell him? As of that moment, he is no longer the Director  
14 of OIA or would you be willing to hear him? I think we  
15 ought to hear him.

16 COMMISSIONER ROBERTS: I have no objection to  
17 hearing him.

18 COMMISSIONER ASSELSTINE: I'm willing to hear  
19 him, I guess.

20 COMMISSIONER ROBERTS: I don't think it's going  
21 to accomplish anything.

22 CHAIRMAN PALLADINO: We can do it in a matter of  
23 a couple of days.

24 COMMISSIONER GILINSKY: Well, I think you ought  
25 to tell him that he doesn't enjoy the confidence of a

1 majority of the Commission. The Commission would like him  
2 to step down but would like to talk to him -- or, if he  
3 would like to talk to the Commission, the Commission would  
4 be pleased to talk with him. *about it*.

5 COMMISSIONER BERNTHAL: Leave him the option.

6 CHAIRMAN PALLADINO: Yes, I would propose we  
7 leave him the option.

8 COMMISSIONER GILINSKY: And I would also say  
9 that what we contemplate is him staying on in the agency  
10 in some other capacity until he finds a suitable *niche* ~~pitch~~, ~~pitch~~,  
11 that's fine, and if he wanted to move on, that's okay,  
12 too.

13 CHAIRMAN PALLADINO: All right. Then I'm going  
14 to tell him that. Again, I'll probably write it all out.  
15 Not because I would read it but because, having written it  
16 out, I don't ~~miss~~ <sup>miss</sup> the words.

17 COMMISSIONER GILINSKY: And there is no intent  
18 to do him in personally, or anything like that, but the  
19 situation has <sup>just</sup> reached the point where we don't feel he can  
20 occupy that position.

21

22

23

24

25



1 CHAIRMAN PALLADINO: I'm not running away. I'm  
2 just want to give a thought that I made a commitment to  
3 give, in a weak moment.

4 COMMISSIONER ROBERTS: Wouldn't that be easier  
5 for you?

6 CHAIRMAN PALLADINO: What's that?

7 COMMISSIONER ROBERTS: Would that be easier for  
8 you?

9 CHAIRMAN PALLADINO: Well, I was thinking of  
10 writing these things out. But then I come back Friday and  
11 we have two meetings and I was hoping to leave as soon as  
12 the 1:30 meeting was over.

13 COMMISSIONER BERNTHAL: It looks like you've got  
14 to do it, Jim.

15 COMMISSIONER ASSELSTINE: Not me.

16 CHAIRMAN PALLADINO: No, I will do it by Monday.

17 COMMISSIONER ROBERTS: Look, Joe, I'm not  
18 volunteering, don't misinterpret that.

19 CHAIRMAN PALLADINO: I would do it by Monday.

20 COMMISSIONER GILINSKY: You ought to do it  
21 sooner. In fact, you ought to do it today.

22 CHAIRMAN PALLADINO: Well, maybe could do it  
23 by tomorrow morning.

24 COMMISSIONER GILINSKY: Well, these things just

25 --

*MA*



1 CHAIRMAN PALLADINO: The best I could do is  
2 possibly tomorrow morning, if I get out of here soon.

3 COMMISSIONER GILINSKY: Well, tomorrow morning  
4 is fine.

5 CHAIRMAN PALLADINO: Maybe I can. Maybe I can  
6 at least talk to Cummings.

7 COMMISSIONER GILINSKY: That's ~~who we're aiming~~  
8 *for really the important - - -*

9 COMMISSIONER ASSELSTINE: That's right.

10 CHAIRMAN PALLADINO: If I, for some reason,  
11 can't do it tomorrow morning, you'll know. I don't know  
12 if I'll have time to tell you what I'm going to say, but  
13 I'll tell you what I said.

14 (Laughter.)

15 CHAIRMAN PALLADINO: And it will be along the  
16 lines you indicated.

17 COMMISSIONER GILINSKY: I hope the result is the  
18 same.

19 CHAIRMAN PALLADINO: Oh, yes. Anything more  
20 that we should touch on this afternoon?

21 (No response.)

22 CHAIRMAN PALLADINO: I need a vote to withhold  
23 the tape.

24 (Chorus of ayes.)

25 CHAIRMAN PALLADINO: Say it loud enough so the

*Rel.*  
*on*

1 tape can hear it.

2 (Chorus of ayes.)

3 COMMISSIONER BERNTHAL: Unanimous.

4 CHAIRMAN PALLADINO: All right. Thank you. Why  
5 don't we stand adjourned.

6 (Whereupon, the foregoing meeting was adjourned  
7 at 3:50 o'clock, p.m.)  
8  
9

10 *Re*

11 *PA*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25