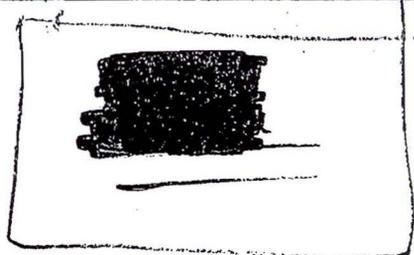


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INQUIRY INTO THE TESTIMONY OF THE EXECUTIVE DIRECTOR FOR OPERATIONS

FBI Agent Names or Other Identifying
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VOLUME I SUMMARY REPORT

Classified by T. J. McTiernan
Director, Office of Inspector
& Auditor 2/18/78
(title)

FEBRUARY 1978

NATIONAL SECURITY
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OFFICE OF THE GENERAL COUNSEL
OFFICE OF INSPECTOR & AUDITOR
U.S. NUCLEAR REGULATORY COMMISSION



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

February 17, 1978

Document No. OIA
This document consists of 48 pages
No. 13 of 50 copies, Series A

MEMORANDUM FOR: Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford

FROM:  Thomas J. McTiernan, Director
Office of Inspector and Auditor
 Jerome Nelson, General Counsel
Office of the General Counsel
 William E. Ryan, Assistant Director
for Investigations, OIA
 James A. Fitzgerald, Attorney
Office of the General Counsel

SUBJECT: INQUIRY INTO TESTIMONY OF THE EXECUTIVE DIRECTOR FOR
OPERATIONS BEFORE TWO HOUSE SUBCOMMITTEES

BACKGROUND

By memorandum dated December 22, 1977, addressed to the General Counsel and the Director, Office of Inspector and Auditor (OIA), the Chairman requested that an investigation be conducted which focuses on the testimony of Lee V. Gossick, the Executive Director for Operations (EDO), before the House Subcommittee on Energy and Environment on July 29, 1977, and the House Subcommittee on Energy and Power, August 8, 1977. In his memorandum the Chairman noted that by letter dated November 15, 1977, Representatives Udall and Tsongas had asked him to explain what they characterized as Mr. Gossick's "failure to present an accurate description of the current understanding of the Apollo matter" in his July 29 testimony to the effect that the Commission has no evidence that significant amounts of special nuclear material (SNM) have been stolen. The Chairman's memorandum also noted that by letter dated December 12, 1977,

Commissioner Gilinsky wrote Congressman Dingell, Chairman, House Subcommittee on Energy and Power, that Mr. Gossick's testimony on August 8, 1977, did not represent his view about evidence of diversion. The Chairman asked that our investigative report include findings and conclusions and, if there should be any disagreements on the findings and conclusions, that separate views be furnished.

The Apollo-NUMEC Matter - The subject of Apollo-NUMEC is not new. On June 20, 1967, the General Accounting Office issued a report dealing with a possible theft or diversion at NUMEC entitled "Review of Accountability Controls over Special Nuclear Materials - Nuclear Materials and Equipment Corporation." The report reflects that the inquiry was instituted at the specific request of the Joint Committee on Atomic Energy. As the GAO report states, NUMEC owned and operated a uranium processing facility at Apollo, Pennsylvania. The major emphasis of the facility was on the conversion of uranium hexafluoride to uranium oxide or carbides and the fabrication thereof into products for use in nuclear reactors, including commercial power, research and governmental applications. The Apollo facility also recovered uranium from various scrap and residue materials commercially and from its internally generated scrap.

Over the years, NUMEC had significant amounts of SNM under its control and reported losses that became the subject of concern and investigation. Regarding these losses, the report states:

"Although NUMEC made periodic physical inventories and AEC performed a number of accountability surveys, a significant quantity of enriched uranium could not be accounted for in the spring of 1965....we were similarly unable to identify the specific disposition of this material. (ENCLOSURE 1)

"The condition of NUMEC's records do not permit us to make a conclusive determination as to the time or the manner in which the losses occurred. AEC reviews and other data suggest that the losses occurred over a period of years." (ENCLOSURE 1)

Allegations

In the interest of orderly presentation, following are summaries of (1) the November 15, 1977, letter from Congressmen Udall and Tsongas, (2) Commissioner Gilinsky's letter of December 12, 1977, to Congressman Dingell and (3) a letter from Congressman Dingell to the Chairman dated January 9, 1978, regarding Mr. Gossick's August 8, 1977, testimony. As noted below, these letters are enclosures to this report and should be reviewed for a full understanding of the allegations in this matter.

Congressmen Udall-Tsongas Letter (ENCLOSURE 2) - The letter notes that the July 29, 1977, hearing, in part, concerned allegations by James Conran, an NRC employee, that successful diversion of SNM might have occurred at NUMEC and elsewhere. While the hearing is discussed hereafter in more detail, the letter quotes in pertinent part a discussion between Congressman Tsongas and Mr. Gossick in which the Congressman observes that Mr. Conran stated that nuclear materials have been successfully stolen and asks Gossick whether he disputes that. Mr. Gossick replied:

We have investigated every incident that has come to our attention or has been alleged to us with regard to the theft or diversion of material. I can say that we have no evidence that significant - and I use the word 'significant' because there have been cases where small, minute quantities have been taken off the premises of a plant - but I say we have no evidence that a significant amount of special nuclear material has been stolen.

I think one should ask Mr. Conran for the specifics of the things he is talking about.

Mr. Tsongas later asked "But don't you agree that the circumstances surrounding the NUMEC-Apollo plant would lead a reasonable person to wonder?"

Mr. Gossick stated "I couldn't respond to that because I am not familiar with the alleged circumstances about that event. Certainly, as has been indicated, all kinds of answers have been rumored or speculated. It is something that happened well before NRC's time. I just can't speak to that."

The letter further states that:

- The Congressmen cannot agree with Mr. Gossick's implication that a diversion at Apollo was "beyond the scope of his concerns."
- Since the July 29 hearing, the Congressmen have developed a better understanding of the basis for suspicion, having been briefed on the Apollo matter by the CIA, the FBI and the National Security Council (NSC) staff.
- The Congressmen additionally have carefully followed press coverage of the situation and noted as an item of particular interest the report that Chairman Anders became sufficiently apprehensive as a result of CIA and ERDA briefings to alert the White House after which President Ford initiated an investigation which still seems to be in progress. Also, they believe it noteworthy that Mr. Chapman stated in a public radio interview that he did not consider this matter closed.

- The Congressmen believed that Mr. Gossick's suggestion that there is no evidence of a diversion was a serious misrepresentation of the facts and cannot be excused on the grounds that Mr. Gossick was not informed or that the information was not relevant to his duties.
- The Congressmen believed it necessary for the Chairman to explain Mr. Gossick's failure to present an accurate description of the current understanding of the Apollo matter.

Commissioner Gilinsky's Letter (ENCLOSURE 3) - On December 12, 1977, NRC Commissioner Victor Gilinsky wrote Congressman Dingell to "correct the record in hearings before your subcommittee on a matter which concerns me directly." The Commissioner notes that, in reviewing Gossick's response to the Congressmen Udall and Tsongas charges, he encountered Mr. Gossick's testimony of August 8, 1977, which he described as amounting to a "blanket denial on behalf of the Commission itself" that any evidence existed to indicate any significant amount of SNM has ever been stolen or diverted. The letter quoted Mr. Gossick's testimony in part:

"I can only say, Mr. Ward, that the statement, the view of the Commission in making the statement there was no evidence that they had that indicated any diversion had taken place, was made in full knowledge of the briefing that they had received. So while I personally was not briefed on that matter, the Commission did make and has reaffirmed that judgment, that in their view there has been no evidence to indicate that any diversion has taken place."

The Commissioner wrote "I should like the record to show Mr. Gossick's statement did not represent my view - a view I made clear to him, to the one other Commissioner, and to the NRC staff at the time the agency issued its report on nuclear materials inventory discrepancies. My view is now, as it was then, that no such categorial statement is possible." The letter states that the Commissioner conveyed the substance of the Executive Branch briefing on Apollo-NUMEC to Mr. Gossick before his testimony. The Commissioner also noted that he does not see the basis for Mr. Gossick's statement that the "Commission did make and has reaffirmed" any judgment on nuclear losses, since at that time there was no Commission and administrative powers had been delegated to Mr. Gossick.

Congressman Dingell's Letter (ENCLOSURE 4) - In a five page letter to the Chairman dated January 9, 1978, Congressman Dingell made the following points, some of which became subjects of our inquiry:

- The Congressman cannot and shall not accept anything less than total candor.

- There can be no disputing the fact that Mr. Gossick provided the Subcommittee with a categorical assertion of a "Commission position" that there is no evidence of a diversion;
- Excluding the Executive Director from the CIA briefing would appear to be an indication of a lack of confidence in the Executive Director;
- There is evidence that the briefing altered the Commission position on diversion as indicated by the Task Force notes on its meeting with Bryan Eagle and Peter Strauss, which state that one impact of the briefing was that the Commission has not said since early 1976 that there is no evidence of diversion without adding qualifications;
- The Task Force determined that NRC did not have access to intelligence information on NUMEC and concluded that it would be relevant to the safeguards program, yet the Commission has not acted to obtain the information;
- A most disturbing feature of the Reamer memo on the Task Force meeting with Strauss is the failure to request a copy of the "packet of information provided by the CIA" and the absence of storage facilities to retain such sensitive materials;
- While document 102 establishes constructive knowledge on Mr. Gossick's part, Commissioner Gilinsky's letter to the Congressman establishes that Mr. Gossick had actual knowledge of the substance of the Executive Branch's NUMEC briefing;
- Mr. Gossick also failed to advise the subcommittee of the dissension within NRC regarding the testimony and there were staff members present with him at the hearing who were aware of the evidence and did not caution or contradict him;
- The ultimate issue is one of candor. The subcommittee was misinformed and misled. Whether purposeful or neglectful, the effect is the same and, most importantly, it was avoidable. Mr. Gossick should have acquainted himself with the issues. The subcommittee cannot afford the luxury of receiving testimony from ill-informed witnesses;
- The Congressman looks to the Commission to deal with Mr. Gossick.
- The opinion expressed by the Chairman in the December 10 letter to Chairman Udall that there is no conclusive evidence of a diversion after 1968 would seem to be fair, but no agency, from a regulatory standpoint, has attempted to identify how a diversion could have occurred from NUMEC;

- The August 2 meeting should have alerted Mr. Gossick to the dangers of making such a broad assertion under oath;
- The December 10 letter does not mention Commissioner Gilinsky's dissent, so the Chairman has repeated, rather than resolved, the problem of candor;
- The letter concludes with an expression that the Congressman looks forward to receiving evidence of Commission action which will justify reliance on testimony from NRC representatives.

Chairman Hendrie's reply to Congressmen Udall and Tsongas - On December 10, 1977, Chairman Hendrie replied to the November 15, 1977, letter received from Congressmen Udall and Tsongas regarding Mr. Gossick's testimony on July 29, 1977. The letter enclosed a memorandum dated December 1, 1977, prepared by Mr. Gossick in response to the November 15, 1977, letter from Congressmen Udall and Tsongas. The Chairman's letter states that:

- He has reviewed Mr. Gossick's memorandum and testimony and discussed them with Mr. Gossick, staff members, Commissioners Kennedy and Gilinsky and former Chairman Rowden.
- Mr. Gossick has told me that he was aware of the "no evidence of diversion" statements that had been made by the AEC before reorganization in 1975 and of such statements in connection with the draft inventory difference reports of ERDA and NRC.
- The NRC draft report, in final printing at the time of Mr. Gossick's testimony contained the statement, "the Nuclear Regulatory Commission has no evidence that any significant amount of strategic SNM has ever been stolen or diverted."
- Before the July 29, 1977, hearing, the Office of Policy Evaluation furnished Commission comments that did not address this "no evidence" statement.
- The Chairman understood that some members of the staff construed the no evidence statement to apply only to the post January 1968 period but Mr. Gossick did not so read the sentence.
- Mr. Gossick believed the Commissioners' collegial position (as contrasted to the views of an individual Commissioner) to be as he stated it at the hearing.
- The Chairman believed Mr. Gossick had a reasonable basis for his assumption and had no intent to misrepresent facts.

- Mr. Gossick's testimony is consistent with the July 29, 1977, testimony.
- After a meeting of Commissioners and staff on August 2, 1977, to discuss the release of the NRC inventory differences report, Mr. Gossick and staff members who were to appear at the press conference were cautioned to avoid broad assertions on diversions since the information available would not justify such a positive conclusion. There was some discussion of the proper form of the "no evidence" statement as well as the time frame to which it would apply. Some felt the "no evidence" statement was correct; others thought the statement should be qualified to say "no conclusive evidence" or "no hard evidence."
- Mr. Gossick continued to feel that the "no evidence" statement fairly represented the agency position and he so testified.
- The ERDA testimony at the same hearing expressed similar views.
- With respect to Apollo, a "no conclusive evidence" form is probably more appropriate.
- The Chairman concluded that for regulatory purposes we must assume the circumstances were such that a diversion could have occurred and NRC must construct its safeguards requirements accordingly.

The accompanying memorandum of Mr. Gossick makes the following points:

- He testified to the best of his knowledge on July 29, 1977, and the charge of misrepresentation is unfounded and unfair;
- He intended no implication that NRC should not consider the possibility of a diversion at NUMEC in its safeguards requirements;
- He made it clear at the August 8, 1977, hearings that he was not present at the Executive Branch briefings on NUMEC-Apollo. (ENCLOSURE 5)

July 29, 1977, and August 8, 1977, Hearings

Following are summaries of what transpired at the July 29 and August 8 hearings with relevant quotations from the record. The July 29 excerpts are from the published report on "Allegations Concerning Lax Security in the Domestic Nuclear Industry" (Serial No. 95-23). The August 8 excerpts are from the edited galley pages that went for final printing.

July 29, 1977, Hearings Before the Subcommittee on Energy and Environment, House Committee on Interior and Insular Affairs. The witnesses were Thomas B. Cochran, Natural Resources Defense Council, Inc.; James H. Conran, Nuclear Engineer, NRC; Maurice Eisenstein, former Assistant Director for Program Development, Division of Safeguards, NRC; and Lee V. Gossick, Executive Director for Operations, NRC. Congressman Tsongas opened the meeting stating that its purpose is to consider allegations concerning the adequacy of security at certain facilities regulated by NRC, the adequacy of safeguards regulations and whether NRC has penalized a staff member who disagreed with its official position. Mr. Conran read his summary statement (his full statement was incorporated in Appendix). Mr. Conran was followed by Mr. Gossick. Mr. Eisenstein then gave his statement. Mr. Cochran in his testimony noted that he had incorporated in his prepared testimony that portion of the Task Force report dealing with whether there was a diversion at NUMEC-Apollo in the mid-1960's. He questioned how, as the Task Force stated, a portion of the information on NUMEC-Apollo was sensitive if it proved there was no diversion. He noted that there is a great deal of confusion about exactly what happened. He stated that he thinks it is incumbent upon the Committee to get to the bottom of the NUMEC-Apollo issue and the allegations of whether or not material was in fact diverted to Israel.

Chairman Udall then assembled the witnesses side-by-side across the witness table and a question and answer period ensued. Chairman Udall opened by mentioning his experience in the My Lai incident and there followed the following relevant statements:

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Mr. Udall - So I do not put off that up at Apollo there is a MUF of 200 pounds, or whatever it is, of special nuclear material. It does not seem really conceivable in a way that my Government would participate in that diversion or that the people running that operation have participated in a major diversion. And there is enough there of a connection that arouses my suspicion a little bit.

I think it is true with Watergate or the efforts of the Koreans to buy influence in Congress, or any of the other kinds of evidence that are around these days, that you get to the bottom of it, and the facts come out one way or the other. Lay it all on the table.

Page 25

Mr. Udall - We are told that there is a sensitive area about what happened at the Apollo facility, and the result is that you cannot get into it. I intend to get into it and find just what it is.

Page 26

Mr. Udall - Mr. Gossick, how do I go about getting to the bottom of this?

Mr. Gossick - I guess it is with some relief that I note that this matter predated the NRC and, for that matter, the whole regulatory part of AEC. I really cannot disagree with the approach that Dr. Cochran has suggested. That seems to be a very thorough way of getting at it.

Page 27

Mr. Conran - There are other instances of theft and material stolen than from the NUMEC installation, thefts or suspected thefts. That information is included in an appendix of my draft overview study.

Mr. Conran - There have been other successful attempts to steal nuclear material -not always a large quantity, not always bomb grade material. There have been a number of instances in which nuclear material was stolen.

Mr. Lujan - Where?

Mr. Conran - In some instances it was recovered so we know it was stolen.

Mr. Lujan - Where?

Mr. Conran - The documentation that I have in my head is so extensive that I really cannot remember which part is classified and which is not, so I would really rather not say in public, but all of the information I have referred to is in the draft overview study report, or I have identified it in some other way for the Subcommittee.

Mr. Conran - I would get very specific in a closed hearing.

Mr. Conran - I documented this information 1 year and 3 months before I was transferred. I knew of it quite some time before then.

Page 37

Mr. Tsongas - Let me make three points before I go. One, Mr. Gossick, Mr. Conran made a statement that there have been nuclear materials successfully stolen. Do you dispute that?

Mr. Gossick - We have investigated every incident that has come to our attention or has been alleged to us with regard to the theft or diversion of material. I can say that we have no evidence that significant - and I use the word "significant" because there have been cases where small, minute quantities have been taken off the premises of a plant - but I say we have no evidence that a significant amount of special nuclear material has been stolen.

I think one should ask Mr. Conran for the specifics of the things he is talking about.

Page 38

Mr. Tsongas - Is 94 kilograms significant?

Mr. Gossick - Ninety-four would be a significant quantity. We have no evidence that such an amount has been stolen. We have inventory differences - or a MUF - of an amount that I am sure you are alluding to.

Mr. Tsongas - Would it be fair to say that you have no evidence that they have not been stolen?

Mr. Gossick - One has to answer that in the light of the other measures that we apply in our safeguards functions. We don't rely on material accounting and checks for inventory differences as the sole measure for safeguarding material. It has to be coupled with our physical security requirements.

Mr. Tsongas - But don't you agree that the circumstances surrounding the NUMEC-Apollo plant would lead a reasonable person to wonder?

Mr. Gossick - I couldn't respond to that because I am not familiar with the alleged circumstances about that event. Certainly, as has been indicated, all kinds of answers have been rumored or speculated. It is something that happened well before NRC's time. I just can't speak to that.

Mr. Cochran - Statistically there is no way you can distinguish whether those MUF's are process losses or diversions. You can't come to any conclusions but that you can't tell whether it was a diversion or not. Mr. Gossick's argument is that we don't rely on the MUF data. We have the physical security data. Well, the physical security data they can't rely on either. There is just no way to tell.

Page 39

Tsongas - I think the committee very seriously intends to follow up the possibility of an incident at Apollo. The Chairman has indicated his intentions of doing that.

August 8, 1977, Hearing Before the Subcommittee on Energy and Power, House Committee on Interstate and Foreign Commerce. Chairman Dingell opened noting that ERDA and NRC on the previous Thursday had publicly released figures on how much special nuclear material is presently unaccounted for at facilities under their jurisdiction. He stated that the hearing is for the purpose of evaluating the usefulness of the released information in detecting and preventing a possible theft or diversion of this material and to determine the basis for the strong assurances from both ERDA and NRC that there has never been a diversion or theft of significant quantities of special nuclear materials. The representatives from ERDA were sworn and gave their statements first. Representing ERDA were Robert W. Fri, Acting Administrator; Alfred D. Starbird, Assistant Administrator for National Security, ERDA; Edward Giller, Deputy Assistant Administrator for National Security, ERDA; and Harvey E. Lyon, Director, Division of Safeguards and Security, ERDA. Mr. Gossick then was sworn and gave his statement. Michael Ward was counsel for the committee. Following are pertinent excerpts from the hearing transcript:

Page 7

Mr. Fri - This report alone cannot prove absolutely that no diversion or theft has occurred. Indeed, inventory accounting cannot prove the negative unless it involves only piece parts that we can count.

Page 11

Mr. Fri - In 1965 a significant inventory difference was identified at Apollo. The Atomic Energy Commission took immediate action to investigate the incident thoroughly and it interrogated employees. They found, after extensive investigation, no evidence that a diversion had indeed occurred.

Page 14

Mr. Fri - No positive information has been found of any theft of a significant quantity of this material and lastly, to our knowledge, no black market of materials has ever existed.

Page 19

Mr. Gossick - Our report contains inventory difference data... during the period January 1, 1968, through September 30, 1976.

Page 24

Mr. Gossick - An inventory difference which exceeds its expected measurement uncertainty may, however, be an indication of processing problems, biased measurements or bookkeeping errors, as well as an actual loss or theft of material.

Page 26

Mr. Gossick - Material balance accounting is only one mechanism used to safeguard nuclear material. The NRC requires licensees possessing significant quantities of strategic nuclear material to maintain an integrated safeguards system which incorporates physical security as well as material control and accounting measures.

Page 50

Mr. Ward - ...I would like to pursue the discussion of the Apollo situation and your assurance that no materials have ever been stolen. Have you been briefed by the intelligence community regarding the NUMEC situation?

Mr. Fri - I think I have seen whatever information may exist in the intelligence community related to that situation, yes.

Mr. Ward - And you are aware of their opinions as to what they believe occurred then?

Mr. Fri - Yes, I think I know. We have been privy to everything that they have done.

Page 51

Mr. Ward - Have many people in ERDA been privy to this or is this very controlled information?

Mr. Fri - Any intelligence information on any subject is controlled quite carefully.

Mr. Ward - Based upon what you know, would you say that all of the intelligence agencies would concur in your assertion that no material has ever been diverted?

Mr. Fri - I really can't speak for them.

Mr. Ward - Is it your impression that they would then concur?

Mr. Fri - It is my impression, based on all of the evidence I have seen, both classified and unclassified, that no diversion occurred.

Mr. Ward - But that would be in disagreement with one intelligence agency, would it not?

D/A??

Mr. Fri - I am not aware that it would be.

Mr. Ward - You are not aware that one agency has certain questions?

Page 52

Mr. Fri - I am not sure, I have seen the information, to the extent it exists, and I know what the other agencies think, to the extent that they have any thoughts on the subject at all. And I am telling you my conclusion. If you want their conclusion, if they have one, you really ought to ask them.

Page 53

Mr. Ward - Have you received an oral briefing from the two intelligence agencies or did you just review documents?

Mr. Fri - I have, to the extent that this material exists, I have both discussed it and seen written material.

Mr. Ward - Mr. Gossick?

Mr. Gossick - I have not seen the material, Mr. Ward.

Mr. Ward - Have you been briefed?

Mr. Gossick - I have not.

Mr. Ward - You have not been briefed?

Mr. Gossick - I have not, the Commission was briefed on this in February 1976 by the executive branch.

Mr. Dingell - Well, that brings up this question, Mr. Gossick, do you feel your judgments here absent (a), a review of the written material, and (b), a briefing by the intelligence agencies involved, is as hard as it should be with regard to safeguards, and the proper custody and retention of the material involved, and the mechanism for assuring the safeguard of the material in proper form?

Page 54

Mr. Gossick - Mr. Chairman, this was precisely the reason the Commission felt it necessary to be briefed fully on this matter. It was something that had occurred in the time period preceding the establishment of the NRC, of course, but in the process of establishing and increasing the stringency of the safeguards program that we have in effect, the Commission felt it important to know whether or not there was any factor here that would affect the measures it might wish to put in force in its safeguards program.

Mr. Dingell - Mr. Ward?

Mr. Ward - Now, the Commission has also given assurance that they believe no significant quantities have ever been diverted or stolen.

Mr. Gossick - That is correct.

Mr. Ward - But you, not having access to all of it, cannot personally give that assurance, is that correct?

Page 55

Mr. Gossick - I can only say, Mr. Ward, that the statement of the Commission that they had no evidence that indicated any diversion had taken place was made in full knowledge of the briefing that they had received. So while I personally was not briefed on that matter, the Commission did make, and has reaffirmed the judgment that, in their view, there has been no evidence to indicate that any diversion has taken place.

Mr. Ward - Did they mean documentary evidence, and Mr. Fri, when you say no evidence, do you mean there are no documents?

Mr. Fri - Well, I am not dead sure of what you are driving at. There are documents, obviously. The AEC produced a pile of documents on the subject.

Mr. Ward - Right.

Mr. Fri - And the then Chairman concluded and wrote down on a piece of paper that conclusion that I support....

Page 56

Mr. Ward - But when you say there is no evidence that there has ever been any significant quantities that have ever been stolen, I

am trying to figure out if you are trying to phrase it in a way that would not necessarily exclude certain possibilities.

Mr. Fri - Well, on the basis of inventory accounting...one can never be 100 percent sure, as I said in my statement, you can't use this stuff to prove the negative... The investigations in this case produced no evidence to suggest to me that a diversion occurred.

Page 68

Mr. Ward - When did you learn other agencies had conducted investigations into problems associated with NUMEC?

Page 69

Mr. Fri - ...several months ago.

Mr. Giller - ...5 years ago.

Mr. Starbird - ...close to 2 years ago.

Mr. Lyon - Same time.

Mr. Ward - When did the NRC learn of it?

Mr. Gossick - The Commission was briefed in February 1976 by the executive branch, Mr. Ward, and I presume at that time they were made aware of whatever investigations had been made.

RESULTS OF INVESTIGATION

This investigation was conducted and the final report was prepared by Jerome Nelson, General Counsel; Thomas J. McTiernan, Director, OIA; William E. Ryan, Assistant Director for Investigations, OIA; and, James A. Fitzgerald, OGC Attorney, all of whom are signatories on the report. Because of weather problems and time constraints, some interviews at the close of the investigation were conducted by John J. Anderson, OIA, and Peter G. Crane, OGC. During the course of the inquiry 32 individuals were interviewed. With the exception of former Chairman Anders and James H. Conran, write-ups were prepared on interviews and were reviewed and approved by the interviewees before inclusion in the final report. Mr. Anders was interviewed in California. When a draft of his statement was mailed to him for approval he preferred to re-draft the statement in his own words rather than edit the initial draft. Mr. Conran's

interview at his request, was recorded and transcribed. He later requested an additional recorded interview to put more information into the record. Because of time constraints we asked Mr. Conran to put his additional information in a memorandum, but he declined. Therefore, as he requested, there was a second transcribed interview. Because of time constraints, an unedited transcription of the second interview is incorporated in this report. Mr. Conran, as did others, assisted the investigators in assembling the documents referenced in this report.

All pages of the transcribed statements of Mr. Conran are incorporated in this report.

In addition, during the course of our inquiry, Dr. Henry R. Myers, Special Consultant on Nuclear Energy Matters, House Committee on Interior and Insular Affairs, forwarded a series of letters setting forth questions to be asked of certain individuals during the course of our inquiry. To insure proper coverage, we generally forwarded these communications to the individuals involved and obtained written responses; in those instances where Dr. Myers had suggested only a few questions we asked them in our interviews. The written responses to Dr. Myers' questions are incorporated in this report, Volume II - Exhibits.

SCOPE OF INVESTIGATION

This investigation deals with testimony of Mr. Gossick before two House subcommittees about the Commission having "no evidence" of a theft or diversion of SNM from NUMEC-Apollo. We have attempted to ascertain what Mr. Gossick knew about NUMEC-Apollo when he testified as well as what the NRC knew about NUMEC-Apollo before and after it was briefed on the matter by the CIA and ERDA in February of 1976, including what transpired at the briefings.

We also undertook to determine any apparent NRC position, with respect to the "no evidence of theft or diversion" issue (1) during the period preceding the February 1976 briefing of the Commission, and (2) during the period following the briefing. This report should not be taken as an inquiry into whether there was in fact a theft or diversion from NUMEC-Apollo. Further, this report should not in any way be taken as an inquiry into the validity of any past investigation into NUMEC-Apollo - whether conducted by CIA, FBI, AEC, ERDA, or anyone else. Due to circumstances beyond our control, we encountered difficulties in developing the full story of the CIA briefing, which are explained more fully elsewhere in this report. Following is a narrative account of the results of our investigation.

This narrative and summary of the witness statements and documents are prepared solely for the purpose of giving the Commission and readers an

overview of the matter. We strongly urge that the readers review the individual statements of witnesses and the supporting documents to acquire full knowledge of the facts and circumstances in this inquiry.

NRC's Position on Theft or Diversion of Special Nuclear Materials
Prior to the February 1976 Briefings by CIA and ERDA

Information developed on this aspect of the inquiry indicates that NRC was adhering to the basic AEC position that there has been no theft or diversion of SNM, although it was in the late fall of 1975 that James Conran commenced his visits to NRC officials to discuss his various concerns including NUMEC-Apollo. Following are summaries of relevant documents and interview statements:

Documents - March 3, 1975--Letter from Chairman Anders to Secretary Kissinger transmitting proposed draft letter from NRC to Senator Ribicoff dealing with nuclear material inventories. The draft states, "We have discussed this subject thoroughly with our senior staff who are confident that there has not been illegal diversion of significant quantities of strategic nuclear materials..." An earlier draft, apparently changed by Chairman Anders stated, "We are confident that there has not been illegal diversion of significant quantities of strategic nuclear materials..." (Enclosure 6)

November 18, 1975--R. G. Page, then Deputy Director, Division of Safeguards, Office of Nuclear Materials Safety and Safeguards (NMSS), made a statement before the Assembly Committee on Energy and Diminishing Material of the California Legislature, that "To date, there is no evidence to indicate any loss by theft or diversion...of significant quantities of special nuclear materials..." (Enclosure 7)

August 26, 1975--Remarks by Commissioner Edward A. Mason, NRC, before the U.S. Utility Meeting on Safeguards, Washington, D.C., August 26, 1975. "History does not indicate any attempt to...steal special nuclear materials..." (Enclosure 8)

Interviews - Carl Builder, former Director, Division of Safeguards, NMSS, stated that it is his view there is no evidence of theft or diversion of significant amounts of material based upon all the information in the possession of NRC. He said that this view was consistent with NRC policy both before and after the CIA briefing. James Conran stated that commencing October 1975 he began discussing with NRC officials the NUMEC problem and the unavailability of information from ERDA. In December, he met with Commissioner Mason and later on with Mr. Chapman and Mr. Anders plus others. R. G. Page, now Deputy Director, NMSS, stated that he has been dealing with safeguards matters since 1966. Mr. Page stated he still questions whether there was a diversion at NUMEC. Page recalled

that James Conran came to his office and expressed concern about the NUMEC inventory discrepancies. Page said he discussed it with Kenneth Chapman, then Director, NMSS, and Chapman said he was aware of the Conran complaints but did not believe them justified. Mr. Chapman said he first heard of the NUMEC problem in the spring of 1975 in a conversation with Seymour Smiley and this planted seeds of interest. Later a Commissioner asked him about NUMEC discrepancies in the mid-60's and he spoke to Harvey Lyon of ERDA who told him ERDA was reopening the matter. In the fall of 1975, James Conran told Mr. Chapman that ERDA was keeping information from him. Mr. Chapman said he called Mr. Giller of ERDA to inquire about Conran's allegations. Mr. Giller said Conran was pressing for NUMEC information and apparently did not need the information he was requesting so he was turned down. However, Mr. Giller offered to give the information to Conran if Mr. Chapman insisted. Mr. Chapman said he declined the offer. Thereafter, Mr. Conran began going to the Commissioners. Mr. Chapman said that, before the briefing, there was no policy statement on the matter of diversion. Peter Strauss, former General Counsel, NRC, said that in 1975, he was unaware of any Commission policy regarding statements on no evidence of diversion.

The CIA and ERDA Briefings

At the outset of this inquiry it was deemed relevant by the investigators to have the full information on the ERDA and CIA briefings. The allegations against Mr. Gossick had criminal implications with respect to his sworn testimony on August 8, 1977, and necessarily involved what transpired at the briefings and what was communicated to him concerning them. Also, it was believed that reconstructing the CIA briefing would assist the Subcommittee in its evaluation of the matter. Finally, since we were expected to make findings with respect to Mr. Gossick's testimony, we felt compelled to know all aspects of the matter before rendering any such conclusions.

The CIA Briefing--We encountered some difficulties in obtaining the details of the CIA briefing. No written or electronic record of the briefing is known to exist. Some of those interviewed refused or were reluctant to talk about the substance of the briefing. The remarks of those who did comment on the substance of the factual information presented, as noted below, were frequently somewhat general. Former Chairman Anders requested that permission be procured from the CIA for him to discuss the facts. After several days of effort, this permission was obtained orally from the CIA a few hours before he was interviewed in California. Nevertheless, Mr. Anders, insisting on a written authorization from the CIA, refused to discuss the substance of the briefing. Former Chairman Rowden was interviewed while the CIA approval was still pending and refused to discuss substance. Mr. Chapman and Mr. Builder also expressed reluctance to discuss facts. It should be noted that,

while declining to discuss substance, former Chairmen Rowden and Anders, as well as the others, were helpful in providing procedural details regarding the briefings, including their assessments.

While the picture that emerges from these interviews regarding the CIA briefing is somewhat blurred, most of the interviewees came away feeling that the results were inconclusive from the standpoint of establishing whether there was a theft or diversion at NUMEC. Some believed that the CIA briefing official was expressing his own theories on what happened. For example, Mr. Anders said the style and ambiance of the presentation raised questions in his mind as to the accuracy and objectivity of the information presented. Carl Builder said that he listened for hard evidence on NUMEC but all he heard were theories, circumstantial evidence and much "color." He said it was not the kind of evidence on which to base rule changes. John Davis, Deputy Director, Office of Inspection and Enforcement (IE), NRC, said he was interested in whether anyone had any facts about material moving out of the plant and, if so, how this was accomplished. No such specific information was imparted at the briefing. He termed the information "inconclusive." He stated that afterwards he concluded the briefing called for no further action on his part. Mr. Chapman said the briefing gave no information that material had left the NUMEC plant improperly. He, too, used the word "inconclusive." Mr. Chapman said the CIA briefer said there was not enough evidence to prosecute and Mr. Chapman got the impression that the briefing official was not happy with the result. Mr. Anders also said that he took what the briefing official said with a grain of salt and wondered if he was on sort of a personal crusade. In this regard, it was Carl Builder's impression that the briefer seemed to be the advocate of theories that did not have the support of his agency.

Commissioner Kennedy said that he got the impression that the briefing was about suspicions without conclusions. He described the briefing as rambling and disjointed and moved through a variety of circumstances. The Commissioner said that "throughout the briefing, I had the distinct impression that I was getting hypotheses, a series of hypotheses, one building on another. I kept looking for the links that would put them together, that would give more than the aura of suspicion...I did not find this." Peter Strauss said he got the impression that the CIA had a fairly strong belief that the inventory discrepancy represented material taken to Israel. He said that if the CIA's information was accurate, there was a strong circumstantial case--missing material, motive and opportunity. Having been at the briefing, Mr. Strauss would not personally say there was "no evidence" and believes that each of those who heard the briefing should pause before making such a statement. Mr. Strauss also said that if one defined the word "evidence" in a certain way (hard, conclusive evidence admissible in a judicial trial), then the "no evidence" statement would be acceptable.

Bryan Eagle, former Executive Assistant to Chairman Anders and Rowden, recounted some of the circumstances mentioned by the CIA in connecting Shapiro with Israel but said that the briefing presented no evidence that material had actually gone to Israel from NUMEC. It was his impression that (1) there was no unanimity within the intelligence community, (2) under the circumstances there was nothing CIA could do to resolve the uncertainties and (3) the FBI and AEC investigations showed no basis for further action. Mr. Eagle said the briefer did not advocate any position. Mr. Rowden said the briefing involved circumstances that could lead one to conclude there was a possibility of diversion. Mr. Huberman said there were indications, but not proof, as he recalls that NUMEC material had been diverted to Israel.

There were varying statements, not very detailed, on the factual information presented by the briefer. As noted above, not everyone discussed the facts. Mr. Chapman said the briefer spoke of Mr. Shapiro's activities and said that Shapiro had the opportunity to divert. Commissioner Kennedy said that the briefing included mention of Shapiro, his associations with the Israel Government and private sector [redacted] Peter Strauss said that Duckett told them that one or more NUMEC officials made several trips to Israel; and how nuclear material might have been carried in a suitcase. Bryan Eagle said the briefing covered Shapiro's numerous trips [redacted] Mr. Davis just recalled that the briefing covered the travel activities of the NUMEC President. Mr. Huberman recalled that the briefer said Mr. Shapiro made numerous trips [redacted] [redacted] He also said the CIA, FBI or the Attorney General had gone to President Johnson and was told to "lay off."

The CIA briefer in our interview said that the purpose of his briefing was to give NRC facts and judgments regarding the possibility that NUMEC might have been the source of U-235 for Israel. He told the Commission that Mr. Shapiro, the President of NUMEC, had frequent contact with Israeli officials; [redacted]

The ERDA Briefing--The ERDA briefing was given on February 25, 1976. The interviewees indicate that there was no sensitive information included in the ERDA briefing and that it did not add much to their knowledge. Mr. Anders recalled that the ERDA briefer said that the FBI and AEC did not agree with the CIA briefer. Mr. Chapman said Harvey Lyon said there was an inventory discrepancy and that fines were paid. He did not speak to diversion. Commissioner Kennedy said the ERDA briefing covered the depth of the AEC investigation and noted that the FBI had declined investigation and GAO had reached the same conclusion as ERDA. Mr. Eagle stated that the ERDA briefing reached a much clearer conclusion than the CIA briefing.

The Failure to Include Mr. Gossick in the Briefings--As noted above, Congressman Dingell's letter observed that excluding the Executive Director from the CIA briefing would appear to be an indication of a lack of confidence in him. The interviews on this point do not support this surmisal. Chairman Anders could not recall whether Mr. Gossick was present but thought his absence was due to CIA's desire to limit the meeting, and his not wanting to cause Mr. Gossick to make unnecessary trips from Bethesda to H Street. He also explained that at that time the question of whether to have a "strong" or a "weak" Executive Director had not been resolved by the Commission. Mr. Chapman believed that Chairman Anders asked him to set up the briefings, but he believed Commissioner Kennedy may have arranged the CIA briefing. He said there was no overt action to exclude Mr. Gossick, but noted that he was not among the initial seven cleared for sensitive information. Mr. Chapman also observed that under the Energy Reorganization Act of 1974, he normally did not have to go through Mr. Gossick in dealing with the Commission on sensitive safeguards information. Commissioner Kennedy recalled that Mr. Anders stated the briefing was restricted to a need-to-know in the most strict sense. He stated that Mr. Gossick in the most strict sense, did not have a need-to-know because at that time he was the manager of the staff and did not involve himself in direct substance. The Commissioner noted that the EDO's role is broader now than it was in 1976. Mr. Strauss attributed Mr. Gossick's absence to a determination that Mr. Gossick did not have a "need-to-know." Mr. Eagle said that he did not know why Mr. Gossick was not in attendance, mentioned possible reasons but said Gossick was not specifically excluded. Mr. Rowden said if substantive responsibility were the criteria, Lee Gossick would not be included because of the way the Commission was then structured.

Steps Taken After Briefings--The interviews indicate that steps were taken after the briefing to apprise the White House and National Security Council (NSC), of what transpired at the CIA briefing. In addition, information developed indicates that ERDA and NRC joined in efforts to review CIA material on the NUMEC-Apollo matter and to brief the NSC on the safeguards program.

Mr. Anders said that he went to the White House because of the CIA briefer's demeanor, the nature of some of his statements, the possible foreign policy implications of such statements and the importance of the safeguards question to the NRC and White House. Commissioner Kennedy said he went to General Scowcroft to apprise him of the briefing and give him his impression of it. He said it raised questions but no answers. He said that Chairman Anders asked him to do it. Commissioner Kennedy said that later General Scowcroft told him they did go into it and had satisfied themselves. Bryan Eagle recalled that after the briefings, Gerry Page, NMSS, was sent to CIA to review some material. He said Page relayed that he did not know if he had seen everything the CIA had, but he had not come back with great new lights. He said Mr. Page related information similar to the chain of circumstances he had heard in the briefing.

Gerry Page advised that in 1976, Mr. Chapman told him to get with certain ERDA people and meet with the CIA. Bob Tharp was the ERDA contact. He said he and Tharp went to CIA and someone brought in two to four pages of freshly-typed paper with no heading

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[REDACTED] The papers contained no information about diversion of SNM. He and Tharp prepared a summary of the papers which was typed there. He recalled that there were three copies of the summary, one retained by CIA and one for ERDA and NRC. Mr. Page said that later George McCorkle, NMSS, worked with Mr. Tharp and Mr. McDowell of ERDA on minor changes of the summary. He said that, thereafter, at Mr. Chapman's request, McCorkle briefed the Commission on the summary, but only Mr. Anders and Commissioners Kennedy and Rowden. He did not recall if Commissioner Gilinsky was briefed. Mr. Page said that, when the Commissioners had no problems, McCorkle told ERDA to send it to the White House.

Mr. Page also recalled that a letter was sent to General Scowcroft pursuant to NSC request. He said Bob Erickson of NRC and some ERDA people prepared it. That letter was intended to discuss the status of safeguards and Mr. Page suspected it was related to the summary.

George W. McCorkle, Chief, Physical Security Licensing Branch, NMSS, said that in the spring of 1976, just prior to Chairman Anders' departure, either Mr. Chapman or Mr. Page told him to stand by to work with ERDA on a sensitive matter. That evening Mr. Tharp and Mr. McDowell of ERDA came to his office and they worked until about 10:00 p.m. drawing up a document which he understood was for the White House. It dealt with safeguards and the allegations of theft or diversion at NUMEC. NRC was assisting to make certain the document accurately represented safeguards implementation. Mr. McCorkle said Mr. Tharp brought with him a six-page digest on the NUMEC problem, which concluded that there was no evidence that theft or diversion had occurred. They compiled a handwritten draft and Mr. McCorkle did not recall retaining a copy. On the next day, he briefed Chairman Anders and Commissioners Kennedy and Rowden, who had no

problems. He told them about the NUMEC information, that it had been investigated, that no evidence to support diversion allegations had been developed and that the letter traced safeguards developments to the present. He then called Tharp on the results. Mr. McCorkle said he never saw the final letter and never mentioned this incident to Mr. Gossick. Mr. Anders, Mr. Rowden and Commissioner Kennedy advised that they do not recall the McCorkle briefing.

Robert H. Erickson, Chief, Test and Evaluation Branch, Division of Safeguards, NMSS, recalled that in the spring of 1976, Mr. Chapman asked him to contact ERDA and assist in preparing a report on the status of safeguards as a result of Mr. Anders' going to the White House. The letter was to describe the evolution of safeguards. The ERDA people gave him a roughly-typed document, classified "Secret" containing "tid-bits" on Mr. Shapiro but nothing about diversion of materials. Mr. Erickson said he kept the memorandum for a while but eventually destroyed it. He said he never discussed this with Mr. Gossick. He recalled that the letter he assisted ERDA in preparing ended up as the Scowcroft letter (Enclosure 9).

Efforts by Mr. Page to locate the documents referred to by him and Mr. McCorkle resulted in two draft memoranda being furnished to him by ERDA as what was provided the NSC in 1976. Regarding NUMEC, one draft memorandum said "there was not a basis for assigning a high priority to...diversion." The second draft said "No theft or diversion...has been indicated by past inventory discrepancies and analyses." (Enclosure 10).

NRC's Position on Theft or Diversion of Special Nuclear Materials
Subsequent to the February 1976 Briefings and to Date

Information developed on this aspect of the inquiry indicates that no definitive statements of policy or guidelines on how to treat the "no evidence" issue were promulgated following the February 1976 briefings. Further, as the following summary of relevant documents reflects, as late as December 1977, at a time when the question of Mr. Gossick's testimony on the Hill had become an issue between the Congress and NRC and a subject of media discussion, the NRC issued a Final Environmental Statement on "Transportation of Radioactive Materials by Air and Other Modes" which contains the statement "to date there is no evidence to indicate any loss by theft or diversion to unauthorized use of significant quantities of special nuclear materials." As the following summaries of relevant documents and interviews reflect, as a result of the Conran Task Force report and the public release of the report on inventory discrepancies, both of which occurred in 1977, there were discussions and some recognition within the agency of the need to qualify statements

relating to theft or diversion, but the agency position remained unclear from the standpoint of the NUMEC matter. One of the Conran Task Force recommendations was that all statements on missing or stolen nuclear materials reflect the uncertainties of material control and accounting technology. The staff action plan on this recommendation agreed that absolute statements associated with reported MUFs should not be made and added that when circumstances warranted, staff has stated that "we have no evidence which indicates that there has been a diversion." Thereafter the Commission found the staff comments on the report generally responsive to the Task Force recommendation. With respect to the recommendation that statements on missing material reflect the uncertainties of material control and accounting, the Commission advised that, if a safeguards problem occurs, NRC public statements should describe the circumstances, the action taken, the resolution of the problem and should clearly acknowledge inherent uncertainties, such as measurement errors. Commissioner Gilinsky in connection with the August 1977 release of MUF data, questioned the use of language indicating there is no evidence of theft or diversion, but after discussion his concern was alleviated by amendment of the MUF report press release, indicating that the "no evidence" statement in the report covered only the period from January 1968 forward, and a general agreement that the report only covered that period.

Documents

February 24, 1976--According to the records of the Secretariat, Chairman Anders and Commissioner Kennedy commented on a series of proposed answers to questions propounded by the Joint Committee on Atomic Energy. The answer to question 22b stated, "While some MUFs have been large, NRC has no indication of any theft or diversion of other than a miniscule quantity of SNM." None of the Commissioner comments addressed question 22b. Commissioners Rowden, Mason and Gilinsky concurred without any comments. Eventually, on April 2, 1976, Chairman Anders signed a letter transmitting the answers to the JCAE questions and the response to question 22b remained unchanged. (Enclosure 11).

April 21, 1977--Excerpt from Hearing Report of House Subcommittee on Energy and Environment on "Problems in the Accounting For and Safeguarding of Special Nuclear Materials"--NRC written response to Question 4 on whether SNM ever was diverted states "The Commission has no direct evidence that there has been diversion of significant quantities of special nuclear materials from licensed operations." (Enclosure 12).

July 19, 1976--William J. Dircks, Assistant Executive Director for Operations, wrote a letter to Senator Jackson concurred in by Mr. Chapman and Mr. Builder, advising that "to date, there is no evidence to indicate

any diversion of significant quantities of special nuclear material from licensed operations." (Enclosure 13).

July 26, 1976--Mr. Dircks wrote a letter to Senator Beall, also concurred in by Mr. Chapman and Mr. Builder, stating "we do not have evidence to support...allegations of theft or deliberate diversion of SNM." (Enclosure 14).

October 11, 1976--Former Commissioner Edward Mason, in a speech before First Pacific Basin Conference on Nuclear Power Development and Fuel Cycle at Honolulu, Hawaii, stated, "We know of no instance where anybody has attempted to steal significant quantities of material..." (However, this statement was prefaced by a reference to plutonium and Dr. Mason in his interview said he was referring to plutonium.) (Enclosure 15).

April 20, 1977--An unsigned memorandum for the record by the Conran Task Force setting forth results of a Task Force meeting with Barry Rich, ERDA, Division of Safeguards and Security. The memorandum states, "Mr. Rich confirmed the existence in ERDA files of a joint body of written materials on Apollo (the NUMEC) of three agencies--DOJ (FBI), CIA and AEC. The joint file is Secret; the reasons for classifying it are Top Secret. This is not a formal report but rather a periodically updated body of information covering about 1964-71. Intelligence information is involved." It also says, "to Rich's knowledge, no one in NRC has seen the joint file." Rich said the joint file is not relevant to Conran's concerns because other safeguards information indicates there is "no proof of diversion." Rich, in effect, said the Task Force could not get the file because he did not think we had a "need-to-know." (Enclosure 16).

April 20, 1977--Mr. Rich, in notes on the above Task Force Memorandum for the Record, states, "the Apollo conclusion of non-diversion was based on a review of safeguard procedures...plus an investigation of the historical material accountancy data and records for Apollo." (Enclosure 17).

April 27, 1977--C. W. Reamer, Legal Advisor to the Conran Task Force, wrote a memorandum to the file captioned "Task Force Meeting with Bryan Eagle and Peter Strauss," which meeting was structured to assist the Task Force in dealing with the NUMEC-Apollo matter. The memorandum states, in part, that the Task Force was advised by Mr. Eagle and Mr. Strauss that:

- The February 1976 briefings raised serious questions but did not provide conclusive answers.
- The Commission and other senior officials had the benefits of this information in reaching their conclusions on current safeguards.
- Chairman Anders worked out the specifics of who in NRC was to attend the briefings, viz., who had the need-to-know.

- An information package was put on the table before the Commission and staff but was not left. No request that it be left was made. NRC had inadequate storage for highly sensitive information.
- The Commission took specific follow-up actions.
- According to Mr. Strauss, the Commission has not said since early 1976 that "there is no evidence of any diversion of material having ever occurred" without qualification to such statements. (Enclosure 18).

April 29, 1977--The Conran Task Force in its final report stated, "...we have no information of this sort upon which to base a belief that significant amounts of nuclear materials have, or have not, been diverted from any U.S. nuclear facility." (Enclosure 19).

April 29, 1977--At another point the report noted that procedures could be improved upon because there may have been a misunderstanding on guidance to staff. The report stated the Commission apparently expected its staff managers to take whatever action was necessary (following the February 1976 briefings) and the staff managers were apparently looking to the Commission for guidance if further action was deemed necessary (Enclosure 20).

May 27, 1977--SECY papers (77-268) from Clifford Smith, Director, NMSS, on "Public Release of Inventory Discrepancy (MUF) Data." The purpose of the paper was to "provide Commission with information about these issues and to forward a draft of the initial release package for comment." The paper notes that ERDA will maintain responsibility for the pre-1968 data and for any questions that such data will engender. A sample question and answer portion included an answer regarding evidence of significant diversion. It stated, "It is on the basis of the entire NRC safeguards program...that NRC has assured the public that it has no evidence of theft or diversion of significant quantities of nuclear materials." (Enclosure 21).

June 3, 1977--Unsigned memorandum from Commissioner Gilinsky to Chairman Rowden and Commissioner Kennedy on the proposed MUF release. It states, "the document implies that a zero MUF is more or less an assurance that theft/diversion has not taken place...low reported MUFs are not necessarily an indication of no diversion." (Enclosure 22).

June 21, 1977--Memorandum to Commission from Clifford Smith, Director, NMSS, through Mr. Gossick, entitled "Action Plan on Recommendations of Mattson Task Force Report." Task Force in Item 3 recommended that all statements on missing or stolen materials reflect the uncertainties of material control and accounting technology. Mr. Smith's response was

"We agree that absolute statements associated with reported MUFs should not be made. When circumstances warrant we have stated that we have no evidence which indicates that there has been a diversion." The memorandum closed with "We feel that we have generally complied with these comments." (Enclosure 23).

June 22, 1977--Transcript of Commission meeting on the Task Force Action Plan. On page 14, there is discussion of a recommendation regarding ensuring that all statements on missing or stolen nuclear materials reflect the uncertainties of material control and accounting technology. Mr. Smith said he is in agreement. Commissioner Gilinsky stated that he does not understand the recommendation. Dr. Mattson explained that the staff was making unqualified statements while Mr. Strauss and Mr. Eagle (Task Force Document 102) told them that such bland statements were not encouraged as a matter of Commission policy, but "that evidently didn't get down to staff level." Commissioner Kennedy said that the individual making the statement could be convinced that nothing is missing but his statement is subject to the uncertainties of measurement. Mr. Smith and Mr. Mattson agreed that this is "what the whole thing is about." Commissioner Gilinsky added that "even when MUFs are zero, it does not necessarily mean that nothing is stolen..." Chairman Rowden said "...there ought to be something that we can turn to that is a very carefully formed, straightforward articulation of the basis for our position in this regard." Mr. Smith said, "I think we could probably draw from the press release...on the proposed MUF release data." The transcript reflects Mr. Gossick was present for this discussion. (Enclosure 24).

July 21, 1977--SECY paper (77-268C) "Release of Inventory Difference (MUF) Data to the Public" forwarding NRC report on MUF for Commission approval for public release (initialled by Gossick). Noted release scheduled for August 4, 1977. Page 2 of report says "NRC has no evidence that any significant amount of strategic SNM has ever been stolen or diverted. However, because perfect measurement of nuclear material is impossible, there will always be uncertainty associated with accounting data..." Report also noted that it covers period from January 1, 1968. (Enclosure 25).

June 28, 1977--Memorandum to Mr. Gossick from Mr. Chilk, Secretary, Office of the Secretary of the Commission, advising that the Commission has concurred in the draft final environmental statement on transportation of nuclear materials (Enclosure 26). The draft then approved contained the same language of the final version issued in December 1977 that, "To date, there is no evidence to indicate any loss by theft or diversion to unauthorized use of significant quantities of special nuclear materials." (Enclosure 27). The Commissioners' concurrence is reflected in a set of Commissioner Action Item Response Sheets (Enclosure 28). It is interesting

to note that at a Commission meeting on the Conran Task Force recommendations on June 22, 1977, Chairman Rowden said, "One of the things...that struck me when I read--I think it was: the proposed final version of the transportation statement, there were statements in there fairly categorical about material being stolen, and I said...I don't know what the right articulation is, but that is not it, go back and do it again and there ought to be something that we can turn to that is very carefully framed, straightforward articulation of the basis of our position in this regard." (Enclosure 29).

June 30, 1977--Memorandum to Gossick from Chilk captioned, "Staff Guidance on Action Plan on Recommendations of the Task Force..." It states that the "Commission has noted the staff's comments on the Task Force report and believes that they are generally responsive to the Task Force's recommendations." As to item 3, "The staff should continue efforts to ensure that, if a safeguards problem does occur, NRC public statements accurately describe the circumstances, the remedial action taken, and the resolution of the problem. The statements should also clearly acknowledge inherent uncertainties, such as measurements errors. Moreover, such problems should be presented in a perspective which makes clear that the NRC safeguards program comprises a balanced, integrated set of safeguards measures, including physical protection, material control and material accounting." (Enclosure 30).

July 26, 1977--Memorandum from Mr. Pedersen, Director, Office of Policy Evaluation, to Mr. Gossick captioned "Commissioner Comment on Release of Inventory Difference..." Under "Specific Comments" the memorandum notes sentences on page 2, paragraph 1, "incorrectly imply that material accounting together with stringent physical security and material control measures do show with absolute certainty that theft has not occurred. Clarify." The memorandum provides no comments on the "no evidence" sentence. (Enclosure 31).

August 1, 1977--Memorandum from Carlton C. Kammerer, Director, Office of Congressional Affairs, to Commissioners Gilinsky and Kennedy on the July 29, 1977, House Subcommittee on Energy and Environment hearing on Conran. The memorandum summarizes generally what transpired at the hearing and states, "Mr. Tsongas concluded the question and answer segment of the hearing by asking Mr. Gossick if material has been stolen at any nuclear facility." When Mr. Gossick responded with the statement that the NRC "has no evidence that significant quantities of nuclear material has been stolen," Mr. Tsongas asked if the reverse were also true--i.e., that NRC has no evidence that they have not been stolen. He then stated that the Committee would follow up the incident at the Apollo, Pennsylvania, plant." (Enclosure 32).

August 4, 1977--Memorandum to Record from Mr. Chilk on, "Briefings on Release of...MUF Data...Tuesday, August 2, 1977, Commissioners' Conference Room." It states Commissioners Gilinsky and Kennedy were briefed by NMSS and IE on the public release of MUF data. "The Commissioners noted that, among other things...Commissioner Gilinsky indicated his preference

for a slight modification to the language of the release package; (subsequently a modification was made to the press release)." (Enclosure 33).

August 5, 1977--"Hold for Release August 5, 1977," press release statement of Robert F. Burnett, Director, Division of Safeguards, on MUF report. It notes report covers period since January 1968 and states, "To sum up, NRC has no evidence of the theft of any significant amounts of strategic special nuclear materials during the period covered by this report." (Enclosure 34).

August 5, 1977--NRC Press Release on MUF data states, "NRC investigations of licensee inventory differences described in the report have disclosed no evidence that significant quantities of these materials have been stolen." The release states that the report covers the period from 1968 to September 30, 1976. At another point, it states, "The NRC has no evidence that any significant amount of strategic SNM has ever been stolen or diverted." (Enclosure 35).

August 5, 1977--Memorandum of Joseph J. Fouchard, Acting Director, Office of Public Affairs, to Commissioners Gilinsky and Kennedy enclosing the transcript of the August 4, 1977, press briefing on MUF. Starbird said on page 8, "Neither ERDA nor its predecessor, the AEC, found evidence leading them to conclude that significant amounts of strategic SNM were diverted from government plants or from licensed facilities." He noted that in 1968 AEC reassigned safeguards from the General Manager to the independent Director of Regulatory Operations, who reported directly to the Commission. Giller's statement on page 14 is, "No evidence of any theft attempt was reported from these surveys." Burnett said, "To sum up, NRC has no evidence of theft of any significant amounts of strategic special nuclear materials during the period covered by this report. However, both NRC and ERDA recognize that material accounting... offer(s) no absolute guarantees that theft or diversion will be detected." At one point, Giller said, "...your statement assumes that there is a CIA report on NUMEC.... Whether there is a CIA report...what they did about it, it's CIA business and should be discussed with them." Cliff Smith said, "...I have not read any CIA report. I am not aware that indeed there is such a report." Giller also said, regarding Conran's complaints, that, "NRC has received the same set of information that we have received." Starbird said, "...there is no apparent evidence, no definitive evidence on it in any material available to us of the actual theft of, or diversion of material...there's a GAO report recently made public and that report states that we have no reason to question the AEC's conclusion relative to diversion." Giller said, "If there is a CIA report, I have not seen it." Starbird said, "My answer is the same as Ed's." (Enclosure 36).

August 9, 1977--Memorandum from Mr. Kammerer to Chairman Hendrie and Commissioners Gilinsky and Kennedy on the August 8, 1977, House Subcommittee

on Energy and Power hearing. It states that Congressman Dingell called on both ERDA and NRC to detail the "basis for the strong assurances... that there has never been a diversion or theft of significant quantities of special nuclear materials." It also notes that, "The problems associated with the NUMEC facility...was another area of questions." (Enclosure 37).

August 11, 1977--Mr. Kammerer memorandum to Chairman Hendrie and Commissioners Gilinsky and Kennedy transmitting copy of transcript of August 8, 1977, House Subcommittee on Energy and Power hearing on the NRC and ERDA MUF data reports. (Enclosure 38).

August 12, 1977--Letter to the General Accounting Office (GAO) from Congressman Dingell requesting an investigation to determine the extent and contents of the intelligence and safeguards information regarding a possible diversion from NUMEC and the extent to which this vital information was provided to ERDA and NRC for their use. GAO was told to "review all necessary files and reports, including those of ERDA, NRC, CIA, and FBI..." (Enclosure 39).

August 19, 1977--Letter to Congressman Udall from Mr. Gossick transmitting responses to questions submitted at Conran hearing--Questions 14 and 15 asked what actions were taken by NRC based upon the 1976 briefing. Response said, "No immediate actions by NRC were deemed necessary following 1976 briefing--the briefing enabled some staff management officials to decide that no additional information regarding this matter was needed by their staffs to fulfill their responsibilities in assessing the adequacy of current safeguards and developing and implementing desirable upgrade...NRC and ERDA further reviewed...the Apollo situation and jointly submitted a classified report to the NSC on the evolution, current status and future outlook for US nuclear safeguards." The answer to Question 16 says, "Based on evidence available to NRC to date, the relevance of the inventory problems...at Apollo in the mid-1960's is minor." The answer to Question 12 says, "Over the years, a number of large inventory differences have been investigated and in the course of these examinations no evidence was found of a theft or diversion of a significant quantity of special nuclear material." (Enclosure 40).

August 26, 1977 (approximately)--Handwritten notes on response to the above Question 12 (House Subcommittee on Energy and Environment question) from Hugh Thompson to Bud Evans, NMSS, and Norm Haller, IE, saying, "The above sentences have been proposed as a replacement for the second sentence in the first paragraph answer to Question 12--Any comment?" signed "Hugh." The recommended sentences read:

"Since the Regulatory staff assumed full responsibility for safeguarding SNM in the private sector in 1968, a number

of large inventory differences have occurred. These have all been investigated and the investigations have not supported the hypotheses that diversion has taken place."

On the following page was a handwritten note:

"Hugh--Gilinsky's problem dead issue now. He wasn't aware the letter had already been signed. LVG 8/26" (Enclosure 41).

August 25, 1977--Mr. Kammerer memorandum to Commissioners forwarding House Subcommittee on Energy and Environment July 29, 1977, hearing transcript. (Enclosure 42).

November 4, 1977--Memorandum from Mr. Gossick to staff (Smith, Case, Levine, Volgenau, Minogue, Pedersen and Shapar) captioned, "Operating Assumption Covering the Use of or Reliability Placed in Information from the Intelligence Community." The memorandum noted that the assumption was formulated in response to the Commission's memorandum dated June 30, 1977, giving staff guidance on the Conran Task Force recommendations. It further noted that the assumption should be used by NRC staff in performing safeguards-related functions. Under the caption, "Degree of Conservatism," the assumption states:

"To date the U.S. Intelligence Community has not to our knowledge developed information of planned or actual thefts, sabotage or diversions of SNM or sabotages of nuclear facilities. To our knowledge there have been no such serious acts perpetrated in this country, and we know of no current or historic evidence that any organized or known groups presently intend to commit such acts of sabotage, theft or diversion." (Enclosure 43).

December 1977--"Final Environmental Statement on the Transportation of Radioactive Material By Air and Other Modes," which states, "to date, there is no evidence to indicate any loss by theft or diversion to unauthorized use of significant quantities of special nuclear materials." (Enclosure 44).

June 14, 1977--Memorandum from Mr. Chilk to Mr. Gossick and others captioned "Staff Requirements...Public Release of Inventory Discrepancy (MUF) Data...June 3, 1977, Commissioners' Conference Room..." The memorandum notes that the Commission requested "...that the release package be modified to provide expanded information on:...b. The concept that even small MUFs may require investigation because of inaccurate accounting systems; and c. why pre-1968 dates were used." (Enclosure 45).

January 26, 1978--Contact with FBI by Thomas J. McTiernan, Director, OIA, confirmed that the FBI investigation involving NUMEC-Apollo is still pending.

February 17, 1978--Memorandum to the files from Peter Crane, OGC, captioned "Supplemental Leads from Mr. Conran," covering notes of Sidney Moglewer, NMSS, on NUREG-0350. (Enclosure 46).

February 13, 1978--Mr. Gossick's responses to questions posed by Dr. Henry Myers. These questions were submitted to the investigators by Dr. Myers in response to Chairman Hendrie's suggestion that he do so. (Enclosure 47).

January 16, 1978--Memorandum from Robert F. Burnett, Director, Division of Safeguards, to Thomas J. McTiernan, Director, OIA, providing an answer in writing to a question which Dr. Henry Myers provided. (Enclosure 48).

Statements on Post-Briefing Position on Theft or Diversion

Interviews--Mr. Anders said that, the Commissioners had not articulated a specific policy on theft or diversion statements at the time of the briefing and it did not cause the Commissioners to formulate a specific policy. Mr. Builder said statements like those in Mr. Gossick's testimony have been made a number of times and were not questioned by the Commission. According to Mr. Builder, "The Commission's policy did not change one iota." Mr. Page said if anything was ever said about a diversion occurring, it did not filter down to the staff. Peter Strauss recalled no guidance by the Commissioners to staff concerning any Commission policy regarding public statements on Apollo/NUMEC or "no evidence of diversion" other than what emanated from the Conran Task Force Report. Mr. Huberman recalled no hedge being placed on public statements. Mr. Eagle said that he could not say that the Commission ever sat down after the briefing and said, "Now we have to modify our statements." Mr. Rowden did not recall ever sitting down and formally adopting a policy on how the Commission should answer an inquiry on diversion. Mr. Chapman said that he and Mr. Builder did discuss the briefing's relevance to their tasks. He said their position was that, if there had been a diversion, based on what they heard, it must have been done under sanction by U.S. Government officials at a very high level, and under that circumstance it would not be relevant to the development of a safeguards security system. He said that they felt there was no need to follow the subject on their own. Mr. Chapman said that after the briefing there was no specific policy adopted on evidence of diversion. Mr. Smith said there never was any Commission policy on the use of the "no evidence" phrase. Dr. Bernard Snyder, Office of Policy and Evaluation, said he was shocked when he saw Mr. Strauss' statement in Document 102 that the Commission after the briefings was avoiding no evidence statements because he had seen enough documents to indicate the statement was inaccurate. Commissioner Kennedy said that the Commission, after the briefing, believed it was important not to make categorical statements so consequently, NRC simply said that it had no evidence that diversions had occurred.

The August 2 Briefing of the Commissioners on the MUF Report--Mr. Pedersen recalled that Commissioner Gilinsky asked whether it was too late to make a change in the report and was told that the draft had gone to the printers and that all Commissioner comments had been taken into account. Commissioner Gilinsky then said that all of his comments had not been considered. He mentioned the "no evidence" sentence. Commissioner Gilinsky said that we cannot make that kind of categorical statement. Mr. Pedersen said Mr. Smith and Mr. Gossick argued for its retention because it was used before and covered only the post 1968 period, as well as having been coordinated with ERDA. Mr. Pedersen said they also stated that any change involved stopping the presses and going back to ERDA. Commissioner Gilinsky asked for a smaller meeting. In the course of changing to the smaller meeting, Mr. Pedersen was told that the staff first heard of Mr. Gilinsky's "no evidence" objection just before the meeting. In the smaller meeting, Mr. Gilinsky argued for changing to "no conclusive evidence." Mr. Gilinsky took the view that "no conclusive evidence" more accurately reflected information which NRC had received and the Commission should not say "no evidence." Pedersen said that Smith, Burnett, and Gossick argued again for the draft language for the same reasons. Mr. Pedersen remembers that the discussion ended with Mr. Gilinsky replying that he might not concur in release of the report. Mr. Pedersen said that Mr. Gilinsky did not, however, issue any clear instruction not to go forward with the MUF report.

Fred Crane, Test and Evaluation Branch, Safeguards Division, NMSS, said that on July 27, 1977, Paul Goldberg of Commissioner Gilinsky's office told him that the Commissioner was out of town but might have changes for the MUF report. He told Mr. Goldberg it must go to the printers in a short time. The next day he received another call from Goldberg who said Commissioner Gilinsky was returning tonight to make changes in the report. He said NMSS decided to go forward with the report. On August 1, he briefed Congressman Dingell's staff on the report. He said that at the Commissioners' briefing on August 2, Commissioner Gilinsky asked regarding the report, "Is this the last word?" The Commissioner was told the Commission comments had been reviewed. Commissioner Gilinsky then called for a smaller meeting, at which point Mr. Crane departed. Mr. Crane said that in his briefing of the congressional staff he discussed the "no evidence" statement and said that it was misleading to say "no conclusive evidence."

Mr. Smith recalled that at the August 2 briefing, Commissioner Gilinsky asked whether it was too late to make changes. He said they pointed out the tight time schedule. Commissioner Gilinsky indicated he had a problem with the "no evidence" statement. Mr. Smith said that when Mr. Burnett pointed out that the report covered the time period from 1968, Commissioner Gilinsky seemed satisfied. Mr. Smith also said that it was obvious the Commissioner was "bothered."

Commissioner Kennedy recalled that at the August 2 briefing, Commissioner Gilinsky wanted to be certain that no categorical statements were included that no theft or diversion had ever occurred. He said that everyone concluded that it should address the period from 1968 since that was when the regulatory staff, NRC's predecessor, got safe-guards responsibility in the licensed sector. Commissioner Kennedy said that Commissioner Gilinsky asked that this be discussed later. Mr. Fouchard, Director, Office of Public Affairs, stated that Commissioner Gilinsky raised questions about the breadth of the no evidence statement and was told the report already was printed. The Commissioner then asked if it was too late to make a press release change. Mr. Fouchard said it was still in draft. They thereupon changed the draft to state that the report covered only the period 1968 forward.

Commissioner Gilinsky's Discussion With Commissioner Kennedy, Mr. Gossick, Mr. Smith, and Mr. Burnett Immediately Following the August 2 Briefing on the Report--Commissioner Kennedy recalled that the Commissioners asked Gossick, Smith, and Burnett to go across the hall to Mr. Gossick's convenience offices after the briefing. There a 3-5 minute session took place. Commissioner Kennedy did not believe Mr. Gossick was there the entire time. It was his recollection that Mr. Gossick was absent longer than he was present. He said he was absolutely confident that Mr. Gossick was not present for some significant portion of the meeting. Commissioner Kennedy said that Commissioner Gilinsky expressed concern about being categorical. He and the Commissioner agreed the staff should know of the briefings which raised questions warranting caution on diversion. Commissioner Kennedy said there was discussion of modifiers such as "conclusive," "direct" and "hard", but he said that NRC should not mislead in any direction on diversion. Commissioner Kennedy stated that he thought Commissioner Gilinsky understood the point he was making but was concerned that the impression that no diversion had ever occurred not be conveyed. This was the only guidance they gave on the use of the "no evidence" phrase.

Mr. Smith said that, when the August 2 briefing was over, Mr. Gossick came over to him and Bob Burnett and said the Commissioners wanted to meet with them. Thereupon, Mr. Gossick, Mr. Smith and Mr. Burnett joined Commissioners Kennedy and Gilinsky in an adjacent room. Commissioner Gilinsky advised them about a CIA briefing and said that it did appear that suspicious things had gone on but there was nothing definite. Commissioner Gilinsky pointed out that apparently the intelligence community was divided over the question of whether or not there had been a diversion. Mr. Smith said Commissioner Gilinsky said there was circumstantial evidence and specifically mentioned the "movements of Shapiro." The Commissioner told Mr. Smith and Burnett that they should be cautious on how they talk of lack of evidence and told them they should have the CIA briefing. Dr. Smith said that he and Burnett knew no more after the meeting than they knew before and that it was his personal feeling at that time that there still is no evidence of a theft or diversion.

Mr. Smith recalled that at one point in the meeting Lee Gossick was "pulled out of the room."

Mr. Burnett said that, after the August 2 briefing, Lee Gossick informed him and Mr. Smith that the Commissioners wished to talk to them. They joined the Commissioners in a small outer office. Commissioner Gilinsky told Burnett and Mr. Smith that they should have the CIA briefing; that he was aware that high officials in the intelligence community had different opinions on the possibility of diversion. Mr. Burnett could not remember that Commissioner Gilinsky discussed the substance of the CIA briefing but he believed the Commissioner was referring to Apollo. Mr. Burnett recalled that the information was not conclusive and there was no certainty on what had happened. He said Commissioner Gilinsky advised them that the CIA briefing was not conclusive. Mr. Burnett said that the Commissioner indicated there were "lots of things that couldn't be answered." It was Mr. Burnett's impression that the main purpose of the meeting in the outer office was to arrange a CIA briefing for them and not to give guidance or caution. It was Mr. Burnett's recollection that Commissioner Gilinsky never stated the CIA had said diversions had occurred. Mr. Burnett recalled that other persons kept "sticking their heads" into the meeting room to coordinate matters with one or more of the parties present.

February 14, 1978--Memorandum for Jerome Nelson, OGC, from Commissioner Kennedy, providing documents from the files of his office relating to Mr. Gossick's testimony, before the House Subcommittees (Subcommittee on Energy and Environment, and Subcommittee on Energy and Power), and information concerning the questions and answers attached to SECY-77-268. (Enclosure 49).

SUMMARY OF LEE V. GOSSICK'S INTERVIEW

Lee V. Gossick advised that he became the Executive Director for Operations when the NRC was formed in January 1975 and said that he first heard of the special briefings that were given the Commission in February 1976 about NUMEC Apollo in the summer of 1976 and that either Ken Chapman or John Davis told him that the briefings had taken place. Gossick said he was not aware of the particulars of the briefings until he read document 102 of the Conran Task Force Report. ✓

Gossick said that it was his understanding that there had been a MUF at NUMEC Apollo, and there was speculation or questions about whether it was a process loss or whether someone had made off with it. His understanding was that the information was not conclusive and no determination had been made as to what actually happened.

Gossick said that in July 1977, after the Commission lost a quorum, he received a letter from Congressman Udall requesting that he testify on the open letter that Jim Conran had sent to the Commission. The testimony was prepared and addressed the allegations made in the Conran letter plus the reason why Conran had been transferred within NRC but not the NUMEC Apollo matter.

Gossick stated that when he testified before the Udall committee that the matter of Apollo came up early. Chairman Udall indicated that Apollo bothered him and asked the four witnesses at the hearing what he could do to get to the bottom of that matter. One of the witnesses suggested that the committee should go to the FBI, the CIA, the JCAE, and the GAO as those agencies may have investigated the matter, and Gossick agreed with this suggestion.

When Gossick, in answer to a question by Congressman Tsongas about the theft of nuclear material, replied to the effect that "we" have investigated every incident and concluded that "we have no evidence that a significant amount of special nuclear material has been stolen" he was talking about what NRC had investigated and what had been investigated by the Regulatory organization of AEC, including events prior to 1968 when regulatory controls were established. Gossick said that he had heard and seen "no evidence" statements many times and knew that this was the view of the staff. He was aware that the Commission had made or approved similar statements and he understood that the statement reflected the Commission's position. By the "Commission" he meant the Commission that existed up to July 1, 1977. He was not speaking on behalf of the entire Federal government or other agencies such as ERDA or CIA.

Gossick said that on August 1, 1977, before the August 2, 1977, briefing of the two sitting Commissioners on the release of MUF data that he received a telephone call from Commissioner Gilinsky on the status of

not accurate
summary
of full
statement.
see it -
page 148
Vol III
also
page 155

See Ans. to Q. C-2
enclosure 47, p. 243

the report. Gossick told Gilinsky that the report was at the printers and Gilinsky said that he wanted the word "conclusive" inserted before the word "evidence" on page 2 of the report and when Gossick suggested that it could be discussed at the August 2 briefing, Gilinsky apparently agreed. When the matter came up at the August 2 briefing Gossick recalled that Gilinsky's concern was taken care of when it was agreed to modify the draft press release for August 5 to make it clear that the NRC report related only to the period after 1968.

With reference to the August 1 phone call from Commissioner Gilinsky, Gossick did not think that the call might have been received before his testimony before the Udall committee but that even if it had he would have answered the "no evidence" question in essentially the same way.

Gossick did not discuss his not being invited to the 1976 briefings by the CIA and ERDA until after his testimony before the Udall committee. Before he testified before the Udall committee, he did discuss the matter of the briefings with Commissioner Kennedy and former Chairman Rowden.

Gossick said that prior to his testimony before the Udall committee he talked to John Davis and Bryan Eagle about a statement in reference 102 of the Conran Task Force by Peter Strauss to the effect that after the 1976 briefings the "no evidence" statement was not made by the Commission without modification. He said that the Strauss statement did not sound right because the Commission had continued to make or approve the "no evidence" statements after this. Davis did not remember much of what had gone on and Eagle added nothing in terms of substance or facts. Gossick also questioned Commissioner Kennedy prior to his testimony before the Udall committee about what he should say if a question relating to the 1976 briefings came up and told Kennedy that he planned to say that the Commission had been briefed by the Executive Branch, without specifying what had been said, and that the Commission was aware of what the Executive Branch had to tell them.

Gossick said that when the August 2 briefing was over that he, Smith, and Burnett met with Commissioners Kennedy and Gilinsky. Gossick did not remember what was said at that meeting but he recalls that after it he asked Smith and Burnett what had been said. <They told him that it was about the 1976 CIA briefing and that it dealt with the suspicion that a diversion of material had taken place.>

Gossick said that in his testimony before the Dingell committee on the question of theft or diversion that it was his understanding that it was the Commission's view that there was no evidence of theft or diversion.

He stated that if he were to testify today he would either limit the answer to the question to the time covered in the MUF report or use the phrase "no conclusive evidence" or "no hard evidence." When he said that the Commission had reaffirmed its position, Gossick said he had in mind the MUF report as well as other statements made or approved by the Commission. In using the word "Commission," Gossick said he had in mind the last Commission before it went out of existence in June 1977.

not consistent - with p 47 finding.

SUMMARY OF COMMISSIONER VICTOR GILINSKY'S INTERVIEW

Commissioner Victor Gilinsky did not recall any formal consideration of the Apollo/NUMEC MUF of the 1960's before 1976. However, the question of nuclear inventory discrepancies and their explanation occupied the Commission from the outset in 1975. He attributed the briefings that the Commission received in February 1976, from the CIA and ERDA to allegations made by James Conran that ERDA was not sharing its information and that NUMEC material may have been diverted. As he understood it, the briefings were expected to lay these matters to rest.

The CIA briefer was a Mr. Duckett. Gilinsky did not recall that Duckett had a package of papers with him. Duckett said in his briefing that the matter was very closely held at the CIA and that former Director Helms had informed the then President and was instructed not to inform other federal agencies.

Duckett told the group that Mr. Shapiro, the Company President, [REDACTED]

[REDACTED] 25X1, E.O.13526 [REDACTED]

[REDACTED] and that there was no satisfactory explanation for the 1960's MUF. Duckett told the group that he thought a diversion had taken place.

Commissioner Gilinsky said that, although the material was identified as highly sensitive, no specific instructions not to disseminate it were given. There was no guidance to the staff issued after the briefing and no formal policy on statements of "evidence" or "no evidence" was formulated. Except for the Mattson Task Force, he did not know of anyone in the Commission being briefed on the subject prior to August 2, 1977. After the 1976 briefing, the Commission took the subject of safeguards much more seriously, particularly the "insider" threat.

Commissioner Gilinsky said that he considers categorical "no evidence" statements always to have been inappropriate, even more so after the briefing. He uses the work "evidence" as meaning information, or reason for belief, bearing on an issue. He said that he tried to keep NRC staff from making categorical statements but that he was inhibited by the need for not connecting his cautions to his NUMEC concerns.

As he recalled the ERDA briefing did not say much. It simply described the AEC investigation and that the NUMEC MUF was apparently due to material accounting deficiencies. He added that the government safeguarders in AEC, ERDA, and NRC had traditionally been too ready to explain away MUF's because inventory differences, in themselves, are not evidence of diversion; but merely reflect accounting differences. He pointed out that what this really meant was that the accounting system was not working properly.

Commissioner Gilinsky noted that during the period when the Commission was preparing to release MUF information, it was his impression that there was pressure from ERDA to adhere to a party line, that everything was all right with safeguards. He said that between July 21-31, that he was in California. He did not have a copy of the final draft of the MUF report which had been circulated on July 21 after he left for California. He said that he communicated with his assistant, Paul Goldberg, about the release. After the "no evidence" statement was brought to his attention he instructed Goldberg in talking with Mr. Gossick's assistants about effecting a change of wording to be discreet and not to connect it directly with NUMEC because of the sensitive background.

When the staff briefed Mr. Kennedy and Mr. Gilinsky on the upcoming MUF report, three matters were covered: (1) the MUF report for 1968 and beyond; (2) the press release to accompany the MUF report; and (3) the briefing statements to be used by the staff to brief the public. Commissioner Gilinsky said that he was surprised to find out at the briefing that the report had already been printed and expressed his strong disapproval of the "no evidence" statement in the report. He suggested that at a minimum, some modifier to "evidence" should be added and when he was questioned about this he responded, "Because there is evidence." At this point, Commissioner Kennedy asked about the evidence. Mr. Gilinsky said, "You mean tangible evidence?" Mr. Kennedy said "Yes." Mr. Gilinsky said that was too narrow a definition of evidence.

Mr. Gilinsky wanted an ERRATUM issued to change the sentence, at least to put the word "conclusive" before "evidence" but he was also concerned that this would highlight the matter unduly. Mr. Gilinsky finally agreed to the release of the report when everyone agreed that the "no evidence" statement was to be used as applicable only to the post-1968 period; that NRC briefers would publicly so interpret the statement; that the press release and briefing statement he modified accordingly; and that questions on the pre-1968 MUF's would be referred to ERDA. Mr. Gossick was present at the meeting and although he was opposed to making changes he ultimately agreed with the point that the statement in question applied only to post-1968.

Commissioner Gilinsky stated that in light of Mr. Smith's statement in the briefing that he knew of no evidence and the fact of his and Burnett's responsibilities for safeguards it was agreed between Mr. Gilinsky and Mr. Kennedy to talk to Smith and Burnett. Gossick, when informed of this, asked to sit in.

No - VG + RK asked me to bring Smith & Burnett to this mtg.

The group moved across the hall to an office. Gilinsky told them that there was information they should know, which would explain his own insistence on qualifying statements about lack of evidence of diversion.

He told them that the Commission had been briefed by the CIA on Apollo/NUMEC and information was presented which related to the possibility of diversion at NUMEC and raised serious suspicions. He told them that it was circumstantial in nature and he was not entirely persuaded by the CIA briefing but that the CIA, at least in the person of the briefer, was persuaded by the evidence and had considered that diversion had occurred. At the conclusion, Mr. Gossick said it was about what he had surmised. Mr. Burnett said something to the effect: "You've told me something, because I have just come from the intelligence community and I know they do not reach such conclusions lightly." During this session, Mr. Gilinsky had a vague recollection of Mr. Gossick going to the door at some point, that there was some interruption and that he waited for it to pass before he resumed talking.

Commissioner Gilinsky stated that either shortly before or shortly after August 2, 1977, Gossick mentioned to him that he had made the unqualified "no evidence" statement before the Udall subcommittee and Gilinsky told him that regardless of what he may have said previously, NRC "has to state this one correctly."

Mr. Gilinsky recalled discussing with Mr. Gossick the questions and answers that were sent to Congressman Udall and remembers that Gossick was reluctant to change them. The response to Udall clearly dealt with licensees, which implied a post-1968 period, but he wanted to state this explicitly. When he learned that the letter had already been sent he did not pursue the matter.

I don't remember any such conversations

Commissioner Gilinsky said that he did not recall seeing the actual wording of the July 29 testimony before Congressman Udall until November and could not pinpoint any mention to Mr. Gossick of reservations he had about NUMEC prior to Mr. Gossick's testimony on July 29, 1977.

He said that about 1 week after the November 15, 1977 letter from Congressmen Udall and Tsongas was received he saw Mr. Gossick's proposed response and became aware for the first time of Mr. Gossick's testimony before the Dingell subcommittee. He told Chairman Hendrie that the reply was unresponsive and that cited testimony before Congressman Dingell's subcommittee mischaracterized a Commission position on evidence of diversion. At the Chairman's suggestion, he talked to Mr. Gossick, who replied that he did not think that he had, but would consider this in his second draft.

After the second draft was circulated, Mr. Gossick came to his office and Mr. Gilinsky asked him whether he understood the limitation on the "no evidence" statement in the MUF report as referring to post-1968. Mr. Gossick said that he did not think that the NRC MUF press release was so limited. Mr. Gilinsky asked Mr. Gossick whether he recalled the

meeting at which he, Gilinsky, said that the CIA thought there had been a theft of the NUMEC material, and Gossick replied that he remembered the meeting but had no recollection of the statement and that this was the first he had heard of it. Mr. Gilinsky mentioned Mr. Burnett's reaction and Mr. Gossick replied that if he had heard it that way, he, too, would have reacted in a similar fashion.

Commissioner Gilinsky stated that Mr. Gossick's final draft was not much different than the earlier ones and because of the apparent lack of agreement among Commissioners on how to respond to Congressmen Udall and Tsongas, Chairman Hendrie decided to answer the Congressmen personally.

Mr. Gilinsky said that he did not agree with the Chairman's interpretation of events and told him that he intended to write Congressman Dingell to clear up the August 8 testimony. After Chairman Hendrie wrote his letter, Mr. Gilinsky dispatched his on December 12, 1977. Before sending it he showed it to Mr. Gossick. In conversation, Mr. Gilinsky recalled Mr. Gossick saying something to the effect that he did not know why he had said that before Congressman Dingell. *I don't recall any such statement*

Commissioner Gilinsky said that he wrote to Congressman Dingell, and not Congressmen Udall and Tsongas, because he felt himself directly and personally involved in Mr. Gossick's testimony before that subcommittee in which Mr. Gossick was purporting to represent a Commission view at a time when he was one of two sitting Commissioners. He felt personally compelled to correct the record before the Dingell subcommittee and sent a copy of this letter to Congressman Udall. He did not consider that he was in a position to answer the questions raised in the letter from Congressmen Udall and Tsongas.

FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

Our findings and recommendations are the end products of an extensive investigation conducted within an understandably tight time frame. The investigators and supporting staff who assisted in this matter were fully aware of the significance of this inquiry to the individuals concerned, the congressional subcommittees, and NRC and made their best efforts, within the deadline, to render a full and accurate account of all relevant facts. Our findings, conclusions, and recommendations are submitted with the realization that they pass upon issues concerning which reasonable people hold, and will probably continue to hold, differing views. We also recognize that there are investigative leads and areas which might have been further examined had there been more time. We can only state that the findings, conclusions and recommendations represent our best and most forthright judgment under the circumstances. It should be noted, too, that while ~~this aspect was not emphasized in our investigation, we have no reason to believe that the inquiry arose out of personal animosity.~~ Finally, we note that neither the NRC nor the Chairman or any other Commissioner has reviewed this report prior to its release.)??

In stating these findings and recommendations, we make no judgment on whether there was in fact a theft or diversion of SNM at NUMEC-Apollo. We made every effort to develop from all participants a full account of the February 1976 briefing but, despite our need-to-know and the significance of the matter involved we encountered some difficulties, as previously noted. We commend Chairman Udall's publicly expressed intention to get to the bottom of the NUMEC-Apollo case and we hope that this report might be of some assistance in this regard.

Findings and Conclusions

A. General

1. While past and present NRC Commissioners have expressed individual concern over the appropriateness of statements about "no evidence" of theft or diversion, the Commission took no action to establish new policy or guidelines regarding such statements after the February 1976 briefings. Except for Commissioner Gilinsky's expression of concern in August of 1977, about the "no evidence" statement in the NRC MUF report, there was a pattern of Commission and staff actions, from 1975 to December 1977 which reflect the position that there is "no evidence" of theft or diversion of SNM. If the Commission believed that the CIA briefing warranted particular caution or circumspection in public statements, it failed to communicate that message. In our view, because the inherent

ambiguity in the "no evidence" phrase could, and apparently did, create a misleading impression, some such message should have been sent.)

2. We believe that the problems posed by Mr. Gossick's testimony should be viewed in the context of the evolving role of the Executive Director of Operations (EDO). The statute authorizes Directors of certain components to "communicate with or report directly to the Commission" when they deem it necessary. ^{1/} Apparently this option was utilized by Mr. Chapman, the head of the Office of Nuclear Material Safety and Safeguards at the time of the CIA briefing, who stated that he normally did not go through Mr. Gossick in dealing with sensitive safeguards matters. Mr. Huberman, the Director of the Office of Policy Evaluation at the time of the CIA briefing, commented upon the "cutting out" of Mr. Gossick from important matters. He characterized this practice as "atrocious," and said it had left Mr. Gossick a "second-class citizen." We understand that in April of 1977, an attempt was made to correct this practice. When a Commission quorum lapsed, Mr. Gossick took over the stewardship of the agency -- confronting heavy new responsibility and several upcoming congressional hearings -- without having been regularly informed about many things.
3. Much of Mr. Gossick's difficulties before the two subcommittees was due to the degree of secrecy which was attached to the CIA briefing. Only a few knew the facts; and the few, justifiably or otherwise, failed to communicate to Mr. Gossick enough information of substance to permit him to independently make a meaningful assessment of the accuracy of the "no evidence" statement. This problem was compounded by the turnover among high-level officials who attended the briefing. adherence to secrecy should never be permitted to become so pervasive that it impedes effective continuity in management.

B. Testimony on July 29, 1977 before the House Subcommittee on Energy and Environment

1. Mr. Gossick's testimony on NUMEC-Apollo on July 29, 1977, before the House Subcommittee on Energy and Environment is not entirely clear. Parts of it disavow knowledge of NUMEC-Apollo; other parts, such as the "no evidence" statement seem to suggest knowledge. Moreover, on page 25, speaking of NUMEC-Apollo,

^{1/} Sec. 209(b) Energy Reorganization Act of 1974

Mr. Gossick said "...this matter predated the NRC..." But on page 37, in a statement which Mr. Gossick acknowledged encompassed the NUMEC-Apollo matter, he said "We have investigated every incident...I can say we have no evidence that...a significant amount of SNM has been stolen." Later, in an apparent reference to NUMEC-Apollo, he said "Ninety-four (kilograms) would be a significant quantity. We have no evidence that such an amount has been stolen." Shortly thereafter, when asked whether the Apollo circumstances would cause a reasonable person to wonder he replied,..."I am not familiar with the alleged circumstances about that...all kinds of answers have been rumored or speculated... I just can't speak to that."

2. Whether "no evidence" accurately described NRC's knowledge about NUMEC-Apollo -- as distinguished from Mr. Gossick's knowledge -- is debatable. Some of those who heard the CIA briefing agree with the term; others who heard the same briefing would qualify it. We believe that the phrase is so inherently ambiguous as to have the potential to mislead.

3. Under all the circumstances we believe that Mr. Gossick, having chosen to testify about NUMEC-Apollo, should have been more expansive -- either by detailing so much of the matter as he then knew, or by clearly defining his terms.

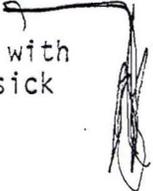
4. In his testimony on July 29, 1977, before the House Subcommittee on Energy and Environment, Mr. Gossick did not knowingly and intentionally misrepresent facts or knowingly and intentionally fail to present an accurate description of the current understanding of the Apollo matter.

- In our view, Mr. Gossick believed (and still believes) that there is "no evidence" of diversion from NUMEC-Apollo. Whether he was right or wrong is a different issue.
- Mr. Gossick believed that his statement on evidence of theft or diversion did not differ from a number of similar statements made by the Commission and staff, both before and after the February 1976 briefings. As noted above, the Commission furnished no guidance on public statements on theft or diversion after the briefing.
- We found no information indicating that Mr. Gossick knew any details about the substance of the February 1976 CIA briefing (which he did not attend) except for the conclusion in document 102 of the Conran Task Force report

that it "raised serious questions and did not provide conclusive answers." Also, there are indications that at least one person who was at the briefing (and perhaps more) had advised Mr. Gossick, without furnishing substance, that the briefings were inconclusive. Mr. Gossick was aware of Mr. Strauss' caution in document 102 about qualifying "no evidence" statements, but Mr. Gossick discounted this because NRC has continued to make unqualified "no evidence" statements after the briefings. Mr. Gossick also was aware of media reports on NUMEC-Apollo and knew the CIA briefing had caused NRC to contact the Executive Branch. But he discounted these events because he knew that the briefing had been inconclusive. In the final analysis, Mr. Gossick chose to adhere to what he believed to be the NRC position on the matter, while expressing his personal lack of knowledge, regarding NUMEC-Apollo. We find that, in these circumstances, Mr. Gossick did not intentionally misrepresent facts.

5. Because of emphasis on the NUMEC-Apollo matter, the public record on other possible thefts or diversions of SNM remains unclear in light of Mr. Conran's testimony in the July 29, 1977 hearing that:
- "There are other instances of theft and material stolen than from the NUMEC-Apollo installation, thefts or suspected thefts."
 - "There have been other successful attempts to steal nuclear material - not always a large quantity, not always bomb grade material. There have been a number of instances in which nuclear material was stolen."
 - "In some instances it was recovered so we know it was stolen."
 - "The documentation that I have in my head is so extensive that I really cannot remember which part is classified and which is not, so I would really rather not say in public, but all of the information I have referred to is in the draft overview study report, or I have identified it in some other way for the subcommittee...I would get very specific in a closed hearing."

C. Testimony on August 8, 1977 before the House Subcommittee on Energy and Power

1. While we have no information indicating that it was done with an intent to deceive or mislead the subcommittee, Mr. Gossick
- 

No!
I was not
referring to
the MUF report
See p 38

in his August 8, 1977 testimony before the House Subcommittee testified incorrectly when he agreed that the Commission, in releasing the MUF report, has "also given assurance that they believe no significant quantities have ever been diverted or stolen." Referring to the same report, Mr. Gossick also testified incorrectly in stating "The statement of the Commission that they have no evidence that indicated any diversion had taken place, was made in full knowledge of the briefing that they had received. So while I personally was not briefed on that matter, the Commission did make, and has reaffirmed that judgment that, in their view, there has been no evidence to indicate that any diversion has taken place."

This testimony is incorrect because it failed to take into consideration the fact that the MUF report, as earlier stated by Mr. Gossick in his prepared testimony at the hearing, covered only the period beginning on January 1, 1968. It was this 1968 limitation regarding "no evidence" of theft or diversion that was particularly significant to Commissioner Gilinsky in the August 2, 1977 briefing about the MUF report (in which Mr. Gossick had participated) and in the rewriting and approving of the press release accompanying the MUF report. Mr. Gossick in his interview admitted that in his August 8 "no evidence" testimony he should have limited his testimony by reference to 1968, or by adjectives such as "conclusive" or "hard." Because Mr. Gossick now recognizes that he should have used such limitations, we do not reach the question whether circumstances, including the August 2 briefing and the meeting which followed, should have, in any event, led Mr. Gossick to articulate those limitations in his testimony. We agree that Mr. Gossick should have limited his testimony to the period covered by the MUF report, or used adjectives such as "conclusive" or "hard."

In hindsight,
to avoid the
step that
resulted, but
not because
I thought my
statement was
wrong.

3. Mr. Gossick's absence from the February 1976 briefings was not due to any lack of confidence in him.
4. No CIA packet of information was offered to or refused by NRC at the February briefings. The results of the interviews indicated generally that the briefer spoke informally from a folder or loose papers.

Recommendations

On the basis of the information developed in this inquiry it is recommended that:

1. If further information about the possibility of theft or diversion at NUMEC-Apollo is relevant to NRC's continuing safeguards responsibilities, then the Commission should arrange for briefings from the

FBI and the General Accounting Office, both of which are conducting current inquiries into the matter, and from the NSC, which agency briefed Congressmen Udall and Tsongas.

2. In the future, NRC should adhere to the position adopted in the August 1977 MUF report with respect to theft or diversion -- that is, that NRC speaks only for 1968 and thereafter, and further, such statements should be qualified by language reflecting the inherent uncertainties in the material accounting system.
3. The Commission should consider the propriety of continuing to use the term "no evidence" in view of our experience in this matter.
4. NRC safeguards experts should identify, clarify publicly, and take whatever action may be appropriate with respect to the other alleged successful thefts or diversions mentioned by Mr. Conran in his July 29, 1977 testimony.

