

Office of the Attorney General
Washington, D. C. 20530

April 22, 1976

MEMORANDUM FOR THE PRESIDENT

The purpose of this memorandum is to set forth my views on two issues -- (1) whether the jurisdiction of the Joint Atomic Energy Committee is exclusive and (2) whether the statute of limitations has run on any possible criminal offenses arising out of the discrepancy in nuclear materials at the Nuclear Materials and Equipment Company (NUMEC) -- and to attach a brief memorandum summarizing the FBI's role in this matter.

I. Jurisdiction of the Joint Atomic Energy Committee.

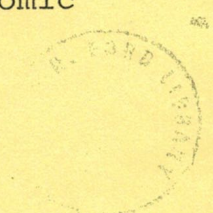
Section 202 of the Atomic Energy Act, 24 U.S.C. 2252, which defines the authority of the Atomic Energy Commission, provides in pertinent part:

"* * * All bills, resolutions, and other matters in the Senate or the House of Representatives relating primarily to the Commission or to the development, use, or control of atomic energy shall be referred to the Joint Committee."1/

Nothing in this text indicates that this referral is exclusive, and that other Committees may not consider those matters if they also come within their jurisdiction.

During the debate of the Atomic Energy Act of 1954 on the floor of the House there was a colloquy in which Congressman Yates expressed the view that with respect to legislative proposals the jurisdiction of the Joint Committee is exclusive. 100 Cong. Rec. 11667-11668. In our view, however, this statement is insufficient to give to the text of the statute a significant feature which it does not in fact contain, particularly in light of the subsequent legislative practice.

1/ This section is derived from section 15 of the Atomic Energy Act of 1946.



The House and Senate rules do not contain any provision which would give the Joint Committee on Atomic Energy exclusive jurisdiction. The Senate Rules merely reprint without comment the provisions of the Atomic Energy Act relating to the Joint Committee. 42 U.S.C. 2251-2257; see Senate Manual paras. 565-571. The House Rules give only a short digest of those statutory provisions. Manual and Rules of the House of Representatives, § 983a. Moreover, at least one House committee is specifically accorded jurisdiction over a matter which comes within the Joint Committee's authority as well. The House Committee on Interior and Insular Affairs is given special oversight functions "with respect to all programs affecting . . . nonmilitary nuclear energy and research and development, including the disposal of nuclear waste." Manual and Rules of the House of Representatives, § 679, 693.

A study covering the practice of the first fifteen years of the Joint Committee indicates that it repeatedly had to share jurisdiction with other committees on matters involving the development, use or control of atomic energy.^{2/} For example, in the case of nuclear powered merchant vessels, the Joint Committee had to share jurisdiction with the Senate Committee on Commerce, and the House Committee on Merchant Marine.^{3/} Recently, the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce considered instances of alleged misuse of radioactive materials, a subject which unquestionably comes within the jurisdiction of the Joint Committee on Atomic Energy.

We conclude that it cannot plausibly be asserted that the jurisdiction of the Joint Committee is exclusive.

There are, however, other features distinguishing the Joint Committee from other committees of Congress, so that the executive branch could justify an unwillingness to furnish sensitive information to committees other than the Joint Committee. Under 42 U.S.C. 2256, the Joint Committee "may classify information originating within the Committee in accordance with standards used generally by the executive branch

^{2/} See Green and Rosenthal, The Joint Committee on Atomic Energy: A Study in Fusion of Governmental Power (1961), pp. 262-274.

^{3/} Id. pp. 270-271

for classifying Restricted Data or defense information." The effect of such classification is at the very least to enable the Act's provision on the protection of Restricted Data to become applicable -- and possibly to enable the invocation of other criminal statutes as well.

Under 42 U.S.C. 2255 the Joint Committee is authorized to permit its members, employees and consultants to carry firearms while in the discharge of their official duties; and under 42 U.S.C. 2257 it is authorized to direct such security safeguards as it deems appropriate. We are advised that by virtue of these provisions the Joint Committee has an extremely secure recordkeeping system.

These special features would obviously justify Presidential willingness to provide information to this Committee which might be withheld from others.

II. Possible Violation of Criminal Statutes.

The Federal Bureau of Investigation conducted one criminal investigation which related to NUMEC. That investigation involved a possible violation of the Foreign Agents Registration Act by the president of NUMEC for acts occurring in 1956-66. The Criminal Division advised the Bureau in September, 1966 that these acts did not constitute a violation of the Act and the investigation was closed. The five-year statute of limitations which applies to this Act has since expired.

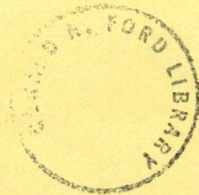
The FBI did not conduct an investigation into the alleged discrepancy in nuclear materials at NUMEC because it was advised by the AEC that any loss likely was attributable to inadequate accounting procedures and that there was no evidence or suspicion of a violation of law. Since no investigation was undertaken, the Department of Justice cannot state that there is no evidence which would support a criminal charge. The facts available with respect to this matter indicate that the following criminal statutes may be involved:

42 U.S.C. 2077 - Unauthorized dealings in special nuclear material

42 U.S.C. 2273 - Violation of Atomic Energy Act generally, or of agency regulations

42 U.S.C. 2275 - Receipt of Restricted Data

42 U.S.C. 2276 - Tampering with Restricted Data



42 U.S.C. 2277 - Disclosure of Restricted Data

18 U.S.C. 832-834 - Transportation of dangerous articles

18 U.S.C. 793-794 - Espionage: gathering or transmittal of defense information

18 U.S.C. 3 - Accessory after the fact

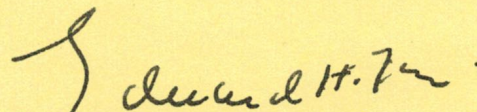
18 U.S.C. 4 - Misprision of felony

18 U.S.C. 371 - Conspiracy to commit offense

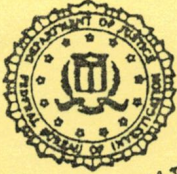
The Statute of Limitations for the above-enumerated offenses is five years (18 U.S.C. 3282) except for violation of 42 U.S.C. 2274-76, for which it is ten years (42 U.S.C. 2278). Furthermore, if concealment of the substantive offense is continuing, the statute of limitations would not bar a prosecution under 18 U.S.C. 3 (accessory after the fact), 4 (misprision of felony) and 371 (conspiracy).

Because the statute of limitations may not have run with respect to any offenses that may be involved and because of the responsibility to consider whether any dismissal or other disciplinary proceedings may be appropriate with respect to any persons presently employed as federal officials who may have participated in or concealed any offense, I believe it necessary to conduct an investigation. Section 2271 of the Atomic Energy Act provides that "the Federal Bureau of Investigation of the Department of Justice shall investigate all alleged or suspected criminal violations" of the Act.

A brief summary of the FBI's file on this matter is attached.


Attorney General





SECRET
UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

April 22, 1976

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE.

11-10-86
Classified by 1629 RFP/long
Declassify on: OADR

(DR)

[REDACTED]

ATOMIC ENERGY ACT

[REDACTED]

(DR)

[REDACTED]

The first investigation was prompted by the Atomic Energy Commission (AEC) advising this Bureau in 1965 that the Nuclear Materials Equipment Corporation (NUMEC), an AEC subcontractor in Apollo, Pennsylvania, was negotiating with the Government of Israel to establish a joint company in Israel to be known as Israeli NUMEC Isotopes and Radiation Enterprises (ISORAD), Limited. The firm was to engage in the irradiation of citrus fruit.

(DR)

[REDACTED]

The results of this investigation were furnished to the Justice Department.

(DR)

[REDACTED]

In February, 1966, the AEC advised there were indications that NUMEC was lax in the management of nuclear materials. Since April, 1957, AEC had made extensive internal technical checks at NUMEC and had reported the situation to the Joint Committee on Atomic Energy (JCAE). The Joint Committee was told by AEC on February 14, 1966, that in the absence of evidence or suspicion of a violation of the law, AEC had determined that inquiry by the FBI was not then warranted. u

~~SECRET~~

Classified by 6019
Exempt from GDS, Category 3
Date of Declassification Indefinite

PORTIONS EXEMPTED
E.O. 12356, Sec. 1.3 (2) (4) (5)
FBI letter, 11/19/86

DECLASSIFIED

NLF MR 87-4, #10
DAD, NARS Date 12/2/86

NATIONAL SECURITY INFORMATION
Unauthorized Disclosure
Subject to Criminal Sanctions

Photocopy from Gerald R...

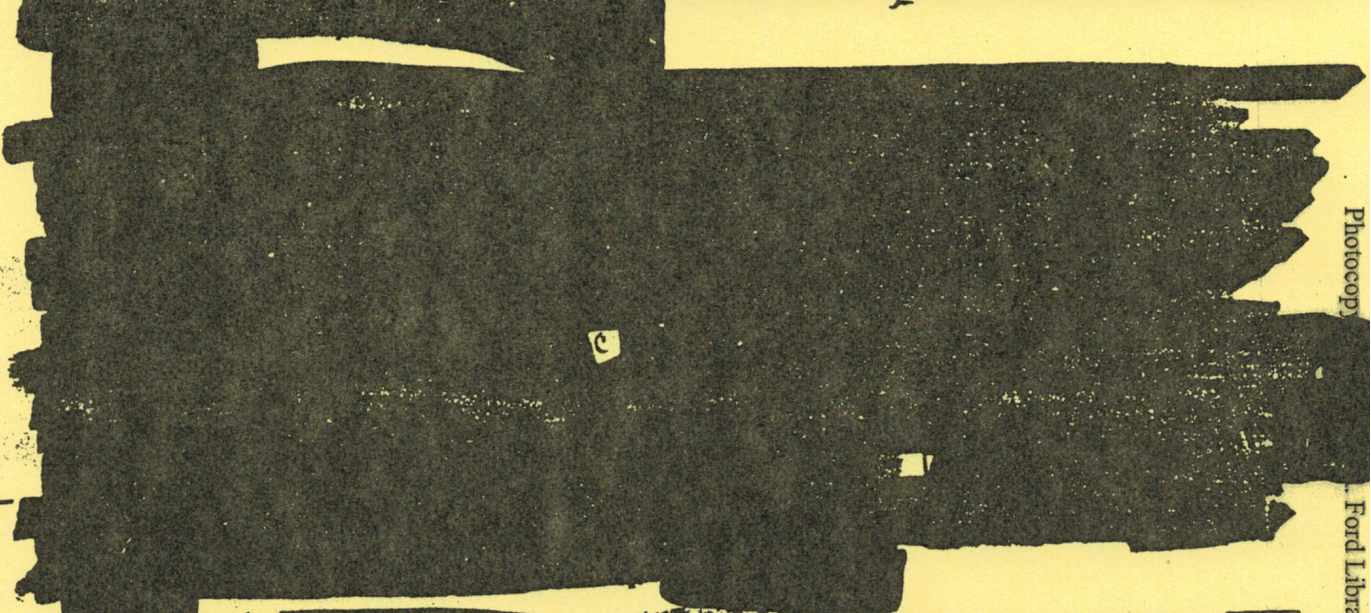
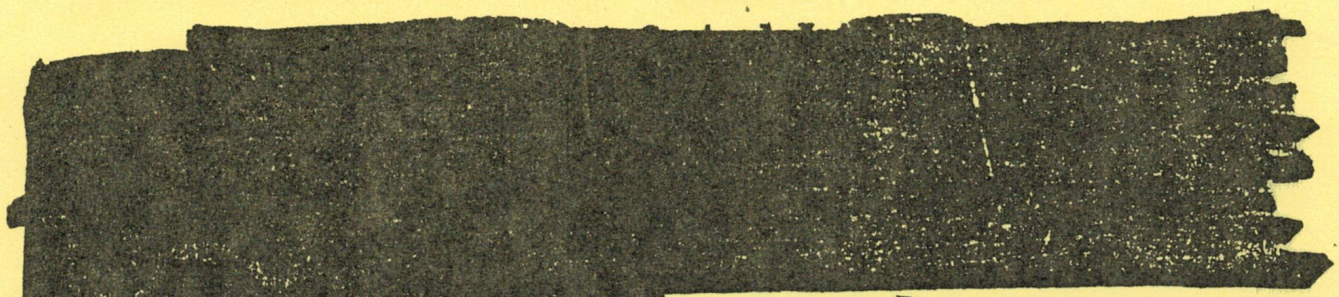
(DR)

According to AEC, NUMEC received 1,012 kilograms of uranium-235 from AEC to process into fuel elements for nuclear reactors for space propulsion. This subcontract was completed on October, 31, 1964. In April, 1965, an AEC inventory indicated a loss, fixed by a later AEC check in November, 1965, at 61 kilograms valued at \$764,000. In addition, a survey of the plant's operations since 1957 revealed that NUMEC had experienced a total cumulative loss on all AEC subcontracts of 178 kilograms, all but 61 of which AEC considered properly accounted for by normal processing losses. AEC was unable to say unequivocally that theft or diversion of the 61 kilograms had not taken place, but AEC believed that NUMEC consistently underestimated its processing losses and that the loss of the 61 kilograms charged to the latest subcontract actually reported an accumulation of losses over an 8-year period. AEC pointed out, however, that because the NUMEC records system was not then so set up, no determination could be made as to when the various losses occurred or whether material provided for the latest subcontract was used, knowingly or inadvertently, to offset losses on other contracts.

AEC advised that there would be no financial loss to the Government as NUMEC had agreed to pay for the 61 kilograms. In addition, NUMEC had developed a better system for controlling nuclear materials and an improvement was also expected due to NUMEC's hiring of a former AEC official. AEC advised, however, that prior to making more penetrating checks into NUMEC's operations, it was felt the FBI should be consulted to determine whether the FBI desired to assume investigation of the matter. u

The FBI advised AEC on March 1, 1966, that the FBI had given full consideration to this matter and that under the circumstances presented by AEC, the FBI did not intend to assume any investigative responsibility; however, it was requested that AEC advise the FBI of any further developments coming to its attention concerning this matter which would indicate there had been a violation within FBI jurisdiction. u

(DR)

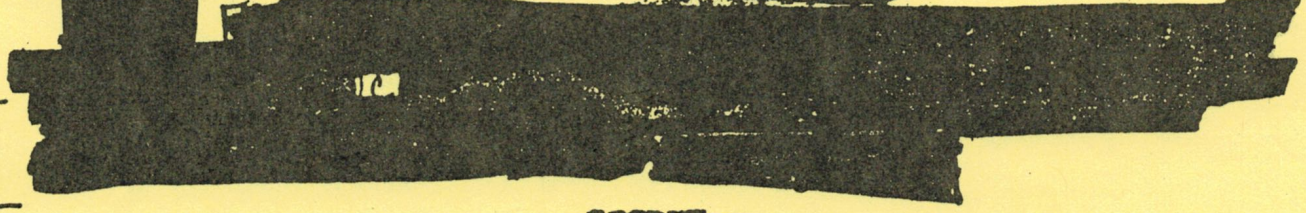


(DR)



c

(DR)



Photocopy
Ford Library

(DR)

[REDACTED]

[REDACTED]

Photocopy from Gerald R. Ford Library

AEC subsequently advised that no further action was being taken by AEC.

(DR)

[REDACTED]

(DR)

By letter dated April 13, 1969, the Department of Justice advised that based on the results of the FBI investigation conducted to date, the facts of the matter were not such as to warrant action [REDACTED]

(DR)