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ATOMIC SAFETY AND LICENSING APPEAL PANEL

April 13, 1983

Note to: Sebastian Aloit

From: Steve Eilperin *SEE*

Here is a copy of the
Applegate chronology as
far as I have gone on it.
Please incorporate whatever
other information or comments
you might have. It should be
of some use to us as a reference
for our interviews.

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PDR FOIA
BAUSER84-415 PDR

CHRONOLOGY

12/5/79 Applegate hired by CGE.

12/17/79 Reports progress to Murray of CGE. Inform Murray about stolen materials and belt buckles. Murray instructs Applegate to look for misconduct of employees of Peabody-Magnaflux.

12/2-/79 Further reports of time cheating; also of lax security. Murray again asks for info on PM.

12/3-/79 Reports gun raffling, defective pipe welds, spool incident, pressure on PM.

1/80 Applegate tells CGE of safety problems and collusion of Kaiser. Ignored. Ordered to try to find reason to get rid of Peabody-Magnaflux (good guys doing x-ray radiography).

1/3/80 CGE terminates Applegate's firm. Applegate takes steps to preserve info he has gathered.

1/5-6/80 PM trailer pilfered.

1/16/80 Applegate resigns from Confidential Services Inc.

25 1/80 (last half) Applegate allegations to Cummings.
- 2/15

1/17 2/12/80 Murray of CGE gives Applegate reports to fired employees.

1/12 2/28/80 Contacts Ahearne's office and then put through to Bill Ward and Dudley Thompson of IE within a matter of hours. Applegate also goes to FBI, US Atty about this time or earlier. IE had not been given info by Cummings.

3/80. Ahearne orders investigation after lower level NRC footdragging.

3/80 Applegate car mysteriously forced off road. Threats begin.

3/3/80 Gerald Phillips and L. Williamson meet Applegate at his home for 9 hours. Take docs to xerox. Don't listen to all tapes.

3/4/80 Phillips again meets Applegate and advises him IE will investigate.

3/11/80 Phillips/Applegate letter scoping investigating into defective welds accepted for safety related systems, defective welds in 5 prefab pipes that had been dropped, flushing, or pressure-cleaning process for safety related piping.

4/1/80 PM ordered off site.

4/80 Phillips advises Applegate NRC investigation at plant about to begin.

4/80 Phillips gives Applegate prelim results. Welds and pipe flushing corrected. Prefab pipes, current violation.

4/80-5/80 IE Reg III investigation.

4/15/80 Applegate contacts Chicago Sun Times.

4/20/80 Applegate story in Chicago Sun Times.

4/2 /80 Applegate tells Phillips coverup continues. Phillip discusses claim.

4/30/80 Applegate contacts Bill Ward of NRC about coverup.

5/1/80 Applegate and Ward meet in local Chicago FBI office with Phillip, and Buckley of FBI, for 2-1/2 hrs. Phillip claimed could not understand tape. FBI said NRC would have to act first.

5/6/80 PM employees no longer talkative. Chief exec claims the pilfering hurt PM in its defense and PM holding co. is dictating position. Charges Kaiser coverup. Conversation taped and witnessed.

5/80 Applegate goes to Washington. Meets Critical Mass, GAP, Metzenbaum staff.

5/10-15/80 Threats against Applegate's landlady.

5/16/80 Applegate leaves Cincinnati

6/80 Applegate in Washington to prepare disclosure.

6/4/80 Phillip talks with Applegate for last time. Says PM unwilling to make specific accusations against CGE. IE report to be out soon.

7/80 Reg III report.

12/80 GAP allegations sent to Merit Systems Protection Board that (a) potentially faulty construction existed at Zimmer, and (b) NRC failed to investigate them properly.

12/15/80 Ahearne tasks OIA to determine adequacy of Region III investigation.

12/29/80 GAP petition formally sent to OIA.

12/80-3/6/81 OIA, principally Gamble and Sinclair, interviews Region III personnel and some others to determine what was done as a result of 2/80 Applegate allegations. OIA looks at IE regional investigative procedures, Zimmer inspection and investigation reports prepared by Region III, pertinent Kaiser welding records, pertinent non-conformance reports, and RIII investigators working files. (OIA of view that only a limited number of GAP 12/80 allegations had been brought to IE attention by Applegate in 2/80).

12/30/80-3/4/81 OIA reviews GAP petition, gets more doc from GAP, many of which concern post-IE inv. and hence could not have been within scope of what Applegate initially told Reg. III.

1/9/81 OIA meets with GAP reps and gets additional doc. which OIA refers to IE because it deals with safety info.

1/13/81 3 OIA people (Gamble, Sinclair, and Schnebelan) meet with Kepler, Davis, Norelius, Phillip, Fiorelli.

8/7/81 OIA Report - Findings: Inadequate doc., e.g., no detailed doc of interviews with Applegate or principal wits, no detailed doc of welding records reviewed re: 3 allegedly defective welds. None of welds were inspected by inv. team nor was all pert weiding doc reviewed.

Second Applegate alleg. re: installing prefab safety pipe with defective welds was not fully investigated nor accurately repled because it omitted fact that a CGE QA officials responsible for QA program at Zimmer had cleared the defective pipe to be installed.

Lastly, IE wrongly quibbled by saying Applegate's alleg. of defective welding not substantiated. In fact, Applegate was right despite the fact that welds had not received final acceptance.

2/81-4/6/81 Gamble and Sinclair write up and complete draft OIA report. Submit to Schnebelan for review.

4/6/81-8/81 Various iterations of draft OIA report with Cummings, Gamble and Sinclair.

5/81 Open 81-39 file growing out of IE investigation uncovering falsification issue.

7/81-8/81 Cummings takes Harpster interview out of draft OIA report over objections of Gamble and Sinclair on grounds of irrelevance.

8/81 Gamble and Sinclair at Cummings direction discuss OIA report with RIII. Kepler, Cummings, Sinclair & Gamble conference call attempt to assuage Kepler's concerns about unfair criticism.

9/81 Lowenstein FOIA request.

6/30/82 GAP FOIA lawsuit.



NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

November 16, 1982

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MEMORANDUM FOR: Chairman Palladino
FROM: Martin G. Malsch *WJM*
Deputy General Counsel
SUBJECT: INTERVIEW WITH THOMAS APPLGATE

On November 5, 1982 Rick Levi and I interviewed Thomas Applagate with regard to his August 16, 1982 letter to Chairman Palladino and his allegations concerning Jim Cummings. Two attorneys representing Applagate, Lynne Bernabei and Thomas Devine, were also present. A detailed report of that interview is attached. That report merely recites Applagate's and his attorneys' statements. OGC's understanding is that the Commission wanted only a report of the interview. OGC has therefore made no attempt to verify or investigate any of Applagate's statements, nor has OGC made any recommendations on future Commission actions in this matter. The following is a brief listing of Applagate's essential allegations about Cummings:

- in early 1980*
- (1) Cummings failed to appreciate the seriousness of Applagate's concerns and brushed Applagate off; *Alot*
 - (2) OIA failed to monitor adequately IE's second investigation at Zimmer to ensure that all relevant evidence appeared in IE's report. Indeed, OIA had evidence showing that Cincinnati Gas & Electric (CG&E) management knew of the problems at Zimmer but OIA did not provide this evidence to IE until IE's report was almost complete. IE's report failed to reflect that evidence and OIA knew that NRC's public statements regarding the lack of CG&E management involvement were false or misleading; *Alot*
 - (3) IE and Applagate established ground rules for conducting IE's second investigation, such as interviewing all witnesses under oath, but these ground rules were not followed, and OIA in its review function and in its cooperation with IE should have seen that they were; *byt*
- in Nov. 1981*
- on Feb 81*

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in April, 1981

- (4) OIA (improperly) suspended its investigation of wrongdoing at Zimmer and requested the U.S. Attorney to halt his criminal investigation because of a concern that the IE safety investigation would be impeded even though IE had in fact stopped its active investigation, thus allowing the subject of the investigation to continue its practices and to cover its tracks. *Alot*
However, there were no allegations that OIA withheld information from the U.S. Attorney's office;
- (5) IE diverted resources to investigate Applegate *about 4/81*
(Applegate stated that he had a personal feeling that OIA might have had an influence here but that he had no support for this feeling); *How?*
- (6) The OIA report was improperly edited to delete critical information regarding CG&E management involvement and possibly also to delete comments that were critical of IE. *Miller*

Except for item (1) all the allegations concern OIA rather than Cummings himself. Applegate and his attorneys would attribute the other items to Cummings because he heads OIA. Applegate also stated that a confidential source told him that Cummings was directly involved in these matters.

Attachments:

1. Report of interview
2. Applegate's August 16, 1982 letter

cc: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

Attachment 1

Interview of Thomas Applegate

Thomas Applegate was interviewed on November 4, 1982 by Martin Malsch and Richard Levi, OGC, regarding his August 16, 1982 letter to Chairman Palladino (attached). Also present at this interview were Thomas Devine and Lynn Bernabei, attorneys representing Mr. Applegate.


Applegate initially stated that the allegations in his August 16, 1982 letter that NRC employees lied to him and attempted to deceive him in an attempt to cover up problems at Zimmer were not directed solely at Jim Cummings. He was also concerned that strong enforcement action like license revocation was warranted with regard to Zimmer. Pursuant to our request, however, the discussion was limited to allegations regarding Cummings.

Applegate stated that he first contacted Cummings beginning about January 1980 and that he spoke to Cummings on several occasions over a period of 3-4 weeks. Applegate stated that these conversations were quite frustrating in that Cummings did not seem to appreciate the seriousness of the matter. Applegate further stated that in his last conversation with Cummings during this time period Cummings told Applegate that he was tired of these phone calls and that if Applegate had any concrete evidence he should submit it in writing. Applegate stated that he regarded this as a rebuff and went to then-Chairman Ahearne, who subsequently directed OIA to investigate the matter.

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Applegate stated that he has had no other direct dealings with Cummings. Applegate stated his belief that Cummings in 1980 wrote him off as a kook spouting information that just couldn't be true. Applegate further believed that Cummings felt "stepped on" when the Commission directed Cummings to conduct an investigation which he had earlier refused to conduct. 1/

Applegate stated that he did have some indirect contact with Cummings in early 1981 when the NRC stated that the Merit System Protection Board (MSPB) did not have jurisdiction over Applegate's allegations and Cummings was put in charge of investigating the adequacy of the NRC investigation. Applegate stated that he did have direct dealings with OIA people regarding the IE investigation beginning in early 1981.

At this point both Devine, Bernabei and Applegate contributed substantially to the interview, with Devine taking the lead. According to them in January or February, 1981, there was a meeting at which the ground rules were set for Region III  to redo or update the earlier investigation. They stated that attending this meeting were Kepple, Davis, Warnick, Streeter, Ted Gilbert, Art Schneblen, McCarter, and Barrett. A transcript was made of this meeting. They stated that these ground rules were not followed during the investigation. They stated that OIA had either agreed to or given silent consent to the ground

1/ Applegate referred to the GAP petition for enforcement action at Zimmer now pending before Staff for details of these dealings with Cummings.

rules, and that they were surprised at the time that OIA did not oversee the reinvestigation to assure conformance with the ground rules. They now conclude that OIA was probably acting in consort with IE on the reinvestigation and had probably agreed that IE need not follow the ground rules. They listed four ground rules that were not followed: (1) all interviews were to be taken in sworn affidavits; (2) all sworn affidavits were to be included in Region III's final report; (3) weekly reports on the progress of the investigation were to be given to Applegate; and (4) if there were discrepancies between information given by Applegate and that given by sources he named, the NRC was to conduct a joint interview of Applegate and the source. Applegate stated that all interviews were not taken in sworn affidavits; all the affidavits were not included in Region III's report; the weekly progress reports to Applegate stopped in mid-1981; and no joint interviews were conducted even though there were major discrepancies between Applegate's information and what his sources told the NRC.

They next stated that OIA failed to provide Region III with evidence in OIA's possession in time for inclusion in Region III's report. Specifically, they stated that OIA had interviews of Schwerts and Giddings and a memo from CG&E to Kaiser stating that Kaiser QA was no longer to do preoperational systems testing. They stated that these items directly contradicted the IE finding that CG&E management did not know what was going on at the site, but that Cummings did not send them to IE (Bert

Davis) until November 18, 1981, when the Region III report was nearing completion and it was too late for them to be included. They stated that the Schwerts interview was attached as an exhibit to the IE Report but was not mentioned in the text, and that neither of the other documents appeared at all. They stated that these two interviews and the memo directly contradicted the November 24 public statements by the NRC Region III that CG&E management was unaware of the problems at the site, and, although they could not remember if OIA actively participated in the public statements, OIA must have been aware of them. There were numerous talks between Bert Davis and OIA about their parallel investigations, and that with such close cooperation OIA and IE each had to know what the other was doing. Thus in their view both OIA and Region III gave a deliberately misleading indication that CG&E management was not aware of the problems at the Zimmer site. Devine stated that at this point he talked to Cummings, whose only concern was that someone in OIA might be leaking information.

Devine also suggested that the Schwerts interview was conducted under strained conditions and that the NRC should look into the conditions of that interview and whether Cummings dictated those conditions. Devine also stated that the Schwerts interview was the most critical interview of the investigation up to that point.

Applegate then resumed the role as lead speaker. He stated that approximately in April, 1981 the OIA investigation of wrongdoing ceased (the Schwerts interview was apparently OIA's last interview), and at about the same time the Region III investigation changed course, and that this appeared to be more than a coincidence. With regard to the Region III investigation, Applegate explained that it changed course by shifting to an attempt to discredit Applegate, e.g., by determining whether he had ever been in a mental institution or whether he was a sexual deviate. Applegate stated that investigators were pulled off serious investigative concerns and put into investigating Applegate. Applegate stated that McCarten, who was to give him weekly investigative reports, told him that he couldn't do so anymore because Applegate was to be investigated. Applegate stated that his former employer, his landlady and members of his family told him that they had been interviewed about Applegate. Applegate further stated that he had a personal feeling that OIA might have had some influence over the shift in the focus of the Region III investigation but that he had no evidence to support this feeling.

Applegate stated OIA's parallel investigation of record falsification and other wrongdoing stopped at about the same time that the IE investigation changed course. Applegate stated that OIA requested the U.S. Attorney's office to put its criminal investigation on hold because of a belief that it might affect the IE safety investigations. Applegate stated that it

appeared that OIA was doing a criminal investigation for both NRC and the Justice Department (DOJ), and that halting the OIA investigation appeared to be a matter of heavy-handed deference by OIA to IE so as not to interfere in the IE investigation. However, Applegate stated that the IE investigation was dormant from July, 1981 to April, 1982, so there was nothing for the U.S. Attorney or OIA to interfere with. Applegate stated that from July 1981 until June 1982 when the U.S. Attorney opened its criminal investigation the targets of the investigation were running the QA programs, and that OIA inexcusably let the situation get out of control. Applegate concluded that OIA had to know it was allowing the targets of an investigation to cover their tracks.

Applegate added that on August 1, 1980 he met with representatives from the U.S. Attorney's office and Region III and that he alleged that criminal activity was occurring even as Region III investigators were conducting their investigation. Applegate asserted that DOJ stated that it was ready to investigate criminal allegations should the NRC determine that there were any, and that OIA was lax in not looking into Applegate's allegations or referring the matter promptly to DOJ. Applegate also stated that McCarten stated that OIA was investigating whether CG&E directed records falsification and that record falsification was outside the scope of the IE investigation. This led to a confusing situation where OIA was both investigating Zimmer and monitoring IE.

With regard to whether Applegate had any details of Cummings' involvement in these matters, as opposed to OIA's, Devine stated that there was no specific evidence about Cummings, except that the memo from OIA to IE enclosing the Schwerts' interview was signed by Cummings. Devine also stated that he could not believe the investigators were responsible for the situation because they were professionals. Applegate stated that a confidential source told him that Cummings had a direct role. Applegate also stated that Cummings is a consistent central figure, and that given the structure of OIA he is responsible for what OIA does. However, there was no concern that OIA or Cummings withheld any information from the U.S. Attorney's office.

Applegate next stated that the November 1981 OIA report was censored. Applegate stated (and showed us) that a draft of the OIA report contained an interview with Terry Harpster but that this interview was dropped from the final report. Devine and Applegate stated that the substance of this interview was essential to the report. Devine pointed out four examples of the importance of this interview: (1) Harpster tried to alert CG&E personnel and NRC personnel about a QA breakdown from 1977-79, which was relevant to OIA's review of the Phillips' investigation; (2) Harpster stated that CG&E was in a race to demonstrate that a high percentage of the plant was complete in order to get financing and this led to inevitable hardware problems, which directly contradicted Keppler's statement that

there was only a paper problem; (3) Harpster's description of Schwerts' interference with IE inspection reports indirectly cast doubt on CG&E's alleged ignorance of QA problems; and (4) Harpster stated that plant managers were afraid to go in the field because of drunkenness, violence, and the number of felons, which contradicted the NRC finding that there was no substantial evidence on this point. We were referred to Sinclair and Gamble, two OIA investigators working on Zimmer, for details of this censoring.

Devine also stated that it is possible the OIA report was censored regarding inadequate IE investigations and investigation procedures. Devine stated that attachment 10 to the OIA report was a training program for IE inspectors and investigators, but there is no reference to IE training in the text of the report. Devine suggested that a critical discussion of IE procedures and investigations may have been deleted from the final report because it would have opened OIA to criticism from IE that OIA did not understand IE procedures.

Devine and Applegate concluded by stating the OIA investigators are quality professionals and they don't know what could have motivated Cummings to do the things he apparently did. In their view Cummings' conduct has fostered the idea that white-collar violations of the Atomic Energy Act aren't taken seriously. They also stated they would not discuss their problems with Cummings' response to their Freedom of Information Act (FOIA) requests at this time as that should be done through

discovery or settlement negotiations in connection with the
pending FOIA lawsuit.

Richard L. Lewis

Richard L. Lewis

Attachment 2

Honorable Nunzio J. Palladino
Chairman
Nuclear Regulatory Commission
1717 H Street N.W.
Washington, D.C. 20545

8/16/82

Dear Mr. Palladino,

It has come to my attention that the Nuclear Regulatory Commission and members of it's staff have lied to me and have attempted to deceive me in, what I believe to be, an attempt to cover up the seriousness of the problems at the Wm. H. Zimmer Nuclear Power Station located in Moscow, Ohio.

For this reason I am hereby informing you that my co-operation with the Commission and/or members of it's staff is at an end effective immediately. Furthermore, I intend to bring these matters to the attention of the Administration and the Congress.

I am deeply ^{disappointed} ~~dissatisfied~~ that my efforts, as well as those of others, have been wasted on deaf ears.

Sincerely Yours;

Thomas W. Applegate, Jr.
Thomas W. Applegate, Jr.

cc: James A. Edwards, Sec.,
U.S. Dept. of Energy
Hon. John Dingell, Chrm.,
Energy and Commerce Committee,
U.S. House of Representatives

8/16..To OIA for Appropriate Action...Cpys to: Chm;Cmrs,OI,EDO,OCA
OPA....82-0851

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8312010242-1P corrections per TApplegate

September 20, 1982

Mr. Thomas Applegate
3650 Woodbridge Road
Columbus, Ohio 43220

Dear Mr. Applegate:

Your July 16, 1982, letter to Chairman Palladino containing allegations of wrongdoing on the part of the U.S. Nuclear Regulatory Commission and members of its staff has been referred to my office.

While your letter clearly sets forth the reasons for your decision to have no further dealings with the Commission and/or members of its staff, I nevertheless want to assure you that, should you change your mind in this regard, my office would assist you in remedying any legitimate complaint.

Sincerely,

Original signed by
James J. Cummings

James J. Cummings, Director
Office of Inspector and Auditor

bcc: T. Johnson, DOE
Commission (5)
W. Dircks, EDO
J. Fitzgerald, OI
L. Bickwit, OGC
G. Cunningham, ELD
C. Kammerer, CA
J. Keppler, RO III

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

May 6, 1983

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MEMORANDUM FOR: Judge Helen Hoyt, ASLBP
Sebastian Alost, OGC

FROM: Nunzio J. Palladino *NJP*

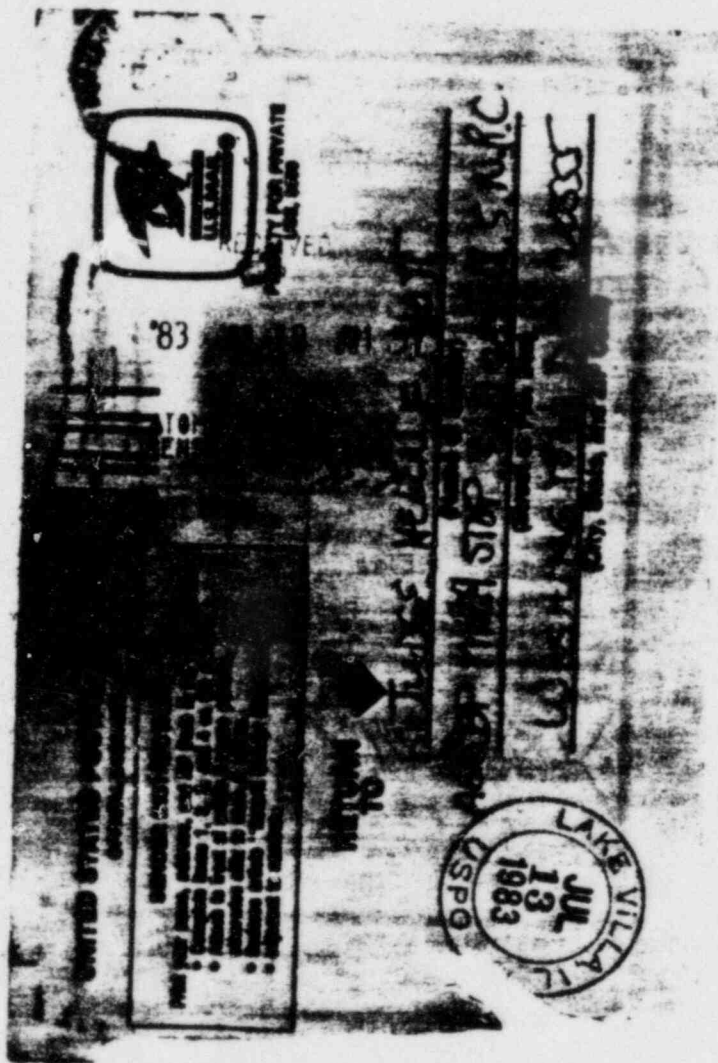
SUBJECT: THOMAS W. APPLGATE ALLEGATIONS

Please undertake an investigation into the allegations that are detailed in the November 16, 1982 memorandum to me from Martin G. Malsch, Deputy General Counsel, titled, "Interview with Thomas Applegate." The focus of your investigation should be whether or not the Director, OIA and that Office made a good faith effort to carry out their responsibilities in this matter.

You are to report your findings to the Commission on or before June 30, 1983 with recommendations.

cc: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

8312010204 *LP*



37042 Avon
Lake Villa, IL 60046
June 29, 1983

Helen F. Hoyt
Administrative Law Judge
U.S. Nuclear Regulatory Commission
Mailstop E-W 439
Washington, D.C. 20555

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Dear Judge Hoyt:

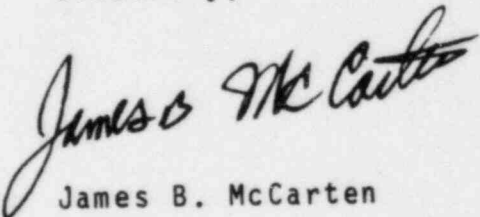
On June 7, 1983 I was interviewed at your request concerning your investigation of irregularities in the NRC's Office of Inspector and Auditor 1981 investigation of another NRC investigation at the William H. Zimmer nuclear power station in Moscow, Ohio.

During the course of this interview, which was transcribed by a court reporter, I provided information relative to the 1981 OIA investigation. But I also used this forum to inform the NRC about mismanagement of other OIA investigations, particularly the OIE investigation conducted at Zimmer in 1981. In light of recent congressional and DOJ criticisms of the NRC investigative program, and due to the forthcoming ASLB decision whether to hold licensing hearings, I feel that the information I provided to you should be reported immediately to the Commissioners and the ASLB panel on Zimmer. Also, as we discussed earlier I would like a copy of my transcript for my own records.

As you well know, I feel strongly that the testimony I gave would have a major impact on the decision to hold licensing hearings and perhaps trigger a wider investigation into Region III and OIA's handling of the Zimmer investigation from a safety standpoint, and also why the NRC did not vigorously pursue allegations of criminal misconduct by utility and contractor personnel at Zimmer. This second issue is very significant for the Commissioners in light of recent DOJ criticisms of NRC's performance in this area.

Thank you for your immediate attention to this serious matter.

Sincerely,


James B. McCarten

cc: Commissioners
Zimmer ASLB panel
Julian Greenspun, DOJ
Cong. Udall, House Interior Comm.

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rec'd 7/1/83