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of the Dept. of Justice

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Washington, D.C. 20530

NOV 1 1984

Ben B. Hayes, Director  
Office of Investigations  
Nuclear Regulatory Commission  
Mail Stop EW/S-434  
Washington, D.C. 20555

Dear Ben,

To recap the substance of matters discussed at our meeting on October 31, 1984, concerning the grand jury investigation of certain activities and persons within the NRC:

(1) We are conducting a grand jury investigation to determine under 18 U.S.C. §371 (conspiracy to defraud the United States by impairing and impeding its lawful functions and responsibilities), 18 U.S.C. §1505 (obstruction of agency proceedings), and 18 U.S.C. §1001 (false statements and concealment of material facts), whether there has been a plan or efforts to: prevent, impair or impede the detection of deliberate violations of law in matters and activities subject to regulation by the NRC; prevent, impede or impair investigations or enforcement action by the NRC or the Department of Justice; intentionally make false statements within the NRC or to the Department of Justice in matters under their jurisdiction.

(2) I indicated to you some of the events at the NRC which have been of concern not only to the Department of Justice (including certain U.S. Attorneys), but to two other branches of government as well.

(3) As I explained, where patterns of suspect or illegal activities which have common themes have occurred within a company or institution, it has been our experience that such activities have not originated or emanated from rank and file employees who carry out orders rather than set or implement policy. Consequently, rank and file inspectors and investigators are not being investigated, nor are they suspects (subjects) or targets. We view them as witnesses and potential witnesses. The same applies to all personnel within your office (Office of Investigations), including your field office, as to which there is no indication of any wrongdoing. Any or all of your personnel may be called as witnesses, however.

(4) Persons who are suspects (subjects) of the investigation will be told so prior to any grand jury appearance or interview of them, as will targets, so that they will be aware of their status. The investigation has just commenced, so obviously there are no targets.

(5) Experience has also shown that we must be particularly sensitive, and we will be, to any efforts whether direct or indirect, subtle or overt, to impair or impede the cooperation and giving of fully truthful information by any person in interviews or to the grand jury, as well as any other effort to impede or hinder the investigation. Apart from the fact that such efforts could be a tile in a larger evidentiary mosaic, I mentioned the additional statutes which can be implicated in this regard, such as 18 U.S.C. §1503 and §§1512 through 1513.

(6) In the latter regard, I also addressed some indicia which we would be alert to and would investigate, including efforts by NRC persons to insinuate themselves into other person's interviews or appearances, as well as efforts to monitor the investigation by either briefing, or debriefing employees before or after interviews or appearances. As I mentioned, this is not an investigation of the agency per se, but of events and persons. There are only two things that any person at the NRC needs to know about this investigation. One, is their status. Two, is their obligation to tell the complete truth if they are interviewed in this investigation or if they appear before the grand jury. I discussed how such monitoring and debriefing affects the willingness of employees to fully cooperate, as well as the misuse of the information by persons who may have something to be concerned about if truthful information is provided.

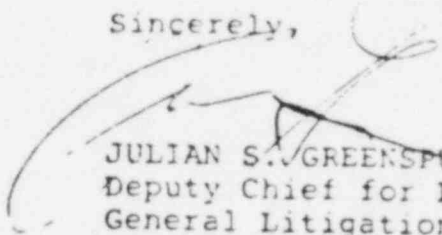
(7) The question arose as to whether NRC attorneys should give advice to NRC personnel in regards to what such persons should do or not do in the investigation, i.e., whether they should or should not cooperate, etc. The only advice which NRC attorneys may legitimately give to persons in regards to this investigation is that they should cooperate, be fully truthful, (and if relevant, fully comply with subpoena duces tecum). NRC attorneys' duty and obligation is to the agency and its responsibilities as defined by Congress and in the CFRs, and not to a particular person or persons. Thus, any advice which could hamper, discourage or prevent detection of violations of law by any NRC employee would be contrary to their obligations to the Agency. By analogy, if a DOJ employee was subpoenaed before a grand jury as part of an investigation into official misconduct, I would be obligated as a DOJ employee to advise him to tell the truth and fully cooperate. If he was advised that he was a suspect or a target, I could not give him any advice other than to tell the truth if he chooses to testify or give an interview.

In either case, I could not advise him on how to answer questions, what information to give or not give, etc. I would add, that we will advise subjects and targets of their respective obligations and rights.

Secondly, attorneys at the NRC may be called upon as witnesses. It is even possible that in the future, I may have to advise one that they are a subject. In any event, an attorney should not be both a witness and giving legal advice in the same proceeding. \*/

(8) With regards to obstructive activities, I discussed the implications of seeking or employing "angles," to engage in them, and using "window dressing" or some cosmetic justification to do so, and, mentioned case law addressing and disposing of such matters.

Sincerely,



JULIAN S. GREENSPUN  
Deputy Chief for Litigation  
General Litigation and  
Legal Advice Section  
Criminal Division

CC: Roger Fortuna  
Nuclear Regulatory Commission

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\*/ If an attorney from the NRC is needed at some point in the future to assist in the grand jury investigation, such as compliance with a subpoena duces tecum, I am sure we should be able to find an appropriate person.