

Court: NRC violated Comley's rights

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The Nuclear Regulatory Commission violated Rowley anti-nuclear activist Stephen B. Comley's constitutional rights by barring him from displaying posters and bumper stickers at NRC meetings, a federal judge has ruled.

Judge John H. Pratt of the U.S. District Court in Washington issued a summary judgment Sept. 18, saying the NRC singled out Comley in keeping him out of some commission meetings and stopping him from displaying posters at others.

"It appears that NRC officials treated Comley differently from other meeting attendees, and that this difference in treatment was based on Comley's views, which no doubt were irritating and annoying," Pratt ruled. "It is undisputed that Comley was singled out."

Meanwhile, the U.S. attorney's office in Boston is pressing for further enforcement of a contempt order against Comley because he refuses to obey an NRC subpoena.

Comley already faces fines approaching \$420,000, with



Stephen B. Comley

\$1,000 added each day he refuses to turn over reputed tape recordings he kept from conversations with an NRC investigator. Comley has not admitted the tapes' existence.

Assistant U.S. Attorney Paul G. Levenson filed a motion

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in U.S. District Court in Boston on Sept. 19 - the day after Judge Pratt issued his ruling - seeking a hearing to address Comley's continued refusal to comply with the court order and to find another way to force compliance. Levenson said yesterday a hearing has not yet been scheduled.

Congressional inquiries into the investigation torpedoed former NRC staff director Victor Stello's chances at a top atomic weapons post. Stello withdrew his name from consideration after a 10-month battle in the Senate over his presidential nomination.

Stello helped direct an inquiry into the relationship of lead NRC investigator Roger Fortuna with Comley, director of We The People Inc., an anti-nuclear group of his own creation.

An upstate New York nuclear plant employee alleged Fortuna did not pass the whistleblower's information through official channels and instead tipped off Comley.

Three congressional inquiries raised questions about the investigation, one finding Stello probably lied to Congress in sworn testimony.

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Stello lost his nomination because Comley would not give up the tapes. They thought would prove Fortuna revealed cover up substandard nuclear-pots in most U.S. plants.

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A congressional subcommittee also found the NRC continued its investigation, hired retired nuclear licensing Judge Alan Rosenthal and assigned the Fortuna case "the highest priority," despite prior findings that Fortuna did nothing wrong.

The NRC inquiry continues through the office of the inspector general, newly created within the agency.

Levenson, in asking the federal court for a hearing on the Comley subpoena, said the inspector general cannot complete his investigation without the tapes.

Comley said the Fortuna investigation and subpoena are part of a "witch hunt," brought on by his long-time criticism of NRC officials, especially Stello, and leading to his occasional ejection from meetings.

Comley filed suit last year

claiming the NRC's actions denied his constitutional right to free speech.

In his ruling, Judge Pratt stipulated the following facts:

- At a Sept. 8, 1988, meeting of the NRC, Stello had Comley kept under close watch by two security officers, who removed him from the meeting when he displayed a We The People poster. Comley was later allowed to return and remain in the room while he displayed a reproduction of the U.S. Constitution.

- Comley was also thrown out of an Oct. 14, 1988, meeting for displaying "Stop Chernobyl Here" bumper stickers. He was not allowed to return.

- Before an NRC meeting on Dec. 21, 1988, security guards required Comley to give up his posters and bumper stickers before being allowed into the meeting room. Comley was allowed to stay when he returned his tapes.

and tie to display a "We The People" T-shirt.

- And during a recess in a March 29, 1989, meeting in Boston of the Atomic Safety Licensing Board, an arm of the NRC, Comley was not allowed to return to the meeting room with a small bag, though other members of the public were allowed to carry briefcases and purses into the room.

Pratt ruled the NRC has authority to bar the display of posters or other actions that may disrupt meetings or distract participants. But such a ban must be applied evenly, said the judge.

His ruling said the NRC bore the burden to prove it had been even-handed, but failed to do so. The NRC also failed to show Comley's displays actually detracted from the meetings.

Pratt merely entered his judgment and did not order punitive

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