

Congress of the United States
Washington, DC 20515

August 22, 1990

The Honorable Kenneth Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Carr:

The investigation of Roger Fortuna by senior staff of the Nuclear Regulatory Commission has been the subject of several Congressional Committee reports and hearings. Each of the Committees has separately arrived at the same conclusion -- Mr. Fortuna was the victim of a vindictive investigation and a personal vendetta which was motivated by revenge and animosity.

The long record of documentation of the unwarranted difficulties that were faced by Mr. Fortuna include the following:

In August 1989, the Senate Committee on Governmental Affairs concluded that the Fortuna investigation:

(1) was pursued in a questionable manner; (2) created the appearance that the investigation was motivated as much by reasons of personal and professional animosity between NRC personnel as it was by the legitimate needs of the NRC; (3) was conducted in a manner which was unfair to the NRC employee (Fortuna) who became the 'target' or 'subject' of the inquiry; (4) violated inspector general principles by involving NRC management to an inappropriate degree in the conduct of the investigation; and, (5) represented a waste of government funds. In sum we found very little reason for the course of the conduct of the investigation.

In March 1990, The House Interior Subcommittee on General Oversight and Investigations found that:

... there exists no compelling evidence of wrongdoing against Mr. Fortuna. Moreover, the NRC's investigation, now in its second year, should long since have been concluded to reflect this fact. The fact that the investigation has been pursued over such

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an extended period without supporting evidence suggests that senior NRC officials abused their authority in order to indulge personal and professional antagonisms toward Mr. Fortuna NRC officials either ignored or purposely disregarded guidelines set out by the NRC's Office of the General Counsel in preparing a justification for the contract and failed to provide accurate and complete information to the OGC on the facts of the case.

In June 1990, the Acting Inspector General of the NRC came to the following conclusions:

To the extent that the NRC staff were relying on OIA's opinions, whether express or implicit, on the reasonableness of Fortuna's conduct as a Federal investigator, this created a problem of fairness to Fortuna In this case the circumstances were not the best, as the fairness problem was exacerbated by the appearance of bias on the part of OIA which I discussed earlier. In any event, if OIA's opinions were not communicated or played no role, then the NRC's decisionmakers on Fortuna were rendering a judgement they were not qualified to make.

In June 1990, the Inspector General of the NRC determined that:

OIG investigation revealed that OIA failed to follow its own internal guidelines. This is especially significant since OIA was the organization within NRC responsible for ensuring that other components of the Agency adhered to procedures, and the three top OIA officials conducted the investigation from its inception. The failure to develop and follow an investigative plan is one reason the investigation was handled in an untimely, disjointed, and incomplete manner The failure to advise individuals of their rights when interviewing them on the issue at hand or to acknowledge that they are a subject of an investigation when specifically asked, violates all principles of fairness in conducting investigations.

In December 1989, Christine Kohl, Chairman and Chief Administrative Judge of the NRC Atomic Safety and Licensing Appeal Panel issued a decision in response to a grievance filed by Mr. Fortuna on June 27, 1989. Judge Kohl found:

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In the totality of these circumstances, the charge of misconduct against Fortuna is not justified. Accordingly, the grievance is upheld, the charge of misconduct is dismissed, and the 18-month letter of reprimand is to be expunged from Fortuna's Official Personnel Folder.

A compelling record has been compiled indicating that -- for doing his job too well -- Mr. Fortuna was suspended from his job to a less challenging position in a distant outpost of the NRC. On February 20, 1990, Mr. Fortuna was given his job back by the NRC. However, in the course of this matter he has incurred over \$100,000 in legal fees -- when he should never have been subjected to these charges in the first place.

We respectfully request that the Nuclear Regulatory Commission reimburse Mr. Fortuna for all appropriate legal fees which he has incurred (pursuant to the Civil Service Act of 1978, Section 5596(b)(1)(A)(ii) of the United States Code, and the Federal Tort Claims Act, Title 28, Section 2671 et seq. of the United States Code). Mr. Fortuna has been a victim for long enough.


If you have any questions, please contact any of us, or Diana Lazarus of Representative Markey's staff at 225-2836.

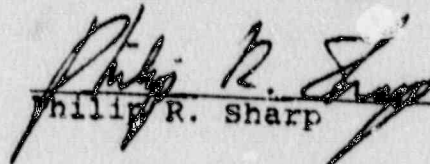
Thank you for your cooperation and courtesy in this matter.

Sincerely,


Morris K. Udall


Edward J. Markey


Peter H. Kostmayer


Philip R. Sharp


John D. Dingell


John Glenn