

November 16, 1982

MEMORANDUM FOR: Chairman Palladino

FROM: Martin G. Malsch *hgm*
Deputy General Counsel

SUBJECT: INTERVIEW WITH THOMAS APPELEGATE

On November 5, 1982 Rick Levi and I interviewed Thomas Applegate with regard to his August 16, 1982 letter to Chairman Palladino and his allegations concerning Jim Cummings. Two attorneys representing Applegate, Lynne Bernabei and Thomas Devine, were also present. A detailed report of that interview is attached. That report merely recites Applegate'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 Applegate's statements, nor has OGC made any recommendations on future Commission actions in this matter. The following is a brief listing of Applegate's essential allegations about Cummings:

- (1) Cummings failed to appreciate the seriousness of Applegate's concerns and brushed Applegate off;
- (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;
- (3) IE and Applegate 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;

831241023713PP
XA

- (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. However, there were no allegations that OIA withheld information from the U.S. Attorney's office;
- (5) IE diverted resources to investigate Applegate (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);
- (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.

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 Matsch 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 Ahearn, who subsequently directed OIA to investigate the matter.

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 Keppler, Davis, Warnick, Streeter, Ted Gilbert, Art Schneblan, 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 Schwartz 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 (Bart

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 Schwars 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 Schwars 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 Schwars 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 Schwars 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 Schwert's 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 A. Lewis

Richard A. Lewis

Attachment 2