



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

OFFICE OF THE
COMMISSIONER

August 26, 1983

MEMORANDUM TO THE CHAIRMAN AND THE COMMISSIONERS

SUBJECT: NRC INVESTIGATIONS

Throughout Judge Hoyt's recent report, and the transcripts of the Commission's meetings on it, NRC's investigations of wrongdoing are equated with "criminal" investigations. One of the report's conclusions was that "...our inquiry established, in our view, a hesitancy on the part of IE officials to pursue, even on a preliminary basis, potential criminal violations..."

The failure to distinguish between civil and criminal investigations of wrongdoing in the nuclear industry has been a source of confusion and mischief for many years. Ironically, it has contributed to the very situation the Judge complains about. The need to coordinate with the Department of Justice has traditionally served as the NRC excuse for not pursuing wrongdoing whenever the staff has become uncomfortable with an investigation. The result has been that some of the worst wrongdoing has gone unpunished because it has fallen between two stools.

The NRC staff should understand that their investigations of wrongdoing are civil investigations. Criminal investigations are the province of the Department of Justice. Different rules apply to the conduct of civil and criminal investigations because the penalties which can result from the two types of investigations are different. Most important, the standard of proof which the NRC must meet in a civil proceeding -- proving its case by a preponderance of the evidence -- is far lower than that it would have to meet in a criminal case -- persuading the jury or judge beyond a reasonable doubt. This latter point has been especially difficult to get across to the staff.

While our staff should be sensitive to NRC's obligation to inform the Department of Justice of possible violations of criminal statutes and to cooperate with the Department, we should not allow the possibility of indictments to obstruct our civil investigations. There should be no holding back from completing our investigations and imposing the civil penalties we think appropriate.

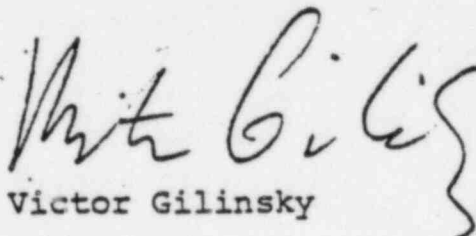
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We should also recognize that we have had very little success in persuading the Department of Justice to pursue criminal cases. In fact, I can only remember one indictment. Realistically speaking, even with some improvement in our investigations, we cannot afford to look to criminal prosecution by the Department of Justice as a deterrent to willful violation of our regulations.

Judge Hoyt's conclusion is basically correct, but it must be understood that IE's failure was in not pursuing its own civil investigations of wrongdoing leading to NRC enforcement, rather than in not conducting "criminal" investigations.


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cc: Judge Hoyt
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