

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,)
)
 Plaintiff,)
)
 v.) Civil Action No.
) 78-322 & 78-420
 FEDERAL BUREAU OF INVESTIGATION,)
) (Consolidated)
 Defendant.)

OPPOSITION OF MR. WEISBERG TO DEFENDANT'S
APPLICATION FOR AN AWARD OF FEES

The court of appeals has remanded this case for
resolution of the following two issues:

- (1) Whether the documentation submitted
and to be submitted by the government to
support its request for attorneys fees satisfies
our test in Concerned Veterans, and
- (2) The proper division of responsibility
between lawyer and client for the conduct which
led to the award of expenses, with findings by
the District Court which apportion their liability.

Weisberg v. Webster, 749 F.2d 864, 874-75 (D.C. Cir.
1984).

The government has sought to expand these issues
by also claiming attorneys fees for the time spent on
this case by its appellate counsel. This memorandum
demonstrates that: (1) the documentation submitted by the
government's trial counsel fails to meet the standard set
in National Association of Concerned Veterans v. Secretary
of Defense, 675 F.2d 1319, 1327 (D.C. Cir. 1982); and
(2) the government is not entitled to fees for appellate

counsel, and in any event her request is excessive and her records are inadequate to determine an appropriate fee.

I. MR. LA HAIE'S APPLICATION.

The court of appeals opinion in this case stated:

This Court has been very explicit about what documentation is necessary to recover attorneys fees. In a carefully crafted per curiam opinion in National Association of Concerned Veterans v. Secretary of Defense, we . . . explained that "[c]asual after-the-fact estimates of time expended on a case are insufficient to support an award of attorneys' fees. Attorneys who anticipate making a fee application must maintain contemporaneous, complete and standardized time records which accurately reflect the work done by each attorney."

Weisberg v. Webster, supra, 749 F.2d at 872-73 (footnotes omitted).

On appeal, the government represented that its trial counsel, Mr. LaHaie, had records that could satisfy this requirement even though he had stated in this court that his application was based on a reconstruction of the time he spent on his motion to compel discovery and his motion to dismiss for failure to provide discovery. (Exhibits B and C to the pending fee application.) Those records

have now been produced (Attachment A to Exhibit A to the fee application), and Mr. LaHaie has further explained them in a deposition.

It is manifest that Mr. LaHaie's records are neither contemporaneous, complete, nor standardized. Indeed, he forthrightly stated in his deposition: "I don't have what you or most other private attorneys would denote as billing records." (LaHaie Dep. at 18.) Similarly, in his latest declaration, he stated that "I -- similar to many other Justice Department attorneys -- have never kept detailed hourly billing records of my time such as private law firms use to bill paying clients." (Exhibit A at 2.) See also LaHaie Dep. at 20.

Mr. LaHaie based his time statement on his "scheduling calendar," the certificates of service on plaintiff's pleadings, and the file stamps on his own pleadings. (Exhibit A at 2-3.) The "scheduling calendar" is simply that and no more. (Attachment A to Exhibit A.) It notes in advance the things he must do. It does not record the work he has done or in any way indicate how much time he has devoted to particular tasks. (LaHaie Dep. at 25-26.) To the extent that Mr. LaHaie relied on a retrospective review of certificates of service and filing stamps, that

exercise is an after-the-fact reconstruction which does not meet the requirement of "contemporaneous, complete and standardized time records which accurately reflect the work done by [the] attorney." Concerned Veterans, supra, 675 F.2d at 1327.

The government urges that the Concerned Veterans standard should not be strictly applied in this case and that Mr. LaHaie's after-the-fact reconstruction is adequate to support an award of fees. In support of this position, the government cites Blitz v. Donovan, 569 F. Supp. 58, 61 (D.D.C. 1983), rev'd, 740 F.2d 1241 (D.C. Cir. 1984), for the proposition that reliance on reconstructed records should at most reduce an award but not eliminate it. The government neglects to point out, however, that Blitz involved a fee application for work done prior to the Concerned Veterans decision, and it was for this reason that the court did not apply Concerned Veterans strictly. 569 F. Supp. at 61.

Until Concerned Veterans fee applications often were based on reconstructions, and this was one of the factors that made fee litigation especially vexing. However, in that decision the court of appeals provided precise requirements to be followed in this circuit in order to reduce the amount of controversy over fee applications. Concerned Veterans, supra, 675 F.2d at 1323-24, 1330.

Since the work for which the government seeks fees in this case was done well after Concerned Veterans, the government has no basis for its appeal that the letter of the rule should be waived in this case.

II. MS. WHITTAKER'S APPLICATION.

There are numerous problems with the government's application for fees for the work done by its appellate counsel, Ms. Christine Whittaker. First, this application is outside the scope of the remand. Surely if the court of appeals had meant for this court to consider whether appellate counsel is entitled to fees, it would have said so.

Second, the government's original claim for fees was not fully vindicated on appeal. Ms. Whittaker herself recognized this when, shortly after the court's decision, she called counsel for both appellants and suggested that each side bear its own costs. (Whittaker Dep. at 6.) Accordingly, the government did not file any bill of costs in this case. (Id. at 7.) If the government did not think it was entitled to a routine award of costs, it certainly is not entitled to an unusual award of attorneys fees.

Third, an award of fees is not authorized under Rule 37 if the position of the losing party is substantially justified. In order to analyze this issue properly, it is necessary to break the appeal down into its constituent parts. We can begin by putting aside the issues on which the government did not prevail. Since Mr. Weisberg prevailed on his claim that Mr. LaHaie's fee application was inadequate to support an award, and since Mr. Lesar prevailed on his claim that the record did not support assessment of fees against him, Ms. Whittaker is not entitled to fees for work done on those issues.

The threshold issue which Mr. Weisberg raised on appeal was whether this court erred in entering its original discovery order on February 4, 1983. Weisberg cannot be assessed fees for appealing this issue, because this court declined to assess fees for his initial opposition to discovery.

The second issue Weisberg raised was whether the sanction of dismissal was too harsh. This issue was distinct from the question of whether the government was entitled to an award of fees. For example, the court of appeals might have ruled that dismissal was too harsh but still upheld the award of fees. Accordingly, Ms. Whittaker is not entitled to recover for work done on the dismissal

issue.

The final issue on which the government prevailed was whether the fee award was improper because plaintiff's failure to provide discovery was substantially justified. However, the question of whether Weisberg's appeal was substantially justified is distinct from the question of whether the failure for which he was sanctioned was substantially justified. That the appeal was justified is amply demonstrated by the deposition testimony of Leonard Schaitman, a senior Justice Department attorney who was Ms. Whittaker's reviewer in this case. Mr. Schaitman stated:

This was a tough case. This presented real problems for us. [Ms. Whittaker] had to work really hard to deal with it properly.

(Schaitman Dep. at 14.)

[T]he reply brief that Weisberg filed was excellent and raised some matters that could be very troubling for our position if we didn't do our homework and know the record and work through the answers.

(Id. at 16.)

When asked whether the case was difficult with respect to any particular issue, Mr. Schaitman responded: "I felt that she needed to be prepared on the whole case, and the sanctions issue was very important and difficult too." (Id. at 17.) These statements plainly demonstrate that Weisberg's appeal on the award of attorneys fees was

substantially justified, and therefore the government is not entitled to fees for the work which Ms. Whittaker did on this issue.

Fourth, even if the government were entitled to fees for Ms. Whittaker's work on the fee issue, her records -- although better than Mr. LaHaie's -- are inadequate to support an award. Ms. Whittaker admitted that her time-keeping practices are in fulfillment of Civil Division directives rather than in anticipation of filing requests for attorneys fees. (Whittaker Dep. at 17-20.) These directives are not intended as a detailed billing device for each attorney but rather as a management device to justify funding for the Civil Division as a whole. (Plaintiffs' Exhibits A and B attached hereto.) Consequently, these directives require less detailed reporting than do the time-keeping practices mandated by Concerned Veterans.

The Civil Division's time-keeping instructions only require entry of a number that is a code for a broad type of activity. (Plaintiff's Exhibit C.) One coded activity is "appeals." (Id.) This category includes "all time related to appeal activities; research, memoranda, discussions, and consideration of appeals; preparation of petitions of appeal or certiorari; preparation of briefs;

arguments; motions; and court time." (Id.) Thus, an attorney in the appellate section, such as Ms. Whittaker, is not required to particularize the time she spends on the varied aspects of an appeal.

Ms. Whittaker's personal time-keeping practices further reflect that they are geared to the Department's management needs rather than to preparing fee applications. She explained that at the end of each day or at the beginning of the next day, she records on a desk pad the time she has spent working on a particular case. (Whittaker Dep. at 7.) Copies of the relevant sheets from her desk pad have been produced in discovery and are attached hereto as plaintiff's Exhibit D. (Whittaker Dep. at 8-9.) The daily entries are only a rough statement of hours without any indication of the type of work done. As Ms. Whittaker stated in her deposition: "I write down the total number of hours. I do not write down whether these hours were spent in telephone calls or writing a brief." (Whittaker Dep. at 8.) She further admitted that she does not make any note of interruptions as they occur, but takes these into account when she enters the number of hours at the end of the day or the next morning. (Id. at 7.)

Ms. Whittaker's entries are of remarkable uniformity. For example, for the five days between June 18 and June 22, 1984, her records reflect that she logged precisely

eight hours on each day. Despite her assertion to the contrary (Whittaker Dep. at 7), it appears that those entries are more a reflection of the amount of time spent at the office, with some deduction for breaks, rather than an accurate account of time actually spent working on a brief.

Since Ms. Whittaker's records are so general, they do not reflect how much time she spent on different tasks. (Whittaker Dep. 9-10.) Thus, although the government concedes that it should not recover for 34 hours Ms. Whittaker spent reviewing the record (Memo at 10), the estimate that she spent 34 hours on that activity is pure guesswork. The attachment to Ms. Whittaker's declaration was prepared around April 29, 1985. (Whittaker Dep. at 10.) This attachment indicates that between June 11 and 15, 1984, she spent 34 hours on the case. On each of those days, the attachment indicates that she spent time reviewing the record. According to the April 1985 attachment, she also spent some time on June 11, 1984, discussing the case with the trial attorney, and some time on June 15, 1984, doing legal research. For neither day does the attachment indicate how the time was divided. The contemporaneous desk pad, however, contains no indication at all of what activity she did each day. From the desk pads, it is

impossible to tell when she reviewed the record, when she did research, or when she wrote her brief. Thus, even the very general descriptions provided in the April 1985 attachment to Ms. Whittaker's declaration are based on a recollection recorded more than ten months after the work was done. (Whittaker Dep. at 11.)

Ms. Whittaker's claims with respect to the preparation of the appendix also demonstrate the uncertainty of her records. The attachment to her declaration states that she prepared the appendix on June 29 and July 2, 1984. However, the court of appeals had deferred the filing of the appendix until the filing of appellants' reply brief, and consequently the appendix was not filed until July 20, 1984. (Whittaker Dep. at 24.) Thus, it is difficult to understand how Ms. Whittaker could prepare the appendix on June 29 and July 2 before she had appellants' final designations. When questioned about this anomaly, Ms. Whittaker replied: "I do not recall the details of producing the appendix." (Whittaker Dep. at 12; see also id. at 26-27.)

It is well established that fees are not recoverable for nonproductive time or time expended on issues on which the party did not prevail. Concerned Veterans, supra, 675 F.2d at 1327. As noted above, this case involves a

number of issues that are "truly factionable." Id. at 1377 n.13. Under the standard of Rule 37, the government can at most recover for time spent on the issue of whether Mr. Weisberg's failure to provide discovery was substantially justified. Since Ms. Whittaker's records are completely inadequate for determining how much time she spent on that issue, no award should be allowed.*/

Finally, the number of hours claimed by Ms. Whittaker are excessive. Excluding the number of hours spent initially reviewing the record -- at which she can only guess -- Ms. Whittaker claims she spent 155 hours on this appeal. Of these, she claims that 53 hours were spent in preparation for oral argument. This means that she is claiming 102 hours for the preparation of her brief.

The excessiveness of both the hours claimed for writing the brief and for preparing for argument can be seen by comparing them with the time spent by Weisberg's counsel in comparable activity. Weisberg's counsel, who

*/If the court permits a reconstruction -- which it should not -- it should be noted that Ms. Whittaker's brief devotes 3 1/2 pages out of 50 to the issue of whether Mr. Weisberg's failure to provide discovery was substantially justified. Accordingly, it appears that only seven per cent of the total time claimed was devoted to the one issue on which the government conceivably is entitled to recover.

kept careful and truly contemporaneous time records, required only 42.50 hours to write his opening brief, excluding time spent reviewing the record. (Declaration of Mark H. Lynch.) To be sure, Ms. Whittaker also had to respond to Mr. Lesar's brief on the issue of whether fees should be assessed against him, but it is implausible that this added work would double the amount of time required to brief the issues raised in Weisberg's brief.

The figure of 53 hours of preparation for oral argument is wildly excessive. Weisberg's counsel spent 6.75 hours preparing for oral argument. (Lynch Dec.) By further way of example of how much time is required to prepare for oral argument, Weisberg's counsel spent 11 hours preparing for the recent argument in Halperin v. Kissinger, a case of considerable complexity with which this court is familiar. (Id.)

From the deposition testimony of Mr. Schaitman and Ms. Whittaker, it appears that she spent much of the 53 hours reviewing the record. (Whittaker Dep. at 13; Schaitman Dep. at 15-16.) But since the government concedes that it cannot charge for her first review of the record, there is no reason why it should be able to bill for a prolonged second review which apparently was made necessary by the inadequacy of the first review.

If the court does allow fees for Ms. Whittaker's work -- which it should not for all the reasons stated above -- the court should first reduce her total number of hours to a number that is in line with those expended by opposing counsel on comparable activity. This lodestar should then be reduced to an amount that represents a reasonable amount of time spent on the single issue on which the government is entitled to recover. As noted above, the space devoted to that issue in the government's brief is only seven per cent of the total.

CONCLUSION

For the reasons stated above, the government's application for an award of attorney's fees should be denied.

DATED: May 28, 1985

Respectfully Submitted,



Mark H. Lynch

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Foundation
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(202) 544-5388

Counsel for Plaintiff



Office of the Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

TO: All Attorneys and Paralegals.
Civil Division

FROM: Thomas S. Martin
Acting Assistant Attorney General
Civil Division

SUBJECT: Implementation of Attorney/Paralegal Timekeeping

I have just approved the implementation of an attorney/paralegal timekeeping system for the Civil Division. The cornerstone of this system will be the regular completion of timesheets by each of us that detail how we distribute our time among our various responsibilities. As you know, law firms require their attorneys/paralegals to record their time for the purpose of billing clients. While the Civil Division does not "bill" its client agencies for the services it renders, it does have to account for and justify its activities to the Department, to the Office of Management and Budget (OMB), and to the Congress. What the Division reports affects the allocation of attorney/paralegal positions and funding, and I have been informed that it will be difficult for us to justify existing or improved levels of expenditure in times of fiscal austerity without timekeeping statistics. For this reason, all of the litigating Divisions have, or will soon initiate, an attorney/paralegal timekeeping system.

The timekeeping system that we will utilize is designed to be simple and unobtrusive. Simple timesheets will be provided to us upon which we will enter only name, date, the amount of time spent, identification of the case and a checkmark next to the listed category that best describes the activity. The timesheets will be collected each day and sent to OPPM, which will enter the data on the computer. OPPM will tabulate the data and provide appropriate reports to each attorney/paralegal and supervisor. Eventually, we will be able to calculate the average time needed to litigate the various case types that the Division handles and project the anticipated workload and attorneys/paralegals needs.

PLAINTIFF'S EXHIBIT A - Weisberg v. Webster,
Civ. Nos. 78-322 & 78-420.

I expect attorney/paralegal timekeeping to begin on May 4, 1981. Representatives from OPPM will be meeting with you in groups of 20 to 25 to explain the operation of the system and to answer questions about it prior to that date. A schedule is attached for those meetings. You should make every effort to attend the meeting for which you are scheduled or the session planned for those who could not make their original meeting.

Attachment



U.S. Department of Justice
Civil Division

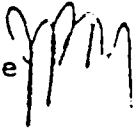
Office of the Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM

28 SEP 1981

TO: All Attorneys and Paralegals
Civil Division

FROM: J. Paul McGrath
Assistant Attorney General Designate
Civil Division 

SUBJECT: Automated Reports From Staff
Resource Management System

The Civil Division's staff resource management system has now been operating for almost 5 months. During this period you have completed thousands of time sheets to record the time spent on your work activities. I sincerely appreciate the faithful attention you have given to this endeavor. The success of the timekeeping system is critical to the Division's efforts to secure adequate budgets for its work. I am most pleased to observe the high levels of participation recorded thus far. Since the timekeeping system began in May 1981, an average of 92 percent of all attorneys and paralegals have submitted time sheets each week and have reported a weekly average of almost 38 hours. I have seen additional evidence of your cooperation in the efforts to clarify and adjust time sheets rejected by the computer. Since the management staff began returning these sheets for correction, the number of errors has fallen by one-half. I find your professional response to the requirements of this system most gratifying.

I am sending you the first automated reports from the staff resource management system. The management staff has been entering your time data on the Division's computer and has now concluded the programming to produce the first five reports based on it. The staff will distribute these reports on a regular basis but will not provide reports at unscheduled times because of the considerable technical effort required to produce them. The report you are receiving gives a detailed list of the time and activities you reported for the month of August.

PLAINTIFF'S EXHIBIT B - Weisberg v. Webster,
Civ. Nos. 78-322 & 78-420.

In the future, you will receive similar reports by the middle of the month following the reporting period. This report provides you with a record of the time attributed to your cases. It should serve as a reminder for submitting any time you might have omitted.

Another report program will enable an individual to request and display quickly a record of the status of any case using the computer terminals located in the litigating Branches. The terminal screens will display the first and last dates on which you have recorded time for specific activities listed on the time sheet. This should benefit those who answer case inquiries by providing additional information concerning the location of the case in the litigative process and the kinds of work you have done on it. I am sending simple, concise instructions to the Branch Directors explaining how to access this information.

Your supervisors will be receiving three additional reports concerning employee participation in the timekeeping system. Each Friday, Branch Directors will receive two reports on participation during the previous week. One report will give a summary of the number of employees who reported various numbers of hours for the week. The second report lists the number of hours that each employee submitted for that week. The Deputy Assistant Attorneys General will also receive the weekly numerical summary of the levels of participation. Every 4 weeks, the Branch Directors, the Deputy Assistant Attorneys General, and I will receive a third report that gives a numerical summary of the levels of participation in each Branch for that 4 week period. The purpose of these reports is to allow supervisors to monitor and assess the extent to which their employees are participating in the timekeeping system. At the present, the information available from the system is limited to the defined formats described above.

To ensure the timeliness and completeness of the automated reports, you need to submit your time sheets shortly after you perform the activities that you report. There will be deadlines for the inclusion of incoming time sheets in these reports. The management staff must receive time sheets no later than the Wednesday of the week following the weekly report period and no later than 5 days after the end of a monthly report period. For budgetary purposes, the management staff will still enter the time sheets received after those deadlines, but the time will not appear in the reports. There will also be a final deadline for submitting time sheets. Technical storage requirements preclude the entry of any time sheets for a given month when received after the end of the subsequent month.

I believe the information in the automated reports will be highly accurate. The failure to submit time sheets prior to the deadlines and the return of some time sheets to employees for correction will account for most of the time not found in the automated reports. The timekeeping records will be even more complete when the automation of the appellate case records concludes in November 1981. Time devoted to these cases will not appear in the automated reports until then.

I hope that the reports you receive will be of use to you. Unlike previous attempts to establish timekeeping systems, this one is recording and using the time information that you submit. Your faithful participation in this system is essential for its success. In a time of reduced federal budgets, the need for a viable work measurement system has become even more urgent. The staff resource management system will enable the Civil Division to substantiate its budget requests and thereby enhance the prospects of obtaining the resources it needs to perform its work. The timekeeping system will, of necessity, require some of your time, but your daily attention to it should pay appreciable benefits for the Division as a whole. I congratulate you for the high level of participation that you have demonstrated thus far. I appreciate your efforts and look forward to your continued cooperation.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION
OF TIME SHEETS

I. Completion of Forms

- After concluding each work activity of 15 or more minutes duration, start filling out a timekeeping form.
- Write or stamp your attorney code and name at the top of the form and date the form with the month, day, and year.
- Write in the DJ Number and case caption, if the work is attributable to a specific case, in the spaces provided. Write the name of the prospective defendant if the work is on a matter.
- Select one of the activity codes from the list at the top of the form that best describes the work performed. Write the number of the activity in the column under 'Code'. Write the number of hours or minutes spent on that particular case and activity in the column under 'Time'.
- Attribute any time spent traveling to the work category that describes the activities that required your travel.
- If the activity is not case related, circle the proper code number under 'Other Activity' on the lower portion of the form, and write the number of hours or minutes in the space next to the activity code.

II. Submission of Forms

- After completing time sheets, place them in your "out box" for your secretary to collect and forward to your normal Civil Division mail drop. Do not place the time sheets in envelopes. Mail messengers will collect all the time sheets from the mail drops each day and deliver them to data clerks for entry on the computer.

III. Case Lists

- To assist you in completing the time sheets, OPPM will furnish individual lists of attorney case assignments at the beginning of each month. You may obtain your case lists from your Branch Case Control Officer.

PLAINTIFF'S EXHIBIT C - Weisberg v. Webster,
Civ. Nos. 78-322 & 78-420.

DEFINITION OF ACTIVITY CATEGORIES

1) Matters

Includes: investigation, research, memoranda, discussions and consideration of matters; and all efforts to obtain suit authorization.

2) Pleadings

Includes: time spent in file review, research, and writing involved in preparation of complaints, answers, counterclaims, and crossclaims.

3) Temporary Restraining Orders/Preliminary Injunctions

Includes: all file review, discussions, consideration, writing, briefs, preparations and court appearances related to temporary restraining orders and preliminary injunctions, as well as associated replies and oppositions.

4) Substantive Motions

Includes: all file review, discussion, consideration, briefs, and preparations related to substantive motions such as for dismissal, summary judgments, partial summary judgments, judgments on pleadings, etc., as well as associated replies and oppositions.

5) Discovery

Includes: time spent on formal and informal discovery; affirmative discovery and responses to written discovery; related file review, research, and preparation of discovery motions and associated replies and oppositions; preparing and responding to interrogatories and admissions; preparing witnesses for depositions and taking depositions; research of government's case.

6) Pretrial Preparations and Proceedings

Includes: file review; trial strategy development, pretrial hearings, conferences and meetings before judges and magistrates or with opposing counsel; preparation of motions and briefs relating to the trial, pretrial oral arguments and waiting; interviewing witnesses; preparing expert witnesses; designating exhibits; stipulations; etc.; preparation of proposed findings of fact and conclusions of law and responses during this period.

7) Pretrial Case Development

Includes: case strategy development and case evaluation through review of pertinent materials, reflection, and meetings, discussions, and correspondence with clients and other attorneys.

8) Trials

Includes: time spent in court; preparation of proposed findings of fact and conclusions of law and responses; and case development during trial period.

9) Post-Trial Proceedings

Includes: post-trial arguments; research, review and preparation of post-trial motions, briefs, notices of appeal, and petitions for rehearing; and any post-trial case development; preparation of proposed findings of fact and conclusions of law and responses during this period.

10) Settlement Activities

Includes: research; file review; negotiations, discussions and correspondence with counsel, United States Attorneys, and client agency attorneys; writing of settlement memoranda.

11) Appeals

Includes: all time related to appeal activities; research, memoranda, discussions, and consideration of appeals; preparation of petitions of appeal or certiorari; preparation of briefs; arguments; motions; and court time.

12) Review

Includes: time spent reviewing attorney case work as designated review officer or as responsible Branch Director.

13) Advice/Assistance to Client Agencies

Includes: any time spent in discussion or correspondence with agencies to assist or to give advice on legal concerns unrelated to assigned cases or matters.

14) Preparation of Other Correspondence

Includes: time spent on matters not directly involved in case litigation such as preparation of Departmental legislation proposals, comments on proposed legislation, responses to citizen and congressional mail, FOIA and Privacy Act requests, including research, file review, and preparation of records for disclosure.

15) Supervision/Administration

Includes: all activities involved in the nontechnical supervision of employees such as personnel actions, evaluations, performance discussions, management of overtime usage, employee relations, etc; all administrative activities such as case control activities, reports, budget preparation, meetings with management, administrative correspondence, and miscellaneous administrative activities.

16) Professional Development

Includes: all work time involved in training, seminars and other legal learning activities; reading advance sheets, United States Attorney bulletins, law journals, etc.

17) Leave

Includes: all official government leave.

June	11	Weisberg v. Webster	6
		Leve	2
	12	Weisberg v. Kessen	8
	13	Weisberg	8
	14	Weisberg	4
		Hanner	4
	15	Weisberg	8
		Stem	1 1/2

June	18	Weisberg	8
	19	Weisberg	8
	20	Weisberg	8
	21	Weisberg	8
	22	Weisberg	8
	23	Weisberg	5

PLAINTIFF'S EXHIBIT D - Weisberg v. Webster,
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June	25	keitberg	8
	26	keitberg	10
	27	keitberg	8
	28	keitberg	8
	29	keitberg	8
	30	keitberg	4

July	2	keitberg	11
	3	keitberg	2
		Ivey v Parke	2
		PD	4
	4	HOLIDAY	
	5	Ivey v Parke	1
		Jordan v Heckler	2
		Kane v Heckler	1
		Manzon v GEOR	2
		PD	2
	6	Gorland v Sullivan	1½
		Ivey v Parke	3½
		Stem v FBI	1
		Jerbin v Heckler	1
		PD	1

October 9 Hanover Building 6
US v Republic 2

10 Ivey v. Parke 6
Delmer v. DOJ 2

11 Ivey v. Parke 6
Gonzalez v. Sullivan 2

12 Keisberg v. Webster 3
Ivey v. Parke 5

October 15 Keisberg v. Webster 8

16 Keisberg v. Webster 5

17 Jordan v. Heule 4
Hanover Building 4

18 Hanover Building 8

19 Granite 2
Frans. Heule 1
Keisberg v. Webster 5

20 Keisberg v. Webster 5

October 21 Hannover 4
 22 Hannover 12
 23 Weiberg v. Weiberg 10
 24 Weiberg v. Weiberg 12
 25 Weiberg v. Weiberg 11
 26 Weiberg v. Weiberg 6
 Jordan v. Weiberg 1
 US v. Republik 1

October 29 Weiberg v. Weiberg 6 1/2
 Jordan v. Weiberg 1
 Republik 1/2
 30 Jordan v. Weiberg 8
 31 Hannover Bundtag: 6
 Republik: 2
 November 1 Republik 4
 Hannover Bundtag: 4
 2 ~~Jordan v. Weiberg 8~~
 Strickman v. DeJ 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 Plaintiff,)
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 v.) Civil Action No.
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 FEDERAL BUREAU OF INVESTIGATION,)
) (Consolidated)
 Defendant.)

DECLARATION OF MARK H. LYNCH

I, Mark H. Lynch, state as follows:

1. I represented plaintiff Weisberg on appeal in this case.
2. Attached hereto are my time sheets for my work on the appeal in this case, which I compiled contemporaneously with the work performed.
3. My time sheets in this case indicate that I spent 42.50 hours writing the the opening brief for appellant. This total does not include the time spent on reviewing the record and other activities prior to May 4, 1984, reviewing the record on May 14 and 15, 1984, or meeting with counsel for Mr. Lesar on May 16, 1984.
4. My time sheets in this case also indicate that I spent 6.75 hours on October 23 and 24, 1984,

preparing for oral argument. This does not include the time spent in court for the argument.

5. Similar time sheets which I maintain in the case of Halperin v. Kissinger indicate that I spent 11 hours preparing for the oral argument in that case, which took place on May 1, 1985. This total does not include the time spent in court for the argument.

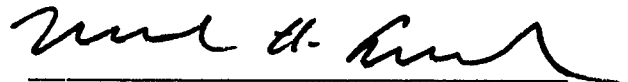
I declare this 28th day of May, 1985, that the foregoing is true and correct.



Mark H. Lynch

CERTIFICATE OF SERVICE

I hereby certify that this 28th day of May 1985, I caused copies of the foregoing Opposition of Mr. Weisberg to Defendant's Application for an Award of Fees and Declaration of Mark H. Lynch to be mailed, first-class, postage prepaid, to counsel for defendant, Ms. Renee M. Wohlenhaus, Department of Justice, Room 3334, 10th & Constitution Avenue, N.W., Washington, D.C. 20530, and to counsel for James H. Lesar, Mr. Cornish F. Hitchcock, Suite 700, 2000 P Street, N.W., Washington, D.C. 20036.



Mark H. Lynch