



JSKoppel:vhw
145-12-2590

TELEPHONE:
202-633-5459

April 10, 1984

Mr. George A. Fisher
Clerk, United States Court of Appeals
for the District of Columbia Circuit
Room 5423, United States Courthouse
Third Street and Constitution Avenue, N.W.
Washington, D.C. 20001

Re: Harold Weisberg v. Department of
Justice, Nos. 82-1229 et al.

Dear Mr. Fisher:

Pursuant to Rule 28(j), Fed. R. App. P., defendant-appellee/cross-appellant Department of Justice hereby brings to the Court's attention the following supplemental authorities:

1. In Murty v. Office of Personnel Management, 707 F.2d 815 (4th Cir. 1983), the court refused to award attorney's fees under the Freedom of Information Act, 5 U.S.C. 552(a)(4)(E), to a plaintiff who filed suit without giving the administrative process an adequate opportunity to supply the requested information. This issue is discussed at pages 40-41 of the Department's opening brief and pages 3-4 of the Department's reply brief.

2. In Blum v. Stenson, 52 U.S.L.W. 4377 (U.S. March 21, 1984), the Supreme Court -- in reversing as an abuse of discretion a 50% upward adjustment of an attorney's fee award under 42 U.S.C. 1988 -- stated that the "lodestar" figure normally is fully compensatory (Slip Op. at 14), and that "[t]he burden of proving that * * * an adjustment is necessary to the determination of a reasonable fee is on the fee applicant." Id. at 4380, 4381. The Court held that the applicants in Blum had failed to carry this burden. Id. at 4381. This issue is discussed at pages 65-67 of the Department's opening brief and page 16 of the reply brief.

3. In Antonelli v. Department of Justice, 721 F.2d 615 (7th Cir. 1983), and Ray v. Department of Justice, 558 F. Supp. 226, 228, 229 (D. D.C. 1982), aff'd. without opinion,

720 F.2d 216 (D.C. Cir. 1983), the courts upheld nondisclosure of the personal records of named individuals to a third-party requester, where the named individuals had not waived their rights under the Privacy Act, 5 U.S.C. 552a. This issue is discussed at page 26 of the Department's opening brief.

Sincerely,

JOHN S. KOPPEL
Attorney, Appellate Staff
Civil Division

cc: James H. Lesar, Esquire
1000 Wilson Boulevard
Suite 100
Arlington, Virginia 22209