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11 SEP 1984

Cornish F. Hitchcock, Esquire
Public Citizen Litigation Group
2000 P Street, N.W., Suite 700
Washington, D.C. 20036

Re: Weisberg v. Webster (D.C. Cir. Nos.
84-5058, 84-5021, 84-5059, 84-5202)

Dear Mr. Hitchcock:

As you may know, your client, James H. Lesar, Esquire, recently wrote to Daniel J. Metcalfe, Co-Director, Office of Information and Privacy, Department of Justice. A copy of this letter is enclosed. Since Mr. Metcalfe is no longer counsel for the government in this matter and since I am unable to communicate directly with Mr. Lesar because of Disciplinary Rule 7-104, I, as counsel for the Department in this case, am writing to you in response to Mr. Lesar's letter.

Mr. Lesar quotes the following passage from the Department's brief, at pages 46-47:

The district court had observed plaintiff's counsel's behavior during the five years since the action was filed. He saw the delays caused by plaintiff and his counsel's acquiescence and encouragement of plaintiff's interminable demands for an ever-increasing search.

Mr. Lesar also cites the following sentence from the Department's brief, at page 44:

The district court had closely observed plaintiff's counsel's relations with plaintiff in this litigation for more than five years.

Mr. Lesar writes: "[T]hese statements are false." He does not, however, give any reasons to support his allegation that the statements are inaccurate. Nor does Mr. Lesar explain in what respect he believes that the statements he quotes are false.

The Department believes that these statements cited by Mr. Lesar are proper. As you know, they appear in that section of the Department's brief which argues that the district court correctly awarded expenses against plaintiff's counsel as well

as plaintiff. The statements introduce our argument that the district court correctly imposed sanctions in light of its experience with plaintiff and his counsel during the course of the litigation as a whole. Neither statement is, of course, meant to imply physical viewing of plaintiff or his counsel for the five year period. Nor do the statements indicate that plaintiff or his counsel caused delay during every month of this action. Rather, both quoted passages suggest that the district court had the advantage of having presided over the entire course of the action and was, therefore, acting within his discretion in imposing sanctions based upon the behavior of plaintiff and his counsel during that period. The Department's brief clearly states that the initial period of this action, from its filing in early 1978, was devoted to the FBI's search for and production of documents, which were completed in December 1981. Defendants believe, nevertheless, that the scope of the search and voluminous production were relevant to the district court's decision and therefore directed the attention of the court of appeals to the entire period of the litigation.

When read in context, it is clear that the quoted passages refer to this type of overview of the entire litigation. The brief then continues by citing specific examples of actions in 1982 and 1983 which defendants characterize as delays and demands for a wider search. It is, of course, open to plaintiff and his counsel to dispute any of these characterizations. The Department, however, does not believe that its characterization of the case was "false."

Very truly yours,

Christine R. Whittaker

CHRISTINE R. WHITTAKER
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Enclosure