Dear Dave, 1/14/92

I do not recall after all these years whether I sent you a copy of the letter I wrote Sheehan of the Christic Institute when I read the incredible affidavit he filed in the case the Supreme Court refused to hear yesterday but myohmy! should he have listened to me!

The enclosed copy of the story includes all references to the decision and Christic.

When I heard that in his efforts to help Awirgnan, the reporter, whose wife is named Honey, he was dredging the conspiracy-theorists' swamps I got a copy of that really irrational affidavit, virtually none of personal knowledge, and told him how utterly wrong and dangerous it was.

He did not reply.

The affidavit, if not the case itself, visualized that bombing, aimed at Eden Pastore, as part of a monster plot that included the JFK assassination. and the CIA.

On which he had nothing factual at all and did have the untenable nutty stuff.

At the time, if I recall correctly, I believed that he had broadened his charges much too much and that this junk was irrelevant in any event, broad as his allegations were.

Official vengeance was under Rule 11. The story makes clear enough what it provides.

Those same DJ people sought a Rule 11 judgement from me.

As I now recall, it was in the field-offices combined case, before that fink of an apology for a judge, John Lewis Smith.

I think they got a relatively small award.

Which I ignored in the belief that they'd have to come out here to collect and would nost risk any litigation of it because it was worse than baseless, it was procured on undenied and amply-proven perjury.

What Christic did was frivolous and it was misconduct.

What I did was solidly factual and was the opposite of frivolous.

I suppse that now Rule 11 will be applied with less restraint against those of less or no influence.

Supreme Court Leaves $1 Million Sanction Intact in Nicaraguan Bombing Case

By Ruth Marcus
Washington Post Staff Writer

The Supreme Court yesterday refused to set aside a $1 million penalty against a nonprofit law firm and two journalists for a lawsuit they filed accusing contra rebel leaders and former CIA officials of planning a 1984 bombing that killed five people in Nicaragua.

The court declined to review the sanction of $1.05 million in legal fees and costs imposed against the Christic Institute, its general counsel, and two free-lance journalists for misconduct in filing the racketeering suit.

The case, *Christic Institute v. Hull*, attracted wide attention because of the unusual size of the sanction, assessed under a provision of the federal trial rules that allows judges to require those who engage in bad-faith litigation to pay the costs incurred by the other side. Public interest groups have warned that the provision, known as Rule 11, is being used to deter them from bringing cases.

As the justices returned from a four-week recess, the biggest news came in what the court did not do: act on a pending challenge to Pennsylvania's abortion law. The justices were to have considered whether to accept the case for review at their conference last week, but did not mention it in the orders released yesterday.

Both Pennsylvania and abortion-rights activists have requested that the court hear the case, which is being closely watched because it could prompt a ruling on abortion rights before the November elections. The justices could announce as early as next week whether they will hear the case, which would likely be argued in April and decided by the end of the term if the court acts within the next two weeks.

In other action yesterday, the court:

■ Refused to reinstate a $7.8 million judgment won by Inslaw, the computer software company, in its long-running dispute with the Justice Department over allegations that Justice officials stole the company's case-tracking software and conspired to force it into bankruptcy.

The federal appeals court here ruled last year that a bankruptcy judge who found that the department used "trickery, fraud and deceit" against Inslaw did not have jurisdiction to hear the company's claim in *INSLAW v. U.S.*

■ Heard a second round of arguments over whether federally mandated cigarette warnings shield tobacco companies from being sued in state courts for false advertising or failing to warn smokers of the health risks of cigarettes. The case was originally heard in October, before Justice Clarence Thomas was confirmed, and the court, apparently split 4 to 4, ordered new arguments. Thomas, a cigar smoker, was the only justice who did not ask a question during the hour-long oral argument.

■ Chided a federal appeals court for taking too long to review a Washington state prisoner's death sentence. State officials took the unusual step of asking the justices to issue an order, known as a writ of mandamus, directing the appeals court to decide the case, which was argued in June 1989.

The court declined to do so, but seven justices, in an unsigned opinion, were critical of the "unexplained" delay and the resulting "severe prejudice" to the state. They said any further delay "will be subject to a most rigorous scrutiny in this Court."

Justice John Paul Stevens, joined by Justice Harry A. Blackmun, said the appeals court had not "unduly delayed" its decision but rather waited in order to consolidate two appeals. "Although I am sure the court did not intend to send such a message, its opinion today may be read as an open invitation to petitions for mandamus from every State in which a federal court has stayed an execution," Stevens said.

■ Let stand rulings that permit illegally obtained evidence to be used as a basis under the federal sentencing guidelines for increasing the sentence imposed on a criminal defendant. The court declined to hear two cases, one from the District and the other from Tampa allowing the use of such evidence at the sentencing stage although it is

barred under the exclusionary rule from being used to obtain a conviction. The cases are *McCrory v. U.S.* and *Lynch v. U.S.*

■ Overturned a New York court ruling that profits from a book by Jean Harris, convicted of killing Scarsdale diet doctor Herman Tarnower, had to be turned over to a New York state crime victims fund. The court last month unanimously struck down New York's "Son of Sam" law seizing the profits from books by criminals.

In the Harris case, *Children of Bedford v. Petromelis*, the justices ordered the New York court to restudy its ruling that some $90,000 in royalties from Harris's autobiography, which she had donated to a group that helps care for the children of fellow female prisoners, should go to the crime victims fund.

■ Declined to hear arguments by former Rep. Robert Garcia and his wife, Jane, that the constitutional prohibition against double jeopardy should have barred their retrial for extortion in connection with the Wedtech Corp. The Garcias, whose original conviction was overturned by a federal appeals court, were convicted at a second trial and are awaiting sentencing.

The Christic Institute lawsuit, dismissed after two years of pretrial discovery, included wide-ranging allegations that the bombing was only part of a semiprivate U.S. intelligence operation that included trading guns for drugs to support the contra rebels in Nicaragua. The federal judge overseeing the case ruled that it was "based on unsubstantiated rumor and speculation from unidentified sources with no firsthand knowledge."

In a friend-of-the-court brief asking the high court to hear the case, Trial Lawyers for Public Justice warned that the imposition of sanctions "constitutes a danger to all who litigate in the federal courts" and "an especially grave threat to those who practice or seek to participate in public interest litigation."

But the defendants in the case told the court, "Sanctions for filing a frivilous suit and maintaining it with a false affidavit of counsel do not retard the pursuit of justice by litigants or lawyers, whether private or public."

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