DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

OFFICE OF THE
GENERAL COUNSEL

Summary of Meeting with Mr. Norman Latker -- August 23, 1979

Present: Norman J. Latker;
Irving Kator, Mr. Latker's attorney;
Darrel J. Grinstead, Assistant General Counsel,
Business and Administrative Law Division; and
P.J. Winzer, Attorney, Business and Administrative
Law Division

Following is a summary of the meeting prepared by Darrel J. Grinstead.

I explained that the purpose of this meeting was to discuss certain allegations of misconduct on the part of Mr. Latker. I stated that before I made my decision as to what course of action to pursue in this matter, I wanted to hear Mr. Latker's explanation of certain events that had been brought to my attention. (1)

Mr. Kator then asked why my investigation had been undertaken. He asked what triggered it. I responded that the matter was pending when I assumed the position of Assistant General Counsel, BAL. My predecessor, Mr. Feiner, had a working file on the matter which was passed on to me. I began to look into the matter at the time Mr. Latker was reinstated. (2)

I then handed Mr. Latker a draft document (Tab A) the heading of which was "The Problem" and the subject of which was the Fourth Exemption of the Freedom of Information Act. I asked Mr. Latker if he had prepared the document. He responded that he had prepared it over a weekend. At this point Mr. Kator asked to study the document and for a chance to discuss it with his client. Mr. Kator and Mr. Latker left the room and returned about 15 minutes later. (3)

I then asked Mr. Latker what the purpose was in his preparing the document. He responded that he had been asked orally by the American Association of Medical Colleges (AAMC) for the Department's position on closing of peer review meetings and that this was his response, although he was not sure it was prepared by him in that form.

I asked him if he had been instructed to prepare it by anyone in the Department. He responded that no one had instructed him to prepare it, but that it was part of his ordinary duties. I asked him if it had been typed by his secretary and he responded that it had.

I then asked if AAMC was involved in litigation with the government on the issue covered by the document, to which Mr. Latker replied no, not that he knew of. I asked Mr. Latker if he was aware of the use AAMC made of the document prepared by him and Mr. Latker replied, yes, that AAMC utilized the patent statistics in an amicus brief in the case of Brown, Secretary of Defense v. Chrysler.

I then asked why, if the document was intended to set forth the Department's position on the closing of peer review meetings, it was drafted from the standpoint of "the Associations", and why, in the conclusion on page 15, the document contained statements beginning "The Associations strongly support appellant's contention ...." Mr. Latker's response was that people would not necessarily agree on every point in a discussion, but that he believed the document was consistent with Department policy. Mr. Kator summarized his client's position by saying that the Association of American Medical Colleges was not engaged in litigation with the Department at the time and the paper was consistent with Department policy, that Mr. Latker was doing his job and that Mr. Latker would have provided information to any group asking for it. Mr. Latker stated that he had provided information on the same subject matter to a number of other people. (4)

I then handed Mr. Latker what appeared to be a letter in draft form (Tab B) urging recipients to contact their Senators concerning a patent policy bill that Senators Dole and Bayh were planning to introduce. I asked him if he recognized the document and its attachment. He responded "not off hand". I then asked him if he recalled drafting the document and he replied again "not off hand."

I then asked Mr. Latker if he recalled having a conversation in May of 1978 with Mr. Feiner concerning testimony that Mr. Latker was going to be giving to a Congressional committee, and he said yes. I asked him if he recalled Mr. Feiner having instructed him at that meeting concerning the prohibition against the use of appropriated funds for lobbying. He said that no such discussion had taken place in that meeting and that the only matter discussed with Mr. Feiner at that time was the substance of his testimony. (5)

I then handed Mr. Latker the package of material on the top of which was a press release from Senator Dole concerning the Small Business, NonProfit Organization Patent Procedure Act (hereinafter "the Dole press package") (attached at Tab C).

I asked him if he had instructed anyone on his staff to make 150 copies of this press package. He said that he had not instructed anyone to make 150 copies, but that he did instruct Evelyn Blaufeld in his office to make "some copies" because he had some requests for it. I asked what he had done with those copies and Mr. Latker said that he had instructed it be sent to seven people. I asked whether government materials and personnel had been used to reproduce and send out the documents and Mr. Latker responded in the affirmative.

I asked Mr. Latker if he recalled talking to Mr. Feiner about this press package. He said that he had talked to Mr. Feiner and complained to him that Mr. Barry Walker had come to his office and searched for these documents. I asked him whether Mr. Feiner had instructed him not to send those documents out. He said that Mr. Feiner and he had reached an agreement that he (Mr. Latker) would not send out the documents and that Mr. Walker would not come searching around his office in the future. I asked Mr. Latker whether, after that meeting, he did anything regarding his orders to send out the package, and he said that he did nothing. (6)

I asked him whether he recalled a meeting he had with Mr. Richard Beattie, Deputy General Counsel, the next day regarding the press package. He said he recalled the meeting and that Mr. Beattie had told him at the meeting that he found it disconcerting that he (Mr. Latker) would send out to the public documents critical of the Department. I asked him whether Mr. Beattie had instructed him at that meeting to cease lobbying, and Mr. Latker responded that Mr. Beattie had not instructed him on the subject of lobbying. (7)

I then handed Mr. Latker a document in draft dated September 27, 1978 which appeared to be a letter addressed to "Dear Patent Administrator" on the subject of S. 3496 (attached at Tab D). I asked him if he recognized the document. He said that it "totally throws him." He did recognize the attachments to the document, however. Mr. Latker said those documents came from Senator Bayh's office. (8)

I asked Mr. Latker whether he had prepared that document and he responded that he had not had it prepared for his signature, but he was not sure whether he prepared it. I asked him whether he recalled ordering copies of the attachement to be prepared in his office, and he responded that he did not recall doing that. (9)

I then asked him how he had obtained the document from Bayh's office, and Mr. Latker responded that it had been given to him for information purposes. (10)

I then indicated that that was the conclusion of my questions.

Mr. Kator then summarized for Mr. Latker. He said that nothing in the material that had been discussed today indicates misconduct on the part of his client. Mr. Kator contended that all of the documents we had discussed were consistent with Mr. Latker's role in the Department patent policy and do not indicate misconduct.

(11)

Mr. Latker then asked if the matters that we had discussed that day was the whole substance of the investigation. I responded to the effect that the substance was not yet clearly defined and that I was still in the process of investigating these matters.

Mr. Kator indicated that he would be in touch with me within a week if he had any additional information to provide. The interview then ended.

Darrel J. Grinstead

cc: Norman J. Latker