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August 30, 1979

Mr. Darrel J. Grinstead
Assistant General Counsel
Office of the General Counsel
Department of Health, Education and Welfare
Washington, D. C. 20201

Dear Mr. Grinstead:

This has reference to our meeting held in response to your memorandum of August 4, 1979 to Mr. Norman Latker in which you stated you were investigating certain allegations concerning Mr. Latker's conduct.

At the meeting you showed Mr. Latker and me copies of two typed letters, one without any indication of a signatory and one on which Mr. Latker's name was typed at the letter's end. Both letters were clearly drafts. There was no indication, nor did you disclose to us, that either of these letters was ever published.

You also showed us a 19 page statement concerning the fourth exemption of the Freedom of Information Act. While Mr. Latker recalls his providing information on this matter at the request of persons having a subject matter interest in the field, he has no way of knowing that the material you showed us was the form in which he prepared it. Nevertheless, the 19 page paper represents the DHEW and government policy and in large measure contains precisely the same information which appears in the report of the President's Biomedical Research Panel which information was prepared by Mr. Latker. Further, the position taken in the paper was fully consistent with the position of the DHEW General Counsel as expressed by him in a letter to the Assistant Secretary on Health on January 11, 1977. Thus, there can be no basis for even a remote suggestion that providing this information was misconduct on Mr. Latker's part. Mr. Latker's position description calls for his maintaining contact with respect to patent matters with representatives of private industry, private attorneys representing clients and patent management agencies. Information supplied by Mr. Latker was consistent with that mandate.

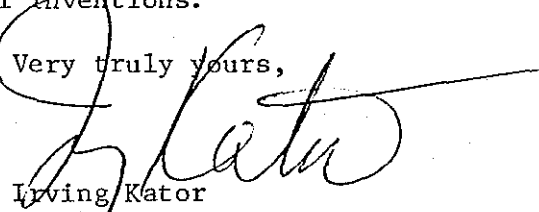
Mr. Darrel J. Grinstead
August 30, 1979
Page 2

You also displayed to us a release from Senator Dole's office relating to Senators Dole's and Bayh's introduction of the Small Business, Non-profit Organization Patent Procedures Act. The release carried a copy of the bill. This was public information and was obtained by Mr. Latker at a press conference. Mr. Latker at the request of several persons who had not attended the conference and who had a subject matter interest, and consistent with his obligations to maintain liaison with various groups, sent them a copy of the bill and the cover statement from Senator Dole's office. There was no large scale reproduction by Mr. Latker or wholesale distribution of the press release and the bill although if there had been there would certainly have been no impropriety. What occurred was that copies were sent to several persons who had specifically requested Mr. Latker to make the information available to them since he had been at the press conference and they had not been. The lack of an impropriety on Mr. Latker's part is apparent from a bare recitation of the facts. That Senator Dole was critical of the Department's handling of certain patent matters in his statement was certainly no basis for Mr. Latker's not sending the statement when requests for it were received. It is not the job of a public servant to cover up criticism of his agency and in fact under Public Law 95-454, the Civil Service Reform Act, he has an obligation to call matters of waste, mismanagement and danger to public health or safety to the attention of appropriate persons, including members of Congress, and it is a prohibited personnel practice under the law for an agency to take a personnel action against a Federal employee for any such disclosure. (5 USC 2302(b)(8)(A)(ii)).

With regard to the two draft letters, one of which had Mr. Latker's name typed at the letter end, Mr. Latker denies authorship. These letters were obviously not intended for his signature and it even appears that his name was added after the body of the letter had been typed. From time to time, Mr. Latker in connection with providing technical assistance to the Congress might at the request of Congressional staff members have certain materials typed in his office which related to his subject matter responsibility. Mr. Latker is charged by his position description with maintaining liaison with members of Congress and he worked cooperatively in providing technical assistance to them. Mr. Latker has no recollection, however, that this was the case with these particular letters.

For the reasons noted above, there is no basis for any allegation of misconduct against Mr. Latker. He has always acted as a responsible and dedicated public servant and his actions have always been in the best interest of the Department, the Government and the American people. Because the Department has been criticized for its actions in bottling up the release of rights to medical devices developed with government support, this is not a proper basis for taking action against Mr. Latker who admittedly favored a policy of the widest possible availability of medical inventions.

Very truly yours,


Irving Kator