



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20201

June 28, 1974

OFFICE OF THE  
GENERAL COUNSEL

Mr. Norman J. Latker  
Chief, Patents Branch  
Business and Administrative  
Law Division  
Office of General Counsel

Dear Mr. Latker:

Since your meeting with Mr. Hiller, Mr. Barrett and me on May 20 I have carefully reviewed the facts, and have received and considered the recommendations of Messrs. Hiller and Barrett, concerning your speech in Chicago on February 5, 1974, your subsequent mailings to the various HEW institutional patent agreement holders and your contacts with the various Congressmen concerning the Public Citizen lawsuits.

I am satisfied that your appearance in Chicago involved no violation of the various provisions of federal law that prohibit the use of appropriated funds to influence legislation pending before the Congress. Although your speech was calculated to influence such legislation you carefully, and appropriately, avoided using any Government funds in connection with your travel and appearance.

I am also satisfied that your subsequent mailings of information to institutions represented at the Chicago meeting were consistent with your already established practice as patent counsel for the Department in sending informational material to the holders of institutional patent agreements. Although some of the institutions did in fact use the material in an effort to influence members of Congress with respect to certain patent policy provisions of H.R. 13-565, 93rd Congress, this was an indirect result of an otherwise proper use of your office facilities. Accordingly, I do not consider the mailings themselves to be a violation of the statutory prohibitions.

I find your contact with the Congressmen concerning the Public Citizen suits more troubling. You concede having contacted the Congressmen in the hope of dissuading them from participating in the Public Citizen suits. If these contacts were made during the course of your representing this Department in connection with these same suits, it is clear your failure to first contact and advise the attorney representing the Congressmen in the suit would violate disciplinary rule, D.E. 7-104 of the Code of Professional Responsibility of the American Bar Association. You point out, however, that this Department was not a party to the lawsuits in question and that you therefore did not consider yourself as representing the Department, in your capacity as an attorney, in connection with the suits. Although I think your role in this regard is somewhat ambiguous I am prepared to accept your perception of that role. In any event a complaint in this regard would have to be directed to the Ethics Committee of your state bar association and the most appropriate complainant would be Mr. Bonner, the attorney for the Congressmen.

My greatest concern respecting your conduct relates to your failure to advise either Mr. Hiller, Mr. Barrett or me of your intended public remarks in Chicago on February 5. Although you intended to appear at that time as a private citizen interested in the area of patent law and administration, your position as patent counsel to the Department was well known to a significant number of those attending the Chicago meeting, I think it would be very difficult for those attending to separate fully your "official" and your "private" roles. Since you were purporting to speak as an individual on the very subject which concerns your official duties, I believe that you should have cleared with Mr. Hiller your appearance in Chicago and the substance of the remarks you intended to make in Chicago. You have conceded as much by the fact that you anticipated that if you consulted Mr. Hiller, Mr. Barrett or me we would have disapproved of your remarks. Far from being a reason for not consulting us this merely underlines the reason why we should have been consulted. Accordingly, I have no

choice but to reprimand you for this dereliction. The fact that you had nothing personal to gain from your conduct and that your actions stemmed from what may have been excessive zeal in pursuit of your official responsibilities is insufficient mitigation. Accordingly, I am directing that a copy of this letter be placed in your personnel file. I trust that this sort of thing will not happen again.

Sincerely,

A handwritten signature in cursive script that reads "John B. Rhineland". The signature is written in dark ink and is positioned above the typed name.

John B. Rhineland  
General Counsel