

Dear Jim, Re Wilkey's minority in the Baez appeal, No. 79-1881 8/15/81

He wrote this lengthy opinion before May 7, 1981, when the whole thing was filed. Maybe he then had his eyes on the Supreme Court, knowing that Reagan would have seats to fill. However strongly he holds the views he expresses, his expression of them appears to me to be excessive, as is his assault on his liberal colleagues.

He also makes a persuasive case even though it boils down to the unreasonable, that in enacting any legislation the Congress has firmly in mind all the provisions of all the legislation he has ever enacted.

It may be one way of launching a new campaign and a new kind of campaign against FOIA.

In a sense, though, he strengthens our positions with regard to costs, including by the footnotes you cited.

I'm not at all sure that the liberals in Congress who amended the Act in 1974 had in mind that Exxon would not be assessed costs if it lost.

There are points at which Wilkey exposes himself and what is in the inner recesses of his mind, like where he refers to the awarding of counsel fees as ~~XXX~~ a "binanaa."

I also noticed where he seems to suggest that we did not make as broad a claim with regard to me as we might have. It can be argued that we had no need to because we prevailed, but I think making all the possible claims would have been better.

Do you suppose he is starting out to make himself the ~~XXXXXXXX~~ new Warren Burger of this appeals court, Burger's?

Best,