

George Lardner
Washington Post
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Washington, D.C. 20005

1/7/85

Dear George,

What I referred to in a recent letter will be enclosed, hopefully day after tomorrow. I've decided to use the retyped rough draft for a number of reasons. Mostly because I'm weak and weary and want to do other things with what time I have. I made a few minor corrections by hand and my wife is having to retype a few pages. I'm expecting, weather permitting, to have the xeroxing done commercially in Frederick. (The court gets 15 copies and the limit is to 15 pages.)

I know the courts are not your beat and there is a limit to what you can do. If you can't or don't want to do anything with this, will you please give it to the court reporters?

For practical purposes this can mean the end of FOIA as we have known it and the good it can mean for the country, not just reporters and other writers.

It is about as dishonest as any I've ever seen, and I am not without experience with judicial dishonesty - and fear.

The panel was Wilkey, Wald and Scalia. Christine Whittaker was DJ counsel, with others signing.

If you think I am quinine looking for windmills, I remember Pastor Niemöller, who recounted all the evils over which he was silent and then said there was nobody else to be silent when the evil befell him.

The others on the government's brief are Richard K. Willard, Acting Assistant Attorney General, DiGenova and Leonard Schaitman, DJ. Jim has a copy of the decision, as does Mark Lynch, both of whom had nothing to do with this, and a messenger can get one from the court. No lawyer could hope to survive such a filing and besides, a conflict of interest developed between Jim and me and Lynch had agreed to represent me because of that only for the appeal. I've not heard from Lynch and all I indicated to Jim was my plan to try to turn Swift into a swift kick.

I know there is always only the slightest chance of an en banc rehearing and my guess is that what I believe must be said reduces even those chances. But I think if nothing else history is served and perhaps more if anyone pays any responsible attention to this denunciation of the appeals court to its face, and with factual accuracy. Imagine that they did not even read the requests, not even after they were told that they'd been lied to about that, and more.

Thanks for anything you may try, I hope you are scared for what this reflects of the judicial system and what that means, and

Best wishes,