

Dear John, *L. M. Day*

1/10/85

It has been a very long time! I hope you are still both kicking around and kicking. I'm still around but I don't dare ~~try~~ to kick literally, although I manage a few other kinds of efforts, one enclosed.

I was able to drive to DC for almost two years after 1975 thrombosis but for about five years I've been able to get there only when driven and then only for the surgeon to marvel every six weeks, that I still have a left leg and thigh. Complications following successful arterial surgery.

You may not recall, but the FOIA investigatory files exemption was amended to see to it that the FBI and CIA are included as the result of official corruption in one of my earlier cases. I've mislaid that page of the Congressional Record, but Judge Gesell once referred to it and I have the story George Lardner wrote. I've marked a copy. Until that decision, the agencies hated me even more and DJ had a "get Weisberg" crew of six lawyers in the Civil Division. When that didn't work they shifted to open mendacity and have gotten away with it in all other courtrooms. After the Act was amended I got some of the FBI's records on me, and what they were capable of is ghastly! These records disclose that in 1967 they considered and approved a recommendation to "stop" me and my writing by tying me up in civil litigation. The SA who was to front for it chickened out, for he knew very well that my writing was accurate. Seven books have stood times/ testing, and I'm proud of that. No significant error and remarkably few insignificant ones. (I think that aside from my background this is due to the fact that I do not theorize conspiracies but instead assess the evidence in what is really a study of how our basic institutions worked in that time of great stress and thereafter. If you ever get up here, I think you'll be surprised at the extent of what I've been able to do, of the archive I leave, and some of the content of which I have copies on my desk as shockers.) They've been able to do this pretty much by stonewalling litigation that I cannot abandon without giving them a license for perpetual suppression. That has pretty much stopped my writing, that and the amount of time I have to spend in physical therapy daily.

I'm well aware that en banc petitions are rarely granted. But if nothing else this petition is a record for the future, for history. While I have no personal interest, and you may recall I never sought personal publicity, I would like to see some attention to this judicial outrage because - and I do think that by the standards of my reporting youth it is a legitimate story - it is in the country's interest. What has happened to the courts is incredible. And I fear reporters have gotten too used to what of it they learn. And I fear for the effects on the country, the judicial system and justice.

As the lawyers say, the document has to speak for itself, and I let it. I hope you will read it and if you have any questions, I'll be glad to answer them. (301/473-8186) I'm usually home from my therapy of three early hours by 10:30 and generally am home the rest of the day.

I regret that the petition is a retyped rough draft. I'd asked my wife to retype it so I'd have a better notion of meeting the limitation to 15 pages but I've been additionally ill, I feared it might get worse, so I just used the retyped draft. There are some things I'd have inserted otherwise. I think that one is the identification of the Shaw case panel to which I refer, which held (No. 84-5084, decided 12/5/84, or two days before mine) SA Phillips not competent to provide attestations because he lacked first-person knowledge of the JFK investigation. (Slip opinion, p. 9) That panel was Wilkey, Wald and Scalia, the same panel that accepted Phillips as the FBI's affiant in my case! And what I did not learn until today, when I received a copy of Law Week for 12.26/84, that this same Scalia wrote the decision in Liberty Lobby v. Jack Anderson. In my petition you will see

I had called to the panel's attention ^{two} ~~in~~ gross lies, both basic in the panel's subsequent decision, by DJ counsel to its attention. DJ didn't bother to argue or to apologize or withdraw these lies. Now in his Carto/Anderson decision Scalia wrote,

"It is shameful that Benedict Arnold was a traitor; but he was not a shop-lifter to boot, and one should not have been able to make that charge while knowing its falsity with impunity."

There is no doubt in my mind that this decision effectively negates FOIA for the errant agencies in those cases that are important/embarrassing to them because of the abuse it licenses. There likewise is no doubt that all lawyers can be in jeopardy in civil cases, particularly with the government the defendant, as a result of this decision. Whatever Lesar did or did not do he was subject to sanctions. This now applies universally, to pro bono counsel for those who cannot pay and to the most prestigious counsel for the wealthiest corporations if either have clients who will not do what they recommend if "discovery" is demanded. And what this means in costs for large corporations in what it licenses as "discovery!"

These are some of the reasons I had to persist in this case, at the cost of writing I cannot hope to live long enough to get to. It is against, not in personal interest.

It may interest you to know, and it pleases me, that my books are now college texts, in history, polisci, government courses and even one in criminalistics! Students have used my files for honors papers and thesis material and are now. So I guess I can feel that the 20 years of unpaid labor was worth it.

Best wishes,

Harold