

Senator Patrick Leahy, Vermont  
U.S. Senate  
Washington, D.C. 20510

8/6/86

Dear Senator Leahy,

If this and what I enclose may be of interest and reach you too late, I regret it and I'll explain it below.

In watching Judge Scalia's nonresponses to your questions about FOIA it occurred to me that he was diverting and in a sense misrepresenting, particularly when he claimed to have almost expanded FOIA. I then phoned a lawyer friend in Washington, in the belief that he might better respond to any questions by your staff, with the suggestion that what is most material is how on the appeals court Judge Scalia voted with regard to his former client, the Department of Justice. And, in a sense, in doing whatever he did on the court, he sat in judgement upon himself.

With regard to the matter that ended this morning's session, the allegation of a leak, the Republican Senators who spoke all assumed that any such leak had to have been by a staff member and, inferentially, by a Democratic staff member. While I have no knowledge of this event (or perhaps nonevent) I have considerable experience with FBI leaks, not infrequently contrived to appear to be the leaking of others. I have and have read hundreds of thousands of pages, mostly from the FBI, obtained under FOIA. So, until more is known, it is possible that once again the FBI may be investigating itself.

FOIA policy during the Nixon and Ford administrations was pretty much influenced if not set by the two nominees and it is inevitable that they will be sitting in judgement on themselves and have already. This, as best a layman can understand it, appears to be a conflict of interest that cannot be resolved by a judge who does not recuse himself.

Several years ago one of your constituents who had helped me, Ms. Rae Barrett, of Sharon, Vt., sent me one of your newsletters discussing your FOIA position and she suggested that I write you. I did and I received no response. So, with my present handicaps and limitations, I did not send you what I sent the other Senators.

My FOIA experience is extensive, I'm a former reporter, investigative reporter, *senate in-*  
*vestigative and*  
intelligence analyst (OSS) and I've published seven books and made numerous appearances in connection with them. Lying is not strange in my experiences but in a long and active life I've never even heard of it being practised to the degree that today characterizes the government's conduct before the courts in FOIA matters. I fear that as long as these serious offenses remain immune the act will be gutted more and more as time passes.

Sincerely,



Harold Weisberg  
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