

HAROLD WEISBERG
7627 OLD RECEIVER ROAD
FREDERICK MD 21701
301/473-8186

American justice will be radicalized - in the direction of a police state - if the Department of Justice prevails in its reaction to the en banc appeals court reconsideration petition I sent you, followed by a supplemental mailing dated January 11~~7~~, 1985. It will convert nonwitness FBI agents into "witnesses."

The Department reacted by filing its own en banc petition, asking that an FBI special agent who has no personal knowledge be accepted as a "witness" by the courts with regard to matters about which he is ignorant! I mean this literally and their petition is limited to this one thing.

One basis for an en banc reconsideration is reconciling conflicting decisions. I cited the glaring conflict between my case and that by the identical panel judges only two days earlier in Shaw v. FBI, No. 5084. Both cases related to the FBI's JFK assassination investigation and in both cases the FBI used the same affiant, SA John N. Phillips. This panel rejected Phillips as incompetent to testify in the Shaw case and two days later accepted him in mine.

The FBI's reconsideration petition is limited to the footnote a copy of which I sent you. In it this panel held that "this affiant (Phillips) was ineffective for the desired purpose. Since the affiant was only a supervisor in the Records Management Division of the Bureau's Freedom of Information/Privacy Acts Section, and did not claim any personal participation in the investigation, his assertions cannot be assumed to have been made upon personal knowledge." (Emphasis added)

The FBI regularly used special agents without personal knowledge in my several FOIA lawsuits when those with personal knowledge were available to it. FBI agents who do not have personal knowledge thus can - and did - lie with impunity because they swear to hearsay, what they say someone else told them. First-person knowledge has always - to now - been prerequisite to testimony in American courts.

Under oath I documented Phillips' sworn-to untruthfulness, making myself subject to the penalties of perjury if I were not truthful. District Court Judge John Lewis Smith nonetheless accepted Phillips' attestations. Judge Smith then rejected my request for a judicial inquiry to determine whether he was faced with perjury.

Examination of the case record is possible at the courthouse, here or at the office of the lawyer who represented me, James H. Lesar. He is moving his office. His present phone is 276-0404.

If the appeals court, whose domination by the administration was reported in some detail in Sunday's Washington Post and earlier by Carl Stern on the NBC TV Evening News, does what the Department of Justice now asks of it the most revolutionary radicalization of American justice will result. It will mean that federal agents who don't know a thing about what they testify to will be accepted as witnesses with personal knowledge. The FBI's record, as I have documented in a number of lawsuits, is that its agents do lie to the courts. In my case, Phillips even swore in contradiction of himself and that is not unique.

When the FBI prevailed in one of my earliest FOIA lawsuits by sworn-to untruthfulness, Congress amended the investigatory files exemption in 1974 over it, leading to the disclosure of unprecedented FBI abuses like "Cointelpro" and of proscribed CIA domestic intrusions.