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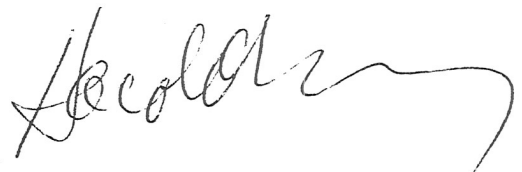
January 11, 1985

In the copy of my petition to the appeals court for an en banc rehearing that I sent you, there is an inadvertent omission. Also, at that time I was not aware of an earlier decision written by Judge Scalia that decided the exact opposite about "falsity." Attached are xeroxes of what I refer to.

"By the same panel" was omitted in line 8 of page 6 of the petition. The very same judges who decided my case decided the cited Shaw case, Wilkey, Wald and Scalia. The sentence should have read "In Shaw ... decided only two days earlier by the same panel, Phillips was held (on page 9) to be incompetent for precisely the same reason..." I have clipped the Shaw footnote from which this is quoted and copied it on the first page of the Shaw decision, which identifies the judges. The point, so you will not have to reread the petition, is that SA Phillips was held to be incompetent in the Shaw case because his attestations were not "made upon personal knowledge," a precise duplication of his role in my case. Both are FOIA lawsuits for JFK assassination information. In my case the identical panel credited Phillips' incompetent attestations that I alleged, under oath and without refutation, were falsely sworn.

Judge Scalia wrote the decision in No. 83-1471, decided about five weeks earlier, the Liberty Lobby's suit against Jack Anderson. He found that while it "is shameful that Benedict Arnold was a traitor" and was not a "shop-lifter," under the law one cannot lie and call Arnold a shoplifter "knowing its falsity with impunity."

It appears, however, that Judge Scalia holds that a legally incompetent FBI agent and FBI counsel can utter "falsity" under oath "with impunity" because that is the thrust of the decision in my case. Also, according to the same law, as decided by the same judge, Jack Anderson cannot make a mistake in his writing but both FBI agents and counsel can lie and prevail before both the district and appeals courts based on those lies. (If, as I attested, Phillips's lies were "material," such lying is the felony of perjury.)



Harold Weisberg