

Mr. Nat Hentoff
c/o Oped page
Washington Post
1150 15 St., NW
Washington, D.C. 20071

9/5/85

Dear Mr. Hentoff,

Your column on police perjury (WxPost 9/5/85) is an important contribution to public understanding, reports what I've not seen reported elsewhere, but there is worse of the same by the FBI. Worse still, because they are officers of the court, is the lusty participation in these felonies by government attorneys, who present the perjury to the federal courts with every reason to know it is perjurious and who add their own unsworn lies. Most subversive of all, and I regard these as genuine subversions, is the more than acceptance of the established perjuries by the federal courts, district and appeals, including in particular those reputedly liberal on the appeals court. The embarrassed courts kill the messenger. They are not content merely to hold against him - they condemn him and are immune in their slanders.

Bad as this is, the lawyers (not without cause) are afraid and the papers regard non-stop federal perjury as not newsworthy and refuse to publish anything.

I speak of long personal experience, mostly in FOIA cases. And while I hesitate to compare these with criminal litigation in which once can lose his personal freedom, I regard them as no less significant and dangerous because these abuses amount to a new assault on the first amendment, of the right of the people to know that their government does.

I have filed and in varying degrees won a large number of FOIA cases. Congress amended FOIA in 1974 over the corruption in one of these cases and, of course, the government hates me even more for this. There is no exception to the rule, the government, mostly the FBI, lied in each and every one of my cases. Early on one judge condemned me and my lawyer for presenting him with an airtight case of perjury by an FBI agent. (First case filed under the amended Act.) Right now I've just proven, without even an attempt at pro forma denial, fraud, perjury and misrepresentation by the FBI and its government counsel. The incredible situation is that to prevail they do not even have to deny felonies. And they are without doubt, it will remain secret because the press will not touch it.

In one current case, which dates to 1978 (but is not the oldest @ I'm still in court in a 1975 case, under this 10-day Act) the Justice (ugh!) Department managed to create a conflict of interest between my lawyer and me so I'm without counsel. By means of sworn lies and gross misrepresentations they got a judgement against me for refusing to provide alleged "discovery" - after I'd voluntarily provided more than two full file drawers of it - and when there was no need for it. First the DJ lawyer told my lawyer they'd seek a contempt charge against me, and when I told him to tell them I dared them face a trial they switched to asking for a judgement to in effect fine me by forcing me to pay their claimed costs, of which they had no record. (It was an improvisation or they'd have had records.) When I ignored that judgement they sought and got a second judgement for the same costs, that one against my lawyer. Because of the principle, a serious threat to all lawyers, the Nader law group represented my lawyer and Mark Lynch of the ACLU represented me on appeal. The appeals court actually held against us, liberals and all, but on remand the fink district court judge badmouthed my lawyer but vacated the judgement against him. When he retained the judgement against me I filed for relief pro se, alleging and proving with the FBI's own records that it perpetrated fraud, engaged in perjury and misrepresentation and that its counsel also lied. The FBI's response was to ignore all I'd proven and to claim that under the Rule I invoked there is a one-year statute of limitation. (This is true of only three of the six clauses of that

Rule so they lied all over again.) I filed a response, have heard nothing (and assume the judge is on vacation because he is speedy with his rubber-stamp) and anticipating that he'll find some way of remaining a virtual adjunct of the FBI I've already drafted most of a motion for reconsideration.

To justify the judgement against my lawyer, who had actually tried very hard to get me to make some kind of pro forma compliance with the "discovery" order that I rejected on principle, the Department lawyers actually told the appeals court that we had, in effect, conspired in persisting misconduct, never ever really defined, and that the district court judge has "closely observed" this throughout the five years of the litigation. The case record shows I was not there with my lawyer even once and the grim fact, also clear in the case record, is that being there is a medical impossibility for me because of complications following arterial surgery. (Lynch was uneasy about making the issue of this I wanted but he did include it in a footnote.) So gross an official lie based on which punishment was sought against two innocent people made no difference to the appeals court and was not of any news interest. It and all the other documented (and privileged) abuses in the case record are totally unreported.

This is not because the major media was not informed. Although it is not easy for two septagenarians both in impaired health I sent copies of all pleadings to about a dozen in a half, including the legal correspondents of the TV nets and the wire services and to the major papers like the Times, Post and Baltimore Sun.

These costs are significant to those who live on Social Security, but I bore them in the belief that there is a responsibility to inform the press so it in turn can inform the nation.

Some of the documentation of the fraud and perjury is in itself entirely new and, without exception, was not newsworthy. The pertinent records repeatedly sworn not to exist do exist and in the FBI's formulation of them is pretty hairy. They prepared "sex dossiers" on the critics of the official investigation of the JFK assassination, dossiers on the Members of the Warren Commission and twice on its staff, early in the Commission's existence and after the Report was issued. While there are numerous other sworn lies, I find it difficult to believe that when the FBI engages in such practises, particularly because of my own reporting background, that it is entirely without news value. Dossiers on the Chief Justice, Senators, Congressmen, the former head of CIA and our coming unelected President? On so many prestigious lawyers, one now a Senator ~~and~~ and at least one a judge? Many lawyers in private practise? And "sex" dossiers" on critics of the FBI and the Presidential commission?

One reporter, a prize-winner at that, actually told me that he sees nothing wrong with the government preparing dossiers on anyone at all for any reason at all or for no reason at all.

This new information I used to obtain a rehearing (the legal term- there hasn't been any yet) was not disclosed to me. It was disclosed to a friend who gave me the copies. And to underscore the magnitude of the perjury, the very FBI supervisor who disclosed this stuff to my friend at the same time ~~sore~~ in my case that it didn't exist in the FBI's files.

Through FOIA I've gotten at least a third of a million pages of once-secret FBI records and they disclose an astounding and vicious campaign against me and my writing. These range from the recommendation (by two different FBI agents) that it "stop" me and my writing, their word, to the most awful fabricated defamations. Perhaps the worst was telling LBJ and then many others that my wife and I annually celebrated the Russian revolution with a gathering for 35 "strangers" at our home. At the time in question I farmed and the only time we ever had more than a couple of guests was an annual picnic by the Jewish Welfare Board after the fall high holidays.

3

Which are always before the anniversary of the Russian Revolution. Kids had a day in the country to see chicks hatch and play with the chicks, to gather eggs and play with tamed animals, and that the FBI converted into such a defamation! Can you imagine the impact when this vicious fabrication was distributed, as it was, the attorneys general and their deputies and to the lawyers handling the FOIA litigation? It went to the Senate, too. The FBI even cooked up and approved filing a spurious libel suit against me in 1967 to "stop" me but the agent who was to front for it chickened out. There is much more, but isn't this enough? It is all in ~~the~~ the case record and is unrefuted and, of course, isn't in itself newsworthy.

One who requests and obtains information under FOIA is surrogate for all the people, so any denial or abuse of me and I think my first-amendment rights is an abuse of the people and their rights. My records, incidentally, are available to all, even including those I dislike strongly, like Willis Carto and his finks.

But I wander perhaps. In each and every one of my FOIA lawsuits I've proven official lying that not infrequently is perjury. It has not once been reported and all that has happened to the felons is that their careers are advanced. The lawyers go up, the FBI agents become supervisors, and the clerks become special agents.

In terms of the archive I leave all of this is valuable because unlike most of the others who have written about political assassinations I'm not chasing a whodunit, am not a conspiracy theorist and I have made a definitive study of how our basic institutions functioned, or failed to function, in those times of great stress and thereafter. And my work stacks. It includes seven books without a single significant error in any of them.

But this new documentation, of the failure of the courts and the reasons for it, including official felonies, does not fill me with joy over its historical importance. It saddens me, more because I am the first member of my family born in this country, which really means outside a terrible tyranny.

I'm not unfamiliar with what reporters can expect from their desks. Back in the early 1930s my city editor in Wilmington told me with regard to one story that "Mr. Dupont would not like this." But he also told a kid what to do with it, and I thus was a syndicated feature writer (old Philadelphia Ledger syndicate) before I was old enough to vote. But that nobody at all sees a single story in any of what is both entirely unrefuted and entirely immune and is official criminality is not easy to believe happened with any basis in traditional news standards.

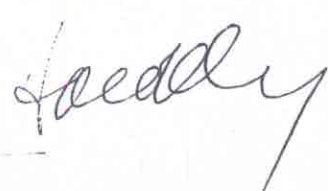
I hope I will never get to old (I'm 72 now) or too ill and infirm to oppose such evil and I'm sorry that I'm entirely alone in this. What I've prepared in anticipation of this disgrace to the judiciary's rejection of my efforts includes reading him and the other judges a lecture on our traditions and what some of our great have said about such things in the past, in addition to sound legal arguments. I will not be too alone to continue to try.

Correspondence relating to one side effort is enclosed. The United States Attorney for the District of Columbia is signatory to the filing of some of the fraud and perjury and I wrote him. As of today without response.

One of those I quote is Cardoza, on the government, for good or ill, the teacher of us all. What are we now teaching the new generations of Americans when the government corrupts the courts so willing to be corrupted and prevails in litigation by means of undisputed felonies?

Thanks for a good and an important column.

Sincerely,


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Nat Hentoff

W Post 9/5/85

When Police Commit Perjury

Michael Avery, a Boston defense attorney, is co-author of a standard text, "Police Misconduct: Law and Litigation." Recently, in an indignant speech at the annual dinner of the Civil Liberties Union of Massachusetts, Avery charged, there is a conspiracy to protect police officers who commit perjury. Avery focused on Massachusetts, but he believes that "the code of silence" concerning false testimony by the police is in operation throughout the country.

"Every judge," Avery said, "who sits in the criminal courts of the Commonwealth of Massachusetts routinely has appearing before him or her police officers who commit perjury in order to make charges stick in criminal cases. Everyone knows this, yet few judges would admit it, and none have addressed the problem with any intention of doing anything meaningful about it."

I asked a prominent, usually very cautious, judge in New York about Michael Avery's accusation. "Oh sure," he said, without hesitation, "cops often lie on the stand. But we don't have enough proof to do anything about it."

Michael Avery concedes that judges are not the main culprits in this matter. "The principal villains in the conspiracy of silence," says Avery, "are those lawyers in the offices of district attorneys and the attorney general who do nothing about police perjury."

Why, then, I asked Avery, don't more defense attorneys blow the whistle? "Because," he said, "a defense attorney needs favors

to make this system work." He or she has to be on reasonably good terms with judges and assistant DAs with regard to court calendars, plea bargaining and other parts of the system. Avery, however, prefers to speak out anyway; and because of his formidable courtroom skills, he does not lack for clients.

Reacting to Avery's Boston speech, another attorney told me of his experience with police perjury. Burton Weinstein, who

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practices in Connecticut, is an American Rumpole in that he is dogged, canny and, when necessary, daring. He was defending a woman charged by the police with starting a riot in a dance hall by shutting off the lights. A policeman testified unequivocally that he had been on the dance floor at the time and had been able to see her switch off the lights.

The judge granted a motion by Weinstein that the prosecutor, the judge, the court stenographer and the defense attorney go to the dance hall to check out the cop's account. It turned out that the only place from which the lights could be turned off was behind a brick wall. Standing on the dance floor, the policeman could not have seen the defendant, or anybody else, switch off the lights.

Back in court, Weinstein asked permission, which was granted,

to give the policeman his Miranda warnings. He then reminded the cop that he was testifying under oath, and that the penalty for perjury was a five-year jail term. Did the cop still stand by his testimony? The policeman said he most certainly did. Weinstein made a motion that the cop be suspended and the transcript of his testimony turned over to the state's attorney for perjury prosecution. The judge declined to accept that motion.

Weinstein then turned to the prosecutor, reminded him that he too was an officer of the court and that he knew the cop had been lying because the prosecutor had also seen the brick wall. The prosecutor looked away from Weinstein. Weinstein eventually won his case, but not even a reprimand was placed in the file of the policeman.

Richard Emery, who does much of the police misconduct work for the New York Civil Liberties Union, suggests that there be a special prosecutor in every jurisdiction who would investigate all charges of police abuse—including perjury. The regular prosecutors, Emery notes, "have to rely on the local cops to make their cases, so they are not eager to go after them."

"I've been a lawyer for a long time," says Emery, "but I am still shocked that the first line of law enforcement in our society can get away with routinely lying in court. And once a cop has broken the law, he can no longer look at himself the same way he did when he came onto the force."