Mr. Alan Fitzgibbon
P.O. Box 34071
Bethesda, Md. 20817

3/16/85

Dear Alan,

While sitting and sipping the third daily drink that is part of my medication, as often happens these days my mind turned to a rather unusual situation in which I am involved pro se with the appeals court, as I'll explain. It then occured to me that a development there may be of interest or even significance in your litigation, the details of which I've forgotten. It relates to the requirement of first-person knowledge to attest to the search. The FBI and CIA avoid this requirement, whenever they can in any event.

In my field offices JFK assassination suit I provided a series of affidavits in which I attested that SA John N. Phillips was not competent to attest to the alleged searches because he had no knowledge of them and those with first-person knowledge were available to the FBI. Jim (to whom a copy) was then too busy to do much with this. As the case developed, with the FBI/DJ enjoying Judge John Lewis Smith, who is their stooge, they and he fabricated a conflict of interest between Jim and me. As a result he wound up represented by the Nader law group and I by Mark Lynch of the ACLU. We got clobbered by an activist Reaganite panel majority with the supposed liberal member rubber-stamping an outrageous and extraordinarily careless decision. Ordinarily, meaning before the Reaganizing of the courts, their briefings would have been excellent. But we did face a determined Reaganite activist/political majority. So, when I read their decision I first released Lynch and then filed a pro se en banc reconsideration petition. It was what no lawyer or almost no lawyer would dare do, a frontal assault on the DJ/FBI and the panel itself. I think it was not impolite but it was very direct and factually and I think legally unassailable. What must have seriously embarrassed this panel of Willkie, Scalia and Wald is that only two days earlier in another of Jim's case, for Gary Shaw, they were in diect conflict, which is a basis for en banc reconsideration. Jim picked up on my argument that Phillips is incompetent to attest to searches he did not make and in a footnote the panel agreed. I exploited this and whether or not related but not until after I did the DJ filed its own en banc petition, limited to that single footnote. Their petition, filed after mine, was rejected promptly but I've not heard a word about mine. I thibk DJ was crazy but they told Jim they expected to be upheld. So, as this nonlawyer sees it, the kinds of attestations provided by the Phillipsea of the FBI and the Bubes of the CIA are not acceptable and I write on the chance that this may provide you with some possibilities.

My petition was within the page limitation but I had no sooner filed it than I had reason to add to it, and I did, thus exceeding the page limit. Then for the first time I saw the DJ Shaw petition and I had basis for a supplement to the addition to the petition and I filed that, too. I think Jim would tell you that I've given these judges some serious problems, perhaps magnified by the sharp split in this appeals court. I did intend to provide the traditionalist minority of good judges with what I believed they'd be able to use. Jim, who has moved his office, has all I filed if it interests you. The enclosed Anderson column, not used by the Wx Post, encapsulates some of the raunchier "new evidence" I filed.

Hope you are well and that your work is progressing to your satisfaction.

Sincerely,