Dear Mark, 5/28/85

I'd no sooner sealed the new evidence envelope to mail to you and rest a few moments before driving into town to mail it when two additional thoughts intruded themselves. I'll mention them briefly so I will not forget and I'll return to them tomorrow, after I see the doctor about the undiminished edema, which will be after my morning therapy.

Whether or not you say it in your brief, the new evidence will make it clear that the FBI lied to Smith, knowingly and deliberately. He will be aware of it whether or not you make a point of it. I think it would not be inappropriate or in any way unwise or undiplomatic or disrespectful to remind him that I did ask him to determine whether or not the FBI's representations were factually correct and he refused, despite the evidence in the case record and undisputed. (Jim dragged his feet on that, too, and finally got around to it rather late when I kept prodding him.)

If you prevail on your legal moves having to do with contemporaneous records of the time claimed for, I think that for a number of purposes we ought move for him to withdraw his dismissal. I'm quite willing to move that myself, but that is entirely different than the precedents against FOIA requesters and their counsel and, perhaps, other counsel in other cases, including you public-spirited types.

These are bad precedents and can be overturned, with any luck at all, because they are based entirely on deliberate lies. This, despite the appeals court, remains their great vulnerability. Now we have the new evidence proof.

Remember also that the appeals court held Phillips to be incompetent to attest because he lacked personal knowledge. (In Shaw.)

Resumed 5/29 to develop two interrelated ideas, my objectives and what good can come of all of this. (I may wander and I'm a little disconcerted because the doctor is having to experiment with the medication to cope with the edema. So if I am not clear, please tell me.)

If I had been able to dismiss this case without prejudice to the rights of others after my 1980 surgery - would have, chiefly because I'd have preferred using the time in writing and because I now have much less time. Much earlier than that I wanted to do this in the King case before June Green but the government would have nothing to do with that. They have their own objectives. So I had to continue with this litigation to prevent its misuse for the total suppression of all undisclosed information relating to the JFK assassination and its investigation. I did make the above offer and it was rejected out of hand. Jim says that even Smith was surprised at that and showed it.

Smith's carelessness, Jim tells me, and I think you did, too, means that they now have no immunity bath for the JFK records so that is no longer an objective per se. It may remain a means to other ends.

From the time they first sought discovery and now with the sanctions precedent new questions are involved and thus the Act and the rights of plaintiffs and counsel in FOIA cases. With regard to counsel, the hazards. Under any circumstances these would be major considerations for me. With the enormous amount of time and effort I now have invested in this, these are even more important considerations if there remains the possibility of accomplishing worthwhile ends in taking a few initiatives that ought not require much time and effort. If there is any success it can have real significances. Asking Smith to annul his Order and Dismissal creates an entirely new situation and potentially great and real problems for the government, despite the Reaganizing of the appeals court.

The new evidence makes it apparent that the government lied throughout this entire litigation whether or not you once use the word. And there is a vast difference between a pro se presentation by a nonlawyer and a lawyerly development of legal points. They can't stand any examination of their record of mendacity, which is permeating, however it is addressed as other than mendacity.

I forgot, I have another objective now, getting those rotten bastards off my back.

They'll now have an additional problem, whether or not it comes from or is related to my supposedly ignored pro se petition. In the Shaw case they filed an en banc petition limited exclusively to the appeals court's holding that Phillips is not competent to provide an attestation because he lacks personal knowledge of the JFK assassination investigation. They later That is a new ground in this case because it so held after the case record before Smith was closed. So, we can move for the rejection of almost all his attestations, all related to New Orleans and Dallas records. (Although I do not anticipate any perjury allegation against him, there came a point at which he swore competently and falsely, so ignorance and lack of personal knowledge is not a defense against a perjury charge they may visualize being made.)

So, along with reference to my rejected request that Smith determine the factual accuracy of what the government presented to him as a reminder with the new evidence, which establishes the untruthfulness of their filings, a reminder of the finding that Phillips is incompetent. Which it happens I alleged on several occasions and particularly with regard to some of the new evidence information, like the ticklers and the police broadcast recordings. I think it was alleged with regard to the searches that, incredibly, remain unmade. That gets to another point of potential perjury charges, SA Anderson's attestation that the search slips he provided are a) the originals and b) made for this litigation, and they ought worry about that, too. (Jim, incidentally, managed to omit the unmade searches in his statement of material facts, so getting it in can be very worthwhile.)

What we are talking about is at once relatively simple and easy and at the same time truly horrendous, and despite the Reaganizing of the appeals court I think that it can have an impact at Justice, where if there is any rational lawyer left they ought have real worries about any such matters going anywhere after Smith. In short, aside from other considerations, which do exist, it is not impossible, whatever the probabilities, that they may be willing to wipe this thing out and keep it from going any farthur. If they want to do that, this means that you and I have to agree, and that means we have our interests. Imagine what it would mean if in this case they wind up paying you counsel fees and costs! I think it is not impossible. And what it could mean to the Act and other requesters. (Without need, I visualize no new requests, although I would like to get their withheld records on me so that, before I die, I can address them.)

This new evidence can mean, Smith or no Smith, that they have to begin from scratch and do what they never did. I can waive that, and under the right circumstances I would.

Do you really think that even this appeals court would ignore the clear significance of this new evidence in terms of even just search, which I emphasize is not only not made but Phillips attested was substituted for? Can you see even this court holding that there is a substitution for search where the records are? (Even Shea told me the FBI was stupid not to have even made a pretense of searching in Dallas.)

This also wipes out the other deficiencies I'm sure you have observed and not commented on.

This new evidence also represents a horrible thing they have done to me, the opposite side of sanctions against an aging and unwell man, and we are not yet a society which accepts abuse of the ill and elderly. (And if Smith assesses only $1 against me I may yet refuse to pay it and let them contend with that, too.) I want very

much, after all these years of abuses from them, to get them off my back and this can be the means. I just want them to leave me alone and stop maligning me.) It is especially evil and makes them more vulnerable because the same component of the FBI and the same division of [redacted] lawyers and perhaps, as I think, the same FBI supervisor, are involved and actually possessed this new evidence at the time they were swearing that it did not exist to the courts and claiming they needed discovery from me and then sought and obtained sanctions.

To now, perforce, you've had to think defensively. Now, however, you do not have to. Now you can think of putting them on the defensive, as even before a Smith they will be. Even more if there can be some public attention, as through a news story. And the great merit, as a nonlawyer sees it, [redacted] is that it requires little or no legal research and no more than drawing together a relatively small amount of material already in hand.

Lord Acton was right, power corrupts and absolute power corrupts absolutely. They have been so corrupt that it becomes a great, great vulnerability. And while it is not possible to anticipate with any certainty what the power-mad will do or how they will react and I won't try, I do think it is obvious that if there is only one rational lawyer in DJ who would read the kind of straightforward and lucid presentation I've just read in your Opposition, they ought see without the suggestion being made that charges can be made against some of them and they might be willing to wipe this whole thing out in a way that satisfies us and is just great for FOIA.

Just imagine if you can turn <u>this</u> case around and at <u>this</u> stage! How exciting, how dramatic and how worthwhile!

And every judge who has been accepting their dishonesties would know and might wonder a bit what might happen to him when he does again.

Please think about this when you can. I think it represents relatively little additional work over that you've said ought be done and it can mean so much, be so rewarding and be at least one meaningful step in opposition to the growing authoritarianism of this administration and its repressions of information and access to it.

Hopefully,

Harold

P.S. I'm sorry about the ribbon but with the changes in typewriters it is almost impossible to get one hereabouts. I'm hoping that I have and will see tomorrow.