Dear Mark, 5/21/85

When I wrote you yesterday my mind was on your letter and Jim's draft affidavit. I gave this matter a bit more thought today. First, I believe we should be mindful of the possibility that these terrible, unprincipled authoritarians, who dislike both Jim and me strongly, can seek to have him disbarred. I want to avoid anything that might be misused that way. If, as I am inclined to believe, the draft affidavit is Hitchcock's idea, he also should have had this in mind and not undertaken to put me in a position in which I'd have to defend myself against them. There is nothing I can do about the dislike of a man who has never even spoken to me and really knows nothing at all about me and I don't care much about this, but I do think that in evaluating this entire matter you ought not forget that he began with a brief in which he undertook to defend Jim by gratuitous attacks on me.

Also, it occurs to me that if I were to assert privilege it would make me look bad. Sort of like the UnAmerican attitude that one who invokes the 5th amendment is guilty or has something to hide. As I indicated, I'd like you to think this over and then advise me. But I think that if the draft affidavit represents Hitchcock's thinking it may be necessary for me to do it to protect Jim who, I think, would be hurt severely by letting himself get involved in a fight against me. Hitchcock ought be thinking, I believe, about how we can stand together, not divided, which does the work of the bad guys for them. (Which reminds me again about new evidence as a first line of defense but not the last. Defense is the wrong word because my life's experiences tells me that the only way to defend is to attack.)

As I'm sure you realized before I said it, this business troubles me and today when I was thinking about it I remembered something that is for your information only. But I think it may help your understanding, which is why I tell you.

At about the time in question, and without a check of a lengthy file I cannot be specific about the time, I perceived dangers in Jim's nonperformance, I'm sure in one of two areas but not sure of which. It was either in doing what he said he'd do about the affidavits about which he did nothing or pushing to go up on appeal. I have a clear recollection of writing him to either do it or accept being relieved and letting me do it for myself. Whatever it was, he gave me his word and I took it.

Just as in January of February of this year, as a precondition of my writing Huff, he assured me he'd file a simple suit for several of the unsearched things in this litigation, sworn not to exist, that do exist, like the recording of the Dallas police broadcasts. I wrote him about it after the time set, 4/8. Later he phoned to tell me he'd been out of town but that he had not forgotten it and would. He hasn't said a word since.

When he wasn't doing the things he should have been doing in this case he was, and perhaps without choice because of his association with Bud Fensterwald, spending much time on terribly childish suits that ought never have been filed. I am certain that judges must have been angry and disgusted at having to spend time on such picayune stuff as the records (meaning identifications) of those who participated in a Canada to Gaunataamo "peace" march. Some of the conspiracy theorists go strongly for such crap. One theory is that Oswald or an Oswald look-alike was in it. Bud has some pretty farout notions, as does one of his clients, Gary Shaw. Both are nice guys in other ways but nutty in this field. (To frustrate a phony national security claim in that case, and I suppose also in hopes of speeding it up, I gave him an affidavit disproving the national security claim.

I do not want to make it possible for others to exploit the vulnerability for which Jim himself is responsible.

Another recollection may be informative. At about the time DJ demanded discovery of me I asked Jim to get in touch with you and the Nader people. Not then to defend us but because I believedthat you ought be apprised of this new element in negating and frustrating FOIA. He kept promising to and he never did. Later, when it became apparent that we had a conflict and needed counsel I asked him again, and again he said he would and didn't. I made this request of him a number of times over a period of about a year or so. I think but am not sure that sometimes he said it would be premature. Finally, he did go to Hitchcock. I don't know but I do believe that we and the Act would have been better off if you both had been informed promptly. It may also be that both of us would have been better off if at the outset we'd had separate counsel and if Jim had been been defending both himself and me.

I am pretty sure that from the outset I saw possible precedents of significance to large corporations and their expensive counsel, and I suggested that an effort be made to inform corporate users of FOIA.

When he did not contact any public interest group I'm pretty sure I asked him to see if Phil Hirschkop might be interested. He didn't. Time after time I asked him for Hirschkop's address so I might write him and I still do not have it. I can't really afford toll calls and I'd rather write, to take less of Hirschkop's time. He still hasn't. (Now I'd like to talk to H about trying to do something about what has been done to me.)

I can't explain his refusal to inform you and the Nader group for there was nothing to be lost by that and no harm if you'd said you had no interest. I can now see that you (either or both) may have seen the conflict I saw and have made some recommendations that might have changed the course of things.

Best wishes,

Harold