Dear Jim, 1/29/78

Although I should not have I got started at 4:30 again this morning. If I do not do this from time to time there will be no end to my getting farthur and farthur behind.

I hope to read and correct the draft of the affidavit in 1996 that we discussed yesterday. It is 22 double-spaced pages and has 11 exhibits,one the "June" file record I gave Les Whitten, reflecting the FBI's attitude toward law and constitutional rights and all the others on O'Leary. I resisted the temptation to expand on O'Leary as rat. He ratted on Hugh Aynesworth, as the ellipsis of the FBI HQ records do not state. I have the other records.

My enclosed letter to the NO FO is longer than I would have liked but I felt it necessary to go into what I did go into. I left out some of my NØ.O. associations, as with some of Marcellos lawyers. Their areas of withholding are wide and deep and their semantics are transparent.

Had a pleasant discussion with Dave yesterday. He does not favor seeking the affidavit you asked him to consider. I had written you about this. It is difficult enough to get the required attentions for what can be kept simple. He does not believe those needed will pay attention long enough for detailed explanations of need. He also is sending what will serve as well or better, the university's release and some of the news stories. He will include a note on the radio and TV attention. The chancellor added the final graf of the release, noting that there is an institute there named after Gesell's father. Reaction seems to have been gratifying.

He is considering the next FOIA case book. I've recommended that he consider basing it around the remand in 226. Not limiting it to the remand but using the affidavits and the Order. Dave has a high opinion of the only affidavit he has a copy of, the rough draft of what I think is my first. If there were only two, the first. He does not have the others. So when Lil can she'll make copies of both, the order and Jim Tague's affidavit. I guess also whatever the government filed.

(The lack of FOIA knowledge about historians and others continues to surprise me. I had a phone call from a Professor Peter Armand , phon., the other day. He is looking into the black legion. He had no idea about how to proceed. He asked me to write to historical journals. I suggested that he locate the various handbooks, like the Nader one, and write a letter to these journals himself. But I think Dave may find a market among scholars who seek to use the Act if he has a way of letting them know.)

Whether or not it was incumbent upon the government to respond, as Pratt undertook to in a visibly partisan as well as inaccurate manner, I believe that the average sophisticated reader, including lawyers, will consdier that failure to respond to the specifics of evidence presented under the appeals court's mandate as inhibited by Pratt means that the government could not respond - that the evidence can't be refuted.

While I have not thought this through I am inclined to believe that such a book, while remaining scholarly, could also be exiciting. It should have values as history and as a primer on how to fight some FOIA cases in the face of partiality in court and dishonesty in government - how to make a case into a no-lose proposition. And, of course, how we built a solid official record when we are not officials.

There will be further interruption latee this morning. The local reporter of the Hagerstown paper wants to do a feature and take pictures of the new records. But I do hope to be able to read, perhaps reorganize and correct the draft of the affidavit. To a much more limited degree I try the facts of the King assassination in it based on the relevant exhibits' contents. I think that busy as she is if the clerk directs her attention to them Green may read the exhibits and the affidavit, even if we do not shorten it much. I do encourage you to spend the minimum time on it and not to aspire to literary perfection.

Best,