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7/5/86

HAROLD WEISBERG
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Dear Mr. Glasser,

Although your timely and well-conceived letter and accompanying special mid-year report do not exaggerate the Reagan administration's assault on our traditional concepts and liberties, I think that in taking credit for the ACLU's accomplishments you err because significant attempts to erode the Freedom of Information Act have succeeded. I write you about one such failure and what, as a layman, I believe it means. In this I believe that a few other quotes from your report are pertinent: "We must prevent those erosions of liberty that are fundamental and will be very difficult to restore..." and "We must resist the government's attempts to institutionalize censorship and information control." The second quote, as you use it, relates only to threats against the major media, wealthy and powerful corporations that can and can afford to defend themselves well. It has broader applicability.

For some years, because it could malign me and because the FOIA requests I made related to an unpopular and misunderstood subject, political assassinations, the government made strenuous and often successful efforts to rewrite FOIA through the courts. When, early on, it did succeed in rewriting the investigatory files exemption to in effect immunize the FBI and CIA, I made a number of efforts to get the ACLU, the Nader people and The Reporters Committee to file amicus briefs. None did. What I am really saying is that all of you copped out and were content to allow the act to be nullified by prejudiced judges and official perjury. (I had on several earlier occasions sought to interest the ACLU in handling FOIA litigation at a time when decent precedents could be set, without success.) But because I persisted Congress did, and the legislative history is quite specific on this, enact the 1974 amendments and restored the investigatory files exemption to what it had originally enacted.

I differ from all the others working in the field of political assassinations in not being a conspiracy theorist and in having made an enormous study of how in time of great crisis and thereafter our basic institutions functioned or malfunctioned. On accuracy my work is completely accurate. There is no significant error in seven books and no single error in any of the thousands of pages of affidavits I have filed in litigation with those who would charge me fast enough if I did err. (In this, I believe, I have also served history in making a record in court records, myself subject to the penalties of perjury and under conditions that called for official attempts at rebuttal. I have never been proven wrong in any of these attestations.) So, the government switched to stonewalling and to methods that, were the

affiants not of the FBI and CIA, would have led to severe sanctions. On stonewalling, a suit I filed in 1975 in which the ignored FOIA requests went back to 1969, I am still in court, with counsel who, when he filed the complaint, had never appeared before a jury. I believe the efforts against me were greater than usual for a number of reasons. (DJ once had a "get Weisberg" crew of six lawyers assigned to "getting me.") One is that my persistence led to the opening of the FBI and CIA files of terrible anti-American acts. Another is that my accurate work has exposed them and has embarrassed them. I rather suspect that they have lingering hatreds because as a young man I got a Dies committee, indicted and convicted when I turned their efforts against me around and because I was able to defeat the first major so-called "security" case when I'd been a government employee. (The State Department had fired 10 of us under the McCarran Rider shortly after World War II. Almost all of us were Jews.)

The FBI also hates me because it is well aware of how seriously it could be embarrassed if my health did not preclude my using what I have obtained from it. Those of you who were blinded by LBJ's appointment of Earl Warren to head his commission and turned off by the terrible excesses and irresponsibilities of those critics who got major attention are not aware of this and probably don't believe it. The FBI got one sample when, as James Earl Ray's investigator after my book on the King assassination appeared, I developed and prepared the evidence that, in the evidentiary hearing based on my investigation, refuted the case against him. Judge McRae, in Memphis, actually held that guilt or innocence were immaterial.

There was, please believe me, an enormous coverup in the noninvestigation of the JFK assassination. The crime itself was never investigated officially. All officials sought only to make it appear to be credible that Oswald was a lone nut assassin. Because most of the withheld information was buried in the Dallas and New Orleans field offices and after I had a notion of some of what was hidden there I requested those records and when my request was ignored filed suit in 1978. The government not only never made the required searches, in one of several moments of aberrational honesty its counsel told me this. (Daniel Metcalfe, who is now co-head of DJ's OIP.) It then delayed any compliance for about four years and then, when I showed that it hadn't searched and hadn't complied, sought and from a fink judge got a discovery order. (I had, by then, at the request of Quin Shea, a history buff who headed the DJ appeals office until the FBI got him kicked upstairs, filed, and this is quite literally true, an entire file cabinet of detailed appeals and xeroxes of pertinent records disclosed to me. Again, if nothing else, I was serving history.) I had many proper and recognized reasons for refusing to comply with this Order, filed a number of undisputed affidavits, to no avail. The government presented no

evidence. It had two claimed reasons for demanding this discovery: that my compliance would enable it to prove that it had complied and if not, my subject-matter expertise was required to locate what had not been processed. While my affidavits were not refuted DJ provided attestations by an FBI FOIPA supervisor and arguments by counsel. When I refused - and the discovery demanded made any attestation impossible, because it called for "each and every" reason and document in this enormous field - and the judge and DJ feared charging me with contempt, which requires a proceeding neither dared or dares face - DJ sought a money judgement against me and I refused to pay it. It then sought a money judgement against my then lawyer and got it. (This created a conflict of interest, of course.) He spoke to the Nader law group, it agreed to represent him and sent him to Mark Lynch for representation of me. Mark agreed for purposes of that appeal only. Save for what I regarded and still regard as the major point, he did a fine job. And lost. On remand the judgement against my then lawyer was dropped and the one against me was reduced, although DJ tried to increase it five times over.

Obviously, I would personally have been better off if at the outset, recognizing the odds with this particular judge and the current climate, I'd just paid the judgement. It would have taken about three months of my Social Security checks. But because of the principles involved, despite my serious health problems and greatly reduced physical capabilities, I could not. This gets to where your report is optimistic and I think it has much broader applicability than FOIA litigation only.

Before going into that, Mark kept his word, with my agreement he filed for recuaal and after quite some time Judge John Lewis Smith hasn't bothered to act on it. So, I've been pro se before him and now am on appeal. Given the precedents involved I think that the danger to me is much less than it is and will be to others if the precedents of the decision are not defeated.

Discovery under FOIA is without precedent, as is discovery under the conditions in this lawsuit. This is also true of sanctions now against me only. Judge Smith has ignored all the rules relating to discovery and refusing it and, to now, so has the Reaganized appeals court. I saw and I still see a great government vulnerability in this and it is the one matter I refer to with Mark above. There were overt and very prejudicial lies, and I mean lies, made up by the government and presented to the appeals court. After some discussions Mark agreed to make passing reference to this in a footnote. There was also extensive and basic perjury and fraud and misrepresentation, by the government, by FBI SAs and counsel, *thoroughly documented and entirely denied.*

Also now involved is an interpretation of Rule 60b that completely ^{re}writes it.

Pro se, I have reduced the issues to the entirely denied perjury, fraud and misrepresentation and to the rewriting of Rule 60b. And by the most remarkable and to me

incredible of coincidences, the FBI disclosed to a friend of mine, with the supervisor making the disclosures, the very same supervisor who provided the perjury in my case, absolutely irrefutable proof of the felonies I charged. This happened when the case was up on appeal. This is why my charges are entirely undisputed - they can't be! It is as airtight as such a thing can be. ^{the FBI SA} While he was making false attestations in my litigation and to this day not withdrawing them, he was simultaneously processing and disclosing proof ^{of his perjury} to my friend who, after my health was impaired, made an FOIA request that partly duplicated one I'd filed and had been ignored by the FBI. ^{My friend} ~~So~~ he provided me with some copies of what he got. These FBI documents prove what I alleged in refusing to provide the demanded discovery. They prove the felonies I charged. They are in the case record, and the government hasn't had a word to say about them. Also incredible to me, particularly when what I alleged isn't even denied, is how Judge Smith dismissed the perjury - as merely "cumulative."

On Rule 60b, he merely ignores, as the government did, what I presented that is relevant to the government's claim that time for "new evidence" had run on me. The last three of its six clauses are intended to toll the year limit of the first three. I don't think that such an affirmed ruling will be helpful to others.

As I see it the discovery rules are being rewritten in this decision and I think it would be applicable in all civil litigation. In FOIA alone it for practical purposes means the end of that kind of litigation if the government can demand and argue it is entitled to discovery, particularly with the record to which I make only partial reference above, it is that bad.

I regret that I, aging, unwell, severely limited in what I can do and without any training in the law, have to try to prevent these evils alone. And I've only now received notice that the appeals court is giving me less than a month, until August 1. I'm not at all certain of the correct form, but I'll be asking for more time. It will be even more limited because it is almost a physical impossibility for me to search files because I can't stand still and can do almost no bending.

It seems to me also that much good could be done with a well-presented and irrefutable case of FBI and DJ lawyer perjury, fraud and misrepresentation. They've been getting away with it for years but I know of no instance in which the same person was their major affiant and simultaneously disclosed the proof of his felonies. I can understand that lawyers might fear pushing this but if they do, what happens to our rights and liberties, and when the federal courts accept and reward it, well, there are your own words, "Above all, we must maintain the independence of the federal court system itself."

Sincerely,
Harold Weisberg



IRA GLASSER

Executive Director

Tuesday Morning

My dear friend:

As the nation celebrates the 100th birthday of the Statue of Liberty, I have been thinking about what the Statue really stands for.

Thanks to the generosity of millions of Americans -- who contributed nearly \$250 million to restore the Statue -- the symbol of liberty stands sparkling in New York harbor, renovated and renewed.

But while the symbol of liberty shines brightly again, what about liberty itself?

The paradox is striking. While the nation rededicates itself to the symbol of liberty, powerful forces led by Attorney General Edwin Meese are hard at work undermining what the Statue of Liberty stands for -- political freedom, religious liberty, equality of opportunity.

Yet, most Americans hardly seem to notice. As with past celebrations, after the fireworks are over and the flags are put away, most Americans return to their daily lives, confident that the symbol is secure.

But you are one of those rare citizens who knows that, while protecting the symbol of liberty is a once-in-a-century job, protecting liberty itself is a job that must be done every day. And you are well aware, too, of Mr. Meese's hostile attitude toward the Bill of Rights.

That is why I have enclosed a Special Midyear Report -- an ACLU State of the Union -- that assesses the state of liberty in America today and describes what I believe we will face during the next two critical years.

(over, please)

As you review this Report, please bear in mind that the coming months are critical to the future state of civil liberties in America. We are now entering the homestretch of a struggle against an Administration determined to alter, in systematic and fundamental ways, those individual freedoms we have all worked so hard to defend.

By maintaining your membership in the ACLU, and making extra contributions from time to time, you have been critically important in the struggle to protect liberty. Many of the victories cited in this Special Report simply would not have been possible without your help.

The struggle, however, is not yet over. The challenges from within the Reagan Administration are real and frightening. They are making a last ditch effort to overturn basic principles of liberty. The program we must mount to counter their anti-civil liberties offensive is the most ambitious we've ever undertaken. And we are the only organization positioned to do it.

Yet at the very moment when the challenge to liberty is peaking, our resources are shrinking. Contributions this year are down by more than \$100,000 compared to last year. And at its next meeting, the national ACLU Board may have to take action to cut several important programs.

That is why we need an extra contribution right now. We cannot cut back when our enemies are stepping up their attacks.

Please take a few minutes to read the enclosed Report, and make as generous a midyear contribution as you can.

Let's celebrate the Statue of Liberty by defending what it stands for.

Sincerely,



Ira Glasser
Executive Director

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Enclosure

AMERICAN CIVIL LIBERTIES UNION
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THE STATE OF CIVIL LIBERTIES
IN THE
UNITED STATES
A Special Midyear Report

June, 1986

In a little more than two years, our nation will begin to celebrate the 200th Anniversary of the Constitution and the Bill of Rights. The period between now and then will prove decisive in determining the degree of liberty and nature of individual freedom that we Americans will be able to celebrate.

Because this period is so critical, we want to share with you our assessment of where we stand now -- the State of the Union from our point of view, so to speak. We also want to outline the specific issues and action agenda we will need to emphasize during this period.

To best understand what we're up against, it is useful to review some recent history on the battles we've already fought . . . share with you our view of the dangers we now face and outline how, with your continued help, we plan to prevail.

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The State of Our Union

Five years ago, an extremist faction, hostile to civil liberties, gained extraordinary political power. Fueled by the likes of Jerry Falwell, they displayed a rare and frightening determination to make fundamental changes in our legal and constitutional system.

Today, it appears that Falwell and the other preacher/politicians have largely been discredited in the eyes of the press and the public. But, they achieved two objectives that must concern us all.

First, they set in motion a far reaching anti-civil liberties agenda and established a political climate in which that agenda could flourish.

Second -- and now most important -- they moved quickly and efficiently to place avid proponents of their philosophy in key positions of influence in the Administration.

As Anthony Lewis, the respected columnist put it, "The lunatic fringe has been absorbed by the state."

- o In the United States Senate, men like Jesse Helms, Strom Thurmond and others suddenly

occupied major leadership positions on pivotal committees.

- o In the Department of Justice, longtime public servants devoted to the enforcement of civil rights laws were driven out and replaced with lawyers relentlessly opposed to the very laws they were sworn to enforce.
- o Agencies like the Legal Services Corporation, the Equal Employment Opportunity Commission and the U.S. Civil Rights Commission were similarly taken over by people opposed to the heart of what these agencies were supposed to stand for.
- o And in the White House, men like Edwin Meese, who began his career by prosecuting the Free Speech Movement at the University of California in Berkeley, assumed key policymaking positions.

These men posed as conservatives, but conserving the Bill of Rights was no part of their agenda!

And although they said they came to restore American traditions, they were in fact utterly opposed to traditions like the separation of church and state . . . freedom of speech and dissent . . . equality before the law . . . and due process of law.

Indeed, they came not to support American traditions, but to overthrow them.

The First Wave of Attacks

It wasn't long before the attacks began.

From the White House came an executive order expanding the authority of the CIA to spy on American citizens who were not even suspected of criminal activity, but whose political beliefs were questionable.

Next, another executive order was issued imposing lifetime censorship on more than 140,000 federal employees and requiring them to take lie detector tests as a condition of employment. The lie detector tests were intended to determine whether they had spoken to the press without authorization.

At the same time, legislation was proposed to cut back and even abolish the Freedom of Information Act. Steps were also taken to restrict the right of Americans to travel to "disfavored" countries and to prohibit foreign citizens, whose views the Administration disliked, from accepting invitations to come here to speak.

As Senator Joseph Biden said at the time:

"Everything is just closing down."

But that wasn't all. The political climate created by the Administration soon made itself felt in Congress.

On Capitol Hill, efforts began to repeal key provisions of the Voting Rights Act of 1965 -- the crown jewel of the civil rights movement -- and to abolish the Legal Services Corporation, which for the first time had begun to give poor people some measure of access to our legal system.

Constitutional amendments were introduced to prohibit abortion and to permit government-sponsored prayer sessions in public schools. And more than 40 statutes were proposed to restrict the jurisdiction of federal courts to even hear cases involving the violation of key constitutional rights.

It seemed as though President Reagan's personal charm had somehow managed to camouflage the sinister agenda of the extremists.

From the Department of Justice came proposals to permit the government to jail people for long periods without trial . . . to encourage police to conduct illegal searches of innocent people . . . and to abolish long-standing rules requiring the police to inform people, upon arrest, of their right to a lawyer.

And in the states, 18 legislatures introduced laws requiring public schools to teach creationism -- the Biblical story of creation -- in science classes as an alternative to the theory of evolution. In two states -- Arkansas and Louisiana -- these statutes passed and were signed into law.

Before long, no constitutional right seemed safe.

The ACLU's Response

But against great odds, in a political climate which seemed to honor extremism, most of the attacks on the Bill of Rights and individual freedom were turned back.

- o The White House was forced, by a storm of protest mobilized by the ACLU, to withdraw its executive order imposing lifetime censorship on most federal employees.
- o The Voting Rights Act of 1965 was not only re-enacted, but was significantly strengthened, thanks to a revitalized coalition led by the ACLU and other civil rights groups.

- o No significant attempt to erode the Freedom of Information Act succeeded. And although the budget of the Legal Services Corporation was severely slashed, the Corporation itself was saved. Later, we were able to persuade Congress to restore some of the cuts.
- o All constitutional amendments to restrict the right to abortion or permit government-sponsored school prayer were defeated. And not one of the proposed laws prohibiting or restricting the jurisdiction of federal courts to hear certain types of constitutional cases passed. (One such law, however, came within three votes of passing the Senate!).
- o At the state level, the model creationism law passed by Arkansas was resoundingly struck down after a long and expensive trial handled by the ACLU.

For a while, it seemed as if the worst was over. Some people even relaxed. Then Edwin Meese was appointed Attorney General. Now, a new, more determined offensive has begun.

The Threat Ahead

With only two years left before the next presidential election year, the extremists know their time to make fundamental changes is running out. As a result, they have single-mindedly stepped up their attacks in the hope that the rest of us will relax our guard.

They have stepped up their efforts to get the Supreme Court to abolish the right to abortion. In a case pending right now, they are asking the Court to allow individual states to pass laws prohibiting abortion.

They have stepped up their efforts to shatter the wall separating church and state by continuing to insist, in court and in Congress, that the government ought to be able to support religion and that the Constitution should be amended to permit government-sponsored school prayer.

They have stepped up their efforts to suppress dissent by imposing lie detector tests on thousands of public officials, prompting Secretary of State George Shultz to threaten to quit. CIA Director William Casey almost daily threatens to prosecute The Washington Post, NBC and other news organizations. And the Department of State continues to block foreign visitors from coming to the United States to speak.

They have stepped up their efforts to eliminate remedies for civil rights violations. In a case now pending before the

Supreme Court, they have asked the Court, in effect, to overturn the key section of the Voting Rights Act. And Assistant Attorney General William Bradford Reynolds defiantly continues to oppose affirmative action remedies.

They have stepped up their efforts to convince the Supreme Court and the American public that state and local governments should not be bound by the Bill of Rights. This move, if successful, would return us to the days before the Civil War, when states' rights were more important than human rights.

And in a direct attack on the independence of the courts, they have instituted a system of ideological litmus tests for judicial candidates by appointing only those candidates who, in effect, promise in advance to decide constitutional questions in conformity with their view.

The Role of Edwin Meese

The hand of Edwin Meese is apparent in all these attacks. And unlike Jerry Falwell, Attorney General Meese occupies a position of substantial legal and political power. To put it bluntly, Edwin Meese poses a far greater threat to civil liberties than a dozen Falwells ever could.

A recent editorial in the The Los Angeles Times said:

"Edwin Meese is a menace to the administration of justice and an embarrassment to the idea of equal justice under law."

Perhaps Time magazine put it best in describing why Meese is such a threat:

"With this unique access to the President and the broad powers of the Justice Department at his disposal, Meese's agenda could become the nation's."

The ACLU: Points of Defense

I am often asked by ACLU supporters: "How do you decide what cases to take, what bills to lobby against, what issues to emphasize?"

In answering that question, I first emphasize that in times like these, we cannot prevent every erosion of liberty. But, we must prevent those erosions of liberty that are fundamental and that will be very difficult to restore once this time has passed.

Therefore, we must first anticipate the major points of attack by our opposition and focus most of our resources on defending basic principles against their onslaught.

- * We must focus on preventing constitutional amendments that would be especially difficult to repeal once passed.
- * We must persuade the Supreme Court not to reverse the right to abortion or to permit government sponsorship of religion because once these basic legal principles are reversed, it could take a generation to re-establish them.
- * We must resist the government's attempts to institutionalize censorship and information control. The threatened prosecution of news organizations is particularly ominous, because all of our rights depend upon a system of free speech and open debate.
- * We must focus on preventing the abolition of the Legal Services Corporation. Budget cuts can be restored, but once an agency is abolished it is very difficult to re-establish.
- * We must prevent the repeal, in the courts or by Congress, of key sections of the Voting Rights Act. And we must prevent the removal of legal restraints upon police abuse, which protect us against illegal searches, unfair interrogation and imprisonment without trial. These rights took generations to establish. Once undone, who knows if and when they can be restored?
- || * Above all, we must maintain the independence of the federal court system itself. Without that, our ability to protect the Bill of Rights will be virtually destroyed.

Second, we must leverage our influence. We must take those cases and lobby those bills that will have the broadest possible impact.

For example, in 1981 we decided to focus our resources on an expensive and lengthy effort to strike down the Arkansas creationism statute because we knew that similar laws were pending in 18 states. If we failed, over a third of the nation would have been burdened with such laws.

The strategy worked. After we made an example of the Arkansas statute, only one state -- Louisiana -- passed such a law and the threat receded. We challenged the Louisiana law as

well, and the lower federal courts struck that down too. But now the U.S. Supreme Court has accepted Louisiana's appeal, and we will be arguing that case during the coming year. At stake will be the continued separation of church and state.

Third, we must maintain our dominance as the main source of citizen resistance to Meese and his extremist agenda.

Because any one case can become a vehicle for changing a basic legal principle affecting all rights, we must maintain our vigilance in the entire area of court cases affecting civil liberties.

And we are doing just that:

- o The ACLU handles more cases challenging unconstitutional restrictions on a woman's right to reproductive freedom than any other organization in America.
- o The ACLU handles the majority of cases in the South challenging racial discrimination in voting.
- o The ACLU handles more cases involving the principle of separation of church and state than any other organization in America.
- o And in our constant commitment to resist censorship and protect the rights of free speech and a free press, the ACLU stands practically alone.

In addition to our court cases, the ACLU maintains the largest legislative program affecting civil rights and civil liberties in Washington, D.C.

Often, the ability to defeat a repressive bill in Congress will save years of litigation in the courts. And on many important issues, congressional action is the only way to protect our rights.

Why You Make A Difference

The three strategies outlined above have proven effective in the defense of liberty over the past five years.

We believe these strategies will be even more important in 1986.

During 1986, we will be pressed very hard by an Attorney General and an Administration determined to have its way. That is why the ACLU's Board of Directors authorized an ambitious 1986 budget which focuses on the priorities described above.

But this budget requires us to raise nearly \$11 million in 1986 -- that's \$500,000 more than we raised in 1985.

That's a tall order, but without significant reserves or endowment funds we really have no choice. We can abandon the fight against Edwin Meese and his band or we can prepare an adequate defense, and hope that those who are committed to civil liberties will help us meet the cost. At midyear, income is running behind last year and our programs are threatened. That is why we need your extra help now.

This is the homestretch of our struggle to preserve basic liberties. By the time this struggle is over, we will be only a few weeks away from 1989 -- the 200th Anniversary of the Constitution.

Please make it possible for us to continue. Dig a little deeper and give a little more. So much depends on it.