The Times' March 25 op-ed page carries a short article by George McMillan on James Earl Ray and his brother John Ray. Since I am attorney for both men, I feel obligated to make a response to this article.

Much of the article deals with a court victory which Mr. McMillan recently won when a federal judge ordered the Bureau of Prisons to let him interview John Ray at the Bureau's Marion, Illinois penitentiary. Mr. McMillan's position seems unassailable: as an author, his First Amendment rights are violated if the Bureau of Prisons unreasonably restricts his access to prison inmates who want to talk with him.

But as our preeminent jurist once remarked, abstract principles do not decide concrete cases. What appears to be a glorious dedication to high legal principles can sometimes be nothing more than a mask for more sordid motivations. As lawyer for the Rays, I long ago reached the conclusion that Mr. McMillan's attempts to see them were not motivated by the spirit of Emile Zola.

I will spell out some of my reasons for reaching this conclusion. First, however, some additional background is needed if, as Mr. McMillan said, "we are to be able to grasp the ironies and absurdities of our time."

Mr. McMillan says that he is writing a biography of James Earl Ray. Mr. McMillan has been saying that for some five years now, but the book has yet to be published. Since all previous books on James Earl Ray and the assassination of Dr. King have been commercial flops, one wonders why he continues the effort. Perhaps because he seeks to

emulate the example of his wife, Priscilla Johnson, who sometimes writes for the Times on stories pertaining to the assassination of President Kennedy. Priscilla Johnson contracted some eight or nine years ago to doaa book with Marina Oswald, the widow of alleged assassin Lee Harvey Oswald. Although she was reportedly paid a very handsome advance, her book, too, has not been published.

On March 10, 1969, James Earl Ray, the subject of Mr. McMillan's future biography, entered a plea of guilty to the charge of having assassinated Dr. King. The following day the Times voiced the nation's outrage at the "minitrial" in an editorial entitled "Tongue-Tied Justice." The Times asked: "Why should this assassination case be tried by statements instead of formal legal procedures, subject to examination and cross-examination, the presentation of all the evidence by the prosecution, the appearance of the accused in open court?" Because the concluding paragraphs of the Times editorial are extremely relevant to Mr. McMillan's attempt to interview the Rays, I quote them in full:

> No one was demanding blood; everyone is demanding facts. Are we going to get the facts from Ray's lawyers, past or present, one of whom is trying to peddle the story to magazines? Are we going to get the facts from William Bradford Huie, the author who has "bought" the "rights" to Ray's story? What a mockery of justice for the facts to emerge in marketed justice!
>
> Unless proceedings are convened in court--Federal, if not state--we shall never know the adjudicated truth. There should be no Warren Commission necessary--a month or a year from now--to still our doubts and do what a Tennessee court has failed to do.

After a bitter and expensive five-year struggle, Ray has won the right to the kind of adversary proceeding called for by the Times. In ordering that Ray be given an evidentiary hearing, the Sixth Circuit Court of Appeals:

> The entire record reeks with ethical, moral and professional irregularities, demanding a full scale judicial inquiry. Without such a hearing, the record leaves no alternative to the conclusion that Ray's attorneys were more interested in capitalizing on a notorious case than in representing the best interests of their client.

The record before the Sixth Circuit pertained not only to Ray's former lawyers, but also to William Bradford Huie, the author who paid them. The allegations in that record assert that Huie used his relationship with Ray and Ray's attorneys to obstruct justice.

Unfortunately, neither Ray's guilty plea nor the recent Sixth Circuit decision have stopped writers from trying to improperly intrude upon the judicial process. For example, one writer has recently offered Ray large sums of money if he would implicate himself and others in the assassination of Dr. King.

Mr. McMillan has also attempted to buy information from the Rays. In the past he has offered as much as $5,000 for an interview with James Earl Ray. Ray rejected that offer, which perhaps explains McMillan's subsequent suit for the right to interview his brother John.

As the text of Mr. McMillan's article makes clear, he is really interested in James Earl, not John Ray. He is not willing to leave the judicial process to its normal and unfettered working. Thus, he alludes to the evidentiary hearing which the Sixth Circuit has

ordered and complains, "but there is no telling what finding that court will make." "Don't we have a right to know what happened?" he asks. "What about the right of the press, or historians, or biographers, to see the prisioner who has . . . special or sole knowledge of some significant historical event?"

Mr. McMillan's objective is totally at variance with the Times' call for a judicial reopening of the Ray case so that "the adjudicated truth" may be known. It also flagrantly violates the fundamental premise of American law which holds that a person charged with a crime is innocent until proven guilty beyond a reasonable doubt by due process of law. McMillan, like most authors who have written on the Ray case, seeks to prove Ray guilty by journalistic fiat. What McMillan seeks is not "the adjudicated truth" based on evidence submitted in open court and tested by cross-examination, but rather "marketable truth."

I view Mr. McMillan's attempts to interview the Rays as particularly ominous because information available to me indicates that Mr. McMillan has been getting assistance from the very law enforcement officials who Ray has charged framed him. Mr. McMillan has himself stated that the FBI file on the King assassination has been made available to him. This FBI file has not been made available to Ray's present lawyers. In fact, it was necessary to file suit under the Freedom of Information Act and obtain a court order before the Department of Justice would make available a copy of the public court documents pertaining to Ray's extradition hearing in London. Yet Mr. McMillan and other writers who follow the official line on the assass-

ination are allowed access to the FBI's file on the case. This is a very insidious policy, to say the least, and the fact that Mr. McMillan is the beneficiary of it is one good reason why the Rays should not be interviewed by him.

There are others. As attorney for James Earl Ray, I am obligated to protect his rights. So, too, are the courts. John Ray is a potential witness at his brother's evidentiary hearing. In my judgment there is a substantial possibility that Mr. McMillan might use an interview with John Ray to bribe or bamboozle him into making some statement which could be twisted or misconstrued to the detriment of his brother's case in court. The danger of this is increased by the fact that Mr. McMillan's "biography" is based on the false premise that James Earl Ray is guilty of having assassinated Dr. King. In addition, while John Ray is not unintelligent, he is both indigent and uneducated, and this puts him at a tremendous disadvantage. There is in fact a history of his having been victimized. His own court-appointed attorney failed to file his petition for a writ of certiorari with the Supreme Court. [I filed it for him, some twenty months late, after obtaining a copy of it from the Office of the Solicitor General. His court-appointed attorney failed to respond to requests which both John and I made for a copy of the petition.]

The danger in Mr. McMillan's lawsuit is that it may establish what would in effect be a constitutional right for an author to bribe or bamboozle a witness or otherwise interfere with the judicial process. In my view the right of an author to have access to an in-

mate ought to be circumscribed so as to prevent the occurrence of such harms. I would suggest that where an inmate is represented by an attorney, the attorney's approval be obtained before such a right is enforceable.

Finally, a brief comment on Mr. McMillan's lead paragraph seems in order. That paragraph, which provides the pretext for his article, asserts:

> For reasons which seem perfectly well-intentioned, Tennessee has announced that it wishes to move James Earl Ray from its state penitentiary at Nashville into a Federal prison.

Since Mr. McMillan does not give Tennessee's reasons for wishing to transfer Ray, the reader has no basis for judging whether or not they were "well-intentioned." Mr. McMillan omits to mention that the abortive transfer plan was killed in early January, very soon after it was announced, because it was clearly illegal and Ray himself had filed suit to block it. Nor does Mr. McMillan relate, perhaps because he does not know, that the Warden of the Nashville penitentiary recently testified in court that he knew that the transfer was illegal.

But just how "well-intentioned" can an illegal transfer be?