

9/22/71

Mr. Philip Geylin
Editorial Page Editor
The Washington Post
1515 L St., NW
Washington, D.C.

Dear Mr. Geylin,

Your offer of a 1000-word piece is a fair remedy for the unintended harm the Post did me. I appreciate it. After we spoke yesterday and before I wrote the piece last night, there were signs of what I take to be an official campaign to capture the public mind. Including this may well have made what we discussed exceed the space you offered. (My wife is now retyping the piece and I do not know its length.) If it is too long, please feel free to cut it however you see fit. You need not consult me. I have no question about the Post's intent and have no doubt that the errors were entirely typographical and due to a desire to make speedy rectification.

Bearing much on what I suggest in this piece is your this morning's piece by Min Yee (whose reporting has, I believe, been conspicuously excellent). There was no need to delay release of the Jackson autopsy report for two weeks. It served only to let the well-reported official lie sink into the public and media mind and to have it endlessly repeated. As with Attica and the allegation of cut throats, this lie immediately formed media opinion. As with Attica, also falsely, one of the inevitable consequences is ~~that~~ your editorial to which I responded. The press simply can't catch up with official misuse of it. Returning to the Jackson autopsy, it would require truly exceptional circumstances for the entry and exit wounds not to have been immediately and accurately identified from visual examination. For the most part, they have different characteristics. Entry wounds are smaller, the flesh around them is burned. They turn the fibres of clothing inward. And this clothing appears not to have been available to the prosecutor. It is hard for one with my experience to regard all of this as innocent error. While I pretend no specific knowledge of the Jackson case, I venture to suggest that if you ever see that autopsy, you will find a bruise mark consistent with a blow that would have knocked the upper part of his body downward and that the path of the bullet through the body will be consistent with his having been shot from not very far away.

I also venture to suggest that, as with the Warren report, when the results of the official and ex parte investigations of San Quentin and Attica finally appear, long after things have cooled, they will be of such a character that the press just will not find it possible to analyze them, to spot and report their defects and deficiencies, will not have access to that upon which they are allegedly based, and that by the time any of these requisites of comprehensive reporting are available, the stories will no longer be news. But the reports will be, and will get major attention.

The only possibility of fuller reporting thus is restricted to special articles and the editorial and op ed pages. But here also the opportunities are limited by the realities of newspaper life, one being that you can't have experts on such matters on your staffs and official sources are not to be trusted. The net result is that the press as boxed in and for all practical purposes finds it impossible to perform its traditional role in our society. Another of the realities is that it comes not to trust those who question the official stories. And soon we are nuts or pariahs.

This is not to say that there has not been irresponsible criticism of government, but even that irresponsibility does not exceed government's. In my own case, there has been no serious allegation of error, none to my face. Percy Foreman, for example, after flying from Houston to New York City for a TV show, fled the studio rather than confront me on his record in the King/Ray case. Four Warren Commission lawyers had sought and been granted a syndicated TV show, but all declined to appear when they learned they would face me. They would not appear in even a gangup.

Should you ever want to discuss any of my work with me, I would welcome the opportunity. I would especially welcome an airing of the Justice Department record in all of these matters. It is incredible. Where the White House chided the Post and the Times for not resorting to the Freedom of Information Act, when I did, in the three cases that have gone to court there were lies without end and three perjuries. When I charged two of them in court papers, there was not even pro forma denial. In the first case, Kleindienst denied having the public evidence I sought, even though his Department had originated it and had then confiscated the only official copy out of its possession, that of the British court. Ultimately, I did get access to what I could identify, and it is inconsistent with the allegations in Memphis. This official attitude toward the law and justice I very much fear will fuel the flames, recruit for the militants, who see no alternative to flames, and compounds the feeling of futility and frustration I have found on every campus on which I have appeared, in every seminar I have conducted, and on every talk show on which I have appeared.

In one case, when government counsel was asked to cite the law he alleged was being enforced, a requirement of applicability of the claimed exemption under the Freedom of Information Act, and there was none, none being possible, he said there had to be a natural law or some kind of law, and on this was sustained by Judge Sirica. In this case, as with the Ray appeal I cite, I have the transcript. I can also provide Judge Williams on tape.

If you have any questions of fact, please ask me. One that occurs is my reference to Oswald's legal rights. You have my Whitewash in your library. I have an entire chapter on this.

Should you ever consider a case study of a jail, I recommend New Orleans, where there is a Washington angle in what happened to a Washington student wrongly arrested during, as I recall, the 1970 Mardi Gras. If your stringer, Dave Snyder, does not recall that case, I am certain that Warren Mardelle, the librarian of both papers, can supply their extensive coverage.

In any event, thank you very much for this fair opportunity. I hope the submission suits you.

Sincerely,

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The bitter tears of Attica were barely dry before there began a prime-time, coast-to-coast TV campaign to make it seem that there was no choice between this slaughter of 40 men by public authority and talking with the revolting prisoners. It reached most early-morning and many if not most late-night TV viewers with the notion that what the police did is an updated defense of the Alamo.

NBC's "Today" show on Monday presented a selection of jail guards - but no prisoners. On Tuesday CBS had the Commissioner of Corrections, who gave the order to attack, on the evening news and in a "special" at 11:30 that night - but again no prisoners. Simultaneously, the ever-thoughtful state arranged a guided tour of the prison for Wednesday morning's TV and radio, preserving the prison's rubble for prejudicial propaganda. Still again, justification of the police attack and no prisoners interviewed. Only two were even within view of the reporters.

There is no "fairness doctrine" for prisoners, which is consistent, for there is nothing else for them, either. Thus the insurrection.

The state is conducting a secret investigation. It is interviewing those it wants to interview. From these statements it will select what suits its purposes and ignore what it dares of what is uncongenial to it. Eventually, it will issue a report that, by the mass of selected detail alone, may well overwhelm the daily press, which will probably be reduced to repeating the official conclusions.

The lesson that might be learned from the tragedy is being lost. If it is, I believe more than jails will burn. Guerrilla warfare will not be confined to the jails, either.

There is no solution in the impassioned words of one letter-to-the-editor writer, that killing three prisoners for each guard is too low a percentage, and that "each man who participated in the Attica riots is guilty of premeditated murder and should be prosecuted." Overnight he forgot that all the bullets came from police guns.

And everyone else seems to be forgetting one of the incredible admissions by government, that prison conditions are inhuman and intolerable and prisoners are denied the inalienable rights of all Americans, from bathing to free access to lawyers.

One need not be an expert on prison conditions to understand that, if the state of New York acceded to 28 of the 30 demands made by the prisoners, the complaints were legitimate. Ought not someone be asking why it took a revolt to get the promise of overdue reform? Need men revolt against society to compel society to treat its wards as human beings, or as some jails justify saying, as well as farmers treat animals? Or people treat their dogs?

The blood had hardly been staunched when government backed out on its most significant concessions, the right to counsel and to privacy in that counsel. It would not let the lawyers inside the jail. Other explanations were given, but the real reason was to prevent the men from giving the outside world their version of what had happened. At San Quentin, lawyers proved authorities liars. New York was not going to risk this. So state troopers stood on the jail steps and physically pushed the lawyers away, the order of a court meaning no more than the promise written ⁱⁿ so awfully much blood.

One of those demands was the last thing most Americans would believe necessary, the right to consult lawyers in private. In September 1971, men have to revolt for this right? For what, then, the Boston Tea Party and Bunker Hill?

The systematic denial of this most elemental right, one of the causes of the Attica revolt, seems incredible in 1971. It was also the fate of the accused in political assassinations, a field in which I can, I believe, claim competence. What happened to Lee Harvey Oswald and James Earl Ray illustrates the plight of other prisoners, especially political prisoners. If such things can happen when the eyes of the world and its press are watching, where can it not happen? And if it can happen to such prominent prisoners in such spectacular cases, to whom can it not?

The day the President was killed, at the very moment Oswald was briefly shown to the press, while he was asking for the American Civil Liberties Union to defend him, an ACLU delegation was thrice told by different Dallas officials that he wanted no lawyer! (The TV transcript was edited in the Warren Report to eliminate his plea.) The next day, after the one lawyer for whom he had asked by name announced he would not take the case, the Dallas police were still assuring Oswald they were trying to reach that lawyer for him. Oswald alone did not know the truth. He never had a lawyer - from Friday to Sunday. And Sunday he was killed, his mouth closed forever.

James Earl Ray did not know whether it was day or night for the eight months he spent in the Memphis jail. His cell windows had been sealed with solid steel plates before his (illegal) extradition from England. For 24 hours each day he was under bright lights. He was taken to the windowless courtroom through a tunnel. When his first lawyer, Arthur Hanes, visited Ray in jail, the sheriff refused to remove the two closed-circuit TV cameras and two microphones, both connected to tape recorders. With the tight security outside the jail and outside and inside that cell, these "precautions" certainly could not protect Ray from anyone. To confer without fear of lip-reading or being

overheard, lawyer and client lay on the cell floor and whispered into each other's ears. And on leaving the cell, the lawyer had to show his notes to a jailer.

Judge Preston W. Battle held this denied Ray no legal rights. Battle was Tennessee's outstanding expert on this subject. As district attorney, he had held another prisoner under artificial lights for only 36 hours (during which the good prosecutor had read the Bible aloud), at the end of which he had the confession he sought. In that case, Ashcraft v. Tennessee, with but 36 hours of constant artificial light, the U. S. Supreme Court held Ashcraft had been subjected to "undue rigor" and denied his legal rights.

But when Ray's present counsel sought a hearing based in part on not 36 hours but eight months of constant illumination, eight months in which Ray did not empty his bowels or bladder in private, Judge William Williams held that only such things as being chained and locked in a sweat box, the very words of his decision, met the "undue rigor" requirement of the statute. Judge Williams notwithstanding, that cell, with all its accoutrements intact, has since been used as a punishment cell.

Such things make a mockery of justice. They are, in my view, more serious crimes against society than those with which most prisoners are charged.

Justice is the real question, at Attica and elsewhere, not revolution. Denial of justice makes revolutionaries, more so when the jails bulge with articulate and intelligent political prisoners. It is an old American belief that, when justice can be obtained no other way, revolution is justified. That is where we started.

It can no longer be claimed that blacks who insist on their rights and equal treatment and political prisoners of all races are

not singled out for special punishment. They are repressed before arrest, abused on arrest, and the most militant are assessed astronomical bail. After the San Quentin killings, a judge refused to look at a prisoner's visible signs of having been beaten.

If there is one lesson to be learned from Attica, it is that unless such abuses now end - and they should never have existed - there will be an ocean of blood.

In New Orleans, before and after Attica, inmates of the parish jail risked burning themselves alive to set that jail ablaze. It is perhaps the closest thing in the United States to the Black Hole of Calcutta. Those prisoners have a real measure of public concern for a habitable jail. There is no money to reduce the 500 percent overpopulation - and in that hot, humid climate. But should the prisoners not be content? New Orleans plans the largest domed stadium in the world.

Is there a better way of asking for more, bigger and bloodier Atticas?