3/16/72

Mr. Fred Graham
The New York Times
1920 L St., NW
Washington, D.C.

Dear Fred,

John Mitchell's sanctimony, not a desire to embarrass you, sponsors this letter and and the time it will take. His Department is your beat, if the hearings are not.

You will remember that when you phoned me in January I reminded you that when I had filed my Civil Action 718-70 to get the official copies of the affidavits used to get James Earl Ray extradicted from London, I phoned the Times, spoke to Tom Wicker, who was about to leave, and at his suggestion left a message for you. You claimed not to have gotten it. However, it was not unknown in the Times office, and that night I got a call from a reporter unknown to me thanking me for using the law and expressing the regret that the major media would not. UPI moved a small piece on this.

Prior to filing that action, under this mechanism of the Department, I asked Kleindienst for these official and public records, what the law defines as "public information." He lied repeatedly and without any possibility of doubt. Mr. Mitchell was indignant at the suggestion that Kleindienst would be considered even capable of lying, but he has personal knowledge in this case.

Kleindienst first lied in saying he did not have these records. He then lied in saying they were records of the British government rather than ours. He lied still again in saying that even if he had these records, they would be exempt under the law as investigative records, a rather exotic interpretation of court records for a man who would be Attorney General. When we wrote Kleindienst giving him to understand that we knew and could prove he was lying, his curt reply was that he adhered to his expressed position, those lies.

Among the proofs that Kleindienst did lie and did it knowingly is a letter from the State Department saying it has given those records to Kleindienst. Of course, we know that Justice and State both had their files copies, but these are the records confiscated from the British court, I think an unheard of precedent in Anglo-Saxon jurisprudence. And a pending comment of which I am reminded by Paul Valentine's story in this morning's Post, when Kleindienst railroaded his preventive-detention law through, his big gun was the judge who had permitted the confiscation of the only official copy of these records outside the possession of the United States Government, Chief Judge Frank Hilton, of the Boss St. Magistrate's Court.

Justice stalled until the moment of hearing after I filed. Mitchell reluctantly then overruled Kleindienst and directed that the files be given to me. He thus also records his knowledge that Kleindienst is a liar and on a basic legal right, something I wish had been a factor in consideration of his appointment. Here then not-exceptional political crookedness. I believe this is a measure of what can be expected of him as Attorney General. Mitchell's and all the other letters are on file in federal district court in Washington. As you know, I can give you copies, but as I know you have a reluctance in getting anything from me, especially when it is pertinent to your work and you call to ask for it.

The story does not end there. For there remains contempt of the order of a federal judge and what I believe is perjury, if not suborned by Kleindienst, committed in his behalf. Justice stalled so long in delivering what I had asked and paid for I had to go to court anyway. Judge Curran chewed the Justice attorney, Anderson, out in court. Anderson defended himself by saying Kleindienst had not even given him to get copies that was withheld until the

night before. Curran, noting that copying takes ten minutes, gave Justice a week to deliver. When it had not on the eight day I appeared in court and got a summary judgment. You have not reported many awards against the Department of Justice, which, naturally, make this not noteworthy. I don't know how many Deputy Attorneys General have arranged for any, but this one candidate for Attorney General did, and if nothing else it is a unique self-portrayal of unparalleled arrogance.

Anderson

Nonetheless, several days later and before he had given me anything, filed an affidavit with the court swearing that he had, in fact, delivered part of what was withheld to me in person in court. Aside from the improbability of the judge ordering the delivery in his presence of what he claimed under oath to have delivered or his silence in the face of it, Paul Valentine happened to be in that court with me at that time and can and will attest that not only was I not given this but was refused it and that he, Paul, drove me from the court to my lawyer's office on his way back to the Post. Moreover, when it was ultimately mailed by Anderson's superior, it was with a dated, covering letter I also have. Thus Justice itself provided proof that its lawyer did con it perjury (for Kleindienst). Nothing could be more relevant in the suit or to the order than this, since I believe it is perjury. I have charged it to Mitchell and Kleindienst without response. Not even pro forma denial.

What is no less incredible is that in a number of letters from Justice in this case, not a single one is truthful. I have them all and you can reach your own conclusions on this should it interest you.

And what bears on the kind of Attorney General Kleindienst can be expected to be is what happened to those public court records confiscated and delivered to him, one of the records withheld from me and the subject of the Anderson perjury: it was classified! A public record, produced by our government in court and then confiscated, was classified and withheld as an investigatory file!

If this did not deal with real and political considerations, I venture to suggest that it might be the subject of more news and Senatorial interest today. And I offer the also-unsolicited opinion that at every stage this suit and what happened in it was legitimate news. The subject qualified it, as did the fact that this was the first case filed by a writer under the law, if not the incredible official record.

Then it was and remains totally unreported by the Times and by you, for if you never got the message I left for you at Wicker's suggestion, we did discuss this in January and Kleindienst has been in the news ever since, most recently with Mitchell's feigned indignation that anyone could conceive his noble Deputy could do so terrible a thing as lie.

Kleindienst as Deputy was in direct charge of all FOI requests. In all those years I have filed numerous ~~are omitted~~. The proof is available for your examination. Your own 1/9 story contains proof of one of several perjuries in the case relevant to that.

Mitchell has charged you and the Post with irresponsibility. Both the Times and the Post know of this entire sordid affair. They will, in the end, establish the legitimacy of Mitchell's statement, if not with the subject he addressed. I wish I could believe that even after attack, normal news concepts would over-ride policy determinations of what is or, indeed, can be news.

Sincerely,

Harold Weisberg

Detention Law Used Rarely

3/16/72

By Paul W. Valentine
Washington Post Staff Writer

Washington's year-old preventive dentention act, pushed by the Nixon administration as a key legal tool to keep dangerous criminals off the streets while they are awaiting trial, has hardly been used and, therefore, has had little impact on the crime rate here, an independent study shows.

Instead, most defendants eligible for preventive detention continue either to be held in prison by the traditional device of high money bond or to be released under various nonfinancial conditions set by a judge, according to the survey. It was conducted by the Georgetown Institute of Criminal Law and Procedure in conjunction with the Vera Institute of Justice in New York.

"The infrequent use of the (preventive dentention) statute has precluded any significant impact on pretrial crime, on pretrial detention and release rates, on subsequent phases of the criminal process or on the operations of the District's criminal courts in general," the study says.

All told, the controversial law was invoked by a prosecutor or judge 20 times in the first 10 months of its existence (February through November, 1971). During that same period, more than 6,000 felony cases passed through U.S. District Court and D.C. Superior Court.

Of the 20 detention cases, defendants in only 10 were actually ordered held (prosecutors withdrew their requests for detention in several cases), according to the study.

Of the 10 defendants held, five were ordered released on later judicial review, and the case of one was dismissed altogether when a grand jury refused to indict him, the study said.

The preventive detention act permits a judge to deny bail and impose pretrial incarceration of certain suspects

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DETAIN, From A1

charged with felonies considered dangerous or violent such as armed robbery, rape, burglary and arson. If a suspect is ordered held after a hearing by the judge, the law requires that he be tried within 60 days or be released again.

Civil liberties attorneys have condemned the act as an unconstitutional infringement on the right to pretrail bail. Law-and-order hardliners say it is a legal and reasonable device to reduce the growing incidence of offenses committed by habitual criminals, especially those already on parole, probation or pretrial release in other cases.

A constitutional test of the act is now in the courts, but has not been finally adjudicated.

U.S. Attorney Harold H. Titus Jr., in response to inquiries by the Georgetown-Vera study team, acknowledged that the act has not been used frequently and gave these reasons:

•Since the act's constitutionality is still being litigated, prosecutors are instructed to invoke it sparingly.

•There is a "prosecutorial reluctance" to initiate detention hearings because often the government is required to reveal crucial elements of its case against the defendant in justifying its request for detention.

•The "continued availability and effectiveness of money bond" assures detention anyway without the formality of a preventive detention hearing.

•A decision of the D.C. Court of Appeals last May 11 requires the U.S. attorney's office to invoke a five-day hold provision for arrested probationers and parolees before it can apply the more severe 60-day preventive detention statute. The five-day hold permits the parole or probation board to examine the circumstances of the defendant's arrest and decide whether to revoke parole or probation and return the defendant to prison in that manner.