6/6/70

Dear Bill,

Here is the Freedom of Information-Ray piece. As we discussed by phone, it is more than enough for two pages. If you like the documentation, of which I might be able to find more safe to use at this juncture, perhaps you can break it into two pages and a follow-up.

Despite the incredible stupidities of Ray's post-Foreman counsel and their non-stop wasting of his legal rights, I believe we today do have a chance of getting a trial. If we do, it will be from Bud's competent use of the content of my book, some of it already in new and unreported pleadings now before State court. There can be a decision on this step any day, thus adding to the interest of the story in your paper, whichever way the decision is. If adverse, it will be taken to federal court.

Some of the enclosed copies of the documents may not be clear enough for you. They can be made clearer on another machine or I'll lend you the originals. If you do not want to print those, they are sufficient to back the story up. In all cases where the address is not me or Bud, the name should be masked out to prevent harrassments. Except for the copies of the pages from the affidavits, which are duplicates, I'd appreciate their return.

There are several other things I offer and ask. For this price, I am assuming you are getting only the one-time use, in the Enquirer only. I would like you to copyright the piece in my name so there will be no later problems. Some of this is already in COUP, some will be added. Let me know pub date if or when you want it done and I can do some free promos for you, by radio and by phone. The places that come immediately to mind are major stations in Chicago, San Francisco, Los Angeles and San Antonio. I have arranged for such a story in a nearby paper, when it will attract attention to yours. I think others likely, at least possible.

I have no familiarity with how you promote, if at all, but if you think this is worth it, I'll help as much as I can. We can discuss this by phone when you make your own evaluation of the piece.

My four printed books are nowhere on sale, so I'd appreciate it if you could work into the intro a reference to them and my address, Rt. 8, Frederick, so those desiring them will know how to order them. You can pick the titles up from the enclosed order blank.

There exists the possibility of TV net reporting. One has examined the suit file only and another is sending a reporter to see me soon. I cannot estimate probability. However, this also suggests I should know pub date.

Sincerely,

Harold Weisberg

Harold Weisberg
Route 8
Frederick, Md. 21701
June 6, 1970

Eyeball to eyeball for the first time, caught in suppression of evidence about the political assassinations, government blinked.

Blinking is the closest-to-honest thing government did. Before that, it ignored and violated the law. Next, it lied. And then, after lying still again, when I used an unused law to drag it into court, it got scared. Not daring to face me in open court, it 'fessed up.

Thus, I now have some of the suppressed evidence in the assassination of Dr. Martin Luther King, Jr.

It indicates James Earl Ray's finger was not on the trigger.

More - worse - in the largest man-hunt in FBI history, self-touted as the most expensive, more extensive even than that of the JFK assassination, hundreds of government employees, including some in the highest echelons of the FBI and the Department of Justice (of which, at least in theory, the FBI is part), knew this and were silent. To this day they commit the terrible crime of silence that is as opposed to every decent American principle and every basic tenet of our law as anything can be.

It is neither unkind nor unfair to declare that, whether or not guilty, whether or not part of a conspiracy to assassinate America's only black Nobel laureate, James Earl Ray was framed. The combination was the federal government, the Memphis prosecution, and especially his own counsel, renowned Percy Foreman.

Foreman's six-figure, money-grubbing sell-out of his client and his profession will have to await complete exposure in what I hope will be the near future, in my completed book, which brings it to light but

terrifies the commercial publishers, or in legal proceedings based on the book. Here I say only that Foreman first threatened Ray and then, when Ray backed out on the deal in the last minute, bribed him. I have the proof, signed by Foreman, in my possession, his unintended confession taped. Foreman's own estimate of the size of the bribe is as much as $350,000.

But Ray never got a cent.

How like the story of the framed, then murdered, Lee Harvey Oswald!

In fact, it was during my investigations of the JFK assassination that I first came across a conspiracy to murder King, entwined with a plot to kill Kennedy, both entirely suppressed by the Warren Commission, with as much proof as it dared withheld from the Commission by the FBI. To the degree permitted by the knowledge I then had, this was reported in the final chapter of my OSWALD IN NEW ORLEANS, written in the winter of 1966-7.

This is but one of the remarkable links between the various assassinations. They prompted me to research and write my longest single work, COUP D'ETAT.M Although copyrighted, the title has twice been preempted. If the book can ever be printed and go into general distribution, it will be called COUP: BY ASSASSINATION. The first part was written in June 1968, in anticipation of a real, old-fashioned American trial, with all the fabled protections of American law: the trial of James Earl Ray, the only accused. That never happened, leading to the second part, an exposure of the frame-up of the accused and of history, the story of assassins guaranteed freedom by government. It was written as soon as that charade of the law, the Memphis "minitrial" of James Earl Ray, was over.

John Mitchell had quit king-making and wheeling and dealing in bonds long enough to contour the chair in his two-story-high office on the fifth floor of the Constitution Avenue side of the Department of Justice when, on March 31, 1969, I wrote to ask for the affidavits his Department used in open court in Great Britain to get Ray extradited.

The Memphis prosecutor assured me everything he had not made public would forever be suppressed. Mitchell and his underlings refused to answer this proper request until after I obtained counsel, Bernard "Bud" Fensterwald, Jr. Bud had been counsel for the Senate committee which brogght forth the so-called "Freedom of Information" law. Officially, it is the Public Information section of the Administrative Practices Act. It is known in the law books as "5 U.S.C. 552".

Rather than being a means of making information available to the public, the clear intent of Congress and its language, this law is regularly misused by the government as an excuse for perpetuating what it was designed to end, suppressions. Refusal by the National Archives and other agencies to provide me with information that should be public is frequently attributed to the provisions of this law.

Bud wrote Mitchell for me. His August 20 letter was unanswered until we discussed, by telephone, going ahead with the suit. We had delayed filing it only because Joseph Cella, a trial lawyer in Justice's Criminal Division, had phoned to ask us to wait for a written reply. Almost as thoughtthe FBI was wired it, which would not supprise me, we had no sooner planned the actual filing of the suit than we got another phone call, then the November 13, 1969, letter of Deputy Attorney General Richard Kleindienst.

Kleindienst tried to con us. And did he lie!

Now, it is libelous and actionable to call a man a liar if he is not. I am not one of those milktoasty writers who sugar-coats the unpalatable so people can gag it down. And I gladly waive those rights Americans have to criticize government officials. I dare Kleindienst to sue me for calling him a liar.

I go further - I call him a repetitive liar.

And a childish amateur at it.

He will not sue me because, tragically, it is all too true: The Deputy Attorney General of the United States is a liar.

Here, for the first time in any newspaper, is the proof Kleindienst will not face me in court as, when given the chance in my suit, he refused to.

Kleindienst wrote there are "no documents in the files of the Department of Justice identifiable as" the affidavits by which Ray's extradition had been procured. He then added another lie, saying that, even if Justice had such records, they would be "part of investigative files compiled for law enforcement purposes and as such exempt from disclosure under the provisions of 5 U.S.C. 552 (b)(7)".

Where we had told him we knew these affidavits had been prepared in this Department, its Number Two man wrote, "I have also taken note of the statements ... (that these are) 'public records' ... prepared in the Department of Justice. Our refraining from making any comment respecting such statements should not be taken as acquiescence by the Department in your opinion and representation in this respect."

If, technically and semantically, this is less than another lie, falsehood and deception are its purposes.

Stunned that so important a public official would write such enormous lies, we wrote this arrogant, power-happy official again,

hoping he would realize we had him cold. December 15 he wrote, "... we adhere to the views expressed in our prior communicstion."

Let us begin with the cited law. Does the second-highest federal law official know the law, quote it accurately?

Aside from deliberate misrepresentation of the character of these affidavits, which are legal, not investigative, files, Kleindienst left out another important inhibition imposed upon the government. That exemption actually reads (emphasis added):

> (7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency.

Over and above everything else, as we shall soon see, these documents I sought and finally got were "available by law to a party", James Earl Ray, even though the Deputy Attorney General of the United States himself refused Ray.

Now, as every school-child knows, the government's legal business is transacted by the Department of Justice, its relations with foreign governments by the Department of State. So, it is obvious that Justice prepared these affidavits, State delivered them, and, as required by law, the head of each department certified them. Not only was this obvious, but I also knew it had happened in this case.

Justice and State both had copies of all the affidavits, if for no other reason than to have a record of that which each cabinet member had certified.

From my own investigation, I also knew, long before Kleindienst's first lie, that somebody in the government had an additional set, the originals filed in the London court.

In what lawyers describe as "an excess of caution", On November 26 we also wrote Secretary of State William P. Rogers asking for the same evidence.

I had had several friends seek these originals for me from the court, and the British government itself. These friends ranged from a college student to the most honored British reporter, John Pilger. John and I had blown minds together in Dallas the preceding November.

His June 26 written report to me, following his verbal message, perhaps the sixth or seventh I had received by then, sums up failure neatly: "simply because it is not available."

Independently, a number of inquiries were directed to Chief Magistrate Frank Milton, of the Bow Street court. Milton ordered Ray's extradition, sat in silence when Ray's lawyer was denied permission to see him, and later appeared before the United States Senate on behalf of the Justice-Mitchell-Kleindienst-desired "preventive detention" act under which Americans could be incarcerated without bond, without due process.

Replies were always at his direction and by Chief Clerk Windham. They all said the court's original evidence had been given to the American State Department through the British Home Office. The opinion the Home Office had kept no copies is explicit:

> ... all copies of that were sent to the Secretary of State at the Home Office in London for transmission to the State Department at Washington, together with the papers which had been sent to this Court from Washington. As far as I know the Home Office has not retained copies of those papers.

Stop and think of this, you who may believe that the public trial of an American citizen is a permanent, imperishable and public record, forever preserved in the court of trial!

The British court voluntarily surrendered its records -- all of them. Not copies, which is the custom, but the originals. And the British government did what? Gave them to the American government, which had no legitimate need, already having at least two sets of them. This

was done only to suppress all official copies.

This incredible thing, certainly unparalleled in British or American jurisprudence, was further spelled out to us by the State Department, first blinker. The last thing State wanted was for it or the British government to be involved publicly in this nasty mess in court. Only the arrogant mind of a Kleindienst could dream that we went that far, knowing what he knew we knew, only to fear trial.

Deputy Legal Adviser J. Edward Lyerly's December 10 letter went out of its way to assure we would leave them alone. He sliced Kleindienst's throat and integrity from ear to ear.

Lyerly, too, could not have been more explicit.

> Affidavits submitted to a foreign court in support of a request for extradition become part of the records of that court.

What Lyerly did not say is that the mendicant governments of the United States in the era of American political assassinations are unchaste with their records when solicited by the American Government.

Lyerly explained this unheard-of bi-governmental confiscation of court records in a bizarre manner:

"Mr. Ray, himself", asked for them. So, "the Department of State was able to have the affidavits returned to the United States by British authorities."

Here the reader should note that getting for Ray the evidence used against him, to which he is, under the law, entitled, did not require State to get the <u>originals</u>. It never intended him to have them, anyway. It got the originals only to latch on to and suppress <u>all</u> official copies. Proper procedure, assuming the non-existent need for the British copies rather than those in Washington, was for Xeroxes to be provided and certified by the court.

Remember Kleindienst's pretense that these documents had not been "prepared in the Department of Justice"? State nailed that one, too, in a sentence beginning, "Since the affidavits were originated by the Department of Justice ..."

By now the reader understands why I do not fear a libel action when I call the Deputy Attorney General of the United States a liar. Truth is the perfect defense.

State's skirts are not unsullied in all of this, however, as the rest of this sentence shows. It says, "We asked the Department's views on their release to Mr. Ray."

Had there been, as there never was, any legal doubt, even forgetting that State had its own and properly certified copies, the time to ask Justice's "views on their release to Mr. Ray" was before raping British justice, before ruining the reputation of British courts. This ploy was a hardly disguised confiscation, no less.

What were Justice's "views"?

No other than "The Deputy Attorney General advused us that the affidavits were considered to be investigative files of his Department and exempt from disclosure under subsection (e)(7) of section 552 of Title 5 of the United States Code."

With this transparently fictitious ruling, "the Department of State returned the affidavits" to Justice.

Thus, before Kleindient's first lie to me, Justice had not fewer than two copies of the affidavits I asked for and was entitled to: its file copy of what the Attorney General himself certified and the beribboned original copy confiscated in Britain.

What better reason for Kleindienst to deny they had any?

The most incredible part of the entire unequaled scandal is the thickness of Kleindienst's skull, for we did everything but cleave it

with a broadaxe to let him know we knew, could and would prove he had this evidence.

And all this in the name of "Freedom of Information" - 5 U.S.C. 552!

In court, where Ray never had his day but through this work may yet get it, this blatant denial of his rights, the rights of all Americans, good or bad, would have been enough to acquit him under the Jencks rule. On June 3, 1957, the Supreme Court addressed exactly what was done to Ray in several ways, the most comprehensible being in these words:

"The Government (can suppress) only at the price of letting the defendant go free." To this it added, "it is unconscionable to allow it to undertake prosecution and then ... deprive the accused of anything which might be material to his defense."

Hoping to avoid the time and trouble of litigation and the consequent embarrassment to our own government, we addressed an appeal from Kleindienst's denial to Attorney General Mitchell. Apparently Mitchell was too preoccupied looking for Americans to swap for Russians and raising Republican campaign money with pious appeals for what he calls "law and order" to answer our February 2, 1970, letter.

We waited five weeks, then filed Civil Action 718-70 in Federal District Court in Washington.

This law provides for the fastest possible hearing. While the government stalled, we kept pushing for trial. At the end of an extension granted it on the spurious claim it needed more time to gather affidavits from itself, government capitulated. Justice phoned Bud to tell him I would be given access to these affidavits - the very same ones Kleindienst said Justice did not have.

At the same time, Justice went to court with two more fictitious motions, each asking that the case be declared "moot", that is, in effect, no longer an issue.

Their alleged reason? No more than the promise to make these non-existent documents available to me.

Now, why could not the Department of Justice wait until othey delivered what I asked for, what I sued for? Their promise alone did not eliminate the issue, and the court did not grant their motions.

The reason is simple: The government wants to pretend there is no such thing as the "Freedom of Information" law, except as a handy tool for illegal suppression. Above all, it wants to pretend it does not lose lawsuits under it.

The Attorney General himself signed the May 6 letter of capitulation, but it was prepared by a motley of legal eagles in his Civil Division. There is no ereference in his letter to the existence of this suit to which he had already, repeatedly, responded in court. In fact, the letter does not acknowledge my existence, either. Instead, the bond market's gift to American jurisprudence got down on his knees, ransacked his wastebasket and found that ignored appeal we had written February 2, three months earlier. He pretended everything that had since transpired was but a dream - had not happened.

Now, that February 2 letter is the one thing that was moot, having been made so by the filing of the suit Mitchell himself forced upon me.

All simulated holiness and kindness, Mitchell said, "in response to your letter of February 2, 1970 ... I have determined that you shall be granted access to them."

No reference to Kleindienst's repeated lies, his claim there were

"no documents in the files of the Department of Justice" as I had so carefully and accurately described them.

In a futile effort to save his own roseate face, Mitchell smeared a broad coat of red guilt on Kleindienst's, saying, "The exemptions do not require that records falling within them be withheld; they merely authorize the withholding ..."

Translation: The affidavits should not have been denied either to Ray or to me to begin with.

Interpretation: Nobody in government was going to face public exposure of a scandal so historic as this, in open court where a servile press would have more difficulty ignoring it.

So, when all alternatives were better than facing me in court, the government privately acknowledged its lies, admitted it denied Ray his rights and me my different ones, produced what it said did not exist, and the future will have to determine the significance of it all.

Americans concerned about the integrity of their government, the viability of their society, desiring that freedom be the genuine, undeviating reality rather than the vacuous pieties of high officials, may perhaps understand that my interest is in the law, not scandal. This history of a patient year of unpublicized effort, the wasting of much time and energy to get the suppressed evidence, should be more than abundant proof of a desire, first, to make the law work and the government abide by it, and nor for the law to take its course, in the courts of Tennessee and, if necessary, in higher appeals.

These things I saved from suppression are directly opposite to what was represented as fact or what witnesses would have testified to

had there been a real trial in Memphis, where the assassination was perpetrated. Even the deal, under which Ray got a more severe penalty than any jury would have imposed, required a description of the evidence that would have been offered against him.

There is, for example, that Vic Dupratt's New Rebel Motel registration in Ray's name. It has the license number of the white Mustang Ray had bought and allegedly escaped in (without leaving a fingerprint in that 400-mile dash through the dark of that danger-laden night, with the fear of imminent capture). One would never know it from the record of the Memphis "minitrial", but there is more than Ray's handwriting on this registration. If this can be innocent, withholding it from the court and denying it to Ray cannot be. It is here printed for the first time.

And what of the lone, so-called eyewitness, drunken Charles Q. Stephens, the man said at the Memphis "minitrial" to have identified Ray as the man he saw funning away inside that flophouse? These are the true facts: As his common-law wife, Grace, claimed, "Bourbon Charlie" was too drunk to know anything. And his initial "idenfification" of Ray was not made until his bourbon-lover's memory was refreshed by a reporter's money. Stephens did <u>not</u> make positive identification. Without positive identification by Stephens, Ray's body was not placed at or near the scene. Only some of what was said to have been his property could be, and that by undated fingerprints alone. When it came time to put it on the line, even with the protection of the government behind him, Bourton Charlie wouldn't swear to a positive identification of Ray.

The crucial part of his until-now suppressed affidavit, the paragraph numbered "9", says no more than two things: Stephens "did not

get a good look at him (the running man) before he turned left" and "I think it was the same man I saw earlier with Mrs. Brewer", the manager of the Memphis flophouse.

There is no attached affidavit from Mrs. Brewer identifying Ray as the man to whom she rented the room. Truth is, when earlier shown pictures of Ray, she had said he was not the man. Moreover, even if Charlie had been sober and looking, and there is reason to believe neither, he could not possibly have seen enough of any stranger to have made any kind of an identification/

Here also for the first time is the suppressed exhibit to the Stephens affidavit. It is the flophouse floor plan. During all the time the man allegedly was running down the hall, his back was to Stephens, again assuming Stephens was there and aware. In the brief instant of that turn to the left at the distant far end of that dimly-lit corridor, in which the diagram shows no window, there was too tiny a fraction of a second to permit any identification at all. Even a sober man could not honestly make one.

Well aware that Stephens could not be credited, but having no one else, until desperate, the government did not take his affidavit. It took his after taking all the others, when it faced this grim reality: There was no single eyewitness to place Ray's body at the alleged scene of the crime.

Naturally, the government did not take Grace Stephens' affidavit. It chose, instead, the course of guilt, of government conspiracy against the accused, of violation of Canon 5 of the bar's code of ethics. This requires disclosure of exculpatory evidence. It says justice, not conviction, is the prosecution's first obligation.

Grace Stephens, both sober and looking, described a man who could not possibly have been Ray, a short, small man, differently dressed.

There there is the affidavit of FBI Fingerprint Expert George Jacob Bonebrake. His affidavit was not used in Bow Street Court. Instead, he was produced in person, the only live witness. He there testified only that he identified fingerprints as Ray's. Cross-examining him on this cut-and-dried business of Ray's prints on Ray's property, no more unseemly than finding persons in churches, could yield almost nothing. For this reason, the government allowed itself the luxury of one live witness, a contemptuous gesture toward American law and concepts of justice.

Both require cross-examination by defense counsel. Cross-examination of inanimate affidavits is impossible. Flying witnesses toBritain presented no problem to the government. The slight cost is picayune in the overall cost of this case. But live witnesses could be destroyed under cross-examination. So, the government produced only Bonebrake.

And his testimony did not by any means prove Ray was the killer.

However, there is a provocative bit in the Bonebrake affidavit. In the paragraph Numbered "3", he says that "On April 19, 1968, I compared" several "latent prints with known fingerprints of James Earl Ray obtained by officials of the Los Angeles Police Department" and "in the official fingerprint files" (as though there are any others!) of the FBI. He "formed the opinion that they were the fingerprints of the same man".

Good. No reason to doubt it.

But Ray was a fugitive from Missouri, from whose pen he had escaped. He was also the 11th man on the FBI's "Ten Most Wanted" list. Why, then, was not the original identification made from prints supplied by Missouri? Don't ask Bonebrake. He doesn't say. Didn't those

famous FBI fingerprint files have them? And, armed with the prints deposited near the scene of the crime, why did it take the fabled FBI two weeks to come up with an identification?

As though to mask this, the next paragraph says "The official fingerprint files of the Federal Bureau of Identification in Washington also contain the fingerprint record of James Earl Ray, taken in connection with his incarceration in the Missouri State Penitentiary." Bonebrake compared these with the other two sets and concluded "that these prints are of the same person".

But when he made the Missouri comparison, when and how these prints became part of those "official" files - why they were not the ones first identified, after two weeks of intensive checking, these mysteries remain. This cannot be without some kind of question, for Ray was wanted in Missouri, not Los Angeles, and his Missouri prints should have been in FBI files especially because Missouri wanted him.

In court, this alone would have offered a Perry Mason field day.

Three of the attachments to Bonebrake's affidavit are pictures, described as of fingerprints on the rifle, its scope sight and a pair of binoculars. Nowhere in the evidence is there a complete picture of any of these objects said to be important evidence. There is only these tiny parts, so tiny in the FBI presentation of evidence that in none of the three cases can the identifying serial numbers be seen, a fact that should have raised the hackles of any competent lawyer. This "evidence" is no more revealing than manufacturers' catalogues. They would at least show what each device looked like.

With the requirement of the law that guilt be proven "beyond reasonable doubt and to a moral certainty", small as these things may seem, they cast the most serious doubt on the contrived case against

Ray. In the hands of a skilled lawyer seriously devoted to his client's defense, they are the kind of evidence that decides cases.

Whether or not in this case they would, one cannot know, there having been no real investigation on Ray's behalf, no critical examination of any of the alleged evidence against him, and no single legal proceeding meeting the requirements and standards of an American trial.

There is no doubt in my mind that any serious, understanding examination of the official evidence said to show Ray's guilt really proves there was no case against him as the killer. This evidence proves him not guilty rather than guilty, as does the Memphis prosecurot's promise of what would have been presented if there had been a trial.

This, however, is not, to me, the essence.

What is most impportant is the sanctity of the law and our institutions; the honor and integrity of government, its word and its own obedience to the law. The govenment that uses its raw power to vilate the law while prating what it calls "law and order" is to me more criminal and more dangerous than any killer, for it kills an entire society, a system of laws as of government, and any right to the decent respect of man.

If there is a lesson to be learned from all this abuse of the law, I suggest it is that each citizen, especially writers, force the government to live by and within the law. One means by which this can be done is through the Freedom of Information Act, as I did it and will do again.

Join me. Demand the end of official suppressions, regardless of what they deal with.

The temptations of enormous power are too great for some men.

Let us use this law to keep 'em honest.