

A Power That Isn't

The Freedom of Information Act Is a Blunt Tool at Best

By JAMES RESTON JR.

The CIA complains that it jeopardizes confidential sources and covert methods. The State Department says it terrifies foreign leaders and prevents frankness in diplomatic conversations. The FBI worries that it undermines criminal investigations. The Federal Communications Commission thinks racketeers will use it to discover what the government knows about them. Budget-cutters try to slay it with cost-benefit analyses.

What is this monster? The Freedom of Information Act. Ah, the awesome power of the historian.

For three years support has been building for a curtailment of the act. In June, 1979, FBI Director William Webster proposed sweeping changes, including the imposition of a seven-year moratorium on the release of all FBI documents. Several bills have been introduced in this session of Congress to tighten restrictions on the release of information, with Sen. Orrin G. Hatch (R-Utah) taking the lead. The congressional attitude seems to be that public disclosure is distracting intelligence and law-enforcement agencies from their real tasks. So far, Webster's seven-year moratorium has not found its way into legislation, but the push is on. Hearings will come this summer.

But how powerful is the act really? My experience with the law over a two-year period suggests that it is a blunt tool at best. My attempts to use it to secure government files on the Jonestown tragedy gave me more a sense of frustration than of power. I encountered massive government resistance and endless excuses, rather than benign cooperation. The information did not flow freely, to say the least.

Jonestown was an incident in which the Freedom of Information Act should have worked smoothly and quickly. Most of the victims, including the real villain, were dead. National security was not imperiled. The event was shrouded in mysteries that could have been cleared up long ago by materials in the government's possession.

Instead, the government resisted. The result, as theologian Jonathan Z. Smith of the University of Chicago has remarked, was that the public has had access only to a pile of "slapdash literature" that focused on the "pornography of Jonestown," not on its theology or its true horror.

Soon after the grisly events of November, 1978, it became known that Jim Jones had taped his nightly sessions in the jungle during the last 18 months of his social experiment. More than 900 hours of these tape recordings were carried out of Jonestown in a body bag and deposited with the FBI in San Francisco.

The tale that these tapes could tell holds the key to understanding the horror and the evil of Jonestown. Jones could never have pulled off his plan in the United States. Only when he separated his flock from all other influences, when he alone was sole conveyor of all information as well as sole dispenser of cruel justice, could he move toward the execution of his apocalypse.

The tapes in the FBI's hands were crucial, but four other agencies also held valuable material. The Federal Communications Commission had been monitoring People's Temple communications between Guyana and San Francisco for a year and a half. The last six months of these communications were coded—and therefore illegally transmitted, by FCC rules—and their acquisition and decoding could be important in reconstructing Jim Jones' demise.

Surely this material belonged to historians, I thought. The FCC did not see it that way. It wanted to make Jonestown a test of the confidentiality of all amateur radio communications. Rarely has the confidentiality

of illegal communications between dead people been guarded with such passionate governmental vigilance. Finally, I sued under the Freedom of Information Act in federal court, a step that I could take only because I had free legal counsel. How many authors have that luxury?

It wasn't worth it, as it turned out. The legal file grew to be several inches thick. At one point, the four government lawyers arrayed against me argued that, if they turned over Jonestown communications, the FCC would be besieged by racketeers filing similar requests for information. The process took nearly a year, and the judge ultimately ruled against me. The Temple communications remain a national secret.

A congressional committee investigated the assassination of Rep. Leo J. Ryan (D-Calif.) and conducted interviews with survivors under oath. These interviews were potentially very valuable, because Temple survivors had changed their stories so many times that, as far as I was concerned, all survivor accounts were suspect. But the committee issued a half-hearted report, leaving classified virtually every important document obtained under its subpoena power. When the committee's chairman, Rep. Clement J. Zablocki (D-Wis.), was challenged, he relented. The committee's materials would be released, the panel decided—in five years.

We shall probably never know how many CIA documents relate to the People's Temple. If ever there was a case in which the agency should have infiltrated a dangerous group, it was this one. Jim Jones was negotiating with the Soviet Union about relocating there, at the same time that his community was collecting \$40,000 a month in Social Security and other U.S. government checks. The CIA never answered my two FOIA requests. Most government agencies turn you aside while citing obscure regulations; the CIA simply ignores you.

The State Department generated many Temple-related documents. In response to my FOIA request and others, the department began to release materials in February, 1980. More than 2,000 cables were declassified, but this was sleight-of-hand. Most of those released documents related to the logistics of the tragedy's aftermath, not to the critical exchanges between the U.S. and Guyanese governments over the danger signals emanating from Jonestown.

Still the FBI remained the focus of my efforts. The bureau consistently denied access to every tape and document in its possession on the grounds that its criminal investigation was still active. Larry Layton, the entranced Temple gunman who shot two Temple apostates at the Port Kaituma airstrip, was to be tried for attempted murder in Guyana. When Layton was acquitted after a farcical trial in Guyana, the Justice Department moved to prosecute him for conspiracy here, and will open its trial this summer.

I had no desire to interfere with a criminal investigation, but, under the Freedom of Information Act, the government is required to segregate documents relating to a specific criminal charge from materials that are unrelated—and release the latter. I suspected (later this turned out to be true) that less than 1% of all the FBI's material bore any reference whatever to the Layton trial. In response to my demand to segregate, the bureau pleaded expense and overwork.

In February, 1980, I finally gained access to the Jonestown tapes. The breakthrough was not produced by the Freedom of Information Act, working as it should have in the interests of enlightenment. The piece needed a hero, and he came in the person of then-Atty. Gen. Benjamin Civiletti. While

virtually every other public official blocked disclosure, Civiletti was apparently compelled by the overriding social benefits of disclosure. On close questions, if the decision is left to the bureaucracy, secrecy will always win over openness. Civiletti turned aside the recommendations of his own staff and those of the FBI, and directed that a compromise be worked out. Once the FBI was ordered to focus on the matter, it blocked my access to only 25 of the tapes.

A year from now, another attorney general might not be willing to make a similar decision. My experience hardly makes a case for the monstrous power of the Freedom of Information Act. The proposed amendments would only strengthen the ability of government to hide behind its comfortable excuses.

The FBI proposal for a seven-year moratorium on all disclosures is the most frightening element in the mix. If enacted, it would prevent early studies of confusing contemporary events that have dramatic or criminal aspects. The day when the author or the historian has the upper hand over the government is a long way off, as it is. In a year, it could be no contest whatever.

James Reston Jr.'s book, "Our Father Who Art in Hell: The Life and Death of Jim Jones," has just been published. On Thursday, National Public Radio will broadcast excerpts of the Jonestown tapes, which Reston obtained under the Freedom of Information Act.

A Power That

By RICHARD HUDSON

I have decided to cash my \$1,000 check from the CIA. It was not an easy decision.

The check was a token compensation for opening my mail illegally, just part of the U.S. government's long surveillance of me while I was considered a possible subversive. As a loyal American, I find this puny "award" insult added to injury.

The matter began in August, 1975, when I requested my files from the Central Intelligence Agency, the Federal Bureau of Investigation, the State Department and other U.S. government agencies under the Freedom of Information Act. In due course, I received a 2-inch-thick sheaf of papers.

When I first read them, I didn't know whether to laugh or cry. On almost every page, large areas were blacked out by streaks from a heavy ink brush. But enough remained to dismay me thoroughly.

One example from an FBI report: "A current informant (name obliterated) out of the Los Angeles office, who has furnished reliable information in the past, advised on May 19, 1950, that on May 7, 1950, the California Labor School, Los Angeles Division, sponsored a May Day Festival at 330 S. Ford Blvd., Los Angeles. Informant advised that among automobiles parked in the vicinity at the time of the festival was one bearing California license 53 Z 783, which informant advised was registered to Richard M. Hudson Jr., 1459 Corson St., Pasadena, for a 1941 Studebaker sedan."

At that time, I was a candidate to become a Foreign Service officer in the U.S. State Department, having passed its tough four-day written exam. When I took the oral exam in Washington, I detected no hint that I might be suspected of holding subversive views. I was told that I was perhaps a bit young, and should reapply the following year, but by then I had decided that I preferred a career in journalism.

To this day, I have never heard of the California Labor School. Having kept a dia-