IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JAMES EARL RAY, Petitioner, v. J. H. ROSE, Warden, Respondent	No. C-74-166

REPLY TO RESPONDENT'S MEMORANDUM

Respondent's Post-Hearing Memorandum begins with an advance apology:

> We have tried to organize and present the evidence introduced at the evidentiary hearing in a straightforward and intelligible manner. If we have taken some liberties with the testimony, they are unintentional and may be attributed to incomplete notes and the absence of a transcript. But this is how it was. [Emphasis added]

With respondent proceeding apology in hand, one might expect the liberties taken to be many--and indecent. They are. It is beyond belief how some of these "liberties" can be unintentional. For example, at page thirteen respondent states:

> All the attorneys who testified in this case, whether defense, prosecution or neutral, agreed that the possibility of an acquittal for Ray given the evidence against him was virtually nil and the death penalty was a distinct possibility.

This is false. Arthur Hanes, Jr. testified that he and his father thought there was "a substantial possibility" of an acquittal. Both Arthur Hanes, Sr. and Arthur Hanes, Jr. testified that the State "was in trouble" or that the State "had problems." It is simply not believable that this important testimony by these two

key witnesses, amply reported in the press, was neither recorded nor remembered by any of respondent's attorneys.

Unfortunately, this misrepresentation of fact does not stand alone; there are still other examples. Such misrepresentations are grossly improper and they make it more difficult for petitioner to respond adequately to respondent's memorandum. There simply is not sufficient time for petitioner to correct all of the many factual errors and misrepresentations which respondent's memorandum contains. Some will be corrected in the sections which follow. However, before turning to that task, it is highly appropriate to quote one very significant passage in the Sixth Circuit opinion remanding this case to the District Court:

> 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. Ray v. Rose, 491 F. 2d 285, 291, fn. 4 [1974]

The "ethical, moral and professional irregularities" of which the Sixth Circuit spoke continue to this date. They include successful efforts to obstruct the holding of the "full scale judicial inquiry" mandated by the Sixth Circuit. Before proceeding to refute respondent's claims as to what the evidence adduced at the evidentiary hearing shows, a description of the limitations placed on that evidence is in order.

I. TWO KEY WITNESSES KEPT FROM TESTIFYING IN OPEN COURT

Next to James Earl Ray himself, the two most important witnesses were Percy Foreman and William Bradford Huie. Neither witness appeared in court to testify against James Earl Ray.

Percy Foreman, "the Texas Tiger," cannot claim that he failed to testify at Ray's evidentiary hearing because he did not have enough "tiger" in his tank to get to Memphis. Even at 72, Foreman carries on a vigorous practice. Foreman himself said so at his April 3rd deposition. When asked if he would voluntarily come to testify at the evidentiary hearing, Foreman replied:

> I don't know. It would depend on my schedule at the time. I told him yesterday that if I could work it into my schedule, that I would be happy to come. I have no objections to coming, but I have a very, very, very heavy schedule. When is it set for? [April 3, 1974, Deposition, p. 64]

Nor did Foreman fail to attend the evidentiary hearing because he was unaware of what was personally at stake for him. As he said at that same deposition: "I am here to defend my reputation against the allegations that I think have been improperly made against me . . ." [April 3, 1974, Deposition, p. 93]

Of course, Foreman could not come to Memphis to defend his reputation: it would be destroyed in the process. If he testified at Ray's hearing, Foreman would inevitably suffer the public embarrassment which he had sought to avoid with his March 9, 1969, bribery letters to James Earl Ray. At a minimum he would be exposed of perjury, bribery, absconding with funds held in trust for a client, and failure to prepare a defense for his client. Whatever Foreman might say in a deposition about defending his reputation, he did not want himself for a client at Ray's evidentiary hearing.

Theoretically, respondent should have wanted Foreman to testify at Ray's hearing. On paper Foreman looked very good. He is a wealthy and successful trial lawyer. He had been President of the National Association of Defense Lawyers in Criminal Cases. He boasted of trying more murder cases in a year than Darrow had in a

lifetime. And of winning nearly all of them. In the words of some of his admirers, "Percy Foreman may be the greatest criminal defense attorney in history." [Respondent's Post-Hearing Memorandum, p. 51]

Difficult as it may be to believe, respondent was no more anxious to put the world's greatest defense attorney on the witness stand than Foreman was to testify. Respondent argued that the rules of criminal rather than civil procedure should be applied to Ray's discovery motions. However, with regard to the subpoena of witnesses, respondent invoked the 100 mile territorial limit provided by the rules of civil procedure. The last thing respondent wanted was the subpoena power to compel the attendance and testimony of witness like Foreman, Huie, and Gerold Frank.

After the Sixth Circuit remanded this case to the District Court for an evidentiary hearing, respondent noted the deposition of Percy Foreman.[1] This was part of a plan to deprive the Court of Foreman's live testimony.

This plan, successfully implemented, denied Ray his right to confront Foreman and Huie in person in open court. As respondent's attorneys have apparently themselves admitted [See Commercial Appeal, November 2, 1974], this hurt Ray. A deposition is a totally inadequate substitute for testimony given in open court. The Court is deprived of the demeanor evidence of the deponent. The deponent is not under courtroom pressure and there is no efficacious way of compelling him to respond to questions he refuses to answer. In a civil case where the deposition is taken beyond the territorial limits of the court, a deponent can commit perjury at will without consequences.

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[1] In October, 1973, petitioner's counsel, worried that Foreman might die or become ill, proposed that his deposition be taken before Christmas, 1973, as a means of perpetuating his testimony. Respondent's attorney indicated he would consider this proposal. But he never responded to it.

Most importantly, Foreman's deposition was taken nearly seven months before Ray's evidentiary hearing, almost five months before any discovery was ordered in this case. Thus, the evidentiary value of Foreman's deposition was severely limited by the absence of documentary materials with which to cross-examine him. For example, petitioner's counsel did not at that time have Huie's November 20, 1968, contract with Dell or his March 17, 1969, contract with Cowles Communications, Inc.; Foreman's bank records; Ray's January 20, 1969, letter to Stanton; Canale's February 12, 1969, letter to Foreman; Gerold Frank's November 14, 1968, letter to Foreman; or any of the logs kept on Ray's confinement in the Shelby County Jail. Nor did petitioner's counsel have the draft of Ray's letter to Bevel.

The taking of William Bradford Huie's deposition on September 20, 1974, was equally irregular. In a talk show broadcast in Nashville in May, 1974, Huie stated, in reply to a question personally put to him by James Earl Ray, that he would come to testify at Ray's hearing. Respondent was not eager to have that happen. In his Motion For A First Pre-Trial Order, filed June 17, 1974, respondent indicated that he would take the deposition of Huie. Notwithstanding that intent, Huie's deposition was not noted until September 11, 1974, barely a month before the scheduled start of the evidentiary hearing.

The prextext for taking Huie's deposition in Nashville, that it is "almost impossible" for him to leave Hartselle overnight because he must take care of his 85 year-old mother, is fraudulent. [This pretext is stated at p. 90 of Huie's September 20 deposition] On November 15, 1974, Huie flew to New York, where he appeared for a TV interview on Channel 13. He reportedly stopped there en route

to Israel via Rome, Italy. Upon his return home, Huie learned that the tape of his Channel 13 interview had been accidentally erased. On December 3rd Huie was again in New York, this time to retape his earlier interview. The interview was broadcast over Channel 13 on December 11, 1974.

At the time Huie's deposition was taken, on September 20th, petitioner had still obtained almost none of the discovery which this Court had ordered. Huie made no discovery available before September 20th. This, of course, made it impossible to prepare a careful cross-examination of Huie based on any new discovery materials which he might choose to make available at his deposition on that date.

Huie, however, made available on discovery virtually nothing which he had not put in evidence in Ray's 1969 civil suit against him, Ray v. Foreman. In fact, Huie has failed to comply with nearly every provision in the two discovery orders served on him.

This is another point of extreme importance to Ray's rights. By refusing to testify in person at Ray's hearing, Huie and Foreman avoided contempt of court charges for failing to produce the discovery ordered of them. To illustrate this, we focus upon just one of the many discovery items which Huie has failed to comply with. The discovery order on Huie required him to produce "all correspondence with James Earl Ray . . ." This correspondence is relevant to many of the allegations in Ray's habeas corpus petition. One in particular stands out. In his September 21, 1972, affidavit Ray stated: "After I had dismissed Hanes, Huie wrote and offered to pay $12,000 to me or my brother. I refused the offer." [Trial Exhibit 13, ¶26]

At the time this affidavit was executed petitioner had nothing to support that statement except his word and the word of his

brother, Jerry Ray, that Huie had offered Jerry or any member of the Ray family $12,000 if James Earl Ray would not take the witness stand at his trial.

Respondent asserts that Jerry Ray's testimony that Huie offered him a $12,000 bribe is "not believable." [Respondent's Post-Hearing Memorandum, p. 57] But the prison mail logs obtained by petitioner nearly two weeks after Huie's deposition corroborate James Earl Ray, and, by inference, his brother Jerry.

The Incoming Mail Log [Trial Exhibit 45] shows that Huie wrote Ray directly only once. The log shows that Ray received that letter from Huie on November 15, five days after Ray fired Hanes. The Outgoing Mail Log [Trial Exhibit 46] shows that Ray wrote Huie on November 18, 1968.

In defiance of this Court's discovery orders, Huie has produced neither of these letters.[2]

The obvious reason why Huie has not produced these letters is that they would corroborate James Earl and Jerry Ray. Or, perhaps more to the point, they would reveal Huie to be guilty of both bribery and obstruction of justice.

These issues would have been raised in public had Huie come to Memphis to testify. Because Huie did not come testify in person, petitioner was denied the right to cross-examine him on the basis of these newly obtained discovery materials. And this has left an incomplete record on the bribery charge and many other important evidentiary points.

That is not to say that because the record is incomplete it is also inconclusive. Quite the contrary. Given Huie's and Foreman's refusal to take the witness stand and their failure to pro-

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[2]Ray testified that he gave his correspondence with Huie to Foreman after Foreman talked about suing Huie. Foreman has produced no discovery materials. In accordance with Policy Statement No. 11, the District Attorney General of Shelby County should have copies of this correspondence.

duce relevant documents, there is no alternative to the conclusion that petitioner's allegations are true.

II. DENIAL OF DISCOVERY RIGHTS

The nonappearance of Huie and Foreman at petitioner's hearing severely curtailed the evidence which could be put before the Court. In addition, the Court's capacity to conduct the full scale judicial inquiry mandated by the Sixth Circuit was further limited by massive noncompliance with the Court's discovery orders.

Petitioner obtained no discovery materials at all from Gerold Frank, George McMillan, Ned Brown, or Time-Life, Inc.

Very little discovery was obtained from Dell Publishing Company, William Bradford Huie, or Percy Foreman. The discovery which was obtained from Huie and Foreman was almost entirely limited to materials used in Ray v. Foreman. As noted above, critical documents are missing from the Ray-Huie correspondence, among them the letter from Huie which Ray received on November 15th and Ray's November 18 reply.

Most obviously missing is Foreman's "investigative file" on the Ray case. Respondent claims that "Preparation of the State's defense in this case has been handicapped to some extent by the loss of Foreman's trial file." [Respondent's Post-Hearing Memorandum, p. 2] The pretended "loss" of this file damages not only Foreman's credibility but respondent's as well. Foreman claims that in 1972 he turned this file over to the Hooker Law Firm. However, the response of the Hooker Law Firm filed with this Court on October 16, 1974, states that, "this firm does not have documents or files which appear to be Mr. Percy Foreman's files or investigation of the Ray case and, to the knowledge of this firm's

members and employees, have never had such documents and files."

This is undoubtedly true. There was never any reason for Foreman to give his investigative file on the Ray case to the Hooker Law Firm. Foreman says he gave the file to John J. Hooker, Sr., in 1972. By that time the civil suit, Ray v. Foreman, had ended. And John J. Hooker, Sr. had died--in December, 1970.

From this only two conclusions follow: either Foreman's investigative file never existed; or, Foreman is withholding that file in violation of court order because its disclosure would embarrass him.

For the past four years counsel for petitioner have assiduously tried to obtain all documents and evidence relevant to the Ray case. It has been a time-consuming task and many obstacles have been placed in the way of its accomplishment. One example will suffice to make the point. On August 31, 1972, petitioner's counsel wrote the Shelby County Public Defender, Mr. Hugh W. Stanton, Sr., and requested:

> 1. Copies of all letters exchanged between James Earl Ray or Percy Foreman and you.
>
> 2. A complete copy of the investigation which the Public Defender's Office carried out regarding the assassination of Dr. Martin Luther King.

This letter was returned with a parenthetical notation to the side of each request. With respect to the first request, the notation was "none"; for the second, it was "not available." [A copy of this letter is attached hereto]

It is now beyond dispute that the response to the first request was untrue. [See Trial Exhibit 35, letter from James Earl Ray to Hugh Stanton, Sr., dated January 20, 1969] Yet when Ray stated in his September 21, 1972, affidavit that he wrote Stanton

after Stanton's visit to see him in the Shelby County Jail, only his own word supported his sworn statement. Yet he spoke the truth about the existence, date, and contents of his letter to Stanton. [See Trial Exhibit 13, ¶28-¶29]

This example graphically illustrates the crucial importance of petitioner's discovery rights. Yet it is doubtful that petitioner obtained even so much as ten percent of the discovery to which he was entitled under this Court's discovery order.

Because respondent arranged for its two key witnesses, Huie and Foreman, to testify in abstentia and before their cross-examiner could have the benefit of petitioner's overall discovery materials, the failure to achieve substantial or even moderate compliance with the discovery orders is doubly significant. It compels the profoundest doubts about all aspects of the State's case and leaves the Court no alternative but to determine the facts favorably to petitioner.

III. OBSTRUCTION OF PETITIONER'S DISCOVERY RIGHTS

Respondent's efforts to obstruct discovery also denied petitioner access to and the effective use of considerable discovery materials. During the week which began September 30, petitioner sought to implement discovery in Memphis. Respondent sought to stonewall some of it and to stall the rest.

Respondent raised a number of frivolous objections to petitioner's implementation of the discovery and instigated time-consuming and ennervating quarrels over what was included within the discovery.

As a result of these reprehensible tactics, petitioner's counsel and his investigator were not able to accomplish nearly as

much discovery during their limited stay in Memphis as they otherwise would have. Many important documents and items of evidence clearly covered by the discovery orders were never examined at all. For example, they never managed to obtain the sherrif's and police radio logs. Other discovery materials were inspected much too hastily.

Respondent's tactics did affect the ability of petitioner's counsel to properly prepare for the evidentiary hearing. An example of this occurred during the cross-examination of petitioner's expert witness, Professor Herbert Leon MacDonell, when respondent derisively brought out the fact that petitioner's attorneys had not shown Prof. MacDonell photographs of the dent in the windowsill. What counsel for respondent did not inform Prof. MacDonell--or anyone else--was that he himself had insisted that petitioner was not entitled to and would not receive this or any other photographs of the evidence but only xerox copies of them.

Respondent's own discovery motion, filed on the very eve of the evidentiary hearing, was another "professional irregularity" aimed at hampering petitioner's preparation for the evidentiary hearing.

In this regard, counsel for petitioner wish to note that during an in chambers discussion of respondent's discovery motion on October 17th, counsel for respondent threatened to settle the matter by having Ray's files seized at Tennessee State Penitentiary in Nashville. This threat was passed off as a joke. There is reason to believe that it was not. When Ray was transferred to Memphis on the night of October 20th, his files were confiscated by State officials and were not returned to him until noon the following day. [See attached affidavit of James Earl Ray]

IV. RAY'S HEALTH

Respondent paints an almost idyllic picture of Ray's life in the Shelby County Jail. Lodged in well-lighted quarters, "a good motel room," Ray enjoyed fine food and the boon companionship of prison guards. He had history's "greatest criminal defense attorney" at his beck and call. But after eight months of living in style and comfort Ray turned ingrate and used his high I.Q. to cynically exploit public interest in the case by injecting "dark hints of a conspiracy" into his March 10 guilty plea proceeding.

This is not the way it was.

One tipoff is the failure of respondent to call any of Ray's guards to the witness stand and ask them what happened to Ray in that cell in the months prior to his guilty plea. Instead, the State relies on the testimony of Dr. DeMere, the prosecutor's brother-in-law, who spent a grand total of one hour and forty-six minutes in Ray's cell over an eight month period.[3]

Referring to the Daily Logs [Trial Exhibit 162], respondent says, "It shows that Ray took an occasional aspirin." [Respondent's Post-Hearing Memorandum, p. 12] Unless one assumes that counsel for respondent do not know that empirin is a trade mark for an aspirin compound, this is dishonest. The logs actually show that between January 21, 1969, and March 7, 1969, a period of 46 days, Ray took 42 empirins and 2 aspirins.[4]

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[3]Dr. DeMere testified that he examined Ray every 2-3 weeks. But the Visitors' Log [Trial Exhibit 44] shows he actually visited Ray only 5 times in 8 months, or about once every 6-7 weeks.

[4]There are two kinds of empirins. One is simply common aspirin. The other contains codeine, an opium deritive, and because it can be addictive is usually given only by prescription. We assume Ray got the first type. In succeeding paragraphs we do not distinguish between empirins and aspirins but lump them all together as empirins.

If this 46 day period is divided in half--and there is a logical reason for doing so--a significant pattern emerges.

During the 23 days from January 20 through February 12, Ray took a total of 16 empirins on eight different days. This is the period during which Ray has testified he thought Foreman was investigating his case and preparing to go to trial. Foreman visited Ray eight times during this period. On the eight days Foreman visited Ray, Ray took empirins only once, on February 5th, when Foreman visited him for five minutes.

During the 23 days from February 13 through March 7, Ray took a total of 28 empirins on 11 different days. February 13 is the day on which Ray testified Foreman first mentioned a guilty plea to him. March 7 is the day on which Foreman requested that the Court schedule Ray's March 10 guilty plea hearing. In short, this is the period during which the guilty plea was coerced by Ray's coming to understand that Foreman did not represent his best interests and would sell him down the river at a trial. Foreman visited Ray on six days during this period: February 13, February 18, February 20, February 26, March 6, and March 7. On each and every one of these six days Ray took 2 or more empirins after Foreman visited him on that day. When compared with the January 20-February 12 period, this presents a rather astonishing reversal of the previous pattern. It strongly supports Ray's testimony that he confronted two different Foremans during these two different periods.

This is further buttressed by other evidence contained in the Daily Logs. Examination of log entries for certain key dates reveals signs that Ray was under pressure. The log entries for February 18, the day on which Foreman visited Ray for 1 hour and 50 minutes and induced him to sign a letter authorizing negotiation

of a guilty plea, show Ray not eating lunch, pacing, taking empirins, restless, and not sleeping until 5:00 a.m. The entries for February 20, the day after Foreman met with Ray's family in St. Louis, show Ray not eating lunch when it was served after Foreman's 1 hour and 40 minute visit, taking 4 empirins, and "appear[ing] to be trying to sleep." John Ray testified that on March 8 when he visited James, James told him he was trying to decide whether to fire Foreman. The log entries for March 7 show that Ray was "veryquiet," "very restless," "very quiet," and, at 6:00 a.m on March 8 the guard noted "Ray have been very restless in his sleeping."

When James Earl Ray testified that he felt his health was deteriorating and that one reason he did not fire Foreman was because he didn't want to continue his ordeal under those circumstances, he was telling the truth.

V. THE WEALTHY MR. FOREMAN

Respondent points out that Foreman is a wealthy man. This is used in support of an argument which takes two contradictory forms: On the one hand it is urged that because Foreman is rich he had no money motive and therefore no conflict of interest. On the other hand it is argued that Foreman's financial interest lay in a trial, not a guilty plea.

It is entirely sensible that once a man becomes a millionaire he does not need more money. Unfortunately, to rephrase a famous dictum, the law of life is not always logic. Men sometimes become rich precisely because they obsessed with it. Once rich they sometimes continue to be obsessed with it.

William Bradfor Huie understood this principle--and sought to exploit it. Testifying before the Shelby County Grand Jury he compared Hanes and Foreman:

> I know them both; they have different personalities; but they are both interested in money but Mr. Foreman is a lot richer which means he is more not less. [Emphasis added. Trial Exhibit 119, p. 9]

The testimony of John and Jerry Ray confirms this. The morning after the guilty plea millionaire Foreman haggled over two or three dollars on a typewritter rental. When he learned that the money which he purportedly held in trust for James Earl Ray might be attached by Renfro Hays, Foreman, then age 67, broke into a run to get to the bank before that could happen. The bank records show that Foreman withdrew the remaining $8,000 in this "trust account" that day. James Earl Ray never heard from Foreman again.

John Ray also testified that Foreman told him he could not afford the time that a trial would take. The trial would be long, and there might be a hung jury. Foreman is obsessed with both time and money. To him they are one and the same. He charges $200 an hour for his work. References to time stud his deposition. [For examples, see pages 24, 25, 38, 68, and 147 of Foreman's 1974 Deposition] In Foreman's own words: "There is no way I could be absent from my practice 30 days without going broke." [1974 Foreman Deposition, p. 68] Poor Percy Foreman, he was just too rich to defend James Earl Ray.

VI. HUIE AND FOREMAN: THE CREDIBILITY CHASM

The State's case ultimately rests upon the credibility of its two key witnesses, Huie and Foreman. The two manage to impeach each other by making contradictory statements on essential points.

For example, Foreman denies Huie's claim that on November 27 Huie told him that James Earl Ray had no defense. Instead, Foreman swears that it is he who spent two or three hours convincing Huie that Ray and Ray alone killed Dr. King. [1974 Foreman Deposition, pp. 116-119] Because Foreman does not want to admit that he decided to plead Ray guilty before he investigated the case, he places the date on which he convinced Huie of Ray's guilt sometime after January 25th. However this only compounds the contradiction because Huie testifies that in late November or early December he decided that Ray alone was guilty and so informed his publisher. [1969 Huie Deposition, pp. 29-30]

Foreman swears that he did not go to Huie until after the guilty plea had been agreed upon. [1969 Foreman Deposition, p. 13] But Huie says that Foreman's reason for asking for the two $5,000 checks he gave him was the need for money to investigate the case, "to hire a lawyer in Memphis to do leg work." [See 1974 Huie Deposition, pp. 62-65]

In arguing that Ray was aware of the conflict of interest potential in the Hanes-Huie contracts, respondent quotes the following passage from Ray's November 22, 1969, Deposition describing Foreman's November 10, 1968 visit with Ray in the Shelby County Jail:

> He [Foreman] had them all, all my previous contracts, so after some general conversation, Mr. Foreman mentioned these contracts and I asked him what he thought of the contracts and he told me the only thing Mr. Hanes and Mr. Huie was interested in was money. He said he studied those contracts and if I stuck with them I would be barbecued. [Quoted at p. 32 of Respondent's Post-Hearing Memorandum]

In thus crediting Ray's testimony, the State impeaches its own witness, Percy Foreman. Foreman vehemently denied having the Hanes-Huie contracts with him when he saw Ray on November 10th.

The following exchange is from the 1974 Foreman Deposition:

> Did they [John and Jerry Ray] give you copies of the contracts, the Hanes and Huie contracts?
>
> Oh, hell, no. I never saw those contracts until January 25.
>
> You did not see anything of those contracts until January 25?
>
> I state I never saw them, and when I saw them, I did not read them.

[1974 Foreman Deposition, p. 129. See also p. 115]

Foreman's 1969 and 1974 depositions sometimes contradict themselves. Thus, in 1969 Foreman testified: "As between Ray and me, there was never any discussion of fee or payment." [1969 Foreman Deposition, p. 20] But in 1974 Foreman testified that he and Ray did discuss a $150,000 fee at their meeting on November 10. [1974 Foreman Deposition, pp. 37-38, p. 137]

Foreman's depositions and his statements in court also contradict each other. For example, Foreman has testified that he did not know that Hugh Stanton, Sr. was going to be appointed as Ray's co-counsel:

> I didn't ask to associate Mr. Stanton, the Court did not give me any option. The Court, out of the blue, decided that himself.
>
> You did not talk with Judge Battle about that before the hearing?
>
> I did not, and I was amazed it happened.
> [1974 Foreman Deposition, p. 103]

This is perjurious, as Foreman's statements to Judge Battle on December 18, 1968, show:

> I talked with Mr. Stanton a few minutes before Court and he has some reservations, Your Honor, about the investigative feature of the case but I understand the Court's order to include both investigation and representation.
> [Emphasis added. Trial Exhibit 83, pp. 33-34]

Had William Bradford Huie come to Memphis to testify, it is likely that his testimony, too, could have been impeached on the basis of perjury. In his 1974 deposition Huie indicates that he didn't take any notes. Specifically asked, "You didn't make notes when you talked to Percy Foreman?" Huie replied, "Lord, no." [1974 Huie Deposition, pp. 48-49] Upon returning home from Ray's evidentiary hearing, the undersigned counsel reviewed a file of materials which he had not taken with him to Memphis. This file includes numerous notes made by Mr. Huie. Two such pages are attached hereto. They contain such interesting and obviously relevant notations as: "Ray on stand?"; "Must have sensation"; "Ray give me quit-claim?"; "Ray doesn't have to identify anybody"; "New contract with 50-50 & 10 off top if & when"; and "804 South Coast Bldg. Houston". [This last notation is the address of Foreman's office in Houston]

VII. WITHHOLDING OF EXCULPATORY EVIDENCE

Respondent has made another attempt, more feeble than before, to claim that there was "overwhelming evidence" that Ray shot Dr. King. Lacking confidence in that claim, respondent also tries to convict Ray on the basis of a new version of the vicarious guilt theory which it has advanced before: since James Earl Ray's brothers are racists, ergo, James Earl Ray killed Dr. King. This, of course, is reminiscent of Huie's foray into the realm of logic during his testimony before the Shelby County Grand Jury: "Anyone who has any information about this case is obviously a guilty man."

There is no longer not even a shadow of a doubt that there never was any "overwhelming evidence" of Ray's participation in the

murder of Dr. King. In fact, all the evidence now points to the fact that James Earl Ray was framed of a crime he didn't commit. The evidence increasingly indicates that law enforcement official, both state and federal, have covered up the evidence of this frameup.

The testimony of Professor MacDonell states that the bullet removed from Dr. King can be traced to a specific rifle. The State put on no witness to refute his testimony. It did not call FBI ballistics expert Robert Frazier to the stand. Taken together with Frazier's affidavit, Professor MacDonell's testimony means that the bullet removed from Dr. King is traceable to a rifle other than the one left on South Main Street. This means that there was a conspiracy to kill Dr. King. It also eliminates any reasonable belief that James Earl Ray was part of that conspiracy.

In view of this it is obvious that a great deal of exculpatory evidence was and still is being withheld from petitioner. A Watergate type coverup of the assassination of Dr. King continues until this day. That and that alone explains the frenzied efforts of the State to obstruct an examination of the physical evidence by petitioner's investigator and counsel.

Much exculpatory evidence was contained in the London extradition documents which were not obtained by petitioner's counsel. This includes the affidavits of Robert Frazier, the ballistics expert, and Charles Quitman Stephens. From the letter of Police Chief Frank Holloman to District Attorney General Phil M. Canale, Jr., of January 23, 1969, it is obvious that police officers also submitted statements which contain exculpatory information.

The law on the withholding of exculpatory evidence was thoroughly discussed in the Memorandum of Points and Authorities which petitioner submitted at the time his habeas corpus petition

was filed in Nashville on December 4, 1972. Petitioner continues to rely on the authorities cited therein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this 13th day of December, 1974, mailed a copy of the foregoing Reply to Respondent's Post-Hearing Memorandum to Assistant Attorney General W. Henry Haile, 420 Supreme Court Building, Nashville, Tennessee 37219.

JAMES HIRAM LESAR

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August 31, 1972

Mr. Hugh W. Stanton, Sr.
Public Defender's Office
157 Poplar
Memphis, Tenn. 38103

Dear Mr. Stanton:

I am assisting Bud Fensterwald in the preparation of a habeas corpus petition on behalf of James Earl Ray. We would like to obtain the following from you:

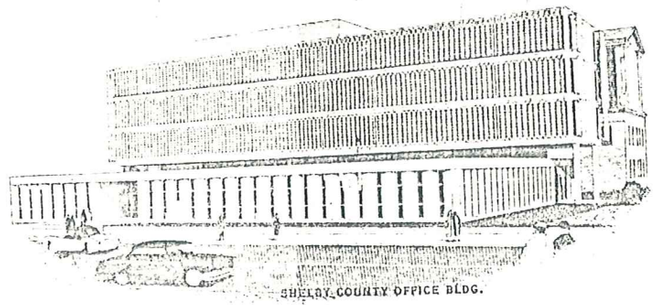
1. Copies of all letters exchanged between James Earl Ray or Percy Foreman and you. (none)

2. A complete copy of the investigation which the Public Defender's Office carried out regarding the assassination of Dr. Martin Luther King. (not available)

Sincerely yours,

Jim Lesar
Jim Lesar

Note from Percy Foreman
atty-at-law
Memphis Tenn.



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AFFIDAVIT OF, JAMES E. RAY #65477

STATE OF TENNESSEE:
County of Davidson:

JAMES E. RAY, being duly sworn, deposes and says:

1. That on or about October 20th 1974 he was transported from the Tenness ee State penitentiary, Nashville branch, to the Shelby County jail, Memphis, Tenn., for an Habeas Corpus hearing subsequently held in the U.S. District court for the Western district of Tennessee, in Memphis. Said hearing was held persuant to a decision by the U.S. 6th circuit court of appeals, case no, District court-C-74-166.

2. The aforementioned transfer was under the supervision of deputy warden, Robert Morford, of the State penitentiary.

3. That he, Ray, had various legal paper, approximately four (4) large yellow envelopes, with him for possible use in the aforementioned H.C. hearing.

4. That upon arriving at the above mentioned jail on the nigh of October 20th 1974 said legal papers were confiscated from, Ray, after some difficulity with Mr. Morford and others over press publicity; and the papers were not returned to, Ray, until the next day which was October 21st. 1974 at approximately 12' O'clock noon.

Respectfully: James E. Ray.

Subscribed and sworn to before me this
the 5 day of December, 1974
My commission expires AUG. 9, 1975.
Notary Public [illegible].

[illegible] Family   Cadillac - [illegible] in [illegible]

Bonebreaker

1. Ray on stand?   No deal
Never before — show questioning in 1954 —
London?

2. October 2nd - left B'ham.

3. Must have sensation.

4. Quit-claim or complete x
Ray give me quit-claim?

5. John Willard —

1535 N. Serrano
L.A. - 90027

6. Jerry got money for Ray in jail

| Crew
april - 3rd
[illegible]
[illegible] +
Walton —

7. Testimony of Bonebreaker - [illegible]
Fingerprint Expert —
affidavit — Testified in [illegible].
Mr. [illegible]

Ray telegraph Raoul. —
little town east of N.O. - stayed there +
went to Selma x
Birmingham Raoul at Starlight — already there —
+ go to room.
Raoul sat in car - Room had outside door.
Ray kept key outside door of [illegible] — [illegible]

[illegible] +
[illegible] +
made key for
Raoul

Tough wire police x

shocking about for a living lawyer who kisses the ass of people

Jay Stein

1. Sign document x
Ray on stand xx

2. New contract with 50-50 + 10 of tape
if + when x

3. Come back + bring all papers in cage x

4. Bring back Ruby, Llewly, + Easterly. + Tell.

5. Ray doesn't have to identify anybody X

Code —

6. Ray —

Establishment x

1. Payne —

2. "I have —" public contract — advised — advised
that I had too.

804 Gulf Coast Bldg.
Houston

Copy of Atlanta extradition

testing — London

→ Breakthrough — Ray — Gerald Hurtle

murder — Ray!