

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

JAMES EARL RAY,

Petitioner,

v.

JIMMY H. ROSE, Warden,

Respondent.

Civil Action No. C-74-166

OPPOSITION TO RAY'S POST-TRIAL MOTIONS
FOR DISCOVERY AND BRIEF IN
SUPPORT OF RESPONDENT'S MOTIONS TO STRIKE

- A. PETITIONER'S DISCOVERY MOTIONS ARE UNNECESSARY AND ARE IN VIOLATION OF THE COURT'S PRIOR ORDERS ON DISCOVERY IN THIS CAUSE.

Before and during the evidentiary hearing in this case, counsel for petitioner examined all the items now sought from the District Attorney General. At the hearing the State upon cross-examination of John Carlisle, inspector with the District Attorney General's office identified all of the correspondence to and from James Earl Ray which is now sought. The respondent tendered those materials to adversary counsel at which time counsel again inspected all correspondence to and from James Earl Ray together with papers taken from Ray's cell trashcan. Prior to the hearing and at the hearing, the Court ruled that no further discovery would be ordered.

- B. RAY'S COUNSEL HAVE NOT COMPLIED WITH THE COURT'S DISCOVERY ORDER.

The Court ordered James Earl Ray to produce and make available to the respondent any and all relevant corres-

pondence to or from James Earl Ray on the subject of his guilty plea. Respondent notes that the letter from James Earl Ray to Jerry Ray of March 10, 1969 was not shown to respondent at the hearing and is particularly revelant to the issue of whether Ray's guilty plea was intelligently and knowingly entered. Throughout the proceeding, Ray's counsel has contended that Foreman badgered Ray into a guilty plea and that Ray was dissatisfied with Foreman. However, the attached letter of March 10 states in revelant part:

Don't write me here in Memphis as I will probably leave here shortly, will write as soon as I get to Nashville. I would get Foreman to take care of thoes (sic) legal matters as soon as possible. Take it easy.

If this is really a March 10, 1969 letter from James Earl Ray, his statements show that he was not dissatisfied with Foreman's representation.

The second letter attached to Ray's counsel's motion is alleged to be a letter to Jerry Ray written February 17, 1969 which, if anything, indicates that Jerry Ray was seeking to exploit his brother's criminal status for his own gain and that Foreman would not be a party to such exploitation. Further, it shows that James Earl Ray consented to his brother's exploitive acts.

C. THE MOTION TO ADMIT CERTAIN ITEMS OF EVIDENCE IS IMPROPER.

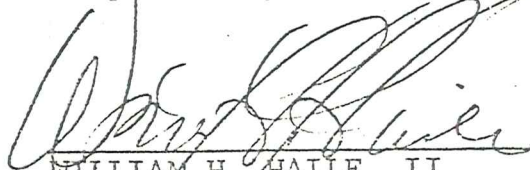
At the conclusion of all the proof, counsel for the petitioner and respondent conferred on remaining exhibits that had been marked for identification but had not been admitted into evidence.

Petitioner's counsel now seeks to admit into evidence, by motion, the affidavits of his own witnesses John Ray, Jerry Ray, and James Earl Ray. At the hearing, petitioner's counsel had ample opportunity to have these affidavits identified by each witness but for some reason did not do so. To attempt now to introduce these affidavits is improper.

As to Exhibits 38A and 38B, there was no doubt at the conclusion of the hearing that these exhibits had not been identified by any witness and were not introduced as evidence. Petitioner's counsel asked Arthur Hanes if he could identify these letters and Mr. Hanes could not. An attempt to introduce these exhibits by argument at this time is contrary to the proper procedure for identification of documents. The customary procedure is designed to protect the reliability of the fact finding process.

Ray's latest attempt to introduce his letters of February 17, 1969 and March 10, 1969 is highly improper -- especially in light of his failure to surrender them in accordance with the Court's pre-trial discovery order.

Respectfully submitted,



WILLIAM H. HAILE, II
Assistant Attorney General
421 Supreme Court Building
Nashville, Tennessee 37219

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent this 17th day of January 1975 to Mr. Bernard Fensterwald, Jr., Attorney at Law, 910 16th St. N.W., Washington, D.C. 20006, Mr. James H. Lesar, Attorney at Law, 1231 4th S.W., Washington, D.C. 20024 and Mr. Robert Livingston, Attorney at Law, Commerce Title Building, Memphis, Tennessee 38103.

W. Henry Haile *th*
W. HENRY HAILE
Assistant Attorney General