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 MOTIONS TO STRIKE

Respondent has moved to strike the two motions which petitioner made after the conclusion of the evidentiary hearing. A brief reply is in order.

In moving the admission of the affidavits of John, Jerry, and James Earl Ray, counsel for petitioner stated that he thought that respondent had agreed to stipulate to the admission of those exhibits. Co-counsel Bernard Fensterwald has an identical recollection. Significantly, respondent does not state that no such agreement was reached at the conclusion of the evidentiary hearing.

Respondent raises no valid objection to the admission of these exhibits. There is no claim that the affidavits are forgeries or that respondent was unaware of them or their content, and respondent plainly had ample opportunity to cross-examine these witnesses about the authenticity and veracity of their affidavits.

Counsel for petitioner admits that it would have been much better form had he asked each of these witnesses to identify his own affidavit for the record. He regrets very much that he overlooked this. However, respondent apparently concedes that these affidavits could have been admitted at the conclusion of the evi-

dentiary hearing. That being the case, it is difficult to see why it would be improper to admit them now. Any objections to admissibility which respondent might have raised at the conclusion of the evidentiary hearing can also be asserted now. Since respondent has not raised any substantive objections, the ends of justice would best be served by admitting these affidavits in evidence.

With respect to Exhibits 38-A and 38-B, respondent states "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." However, as previously stated, it is the recollection of counsel for petitioner that James Earl Ray did identify Exhibit 38-A as a letter which he received from William Bradford Huie via Percy Foreman in February, 1969.

Respondent urges that the introduction of these exhibits at this time "by argument" is contrary to "the customary procedure [which] is designed to protect the reliability of the fact finding process. Under the peculiar circumstances of this case, that is a very lame objection.

Respondent asserted in open court that these letters were forged by counsel for petitioner, but that accusation is admittedly false. And that accusation was obviously intended not to assist the reliability of the fact finding process, but to obstruct it.

In moving the admission of Exhibits 38-A and 38-B, petitioner asserted that at the same time respondent's counsel was claiming forgery, he in fact knew that the exhibits he objected to were authentic. That charge has not been denied.

In addition, it should be pointed out that the main obstacle to the "customary identification" of these exhibits was the contrivance by which respondent arranged for William Bradford Huie to avoid testifying in person at Ray's evidentiary hearing.

One rather bizarre result of this contrivance is that while Ray's answers to Huie's questions are in evidence, Huie's questions are not. This is not a state of affairs conducive to reliable fact-finding.

With respect to petitioner's discovery motion, respondent asserts that Ray's counsel did not comply with the court's discovery order by failing to produce for inspection and copying before the evidentiary hearing the two letters from James Earl Ray to Jerry Ray of February 17, 1969 and March 10, 1969. This is not true. As petitioner's discovery motion states: "Counsel for petitioner neither read nor even obtained copies of any of this correspondence until after the evidentiary hearing had concluded." In fact, counsel for petitioner only obtained these letters after respondent's Post-Hearing Memorandum stated--incorrectly--that these letters had been kept by James Earl Ray, and implied that petitioner was withholding these letters because they did not support his version of the events leading up to his coerced guilty plea. [See Respondent's Post-Hearing Memorandum, p. 22] Under these circumstances, counsel for petitioner thought it only fair that petitioner be allowed to show that respondent's implication is untrue.

Respondent's Motion To Strike also states:

> "Discovery has already been had on all letters and notes in the possession of the Shelby County District Attorney General. The petitioner's attorneys were able to peruse all letters and notes in the District Attorney General's possession before the hearing and the same letters and notes were brought into Court by the witness John Carlisle and re-examined by petitioner's attorneys and <u>there are no others</u>."

If this is true, there seems to be no basis for respondent's strenuous opposition to this discovery motion. However, there is reason to believe that respondent's representations are not true.

Petitioner's counsel has notes on the evidentiary hearing which read as follows: "Jerry Ray letter to JER (July 27, 1968)--from AG file, but not on discovery. Haile claims not covered by any discovery order." This interchange occurred during James Earl Ray's testimony. If these notes are accurate--and the transcript of the evidentiary hearing should show whether or not they are--then all of Ray's correspondence in the District Attorney's files was not made available to counsel for petitioner.

During Ray's testimony respondent also introduced Exhibit 149, a xerox of a telegram from Rev. James L. Bevel to James Earl Ray and an undated draft of Ray's response to Bevel. It is the recollection of counsel for petitioner that when asked where these documents had been obtained, counsel for respondent stated that he got them from petitioner's files. This is not true. Petitioner's counsel had not seen copies of these documents prior to their introduction in evidence at the evidentiary hearing. It would be most helpful for petitioner to learn who these copies were obtained from, when, and by what means. Petitioner would also like to know who has the originals. Ray testified that he thought that the copy of his response to Bevel is a draft of the letter he eventually sent Bevel, rather than a copy of the letter itself. If this is true, it again indicates the persistance and thoroughness of the surveillance illegally conducted against him. Petitioner believes that if his discovery motion is granted, it would help to clear up these disturbing questions.

Respectfully submitted,

James H. Lesar

JAMES HIRAM LESAR
1231 Fourth Street, S. W.
Washington, D. C. 20024

ROBERT I. LIVINGSTON
940 Commerce Title Bldg.
Memphis, Tennessee 38103

BERNARD FENSTERWALD, JR.
910 16th Street, N. W.
Washington, D. C. 20006

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have this 27th day of January, 1975, mailed a copy of the foregoing Reply to Respondent's Motions to Strike to Assistant Attorney General W. Henry Haile, 420 Supreme Court Building, Nashville, Tennessee 37219.

James H. Lesar

JAMES HIRAM LESAR