

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

.....  
JAMES EARL RAY,

Petitioner-Appellant,

v.

Civil No. 74-166

J. H. ROSE, Warden,

Respondent-Appellee  
.....

REPLY TO OPPOSITION TO MOTION FOR LEAVE  
TO PERPETUATE TESTIMONY PENDING APPEAL

Respondent has filed an opposition to petitioner's motion for leave to take the deposition of William Bradford Huie pending appeal. Contrary to the assertion of the respondent that a complete deposition of Mr. Huie "touching on all aspects of the issues between the parties" is already in the record, it is apparent from the enumeration of items of testimony to be elicited from Mr. Huie which is contained in petitioner's motion that there is no testimony from Mr. Huie on a wide range of the most important factual issues in this case. For example, there is no testimony from Mr. Huie about the two very important pages of his notes which are attached as exhibits to petitioner's motion. Nor is there any testimony from Mr. Huie about his attempt to bribe James Earl Ray not to take the witness stand. Nor is there any testimony from Huie about his refusal to produce on discovery the documents ordered by this court. These examples are sufficient to show why respondent is afraid to take a deposition of William Bradford Huie now that petitioner has obtained some of the relevant documents

As petitioner has stated previously, the taking of Huie's deposition last September 20th was fraudulent. It's transparent purpose was to deprive petitioner of his right to confront and cross-examine Huie in open court and to enable Huie to testify while at the same time refusing to comply with the court's discovery orders. Contrary to the false statements made during the Huie deposition by General Haile and Mr. Gareth Aden (see Huie deposition, pages 90-92), no attorney for James Earl Ray stated he would be present at the Nashville deposition. The subject of Huie's deposition was first broached at a conference between Mr. Lesar, Mr. Fensterwald, and General Haile on August 15, at which time counsel for petitioner vehemently objected to the suggestion. [A tape of that conference was made by petitioner's counsel] The taking of Huie's deposition was not mentioned at the August 21 preliminary hearing which was to have resolved all discovery disputes, at least insofar as petitioner's counsel can recall. Instead, the proposed deposition of Huie was revived during a September 9 phone call to Mr. Fensterwald. After conferring with co-counsel, Mr. Fensterwald wrote General Haile the next day politely rejecting the "proposed deposition" of Huie. No one able to read plain english can construe it as other than an indication that counsel for Ray would not participate in that deposition. [A copy of Mr. Fensterwald's letter is attached hereto.]

In arguing against taking another deposition of Mr. Huie now, General Haile destroys the pretext for the taking of Mr. Huie's deposition in Nashville last September 20th. That pretext was that Mr. Huie lived with his 85 year-old mother who had been in the hospital "six times within the last nine months." [Huie deposition, p. 90] Therefore, Mr. Huie could not leave Hartselle overnight to come to Memphis and testify at the evidentiary hearing.



Petitioner has previously commented to the court on the fraudulent nature of this pretext. Huie is known to leave home for extended periods of time. Indeed, less than two months after his September 20 deposition, Huie appeared on WNET TV in New York City, where he had stopped over en route to Rome and Tel Aviv. Now General Haile provides additional evidence that the justification for taking that deposition was faked by assuring the court that when he saw her last September, Huie's mother was "in excellent health."

In the process of contradicting Huie on the state of his mother's health last September, General Haile also discloses that he made a trip to Hartselle/<sup>at</sup>that time. This provides additional justification for granting petitioner's motion to take Huie's deposition pending appeal by making apparent the collusion between Mr. Huie and General Haile which made it possible to depose Huie without having him testify on most of the basic factual issues in the case and without requiring him to produce for petitioner's inspection the relevant documents in his possession specified in this court's two discovery orders on him. In short, Mr. Huie's September 20th deposition was a sham, contrived to let him testify against petitioner without subjecting him to cross-examination in open court and without petitioner having been allowed access to the vital discovery documents which this court ordered him to produce.

For the reasons set forth above and in petitioner's motion, the court should grant him leave to take Mr. Huie's deposition pending appeal.

Respectfully submitted,

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply to Opposition to Motion for leave to Perpetuate Testimony Pending Appeal has been sent this 28th day of May, 1975 to Assistant Attorney General W. Henry Haile, 419 Supreme Court Building, Nashville, Tennessee 37219.

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JAMES H. LESAR