

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 75-1996  
 :  
 U.S. DEPARTMENT OF JUSTICE, :  
 :  
 Defendant :  
 :

AFFIDAFIT OF JAMES H. LESAR

I, James H. Lesar, first having been duly sworn, depose and say as follows:

1. I am counsel for plaintiff in the above-entitled case.
2. I have read the affidavits of Salliann M. Dougherty and Janet L. Blizzard attached to defendant's Memorandum in Response to Motion to Order Disclosure of Records of the Civil Rights Division of the Department of Justice. I note, preliminarily, that neither affidavit addresses the question of whether there are any Civil Rights Division records responsive to plaintiff's April 15, 1975 request. Plaintiff has on numerous occasions pointed out that the July 13, 1976 affidavit of Stephen Horn suffers from the same deficiency.

3. Paragraph 7(a) of Ms. Blizzard's affidavit states categorically: "There is no Department of Justice file which is numbered 41-157-147." I attach hereto copies of two Civil Rights Division memoranda which bear the number "41-157-147" right below Department of Justice File No. 144-72-662. (See Exhibits 1-2)

4. Item 13 of plaintiff's December 23, 1975 request asks for:

All records pertaining to any alleged or contemplated witness, including any statements, transcripts, reports, or memorandums from any source whatsoever.

Attached hereto as Exhibit 3 are pages from Vol. XIII of the House Select Committee on Assassinations' investigation into Dr. King's

assassination. Page 184 shows that the Civil Rights Division drew up a lengthy memorandum on legal and practical problems involved in subpoenaing William Bradford Huie to testify before a Grand Jury or in using a search warrant to obtain materials in his possession. The footnote to this passage, No. (222), cites "Memorandum to Attorney General re James Earl Ray Possible Evidence of Conspiracy; DOJ King Assassination file, 144-72-662." To the best of my knowledge and recollection, the Civil Rights Division has not provided Mr. Weisberg with a copy of this memorandum.

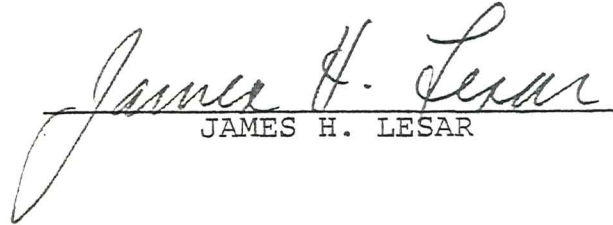
5. As is shown by Exhibits 4-5, Mr. Huie was subpoenaed to testify before the Shelby County Grand Jury. I have read the transcript of his grand jury testimony. Although Ray was paying for James Earl Ray's legal defense, in exchange for confidential information received from James Earl Ray through his attorneys, Huie testified against Ray before the Shelby County Grand Jury. Immediately after Huie testified, Phil Canale, the District Attorney General of Shelby County wrote Percy Foreman, Ray's lawyer, that he was going to use Huie as a witness for the prosecution at Ray's trial. Foreman, who had a 60 percent interest in Huie's exclusive book and movie rights to the Ray story, began to pressure Ray to plead guilty two days later. Because of these and other facts, any records pertaining to Huie's role in the Ray case or the government's efforts to make use of him are of great public interest.

6. Item 17 of Mr. Weisberg's December 23rd request is for:

All notes, memoranda, correspondence or investigative reports constituting or pertaining to any re-investigation or attempted re-investigation of the assassination of Dr. King undertaken in 1969 or anytime thereafter, and all documents setting forth the reasons or guidelines for any such re-investigation.

Exhibit 6 consists of pertinent pages of the Office of Professional Responsibility's report on a reinvestigation of the King assassi-

nation carried out by a Department of Justice Task Force under its direction. It shows that between November 24, 1975 and April 26, 1976, the Civil Rights Division of the Department of Justice undertook a review to determine whether the investigation of the assassination of Dr. King should be reopened. Such a review must have generated materials responsive to item 17 of Mr. Weisberg's request, yet to the best of my knowledge and recollection, the Civil Rights Division has not provided these records to Mr. Weisberg.

  
 JAMES H. LESAR

DISTRICT OF COLUMBIA

Subscribed and sworn to before me this 5th day of January,  
 1981.

  
 NOTARY PUBLIC IN AND FOR  
 THE DISTRICT OF COLUMBIA

My Commission Expires August 31, 1984



October 22, 1970

H. William O'Connor  
Chief, Criminal Section  
Civil Rights Division

Monica Gallagher  
Attorney, Criminal Section

MC:msb  
144-72-662  
41-157-147

Telephone Confereration with Mr. Fensterwald

Mr. Fensterwald called Wednesday, October 21 to report on his conversation with Ray. He said that he was unprepared to give a conclusive answer but felt that the prospects for Ray going before a federal Grand Jury were not good. He said that he wished to give Ray a few days to reconsider before giving his final answer.

Mr. Fensterwald said there appeared to be three main reasons why Ray would not be interested in testifying at this time: 1. He is not sure he has enough information to indict anyone (this is Mr. Fensterwald's language); 2. He has a huge distrust of the FBI, according to Mr. Fensterwald "based on long years' experience"; 3. According to Mr. Fensterwald the most important reason): he says that if the only way he can get out of jail is to put someone else in there, he won't do it. In this connection, Fensterwald said Ray used expressions such as "I could never look anybody in the face again" and "People who live a life of crime can't go running to the police when they get in trouble."

Mr. Fensterwald said that Ray was not particularly concerned about such aspects of the matter as his own physical safety, the place where a Grand Jury might be held, etc., items which were of some concern to Mr. Fensterwald.

cc: Records ✓  
Chrono  
Turner  
Gallagher



Jerris Leonard  
Assistant Attorney General  
Civil Rights Division

November 4, 1970

K. William O'Connor  
Chief, Criminal Section

KWO:cmsb  
DJ 144-72-662  
# 41-157-147

Assassination of Dr. Martin Luther King - Possible James Earl Ray Testimony

On November 3, 1970, Mr. Fensterwald called me from Los Angeles. He said that he thought that Mr. Ray would never agree to testify before a Federal grand jury because he felt that Ray believed unshakably that the only way he could get out of jail would be to put someone else in. Fensterwald asked if the question of Ray's appearance before a Federal grand jury could be left open a little while longer, as he would see Ray again and talk to him "in a few weeks". I told him that I would accept his request, but that we would make our decision at the time which seemed appropriate to us.

Mr. Fensterwald said that he is, and has been, involved for some years in a committee which is studying the killings of Robert Kennedy by Sirhan Sirhan and the killings of John F. Kennedy and Martin Luther King. He said that he believed that the three killings are linked together, and that he is relatively sure that he can link together the killing of Robert Kennedy by Sirhan with the killing of Martin Luther King. He suggested that Matt Byrne had information as to a second man besides Sirhan who was involved in the Robert Kennedy killing and he asked me if I would like to meet with him and Byrne to discuss this issue. I told him that I had to think about that, and that if he wanted to call me when he returns to Washington he could do so.

cc: Records ✓  
Chrono  
Turner  
O'Connor  
Gallagher



INVESTIGATION OF THE ASSASSINATION  
OF MARTIN LUTHER KING, JR.

---

---

APPENDIX TO  
HEARINGS  
BEFORE THE  
SELECT COMMITTEE ON ASSASSINATIONS  
OF THE  
U.S. HOUSE OF REPRESENTATIVES  
NINETY-FIFTH CONGRESS  
SECOND SESSION  
VOLUME XIII  
(SCIENTIFIC REPORTS)  
and  
(SUPPLEMENTARY STAFF REPORTS)

MARCH 1979

Printed for the use of the Select Committee on Assassinations





- (210) The Crime Records Division of the FBI in addition to responsibilities in the areas of crime statistics, Congressional liaison, and citizen correspondence, handled all press and media relations for the FBI.
- (211) Letter, DeLoach to Tolson, Mar. 11, 1969; FBI Headquarters Murkin file, serial 44-38861-5654.
- (212) *Ibid.*
- (213) Letter, Jones to Bishop, Mar. 20, 1969; FBI Headquarters Murkin file, serial 44-38861-5655.
- (214) Staff interview with Thomas R. Bishop, June 20, 1978 House Select Committee on Assassinations p. 3 (MLK Document 230012).
- (215) Staff interview with Gerold Frank, Sept. 1, 1977 House Select Committee on Assassinations p. 4 (MLK Document 130100).
- (216) See staff interview with Fred Vinson, Jr. supra at ref. 132.
- (217) Use of a grand jury to secure the testimony of James Earl Ray had been considered by the Department of Justice on at least two occasions, to be discussed in a separate section of this report.
- (218) Teletype, Chicago to Director, Aug. 23, 1968, FBI Headquarters Murkin file, serial 44-38861-5142.
- (219) Memorandum. Director to Pollak, Sept. 10, 1968, FBI Headquarters Murkin file, serial 44-38861-5158.
- (220) Airtel, SAC Birmingham to Director, Sept. 2, 1968, FBI Headquarters Murkin file, serial 44-38861-5160.
- (221) See memorandum. Director to Pollak, supra at ref. 219.
- (222) Memorandum. to Attorney General re James Earl Ray Possible Evidence of Conspiracy; DOJ King Assassination file, 144-72-662.
- (223) Memorandum. Pollak to Director, Sept. 17, 1968, FBI Headquarters Murkin file, serial 44-38861-5174.
- (223a) *Ibid.*
- (224) See Look magazine, Nov. 12, 1968, supra at ref. 129.
- (225) Memorandum, Pollak to Director, Nov. 7, 1968, FBI Headquarters, Murkin file, serial 44-38861-5382.
- (226) Memorandum. Pollak to Director, Nov. 16, 1968, FBI Headquarters, Murkin file, serial 44-38861-5388.
- (227) See Look magazine, Nov. 26, 1968, supra at ref. 129.
- (228) See, memorandum, Pollak to Director, supra at n. 128.
- (229) When interviewed by the committee AAG Pollak could not recall why the Department's decision took so long, and agreed that the reason for the ultimate decision not to pursue a warrant was based on an assumption that Huie's articles contained most of the information.
- (230) See staff interview with Alex Rosen, supra at ref. 12.
- (231) See staff interview with James R. Malley, supra at ref. 16.
- (232) *Ibid.*
- (233) See staff interview with Clem McGowan, supra at ref. 3.
- (234) *Ibid.*
- (235) See staff interview with Wilbur Martindale, supra at ref. 6.
- (236) See staff interview with Ed McDonough, supra at ref. 4.
- (237) See staff interview with Fred Vinson, supra at ref. 144.
- (238) See executive session testimony of Ramsey Clark, supra at ref. 135, p. 78.
- (239) *Ibid.* at p. 78.
- (240) *Ibid.* at pp. 79-80.
- (241) *Ibid.* at p. 82.
- (242) FBI interview with Charles J. Stein, Apr. 24, 1968 by State attorneys Gardner and Slicks, dictated on Apr. 30, 1968. Los Angeles Murkin file 44-1547.
- (243) See, e.g., FBI interview with George Jones (Kansas City, Apr. 22, 1968, 302 by State attorney Howe); Robert Burns and James Stidham (Kansas City June 14, 1968, 302 by State attorney Howe).
- (244) Memorandum. Rosen to DeLoach, Aug. 19, 1968, FBI Headquarters Murkin file, serial 44-38861-5097.
- (245) For further analysis of the investigation concerning Ray's family, see text, *infra.* at refs. 319-340.
- (246) See, e.g., memorandum from Director to Pollak, Apr. 20, 1968 and Apr. 25, 1968, FBI Headquarters Murkin file, serial 44-38861-5631 (concerning the Bureau's resolution of allegations made by one John McFerren concerning Frank C. Liberto and James W. Latch of Memphis, Tenn.)
- (247) Executive session testimony of Ramsey Clark, supra at ref. 135, p. 85.
- (248) *Ibid.* at p. 26.



During the interview, Huie indicated that he had entered into a contract with James Earl Ray and Arthur Hanes, Sr., Ray's attorney, to fund the defense through his writing. Huie showed the Klingemans pieces of paper with Ray's handwriting on it, and gave the Klingeman's details of a vague conspiracy to kill King in which Ray was only an unwitting dupe. (218) On August 24, the FBI began internal consideration of means to secure Huie's evidence, including seizure of the author's notes, through use of a search warrant or a grand jury subpoena, or the taking of Huie's testimony in a grand jury. Three days later the matter was raised with D. Robert Owen, Deputy Assistant Attorney General of the Civil Rights Division, (219) and Federal prosecutors initiated what turned out to be a lengthy and ultimately inconclusive consideration of the Bureau's alternative proposals. (131) Meanwhile, the Birmingham field office was contacted, apparently coincidentally, by Huie himself, and receive a rather extraordinary offer from the author. Huie stated that he was in "constant contact" with Ray through the defendant's attorney, although he had been denied personal access to the prisoner by the trial judge, W. Preston Battle. The author offered to turn over to the FBI on a confidential basis all information received from the defendant both in the past and in the future (including names of cities, States, places, maps and individuals contacted by Ray, as well as activities from the date of his escape from prison to his apprehension in England), if he could be given current, nonpublicized photographs of Ray of character type and was afforded personal access to the prisoner. Huie then requested that the interview be kept confidential. (220)

(132) FBI officials conveyed this new information to the Justice Department on September 10, 1968, along with a request for permission to inform Mr. Phil M. Canale, Jr., State Attorney General, of Huie's evidence, and a request that the Department give consideration to the urgency of making a determination as to the course of action it desires to follow in this matter, in light of the upcoming November 12, 1968, trial date in Memphis. (221) The Birmingham field office was advised not to bargain with Huie, and to keep headquarters informed of any further approaches by the author.

(133) Within the Department's Civil Rights Division, which was ultimately responsible for any Federal conspiracy prosecution, and therefore most keenly interested in the evidence possibly in Huie's possession, a lengthy memorandum of law was drawn up exploring practical and legal problems inherent in the use of the search warrant or the grand jury subpoena. Despite the Bureau's request that the Department also consider taking oral testimony from Huie before a grand jury, the memo reflected no consideration of this alternative. Clearly—and justifiably—concerned over possible damage to the State and potential Federal prosecutions that would result from an invalid search warrant, (222) Pollak ultimately recommended cautious use of a search warrant under tight, specifically defined procedures including requesting Huie's unconditioned cooperation prior to use of the warrant. Pollak's memorandum was transmitted to the Attorney General (223), and the FBI was asked to postpone any disclosure of information to the local prosecutors until a decision was reached by the Department. (223a)



(134) On October 4, 1968, 5 weeks after the matter was first submitted to the Department, the Bureau sent another memorandum to AAG Pollak, reminding him that Canale had not yet been informed of Huie's evidence and asking for a decision concerning the possible employment of the search warrant or grand jury subpoena. No response of any type was given, however, until November 7, 1968, when, after circulation of Huie's first Look magazine article, (224) the Department asked the Bureau to investigate certain leads suggested by the article. (225) The same procedure was followed 1 week later, (226) following release of Huie's second, Look magazine article. (227)

(135) Then, on November 27, 1968, 3 months to the day after the initial FBI request, a short memo is sent to the FBI:

This responds to an inquiry from your Bureau. We have no present plans to obtain a search warrant or issue a subpoena in order to obtain the notes and letters in the possession of William Bradford Huie, allegedly received by him from James Earl Ray through Attorney Arthur Hanes. (228)

No mention was made of the possibility of securing Mr. Huie's oral testimony before a grand jury, and no steps were taken by Federal prosecutors then, or at any later time, to secure that testimony. (229) In February 1969, prior to Ray's plea, Huie was called before a local grand jury in Shelby County conducted by District Attorney General Canale to secure testimony concerning a variety of matters, including the possibility of co-conspirators in the Tennessee murder case.

(136) Beyond this one instance, the FBI never formally proposed the use of a grand jury during their assassination investigation. Different explanations for this situation were given by various members of the FBI's headquarters staff during their interviews with the committee. Alex Rosen, Assistant Director of the General Investigative Division, noted that the Bureau traditionally resorted to the grand jury only after all other investigative methods had failed. Since active leads existed until Ray's arrest, the grand jury was unnecessary. In addition, Rosen raised the possibility that an active field investigation and a simultaneous grand jury investigation could wind up on different tangents, and expressed some concern over the premature publicity of confidential information which might result from involvement of a local U.S. attorney in a grand jury proceedings. (230)

(137) Additional reasons given by FBI headquarters personnel for the absence of a grand jury investigation included a general feeling that people were cooperating during field interviews, neither withholding information, nor giving false information; (231) the Bureau's customary practice of not bringing the prosecutor into the case until the matter was ripe for indictment; (232) a concern about the tenuous jurisdiction supporting the FBI's investigation; (233) a skepticism about the value of this investigative approach, considering the probability that a prospective target would either perjure himself or assert the fifth amendment; (234) a fear over loss of control of the investigation that would result from the participation of Department attorneys; (235) and a feeling that the FBI's field investigation had solved the case, making a grand jury unnecessary. (236)



## 2. The Attorney General's Directive

On November 24, 1975, the Attorney General of the United States directed the Civil Rights Division of the Department of Justice to undertake a review of the files of the Department and its Federal Bureau of Investigation to determine whether the investigation of the assassination of Dr. Martin Luther King, Jr. should be reopened. More particularly it was sought to be determined: (1) whether any action taken in relation to Dr. King by the FBI before the assassination had, or may have had, an effect, direct or indirect, on that event, and (2) whether any action was taken by the FBI which had, or may have had, any other adverse effect on Dr. King. Recommendations for criminal, disciplinary or other appropriate action were requested.

## 3. The Review up to April 26, 1976

In the next four months, the Assistant Attorney General in charge of the Civil Rights Division, his principal Deputy Assistant Attorney General and the Chief of the Criminal Section of the Civil Rights Division, acting as a review staff, variously read portions of the FBI headquarters file on a person

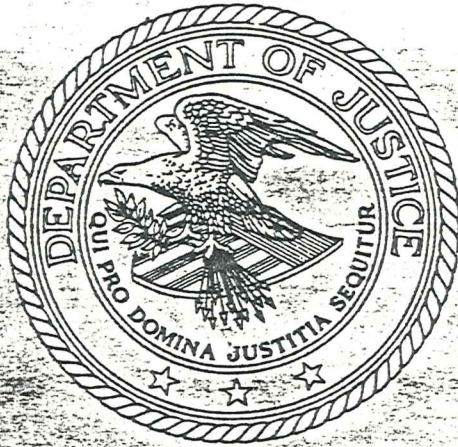


who served as an adviser to Dr. King, portions of the FBI headquarters security file on Dr. King himself, portions of the FBI headquarters file on the assassination investigation, some Department (as opposed to FBI) files relating to Dr. King, and other Bureau documents including everything on Martin Luther King, Jr., held in the late J. Edgar Hoover's official, confidential and personal files.

By a memorandum to the Attorney General dated April 9, 1976, the Assistant Attorney General in charge of the Civil Rights Division submitted a 51 page report of the Chief of the Civil Rights Division's Criminal Section dated March 31, 1976, embodying the results of the three-man study, limited to the above listed files, and concentrating almost exclusively on the pre-assassination surveillance of, and counterintelligence activities against, Dr. King.

The Assistant Attorney General recommended the creation of a Departmental Task Force to complete the review he and his team had begun. He also recommended an Advisory Committee of distinguished citizens to advise with the task force. The further review proposed included interrogation of material witnesses, reading all the pertinent field office files and reviewing all of the headquarters files relating to Dr. King and possibly to other civil rights activists. A recommendation was made to review tapes secured





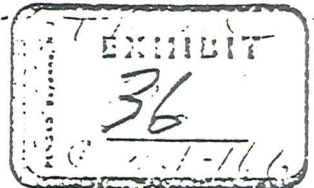
REPORT OF THE DEPARTMENT OF JUSTICE

TASK FORCE TO REVIEW THE FBI MARTIN LUTHER KING, JR.,

SECURITY AND ASSASSINATION INVESTIGATIONS

January 11, 1977





STATE OF TENNESSEE

To the Sheriff of Shelby County—GREETINGS:

You are hereby Commanded to Summon

WILLIAM BRADFORD HUIE and bring with him all notes, memoranda, manuscripts, documents and any and all other paper writings, or copies of all of aforesaid, under his control concerning the slaying of Martin Luther King, Jr., including but not limited to those writings furnished by James Earl Ray and/or his agents.

if to be found in your County, personally to be and to appear before the Judge of the Criminal Court of Shelby County, when sitting at the Court House in Memphis, on FRIDAY-8:30 AM the 7th day of FEBRUARY 1969, being one of the days of the JANUARY Term 1969, of said Court, now holden, for the County of Shelby, then and there to be sworn and testify and give evidence before the Grand Jury now sitting, in behalf of the State of Tennessee, concerning his knowledge relative to the slaying of Martin Luther King, jr.

This you shall in no wise omit, under the penalty prescribed by law. Herein fail not, and have you then and there this Writ.

Witness J. A. BLACKWELL, Clerk of said Court. at office, the third Monday in September, 1968

J. A. BLACKWELL, Clerk,

[Handwritten signature]

D. C.



ISSUED - JAN, 30, 1969

*[Signature]*  
FOREMAN, SHELBY COUNTY GRAND JURY

WITNESS SWORN BY:

FOREMAN, SHELBY COUNTY GRAND JURY

DATE \_\_\_\_\_ Returnable 7th day of FEBRUARY 1969

CRIMINAL COURT  
OF SHELBY COUNTY

JANUARY \_\_\_\_\_ Term

State of Tennessee

vs.

MARTIN LUTHER KING, JR.

Grand Jury Subpoena

Issued 30<sup>th</sup> day of January 1969

Came to hand 30 day of January 1969

Executed on February 7, 1969

by reading same to  
Mr. William Bradford Huie  
in person and leaving  
copy of same

By John L. Carlier  
Criminal Investigator  
Attorney General's Office

EXHIBIT  
37  
7-11-166

THE NEW YORK TIMES, SATURDAY, FEBRUARY 8, 1969

# Biographer of Ray Is Arrested Over Articles on Dr. King Case

NF

## Huie Cited for Contempt as Violator of Judge's Ban on Pretrial Publicity

MEMPHIS, Feb. 7 (AP)—William Bradford Huie, biographer of James Earl Ray, was arrested on a contempt of court warrant today after testifying for two hours and 40 minutes before the Shelby County grand jury.

The warrant was issued by Criminal Court Judge W. Preston Battle, the judge who will preside when Ray goes on trial March 3 on a charge of assassinating the Rev. Dr. Martin Luther King Jr.

The contempt citation was issued in connection with magazine articles that Mr. Huie wrote. The citation was based on a strict order issued by Judge Battle against pretrial publicity.

Mr. Huie, who says he has knowledge of a conspiracy in the King slaying, had been directed to appear before the grand jury to tell all he knew about the case.

### Look Magazine Articles

Mr. Huie's articles on Ray appeared in Look magazine. He purportedly paid Ray up to \$35,000 for the material he used in writing them.

Shortly after Mr Huie concluded his session with the grand jury, Ray's attorneys appeared before Judge Battle for a hearing on several defense motions.

These included a request by the prisoner to have a photographer make a series of pictures of him in his steel-plated jail cell. Ray said a magazine had offered to pay him up to \$5,000 for exclusive rights to publish the pictures. He said he needed the money for his defense.

Before going before the jury, Mr. Huie told newsmen he could name others he said were involved in Dr. King's slaying



United Press International

William Bradford Huie before his arrest in Memphis.

—but probably would not do so before the grand jury.

"I can't name people who I think may be involved until they are arrested. I could be sued for libel," said the dapper Alabama author.

Asked how the grand jury could return indictments if he did not name names, Mr. Huie replied, "I am not in the law enforcement business. The only information I have is information given me by James Earl Ray. All of it has been made available to the F.B.I. and the State of Tennessee."

Judge Battle has cited several other persons for violating his no-publicity edict, including two Memphis newspapermen and Ray's former attorney, Arthur Hanes, onetime Mayor of Birmingham.

Mr. Huie posted \$1,000 bond and was freed following his arrest. He had been ordered to present to the grand jury any documents he had collected for his articles on Ray and a book on the case, scheduled for early publication.