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# Judge Battle's Death Could Get Ray New Trial



W. PRESTON BATTLE

nary insufficiency... "a form of heart disease in which emotions can cause a fatal outcome."

An inventory of Battle's papers and correspondence left on his desk and in his chambers was completed by James A. Blackwell, Criminal Court clerk, and turned over to the remaining four criminal court judges.

BLACKWELL WAS in conference with Judges Perry Sellers, Odell Horton, Arthur Faquin and John Colton. They may get additional advice as to whether or not any letters would qualify as a motion and whether or not the motion should be filed.

The decision of the judges will determine whether the

HE SAID IF the letter is construed as a motion for a new trial, the state would have to give Ray one.

Blackwell said the letter Ray sent to Battle was never filed in the clerk's office and as of the moment was not a part of the court records.

THERE IS NO motion for a new trial or a habeas corpus writ on file in the clerk's office, Blackwell said. He said, however, that Judge Battle had signed the minutes of the March 10 hearing where Ray's guilty plea was made.

If the judge hadn't signed the minutes, Ray, under Tennessee law, would have been entitled to a new trial.

Shelby County's four criminal court judges today were grappling with a legal problem which could result in a re-trial for James Earl Ray, convicted slayer of Dr. Martin Luther King Jr., following death of the trial judge.

Key to a new trial is in the contents of a letter mailed by Ray to Criminal Court Judge W. Preston Battle 60 who collapsed in his chambers and died of a heart attack yesterday.

There was speculation the results of the James Earl Ray case may be hastened by Battle's death. Dr. Perry Sellers, county medical examiner, said Judge Battle died of cor-

letter from Ray is filed in the Criminal Court clerk's office by Blackwell.

After Ray pleaded guilty to King's slaying and was sentenced to a 99-year prison sentence, he had second thoughts. He wrote Battle apparently asking for a new trial. Battle's office confirmed receipt of the letter, but contents were not divulged.

Judge Charles Galbreath of the state Court of Criminal Appeals said in Nashville that Tennessee law provides any motions for a new trial pending before a deceased judge must be granted. The law does not define a motion, or how it must be filed, he said.

In the case of a petition for a writ of habeas corpus — where a prisoner claims his rights were denied — Tennessee Supreme Court Chief Justice Hamilton Burnett said Battle's death would have no effect on the case.

"IT MAKES NO difference at all," Burnett said, adding that a petition of this kind could be filed with another judge.

Gov. Buford Ellington will name a successor to Battle, but is expected to ask Memphis and Shelby County Bar Association for recommendations.

Leo Bearman Jr. of the amicus curiae committee named by Battle to assist

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MEMPHIS PRESS-SCIMITAR

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44-1987-Sub-C-265

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*Orig. one to Bureau 4-3-69*

him in applying his order limiting publicity in the Ray case, said the judge's death may render contempt proceedings against six persons moot. But, he said, the law must be researched concerning this.

**THESE INCLUDE** Press-Scimitar reporter Roy B. Hamilton and Commercial Appeal reporter Charles Edmundson. Battle delayed sentencing them on conviction of contempt, saying by their future conduct they might purge themselves.

The State Supreme Court last week dealt a blow to Ray's hopes for a new trial, ruling in a case similar to Ray's a defendant cannot get

a new trial on grounds he was talked into pleading guilty by his attorney. Ray is reported to contend that Foreman pressured him into a guilty plea.

Battle, of 1422 Lamar, was found unconscious at 5:25 p.m., slumped over his desk in his chambers, by Gen. James Beasley, one of the three prosecutors in the Ray trial last month.

A Fire Department ambulance took Battle to Methodist Hospital, where he was pronounced dead on arrival at 6:02.

A SHERIFF'S spokesman said Battle did not have a history of heart disease. Dr. Jerry T. Francisco, county coroner, confirmed, after an autopsy, that death was caused by a heart attack.

Battle had returned from a Florida vacation March 10 the day that Ray pleaded guilty to the assassination of Dr. Martin Luther King Jr., and took another rest after that, said the spokesman. He had a physical checkup just before the trial.

Beasley said he saw Battle between 12:30 and 1 p.m. yesterday, and attempted to telephone him later.

He found Battle's secretary likewise could not find the judge and she called Sheriff William N. Morris about 3 p.m.

When she found Morris had not seen Battle, Beasley left word with her for the judge to call him.

**BATTLE DID NOT** return the call and, in late afternoon, as Beasley was leaving, he saw lights on in Battle's office.

It was then Beasley entered Battle's chambers.

Battle had been a Criminal Court judge since 1959.

He was born in Memphis, and attended Idlewild School, Memphis University School, Woodberry Forest School at Orange, Va., Washington & Lee University, and the old University of Memphis law school. He received his law license in 1933. He served as assistant district attorney from 1934 to 1945.

**BATTLE WAS IN** private law practice from 1945 until 1959, when he won election to fill the newly created court bench he served until his death. Battle was appointed to the post by Gov. Buford Ellington after the Memphis

Services for Judge Battle will be held at 3:30 p.m. tomorrow at Grace-St. Luke's Episcopal Church, with burial in Elmwood Cemetery.

Memphis and Shelby County Bar Association will hold a memorial service for Judge Battle at 9:30 a.m. Thursday in his Courtroom, Div. 3 of the Criminal Courts.

& Shelby County Bar Association primary.

Battle was shy, timid and diffident in his younger days, which he said led him to a career in law. He recalled in 1960 that his aversion to public speaking caused him to join the literary society at MUS, so that he would be forced to speak.

He was a member of Grace-St. Luke's Episcopal Church.

His hobby was deep sea fishing.

**BATTLE MARRIED** the former Florence Warfield Boyce of Memphis in 1941.

He is also survived by four children: Mrs. B. Frank King of Germantown, W. J. Britton III, Mrs. E. R. Kinnebrew III, and Walter Preston Battle Jr., all of Memphis, three grandchildren and a brother, John Battle, of Kingston, Tenn.

Battle was the judge in both trials of Louis F. Montesi, grocery executive accused of slaying his wife.

Battle was a short, sturdy man who was serious — almost scowling — on the bench. He had a reputation for conducting a "no-nonsense" courtroom.

**SEVERAL OF HIS** decisions had been reversed by higher courts, but attorneys noted that was the mark of a judge who heard many cases and was not afraid to blaze new trails.

He ruled his court with great dignity and courage.

The Tennessee Supreme Court, handing down a decision in one of his cases in February, 1969, recognized his rare ability as a jurist and commended him, saying, "In all the annals concerning the application of criminal law in this state, or any other state, there is seldom to be found a multi-party and complex criminal trial which has been conducted with such judicial restraint, patience and excellent legal discrimination as that reflected in this enormous record. What has been done here in the trial court is, indeed, a lasting tribute to the trial judiciary of this state."

Battle was a stickler for legal technicalities, and often dismissed court to research a point of law.

He showed patience with defendants or witnesses who appeared nervous or did not understand legal procedures, but he often had sharp words for attorneys who attempted grandstand tactics in his courtroom.

Battle was picked by lot from among the five Crimi-

nal Court judges to preside over the Ray trial.

**CRITICIZED FOR** his strict controls over publicity in the Ray case. Battle commented last February that the state was expected to

to police the national news media with limited contempt powers—a maximum of 10 days in jail and a \$50 fine.

Battle then added: "I have a passion to see that this case, in a fishbowl, so to

speak, under a microscope, is tried as fairly as I can have it."

The three-hour guilty plea trial of Ray, which resulted in a 99-year prison sentence, was the climax of a long and illustrious career for Battle.