BRIEF FOR PETITIONER-APPELLANT

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 75-1795

JAMES EARL RAY,

Petitioner-Appellant

vs.

J. H. ROSE, Warden, Tennessee State Penitentiary,

Respondent-Appellee

On Appeal from the United States District Court
For the Western District of Tennessee,
Western Division, Hon. Robert M. McRae, Judge

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the case transferred to the United States District Court for the Western District of Tennessee in Memphis, citing as grounds the greater availability of witnesses there.

The evidentiary hearing was held October 22 through November 1, 1974. On February 27, 1975, District Judge Robert M. McRae issued an opinion denying the writ. Ray v. Rose, 392 F. Supp. 601 (W.D. Tenn. 1975).

STATEMENT OF THE CASE

I. Prologue

Immediately after James Earl Ray pled guilty to the murder of Dr. Martin Luther King, Jr. on March 10, 1969, he renounced his plea. On March 13 and March 26, 1969, he wrote Trial Judge Preston W. Battle, asking that he be allowed to withdraw his plea and stand trial, and that counsel be appointed to represent him.

In the meantime, Ray and his brother, Jerry Ray, had contacted three other attorneys--Richard Ryan, J. B. Stoner, and Robert W. Hill. These three attorneys tried to meet with Ray and present him with a motion for a new trial for his signature, but the prison authorities refused to let them see Ray.

Judge Battle died on March 31, 1969. A letter from attorney Robert W. Hill was found on Judge Battle's desk at the time of his death. [Exh. 90] Attached to Hill's March 27, 1969, letter

were some of the many contracts between William Bradford Huie, Arthur Hanes, Percy Foreman, and James Earl Ray, including the two scandalous March 9, 1969, letter contracts in which Foreman agreed to pay James Earl Ray and his brother Jerry Ray sums of money "if the plea is entered and the sentence accepted and no embarrassing circumstances take place in the court room . . ." The most pertinent parts of Hill's letter read:

> Dear Judge Battle:
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> This letter is written to express my highest esteem and admiration for the forthright caution and rectitude in which you handled the case of State V. James Earl Ray. Secondly, and most important, it is to explain my association, if any, with the case.
>
> The reason for my connection is clearly evidenced by the request of employment and affidavit enclosed herein; and further, in view of the mockery of justice which (if the documents here enclosed are accurate) was perpetrated upon not only Mr. Ray, but upon this court, the Bar Association in general (as well as that of Tennessee), and the people of this country.
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> * * * * * * *
>
> Mr. J. B. Stoner and I spent the day at the Nashville Prison. The out-cropping was that none of us were allowed to see Mr. Ray. The question of whether or not he desired our representation could have been easily settled then and there by allowing Mr. James Earl Ray to state to us personally his wishes in this regard. This was suggested by all of us, but before any decision on any matter was made Mr. Avery was telephoned (apparently for authorization).
>
> Not only was Mr. Ray held incommunicado from prospective attorneys, but his brother, Mr. Jerry Ray, stated that Mr. Avery told him that he (Mr.

> Avery) knew of a good attorney or attorneys who would be helpful. * * *
>
> Mr. Ryan, Mr. Stoner, and myself each signed the unfiled motion for a new trial, expecting to see Mr. Ray and have him confirm such signatures if he so wished; but I am certain that each of us wish to be counsel of record only upon the expressed wishes of James Earl Ray. [App. 236-237]

Hill's letter to Judge Battle expressed an understated but appropriate shock and outrage at the abhorrent letters and contracts attached to it. The ethical sqaulidness of those documents is transparent to any lawyer. The documents attached to Hill's letter were all that any trial judge needed to allow Ray to withdraw his plea and stand trial.

The illegal refusal of the prison authorities to let Ray confer with his attorneys prevented Judge Battle from granting the motion for a new trial before he died. But Judge Battle did begin work on that. In September, 1974, Ray obtained on discovery a small box containing a few papers which purport to be <u>all</u> the materials relating to the Ray case which were found in Judge Battle's office after his death. These papers were placed in a vault in the office of the Clerk of the Criminal Court on the night of Judge Battle's death. One of the papers which had remained in that vault for the past five and a half years is a single page of notes on a legal pad found in Judge Battle's desk. That page of notes [Exh. 92] clearly evinces Judge Battle's intent to grant Ray a trial. [App. 239]

When Judge Battle made the decision to grant Ray's motion for a new trial he had only a glimmering of the machinations which lay behind Ray's plea of guilty. The contracts attached to Hill's letter showed on their face the fraud which had been perpetrated on the court and the nation. But not in his wildest imagination could Judge Battle or anyone else have conceived the extent of the fraud.

Judge Battle did not know that William Bradford Huie, who purported to be financing Ray's defense for the benefit of Ray, had secretly executed a contract with Dell Publishing Company which specified that none of the proceeds from that contract "shall directly or indirectly be used for the benefit of James Earl Ray." [Exh. 7, ¶21; App. 82]

Nor did Judge Battle know that just a few days before the guilty plea hearing Huie had entered into another secret contract with Cowles Communications, Inc., which provided that Huie would be paid $20,000 for a third Look magazine article on the Ray case, and Ray's present and former attorneys, Percy Foreman and Arthur Hanes, Sr., would be paid $1,000 each for shorter articles by them appearing in that same issue, all such payments being "conditional upon (a) Ray's plea of guilty during the week of March 10, (b) the timely receipt by Cowles of the articles described in paragraph 1, and (c) the reasonable judgment of Cowles that the articles are satisfactory in content." [Exh. 8, ¶6; App. 85] And that Foreman actually had a minimum of Thirteen Thousand Dollars ($13,000.00) on the March 10th guilty plea.

IV. The Facts

A. A Lawyer Retains Two Clients

James Earl Ray was arrested in London on June 8, 1968. Remembering the hometowns of only two attorneys, he wrote Mr. F. Lee Bailey and Mr. Arthur Hanes care of their bar associations. In his June 10 letter to Hanes, Ray wrote:

> Most of the tings that have been written in the papers about me I can only describe as silly. Naturally I would want you to investigate this nonsense before committing yourself. For these reasons and others which I won't go into, I think it is important that I have an attorney upon arrival in Tennessee or I will be convicted of whatever charge they file on me before I arrive there.[5] [App. 305]

He concluded: "In the event you cannot practice in Memphis would you contact an attorney there who would?"

F. Lee Bailey declined to represent Ray on grounds of a possible conflict of interest. Although Ray had only asked about representation if and when he was extradited, Hanes flew to London on June 19, 1968. Before he left the United States, Hanes was contacted by author William Bradford Huie. Knowing that Hanes would need money to finance a trial, Huie proposed to pay Hanes up to $40,000 if, after talking with Ray, Hanes thought Ray had a story to sell. Hanes agreed. Huie notified his publishers, who met Hanes in London and got him a hotel room there during the busy

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[5] As with other of Ray's writings quoted in this brief, spelling and punctuation changes have been made to enhance readability, but no changes in substance are made.

Ascot week festivities. [September 20, 1974, Huie deposition, p. 26; App. 452.

When British authorities refused to allow him to confer with Ray, Hanes returned to the United States. Two weeks later he flew back to London with two contracts for Ray to sign. At their first meeting, which took place on July 5, 1968, and lasted only half an hours, Hanes advised Ray to sign these contracts. Essentially they provided that:

1. Ray gave Hanes a complete power of attorney. [App. 58]

2. Ray assigned to Hanes 40 percent of all monies that Ray would receive under the terms of a subsequent agreement between Hanes, Ray, and an unnamed third party. [App. 60]

3. Hanes was to act as "exclusive agent and attorney" for Ray "in the handling of his affairs, contracts, negotiations, and sale of any and all rights to information or privacy which he may have in and to his life or particular events therein to persons, groups or corporations for the purpose of writing, publishing, filming or telecasting in any form whatever." [App. 60]

After a second equally brief meeting with Ray, Hanes returned to the United States. He and Huie then executed a tripartite contract which obligated Ray and Hanes to supply Huie with information on ". . . the assassination of Martin Luther King, Jr., the alleged participation of Ray therein, and the life and activities of Ray . . ." In return Huie agreed to pay Hanes and Ray each 30 percent of the gross receipts from the sale of Huie's work

in the form of "magazine, book, dramatic, motion picture, television and/or adaptations of every kind." By virtue of this contract Huie acquired "the sole and exclusive right to make motion pictures and television pictures of all kinds based in whole or in part on [Huie's] work . . ." [App. 63] Emphasis added]

This contract was signed by Hanes and Huie on July 8, 1968, when Ray was still in London. Ray signed it about two weeks after he was extradited, and after he first suggested that funds for the trial might be raised through public donations.

One clause in this contract provided that Ray and Hanes "hereby irrevocably appoint" Huie as their "true and lawful attorney" so that Huie could negotiate and execute, in their names, contracts for the sale of Huie's book, magazine, television, movie and other rights in the James Earl Ray story.[6]

Hanes and Huie also executed a second tripartite agreement on July 8th. This July 8 Letter Agreement [App. 66] set forth a schedule of payments totaling $40,000. The initial $10,000 was to be paid "[o]n the signing of the first, or book contract." The remaining $30,000 was to be paid in monthly installments of $5,000 each. However, these monthly installments would not begin

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[6]Huie entered into secret contracts with Cowles Communications, Inc. and Dell Publishing Company, Inc. Under the terms of the July 8 contract, Huie's agent, Ned Brown, was obligated to furnish Ray and Hanes copies of any and all contracts entered into by Huie within 10 days of their completion. This provision was not honored, nor were others, including one for an accounting to Ray at quaterly intervals of income received under these contracts. Ned Brown also did not comply at all with the District Court's discovery orders in this case.

until "the first day after Ray has been lodged in a jail in the United States."

On July 13, 1968, two days after he signed the first book contract with Cowles Communications, Inc. [App. 68] Huie paid Hanes $10,000. [Exh. 49] Thus, before Ray saw the July 8 contracts or learned that Huie would be the third party in them and in the July 5 contract presented to him in blank in London, Huie had paid Hanes $10,000.

Hanes knew that if Ray received a full and fair hearing in London he could not be extradited under the terms of the Anglo-American Extradition Treaty of 1931. Nonetheless, he advised Ray to drop his extradition appeal. Ray did waive that appeal.[7] He made this decision without having seen the July 5 Letter Agreement which tied Huie's payments to Hanes to his extradition.

B. Trying to Obtain a Confession

On September 3, 1968, Huie wrote Ray a letter in which he pressed Ray to confess to the assassination of Dr. King. [App. 183] In this letter, which was transmitted to Ray by Hanes, Huie wrote:

> Quite obviously, some time during 1967 somebody decided to have King killed. And

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[7] In a letter dated June 29, 1968, Ray wrote Hanes: ". . . in regards to my extradition hearing which began Thursday, they seem to be running far afield and at this point I think it might have been a mistake to contest extradition." But this letter was not posted to Alabama until July 4, 1968, so it arrived there while Hanes was in London for his July 5 meeting with Ray.

this decision was made somewhere.

Where do you think this decision was made?

At what time do you think it was made?

Ray replied:

> I don't know when, where, the time or why King was killed. I suppose I became involved when I first took those packages into the U.S. from Canada.

C. Concern about Pretrial Publicity

During August and September Ray became increasingly concerned about pretrial publicity, including that by Huie. On September 12 the Memphis Commercial Appeal ran a story by Huie. Ray wrote Judge Battle that same day complaining about it:

> I would like to respectfully call your Honor's attention to three articles written about me since you issued your order against publicity in the instant case. One article is in the August issue of The Reader's Digest by Mr. Jeremiah O'Leary. I am sure you would agree that this article could not have been written without the assistance of someone in the Justice Department.
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> The other is a picture of me in a late edition of a tabloid called the Inquirer. This is a typical picture which the law authorities have been releasing of me. In this instance the picture was taken and released by the Shelby County Sheriff's Office. It shows me manacled up, a bullet proof vest on and looking like I just been pulled out of the river. The accompanying story does not relate to me.
>
> The third story came out in Wednesday's Commercial Appeal the 12th of September by Mr. William Bradford Huie. I think almost anyone

> reading between the lines would interpret this article as meaning the only thing I am interested in is money and in my greed for it I am going to help expose someone or organization such as was mentioned in the newspaper article. I would like to say for the record both public and private, I don't know anyone to expose and I want to dis-associate myself from this article. I have relayed to Mr. Huie that I would tell him where I had been and what I had done and that's all, that I didn't care what he wrote but not to quote me. Also, I certainly didn't ask for the article or any other pretrial statements from Mr. Huie.
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> I realize Your Honor does not have jurisdiction over national publications like the Digest, but I would think so in the picture release and the Huie release. I have said nothing since I arrived here thinking these stories would stop until after the trial. But apparently they are not. Therefore, in the near future I am going to have an attorney file some libel suits and contradict some of the outright lies. I am also sending these stories and pictures to the ethical committee of the A.B.A. I believe if these type of articles don't stop, I might as well waive the trial and come over and get sentenced.
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> I realize that Mr. Hanes should bring this up, but I think under the circumstances I had to.
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> I am also writing him today about this matter.

This September 12 letter which Ray wrote to Judge Battle was the first manifestation of the inherent conflict of interest in

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[8]Ray sent his September 12 letter to Judge Battle by registered mail. However, before it reached Judge Battle it was first delivered to the District Attorney's Office for xeroxing. The original of this letter is missing.

in the Hanes-Huie contracts. But Ray was becoming aware of others.

Ray became worried that because Hanes was not licensed to practice in Tennessee he could not represent him on appeal or at a second trial. Under the July 8 contract, Ray and Hanes were each entitled to 30 percent of the gross receipts from the sale of Huie's works. [App. 62] In addition, Ray's July 5 agreement with Hanes originally provided that Hanes was to get 40 percent of Ray's 30 percent interest in Huie's works. [App. 60] Ray saw this could leave him without funds to hire a new lawyer in the event of an appeal or hung jury. Therefore, in September Ray got Hanes to modify their July 5 contract so that instead of getting 40 percent of Ray's share of Huie's proceeds, Hanes was to get a flat $20,000 plus case expenses. After that was paid off, Ray would get all of his 30 percent.

On October 16, Ray wrote Huie that he wanted to get out from under some of the contracts he had signed. [App. 294] He wanted his brother Jerry Ray to have a power of attorney. On November 1st, he wanted Huie to start putting one-half of his 30 percent in a bank designated by Jerry Ray. The other one-half of his 30 percent would go to Hanes until he got Hanes paid off.

Ray gave Huie three reasons for insisting upon this new arrangement: 1) If convicted he would hire a Tennessee lawyer to help with his appeal, 2) he wanted "the ethics committee" to investigate the adverse publicity in his case and felt he would need money to hire a lawyer for this, and 3) he intended to hire

a private detective to investigate his case. The third reason arose out of Ray's growing distrust of Huie. He did not want to rely on Huie as a detective because Huie was not a professional investigator. In addition, Ray believed Huie was conveying to the FBI information which he got from Hanes for literary purposes. [App. 99] These reasons were all vital to Ray's trial.

D. Attempting to Bribe Ray Not to Testify

The day after Huie's article appeared in the Commercial Appeal, Hanes was quoted as saying that Ray might never testify in his own defense. [App. 232] This issue--whether Ray would take the stand--is the best example of how the conflict of interest inherent in the Hanes-Huie contracts engendered a sordid reality.

Ray had two reasons for wanting to take the witness stand: 1) to explain his actions on the day of the crime, and 2) he did not want to reveal this information to Hanes because he had reason to believe Hanes was passing all information Ray gave him on to Huie, who gave it to the FBI. [App. 99, ¶15] According to the handwritten draft of an article which Arthur Hanes, Jr. wrote for his father's signature, ". . . Ray and I had many heated discussions concerning whether he would take the stand." [Exh. 56; App. 193-H]

This issue came to a head on November 1, 1968, when Huie sent Jerry Ray a rountrip airplane ticket to come to Hartselle,

Alabama. Huie met Jerry Ray at the Huntsville airport, put him up at a motel there, paid his expenses, and provided him with a bottle of Jim Daniels whiskey. [App. 629-630]

Huie told Jerry that if James Earl Ray took the witness stand it would ruin his book because what he testified to would then be public knowledge. Huie told Jerry that he had to get his book out fast. Huie said that the way things stood then, if the case went to trial there would be a hung jury and people would lose interest. Huie asked Jerry to do two things: 1) tell his brother not to take the witness stand, and 2) get the name of somebody who might be arrested in the case. In return for persuading his brother not to testify, Huie offered to pay $12,000 to Jerry Ray, James Earl Ray, or any member of the Ray family. Huie added that he preferred not to give the money to James Earl Ray because Mrs. King could sue him and tie up the money. [App. 652]

After returning to St. Louis, Jerry Ray went to Memphis to see his brother James. He told his brother that Hanes was representing Huie, not Ray. He suggested Ray fire Hanes and get another lawyer, Percy Foreman. But Ray said he didn't want Foreman but a local lawyer. Jerry contacted a Memphis attorney, Richard Ryan, who said the case was too big for him. So Jerry called Foreman anyway. Foreman said that he would like to have the case but would have to have a letter from James Earl Ray requesting to see him.

Jerry went back to St. Louis again. After talking with his brother John Ray, he decided to call Foreman again. Foreman

said he had not received a letter from James Earl Ray. But after they talked awhile, Foreman told Jerry to meet him at the Memphis airport and bring the Hanes-Huie-Ray contracts.

E. The "Texas Tiger" Enters the Case--Unethically

On November 10, 1968, John and Jerry Ray met Foreman at the Memphis airport. Foreman looked at the contracts they had brought with them and said he could break them. They then went to the Shelby County Jail, where Foreman was allowed in without any letter from James Earl Ray authorizing or requesting it.[9]

Foreman told Ray that he could break the contracts because he had been taken advantage of due to his lack of education in such matters. Foreman told Ray that Hanes and Huie were only interested in money. Foreman set his own fee for taking the case at $150,000, which would include the trial and any appeals necessary. As a retainer, two days later Foreman had Ray sign over the alleged murder weapon and a 1966 white Mustang. [App. 164] But at their November 10 meeting, Foreman told Ray to let him worry about how to finance the trial. He assured Ray that he would not get involved in any book contracts until after the trial was over. At the conclusion of this meeting, Foreman and

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[9]Foreman's accounts of receiving this letter differ [see, for example, Look and Foreman deposition] but Foreman has emphatically stated under oath that he did receive this letter [App. 361, ¶19] Ray told the truth; Foreman committed perjury. The log of Ray's outgoing mail which was kept by his prison guards shows there was no such letter. [Exh. 46]

Ray drafted a brief note firing Hanes [App. 163] This note did not specifically mention hiring Foreman, but it did state Ray's intention of retaining a Tennessee lawyer.

On November 12, 1968, Foreman filed a motion to be enrolled as counsel. [App. 230] In this motion he repeated to the court the promise he had made to James Earl Ray two days earlier, that he would retain a licensed Tennessee counsel to associate with him. Foreman did not keept this promise.

F. The Investigation

On November 12th Foreman talked about making an extensive investigation. He told the court that the law of the land placed an affirmative duty on defense counsel to attempt to interview all prosecution witnesses. He estimated that it would take 90 days working 8 hours a day just to interview the 360 witnesses which the state said it might call. [Exh. 140, pp. 18-19]

Some prior investigation had been made by Arthur Hanes. Foreman learned, however, that little of the Hanes investigation had been reduced to writing. As Arthur Hanes wrote Judge Battle on November 27, 1968, ". . . my files, which I have offered and do offer to Mr. Foreman are of relatively insignificant value compared with the information which Art, Jr. and I carry only in our heads." [App. 169] Foreman made no real attempt to obtain the information which the Haneses carried in their heads. He stop in Birmingham to talk with them only once, on a brief layover be-

tween plane flights on November 18th. Foreman spent most of his time on that visit eating a steak dinner and guzzling some $14.00 worth of scotch. [App. 952] In his November 27 letter to Judge Battle, Arthur Hanes concluded: "Quite frankly, it is my distinct impression that Mr. Foreman is disinterested in making a genuine effort to benefit from the fruits of our labors." [App. 169]

In August, 1968, Hanes was contacted by Renfro Hayes, an unlicensed Memphis detective who has a history of mental illness. Hayes was the only detective Hanes employed to work on the Ray case. Although Hayes was only paid a paltry sum for his services and expenses, Hayes' lawyer sent Foreman a bill for $9,456.84 shortly after Hanes was fired. [App. 330] Hayes never interviewed James Earl Ray, nor was Ray aware that he was working for Hanes as an investigator.

Hayes worked on the Ray case under the direction of Russell X. Thompson, a Memphis attorney who believed that Hanes had retained him as local counsel. Hanes used Thompson's known connections with the NAACP Legal Defense Fund to gain some favorable publicity in the Memphis papers. Thompson was never paid for his services, although he did accumulate some files and tapes on the assassination of Dr. King.

On November 13, 1968, Russell X. Thompson was contacted by author Gerold Frank, who wanted to obtain his files on the Ray case. Thompson wrote a memorandum on Frank's visit in which he

stated his willingness to turn these files over to Frank if Foreman made it known to him that "he does not wish to utilize any services that I may have to offer or does not wish to suppress any of the material that I may have", and conditional also upon Frank's pledge that "it will not be used in any way to jeopardize the trial or in any way for publication at a time that might be in conflict with orders of the Court . . ." [App. 168] By a handwritten letter dated November 14, 1968, Foreman wrote Mr. Frank:

> You have shown me a communication from Russell X. Thompson, Esq. concerning certain evidence and names of witnesses that may become important to the defense of my client, James Earl Ray. The inference is that my attitude toward this evidence may affect its availability to you. Without any obligation on my part this is my consent that you receive any information, names of witnesses, tape recordings or other reference material that may be available from Mr. Thompson for whatever use you and he may see fit to apply it. I have received no fee for legal services in this case. It is highly likely that I will not. So I can pay nothing for the past, present or future services of Mr. Thompson. [App. 166]

Foreman never made any attempt to obtain for himself this file, even though he wrote Frank that it contained information "that may become important to the defense of my client . . ." At a much later date, apparently after the Public Defender was appointed full co-counsel on Janaury 17, 1969, Thompson gave his files to the Public Defender of Shelby County, Mr. Hugh Stanton, Sr.

Between November 12, 1968, when he was formally recognized as Ray's new counsel and January 20, 1969, Foreman paid Ray only three visits. On November 12th and November 20th, Foreman met with Ray for 13 minutes and 50 minutes, respectively. On December 11th, when Foreman was in town to give a speech to students at Memphis State University, Foreman conferred with Ray for another 50 minutes. There were no further meetings between Ray and Foreman until January 21, 1969, the day after Ray had telephoned Foreman from the Sheriff's office. Thus, during the first 70 days he was in the Ray case, Foreman met with his client a total of one hour and 53 minutes![11]

On December 18, 1968, by pre-arrangement and without Ray's consent, Judge Battle appointed the Public Defender of Shelby County, Mr. Hugh Stanton, Sr., co-counsel for Ray. The stated purpose of this appointment was to have the Public Defender's Office assist Foreman in the investigation of the Ray case. But later that same day, after discussing with Foreman whether or not Foreman felt Ray was guilty, Mr. Stanton went to the District Attorney, Mr. Phil M. Canale, to sound him out about a guilty plea.

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[11]In his 1969 deposition Foreman estimated that he had spent between 30 and 75 hours just cross-examining James Earl Ray. [App. 353] In actual fact, the Jail Visitors' Log [Exh. 44] shows that he spent a total of 21 hours and 55 minutes with Ray, two of which were spent getting himself into the case. In his 1969 deposition, Foreman also maintained that Ray agreed to plead guilty between January 23rd and January 27th. If this were true, Foreman spent some 12 to 13 hours with Ray after he agreed to plead guilty!

Although appointed on December 18th to investigate the Ray case, the Public Defender's Office did not interview its first witness until February 3, 1969, 48 days later! This means that no witness was interviewed until after the date on which Percy Foreman says Ray had agreed to plead guilty.[12]

Thus, by Foreman's own account, the Public Defender's investigation was a sham. This helps explain why the Public Defender's investigation and Foreman's work on the Ray case were entirely separate. The Public Defender never obtained copies of Foreman's alleged witness interviews.[13] Although Foreman told the court that he was going to use students as his investigators, the Public Defender never worked with them or received

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[12] In 1969 Foreman stated under oath that Ray made an oral agreement to plead guilty sometime between January 23 and January 26, 1969. [App. 352] In his 1974 testimony Foreman tried to shove the date back to February 3, 1969, or a day or two thereafter. [App. 369]
Both accounts are obviously fictional. If Ray had already agreed to plead guilty, then there was no reason for Foreman to write his February 13, 1969, letter [App. 187] advising Ray to plead guilty or the February 18, 1969, letter [App. 189] written by Foreman in which Ray requests that Foreman negotiate a guilty plea.

[13] If such witness interviews ever existed and Stanton had obtained them, they would have been useless to his investigation anyway. In Foreman's May 10, 1969, letter to Ray's post-plea attorney Richard Ryan, he states: "My own investigation and interviews with witnesses are in a cryptic form of shorthand, being a combination of Gregg, Pitman, Percy Foreman and Alabama-Coushatta Indian hieroglyphics. In other words, no living human being except myself can decipher whatever has been reduced to writing by me as a result of interviews in the James Earl Ray case." [App. 141]

any reports or memorandums from them. Foreman did write a pompous letter [App. 309] to two Memphis State University law students who had volunteered to help him on the Ray case, but the State introduced no report or memorandum written by any students, nor any other evidence showing that any student ever actually did any work for Foreman.[14] The risible character of Foreman's letter to those students who did volunteer probably deterred them from carrying through on their offer.

What the Public Defender did on the Ray case was so completely divorced from Foreman's conduct of the case that the Assistant Public Defender in charge of the investigation, Mr. Hugh Stanton, Jr., was "amazed and surprised and astounded" to learn on March 7, 1969, that Ray was going to plead guilty on March 10, 1969. He learned this tidbit not from his co-counsel but from the Sheriff of Shelby County! [App. 518] At the time Stanton learned that Ray was going to plead guilty, he had only begun his investigation of the Ray case and was not prepared to go to trial. [App. 524]

The Public Defender's investigation was also hampered by the fact that no one from the Public Defender's Office ever talked with

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[14] In his 1974 deposition Foreman claimed that he paid several students $5.00 an hour to investigate "theories". As in his 1969 deposition, he couldn't remember the names of any of them. Taking his cue from Assistant Attorney General W. Henry Haile, Foreman refused to answer whether his alleged student helpers had ever interviewed any witnesses. [App. 373-380]

Mr. Hugh Stanton, Jr., who never met with the students, was under the impression that they were to gather statements to be used in support of a change of venue motion. [App. 532]

Ray. The Public Defender, Mr. Hugh Stanton, Sr., did not even attempt to interview Ray until a month after he was appointed to investigate the case. When Stanton, Sr. finally did go to the Shelby County Jail on January 17, 1969, Ray refused to talk with him. After he threw Stanton out of his cell, Ray complained to his guards that he wouldn't let Stanton defend him on a traffic case. [App. 750]

Foreman and the Public Defender achieved togetherness in one respect: each failed to do what both should have done. Foreman didn't give his alleged investigative reports to Stanton; Stanton didn't request them. Stanton came into possession of Russell X. Thompson's files on the Ray case but could not remember whether he ever gave them to Foreman. Nor could Stanton remember what Foreman said Ray told him.

Neither Stanton nor Foreman obtained the vital extradition documents submitted to the Bow Street Magistrate's Court in London. Neither Foreman nor Stanton nor any member of Stanton's staff interviewed such vital witnesses as Judgson Eugene Ghormley, the Sheriff's Lieutenant who found the rifle left on South Main Street; Gracie Walden, the common-law wife of Charles Quitman Stephens, the State's only alleged eyewitness; Dr. Jerry Thomas Francisco, the County Medical Examiner who performed the autopsy on Dr. King; and Dr. Robert V. Wenzler, the city engineer who surveyed the scene of the assassination.

Stanton did not examine any of the physical evidence connected with the assassination of Dr. King. Foreman stated that he had examined the physical evidence, but when asked what he had inspected he could not remember a single item. He did not know whether he had examined a clip with the rifle, nor could he remember seeing the bathroom windowsill. [1974 Foreman deposition, pp. 88-89; App. 381-382]

No attorney who represented James Earl Ray--not Hanes, not Foreman, not Stanton--ever had or sought to have independent ballistics or other kinds of scientific tests, such as spectrographic analyses or neutron activation analyses, performed on the projectile removed from Dr. King or the rifle left on South Main Street. Nor did any of Ray's attorneys ever have or seek to have a forensic scientist examine or test other items of evidence, such as the bathroom windowsill.

These derelictions are fatal to any claim that any of Ray's defense attorneys ever properly investigated his case. The failure to obtain the extradition documents submitted to the London Court is a good example. Any attorney who had obtained those documents would have been able to: 1) discredit the testimony of the State's only alleged eyewitness, Charles Quitman Stephens, on the basis of his own affidavit [App. 134]; 2) establish that Police Inspector N. E. Zachary had submitted an affidavit to the Bow Street Magistrate's Court which perjuriously stated that he had found the rifle left on South Main Street, thereby concealin

the identity of the person who actually did find the rifle, Lt. Judson Eugene Ghormley, and the fact that Lt. Ghormley found it within two to three minutes after Dr. King was shot;[15] and 3) establish that the FBI's ballistics expert, Special Agent Robert W. Frazier, had executed an affidavit [App.131] perjuriously stating that "[b]ecause of distortion due to mutilation and insufficient marks of value" he could not determine whether the bullet removed from Dr. King was fired by the rifle left on South Main Street.

Simply by obtaining these extradition documents, any competent defense attorney would have been able to demolish the testimony of these essential State witnesses on the basis of their own affidavits. This, of course, would have been more effective than countering them with other witnesses, where that was possible. In addition, the revelation that these witnesses had perjured themselves would materially assist Ray's claim that he had been framed. Yet Percy Foreman never obtained the extradition documents and it seems apparent that none of the other attorneys who represented Ray did either.

Examination of the physical evidence was even more important than obtaining the extradition documents. In his December 3, 1968, letter to Percy Foreman [Exh. 155], Arthur Hanes wrote: "This, of

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[15]Ray attempted to subpoena Mr. Zachary to testify at the evidentiary hearing but was informed that he resided in Mississippi just outside the District Court's territorial limits. Thus, Ray was denied the opportunity to question Zachary about his affidavit and the staged photograph of the bundle and rifle which accompanied it. As a consequence of this, the affidavit is also not in evidence in this case.

course, is not the type of case in which affirmative physical or documentary evidence is available for defense, and we accordingly have none to offer you." [Exh. 155]

The evidentiary hearing demonstrated, however, that there is affirmative evidence available for Ray's defense. For example, the State alleges that the shot which killed Dr. King as he was standing on the balcony of the Lorraine Motel was fired from a bathroom window at the rear of a rooming house located at 422 1/2 South Main Street. According to the State's calculations, this shot was fired at a downward angle of approximately four degrees. The State purported to link the rifle left on South Main Street to the bathroom window by claiming that a dent in the windowsill contained microscopic "markings" which are "consistent with" the machine markings on the barrel of that rifle.

But an examination of the bathroom windowsill under a microscope and a study of photographs of the bathroom showed that: 1) it was not possible to determine even the class of object which made the dent in the windowsill, let alone specifically identify that object; 2) because the windowsill is raw, weathered wood, it is not possible to make a microscopic comparison of the dent and the machine markings on the rifle barrel; 3) that if fired at a downward angle of four degrees, there was not enough room to fit the 42 inch long rifle between the dent in the windowsill and the bathroom wall; 4) that if the muzzle rather than the barrel had been resting where the dent is located, the muzzle blast would

have left indelible markings which would have been very evident; and 5) examination of the windowsill revealed no such singe marks. [App. 570-582]

The State put on no forensic scientist to rebut the testimony of Ray's expert witness, Prof. Herbert Leon MacDonell. Thus, the uncontradicted expert testimony is totally exculpatory: the shot which killed Dr. King could not have been fired from the bathroom window by the rifle left on South Main Street as alleged by the State. Yet Percy Foreman scoffed at the idea of having a forensic scientist examine the windowsill. [App. 383-385] And there is no evidence that any of Ray's other defense attorneys ever considered having the windowsill examined by an independent expert.

The testimony at the evidentiary hearing with respect to the ballistics evidence is even more important. That testimony is that the bullet removed from Dr. King contains sufficient detail in its grooves that a positive identification ought to be possible. [App. 577-579] In other words, by test-firing the rifle left on South Main Street, it should be possible to determine beyond any question whether that rifle fired the shot which killed Dr. King.

The undisputed proof adduced at the evidentiary hearing in regard to the ballistics evidence therefore contradicts the affidavit which the FBI's ballistics expert, Robert W. Frazier, submitted at the extradition proceedings in London. Frazier's affi-

davit [App.132] states that "[b]ecause of distortion due to mutilation and insufficient marks of value" he could not determine whether the bullet removed from Dr. King was fired by the rifle allegedly used to commit the assassination. The State did not put Agent Frazier or any other ballistics expert on the stand to rebut the clear inference that Frazier executed a perjurious affidavit in order to conceal the fact that the bullet recovered from Dr. King was not fired by the rifle left on South Main Street.

Although evidence that the bullet which murdered Dr. King did not come from that rifle is directly relevant to Ray's claim that he was framed, none of his defense attorneys sought to have an independent ballistics expert examine and test-fire the rifle and thereby obtain this proof.

Yet to destroy the State's case against Ray not even expert testimony is needed. The part of the bathroom windowsill which contains the dent allegedly made by the barrel of the murder rifle is the inside section. But there is no way that the shot could have been fired at a downward angle while the barrel was resting on the inside part of the windowsill. Yet if fired from the bathroom window, the shot has to have been aimed downward at an angle of approximately four degrees in order to hit Dr. King.

G. A Letter to the Public Defender

On December 18, 1968, Judge Battle appointed the Public Defender, Mr. Hugh Stanton, Sr., as Ray's co-counsel. Stanton was