

**ASSASSINATION INVESTIGATIONS** FRED J. COOK

**THE**

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tute a special committee to investigate economic and financial concentrations, as proposed in Senate Joint Resolution 113, now before the Senate Judiciary Committee. Change from within the system depends upon revelations of facts on ownership and control which the public has a right to know. Armed with that information we can proceed to reshape our institutions so that they will be responsive to the needs of our times. □

## ASSASSINATION INVESTIGATIONS

# THE IRREGULARS TAKE THE FIELD

### FRED J. COOK

*Mr. Cook, a long-time contributor to The Nation, is the author of many books, including the recently published The Nightmare Decade: The Life and Times of Senator Joe McCarthy (Random House).*

The board of directors of the Committee to Investigate Assassinations sat around a circular table in a Washington law office recently and discussed plans for an ongoing inquiry into the three assassinations that have shaken the American political system: those of President John F. Kennedy, Dr. Martin Luther King, Jr. and Robert F. Kennedy. This group of volunteers, formed to press inquiries into the assassinations beyond the point at which official probes have stopped, is unprecedented in the American experience. When President Lyndon B. Johnson appointed the Warren Commission to investigate the death of President Kennedy in 1963, he remarked that there had been a century of controversy over the assassination of President Abraham Lincoln and he did not want that to happen again. He wanted, so he said, all the answers; but the Warren Report, so widely and warmly praised when it was issued, turned out on closer examination to be specious, and full of rationalizations to support the instant official verdict that Lee Harvey Oswald had been the lone assassin. A public storm broke when a number of critical articles and books appeared in 1966, and public opinion polls soon showed that a majority of the American people did not believe the conclusions of the Warren Report.

The official attitude was then, and remains today, one of indifference and lethargy—at times mounting to opposition—toward any further attempt to discover the full truth, which, in the opinion of even some leading public figures, is not to be found in the Warren conclusions. Many Americans found this official inertia intolerable. A highly popular young President had been gunned down in Dallas in mystifying circumstances—and yet it seemed no one wanted, dared or cared enough to uncover the whole story. This situation led in 1968 to the formation of the Committee to Investigate Assassinations.

Learning from the investigations into Lincoln's murder, which produced conflicting theories for decades, this committee is designed to bring under one tent the most responsible assassination researchers across the nation. Its main purposes are to dig for fresh facts, to evaluate and

fit together the mountain of details and clues that already exist, and to keep up a steady campaign of legal actions against official bodies that would prefer to close all doors to further inquiry.

This novel committee exists because of the energy and persistence of Bernard (Bud) Fensterwald, Jr., a former aide to the late Sens. Estes Kefauver and Thomas C. Hennings, and one-time counsel to former Sen. Edward Long's invasion of privacy committee. Among those on the board of directors are former FBI agent William Turner; Prof. Richard Popkin, who developed evidence of "two Oswalds" in Dallas; Richard Sprague of Hartsdale, N.Y., a computer expert who has made a study of assassination photographic evidence; John Henry Faulk of Texas, whose radio career was blighted when he became a victim of the McCarthy witch hunt; Fletcher Prouty, a former Air Force intelligence officer, now connected with a Washington bank; and Paris Flammonde and myself, a couple of writers.

Fensterwald was born into a family of wealthy Nashville clothing merchants, and was educated at Harvard, from where he was graduated in 1942, with a degree *magna cum laude* in international law.

After the war, when he served as a Navy lieutenant in the Southwest Pacific, Fensterwald returned to the study of international law at law school, receiving a master's degree in the subject from the School of Advanced International Studies. He then headed for Washington and a career in the State Department.

One of his first jobs was to put together a defense for some of the expert old China hands who had been maligned by Sen. Joseph McCarthy. Another assignment sent him to Capitol Hill to lobby against the Bricker amendment, which would have crippled the Presidency by returning practically all foreign policy decisions to Congress. The amendment was narrowly defeated in the Senate, and Fensterwald is still proud of his part in the victory. He says: "It [the Bricker amendment] would have returned us to an era like that under the Articles of Confederation."

While working against the amendment, Fensterwald had become close to Senator Kefauver, one of the few outspoken opponents of the bill. With the State Department demoralized by McCarthy's antics, he decided to throw

in his lot with Kefauver, and he traveled with the Senator as speech writer and foreign policy adviser during Kefauver's Vice Presidential campaign in 1956.

An incident of that campaign was to come back to haunt Fensterwald. Kefauver made a speech in Dallas at the end of a hard week of campaigning. He had intended to stay in the city overnight, flying out the next morning. "But a high Dallas police official—I can't remember now just who he was—came to me and said, 'I think you had better get your man out of the city tonight. I don't know whether we can protect him here,'" Fensterwald recalls. "He was quite emphatic about it, and that was enough for me. I told the Senator we had better change our plans, and we got the first plane out."

After the campaign, Fensterwald spent two years as administrative assistant to Sen. Tom Hennings. Then he joined Kefauver as staff director of the Subcommittee on Antitrust and Monopoly, helping direct the hearings that exposed the intricate price-fixing conspiracy in the electrical industry. When Kefauver died, Fensterwald became chief counsel for Senator Long's invasion of privacy probe.

The hearings he conducted on the snooping into private lives by a variety of federal agencies raised a storm at the time, one that still echoes in today's further disclosures. But, as Fensterwald says, with a bite in his soft voice, these hearings were also "the ones that did us all in." A *Life* article, based on an illegal leak by Internal Revenue of tax files, portrayed Senator Long as splitting fees with a Teamster attorney, and the broad-jump inference was drawn that some of the hearings had been tailored to assist the imprisoned Teamster chief, James Hoffa. Fensterwald insists that he had leaned over backward to avoid this (a contention I know to be true regarding at least one bit of potential evidence); but Senator Long, badly spattered, was defeated for re-election. With all his horses shot out from under him, Fensterwald decided at this point to go into private law practice and to turn his energies to an investigation of President Kennedy's assassination.

"Like a lot of others," says Fensterwald, "I had been interested in this from the first, but I really began to get involved in 1967 when I went into New Orleans to see Jim Garrison. I was there on another matter entirely, but Garrison—it's typical of Jim—spent the whole afternoon talking about his Kennedy investigation, and the more he talked, the more interested I became."

Back in Washington, Fensterwald began to study with greater care the Warren Report and the accompanying twenty-six volumes of testimony. He also talked to a wide circle of influential friends on Capitol Hill. There are those in Washington who will tell you that Fensterwald has a brilliant and disciplined mind that could have carried him far in the State Department had the chips fallen differently; but, in any event, there can be no question about his contacts. Inscribed pictures of sixteen prominent men line his walls. Those of Kefauver and Long are in places of honor, but conspicuous also are pictures of Birch Bayh, Philip Hart, Edward Kennedy, Everett Dirksen and Lyndon Johnson. Fensterwald recalls:

I tried to interest some of these men in the Senate, many of them good friends of mine, in doing something about the Warren Report. I got no response at all,

largely, I think, for two reasons: the great regard a lot of these men had for Chief Justice Earl Warren, and the fact that other distinguished members of Congress, like Sen. Richard Russell of Georgia, had their reputations on the line—and so nobody wanted to mess with the case.

I talked to Senator Long about it. I'm sure that he, like many of the others, didn't believe the Warren Report, but he didn't think anything could be done about it and he thought that, politically, it was suicidal. He was sympathetic to what I was trying to do, but that was it.

The assassinations of 1968, those of Dr. King and Robert Kennedy, determined Fensterwald's course. He had come to believe—a belief he still holds—that the failure to solve beyond doubt President Kennedy's assassination in Dallas meant that there would be other assassinations. The events of 1968 came like a confirmation of his private conviction.

"I figured I had to do this," he says, explaining his decision to devote his own time, energy and no inconsiderable amount of money to the cause. "I thought somebody had to be doing it, and I thought my training as an investigator qualified me better than most. In addition, I had held hearings all over the country, and I had contacts with people in law enforcement.

"My aim was to get all the responsible critics of the Warren Report under one tent, to pool all information researchers had unearthed across the country. And I thought that, if this was done, we would be able to raise money to finance a really professional investigation."

I had first met Fensterwald when he was counsel for Senator Long's invasion of privacy committee [see Cook: "Law Enforcement Underground," *The Nation*, December 20, 1965]. I met him again in September 1968, when he was in New York and on one leg of an 8,000-mile tour that took him to Los Angeles, Dallas, New Orleans, Miami and Memphis. One of his first stops, in Miami, had shaken him; but he was uncertain at the time how much importance he should attach to it.

The late Walter E. Headley, Jr., chief of police in Miami, who had a national reputation as a tough law-and-order cop (former President Truman once called him "the best police chief in the country"), contended that he had tried to warn federal agencies for nine months before Dallas that a serious assassination conspiracy was aimed at President Kennedy. Headley had reason for his concern. His detectives were working with an informer who had traveled to New Orleans, Indianapolis and other cities with a leading segregationist, and who had reported on a hate-crazed fringe that talked wildly of assassination.

When President Kennedy was scheduled to visit Miami on November 18, 1963, Chief Headley became deeply alarmed. Detective Sergeant C. H. Sapp, commanding Headley's intelligence unit, had a motel room wired for sound, and the informer inveigled the segregationist leader into a tape-recorded conversation. The segregationist described almost to the letter the events that were so soon to occur in Dallas: a high-powered rifle would be taken, disassembled, into a high office building; if the Secret Service wasn't suspicious and wasn't checking every building on the motorcade route, the President would be shot; and right afterward, "they will pick somebody up . . . just to throw the public off. . . ."

The tape recording so upset Chief Headley that he at

once notified the FBI and the Secret Service; and when President Kennedy came to Miami on November 18, the originally proposed motorcade was called off, the President was lifted by helicopter to the site at which he spoke, then was airlifted out again and whirled away from the city. Yet no mention of all this is to be found in the Warren Report or in its twenty-six volumes of evidence; and when Fensterwald visited the Miami police in 1968, they told him that he was the first investigator to inquire about what they knew.

Fensterwald's 1968 nationwide tour succeeded, as he had hoped, in persuading the more responsible researchers to pool their efforts. In Dallas he found that three of the city's most respectable citizens had devoted almost every hour of their spare time since the assassination to interviewing witnesses and running down clues. That work, persevered in for almost eight years, has produced a 12,000-card index file covering virtually every facet of the Presidential assassination.

In November 1969, during a trip abroad, Fensterwald turned his attention to certain mysterious aspects of the King case that had arisen in connection with the arrest in London of James Earl Ray, another alleged "lone assassin." What interested Fensterwald were some wispy strands of evidence indicating that, both in the United States and in London, more than one man had used Ray's alias of the moment. The laying of multiple "Oswald" trails had been baffling in Dallas, and the same technique seemed to have been followed in the assassination of Dr. King.

In the pre-assassination period, Ray had been using the alias of Eric Starvo Galt. While Ray was in California, a man telephoned the Alabama Highway Patrol for a duplicate driver's license for Eric Starvo Galt, claiming the original had been lost. The license was mailed to Ray's former boardinghouse address in Birmingham; it was picked up there and the small fee mailed back. Yet, as a doctor's records and those of a bartender's school showed, Ray had been in California at the time.

The alias used by Ray in London had been another highly unusual one—Ramon George Sneyd. Yet again, it appeared, someone other than Ray had been using this novel name, a technique that resulted in infinite confusion.

One indication of a Sneyd-Ray double snafu emerged from the tanglefooted announcement of Ray's arrest. Scotland Yard, which is supposed to be as infallible as the FBI, originally announced that Ray was arrested at 6:15 A.M., June 8, 1968 after disembarking from a Lisbon flight and while waiting to transfer to a Brussels plane. London newsmen, who interviewed the arresting officer, quoted him as saying he had spotted Ray during a "pre-breakfast" tour of duty. Later, the official version changed. The time of the arrest was put at 11:15 A.M., but Scotland Yard still insisted, months later, that Ray had arrived on a Lisbon flight.

The puzzle about all this is that the Ramon George Sneyd who became the real James Earl Ray in later official versions was living in a small London rooming house called the Pax at the moment the original official announcement had him being arrested at London's Heathrow Airport. As the official version finally jelled, it was the Pax's Ramon George Sneyd who left his room about 9:30 A.M., went to

the airport and was picked up there while trying to board a Brussels flight.

Fensterwald tried to unravel the mystery, but ran into a wall of official silence at Scotland Yard. He had better luck, however, with the landladies of London who had encountered men calling themselves Ramon George Sneyd and who described for him two individuals whose life styles marked them as totally different men.

Mrs. Katherine Westwood was proprietress of the Heathfield House, where a man named Sneyd had stayed. He had occupied Room 3C from May 16 to May 28; he had then moved to the New Earls Court Hotel, and from there apparently to another undiscovered rooming house. According to Mrs. Westwood, her Sneyd left daily at about 10 A.M., was gone all day and returned around midnight. He was a calm man; he showed no signs of being nervous or worried. Shown pictures of Ray, Mrs. Westwood said they "did bring the man back to mind," but she couldn't be certain her Sneyd was really Ray.

Take now, by contrast, the account of Mrs. Anna Thomas, proprietress of the Pax Hotel at 126 Warwick Street. Her Sneyd appeared on the doorstep during a driving rainstorm on June 5. He was accompanied by a tall blond man who said nothing. Mrs. Thomas got the impression that Sneyd had just flown in from Canada. He seemed extremely tired and clutched in his hands a sheaf of magazines and newspapers. Sneyd told Mrs. Thomas that he would be receiving mail and phone calls—and he did. Every time she saw him, his eyes were hidden behind large dark glasses. Unlike Mrs. Westwood's Sneyd, Mrs. Thomas' Sneyd seemed secretive, jumpy. He never left his room for more than a few minutes at a time. Mrs. Thomas considered him "cheeky" and said that he looked and acted as if he were drunk most of the time. His clothes were so rumpled she decided he slept in them. And after his departure, she found a plastic syringe and needle in his room, which suggested that her Sneyd was a drug addict (Ray isn't).

When police came calling on June 12, Mrs. Thomas told Fensterwald, they asked her a number of questions, but they didn't try to examine the room her Sneyd had occupied for fingerprints; they didn't bother with the syringe and needle he had left behind; they didn't examine or take the magazines and newspapers Sneyd had left in his room. In October 1968, evidently in preparation for Ray's pending Memphis trial, FBI agents, accompanied by Scotland Yard men, questioned Mrs. Thomas. When she described her roomer to them, she said, they became "very cross" and practically accused her of lying. She quoted them as admonishing her: "Forget about it completely. Never mention it again."

Mrs. Thomas added one postscript. She told Fensterwald she was positive her Sneyd was *not* James Earl Ray. There was a resemblance, she said, but it was definitely not the same man. She gave Fensterwald other details pointing to the same conclusion.

#### SUMMER SCHEDULE

During the summer, *The Nation* will not appear on the following dates: July 26, August 9, August 23.

If Mrs. Thomas' "Sneyd" was not the real James Earl Ray, as seems probable, why did the official version insist that he was? And where did the real James Earl Ray come from? Was he, indeed, the man on the Lisbon flight? Or was he Mrs. Westwood's "Sneyd"? Or could it be that these two were one—that Mrs. Westwood's Sneyd, after vanishing into the London rooming-house maze, had gone to Lisbon and been arrested on his return? Here was an unresolvable mystery.

Fensterwald concluded, as he later reported to his committee, "that there were two Sneyds in London some of the time between May 17 and June 8." He also thought it possible that two men had been picked up at Heathrow on the morning of June 8 and that the conflicting official versions resulted from confusion about which of them was the real James Earl Ray—"the lone assassin," the man to be held. This possibility, however, could never be tested without official cooperation, and Fensterwald returned home more convinced than ever that the full truth about the assassinations had not been told.

Yet Fensterwald had no success then—and has had none since—in persuading any of the powerful men he knows in Washington to throw their weight and prestige behind an investigation into the assassination mysteries that haunt the American political scene. With reference to President Kennedy's death, he says:

I must have talked to twelve or fifteen Senators, all of them friends of mine, but I had no luck in getting any of them to move. Among the Senators I talked to, I couldn't find many who believed in the Warren Report, but they all felt uneasy the minute I tried to talk about it and changed the conversation to something else. They just didn't want to think about it.

In September 1970, California's conservative Republican Sen. George Murphy, then seeking re-election, startled a San Francisco Bay Area audience by saying he doubted the lone-assassination "solutions" to the deaths of both Kennedys: "A President and his brother are assassinated—for what reason and by whose order I am still not certain. . . . Somebody, I think, instigated them."

Most curious of all, perhaps, are the doubts expressed

by Jesse Curry, former police chief of Dallas, who was in charge of Dallas police at the time of the assassination. Of all men, he might be expected to be the most certain that Oswald was the killer and that he was without accomplices. Yet in his book, *JFK Assassination File*, Chief Curry expressed skepticism and gave his reasons as follows:

(1) "A paraffin test taken of the right side of Oswald's face did not reveal any nitrates from having fired a rifle," as would be expected had he fired one.

(2) Howard L. Brennan, the Warren Commission's star witness, the man who is supposed to have spotted Oswald firing from the 6th-floor window of the Texas School Book Depository, constantly changed his story. After first failing positively to identify Oswald in a lineup, Chief Curry wrote, "Brennan's later testimony to FBI agents apparently varied from month to month. . . ."

(3) Eyewitnesses who reported seeing *two* men on the 6th floor of the depository were interviewed by Dallas police, turned over to the FBI—and "No statement about the second man or mention of an accomplice appeared in the FBI report."

(4) As Curry told newsmen when his book was published, "We don't have any proof he [Oswald] fired the rifle. No one has been able positively to put him in that building with a gun in his hand." In a subsequent letter to Fensterwald, Curry wrote: "I would be very interested to know if you uncover additional evidence regarding a conspiracy. If I can be of any further help to you please let me know."

With this background in mind, the board of directors of the Committee to Investigate Assassinations met in Fensterwald's office late in April. John Henry Faulk had come up from Texas. Most Texans, he said, except for certain "establishmentarian types," had never believed the Warren Report and would like to see the President's assassination really solved, convinced that if the whole truth were known much of the onus would be removed from Dallas and Texas.

Fensterwald outlined the progress that had been made on a variety of projects. The major one involves putting



all of the information about the Dallas assassination into a computer system. This has become essential because, as the Dallas researchers' 12,000-card index indicates, the number of names, clues, witnesses that thread in and out of the Dallas story represent a bewildering maze beyond the capacity of any human brain to contain and understand.

The first object of the computer system is to catalogue the associations and activities of persons turned up in the official investigation. The computerized system, it is expected, will be able to give instant answers to questions such as these: Were two persons acquainted? Were they in the same place at the same time? Did they belong to the same organizations? Did their explanations of their whereabouts and activities conflict?

Since the committee has never been able to attract more than a few contributions, since its treasury is chronically bare, this work must be done by volunteers. The first 1,000 computer cards were key-punched by girl volunteers last summer; another 2,000 are being prepared now. One computer expert rises sometimes at three o'clock in the morning to feed information into a computer that he knows will be available at that time.

Many efforts have been made to ridicule the committee's work and to create a public impression that only crackpots still concern themselves about the assassinations. A favorite tactic of the late Allen Dulles, former director of the Central Intelligence Agency and a Warren Commission member, was to object that critics "haven't come up with anything new." If Oswald didn't do it, who did, he would ask, as if the critics were irresponsible if they couldn't provide the answer. But every day of the week juries acquit defendants whom, on the evidence, they find not guilty. They are not expected at the same time to tell the prosecution who *was* guilty. The reasons are obvious: jurors, like the critics of the Warren Report, have no authority to investigate; they have no subpoena powers, no detective force at their command.

The committee's files are loaded with leads and information, much of it in affidavit form, that any thorough and conscientious official inquiry could pursue. As is always the case in criminal investigations, some leads that look promising would wash out after full investigation, but it is hard to believe that instance after instance in which there is evidence of lies, deceit and shadowy undercover double-dealing would not in the end turn up some matters of substance.

Take, for example, this single instance, typical of many, of a trail ignored or not pursued in the official Dallas inquiry. In October 1963, a young man popped into the Lincoln-Mercury agency in Dallas and got a job as a salesman, after submitting what appeared to be excellent references from a New Orleans agency. He worked for the Dallas firm up to the day of the President's assassination, but he never sold a car.

This Dallas agency, it so happened, was the one that supplied all the cars for the Presidential motorcade; it was also the one where a man giving the name of Lee Harvey Oswald came car-shopping, confiding that he would come into considerable money in November and test-driving a sales model in the most reckless fashion (Oswald was supposed to be unable to drive). As November 22 neared, the young salesman about whom the agency knew very little

asked his bosses for the loan of a car. He had to make an urgent trip to California. After much discussion, it was arranged that he should take a new car and deliver it in Los Angeles. He was to leave Dallas on the afternoon of November 22. However, he did not show up for work that morning. About 1:45 P.M. he ran into the agency. He was dripping wet, his face ashen; and he hurried into the men's room, where he was violently sick. He had driven the car home the night before; it was recovered from a parking place in the area of the grassy knoll overlooking the assassination site. The young salesman himself was picked up by the police, held for some twenty-four hours, then released after the entire guilt for the deed had been fixed on Oswald.

Subsequent investigations showed that the references with which the young man had impressed the auto agency were false. There was evidence that he had stayed in a YMCA with Oswald. In Dallas he, like Oswald, had talked an ardent pro-Castro line; but after he left Dallas and went to West Virginia, he was noted for making just as ardent right-wing speeches. He had received an honorable discharge from the Air Force, where he had been rated an expert marksman. When a volunteer investigator for the committee questioned him and began to press him on the inconsistencies of his story, his eyes hardened and he warned the investigator to stop bothering him and get out of town—or else.

And then there is the matter of how the Secret Service behaved in Dallas. A former veteran intelligence agent explained to the committee in its April meeting that there exists "a book" which prescribes exactly the manner in which Presidential motorcades are to be covered. The question is: why wasn't "the book" followed in Dallas? Only four days earlier in Miami, thanks to the insistence of Chief Headley, "the book" had been followed to the letter and the President had been given the most thoroughly protective "cover." In Dallas, the "cover" was not supplied.

"Secret Service rules are positive and exact," the former intelligence agent says. They are so exact that they define the precise rate of speed that makes the difference between coverage and noncoverage. If a motorcade is going faster than 44 miles an hour, it is not necessary to cover every rooftop and every building; at any slower speeds—"the book" is rigid—everything must be covered. This agent says:

Now, I can't give you "the book," but I have had it in my hands. I personally have had the training of agents on the procedures to be followed, and I have done it from "the book." Remember, in a case like this, Secret Service forces may be beefed up fifty times, or 500 times, by agents drawn from other government forces. The only way an assassination like this can happen is if "the book" isn't followed. That's what happened to Diem; that's what happened to Trujillo—and I *know* what happened to Trujillo. Once the guy's cover is withdrawn, it's going to happen.

"The book," according to this agent, decrees a cover for every rooftop and every window overlooking the route of a slow motorcade. Even machine guns will be placed on rooftops overlooking rows of dangerous windows; they may not be visible to the average viewer—but they will be there. Every office in every office building overlooking the mo-



torcade route must be examined thoroughly. If an office is unused, it must be locked and sealed. Agents are furnished with walkie-talkies and, minutes before the motorcade passes a given point, they must tour the halls again, making certain that the seals are intact on each locked room.

"The whole thing is a science and a nice one," the agent says. "And as you know, in a bureaucracy, once 'the book' is set up, it is much easier to do things by 'the book' than not to do them that way. It would take some powerful force to change this, to remove 'the cover' and do it another way."

Yet, in Dallas, as the Warren Report makes clear, there were no Secret Service agents in the entire area of the School Book Depository and the grassy knoll; President Kennedy simply was not given the kind of protective cover that, as the pictures in almost any newspaper file will demonstrate, has been provided for other Presidents in other motorcades in other cities.

There is another indication that something odd was happening in Secret Service. Jerry Bruno was the experienced advance man who supervised speaking and crowd arrangements for the Kennedys. He tells in his book, *The Advance Man*, how he tried to make arrangements for President Kennedy's visit to Dallas. He found that the conservative Democratic machine headed by Gov. John B. Connally wanted the President to speak in the Dallas Trade Mart with only fat cats in attendance. Bruno disliked the idea and decided the President should speak in the Women's Building auditorium, which seats 4,000 and could accommodate the common people. But Bruno had to circumvent Establishment pressure for the Trade Mart site, and he did it very neatly—or so he thought. He writes:

My idea—and I'd done it before on political advance—was to get the Secret Service to veto the Trade Mart on security grounds. That way there was nothing Connally could do about it, and we would have to go to the Women's Building. I asked Jerry Behn, the head of the Secret Service at the White House, to pass the word to the Texas agents to wrap it up. But somehow or other the word never got through. We heard back from Texas that the Secret Service had O.K.'d the Trade Mart as acceptable from a security point of view.

Bruno's plan had been sabotaged. It was, as he points out, a key decision. Had the President been going to speak at the Women's Building auditorium, his motorcade would have rolled along straight streets at a good rate of speed; there would have been no necessity to make that slow, intricate turn in front of the Texas School Book Depository, fringed with its grassy knoll—the perfect setup, as it turned out, for assassination.

Out in California the committee keeps in touch with a number of researchers who are pursuing various leads in the Robert F. Kennedy assassination. Much of the material gathered so far, however, requires further investigation. On the other hand, the case of James Earl Ray seemed to offer a better opportunity for a legal challenge of the official verdict, and it is this case in which Fensterwald and the committee have been most active.

Ray pleaded guilty to the murder charge in the King case in a Memphis courtroom on March 10, 1969. In a brief court travesty that the press of the nation promptly

dubbed "the minitrial," Ray felt impelled, however, to throw a wrench into the smoothly oiled plea-copping performance that was to bring him a ninety-nine-year sentence. He protested to Judge W. Preston Battle that he did not agree with FBI Director J. Edgar Hoover and Atty. Gen. Ramsey Clark that there had been no conspiracy. Here was the crux of the case, and Ray certainly was in a position to know. He had lifted the lid on Pandora's box. Would officialdom peep? It would not. Ray's attorney of the moment, Texas lawyer Percy Foreman, leaped into the breach, reminding the court smoothly that the only issue was that Ray was admitting his own guilt. Was he? Yes, Ray said, and the proceedings rolled smoothly on. The usually temperate *New York Times* erupted in an editorial roar, branding "the aborted trial . . . a shocking breach of faith with the American people. . . . Nothing but outrage and suspicion can follow the handling of this long-delayed and instantly snuffed-out trial. . . ."

Packed away in Brushy Mountain Penitentiary in east Tennessee (from which in early May he made an attempt to escape), James Earl Ray looked with distaste at those ninety-nine prison years stretching before him. He denounced Percy Foreman for twisting his arm and conning him into copping a plea instead of standing trial as, Ray insisted, he had wanted to do. The record seems to bear Ray out on this point. Foreman himself later acknowledged that he had told Ray any Memphis jury that would try him would be set to "burn your ass," disregarding centuries of precedent that say Southern juries rarely convict, let alone "burn," white men who kill Negroes. Ray's dismissal of Foreman and his clamor to have his case reopened gave Fensterwald his chance, and Fensterwald became, in time, Ray's eleventh attorney.

In 1970 Fensterwald filed a motion in Shelby County Criminal Court in Tennessee, asking for an "evidentiary hearing" on Ray's contention that his constitutional rights had been abridged by undue pressure exerted upon him by Foreman. In a deposition, Foreman under oath admitted that he had bargained directly with Judge Battle for the guilty plea and ninety-nine-year sentence. "I didn't talk to the prosecution about a plea," he testified. "Judge Battle was running this lawsuit."

Foreman said that he had met with Judge Battle "many times, six or eight times," and Fensterwald argued that a judge who becomes so involved is, in effect, not a judge but an arm of the prosecution. He cited the American Bar Association's *Standards Relating to Pleas of Guilty*, which says flatly: "The trial judge should not participate in plea discussions." Fensterwald added:

In addition, Petitioner alleges that Foreman's direct negotiation of the guilty plea had to raise in the Petitioner's mind the question of whether he could possibly receive a fair trial were he to go to trial before Judge Battle with Percy Foreman as his counsel. This affected the voluntariness of his plea. At the same time, this history of prior negotiation between Judge Battle and Percy Foreman also made it difficult, if not impossible, for Judge Battle to objectively determine the voluntariness of the guilty plea when it was offered.

Unfortunately, Judge Battle had died with Ray's appeal papers on his desk. Judge William Williams, who inherited the case, rendered an oral decision after almost

a year of delay. He refused to grant Ray a hearing. He argued, in effect, that Ray's rights would have been violated if an agent of the state had coerced him into pleading guilty, but that it wasn't against the law of Tennessee if his own attorney applied such pressure.

"We are taking an appeal to the Tennessee Court of Appeals in Jackson, Tenn.," Fensterwald says, "and we will fight the case all the way to the Supreme Court of the United States if we have to." In preparing the appeal, Fensterwald has talked many times to the enigmatic habitual criminal whose career in crime had been a series of almost ludicrous failures until he escaped from Missouri State Prison and emerged months later in the King assassination as both a supershot and superbrain, two attributes his life-long story suggests he never possessed.

"Originally, he was very tight-mouthed about everything," Fensterwald says, describing his experience with Ray. "But, remember, he had had a pretty bad experience with lawyers. The first few times I saw him he told me nothing. Now he still keeps silent about the key points we are interested in, but again, remember, he is still in prison and it might not be too healthy for him to talk."

In studying Ray's case, Fensterwald and his young legal assistant, James Lesar, eldest son of the dean of Washington University Law School, made several trips to Tennessee, and several of their discoveries are suggestive. "In the nine months Ray was in solitary confinement, from the time he was flown here from England until he pleaded guilty, he never saw the light of day, and he could never sleep in darkness," Fensterwald says. "Twenty-four hours a day there was an electric light burning into his eyes in that cell. And the cell in which he was confined is now used as a special punishment cell."

Attempts to examine some of the basic evidence in the case were frustrating. Arthur J. Hanes, the former Mayor of Birmingham and Ray's original attorney, had asked for and been granted access to all official records detailing the motels and rooming houses in which Ray had stayed from the time of his Missouri escape until his arrest in London.

"But when we asked for the same information, all we were allowed to see was Ray's registration in the Rebel Motel in Memphis," Fensterwald says.

A bit of evidence that was widely ballyhooed in the press at the time of Ray's arrest was the windowsill taken from the bathroom of the Memphis flophouse from which, according to the official version, Ray fired the shot that killed Dr. King. This windowsill was supposed to have a dent in it that perfectly matched the curvature of a rifle barrel. Though a rifle kicks up, not down, when a shot is fired, this dent was interpreted by the prosecution as a vital exhibit, demonstrating that the fatal shot had been fired from the bathroom window. "Well, the windowsill is gone; it has just disappeared," Fensterwald says. "We were allowed to look at all the exhibits introduced in court. The others are there—but not the windowsill."

Summing up his efforts in the assassination cases, Fensterwald shakes his head and smiles wryly. "It sure doesn't help the law business," he confides. "People don't want to make Uncle Sam mad." And he continues to be amazed at the sometimes positively hostile reaction on Capitol Hill. Edward Kennedy's attitude especially disturbs him. "I haven't talked to him directly," Fensterwald explains, "but I have to some of the people close to him. I'm told he's violently opposed to what I'm doing. I can understand that he might not want to become involved, but why should he be violently opposed? I don't get it."

As for the general atmosphere, ranging from inertia to positive hostility on Capitol Hill, he gives this interpretation: "There seems to be an inherent fear that, if you do open all this up, you may find agents from some federal agencies mucking around in the background of the whole business. And this is just too much for them to stand; they refuse to face the possibility."

This, in Fensterwald's opinion, is the dark shadow that inhibits action; but he is convinced, as are many members of his committee, that unless there is action the tragic record of the past may well be repeated in the future. □

## A Fair Trial for Angela Davis?

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Ordinarily, when we speak of a fair trial, we think of the defendant's ability to retain competent counsel and investigators, of being able to exclude illegally seized evidence, or coerced confessions. The Angela Davis-Ruchell Magee case is out of the ordinary. Magee claims he cannot obtain a fair trial in the courts of California. He points to his seven-year-old conviction on a \$10 kidnap-robbery charge in Los Angeles and says his guilty plea was fraudulently

obtained. He believes that the California courts, district attorneys and appointed counsel want to railroad him to the gas chamber to silence him from protesting his fraudulent conviction. Miss Davis, on the other hand, now says she believes it may be possible for her to receive a fair trial in California courts, although she may not have thought so when she left the state in August 1970. Still, it is questionable that a fair trial is possible for her. The issue must be analyzed in terms of the ability of the criminal justice system to deal impartially with a black, abrasively political defendant accused of serious, violent acts.

On August 7, 1970 James McClain, an inmate at San Quentin prison, was on trial in San Rafael, Calif., for assaulting a prison guard. Ruchell Magee was on the witness stand being examined by the assistant district attorney, Gary Thomas. At about 11 A.M., a young, hand-