

HR JP

August 8, 1971

Mr. Royal E. Blakeman  
Marshall, Bratter, Greene, Allison & Tucker  
430 Park Avenue  
New York, New York 10022

Dear Mr. Blakeman:

This delay in responding to your letter of July 29 is so I may quote directly from the Merv Griffin Show on which Percy Foreman did appear. Doing this seems to be necessary in view of your claim about what you alleged to be the character of Mr. Foreman's remarks, which, in turn, seems to have been dictated not from your own examination of tape or transcript but from a misrepresentation made to you. Although in all other respects your letter is frivolous or irrelevant, I will also address these points.

That others were on the same show, for example, is utterly meaningless.

But you pretend that "we are unaware of statements made by Mr. Foreman in connection with that case which would require, under the so-called 'fairness doctrine', the presentation of other viewpoints."

Immediately after you wrote this letter, the U. S. Court of Appeals in Washington issued a 54-page decision, a few selections from which are precisely in point on this question. Here are a few quotes:

The marketplace of ideas protected by the First Amendment is not governed by the tastes and intellectual standards of the universities or the broadcast newsroom - or even judicial chambers,

and "robust, wide-open debate" on public issues must be insured.

(Yet you claim "a beeking is solely within the discretion of the producer of the show.")

The broadcast media have become "our primary means of communication" and cannot be treated like private enterprise. Americans once reached by ideas presented in the traditional means of the past "have increasingly moved indoors - in front of their television sets."

This decision holds that there is urgent national need for "enriching debate on public issues." And it renews and fortifies "the people's right to engage in and to hear vigorous public debate on the broadcast media."

Thus, the former standard of "controversial," which my request for equal time does meet, is broadened and the sole requirement now is that it be a "public issue."

Regardless of what the producer may or may not have had in mind in scheduling Mr. Foreman, here is how Mr. Griffin opened the subject of the King/Ray case:

"And you, Mr. Foreman, are the man who got the decision for James Earl Ray, the man who assassinated Martin Luther King. It may well put him back into the streets someday."

It is unfortunate that everything Mr. Griffin said is untrue by the existing public record.

Ray was neither the actual assassin, nor charged with being the actual assassin, nor admitted being the actual assassin. When Foreman attempted to extend the deal into which he had first blackmailed and then bribed Ray, Ray objected, publicly, in court. As a lawyer, you well know that at this moment the judge should have halted everything, for this was during the voir dire. I have the transcript and quote it verbatim in FRAME-UP, which you have.

Foreman has not been unduly modest in saying how he got Ray to agree to the plea he had resisted from the beginning. It took months to get him to agree. Foreman merely told Ray if he didn't, he'd be "barbecued." When, in the last minute, the day before the hearing, Ray again backed out on the deal, Foreman bribed him, quite literally. Whereas Foreman had been gloating over the estimated half-million dollars salting his client away for life was about to yield him, on March 9, 1969, he bought Ray's silence for another 24 hours by promising Ray about \$350,000, or all over and above \$165,000 which Foreman would keep. The sole condition was if "no embarrassing circumstances take place in the court room," in the words of one letter contract, and "contingent upon the plea of guilty and sentence going through on March 10, 1969, without any unseemly conduct on your part in court" in the second. (Both letters enclosed.)

Are you, as a lawyer, prepared to argue that such a thing, in the United States, is not a "public issue," not a "controversial" issue, not something on which the people have a right "to hear vigorous public debate on the broadcast media," especially after Mr. Griffin's introduction?

Rather than the simplification that Foreman "got the decision," Judge Preston Battle, with utmost impropriety, negotiated it (FRAME-UP, pp.86ff). Simultaneously, as he later confessed, this same judge expressed the most profound doubt about all the basic questions, including conspiracy (p.90). In expressing his own lack of confidence in the workings of our system of justice, the judge went even further, bragging that he had, in fact, made a "good deal," for had he not insisted upon putting Ray on ice for the rest of a normal life-span,

"Had there been a trial, there could always have been the possibility, in such an emotionally-charged case, of a hung jury. Or, though it may appear far-fetched now, he could have perhaps been acquitted by a jury." (p.91)

If in your practice you are not familiar with the ABA standards in such matters, drafted by the man now Chief Justice, you will find them on page 89.

Over and above the question, in your words, of "the presentation of other viewpoints" or the court's of full and vigorous presentation of both sides on "public issues" is the question of fact, of your giving that enormous proportion of the American people you reach - and I do not impute dishonesty of intent - the grossest misinformation. (And it is precisely because no show can know all about all issues that this FCC policy is so wise.)

The first question raised was that of conspiracy, "many of us suspect that there were other people involved and that the plea was an arrangement to prevent anything from coming to light." Foreman made so light of this that the audience laughed, and he added of this odious deal, "Wasn't anything behind it except 43 years of trial work and my judgment and his ... that he would be executed ..."

To Foreman's knowledge this was false, on all counts.

On Foreman's track record, including an incredible number of murderers caught in the act, according to Time magazine, he "has served as defense counsel in at least 1500 capital cases. By his own count, a mere 64 of his clients were sentenced to prison and only one was executed." (p.94).

The judge, in self-justification, argued, "Why accept any plea at all? Why not try him, try to give him the electric chair? Well, I have been a judge since 1959, and I myself have sentenced at least seven men to the electric chair, maybe a few more. My fellow judges in this county have sentenced several others to execution. There has been no execution of any prisoners from Shelby County in this State since I took the bench in 1959. All the trends in the country are in the direction of doing away with capital punishment altogether." (p.125)

Assuming what my assembling of the evidence makes impossible, that Ray could or would have been convicted and that conviction sustained, there was no chance of execution at all, to which the unjudicial judge himself attested.

An interesting sidelight on this is what so eminent a defender as Foreman should have known, drawing on all those "43 years of trial work," that as a prosecutor this judge had extorted a confession from a prisoner by keeping him under constant lights for 36 hours. That case (Ashcraft v. State of Tennessee) went to the Supreme Court and was reversed because of this "undue rigor." But when this prosecutor became the judge in the Ray case, he refused to ameliorate the conditions of Ray's pre-trial confinement, nine months of solitary confinement with constant light plus two closed-circuit TV cameras plus two microphones connected to tape recorders, none of these conditions removed even when earlier counsel conferred with him! For nine months Ray saw no daylight, never knew whether it was day or night. Can you, as a lawyer, believe that on this basis alone conviction could have been sustained? Can you as a lawyer honestly say there is no "public issue" here?

Asked "where did all the money come from" for all that international travel, the purchase of a car, expensive camera equipment, dancing and bartending instructions, and the cost of living for so long a period, Foreman specified but two criminal acts that netted, in his own words, \$1,700 and \$2,100, hardly enough to answer the question or to be the reality.

Asked Ray's motive, "Ray thought he would be a hero to the white people ... He wanted to be caught."

Aside from the inference of racism, of which there is no probative evidence either way but nothing in Ray's subsequent prison history to validate it, to be a "hero" he had to be caught. Is there anything in what is generally known to support such a fable? All those aliases, all that hiding, all that inability of the FBI ever to get close to him - even the ultimate arrest an accident? Wiping the car clear of prints? The claim of Scotland Yard, that on capture he said he felt so penned in? His denial of doing the actual shooting in court and his insistence that there had been a conspiracy? Why? To share his moment of glory, his "heroism?" This line of argument and reasoning would demean a madman.

When Foreman gets into the alleged evidence, he displays an ignorance of it rivaled only by the chief prosecutor, who improper discussion of a case then in court before the state bar association I have on tape, should it interest you.

Of Ray's transistor radio: "... his number from the Missouri Penitentiary ... was pasted on ..." The FBI says it was engraved.

The rifle? "... the gun, which had fingerprints all over it but only three were found and he was irate because the FBI had found only three prints. He said there were 31 there ..."

How could Ray possibly have known the number of fingerprints he had left on the finely-polished and finely-machined rifle he had bought? But the FBI claims only one, plus one on the scope, neither where the rifle had to be held when shooting. There is no print where prints had to be had he used the weapon. I have the FBI agent's affidavit, not put into evidence in the Memphis mimicry of justice I call the "minitrial." I had to sue to get it and other public evidence, all confiscated by the federal government. But, since there is no proof this rifle was used in the assassination, any print on it is irrelevant.

What should capture your mind is this: Ray bought the rifle hundreds of miles away and handled it often. Yet there is but a single print on it and one on its scope? There is but one way to explain this, and that is not in terms of the ambition for fame Foreman attributes to him. That rifle was wiped clean and then Ray handled it.

"He laid all this down at the foot of the stairs. In the presence of half-dozen people watching." The package was not "at the foot of the stairs" or anywhere near it. It was at a different address to the south, inside the entrance to a secondhand record store. Not only were there not "half-dozen people watching him," there was not one! There is nobody known to have seen the package deposited, and there is no prosecution claim, even in the absence of opposition, to the existence of such a witness.

I could go on and on for hours. For your information and understanding, let me add just a few uncontested facts:

Ray bought and had an entire box of bullets. There were none in the rifle's clip, merely an expended shell, in the breech. There is no case

on record of an empty shell causing a murder.

The FBI admits it cannot connect this rifle with the crime. It lies in saying it examined a "bullet" recovered from the body, for none was. But of this fragment, the FBI could not be more explicit: It could not and did not connect this misrepresented fragment with that Ray rifle (p.506).

The prosecution had no single identification of Ray. They not only could not place him at the scene of the crime - when it was committed or at any other time - but can't even place him in Memphis at that time.

Not one of the witnesses shown FBI identification pictures identified Ray. All who took a firm position took it negatively.

The closest thing to any kind of witness is legal history's least credible, a poor sick man, an alcoholic then so drunk he was unable to get out of bed. He saw nothing and didn't even pretend to until paid to by a reporter. He was still so drunk later that night when taken to the district attorney's office that they didn't even try to take a statement from him. He had, in fact, shortly before this, himself threatened to commit a different murder. And even he makes no identification (p.506).

There is no Ray fingerprint anywhere he had to have been to do any part of what the prosecution attributes to him, being in that flophouse room, moving its furniture, using the bathroom or firing from it. Of his car when found the FBI presents something new in criminology, claiming that after that mad dash across the heartland of the south, with witnesses seeing the driver leaving it in Atlanta, no single print was in or on the car. There were prints in that bathroom. I have pictures of them after they were dusted. They were not Ray's.

There are two other acid tests. Prior to writing this book, I wrote Percy Foreman telling him what I believe and asking him for any refutation or explanation. I sent this certified. He never responded. I have the receipt.

The night of March 18, 1971, after reading FRAME-UP, Percy Foreman was scheduled to tape a confrontation with me in a New York TV studio. I was there, made up and waiting. He apparently did not expect to confront me. When he learned from the make-up man that he was going to, he fled, hurling threats in all directions as he departed. This happened so fast the program listings in the New York Times could not be changed. If you want a copy of that of March 20, I will send it. It reads, for Channel 5, 11 p.m., "Bandy: Harold Weisberg, Percy Foreman, guests."

Although the question of newsworthiness is not relevant, you do argue production discretion and its alleged impartiality. In order to get the evidence I used, I had to sue the Department of Justice. I got a summary judgment. How common is this in your legal experience? How many cases do you know of where all the public records of the public trial of an American were confiscated by our government, in this case with the complicity of the London Bow Street Court and the British Home Office? Can you, as a lawyer, tell me of anything like this in Anglo-Saxon jurisprudence? Or anything more deeply subversive? In itself, this is not worthy of your airing? With all the tinsel triviality, all the mawkish insult to intelligence that apparently is?

The real frivolity, something truly laughable were we not concerned with the right of the people to hear the other side of the most costly crime in our history, something other than the official mythology, to be concerned about the crumbling of all the institutions of society, all of man's legal protections, lies in your actually saying of me, "your primary motivation in seeking a booking is to promote your book 'Frame-Up'." before addressing this gross and uncalled-for insult, let me ask you this: What would you and all the other talk shows air without promoting the self-seeking? How would you book enough guests to keep yourselves going without serried ranks of flacks to feed you?

But by way of definitive response, the work I do has been bankrupting, not profit-making, as you can readily learn. But why not apply this standard to Foreman, a lawyer who is precluded from advertising and attracts his clients and their fortunes by such free advertising as you gave him? Is it right to promote Foreman and to refuse to promote a work of non-fiction about his record in such a crime as this?

Further on promotion, let me note that it is more than six months after appearance of the first review. It is doubtful if many bookstores still have my book, thanks, in part, to your show's suppression.

This, of course, is also irrelevant. I merely record my sense of outrage at the needless insult you heap on shameful injury.

I have taken this time to give you what I hope is a sufficient explanation, your own letter indicating you are not possessed of any dependable fact and that you knew only what you were told in what amounts to a policy decision that I believe is precluded in such cases. The record is entirely contrary to your representation of it. Now that you know this, I do hope your own fairness concepts will prevail, your own interest in the integrity of our institutions, in a full and fair airing of all sides of so important a public issue.

If it does not, I will then seek other remedies.

Foreman's threat was not on your show. I did not allege it was. It was spurious, yet it did succeed in its purpose, intimidation. But your airing of his nonstop falsifications had the effect, whether or not intended, of defaming and belittling me and my work, a damage that need not be intended to be a great damage and a further impairment of the public's right to know, the essence of the working of any kind of representative society.

Sincerely yours,

Harold Weisberg

Enclosures

cc: The Honorable Nicholas Johnson  
Federal Communications Commission