Judge permits Ray to make his case

But trial in King slaying still distant

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MEMPHIS — James Earl Ray will get a new day in court — sort of — on his claim that someone else killed the Rev. Martin Luther King Jr. in 1968.

Shelby County Criminal Court Judge Joseph Brown agreed yesterday to let Ray present witnesses in support of his claim, saying it is not unreasonable to believe the late civil rights leader was the victim of "a monstrous conspiracy."

RAY

Brown said he was making the ruling even though Tennessee law does not currently provide a means for a defendant to benefit from new evidence long after he is convicted of a crime.

Brown said he will permit Ray's lawyers to call as many witnesses as they want into his courtroom for questioning, so that any appeals court that might later consider the case can know for certain what new evidence there is:

"Let's get it all out on the record. It will be up to an appellate court to determine what, if anything, to do about it."

The judge agreed with prosecutors' argument that statutes of limitations bar Ray from trying to use "new evidence" to over-

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turn his murder conviction and 99-year prison sentence now.

Assistant District Attorney General John Campbell told Brown that little of the evidence now being cited by Ray's attorneys is actually new.

And, Campbell said, the only way for Ray to present new evidence now is in a clemency appeal to the governor or by filing a new proceeding in federal court.

But Ray's lead counsel, London-based attorney William Pepper, responded that the whole King murder case was put in a new light by former Memphis businessman Loyd Jowers.

Jowers stated publicly, late last year, that he was offered a large sum of money to find someone — not Ray — to shoot King.

Memphis police have been aware, since 1969, that former waitresses in Jowers' restaurant said "that their boss man was involved in the killing," Pepper said.

"Many of these facts have been rumored, but they have not been known."

Pepper asked Brown to order a hearing "before other witnesses die or are intimidated."

Brown did not set a date for the hearing, which he said could be held at intervals over several weeks. Brown told the lawyers to let him know by June 6 when they can begin presenting witnesses.

Pepper said he was pleased with Brown's ruling, even though it fell far short of Pepper's request that Ray's 1969 guilty plea be voided and that the murder charge against him be set for trial.

"We have taken the first step down the road" toward proving that Ray did not shoot King, Pepper said after the hearing.

He said there are "probably up around 40 potential witnesses" that he may call into court, adding, "a lot of them will probably not want to testify."

Ray's attorney said he will ask Brown, after all the witnesses have testified, to reconsider his decision that Ray is not entitled to any relief under current Tennessee law.

Pepper predicted the planned hearing before Brown "will lead to a trial for Mr. Ray — that's my honest belief."

Shelby County District Attorney General John Pierotti maintained yesterday, as he has for several months, that Ray's so-called new evidence is "garbage." ■

Ruling based on laws of evidence

Judges often allow lawyers to make a "proffer," or offer of proof, when evidence is ruled inadmissible in court.

The judge will allow the lawyer to present the evidence, on the record and under oath, so the appeals court that later reviews the case will know what the argument was all about.

But it is unusual for a judge to set aside days, even weeks, to hear a proffer, as did Shelby County Criminal Court Judge Joseph Brown when he agreed yesterday to let James Earl Ray's lawyers present new evidence about the assassination of the Rev. Martin Luther King Jr.

Brown ruled that Tennessee law currently provides no mechanism for a defendant, even one who is "actually innocent," to present new evidence if more than three years has elapsed since his or her original appeals were exhausted.

The state's appellate courts may need to consider whether such a bar on new evidence is fair to defendants, Brown said.

So, the judge said, he will permit Ray's lawyers to call as many witnesses as they like to "build a record" that they can later present to the appeals courts, which do not listen to live testimony. ■