

10/11/71

Mr. Steven B. Duke
Professor of Criminal Law
Yale University
New Haven, Conn.

Dear Mr. Duke,

I am the author of FRONT-UP, a study of the assassination of Dr. Martin Luther King and of the James Earl Ray case, of which I enclose a few reviews. It includes a rather vigorous examination of Percy Foreman's performance, about which I have the deepest misgivings.

The New York Times of 3/15/69 reports your interest in and success on behalf of James Miller, whose case had been handled to conviction by Foreman. There is elliptical reference to what might be this case in Michael Dorman's biography of Foreman.

I am writing to ask for whatever information you can give me about the facts of the case, which remarkably parallels some of Ray's career, and about Foreman's performance. I recognize there may be some professional limitations on the latter. I am not asking the unethical of you, merely what you feel you may properly let me have. My own belief is that Foreman from the first had the intention of selling Ray out, of arranging a quick and politically-desired "solution" to the case, although I am not suggesting and have no reason to believe, as Ray does, that this was his motive.

Believe me or not, there is simply no case at all against Ray. Foreman made no investigation at all. What evidence is available is exculpatory, and since writing the book I have obtained what I regard as totally exculpatory evidence, as it relates to the shooting. There is no doubt of Ray's conscious criminal activity. But that does not make him an assassin.

The facts in the Miller case as reported by the Times fascinate me, they are that close to duplication of some in Ray's case. Including narcotics, Canada and Mexico. And Foreman in similar, uncharacteristic roles in each case?

I do hope you can help. Thanks for anything you may do.

Sincerely,

Harold Weisberg

New Narcotics Trial Is Won on Issue of Hypnosis

By EDITH EVANS ASBURY

A new trial was ordered yesterday for James Miller, a Connecticut hairdresser who had been convicted of participating in an international narcotics smuggling ring.

The United States Court of Appeals for the Second Circuit reversed his conviction and ordered a new trial because the defense and jury had not been told by the Government that it had questioned its principal witness under hypnosis before the trial.

The three-judge court, headed by Henry J. Friendly, and sitting at Foley Square, had upheld Miller's conviction previously.

Miller, the 42-year-old owner and operator of several beauty shops in the New Haven area, was convicted on June 2, 1960, after a jury trial in Hartford, and was sentenced to 12 years in prison. He has been free on \$200,000 bail as Steven B. Duke, professor of criminal law at Yale University, pressed his appeal without fee, and a committee of citizens campaigned in his behalf.

Driver Is Key Witness

Miller was arrested June 19, 1964, and was charged with being the man to whom 72 pounds of pure heroin, valued at \$46 million, was consigned by a Texas-based



Steven B. Duke, who took up James Miller's defense.

accepted at the border, identified Miller from photographs, and was the Government's chief witness at the Miller trial.

After the trial was completed, Professor Duke found that Caron had been questioned under hypnosis at a hearing by a Texas judge.

to disclose the hypnosis deprived the defense of its right to cross-examine Caron concerning it.

Yesterday's opinion, written by Judge Friendly, stated that "developments during the trial placed a duty on the Government to disclose the hypnosis."

A new trial is necessary, he continued, because "there is a significant possibility that the undisclosed evidence might have led to an acquittal or a hung jury."

Caron's testimony, the opinion stated, "may have been the truth, but it was hardly the whole truth as known to Butler, and should have brought to his mind the hypnosis performed only three months before, and the interest the defense could have in this."

The two other judges who concurred in the opinion, were Edward P. Moore and William H. Hastert.

The Butler questioned Caron

during the trial at Hartford. Percy Foreman, engaged by Miller when he was indicted in Texas, represented him at the trial but withdrew after the conviction.

Lucien Rivard, alleged leader of the smuggling ring, three Canadians, a Mexican and a Frenchman indicted with Miller in Texas were tried and sent to prison. The Canadian Government was embarrassed by the case, because of bribery charges involving Government officials. A Cabinet minister and a Member of Parliament resigned, and an official was arrested.

Miller, who is married and the father of a 6-year-old boy, has maintained since his arrest that he was the victim of mistaken identity. He and professor Duke also argued in the appeal that they could prove who the real culprit was.