

# Is TV 'court of last resort'?

## HBO special offers mock trial of James Earl Ray

By Ray Richmond

Daily News Television Critic

**T**onight, 25 years to the day after the Rev. Martin Luther King Jr. was assassinated as he stood on the second-floor balcony of a Memphis motel, the man charged with his murder will finally have his day in "court" via a television network that didn't even exist a quarter-century ago.

"Guilt or Innocence: The Trial of James Earl Ray," the mock,

television-created proceeding airing at 8

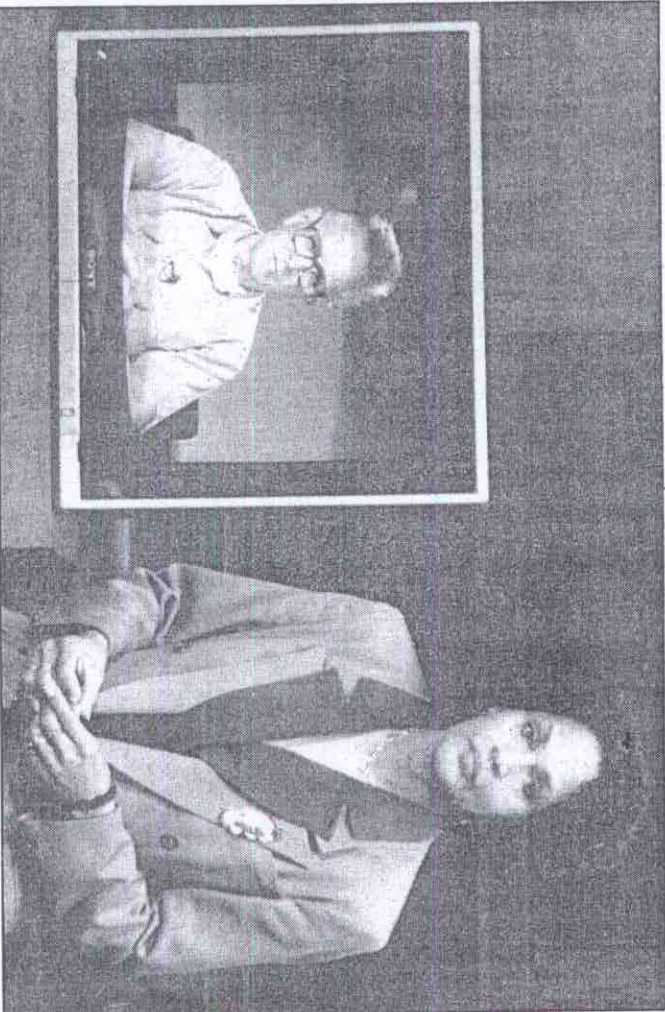
tonight on HBO — brings the long-debated question of Ray's guilt to the electronic court of public opinion.

For a quasi-event without true legal standing, "The Trial of James Earl Ray" carries with it a question of responsibility in the efforts of HBO and co-producer Thames Television of England to disguise pseudo-reality as reality.

And because HBO has made Ray available for interviews in hyping the project, there is the perception that a television network is using an assassin to help market an entertainment vehicle.

### No apologies

HBO senior vice president, original programming Brigitte



James Earl Ray appears via closed-circuit monitor on HBO's "Guilt or Innocence: The Trial of James Earl Ray." The special is hosted by Charlayne Hunter-Gault.



Potter makes no apologies for either the project itself or for Ray's very active participation.

"(Ray) is a very interesting man and it is his trial," said Potter. "It's logical he should be discussing it in the press.

"Yes, we're trying to get attention for this project. And you need to remember that Ray has never been convicted of anything. He confessed and then retracted it. He is not a convicted assassin."

Ray has been serving a 99-year sentence in a Nashville prison for the past 24 years, having been arrested two months after King was gunned down. He immediately pleaded guilty to avoid the electric chair, which he claims to this day his attorney instructed him to do. Three days later, Ray fired the lawyer and asked to change his plea.

That request was refused, as were several of Ray's subsequent appeals to be given a public trial. He has been turned down each time. So with tonight's HBO "trial," the program's backers maintain that if Ray continues to be denied due process, this tube process is better than no process at all.

### More than entertainment

HBO is promoting "Guilt or Innocence" as something less than legally binding yet more than mere entertainment for a variety of reasons.

■ The program, meticulously edited down to three hours from 10 days of testimony, uses no actors or script.

■ The attorneys (prosecutor W. Hickman Ewing and defense lawyer William F. Pepper, Ray's attorney since 1985) are the real thing. The presiding judge (Marvin Frankel) is a retired judge from New York. An impartial "jury" was impaneled in the typical way, off the voting roles of three U.S. cities. And the witnesses are the genuine article.

■ Ray himself is afforded the opportunity to testify in his own defense and is cross-examined via a special closed-circuit monitor hook-up that also allowed him to watch the whole thing from prison.

■ The "trial" was held earlier this year in an actual Memphis courtroom, and most guidelines of legal procedure in the state of Tennessee were followed. Rules of evidence were altered only slightly to allow for the admissibility of some sworn statements from witnesses now deceased.

### Dropped everything

Furthermore, both lawyers prepared for the mock trial in the same fashion they would for one with legal relevance — forcing both men to drop everything else for the better part of a year, said Pepper in an interview. "It was more exhausting than you can imagine."

HBO's Potter said the sole purpose of the project is to "find out what happened" in the assassination of the civil rights leader.

George Bird, chairman of the Criminal Justice Section of the Los Angeles County Bar

Association, cautioned not to put too much stock in what is revealed tonight.

"It will be interesting and likely informative, and it could even influence public perception of the case," said Bird. "But short of that, it's still just an entertainment vehicle."

Bird believes the mock trial will be most valuable in educating the public to the tedious vagaries of the legal process.

"What we learn from this is that television seems committed to becoming the court of last resort," said Bird. "For James Earl Ray, that's exactly what this is."

Although Potter said there is no agenda to reopen the investigation or influence the actual court in Tennessee, Ray's attorney is hoping the courts will reconsider the case.

### Out of options

Pepper was the one who originally contacted HBO and Thames about conducting the mock trial of Ray because, as he readily acknowledged, he and his now 64-year-old client had effectively run out of other options.

"This was a no-lose situation," said Pepper. "My guy is at the end of his rope. And without question, I believe that a substantial amount of what emerges here should be viewed as new evidence."

The verdict has already been rendered but is being kept hush-hush by HBO. Only the jury, the judge and program producer Jack Saltman presumably are privy to the decision.

If an acquittal is handed down, Pepper said he "may be paying a visit to the (Tennessee) governor's mansion." Even if it's a conviction, however, Pepper believes he could "still package

new evidence" that would form the basis for a petition.

Project legal consultant Burt Neuborne said that what surfaces during the proceeding should merely "create a strong equitable argument for a trial" but never be mistaken for new evidence in and of itself.

### Exercise in 'truth-finding'

"All I can tell you is that it was a good exercise in truth-finding," Neuborne said. "All of the usual pitfalls of having a camera present, like sensationalizing or playing to it, are absent here. It has the remarkable feel of a real trial."

Frankel, the presiding judge, agreed.

"This had the air of a sensitive, serious proceeding," said Frankel. "We did it straight and entirely by the book, if a little faster than usual and apart from the fact we didn't have the power of the state behind us."

What inspired Frankel to participate was the opportunity to partially right what he views as a longtime wrong.

"The man should have received his day in court in 1969," Frankel said. "It was a mistake, if not a sin. To deny Ray's motion to vacate his guilty plea remains puzzling."

Ray himself has long maintained his innocence in shooting King from a sniper's perch in a flophouse bathroom a few blocks from King's motel.

In a telephone interview from Nashville's Riverbend Maximum Security Institution, he reiterated that he never set foot inside the flophouse in question and remains bitter over what he described as a

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# Ray

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"coerced" confession influenced by his attorney at the time.

"For some reason, the thing was twisted around to make it look like the plea was all mine," Ray said. "I was told it would save my hide. I don't guess it did."

Ray confirmed HBO's claim that he was paid nothing to participate in the ersatz trial. He believes that people who watch it will be surprised at what they learn.

"They will find out that this thing is far more complicated than they thought," Ray said.

That very complexity — and the presumption that King's assassination extends beyond Ray to involve a high-level conspiracy — has planted some unlikely supporters in Ray's corner. Among them is Jesse Jackson, who was with King when he died and actually penned the foreword to a book Ray wrote from prison.

Another man who welcomes tonight's mock trial and its potential fallout is Joe Hicks, executive vice president of the nonprofit, Los Angeles-based Martin Luther King-Legacy Association that runs numerous community-based educational programs.

"What we would like to see happen is that this show — however the verdict goes — inspire some kind of groundswell to get Ray tried," said Hicks. "There remain too many unanswered questions about this man's guilt as the triggerman, and if there is indeed a government cover-up."

Hicks added that he has long suspected that "larger forces were at play.

"For too long, this has been a gross travesty of justice," said Hicks. "We believe that watching a show of this sort and having the issue before the American public will carry its own impact."

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TELEVISION

Phil Rosenthal

# Time Warner: Hollywood hypocrites?

**W**ho knows if James Earl Ray fatally shot civil rights leader Martin Luther King Jr. 25 years ago? Ray once said he did, earning a 99-year sentence, but he has since recanted.

We don't know for sure.

The thing is, neither does Time Warner, the media conglomerate that is seeking to cash in by staging a mock trial on HBO pay-cable, giving Ray a national forum to proclaim his innocence.

And Time Warner, you might recall, is the same outfit that couldn't stomach it last year when rap artist Ice-T and Body Count, his heavy metal band, merely talked about killing people in the song "Cop Killer" on its Sire recording label.

You would think Time Warner would be in something of a quandary over this seeming contradiction. Talking about murder, well, that's just a little too dangerous. But doing business with someone who actually has admitted to doing the deed is all right?

"It's not a dilemma at all," Bridget Potter, HBO's senior vice president of original programming, said. "This is information . . . more than entertainment, though I think it's quite compelling television. It's not a TV movie but a serious journalistic enterprise."

The merits of paying lawyers to stage "serious journalistic enterprise" are for another debate on another day, but a pattern is beginning to surface. Even as Time Warner gears up to present the Ray trial on HBO tonight — the verdict still a tightly held

secret — its Warner Books subsidiary is proceeding with plans to publish "The Diary of Jack the Ripper" this fall.

"He's the mother of all serial killers," executive editor Joann Davis explained to The New York Times, calling the work not sensational but rather "a valuable historical document."

So, in other words, this, too, is a serious journalistic enterprise.

But it is not as though Ice-T's artistic enterprise was frivolous.

While no one would argue the "Cop Killer" lyrics — taken

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literally and out of context — don't offer a vile, inflammatory, antisocial sentiment, is it really any more vile, inflammatory or antisocial than out-and-out cold-blooded murder?

Faced with outrage from police associations and other concerned citizens over "Cop Killer" last year, Time Warner mouthed platitudes about free artistic expression. Then, out of the blue, Ice-T announced he was withdrawing the song from the Body Count album.

Ice-T left Sire this year after he and Time Warner couldn't come to terms over some issues concerning "Home Invasion," a recording that eventually came out last month on an independent label.

While critics have pointed out "Home Invasion" has its share of the same sort of things for which Ice-T's earlier efforts were slammed, there has been little controversy over the recording. Its release was hardly news.

It would seem, in retrospect, that Time Warner may have jumped the gun in severing its ties with Ice-T, to whom it once planned to give an HBO talk show. When "The Diary of Jack the Ripper" comes out on tape, he would have been the perfect narrator.

Perhaps, in light of its mock trial, Time Warner could have lived with that.

*Phil Rosenthal's column appears in the Daily News four days a week.*

PHOTOGRAPH BY

# Mock trial for Ray seems real,

By Ray Richmond  
*Daily News Television Critic*

Say what you will about the validity, or value, of trying a man in the court of public opinion. Tonight's mock proceeding that carries the official title "Guilt or Innocence: The Trial of James Earl Ray" (8 p.m. on HBO) is nothing if not fascinating fiction.

## REVIEW

It should be remembered that the verdict rendered at the close of this mock trial has no true legal relevance. Even if Ray, serving a 99-year sentence for the assassination of Dr. Martin Luther King Jr. 25 years ago in Memphis, Tenn., is "acquitted" on the show, he remains in prison in Nashville.

Yet, a decision that finds Ray innocent stands to have reverberations that echo loudly enough to

## THE FACTS

- **The show:** "Guilt or Innocence: The Trial of James Earl Ray."
- **When:** 8 tonight and repeating Wednesday, April 15, 21 and 27.
- **Network:** HBO.
- **Hosted by:** Journalist Charlayne Hunter-Gault.
- **Our rating:** ★★★  
★★★★ — don't miss it; ★★★ — worth your while; ★★ — has its moments; ★ — if you must; ① — don't bother.

plant a reasonable doubt in the minds of millions of viewers. And that could ultimately lead to the actual trial Ray has never had.

All because of a television program.

With that possibility looming, there rested a significant responsibility on the shoulders of co-producers HBO and Thames Televi-

sion of England. It had to simulate reality without transforming it into an "L.A. Law"-styled circus.

To that degree, this "Trial of James Earl Ray" is a glorious success. By incorporating actual attorneys, jurors, witnesses and testimony (including Ray himself via a closed-circuit monitor) in a genuine courtroom setting, it provides what is probably the closest possible approximation of the real thing.

Which is a double-edged sword, of course. The actual rhythms of the American judicial system are often slow, meandering and tedious, and the HBO program is often imprisoned by a monotony of its own creation.

It's also unfortunate that a 10-day trial compressed into three hours of television is invariably going to shortchange certain points of testimony and lend im-

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## but it's only on reel

balanced weight to others. The radical editing often results in confusing jumps and starts, a problem that voiceover commentator Charlayne Hunter-Gault tries to bridge with her words but doesn't succeed.

So while viewers will be seeing many of the key points and witnesses, there is also much that isn't being made available. As a result, the jury at home will have far less to work with in rendering its own verdict.

Even taking all of that into account, "The Trial of James Earl Ray" is a unique piece of entertainment that, as far as it goes, makes a compelling statement about the longtime denial of Ray's due process.

"The Trial of James Earl Ray" is like a dramatic re-enactment on some reality-based series. Lines are blurred. The major difference in the mock trial is no actors are used.