

UNITED STATES GOVERNMENT

Memorandum

SEP 6 1978

DATE: August 29, 1978

TO : The Attorney General

FROM : Robert L. Keuch
Deputy Assistant Attorney General
Criminal Division

SUBJECT: Select Committee on Assassinations - United States
House of Representatives; John Ray; Perjury.

RLK:ALH:RBC:am

The Select Committee referred the testimony of John Ray to the Department and requested that a perjury prosecution be initiated. The Criminal Division has declined prosecution of John Ray in connection with his May 9, 1978 testimony before the House Select Committee on Assassinations. I agree with this recommendation and I intend to advise the Select Committee of our declination. It is anticipated that Robert Blakey, Chief Counsel of the Committee, will contact you concerning our decision not to proceed with a prosecution.

Enclosed for your information is a copy of the prosecutive memorandum forming the basis for our declination.

Attachment

cc: Records
Mr. Cabbage
General Crimes
Mr. Keuch



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Phillip B. Heymann
Assistant Attorney General
Criminal Division

August 25, 1978
AMH:RBC:jad

Alfred L. Hantman, Chief
General Crimes Section
Criminal Division

Select Committee on Assassinations - United States House of
Representatives; John Ray; Perjury

This is in response to your request for our views as to whether John Ray should be prosecuted for perjury, 18 U.S.C. 1621, as a result of Mr. Ray's alleged false testimony to the House Select Committee on Assassinations. We have concluded that prosecution should be declined because (1) the allegedly false testimony was not material and (2) all surrounding circumstances show that prosecutorial discretion is best exercised by declining prosecution.

By letter to the Attorney General dated June 15, 1978 (Tab A), the Committee specifically referred John Ray's May 9, 1978 testimony that he did not participate in several bank robberies. The referral was specifically authorized by Committee resolution dated May 17, 1978.

Prior to formally referring this matter to the Department of Justice, Mr. Blakey met with United States Attorney Earl Silbert and a representative of the Criminal Division on May 24, 1978 concerning this allegedly false testimony. At that time Mr. Blakey advised that the primary reason that he wanted John Ray charged with perjury was to convince James Earl Ray to testify before the Committee concerning his knowledge of the assassination of Dr. Martin Luther King. In other words, Mr. Blakey was desirous of being in the position of telling James Earl Ray that if he does not cooperate with the Committee and tell the truth, his lack of cooperation will result in the incarceration of members of his family - i.e., John Ray will be prosecuted for perjury by the Department of Justice in connection with his false testimony to the Committee.

On May 9, 1978, John Ray appeared before the Committee in Executive Session after having been granted immunity pursuant to 18 U.S.C. 6005. Mr. Ray had previously appeared before the

Committee on April 17 and 18 in which he exhibited a remarkable lack of memory of anything specific (the transcripts are attached - Tab B). At Mr. John Ray's May 9th appearance he was advised by Mr. Michael Eberhardt, Assistant Deputy Chief Counsel, that he was going to ask Mr. Ray a series of questions about crimes, particularly bank robberies, which had previously occurred. Mr. Ray was further advised that this line of questioning was being pursued to determine if James Earl Ray received monies from any source during the period of his fugitivity - from April 23, 1967 until June 8, 1968. John Ray was advised that a determination as to whether or not James Earl Ray was financially assisted ". . . bear on the question of whether or not James Earl Ray, himself, was involved in the eventual assassination of Dr. Martin Luther King." (transcript of May 9 attached - Tab C)

During his examination he was asked a series of questions relative to his knowledge of and involvement in the robbery of the Bank of Alton, Illinois on July 13, 1967. This robbery of \$27,000, which remains to this day unsolved, may explain James Earl Ray's source of funds during his fugitivity. James Earl Ray, as well as his brother, John, is known to have been in the general vicinity of Alton, Illinois on the date of the robbery. (James Earl Ray purchased an automobile for \$200 cash on July 14, 1967 within 30 miles of Alton.) The FBI, acting on informant information after Dr. King's assassination, considered James as a suspect. However, the now deceased informant, John Gawran, proved somewhat unreliable (although he persisted in his contention that James was involved) and the FBI could not develop evidence corroborating the allegation.

John Ray was convicted of the 1970 robbery of the Bank of St. Peters, Missouri. He received an 18 year sentence from which he was to be paroled in late June, 1978. His May 9, 1978 Executive Session testimony, however, contains denials of any involvement in the St. Peters robbery. The FBI also carried John Ray as a suspect in a series of bank robberies which, according to the Committee, contain remarkable similarities to the modus operandi of the Alton bank robbery (attached memorandum and chart provided by the Committee - Tab D). These other bank robberies in which John Ray denied any participation are as follows:

<u>Bank</u>	<u>Date of Robbery</u>
1. Farmers & Traders Bank Meredosia, Illinois	1/28/70
2. Laddonia State Bank Laddonia, Missouri	6/11/70
3. Bank of Hawthorne Hawthorne, Florida	7/29/70
4. Farmers Bank of Liberty Liberty, Missouri	10/17/69

In addition to denying any personal involvement in, and knowledge of, these bank robberies, Mr. Ray generally denied ever being involved in any bank robbery or engaging in any armed robbery with James Earl Ray.

The following evidence has been developed demonstrating the falsity of John Ray's testimony:

background

(1) James Russell Rodgers has testified before the Committee (Tab E) that he and John Ray participated in the robbery of all four of the above banks;

(2) Clarence Haynes when interviewed by the Committee advised that he and John Ray participated in the robbery of the Laddonia State Bank, Laddonia, Missouri (Tab F).

(3) Ronald Goldenstein when interviewed by the Committee advised that he and John Ray participated in the robbery of the Farmers & Traders Bank, Meredosia, Illinois, and the Bank of St. Peters, St. Peters, Missouri (Tab G).

As can be seen by the above, there currently exists two witnesses (James Russell Rodgers and Ronald Goldenstein) who can testify that John Ray participated in the robbery of the Farmers & Traders Bank, Meredosia, Illinois, and two witnesses (James Russell Rodgers and Clarence Haynes) who can testify that John Ray participated in the robbery of the Laddonia State

Bank, Ladonia, Missouri. Further, there is sufficient evidence to charge John Ray for perjury for his denial of committing the St. Peters robbery for which he was convicted and sentenced. In addition, Ronald Goldenstein can testify that John Ray participated in the St. Peters bank robbery. No evidence exists that John Ray, James Earl Ray, or anybody participated in the Bank of Alton, Illinois, bank robbery that occurred on July 13, 1967 during the period of time that James Earl Ray was a fugitive.

Our recommendation to decline prosecution in this case is based on the following reasons:

(1) If John Ray were indicted for perjury, the charges would be of a "bootstrap" variety: i.e., the charge arises from sworn testimony recently elicited about events which occurred eight or more years ago. Since we can no longer prosecute John Ray for the bank robberies themselves because of the five year statute of limitations (see 18 U.S.C. 3282), we would be bootstrapping ourselves by going after John Ray for perjury concerning those same bank robberies. ^{1/} Although logic indicates that a prosecution for perjury about crimes that occurred beyond the statute of limitations will lie, there is little law directly on the issue. Judge Wyzanski stated in dicta in United States v. Worcester, 190 F. Supp. 548, 569 (D. Mass. 1961), that a federal perjury prosecution may be based upon a willfully false statement about a matter not punishable by the Federal criminal law. In Worcester, the defendants argued unsuccessfully that it was "fundamentally unfair to put them under oath as witnesses to testify to matters occurring many years ago, many of which [were] barred by the statute of limitations." Cf. United States v. Rayer, 204 F. Supp. 486, 492 (S.D. Cal. 1962), aff'd, 323 F.2d 519 (9th Cir. 1963), cert. den., 375 U.S. 993 (1964).

^{1/} See attached copy of former DAG Tyler's memorandum to former Director Kelley in which the bootstrap principle was used to decline prosecution of an FBI agent for obstruction of justice in connection with perjurious statements given during an FBI internal investigation into the destruction of a note from Lee Harvey Oswald that Mr. Oswald had left at the Dallas field office approximately a week before the Kennedy assassination (Tab H).

(2) Only one of the bank robberies, the robbery of the Bank of Alton, Illinois, on July 13, 1967, was committed during the period of James Earl Ray's fugitivity - from April 23, 1967 through June 8, 1968. There is no existing or anticipated testimony or other evidence to link John Ray or James Earl Ray to that robbery. It appears that the real issue concerning the remaining bank robberies is that of establishing the materiality of the testimony, a necessary element for a perjury prosecution. The traditional test of materiality of a false statement is whether the testimony has a natural effect or tendency to influence, impede or dissuade the investigating body. United States v. Barker, 244 F.2d 943 (7th Cir.), cert. den., 355 U.S. 836 (1957). Although the authority of the Select Committee is broad (see H. Res. 222 - Tab I), John Ray was advised that the purpose of the questions into the matters of bank robberies was to determine James Earl Ray's source of funds. The bank robberies that occurred after James Earl Ray was arrested on June 8, 1968 could not have been a source of funds for James Earl Ray while he was a fugitive. Therefore, it could be argued that the broad authority of the Committee had been limited by the Committee's own statement in connection with the questions concerning the bank robberies. Even if it could be argued that the questions asked about the bank robberies that occurred after the Alton bank robbery went to credibility and were therefore material, it would seem that a relationship or similarity in the bank robberies would be necessary.

The Committee has taken the position that because of the "remarkable similarities in circumstances between the five bank robberies in question and the Bank of Alton robbery, John Ray's denials are undoubtedly relevant to the question of his own participation in the Alton robbery. John's involvement, given the known, alleged and inferred relationship between John and James during 1967-68, is relevant to the specific inquiry into James' possible involvement in the same robbery." (page 14 of Tab D). However, my review of the facts surrounding the bank robberies as set forth in a chart supplied by the Committee (Tab D), indicates that the only real similarity is the fact that the banks were robbed by armed men wearing stocking masks. In fact, a review of the two bank robberies for which we have two witnesses indicating John Ray's participation (Ladonia State Bank and Farmers & Traders Bank) indicate many dissimilarities. In the Bank of Alton robbery, there were two bank

robbers who used a blue automatic pistol and a sawed-off shotgun. Their clothing and stocking masks were later found burned in the woods. There was no getaway driver and the robbers fled on foot. In the robberies of the Laddonia State Bank and the Farmers & Traders Bank there were three and four bank robbers respectively and a chrome revolver and a sawed-off shotgun or rifle were used. The robbers stocking masks were discarded along the getaway route. (The Committee's interview report of Goldenstein indicates the stocking masks were burned after the Farmers & Traders Bank robbery.) The robbers did not flee on foot but used a getaway vehicle. Since the Committee has no evidence of anyone being involved in the Bank of Alton robbery, and because of the dissimilarities in the bank robberies, it appears that it is immaterial to the Committee's inquiry whether John Ray admitted or denied his involvement in any of the bank robberies other than the Bank of Alton, and that his false testimony with respect to these later bank robberies did not influence, impede, or dissuade the Committee. In other words, only the Bank of Alton appears to be material and we have no evidence, direct or otherwise, that John Ray lied about his participation in that bank robbery.

(3) Returning an indictment against John Ray in order to pressure his brother James Earl Ray into cooperating could and should be viewed as an abuse of process. It is one thing to use the criminal laws to pressure an individual into cooperating with the government. It is another thing to use the criminal laws against someone to pressure another individual into cooperating with the government. This is particularly true when the individuals involved are close family relatives such as brothers.

The facts of this case have been discussed with United States Attorney Earl Silbert who concurs in our recommendation. For your information, on two occasions, June 23, 1978 and August 24, 1978, representatives of the Criminal Division met with James Lesar, John Ray's attorney, in an unsuccessful effort to obtain Ray's truthful cooperation with the Committee. This approach of attempting to aid the Committee has been a paramount guideline in reviewing this entire matter. In that regard, it must be noted that on August 8, 1978, Claude Powell, Jr., was indicted in the District of Columbia for contempt of Congress.

(2 U.S.C. 192) for failing to obey a subpoena requiring him to appear and testify before the Committee. Further, Mr. Reuch's June 13, 1978 letter to Parole Commissioner Robert Vincent was instrumental in having John Ray's parole retarded for approximately one month. (Tab J) A subsequent hearing resulted in several months delay in Ray's parole (Ray is scheduled to be paroled on September 18, 1978). The Committee has been advised that we stand ready to assist them in all matters of importance to the Committee wherever appropriate.

Attachments