

Draft

**JAMES EARL RAY NEVER HAD A TRIAL, HE DID NOT SHOOT
DR. KING, AND THERE WAS A CONSPIRACY, AND THERE IS A RAUL**

Last Sunday's Outlook section presented articles by Richard Billings ("James Earl Ray Has Already Had His Day in Court") and Priscilla Johnson McMillan ("The \$7,000 Question: Where Did Ray Get The Money?") which share a common fatal flaw--they presume that James Earl Ray shot Dr. King.

McMillan argues, largely on the basis of noncredible hearsay from a prison inmate, that there was no conspiracy, that Ray alone shot Dr. King. Billings says Ray was part of a conspiracy by members of his family and racist St. Louisians to kill Dr. King. Both non-conspiracy theorists presume Ray shot Dr. King; dismiss out-of-hand Ray's claim that he was set up by the mysterious "Raul."

In the 1970s I spent several years trying to get Ray a trial. I have a different view. Ray never had a "trial." He was a victim of a judicial farce which had nothing in common with the traditional concept of American justice. His attorneys sold him down the river, the Sheriff of Shelby County intercepted his mail to his attorneys and the judge and passed it on to the Shelby County District Attorney, and he was coerced into pleading guilty because the conduct of his attorney convinced him he couldn't get a fair trial.

Ray was a patsy. He did not shoot Dr. King. There was a conspiracy. And, yes, there was--and is--a "Raul."

In arguing that Ray had his day in court, Billings says that after Ray's arrest in London and return to Memphis in June 1968, "he hired Percy Foreman, a highly regarded defense attorney who reviewed the evidence--and told Ray that if he went on trial he would

be convicted and probably get the death penalty. His only hope was to plead guilty, which Ray did, and he was sentenced to 99 years in prison." This passage reminds me of the comment of the anonymous Senator who was quoted in a Washington Post story several years as saying "the CIA does not lie. They just won't tell you if your coat is on fire." In two sentences, Billings has committed many sins of omission, as well as the sin of being technically correct but substantively wrong and disingenuous.

It is technically true that Ray didn't hire Foreman until he returned to Memphis, but this formulation omits the entire history of betrayal of Ray by his prior attorneys, by Foreman, and by Alabama author William Bradford Huie. This history is essential to why Ray pled guilty to a crime he didn't commit. Ultimately, it was Ray's distrust of his lawyers, especially Foreman, which coerced him into agreeing to enter a plea against his own wishes.

Ray's first attorney, Arthur Hanes, Sr., advised Ray to give up his extradition appeal even though the extradition treaty provides an exception for political crimes, a category that certainly includes Dr. King's murder. The contracts that Hanes drew up before he ever talked with Ray, provided that author William Bradford Huie would pay his fee in exchange for exclusive literary rights-- and that Hanes would not be paid until Ray returned to Memphis.

Ray fired Hanes just before trial because Hanes and Huie didn't want him to take the witness stand. Ray had come to understand that Hanes was working for Huie, not him. Just before the firing, Ray had learned that Huie had flown his brother Jerry to

Hartselle, Alabama, plied him with whiskey and offered to pay \$12,000 to Ray or any member of his family if Ray would not take the witness stand. Huie had explained that if Ray took the witness stand, his exclusive disappeared because everything Ray had told him would be spread on the public record.

Foreman replaced Hanes and got the trial postponed. If he was a "highly regarded defense attorney"--Billings doesn't say who held him in such high esteem, that reputation was unwarranted. Whatever his legal skills, he was a money-grubbing shyster who once got caught taking money from both sides in a case.

Billings claim that Foreman "reviewed" the evidence before advising Ray to plead guilty is meaningless because he doesn't--and can't--say what evidence Foreman reviewed. The relevant question is whether he properly investigated the case. In 1974, I deposed Foreman for seven hours. I concluded he didn't do any investigation. He claimed he had interviewed some witnesses but was unable to name them and didn't produce any notes of such interviews. He claimed that his notes were useless to anyone else because they were taken "in a cryptic form of shorthand, being a combination of Gregg, Pitman, Percy Foreman and Alabama-Coushatta Indian hieroglyphics [that] "no living human being except myself can decipher...."

Foreman actually advised Ray that there was a 100% chance of conviction and a 99% chance of a death sentence. The known facts did not support this opinion, and Ray knew it. All Foreman had to do was sew the seeds of reasonable doubt in minds of a southern jury. He had some potent facts to utilize:

--The State's only alleged eyewitness who could place Ray at the putative crime scene was an alcoholic who was so drunk minutes before the shooting that a cab driver refused to pick him up.

--the FBI's ballistics expert said no match could be made between the alleged murder weapon and the murder slug.

--There was no credible motive except motive. Even Billings concedes this. But Ray re-turned to London from Portugal because he didn't have the \$100 more he needed to take a plane to Rhodesia, where he wanted to go and from whence he could not be extradited.

--The alleged murder weapon was found on the street a block away from the murder site in a bedspread containing a blue brief case, binoculars, a couple of cans of beer, personal effects, a transistor radio, a newspaper, etc. The placement of this odd but incriminating bundle suggests a plot to incriminate Ray, whose fingerprint was on the rifle?

The death penalty, which Foreman said was "99% certain" (rather "probable" as claimed by Billings, was not likely. Tennessee had not imposed it in decades. The Supreme Court was expected to declare it unconstitutional--and did. It was not likely Ray would be executed so long as questions about a conspiracy persisted.

Why then, did Foreman "advise" Ray to plead guilty? Why did Ray give in to the pressure?

In February 1969, Huie "testified" to the Shelby County Grand Jury that Ray killed King. The DA notified Foreman, that Huie, who was paying Foreman's fee, would be called to testify against his client. (Although Foreman had promised Ray he would not get in-

volved in any book contracts until after the trial, he soon replaced Hanes in the contracts--for a much greater share of the booty.). The DA's move threatened Foreman with severe professional embarrassment and possible disbarment. Foreman began at once to pressure Ray to plead guilty.

Ray resisted. Foreman visited Ray's family in St. Louis and pressured them. He warned that Ray would "burn" if he went to trial, said he would be tried by a "blue ribbon" jury that would make an example of him, and claimed that by associating Nashville attorney John J. Hooker in the case--Hooker was then running for Governor--he would get Ray pardoned after Hooker was elected. He then went back to Memphis and told Ray that his family wanted him to plead guilty. When brother Jerry visited him a few days later, Ray learned this was false.

Ray pressed Foreman to go to trial, but Foreman told the Court that he was not prepared to go to trial in April and requested a continuance, which the Court denied. Ray came to distrust Foreman and believed he would throw the case if he went to trial. When he threatened to fire Foreman, Foreman reminded him that Judge Battle had said his alternative was to go to trial with the Public Defender. Ray, as Foreman well knew, held the Public Defender in contempt and had thrown him out of the jail when he belatedly tried to interview Ray (after Foreman had, without Ray's consent, gotten the judge to appoint him co-counsel).

Foreman had him boxed in, so Ray agreed, on March 7th, to plead guilty on March 10th, and to accept a guilty e of 99 years,

the maximum possible under the law. But then he began to talk in his jail cell about firing Foreman. Foreman flew back to Memphis and entered into a corrupt deal with Ray. In the first of two letter agreements dated March 9, 1969, Foreman agreed to assign any literary proceeds under the Huie in excess of his \$165,000 fee to Ray on the condition that Ray would plead guilty the next day "and no embarrassing circumstances take place in the courtroom," Ray insisted that he needed money to hire a new lawyer to overturn the guilty plea. So Foreman drew up a second agreement which provided that he would pay Jerry Ray \$500 "contingent upon the plea of guilty and sentence going through . . . without any unseemly conduct on your part in court."

Billings' account omits this sordid history. The fact that the courts upheld the voluntariness of Ray's plea is a matter of enduring shame; not evidence that the "facts" agreed to by Ray and accepted without cross-examination or analysis at his March 10th "mini-trial," are reliable. The denial of a trial for Ray not only stripped Ray of his constitutional rights, it has deprived the public of the assurance that disputed facts have been properly tested in accordance with traditional--and absolutely critical--safeguards.

The fact that a House Select Committee on Assassinations ("HSCA") investigated the King case does not remedy the judicial outrage committed against Ray. Ray had no right to cross-examine witnesses, or even to know what they said against him in the HSCA's many secret hearings. The HSCA "findings" are based on hearsay,

not evidence. Moreover, Congress has locked up the files on its King investigation and rebuffed persistent attempts to get them unsealed. Billings claim that the HSCA's work has "stood the test of history" (quoting Cong. Louis Stokes) is nonsense on this basis alone.

The methodology employed by the HSCA to find Ray and his family guilty was fundamentally flawed. As Billings himself makes clear, the HSCA adopted an investigative strategy which presumed Ray's guilt ("we realized that for Ray to tell the truth would mean implicating his brothers in the plot."). Not surprisingly, the HSCA managed to validate its own premise.

Based on the premise that Ray was guilty, the HSCA made an intensive study of Ray and his associates and their associates, "chart[ing] this data with central figures surrounded by a circle of associates." According to Billings, "[w]hen we started seeing concentric circles, we figured we were making progress." People who go too long without water in the desert see such circles in the form of oases. They're called mirages. Billings admits that the HSCA's St. Louis plot was "not a provable conspiracy."

Billings dismisses "Raul," the mysterious person who Ray says set him up to take the fall, as a "fiction" invented by Ray. But there is compelling evidence to support Ray's story that Raul directed his movements in Canada, the United States and Mexico, giving him money and promising him identity documents in exchange for run-ning contraband across the Canadian and Mexican borders. Why else would Ray, who had fled to Canada after his escape from

prison, return to the United States and risk arrest? And where did he get the \$2,000 to buy the white Mustang he purchased in Birmingham, if not from Raul. Claims that he got the money from his brothers represent wishful thinking on the part of the Ray-did-it crowd, rather than evidence. They are inconsistent with the fact that after his escape from prison Ray took a menial job as a restaurant worker in Chicago and was all but flat broke when arrested in London.

Moreover, while Ray's "Raul" claim has long seemed nebulous, it no longer is. Ray has identified a specific individual located by his current attorney, Dr. William Pepper, as Raul, and this identification is supported by other witnesses who are not Ray associates or family members and who, with the exception of a brother-sister pair, do not know each other. As attorney for Dr. Pepper and Rev. James Lawson, who plan to file suit for government records on this person, I have seen this evidence and find it very persuasive.

Billings states categorically that "neither Ray nor his latest attorney, William Pepper, has ever produced a shred of evidence of anyone else's involvement in a plot." This, to quote Billings himself, is "patent nonsense." In a sensational development much ignored by the news media, Lloyd Jowers, the Memphis businessman who owned the restaurant adjacent to the rooming house from which the shot was allegedly fired, has confessed that he was involved in a plot to kill King, and Pepper has located other witnesses who support this claim. Whether this new evidence will ultimately

prove to lack credibility remains to be seen. But in my view it is at least serious enough to deserve an evidentiary hearing at which its merits can be sorted out on the basis of the adversary testing which our legal system requires when it functions properly.

For twenty-eight years James Earl Ray has relentlessly pursued the legitimate trial he was denied. At long last, he should be given his day in court.
