

RAY JUDGE DELAYS TRIAL TO MARCH 3

Gives New Counsel Time to Prepare a Defense
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By ANTHONY LEWIS

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MEMPHIS, Nov. 12—James Earl Ray won today a postponement until next March 3 of his trial for the murder of the Rev. Dr. Martin Luther King Jr.

Judge W. Preston Battle, convening the Shelby County Criminal Court on the day long fixed for the trial to begin, agreed to let Ray change lawyers. The new counsel, Percy Foreman of Houston, was then given a continuance to prepare his defense.

Two days ago Ray, from his constantly watched cell near the courtroom, sent word that he wanted to dismiss Arthur J. Hanes of Birmingham, Ala., the lawyer he retained when arrested in England last June.

"This motion comes not only at the 11th hour," Judge Battle said from the bench today, "but, so to speak, at the 59th minute and the 59th second before trial.

"It is also true that an immense amount of human energy and time and thought and money has gone into the preparation. It's an awful thing at this time to have it continue the case."

"But all other considerations yield to the defendant's right to be represented by counsel of his own choosing in a trial for his life," the judge said.

The proceedings today were thus an anticlimactic break in a case that has attracted worldwide attention. Dr. King was the country's leading figure of nonviolent Negro protest, and there is deep interest in knowing whether his murder by rifle shot in Memphis last

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April 4 was the result of a conspiracy.

Nevertheless, the brief hearing today—it took just an hour of courtroom time—was interesting in its foretaste of what could be a classic American criminal trial.

"I think this case is unique in many ways," Judge Battle said, "unique in the number of witnesses." It was disclosed that the state had a list of 360 "potential witnesses" and expected to call from 80 to 100.

"The witnesses are scattered all over the United States, Mexico, Canada, England and Portugal," Judge Battle added.

Defendant Sits Alone

Ray, who escaped from the Missouri Penitentiary in 1967, reportedly traveled through the West and Mexico before the assassination and went to Canada and Europe afterward. The prosecution will evidently attempt to unravel his life in detail.

The air of mystery that has attached to Ray since his capture in London—the feeling that he is a cipher, a man without attachments or emotional well-springs—persisted in the small courtroom today.

Ray sat alone in a chair just behind the counsel table. He chewed gum, put a hand nervously in and out of a pocket of his checked sports jacket, then walked out in something of a slouch when the session ended.

He seemed to have lost weight since his appearance in the London extradition proceedings. His face was sallow, his eyes downcast, his expression uneasy rather than defiant—as if, one close observer says, the fact that he faced a capital charge had come home to him.

Answers Four Times

The defendant spoke only four times today, answering four questions by Judge Battle with the same words: "Yes, sir." The judge showed him a letter asking for the change of lawyers. These exchanges followed:

Q.—I wish you would examine it and see if you wrote that letter. A.—Yes, sir.

Q.—Did you send that letter? A.—Yes, sir.

Q.—And I believe in that letter you state that you wish to terminate the services of the Messrs. Hanes [Mr. Hanes and his son, Arthur Hanes Jr.] in this case? A.—Yes, sir.

Q.—And you want to hire other counsel? A.—Yes, sir.

The main drama was contributed today by Mr. Foreman, and there is every indication that he will continue to be the commanding figure on stage when the trial occurs.

Tall, silver-haired, with a well-worn, craggy face, Mr. Foreman spoke in a soft Texas voice with a sourly air. There were florid touches, but he generally showed himself to be a member of the calm rather than the shrill legal school.

Postponement Is Opposed

The prosecutors, somewhat unexpectedly, put up strong objections to the change in lawyers and delay in the trial. The Shelby County Attorney General, Phil Canale, and his assistant, Robert K. Dwyer, urged Judge Battle to go ahead today.

"He [Ray] has been here four months or better," Mr. Dwyer said, "and it appears to me that he is trifling with the court.

"The state of Tennessee is ready for trial. We have made an extensive, exhaustive investigation into this matter. We have something like 90 witnesses alerted nationally and in various parts of the world to come in here."

"This is an unusual, unique

case in the eyes of the world, but it is still a piece of business in these courts, he went on.

Mr. Dwyer showed considerable animosity toward Mr. Foreman, either as a matter of trial tactics or for some personal reason not readily apparent. He referred sarcastically to "this gentleman from Texas . . . Foreman I believe is his name."

A Constitutional Argument

Blandly, Mr. Foreman told the judge that he expected "no personality conflicts" in the trial.

"I know I can get along with Mr. Canale," he said, "and I hope before the day is over I can get along with Mr. Dwyer."

Mr. Foreman pressed a broad constitutional argument for allowing Ray to hire new counsel at this late date.

"In most of the world today," he said, "the state says who can represent a defendant. But in those countries deriving their jurisprudence from England, the common law and Anglo-Saxon principles, the defendant has a right to."

"Frankly, Your Honor, I would be much better off physically and financially if the court adhered to the adjurations of the distinguished prosecuting attorney."

"However," he went on, "I feel it my responsibility to my oath as a lawyer and to my profession, if this man wants me and needs me and feels that he does, and this Court will so permit, to make myself available to the defense of this case."

No Price Tag on Justice

"This man is not at liberty. He is in jail. He is not a danger to the community.

"There might be some expense, but justice doesn't have a price tag on it."

Mr. Hanes, the unwanted lawyer, sat at the counsel table and took part occasionally. He said he was ready for trial but asked, in view of Ray's wishes, to be removed from the case.

Mr. Foreman's written motion for a continuance made an interesting statement on the financing of the defense. The statement was not challenged.

It said that Mr. Hanes had been paid \$30,000 for his work so far, the money having come from William Bradford Huie, who is writing about the case for Look magazine. Mr. Hanes was asking \$12,000 more before turning his defense prepara-

ration over to Mr. Foreman, the motion said.

Conditions on Lawyer

Judge Battle, when the granted the motion to drop Mr. Hanes from the case, added the stringent condition that Mr. Hanes make available to Mr. Foreman everything he has on the case. Any dispute about fees could be worked out later, the judge said.

There was no indication how Mr. Foreman would be paid.

Conceivably, there could be further literary payments to Ray, although Mr. Huie has first rights preserved in a contract.

Judge Battle imposed two other conditions on Mr. Hanes.

He said that the former defense counsel would continue to be subject to the Court's strict rules against comment to the press. And he made Mr. Hanes post a \$1,000 bond to assure his eventual return to Memphis to be sentenced for contempt for violating those publicity rules.

The judge, having approved the change of counsel, asked the two sides to get together and agree on a new trial date. But discussion during an hour's recess failed to get agreement.

Defence Gets 111 Days

Mr. Canale urged Judge Battle to reschedule the trial for the third week in January. He said it was no secret that delays in criminal trials tended to hurt the prosecution, and he said the state had rights as well as the defendant.

Mr. Foreman said he always made it a practice to interview every potential prosecution witness who would talk to him before preparing his defense. With such a long list, he asked the judge to have the parties return in 90 days and then fix a trial date.

The date of March 3, which the judge then picked himself, gives Mr. Foreman 111 days to prepare. At that the judge told Mr. Foreman to report back a month from today, Dec. 12, and say whether he could meet that target. Thus, there could be some further delay, though not much would be expected.

Judge Battle generally made it clear that he would allow Mr. Foreman a good deal of leeway in this explosive case.

The judge today often leaned

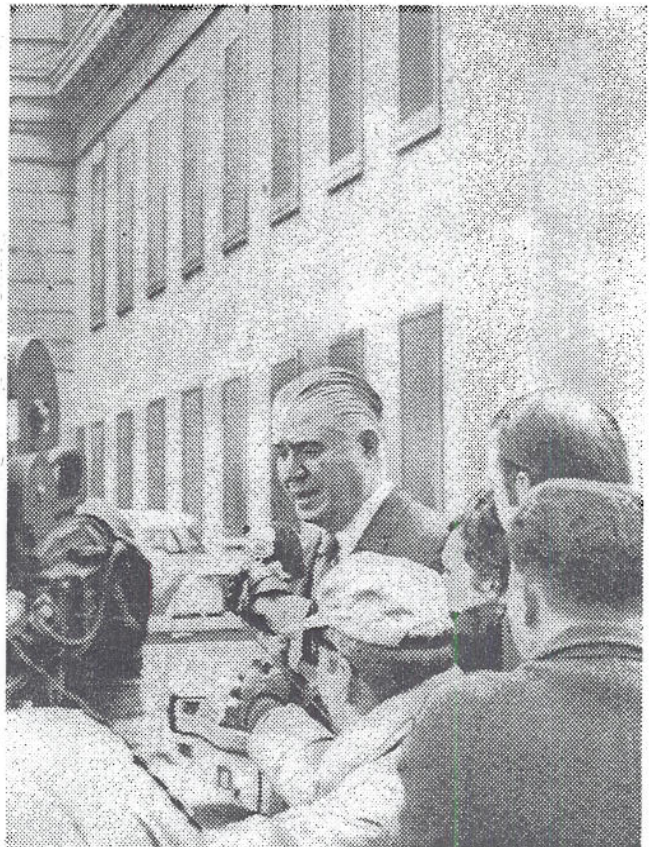
back in his chair, face down on his double chin, with his black hair and half-glasses dominant in his features.

Security Is Strict

The vast security precautions arranged for the trial to prevent any assault on Ray were all in operation today. The 42 members of the press admitted were searched by two detectives and an electronic scanner, were recorded on television tape and had their shoes removed and inspected. All this took 37 minutes.

Among the 42 were three men who have been commissioned to write books. They were Gerold Frank, writing for Doubleday; George McMillan, for Little-Brown, and Clay Blair, for Bantam Books.

Of the 40 or so seats set aside for members of the public, almost all were filled today by employees of the sheriff's office. One outsider present was Harold Guinn, a 17-year-old Negro who is a junior in high school. He said he thought the trial could provide "a civics lesson."



Associated Press

Percy Foreman, new attorney for James Earl Ray, holding an impromptu news conference outside Shelby County jail.