

Mr. DeLoach

A. Rosen

MURKIN

March 13, 1969

1 - Mr. DeLoach

1 - Mr. Rosen

1 - Mr. Malley

1 - Mr. McGowan

① - Mr. Long

This is the case involving the murder of Martin Luther King.

Reference is made to previous memoranda concerning Jensen's plan to interview subject Ray in the above-entitled matter at the Tennessee State Penitentiary, Nashville, Tennessee.

I had previously advised that Jensen had entered the maximum security building at the institution at 3:44 p.m. This information was furnished to the Director's Office immediately thereafter.

It is also pointed out that the steps outlined and the Director's comments concerning the need to make no public statement as the press and TV would descend on the penitentiary en masse were brought to the attention of Assistant Attorney General Leonard of the Civil Rights Division after Jensen had started his interview with Ray today. Mr. Leonard indicated he fully agreed that any publicity at this time would be most undesirable.

Mr. Leonard asked to be informed of developments which might have a bearing on this matter as it will be necessary to decide, in the event Ray is not cooperative and there is no possibility of further getting any cooperation from him, as to whether he should be brought before a Federal Grand Jury and be questioned under oath concerning the existence of coconspirators.

ACTION TO BE TAKEN: In accordance with the Director's instructions, the results of the interview of subject Ray by SAC Jensen will be furnished to the Director before any further action is taken to disseminate such information to the Department. It is noted that Leonard indicated he was in close touch with the Attorney General in this matter and is anxious to know of developments. The information will therefore not be furnished to Mr. Leonard until it receives the Director's approval.

AR:lge:mfd

(6)

3/2

Mr. DeLoach

A. Rosen

MURKIN

March 12, 1969

1 - Mr. DeLoach

1 - Mr. Rosen

1 - Mr. Malley

1 - Mr. McGowan

① - Mr. Long

This is the case involving the murder of Martin Luther King.

SAC Jensen called to advise. he had talked to District Attorney Phil Canale concerning the possibility of interviewing James Earl Ray. Canale indicated he had no objection to such an interview and saw no reasons why there would be any objections raised.

The Houston Office advised SAC Jensen at Memphis that Attorney Percy Foreman had no objection to our interviewing Ray. He said he talked to him for about 50 hours but did not go into the facts of the case. Foreman was of the opinion that Ray was a racist and he did not think that he would be very cooperative.

The Commissioner of Corrections for the State of Tennessee who has charge of the prison at Nashville in which Ray is confined has consented to an interview.

SAC Jensen plans to be in Nashville tomorrow and be able to make contact with the prison official sometime in the early afternoon in order to make the first contact with Ray. He will then be able to size up Ray's attitude and follow up with an interview the following day and until such time as all possibility of getting information from Ray is exhausted.

It is recalled Deputy Assistant Attorney General Owen of the Civil Rights Division asked to be advised when we plan to interview Ray. He indicated he had no objection to such an interview but wanted to be advised. If approved, we will let him know at such time as the interview is under way.

AR:lge
(6)

MURKIN
MEMO
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Mr. DeLoach

A. Rosen

MURKIN

March 12, 1969

- 1 - Mr. DeLoach
- 1 - Mr. Rosen
- 1 - Mr. Malley
- 1 - Mr. McGowan
- (1) - Mr. Long

This is the case involving the murder of Martin Luther King.

Bob Owen, Deputy Assistant Attorney General of the Civil Rights Division, called to advise me that the Press Relations Office and the Attorney General's Office were considering making some statement to the effect that steps were being taken to interview James Earl Ray. He said there was a suggested statement to the effect the Department was continuing its inquiry into the possibility of a conspiracy and the facts developed during the past week would give rise to talking to Ray. Owen said this was not the exact language but this was the general idea which they had in mind.

Owen said he was opposed to making any statement because he thought this might have some affect upon our plan to try to talk to Ray and he wondered what our position in the matter was.

I told him we were trying to get permission from Canale, from the warden of the penitentiary at Nashville, Tennessee, and from Percy Foreman to conduct such an interview. In addition, Ray was being processed through the penitentiary at this time and we do not know whether permission would be granted by the warden; we do not know where Percy Foreman is although we believe he is at Houston, Texas; and consequently we have to clear all this before we can actually say we are allowed to interview Ray. I advised him any premature statement at this time about our plan to interview Ray or that we were taking steps to try to interview him might preclude this opportunity. I advised him this was my personal opinion and I would want to have this taken under consideration before giving him any answer.

Owen also mentioned he understood Bradford Huie was on TV last night and made the comment he had not been able to come up with any evidence of any conspiracy although he had talked with Ray and had been of the opinion at the start when he wrote the story on Ray that such a conspiracy might have existed but he said he has not come up with anything to indicate that there was a conspiracy.

AR:ige
(6)

CONTINUED - OVER

Memorandum to Mr. DeLoach
Re: MURKIN

ACTION TAKEN:

I called Owen back and advised him it was the Bureau's view that any comment at this time would be premature and might preclude the possibility of our getting an opportunity to talk with Ray and also to have him talk with us if we do get such permission unencumbered by the possibility of news comment.

Owen said if we do get permission to talk to Ray from Canale, the warden, and Attorney Percy Foreman that he would want to know beforehand but that insofar as we were concerned we could go ahead with the interview.

3-11

*Murkin
Memo
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Mr. DeLoach

March 11, 1969

A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Long
1 - Mr. Bishop

MURKIN

In connection with the Director's inquiry as to when Ray will be eligible for parole, the following is set forth:

On March 10, 1969, in State Court, Memphis, Tennessee, James Earl Ray entered a plea of guilty to murder in the first degree in connection with the slaying of Martin Luther King, Jr. He was sentenced to a term of imprisonment for 99 years.

According to Memphis authorities, Tennessee State Law provides that Ray will be eligible for release on parole with good time and honor time added in 33 years. It is noted that in 1960, Ray was sentenced to imprisonment at St. Louis, Missouri, for a term of 20 years on charges of armed robbery, and he escaped on April 23, 1967. It would appear that based on this record he owes a minimum of 13 years to the State of Missouri on the armed robbery charge.

ACTION:

For information.

RED:jms

MURKIN
MEMO
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Mr. DeLoach

March 11, 1969

A. Rosen

1 - Mr. DeLoach

1 - Mr. Rosen

1 - Mr. Malley

1 - Mr. McGowan

MURKIN

1 - Mr. Long

This is the case involving the murder of Martin Luther King.

Assistant Attorney General Jerris Leonard, Civil Rights Division, met with Messrs. Rosen and Martindale in his office, together with his Deputy Robert Owen and Attorney David Norman. He was interested in two matters:

Item 1 re James Earl Ray (Murder of Martin Luther King)

The first matter concerned the disposition of the Federal conspiracy warrant presently outstanding concerning James Earl Ray, who was sentenced to 99 years in Tennessee.

Leonard stated the President would be going to take the position in a future press conference that the Federal Government was continuing to give intensive interest to the possibility of the existence of a conspiracy. Because of this, Leonard felt the Department ought to decide on the action which should be taken at this time and possible future procedure.

After discussing such possibilities as the dismissal of the warrant, filing the Federal warrant as a detainer against the state process, interviewing Ray immediately or postponing such an interview, and the possibility of calling him before a Federal grand jury, the following decision was reached by Leonard.

He felt that, insofar as the timing was concerned, the most desirable procedure at this time without making any commitments by the Federal Government beyond what the President would say was to try to interview Ray at the earliest possible time. In this connection, he asked that we contact the SAC at Memphis (Jensen) and have him get in touch with Canale, the District Attorney, to determine whether the circumstances are such as to allow an interview with Ray at this time to determine whether he will give any information concerning possible conspirators.

AR:ige
(6)

CONTINUED - OVER

Memorandum to Mr. DeLoach
Re: MURKIN

ACTION TO BE TAKEN:

If approved, we will instruct the Memphis Office to immediately take the necessary steps to determine whether Ray can be interviewed. This will involve the possibility of clearance from Attorney Percy Foreman.

OK, H"

Item 2 re Murder of Three Civil Rights Workers in Mississippi

The second matter concerned informant James Jordan, who is presently serving a four-year sentence after pleading guilty to Federal Civil Rights charges in connection with the murder of three civil rights workers in Mississippi. Jordan was the primary Government witness responsible for the conviction of seven other subjects in Federal Court. There are three subjects to be re-tried in Federal Court and Jordan's testimony is essential to successful prosecution.

The U. S. Board of Parole has passed Jordan over until September, 1970, although he will be eligible for release on good time in June, 1970. The Civil Rights Division strongly feels that Jordan, who has been a model prisoner, should be favorably considered for parole in view of his cooperation with the Government at the prior trial and in view of the need for his testimony when the three subjects are re-tried. The Civil Rights Division has been unable to make any arrangements through consultation with the Parole Board but Robert Owen has been invited to appear before the Parole Board in the near future and plans to do so. In addition, Leonard requested that Special Agent in Charge Joseph A. Sullivan, New York, who dealt with Jordan during the investigation in Mississippi, be permitted to appear with Owen merely for the purpose of pointing out the fact that Jordan was most cooperative with the Federal Government.

Leonard was advised that his request would be taken under consideration. He stated he was most emphatic in his feeling that Sullivan's testimony before the Parole Board would be most effective in not only retaining Jordan's cooperation but in setting the facts before the Parole Board inasmuch as he would be an impartial witness whereas Owen acted as a prosecuting attorney.

CONTINUED - OVER

Memorandum to Mr. DeLoach
Re: MURKIN

RECOMMENDATION:

In view of the necessity for continuing to maintain Jordan as a cooperative witness in bringing about a favorable prosecution against the three remaining subjects to be re-tried in Federal Court, favorable consideration should be given to Mr. Leonard's request that Sullivan be allowed to appear before the U. S. Board of Parole and limit any comments to the fact that Jordan was most cooperative with the Government.

OK "H"

MURKIN
MF 110
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Mr. Callahan

3/11/69

J. P. Dunphy

MURKIN

This is the case involving the killing of Martin Luther King.

On 3/10/69 subject Ray was sentenced to 99 years in prison. John Carlisle, Chief Investigator, District Attorney General's Office, Shelby County, Memphis, Tennessee, called on 3/10/69 advising that the two models prepared by the Bureau were used extensively during subject's trial yesterday and that many favorable comments were received concerning them.

Now that the trial has been concluded, Carlisle wishes to know what disposition the Bureau desires to be made of the two trial models. It was pointed out to Carlisle that since they had been introduced in evidence they were the property of the court and the presiding Judge would be the one to indicate what should be done with them. Carlisle advised they nevertheless wanted to make whatever disposition the Bureau desired. According to Carlisle the Memphis Police Department has expressed an interest in obtaining these models for use in their police training academy.

SAC Jensen advises the models were of great assistance during the trial and that while there would be no objections to furnishing the models to the Memphis Police Department, he felt they might be put to better use at the Bureau.

In view of the tremendous amount of public interest in the killing of King and the trial of Ray, either or both of these models might very well lend themselves to effective display on the tour route. They would also lend themselves very well to be utilized as training aids in our Training Division. It is therefore felt that Carlisle should be advised that if the Judge so desires, these models should be returned to the Bureau.

RECOMMENDATION:

JPD:ko
(5) That Carlisle be advised to inform the Judge that the Bureau can make use of these models here in Washington if he has no objection to returning them to us.

1 - Mr. Bishop 1 - Mr. Casper
1 - Mr. Long, Rm. 2260

8-10

MURKIN
MEMO
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Mr. DeLoach

3/10/69

A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Bishop

MURKIN

Long
SAC Jensen telephonically advised the state court proceedings at Memphis, Tennessee, in captioned case, were completed at 12:10 p. m. today, at which time Ray was found guilty and was sentenced to 99 years' imprisonment.

SAC Jensen advised that at the commencement of proceedings this morning, Attorney Percy Foreman addressed the court, stating that his client, Ray, was willing to enter a plea of guilty if the court would accept same and give a 99 year sentence, and added that he was making a motion to this effect. Following Foreman's motion, Ray openly and voluntarily agreed to enter a plea of guilty and accept the above-mentioned sentence.

The State then introduced five witnesses. There was no cross examination of any of the witnesses by defendant's attorney. There was a short recess; court then reconvened, at which time James Beasley, Assistant Attorney General, Shelby County, Tennessee, gave a summation of all the facts in this case.

The Judge then indicated to the jury that he wanted a vote from them, at which time they did vote to accept a plea of guilty from Ray and that he would be sentenced to 99 years' imprisonment. This vote was taken in open court, at which time there was a unanimous verdict to accept the plea of guilty and sentence of 99 years. (The all-male jury consisted of 10 white and 2 Negro jurymen.) The court agreed on the acceptance of the plea of guilty and the 99 year sentence was imposed.

ACTION: Submitted for information.

JRM:mpd (8)

MURKIN
MEAT
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Mr. DeLoach

3/10/69

A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Bishop

MURKIN

LONG

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ACTION: Submitted for information.

JRM:mpd (6)

UNITED STATES GOVERNMENT

Memorandum

*MURKIN
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Tolson _____
DeLoach _____
Mohr _____
Bishop _____
Casper _____
Callahan _____
Conrad _____
Felt _____
Gale _____
Rosen _____
Sullivan _____
Tavel _____
Trotter _____
Tele. Room _____
Holmes _____
Gandy _____

TO : Mr. DeLoach

DATE: March 10, 1969

FROM : A. Rosen

1 - Mr. DeLoach

1 - Mr. Rosen

1 - Mr. Malley

1 - Mr. McGowan

① - Mr. Long

1 - Mr. Bishop

1 - Mr. Sullivan

SUBJECT: MURKIN

This is the case involving the murder of Martin Luther King, Jr.

In connection with the scheduled appearance of James Earl Ray and his attorney, Percy Foreman, in State Criminal Court, Memphis, Tennessee, today at 9:30 a. m. , the Executive Assistant to the State Attorney General, Shelby County, Memphis, has requested that SAC Jensen appear at his office this morning as the possibility exists that SAC Jensen may be called upon to testify in state court.

The State Attorney General desires to be fully prepared in the event Ray enters a guilty plea and if required, SAC Jensen will testify concerning receipt of evidence from Memphis Police Department and the chain of evidence; brief resume concerning extent of investigation conducted by FBI to identify Ray through fingerprints found on items of evidence; and brief statement that FBI investigation to date has not identified any other individuals in a conspiracy.

This was discussed with Mr. D. Robert Owen, Deputy Assistant Attorney General, Civil Rights Division of the Department, on 3-9-69, and Mr. Owen advised that SAC Jensen should appear as requested and he is personally giving authority to SAC Jensen to appear and testify. Mr. Owen also advised that a Departmental attorney will be in Memphis today to protect the Government's interest. SAC Jensen has been instructed to appear and if necessary testify along the lines set forth above.

ACTION: For information. You will be kept advised of all developments.

REL:erg *erg*
(8)

SAC ROBERT G. JENSEN, 3-8-69

Here is general procedure as it would probably be followed in the event a plea of guilty is entered:

A jury must weigh the recommended sentence in first-degree murder cases although it is often simply a formal confirmation of sentence in Tennessee courts. It works like this:

A jury is impaneled but individual jurors are not questioned as they are when the guilt or innocence of an accused is at stake. The first 12 jurors drawn are seated. Then a much abbreviated selection of the proof is presented to the jury as the state and the defense call a few key witnesses. In summation the state recommends a specific sentence, and the defense usually urges the jury to retire and confirm the sentence.

Newspaper "Commerical Appeal" says that State Parole Office in Memphis said a 99-year sentence can be served completely in 50 years and seven months. A convicted man is eligible for parole after 48 years and six months. With maximum good and honor time the term of 99 years could be reduced to 33 years.

Mr. DeLoach

3/10/69

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T. E. Bishop

CLAY D. BLAIR, JR.
AUTHOR, BANTAM BOOKS;
BOOK ON JAMES EARL RAY

Previous memoranda have been submitted by me reflecting contacts made by above individual concerning his intentions to write a book on James Earl Ray and the King assassination for Bantam Books which was to be published within several days after the conclusion of the trial of Ray. We have not cooperated with him in connection with the preparation of the book but he did furnish us his rough manuscript for us to look over, at which time several major discrepancies regarding the FBI were pointed out to him. The manuscript was hastily and crudely written and based on various newspaper articles on the case and some minor personal research by Blair. It is obvious that the purpose of this book is to "make a quick buck" by having it published as soon as possible after the completion of the trial.

Blair called Bishop on the afternoon of 3/10/69 from Memphis and asked if the Bureau now would cooperate with him in allowing him to interview SAC Jensen of the Memphis Office and other Agents who worked on the Ray case. He stated this would have to be done within the next day or so, so he could revise his book. He was advised that it would not be possible for the Bureau to cooperate in the manner he desired.

RECOMMENDATION:

None. For information.

- 1 - Mr. DeLoach
- 1 - Mr. Rosen
- 1 - Mr. Sullivan
- 1 - Mr. Jones

TEB:mia
(6)

[Handwritten signatures and initials]

3-7

Extra Ticker

MURKIN
Memo
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Mr. DeLoach

March 7, 1969

A. Rosen

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
1 - Mr. Long
1 - Mr. Bishop
1 - Mr. Sullivan

MURKIN

This is the case involving the murder of
Martin Luther King, Jr.

Judge W. Preston Battle, Criminal Court, Memphis, Tennessee, has advised that Percy Foreman, attorney for James Earl Ray, requested permission to have Ray in court Memphis, Tennessee, at 9:30 a.m. Monday, March 10, 1969. Judge Battle expressed the opinion that Mr. Foreman desires to enter a guilty plea (state charge of murder) on Ray's behalf at that time, although, the Judge professed not to have specific information on this point. Judge Battle requested that this matter be given no publicity whatsoever.

ACTION:

This is for information. SAC, Jensen, is closely following this matter and will keep the Bureau advised.

If any additional info comes in on this
call R.E. LONG

REL:jms
(8)

MURKIN

Memo
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Mr. DeLoach

A. Rosen

MURKIN

March 7, 1969

1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Malley
1 - Mr. McGowan
① - Mr. Long
1 - Mr. Bishop
1 - Mr. Sullivan

This is the case involving the murder of
Martin Luther King, Jr.

Judge W. Preston Battle, Criminal Court, Memphis, Tennessee, has advised that Percy Foreman, attorney for James Earl Ray, requested permission to have Ray in court Memphis, Tennessee, at 9:30 a.m. Monday, March 10, 1969. Judge Battle expressed the opinion that Mr. Foreman desires to enter a guilty plea (state charge of murder) on Ray's behalf at that time, although, the Judge professed not to have specific information on this point. Judge Battle requested that this matter be given no publicity whatsoever.

ACTION:

This is for information. SAC, Jensen, is closely following this matter and will keep the Bureau advised.

REL:jms
(8)

 2-18

MURKIN
MEMO
FOLDER

Mr. DeLoach

February 18, 1969

A. Rosen

1 - Mr. DeLoach

1 - Mr. Rosen

1 - Mr. Malley

MURKIN

1 - Mr. McGowan 1 - Mr. Bishop

1 - Mr. Long 1 - Mr. Sullivan

This is the case involving the murder of
Martin Luther King, Jr.

Attorneys for James Earl Ray argued motions in the
court of Judge W. Preston Battle, Memphis, Tennessee, on
February 14, 1969. The motions and the results thereof are as
follows:

1. Motion to require the return of state's subpoena to the Clerk
of the Criminal Court: It is noted that subpoenas for witnesses
who had been requested to testify in the state trial previously
scheduled for November 12, 1968, were not returned to the clerk
of the court, but were being held in the State Attorney General's
Office. Judge Battle ruled that the executed subpoenas must be
returned to the clerk as they are not to be made matter of public
record and only attorneys for the defense are to be made aware
of the prosecution witnesses.

2. Motion to delete from the indictment the aliases Eric Starvo
Galt, John Willard and Harvey Lohmeyer: Judge Battle denied
this motion, stating that the defendant Ray was responsible for
the use of these aliases and the prosecution had indicated they
would present evidence to prove such use.

3. Motion to designate court reporters and provide for compen-
sation by the State of Tennessee: Judge Battle denied this
motion but agreed to allow Percy Foreman (Ray's Attorney) to
have a live reporter in the courtroom provided this reporter
is compensated by the defense.

4. Motion to require District Attorney General to prepare and
present to the court proposed stipulations as to the undisputed
testimony of witnesses: Judge Battle denied this, stating
that he does not desire to coerce the prosecution into agreeing
to the stipulation of testimony.

ACTION: For information. You will be kept advised of per-
tinent developments.

REL:jmv
(8)

2/14/69

AIRTEL

TO: DIRECTOR, FBI (44-38861)
FROM: SAC, MEMPHIS (44-1987) (P)
SUBJECT: MURKIN

Enclosed for the Bureau are two copies each of three motions having to do with a continuance; with the designation of court reporters; and with stipulations as to the undisputed testimony of witnesses.

On 2/14/69, motions made by the defense were argued before Judge W. PRESTON BATTLE, Memphis, Tenn. The results are as follows:

1. MOTION TO REQUIRE THE RETURN OF A STATE'S SUBPOENA TO THE CLERK OF THE CRIMINAL COURT

This motion relates to defense attorneys' desire to know the identity of the individuals already subpoenaed by the prosecution for the trial of JAMES EARL RAY. The prosecution has thus far avoided having the executed subpoenas returned to the Clerk of the Court, and the prosecution contends that they do not desire the news media to learn the identity of witnesses under subpoena. Judge BATTLE has now ruled that the executed subpoenas must be returned to the Clerk, however, they are not to be made a matter of public record and only attorneys for the defense are to be made aware of the prosecution's witnesses. After defense attorneys have examined the subpoenas, they are to be given to Judge BATTLE for safekeeping. Copies of this motion have previously been furnished the Bureau.

3 - Bureau (Encs. 6)
2 - Memphis

JCH:jap
(5)

2. MOTION TO DELETE FROM THE INDICTMENT THE ALIASES ERIC STARVO GALT, JOHN WILLARD, AND HARVEY LOHMEYER.

On 2/14/69, Judge BATTLE denied this motion, stating that the defendant RAY was responsible for the use of these aliases and that the prosecution had indicated they would present evidence to prove such use. It had been the contention of the defense that the reading of the indictment with these aliases to the jury would be prejudicial and inflammatory. Copies of this motion have previously been furnished the Bureau.

3. MOTION TO DESIGNATE COURT REPORTERS AND PROVIDE FOR COMPENSATION BY THE STATE OF TENNESSEE

It is customary in Tennessee courts to have testimony taken by a mechanical recording rather than by a live court reporter. Such is the practice in Judge BATTLE's court. The defense has argued that such taking of testimony is not reliable and has requested the court to designate and to provide compensation for a live reporter. On 2/14/69, Judge BATTLE denied this motion but agreed to allow FOREMAN to have a live reporter in the courtroom provided this reporter is compensated by the defense.

4. MOTION TO REQUIRE DISTRICT ATTORNEY GENERAL TO PREPARE AND PRESENT TO THE COURT PROPOSED STIPULATIONS AS TO THE UNDISPUTED TESTIMONY OF WITNESSES

The defense has argued that the prosecution is in possession of written FBI reports and is aware of the testimony that will be given by various witnesses who have been subpoenaed both from out of state and from outside this country. The defense desires that these be made available to them and states that in many instances the defense will agree to stipulation of testimony by certain witnesses, thus making it unnecessary to have them brought at State expense to Memphis. The prosecution contends that this is merely an attempt by the defense to discover in advance the testimony to be given by prosecution witnesses.

Judge BATTLE denied this, stating that he does not desire to coerce the prosecution into agreeing to the stipulation of testimony.

in question and answer form. There are places in the record where it appears that the court reporter experienced difficulty with his recording equipment. This information is stated because, as we have said before, the record is in such a garbled condition one reading it can't tell anything about it.

For these reasons we do not deem it advisable or necessary to comment on the various assignments made in this record. In looking at it in one way, clearly, there was no justification for a search wherein a pistol was found, nor is there any evidence to show that this defendant was guilty of possessing these burglary tools, but the record might be looked at from a different standpoint and there might be other evidence which is left out which caused the trial judge to rule as he did. It is shown that the jury was out when most of the evidence along different lines was given. There is nothing in this record to show any incidents when the jury was in whether there was sufficient evidence to convict this man. It is for this reason that the case is reversed and remanded for a new trial.

Hamilton S. Burnett, Chief Justice.

Briefly, these two cases were tried together, the defendant, Kernes, being indicted in Case No. 4724 for carrying a pistol, and Kernes and a man named James W. Tutor were jointly indicted in Case No. 4725 for possessing burglary tools. In the record there is also a copy of another indictment which charges a man named Tholma Roy Tutor with possessing burglary tools. This indictment is No. 4836. The minutes of the court indicate that cases 4724 and 4725 were tried jointly in the present proceedings. The bill of exceptions shows that Kernes entered pleas to both 4724 and 4725. The bill of exceptions does not show that the co-defendant entered a plea to the indictment in 4725, but the technical record does show that both defendants were on trial.

This statement is relevant because the entire record shows that Tholma Roy Tutor was on trial in Case No. 4725, when as a matter of fact James W. Tutor was named in the indictment. After the State had presented its case both Tholma Roy Tutor and James W. Tutor testified for the defense. A clerk of the court testified that it was James W. Tutor who was actually named in the indictment. Upon motion of the defendant for a directed verdict as to Tholma Roy Tutor, the trial judge granted a mistrial as to Tholma Roy Tutor but did not direct a verdict.

The bill of exceptions is styled a "narrative bill of exceptions" on the cover page, although as a matter of fact it is

5-6-67
9-11-5-1
FILED

MAY 5 1967

BESSIE BUFFALOE, Clerk

ROBERT L. KERNES

v.

STATE OF TENNESSEE

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)
:
SHELBY CRIMINAL
)
: Hon. W. Preston Battle, Judge.
)
:
)
:
)

For Plaintiff in Error:

Harry U. Scruggs, Jr.
J. E. Madden
M. A. Hinds
Memphis, Tennessee

For the State:

Edgar P. Calhoun
Assistant Attorney General
Phil M. Canale, Jr.
District Attorney General

OPINION

Kernes was convicted of carrying a pistol and fined \$50.00 and sentenced to eleven (11) months and twenty-nine (29) days in the Shelby County Workhouse in one case, and sentenced to serve two years in the State penitentiary in another case for the possession of burglary tools. From these two convictions he has seasonably appealed, briefs have been filed, arguments heard, and, after reading this record and considering the matter, we think the record is in such a garbled condition that it is impossible to tell heads or tails about the situation so that it would be fair to either the defendant or the State to render a decision thereon. For this reason the judgments below are reversed and the cause is remanded for a new trial.

1 reporting in Memphis, Shelby County, Tennessee, who are
2 available for employment in court reporting.
3 FURTHER AFFIANT SAITH NOT.
4 Vernon N. Short
5 VERNON N. SHORT
6 STATE OF TENNESSEE)
7 COUNTY OF SHELBY)
8 Sworn to and subscribed before me on this
9 fifth day of February, 1969.
10 Bobby J. Dodson
11 BOBBY J. DODSON
12 Notary Public at Large
13 State of Tennessee
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My commission expires February 4, 1970.

1 IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

2 STATE OF TENNESSEE)

3 VS)

4 JAMES EARL RAY, ETC.,) No. _____

5)

6)

6)

7 AFFIDAVIT OF VERNON N. SHORT

8

9 STATE OF TENNESSEE)

10) ss

10 COUNTY OF SHELBY)

11 Vernon N. Short, being duly sworn, deposes

12 and says:

13 That he is a Notary Public at Large for the

14 State of Tennessee and is currently practicing his skill

15 of shorthand (court) reporting in the free-lance field in

16 Memphis and Shelby County, Tennessee, and has been actively

17 engaged in that locale since May 1957.

18 That he is a member in good standing of the

19 national, state, and local shorthand reporting associations

20 and is currently vice-president of the Memphis & Shelby

21 County Shorthand Reporters Association.

22 That as of this date, February 5, 1969, there

23 are a minimum of fifteen (15) shorthand reporters actively

24 engaged in the free-lance field of court and general

O R D E R

On this the ____ day of February, A.D., 1969, was duly presented the foregoing Defendant's Motion to nominate and appoint qualified reporters and auxiliary court reporters and to fix their compensation and provide their payment by the State of Tennessee and to enter an order controlling the sale, dissemination, circulation and reproducing of daily copy of the Court proceedings and forbidding same by any one other than the duly appointed Court Reporters and duly appointed auxiliary reporters, as a unit, and said motion was duly considered by the Court, and the Court being of the opinion that same should be granted, it is, accordingly:

GRANTED in all things as more particularly appears by an order this day entered herein.

OVERRULED and DENIED, to which action of the Court in overruling said motion the Defendant then and there in open Court excepted, and said motion, together with this ruling thereon and Defendant's exception thereto is here now ordered filed as a part of the record of this case.

W. PRESTON BATTLE, Judge

reporters, without permission to duplicate said original transcript of daily proceedings having been applied for in writing to this Court and without a hearing having been had on such application to duplicate and without an order first having been entered of record by the Court so permitting such duplication, and for such other and further orders with reference to the reporting, duplicating and dissemination of such proceedings as the court may deem first, suitable and proper, as said Defendant, in duty bound, will ever pray.

James Earl Ray
JAMES EARL RAY, Defendant

STATE OF TENNESSEE :

COUNTY OF SHELBY :

SUBSCRIBED AND sworn to before me the undersigned Notary Public in and for Shelby County, Tennessee, by JAMES EARL RAY, known to me, this _____ day of February, A. D., 1969.

Notary Public in and for
Shelby County, Tennessee.

SEAL

Hugh Stanton Sr.
Hugh Stanton, Sr.,
Hugh Stanton Jr.
Hugh Stanton, Jr.,

PUBLIC DEFENDER'S OFFICE
SHELBY CO., TENNESSEE.

Percy Foreman
Percy Foreman, Attorney at Law
Of counsel.

subject this Court to the impossible task of supervision even legally unauthorized employees of the various letter services, duplicating machine people, transcribers, recorders, out of the presence of the Court and beyond the Court's control, all in violation of the spirit and the letter of the law as laid down in articles 40-2029 through 40-2043, aforesaid, and especially of article 40-2038 which provides:

"The reporters shall be subject to the supervision of the appointing judge in the performance of their duties, INCLUDING DEALINGS WITH THE PARTIES REQUESTING TRANSCRIPTS *****" (emphasis added).

Comments
And, in this connection, Defendant is informed and believes that the expressed demand for copies of said daily transcript is so widely based that a proper control by the Court and the limitation of the right to produce and sell such daily copy to the court appointed court reporter and auxiliary reporters can make daily copy available at little or not additional expense to the State of Tennessee. At least, that such can be available as daily copy within the cost of what would be the normal cost of such daily proceedings if produced in due time and not at daily copy rates.

VII.

This Defendant says that he is without funds with which to engage, employ and compensate such duly appointed reporter and such auxiliary reporters hereinabove requested.

WHEREFORE, premises considered, Defendant prays the Court to nominate and appoint a qualified Court Reporter and such auxiliary court reporters as may to the Court seem necessary and to enter an order providing for their compensation by the State of Tennessee, as provided by law, and, also, that the Court enter an order providing that such duly appointed court reporters and auxiliary court reporters, as a unit, and they only shall have the right to sell and or offer for sale transcripts of the daily proceedings, and that no copies of such proceedings shall be duplicated and circulated by any original purchaser of such a copy of a transcript of any daily proceedings by any person, firm or corporation or agent thereof, except such appointed court

that right by failing to provide a qualified court reporter would be and is a deprivation of the right of the Defendant to 'effective representation of counsel' as well as of due process of law, guaranteed under the Constitutions aforesaid of the United States of America and of the State of Tennessee.

V. *Not in Constitution*

Defendant says that daily copy of the proceedings will be needed for his effective representation by counsel and that such will require alternate court reporters working in relays to prepare such copy. That it is a physical impossibility for one reporter to carry the load of taking a day's testimony and then transcribing it before the succeeding day. That this Court has the authority under 40-2032, T.C.C.P to appoint such auxiliary reporters as the exigencies of the case may require and that at least one and perhaps two such auxiliary reporters should be appointed, and their compensation as well as that of the first such reporter should be provided for and should be paid by the State of Tennessee. *Paid for by State*

VI.

This Defendant is informed and believes and upon such information alleges as a fact that various news agencies, reproducing equipment companies and other commercial enterprises, either for commercial profit or for the advertising value to be derived therefrom, have contracted and agreed to furnish numerous office personnel, agents, representatives, operators and others to duplicate, disseminate, merchandise and sell the proceedings on a daily basis to news media, writers, wire services and other curious and or interested persons, firms and corporations, as such proceedings of the trial of this case may be or become

available from the mechanical recording devices that would be used should this motion be denied. *40-2043 authentic 2034 authentic accurate*

Defendant says that money changers in the temple of justice are not contemplated by the spirit or letter of the law of Tennessee. That such a course of commercializing the dissemination of the proceedings of this Honorable Court would

of approximately 1,000,000 or more inhabitants and having within its territorial area at least several dozen eminently qualified Court Reporters, including but not limited to more than two dozen such who are available for appointment by this Court as Reporter and Auxiliary Reporter to act as such in the above styled cases and as herein prayed for.

Therefore, Shelby County, Tennessee does not come within the provisions of Article 40-2042 of the Tennessee Code of Criminal procedure which article authorizes the use of 'recording equipment' in lieu of a qualified Court Reporter in remote counties where no qualified Court Reporter is available to record the proceedings. Shelby County has an abundance of such qualified reporters, and due process of law provided by the Constitutions of the State of Tennessee and of the United States of America justify and require the appointment of such qualified reporter to record the proceedings in the above styled cases against this Defendant.

IV.

However, the general practice prevailing for the recording of proceedings in the trials of felony criminal cases in Shelby County, Tennessee, and which will prevail in this case in the event of the overruling of this motion, is to have such proceedings 'recorded' on a mechanical dictating machine by a deputy clerk of the Court, which the Statutes of the State of Tennessee authorizes only in Counties in which a judge can truthfully certify 'that no qualified court reporter is available to record the proceedings'.

Defendant says that the purported recording of the proceedings by such mechanical device is inadequate, inaccurate, haphazard, and completely unreliable. That Defendant is charged in one of the above cases with murder with malice aforethought for which one of the alternate punishments is Death. That he has the Constitutional right of appeal in the event of conviction, which carries with it the right to have a truly accurate record of the proceedings below for the guidance of the appellate tribunal in reviewing his trial below, and, as above pleaded, any derogation or infringement of

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION III

STATE OF TENNESSEE

Vs.

NOS. 16645 and 16819

JAMES EARL RAY

MOTION TO DESIGNATE COURT REPORTERS AND PROVIDE FOR
THEIR COMPENSATION BY THE STATE OF TENNESSEE

TO SAID HONORABLE COURT:

COMES NOW, James Earl Ray, Defendant in the above styled and numbered causes and files this Motion to Designate Court Reporters and to enter an order that will provide for the payment of their fees by the State of Tennessee; and, in support of said motion would respectfully show the Court as follows, to-wit:

I.

Said Defendant has heretofore testified in open court to the fact that he is an indigent person and has been so adjudicated by this Court; and, pursuant to said finding this Court has appointed the Public Defender of Shelby County to act as counsel for said Defendant. Co-counsel, Percy Foreman, admitted for the purpose of appearing in the above cases has received no fee and does not contemplate that he will receive any such fee for his appearance herein. *Pictures + 5000*

II.

This motion is filed pursuant to the provisions of the Tennessee Code of Criminal Procedure, Articles 40-2029 through 40-2043, inclusive, the same being Chapter 221 of the Sessions Laws of the Legislature of the State of Tennessee, Acts of 1965, which give the Court the power and authority to grant all of the relief herein prayed for, and, in the opinion of the attorneys for this Defendant, make the granting of such relief mandatory. *Dejeu*

III.

Defendant says that Shelby County, Tennessee is a principal metropolitan area of the State of Tennessee, having a population

O R D E R

On this the ____ day of February, A.D., 1969, the foregoing Motion to Require the District Attorney General and prosecuting attorneys to prepare and present proposed stipulations as to the testimony of witnesses residing beyond Shelby County, Tennessee, was presented to and considered by the Court, and the Court having considered the same, and believing the administration of justice would be facilitated and the trial expedited by such stipulations, as proposed by the Defendant and his counsel, it is, accordingly:

GRANTED as more particularly appears by an order to that effect this day entered herein

OVERRULED and REFUSED, to which action of the Court in overruling and refusing to grant said motion the Defendant then and there in open court excepted, and said motion, together with this order thereon and Defendants exception to the action of the Court in overruling and refusing said motion are here-now ordered filed as a part of the record of this case.

W. PRESTON BATTLE, Judge

V.

Defendant says that this motion is filed herein approximately one month before any of said witnesses will have left their homes and thereby obligated Shelby County, Tennessee, for the payment of their travel and living expenses, and in ample time for the preparation, presentation and consideration of the proposal to stipulate and for the entering into said stipulation.

Furthermore, that the prosecution has in its possession a detailed report of the interviews of such witnesses by the agents of the Federal Bureau of Investigation and by its own investigators and is well aware of what their testimony will be and the preparation of such proposed stipulations will not unduly inconvenience the prosecution, and that for every penny of expense incident to the preparation of such stipulation, approximately \$1,000.00 can be saved the taxpayers of Shelby County, Tennessee.

V.

This Defendant and his attorneys verily believe that every word of testimony that could be available from 99.99% of said witnesses, in person, can be stipulated and made a part of the record thereby.

WHEREFORE, premises considered, Defendant prays that an order enter directing the District Attorney General and his assistants attorney general to prepare and present to this Court within five days of the presentation of this motion a proposed stipulation as to the testimony of each and every witness it has furnished Defense Counsel, who reside beyond the limits of Shelby County, Tennessee, to the end that such proposed stipulations or as much thereof as may be undisputed be entered into in advance by the Defendant and his attorneys, before the financial expense and drain on Shelby County's treasury shall occur, as Defendant, in duty bound, will ever pray. *Subtle deception*

Of counsel

Percy Foreman
Percy Foreman

James Earl Ray
JAMES EARL RAY.

Henry Stanton
Henry Stanton Jr
PUBLIC DEFENDERS.

Constitutional right
Constitutional right
Grant Davis Lawyer

nied and this Defendant and his attorneys are willing to stipulate either to the fact or the testimony of such absent witnesses, so as to save the expense of their transportation and maintenance as witnesses throughout the trial of this case. Defendant says that if the prosecution insists on the bringing of said witnesses in person, that his attorneys can not, in good conscience, agree to their release and return to their distant homes until the conclusion of the trial, and therefore their maintenance may cover a period of three to six months, more or less. *Intimidate*

II.

Defendant further says the presentation of said witnesses in person, rather than by stipulation as prayed for herein, will unduly delay, impede and waste the time of this Honorable Court, needlessly and wastefully. That there is not physical possibility of this case terminating in less than four months, if the prosecution persists in the personal presentation of said witnesses. Furthermore, such an extended trial is calculated to so confuse a lay jury as to prevent the proper consideration by the jury of the pertinent and essential facts and testimony to the issues raised by the pleadings. *Confuse*

III.

Defendant says that it is not meet nor proper that the time of jurors who might be selected in this case be consumed for weeks on end by undisputed and immaterial testimony that can be made available and received into evidence by stipulation. Nor is it fair to the treasury of Shelby County that the processes of justice be strained and penalized, when such can be avoided by stipulation. *Equate expenses with justice*

IV.

Defendant says that such witnesses whose testimony can be stipulated come from: England, Canada, Portugal, California Alabama, Washington, Georgia and elsewhere and the law requires the advance to them of ten cents (\$.10¢) per mile each way plus living expenses while in attendance on the Court.

IN THE CRIMINAL COURT OF SHELBY COUNTY , TENNESSEE

DIVISION III

STATE OF TENNESSEE

Vs.

JAMES EARL RAY

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!

Nbs. 16,645 and 16,819

MOTION TO REQUIRE DISTRICT ATTORNEY GENERAL TO PREPARE AND PRESENT TO THE COURT PROPOSED STIPULATIONS AS TO THE UNDISPUTED TESTIMONY OF WITNESSES

TO SAID HONORABLE COURT:

COMES now, James Earl Ray, Defendant, acting herein by and through his attorneys of record, and files this his motion to require the prosecuting attorneys in this case to prepare and present to the Court and to said attorneys for the defense a proposed stipulation of the testimony of all witnesses residing outside Shelby County, Tennessee, whose names have been furnished said attorneys for the defense as possible witnesses for the prosecution, in support of which motion said Defendant would respectfully show the Court:

I.

The office of the District Attorney General has heretofore, pursuant to and order of the Court so to do, furnished defense counsel with the names of some 360 or more witnesses as possible witnesses to be called and offered as witnesses for the prosecution at the trial of the above case or cases.

A very large number of these witnesses reside abroad or in other States than Tennessee. The expense of bringing said witnesses and their maintenance during this trial could conceivably cost the taxpayers of Shelby County and the State of Tennessee as much as a half million (\$500,000.00) dollars, that could be better spent for other needful purposes.

Because, Defendant says, from magazine and newspaper articles available to him and his attorneys, purporting to reflect his travels, contacts and activities in distant states and foreign countries, most, if not all such reports will not be de-

MAIN AT RISK

LAW OFFICES OF
PERCY FOREMAN
804 SOUTH COAST BUILDING
HOUSTON, TEXAS 77002

CA 4-9321

Sheraton - Peabody
Memphis, Tennessee
Room 1125
February 14, 1969

Michael D. Eugene, Esq.,
Attorney, Counselor and
Barrister,
25 Rowsley, Avenue.

Dear Mr. Eugene:

Your letter of the 10th reached me this (Friday)
morning.

The mistake in the amount of remittance was that of the banker at the Union Planters National Bank. I have this day written him an additional check \$250.00 (the first one was \$34.05). A cashier's check for \$104.10 is enclosed herewith. I am sure the documents, testimony and depositions will come forward without delay.

You are correct in that we need:

- (1) The affidavits of the 20 prosecuting witnesses furnished you in advance of the hearing. These include that of Mr. Bonebrake. Also, 19 others. Also exhibits attached thereto, requisition from the United States Ambassador to London, the Certificate of detention, autopsy of Martin Luther King, his death certificate and others too numerous to mention.
- (2) A transcription of the oral evidence taken at the extradition hearing in London, when James Earl Ray was ordered into the custody of the United States authorities.

All the above you state you sent Mr. Arthur J. Hanes Sr., on November 1st, without a covering letter. Mr. Hanes has never furnished us a single sheet of any of the above. Nor did he give us the Press Association Special Service account of the hearing. But we did receive a copy of this latter from a writer, William Bradford Huie, about 10 days ago. He stated that he obtained it from Arthur J. Hanes Sr., the preceding Saturday afternoon, upon agreeing to pay him an additional \$5,000.00.

01-203 0787

25, ROWSLEY AVENUE,
HENDON, N.W.4

P a g e T w o

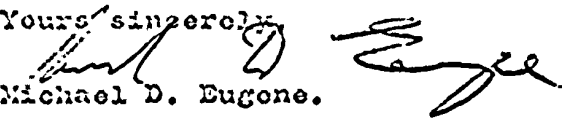
The third category of documents is simply the transcription of the London hearing which I obtained from the Press Associations Special Service and to which, again, you refer in your letter as being in your possession.

✓ It is obvious from your letter that your main concern relates to the first bundle of documents, referred to above, and also ✓ the greater part of the depositions. Copies of these documents were forwarded by me to Mr. Hanes on or about the 1st November last. I did not send a covering letter as it was quite apparent from Mr. Hanes urgent request, that he required these documents with the utmost expedition and I merely sent him a complimentary slip. I therefore regret that I cannot be more specific as far as the date is concerned but I am satisfied that it was around the aforesaid period. This is an extremely bulky collection of documents ✓ and in all, they number over two hundred pages.

I acknowledge receipt of your cheque in the sum of £14.5s. but unfortunately there appears to have been some sort of clerical error. The equivalent English remuneration for 285 dollars is £118.15s. The balance that I would therefore be obliged to receive is £104.10s. Upon receipt of this sum I shall despatch the required documents by Express Airmail.

I would additionally inform you that there are several letters in my possession relating to this case, the contents of which you may find interesting. Unfortunately, as these were addressed to my firm, I cannot relinquish them but I confirm that I shall bring them with me to show you.

Yours sincerely,


Michael D. Eugene.

Percy Foreman Esquire,
C/O Room 1125,
Sheraton Peabody Hotel,
Memphis, Tennessee,
U.S.A.

25. ROWSLEY AVENUE,
HENDON, N.W.4

10th February, 1969

Dear Mr. Foreman,

The reason for my not having replied to your letter of the 31st January is due to my having been away from the office for the past few days and having just returned.

I am therefore replying to you immediately as, obviously, there is some urgency in your request.

The times of your telephone calls to my office and the substance of the conversations between us are confirmed by me.

In order to clarify any confusion that may have arisen with regard to the character of the documents relating to the trial proceedings in London, I would inform you of the following.

These documents may, for the sake of convenience, be divided into three parts.

Firstly, there is the bundle of documents which comprises the Affidavits of approximately twenty Prosecution witnesses (including Bonebrake's), various exhibits attached thereto and also other documents such as the requisition from the United States Ambassador to London, the Certificate of Detention, the autopsy report on Martin Luther King and his death certificate, and also other documents too numerous to detail. These documents form the basis of the Prosecution case in the London Extradition Proceedings and were served on my firm prior to the Hearing.

The second category of documents are those which comprise the oral evidence taken at the aforesaid hearings and which we term "depositions". Included in these would be the oral statements of Ray, to which you refer in your letter. In English proceedings, only the answers of the witness or defendant are noted in the depositions and no note is ever taken of the questions asked.

/continued

between the United States and Great Britain, so as to file any preliminary motions revealed as necessary by such testimony from depositions and affidavits as may be included in the 200 pages referred to in Michael D. Eugene's letter of February 10, 1969.

For each and all of the foregoing reasons and because investigators of the Public Defender's Office, Shelby County, have not completed and will not be able to complete an adequate investigation and interview of witnesses, so as to be prepared for trial on March 3rd, this Defendant respectfully prays the Court to grant an additional continuance for such length of time as the Court may deem proper,

JAMES EARL RAY

AFFIDAVIT

STATE OF TENNESSEE
COUNTY OF SHELBY

Before me, the undersigned Notary Public, in and for Shelby County, Tennessee, on this day personally appeared James Early Ray, through, being by me first duly sworn, on oath, says:

The foregoing allegations in the aforesaid motion for a continuance are true.

JAMES EARL RAY

Subscribed and sworn to at Memphis, Tennessee, this 14th day of February, 1969.

Notary Public

My Commission Expires:

Approximately seven to ten days ago, through the intervention and offices of William Bradford Huie, a writer, and friend of Arthfurf J. Hanes, Sr., the said Percy Foreman was able to obtain an additional 150 pages, more or less of investigatory effort, which, for the first time, was furnished information upon which to base an investigation.

(4) However, no part of the material mentioned in the first paragraph (3) hereinabove were included in any portions of the files turned over to said Percy Foreman, either directly or through William Bradford Huie.

There is attached hereto a photocopy of a letter dated February 10, 1969, from Michael D. Eugene, 25 Rowsley Avenue, Hendon, N.W. 4, London, England, the attorney who represented James Earl Ray at his extradition hearing in July of 1968, which states categorically that on November 1, 1968, all of this material matter was sent Mr. Hanes from London, England, to Birmingham, Alabama, to-with

"It is obvious from your letter that your main concern relates to the first bundle of documents, referred to above, and also the greater part of the depositions. Copies of these documents were forwarded by me to Mr. Hanes on or about the 1st November last. I did not send a covering letter as it was quite apparent from Mr. Hanes urgent request, that he required these documents with the utmost expedition and I merely sent him a complimentary slip. I therefore regret that I cannot be more specific as far as the date is concerned but I am satisfied that it was around the aforesaid period. This is an extremely bulky collection of documents and in all, they number over two hundred pages."

There is also attached hereto a photocopy the first page of a letter written by present counsel for Defendant to Michael D. Eugene.

A proper preparation of this case, requires that the London depositions, affidavits, exhibits, and testimony be available to Counsel for Defendant in order that he may brief the law of extradition and the Treaties

(3) In addition, although Counsel for this Defendant has assiduously pursued an effort to obtain depositions, affidavits, exhibits, and statements, made the basis for the extradition of Defendant, from London, England, to Memphis, Tennessee, he has not been successful.

On November 12, 1968, this Honorable Court directed Arthur J. Hanes, Esquire, former attorney for the defendant, to deliver his files and investigative reports to Percy Foreman, his successor as defense counsel, and, although said Percy Foreman called on the said Arthur Hanes at his office in Birmingham, Alabama, the following Monday to receive such files, the same were not forthcoming. The said Percy Foreman requested said files and investigative reports of the said Arthur J. Hanes, Sr., in the Courtroom on November 12, 1968, immediately upon the Court stating from the Bench his mandate that such files and reports be surrendered to the successor attorney. The said Arthur J. Hanes, Sr., had therefore been paid \$30,000 by and at the request of the Defendant, and said files and investigative reports had been accumulated through the expenditure of this money derived from this Defendant.

The only writing, report or exhibit of any kind obtained by Percy Foreman from Arthur J. Hanes on his visit to Mr. Hanes' office in Birmingham about the 18th of November, 1968, were pencilled notes reproduced by photocopy of an alleged recording of a police broadcast made in Memphis about 6:00 p.m. on April 4, 1968.

Upon reporting this fact to this Honorable Court, a written order was entered by the Court and served on Arthur J. Hanes, Sr., whereupon, the said Percy Foreman received photocopy of approximately 29 pages, more or less, of interviews with witnesses, most of which interviews consisted solely of impeaching testimony.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

DIVISION III

STATE OF TENNESSEE

VS.

NO. 16645

JAMES EARL RAY,

Defendant.

MOTION FOR CONTINUANCE

Comes now James Earl Ray, the Defendant, and moves the Court for an additional continuance in support of which he would respectfully represent and show the court:

(1) On November 12, 1968, this Court continued this cause until March 3, 1969, having estimated that 101 days should be sufficient time for preparation. That on December 23, 1968, and until January 20, 1969, Chief Counsel for the Defendant, Percy Foreman, was continuously confined to bed with pneumonia, except for a two-day period. That he had a relapse after two days and spent an additional twelve days confined to bed. Thus losing more than 27 days of the original 101 days allowed by the Court for preparation. On January 20th and continuously thereafter, until the date of this report and the filing of this motion, said Counsel for the Defendant has spent from Sunday evening through Friday night in Memphis, Tennessee, working exclusively on preparation for the trial of this case. He proposes so doing until the case is ready for trial.

(2) Likewise, Defendant has applied for permission to take depositions of material witnesses in other states and he anticipates taking of such depositions will be permitted in some instances. The mechanics of taking said depositions, if so permitted, will consume at least 30 days from the entry of the order of their being taken, which, alone, would extend beyond the date of March 3, 1969.

2-12

MURKIN
Memo
Folder

Mr. DeLoach

2/12/69

T. E. Bishop

GEROLD FRANK, AUTHOR
DESIRE TO DO BOOK ON ASSASSINATION
OF MARTIN LUTHER KING
BUREAU FILE 94-63917

Previous memoranda have been submitted reflecting contact made by captioned individual with the Bureau concerning his desire to do a book on the assassination of Martin Luther King with the cooperation of the Bureau. Each memorandum reflects that he was advised that until the prosecution in instant case was completed, it was premature for the Bureau to consider cooperating with any author in connection with a book on the case.

CURRENT DEVELOPMENT:

On 2/12/69 Frank telephoned Bishop and advised that he was calling merely to indicate that he is still interested in doing the book on the case and that he is proceeding with the collection of data for use in the book. He stated that he does not contemplate that the book will be published until sometime in 1972, but he merely wanted to advise Bishop that he still wanted to receive Bureau cooperation in preparation of the book after prosecution in instant case is completed.

Frank was advised that, as he had been informed before, the Bureau could not take steps to cooperate with him until after prosecution in instant case was completed and that we would make no decision with regard to cooperating with any author until that time.

RECOMMENDATION:

None. For information.

1 - Mr. Tolson
1 - Mr. DeLoach
1 - Mr. Rosen
1 - Mr. Jones

TEB:mls
(6)

Long

FILE REVIEW
SUBJECT: PERCY FOREMAN

*Martin
Morgan
Folder*

BACKGROUND DATA:

"Who's Who in America" identifies Percy Foreman as a native Texan, born in Polk County, Texas, June 21, 1902. He received his law degree from Texas University in 1927 and is a member of the American, Texas and Houston bar associations.

INFORMATION IN BUFILES:

Bureau files characterize Foreman as one of the most brilliant criminal attorneys in the country, particularly in the field of homicides. His strong points are selection of a jury and persuasive arguments, particularly "reasonable doubt." He has been extremely successful at impressing juries, particularly when a judge has allowed great latitude in the questioning of prospective jurors. In such cases, he has hired local attorneys to familiarize him with the area and local situations. He has an excellent memory for names and uses this talent and information when questioning the panel in order to establish a personal feeling with those picked for the jury. (44-38861)

Foreman's weakness, if any, is his lack of legal knowledge. He overcomes this weakness by hiring local attorneys known for their legal ability. In the past he employed Luther Jones, a legal authority in Corpus Christi, Texas; Gilbert Sharpe, a member now of the Texas Court of Civil Appeals; and most recently C. Anthony Friloux, a former Assistant United States Attorney of Houston, Texas. Foreman generally pays these attorneys very well for their services, usually up to \$1,000 per day in the courtroom, depending on the size of his fee. In this regard, it should be noted that Foreman as a rule in the past has not accepted cases unless paid in advance. In one Bureau case, "David Clifton Stephens, Et Al, Fraud Against the Government," Stephens advised Special Agent Joseph J. Dooling that after he (Stephens) was convicted and lost his appeal that Foreman required Stephens to sell his home, and Stephen's son, Larry Stephens, Dallas Cowboy Football player, borrow the remainder of Foreman's fee before Foreman entered the case. (58-5155)

Foreman has represented individuals involved in investigations conducted by our Houston Division and repeatedly refuses permission for clients to be interviewed by Bureau Agents. However, Foreman has not been successful in winning acquittals in Federal court. It is generally believed that his

EAM

CONTINUED - OVER

lack of success in Federal court is due to stricter rules of conduct enforced during a trial by Federal judges. Foreman is adept at "side-bar" remarks and ridiculing the prosecutor and prosecution witnesses. When a judge limits Foreman's attempts to display his courtroom antics, Foreman attempts to get a hung jury by appealing to one or two jurors who appear to be sympathetic towards his case. In addition, he reportedly would stoop to any limit in effort to produce a witness to gain acquittal for his clients. He further is described as a "big blow hard" who will back down when confronted with the facts, and also has the reputation for injecting into his cases such civil rights issues as alleged abuse by arresting officers. (62-9-12-220)

In the Stephens' case mentioned above, Foreman obtained a mistrial under Title 18, Section 3500, Jenck's Act, when a government witness admitted under cross examination that he had been interviewed by another government agency, and which interview was unknown to the FBI or U. S. Attorney. In a case entitled "Richard Arno Yerxa, AKA.; Et Al, Interstate Transportation of Obscene Matter," Foreman appealed to a few jurors who held out for acquittal, thus causing a hung jury and mistrial. If permitted by the judge in a capital case, Foreman attempts to convince the jury that the victim was a culprit or scoundrel and got what he deserved. This is his main defense in capital cases. Generally, Foreman appears bored when the prosecution has its witnesses on direct examination and tries to convey this feeling to the jury. (145-2846)

Bufiles reveal an indictment was returned in Houston, Texas, in October, 1937, charging Foreman with subornation of perjury, a felony. A nolle prosequi was entered 3/18/38. Foreman was also indicted by a Grand Jury in Houston for keeping and exhibiting a policy game, a felony, and on 11/1/43, was found not guilty after a jury trial. (87-55433)

In an ITSMV case in which he was defense attorney, Foreman told a U. S. District Judge in Houston in chambers that he needed time to investigate alleged ransacking by Bureau Agents of a law office of two subjects in Chicago. The subjects had been arrested in Chicago in 1959 and been ordered to appear in Houston for trial. There was no foundation for this allegation. During cross examination of a Bureau Agent in January, 1960, Foreman referred to the Bureau as "constabulary" and "Federal police"; however, he promptly thereafter volunteered that he intended no disrespect. (29-18886)

By cover letter dated April 2, 1957, Foreman forwarded a letter he received through the U. S. mails to the Houston postal inspector. Foreman advised that although the letter was received on 3/18/57, he had "just opened it." The letter, in essence, was from eleven of Foreman's former clients who charged