to the previous attorneys.

6. Most of said evidence was given to Clerk of Court by an Order of Judge Battle dated March 13, 1969. A copy of this Order is appended as Exhibit D to this motion.

Therefore, it is prayed that this Honorable Court will order its Clerk to produce to the attorneys for defendant, and allow them to inspect and/or duplicate all items listed in Exhibit D to this motion;

And, it is prayed further that this Honorable Court will order the Attorney for the State to produce to the attorneys for defendant, and allow them to inspect and/or duplicate, books, papers, documents or tangible objects obtained from or belonging to the defendant or obtained from others which are in possession of, or under the control of the attorney for the State or any law enforcement officer, including, but not limited to the following, to wit:

1. Any firearm or other weapon belonging to defendant or allegedly used in committing the crime charged.

2. Any and all objects found in any automobile allegedly owned or operated by defendant.

3. Records of or documents pertaining to any hotel, motel, rooming house or other purported place of residence, temporary or permanent, of defendant or others.

4. All photographs purportedly showing defendant or others sought in connection with the crime herein charged.

5. Any and all penal records and files of [redacted], including any and all medical, optometric, or psychiatric reports contained therein or produced while defendant was in custody of any authority.

6. Any and all military records of defendant, including results of medical, optometric, or psychiatric tests and results of proficiency tests.

7. Passports, visas and applications therefore.

8. Records of entry and exit to and from this or any other country.

9. Documents, records or objects pertaining to transportation of or travel by defendant.

10. Evidence and test fingerprints of defendant.

11. Any sets of fingerprints used or displayed in any search for defendant.

12. Any fingerprints of defendant or other persons found on tangible objects named or produced herein.

13. Ballistic and weapons tests and reports thereof.

14. Expended slugs from a firearm, or fragments thereof.

15. Bullets, hulls, shells or casings, expended or unexpended.

Exhibit D

IN THE CRIMINAL COURTS OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE	I	
VS.	I	NO. 16645
JAMES EARL RAY	I	

ORDER

In the course of the presentation of testimony and stipulations during the plea of guilty in the above-styled cause, certain items of physical evidence were introduced by the State as itemized and listen on the attached three (3) page document designated Exhibit I:

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the items referred to in Exhibit I be and the same are hereby declared to be the official exhibits in this cause and the Clerk of the Court is hereby ordered to retain and safely keep said exhibits pending further orders of this Court.

ENTER this the 13th day of March, 1969. and for Mar. 10, 1969, nunc pro tunc

JUDGE

90

March 12, 1969

EVIDENCE INTRODUCED THROUGH
WITNESSES & BY STIPULATION

One 30.06 Remington Rifle

One Browning Shotgun Box

One Blue Zipper Bag - Containing the following: (Box No. 1)

One Channel Master Transistor Radio

One Pair Binoculars

One Binocular Case

One Cardboard Binocular Box

One Hairbrush

Two Can Schlitz Beer.

One Commercial Appeal Newspaper

One Pair Pliers and One Tack Hammer

One Gillette Shaving Kit

One Empty Paper Bag With York Arms Cash Receipt

One Pair Undershorts

One T Shirt

One 30.06 Cartridge Case

One 30.06 Calibre Slug

One 30.06 Cartridge Box with Live & Spent Cartridges

Cardboard Box No. 2 containing the following:

One Pillow

One Pillow Case

One White Sheet

One White Sheet

One Rug

One Styrofoam Box

One 1967 Alabama License Plate

One 1968 Alabama License Plate

Cardboard Box No. 3 containing the following:

One Pillow

One Pillow Case

One White Sheet

One White Sheet

Box No. 3 Continued:

One Green Sofa Pillow

One Dark Blue Sweat Shirt

One Black and Gray Sweater

One Pair Walking Shorts

One Brown Suit

One .38 Calibre Snub-nosed Pistol

Five .38 Calibre Cartridges

Cardboard Box No. 4 containing the following:

Two Canadian Passports

One Hotel Portugal Receipt

One Birth Certificate and Vaccination Certificate

One Airline Ticket, London to Brussels

One Envelope and Correspondence with Kennedy Travel Bureau

One Kennedy Travel Bureau folder

One Cash Receipt for Top Coat

One Copy of Airline Ticket, Lisbon to London

One South African Airways Timetable Folder

One Rebel Motel Registration Receipt

One Folder Bulk Film Company

Type written letter 10-5-67

Type written letter 10-22-67

Type written letter 11-20-67

Order Blank Form

One Provincial Motel Registration Receipt

One Sealed Envelope Bearing Handprinted Name Eric S. Galt

One Folder Containing Dance Studio Correspondence & P.O. Change of Address Correspondence

One Folder Containing Modern Photo Bookstore Correspondence

One Folder Containing the following:

Photograph of Ray

Signature of Ramon George Snoyd

Application for Canadian Passport

Statutory Declaration of Guarantor

Entry and Exit Cards - Portugal

One Envelope Containing Parkay Apartment Lease

47

Order for Suit, English and Scotch Woolen

Alabama Motor Vehicle Forms

One Envelope Containing the following:

One 8 x 10 Color Photograph of Bartending School Graduation Picture

Fifteen Individual Photographs of Ray

Four Color Photographs of Mexican Stickers Displayed on White Mustang

One Photograph of Deceased

One Photograph, Rear of 422½ Main

One Photograph of Mulberry Street

One Photograph of Bundle, front of 424 S. Main Street

One Map of Mexico

One Map of Atlanta

One Map of Atlanta

One Map of Georgia and Alabama

One Map of United States

One Map of Texas and Oklahoma

One Map of Los Angelos

One Map of Los Angelos

One Map of California

One Map of Louisiana

One Map of Arizona and New Mexico

One Map of Birmingham

One Map of Texas, Arkansas, Louisiana & Mississippi

Fibers Q-114 from Bedspread

Hairs Q-206-7 (James Earl Ray)

One 8 x 10 Photograph of White Mustang

Two Small Photographs of White Mustang

One Window Sill

IDENTIFIED AS EXHIBIT I

W. Preston Battle
JUDGE
Mar 13, 1969, nunc
pro tunc Mar 10, 1969.

44-1987-Sub-0-159

[illegible] that Petition your petitioner has filed various Motions for production of records and other essential items necessary to preoperly present his Petition for relief. Your petitioner relies upon the Section 40-2044 Tennessee Code Annotated which is as follows:

> Copying certain books, papers and documents held by attorney for state.--Upon motion of a defendant or his attorney, at any time after the finding of an indictment or presentment, the court shall order the attorney for the state, or any law enforcement officer, to permit the attorney for the defendant to inspect and copy or photograph designated books, papers documents or tangible objects, obtained from or belonging to the defendant or obtained from others which are in possession of, or under the control of the attorney for the s tate or any law enforcement officer. The order may specify a reasonable time, place and manner of making the inspection, and of taking the copies or photographs and may prescribe such terms and conditions as are just. However, such inspection, copying or photographing shall not apply to any work product of any law enforcement officer or attorney for the state
> .....

CONSTITUTIONAL LAW:

> Where defendant in state prosecution was denied the production of evidence in possession of the prosecution, due process required that the case be remanded to state courts for an in camera examinatinn of the evidence, after which defendant must be given a new trial if the state courts determine that favorable evidence material either to guilt or to punishment had been suppressed.
>
> U.S.C.A. Const. Amend. 14

In his concurring opinion in Giles v. State of Maryland, 386 U.S. 66, Mr. Justice Fortas stated:

> "If it (the prosecution) has in its exclusive possession specific, concrete evidence which is not merely cumulative or embellishing and which may exonerate the defendant or be of material importance to the defense - regardless of whether it relates to testimony which the State has caused to be given at the trial - the State is obliged to bring it to the attention of the court and the defense."

"The right of the accused to have evidence material to his defense cannot depend upon the benevolence of the prosecutor. Numerous regrettable instances of prosecutorial misconduct attest to the impracticability of this approach." Giles v. State of Maryland, 386 U.S. 66, Williams v. Dutton, 400 Fed.2d, Page 800.

"We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83.

"Granting a Motion of discovery and inspection by the Court is in terms discretionary and not mandatory' 'but a Motion to its discretion is a Motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles'." U.S. v. Smith, 156 Fed. 2d 642.

"The determination of what can be useful to the defense can properly be made only by an advocate. The Judge's function in this area is limited to deciding whether a case has been made for the production of the desired material and to supervise the discovery process." Pittsburgh Plate Glass v. U. S. 360 U.S. 395.

Mr. Justice Fortas, stressed that a criminal trial "is not a game in which the state's function is to outwit and entrap its quarry." Giles v. Maryland, 386 U.S. 66

"The unequal positions of the judge and the accused, one with the power to commit to prison and the other deeply concerned to avoid prison, at once raise a question of fundamental fairness. When a judge becomes a participant in plea bargaining he brings to bear the full force and majesty of his office. His awesome power to impose a substantially longer or even maximum sentence in excess of that proposed is present whether referred to or not. A defendant needs no reminder that if he rejects the proposal, stands upon his right to trial and is convicted, he faces a significantly longer sentence. U.S. ex rel. Elksnis v. Gilligan, 256 F.Supp. 244.

That common interest which every citizen has in the enforcement of the laws and ordinances of the community wherein he dwells has been held to entitle a citizen to the right to inspect the public records in order to ascertain whether the provisions of the law have been observed. Nowack v. Auditor Gen. 243 Mich.200; State ex rel. Ferry v. Williams, 41 NJL 332.

Chief Justice Warren stated in Coppedge v. United States, 369 U.S. 438, 449:

> "When society acts to deprive one of its members of his life, liberty or property, it takes its most awesome steps. No general respect for, nor adherence to, the law as a whole can well be expected without judicial recognition of the paramount need for prompt, eminently fair and sober criminal law procedures. The methods we employ in the enforcement of our criminal law have aptly been called the measures by which the quality of our civilization may be judged."

Petitioner urges upon this Court that making available to him the evidence, both material and intangible, is not the prelude to a "fishing expedition" but only specifically to aid him in the establishment of his Petition for Post Conviction Relief of certain vital, necessary facts.

Respectfully submitted,

RICHARD J. RYAN

ATTORNEY FOR PETITIONER

44-1987-Sub-D-160

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE.

JAMES EARL RAY,

Petitioner

VS

NO. H.C. 661

STATE OF TENNESSEE,
and
LEWIS TOLLETT, WARDEN,
STATE PENITENTIARY AT
PETROS, TENNESSEE,

Defendants

BRIEF AND ARGUMENT

MAY IT PLEASE THE COURT:

STATEMENT OF FACT

On March 10, 1969, the petitioner herein was sentenced to ninety-nine (99) years on his plea of guilty, said sentence being imposed by the late Honorable Preston Battle, Judge of Division III of the Criminal Court of Shelby County, Tennessee. Three days later your petitioner attempted to set aside this plea, as evidenced by a letter addressed to the late Judge Battle and dated March 13, 1969, from Nashville, Tennessee, where the petitioner was confined in the State Penitentiary. Another communication dated March 25, 1969, was also forwarded to the late Judge Battle by the petitioner asking him to "go the 30 day route". A Motion for New Trial was filed, the same being denied by the successor Judge, the Honorable Arthur Faquin of Shelby County, Tennessee; this Motion was subsequently denied by the Supreme Count of Tennessee. Petitioner has filed a Petition for Post Conviction Relief in this Court, and this is now waiting to be heard.

6/15/70

AIRTEL

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) (P)

SUBJECT: MERKIN

On 6/12/70, Assistant District Attorney General CLYDE MASON, Memphis, Tenn., made available the following documents filed in the Criminal Court of Shelby County, Tenn., by attorneys for the subject RAY. Two copies of each of these documents are enclosed for the Bureau:

1. Motion to Produce, directing the Sheriff of Shelby County, Tenn., to furnish the name of the person or persons who constructed and designed the quarters in the Shelby County Jail wherein the subject was incarcerated. This motion has been denied by Judge WILLIAM H. WILLIAMS.

2. Motion to Produce, requesting that the Clerk of the Shelby County Criminal Court produce date books, log books, or notebooks, or other personal data belonging to the late Judge PRESTON BATTLE. This motion has been denied by Judge WILLIAMS.

3. A motion to declare the subject RAY indigent. Judge WILLIAMS has withheld decision on this pending receipt of an affidavit from RAY stating that he is indigent.

4. Motion for an order to require the Shelby County Sheriff to permit psychiatrists to visit the Shelby County Jail quarters where RAY was confined. This motion has been denied by Judge WILLIAMS.

44-1987-Sub-0-161

2 - Bureau (Encs. 14)
(2) - Memphis
JCH:jap
(4)

jap

5. Motion to Produce, asking that the Shelby County Sheriff make available all records pertaining to the visits made to the subject by PERCY FOREMAN and by JERRY RAY. Judge WILLIAMS has denied this motion.

6. Motion for production of books, papers, documents, and tangible objects. Judge WILLIAMS ruled that those items of evidence mentioned in the stipulation at the time of the subject's guilty plea may be reviewed by the subject's counsel. He directed subject's counsel to request the Clerk of the Criminal Court to make these items available for examination.

7. Brief and Argument furnished in support of Item 6, above.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

JAMES EARL RAY,	:	
Petitioner,	:	
Vs.	:	NO. H.C. 661
STATE OF TENNESSEE, and LEWIS TOLLETT, WARDEN, STATE PENITENTIARY AT PETROS, TENNESSEE,	:	
Respondents.	:	

MOTION TO STRIKE

Comes now the Respondents and respectfully move to strike the Petition for Post Conviction Relief and Amendments thereto, pursuant to the Post Conviction Procedure Act for the reasons set out below:

Petitioner does not allege any abridgment in any way of any rights guaranteed by the Constitution of the State of Tennessee or the Constitution of the United States.

Further, all matters alleged have either been previously determined or waived.

Therefore, for the above grounds, the Respondents respectfully move that the Petition for Post Conviction Relief and the Amendments thereto be stricken.

Respectfully submitted,

Loyd A. Rhodes

LLOYD A. RHODES
Executive Assistant

Jesse Clyde Mason

JESSE CLYDE MASON
Assistant Attorney General

VA-1957-Sub-0-162

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

JAMES EARL RAY,

Petitioner

VS. NO. H.C. 661

STATE OF TENNESSEE,
and
LEWIS TOLLETT, WARDEN,
STATE PENITENTIARY AT
PETROS, TENNESSEE,

Defendants

BRIEF

Petitioner herein has filed a Petition for Post-Conviction Relief and subsequent thereto an amended Petition for Post-Conviction Relief being the same in substance as to the questions raised and respondent in its brief will treat both petitions as one.

Respondent has filed a Motion to Strike on the grounds the petition and amendments thereto does not allege any abridgement of rights guaranteed the petitioner by either the constitution of the State of Tennessee or the United States and further, all matters alleged have either been previously determined or waived.

Of primary consideration here is the purpose of the Post-Conviction Relief Act. It is succinctly stated in Tennessee Code Annotated 40-3805:

> 40-3805. When relief granted.--Relief under this chapter shall be granted when the conviction or sentence is void or voidable because of the abridgement in any way of any right guaranteed by the Constitution of this state or the Constitution of the United States, including a right that was not recognized as existing at the time of the trial if either Constitution requires retrospective application of that right. /Acts 1967, ch. 310, §4./

Respondent contends that nowhere in the petition or amended Petition for Post-Conviction Relief is there an allegation of substance that petitioner's constitutional rights have been abridged and for that reason alone the Motion to Strike should be granted, however, respondent will discuss the specific questions raised.

Petitioner has raised the question of his extradition from England apparently on the grounds his crime has a political one although there are no allegations of facts as a basis to that allegation. The law is quite clear, however, that the decision of the Courts of the Asylum Country as to whether a fugitive shall be surrendered and whether the offense charged is within the terms of an extradition is final, and the question cannot again be raised in the Courts of the demanding country after extradition. The regularity of the proceedings in the Asylum Country leading up to the warrant and surrender will not be examined into the Courts of the demanding country nor can the surrendered fugitive question the good faith of the extradition proceedings. 35 C-JS, Extradition § 47, p. 477; 31 Am. Jur. 2d, Extradition § 74, p. 981. Crane v. Henderson, Court of Criminal Appeals (Tenn.) June, 1969. More specifically, the issue of what is a political offense must be determined by the examining magistrate in the Asylum Country. 31 Am. Jur. 2d Extradition § 23, p. 940; 35 C-JS, Extradition, § 26, p. 458.

Of similar nature is the allegation of an illegal search, again without allegations of facts on which to base this conclusory allegation or prejudice thereof. It is clear that a plea of guilty waives nonjurisdictional defects and defenses including claims of violation of constitutional rights prior to the plea including unlawful search or seizure. Martin v. Henderson, 289 F. Supp. 411 (E. D. Tenn.), Shephard v. Henderson, Tenn. , 449 S.W. 2d 726, State ex rel, Edmondson v. Henderson, 220 Tenn. 605, 421 S.W. 2d 635, Reed v. Henderson, 385 F. 2d 995 (6th Cir., 1967), generally see 20 ALR 3d 724.

Petitioner further claims that exculpatory evidence was withheld from petitioner but attaches thereto the Order of the trial judge allowing extensive discovery but cites as error refusal of the trial judge to allow inspection of ballistic test or tests performed by the FBI but petitioner does not allege any prejudice thereby or suppression by the State or in fact how the alledged

evidence withheld is exculpatory rather than inculpatory. The Tennessee Statute 40-2044 specifically exempts from discovery by defendant or his attorneys, " . . . . . any work product of any law enforcement officer or attorney to the State or his agent". It cannot be seriously contended that a ballistics test is not such a work product.

Petitioner claims that the furnishing of 360 potential witnesses by the State violate some constitutional right. Apparently, the right of confrontation Petitioner chose not to exercise that right and thus the allegation is patently without merit. The allegation of a particular witness alledgedly wrongfully incarcerated in a mental hospital is similarly without merit, as pure conclusion with no allegation of fact or prejudice. Burt v. Tennessee, Court of Criminal Appeals, Tenn., Feb., 1970.

The remainder of the allegations in the petition and amendments all point to one issue, ineffective legal representation and a coerced guilty plea as a result thereof. The general rule as to ineffective counsel is followed in Tennessee.

"Only if it can be said what was or was not done by the defendant's attorney for his client made the proceedings a farce and a mockery of justice, shocking the conscience of the Court, can a charge of inadequate legal representation prevail. The fact that a different or better result may have been obtained by a different lawyer does not mean that the defendant has not had the effective assistance of counsel". State ex rel. Leighton v. Henderson, Tenn. 448 S.W. 2d 82.

There are no allegations of facts or substance in the petition and amendment thereto to fairly or seriously raise the alleged claims to a charge of mockery or sham. The main thrust of petitioner's claim being that due to certain private contractual arrangement between a writer and petitioner's prior attorney, he was persuaded to plead guilty. There is no claim of State action. All of petitioner's prior attorneys were privately retained or under the direction of privately retained counsel.

The rule as to ineffective counsel when such counsel is privately retained is clearly set forth in McFerren v. State, Tenn. 449 S.W. 2d 724 at p. 725.

"When counsel is retained by a defendant to represent him in a criminal case he acts in no sense as an officer of the State. For while he is an officer of the Court, his allegiance is to his client whose interests are ordinarily diametrically opposed to those of the State. It necessarily follows that any lack of skill or incompetency of counsel must in these circumstances be imputed to the defendant who employed him rather than to the State, the acts of counsel thus becoming those of his client and as such so recognized and accepted by the Court unless the defendant repudiates them by making known to the Court at the time his objection to or lack of concurrence in them."

In the same vein, petitioner claims a coerced plea by reason of the death penalty, again at the instance of privately retained counsel. The Supreme Court of the United States has recently ruled that a guilty plea motivated by a desire to avoid the death penalty is not involuntary. Brady v. U. S., May 4, 1970 Criminal Law Reporter, Vol. 7 No. 6, p. 3064, Parker v. North Carolina, May 4, 1970 Criminal Law Reporter, Vol. 7, No. 6, p. 3069.

Further and more basically, as to the particular case at bar, the successor Trial Judge to Judge Battle found in a prior hearing as follows:

> "It is therefore the opinion of this Court, based upon the evidence presented at this hearing, that the Guilty Plea entered by the defendant, James Earl Ray, before Judge Battle, was properly entered. This Court finds as a matter of fact that it was knowingly, intelligently, and voluntarily entered after proper advice without any threats or pressure of any kind or promises, other than that recommendation of the State as to punishment; and, that the defendant, Ray, had a full understanding of its consequences, and of the law in relation to the facts." Memorandum and Finding of Facts, Judge Arthur C. Faquin.

On appeal the Supreme Court of Tennessee held in the instant case that:

> "The Court finds that the defendant willingly, knowingly, and intelligently and with the advice of competent counsel entered a plea of guilty to Murder in the first degree by lying in wait, and this Court cannot sit idly by while

deepening disorder, disrespect for constituted authority, and mounting violence and murder stalk the land and let waiting justice sleep." Ray v. State, Tenn. 451 S.W. 2d 854.

There are no new allegations of substance in the Petition for Post-Conviction Relief or amendment thereto and the State therefore respectfully moves the Motion to Strike be granted.

LLOYD A. RHODES
EXECUTIVE ASSISTANT

J. CLYDE MASON
ASSISTANT ATTORNEY GENERAL

THE FOLLOWING AFFIDAVIT IS TRUE TO THE BEST OF MY KNOWLEDGE.
COMMENCING WITH MY ARREST AND INCARCERATION IN LONDON ENGLAND ON OR ABOUT JUNE,6,1968;
AND TERMINATING WITH THE GUILTY PLEA TO HOMOICIDE AND INCARCERATION IN THE TENNESSEE STATE PRISON AT NASHVILLE TENNESSEE.
THE ABOVE PLEA IN THE COURT OF THE HONORABLE W. PRESTON BATTLE,MEMPHIS TENNESSEE,MARCH,10, 1969.

ON OR ABOUT THE 6th.DAY OF JUNE,1968 i was arrested AT THE HEATHROW AIRPORT, LONDON ENGLAND, SUBSEQUENTLY I WAS CHARGED WITH HOMOICIDE IN THE UNITED STATES AND ORDERED HELD FOR AN IMMIGRATION HEARING.AFTER BEING HELD INCOMMUNICADO FOR APPROXIMATELY 4 DAYS I WAS TAKEN BEFORE AN ENGLISH MAGISTRATE AND ORDERED HELD FOR AN EXTRADITION HEARING.
SHORTLY AFTER MY INCARCERATION IN THE ENGLISH PRISON I WROTE TO BIRMINGHAM ALABAMA ATTORNEY, AUTHOR J. HANES, VIA THE BIRMINGHAM BAR ASSOCIATION ASKING HIM IF HE WOULD MEET ME IN MEMPHIS TENN, WHEN I WAS EXTRIDATED BACK TO THE UNITED STATES.AT THIS TIME I DID'NT ASK MR.HANES TO TAKE THE CASE JUST MEET ME IN MEMPHIS,AS I WAS CONCERNED ABOUT FALSELY BEING ACCUSED OF MAKING AN ORAL STATEMENT IF I WAS ALONE WITH PROSECUTION AGENTS IN MEMPHIS.

MR. HANES IN TURN WROTE TO THE ENGLISH SOLICITOR WHO WAS REPRESENTING ME IN ENGLAND,MR. MICHEL EUGENE,INQUIRING ABOUT HIS FEE.THEN LATER MR. HANES WROTE TO ME DIRECTLY SAYING HE WOULD TAKE THE CASE.
"ALSO,I HAD WRITTEN TO MY BROTHER,JOHN L. RAY,ST LOUIS,MISSOURI-NOT WILLIAM BRATFORD HUIE- ASKING HIM TO GIVE MR.HANES ENOUGHT MONEY TO MEET ME IN MEMPHIS"
LATER MR. HANES CAME TO LONDON ENGLAND TO CONFER WITH ME ON LEGAL QUESTIONS.
HOWEVER THE ENGLISH GOVERNMENT REFUSED MR.HANES REQUEST TO SEE ME.
WHEN I COMPLAINED TO SUPT.THOMAS BUTLER-WHO WAS THE POLICE OFFICER IN CHARAGE OF INVESTAGATION AND CUSTODY-ABOUT NOT BEING PERMITTED TO CONFER WITH COUNSEL HE SAID UNITED STATES ATTORNEY FRED M. VINSON WAS CALLING THE SHOTS.

THEREFORE AT MY NEXT COURT APPERANCE I COMPLAINED OF NOT BEING PERMITTED TO CONFER WITH COUNSEL.
THEREAFTER I WAS TOLD BY PRISON AUTHORIES THAT MR. HANES COULD SEE ME.
ON JULY 5th.1968,MR. HANES DID VISIT ME IN THE ENGLISH PRISON.
HE SUGGESTED I SIGN TWO CONTRACTS-ONE GIVING MR. HANES MY POWER OF ATTORNEY,THE OTHER 40% OF ALL REVENUE I MIGHT RECEIVE-AT THIS TIME NO MENTION WAS MADE OF ANY NOVELIST,AND NO NOVELIST NAME,INCLUDING WILLIAM BRATFORD HUIE,APPEARED ON THE CONTRACT.
THE REASONS MR. HANES GAVE FOR THE CONTRACTS WERE THAT(ONE)HE WAS ALLREADY OUT CONSIDERABLE FUNDS.(TWO)HE WOULD NEED CONSIDERABLE MORE FUNDS FOR HIS SERVICES.

"I HAD ALSO WRITTEN THE BOSTON MASS. ATTORNEY,MR. F. LEE BAILEY-AT THE SAME TIME I HAD WRITT -EN MR. HANES-ON THE POSSIBILITY OF REPRESENTING ME.
IN A LETTER TO ENGLISH SOLICITOR EUGENE, MR. BAILEY DECLINED ON POSSIBLE CONFLICT OF INSTREST GROUNDS"

I SPOKE TO MR. HANES AGAIN BEFORE BEING DEPORTED BUT NO FURTHER MENTION WAS MADE OF CONTRAC -TS.MR. HANES DID ADVISE ME TO WAIVE FURTHER EXTRADITION APPEALS:WHICH I DID.

AFTER I WAS RETURNED TO MEMPHIS TENN. AND CONFINED IN THE SHELBY COUNTY JAIL I WAS DENIED ACCESS TO LEGAL COUNSEL,OR SLEEP, UNTIL I SUBMITTED TO PALM PRINTS.
WHEN SUBSEQUENTLY ATTORNEY AUTHOR HANES SR. DID VISIT ME,SPECIFIALLY THE SECOND VISIT, HE HAD WITH HIM CONTRACTS FOR VARIOUS ENTERPRISES BEARING HIS NAME AND THE NOVELIST,WILLIAM BRATFORD HUIE OF HARTSELL ALABAMA.
MR. HANES URGED ME TO SIGN THE CONTRACTS TO FINANCE THE SUIT.
I SUGGESTED RATHER THAT A SEGMENT OF THE PUBLIC INTEREST I N A FAIR TRIAL MIGHT FINANCE The

TRIAL. THEN AFTER THE TRIAL WAS OVER, AND IF IT WAS FINICALLY NECESSARY TO FURTHER SUPPLEMENT MR. HANES FEE, HE COULD CONTRACT A NOVELIST.
MR. HANES DISAGREED WITH THIS SUGGESTION AND TOLD ME TO CONSIDER THE CONTRACTS AS THE ONLY-METHOD TO FIANANCE THE TRIAL.
AFTER CONSIDERABLE THOUGHT, AND BELIEVEING IT USUALLY NECESSARY TO FOLLOW COUNSEL'S ADVICE IN THAT TYPE SITUTATION, I SIGNED THE CONTRACTS ON OR ABOUT AUGUST Ist. 1968; APPROXIMATELY TWO WEEKS AFTER MR. HANES RECOMMENDED I DO SO.

MY FIRST DISAGREEMENT WITH MR. HANES WAS (ONE) I ASKED MR. HANES AND, WROTE THE NOVELIST, WILLIAM BRATFORD HUIE, REQUESTING $I.250.00. EXPLAINING I WANTED TO HIRE TENN. LICENCE IN THE EVENT I WAS CONVICTED OF SOMETHING, OR HAD A MISTRIAL; AS THEIR WAS SOME QUESTION AS TO WHEATHER MR. HANES COULD HANDLE AN APPEAL OR, A RETRIAL, UNDER THE TENN.+ ALABAMA RECIPROCAL AGREEMENT WHICH MR. HANES DESCRIBED AS A "ONE SHOT DEAL".
I FURTHER STATED IN THE LETTER TO MR. HUIE THAT I WOULD PROABLY BE HELD IN CONTINUED ISOLATION AS LONG AS I WAS INCARCERATED AND WOULD NEED TENN. COUNSEL TO GET RELIEFE.

"FURTHER, I WANTED TO HIRE AN INVESTAGOR TO GO TO [redacted] LOUISANA TO CHECK ON SOME PHONE NRS. AND I DID'NT WANT ANYONE CONNECTED WITH WILLIAM BRATFORD HUIE DOING THIS SINCE I KNEW THEN THAT MR. HUIE WAS A CONVEYOR, AN ADMITTED CONVEYOR, OF INFORMATION TO THE F.B.I.-HENCE THE PROSECUTING ATTORNEY."

MR. HANES TURNED DOWN THIS REQUEST AND THE ISSUE WAS CLOSED.

(TWO) THE OTHER DISAGREEMENT CONCERNED WHEATHER I SHOULD TESTIFY IN MY BEHALF.
I FAVORED TAKING THE WITINESS STAND BECAUSE I HAD TESTIMONY TO GIVE WHICH I DIDINT WANT THE PROSECUTION TO KNOW OF UNTIL AS LATE AS POSSIBLE SO THEIR WOULD BE NO TIME TO ALTER RECORDS, SUCH AS PHONE NRS., AND AT THIS STAGE OF THE PROCEEDINGS I HAD REASONS TO BELIEVE MR. HANES WAS GIVING "ALL" INFORNATION I WAS GIVING HIM TO NOVELIST HUIE WHO INTURN WAS FORWARDINGS IT TO THE PROSECUTION VIA THE F.B.I.

MR. HANES ALSO TURNED DOWN THIS REQUEST SAYING, WHY GIVE TESTIMONY AWAY WHEN WE CAN SELL IT. AND THAT ISSUE WAS ALSO CLOSED.

THE ONLY OTHER DISCORD MR. HANES AND I HAD CONCERNED PUBLICITY.
DESPITE TRIAL JUDGE BATTLE'S ORDER BANNING PRE-TRIAL PUBLICITY THEIR WERE MANY PREJUDICIAL ARTICLES PRINTED IN THE LOCAL PRESS AND NATIONAL MEDIA.
(AS EXAMPLE) THE STORY BY-LINED BY CHARLES EDMOMDSON IN THE COMMERCIAL APPEAL DATED NOV. 10th. 1968. JUST TWO DAYS BEFORE TRIAL WAS SCHEDULED TO START, AND MR. HUIE'S FREQUENT NEWS CONFERENCES ON MEMPHIS T.V.) THEREFORE I SUGGESTED TO MR. HANES THAT WE ASK FOR A CONTINUENCE UNTIL THE PUBLICITY STOPED.
MR. HANES ANSER WAS THAT OUR CONTRACTS WITH NOVELIST HUIE SPECIFIED A TIME LIMIT FOR THE TRIAL TO BEGIN IF WE WERE TO RECEIVE FUNDS TO PROSECUTETHE DEFENSE.

"ALSO, I WROTE A CERTIFED LETTER TO TRIAL JUDGE BATTLE COMPLAINING OF THE STORIES MR. HUIE WAS DISSMINATING IN THE MEDIA. I TOLD THE JUDGE IF SUCH PRACTICES WEREN'T STOPED I MIGHT AS WELL FORGET A TRIAL AND JUST COME OVER AND GET SENTENCED."

HOWEVER, DESPITE THESE DIFFERENCES WITH ATTORNEY AUTHOR HANES SR. I WAS PREPARED TO GO TO TRIAL WITH HIM ON NOV. I2th. I968.
but two or three days before the nov. trial datemy BROTHER, JERRY RAY, CAME TO VISIT ME. DURING THE COURSE OF OUR CONVERSATION JERRY TOLD ME HE HAD RECENTLY SPOKEN WITH THE NOVELIST, WILLIAM BRATFORD HUIE, AND HUIE HAD TOLD HIM THAT IF I TESTIFIED IN MY OWN BEHALF IT WOULD DESTROY THE BOOK HE WAS WRITING.
MY BROTHER ASK ME IF HE SHOULD TRY TO FIND ANOTHER ATTORNEY. I TOLD HIM NO IT WAS TO LATE. WHEN THE VISIT ENDED I WAS STILL ASSUMING I WOULD GO TO TRIAL WITH ATTORNEY AUTHOR HANES SR. ON NOV. I2th. I968.

HOWEVER, ON OR ABOUT NOV. 10th. I968. MR. PERCY FOREMAN, A TEXAS LICENCED ATTORNEY CAME TO THE SHELBY COUNTY JAIL AND ASKED TO SEE ME.
I AGREED TO SEE MR. FOREMAN ALTHOE I NEITHER CONTACKED HIM DIRECTLY OR, INDIRECTLY, REQUESTING ANY TYPE LEGAL ASSISTANCE.

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AFTER THE AMENITIES I SAW THAT MR. FOREMAN HAD THE CONTRACTS I HAD SIGNED WITH MR. HANES&MR. HUIE.
I ASKED HIS OPINION OF THEM.MR. FOREMAN CAME RIGHT TO THE POINT,HE SAID HE HAD READ THE CONTRACTS AND HAD CONCLUDED THAT THE ONLY THING HANES & HUIE WERE INTERESTED IN WAS MONEY.HE SAID THEY WERE PERSONAL FRIENDS AND IF I STUCK WITH THEM I WOULD BE BAR-BE-CUED.
I TOLD MR. FOREMAN I WAS CONCERNED WITH CERTAINED ASPECTS OF THE CONTRACTS,SUCH AS THE INFERENCE OF A TRIAL DATE DEADLINE,BUT THAT SINCE I HAD SIGNED THE DOCUMENT THEIR WASN'T MUCH I COULD DO.
MR. FOREMAN REPLIED THEIR WAS SOMETHING I COULD DO,THAT HE COULD BREAK THE CONTRACTS IF I HIRED HIM,SINCE I HAD BEEN TAKEN ADVANTAGE OF DUE TO A LACK OF EDUCATION IN SUCH MATTERS.
I ASK HIM WHAT HIS POSITION WOULD BE IF I DID ENGAGE HIM IN RELATION TO CONTRACTS WITH BOOK WRITERSAND,RETAINING A TENN.LICENCED ATTORNEY.
HE SAID THEIR WOULD BE NO STORIES WRITTEN UNTIL AFTER THE TRIAL WAS OVERAND THAT IT WAS NECESSARY THAT TENN. LICENCED COUNSEL BE RETAINED TO ADVISE AND ASSIST WITH TENN. LAWS.
I ALSO ASKED MR. FOREMAN HOW HE WOULD FINANCE THE TRIAL;HE SAID LET HIM WORRY ABOUT THAT THAT WHEN THE TRIAL WAS OVER HE WOULD MAKE A DEAL WITH SOME BOOK WRITER BUT THAT HE WOULDN'T COMPRISE THE DEFENSE WITH PRE-TRIAL DEALS.
HE SAID THAT HIS FEE WOULD BE$150,000. FOR THE TRIAL,AND APPEALS IF NECESSARY,AND THAT AS A RETAINER HE WOULD TAKE THE 1966 MUSTANG I HAD,WHICH I SIGNED OVER TO HIM.
MR FOREMAN ALSO ASKED ME TO SIGN OVER TO HIM A RIFLE THE PROSECUTION WAS HOLDING AS EVIDENCE.ALTHOE THEIR WAS A QUESTION OF OWNERSHIP I ALSO SIGNED THIS ITEM OVER TO HIM.
I THEN WROTE OUT A STATEMENT FOR MR. FOREMAN DISMISSING MR. HANES AND STATING I WOULD ENGAGE TENN. COUNSEL.

AFTER MR. FOREMAN BECAME COUNSEL OF RECORD, AND ON ONE OF HIS EARLIER VISIT'SHE SAID HE WOULD RETAIN NASHVILLE ATTORNEY,JONH J. HOOKER SR. TO ASSIST WITH THE LAW SUIT.

"LATER,MR. FOREMAN TOLD ME IN THE COURTROOM-ON DEC.18th1968-THAT THE COURT WOULD APPOINT THE PUBLIC DEFENDER TO THE CASE.WHEN I QUESTIONED THE APPOINTED MR. FOREMAN SAID HE,JUDGE-BATTLE,AND MR. HUGH STANTON SR. HAD AGREED BEFORE THE HEARING TO BRING THE PUBLIC DEFENDER'S OFFICE INTO THE CASE.THAT HE (FOREMAN)HAD ALSO DISCUSSED THE DEAL PRIVATELY WITH MR. STANTON AND IT (THE APPOINTMENT)WOULD SAVE US MONEY BUT,THAT HE WOULD STILL RETAIN JOHN J. HOOKER SR."

IN DECEMBER 1968 WHEN MR. FOREMAN BECAME ILL,AND TRIAL JUDGE BATTLE APPOINTED-ON JAN. 17th.1969-MR. HUGH STANTON SR. FULL COUNSEL,MR. STANTON CAME TO THE JAIL TO SEE ME.
I TOLD CAPT.BILLY SMITH I DID NOTWISH TO SEE MR. STANTON.
HE WAS PERMITTED IN THE CELL BLOCK ANYWAY.
I INFORMED MR. STANTON I DID'NT WANT TO DISCUSS ANYTHING WITH HIM AND THAT I WOULD WRITE HIM A LETTER EXPLAINING WHY.
HE LEFT THE BLOCK SAYING HE DID'NT HAVE TIME FOR THE CASE ANYWAY.

"I THEN WROTE A LETTER TO MR. HUGH STANTON SR. SAYING I DID'NT WANT JUDGES AND PROSECUTING-ATTORNEYS DESIDING WHO WOULD DEFEND ME."

Note DURING THIS EARLY PERIOD OF MR. FOREMAN TENURE HE ONCE SUGGESTED I CONFIRM,IN WRITING, SOME THEORIES BEING PROPOUNDED BY ANOTHER NOVELIST,ONE GEORGE McMILLIAN WHO,IN COLLABORATION WITH A PHRENOLOGIST,WAS WRITING ANOTHER NOVEL CONCERNING THE CASE.
MR. FOREMAN SAID THE PAIR WOULD GIVE US $5.000.00 TO USE FOR DEFENSE PURPOSES.
I REJECTED THIS SUGGESTION."

THEN LATER MR. FOREMAN TRANSPORTED A CHECK TO THE JAIL FOR $5.000.00 FOR ME TO ENDORSE.
HE SAID HE HAD RECEIVED THE CHECK FROM THE NOVELIST WILLIAM BRATFORD HUIE AND THAT WOULD I LET HIM HAVE THE MONEY TO GIVE TO NASHVILLE ATTORNEY,JOHN J. HOOKER SR. AS A RETAINER FEE,I AGREED TO THIS.

ALSO DURING THIS PERIOD I SUGGESTED TO MR. FOREMAN THAT RATHER THAN PRINTING MORE PRE-TRIAL STORIES WE INSTIGATE SOME TYPE LEGAL ACTION TO PREVENT THE PUBLISHING OF STORIES, ESPICALLY THE MORE RANCID TYPE ARTICLES SUCH AS WAS APPEARING IN LIFE MAGAZINE.
MR. FOREMAN REJECTED THIS SUGGESTION SAYING: "WHY STIR UP A BARREL OF RATTLE SNAKES."

STILL LATER, ON OR ABOUT JAN. 29th. 1969. MR. FOREMAN TRANSPORTED A CONTRACT TO THE JAIL AND ADVISED ME TO SIGN IT. "SEE CONTRACT CT. RECORDS!"
MR. FOREMAN SAYING IT WOULD TAKE CONSIDERABLE FUNDS TO FINANCE THE SUIT AND PAY JONN J. HOOKER SR.'S FEE.

ON OR ABOUT FEBURARY 3rd. 1969-MR. FOREMAN TRANSPORTED STILL ANOTHER CONTRACT TO THE JAIL AND ADVISED ME TO SIGN IT. HE TOLD ME THE LAW SUIT WAS PROGRESSING WELL, THAT HE COULD PROVE I WAS INNOCENT, AND THE TRIAL WOULD START IN THE NEAR FUTURE.
I ALSO SIGNED THIS DOCUMENT BEING REASSURED BECAUSE THE DOCUMENT STIPULATED THAT MR. FOREMAN WOULD REPRESENT ME AT 'TRIAL OR TRIALS' PENDING IN SHELBY COUNTY TENNESSEE; IN EXCHANGE FOR ME SIGNING THE DOCUMENT." SEE CONTRACT CT. RECORDS."
THEIR WAS NO MENTION OF "COP-OUTS" IN THE CONTRACT AND IT SEEMS "COP-OUTS" ARE NOT LEGALLY CLASSIFIED AS TRIALS IN TENNESSEE.

BEFORE MR. FOREMAN TERMINATED HIS VISIT THAT DAY OR, MAYBE IT WAS THE NEXT TIME HE VISITED ME, HE SHOWED ME VARIOUS PICTURES. HE SAID EITHER HE (FOREMAN) HAD RECEIVED THE PICTURES FROM TH E F.B.I. OR THAT HE HAD RECEIVED THEM FROM THE NOVELIST, WILLIAM BRATFORD HUIE, WHO IN TURN HAD RECEIVED THEM FROM THE F.B.I.
HE SAID THEY WERE PICTURES OF PEOPLE THE F.B.I. WANTED TO GET OUT OF CIRCULATION.
HE SHOWED ME ONE PICTURE CONTAINING WHITE MALES-SUPPOSELY TAKEN IN DALLAS TEXAS IN NOVEMBER 1963, HE SAID THEY WERE EITHER ANTI COMMUNIST CUBANS OR, ASSOCIATED WITH ANTI COMMUNIST. FOREMAN ASKED ME IF I WOULD IDENTIFY ONE OF THE MEN AS THE MAN WHO SHOT MARTIN LUTHER KING IF THE F.B.I. ARRESTED HIM AND TRANSPORTED HIM TO MEMPHIS.
I TOLD MR. FOREMAN NO, THAT I DID'NT WANT TO GET INVOLVED IN THAT TYPE THING FOR VARIOUS REASONS.
WHEN READY TO TAKE LEAVE, AND FAILING TO CONVINCE ME TO FOLLOW THE AFOREMENTION ADVICE, MR. FOREMAN ASK ME IF THAT WAS MY LAST WORD ON THE SUBJECT: I REPLIED YES.
THEN AT A FAIR DATE WHEN ATTORNEY FOREMAN VISITED ME HE HAD SEVERAL DUPLICATED TYPEWRITTEN SHEETS OF PAPER WITH HIM, ONE CLAUSE IN THE SHEETS CLEARED THE NOVELIST, WILLIAM BRATFORD HUIE, AND LOOK MAGAZINE, OF DAMAGING MY PROSPECTS FOR A FAIR TRIAL BECAUSE OF THEIR PRE-TRIAL PUBLISHING VENTURES, ANOTHER CLAUSE; THAT IF I STOOD TRIAL I WOULD RECEIVE THE ELECTRIC CHAIR.

"I TOLD MR. FOREMAN THAT MR. HUIE AND LOOK MAGAZINE WERE ABLE, LEGALLY&FINICALLY, TO LOOK OUT FOR THEIR OWN INTEREST".

MR. FOREMAN MONOLOGUE WAS VERY STRIDENT THAT DAY, IN INSISTING THAT I SIGN THE PAPERS AS I HAD TO ASK HIM SEVERAL TIMES TO LOWER HIS VOICE TO KEEP THE GUARDS, TRUSTY AND OPEN MIKE, FROM OVER HEARING OUR CONVERSATION.
I THOUGHT THEN THAT MAYBE I HAD BEEN "HAD" BELIVEING IT WAS FINICAIL,, THE SOGGESTION OF A GUILTY PLEA SO SOON AFTER SIGNING THE FEBRUARY, 3rd. CONTRACT.

THE NEXT TIME I SAW MR. FOREMAN HIS MONOLOGUE HAD'NT CHANGED SO I SIGNED THE AFOREMENTIONED PAPERS BUT, NOT WITH THE INTENTION OF PLEADING GUILTY; AS I TOLD FOREMAN.

LATER I TRIED TO PERSUADE MR. FOREMAN TO STAND TRIAL, I ASKED HIM WHY IT WAS NECESSARY TO PLEAD GUILTY WHEN I WASN'T GUILTY.
MR. FOREMAN GAVE ME THE FOLLOWING REASONS WHY A GUILTY PLEA WAS NECESSARY.
(ONE) HE SAID THE MEDIA HAD ALLREADY CONVICTED ME AND CITED THE PRE-TRIAL ARTICLES WRITTEN IN LIFE MAGAZINE AND THE READERS DIGEST; WITH THE HELP OF GOVERNMENT INVESTAGATIVES AGENCIES AS EXAMPLES.
HE ALSO CITED VARIOUS ARTICLES PRINTED IN THE LOCAL PRESS, PARTICULAR THE STORY IN THE COMMERICAL APPEAL DATED NOV. 10th. 1968, JUST TWO DAYS BEFORE TRIAL DATE.

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FURTHER, FOREMAN CITED THE RECORD OF THE AMICUS CURIA COMMITTEE SAYING NEITHER THE COMMITTEE OR TRIAL JUDGE WOULD ATTEMPT TO HALT PUBLIVCITY UNLESS IT REFLECTED ON THE PROSECUTION CASE.

(TWO) FOREMAN SUGGESTED, SPECIOUSLY, THAT IT WOULD BE IN MY FINICIAL INTEREST TO PLEAD GUILTY.

(THREE) THAT THE PROSECUTION HAD PROMISED A WITINESS CONSIDERABLE REWARD MONEY FOR TES-IFING AGAINST ME, THAT THIS WITINESS HAD ALLREADY BEEN GIVEN A RAISE IN A WELFARE CHECK HE WAS RECEIVING FROM THE GOVERNMENT, THAT THE PROSECUTION WAS ALSO PAYING HIS FOOD AND WINE BILLS.
FURTHER, THAT TWO MEMPHIS ATTORNEYS HAD SIGNED A CONTRACT WITH THIS ALLEDGED WITINESS FOR 50% OF ALL REVENUE HE RECEIVED FOR HIS TESTIMONY. THEY IN TURN WOULD LOOK OUT FOR HIS INTEREST.

MR. FOREMAN ALSO GAVE ME THE FOLLOWING REASONS WHY THE PROSECUTION WANTED, AND WOULD THEREFORE LET ME PLEAD GUILTY.

(ONE) THAT THE CHAMBER OF COMMERENCE WAS PRESSURING THE TRIAL JUDGE AND THE ATTORNET GENERALS OFFICE TO GET A GUILTY PLEA AS A LONG TRIAL WOULD HAVE AN ADVERSE EFFECT ON BUSINESS, BOYCOTS AND SUCH.
FURTHER, THAT THE CHAMBER WASN'T UNHAPPY ABOUT DR. KING BEING REMOVED FROM THE SCENE-HENCE THE ACCEPTANCE OF A GUILTY PLEA.

(TWO) THAT TRIAL JUDGE BATTLE WAS ~~ABOUT~~* CONCERNED ABOUT THE EFFECTS A TRIAL WOULD HAVE ON THE CITY'S (MEMPHIS) IMAGE, AND THAT THE JUDGE HAD EVEN DISPATCHED HIS AMICUS CURIEA COMMITTEE CHAIRMAN, MR. LUCIAN BURCH, TO PERSUADE SOME S.C.L.C. MEMBERS TO ACCEPT A GUILTY PLEA.

"ABOUT THIS TIME PERCY FOREMAN ALSO HAD ME SIGN ANOTHER PAPER SANCTIFING HIS DEALINGS WITH THE ATTORNEY GENERAL'S OFFICE."

LATER, AFTER CONSIDERING ALL THAT MR. FOREMAN HAD TOLD ME I SAID I STILL WANTED TO~~+~~ STAND TRIAL.
I TOLD FOREMAN I AGREED THAT THE MEDIA HAD HAD AN ADVERSE EFFECT ON THE PROSPECTS OF MY RECEVING A FAIR TRIAL BUT I DID'NT THINK THE PUBLIC ANY LONGER BELIEVED EVERY FABRICATION THEY READOR, SAW ON T.V.-THEREFORE A POSSIBLE FAIR JURY VERDICT.

MR. FOREMAN REPLY WAS THAT IF I PLEAD GUILTY HE COULD GET ME A PARDON, AFTER TWO OR THREE YEARS, THROUGH THE OFFICE OF NASHVILLE ATTORNEY, JOHN J. HOOKER SR. AS A RELATIVE OF MR. HOOKER WOULD THEN BE GOVERNOR.

BUT, IF I INSISTED ON A TRIAL HE (FOREMAN) WOULD HIRE FORMER MEMPHIS JUDGE, MR. BEN~~+~~ HOOKS, AS CO-COUNSEL.
I KNEW FROM NEWSPAPER ACCOUNTS THAT MR. HOOKS HAD RESIGNED A JUDGFSHIP TO ACCEPT A POSITION WITH S.C.L.C.
THEREFORR I TOLD FOREMAN THAT HAVING MR. HOOKS AS CO-COUNSEL WOULD BE A CLEAR CONFL-ICT.

insert

"AFTER THE SIGNING OF THE FEB. 3RD. 1969 CONTRACT NO FURTHER MENTION WAS MADE BY FOREMAN CONCERNING ENGAGEING ATT. HOOKER ALTHOE ON MARCH 9TH. 1969 FOREMAN TRIED TO GET ME TO SPEAK WITH HOOKER, BARRING THAT, TO HAVE HOOKER PRESENT AT THE PLEA. I DECLINED BOTH SUGGESTIONS.

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OF INTEREST, MORE SO THAN THE GROUNDS ATTORNEY F. LEE BAILEY REFUSED THE CASKE ON. MORMAN REPLY WAS THAT AS CHIEF COUNSEL HE HAD THE RIGHT TO PICK CO-COUNSEL.

BY THIS TIME MR. FOREMAN HAD FINALLY GOT THE MESSAGE OVER TO ME THAT IF I FORCED HIM TO TRIAL HE WOULD DESTROY-deliberately-THE CASE IN THE COURT ROOM.
"I DID'NT KNOW HOW HE WOULD FAKE THE TRIAL UNTIL I READ THE ARTICLE HE WROTE FOR LOOK MAGAZINE, PUBLISHED APRIL, 1969"
IT WAS ALSO MY BELIEF THAT I WOULD ONLY RECEIVE ONE TRIAL-THAT APPELLANT CTS. PROABLY WOULDN'T BE LOOKING TO CLOSE FOR TECHNICAL ERROW-THEREFORE I DID'NT WANT THE ONE TRIAL FAKED.
CONSIDERING I HAD NO OTHER CHOICE, AT THE TIME, I TENTATIVELY AGREED TO ENTER A GUILTY PLEA TO A TECHINICAL CHARGE OF HOMOICIDE IN CASE OF CONVICTION.
MR. FOREMAN THEN PRESENTED ME WITH VARIOUS STIPULATIONS TO SIGN WHICH HE CLAIMED HE RECEIVED FROM THE ATTORNEY GENERAL'S OFFICE.
I OBJECTED TO A NUMBER OF THE STIPULATIONS: TWO IN PARTICULAR.
THE FIRST, A STIPULATION WITH NO LEGAL QUALIFICATIONS, MET TO BE AN EMBARRASSING REFERENCE TO GOVERNOR GEORGE WALLACE AND INSTIGATED BY A CALIFORNIA HIPPIE SONG WTITER NAMED CHARLES STEIN. MR FOREMAN HAD THE STIPULATION REMOVED. HE SAID THE NOVELIST, WILLIAM [redacted], BRATFORD HUIE, HAD GOT THE ATTORNEY GENERAL TO INSERT THE STIPULATION.
THE SECOND, THIS STIPULATION CONCERNED MY PEREGRINATIONS BETWEEN MARCH, 30th. 1968 and APRIL, 4th. same year.
MR FOREMAN SAID HE COULD'NT GET THIS STIPULATION REMOVED AS EVERYONE ASSOCIATED WITH THE PROSECUTION, DIRECTLY AND INDIRECTLY, INSISTED IT BE INCLUDED, INCLUDING ATTORNEY LUCIAN BURCH AND THE F.B.I.

LATER DURING ONE OF MR. FOREMAN'S VISITS TO THE JAIL IN EARLY MARCH, 1969, I MADE A LAST ATTEMPT TO HAVE A JURY TRIAL.
I ASKED MR. FOREMAN TO WITHDRAW FROM THE SUIT IF HE DID'NT WANT TO DEFEND ME FOR POLITICAL OR SOCIAL REASONS. "HE HAD MADE THE PUBLIC STATEMENT, AND MENTIONED TO ME SEVERAL TIMES THAT HE WAS CONCERNED THAT THE NEGROS WOULD THINK HIM A JUDAS FOR DEFENDING ME."
I TOLD FOREMAN I WOULD SIGN OVER TO HIM THE ORIGINAL $150.000 WE HAD PREVISOULY AGREED ON FOR HIM TO DEFEND ME, AND I WOULD SIGN ANY FUNDS OVER THAT AMOUNT FROM THE CONTRACTS TO ANOTHER ATTORNEY TO TRY THE SUIT BEFORE A JURY.
"I ALSO ASK HIM TO GIVE MY BROTHER, JERRY RAY, $500.00 TO FIND SUCH AN ATTORNEY."

I STATED OTHERWISE I WAS GOING TO EXPLAIN MY FINICIAL SITUTATION TO THE COURT AND ASK EITHER TO DEFEND MYSELF OR, ASK OTHER RELIEF.
MR. FOREMAN REFUSED TO WITHDRAW AND REMINED ME OF TRIAL JUDGE BATTLE'S RULING AS OF 4 JANUARY 1969, saying, IT WOULD EITHFR BE HIM AS COUNSEL OR, THE PUBLIC DEFENDER.
HOWEVER, MR. FOREMAN SAID IF I WOULD PLEAD GUILTY HE WOULD COMPLY WITH THE AFOREMENTIONED REQUESTS.
HE SAID THAT I COULD GET A TRIAL IN A COUPLE YEARS IF I WANTED ONE AND HE IMPLIED THAT AFTER THE PLEA WAS OVER HE WOULD DISASSOICATE HIMSELF FROM THE SUIT.
THEN ON MARCH 9th. 1969, ATTORNEY FOREMAN PRESENTED ME WITH TWO CONTRACTS-SEE CT. TR.-WITH THE AFOREMENTIONED STIPULATIONS INCLUDING A CLAUSE STATING IF I [redacted] PLEAD GUILTY THE DEAL WAS OFF. "FOREMAN [redacted] JO[redacted] REFUSED TO [redacted]ED.
THE NEXT DAY, MARCH 10th. 1969, I PLEADED GUILTY UNDER THE ABOVE RELATED CIRCUMSTANCES.
I DID OBJECT DURING THE PLEA PROCEEDING WHEN FOREMAN ATTEMPTED TO USE THE OCASSION AS A FORUM TO EXONERATE HIS FRIEND, FORMER ATTORNEY GENERAL, MR. RAMSEY CLARK, OF INCOMPETENCE OR FRAUD, AND, TO EXPAND ON WHAT I HAD AGREED TO IN THE STIPULATIONS.

LATER THAT DAY, MARCH. 10, 1969, WHEN I SAW MR. FOREMAN ON T.V. NEWS I KNEW HE WASN'T DISASSOCIATING HIMSELF FROM THE SUIT, RATHER HE WAS TRYING TO PRESENT THE PROSECUTION VERSION OF THE CASE. IN REPLY TO ONE REPORTERS QUESTION AS TO WHY MY PAST RECORD WOULD'NT INDICATE SUCH A CRIME, MR. FOREMAN WENT INTO A LONG DISSERTATION ON HOW EVERY FIVE YEARS ALL THE CELLS IN THE HUMAN BODY CHANGE, HENCE A DIFFERENT PERSON MENTALLY EVERY FIVE YEARS. "FOREMAN WAS APPLYING THIS SCIENTIFIC QUACKERY TO [redacted] HIS CLIENT."

THIS PRESS CONFERENCE COUPLED WITH MR. FOREMAN'S COURT ROOM SPEIL AT THE PLEA INDICATED I COULD'NT WAIT ANY TWO YEARS UNTIL I MIGHT POSSIBLE RECEIVE FUNDS FROM CONTRACTS TO HIRE

OTHER COUNSEL AS HE THEN FOREMAN & BOIE IN COMPANY WOULD HAVE HAD ME CONVICTED VIA THE MEDIA WHICH THEIR TYPE ALWAYS SEEM TO HAVE READY ACCESS.

AFTER ARRIVING AT THE PRISON IN NASHVILLE,TENN.ON MARCH,11_1969,AND HEARING MORE OF MR. FOREMAN'S CONTINUOUS MONOLOUGE I THEN "KNEW" I COULD'NT WAIT TWO YEARS BEFORE ATTEMPTING TO GET A TRIAL.
"SHORTLY THEREAFTER THIS VIEW WAS REINFORCED BY THE REMARKS OF TRIAL JUDGE BATTLE AT A NEWS CONFERENCE WHEREIN HE IMPLIED THAT THE REASON HE(THE JUDGE) WANTED THE GUILTY PLEA WAS THAT THE DEFENDANT ..MIGHT HAVE BEEN AQUITTED BY A JURY."
THEREFORE ON MARCH,13th.1969,I WROTE A LETTER TO TRIAL JUDGE W. PRESTON BATTLE STATING MR. PERCY FOREMAN NO LONGER REPRESENTED ME AND, THAT I WOULD SEEK A TRIAL.

I THEN CONTACKED OTHER COUNSEL AND ASK MY BROTHER,JERRY RAY,TO SEND COUNSEL ENOUGHT FUNDS TO VISIT ME IN ORDER THAT COUNSEL COULD ATTEMPT TO SET ASIDE PLEA.

HOWEVER DESPITE CONFORMING TO PRESCRIBED PRISON PROCEDURE TENNESSEE CORRECTIONS COMMISSIONER,MR.HARRY AVERY, REFUSED TO LET COUNSEL INTO THE PRISON TO PERFECT A PETITION TO SET ASIDE THE PLEA_SEE CT. TR.

AFTER,AND BECAUSE,COUNSEL WAS REFUSED ADMITTANCE ON MARCH,26th.1969,TO THE PRISON, I WROTE A PETITION TO TRIAL JUDGE BATTLE ASKING FOR A TRIAL=THAT SAME DAY.MARCH, 26th.1969.

"AFTER I WROTE THE MARCH,13th. LETTER TO JUDGE BATTLE ININDICATING I WOULD ASK FOR A TRIAL CORRECTIONS COMMISSIONER HARRY AVERY STRONGLY ADVISED ME NOT TO SEEK A TRIAL.
HE SAID IF I DID'NT I WOULD BE TREATED LIKE ANY OTHER PRISONER AND,WOULD BE RELEASTED FROM ISOLATION AT THE END OF THE PRESCRIBED SIX WEEKS BUT,IF I PERSISTED IN ASKING FOR A TRIAL HE COULD'NT PROMISE ANYTHING_HE SAID HE WAS SPEAKING FOR THE BIGEST AUTHORITY."

I WAS ALSO CONCERNED AT THIS PERIOD THAT COMMISSIONER AVERY WAS TRYING TO PUT ME IN A POSITION TO FALSELY QUOTE ME AS MAKING AN ORAL STATEMENT.
THEREFORE I SENT AN AFFIDAVIT TO UNITED STATE'S SENATOR JAMES O. EASTLAND, CHAIRMAN SENATE JUDICARY COMMITTEE,STATING I WOULD ONLY DISCUSS THE SUIT IN COURT.

"LATER I SENT A SIMULAR ~~LETTER~~ AFFIDAVIT TO THE HONORABLE BUFORD ELLINGTON, GOVER. OF TENNESSEE..

SIGNED:JAMES E. RAY 65477.
STATE PRISON
PETROS,TENNESSEE.

FOR ATTORNEYS.
P.C. HEARING.

James E. Ray

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44-1987-SUB-O-163

Copy to Mason

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

JAMES EARL RAY,

Petitioner

vs

STATE OF TENNESSEE

and

LEWIS TOLLETT, WARDEN
State Penitentiary at
Petros, Tennessee,

Defendants

FILED 8-31-1970
J. A. BLACKWELL, CLERK
BY J. V. Bynum D. C.

NO. H.C. 661

PETITONER'S ANSWER TO RESPONDENTS' MOTION TO STRIKE

I. RESPONDENTS' MOTION TO STRIKE

Respondents have moved to strike Petitioner's Petition for Post Conviction Relief and Amendments thereto on grounds that:

1. Petitioner does not allege any abridgement in any way of rights guaranteed by the Constitution of Tennessee or the Constitution of the United States.

2. Further, all matters alleged have either been previously determined or waived.

II. PETITIONER HAS ALLEGED ABRIDGEMENTS OF HIS CONSTITUTIONAL RIGHTS

In regard to the first ground set forth by the Motion to Strike, Respondents are referred to the averments on page three of the Amended Petition For Post Conviction Relief, wherein Petitioner alleged the following abridgements of his constitutional rights:

1. That his rights of "due process" guaranteed him by both the State and Federal Constitution have been grossly violated;

2. That his rights to counsel guaranteed him by the State and Federal Constitution at all stages of the criminal proceedings against him have been grossly violated;

3. That he has not been accorded the "equal protection"

guaranteed him by the Fourteenth Amendent to the United States Constitution, and

4. That, as a result of these violations, Petitioner's plea of guilty was involuntary.

III MATTERS RAISED IN PETITIONER'S PETITION FOR POST CONVICTION RELIEF HAVE NOT BEEN "PREVIOUSLY DETERMINED"

A. Provisions of the Tennessee Post Conviction Procedure Act

The second ground set forth in respondendents' Motion to Strike' Defendant's Petition for Post Conviction Relief and Amendents thereto claimed that "all matters alleged have either been previously determined or vaived." It should be pointed out at the very outset that this second ground actually combines two separate and distinct grounds. Petitioner urges that the provisions of the Post Conviction Procedure Act make no mention whatsoever of waiver", neither with respect to the specific statutory provisions which refer to grounds "previously determined", nor to the Post Conviction Act as a whOle. Thus, there is no statutory basis for this peculiar amalgamation of grounds, since the question of waiver does not arise at all under the provisions of the Act,

The provisions of the Post Conviction Procedure Act which bear most directly upon the first part of Respondents' second ground are sections 40-3811 and 40-3812 of the Tennessee Code Annotated. The first of these sections defines the scope of the hearings held under the Act:

> TCA 40-3811. "Scope of hearings. -- The scope of the hearing shall extend to all grounds the petitioner may have, except those grounds which the court finds should be excluded because they have been previously determined, as herein defined."

The following section defines the phrase "previously determined":

> TCA 40-3812. "When ground for relief is 'previously determined.' -- A ground for relief is 'previously determined' if a court of competent jurisdiction has ruled on the merits after a full and fair hearing."

In construing the phrase "previously determined", it must be remembered that a court hearing an appeal has powers quite different from those which inhere to a trial court hearing a petition under the Post Conviction Procedure Act.

Thus, when hearing an appeal on a Motion For New Trial, the appellate court is limited to the record at the trial and sits to review that record for any errors in the application of law which may have been committed by the trial court.

The situation of a trial court hearing matters under the Post Conviction Procedure Act is quite different. Here the court has jurisdiction to go behind the record and make determinations both as to fact and law.

This considered, it follows that, where a ground for relief alleges facts not previously disclosed, the only court competent to hear the ground for relief is the trial court when it sits to hear either a Motion For New Trial or a Petition For Post Conviction Relief. An appellate court is not competent to determine such a ground of relief because it has no jurisdiction to go behind the record and consider previously undisclosed facts. For this reason also an appellate court cannot rule "on the merits" of such a ground for relief "after a full and fair hearing". Therefore, it may be concluded that, where a Petition for Post Conviction Relief alleges previously undisclosed facts in support of a ground for relief an appellate court cannot render such ground "previously determined". The requirements of the above-quoted section 40-3812 make this quite clear.

The converse of this interpretation would disembowel the Post Conviction Procedure Act, largely relegating the trial court to rubber stamping appellate decisions, since any ground of relief if previously alleged and ruled upon, would be excludable as "previously determined", even though previously undisclosed factual evidence in support of such ground were offered to the court.

Such an interpretation would also be subject to several other grave criticisms. In the first place, this construction of the statute would apply the principle of res judicata to an area of law historically exempt from it and thus curtail a traditional and most basic right.

At this point, the provisions of section 40-3808 should be noted.

At this point, the provisions of section 40-3808 should be noted:

> TCA 40-3808. "Petitions for habeas corpus may be treated as petitions under this chapter. -- A petition for habeas corpus may be treated as a petition under this chapter when the relief and procedure authorized by this chapter appear adequate and appropriate, notwithstanding any thing to the contrary in title 23, chapter 18 of the Code, or any other statute."

Habeas corpus is thus incorporated into the Post Conviction Procedure Act. At common law res judicata did not apply to petitions for writs of habeas corpus. Therefore, if the State's restrictive construction of "previously determined" is followed, one of the vital elements of common law habeas corpus would be nullified. It is submitted that the Tennessee Legislature did not intend to abridge the rights inherent in common law habeas corpus when they incorporated it into the Post Conviction Procedure Act.

A second criticism of the State's interpretation of "previously determined" is that it would nullify section 40-3805, which declares:

> TCA 40-3805. "When relief granted. -- Relief under this chapter shall be granted when the conviction or sentence is void or voidable because of the abridgement in any way of any right guaranteed by the Constitution of this state or the Constitution of the United States, including a right that was not recognized as existing at the time of the trial if either Constitution requires retrospective application of that right."

Under what appears to be the Respondents' construction of "previously determined", if a defendant alleged a constitutional right not recognized at the time of his trial and unsuccessfully appealed the right alleged, he would not be able to get relief under section 40-3805 because the ground for relief would have been previously determined.

Further, under Respondent's construction of "previously determined", it is all but impossible, if not in fact impossible, for any defendant who pleads guilty at his trial to obtain relief under the Post Conviction Procedure Act; in Respondents' view, any ground for relief which might be alleged by such a defendant would have been either "previously determined" or waived.

There is, of course, nothing in the Post Conviction Procedure Act or its legislative history to suggest that defendants who enter

guilty pleas cannot obtain relief under its provisions. Indeed, had that been the intent of the enactors, it would have been quite simple to write that limitation into the law. Further, common sense suggests that the Tennessee Legislature did not intend section 40-3805 to be a nullity, nor that the courts hearing petitions under the Post Conviction Procedure Act merely rubber-stamp appellate decisions.

Just when a ground for relief may be properly said to have been "previously determined" is a more subtle question than may be gathered from the bare assertion presented by Respondents' Motion to Strike. The complexities of this question will be discussed at greater length further on in this brief.

At this point, it will suffice to lay down the proposition that where a Petitioner alleges substantial issues of fact and law, such grounds can only be considered "previously determined" if <u>each</u> such ground has been ruled upon in accordance with the provisions of section 40-3812, which require: 1) a court of competent jurisdiction, 2) a decision "on the merits", and 3) a full and fair hearing.

Other provisions of the Post Conviction Procedure Act suggest some criteria to which a hearing should conform in order to qualify as a "full and fair hearing" in those instances where a ground for relief alleges substantial questions of fact. Thus, section 40-3810 requires that:

> "If the petitioner has had no prior evidentiary hearing under this act and in other cases where his petition raises substantial questions of fact as to events in which he participated, he shall appear and testify." (TCA 40-3810)

Section 40-3818 states another requirement:

> Upon the final disposition of every petition, the court <u>shall</u> enter a final order, and . . . set forth in the order or a written memorandum of the case all the grounds presented and <u>shall</u> state the findings of fact and conclusions of law with regard to each such ground." TCA 40-3818. (Emphasis added)

These requirements, petitioner submits, are the relevant criteria by which it can be judged whether or not a full and fair hearing has been had upon any ground of relief requiring that the court look behind the trial record. Further, a full and fair

hearing on the merits must be had before a ground for relief alleging substantial questions of fact can be said to have been "previously determined".

As will be further elaborated upon below, Petitioner's grounds have not been acted upon in conformity with these statutory provisions: the grounds alleged in his Petition have not been decided by a court of competent jurisdiction, nor has there been a decision on the merits, nor a full and fair hearing with regard to the grounds alleged.

Specifically, Petitioner has had no prior evidentiary hearing under the Post Conviction Procedure Act; and, in addition, his petition has raised substantial questions of fact as to events in which he participated, namely, his guilty plea. Standing alone, each of these circumstances requires that Petitioner be called to testify at an evidentiary hearing in accordance with the provisions of section 40-3810.

Further, the nature of Petitioner's allegations are such as to require under section 40-3818 that the court shall set forth in an order or written memorandum of the case all the grounds presented, stating the findings of fact and conclusions of law with regard to each such ground. No such findings of fact and conclusions of law have been set forth with regard to Petitioner's present allegations brought under the Post Conviction Procedure Act.

B. Sanders v. United States: "The Test Is 'The Ends Of Justice'"

The Federal equivalent of Tennessee's Post Conviction Procedure Act is found at 28 U.S.C. ¢ 2255. While the wording of the Federal Statute varies somewhat from that of the Tennessee Act, the intent and basic provisions are much the same. Because the Tennessee Act is of recent origin and relatively few cases have been decided under it, a look at the Supreme Court's construction of the Federal statute may merit some attention.

The leading case of Sanders v. United States, 373 U.S. 1, 10 L. Ed/ 2 d 148, 83 S/ Ct. 1068 (1963) dealt with the provision of 28 U.S.C. section 2255 which states that "the sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner". [1]

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[1]The full text of section 2255 provides:

"A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack ,may move the court which imposed the sentence to vacate, set aside or correct the sentence.

"A motion for such relief may be made at any time,

"Unless the motion and the files and records of the case conclusively show that the prisioner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisioner as to render the judgment vulverable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisioner or resentence him or grant a new trial or correc the sentence as may appear appropriate.

"A court may entertain and determine such motion without requiring the production of the prisioner at the hearing.

"The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisioner.

"An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

"An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

Sanders filed two motions under section 2255. In the original motion, petitioner, appearing pro se, alleged no facts but only the conclusions that 1) the "Indictment" was invalid, 2) "Appellant was denied adequate assistance of Counsel as guaranteed by the Sixth Amendment," and 3) the sentencing court had "allowed the Appellant to be intimidated and coerced into intering (sic) a plea without counsel, and any knowledge of the charges lodged against the Appellant."

The trial court denied petitioner's first motion under section 2255 on the grounds the motion, "although replete with conclusions, sets forth no facts upon which such conclusions can be founded." Accordingly, petitioner was not granted an evidentiary hearing.

Several months later petitioner, again appearing pro se, filed his second motion under section 2255. His second motion alleged:

> "that at the time of his trial and sentence he was mentally incompetent as a result of narcotics administered to him while he was held in the Sacramento County Jail pending trial. He stated in a supporting affidavit that he had been confined in the jail from on or about January 16, 1959, to February 18, 1959; that during this period and during the period of his "trial" he had been intermittently under the influence of narcotics; and that the narcotics had been administered to him by the medical authorities in attendance at the jail because of his being a known addict." 373 U.S. at 5.

The District court denied the motion without a hearing, on the ground that,

> "As there is no reason given, or apparent to this Court, why petitioner could not, and should not, have raised the issue of mental incompetency at the time of his first motion, the Court will refuse, in the exercise of its statutory discretion, to entertain the present petition." 373 U.S. at 6.

Although the Court of Appeals upheld the decision refusing to entertain petitioner's second motion under section 2255, the United States Supreme Court reversed that decision, holding that the sentencing court should have granted a hearing on that motion.

In its opinion, the Supreme Court laid out what it felt were the guidelines to the proper construction of the provision that "the sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same

prisoner." 373 U.S. 6 et seq=. As those guidelines seem worthy of application to petitions brought under the Tennessee Post Conviction Procedure Act, they are recapitulated below.

First, the Court noted that at common law the denial by a court or judge of an application for habeas corpus was not res judicata. The Court found a strong policy rule for this principle:

> "Conventional notions of finality of litigation have no place where life or liberty is at stake and infringement of constitutional rights is alleged. If "government . . . (is) always (to) be accountable to the judiciary for a man's imprisonment," Fay v. Noia, supra (372 US at 402,) access to the courts on habeas must not be thus impeded. The inapplicability of res judicata to habeas, then, is inherent in the very role and function of the the writ." 373 U.S. at 8

These policy considerations underlying applications for a writ of habeas corpus address themselves equally well to petitions for relief under Tennessee's Post Conviction Procedure Act. First, the nature of the relief afforded by a writ of habeas corpus and that provided under the Post Conviction Act are similar; and, as the Supreme Court remarked in assessing whether Congress intended to treat the problem of successive applications differently under habeas corpus than under the post conviction statute (section 2255), "it is difficult to see what logical or practical basis there could be for such a distinction." (Sanders, supra, at 14)

Secondly, the Post Conviction Procedure Act expressly provides that:

> "A petition for habeas corpus may be treated as a petition under this chapter when the relief and procedure authorized by this chapter appear adequate and appropriate . . . " (TCA 40-3808)

Since habeas corpus in incorporated into the Act, it seems clear that the U. S. Supreme Court's comments regarding the inapplicability of notions of res judicata to habeas corpus proceedings ought to be equally appropriate as regards petitions for post conviction relief under Tennessee law.

As the second of its guidelines, the Supreme Court laid down the principal that a second or successive application for federal habeas corpus or section 2255 relief should be denied without a

> "The prior denial must have rested on an adjudication of the merits of the ground presented in the subsequent application." (Sanders, supra, at 16)

Finally, in a passage in its opinion which well illustrates just how far the Court went in avoiding notions of finality in respect to petitions for post conviction relief, the Supreme Court declared:

> "Even if the same ground was rejected on the merits on a prior application, it is open to the applicant to show that the ends of justice would be served by permitting the redetermination of the ground. If factual issues are involved, the applicant is entitled to a new hearing upon showing that the evidentiary hearing on the prior application was not full and fair." (Sanders, supra, at 17)

Having laid down its guidelines for determining when a petitioner for post conviction relief merits an evidentiary hearing, t the Supreme Court then summed up its discussion in a phrase which deserves to be well remembered: ". . . the foregoing enummeration is not intended to be exhaustive; the test is 'the ends of justice' and it cannot be too finely particularized." (Sanders, supra, at 17)

C. Tennessee Case Law

The Tennessee Post Conviction Procedure Act is of recent origin, and thus far relatively few cases have raised questions as to when the allegations in a petition entitle the petitioner to an evidentiary hearing. Yet those cases which have raised such questions follow the basic distinction laid down in Sanders v. United States, supra; namely, petitions alleging purely legal issues which have been previously determined or grounds whose lack of legal merit appears on the face of the petition may be dismissed without an evidentiary hearing; on the other hand, petitions alleging sufficient facts in support of adequate legal grounds requiredan evidentiary hearing.

Thus, in Burt v. State, 454 S. W. 2d 182 (1970), the Tennessee Court of Criminal Appeals con sidered petitioner's first ground of relief, which alleged that he was being unlawfully held in violation of the Thirteenth and Fourteenth Amendments to the U. S. Constitution and article 1, sections 8 and 33 of the Tennessee Constitution, and stated that:

> "The first ground of relief set out in this petition is too general to merit consideration; alleging no facts, but just the conclusion of the pleader that he is being deprived of certain unnamed constitutional rights in some unspecified way. Such conclusory allegation does not give rise to a right to an evidentiary hearing. O'Malley v. United States, 285 F. 2d 733 (6th Cir)". (Burt v. State, supra, at 184)

In McFerren v. State, the Court of Criminal Appeals affirmed the trial court's decision to dismiss the petition, saying:

> "In our opinion, this petition does not allege sufficient facts to require an evidentiary hearing. Since the petition did not raise factual issues for post-conviction relief, the trial judge was correct in dismissing it. (McFerren v. State, 449 S.W. 2d 724 (1970) at 726)

Although this holding is framed in the negative, the inference may be properly drawn from it that, conversely, if a petition does raise sufficient factual issues, an evidentiary hearing is required.

It is the position of Petitioner that his petition raises sufficient factual issues, both previously undisclosed and undetermined, to require that an evidentiary hearing be held.

D. Petitioner's Grounds For Relief Were Not Determined At Hearing On His Motion For A New Trial

Defendant's Amended and Supplemental Motion For a New Trial set forth two grounds for relief:

1. That Defendant should be granted a New Trial under the provisions of section 17-117 of the Tennessee Code Annotated; and

2. That the waiver, plea and conviction were the result of Defendant being deprived of legal counsel in violation of the Fourteenth and Sixth Amendments to the U.S. Constitution.

Subsequently, Defendant submitted a Motion For a New Trial which added the following grounds for relief:

1. That he was denied effective counsel;

2. That the preponderance of the evidence was not such as to support a jury verdict of guilty;

3. That there was no evidence introduced upon which he could be found guilty; and

4. That since Judge Battle died, and he is the only one who could have tried the above questions, he is, as a matter of law, entitled to a New Trial.

Later, at the Hearing on the Motion to Strike, Defendant withdrew the second ground for relief stated in his Amended and Supplemental Motion For a New Trial, as well as all paragraphs and exhibits in support of that ground, leaving only the ground which alleged Defendant should be granted a new trial under the provisions of section 17-117 of the Tennessee Code Annotated.

Section 17-117 reads as follows:

> "Whenever a vacancy in the office of trial Judge shall exist by reason of the death of the incumbent thereof, or permanent insanity, evidenced by adjudication, after verdict but prior to the hearing of the Motion for a New Trial, a new trial shall be granted the losing party, if motion therefor shall have been filed within the time provided by the rule of the Court and be undisposed of at the time of such death or adjudication."

The only issues before the court, therefore, were those raised by the Defendant under section 17-117 and by the State's Motion to Strike, which asserted that there is no Motion for a New Trial from a guilty plea.

By the nature of his motion, Defendant was restricted to the record; taking the position that only the deceased Judge Battle had power to rule on his exceptions, Defendant declined to put in any exhibits or evidence in support of them.

The court itself recognized Defendant;s position, saying

> "The Motion and Petitions filed so far by the Defendant, do not contain the necessary elements required by statute, to allow the court to act upon them as either a Petition for Writ of Habeas Corpus or a Petition under the Post Conviction Procedure Act; especially since the Defendant has made it clear they are to be treated as a Motion for a New Trial." (May 26, 1969 Hearing at page 78 of the transcript)

In addition, Judge Faquin declared that he did not, as the successor to Judge Battle, have the right to hear a Motion for a New Trial or approve and sign the Bill of Exceptions.

However, Judge Faquin also noted that "if the Motion to Strike is granted, then a Petition for a Writ of Habeas Corpus or a Petition under the Post Conviction Act could be filed." (May 26, 1969 Hearing, at page 78 of the transcript)

Thus, the only issue before Judge Faquin was whether or not Defendant was entitled to a New Trial under section 17-117; and, consequently, that is the only issue that can possibly be considered "previously determined".

IV. ALLEGATION THAT PLEA WAS INVOLUNTARY HAS NOT BEEN "PREVIOUSLY DETERMINED, THUS, A HEARING ON THE MERITS IS REQUIRED

Petitioner has alleged violations of his constitutional rights to due process of law, equal protection of the laws, and his right to effective counsel. Concommitantly, he has alleged that as a result of these violations, his guilty plea was involuntary.

Petitioner has alleged certain facts in support of his claims that, as a result of these violations of his constitutional rights, his guilty plea was involuntary. For the sake of clarity and information, some of the facts alleged which have not been introduced into evidence before are outlined below. None of this material has previously figured in any court decision; therefore, it cannot be considered 'previously determined'.

1. Exculpatory information was withheld from Petitioner; to wit:

a. The fact that no identifiable bullet was removed from Dr. King's body.

b. That Dr. King suffered a second and more damaging wound than the one to the jaw, proving that the missile was frangible or fragmentable; and

c. That, immediately after the crime, the state's chief eye witness, Charles Quitman Stevens could not and would not identify Petitioner as the killer.

2. Unavailability of Witnesses.

Mrs. Grace Stevens, potentially a key witness for Petitioner, was wrongfully incarcerated in the Western State Mental Hospital because she might have testified favorably to petitioner.

3. The trial Judge prominently participated in the plea bargaining which led to Petitioner's guilty plea.

All of the facts stated above are alleged in Petitioner's Amended Petition For Post Conviction Relief, and all present grounds for relief which have not been previously known or disclosed, much less previously determined. Petitioner is prepared to proffer considerable evidence in support of these and other

grounds alleged.

For example, with regard to just one of the facts enummerated above, Petitioner is prepared to show, on the basis of sworn court testimony, that Gracie Stevens was never insane and was thus illegally incarcerated in Western State Mental Hospital under the guise of "protective custody", further, Petitioner will call witnesses to show that other mysterious and irregular circumstances attended the incarceration of this witness who might have testified favorably to Petitioner.

Attached to this brief is an affidavit by Petitioner. The factual statements averred in the affidavit have a strong and direct bearing upon the grounds for relief alleged in the Amended Petition For Post Conviction Relief, particularly as concerns two two paramount legal issues: 1) whether Petitioner's guilty plea was voluntary, and 2) whether Petitioner was the victim of ineffective and fraudulent legal counsel.

The statements in Petitioner's affidavit constitute very grave charges, and it is clear that the allegation of such detailed facts makes it imperative that an evidentiary hearing be held, in accordance with the provisions of 40-3810, and that the court shall set forth its findings of fact and conclusions of law with regard to <u>each</u> ground of relief alleged, as is required by section 40-3818 Tennessee Code Annotated.

V. VOLUNTARINESS OF GUILTY PLEA IS NEVER WAIVED

As mentioned in the foregoing section of this brief, the question of the voluntariness of Petitioner's guilty plea was not raised before the trial court on the Motion for a New Trial and, therefore, it could not be previously determined. In addition, it must be pointed out that the question of the voluntariness of a guilty plea is never waived. Both points were noted by Judge Faquin when rendering his Memorandum Finding of Fact and Conclusion of Law at the May 26, 1969 Hearing:

> "As stated in Owens, that's Herman Earl Owens vs. Lake Russell, which was decided in an unpublished opinion on October 4, 1968 by the Court of Criminal Appeals in Tennessee. It

> states, that the question of the voluntariness of the Guilty Plea is never foreclosed while any part of the resulting sentence remains unexecuted, which means under our procedure either on a Petition for Writ of Habeas Corpus, Post Conviction Act while the Court has it under advisement after the trial, the Judge can set the Guilty Plea aside and allow him to go to trial on a Not Guilty Plea. But we are not faced with that situation in this case."
> (May 26, 1969 Hearing at pages 72-73 of the transcript)

Under these circumstances, then, it is clear that the voluntariness of Petitioner's guilty plea is not an issue which has or can be waived; consequently, Petitioner is entitled to an evidentiary hearing on the facts alleged in his Petition For Post Conviction Relief.

RICHARD J. RYAN
Falls Bldg.
Memphis, Tennessee

BERNARD FENSTERWALD, JR.
927 15th Street, N.W.
Washington, D. C.

Filed: August 31, 1970

Copy
Motion

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

JAMES EARL RAY,

Petitioner

vs

STATE OF TENNESSEE

and

LEWIS TOLLETT, WARDEN
State Penitentiary at
Petros, Tennessee,

Defendants

FILED 8-31-1970
W. A. BLACKWELL, CLERK
By J. V. Smith D.C.

MOTION TO PRODUCE

Now comes Petitioner and requests the Court to order respondent to produce the FBI spectrograhpic analyses of 1) the bullet fragments taken from the body of Dr. Martin Luther King, and 2) the bullets which were found outside 424 S. Main and which allegedly had been purchased by Petitioner.

If the FBI made no such analyses or the State does not have such analyses, the Court is requested to order production of said bullets and fragments so that Petitioner may have such analyses made.

Respectfully submitted,

BERNARD FENSTERWALD, JR.
Attorney for James Earl Ray

RICHARD J. RYAN,
Attorney for James Earl Ray

44-1987-Sub-C-164

Memphis, Tennessee
September 2, 1970

RE: JAMES EARL RAY;
DR. MARTIN LUTHER KING, JR. - VICTIM;
CIVIL RIGHTS - CONSPIRACY

On September 2, 1970, Assistant District Attorney General Clyde Mason, Memphis, Tennessee, advised that on that date a hearing had been held before Judge William H. Williams in the Criminal Court of Shelby County, Tennessee, at Memphis, Tennessee, concerning Ray's petition for post conviction relief under the Post Conviction Relief Act.

During this hearing on September 2, 1970, Judge Williams allowed the attorneys for the defendant to amend their petition to reflect that (1) the defendant Ray's guilty plea was negotiated with the late Judge Preston Battle rather than with the District Attorney General's Office, and (2) to allege that the defendant's attorney Percy Foreman was not in sufficiently good health to effectively represent Ray at the time of Ray's guilty plea.

Judge Williams has granted the defendant's attorneys additional time in which they are to make their allegations more specific. The amendment must be filed with the Court no later than September 16, 1970, and the District Attorney General's Office will thereafter be allowed several days in which to study the amendments. Following their review of the amendments, application will be made to Judge Williams to set a date for which this matter will be heard before him.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

4 - Bureau (44-38861)
(2) - Memphis (44-1987)
JCH:jap
(6)

Hester

INDEXED

9/2/70

AIRTEL

TO: DIRECTOR, FBI (44-38861)

FROM: SAC, MEMPHIS (44-1987) (P)

SUBJECT: MURKIN

Enclosed for the Bureau are 4 copies of an LHM dated 9/2/70 at Memphis, Tenn., regarding captioned matter, and 2 copies each of the following documents filed in the Criminal Court of Shelby County, Tenn., in this matter:

1. A motion filed by the prosecution to strike the subject's Petition for Post Conviction Relief.

2. The subject's answer to the prosecution's Motion to Strike, to which document is attached an affidavit prepared by the subject RAY.

3. A brief filed by the prosecution which contains arguments relating to Document 2, above.

4. A motion filed by the defense asking that the State produce bullet fragments taken from the body of the victim KING and bullets found outside 424 S. Main St., and which had allegedly been purchased by the subject.

2 - Bureau (Encs. 12)
2 - Memphis

JCH:jap
(4)

44-1987-Sub-0-166

Memphis, Tennessee
February 3, 1971

RE: JAMES EARL RAY;
DR. MARTIN LUTHER KING, JR. -
VICTIM
CIVIL RIGHTS - CONSPIRACY

On February 26, 1971, arguments will be heard by Judge William H. Williams of the Shelby County Criminal Court, Memphis, Tennessee, concerning the prosecution's motion to strike James Earl Ray's Petition For Post Conviction Relief.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

5 - Bureau
(2) - Memphis (44-1987) NOTE: Please file in 44-1987-Sub-)

JCH:lfm

(7)

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44-1987-Sub-0-167