TECHNICAL RECORD

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MONDAY, JANUARY 20, 1969

Court met pursuant to adjournment,

OPENING OF COURT

BE IT REMEMBERED, that at a regular term of the Criminal Court, Division Three, of Shelby County, Tennessee, begun and holden at the Criminal Courts Building in the City of Memphis, on the Third Monday in January, 1969, the same being the 20th day of January, 1969, present and presiding, the Hon. W. Preston Battle, Judge &c; Phil M. Canale, Jr., District Attorney General, Robert K. Dwyer, James C. Beasley, Arthur T. Bennett, Sam J. Catanzaro, Jr., Don A. Dino, Earl A. Fitzpatrick, Gene Gaerig, Billy Gray, William D. Haynes, Harvey Herrin, Leonard T. Lafferty, Jesse C. Mason, Jewett H. Miller, J. L. Patterson, John Pierotti, Lloyd A. Rhodes, Ewell C. Richardson, Glen Sisson, & Don Strother, Assistant Attorreys General; J. A. Blackwell, Clerk of said Court, William T. Carlisle, Travis Carr, Donal Cavette, George C. Cohan, Donald C. Cooper, Jules V. Gipson, Joe E. Hughes, Jr., Charlotte Hunderup, Charles E. Koster, Mary L. Lindsey, George McGowan, Gary C. Moore, Jewell Mottweiler, Larry Nance, Gene Plant, Mary V. Reynolds, Carl Frank Scott, Jr., Stewart B. Scott, Gerald A. Spotorno, Emily Tharpe, David Toney, Larry Varnadoe, Gerald Voss, & Roger Watson, Deputy Clerks; and William N. Morris, Jr., Sheriff of Shelby County, Tennessee; whereupon the following proceedings were had and ordered to spread upon the minutes of the Court to-wit:

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ W. PRESTON BATTLE

J U D G E

3-13-69

Dear Sir,

I wish to inform the board that Mr. James Hunter Att. for Randolph in my Case
represents me in my capacity. He is the
writing this letter to the Court to file for
a Post Conviction Relief on the ally men
tioned and that upon hearing of Said
cause enlist His aid in My Case behalf.

Sincerely
James Earl Ray

FILED 4-1-69 2:55 P.M.
J. A. BLACKWELL, CLERK
BY [signature] D. C.

Mr. John Quinn
Attorney
Memphis, Tennessee 3-31-69

Dear Sir:

Mr. Richard J. Ryan of Memphis, Tenn.
is attorney who represents me in criminal
proceedings. Therefore I would appreciate it
if you would let him in to consult with me
on legal matters.

Thanks
James E. Ray
#03.

Filed
4-7-69
Washington D.C.
9:47 AM
in Court

FRIDAY, APRIL 4, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit:

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE
VS
JAMES EARL RAY,
Defendant

NO. 16645

FILED Apr 4 1969
J. A. BLACKWELL, CLERK
BY [illegible] D. C.

O R D E R

This cause having come to the attention of this Court, and it appearing to the Court that the Honorable Richard J. Ryan is now representing the above styled defendant;

AND IT FURTHER APPEARING TO THE COURT that an Order from this Court is necessary for the said attorney to visit and consult with his client, James Earl Ray, in the State Penitentiary at Nashville, Tennessee, said consultation being of a legal necessity to the defendant;

AND IT FURTHER APPEARING TO THE COURT that the Honorable Richard J. Ryan is a member in good standing of the Tennessee Bar, practicing in Shelby County, Tennessee.

IT IS THEREFORE ORDERED:

That the Warden of the State Penitentiary or any other person charged with the care and custody of the defendant is hereby directed to permit the Honorable Richard J. Ryan to visit and consult with his client as above styled.

Arthur C. Faquin Jr.
ARTHUR C. FAQUIN, JUDGE
DIVISION II
CRIMINAL COURT OF SHELBY COUNTY,
TENNESSEE
by interchange for Division III
4/4/69

Whereupon Court adjourned until Monday morning at 9:30 o'clock.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE

127

WEDNESDAY, APRIL 16, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE

VS B-16645 MURDER IN THE FIRST DEGREE

JAMES EARL RAY
with aliases

It is ordered by the Court that the Motions pending in the above cause be reset to May 26, 1969.

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE

TUESDAY, MAY 6, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE * NO. 16645 Murder First Degree

VS. * NO. 16819 Carrying Dangerous Weapon

JAMES EARL RAY
Alias Eric Starvo Galt, * 2789741
Alias John Killard,
Alias Harvey Lowmeyer, *
Alias Harvey Lowmyer.
*

ORDER APPOINTING ATTORNEYS "AMICI CURIAE"

This cause came on this day to be heard by the Court on its own motion from all of which it appears to the Court:

That certain Contempt of Court matters are pending in this Court which necessitate further proceedings in this Court.

It, therefore, further appears to the Court and it is the Court's desire and opinion that it should appoint certain attorneys as "amici curiae" for the purpose of assisting and advising with the Court with regard to these proceedings.

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that Don G. Owens, Lucius E. Burch, Jr., J. Alan Hanover, Cooper Turner, Jr., James D. Causey, Leo Bearman, Jr., and Lee A. Hardison, attorneys and members of the Memphis and Shelby County Bar Association, be and they are hereby appointed "amici curiae" by this Court .

IT IS FURTHER ORDERED AND ADJUDGED that the attorneys aforesaid be and they are hereby directed to investigate, assist and advise with the Court with regard to these further proceedings, and otherwise assist the Court as may be expedient or necessary.

ENTERED this the 6 th day of May, 1969.

Arthur C. Faquin J.
Judge, Division II
Criminal Court
By interchange for Division III

WHEREUPON COURT ADJOURNED UNTIL TOMORROW MORNING AT 9:30 O'CLOCK.

/s/ ARTHUR C FAQUIN JR,
JUDGE BY INTERCHANGE

THURSDAY, MAY 8, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding; by interchange;
whereupon the following proceedings were had to-wit:

FILED 5-8-69
J. A. BLACKWELL, CLERK
BY G. C. Cohan D. C.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS NO. 16645

JAMES EARL RAY,

Defendant

ORDER

This cause having come to the attention of this Court, and it now appearing to this Court that the Honorable J. B. Stoner is now assisting the Honorable Richard J. Ryan as co-counsel in the representation of the above styled defendant;

AND IT FURTHER APPEARING TO THE COURT that an Order has heretofore been entered in this cause by this Court to the effect that the Honorable Richard J. Ryan be permitted to visit and consult with his client, James Earl Ray, in the State Penitentiary at Nashville, Tennessee;

AND IT FURTHER APPEARING TO THE COURT that the Honorable J. B. Stoner should be accorded the same privilege, said consultation being a legal necessity to the defendant.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

That the Warden of the State Penitentiary or any other person charged with the care and custody of the defendant is hereby directed to permit the Honorable J. B. Stoner to visit and consult with the defendant as above styled.

Arth C. Jr

ARTHUR C. FAQUIN, JUDGE
DIVISION II
CRIMINAL COURT OF SHELBY COUNTY
TENNESSEE
By interchange for Div. III
5/8/69

WHEREUPON COURT ADJOURNED UNTIL TOMORROW MORNING AT 9:30 O'CLOCK.

/s/ Arthur C Faquin Jr,
JUDGE

150

3-. 6-69

Hon. Judge W. Preston Bell
Judge of the Criminal Court
Knoxville Tennessee.

I would respectfully request this court to treat this letter as a legal notice, we are about to ask for a reversal of the 99 year sentence pittman received in Sevier county court. I understand on one avenue of appeal, I have only 30 days in which to file a writ of error, & have proper action set aside. That is the appeal route to which I allude the court.

I also would like to bring to the attention of the Knoxville Court, That Mr. Perry Farmer, the attorney who was supposed to be representing me on this charge, withdrew in open court.

Or, That since he "Mr. Farmer" was receiving my funds to help prepare case for trial, and he did not, that he should be required to use his own funds, he requested court to appoint counsel to help defend case. The court appointed public defender to represent case and assist Mr Farmer.

That Mr. Farmer said in open court he did not want or expect to receive, a cent for his efforts.

I think from Mr. Perry Farmer statement to the press that he had a contract from me and Mr William B Hill, "representing" the one for $4-10,000, and that he was now to receive $150 000, should be set the above fact straight Mr Farmer told the court.

There is by Louis E. Ray in turn has not personally received a cert from Mr. William B. Hill.

This may reason for bringing the situation back to the attention of the court in which I would respectfully move that the court appoint attorney, or Public Defender to assist me in the preceding I have no stable income nor have I received any funds from any source to engage Counsel.

Petitioner asks this Hon'd assist, as I hereby request the court, that I be personally present at the hearing, and to assist Court appointed Counsel so that there be no repetition of Mr. Louis Torrence actions.

Respectfully

Louis Earl Ray
Station A-West
777 S.B. Hwy 3
Nashville, Tenn. 37203.

FILED 4-1-69 2 P.M. 56
J. A. BLACKWELL, CLERK
BY [signature] D. C.

I, JAMES A. BLACKWELL, HEREBY CERTIFY THAT THE DATE WHICH APPEARS AT THE TOP OF THIS LETTER, ON THE FIRST PAGE, WHICH HAS BEEN OBLITERATED BY PUNCHING THE HOLE FOR INSERTION OF THIS LETTER IN THE JACKET, IS 3-26-69.

J. A. BLACKWELL, CRIMINAL COURT CLERK

WITNESS

WITNESS

DATE

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

JAMES EARL RAY,

Defendant

NO. 16645

FILED 4-7-69 11:44 A.M.
J. A. BLACKWELL, CLERK
BY [signature] D. C.

AMENDED AND SUPPLEMENTAL MOTION FOR A NEW TRIAL

Comes now JAMES EARL RAY, the defendant in the above styled cause, by and through his attorneys Richard J. Ryan, J. B. Stoner, and Robert W. Hill, Jr., and incorporates herein by reference letters asking for a new trial, especially that communication addressed to Judge W. Preston Battle dated March 26, 1969, and refers to it herein as though it were copied verbatim, said letter being in the office of the Clerk of Criminal Court of Memphis, Shelby County, Tennessee, and he hereby amends and supplements said letters to the effect that he moves this Honorable Court to set aside his waiver, his plea of guilty, and his conviction and grant him a new trial pursuant to and in accordance with Section 17-117 of the Tennessee Code Annotated.

And for further grounds of this Motion for a New Trial your defendant would state that the said waiver, plea, and conviction were the result of your defendant being deprived of legal counsel in violation of the Fourteenth and Sixth Amendments to the United States Constitution and submits the followingfacts in support thereof:

I.

Defendant would show that he and his two prior attorneys in this above styled cause entered into contracts with the author William Bradford Huie while your defendant was in the Shelby County jail awaiting trial, said contracts being primarily to sell the publishing and movie rights concerning defendant's case; that this sale was to made to the said William Bradford Huie for substantial sums of money, evidenced by Exhibits Nos. 1, 2, 3, 4, 5, 6 and 7 which are attached hereto and made a part of this Motion.

II.

Defendant alleges that the said contract and letters contained in Exhibits Nos. 1, 2, 3, 4, 5, 6 and 7, which are attached hereto and made part of this Motion, establish a conflict of interest between him, the defendant, and his two prior attorneys; that defendant would have no story to sell and no movies with publishing rights to convey if he were allowed to take the witness stand; that such an action on his part would allow all facts in this cause to become a matter of public record for the free use of all.

III.

Defendant alleges that in the establishment of conflict of interest between defendant and his two prior attorneys, as evidenced by the attached exhibits, that the said prior attorneys actually represented William Bradford Huie and their own financial interests and not his, your defendant's. Defendant alleges that there would be no profit to anyone if he persisted in his "Not Guilty" plea; that your defendant was pressured and induced into entering a plea of "Guilty" and respectfully directs the Court's attention to Exhibits No. 6 and No. 7.

IV.

Your defendant is informed, and therefore alleges, that the author William Bradford Huie made the statement that your defendant "Must not take the witness stand in his expected trial, because if the defendant did take the witness stand, then he (William Bradford Huie) would have no book".

V.

That defendant's failure to have legal counsel as guaranteed by the said Fourteenth and Sixth Amendments to the United States Constitution and Article I Section 9 of the State of Tennessee Constitution is in reality a greater disservice to him, the defen-

dant, than having incompetent counsel and is a gross denial of due process and effective representation of consel so as to be such as to make defendant's plea of "Guilty" a farce, a sham, and a mockery of justice.

VI.

That defendant's second attorney in this cause pressured him, and he, the defendant, under duress due to this pressure, entered a plea of "Guilty" due to this conflict of interest between said attorney and defendant and for the sole financial gain of the said attorney, as evidenced by defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6 and 7 which are hereto attached and made a part hereof.

VII.

That for the above enumerated reasons and other good and sufficient reasons to be shown upon the hearing of this Motion, defendant requests a hearing on this Motion and to be allowed to introduce evidence in support thereof.

VIII.

That for these and other good and sufficient reasons to be shown upon the hearing of this Motion, defendant respectfully moves that the judgment heretofore entered be set aside and the case be restored to the trial calendar.

James Earl Ray
JAMES EARL RAY

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Comes now the affiant, JAMES EARL RAY, and makes oath as follows:

The Amended and Supplemental Motion for a New Trial has been carefully read by me and each and every fact stated therein is true and correct in each and every statement and implication.

James Earl Ray
JAMES EARL RAY

Subscribed and sworn to before me this 5 day of March, 1969.

[illegible]
NOTARY PUBLIC

My commission expires: 24 Jan 1970

155

Respectfully submitted,
ATTORNEYS FOR THE DEFENDANT:

RICHARD J. RYAN

J. B. STONER

ROBERT W. HILL, JR.

I, RICHARD J. RYAN, certify that I have this day, April 7, 1969, delivered personally into the hands of the Office of the Attorney General a copy of the foregoing Motion.

RICHARD J. RYAN

Exhibit #1

AGREEMENT

AGREEMENT entered into this 6 day of July, 1969, by and between William Bradford Huie (herein "Author"), James Earl Ray (herein "Ray") and Arthur J. Hanes (herein "Hanes").

1. This Agreement is entered into with reference to the following:

(a) Author is and has been for many years a writer of international reputation and has had numerous books and articles published and serialized throughout the world.

(b) Ray has been charged with the murder of Martin Luther King, Jr.; and it is anticipated that a trial (herein "the Trial") of Ray for such murder will be held in the State of Tennessee in the near future.

(c) Hanes is an attorney at law licensed to practice as such in the State of Alabama; Ray and Hanes and each of them represent that Ray has engaged Hanes to act as his attorney in the Trial, that Hanes has accepted such engagement and that he will so act.

(d) Author proposes to write literary material dealing with the assassination of Martin Luther King, Jr., the alleged participation of Ray therein, and the Trial, for the purpose of establishing the truth with respect thereto.

(e) Ray and Hanes are desirous of assisting Author in such writing by furnishing to him such material relative to the subject matter of such writing which Author might not otherwise be able to obtain.

2. Ray and Hanes and each of them agree that they will use their best efforts to arrange as many personal interviews between Author and Ray and on the earliest occasions which may be permitted by the authority having jurisdiction over the institution in which Ray is then confined; and that they and each of them on such occasions and otherwise, through Hanes or other persons, will impart to Author such information (herein the "Private Material") with respect to the assassination of Martin Luther King, Jr., the alleged participation of Ray therein, and the life and activities of Ray, as they or either of them may have or reasonably may be able to obtain; and that Author shall have the right to use the Private Material or any part thereof in his writing of said literary material.

3. The literary material which Author proposes to write as aforesaid, including such of the Private Material as Author in his sole discretion elects to use, is hereinafter referred to as "said work". Author shall have, and if and to the extent that they or either of them have any rights, titles, or interests therein, Ray and Hanes, and each of them, give, sell, assign and transfer to Author, forever, the following absolute, exclusive and unqualified rights: the right to write said work and to use the same, in whole or in part, in whatever manner Author in his sole discretion may elect, including but not limited to the right to make and/or cause to be made magazine, book, dramatic, motion picture, television and/or other

adaptations of every kind, of said work or any part thereof, and for the purpose of making any of said adaptations Author or his designees may change, interpolate in, add to or subtract from or make foreign language versions of, said work, to such extent as Author in his sole discretion may elect; the sole and exclusive right to make motion pictures and television pictures of all kinds based in whole or in part on said work and/or containing characters of said work (including remakes of and/or sequels to any such pictures), with the right to sell, lease, license and generally deal in the same throughout the world, forever; the right to use the name, voice and/or likeness of Ray and Hanes, or either of them, in or as the title of said work; the right to obtain copyright in the name of Author or otherwise in all countries throughout the world, in and to said work and/or any of said adaptations; the sole and exclusive right to negotiate for, execute and deliver, in the name of Author alone or in the names of Author, Ray, and Hanes, or any of them (but without consulting with or obtaining the approval or consent of Ray or Hanes thereto), such licenses, grants, agreements, and contracts with respect to said work, any of said adaptations, and/or any of the rights hereinabove set forth, as Author in his sole discretion may elect; for this purpose (but without limiting the generality of the foregoing) Ray and Hanes and each of them hereby irrevocably appoint Author the true and lawful attorney of them and each of them to negotiate for, execute and deliver, in the names of Author, Ray and Hanes, or any of them, as Author may elect, any and all such licenses, grants, agreements and contracts.

4. Without in any manner limiting the generality of the foregoing, Ray and Hanes and each of them agree, upon demand, to execute and deliver to Author or his designees any and all such instruments, including but not limited to assignments, consents, approvals, and releases, which in the judgment of Author may be necessary or desirable to implement, effectuate or protect the rights of, or rights, titles and interests herein given or agreed to be given to, Author with respect to said work and/or any of said adaptations.

WBH
a-2-14

5. In full consideration for all rights, titles and interests given or agreed to be given by Ray and Hanes to Author hereunder and for all agreements and acts of Ray and Hanes hereunder or pursuant hereto, Author agrees to pay to Ray and Hanes each, thirty per cent of the gross receipts from said work. All receipts shall be paid to and collected by the Author's agent, Ned Brown, Inc., 315 South Beverly Drive, Beverly Hills, Calif., and said Author's agent shall make payments to Ray and Hanes each, or their respective designees or assignees, within ten days after receipt. The Author's agent shall also, at quarterly intervals, furnish statements reflecting all transactions in reasonable detail. The Author's agent shall also, within ten days after their completion, furnish to Ray and Hanes copies of any and all contracts entered into by the Author.

6. Notwithstanding anything elsewhere herein contained, the parties expressly understand and agree as follows:

(a) Author has no obligation of any kind to Ray, Hanes or others to write or make or cause to be written or made said work or any of said adaptations, or to use any of the Private Material in said work or said adaptations. Author has not represented, warranted or agreed and does not represent, warrant or agree that if he does write or make or cause to be written or made said work or any of said adaptations he will in fact enter into any license, grant, agreement or contract relative thereto, or that in any event there will be any Author's net profits from said work in any particular amount or at all.

(b) ~~In the event Author does not have an interview with Ray within 30 days after the date of this Agreement or the date Ray first becomes eligible for parole hereunder, whichever is the later date, Author shall have the right and option, by written notice to Ray and Hanes, to terminate the agreement and all of the respective rights and obligations of the parties hereunder. In the event such notice is given, notice to Ray shall be deemed to have been sufficiently given if mailed or delivered to the warden or other person in charge of the institution in which Ray may be confined at the time of the giving of such notice.~~

(c) Author shall receive credit for the writing for said work and/or said adaptations in such manner as Author may elect.

7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, executors, administrators, heirs, legatees, and assigns. Author may transfer or assign this Agreement, all or any part of the rights, titles and interests herein given or agreed to be given to Author hereunder, and/or all or any part of any rights herein referred to, to any persons, firms and/or corporations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

William Bradford Huie

William Bradford Huie

Author

James Earl Ray

James Earl Ray

Ray

Arthur J. Hanes

Arthur J. Hanes

Hanes

SS:

On July 15, 1968 before me, the undersigned [illegible] personally appeared WILLIAM BRADFORD known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESSETH my hand and official seal.

Arthur J. Hanes

SS:

On Aug 1, 1968 before me, the undersigned [illegible] personally appeared JAMES EARL RAY known to me to be the person whose name is subscribed to the within instrument and acknouledged that he executed the same.

WITNESSETH my hand and official seal.

Arthur J. Hanes, Jr

SS:

On July 8, 1968 before me, the undersigned [illegible] personally appeared ARTHUR J. HANES known to me to be the person whose name is subscribed to the within instrum ent and acknouleded that he executed the same.

WITNESSETH my hand and official seal.

Arthur J. Hanes, Jr.

WILLIAM BRADFORD HUIE

HARTSELLE, ALABAMA
July 8, 1968

Mr. Arthur J. Hanes
Attorney at Law
617 Frank Nelson Building
Birmingham, Alabama 35203

Dear Art:

This letter is meant to be part of our Agreement, signed on this date, and is an extension and clarification of Article 5 of said Agreement.

It is known and understood by you, Ray, and me that all advances made by publishers to an Author on a book contract are merely loans, returnable in full if, for any reason whatever, the book is not completed and accepted; and these advances or loans become income to the Author only after completion of the book and after its acceptance by the publisher.

Therefore, any monies paid by me to you and Ray while I am researching and writing this book are, in effect, loans from me to the two of you. However, under the circumstances, I am willing to consider these monies or advances made by me to the two of you non-returnable, if you and Ray will agree that these payments or advances shall not exceed the following schedule of payments:

1. On the signing of the first, or book, contract, I will pay you the sum of $10,000.00. It is assumed that this will be on or about July 15th, not later than July 20th.

2. On the first day after Ray has been lodged in a jail in the United States, I will pay $5000. It is assumed that this will be about August 1st.

3. One month after Ray has been lodged in the United States, I will pay $5000.

4. Similarly, a month later, another $5000.

5. Similarly, a month later, another $5000.

6. Similarly, a month later, another $5000.

7. Similarly, a month later, another $5000.

In short, on signing, on Ray's return, and during the first five months after his return, I am obligating myself to pay you and Ray, under terms of our Agreement, to pay you and Ray a total of $35,000. All payments, as per our Agreement, will be made to you by my agent, Ned Brown, and these payments in equal amounts, will be charged against whatever may become due to you and Ray under the Agreement.

Five months after Ray's return, assuming that I receive all the cooperation from you and Ray guaranteed by the Agreement, I expect to have completed the book, or to have obtained legal extentions from the publisher, you and Ray. Normally a publisher has 30 days in which to accept or reject the book. Once the book has been accepted, the entire publishing advance will be paid; and thereafter, all payments made to me, from any and all sources, will be income, not loans; and this income will be divided and paid promptly as provided under the Agreement.

Your signature, along with that of Ray affixed by you under your Power of Attorney, will attest Agreement.

William Bradford Huie

William Bradford Huie

Arthur J. Hanes

Arthur J. Hanes

James Earl Ray

James Earl Ray

STATE OF TENNESSEE
COUNTY OF SHELBY

WHEREAS, William Bradford Huie ("Author"), JAMES EARL RA Y (Ray") and ARTHUR J. HANES ("Hanes"), did, on or about July 8th, 1968, enter into what has been called a "Basic Agreement" relating to the writing of certain literary material by Author and the grant of certain rights to Author by Ray and Hanes; and

WHEREAS, On and after July 5th, 1968, by assignment agreements, Ray assigned to Hanes at first a portion of his interest in any moneys accruing to Hanes under said Basic Agreement, and later the said Ray assigned to the said Hanes all of his interest in said moneys so accruing under any agreement or agreements with said Author; and

WHEREAS, by an instrument designated "Amendatory Agreement" on the 29th day of January, A. D., 1968, also entered into by and between the said Author and the said Ray and Hanes, the said Hanes did by said Amendatory Agreement transfer and assign to Ray all of his (Hanes') right, title and interest in, to and under said Basic Agreement and the Assignment Agreements, including but not limited to any and all moneys and other compensation of any kind to which the said Hanes may now or hereafter be entitled thereunder; and

WHEREAS, Percy Foreman, a duly licensed and practicing attorney at law of H ouston, Texas, has been admitted by the trial judge at Memphis, Tennessee, to its bar for the purpose of representing the said James Earl Ray in the trials of cases pending before said judge, said admission having been at the request in open court on November 12, 1968 made by the said James Earl Ray, and the said Ray desires to secure the fees of the said attorney for his said defense, and desires to assign to the said Percy Foreman all of the rights, title and interest he may have or heretofore at any time may have had under any contract or contracts with the said Author and or as assignee of any rights at

any time held by the said Hanes, and any and all rights of whatsoever kind or character he may have as a result of the writings of said author and of their subsequent publication, including the right to receive, accept and retain the proceeds derived from said rights in his own name absolutely, now, therefore,-

KNOW ALL MEN BY THESE PRESENTS:

THAT I, JAMES EARL RAY, presently in Memphis, Shelby County Tennessee, for and in consideration of monies heretofore advanced by him in my behalf, and, further, in consideration of his services heretofore rendered in my behalf and his agreement to represent me at the trial or trials of any cases presently pending against me in Shelby County, Tennessee, have signed over, given, conveyed and transferred, and do, by this instrument here-now give, assign, set over and transfer to PERCY FOREMAN, of Houston, Harris County, Texas, a ll of my aforesaid right, title and interest in a nd to the proceeds that would otherwise have accrued to me pursuant to said Basic Agreement andto said Amendatory Agreement, and to all of my rights thereunder as well as to any other right or rights that might be or have been mine because of the writing and subsequent purblication of such writing by said Author, whether included in said assignment by the said Hanes to me under the Amendatory Agreement of January 29th, 1969, or otherwise, said assignment and transfer herein to the said Percy Foreman being a bsolute and irrevocable, and I here now authorize and direct any person , firm or corporation having funds due and owing me by virtue of said Basic Agreement or any subsequent as - signments, including said Amendatory Agreement, or otherwise owing me because of the writings of said Author, to pay the same to the said Percy Foreman, at his office in Houston, Harris Co., Texas, in his own name and as his own propefty.

IN WITNESS Whereof, I have signed this conveyance, assignment and contract at Memphis, Shelby Co., Tennessee, this the

JEB to PP - 2 [illegible]

3rd day of February, A. D., 1969.

JAMES EARL RAY

THE STATE OF TENNESSEE |

COUNTY OF SHELBY |

BEFORE ME, the undersigned Notary Public in and for Shelby County, Tennessee, on this day personally appeared JAMES EARL RAY, known to me to be the person whose name is signed to the foregoing instrument, and he acknowledged to me that the executed the same for the purpose and consideration therein expressed.

GIVEN under my hand and seal of office at Memphis, Tennessee, this 3rd day of February, A. D., 1969.

Notary Public in and for Shelby Co., Tennessee.

My commission expires April 28, 1969.

JJS ltr 12/6/68

Ex #4

AMENDATORY AGREEMENT

AMENDATORY AGREEMENT entered into this 29 day of December, 1968, by and between WILLIAM BRADFORD HUIE (herein "Author"), JAMES EARL RAY (herein "Ray") and ARTHUR J. HANES (herein "Hanes").

(1) This Amendatory Agreement is entered into with reference to the following:

(a) The parties hereto have entered into a certain Agreement and letter agreement supplementary thereto, both dated July 8, 1968 (herein "said Basic Agreement"), relating to the writing of certain literary material by Author and the grant of certain rights to Author by Ray and Hanes.

(b) Ray and Hanes have entered into a certain document entitled "Agreement" dated July 5, 1968 (herein the "Assignment Agreement") under which Ray assigned to Hanes a portion of his interest in any moneys accruing to Hanes under said Basic Agreement.

(c) Under and pursuant to said Basic Agreement Author has in fact written and is presently writing certain literary material with respect to the murder of Martin Luther King, Jr., Ray's alleged participation in and Ray's coming trial for such murder, and the life and activities of Ray, some of which material has been and other of which will be published in issues of Look Magazine by Cowles Communications, Inc. pursuant to a contract with Author, and other of which material will be published in book form by Dell Publishing Co., Inc. pursuant to a contract with Author (the working title of which book is "THEY SLEW THE DREAMER").

(d) At the time of the execution of said Basic Agreement and for some period thereafter, Hanes was engaged to act and did act as attorney for Ray in connection with Ray's coming trial, but such engagement has been terminated, Hanes no longer represents Ray as his attorney in any capacity, and Percy Foreman, an attorney at law, has been substituted to act and now acts as attorney for Ray.

(e) The parties are desirous of effecting certain releases and other acts with respect to said Basic Agreement as hereinafter provided.

(2) Hanes does hereby transfer and assign to Ray all of Hanes' right, title and interest in, to and under said Basic Agreement and the Assignment Agreement, including but not being limited to any and all moneys and other compensation of any kind to which Hanes may now or hereafter be entitled thereunder. Hanes further agrees that he shall not hereafter write or authorize to be written any literary material relating to the murder of Martin Luther King, Jr., Ray's alleged participation in or Ray's coming trial for such murder, or the life or activities of Ray, and that he shall not hereafter make or authorize to be made magazine, book, dramatic, motion picture, television and/or other adaptation of any kind relating to any such subjects.

(3) Hanes hereby forever releases and discharges Ray and Author and each of them from any and all claims, demands, actions and causes of action which Hanes, but for this release, might now have or hereafter might have against them or either of them under or pursuant to said Basic Agreement, the Assignment Agreement or any other agreements or contracts, written or oral, of any kind or nature whatsoever heretofore entered into between said parties or any of them with respect to the subject matter of said Basic Agreement. Without limiting the foregoing, Hanes does hereby acknowledge that he has received from Author and Ray any and all

moneys and other compensation which Hanes heretofore may have been entitled to receive from Author or Ray under said Basic Agreement, the Assignment Agreement or otherwise.

(4) Author and Ray, and each of them, do hereby forever release and discharge Hanes from any and all claims, demands, actions and causes of action which they or either of them, but for this release, might now have or hereafter might have against Hanes under or pursuant to said Basic Agreement, the Assignment Agreement or any other agreements or contracts, written or oral, heretofore entered into between said parties or any of them with respect to the subject matter of said Basic Agreement.

(5) The parties hereby agree that for any and all purposes Hanes shall no longer be or be considered as a party to said Basic Agreement, and shall have no further right, title or interest of any kind or nature whatsoever thereunder or under the Assignment Agreement or any other agreements or contracts, written or oral, heretofore entered into between the parties or any of them, with respect to the subject matter of said Basic Agreement. Hanes hereby agrees to execute and deliver to Author and/or Ray upon demand any further instruments necessary or desirable to implement or effectuate this Amendatory Agreement.

(6) Ray does hereby acknowledge and confirm that as of the date hereof there are no moneys or other compensation of any kind now due or payable to Ray from Author under or pursuant to said Basic Agreement, the Assignment Agreement, or otherwise.

(7) Author and Ray hereby agrees that paragraph 5. of said Basic Agreement shall be and the same hereby is amended to provide that all acts therein specified to be done by Author's agent shall be done, instead, by Author, and to provide further that all payments to be made and all statements, notices and other documents to be furnished or given to Ray shall be made, furnished

or given to Ray in care of Ray's Attorney, Percy Foreman, Esq., at 1116 Capitol Avenue, Huston, Texas, 77002.

(8) The parties do hereby confirm and agree that except as hereinabove expressly set forth said Basic Agreement is in full force and effect and has not been and is not hereby altered, amended or modified in any manner or particular whatsoever, that Author has and shall continue to have all of the rights, titles and interests given or granted, or agreed to be given or granted, to him by Ray and/or Hanes under said Basic Agreement, and that the writing by Author and the publication by Cowles Communications, Inc. in Look Magazine and by Dell Publishing Co., Inc. of certain literary materials, hereinabove referred to, has been and is authorized under said Basic Agreement and such rights, titles and interests.

(9) This Amendatory Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, executors, administrators, heirs, legatees and assigns. Author may transfer or assign this Amendatory Agreement, and/or all or any part of the rights, titles and interests herein referred to, to any person, firm or corporation.

IN WITNESS WHEREOF the parties hereto have executed this Amendatory Agreement as of the date first above written.

William Bradford Huie
William Bradford Huie, "Author".

James Earl Ray
James Earl Ray, "Ray".

APPROVED AS TO FORM
AND CONTENT:

Percy Foreman
Percy Foreman, as Attorney
for James Earl Ray

Arthur J. Hanes
Arthur J. Hanes, "Hanes".

Ex 15

WILLIAN BRADFORD HUIE

HARTSELLE, ALABAMA

March 7, 1969

Dear James Ray....

Enclosed you will find:

1. The original agreement signed by you, Mr. Hanes, and me.

2. The letter attached to that agreement by which I agreed to advance $35,000 in anticipation of earnings from this project.

3. Receipts from your attorneys for the $40,000 which I have advanced to date. ($30,000 to Mr. Hanes and $10,000 to Mr. Foreman.)

I am also having sent to you, from my attorneys, the Supplementary Agreement which was signed by Mr. Foreman, Mr. Hanes, you and me. I suggest that you sign another copy of this for Mr. Foreman, so that we can have two copies bearing all four original signatures.

This gives you copies of all agreements existing between you and me; and you will note that I have followed them to the letter. I will continue to do so.

To this date this project has earned $30,000. Additional earnings will shortly be received from LOOK magazine, from foreign magazines, and from Dell Publishing Company, which will publish the book in May.

LOOK Magazine will publish my next article on April 15th. The book, titled HE SLEW THE DREAMER, will be published about May 15th.

I am currently negotiating with Carlo Ponti, the film producer, over picture rights. I'll keep you informed of developments.

As soon as you are moved to Nashville, I will attempt to see you....or rather we will attempt to get permission for you to see me. We need a picture of you to use on the front cover of the book.

Jerry keeps in touch with me; and if it is your desire you can count on me to keep in touch with you indefinitely. I'll help you in any way I can.

And of course I will keep both you and Mr. Foreman informed as to earnings.

Best wishes. B. Huie

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

MAIN AT RUSK

CA 4-9321

March 9th, '69

Mr. James Earl Ray,
Shelby County Jail,
Memphis, Tennessee.

Dear James Earl:

You have heretofore assigned to me all of your royalties from magazine articles, book, motion picture or other revenue to be derived from the writings of Wm. Bradford Huie. These are my own property unconditionally.

However, you have heretofore authorized and requested me to negotiate a plea of guilty if the State of Tennessee through its District Attorney General and with the approval of the trial judge would waive the death penalty. You agreed to accept a sentence of 99 years.

It is contemplated that your case will be disposed of tomorrow, March 10, by the above plea and sentence. This will shorten the trial considerably. In consideration of the time it will save me, I am willing to make the following adjustment of my fee arrangement with you:

If the plea is entered and the sentence accepted and no embarassing circumstances take place in the court room, I am willing to assign to any bank, trust company or individual selected by you all my receipts under the above assignment in excess of $165,000.00. These funds over and above the first $165,000.00 will be held by such bank, trust company or individual subject to your order.

I have either spent or obligated myself to spend in excess of $14,000.00, and I think these expenses should be paid in addition to a $150,000.00 fee. I am sure the expenses will exceed $15,000.00 but I am willing to rest on that figure.

Yours truly,

Percy Foreman

PF-4 James Earl Ray

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

MAIN AT RUSK

CA 4-9321

March 9, 1969

Mr. James Earl Ray,
Shelby County Jail,
Memphis, Texas.

Dear James Earl:

You have asked that I advance to Jerry Ray five ($500.00) of the "$5,000.00", referring to the first five thousand dollars paid by Wm. Bradford Huie. On January 29th, Mr. Huie advanced an additional $5,000.00. At that time I had spent in excess of $9,500.00 on your case. Since then, I have spent in excess of $4,000.00 additional.

But I am willing to advance Jerry $500.00 and add it to the $165,000.00 mentioned in my other letter to you today. In other words, I would receive the first $165,500.00. But I would not make any other advances - just this one $500.00.

And this advance, also, is contingent upon the plea of guilty and sentence going through on March 10, 1969, without any unseemly conduct on your part in court.

Yours truly,

Percy Foreman

PF-4

P.S. The rifle and the white mustang are tied up in the suit filed by Renfro Hays. Court costs and attorneys fees will be necessary, perhaps, to get them released. I will credit the $165,500.00 with whatever they bring over the cost of obtaining them, if any.

Percy Foreman

James Earl Ray

Percy Foreman

IN THE CRIMINAL COURTS OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE I

VS. I NO. 16645

JAMES EARL RAY I

Defendant. I

FILED 5-13-69
J. A. BLACKWELL, CLERK
BY _____ D. C.

MOTION TO STRIKE

Comes now Phil M. Canale, Jr., District Attorney General for the Fifteenth Judicial Circuit of Tennessee, and moves the Court to strike and hold for naught the Motion of the defendant, James Earl Ray, entitled "Amended and Supplemental Motion for a New Trial" and any incorporates therein purporting to be a Motion for a New Trial in this cause and in support thereof would show:

I

For answer to the Motion of the defendant herein, State of Tennessee hereby denies each and every allegation of fact as well as the conclusion of facts and law alleged in the said Motion.

II

State of Tennessee would further show that the defendant, James Earl Ray, pleaded guilty on March 10, 1969, in Division III of the Criminal Courts of Shelby County, Tennessee.

That at the entry of the guilty plea and for some time prior thereto, the defendant, James Earl Ray was represented by his personally selected and retained counsel, Percy Foreman, a copy of the minute entry of November 12, 1968, reflecting the employment of Percy Foreman by the defendant, James Earl Ray, is attached hereto as Exhibit 1.

That the defendant, James Earl Ray, in person and through his attorney, filed a Petition for waiver of trial and request for acceptance of plea of guilty, a copy of which is attached hereto as Exhibit 2.

An Order authorizing waiver of trial accepting plea of guilty was entered by Judge W. Preston Battle, the presiding judge on March 10, 1969, a copy of which is attached hereto as Exhibit 3.

The defendant, James Earl Ray, was extensively and comprehensively examined by the Honorable W. Preston Battle, presiding judge, before the entry of the guilty plea, a certified copy of the transcript of the interrogation by Judge Battle is attached hereto as Exhibit 4.

That a jury was empaneled, sworn, evidence of witnesses presented, stipulations, and a plea of guilty was entered in the presence of the jury and the jury verdict approved the guilty plea as to the State's recommendation of ninety-nine (99) years confinement in the State Penitentiary at Nashville, Tennessee, to the offense of Murder First Degree, and the defendant, James Earl Ray, was sentenced by the Presiding Judge W. Preston Battle, a certified copy of the minutes of Division III of the Criminal Courts of Shelby County, Tennessee, so reflecting, is attached hereto as Exhibit 5.

The State of Tennessee moves the Court to strike the defendant's Motion and any incorporates thereto on the grounds that there is no Motion for a New Trial from a guilty plea.

Phil M. Canale by RKO

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL
FIFTEENTH JUDICIAL CIRCUIT
STATE OF TENNESSEE

TUESDAY, NOVEMBER 12, 1968

Thereupon the Hon. W. Preston Battle, Judge, assumes the Bench, whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE
VS B-16645, 16819
JAMES EARL RAY, aka

MURDER FIRST DEGREE & CARRYING A DANGEROUS WEAPON

Comes the Attorney General on the part ofthe State and the defendant in proper person and by counsels of record, Mr. Arthur Hanes, Sr., & Mr. Arthur Hanes, Jr., whereupon there comes on to be heard the Attorneys' Motion to be allowed to withdrew from the above causes, which Motion having been fully heard and underttood by the Court is GRANTED, whereupon it is ordered by the Court that the names of Arthur Hanes, Sr., and Arthur Hanes, Jr., be removed from the Jackets in the above causes, and the name of Mr. Percy Foremon, be substituted in their steed.

STATE OF TENNESSEE
VS B-16645, 16819
JAMES EARL RAY, aka

MURDER FIRST DEGREE & CARRYING A DANGEROUS WEAPON

Comes the Attorney General on the part of the State and the defendant in proper person and by counsel of record, Mr. Percy Foreman, whereupon there comes on to be heard the defendant's Motion for First Continuance, which Motion having been heard and fully considered by the Court is GRANTED, whereupon it is ordered by the Court that the causes be reset to March 3, 1969, for trial. (Order to be entered later).

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

W Preston Battle
JUDGE

EXHIBIT 1

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STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing ONE (1) pages of writing contain a full,

complete, true and perfect copy of ~~all the proceedings had~~ the first continuance application and changing of attorneys in the case of the State of

Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL By: _____ D. C.

HOLIDAY PRESS — MEMPHIS

EXHIBIT 2

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

VS.

NO. 16645

JAMES EARL RAY
DEFENDANT

PETITION FOR WAIVER OF TRIAL AND REQUEST FOR ACCEPTANCE OF PLEA OF GUILTY

That my true full name is JAMES EARL RAY and I assert that all proceedings against me should be had in the name which I hereby declare to be my true name.

My attorney in the cause is PERCY FOREMAN, who was selected and retained by me,/who was appointed by the Court ~~xkxxxxxxxxx~~, to represent me in this cause. and Hugh Stanton, Sr., Public Defender,

I have received a copy of the indictment before being called upon to plead, and I have read and discussed it with my attorney, and believe and feel that I understand the accusation made against me in this case and in each case listed herein. I hereby waive the formal reading of the indictment.

I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the indictments, and believe and feel that my attorney is fully informed as to all such matters. My attorney has informed me at to the nature and cause of each accusation against me, and as to any and all possible defenses I might have in this cause.

My attorney has advised me as to the punishment provided by law for the offenses charged and embraced in the indictment against me. My attorney has further advised that punishment which the law provides for the crime with which I am charged in the indictment is as follows:

death by electrocution or confinement in the State Penitentiary for life or for some period of time over twenty (20) years

and if accepted by the Court and Jury my sentence on a plea of guilty will be:

confinement in the State Penitentiary for ninety-nine years (99).

It has been fully explained to me and I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees and this Court will provide me the right to a speedy and public trial by jury; the right to see and hear all witnesses against me; the right to use the power and process of the Court to compell the production of any evidence, including the attendance of any witness, in my favor; and the right to have the assistance of counsel in my defense at all stages of the proceedings.

In the exercise of my own free will and choice and without any threats or pressure of any kind or promises of gain or favor from any source whatsoever, and being fully aware of the action I am taking, I do hereby in open Court request the Court to accept my plea of guilty to the charges outlined herein. I hereby waive any right I may or could have to a Motion for a New Trial, and/or an appeal.

James Earl Ray
Defendant

Witness:
Percy Foreman

Hugh Stanton Sr.
Hugh Stanton Sr.

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STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing ONE (1) pages of writing contain a full,

complete, true and perfect copy of ~~all the proceedings had~~ Petition for Waiver of Trial and Request for Acceptance of Plea of Guilty in the case of the State of

Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL

By: _____ D. C.

HOLIDAY PRESS – MEMPHIS

EXHIBIT 3

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

VS NO. 16645

JAMES EARL RAY

DEFENDANT

ORDER AUTHORIZING WAIVER OF TRIAL AND ACCEPTING PLEA OF GUILTY

This cause came on for hearing before the Honorable W. PRESTON BATTLE, Judge of Division III, of the Criminal Court of Shelby County, Tennessee, on the petition of the defendant, JAMES EARL RAY, for Waiver of trial by jury and request for acceptance of a plea of guilty, said petition being attached hereto and incorporated by reference herein; upon statements made in open Court by the defendant herein; his attorneysof record; the District Attorney General/the Assistant AttorneysGeneral representing the State of Tennessee; and from questioning by the Court of defendant and his counsel in open Court; and

IT APPEARING TO THE COURT after careful consideration that the defendant herein has been fully advised and understands his right to a trial by jury on the merits of the indictment against him, and that the defendant herein does not elect to have a jury determine his guilt or innocence under a plea of Not Guilty; and has waived the formal reading of the indictment, AND:

IT FURTHER APPEARING TO THE COURT that the defendant intelligently and understandingly waives his right to a trial and of his own free will and choice and without any threats or pressure of any kind or promises, other that the recommendation of the State as to punishment; and does desire to enter a plea of guilty and accept the recommendation of the State as to punishment, waives his right to a Motion for a New Trial and/or an appeal.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the petition filed herein be and the same is hereby granted.

Enter this the 10th day of March, 1969.

W. Preston Battle
JUDGE

STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing ONE (1) pages of writing contain a full, complete, true and perfect copy of ~~all the proceedings had~~ Order authorizing Waiver of Trial and Accepting Plea of Guilty in the case of the State of

Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL By: _____ D. C.

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HOLIDAY PRESS - MEMPHIS

EXHIBIT 4

VOIR DIRE OF DEFENDANT ON WAIVER AND ORDER

JUDGE "James Earl Ray, stand."

JUDGE "Have your lawyers explained all your rights to you and do you understand them?"

DEFENDANT "Yes"

JUDGE "Do you know that you have a right to a trial by jury on the charge of Murder in the First Degree against you, the punishment for Murder in the First Degree ranging from Death by Electrocution to any time over twenty years? The burden of proof is on the State of Tennessee to prove you guilty beyond a reasonable doubt and to a moral certainty and the decision of the Jury must be unanimous both as to guilt and punishment?

In the event of a jury verdict against you, you would have the right to file a Motion for a New Trial addressed to the trial judge? In the event of an adverse ruling against you on your Motion for a New Trial, you would have the right to successive appeals to the Tennessee Court of Criminal Appeals and the Supreme Court of Tennessee and to file a petition for review by the Supreme Court of the United States? Do you understand that you have all these rights?"

DEFENDANT "Yes"

JUDGE "You are entering a plea of Guilty to Murder in the First Degree as charged in the Indictment and are compromising and settling your case on agreed punishment of ninety-nine years in the State Penitentiary. Is this what you want to do?"

DEFENDANT "Yes"

JUDGE "Do you understand that you are waiving, which means "giving up", a formal trial by your Plea of Guilty although the laws of this State require the prosecution to present certain evidence to a jury in all cases of Pleas of Guilty to Murder in the First Degree?

P.7

By your plea of guilty you are also waiving your rights to (1) Motion for a New Trial; (2) Successive Appeals to the Tennessee Court of Criminal Appeals and the Supreme Court of Tennessee; (3) Petition for Review by the Supreme Court of the United States.

By your plea of guilty you are also abandoning and waiving your objections and exceptions to all the Motions and Petitions in which the Court has heretofore ruled against you in whole or in part, among them being:

1. Motion to withdraw plea and quash indictment
2. Motion to inspect evidence
3. Motion to remove lights and cameras from jail
4. Motion for private consultation with attorney
5. Petition to authorize defendant to take depositions
6. Motion to permit conference with Huie
7. Motion to permit photographs
8. Motion to designate court reporters
9. Motion to stipulate testimony
10. Suggestion of proper name"

DEFENDANT "Yes"

JUDGE "Has anything besides this sentence of ninety-nine years in the penitentiary been promised to you to get you to plead guilty? Has anything else been promised you by anyone?"

DEFENDANT "No"

JUDGE "Has any pressure of any kind, by anyone in any way been used on you to get you to plead guilty?"

DEFENDANT "No"

JUDGE "Are you pleading guilty to Murder in the First Degree in this case because you killed Dr. Martin Luther King under such circumstances that would make you legally guilty of Murder in the First Degree under the law as explained to you by your lawyers?"

DEFENDANT "Yes"

LM

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P. 7

JUDGE "Is this Plea of Guilty to Murder in the First Degree with agreed punishment of ninety-nine years in the State Penitentiary, freely, voluntarily and understandingly made and entered by you?"

DEFENDANT "Yes"

JUDGE "Is this Plea of Guilty on your part the free act of your free will, made with your full knowledge and understanding of its meaning and consequences?"

DEFENDANT "Yes"

JUDGE "You may be seated."

STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee, do hereby certify that the foregoing THREE (3) pages of writing contain a full, complete, true and perfect copy of all the proceedings had Interrogation of defendant by Judge Battle in the case of the State of Tennessee, vs. Docket No. 16615

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis, this, the 12th day of MAY 1969

J. A. BLACKWELL, Clerk

SEAL By: D. C.

MOLICAT PRESS ~ MEMPHIS

MONDAY, MARCH 10, 1969

Court met pursuant to adjournment, the Hon. W. Preston Battle, Judge, presiding; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE
VS B-16645
JAMES EARL RAY,
alias, ERIC STARVO GALT
alias, JOHN WILLARD
alias, HARVEY LOWMEYER
alias, HARVEY LOWMYER

MURDER IN THE FIRST DEGREE

Comes the Attorney General on the part of the State and the defendant in proper person and by counsel of record, Mr. Percy Foreman and Mr. Hugh Stanton, Sr. When to try the above cause there comes a jury of good and lawful men to-wit: AMOS G. BLACK, JR., JOHN W. BLACKWELL, JAMES N. ABRAHAM, ROBERT S. ST. PIERRE, MILLER WILLIAMSON, J. PAUL HOWARD, RICHARD LEE COUNSELLOUR, JOE STOVALL, JR., JAMES R. PATE, JOHNNY SHAW, GUS CARIOTA, AND JAMES W. BALLARD, who were sworn well and truly to try the issue of traverse herein joined, a true deliverance make and a true verdict render according to the law and evidence. Thereupon the defendant on being arraigned at the bar of the Court and charged on the bill of indictment plead GUILTY to same, and for his trial put himself upon the Country and the Attorney General doth the like. Thereupon the Court proceeds with the hearing of testimony in the above cause, and after completion of testimony of five witnesses, and a lengthy stipulated statement by Assistant Attorney General James Beasley, the Jury upon their oath do say: WE THE JURY FIND THE DEFENDANT JAMES EARL RAY GUILTY OF MURDER IN THE FIRST DEGREE AS CHARGED IN THE INDICTMENT AND FIX HIS PUNISHMENT AT CONFINEMENT FOR NINETY-NINE (99) YEARS IN THE STATE PENITENTIARY AT NASHVILLE.

Thereupon the Court proceeds to pass sentence which is that he be taken by the Sheriff and remanded to Jail, and at the earliest convenience delivered to the WARDEN OF THE STATE PENITENTIARY, therein to be confined at hard labor for a period of NINETY NINE YEARS, and that he pay the cost of this prosecution for which let mittimus and execution issue. O/C 234 days Jail Credit.

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

W Preston Battle
JUDGE

EXHIBIT 5

STATE OF TENNESSEE
Shelby County

I, J. A. BLACKWELL, Clerk of the Criminal Courts of Shelby County, Tennessee,

do hereby certify that the foregoing ONE (1) pages of writing contain a full,

Guilty Plea

complete, true and perfect copy of ~~all the proceedings~~ had in the case of the State of

Tennessee, vs. Docket No. 16645

JAMES EARL RAY

Indictment for MURDER FIRST DEGREE

as the same now appears on file, and of record in my office.

WITNESS my hand and the seal of said Court, at office in Memphis,

this, the 12th day of MAY 19 69

J. A. BLACKWELL, Clerk

SEAL By: _____ D. C.

HOLIDAY PRESS — MEMPHIS

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

NO. 16645

JAMES EARL RAY,

Defendant

FILED 5/19/69
J. A. BLACKWELL, CLERK
BY [illegible] D. C.

AMENDMENT TO MOTION FOR A NEW TRIAL

Comes now your petitioner, JAMES EARL RAY, defendant in the above styled cause, by and through his attorneys, Richard J. Ryan, J. B. Stoner and Robert W. Hill, Jr., and amends his Supplemental Motion for a New Trial to add the following grounds, to-wit:

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

4. That since Judge Battle has 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.

Respectfully submitted,

Richard J. Ryan
RICHARD J. RYAN

J. B. Stoner
J. B. STONER

Robert W. Hill, Jr. by RJR
ROBERT W. HILL, JR. by RJR

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION II

STATE OF TENNESSEE I

VS. I NO. 16645

JAMES EARL RAY I

FILED 5-23-69
J. A. BLACKWELL, CLERK
BY ..... D. C.

MOTION TO STRIKE AMENDMENT
TO MOTION FOR NEW TRIAL

Comes now Phil M. Canale, Jr., District Attorney General for the Fifteenth Judicial Circuit of Tennessee and for the State of Tennessee would show the Court as follows:

That all allegations of fact in conclusion in the Amendment to Motion for New Trial are denied.

State of Tennessee moves the Court to strike the Amendment to Motion for New Trial on the grounds previously cited in the State of Tennessee's Motion to Strike to the Supplemental Motion for New Trial.

Phil M. Canale Jr. by RKR

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL
FIFTEENTH JUDICIAL CIRCUIT
STATE OF TENNESSEE

NOTICE OF SERVICE

Copy of Motion to Strike Amendment to Motion for New Trial delivered personally to attorney for defendant, Richard J. Ryan, on May 23, 1969, at 12:55 p.m.

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
DIVISION II

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

FILED _____
J. A. BLANCHARD, CLERK
BY _____ D. C.

REPLY BRIEF

The Petitioner in this cause filed an amendment to his Supplemental Motion for New Trial and a Memorandum of Authorities after the State of Tennessee had filed its Motion to Strike accompanied with a Memorandum of Authorities; therefore, State of Tennessee feels it proper to file a Reply Brief.

In essence Petitioner relies on two grounds in his Motion for New Trial. His first ground is based on Tennessee Code Annotated 17-117, and the admitted fact of Judge Battle's death within thirty days of Petitioner's plea of guilty, conviction, and sentencing thereon. In support of this ground the Petitioner cites a number of cases, all of which with the exception of Swang v. State 42 Tenn. 212 and Knowles v. State, which will be discussed later, were cases in which an actual trial was had. None of the cases so cited are applicable to our particular situation; for example, Howard v. State 399 SW2d 739 was a case tried in this same division, and in which Judge Campbell had not signed the minutes of the conviction on the trial and sentencing prior to his death. The cause was of course reversed as a court speaks only through its minutes. In the case of Knowles v. State cited by the Petitioner, a guilty plea was set aside because no evidence was presented to the jury. Of course, in our particular situation evidence was presented, see State of Tennessee exhibits, and further, it

has been held by the Supreme Court of Tennessee since the Knowles case that a Petitioner present with attorney entering guilty plea and not objecting to statements made by the District Attorney General through stipulation is estopped from relying on the statute requiring evidence on a guilty plea. Barnes v. Henderson 423 SW2d 497 (1968).

To properly understand the purpose of the statute relied upon, Tennessee Code Annotated 17-117, one must return to the elementals of law. A trial is most commonly defined as a judicial investigation and determination of the issues between the parties to an action. The word is commonly used to designate that step in an action by which issues or questions of fact are decided but often signifies an examination of matters of law as well. 53 Am Jur Trial, Section 2, page 28. To further understand a "trial" the word issue must be defined. An issue is matter presented by a pleading which raises a point of fact or of law, or both, in a pending suit, requiring determination of a judicial tribunal. The production of an issue is the chief object of all pleading, and an issue arises on the pleadings when a fact or conclusion of law is maintained by the pleadings of one party and is controverted by the pleadings of the other. 71 CJS Pleadings, Section 512, page 1068. Issue has been further defined as a disputed point, Vita Graph Company of America v. Swaab 94 A. 126, or matter affirmed on one side and denied on the other. The Tordenskjold 53 F.2d 266. Further, as a point in dispute between parties on which they put their cause to trial. Martin v. Columbus 127 N.W. 411 (Ohio). In Tennessee it has been held when referring to issues raised by the proof that the word issue when thus used means facts put in controversy by the pleadings. Taylor v. State 212 Tenn. 187 at page 191.

To go even further a new trial is defined as a remedy

which is afforded to the litigant consisting of a re-examination of an issue by the trial court with a view to correcting errors which have occurred in the course of a preceding trial. 39 Am Jur New Trial, Section 2, page 33.

It is axiomatic then that Tennessee Code Annotated 17-117 pertains and applies only to a trial that is a contest of disputed issues and a judicial determination thereof. The Petitioner in this cause has never had a trial and of course cannot have a new trial. The Petition should be more properly titled a Motion for a Trial.

The death of Judge Battle can have no affect on the rights, if any, of the Petitioner as the situation is more analagous to the situation contemplated by Tennessee Code Annotated 17-118 rather than 17-117. Judge Battle had accepted the guilty plea, heard evidence, accepted the verdict of the jury thereon, sentenced and executed the verdict and signed the minutes of his actions therein. There was nothing further for Judge Battle to do in this matter. The only relief Judge Battle could have given Petitioner if he were still alive would be under a Writ of Habeas Corpus, a Petition for Postconviction Relief or a Motion to Withdraw his plea of guilty if the proper and required grounds were present. If the required grounds are present, any other court of the proper jurisdiction and standing could grant the same relief. Therefore, it is inescapable that Judge Battle's death has not prejudiced the rights, if any, of the Petitioner and that Tennessee Code Annotated 17-117 is not applicable.

The other ground on which Petitioner relies in his alleged Motion for a New Trial, more properly called a Motion for a Trial, the essence seems to be lack of competent counsel. As cited in the State of Tennessee's previous Memorandum of Authorities, Richmond v. Henderson, March 26, 1969, the Supreme

Court of Tennessee pointed out that the due process test for incompetency of counsel is conduct making the trial a farce, sham or mockery of justice. The case cited by the Petitioner, Swang v. State 42 Tenn. 212, states this test clearly when it says to disregard guilty plea there must appear a total misrepresentation of the prisoner's rights through official (emphasis supplied) misrepresentation, fear or fraud. In that particular case the court stated that a statement of the facts were unprecedented in the judicial history of the State and in effect amounted to common barratry and official oppression. In the two cases cited by Petitioner, State of Tennessee ex rel Owens v. Russell, Unreported Opinion of the Criminal Court of Appeals and Henderson v. State ex rel Lance 419 SW2d 176, the situation is a total misrepresentation of a fact to the defendant on a plea of guilty. In one, the Petitioner's attorney, the court and District Attorney General advised the Petitioner on his plea of guilty that his time would run concurrent with his parole violation and as pointed out as a matter of law, the court could not do this. This then was a total misrepresentation of a fact, and the plea was set aside. In the other case it was alleged that the District Attorney and the Petitioner's defense attorney entered into a conspiracy to trick the defendant into pleading guilty by lying to him as to the amount of time Petitioner would have to serve before being paroled. On the trial court's dismissal of the habeas corpus, the Court of Appeals held that an evidentiary hearing should have been granted and reversed for that purpose.

In the instant situation there is no allegation of official oppression, misrepresentation, or fraud. The only allegation is that certain financial dealings between the Petitioner and his privately retained counsel create a situation in which such counsel "forced" the Petitioner to plead guilty.

Under Richmond v. Henderson supra the allegation does not raise even the question required by law for the lack of effective or competent counsel or under the requirements set forth in the Swang case cited by the Petitioner. Therefore, assuming for purpose of argument Petitioner's allegations to be true, the court as a matter of law should dismiss Petitioner's alleged Motion for New Trial.

Respectfully submitted,

PHIL M. CANALE, JR.
DISTRICT ATTORNEY GENERAL

NOTICE OF SERVICE

Copy of Reply Brief delivered personally to attorney for defendant, Richard J. Ryan, on May 23, 1969, at 12:15 p.m.

MONDAY, MAY 19, 1969

Court met pursuant to adjournment,

OPENING OF COURT

BE IT REMEMBERED, that at a regular term of the Criminal Court, Division Three, of Shelby County, Tennessee, begun and holden at the Criminal Court Building in the City of Memphis, on the Third Monday in May, 1969, the same being the 19th day of May, 1969, present and presiding, the Hon William H Williams, Judge &c; Phil M Canale Jr, District Attorney General, Robert K Dwyer, Arthur T Bennett, Sam J Catanzaro Jr, Don A Dino, Earl E Fitzpatrick, Eugene Gaerig, Billy F Gray, James Hall; William D Haynes, Harvey Herrin, Leonard T Lafferty, Jesse C Mason, Jewett H Miller, J L Patterson, John Picrotti, Lloyd A Rhodes, Ewell C Richardson, Glen Sisson and Don D Strother, Assistant Attorneys General; J A Blackwell, Clerk of said Court, William T Carlisle, Travis Carr, Donal Cavette, George C Conan, Donald C Cooper, Marvin Ray Emmons, Jules V Gipson, Joe E Hughes Jr, Charlotte Munderup, Charles E Koster, Mary L Lindsey, Fred R Lowe, George McGowan, Gary C Moore, Jewell Mottweiler, Larry Nance, Eugene Plant, Mary V Reynolds, Carl Frank Scott Jr, Stewart B Scott, Gerald A Spotorno, Emily Tharpe, David Toney, Gerald Voss and Roger D Watson, Deputy Clerks; and William K Morris Jr, Sheriff of Shelby County, Tennessee; whereupon the following proceedings were had and ordered to spread upon the minutes of the Court to-wit:

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ William H Williams,

JUDGE.

TUESDAY, MAY 20, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE VS. JAMES EARL RAY Alias Eric Starvo Galt, Alias John Willard, Alias Harvey Lowmeyer, Alias Harvey Lowmyer.	NO. 16645 Murder First Degree

ORDER

The Court finds that certain motions have been filed on behalf of the defendant and the State, in this case, and in order to assure the orderly and fair hearing of these motions, guaranteed under our law, the Court adopts in its entirety the "Order" limiting the seating accomodations issued on October 14, 1968, by the Honorable W. Preston Battle, then Judge of Division III of this Court, now deceased; and, in addition thereto, the Court is of the opinion that the following rules are necessary, and therefore orders:

I.

The term "Criminal Courts Buildings" as used herein shall mean the Criminal Courts Building, 150 Washington, and the adjoining Shelby County Building, 157 Poplar Avenue, Memphis, Tennessee.

All entrance ways, corridors, and approaches to Court rooms, offices and other rooms in the Criminal Courts Buildings will be kept clear at all times for free access thereto by those using them in the course of their employment or those having business to transact therein.

II.

No cameras, photographic, television, radio or sound equipment, including tape recorders, will be permitted in the Criminal Courts Buildings or upon the alley-ways, parking lots, yards or grounds immediately surrounding said buildings. No sketches will be made in the Criminal Courts Buildings.

III. TUESDAY, MAY 20, 1969

All persons seeking admission to the Courtroom will submit voluntarily to a search of his person before being admitted.

IV.

No one will enter the Courtroom after a session has begun without permission of the Court, but must wait until the next recess. No one will leave the Courtroom except at recess or adjournment except in an emergency. At noon recess and adjournment, and at any other time the prisoner is being removed to the jail, the spectators shall remain seated in the Courtroom until the prisoner has had ample time to be removed, and said spectators have been given permission to disperse.

V.

The bar of the Court within the rail is reserved for the defendant, counsel, members of the Bar, Court personnel and such witnesses as counsel may desire to be within the bar for consultation purposes. No one else will enter without permission of the Court.

VI.

No one except attorneys of record, their agents, Court personnel, and witnesses may handle exhibits except by order of the Court.

VII.

Nothing in this order shall prohibit any witness from discussing any matter in connection with the case with any of the attorneys representing the defendant or the State, or any representative of such attorneys.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that these orders, having now been adopted by this Court, are in full force and effect and will remain so until revoked or suspended by this Court.

Arthur C. Faquin Jr.
JUDGE, DIVISION III, by interchange
Criminal Court of Shelby County, Tennessee

Date: 5/20/69

WHEREUPON COURT ADJOURNED UNTIL TOMORROW MORNING AT 9:30 O'CLOCK.

/s/ ARTHUR C FAQUIN JR,
JUDGE BY INTERCHANGE

WEDNESDAY, MAY 21, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE VS. JAMES EARL RAY Alias Eric Starvo Galt, Alias John Willard, Alias Harvey Lowmeyer, Alias Harvey Lowmyer.	NO. 16645 Murder First Degree

ORDER

It appears to the Court that James Earl Ray, named above with aliases, has filed certain Petitions or Motions, in this Court, in the above styled case. According to the allegations, the defendant is in custody of the Warden of the State Penitentiary at Nashville, Tennessee, by virtue of conviction and judgment rendered in this Court.

It further appears to the Court that the said James Earl Ray, named above with aliases, should be present before this Court at the hearing of the said Petitions or Motions, and, that the said Warden, or the Sheriff of Shelby County, Tennessee, should transport the defendant from the State Prison, wherein he is incarcerated, to this Court.

It further appears that the defendant has requested and should be allowed to bring with him a sufficient amount of his civilian clothing to enable him to be dressed in civilian clothing at the hearing.

The hearing of these Petitions or Motions will be on the 26th day of May, 1969, at 9:30 A.M.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the said Warden or the Sheriff of Shelby County, Tennessee, shall transport the defendant from the State Prison, wherein he is now incarcerated, to the Shelby County Jail, delivering him to the Sheriff of Shelby County, Tennessee, not later than the date and time last above written; and, that the defendant be allowed to bring with him a sufficient amount of his civilian clothing so as to enable him to be dressed in civilian clothing at the hearing.

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JUDGE Arthur C. Faquin Jr.

Dated: May 21, 1969

WEDNESDAY, MAY 21, 1969

WRIT OF HABEAS CORPUS

STATE OF TENNESSEE)
COUNTY OF SHELBY)

TO THE WARDEN OF THE TENNESSEE STATE PENITENTIARY AT NASHVILLE, TENNESSEE:

You are hereby commanded to have the body of James Earl Ray, named above, who is alleged to be unlawfully detained by you, with aliases before me, at Memphis, Tennessee, on May 26, , 1969, to be dealt with according to law and have you then and there this writ with a return thereon of your doings in the premises.

This 21st day of May, 1969.

Arthur C. Faquin Jr.
JUDGE
DIV. II, CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE
by interchange for Division III

The above Order has been issued pursuant to authority granted in Chapter 310 of the Public Acts of 1967 of the Tennessee General Assembly.

JUDGE Arthur C. Faquin Jr.
5/21/69

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ ARTHUR C FAQUIN JR,
JUDGE BY INTERCHANGE

MONDAY, MAY 26, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit;

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE
VS
JAMES EARL RAY,
Defendant

NO. 16645

O R D E R

This matter came on to be heard upon the motion of the Honorable J. B. Stoner moving this Honorable Court that the defendant James Earl Ray be rendered an indigent person;

AND IT APPEARING TO THE COURT that an Order has heretofore been entered in this cause declaring the defendant to be an indigent person, and it further appearing to the Court that this Order should continue to have full force and effect.

IT IS THEREFORE ORDERED:

That the Order previously entered continue to have full force and effect as to the indigency of the defendant James Earl Ray.

Arthur C Faquin
J U D G E
May 26, 1969 NUNC PRO TUNC
by interchange

Jesse Clyde Mason
Assistant attorney General

MONDAY, MAY 26, 1969

STATE OF TENNESSEE

VS B-16645 MURDER IN THE FIRST DEGREE

JAMES EARL RAY
with aliases

Comes the Attorney General on the part of the State and the defendant in proper person and by counsel of record, Mr. Richard Ryan, Mr. Robert Hill and Mr. J. B. Stoner; whereupon there comes on to be heard the State's Motion to Strike the alleged Motion for a New Trial in the above matter, and after a full hearing and arguments by the State and the Defense, it is ordered by the Court that the Motion to Strike is GRANTED, the Writ of Habeas Corpus heretofore issued is DISMISSED and the defeendant is remanded back to the STATE PENITENTIARY there to serve the remainder of the sentence heretofore imposed in the cause on March 10, 1969. (order to be entered). To all of the above, defendant noted his exceptions.

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ Arthur C Faquin Jr,

JUDGE BY INTERCHANGE

FRIDAY, JUNE 6, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding; by interchange; whereupon the following proceedings were had to-wit:

STATE OF TENNESSEE	I	
	I	
VS	I	NO. 16645
	I	
JAMES EARL RAY, Alias ERIC STARVO GALT, Alias JOHN WILLARD, Alias HARVEY LOWMEYER, Alias HARVEY LOWMYER	I	

MEMORANDUM FINDING OF FACTS AND CONCLUSIONS OF LAW

Indictment No. B-16645 charges the Defendant, James Earl Ray with the offense of Murder in the First Degree in the murder of Dr. Martin Luther King. On March 10, 1969, the defendant, James Earl Ray, while represented by an Attorney of his own choosing, Mr. Percy Foreman, and by Court appointed Attorneys, Messrs. Hugh Stanton Sr. and Jr., came into Division III of this Court and before the Honorable W. Preston Battle, then Judge of this Court, entered a Plea of Guilty to Murder in the First Degree as charged in this Indictment. A Jury was empanelled, sworn, evidence of witnesses presented, stipulations heard, and a plea of Guilty to Murder in the First Degree was entered in the presence of this Jury. The Jury approved the Guilty Plea and accepted and approved the agreed upon State's recommendation of Ninety-Nine (99) Years Confinement in the State Penitentiary, at Nashville, Tennessee. The Defendant, James Earl Ray was sentenced by Judge Battle, and, at that time, he waived any right to a Motion for a New Trial and Appeal as shown by the minutes of this Court for that day. Judge Battle signed these minutes which are marked exhibits two (2) and three (3) to today's hearing.

On March 31, 1969, Judge Battle died.

On April 1, 1969, two letters purporting to be from the defendant, James Earl Ray and dated March 13, 1969, and March 26, 1969, respectively, were filed with the Clerk of this Court.

FRIDAY, JUNE 6, 1969

On April 7, 1969, a Petition entitled "Amended and Supplemental Motion for a New Trial" and incorporating therein by reference "letters asking for a new trial, especially that communication addressed to Judge W. Preston Battle, dated March 26, 1969," and "he hereby amends and supplements said letters to the effect that he moves this Honorable Court to set aside his Waiver, his Plea of Guilty, and his Conviction and grant him a New Trial pursuant to and in accordance with Section 17-117 of the Tennessee Code Annotated." Seven Exhibits were attached to this amended and supplemental motion, which exhibits were withdrawn this morning before the hearing. This motion was further amended on May 19, 1969.

It is obvious from the wording of the Petition, that the defendant and his privately employed attorneys, Mr. Richard J. Ryan, Mr. J. B. Stoner and Mr. Robert W. Hill, Jr., intended for this Petition to be a Motion for a New Trial. Such was their statement in open Court today.

Tennessee Code Annotated, Section 17-117 reads as follows:

> "New Trial after death, or insanity.- 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 at the time of such death or adjudication."

No rule of Court has been introduced into evidence in this case.

On May 13, 1969, the District Attorney General for the Fifteenth Judicial Circuit for the State of Tennessee, filed a Motion to Strike the "Motion of the Defendant, James Earl Ray, entitled 'Amended and Supplemental Motion for a New Trial' and any incorporates therein purporting to be a Motion for a New Trial." Five exhibits were attached.

The "Motion to Strike" as shown on its face and attached exhibits, as well as the accompanying "Memorandum of Authorities", is based on the theories:

(1) that there is no Motion for a New Trial from a Guilty Plea; and

(2) that the defendant waived any right he had to a Motion for a New Trial and an Appeal.

The State filed on May 23, 1969, a Motion to Strike the "Amendment to Motion for a New Trial," based on the same grounds as cited in the original Motion to Strike.

Each party has filed a Memorandum of Authorities. The Motion to Strike has come on to be heard on this the 26th day of May, 1969. The State is represented at this hearing by Executive Assistant Attorney General, Robert K. Dwyer, Administrative Assistant, Lloyd A. Rhodes, and Assistant Attorney General, Clyde Mason. The defendant is represented by Mr. Richard J. Ryan, Attorney-at-law of the Memphis Bar, Mr. J. B. Stoner, Attorney-at-law from Georgia, and Mr. Robert W. Hill, Jr., Attorney-at-law of the Chattanooga Bar. All are privately retained counsel of the defendant's own choosing.

The statement has been made that I, as successor Judge, cannot hear this Motion or Petition of the Defendant, which purports to be a Motion for a New Trial, and not being able to hear a Motion for a New Trial in a case disposed of by another Judge, I cannot approve and sign a Bill of Exceptions in the case.

The further contention of the defendant, James Earl Ray is, that without the approved and signed bill of exceptions, he is denied his constitutional right of Appellate Review, without fault of his own.

In answer to these questions, I find that:

(1) I do not, as a successor Judge, have the right to hear a Motion for a New Trial or approve and sign the Bill of Exceptions. Allison vs State, 189 Tenn 67; Darden vs Williams, 100 Tenn 414; Dennis vs State, 137 Tenn 543; O'Quinn vs Baptist Memorial Hospital, 182 Tenn 558; and McLain vs State, 186 Tenn 401.

(2) The defendant had a constitutional and statutory right to have his case reviewed in the Appellate Courts and relief would be awarded if he was deprived of such right without fault of his own. Dennis vs State, supra; State ex rel Terry vs Yarnell, 156 Tenn 327; Tenn Central Railway Co. vs Tedder, 170 Tenn 639.

I emphasize the phrase "Without fault of his own."

Since I, as successor Judge, cannot hear a Motion for a New Trial in this case, do I then have the power to hear and rule on a Motion to Strike a Petition that purports to be, and the defendant insists is, a Motion for a New Trial?

The defendant says that I do not.

I am of the opinion that I do have that power just as I would have the power to hear a Petition for Writ of Habeas Corpus or a Petition filed under the Post Conviction Act in this case; provided the defendant did not have a right to file a Motion for a New Trial, or, if the defendant's Motion for a New Trial had already been disposed of by Judge Battle by Defendant's Waiver of such right.

> "It is well established in this State, that a Motion for a New Trial is nothing but a pleading, and cannot be looked to as establishing facts that it alleges." Monts vs State, 214 Tenn 171.

> "A Plea may be stricken on motion on the ground that the pleading is not authorized by the procedure of the forum, or that the issue to be raised has already been determined conclusively of record." Wharton's Criminal Procedure, Sec. 1907, Page 775, Vol. IV.

This is a unique case because, to test TCA Sec. 17-117, it appears that, the defendant would have to file what he would allege to be a Motion for a New Trial. If this Court did not act upon such a Motion, possibly a Writ of Mandamus could issue, or a Petition for Writ of Habeas Corpus, or a Petition under the Post Conviction Act could be filed and heard, citing this statute. I feel, however, that the proper procedure is for me to act upon the Motion to Strike the Petition that purports to be a Motion for a New Trial, and 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. The Motions 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 Act; especially since the defendant has made it clear that they are to be treated as a Motion for a New Trial.

Two main questions present themselves to be decided today. The first question is: whether the defendant, Ray, had a right to a Motion for a New Trial in a case disposed of on a Guilty Plea based upon an agreed upon settlement and submission. I have been unable to find that this precise question has been decided before in Tennessee.

The second question is two-fold: (1) Can a defendant expressly waive his right to a Motion for a New Trial in Tennessee; (2) if he can, did the defendant, Ray, effectively waive that right in this case?

If the defendant, Ray, did not have a right to a Motion for a New Trial, in his case, because it was disposed of on an effective guilty plea based upon an agreed upon settlement and submission, or, if he could expressly waive his right to a Motion for a New Trial, and, in fact, did effectively waive that right, then, in either event, TCA 17-117 could not apply since the Motion for a New Trial had already been disposed of. Consequently, the State's Motion to strike would have to be granted.

I

I will now discuss the first question, and dispose of it.

Tennessee Code Annotated, Section 40-3401, gives either party to a criminal proceeding, except the State upon a judgment of Acquittal, the right to pray an appeal in the Nature of a Writ of Error as in civil cases.

On Page 901 of Caruther's History of a Lawsuit (Eighth Edition) under the section heading of "Motions for New Trial and in Arrest of Judgment" is found the following statement:

> "If the Defendant is acquitted, the State cannot obtain a New Trial. But if he is convicted, he is entitled to a New Trial upon all the grounds heretofore stated as sufficient in a civil suit. A Motion for a New Trial is not a prosecution by the State, but a proceeding in error brought by the accused to reverse a judgment rendered against him by the Trial Court."

The purposes of a Motion for a New Trial are stated in Adams vs Patterson, 201 Tenn 655, as follows:

> "Motions for New Trial serve two purposes to-wit:
>
> (a) to suspend the judgment so that the trial judge may have time to correct his errors by the grant of a new trial; and
> (b) to set out the error as a ground and as prerequisite to an Appellate review where such error depends upon a bill of exceptions. Memphis Street Railway Co vs Johnson, 114 Tenn 632, 88 S.W. 169."

In Tennessee, there are various proceedings for the correction of errors. They are enumerated in Tennessee Code Annotated, Section 27-101.

> TCA 27-101. "Methods of correcting error.- Errors not embraced by the provisions of this Code, in regard to amendments, may be corrected in one or more of the following modes: (1) By Writ of Error Coram Nobis; (2) By Re-hearing, Review, or New Trial; (3) By Certiorari; (4) By Appeal; (5) By Appeal in the Nature of a Writ of Error; (6) By Writ of Error."

The next Section of the Code provides that certain actions release errors.

> TCA 27-102. "Release of Error by Confession or Injunction. - A Judgment by confession, or the suing out of an injunction against a defendant at law, is a release of errors."

It has been held that a judgment properly entered on a guilty plea is, in effect, a judgment by confession.

> "A Judgment in a criminal case which has been properly entered on a plea of guilty is, in effect, a judgment by confession, and ordinarily cannot be reviewed by appeal or error proceedings." 4 Am. Jur. (2d), Appeal and Error, paragraph 271.

> And, "In a criminal case a party cannot, as a general rule, have a judgment properly entered on a plea of guilty reviewed by appeal or error proceedings, since such judgment is in effect a judgment by confession." Wharton's Criminal Procedure, Volume 5, Section 2247, page 498.

Caruthers History of a Law Suit (Eighth Edition) Page 688, says:

> "A judgment by confession cannot be appealed from, either in a civil or criminal case."

Our Supreme Court said in the case of McInturff vs State, 207 Tenn 102:

> "Now, we think it is axiomatic that the defendant, having confessed judgment for the fine and costs, had no right of appeal, nor did the Court have the power to grant such an appeal, because no one can appeal either in a criminal or a civil case from a verdict on a plea of guilty or a judgment based upon confession of liability."

Since it appears that the Court in the McInturff case has recognized in Tennessee that a defendant in a Criminal case cannot appeal from a verdict on a plea of guilty, it must next be determined whether a defendant in a criminal case has a right to a Motion for a New Trial from a verdict on a plea of guilty.

In Bradford vs State, 184 Tenn 694, the Court said:

> "An appeal from a conviction in the lower Court is analogous to a motion for a new trial in the lower court to set aside the verdict of the jury in that in both situations the prodeedings are commenced and prosecuted by the defendant in an effort to show cause why his conviction should not be set aside and a new trial granted."

In 24 Corpus Juris Secundum, Criminal Law, Section 1418, Page 3, is found the following paragraph:

> "A new trial can be granted only after a trial, and hence a motion therefor is properly overruled where there has been no trial, as where the original proceedings consisted merely of an arraignment and a plea of guilty. A Motion for a New Trial right after a plea of guilty and trial by Court to determine question of mercy has been held properly overruled."

The Supreme Court of Tennessee in several cases has recognized that there is a difference between a trial and a plea of guilty.

> "Defendant did not go to trial but chose instead to enter a plea of guilty" State ex rel, Hall vs Meadows, 389 S.W. (2d) 256; State ex rel Wood vs Johnson, 393 S.W. (2d) 135.
>
> "It must be remembered also that this man entered a plea of guilty to the charge and received a reduced sentence. There was nothing from which he could logically appeal." State ex rel Reed vs Heer, 403 S.W. (2d) 310.

As cited above in Tennessee Code Annotated, 27-101, Motions for New Trial and Appeals are modes of correcting errors. Since a "Judgment properly entered on a plea of guilty" is, in effect, a judgment by confession, and a judgment by confession is a release of errors (Tennessee Code Annotated 27-102), the need for a Motion for a New Trial is not present.

The question now arises as to what constitutes a judgment properly entered on a plea of guilty.

In discussing the principle that a judgment properly entered on a plea of guilty cannot be reviewed by appeal or error proceedings, Wharton's Criminal Procedure, Section 2247, Volume 5, page 498 says:

> "Before proceeding to make such a plea the foundation of a judgment, however, the Court should see that it is made by a person of competent intelligence, freely and voluntarily, and with a full understanding of its nature and effect, and of the facts on which it is founded."

Judge Oliver, in State ex rel, Lawrence vs Henderson, 433 S.W. (2d) 96 (1968), Certiorari denied by the Supreme Court of Tennessee on November 4, 1968, cited the law concerning the entering of a plea of guilty as follows:

"A guilty plea induced by promises or threats or other coercion is not voluntary and is a nullity, and a conviction based on such an involuntary plea of guilty is void. Machibroda vs U.S., 368 U.S. 487, 82 Supreme Court 510, 7 Lawyer's Edition (2d) 437;" (citing other cases). In State ex rel Barnes vs Henderson, 220 Tenn, 719, 423 S.W. (2d) 497, our Supreme Court recognized this universal rule: 'It is recognized in this State, as in all jurisdictions, that a plea of guilty must be made voluntarily and with full understanding of its consequences.' And in Brooks vs State, 187 Tenn 67, 213 S.W. (2d) 7, the Court said: 'Out of just consideration for persons accused of crime, Courts are careful that a plea of guilty shall not be accepted unless made voluntarily after proper advice with full understanding of the consequences.'"

The United States Supreme Court, in McCarthy vs United States, supra said:

> "Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."

In order to determine whether or not a judgment was properly entered on a plea of guilty by Ray in this case, it will be necessary to apply the above rules of law to the facts presented at this hearing. This will be done later in this memorandum.

Therefore, for the reasons cited above in this opinion, I find as a matter of law, that a defendant in a criminal case, cannot have a judgment properly entered on a plea of guilty reviewed by a Motion for a New Trial.

II

The next question to be decided is: Can a defendant expressly waive his right to a Motion for a New Trial in a Criminal Case in Tennessee?

In deciding this question, it is necessary to discuss several principles concerning appeals and waivers.

In Tennessee, a defendant in a Criminal case has a constitutional and statutory right to have his case reviewed in the Appellate Courts and relief would be awarded if he was deprived of such right without fault of his own. Dennis vs State, supra; State ex rel Terry vs Yarnell, supra; and Tennessee Central Railway Co vs Tedder, supra.

Since a defendant does have this right, can he waive it? The Supreme Court of Tennessee has held that he can.

In the case of the State of Tennessee ex rel Doyle vs Henderson, 425 S.W. (2d) 593, (1968), on page 596, the Court held:

> "It seems to us whether or not a defendant, and particularly this Petitioner, has been deprived of his constitutional right to Appellate review depends upon the facts and circumstances of his case. The legal principles as announced in each of the cases cited above merely furnish guidelines in the application of this protected right. As said above no court that we can find has held that a defendant must appeal his case or that a waiver will not be recognized."

And later on the same page, the Court says:

> "We think, after careful consideration, that under a factual situation as here presented, this amounts to an oral waiver of appeal and none of the constitutional rights of this Petitioner has been violated by not granting him a New Trial from which he could perfect an appeal."

Further evidence that he may waive this right is shown in the case of State vs Simmons, 199 Tenn 479 (1956), in which Chief Justice Neil in his concurring opinion, quotes from perhaps the leading case on the subject of waivers in Tennessee, State ex rel Lea vs Brown, 166 Tennessee 669, 692, 693, Certiorari denied 54 Supreme Court Reporter, 717, 292 U.S. Supreme Court Reports 638, 78 Lawyers Edition 1491 as follows:

> On Page 491- "A party may waive any provision of a contract, statute, or constitution intended for his benefit." On Page 492. So, it was said in a leading case, In Re: Cooper, 93 N. Y. (507), 512, 'It is very well settled that a party may waive a statutory and even a constitutional provision made for his benefit, and that having once done so he cannot afterwards ask for its protection.'

This quoted principle is set out in Wallace vs State, 193 Tenn, on page 186, and in State ex rel Barnes vs Henderson, 423 S.W. (2d) 497 (1968).

In State ex rel Barnes vs Henderson, supra; the Court said:

> "As a general rule, subject to certain exceptions, any constitutional or statutory right may be waived if such waiver is not against public policy."; AND "Where a constitutional right accorded the accused is treated as waivable, it may be waived by express consent, by failure to assert it in apt time, or by conduct inconsistent with a purpose to insist upon it."

It appears then that not only can the right of appeal be waived but any other statutory or constitutional provision, made for his benefit, may likewise be waived, and that once this right or provision has been waived the defendant cannot afterward ask for its protection. This being true, it must then follow that a Motion for a New Trial can likewise be waived.

Further proof that the right to a Motion for a New Trial can be waived is shown by the following quotations and authorities:

In Hall vs State, 110 Tenn 365, the Court said:

> "In his work on General Practice, Judge Elliott (Volume 2, Section 995) says: 'The right to move for a New Trial may be waived by agreement in advance or by inconsistent acts, or by neglecting to take the proper steps. Thus it has been held moving in arrest of Judgment before moving for a new trial is a waiver of the latter motion.'; AND

> "The practice in this State is well settled that a Motion in Arrest of Judgment made before a Motion for a New Trial waives the latter motion." This last statement is quoted and cited in Palmer vs State, 121 Tenn. page 489. Almost the identical quote is found in Green vs State, 147 Tenn 299.

In Bradford vs State, supra, where the defendant was not present when his Motion for a New Trial came on to be heard, the Tennessee Supreme Court held:

> "We are accordingly, of the opinion that the defendant by his own act has waived the right to have his Motion for a New Trial considered and determined. His conduct was in legal effect an abandonment of the prosecution of his motion. We think, therefore, that the Court did not commit error in ordering the dismissal of that motion. It's judgment so ordering is affirmed."

The Supreme Court of Missouri in the case of State vs Pence, 428 S.W. (2d) 503 (1968), said:

> "Appellant cites no case in which it has been held that the waiver of the right to file a Motion for a New Trial is, as a matter of law, involuntary when the defendant is not specifically advised of the rights which he will be afforded on appeal. Maness vs Swenson, 8th Circuit, 385, Fed. 2d 943, does hold that the right to appeal must be knowingly and intelligently waived. However, the Court there considered the issue as a factual one to be determined in the light of all of the circumstances."

Since a defendant may waive his right to a Motion for a New Trial and to an Appeal, the next question is: What constitutes a Waiver?

The most cited case appears to be Johnson vs Zerbst, 304 U.S. 464, 58 Supreme Court 1019. It says:

> "It has been pointed out that 'Courts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume acquiesence in the loss of fundamental rights'. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused."

Part of this last quoted statement is cited in McCarthy vs U.S., 89 Supreme Court 1166 (1969).

A further discussion of waiver is found in State ex rel Lea vs Brown, supra:

> On Page 691- "Waiver is concisely defined as 'the voluntary relinquishment of a known right', 27 Ruling Case Law 904. Waiver is a doctrine of very broad and general application. It concedes a right, but assumes a voluntary and understanding relinquishment of it. 'It is a voluntary act, and implies an election to dispense with something of value, or to forego some advantage which he might at his option have demanded and insisted on.'"

III

With the above rules in mind for a "judgment properly entered on a plea of guilty" and the elements necessary for a proper "waiver", it is now necessary to discuss the facts presented at this hearing and to apply these rules to the facts.

Most of the evidence presented was by the introduction of certain parts of the Court's minute entries, by Mr. J. A. Blackwell, Clerk of the Criminal Court of Shelby County. The defendant declined to offer any evidence. In considering these minute entries the Court applied the following principles of law:

> "It is well settled in Tennessee that a trial Court speaks only through its minutes. McClain vs State, supra; Jackson vs Handell, 327 S.W. (2d) 55; Howard vs State, 217 Tenn 556.
>
> In the Howard case, the Court said:
>
> "The rule in this State for generations has been, and is, that 'minutes' are indigenous to Courts of record; and when they are signed by a Judge, they become the highest evidence of what has been done in the Court. So far as they are records of judicial proceedings, they import absolute verity, and are conclusive unless attacked for fraud. The rule has been stated otherwise that a 'Court of Record' is a Court where acts and judicial proceedings are enrolled in parchment for perpetual memorial and testimony. These rolls are called the 'record' of the Court and are of such high and transcendent authority that their truth is not to be questioned."

Introduced into evidence at this hearing by Mr. Blackwell, were the following exhibits:

Exhibit #1, is a minute entry of November 12, 1968, signed by Judge Battle, allowing Attorneys, Hanes Sr. and Jr., to withdraw from the case, and allowing Attorney Percy Foreman to substitute as counsel in this case; and further resetting the case to March 3, 1969, upon application of the defendant.

Exhibit #2, is the Petition for Waiver of Trial and acceptance of Plea of Guilty, signed by James Earl Ray and by his Attorneys.

Exhibit #3, is the minute entry made on March 10, 1969, and signed by Judge Battle, which was an order authorizing waiver of trial and acceptance of a guilty plea.

Exhibit #4, is a part of the transcript of Judge Battle's questioning of the defendant, Ray.

Exhibit #5, is the Minute entry on March 10, 1969, which was the actual judgment and sentencing by Judge Battle.

FRIDAY, JUNE 6, 1969

The Order authorizing the 'Waiver of Trial and Acceptance of Plea of Guilty,' and made Exhibit #3 in this case, shows that Judge Battle heard statements made in open Court by the defendant, his Attorneys of record, the District Attorney General, the Assistant Attorney General; and that he questioned the defendant (as shown by Exhibit #4) and his Counsel in open Court. This Minute entry is on the Court's Minutes for March 10, 1969, and was signed by Judge Battle. It further shows, that the Petition of the defendant, James Earl Ray, for Waiver of Trial by Jury and Request for Acceptance of a Plea of Guilty, which was made Exhibit #2 at this hearing, was attached and incorporated by reference in this Order. This Petition was signed by the defendant, Ray and witnessed and signed by his privately retained Attorney, Percy Foreman and his Court appointed Attorneys, Hugh Stanton, Sr. and Jr.

Judge Battle, using the evidence set out above, in this Court's opinion, had ample evidence to find as he did in Exhibit #3, to-wit:

> "It appearing to the Court after careful consideration, that the defendant herein has been fully advised and understands his right to a trial by jury on the merits of the Indictment against him, and that the defendant herein does not elect to have a jury determine his guilt or innocence under a plea of Not Guilty; and has waived the formal reading of the Indictment; AND it further appearing to the Court that the defendant intelligently and understandingly waives his right to a trial and of his free will and choice and without any threats or pressure of any kind or promises other than the recommendation of the State as to punishment; and does desire to enter a Plea of Guilty and accept the recommendation of the State as to punishment, waives his right to a Motion for a New Trial and/or an Appeal.
>
> It is therefore Ordered, Adjudged and Decreed that the Petition filed herein be and the same is hereby granted."

At the time of the guilty plea, Judge Battle fully questioned the defendant as to his understanding of the charges and proceedings against him, the sentence being recommended, and whether or not the defendant had been induced to plead guilty by any promise other than the agreed sentence. The defendants' answers left no doubt that he fully understood the circumstances surrounding his guilty plea.

It is obvious that Judge Battle's finding complies with the law for acceptance of a Guilty Plea as stated above in the discussion of a properly entered guilty plea in State ex rel Lawrence vs Henderson, supra; McCarthy vs United States, supra; and Wharton's Criminal Procedure, Section 2247, Volume 5, page 498, supra.

It is also obvious that Judge Battle's finding that the defendant intelligently and understandingly waived his right to a Motion for a New Trial and an Appeal, complies with the law of Waivers as set out above in State vs Pence, supra; Johnson vs Zerbst, supra; State ex rel Lea vs Brown, supra; and McCarthy vs United States, supra.

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.

This Court finds that such Guilty Plea precluded the defendant from ~~finding~~ filing a Motion for a New Trial in this case.

Further, this Court finds that the defendant, James Earl Ray, knowingly, intelligently and voluntarily expressly waived any right he may have had to a Motion for a New Trial and/or Appeal.

Either one of these two decisions showing that the defendant could not file and have a Motion for a New Trial heard renders Tennessee Code Annotated, Section 17-117 inapplicable in this case. His Motion for a New Trial had already been disposed of by Judge Battle before his death when he allowed the defendant to waive his right to a Motion for a New Trial.

Consequently, this Court after a full evidentiary hearing on this matter, finds that the State's Motions to Strike are well taken and should be granted and that the defendant's Motions, as amended, regardless of what he calls the Motions, should be stricken and dismissed without further hearing.

These motions cannot be treated as a Motion for a New Trial, because the defendant had already waived his right to a Motion for a New Trial as determined by Judge Battle in his minute entry for March 10, 1969, which has been marked Exhibit #3 to the present hearing. Neither can they be treated as a Petition for Writ of Habeas Corpus or under the Post Conviction Act because the elements necessary for the latter two Petitions are not present.

It is therefore Ordered, Adjudged and Decreed that the State of Tennessee's Motions to strike are granted and that the defendant's Motions as amended are stricken and dismissed.

It is further ordered, adjudged and decreed that the Writ of Habeas Corpus issued to return this defendant for hearing, is hereby quashed, vacated and held for naught; and the defendant, James Earl Ray, is hereby ordered to be returned to the State Penitentiary at Nashville, Tennessee, under the authority of the original judgment and orders of this Court, to all of which the defendant, James Earl Ray, has noted his exception.

Arthur C. Faquin Jr.
JUDGE
By Interchange
6/6/69

WHEREUPON COURT ADJOURNED UNTIL MONDAY MORNING AT 9:30 O'CLOCK.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE

VS

JAMES EARL RAY,

Defendant

NO. 16645

FILED
J. A. BLACKWELL, CLERK
BY D. C.

PRAYER FOR APPEAL

Comes now the defendant, James Earl Ray, by and through his attorney of record, Richard J. Ryan, having heretofore respectfully excepted to Your Honor's ruling upon his Motion for a New Trial, now moves this Honorable Court for permission and leave to file his Appeal from this Court to the Court of Criminal Appeals for the Western District of Tennessee.

Richard J. Ryan
RICHARD J. RYAN,
ATTORNEY FOR DEFENDANT

WEDNESDAY, JUNE 18, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-Wit:

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE
VS
JAMES EARL RAY,
Defendant

NO. 16645

O R D E R

Upon application of the defendant herein by and through his Attorneys of Record for an extension of time to file and perfect his Wayside Bill of Exceptions;

The Court is of the opinion that the Order should be granted, the same having been applied for within the original thirty (30) days.

IT IS THEREFORE ORDERED AND ADJUDGED:

That the defendant is granted the additional time of sixty (60) days to file his Wayside Bill of Exceptions to this Court's rulings.

Att C. Faq J.
JUDGE

DATE: 6/18/69

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE

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WEDNESDAY, JUNE 18, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-Wit:

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE
VS
JAMES EARL RAY,
Defendant

NO. 16645

O R D E R

Upon application of the defendant herein by and through his Attorneys of Record for an extension of time to file and perfect his Wayside Bill of Exceptions;

The Court is of the opinion that the Order should be granted, the same having been applied for within the original thirty (30) days.

IT IS THEREFORE ORDERED AND ADJUDGED:

That the defendant is granted the additional time of sixty (60) days to file his Wayside Bill of Exceptions to this Court's rulings.

Arth C Faq
JUDGE

DATE: 6/18/69

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE

WEDNESDAY, JUNE 25, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding by interchange; whereupon the following proceedings were had to-wit:

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE
VS
JAMES EARL RAY,
Defendant

NO. 16645

O R D E R

Upon application of the defendant wherein he prays for permission or leave to file his appeal to the Court of Criminal Appeals of the Western Division of the State of Tennessee from the judgment of this Court heretofore rendered upon the Motion for a New Trial and the State of Tennessee's Motion to Strike the said Motion for a New Trial, and the State of Tennessee's Motion to Strike being granted by this Court;

The Court is of the opinion that the defendant has heretofore waived his right to a Motion for a New Trial, and that the granting of the Motion to STrike is an Interlocutory Decree or Order and that, therefore, there is no appeal from the same.

IT IS THEREFORE ORDERED AND ADJUDGED:

That the Prayer for Appeal of the defendant is herein denied, all to which the defendant excepts.

Arthur C. Faquin
JUDGE

DATE: 6/26/69

WHEREUPON COURT ADJOURNED UNTIL TOMORROW MORNING AT 9:30 O'CLOCK.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE

WEDNESDAY, SEPTEMBER 10, 1969

Court met pursuant to adjournment, Hon Arthur C Faquin Jr, Judge presiding; whereupon the following proceedings were had to-wit:

IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

STATE OF TENNESSEE
VS
JAMES EARL RAY,
Defendant

NO. 16645

AMENDED ORDER

This cause having come to the attention of this Court, and it appearing to the Court that the Honorable Richard J. Ryan and the Honorable J. B. Stoner are now representing the above styled defendant;

AND IT FURTHER APPEARING to the Court that an ORDER was heretofore directed to the Warden of the State Penitentiary at Nashville, Tennessee, or any other person charged with the care and custody of the defendant was directed to permit the Honorable Richard J. Ryan and HOnorable J.B.Stoner to visit and consult with the defendant as above styled;

AND IT FURTHER APPEARING to the Court that the visitation and consultation of the defendant has been restricted to conversations behind glass partition with the use of a telephone system in communicating with their client, all of which is not conducive to good client and attorney consultations;

AND IT FURTHER APPEARING to the Court that there is available a consultation room in the Maximum Security Building wherein it is possible for the said attorneys to converse with their client, said conversations having taken place in the past in said consultation room;

That this Court is of the oninion that the Orders heretofore entered in this cause directing the Warden to permit the attorneys, the Honorable Richard J. Ryan and the Honorable J. B. Stoner, to visit and consult with their client should be amended, and that they be allowed to visit and consult with their client in the open conference room available to them now as in the past in the Maximum Security Building.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Honorable Richard J. Ryan and the Honorable J. B. Stoner be and they are hereby permitted to visit and consult with their client, James Earl Ray, as above styled in the open conference room in the Maximum Security Building without the necessity of communication by a telephone system behind glass partitions.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Warden or any other person charged with the care and custody of the defendant is hereby directed to permit the Honorable Richard J. Ryan and the Honorable J. B. Stoner to visit and consult with their client, James Earl Ray, in the open conference Room in the Maximum Security Building without the necessity of consulting behind glass partititons or with a telephone communication system.

Arthur C. Faquin Jr.
JUDGE BY INTERCHANGE

DATE: 9/10/69

Whereupon Court adjourned until tomorrow morning at 9:30 o'clock.

/s/ Arthur C Faquin Jr,
JUDGE BY INTERCHANGE