JULY 10, 1970

THE COURT: Now, let's see, I see Mr. Ryan and Mr. Fensterwald are here, and Mr. Mason is here. We have a setting to be made on the James Earl Ray matter, I'll listen to it. All right sir. Now -- good morning, Mr. Fensterwald and Mr. Ryan -- now you're from Washington, I believe?

MR. FENSTERWALD: Yes sir.

THE COURT: So, I believe we should kind of pay some attention to when you can make it, you know?

MR. FENSTERWALD: Your Honor, I think whenever it's convenient.

THE COURT: All right. We have this situation, the Court will be on the bench for one more week in July, but I am not in a position to hear it at this time, this next week. I will then be on vacation for 3 weeks, and will be back on the bench the week of August 24, so we can set the case, of course, now we have some trials involved, the first week, so that would leave the second week open. In other words, beginning

August 31, during that week, we can hear the case, and then over, of course, into September, and any time after the third Monday in September, it would have to be on a Friday, but up until then, we can hear the case on any given day unless there is an announced trial on that day, the only one I know of is during that week of the 24th. So, in other words, beginning the last week of August, in other words, this week in August beginning the 31st, which will lead you into September. Now, we have this situation: on September the first, the Court will be re-sworn, or sworn again, starting the new term. I would not want to hear the case that day. Would you rather wait until the Court has been re-sworn, we -- we have an election here, the Court is unopposed, so there's not a question of guessing about it, I would suggest then, as far as the Court's concerned, Wednesday, the 26th of August would be a good day, that is the day after the Court will be sworn, no, now wait a minute, let's get it

straight, that'll be September, I'm looking at the wrong calendar. It will be September 2nd, a Wednesday.

MR. FENSTERWALD: September will be fine with us --

THE COURT: That's a fine day, I think it's clear, and we'll have everything out of the way to hear the case. Is September 2 satisfactory?

MR. MASON: Yes sir.

THE COURT: September 2.

MR. FENSTERWALD: That will be fine, your Honor, can I take up one of the vital matters with respect to this hearing?

THE COURT: All right.

MR. FENSTERWALD: One, I think it has with regard to an affidavit of indigency on the part of James Earl Ray.

THE COURT: All right.

MR. FENSTERWALD: We need an order to that affect.

THE COURT: All right.

MR. FENSTERWALD: Would your Honor like to draft an order?

THE COURT: I believe we have a standard order here, but it should be patterned after our standard order, of course, you're not Court-appointed counsel, you're privately retained counsel. Now, you may proceed with that. The Court has no objection -- does the State?

MR. MASON: No.

MR. FENSTERWALD: Now, let me go into two other matters -- one, could your Honor order a manuscript of the very brief hearing we have just set, and this hearing today, and then will we have a manuscript mailed to us on the hearing of September 27

THE COURT: Mr. Fensterwald, you've raised some questions there, you're not entitled to a transcript, as the Court understands the law, of the hearing that you're speaking of on the motion for the discovery, you're entitled, for purposes of

appeal, a copy of the transcript, but in this State, as the Court understands it, you see, the Criminal Court Clerk makes these copies, and he's entitled to be paid for them by the State if the person is indigent and by the person himself, if the person is not indigent, but it must be following the statutory authority, and as we understand this matter, pursuant to a Court order, the indigent would be entitled to a copy of his trial transcript, or the hearing of the transcript, but it's a matter of timing and so forth. I do not see it as a matter of right, under the statute, you see?

MR. FENSTERWALD: Well then, at the hearing on September 2 --

THE COURT: (Interrupts) I'm thinking now of the motion. It's beyond me, at this point, bearing now on the hearing

itself, why, of course it's none of the Court's business, but why you would want the Clerk to type up the rather lengthy hearing on the motion to produce certain evidence that you have, what bearing that would have on the issue of an involuntary guilty plea, at this point, the Court fails to see, whatsoever. Let me say further, the Criminal Court Clerk here is under enormous burden as possibly, the other clerks are too, in getting these matters typed up, and it's not just a matter of the wave of the hand, saying 'I want it by tomorrow morning, this transcript', the Clerk has 5 people typing at all times, almost on a 24 hour basis up there, so we want to be sure of what we're doing before we order the Clerk to prepare a

transcript. Now, I take it, then, furthermore, the matter of timing of the declaration of indigency, the Court has stated that it would grant it, it hasn't signed the order yet, you have filed an affidavit before the Court, I had in mind doing this, quite frankly, at the hearing, here. I would, of course, go ahead and enter the order of indigency, but I have no -- no real objection to that, we can do that today, but coming back to your question now, you are asking for a copy of the transcript of the original motion to -- for discovery, we'll call it, that was held some weeks ago?

MR. FENSTERWALD: Yes sir.

THE COURT: You want an entire copy of the transcript in that matter?

MR. FENSTERWALD: Yes sir.

THE COURT: And then, secondly, what do you want?

MR. FENSTERWALD: A copy of the meeting today, and then the one scheduled for September 2.

THE COURT: Of course, in time, this will be granted, possibly. I'm not seriously worried that you can have this prepared -- but I -- I fail to see the response of how this can bear upon your situation, I don't understand.

MR. FENSTERWALD: Your Honor, it's just the fact that it is recorded and retained, I think I should withdraw until after the hearing on September 2?

THE COURT: I would suggest that, sir. This will give the Clerk, in his normal routine, a chance to write these things up. It's not a question of denying, as such, at this time, it just doesn't seem to be right, is

what I'm getting at, and with all the words the Court has spoken, that's what I'm getting at. After the hearing, dependant upon what happens, then it would not be, it would be a part of the proceeding that you're entitled to it, there is no question.

MR. FENSTERWALD: I understand your Honor, and I withdraw that request.

THE COURT: All right sir.

MR. FENSTERWALD: There are several matters, your Honor will recall that it's been suggested that we see the Court Clerk as to the evidence in the case, yesterday, I met with Mr. Mason and the Clerk, and we did go over all the evidence in the Clerk's possession. There are, however, two or three items which are not in his possession, but in the possession of the Attorney General, which we would like to see before September 2, at the hearing.

One is that we would like to see the spectographic analysis of the bullet which was taken from Dr. King's body. Second, we would like to be able to listen to the recording of the defendant, taken while he was incarcerated in Memphis. And third, we would like any plan or prints with respect to the special building of the cell in which he was kept, pending trial. I think all of these are not in the Clerk's hands, and I don't know where they are kept.

THE COURT: It seems like we're stepping back on the plowed ground here, are these matters, Mr. Fensterwald, evidence that was marked under the so-called exhibit #1 to the original James Earl Ray guilty plea hearing, in the long list of evidence?

MR. FENSTERWALD: No sir. We went over that material yesterday.

THE COURT: All right. The Court's ordered, you

will understand, the Court directed that a written order was entered in that, was that entered?

MR. MASON: It hasn't been entered yet, no sir.

THE COURT: Well let's get it entered, for this reason, the Court rules that those matters that were listed in the so-called exhibit #1, you were entitled to see, the others, you were not. You see? That was the Court's ruling. Now you are coming back again, and stating that you wish again, to renew that motion as I take it, to see these other items, is this correct?

MR. FENSTERWALD: That's correct.

THE COURT: But these are not items, once again, that are listed on a so-called -- I believe it's called exhibit #1, to the guilty plea proceeding hearing, before Judge Battle. These are not items that are listed on there, that the Court did grant you the right to see?

MR. FENSTERWALD: They are not.

THE COURT: They're not. All right, let's hear from the State, this is an oral motion, a little bit unusual.

MR. MASON: All right sir, as to the -- whether we have it or not, I'll be frank with the Court, I don't know, as Mr. Fensterwald, he had not mentioned this to me, and yesterday, I was with him all yesterday afternoon, but he did not mention this. As to whether we have these matters or not, I am not able to say one way or the other, because I don't know, I'll have to check. As to the spectographic analysis, one such was done, one was done of the bullet involved, it would be a work project of the Federal Bureau of Investigation, and if we have it in our possession, it would be part of our work project, and therefore, in our opinion, not available to defense. I am not aware of any recording of

the defendant in Memphis, I'm not sure what Mr. Fensterwald is getting at, I cannot give an answer as to that. As to the plans or prints of the Jail, that was, and he heard it, in a former hearing in this matter, and as the Court, I believe ruled in that, in essence, that it's in the custody of the Sheriff, or he would be the proper custodian of that, and then the Court would have no authority to require the Sheriff to produce something that is not a part of the record, or a part inherent to be used by the Sheriff in relation to the Court. Of course, the State will oppose all the requests.

THE COURT: Mr. Fensterwald?

MR. MASON: I just can't -- I'd like to state that I can't give a better answer than I've given because I'm not aware of just what he wants and whether we actually have them in our possession or not.

MR. FENSTERWALD: Could I make one more statement?

THE COURT: Yes sir.

MR. FENSTERWALD: With respect to the spectographic analysis, the items on which a spectographic analysis would have been made, are available, if there is not such, then the State could not have used them as a work product, is it possible for the defendant to have a spectographic analysis made of this element, in any way? I've never heard a case of this type, in case the spectographic analysis has not been made, I could not find one in the evidence, and I think, and I feel like that it has been done. If it has not been done, and the material from which the analysis is made is part of the evidence, which is in the Clerk's possession, and is available, is there any objection to our having a spectographic analysis run on this bullet?

MR. MASON: The State would like to have ay opportunity to check its file, and

to examine the matter itself. We will make, I think, more progress to state our position, make the matter a little bit easier.

THE COURT: I think, Mr. Fensterwald, once again, you're a little premature, you see the issue that's before the Court, on a post-conviction hearing, and whether or not this man plead guilty voluntarily and freely without force or coercion, you see. By the State, or any State agent, or at the handling of the State. You are going into matters involving the facts, and of course, a post-conviction habeas corpus cannot be used as a substitute for an appeal, or you cannot re-litigate the issue, or you cannot go into issues that are collateral to the petition itself. Now, once again, dependant upon what action the Court would take on the second, I mean on the -- on the hearing here, set for

September 2, and even then, there would be a question. I think your application is premature, it can have no bearing, whatsoever, on this petition that you have filed.

MR. FENSTERWALD: Your Honor, it might have a very seriousbearing on the case since one of the Constitutional opinions that was raised was the right to use the telephone. If defense counsel in this case did not have a spectographic analysis run on this bullet to see if any connection with that bullet and the defendant, I think it has a very definite bearing on whether he did have effective counsel at the time of the guilty plea, and whether it was voluntary, as I've said, I've never heard of a case of this type, in which a spectograph analysis and its results in evidence with respect to the witness in the case are made. Recently, and in a Court in Washington,

they obtained evidence which James Earl Ray was extradited, and evidence was very contrary to what was submitted at the trial. If there is no spectograph in this bullet, and no relation to the other bullet found allegedly in the defendant's possession, I think it has a large bearing on whether or not he had effective counsel, and since the evidence is available to the defendant, I wonder if (inaudible)

THE COURT: Anything else?

MR. FENSTERWALD: No sir, I think that's all.

THE COURT: Motion denied. Put that in the form of a written order. Mr. Mason, if you will make a note of that?

MR. MASON: Yes sir.

THE COURT: Specifically what was requested, and the action of the Court. All right, anything further, gentlemen?

MR. FENSTERWALD: No your Honor, we'll be back September 2.

THE COURT: September 2, we'll see you then.

MR. FENSTERWALD: Thank you, your Honor.

THE COURT: All right sir.

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(THIS WAS ALL THAT OCCURRED AT THIS HEARING)