IN THE CRIMINAL COURT OF SHELBY COUNTY, TENNESSEE

JAMES EARL RAY,

Petitioner

VS

STATE OF TENNESSEE

and

LEWIS TOLLETT, WARDEN
State Penitentiary at
Petros, Tennessee,

Defendants

NO. H.C. 661

FILED May 7, 1970
J. A. BLACKWELL, CLERK
BY J. A. Blackwell, D. C.

AMENDED PETITION FOR POST CONVICTION RELIEF

Comes now your petitioner, JAMES EARL RAY, by and through his attorneys, J. B. STONER, RICHARD J. RYAN, and BERNARD FENSTERWALD, JR., and respectfully shows to the Court that he is being illegally and wrongfully restrained of his liberty by the Warden of the Penitentiary of the State of Tennessee, located near Petros, Tennessee, in Morgan County.

Petitioner asks that this AMENDED PETITION be substituted for and should replace one filed on April 13, 1970, reserving to the petitioner the exhibits that were made part of the Original Petition herein, and said exhibits the petitioner adopts and referes to them in this Amended Petition as being "Exhibits B through F." Petitioner further hereto entersExhibit No. 7, an Affidavit of Carol and Albert Pepper, and it is made a part of this Amended Petition.

Petitioner states that his name is JAMES EARL RAY; that his present address is the Brushy Mountain Prison at Petros, Ten-

nessee; that he is under confinement being sentenced on the charge of murder under Criminal Court Docket No. 16645 of Shelby County, Tennessee; that the sentence was pronounced by the late Honorable Preston Battle on March 10, 1969, in Division III of the Criminal Court of Shelby County, Tennessee; that the sentence was for a term of ninety-nine (99) years; that he is confined to the Brushy Mountain Penitentiary at Petros, Tennessee, in the custody of Warden Lewis Tollett who is presently charged with the custody of petitioner; that said custody began on or about March 25, 1970; that prior to that date your petitioner was confined in the State Penitentiary in Nashville, Tennessee, in the custody of William S. Neil, Warden.

Petitioner would show that he heretofore filed a Motion for a New Trial; that prior to the hearing the presiding Judge, the Honorable Preston Battle died; that an Amended Motion was filed suggesting the death of the trial judge; the State of Tennessee filed a Motion to Strike and it was granted by the suceeding Judge, the Honorable Arthur Faquin, said judgment being appealed to the Court of Criminal Appeals and the Supreme Court of the State of Tennessee which was subsequently affirmed and the Petition to Rehear denied.

Your petitioner was represented by the following attorneys at the various stages of his case: in the extradition proceeding in London, England, by Messrs. Michael Eugene (Solicitor) and Roger Frisby (Barrister); while in incarceration from July to November, 1968, by Messrs. Arthur Hanes, Jr., and Arthur Hanes, Sr., of Birmingham, Alabama; from November 12, 1968 through March 10, 1969, by Mr. Percy Foreman of Houston, Texas, assisted by court-appointed Public Defender of Memphis and his staff; on appeal in 1969 by Messrs. J.B. Stoner of Savannah, Georgia, Richard J. Ryan of Memphis, and Robert Hill of Chattanooga; cur-

rently petitioner is represented by Messrs. Stoner, Ryan, and Bernard Fensterwald, Jr., of Washington, D. C.

Your petitioner charges that his rights of "due process" guaranteed him by both the State and Federal Constitution have been grossly violated.

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

He also avers that he has not been accorded the "equal protection" guaranteed him by the Fourteenth Amendment to the United States Constitution.

As a result of these violations, petitioner avers that his plea of guilty was involuntary, and offers the following facts and supporting evidence in support thereof:

I. DUE PROCESS DENIED IN PROCEEDING WHEREBY PETITIONER WAS EXTRADITED TO MEMPHIS.

a. Petitioner was not permitted to consult Arthur Hanes, Sr., counsel of his choice, before the extradition hearing in the Bow Street Magistrate's Court, London, on June 28, despite the fact that Mr. Hanes had gone to London for that very purpose.

b. While incarcerated in London, petitioner was denied the right to communicate orally or in writing with persons who might assist him. For example, he was denied the right to communicate with Mr. Heath, Leader of the Opposition in Parliament.

c. Virtually all of the evidence presented in England against petitioner was in affidavit form and hence, not subject to cross-examination. Only one witness from the United States was offered and cross-examined; he was Mr. Arthur Bonebrake, an FBI Special Agent, who testified at greatest length on civil rights matters in the United States, though he repeatedly admitted that he was incompetent to give expert testimony with respect to such matters. [See Exhibit A for Mr. Bonebrake's testimony.]

d. If petitioner had had competent counsel in England, he could not have been extradited for the murder of Dr. King, even if he had perpetrated the crime, because under the Anglo-American extradition treaty of 1931 and the applicable doctrines of international law, extradition is not granted in cases of political crimes.

e. Mr. Ramsey Clark, Attorney General of the United States, refused to permit the petitioner's lawyer, Mr. Hanes, to accompany him on the flight from London to Memphis; therefore, Mr. Hanes was absent and unavailable when petitioner arrived in Memphis. This decision on the part of the U.S. Attorney General was arbitrary and capricious, and it resulted in a denial of due process to petitioner at the hands of U.S. authorities even before petitioner arrived in the United States.

II. DUE PROCESS - TRIAL BY PRESS

a. Petitioner would like to remind the Court that this was a case that attracted international attention due to the prominence of the person murdered, and that the Trial Judge deemed it necessary to take unusual and rigorous steps in an effort to

prevent either the State or this petitioner from being prejudiced by the welter of lurid publicity which attended this case.

b. In order to keep him from being totally indigent and to finance at least a part of the cost of his defense, petitioner made certain agreements between himself, his attorneys, and Mr. William Bradford Huie, whereby he would assist Mr. Huie in the preparation of certain magazine articles, books, etc., re the charges against petitioner. [See Exhibits B through F, attached hereto.]

c. Despite a promise to petitioner that he would not publish anything prior to trial, and despite an order by the Trial Judge that no such pre-trial publication be made, William Bradford Huie did publish two long articles in Look Magazine prior to the original trial date of November 12, 1968.

d. Huie not only broke his pledge to petitioner, he also misquoted and distorted what was told him by petitioner. For example, petitioner told Huie that his principal prior to the date of Dr. King's killing had "dark, red hair;" in Huie's articles, the principal was a "blonde."

e. The substance of Huie's pre-trial articles in Look Magazine [Appendixes G and H] was widely distributed, directly and indirectly. As Huie then stated that Dr. King's murder resulted from a wide conspiracy, the article had the effect of warning potential witnesses that there were powerful conspirators free to wreak vengeance if they said anything.

f. Huie's pre-trial publicity, and the indirect publicity deriving from it, would have made it difficult for an

unbiased jury to be picked for petitioner's trial.

g. For these reasons, the Trial Judge charged Huie with contempt of court; unfortunately, the Trial Judge postponed action on the charge, and he died before Huie could be tried by him on this charge.

III. DUE PROCESS - EXCULPATORY INFORMATION WITHHELD FROM PETITIONER

a. Petitioner avers that much exculpatory information was withheld from the petitioner. A few of the more crucial items are:

1. the plain fact that no identifiable bullet was removed from Dr. King's body;

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

3. that, immediately after the crime, the State's chief eye witness, Charles Quitman Stevens could not and would not identify petitioner as the killer.

b. Much of the exculpatory material was contained in 200-odd pages of affidavits and other documents presented to the Bow Street Magistrate's Court in connection with the extradition proceeding. These documents were returned to the United States custody at the completion of the extradition proceeding; they have been sequestered and made unavailable to Ray's lawyers and

to Ray himself, although urgent and repeated requests for them have been made to both the British and U.S. Governments. [See Exhibits I and J].

c. During preparation for trial, petitioner filed a motion for the State to produce ballistic and weapons tests and reports thereof. By order dated September 9, 1968, the Trial Judge denied the motion, thus wrongfully depriving petitioner of information vital to his defense. [See Exhibits K and L for said Motion and Order.]

IV. DUE PROCESS - UNAVAILABILITY OF WITNESSES

a. The State provided the petitioner with a list of 360 "potential witnesses" in various States of the Union and in a number of foreign countries. Although the State made the statement that it actually intended to use only "80 or 90" of these "potential witnesses," it would not give the list of 80 or 90 to petitioner, nor, despite numerous requests, would the Trial Judge order it to do so. Further, Trial Judge refused to permit petitioner's attorneys to take depositions from any witnesses, here or abroad. This combination of factors amounts to a denial of petitioner's right to due process, both under the Constitution of Tennessee and under Articles V and XIV of the U.S. Constitution.

b. Petitioner believes that at least one crucial witness, Mrs. Grace Stevens, was wrongfully incarcerated in the (Tennessee) Western State Mental Hospital solely because she might have testified favorably to petitioner.

V. UNREASONABLE SEARCH AND SEIZURE

Petitioner has reason to believe that an illegal search and seizure was made by the FBI of his rented premises at 107 14th st., N.E., Atlanta, Georgia, and that the fruits of this search and seizure were introduced in evidence at his trial on March 10, 1969. [For a discussion of this matter before Trial Judge on February 7, 1969, see Exhibit M, pp. 16-19 of the transcript for that date.]

VI. RIGHT TO COUNSEL

Under both Tennessee and Federal law, right to counsel means effective right to counsel. Petitioner avers that his effective right to counsel was negated in the following specific ways:

a. During his incarceration in Memphis, he was physically prevented from having private conversations with his attorneys. Not only were there guards present at all times, but also his quarters (where lawyer-client conversations were permitted) were permanently and admittedly "bugged;" it was said that the microphones were cut off during such conversations, but there was no way for either petitioner or his lawyers to verify this. Further, all written communications, even between lawyer and client, was subject to censorship. A motion to grant private communication was made by petitioner [Exhibit O] but denied by the Trial Judge [Exhibit P].

b. A series of conflicts of interests prevented a series of competent attorneys from providing effective counsel to petitioner.

Petitioner first chose Arthur Hanes, Sr., of Birmingham, Alabama, as his counsel-of-choice. At their very first meeting, Hanes required petitioner to sign two documents: 1) a general power of attorney; 2) a fee contract whereby Hanes would get 40% of all future proceeds to be derived from the sale of petitioner's story in the form of magazines, books, movies, etc. [See Appendix]. Lawyer Hanes knew that his 40% might come to a tidy sum, as he had already contracted with Author William Bradford Huie for the magazine and book rights before he departed for London for his meeting with petitioner.

Upon petitioner's return to the United States, Lawyer Hanes presented petitioner with a new contract, whereby a new carving up of petitioner took place:

Huie	40%
Hanes	30%
Ray	30%

but, as Hanes got 40% of Ray's 30%, it came out:

Huie	40%
Hanes	42%
Ray	18%

To finance the deal, Look Magazine advanced Huie $30,000; Huie paid the $30,000 to petitioner, who, in turn, signed it all over to Hanes as his legal fee.

This contract forced petitioner to provide Huie with what was against petitioner's interest, i.e., falsehoods, as he dared not tell the whole truth if he wished to live.

From Huie's standpoint --- and also from Hanes' standpoint in large measure --- there could be no real income if

all of petitioner's story were told in open court where it became part of public domain. Specifically to Huie, it meant that he had to get part of petitioner's story in print before any trial, hence, he risked contempt of court to publish two articles in Look --- all to petitioner's detriment. Petitioner is informed, and therefore alleges, that the author Huie made the statement that your petitioner "must not take the witness stand in his expected trial, because if he did take the witness stand, then he (Huie) would have no book."

To Hanes, it meant basically the same thing, i.e., although he could try the case on a not-guilty plea, he could not permit petitioner to take the stand and tell his whole story from the witness stand. Thus, Hanes,was protecting his own mercenary interests and those of Huie, rather than protecting the life and liberty of petitioner.

As November 12th and the opening of the trial neared, petitioner and Hanes were unable to agree as to petitioner's taking the stand. At this point, Attorney Percy Foreman entered the case, but improperly. Although he knew that petitioner still retained Arthur Hanes, Foreman was persuaded by petitioner's brother, Jerry Ray, to visit Memphis and petitioner without informing Hanes or receiving any request, either orally or in writing, from petitioner. In fact, Jerry Ray had written petitioner in England as to the acceptability of Foreman as counsel, and he had received an emphatic "no," because petitioner knew Foreman to be very friendly with U.S. Attorney General Ramsey Clark and his father, retired Justice Tom Clark.

However, in Memphis on November 10, 1968, Foreman persuaded petitioner to discharge Hanes and retain him as counsel. Foreman said that he could break the Huie-Hanes contract; whereupon, petitioner agreed orally with Foreman at their first meeting on November 10th, that a fee of $150,000 should be paid out of future "earnings" for Foreman's legal assistance through the trial and on appeal, all the way to the U.S. Supreme Court if necessary. However, Foreman then turned around and renegotiated the Hanes-Huie arrangement, inserting himself for both Hanes and petitioner; thus, he had a 60% interest and Huie had a 40% interest in petitioner's "earnings" from books, magazines, etc. In short, Foreman rapidly assumed the same conflict of interest that had immobilized Hanes as an effective advocate, with one exception: he was greedier than Hanes, taking petitioner's 18% for himself.

Petitioner alleges that in the establishment of conflict of interest between petitioner and Hanes and Foreman, as evidenced by Exhibits B through F, that the said prior attorneys actually represented Huie and their own financial interests and not his, your petitioner's.

Petitioner further avers that these attorneys entered into contracts with Huie who was desirous of obtaining the exclusive rights to the facts of the petitioner's version of the case, and this could not be accomplished if there was an open trial of the case, as the facts of such a public trial would thereby become public knowledge. Petitioner avers that Attorney Foreman conceived the diabolical idea that if he could induce petitioner to plead guilty, these ends could be thus achieved.

Petitioner charges that attorneys Hanes and Foreman had a responsibility over and above that to their client. As agents

of the court, they had an obligation to see that justice was done. They should have refrained from making sharp financial transactions and then fitting their court performance to their financial interests. They ignored their responsibilities to their client and their profession.

Petitioner's failure to have effective and honest counsel is in reality a greater disservice to him than having incompetent counsel and is a gross denial of his rights under Article I, Section 9, of the Constitution of the State of Tennessee and the 6th and 14th Amendments to the Constitution of the United States of America. This failure to have effective representation made petitioner's plea of guilty, a farce, a sham, and a mockery of justice.

c. As difficult as it may be to believe, the Public Defender and his office aided the prosecution more than the petitioner.

On December 18, 1968, the Trial Judge appointed the Public Defender, Mr. High Stanton, Sr., to assist Foreman in preparing his defense of petitioner, who had been adjudged indigent. At their very first meeting on December 18th, Stanton suggested to Foreman that they should attempt to work out a guilty plea.

Petitioner avers that the Trial Judge appointed the Public Defender to assist in his, petitioner's, preparation of his defense, not to persuade his counsel-of-choice to enter a plea of guilty.

VII. THE DEAL

After Stanton's conference with Foreman on December 18th, he went to work to see what kind of a deal he could work out with the other interested parties for a plea of guilty and a "reduced" sentence.

On December 26th, Stanton phoned Foreman that the best he can do was a sentence of 99 years. When this word was passed to petitioner, he vehemently rejected the deal.

During January and February, 1969, Foreman visited petitioner often. His theme was always the same: accept the deal or go to the electric chair. Eventually, petitioner was persuaded and signed a letter authorizing Foreman to make a deal. On February 21st, Foreman took the formal plea of guilty to District Attorney Canale. On February 28th, Asst. District Attorney Beasley gave Foreman the stipulations which must accompany the plea. On or about February 28th, Foreman returned with petitioner's approval of the stipulations. In early March, District Attorney Canale consulted the U.S. Department of Justice which gave its approval to the deal. Next the District Attorney consulted Mrs. King and the Reverend Abernathy who did not "approve" the "deal" but said that they did not object to petitioner's not going to the electric chair, as they disapproved of capital punishment in general. Mrs. King and the Reverend Abernathy have both consistently expressed the view that they believe that the Reverend King was murdered as the result of a conspiracy.

Finally, Messrs. Foreman and Canale took the deal to the Trial Judge who gave his approval, but only because the deal provided 99 years imprisonment rather than a life sentence. Ironi-

cally, after sentence had been pronounced, Judge Battle proclaimed to the court that it had been a good deal. After all, according to him, it avoided the possibility of acquittal or a hung jury, and, after all, no one has been put to death in Tennessee in over a decade.

VIII. PETITIONER ACCEPTED DEAL UNDER DURESS AND BRIBERY

a. Petitioner charges that his attorney, Percy Foreman, instituted a course of action toward him designed to pressure petitioner into pleading guilty. Your petitioner avers that his attorney's action was not taken for the welfare of petitioner but was done by his said attorney so that he could collect large sums of money from the writer or writers with whom he had contracted.

b. Although petitioner was very loathe to plead guilty to a crime which he did not commit, he was equally loathe to disregard the consistent and persistent advice of his chosen and experienced counsel. Personalities and differences in age and education - petitioner only finished eighth grade - certainly took its toll in the process of persuasion and acceptance.

c. Petitioner avers that attorney Foreman pressured him toward a plea of guilty all during the months of January and February, finally warning him without equivocation that 'the only way to save his life was for him to plead guilty.'

d. Having changed lawyers once, and having been warned by the Trial Judge that he would not be permitted to do so again except under the most exceptional circumstances, and fearful of

ignoring the advice of his chosen counsel and the Public Defender, petitioner finally gave in and consented under extreme duress to a plea of guilty.

e. Petitioner avers that Attorney Foreman told him that chances of conviction were "100%" and chances of the electric chair were "99%."

f. Later, on a national TV program (Dick Cavett, August 9, 1969), Attorney Foreman bragged of his handling of the guilty plea:

> Cavett: ..... a lot of people in the legal profession were astounded at how you got him to change the plea.
>
> Foreman: I didn't get him to change the plea. I simply told him that I thought he would be executed if he didn't. [Laughter.]

g. What Attorney Foreman did not tell the TV audience was that, when the agreement for the guilty plea became unhinged on March 9th, the day before the trial, that he seasoned his duress with a touch of bribery to get petitioner "back in line." Specifically, petitioner desired to change his mind and return to his original plea of "not guilty." When Attorney Foreman heard of this, he rushed to the jail and spent 2-1/2 hours with petitioner, arguing with him to stick with the "guilty plea."

Furthermore, Attorney Foreman said (and confirmed in writing) that if petitioner persisted in his demand for a "not guilty" plea and a trial that he (Foreman) would insist on execution of his contractual rights to all of petitioner's future earnings from literary, movie, etc. rights; Foreman estimated these to be approximately one half million dollars; Foreman had some basis for this estimate as he thought he had worked out movie

rights alone with producer Carlo Ponti for $175,000, plus 13% of proceeds. Attorney Foreman informed petitioner, however, that if he stuck with the guilty plea "and no embarrassing circumstances take place in the courtroom, 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". It has never been explained as to whom the circumstances were not to be "embarrassing." Foreman? Canale? The United States? [See Exhibits Q and R for two letters of March 9, 1969, from Percy Foreman to petitioner.] Thus, bribery was added to duress.

IX. CRUEL AND UNUSUAL PUNISHMENT

Petitioner avers that he was subjected to cruel and unusual punishment in violation of the Constitutions of Tennessee and the United States, and that this punishment contributed directly to his plea of guilty to a crime which he did not commit. Specifically, petitioner avers that:

a. He was kept in solitary confinement in Memphis for nine months.

b. He was cut off from all fresh air and daylight during this long period of time.

c. He was under constant surveillance, 60 minutes of every hour, 24 hours of every day during that period. The surveillance consisted of bright lights, guards within eye and ear shot, closed circuit TV and concealed microphones at all times.

d. Despite protests, he was subjected almost constantly to radio and TV noises from the guards' radio and TV sets.

e. As a result of this cruel and unusual punishment, he could not get proper rest. He became extremely nervous and suffered from chronic headaches and nosebleeds.

f. The Trial Judge denied a motion by petitioner to correct or ameliorate certain of these conditions.

g. Because of his distress and nervousness, he became incapable of making rational and intelligent decisions with respect to his defense. He became wholly dependent on Attorneys Foreman and Stanton and their judgement. Eventually, his resistance was worn down and he was induced to bow to their insistence on a plea of guilty.

XI. DID PETITIONER IN FACT AGREE IN COURT THAT HE WAS VOLUNTARILY PLEADING GUILTY?

At the hearing on March 10, 1969, Judge Battle posed this question to petitioner:

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

According to the transcript prepared by the Clerk of Court, petitioner replied:

> "No, no one, in any way." [Exhibit Q.]

However, in the only published version of the court proceeding [See Exhibit R, The Strange Case of James Earl Ray, by Clay Blair, Bantam Press, 1969, at p. 210, the exact same question is answered:

"Now, what did you say?"

and the judge, without repeating the question, went on to the next question.

Yet, on this crucial question of duress, still another "official" version of the transcript, that of Miss Marty Otwell, Court Reporter, Memphis, completely omits both the question and answer. [See Exhibit S]. Miss Otwell had been approved by Judge Battle as official court reporter for petitioner.

Petitioner avers that he recalls that the question was asked, but that,because of its importance, he wanted to be sure that he understood it exactly. To the best of his memory, the question was not repeated, and he was given no further opportunity to answer it.

Petitioner further avers that the record on this point, at best, is very unclear, and that, as set out above at some length, continuous and heavy pressure was brought to bear by his counsel. The pressure had been particularly heavy on the previous day, March 9, and it had been supplemented with bribery.

XII. FRAUD ON THE COURT

Petitioner avers that the Court as well as he has been defrauded by the actions of counsel in this case, and cites the following specific examples:

a. Despite a prohibition against pre-trial publicity, Look Magazine published highly prejudicial articles by author

Wm. Bradford Huie, who had received his information from Attorney Arthus Hanes.

b. On November 12, 1968, when Judge Battle enrolled Percy Foreman to practice before the court as petitioner's counsel, Foreman made no mention of fee. However, when he reported to the court on December 18, 1968, as to progress in his investigation of the case, he made these statements:

> "I intend to stay in this case as long as your Honor will permit me so to do and without compensation. If compensation should become available, it will do so without my committing any of what I consider a lawyer's responsibility or a client's rights." [Transcript, p.3]
>
> "... and I will keep this court advised if any contracts of any kind are signed or agreed upon." [Transcript, p. 6]
>
> "If I were willing to sell this man's life for some royalties on a picture and on a book, magazine articles, it would be logical for money but I don't practice law for money now. There was a time when I did." [Transcript, p. 23].

Again, on February 7, 1969, he told the court:

> "... because I want it said at the conclusion of this trial that I did not receive anything for my part of this case...." [Transcript, p. 21]

As Exhibits B-F indicate, from the very beginning Foreman had every intention of extracting as much money as possible out of the case. Petitioner avers that at their very first meeting, Foreman demanded and he verbally agreed to $150,000 if that much could be realized from the sale of literary rights. In time, this sum was increased considerably and, at one point, Foreman had a written contract for <u>all</u> of petitioner's and Hanes' percentage of the future rights.

Petitioner further avers that he knows of no evidence to indicate that these mercenary agreements, so full of conflict of interest, were ever revealed to the court as promised.

c. Attorney Foreman's Motion for Enrollment, granted on November 12, 1968, contained this promise:

> "That he will, if admitted, secure the services of a lawyer licensed by the State of Tennessee to associate with him in the defense of said cases."

Yet, petitioner avers, that no such lawyer was ever engaged. The first mention that petitioner heard of a Tennessee lawyer in private practice was on or about March 1st when Foreman said that he wanted Attorney John J. Hooker, Sr., of Nashville, associated with the plea of guilty. Under the circumstances, petitioner declined the services of the eminent lawyer, as he needed no further assistance in pleading guilty.

d. Attorney Foreman stalled the court for months with the argument that he personally needed to interview all 360 of the State's prospective witnesses. Petitioner believes it to be a fact that Foreman personally interviewed less than 10% of these witnesses (if, indeed, that many) and that the extensions of time were sought solely to pressure him into a plea of guilty.

e. Later, on the Dick Cavett show of August 8, 1969, Attorney Foreman discussed petitioner's case and made at least two statements which petitioner urges are further frauds on the court of which Foreman is an officer:

1. He outlined certain serious crimes which he alleges petitioner perpetrated; if petitioner had perpetrated such crimes he could be prosecuted and might

be convicted; and public disclosure of such alleged crimes is a gross breach of a lawyer's responsibility toward a client. Foreman's statement as to petitioner was as follows:

> "Well, he [petitioner] ran three packets of narcotics from Windsor down to Detroit. He ran one tire full of jewelry from Laredo, Texas, into Mexico.

2. Attorney Foreman also made this statement on the same show:

> "Well, there are few people in my 42 years and not one has committed a murder that ever committed his second one. Of course, there are paid killers, but they are an asset to society usually by the type of people they kill, at least most of them. [Laughter].

Such is the lawyer who persuaded petitioner to plead guilty.

XIII. PUBLIC INTEREST

No two cases are exactly alike and petitioner believes that his case is somewhat exceptional from the viewpoint of public interest.

The public is grossly dissatisfied with the proceeding in Memphis whereby petitioner plead guilty. They do not believe that he killed Dr. King, certainly not by himself. If there was a conspiracy, they wish to know the identity of the conspirators, and why they have not been tried and convicted.

Under our American system of law, all suspects are to be tried in court by an adversary proceeding. Here, due to the duplicity of petitioner's attorneys, petitioner was tried, not in court, but in the press in advance of a trial date. There was no adversary proceeding, only a stipulation of the record.

Petitioner avers further that he has never had a trial and has never been accorded his day in court. By way of being more explicit, petitioner would show to the court that he was induced to plead guilty when, in fact, he was and is not guilty of the crime of murder.

XIV. TRIAL JUDGE INTENDED TO HEAR MOTION FOR NEW TRIAL AT TIME OF HIS DEATH

Petitioner avers that Judge Battle intended to hold a hearing on petitioner's Motion for a New Trial at the time of his death. In fact, he had on his desk two letters from petitioner which he considered the equivalent of such a Motion. He had promised petitioner's new counsel, Mr. Richard Ryan of Memphis, on that very day that he would arrange for Mr. Ryan to visit petitioner in jail and work out details of the Motion before the thirty-day time limit ran. Unfortunately, Judge Battle dropped dead before he could complete these arrangements on that day.

Your petitioner avers that another Judge, the Hon. Arthur Faquin, serving in place of Judge Battle, ruled that since he had pleaded guilty, there could be no motion for a new trial heard, and refused to set aside the judgment. Yet, in a reply brief of May 13, 1969, District Attorney Canale admitted that Judge Battle, had he lived, could have given petitioner relief

"on a Motion to Withdraw his plea of guilty if the proper and required grounds were present." Also, by an order dated March 13, 1969, Judge Battle ordered all evidence retained by the State, obviously anticipating further legal moves in the case.

The case was carried to the highest appellate courts of this State and finally the Supreme Court of Tennessee affirmed the judgment of the Criminal Court of Shelby County. This was done despite the statutes of Tennessee which require a new trial where the presiding Judge has died before passing on such motions. The prior decisions of the Supreme Court of Tennessee had held this to be a wholesome law since the judge who heard the case was the only judge who could properly and legally authenticate the record in the case for review by the Supreme Court.

XV. DELAY

Your petitioner further charges that this matter was brought to the attention of the Judge who originally presided in this case, and before the death of Judge Battle, and to the attention of the successor Judge and the District Attorney General, within a short time thereafter; the matters contained in this complaint were brought to the attention of the Court and the prosecution promptly, so that delay could not have been petitioner's motive, nor could the passage of such a short period of time have impaired the chances of the prosecution in presenting whatever case they have or may have not had. Petitioner hereby makes his affidavit a part of this petition and is filing the same with this petition.

He would show to the court that the State's case has not been prejudiced, and that he has obtained no unfair advantages by reason of his plea of guilty.

XVI. RELIEF

Petitioner avers that he only pleaded guilty because of the above-stated reasons and not because he was in fact guilty.

PREMISES CONSIDERED, PETITIONER PRAYS:

1. That he be allowed to file this petition;

2. That the Writ of Habeas Corpus issue requiring the warden, Lewis Tollett, to have the person of the petitioner before this Court at such time and place as this Court may require and order, so that the legality of his restraint may be inquired into;

3. He prays that he be allowed to withdraw his plea of guilty and that the judgment upon which he is being restrained, be set aside and for nothing held and that he be granted a trial on his plea of not guilty;

4. That the Public Defender be ordered to make all files on this case available to present counsel for petitioner;

5. That an evidentiary hearing be granted under Section 40-3809 of Tennessee Statutes;

6. That for such evidentiary hearing, a Court Reporter be appointed under Section 40-3801 of the Tennessee Statutes;

7. He prays for such other, further and general relief as the equities and justice of the case may demand.

James Earl Ray
by Richard J. Ryan

JAMES EARL RAY
(Petitioner)

J. B. Stoner

J. B. STONER
(Attorney for Petitioner)

Richard J. Ryan

R. J. RYAN
(Attorney for Petitioner)

Bernard Fensterwald Jr.

B. FENSTERWALD, JR.
(Attorney for Petitioner)