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IN THE CRIMINAL COURTS OF SHELBY COUNTY, THIRTIETH JUDICIAL
DISTRICT AT MEMPHIS, TN

JAMES EARL RAY

Petitioner

Prisoner I.D. No. 65477

v.

MICHAEL DUTTON, Warden Tennessee State Penitentiary,
Nashville, Tennessee

Respondent

PETITION FOR HABEAS CORPUS PURSUANT TO T.C.A.
SECTION 29-21-101 ET SEQ. OR IN ALTERNATIVE,
PETITION FOR POST-CONVICTION RELIEF PURSUANT TO
T.C.A. SECTION 40-30-101

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TO THE HONORABLE JUDGES, CRIMINAL COURTS OF SHELBY COUNTY:

Comes now Petitioner JAMES EARL RAY, by and through
counsel, William Pepper and Wayne Chastain. They
respectfully petition this Honorable Court for JAMES EARL
RAY for *Habeas Corpus* relief pursuant to Tennessee Code
Annotated Section 29-21-101 Et Seq.; or in alternative,
relief pursuant to T.C.A. Section 40-30-102 Et Seq.

It will be clearly shown to this Honorable Court that
Petitioner JAMES EARL RAY is being illegally restrained and
has been illegally restrained for some twenty four years
and 10 months pursuant to a criminal conviction that is
void as well as voidable as a result of the abridgement of
his fundamental constitutional rights as protected by both
the Federal and State Constitutions.

Introduction

1. Petitioner is currently completing the 25th year of a
99 year prison sentence imposed upon him on March 10,
1969 in the Criminal Court of Shelby County,
Tennessee, pursuant to indictment number 16645, on the
charge of the first degree murder of the Reverend Dr.
Martin Luther King, Jr. on April 4, 1968.
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2. Said indictment issued on 7 May 1968, a true copy of which is attached hereto as Exhibit 1, charged that Petitioner "did unlawfully, feloniously, wilfully, deliberately, premeditatedly and of his malice aforethought KILL and MURDER MARTIN LUTHER KING, JR."
3. Petitioner's conviction and sentence was facilitated by a plea of guilty entered in a hearing on the date of sentencing, March 10, 1969.
4. Petitioner has however consistently and continually contended that his plea was coerced and forced upon him only days before the said guilty plea hearing by counsel whose representation Petitioner has contended was ineffective, inadequate and irreparably impaired by conflicts in contravention of Petitioner's constitutional right to effective counsel. In one instance Petitioner has noted that this rendered impossible any cross examination of the State's chief witnesses by co-counsel, who without Petitioner's consent initiated plea negotiations with the prosecutor on the afternoon of December 18, 1968 barely four hours after being appointed. Said counsel then continued the plea negotiations, also without Petitioner's consent, for over two months before terms of the plea were announced to and imposed upon Petitioner as an ultimatum.
5. Three days after sentencing Petitioner wrote to the presiding judge and began his effort which has continued to this day, to set aside the guilty plea and obtain a trial on the charge set out in the Indictment.

6. That request was denied and each and every other similar request submitted by Petitioner up to the date hereof has been denied, but the ground for relief in the form of newly discovered evidence, now to be put forward in support of this Petition was not previously known and has never been put before a competent tribunal such as this Honorable Court which is vested with the jurisdiction and authority to grant habeas corpus or post conviction relief.

7. A history of prior petitions and appeals for relief filed, including the date each has been decided, the court, and the grounds for relief asserted and the decision, along with the names of counsel who have represented Petitioner in said applications, is set out and attached hereto as Exhibit 2.

First Ground for Relief

Newly Discovered Evidence

8. Petitioner would establish before this Honorable Court that he is presently being illegally restrained against his liberty in violation of his civil rights by the State of Tennessee at the Tennessee State Penitentiary. Petitioner would further show this Honorable Court that this wrongful imprisonment has been continued for approximately 24 years and 10 months as a result of his coerced acceptance of a plea bargaining arrangement. Petitioner's wrongful conviction and sentence emanated from him being erroneously charged with acting alone in the commission of the crime of murder in the first degree which crime the indictment alleged was perpetrated by him acting alone and entirely on his own initiative, planning and execution. The premeditated murder of

which Petitioner was accused was carried out by the firing of a single shot, at approximately 6:01 p.m. on April 4, 1968, with said bullet striking and mortally wounding Dr. King as he stood on the balcony of the Lorraine Motel on Mulberry Street in Memphis, Tennessee.

Facts in Support

9. Petitioner would submit evidence to this Honorable Court which would prove that he did not fire the fatal shot as charged but that in fact another person, unknown to Petitioner, fired said fatal bullet. The Petitioner's actual innocence would thus be established.

10. Some persons, whom Petitioner respectfully requests be ordered to appear before this Honorable Court and be required to provide evidence, have as of the date hereof come forward and given statements on television and through their attorney, explicitly confirming either their involvement in the actual murder and/or their knowledge of facts and events surrounding and including the murder. Said persons have also explicitly confirmed against their own interests that Petitioner did not commit the crime of murder for which he was charged and further that Petitioner is, in fact, not only innocent of said crime but also innocent of having any prior knowledge that said crime of murder was to be committed.

11. In verification and support of said statements evidencing Petitioner's actual innocence of the crime for which he is presently incarcerated, Petitioner respectfully calls the attention of this Honorable Court to the following exhibits attached hereto.

11.1 Exhibit 3 - A true and exact video copy of the entirety of the ABC Television Programme "Prime Time Live" as aired on 16 December 1993.

11.2 Exhibit 4 - A transcript of said Programme which may be read in conjunction with the aforesaid video copy.

11.3 Exhibit 5 - An affidavit of Petitioner's co-counsel Wayne Chastain which confirms that a formal request for immunity from prosecution was submitted by Attorney Lewis Garrison to the Shelby County District Attorney on behalf of five persons and that Attorney Garrison subsequently provided a copy thereof to counsel Chastain a true copy of which he attaches to his affidavit.

11.4 Exhibit 6 - An affidavit by Petitioner's counsel Dr. William Pepper setting out information he received as a result of contact with three of the five persons now coming forward with the new evidence which confirms their current statements, and which in some instances was developed over contact periods going back 15 years.

11.5 Exhibit 7 - An affidavit by private investigator Kenneth Herman of Memphis, Tennessee who has interviewed each of the persons now coming forward with the new evidence.

11.6 Exhibit 8 - An affidavit by private investigator Clifton Dates of Memphis, Tennessee who also has interviewed two of the persons now coming forward with the new evidence, one of whom expressed fear for her safety if she came forward in early 1993.

11.7 Exhibit 9 - An FBI 302 report pertaining to an interview given on April 8, 1968 by John McFerren of Somerville, Tennessee concerning a telephone conversation he overheard within an hour before the murder. Said telephone conversation involving a now deceased Memphis produce dealer and reported by McFerren over 25 years ago tends to corroborate the involvement of the deceased produce dealer in the murder as alleged by Loyd Jowers, one of the persons now coming forward.

11.8 Exhibit 10 - An interview taken under oath of James McCraw on October 22, 1992 by defense counsel William Pepper as to events relating to the murder of which he was aware and which tends to corroborate certain allegations made by one or more of the persons who have now come forward with new evidence.

12. Petitioner also respectfully calls the court's attention to other new evidence tending to corroborate facts which support his claim of innocence which has been produced by Defense counsel's investigation and which in part aired on the HBO special programme "Guilt or Innocence: the Trial of James Earl Ray." The new evidence addresses certain facts originally put forward by the State in its prosecution of Petitioner which facts were critical to its case and which are now shown to be in serious doubt or clearly untrue.

Petitioner would show this Honorable Court that the facts now being established by the new evidence in support of Petitioner's innocence relate to the following material issues:

- 12.1 Whether or not as the State alleged the 30.06 Remington 760 Gamemaster rifle found near the scene is the murder weapon i.e. whether the death slug was fired from said rifle.
- 12.2 Whether or not as the State alleged the alleged death slug is in fact the fatal bullet.
- 12.3 Whether or not the defendant had an alibi as to his whereabouts at the time of the killing and was in fact not at or around the scene of the crime at the time of the killing.
- 12.4 Whether as the State alleged the State's chief witness Charles Quitman Stephens had the capability to identify the Petitioner or anyone else on the afternoon of April 4, 1968.
- 12.5 Whether or not as the State alleged the fatal shot was fired from the bathroom window.
- 12.6 Whether or not, in fact, a wide range of other newly discovered and newly analyzed evidence proves that material events occurred which were clearly beyond the capability of the Petitioner, indicating the existence of a broad conspiracy. These specific material events are the following:
 - 12.6.1 The fact that for many years prior to the killing Dr. King was the subject of a continual electronic surveillance and harassment by the FBI and that even though the FBI, through its Memphis field office case agent on the killing, Joe Hester, denied it took place, electronic surveillance on Dr. King was carried out in Memphis during his visits in 1968.
 - 12.6.2 The violence which occurred during the march on March 28, which made it necessary for Dr. King to return to Memphis.
 - 12.6.3 The failure of the Memphis Police Department to form the black homicide bodyguard unit during Dr. King's last visit.
 - 12.6.4 The removal of a black detective and two black firemen from duty in the immediate area of the crime prior to the killing.
 - 12.6.5 The changing of the reservation and room assignment of Dr. King at the Lorraine Motel.
 - 12.6.6 The withdrawal of the TACT units from around the Lorraine Motel on the morning of April 4, and the disappearance from the Motel of any police within an hour prior to the killing.
 - 12.6.7 The presence of two mustangs with one belonging to Petitioner in front of the rooming house building late in the afternoon of April 4.
 - 12.6.8 The cutting down of the brush and bushes behind the rooming house, early on the morning of April 5, 1968.
13. These facts being established by the new evidence in respect of the issues set out above provide a further corroborating framework for Petitioner's claim for

relief herein and the submission of said new evidence not only raises questions of reasonable doubt of Petitioner's guilt but, it is respectfully suggested, establishes Petitioner's actual innocence of the charge of first degree murder of Dr. Martin Luther King, Jr.

FACT SUMMARY

THE RIFLE IN EVIDENCE FOUND IN THE VICINITY OF THE CRIME, AND ADMITTEDLY PURCHASED BY PETITIONER, HAS NOT BEEN PROVED TO BE THE MURDER WEAPON AND IN ALL LIKELIHOOD IS NOT THE GUN WHICH FIRED THE FATAL BULLET.

14. Though this Honorable Court denied teletrial producers HBO and Thames an opportunity to conduct ballistics tests in order to preserve the evidence for testing in a formal court proceeding such as the one required by this Petition, expert ballistics testimony was produced during the ten day trial proceedings, portions of which were made a part of the Thames Television/HBO television production "Guilt or Innocence: The Trial of James Earl Ray," noted above. Petitioner attaches hereto a true video copy of the three hour edited version as Exhibit 11.

14.1 Donald E. Champagne was a member of the House Select Committee on Assassinations ("HSCA") five man ballistics panel of experts which conducted extensive tests on the rifle in an effort to match the actual death slug with any one of twelve test fired slugs resulting from Mr. Champagne's Panel test fires. No match could be made. Mr. Champagne testified that it was thus not possible to conclude that the rifle in evidence was, to the exclusion of all others, the weapon from which the fatal shot was fired. Petitioner attaches as Exhibit 12 the relevant pages of the Transcript of this testimony. He noted that the class characteristics - lands,

grooves and twists - were the same but testified that this only meant that the evidence rifle was one of thousands of others which were manufactured with those characteristics.

14.2 The Defense expert, the nationally respected Charles Morton, also confirmed, following his examination of the alleged death slug and review of the HSCA ballistics panel report, that the evidence rifle was only one of thousands which could have fired the death slug and that no one could conclude that it, to the exclusion of all other 30.06 rifles with the same class characteristics, was the murder weapon. Petitioner attaches hereto as Exhibit 13 the relevant pages of Mr Morton's testimony.

14.3 Petitioner suggests that though it appears clear that there is no proof that the fatal shot was fired from the rifle in evidence he looks forward to his counsel being allowed by this Honorable Court to scientifically test the weapon, death slug and bullets in evidence.

14.4 If allowed to extensively test the weapon, Petitioner suggests that it might be possible at this point in time, to exclude it as the murder weapon. Since the teletrial production was denied the opportunity to do so by the courts of Tennessee, despite Petitioner's request for such an opportunity in joinder with the Petition of Thames and HBO such testing is now appropriate and necessary. In denying the HBO/Thames application for such testing the Court held that the evidence must be safeguarded for testing and consideration and use in any future official proceedings. This

Petition clearly initiates such a proceeding. Accordingly, pursuant to the relief sought by Petitioner in this Petition, Petitioner requests that his counsel be afforded an opportunity to properly and professionally arrange all of the usual ballistics tests to be conducted, in addition to any other forensic testing of the evidence deemed necessary by counsel.

FACT SUMMARY

THERE IS NOW A SERIOUS QUESTION ABOUT WHETHER THE ALLEGED DEATH SLUG IS IN FACT THE SLUG REMOVED FROM DR. KING'S BODY OR IF IT IS WHETHER OR NOT THE EVIDENCE DEATH SLUG HAS BEEN TAMPERED WITH AND MATERIALLY ALTERED.

15. Former homicide detective Captain Tommy Smith testified at the Trial that though he was also never questioned on the matter, he photographed Dr. King's back and left shoulder blade area and that said photograph depicted a lump which in fact was the death slug, just under the skin. He said that he pinched the skin and rolled it between his thumb and his index finger and he could clearly feel that it was intact and in one piece. Petitioner attaches hereto as Exhibit 14 a copy of the photograph taken by Captain Smith and the relevant Transcript pages containing his testimony on this issue.

15.1 Memphis Police Department homicide detective Barry Linville on April 4, 1968 saw the death slug being removed from Dr. King's body by the Coroner Dr. Jerry Francisco and personally received it. Noting that no law enforcement official or investigatory body, including the FBI and the HSCA had ever interviewed him, he testified at the Trial that the slug was in one piece, intact, and with the exception of a flattened tip, in pristine condition. As a piece of

evidence he termed it a "...piece of gold." When confronted with a photograph of the alleged death slug in evidence which shows it to be in three pieces, Detective Linville categorically denied that this was the slug he received from Dr. King's body and tagged as evidence for sending to the FBI laboratory in Washington, D.C. Petitioner attaches hereto as Exhibit 15 the relevant Transcript pages of Detective Linville's testimony and a photograph of the alleged death slug in evidence.

15.2 Coroner Dr. Jerry Francisco stated in his affidavit that he removed a "...bullet from beneath the skin..." In an interview with the FBI conducted on 18 April, 1968 Dr. Francisco stated that he personally took a photograph of the "missile" after it was removed and furnished the FBI with copies of said photograph. Petitioner attaches hereto as Exhibit 16 a copy of Dr. Francisco's affidavit and a copy of the FBI 302 interview report.

15.3 The Prosecution's chief forensic expert, Dr. Michael Baden, who is one of the nation's foremost forensic pathologists and who was chairman of the HSCA's forensic panel, also testified that based upon his review of the relevant reports and documents that the death slug was in one piece when it was removed from the body of Dr. King. Petitioner attaches hereto as Exhibit 17 the relevant Transcript pages of Dr. Baden's testimony on this issue.

15.4 Based upon this clear and sound evidence a most serious question now exists about the integrity of one of the State's most essential pieces of physical evidence - the death slug itself. Either the actual

death slug has been replaced or substituted by another, mangled slug or the actual slug which took Dr. King's life, has been tampered with and damaged to the extent that it has become unrecognisable.

15.4.1 In any case, Petitioner respectfully suggests that this occurrence renders the death slug evidence useless to the State. It also raises a question as to what happened to this evidence when it came under the control of the FBI and what this apparent tampering means in respect of possible official involvement. Pursuant to the relief sought by Petitioner in this Petition, Petitioner requests that his counsel be afforded an opportunity to properly and professionally arrange for the conduct of relevant neutron activation tests and analysis of the "death slug" in evidence and other bullets in evidence found at the scene.

FACT SUMMARY

THE PETITIONER WAS NOT AT OR AROUND THE SCENE OF THE CRIME ON APRIL 4, 1968, BUT IN FACT LEFT THE AREA APPROXIMATELY FIFTEEN MINUTES PRIOR TO THE TIME OF THE MURDER AND WAS ELSEWHERE.

16. The Petitioner has consistently maintained that he left the area of the rooming house and South Main Street at some time prior to 6 p.m. on the evening of the murder. He has insisted that he drove to a service station in order to try to have a flat tire repaired. Petitioner attaches as part of Exhibit 18 FBI document "AT44-2386" which is the examination report of the mustang and which records the examiner's observation that the spare tire in the trunk was flat.

16.1 At the trial the Defense introduced two long buried FBI reports of interviews of Messrs Ray Hendrix and William Reed who had been customers in Jim's Grill late in the afternoon of April 4. In these interviews Messrs Hendrix and Reed stated how they left Jim's Grill around 5:35-5:55 p.m. that day.

16.2 Once outside, Hendrix remembered that he left a jacket in the Grill and went back to get it. Reed waited for him and in the meantime noticed the white mustang parked in front of and slightly south of the entrance to the Grill. He said that he took notice because he was considering buying a car and was interested in the model. In any event, after Reed came out the two began to walk up the street and when they got to Vance Street, it must have been around 5:35-5:55. They were about to cross when Reed saw a car about to turn the corner. He stopped and pulled his friend Hendrix back, just as the car - a white mustang, with only the driver inside - made the right turn on to Vance from South Main Street. Both men stated that the car was travelling at a normal rate of speed.

16.3 The men were staying at Clark's Hotel, 106 Vance and it only took them a few minutes to reach their hotel. Shortly after they reached the hotel there were sirens sounding everywhere.

Petitioner attaches as part of Exhibit 18 the Transcript pages containing the relevant testimony and copies of the statements.

16.4 Thus, Petitioner who has always maintained that he drove away from the area shortly before 6p.m., had an alibi apparently substantiated by three witnesses

whose statements have been long overlooked or not discovered by each and every investigatory effort in this case. These separate and entirely independent witnesses with no axe to grind seem to place the Petitioner elsewhere at the time of the crime but, in any event, certainly raise more than a reasonable doubt as to whether or not Petitioner was anywhere near the scene of the crime at the time of the shooting.

FACT SUMMARY

THE STATE'S CHIEF WITNESS CHARLES QUITMAN STEPHENS WAS INTOXICATED ON THE AFTERNOON OF THE MURDER AND COULD NOT HAVE PROVIDED A CREDIBLE IDENTIFICATION OF PETITIONER.

17. From the outset a major element of the State's case was the alleged eyewitness identification of Petitioner in the rooming house just after the shooting by a resident, one Charles Quitman Stephens. In fact it was Mr. Stephens's affidavit that was material to the successful extradition request to the United Kingdom. Mr. Stephens was kept in protective custody for some period of time in anticipation of his testimony for the Prosecution.

17.1 As it emerges, Mr. Stephens could not have provided even remotely credible identification of Petitioner since he was intoxicated to the point where his ability to see anything was questionable.

17.1.1 In a sworn statement at the Trial, taxi driver James McCraw stated how he arrived at the Rooming House, 4221/2 South Main Street late on the afternoon of April 4, having been sent there to pick up Mr Stephens to take him somewhere. He stated that it must have been between 5:50 and 5:55 when he entered the north entrance and climbed the

stairs to the second floor to call at Mr Stephens's room - 6B. When he pushed the door open he said he saw Mr Stephens passed out drunk on the bed. Seeing him in this condition he would not take him and turned away and returned to his cab which he had left double parked in front. He made a U turn and headed south for his next job but had only gone a few blocks when news of the shooting (which took place at 6:01 p.m.) came over his radio. Mr McCraw stated that he must have exited the rooming house only a few minutes earlier.

17.1.2 Mr McCraw's statement makes it clear that Charles Stephens was not in a condition to credibly identify anyone on the evening of April 4. Petitioner attaches hereto as Exhibit 19 the Transcript of pages containing the relevant portions of Mr McCraw's statement.

17.2 Homicide Detective Captain Tommy Smith attempted to interview Mr Stephens shortly after the shooting and he was unable to do so, finding him incoherent and barely able to stand up. Petitioner attaches hereto, also as a part of Exhibit 19 the relevant section of the Transcript containing Captain Smith's testimony.

17.3 Attorney Wayne Chastain was a journalist for the *Press Scimitar* in 1968 and on the evening of April 4 he also tried to interview Charles Stephens and found him with his head down on the table unable to carry on a conversation as a result of the degree of intoxication. Petitioner also attaches hereto as part of Exhibit 19 the section of the Transcript containing Mr Chastain's statement.

17.4 It is clear from the statements of the observations of these independent witnesses that in Mr Stephens the State had no credible eye witness but rather an easily manipulated inveterate drunk on which they hoped to establish Petitioner's presence around the scene of the crime.

FACT SUMMARY

THE FATAL SHOT WAS NOT FIRED FROM THE BATHROOM WINDOW OF THE ROOMING HOUSE BUT FROM THE BRUSH AREA AT THE REAR OF THE BUILDING

18. Another pillar of the State's case and a fact central to its case is the allegation that the shot was fired from the bathroom window of the rooming house. The alleged presence of Petitioner in that bathroom at a time close to the slaying has been a critical part of the State's case from the outset.

18.1 In fact the bathroom was empty and the door wide open minutes before the shooting. As he approached room 6B to pick up Stephens, cab driver McCraw saw the open door and the empty bathroom. As he left Stephens's room he once again observed the empty bathroom and the open door. This was just before 6 p.m. Petitioner attaches hereto as part of Exhibit 20 the section of the Transcript containing that portion of McCraw's observations.

18.2 The evidence as now developed is clear and overwhelming that the fatal shot was fired not from the bathroom which was empty but from the brush area behind the rooming house. This is confirmed by the following evidence:

- 18.2.1 The testimony of former *New York Times* journalist Earl Caldwell who, from the doorway of his room - 217 - at the Lorraine Motel immediately after the shot saw a figure crouching in the bushes staring at the balcony.
- 18.2.2 The sworn statement of the Reverend James Orange, a member of the Executive Staff of the Southern Christian Leadership Conference ("SCLC") that immediately after the shot he turned toward the bushes and saw smoke rising straight up from them.
- 18.2.3 The statement of Solomon Jones that he looked over to the bushes also immediately after the shot and saw a person wearing a hooded sweatshirt turn and move quickly back toward the building.
- 18.2.4 Then testimony of Patrolman J. B. Hodges that he found two fresh footprints in the area back near the south-east corner of the alley which runs between the two sections of the rooming house building. He identified a photograph of the plaster cast of the footprints made by the Police Department. Petitioner attaches hereto as part of Exhibit 21 the relevant sections of the Transcript which contain the evidence set out above and a copy of a photograph of the plaster cast of the footprints.

FACT SUMMARY

THERE IS A WIDE RANGE OF CREDIBLE EVIDENCE THAT MATERIAL EVENTS OCCURRED WHICH WERE INDISPUTABLY BEYOND THE POWER OR CAPABILITY OF PETITIONER AND FURTHER STRONGLY POINT TO THE EXISTENCE OF A BROAD CONSPIRACY

19. They may be seen as follows:

- 19.1 The now well established historical fact that Dr. King was for a long time the subject of harassment, intimidation and electronic surveillance by the FBI. The Bureau mounted numerous programs designed to discredit Dr. King and eliminate him as a force for change in the United States. This range of activity was put into evidence in the Trial by former Atlanta FBI agent Arthur Murtagh. Petitioner attaches hereto the relevant testimony and representative FBI documents as Exhibit 22.
- 19.2 Electronic surveillance was conducted against Dr. King during his visits to Memphis in 1968. That this was done was documented as newly discovered evidence at the Trial in testimony by a former member of the surveillance team. That this went on was not a surprise. What is curious and worrying is that the FBI has denied that this surveillance ever took place. Former special agent Joe Hester categorically denied it at the Trial and maintained that if it had taken place he would have known about it. Petitioner attaches hereto as Exhibit 23 the relevant testimony both establishing and denying the existence of the surveillance in early 1968.
- 19.3 The existence of *agents provocateurs* who disrupted the march led by Dr. King on March 28, 1968 (see Exhibit 24 hereto).
- 19.4 The change of Dr. King's hotel reservation to the Lorraine for the visit on April 3 prompted by FBI planted articles and even his more secure ground level room at that Motel to the greatly exposed

balcony room in front of which he was standing when killed (see Exhibit 25 hereto).

- 19.5 The failure of the Memphis Police Department to form the black homicide bodyguard unit, previously formed and in place when Dr. King came to town (see Exhibit 26 hereto). Instead Inspector Don Smith went to the airport with three other white detectives who in every way were totally inappropriate bodyguards for Dr. King and who disappeared after 5 p.m. on April 3.
- 19.6 The removal of the TACT forces from in and around the Lorraine Motel prior to the shooting back to the perimeter with Engine House #2 as the base for TACT 10, the unit closest to the Lorraine, and with no satisfactory explanation ever provided for the withdrawal, except that a request from one of Dr. King's party was alleged. This "request" on further examination appears to have come, if at all, from a local pastor with Police Department connections and not from any one in Dr. King's party (see Exhibit 27 hereto).
- 19.7 The transfer orders on the night of April 3 of the only two black firemen working at Engine House #2 to other stations which were overmanned with their arrival and which left their home station undermanned (see Exhibit 28 hereto).
- 19.8 The removal of a seconded black detective from surveillance duty at Engine House #2 at 4 p.m. for a specious, ultimately baseless reason - two hours before the shooting - and the disappearance of any remaining police officers at the Lorraine after

4:45 and before 5:45 p.m. on April 4 (see Exhibit 29 hereto).

- 19.9 The presence of two white mustangs (despite the State's allegation contained in the Memphis Police Department Investigation Report that there was only one) parked on the east side of South Main Street on the afternoon of April 4, with one belonging to the Petitioner and one bearing Arkansas licence plates whose owner is unknown. In light of the alibi testimony and the departure of the mustang in front of Jim's Grill shortly before 6 p.m., the second mustang takes on a special significance. Eyewitness testimony states that this second mustang, parked just south of Canipe's Amusement Company on South Main Street (approximately 100 feet south of Jim's Grill) was driven off shortly after 6:01 p.m. and after someone had dropped a bundle of "evidence", conveniently incriminating Petitioner, in front of Canipe's door (see Exhibit 30 hereto).
- 19.10 The cutting down very early on the morning of April 5 to the virtual bare earth of all of the brush and bushes behind the rooming house, which provided a dense cover at the time of the shooting. Petitioner maintains that this cutting was a drastic, unprecedented alteration of the scene of the crime and which had the effect of removing the cover used by the actual killer (see Exhibit 31 hereto which includes photographs taken after the "clean up").
20. Petitioner respectfully suggests that whilst some of these events and occurrences may be coincidental with

the killing of Dr. King, that it is not credible in the slightest to suggest that all of them may be so explained away. It is, moreover, significant to note that the FBI itself sought to have a "friendly" writer put forward its history of the case (see Exhibit 32 hereto).

21. Petitioner also respectfully calls the attention of this Honorable Court, that each and every one of these events and occurrences and all of them are beyond the capability of Petitioner to effect or influence in any way whatsoever, leaving no other credible conclusion except that forces independent of and Petitioner asserts unknown to him, have planned and orchestrated these events in conjunction with and as a part of the operation which assassinated Martin Luther King, Jr. and that Petitioner was manipulated and instructed throughout by a handler named "Raoul" whose existence was well known to the HSCA and concealed (see Exhibit 33) and has now been independently confirmed by Loyd Jowers, the person who has now admitted accepting the contract offered by produce man Frank Liberto to arrange the murder of Dr. King in Memphis (see Exhibits 3 and 4).
22. Petitioner also asserts that these unknown forces have probably been behind a number of post conviction efforts to intimidate him or buy his admission of guilt, one of which involved an offer to him of \$220,000, a Tennessee Pardon, a removal of the Missouri detainer and a new identity and life outside of the United States (see Exhibit 34 hereto).
23. Unless this Honorable Court is prepared to grant the relief requested herein on the basis of the new

evidence as contained and set out in the Petition and the exhibits attached hereto, in order to further develop this new evidence now before the Court Petitioner respectfully moves that an Order issue empowering his counsel to take formal depositions and require the production of documents of those witnesses whose testimony is critical to these issues of exoneration, but who are outside the fifty mile radius of Memphis, Shelby County.

23.1 The witnesses to be covered by said Order and whose addresses will be provided to this Honorable Court are the following:

23.1.1 Jack Saltman, Surrey, England

23.1.2 Dr. Gus Prosch, Birmingham, Alabama

23.1.3 Solomon Jones, Atlanta, Georgia

23.1.4 Sam Donaldson and other ABC television *Prime Time Live* investigative staff - New York City, New York.

23.1.5 Walter Fauntroy, Washington, D.C.

23.1.6 Marrell McCullough, Washington, D.C. or Langley, Virginia.

23.1.7 Governor Ray Blanton, Jackson, Tennessee.

24. Petitioner also respectfully requests that subpoenas be issued to the following persons, whose addresses will be provided to this Honorable Court, each having relevant information in respect of the newly discovered evidence.

- 24.1 Kenneth Herman, Memphis, Tennessee
 - 24.2 John Billings, Memphis, Tennessee
 - 24.3 John McFerren, Somerville, Tennessee
 - 24.4 Attorney Lewis Garrison, Memphis, Tennessee
 - 24.5 Betty (Smith) Spates, Memphis, Tennessee
 - 24.6 Ms Alda (Smith) Washington, Memphis, Tennessee
 - 24.7 Willie Akins, Memphis, Tennessee
 - 24.8 Bobbi Smith, Memphis Tennessee
 - 24.9 Rosie Lee Dabney, Memphis, Tennessee
 - 24.10 James McCraw, Memphis Tennessee
 - 24.11 Loyd Jowers, Martin, Tennessee
25. Petitioner also respectfully requests that this Honorable Court issue an Order to the Clerk of the Criminal Court of Shelby County Tennessee whereby Petitioner's counsel is authorized and empowered to arrange for the conduct of ballistics tests and analysis on the 30.06 Remington 760 Gamemaster rifle presently held as part of the evidence in this case, as well as neutron activation and other related tests on the alleged "death slug" and other bullets and any other forensic tests deemed necessary by counsel on other items of evidence held by the Clerk as part of the evidence in this case.

Second Ground for Relief

Violation of the Law Sanctioning Plea Bargaining Then In Effect at the time of Petitioner's Conviction and Sentence

26. Petitioner respectfully calls to the attention of this Honorable Court the fact that on March 10, 1969 on the urging and as a result of corecion by counsel he filed a petition for a waiver of trial and agreed to accept a plea of guilty of murder in the first degree. Petitioner was thus compelled by the Court to plea bargain in this case of capital murder.

27. Petitioner notes that the only section of the Tennessee Code which authorized the use of the plea bargaining procedure at the time was 40-2310.

27.1 Prior to 1967 plea bargaining was authorized by this section in respect of felonies for which the punishment required under law was imprisonment for a term of years in the penitentiary (emp. added). The section then read as follows:

27.1.1 "40-2310. Fixing penalty on plea of guilty. -- Upon the plea of guilty, when the punishment is confinement in the penitentiary, a jury shall be impaneled to hear the evidence and fix the time of confinement, unless otherwise expressly provided by this Code." (emp. added)

27.2 Thus the plea bargaining section did not include any capital offenses such as first degree murder which was the charge against Petitioner. Convictions in such cases carried a sentence of "...death in the mode prescribed by law for the infliction of the death penalty in capital cases..." unless following a trial

the jury found that there were mitigating circumstances (Sec. 39-2406).

27.3 In 1967 the plea bargaining section (40-2310) was amended to allow for a resume of stipulated facts to be presented to the jury which they were to consider as they fixed punishment. The amendment however, clearly did not expand the class of felonies to which the section applied to include capital offenses. For the consideration of this Honorable Court the amended section states as follows:

27.3.1 "40-2310. Fixing penalty on plea of guilty.-- Upon the plea of guilty, when the punishment is confinement in the penitentiary, a jury shall be impaneled to hear the evidence and fix the time of confinement, unless otherwise expressly provided by this Code. Provided however, that if the defense does not request a trial upon his plea of guilty, and has agreed to accept the punishment recommended in the case on the plea of guilty, in the discretion of the court a resume of the facts of the case shall be related to the jury by the state and stipulated and agreed to by the state and the defense as being the substantial facts and evidence in the case, to be considered by the jury as such facts and evidence, and the jury may then approve the recommendation and be sworn to fix the punishment. In such pleas of guilty by stipulation and agreement, the judge shall not be required to charge the jury in writing, or otherwise." (emp. added)

28. Petitioner thus calls to the attention of this Honorable Court the fact that the relevant section of

the Tennessee Code in effect on March 10, 1969 under which his plea bargain was conducted and carried out explicitly only applied to defendants who pleaded guilty to ordinary felonies for which the punishment mandated was a penitentiary sentence. For such a defendant the legislature authorized the prosecution and the defense to compromise and agree upon a recommended length of the sentence in return for a plea of guilty, and further authorized the presentation of stipulated facts to the jury for their formal determination of the sentence.

29. Petitioner respectfully suggests that nowhere in this section or anywhere else in the code is there any authorization for the plea bargaining procedure to extend or be applied to capital offenses and that such an application is clearly in contravention of the law.
30. Petitioner is aware that during this period and even up to 1979 when the section was repealed that many prosecuting and defense attorneys used the plea bargaining statute in capital cases, probably reasoning that because a criminal trial jury could mitigate the death penalty therefore it could also be negotiated by attorneys. The use of the procedure, however, in such capital cases is clearly nowhere sanctioned by law, though Petitioner acknowledges that it would only be a rare defendant, such as himself who would assert the illegality of the procedure as a ground for relief.
31. Petitioner does now assert that the entire plea bargaining procedure which was imposed upon him in March 1969 was illegal and contrary to Tennessee law and thus the resulting conviction and sentence are

void or voidable, and that had he been aware of the illegality of the plea bargaining activity and the circumstances surrounding the plea at the time he would not have consented to such plea being entered on his behalf (see Exhibit 35).

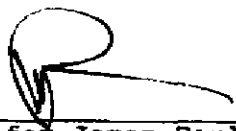
32. Petitioner also respectfully notes that this issue has never been raised by him in any court or any other proceedings prior to these now before this Honorable Court.

PREMISES CONSIDERED, Petitioner JAMES EARL RAY respectfully moves for this Honorable Court after due consideration of the new evidence contained in this Petition and the exhibits attached hereto, find that Petitioner is being illegally detained and to Order the Respondent to effect the immediate release of Petitioner from the Tennessee State Penitentiary, or in the alternative Petitioner requests that this Honorable Court order an immediate evidentiary hearing with orders to be issued for the testing of items of evidence and depositions of persons identified herein and subpoenas to be issued for those persons also identified herein, for the purpose of establishing that Petitioner Ray has been illegally restrained for the past twenty five years for a murder he did not commit.

IN THE ALTERNATIVE, Petitioner JAMES EARL RAY seeks relief pursuant to T.C.A. Section 40-30-101 et seq., known as the Tennessee Post-Conviction Relief statute, on grounds that his conviction is void or voidable, in that his attorneys at the time in collaboration with counsel for the prosecution have violated his constitutional rights as protected by the Fourth, Fifth, Sixth and Fourteenth Amendments, by placing him in jeopardy of his life, and

compelling him to illegally plea bargain with the State of Tennessee in contravention of Section 40-2310 of the Tennessee Code, for the purpose of saving his life by pleading guilty to the crime of murder in 1969. Said defense counsel engaged in this illegal activity, and thus failed to provide Petitioner with an adequate and effective defense.

Respectfully submitted

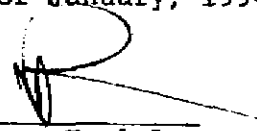


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CERTIFICATE OF SERVICE

I, DR. WILLIAM PEPPER, Counsel for James Earl Ray, hereby certify that I have sent a copy of this Petition for Habeas Corpus Relief, etc. to the Honorable John Pierotti, District Attorney General for the 30th Judicial District, State of Tennessee, this day of January, 1994.



Dr. WILLIAM PEPPER, Counsel for James Earl Ray