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Judge Brown Slams Memphis Over the King Case

The following is a transcription of Judge Joe Brown's remarks made on the 30th anniversary of the assassination of Martin Luther King on April 3, 1998 at the Centenary Methodist Church in Memphis. The remarks were transcribed by author Dick Russell who will be writing an article for High Times *this fall on this conference. Russell is also the author of the current book* Black Genius *which was published by Carroll and Graf earlier this year. Our thanks to Dick for letting us share this transcription with our readers.*

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In this case involving James Earl Ray, I found one morning that it was on my calendar. I had been totally unaware of that until the prosecutor in this case, Mr. Campbell, came to attempt to approach me and discuss this case off the record which is, of course, improper. I declined to do this. That was the first of a number of *ex parte* approaches by the state to engage in what are basically improprieties. In any event, I was ultimately confronted with a question: with the application of modern scientific methodology, is this in fact the rifle? As the rifle was excluded from the [unintelligible] of being the murder weapon, does this fact alone—based on an assessment of the entire body of evidence—cause James Earl Ray to be innocent, therefore mandating a new trial? In other words, if the weapon was excluded, I was to conduct an analysis and an evaluation of the entire case—and then write an opinion relative to my assessment.

James Earl Ray, even in the event that the rifle [had] been excluded, might have still been found legally guilty of being an accessory, an aider and abettor, or a conspirator. I won't touch upon that. But I do know what I saw in terms of the hard evidence, in terms of what's in that file relative to those things that the untrained might never notice. I would remark initially upon the category of so-called "experts" that everyone has been relying upon in this case. The level of expertise, if they had any such, was extremely low. They had long histories of being able to look at bullets under a microscope and using relatively primitive technology to make an analysis subjectively as to whether in their opinion such-and-such a bullet matched a sample that they were attempting to compare it with. That was the extent of their expertise. They had very little knowledge—if any—about rifles and firearms in general.

They found me with the knowledge that I just happened to have had as an individual. Amongst other things, I have read in the record the big to-do about the mark in the window sill at the boarding house where the rifle was supposed to be fired. Well, let's talk about the rifle. It's a 760 Remington Gamemaster, a pump action, just like a 12 gauge pump shotgun. There is very little call for this weapon in any other part of the country other than the eastern seaboard, where certain states forbid the use of semi-automatic weapons for deer hunting. It's a fast action but it's not as powerful a weapon. There's a peculiar thing about this weapon. If you do not rest, if you're attempting to use a rest when you shoot it—the weapon does not shoot where it is sited in. Any hunter will tell you that if you are attempting to use a rest to shoot game, you put your coat, your hat, your pack, something under the rifle barrel—and you do not allow the rifle barrel to touch hard wood, rock or anything else because your weapon will not shoot where you have sited it in to shoot. Assuming you've sited the weapon in. If anyone placed the weapon on that window sill, sufficient to cause an indentation in the window sill, you can guarantee that whatever they were shooting at would not have been hit. Because the weapon would not have hit where it was sited in to hit.

Now Preston Battle, the honorable late initial judge who handled this case, said this on the record. He was firmly convinced that if James Earl Ray in fact did the killing, he did not act alone. Now James Earl Ray in the record is said to have gone to a gunshop and purchased a .243 caliber weapon. It says he was told by *others* that this was not a suitable

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geration of the story. Anyway, we've tried several different things on that.

Last question.

QUESTION: Well, this isn't quite as technical, but have you been exposed to a vast amount of the information on the subject, what is your personal feeling on (UNINTELLIGIBLE)? ...

GUNN: I don't know. The evidence is really confusing. One way that you can look at it, and it's an appropriate way. This is not very satisfying. My father, when he—when I talk to him about this issue, he always wants to know whether I have found the file that will say who killed JFK?

I don't know. I mean, suppose there's a file that says we know who killed JFK, and it's signed by John McCone and J. Edgar Hoover, and it says that Lee Harvey Oswald did it, you know, who's going to believe that? Or if it says that so-and-so did it, I mean, I don't know how anyone would be able to prove anything at all.

One of the things that I think is interesting is that even if you were to—if one were to say that there is more exculpatory evidence about Lee Harvey Oswald than there is inculpatory evidence, so it's more likely than not, just basing this on the evidence, that Lee Harvey Oswald didn't do it, that may be the case. We could say, take that as the hypothesis, the evidence principally suggests that Oswald didn't do it.

On the other hand, there is more evidence pointing to Oswald than at any other person at all. So if your standard is, where does it point more than anybody, it has to point at Oswald. I mean, he is on the sixth floor. He does do some funny things that day. He does behave strangely. He has been to the Soviet Union. He is a Marxist. There are a lot of problems that he has.

The curtain rod story is, to me, not believable, among other things. There are a lot of problems that Oswald has. So there's probably more evidence pointing towards him than any other person.

After—if you say Oswald's not the leading candidate, then who's the leading candidate? The amount of evidence you have drops to fairly close to zero. You don't know who it is. So that means, you know, by plurality, Oswald is more likely than anyone else. But that's not the way that you decide culpability, and it's not a very convincing answer.

Anyway, thank you very much....⌖

Jeremy Gunn's talk has been slightly edited to allow for the flow and some technical problems with sound on the tape as it was transcribed.—Eds.

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weapon for the purpose. "Others", o-t-h-e-r-s, I'm assuming that means the same to everyone else that it does to me. He returned the .243 to exchange it for a 30.06. Whereupon he had a scope mounted on the weapon in the gunshop.

There's an interesting thing about the Remington 760 Gamemaster. The breach of the weapon is closed by the receiver—don't worry about what this means, it's rather arcane. It means that you can't simply do what you would do with a bolt action, which ordinarily would be the weapon of choice if you were going to commit any sniping activity because its far more accurate. It means that you can't simply take the bolt, prop this weapon up on some cushions and sandbags, anything that does not move, look down the bore at some object a hundred yards distant, center that object in the bore and then take your scope site using the adjusting screws, move your crosshairs until they center the object approximately 100 yards away while that object is centered in the bore. That's called bore siting. What you'd have to do is colonate the weapon. That means you stick something that looks like a small telescope in front of the muzzle of this weapon with an adapter and you attempt to get the crosshairs of the scope registered on the crosshairs of this colonator device that is inserted into the muzzle.

There were a number of items that were removed from the case, a number of things that were leaked, and there was another incident where the court had to send one of its bailiffs to physically stop an individual, while this case was pending, from removing the bullet fragments from the courthouse. This individual had gone to the property room. They had given the fragments to this individual as he was leaving the courthouse.

The gunshop in question did not possess such a colonator. So the scope was simply bolted to the top of the rifle. Now it has been my personal experience when siting in more than 60 rifles in my lifetime...if you colonate a weapon, bore-site it or whatever, and you take it to the range to continue to calibrate it so that it hits what you're trying to hit, and you place a target which is maybe 4-5 feet square on a target rack at 25 yards, you will probably be lucky if the weapon hits paper. And then you crank in 25-30 clicks to the right, 15-20 up, and you get it approximately to the center of that paper at 25 yards. Then you back off to approximately 100, and then you fire again, and you keep adjusting your sites until you hit what you're trying to hit.

That was not done in this case. It would be the most profound accident I've ever heard of if you simply bolted a scope to the top of that weapon and you were able to achieve sufficient accuracy at 100 yards to hit your target. I won't speak on the number of times that just out of curiosity I took people who had little experience in firearms to arrange or to a measured 100 yard stretch of open ground in the country, set up a silhouette target, and allowed them the opportunity to attempt to hit the head of that target. I can tell you that, with the exception of certain experienced riflemen, there was zero success.

Now that's just one thing that's out there. There's another little something. Ammunition companies compete with each other for sale of their products. In other words, the company with the most accurate ammunition sells the most of it. Remington, Winchester, Federal and a number of others were in high competition about that time [1968], to corner the market. One of the things that you might know if when an ammunition company makes ammunition, they do not have a machine dedicated to a particular caliber. They make a run, several million of this particular item that's relative to that caliber, and then they change the machinery to something else. So there might be a run of 15 million 30 caliber 150 grain bullets, 180 grain bullets—whatever the specification might be. And all of those bullets are roughly similar. About a year or so later when they convert the machine back and attempt to make the same thing, there are subtle differences—and those differences have a grave effect upon the accuracy of the trajectory. So what the ammunition companies always do is, separate them by what they call lots. A lot is one run. You take the lot of 150 grain bullets—you run a marker that has

a lot number. Take a run of cases and that run has a lot number....

Now there are other subtle things different with these lots. For example if you analyze, you will find the composition of the metal in the various components will change from lot to lot. Now what I saw in this record, in a very abrupt and abbreviated report from the FBI...is there is a cartridge case that is said to have been fired from this rifle. They found other unfired cartridge cases, with bullets, powder—intact along with the weapon. Well they couldn't shave them a brass from a fired cartridge case, they took a shaving of brass from the unfired cases and they made an analysis. Metallurgical analysis revealed the fired cartridge and the unfired cartridge case were from the same lot. They took a sample of the lead from each of the unfired bullets and they analyzed those four unfired bullets. They all were from the same lot. They took a sample from the leaded core of the bullet they removed from Dr. Martin Luther King. Guess what? It is *not* from the same lot.

That's a red flag. Ammunition companies say clearly, without equivocation, they never do that. The bullet that was removed from Dr. Martin Luther King was sent to the FBI intact. What they sent back was fragments. There is a picture of the intact bullet. I will tell you now that in the last four years, that photograph, which was marked into evidence, is missing.

Which incidentally was one of the reasons why the court exercised the prerogative under statute to have the files left in its office rather than downstairs. There were a number of items that were removed from the case, a number of things that were leaked, and there was another incident where the court had to send one of its bailiffs to physically stop an individual, while this case was pending, from removing the bullet fragments from the courthouse. This individual had gone to the property room. They had given the fragments to this individual as he was leaving the courthouse. Now, that's not kosher. What you've got in terms of the physical evidence relative to ballistics... is frightening. I won't touch on it anymore at this time.

The conduct of the Attorney General's office in this case is highly unusual. They had a select committee that they formed, at taxpayer's expense, supposedly to conduct an investigation that resulted in this report they released week before last. I don't know what it had to do with the investigation, but a lot of their activities had a lot to do with following the judge—videotaping the judge coming out of restaurants and with his associates, sending individuals to attempt to contact the judge in the case and place him in compromised situations. One of whom incidentally has made the statement to law enforcement officials—that statement's been recorded—and he said, quote, "I don't know what they have against this judge, he's just trying to be honest and they're trying to get me to see if I can't get him in a compromised situation. I don't know why they're trying to do this, or what they are afraid of," unquote.

The reason we must go forward and resolve this matter is for the children. Generation X is coming of age and there's going to be leadership that will come out of this generation and the one behind it. They will do things to offend the power structure, just like we did things in the sixties, the fifties, or seventies. To protect this new generation from this type of response by the system, we must expose, we must dismantle the mechanism and we must do something profound so that somebody's brought to justice as a deterrent – so this does not happen to the children when somebody says we can step outside of the law because we believe our cause is holy.

I was jogging down the street in my neighborhood, became aware that I was being followed. Somebody came up eventually and decided to say a good lawyer over here told him to come talk to me etc. etc. etc. "I'll tell you what you need to do, I'll give you the name of the senior law enforcement official, you go talk to him." Apparently, the people on this investigation committee that the Attorney General's office had put together became rather upset. There was a dialogue they had with a law enforcement official who will remain unnamed at the moment, about why did he have a conversation with this person. Interesting what transpired as a result from that.

I don't know whether or not James Earl Ray would be legally guilty, but I can sit here as an elected judge from the 30th Judicial District, State of Tennessee presiding over Division 9 of the Criminal Courts in Memphis, and tell you that there is sufficient evidence in this case to scream out to any decent person that a criminal investigation is mandated to determine what other persons were involved in this.

Judges are not supposed to do this. Well they can take it and go to hell with it! They can shove it! Thirty years ago today, a man who was trying to speak about truth and the conscience of America was slain in this city because of that. He gave his life. I can say the devil with it, this job as a judge is not as important as a man's life. And if I have to risk that, then go to hell anybody that doesn't like it!

I have a very good idea what really happened in this case, from going through these files and scrutinizing them. And if necessary I will withdraw from this [judicial] race and won't run or resign if it takes that to bring the truth forth. But it needs to be brought forth, because this is more important than any one individual. This involves a child of history, one of those people that God send every now and then to deliver a message to mankind. That involves a prophet, a man who was about the business of bringing black, brown, red, yellow, white, all of America together so it could remain the best in the world. That was that man's business. And that is my business. And that I think is the business of everyone assembled here today.

I read this [Attorney General's] report that they have, such as I was able to get out of it. It's absolutely ridiculous. I'm not surprised at the results of the investigation. I'm not surprised at the attitudes that have been reflected in the investigation. I'm not surprised at the course of conduct that has been engaged in by the people responsible for protecting the interests not only of the citizens of this state, this county, but advancing the interests of the whole world in finding out what happened to Dr. King—so we can have atonement and have closure. I'm not surprised.

I'm not surprised that the District Attorney General's office went all the way to the United States Supreme Court to have the principle ratified by that august body that the victim's family has an absolute right to be heard, relative to the disposition of a homicide case. I'm not surprised that they fought

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tooth and nail and engaged in the worst disrespect I've seen by prosecutors in a courtroom in 25 years to prevent the widow of Dr. King and his son from being allowed to be heard in open court as to their wishes. I'm not surprised. But that has got to stop! This is egregious. That is not right....

Excuse the liberty but I'm probably going to catch all kinds of hell for these remarks, so I thought I'd at least give you enough of a plate for the hell I know I'm going to get....Please put this out there, you can take it to hell and shove it if being less than a man is what is required by holding this office. Thank you very much.

The following remarks were made at the COPA (Coalition on Political Assassinations) conference the next evening in Memphis.

It's obvious from looking at everything that's in that [case] file, this matter is not resolved. There's no way an intelligent reasonable person can examine what's in that file, what's in this case, and say that we have one individual who's in the penitentiary who is solely responsible for the death of Dr. Martin Luther King.

The reason we must go forward and resolve this matter is for the children. Generation X is coming of age and there's going to be leadership that will come out of this generation and the one behind it. They will do things to offend the power structure, just like we did things in the sixties, the fifties, or seventies. To protect this new generation from this type of response by the system, we must expose, we must dismantle the mechanism and we must do something profound so that somebody's brought to justice as a deterrent—so this does not happen to the children when somebody says we can step outside of the law because we believe our cause is holy.

In this case, what it was all about is somebody was attempting to take the tack that we have this "demon of world communism facing our great democracy and need to take steps to protect it from those who would tear it down." When Dr. King stepped over the line from just being civil rights oriented to dealing with the economy and labor, and talking about the Vietnam War, then that whole thing kicked in. It is not about James Earl Ray. It's about what else has gone on out there. Now singularly missing from what I have seen in this record is an examination of who financed the itinerary [of James Earl Ray's travels after the assassination.] You've got the itinerary, who paid for it? That's one of the things you need to look at. How was the hotel paid for? The airline fare? Where did it come from?

...you want to say a three time loser, an escaped convict with no obvious financial resources, no technical knowledge, is going to, not only miraculously learn how to operate, fire, and direct a rifle and become a good marksman. This one individual is going to be able to acquire the resources to get identities for deceased individuals, come up with very, very good forgeries for passports and fake identifications, is going to somehow acquire funds to express himself in a pre-paid very expensive itinerary and travel schedule. And then he gets himself caught because he goes through Heathrow Airport, but he does not know whether he is a citizen, an alien, or whether he has commonweal status. Now, be real. You have to be the worst culpable moron to go for that story.

Track down the passports that were seized. What's the common thread with the individuals that are the subjects of these fake identifications? How would someone go about acquiring the information?

We talked about the rifle yesterday, which was the subject of the inquiry I conducted. It's not there. Not the right type of rifle. It's never been sited in. Wrong kind of scope. Wrong kind of equipment. A person who does not know how to use it. Metallurgical analysis excludes the bullet from the body of Dr. King from coming from the cartridge case they say was fired in that rifle. That so-called dent in the window sill is a complete red herring because one, if you're a rifleman you simply do not rest a bare rifle against a hard surface. You're guaranteed to miss your target. You've not a downward trajectory which would require someone to aim under the target in order to hit at what you're shooting at. These are things that you require some experience with. You've got an odd distance involved in the shooting, especially from the claimed location of the shot. With a 30.06, it makes a particularly difficult shot shooting downhill in that circumstance you had. You don't have the thing that adds up to what you need.

What's likely to have happened also, if you get into the mechanics of doing some shooting, if you've ever...stand waiting on a deer, you know that hardest bloody thing is to keep your rifle in a position that's handy so you can quickly get to it without tipping your position by your movement....

What seems to have happened is that somebody who was at the [Lorraine] hotel, who was closely privy to the comings and goings of Dr. King, made a call—and notified whomever was the real sniper that Dr. King was shortly coming out on the balcony. That's how this went down. You've got somebody who was not remote, but somebody that was close, who was involved. That has a lot to do with the posture of what you've seen in the investigation. You've got political purposes here....

...Everybody's talking about somehow or another you've got a government implicated in this. You've got a director of the FBI who has a pathological hatred of Dr. King. You've got somebody that ran an agency with an iron fist and whom history has revealed to frequently have violated not only the letter and spirit of the law, but to have total disregard for it as an impediment toward his own ends, which he thought was to protect America. What is the paramount phrase that explains intelligence operations? You know, on a need-to-know basis. So you're asking people who are pretty well low down on the totem pole to explain to you everything that went on. Why in the world would you assume that they know? They're not gonna tell you. They know a small piece of the action. I would imagine Ray doesn't really know too much. What you've got in this case was a stooge whose task was to throw everybody off of the trail. That's what an analysis suggest. A three time loser....What do you think he knows? They're not going to tell him much of anything....

Look at what you've got in our record recently. The Pan Am disaster, not the one off the American coast, the one over the British Isles. They left no stone unturned in doing

great detective work and they come up with several suspects, foreign suspects, a very advanced plot in scheme. They can solve that but for some reason strangely here in America, with something like this, you leave this investigation in the condition you find it in and you want to say a three time loser, an escaped convict with no obvious financial resources, no technical knowledge, is going to, not only miraculously learn how to operate, fire, and direct a rifle and become a good marksman. This one individual is going to be able to acquire the resources to get identities for deceased individuals, come up with very, very good forgeries for passports and fake identifications, is going to somehow acquire funds to express himself in a pre-paid very expensive itinerary and travel schedule. And then he gets himself caught because he goes through Heathrow Airport, but he does not know whether he is a citizen, an alien, or whether he has commonweal status. Now, be real. You have to be the worst culpable moron to go for that story.

But you see, a lot of things were buried because everybody trusted J. Edgar Hoover and the FBI thirty years ago. That was an icon, mom, apple pie, and the flag. And nobody questioned the lackadaisical, disgustingly inept work that they had in this case. Judge Battle in 1968 ordered the rifle re-tested. He said what I see in the record is not adequate. The rifle never got re-tested. He stated himself, I am sure that Ray did not act alone. Nothing was done of it. The House Select Committee on Assassinations says there was no investigation of a conspiracy.

See, conspiracy is only an agreement between persons to do a wrongful act. Under the laws of the state of Tennessee, you can criminally conspire to do an unlawful thing. There's an interesting thing about conspiracy that scares the hell out of the Attorney General's office: if they actually were to nail somebody—rules of evidence change. Any statement by any person shown to be a conspirator can be used against any other person, even if that person does not take the stand. Ordinarily a statement of a co-defendant cannot be used against another, unless the maker of the statement takes the stand and is subject to cross-examination. If you get a statement from anybody and that person dies, if you can show a conspiracy, there being no statute of limitations on a murder, you can use that statement in perpetuity against anyone and you can bring the whole chain down....

You see, you don't get into a situation where all it takes as a law enforcement agency is, you clean a rifle. I gave them something known as an outers file-out. It works on reverse electrolysis. You simply hook the thing out using electric current, put a rubber stopper in the muzzle, fill the bore up with a chemical, plug the other end, turn the device on, come back in 24 hours, pull all the fouling out, you've got a pristine rifle bore. I've used one myself, works excellently. That won't touch the barrel. Won't harm it a bit. Then you take this weapon and you shoot it. And you analyze what you get. Sounds simple enough, doesn't it? Why was somebody so damned worried about that that they fought it tooth and nail for 3 1/2 years? James Earl Ray did it. We've got the man. There's no need to go any further. Are you that arrogant and cocksure to make that kind of statement, when you ought to be anxious as the chief law enforcement agency in the county wherein the crime was committed to see if there are other perpetrators that ought to be brought to justice? Damn, they do better than that on a DUI.

What's going on here? Why does the Attorney General's office engage in a national campaign of slander against the King family? Some reporters have called me up and let me hear some tapes they made of comments by members of the Attorney General's office. It's disgusting. It's revolting. It's defamation of character. You've got the same group of folks running around screaming about the victim's rights and they holler and they disrupt the court process for what was traditional for the new morality—saying a victim's family has an absolute right to be heard. What the sentence is going to be, whether there is a plea bargain. To be heard in the event a person is convicted relative to whether or not the person gets the death penalty, life in the penitentiary or life without possibility of parole. They always do this, bring the victim's family down and parade them in front of the court or the jury, put them on the stand and let them have their say. And yet they don't want Coretta Scott King to have a right to say anything. They don't want Dexter King to have a right to say anything. They don't want Dexter King to be allowed to take the stand. What goes here?

And then you turn around and you can't leave it at that. You try to slander and libel the King family—bzz, bzz, bzz things in the ear of other people to try and wage a campaign to discredit them. What goes on here? What gives when witnesses are sending—since the court's supposed to see to it that they get paid—an indication that they have interesting evidence, you say well hold on let's see what's revealed when they come in and testify. And then when they come time to testify, they have nothing to say. Or Mr. Campbell again, who seems to be so prone to being offended, comes in and ex parte says, Judge, you know we've gotten word that some of the tabloids are going to contact the defendant's expert witnesses and we're worried that they're going to leak the information before it's revealed in court and they haven't been paid and we think the court ought to see to it that they get paid. Well, excuse me Mr. Campbell, have you talked about this with Mr. Pepper? "No, I' think I'll bring it to the courts." "Well, I'll convey this to Mr. Pepper." I tell this to Mr. Pepper, and Mr. Chastain provides shortly an affidavit of indigency for Mr. James Earl Ray. And guess what's going on? Somebody is saying bzz bzz bzz, you guys haven't been paid. We'll see to it that you get paid if you switch sides.

The last hearing we had on that, they were saying we want another hearing because these people will testify against the petitioner now and say there's nothing to these rifle tests. Well gentlemen, this is Thursday, you have until Monday to provide a synopsis, written statement in writing from these gentlemen as to what they would testify to. Well we want the court to rule on whether it's going to recuse itself. No, you have this by Monday. The court will rule on that recusal as a separate matter. They never provided it.

Interesting to look at the appellate decision [which removed Judge Brown from the case]. Most of the information they based it on was in error. The Attorney General's office had a habit of running up there to get something done before a transcript could be prepared and then making fundamental misrepresentations to the Court of Criminal Appeals as to what transpired. And then the Court of Criminal Appeals says the judge was too involved in the fact-finding process. Well, what does rule 608B rules of evidence say? The judge may interrogate witnesses. Case law says there is no limit to the extent to which a judge during a trial to a bench—in other words where the facts are to be determined by the judge—can question a witness. Judges generally cannot call witnesses. Rule 714 of the rules of evidence State of Tennessee says, where the trial is to the bench and not to a jury, or the issue of fact is to the bench not to a jury, a judge may call expert witnesses if he does not feel that those provided by the parties are adequate. Rule 715, compensation of expert witnesses, etc. etc., expert witnesses called by the court in criminal matters shall be compensated in the event that the defendant is indigent, through the state's fund for compensation of witnesses for indigent parties. Now if the judge can call a damn witness, if the judge can interrogate witness, then what the hell do they mean that the judge is too much involved in finding the facts of the case and interfering with the Attorney General's ability to manipulate the matter through procedural

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devices.

The judge is biased against the state. Well, I mean that's very ironic. I suppose I should take it as a compliment. They're taking an African-American man who's had a long history of civil rights involvement—in the sixties was known for being quite militant—and they're saying he's biased in favor of a self-avowed bigot and racist. Well, when you have ordered that records be sealed and the state's representatives decide that they are going to leak them anyway; when you've got a political action committee that is operating in the AG's office and they've already picked a member to run against you and they are using the opportunity to get some political clout, what do you think's going to happen? Historically, correct me if I'm wrong, it has always been a longstanding rule in the District Attorney General's office that no assistant would be permitted to run against an incumbent criminal court judge,only if there is a vacancy. So they've already set somebody up to run against yours truly and they were doing it at the time and they were doing political manipulation. Tennessee rules of judicial conduct says, any judge subject to election may campaign at any time and make statements relative to his candidacy at any time to the news media. What was wrong there because somebody said this is nothing but politics that you see, it has nothing to do with the merits of the case. Never discussed, never indicated, never gave any indication or information what his ruling was going to be relative to whether or not James Earl Ray got a new trial. I *still* haven't given any indication. Because whether or not that was the rifle had nothing to do with whether James Earl Ray got a new trial per se. What was going on was, if the rifle was excluded, then an evaluation of the entire record must be done. A written finding of fact must be delivered by the court and in light of that exclusion, did that mandate a new trial for James Earl Ray? In other words you were going to get an African-American man who came from Los Angeles, California, went to UCLA, was active in everything going on, anti-war, civil rights, equal rights, gender rights, in the sixties—was going to get a chance to write for history a synopsis of what really happened in the James Earl Ray case. Now, you get another idea about what the devil's going on here?

And you want to look at that piece of garbage [the Attorney General's report] that's 32 pages long, filled with inaccuracies, errors, deliberate misstatements, misspellings, incorrect information—and you want to rely upon it as a statement that a 6th grade dropout, no money, on the lam who's an escaped convict with I suppose great ties into England, great ties into the civil reporting and health systems of England, great ties into people who were expert forgers with identification and passports, got an inside track into international air travel, inside track into obtaining the wherewithal to do what was required to make those reservations, accommodations and transportation arrangements in various countries. Yeah. See, you got another thing going on.

I have a pretty good idea what actually happened. I'm not going to say right now, but let's put it at this point that there needs to be investigation. I think the federal government ought to do it, because this agency here is not capable of doing it. They don't have any resources. They don't have the knowledge. They don't have the expertise and they don't have anything in this state that's sufficiently sophisticated to draw upon to handle these matters. The federal government ought to do an investigation. Mr. Clinton's been over in Africa apologizing for the conduct of this country relative to African citizens who were kidnapped and brought over here and colonial activities, and a lot of folks are real upset with him for that. Why the devil are you going to get upset with somebody for having the decency to apologize for some wrongdoing I do not know. But I submit it's the same attitude you see here.

Now we've got a real live problem. And until we clear this problem up, our children are in danger. Because they'll do it again. This is thirty years after King was killed. J. Edgar Hoover pulled this charade off and we still haven't come far enough because the Attorney General's office in Shelby County Tennessee is still pulling it off thirty years later and doing it with the feeling they can do it with impunity. They're to be called to the carpet, raked across the coals, and a demand needs to be made as to why this farce has been perpe-

Fading Spirits

Old Spooks lurk speaking slyly like Shackley the ghost
"Those were the days".
Old stories. Old men.
War stories.
Tinkering. tailoring. Doctoring the spin.

You remember. Nocturnal death-optics tracking Che's heat.
A satellite shot: Outlined in the dark jungle like a corpse in chalk on the street.
Wet. A crash program. Agent Olson's suicide silhouette in glass.
The shatter froze. Sagged. Clattered glittering to the street. Light following mass.
A mad dash. A brute crash. A black bag of warm meat.

Before technical services. Or one lousy germ.
Recall the orchid man white as a worm.
Slighted in corridors. Glimpsed in the stacks.
Colleagues cowering. Eyes on their backs.
Him; a sensitive instrument tuned to the squirm.

Now the past glimmers shimmering gold.
Business lawyers panning Saigon when the war was cold.
Packing monumental artillery. Wielding word of mouth.
The north was spooked. Assaulting the south.
Now we look back looking old. Out of the past. In from the cold.

By Peter Kerns

trated upon the people of this county, this state, this country and the world. And I really don't care that much about being a judge, to sit there and keep my mouth shut when I see this kind of injustice. They can take it and shove it. Meanwhile I may just change careers. You can watch my program starting in the fall. The Judge Joe Brown Show brought to you by the same folk that do Judge Judy, Aaron Spelling Productions and Big Ticket Television. And again, good hunting.

The following is part of an answer Judge Brown gave during the question and answer period afterwards.

I know what's been conspicuously absent from that file—nothing to investigate payments, or obviously what's going on internationally. When you make a reservation at a hotel internationally, you've got to provide passport information, financial information, means of payment whether it's currency, credit or some other kind of transfer. I don't see any of that in the record. It should exist and if it's destroyed, you should at least be able to get an indication as to how it became destroyed...

So understand this issue does not die with James Earl Ray. There is not statute of limitations on murder and they don't need James Earl Ray to reopen this investigation.

Q: Did you expect the kind of resistance you found?

Brown: Well they came to me and they had this cocksure attitude—of course we've got a formerly militant black man. He's going to throw James Earl Ray right out of court. What they did not count on is in fact somebody who understands what justice is about. That it's blind. It doesn't make any difference who is in front of you. Everyone is to get the same rights. Sometimes they don't like that. I didn't pay any attention to Mr. Ray's personal philosophy. All we dealt with was the issues at hand.

Now actually it started out in a unique fashion. When the case came in front of me, they were saying there was new scientific technical methodology that would establish his innocence. I think there were a number of issues that were raised relative to that. What I did is denied the petition. But I said there's a loophole in Tennessee law that needs to be closed. And that is if you do not file within a certain period of time—even if there is some new scientific evidence that shows that you're pristinely innocent—you lose your judicial remedy and you have to go to the governor for a pardon. That's repugnant to the law, for a legal situation to exist that has no legal remedy. In other words, a person sitting on death row condemned to die for a murder and it turns out that new DNA testing would reveal that he is absolutely not the perpetrator. Well under Tennessee law at the time, there's nothing that could be done.

So what I did is say I deny the petition but I will allow the defense to make a proffer of proof for the appellate record. In other words, you may test the rifle, see what you get. Well, they ran up and got an immediate injunction. Said I was crazy. They said they'd never heard of it and they filed an affidavit that was very interesting. It says: "If the rifle is tested, it may be damaged which would prevent it from being tested in the future." They ordered me to dismiss the whole damn thing, and a week after the order came down, guess what? I had been talking with some of the state legislators, so they passed a new law. It says there is no stature of limitations when there is new scientific methodology that will establish the innocence of the petitioner. And/or he may simply request that his petition be reopened.

Well they came to me and they had this cocksure attitude—of course we've got a formerly militant black man. He's going to throw James Earl Ray right out of court. What they did not count on is in fact somebody who understands what justice is about. That it's blind.

They went and requested that it be reopened.

First thing that happened was, I had a hearing to determine whether that would damage the rifle. The conclusion was it would not, let's go ahead with it. Next thing they ran up to the Court of Appeals saying they wanted it out of my courtroom. It should go back to Division 3 because that's the original trail court. They did not understand that there is a thing called trial court, a thing called appellate court, and a thing called Supreme Court. So trial court simply meant Division 8. They sent that back down. So then they went over to somebody who had the administrative judgeship in rotation and they said, you must correct this, there's another mistake, they didn't really mean this, transfer it to another division. That didn't go. So they they went up to the Criminal Court of Appeals and they said no you can't do that. So then they try it again. Three times. We got back to the streets and we finally get these tests, and they come up with this flimflam and I cross-examined their experts and they did not appear to be too expert to me based upon their inability to answer questions. And what did the law on experts say: expert testimony is sometimes the best or the only means of arriving at the truth. But you are cautioned that you should receive expert testimony with *suspicion*. You are not bound to accept it. You may reject it in part or totally. You should base your acceptance or rejection on the witnesses ability to answer questions, his knowledge of the subject etc etc.

So the next thing they did is they tried again, and somebody filed and said no it should be in my court. We had a big to-do. And it seems every time I was out of town is when they'd do it. So they have one statement in the paper that this is nothing but nonsense. It's politically motivated. Hell, I may have said it, I don't remember. I was probably full of it because I was in Jamaica and it was 2 AM in the morning and we had been dancing and drinking Bahama mammas, and somebody from the *Commercial-Appeal* managed to track me down at a resort hotel after we had been at the reggae festival.

In any event then when they got through with that round they tried again and wanted another set of hearings and wanted to run back up. Frankly, if I'd had anything to do with it, I would have said that your Court of Criminal Appeals needed to recuse itself because there were former prosecutors involved in the James Earl Ray case who had sat on or were sitting on the Court of Criminal Appeals. They were closely and personally connected with those individuals; and the fact it might cause an onus upon the prosecutor's office at the time and upon Criminal Appeals for more valid reasons, then they thought I ought to be recused. However, I didn't have any say-so in the matter because nobody asked me. Again, this is the same court system that brought you the Scopes monkey trial.

Q: Based on what has happened in the past, can we be comfortable with a commission that would take control of this case?

Brown: There is a method that could be done on the state level. We have a special prosecutor law in Tennessee. It says when there is a conflict in the prosecutor's office or they seem unable or unwilling to go forward, a special prosecutor can be appointed. It happens all the time particularly when a law enforcement official is the subject of a prosecution. I actually thought that would have been appropriate. There is a California case of First Impression that's interesting. It says that where prosecutors are tied to a position that makes them adverse to bringing out the whole truth, they must be removed from the case because they represent all of the people including the accused or the petitioner. And if they're not capable of objectivity in their conduct of handling of the matter, they should not be allowed to prosecute and they must be removed. Now that would have some bearing on this situation. I think what you need to do is get a select committee. But it needs to have absolutely nothing to do with any of the previous interests in this. ⌖