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**Tape of Dexter King, Andrew Young and Loyd Jowers played for jury 542**

**Arthur Haynes Junior, page 645**

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Dr. Pepper: The tape was made approximately a year ago and made here in Tennessee. (Note: didn't Ambassador Young say it was made in Little Rock? Is this a new tape?) Participants were the defendant **Mr. Loyd Jowers, his attorney Mr. Lewis Garrison, Amb. Andrew Young, and plaintiff Mr. Dexter Scott King.** They came together to discuss Mr. Jowers's role in the killing of Dr. King.

(A summary of the tape follows,)

*Loyd Jowers: Dexter, what you been up to?*

*Dexter King: keeping busy, working hard, traveling.*

*Loyd: you work a lot at night, don't you?*

*Dexter King: You remember. I was working late one night in my office when I talked to you. Keeping things moving forward. This is a trying issue. My family, particularly my mother, I've been concerned about because the media has been so vicious in trying to discredit and attack the family. We had hoped to get to the bottom of this. You have to get it out in the open, so we appreciate your willingness to come forward and we continue to support immunity for you. It seems the District Attorney doesn't want the story to come out. It appears they are shutting everything down.*

*Andrew Young: if you were indicted for anything, I would be willing to testify on your behalf as having been very helpful to us. We would want to make sure that nothing happened to you.*

*Loyd: I never did understand it about Pres. Kennedy. That they know there has got to be a conspiracy, so why won't they admit that and go from there on the basis of prosecution, whatever they have to do.*

*Lewis Garrison: Mr. Jowers--Mr. King and Mr. Young read the account that I wrote from what you said, and they want to question you.*

*Dexter King: when we last met, you had taken up to the point where you had received the rifle*

from Lieut. Clark. You thought it was a 30-30, and said it might have been a 30-06.

*Jowers: I knew he owned a 30-30. I couldn't swear that it was Clark that I took it from, but I believe it was. It was just a split second to hand me that rifle and get going. The smoke was still coming out of the barrel. I breached it. Clark had been in the place that day. He went and looked out the back. He walked all the way back. I was working and didn't pay attention to them. Of course he was a friend.*

*I was already at the back door at six o'clock out of the storeroom before the shot. One shot is all I heard. I'd been told to be there at the door at six, that a man was going to pass me a package. The door was standing open. He came up from the bushes back there and handed me the rifle. All I got was a glance. The rifle was smoking. I thought it was a 30-30 but I didn't have time to examine it. I got that empty shell out of it and there were no other shells in it. I broke it down right quick, put it under my apron, wrapped it in a tablecloth and set it underneath the counter up front. It took 2 or 2-1/2 minutes for the police to get there. I didn't have time to see nobody or do nothing. I was working by myself.*

*I'd been told to receive a package at six. They didn't say what it was and I certainly didn't know he was going to shoot anybody, especially Dr. King. I would have bet it was a 30-30, but it could have been a 30-06. They both break down about the same. I used to hunt with Mr. Clark, but never went with him after that. He came on the police department just before I went off. We went hunting on Rex Chenault's place in Mississippi below Hernando pretty regularly.*

*Lewis Garrison: Mr. Clark is dead. His wife is still living. Mr. Barger is dead. The only one still living is Officer Zachery, who was in and out of the grill, wasn't he?*

*Jowers: I believe Ofc. Zachary was in charge of the men that were in charge of Dr. King's security. Marrell MacCullough was there, Clark or Johnny Barger introduced him. Barger was my partner. We were policemen together and he introduced me to Frank Liberto. We used to go there quite often. They was real good friends. I got to be pretty good friends with Frank, because he could do you a lot of good in Memphis, especially on the police department. I met his wife once but can't say I knew her. I always called her "Ms. Liberto". I think she's still living.*

*Lewis Garrison: The FBI questioned Mrs. Liberto (the mother of Mr. Liberto) and questioned his brother, who was on the Memphis police force. I've got copies of those statements. His brother was a Memphis police officer. They had a picture of Mr. Ray. They all asked if they knew him, and they said they did not, but he looked familiar. like someone they had seen around. Ray claimed in his deposition that he had gone to New Orleans to meet with Raoul. In her affidavit and also his brother and I believe someone else, they all said Mr. Ray's face looked familiar. The brother was a police officer in New Orleans, retired.*

*Loyd: I never met Charles Liberto. Frank told me about him. but we never met.*

*Garrison: There were three Frank Libertos--a car salesman, a liquor store owner, and a produce dealer.*

*Loyd: the only one I knew was Frank. He is the one that always called me. I handled that \$100,000 for him. It wasn't the first time, but it was the last. They said they would send it in the bottom of the produce box and somebody would pick it up from me. When I handled money for them, they never told me what it was for. First Frank called and said a Cuban would be by to pick it up. He said there was \$100,000. I said Frank, you know I ain't going to count that money. If it is \$100,000, that's fine. If there is not that much, that will have to be fine too. That was on a*

*Wednesday morning.*

*It was in hundred dollar bills with two rubber bands, one on each end, it was in a brown paper bag and it was underneath my vegetables. Then he called me back and said now that wetback is going to be by here by there to get that package that is going to be handed in that back door. I never heard a Cuban called a wetback before, so I don't know if he was Cuban or Mexican, but he was definitely foreign. They said his name was Raoul, but I don't believe that a man would use his own name when he's involved in something like that. He would use Jack Jones. I was gonna look that up and see what that stands for in a foreign language. At first I thought he said "Royal" but his buddy corrected me and told me Raoul.*

*Loyd: I knew Frank Liberto's friend Ms. Whitlock, who owned a restaurant in Highland Heights. I met her one time. She wasn't all that old either. I knew her son Nathan real well over the years after the assassination. He knew Liberto real well. Ms. Whitlock owned a restaurant on Macon Rd. I believe. Frank used to stop in there all the time and try to go to bed with Ms. Whitlock. He'd get drunk up and he'd do a lot of talking.*

*Loyd: Johnny Barger was a friend of Liberto, I'm not sure if Cross was. [Note: He says "Cross." Does he mean Clark?] We used to be in a squad car and we'd leave our territory go over to his place of business on Scott Street. Sometimes we'd stay a few minutes and sometimes longer. Back then everything was political. To get anywhere you had to know somebody that knew somebody. There were no blacks on the police force--it was unheard of, then. Crump was in office then. He got me the job. I want to see him on Monday and on Thursday I went to see the Police Commissioner. That Monday morning I was riding in a squad car with a .38 hanging by my side, billy stick hanging on this side. That's how things operated back then.*

*Loyd: I was in the Navy, discharged out at Millington. Less than a year later I went on the police department. Jobs were hard to find, doubly so for black people. I knew Frank Liberto had a brother in New Orleans who was in the produce business and the Mafia, but I didn't know whether Frank had any friends in Texas or any business in Texas or New Orleans,*

*Loyd: I first talked about the assassination with Frank after it took place. Before the assassination Frank and I talked about the march. He didn't mention the killing until after the fact. He called me on the phone and asked me, did I know what that bundle money was for? He said "well that's what it cost me to get King killed." Word for word, that's what he told me. I almost dropped the phone. I figured it was to buy guns or dope or whatever he was dealing.*

*Loyd: If there was no conspiracy, Dr. King, whenever he came to Memphis, checked into the Rivermont Hotel. Everybody knew that. Even I knew that. But the next day they moved him over to the Lorraine. The lady that runs that place, Ms. Bailey, put him downstairs. I don't think he stayed downstairs one night--they almost immediately moved him to the second floor. Now there had to be a conspiracy. I couldn't have done it. James Earl Ray couldn't have done it. It had to be his security people or the CIA or the FBI. It had to be.*

*Loyd: November 20 I'll be 72. I have glaucoma in both eyes and a cataract on this one. I exercise every day. I may live to be 100, but I don't believe it. I smoke two packs a day.*

*Loyd: The CIA and the FBI were in my place but not the same time all those police were there. Before Dr. King was killed, policemen would meet in my place, cab drivers. I'd sometimes pick up a word as I was working, but I wouldn't know what the meeting was about. After the assassination, there were few meetings. If a policeman came in it would be Johnny Barger or Clark or someone just stopping in for a minute.*

*Loyd: The CIA business with the FBI is just guesswork on my part. They wear plain clothes. The CIA and FBI came together. There was one stranger with the police that I never saw before or after the meeting. That was the meeting with Johnny Barger and Clark. I don't remember who all was there. I was working. I waited on them.*

*Loyd: I can't remember how many times Merrell McCullough was in there. Several times at least. He could've been in there when I wasn't around. He was introduced to me as a police officer. I believe he was a sergeant when Dr. King got killed. He was never in uniform when I saw him. He was plainclothes. Johnny Barger always came in uniform.*

*Loyd: When I received the money, one of Frank's regular drivers brought it. They brought my produce on Wednesday afternoons. I opened up about five o'clock, got lunch ready, wouldn't go home until four in the afternoon. Then Frank called to ask if I had received it. He asked if I had counted the money and I said no. That's the first, last, and only time he ever asked me that. He said I should put up the money until tomorrow, there will be a wetback or a Cuban to pick it up. I put it in the old cook stove I didn't use because nobody ever went in there.*

*The next day, the Cuban came and picked it up, the person alleged to be Raoul. If he had ever been there before, I didn't see him. I gave him the money and he walked on out the door. Same way when he come and picked up a rifle that I took in the back door. He come in, picked it up, hit that door turned right north on Main Street, and I haven't seen him since. That's Raoul. The same guy took the money and took the rifle.*

*Loyd: After the shot was fired, a white man gave me the smoking rifle at the back door. I'd almost swear that was Clark, but it happened so fast.*

*Loyd: The Cuban made three trips. I never saw the rifle in my restaurant until after the killing. The Cuban brought a box, big enough for a rifle, but I never opened it and I didn't know what was in it. It was big enough for a rifle to go in. The Cuban brought that box after the produce was delivered. The produce box from Frank Liberto came with the usual driver. I had opened up the grill in late 1966 or early 1967. The produce included three or four stalks of celery. You need celery to go in soup. Maybe a head or two of lettuce.*

*Loyd: I believe that long box was brought in when I wasn't there. That would've been the next day, the day Dr. King got killed. Then Raoul would have picked it up. I don't remember giving it to anyone.*

*Loyd: I put the long box under my long counter. It wasn't wrapped up or anything. I don't remember giving it to anybody.*

*Loyd: The police never searched my store. I talked to one, he said he was FBI, that was the next day. To my knowledge, they never looked in the back in the storeroom and never went down to the basement. A full basement in that place. There could've been half a dozen people down there.*

*Loyd: I always thought Frank Liberto owned the produce company. He said he owned it. I met Mr. Latch one time, but know nothing about him.*

*Loyd: McCullough came in with the Memphis police. I believe there were five. We had two here and two there and I took them a chair so it had to be five. There was one I had never seen before and haven't seen since. He could've been FBI or CIA, I don't know. I couldn't hear their*

*conversation, but I knew they were up to something illegal. I would pick up a word now and then. I didn't want to know about it.*

*Loyd: Betty Spates, the black waitress, said she saw the money. Whether she did or not, I don't know. She would have opened up that old stove and looked at it. I think her sister saw it too. I had a relationship with Betty. She said she saw me running with the rifle, but she couldn't have because she wasn't there that night. I was the only one working there that night. If Harold Parker was still living, he would tell you that. He would also tell you that I went to the back door at six o'clock. He was sitting in the back booth.*

*Loyd: I gave the murder weapon to Raoul early the next day, April 5. Liberto knew Raoul was picking it up. I wouldn't have given it to him, if Liberto hadn't told me. He said the wetback would be there to pick up the package you got at the back door. Of course after the shooting took place, then I knew what that damn rifle had done. It wasn't so hard to put together. I knew I was right in the middle of it. Two or three days later Frank said the murder weapon was his. So all I could do was keep my mouth shut, and that's what I did. That's what the Mafia knew I would do.*

*Loyd: McCullough was a young man back then. I heard he works for the CIA now.*

*Ambassador Young: That's what I thought.*

*Mr. Garrison: Yeah.*

*Loyd: The only way it will ever be able to prove this conspiracy is to get the FBI and CIA records. It's common knowledge that J. Hoover hated Dr. King with a personal passion.*

*Ambassador Young: There wouldn't be any record of it. It is difficult to prove. That's why we've advocated what they did in South Africa: declare general amnesty and let everyone come forward and clear their conscience. That would help the country.*

*p. 590 Dexter King: I know you are afraid of being indicted if you come forward, Mr. Jowers, but what if you were to tell your story to a friendly reporter, who we feel would be sensitive, who would not try to paint you in a negative light, but it just tells the story the way it happened, not the way some of the media have dealt with you in the past. What if they did a print story first in the morning and you followed up with a press conference that afternoon in front of a host of reporters so they can't isolate you (as with ABC Prime Time and Turning Point) and spin it?*

*Loyd: If I thought that would do any good, I'd do it in a minute, but if I do that without immunity I'll get indicted. The prosecutor has already said he has enough evidence to indict me, but not enough to convict me. They would indict me for being part of a conspiracy.*

*Lewis Garrison: They did make that statement.*

*Lloyd: I called Mark Glankler and I'd had a few beers and I called him out of a meeting and said you SOB do you think I'm scared of you?*

*Lewis Garrison: Since April 4<sup>th</sup>, 1968 the police have never talked to you about any part you had in it?*

*Loyd: I think it was April 6 that I went down to the police station to give them a statement about who had been in there. I knew almost all of them that had been in the place, even the black guy*

*they put in, Frank Holt. They didn't ask me anything. Frank Holt was going to work at a produce place on Front Street, Carter's.*

*Loyd: The rifle had a scope on it, the clip-on type.*

*Lewis Garrison: the problem with Mr. Holt's statement is that they did not operate at night at the produce company. I don't know that he had anything to do with this case at all.*

*Lloyd: to my knowledge, they closed around five o'clock, and I don't know if he had anything to do with this case. All that detail that came out on ABC was Willie Akins's idea. McCullough was the only black person in on the early planning that I know of, the only one that showed up at my place. I know Jones, Dr. King's driver, pretty well. Haven't seen him in years.*

*Lewis Garrison: Officer Redditt, an African-American, said he was there and had been watching Dr. King and Mr. Young and said he was startled because he had no knowledge of anyone ever threatening him (Redditt). The first thing he knew, some officers took him to the police department and the police commissioner was there along with people they identified as FBI agents and told him that he had received a threat. They took him to his home and officer went with him to make sure he stayed there. He said he knew what was going on. By the time he got home, he heard about the assassination.*

*Strange thing to me is that Mr. McCullough, undoubtedly with the police department, was an African-American on the scene, yet officer Redditt and the firemen were removed. McCullough [ or is he talking about Redditt?] was not interviewed as a witness ever. His name doesn't appear.*

*Andrew Young: Sam Donaldson pointed him out to me, and said he was in Army intelligence and was there to make sure that Dr. King was really dead.*

*(Tape ends. Picks up with the below)*

*Loyd: Snub .38, 4 inch barrel. They didn't make many of them. It was stolen from me.*

*The bullet casing I bent together and flushed it down the commode but it stopped up the commode. The next day I got it out, and that night I drove across the Mississippi bridge and threw it over the side into the river.*

*Lieut. Clark must have been in the Grill before 10 o'clock in the morning on April 4, because I left there about 10 or 10:30. He just stopped by like policeman used to do. I don't think Johnny Barger came back that day.*

*To get the rifle to the back yard, the person who had it needed to carry it out there. He carried it from a car, from the street. The box had been in my store, I didn't give it to anyone, but someone had picked it up.*

*I'm sure it was Clark that gave me a smoking rifle when I was standing at the back door. I broke it down and put it under the counter. I breached it, took the empty shell out, broke it down into two pieces, wrapped it in a table cloth, put it up under the counter and put some more towels on top of it. That's where it stayed until the next day. Raul asked me if I had a package for him and I said sure, under the counter. I got it last night. He said that's what I'm asking for. He was real short about it. Raul picked it up and left it wrapped in the tablecloth and went out the front door with it. That's the last I've seen of him.*

*I have heard this story that McFerren overheard Frank Liberto on the phone saying "get the SOB when he is on the balcony". I have no idea who Liberto might have been speaking with, and have no doubt that it took place, but no call was made from my restaurant. I was working the place myself alone that night because I had no help. I always wondered why that help stayed home that day, because they were good workers. Betty always came to work.*

*The pay phone was between the front of the building and my steam tables. Someone could have stepped in and used that phone, but I don't remember seeing anybody, certainly not about 4:30. I could have missed a phone call because I was trying to wait on everybody in the place.*

*Willie Atkins said I told him a lot of things. He is a big old liar. I ain't told him nothing.*

*On April 4 I came to work at 4 am, opened at 5 am. After I got lunch ready, I turned it over to cook, she handled the lunch crowd. I came back to work at 4 pm.*

*I don't know if I was driving my station wagon or my Cadillac--whichever one my wife wasn't driving.*

*I don't remember ever hearing that someone within Dr. King's organization would get Dr. King into position on the balcony. I heard a lot of talk from customers in the restaurant to the effect that someone had infiltrated the King organization. I heard that Jones was involved. I heard that Ralph Abernathy was involved. I heard Abernathy had him moved from downstairs to upstairs. I always doubt that, but somebody had it done. It had to be someone in the organization, or his security. I never heard anything bad about either Rev. Kyles or Rev. Jackson.*

*I do not remember that Liberto ever mentioned his ties to Marcello or the guy in Memphis, Genovise or Venovise. Half the police department knew of Liberto's ties to the Marcello organization. Frank did a little gun running, selling guns to the Cuban rebels, or so I was told. He did gambling and drugs. You would think that the money I handled for him before the assassination was going to buy drugs, guns, and pay-offs. He had to pay off the New Orleans Police Department, Memphis PD. I'm not too sure he didn't pay Mr. Crump some money years ago. He was one powerful dude in town.*

*My restaurant had a front entrance and a back entrance. The upstairs had a stairwell that came down the side, but it stayed blocked off all the time. You could go down the steps, you get to that door and they would not open inside or out. Of course, they have front entrance that went right down beside my grill, which was inside the building, and went right out right next to my door, right around the corner.*

*Of the occupants upstairs on April 4, Charlie Stephens is the only one I really knew--and that crippled boy who bought a lot of beer. Earl Clark and Raoul were not to my knowledge up there that afternoon.*

*I don't remember what Clark was wearing that afternoon. Not a police uniform. The guy who handed me the gun was had a white shirt and dark pants. I did not see him fire the rifle. I heard the shot. It sounded like cannon.*

*The test shows that the bullet was going down. Two or three different people have said that Jones said something about getting an overcoat and King bent over the rail when he got shot. The bushes and the room were at about the same level. He was leaning over trying to hear what*

*Jones was talking about.*

*Andrew Young: The bullet hit the tip of his chin.*

*Lloyd: I never locked the basement door. There was nothing down there. I have no idea whether Clark or anyone went down in the basement after the shooting or if Clark put on a uniform or had a uniform after the shooting. He could change shirts in seconds. Could have changed in the car. I never saw him again after the killing.*

*I have no idea who was in the brush area at the time of the shooting. He threw the rifle to me like you would do a soldier. It had just been fired. I did what Frank told me: broke it down and put it under a counter and went on and waited on my customers.*

*When I got to work at 4:00 I parked right behind a white Mustang on South Main. It had out-of-state tags; I don't know what state.*

*My personal opinion is that Earl Clark was the trigger man. I would think he did it for money. I don't know if he lived better after the shooting.*

*The police didn't really do any interviewing the night of the shooting. They took names and addresses and phone numbers and told us to go home. I have no idea who did the crime scene interrogation. I didn't see Barger, Zachary, McCullough, Clark, or Liberto the night of the killing or the next day. I talked to Liberto but didn't see him.*

*I don't know how deep McCullough was involved in the killing. I think he was just following orders. I only saw him that one time when he came into the Grill for a planning session. I got a word here and there and knew it was illegal, whatever they were talking about, but I had no idea what it was. Barger was one of four field inspectors over a section of the uniformed, maybe 100 or 125 officers.*

*Raoul had to be the one to pay Clark. I don't know if Raoul approached Clark about being the trigger man. I don't know any other Memphis officers that would have received money for the operation and don't know that Clark got any. I believe he did. He may have done it for fun. You never know about people.*

*I heard about a hoax police radio broadcast to the effect that the suspect was out in Raleigh or somewhere in a white Mustang and the police were supposed to be behind him, while James Earl Ray said he was really going south down 65 in the other direction. The radio said he was going north. To break into police radio frequency broadcast would require military equipment.*

*Dexter King: That came out of the House Select investigation.*

*Dexter King: What about the taxi driver that picked up the passenger at the time of the killing and said they saw a man who came down over the wall and get into a Memphis police car up on Huling Street, and the driver was killed that night?*

*Lewis Garrison: I don't think he knows anything about that. After this Prime Time telecast, a gentleman called me and gave his name to Dr. Pepper. His statement was that he was a cab driver that night and a friend of his was also a cab driver, who radioed him from the Lorraine Motel and said he had been unloading luggage he saw Dr. King get shot. He said he called his dispatcher, and was told to get out of the area.*



*So the gentleman who called me said that he told his friend to meet him out at a place they frequent at the airport, and he said two officers came there, and he heard his friend give the police officer on account of what he saw: that someone ran and got in a police car. The gentleman has talked to several people. He said the police officer told his friend to come down to the station in the morning and make a full statement. The next morning it's said the man's body was found across the bridge on the Arkansas side and he had been thrown out of a car.*

*Loyd: remember the cab driver getting killed. I didn't know about all that.*

*Lewis Garrison: There is no account of it. I gave this man's name to Dr. Pepper. His name is in the book. Lewis Ward, I believe. There's no question that they just got rid of the file. When we dug into it we could find no record where the man was even killed. The gentleman said he heard the man at the airport tell the police officers that he had seen Dr. King over the railing, and it looked to him like the shot blew his whole face off. He looked around immediately and saw a man running and get into a police car. He radioed his dispatcher.*

*We checked with the cab company and they claim they can't find a record that he even worked there.*

*Loyd: Everything I heard about the assassination was after the fact, and I didn't put much stock in it. Beer talk, mostly.*

*Afterwards I heard that Solomon Jones had been talking to Dr. King, so that if King was shot from the backyard. He would have been leaning over the balcony. Otherwise the bullet would have gone level.*

*Andrew Young: It could have gone either way. It was such a clean wound you can't tell which way it went.*

*Loyd: The only difference between what I said in an earlier session and what I've said today is that I'm almost positive it was Earl Clark in my back door, and I'm not sure about the rifle. I thought it was a 30-30, but it might have been a 30-06. The shot sounded like a 30-30, because they're louder than a 30-06. I've told you everything I know.*

*Loyd: My opinion is that the assassination order came from J. Edgar Hoover. There's no way to prove that. I don't believe the President would have done it. J. Edgar Hoover hated Dr. King. If the military were involved, the order would have to come from the President, and there would be a record of it.*

*Andrew Young: Hoover's number two man was almost staying at the White House, Lee DeLoach —telling Lyndon Johnson what they wanted him to know.*

*Loyd: I don't know of anyone who has scientific evidence of which rifle actually did kill him. Definitely not the one the police found at the amusement company down the block. I'd never believe that James Earl Ray killed him, not even if he told me. He was set up through his own fault. They got him out of jail, gave him money and passports. They came up with that tale about setting up a gun deal, but it wasn't true. But now he stalked Dr. King halfway across the USA, went to Atlanta, had all that written down. He was doing that for the CIA and the Mafia, establishing a paper trail. Certainly if they were using him as a set-up guy they would want him to appear that he was stalking, and he probably didn't even realize he gave that appearance. I'm*

*sure that's how it went down. I don't believe he had any intention of hurting Dr. King. He did what he was told to do, and that was to make it look like he was stalking Dr. King.*

*I wish I knew exactly who done the killing, and if I did I'd say it. But I don't. I do know this for sure: it was a conspiracy. I'm almost positive that Clark did it, but I did not see his face. I saw the back of his head. But I had seen him wearing those same clothes.*

*Lewis Garrison: the people involved who are still alive would be Lieut. Zachary, McCullough, Ms. Spates, Mr. Jowers. Ms. Spates says what Loyd saw,*

*Lloyd: That was a big old lie. I was right there. When she described it in lengthy statements under oath, and I know about her affidavit, she did it to get at me. Not a dad-gum word of it is true, but she believes it and nobody can change her mind, that I actually done the shooting. She said I did it. She told me that. I saw Clark in the Grill one time on that day. I left about 10 that morning, He may have been around more than what I saw,.*

*Lloyd: Betty Spates used to be my girlfriend. She has a hell of a temper. I offered to take a blood test to find out if her two children are mine. She backed out. If they were, I would have been supporting them. We had a sexual relationship for about five years.*

*I think if I came forward to the media, it would get me put in jail, and get me indicted.*

**p. 645 End of the playing of the tape.**

p. 646 **Judge Arthur J. Haynes, Jr.** 15 years as Circuit Court Judge, formerly a lawyer for James Earl Ray  
3533 Spring Valley Ter., Birmingham, AL

### **Direct Examination by Dr. Pepper**

In 1968 I was a very young lawyer. My father also was a trial lawyer. We had success in defending highly publicized and unpopular cases. When James Earl Ray was arrested in London he contacted my father. Actually we were contacted by R. J Sneyd, which was the name on his Canadian passport. My father and I became James Earl Ray's defense attorneys.

We had prepared to go to trial. Mr. Ray changed lawyers the night before I was to give the opening statement in the case. I had spent all day Friday with him in Memphis, getting ready for trial. I returned to Birmingham late Friday evening and came back to Memphis on Sunday night. I had to get new suits and do some other final things to get ready for trial. Why Mr. Ray made the change of counsel at the midnight hour remains a mystery to me. About a week later Mr. Ray said gentlemen, I made the biggest mistake I ever made, would you please come back to try this case for me.? All this new fellow wanted me to do is plead guilty. We considered the case so bolloxed up that we weren't willing to get back in.

In the course of trial preparation, I was familiar with the state's evidence. The State's case was absolutely confined to one man, James Earl Ray, acting alone. Our view was that this was an impossible result, both factually and at trial, and we were confident that the Defense could win. The state had offered a plea bargain allowing for parole in 10 years. I believe he took a 99 year sentence, making him eligible for parole in 33 years. Neither Mr. Ray nor we were going to consider a plea of guilty in a case that should have been won.

We interviewed a good number of witnesses, among them the owner of Canipe Amusement Company on S. Main St. near the rooming house. The state's theory was that at the entrance to Mr. Canipe's store was a Browning rifle box that contained clothing, a radio that had James Earl Ray's Missouri state penitentiary number on it, and a Remington 760 rifle that James Earl Ray had bought in Birmingham. The rifle may have been wrapped in clothing. The box was wrapped and tied in some fashion. The State's theory was that Mr. Ray had fired the shot that killed Dr. King, had run across the entrance way between the two buildings. Adjoining these two buildings was sort of a rickety metal connecting way. The State's theory was that Mr. Ray had fired a shot from the bathroom on the second floor, come down the hallway into his room and carefully packed that box and tied it up, then had proceeded across the walkway the length of the building to the back where that stair from that door came up, had come down the stairs out the door, and placed the Browning box containing the rifle and the radio there in the main entryway. It was the only theory the State could have with James Earl Ray acted alone. He then proceeded to get into a Mustang and drive away.

In July or August of 1968 we interviewed Mr. Canipe. He remembered the events vividly and was one of the more reliable people that we interviewed. He said the package was dropped in his doorway by a man who then headed South down Main St. on foot, and that this happened about 10 minutes before the shot was fired. He was tied up doing something and didn't go out to check what it was. We found this very credible, because, right next door was a fire station packed with Memphis Tac Squad detectives, firemen, people keeping Dr. King under surveillance. When Dr. King was shot, they poured down the driveway and out the door looking in the bushes and on Main Street. It seems a circumstantially almost impossible to believe that someone could throw that package down and leave in the face of that erupting fire station.

The rifle found in that box was, the State contended, the murder weapon. It was the only weapon found. The FBI took it to Washington for ballistics tests, and reported that the slug taken from Dr. King's body was consistent with the type of slug fired by that rifle. In essence, the best they could do was that Dr. King was killed by a 30-06 rifle and this was a 30-06 rifle. If there is a match, the FBI can make a match out of a piece of slug the size of your little fingernail. And if they had matched, then their testimony would be that the evidence weapon to the exclusion of all other weapons in the world fired the evidence slug. They could not match it.

I had seen other death slugs and other bullets by that point and at some point I did personally examine the death slug. It was a Remington core lot bullet with a metal base that was not skewed. It was almost perfectly round. You could see the lands and grooves, the marks on the slug, with your naked eye. Visually it was an excellent evidence slug. I knew that if James Earl Ray fired that slug, we would see every expert in the world put that slug with that rifle. It didn't pan out that way. We felt that there was virtually no chance that the State could prove beyond reasonable doubt that James Earl Ray could have acted alone in firing the shot that killed Dr. King.

p. 662 **Cross-examination by Mr. Garrison.**

Mr. Ray said he had an associate by the name of Raoul, and that at some point in the afternoon, one or both of them went into Jim's Grill to have a beer. We interviewed everybody we could and could find no corroboration that they went in there. We hired Renfro Hayes as an investigator because he knew that area of town. He knew Loyd Jowers and reported to us that there was nobody in Jim's Grill that had testimony to offer that would affect the case.

I never heard Mr. Ray mention the name of Jowers or Liberto. To some extent we tried to

locate Raoul. Ray told us the reason the rifle was in Memphis was that it was part of an operation to bring guns from Mississippi down to New Orleans to Cuban revolutionaries. We wanted to go to New Orleans, but Mr. Ray instructed us that no matter what happened, nothing to investigate the connection should be done. We looked for corroboration of Raoul's existence to no avail. That's why we were interested in the Jim's Grill people. We were looking for anyone who saw a strange pair, who knew Ray or ideally saw Ray with a stranger. Nobody would say anything about that.

The only person we talked to who we believe had knowledge of who fired the shot was a man in the rooming house. All I know about the brushy area is that some associates of Dr. King across the street thought the shot came from there.

p. 667 **Redirect Examination by Dr. Pepper**

The State shared no Memphis Police or Fire Department witnesses with us, but we uncovered some ourselves. I am familiar with the prosecution's contention at the time that the bullet was fired from the bathroom window of the rooming house. I've heard that the prosecution claimed that a dent in the windowsill was made by the rifle itself, but I cannot believe that they would have tried to prove that in court. I would be shocked if a lawyer claimed in the guilty plea hearing on March 10, 1969 that they could prove with certainty that the dent was made by the rifle. I don't think the prosecution ever turned over to me the FBI reports of the windowsill evidence. (Dr. Pepper states that these reports indicate that the FBI could not prove that the rifle rested on the windowsill.) I don't remember if that report was disclosed to me. There were reams of evidence. There is no way you could prove that that rifle rested on that windowsill. If we saw a report that said they can't prove that, we would just hurry on.

p. 671 **Ms. Bobbie King Balfour**, presently a cook at Embassy Suites on American way.

On April 4, 1968 I was employed at Jim's Grill by Mr. Loyd Jowers as a waitress and cook. Mr. Jowers would pick us up at 4:30 in the morning, me and Rosetta, and drive us to work. I don't think Rosetta came to work that day. I started the usual time that morning. In my work at Jim's Grill I knew Grace Stephens who lived upstairs in the rooming house. I would take her breakfast between 8:30 and 9:00 and set it beside the bed. I was not responsible to bring the dishes back. She was in bed all the time. I don't know if she was ill. I didn't go all the time. Sometimes Rosetta went. I don't think Rosetta worked on April 4. Another girl was there. I did not take the breakfast to Mrs. Stephens that morning, because Mr. Jowers said I didn't have to take it up there that day. He did not explain why he did not want me to go to the second floor, and I did not ask him. I don't know if Grace Stephens got her breakfast that day. I left work sometime before the assassination, and when I got home, the news was on the TV.

Mr. Jowers picked me up the next morning and drove me to work. I do not recall if he mentioned a rifle, but he said there had been a lot of excitement the night before, that the police had come through the restaurant and found a gun in the back yard.

I have looked out the back door. It was woody out there with grass and weeds and stuff. Little trees. It was in bad shape. Mr. Jowers said the police found a gun in the back area, he said nothing more than that.

p. 680 **Cross-examination by Mr. Garrison**

The day of the assassination Mr. Jowers had come to my home and he took me to work in the

morning at four or five o'clock. I had worked all that week as I recall. I never saw anyone bring in any money to the restaurant and never saw a gun. I never heard Mr. Jowers make any statement about the assassination of Dr. King before it happened. Mr. Jowers was not prejudiced. He was very fair. I never saw police officers in the Grill before the assassination and none of them came in on a regular basis. I don't remember seeing any strangers in the Grill that day. Mr. Jowers several times ran Mr. Stephens out of the restaurant because he was drunk.

p. 682 **Redirect examination by Dr. Pepper**

I was not questioned at the time about the events surrounding Dr. King's death. When they came in the next day they asked me a question, I gave them an answer and they told me to go back to the kitchen. No investigating authorities ever questioned me about what I saw or heard or anything.

p. 684 **Re-cross by Mr. Garrison**

No one from the police, FBI, or Sheriff's Office ever came into the Grill while I was there to look around or investigate anything after the assassination.

p. 684 **William R. Key**

currently Criminal Court Clerk of Shelby County, Keeper of Records, Keeper of Property and Evidence.

1574 Cherry Park Dr., Memphis

**Direct examination by Dr. Pepper**

I maintain the evidence room in the Criminal Court Clerk's office on the fourth floor. The property kept there is items brought in for court proceedings, and we continue to hold the property until the case is disposed of—sometimes 25 years. The property in the Martin Luther King death case is kept in a vault, in a safe separate from the place they keep money and diamonds. All the evidence that is known that has been turned over is kept in that facility: 13 boxes, 267 items under my supervision, care, and custody for the last five years. In 1981, the evidence was moved from a vault in 157 Poplar to new quarters at 201 Poplar.

I am appearing under subpoena, and was asked to bring evidence: the rifle that is purported to have been the weapon that slew Dr. King. This is the weapon that we've had in the five years I have been there, and it was taken to Rhode Island and Pennsylvania for firing and testing. This weapon has not been tampered with or changed or replaced in any way during my five years. It is still operational.

p. 690 **Judge Joseph B. Brown**, State judge for 30th judicial district, State of Tennessee.

### **Direct examination by Dr. Pepper**

I am appearing under subpoena. I have a law degree from UCLA, 1973, have been a member of the bar of Tennessee since 1975, worked for Legal Services, and then the Equal Employment Opportunity Commission. I believe I was the first black prosecutor in Memphis, and I ran the City Public Defenders Office for a while, then went into private practice. In 1990 I was elected Judge for Division IX of the criminal courts, reelected in August of 1998.

I have always had an interest in ballistics and firearms. I've been a hunter, target shooter. My father taught me to shoot when I was six years old and I have on my own studied and read about the science of ballistics and weapons for the last 40 years or so. I have 30 to 35 years worth of experience with rifles of the type involved in this case. I have explored the nuances of ballistics and the matching of bullets to particular weapons, and am familiar with the techniques of the process. Ballistics is about the flight of projectiles, beginning with an initial impetus from a catapult sling or from the thrust in a ballistic missile, what happens when you fire a bullet, projectile, how it behaves as it travels until its forward flight stops.

There are special categories such as internal ballistics: how a projectile behaves in a barrel of the weapon, what happens when you fire a cartridge.

It's common today to compare a bullet found in the body of a shooting victim with a sample fired from the suspect weapon. Commonly this is done with a microscope device that allows comparison of striations (fine grooves) engraved on the bullet based on particular characteristics of the weapon. There are basal characteristics determined by the nature of the weapon, its caliber, the manufacturer, and then there are individual characteristics brought about by manufacturing flaws, tool marks left in the bore of the weapon. You check the individual signature a weapon leaves on a sample bullet, and try to match that with the bullet removed from the victim.

In this case we're talking about a .30 caliber bullet, nominally a .308 diameter. The state's allegation was that the bullet was fired from a 30-06, a .30-caliber weapon firing a cartridge based on a military cartridge known as .30-caliber of 1906. This was a modification of the earlier .30 caliber model 1903 which resulted in a shortening of the case neck of the cartridge and a weight reduction of the initial military bullet from 220 grains down to 150 grains. That's become known as a 30-06. The actual caliber of the projectile is .308. In European terms it's known as a 7.62 x 63 mm cartridge.

Late in the 19th century, the English in India were concerned about increasing stopping power of their bullets and started producing a bullet with a large amount of lead exposed at its tip, and sometimes with a hole in the front. These bullets would expand into a mushroom shape when they hit flesh and cause very bad wounds. As a humane matter, most of the world has agreed not to use these soft point bullets and instead use a full metal jacket and bullet where the point is covered with a steel or brass or composite jacket so it does not expand.

Manufacturers make bullets in batches of say 25 to 35 million. So after producing 150-grain .308 bullets they may switch the machine over to the 6.5 mm and run 20 million of those. Then when they convert the machine back to .30 caliber they can't get the tolerance exactly as before, so each batch gets a lot number. When they load the completed cartridge they try to keep the lots

consistent so the customer gets reasonable predictability. Powder varies too from one batch number to another. So they'll assign a lot number to a particular batch of powder, and a lot number to a batch of cartridge cases and the same with primer. So a batch of cartridges will have similar lot numbers, and a metallurgical analysis of the materials will show metallurgical consistency between cartridges in the same batch, consistency of powder samples, the gilding metal of the jacket, and the lead core.

I have familiarized myself with the death slug and with the bullets and cartridges that were found in an evidence bundle in this case. It seems that when the rifle in question was recovered, there were four unfired cartridge cases with the rifle and one fired cartridge case. A primitive metallurgical analysis done 30 years ago suggests that the fired cartridge case and the four unfired cartridge cases are metallurgically identical, that is, they are from the same lot. The bullets from the four unfired cartridge cases are metallurgically identical, while the bullet removed from Dr. King is metallurgically different, which suggests it is not from the same lot. Furthermore, the cartridge case that appears to have been fired in the rifle that is in evidence is of the same lot as the other four unfired cartridges. You would expect the bullet that had been removed from Dr. King's body to have been of the same lot. This suggests that the bullet was not fired from the empty cartridge case that was found with the rifle and that casing was definitely fired in the rifle.

The alleged murder weapon in this case is a Remington 760 GameMaster, caliber 30-06, known as a pump action. It is basically the only one still manufactured in America. At one time it was popular, but since the end of the 19th century this is basically the only remaining center-fire pump-action rifle. The .30 caliber weapon is perhaps the most popular caliber in America, and several weapons will fire an identical bullet. If you manufactured a batch of those bullets you could load those correctly into several different caliber weapons.

One is known as a .308 Winchester, a civilian nomenclature applied to a 76 2x51 nail round adopted in 1954 by the US government's NATO forces. It also fires .308 bullets. Likewise there is a .300 Holland & Holland Magnum, and it fires the same .308 bullets. If you hand load, you can take a .308 bullet you would buy in a gun shop and if it is suitable for your purposes, you could load that in a .308 Winchester 30-06, a .300 H & H, a .300 Winchester Magnum, and a .300 Weatherby. You can load it in--I'm talking about factory ammunition--a 30 X 378 Weatherby and a Remington .330 Super Magnum. Lazzeroni has something called a WarBird, very specialized. A company called Dakota puts one out. They all use the same .308 bullet.

Since the .308 is a standard NATO round you have such items as the M-60 machine gun, the M-14 which was adopted in 1956 as the standard battle weapon for the Marine Corps and the Army, which has been superseded by the M-16. There's also an M-21, a sniper edition of the M-14. You have the M-24, which is a Winchester model 70 that the military used in the late '60s that was a bolt-action sniper weapon. You have a version of the Remington 700 that the military currently uses as a bolt-action sniper weapon, along with refurbished editions of the M-21. You have various and sundry permutations of weaponry that are .30 caliber that the military has used from time to time.

On the civilian market there are also a number of semi-automatic weapons that had military intentions initially, such as the F.N. Fowl that was commonly available and the G3A. and K91, which are available from time to time. There are a number of weapons that will be such as to fire a similar bullet.

Back in 1969 there were a number of weapons that could fire such a bullet. The .308 Winchester was popular. The 30-06 was even more popular at the time. Those two would have probably been what you would encounter if you were talking about hunting-caliber center-firing 30-06 or .308

Winchester. You also have the old 30-30, which fires a similar diameter bullet, but that would be a blunt nosed slug, which is an entirely different design for feeding through a tubular magazine.

You also had the .30-40 Frig that was used as starting from 1892 and used a .308 slug. There were very many foreign copies of that.

So any one of those range of weapons could have fired this type of slug at that time.

p. 709 I recognize the 760 GameMaster in evidence in this case. It is a fairly new weapon with a Redfield 2 to 7 variable scope on it. It is mounted in Weaver scope rings and mounts and it's a pump action weapon. From the marking on the barrel, it's .30-06 in caliber.

I had occasion to consider this weapon as the murder weapon in this case in some degree of depth and consideration during the course of proceedings brought by the late James Earl Ray, post-conviction relief proceedings to challenge his conviction. Mr. Ray had never confessed to the killing of Dr. King, but had entered what is known as an Alford versus North Carolina plea, a plea delivered under the principle of an old US Supreme Court case that stands for the proposition that you may plead guilty even if you're not actually guilty if you believe it is in your best interest to do so, and you do that freely, voluntarily, knowingly, advisedly and intelligently if the state otherwise has a reasonable factual basis upon which to proceed. You may plead guilty even if you're not guilty if that is in your best interest and if the state has some case that they can go forward on.

The entirety of that case, according to the petitioner's theory, was based on this rifle, which is what hooked him to the case.

During the course of reviewing the record for this matter it develops that there was a transcript of James Earl Ray's guilty plea. It develops that Mr. Ray aforesaid had never actually confessed to the killing of Dr. King. I believe there are at least two places in that transcript that revealed that when an investigator for the district attorney's office testified during the course of the guilty plea proceedings and indicated that James Earl Ray acted alone, in at least one instance, Mr. Ray rose in a mild outburst saying that was not true, that he did not act by himself, whereupon a recess was taken. That happened again and another recess was taken. And then he did not rise the third time. They then went through the process.

A lot of cases are disposed of on Alford pleas. Sometimes the defendant has a criminal record that would be revealed to a jury in the event that he testified, which might be something that he would be leery of. The jury would be instructed not to consider any felony convictions as touching upon his guilt or innocence, but told they could consider it in evaluating his credibility. In the absence of an exceptional situation and when the jury finds you've got a criminal history, they will not look at you as well as they might have otherwise even in spite of the instructions given by the judge. The case may seem so outrageous or so gross or horrible that you don't want to take your chances in front of the jury and you will settle for what has been offered. So as far as the petitioner's theory, considering the person who was slain and the public outcry and uproar and the possible sentence, he thought the Alford plea was in his interest.

I presided over those proceedings about three years. At the time it got in my court there was case law that caused me to deny Mr. Ray's petition as untimely, but I noted a loophole in Tennessee law: A person on death row, let's say, and DNA evidence could prove absolute innocence. But unless he had filed that case within the three year statute of limitations for post-conviction relief, and raised that evidence or was able to avail himself of a petition of error coram nobis, he had no remedy. The law abhors a situation which is legal where there is no judicial remedy, and so the only thing he could do was applied to the governor for clemency.



So I ordered that the petition be denied, but I would allow the petitioner to put on a proffer of proof so an appellate court could determine whether or not the law needed to be reviewed.

I ordered that the rifle would be retested. That was in accordance with an order given by the original judge, Preston Battle. In 1968 Judge Battle entered the order that the rifle be tested since he was not satisfied with the ballistics tests have been run at that point. But that rifle never was retested, so I ordered it retested. The Court of Criminal Appeals went along with the prosecutorial side and declined to allow the rifle to be retested, and issued a stay.

A few weeks after that stay was issued the Legislature passed a new post-conviction relief statute saying that if there is a new scientific methodology that would establish the innocence of the petitioner, there is no statute of limitations, no time limit on filing, and no time limit on when they can be reopened. So you don't get someone stuck on death row when there is methodology such as DNA testing that would show that he is not the fellow.

I considered very carefully the testing history of that rifle, and I thought it was totally inadequate. The FBI testing just involved firing four cartridges through this weapon into cotton waste. That totally destroys the fine striations that would enable you to do the valid ballistics test. All you would get out of that would be base characteristics, which would be that this weapon fired a .30 caliber bullet of .308 diameter and had four lands and grooves with a right-hand twist. One thing they never resolved was the rate of twist. Historically, 30-06's had one full turn every ten inches. Weapons that are designed from the front end as .308 weapons have one full turn every twelve inches (though there are examples of each where the twist is as the other would be). It depends on whether you will fire a heavier or lighter bullet for the caliber.

The FBI tests were totally incapable of giving a valid basis of comparison to determine whether the bullet taken from Dr. King's body was fired from this weapon.

p.717 Another thing, and I believe Mr. Key came up with this, is that when I asked for an inventory of all the evidence in the case, he noted that a picture of the slug removed from Dr. King's body before its transmission to the FBI showed that the bullet was intact, though mushroomed. What the FBI sent back after the test was three jacket fragments and three lead core fragments that had been cut as though you pulled a banana peel all the way off and then took a knife and cut the banana lengthwise into three equal sections.

The photo presented by Dr. Pepper is similar to the evidence photo I saw. In the lower right you see the jacket peeled back by a mushroom process. The other two items are pieces of the lead core. Maybe it was a poorly-constructed bullet and it simply fell out in testing, but what I found later was not just what you see there but before the jacket had been peeled back so there are three separate fragments to the jacket itself.

The bullet taken from Dr. King's body was in one piece. It's a soft core hunting bullet designed for humane harvesting of animals. It mushrooms, so the bullet transfers most of its energy into the animal rather than putting a clean hole through it. If you were to shoot an animal between 100 and about 350 pounds with a 30-06 from under 150 yards and got a solid torso hit in the lung or heart area you could count on animal dying. You would dump the entire energy of the weapon into the target, a ton and a half of energy. Fire this weapon and you would have a 150-grain bullet moving at a nominal velocity, and with the type of ammo they were likely to have in 1968, it would travel at 2700 to 2750 ft./s giving you 3000 foot-pounds of energy.

When you shoot someone with a full metal jacket military bullet, you put a nice clean hole in them

and most of the energy is dumped in the dirt or tree or a rock behind the target. If you shoot an animal with a hunting bullet you dump all the energy in the animal and it expires quickly. Generally hunters these days prefer to have the bullet completely penetrate the animal so you can leave a blood trail, but I assure you release a much bigger hole on the way out is going in. If you shoot a deer, very, very seldom will one of them drop right in its tracks. It will usually run around 25 to 150 yards, and you must track the animals through the brush until you find the body, which is expired from blood loss. If you shoot the animal right and the bullet does not penetrate downward but stays inside and disintegrates, which is known as bullet failure, then you may still disrupt the animal's central nervous system in its tracks. That happens from time to time.

p. 722 From the record, it appears that James Earl Ray went into a gun shop and bought a 243 Winchester, one of the .308 rounds that we have been talking about or at least the cartridge case, neck down, to .243 caliber--about 6 mm versus 7.62 mm. He brought it back the next day and said he had been advised to get a .30 caliber weapon, whereupon he reportedly purchased this item right here and they mounted a scope on it. Actually the .243 probably would have been a better weapon for the purpose than this .30 caliber, commonly used to dispatch deer and other varmints. Also, it is a pretty accurate round, and the range is less than 150 yards. The .243 Winchester was at least as good a rifle for assassination, and quite a bit better caliber than the one used to kill Pres. Kennedy.

My belief is that the petitioner was instructed to buy the 30-06 so there could be a number of common caliber weapons that might have been on the scene of the killing that would've used the same caliber bullet. If the ballistic comparison tests were run as the FBI did them, firing sample projectiles into cotton waste so you could not get more striations on to compare with the bullet taken from Dr. King's body, you would have about 16 million guns that could have been the murder weapon. I think Remington ultimately made somewhere around eight or 9 million copies using the same barrel machinery either with this permutation of the 760 GameMaster, the 740 semiauto, or the model 700 bolt-action series.

With respect to the scope it's interesting that the proprietor of the shop never polarimeted this scope. You can't just stick a scope on and expect to hit anything. You've got to zero the thing. A polarimeter looks like a small telescope and has a little spindle that fits in the weapon's muzzle, and you line it up. There are crosshairs on it. You move these devices around using a coin until you get the crosshairs on the scope matching the crosshairs on the polarimeter.

An alternative method used with bolt-action is to take the bolt out and lay the rifle on a sandbag and aim down the barrel at a small circular item about 100 yards away and try to align it in the middle of the bore. Then you can manipulate the adjustment knobs on the scope to align its crosshairs with the item 100 yards away and you keep looking back and forth. This rifle has a closed receiver so you can't bore sight using that method. You'd have to polarimeter it.

In my experience over the last 30 years of firing I don't know how many hundreds of rifles, even when you do get it polarimeted or bore-sighted you take it out to the range and finalize your sight-in process and put a target up at 25 yards the size of one of these picture frames on the wall, you might be lucky to get it in the bottom left-hand corner at 25 yards. Then you have to dial in 60 clicks, up 60 clicks to the right or left to get it close on and then back out to 100 yards and try to sight the thing in further, and by a slow process make it so that the bullet impacts where your crosshairs are located.

Usually on a .30 caliber weapon you try to get the typical bullet impact 1-1/2 to 2 inches above the point of aim. That would put your rifle dead on at 250 yards. At 25 yards with a scope like this you'd you'd hit about an inch below the target. At about 50 yards you would start crossing over the target line, at about 70 you'd hit right on, at 100 yards maybe 2 inches high. Slightly over

that at 200 yards and at 250 you'd be dead on. At 300 maybe 7 inches low. So you have to sight this thing in. It does not appear that this weapon was ever sighted in.

p. 728 There was an FBI report about test-firing of this weapon shortly after it was taken in evidence: it shot several feet to one side at 100 yards and slightly half that low. So this does not appear to have been a sighted-in weapon. Possibly it could have been knocked out of zero but this rifle is less likely to have that happen than are other weapons. It has a two-piece stock that is not firmly affixed to the barrel. There is an operating rod upon which this slide is affixed. That keeps it from having any impact on the barrel at all. The barrel is fixed to the receiver. You simply have a butt stock here, which keeps this thing from occurring like your typical bolt action where the wood goes up along the barrel and tends to warp.

This rifle probably would not have gotten out of zero (an inch or so one way or the other). If this weapon was in the condition it was in three or four days after it was taken into evidence, it literally could not have hit the broadside of a barn if someone was shooting at a target. I think the FBI tests showed it would shoot four feet off one way and two feet down. That scope could not have been thrown out that amount simply by dropping it on the sidewalk.

Based on the entirety of the record and further ballistics tests that I had run on this rifle, it is my opinion that this is not the murder weapon. The basis of that opinion was the subsequent ballistics analysis done with this weapon using scanning electron microscopy to analyze the sample bullet and compare it with the slug removed from Dr. King, the circumstances attendant upon the lack of similar batch status of the bullets from the rest of the cartridges, the weapon itself in terms of it not being sighted in, and also a description of the shooting itself in terms of supposedly of what supposedly transpired. That makes this a rather unique weapon.

I ordered the rifle thoroughly cleaned because it is a new weapon, and the bore was not broken in. Remington was not the worst, but in 1966, '67, '68 the firearms companies were switching to machine manufacturing processes that had not been perfected. There was a hue and cry in the gun world about defects with new products. Every fourth or fifth time I got a hunting rifle I had to send it back to correct flaws.

I ordered this weapon cleaned because even though it looks like you've got a shiny bore, under certain light conditions this whole bore is smeared with jacket powder. When you fire a bullet it leaves traces of the jacket all down the barrel. As the barrel gets broken in and smoother, less of this jacket coating is deposited. When I inspected this weapon initially, the bore impressed me as quite filthy. I used a bore sight, a device with a light in it.

I ordered it cleaned. They apparently did not clean it more than to run a patch down once or twice through it. I had suggested that they use a file out, a nonintrusive device made by the Outers company. You fill the barrel with a chemical, put a plug in it, an electrode in it, hook the barrel up to the other electrode, you leave it on for 24 hours and it works a reverse-plating process so you get all the filings stripped out from the barrel and it adheres to the electrode. So you would have a pristinely clean weapon in 24 hours.

They chose not to do that, but simply to run a patch through it for a number of reasons which through their mistake--which was going against their misunderstanding of my order--they thought I ordered them not to clean it.

In any event, they fired 18 bullets from this weapon into a water tank. 12 of those bullets, that is 67%, showed a similar and very unusual characteristic. Usually when you fire a bullet down a rifle barrel, the actual diameter of the bullet would match the bore. But when a bore has some lands,

ribs that stick down, they engrave the bullet. What's unusual about the projectiles fired out of this weapon is that a defect somewhere in this barrel caused the bullet not to be pressed down, but to come up into this particular flaw. So instead of rounding with grooves indented in the bullet, a bump would stick up from the surface. That is unusual and indicates some chattering in the tool used to make the barrel. It's rare, but it was present on these bullets.

Now, because this weapon was not cleaned, the filing material was being blown out of this flaw. One of the bullets would have a gross reflection of this flaw. The next shot through would be somewhat less impressed, because the filing had filled up the defect. The third would have even less of an impression. Then the filing would get blown out. The next bullets through would not show it to a gross extent. So you've got 12 bullets with the same characteristic: this raised area on the surface of the bullet. That was not found on the corresponding portion of the bullet removed from Dr. King.

Scanning electron microscopy can give you a much clearer view than the traditional method gives. One of the problems with the so-called experts that were called upon is that they were expert only in comparing bullets in a microscopic setting. None had any experience in scanning electronic microscopy, and none had any significant experience and shooting or using a rifle. None had ever cleaned a rifle other than (I believe the testimony was) that when they found one clogged with mud or dirt or debris they would run a rod through just so they didn't destruct the weapon.

In any event, this characteristic was common. 67% of the bullets showed it. I ordered the weapon retested once the cleaning was done. The nature of the defect was such that it would be expected that 100% of the rounds fired would show this defect.

In lay terms it's like this: you're 67 years old, 74 years, you are having trouble urinating. The doctor says he's seeing a hard something in the prostate area, and you need to see a proctologist. The proctologist says, okay, we need to run some test. Every test they run says you've got prostate cancer. That's where we are with this rifle here.

The next step would have simply been a confirmation of everything that had gone before. But this does not appear to be the rifle that killed Dr. King.

There is another unusual thing: the testimony that the barrel of this rifle was rested across the hardwood windowsill, that the gunman using one foot propping himself up, holding on and using another arm to hold the weapon, supposedly rested this barrel on the windowsill and pulled the trigger. There is an unusual thing about this one: the slide action. If you do that, nine times out of ten the slide will cycle itself before the pressure is dropped in the barrel and then you get a blown up or ruptured shell casing. So this rifle is fortuitously incapable of being used as they indicated in the proof that was in the record.

So we've got 1) non-similar lots of components, 2) a rifle that has never been sighted in, and 3) a usage suggested that is impossible for this particular type of weapon. And then in addition when we run the more advanced ballistics comparison tests, none of that matches.

So I ordered retesting under very strict guidelines, cleaning and retesting. That was about to go forward. The Tennessee Court of Current Criminal Appeals removed me from the case. They said I was biased toward James Earl Ray. That was done before a full transcript was developed. Whenever the prosecution didn't like what I was doing in these proceedings, they would run up and file affidavits, which in my opinion misrepresented the state of the evidence, and they would get an emergency stay before the transcript was prepared. One affidavit stated that the weapon

should not be tested because it might be damaged, which could prevent it from being tested in the future.

As to how firing a .30 caliber weapon might create smoke from the brush area, I acknowledge that you do not get smoke from smokeless powder, but a high-intensity cartridge like a 30-06, compression might cause condensation of water or might kick up fine dust in front of the rifle, or the slug moving near the speed of sound may cause a shock wave passing a dusty bush so the dust rises so that it looks like smoke.

Not only could a number of civilian weapons be used to fire a .30 caliber cartridge, but the basal characteristics of the slug would not tell you whether it came out of a M-14, M-21, M-24 or the Remington 700 military sniper weapon.

They did not analyze the twist of the recovered projectile. Suppose you had five people who for one reason or another are convinced that their own little portion of the assassination was worthwhile. Meanwhile, if others were out there, then each of the .30 caliber weapons they possessed could have been tied into the case just as this one was. The fatal shot could have been fired from any number of 30 caliber weapons, military or civilian.

As a professional involved in the criminal justice system for a long time, as a prosecutor, public defender, defense lawyer handling murders, robberies, very serious crimes – this had to be one of the most inept and incapable, if not downright incompetent, investigations I've ever seen in my life.

If they really wanted to analyze bullets fired out of this rifle they would have fired them into water, not cotton waste. They would've done a more intense analysis.

The base of that bullet is completely intact and it is quite subject to even ordinary ballistic analysis for striations. They did not do that. Contrary to FBI representations, the slug is not badly deformed. You have an intact base, and that's what you need. Most of what's in this record is something that you would accept on trust, because ballistics is an arcane subject and the FBI is supposed to know everything there is to know.

In 1996, the FBI was trusted and said, in our professional opinion, this is not capable of being analyzed. They didn't do anything, nothing at all, except the worst things you could do if you wanted to develop some test results.

Judge Preston Battle looked at what the FBI supplied and even back in 1968 he was not satisfied with these tests, and ordered that they be redone. So from 1968 up until James Earl Ray died, there was resistance on the part of local authorities to keep this weapon from being retested. The first judge ordered it. I ordered it. When it was tested, 67% of the bullets were found not to match the murder slug.

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