

**Complete Transcript of the Martin Luther King, Jr.
Assassination Conspiracy Trial**

Volume 1

15 November 1999

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THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE

THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

CORETTA SCOTT KING, MARTIN

LUTHER KING, III, BERNICE KING,

DEXTER SCOTT KING and YOLANDA KING,

Plaintiffs,

Vs. Case No. 97242-4 T.D.

LOYD JOWERS and OTHER UNKNOWN

CO-CONSPIRATORS,

Defendants.

BE IT REMEMBERED that the above-captioned cause came on for Trial on this, the 15th day of November, 1999, in the above Court, before the Honorable James E. Swearingen, Judge presiding, when and where the following proceedings were had, to wit:

VOLUME I

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P R O C E E D I N G S

THE COURT: Mr. Garrison, are you all ready?

MR. GARRISON: Ready.

THE COURT: Let me see the lawyers in chambers before we get started.

(Brief break taken.)

THE COURT: All right. Are we ready to proceed?

MR. GARRISON: Yes, sir.

THE COURT: If there are any members of the media, we're going to ask you to excuse yourself until after the jury selection process. All right, Mr. Sheriff, you can get us some jurors.

THE COURT: All right, Mr. Pepper, who are these additional people with you?

DR. PEPPER: They're all with us, part of our team.

THE COURT: Are they going to participate in the trial?

DR. PEPPER: Only as assistants, that's all.

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THE COURT: I normally introduce those parties who are going to participate. And if they are, I need their names.

DR. PEPPER: You want me to write them down for you, Your Honor?

THE COURT: That has dual purposes – for my convenience and then, in addition to that, once we have called their names, we're in a position to ask the jurors if they're

familiar with their names.

DR. PEPPER: Sure. (Brief break taken.)

MR. PERA: Your Honor, for many years – and I should first say, Your Honor, that all I know about this situation is what I've learned in the last 15 minutes. But as I say, for the record, I do represent *The Commercial Appeal*. I'm a little out of breath. But my name is Lucian Pera. And since at least 1984 when the Supreme Court decided the Press Enterprise case – *Press Enterprise versus Superior Court of California*. And the cite on that I can give you which is 464 U.S. 501.

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In 1984 the Supreme Court has made it clear, as has virtually every court in the nation – has addressed the issue that there is a constitutional right on the part of members of the public and, therefore, members of the press to attend jury voir dire proceedings in court. I would add, Your Honor, that in Tennessee there have been at least two cases on this point – I believe three.

The first one of which is *State versus Drake* which is a 1985 case which squarely follows the analysis in what are called the quartet of cases of which Press Enterprise is a part from the U.S. Supreme Court. And that case requires that if there is a closure of any part of a trial that there must be under the constitution specific findings by the Court on a motion by a party that there will be prejudice if there's not a closure and specifically how the closure is tailored as narrowly as possible to meet the compelling interest of preventing prejudice. The Supreme Court of Tennessee

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requires written findings. There have been at least two other cases since then, Your Honor. I don't – I can't cite you the precise name on this short of notice, but I will remind the Court of one the Court may be familiar with arising from this county. I believe it was in front of a criminal court judge across the street. And essentially what happened is that there was – it was a rather horrible gang-related murder case.

In fact, it was one in which I believe the victims were literally buried alive. There were claims of misconduct ongoing in the midst of the trial. In fact, the Court itself was under 24-hour armed guard at home and at the office – at the court. During the

course of that trial, the judge heard testimony from witnesses obviously. And one of the witnesses who had testified was to testify again.

The Court imposed a gag order essentially closing the trial implicitly and saying that the reporters might not print the name of that witness who had already

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testified in open court and who was to further testify as a rebuttal witness. The Court expressed very specific concerns about safety, that the witness might flee, that the trial might be jeopardized for that reason.

And the Court of Appeals – excuse me, I think it was the Court of Criminal Appeals – specifically and flatly and firmly reversed that ruling and said that what goes on in open court is open, and the constitution requires that it be so, and again reaffirming *State vs. Drake* relying on Press Enterprise.

So, Your Honor, with that thought in mind – again, I've not been privy to the discussions here about what the problem were that were sought to be addressed, and I apologize to the Court for not being prepared in that respect. But I would urge the Court to not close this hearing to members of media including my client, *The Commercial Appeal*.

THE COURT: All right.

MR. PERA: And, Your Honor, I might finally request that in compliance with

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State versus Drake, whatever the Court's decision there, that there be specific findings of fact tailored to address the issues under Press Enterprise.

THE COURT: All right. First of all, I would like to refer you to Supreme Court Rule 30, Media Guidelines, under Section C(2) which reads as follows: "Jury selection. Media coverage of jury selection is prohibited."

MR. PERA: Your Honor, it's my – am I interrupting? I can look at the rule, Your Honor, but it's my impression that Rule 30 addresses television coverage and similar

media coverage. To the extent that that rule, Your Honor, either says or is interpreted to mean that voir dire may be closed by a court without constitutional foundation, the specifics which are very clear – I can cite them to the Court if I can get my hands on *State versus Drake*.

If that rule says that or means that or the Court interprets it to mean that, then it is unconstitutional, Your Honor.

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THE COURT: Well, let me further refer you to Section D, and that section deals with limitations. And under 2 it says:

"Discretion of Presiding Judge." That's me.

"The presiding judge has the discretion to refuse, limit, terminate or temporarily suspend media coverage of an entire case or portions thereof in order to

1.) Control the conduct of proceedings before the Court.

2.) Maintain the quorum and prevent distraction.

3.)" – and this one I am concerned with – "Guarantee the safety of any party, witness or juror."

This case is such that I feel that the jurors should be protected from public scrutiny and that the public shall not be aware of who they are. I don't want – and I'm going to assure them when we voir dire them that they will remain anonymous. And for that reason they will feel free to participate in the trial process. That's my ruling.

MR. PERA: Your Honor, may I be heard on this point?

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THE COURT: No. I've ruled. I have ruled.

MR. PERA: Okay. Your Honor, meaning no disrespect, may I ask – may I ask a question?

THE COURT: Yes, sir.

MR. PERA: Has this Court considered or has it been proposed to the Court that the jurors remain anonymous and therefore that proceedings be allowed to take place in open court with, for example, members of the public and/or media present but nevertheless with the jurors remaining anonymous? Has that been considered, Judge?

THE COURT: No, sir, because I don't feel that that's a viable solution.

MR. PERA: May I ask a further inquiry, Your Honor?

THE COURT: Yes, sir.

MR. PERA: Is it the Court's ruling that the entire trial is going to be held in secret?

THE COURT: No, sir. Once the jury selection process is completed, then it

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will be open to the media as prescribed by court rules with cameras and with reporters and all of that. This court is not excluding the media from the trial proceeding, but it is excluding them from the jury selection process.

MR. PERA: Well, Your Honor, again – the Court knows me, and the Court knows that I'm not inclined to argue with a ruling once it's been made. But since I'm getting into this so late, Your Honor, I have to inquire further. Your Honor, if – I'm not at all sure I understand how this is tailored narrowly under the guidelines of the constitution.

I mean, for example, Your Honor, if – if the identities of the jurors is what the Court is trying to protect, then – and not, for example, their answers to the questions of one of the parties as to their particular biases or lack of biases, it seems to me that the Court might consider having the jurors, as has been done across the country, I think the Court is probably aware

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of this – having the jurors remain anonymous and have the parties to the case and the Court refer to them in whatever way would do so anonymously but, nevertheless, allow the questioning that goes to, for example, bias – their views on particular subjects to be explored in open court as the constitution requires.

I would urge that upon the Court as a remedy that has been used elsewhere. And it would not trample on the First Amendment but it would, nevertheless, meet the Court's concerns.

THE COURT: I'm going to deny your request.

MR. PERA: Your Honor, when – you're ruling then that until voir dire is complete and the jury is sworn that this hearing is closed both to members of the press and the public?

THE COURT: I'm not excluding the public, no, sir.

MR. PERA: So I can sit here for example?

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THE COURT: You may, yes, sir. But if you do, then you would be under a gag order. As an officer of the Court you could sit, yes, sir.

MR. PERA: But another member of the public could be present and not be under some sort of gag order?

THE COURT: I'm going to exclude all members of the public, as a matter of fact, during the jury selection process. I'm not going to let reporters come in here and say, at this time I'm not a reporter, I'm just a member of John Q. Public.

MR. PERA: Okay, Your Honor. I just wanted to make sure I understand your ruling then. The hearing is closed to members of the press and the public until the jury is sworn.

THE COURT: And the public. And the public, yes, sir.

MR. PERA: May I – I assume that what has transpired here so far, I'm under no gag order; is that correct, Your Honor? Because I may well be instructed by

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my client to pursue appellate relief.

THE COURT: You are free to do that.

MR. PERA: Okay. I just want to make sure that we understand each other. Thank you. Appreciate it, Your Honor.

MR. GARRISON: In the Court's ruling I think Your Honor did the proper thing.

(Brief break taken.)

(By Order of the Court, the Jury Selection portion of the trial was not transcribed.)

MR. PERA: I would like to apply for permission to appeal under Tennessee Rule of Appellant Procedure 9 from the Court's earlier ruling.

THE COURT: Oh, yes. Of course.

MR. PERA: Thank you, Your Honor. I assumed so. Your Honor, may I present an order on that either this afternoon or in the morning?

THE COURT: You may.

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MR. PERA: Thank you, Your Honor.

(Lunch Recess.)

(Jury Selection resumed.)

THE COURT: All right. Ladies and Gentlemen, we have completed our process. We have 12 jurors now and two are alternates. So the rest of you I'm going to excuse and thank you for your patience, and you can report to the main jury room tomorrow at 9:30.

All right. Now that we have selected our jurors and alternates, we would ask to you

please stand and take the official oath as jurors in the case.

THE CLERK: Ladies and Gentlemen, please raise your right hand.

(Whereupon the jury was sworn in.)

THE CLERK: Okay. Please be seated.

THE COURT: All right. Normally at this stage we would begin our trial which would be the rendering of an opening

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statement by the lawyers. That is they would tell you what they expect the proof to be as it develops in the case, and then we would start to hear the witnesses in the case. But because of the hour, I'm going to excuse you and ask you to be here tomorrow at 9:45 so that we can get started promptly at 10 o'clock, reminding you that you should not speak with the lawyers or the witnesses or anyone else involved in the case and that you should have no contact with the media.

I think – I'll have some additional instructions for you tomorrow before we start to hear the proof. You should not go back to the main jury room for any reason. You come directly here from now on which means that you don't report at the regular 9:30 thing over there. Just come right here. Mr. James will show you our jury facility back here, and that's where you should congregate until you come out as a group.

We would ask you – sometimes the jurors would sit out in the hall and do things of that sort before the trial begins

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in a normal case. But because of the nature of this one and because we don't want you to be exposed to the media, we would ask you to please not congregate in the hallways out there. If there are smokers in the crowd, then during our breaks, you can feel free to go down and do your smoking or whatever else just as long as you don't have any contact with the media.

If we – if for any reason we need to take a comfort break on your behalf, we're very

considerate, we'll do that. We want this to be a pleasant experience for you. But it's a serious matter, and let's not forget that. All right.

(Court adjourned until 11/16/99 at 10:00 a.m.)

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