Dear Quin, 2/10/79

I've just come to the end of what I hope is the complete draft of a long affidavit in 78-0249. Jim told me yesterday that Smith refused the request for a short time extension in which to file it but I'm finishing it anyway and expect to use it. Meanwhile, I have to get it out of my mind for a while so I'll start with the accumulated mail. Your thoughtful copy of the Brill piece is among the more recent of the accumulation but I've also received a couple of things you might want.

I agree with the second part of the note you wrote with the Esquire copy: If Mark Lane does not sue Steven Brill he may be disbarred.

There is virtually no chance this side of complete desparatipn that Lane will sue. I once tried to entice it. I'd heard that he was telling others that if I ever said anything else about him he'd sue me. I wrote him promptly, I believe certified, telling him that if what had been reported to him was not enough to persuade him to sue then he was this kind of sinofabitch, that kind of crook, etc. I've never since heard any alleged threat of an alleged suit. I could entertain you endlessly over this sort of thing.

I had nothing to do with the Brill piece. He never phoned me. At one point one of the Esquire editors checked a few minor points, no minor I do not recall them. The opinion I then offered is that it is impossible to libel Lane and I had enough to defeat any suit and would provide it.

For years I was publicly silent about the monster, ducking talk show questions and avoiding pointless controversy that would have wasted time and energy. Until early 1975, when I prepared to tangle with him face-to-face at NYU law school only to come down with pneumonia and pleurisy. Jim read the speach I was not able to cut. I'd done a draft only and expected to reduce it in NYC but got sick instead. I've no heard a word from Lane about it. I've done him in too often, amaaning each of the few time we appeared together.

Short of his finale ultimo I doubt I can get old or sick or weak enough for him to want to pick a fight with me. Right now I'm content for events to take whatever course they take. I've made and will make no effort to get in touch wit the NY bar or the DC% lawyer who filed cahrges. On the other hand, as I offered as recently as yesterday to an Atlanta woman magazine reporter, what I have is available to scholars and reporters alike. On Lane it is a fat file and many tape recordings not one of which I made myself. They were sent to me by others, from odd places, like Pittsburgh.

I do not approve of the FBI's efforts against him over the Warren Commission and would not have anything to do with the FBI over that. However, I know the sick man and was certain all along that he was well aware of what could and then did happen in Jonestown. That is truly frightful and if he was in any degree an accessory the law should work and I hope it does.

My own belief is that the Department and probably the FBI are afraid of the martyr bit, as I know the Post is. His best present protection is a combination of the wrong things the FBI and CIA did and all the hollering and exaggerating he did to so many audiences. It is protection only if the DJ or FBI permit self-intimidation if there is the case I believe there is.

Lil will probably do some copying later. If and when she does I'll include a copy of a Memphis article that really understates the utter stupidity of his latest effort supposedly for Ray and a copy of a leaked memo he wrote Jim Jones. The leak was to Crewdson. Jim will probably send me the story that finally appeared and typical of Crewdson says much less than it could. Crewdson's leak, according to the San Francisco FBI, was not by the FBI. I don't care, I'm telling you what I was told. Garry would not surprise me. Kevin, who is an old friend, tells me it is false. Lane spoke to him. The rest is totally untrue.

By proxy, by informing another, I've located several other of the movies and other stills the Dallas FBI did not send to DC or apparently let FBIHQ

know about. They don't have to be told what HQ does not want to have to work around...I hear the Denver Post had a crzy and factually wrong story about another previously unseen film I had nothing to do with. That film, I'm told, has other importances, if it comesk to your attention.

I've not been able to return to the NewOrleans stuff about which I think I wrote you a little. I've some memos that awaited copies, etc., but do not h have a cle ar recollection of them now. Except for what I could not avoid I've been working on the affidavit and done other things in odd moments if at all.

Aside from the lane. I've got it virtually clear and think I feel a bit better for the exertion. The snow blower was a great investment. Keeping it g ing straight also exercises the arms and just walking behind it the legs. Did close to 2,000 years behind it before 10:30 a.m.

I've loaned the Post-Dispatch the Patterson file, with his OK. I did not have time to even look at it. They'll make and mail a copy to him if they haven't and I've told them I'll pay for it.

He has written me about what I think may be a Lane-inspired St. L. dis- information probably aimed at the FBI. I have to respond now on the chance I can get it in the mail before Monday's.

Thanks for the addition on Lane,

For New Trial

Some See Little Merit In Ray's Arguments

By RICHARD POWELSON
Press-Scimitar Staff Writer

The latest move by James Earl Ray's attorneys to get him a new trial, 10 years after he pleaded guilty to the slaying of Dr. Martin Luther King Jr., appears headed for the already voluminous file of dismissed petitions in the extended case.

This time, Ray's attorneys — Mark Lane and former Court of Criminal Appeals Judge Charles Galbreath of Nashville — are centering on two alleged errors in an attempt to win a new trial for Ray. Ray pleaded guilty to first-degree murder in King's 1968 slaying in exchange for a 99-year prison sentence rather than risk getting the maximum penalty of death by electrocution in a jury trial.

JAMES EARL RAY

However, several lawyers specializing in criminal law view the latest claims — like others before them — as having no merit, and refer to several court opinions and records in Ray's case to support their position.

"This is just more of the same," one lawyer said, "but with different attorneys." Ray has had almost a dozen different lawyers represent him since his arrest in England.

His present attorneys say Ray's guilty plea before a jury should be voided because the jury allegedly did not specify Ray's admitted degree of homicide. But a check of the jury's written decision and the courtroom minutes on the guilty plea showed that the jury accepted Ray's 99-year sentence as punishment for "murder in the first degree."

In another claim, the attorneys say that Ray filed a motion for a new trial within 30 days after his guilty plea, but the trial judge, W. Preston Battle, died before acting on it. Battle died March 31, 1969 — 21 days after Ray pleaded guilty. The case then was assigned to Judge Arthur Faquin, who dismissed the motion because Ray had earlier formally waived his right to a new trial when he pleaded guilty. Faquin's ruling was upheld on appeal.

Ray's attorneys cited earlier cases which they claimed supported their argument that if a judge dies before hearing a motion for a new trial, that the defendant is entitled to a new trial.

However, the waiver signed by Ray March 10, 1969, said: "I hereby waive any right I may or could have to a motion for a new trial and-or an appeal." Ray signed on a line just below the waiver statement.

Also, the transcript of Ray's hearing for the guilty plea shows he was advised verbally by Battle that he lost his right to petition for a new trial if he entered a guilty plea and signed a waiver.

Galbreath, contacted in Nashville, said his position is that if Ray was coerced into pleading guilty, he also was coerced into waiving his right to a motion for a new trial. In the petition for a new trial, Galbreath and Lane maintain that Ray still is seeking a new trial because his plea of guilty "was not voluntary, but the result of coercion, threats and intimidation."

However, the Tennessee Supreme Court in 1970 ruled that Ray entered the plea voluntarily and with knowledge of the consequences.

"This well planned and well executed killing would indicate the defendant to be of at least or over average intelligence, and certainly of such intelligence as to understand what he was doing when he went to the 'bargaining table' to decide his fate — whether to plead as he did or take his chances at the hands of a jury. He made the bargain.

"The court finds that the defendant willingly, knowingly and intelligently and with the advice of competent counsel entered a plea of guilty to murder in the first degree," the high court said.

Persons who knowingly and voluntarily plead guilty to crimes and waive their right to a trial must not be given a trial later, the high court said. "Otherwise, the doors of our state prisons would remain ever ajar to those who are incarcerated therein on pleas of guilty, and who becoming dissatisfied, seek relief on motion for a new trial.

"The dockets of our courts would become congested with such procedure and these cases would never be closed. There must be a conclusion to litigation sometime even in a criminal case. . . ."

The high court also found earlier that Ray's incarceration in the Shelby County Jail after his arrest was not inhumane, as Ray and attorney Lane have claimed, and was not a factor in Ray pleading guilty.

Ray himself said several times in 1969 — in answer to Judge Battle's questions — that he was pleading guilty voluntarily, the hearing transcript showed.

Based on the records and prior high court opinions, the attorneys' petition set to be heard by Criminal Court Judge William H. Williams March 1 could result in a short hearing. In 1972, Williams dismissed one of Ray's petitions for a new trial without hearing evidence because there were no claims supported by records that Ray was entitled to relief. Williams' ruling was appealed, but the higher courts upheld his decision.

Galbreath said he was "not sure" if Ray would be present at his hearing on the motion for a new trial. "I'm not going to suggest it," Galbreath said.