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Record No. 6778

In the Supreme Court of Appeals of Virginia at Richmond

GEORGE HUGH CAUDILL

v.

C. C. PEYTON, SUPT., ETC.

FROM THE CIRCUIT COURT OF TAZEWELL COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6778

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 6th day of October, 1967.

GEORGE HUGH CAUDILL, Plaintiff in error,

against

C. C. PEYTON, SUPERINTENDENT OF THE VIRGINIA STATE PENITENTIARY, Defendant in error.

From the Circuit Court of Tazewell County
J. Aubrey Matthews, Judge Designate

Upon the petition of George Hugh Caudill a writ of error is awarded him to a judgment rendered by the Circuit Court of Tazewell County on the 25th day of April, 1967, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and C. C. Peyton, Superintendent of the Virginia State Penitentiary, was defendant; no bond being required.

RECORD

* * * * *

page 1 } VIRGINIA: The Circuit Court of the County of Tazewell, on Thursday, on the 4th day of February, in the year of our Lord, one thousand nine hundred and sixty.

* * * * *

On the 4th day of February, 1960, came the Attorney for the Commonwealth and George Hugh Caudill, who stands charged in a warranty with a felony, to-wit: murder, was lead to the bar in the custody of the Sheriff of this County, and also came J. P. Proffitt, Jr., his attorney. Whereupon, the accused was advised by the Court of his right to be indicted by a grand jury for the charge contained against him in the warrant, and the accused after private consultation with his attorney, in open Court, signed a paper writing waiving indictment by the grand jury, and requesting, consenting and agreeing to be tried on the charge contained in the warrant, which waiver in writing, signed by the accused as aforesaid, is ordered to be filed with the papers in this cause.

Whereupon, the accused was arraigned and after further private consultation with his counsel, pleaded not guilty to the charge contained in the warrant, which plea was tendered by the accused in person. And thereupon, the accused, after having first been advised by his attorney, waived trial by jury, and with the consent of the Court and the *concurrance* of the Attorney for the Commonwealth, here entered of record, the Court proceeded to hear and determine the case without the intervention of a jury, as provided by law, and having heard the evidence, doth find the accused guilty of murder in the first degree as charged in the warrant in this case.

Thereupon, the Court on motion of the accused, by counsel, before fixing sentence or imposing sentence, doth direct the Probation Officer of this Court to thoroughly investigate and report to the Court as provided by law, to which time this case is continued.

And the accused is remanded to jail.

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* * * * *

Whereas, E. P. McGlothlin, Sheriff has this day made complaint and information on oath before me, S. P. Hoover Jus-

tice of the Peace of the said County, that George Hugh Caudill (32) in the said County did on the 5 day of October, 1959: Unlawfully and Feloniously Did Kill and Murder Robert Dixon. With a deadly Weapon To-Wit: a Shotgun.

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the County Court of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to summon:

..... color ..... Address ..... ☐
..... color ..... Address ..... ☐
..... color ..... Address ..... ☐
..... color ..... Address ..... ☐
..... color ..... Address ..... ☐

as witnesses.

Given under my hand and seal, this 6 day of October, 1959.

S. P. Hoover (Seal)
(Title of Issuing Officer)
Justice of the Peace

* * * * *

page 3 } IN THE TAZEWELL COUNTY COURT OF TAZEWELL COUNTY, VIRGINIA.

October 7, 1959

* * * * *

On the 7th day of October, 1959, came the Attorney for the Commonwealth and George Hugh Caudill, who stands charged in a warrant with a felony, to-wit: murder, appeared in open Court in the custody of the Sheriff of this County.

Thereupon, the Attorney for the Commonwealth moved the Court to commit the defendant to the Southwestern State Hospital, Marion, Virginia, for observation and determination as to the mental condition of said defendant, and the Court after hearing the evidence introduced, and it appearing to the Court proper so to do, it is considered and ordered that George Hugh Caudill be, and he is hereby, committed to Southwestern State Hospital, Marion, Virginia, for observation and determination as to his mental condition, and said hospital is directed to report its findings to this Court on or before the 7th day of November, 1959, provided the Southwestern State Hospital shall have reached a definite conclusion at that time. In the event the Southwestern State

Hospital shall not be prepared to submit to the Court a report as to the mental condition of said defendant by the 7th day of November, 1959, said hospital shall report the matter to the Court and the matter shall stand continued until such time as the hospital may deem it proper to submit a report. Said hospital shall consider, among other things, the ability of said defendant to determine right from wrong, as well as to the mental capacity of said defendant.

The Clerk of this Court is hereby directed to deliver two attested copies of this order to the Sheriff of this County, together with two attested copies of the warrant
page 4 } against the defendant, and the Sheriff of this County is directed to forthwith deliver said defendant to the Superintendent of the Southwestern State Hospital, Marion, Virginia, delivering one of said attested copies of said order, together with an attested copy of said warrant to the Superintendent of the Southwestern State Hospital, and the Sheriff shall make his return on the other copy of said order, showing how he executed the same, and file said executed copy with the Clerk of this Court.

Entered: ALBERT G. PEERY, Judge

* * * * *

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* * * * *

I, George Hugh Caudill, who stands in the Circuit Court of Tazewell County, Virginia, charged with a felony, to-wit: Murder, hereby waive indictment on said felony and request, consent and agree to be tried on the warrant in this case.

Given under my hand this 4th day of February, 1960.

GEORGE HUGH CAUDILL

The above waiver was signed by George Hugh Caudill, in the presence of the Court on this the 4th day of February, 1960.

VINCENT L. SEXTON, JR.
Judge of the Circuit Court of
Tazewell County, Virginia

Plea of Not Guilty.

* * * * *

page 12 } Tazewell, Virginia
October 6, 1959

I, George Hugh Caudill, knowing Foster Vance to be a Deputy Sheriff of Tazewell County, Virginia, do voluntarily make the following statement to him, knowing that everything that I say might be used for or against me in Court. I say this voluntarily, without any threats or promise of reward. I know that I do not have to make such a statement.

G. H. Caudill

About six weeks ago he wanted to sell me a .22 I did not have money to buy and told him. He told me then that he would credit me then first one thing or another. I argued with him and told him I did not have any money. I told him I might be at your house about Tuesday, so I went down there and I told him, Bob, tell you the truth I better let it go I don't have enough to pay for it, and he asked how much do you have, and I told him $15.00 or $16.00 of it, but the best thing was to let it go, and he told me in the meantime he would sell it and I could pay the rest later, I told him I did not like to do business like this that my back is not good I might die and leave this world or get killed and my people might say I don't owe you anything refuse to pay you the $5.00, and you could not get it. He could make me a bill out that I owed him that much and he kept arguing with me, and nothing to do you can give me a receipt and let you keep the gun and when I have the money I owe you $5.00. I don't know when I get around to paying and he said that is alright I know you. He said your debt is as good as anybody when we was making the deal. This was about six weeks ago. So I give him a $10.00 bill and a $5.00 bill. I told him I didn't know whether or not I could get anything coming to me one man owed me $27.50 and another man $21.50, and they could not get the money to pay me and I could not pay him, I owe other debts I could not pay.

I went to Jim Helmandollar's yesterday evening to see if they were going to Boissevain this morning, he lives up the mountain above me. He come up there after I got there. I thought I heard somebody blow, Betty looked out and said who was that I paid no mind I was sitting there in the house watching TV, it was Bob Dixon. I went out there and as soon as I got there it was Bob Dixon, I saw he
page 13 } was drinking, and he said what is the matter you never been down, and I told him I have no money like I told you. He pulled it out and stuck it out and it was

not what he had sold me when I got it. I did not know he was this kind of a man. He offered me $10.00 back to square off with him, if you are that hard up take the $15.00 I don't do business like that, I would be truthful with you Bob. He got out and had old saws and old wire stretchers whatever you call them. I told him if he would take them to the house and $5.00 I would square off with him. He wanted to know if he could get down there, and we come on down to the house, I rode down there with him. He wanted to know where the gun was and Wallace said it was in the seat, and I saw it in the seat and he laid it back down. He got one set of these things out. I did not have a light, and he gave me the $5.00 out in front of the light, five $1.00 bills, so I went in the house and he kept arguing to get me to sell two chickens for $1.50 and an old cradle. I went in the house and got the light to go catch him two chickens and I got the two chickens, and tried to tell him they were not too fat, and when I got back he said he saw nothing wrong with them. I think they wanted to trade them to go get some more liquor and pick up a couple women. I don't care what you do after you leave here as far as I am concerned. He wanted to trade me out of the rest of the chickens and I would not trade with him. I went around the back door and saw the other stretchers, and he did not want to pay me and I said that he was supposed to bring me down here. I took them out and laid them down and stood there and talked to him. They went on out the hollow, they got down there and got stuck on the rocks, and I heard the truck and saw them just the other side of it. I was going down there and help them get out and do everything I could. I got near his truck I saw it was not stuck, I thought you were stuck up on the rock. Wallace said we were and got over it. I will have to go you all come to see me, and I got past the rock and Bob hollowed come back here, I want to trade you out the rest of the chickens. I went back and we could not get together.

page 14 } He offered me 50¢ piece, I could not take that, I was so far in debt I could not get the money for my debts, I have some corn already raised to feed them and can eat them myself. You don't need them you can sell them to me. He wanted to trade these old saws. I went back about the same distance he hollowed to come back again, and I went back again and he said he would give me 75¢, I could not do it. If you want them I will give you five of them for $1.00 piece and take the old saws I could sell them for scrap iron. I did not need them I had a cross cut and a buck saw. I started back to the house and he hollowed come on I am going to trade with you. There was some old scrap iron there, and I told him he could not back up there and turn. He tried

and you could hear the truck and I said you will tear your truck all to pieces. Wallace told him that Caudill told you could not do it. Bob went down in the bottom and backed up and turned and finally got turned around there. He said I am not going to pay you more and a dollar a piece for the chickens and I told him to get out *her* don't be bothering me or arguing with me, I did not want to fool with you to start with. Come on here and I went up there and caught the chick five or six something like that. He said I am not going to pay that for they are not worth it Wallace said it was too much to put in them. I turned them loose and I go up under the roosting pole and burn the strings off because I did not have a match and then they would drop off, and I said get out of here and stay out. I am sick and tired of this I have put up with it long enough. He hollowed and cussed and wanted to fight about it. I come out of there under the roost and he wanted to know where his knife was, just like that it struck me that I had better get out and I told him to get out and stay out of here. I told him he owed me $2.00 for my trouble when I was under the roosting poles, and he said he was not going to give me $2.00, get on out of here and let me alone I want to go to bed. I went to the house and got my gun and thought I would go coon hunting awhile and let my dogs run, and I shot up in the air. Bob was still standing out there cussing and when I went in the house and come out and had the gun and I just shot up in the air and told Bob to get out and stay out, and I turned around and started page 15 } toward the front door he was cussing and called me bad names and said to come over there. No I am not coming over there I am going to the house, and he said I will pay you like I said I would pay you for good and cussed again and come around to the front fender so I aimed to shoot down to the ground in front of the *finder* and when I shot it was not down but up. I was afraid to have a light on and I had it pointed up and I thought I had it pointed down and I shot him and did not mean to when the gun went off and I went up to the coal house and Wallace said come over here I don't know how bad he was hurt. I was afraid to go over there just by myself I was not scared of Wallace. I went back to the house. I was *made* and worried I went to the house and got the gun and came out and shot once in the air, and said get out of here and stay out when you get out. He remained there standing and cussing and wanted me to come up there. I refused to come up there then I just blazed loose and shot him. He was in front of the truck with the lights on. I never heard him open the door to get the gun and did not see the gun. I shot him with a 12 gauge single *barrell* shot

gun and could not say what size shot. After I shot him I stayed in the dark and did not go over as I have stated before when Wallace called me.

G. H. Caudill

Witness
Sidney E. Harmon
Foster Vance

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* * * * *

COMMONWEALTH OF VIRGINIA

SOUTHWESTERN STATE HOSPITAL
Marion, Virginia

Department of

MENTAL HYGIENE AND HOSPITALS

November 30, 1959

Honorable Albert G. Peery, Judge
Tazewell County Court
Tazewell, Virginia

Re: George Hugh Caudill
Reg. No. 21933

Dear Judge Peery:

The above-named patient was admitted to this hospital on October 7, 1959, having been committed by your Court for observation and report.

Since admission he has been carefully studied both physically and mentally and history obtained from available sources. As a result of our observations, we beg to report that he is not now psychotic or insane and has not been psychotic or insane since admission. A diagnosis is made of 'Personality Pattern Disturbance, Inadequate personality, Mild mental deficency.' Using the Wechsler-Adult Intelligence Scale he scored a Verbal I. Q. of 77, a Performance I. Q. of 73, and a Full Scale I. Q. of 74. History of convulsive disorder (epilepsy) in the past is not noted nor so determined

after observation, laboratory investigation (including electroencephalogram or brain wave), and treatment at this hospital. He is mentally competent and able to return to Court.

If you desire further information in this case, please contact us, and we will forward available data.

You may call for Mr. Caudill at your convenience, at which time it will be necessary for us to receive an Order for his release.

Respectfully,

Joseph R. Blalock, M. D.,
Superintendent

Chas. A. Zeller, M. D.,
Clinical Director

CAZ/fm

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* * * * *

Circuit Court of the County of Tazewell, on Friday, the 11th day of March, in the year of our Lord, one thousand nine hundred and sixty.

* * * * *

On the 11th day of March, 1960, came again the Attorney for the Commonwealth and George Hugh Caudill who stands convicted of a felony, to-wit: first degree murder, was again led to the bar in the custody of the Sheriff of this County, and came also J. P. Proffitt, Jr. attorney for the accused.

And the probation officer of this Court to whom this case had previously been referred for investigation appeared in open Court with a written report, which report he presented to the Court in open Court in the presence of the accused who was fully advised of the contents of the report, and a copy of said report was also delivered to counsel for the accused.

Thereupon, the accused and his counsel were given the right to examine the probation officer as to any matters contained in said report and to present any additional facts bearing upon the matter as he desired to present, and it being brought to the attention of the Court that the last paragraph of the report was in error as to the sequence of events, the same was

corrected by the Court. The report of the probation officer is hereby filed as a part of the record in this case.

Whereupon, the Court taking into consideration all the evidence in the case, the report of the probation officer, the matter brought out on cross-examination of the probation officer, and such additional facts as were presented by the accused doth ascertain and fix the punishment of the accused to be forty (40) years in the Penitentiary of this Commonwealth.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law and nothing being offered or alleged in delay of judgment, it is ac-
page 20 } cordingly the judgment of this Court that the said George Hugh Caudill be, and he is hereby, sentenced to confinement in the Penitentiary of this Commonwealth for the term of forty (40) years, the period by the Court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said George Hugh Caudill the cost by it about its prosecution in this behalf expended, amounting to $181.28.

Thereupon, the defendant, by counsel, moved the Court to suspend the execution of the aforesaid sentence and place the defendant on probation, and the Court being of the opinion that it is not compatible with public interest so to do, doth overrule said motion.

And it is further ordered that as soon as possible after the entry of this order the prisoner be removed and safely conveyed according to law from the jail of this County to said Penitentiary, therein to be kept, confined and treated in the manner provided by law.

The Court orders that the prisoner be allowed credit for 174 days spent in jail awaiting trial. The Court certifies that at all times during the trial of this case the accused was personally present.

And the prisoner is remanded to jail.

* * * * *

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* * * * *

PETITION FOR WRIT OF *HABEAS CORPUS AD SUBJICIENDUM*

TO THE HONORABLE VINCENT L. SEXTON, JR., JUDGE:

Your petitioner, George H. Caudill, hereby applies for a writ of *habeas corpus ad subjiciendum* in accordance with Section 8-596 of the Code of Virginia (1950), as amended, and shows the following case:

1. Your petitioner is presently detained without lawful authority by the Respondent at the Virginia State Penitentiary, 500 Spring Street, Richmond, Virginia.

2. Your petitioner is being detained pursuant to a judgment order of conviction, for first-degree murder, entered by the Circuit Court of the County of Tazewell, Virginia, on February 4, 1960, and an order fixing the petitioner's sentence, entered March 11, 1960.

3. These orders are illegal and void because petitioner was not given a public trial as was his right under the Sixth and Fourteenth Amendments to the Constitution of the United States, as is more fully set forth in petitioner's affidavit which accompanies this petition.

4. Petitioner previously submitted a petition for writ of *habeas corpus,* returnable to this court, complaining of this conviction, on the grounds that the court ordering his confinement was without jurisdiction to do so, that he was deprived of his right to call for evidence in his favor, page 24 } denied a jury trial, and compelled to testify against himself, that he was not rendered effective assistance of counsel, and other grounds, but said petition was not based on the grounds herein alleged. A hearing on this petition was had in the Circuit Court of the County of Tazewell on January 22, 1963, and an order denying relief was entered March 2, 1963. Upon a similar petition to the Supreme Court of Appeals of Virginia, relief was denied by order entered March 10, 1965. Upon a similar petition filed in the United States District Court for the Eastern District of Virginia, after a plenary hearing on January 24, 1966, relief was denied by order entered the same date. By judgment entered September 21, 1966, the United States Court of Appeals for the Fourth Circuit reversed the District Court's decision and

remanded with instructions to the District Court to hold the case in abeyance for a reasonable time for the petitioner to raise the question of whether he had a public trial. This question has never been raised by any of the petitions heretofore submitted. A copy of the Fourth Circuit's opinion is attached hereto as Exhibit A.

WHEREFORE, petitioner respectfully prays that a writ of *habeas corpus ad subjiciendum* be granted and that an order be entered discharging petitioner from the respondent's custody.

Respectfully submitted,
GEORGE H. CAUDILL

Filed in open Court this Nov. 21, 1966.

Teste:

RHEA F. MOORE, JR., Clerk

* * * * *

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* * * * *

EXHIBIT A

UNITED STATES COURT OF APPEALS

For the Fourth Circuit

No. 10,553.

George H. Caudill,
Appellant,

versus

C. C. Peyton, Superintendent
of the Virginia State Penitentiary,
Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. John D. Butzner, Jr., District Judge.

(Argued June 23, 1966. Decided September 21, 1966.)

Before HAYNSWORTH, Chief Judge, and SOBELOFF and J. SPENCER BELL, Circuit Judges.

Edwin P. Munson (Court-assigned counsel) [Williams, Mullen & Christian on brief] for Appellant, and James Parker Jones, Assistant Attorney General of Virginia, (Robert Y. Button, Attorney General of Virginia, and Reno S. Harp, III, Assistant Attorney General of Virginia, on brief) for Appellee.

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page 26 } J. SPENCER BELL, Circuit Judge:

This is an appeal from the district court's denial of a writ of habeas corpus after a plenary hearing. The petitioner contends that he lacked the assistance of counsel at critical stages of his pre-trial and the effective assistance of counsel at his trial because the issues of capacity to stand trial and of his mental status at the time of the alleged offense were not raised at his trial. The record itself, as pointed out by the district judge, raises the question of whether the petitioner received a public trial.

The petitioner, who is of extremely low mentality,[1] shot and killed one Robert Dixon, a person of "bad reputation" in the community. Dixon, who was drinking at the time, had gone to the petitioner's cabin in the mud creek section of Mill Creek Community in Tazewell County in the mountains of western Virginia. They quarreled over the sale of some

[1] The State psychiatrist who administered the Wechsler Adult Intelligence Scale form test reported Caudill's I.Q. Score as: Verbal I.Q. of 77, a Performance I.Q. of 73, and a full scale I.Q. of 74. Such a score would indicate that Caudill was bordering on mental retardation and considered barely able to function outside of a specialized institution. He was not educable in an ordinary school, and rated in the lowest two or three per cent of the population.

chickens. Caudill ordered Dixon to leave. There was uncontradicted evidence that Dixon had a knife and a gun and that Caudill was afraid of him. After the shooting Caudill turned himself in to the police. The next day he gave a long, incoherent and rambling confession which was introduced in evidence. Shortly thereafter, upon motion of the prosecutor, who had known Caudill for years, he was committed to a state mental institution to determine his capacity to stand trial. Approximately 60 days later the institution reported that "... he is not now psychotic or insane and has not been
page 27 } psychotic or insane since admission . . ." and that he was competent to stand trial. Thereafter on January 8, 1960, counsel was appointed, and on February 4th the petitioner in open court waived indictment by a grand jury and his right to trial by jury and consented to trial by the court. The trial, which was completed in one day, took place in the judge's chambers; the petitioner was found guilty of murder in the first degree and subsequently sentenced to 40 years in prison.

We think the case raises serious questions both as to the lack of counsel at the critical stage in the proceedings when the petitioner was committed to a state hospital for 60 days, *cf. Timmons* v. *Peyton,* 360 F.2d 327 (4 Cir. 1966), and the adequacy of his representation at the in-chambers trial before the judge. The questions with respect to the trial fall into two broad categories: first, whether the defendant had the mental capacity knowingly and intelligently to waive his right to indictment and his right to a trial before a petit jury, and secondly, whether he had constitutionally adequate service of counsel in permitting him to waive these rights and in failing to raise the questions of his client's capacity to stand trial or his mental status at the time he committed the alleged offense. Neither his own counsel nor any of the state's witnesses who testified at the state and federal habeas hearings was willing to make the statement that he felt certain Caudill understood the significance of his conduct before or at the trial. His trial counsel, who testified for the state on direct examination at the federal habeas hearing, said:

"I personally have some reservations, I did then and I do now, about George's capacity. But I thought that he was, at the time I was talking to him, it appeared to me he understood what we were talking about."

page 28 } Yet in the face of this doubt, no question of the defendant's sanity at the time of the offense or his capacity to stand trial was raised by his counsel. At the state

habeas hearing the prosecuting attorney stated that he had known the petitioner for years and believed him to be "subnormal," and for that reason had had him committed to the mental institution for examination. It is true that the state mental institution reported that Caudill was neither insane or psychotic[2] at any time while he was in the hospital and that he was competent to stand trial. It was one the strength of this report that defense counsel "justified" his failure to raise either issue at the trial. It is apparent, however, that had the attorney sought the advice of an expert he would have found that the Wechsler test score contained in the report itself raised serious question concerning his client's mental status which should have been raised at the trial in defending his client on a first degree murder charge under Virginia law. We also point out that the report in question purported to deal and did deal only with the petitioner's capacity to stand trial and not with his mental status with respect to the crime—two separate and distinct standards. Furthermore, this letter report was merely hearsay evidence which, though it might justify the court in proceeding to trial, would not, of course, in any respect be definitive of either issue at the trial itself. *Cf. Pate* v. *Robinson,* 383 U.S. 375 (1966).

We refrain, however, from finally passing on these questions. At the hearing below trial counsel for Caudill testified that the trial took place in the Judge's chambers, as was his customary practice. If this is true, a serious question arises as to whether or not the petitioner received a page 29 } public trial, and since the issue has not been submitted to the Virginia courts, we remand the case to the district court with instruction to hold the matter in abeyance until the petitioner shall have a reasonable time to submit the question of a public trial to the Virginia courts. In *Lewis* v. *Peyton,* 352 F.2d 791 (4 Cir. 1965), another case arising from Tazewell County, we held, citing *In re Oliver,* 333 U.S. 257 (1947), that the failure to hold a public trial violated the due process clause of the Fourteenth Amendment which includes the Sixth Amendment's command that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." While the facts and circumstances of this case may be different, the principle is too important to ignore.

Reversed and Remanded.

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[2] The Virginia statute, Code 1950 §19.1-228 (1964 Cum. Supp.), though it deals only with capacity to stand trial, is phrased in terms of sanity. *Cf. Pate* v. *Robinson,* 383 U.S. 375, 384 (1966), n. 6.

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* * * * *

AFFIDAVIT IN SUPPORT OF PETITION FOR WRIT OF *HABEAS CORPUS AND SUBJICIENDUM*

* * * * *

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

I, George H. Caudill, being first duly sworn, depose and say as follows:

1. That I am the petitioner in the above captioned proceeding.

2. That I am detained by the respondent pursuant to a judgment order of conviction for murder entered by this Court on February 4, 1960, and subsequent order of sentencing entered March 11, 1960.

3. That said orders are illegal and void as they were entered incident to a trial which was not a public trial as is guaranteed an accused by the Constitution of the United States.

4. That said trial, for a capital offense, was not given the dignity of being held in open court, but was held in the Judge's chambers, without a court reporter or other disinterested party present, without the accused person's having been notified of the time and place of trial, thus rendering him incapable of having present members of his family and others who wished to attend and who were available to attend.

5. That I was irreparably prejudiced and harmed by the private nature of the proceedings in that now, in
page 31 } collaterally attacking said conviction, it is impossible to present disinterested parties to testify as to the defects in my defense and in the proceedings.

Signed and sworn to this 11-16 day of Nov., 1966.

GEORGE H. CAUDILL

Subscribed and sworn to this 16th day of November, 1966, in the City and State aforesaid, before me, the undersigned, a Notary Public in and for the said City and State.

RAYMOND L. CHEVRETTE
Notary Public

My commission expires April 3, 1970.

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* * * * *

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

* * * * *

Petitioner now shows by the attached affidavit that he is a pauper and without means to pay costs, expenses or counsel fees in connection with his accompanying petition for writ of *habeas corpus* and now moves the Court for leave to proceed *in forma pauperis,* that counsel be appointed to represent the petitioner in connection with his petition, hearing and other proceedings, and that all costs and expenses of said proceedings be paid in his behalf.

GEORGE H. CAUDILL

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* * * * *

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* IN *HABEAS CORPUS* PROCEEDING

* * * * *

STATE OF VIRGINIA
CITY OF RICHMOND, To-wit:

I, George H. Caudill, being first duly sworn depose and say as follows:

1. I have presented to the Circuit Court of the County of Tazewell a petition for writ of *habeas corpus ad subjiciendum,* on the grounds that I was not afforded a public trial as was my right under the United States Constitution, attacking a conviction in this Court, on February 4, 1960, of murder, and the subsequence sentence of 40 years handed down by the Court by order dated March 11, 1960.

2. I make this affidavit in support of my motion to this Court for an order herein granting me leave to proceed *in forma pauperis* in the prosecution of my petition for writ of *habeas corpus.*

3. I am presenting said petition for *habeas corpus* in good faith and believe myself entitled to the relief sought in this proceeding.

4. I have no property, real, personal or mixed, and have been, since being confined, wholly destitute, and I cannot pay any of the costs, expenses or counsel fees incident to my petition for writ of *habeas corpus* and the prosecu-
page 34 } tion thereof. On the date certified below, I have the sum of $110.53 on deposit in my prison spending account.

GEORGE H. CAUDILL

Subscribed and sworn to this 16th day of November, 1966, in the City and State aforesaid, before me, the undersigned, a Notary Public in and for said City and State, as witness my hand and official seal.

RAYMOND L. CHEVRETTE
Notary Public

[SEAL]

My commission expires April 3, 1970.

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* * * * *

Now comes the respondent, by counsel, and files his answer to the petition for a writ of *habeas corpus* and says as follows:

1. On October 6, 1959, a warrant was issued charging the petitioner with murder. (See exhibit I)

2. On February 4, 1960, George H. Caudill waived indictment and agreed to be tried on the warrant. (See exhibit II)

3. On February 4, 1960, petitioner, represented by his attorney, entered a plea of not guilty to the charge contained in the warrant, waived trial by jury, was found guilty of murder in the first degree; and the case was referred to the Probation Officer to thoroughly investigate and report to the Court. (See exhibit III)

4. Attached hereto and marked exhibit IV is a copy of the pre-sentence report. (See exhibit IV)

5. On March 11, 1960, petitioner again appeared before the bar of this Court represented by his attorney, was given the opportunity to cross-examine the Probation Officer, and was

sentenced to serve forty (40) years in the Virginia State Penitentiary. (See exhibit V)

6. Respondent is now detaining petitioner pursuant to the aforesaid judgment of this Court.

page 36 } 7. Respondent denies each allegation set forth in the petition for a writ of *habeas corpus* which is not expressly admitted and says that the petitioner was not denied any of his constitutional rights in connection with his trial in this Court.

Wherefore, respondent prays that the petition for a writ of *habeas corpus* be denied and dismissed.

C. C. PEYTON, Superintendent
of the Virginia State Penitentiary

By: CURTIS R. MANN
Counsel

RENO S. HARP, III
Assistant Attorney General

CURTIS R. MANN
Assistant Attorney General
Supreme Court Building
Richmond, Virginia

Filed in open Court this March 6, 1967.

Teste:

RHEA F. MOORE, JR., Clerk

* * * * *

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* * * * *

ORDER NO. 1

* * * * *

TO THE HONORABLE VINCENT L. SEXTON, JR., JUDGE:

It appearing to the Court that George H. Caudill has filed a Petition in the Clerk's Office of the Circuit Court of Taze-

well County, Virginia, for Writ of *Habeas Corpus ad Subjiciendum,* and that the Petitioner is not represented by counsel, and has filed a Motion for Leave to Proceed *in Forma Pauperis,* and Affidavit in support of said Motion. The Court doth accordingly appoint John W. Gillespie, an able and competent attorney at law, practicing before the bar of this Court, to represent the Petitioner in this cause.

It is further considered and ordered that the Attorney General of Virginia be and he is hereby required to file an answer in this matter, and a plenary hearing is hereby granted to the Petitioner, said hearing to be set at such a date as may be mutually agreeable to the Attorney General of Virginia and counsel for the defendant.

Enter—December 20, 1966. V. L. S., JR., Judge

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* * * * *

ORDER NO 2

* * * * *

It appearing to the Court that George H. Caudill has filed a Petition in the Clerk's Office of the Circuit Court of Tazewell County, Virginia, for a Writ of *Habeas Corpus ad Subjiciendum* and it further appearing to the Court that the Petitioner complains of certain actions of the Judge of this Court in the trial of his case on February 4, 1960, it is the opinion of the said Judge that it is improper for him to preside at the hearing of the Petition for a Writ of *Habeas Corpus.*

The Clerk of this Court is directed to report this fact to the Chief Justice of the Supreme Court of Appeals of Virginia with the request that a Judge of some other Court be designated to hear and determine said Petition for Writ of *Habeas Corpus.*

Enter—December 20, 1966. V. L. S., JR., Judge

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* * * * *

KNOW YE, That I, HAROLD F. SNEAD *Justice of the Supreme Court of Appeals of Virginia, by virtue of authority vested in me by law, do hereby designate—*

Honorable J. AUBREY MATTHEWS *Judge of the* Twenty-Third Judicial Circuit *to preside in the* Circuit *Court of* Tazewell County in the case of George H. Caudill v. C. C. Peyton, Superintendent of the Virginia State Penitentiary, To be heard on a date set by the Judge, in the place of THE HONORABLE VINCENT L. SEXTON, JR., JUDGE of said Court, who is so situated as to render it improper, in his opinion, for him to preside at the trial of the said case.

Given under my hand and seal this 28th *day of* December, 1966.

HAROLD F. SNEAD (Seal)
Justice of the Supreme Court of Appeals of Virginia

* * * * *

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* * * * *

On the 6th day of April, 1967 came the petitioner in custody of the Sheriff of this County, and also came John W. Gillespie, Court appointed counsel for the petitioner, and the respondent, by Overton P. Pollard, Assistant Attorney General of the Commonwealth of Virginia, and thereupon the parties announced ready for trial.

Thereupon counsel for the petitioner moved the Court to make the record of this case in the United States Circuit Court of Appeals for the Fourth Circuit a part of the record of this proceeding, and there being no objection to said motion the same was granted.

It is, therefore, adjudged, considered and ordered that the record of this case in the United States Circuit Court of Appeals for the Fourth Circuit be, and it hereby is, made a part of the record of this proceeding.

Thereupon the petitioner, by counsel, moved the Court to refer the petitioner to one of the State hospitals for psychiatric examination to determine and report to this Court upon the mental capacity of the petitioner to commit a felony at the time of the commission of the alleged crime for which he was tried and convicted in the Circuit Court of Tazewell County, Virginia under which conviction he is now being held in custody by the respondent, which motion was opposed by the respondent.

The Court deeming it proper so to do, said motion was denied, to which ruling of the Court in denying said motion the petitioner, by counsel, then and there objected and excepted.

The Court, after hearing the evidence introduced on behalf of the petitioner, and on behalf of the respondent, and after hearing argument of counsel for the petitioner and for the respondent, and being of the opinion that the page 52 } prayer of the petition herein should be denied for the reasons stated from the Bench and the Court finding that the petitioner's allegations are without merit;

It is adjudged, considered and ordered that the petition for a writ of *habeas corpus* be, and the same hereby is, denied, the writ discharged, and the petitioner remanded to the custody of the respondent, to all of which the petitioner, by counsel, objected and excepted.

Thereupon the petitioner, in person, announced to the Court that it was his desire to "appeal to the State Supreme";

It is adjudged, considered and ordered that the Court Reporter transcribe the proceedings had herein on the 7th day of April, 1967, file the original copy thereof with the Clerk of this Court, deliver a true copy thereof to each of counsel for the petitioner, the petitioner, the respondent, and the Attorney General of Virginia.

Petitioner being without funds to prosecute his appeal herein, it is adjudged, considered and ordered that John W. Gillespie, Attorney at Law, practicing at the Bar of this Court, be, and he hereby is, appointed attorney for the petitioner to prosecute his appeal.

It is further adjudged, considered and ordered that the Clerk of this Court certify copies of this order to the petitioner, his attorney, the respondent, and the Attorney General of Virginia.

I ask for this:

OVERTON P. POLLARD
Counsel for the Respondent

Seen and objected to:
JOHN W. GILLESPIE
Counsel for the Petitioner

Enter this order this 25th day of April, 1967.

J. AUBREY MATTHEWS
Judge Designate

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

* * * * *

Counsel for George Hugh Caudill, the petitioner in the above styled case, hereby gives notice of an appeal from a final judgment entered herein on the 25th day of April, 1967.

The said George Hugh Caudill, petitioner in the above styled case, will apply to the Supreme Court of Appeals of Virginia for a writ of error to said judgment and herewith sets forth his assignments of error as follows:

1. The Court erred in overruling the petitioner's motion that he be referred to a State hospital for psychiatric examination to determine his mental capacity to commit the crime for which he was sentenced to the Virginia State Penitentiary and for which crime he is now being held by the respondent;

2. The Court erred in denying the writ prayed for by the petitioner in his petition and ruling that the petitioner had a public trial as guaranteed to him by Article Six of the Constitution of the United States and remanding the prisoner to the Virginia State Penitentiary.

Dated this 17th day of May, 1967.

GEORGE HUGH CAUDILL

By: JOHN W. GILLESPIE
Of Counsel

Filed in the Clerk's Office Circuit Court of Tazewell County, Virginia, May 17, 1967.

Teste:

ELIZABETH BAKER, Deputy Clerk

* * * * *

The above-styled matter came on to be heard on the 6th day of April, 1967.

BEFORE:
HONORABLE J. AUBREY MATTHEWS.

APPEARANCES:
JOHN W. GILLESPIE, Attorney for the Petitioner.
OVERTON P. POLLARD, ASSISTANT ATTORNEY GENERAL, Attorney for the Respondent.
The Petitioner in person.

The Court: Mr. Gillespie, are you ready for the petitioner?
Mr. Gillespie: Yes, we are ready, your Honor.
The Court: Are you ready, Mr. Pollard, for the respondent?
Mr. Pollard: Yes sir.
The Court: For the record, this is a hearing on behalf of George H. Caudill, who filed a paper writing in this Court in November, 1966, for a hearing. Heretofore, on page 2 } December 20, 1966, Mr. John W. Gillespie was appointed Attorney for Mr. Caudill; that, thereafter, order was entered designating myself, J. Aubrey Matthews, Judge Designate, to hear this matter; that on January 26, 1967, order was entered fixing the matter for hearing on this date and ordering Mr. Caudill to be returned to Tazewell County for the hearing. Let the Record show that Mr. Caudill is present and in Court with his Court appointed attorney, Mr. Gillespie, and at this time, gentlemen, I would like a brief statement in order to know the position of Mr. Caudill and his contentions connected with his petition.
Mr. Gillespie: May it please your Honor, if I understand the issues involved in this, as specified by Judge Spencer Bell, of the Fourth Circuit Court of Appeals, before whom this matter has been heard, that it was remanded to the United States District Court for the Eastern District of Virginia upon two questions; one of which was whether or not Mr. Caudill's mental capacity to commit a crime, being legally responsible for the alleged crime, had not been determined as of the time of the alleged offense. Now, if I understand the Record completely, he was sent to Marion on a motion of the Commonwealth Attorney for Tazewell County, and an examination was had by the personnel or staff of the Southwestern State Hospital. They reported that at the time they saw him, he was mentally competent to stand trial. However, there was no report made as to whether or not he was mentally competent at the time of the commis-

sion of the alleged offense; and secondly, as to whether or not the proceedings had in the Circuit Court of
page 3 } Tazewell County at the time Caudill was tried on the wavier of indictment for murder of which he was charged, was a public trial, and if I understand it correctly, those are the two issues that are presently pending on this hearing. The Circuit Court of Appeals remanded this case, I am informed, to the United States District Court for the Eastern District of Virginia with instructions to hold any further proceedings in abeyance until these two matters, or certainly one of them, could be tried in the State Courts. That brings it to here. I am not very familiar with the prosecution of or defense of *habeas corpus* proceedings, but I wonder if we can agree that the opinion of Judge Bell and the proceedings had in the United States District Court and in the Circuit Court of Appeals for the Fourth Circuit can be made a part of the record in this case.

The Court: Any objection, Mr. Pollard?

Mr. Pollard: No objection to that.

Mr. Gillespie: Now, then, in view of that, I respectfully move the Court that George Caudill be remanded to one of the State institutions, preferably Southwestern State Hospital at Marion, it being the closest, and there that the personnel or staff of that hospital be directed to observe, examine and make whatever tests they deem necessary or proper to determine whether or not George Caudill was competent, legally competent, at the time of the commission of the alleged offense and whether or not he was legally responsible for the crime that he was alleged to have committed, if in fact, he did commit it.

page 4 } Mr. Pollard: Your Honor, the respondent's position is that the, that this particuar question is now before the Fourth Circuit Court of Appeals, and we do not feel we should go into this. Now, as I see it, the only issue that should be before the Court today is whether or not he was granted a public trial. Now, as I understood Mr. Gillespie's motion as to Judge Bell's ruling, that was just to make a record of the District Court as a part of this proceeding. Of course, right now, the Fourth Circuit Court of Appeals is holding in abeyance their ruling as to the holding of the District Court, and one of the questions presented on appeal was whether the petitioner was accorded his constitutional rights with respect to determination of his sanity. I feel that the motion made by Counsel for petitioner should be overruled.

The Court: Motion will be overruled and denied. As I see from the petition, the only issue raised in your petition is

whether or not the petitioner had a public trial. I don't see any question in the petition at all concerning the sanity issue, and that matter is now in the Federal Court, and as I understand the proceedings, it is held in abeyance on the determination of all other questions, with the exception of whether or not he was afforded a public trial in the Circuit Court of Tazewell County. I think the hearing should be limited to that issue.

Mr. Gillespie: We except to the Court's ruling.

The Court: Do you desire to make an opening statement?

page 5 } Mr. Pollard: No, your Honor, we will waive the opening statement.

The Court: You may call your first witness.

Mr. Gillespie: Mr. Coates.

WHEREUPON,

WADE S. COATES was called as a witness, and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. John W. Gillespie, Attorney for the petitioner:

Q. You are Wade S. Coates, are you?

A. I am.

Q. You are Commonwealth Attorney for Tazewell County at the present time?

A I am.

Q. And you were at the time George Caudill was tried on a waiver of indictment charging him with murder?

A. I was.

Q. Mr. Coates, do you have any independent recollection of the hearings which were had at the time George Caudill was tried and sentenced?

A. I think so.

Q. Where was the trial held?

A. My recollection is that the trial was had in the Chambers of the Judge of the Circuit Court, the Chambers being located just off the Courtroom. The door of the

page 6 } Chambers was open.

Q. Do you have any independent recollection of how many people were present at the trial?

Wade S. Coates

A. I do not have an independent recollection of how many people were present. There were several people present.

Q. I take it Judge V. L. Sexton, Judge of the Twenty-Second Judicial Circuit presided?

A. He did.

Q. His desk is located near the center of his Chambers?

A. It is. Face out.

Q. Facing the Courtroom?

A. Yes.

Q And he, of course, was behind the desk facing the Courtroom?

A. Facing the Courtroom and the open door.

Q. On his left, as he sat at the desk, is there a typewriter setting just off of the Southeast corner?

A. The left and to the rear of his desk. There is another desk, which is a typing desk. It has a typewriter on it, near the window.

Q. And directly to the South of his desk, is there a four drawer filing cabinet?

A. There is.

Q. And to the West of that filing cabinet and on the South wall of the office, how many chairs are there?

A. Several. I don't recall the number. Four to five.

page 7 } Q. Along that wall?

A. Along that wall.

Q. How many on the West wall and to the North of the door entering into Judge Sexton's office?

A. Mr. Gillespie, I haven't counted them. I would judge to be three, perhaps.

Q. At this trial, I take it you were present?

A. I was.

Q. Do you remember where you were seated?

A. Mr. Gillespie, I don't remember where I was sitting. Customarily, when proceedings have been held in there, I, as I usually do, would sit on the Court's left in the first chair by the filing cabinet.

Q. Was the Clerk of the Circuit Court present?

A. Yes, I think he was.

Q. Do you know where he was sitting?

A. I don't have an independent recollection. I would say that he usually sits to the rear of the Judge at the typing desk.

Q. The defendant was present?

A. The defendant was present.

Q. Do you know where he sat?

Wade S. Coates

A. Not an independent recollection, I don't. I think he, perhaps, he sat on the North wall. You have mentioned a West wall and the South wall. There are usually some chairs on the North wall in front of the book cases and, perhaps, he sat there. I am not sure.

page 8 } Q. He was represented by Counsel, wasn't he?

A. Yes.

Q. Where did his attorney sit?

A. By him.

Q. Do you know what witnesses were present? Do you remember what witnesses were present?

A. Mr. Gillespie, without referring to my file, I couldn't be absolutely sure as to what witnesses were called. Is that what you mean?

Q. No. I mean present in the room?

A. No, I don't.

Q. Was A. K. Harvey there?

A. A. K. Harvey was called as a witness and testified on behalf of the Commonwealth. Perhaps, he was recalled by the defendant.

Q. Did Sid Harman appear?

A. Sid Harman was called as a witness.

Q. Both of these men were in the Judge's Chambers?

A. They were in the Judge's Chambers at the time the evidence was taken. I don't know whether they remained in there or not. One of the officers remained in there at all times.

Q. Was Foster Vance present?

A. Yes, I think so.

Q. He was in there, too?

A. I think so.

Q. How about the Sheriff?

page 9 } A. Now, you say he was in the room, too. Now, I am not saying definitely they were in the room, Mr. Gillespie. I don't remember.

Q. How about the Sheriff?

A. Perhaps.

Q. Who was the Sheriff at that time? E. P. McGlothlin?

A. I think so.

Q. Was he there?

A. I am sure he was around somewhere.

Q. A. K. Harvey, Sid Harman and Foster Vance were Deputies under E. P. McGlothlin, Sheriff of this County, at that time?

A. They were deputies. Yes.

Wade S. Coates

Q. And then, aside from Judge, there were two lawyers, you and defense counsel, the Clerk, and, perhaps, four officers, and the defendant?

A. Mr. Gillespie, I wouldn't think that all four officers were in the room. That is not usual, and I wouldn't think so.

Q. Were any of the defendant's relatives present?

A. Mr. Gillespie, two of Mr. Caudill's sisters from Falls Mills were in contact with me numerous times, and his, I don't know whether it was his Uncle or cousin, George Caudill, kept in contact with me. I don't recall whether they, any of them were present at that hearing or not. I don't recall these sisters' names. I would know them if I saw them. They lived at Falls Mills.

page 10 } Q. Were there any other people, other than defense counsel, who were related to the defendant, either by blood or marriage, present at the trial?

A. Mr. Gillespie, I don't know.

Q. You have no recollection of any?

A. There were, perhaps, some people around and in the Courtroom but I don't know who was there at the time.

Q. I am talking about the Judge's Chambers?

A. In the Judge's Chambers, I don't think so. I don't remember.

Q. Do you know whether or not any of his people had been notified of the time of this trial?

A. Mr. Gillespie, I couldn't state positively. I rather think that I had discussed the matter, perhaps, with George Caudill, the relative, the painter, and these two sisters were in contact with me, and I am rather inclined to think that I probably told them when it was.

Q. Are you prepared to say positively that you did?

A. No, I am not prepared to say positively that I did. That is too far, too far back.

Q. I believe you were summoned here as a witness for the petitioner?

A. I was summoned, Mr. Gillespie. I don't recall which one of you gave me the subpoena.

Mr. Gillespie: You may ask him.

page 11 } Mr. Pollard: Your Honor, I have no questions at this time but I would like to reserve the right to recall Mr. Coates as a witness for the respondent.

The Court: Mr. Coates, the Court would like to ask you this.

By The Court:

Q. Has the Courtroom or the Judge's office or Judge's Chambers changed any since the date of this trial?

A. No sir, not materially.

Q. The Court notices that the Bench is a considerable distance from the seats in the Courtroom. How far would you say it is from the Bench to those seats?

A. Twenty-five to thirty feet.

Q. The Court further observes that the benches are very close to the door of the Judge's Chambers. How far are the benches for the spectators from the door to the Judge's Chambers?

A. Three feet. Four at the outside.

The Court: All right.

Mr. Gillespie: Judge Sexton, will you take the stand, please?

WHEREUPON,

VINCENT L. SEXTON, JR. was called as a witness, and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. John W. Gillespie, Attorney for the petitioner:

Q. I believe you are V. L. Sexton, Jr.?

A. Yes sir.

page 12 } Q. And you are the Judge of the Twenty-Second Judicial Circiut of Virginia?

A. Yes sir.

Q. Which is comprised of Bland, Giles and Tazewell?

A. Yes.

Q. Judge Sexton, how long have you been Judge of the Twenty-Second Judicial Circuit?

A. Since 1946 in October.

Q. You have served continuously since that time on up until now?

A. Yes sir.

Q. On the day that George Caudill was tried, do you recall his having been tried in your office, in your Chambers?

A. Yes sir. That is my recollection on it.

Q. Do you have any recollection as to the persons present within your office at that time?

Vincent L. Sexton, Jr.

A. None other than — of course, I have refreshed my memory just by looking at the record I made of the trial. The Commonwealth Attorney was there, the Clerk, the defendant and his counsel, and I don't remember whether Sheriff Davis was there or not. He was Sheriff at that time and it may be that he sat in the room with the defendant. Then, there were other Deputies who testified but they came in and testified and they withdrew, as I recall.

Q. Judge, has the furniture in your room been changed substantially as to its position as it appeared then and as it appears now?

page 13 } A. With the exception of the chairs being moved around, the desk is where it was, the typewriter desk, the four drawer file, and the bookcases are identical as to location now.

Q. During the time that you have been on the Bench of this Circuit and have held hearings in your office, particularly, criminal hearings, has it been customary for spectators to come into your office, who have no particular interest in the case either as a witness or Court officers or Court officials—has it been customary for ordinary spectators to come into your Chambers?

A. Not here in Tazewell, because my office is relatively small. I would say that I have eight or ten chairs in there, and there is not room for any spectators. The situation is a little different in Giles County. I have a larger office there, and the attorneys sort of stay in Court while Court is on there, and they are in and out, and other people, but here because of the size of my office, ordinarily no spectators are there unless they are directly interested in the matter being considered.

Mr. Gillespie: I think you may cross examine him.

CROSS EXAMINATION

By Mr. Overton P. Pollard, Attorney for the respondent:

Q. Judge, if spectators were directly interested, there would be no objection to letting them come in?

A. Not at all. We often, if a defendant requests or if his attorney requests that wife or brothers or sisters or parents be present, they are present, in a good many instances.

page 14 } Q. If there were a request for someone, not a member of the family, but just interested in the

trial, would there be any objection to that request being granted?

A. I don't think so if they had some interest in it, an employer, for instance, or maybe a person who was on the defendant's bond, or a close friend.

Q. Now, Judge, from your recollection, was the door kept open to your office?

A. Yes sir. I think I can say the door was kept open because when I have hearings in there, unless there is Court here in this Courtroom, county court, or unless something else is going on out here that would detract, the door is open.

Q. Now, I believe from the description of your office, you would face the door. Is that correct?

A. I face the door in the Courtroom.

Q. Now, when Mr. Caudill was tried, do you recall if there were any spectators outside the door?

A. Not specifically. The Sheriff's office was right next door to my Chambers at the time, and people were coming and going, not only the members of the Sheriff's Department, but individuals, and very often when I am having hearings in there, people will be sitting in the Courtroom, but in this instance, I cannot say that anyone was in the Courtroom. I don't know.

Q. Could you say whether they would have any difficulty in hearing what was going on if they were in the Courtroom?

page 15 } A. Not a bit, not a bit.

Q. Would they, also, be able to see, assuming that they are sitting, say, within ten to fifteen feet of the door?

A. Yes. From this witness stand, you can see right into my office. I have always considered, of course, that Chambers is open Court.

Q. Do you by any chance know the size of your office, the dimensions?

A. Oh, I would say approximately eleven by fourteen or fifteen feet. Eleven or twelve by fourteen or fifteen feet. Do you have the size of it there? There is a map. What does it show?

Mr. Gillespie: This shows eighteen by twelve feet, nine inches.

Q. Do you recall any objection being made by any of the people involved in this case to Mr. Caudill being tried in your office?

W. J. Hankins

A. None at all. No sir. Frankly, as a matter of convenience, this is a large Courtroom, with the Judge's Bench probably twenty feet from this witness stand; this is a large room; the acoustics are bad, and very often, as a matter of convenience so that the parties can be closer together and understand things better, we go into Chambers to have a hearing, not only in criminal cases but in a great many other cases. There was no objection whatever voiced by the defendant or his counsel to having the trial in there.

page 16 } Mr. Pollard: I have no further questions.
Mr. Gillespie: Mr. Hankins.

WHEREUPON,

W. J. HANKINS was called as a witness, and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. John W. Gillespie, Attorney for the petitioner:

Q. Are you W. J. Hankins?

A. I am.

Q. What position do you hold in Tazewell County, Mr. Hankins?

A. I am Executive Secretary, Purchasing Agent for the County.

Q. How long have you been Executive Secretary?

A. I have been Executive Secretary officially since February, 1966.

Q. Mr. Hankins, as Executive Secretary, do you have in your possession the original drawings for the Courtroom?

A. I do.

Q. Did you make a sketch from that drawing sometime recently?

A. I did.

Q. I hand you what purports to be a sketch of the Courtroom, showing the Judge's Bench, the Jury Box, the stairs leading up to it, on one side, the Law Library,
page 17 } Justice Buchanan's office, the witness room, and on the other side, Judge Peery's office, the witness room, Judge Sexton's office, and the Secretary's office, and ask you to examine that to see if that is the sketch of the Courtroom that you prepared at the request of the petitioner?

A. It is.

Mr. Gillespie: I will ask the Court to mark it as the Petitioner's Exhibit No. 1.

The Court: Let it be so marked. That will be the Petitioner's Exhibit No. 1.

Q. Mr. Hankins, again referring to Petitioner's Exhibit No. 1, which has just been filed as evidence in this case, I will ask you if it isn't generally the situation of the Courtroom that it faces North and South?

A. Generally, yes.

Q. And you have on the bottom of this drawing what appears to be a set of stairs?

A. Right.

Q. Now, which end of the Courtroom are they on, and I speak of the North and South?

A. They are on the North.

Q. Entering the Courtroom from the North end, after you come into the Courtroom proper, and looking to the East, what is the first room that comes under your observation?

A. After you come into the Courtroom?

Q. Right.

page 18 } A. What is now a witness room and Judge Sexton's office.

Q. Was that witness room the room that Judge Sexton referred to in his testimony at the time of the original hearing in this case as being the Sheriff's office?

A. That is right.

Q. And coming down the East wall, what is the next room?

A. Judge Sexton's office, and then a witness room again, Secretary's office for Justice Buchanan's Secretary.

Q. It is indicated on this drawing as Sec. office?

A. Right.

Q. Getting back to Judge Sexton's office, Mr. Hankins, what are the dimensions of that office?

A. Eighteen feet by twelve foot, nine.

Q. How far from the front door leading into his office out of the Courtroom is the West edge of his desk situated now at the time you made the drawing?

A. Well, at the time I made the drawing, Mr. Gillespie, we were doing some painting in the office. At that time, the desk was six foot, eight inches from the door.

Q. Is that about where it is situated now?

A. I believe it—I haven't measured it but guessing, I would say that it is moved back, maybe, one foot, one and one-half feet.

Q. Then probably, the ordinary location for that desk would probably be maybe seven feet to eight, eight and one-half feet?

W. J. Hankins

Mr. Pollard: Your Honor, I will have to object to the actual location of the desk. We are not certain as to
page 19 } whether or not that desk was where it is now. It is approximately but the exact measurements—

The Court: Objection overruled.

Mr. Pollard: Exception to the Court's ruling.

Q. Now, Mr. Hankins, what is the size of the Courtroom according to your sketch?

A. The Courtroom is forty-nine feet, three inches by forty-seven feet.

Q. Which was, which way is the forty-nine feet? Is it North, South, East or West?

A. The forty-nine feet, three inches is North and South.

Q. The forty-nine feet, three inches runs North and South, and the forty-seven feet runs East and West?

A. Yes. That is my recollection.

Mr. Gillespie: I believe that is all. You may cross examine him.

CROSS EXAMINATION

By Mr. Overton P. Pollard, Attorney for the Respondent:

Q. Mr. Hankins, did you actually make these measurements or were they taken from the drawing?

A. Those measurements are taken from the original drawing of the Courthouse.

Q. The original drawing of the Courthouse, also, showed the distance of Judge Sexton's desk?

A. No, it did not.

Q. Where did that measurement come from?
page 20 } A. I put that in at the request of Mr. Gillespie.

Q. And this was made while there was some painting going on?

A. Yes. We were doing some changing around in several of the offices, and at that time, the desk was as measured there.

Q. So you have no way of knowing where the desk was in 1960?

A. I do not.

Q. That wouldn't appear on any original drawing that you took the other measurements from?

A. No.

Q. Do you know when the original drawing was made?

A. No, I don't.

Q. You have no personal knowledge, then, of these measurements?

A. No.

Q. And you say that you have been Executive Secretary since 1966 or 1956?

A. 1966.

Mr. Pollard: I have nothing further.

Mr. Gillespie: Come around, George.

WHEREUPON,

GEORGE HUGH CAUDILL was called as a witness, and after first being duly sworn, was examined and testified as follows:

page 21 } DIRECT EXAMINATION

By Mr. John W. Gillespie, Attorney for the Petitioner:

Q. You are George Hugh Caudill?

A. Yes sir.

Q. You are the petitioner in this *habeas corpus* hearing that is now being conducted in the Circuit Court of Tazewell County?

A. Yes sir.

Q. George, you were tried and convicted for a murder charge in 1960 in the Circuit Court of Tazewell County and sentenced to serve forty years in the penitentiary?

A. Yes sir.

Q. Have you been in the penitentiary since shortly after you were sentenced until you were returned here recently for this hearing?

A. Yes. I got to the penitentiary March 29, 1960.

Q. When did you come back to the jail in Tazewell?

A. I left down there March 13, 1967, on this.

Q. George, do you have a clear remembrance of the people who were present and where you were tried when you were tried on waiver of indictment, charging you with murder?

A. Well, like I say, it is a hard matter to keep all that stuff in your mind and remember it the best you can. That is about all I can say or do.

Q. Do you have a clear remembrance of this?

A. Well, I think I do.

page 22 } Q. George, the morning that you were tried on

George Hugh Caudill

the waiver of indictment, did you have any previous notice that you were going to be tried on that particular day?

A. No more than that evening, I said to him, around 5:00 or 6:00 that evening, the jailer, Harry Buchanan, come in there and told me he understood they was going to try me the next day.

Q. That was 5:00 or 6:00 in the evening *preceeding* the trial?

A. Yes sir. That was getting late in the evening.

Q. Then, what time the next day were you brought from the jail?

A. Well, I would say it was somewhere around 9:00.

Q. Do you remember who came to the jail for you?

A. The lawyer come down there and said, "We are going to try you today", and I can't remember if I come up here with him or whether I was in jail and the Sheriff come down.

Q. When you were brought from the jail, where were you taken?

A. Well, I just come up through there, went over there and went in the Judge's Chambers.

Q. Went into the Judge's office?

A. Yes sir.

Q. Now, George, do you remember what persons were in the Judge's office when you went in there?

A. Well, sir, they was Mr. Sexton.

page 23 } Q. Do you remember where Judge Sexton was sitting?

A. He was sitting across to the back of the desk from the door.

Q. He was sitting behind the desk facing the door?

A. Yes sir.

Q. Have you seen his desk since you have been back here this time, George?

A. No, sir, I haven't.

Q. Who else was in that room?

A. Mr. Wade Coates. He was in there.

Q. Do you remember where Wade was sitting?

A. He was sitting over next to the wall on the right of the door as you go in.

Q. He was sitting on the right next to the wall as you go in the door?

A. Yes sir.

Q. Do you remember anybody else being there?

A. Well, the Clerk of the Court, Mr. Moore.

Q. Do you remember where Mr. Moore was sitting?

George Hugh Caudill

A. He was sitting over in the right hand corner as you go in.

Q. Was he behind Judge's desk or in front of his desk?

A. No sir, he was back behind the Judge's desk.

Q. Was there anybody else sitting behind Judge Sexton's desk other than Mr. Moore and Judge Sexton?

A. Not that I remember of.

page 24 } Q. Now, who else was in that room, George?

A. Mr. Bennett, of Falls Mills, Deputy Sheriff.

Q. Mr. Bennett?

A. Yes sir.

Q. Do you remember where he was sitting?

A. Well, a part of the time, he was sitting over there next to Mr. Coates, the Prosecuting Attorney, but I can't remember if he stayed over there all the time.

Q. You referred to Mr. Coates. Where was he sitting?

A. He was sitting to the right of the door as you go in.

Q. Who else was in there, George?

A. Sid Harman. He was in there.

Q. What position did Sid Harman occupy?

A. Well, now, he was over there next to Mr. Coates, the Prosecuting Attorney. He was over there. In fact, I am sure all the time that he was in there.

Q. Was Sid Harman an officer?

A. Yes sir, at that time.

Q. What officer was he?

A. He was Deputy Sheriff.

Q. Did you say Bennett was a Deputy Sheriff?

A. Yes sir. He was a Deputy Sheriff and looked after that fishing club down there at Falls Mills.

Q. Now, was there anybody else in that room, George?

A. Chip Harvey from Bluefield, Virginia.

Q. Is that A. K. Harvey?

page 25 } A. I believe it is. I ain't prepared to say.

Q. Do you know where he was sitting?

A. Well, as I remember, he was sitting over there next to Mr. Coates, too, part of the time anyhow.

Q. What position did A. K. Harvey hold?

A. He was Deputy Sheriff.

Q. Now, was anybody else in there, George?

A. Well, it seems to me like Mr. St. Clair might have come in there that evening.

Q. Who is Mr. St. Clair?

A. I ain't for sure about that, whether he did or not. That is the Probation Officer.

George Hugh Caudill

Q. The Probation Officer?
A. Yes sir.
Q. You refer to Mr. A. G. St. Clair, Jr. Is that the person you are referring to?
A. Yes sir. I ain't for sure but I believe he did.
Q. Do you remember whether or not Foster Vance was present?
A. It seems to me like that he was in there but I don't think he stayed. I ain't sure.
Q. Now, what position did Foster Vance occupy at that time?
A. Well, he was Courthouse Deputy, I believe, if I ain't mistaken.
Q. Courthouse Deputy Sheriff?
A. I believe.
Q. Was there anybody else in there, any other officers?
page 26 } A. No sir.
Q. Do you remember seeing the Sheriff there?
A. If he was there, he never stayed any time, not that I can remember anything about.
Q. Do you remember who was Sheriff at that time?
A. Mr. Davis. He just had started.
Q. Mr. Davis, who is the present Sheriff?
A. Yes sir. He was high Sheriff.
Q. Was your lawyer in there?
A. Yes sir.
Q And you were, of course?
A. Yes sir.
Q. Anybody else that you recall?
A. No sir. I think that is all.
Q. Were any of your people there, George?
A. No sir.
Q. Were any of your friends there?
A. No sir.
Q. Were there any curiosity spectators there?
A. No sir.
Q. Were there any strangers to you other than these people you have mentioned?
A. No, not that I can remember of.
Q. Were there any people in there who had nothing, or had no interest in the case, except to see what was going on in the Judge's office when you were being tried?
page 27 } A. Not that I can remember of. No.
Q. Do you remember whether or not the door to Judge Sexton's office was open or closed?

George Hugh Caudill

A. Well, it was open part of the time. It might have been closed part of the time.

Q. Do you remember for sure about that?

A. Yes sir, but like I say, it is hard to keep all this stuff in mind.

Q. Do you remember what time of day you were tried, George?

A. Well, the best I remember, we come up here about 9:00 that morning.

Q. Were you tried and sentenced there that day, the same day?

A. No sir.

Q. How was that handled?

A. The Judge said that he would turn it over to the Probation Officer.

Q. It was turned over to the Probation Officer?

A. Yes.

Mr. Pollard: Your Honor, I object to going into the sentencing. We just have the one issue. I think the record—

The Court: I am going to overrule your objection. I am going to give you some leeway.

Mr. Pollard: Except to the Court's ruling.

Q. After this matter was referred to the Probation Officer, what became of you, George?

page 28 } A. Well, sir, I went back down there in jail and stayed down there until they called me up for sentencing.

Q. How long after you went back to jail were you called up for sentencing?

A. The best I can remember, that was March 18, 1960.

Q. That you were sentenced?

A. Yes sir, I am pretty sure that is right.

Q. George, during the time you were being tried there and before you were brought back and sentenced, were you conscious of any people being out in the Courtroom?

A. I didn't understand you.

Q. Did you know whether or not there were any people out in the Courtroom proper, outside of Judge office and in the big Courtroom?

A. Well, not no more than there would be somebody that would work there or involved some way or other like that.

Q. Did I understand you to say that you thought there was somebody working there?

George Hugh Caudill

A. Yes sir. I saw a couple of guys over next to the wall. I wouldn't know who they were.

Q. Were there any people present in the Courtroom who just apparently were here to observe what was going on or looking around in the Courtroom?

A. Not that I know of.

Q. Did you have any of your relatives at all present, George?

page 29 } A. No sir.

Q. Do you know whether or not any of your relatives knew when you were going to be tried?

A. No sir. I got the least little idea of it that they didn't know about it.

Q. How about any of your friends? Were any of them present in the Courtroom or out in the Courtroom?

A. No sir, that I know of, they wasn't.

Q. Did you see any of them?

A. No, I didn't.

Q. Did you see any people you knew besides those whose names you have given and who were present in the Judge's office that day?

A. No sir, no more than Garnett Wallace. He was in there.

Q. Garnett Wallace?

A. Yes sir.

Q. Was he a witness in the case?

A. Yes sir.

Q. For whom?

A. The Commonwealth.

Q. He was a Commonwealth witness. Was he in Judge Sexton's office, also?

A. Yes sir. He come in there and told what, testified what he was going to say, and went on out. He sat over there on the bench awhile and then disappeared.

page 30 } Q. Did he disappear before you came out going back down to the jail?

A. Yes sir.

Q. Did you see anybody else in the Courtroom, outside of Judge Sexton's office, other than those you mentioned that you saw?

A. They was some fellow come over there at the door, and I heard Mr. Coates whisper something to him, to move on or something, and I looked and seen him motion his hand. When I looked and seen him, then, why he had done disappeared.

Q. You say you saw Mr. Coates motion to somebody?

A. Yes sir but I don't know who he was.

George Hugh Caudill

Q. Did that motion indicate to you that he wanted him to leave?

A. Well, in my way of looking at it, that would be the meaning of it.

Q. What attracted your attention to this man that you refer to?

A. Well, I heard Mr. Coates whisper to him. Then, I looked and seen him and when I seen him, I seen him work his hand and by the time I looked around, why the man had, the man was leaving.

Q. Is that the only other person that you saw in the Court room?

A. No sir. That is about all I think.

Q. That is about all you saw?

page 31 } A. Yes sir.

Q. Do you know whether or not the Courthouse bell had been rung that morning to notify the public that Court was in session?

A. No sir, I don't. I would be afraid to say about that.

Q. Do you recollect hearing it ring, George?

A. No sir, I don't, Mr. Gillespie.

Q. You were present in Court this morning when the Sheriff opened Court?

A. Yes sir.

Q. Was that *proceedure* followed that morning so far as you know?

A. No sir, it wasn't. Not that I remember anything about.

Mr. Pollard: What was that question?

Mr. Gillespie: I asked him if that procedure of the Sheriff opening Court was followed the day he was tried, and he said, not that he remembered anything about.

Q. Is that correct, George?

A. Yes sir.

Q. Did you have an opportunity to talk to anybody on the way up from the jail or from the jail back down other than your lawyer and the people who were in Judge Sexton's office?

A. No more than the time that I was in the office and going and coming.

Mr. Gillespie: I believe you can cross examine him.

George Hugh Caudill

page 32 } CROSS EXAMINATION

By Mr. Overton P. Pollard, Attorney for the Respondent:

Q. Mr. Caudill, you say you saw Mr. Coates whisper to someone. You didn't hear what Mr. Coates said?

A. No sir, I didn't.

Q. And you said you saw him motion to the man. What do you mean by that?

A. Well, in my way of looking at it, that would be meaning that they could be business going on or something, and if he come in, it could interrupt.

Q. Could, also, be asking him to be quiet?

A. Yes sir.

Q. Now, you said some of the people that were in the Courtroom that day may not have been there all the time. Was that correct?

A. Yes sir. I wouldn't say for sure that they was there all the time.

Q. So they could have been coming in and out?

A. Yes sir. Some of the Deputies, they could have went in and come out. I never noticed.

Q. Now, where were you sitting during the trial?

A. I was sitting at the left of the door as you go in.

Q. And which way were you facing? Were you facing Judge Sexton?

A. Well, I was sitting with my back up in the corner and facing the other corner.

page 33 } Q. In other words, as you go in the door, you would turn to the left and you were sitting over in that corner to the left?

A. Yes sir.

Q. And could you see out of the door from that point?

A. Well, you could see out there all the time. I wasn't interested in sitting there looking at the door all day.

Q. But you say you could see from that corner?

A. You could see part of the time if something called my attention to look around or something.

Q. And did something cause your attention to be directed towards the door several times?

A. Well, about the only thing that ever called my attention to actually look at the door was when Mr. Coates, when that man walked up there, this gentleman, and Mr. Coates motioned for him to move on.

Q. So just that one time?

A. Yes sir. That is about the only time that anything like that called my attention. Maybe somebody might cough or something.

Q. Someone might cough?

A. Yes sir, might cough.

Q. This would be someone near the door or outside the door?

A. Yes sir.

Q. But unless something directed your attention to the door, you don't know what may have been going on outside the door?

page 34 } A. Some of the deputies could have been going in and coming out, maybe shutting the door. I just don't remember how the door was. The door might have been pushed back and my chair sitting back against it. I just don't remember for sure.

Q. And there could have been some people outside the door and you wouldn't have known it?

A. Well, if they was, they could have been on the other side of the door there and no chance for me to look out and see them.

Q. And you say that to your knowledge none of your relatives or friends were in the Court room or at the Courthouse?

A. No sir. They wasn't none of them. I am sure they didn't even know about it. I don't think they knowed about it.

Q. Now, you said awhile ago that the door was open part of the time and might have been closed part of the time. What do you mean by might have been closed?

A. Well, it is just like I said, it is a hard matter for a man to keep all this stuff in his mind. He is picking up and gathering some more of it all the time, and it is just like writing a big book and after you get it wrote, you have got to memorize every bit of it.

Mr. Pollard: I have nothing further, your Honor.

RE-DIRECT EXAMINATION

By Mr. John W. Gillespie, Attorney for the Petitioner:

Q. George, what is your age?

A. I will be 40 years old this coming November, November 23rd.

page 35 } Q. How much education do you have?

A. Well, sir, I started in the 3rd Grade. You

see, I suffered from my stomach when I was a kid growing up. I had a hernia. It wouldn't show up as a hernia. It showed up in my stomach. It affected me, I couldn't eat, and doctors, they didn't know what was wrong with me.

Q. But you had only started into the 3rd Grade?

A. Yes sir.

Q. That is the only education you had? You actually finished two grades in the public schools?

A. Yes sir.

Mr. Gillespie: I believe that is all.

Mr. Pollard: Nothing further, your Honor.

Mr. Pollard: I would like to call Mr. Wade S. Coates.

WHEREUPON,

WADE S. COATES was recalled, and was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Overton P. Pollard, Attorney for the Respondent:

Q. Now, Mr. Coates, during the course of the trial, do you recall going to the door to whisper to anyone or talk to anyone?

A. No sir.

Q. Do you recall motioning anyone away from the door?

A. No sir.

Q. I believe you said that to the best of your recollection that there were some people in the Courtroom?

page 36 } A. Yes, I think so. Since my memory has been refreshed, Sheriff McGlothlin was the Sheriff that investigated this case and it was tried after Sheriff Davis became Sheriff. I think, probably, Sheriff Davis was in the Court room.

Q. Mr. Coates, do you recall exactly where the petitioner was sitting?

A. He was sitting on the left hand side of the Judge's office as you enter the door. I don't recall whether he was sitting with his back to the West wall or on the South wall, on the North wall, I mean.

Q. Now, at this time, was it quite a normal practice to hold Court in the Judge's office?

A. Yes.

Mr. Gillespie: We object to that as being immaterial in this proceeding.

The Court: Overruled.

Mr. Gillespie: Exception.

A. To my knowledge, it has been done for many years, including the time that Judge Sexton has been Judge and prior to that when Justice Buchanan was on the Bench.

Mr. Pollard: You may cross examine.

CROSS EXAMINATION

By Mr. John W. Gillespie, Attorney for the Petitioner:

Q. But you don't have any independent recollection and are not in position to say with certainty that someone did not come and whisper to you while the trial was going on?

page 37 } A. Mr. Gillespie, I would feel relatively certain that they did not because I would have been in the process of trying this case. I know very well that I was right by the Judge. If anybody had come to see me, I would have told the Sheriff or one of the officers to go on and not bother me. I wouldn't have told anybody to leave. I don't think I would have stopped what I was doing to talk to anybody or motion them away. I certainly wouldn't have gotten up and gone to the door.

Q. But do you have any independent recollection of people actually being out here in the Courtroom?

A. Mr. Gillespie, I seem to remember people being out here, going and coming. It is common that people would be up and listening at the door. Like George says, this has been several years ago.

Q. And, therefore, you are not in a position to say definitely?

A. I wouldn't say who was there or how many but I feel like they were.

Mr. Pollard: I have one further question.

RE-DIRECT EXAMINATION

By Mr. Overton P. Pollard, Attorney for the Respondent:

Q. Mr. Coates, do you recall whether or not there was any work being done in the main Courtroom here?

A. I don't recall any work being done at that time.

Rhea F. Moore, Jr.

RE-CROSS EXAMINATION

By Mr. John W. Gillespie, Attorney for the Petitioner:

Q. Not even cleaning it up?

page 38 } A. No sir, I don't recall anything. I don't think they would have been sweeping and mopping while we were busy in there. I don't think the Judge would have put up with it. I think he would have stopped it.

Mr. Pollard: I have nothing further.

The Court: Any further witnesses?

Mr. Pollard: Yes sir. Mr. Rhea F. Moore.

WHEREUPON,

RHEA F. MOORE, JR. was called as a witness, and after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Overton P. Pollard, Attorney for the Respondent:

Q. Would you state your name and occupation, please?

A. Rhea F. Moore, Jr., Clerk of the Circuit Court of Tazewell County.

Q. And how long have you been Clerk?

A. Since January 1, 1960.

Q. Do you recall attending the trial of the petitioner held in 1960?

A. I do.

Q. And I believe this was held in Judge Sexton's office or Chambers?

A. It was.

Q. From your recollection, could you state where you were sitting?

page 39 } A. Yes sir. I was sitting at, rather to the left and slightly to the rear of Judge Sexton's desk at a desk which has been identified previously in testimony here this morning as a typing desk.

Q. And would you have been facing the door?

A. I would.

Q. Could you say, from your recollection, whether or not this door was open during the course of the trial?

A. Mr. Pollard, I can't say for sure that the door was open 100% of the time. However, it was certainly customary for the door to be open because of the small confines of the

room with five, six, seven, eight people in there, from the ventilation standpoint. It was certainly customary for the Court to conduct these hearings at all times with the door open, and I would say that the door was open during this particular proceeding.

Q. Do you recall seeing people come into the Judge's Chambers there during the trial and go out?

A. Witnesses. Yes sir.

Q. Do you recall any spectators coming in or out?

A. I can't recall any spectators. No sir. I do recall the witnesses.

Q. Do you recall seeing any other people in the main Court room?

A. No sir, I cannot. I can't say that there was or there wasn't.

page 40 } Mr. Pollard: You may cross examine.
Mr. Gillespie: No questions.
Mr. Pollard: The respondent rests, your Honor.
The Court: Anything further?

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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